

## The Budget Crisis, 2000-2004

### A. Introduction

Nebraska's post "9-11" economy in 2002 found the Legislature scrambling to address one of the worst revenue shortfalls in the history of the state. The question was less *if* but *how* state aid would be reduced to help balance the state's biennium budget.

One year later, in 2003, the economic situation in Nebraska had not improved. The Legislature was once again searching for alternatives to address the state's revenue shortfall. It was then the unthinkable became a legitimate item of discussion: increase the maximum school levy limitation, at least for temporary purposes. The result would be a decrease in state appropriations to fund the state aid formula, a reduction in the state's budget deficit, and a shift of funding responsibility to local school districts.

The Legislature had proposed and passed legislation within two consecutive sessions to implement a mechanism for across-the-board reductions in formula need calculations, provide a relief valve through a levy exclusion, increase the levy for schools, and reduce the schools' spending authority. The efforts were met with vetoes and subsequent veto overrides. All this would change in the 2004 Session.

By 2004 there were some positive signs of economic recovery, but there were still pressing state budget issues to address. The Legislature once again set out to reduce costs to the state through a variety of means. But the general feeling was that public schools had already contributed sufficiently to the cause so as to avoid any new reductions and funding shifts. That is not to say, however, that existing reductions and shifts could not be extended. And, in fact, this is what the Legislature chose to do.

### B. *Hawkins v. Johanns*

In 2000, a ruling would be handed down in a federal lawsuit concerning the Class I school district structure created in 1997 and a revenue structure created in 1996. On July 21, 1998 the suit was filed in the U.S. District Court of Nebraska by six Class I district patrons against the State of Nebraska.<sup>2090</sup> The federal lawsuit was filed by Irwin

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<sup>2090</sup> *Hawkins v. Johanns*, 88 F.Supp.2d 10 27 (U.S. Dist. Ct. NE 2000).

Hawkins, Teresa and Zane Wondercheck, Jerry Nicholls, Thomas Kappas, and Paul Simmons against Mike Johanns, Governor, Don Stenberg, Attorney General, and Doug Christensen, Commissioner of Education.<sup>2091</sup>

The plaintiffs resided in Class I (elementary only) school districts and sought injunctive and declaratory relief against the defendant state officials based upon the claim that state law concerning reorganization of Class I districts was unconstitutional and denied plaintiffs' equal protection rights. The plaintiffs challenged a statutory scheme, created under LB 1114 (1996) and LB 806 (1997), in which voters in other classes of districts educating K-12 students could have voting power over their Class I districts. The plaintiffs alleged their school districts had become dependant upon high school districts for budgets and property tax levies.<sup>2092</sup> Plaintiffs raised these specific issues:

1. The relative inability to set their own school budgets and the relative inability to exceed the general fund budget authority once it is established;
2. the relative inability to set or exceed tax levies;
3. the relative inability to authorize and spend special building fund monies; and
4. the relative inability to merge, dissolve or reorganize.<sup>2093</sup>

The plaintiffs argued that Class I districts deserve equal protection under the 14<sup>th</sup> Amendment to the U.S. Constitution, the clause that prohibits states from restricting fundamental constitutional rights.<sup>2094</sup>

The state defended the laws created in 1996 and 1997 by asserting a legitimate governmental purpose behind the challenged statutes, including promotion of tax equity, educational effectiveness, and cost efficiency. The state argued that the legislation met the needs of the state while at the same time preserving the authority at the local level to maintain various classes of school districts, including Class I (elementary only) districts.

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<sup>2091</sup> At the time of filing, Irwin Hawkins resided in a Class I district in Custer County, Teresa and Zane Wondercheck in Boone County, Jerry Nicholls in Lancaster County, Thomas Kappas in Cass County, and Paul Simmons in Sheridan County.

<sup>2092</sup> *Hawkins v. Johanns*, 1027.

<sup>2093</sup> *Id.*, 1029.

<sup>2094</sup> U.S. CONST. art. XIV, § 1.

Naturally, the lawsuit created a fair measure of anxiety among various lawmakers, the executive branch, and those schools that sought to uphold the existing school finance system. School officials from some of the state's largest schools were sufficiently concerned that they sought to intervene on behalf of the state. Members of the Greater Nebraska Schools Association (GNSA) filed a friend-of-the-court (amicus) brief on behalf of the defendants. GNSA is a professional and lobbying organization comprised of school board members and school administrators from many of the larger K-12 school districts in Nebraska. "Our decision was based upon concern about any potential impact on the ability of the state to distribute state aid to schools," said Ken Anderson, Superintendent at Hastings Public Schools.<sup>2095</sup>

At stake, of course, were the products of at least two legislative sessions with particular focus on the levy limits under LB 1114 (1996) and the comprehensive changes to the school finance formula under LB 806 (1997). If the state lost the case, the Legislature would likely have to start from scratch on a school finance formula, a local property tax system as it applies to school districts, and a school reorganization system. The anxiety among state officials and other interested parties was particularly acute during the 2000 Session when it was announced that a ruling would be forthcoming prior to the end of the session. Some wondered if the Legislature would be called into special session to address any deficiencies the court might find in existing state law.

The decision in *Hawkins* was prepared and delivered by Chief Judge Richard Kopf of the U.S. District Court in Nebraska. The decision was handed down on March 31, 2000. This was a recess day for the Legislature, which had only seven business days remaining in its regular session. And the news was positive for the state. Judge Kopf held against the plaintiff Class I residents and in favor of the state.<sup>2096</sup>

The decision was remarkable really on two different levels. The first, of course, was that it upheld the work of two separate legislative sessions. It vindicated those who

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<sup>2095</sup> Leslie Reed, "Large Districts Defend School-Aid Law in Federal Suit," *Omaha World-Herald*, 15 January 2000, 26.

<sup>2096</sup> *Hawkins v. Johanns*, 1047.

supported the levy limitations and the school finance modifications in 1996 and 1997. “Personally, it’s a great relief,” said Senator Ardyce Bohlke, “It removed any cloud of doubt hanging over LB 806 and how 806 treated Class I schools.”<sup>2097</sup> The second remarkable note about the decision had more to do with the extraordinary and painstaking effort of the court to characterize the existing law relevant to school finance and school organization. It was obvious that Judge Kopf and his staff endeavored to understand all facets of Nebraska’s public education structure in order to decide the merits of the allegations. The background contained in the decision provides a marvelous dissertation on the affiliation system, the rights of voters in different classes of districts, the general fund budget authority among schools, the process to exceed spending limits, the tax levy system, and the procedures for merger, dissolution, and reorganization of school districts.

The findings and conclusions contained within the decision not only vindicated the actions of the Legislature but praised them as well. His decision was based upon extensive research, including legislative histories of the enacted legislation at issue. Judge Kopf appeared to empathize with lawmakers and recognized the difficult situations faced by the Legislature in 1996 and 1997. He wrote in part:

As a result, the legislature faced a difficult dilemma. It made sense to view the education of children as a continuing enterprise from kindergarten through high school, but it was also advisable to keep the various types of districts separate. Furthermore, it was necessary to limit the amount of spending on the education of children from kindergarten through high school, and to impose a single funding limit on all schools, whether a school performed all or only part of the total educational task.<sup>2098</sup>

In response to the dilemma, he wrote, the Nebraska Legislature “decided to compromise and then experiment.”<sup>2099</sup> He called the chosen solution an “innovative device” because it retained a modified Class I system that was “partially controlled by a geographically distinct school district that was obligated to provide a high school education to the

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<sup>2097</sup> Leslie Reed, “Judge Rejects School Aid Suit,” *Omaha World-Herald*, 1 April 2000, 1.

<sup>2098</sup> *Hawkins v. Johanns*, 1045.

<sup>2099</sup> *Id.*

children graduating from the Class I district.”<sup>2100</sup> He wrote that it “made sense to put much of the decision making power about funding in the geographically distinct district providing the high school education since it was that district that was responsible for the ‘finished product.’”<sup>2101</sup> The finished product, of course, meant a student with a high school diploma in hand.

As to the specific claims of the plaintiffs, all were dismissed in the judge’s ruling. “The plaintiffs’ complaint boils down to a condemnation of the dependence of their Class I school districts on other political bodies for budgets, levies, special funds, and mergers, dissolutions or reorganizations,” he wrote.<sup>2102</sup> He concluded:

There is no evidence that a single Class I district school has received funds that are disproportionately less than other similar schools in other districts.

In the same vein, there is no evidence that any Class I district or voter has been denied the ability to merge, dissolve or reorganize.

There is no showing that the legislative scheme has denied, or will deny in the future, Class I voters tax equity, educational effectiveness, or cost efficiency.

Finally, there is no showing that Class I districts or voters are likely to be the subject of discriminatory treatment of any kind by Class II-VI boards or voters.<sup>2103</sup>

The plaintiffs, he wrote, had offered no proof beyond the mere difference in treatment of various classes of school districts by the state laws in question.

In summary, Judge Kopf wrote, the state had a legitimate purpose in the passage of the challenged legislation: “By using an ingenious strategy, Nebraska hoped to promote tax equity, educational effectiveness, and cost efficiency while still maintaining the separate identities of various political subdivisions.”<sup>2104</sup> He wrote that the Legislature’s “innovation in the reorganization of Class I school districts” was rationally

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<sup>2100</sup> Id.

<sup>2101</sup> Id.

<sup>2102</sup> Id., 1046.

<sup>2103</sup> Id.

<sup>2104</sup> Id.

related to a legitimate governmental purpose and, therefore, not in violation of the equal protection clause of the U.S. Constitution.<sup>2105</sup>

### C. The 2000 Legislative Session

#### LB 1213 - Levy Overrides

Sadly there are not many pieces of legislation like LB 1213 (2000) passed each session: one page in length and relatively easy to understand. But the form in which LB 1213 was passed and the form it was introduced were two entirely different matters.

The original purpose of LB 1213 was to revamp the budget process for Class I (elementary only) school districts. Introduced by the Education Committee, the bill sought to remove the existing methodology for calculating Class I budget limitations and instead include Class Is within the budget limits applicable to their primary high school's local system.<sup>2106</sup> The existing lid exceptions for budget limitations would be extended to the Class I districts. The existing provision, which allowed districts to seek voter approval for additional budget authority, would also be extended to Class I districts, except that voters in all affected local systems must be allowed to vote.<sup>2107</sup>

Aside the proponent opening remarks by Senator Ardyce Bohlke, no one else appeared in support of the measure on February 1, 2000 during the public hearing. But there were plenty of opponents. Patrons of Class I districts, representatives of the Class I United organization, and even a representative of the Nebraska Farmers Union appeared in opposition to the bill.<sup>2108</sup> Their opposition, however, was far from adamant. In fact, several testifiers seemed to desire more explanation about how the new lid mechanism would work. The Class I United organization even offered several amendments, presumably to improve the measure.

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<sup>2105</sup> Id., 1047.

<sup>2106</sup> Senator Ardyce Bohlke, *Introducer's Statement of Intent, LB 1213 (2000)*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, 1 February 2000, 1.

<sup>2107</sup> Id.

<sup>2108</sup> Committee on Education, *Committee Statement, LB 1213 (2000)*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, 1.

The truth of the matter was that some Class I districts might have gained some budget authority under the bill. As stated in the initial fiscal impact note, “It is possible that the budget of expenditures for Class I districts may be higher pursuant to the bill.”<sup>2109</sup> The matter seemed to depend upon the affiliation arrangement of each individual Class I district, and perhaps their relationship with the designated primary high school district. Some of the affiliation relationships were positive while others were more contentious.

There was another dynamic of the public hearing on February 1, 2000 that had many proponents of Class I schools on guard, perhaps even weighing the lesser of evils in terms of bills that had an impact on their schools. Senator Bohlke, chair of the Education Committee, chose to hold a combined hearing on five separate bills at the same time. The respective sponsors would open on their bills and testifiers could then offer comments on whichever measures were of interest to them. This is not an unusual event, but it can add another dimension to the hearing environment. It tends to require a little more strategy on the part of those who seek to influence the disposition of one or more bills heard at one sitting. In the case of February 1, 2000, the hearing incorporated an entire range of bills having an impact from slight to severe on Class I schools.

The other four bills heard that day included rather innocuous measures, such as LB 1001, introduced by Senator Floyd Vrtiska of Table Rock, to provide various duties for county clerks in relation to the affiliation process.<sup>2110</sup> Another relatively inoffensive bill was LB 1056, offered by Senator Jim Jones of Eddyville.<sup>2111</sup> The bill proposed to change some of the audit provisions concerning Class I school districts. At the other end of the spectrum were two bills that had Class I proponents and Class VI (high school only) proponents very concerned. LB 1439, introduced by Senator Mark Quandahl of

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<sup>2109</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 1213 (2000)*, prepared by Sandy Sostad, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2000, 31 January 2000, 1.

<sup>2110</sup> Legislative Bill 1001, *Provide duties for the county clerk relating to school affiliation*, sponsored by Sen. Floyd Vrtiska, Nebraska Legislature, 96<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2000, title first read 5 January 2000.

<sup>2111</sup> Legislative Bill 1056, *Change provisions relating to audits of Class I school districts*, sponsored by Sen. Jim Jones, Nebraska Legislature, 96<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2000, title first read 6 January 2000.

Omaha, eliminated all Class I and Class VI school districts by July 1, 2002.<sup>2112</sup> Even more draconian, LB 1447, offered by Senator Dan Lynch of Omaha, intended to eliminate Class I and Class VI districts by July 1, 2000.<sup>2113</sup> This did not necessarily mean the closing of buildings, but it did mean the end of separate school boards and administration for these classifications of schools.

Senator Lynch said the pending federal lawsuit filed by Class I patrons (*Hawkins v. Johanns*) had played a role in his decision to offer LB 1447.<sup>2114</sup> And he recognized the severity of the action. “However, it is simply a logical step in the progression this state has been taking for a great many years toward a rational, comprehensive K-12 education system in Nebraska,” Lynch said.<sup>2115</sup> Whether intended or not, it was as though Lynch’s and Quandahl’s bills were meant as retribution against those who dared file suit against the state. This may or may not have been the case, but it certainly had the Class I advocates scrambling to defend their schools. Over 100 small school patrons, board members, administrators, and students attended the hearing that day.<sup>2116</sup>

The Lynch/Quandahl proposals also made LB 1213, by comparison, look pretty good. Perhaps this was Senator Bohlke’s motivation all along for combining the bills into one hearing. And it worked. LB 1213 was advanced from committee on February 15, 2000 by an 8-0 vote.<sup>2117</sup> The other Class I-related bills remained in committee.

The bill emerged from committee with amendments attached in order to fine-tune the original purpose. LB 1213, as amended, would repeal the section of law allowing a Class VI district, a primary high school district for a Class I district, to establish the

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<sup>2112</sup> Legislative Bill 1439, *State intent relating to Class I and Class VI school districts*, sponsored by Sen. Mark Quandahl, Nebraska Legislature, 96<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2000, title first read 20 January 2000.

<sup>2113</sup> Legislative Bill 1447, *Eliminate Class I and Class VI school districts*, sponsored by Sen. Dan Lynch, Nebraska Legislature, 96<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2000, title first read 20 January 2000.

<sup>2114</sup> *Hawkins v. Johanns*.

<sup>2115</sup> Leslie Reed, “Bill Targets Non-K-12 Districts; A lawmaker says ending elementary- only and high-school-only districts is a logical step,” *Omaha World-Herald*, 2 February 2000, 1.

<sup>2116</sup> *Id.*

<sup>2117</sup> Committee on Education, *Executive Session Report, LB 1213 (2000)*, Nebraska Legislature, 96<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2000, 15 February 2000, 2.



budget of expenditures for the Class I district. Also repealed would be the requirement for NDE to determine the budget of expenditures for Class I districts that are not part of Class VI districts. The bill provided that the applicable growth percentage for Class I districts would be the growth percentage for the local system containing the Class I district's primary high school. The bill also allowed Class I patrons to vote on exceeding the applicable allowable growth percentage. Finally, the bill allowed Class I districts to request a vote to exceed the levy limitation and all patrons in the multiple-district school system would vote on the request to exceed the levy limitation by a Class I district.<sup>2118</sup>

However, we will never know how this scheme would have improved the budget and levy situation between Class Is and their primary high school districts. The committee amendments were, in fact, adopted and the bill advanced on March 15, 2000.<sup>2119</sup> The bill was, in fact, advanced on second-round consideration on March 24<sup>th</sup>.<sup>2120</sup> But none of the provisions advanced from committee and advanced on the floor ever became law. So what happened?

The answer to this question arrived during a legislative recess day on March 31, 2000. The event would have a profound impact on school finance policy in Nebraska, a fraction of which was demonstrated by the literal gutting of LB 1213 during Final Reading consideration on April 10<sup>th</sup>.

As fate would have it, the long awaited decision on the federal lawsuit brought by Class I patrons was handed down on March 31<sup>st</sup>. In *Hawkins v. Johanns*, the plaintiffs alleged that existing law deprived them of equal protection under the U.S. Constitution.<sup>2121</sup> Specifically, the plaintiffs believed legislation passed in 1996 and 1997 impeded if not prevented Class I districts to set their own budgets, exceed their general fund budget authority, exceed tax levies, authorize and spend special building fund monies, and merge, dissolve or reorganize.<sup>2122</sup> The suit was filed against several of the

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<sup>2118</sup> NEB. LEGIS. JOURNAL, *Com AM2305*, 17 February 2000, 720-25.

<sup>2119</sup> *Id.*, 15 March 2000, 1097.

<sup>2120</sup> *Id.*, 24 March 2000, 1291.

<sup>2121</sup> *Hawkins v. Johanns*, 1027.

<sup>2122</sup> *Id.*, 1029.

state's constitutional officers, including Governor Mike Johanns and Commissioner of Education, Doug Christensen. The suit amounted to an indictment on the actions of the Legislature upon the enactment of LB 1114 (1996), relating to levy limitations, and LB 806 (1997), relating to major modifications to the school finance formula.

To the great relief of many state officials and lawmakers alike, Judge Richard Kopf disagreed with plaintiffs' contentions. He went further than that by praising state government for addressing legitimate governmental interests and at the same time preserving the Class I structure. He called the legislation in question an "innovative device" because it retained a modified Class I system that was "partially controlled by a geographically distinct school district that was obligated to provide a high school education to the children graduating from the Class I district."<sup>2123</sup>

With this issue resolved, members of the Legislature could breathe a sigh of relief, particularly Senator Ardyce Bohlke, who believed the U.S. District Court decision vindicated her work on LB 806. If the original provisions of LB 1213 were at all intended to "fix" a perceived problem, the fix was no longer needed following the decision in *Hawkins*. While the official record is somewhat sketchy, it was decided to remove the existing provisions of LB 1213 and use the legislation as a vehicle for other important objectives before the Legislature adjourned sine die. On April 10, 2000, a series of motions were entertained to bring the legislation back to Select File for specific amendment. The first such motion was filed by Senator Raikes, a member of the Education Committee, who alluded to the decision concerning the fate of LB 1213. "The decision, although LB 1213 is on Final Reading, the decision has been made not to go with LB 1213 as it is, so that's the reason for bringing it back from Final Reading," he said.<sup>2124</sup> Senator Bohlke would later add during floor debate that one of the reasons for removing the original provisions "was knowing that we no longer needed LB 1213."<sup>2125</sup>

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<sup>2123</sup> Id., 1045.

<sup>2124</sup> Legislative Records Historian, *Floor Transcripts, LB 1213 (2000)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 96<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 10 April 2000, 13100.

<sup>2125</sup> Id., 13106.

There were actually several distinct proposals to renovate LB 1213, and not all would be agreeable to the majority of the body. The Legislature was on its 58<sup>th</sup> day of a 60-day session and LB 1213 had suddenly become a vacant, yet very useful vessel. For instance, Senator Roger Wehrbein tried unsuccessfully to transfer \$2 million to provide additional reorganization incentive payment funds.<sup>2126</sup> Several other amendments were discussed for a short time and then withdrawn. Ultimately, only two amendments would meet with approval from the majority of the Legislature, and would become the revised version of LB 1213.

Senator Ron Raikes of Lincoln proposed to merge the contents of LB 1324, a bill that he had introduced and that had been advanced from committee.<sup>2127</sup> LB 1324 and the corresponding amendment to LB 1213 related to levy override elections pursuant to the levy limits under LB 1114 (1996). The problem, Raikes explained, was that the law was not clear as to whether a levy override and spending lid override could occur on the same ballot. It was believed they could, but clarification to that effect would make those concerned more comfortable. Accordingly, the Raikes amendment permitted a levy and spending lid override to occur on the same ballot. It also changed existing law to permit override issues to occur on Primary, General, or special election ballots.<sup>2128</sup> This would save not only money in terms of election costs, but also time and effort by those who wish to attempt such an override, whether by petition or by resolution of the school board. The Raikes amendment was adopted on a 31-0 vote.<sup>2129</sup>

The second and last successful proposal to return the bill for specific amendment was filed by Senator Curt Bromm of Wahoo. The issue concerned what is commonly called the “respin” provision of the education statutes.<sup>2130</sup> This provision of law provides a mechanism by which NDE may adjust funding to schools that received either more or less than the appropriate amount due to clerical errors for instance. The problem, Bromm

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<sup>2126</sup> NEB. LEGIS. JOURNAL, *Wehrbein AM3374*, 10 April 2000, 1689.

<sup>2127</sup> *Id.*, 23 March 2000, 1232.

<sup>2128</sup> *Id.*, *Raikes AM3369*, 10 April 2000, 1686-87.

<sup>2129</sup> *Id.*, 1687.

<sup>2130</sup> NEB. REV. STAT. § 79-1065 (Cum. Supp. 1998).

said, was that some districts entitled to those sums of money had to wait until disbursement of aid in the ensuing year.

The Bromm amendment specified that a school district would be allowed to apply to NDE for a lump-sum payment of adjustments made to state aid as per the “respin” provisions in existing law. If it is found that the district is owed \$1,000 or more due to the respin, the department would pay the district in one lump sum before the last business day of September in the year the respin occurred. Adjustments of less than \$1,000 would be paid in a lump sum on the last business day of December.<sup>2131</sup> Interestingly, respin calculations work both ways in that sometimes districts are overpaid and must suffer reductions in aid the following year. The Bromm amendment only applied to situations in which the state owed the district, not the other way around.

There is no question that the legislative life of LB 1213 was anything but typical. The bill had been gutted on the second to last day of the session and reborn to incorporate entirely different provisions. Certainly there are some interesting questions about LB 1213, such as its original purpose in comparison to its ultimate fate. One might pause to wonder, if the decision in *Hawkins* had arrived much later in the session, what the Legislature would have done, if anything, different than what it ultimately chose to do. In any event, the Legislature voted to pass LB 1213 by a unanimous 47-0 vote on the 60<sup>th</sup> and final day of the 2000 Legislative Session.<sup>2132</sup>

Table 124. Summary of Modifications to TEEOSA as per LB 1213 (2000)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>   | <i>Description of Change</i>  |
|------------------|---------------------|---|---|
| 1                | 79-1029             | Basic allowable growth rate; Class II, III, IV, V, or VI district may exceed; procedure | LB 1213 provides that approval for a school district to exceed the allowable growth rate for the district’s budget of expenditures can be obtained by a vote of the people at a primary or general election. Prior to LB 1213, approval to exceed the expenditure limit could only be obtained if a special election was held each year. LB 1213 also provided that patrons could vote to exceed the limitation on expenditures and the levy limitation at the same time. |

Source: Legislative Bill 1213, *Slip Law*, Nebraska Legislature, 96<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2000, § 1, p. 1.

<sup>2131</sup> NEB. LEGIS. JOURNAL, *Bromm AM3364*, 10 April 2000, 1688.

<sup>2132</sup> *Id.*, 12 April 2000, 1768.

### LB 968 - Property Tax Relief

George Kilpatrick, legal counsel for the Revenue Committee, labeled LB 968 (2000) as “one of series of bills” to update what he called the “property tax relief project,” which commenced in 1996.<sup>2133</sup> Speaking before the Revenue Committee during the public hearing for LB 968, Kilpatrick outlined the legislation while making references to the various historical pieces of legislation that it affected. The bill updated components of LB 1114 (1996) relating to levy limitations, LB 271 (1999) relating to taxation of government property not used for public purpose, and LB 87 (1999) relating to creation of joint public agencies. Kilpatrick was careful not to refer to LB 968 as a technical cleanup bill. “I try never to use the word, technical, because it implies that there’s nothing substantive, and there is substantive change,” he said.<sup>2134</sup>

Nevertheless, some of the provisions of LB 968 were in fact technical in nature. For instance, the bill inserted the phrase “joint public agency” within a few sections of law that should have been amended under LB 87 in 1999. Some of the more substantive provisions involved treatment of historical societies under the levy limitations of LB 1114 (1996) and the Nebraska Budget Act. The intent of LB 968, in part, was to specify when historical societies fell within the requirements of the Nebraska budget Act for purposes of reporting budgetary information. The bill also addressed a controversy about the effective date of LB 271 relating to taxation of government property not used for public purpose. The 1999 legislation specified an effective date of January 2, 2000 and LB 968 changed the date to January 1, 2001 to avoid any legal and administrative entanglements.<sup>2135</sup>

The changes to the school finance formula, TEEOSA, were not a part of the original version of LB 968. These provisions were added during an executive session of the Revenue Committee on February 10, 2000 and attached to the bill as committee

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<sup>2133</sup> Legislative Records Historian, *Floor Transcripts, LB 968 (2000)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 96<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 19 January 2000, 2.

<sup>2134</sup> Id.

<sup>2135</sup> Legislative Bill 968, *Change provisions relating to revenue and taxation*, sponsored by Revenue Committee, Nebraska Legislature, 96<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2000, 5 January 2000, § 11, p. 18.

amendments. The additional provisions related to expanding and clarifying the special valuation laws and derived from a separate piece of legislation introduced in 2000 by Senator Bob Wickersham (LB 1260).<sup>2136</sup>

Special valuation, or “greenbelt,” laws were enacted in Nebraska during the 1974 Legislative Session.<sup>2137</sup> Greenbelt laws were enacted as a result of urban development and other non-agricultural development that had an economic impact on neighboring agricultural or horticultural land. At the time, the special valuation assessment provided for a taxable value based solely on 80% of the actual value of land for agricultural or horticultural purposes or uses without regard to the actual value the land might have for other purposes or uses. Because special valuation assessment reduces the value base for property tax purposes, there are provisions for the “recapture” of the tax benefit when the property ceases to qualify for the special valuation.<sup>2138</sup>

Since 1974, the greenbelt laws had been amended from time to time in order to keep pace with changing assessment practices, land development issues, and other issues related to real property taxation. Generally, in order for land to qualify for special valuation all the following criteria must be met:

- (a) The land is located outside the corporate boundaries of any sanitary and improvement district, city, or village,
- (b) the land is used for agricultural or horticultural purposes,
- (c) the land is zoned predominantly for agricultural or horticultural use, and
- (d) the land is not subdivided.<sup>2139</sup>

Individuals wishing to attain special valuation classification would apply for such status with their county assessor.

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<sup>2136</sup> Committee on Revenue, *Executive Session Report, LB 968 (2000)*, Nebraska Legislature, 96<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2000, 10 February 2000, 1.

<sup>2137</sup> NEB. REV. STAT. §§ 77-1343 - 1348.

<sup>2138</sup> NEB. ADMIN. CODE, Title 350, Chap. 11. Nebraska Department of Property Assessment and Taxation rules and regulations concerning agricultural or horticultural land special valuation.

<sup>2139</sup> Legislative Bill 968, *Slip Law*, Nebraska Legislature, 96<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2000, § 49, p. 19. The fourth criteria, relating to subdivided land, would be eliminated in subsequent legislation. Criteria codified in NEB. REV. STAT. § 77-1344.

Senator Wickersham introduced LB 1260 in 2000 and subsequently sought to include its provisions within LB 968 in order to address changes in real estate development in recent years. As Wickersham explained during floor debate of LB 968, special valuation had been predominant around metropolitan areas of the state, such as Lancaster, Douglas, Cass, and Washington Counties where there had been “great pressure” on agricultural values due to development.<sup>2140</sup> “We’re now seeing that phenomenon on a more statewide basis,” he explained.<sup>2141</sup>

Through LB 968, Senator Wickersham sought to change state law in order to more accurately implement what he called the “greenbelt provision in the constitution.”<sup>2142</sup> Said Wickersham:

We are suggesting that ag land valued under the special use valuation be subject to the same general assessment standard as for other ag land, so it’s 80 percent of the purpose, so that would be 80 percent of the special valuation that is created in that process.<sup>2143</sup>

The legislation would conform the recapture provisions of law in the event special valuation status is lost. The greenbelt laws would also be amended to incorporate the Tax Equalization and Review Commission (TERC) in cases of appeal.

In general, LB 968 intended to improve the process to apply for special valuation status without changing the criteria to qualify for such status. The measure provided that on or before July 15<sup>th</sup> in the year of application, the county assessor must approve or deny the application for special valuation. If the application is denied, the applicant may protest to the applicable county board of equalization on or before August 15<sup>th</sup>. The county board of equalization must decide the protest on or before September 15<sup>th</sup>. Within

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<sup>2140</sup> *Floor Transcripts, LB 968 (2000)*, 15 March 2000, 10821.

<sup>2141</sup> *Id.*

<sup>2142</sup> *Id.*, 10822. Article VIII, Section 1(5) of the Nebraska Constitution provides that “the Legislature may enact laws to provide that the value of land actively devoted to agricultural or horticultural use shall for property tax purposes be that value which such land has for agricultural or horticultural use without regard to any value which such land might have for other purposes or uses;... .”

<sup>2143</sup> *Floor Transcripts, LB 968 (2000)*, 15 March 2000, 10822.

30 days after the decision of the county board of equalization, its decision may be appealed to the TERC.<sup>2144</sup>

LB 968 affected only one section of the school finance formula. The legislation specified that greenbelt land would be set at 100% of special valuation for purposes of state aid value, the value used to calculate state aid.<sup>2145</sup> It must be remembered, however, that special valuation is defined as 80% of the “value that the land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses.”<sup>2146</sup> The confusing aspect about this system, in terms of calculating state aid value for special valuation property, is that it amounts to 100% of 80%, meaning the maximum assessed value for special valuation property. By comparison, the state aid value for nonagricultural property is set at 100% of market value. The state aid value for agricultural land is set at 80% of market value.

So what did this mean for state aid to education? What impact would the legislation have on public schools? The final fiscal impact statement for LB 968 stated that the bill “could increase state aid to schools by \$4.5 million,” but that no definitive impact would “show up” until fiscal year 2004.<sup>2147</sup> While the fiscal note did not specify a reason, an increase in state aid often derives from a loss of property tax revenue due to changes in valuation and assessment practices. The state aid formula is designed to compensate for losses in local revenue sources. LB 968 did not answer the question of fiscal impact to schools, but it would launch a series of changes to the greenbelt laws in the next few years to fine-tune the special valuation provisions.

Not unlike other broad, encompassing pieces of legislation, LB 968 provided an opportunity for piling on other revenue-related amendments. The Legislature appeared relatively content with the work prepared by the Revenue Committee in terms of the committee amendments and the original provisions, but the bill quite literally opened a

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<sup>2144</sup> LB 968 (2000), *Slip Law*, § 51, p. 20.

<sup>2145</sup> *Id.*, § 80, p. 31.

<sup>2146</sup> *Id.*, § 48, pp. 18-19.

<sup>2147</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 968 (2000)*, prepared by Doug Nichols, Nebraska Legislature, 96<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2000, 24 March 2000, 2.



large portion of law for potential amendment. Before the bill passed on April 3, 2000, the measure had been amended several times, but no further changes were made to the school finance formula. LB 968 passed on a unanimous 44-0 vote.<sup>2148</sup> Governor Mike Johanns, who was presumably briefed on the potential increase the bill may cause in state aid to education, signed the bill into law on April 6, 2000.<sup>2149</sup>

Table 125. Summary of Modifications to TEEOSA  
as per LB 968 (2000)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>  | <i>Description of Change</i>  |
|------------------|---------------------|--|---|
| 80               | 79-1016             | Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited | Prior to LB 968, the school finance formula defined “state aid value” for purposes of calculating state aid as 100% of market value for real property other than agricultural land and 80% of market value for agricultural land. LB 968 added language to specify that agricultural land that receives special valuation (greenbelt status) would be set at 100% of special valuation. |

Source: Legislative Bill 968, *Slip Law*, Nebraska Legislature, 96<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2000, § 80, pp. 31-32.

#### D. The 2001 Legislative Session

##### LB 313 - Reorganization Incentives

There may have been more than a few rural state legislators who favored enhanced incentive programs to encourage reorganization of schools, but only one really had the political influence to pull it off. In 2001, the venerable senior member of the Legislature, Senator George Coordsen, was serving his fifteenth year as a state lawmaker. It would be the second to last year of service for the farmer from Hebron, Nebraska.

Since 1996 he had served as chairman of the Executive Board, one of the most prestigious positions within the leadership structure of the Legislature. He also was a long-time member of both the Revenue and Education Committees. In fact, public education had always been one of his major interests and he was often involved in the resolution of differences between parties on various education-related policy matters.

<sup>2148</sup> NEB. LEGIS. JOURNAL, 3 April 2000, 1520.

<sup>2149</sup> Id., 6 April 2000, 1656.

Often when floor debates had reached a breaking point, it was Senator Coordsen who used his life experience, intellect, and down-to-earth yet articulate way of expression to make sense of the matter at hand.

Senator Coordsen was present during the long and tedious debate of LB 1059 in 1990. He was an active proponent of the new school finance system and voted in favor both of final passage and overriding Governor Orr's veto. He did not, however, support LB 806 (1997) and voted against passage of the comprehensive school finance modification bill. He joined many of his rural colleagues in opposing the 1997 legislation because, in part, he perceived it to be too harsh on small, rural schools. He devoted much of the remainder of his legislative career in pursuit of legislative initiatives designed to assist those schools he sought to protect.

In 2001 Senator Coordsen sponsored what he called one of his "biennial" bills in reference to previous, failed legislative attempts on the same policy issue.<sup>2150</sup> The bill (LB 313) proposed to extend the life of an existing reorganization incentive program and also to increase the funds available for such purpose. He had proposed a similar measure in the 2000 Session (LB 896), but the measure was indefinitely postponed in committee several weeks after the public hearing.<sup>2151</sup>

The genesis of the incentive program that Senator Coordsen wanted to amend was an idea originally proposed under LB 600 in 1995 by Senator Bohlke.<sup>2152</sup> A modified version of LB 600 would eventually be absorbed into LB 1050, a comprehensive school finance modification bill passed in 1996.<sup>2153</sup> The program created under LB 1050 provided incentive payments to school districts that reorganize. The payments were to be made from funds appropriated to schools as equalization aid based upon a per pupil

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<sup>2150</sup> Committee on Education, *Hearing Transcripts, LB 313 (2001)*, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 22 January 2001, 61.

<sup>2151</sup> Legislative Bill 896, *Change provisions relating to incentive payments relating to state aid to schools*, sponsored by Sen. George Coordsen, Nebraska Legislature, 96<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2000, title first read 5 January 2000. NEB. LEGIS. JOURNAL, 7 February 2000, 566.

<sup>2152</sup> Legislative Bill 600, *Provide for incentives for reorganized school districts*, sponsored by Sen. Ardyce Bohlke, Nebraska Legislature, 94<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1995, title first read 18 January 1995.

<sup>2153</sup> LB 1050, *Session Laws, 1996*, § 19, pp. 17-19 (1131-33).

formula contained in the legislation. Payments were made for three years beginning in the year of reorganization. LB 1050 limited the funds available for incentive payments to 1% of the total amount appropriated for equalization aid, which translated to about \$3.3 million for FY1996-97. The program applied only to those consolidations occurring between May 31, 1996 and August 2, 2001. The incentive payments were not to be included as “accountable” receipts, so the payments would not be held against the reorganized districts for purposes of calculating state aid.<sup>2154</sup>

Naturally, the incentive program was not without detractors. The program essentially took funds away from those districts entitled to equalization aid under the state aid formula. Some argued it amounted to the classic proverb, “rob Peter to pay Paul.” But in 1996 it also represented one of the many tradeoffs that pro-equalization advocates were willing to make. After all, one of the major focuses of LB 1050 was to realign existing state resources to enhance the equalization component of the state aid formula. In essence, equalized districts gained in the overall scheme of the legislation, even with the 1% reduction of aid to fund the incentive program. Nevertheless, one of the commandments in the politics of school funding is to avoid losing ground. Therefore, another tradeoff contained in LB 1050 was an automatic sunset clause to the incentive program. In this regard, the loss of equalization funds to finance the incentive program would be temporary.

The incentive program would be modified several times over the years since 1996. Most noticeably, in 1998 the Legislature passed LB 1219 to create another option for reorganization. Under LB 1219 two or more K-12 districts could form a unified system with a “super board” overseeing various functions while each participating district retained much of its own identity and local school board.<sup>2155</sup> Also in 1998, the Legislature passed LB 1134, which set aside \$2 million per year specifically for base year incentive payments.<sup>2156</sup> The funding for second and third year incentive payments would

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<sup>2154</sup> Id.

<sup>2155</sup> LB 1219, Session Laws, 1998, § 9, pp. 4-5 (729-30).

<sup>2156</sup> LB 1134, Session Laws, 1998, § 4, pp. 5-6 (580-81).

derive from the 1% allocation from the state aid appropriation. However, the deadline for districts to take advantage of the program, August 2, 2001, remained unchanged, a fact that Senator Coordsen was keenly aware.

LB 313 was introduced early in the 2001 Session, which helped to put it into position for an early public hearing date. As introduced, LB 313 extended the termination date for applications to the incentive aid program to August 2, 2004.<sup>2157</sup> This meant that incentive aid payments would extend through 2006-07 since payments continue for three years after approval. The bill also proposed to increase the amount allocated for base year incentive aid from \$2 million to \$5 million in 2001-02. The \$5 million level for base year incentive aid would be continued in 2002-03, 2003-04 and 2004-05.<sup>2158</sup> The idea was simply to make more funds available to ensure that at least the base year, the first year of the incentive aid program would be met in full.

The final component of LB 313 was to repeal the Hardship Fund created in 1999. The Hardship Fund represents an example of an idea with good intentions but not much practical use for school districts. The Fund was created under LB 314 (1999), a bill sponsored by Senator Bohlke. LB 314 was designed to help districts that encounter unexpected special education costs by applying to the Commissioner of Education for money if one or more unexpected occurrences cause the district financial distress. The occurrences include: (1) one or more new special education student or one or more new disabling conditions; (2) the opening of a group home causing expenditures to increase by at least 10%; (3) clerical errors by public officials; or (4) the final calculation of state aid caused a negative adjustment reducing the aid originally calculated for the district by 50% or more.<sup>2159</sup>

Under LB 314, a district must repay the fund in full in a manner to be determined by the commissioner with interest calculated by the State Treasurer at 50% of the rate

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<sup>2157</sup> Legislative Bill 313, *Change provisions for incentive payments under the Tax Equity and Educational Opportunities Support Act and eliminate the Hardship Fund*, sponsored by Sen. George Coordsen, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 8 January 2001, § 1, p. 2.

<sup>2158</sup> *Id.*, § 1, p. 7.

<sup>2159</sup> Legislative Bill 314, *Slip Law*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, §§ 1-2, pp. 1-2.

determined for the delinquent payment of taxes to the State of Nebraska. Approximately \$2.8 million in General Funds would be set aside each year for this purpose.<sup>2160</sup> After the first year of existence, however, it became clear that no one intended to actually apply for money from the Hardship Fund. It was a pot of money ripe for the picking, and Senator Coordsen had an idea on how the funds could be used.

Senator Coordsen expected some criticism concerning his legislation, specifically on the issue of increased costs to the state. His solution was to make a provision in LB 313 to repeal the Hardship Fund and, impliedly, divert those funds to offset the additional cost for base year incentive aid. The chief sponsor of the Hardship Fund, Senator Bohlke, had retired from the Legislature in 2000, so she was no longer around to defend her program. But even if she had been around, she would have had difficulty defending a program never used. In truth, the elimination of the Hardship Fund was a non-issue. It was seldom brought up during the hearing and floor consideration of LB 313.

The issue that did arise time and again during the legislative life of LB 313 was the practicality and wisdom for increasing funding for mergers and unifications. It fell on the shoulders of Senator Coordsen to defend this course of action, which he did with the help of some statistics provided by the Department of Education. During the public hearing on January 22<sup>nd</sup>, Russ Inbody, representing the department, testified that the trend-line pointed upward for mergers and unifications. Inbody said only three mergers and one unification occurred in 1997-98. And one merger and two unifications occurred during the 1998-99 school year. But in 1999-2000, no less than seven mergers and three unifications had been approved. “And this current year we estimate that we’re going to have a minimum of 20 either unifications or reorganizations,” Inbody added.<sup>2161</sup>

The underlying argument to Senator Coordsen’s proposal was a need for time, more time to allow communities to work through the tedious political discussions about whether and how to merge or unify individual districts. Just because the Legislature created an incentive aid program, he argued, does not mean people move any faster to put

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<sup>2160</sup> Legislative Bill 314A, *Slip Law*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, § 1, p. 1.

<sup>2161</sup> *Hearing Transcripts, LB 313 (2001)*, 63.

such reorganization schemes into play. It takes time, and time, in addition to the increased funding for incentive payments, was what LB 313 intended to provide.

The Education Committee wasted little time in deliberation of LB 313. The committee met in executive session following the public hearing on January 22<sup>nd</sup> and advanced the measure by a unanimous vote with amendments attached. The amendments maintained the original provisions of the bill, but further enhanced the measure by allocating 2% rather than 1% of the funds appropriated to the state aid fund. This would significantly increase the funds available for incentive aid payments.<sup>2162</sup>

There are not many legislative proposals that actually witness an increase over and above what the chief sponsor requested. Usually the art of compromise takes hold as early as the committee stage of consideration. Of course, it did not hurt that Senator Coordsen also sat as a member of the committee having jurisdiction over his own proposal. It certainly did not hurt that the chair of the committee, Senator Ron Raikes, also supported the measure. In short, Senator Coordsen had every reason to be hopeful about the fate of his proposal, and, considering the political nature of the legislative process, every reason to worry.

First-round debate on LB 313 began on January 24, 2001, a few days after its advancement from committee. It was still early enough in the session that the body did not have too many new legislative measures to debate. Committees were still in the early stages of a long public hearing schedule, and only a few measures had been advanced to General File. So LB 313 became one of the first substantive bills considered by the Legislature in 2001.

Senator Coordsen's proposal was initially met with a warm reception from his colleagues. Senator Floyd Vrtiska of Table Rock, for instance, spoke of the "great many schools" that had discussed utilizing the incentive program for reorganization but had not reached a final consensus to act.<sup>2163</sup> It would be unfortunate, Vrtiska rationalized, to "jerk

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<sup>2162</sup> Committee on Education, *Committee Statement, LB 313 (2001)*, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 1-2.

<sup>2163</sup> Legislative Records Historian, *Floor Transcripts, LB 313 (2001)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 24 January 2001, 362.

the rug out” from underneath these districts in reference to the looming deadline to make use of the program.<sup>2164</sup> Senator Bob Kremer of Aurora also spoke in favor of the measure and noted that one unification and three mergers had occurred within his legislative district in the past two years. “And we have promised that we’ll give them some incentive money if they would do that; and then only to find out that the funds were inadequate; it was kind of a blow,” Kremer said.<sup>2165</sup> It was important, he said, for the Legislature to “hold true to our promise” to ensure adequate funds for incentive payments.<sup>2166</sup>

It appeared as though Senator Coordsen was well on his way to easy victory if it had not been for the dissenting view of one lone voice. Senator Chris Beutler of Lincoln hastened to assure his colleagues of his support for the measure in principle but questioned the wisdom of financially binding the state given uncertain economic times. The nation, after all, was enduring a mild recession and the state’s tax revenue was in decline. Was this the appropriate time for such a spending measure?

The Lincoln senator understood the reasons for originally enacting the incentive program, but what about long term state policy? If the state believed in such programs, why not offer financial incentive programs to other classifications of local government? Said Beutler:

I think that we all would acknowledge that government by incentives generally is the most expensive form of government, because instead of saying to people do what this body has determined as representatives of the people is the good policy, just do it, we say to people we’ll give you money if you’ll do it and you do it if you want to. Well, if you start using that form of government on a large scale, then your government becomes overburdened and you can’t do all the things that you are supposed to do.<sup>2167</sup>

He warned that other major state commitments anticipated increases in appropriations, but would likely see none. In fact, Senator Roger Wehrbein, the chair of the

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<sup>2164</sup> Id.

<sup>2165</sup> Id., 363.

<sup>2166</sup> Id.

<sup>2167</sup> Id., 25 January 2001, 419.

Appropriations Committee, had cautioned the Legislature that very little funding would be available for new or expanded programs.

At first, Senator Beutler's comments were viewed as more an annoyance than anything else as far as the proponents of LB 313 were concerned. If it had not been for Senator Beutler, the bill would have sailed through first-round consideration. In fact, LB 313 would be advanced, but along with the advancement was the nagging feeling that Senator Beutler may have had a point. As it turned out, he did.

LB 313 was advanced to second-round debate on January 25<sup>th</sup> by a 28-6 vote.<sup>2168</sup> The Legislature would take up Select File debate on February 9<sup>th</sup> and the bill would be advanced yet again.<sup>2169</sup> Senator Beutler continued his dialogue on the uncertainty of economic times, but also added another line of rhetoric that perhaps came closer to his true sentiments. "I think most of us feel that some kind of support in this area is certainly appropriate, but it's also expensive for something that affects a very small percentage of the school districts and an even smaller percentage of students," he said.<sup>2170</sup> In fact, the net fiscal impact of the legislation was anticipated to be a maximum of \$10.31 million for 2002-03 and an unknown amount for succeeding years.<sup>2171</sup> But the underlying message from Senator Beutler, the affordability factor, was about to play out.

On February 23<sup>rd</sup>, the Nebraska Economic Forecasting Advisory Board convened at the State Capitol for their semi-annual meeting. The Forecasting Board was created in 1984 ostensibly to assist the Governor in developing estimates of revenue and to assist the Legislature in setting the state sales and income tax rates.<sup>2172</sup> The board consists of gubernatorial appointees who are knowledgeable about economic matters and are typically economists, academics, accountants and investment experts. The principle objective of the board is to formulate a "consensus projection of economic activity in

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<sup>2168</sup> NEB. LEGIS. JOURNAL, 25 January 2001, 422.

<sup>2169</sup> Id., 9 February 2001, 614.

<sup>2170</sup> *Floor Transcripts, LB 313 (2001)*, 9 February 2001, 1066.

<sup>2171</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 313 (2001)*, prepared by Sandy Sostad, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 26 January 2001, 1.

<sup>2172</sup> NEB. REV. STAT. § 77-27,156.



Nebraska,” which essentially amounts to a projection of tax revenues in the coming months and following fiscal year.<sup>2173</sup> Since its inception, the board had a fairly prominent role within the structure of state government, but its renown outside state government would grow considerably after the terrorist attacks on September 11, 2001.

The board has a purely advisory role in government, but the advice afforded by the board is supposed to be heeded by policymakers. Otherwise, there would not be any reason for its existence. And by the time the board adjourned its meeting on February 23, 2001, the advisory position was not particularly good news. For the first time in five years, the board gave a downward projection on state tax revenues. The actual reduction in tax projections was slight, \$8 million subtracted from a \$2.5 billion revenue projection, but it was enough to cast a shadow on the 2001 Legislative Session. It was anticipated that the Legislature would have no more than \$26 million in discretionary spending authority for 2001.<sup>2174</sup>

Naturally, the news from the Forecasting Board put LB 313 in a much different light. The roof had fallen on Senator Coordsen’s hopes to pass the bill as it currently stood on Final Reading. He was forced to go along with a compromise to make the legislation affordable given the budgetary situation. When the bill came up for final-round consideration on May 7, 2001, Senator Coordsen asked his colleagues to return the bill to Select File for specific amendment. “I told the body that if, in fact, the Forecasting Board predicted that we were in for a rocky road ahead I would be back with a ... an amendment to LB 313 that would reduce the impact of the bill by a significant amount,” he explained.<sup>2175</sup> The amendment established a deadline of August 2, 2002 to apply for the reorganization program and reduced from 2% back to 1% the amount of TEEOSA funds set aside for incentive payments.<sup>2176</sup> The motion was successful and the

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<sup>2173</sup> Id., § 77-27,158.

<sup>2174</sup> Leslie Reed, “Forecast Reflects Caution, The economic advisory board’s projection of state tax revenues takes its first downward turn in five years,” *Omaha World-Herald*, 24 February 2001, 13.

<sup>2175</sup> *Floor Transcripts, LB 313 (2001)*, 7 May 2001, 6557.

<sup>2176</sup> NEB. LEGIS. JOURNAL, *Coordsen AM1641*, 24 April 2001, 1641.

amendment was adopted by a 28-3 vote.<sup>2177</sup> As amended, LB 313 would provide incentive aid for consolidations and unifications through 2004-05. The bill would still increase the amount allocated for base year incentive aid from \$2 million to \$5 million in 2001-02.

Economic circumstances rather than politics had forced Senator Coordsen to advocate a compromise to his own measure. He won the battle to increase base year incentive aid, which would theoretically encourage more school districts to seek application for the program. He also successfully extended the deadline to apply for incentive payments by one year. LB 313 would win final approval on May 21, 2001 by a 34-7 vote.<sup>2178</sup> Governor Johanns signed the bill into law on May 25, 2001.<sup>2179</sup>

In the final analysis Senator Beutler was correct to caution the Legislature about the fiscal impact of LB 313. In fact, the economic situation would become worse than anyone could have imagined. The events on September 11, 2001 were instrumental in causing an economic downturn felt by all state governments to one degree or another. The Nebraska Legislature would be forced to convene in special session in the months of October and November 2001 to make necessary budget cuts. Among these reductions would be the entire effort contained in LB 313 to expand the incentive aid program. The Legislature would reverse itself with regard to reorganization incentives in order to deal with more pressing budgetary considerations.

Table 126. Summary of Modifications to TEEOSA as per LB 313 (2001)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i> | <i>Description of Change</i>  |
|------------------|---------------------|---------------------------|---|
| 1                | 79-1003             | Terms, defined            | Prior to LB 313, the calculation of general fund budget of expenditures did not include expenditures for repayment of hardship funds that were approved by the Commissioner of Education. However, one of the purposes of LB 313 was to eliminate the hardship fund. Accordingly, LB 313 eliminated references to the hardship fund in the definition of general fund budget of expenditures. |

<sup>2177</sup> Id., 7 May 2001, 1840.

<sup>2178</sup> Id., 21 May 2001, 2157-58.

<sup>2179</sup> Id., 25 May 2001, 2269.

Table 126—Continued

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>   | <i>Description of Change</i>  |
|------------------|---------------------|---|---|
| 2                | 79-1010             | Incentives to reorganized districts and unified systems; qualifications; requirements; calculation; payment | <p>LB 313 extended the termination date for incentive aid for school districts that consolidate or unify. Prior to LB 313, the law provided incentive payments for merged or unified districts for a three-year period, if the consolidation or unification occurred before August 2, 2001. Final incentive payments for mergers or unifications based on current law would be made in 2002-03. LB 313 provided incentive aid for consolidations and unifications that occur before August 2, 2003. This means that incentive aid payments could extend through 2005-06.</p> <p>The bill also increased the cap on the amount of the TEEOSA appropriation that can be spent on incentives from 1% to 2%. Prior to LB 313, there were \$2 million of general funds appropriated for base year incentive aid payments in 2001-02. The base year incentive was paid in the initial year of a consolidation or unification. LB 313 increased the amount allocated for base year incentive aid from \$2 million to \$5 million in 2001-02. A \$5 million level of base year incentive aid was also continued in 2002-03 and 2003-04. This change would increase the state aid appropriation for the Tax Equity and Educational Opportunities Support Act (TEEOSA) by \$3 million in 2001-02 and \$5 million in 2002-03 and 2003-04.</p> <p>LB 313 provided for the inclusion of students who are educated outside of their resident district in the average daily membership (ADM) of the resident district for purposes of calculating incentive payments in certain instances. If a district that did not provide education in grades 7-12 or grades 9-12, in the year before it was involved in a consolidation, had an agreement with another district to provide such instruction, then the students who were educated are to be included in the ADM of the resident district for purposes of incentive aid. The incentives must be paid for local systems that received base year incentives prior to 2001-02 and must be provided in the June 30, 2001 and June 30, 2002 state aid payments for such local systems. The additional incentives must also be included in the state aid to be paid in 2002-03, subject to any prorating due to the cap on incentive aid.</p> |

Source: Legislative Bill 313, *Slip Law*, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, §§ 1-2, pp. 1-7.

### LB 797 - Technical Cleanup

At the outset of first-round debate on LB 797, Senator Ron Raikes described the bill this way: “It’s 94 pages of some of the finest reading you’ll come across.”<sup>2180</sup> His

<sup>2180</sup> Legislative Records Historian, *Floor Transcripts, LB 797 (2001)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 3 April 2001, 3857.

tongue in cheek remark was meant to bring some levity to an otherwise dry and tedious discussion on the omnibus technical cleanup bill of 2001. In light of the budget restrictions faced by the Legislature in 2001, those measures with a chance to pass were those without a fiscal impact. LB 797 was just such an example.

LB 797 was uncontested at its public hearing. The measure advanced unanimously through all three stages of floor consideration. The bill did what technical cleanup bills are supposed to do and that is to clarify existing language in statute, remove obsolete provisions, and harmonize the law. As with all technical bills, there were a few provisions that border-lined on substantive change. The bill passed on May 1, 2001 by a 41-0 vote.<sup>2181</sup>

The bulk of the bill modified sections of education law that did not relate to the school finance formula. However, thirteen of the 56 sections comprising the bill did amend portions of TEEOSA. Of these thirteen sections, the change of most significance related to the calculation of option payments. LB 797 provided that net option funding would be the net number of option students in each grade range multiplied by the statewide average cost grouping cost per student multiplied by the weighting factor for the corresponding grade range. Prior to LB 797, the formula provided that net option funding would be the net number of option students in each grade range multiplied by the lesser of (i) the statewide average cost grouping cost per student or (ii) the local system cost grouping cost per student, and then multiplied by the weighting factor for the corresponding grade range.<sup>2182</sup>

The change in computation of net option funding was expected to shift a minimal amount of state aid between districts. In essence, it meant that schools in the standard cost grouping receiving net option funding would receive a higher amount of such funding since the aid would be based on the statewide average cost grouping cost rather than the local system cost grouping cost. It also meant that the increase in net option aid

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<sup>2181</sup> NEB. LEGIS. JOURNAL, 1 May 2001, 1765.

<sup>2182</sup> Legislative Bill 797, *Slip Law*, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, § 22, pp. 16-17.

would reduce the amount available through the formula as income tax rebate.<sup>2183</sup> Net option funding derives from the amount set aside for income tax rebate to school districts. If more funds are used for net option funding, then less is available for income tax rebate.

Other relatively important changes made to the school finance formula include the authorization of NDE staff to approve, deny, or modify projected increases in formula students.<sup>2184</sup> Prior to LB 797, it was the State Board of Education that formally considered such requests. However, it was determined that the more efficient method would be to authorize staff to take on this duty. Since the number of students in a district is an integral part of the state aid formula, it made more sense to permit an expedited process to officially change the membership count.

Also included in LB 797 was a harmonizing provision stating that a representative of the Department of Property Assessment and Taxation serve as a member of the School Finance Review Committee.<sup>2185</sup> Prior to LB 797, the law called for a representative of the Office of Property Tax Administrator, which had been a division of the Department of Revenue. In 1999 the Legislature created a separate department for administration of property tax and assessment, hence the harmonizing provision found in LB 797.<sup>2186</sup>

As a matter of background, the original enactment of TEEOSA included a member of the Department of Revenue to serve on the committee, which was designed to monitor the formula and make recommendations for change as necessary.<sup>2187</sup> In 1995 the Legislature passed legislation, LB 490, to create the Tax Equalization and Review Commission (TERC). Among the many changes in LB 490 was a provision to remove the reference to the Department of Revenue and instead provide for a representative of

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<sup>2183</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 797 (2001)*, prepared by Sandy Sostad, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 7 March 2001, 1.

<sup>2184</sup> LB 797 (2001), *Slip Law*, § 29, pp. 22-23.

<sup>2185</sup> *Id.*, § 30, p. 23.

<sup>2186</sup> LB 36 (1999), *Slip Law*, §§ 21-28, pp. 7-8.

<sup>2187</sup> LB 1059, Session Laws, 1990, § 23, p. 18 (817).

the Office of Property Tax Administrator.<sup>2188</sup> It was believed that such a representative would more closely match the necessary expertise for the committee’s work and function.

The ironic aspect of the changes in LB 797 relevant to the review committee was that it would soon cease to exist. The budget cuts that began in 2001 due to the economic downturn would continue for several more years. In August 2002, during the second special session, the Legislature passed LB 41 to repeal the School Finance Review Committee.<sup>2189</sup> The annual savings to the state by eliminating the committee was very minimal, about \$4,700, but it demonstrated just how desperate the Legislature was to reduce costs.<sup>2190</sup> It was also believed by some that the committee had failed to have any appreciable affect on the school finance formula since its inception in 1990.

Table 127. Summary of Modifications to TEEOSA  
as per LB 797 (2001)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>                               | <i>Description of Change</i>  |
|------------------|---------------------|---|---|
| 18               | 79-1003             | Terms, defined  | <p>The definition of “general fund budget of expenditures” was amended to mean the budget of disbursements and transfers for general fund purposes.</p> <p>The existing definition was the total budgeted expenditures for general fund purposes. Expenditures for repayment of money from the Hardship Fund were also excluded from the definition. Expenditures for retirement incentive plans and staff development assistance were excluded from the definition of general fund operating expenditures.</p> <p>The definition of “special grant fund” was amended by requiring the State Board of Education to approve a listing of grants that qualify, rather than approving each individual grant to a school district.</p> <p>The definition of “transportation allowance” was amended by removing obsolete language.</p> |
| 19               | 79-1007.01          | Adjusted formula students for local system; calculation | The federal citation for the definition for students with limited English proficiency was revised. Obsolete language was removed from various provisions.   |

<sup>2188</sup> LB 490, Session Laws, 1995, § 187, pp. 51-52 (957-58).

<sup>2189</sup> Legislative Bill 41 (2002), *Slip Law*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Spec. Sess., 2002, § 1, p. 1.

<sup>2190</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 41 (2002)*, prepared by Sandy Sostad, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Spec. Sess., 2002, 2 August 2002, 1.

Table 127—Continued

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>   | <i>Description of Change</i>   |
|------------------|---------------------|---|--|
| 20               | 79-1008.01          | Equalization aid; amount  | The maximum levy for purposes of calculating the “stabilization factor” was clarified as being the maximum levy for the school fiscal year for which aid was being certified. The stabilization factor prevents total state aid from decreasing by more than: $(15\% \times \text{previous year's state aid}) + (\text{maximum levy} \times \text{increase in adjusted valuation})$ .  |
| 21               | 79-1008.02          | Minimum levy adjustment; calculation; effect  | The general fund common levy for purposes of calculating the minimum levy adjustment was clarified as being the general fund common levy in the calendar year in which aid was certified. Prior to LB 797, the levy was from the calendar year when aid was certified.   |
| 22               | 79-1009             | Option school districts; net option funding; calculation  | Amended by basing net option funding on the statewide average cost grouping cost per student, instead of the lesser of the statewide average cost grouping cost per student or the local system cost grouping cost per student. This change was expected to result in higher net option funding for systems in the standard cost grouping, which would in turn reduce the allocated income taxes for all local systems.                                |
| 23               | 79-1010             | Incentives to reorganized districts and unified systems; qualifications; requirements; calculation; payment | This section was amended by clarifying that incentive repayment was required if a district withdraws from a unified system prior to the beginning of the 8th school year. The existing language referred to the 8th year, but did not specify what type of year.   |
| 24               | 79-1015.01          | Local system formula resources; local effort rate; determination  | This section was amended to clarify that the maximum levy used to determine the local effort rate was the maximum levy for the school fiscal year for which aid was being certified.   |
| 25               | 79-1018.01          | Local system formula resources; other actual receipts included  | For calculation of aid in 2002-03, receipts from the temporary school fund were to only include receipts pursuant to §79-1035 and the receipt of funds pursuant to §79-1036 for property leased for a public purpose as set forth in §77-202(1)(a). This change would exclude in lieu-of-taxes the system received two years earlier from the resources when the property those in-lieu-of-taxes were based on was included in the adjusted valuation. |
| 26               | 79-1024             | Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect    | Section 13-511 was recognized as an additional section to §13-504 for requiring the correction of errors in budget documents.  |
| 27               | 79-1026             | Applicable allowable growth percentage; determination; target budget level                                  | Replaced the target budget level with formula need for determining the applicable allowable growth rate. Before LB 797, the target budget level calculation and the formula need calculation were the same.  |

Table 127—Continued

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>  | <i>Description of Change</i>   |
|------------------|---------------------|--|--|
| 27               | 79-1026             | Applicable allowable growth percentage; determination; target budget level                               | Replaced the target budget level with formula need for determining the applicable allowable growth rate. Before LB 797, the target budget level calculation and the formula need calculation were the same.  |
| 28               | 79-1027             | Budget; restrictions   | Obsolete language was removed.   |
| 29               | 79-1028             | Applicable allowable growth rate; Class II, III, IV, V, or VI district may exceed; situations enumerated | Authorized NDE rather than the State Board of Education, to approve, deny, or modify projected increases in formula students. Districts that receive additional budget authority due to projected increases in formula students would be given the necessary document to recalculate the actual formula students and would file the document, which authorizes NDE to verify data used for the TEEOSA and authorized the Auditor to then make necessary changes in the budget documents to effectuate the budget limits. |
| 30               | 79-1032             | School Finance Review Committee; created; members; duties  | Include a representative from the Department of Property Assessment and Taxation on the School Finance Review Committee. The representative from NDE would be appointed by the Commissioner of Education rather than the State Board of Education. The monitoring provisions for the Committee were expanded to include the entire Act. The deadline for the Committee's annual report was moved from March 1 to July 1.   |

Source: Legislative Bill 797, *Slip Law*, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, §§ 18-30, pp. 11-23.

### LB 833 - Distance Education/Converted Contracts

LB 833 represents the legislative history of two entirely separate issues. The bill as originally introduced by Senator Curt Bromm pertained to funding for distance learning connectivity. As amended during second-round debate, the bill would also incorporate the provisions of LB 621 (2001) pertaining to converted contracts and the affect on state aid calculations. LB 833 was referred to the Education Committee for disposition and became Senator Bob Kremer's priority bill for the 2001 Session.<sup>2191</sup>

During the public hearing for LB 833 on March 13, 2001, Senator Bromm related to members of the Education Committee the reasons for his bill. Several school superintendents, he said, had approached him about their failed efforts to obtain funding

<sup>2191</sup> NEB. LEGIS. JOURNAL, 31 January 2001, 470.



to establish distance-learning projects within their respective school districts. “After some research on their part, it was discovered that basically there are about 50 Nebraska schools right now that do not have long-distance learning capabilities,” Bromm testified.<sup>2192</sup> The purpose of his bill, therefore, was to provide a funding mechanism for these remaining school districts that desire a two-way interactive video delivery system within their schools to connect to surrounding schools, colleges and the University.

As a matter of background, the Legislature passed LB 860 in 1995 to establish legislative intent that by June 30, 2000, all public school districts would have a direct connection to a statewide public computer network.<sup>2193</sup> Grants from the Education Innovation Fund (state lottery), the telecomputing levy authorized for ESUs, which existed at the time, and a newly created School Technology Fund were designated for use to finance the connection. LB 860 created the School Technology Fund consisting of the balance of funds existing in the School Weatherization Fund on July 1, 1996 (about \$3.5 million) along with any transfers made by the Legislature from the General Fund. The School Weatherization Program was facilitated by the State Energy Department and was designed to provide loans for school energy efficiency projects. LB 860 eliminated this old fund effective June 30, 1996.<sup>2194</sup>

The State Board of Education was authorized to make disbursements from the School Technology Fund. The first priority for the disbursement of the School Technology Fund was the direct connection of each K-12 public school district, affiliated school system, or Class VI school system to a statewide public computer information network. Subsequent priorities for disbursement may include development of networking capabilities within a district or system, the purchase or installation of equipment, or other telecomputing needs as determined by the State Board of Education.<sup>2195</sup>

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<sup>2192</sup> Committee on Education, *Hearing Transcripts, LB 833 (2001)*, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 13 March 2001, 2.

<sup>2193</sup> Legislative Bill 860, in *Laws of Nebraska, Ninety-Fourth Legislature, First Session, 1995*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 2, p. 3 (1260).

<sup>2194</sup> *Id.*, § 4, p. 4 (1261).

<sup>2195</sup> *Id.*, § 2, p. 3 (1260).

By the time of the 2001 Session, the central problem faced by some school districts was funding to establish connection within a distance learning system. The costs associated with hardware alone were staggering. In many areas of the state, distance learning consortiums had evolved to provide a network, but it still required substantial sums of money to link schools within the network. There were ample examples of involvement by community and state colleges, but the issue still came down to funding. And available funding was tight if not nonexistent. The Legislature eventually eliminated the separate telecomputing levy authority for ESUs and the School Technology Fund could only absorb that many requests for funding.

Another problem addressed by LB 833 was the intended deadline established in 1995 to provide a direct connection to a statewide public computer network for all school districts by June 30, 2000. The idea proposed in LB 833 was to delay the deadline by two years, but the members of the Education Committee had a better idea. They proposed through committee amendments to LB 833 to simply do away with the deadline altogether.<sup>2196</sup> This was the easy part of the problems posed by Senator Bromm. The more difficult aspect was, of course, funding.

It must be remembered that the budgetary matters faced in the 2001 Session did not lend well to expensive new spending proposals, no matter how important the subject matter. The Education Committee had no real choice except to partition some of the funding from the Education Innovation Fund for the purposes of LB 833. The Education Innovation Fund is a beneficiary fund under the State Lottery Act.

In 2001 the annual proceeds to the Education Innovation Fund were dispersed among three different programs. Up to 10% of the funds were designated for the mentor teacher program under the Quality Education Accountability Act. Up to 70% of the funds were used for quality education incentive payments, also under the auspices of the Quality Education Accountability Act. The remaining 20% of the fund was placed under the authority of the Governor to issue grants to encourage the development of strategic

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<sup>2196</sup> NEB. LEGIS. JOURNAL, *Com AM1338*, printed separate, 3 April 2001, 1340. Committee Amendments to LB 833 (2001), *Com AM1338*, § 3, p. 11.

school improvement plans by individual school districts.<sup>2197</sup>

The committee amendments to LB 833 would rearrange this funding scheme to carve out some funding for technology. Under the amendments, LB 833 would change the allocation of the Education Innovation Fund in 2001-02 and 2002-03 only. The amendments would leave in tact the percentage of funding for the mentor teacher and quality education incentive payment programs. Of the remaining 20% normally allocated to the Governor for grants, \$1.5 million would be set aside for a distance education network completion grant. The grant would fund engineering, equipment, and installation charges for two-way interactive distance education capacity for public high school buildings that do not already have such capacity.<sup>2198</sup> This would leave about \$100,000 left over for grants allocated by the Governor.<sup>2199</sup>

The Department of Education would supervise the technology grant program. For a public high school to participate in the grant, the school district must apply to the department. The application would require evidence that the school district has made a commitment to be part of a distance education consortium and that the distance education consortium has accepted the district's commitment. The application also required the district to list the classes that it anticipates accessing from the consortium or a community college and any classes that the district anticipates offering to other districts in the consortium through distance education.<sup>2200</sup>

LB 833 was advanced from committee on a unanimous vote (7-0).<sup>2201</sup> First-round debate occurred on April 17, 2001. Both the committee amendments and the bill itself were adopted and advanced respectively, but there was discussion if not concern expressed by some senators about the latest raid on lottery funds. Speaker Kristensen

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<sup>2197</sup> NEB. REV. STAT. § 9-812 (Cum. Supp. 2000).

<sup>2198</sup> Committee Amendments to LB 833 (2001), *Com AM1338*, § 2, pp. 9-11.

<sup>2199</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 833 (2001)*, prepared by Sandy Sostad, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 11 May 2001, 1.

<sup>2200</sup> Committee Amendments to LB 833 (2001), *Com AM1338*, § 2, pp. 9-11.

<sup>2201</sup> Committee on Education, *Executive Session Report, LB 833 (2001)*, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 27 March 2001, 1.

reminded his colleagues that several pieces of pending legislation also tabbed lottery proceeds as a funding source for various programs. He reminded his colleagues that one of the major issues of the session, increasing teacher salaries, had yet to be addressed.

Some of the pending measures, including LB 708, proposed to use lottery proceeds. LB 708 proposed the establishment of a Teacher Tuition Reimbursement Program to provide tuition reimbursement to teachers who agree to teach in a Nebraska public school for five years.<sup>2202</sup> The bill proposed to change the distribution of lottery proceeds to include an allocation to the new fund. LB 708 would not emerge from committee, but another teacher-related bill, LB 305, would emerge. LB 305 represented a comprehensive package to assist teachers professionally and monetarily, and included a .25% sales tax increase to pay for salary supplements.<sup>2203</sup> LB 305 would not pass, but the measure was a prominent point of discussion during the debate on LB 833.

As amended and advanced, LB 833 appeared on a clear path for final passage. The merits of the legislation were debated in full during first-round consideration. On Select File, however, the bill would take on a second and entirely new function.

The issue involved a very specific set of circumstances faced by only two school districts in the State of Nebraska: Grand Island Public Schools, a Class III district, and Grand Island Northwest Public School, a Class VI (high school only) district. The circumstances of the case were embodied in LB 621, introduced by Senator Vickie McDonald of Rockville. The bill primarily concerned Grand Island Northwest, which was the only school district in the state at the time that had contracted “tuition exchange” students who would become option enrollment students once the contract period expired. The two Grand Island area districts had a written agreement that provided that if Grand Island annexes land in the Northwest district, and children desire to remain at Northwest, then Grand Island would pay the tuition to Northwest for the students. This agreement was set to expire after the 2003-04 school year.

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<sup>2202</sup> Legislative Bill 708, *Adopt the Teacher Tuition Reimbursement Act*, sponsored by Sen. Doug Kristensen, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 17 January 2001, §§ 1-6, pp. 2-11.

<sup>2203</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 305 (2001)*, prepared by Sandy Sostad, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 22 May 2001, 1.

In the absence of some form of legislative intervention, Northwest would have tuition received from Grand Island in 2002-03 demonstrating an accountable receipt, a resource for state aid purposes, but would, in reality, no longer actually receive the tuition payment. This “accountable receipt” would offset the equalization aid that Northwest would receive by including those students in the membership count for purposes of the “needs” calculation. In essence, this would dock Northwest High School for state aid it would otherwise receive (about \$2.1 million in 2004-05).<sup>2204</sup>

The ‘trick’ to the situation involved a legislative solution that would allow Northwest to receive the state aid it was entitled while at the same time holding Grand Island harmless. LB 621 was supported at the public hearing stage by both school districts.<sup>2205</sup> But the solution contained in LB 621 required some perfection, which was embodied in the committee amendments to the bill as advanced from the Education Committee. LB 621, a non-prioritized bill, was placed on General File where it would likely have languished through the 2001 Session. LB 833, on the other hand, provided an opportunity to advance the Grand Island measure.

During second-round consideration of LB 833 on May 9<sup>th</sup>, Senator Ray Aguilar of Grand Island, a cosponsor of LB 621, asked his colleagues to suspend the rules and allow a non-germane amendment to be merged into LB 833. The amendment, of course, was the contents of LB 621 in the form it was advanced from committee. The motion to suspend the rules and the amendment itself were adopted by unanimous votes.<sup>2206</sup>

The Aguilar amendment addressed the Grand Island matter by making changes in the option enrollment provisions of the state aid formula and the computation of local formula resources. Beginning with state aid distributed in 2004-05, the amendment provided that tuition receipts from districts where nonresident students have been converted from being contracted students to option students will not be included as a

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<sup>2204</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 621 (2001)*, prepared by Sandy Sostad, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 29 March 2001, 1.

<sup>2205</sup> Committee on Education, *Committee Statement, LB 621 (2001)*, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 1.

<sup>2206</sup> NEB. LEGIS. JOURNAL, 9 May 2001, 1896.

local formula resource. The students attending Grand Island Northwest would become option students and the state aid for Grand Island Public would decrease by a matching amount.

Before the bill advanced on second-round consideration, Senator Bromm would attempt unsuccessfully to set aside even more lottery proceeds for distance learning at the expense of quality education incentive payments.<sup>2207</sup> His amendment failed on a 13-20 vote.<sup>2208</sup> LB 833 passed with the emergency clause attached on May 16, 2001 by a unanimous 46-0 vote.<sup>2209</sup>

Table 128. Summary of Modifications to TEEOSA  
as per LB 833 (2001)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>                                | <i>Description of Change</i>  |
|------------------|---------------------|--|---|
| 3                | 79-1001             | Act, how cited   | Adds a new section to TEEOSA  |
| 4                | 79-1003             | Terms, defined   | <p>“Converted contract” is defined as an expired contract that was in effect for at least fifteen years for the education of students in a nonresident district in exchange for tuition from the resident district when the expiration of such contract results in the nonresident district educating students who would have been covered by the contract if the contract were still in effect as option students pursuant to the enrollment option program.</p> <p>“Converted contract option students” is defined as students who will be option students under the enrollment option program for the school fiscal year for which aid is being calculated and who would have been covered by a converted contract if the contract were still in effect and such school fiscal year is the first school fiscal year for which such contract is not in effect.</p> <p>“Tuition receipts from converted contracts” is defined as tuition receipts received by a district from another district in the most recently available complete data year pursuant to a converted contract prior to the expiration of the contract.</p> |
| 5                | 79-1009             | Option school districts; net option funding; calculation | Provides that a district will receive net option funding if option students (a) were actually enrolled in the school year immediately preceding the school year in which aid is to be paid; or (b) will be enrolled in the school year in which the aid is to be paid as converted contract option students.  |

<sup>2207</sup> Id., *Bromm AM1850*, 7 May 2001, 1845.

<sup>2208</sup> Id., 9 May 2001, 1899.

<sup>2209</sup> Id., 16 May 2001, 2065-66.

Table 128—Continued

| <i>Bill Sec.</i> | <i>Statute Sec.</i>              | <i>Revised Catch Line</i>                                      | <i>Description of Change</i>   |
|------------------|----------------------------------|--|--|
| 6                | 79-1018.01                       | Local system formula resources; other actual receipts included | Provides that tuition receipts from converted contracts would not be included in the calculation of local system formula resources beginning in school fiscal year 2004-05.  |
| 7                | 79-1009.01<br><i>new section</i> | Converted contract option students; application; procedure     | Provides that a district which will have converted contract option students must apply to NDE by November 1 <sup>st</sup> of the calendar year preceding the beginning of the school fiscal year for which there will be converted contract option students. NDE must determine the amount of tuition from converted contracts to be excluded from the calculation of formula resources. |

Source: Legislative Bill 833, *Slip Law*, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, §§ 3-7, pp. 4-8.

### LB 170 - Property Taxation and TERC

LB 170, introduced by the Revenue Committee, made various changes in Nebraska's property tax laws, such as allowing the use of "market areas" in the valuation of real property and allowing the Nebraska Tax Equalization and Review Commission (TERC) to adjust the value of real property in market areas. The market area provisions represented a legislative response to decisions by the Nebraska Supreme Court in 2000 and the Nebraska Court of Appeals in 2001 that invalidated the use of market areas in the valuation and assessment of agricultural land for property tax purposes.<sup>2210</sup>

In *Schmidt v. Thayer County Board of Equalization*, the Nebraska Court of Appeals held that the use of market areas by Thayer County in 1999 was invalid.<sup>2211</sup> Agricultural land in the county had been divided into two market areas, one of which received a higher valuation due to its irrigation potential. The Court said that the "market areas appear to be drawn arbitrarily" and that "the market areas were not based on soil classifications, but rather, on location of property within the county."<sup>2212</sup> In *Bartlett v.*

<sup>2210</sup> Nebraska Legislative Research Division, "A Review: Ninety-Seventh Legislature, First Session, 2001," July 2001.

<sup>2211</sup> *Schmidt v. Thayer County Board of Equalization*, 10 Neb. A10, 624 N.W.2d 63 (Neb. 2001).

<sup>2212</sup> *Id.*

*Dawes County Board of Equalization*, the Nebraska Supreme Court had held that “a ‘market area’ is not a subclass of agricultural land recognized by our statutes” and cited existing state law for the proposition that “[s]ubclasses of agricultural property must be based on soil classification for purposes of taxation.”<sup>2213</sup>

To address the issue, LB 170 created statutory authority allowing the use of market areas for property tax assessment purposes and allowed TERC to make adjustments to particular market areas for the purpose of performing its equalization function. LB 170 did not specifically define the phrase “market area,” but it did define the phrase “class or subclass of real property” to mean “a group of properties that share one or more characteristics typically common to all the properties in the class or subclass, but are not typically found in the properties outside the class or subclass.”<sup>2214</sup> The phrase “class or subclass” would include agricultural and horticultural land, which contains the special valuation provisions that govern the valuation of greenbelt land. The definition of “class or subclass” also includes “parcel use, parcel type, location, geographic characteristics, zoning, city size, parcel size, and market characteristics.”<sup>2215</sup> Therefore, real property classes of agricultural property would no longer be restricted to soil classifications. LB 170 provided authority for classifying agricultural real property based on common “characteristics” of property in a class or subclass of real property.<sup>2216</sup>

LB 170 also clarified that certain statutory references to agricultural land also include horticultural land. These provisions were incorporated from LB 171 (2001), which was legislation requested by the Property Tax Administrator to improve the administration of the property tax laws.<sup>2217</sup> The inclusion of these provisions affected the state aid formula by amending the provision relating to state aid value.

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<sup>2213</sup> *Bartlett v. Dawes County Board of Equalization*, 259 Neb. 954, 962-63, 613 N.W.2d 810 (2000).

<sup>2214</sup> Legislative Bill 170, *Slip Law*, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, § 3, p. 1.

<sup>2215</sup> *Id.*

<sup>2216</sup> *Id.*

<sup>2217</sup> Legislative Bill 171, *Change provisions for valuation of certain agricultural and horticultural land and powers and duties of the Property Tax Administrator*, sponsored by Revenue Committee, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 4 January 2001.



The computation of state aid value is part of the process to establish adjusted valuation for purposes of the state aid formula. The TEEOSA requires county assessors to certify to the Property Tax Administrator the total taxable value by school district for the current assessment year. The Property Tax Administrator then computes and certifies to the Department of Education the adjusted valuation for the current assessment year for each class of property in each school district and each local system. The adjusted valuation of property for each school district and each local system must reflect as nearly as possible the appropriate “state aid value.” Prior to LB 170, the TEEOSA defined state aid value as 100% of market value for real property other than agricultural land, 80% of market value for agricultural land, 100% of special valuation for agricultural land that receives special valuation, and the net book value for personal property. The definition of state aid value did not include references to horticultural land (i.e., it recognized agricultural land but not horticultural land).<sup>2218</sup> So what difference did it make?

The short answer to the question is, “Not much.” The long answer is that the terms are used somewhat interchangeably, at least for taxation purposes. Nebraska state law combines the terms agricultural land and horticultural land in the same definition:

[L]and which is primarily used for the production of agricultural or horticultural products, including wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural or horticultural products. Land retained or protected for future agricultural or horticultural uses under a conservation easement as provided in the Conservation and Preservation Easements Act shall be defined as agricultural land or horticultural land. Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land. Land that is zoned predominantly for purposes other than agricultural or horticultural use shall not be assessed as agricultural land or horticultural land...<sup>2219</sup>

There is, of course, a difference between agricultural land and horticultural land from an academic perspective. The term “agriculture” refers to the process of producing food, feed, fiber and other products by the cultivation of certain plants and the raising of

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<sup>2218</sup> NEB. REV. STAT. § 79-1016 (Cum. Supp. 2000).

<sup>2219</sup> Id., § 77-1359 (Cum. Supp. 2000).

livestock.<sup>2220</sup> “Horticulture” means literally culture of garden plants. The term is typically applied to the production of floral crops, landscape plants, fruits and vegetables.<sup>2221</sup>

The impact of the change in LB 170 on the state aid formula was likely nonexistent. It was a simple matter of changing the word of the law to match actual practice. Interestingly, the initial fiscal note on LB 171 included an agency estimate prepared by the Department of Education stating, “The change of the ‘state aid value’ definition involving horticultural land could have an impact on school aid distribution.”<sup>2222</sup> The final fiscal note on LB 170, just prior to its passage, stated that, “This bill does not appear to impact local expenditures or revenues.”<sup>2223</sup>

Table 129. Summary of Modifications to TEEOSA as per LB 170 (2001)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>  | <i>Description of Change</i>  |
|------------------|---------------------|--|---|
| 28               | 79-1016             | Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited | Prior to LB 170, it was assumed that the definition of state aid value implied agricultural and horticultural land even though the word “horticultural” was not included within the definition. As it relates to the state aid formula, LB 170 merely adds the word “horticultural” to the definition of state aid value for purposes of calculating state aid. |

Source: Legislative Bill 170, *Slip Law*, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, § 28, pp. 11-12.

## E. The 2002 Legislative Session

### LB 898 - Temporary Aid Adjustment Factor

The atmosphere surrounding the 2002 Session was certainly one of bleakness and foreboding. As with all Legislatures before it facing budgetary problems, there were really only three available options. Lawmakers could (i) raise taxes, (ii) reduce spending,

<sup>2220</sup> Wikipedia contributors, “Agriculture,” Wikipedia, The Free Encyclopedia, <http://en.wikipedia.org/w/index.php?title=Agriculture&oldid=39605249> (accessed February 15, 2006).

<sup>2221</sup> Id., “Horticulture,” Wikipedia, *The Free Encyclopedia*, <http://en.wikipedia.org/w/index.php?title=Horticulture&oldid=37555817> (accessed February 15, 2006).

<sup>2222</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 171 (2001)*, prepared by Doug Nichols, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 23 January 2001, 1.

<sup>2223</sup> Id., LB 170 (2001), 6 March 2001, 1.

or (iii) a combination of the first two options. Naturally, raising taxes was then, as it is now, an action of last resort for most politicians. But the 2002 Session presented such a severe budget crisis that the majority of the Legislature believed a combination of spending reductions and revenue increases was absolutely essential to addressing the situation. By the end of the session, however, it was believed that their already drastic measures were likely not enough to stem the budget shortfall.

In 2002, the Legislature would ultimately pass three packages of legislation. The first, to no surprise, was a revised budget proposal containing numerous cuts in state spending and fund transfers to the state's General Fund. These provisions were largely embodied within LB 1309 and LB 1310. The second package of bills passed into law related to the never popular tax increases, including LB 905, to increase estate tax revenues, LB 947, to change the taxation of cellular phone service, and LB 1085, to temporarily increase the cigarette tax, income tax and sales tax, and also broaden the sales tax base. The third package involved the passage of LB 898, which essentially lowered state support for schools and forced local districts to make up the difference from local resources or, in the alternative, make appropriate budget reductions or restructuring.

LB 898 was one of several bills introduced in 2002 to allocate some of the burden of the state's budget problem onto the shoulders of public education. For organizations representing public schools and employees, it was less a matter of whether than how the Legislature would pass along a portion of the budget crisis onto schools. So it came as no surprise at the outset of the 2002 Session that measures were introduced to impact state support of schools. Of particular significance was the introduction of LB 1252 by Senator Ron Raikes, chairman of the Education Committee, and LB 898, introduced by Speaker Doug Kristensen.

LB 1252 represented Senator Raikes' attempt to help relieve the state's budget crisis by requiring an across-the-board reduction in state aid to school districts. This meant that both equalized and non-equalized school districts alike would experience a reduction in state financial support. As introduced, LB 1252 would have changed the calculation of state aid for three years beginning in 2002-03, which naturally meant the

recertification of state aid since state aid certification notices are dispersed by February 1<sup>st</sup> each year for aid in the following year. The bill proposed to reduce each local school system's formula need, transportation and special receipts allowances, allocated income tax funds and net option funding by 5%.<sup>2224</sup> It was estimated that the bill would decrease the state commitment to public education by \$86 million for 2002-03.<sup>2225</sup> This represented a sizable contribution to the state's overall financial situation.

Senator Raikes testified that the state's principal obligation to state aid to education coupled with appropriations for special education costs amounted to over \$800 million per year out of a \$2.5 billion state budget. Raikes classified his proposal as an option for the Legislature to consider if "there's no way to omit state aid to schools" from state budget reductions.<sup>2226</sup> "In these times I think you simply have to keep options available and certainly, at least, LB 1252 is an effort along those lines," Raikes said.<sup>2227</sup>

The education community responded to LB 1252 by not responding, at least publicly. No one testified at the public hearing for LB 1252 on February 19, 2002 other than the sponsor himself.<sup>2228</sup> Of course, there were plenty of conversations going on behind the scenes, much of which was of a negative stance on the legislative proposal. For some education-related organizations, the bill proposed a political quandary with no easy answer. If one outright opposed the bill, introduced by the chair of the Education Committee, one might face the political fallout with the leader of the committee. If one supported the measure, the fallout would derive from the membership of the organization. Therefore, the most favored solution was to not act on the bill publicly but rather work with the Senator Raikes and members of his committee privately to obtain the least damaging legislative solution to public schools.

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<sup>2224</sup> Legislative Bill 1252, *Provide for certification of state aid as prescribed*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, 23 January 2002.

<sup>2225</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 1252 (2002)*, prepared by Sandy Sostad, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, 13 February 2002, 1.

<sup>2226</sup> Committee on Education, *Hearing Transcripts, LB 1252 (2002)*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, 19 February 2002, 6.

<sup>2227</sup> *Id.*, 5-6.

<sup>2228</sup> Committee on Education, *Committee Statement, LB 1252 (2002)*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, 1.

A similar stance, or lack of stance, would be taken by education organizations with regard to LB 898, the public hearing for which was held simultaneously with LB 1252. Sponsored by Speaker Doug Kristensen, LB 898 was introduced “in order to help address the budget shortfall facing Nebraska for the current biennium.”<sup>2229</sup> While Senator Raikes’ LB 1252 focused on both the needs and resources “sides” of the state aid formula, LB 898 focused on the resource side alone. The measure proposed to increase the local effort rate for FY2002-03 and FY2003-04 from 90¢ to 92.5¢.<sup>2230</sup> The simple meaning of this proposal would be to place a greater emphasis on local resources and a corresponding decreased burden on state support. The local effort rate had been established, since 1999, at 10¢ below the maximum statutory levy. The overall effect of the bill would have been a \$22.3 million savings to the state in 2002-03 and a similar savings in the year after.<sup>2231</sup> Although not provided for in the original bill, LB 898 would have also necessitated a recertification of state aid for the 2002-03 school year.

The impact on schools under Speaker Kristensen’s original proposal would have been mixed and, one might surmise, unfair. Those local systems currently at the maximum prescribed levy limitation would be required to reduce spending, use cash reserves, or seek a levy override to access additional property tax resources. Those local systems below the maximum levy would have the option to raise their levy to offset the impact of LB 898. Senator Raikes’ proposal, on the other hand, proposed to impact all local systems on a more equitable basis by reducing aid, whether equalization aid or other state aid, by a uniform percentage.

Speaker Kristensen closed the public hearing on his bill by noting the avoidance of school representatives to testify on his proposal. Most of the education lobby was on hand for the hearing, but chose not to speak openly on either LB 898 or LB 1252. “Obviously, what’s going to occur is that nobody wants to step up to the plate and do it,”

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<sup>2229</sup> Senator Doug Kristensen, *Introducer’s Statement of Intent, LB 898 (2002)*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, 19 February 2002, 1.

<sup>2230</sup> Legislative Bill 898, *Change provisions relating to local effort rate*, sponsored by Sen. Doug Kristensen, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, title first read 9 January 2002, § 1, p. 3.

<sup>2231</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 898 (2002)*, prepared by Sandy Sostad, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, 16 January 2002, 1.

Kristensen said, “The schools are never going to come up to the plate.”<sup>2232</sup> His irritation at the education lobby was certainly noted by those concerned. No one in his or her right mind would intentionally offend the Speaker. But how could the education special interests support any proposal to cut state aid in any form? The lobbyists, of course, were not responsible for finding a solution to the state’s budget problem, a fact not lost on the Speaker. “You can stick your head in the sands and say, we’re just going to ride this thing out,” Kristensen said.<sup>2233</sup> “The trouble is, as members of the Legislature we can’t do that,” he said, “We’ve got to do something.”<sup>2234</sup>

One of Speaker Kristensen’s last admonitions at the public hearing on February 19<sup>th</sup> had a chilling effect on everyone in the room that day. “We need a state aid bill on the floor, in some form or fashion, as a tool and as an option,” he said.<sup>2235</sup> If anyone doubted the sincerity of the legislative proposals prior to the hearing, no one questioned it after Speaker Kristensen’s final comments. It was clear that public education was destined to play a part in the overall solution to the budget crisis. But how would the Education Committee reconcile the intent and purpose of the two proposals? How would the committee respond to the Speaker’s directive that a state aid reduction proposal had to be on the floor for consideration?

Speaker Kristensen would up the ante on the following session day when he formally prioritized LB 898.<sup>2236</sup> Senator Raikes had already established LB 1172, relating to student fees, as his own personal priority for the 2002 Session.<sup>2237</sup> The expectation, of course, was that the Education Committee would follow the lead of the Speaker by utilizing LB 898 as the vehicle for some form of state aid reduction. But it would be the members of the Education Committee, not the Speaker, who proposed in their collective good judgment the contents of the Speaker’s individual priority bill.

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<sup>2232</sup> Committee on Education, *Hearing Transcripts, LB 898 (2002)*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, 19 February 2002, 8.

<sup>2233</sup> *Id.*

<sup>2234</sup> *Id.*, 8-9.

<sup>2235</sup> *Id.*, 9.

<sup>2236</sup> NEB. LEGIS. JOURNAL, 20 February 2002, 665.

<sup>2237</sup> *Id.*, 24 January 2002, 345.

As events unfolded, LB 898 would emerge from committee as expected, but not in any resemblance to Kristensen's original proposal. In the final analysis, what the Speaker's original bill did was to establish a level of anticipated financial impact, the magic number to which a state aid reduction bill, in whatever form, was expected to meet. While Senator Raikes' LB 1252 proposed to reduce state aid by \$86 million, Speaker Kristensen's original bill proposed a reduction in the amount of \$23 million. The Education Committee would ultimately fashion amendments to LB 898 in order to meet the Speaker's financial expectations (i.e., about \$23 million). Senator Raikes also worked closely with the chair of the Appropriations Committee, Senator Roger Wehrbein, to make certain the proper amount of the proposed state aid reduction.

LB 898 was advanced from committee by a 7-1 vote on March 14, 2002.<sup>2238</sup> The committee amendments essentially incorporated the contents of LB 1252, Senator Raikes' proposal for state aid reduction. The amendments proposed to change the calculation of state aid to education for 2002-03, 2003-04, and 2004-05. The legislation would establish a new phrase within the school finance lexicon: the temporary aid adjustment factor. The factor would reduce each local school system's formula need, allocated income tax funds and net option funding by 1.25%. The amendments also reduced the factors used to compute the stabilization factor and small stabilization adjustment by 1.25%. Finally, the amendments required the recertification of state aid for 2002-03 prior to May 1, 2002.<sup>2239</sup>

The legislation would reduce state aid, and thereby assist the state's financial crisis, by \$22.3 million in 2002-03 and roughly \$23 million in 2003-04.<sup>2240</sup> But what would the temporary aid adjustment factor translate into actual loss of state aid to each school district? It was estimated that the statewide average decrease in state aid for school districts, in comparison to the amount certified in February 2002, would be

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<sup>2238</sup> Committee on Education, *Executive Session Report, LB 898 (2002)*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, 14 March 2002, 1. Senators Brashear, Maxwell, Price, Raikes, Stuhr, Suttle, and Wickersham voted to advance while Senator Coordsen voted against.

<sup>2239</sup> NEB. LEGIS. JOURNAL, *Com AM3171*, printed separate, 19 March 2002, 1036. Committee Amendments, LB 898 (2002), *Com AM3171*, §§ 1-19, pp. 1-38.

<sup>2240</sup> *Fiscal Impact Statement, LB 898 (2002)*, 10 April 2002, 1.

3.26%.<sup>2241</sup> Some schools would lose more, others less, depending upon the type and amount of aid received by the local system. Those districts heavily reliant upon equalization aid, for instance, might suffer a heavier reduction. Those more reliant upon non-equalization aid, such as net option funding, would feel the impact in that regard. The exact numbers, system-by-system, would not become available to lawmakers until later in the legislative session.

*“Talk about a dilemma, this is a dilemma”*

First-round debate on LB 898 took place on March 21, 2002, just one week after its advancement from committee. The first words spoken on the legislation came from the bill’s sponsor. “LB 898 is a priority bill that I assumed and thought I would never, ever introduce in my life,” Speaker Kristensen said.<sup>2242</sup> “And I would tell you that LB 898 is not the bill that I would be proud of if I was out on the campaign trail,” he added.<sup>2243</sup> But the events and circumstances, he said, had evolved radically for the worse since the Legislature met in special session in October 2001.<sup>2244</sup> It was then that the Legislature met for the first time in the wake of “9/11” to address a growing budget shortfall. It was then that the Legislature vowed to hold harmless state aid to education from any budget cuts. Said Kristensen:

[A]s you remember in the Special Session, there were some principles that were laid out and one of them was, we’re not going to cut money from aid to individuals and we’re not going to take money from TEEOSA, from state aid to schools. We did not. If you look at what we did during the Special Session, you will see the line that talks about aid to education, the TEEOSA aid that we’ve established; there’s a goose egg there. We took nothing from that. We left Special Session with the hope that things would get better. They did not.<sup>2245</sup>

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<sup>2241</sup> Id.

<sup>2242</sup> Legislative Records Historian, *Floor Transcripts, LB 898 (2002)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, 21 March 2002, 12132.

<sup>2243</sup> Id.

<sup>2244</sup> The First Special Session of the 97<sup>th</sup> Legislature was convened on October 25, 2001 and adjourned on November 8, 2001.

<sup>2245</sup> *Floor Transcripts, LB 898 (2002)*, 21 March 2002, 12132.



In fact, the budget shortfall had grown to \$136 million by the time the Legislature began debate on LB 898 along with the remainder of the budget-fix legislation. It had become necessary, Kristensen said, for K-12 education to share the burden of the state's financial circumstances.

Senator Raikes, in his opening remarks, agreed with the Speaker relevant to the overall situation faced by the state, and agreed that public education had to absorb a portion of the financial crisis no matter how distasteful it may be. "This is not something any of us probably would like to do and certainly not those of us on the Education Committee," he said, "We regard this as an obligation in support of the cause, and that is the spirit in which we undertake this effort."<sup>2246</sup> But he hastened to remind his colleagues that public education, in general, had not been held harmless during the 2001 special session. It was true, he said, that the necessary level of state aid to education had not been touched, but other areas of education funding had been affected.

Senator Raikes reminded his colleagues that, during the 2001 special session, public education took several major budget hits, not the least of these being the diversion of almost all lottery proceeds to the General Fund. LB 3, passed during the special session, rerouted \$13 million over a two-year period from the Excellence in Education Fund to the state's coffers.<sup>2247</sup> In addition, the Legislature took a dramatic step in eliminating almost \$3.4 million in appropriations for reorganization incentive aid payments.<sup>2248</sup> The Legislature effectively eliminated any type of incentive program to encourage school reorganization. All the work by Senator Coordsen to strengthen this program during the 2001 Session had evaporated.<sup>2249</sup> Therefore, public education had been under budget knife, but it was true, as alleged by Speaker Kristensen, that K-12 had been deliberately spared, to a great extent, in comparison to other state funding issues.

Senator Raikes utilized the remainder of his initial comments to explain how the temporary aid adjustment factor would work. He had previously distributed a district-by-

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<sup>2246</sup> Id., 12135.

<sup>2247</sup> Legislative Bill 3, *Slip Law*, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Spec. Sess., 2001, § 1, p. 4.

<sup>2248</sup> Id., § 7, p. 19.

<sup>2249</sup> Senator Coordsen sponsored LB 313 (2001) to increase the appropriations for incentive aid payments.

district spreadsheet on the impact of the legislation. He took his colleagues through a mini course on the mechanics of school finance. First, the factor would be used against the local system's formula needs: 1.25% multiplied by the sum of the local system's transportation allowance plus the special receipts allowance plus the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping.<sup>2250</sup>

Second, the factor would be used against the local system's formula resources in a two-phase process. In the first phase, a local system's net option funding would be calculated by subtracting the temporary aid adjustment factor (1.25%) from the sum of the product of the net number of option students in each grade range multiplied by the statewide average cost grouping cost per student multiplied by the weighting factor for the corresponding grade range. However, a local system's net option funding would not be allowed to fall below zero under the calculation.<sup>2251</sup> In the second phase, each local system's allocated income tax funds would be calculated by subtracting the difference of the temporary aid adjustment factor minus the reduction in net option funding due to the temporary aid adjustment factor, from the preliminary allocated income tax funds. Again, as a safeguard, a local system's allocated income tax funds would not be allowed to fall below zero in the calculation.<sup>2252</sup>

Senator Raikes explained that the impact on local systems would obviously vary due to the circumstances of each system. For instance, some systems might actually experience little or no reduction in aid due to the lop-off provision, stabilization factor, or small school stabilization adjustment under the formula. The lop-off provision was created under LB 806 (1997) 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 due to them exceeded the amount required to meet their needs. In essence, the state aid owed to the local system by virtue of the formula would create a

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<sup>2250</sup> Committee Amendments, LB 898 (2002), *Com AM3171*, § 3, p. 8.

<sup>2251</sup> *Id.*, § 10, p. 25.

<sup>2252</sup> *Id.*, § 5, pp. 11-12.

windfall profit to the local system when added to the property tax revenue. The small school stabilization adjustment, created under LB 806, 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 implies, small schools were the beneficiaries of this particular provision. The stabilization factor, also created under LB 806, represented the hold harmless provision within the formula to protect local systems from sharp losses in state aid from year to year.

Naturally, for school officials it was bad enough to know that LB 898 would void the 2002-03 state aid certification. School districts plan their budgets for the following year based upon those certification figures. It was even more distressing to learn that most local systems would endure a cut in state aid. Perhaps most stressful for some districts was that LB 898 would not cause a recertification of state aid until May 1, 2002. This meant a rather tedious wait until the Legislature finally passed LB 898 and then a further wait until the department could process the new state aid figures. Understandably, there was anxiety among local officials throughout the 2002 Session while the Legislature deliberated about what to do.

“Talk about a dilemma, this is a dilemma,” Senator Floyd Vrtiska said of the situation facing public schools along with the Legislature itself.<sup>2253</sup> For most legislators actively participating in the debate on LB 898, it was a matter of choosing between the lesser of evils: the loss of teachers and programs due to local spending cuts or potential property tax increases to make up the amount of revenue lost due to the temporary aid adjustment factor. Some districts having ample reserves might possibly weather the storm without much change in operations or staff. But other less fortunate districts might have few other options but to reduce staff. Some districts already at the maximum levy would have no ability to seek additional funding at the local level. Levy override elections were always a possibility, but there was no guarantee that patrons of the district would go along with such a strategy.

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<sup>2253</sup> *Floor Transcripts, LB 898 (2002)*, 21 March 2002, 12143.

Speaker Kristensen took the brunt of the attack from those of his colleagues who were concerned about shifting a greater property tax burden upon their constituents. He reminded his colleagues that LB 898 did not represent an automatic property tax increase. It did, however, represent a sharing of the overall state budget crisis with local schools. Said Kristensen:

We've got to make decisions at the state level to live with our budget. And certainly a 1.2 or a percent and a quarter reduction is not the death knell of a school. It's certainly starts the rhetoric going but it is not impossible, particularly when it's not long term. It is a short term.<sup>2254</sup>

The Speaker characterized the temporary state aid reduction as a fair contribution on the part of public schools since state aid represented the largest block of the state budget.

Several senators rose to express outright opposition to LB 898 no matter how important it was to the cause of correcting the state budget. "I've stood here this morning and I talked about no new taxes and we have to make cuts and now I'm standing here telling you we can't make this particular cut," said Senator Doug Cunningham, "But ... this is the same as a property tax increase so it is still a tax increase."<sup>2255</sup> The Wausa Senator was perhaps mostly concerned about the impact on property tax rates, but he also expressed concern for the impact and circumstances faced by rural schools within his own legislative district. He said schools within his area were "down to bare bones now, ever since we passed LB 806," and further cuts to state aid would further place these districts in jeopardy.<sup>2256</sup> Of course, Senator Cunningham was not a member of the Legislature in 1997 when LB 806 was passed, but his predecessor, Senator Stan Schellpeper, was among those voting against the comprehensive school finance bill.

Senator Cunningham's view on LB 898 was an example of the extreme opposition, which represented a small minority of the body. The average viewpoint was more in line with Senator Curt Bromm's statement during first-round debate:

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<sup>2254</sup> Id., 12142.

<sup>2255</sup> Id., 12144.

<sup>2256</sup> Id.

I was on the school board for about ten years right before I came in here, and I had five kids go through the school system, and I stood here last fall in Special Session, and I would not have supported taking away any of the state aid to schools. But things have changed in terms of the circumstances. And we have to look everywhere and we have to ask everyone to bear a part of the burden of the situation that we're in. And that should include as broad a base as possible so that we don't hurt anybody more than we have to.<sup>2257</sup>

Senator Bromm compared public schools to state government to the extent that there were certain essential programs and services that must be provided no matter what. There were, he argued, some school programs and services that may have to be suspended until better times. He used extracurricular activities as an example of a non-essential service.

Ultimately, the Legislature adopted the committee amendments to LB 898 by a 31-11 vote.<sup>2258</sup> Speaker Kristensen spoke to his colleagues prior to the vote on advancement. "It may not be the most popular but it is the right thing to do," he said.<sup>2259</sup> "Those who can't at this time vote to advance it, you still have my respect because I understand why you're doing it," Kristensen added.<sup>2260</sup> Of course, as time would tell, every vote mattered for the successful passage of LB 898. The 32-12 record vote to advance LB 898 to Select File would be later regarded as too close for comfort *if* enactment ultimately required a veto override.<sup>2261</sup> And it would.

#### *Levy Lid Exclusion*

Second and final-round consideration would come and go in rapid succession as the Legislature attempted to finalize a budget solution. Despite the monumental nature of LB 898, the total floor debate time from start to finish was relatively short. This may owe in part to the complexity of the other legislative packages of the budget-fix that seemed to drain the Legislature's time and attention. The discussion on LB 1085 relating

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<sup>2257</sup> Id.

<sup>2258</sup> NEB. LEGIS. JOURNAL, 21 March 2002, 1069.

<sup>2259</sup> *Floor Transcripts, LB 898 (2002)*, 21 March 2002, 12159.

<sup>2260</sup> Id.

<sup>2261</sup> NEB. LEGIS. JOURNAL, 21 March 2002, 1069.

to the sales tax base, for instance, comprised a major part of the session. In fact, the debate on LB 1085, in particular, would help to shape the final outcome of LB 898 in an important way.

On Monday, March 25, 2002, just four days after the initial advancement of LB 898, the Legislature took up first-round discussion on the most controversial piece of the budget-fix package. LB 1085 would be used as the vehicle to house a sales tax increase, an expansion of the sales tax base to include certain services, and a cigarette tax increase, among other revenue-generating mechanisms.<sup>2262</sup> This legislation ultimately would be the subject of an unsuccessful petition effort to repeal it.

Of particular significance to school officials was a provision contained within the committee amendments to LB 1085 that allowed qualified local systems to exceed the levy limitation in the amount of lost state aid due to the provisions of LB 898.<sup>2263</sup> The levy exclusion would exist for three years (FYs 2002-03, 2003-04, and 2004-05) and required a three-fourths majority vote of the school board to access the levy exclusion.<sup>2264</sup>

During first-round debate of LB 1085, a request was made and granted to divide the committee amendments into four parts, the second of which became the division related to the levy exclusion.<sup>2265</sup> Eventually, the Legislature adopted the second division, but not before a careful explanation by Senator Wickersham, the chair of the Revenue Committee, on how the exclusion would work. In fact, the experience and expertise possessed by Senator Wickersham on both school finance and revenue-related subjects would prove indispensable for this discussion.

Naturally, the first blush reaction by some lawmakers to the levy exclusion was that it meant an across-the-board property tax increase for all school districts. But this was not the intent of the proposal. Senator Wickersham, who served on both the

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<sup>2262</sup> Nebraska Legislative Research Division, "A Review: Ninety-Seventh Legislature, Second Session, 2002," May 2002, 77-79.

<sup>2263</sup> NEB. LEGIS. JOURNAL, 19 March 2002, 1010. Committee amendments to LB 1085 (2002), *Com AM3155*, § 12, pp. 40-46.

<sup>2264</sup> *Id.*

<sup>2265</sup> NEB. LEGIS. JOURNAL, *FA948 (AM3155)*, 25 March 2002, 1103-06.

Revenue and Education Committees, explained that the levy exclusion would only apply to those local systems that were already at the maximum levy (at the time \$1.00 per \$100 assessed valuation). This was the first qualification. The second was that the local system actually possesses the spending authority to utilize the additional levy authority. And this is where it became somewhat confusing, as demonstrated during the debate on this component of the committee amendments to LB 1085.

Prior to the first-round debate on LB 1085, Senator Wickersham requested and received a printout illustrating those schools that would and would not qualify for the proposed levy exclusion. The data used to compile the printout assumed a 3.5% growth in local property values and a 2.5% increase in spending. At the time, the base spending lid was 2.5%. Using these criteria, Senator Wickersham explained, there would be 14 local systems out of 263 that would actually qualify for the proposed levy exclusion, a relatively small number of schools.<sup>2266</sup>

The reasons for such a small number of affected schools were several. If the local system was not at the maximum levy, for instance, then the school board always had the option to utilize the remaining levy authority without the use of the levy exclusion. Another scenario would involve the spending limitation assigned to each local system. While the base spending lid was set at 2.5% (i.e., 2.5% growth from the previous year), the applicable allowable growth rate for each local system would vary from local system to local system. The applicable allowable growth rate is computed by the Department of Education each year for the following school fiscal year.

Since the inception of the TEEOSA in 1990, the idea was to establish a spending lid range relative to the spending habits of the individual school district. Essentially, a district with low spending in year “A” would be allotted a higher spending growth rate in year “B” and, conversely, a district with high spending in year “A” would be allotted a lower growth rate in year “B”. The idea was to provide some stability in the overall spending habits of each district. In 2002, the base spending lid was 2.5%, but the growth

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<sup>2266</sup> Legislative Records Historian, *Floor Transcripts, LB 1085 (2002)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, 25 March 2002, 12345.

range was up to 4.5%. A local system could have an applicable allowable growth rate anywhere within that range depending upon the prior year spending.

Under the proposed levy exclusion contained in LB 1085, a local system must have the available spending authority to actually use the additional revenue generated from the levy exclusion. Otherwise, the additional levy authority would be pointless. Of course, the other major requirement was that three-fourths of the local board, a supermajority, must vote to access the levy exclusion. This last hurdle was intended to ensure a unified, or nearly unified, voice on the matter and to offer that extra protection to the taxpayer against frivolous decisions by the school board.

There was more discussion than debate on the second division of the committee amendments to LB 1085. Several senators, both rural and urban alike, wanted to know how the exclusion would work and what districts would benefit. Both Senators Wickersham and Raikes had the expertise to explain it to their colleagues. And both supported the proposal, which offered some assurance to those not *in the know* about the viability of the concept. What some may not have fully realized was how few schools would actually qualify to access the additional levy authority. But Senator Wickersham emphasized to his colleagues that the levy exclusion was not to be considered a relaxing of the levy limitations or even a modification of the school finance formula. “[W]e’re not going to be able to change the state aid formula, we’re not going to raise the levy limitations,” he said, “I don’t want to do either one of those things.”<sup>2267</sup>

The levy exclusion portion of LB 1085 was adopted by a 28-8 vote.<sup>2268</sup> In hindsight, this would be one of the more congenial discussions relevant to the revenue-generating legislation. It would take two days to advance the bill from first-round consideration. LB 1085 would ultimately receive the same fate as LB 898 in terms of the Governor’s reaction. The Legislature in turn would have the final word by overriding the gubernatorial veto by a 30-19 vote, just barely meeting the minimum number of

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<sup>2267</sup> Id., 12358.

<sup>2268</sup> NEB. LEGIS. JOURNAL, 25 March 2002, 1106.



affirmative votes to pass such a motion.<sup>2269</sup> This gave rise to the so called “dirty-30,” an expression coined by outside interests who sought unsuccessfully to overturn the tax increase bill through the referendum process.

In the meantime, the willingness of the Legislature to conclude its work on LB 898 was demonstrated during second-round consideration. Select File debate took place on April 8<sup>th</sup>, about three weeks after advancement from first-round. Senator Raikes, who supported the levy exclusion contained in LB 1085, sought to ensure the inclusion of this provision by amending LB 898 with the same language.<sup>2270</sup> This represented a smart political move by Senator Raikes since the real item of controversy was less LB 898 than LB 1085. If LB 898 became law but LB 1085 did not, then schools would be left with a reduction in state aid with no authority to exclude that amount from the levy limitation. Senator Raikes believed it was prudent to incorporate the provision in both bills to cover the bases, so to speak. It would also solidify the Legislature’s intent to afford schools this additional levy capacity.

There was no debate on the Raikes amendment to LB 898. The levy exclusion language was modified to include a provision requiring the Department of Education to annually certify to each district the amount that could be excluded from the levy limitation. Interestingly, during a short exchange with Senator Beutler, who sought clarification as to why the amendment was necessary, Senator Raikes alluded to the protection it would offer schools. “I suppose the school districts would be interested in LB 1085 passing if this provision were not in LB 898,” Beutler said in response.<sup>2271</sup> The addition of the levy exclusion to LB 1085 had in fact caused the education lobby to take more interest in the tax-related legislation. The harmonizing amendment to LB 898 was adopted without fanfare on a 32-0 vote.<sup>2272</sup>

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<sup>2269</sup> Id., 11 April 2002, 1621.

<sup>2270</sup> NEB. LEGIS. JOURNAL, *Raikes AM3604*, 8 April 2002, 1542-45.

<sup>2271</sup> *Floor Transcripts, LB 898 (2002)*, 8 April 2002, 13900.

<sup>2272</sup> NEB. LEGIS. JOURNAL, 8 April 2002, 1545.

### *Local budget decisions*

While the Raikes amendment was characterized as an affirmation of an existing legislative objective, the final amendment relevant to LB 898 was of a more controversial nature. The last amendment to LB 898 derived from Senator Pat Bourne of Omaha, who introduced his amendment with the often-used phrase, “This is a very simple amendment.”<sup>2273</sup> And just as often, it is anything but simple. The Bourne amendment proposed to protect students and presumably classroom teachers as much as possible from local budget cuts due to any reduction in state aid. The main body of the amendment stated:

It is the intent of the Legislature that reductions in state aid required pursuant to this legislative bill impact the quality of educational opportunities for students to the least extent possible. In keeping with this principle, the Legislature encourages school boards to make needed budget reductions in budgeted expenditures in functions other than classroom instruction.<sup>2274</sup>

Senator Bourne acknowledged that the language of the amendment would not bind school districts to comply with the intent. “But it sends a message that even though this budget cut is necessary it’s unfortunate, and we should make those cuts furthest away from the student as possible,” he said.<sup>2275</sup>

The concept proposed by Senator Bourne was certainly not new to the Legislature. A series of amendments were similarly offered during the debate on LB 299 (1996), a bill to radically decrease the spending limitation in conjunction with the levy limitations contained under LB 1114 (1996). The Legislature ultimately settled on a compromise amendment with language stating that:

It is the intent of the Legislature that any reductions in a school district budget, made to comply with the budget limitation in the Tax Equity and Educational Opportunities Support Act, affect classroom expenses as a last resort.<sup>2276</sup>

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<sup>2273</sup> *Floor Transcripts, LB 898 (2002)*, 8 April 2002, 13901-02.

<sup>2274</sup> NEB. LEGIS. JOURNAL, *Bourne AM3326*, 8 April 2002, 1546.

<sup>2275</sup> *Floor Transcripts, LB 898 (2002)*, 8 April 2002, 13904.

<sup>2276</sup> LB 299, *Session Laws, 1996*, § 6, p. 2 (85). NEB. REV. STAT. § 79-1083.01 (1996).

This statute remains in effect today. But what force and effect does it possess except to merely state intent? How could a district be found to violate the statute and what penalty would befall the district?

Senator Bourne essentially answered some of these questions with regard to his own amendment to LB 898. The amendment, he said, was meant to layout the State's objective that all things related to students as well as the teachers who instruct them be held harmless to the greatest extent possible when deliberating local budget options. But even this assertion is problematic given the realities of school operations since it is widely known that the largest portion of the average school budget is labor, specifically the salaries and benefits of teachers. If one utilizes the logic forwarded by Speaker Kristensen that the largest portion of the state budget (i.e., state aid to education) should naturally take a cut, then it would follow that the same logic would apply at the local level. Public education is primarily labor driven if one uses the term "labor" loosely.

The remaining portions of the average school budget would include, to a great extent, fixed costs associated with utilities, supplies, maintenance, etc. Many of these costs are driven by forces outside a school board's control, such as the cost of electricity and gas, which are determined by supply and demand. The local budget would also provide for administrative costs, including building level administrators, central office administrators, and the school board itself. The budget would also include facility improvements, renovations, and new construction expenses.

So where would the proponents of Senator Bourne's amendment look first to reduce the average school district budget? Naturally, administration would be one of the key targets. Administration, specifically administrators, were and still are the preferred target for those who believe there are available budget cutting options that would not impact the classroom. However, it is one thing to advocate reducing administrative staff and another to specify exactly how that would be done. This was illustrated during the debate on the Bourne amendment when an exchange took place between Senator Bourne and Senator Paul Hartnett from Bellevue:

SENATOR HARTNETT: ... are you thinking of ... instructional line, or don't fire the lowest custodian, or ... because an ... if I think of instruction, you know, and professional staff, I think the furthest one away would be the superintendent. So, (laugh) the school board would have to get rid of the superintendent, is that... (laugh). Well, maybe that would be good for... (laugh)

SENATOR BOURNE: You know, you could read it that way, Senator Hartnett. It just ... it ... and the furthest away from the student was my language. And basically what it says, the Legislature encourages school boards to make needed budget reductions in budgeted expenditures and functions other than classroom instruction, so maybe forego paving the parking lot, or repaving it, or some other such thing. The point in, is that, you know, this ... this cut, well, the point in, is that the kids shouldn't suffer any more than they have to. And so the ... the intent is, is to make sure that the kids still get an education, and that the cuts are made other than in classroom instruction.<sup>2277</sup>

Senator Bourne did not appear to dissuade Senator Hartnett's line of thinking. But what Bourne's answer seemed to say was that local boards would have to use their best judgment in the interest of students.

School board members would likely respond that they always use their best judgment, especially when it comes to students. Some might even be insulted by suggestions that they have or will fail to use their best judgment to protect the interests of students. And coming to the direct assistance of school boards was a former school board member himself. "[T]hese are the decisions that our boards have to make in each individual specific case," said Senator Curt Bromm, "I don't really think that we can set a pattern, or give them advice when they have to take into account their own circumstances."<sup>2278</sup> Senator Raikes said he really did not have any major problem with the language because it would not have any effect except to offer advice. "I probably will not support it, but I would not regard it as a ... a major problem," Raikes said.<sup>2279</sup> Senator Ernie Chambers encouraged his colleagues to avoid adoption of such amendments. "And since this language is not binding, it's just a statement that you

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<sup>2277</sup> *Floor Transcripts, LB 898 (2002)*, 8 April 2002, 13903.

<sup>2278</sup> *Id.*, 13904.

<sup>2279</sup> *Id.*, 13902.

might call good advice, or it's intended to be good advice," he said, "But some people may feel it's not even good advice."<sup>2280</sup>

The most interesting aspect of the Bourne amendment was revealed in the vote on adoption. Even though no one other than Senator Bourne himself rose to voice outright support for the amendment, the vote was relatively close (21 in favor, 18 opposed).<sup>2281</sup> This likely meant that one or several special interest groups had promoted the merits of the amendment and had received assurances of support from various members of the Legislature. Support from lawmakers despite the fact that the amendment would have had absolutely no actual impact or consequence to school boards, students, teachers, or the classroom. Following consideration of the Bourne amendment, the Legislature advanced LB 898 to Final Reading by a voice vote.<sup>2282</sup> And the real drama surrounding LB 898 was about to play out.

*"Legislation I cannot support"*

In some cases, there are last minute speeches on the floor of the Legislature before a final vote is taken. A sponsor might, for instance, file a motion to strike the enacting clause of his or her own bill in order to have that last chance to sway lawmakers to vote in favor of the measure. In the case of LB 898, however, there was no such last minute attempts, no last minute speeches. In the case of LB 898, it was not necessary and the proponents knew it. Just two days after advancement from Select File, the Legislature voted to pass LB 898 by a 46-3 vote and passed the accompanying appropriation (A) bill by a 45-3 vote.<sup>2283</sup> LB 898A was designed to amend the biennium budget to reflect the reduced amount of state aid for FY2001-02 and 2002-03.<sup>2284</sup>

LB 898 was passed on April 10, 2002, the 55<sup>th</sup> day of the 60-day session. Governor Johanns wasted no time in expressing his viewpoint about the legislation. On

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<sup>2280</sup> Id., 13902-03.

<sup>2281</sup> NEB. LEGIS. JOURNAL, 8 April 2002, 1546.

<sup>2282</sup> Id.

<sup>2283</sup> Id., 10 April 2002, 1580-81.

<sup>2284</sup> Legislative Bill 898A, *Slip Law*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, § 1, p. 1.

the same day the Legislature passed the bill, Governor Johanns vetoed LB 898 but signed LB 898A into law. In a letter to the Legislature communicating his veto, he wrote:

With this letter I am returning LB 898 without my signature and with my objections. I am returning LB 898A with my signature.

I have supported the provisions in LB 898 that prescribe the manner in which the Tax Equity and Educational Opportunities Support Act [“TEEOSA”] aid formula would be amended to implement the new level of aid to Nebraska school districts as we address our State’s budget shortfall. However, as amended on Select File, the bill now authorizes school districts to exceed the maximum levy allowed by law without a vote of the people. You have now presented me with legislation I cannot support. I believe that Nebraskans are asking for greater spending restraint at all levels of government. Granting authority to a local school board to exceed the maximum levy without first requiring approval from taxpayers is inconsistent with the State’s previously established requirement of allowing only the taxpayers themselves to determine such an important local funding issue.

Further, LB 898 is not required for the Legislature to implement the revised level of funding for state aid to schools under the TEEOSA aid appropriation that is contained in LB 898A. The Attorney General has determined that there are no statutes which would prevent or otherwise limit the Legislature’s ability to change the amount of state aid that has previously been appropriated to schools.<sup>2285</sup>

And on the same day Governor Johanns vetoed the legislation, Speaker Kristensen filed a motion to override the veto of LB 898.<sup>2286</sup> The showdown between the executive and legislative branches was set for the next day.

On April 11, 2002, the Legislature considered the motion to override the gubernatorial veto. The basic message from the Governor was that LB 898 went too far by authorizing the levy exclusion. He believed LB 898A alone carried forth the appropriate message by simply cutting state aid. However, there were many problems with the Governor’s veto if one supported public education, and there were some unavoidable problems if you were a lawmaker. The Governor’s signature on LB 898A meant there would be a reduction in state aid. The Governor’s veto of LB 898 meant there would be no guidance on how the reduction would be distributed among the

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<sup>2285</sup> NEB. LEGIS. JOURNAL, 10 April 2002, 1589-90.

<sup>2286</sup> *Id.*, 1601.

schools. It meant there would be no recertification of state aid, which gave the schools every legal reason to believe the existing certification would be enforced and funded. This left the Legislature with few options except to correct the actions of Governor Johanns so that school districts could be treated fairly in the state aid reduction process.

No one rose to support the Governor's veto action on the morning of April 11<sup>th</sup>, although some would vote to sustain it. Speaker Kristensen naturally rose to introduce his motion and to urge his colleagues' support. But it was Senator Raikes who really captured the essence of the situation created by the Governor's actions:

In an effort to express his displeasure with the levy exclusion, he vetoed LB 898 and signed LB 898A. What this does is unravel the whole proposal. There is no distribution mechanism, there is no recertification procedure and date, there is no longer a three-year program. And what would happen if this were left, would at least be a great deal of uncertainty for the public schools.<sup>2287</sup>

Speaker Kristensen closed on his motion by congratulating his colleagues on the hard decisions they made and have yet to make in the 2002 Session. "You have made more hard decisions this year than I think any Legislature has made in a long time," he said.<sup>2288</sup>

There were a few lawmakers who remained loyal to the Governor for one reason or another. Perhaps it was less about loyalty to the Governor and more about concern for potential property tax increases. The majority, however, voted to override the veto by a 38-5 vote.<sup>2289</sup>

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Table 130. Vote to Override Veto of LB 898 (2002)

*Voting in the affirmative, 38:*

|          |          |            |          |          |
|----------|----------|------------|----------|----------|
| Aguilar  | Connealy | Janssen    | Pedersen | Smith    |
| Beutler  | Coordsen | Jensen     | Price    | Stuhr    |
| Bourne   | Cudaback | Kremer     | Quandahl | Suttle   |
| Brashear | Engel    | Kristensen | Raikes   | Thompson |
| Bromm    | Erdman   | Kruse      | Redfield | Vrtiska  |
| Brown    | Foley    | Landis     | Robak    | Wehrbein |

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<sup>2287</sup> *Floor Transcripts, LB 898 (2002)*, 11 April 2002, 14221.

<sup>2288</sup> *Id.*, 14223.

<sup>2289</sup> NEB. LEGIS. JOURNAL, 11 April 2002, 1620.

Table 130—*Continued*

|         |          |          |         |
|---------|----------|----------|---------|
| Bruning | Hartnett | Maxwell  | Schimek |
| Byars   | Hudkins  | McDonald | Schrock |

*Voting in the negative, 5:*

|         |            |        |       |       |
|---------|------------|--------|-------|-------|
| Burling | Cunningham | Dierks | Jones | Tyson |
|---------|------------|--------|-------|-------|

*Present and not voting, 6:*

|          |          |            |
|----------|----------|------------|
| Baker    | Pederson | Synowiecki |
| Chambers | Preister | Wickersham |

*Source:* NEB. LEGIS. JOURNAL, 11 April 2002, 1620.

Table 131. Summary of Modifications to TEEOSA as per LB 898 (2002)

| <i>Bill Sec.</i> | <i>Statute Sec.</i>         | <i>Revised Catch Line</i>   | <i>Description of Change</i>   |
|------------------|-----------------------------|---|--|
| 2                | 79-1001                     | Act, how cited  | Adds two new sections to the Tax Equity and Educational Opportunities Support Act  |
| 3                | 79-1003                     | Terms, defined  | Provide for a new definition for “temporary aid adjustment factor,” which would be equal to 1.25% of the current calculation of formula needs. The temporary aid adjustment factor would be defined as 1.25% of the sum of the local system’s transportation allowance, the local system’s special receipts allowance, and the product of the local system’s adjusted formula students multiplied by the average formula cost per student in the local system’s cost grouping.<br><br>The definitions section would also be amended to include references to the new sections where appropriate. The new Section 5 is referenced as the section for determining allocated income tax funds for school fiscal years 2002-03, 2003-04, and 2004-05. The new Section 13 would be referenced in the equalization aid definition to recognize the new section as the section for determining equalization aid for those same years. |
| 4                | 79-1005.01                  | State aid calculation generally; income tax receipts; disbursement  | Amended to exclude school fiscal years 2002-03, 2003-04, and 2004-05 from the determination of allocated income taxes pursuant to the section. This effectively suspends the section for the three-year period.  |
| 5                | 79-1005.02<br>[new section] | State aid calculation; school fiscal years 2002-03, 2003-04, and 2004-05; Income tax receipts; disbursement | Identical language to §79-1005.01, except that for school fiscal years 2002-03, 2003-04, and 2004-05 the allocated income taxes would be reduced by the amount of the temporary aid adjustment factor that had not been subtracted from net option funding.  |



Table 131—Continued

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>   | <i>Description of Change</i>  |
|------------------|---------------------|---|---|
| 6                | 79-1007.01          | Adjusted formula students for local system; calculation   | Amended to include a reference to new provisions in §79-1007.02 for calculating each local system's formula need for school fiscal years 2002-03, 2003-04, and 2004-05. Federal statute references would also be updated.   |
| 7                | 79-1007.02          | School fiscal year 1998-99 and thereafter; cost groupings; average formula cost per student; local system's formula need; calculation | Amended to exclude school fiscal years 2002-03, 2003-04, and 2004-05 from the current provisions for calculating each local system's formula need. A new subsection of this section would repeat the current provisions, except that for school fiscal years 2002-03, 2003-04, and 2004-05, each local system's formula need would be reduced by the temporary aid adjustment factor.   |
| 8                | 79-1008.01          | Equalization aid; amount  | <p>The existing provisions for the "stabilization factor" would be amended by excluding school fiscal years 2002-03, 2003-04, and 2004-05. The "stabilization factor" assures that each local system will receive at least 85% of the aid from the preceding school fiscal year minus the amount generated when the maximum levy is applied to the increase in adjusted valuation. The provisions are repeated in LB 898, except that for school fiscal years 2002-03, 2003-04, and 2004-05, the 85% threshold is replaced with an 83.75% threshold.</p> <p>The existing provisions for the "small school stabilization factor" would be amended by excluding school fiscal years 2002-03, 2003-04, and 2004-05. The "small school stabilization factor" distributes funds saved by the "lop-off" to local systems with no more than 900 students and adjusted general fund operating expenditures per formulas student less than the average for all local systems with no more than 900 formula students. Qualifying local systems are limited to receiving distributions that will not give the system state aid plus available property taxes of more than 90% of the state aid plus property taxes from the prior year. LB 898 would reduce the maximum for the "small school stabilization factor" to 88.75% of the state aid plus property taxes from the prior year.</p> <p>The "lop-off" calculation would be adjusted by recognizing receipts from other school districts related to annexation. The "lop-off" calculation reduces state aid for local systems that would otherwise appear to receive more state aid than the system would have the authority to spend.</p> |

Table 131—Continued

| <i>Bill Sec.</i> | <i>Statute Sec.</i>         | <i>Revised Catch Line</i>   | <i>Description of Change</i>   |
|------------------|-----------------------------|---|--|
| 8                | 79-1008.01                  | Equalization aid; amount<br><br><i>Continued</i>                    | The calculation is currently based on the property tax and state aid resources available to the system in the prior year and the authorized budget growth. Annexation receipts may be received by a system as a transition between having property tax resources and having state aid resources when the system loses property due to an annexation.   |
| 9                | 79-1008.02                  | Minimum levy adjustment; calculation; effect                        | Amended to reference new Section 5 as the section for determining the allocated income taxes for school fiscal years 2002-03, 2003-04, and 2004-05.  |
| 10               | 79-1009                     | Option school districts; net option funding; calculation            | Amended to exclude school fiscal years 2002-03, 2003-04, and 2004-05 from the current provisions for net option funding. For school fiscal years 2002-03, 2003-04, and 2004-05, net option funding would be reduced by the temporary aid adjustment factor for each local system. A reference would also be made to the new Section 5 as the section for determining the allocated income taxes for school fiscal years 2002-03, 2003-04, and 2004-05. |
| 11               | 79-1017.01                  | Local system formula resources; income tax funds; allocation        | Amended to reference the new provisions in Section 5 for determining allocated income taxes for school fiscal years 2002-03, 2003-04, and 2004-05. Obsolete language would also be eliminated.   |
| 12               | 79-1022                     | Distribution of income tax receipts and state aid; effect on budget | Amended by requiring state aid to be certified on or before May 1st for 2002. The certification deadline would return to February 1st for future years.  |
| 13               | 79-1022.02<br>[new section] | School year 2002-03 certification null and void; recertification    | New Section 13 would nullify the certification of state aid from February 1, 2002 and require state aid to be recertified on or before May 1, 2002 using data sources as they existed on February 1, 2002.   |
| 14               | 79-1031.01                  | Appropriations Committee; duties                                    | Amended to reference the change in the certification date for 2002.  |

Source: Legislative Bill 898, *Slip Law*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, §§ 2-14, pp. 3-11.

### LB 1172 - Student Fees

Prior to 2001, the issue of charging student fees may have existed in the minds of some parents. To some parents it was more an annoyance than anything else, to others an embarrassing financial burden. But the issue had not yet reached the state's public agenda. There were fees for lockers, lab materials, field trips, etc. A dollar here, five dollars there, multiplied by the number of your children, one more financial expectation

within an otherwise free public education system. And, in fact, it was the word “free” that would weigh heavy for state policymakers in the months leading up to and throughout the 2002 Session. After all, the Nebraska Constitution specifically called for the “free instruction in the common schools of this state of all persons between the ages of five and twenty-one years.”<sup>2290</sup> But what did “free” really mean? Did free mean absolutely free or relatively free?

The issue of student fees became a school finance issue in 2001. The final resolution was painful to some school districts, not a major problem for others, and a clear victory for parents and students. The resolution came in the form of a legislative proposal, LB 1172 (2002), which did not directly amend or modify the TEEOSA, but would nonetheless have an impact on various components of the formula. From a constitutional perspective, LB 1172 will likely be regarded as a major development in the history of Nebraska school law. The legislation took a dramatic step in providing actual meaning and definition to the phrase “free instruction” within the education policy arena.

*“An illegal tax”*

Events leading up to the student fees legislation began in September 2001 when a parent residing in Omaha filed suit against Omaha Public Schools (OPS) for repayment of the fees. Roger Roll, having two children enrolled in OPS schools, claimed the fees violated the Nebraska Constitution and said the fees amounted to “an illegal tax.”<sup>2291</sup> He had been paying \$25 to \$30 fees for such things as lockers and lab costs. Naturally, the lawsuit had the full attention of the OPS Board of Education, which subsequently requested that the Commissioner of Education, Doug Christensen, review existing law relevant to student fees. In the meantime, a second student fees lawsuit would be filed in October 2001. Mary Sauter, a Plattsmouth area parent, filed suit against Plattsmouth Public Schools for refund of fees paid. Sauter had refused to pay registration fees to the district for her son and daughter. “I was shocked as a parent registering my kids that

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<sup>2290</sup> NEB. CONST. art. VII, § 1.

<sup>2291</sup> Angie Brunkow, “Lawsuit says student fees violate Nebraska Constitution,” *Omaha World-Herald*, 24 September 2001, 1a.

there was any type of fee,” she said.<sup>2292</sup> Dick Widerhold, Plattsmouth Superintendent, said the district charged a \$10 registration fee for each K-4 student and \$15 for each 5-12 grade student.<sup>2293</sup>

*“Free is free”*

On October 1, 2001, the OPS School Board publicly asked the State Board of Education to establish a uniform state policy governing student fees. “I want them to make the decision,” said John Langan, OPS board president, “They’re not reluctant to do it on anything else.”<sup>2294</sup> The Commissioner of Education was quick to respond that he did not believe there was much of a controversy. “How much clearer can you be than free?” Christensen asked rhetorically.<sup>2295</sup> “Free is free,” he said.<sup>2296</sup> The Commissioner believed that any required activity or course should not have any fees attached to it, but voluntary activities outside the school day may be a different story.

To address the matter, Commissioner Christensen issued a memorandum to all school superintendents outlining permissible student fees, at least as he believed them to be. Locker fees, towel fees, science and some art lab fees and most field trip fees were not acceptable. The memo sent school officials scrambling to react in accordance with the Department of Education. Some school districts issued refunds of fees, and many school districts sought immediate legal review of their own student fee policies. School attorneys, perhaps initially caught off guard, were plenty busy trying to review the law in order to offer advice to their clients. For some school districts, the potential loss of revenue would be slight, for others it meant a sizable budget matter. Millard Public Schools, for instance, generated approximately \$500,000 per year in student fees.<sup>2297</sup> But

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<sup>2292</sup> Todd von Kampen, “Plattsmouth also sued over fees Mother of two students files a legal action similar to a pending case against the Omaha Public Schools,” *Omaha World-Herald*, 16 October 2001, 1b.

<sup>2293</sup> *Id.*

<sup>2294</sup> Angie Brunkow, “OPS asks state to create a policy for school fees,” *Omaha World-Herald*, 2 October 2001, 8b.

<sup>2295</sup> *Id.*

<sup>2296</sup> *Id.*

<sup>2297</sup> Angie Brunkow and Paul Goodsell, “The word is free, not fee, chief of education says; Tighter budgets and fewer opportunities may result if parents are not required to pay for extras, one superintendent warns,” *Omaha World-Herald*, 3 October 2001, 1a.

the central problem remained that no one seemed to know for sure what fees were acceptable and what fees were unacceptable. There were, however, plenty of guesses.

As fortune and fate would have it, the next regularly scheduled meeting of the State Board of Education occurred on Friday, October 5, 2001. All forms of news media were on hand at the State Office Building in Lincoln to find out how the board would address the rapidly escalating public policy issue. The OPS Superintendent, John Mackiel, appeared at the meeting and publicly asked the board for guidance on the matter. He acknowledged receipt of the memo from Commissioner Christensen, but said questions and confusion still existed. “I can state without hesitation that parents, students and school districts throughout Nebraska ... need an immediate, definitive and legally binding decision,” Mackiel said.<sup>2298</sup> The absence of any state response, he said, would place more school districts in jeopardy of lawsuits.

The State Board directed Commissioner Christensen to formulate a plan to address the issue in time for the next regularly scheduled meeting in November 2001. The Commissioner fully understood, however, that it was not merely a matter of formulating a plan, but, more importantly, determining the proper authority to establish a state policy (i.e., the State Board of Education or the Legislature). What he could do, and did, was to call meetings of school officials to discuss the issue and learn exactly what schools were charging in the way of student fees.

From the Commissioner’s review of existing state law, it was discovered that there were only a few instances wherein statutory authority was specifically granted to school districts to charge fees to students as shown in Table 132.

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Table 132. Student Fees Specifically Authorized  
or Prohibited Prior to 2002

*Student Files:* Section 79-2,104(2) permitted each school district to establish a schedule of fees for reproduction for copies of a student’s files or records.

*Protective Eye Wear:* Prior to 2002, section 79-715(1)(b) permitted school districts to charge fees for protective eye wear necessary for labs and vocational courses.

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<sup>2298</sup> Judith Nygren, “Parents, schools seek answers amid student fees controversy; Omaha school officials turn to the State Board of Education for guidance on fees,” *Omaha World-Herald*, 6 October 2001, 1a.

Table 132—*Continued*

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*Before-and-after School Programs:* Section 79-1104 permitted school districts to create before-and-after school programs and to charge fees for participation.

*Textbooks:* Under section 79-734, school districts must purchase and provide all textbooks, equipment, and necessary supplies.

*Transportation:* Section 79-611 provides that school districts must either provide free transportation or pay an allowance for transportation in lieu of free transportation.

*Admission:* Section 79-215(1) provides that resident students “shall be admitted to any such school district upon request without charge.”

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*Source:* NEB. REV. STAT., passim.

Over all, it was found that very little statutory authority existed to guide school districts or, for that matter, the Department of Education on acceptable, legal student fees. This led some to refer back to the State Constitution and its “free instruction” clause as the primary authority. But as events unfolded, this would be regarded as an overly simplified belief.

On November 2, 2001 the State Board of Education met as scheduled and the student fees issue was once again at the forefront of media attention. The board emerged from executive session and essentially declared that it would move forward with rules and regulations governing student fees. While some states dictated in statute how and when schools could charge student fees, Nebraska law was mostly devoid of any such guidance. The State Board was faced with the unenviable situation of either waiting for the Legislature to address the issue, which may or may not happen, or move forward with rules and regulation based upon existing law. School officials were asking for and awaiting guidance on the issue.

On November 27, 2001 the Commissioner of Education dispatched to all school superintendents the first draft of the student fees regulation. Under the proposed rule, most school programs should be considered part of the instructional offerings taught by teachers, and therefore, should be free to students. The four-page draft rule made it clear that all instructional activities are free. This would apply to coursework and school-sponsored extra-curricular programs like sports, marching band, debate, speech, drama,

choir and vocational student organizations. And it may have been the provision concerning extra-curricular activities that had some school districts in near panic. The draft rule seemingly required schools to purchase and provide for items most schools had never provided in the past, including cheerleading attire and athletic shoes. In the case of field trips, schools could ask parents for donations, but not require payment of a fee.

The reaction to the draft rule was largely negative from school officials. “Lots of people don’t like our draft of the rules, but no one - including school attorneys - has come forward to say we are interpreting the current statutes wrong,” Commissioner Christensen said.<sup>2299</sup> The chief education officer said he would support legislation to permit student fees in limited circumstances, such as extracurricular activities, but not if it meant potentially depriving a student of an educational opportunity. There had to be some way to help those who cannot afford to pay. “I’m not necessarily opposed to having any kind of fees, but we have to change the statute,” Christensen said.<sup>2300</sup>

Commissioner Christensen formally presented the draft rule to the State Board of Education on December 7, 2001, about a month before the start of the 2002 Legislative Session. By this time, of course, the opinions about the draft were as numerous as they were varied. Members of the State Board were amply supplied with suggestions. Perhaps supplied so well that more questions arose than were answered. The Board opted to direct the Commissioner of Education to seek counsel from the Office of the Attorney General while at the same time exploring legislative remedies. In the meantime, the draft rule would be shelved until the matter could be sorted out. The Board also directed the Commissioner to form a task force comprised of educators and non-educators alike in order to offer more insight into the issue.

Throughout the period between the filing of the first lawsuit and the actions of the State Board of Education, various members of the Legislature had made inquiries, called for meetings, and pondered their role in the issue. Senator Deb Suttle, for instance, was very active in representing the interests of the school within her legislative district,

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<sup>2299</sup> Angie Brunkow, “Lawmakers may have say on fees; The education commissioner says his proposal on what schools must pay for is based on long-standing laws,” *Omaha World-Herald*, 30 November 2001, 1b.

<sup>2300</sup> *Id.*

Omaha Public Schools. A member of the Education Committee, Suttle attended meetings and sought answers to the same questions others were asking. “I haven’t got it jelled yet,” Suttle said, “I don’t think realistically that we can ask schools to pay for everything.”<sup>2301</sup> Senator Ron Raikes, chair of the Education Committee, also followed the issue from the very start. His concerns included the protection of those students who could not afford to pay fees but wished to participate anyway. Senator Bob Wickersham, another member of the Education Committee, believed the matter would find its way to the courts. “The final word will be when that statute is reviewed by the Supreme Court,” he predicted in reference to any student fees law passed by the Legislature.<sup>2302</sup>

### *Mistaken Assumption*

As directed by the State Board, Christensen formally requested an Attorney General opinion with regard to 13 questions related to the student fees issue. Some of the questions concerned legal definitions of such phrases as “free instruction” and “free education.” Many of the questions concerned the scope of authority for the department to promulgate rules and regulations. The Attorney General officially responded to the questions on February 1, 2002, about three weeks into the 2002 Legislative Session.

The opinion went a long way to explain some issues surrounding student fees but also created additional questions in the minds of some policymakers and school officials. Deputy Attorney General Steve Grasz, writing on behalf of Attorney General Don Stenberg, cut through much of the confusion at the outset of the opinion. Grasz wrote:

The current school fee “crisis,” it seems, is not so much a matter of errant school districts as it is a matter of widespread misunderstanding of the Nebraska Constitution.

The key to the issue of student fees under the free instruction clause is the distinction between a self-executing Constitutional provision and a non-self-executing provision.<sup>2303</sup>

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<sup>2301</sup> Robynn Tysver, “Stage is set for school-aid debate School-fee law due for change,” *Omaha World-Herald*, 8 January 2002, 1b.

<sup>2302</sup> *Id.*

<sup>2303</sup> Attorney General Don Stenberg, Steve Grasz, Deputy Attorney General, “Student Fees And The Right To Free Instruction In The Public Schools,” Opinion 02004, req. by Douglas D. Christensen, Commissioner of Education, 1 February 2002.



Grasz wrote that it had become a mistaken assumption by both the public and government officials that the “free instruction” clause spoke directly to citizens. It did not. In fact, the “free instruction” clause was, in fact, a non-self-executing provision, which required the Legislature to implement enforceable rights. “The right to ‘free instruction in the common schools’ is not a fundamental Constitutional right,” Grasz wrote.<sup>2304</sup>

The AG opinion concluded that the Nebraska Constitution delegates to the Legislature the “task of determining what ‘free instruction’ will be available to Nebraska school children.”<sup>2305</sup> Grasz wrote:

Generally speaking, it is our opinion that under current law a school district must provide free instruction for all courses which are required by state law or regulation and must provide all things necessary for that instruction, such as lab equipment, textbooks and so forth, without charge or fee to the student. For other activities which are not required by law or regulation, such as athletics, cheerleading, and chess club, the school district may require students to provide their own equipment and may charge fees, but the district is not required to do so.<sup>2306</sup>

The final sentence within the conclusion of the opinion stated that the “Legislature, if it chooses, may amend the law to either expand or limit the authority of school districts to charge fees.”<sup>2307</sup> This seemed to imply that there was no real urgency for the Legislature to act, and, in fact, may choose not to act on the issue. So where was the crisis?

The crisis, of course, was at the local level. School officials were concerned that their own district may be next to be sued by angry parents. For most school officials, it came down to both wanting the state to offer guidance and fearing the state will offer guidance. From a school finance perspective, most did not believe they would particularly like what the Legislature handed down in the form of a student fee policy.

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<sup>2304</sup> Id.

<sup>2305</sup> Id.

<sup>2306</sup> Id.

<sup>2307</sup> Id.

Some would consider their beliefs validated. Others would find relief in knowing that the act of abiding by a state formulated policy meant avoiding potential lawsuits.

*A range of ideas*

At the start of the 2002 Session, it was only a matter of how many student fee bills would be introduced. There was initial concern among some political insiders that the situation would open a Pandora's box on issues related to school operations, management, and equity of educational opportunities. How far and deep would this matter go?

In all, seven separate legislative bills were introduced relevant to student fees during the 2002 Session. The first of the student fee measures introduced, LB 1059, was offered by Speaker Doug Kristensen on January 14, 2002. The six other measures, introduced by Senator Raikes, included LB 1171, LB 1172, LB 1173, LB 1174, LB 1175, and LB 1254. Senator Raikes thought the best approach was to offer a range of ideas in order for the Education Committee to consider as many options as possible. The last of the bills introduced, LB 1254, represented the proposal recommended and favored by the State Board of Education.

The student fee bills were referred to the Education Committee for disposition, and, having authority to set the schedule of hearings, Senator Raikes decided to conduct one public hearing for all seven bills on one day, January 29, 2002. First Speaker Kristensen and then Senator Raikes opened on their respective measures. Proponent and opponent testimony followed the senators' remarks.

Speaker Kristensen's proposal, LB 1059, focused on defining what is not subject to student fees rather than list in law what are acceptable fees. Between the seven bills introduced, Speaker Kristensen's bill arguably rated as the most general in nature. LB 1059 permitted a school district to charge a fee for extracurricular activities, not to exceed the actual cost of providing the activities. "Extracurricular activities" were defined as optional activities that were supervised and administered by the school district, but do not include: (1) activities, programs, or services which are mandatory, which meet requirements for graduation or for grade level promotion, or which provide extra course

credit; or (2) for-credit non-instructional activities, programs, or services.<sup>2308</sup> “It is in the Legislature’s best interest and I believe the school districts’ best interest to try and to lay some guidelines and some framework into what permissible fees are,” Kristensen said, “Legislative Bill 1059 does that.”<sup>2309</sup>

Senator Raikes prefaced his comments by noting that a good discussion on the issue of student fees was long over due. “We have not really faced this issue, nor has an Education Committee in the Legislature for a great many years, possibly a hundred or so, so this is new, a new area for us,” he said.<sup>2310</sup> The overriding factor, in his mind, was determining to what extent “free” means free, as per the constitutional provision at issue. Accordingly, his six bills ranged from a strict constitutional interpretation on one end of the spectrum to providing for the “maximum facilitation” of school district discretion on the other end of the scale.<sup>2311</sup>

LB 1171 represented the “strict interpretation” model and permitted school districts and ESUs to collect fees for a very limited number of purposes: (1) Reimbursement to the district or ESU for property lost or damaged by the student; (2) purchases at a school store for food, soft drinks, and personal or optional items; (3) before-and-after school or pre-kindergarten services; and (4) breakfast and lunch programs.<sup>2312</sup> “Basically, there would be nothing allowed in the way of fees except for damage, property lost or damaged, a fee could be charged for that,” Raikes said.<sup>2313</sup>

LB 1172 proposed to create the Public Elementary and Secondary Student Fee Authorization Act. The bill permitted school districts and ESUs to collect student fees or

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<sup>2308</sup> Legislative Bill 1059, *Authorize school districts to charge fees for extracurricular activities*, sponsored by Sen. Doug Kristensen, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, title first read 14 January 2002, § 1, pp. 1-6.

<sup>2309</sup> Committee on Education, *Hearing Transcripts, LBs 1059, 1171, 1172, 1173, 1174, 1175, 1254 (2002)*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, 29 January 2002, 2.

<sup>2310</sup> *Id.*, 7.

<sup>2311</sup> *Id.*

<sup>2312</sup> Legislative Bill 1171, *Adopt the Free Instruction Act and change fee provisions relating to records, transportation, and eye protective devices*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, title first read 17 January 2002, § 1, p. 2.

<sup>2313</sup> *Hearing Transcripts, LBs 1059, 1171, 1172, 1173, 1174, 1175, 1254 (2002)*, 9.

require students to provide specialized equipment or attire for any of the following specified purposes: (1) Extracurricular activities; (2) event admission fees; (3) postsecondary education costs; (4) transportation costs (e.g., options students, nonresident students); (5) reproduction costs for copies of student files or records; (6) reimbursement for property lost or damaged by the student; (7) before-and-after school or pre-kindergarten services; (8) summer school; and (9) breakfast and lunch programs.<sup>2314</sup>

In addition, school entities would be permitted to:

- (i) require students to furnish personal or consumable items, including, but not limited to, pencils, paper, pens, erasers, and notebooks;
- (ii) require students to furnish and wear clothing meeting general written guidelines for specified courses and activities during both the regular school day and outside the regular school day if the written guidelines are reasonably related to the course or activity; and
- (iii) operate a school store in which students may purchase food, soft drinks, and personal or consumable items.<sup>2315</sup>

“This one adds extracurricular activities to include postsecondary education costs and extracurricular activities, in this context, would be defined as those outside of the regular school day which do not count toward graduation or grade advancement and for which participation is not otherwise required,” Raikes said.<sup>2316</sup> By the time of the hearing, Raikes had already designated LB 1172 as his priority bill for the 2002 Session.<sup>2317</sup>

LB 1173 provided general authorization for school districts and ESUs to collect fees from students or require students to provide specialized equipment or attire for extracurricular activities and courses not required for graduation. “Extracurricular activities” was defined as student activities that are not required for graduation.<sup>2318</sup> The

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<sup>2314</sup> Legislative Bill 1172, *Adopt the Public Elementary and Secondary Student Fee Authorization Act*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, title first read 17 January 2002, §§ 1-9, pp. 2-4.

<sup>2315</sup> Id.

<sup>2316</sup> *Hearing Transcripts, LBs 1059, 1171, 1172, 1173, 1174, 1175, 1254 (2002)*, 9.

<sup>2317</sup> NEB. LEGIS. JOURNAL, 24 January 2002, 345.

<sup>2318</sup> Legislative Bill 1173, *Adopt the Public Elementary and Secondary Student Fee Authorization Act*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, title first read 17 January 2002, §§ 1-9, pp. 2-3.

legislation also permitted a district or ESU to: (1) Require students to furnish personal or consumable items, including, but not limited to, pencils, paper, pens, erasers, and notebooks; (2) require students to furnish and wear clothing meeting general written guidelines for specified courses and activities required for graduation if the written guidelines are reasonably related to the course or activity; and (3) operate a school store in which students may purchase food, drinks, and personal or consumable items.<sup>2319</sup> “A feature of both LB 1172 and LB 1173 would be a fee waiver policy would be required,” Raikes said.<sup>2320</sup> “And this, basically, would allow or would provide that schools would be required to waive fees for students who qualify for free and reduced lunches, not necessarily those who participate in the free and reduced lunch program,” he added.<sup>2321</sup>

LB 1174 was unique in that it addressed two other issues arguably intertwined with the issue of student fees: (i) whether coaches need to be certified; and (ii) the potential for enhanced “need” within the school finance formula. The legislation provided intent language stating that the requirements of Rule 10 (State Board regulations governing accreditation) “represent the elements of free instruction that Nebraska’s public schools are required to offer.”<sup>2322</sup> The intent language further stated that the provisions of the bill were “intended to provide the option for schools to charge students for extracurricular expenses beyond such elements of free instruction.”<sup>2323</sup> LB 1174 permitted a school district or ESU to collect the payment of fees from students for extracurricular expenses, which was defined as any expenses of the school district that were not incurred to meet the accreditation requirements under Rule 10. A district or ESU may also require students to furnish specialized equipment or attire for courses and activities not required under Rule 10 and may require students to furnish their own

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<sup>2319</sup> Id.

<sup>2320</sup> *Hearing Transcripts, LBs 1059, 1171, 1172, 1173, 1174, 1175, 1254 (2002)*, 9.

<sup>2321</sup> Id.

<sup>2322</sup> Legislative Bill 1174, *Adopt the Public Elementary/Secondary Student Fee Authorization Act and change employment provisions and state aid calculations*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, title first read 17 January 2002, § 2, p. 2.

<sup>2323</sup> Id.

personal or consumable items, including, but not limited to, pencils, paper, pens, erasers, and notebooks.<sup>2324</sup>

LB 1174 provided that a person employed to coach or supervise extracurricular activities that occur outside of the regular school day would not be required to hold a valid Nebraska certificate or permit in order to teach. Every person employed to coach or supervise extracurricular activities who does not hold a valid certificate or permit to teach must, however, file a complete set of his or her legible fingerprints with the Commissioner of Education who must then request a criminal history check from the Nebraska State Patrol.<sup>2325</sup> Lastly, LB 1174 changed elements of the poverty factor used to calculate adjusted formula students for a local system. The bill uniformly increased the “multipliers” within the poverty factor by one-tenth, which thereby placed a slightly greater emphasis on students of low-income families within the state aid formula.<sup>2326</sup> “Legislative Bill 1174, the focus here is accreditation requirements, basically, fees could be charged for anything that went beyond accreditation requirements,” Raikes said.<sup>2327</sup>

LB 1175 took a different approach to the issue of student fees. The bill modified the school finance formula to require each school district to establish and maintain a student fee fund consisting of money from the general fund of the district. The student fee allotment would equal \$500 per student for the first year of implementation. All student fees for courses, activities, and equipment or supplies would be paid out of the student fee fund to the general fund of expenditures as the fee was incurred. Each student would be allowed to participate in courses and activities and use equipment or supplies subject to the student’s allocation.<sup>2328</sup>

LB 1175 changed the “need” calculation in the school finance formula beginning in school fiscal year 2002-03 to include the local system’s “student fee subsidy.” The

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<sup>2324</sup> Id., §§ 3-10, pp. 2-3.

<sup>2325</sup> Id., §§ 12-17, pp. 5-7.

<sup>2326</sup> Id., § 18, pp. 7-10.

<sup>2327</sup> *Hearing Transcripts, LBs 1059, 1171, 1172, 1173, 1174, 1175, 1254 (2002)*, 10.

<sup>2328</sup> Legislative Bill 1175, *Provide for a student fee subsidy within the state aid formula*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, title first read 17 January 2002, §§ 1-5, pp. 2-17.

“student fee subsidy” was defined as an amount equal to 50% of the student fee allotment for the school fiscal year for which aid was being calculated multiplied by the local system’s weighted formula students for such school fiscal year.<sup>2329</sup> “LB 1175, this one I think is maybe noteworthy in that it potentially serves as somewhat of a model to view several of the proposals” Raikes said, “It is different in that this might be described roughly as a cafeteria plan.”<sup>2330</sup> The cafeteria plan, of course, referred to each student’s decision on how to use the funds set aside for him or her to pay various fees.

LB 1254 represented some of the views and recommendations of the Commissioner’s Task Force on Student Fees, which was created at the request of the State Board of Education. LB 1254 was without a doubt the most detailed and lengthy of the seven student fee bills. The legislation provided a fairly complete laundry list of acceptable items for which fees may be charged. The bill prohibited a district from assessing a fee for any course that is offered as part of the instructional curriculum of the district or for any textbooks, supplies, or equipment required for such course, except for such things as musical instruments. A district may require a student to provide his or her musical instrument for optional courses in instrumental music. However, if a student chose not to provide his/her own instrument, a reasonable rental fee may be charged by the district, not to exceed the rental costs to the district or the total of the annual depreciation plus the annual maintenance cost for each instrument, whichever is less.<sup>2331</sup>

Under LB 1254, a school district may charge fees for: (1) admission to school activities and events, if attendance is optional; (2) optional field trips, not to exceed actual cost, sponsored by a school district which occur outside the hours of required school attendance if the field trip does not provide any course credit or extra credit and does not fulfill any requirement for a course, for grade promotion, or for graduation; and (3) damage to or loss of school property by a student. Except for those students qualified for

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<sup>2329</sup> Id.

<sup>2330</sup> *Hearing Transcripts, LBs 1059, 1171, 1172, 1173, 1174, 1175, 1254 (2002)*, 10.

<sup>2331</sup> Legislative Bill 1254, *Authorize assessment of charges and fees for certain school activities*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, title first read 23 January 2002, §§ 1-14, pp. 2-7.

a waiver, a district may also assess a fee, not to exceed actual cost, for extracurricular activities, including the cost of supplies and equipment. A district may require a student to provide his or her own supplies and equipment for participation in extracurricular activities and assess a fee, as an equipment security deposit, for any equipment loaned to a student for use in an extracurricular activity. Similar to LB 1174, LB 1254 did not require an employee of a school district assigned to supervise extracurricular activities to be certified. The bill also permitted non-teachers to serve in this capacity.<sup>2332</sup>

LB 1254 required districts to adopt a written policy regarding the assessment and collection of student fees. The policy must provide for the waiver of fees when the student or his/her parent or guardian or the person with legal or actual charge or control of the student is financially unable to pay the following: (i) fees for extracurricular activities; (ii) fees for optional summer or other programs; (iii) fees for optional before- or after-school, behind-the-wheel driver education programs; and (iv) fees for musical instrument rental for optional instrumental music programs.<sup>2333</sup> “This particular proposal identifies particular courses or categories of courses in which fees could and could not be-charged,” Raikes said of LB 1254.<sup>2334</sup> “So it goes a little bit beyond what the others have in terms of identified specifics rather than just principles,” he added.<sup>2335</sup>

The President of the State Board of Education, Steve Scherr, testified on behalf of the Commissioner and the board on which he served. As expected, he offered support for LB 1254, but did not necessarily discount the merits of the other proposals. “Our goal was to, we hope, to assist you in fashioning some legislation that meets both the needs of the schools and supports the missions of our public education, and also stands within the scope of the constitution and statutory mandates on providing a free public instruction,” Scherr said.<sup>2336</sup> He believed school officials wanted to know exactly what activities and programs they may or may not charge a student fee.

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<sup>2332</sup> Id.

<sup>2333</sup> Id., §§ 1-14, pp. 2-7.

<sup>2334</sup> *Hearing Transcripts, LBs 1059, 1171, 1172, 1173, 1174, 1175, 1254 (2002)*, 11.

<sup>2335</sup> Id.

<sup>2336</sup> Id., 19-20.



John Bonaiuto, Executive Director for the Nebraska Association of School Boards (NASB), testified at the hearing on behalf of his organization and three other groups: the Nebraska Council of School Administrators (NCSA), the Nebraska Rural Community Schools Association (NRCSA), and the Greater Nebraska Schools Association (GNSA). The four education groups hooked their wagon to LB 1172, which was a safe bet since Senator Raikes had already prioritized that particular piece of legislation. The education lobby knew that LB 1172 would be the vehicle likely to move a student fee proposal. It was just a matter of working with the Education Committee to formulate the contents of that proposal.

Bonaiuto framed the issue from the perspective of school management while at the same time noting the complexity of the subject. “Although at first blush resolving this issue might seem simple, there are some very complicated policy decisions imbedded in whatever future the Legislature decides when it grants authority for school districts to charge fees for some of its services or equipment,” Bonaiuto said.<sup>2337</sup> He warned there would be a fiscal and operational impact to some school districts depending upon their individual status within the school finance structure. Some districts may have to simply give up certain programs, services, or even extracurricular activities in order to avoid financial burden. The best type of state policy, he testified, might be one that permits local control over the matter. Said Bonaiuto:

The education lobby would like to ask that the Education Committee develop permissive language on this subject that allows local boards to make decisions based on the will of their local constituency. Prescriptive legislation which ties, which tries to imagine all of the possibilities does not allow local boards to assess the desires of the parents and the taxpayers of their district.<sup>2338</sup>

In fact, most of the education lobby was hedging its bet by pledging to work with the Education Committee, particularly Senator Raikes, and hoping for the best possible, most flexible legislation.

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<sup>2337</sup> Id., 27.

<sup>2338</sup> Id., 28.

The Nebraska State Education Association (NSEA) took a slightly different route by not lending full support to any particular student fee bill. Represented by Executive Director Jim Griess, NSEA did support LB 1254 in that it “clearly defines the issues so that school districts would be able to tell which issues ought to be subject to fees and which should not.”<sup>2339</sup> However, Griess believed, even that bill required “some tweaking.”<sup>2340</sup> Griess expressed concern that fees could be charged for summer school, which he believed were mandated programs. “We’re in a state of situation now where we have high stakes testing, we have a great deal of student assessments, and I think every educator understands very quickly that not all students progress at the same pace,” he said.<sup>2341</sup>

Omaha Public Schools was one of the few school districts to send a representative to the public hearing. Elizabeth Eynon-Kokrda, legal counsel for OPS, at first preferred not to go on record for or against any particular fee bill. Pressed by Senator Wickersham to take some type of position, Eynon-Kokrda said her testimony was “going to be in opposition but talking about some of the positive aspects of some of the bills themselves.”<sup>2342</sup> She said her client’s ability to weigh in on the student fee legislation was made possible after the parent who sued OPS over student fees had decided to drop the lawsuit. In fact, Roger Roll withdrew his lawsuit on January 14, 2002 expressing satisfaction that the OPS Board had addressed the issue.<sup>2343</sup>

Eynon-Kokrda expressed concern for many of the terms used in the various proposals that she believed would “result in the situation of terrible inequity amongst the students, especially in OPS.”<sup>2344</sup> She asked that the committee carefully distinguish “co-curricular activities” that are activities “linked inextricably to the education of the

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<sup>2339</sup> Id., 32.

<sup>2340</sup> Id.

<sup>2341</sup> Id., 32-33.

<sup>2342</sup> Id., 39.

<sup>2343</sup> Angie Brunkow, “Parent to drop suit over OPS fees,” *Omaha World-Herald*, 15 January 2002, p. 1B.

<sup>2344</sup> *Hearing Transcripts, LBs 1059, 1171, 1172, 1173, 1174, 1175, 1254 (2002)*, 39.

students.”<sup>2345</sup> She asserted that team activities and team sports are co-curricular activities and are “definitely activities that are integral to the education of students.”<sup>2346</sup> She further stated that:

Looking at carving out things like music, co-curricular activities, summer school, I think that’s essentially saying that it is the belief of this Legislature, that such activities are not the instruction guaranteed by our constitution, not part of the quality education guaranteed by our statutes and not included in the mission of the state to offer every child, not just those who can afford it an adequate education.<sup>2347</sup>

However, there was, she said, a viable solution to the issue of student fees. Eynon-Kokrda testified that parking fees, lunch fees, evening dances, field trips that are not for course credit, and fees for damage or loss of property would be acceptable to OPS. “Every child in the state has a right to equal access to an adequate education and equal opportunity to achieve it,” she concluded.<sup>2348</sup>

Of course, no one disagreed with the notion that public education should provide maximum opportunities for all students. The question at hand, at least to some, was more in the nature of how to balance access to programs and activities with the realities of limited resources to provide them. If there were disparities in the wealth of individual districts, then it stood to reason that there would be disparities in the offering of opportunities to students. Put simply, the revenue generated from student fees was more crucial to some districts than others to offset the cost of providing certain activities and programs or even certain courses that other districts could afford with no fee attached. The student fee issue exposed, once again, the inequities that still existed among districts, no matter how diligent the Legislature may have been to address them in the past.

*“It’s the perfect storm”*

By the conclusion of the public hearing on January 29<sup>th</sup>, the eight members of the Education Committee had about as many and varied opinions, suggestions, and concerns

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<sup>2345</sup> Id., 39-40.

<sup>2346</sup> Id.

<sup>2347</sup> Id., 42.

<sup>2348</sup> Id.

as they could collectively handle on one single issue. There was general consensus that they had to act, other than that it was wide open. They did have a vehicle to move a proposal forward, since Senator Raikes prioritized LB 1172, but there was no immediate majority opinion on the exact form the bill should take. The committee met in executive session to discuss the issue beginning on February 6<sup>th</sup>. Members emerged from the meeting with no answer and no proposal.

Part of the problem for members of the committee was that they were trying to anticipate how the Nebraska Supreme Court might treat various legislative actions, assuming the legislation reached the high court for review. “We’re trying to guess what a group of people in black might do, if it ever rises to that point,” said Senator George Coordsen, a member of the Education Committee.<sup>2349</sup> Also compounding the problem were several other factors. First, the Commissioner of Education, Doug Christensen, was of the opinion that most student fees violated the “free instruction” clause. Second, the Attorney General, Don Stenberg, wrote on February 1, 2002 that all things related to instruction must be free, but other activities may be fee-based, including extracurricular activities.<sup>2350</sup> This appeared to contradict the belief by others who argued that even most extracurricular activities, supervised or coached by certified staff, should be fee free. Thirdly, and perhaps least significant to some policymakers, was a truly divided education community. The education lobby simply did not have a unified voice on the matter. “It’s the perfect storm,” surmised Steve Joel, Superintendent at Grand Island Public Schools.<sup>2351</sup>

The only safe bet was that criticism would follow whatever proposal emerged from committee. On February 26, 2002 the Education Committee voted 8-0 to advance

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<sup>2349</sup> Leslie Reed, “Answers are few on fees Lawmakers discuss how to pay for school activities mindful of probable Nebraska Supreme Court involvement,” *Omaha World-Herald*, 6 February 2002, 1b.

<sup>2350</sup> Stenberg, AG Opinion 02004, 1 February 2002.

<sup>2351</sup> Judith Nygren, “Educational equity at center of storm Budget woes bringing possible cuts in state aid are heading straight at the heart of expectations for Nebraska’s schools,” *Omaha World-Herald*, 22 February 2002, 1a.

LB 1172 with committee amendments attached.<sup>2352</sup> The amendments would strike the original provisions of LB 1172 and insert entirely new language.

The committee's proposal essentially threw the student fee issue back to the local level and it would also propose amendments to the school finance formula. The amendments required each district to adopt a student fee policy and review it annually. A district could charge fees for participation in, or for equipment or supplies for, any school related activity or any activity sponsored by the school district if the requirement would not "impinge on a student's right to free instruction" as per the Nebraska Constitution.<sup>2353</sup> In addition, a district could not charge a fee otherwise prohibited under state law.

Any district charging student fees would deposit the revenue in a "student fee fund."<sup>2354</sup> Excluded from this fund would be such revenue as student admission fees for spectator events and fees collected for nutrition programs. The committee amendments then created a mechanism within the state aid formula to hold school districts accountable for revenue generated from student fees in excess of an established threshold. The threshold would be equal a percentage of the school district's General Fund operating expenditures. The percentage would begin at 3% in 2002-03 and gradually reduce to 2.5% for 2004-05 and each year thereafter.<sup>2355</sup>

For some school officials the real troubling part of the committee amendments had to do with a provision concerning litigation. The amendments provided that, in any action brought to challenge the validity of a student fee policy, the court would be allowed to award costs of litigation to a prevailing party or the substantially prevailing party unless that party was the school district. The amendments did provide, however, that the district would not be liable if it acted in good faith in establishing its policy.<sup>2356</sup>

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<sup>2352</sup> Committee on Education, *Executive Session Report, LB 1172 (2002)*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, 26 February 2002, 1.

<sup>2353</sup> NEB. LEGIS. JOURNAL, *Com AM2931*, printed separate, 27 February 2002, 765. Committee Amendments to LB 1172 (2002), *Com AM2931*, § 1, p. 1.

<sup>2354</sup> Committee Amendments to LB 1172 (2002), *Com AM2931*, § 5, pp. 10-11.

<sup>2355</sup> *Id.*, § 6, p. 14.

<sup>2356</sup> *Id.*, § 3, p. 2.

There was a fair amount of grumbling among school officials about the proposal forwarded by the Education Committee. Some believed it was more or less a copout to push the issue back on the same local school boards that had looked to the Legislature to provide guidance in the first place. It was as if the Education Committee decided the issue was too hot to handle, and preferred instead to allow individual school districts to fight it out within the judicial system. However, there were other school officials who supported the proposal since it effectively protected parents and students. It created just enough risk and potential liability to the district as to cause school boards to think twice about charging fees.

*“Safe haven”*

With LB 1172 advanced to General File, there remained six other student fee bills awaiting disposition. Interestingly, the Education Committee took action on February 28, 2002 to indefinitely postpone all other remaining student fee bills except one.<sup>2357</sup> LB 1059, Speaker Kristensen’s student fee bill, was allowed to remain in committee until March 5<sup>th</sup> when it too was indefinitely postponed.<sup>2358</sup> One day later, March 6<sup>th</sup>, the Legislature began first-round debate on LB 1172. Whether fortuitous or coincidental, the act of killing LB 1059, one day before General File debate on LB 1172, would add to the drama soon to unfold.

In the afternoon of March 6, 2002, the Legislature began debate on LB 1172. Senator Raikes took his colleagues through the background of the issue and also the technical aspects of the pending amendments, which, if adopted, would become the bill. This type of amendment is often referred to as a “white copy” amendment since it would completely eliminate the original “green copy” of the bill and replace with new material. “It is a special issue,” Senator Raikes said of the student fees situation.<sup>2359</sup> “[A]nd one that I think I can convince you is a complicated one,” he added.<sup>2360</sup> He would be right

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<sup>2357</sup> NEB. LEGIS. JOURNAL, 28 February 2002, 769

<sup>2358</sup> *Id.*, 5 March 2002, 787.

<sup>2359</sup> Legislative Records Historian, *Floor Transcripts, LB 1172 (2002)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, 6 March 2002, 11018.

<sup>2360</sup> *Id.*

about convincing his colleagues as to the nature of the issue, but would fail to convince his colleagues about the merits of the proposal forwarded by the committee to address it.

Very soon after Senator Raikes' opening comments, Speaker Kristensen offered an amendment to the committee amendments that would radically change the direction of the legislation. In fact, the amendment embodied the exact contents of LB 1059, Speaker Kristensen's student fee bill that had been killed in committee the day before.<sup>2361</sup> As described earlier, LB 1059 focused on defining what is *not* subject to student fees rather than list in law what are acceptable fees. Between the seven bills introduced, Speaker Kristensen's bill arguably rated as the most general in nature. LB 1059 permitted a school district to charge a fee for extracurricular activities, not to exceed the actual cost of providing the activities. "Extracurricular activities" were defined as optional activities that were supervised and administered by the school district, but do not include: (1) activities, programs, or services which are mandatory, which meet requirements for graduation or for grade level promotion, or which provide extra course credit; or (2) for-credit non-instructional activities, programs, or services.<sup>2362</sup>

Speaker Kristensen said, as far as his own agenda, the student fee issue was second in line to the state's budget shortfall in terms of overall importance. He cast what some might have viewed as a public scolding to the Education Committee for failing to produce a fair proposal to school districts. Said Kristensen:

The way I would see the committee amendment is you can charge a fee if you think it's constitutional. Now, yes, we set up this nice elaborate procedure but, quite frankly, to the schools you give no direction, and you give them a land mine. I don't think that's right and I don't think that's good for your school districts.<sup>2363</sup>

A full-blown showdown between the Speaker and members of the Education Committee was in progress, and everyone in the chamber and in the lobby could sense the uncomfortable atmosphere. But Speaker Kristensen was not about to let up for the sake of politeness. "I'm afraid that the committee amendment is going to lead you down the

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<sup>2361</sup> NEB. LEGIS. JOURNAL, *Kristensen AM2952 to Com AM2931*, 6 March 2002, 855-58.

<sup>2362</sup> LB 1059 (2002), § 1, pp. 1-6.

<sup>2363</sup> *Floor Transcripts, LB 1172 (2002)*, 6 March 2002, 11022.

path of not giving a safe haven for those school districts and not giving them a whole lot of direction,” the Speaker said.<sup>2364</sup> The “safe haven” argument was picked up and resonated several times during the debate by other members of the body.

Perhaps most troubling to proponents of the committee version of the bill was that Kristensen’s comments were effective in swaying the opinions of lawmakers, including the Vice-Chair of the Education Committee. Senator Deb Suttle of Omaha served as second-in-command of the committee and voted to advance the bill as presented on General File. But she changed her mind during first-round debate. Said Suttle:

I do believe I probably am going against my colleagues ... on the Education Committee. But I was troubled, somewhat, with our amendment. I know that there’s a feeling there that we don’t want to get into the laundry list of things that can and cannot be charged for. And that concerned me that I wanted something broad, but I don’t know whether we answered the question that we were being asked to answer by the districts out there, and that does concern me.<sup>2365</sup>

Senator Suttle would be the only member of the committee to jump ship, but one vocal dissenter was ear catching to the Legislature. Only one other member of the committee who was present for the debate, Senator Bob Wickersham, actually rose to assist Senator Raikes in defending the committee version. He had a stake in the matter since he had suggested some of the proposed language.

However, no matter how diligent Senators Raikes and Wickersham were that day to defend the committee’s work, the opinion train was moving in the opposite direction. Toward the end of the debate Senator Raikes resorted to a procedural argument that the Kristensen amendment required at least 30 affirmative votes instead of a simple majority vote (25 affirmative votes). The reason for this is rooted in the action taken by the committee just one day before first-round debate of LB 1172 when the committee voted in executive session to kill LB 1059. Since the Kristensen amendment was substantially the same as LB 1059, the amendment would require a special threshold for adoption.<sup>2366</sup>

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<sup>2364</sup> Id., 11024.

<sup>2365</sup> Id., 11038.

<sup>2366</sup> RULES OF THE NEB. LEG., Rule 6, § 3(h).



Speaker Kristensen did not dispute the assertion that his amendment required a higher number of votes for adoption. In fact he took it in stride and used the opportunity for one of the few moments of levity that afternoon. Said Kristensen:

First observation I would have is that, Senator Raikes, any self-respecting Education Chair shouldn't have ever killed a bill numbered LB 1059. It's kind of sacred in this body. (Laughter) And it's sort of like you violated one of the real tenets that you ... you ought not do.<sup>2367</sup>

Kristensen's reference to the most famous "LB 1059," the 1990 school finance bill, broke the tension temporarily, but not entirely. The body proceeded to vote on the Kristensen amendment, which was adopted on a 31-10 vote, one vote more than necessary.<sup>2368</sup>

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Table 133. Record Vote: Adoption of Kristensen AM2952  
to Com AM2931 to LB 1172 (2002)

*Voting in the affirmative, 31:*

|         |            |            |          |          |
|---------|------------|------------|----------|----------|
| Aguilar | Connealy   | Hudkins    | Quandahl | Thompson |
| Baker   | Cudaback   | Jones      | Redfield | Tyson    |
| Beutler | Cunningham | Kremer     | Robak    | Wehrbein |
| Bourne  | Dierks     | Kristensen | Schimek  |          |
| Bromm   | Erdman     | Kruse      | Schrock  |          |
| Burling | Foley      | Pederson   | Smith    |          |
| Byars   | Hartnett   | Preister   | Suttle   |          |

*Voting in the negative, 10:*

|          |         |        |            |            |
|----------|---------|--------|------------|------------|
| Coordsen | Landis  | Price  | Stuhr      | Vrtiska    |
| Janssen  | Maxwell | Raikes | Synowiecki | Wickersham |

*Present and not voting, 2:*

|       |       |
|-------|-------|
| Brown | Engel |
|-------|-------|

*Absent and not voting, 1:*

Chambers

*Excused and not voting, 5:*

|          |         |        |          |          |
|----------|---------|--------|----------|----------|
| Brashear | Bruning | Jensen | McDonald | Pedersen |
|----------|---------|--------|----------|----------|

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Source: NEB. LEGIS. JOURNAL, 6 March 2002, 858.

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<sup>2367</sup> *Floor Transcripts, LB 1172 (2002)*, 6 March 2002, 11055.

<sup>2368</sup> NEB. LEGIS. JOURNAL, 6 March 2002, 858.

After the vote on the Kristensen amendment, Senator Raikes had only one play left and that was to urge his colleagues to vote against the committee amendments as amended by the Kristensen proposal. By doing this, of course, the proposal remaining on the table would be the green copy of the bill as originally introduced. “I believe the original bill, LB 1172, is a better approach to the issue than what is offered by the amended committee amendment,” he said.<sup>2369</sup> But his colleagues were not willing to go along with that approach. The committee amendments were adopted as amended on a 26-6 vote.<sup>2370</sup> “I think it’s clear that I would have preferred a different route,” Raikes said after the vote, “but I accept your decision on this.”<sup>2371</sup> LB 1172 was advanced to second-round consideration by a solid 39-0 vote.<sup>2372</sup>

### *The Compromise*

Senator Raikes may have been down but not out following the General File debate of LB 1172. Senator Raikes went back to work with his committee to formulate another proposal consistent with the theme advanced by the Legislature through the Kristensen amendment, at least as they believed it to be. One of the areas the Kristensen proposal did not cover adequately, in the minds of the Education Committee, was a sufficient handling of fee waivers for those unable to pay. And there were other areas certain to be faced by school districts that were simply not covered by the existing legislation. Accordingly, on March 27<sup>th</sup>, Senator Raikes filed another amendment that he hoped would find acceptance among members of the Legislature.

The Raikes amendment proposed to create the Public Elementary and Secondary Student Fee Authorization Act comprised of thirteen separate sections.<sup>2373</sup> The thirteenth section, interestingly, was a “severability clause” stating that, if any section were declared unconstitutional, the declaration would not affect the validity of the remaining

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<sup>2369</sup> *Floor Transcripts, LB 1172 (2002)*, 6 March 2002, 11057.

<sup>2370</sup> NEB. LEGIS. JOURNAL, 6 March 2002, 859.

<sup>2371</sup> *Floor Transcripts, LB 1172 (2002)*, 6 March 2002, 11058.

<sup>2372</sup> *Id.*

<sup>2373</sup> NEB. LEGIS. JOURNAL, *Raikes AM3375 to LB 1172 (2002)*, 27 March 2002, §§ 1-13, pp. 1208-11.

portions.<sup>2374</sup> Each provision would essentially stand on its own merit. The clause itself is not unusual for legislative proposals, but, in the case of LB 1172, it certainly underscored the concern legislators had about the constitutionality of a student fee measure.

The Raikes amendment emphasized fee waivers for students who qualified for free or reduced lunches, the chosen benchmark to identify students who may not have the means to pay fees. It did not matter whether the students actually utilized the free or reduced lunch program, only whether they *qualified* for such program. Each school district and ESU board must establish a policy that waives fees for students who qualify for free/reduced lunches for: (1) Participation in extracurricular activities; (2) admission fees and transportation charges for spectators attending extracurricular activities; and (3) materials for course projects.<sup>2375</sup>

The amendment required each school district to establish a student fee policy and annually review the policy. Public hearings must be held to review the amount of money collected from fees and the use of waivers for the prior school year. The student fee policy must include specific details regarding:

- The general written guidelines for any clothing required for specified courses and activities;
- Any personal or consumable items a student will be required to furnish for specified courses and activities;
- Any materials required for course projects;
- Any specialized equipment or attire which a student will be required to provide for any extracurricular activity;
- Any fees required of a student for participation in any extracurricular activity;
- Any fees required for postsecondary education costs;
- Any fees required for transportation costs;
- Any fees required for copies of student files or records;
- Any fees required for participation in before-and-after-school or pre-kindergarten services;
- Any fees required for participation in summer school or night school;
- Any fees for breakfast and lunch programs; and
- The waiver policy as noted above.<sup>2376</sup>

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<sup>2374</sup> Id.

<sup>2375</sup> Id., § 9, pp. 1209-10.

<sup>2376</sup> Id., § 10, p. 1210.

Each school board also must establish a student fee fund into which all money collected from students would be deposited and from which money must be expended for the purposes for which it was collected from students.<sup>2377</sup>

The Raikes amendment provided a laundry list of fees that may be charged unless a student qualified for a fee waiver. The amendment provided that a governing body may require and collect fees or other funds from students or require students to provide specialized equipment or specialized attire for any of the following purposes:

- (1) Participation in extracurricular activities;
- (2) Admission fees and transportation charges for spectators attending extracurricular activities;
- (3) Postsecondary education costs;
- (4) Certain transportation costs;
- (5) Copies of student files or records;
- (6) Reimbursement to the school district or ESU for property lost or damaged by the student;
- (7) Before-and-after-school or pre-kindergarten services;
- (8) Summer school or night school; and
- (9) Breakfast and lunch programs.<sup>2378</sup>

A school board or ESU board may require students to furnish minor personal or consumable items for specified courses and activities, including pencils, paper, pens, erasers, and notebooks.<sup>2379</sup> A board may require students to furnish and wear “nonspecialized attire” meeting general written guidelines for specified courses and activities so long as the written guidelines are reasonably related to the course or activity.<sup>2380</sup> A school district may operate a school store in which students may purchase food, beverages, and personal or consumable items.<sup>2381</sup>

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<sup>2377</sup> Id., § 11, p. 1210.

<sup>2378</sup> Id., § 3, pp. 1208-09.

<sup>2379</sup> Id., § 4, p. 1209.

<sup>2380</sup> Id., § 5, p. 1209.

<sup>2381</sup> Id., § 8, p. 1209.

Two of the more thornier issues related to project materials and musical instruments. The Raikes amendment provided that, except for students who qualify for free or reduced lunches, a district or ESU may require students to furnish materials for course projects meeting written guidelines if upon completion, the project becomes the property of the student and the written guidelines are reasonably related to the course.<sup>2382</sup> An example might be a woodshop course where students created projects in order to take home with them upon completion.

A district or ESU may require students to furnish musical instruments for participation in optional music courses that are not extracurricular activities so long as the board provides for the use of a musical instrument without charge for any student who qualifies for free or reduced lunches. The amendment specified that a district or ESU would not be required to provide for the use of a particular type of musical instrument for any student. In other words, a student may not have his or her first choice in instruments. And, for music courses that are extracurricular activities, a board may require fees or require students to provide specialized equipment, such as musical instruments, or specialized attire.<sup>2383</sup> Both the project materials and musical instrument provisions would ultimately require some legal interpretation in order to implement.

Within a few days after Senator Raikes filed his amendment, LB 1172 appeared on the Legislature's agenda for Select File consideration. The debate that occurred on April 2, 2002 was far less dramatic than first-round consideration some three weeks earlier. Senator Raikes introduced his amendment with due respect to the course of direction chosen by his colleagues. Raikes said:

[T]he amendment is consistent with your decision on General File. That is, it focuses on extracurricular activities and it is a list approach rather than the approach taken in the committee amendment, which is an approach that deals more or aims more along the lines of additional local discretion.<sup>2384</sup>

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<sup>2382</sup> Id. § 6, p. 1209.

<sup>2383</sup> Id., § 7, p. 1209.

<sup>2384</sup> *Floor Transcripts, LB 1172 (2002)*, 2 April 2002, 13077.

Senator Raikes was careful to note the differences in policy between the existing contents of LB 1172, as per the Kristensen proposal, and his own.

Speaker Kristensen rose to offer his support for the Raikes amendment although he questioned whether any legislative proposal would be absolutely safe from judicial scrutiny. The Speaker said:

Realize none of these fees are constitutionally safe. We are guessing where the court is going to be. I think this bill errs on the side of being more restrictive than being broader and allowing more things and, to that extent, it probably tries to outline what the present day realities are of what should be fees and what should not be fees.<sup>2385</sup>

His comments illustrated the extent to which some members of the body were concerned about legal challenges. Although no one knew at the time, these fears would later prove to be unwarranted due largely to a careful application of the law by school officials who did not wish to be party to any test cases in court.

The duration of the discussion on the Raikes amendment was less than an hour. The body approved the amendment by a unanimous 29-0 vote and then advanced the bill to the third and final stage of consideration by voice vote.<sup>2386</sup> LB 1172, as amended, was passed by the Legislature on April 11, 2002 by another unanimous vote (40-0).<sup>2387</sup> As passed by the Legislature, LB 1172 did not directly amend the school finance statutes but would nevertheless have an impact on school finance.

#### *Reaction and Implementation*

While the Legislature had taken official action on the student fees issue, the real work lay ahead. The implementation phase of the legislation was anything but smooth since questions about legislative intent remained long after the 2002 Session had ended. Education groups, including the Nebraska Council of School Administrators (NCSA), conducted workshops for its members specifically designed to wade through the details

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<sup>2385</sup> Id., 13083.

<sup>2386</sup> NEB. LEGIS. JOURNAL, 2 April 2002, 1292.

<sup>2387</sup> Id., 11 April 2002, 1651.

and potential legal entanglements within the legislation. The Department of Education also was very involved in attempting to help school officials.

On May 31, 2002, Commissioner Christensen issued a memorandum to school superintendents concerning the implementation of LB 1172.<sup>2388</sup> He reminded district chiefs that the effective date of LB 1172 was July 20, 2002, but that much work had to be completed in time to meet some of the deadlines contained in the bill. Local public hearings on district student fee policies had to be held by August 1, 2002.<sup>2389</sup> “Regardless of the issues and difficulties involved in implementing LB 1172, I know you will work hard to continue to assure that all students in Nebraska receive a quality education,” Christensen wrote.<sup>2390</sup> He added that:

The language and requirements of LB 1172 have raised many questions. And, with the short timeline for implementation, there will be a number of questions and concerns left unanswered. While it was clear that the legislature is giving school districts clear authority for the charging of certain fees, it is also clear that the number and kinds of fees are limited. I would suggest that you consider limiting the required fees to those you feel are absolutely necessary.<sup>2391</sup>

The Commissioner reminded superintendents that it was still reasonable for schools to ask (not require) students to provide certain items or fees on a voluntary basis. He also reminded them that LB 1172 did not prohibit schools from fund raising or having organizations within the community provide funds to support school activities.

Individual school districts reacted to the new law in different ways. For some, the policy directives represented welcome guidance to help avoid lawsuits. For others, the new law was deemed to be intrusive on local control over such matters. The Omaha Public School District Board of Education, for instance, issued a protest of sorts against the new law. On May 20, 2002, the OPS Board voted to consider abolishing district sponsored student activities, including athletic programs. “This was something put on the

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<sup>2388</sup> Doug Christensen, Commissioner of Education, to Nebraska Public School Superintendents, memorandum, 31 May 2002.

<sup>2389</sup> Legislative Bill 1172, *Slip Law*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, § 10, p. 2.

<sup>2390</sup> Christensen, Memorandum, 31 May 2002.

<sup>2391</sup> *Id.*

Omaha Public Schools,” OPS Board President John Langan said, “I don’t believe our fees were out of line.”<sup>2392</sup> Although OPS was one of the first school districts to ask for state intervention on the issue in 2001, the end result was not entirely to their liking, nor was it to other school officials across the state.

However, there was a positive side of the situation faced by school districts. LB 1172 forced all districts to re-evaluate their policies with an emphasis on the consumers of the services that districts provide. “I’ve been encouraged by hearing superintendents ask, ‘What is the advantage to kids, what is the disadvantage?’” Commissioner Christensen said.<sup>2393</sup> LB 1172 and the surrounding issues caused everyone associated with public education to take a closer look at the free instruction clause of the State Constitution and to ask what it meant to them. The issue brought many individuals and groups to the public forum to offer their viewpoints, precisely as a democratic society should expect from itself. And if, in the end, students of all economic circumstances are assured equal opportunities at their publicly funded school, then all other relevant issues and arguments become subordinate, if not trivial.

#### LB 460 - Allowable Reserves and Class Is

One of the least discussed provisions of the school finance formula relates to the allowable reserves a school district may set aside. The issue involves what is typically considered sound business practices. Just as it is generally accepted that businesses have reserve funds, so it goes for government entities, including school districts. The reserve provision under the school finance formula was relatively unchanged from 1990, when it was implemented, until 2002 when LB 460 was passed into law.

The Nebraska Tax Equity and Educational Opportunities Support act, as enacted under LB 1059 (1990), established a system by which school districts would be allowed

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<sup>2392</sup> Angie Brunkow, “OPS board protests state law over fees It votes to consider dumping activities Inclusive policy elusive,” *Omaha World-Herald*, 21 May 2002, 1b.

<sup>2393</sup> Judith Nygren and Angie Brunkow, “Many schools simply tweak fees A new state law apparently won’t end the disparities between districts on the cost to students,” *Omaha World-Herald*, 3 June 2002, 1b.



to hold in reserve a percentage of its total general fund budget of expenditures.<sup>2394</sup> The system was based upon a sub-formula involving the average daily membership of the district correlated to a specified percentage as shown in Table 134.

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Table 134. Percentage of Allowable Reserves under TEEOSA

| <i>Average daily membership of district</i> | <i>Allowable reserve percentage</i> |
|---|-------------------------------------|
| 0 - 471.....                                | 50                                  |
| 471.01 - 3,044.....                         | 40                                  |
| 3,044.01 - 10,000.....                      | 30                                  |
| 10,000.01 and over.....                     | 25                                  |

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*Source:* NEB. REV. STAT. § 79-3818 (Cum. Supp. 1990).

Generally, the larger the district in terms of student population the smaller the allowable reserve and vice versa. This same table, with the same membership-to-reserve-percentage ratio, has existed, unchanged, since 1990.

The original law also imposed a requirement that a district could not increase its reserve fund by more than 2% of its total general fund budget of expenditures each year.<sup>2395</sup> The growth provision, of course, applies only to those districts that had not yet reached its maximum reserve percentage. If a district had reached its maximum reserve, it could not utilize the growth provision. Part of the underlying idea was that restrictions should be placed on school districts in order to prevent them from dramatically raising property taxes merely to bolster the reserve fund. The original policy decision incorporated a balance between acknowledging the merit of a reserve fund and the protection of the taxpayer.

The underlying policy issue behind LB 460 was that the existing reserve provision did not permit some school districts to set aside sufficient reserves for whatever emergency or circumstance that may arise. Larger school districts, with higher student populations, also had more teachers whose salaries might, in an emergency or revenue

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<sup>2394</sup> NEB. REV. STAT. § 79-3818 (Cum. Supp. 1990).

<sup>2395</sup> *Id.*

shortage, become dependent upon the district's reserve fund. It was believed by some that the reserve provision in effect penalized some school districts while benefiting, or potentially benefiting, others. Accordingly, Senator Chris Beutler of Lincoln introduced LB 460 during the 2001 Session on behalf of Lincoln Public Schools. School officials from other districts, mostly larger school districts, would also demonstrate their support for the measure at the public hearing on March 12, 2001.<sup>2396</sup>

LB 460 represented one of those measures that required a careful review in order to understand the intent. On the face of the bill, it appeared as though the sole objective was to change provisions relating to the Hardship Fund. The Hardship Fund was created under LB 314 (1999), a bill sponsored by Senator Ardyce Bohlke. LB 314 was designed to help districts that encounter unexpected special education costs by applying to the Commissioner of Education for money if one or more unexpected occurrences cause the district financial distress. The occurrences include: (1) one or more new special education student or one or more new disabling conditions; (2) the opening of a group home causing expenditures to increase by at least 10%; (3) clerical errors by public officials; or (4) the final calculation of state aid caused a negative adjustment reducing the aid originally calculated for the district by 50% or more.<sup>2397</sup>

In order to be eligible for the funds, a district must have budgeted reserves equal to at least 98% of the applicable allowable reserves authorized for that district for the most recent budget prior to the district becoming aware of the unexpected occurrence.<sup>2398</sup> Essentially, the district had to be nearly at the maximum amount of available reserves. And it was this provision that LB 460 sought to eliminate, which, again on the face of it, appeared to carry the objective of making hardship funds more accessible to school districts.<sup>2399</sup>

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<sup>2396</sup> Committee on Education, *Committee Statement, LB 460 (2002)*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, 1.

<sup>2397</sup> NEB. REV. STAT. § 79-1072.03 (Cum. Supp. 1999).

<sup>2398</sup> *Id.*

<sup>2399</sup> Legislative Bill 460, *Change allowable reserve provisions under the Tax Equity and Educational Opportunities Support Act*, sponsored by Sen. Chris Beutler, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, title first read 10 January 2001, § 1, pp. 2-6.

However, the real heart of LB 460 lay in the section of the bill that outright repealed the reserve fund provision of the state aid formula.<sup>2400</sup> The “repealer” section of a bill is often overlooked or taken for granted. In the case of LB 460, the repealer section was the main thrust of the bill. The proposed change to the Hardship Fund was merely to harmonize existing law with the intent to repeal the reserve fund section of the state aid formula. While the collateral impact of LB 460 was to make it easier for some districts to apply for and receive Hardship Funds, the simple fact remained that no district had ever applied for the funds since its creation in 1999. In fact, the Hardship Fund would be repealed during the 2001 Session under LB 313.<sup>2401</sup>

Senator Beutler did not intend to create a smoke and mirrors illusion within his bill. He was fully aware that the bill looked like one thing and did another. “When you open the bill itself, it looks a little bit like it deals with the hardship fund, but it really doesn’t,” Beutler said during the public hearing.<sup>2402</sup> “As you all are aware, the hardship fund is being repealed this session by another bill that sits on final reading,” he added.<sup>2403</sup> But the question remained, if the Legislature repeals the reserve fund provision within the state aid formula, how would reserve funds be regulated?

Here the legislation was somewhat illusive, but not deliberately deceptive. Senator Beutler intended that school districts would fall within the same reserve limitation by which all other political subdivisions abide. The Nebraska Budget Act provides that the cash reserve for political subdivisions may not exceed 50% of the total budget adopted exclusive of capital outlay items.<sup>2404</sup> The reserve provision within the school finance formula was based on the provision within the Budget Act, but it also imposed greater restrictions on those school districts that had higher student populations. Senator Beutler believed the same reserve limitation should apply to all political

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<sup>2400</sup> Id., § 3, p. 6.

<sup>2401</sup> LB 313, Session Laws, 2001, § 5, p. 7.

<sup>2402</sup> Committee on Education, *Hearing Transcripts, LB 460 (2002)*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2001, 12 March 2001, 27-28.

<sup>2403</sup> Id.

<sup>2404</sup> NEB. REV. STAT. § 13-504(1)(c) (Cum. Supp. 2000).

subdivisions. The effect would be to provide the same level of flexibility to school districts as other types of local government already have. Therefore, while LB 460 did not specifically state it, the repeal of the reserve fund provision in the state aid formula would, by default, allow the provisions of the Nebraska Budget Act to govern the reserve limits for school districts.

Naturally, there was a potential downside to the idea, and members of the Education Committee saw it immediately. Part of the reason for special reserve limitations on school districts is related to the fact that schools are the single largest consumer of property tax revenue. This was true in 1990 when LB 1059 was passed and it remains true today. In fact, the initial fiscal impact statement prepared by Sandy Sostad of the Legislative Fiscal Office stated: “The repeal of the allowable percentage limitation on school district cash reserves and the limitation on the annual percentage increase in reserves may have a fiscal impact on the amount of property taxes levied and collected by some school districts.”<sup>2405</sup> The committee was aware of the potential impact on property taxes and this became one of the discussion points at the public hearing.

In addition to Lincoln Public Schools, other supporters of the bill included the member districts of the Greater Nebraska Schools Association (GNSA), Omaha Westside Community Schools, and the Nebraska Association of School Boards (NASB).<sup>2406</sup> As no surprise, many of the districts that supported the legislation were also among those currently at the maximum reserve limitation. In fact, the Department of Education reported there were 37 K-12 or high school-only school districts out of 263 that were at the maximum reserve percentage in 2000.<sup>2407</sup> The only outward opposition came not from any testifier, but from one member of the committee. Senator George Coordsen of Hebron stated his concerns during the hearing:

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<sup>2405</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 460 (2002)*, prepared by Sandy Sostad, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 11 April 2001, 1.

<sup>2406</sup> *Committee Statement, LB 460 (2002)*, 1.

<sup>2407</sup> *Fiscal Impact Statement, LB 460 (2002)*, 11 April 2001, 1.

I don't follow this necessity to have a whole lot, because you don't have revenue. You have the ability to levy taxes on the people that live in your district for the portion of the school cost that are not covered by non-property, and it just seems to me that there's a false premise involved in creating the idea that a school is a business rather than a citizen supported service.<sup>2408</sup>

Senator Coordsen thought communities would be better served to “leave that money in the economy generating business” rather than raising property taxes to grow reserve funds.<sup>2409</sup>

For a historically conservative Legislature, the original version of LB 460 probably represented a far reach. But one of the political maxims underlying any legislative proposal is to shoot high and expect something in the middle. The art of compromise would serve its purpose here as well. By a 6-1 vote, the Education Committee advanced the bill on April 20, 2001 with amendments that eliminated the original provisions and inserted new language.<sup>2410</sup> Senator Coordsen cast the lone dissenting vote. The new language would eliminate the restriction that schools could only grow their reserve by an annual rate of 2%. However, schools must still adhere to the applicable reserve caps based upon average daily membership. On the whole, the compromise represented much less than the proponents wanted, but it was at least a small victory in their minds.

The more immediate problem for proponents of the bill was time, specifically the lack of time, to seek passage of the bill in the waning months of the 2001 Session. The bill was officially on General File, but it had no priority status and no real prospect of advancement. LB 460 would carryover to the 2002 Session and the proponents were prepared to take appropriate steps to ensure its passage. Senator Marian Price of Lincoln designated the bill as her priority measure, and the bill had the additional advantage of

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<sup>2408</sup> *Hearing Transcripts, LB 460 (2002)*, 38.

<sup>2409</sup> *Id.*

<sup>2410</sup> Committee on Education, *Executive Session Report, LB 460 (2001)*, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 20 April 2001, 1.

already being on General File.<sup>2411</sup> Having the measure queued on the agenda was particularly helpful in light of the heavy budget issues facing the Legislature in 2002.

On March 12, 2002, exactly one year after its public hearing, LB 460 was considered on the first stage of debate. Interestingly, the proponents of the bill had lobbied the measure so well that only a brief discussion was necessary to move it forward. Senator Beutler successfully offered an amendment to the committee amendments in order to remove contingency funds from the reserve fund limitation.<sup>2412</sup> Prior to LB 460, the reserve cap applied to the total amount of four types of funds, including contingency funds, depreciation funds, employee benefit fund cash reserves, and general fund cash reserves. The Beutler amendment proposed to remove contingency funds from the computation of the allowable reserve cap. Contingency funds were established by a school district to use for defense against and payment of losses. Contingency funds cannot exceed 5% of the total budgeted general fund expenditures of a district. The removal of contingency funds from the computation could only help not hurt school districts. It was particularly helpful to about 11 school districts, including Lincoln, which used contingency funds to set aside self-insured insurance money. The Beutler amendment was adopted by a unanimous 31-0 vote.<sup>2413</sup>

Following the vote on the Beutler amendment, LB 460 would take a different twist with the adoption of an amendment related to Class I (elementary only) school districts. Offered by Senator Gene Tyson of Norfolk, the amendment contained the language found in LB 1212 (2002), which had been advanced to General File by the Education Committee.<sup>2414</sup> The Tyson amendment proposed to change the law regarding mergers, dissolutions or reorganizations of Class I districts that are affiliated with Class II or Class III districts (K-12 districts). Prior to 2002, a vote of the school boards of the

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<sup>2411</sup> NEB. LEGIS. JOURNAL, 28 January 2002, 386.

<sup>2412</sup> NEB. LEGIS. JOURNAL, *Beutler AM2312 to Com AM1697*, 28 January 2002, 386.

<sup>2413</sup> *Id.*, 12 March 2002, 922.

<sup>2414</sup> Legislative Bill 1212, *Change prohibition on reorganization of certain affiliated Class I school districts*, sponsored by Sen. Gene Tyson, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, title first read 22 January 2002. NEB. LEGIS. JOURNAL, *Tyson AM3011 to Com AM1697*, 7 March 2002, 863.

impacted school districts was required when a Class I district with 50% or more of the district's valuation that was affiliated with a single Class II or Class III districts opts to merge, dissolve or reorganize. The Tyson proposal required the approval of all the affiliated Class II or Class III school boards when a Class I district with 8% or more of its valuation affiliated with another school district opts to merge, dissolve or reorganize.<sup>2415</sup> Senator Tyson said he introduced the measure on behalf a Class I district in Madison County. The amendment was adopted without debate on a 29-0 vote followed by a unanimous vote to adopt the committee amendments, as amended, on a 34-0 vote.<sup>2416</sup>

LB 460 was advanced as amended to second-round consideration on a 34-0 vote.<sup>2417</sup> During Select File consideration, the Tyson amendment would come under fire from Senator Jennie Robak who admitted being present during the General File debate but said nothing. Senator Robak believed the amendment might negatively affect school districts within her legislative district. But it was too little too late for the Columbus legislator. The Legislature advanced LB 460 by a 33-2 record vote.<sup>2418</sup> Interestingly, Senator Robak must have re-evaluated her position on Final Reading when she joined proponents in a 40-1 vote to pass the bill.<sup>2419</sup>

Table 135. Summary of Modifications to TEEOSA as per LB 460 (2002)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i> | <i>Description of Change</i>  |
|------------------|---------------------|---------------------------|---|
| 2                | 79-1027             | Budget; restrictions      | Eliminated the existing restriction concerning the annual growth rate of allowable cash reserves of school districts to 2% of the total general fund budget of expenditures. School districts must still adhere to the statutory cap that restricts allowable reserves within a range of 20% to 45% of the total general fund budget of expenditures based upon the membership of the district. Contingency funds would no longer be included in the computation of the allowable reserve percentage for a school district. |

*Source:* Legislative Bill 460, *Slip Law*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, § 2, pp. 1-2.

<sup>2415</sup> NEB. LEGIS. JOURNAL, *Tyson AM3011 to Com AM1697*, 7 March 2002, 863.

<sup>2416</sup> *Id.*, 12 March 2002, 922.

<sup>2417</sup> *Id.*

<sup>2418</sup> *Id.*, 2 April 2002, 1339.

<sup>2419</sup> *Id.*, 11 April 2002, 1636.

### LB 994 - Omnibus Property Tax Cleanup

LB 994 represented the Revenue Committee's omnibus technical cleanup bill in 2002 concerning property tax administration and assessment. By the time the bill passed, it would have also become the omnibus "Christmas tree" bill containing "ornaments" from no less than ten other revenue-related measures. The bill amended provisions related to the Tax Equalization and Review Commission and the greenbelt laws, among other provisions. The legislation also permitted political subdivisions to accept credit cards and debit cards as methods of payment for taxes, levies, fines, licenses, and fees.<sup>2420</sup>

The school finance formula was amended in relation to adjusted valuation used in the calculation of state aid. Since 1994 the formula utilized adjusted rather than assessed valuation in order to enhance the equalization objective of the Tax Equity and Educational Opportunities Support Act. The system in place prior to 2002 required county assessors to certify to the Property Tax Administrator (PTA) the total taxable value by school district in the county for the current assessment year. The PTA must then compute and certify to the Department of Education the adjusted valuation for the current assessment year for each class of property in each school district and each local system. The adjusted valuation of property for each school district and each local system must reflect the appropriate state aid value, which for residential property equals 100% of market value, 80% for agricultural land, and net book value for personal property. The existing law required the establishment of adjusted valuation based upon assessment practices established by rule and regulation adopted and promulgated by the PAT.<sup>2421</sup>

LB 994 changed the adjusted valuation provision to state that the establishment of adjusted valuation would be based on the determination of the level of value for each school district from an analysis of the comprehensive assessment ratio study or other studies developed by the PAT. As provided in the former law, the PAT was required to adopt and promulgate rules and regulations setting forth standards for the determination

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<sup>2420</sup> Nebraska Legislative Research Division, "A Review: Ninety-Seventh Legislature Second Session, 2002," May 2002, 73-77.

<sup>2421</sup> NEB. REV. STAT. § 79-1016 (Cum. Supp. 2001).



of level of value for purposes of school aid calculations.<sup>2422</sup> Legal Counsel for the Revenue Committee, George Kilpatrick, testified at the public hearing for LB 994 that several members of the committee had requested the change. Said Kilpatrick:

[W]e developed some language that has to do with providing maybe a little bit of guidance and structure to the process of determining adjusted value for school aid purposes. I don't know that we've had a general discussion on that but it's an aspect of this and it provides a bit of guidance, essentially that it be done based on statistics and professionally accepted mass appraisal techniques and that sort of thing that we quite often see in these types of statutes.<sup>2423</sup>

The Property Tax Administrator, Catherine Lang, also testified in support of the proposed changes.<sup>2424</sup>

LB 994 was passed on April 19, 2002 by a 47-0 vote.<sup>2425</sup>

Table 136. Summary of Modifications to TEEOSA as per LB 994 (2002)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>  | <i>Description of Change</i>   |
|------------------|---------------------|--|--|
| 30               | 79-1016             | Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited | Changed the adjusted valuation provision to state that the establishment of the adjusted valuation would be based on the determination of the level of value for each school district from an analysis of the comprehensive assessment ratio study or other studies developed by the Property Tax Administrator. |

Source: Legislative Bill 994, *Slip Law*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, § 30, p. 18.

## F. The 2003 Legislative Session

### LB 540 - Levy Increase

The budget woes that began in 2001 would peak during the 2003 Session. The Nebraska Legislature would eventually adopt a biennium budget that addressed the

<sup>2422</sup> Legislative Bill 994, *Slip Law*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, § 30, p. 18.

<sup>2423</sup> Committee on Revenue, *Hearing Transcripts, LB 994 (2002)*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, 25 January 2002, 20.

<sup>2424</sup> Committee on Revenue, *Committee Statement, LB 994 (2002)*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, 1.

<sup>2425</sup> NEB. LEGIS. JOURNAL, 19 April 2002, 1787.

revenue shortfall by making dramatic spending cuts and significant tax policy changes in order to raise revenue. The bulk of the spending cuts came in the form of reductions in state aid to municipalities, community colleges, the University of Nebraska and, most especially, public school districts. The tax policy changes came in several forms. The biennium budget plan made permanent all the temporary tax increases enacted by LB 1085 in 2002, including the temporary one-year sales and use tax rate increase, the temporary one-year individual income tax rate increase, the temporary two-year cigarette tax increase, and the temporary two-year tobacco products tax rate increase. The plan expanded the sales tax base to include additional services. The plan also produced the first significant departure in the property tax relief package of 1996. The Legislature did what some viewed as the unthinkable. It increased the maximum levy for schools from \$1.00 to \$1.05 and thereby placed the burden of the state aid cuts on the backs of the local property taxpayer.

From the perspective of the original objectives contained in LB 1059 (1990), the Legislature would take a major step backward in its financial commitment to public education. The local taxpayer was once again taking on more and more of the overall responsibility to fund public schools. From a state budget perspective, however, the Legislature did what it believed it had to do in order to address the circumstances at hand. Despite the objections of Governor Johanns, the Legislature made some courageous decisions, some members putting their own political futures on the line, in order to address the budget situation in as fair a manner as they thought possible.

### *Three Scenarios*

In the first several months of the 2003 Session there was no shortage of ideas on how to apply some type of state aid reduction to public schools, some ideas were more creative and compassionate than others. By March 2003 it was clear to most political insiders that three possible scenarios were available to the Legislature. The first of these scenarios was the most unlikely to occur: to do nothing, to allow the February 2003 state aid certification to stand, and hold schools harmless of any form of aid reduction.

Table 137. 2003 Budget Scenario 1: Maintain  
February 2003 State Aid Certification

|                              | <i>FY2003-04</i> | <i>FY2004-05</i> |
|------------------------------|------------------|------------------|
| General Fund Appropriations  | \$707,713,471    | \$738,343,664    |
| Insurance Premium Tax Rebate | \$14,811,647     | \$15,181,938     |
| Total State Aid              | \$722,525,118    | \$753,525,602    |

*Source:* Committee on Appropriations, "Preliminary Report, FY2003-04/FY2004-05 Biennial Budget, Nebraska Unicameral Legislature, Ninety-Eighth Legislature, First Session," February 2003.

As shown in Table 137, the total amount of state aid certified to schools for 2003-04 would have been about \$722.5 million. The Department of Education and Legislative Fiscal Office could only make an educated guess or projection for 2004-05 until all the necessary data became available. The most important number for the time being, however, was the total state aid necessary for 2003-04. The "magic number" was \$722.5 million for purposes of basing any type of aid reduction scheme.

The first scenario was obviously wishful thinking on the part of education interests especially in light of the budget crisis facing the Legislature. And the second scenario, school officials prayed, was just as unlikely. The second scenario involved the proposed budget submitted by Governor Mike Johanns on January 15, 2003. The Governor unveiled to the Legislature a plan for drastic reductions in aid to public education in order to help deliver the State from its worst economic crisis in recent times. The Governor proposed to reduce state aid to schools by roughly \$64.7 million in 2003-04 coupled with essentially a zero percent growth in aid for 2004-05.

Table 138. 2003 Budget Scenario 2:  
Governor Johanns' Budget Plan

|                                | <i>FY2003-04</i> | <i>FY2004-05</i> |
|--------------------------------|------------------|------------------|
| Certified/Projected State Aid* | \$722,525,118    | \$753,525,602    |
| Governor's Budget Proposal*    | \$598,169,251    | \$598,539,542    |
| (Difference)                   | (\$124,355,867)  | (\$155,613,626)  |

\* Includes Insurance Premium Tax Rebate

*Source:* Legislative Bill 407, *Appropriate funds for state Government expenses*, sponsored by Sen. Curt Bromm, req. of Gov., Nebraska Legislature, 98<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2003, 15 January 2003.

Special education appropriations and state aid to ESUs also would be dramatically impacted by the Governor's budget proposal. However, there was a middle ground backed by the art of compromise. On February 27, 2003, the Legislature's Appropriations Committee issued its preliminary budget recommendations. The committee's plan would constitute the third scenario, a variation of which would become the work-in-progress between the Education and Appropriations Committees. Under the third scenario, state aid to education would actually witness a slight increase (2.6%) over the prior year's amount. In 2002-03, the state aid appropriation was \$647,477,820. The Appropriations Committee proposed to increase this base amount by \$16,884,145 to equal \$664,361,965 for FY2003-04 (General Funds). After adding the insurance premium tax amount, the total projected amount of state aid for FY2003-04 would be \$679,173,612, as shown in Table 139.

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Table 139. 2003 Budget Scenario 3: Appropriations  
Committee Preliminary Budget Proposal

|                                | <i>FY2003-04</i> | <i>FY2004-05</i> |
|--------------------------------|------------------|------------------|
| Certified/Projected State Aid* | \$722,525,118    | \$753,525,602    |
| Preliminary Budget Proposal*   | \$679,173,612    | \$708,314,066    |
| Difference                     | (\$43,351,506)   | (\$45,211,536)   |

\* Includes Insurance Premium Tax Rebate

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*Source:* Committee on Appropriations, "Preliminary Report, FY2003-04/FY2004-05 Biennial Budget, Nebraska Unicameral Legislature, Ninety-Eighth Legislature, First Session," February 2003.

Given the certified amount of \$722.5 million for FY2003-04, the Appropriations Committee still amounted to a major loss in state aid. However, it did not represent as great a loss as that proposed by the Governor. The Appropriations Committee proposal accepted some of the budget reductions recommended by the Governor. For instance, the proposal upheld the Governor's suggested cuts to special education and ESUs. But the proposal also would reverse other gubernatorial recommendations with the hope of a revenue package to make up the difference. The revenue package (e.g., changes in sales and/or income tax rates) would naturally derive from the Revenue Committee.

*“The difficult fiscal environment we face”*

At the outset of the 2003 Session, the often-heard discussion in the corridors and offices of the State Capitol involved the infamous three major “pots” of money flowing from state government. These included the University of Nebraska, Medicaid, and state aid to public schools. Of the three, it was widely believed Medicaid would have the best chances of escaping any major reductions, although talk of reform would become a theme during the session. For the University and public schools, it was much less a matter of “if” as “how much” would be deducted from their respective budget lines. In a familiar condition of the economic times, postsecondary education was politically pitted against elementary and secondary education even though it was generally accepted within academic circles that the success of one was dependent upon the success of the other.

For Senator Ron Raikes, as chair of the Education Committee, it was a matter of economic academics that public education, the single largest draw from state coffers, step up to the plate during the budget crisis. The education lobby met with Senator Raikes before the session to discuss alternatives, but in the end the lobbying entities were as much spectators to the unfolding events as anyone else. There was not much that education interest groups could say or argue that was unanticipated by lawmakers. While there was still a general feeling among legislators to protect K-12 education as best as possible, there was no patience for those who believed any one segment of the budget should be immune from cuts. The best move for education groups, it was believed, would be to willingly support some form of hit to education funding. To appear otherwise would simply draw a larger target for legislators to take aim.

Thus, the introduction of LB 540 by Senator Raikes on January 21, 2003 came as no surprise to education groups and their constituent memberships. “Legislative Bill 540 deals with the funding of K-12 public schools in the difficult fiscal environment we face,” Senator Raikes said at the public hearing on March 10<sup>th</sup>.<sup>2426</sup> The intent of LB 540 was to change the calculation of state aid to education for 2003-04 and 2004-05 by

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<sup>2426</sup> Committee on Education, *Hearing Transcripts, LB 540 (2003)*, Nebraska Legislature, 98<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2003, 10 March 2003, 8-9.

doubling the temporary aid adjustment factor from 1.25% to 2.5%.<sup>2427</sup> The temporary aid adjustment factor was first implemented in 2002 under LB 898 to artificially reduce the needs and resources of each local system. The result of LB 540 would be a savings to the state of approximately \$23.5 million for 2003-04 and presumably a similar amount for 2004-05.<sup>2428</sup> The legislation allowed school districts, as LB 898 before it, to exceed the levy limitation with a three-fourths majority vote of the school board by an amount equal to the amount of state aid that would have been provided without the changes made in LB 540. Finally, LB 540 required the recertification of the 2003-04 state aid before June 15, 2003.<sup>2429</sup> This meant another long wait-and-see for school officials anxious to finalize a school budget for 2003-04. It meant another period of anxiety for teachers who worried for their own jobs while the Legislature wrangled with the state budget.

Compounding the situation, Senator Raikes filed an amendment to his own measure just seven days before the public hearing was to be held on March 10, 2003. Senator Raikes was attempting to forward a proposal in concert with the work of the Appropriations Committee and its preliminary budget plan. The amendment proposed to strike the original contents of the bill and insert new language. The newly proposed version of the bill would use a different tactic on the budget situation as it related to public schools. First, the amendment proposed to increase the maximum levy for schools from \$1.00 to \$1.03 for 2003-04 and 2004-05 only. Second, the spending limitation would be lowered from 2.5% to 1.5% for same two-year period, but school boards would be allowed to exceed their applicable spending lid by 2% rather than 1% by a super majority (3/4s) majority vote. Finally, the amendment proposed to void the February state aid certification for 2003-04 and to require a recertification by June 15, 2003.<sup>2430</sup>

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<sup>2427</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 540 (2003)*, prepared by Sandy Sostad, Nebraska Legislature, 98<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2003, 3 March 2003, 1.

<sup>2428</sup> *Id.*

<sup>2429</sup> Legislative Bill 540, *Change and eliminate provisions for education tax levy, budget authority, and state aid*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 98<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2003, title first read 21 January 2003, §§ 1-5, pp. 2-22.

<sup>2430</sup> NEB. LEGIS. JOURNAL, *Raikes AM712*, printed separate, 6 March 2003, 755. Amendment, *Raikes AM712 to LB 540 (2003)*, 6 March 2003, §§ 1-6, pp. 1-14.

Table 140. Introduced Version of LB 540 (2003) Compared to Alternate Amendment (AM712) - Applicable to FY2003-04 and FY2004-05

| Original Version of LB 540  | Alternative Version (AM712)  |
|---|--|
| <ul style="list-style-type: none"> <li>• Void the February 5, 2003 certification of state aid;</li> <li>• Impose a temporary aid adjustment factor of 2.5%;</li> <li>• Provide a temporary levy exclusion to make up the lost state aid due to this calculation;</li> <li>• Reduce the stabilization factor from 83.75% to 82.5% (the small school stabilization factor would be limited by 87.5% of the prior years aid plus property taxes, rather than the current 88.75%); and</li> <li>• Provide for a recertification of the 2003-04 state aid by June 15, 2003.</li> </ul> | <ul style="list-style-type: none"> <li>• Void the February 5, 2003 certification;</li> <li>• Maintain the existing temporary aid adjustment factor of 1.25% as per LB 898 (2002);</li> <li>• Maintain authority to exceed the maximum levy to recover lost state aid due to the 1.25% reduction (as per LB 898, 2002);</li> <li>• Increase the maximum levy from \$1.00 to \$1.03;</li> <li>• Increase the Local Effort Rate (LER) from \$.90 to \$.93;</li> <li>• Lower the base spending lid from 2.5% to 1.5% (thereby creating a spending lid range from 1.5% to 3.5%);</li> <li>• Authorize a school board to exceed its growth rate by 2% rather than the existing 1% by a 3/4s (“supermajority”) vote; and</li> <li>• Provide for a recertification of the 2003-04 state aid by June 15, 2003.</li> </ul> |

*Sources:* Legislative Bill 540, *Change and eliminate provisions for education tax levy, budget authority, and state aid*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 98<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2003, title first read 21 January 2003, §§ 1-5, pp. 2-22; NEB. LEGIS. JOURNAL, *Raikes AM712*, printed separate, 6 March 2003, 755; Amendment, *Raikes AM712 to LB 540 (2003)*, 6 March 2003, §§ 1-6, pp. 1-14.

According to Senator Raikes, the problem encountered by expanding the temporary aid adjustment factor, as originally proposed under LB 540, was that school districts receiving equalization aid would suffer an impact greater than those receiving little or no equalization aid. The disproportionate impact caused him to consider an alternative approach to the issue. As Senator Raikes explained during the public hearing:

The exclusion mechanism works when you have a relatively small cut to make. If you have a 1.25 percent reduction in needs, I think the exclusion works okay. If you get a much bigger amount than that, then you run into serious discrepancies between school districts based on the valuation per student. It becomes very dis-equalizing.<sup>2431</sup>

<sup>2431</sup> *Hearing Transcripts, LB 540 (2003)*, 29.

Senator Raikes apologized for filing the alternative approach to the bill so soon before the hearing, but added that the fluidity of the budget crisis required flexibility on the part of everyone concerned. The alternative approach was meant to offer the Education Committee other ideas to examine. “One way to look at this is that it simply opens up to us a range of tools that we can use to address the situation we find ourselves in,” he said.<sup>2432</sup>

While the education community was willing to step to the plate and take its lumps, it did have a limit. Many of the major organizations comprising the K-12 lobby testified in support of the original version of LB 540 and opposed the alternative approach offered by Senator Raikes. Herb Schimek, representing the Nebraska State Education Association (NSEA), reminded members of the Education Committee of the original intent of LB 1059 (1990) to provide greater state financial support of schools while simultaneously providing property tax relief. Schimek said:

Our formula is based on LB 1059, which was referred to the people of the state of Nebraska, and the people voted to keep that law. If we change that law, I think you’re reneging on those people’s vote. And something you need to think about, shouldn’t just be made haphazardly.<sup>2433</sup>

While the NSEA was willing to support the temporary provisions contained in LB 540, it would absolutely not go along with any plan to change provisions related to the Commission on Industrial Relations for the sake of making it more convenient for local school boards.

Prior to Herb Schimek’s testimony, Virgil Horne, representing Lincoln Public Schools (LPS), had testified that the committee should consider temporarily changing the deadline for filing reduction-in-force (RIF) notices. “I would request that this committee consider changing the notification date to June 15,” Horne said.<sup>2434</sup> The deadline had always been April 15<sup>th</sup> of each year, but Horne, an LPS administrator, believed this date was inconsistent with the proposed state aid recertification date of June 15, 2003. If schools were not to learn of the amount of state aid for 2003-04 until June 15<sup>th</sup>, how

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<sup>2432</sup> Id.

<sup>2433</sup> Id., 25.

<sup>2434</sup> Id., 24.



could they be expected to know how much or little of their teaching staff would be allowed to remain employed? This was a reasonable question for the management side of public education, but not to the instructional side. “As far as the changing the rifting date, if you want to see a lot of feathers in the air, that’s a good one to go after,” Schimek testified in reference to Horne’s suggestion.<sup>2435</sup>

This would become the first of several clashes between factions of the public education community during the deliberation of LB 540. In the meantime, the humor of the moment was not lost upon Senator Raikes as he provided closing remarks at the public hearing. “Well, I did jot down one thing, Herb Schimek, feathers in the air, we might have quite a few feathers in the air before this is all over with; and unfortunately, I think, there is probably no other way,” Senator Raikes said in an attempt to breakup the serious tone of the hearing.<sup>2436</sup> In truth, there would be no effort to change the reduction-in-force deadline, but Senator Raikes was nonetheless correct about the inevitable flutter of feathers. The differences would arise between members of the Legislature and even among member groups of the K-12 lobby corps.

The only two sure things that derived from the public hearing on LB 540 were that Senator Raikes planned to designate the bill as his personal priority measure and that the Education Committee was put in a position to prepare a proposal aimed at a floating target. The target, of course, was the magic number, the amount the Appropriations Committee determined to be the amount of reduction in state aid. It certainly would be no use to anyone concerned for the Education and Appropriations Committees to disagree on this important figure. In fact, the best approach would be for the three key standing committees (i.e., Education, Appropriations, and Revenue) to forward a coordinated, unified plan to the floor of the Legislature. But then few regard politics to be perfect.

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<sup>2435</sup> Id., 25.

<sup>2436</sup> Id., 28.

On April 10<sup>th</sup>, exactly one month after the public hearing, the Education Committee advanced LB 540 by a 6-0 vote.<sup>2437</sup> As advanced, LB 540 would:

- Void the February 5, 2003 certification of state aid;
- Maintain the existing 1.25% temporary aid adjustment factor as per LB 898 (2002);
- Maintain the existing authority to exceed the maximum levy to recover lost state aid due to the temporary aid adjustment factor;
- Increase the maximum levy from the current \$1.00 to \$1.04 for 2003-04 and 2004-05 only;
- Increase the Local Effort Rate (LER) from the current \$ .90 to \$ .94 for 2003-04 and 2004-05 only;
- Lower the base spending lid from 2.5% to 0% for 2003-04 and 2004-05 only;
- Permanently extend the spending lid range from 2% to 3% thereby creating a lid range of 0 - 3% for the 2003-05 biennium and 2.5% to 5.5% thereafter;
- Authorize a school board to exceed its annual growth rate by 1% with a 3/4s vote (consistent with existing authority); and
- Provide for a recertification of the 2003-04 state aid by June 15, 2003.<sup>2438</sup>

The major change from the previous two versions of LB 540 was the extension of the spending lid range. Prior to LB 540, the spending lid range was established by adding 2% to the 2.5% base spending lid (i.e., 2.5% to 4.5%). Under LB 540, as advanced from committee, the lid range would become the base lid (0%) plus 3% (i.e., 0% to 3%).

Amended into LB 540 were portions of LB 246 (2003) to provide levy and bonding authority for school districts in the amount of expenditures for modifications to correct life safety code violations, for indoor air quality, or for mold abatement and prevention. The existing law, allowing school boards to levy up to 5.20¢ to cover environmental hazard abatement or accessibility barrier elimination projects, would be amended to allow the additional levy authority to also include life safety, indoor air

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<sup>2437</sup> Committee on Education, *Executive Session Report, LB 540 (2003)*, Nebraska Legislature, 98<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2003, 10 April 2003, 1. Raikes, Stuhr, McDonald, Bourne, Schrock, and Byars voting in favor; Brashear and Maxwell abstaining.

<sup>2438</sup> Committee on Education, *Committee Statement, LB 540 (2003)*, Nebraska Legislature, 98<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2003, 2-4.

quality and mold abatement and prevention projects. The measure also would incorporate provisions of LB 302 (2003) to impose a 0% resource/spending lid on community colleges and to provide a levy exclusion to make up lost state aid (similar to the existing K-12 levy exclusion).<sup>2439</sup>

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Table 141. Savings to State as per Committee  
Amendments to LB 540 (2003)

|                                   | 2003-04        | 2004-05         |
|-----------------------------------|----------------|-----------------|
| Decrease in allowable growth rate | \$42.1 million | \$89 million    |
| Increase in maximum levy          | \$31.1 million | \$33.1 million  |
| Total Reduction in State aid      | \$73.2 million | \$122.1 million |

*Source:* Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 540 (2003)*, prepared by Sandy Sostad, Nebraska Legislature, 98<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2003, 25 April 2003, 1.

As noted in Table 141, the projected savings to the State under the proposed committee amendments to LB 540 was expected to be \$73.2 million in 2003-04 and \$122.1 million in 2004-05. The proposal was in keeping with the preliminary budget report issued by the Appropriations Committee. By this time, the Legislature was facing a projected \$761 million budget gap. The Appropriations Committee proposed to fill the bulk of the gap with budget cuts, not the least of which derived from cuts to state aid to K-12 schools. Roughly half the budget gap, about \$360 million, was expected to be filled by a package of revenue-generating bills.<sup>2440</sup>

*“We’ve got a formula, a system, that isn’t working”*

First-round debate of LB 540 occurred on April 24, 2003, the 68<sup>th</sup> day of the 90-session. Earlier on the same day, the Legislature had advanced LB 759, the main revenue-generating vehicle to help address the budget situation. The debate on LB 759 was anything but smooth and the projection for the amount of revenue to be raised by the measure fell far short of the \$360 million anticipated by the Appropriations Committee. As advanced to second round, LB 759 was expected to generate between \$150 and \$180

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<sup>2439</sup> Id.

<sup>2440</sup> Committee on Appropriations, Preliminary Report, FY2003-04/FY2004-05 Biennial Budget.

million over the following two years. “It ain’t big enough to fill the hole,” remarked Senator Paul Hartnett of Bellevue, adding, “Something’s got to give.”<sup>2441</sup>

For educators, the long awaited debate on the school finance portion of the state budget debate was excruciating. The April 15<sup>th</sup> deadline to file reduction-in-force notices had come and gone, and the Legislature was just at the first stage of debating a major school finance-related bill. On the whole, first-round debate of LB 540 progressed relatively well for Senator Ron Raikes, who guided his colleagues through the intricate details of the legislation. The debate lasted about three hours. The first two hours were devoted to the K-12 portions of the measure and the last hour was filled with discussion on the community college portion of the bill.

In his opening remarks, Senator Raikes provided a brief history of actions taken by the Legislature relevant to school finance, most recently LB 898 (2002) which reduced districts’ formula needs and provided a levy exclusion to make up the difference in lost state aid. He noted that the provisions under LB 898 remain unchanged under LB 540 with the temporary aid adjustment factor and levy exclusion remaining in existence through the next biennium (i.e., 2003-05). As anticipated, the provision to increase the maximum property tax levy for schools was the major item of debate. Senators Ed Schrock, Roger Wehrbein, Floyd Vrtiska noted their reluctance to raising, or potentially raising, property taxes. These same senators, however, also noted their support for K-12 education, which outweighed their objections to higher property tax levies.

But property taxes were not the only area of concern. In fact, the state aid formula itself came under fire at one point, and from a member of the Education Committee no less. “I can’t resist pointing out that this is the second year in a row now that we’ve had to mess with the formula,” said Senator Chip Maxwell of Omaha.<sup>2442</sup>

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<sup>2441</sup> Leslie Reed, “Senators advance tax bill But the measure falls short of closing the state’s \$761 million budget shortfall, and an alternative will be unveiled today,” *Omaha World-Herald*, 25 April 2003, 1a.

<sup>2442</sup> Legislative Records Historian, *Floor Transcripts, LB 540 (2003)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 98<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2003, 24 April 2003, 5044.

“[W]e, the state, make a promise to local districts about how much of the burden we’re going to shoulder and then we back off,” he added.<sup>2443</sup>

Ears tend to perk when dissension emerges among members of a standing committee. Such an occurrence opens doors for political opportunists. And if Senator Maxwell had not yet caught everyone’s attention, what he said next would do the trick:

Educators are trying to hire staff and make budgets for the next year and beyond, projections, and here you’ve got this spectrum going with a hundred-million-dollar range of what money they’re actually going to get. It’s craziness. So I think it’s proof that we’ve got a formula, a system, that isn’t working.<sup>2444</sup>

Naturally, the chair of the committee on which Senator Maxwell served would be expected to address the comments made. “He mentioned that the fact that we need to make changes indicates the formula is not working,” said Senator Raikes, “I would offer a different view.”<sup>2445</sup>

What Senator Raikes said in response to his colleague on the Education Committee may or may not have been appreciated by those paying attention that day, but it did attempt to explain one of the enduring characteristics of the modern school finance formula: its complexity. Raikes said:

Our formula is fashioned in a way that we have flexibility so that if we need to make adjustments, like we need to this year, we can do it within the context of the formula. I’m not going to argue that the formula is perfect. I’ve attempted and failed several times to make a number of changes. But I would tell you that the formula is the consensus, it is our policy consensus at the moment as to how we fund K-12 schools. It’s complicated for one reason — trying to be fair involves complication.<sup>2446</sup>

Senator Raikes’ comments seemed to magnify one of the ongoing frictions between local school officials and the Legislature. School officials want and expect a stable school finance formula with predictable results in state financial assistance from year to year.

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<sup>2443</sup> Id.

<sup>2444</sup> Id., 5045.

<sup>2445</sup> Id., 5056-57.

<sup>2446</sup> Id., 5057.

The Legislature, on the other hand, has no choice but to address the circumstances dealt to it, which on occasion involves severe economic distress and budget shortfalls.

Senator Raikes may have felt put on the spot by Senator Maxwell's comments, but the chair of the Education Committee had to like the outcome of the debate over all. The committee amendments, which became the bill, were adopted by a unanimous 26-0 vote (although 14 were present, not voting, and nine were excused, not voting).<sup>2447</sup> The bill was advanced to second round consideration by a more reassuring 33-0 vote.<sup>2448</sup>

*"We're heavy in administration"*

Select File debate of LB 540 began on May 7, 2003 but would not conclude until the following day. The topic of discussion on May 7<sup>th</sup> was a rehash of a familiar theme of legislative debate: Nebraska has too many school administrators, and classroom teachers need to be protected from budget cuts. The topic of conversation dates back perhaps as far and long as the history of the Nebraska Legislature itself. The more modern version of the subject peaked in 1996 when the Legislature adopted an amendment to LB 299 (1996), the companion spending lid bill to LB 1114 (1996), stating that:

It is the intent of the Legislature that any reductions in a school district budget, made to comply with the budget limitation in the Tax Equity and Educational Opportunities Support Act, affect classroom expenses as a last resort.<sup>2449</sup>

Many of the provisions of LB 299 automatically expired two years after its passage, just prior to the time when the levy limitations became operative. However, the intent language relevant to reductions in school district budgets remained in place permanently.

Senator Pat Bourne of Omaha, on behalf of the Nebraska State Education Association (NSEA), filed an amendment to LB 540 in time for second-round consideration that would take the intent language to the next level.<sup>2450</sup> The amendment proposed to strike the phrase in the existing law that classified it as merely intent

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<sup>2447</sup> NEB. LEGIS. JOURNAL, 24 April 2003, 1405.

<sup>2448</sup> *Id.*, 1406.

<sup>2449</sup> NEB. REV. STAT. § 79-1083.01 (1996).

<sup>2450</sup> NEB. LEGIS. JOURNAL, *Bourne AM1616*, 1 May 2003, 1584.

language and inserted the word “shall” in relation to the objective to affect classroom expenses as a last resort. In other words, Senator Bourne proposed to change the law from intent language to a state mandate. The amendment also expanded the existing statute to define “classroom expenses” to include programs and courses offered as part of the school curriculum and the cost of instructional and administrative employees needed to offer such programs. It would not include technology, equipment, supplies, maintenance, the cost of non-certificated employees, transportation, extracurricular programs and activities, capital expenditures, and national travel.<sup>2451</sup>

As he defended his amendment during floor debate, Senator Bourne produced a chart depicting state rankings of ratios between numbers of classroom teachers and “district-level” administrators.<sup>2452</sup> The chart apparently illustrated that Nebraska ranks as one of the more administrator-laden states in the nation. “[W]e’re heavy in administration here in this state when you compare us to a similar demographically situated state where there is 204 teachers in Utah for every 1 administrator, versus Nebraska, where we have 37 teachers for every administrator,” Bourne said.<sup>2453</sup>

Senator Bourne was not alone in his beliefs. Senators Mike Foley of Lincoln, John Synowiecki of Omaha, Adrian Smith of Gering, Matt Connealy of Decatur, and Don Preister of Omaha all voiced their support of the amendment. Senator Preister said the amendment provides a system of prioritization:

I think this says that it takes one component off the table. It says that the instruction and the classroom work has top priority and that can’t even be played with in a political kind of way to generate opposition to those cuts. It says we, as a legislative body, value what takes place in that classroom, we value it above all of the other extracurricular, transportation, administrative, all of the other kinds of things that could be done to cut when monies are tight, and that’s where I think the priority should lie.<sup>2454</sup>

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<sup>2451</sup> Id.

<sup>2452</sup> *Floor Transcripts, LB 540 (2003)*, 7 May 2003, 6285.

<sup>2453</sup> Id., 6286.

<sup>2454</sup> Id., 6277-78.

Senator Bourne seemed to gain some momentum on the theme of prioritization. “I’d rather have our kids have books than, you know, replacing the fleet, the cars in a school district, or ‘re-Astroturfing’ the stadium,” Bourne said.<sup>2455</sup>

For many school officials, Bourne’s comments as well as the comments of those who supported his amendment were considered demeaning if not outright insulting. How many school board members would knowingly and willingly choose to re-turf the football field over purchasing needed instructional materials? But Bourne admitted his concern for the feelings of school officials were not an issue to him. Said Bourne:

If this hurts the administrators’ feelings or if they’re upset by this, it doesn’t matter to me because I think that, you know, the kids are a priority, the students are a priority, and that’s all I can say and that’s my intent here, is that, again, that we recognize that priority, that the kids of our students are the future of this state.<sup>2456</sup>

Of course, school board members too would have had hard feelings about the Bourne proposal. After all, school boards approve the budgets and the spending priorities at the local level. Were school boards incapable of establishing the appropriate priorities in the best interests of the students under their care?

Senator Raikes rose to speak against the amendment several times. He did not necessarily disagree with the concept of reducing the number of administrators, but he did have a problem with mandating such a scheme upon school boards. “This would convert that intent language into a mandate,” Raikes said, “It would trap schools into a situation where, despite declining enrollments, they couldn’t reduce their teaching staff, they couldn’t reduce administrators.”<sup>2457</sup> Senator Raikes’ remarks seemed to highlight the contradiction between Senator Bourne’s objective to reduce the number of administrators and the language he chose for his own amendment. Bourne defined “classroom expenses” to include “programs and courses offered as part of the school curriculum and

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<sup>2455</sup> Id., 6279.

<sup>2456</sup> Id., 6291.

<sup>2457</sup> Id., 6283.



the cost of teaching and administrative certificated employees needed to offer such programs.”<sup>2458</sup> Would this not protect administrative staff as well as instructional staff?

Joining Senator Raikes in opposition to the amendment was fellow Education Committee member Senator Elaine Stuhr of Bradshaw, herself a former educator. “I feel that it would tie the hands of those that have been elected to serve in that capacity and those that have been selected as being administrators of our schools,” Senator Stuhr said, “I believe that it would limit the local district’s ability to control their budget.”<sup>2459</sup> Senator Roger Wehrbein of Plattsmouth echoed the concern for local control of such decisions. “I think that leads to all kinds of unintended consequences that will certainly not accomplish what we might want to do and, in the same process, cause some serious damage at the local level,” he said.<sup>2460</sup> Senator Wehrbein also reiterated concerns brought forth by Senator Raikes and others about potential lawsuits against school boards deemed to have violated the mandate contained in the amendment.

Behind the scenes, the Bourne amendment pitted various members of the K-12 lobby against one another, perhaps at a time when unity was most needed. The Nebraska Council of School Administrators (NCSA), in particular, found itself at odds with those promoting the amendment. And the forces at work had not escaped Senator Bourne’s attention. “I’ve been in the Legislature five years,” Senator Bourne said during his closing comments.<sup>2461</sup> “It’s interesting to me what a well-organized group with a blast e-mail type system can do to generate what I would call the Chicken Little syndrome,” he added.<sup>2462</sup> Whether the sky was falling or not, the curtain was certainly falling on the Bourne amendment, which was defeated by an 8-28 vote.<sup>2463</sup>

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<sup>2458</sup> NEB. LEGIS. JOURNAL, *Bourne AM1616*, 1 May 2003, 1584.

<sup>2459</sup> *Floor Transcripts, LB 540 (2003)*, 7 May 2003, 6281.

<sup>2460</sup> *Id.*, 6284.

<sup>2461</sup> *Id.*, 6298.

<sup>2462</sup> *Id.*

<sup>2463</sup> NEB. LEGIS. JOURNAL, 7 May 2003, 1678.

*The “Bourne again” amendment*

Senator Pat Bourne may have been down but certainly not out. Following the rejection of his first amendment on May 7<sup>th</sup>, he launched yet another campaign on the following day to amend LB 540. This time the subject was the proposed zero percent spending lid to be imposed upon schools for the two-year period specified in the legislation. On behalf of Omaha Public Schools (OPS), Senator Bourne introduced and advocated an amendment to substantially increase the spending authority of school districts in 2005-06, the year after the zero percent lid was set to expire. In essence, the amendment would allow schools to double their allowable growth rate for 2005-06 in order to recapture some of the spending authority lost during the previous two years.<sup>2464</sup>

Senator Bourne said the amendment would require the Legislature to track the spending growth of school districts as if the zero percent base lid did not exist. This would allow everyone to witness just how much school expenditures would have grown under normal circumstances. In fact, it was estimated that the Bourne amendment would require an additional \$49 million in state aid for 2005-06. However, Bourne explained, the Legislature would not be obligated to fund or support that amount of additional spending once the zero percent lid expires:

But again, that’s not a real number ... we don’t have to fund that. It just simply allows us to say, okay, had we left the formula alone, had we left in agreement what we said we would do in terms of state aid, the number would be \$49 million higher in four years than it is today. It doesn’t increase our budget, doesn’t increase our contribution there. It just simply allows us to track what it would have been.<sup>2465</sup>

But no matter how thorough Senator Bourne’s explanation, the nagging question was, “Why?” The political nature of the amendment seemed obvious, especially in light of the increasing talk from OPS officials about legal action against the State concerning the state aid formula. In fact, OPS would file suit shortly after the 2003 Session.

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<sup>2464</sup> NEB. LEGIS. JOURNAL, *Bourne AM1757*, 8 May 2003, 1684-87.

<sup>2465</sup> *Floor Transcripts, LB 540 (2003)*, 8 May 2003, 6338.

To the amusement of those on the floor and a welcome break from the tense debate, Senator Raikes referred to the second Bourne proposal as the “Bourne again” amendment.<sup>2466</sup> But Senator Raikes was not going for this Bourne proposal either. Raikes noted that the two Omaha area senators pushing the amendment (Bourne and Maxwell) spoke of the integrity of the Legislature in relation to its commitment to schools and the state aid formula. “We should honor whatever our formula is,” Senator Maxwell said, “We can’t just change the dials and change the settings from year to year to accommodate our problems.”<sup>2467</sup> To Senator Raikes, however, the Bourne amendment was anything but honorable, or even honest. “To me, I interpret that as directly opposite of honest,” said Raikes.<sup>2468</sup> “That is doing something to try to make a political or other point, but not one that represents good fiscal management,” he added.<sup>2469</sup>

The discussion evolved into a course on the mechanics of the school spending limitation. Senator Raikes explained to his colleagues that, even under the existing 2.5% base spending lid, school district spending increased about 5.5%. The individual growth rates certified to each school district by the Department of Education ranged between 2.5% and 4.5%. School districts were the only political subdivisions that had such a statutory range of spending growth. However, in addition to the statutory lid range, school boards may exceed their applicable growth rate by another 1% with a supermajority (3/4s) affirmative vote. In addition, there were various factors that might increase spending authority such as increases in enrollment. Raikes also noted that school districts, like other political subdivisions, are authorized to use interlocal agreements with other entities to procure services. The amounts expended by virtue of interlocal agreements are excluded from the spending limitations.

Therefore, Raikes argued, the proposed zero percent base spending lid under LB 540 would not necessarily create a zero percent growth in spending. In fact, the

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<sup>2466</sup> Id., 6342.

<sup>2467</sup> Id., 6336.

<sup>2468</sup> Id., 6339.

<sup>2469</sup> Id.

legislation increases the lid range from 2% to 3% so that the applicable allowable growth rate of each district would be set at between 0% and 3%. School boards would retain the authority to exceed the allowable growth rate by 1% by a supermajority vote, enrollment increases would continue to be addressed, and interlocal agreements remained an available option. The temporary decrease in the spending limitation was necessary, Raikes believed, in relation to the temporary increase in levy authority. The chair of the Education Committee wanted to help schools by offering a higher maximum levy, but he did not want to hand out blank checks for unbridled growth in spending.

The Bourne amendment, Raikes concluded, “definitely weakens our effort to make the signal to schools that that is what we need to do, plus I would argue that it definitely fiscally impacts school aid in the future.”<sup>2470</sup> In truth, the Bourne amendment would have merely added to what was expected to be a tremendous increase in state aid at the conclusion of the 2003-05 biennium, assuming LB 540 was passed into law. Estimates ranged between \$140 and \$160 million in additional state aid following the two-year period wherein schools would be subjected to the lower spending lid and higher property tax levy. The need side of the formula would continue to rise during this two-year period. Just as Senators Bourne and Maxwell alleged, the necessary spending of schools would not stop or otherwise be suspended just because the Legislature imposed a zero percent lid. Teachers were not about to abide a freeze on salaries for two years, maintenance costs would exist no matter what the Legislature did, vendors were not about to hold off price increases to accommodate schools, utility costs would continue to be dictated by supply and demand, etc.

The floor discussion on the Bourne amendment primarily focused on the viewpoints of four members of the Education Committee, Senators Bourne and Maxwell on one side and Senators Raikes and Stuhr on the other. “We on the Education Committee are a tight group,” Senator Raikes joked, “We hardly ever disagree, as you can see.”<sup>2471</sup> But the amendment did produce a good examination of the spending

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<sup>2470</sup> Id.

<sup>2471</sup> Id., 6342.

limitation and how it works. It also heightened the Legislature's awareness that LB 540 would have fiscal consequences after the 2003-05 biennium. The second Bourne amendment to LB 540 failed on a relatively close 18-26 vote.<sup>2472</sup>

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Table 142. Record Vote: Bourne AM1757 to LB 540 (2003)

*Voting in the affirmative, 18:*

|          |            |          |          |            |
|----------|------------|----------|----------|------------|
| Bourne   | Connealy   | Hartnett | Mines    | Stuthman   |
| Byars    | Cudaback   | Kruse    | Preister | Synowiecki |
| Chambers | Cunningham | Louden   | Quandahl |            |
| Combs    | Erdman     | Maxwell  | Schimek  |            |

*Voting in the negative, 26:*

|          |         |          |          |          |
|----------|---------|----------|----------|----------|
| Aguilar  | Foley   | Landis   | Redfield | Vrtiska  |
| Baker    | Friend  | McDonald | Schrock  | Wehrbein |
| Brashear | Hudkins | Pedersen | Smith    |          |
| Bromm    | Jensen  | Pederson | Stuhr    |          |
| Burling  | Jones   | Price    | Thompson |          |
| Engel    | Kremer  | Raikes   | Tyson    |          |

*Present and not voting, 4:*

|         |         |         |        |
|---------|---------|---------|--------|
| Beutler | Janssen | Johnson | Mossey |
|---------|---------|---------|--------|

*Excused and not voting, 1:*

Brown

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*Source:* NEB. LEGIS. JOURNAL, 8 May 2003, 1687-88.

The second Bourne proposal would be the last amendment debated on LB 540 during Select File consideration. The Legislature voted to advance the legislation to the third and final round of debate on a 46-1 vote.<sup>2473</sup>

*Another Penny*

By mid May, the Legislature was close to meeting the \$761 million budget shortfall. Roughly half the amount would be met through state spending reductions in the mainline budget bill, LB 407, and other companion bills. And roughly half the amount would derive from various tax increases and tax policy changes under LB 759. By May

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<sup>2472</sup> NEB. LEGIS. JOURNAL, 8 May 2003, 1687-88.

<sup>2473</sup> *Floor Transcripts, LB 540 (2003)*, 15 May 2003, 1688.

14<sup>th</sup>, the Legislature was down to about a \$16 million gap standing in the way of a balanced budget proposal. Some final decisions had to be made.

The Legislature voted to further reduce state aid to education by \$16 million for the biennium. Although no overt deal was made on the floor of the Legislature, the behind-the-scenes negotiations involved an understanding that an amendment would be offered to LB 540 in order to recapture the additional lost state aid. The chosen method was to increase the maximum levy from \$1.04, as prescribed in the bill, to \$1.05 for each year of the 2003-05 biennium.

On May 15, 2003, the Legislature took up final-round consideration of LB 540. As expected, Senator Raikes had filed a motion the day before to pull the measure back to Select File for specific amendment in order to adjust the maximum levy provision.<sup>2474</sup> This important move would mark the last major piece of the biennium budget package. “This is obviously an important and difficult decision,” Senator Raikes said of his amendment.<sup>2475</sup> He explained that each penny added to the maximum levy would account for about \$8 to \$10 million in state aid to education. This would correlate with the action of the Legislature the day before with regard to LB 407 in which state aid was reduced by \$8 million for each year of the biennium.

The response by his fellow legislators was mixed, but generally supportive. Senator Jim Cudaback of Riverdale represented the typical view in that he vowed not to raise property taxes any further, but the need to protect K-12 education weighed heavier in his mind. “I guess only a fool never eats his crow when he’s starved, and I guess we’re starved here on this issue,” Senator Cudaback said, “So I’m going to eat some crow here.”<sup>2476</sup> Speaker Curt Bromm of Wahoo had a similar view. “[T]he changes that we made to LB 407 to reduce the state aid to our K-12 schools really only works if we do this,” he said, “Unless someone has a better plan.”<sup>2477</sup>

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<sup>2474</sup> NEB. LEGIS. JOURNAL, *Raikes AM1926*, 14 May 2003, 1821.

<sup>2475</sup> *Floor Transcripts, LB 540 (2003)*, 15 May 2003, 6926.

<sup>2476</sup> *Id.*, 6946.

<sup>2477</sup> *Id.*, 6930.

And there were some policymakers who thought they had a better plan, although perhaps not to the immediate problem. Senator Chip Maxwell used the occasion of the Raikes amendment to once again label the current school finance formula a broken system. Said Maxwell:

K-12 got jerked around last year. K-12 is getting jerked around in a big way this year, including another little jerk yesterday. K-12 is going to get jerked around every year that we continue using an unrealistic formula that produces unrealistic numbers. K-12ers, when you're ready to break out of this mess and get into your own state variable tax that provides you stable, solid, increasing revenue, please talk to me.<sup>2478</sup>

The “K-12ers” to whom he referred were apparently the education groups and individual school districts comprising the K-12 education community. “Until then, I wish you good luck thrashing around in the current dysfunctional system,” Maxwell said.<sup>2479</sup> The Omaha legislator would introduce his own comprehensive school finance reform bill during the 2004 Session, but the measure would never emerge from committee.<sup>2480</sup> Senator Maxwell said he would not support the additional penny on the maximum levy, but that he would support passage of the legislation. And he kept his word.

Senator Raikes closed on the motion to return the bill to Select File with the caution that, “If we don’t do this, our budget bill does not match our funding formula.”<sup>2481</sup> It was that simple. The Legislature had but nine days remaining in the session, which would make it difficult to go back to the drawing board in order to investigate new options. The Legislature accepted Senator Raikes’ proposal to increase the maximum levy by a 27-8 vote.<sup>2482</sup>

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<sup>2478</sup> Id., 6942.

<sup>2479</sup> Id.

<sup>2480</sup> In 2004, Senator Maxwell introduced LB 1248 to fund schools by a uniform \$6000 per student subsidy. The funding for schools would derived from a state tax on all taxable income and a state property tax. Maxwell also filed LR 228CA, a constitutional amendment to allow the state to levy a tax on real property to fund K-12 education. The Education Committee took no action on either measure.

<sup>2481</sup> *Floor Transcripts, LB 540 (2003)*, 15 May 2003, 6947.

<sup>2482</sup> NEB. LEGIS. JOURNAL, 15 May 2003, 1852.

*“This critical spending issue”*

A showdown between the Legislature and Governor Johanns was relatively certain going into final-round consideration of the biennium budget package. The Governor had threatened to veto the entire budget if lawmakers took action to close the Lincoln Correctional Center. And such a plan was, in fact, incorporated into the budget package. Therefore, political insiders and lawmakers alike were carefully watching the vote tallies on May 20, 2003 to determine whether the various bills that comprised the budget package were “veto-proof.” A motion to override a veto requires 30 affirmative votes, but it first takes a solid vote on Final Reading to determine what kind of strength a measure has overall. For supporters of the budget package, the news would be good.

The Legislature voted to pass LB 407, the mainline budget bill, by a 37-11 vote.<sup>2483</sup> LB 540, the school finance bill, was passed by a solid 42-6 vote.<sup>2484</sup> The revenue measure, LB 759, was passed by a 36-13 vote.<sup>2485</sup> The package would produce a \$5.4 billion biennium budget with tax increases to generate some \$343 million in new revenue. The package would allow schools to raise their property tax levies to offset lost state aid. Total state spending would continue to grow under the proposal. In 2003-04, spending would increase by 1.3%, and in 2004-05 spending would increase by 3.6%.<sup>2486</sup>

Governor Johanns had intimated that he would likely take the allotted five days to consider any veto actions, and he would hold true to his word. On May 26, 2003, the Legislature was officially told of the Governor’s action to veto the entire budget package, a somewhat unusual move, but not entirely unexpected. The Legislature had all but abandoned the Governor’s initial budget recommendations early in the legislative process. Many believed the Governor had offered an unworkable if not unconscionable budget plan at the outset of the session, especially as it related to public education. Johanns had proposed to cut state aid to education and special education funding by 10%

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<sup>2483</sup> Id., 20 May 2003, 1945.

<sup>2484</sup> Id., 1957.

<sup>2485</sup> Id., 1959.

<sup>2486</sup> Leslie Reed, “Legislature approves budget, tax-increase bills; Both measures receive enough votes to override a veto by Gov. Mike Johanns,” *Omaha World-Herald*, 21 May 2003, 1a.



and then freeze the appropriation for the second year of the biennium. He did not seem to care what impact this would have on school districts, parents, and, most especially, students. In fact, for some policymakers it was relatively easy to take the high road with regard to supporting tax increases given the Governor's attitude about public education.

In separate letters for each vetoed measure, Governor Johanns outlined his objections and reasons for returning the bills without his signature. "Legislative Bill 407 and certain other budget-related legislation you have presented me are in conflict with the basis of my original budget recommendations and my continuing position about the size of state spending that can be afforded by the citizens of Nebraska during these difficult economic times," Johanns wrote about the budget bill.<sup>2487</sup> "Once again, the Legislature is balancing the State's budget by asking Nebraskans to pay more taxes from their already limited resources," the Governor wrote with regard to the tax bill (LB 759).<sup>2488</sup>

Governor Johanns' veto message concerning LB 540 was much shorter and to the point. He acknowledged and appreciated the cuts to state aid, something he advocated himself, but he could not abide any effort by the Legislature to make schools whole. Johanns wrote:

I appreciate the difficult decision that the Legislature has made to address our State's current budget shortfall by including a reduction in public school aid and community college aid funding for the next two fiscal years. I cannot, however, support the provisions of the bill that raise the maximum allowable levy from \$1.00 to \$1.05 without a vote of the people. I firmly believe that Nebraskans are asking for greater spending restraint at all levels of government. That is not the approach taken by this legislation. Rather, if the full authority granted by LB 540 were exercised by schools and community colleges, property taxes levied statewide in the next fiscal year, alone, could be increased by \$63 million dollars.

LB 540 provides a two-year approach to the direction that our State is heading with respect to our school aid formula. The bill fails to address the anticipated growth that the current formula will generate in the out-biennium and into the future. I believe that, collectively, we need to address this critical spending issue.<sup>2489</sup>

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<sup>2487</sup> NEB. LEGIS. JOURNAL, 26 May 2003, 2023.

<sup>2488</sup> *Id.*, 2025.

<sup>2489</sup> *Id.*, 2024.

The so-called “critical spending issue” would, in fact, be something for future Legislature’s to wrangle over. In the ultimate irony, Governor Johanns would, in 2004, develop an appreciation for the work of the Legislature in 2003.

On May 27, 2003, one day after the veto actions, the Legislature convened to deliberate a list of motions to override vetoes. The motions were filed by the respective chairs of the standing committees from which the various components of the budget package derived. All motions would meet with success. When it came time to consider Senator Raikes’ motion to override the veto of LB 540, various members of the body rose to voice their support for the effort. Perhaps no one captured the moment better than Senator Ed Schrock of Elm Creek. “[A]s a farmer, if you eat your seed corn, you don’t harvest much,” he said, “And if we don’t fund our education, we’re not going to harvest a very good crop of students.”<sup>2490</sup> LB 540 was passed into law over the Governor’s objections by a 44-4 vote.<sup>2491</sup> The measure actually gained two affirmative votes in the vote to override Governor Johanns’ veto.

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Table 143. 2003 Budget Package: Votes to Pass and Override Gubernatorial Vetoes

|                               | <i>Vote to Pass<br/>May 20, 2003</i> | <i>Vote to Override Veto<br/>May 27, 2003</i> |
|-------------------------------|--------------------------------------|---|
| LB 407 (Mainline budget bill) | 37-11                                | 37-11   |
| LB 540 (School finance bill)  | 42-6                                 | 44-4  |
| LB 759 (Revenue bill)         | 36-13                                | 37-12   |

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*Source:* NEB. LEGIS. JOURNAL, 27 May 2003, 2045, 2046, 2048.

Table 144. Summary of Modifications to TEEOSA as per LB 540 (2003)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i> | <i>Description of Change</i>  |
|------------------|---------------------|---------------------------|---|
| 4                | 79-1008.01          | Equalization aid; amount  | Amended by replacing the 90¢ levy rate currently used for the calculation of “lop-off” with language making the levy rate to be used equal to the maximum levy minus 10¢. |

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<sup>2490</sup> *Floor Transcripts, LB 540 (2003), 27 May 2003, 7818.*

<sup>2491</sup> NEB. LEGIS. JOURNAL, 27 May 2003, 2048.

Table 144—Continued

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>  | <i>Description of Change</i>  |
|------------------|---------------------|--|---|
| 4                | 79-1008.01          | Equalization aid; amount<br><i>Continued</i>                         | For the calculation of “small school stabilization” for school fiscal years through 2004-05, the levy rate of \$1.00 used in the calculation would be replaced with language making the levy rate to be used equal to the maximum levy.   |
| 5                | 79-1022             | Distribution of income tax receipts and state aid; effect on budget  | Changed the deadline for the certification of state aid from February 1 to June 15 for 2003-04. The deadline for notifying the Governor and Legislature of the total aid amount was moved from February 1 to June 15 for 2003-04.   |
| 6                | 79-1022.02          | School year 2003-04 certification null and void; recertification     | Amended by declaring the 2003-04 certifications of state aid, applicable allowable growth rates, and Class I budget authority to be null and void. A recertification would be required to be completed on or before June 15, 2003.  |
| 7                | 79-1025             | Basic allowable growth rate; allowable growth range                  | Increased the allowable growth range from 0-2% to 0-3%. The allowable growth range allows additional growth for school systems that spend less than their formula needs. The amount of additional allowable growth depends on how much less spending is than formula needs. Systems that spend 20% below their formula needs are allowed an additional allowable growth equal to the range maximum. |
| 8                | 79-1026             | Applicable allowable growth rate; determination; target budget level | Amended by changing the deadline for the certification of applicable allowable growth rates from February 1 to June 15 for 2003-04.   |

Source: Legislative Bill 540, *Slip Law*, Nebraska Legislature, 98<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2003, §§ 4-8, pp. 4-6.

### LB 67 - Technical Cleanup

At the public hearing for LB 67 on January 21, 2003, Tammy Barry, Legal Counsel for the Education Committee, introduced the bill as a technical cleanup bill on behalf of the Department of Education. “And for those of you that are new to the committee, this will be the most boring bill that you hear this session,” she said jokingly.<sup>2492</sup> She was not too far off the mark, although the legislation would carry several important provisions before it was all said and done. In fact, the measure was placed on the legislative fast track in order to fix a component of the school finance formula in time for the February certification of state aid.

<sup>2492</sup> Committee on Education, *Hearing Transcripts, LB 67 (2003)*, Nebraska Legislature, 98<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2003, 21 January 2003, 17.

The issue arose after the hearing. It was discovered that an error existed in one of the sections of the TEEOSA, which, if left uncorrected, would cause a miscalculation of the cost growth factor. The cost growth factor is used within one of the more intricate sub-formulas. It is used to calculate the average formula cost per student in each of the three cost groupings (standard, sparse, and very sparse). And this is how it works.

Each year the Department of Education calculates the average formula cost per student in each cost grouping by dividing the total estimated general fund operating expenditures (GFOE) for the cost grouping by the total adjusted formula students for all local systems in the cost grouping, as follows:

$$\begin{array}{rcccl} \text{Total estimated} & & \text{Total adjusted} & = & \text{Average} \\ \text{GFOE expenditures} & + & \text{formula students} & & \text{formula cost per} \\ \text{for the cost} & & \text{all local systems} & & \text{student in each} \\ \text{grouping} & & \text{in the cost grouping} & & \text{cost grouping}^{2493} \end{array}$$

This calculation is performed for each of the three cost groupings. However, in order to arrive at the total estimated GFOE for each cost grouping, the department must multiply the total adjusted GFOE for all local systems in the cost grouping by a *cost growth factor*.

The cost growth factor for each cost grouping is equal to the sum of:

- (a) One; plus
- (b) 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 for the most recently available complete data year divided by the average daily membership attributable to the cost grouping for the most recently available complete data year (however, the ratio may not be less than zero); plus
- (c) the basic allowable growth rate for the school fiscal year in which the aid is to be distributed; plus
- (d) the basic allowable growth rate for the school fiscal year immediately preceding the school fiscal year in which the aid is to be distributed; plus
- (e) one-half of any additional growth rate allowed by special action of school boards for the school fiscal year in which the aid is to be distributed as determined for the school fiscal year immediately preceding the school fiscal year when aid is to be distributed; plus

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<sup>2493</sup> NEB. REV. STAT. § 79-1007.02 (Cum. Supp. 2002).

- (f) one-half of any additional growth rate allowed by special action of the school boards for the school fiscal year immediately preceding the school fiscal year when the aid is to be distributed.<sup>2494</sup>

Naturally, one of the important elements of the cost growth factor is the proper calculation of formula students. And this is where the error in the formula was discovered.

As it turned out, the existing cost growth factor did not account for “tuitioned students.” Tuition students, as one might suspect, are students in kindergarten through grade twelve of the district whose tuition is paid by the district to some other district or education agency.<sup>2495</sup> These students needed to be accounted for in the state aid formula in order to produce an accurate cost growth factor, which ultimately produces an accurate average formula cost per student in each of the three cost groupings.

This may seem like a rather prolonged and overly detailed explanation of one change in one component of one sub-calculation within the state aid formula. And indeed it is. But it serves to illustrate the intricate nature of the formula and the extent to which those monitoring the formula perform their duties. And, given the complexity of some portions of the formula, it is not difficult to envision how mistakes can be made, no matter how diligent the effort.

If left unchecked, the error most likely would not have produced wild aberrations in the calculation of state aid, but it would have meant that a few individual districts would not have received the full allotment of financial assistance from the State. It would have meant that some districts would have received slightly more assistance than deserved. In short, it would not have been accurate.

Accordingly, Senator Raikes filed an amendment to LB 67 on the day it was taken up for first-round consideration. The amendment corrected the language in existing law relevant to the cost growth factor. It also delayed the date for certification of the 2003-04

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<sup>2494</sup> Id.

<sup>2495</sup> Id., § 79-1003(45) (Cum. Supp. 2002).

state aid from the usual February 1 to February 5.<sup>2496</sup> This would buy time, so to speak, for the department to rerun the state aid computation with the proper data elements. The trick, of course, would be to pass LB 67 into law as quick as possible since the department cannot perform a rerun unless the applicable statute is first corrected.

The legislation was advanced from committee on January 21<sup>st</sup> and passed on January 30<sup>th</sup>.<sup>2497</sup> The bill was signed into law on January 30<sup>th</sup>, which made it operative on February 1, 2003.<sup>2498</sup> The department reran the state aid computation and certified the proper amounts to each school district by February 5<sup>th</sup>. And for all the work of all concerned, the effort was largely in vain. LB 540 (2003) would become a major part of the budget fix package of 2003 and would void the February 5<sup>th</sup> certification of state aid. A new state aid certification would be issued on June 15, 2003.

Naturally, no one knew what lay ahead when Senator Raikes was asking for a fast track process on LB 67. In the absence of a crystal ball, the Legislature had to deal with each issue or each emergency as they arose. For the Education Committee, the first emergency was correcting a mistake in the state aid formula and moving it forward as fast as possible in order to meet the requirements of existing law.

There were other provisions of LB 67 that still had significance. For instance, the measure outright repealed laws pertaining to the payment of state aid for the cost of reorganization studies by school districts.<sup>2499</sup> In 2002-03, there was \$18,400 of general funds appropriated for the reimbursement of school districts for reorganization studies. Schools were eligible to receive up to \$2,500 for the cost of one-fourth of a reorganization study. Upon approval of a reorganization plan by the school boards and legal voters of the participating districts, the school districts would receive an additional one-fourth of the cost of the study, up to \$2,500. During the public hearing for LB 67, Russ Inbody of the Department of Education explained the elimination of this provision:

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<sup>2496</sup> NEB. LEGIS. JOURNAL, *Raikes AM27*, 23 January 2003, 288-291.

<sup>2497</sup> NEB. LEGIS. JOURNAL, 30 January 2003, 364.

<sup>2498</sup> *Id.*, 379.

<sup>2499</sup> Legislative Bill 67, *Slip Law*, Nebraska Legislature, 98<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2003, § 34, p. 17.

[T]he budget was cut in one of the Special Sessions. And the past two years it's been less than \$20,000 that we've had requested for payments. So in helping the fiscal crisis, we thought this would be a good idea, because it wasn't being used fully.<sup>2500</sup>

The idea to offer financial assistance for reorganization studies originated under LB 1050, the comprehensive school finance bill of 1996. The legislation mandated such studies in order to apply for other reorganization incentives contained in the bill, so the Legislature opted to provide limited financial assistance to prepare the studies.

LB 67 also extended the time period for judicial review proceedings of special education placements from 30 days to two years. Under prior law, proceedings for judicial review had to be instituted by filing a petition in the district court of the county in which the main administrative offices of the school district were located within 30 days after service of the final decision and order on the party seeking the review.<sup>2501</sup> The provision in LB 67 was an obvious attempt to benefit those who might choose to initiate such proceedings.

Table 145. Summary of Modifications to TEEOSA  
as per LB 67 (2003)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>  | <i>Description of Change</i>  |
|------------------|---------------------|--|---|
| 11               | 79-1007.02          | Cost groupings; average formula cost per student; local system's formula need; calculation               | Technical change to assure that the students used to compute the cost growth factor are comparable and that state aid is not erroneously allocated based on an incorrect growth rate. |
| 12               | 79-1022             | Distribution of income tax receipts and state aid; effect on budget.                                     | Changed the state aid certification date from February 1 <sup>st</sup> to February 5 <sup>th</sup> for 2003 only.   |
| 13               | 79-1023             | Class II, III, IV, V, or VI district; general fund budget of expenditures; limitation                    | Changed the term "applicable allowable growth percentage" to "applicable allowable growth rate."  |
| 14               | 79-1024             | Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect | Removed requirement that the Auditor of Public Accounts consult with NDE before reviewing budget statements.  |

<sup>2500</sup> *Hearing Transcripts, LB 67 (2003)*, 21 January 2003, 23.

<sup>2501</sup> Legislative Bill 67, *Slip Law*, Nebraska Legislature, 98<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2003, § 27, p. 16.

Table 145—Continued

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>  | <i>Description of Change</i>   |
|------------------|---------------------|--|--|
| 14               | 79-1024             | Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect<br><i>Continued</i> | Added the word “shall” to the requirement for the Auditor to notify the Commissioner of a district that does not submit a budget or required corrections to a budget. Changed the term “applicable allowable growth percentage” to “applicable allowable growth rate.”   |
| 15               | 79-1026             | Applicable allowable growth rate; determination; target budget level   | Repealed obsolete language regarding school fiscal years and changed the date for certification of the applicable allowable growth rate (Budget Factors) to February 1 <sup>st</sup> of each year.   |
| 16               | 79-1027             | Budget; restrictions   | Changed the term “applicable allowable growth percentage” to “applicable allowable growth rate.”   |
| 17               | 79-1027.01          | Property tax requests exceeding maximum levy; reductions; procedure  | Added language to clarify that a Class VI high school may require a Class I school within its system to reduce their tax request (Class I) if the system tax request exceeds the statutory maximum levy plus exclusions.   |
| 18               | 79-1028             | Applicable allowable growth rate; Class II, III, IV, V, or VI district may exceed; situations enumerated                     | Clarified that a Class II-VI may exceed the local system’s applicable allowable growth rate in subsection (1), changes the date in subsection (2) for recovery of projected formula students, and adds language in subsection (3) to reflect current practice for recovering building operation and maintenance exclusions. Changed the term “applicable allowable growth percentage” to “applicable allowable growth rate.” |
| 19               | 79-1029             | Basic allowable growth rate; Class II, III, IV, V, or VI district may exceed; procedure                                      | Changed the term “applicable allowable growth percentage” to “applicable allowable growth rate.”   |

Source: Legislative Bill 67, Nebraska Legislature, 98<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2003, §§ 11-19, pp. 5-10.

### G. School Organization Interim Study

Toward the conclusion of the 2003 Session, Senator Raikes along with 20 other lawmakers, sponsored an interim study resolution, LR 180, to examine:

[T]he organizational structure of elementary and secondary education in Nebraska and to develop a proposal to refine the structure to support an effective and efficient delivery of education to the students of Nebraska now and into the future.<sup>2502</sup>

<sup>2502</sup> NEB. LEGIS. JOURNAL, *Legislative Resolution 180 (2003)*, 15 May 2003, 1864-65. In addition to Senator Raikes, LR 180 was co-sponsored by Senators Wehrbein, Byars, Bromm, Bourne, Pedersen, Stuhr,



Legislative staff performed the bulk of the data compilation, including staff employed by members of the Education Committee, Appropriations Committee, and Revenue Committee. Staff from the Legislative Fiscal Office and Department of Education also participated in the in-depth analysis.

The “LR 180 Staff,” as they referred to themselves, actually began meeting before the end of the 2003 Session knowing the immensity of the task ahead of them. They consulted with sources and experts outside the Legislature, including professors at the University of Nebraska. The basic plan was to divvy up the items to be researched among the various staff according to their own fields of expertise. The staff planned to release the findings of their study in late August 2003. The materials would be handed over to the Education Committee for review. The committee would in turn develop a number of scenarios or options for purposes of public discussion at a series of hearings to be held in the fall of 2003. Legislation would then be drafted in time for the 2004 Session.

The staff collected data regarding the existing school structure, data regarding demographic trends in Nebraska, including predicted changes in the concentration of students in various geographic areas, and analysis of regional and national information regarding organizational structures of elementary and secondary education. The underlying objective and foundation of the data collection was to develop “a process to move Nebraska elementary and secondary education toward a structure that will effectively and efficiently support education with the available funds, taking into account predicted demographics and potential accreditation rules.”<sup>2503</sup>

The data was formally unveiled at a special briefing on August 21, 2003 at the State Capitol. Attending the briefing were various members of the Legislature, the staff who performed the analysis, lobbyists, school officials, and news media. Over the course of several hours, members of the LR 180 Staff reviewed the findings within their respective research assignments. Some of their “observations” are provided in Table 146.

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Schrock, Maxwell, Jensen, Janssen, Kremer, Hartnett, Jones, Brashear, Baker, Connealy, Beutler, Loudon, McDonald, and Synowiecki.

<sup>2503</sup> NEB. LEGIS. JOURNAL, *Legislative Resolution 180 (2003)*, 15 May 2003, 1865.

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Table 146. Observations: Nebraska Historical And Current Data  
Prepared and submitted by the LR 180 Staff (2003)

- I. *Number of Administrators* - Historically the number of pupils per certificated administrative staff has been dropping despite declining numbers of school districts. Another observation is that as districts increase in size so do the number of midlevel administrators. There does not appear to be much research on the optimum number of students per administrator or teachers per administrator.
- II. *Pupil/Teacher Ratios* - State pupil/teacher ratios have been affected by the largest school districts lowering their pupil/teacher ratios at both elementary and secondary levels.
- III. *General School Spending Patterns* - The percentage of statewide school expenditures attributed to different district size categories is not very different than the percentage of enrollment attributed to each of the categories. Small school spending is growing at a significantly slower rate than spending for larger school districts. However, declining enrollments in the small districts v. increasing enrollment in the larger districts affects per pupil expenditures. The percent of school district budgets expended on various categories does not vary dramatically based on district size.
- IV. *Administrative Costs* - A table comparing administrative costs for different sizes of districts reveals an interesting phenomenon. The administrative costs go down as school districts increase in size, but the support services costs increase at about the same rate, canceling out the savings.
- V. *Historical Savings* - Don Uerling, a professor at the University of Nebraska-Lincoln, completed a study of costs for several recently reorganized districts. The staff group enhanced the study by analyzing a few more reorganized districts using Uerling's methods. Both Uerling and the staff group found that the costs for reorganized districts two years later were less than predicted if the consolidating districts remained separate. However, the savings vary dramatically, which may depend on local decisions made in implementing the reorganization.

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*Source:* Legislative Resolution 180, "School District Organization Background Information," prepared by the L.R. 180 Staff, Interim 2003.

The LR 180 Staff found that in 2003 Nebraska ranked high nationally in terms of total number of school districts, and near the national average in expenditures per pupil. However, the expenditures per pupil varied among different sizes of school districts. The school size grouping with the lowest expenditures per pupil contained districts with 2,000 to 5,000 students. The staff found that most of the school districts in rural areas of Nebraska had experienced declining enrollments, and demographic trends suggested

those districts would continue to lose students.<sup>2504</sup> Districts with more than 5,000 students were the only schools that had increased enrollment within the previous five years (an increase of about 2.9%). Districts with fewer than 250 students had the slowest measure of growth in spending within the previous five years (on average 2.8% annually). Interestingly, the spending habits of the state's largest seven districts grew at the fastest pace (on average 5.9% per year). All other sizes of districts had declining enrollment.<sup>2505</sup>

The study group found that there were limited cost savings when districts consolidate. Although reorganized districts experienced local savings, those amounts were not as much as would be predicted by some models, especially at a statewide level. It was also found that past incentives for reorganization were helpful in covering costs that were unique to reorganization. While a reduction in the number of school districts could result in a reduction in the number of teachers, the salaries of the remaining teachers would most likely increase. Increases in transportation for reorganized districts appear to create more of an issue with regard to the effect on students rather than an issue of significant cost.<sup>2506</sup>

The important item to note about the initial research was that, at least at that point in time, the notion of reorganization was evaluated in terms of all school districts, including the state's largest school districts. The LR 180 Staff looked at all options for possible reorganization. This naturally gave reason for everyone involved in K-12 education to be concerned.

Following the compilation of the background materials, the Education Committee met twice in the fall of 2003 to develop ideas for public input. Hearings were planned in three separate cities, Mullen, Broken Bow, and Wahoo. In order to provide some guidance for public discussion, the Education Committee developed three alternatives.

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<sup>2504</sup> Committee on Education, "Legislative Resolution 180, Executive Summary of Final Report," 29 October 2003.

<sup>2505</sup> Leslie Reed, "Officials float ideas for school savings; One of the ideas suggested by lawmakers is breaking up the Omaha school district," *Omaha World-Herald*, 22 August 2003, 1.b.

<sup>2506</sup> "Legislative Resolution 180, Executive Summary of Final Report," 29 October 2003.

The three ideas to be discussed at the public hearings could either operate together or individually to encourage a more financially viable school organizational structure.

The three ideas involved the “assimilation” of Class I districts into K-12 systems, reorganization incentives to encourage consolidation, and the recommendation for passage of LB 698, a carryover bill from the 2003 Session. The assimilation idea would garner the most attention and the most controversy. Class I supporters would demonstrate their displeasure with the concept during the three public hearings. The idea to offer financial incentives to encourage school districts to reorganize obviously was not a new concept, but the LR 180 Staff did find that such incentives were helpful to the cause of reorganization.

The third idea, passage of LB 698, was perhaps a favorite to Senator Ron Raikes and various members of the Education Committee. The bill was developed for the Education Committee during the 2002 interim and would base funding on districts of similar size and account for demographically based spending differences using actual approved costs. There would also be adjustments for systems in size ranges that spend below average, teachers with above average levels of education, systems with growing numbers of students, and systems with less than 390 students that are not sparse or very sparse. The last adjustment would require local taxpayers to support half of the additional costs associated with having less than 390 students in situations where sparseness is not a major factor. LB 698 was, at the time, held in committee and awaited final disposition.

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Table 147. LR 180 (2003) Study Recommendations

*Recommendation #1: Class I Assimilation*

- I. All Class I districts would be required to dissolve prior to the 2005-06 school year and all Class VI districts would become K-12 districts beginning with the 2005-06 school year.
- II. The Class I school board would determine and notify the State Reorganization Committee and County Assessor before November 1, 2004 of the board’s decision for either:

Table 147—Continued

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- a. All of the property of the Class I district to be merged into the K-12 district with which the property is affiliated or the Class VI system of which the property is a part;
  - b. All of the property of the Class I district to be merged into the Class I school district's primary high school district; or
  - c. All of the property of the Class I district to be merged into K-12 districts according to an agreement between the school boards of: (i) The Class I district; (ii) all K-12 districts with which the property is affiliated; (iii) all Class VI systems with which property is a part; and (iv) all districts that will receive property pursuant to the agreement.
- III. If the Class I school board fails to notify the State Reorganization Committee of their decision before November 1, 2004, the district will be dissolved by the Committee and all of the property of the Class I district will be merged into the K-12 district with which the property is affiliated or the Class VI system of which the property is a part.
  - IV. If all of the property of a Class I district is merged into a single K-12 district or former Class VI district, all of the assets and liabilities of the Class I district (including the facilities) would be assigned to the single K-12 district or former Class VI district.
  - V. If the property of a Class I district is merged with multiple K-12 districts or former Class VI districts, the assets and liabilities of the Class I district would be divided based on the proportion of the valuation each K-12 district or former Class VI district receives (current law).
  - VI. If all of the property of a Class I district is merged into a single K-12 district or former Class VI district and 15 or more resident students attended school in the building in the prior year, the Class I school building could not be closed unless:
    - a. A vote is taken by the voters in the K-12 school district after the Class I district has dissolved and the voters who reside on property formerly in the Class I district are included as voters in the K-12 school district; or
    - b. The school board of the K-12 school district is composed completely of members who have been elected in elections that included the voters who reside on property formerly in the Class I school district.
  - VII. The certification of state aid would need to be moved from February 1, 2005 to March 1, 2005 for the 2005-06 school year in order to attribute the valuation of the Class I district to K-12 districts or former Class VI districts according to the method of dissolution chosen by the Class I school board.
  - VIII. Class I dissolutions occurring prior to September 1, 2004 would follow the current rules.

Table 147—Continued

*Recommendation #2: Reorganization Incentives*

- I. Incentives would be offered for mergers (not unifications) of K-12 districts effective for 2005-06 or later and resulting in a combined district of at least 390 students according to statistics from the school year prior to the merger.
- II. For incentives to be paid in 2005-06, the membership of Class I districts would be incorporated into the high school districts either:
  - a. Based on the percentage of valuation affiliated with the district or part of the system if the Class I district is dissolving along affiliation lines; or
  - b. With the high school district if the Class I district is merging completely with the primary high school district.
- III. The reorganization must be approved by the State Reorganization Committee prior to November 1st preceding the reorganization so that the incentive payments would be included in the calculation and appropriation of state aid.
- IV. The schedule for incentives would be as follows:
 

| Average daily membership range before consolidation | Average daily membership range after consolidation | Total per student incentive amount |
|---|--|------------------------------------|
| 0.00 - 129.99                                       | 390.00+  | \$4,100                            |
| 130.00 - 194.99                                     | 390.00+  | \$1,900                            |
| 195.00 - 259.99                                     | 390.00+  | \$1,100                            |
| 260.00 - 389.99                                     | 390.00+  | \$900                              |
- V. One half of the calculated incentives would be paid in each of the first two years of the combined district.
- VI. Beginning with mergers taking effect for the 2010-11 school year, the incentives would be reduced by 50%.
- VII. Additional budget authority would be authorized in the amount of the incentives for the two years in which the incentives are paid.

*Example:* A district with 150 students merges with a district with 250 students.  
 $(150 \text{ students} \times \$1,900/\text{student}) + (250 \text{ students} \times \$1,100/\text{student})$   
 $\$285,000 + \$275,000 = \$560,000$  Total Incentives  
 $\$560,000 / 2 = \$280,000$  Annual Incentives for 2 Years

*Example:* A district with 100 students merges with a district with 5,000 students.  
 $(100 \text{ students} \times \$4,100/\text{student}) + (5,000 \text{ students} \times \$0/\text{student})$   
 $\$410,000 + \$0 = \$410,000$  Total Incentives  
 $\$410,000 / 2 = \$205,500$  Annual Incentives for 2 Years

Table 147—Continued

*Recommendation #3: Legislative Bill 698*

- I. Replace cost groupings (standard, sparse, & very sparse) with averaging technique based on the next 5 larger and next 5 smaller systems in terms of membership.
  - a. The new averaged base cost would be called basic funding.
  - b. Techniques are included to address the smallest and largest systems.
- II. Replace current system of weightings and allowances with new allowances and adjustments.
  - a. Allowances subtract unique costs from the system's expenditures before the averaging process and add them back to the individual system's needs.
  - b. The new allowances would be for costs attributed to: (i) Poverty; (ii) limited English proficiency; (iii) special education; (iv) special receipts; (v) transportation; and (vi) remote elementary sites.
  - c. Adjustments add or subtract from the individual system's needs.
  - d. The adjustments are: (i) an averaging adjustment for systems with below average basic funding per student; (ii) a teacher education adjustment for systems with above average teacher education; (iii) a student growth adjustment; (iv) a student growth correction adjustment for overestimates of student growth; and (v) a local choice adjustment for systems with less than 390 students and not sparse or very sparse.
  - e. Grade weightings would not be replaced, except that half-day kindergartners would count as 1/2 of a formula student.
- III. Replace adjusted valuation with assessed valuation for the calculation of state aid.
- IV. Provide an exception to the budget limits to allow for the growth in the poverty and limited English proficiency allowances.
- V. Increase the stabilization factor from 85% to 90% to assist in the transition and in stabilizing resources for school districts.

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*Source:* Handout distributed by the Education Committee, 29 October 2003.

#### H. The 2004 Legislative Session

##### LB 1093 - Extension of the Levy Increase/Aid Adjustment Factor

For the third consecutive year, the Nebraska legislature faced an uphill battle to address the economic plight of the State. Although at long last, it seemed there was a

light at the end of the tunnel. Revenue receipts had demonstrated a turn-around in the months leading up to the 2004 Session, and there was a general feeling of hopefulness among policymakers and the administration. Nevertheless, there was still a budget shortfall to address and the forecast for the next biennium was not entirely pleasant. Some projected as much as a \$315 million shortfall for the 2005-07 biennium, although it was hoped that healthier revenue receipts would help to dissipate some of this gap. Included within the shortfall was the ultimate thorn in any state government's side: a judgment. In 2004 Nebraska had nearly exhausted its legal options to delay or negotiate a \$160 million judgment over the State's withdrawal from the Central Interstate Low-Level Radioactive Waste Disposal Compact.<sup>2507</sup>

The most accurate way to describe the 2004 Session was that it positioned the State to deal with the projected financial problems of the next biennium. In fact, the 2005-07 biennium, the "out years" as lawmakers referred to it, was a constant focus of the 2004 Session. But without question one of the more remarkable footnotes of the 2004 Session was the about-face by Governor Mike Johanns concerning critical issues from the two previous sessions. What he had objected to in both 2002 and 2003, he would embrace in 2004.

*"The Governor is sometimes wrong"*

The 2004 Session found the Legislature's Education Committee once again a pivotal cog for the successful outcome of the budget crisis. State aid to public education was once again placed on the table and open for discussion and revision. The public education community was once again expected to "play ball" for the betterment of the overall budget situation, even though it may not have been in the best interests of the taxpayer or, some would argue, the consumers of public education services: the students.

At the request of the Governor, Senator Raikes introduced LB 1093 (2004) to make permanent two of the major issues of the previous two years. First, the bill

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<sup>2507</sup> Nebraska Legislative Research Division, "A Review: Ninety-Eighth Legislature, First Session, 2003," July 2003.



proposed to permanently extend the maximum levy for schools to \$1.05.<sup>2508</sup> The \$1.05 levy was meant to sunset after the 2004-05 school fiscal year, as per LB 540 (2003). LB 1093 also proposed to make permanent the temporary aid adjustment factor first established in 2002 under LB 898.<sup>2509</sup> In fact, the factor would be renamed the “total aid adjustment factor” rather than the “temporary aid adjustment factor.”<sup>2510</sup> As before, the total aid adjustment factor would equal 1.25% of the formula needs of a local system. State aid for the local system would then be reduced by the amount of the factor using three different components of the state aid calculation. The factor essentially reduced the amount of aid owed by the State in order to reduce the State’s financial burden. As recompense, of sorts, the Legislature permitted an exclusion to the levy limitation in the amount of state aid lost by a local system by virtue of the aid reduction factor. This provision also would become permanent under LB 1093.<sup>2511</sup>

Several important notes about LB 1093 include the fact that it applied to the next biennium and beyond. In order to extend the levy provisions and to prepare for the 2005-06 state aid certification, it was necessary to pass the bill in 2004. The provisions of LB 898 (2002) and LB 540 (2003) were due to automatically sunset after the 2004-05 school fiscal year. On the positive front, at least for school officials, LB 1093 did not extend the zero percent base spending lid that was imposed under LB 540 (2003). In fact, the legislation did not even mention the spending limitation. This meant that schools would enjoy a 2.5% to 5.5% spending lid range beginning with the 2005-06 year. The range had been extended from 2% (i.e., 2.5% to 4.5%) to 3% (i.e., 2.5% to 5.5%) under LB 540 (2003).<sup>2512</sup> The wider range would help to some degree in recapturing some of the spending authority lost under the temporary two-year 0% base lid.

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<sup>2508</sup> Legislative Bill 1093, *Change dates relating to calculation of state aid to schools*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, title first read 15 January 2004, § 1, p. 2.

<sup>2509</sup> *Id.*, §§ 3, 5-6, 8, pp. 14-15, 22-26, 28.

<sup>2510</sup> *Id.*, § 2, p. 13.

<sup>2511</sup> *Id.*, § 1, p. 2.

<sup>2512</sup> Legislative Bill 540, *Slip Law*, Nebraska Legislature, 98<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2003, § 7, p. 6.

Of particular importance to state lawmakers and the administration, LB 1093 was expected to take a sizable bite out of the projected budget shortfall for the 2005-07 biennium as illustrated in Table 148.

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Table 148. Projected Savings to the State:  
Reductions in State Aid as per LB 1093 (2004) as Introduced

|                                  | 2005-06      | 2006-07      |
|----------------------------------|--------------|--------------|
| \$1.05 maximum levy/LER \$.95*   | \$49,076,711 | \$51,615,547 |
| Total aid adjustment factor      | \$26,507,329 | \$28,034,653 |
| Total projected savings to State | \$75,584,040 | \$79,650,200 |

\* LER = Local Effort Rate

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*Source:* Nebraska Legislative Fiscal Office, Fiscal Impact Statement, LB 1093 (2004), prepared by Sandy Sostad, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, 3 March 2004, 1.

LB 1093 was given special status as one of the first bills to be publicly reviewed by the Education Committee in 2004. The hearing was conducted on January 27<sup>th</sup>, the 14<sup>th</sup> day of the 60-day session. Senator Raikes, who guided the Legislature through two veto overrides in as many years, presented opening remarks on the legislation that represented the content and issues the vetoing Governor once opposed. The irony was not lost on Senator Raikes, members of the committee, or the representatives of education organizations present that day. “The Governor and I don’t always agree, which is another way of saying that the Governor is sometimes wrong,” Raikes said jokingly, adding, “In this particular case, we do agree.”<sup>2513</sup>

Senator Raikes provided a summary of the events of the past two years leading up to the introduction of LB 1093. He admitted the financial circumstances of the State necessitated the continuation of programs that would otherwise be considered distasteful for all concerned. The programs, to which he referred, included the extension of the levy limitation and the aid reduction factor coupled with the corresponding levy exclusion. Raikes explained:

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<sup>2513</sup> Committee on Education, *Hearing Transcripts, LB 1093 (2004)*, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, 27 January 2004, 2.

We can not, however, in my judgment and also, I think, in that of the Governor, end these programs after the 2004-2005 school year, the next year, and have any reasonable hope of balancing the budget for the next biennium without sizable tax increases or major cuts elsewhere or a revenue miracle.<sup>2514</sup>

He mentioned the fact that LB 1093 effectively ended what he called the “most troublesome” of the provisions within LB 540 (2003), which was the zero percent base lid.<sup>2515</sup> Of course, LB 1093 eliminated this provision by simply not addressing it. The temporary lid would be allowed to expire.

While it is not uncommon for the Governor to appear and testify at a public hearing when a measure is introduced on his behalf, Governor Mike Johanns chose instead to send his Chief of Staff, Larry Bare. “In the mid-biennium budget assessment presented on January 15, 2004, the Governor recommended that a portion of the 2004 Legislative Session be used to plan and prepare for the development of the state’s 2005-2007 biennial budget,” Bare said.<sup>2516</sup> LB 1093, he added, was a significant component of the plan. And the plan, of course, meant avoiding what Bare called a “sudden increase” in necessary appropriations for state aid.<sup>2517</sup> In fact, there would have been sudden increases if the provisions of LB 898 (2002) and LB 540 (2003) were allowed to fall away. If the maximum levy were allowed to return to \$1.00, the State would, theoretically, owe the difference in state aid to schools. Similarly, if the temporary aid adjustment factor lapsed, the State would owe the difference in state aid.

The education lobby did what was expected. It came to the table to voice support for the measure, albeit reluctant support. John Bonaiuto, Executive Director for the Nebraska Association of School Boards (NASB), testified:

[I]deally if the state were able to maintain the amount of state aid that it looked like schools would need to meet their needs, it would be terrific to be able to stay at the \$1 levy. Schools were used for property tax relief and that was the target,

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<sup>2514</sup> Id., 3.

<sup>2515</sup> Id.

<sup>2516</sup> Id., 5.

<sup>2517</sup> Id.

but I think this is fluid right now that the state needs some help to relieve the pressure that is on the state budget based on the revenues that the state can generate.<sup>2518</sup>

Mike Dulaney, Associate Executive Director for the Nebraska Council of School Administrators (NCSA), agreed with Bonaiuto's testimony. "[W]e would like to reserve the opportunity, at some point when the economy improves, that we come back and talk to you about maybe increasing the state obligation with regard to state aid, but we do support LB 1093," he said.<sup>2519</sup>

The only opposition to the bill came from the Nebraska Farm Bureau. "I'm sure it comes as no surprise to you that our members do not like property taxes," testified Jay Rempe, Bureau Director of Governmental Relations.<sup>2520</sup> Rempe reminded members of the Education Committee of the policy established in 1996 to implement maximum levy limitations for political subdivisions for the purpose of property tax relief. "I think the Legislature set the course a few years back on trying to work towards property tax reduction and set the levies to ratchet down to \$1, and the \$1 on schools kind of became the benchmark, if you will, for property tax relief for schools," he said.<sup>2521</sup> Rempe encouraged the committee to re-evaluate the notion of making the \$1.05 school levy permanent. "In our view, we should continue to look at the \$1.05 as a temporary measure and not something that's on a permanent basis," he said.<sup>2522</sup>

In his closing remarks, Senator Raikes acknowledged the change of policy outlined in LB 1093. "We ... the Legislature has, for a number of years, been working on the issue of property taxes and the goal was \$1," he said, "This is a retreat from that."<sup>2523</sup> He expressed regret that more of the burden to finance public education was being placed on the backs of property taxpayers. He also expressed his hope that, someday, the

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<sup>2518</sup> Id., 8.

<sup>2519</sup> Id., 10.

<sup>2520</sup> Id.

<sup>2521</sup> Id., 10-11.

<sup>2522</sup> Id., 11.

<sup>2523</sup> Id.

Legislature could re-evaluate the \$1.05 levy. “If a future Legislature can see to it to return it to \$1, I hope they will and I think they deserve the appropriate credit, or whoever deserves the credit at the time it happens,” Raikes said.<sup>2524</sup>

*Temporary versus permanent; \$1.05, \$1.10, \$1.07?*

The Education Committee met in executive session on February 9, 2004 to review LB 1093. Senator Ed Schrock of Elm Creek, a second year member of the committee who began his service in the Legislature in 1995, moved to amend the bill so that the temporary aid reduction factor and the \$1.05 maximum levy would remain in effect for two additional years and then fall away.<sup>2525</sup> The motion failed on a 3-3-1-1 vote.<sup>2526</sup> The committee met again on February 24<sup>th</sup>. This time the committee would find consensus, and those anxious to maintain a temporary status to the provisions contained in the bill would be pleased. The committee voted to advance the bill with committee amendments attached. The amendments would extend the \$1.05 levy, the temporary aid reduction factor and the accompanying levy exclusion for a period of three years (2005-06, 2006-07, and 2007-08).<sup>2527</sup> The bill was advanced on a 7-1 vote with Senator Chip Maxwell casting the lone dissenting vote.<sup>2528</sup> The committee appeared relatively united on a course of action, but the issue was far from resolved.

On February 27, 2004 the Nebraska Economic Forecast Advisory Board (NEFAB) met at the State Capitol to review the latest economic reports and revise, if necessary, the State’s revenue projections. The board not only found it necessary, but necessary in a big way. The nine-member appointed board is comprised of citizens having expertise in tax policy, economics, or economic forecasting. One of the board’s principal duties is to make educated guesses about the immediate future of tax revenue

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<sup>2524</sup> Id.

<sup>2525</sup> Committee on Education, *Executive Session Report, LB 1093 (2004)*, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, 9 February 2004, 1.

<sup>2526</sup> Id. Voting aye, Senators McDonald, Schrock, and Stuhr; voting nay, Senators Bourne, Byars, and Raikes; present, not voting, Senator Maxwell; absent, Senator Brashear.

<sup>2527</sup> NEB. LEGIS. JOURNAL, *Com AM2792*, 3 March 2004, 858. Committee amendments, *Com AM2792 to LB 1093 (2004)*, §§ 1-7, pp. 1-19.

<sup>2528</sup> *Executive Session Report, LB 1093 (2004)*, 2.

projections. In the case of the February 2004 meeting, the board voted to decrease revenue projections over the next two years by a combined \$104 million. Their decision would throw a large wrench in the proposed budget plan crafted early in the session by the administration and key members of the Legislature. It meant doubling the amount of the shortfall state leaders had planned to address in 2004 and it meant additional worries for the next biennium budget. "It's pretty serious stuff," said Senator Roger Wehrbein, chair of the Appropriations Committee.<sup>2529</sup> "It's going to make us examine more closely how deep we can go into many of the state's services," he added.<sup>2530</sup>

The Legislature is not necessarily bound to the advisory board's projections, but, if the projections are ignored, then why have the board in the first place. The initial reaction from Wehrbein matched that of the Governor. The news meant more cuts in the budget, but additional taxation was not immediately in the cards. This too would change, at least in the minds of some members of the Legislature's budget-setting committee.

In February 2004 the Appropriations Committee was already hard at work trying to mold and massage all the many complicated budgetary considerations into a final proposal for the full Legislature to consider. However, the advisory board's downward revenue projections required the committee to evaluate options not previously imagined. The most startling of these options actually became part of the committee's final budget report, which was unveiled on March 16, 2004. The report stated in part:

Without the February revenue forecast changes, the projected status for the following biennium would have been only \$53 million below the required 3% reserve when annualizing the Appropriations Committee's FY04-05 budget actions into the following biennium. Unlike the remainder of the current biennium, the minimum 3% reserve requirement is applicable to the next biennial budget. This relatively balanced position (at least from the standpoint of estimating three years into the future) was estimated even incorporating a large increase in TEEOSA school aid (average growth of 13.5% per year) due to the expiration of the temporary aid adjustment factor and the school levy limit returning to \$1.00 after two years at \$1.05 per current law.

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<sup>2529</sup> Martha Stoddard, "Revenue forecast takes dip Gov. Johanns says the \$104 million drop means deeper cuts, but probably no tax increase," *Omaha World-Herald*, 28 February 2004, 1a.

<sup>2530</sup> *Id.*

However the February forecast revisions significantly altered the outlook. The revised NEFAB forecasts, and subsequent adjustments to the revenue estimates for the “out years” yielded a cumulative revenue reduction of \$245 million over the four years raising the \$53 million shortfall to \$292 million. Even when incorporating an extension of the current \$1.05 school levy limit and temporary aid adjustment factor per LB1093, the projected shortfall is still \$137 million. For this reason, the Committee proposal reflects an increase in the school levy limit to \$1.10 resulting in an additional \$102 million savings in TEEOSA school aid and reducing the “shortfall” to a manageable \$35 million.<sup>2531</sup>

Considering the difficult challenge endured by the Legislature to raise the maximum levy from \$1.00 to \$1.05 in 2003, it seemed almost unfathomable for the same body to buy into a \$1.10 levy for schools.

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Table 149. Projected Savings to the State Reductions in State Aid as per LB 1093 (2004) as Advanced to General File and the \$1.10 Levy Proposed by the Appropriations Committee

|                                     | 2005-06       | 2006-07       |
|-------------------------------------|---------------|---------------|
| \$1.05 maximum levy/LER \$.95*      | \$49,076,711  | \$51,615,547  |
| Increase levy to \$1.10/LER \$1.00* | \$49,646,229  | \$52,128,540  |
| Temporary aid adjustment factor     | \$26,507,329  | \$28,034,653  |
| Total projected savings to State    | \$125,230,269 | \$131,778,740 |

\* LER = Local Effort Rate

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*Sources:* Nebraska Legislative Fiscal Office, Fiscal Impact Statement, LB 1093 (2004), prepared by Sandy Sostad, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, 3 March 2004, 1. Committee on Appropriations, “Budget Recommendations, Mid-Biennium Budget Adjustments FY2003-04 and FY2004-05,” March 2004, 1-2.

As stated in the excerpt of the committee’s report, the proposed increase in the maximum levy for schools to \$1.10 would bring the State very close to fully addressing the shortfall for the out years (i.e., the 2005-07 biennium). The bulk of the overall budget crisis would be placed on the backs of school districts and property taxpayers. Of course, the notion of a \$1.10 maximum levy for schools was certainly not unprecedented. In fact, the original levy limitation for schools was established under LB 1114 (1996) at \$1.10 for fiscal years 1998-99 through 2000-01.

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<sup>2531</sup> Committee on Appropriations, “Budget Recommendations, Mid-Biennium Budget Adjustments FY2003-04 and FY2004-05,” March 2004, 1-2.

Table 150. Public Schools' Maximum Levy (1998-2005)

|         |        |                       |
|---------|--------|-----------------------|
| 1998-99 | \$1.10 | as per LB 1114 (1996) |
| 1999-00 | \$1.10 | as per LB 1114 (1996) |
| 2000-01 | \$1.10 | as per LB 1114 (1996) |
| 2001-02 | \$1.00 | as per LB 1114 (1996) |
| 2002-03 | \$1.00 | as per LB 1114 (1996) |
| 2003-04 | \$1.05 | as per LB 540 (2003)  |
| 2004-05 | \$1.05 | as per LB 540 (2003)  |

Sources: Legislative Bill 1114, in *Laws of Nebraska, Ninety-Fourth Legislature, Second Session, 1996*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 1, p. 1 (1245); Legislative Bill 540, *Slip Law*, Nebraska Legislature, 98<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2003, § 2, p. 2.

But would the Legislature go along with this fast and easy approach to pulling the State out of the budget doldrums? And, even if the Legislature accepted the idea of a \$1.10 levy, would the Governor sign such a measure into law or veto it?

The trial balloon on the concept of a \$1.10 levy would be floated on the morning of Thursday, March 18, 2004 when the Legislature took up first-round debate on the budget package. The body devoted the entire first day to discussion on LB 1089, the mainline budget bill. Since the entire budget package depended upon the acceptance of the \$1.10 levy for schools, it was not surprising that property taxes and state aid to education consumed the better portion of the discussion time. Just before the body adjourned in mid afternoon, the committee amendments to LB 1089 were adopted, narrowly.<sup>2532</sup> The bill was advanced, again narrowly, by a 25-6 record vote.<sup>2533</sup> So what did this mean?

To the casual observer, it might have appeared that the Legislature reluctantly bought into the idea of increasing the maximum levy for schools. The levy change was, after all, a major provision of the budget proposal. However, the truth of the matter was more complicated since LB 1089 did not actually pertain to the levy provision. Nor did the measure have the capacity to reduce appropriations to state aid for the out years since it was designed only to address the second year of the 2003-05 biennium. In essence, the

<sup>2532</sup> NEB. LEGIS. JOURNAL, 18 March 2004, 1149.

<sup>2533</sup> Id., 1150.



Legislature could agree to LB 1089 without necessarily agreeing to the levy increase. Nevertheless, it was important to the Appropriations Committee that the Legislature go along with the \$1.10 levy since other decisions to reduce or not reduce various line items was contingent upon the reduction in state aid owed in the out years. It all tied in together.

The Legislature would continue debating the budget package through the remainder of the week. On Monday, March 22<sup>nd</sup>, the body finally arrived at the anticipated showdown on property taxes. LB 1093 was the subject of intense debate from morning until late in the afternoon. In fact, it was the only bill considered that day, and the policy decision at stake warranted at least that much time and attention. LB 1093 would be unraveled and reassembled all in the course of one legislative day.

Senator Wehrbein's mission that day was to ask his colleagues to formally approve his committee's recommendation concerning the \$1.10 levy. He did so in the form of an amendment to the committee amendments. The Wehrbein amendment would leave the temporary aid adjustment factor in tact along with the accompanying levy exclusion to win back lost revenue from state aid. The amendment would also leave in tact the notion that the levy increase applied only for three additional years and would then automatically return to \$1.00. The only proposed change in the Wehrbein amendment was to increase the maximum levy from \$1.05 to \$1.10.<sup>2534</sup>

Senator Wehrbein emphasized to his colleagues that, without the \$1.10 levy and the savings the State would incur, the bigger problem faced in the out years would be magnified. He also stressed the need to warn school officials of the severity of the situation. Said Wehrbein:

And if we're going to leave a bigger gap out there, or whether we're going to try to narrow it, whether we're going to try to give warnings to the schools, which, to me, is one of the most critical parts of this, is giving some kind of direction or at least a guide to the school districts as to what they will be able to do in two years hence ... .<sup>2535</sup>

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<sup>2534</sup> NEB. LEGIS. JOURNAL, *Wehrbein AM3027 to Com AM2792*, 16 March 2004, 1061.

<sup>2535</sup> Legislative Records Historian, *Floor Transcripts, LB 1093 (2004)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, 22 March 2004, 11995.

He asked fellow members to look at the issue in terms of an overall timeframe involving the current year and three years into the future. “The one thing I can promise is, our demands are going to continue to go up on the state budget,” Wehrbein said.<sup>2536</sup>

After a very tense, sometimes heated, debate, the body voted to reject Senator Wehrbein’s amendment, and, accordingly, one of the underpinnings of the Appropriations Committee budget proposal. Perhaps one of the more interesting aspects of the debate and subsequent vote was the disagreement among members of the Appropriations and Education Committees. Senator Raikes, chair of the Education Committee, supported the Wehrbein amendment, but no other member of his committee followed suit. The majority of the Appropriations Committee voted in favor of the Wehrbein amendment, but there were several notable dissenters.

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Table 151. Record Vote: Wehrbein AM3027 to  
Committee Amendments, LB 1093 (2004)

(A) = Appropriations Committee (E) = Education Committee

*Voting in the affirmative, 15:*

|              |           |           |              |                |
|--------------|-----------|-----------|--------------|----------------|
| Aguilar      | Engel (A) | Kruse (A) | Pederson (A) | Redfield       |
| Brown        | Jensen    | Landis    | Price (A)    | Synowiecki (A) |
| Cudaback (A) | Johnson   | Mines     | Raikes (E)   | Wehrbein (A)   |

*Voting in the negative, 31:*

|              |            |              |           |              |
|--------------|------------|--------------|-----------|--------------|
| Baker        | Connealy   | Janssen      | Pedersen  | Thompson (A) |
| Beutler (A)  | Cunningham | Jones        | Preister  | Tyson        |
| Bourne (E)   | Erdman     | Kremer       | Quandahl  | Vrtiska      |
| Brashear (E) | Foley      | Louden       | Schimek   |              |
| Burling      | Friend     | Maxwell (E)  | Smith     |              |
| Chambers     | Hartnett   | McDonald (E) | Stuhr (E) |              |
| Combs        | Hudkins    | Mossey       | Stuthman  |              |

*Present and not voting, 1:*

Schrock (E)

*Excused and not voting, 2:*

Bromm            Byars (E)

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Source: NEB. LEGIS. JOURNAL, 22 March 2004, 1168-69.

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<sup>2536</sup> Id., 11996.

In the spirit of compromise, Senator Ernie Chambers of Omaha believed he had the solution for the issue. Shortly after the failure of the Wehrbein amendment, Senator Chambers offered a floor amendment to establish a \$1.07 maximum levy for schools for a period of three years.<sup>2537</sup> “Senator Wehrbein felt that what is being presented by the committee amendment is betwixt and between,” Senator Chambers said referring to the committee amendments to LB 1093.<sup>2538</sup> “Well, I’m offering another ‘tweener,’” he added.<sup>2539</sup> Perhaps desperate at this point in time, Senator Wehrbein appeared eager to support the Chambers’ amendment. “I think I will support \$1.07, because it’s better than \$1.05 in terms of solving our problem,” Wehrbein said.<sup>2540</sup> Senator Raikes also consented the compromise plan. “This gets us closer, and I’m in favor of that,” Raikes said.<sup>2541</sup>

Senator Chris Beutler of Lincoln, on the other hand, attempted to bring the Legislature back to the impact on property tax relief. Senator Beutler, a member of the Appropriations Committee, had voted against the Wehrbein amendment and now rose to oppose the Chambers amendment. Beutler said:

I’m not sure that this retreat from our position on property taxes is necessary at this particular point in time. If we leave it at \$1.05, we’re already 5 cents worse than we were a year or two ago when we were on our path to property tax reform. If you take it to \$1.07, then instead of being \$100 million short, you’ll be \$60 million short.<sup>2542</sup>

Senator Beutler urged his colleagues to consider other options in order to address the shortfall, such as an income tax increase. He believed the body could always return to the concept of a \$1.07 levy if all else failed.

Senator Chambers had to be commended for offering the compromise in an attempt to help the situation. “I love having Senator Chambers playing the role of the reasonable compromiser on General File,” said Senator Kermit Brashear, a fellow Omaha

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<sup>2537</sup> NEB. LEGIS. JOURNAL, 22 March 2004, 1177-78.

<sup>2538</sup> *Floor Transcripts, LB 1093 (2004)*, 22 March 2004, 12005.

<sup>2539</sup> *Id.*

<sup>2540</sup> *Id.*, 12006.

<sup>2541</sup> *Id.*, 12009.

<sup>2542</sup> *Id.*, 12011.

legislator.<sup>2543</sup> But this proposal also failed to meet consensus among members of the body. The Chambers amendment failed on a 17-26 vote.<sup>2544</sup>

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Table 152. Record Vote: Chambers FA1580 to  
Committee Amendments, LB 1093 (2004)

(A) = Appropriations Committee (E) = Education Committee

*Voting in the affirmative, 17:*

|          |              |              |             |           |
|----------|--------------|--------------|-------------|-----------|
| Aguilar  | Cudaback (A) | Jensen       | Price (A)   | Stuhr (E) |
| Bromm    | Engel (A)    | Johnson      | Raikes (E)  |           |
| Brown    | Hartnett     | Landis       | Redfield    |           |
| Chambers | Janssen      | Pederson (A) | Schrock (E) |           |

*Voting in the negative, 26:*

|             |         |              |                |              |
|-------------|---------|--------------|----------------|--------------|
| Baker       | Foley   | Maxwell (E)  | Quandahl       | Vrtiska      |
| Beutler (A) | Friend  | McDonald (E) | Schimek        | Wehrbein (A) |
| Bourne (E)  | Hudkins | Mines        | Smith          |              |
| Burling     | Jones   | Mossey       | Stuthman       |              |
| Cunningham  | Kremer  | Pedersen     | Synowiecki (A) |              |
| Erdman      | Louden  | Preister     | Tyson          |              |

*Present and not voting, 2:*

|       |           |
|-------|-----------|
| Combs | Kruse (A) |
|-------|-----------|

*Excused and not voting, 4:*

|              |           |          |              |
|--------------|-----------|----------|--------------|
| Brashear (E) | Byars (E) | Connealy | Thompson (A) |
|--------------|-----------|----------|--------------|

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Source: NEB. LEGIS. JOURNAL, 22 March 2004, 1178.

Following the failure of the Chambers amendment, Senator Wehrbein immediately offered a motion to reconsider the vote, and another round of debate ensued. Senator Wehrbein attempted to redirect the discussion from taxes to the best interests of students. Said Wehrbein:

I think we're forgetting about the kids, the students, those that need to be educated. We're sitting here talking all morning talking about taxes and taxes. And I agree that that's a serious problem. But the issue is, what all this is about, is trying to get adequate funding into our schools. And whether it comes from the state or whether it comes from local property taxes, it appears to me education for our kids is important. I think education for our kids is important.<sup>2545</sup>

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<sup>2543</sup> Id., 12012.

<sup>2544</sup> NEB. LEGIS. JOURNAL, 22 March 2004, 1178.

<sup>2545</sup> *Floor Transcripts, LB 1093 (2004)*, 22 March 2004, 12023.

However, to many lawmakers that day it was not a matter of choosing between students and taxpayers. “I could see people digging their heels in here and bringing kids into it,” said Senator Tom Baker of Trenton.<sup>2546</sup> “So we’re all concerned about kids, I understand that, but that to me is not a good argument,” he added.<sup>2547</sup> To Senator Baker and others, time was not of immediate essence in this discussion. He believed the Legislature could always re-address the issue of raising property tax rates in the following year if necessary.

The result of the motion to reconsider was the same as the original decision. Wehrbein’s motion failed on a 22-21 vote.<sup>2548</sup> LB 1093 had nearly suffered an unraveling on the floor of the Legislature, but survived. Most lawmakers were willing to make a concession with regard to extending the \$1.05 levy, but were unwilling to move beyond that with regard to property taxes. This was demonstrated by the ultimate adoption of the committee amendments to the bill on a unanimous 33-0 vote.<sup>2549</sup> This was eventually followed by a successful vote to advance the bill on a 27-3 vote.<sup>2550</sup>

*“It’s time to focus on school finance”*

Second-round consideration of LB 1093 on April 2<sup>nd</sup> would have been merely a formality had Senator Chip Maxwell not decided to make one last plea for school finance reform. The Omaha lawmaker threw out a motion to bracket the bill in order to make his point. “I’m just trying to take one last shot to convince you of the basic proposition that change is necessary in school finance,” Maxwell said, “If you want to do something, if you are really serious about fundamental long-term reform, then it’s time to focus on school finance.”<sup>2551</sup> Senator Maxwell had introduced several measures to effectuate a comprehensive overhaul of the school finance system. He proposed LB 1248 in 2004 to fund public schools by a uniform \$6000 per student subsidy. The funding for public

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<sup>2546</sup> Id., 12028.

<sup>2547</sup> Id.

<sup>2548</sup> NEB. LEGIS. JOURNAL, 22 March 2004, 1179.

<sup>2549</sup> Id., 1183-84.

<sup>2550</sup> Id., 1185.

<sup>2551</sup> *Floor Transcripts, LB 1093 (2004)*, 2 April 2004, 13146.

schools would derive from a state tax on all taxable income and a state property tax. He introduced LR 228CA as a companion piece to LB 1248. The constitutional amendment would allow the state to levy a tax on real property to fund K-12 education.<sup>2552</sup> The Education Committee took no action on either measure. “How far can we push the burden back on property and not cross some threshold that does make us vulnerable to a lawsuit, to a lawsuit,” Maxwell said before withdrawing his motion.<sup>2553</sup> “Remember, the other states, the more they relied on property tax, the more vulnerable they’ve been to legal challenges,” he said.<sup>2554</sup>

LB 1093 advanced to the third and final stage of consideration by a 26-5 vote.<sup>2555</sup> By this time, the mainline budget bill, LB 1089, along with the remainder of the budget package had already advanced to Final Reading. Of all the pieces to the budget package of 2004, LB 1093 was one of the few that remained unchanged throughout the legislative process. This was a testament to the will of the members of the Education Committee who held fast to their original commitment upon advancing the bill out of committee. It was also proof of the Legislature’s belief in holding as true to the objectives of property tax relief as fiscally possible. The final demonstration of the unity of the body, or near unity, came on April 7, 2004 when LB 1093 was passed by a sturdy 43-5 vote.<sup>2556</sup> Governor Johanns, having reversed his opinions about the content of the legislation in comparison to years past, signed LB 1093 into law on April 13<sup>th</sup>.<sup>2557</sup>

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<sup>2552</sup> Legislative Bill 1248, *Provide for a system of funding elementary and secondary education as prescribed*, sponsored by Sen. Chip Maxwell, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, title first read 21 January 2004. Legislative Resolution 228CA, *Constitutional amendment to authorize a state property tax for school funding and to restrict local property taxes for such purpose*, sponsored by Sen. Chip Maxwell, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, title first read 21 January 2004.

<sup>2553</sup> *Floor Transcripts, LB 1093 (2004)*, 2 April 2004, 13148.

<sup>2554</sup> *Id.*, 13146.

<sup>2555</sup> NEB. LEGIS. JOURNAL, 2 April 2004, 1460.

<sup>2556</sup> *Id.*, 7 April 2004, 1542-43.

<sup>2557</sup> *Id.*, 13 April 2004, 1590.

Table 153. Summary of LB 1093 (2004) as Passed into Law

- (1) Extended the existence of the \$1.05 levy through the 2007-08 school year. After 2007-08, the maximum levy would return to \$1.00.
- (2) Extend the existence of the \$ .95 Local Effort Rate (LER) through the 2007-08 school year.
- (3) Extend the existence of the 1.25% temporary aid adjustment factor through the 2007-08 school year.
- (4) Extend the existence of the authority of local school boards to exceed the maximum levy to recover lost state aid due to the temporary aid adjustment factor through the 2007-08 school year.
- (5) Because LB 1093 did not address the spending lid provisions, the zero percent base spending lid would end after the 2004-05 school year. The base spending lid would then return to 2.5% with a lid range to 5.5% beginning in 2005-06.

*Source:* Legislative Bill 1093, *Slip Law*, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, §§ 1-6, pp. 1-7.

The actions of the Legislature in 2004 resulted in a balanced budget for the remainder of the 2003-05 biennium, but the State would still face as much as a \$295 million shortfall in the next biennium. This figure included the \$160 million final judgment against the State for failure to act in good faith concerning its involvement in the Central Interstate Low-Level Radioactive Waste Disposal Compact.<sup>2558</sup>

Table 154. Summary of Modifications to TEEOSA as per LB 1093 (2004)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>   | <i>Description of Change</i>   |
|------------------|---------------------|---|--|
| 2                | 79-1005.01          | State aid calculation generally; income tax receipts; disbursement                                    | Extended the temporary aid adjustment factor in the state aid formula for an additional three years, 2005-06, 2006-07 and 2007-08. |
| 3                | 79-1005.02          | State aid calculation; school fiscal years 2002-03 through 2007-08; income tax receipts; disbursement | Extended the temporary aid adjustment factor in the state aid formula for an additional three years, 2005-06, 2006-07 and 2007-08. |
| 4                | 79-1007.02          | Cost groupings; average formula cost per student; local system's formula need; calculation            | Extended the temporary aid adjustment factor in the state aid formula for an additional three years, 2005-06, 2006-07 and 2007-08. |

<sup>2558</sup> "A Review: Ninety-Eighth Legislature Second Session, 2004," May 2004, 7.

Table 154—*Continued*

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>                                | <i>Description of Change</i>   |
|------------------|---------------------|--|--|
| 5                | 79-1008.01          | Equalization aid; amount                                 | Extended the temporary aid adjustment factor in the state aid formula for an additional three years, 2005-06, 2006-07 and 2007-08. |
| 6                | 79-1009             | Option school districts; net option funding; calculation | Extended the temporary aid adjustment factor in the state aid formula for an additional three years, 2005-06, 2006-07 and 2007-08. |

*Source:* Legislative Bill 1093, *Slip Law*, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, §§ 2-6, pp. 3-7.

### LB 1091 - Resurrection of Reorganization Incentives

The 2004 Session was generally considered an inappropriate time to launch new spending programs no matter how well intended. After all, the session's primary focus appeared to be fixing the current 2003-05 biennium budget and situating the State in a favorable position to deal with the next biennium budget crisis. On the other hand, the administration itself had requested, and ultimately received, new spending authority for such necessary services as mental healthcare and child protection and advocacy. As bad as things were on the budget front, there was in fact new spending in 2004. Some of the spending derived from General Fund resources, while other spending resulted from shifts in existing funds.

In 2004, the legislative vehicle to address transfers of funds was LB 1091, which was one of a series of bills comprising the official budget package forwarded by the Appropriations Committee. Introduced by Speaker Bromm on behalf of the Governor, LB 1091 provided for cash transfers from various State created funds in an effort to cover necessary expenses and generally lighten the overall budget shortfall. Such transfer bills are introduced almost every year, in good economic times and bad, but the 2004 transfer vehicle contained some significant, if not ominous, provisions. Of most interest to public education, LB 1091 transferred \$8 million over the 2005-07 biennium from the Education Innovation Fund to the General Fund.<sup>2559</sup> The Education Innovation Fund is one of the

<sup>2559</sup> Legislative Bill 1091, *Slip Law*, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, § 1, pp. 1-2.



main beneficiary funds under the State Lottery Act.<sup>2560</sup> Of the \$8 million transferred, \$6 million was earmarked to remain in the General Fund while the other \$2 million would be used for a new program, or perhaps more accurately termed a resurrected program.

In 2004, Senator Ron Raikes, chair of the Education Committee, had introduced legislation, LB 1105, to revive the state policy of encouraging school districts to voluntarily merge or consolidate in exchange for monetary incentives to ease the financial burden of reorganization. This state policy was instigated in 1995 under LB 840 at the request of then Governor Ben Nelson. The underlying idea was simple. The State would provide a mechanism within the state aid formula to eliminate what many called the “disincentives” to reorganize. The disincentives referred to past reorganization efforts that actually produced more hardships to the joining school districts than when the districts were separate and distinct entities. The formula, in effect, penalized some districts for the act of merging or consolidating, an act otherwise supported and encouraged by the State.

LB 840 (1995) created a system within the formula to reward reorganized school districts by offering additional state aid over a period of years to offset any possible dips in aid the individual districts comprising the reorganized district would have otherwise received. The program was later expanded in 1998 to include unification districts. LB 1219 (1998) created a new type of reorganization effort that involved two or more K-12 districts joining for all intent and purposes with the general objective of someday uniting as one district. And, similar to other forms of mergers and consolidations, unified districts also were provided incentive aid under the school finance formula.

The state policy relevant to financial incentives to reorganize reached its pinnacle when the Legislature passed LB 313 in 2001. Under the efforts of Senator George Coordsen, the State would obligate additional funds and extend the timeframe to take advantage of the incentive aid program. Unfortunately, 2001 would also mark a black year for the nation and for Nebraska as the economic morass following “9/11” took hold. The Legislature met in special session in October and November 2001 to begin what

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<sup>2560</sup> NEB. REV. STAT. § 9-812 (Cum. Supp. 2003).

would be a three-year effort to right the ship, to address shortfalls in tax revenue through budget cuts and tax increases. As part of this effort, the Legislature passed LB 3s1 (2001), which reversed the action taken under LB 313 (2001). LB 3s1 essentially closed the book on the incentive aid program by affixing a retroactive date of August 2, 2001 as the deadline for reorganized districts to apply.<sup>2561</sup> For all practical purposes, the reorganization incentive aid program was shut down except for any existing obligations to those reorganization districts that applied prior to August 2, 2001.

In 2004, Senator Raikes attempted to revitalize the incentive aid program through the introduction of LB 1105. The measure was designed to “encourage consolidation of Class II and III school districts” that had less than 390 students into existing K-12 districts that had greater than 390 students.<sup>2562</sup> In 2002-03, there were 134 Class II and III school districts with less than 390 students.<sup>2563</sup> Similar to the original incentive aid program established in 1995, LB 1105 proposed to set aside an amount of funds otherwise allocated for equalization aid each year. This meant, of course, that less money would be available for equalization aid in order to pay for reorganization incentives. The bill called for \$1 million to be set aside from TEEOSA funds in fiscal years 2005-06 through 2009-10 and \$500,000 per year thereafter.<sup>2564</sup>

The public hearing for LB 1105 was held before the Education Committee on January 26, 2004, but the bill was never advanced.<sup>2565</sup> Instead, Senator Raikes used a different legislative strategy, and a different funding source. During first-round debate on LB 1091, one of the pieces of the budget package, Senator Raikes floated a trial balloon on the subject. The amendment he offered would transfer the bulk of the proceeds from

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<sup>2561</sup> Legislative Bill 3, *Slip Law*, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Spec. Sess., 2001, § 7, p. 5.

<sup>2562</sup> Legislative Bill 1105, *Provide incentives for school district consolidation*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, 15 January 2004, § 2, p. 2.

<sup>2563</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 1105 (2004)*, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, 22 January 2004, 1.

<sup>2564</sup> LB 1105 (2004), § 2, p. 4.

<sup>2565</sup> NEB. LEGIS. JOURNAL, 16 January 2004, 318.

the Education Innovation Fund to the State's General Fund for the 2005-07 biennium.<sup>2566</sup> While not stated in the amendment, Senator Raikes intended that \$2 million of that amount be set aside for reorganization incentive aid (\$1 million for each year of the following biennium). Said Raikes:

This reorganization incentive proposal was a part of the Education Committee's interim work. The committee came to the conclusion that if you want to achieve efficiencies among particularly smaller K-12 schools, it makes good sense to see to it that mergers and consolidations occur. Those activities are expensive initially, even though long-run benefits occur in terms of cost savings. So it just makes good fiscal sense, I think the committee believed, to go ahead and provide the school systems that are interested in reorganization some up-front money to help them cover these initial costs.<sup>2567</sup>

Senator Raikes told his colleagues that he did not intend to "press this amendment," on that particular day, on that particular stage of consideration.<sup>2568</sup>

The act of pressing the issue had not escaped a somewhat nervous chair of the Appropriations Committee, whose job it was to watch over every aspect and every decision made with respect to money flowing in and out of the State's General Fund. "You said you weren't going to press this," said Senator Roger Wehrbein, "Are you ... does that mean you're not going to iron the money, or what?"<sup>2569</sup> "How far are you going to push this amendment?" he inquired.<sup>2570</sup> "Boy, you guys are tough to deal with," Raikes responded good-naturedly.<sup>2571</sup> Of course, Senator Raikes, true to his word, would pull the amendment, but not before he had a chance to hear the debate on his trial balloon.

What followed on March 19<sup>th</sup> was what Senator Raikes had hoped to hear, a reasonably good discussion on the floor of the Legislature on the merits of renewing such a program. "[I]t's just sad to me that we put money in new initiatives when we badly

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<sup>2566</sup> *Id.*, *Raikes AM3232 to Com AM3075 (LB 1091)*, 19 March 2004, 1154.

<sup>2567</sup> Legislative Records Historian, *Floor Transcripts, LB 1091 (2004)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, 19 March 2004, 11822-23.

<sup>2568</sup> *Id.*, 11823.

<sup>2569</sup> *Id.*, 11829.

<sup>2570</sup> *Id.*

<sup>2571</sup> *Id.*

need money to reorganize government and we can't even squeeze out enough dollars to reorganize government to get us on the right track before we start with new initiatives again," said Senator Chris Beutler of Lincoln.<sup>2572</sup> Beutler encouraged Senator Raikes to bring the amendment back on second-round debate of LB 1091.

Not everyone was all together sure about Senator Raikes' idea to rejuvenate the reorganization incentive aid program, especially on the basis of a bill that had not yet nor ever would be advanced from committee. Senator Pat Bourne of Omaha, for instance, was concerned about whether such use of lottery funds would violate the intent of the Education Innovation Fund. Senator Wehrbein was concerned that the Raikes proposal would pull another \$2 million away from the General Fund and would widen the budget shortfall for the next biennium. But on the whole, Senator Raikes had good reason to be optimistic about his chances to amend LB 1091 during second-round debate.

Senator Raikes would, in fact, try again during Select File consideration of LB 1091 on April 2, 2004. Unlike the amendment he withdrew during first-round debate, Raikes intended to take the second attempt to a vote. This amendment would provide incentive payments to encourage Class II and III school districts with less than 390 students to reorganize into K-12 school districts with greater than 390 students. The incentive payments apply only to consolidations occurring after May 31, 2005 and before June 1, 2007, so the window of opportunity was limited.<sup>2573</sup>

Under the new program, incentives would be paid to reorganized schools for a period of two years (rather than three years as prescribed in the original program created in 1995). Base year incentives would be paid in the initial year of reorganization and would be equal to 50% of the "per-student incentive amount" multiplied by the number of students in the district or districts having less than 390 students.<sup>2574</sup> This amount would be calculated using a formula established in the amendment as follows:

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<sup>2572</sup> *Id.*, 11831.

<sup>2573</sup> NEB. LEGIS. JOURNAL, *Raikes AM3480 to ER AM7203 (LB 1091)*, 31 March 2004, 1407-11.

<sup>2574</sup> *Id.*

$$\$4,000 - ((ADM \times (3,000 / 390)) = \text{per student incentive amount}^{2575}$$

The “ADM” used in the formula represents the average daily membership of each district having less than 390 students prior to the reorganization. Therefore, in a simple example involving the consolidation of District A, with 100 ADM, into District B (the district already having greater than 390 students) the per-student incentive amount would be approximately \$3,230.77. The per-student incentive amount (\$3,230.77) multiplied by the 100 ADM equals a total reorganization incentive amount of \$323,077. Half this amount would be paid as base year funds and the other half in the second year.<sup>2576</sup>

The amendment required \$1 million to be transferred from the Education Innovation Fund to the State’s General Fund in both 2005-06 and 2006-07 for base year incentive payments. Second year incentives would be funded through General Funds as part of the distribution of state aid in 2006-07 and 2007-08. Incentive payments would be prorated to reorganized districts if the payments exceeded the amount of funds available. The amendment provided that base year incentive payments would not be included in the formula resources for purposes of calculating state aid and schools may exceed the spending lid by the amount of incentive payments received.<sup>2577</sup>

Senator Adrian Smith of Gering posed one of the more obvious questions about the proposal during debate on the amendment. “I guess to cut to the chase, why 390?” he asked Senator Raikes.<sup>2578</sup> The chair of the Education Committee had actually anticipated the question in his opening remarks on the amendment. Even before Senator Smith’s question, Senator Raikes had distributed a handout to his colleagues to illustrate the sizable increase in cost per student for local systems with fewer than 390 students. “In rough numbers, at ... for an average at 390 students or thereabout, it looks like it’s \$7,760 or \$7,800 per student; whereas, you go back to an enrollment of 150 or so, it approaches

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<sup>2575</sup> Id.

<sup>2576</sup> Id.

<sup>2577</sup> Id.

<sup>2578</sup> *Floor Transcripts, LB 1091 (2004)*, 2 April 2004, 13101.

or exceeds \$10,000 per student,” Raikes explained.<sup>2579</sup> The theory went that local systems with at least 390 students would generally have lower per student costs, and would, therefore, require less overall financial resources, including state aid. Senator Raikes believed this would produce more efficient school systems and ultimately provide savings to the state. “[T]he idea is this ... if you move a school system in size from, say, 150 students to 390 or more, probably on a year-in/year-out basis, there may be as much as a \$4,000 per student saving,” he said.<sup>2580</sup>

Senator Raikes’ assertions were supported by the research performed by the Legislative Fiscal Office. In a fiscal impact statement submitted on April 5, 2004, analyst Scott Danigole wrote:

The reorganization of schools into districts with 390 or more students will result in reorganization efficiencies which will reduce the amount expended by schools to operate with less than 390 students. These efficiencies should result in a savings for property taxpayers in those merged school districts with costs greater than their cost grouping cost prior to the merger. The state will also realize a savings in state aid payments two years after the consolidation due to lower overall school expenditures. Lower school spending results in lower cost group costs which will reduce state aid for schools receiving equalization aid.<sup>2581</sup>

Danigole noted, however, that any savings in state aid would not be realized until the 2007-08 fiscal year. This would become the first year in which any participating reorganized school districts would graduate, so to speak, from the incentive aid program.

Following Senator Smith’s question, Senator Raikes also disclosed that “390” was the product of an efficiency model based upon an optimum K-12 system. He noted there were thirteen grade levels in a kindergarten through twelfth grade school system. If one assumes an optimal class size of 15 students per classroom and two classes per grade level multiplied by 13 (the number of grade levels), one arrives at 390. Senator Raikes admitted there was not anything particularly magical about 390. It depended upon what assumptions one wishes to make when creating a financial aid program. Perhaps no

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<sup>2579</sup> Id., 13098-99.

<sup>2580</sup> Id., 13099.

<sup>2581</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 1091 (2004)*, prepared by Scott Danigole, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, 5 April 2004, 2.

different than when the Legislature makes various assumptions and political decisions concerning the school finance formula on the whole. There is an inevitable element of educated guesswork in the parameters and factors used in any formula.

Another question anticipated by Senator Raikes related to the manner in which the program would actually encourage districts to consolidate. Senator Raikes explained that the process of reorganization does not immediately produce cost savings to anyone involved. In fact, the opposite is true. For example, obtaining appropriate facilities to house the additional students often produces expenses. There is also the possibility that the state aid formula would produce less state aid for the reorganized district than if the participating districts had remained a part. The needs minus resources equation within the state aid formula tends to produce less equalization aid to those local systems with greater property tax revenue generating capacity.

Generally, the physical landmass and property tax capacity of a school district increases once joined with one or more other districts. The incentive aid program was meant to provide a financial bridge for the initial years of the reorganized district's existence. "The reorganization incentive proposal here is simply one that would provide school systems that amount of money to sort of get over the hump, if you will, to make the change," Raikes said.<sup>2582</sup> It would provide state financial assistance over and above the amount of state aid due to the reorganized district.

The amendment received mostly positive comments during Select File debate. There was considerable discussion about the use of 390 students as the benchmark for qualification. There also was discussion on the merits of encouraging rather than mandating consolidation of school districts. "I don't know if the 390 number is right, but certainly the way it's been described I think it's extremely logical," Speaker Curt Bromm said, "Taking this approach is consistent with what Nebraskans have wanted us to do in terms of the way we approach school reorganization for years and years."<sup>2583</sup> Support was also evident among some of the urban legislators, including Senator Chris Beutler of

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<sup>2582</sup> *Floor Transcripts, LB 1091 (2004)*, 2 April 2004, 13099.

<sup>2583</sup> *Id.*, 13102.

Lincoln and Senator Pam Redfield of Omaha. “I agree that it is always preferable to encourage people with positive incentives to change behavior that might be in the best benefit of all,” said Redfield.<sup>2584</sup> Senator Bob Kremer of Aurora agreed. “I believe in incentives more than I do forced consolidation,” he said.<sup>2585</sup>

Several lawmakers were less concerned about the mechanics of the amendment as the fiscal aspects. Senator Pat Bourne of Omaha continued his opposition launched during first-round debate to using monies from the Education Innovation Fund for programs other than what was intended. Said Bourne:

I don’t want to see the money continue to be diverted from the lottery. Whether it’s from the education side or the environment side, I think we need to stop diverting that money. If we’re going to divert it, we should divert it into the General Funds and it should be on an equal basis.<sup>2586</sup>

Senator Bourne’s comments were certainly supported by some school officials who had hoped to see things return to normal with regard to lottery funds following the 2003-05 biennium. The Raikes amendment appeared to some as a continuation of a dangerous precedent to raid the Education Innovation Fund upon the whim of the Legislature.

Senator Roger Wehrbein, in keeping with his role as the Legislature’s budget guru, also cast some concerns about the potential cost of the program if all 134 eligible K-12 districts having fewer than 390 students sought reorganization and applied for funds. Part of Wehrbein’s function, of course, was to look at worst-case scenarios. The Legislative Fiscal Office examined the concern raised by Wehrbein and reported that:

The fiscal impact of the amendment for the state depends upon the consolidations that occur. In 2002-03, there were 134 Class II and III school districts with less than 390 students. These systems had an average daily membership (ADM) of 32,891 students. It is estimated that if all school districts (76) in the standard cost grouping with less than 390 students were to consolidate, the fiscal impact for incentives will be \$36.4 million over the three-year period from 2005-06 to 2007-08.

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<sup>2584</sup> Id., 13110.

<sup>2585</sup> Id., 13123.

<sup>2586</sup> Id., 13132.



The potential fiscal impact is overstated since all Class II and III school districts in the standard cost group with less than 390 students will probably not consolidate. The fiscal impact is understated due to the use of 2002-03 ADM. This is because declining membership in smaller school systems results in a greater number of schools being eligible for future incentives which may be higher as membership declines. The fiscal impact may also be understated if school systems in the sparse or very sparse cost groups consolidate. The fiscal impact may also be impacted by consolidations of Class I and Class VI districts with Class II and III districts.<sup>2587</sup>

But how likely was the worst-case scenario? The Fiscal Office assumed that only about 5-10% of all eligible districts would actually utilize the program based upon historical trends with regard to school consolidation in Nebraska. “If this number of consolidations occur, then the total fiscal impact will range from \$1.8 to \$3.6 million over the three year period,” the Fiscal Office reported.<sup>2588</sup>

In truth, the Raikes amendment contained language to prorate incentive payments if the number and amount of requests exceeds the available funds. This would be the safety valve for the State in terms of its overall financial commitment to the program. Although pro-consolidation policymakers would be delighted to encounter a problem such that additional funding became necessary due to large numbers of reorganization efforts. This would, after all, meet their ultimate objective: fewer districts.

Senator Raikes’ amendment was adopted after several hours of discussion on a 26-7 vote.<sup>2589</sup> Reorganization incentives were once again a part of the school finance formula, at least for a period of a few years. It also meant that the Education Innovation Fund would once again be diverted to the State’s General Fund to help the budget circumstances faced by the Legislature. For each year of the 2005-07 biennium, \$1 million would be set aside for the reorganization incentive aid program and another \$3 to \$4 million would be transferred to the General Fund. LB 1091 was passed on a unanimous 48-0 vote on April 7, 2004 and signed into law by Governor Mike Johanns.<sup>2590</sup>

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<sup>2587</sup> *Fiscal Impact Statement, LB 1091 (2004)*, 5 April 2004, 2.

<sup>2588</sup> *Id.*

<sup>2589</sup> NEB. LEGIS. JOURNAL, 2 April 2004, 1451.

<sup>2590</sup> *Id.*, 1540.

Table 155. Summary of Modifications to TEEOSA  
as per LB 1091 (2004)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>  | <i>Description of Change</i>   |
|------------------|---------------------|--|--|
| 8                | 79-1001             | Act, how cited   | Adds two new sections to the Tax Equity and Educational Opportunities Support Act.   |
| 9                | 79-1011             | Incentives for consolidation; qualification; requirements; payment                                       | <p>Provides that the state will fund incentive payments to encourage Class II and III school districts with less than 390 students to reorganize into Class II, III, IV or V school districts with greater than 390 students. The incentive payments apply to consolidations after May 31, 2005 and before June 1, 2007. Incentives are paid to reorganized schools for two years. Base year incentives are paid in the initial year of reorganization. \$1 million in transfers from the Education Innovation Fund (lottery proceeds) will be available in 2005-06 and 2006-07 for base year incentives. The funds are to be prorated if the total is insufficient to fund all schools qualified for incentives. Base year incentives will be equal to 50% of the amount calculated based upon a formula established in the amendment.</p> <p>Incentives in the second year of a consolidation will equal the other 50% of the original calculation unless funds were prorated for the base year. If funds were prorated, the second year incentive will include the amount not paid in the first year due to pro-ration of funds. Second year incentives will be funded with General Funds as part of the distribution of state aid in 2006-07 and 2007-08. Base year incentives are not included in formula resources for purposes of state aid and schools may exceed the budget lid by the amount of incentive payments received.</p> |
| 10               | 79-1012             | School District Reorganization Fund; created; use; investment  | Creates the School District Reorganization Fund to be administered by NDE. The fund would consist of money transferred from the Education Innovation Fund and must be used to provide payments to reorganized school districts under Section 9. Any money remaining in the fund on July 1, 2008, must be transferred to the General Fund on such date.   |
| 11               | 79-1028             | Applicable allowable growth rate; Class II, III, IV, V, or VI district may exceed; situations enumerated | Provides that a Class II, III, IV, or V district may exceed its applicable allowable growth rate by the specific dollar amount of incentive payments or base fiscal year incentive payments to be received in such school fiscal year under section 9.   |

Source: Legislative Bill 1091, *Slip Law*, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, §§ 8-11, pp. 8-10.

LB 973 - Adjusted Valuation / Clerical Errors

Legislative Bill 973 (2004) represented an omnibus technical cleanup bill for the Tax Equalization and Review Commission (TERC). The legislation was intended to clarify and improve existing law relevant to the equalization responsibilities incumbent upon the commission. The Commission was created in 1996 to provide a less complicated, less expensive avenue of appeal for taxpayers challenging real property valuation decisions. The Commission also carries the duty to hear and decide other petitions and appeals.

By the time the bill passed, LB 973 also had absorbed several other provisions from revenue-related bills. In general, LB 973 made various appeal timelines and procedures uniform throughout state law and adopted more general language concerning appeals. Procedures covering perjury, subpoenas and continuation of an action after the death or disability of a party or sale of the underlying property would be outlined in statute. The TERC would be provided more flexibility to decide whether an adjustment must be made, and requirements for subclass adjustments would be modified.

During General File debate on March 16, 2004, an amendment was successfully offered by Senator Ray Janssen of Nickerson that would allow certain taxpayers who are eligible for a special valuation (greenbelt) under existing law to apply for the valuation within 30 days of receiving a property valuation notice from the county. Senator Janssen said the amendment was introduced in response to a clerical error in Dodge County that caused about 900 property owners to miss a deadline for filing for a special valuation.<sup>2591</sup>

The amendment also provided that, by June 30<sup>th</sup> of the year following the certification of adjusted valuation, a local school system or county official may file with the Property Tax Administrator a written request for a “nonappealable correction” of the adjusted valuation due to changes to the tax list that change the assessed value of taxable property.<sup>2592</sup> Upon the filing of the written request, the Property Tax Administrator must require the county assessor to recertify the taxable valuation by school district in the

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<sup>2591</sup> NEB. LEGIS. JOURNAL, *Janssen AM3032 to AM2384 (LB 973)*, 10 March 2004, 975-80.

<sup>2592</sup> *Id.*, 978.

county. The recertified valuation must be the valuation that was certified on the tax list increased or decreased by changes to the tax list that change the assessed value of taxable property in the school district in the county in the prior assessment year. By the following July 31<sup>st</sup>, the Property Tax Administrator must approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from the action to the Department of Education.<sup>2593</sup>

The impact of the Janssen amendment was not immediately known at the time of its adoption. The Department of Education reported that the year-end recalculation of state aid could cause a shift in the distribution of state aid. A statewide decrease in adjusted valuation may cause the local effort rate (LER) in the year-end recalculation of state aid to increase. Such an increase in the LER may cause local systems to receive less equalization aid. Similarly, any local system that witnesses a decrease in adjusted valuation may receive an increase in equalization aid.<sup>2594</sup>

The Janssen amendment also made changes to existing law concerning corrections and errors in adjusted valuation for purposes of calculating state aid. Under the provisions of the school finance formula at the time, county assessors must, by August 25<sup>th</sup>, certify to the Property Tax Administrator the total taxable value by school district in the county for the current assessment year. LB 973 amended the formula to state that the county assessor may amend the filing for changes made to the taxable valuation of the school district in the county if corrections or errors are discovered on the original certification. Amendments must be certified to the Property Tax Administrator by September 30<sup>th</sup>.<sup>2595</sup>

Other changes contained in LB 973 included clarification of existing law relevant to orders from the Property Tax Administrator concerning changes in adjusted valuation. The previous law required the Property Tax Administrator to enter an order modifying or declining to modify the adjusted valuations by January 1<sup>st</sup> each year and must certify the

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<sup>2593</sup> Id.

<sup>2594</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 973 (2004)*, prepared by Doug Nichols, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, 17 March 2004, 1.

<sup>2595</sup> NEB. LEGIS. JOURNAL, *Janssen AM3032 to AM2384 (LB 973)*, 10 March 2004, 976.

order to the Department of Education. The final determination of the Property Tax Administrator may be appealed to the TERC. LB 973 clarified that the order must be in written form. The legislation also required a copy of the written order to be mailed to the local school system within seven days after the date of the order. The written order of the Property Tax Administrator may then be appealed within 30 days after the date of the order to the TERC.<sup>2596</sup>

Finally, LB 973 included provisions of LB 970 relating to special valuation or greenbelt land. Greenbelt land involves agricultural land actively devoted to agricultural or horticultural purposes but has value for purposes other than agricultural or horticultural uses and meets the qualifications for special valuation. LB 973 specified that such land constitutes a separate class of property and would be valued at 80% of its agriculture-only use for purposes of taxation and recapture.<sup>2597</sup> LB 973 changed the acceptable range for greenbelt land from 92% to 100% of the special or recapture value, to 74% to 80%.<sup>2598</sup> While LB 970 clarified the assessment and equalization of greenbelt land, it did not change the valuation or taxation of such land.

LB 973 passed on April 1, 2004 by a 46-0 vote.<sup>2599</sup>

Table 156. Summary of Modifications to TEEOSA  
as per LB 973 (2004)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>  | <i>Description of Change</i>   |
|------------------|---------------------|--|--|
| 66               | 79-1016             | Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited | Existing law stated that, on or before August 25, the county assessor must certify to the Property Tax Administrator the total taxable value by school district in the county for the current assessment year on forms prescribed by the Property Tax Administrator. |

<sup>2596</sup> Legislative Bill 973, *Slip Law*, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, § 66, p. 27.

<sup>2597</sup> *Id.*, § 6, p. 5.

<sup>2598</sup> *Id.*, § 64, p. 25.

<sup>2599</sup> NEB. LEGIS. JOURNAL, 1 April 2004, 1427.

Table 156—Continued

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>  | <i>Description of Change</i>  |
|------------------|---------------------|--|---|
| 66               | 79-1016             | Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited<br><br><i>Continued</i> | <p>LB 973 amended this section to state that the county assessor may amend the filing for changes made to the taxable valuation of the school district in the county if corrections or errors on the original certification are discovered. Amendments must be certified to the Property Tax Administrator on or before September 30.</p> <p>LB 973 also provides that, by June 30th of the year following the certification of adjusted valuation, a local school system or county official may file with the Property Tax Administrator a written request for a “nonappealable correction” of the adjusted valuation due to changes to the tax list that change the assessed value of taxable property.</p> <p>Upon the filing of the written request, the Property Tax Administrator must require the county assessor to recertify the taxable valuation by school district in the county on forms prescribed by the Property Tax Administrator. The recertified valuation must be the valuation that was certified on the tax list increased or decreased by changes to the tax list that change the assessed value of taxable property in the school district in the county in the prior assessment year. By the following July 31st, the Property Tax Administrator must approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from the action to the Department of Education.</p> <p>LB 973 changed the provisions relating to state aid value relevant to special valuation (greenbelt) land. The changes in this section harmonize the state aid value provision with the acceptable range for greenbelt land from 92% to 100% of the special or recapture value, to 74% to 80%.</p> |
| 67               | 79-1022             | Distribution of income tax receipts and state aid; effect on budget  | Editorial changes to harmonize with changes to Section 66, which amended 79-1016.   |

*Source:* Legislative Bill 973, *Slip Law*, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, §§ 66-67, pp. 26-28.

### I. Review

In 2002, Nebraska economic crisis required almost every facet of state government to expect to take its lumps in order reduce state expenditures and then hope for better times. The three largest pools of expenditures were, and still are, Medicaid, the University, and public education, and at least two of these major pools would be prime

targets for budget reductions during the 2002 Session. The question was less *if* but *how* state aid would be reduced to help balance the state's biennium budget.

The Education Committee reviewed a number of proposals introduced in the 2002 Session designed to reduce the state's financial burden by somehow shifting more burden to the local level, at least temporarily. Ultimately, the vehicle of choice would be LB 898 (2002). The original version of LB 898, as introduced by Speaker Doug Kristensen, would have increased the local effort rate and thereby reduced the amount of state aid necessary to fund the school finance formula. As advanced from committee, LB 898 would accomplish a decrease in state aid by use of a "Temporary Aid Adjustment Factor," which would reduce calculated needs, allocated income taxes and net option funding to local systems by 1.25%. The reduction would be in place for three years and would result in a decrease of state appropriations of about \$22 million each year.

During second-round debate, the Legislature would amend the legislation in order to permit school districts to exceed the levy limitation by an amount equal the amount of state aid lost by virtue of the Temporary Aid Adjustment Factor. The bill required NDE to certify the amount by which the levy can be exceeded for each local system. The additional levy authority could only be accessed by a super majority (three-fourths) vote of a local school board.

If LB 898 had landed on the Governor's desk without the additional levy authority, he apparently would have signed the bill into law. This was not the case, and on April 10, 2002, the same day the Legislature voted to pass the bill by a 46-3 vote, Governor Johanns vetoed LB 898. Lead by Speaker Kristensen, the Legislature would take immediate action to override the veto. The majority of the body believing that it would be inappropriate to preclude some form of remedy to local school districts.

One year later, in 2003, the economic situation in Nebraska had not improved. The Legislature was once again searching for alternatives to address the state's revenue shortfall. It was then the unthinkable became a legitimate item of discussion: increase the maximum school levy limitation, at least for temporary purposes. The result would be a decrease in state appropriations to fund the state aid formula, a reduction in the

state's budget deficit, and a shift of funding responsibility to local school districts.

The bill was LB 540, introduced by Senator Ron Raikes. As advanced from the Education Committee, and ultimately passed by the Legislature, the bill provided what were intended to be temporary adjustments to the school finance formula. LB 540 would leave in place the Temporary Aid Adjustment Factor and the accompanying levy exclusion, both of which were incorporated into the formula the year before. The heart of the bill was to raise the maximum levy for schools from \$1.00 to \$1.05 beginning with the 2003-04 school year. It also increased the Local Effort Rate (LER) from 90¢ to 95¢ in order account for the higher maximum levy. But there was a catch.

LB 540 also proposed to lower the base spending lid for schools from 2.5% to 0% for both 2003-04 and 2004-05. In exchange, the lid range was increased from 2% to 3%. This meant that instead of the existing 2.5% to 4.5% spending lid range, schools would be subject to a 0% to 3% lid range for two consecutive fiscal years. The idea was that if the Legislature planned to offer additional levy authority to schools, then there had to be a tighter control on local spending. (The bill retained a local school board's authority to exceed its growth rate by an additional 1% by a three-fourths vote of the board.)

As a virtual repeat from the year before, the Legislature would pass LB 540 only to have it returned and stamped with a gubernatorial veto. The Legislature once again voted to override the veto, this time by a unanimous vote.

The Legislature had proposed and passed legislation within two consecutive sessions to implement a mechanism for across-the-board reductions in formula need calculations, provide a relief valve through a levy exclusion, and increase the maximum levy for schools up from \$1.00 to \$1.05, and reduce the schools' spending authority. The efforts were met, for one reason or another, with vetoes and subsequent veto overrides. All this would change in the 2004 Session.

By 2004 there were some positive signs of economic recovery, but there were still pressing state budget issues to address. The Legislature once again set out to reduce costs to the state through a variety of means. But the general feeling was that public schools had already contributed sufficiently to the cause so as to avoid any new reductions and



funding shifts. That is not to say, however, that existing reductions and shifts could not be extended. And, in fact, this is what the Legislature chose to do.

The Legislature passed LB 1093 (2004) to extend the existence of the \$1.05 levy (and the 95¢ LER) through the 2007-08 school year. After 2007-08, presumably, the maximum levy would return to \$1.00. In addition to the levy provision, the legislation would maintain the Temporary Aid Adjustment Factor and the corresponding levy exclusion through the 2007-08 school year. However, the 0% base spending lid, imposed under LB 540 (2003), would be allowed to expire after the 2004-05 school year. Unless the Legislature takes further action in the 2005 Session, school districts would return to the 2.5% to 4.5% spending lid range beginning with the 2005-06 school year.

LB 1093 did not propose anything new. It extended the life of existing provisions for a formula need reduction, maximum levy authority, and levy exclusion. And yet this time, the Governor would sign into law rather than veto the proposal.

## School Organization, 2005

### A. Introduction

More than 350 people attended the public hearing and another 400 or more listened throughout the Capitol hallways and within the rotunda where TV monitors had been arranged. The legislation at issue proposed to eliminate Class I (elementary-only) school districts. The bill allowed such districts to voluntarily merge with a K-12 district by a certain date, or would be required to do so by a reorganization committee. “It’s a glacier force that we are putting into motion that should not be stopped,” said a co-sponsor of the bill, who added, “The bill does everything within its power to protect local authority and autonomy.”<sup>2600</sup> The same state lawmaker would later defend the legislative proposal saying that, “This is a state issue, not an urban issue or a rural issue.”<sup>2601</sup>

Opponents of the measure countered with arguments of local control, student/parent choice, and a host of evidence that seemed to indicate that smaller is better, at least for some communities. “Some Class I (schools) should be merged but not all Class Is should be merged,” admitted a rural-area lawmaker and principal opponent of the legislation.<sup>2602</sup> Ironically, opponents of the Class I reorganization bill would lose the battle, but ultimately win the war. The people had the final word on the matter and voted to repeal the law at the General Election. The year was 1986.

Mark Twain is credited with the saying, “History doesn’t repeat itself - at best it sometimes rhymes.”<sup>2603</sup> This seems to be an appropriate summation of the events in 1985-86 in comparison to those occurring some twenty years later. Much of the same issues brought to bear in 1985 were rehashed in 2005, just as they were rehashed from decade to decade in the whole of the 20<sup>th</sup> Century. The reorganization of elementary-only

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<sup>2600</sup> “Legislature passes bill to reorganize schools,” *Unicameral Update*, 19 April 1985, 6. Quotation from Senator Vard Johnson of Omaha.

<sup>2601</sup> “School merger proposal wins 1st-round approval,” *Unicameral Update*, 8 March 1985, 2. Quotation from Senator Vard Johnson of Omaha.

<sup>2602</sup> “Legislature passes bill to reorganize schools,” 6. Quotation from Senator Howard Lamb of Anselmo.

<sup>2603</sup> Thinkexist contributors, “History doesn't repeat itself - at best it sometimes rhymes,” Thinkexist.com, [http://en.thinkexist.com/quotation/history\\_doesn-t\\_repeat\\_itself-at\\_best\\_it/163316.html](http://en.thinkexist.com/quotation/history_doesn-t_repeat_itself-at_best_it/163316.html), accessed 11 March 2006.

school districts is quite simply one of the oldest, most bitterly contested education issues in the history of the State of Nebraska. And by the conclusion of the 2005 Session, proponents of mandatory reorganization would once again believe they succeeded, while opponents would once again seek a definitive answer from the electorate.

The 1985 legislation, LB 662, required Class I schools, that are not part of a Class VI (high school-only) school district, to merge with a K-12 school district or become part of a Class VI district prior to September 1, 1989. County reorganization committees were directed to dissolve districts that do not comply with the merger requirements of the bill.<sup>2604</sup> Governor Bob Kerrey signed the bill into law even though he did not particularly care for one of the other major provisions of the measure: a tax increase. LB 662 was amended during floor debate to include a one-cent sales tax increase in order to help pay for the property tax relief component of the legislation. In addition to the mandate for reorganization, LB 662 placed a cap on the level of funding for schools derived from property taxes at 45% of total of operational costs.<sup>2605</sup> Naturally, this meant the other 55% of necessary funding must derive from state and/or federal aid. The idea was that the bulk of the additional funding would come from the State.

LB 662 was passed by the Legislature on April 18, 1985 by a narrow 25-23 vote.<sup>2606</sup> Governor Kerrey deliberated whether to sign or veto the measure until the very last hour of his allotted five-day consideration period. Within a short time after Governor Kerrey signed the bill into law, a citizen group organized to repeal the legislation through a vote of the people. Referendum 400 appeared on the November 4, 1986 General Election ballot and almost 68% of all registered voters participated in the election. No doubt the heavily publicized and hard fought battle over Referendum 400 having a significant impact on the high turnout. The ballot question to retain LB 662 was

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<sup>2604</sup> LB 662, Session Laws, 1985, §§ 1-8, pp. 1-4 (1103-06).

<sup>2605</sup> *Id.*, § 17, p. 9.

<sup>2606</sup> NEB. LEGIS. JOURNAL, 18 April 1985, 1658.

answered loud and clear. No. A full 66.5% voted against retention of the 1985 legislation while only 33.5% voted in favor.<sup>2607</sup>

Even some Class I advocates took the 1986 election results as less an endorsement of their small schools as a resounding defeat of a tax increase. “Oddly enough,” said Rick Baum of the Nebraska School Improvement Association, “it was the finance portion of the bill that seemed to pass the bill in the Legislature, but it was the finance portion of the bill that defeated the bill on the ballot.”<sup>2608</sup> The Nebraska School Improvement Association was instrumental in launching the referendum effort, but many believe it was the state and local chambers of commerce that had most to do with the success of the repeal effort. The business community was simply unwilling to go along with a sales tax increase. In fact, some attribute the tough stance taken by candidate Kay Orr against the tax increase as a major contribution to her ascension to the Office of Governor in 1986.

There would be similar legislative attempts following the 1985-86 effort to force Class I consolidation, but most were akin to shots across the bow in order to pave the way for some other agenda. LB 806 (1997), for instance, did not originally contain a Class I reorganization element. As the bill emerged from committee, however, it suddenly incorporated provisions for mandatory consolidation. The proponents of the bill were *willing* to let go of the reorganization piece if opponents of the bill went along with some of the other controversial school finance provisions. Proponents of the bill essentially agreed to give up that which they did not originally seek to achieve, an interesting political ploy to say the least. But it worked, at least for proponents of LB 806.

It was not until 2004 that a serious effort to reorganize Class I districts was once again launched in the Nebraska Legislature. Senator Ron Raikes of Lincoln, chair of the Education Committee, sponsored LB 1048 (2004) along with 14 other co-sponsors, both

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<sup>2607</sup> Secretary of State Allen J. Beermann, comp., *Official Report of the State Board of State Canvassers of the State of Nebraska, General Election, November 4, 1986* (Lincoln, Nebr.: Office of Sec’y of State).

<sup>2608</sup> Nicole Simmons, “Consolidation Bill Doomed by Tax Hike,” *Omaha World-Herald*, 5 November 1986, 1.

rural and urban-based lawmakers.<sup>2609</sup> The basic concept behind the legislation was to “assimilate” all Class I districts into a high school district effective on June 15, 2005.<sup>2610</sup> However, an effort was made to give patrons of Class I districts control over their own destiny to a certain extent. The bill offered an opportunity for Class I districts to conduct public hearings on the merger process and forward a “statement of commitment” to the State Committee for the Reorganization of School Districts.<sup>2611</sup>

LB 1048 was the product of one of the most comprehensive studies conducted by the Legislature on the issue of school organization, in fact, the entire organization of schools in the State of Nebraska. The study was conducted as a part of an interim study (LR 180), which was filed during the 2003 Session. The outcome of the study was a wealth of data on the existing school structure, analysis on the potential savings due to consolidation, and three alternatives for legislative action. The alternatives included passage of LB 698, a leftover school finance bill from the 2003 Session, the use of financial incentives to encourage reorganization, and the “assimilation” of Class I districts into K-12 systems. It was the latter of these alternatives that was embodied in LB 1048, a bill supported by both the Nebraska State Education Association (NSEA) and the Nebraska Council of School Administrators (NCSA).<sup>2612</sup> LB 1048 was advanced from the Education Committee, but was never debated on the floor.<sup>2613</sup> The bill was indefinitely postponed by virtue of the conclusion of the 2004 Session since no bill may carryover to the start of a ninety-day session.

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<sup>2609</sup> Legislative Bill 1048, *Change school district reorganization provisions*, sponsored by Sen. Ron Raikes, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, title first read 13 January 2004, §§ 1-49, pp. 1-68.

<sup>2610</sup> The use of the word “assimilate,” a synonym for reorganization, was never actually used within the language of the bill. Senator Raikes chose the word assimilation, perhaps a softer use of terminology, within his Statement of Intent. Senator Ron Raikes, *Introducer’s Statement of Intent, LB 1048 (2004)*, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, 3 February 2004, 1.

<sup>2611</sup> LB 1048 (2004), § 1, pp. 3-4.

<sup>2612</sup> Committee on Education, *Committee Statement, LB 1048 (2004)*, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, 1.

<sup>2613</sup> NEB. LEGIS. JOURNAL, 3 March 2004, 843.

## B. Class I Assimilation

If LB 1048 (2004) did anything it was to demonstrate to Nebraskans the seriousness of many members of the Education Committee to pursue the concept of mandatory reorganization. The bill served to put all interested parties on notice that the issue was ripe for legislative action. And, without question, the name most attached to this mission was Senator Ron Raikes. In truth Senator Raikes had endured considerable criticism from Class I supporters beginning in 2003, but he was undaunted in his effort to affect organizational change in Nebraska's school structure.

On January 6, 2005, Senator Raikes would introduce a near carbon copy of the 2004 measure in the form of Legislative Bill 126, a now infamous number to the issue of reorganization just as "1059" is to school finance. Joining Senator Raikes were eleven co-sponsors, including three other members of the Education Committee.<sup>2614</sup>

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### Table 157. Summary of LB 126 (2006), Class I Assimilation Bill, as Introduced

1. Assimilate all Class I districts into K-12 districts in time for the 2006-07 school year;
2. Reclassify each Class VI (high school only) district as a Class II or Class III (K-12) school district;
3. Prohibit K-12 school boards from closing an elementary attendance center or changing the grades offered beginning June 15, 2006 if:
  - a. the fall membership for the prior school year included total resident students of at least 2.5 times the number of grades offered; and
  - b. the attendance center is at least 10 miles from another elementary attendance center within the district or the attendance center is the only elementary attendance center located within the boundaries of an incorporated city or village;
4. Prohibit K-12 school boards, beginning June 15, 2006 until July 1, 2010, from closing an elementary attendance center or changing the grades offered without the approval of at least 75% of the school board if:
  - a. the fall membership for the prior school year included a total number of resident students that was at least 2 times the number of grades offered; or

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<sup>2614</sup> Co-sponsors included Senators Baker, Beutler, Engel, Janssen, Jensen, Mines, Price, and Redfield. Co-sponsors from the Education Committee included Senators Bourne, Byars, and Stuhr. Legislative Bill 126, *Change provisions relating to school district reorganization*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, title first read 6 January 2005.

Table 157—*Continued*

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- b. the attendance center is at least 10 miles from another elementary attendance center within the district; or
  - c. the attendance center is the only elementary attendance center located within the boundaries of an incorporated city or village.
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*Source:* Legislative Bill 126, *Change provisions relating to school district reorganization*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, title first read 6 January 2005, §§ 1-3, 35, pp. 3-10, 44-46.

Similar to the 1985 version, LB 126 attempted to provide Class I school boards an opportunity to control their own destiny to a certain extent, for a certain period of time. If the Class I boards did not act on their own volition, it would be done for them. The measure required the State Committee for the Reorganization of School Districts to issue orders merging the property of each Class I district into one or more high school districts by December 1, 2005. The effective date for all mergers was set at June 15, 2006.<sup>2615</sup>

One of the major differences between the 1985 and 2005 measures was the extent to which LB 126 attempted to protect existing elementary attendance centers from closure. Without question, LB 126 had a more kinder and gentler approach to the matter than LB 662 in 1985, but the end result was essentially the same: a move toward K-12 systems. Indeed, LB 126 took the objective a step further than LB 662 in that it required the reclassification of all Class VI (high school only) districts to K-12 systems. LB 662 would have allowed Class VI districts to remain high school only districts.

The reclassification of Class VI districts under LB 126 was not entirely welcome news for Class VI school patrons and officials, but it was not breaking new ground either. LB 1048 (2004), the predecessor to LB 126, also included a provision to convert Class VI districts into K-12 systems.<sup>2616</sup> Some Class VI districts opposed both LB 1048 and LB 126 based upon this provision. Their concerns included the issue of mandatory transportation for certain students meeting the existing statutory requirements. Nebraska law required a school board to either provide free transportation or pay an allowance for

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<sup>2615</sup> LB 126 (2005), § 2, pp. 4-5.

<sup>2616</sup> LB 1048 (2004), § 2, pp. 4-5.

transportation expenses when “a student attends a secondary school in his or her own Class II or Class III school district and lives more than four miles from the public schoolhouse.”<sup>2617</sup> LB 126 proposed to eliminate an existing exception to this rule, which was applied when one or more Class I school districts merge with a Class VI school district to form a new Class II or III district after January 1, 1997.<sup>2618</sup> The exception was created under LB 806 (and modified by LB 710) in 1997.<sup>2619</sup>

LB 126 proposed to eliminate the exception effective July 15, 2006.<sup>2620</sup> To compensate for this change, Senator Raikes provided a one-time exception to the spending limitation by an amount equal to the anticipated transportation expenditures necessary to meet the new transportation requirements. The lid exception applied only to 2006-07 and applied only to those former Class VI districts (now K-12 districts) that qualified for the old the transportation exemption.<sup>2621</sup> The fiscal impact of the transportation provision had some Class VI districts more than a little concerned. It was initially estimated that the provision would require an additional \$1.2 million in spending by former Class VI districts. This amount could be exempted from the spending lid for one year, but, after 2006-07, it would be left to the former Class VI district to account for the additional expenditures. “The increase in school spending will result in an initial increase in property taxes to finance the spending increase and an increase in (TEEOSA) state aid two years later,” reported the Legislative Fiscal Office.<sup>2622</sup>

Aside the potential financial impact on Class VI schools, there was also controversy surrounding the fiscal impact of the main component of the legislation, the assimilation of Class I districts. The Legislative Fiscal Office initially reported on January 11, 2005 that:

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<sup>2617</sup> NEB. REV. STAT. § 79-611(c) (Cum. Supp. 2003).

<sup>2618</sup> *Id.*

<sup>2619</sup> LB 806, Session Laws, 1997, § 28, p. 16 (1542); LB 710, Session Laws, 1997, § 4, p. 5 (1301). LB 710 amended LB 806 to include the effective date of January 1, 1997.

<sup>2620</sup> LB 126 (2005), § 48, p. 74.

<sup>2621</sup> *Id.*, § 44, pp. 68-69.

<sup>2622</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 126 (2005)*, prepared by Sandy Sostad, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, 11 January 2005, 1.



It is difficult to calculate a fiscal impact of the bill because it is dependent upon mergers and decisions made at the local level. It is also dependent upon the restrictions on closure of elementary attendance sites that are enumerated in the bill. It is assumed that very few attendance sites will close due to these restrictions. It is assumed that at the most there will be savings of \$2 million - \$3 million at the local level due to the closure of attendance sites with student membership less than the thresholds established in the bill.<sup>2623</sup>

However, on February 7, 2005, three days before first-round debate, the Fiscal Office released a new report that seemed to paint a more positive outlook for potential savings to the State. Based upon newly furnished data from the Department of Education, the Fiscal Office estimated that the savings could be as much as \$12.7 million based upon potential closure of elementary attendance centers.<sup>2624</sup>

In truth, it is not unusual for the Fiscal Office to release revised fiscal notes based upon new information or data previously unavailable, especially when the legislation at issue involves complicated provisions with ample “what-if” scenarios. But the revised report still served as political fodder for opponents of the legislation. Senator Adrian Smith of Gering was particularly vocal about the turn of events. “Now, it was interesting that all of a sudden, yesterday I think it was, a fiscal note came out that was drastically different, drastically different,” Smith said on the first day of General File debate, “And I don’t want to say that there’s politics behind it, but I certainly wouldn’t be surprised if there were.”<sup>2625</sup> Ironically, if there was any political plot, as alleged, the scheming occurred at an institution-wide basis since the Legislative Fiscal Office was created by and operates on behalf of the Legislature. In fact, the real politics concerning LB 126 occurred, as one would expect, among members of the Legislature, not among or by the diligent state employees comprising the Legislative Fiscal Office.<sup>2626</sup>

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<sup>2623</sup> Id.

<sup>2624</sup> Id., 7 February 2005, 1.

<sup>2625</sup> Legislative Records Historian, *Floor Transcripts, LB 126 (2005)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, 10 February 2005, 764.

<sup>2626</sup> The primary function of the Legislative Fiscal Office is to assist the Legislature in analyzing state government financial and program issues. The specific roles and responsibilities in meeting this objective are defined in statute, linking office functions to the responsibilities of the Legislature’s Appropriations and

The timing of the revised fiscal report may have looked suspicious to some, but to best serve the Legislature is to get it right rather than allow misleading or incomplete data to govern the debate of an important bill. To biased and unbiased observers alike, it should have been clearly evident that to forecast savings to the State as a result of passing LB 126 was next to impossible. There were too many possible scenarios and no one could predict how each affected community would choose to address the law if LB 126 passed. To base one's support for LB 126 solely upon the expectation of significant savings to the State would have been in error given the analysis of the Fiscal Office. And even if preliminary savings to the State were realized, it would be tempered by potential increases in expenditures born by K-12 districts to comply with the provisions of the bill. Not the least of these local spending increases would result from paying higher salaries to instructional staff absorbed through the assimilation process. And any necessary increases in spending by schools would be reflected in the state aid formula through growth in calculated needs.

*"The time has come for us to move to a K-12 organization"*

Perhaps a more sellable argument concerning LB 126, and its predecessor LB 1048, was a move toward K-12 organization in order to bring about a certain level of continuity among school districts, at least more continuity than existed previously. This seemed to be the chosen argument taken by Senator Raikes during his opening remarks on LB 126 at its public hearing on January 18, 2005. There were not quite as many in attendance at the hearing for LB 126 as there were for LB 662 in 1985. The similarity in 2005 was that both the hearing room and a separate "overflow" room at the State Capitol were filled to capacity. Also similar was the geographic diversity of those in attendance.

"The time has come for us to move to a K-12 organization of school districts in Nebraska," Senator Raikes said in his opening comments on LB 126.<sup>2627</sup> He offered several reasons. "First, we can no longer afford a structure that requires administration

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Revenue Committees, and by the Rules of the Nebraska Unicameral Legislature. NEB. REV. STAT. § 50-419 (Cum. Supp. 1992).

<sup>2627</sup> Committee on Education, *Hearing Transcripts, LB 126 (2005)*, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, 18 January 2005, 66.

and budgeting of an extra 230 separate local government units,” he said in reference to the number of Class I school districts.<sup>2628</sup> He noted that these districts serve a very small percentage of all students in Nebraska and the cost per student is on average higher than found in K-12 schools. In fact, all Class I schools combined served less than 3% of the total number of students attending public schools in Nebraska, as illustrated in Table 158.

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Table 158. Class I District Statistics

|   | <i>Number</i> | <i>% of Statewide Total</i> |
|---|---------------|-----------------------------|
| Class I Districts                         |               |                             |
| Number of Operating Districts.....        | 231           | 47.34%                      |
| Total Membership.....                     | 7,924         | 2.84%                       |
| Class Is with Less Than 50 Students       |               |                             |
| Number of Operating Districts.....        | 204           | 41.80%                      |
| Total Membership.....                     | 3,288         | 1.18%                       |
| K-12 Districts                            |               |                             |
| Number of Operating Districts.....        | 257           | 52.66%                      |
| Total Membership.....                     | 270,977       | 97.16%                      |
| Statewide Totals                          |               |                             |
| Number of Operating Districts.....        | 488           | 100.00%                     |
| Total Membership.....                     | 278,901       | 100.00%                     |
| Number of Counties with Class Is .....    | 56            | 60.22%                      |
| Average Teacher Salaries (2002-03)        |               |                             |
| Schools within Small Schools Report ..... | \$29,197      |                             |
| State .....                               | \$38,083      |                             |

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*Source:* Handout material prepared by the office of Senator Ron Raikes, District 25, and distributed January 18, 2005 at the public hearing for LB 126 (2005).

Senator Raikes believed a move toward K-12 systems would ultimately mean less state resources expended on public education. He said he would continue to advocate for necessary appropriations for state aid and special education “if we are willing to move to a more efficient organizational structure.” However, to continue with the existing organizational structure would be unacceptable. “[W]e cannot justify a system that allows students and parents or taxpayers to withdraw from the broader community that

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<sup>2628</sup> *Id.*, 67. While Senator Raikes referred to 230 Class I school districts, the Legislative Fiscal Office reported that 231 Class I school districts existed in the 2004-05 school year. *Fiscal Impact Statement, LB 126 (2005)*, 7 February 2005, 1.

supports public education,” he said.<sup>2629</sup> “The longer we wait, the more taxpayer money that is wasted on high cost per student, and on schools that have no students,” he added.<sup>2630</sup>

Senator Raikes insisted every teacher in Nebraska’s public education system “deserves equitable treatment” in terms of pay and working conditions.<sup>2631</sup> “We cannot justify paying teachers in Class I systems substantially less than those in K-12 systems given our need to attract and retain an outstanding teaching staff,” he said.<sup>2632</sup> This was particularly underscored, he noted, by the fact that, even though cost per student is typically higher in Class I districts, teachers are paid less “because the structure is not efficient.”<sup>2633</sup>

Senator Raikes spoke about the equity of educational opportunities for students in Class I districts compared to those in K-12 systems. He noted the relatively low percentage of resident students that attend Class I schools and the high number of option students. Of the 122 affiliated Class I districts, for instance, on average only 54% of the students attending those schools were actual residents of the district while on average 33% were option students from outside the district.<sup>2634</sup> He referred to the ratio of resident-to-option students as a “shockingly low endorsement by resident students” especially since the primary purpose of a public school is to serve its resident students.<sup>2635</sup> The average percentage of resident students attending Class I schools that were at least associated with a Class VI (high school) district was somewhat better (75%), “but less than a ringing endorsement.”<sup>2636</sup>

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<sup>2629</sup> *Hearing Transcripts, LB 126 (2005)*, 18 January 2005, 67.

<sup>2630</sup> *Id.*, 69.

<sup>2631</sup> *Id.*, 68.

<sup>2632</sup> *Id.*

<sup>2633</sup> *Id.*, 70.

<sup>2634</sup> *Id.*, 71.

<sup>2635</sup> *Id.*

<sup>2636</sup> *Id.*, 72.

In Senator Raikes' opinion, the financial issues coupled with the disparity of treatment of students and teachers in Class I schools did not point to an efficient school organizational structure. "In my view, the state cannot and should not be complicit in this sort of school organization and funding arrangement," Raikes said.<sup>2637</sup> "I simply and firmly believe that the best interest of all of us, the greater good for the longer haul, is served by moving to a K-12 school organization," he added.<sup>2638</sup>

Proponents of LB 126 included such organizations and entities as the Nebraska State Education Association (NSEA), the Greater Nebraska Schools Association (GNSA), the Nebraska Council of School Administrators (NCSA), and the State Board of Education. Jim Griess, NSEA Executive Director, said the teachers' association supported the bill because "bringing all children in Nebraska into a K-12 district is in the best interests of children," and because LB 126 will, in the long-term, be in the best interest of all teachers.<sup>2639</sup> "It's high time that all Class I students and teachers are treated fairly," Griess added.<sup>2640</sup>

Steve Joel, Superintendent at Grand Island Public Schools, represented the GNSA, comprising the majority of the large school districts in Nebraska. "LB 126 isn't about closing schools," Joel testified, "It is about the underlying organizational structure of our school districts and creating a structure that is both fiscally and organizationally sound."<sup>2641</sup> Jerry Sellentin, NCSA Executive Director, relayed the decision of his organization's legislative committee, which voted to support LB 126 on the basis that it represented good state policy. "This has been a difficult issue for decades and the time has come to deal with it," he stated, "But we believe it is the right thing to do for purposes of school organization, finance, coordination of curriculum, and accountability."<sup>2642</sup>

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<sup>2637</sup> Id., 73.

<sup>2638</sup> Id., 73-74.

<sup>2639</sup> Id., 75-76.

<sup>2640</sup> Id., 77.

<sup>2641</sup> Id., 82.

<sup>2642</sup> Id., 90.

Fred Meyer, President of the State Board of Education, also testified in support of the legislation. Meyer testified:

Our State Board of Education feels that the major education policy issue in Nebraska is equity of opportunity for all students. We believe that there is an essential education to which all students should have access, and that access to this essential education should not be diminished or prohibited by the size of a district or the wealth of a district.<sup>2643</sup>

Meyer said the support of the State Board for LB 126 was consistent with its overall policy objective to provide an essential education for all students. The policy objective included curriculum coordination, financial determination, governance, and accountability under a K-12 organization of schools. The State Board outlined its policy proposal in a separate piece of legislation, LB 467 (2005).<sup>2644</sup>

Opponents of LB 126 included Class I patrons, teachers, and representatives. Their collective task was to defend the existence of their schools, to counter the arguments made by proponents, and to preserve a way of life and learning. Ed Swotek, for instance, represented Oak Valley School, a one-room school providing K-8 education. The school was established in 1869 (just a few years after Nebraska became a state) and lies just northeast of Lincoln. “Class I schools provide a quality educational environment with exemplary academic results, more parental involvement, better local control, healthy social environments and communities whose economic well-being is tied to their school,” Swotek said. He disagreed with the intentions of the chief sponsor. He believed LB 126 would force the closure of many attendance centers against the wishes of the affected communities. The historical trend, he said, was moving toward fewer school districts anyway. Why force communities to shut the doors of their school until they themselves choose to do so? “Years from now the legacy of this Legislature will be judged on what priority it places on education,” Swotek warned.<sup>2645</sup>

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<sup>2643</sup> Id., 92.

<sup>2644</sup> Legislative Bill 467, *Adopt the Creating Essential Educational Opportunities for All Students Act*, sponsored by Sen. Dennis Byars, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, title first read 13 January 2005.

<sup>2645</sup> *Hearing Transcripts, LB 126 (2005)*, 18 January 2005, 108.

Several Class I teachers testified in opposition to the measure, including Patty Herman, a fifth and sixth grade teacher at Cheney School in Lancaster County offering instruction in kindergarten through eighth grade. Herman acknowledged that her pay was lower than that found in K-12 institutions, but salary was of secondary importance to her. “The primary reason for teaching in a Class I school is having the opportunity to really teach,” she said.<sup>2646</sup> Herman also praised the level of parental involvement at her school. “Parents volunteer in classrooms, fundraise, coordinate parties, volunteer as board members, donate money and useful equipment, chaperone field trips, sew costumes, and help with concerts and science fairs,” she said.<sup>2647</sup> Jeanni Hohnstein, representing Lake Alice Public School in Scotts Bluff County, taught in a K-12 system before taking a teaching position at Lake Alice where she has devoted 26 years as a kindergarten teacher. “I choose to teach in a Class I for a simple reason-working conditions,” Hohnstein testified.<sup>2648</sup> “Much has been made of low salaries of Class I teachers,” she said, “However, salary is hardly the driving force for teacher retention.”<sup>2649</sup>

Stephen Swidler, a Class I parent from Oak Valley School, pointed to research that supported smaller schools. Said Swidler:

Research on school size points to several conclusions about the benefits of smaller schools, specifically, smaller school size is associated with higher achievement. Smaller schools can also promote equity of achievement among all students. Smaller schools may be especially important for disadvantaged students and higher achievement is associated with smaller size in poor communities.<sup>2650</sup>

Kevin Cooksley, a board member representing Broken Bow Public Schools (a K-12 school), asked members to preserve what is unique to the rural communities of Nebraska. Using a twist on the relatively new term within the consolidation lexicon, Cooksley asked the committee to “assimilate LB 126 into the indefinitely postponed file.”<sup>2651</sup>

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<sup>2646</sup> Id., 117.

<sup>2647</sup> Id., 118.

<sup>2648</sup> Id., 132.

<sup>2649</sup> Id.

<sup>2650</sup> Id., 136.

<sup>2651</sup> Id., 157.

Some of the opponent testimony brought out arguments that even some hardcore proponents of LB 126 would find difficult to counter. For instance, Tom Davis spoke on behalf of the nine Class I schools comprising the Northeast Nebraska Rural Schools (NEN), a cooperative organization located in Madison and Pierce Counties. Davis served as superintendent of the cooperative that functions under an interlocal agreement. Each school retains its own school board, but a separate, centralized school board develops policies and negotiates staff salaries and benefits. The cooperative functions very similar to a unified district in which separate districts maintain some individual identity while a super board takes on some of the major financial and administrative functions. “My focus here today will be to give a clear picture of interlocal agreements and what can be accomplished by schools working together,” Davis said.<sup>2652</sup> The example of efficiency established by the NEN would resurface several times during floor debate of LB 126.

One of the last opponents to testify on January 18<sup>th</sup> was Jamie Isom, Superintendent at Valentine Rural High School, a Class VI (high school only) district. “Valentine is a place where the Class 1-6 system does work,” Isom testified, “We’re able to provide an efficient education for a very large geographic area very effectively.”<sup>2653</sup> Valentine represents the largest school district in Nebraska in terms of landmass (3,600 square miles). There were seventeen Class I districts associated with the high school district with a total K-12 population of 865 students. Naturally, another major concern for Isom and the district she represented was the transportation provisions contained in the bill. “If we have to provide transportation for those students, it’s estimated that that will be an additional \$183,000 for us to have to find somewhere in our budget at least for the initial year,” she stated.<sup>2654</sup>

Owing once again to Twain’s observation of the nature of history, Valentine and Cherry County as a whole maintained a consistent presence on the issue of mandatory consolidation. In 1985 during the hearing on LB 662, it was Deb Fischer who testified

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<sup>2652</sup> Id., 162.

<sup>2653</sup> Id., 167.

<sup>2654</sup> Id., 168-69.



against the legislation on behalf of the Cherry County School Association.<sup>2655</sup> In 2004 Fischer was elected to represent the 43<sup>rd</sup> District in the Nebraska Legislature. She was amply prepared to represent the views of much of her constituency during the debate on LB 126. “I’m very pleased that I have the opportunity to discuss this issue on the floor as a member of the body,” Senator Fischer said on the first day of debate on LB 126.<sup>2656</sup>

*“Strap on your helmets. It will be a battle”*

On January 20<sup>th</sup>, two days after the public hearing, members of the Education Committee met in executive session to discuss the legislation. A motion was presented and passed to advance LB 126, the original version of the bill, by a 7-1 vote (Senators Bourne, Byars, Howard, Kopplin, Raikes, Schrock, and Stuhr voting in favor, Senator McDonald voting against).<sup>2657</sup> “Strap on your helmets,” Senator Raikes told his fellow committee members, “It will be a battle.”<sup>2658</sup>

The fact that the bill emerged from committee with absolutely no markup (committee amendments) had to be discouraging to opponents of the bill, but should not have been surprising. A near identical piece of legislation (LB 1048) was advanced from committee a year earlier, but progressed no further in the legislative process. Still, the opponents had to feel a certain amount of trepidation at the news of the committee’s disposition of the measure. “The ones of us that are opposed to it will go into Phase 2,” said Senator Carol Hudkins of Malcolm, “We’re hoping that it’s going to take 33 votes (to advance the bill).”<sup>2659</sup> Senator Hudkins, who became one of the more vocal opponents of LB 126, was referring to the likely scenario involving a motion for cloture in order to

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<sup>2655</sup> “School reorganization bill draws crowd to capitol,” *Unicameral Update*, 15 February 1985, 10.

<sup>2656</sup> *Floor Transcripts, LB 126 (2005)*, 10 February 2005, 792.

<sup>2657</sup> Committee on Education, *Executive Session Report, LB 126 (2005)*, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, 20 January 2005, 1.

<sup>2658</sup> Martha Stoddard, “School-merger proposal is on fast track: The plan, which would end elementary-only districts, is unlikely to be stalled again,” *Omaha World-Herald*, 21 January 2005, 4B.

<sup>2659</sup> *Id.*

end a filibuster. Such a motion requires 33 affirmative votes, which was a tally Senator Hudkins hoped would be difficult for proponents to achieve.<sup>2660</sup>

The political process can certainly become ugly at times. Political insiders joke that making legislation is similar to making sausage — at times an unsightly process that warrants any excuse for absenteeism. The debate on LB 126 would live up to everyone's expectations of an all out war. It started and ended as front-page material for the media, a true clash between those wanting to hang-on to tradition and heritage and those demanding progress for public education. The debate would touch raw nerves on both sides of the issue, but it was those playing defense that had most to lose, at least as they saw it. "It's a bigger picture than just the school," said Diane Semrad, an Abie school parent, "If we close the schools, that means our community is dead."<sup>2661</sup>

LB 126 brought out deep feelings about community and education. As with any issue, however, there is always more to the story than some might want known. There were, and had been for many years, allegations that some parents in some areas of the state used Class I schools as a means to segregate their children from attendance at larger schools that embrace diversity of race, creed, and color. This was the sort of discriminatory attitude that was fought, and supposedly defeated back in the 1960s. There were also allegations that some Class I schools were somewhat akin to quasi-private, religious institutions funded at taxpayer expense.<sup>2662</sup> Most were careful when and how such issues were broached in public settings, but almost everyone close to the debate was aware of the accusations. Senator Raikes and others were certainly aware, and such stories no doubt fueled their determination to put an end to it, even if it meant throwing out the good with the bad.

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<sup>2660</sup> Rules of the Neb. Leg., Rule 7, § 10.

<sup>2661</sup> Martha Stoddard, "Centers of contention: The state's Class I schools fear that if LB 126 passes, mergers would sound their towns' death knells," *Omaha World-Herald*, 6 February 2005, 1A.

<sup>2662</sup> The Ord (Nebraska) Area Chamber of Commerce, Valley County Economic Development website lists Vinton Public School, a Class I district. The caption beside the name of the school reads, "Vinton School strives to instill Christian values in the students as well as giving students basic academic instruction." Ord (Nebraska) Area Chamber of Commerce, Valley County Economic Development, "Education: Elementary & Secondary Education," available from <http://www.ordneusa.com/education.asp>, Internet, accessed 22 February 2006.

*“This is an extremely emotional issue and extremely political issue”*

The legislative contest for the passage of LB 126 will undoubtedly reside in the pantheon, the Hall of Fame, of all time debates in the history of the Nebraska Legislature, if for the sheer length of the debate if nothing else. If it is an accepted fact that LB 806, the comprehensive school finance bill of 1997, broke records for length of debate, then LB 126 should be remembered as a runner up. First-round debate of LB 126 alone would span four separate session days before a vote on advancement was taken. Second-round debate would require two separate session days before advancement. LB 126 would also endure the ultimate challenge to any piece of legislation with the adoption of a motion to override a gubernatorial veto.

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Table 159. Chronology of Debate, LB 126 (2005)

| <i>Session Day</i> | <i>Stage</i>       | <i>Action</i>     |
|--------------------|--------------------|-------------------|
| February 10.....   | General File.....  | Debated; pending  |
| February 11.....   | General File.....  | Debated; pending  |
| February 14.....   | General File.....  | Debated; pending  |
| February 15.....   | General File.....  | Debated; advanced |
| May 19.....        | Select File.....   | Debated; pending  |
| May 20.....        | Select File.....   | Debated; advanced |
| June 1.....        | Final Reading..... | Passed            |
| June 2.....        |                    | Vetoed            |
| June 3.....        |                    | Override approved |

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*Source:* NEB. LEGIS. JOURNAL, *Chronology of Bills, LB 126 (2005)*, 1963-64

First-round debate began on February 10, 2005. By this time, the legislation had been designated as an Education Committee priority bill and would enjoy a limited degree of precedence on the legislative agenda. There was some concern voiced by proponents of the bill over whether the bill should have been tabbed an individual senator priority rather than a committee priority, which has less status within the agenda setting process. But Senator Raikes was adamant that LB 126 represented a work-product of his whole committee. “This proposal is a committee effort,” he emphasized at both the hearing and later during floor debate.<sup>2663</sup>

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<sup>2663</sup> *Floor Transcripts, LB 126 (2005)*, 10 February 2005, 758.

On the first day of debate, Senator Raikes would deliver an opening speech very similar to that which he used during the public hearing. He reviewed the mechanical elements of the bill and how the assimilation process would be conducted. He then launched into the supporting statistical evidence to underscore the need for change. Intermixed were punctuation remarks that left no one in doubt of his convictions. “[W]e cannot justify a system that allows students and parents, or taxpayers, to withdraw from the broader community that supports public education,” Senator Raikes said.<sup>2664</sup> “I’m convinced the potential gains in efficiency are considerable,” he said.<sup>2665</sup>

Principal opponents of the legislation included Senators Carol Hudkins of Malcolm and Adrian Smith of Gering. Senator Vickie McDonald of St. Paul, a member of the Education Committee, Senators Deb Fischer of Valentine, Lavon Heidemann of Elk Creek, and Mike Flood of Norfolk were also vocal opponents of the measure. Collectively, they appeared to have a strategy involving relatively calm responses and comebacks to the assertions made by proponents. They made their case based upon some of the intangible yet fundamental elements of the issue. Class I schools, they said, represent a viable option, a choice by parents for whatever reason, and should be respected by state policymakers, rather than negated and eliminated. “They mean the opportunity to learn in a different environment than maybe the larger school in that area,” said Senator McDonald.<sup>2666</sup> “Why take those options away?” asked Senator Smith.<sup>2667</sup>

In addition to parental choice, opponents spoke of the quality of educational opportunity offered at Class I schools, the level of involvement by parents in their children’s education, the dedication of the teaching staff. “[A]s long as they’re providing quality at a reasonable amount, let’s let it be,” said Senator Smith.<sup>2668</sup> Opponents attacked the assertion concerning the high cost of Class I operations in comparison to K-12 schools by reciting statistics that seemed to punch holes in this argument. Senator

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<sup>2664</sup> Id., 759.

<sup>2665</sup> Id., 763.

<sup>2666</sup> Id., 775.

<sup>2667</sup> Id., 765.

<sup>2668</sup> Id., 799.

Hudkins, for instance, read aloud the cost per student of Lincoln Public Schools at \$8,030, which was above the statewide average of \$7,900 per student. In comparison, Oak Valley School, a Class I district within her legislative district, had a \$6,265 cost per student. Although she admitted that Oak Valley is an elementary institution and it typically costs less to educate an elementary student versus a high school student.

By the time the Legislature adjourned for the day, Senator Raikes successfully sought the approval of a technical amendment to the bill to clarify and harmonize various provisions. Aside this minor victory, it was clear to everyone that a real fight was in full swing. Senator Dennis Byars of Beatrice captured it best when he noted, “This is an extremely emotional issue and extremely political issue.”<sup>2669</sup> Emotions did run high on the first day of debate and political posturing was everywhere and all at once.

Opponents of the bill had successfully prolonged the discussion without necessarily addressing the merits of the bill itself. They chose instead to focus on the issues they believed the legislation, in essence, ignored. A common thread among the opponent speeches was the variance in the two fiscal notes released prior to the start of debate. But this tactic did not sit well with some lawmakers, including Senator Lowen Kruse of Omaha, who attended a small rural schoolhouse as a boy. “I see this, dollars part of it, as a non-issue,” he said while disclosing his “reluctant firmness” in support of the bill.<sup>2670</sup> “My reluctance is because of the cultural value within our society of the one-room schools,” he said, “My firmness is because it’s time to move on.”<sup>2671</sup>

*“That is not defensible”*

The second day of first-round debate occurred on Friday, February 11, 2005. The opponents of LB 126 seemed to have gained a renewed vigor and confidence in their fight against the legislation. Metaphorically speaking, Senator Raikes was placed under the interrogation light by one opponent after another in order to find weaknesses and flaws in the measure he promoted. But Senator Raikes would have the last word.

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<sup>2669</sup> Id., 782.

<sup>2670</sup> Id., 815.

<sup>2671</sup> Id.

It was on the second day of debate that opponents were publicly confronted with factual details concerning certain Class I districts in Nebraska that begged, if not demanded, explanation. In fact, there would be no explanation, but there would be plenty of deflection.

At the outset of debate, the Legislature took up Senator Carol Hudkins' pending amendment to essentially defer the implementation of the bill for ... a few generations. "The amendment is quite simple," said Senator Hudkins, "It just delays the implementation of LB 126 for 50 years."<sup>2672</sup> In fact, the amendment delayed the effective date to 2055.<sup>2673</sup> The humor was certainly not lost on Senator LeRoy Loudon of Ellsworth who rose to support what he thought was more or less a bracket motion, adding, "It's just kind of a long ways out there to bracket it."<sup>2674</sup>

Senator Hudkins' amendment was the first in a long line of attempts by opponents to filibuster the bill. This was certainly a tactic within their prerogative and within the scope of the Rules of the Legislature. Unfortunately for the opponents, the Hudkins amendment was less than the ideal caliber of stall moves available to them at the start of the day. It merely put the proponents on notice that they would have to endure a series of frivolous amendments before all was said and done.

Senator Hudkins seemed to base her amendment in part on an unscientific survey conducted by a local TV news station. The survey produced results demonstrating that 80.6% of those responding favored local control over closure of schools. "It's not a Gallup Poll," she admitted, "It's just the people who feel strongly about this question that offered their opinion."<sup>2675</sup> She did feel that the results accurately represented the views of residents in Lincoln and surrounding areas. She also believed that Class I schools were on their way out anyway, so why rush it. "We figure that by the year 2055, there may not

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<sup>2672</sup> Id., 11 February 2005, 834.

<sup>2673</sup> NEB. LEGIS. JOURNAL, *Hudkins AM0251*, 11 February 2005, 491.

<sup>2674</sup> *Floor Transcripts, LB 126 (2005)*, 11 February 2005, 840.

<sup>2675</sup> Id., 835.

be very many Class I's left at all," she concluded.<sup>2676</sup> She withdrew the amendment just prior to a vote on the matter she presented.

Next Senator Vickie McDonald moved to amend the bill. At least this time the content of the amendment brought about a legitimate, although limited, discussion on the merits of the legislation. Senator McDonald's amendment was an inquiry into the policy rationale for excluding students who optioned into Class I districts in the total count of students for purposes of authorizing closure of an attendance center. LB 126 provided very specific factors concerning the ability of K-12 school boards to actually close a former Class I attendance site, and part of the policy objective was to count only those students who actually resided in the former Class I district, not those who optioned into it. As Senator Raikes stated during the public hearing, "The primary mission of a public school is to serve its resident students."<sup>2677</sup>

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Table 160. Parameters for Closure of Attendance Sites  
under LB 126 (2005) as Advanced to General File

1. Beginning June 15, 2006, school boards would be prohibited from closing an elementary attendance center or changing the grades offered if:
  - a. The fall membership for the prior school year included a total number of resident students that was at least 2.5 times the number of grades offered; and
  - b. The attendance center is at least 10 miles from another elementary attendance center within the district or the attendance center is the only elementary attendance center located within the boundaries of an incorporated city or village.
2. Beginning June 15, 2006 until July 1, 2010, school boards would be prohibited from closing an elementary attendance center or changing the grades offered without the approval of at least 75% of the school board if:
  - a. The fall membership for the prior school year included a total number of resident students that was at least 2 times the number of grades offered; or
  - b. The attendance center is at least 10 miles from another elementary attendance center within the district; or

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<sup>2676</sup> Id., 834.

<sup>2677</sup> *Hearing Transcripts, LB 126 (2005)*, 71.

Table 160—*Continued*

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- c. The attendance center is the only elementary attendance center located within the boundaries of an incorporated city or village.
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*Source:* Legislative Bill 126, *Change provisions relating to school district reorganization*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, title first read 6 January 2005, § 35, pp. 44-45.

Senator McDonald’s amendment certainly represented an appropriate discussion point. Why should option students be excluded from the count? How were the various factors developed (e.g., the multiplier of 2.5, and the use of 10 miles)? The answers to these questions were of particular significance since it could mean the difference between protected versus unprotected status for certain Class I attendance centers.

Senator Raikes’ initial response was that the contents of the bill represented the wishes of the majority of the standing committee that forwarded the legislation for floor discussion, on a 7-1 vote, he hastened to add. Senator McDonald was the lone dissenting vote on advancement of the bill from committee. The main reason for excluding option students, he said, was to count only those students who actually belong to the resident district. The second reason, he said, related to what he referred to as the “distaste” among people toward the practice of recruiting students into schools in order to boost enrollment.<sup>2678</sup> Senator Raikes said LB 126 was not a slam on the enrollment option program, but rather an attempt to account for the true number of students affected by a move to close an attendance center. In other words, the number of students residing in the K-12 district in which the applicable K-12 school board would have the authority to maintain or close the school building under its jurisdiction.

Senator Vickie McDonald was particularly persistent during her questioning of Senator Raikes, who had to feel as though he sat on the eternal witness stand in Hades by the conclusion of the second day of debate. In a rapid battery of questions, she quizzed Senator Raikes about his insinuation that only Class I schools recruited students:

SENATOR McDONALD: Yes, and I have to ask you a question. Does Omaha schools recruit?

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<sup>2678</sup> *Floor Transcripts, LB 126 (2005)*, 11 February 2005, 863.



SENATOR RAIKES: I don't know that I could ... Omaha Public School you're talking about?

SENATOR McDONALD: Yes. Oh, no, just the Omaha schools. Schools in the Omaha system, do any of those recruit?

SENATOR RAIKES: Well, you have different opinions on that.

SENATOR McDONALD: Have you seen articles in the paper that they recruit?

SENATOR RAIKES: I can't remember of any.

SENATOR McDONALD: Was there any passed out in our hearing that had a recruitment for an Omaha school?

SENATOR RAIKES: There ... yeah, I don't know that I would call it an advertisement,...

SENATOR McDONALD: I remember that there was.

SENATOR RAIKES: ... but I do remember...

SENATOR McDONALD: It happened.

SENATOR RAIKES: ... a statement about some deadlines ...

SENATOR McDONALD: Thank you.

SENATOR RAIKES: ... and so on.<sup>2679</sup>

The opponents repeatedly used the cross-examination ploy on Senator Raikes throughout the day. Their strategy seemed to involve an attempt to rattle Senator Raikes, or to cause him to misspeak on one issue or another.

Senator McDonald also renewed her attack on the revised fiscal note. She questioned Senator Raikes about the origin of the new information that caused the Fiscal Office to issue a new estimate, a substantial increase in the projected savings to the state if LB 126 became law. "If we don't know the list of the schools that will be closing, how are we going to know the estimate of savings?" she asked, "I guess I question that fiscal note with the new information if we don't know who ... what the schools are."<sup>2680</sup> Senator

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<sup>2679</sup> Id., 863-64.

<sup>2680</sup> Id., 845.

Raikes responded with some frustration in his voice. “[Y]ou’re on the Education Committee, you’re well aware of what we’ve done on LB 126,” he retorted, “You know that we have gotten information from the department.”<sup>2681</sup>

By this time, the attack on the Fiscal Office was growing old, particularly for the chair of the Appropriations Committee, Senator Don Pederson, who spoke against the attack the day before. Pederson said:

I’m very concerned about the comments that have been made on this floor about our Legislative Fiscal Office. I have served on the Appropriations Committee for nine years and I have never once found any area where any fiscal note was determined based on anything other than the facts involved.<sup>2682</sup>

Nevertheless, the opponents would continue to use the work of the Fiscal Office as a political tool in their effort to derail LB 126.

Senator Raikes was not without his own offensive plan on the second day of debate. He was fully prepared to fire back to those who doubted the time had come for decisive action on school reorganization. Distributing handouts to those on the floor, Senator Raikes outlined a few examples of a broken system, a system that underserved some students to the point of being unconscionable.

The handouts were actually spreadsheets of data outlining two existing situations involving affiliated or associated Class I districts with a high school district. The first involved Lexington Public Schools and its affiliated Class I districts. Senator Raikes drew his colleagues’ attention to the fact that not one of the Class I districts had a single student of limited English proficiency (LEP) nor a single student qualified for free or reduced lunch/milk programs. On the other hand, the high school district, Lexington Public Schools, had no less than 31.38% LEP and nearly 46% qualified for nutrition assistance programs (indicating poverty). The data pointed to tremendous disparities and inequities among students within the same general geographic area.

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<sup>2681</sup> Id., 846.

<sup>2682</sup> Id., 10 February 2005, 777.

Table 161. Selected Student and Spending Data from Lexington Public Schools and its Affiliated Class I Districts

| <i>Name</i>                 | <i>Town</i>  | <i>Total Members</i> | <i>Option In</i> | <i>Option Out</i> | <i>Valuation per Member</i> | <i>LEP Students</i> | <i>% LEP of Total Members</i> | <i>Free Lunch/Milk</i> | <i>Budget Per Fall Member</i> |
|-----------------------------|--------------|----------------------|------------------|-------------------|-----------------------------|---------------------|-------------------------------|------------------------|-------------------------------|
| Dist 015-Dawson Cnty        | Johnson Lake | 26                   | 8                | 13                | 3,297,996                   | 0                   | 0.00%                         | 0                      | \$10,962.27                   |
| Dist 044-Dawson Cnty        | Lexington    | 6                    | 0                | 1                 | 2,323,271                   | 0                   | 0.00%                         | 0                      | \$9,580.00                    |
| Dist 017-Dawson Cnty        | Lexington    | 29                   | 3                | 3                 | 1,917,917                   | 0                   | 0.00%                         | 0                      | \$11,079.17                   |
| Dist 016-Dawson Cnty        | Cozad        | 21                   | 10               | 13                | 1,863,817                   | 0                   | 0.00%                         | 0                      | \$7,874.34                    |
| Dist 022-Dawson Cnty        | Lexington    | 27                   | 3                | 12                | 1,609,449                   | 0                   | 0.00%                         | 0                      | \$7,075.41                    |
| Dist 025-Dawson Cnty        | Lexington    | 23                   | 15               | 5                 | 690,525                     | 0                   | 0.00%                         | 0                      | \$9,386.17                    |
| <i>High School District</i> |              |                      |                  |                   |                             |                     |                               |                        |                               |
| Lexington Public Schools**  | Lexington    | 2,562                | 59               | 91                | 133,472                     | 804                 | 31.38%                        | 1,172                  | \$8,589.98                    |

\*\* A Class III (K-12) district.

*Source:* Partial data from the handout distributed by Senator Ron Raikes on the floor of the Legislature on February 11, 2005 during the debate on LB 126 (2005).

The second situation involved seven Class I districts associated with Schuyler Central High School, which is a Class VI (high school only) district. The data demonstrated that among the seven elementary districts, only one Class I school had enrollment that included English language learners (ELL) and this same district had a high proportion of students qualified for nutrition assistance programs. This same district possessed the lowest valuation per student among the seven Class I districts. The data pointed to a single district where poor minority students attended while white children were primarily enrolled in the other Class I districts. In the minds of some, the Lexington and Schuyler data pointed to white flight.

Table 162. Selected Student Data from the Schuyler School System

| <i>Name</i>                 | <i>Town</i> | <i>Total Members 2004/05 data</i> | <i>Option In 2004/05 data</i> | <i>Option Out 2004/05 data</i> | <i>English Language Learners 2003/04 data</i> | <i>% E.L.L. of Total Membership</i> | <i>Free Lunch/Milk 2003/04 data</i> | <i>Valuation per Fall Member</i> |
|-----------------------------|-------------|-----------------------------------|-------------------------------|--------------------------------|---|-------------------------------------|-------------------------------------|----------------------------------|
| Dist 505 - Colfax Cnty      | Clarkson    | 19                                | 3                             | 16                             | 0   | 0.0%                                | 0                                   | 3,890,407.37                     |
| Garfield Public School      | Bellwood    | 19                                | 7                             | 18                             | 0   | 0.0%                                | 2                                   | 2,844,130.11                     |
| Dist 504 - Colfax Cnty      | Schuyler    | 37                                | 18                            | 12                             | 0   | 0.0%                                | 13                                  | 1,697,730.30                     |
| Abie Public School          | Abie        | 16                                | 3                             | 8                              | 0   | 0.0%                                | 0                                   | 1,293,035.69                     |
| Richland Public School      | Richland    | 70                                | 17                            | 12                             | 0   | 0.0%                                | 0                                   | 1,288,994.74                     |
| Fisher's Public School      | Schuyler    | 43                                | 18                            | 4                              | 0   | 0.0%                                | 3                                   | 1,016,641.88                     |
| Schuyler Grade Schools      | Schuyler    | 866                               | 12                            | 82                             | 250   | 28.9%                               | 307                                 | 247,750.50                       |
| <i>High School District</i> |             |                                   |                               |                                |   |                                     |                                     |                                  |
| Schuyler Central H.S.*      | Schuyler    | 416                               | 5                             | 37                             | 76  | 18.3%                               | 121                                 | 1,199,607.37                     |

\* A Class VI (high school only) district.

*Source:* Partial data from the handout distributed by Senator Ron Raikes on the floor of the Legislature on February 11, 2005 during the debate on LB 126 (2005).

Senator Raikes had hit his stride on the issue of equity. This was, by far, a more viable argument than any potential savings to the State or achievement of efficiencies among local governments. The issue of fair treatment of all students is fundamental to the objective of a sound school finance system. In fact, the State possesses the rationale function, the power if not duty to intervene in circumstances where some of its citizens are being treated differently than others, especially concerning such a vital purpose as provision of free public education. The State must serve as the entity that offers meaning to the often used phrase, “equity of educational opportunity,” or else it becomes merely another fancy phrase and use of words, and empty promises.

Having explained the data contained in the handouts, Senator Raikes could look across the floor of the Legislature to deliver what proponents viewed as a knock out punch. He said:

What I want to know, is there someone who endorses this in this body? Is there someone who says this is fine, this is what we should do. If you do, you’ve got your lights on, stand up. I’ll sit here and listen to you explain to me why this is something we ought to do. Explain to me why, when we’ve got Hispanic families coming into this state, working their tails off, working two jobs, that they’re not entitled to have their kids participate in the school system that is adequately funded and with an adequate building. Please explain to me why that should be the case. This Class I system allows this to happen. It must stop. It must stop now.<sup>2683</sup>

No doubt the opponents of LB 126 heard what Senator Raikes had to say. Raikes was seldom known to raise his voice or otherwise demonstrate emotion on the floor of the Legislature. In this case, however, the frustration was evident and real.

Senator Smith, a graduate of a Class I school in Scotts Bluff County, was the first prominent opponent of the assimilation bill to address the evidence submitted by Senator Raikes. “I believe that this issue of poverty and race is an issue of convenience for the proponents of LB 126,” he said, “It’s one that gets a lot of attention because we’re, to use Senator Fischer’s term, using a broad-brush approach except, except in the urban

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<sup>2683</sup> Id., 11 February 2005, 851.

areas.”<sup>2684</sup> Senator Smith effectively deflected Raikes’ argument by suggesting that poverty and race issues remain unaddressed in Nebraska’s urban area schools. “We wouldn’t want to do that because we don’t have the political will to do that,” Smith continued, “We’ve got the political will to pick on the little guys, so we’re going to do that.”<sup>2685</sup>

Senator Elaine Stuhr, herself a graduate of a Class I school, came to Senator Raikes’ assistance several times throughout the debate on LB 126. She cast her support for the concept of assimilation in 2003 and weathered more than slight criticism from some of her own constituents for doing so. On February 11<sup>th</sup> she assisted the cause of LB 126 by reading aloud to her colleagues a portion of a letter received from a citizen outside her own legislative district. A Madison-area resident wrote:

‘Dear Senator, please work hard to close Class I school districts in Nebraska. I believe all children have the right to the articulated K-12 curriculum found in K-12 school districts. I further believe that Class I school districts are often white flight dodges for families trying to avoid our growing Hispanic population.’<sup>2686</sup>

Senator Stuhr admitted she likely would not be standing to support a mandatory merger bill ten years ago. But, she said, things change. “Too often Class I school districts are located within five miles of the town school,” she said, “Clearly, distance is not a factor in determining the need for such an attendance center.”<sup>2687</sup>

Senator Carol Hudkins was skeptical of the expertise possessed by the unknown Madison-area resident on this situation. Said Hudkins:

Look at the demographics in our state. How many schools are actually affected by minority ... not “affected.” Not a good choice of words. How many schools have minorities populations? There are getting to be more, but these schools, these Class I schools, are bound to accept students if they have room.<sup>2688</sup>

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<sup>2684</sup> Id., 854-55.

<sup>2685</sup> Id., 855.

<sup>2686</sup> Id., 867-68.

<sup>2687</sup> Id., 868.

<sup>2688</sup> Id., 870.

She insisted that Class I schools accept all students no matter the color of their skin, so long as there is room for them. “If there is a Hispanic student, a Chinese student, a black student, a green student, doesn’t matter, if there’s room they have to be accepted,” she insisted.<sup>2689</sup>

Senator Raikes stood patiently behind his desk on the floor of the Legislature often leaning slightly against the desk behind his own. Waiting. Finally, just prior to adjournment for the day, Senator Raikes re-addressed the data concerning the Schuyler and Lexington schools, which he had previously presented for his colleagues’ review. Said Raikes:

I have not heard anyone defend that, and I don’t blame you. I don’t think you can defend that. That is not defensible. The point was made, well, why don’t we talk about school finance. School finance is certainly more important than school structure. What I would remind you is that I have no interest in dumping more money into a school structure that produces these kinds of results. I don’t think you should either. We need to get this straightened out first and then we’ll talk about school finance. Again, I would simply emphasize this is not something you can defend, this is not something you should defend. I have not heard anyone defend it, and I think for good reason. Look at both Schuyler and Lexington. Remind yourself of what’s going on. We simply cannot endorse that. We can’t tolerate that.<sup>2690</sup>

The second day would come to a close without final disposition on the pending McDonald amendment related to counting option students for purposes of protecting attendance centers from closure. In truth, very little time in the course of the long day was devoted to the actual merits of the proposed amendment.

*“Compromise is what it’s all about”*

The debate on LB 126 dominated the 25<sup>th</sup> and 26<sup>th</sup> days of the 2005 Session (February 10<sup>th</sup> and 11<sup>th</sup>). The third consecutive day of first-round debate occurred on Valentines Day, Monday, February 14<sup>th</sup>. One would be hard pressed to say there was love in the air, in the traditional sense, but there was love in the sense that the word “compromise” was first used and applied to the legislative issue at hand.

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<sup>2689</sup> Id., 870-71.

<sup>2690</sup> Id., 893.

Senator Vickie McDonald, a vocal opponent of LB 126, had the final word during debate on the second day. “[W]hen we look at this bill, it’s bigger than just closing our Class Is,” she said, “It’s taking our rural identity away.”<sup>2691</sup> The body had not yet taken action on her pending amendment to include option students in the counts used to determine whether a K-12 board could act to close an elementary attendance center. Senator McDonald would also have the last word on the third day of debate. Her message, consistent with that of the previous day of debate, also incorporated a willingness to work toward a mutual satisfaction on the matter. “Compromise is what it’s all about,” she said, “We need to do that on this bill.”<sup>2692</sup> “This is a big issue for rural Nebraska, taking away their Class I schools opportunity, to take away rural ... any possible chance of rural economic development.”<sup>2693</sup>

Senator Adrian Smith, also an ardent opponent of the bill, was actually the first to publicly call for a meeting of the minds on the third day of debate. “From the beginning, I have said that I’m willing to compromise on the issue as it relates to effectiveness and efficiency,” he said.<sup>2694</sup> “I think we need to sit down, both sides, and air our concerns.”<sup>2695</sup> But what Senator Smith called “effectiveness and efficiency,” Senator Raikes preferred to call “efficiency and equity.”<sup>2696</sup>

Senator Raikes may have battled on the defensive side during the second day of debate, but the third day was all offense. He opened the day’s debate with a mission to clarify to his colleagues the “dominant themes” of the overall purpose for LB 126: “efficiency and equity.”<sup>2697</sup> Concerning efficiency, he said, there are too many school districts, too many separate education-related political subdivisions. There were 488 school districts in Nebraska in 2005 of which 47% or 231 were Class I (elementary only)

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<sup>2691</sup> Id., 895.

<sup>2692</sup> Id., 14 February 2005, 942.

<sup>2693</sup> Id.

<sup>2694</sup> Id., 935.

<sup>2695</sup> Id.

<sup>2696</sup> Id., 899.

<sup>2697</sup> Id.

districts. In all the 231 Class I districts served less than 3% of the total number of students in Nebraska. The affiliated Class I districts only served slightly over half the students residing in their districts, and do so at a cost per student that on average is higher than found in K-12 districts, and in some cases much higher. “There is \$75 million of taxpayer money budgeted to these 231 Class I schools,” Senator Raikes said, “Eleven of them have no students, yet are budgeted over \$800,000.”<sup>2698</sup> At the same time, the teachers employed by these Class I districts were paid disproportionately less than their counterparts employed in high school districts. LB 126, he said, was intended in part to produce a more efficient school organizational structure while at the same time addressing other issues such as equity in teacher pay.

On the issue of equity, which received a fair amount of attention on the second day of debate, Senator Raikes said the state is “bound by good conscience, at least, to see that educational funding is distributed so that students most in need are not under-funded as compared to students least in need.”<sup>2699</sup> Race, he said, was not a factor per se in the state aid formula, but poverty and the ability to speak English do represent utilized factors, as they should be. “The information I handed out shows that needy students are being under-funded compared to less needy students in both Class I-Class VI systems, and in affiliated Class I districts,” he said.<sup>2700</sup>

Senator Raikes held fast to the notion that LB 126 would produce a financial savings to the state. “I am guessing that most of the opponents of this bill would describe themselves as fiscally conservative,” Raikes said, “They have the burden of explaining why they are opposed to a major reduction in government bureaucracy and a savings of more than \$12 million annually.”<sup>2701</sup>

The issue of racial discrimination seemed to weight heavy on the minds of some legislators on the third day. There seemed to be an effort on the part of some to distance themselves, and the Class I districts they defended, from insinuations of that nature.

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<sup>2698</sup> Id., 900.

<sup>2699</sup> Id., 899.

<sup>2700</sup> Id., 900.

<sup>2701</sup> Id.



However, Senator Ray Aguilar of Grand Island had no compunction in addressing the matter head on. Said Aguilar:

I agree with his [Senator Raikes'] comment that racism shouldn't be part of our legislation, but it definitely should be part of our discussion, because I think there's a lot of senators in here that either think it doesn't exist or choose to just stay quiet on the issue and hope that it goes away. Well, it's not going to go away, folks. It's part of life here in Nebraska.<sup>2702</sup>

Senator Aguilar addressed the contention made by opponents that Latinos and other minorities always have the option to enroll their children in a Class I district if they so choose. But the reality of the matter is far different. "We're talking about families that both parents are working, they still probably only have one vehicle," he said, "They're struggling."<sup>2703</sup> "They're trying to make a better life for themselves, but it's tough."<sup>2704</sup>

Senator Raikes and other proponents should have felt good about the third day's debate, even though the bill was effectively stalled on General File. Opponents were publicly talking about compromise, although talking about compromise and actual compromise are two separate events. Perhaps troublesome to proponents and hopeful to opponents was the fact that not all lawmakers had yet taken a side. There were still undecided votes. "I'm an actual in-the-middle, on-the-fence, uncommitted vote," said Senator Dave Landis of Lincoln.<sup>2705</sup> "I am subject to the persuasion of both sides," he said, "And I want you to know, neither side has done it so far."<sup>2706</sup>

Just as troubling, or hopeful from another perspective, was the as yet undecided administration. Governor Dave Heineman, serving his first year as the state's chief executive officer, said he had been watching the debate closely. "I'm going to continue to monitor this," he said, "I'm very open-minded and trying to learn more."<sup>2707</sup> In truth,

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<sup>2702</sup> Id., 918.

<sup>2703</sup> Id., 919.

<sup>2704</sup> Id.

<sup>2705</sup> Id., 932

<sup>2706</sup> Id.

<sup>2707</sup> Martha Stoddard, "Governor cautious on schools bill; Both sides of merger proposal appreciate his consideration," *Omaha World-Herald*, 15 February 2005, 1B.

there was speculation about the Governor's opinion from the very start of the session. Would the assimilation bill require a simple majority to pass or 30 votes to override a veto? No one seemed to know. But it weighed heavy on everyone's mind.

By the end of the third day of first-round consideration, the Legislature had effectively devoted about seven and a half hours of debate on LB 126. At least one major newspaper alluded to the notion that proponents need only hold out another half hour of debate before offering a motion for cloture (to force an end to debate). In fact, under the old rule, a motion for cloture could not be made until at least eight hours of debate on any given stage of consideration. However, in 2001 the rules were changed to permit the motion at just about any time so long as the presiding officer agrees that a full and fair debate has been afforded. If the presiding officer disagrees with the mover, the motion will be ruled out of order and the ruling may not be subject to challenge. If the presiding officer does not rule otherwise, a vote on the cloture motion is taken immediately requiring a two-thirds majority vote of the body to be successful (33 votes).<sup>2708</sup>

*"We have reached what I call an accommodation"*

An extraordinary event occurred on the fourth and final day of first-round debate on LB 126, an event for which proponents would be very grateful. The debate took place on the morning of February 15, 2005, and would last no more than a few hours. At the outset of debate, it appeared that nothing new had transpired between the two sides. Much of the same arguments levied the previous three session days were once again brought out and rehashed.

Those monitoring the debate, both within and outside the chamber, felt something was in the wind about half way through the morning debate. Sidebar conversations are nothing out of the ordinary during a typical debate. Senators gather in small clusters to confer and discuss privately while at the same time others speak "on mike" or wait their turn to speak. To the casual observer, it seems as though they often do not listen to one another while they move around on the floor, or depart the chamber to meet with lobbyists and constituents. In truth, the real "politicking" occurs at many levels and often

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<sup>2708</sup> RULES OF THE NEB. LEG., Rule 7, § 10.

the small gatherings to the side of the chamber are strategy sessions or efforts to seek a compromise on a given matter. Such was the case on February 15<sup>th</sup>.

The initial indication occurred when Senator Raikes offered his own “on mike” allotment of time to Senator Beutler, a fellow proponent, in order that Senator Raikes could have a sidebar discussion with Speaker Brashear and others. “I understand we’re trying to work something out,” Senator Beutler began before using the donated five minutes to speak, ostensibly on the bill, but perhaps more to give the sidebar discussion the necessary time.<sup>2709</sup>

Eventually, about an hour later, all necessary private discussions had transpired with apparent success. Speaker Kermit Brashear approached a microphone to offer what, for proponents, was an extraordinary act of leadership. “[W]e have reached what I call an accommodation,” the Speaker began.<sup>2710</sup>

Brashear, in his usual eloquence, outlined the main objective of the bill, to move toward a K-12 organization, along with the concerns brought forth by various opponents of the measure. He deliberately chose to stand near a microphone opposite to where Senator Raikes’ desk was situated in order, he said, to facilitate a colloquy between himself and Senator Raikes. “I was asked last evening to become involved with this and to be helpful, and that’s my role” Speaker Brashear said, “I’m articulating it because the people who asked me to intervene have asked me to articulate the transaction.”<sup>2711</sup>

The Speaker carefully wove through the intricate and emotional issues that had become part of the overall debate. An obvious attempt was made to avoid degrading or otherwise belittling anyone’s position. Nonetheless, he said, the time was at hand to make a decision on advancement with the promise of negotiations before second-round consideration. “We’ve had a full and fair, well-prepared, substantive debate on this subject,” Brashear said.<sup>2712</sup> “[T]here must be good faith negotiation between General and

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<sup>2709</sup> *Floor Transcripts, LB 126 (2005)*, 15 February 2005, 964.

<sup>2710</sup> *Id.*, 981.

<sup>2711</sup> *Id.*

<sup>2712</sup> *Id.*

Select,” he said, “And I will, as an effort to facilitate this transaction accommodation, I have said I will utilize, fairly and justly, the powers of my office with regard to the scheduling on Select File.”<sup>2713</sup>

A grateful chair of the Education Committee responded with relief. “[T]hank you very much, Mr. Speaker, for your efforts,” Senator Raikes said, “They have been invaluable.”<sup>2714</sup> A few of the ardent opponents also took a few minutes to address the Speaker’s proposal. “[The devil is in the details,” said Senator Adrian Smith, stating that opponents still had grave concerns with the legislation.<sup>2715</sup> “I have mixed emotions about this, LB 126,” said Senator Carol Hudkins, “Obviously, you know I don’t like it, but we are willing to enter good faith negotiations with Senator Raikes.”<sup>2716</sup>

The body took quick action to either withdraw or re-file pending amendments before a vote to advance was taken. Senator McDonald, for instance, withdrew her pending amendment concerning option students within the count for purposes of closing attendance centers. At 11:09 a.m. (CST) on February 15, 2005, the Legislature voted to advance LB 126 by a 33-8 vote.<sup>2717</sup> Ironically, the bill advanced with the exact number of affirmative votes necessary to successfully pass a motion for cloture, which became unnecessary due to Speaker Brashear’s efforts to intervene.

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Table 163. Vote to Advance LB 126 to E&R Initial

*Voting Aye, 33:*

|          |          |         |          |            |
|----------|----------|---------|----------|------------|
| Aguilar  | Combs    | Janssen | Pahls    | Schrock    |
| Baker    | Cornett  | Jensen  | Pedersen | Stuhr      |
| Beutler  | Cudaback | Johnson | Preister | Synowiecki |
| Bourne   | Engel    | Kopplin | Price    | Thompson   |
| Brashear | Foley    | Kremer  | Raikes   | Wehrbein   |
| Brown    | Friend   | Kruse   | Redfield |            |
| Byars    | Howard   | Mines   | Schimek  |            |

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<sup>2713</sup> Id., 982.

<sup>2714</sup> Id., 984.

<sup>2715</sup> Id., 985.

<sup>2716</sup> Id.

<sup>2717</sup> NEB. LEGIS. JOURNAL, 15 February 2005, 519.

Table 163—Continued

*Voting Nay, 8:*

|         |           |            |          |
|---------|-----------|------------|----------|
| Erdman  | Heidemann | Langemeier | McDonald |
| Fischer | Hudkins   | Louden     | Smith    |

*Present, Not Voting, 6:*

|          |            |          |
|----------|------------|----------|
| Burling  | Connealy   | Flood    |
| Chambers | Cunningham | Stuthman |

*Excused, Not Voting, 2:*

|        |          |
|--------|----------|
| Landis | Pederson |
|--------|----------|

*Source:* NEB. LEGIS. JOURNAL, February 15, 2005, 519.

Little did anyone know, at the time, that it would be over three long months before LB 126 would return to the agenda for second-round consideration. In between were negotiations, frustration, posturing, but little to no break through.

*“We have provided opportunity for compromise”*

Between General File and Second File, several events occurred to further shape opinions one way or another. The first occurred in western Nebraska concerning the communities of Gordon, Rushville, and surrounding areas. It was here on March 8, 2005 that four Class I districts effectively blocked the merger of two high school districts: Gordon and Rushville. The proposed merger had been in the works for some time, but the merger resolution required the approval of boards from all affected school districts, which included two high school districts and fifteen Class I districts. The boards representing the two high school districts along with eleven Class I districts approved the plan, but the boards of four elementary districts (Merriman, Mirage Flats, Prairie View and Sheridan County District 131) voted against. The result was a veto of the entire plan. The minority overruled the majority.

Naturally, those working hard to create an efficient school system were disappointed. “Instead of having somebody do it for us, we had hoped to do it this way,” Gordon Mills, president of the Gordon High School board said, “We wanted to be ahead

of LB 126.”<sup>2718</sup> The local matter also provided fodder for Senator Raikes, who had argued during first-round debate of LB 126 about the need for state sanctioned school reorganization. “It goes to the veto-power issue,” Senator Raikes said, “If you’ve got two or three very small groups that can thwart the will of the entire community, that’s an issue.”<sup>2719</sup>

The second situation involved the Cheney Public School, a Class I district, and one of the four high school districts with which it was affiliated, Lincoln Public Schools (LPS). State law required the high school districts to approve the budgets of affiliated Class I districts. On March 22, 2005, the LPS school board voted to oppose a request made by the Cheney board for additional budget authority for 2005-06. The total amount requested was \$87,656 of which \$47,081 would have been the responsibility of LPS under the affiliation arrangement. “Now with the decision by the LPS board today, Cheney has been remanded to spend less per child than the state average,” wrote Cheney School Board President Matt Nasseti in an email message.<sup>2720</sup> “This is a near impossibility for any small school such as Cheney,” he added.<sup>2721</sup> The cost per student for Cheney Public School had been \$8,851, but without the additional budget authority, the cost per student fell to \$7,306 (\$594 below the state average).

Were the Gordon/Rushville and Cheney/LPS events related to the divisive debate surrounding LB 126, or were they unrelated events that would have occurred even if LB 126 did not exist? Board members representing a few of the Class I districts that blocked the Gordon/Rushville merger said they voted against it because they felt the issue should be decided instead by the local electorate. LPS officials alluded to overall budget reductions as the reason for denying Cheney Public School’s additional budget authority request. The Cheney event, of course, did not escape the attention of opponents of LB

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<sup>2718</sup> Martha Stoddard, “Grade schools block merger of high schools; A legislator who wants elementary-only districts eliminated says the vote in Gordon and Rushville illustrates his point,” *Omaha World-Herald*, 10 March 2005, 1A.

<sup>2719</sup> *Id.*

<sup>2720</sup> JoAnne Young, “LPS rejects Cheney’s school funding request,” *Lincoln Journal Star*, 23 March 2005.

<sup>2721</sup> *Id.*

126, particularly Senator Adrian Smith, who used several opportunities during the long debate to criticize Lincoln Public Schools.

Meanwhile the reported progress of the good faith negotiations on the controversial assimilation bill depended upon to whom one spoke and on which day. Both sides accused the other of stalling, refusing to meet, and generally bad faith efforts to arrive at a compromise. But for the chief sponsor of LB 126, time was of the essence. “I think there is a point at which you say we have provided opportunity for input, we have provided opportunity for compromise,” Senator Raikes said on April 8<sup>th</sup>.<sup>2722</sup> In truth, Senator Raikes had taken the initiative to meet with opponents on a one-on-one basis, he had offered various proposals for consideration, but it seemed as though the opponents themselves were not sure how or when to respond. “We’re getting ready to negotiate,” said Senator Heidemann.<sup>2723</sup> “We work on it every day,” he said, “It’s not an easy issue.”<sup>2724</sup>

Also of significance was Governor Heineman’s opinion on the matter, which seemed to be taking shape as the weeks dragged on. During a press conference on April 19<sup>th</sup>, the Governor appeared to be hinting toward disapproval of the legislation. He said his main concern was the provision of quality education for all children. He raised concerns about whether LB 126 would actually save all that much for the State and whether it was prudent policy to interfere with local control over school organization. At several meetings held by education-related groups, Governor Heineman rhetorically asked whether all the schools located in Omaha would also be willing to merge into one K-12 district. What is good for the goose is good for the gander, he postulated. Proponents of LB 126, of course, believed the Governor had missed the point since the objective of the legislation was an all K-12 school organization. What happens in Omaha and other large cities is a separate matter, they thought.

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<sup>2722</sup> Martha Stoddard, “Sides hone legislation on school mergers,” *Omaha World-Herald*, 9 April 2005, 1A.

<sup>2723</sup> *Id.*

<sup>2724</sup> *Id.*

*“A good proposal”*

Finally, on May 19, 2005, the 81<sup>st</sup> day of the 90-day session, LB 126 once again appeared on the Legislature’s daily agenda. It had been three long months since the topic of Class I assimilation had been addressed on the floor of the Legislature, although the issue was never far from anyone’s mind.

Whether by design or happenstance, Senator Raikes never spoke to the issue he so passionately upheld during that first day of Select File debate. And perhaps this was the best strategy. Say nothing and survey the scene. Opponents, on the other hand, did talk, and talk.

There was a good amount of complaint from the opponents about the negotiation process that took place in the previous three months. Interestingly, one of the opponents, Senator Mike Flood of Norfolk, had this to say about the process:

[T]his morning’s negotiation wasn’t our first negotiation. For those of you that maybe are on the fringe or may be supporting LB 126, you may wonder why we’re having this trouble trying to put together deals and negotiate different interests. And that’s because each one of the rural senators comes from a different position.<sup>2725</sup>

As events would unfold, it became obvious that the weak link in the opponents’ strategy was the lack of agreement among them. Perhaps another reason for Senator Raikes to carefully pick when and how he chose to speak to the legislation.

Senator Flood offered one of the more compelling reasons to question the one-size-fits-all approach to LB126. Senator Flood admirably represented the Northeast Nebraska (NEN) Class I cooperative, which resided mostly in Madison County. Senator Flood worked diligently to prove the merits of such cooperatives, so long as they adhere to certain standards. In his opinion, the best reason to oppose LB 126 was that it placed all Class I districts in the same light even though there were examples of efficient systems within the elementary-only structure. “My interest in this is to find something that treats all different Class I schools fairly and yet is responsive to what the Class IIIs

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<sup>2725</sup> *Floor Transcripts, LB 126 (2005)*, 19 May 2005, 6362.



are telling us they're looking for in efficiency, the reason we have LB 126," Flood said.<sup>2726</sup>

However, any positive discussion had to be weighed against the less constructive comments and dialogue, which, as heartfelt as it was, simply did not lend itself to the overall debate. For instance, Senator Smith stated:

An interesting journey indeed and it gets more interesting with every day and with every minute. And I would like to speak candidly. I regret being nice on General File because there were some issues that I thought could be included and would be included. Shame on me for not requiring those in writing. Shame on me.<sup>2727</sup>

"'Tis the season," Speaker Brashear said before using his authority as Speaker to close debate for the day.<sup>2728</sup> There was simply no progress on the issue to warrant continued discussion.

The following day would be different. On the last day of Select File debate, Senator Raikes would offer what he called "a good proposal," a compromise amendment.<sup>2729</sup> In exchange for a green light on some of the major components of the legislation, Senator Raikes' amendment would offer more protection against closure of Class I attendance centers. In addition, the amendment would permit more input from Class I officials through the formation of "operating councils" to serve as advisory groups on matters including facilities, budgets and personnel decisions. As illustrated in Table 164, the amendment also provided rural education transition funds for Class II or III school districts formed from a Class VI system having 600 or more students to help offset the initial costs of reorganization.

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<sup>2726</sup> Id., 6362-63.

<sup>2727</sup> Id., 6345.

<sup>2728</sup> Id., 6364.

<sup>2729</sup> Id., 20 May 2005, 6537.

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Table 164. Provisions of AM1672 to LB 126 (2005) Coupled  
with Surviving Provisions from Original Bill

A. *Reorganization.*

1. On or before December 1, 2005, the State Committee for the Reorganization of School Districts must issue orders merging the property of each Class I school district into one or more Class II, III, IV or VI school districts.
2. On or before December 1, 2005, the State Committee shall also order each Class VI school district to be converted into a Class II or Class III school district.
3. The effective date for mergers is June 15, 2006.
4. Bonded indebtedness approved prior to the mergers remains the responsibility of the property owners in the original district voting such bonds.
5. Elementary attendance centers may be designated as community schools through the formation of advisory operating councils.

B. *Attendance Site Closures.*

1. The amendment provided that an elementary attendance center cannot be closed until students that will be in kindergarten in 2005-06 complete the highest grade offered at the site, as long as the center has at least five resident students.
2. After the initial protection expires, a 75% majority of a board may close an attendance center with at least ten resident students that is within four miles, but less than ten, of another elementary site in the district.
3. Centers cannot be closed if there are at least ten resident students and the center is at least ten miles from another elementary site in the district, having ten students, or the center is the only attendance site within the boundaries of an incorporated city or village.
4. No center may be closed if a student resides over twenty miles from the nearest attendance site.

C. *Funding.*

1. Class II or III school districts formed from a Class VI system having 600 or more students are eligible for rural education transition funds for a three-year period.
2. Class II and III school districts may also qualify for elementary improvement grants for a three-year period if certain conditions are met.

D. *Transportation Requirements.*

1. Transportation requirements are repealed for some classes of school districts and requires all districts to provide transportation or pay a transportation allowance for students in grades kindergarten through eight who live more than four miles from school.

Table 164—*Continued*

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2. Repeals the requirement for Class II and III school districts, that were not formed from former Class VI school systems, to transport or pay an allowance for the transportation of secondary students in grades nine through twelve who live more than four miles from school.
- E. *Certification Date.* Changes the certification date for 2006-07 state aid from February 1<sup>st</sup> to March 1<sup>st</sup> for 2006 only.
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*Sources:* NEB. LEGIS. JOURNAL, *Raikes AM1672*, printed separate, 19 May 2005, 1679. Amendment, *Raikes AM1672 to LB 126 (2005)*, 1-16.

One of the unfortunate side affects of LB 126 is the loss of federal Rural Education Achievement Program (REAP) funds, approximately \$1.7 million in all. The federal funds are available to schools with fewer than 600 students. School districts in Nebraska were awarded a total of \$7.4 million of REAP funds in 2004-05. Senator Raikes attempted to account for some of this loss by including transition funds in his compromise amendment. The “rural education transition funds” would be used for Class II or III school districts formed from a Class VI system having 600 or more students. Schools would be eligible for transition funds for a three-year period (2006-07, 2007-08 and 2008-09). It would cost the state \$650,000 in 2006-07 for such transition funding. Senator Raikes would, therefore, need to introduce an appropriation (“A”) bill to cover this expenditure.<sup>2730</sup>

The compromise amendment also provided for “elementary improvement” grants for Class II and III school districts that meet certain criteria outlined in the proposal. The grants would be available for a three-year period (2007-08, 2008-09 and 2009-10). Qualifying districts must have an approved bond issue for at least \$2 million to remodel or build a new elementary attendance center. The bond issue must be approved after June 15, 2006 and on or before June 14, 2007. The amendment requires the State Board of Education to determine and approve the project as being designed to improve the educational environment for students with diverse economic and cultural backgrounds.

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<sup>2730</sup> *Fiscal Impact Statement, LB 126 (2005)*, 24 May 2005, 1-2.

Funding for the grants could be deferred until the 2006 Session and would not need to be accounted within the A-bill to LB 126.<sup>2731</sup>

So how much could be saved if the Raikes amendment was adopted? The Fiscal Office estimated that 63 Class I attendance centers would be qualified for closure by their respective K-12 school boards beginning in 2006-07. This does not mean the K-12 boards would, in fact, opt to do so. However, if all such boards took action to close the centers, the State would theoretically save about \$4.7 million. Additional savings might be realized in future years depending upon the number of closures by K-12 boards, but these savings may be offset by additional expenditures by the same K-12 districts that absorbed those students.<sup>2732</sup> Once again, the savings factor simply did not constitute the best reason to support LB 126, although proponents would argue that other factors would more than justify support for the measure.

Senator Raikes' amendment effectively divided the opponents and paved the way for advancement of LB 126. For instance, Senators Smith and Fischer remained opposed to the legislation, but Senators Hudkins and McDonald agreed to support it. "[W]e came to a compromise," said Senator McDonald.<sup>2733</sup> Some opponents believed the amendment represented improvement, but not enough to change their position. "Do I believe that AM1672 is better than the green copy?" Senator Erdman asked aloud, "I sure do."<sup>2734</sup> Senator Erdman, however, was not sufficiently convinced to alter his viewpoint.

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Table 165. Record Vote: Senator Raikes' Compromise Amendment, AM1672 to LB 126 (2005)

*Voting in the affirmative, 35:*

|         |            |         |          |          |
|---------|------------|---------|----------|----------|
| Aguilar | Byars      | Janssen | Mines    | Redfield |
| Baker   | Connealy   | Johnson | Pahls    | Schimek  |
| Beutler | Cunningham | Kopplin | Pedersen | Schrock  |

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<sup>2731</sup> NEB. LEGIS. JOURNAL, *Raikes AM1672*, printed separate, 19 May 2005, 1679. Amendment, *Raikes AM1672 to LB 126 (2005)*, 3-4.

<sup>2732</sup> *Fiscal Impact Statement, LB 126 (2005)*, 24 May 2005, 1-2.

<sup>2733</sup> *Floor Transcripts, LB 126 (2005)*, 20 May 2005, 6554.

<sup>2734</sup> *Id.*, 6563.

Table 165—*Continued*


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|                                   |           |            |          |            |
|-----------------------------------|-----------|------------|----------|------------|
| Bourne                            | Engel     | Kremer     | Pederson | Stuhr      |
| Brashear                          | Foley     | Landis     | Preister | Synowiecki |
| Brown                             | Howard    | Louden     | Price    | Thompson   |
| Burling                           | Hudkins   | McDonald   | Raikes   | Wehrbein   |
| <i>Voting in the negative, 6:</i> |           |            |          |            |
| Erdman                            | Flood     | Langemeier |          |            |
| Fischer                           | Heidemann | Smith      |          |            |
| <i>Present and not voting, 6:</i> |           |            |          |            |
| Chambers                          | Cudaback  | Jensen     |          |            |
| Combs                             | Friend    | Stuthman   |          |            |
| <i>Excused and not voting, 2:</i> |           |            |          |            |
| Cornett                           | Kruse     |            |          |            |

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*Source:* NEB. LEGIS. JOURNAL, 20 May 2005, 1691.

Senator Raikes had a victory in hand, and had every reason to be pleased with the vote. However, a few minutes after the vote on the compromise amendment, the body voted on advancement to Final Reading. As illustrated in Table 166, the results were somewhat worrisome assuming proponents would eventually need 30 votes to override a veto. And they would.

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Table 166. Record Vote: Vote to Advance LB 126 to E&R Final

|                                       |            |            |          |            |
|---------------------------------------|------------|------------|----------|------------|
| <i>Voting in the affirmative, 29:</i> |            |            |          |            |
| Aguilar                               | Byars      | Janssen    | Pahls    | Schimek    |
| Baker                                 | Cunningham | Jensen     | Pedersen | Stuhr      |
| Beutler                               | Engel      | Johnson    | Preister | Synowiecki |
| Brashear                              | Foley      | Kremer     | Price    | Thompson   |
| Brown                                 | Friend     | Landis     | Raikes   | Wehrbein   |
| Burling                               | Howard     | Mines      | Redfield |            |
| <i>Voting in the negative, 12:</i>    |            |            |          |            |
| Connealy                              | Fischer    | Hudkins    | McDonald |            |
| Cudaback                              | Flood      | Langemeier | Smith    |            |
| Erdman                                | Heidemann  | Louden     | Stuthman |            |
| <i>Present and not voting, 5:</i>     |            |            |          |            |
| Bourne                                | Chambers   | Combs      | Kopplin  | Schrock    |
| <i>Excused and not voting, 3:</i>     |            |            |          |            |
| Cornett                               | Kruse      | Pederson   |          |            |

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*Source:* NEB. LEGIS. JOURNAL, 20 May 2005, 1692.

Reaction to the adoption of the compromise amendment along with the advancement of LB 126 was mixed as expected. George Lauby, representing Class I's United, expressed both sadness and gratitude. He applauded the efforts made by various legislators to oppose the measure. "I think they worked very hard to get what they thought they could get, and we appreciate their efforts," Lauby said.<sup>2735</sup> Proponents were naturally pleased, but also worried whether they would have sufficient votes to pass a motion to override. Lobbyists representing education groups and school districts supportive of LB 126 immediately began talking privately with lawmakers to affirm their position. The Governor, in the meantime, was mostly quiet about his view on the legislation, which seemed to point to a veto action. Rural senators such as Deb Fischer of Valentine were not shy about piling on the pressure. "I don't believe he can ever come and campaign in the 3rd (Congressional) District unless he vetoes it," she said in reference to Governor Heineman.<sup>2736</sup>

*"This is a historically very difficult, difficult subject"*

For those who appreciate dramatic finishes, the 2005 Session was made to order. Final Reading of LB 126 occurred on June 1, 2005 (the 88<sup>th</sup> day of the session), Governor Heineman vetoed the bill on June 2<sup>nd</sup> (the 89<sup>th</sup> day), and Legislature voted to override the veto on June 3<sup>rd</sup> (the 90<sup>th</sup> and last day of the session). Appropriately, perhaps, the disposition of LB 126 was one of final actions of the Legislature in 2005.

To his credit, Senator Adrian Smith kept up the fight until the very end. He filed an amendment to strike the enacting clause in order to have another opportunity to speak to his colleagues before they voted on passage of the bill.<sup>2737</sup> Said Smith:

[T]o me, education is more than the four walls of a school building. Education is about community support. LB 126 destroys it, maybe not intentionally, but effectively it destroys community support. The innovation that takes place, that's

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<sup>2735</sup> Martha Stoddard, "Schools bill advances after deal: The compromise would give elementary-only districts more protection before merging with K-12 districts," *Omaha World-Herald*, 21 May 2005, 1A.

<sup>2736</sup> Martha Stoddard, "Both sides in schools fight antsy; All eyes turn to Gov. Heineman, who is expected to announce Friday whether he will veto the district consolidation bill," *Omaha World-Herald*, 2 June 2005, 1A.

<sup>2737</sup> NEB. LEGIS. JOURNAL, *Smith FA322*, 1 June 2005, 1864.

what we need more of in education is the innovation of community participants, of parents participating in the school programs. LB 126 discourages it.<sup>2738</sup>

Senator Smith withdrew his amendment. By this time, of course, there were few undecided votes, as the final tally demonstrated.

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Table 167. Record Vote: Passage of LB 126 (2005)

*Voting in the affirmative, 35:*

|          |            |         |          |            |
|----------|------------|---------|----------|------------|
| Aguilar  | Chambers   | Howard  | Landis   | Raikes     |
| Baker    | Combs      | Janssen | Mines    | Redfield   |
| Beutler  | Cornett    | Jensen  | Pahls    | Schimek    |
| Bourne   | Cunningham | Johnson | Pedersen | Stuhr      |
| Brashear | Engel      | Kopplin | Pederson | Synowiecki |
| Brown    | Foley      | Kremer  | Preister | Thompson   |
| Byars    | Friend     | Kruse   | Price    | Wehrbein   |

*Voting in the negative, 12:*

|          |           |            |          |
|----------|-----------|------------|----------|
| Burling  | Fischer   | Hudkins    | McDonald |
| Cudaback | Flood     | Langemeier | Smith    |
| Erdman   | Heidemann | Louden     | Stuthman |

*Present and not voting, 2:*

|          |         |
|----------|---------|
| Connealy | Schrock |
|----------|---------|

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*Source:* NEB. LEGIS. JOURNAL, 1 June 2005, 1865-66.

The appropriation bill (LB 126A) also passed on a 39-10 vote.<sup>2739</sup> The votes seemed to indicate a good chance to override a veto, if necessary — and it would be necessary. The next day, June 2<sup>nd</sup>, Governor Heineman took action to veto both LB 126 and LB 126A. In a communication to the Legislature, the Governor wrote:

Almost without exception in Nebraska's history, decisions regarding the mandatory merger or closure of our local school districts are permeated with strong emotion. You and I have received immeasurable public input from both supporters and opponents of this significant legislation.

After having diligently reviewed the very detailed provisions of LB 126, I do not believe the bill achieves its original goals of improved efficiency and of an

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<sup>2738</sup> *Floor Transcripts, LB 126 (2005)*, 1 June 2005, 7387.

<sup>2739</sup> NEB. LEGIS. JOURNAL, 1 June 2005, 1866.

improved quality education that the students of our small schools receive. The legislation now requires the expenditure of nearly three million dollars during the first three years to implement its provisions.

Furthermore, I firmly believe that the forced consolidation presented by the bill will, in the long run, alienate parents from their schools rather than involving them even more in the decisions affecting the management and structure of their children's public education. Voluntary school district consolidation is already occurring without government intervention. Voluntary consolidation implemented by local decision-making rather than a state mandate has a better opportunity of uniting communities.

I have visited several Class I school districts and I have been in many K-12 districts over the years. Both are providing a quality education for Nebraska students.

I commend Senator Raikes and those who worked tirelessly to try to achieve a final legislative solution; however, the compromise proposed in LB 126 neither advances the cause of efficiency in school governance nor ensures a better quality of education for children who are educated in Class I and Class VI schools throughout Nebraska.<sup>2740</sup>

On the same day that Governor Heineman vetoed the legislation, Senator Ron Raikes would file motions to override the vetoes.<sup>2741</sup> The showdown was set for the 90<sup>th</sup> and last day of the 2005 Session.

"I'm asking you to join me in voting to override his veto so that this measure, which we the Legislature have worked so hard to develop over the past three years, can become law," Senator Raikes said in his opening remarks to the motions to override.<sup>2742</sup> He disputed the Governor's knowledge of the issues given his stated reasons for vetoing the legislation. "I'm going to assume the Governor simply doesn't know these facts," Raikes said, "If he did know them, I can't think he would endorse this arrangement and result."<sup>2743</sup> He went on to say that if there were any chance that LB 126 would compromise the quality of education for students, he would not have introduced the proposal.

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<sup>2740</sup> Id., 2 June 2005, 1895-96.

<sup>2741</sup> Id., 1896.

<sup>2742</sup> *Floor Transcripts, LB 126 (2005)*, 3 June 2005, 7499.

<sup>2743</sup> Id., 7500.



Senator Smith and other opponents rose in opposition to the motions and in support of the Governor's veto. "We cannot afford, as policymakers, to alienate public education from the community," Smith said.<sup>2744</sup> The Gering senator reiterated his belief that LB 126 offered no assurances of quality of educational opportunity and that local control would be seriously impeded. Senator Deb Fischer drew upon the latest fiscal note released by the Fiscal Office to demonstrate that no substantial savings would occur due to LB 126. She also asked her colleagues to seriously think about the impact on rural communities and residents. "I ask that you consider the effects of this bill on the families across the entire state," she said.<sup>2745</sup>

Senator Tom Baker of Trenton, a consistent supporter of LB 126, said the whole matter came down to the differences of outlooks between opponents and proponents. "They look at this as a threat," Senator Baker said.<sup>2746</sup> "I look at this as an opportunity," he said, "Big difference."<sup>2747</sup> Senator Baker said he had received threatening phone calls from those who opposed the bill and wanted him to vote against it. He said he also received encouraging letters and email from school board members and school administrators in support of the measure.

Appropriately, perhaps, the elected leader of the Legislature also spoke to the motions to override. "In my 11 years of service in the Legislature, there were more people involved in these discussions and negotiations than any other matter I've ever done," said Speaker of the Legislature, Senator Kermit Brashear.<sup>2748</sup> He indicated his pride in the process and those who participated in the long, arduous debate. But nothing could erase or hide the fundamental emotions involved in this issue. "This is a historically very difficult, difficult subject," Brashear said.<sup>2749</sup>

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<sup>2744</sup> Id., 7502.

<sup>2745</sup> Id., 7503

<sup>2746</sup> Id., 7506.

<sup>2747</sup> Id.

<sup>2748</sup> Id., 7508.

<sup>2749</sup> Id.

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 Table 168. Record Vote: Motion to override veto of LB 126 (2005)

*Voting in the affirmative, 32:*

|          |          |          |          |            |
|----------|----------|----------|----------|------------|
| Aguilar  | Chambers | Kopplin  | Pederson | Stuhr      |
| Baker    | Cornett  | Kremer   | Preister | Synowiecki |
| Beutler  | Engel    | Kruse    | Price    | Thompson   |
| Bourne   | Howard   | Landis   | Raikes   | Wehrbein   |
| Brashear | Janssen  | Mines    | Redfield |            |
| Brown    | Jensen   | Pahls    | Schimek  |            |
| Byars    | Johnson  | Pedersen | Schrock  |            |

*Voting in the negative, 16:*

|            |         |            |          |
|------------|---------|------------|----------|
| Burling    | Erdman  | Friend     | Louden   |
| Connealy   | Fischer | Heidemann  | McDonald |
| Cudaback   | Flood   | Hudkins    | Smith    |
| Cunningham | Foley   | Langemeier | Stuthman |

*Present and not voting, 1:*

Combs

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*Source:* NEB. LEGIS. JOURNAL, 3 June 2005, 1912-13.

The override motion was successful with two votes to spare. The motion to override the veto of LB 126A also passed on a 38-4 vote.<sup>2750</sup> For the second time in 20 years, landmark legislation mandating school reorganization of Class I schools had become law. The fight was no less contested, bitter, and controversial in 2005 than it was in 1985. But the fight was far from over.

Within a week of the end of the 2005 Session, a group of citizens, the Nebraskans for Local Schools, had formed to give the electorate the last word, or so they hoped. Mindful of the 1985-86 episode, the group believed it could make history rhyme with a second effort to repeal a reorganization law. “If we find enough people, I think this will be successful,” said George Lauby, a member of the citizen group.<sup>2751</sup> But to be successful, the petition group would need 56,435 valid signatures by September 1, 2005, and double that figure to suspend the enforcement of the law until an election is held.

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<sup>2750</sup> NEB. LEGIS. JOURNAL, 3 June 2005, 1913.

<sup>2751</sup> Martha Stoddard, “‘85 repeal inspires Class I backers; Their petition drive will target LB 12655,000 need to sign,” *Omaha World-Herald*, 11 June 2005, 1A.

A testament to their organizational skills, the petition group gathered 87,006 signatures in total, including a very important signature and endorsement from the Governor of the State of Nebraska. But the effort fell short of the required number to suspend the law until the people voted. The issue would appear on the 2006 General Election ballot, but the enforcement of the law would continue unabated. By the time of the election, much of the prescribed timeline for reorganization would be complete. The petition supporters went to Plan B and filed an injunction against the State Committee on the Reorganization of Schools to prevent the committee from carrying out the duties prescribed under LB 126. Governor Heineman supported the suspension of the law. “That would be applying a little Nebraska common sense,” he said.<sup>2752</sup>

LB 126 brought to bear such issues as discrimination, school finance, accountability, curriculum, equity of teacher pay, equity and quality of educational opportunities, local choice, transportation issues, administrative costs, urban versus rural interests, etc. It was an emotional fight for survival in the minds of some and a battle for progress in the minds of others. In the end, whenever the end arrives, there will be no thought of winners or losers in this legislative contest, only a testament to the spirit of decency and dedication to the interests of children, their wellbeing, and future.

Table 169. Summary of Modifications to TEEOSA  
as per LB 126 (2005)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i> | <i>Description of Change</i>  |
|------------------|---------------------|---------------------------|---|
| 45               | 79-1003             | Terms, defined            | Revised the definition of “local system” for fiscal year 2006-07 to mean (i) a Class VI district and the Class I districts or portions of Class I district that will be merged with the Class VI district to form a Class II or III district on June 15, 2006, or (ii) a Class II, III, IV, or V district and any Class I districts or portions of Class I districts that will be merged with the Class II, III, IV, or V district on June 15, 2006. Beginning with school fiscal year 2007-08, a local system would mean a Class II, III, IV, or V district. |

<sup>2752</sup> Martha Stoddard, “School merger foes get issue on 2006 ballot,” *Omaha World-Herald*, 25 October 2005, 1B.

Table 169—Continued

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>  | <i>Description of Change</i>  |
|------------------|---------------------|--|---|
| 46               | 79-1016             | Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited | By December 20, 2005, required the Property Tax Administrator (PAT) to in turn require the county assessor to recertify the Class I taxable valuation according to the new affiliation pursuant to orders issued by the State Committee for the Reorganization of School Districts for a Class I district which dissolves and attaches its territory to a Class II, III, IV, or VI school district in such a manner that the parcels of property do not become a part of the local system with which they were previously affiliated or to which they were previously attached. For any local system's territory which is affected by a recertification of a Class I district's taxable valuation, the PAT must compute and recertify the adjusted valuation to each local system and the department by February 1, 2006. |
| 47               | 79-1022             | Distribution of income tax receipts and state aid; effect on budget  | Temporarily changed the state aid certification date from February 1 <sup>st</sup> to March 1 <sup>st</sup> for 2006 only. Also changed the date from February 1 <sup>st</sup> to March 1 <sup>st</sup> for 2006 only concerning the requirement upon the department to report the necessary funding level to the Governor, the Appropriations Committee of the Legislature, and the Education Committee of the Legislature.  |
| 48               | 79-1026             | Applicable allowable growth rate; determination; target budget level   | Temporarily changed the date by which the department certifies to each district the applicable allowable growth rate from February 1 <sup>st</sup> to March 1 <sup>st</sup> for 2006 only.  |
| 49               | 79-1027             | Budget; restrictions   | Temporarily changed the date by which the department certifies to each district the applicable allowable reserve percentage from February 1 <sup>st</sup> to March 1 <sup>st</sup> for 2006 only.   |
| 50               | 79-1028             | Applicable allowable growth rate; Class II, III, IV, V, or VI district may exceed; situations enumerated                         | For 2006-07 only, a Class II or III district that has been exempt from the transportation requirements due to the district's status as a Class VI school district in a prior school fiscal year may exceed its applicable allowable growth rate by an amount equal to anticipated transportation expenditures necessary to meet new transportation requirements. The department was authorized to approve, deny, or modify the anticipated transportation expenditures. NDE must compute the actual transportation expenditures necessary to meet new transportation requirements for 2006-07 and must, if necessary, modify the local system's applicable allowable growth rate for the ensuing year.  |
| 51               | 79-1031.01          | Appropriations Committee; duties   | Temporarily changed the date from February 1 <sup>st</sup> to March 1 <sup>st</sup> by which the Appropriations Committee must carry out its annual duty to include the amount necessary to fund the state aid certified to districts in its budget recommendations. Applied to 2006 only.  |

Source: Legislative Bill 126, in *Laws of Nebraska, Ninety-Ninth Legislature, First Session, 2005*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of John Gale, Secretary of State), §§ 45-51, pp. 20-27 (247-54).

### C. Early Childhood Education

One of the under-discussed subjects in the legislative arena involves early childhood education, including pre-kindergarten, kindergarten, and elementary-level programs. Perhaps by necessity, perhaps by choice, the focus of most education-related legislative debates involves the big picture issues, such as taxation and commitment of financial resources to fund schools. Seldom has the Legislature devoted substantial periods of time to such critical issues as child development and the youngest of our at-risk students. There have been attempts to bring the relevant issues to the forefront of the public agenda, but most are thwarted by cost factors and other pressing legislative issues.

There have been several attempts to alter the kindergarten enrollment age and/or the deadline to enroll students into kindergarten programs, most recently in 2004 by Senator Elaine Stuhr.<sup>2753</sup> There have been failed attempts to create spending and/or levy exclusions in order to encourage schools to move toward offering full-day kindergarten programs, most recently, for instance, by Senator Gwen Howard in 2005.<sup>2754</sup> The three most recent chairs of the Legislature's Education Committee, Senators Ron Withem, Ardyce Bohlke, and Ron Raikes, placed early childhood education issues at the forefront or near the forefront of their own legislative agendas at one time or another. All met limited success in promoting such agendas.

In 2002, Senator Raikes introduced a bill for a formal study on kindergarten readiness. LB 1169 would have required the Department of Education to conduct the study, which would have included:

1. Characteristics for incoming kindergartners that are beneficial for success in kindergarten;

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<sup>2753</sup> Legislative Bill 934, *Change provisions relating to kindergarten entrance age*, sponsored by Sen. Elaine Stuhr, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, title first read 9 January 2004, §§ 1-2, pp. 2-3. Other attempts include LB 50 (1997), sponsored by Senator Schimek, and LB 174 (1997), sponsored by Senator Wehrbein.

<sup>2754</sup> Legislative Bill 228, *Provide tax levy and state-aid increases for full-day kindergarten expenses as prescribed*, sponsored by Sen. Gwen Howard, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, title first read 7 January 2005, §§ 1-4, pp. 2-19. Other attempts include LB 263 (2003), sponsored by Senator Raikes, and LB 1206 (2004), sponsored by Senator Brashear.

2. An estimate of the number and distribution of kindergartners in Nebraska possessing such characteristics; and
3. The number, location, and traits of early childhood education programs that may help children acquire such characteristics.<sup>2755</sup>

The Education Committee advanced the bill on a unanimous vote, but the measure never advanced any further.<sup>2756</sup> Senator Raikes had filed an appropriation (“A”) bill providing for a relatively nominal amount of \$25,000 over a two-year period to pay for the study.<sup>2757</sup> The Department of Education would have been authorized to contract with an outside consultant to help conduct the study.

The State Board of Education, along with the staff of the Department of Education, was not dissuaded from the mission set forth in LB 1169. The State Board established its own task force in 2004 to initiate a study, which coincided with its overall objective toward implementation of an essential education policy. The Nebraska Early Childhood Policy Study would ultimately outline five recommendations, including:

1. Implement statewide full day/every day kindergarten;
2. Expand the Nebraska Early Childhood Grant Program to increase availability of collaborative community based pre-kindergarten for all 3- and 4-year-olds;
3. Establish expectations for supporting best practices, which encompass class size and active learning environments in kindergarten through third grade;
4. Ensure access to high quality early childhood education and care services for all children birth to age three whose families would choose to access such services; and
5. Establish a system for exchanging information with families about the development and learning of young children from birth through age eight.<sup>2758</sup>

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<sup>2755</sup> Legislative Bill 1169, *Provide for a study of kindergarten readiness*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, title first read 17 January 2002, §§ 1-2, p. 2.

<sup>2756</sup> NEB. LEGIS. JOURNAL, 7 February 2002, 539.

<sup>2757</sup> Legislative Bill 1169A, *Appropriation Bill*, Nebraska Legislature, 97<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2002, title first read 26 February 2002, § 1, p. 2.

<sup>2758</sup> Nebraska Department of Education, “Nebraska Early Childhood Policy Study Report,” 7 October 2005, 8-9.

The study was conducted by department staff but also included representatives from groups involved in or interested in early childhood education.

Prior to 2005, the Nebraska school finance formula acknowledged the cost of educating kindergarten and grade school children in relation to the cost of educating students in higher grade levels. The policy statement, essentially, was that it costs progressively more to educate students as they move up through grade levels. In calculating adjusted formula students for each local system, for instance, the formula gives less weight to early grade levels and more weight to higher grade levels.

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Table 170. Calculating Adjustment Formula Students Prior to LB 577 (2005)

*Multiply Formula Students in each Grade Range  
by Corresponding Weighting Factors*

|   |     |
|---|-----|
| Kindergarten .....  | 0.5 |
| Grades one through six, including full-day kindergarten ..... | 1.0 |
| Grades seven and eight .....                                  | 1.2 |
| Grades nine through twelve .....                              | 1.4 |

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*Source:* NEB. REV. STAT. § 79-1007.01 (Cum. Supp. 2002).

The weighting factors were established under LB 1059 (1990) and remained unchanged until 2005. In 1997, the Legislature passed LB 806, which, in part, added several demographic factors, including limited English proficiency and poverty.<sup>2759</sup> But there had never been a specific factor related to early childhood education in the computation of state aid, until 2005.

The 2005 Session marked a real breakthrough on the issue of early childhood education, perhaps not in a monumental manner but certainly a noteworthy manner. The session witnessed the introduction of four separate early childhood education bills, including:

LB 228 (Howard) Proposed to allow districts to exceed the levy limit by the amounts levied to implement full-day kindergarten programs for poverty students

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<sup>2759</sup> LB 806, Session Laws, 1997, § 35, p. 23 (1549).

and to pay for special building and sinking funds for the construction, expansion, or alteration of buildings to provide the programs for these students.<sup>2760</sup>

LB 350 (Bourne) Proposed to allow districts to exceed the levy limit by the amounts levied to implement pre-kindergarten programs for poverty students and to pay for special building and sinking funds for the construction, expansion, or alteration of buildings to provide programs for these students. Authorized certain districts to exceed their spending limit by a specific amount if the district projects a greater than fifteen student increase in pre-kindergarten poverty students.<sup>2761</sup>

LB 595 (Kruse) Proposed to change the factors used to compute adjusted formula students in the state aid formula. Increased the weighting factors for full-day kindergarten, limited English proficiency, and poverty. Allowed districts to exceed the spending lid in 2006-07 for changes in the formula student count due to increased weighting for full-day kindergarten, LEP, and the poverty factors.<sup>2762</sup>

LB 577 (Raikes) Proposed the inclusion of early childhood education programs within the state aid formula.<sup>2763</sup>

Omaha-area lawmakers introduced the first three measures, while Senator Raikes of Lincoln offered the fourth measure, LB 577 (2005).

The Education Committee received public comment on the four bills within a two-day period, January 31 to February 1, 2005. Naturally, the measure with seemingly the best chance of advancement was LB 577 for the simple reason that the sponsor was the chair of the committee, although both Senators Bourne and Howard also served as members of the committee. The public hearing for LB 577 was very well attended with supporting testimony from such schools and organizations as: Voices For Children in Nebraska, University of Nebraska, State Board of Education, Nebraska Department of Education, Crete Public Schools, Lexington Public Schools, Nebraska Association for the

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<sup>2760</sup> LB 228 (2005), §§ 1-4, pp. 2-19.

<sup>2761</sup> Legislative Bill 350, *Provide for inclusion of prekindergarten programs in the state aid formula as prescribed*, sponsored by Sen. Pat Bourne, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, title first read 11 January 2005, §§ 1-7, pp. 2-26.

<sup>2762</sup> Legislative Bill 595, *Change weighting of schools demographic factors within the state aid formula*, sponsored by Sen. Lowen Kruse, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, title first read 18 January 2005, §§ 1-3, pp. 2-8.

<sup>2763</sup> Legislative Bill 577, *Include early childhood education programs within the state aid formula as prescribed*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, title first read 18 January 2005, §§ 1-6, pp. 2-20.



Education of Young Children, Inc., Westside Community Schools, Omaha Public Schools, Kearney Public Schools, Lincoln Public Schools, Nebraska State Education Association, Grand Island Public Schools, Nebraska Association of Elementary School Principals, and the Nebraska Council of School Administrators.<sup>2764</sup> Many of those testifying also recognized the merits of the other early childhood bills.

Katie Mathews, an elementary principal representing Kearney Public Schools and elementary principals statewide, testified that the availability of early childhood programs varies among communities, and students in some areas are underserved or not served at all. Even within her school district, a large Class III system, the availability of programs depends upon a number of factors. “[O]nly two of our nine elementary schools have full-day kindergarten and that is because of space, for one, and the other is we have a spending limit that does not permit us to hire the additional seven teachers that are needed,” she said.<sup>2765</sup>

Richard Eisenhauer, Superintendent at Lexington Public Schools, stressed the growing need for state assistance in the area of early childhood education. “Many Nebraska schools are experiencing increasingly diverse enrollments and this fact underlies my urgency for legislation to make pre-kindergarten experiences more widely available in their state,” he said.<sup>2766</sup> Lexington, another large Class III system, had 65% of its enrollment in 2005 classified as poverty level, 17% classified as special education, and 22% English language learners (ELL). Eisenhauer urged the committee to advance legislation to assist school districts with the financial costs of providing early childhood programs and to low income and other at-risk students.

As introduced, LB 577 sought to provide increased funding for the existing Early Childhood Education Grant Program sufficient to serve an additional one-third of the unserved at-risk children eligible to attend kindergarten. The increased appropriations

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<sup>2764</sup> Committee on Education, *Committee Statement, LB 577 (2005)*, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, 1.

<sup>2765</sup> Committee on Education, *Hearing Transcripts, LB 577 (2005)*, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, 1 February 2005, 66.

<sup>2766</sup> *Id.*, 41-42.

would occur in 2005-06 and the following two years.<sup>2767</sup> The genesis of the grant program was established in 1990 and ran within two separate yet partially intertwined veins of legislative effort.

The first occurred in 1990 with the passage of LB 567, chiefly sponsored by Senator Ron Withem of Papillion. LB 567 was a monumental piece of legislation and would serve as a cornerstone for future legislative initiatives concerning early childhood education. Senator Withem, then chair of the Education Committee, incorporated legislative findings that:

- a. Early childhood and parent education programs can assist children in achieving their potential as citizens, workers, and human beings;
- b. Early childhood education has been proven to be a sound public investment of funds not only in assuring productive, taxpaying workers in the economy but also in avoidance of increasingly expensive social costs for those who drop out as productive members of society;
- c. The key ingredient in an effective early childhood education program is a strong family education component because the role of the parent is of critical importance;
- d. While all children can benefit from quality, developmentally appropriate early childhood education experiences, such experiences are especially important for at-risk infants and children; and
- e. Current early childhood education programs serve only a fraction of Nebraska's children and the quality of current programs varies widely.<sup>2768</sup>

The legislation also provided intent “to encourage the provision of high-quality early childhood education programs for infants and young children.”<sup>2769</sup>

LB 567 (1990) established the Early Childhood Education Pilot Project Program under the auspices of the Department of Education. Under this program, the State Board of Education would establish guidelines and criteria for pilot projects, and request

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<sup>2767</sup> LB 577, § 5, p. 20.

<sup>2768</sup> Legislative Bill 567, in *Laws of Nebraska, Ninety-First Legislature, Second Session, 1990*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 1, p. 1 (280).

<sup>2769</sup> *Id.*

proposals from school districts and cooperatives. The board was authorized to approve four such proposals and award up to \$100,000 per year for each project for a period of three years.<sup>2770</sup> Senator Withem was able to secure an appropriation of over \$700,000 over a two-year timeframe to get the program started.<sup>2771</sup>

In 2001, Senator Ron Raikes, in his first year as chair of the Education Committee, successfully sought passage of LB 759 to take the pilot program to the next level. He did not wish to turn away from those pilot programs already commenced and active, but he wanted to somehow expand the availability of funds for other early childhood programs. The legislation affectively eliminated the pilot project and replaced it with an Early Childhood Education Grant Program, once again under the auspices of the Department of Education.<sup>2772</sup>

Under the new grant program, previously selected pilot projects would be eligible for continuation grants if the programs adhere to the requirements of the legislation. The State Board would be authorized to grant funds to new projects brought forward by school districts, cooperatives, and ESUs. The Legislature had appropriated \$560,000 of general funds in 2000-01 for pilot program grants. LB 759 did not require any additional funding for early childhood education program grants since Governor Johanns had included an additional \$1 million in 2001-02 and \$2 million in 2002-03 for early childhood education projects in his budget recommendation.<sup>2773</sup>

The second vein of legislative initiative involved the passage of federal legislation and the conforming state legislation that followed. In 1990, Congress established the Child Care and Development Block Grant Act in response to the need for quality child

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<sup>2770</sup> Id., § 3, pp. 2-3 (281-82).

<sup>2771</sup> Legislative Bill 567A, in *Laws of Nebraska, Ninety-First Legislature, Second Session, 1990*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 1, p. 1 (283).

<sup>2772</sup> Legislative Bill 759, Slip Law, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, §§ 1-3, pp. 1-3.

<sup>2773</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 759 (2001)*, prepared by Sandy Sostad, Nebraska Legislature, 97<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2001, 6 February 2001, 1.

care.<sup>2774</sup> The Child Care and Development Block Grant program was designed to support families by increasing the availability, affordability, and quality of child care in the United States. The federal legislation required each state to develop a plan for utilization of the allotted funds. In 1991, the Nebraska Legislature met this obligation through the passage of the Quality of Child Care Act (LB 836), which was introduced by Senator Don Wesely of Lincoln.<sup>2775</sup>

The plan implemented by the Nebraska Legislature in 1991 was to distribute the bulk of the federal funds toward vouchers to parents who could not otherwise afford child care services, consistent with the intent of the federal program. The remainder of the funds was used for quality enhancement efforts by various state agencies and the Early Childhood Training Center. The Training Center was established in 1990 under LB 567 and provides support and training to staff working with children and their families.<sup>2776</sup> The Training Center is housed at Educational Service Unit #3 in Omaha.

In 2005, Senator Raikes sought to further enhance the existing grant program to reach more children in need of early childhood educational services, particularly at risk children. During the public hearing for LB 577, Senator Raikes said that existing programs served about 1,300 children in 2003-04 by 28 public schools and ESUs. Approximately 800 of those children were four year olds, who would attend kindergarten in the following year. He quoted statistics from the Department of Education that there were about 4,500 at-risk children currently un-served in early childhood programs. The problem, as one might expect, came down to money. The price tag of LB 577, as introduced, had a projected fiscal impact of about \$9.5 million for 2005-06, \$15.8 million for 2006-07, \$23.1 million for 2007-08, and \$18.9 million for 2008-09 and thereafter.<sup>2777</sup>

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<sup>2774</sup> § 5082 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), Public Law 101-508, as amended.

<sup>2775</sup> Legislative Bill 836, in *Laws of Nebraska, Ninety-Second Legislature, First Session, 1991*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), §§ 1-37, pp. 1-16 (2291-2306).

<sup>2776</sup> LB 567 (1990), Session Laws, § 2, pp. 1-2 (280-81).

<sup>2777</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 577 (2005)*, prepared by Sandy Sostad, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, 27 January 2005, 1.

The prospects for such a proposal were not particularly good in a legislative session that had such weighty issues as a \$145.8 million final settlement on the Low-Level Radioactive Waste Settlement Fund lawsuit, among other fiscal matters.

Nevertheless, on March 11, 2005, Senator DiAnna Schimek designated LB 577 as her personal priority bill for the session.<sup>2778</sup> This was a vital step if the legislation was to have any hope at all. The next step was to develop a revised version of the legislation in order to be fiscally feasible. The subject matter of the legislation was such that almost no one could argue against it, but the cost, on the other hand, was a potential stumbling block. Accordingly, Senator Raikes went to work to find a viable solution, something that could fly in an otherwise tight fiscal-minded session. Finally, on May 10, 2005, the 76<sup>th</sup> day of the 90-day session, the Education Committee advanced a proposal they hoped would have a chance.<sup>2779</sup>

The proposal advanced from committee, and ultimately passed by the Legislature, would recognize early childhood education within the state aid formula, provide a limited spending lid exclusion, and prioritize the distribution of grant funds under the existing grant program. In a separate yet related move, Senator Raikes would eventually find success in amending the biennium budget bill (LB 425) to include funding for the Early Childhood Education Grant Program.

Under LB 577, as passed, the state aid formula was amended to include a weighting factor for early childhood education programs and to include the membership of children enrolled in an early childhood grant funded program in the calculation of state aid. However, the membership of those who will be eligible to attend kindergarten in the following year is included so long as the program has received an early childhood grant through the Early Childhood Education Grant Program for three years.

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<sup>2778</sup> NEB. LEGIS. JOURNAL, 11 March 2005, 823.

<sup>2779</sup> Committee on Education, *Executive Session Report, LB 577 (2005)*, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, 10 May 2005, 1.

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Table 171. Calculating Adjustment Formula Students after LB 577 (2005)

*Achieved by Multiplying the Formula Students in each Grade  
Range by the Corresponding Weighting Factors*

|   |     |
|---|-----|
| Early childhood education programs.....                       | 0.6 |
| Kindergarten .....  | 0.5 |
| Grades one through six, including full-day kindergarten ..... | 1.0 |
| Grades seven and eight .....                                  | 1.2 |
| Grades nine through twelve .....                              | 1.4 |

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*Source:* Legislative Bill 577, in *Laws of Nebraska, Ninety-Ninth Legislature, First Session, 2005*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of John Gale, Secretary of State), § 2, pp. 4-5 (1082-83).

In essence, LB 577 provided a mechanism for school districts to include the students enrolled in an early childhood education program incorporated within the state aid calculations. The State had a vested interest in the formation and maintenance of these programs, so schools would need to comply with certain standards before qualifying for additional aid under the formula.

The early childhood education students would be included as adjusted formula students for determining a district's formula need in the first two years, but would be subtracted from adjusted formula students for the first two years for the purpose of determining average formula cost per student in each cost grouping.<sup>2780</sup> This sounds complicated, but the reason was to allow funding to be provided based upon K-12 students until the expenditures for early childhood education students are reflected in the calculation of state aid. School districts that receive additional state aid attributed to the early childhood program would be authorized to exceed their applicable allowable growth rate (spending limitation) in an amount equal to the number of adjusted formula students in the early childhood program times the cost group cost per student.<sup>2781</sup>

LB 577 also established a system to prioritize the issuance of grants under the Early Childhood Education Grant Program. The first priority would be for continuation

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<sup>2780</sup> Legislative Bill 577, in *Laws of Nebraska, Ninety-Ninth Legislature, First Session, 2005*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of John Gale, Secretary of State), § 3, pp. 5-6 (1083-84).

<sup>2781</sup> *Id.*, § 4, pp. 6-8 (1084-86).

grants to programs that received grants in the prior year. The second priority would be for new grants and expansion grants for programs that will serve at-risk children who will be eligible to attend kindergarten the following school year. The third priority would be for new grants, expansion grants, and continuation grants for programs serving children younger than those who will be eligible to attend kindergarten the following school year.<sup>2782</sup>

Through the passage of LB 577, Senator Raikes had achieved something few would have attempted. Owing perhaps to the well-accepted purpose of the measure (i.e., to help children at risk), the Legislature was willing to effectively write a blank check in order to push LB 577 through the legislative process. The measure would increase necessary appropriations for state aid to education beginning in 2007-08. This had the effect of binding the Legislature to this obligation in the out years, the next biennium and the biennium after that. The measure produced what might be called a conveyor belt effect on the formula, since it encouraged school entities to apply for grants with the notion that the students who participated in those programs would eventually be counted in the state aid formula.

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Table 172. Estimated State Aid Increase under LB 577 (2005)

*(In dollars)*

|                         | 2007-08   | 2008-09   | 2009-10   | 2010-11   | 2011-12   |
|-------------------------|-----------|-----------|-----------|-----------|-----------|
| 1st Year - 800 Children | 2,400,000 | 2,500,000 | 2,700,000 | 2,800,000 | 2,800,000 |
| 2nd Year - 335 Children |           | 1,100,000 | 1,100,000 | 1,200,000 | 1,200,000 |
| 3rd Year - 84 Children  |           |           | 300,000   | 300,000   | 300,000   |
| 4th Year - 204 Children |           |           |           | 700,000   | 700,000   |
| 5th Year - 204 Children |           |           |           |           | 800,000   |
| Estimated Fiscal Impact | 2,400,000 | 3,600,000 | 4,100,000 | 5,000,000 | 5,800,000 |

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Note: During Select File, LB 577 was amended to provide that early childhood programs that have operated for three years and have been approved as meeting the same guidelines as early childhood programs receiving state grants may also have their four year olds integrated into the state aid formula. Therefore, the fiscal impact would be greater beginning in 2008-09 by between \$500,000 to \$1 million.

Source: Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 577 (2005)*, prepared by Sandy Sostad, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, June 1, 2005, 1.

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<sup>2782</sup> Id., § 5, pp. 8-9 (1086-87).

Senator Raikes sweetened the deal for public education during the biennium budget debate. On May 11, 2005, he successfully amended the mainline budget bill (LB 425) to increase funding for special education funding, one of the major issues in the 2005 Session. Senator Raikes' amendment increased special education funding by 5% for 2005-06 and 3% in 2006-07.<sup>2783</sup> At the start of the session, both the executive branch and the Appropriations Committee sought a zero percent growth in special education funding, which would have maintained funding at the 2004-05 appropriation of \$161.1 million for both 2005-06 and 2006-07. With the adoption of the Raikes amendment, special education funding would grow by \$21.2 million over the next two years.

The same amendment to LB 425 also incorporated a provision to increase overall funding for the Early Childhood Education Grant Program. The Raikes amendment provided an additional \$1.7 million in grant funding in each of the next two years.<sup>2784</sup> Prior to the adoption of the Raikes amendment, the mainline budget bill provided approximately \$2 million in each year of the biennium for early childhood education project grants. The Raikes amendment substantially increased the appropriation to \$3,680,471 for each of the next two years.

LB 577 was passed by the Legislature on June 3, 2005 by a solid 42-0 vote.<sup>2785</sup> Senator Raikes and those who supported the legislation achieved an unlikely objective to pursue new funding for a program in an otherwise conservative legislative session. LB 577 also renewed hope that the Legislature would take a greater role in promoting the merits of early childhood education.

Governor Heineman did not immediately sign the measure into law. He had concerns about the long-range impact it would have on appropriations for state aid to education. He also knew that it represented a fairly open-ended fiscal scenario for future years. Ultimately, however, he did sign the bill into law, in part, with the hope that other

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<sup>2783</sup> NEB. LEGIS. JOURNAL, *Raikes AM1568 to LB 425 (2005)*, 11 May 2005, 1489.

<sup>2784</sup> *Id.*

<sup>2785</sup> *Id.*, 3 June 2005, 1905.



funding sources would become available from foundations and other private donations to boost the overall commitment to early childhood education programs.

Governor Heineman, for the most part, agreed with the decisions of the Legislature concerning LB 425, the mainline budget bill. He returned the legislation on May 24, 2005 with a few line-item vetoes, one of which related to the additional funding for grants under the Early Childhood Education Grant Program. In a letter to the Legislature, Governor Heineman explained:

I have vetoed \$88,850 for both FY 2005-06 and FY 2006-07 of the \$1,777,000 General Fund increase each year to the Department of Education for Early Childhood programs, which were specifically designated for agency operations. This budget still provides for a shift of \$104,859 in funding for this program from aid to operations. The department is fully capable of administering additional grants to new Early Childhood programs without additional administrative resources.<sup>2786</sup>

The veto action was not contested by the Legislature. Notwithstanding the Governor's line-item veto, an additional \$1,688,150 would be applied toward the grant program for both 2005-06 and 2006-07.

Table 173. Summary of Modifications to TEEOSA  
as per LB 577 (2005)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i> | <i>Description of Change</i>   |
|------------------|---------------------|---------------------------|--|
| 1                | 79-1003             | Terms, defined            | <p>Defined Qualified early childhood education average daily membership as the product of the average daily membership for school fiscal year 2006-07 and each school fiscal year thereafter of students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by the department for such school district for such school year if certain criteria are met.</p> <p>Defined Qualified early childhood education fall membership as the product of membership on the last Friday in September 2006 and each year thereafter of students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by the department for such school district for such school year if certain criteria are met.</p> |

<sup>2786</sup> NEB. LEGIS. JOURNAL, 24 May 2005, 1732.

Table 173—Continued

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>  | <i>Description of Change</i>   |
|------------------|---------------------|--|--|
| 2                | 79-1007.01          | Adjusted formula students for local system; calculation  | Added a new weighting factor for the purpose of calculating adjusted formula students for each local system for early childhood education programs.  |
| 3                | 79-1007.02          | Cost groupings; average formula cost per student; local system's formula need; calculation               | Provided that early childhood education students would be included as adjusted formula students for determining a district's formula need in the first two years, but would be subtracted from adjusted formula students for the first two years for the purpose of determining average formula cost per student in each cost grouping. The reason was to allow funding to be provided based upon K-12 students until the expenditures for early childhood education students are reflected in the calculation of state aid. |
| 4                | 79-1028             | Applicable allowable growth rate; Class II, III, IV, V, or VI district may exceed; situations enumerated | School districts that receive additional state aid attributed to the early childhood program would be authorized to exceed their applicable allowable growth rate (spending limitation) in an amount equal to the number of adjusted formula students in the early childhood program times the cost group cost per student.  |

*Source:* Legislative Bill 577, in *Laws of Nebraska, Ninety-Ninth Legislature, First Session, 2005*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of John Gale, Secretary of State), §§ 1-4, pp. 1-8 (1079-86).

#### D. Retirement Legislation

LB 503 (2005) embodied a number of technical and substantive changes to several state sponsored public employees retirement plans. Under the School Employees Retirement System, the four major provisions of the legislation included: (1) an increase in the contribution rate; (2) provisions concerning salary spiking; (3) school reporting of salary information; and (4) provisions for a temporary spending lid exclusion. It was the latter of these provisions that impacted the state aid formula.

##### *Contribution Rate*

In order to address a \$14.9 million actuarial shortfall, LB 503 raised the contribution rate under the School Employees Retirement System for a period of two years. The prior employee contribution rate was set at 7.25% with an employer rate of 7.32% (automatically set at 101% of the employee rate). LB 503 caused the rates to change as follows:

Effective September 1, 2005 to August 31, 2006:

- Employee: 7.98%
- Employer: 8.06%

Effective September 1, 2006 to August 31, 2007:

- Employee: 7.83%
- Employer: 7.91%<sup>2787</sup>

The actuarial shortfall, so called because the state actuary determined that additional contributions were necessary to maintain a financially sound system, was due largely to the economic problems faced by the nation in the previous three years.

An increase in the contribution rates has obvious implications for local school systems in terms of what the schools are willing to settle during teacher contract negotiations. For school boards, it means additional expenditures to pay for that portion of employee benefits. For teachers and other school employees, it could mean less take home pay.

### *Salary Spiking*

Prior to the 2005 Session, the School Employees Retirement System utilized what was commonly referred to as the “10% rule.” Under this rule, the amount of compensation that may be counted toward retirement for each plan member was capped at 10% growth from the previous year. The rule did not limit the amount a school board may pay an employee, but it did limit the amount a plan member may count toward retirement. The 10% rule applied to each year of membership prior to actual retirement.

There were two exceptions to the rule: (1) if the member experienced a substantial change in employment position; or (2) if the excess compensation occurred as the result of a collective bargaining agreement between the employer and a recognized collective-bargaining unit or category of school employee. The latter of these two exceptions applied to teachers in particular.<sup>2788</sup>

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<sup>2787</sup> Legislative Bill 503, in *Laws of Nebraska, Ninety-Ninth Legislature, First Session, 2005*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of John Gale, Secretary of State), § 10, p. 9 (926).

<sup>2788</sup> NEB. REV. STAT. § 79-902(35)(c) (Cum. Supp. 2003).

One of the policy issues addressed by LB 503 was that the existing 10% rule simply did not curb the problem of salary spiking by school employees, which sometimes occurred in the last few years of employment prior to retirement. There was some question about the extent of this problem, but there had been several pieces of legislation introduced to address the real or perceived issue. In 2004, the Legislature's Retirement Committee introduced LB 1081 to amend existing law to include the false or fraudulent reporting of compensation received that includes amounts not defined as compensation for purposes of the School Employees Retirement Act.<sup>2789</sup> LB 1081 was never advanced from committee, but it did lead to an interim study to address the issue. The subsequent study led to the introduction of LB 411 in the 2005 Session, the contents of which were absorbed into LB 503.<sup>2790</sup>

To address salary spiking, LB 503 put into place a similar system used in other states to limit the amount of salary increase counted toward retirement. Beginning July 1, 2005, LB 503 implemented what might be loosely called a "floating cap" to determine compensation for purposes of retirement. In the determination of compensation for members on or after July 1, 2005, LB 503 implemented an annual compensation cap of 7% (for purposes of the retirement plan) for each of the last five years (60 months) of employment prior to actual retirement. This does not preclude an increase in compensation greater than 7%, but no more than 7% would be counted toward calculation of retirement benefits in each of the last five years of employment.<sup>2791</sup>

There are three exceptions to the new cap, and one of these exceptions gives rise to the rationale for calling it a "floating cap." The first exception is consistent with that under previous law: the member experienced a substantial change in employment position. The second exception is a modified version of previous law in that the 7% cap would not apply to employees covered by a collective bargaining agreement between the

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<sup>2789</sup> Legislative Bill 1081, *Change provisions relating to false or fraudulent actions under the School Employees Retirement Act*, sponsored by Nebraska Retirement Systems Committee, Nebraska Legislature, 98<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 2004, title first read 14 January 2004, §§ 1-3, pp. 2-4.

<sup>2790</sup> Legislative Bill 411, *Change calculations for school employee retirement*, sponsored by Sen. Elaine Stuhr, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, title first read 12 January 2005, §§ 1-4, pp. 2-14.

<sup>2791</sup> LB 503, Session Laws, 2005, § 8, pp. 4-8 (921-25).

employer and a recognized collective-bargaining unit or category of school employee. The twist in this modified exception is that, if the collective bargaining agreement arrives at an average compensation increase in excess of 7%, that percentage would also apply to employees not covered by the collective bargaining agreement (e.g., school administrators). The third exception applies to compensation increases in excess of 7% due to a district-wide permanent benefit change made by the employer for a category of school employee.<sup>2792</sup>

#### *School Reporting*

In order to assist the Nebraska Public Employees Retirement Systems (the Retirement Agency) in monitoring salary information from school employees, LB 503 also requires school districts to report each occurrence of an employee's compensation exceeding 7% of the previous year's compensation. The "self-reporting" provision requires the employer district to report such information within 90 days of the end of the plan year. The Retirement Agency would maintain this information in order to assist the administration of the floating 7% cap under LB 503.<sup>2793</sup>

#### *Spending Lid Exclusion*

On April 11, 2005, Senator Ron Raikes succeeded in a motion to return LB 503 to Select File for specific amendment.<sup>2794</sup> The Legislature subsequently adopted Senator Raikes' proposed amendment to LB 503 concerning a temporary spending lid exception for the amount of the contribution increase born by employer districts. The spending lid exception would apply only to the 2005-06 and 2006-07 school fiscal years. The current employer contribution rate was set at 7.32% of employee salaries. LB 503 would raise the employer rate to 8.06% for 2005-06 and a slightly lower rate of 7.91% for 2006-07. The employer rate would automatically return to the 7.32% rate beginning in 2007-08, at which time the spending lid exception would automatically sunset.<sup>2795</sup>

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<sup>2792</sup> Id., § 8, pp. 4-8 (921-25).

<sup>2793</sup> Id., § 9, p. 8 (925). This particular provision was amended by LB 364 (2005) to change the number of days from 30 to 90 and to make other changes in the provisions of LB 503.

<sup>2794</sup> NEB. LEGIS. JOURNAL, *Raikes AM1046*, 11 April 2005, 1167.

<sup>2795</sup> LB 503, Session Laws, 2005, § 11, pp. 9-10 (926-27).

Table 174. Employer Contribution Rate Changes/Amount of Spending Lid Exclusion under LB 503 (2005)\*

| <i>Current<br/>2004-05 Rate</i> | <i>Rate for<br/>2005-06</i> | <i>Difference from<br/>2004-05 Rate</i> | <i>Rate for<br/>2006-07</i> | <i>Difference from<br/>2004-05 Rate</i> |
|---------------------------------|-----------------------------|---|-----------------------------|---|
| 7.32%                           | 8.06%                       | .74%                                    | 7.91%                       | .59%                                    |

\* The provision applies only to the spending lid and not the levy limitation.

*Source:* Legislative Bill 503, in *Laws of Nebraska, Ninety-Ninth Legislature, First Session, 2005*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of John Gale, Secretary of State), § 11, pp. 9-10 (926-27).

Table 175. Summary of Modifications to TEEOSA as per LB 503 (2005)

| <i>Bill<br/>Sec.</i> | <i>Statute<br/>Sec.</i> | <i>Revised<br/>Catch Line</i>  | <i>Description of Change</i>  |
|----------------------|-------------------------|--|---|
| 11                   | 79-1028                 | Applicable allowable growth rate; Class II, III, IV, V, or VI district may exceed; situations enumerated | For 2005-06, a Class II-VI district may exceed its applicable allowable growth rate by a specific dollar amount not to exceed .74% of the amount budgeted for employee salaries for such school fiscal year. For 2006-07, a Class II-VI district may exceed its applicable allowable growth rate by a specific dollar amount not to exceed .59% of the amount budgeted for employee salaries for such school fiscal year. |

*Source:* Legislative Bill 503, in *Laws of Nebraska, Ninety-Ninth Legislature, First Session, 2005*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of John Gale, Secretary of State), § 11, pp. 9-10 (926-27).

### E. Adjusted State Aid

LB 198 (2005) provided for adjusted state aid payments to schools to reflect transfers of property due to annexation, dissolutions of Class I districts, and reorganizations of one or more Class I district. In order to receive additional state aid under the bill, a school district from which property is being transferred must apply to NDE on or before August 20<sup>th</sup> preceding the first fiscal year for which the property will not be available for taxation. “The provisions would apply whenever you have a Class I school district that dissolves or reorganizes and parcels of property do not become part of the school district in which the parcels were affiliated,” said Senator Raikes during first-round consideration.<sup>2796</sup>

<sup>2796</sup> Legislative Records Historian, *Floor Transcripts, LB 198 (2005)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 99<sup>th</sup> Leg., 1<sup>st</sup> Sess., 2005, 1 March 2005, 1517.

LB 198 requires the Department of Education, with the assistance of the Property Tax Administrator, to calculate the adjustment in state aid due to the property transfer and increase the state aid payment to such school system. State aid payments are also reduced by an equal amount for local systems receiving valuation. In order to insure the bill is revenue neutral, a portion of the state aid adjustments may be delayed for the applicant school systems to future years if receiving systems will not receive enough state aid in the initial year to offset the increases for the applicant districts.<sup>2797</sup>

The measure allows school districts that lose valuation to receive state aid in the year in which the valuation is lost, rather than one year later. Systems that gain taxable property will have a reduction in state aid in the year the school system has an increase in valuation pursuant to the acquisition of property, rather than a year later.

Table 176. Summary of Modifications to TEEOSA  
as per LB 198 (2005)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>   | <i>Description of Change</i>   |
|------------------|---------------------|---|--|
| 3                | 79-1022             | Distribution of income tax receipts and state aid; effect on budget | Incorporated the new provisions concerning transfers of property due to annexation and dissolutions or reorganizations involving Class I school districts into the payment of state aid and by recognizing the changes in state aid as part of the certified state aid to be shown as budgeted non-property-tax receipts prior to calculating property tax requests. |

*Source:* Legislative Bill 198, in *Laws of Nebraska, Ninety-Ninth Legislature, First Session, 2005*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of John Gale, Secretary of State), § 3, p. 2 (299).

#### F. Property Tax Provisions

LB 263 (2005) represented the annual technical cleanup bill brought to the Revenue Committee by the Property Tax Administrator (PTA) to improve the administration of the property tax. In relation to the school finance formula, the measure amended the existing law relevant to non-appealable corrections of adjusted valuation.

<sup>2797</sup> Legislative Bill 198, in *Laws of Nebraska, Ninety-Ninth Legislature, First Session, 2005*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of John Gale, Secretary of State), § 1, pp. 1-2 (298-99).

Under prior law, a local system or county official may file, on or before June 30<sup>th</sup> of the year following the certification of adjusted valuation, a written request to the PTA for a non-appealable correction of the adjusted valuation due to changes to the tax list that change the assessed value of taxable property. Upon filing the written request, the PTA must then require the county assessor to recertify the taxable valuation by school district in the county. The recertified valuation would be the valuation that was certified on the tax list increased or decreased by changes to the tax list that change the assessed value of taxable property in the school district in the county in the prior assessment year. The law provided that, on or before the following July 31<sup>st</sup>, the PTA must either approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from such action to the Department of Education. LB 263 changed the filing deadline from June 30<sup>th</sup> to May 31<sup>st</sup> in order to better facilitate the process.<sup>2798</sup>

Table 177. Summary of Modifications to TEEOSA as per LB 263 (2005)

| <i>Bill Sec.</i> | <i>Statute Sec.</i> | <i>Revised Catch Line</i>  | <i>Description of Change</i>   |
|------------------|---------------------|--|--|
| 16               | 79-1016             | Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited | Changed a filing date for the non-appealable corrections of adjusted valuation for purposes of the state aid formula from June 30 to May 31. |

*Source:* Legislative Bill 263, in *Laws of Nebraska, Ninety-Ninth Legislature, First Session, 2005*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of John Gale, Secretary of State), § 16, p. 6 (439).

### G. Review

In 2005 the Nebraska Legislature accomplished what many of its predecessor Legislatures could not: a K-12 public education system. Some believe the Legislature committed a serious error in passing LB 126 into law, perhaps bordering on the sensister. It effectively snuffed the life out of some rural communities. Others believe Nebraska finally joined the modern, progressive era of school organization that most other states take for granted. Only time can tell how the Nebraska Legislature will be judged.

<sup>2798</sup> Legislative Bill 263, in *Laws of Nebraska, Ninety-Ninth Legislature, First Session, 2005*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of John Gale, Secretary of State), § 16, p. 6 (439).