

Comprehensive Modifications to TEEOSA, 1997

A. Introduction

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

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

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

B. LB 806

Bill Introduction

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

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

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

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

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

¹²⁷⁴ *Id.*, § 1, p. 2.

¹²⁷⁵ *Id.*, § 11, p. 33.

¹²⁷⁶ *Id.*, § 13, pp. 37-38.

¹²⁷⁷ *Id.*, § 5, p. 16.

¹²⁷⁸ *Id.*

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

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

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

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

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

¹²⁷⁹ Id., § 11, p. 33.

¹²⁸⁰ Id., § 10, pp. 31-32.

¹²⁸¹ Id., p. 32.

¹²⁸² Id., § 11, p. 33.

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

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

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

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

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

¹²⁸³ Id.

¹²⁸⁴ Id.

¹²⁸⁵ Id., § 11, pp. 33-34.

¹²⁸⁶ Id., § 13, p. 38.

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

Public Hearing for LB 806

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

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

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

¹²⁸⁷ Id., § 14, p. 40.

¹²⁸⁸ Id., § 13, p. 38.

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

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

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

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

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

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

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

Table 64—*Continued*

Intent Language	The original intent language under existing law to achieve a 45% state funding level was modified to create the intent of providing state funding sufficient to support general fund operating expenditures that cannot be met by local resources.
-----------------	--

Source: Committee of Education, *Committee Statement, LB 806 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 1-5.

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

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

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

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

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

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

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

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

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

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

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

¹²⁹³ Id., 10.

¹²⁹⁴ Id., 15.

¹²⁹⁵ Id., 20.

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

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

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

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

¹²⁹⁶ Id., 25-26.

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

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

¹²⁹⁹ Id., 32.

¹³⁰⁰ LB 806 (1997), § 10, p. 32.

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

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

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

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

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

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

¹³⁰² *Id.*, 40.

¹³⁰³ LB 806 (1997), § 13, p. 38.

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

Table 65—*Continued*

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

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

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

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

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

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

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

¹³⁰⁸ *Id.*, § 53, pp. 99-102.

¹³⁰⁹ *Id.*, §§ 4-19, pp. 12-30.

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

Floor Debate and Passage of LB 806

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

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

¹³¹⁰ Id., § 22, pp. 36-40.

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

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

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

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

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

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

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

¹³¹⁴ *Id.*

¹³¹⁵ *Id.*

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

General File Debate

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

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

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

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

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

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

¹³¹⁷ *Id.*, 4781.

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

Division of the Committee Amendments

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

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

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

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

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

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

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

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

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

¹³²² Id.

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

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

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

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

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

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

¹³²⁵ *Id.*

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

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

Debate on 1st Division: Merger of Class I Districts

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

¹³²⁶ Id.

¹³²⁷ Id.

¹³²⁸ Id.

¹³²⁹ Id.

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

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

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

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

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

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

¹³³³ *Id.*

¹³³⁴ *Id.*, pp. 36-38.

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

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

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

“No change is not an option”

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

¹³³⁵ Id., p. 38.

¹³³⁶ Id., p. 38.

¹³³⁷ Id., pp. 38-39.

¹³³⁸ Id., p. 39.

¹³³⁹ Id.

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

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

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

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

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

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

¹³⁴¹ *Id.*, 4780.

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

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

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

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

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

¹³⁴² Id., 4780.

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

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

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

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

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

¹³⁴⁵ Id., *Cudaback AM1617*, 1602.

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

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

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

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

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

¹³⁴⁷ *Id.*, 4899.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹³⁵³ *Id.*, 5114.

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

¹³⁵⁵ *Id.*, 1710.

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

Second Division: Streamline Reorganization Process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Petition Method:

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

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

¹³⁶² *Id.*, § 10, pp. 21-23.

Table 67—*Continued*

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

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

Election Method:

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

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

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

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

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

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

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

Third Division: Freeholding

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

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

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

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

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

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

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

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

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

¹³⁶⁵ NEB. REV. STAT. § 79-458 (1996).

¹³⁶⁶ *Id.*

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

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

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

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

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

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

¹³⁶⁹ *Id.*

¹³⁷⁰ *Id.*

¹³⁷¹ *Id.*

¹³⁷² *Id.*, 5036.

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

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

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

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

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

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

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

¹³⁷⁵ *Id.*, 5047.

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

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

Fourth Division – State Aid Formula

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

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

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

¹³⁷⁷ Id., 1699.

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

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

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

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

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

Table 68—Continued

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

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

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

Income Factor

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

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

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

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

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

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

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

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

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

¹³⁸¹ Id.

¹³⁸² Id.

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

¹³⁸⁴ Id.

¹³⁸⁵ Id., 5145.

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

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

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

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

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

¹³⁸⁶ Id.

¹³⁸⁷ Id.

¹³⁸⁸ Id., 5150.

¹³⁸⁹ Id., 5151.

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

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

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

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

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

¹³⁹⁰ Id., 5171.

¹³⁹¹ Id., 5173.

¹³⁹² Id., 5183.

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

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

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

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

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

Continuation of General File Debate

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

¹³⁹³ Id.

¹³⁹⁴ Id., 5186.

¹³⁹⁵ Id., 5187.

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

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

Bracket Motion

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

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

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

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

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

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

Poverty Factor

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

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

¹³⁹⁸ Id., 5194.

¹³⁹⁹ Id., 5196.

¹⁴⁰⁰ LB 806 (1997), § 10, p. 32.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cost Groupings

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

¹⁴⁰⁴ Id., 22 April 1997, 5308.

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

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

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

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

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

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

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

¹⁴⁰⁷ *Id.*

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

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

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

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

¹⁴⁰⁸ Id.

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

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

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

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

¹⁴⁰⁹ Id., 29 April 1997, 5210.

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

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

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

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

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

¹⁴¹² *Id.*

¹⁴¹³ *Id.*, 5198.

¹⁴¹⁴ *Id.*

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

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

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

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

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

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

¹⁴¹⁵ Id., 5203.

¹⁴¹⁶ Id.

¹⁴¹⁷ Id., 5205.

¹⁴¹⁸ Id.

¹⁴¹⁹ Id., 5205-06.

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

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

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

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

¹⁴²⁰ Id., 5207.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁴²³ *Id.*, 5228.

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

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

Grades 1-6, including full-day kindergarten

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

Grades 9-12

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁴²⁹ Id., 5342.

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

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

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

The Cooling Off Period

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁴³⁸ *Id.*, 5438.

¹⁴³⁹ *Id.*, 5439.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁴⁴⁴ *Id.*

¹⁴⁴⁵ *Id.*, 5451.

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

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

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

After an hour-long debate, the body voted 40-6 to pass the motion to suspend the rules and permit advancement of LB 806 without further amendment or debate.¹⁴⁴⁸ Immediately after suspension of the rules, the body voted 35-7 to advance the bill.¹⁴⁴⁹

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

Voting in the affirmative, 35:

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

Voting in the negative, 7:

Chambers	Hudkins	Schellpeper	Schmitt	Tyson
Dierks	Robak			

Present and not voting, 4:

Matzke	Schrock	Stuhr	Vrtiska
--------	---------	-------	---------

Excused and not voting, 2:

Coordsen	Engel
----------	-------

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

¹⁴⁴⁶ Id., 5447.

¹⁴⁴⁷ Id., 5448.

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

¹⁴⁴⁹ Id., 1743-44.

Defining the Issues

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

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

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

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

¹⁴⁵¹ *Id.*

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

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

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

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

¹⁴⁵² Id.

¹⁴⁵³ Id.

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

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

The Governor’s Position

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

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

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

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

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

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

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

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

¹⁴⁵⁵ Id.

¹⁴⁵⁶ Id.

¹⁴⁵⁷ Id.

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

Appropriation Bill

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

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

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

¹⁴⁶⁰ *Id.*

¹⁴⁶¹ *Id.*

¹⁴⁶² *Id.*

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

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

Fifth Division - Educational Service Units

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

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

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

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

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

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

¹⁴⁶⁵ *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁴⁷⁴ *Id.*, 7119.

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

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

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

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

Class I Budgets and Freeholding Revisited

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

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

¹⁴⁷⁷ Id., 15 May 1997, 2018.

¹⁴⁷⁸ Id., 2020.

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

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

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

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

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

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

Table 74—*Continued*

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

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

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

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

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

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

¹⁴⁸⁰ Id.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁴⁸⁷ *Id.*, 2023-24.

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

¹⁴⁸⁹ *Id.*

¹⁴⁹⁰ *Id.*

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

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

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

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

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

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

Return to the Fourth Division

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

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

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

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

Adequate Appropriations

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

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

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

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

¹⁴⁹⁵ Id.

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

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

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

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

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

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

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

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

¹⁴⁹⁹ *Id.*, 7196.

¹⁵⁰⁰ *Id.*, 15 May 1997, 7189.

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

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

Poverty Factor Revisited

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

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

¹⁵⁰¹ Id., 7190.

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

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

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

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

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

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

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

¹⁵⁰⁵ *Id.*

¹⁵⁰⁶ *Id.*

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

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

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

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

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

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

¹⁵⁰⁸ *Id.*

¹⁵⁰⁹ *Id.*

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

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

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

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

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

¹⁵¹⁰ Id., 7208.

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

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

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

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

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

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

¹⁵¹⁴ Id., 7212-13.

¹⁵¹⁵ Id., 7213.

¹⁵¹⁶ Id.

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

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

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

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

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

¹⁵¹⁷ Id., 7215.

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

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

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

¹⁵¹⁸ Id., 7218.

¹⁵¹⁹ Id., 7240.

¹⁵²⁰ Id., 7241.

¹⁵²¹ Id., 7244.

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

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

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

Voting in the affirmative, 14:

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

Voting in the negative, 27:

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

Present and not voting, 3:

Brashear	Jensen	Wehrbein
----------	--------	----------

Absent and not voting, 1:

Landis

Excused and not voting, 4:

Abboud	Lynch	Raikes	Will
--------	-------	--------	------

Source: NEB. LEGIS. JOURNAL, 15 May 1997, 2049.

¹⁵²² Id.

¹⁵²³ Id.

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

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

“Their three best shots”

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

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

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

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

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

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

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

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

¹⁵²⁷ *Id.*

¹⁵²⁸ *Id.*, 7248.

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

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

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

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

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

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

¹⁵²⁹ Id., 7253.

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

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

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

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

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

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

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

¹⁵³² *Id.*, 7267-68.

Averting a Meltdown

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

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

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

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

¹⁵³⁴ *Id.*

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

Lop Off Provision

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

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

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

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

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

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

¹⁵³⁷ *Id.*, 2066.

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

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

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

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

Sparse Cost Grouping Revisited

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

¹⁵³⁹ Id.

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

¹⁵⁴¹ Id.

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

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

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

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

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

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

¹⁵⁴³ *Id.*, Bohlke AM2274, 2069.

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

¹⁵⁴⁵ *Id.*, 7337.

¹⁵⁴⁶ *Id.*, 7345.

¹⁵⁴⁷ *Id.*, 7344.

¹⁵⁴⁸ *Id.*

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

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

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

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

Voting For, 33:

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

Voting Against, 9:

Bromm	Dierks	Matzke	Schmitt	Witek
Coordsen	Hudkins	Robak	Tyson	

¹⁵⁴⁹ Id., 7342.

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

¹⁵⁵¹ Id.

¹⁵⁵² Id.

Table 76—*Continued**Present, not voting, 4:*

Brashear	Stuhr	Vrtiska	Will
----------	-------	---------	------

Excused, not voting, 3:

Abboud	Jones	Schellpeper
--------	-------	-------------

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

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

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

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

¹⁵⁵⁴ *Id.*

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

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

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

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

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

¹⁵⁵⁶ Id.

¹⁵⁵⁷ Id.

¹⁵⁵⁸ Id.

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

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

Shadow of Doubt

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

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

¹⁵⁶⁰ Id.

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

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

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

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

¹⁵⁶² Id.

¹⁵⁶³ Id.

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

¹⁵⁶⁵ Id.

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

Final Reading

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

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

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

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

¹⁵⁶⁶ Id.

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

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

¹⁵⁶⁹ Id.

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

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

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

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

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

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

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

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

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

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

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

¹⁵⁷² *Id.*, 8531-32.

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

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

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

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

Voting in the affirmative, 36:

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

Voting in the negative, 13:

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

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

¹⁵⁷³ Id., 8541.

¹⁵⁷⁴ Id.

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

¹⁵⁷⁶ Id., 2420.

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

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

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

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

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

¹⁵⁷⁷ Id., 2429.

¹⁵⁷⁸ Id., 3 June 1997, 2564.

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

¹⁵⁸⁰ Id.

¹⁵⁸¹ Id.

Table 78—*Continued*

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

I. School District Organization.

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

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

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

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

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

Table 78—*Continued*

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

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

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

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

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

Table 78—*Continued*

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

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

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

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

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

II. School Finance.

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

Table 78—*Continued*

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

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

Table 78—Continued

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

Table 78—*Continued*

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

Table 78—*Continued*

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

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

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

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

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

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

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

Table 78—*Continued*

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

Table 78—*Continued*

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

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

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

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

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

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

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

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

Source: Bill summary prepared by Thomasin Tate Barry, Legal Counsel, Education Committee.

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

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

Table 79—*Continued*

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

Table 79—Continued

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

Table 79—*Continued*

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

Table 79—*Continued*

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

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

C. Technical and Substantive Revisions to LB 806

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

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

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

¹⁵⁸³ *Id.*, 1451.

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

¹⁵⁸⁵ *Id.*, § 6, p. 15.

Table 80. Original Provisions of LB 710 (1997)

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

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

Table 80—*Continued*

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

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

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

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

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

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

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

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

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

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

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

¹⁵⁸⁹ *Id.*, pp. 21-22.

¹⁵⁹⁰ *Id.*, pp. 22-23.

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

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

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

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

¹⁵⁹¹ Id., § 10, p. 29.

¹⁵⁹² Id., § 8, p. 23.

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

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

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

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

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

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

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

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

¹⁵⁹⁵ *Id.*

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

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

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

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

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

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

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

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

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

¹⁶⁰⁰ *Id.*, 12 June 1997, 2745.

¹⁶⁰¹ *Id.*, 18 June 1997, 2759.

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

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

Table 81 — *Continued*

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

Table 81 — *Continued*

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

Table 81 — *Continued*

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

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

D. Other Legislation Amending TEEOSA in 1997

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

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

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

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

Table 82. Overview of Other Bills Amending TEEOSA in 1997

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

Table 82—*Continued*

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

* Standing committee having jurisdiction over the measure.

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

First Segment: Legislation referred to the Education Committee

Recodification Bills

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁶⁰⁹ *Id.*, 10 March 1997, 989.

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

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

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

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

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

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

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

¹⁶¹² *Id.*, 10 March 1997, 989.

State Aid Certification Date

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁶¹⁶ *Id.*, 1-2.

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

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

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

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

¹⁶¹⁸ Id., 26 March 1997, 1248.

Table 85 — *Continued*

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

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

Special Education Funding System

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

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

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

¹⁶²⁰ *Id.*, § 12, p. 5 (1209).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁶³² *Id.*, 10 June 1997, 2703.

Second Segment: Legislation referred to the Revenue Committee

Property Tax Relief Package Revisions

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

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

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

On the issue of levy setting itself, LB 269 amended existing law to delay the final levy setting date for the county board of equalization from October 15th to November 1st and required the board to set levies certified by other political subdivisions only if the levy is within the limit of the law.¹⁶³⁵ The bill also provided that the levy setting

¹⁶³³ Id., 3 April 1997, 1330.

¹⁶³⁴ Legislative Bill 269, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 10, p. 6 (435).

¹⁶³⁵ Id., § 41, p. 21 (450).

requirements do not apply to bond levies, and that the clerk of the county where the office of the political subdivision is located is responsible for the preliminary levy, rather than all the counties jointly.¹⁶³⁶

Some of the major substantive provisions of LB 269 related to community colleges. The bill changed the levy limits for community colleges from 8¢ per \$100 of taxable property beginning in 1998-99 and 4¢ beginning in 2001-02, as per LB 1114 (1996) to 8¢ for 1998-99 and 1999-2000 and 7¢ thereafter.¹⁶³⁷ The bill also enacted a new aid program for community colleges. The program would supply state funds for any shortfall between the revenue raised by community colleges levying the maximum levy and 40% of their operating costs. The costs were to be calculated by using 1997-98 as a base and increasing it by an amount equal to full-time equivalent student growth plus 2% annually. Community colleges were also to receive aid necessary to make up any shortfall between the categorical aid provided by the current program and 40% of operating costs measured if the college is levying the minimum levy.¹⁶³⁸

For school districts, LB 269 attempted to resolve one of the major uncertainties created upon the passage of LB 1114. The 1996 legislation was designed to impose property tax levy limits and also to enumerate and describe the possible exclusions to the levy limitations. One of the exclusions related to special building funds and sinking funds established for projects *commenced* prior to April 1, 1996, for construction, expansion, or alteration of school district buildings.¹⁶³⁹ The problem encountered by school officials was attempting to discern what the term “commenced” really meant. How far along in a building project must a school board have been in order to legally fall within the intent of LB 1114 and thereby qualify for the levy exclusion? LB 269 provided a response to the question in that the district would qualify for the levy exclusion if “any action of the school board on the record” prior to April 1, 1996 “commits the district to expend district funds in planning, constructing, or carrying out

¹⁶³⁶ Id., §§ 42-43, pp. 21-22 (450-51).

¹⁶³⁷ Id., § 56, pp. 25-26 (454-55).

¹⁶³⁸ Id., § 76, pp. 39-40 (468-69).

¹⁶³⁹ LB 1114, Session Laws, 1996, § 1, p. 1 (1245).

the project.”¹⁶⁴⁰ However, as a matter of accountability, LB 269 also required school districts to report the amount of their building fund levies that is exempt as per the levy exclusion to the Department of Education.¹⁶⁴¹

The changes under LB 269 to the school finance formula were of an editorial nature. The bill changed two separate sections clarify the exact section and subsection of law, section 13-508(1), in which can be found the deadlines for school districts to certify budget statements together with the amount of the tax required to fund the adopted budget. For Class I districts, the deadline was August 1st and for all other districts, September 20th.¹⁶⁴²

LB 269 was passed by the Legislature on May 30, 1997 with the emergency clause attached by a 42-1 vote.¹⁶⁴³ Governor Nelson signed the bill into law on June 5th.¹⁶⁴⁴ In fact, in a somewhat unusual yet touching move, the Governor submitted a letter of acknowledgment to the Legislature of his action to approve the legislation. But the letter was much less about the legislation he signed into law as the man who spearheaded its introduction, and spearheaded so many other legislative efforts before it. The letter represented the Governor’s feelings about the recent death of Senator Jerome Warner on April 20, 1997. Nelson wrote:

This bill is only one of many initiatives authored by Senator Warner during his 35 years as a member of the Nebraska Legislature. He was a genuine leader for all Nebraskans, a legislative problem-solver and a man whose fairness, wisdom, honesty and integrity helped to shape the State to which he dedicated his life.

His legacy is one of action, not only in the area of taxation policies, but also in the establishment of a program for state aid to schools; in the growth of educational opportunities in Nebraska’s university system; in the development our state’s highway planning and construction process; and in providing property tax relief to Nebraskans while maintaining local control.

¹⁶⁴⁰ LB 269, Session Laws, 1997, § 56, p. 25 (454).

¹⁶⁴¹ Id., § 59, p. 28 (457).

¹⁶⁴² Id., § 60, pp. 29-30 (458-59).

¹⁶⁴³ NEB. LEGIS. JOURNAL, 30 May 1997, 2499.

¹⁶⁴⁴ Id., 5 June 1997, 2699.

In building this record, Senator Warner used few words to make his point. Instead, he relied on listening to others, studying the issues, debating the merits and avoiding political games. It is a measure of the greatness of this quiet, simple farmer that both those who called him friend and those that did not know him well thought him a decent, fine man.

It is with honor and pride that I take this opportunity to sign the final priority bill authored during the distinguished career of our friend and fellow Nebraskan, Jerome Warner. In Senator Warner's own words, "I guess we're done now."¹⁶⁴⁵

Table 87. Summary of Modifications to TEEOSA
as per LB 269 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
60	79-1008	School fiscal years before 1998-99; equalization aid; amount	Technical change. Merely clarifies the section of law [§13-508(1)] in which can be found the deadlines for school districts to certify budget statements together with the amount of the tax required to fund the adopted budget (by August 1 each year for Class Is and by September 20 each year for all other districts).
61	79-1024	Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect	Technical change. Similar to section 60 of LB 269 (1997), section 61 merely clarifies the exact section of law for the filing deadlines.

Source: Legislative Bill 269, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 60-61, pp. 29-30 (458-59).

Property Taxes, Generally

LB 270 (1997) cannot be classified as a mere revenue-related, technical cleanup bill. It did contain many, seemingly technical changes to laws concerning property taxes, but the background of the legislation would require it to be examined in a different light.

The bill was introduced on behalf of the Nebraska Department of Revenue, but more specifically, on behalf of the department's newly created Property Tax Division. The new division was created under LB 490 in 1995, along with the creation of a gubernatorial appointed Property Tax Administrator. The first designee for the position

¹⁶⁴⁵ Id., 18 June 1997, 2761-62.

was Catherine Lang-Morrissey, who had been appointed by Governor Nelson but not yet confirmed by the Legislature at the time of the public hearing for LB 270. True to her reputation and diligence, she had already begun a comprehensive review of all state laws relating to property taxation. And the comprehensive review was literally conducted at a grassroots level with the participation of county assessors, along with staff from the Property Tax Division. Their mission was to examine every pertinent statute and compare actual practice to express provisions of law. The result was LB 270.

Technical bills are usually uncontested at the public hearing stage, but again, LB 270 was not wholly a technical-oriented bill. During the public hearing, LB 270 received opposition testimony by several groups, including the Nebraska Catholic Conference. Their concern was largely focused on any possible changes to the exempt status of property owned by religious organizations. Many of their concerns were addressed in the committee amendments to the legislation as it emerged from the Revenue Committee.

The only set of changes under LB 270 that directly affected the school finance formula were provisions to eliminate a notice requirement, then incumbent upon the Department of Revenue, and a provision to clarify the process to request a nonappealable correction of adjusted valuation. Both changes occurred within the same section of the school finance formula relating to the process by which adjusted valuations are computed and certified to NDE and to individual school districts.¹⁶⁴⁶

The first change concerned a publication requirement created under LB 1290 in 1994.¹⁶⁴⁷ The provisions required the Department of Revenue, later changed to the Property Tax Administrator, to publish adjusted valuations of each school district in a newspaper of general circulation within the county at the same time adjusted valuations were certified to the Department of Education. The idea was to make the public aware of their respective school's adjusted valuation for the coming school fiscal year and generally to be open about the process involved. This was part of a broader goal outlined

¹⁶⁴⁶ Legislative Bill 270, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 103, pp. 28-29 (498-99).

¹⁶⁴⁷ LB 1290, Session Laws, 1994, § 7, p. 5 (1299).

in LB 1290 (1994) to ensure a level playing field in the area of assessment of taxable property.

It must be remembered that the intent of LB 1059 (1990) was to use adjusted valuation for purposes of calculating state aid to schools, but there were difficulties encountered by the Department of Revenue in making the transition. In fact, LB 1290 (1994) was originally introduced to impose another one-year delay in order to give the Department of Revenue more time (and more funding). By the time LB 1290 passed, however, the delay was removed, more funding was granted to hire staff, and adjusted valuation would be used for the first time beginning with the 1994-95 school year.

Therefore, the publication requirement was added to LB 1290 in order to further the goal, perhaps even overreach the goal, to conduct an open and public process of assessing taxable property and adjusting it for purposes of state aid computation. This was, after all, a new process, and lawmakers believed the public had to be made aware. By 1997, however, it was clear to the newly appointed Property Tax Administrator Lang-Morrissey that this particular publication requirement may be over doing it. “We believe that that requirement should be removed,” Lang-Morrissey said during the public hearing.¹⁶⁴⁸ “[T]he only people who can protest or the only entities that can protest adjusted valuations are school districts and they are required by law and are getting specific notice as to their adjusted valuations,” she added.¹⁶⁴⁹ In addition, she noted, the notice did not list all districts and their respective adjusted valuations, and the overall value of the notice had to be questioned. The only way to enhance the value of the notice would be to include more information, but the cost would be greatly increased.

The other change to the school finance formula concerned the same statute that contained the publication notice discussed above. The existing statute at the time stated that a school district or county official could file a written request for a “nonappealable” correction of an adjusted valuation due to clerical error. The request must be filed with the Property Tax Administrator (PTA) by a specified date each year, but the decision of

¹⁶⁴⁸ Committee on Revenue, *Hearing Transcripts, LB 270 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 24 January 1997, 42.

¹⁶⁴⁹ *Id.*, 42-43.

the PTA may not be appealed. LB 270 changed this subsection to state that both clerical errors and changes in assessed value by reason of qualifying or disqualifying for greenbelt status may be appealed.

LB 270 passed with the emergency clause attached on June 3, 1997 by a 42-0 vote.¹⁶⁵⁰ Governor Nelson signed the bill into law on June 9th.¹⁶⁵¹

Table 88. Summary of Modifications to TEEOSA
as per LB 270 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
103	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	<p>Eliminates a publication requirement for the Property Tax Administrator (PTA). Prior to LB 270 (1997), the PTA was required to publish notice of the school district adjusted valuations once they are certified to NDE. This requirement was eliminated under LB 270.</p> <p>Permits school district or county official to file an appeal with the PTA concerning assessed value changes by reason of land qualified or disqualified for special use valuation (greenbelt).</p> <p>NOTE: This section amended LB 342 (1997), § 4, and LB 713 (1997), § 3.</p>

Source: Legislative Bill 270, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 103, pp. 28-29 (498-99).

Motor Vehicle Fee System

LB 271 (1997) was the subject of considerable debate and controversy during the 1997 Session and culminated in a less than united vote on Final Reading. The bill proposed to eliminate the existing motor vehicle personal property tax system and replace it with age-based tax and fee schedules. The idea was certainly nothing new. Similar legislation had been introduced in previous sessions, but the proposals never made it out of committee. Legislators and lobbyists alike referred to the proposal as the “clunker tax” because it usually involved increased taxes on older vehicles and reduced taxes for newer and more expensive models. But in 1997 circumstances had changed and the time was ripe for the so-called clunker tax to move forward.

¹⁶⁵⁰ NEB. LEGIS. JOURNAL, 3 June 1997, 2589.

¹⁶⁵¹ *Id.*, 9 June 1997, 2701.

LB 271 was a very important bill for public schools and, in fact, most political subdivisions because a good portion of their local revenue derived from motor vehicle taxes. In 1996, the motor vehicle property tax produced \$152 million in revenue to political subdivisions, and school districts received a substantial amount of the total proceeds.¹⁶⁵²

The system in existence prior to 1997 placed a value on motor vehicles and then the applicable real property tax rate for each political subdivision would be applied to that value to determine proportionate shares of revenue. However, the existing system also had its share of critics, including individual taxpayers, who claimed the system did not take into account actual value, and therefore was not fair. And at least one major Nebraska organization agreed with the critics. Loy Todd, Executive Vice President and Legal Counsel for the Nebraska New Car and Truck Dealers Association, testified at the public hearing for LB 271, and stated:

[T]he actual fair market value of your motor vehicle, in this state, has almost nothing to do with how it is taxed. You can't have a property tax system that is based on virtually nothing. What we have now is a schedule that is thought up by somebody in a back room, the Department of Revenue, that is based on some manufacturer's suggested retail prices set by my industry. Then, it is arbitrarily assigned some depreciation. A schedule is supposed to be published, I have never seen it, and sent out to the counties, and then what we do is we tax, based upon it.¹⁶⁵³

Todd said the state had been lucky up to that point to avoid a lawsuit challenging the existing system. "But you have got a system that doesn't work," Todd said, adding, "We have suggested many years now that you replace it with an age-rated system."¹⁶⁵⁴

The newly appointed Property Tax Administrator, Cathy Lang-Morrissey, had essentially the same message to offer the Revenue Committee. Lang-Morrissey offered supporting testimony and said the responsibility falls upon her office to determine values

¹⁶⁵² Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 271 (1997)*, prepared by Doug Nichols, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 24 February 1997, 1.

¹⁶⁵³ Committee on Revenue, *Hearing Transcripts, LB 271 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 27 February 1997, 65-66.

¹⁶⁵⁴ *Id.*, 66.

for motor vehicles under the existing system. And this was a responsibility she did not particularly care to have. “It is my firm belief, both from a legal perspective and a policy perspective, that the Legislature must specify the policy for the valuation of motor vehicles,” she testified.¹⁶⁵⁵ The existing law, Lang-Morrissey said, offered no direction for her office in terms of guidelines to perform the task.

However, the fairness issue was but one of the major policy issues that gave rise to LB 271. Testifying on behalf of the Revenue Committee, the majority of which sponsored the bill, George Kilpatrick, committee legal counsel, outlined three main issues that lead to the introduction of LB 271. The first related to the fairness problem addressed by Loy Todd and Cathy Lang-Morrissey. The second related to the recent enactment of levy limitations under LB 1114 a year earlier. Kilpatrick testified that, “[B]y adopting a uniform schedule of taxation ... it will remove essentially motor vehicles from the property tax equation in the sense that whatever relief is provided by 1114, whatever shortfall is caused by 1114, will have no impact on motor vehicle owners.”¹⁶⁵⁶ But there may, instead, be an impact on the real property owner since political subdivisions may be tempted to compensate for lost revenue by raising their property tax levies. This was a very real fear to Governor Nelson who would address the issue later in the session.

The third major issue involved in LB 271 had to do with the distribution of motor vehicle taxes to various political subdivisions. In fact, this became one of the key sticking points to final passage of the bill. As a matter of background, the Nebraska Constitution was amended in 1952 in part to establish a distribution system for motor vehicle taxes. Article VIII, Section 1 was amended to permit a different method of taxing motor vehicles so long as:

Such tax proceeds from motor vehicles taxed in each county shall be allocated to the state, counties, townships, cities, villages, and school districts of such county

¹⁶⁵⁵ Id., 64.

¹⁶⁵⁶ Id., 61.

in the same proportion that the levy of each bears to the total levy of said county on personal tangible property.¹⁶⁵⁷

This same section of the Nebraska Constitution would be amended in 1998 to change the system of allocation, but in 1997 this was the constitutional provision the Legislature had to abide.

Nevertheless, LB 271, as originally introduced, provided a different scheme for revenue distribution. The bill required 65% of the tax revenue to be channeled to the TEEOSA Fund for distribution through the state aid formula. Twenty percent of the revenue would be allocated to county governments and 15% would be allocated to municipalities.¹⁶⁵⁸ Some believed the proposed distribution system might create a constitutional challenge and the issue was brought up several times during the hearing.

However, as the bill slowly moved its way through the legislative process most of the issues were resolved, including the distribution of revenue. As passed by the Legislature, LB 271 would create separate schedules for a motor vehicle tax and a motor vehicle fee. The tax would be based upon the age and original selling price of the vehicle, except for certain vehicles such as trucks and mobile homes that are based on weight. The original selling price would be based upon the manufacturers' suggested retail price and would be established by the Property Tax Administrator (although the duty would later be transferred to the Department of Motor Vehicles). The fee portion would be graduated so that lower priced vehicles will pay a lower fee than higher priced vehicles, and older vehicles would pay a lower fee than newer vehicles.

The distribution of the motor vehicle tax would be similar to the old tax system. After each county treasurer deducts a 1% collection fee, the proceeds would be allocated to each taxing unit in the proportion of each unit's levy to the total levy on taxable property of all the taxing units in which the motor vehicle has situs. However, revenue generated from the fee would be distributed only to counties and municipalities. The

¹⁶⁵⁷ Attorney General Don Stenberg, "Constitutionality of the Method for Distribution of Motor Vehicle Taxes Under LB 271, as amended," Opinion 97032, 2 June 1997.

¹⁶⁵⁸ Legislative Bill 271, *Change motor vehicle taxation and fee provisions*, sponsored by Sen. Jerome Warner, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 13 January 1997, § 3, p. 5.

premise behind LB 271 all along was to create a measure as revenue neutral as possible, resulting in little or no fiscal impact on anyone. But LB 271 also brought at least initial considerations toward helping certain classes of local government to generate replacement revenue in light of the pending levy limitations. While schools were destined to receive substantial assistance under the appropriation bill to LB 806, other classes of political subdivisions were scrambling during the 1997 Session to corner any revenue mechanism they could. For the most part, the lobbying effort by public school interests was to simply ensure that LB 271 did not reduce funding for schools.

The bill was passed on June 4, 1997 by a 34-11 vote.¹⁶⁵⁹ However, by the time the bill passed, the Legislature had taken action to reduce the tax and fee schedules sufficiently to cause some doubt about the fiscal impact on political subdivisions, particularly school districts. The Legislature's Fiscal Analysis Office reported that the fiscal impact on political subdivisions was "indeterminate" and may result in a "shift to other taxable property."¹⁶⁶⁰ The concern was that certain local governments would raise their property tax levies in order to compensate for any lost revenue from the new motor vehicle tax/fee system. Perhaps no one was more concerned about this possibility than Governor Nelson. In a June 10, 1997 communication to the Legislature, the Governor made his concern very clear:

Today I signed LB 271 and LB 271A into law. LB 271 eliminates the property tax on motor vehicles and replaces it with a tax and a fee. LB 271A provides funding for the Department of Motor Vehicles to carry out the bill's provisions.

LB 271 is designed to implement a motor vehicle tax system more closely tied to vehicle value and age, and to provide motor vehicle owners with property tax relief. I do not believe it is the intention of the Legislature--nor is it mine--for local subdivisions to use passage of this bill to shift the local tax burden further onto real property taxpayers. If local subdivisions respond to any losses of revenue under LB 271 by attempting to increase real property taxes, rather than by reducing spending, taxpayers will rightly believe they have been betrayed.

¹⁶⁵⁹ NEB. LEGIS. JOURNAL, 4 June 1997, 2644.

¹⁶⁶⁰ *Fiscal Impact Statement, LB 271 (1997)*, 30 May 1997, 1.

I have previously voiced my support for caps on local subdivision spending once the LB 299 spending limits expire. It is my intent to work in developing legislation for consideration next year to impose spending limits and, where appropriate, adjust the current LB 1059 limits. Taxpayers and local officials should understand that the response of local subdivisions to LB 271 will play an important role in what types of limits will be included in that bill.

Owners of real property and motor vehicles deserve tax relief. That was the purpose of LB 299 and LB 1114. Any attempt by political subdivisions to circumvent the spirit of these tax relief measures; and LB 271 becomes unacceptable to me, the Legislature, and the taxpayers.¹⁶⁶¹

Governor Nelson's warning was obviously directed to the Legislature and at local governments, perhaps at school officials in particular.

Nevertheless, it was obvious to all concerned that the Legislature and the Governor would be watching to see what action school districts take in response to LB 271. The Governor's threat to extend the restrictive budget lids imposed under LB 299 (1996) was sufficient to gain everyone's attention. It effectively set the stage for the budget lid battles to follow in the 1998 Legislative Session.

For purposes of the school finance formula itself, LB 271 amended one section that referred to motor vehicle tax revenue for purposes of establishing adjusted valuation for each school district.¹⁶⁶² The existing law referred to motor vehicles and the method by which the "state aid value" would be determined. LB 271 eliminated these references because they would no longer be necessary. Motor vehicles would henceforth be treated as any other personal property for purposes of establishing adjusted valuation. And section 3 of the bill, which was codified as section 60-3003, would now govern the allocation of tax revenue to each school district.

¹⁶⁶¹ NEB. LEGIS. JOURNAL, 12 June 1997, 2704.

¹⁶⁶² Legislative Bill 271, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 53, pp. 28-29 (530-31).

Table 89. Summary of Modifications to TEEOSA
as per LB 271 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
53	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	Harmonizes the school finance formula with change under LB 271 (1997) to eliminate the existing motor vehicle property tax system and replace it with a vehicle age-based system. The change to this section involves the elimination of references to motor vehicles.

Source: Legislative Bill 271, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 53, pp. 28-29 (530-31).

Timelines to Establish Adjusted Valuation

The intent of LB 342 (1997), sponsored by Senator Warner, was to provide a procedure for correcting clerical errors in the process by which valuations are adjusted for purposes of school aid.¹⁶⁶³ The use of adjusted valuation in calculating state aid was one of the key components of the school finance formula created under LB 1059 (1990), but it was not until 1995 that adjusted valuation was actually implemented. In 1994 the Legislature passed LB 1290 to allocate additional funds to the Department of Revenue in order to hire necessary personnel and put the adjusted valuation system into place.

The problem, as ably explained by Dennis Pool, then School Finance Administrator for NDE, was that no process or authority existed to correct mistakes made in certifications of adjusted valuation. Pool testified at the public hearing for LB 342 on January 24, 1997 before the Revenue Committee. Pool explained that the department might very well have prior knowledge that the adjusted valuation for one or more districts is incorrect, but they have no power to change it. The incorrect adjusted valuation would then be used to compute state aid, which would then result in incorrect certifications of state aid. Some districts would receive less than they should while others would receive more than they are entitled. The mistakes, if they occur, would typically be made by county assessors who incorrectly place certain property within School District A into

¹⁶⁶³ Senator Jerome Warner, *Introducer's Statement of Intent, LB 342 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 24 January 1997, 1.

School District B or simply make mistakes in writing down the correct figures. Pool said the consequence of one clerical error in one district's adjusted valuation would essentially have a ripple effect, large or small, throughout the entire state aid certification. The mistake would cause some to lose and others to gain state aid funds.¹⁶⁶⁴

The existing law already provided for a formal process in which a school district may protest its adjusted valuation. LB 1290 (1994) provided that any school district may file with the Property Tax Administrator (PTA) written objections to the adjusted valuations that are certified by the PTA.¹⁶⁶⁵ The process requires the PTA to set a hearing date where either party may submit evidence on the matter at issue. The PTA must then submit an order to modify or decline to modify the adjusted valuations and must then certify the order to NDE. The final determination of the Property Tax Administrator may be appealed to the Tax Equalization and Review Commission (TERC).

LB 342, on the other hand, proposed what might be considered an informal process, a "nonappealable" process, to remedy clerical errors in adjusted valuations. The bill provided that, by October 31st each year, any school district or county official may file with the Property Tax Administrator a written request for a nonappealable correction of the adjusted valuation due to clerical error. The legislation defined clerical error as transposition of numbers, allocation of value to the wrong school district, mathematical error, and omitted value. The Property Tax Administrator must then approve or deny the request by November 30th. If approved, the PTA must then certify the corrected adjusted valuations to NDE.

LB 342 was placed on the legislative fast track due to an actual clerical error that occurred in Adams County between two difference school districts, one equalized and one non-equalized district. The error occurred on the 1996 certified adjusted valuation, so the bill contained a special allowance for filing nonappealable corrections from the year before. The special allowance provided that errors occurring on the 1996 adjusted

¹⁶⁶⁴ Committee on Revenue, *Hearing Transcripts, LB 342 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 24 January 1997, 3.

¹⁶⁶⁵ LB 1290, Session Laws, 1994, § 7, p. 5 (1299).

valuation had to be filed with the PTA by March 15, 1997. Even on the fast track, LB 342 passed just barely in time for the parties involved to take advantage of the new procedure. The bill passed on March 4th by a 43-0 vote.¹⁶⁶⁶ LB 342 was signed into law on March 10th, which made the effective date for the bill March 11th.¹⁶⁶⁷

Table 90. Summary of Modifications to TEEOSA
as per LB 342 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
4	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	Creates a new process by which any school district or county official may file with the Property Tax Administrator (PTA) a written request for a “nonappealable” correction of the adjusted valuation due to clerical error. Clerical errors would include transposition of numbers, allocation of value to the wrong school district, mathematical error, and omitted value. The PTA must approve or deny the requests by specified dates, and, if approved, certify the corrected adjusted valuations resulting from such action to NDE.

Source: Legislative Bill 342, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 4, pp. 1-2 (703-04).

Tax Equalization Review Commission Cleanup

LB 397 (1997) represented the follow-up bill to a two-year process to fully implement the Tax Equalization Review Commission (TERC). The TERC was the brainchild of Senator Doug Kristensen of Minden, a member of the Revenue Committee in 1997, who would later be elected to the office of Speaker. The idea behind TERC was to replace the State Board of Equalization with a fulltime commission having oversight of the equalization process.

In 1995 the Legislature passed LB 490 and LR 3CA. LB 490 embodied the Tax Equalization Review Commission Act, which established the structure and duties of the commission. LB 490 also created the office of Property Tax Administrator to work

¹⁶⁶⁶ NEB. LEGIS. JOURNAL, 4 March 1997, 863.

¹⁶⁶⁷ Id., 11 March 1997, 989.

closely with the commission. LR 3CA was a constitutional amendment to eliminate the old State Board of Equalization and replace it with the TERC. The amendment appeared on the 1996 Primary Election Ballot as Amendment Number 4 and was passed by the voters with a 54% to 46% margin.¹⁶⁶⁸

With all the pieces in place by 1997, it was time to fine-tune the TERC Act in order address issues that were discovered since the passage of LB 490. The bill also transferred the powers and duties from the State Board of Equalization to the Tax Equalization and Review Commission. The only change to the school finance formula under LB 397 involved the elimination of an outdated and obsolete reference to amounts paid by the state to refund litigated personal property taxes to school districts in 1988.¹⁶⁶⁹ These amounts were listed as receipts to school districts and counted as part of their formula resources for purposes of calculating state aid.

LB 397 passed with the emergency clause attached on March 10, 1997 by a 42-0 vote.¹⁶⁷⁰ The Governor signed the bill into law on March 13th.¹⁶⁷¹

Table 91: Summary of Modifications to TEEOSA
as per LB 397 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
49	79-1018	School fiscal years before 1998-99; district formula resources; other receipts included	Eliminate outdated references to amounts paid by the state to refund litigated personal property taxes to school districts in 1988.

Source: Legislative Bill 397, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 49, p. 14 (946).

¹⁶⁶⁸ NEB. BLUE BOOK, 2004-05 ed., 265.

¹⁶⁶⁹ Legislative Bill 397, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 49, p. 14 (946).

¹⁶⁷⁰ NEB. LEGIS. JOURNAL, 10 March 1997, 967.

¹⁶⁷¹ *Id.*, 13 March 1997, 1075.

Income Tax Rate Reduction

LB 401 (1997) was the subject of intense debate and controversy during the 1997 Session. The bill originally contained the Economic Growth Income Tax Reduction plan introduced on behalf of Governor Nelson by Senator Jerome Warner, chair of the Revenue Committee. This was one if not the most important objective for Governor Nelson during the 1997 Session. As introduced, the bill would provide an individual income tax cut of \$50 million annually. The average Nebraskan would receive a 5.5% income tax cut, equaling \$65 per average return.¹⁶⁷²

For guardians of the school finance formula, the potential issue with this plan related to the goal of LB 1059 (1990) to dedicate a portion of income tax revenue to fund public schools. If LB 401 proposes to reduce state income tax revenue, how would this impact the school finance formula? Anticipating this concern, the Governor's plan included a "hold harmless" provision to increase the appropriation to fund the income tax rebate to schools.

The concern with the Governor's proposal, as it relates to schools, was two-fold. First, the Legislature's Fiscal Office reported that the Governor's proposal, as submitted, would be anything but harmless to school districts. The initial Fiscal Note indicated that, "[T]his bill could reduce the total amount calculated to be available as state aid to schools under LB 1059 by an estimated \$9.6 million in FY1997-98 and \$7.9 million In FY1998-99."¹⁶⁷³ Second, the Legislature had taken action a year earlier to cap the income tax rebate to schools at the 1992-93 level under LB 1050 (1996).¹⁶⁷⁴ Under the new cap, schools could expect the dedication of approximately \$102 million each year for income tax rebate funding.

Both of these points were brought out during the public hearing for LB 401 on February 7, 1997 before the Revenue Committee. Neither point was entirely addressed

¹⁶⁷² Senator Jerome Warner, *Introducer's Statement of Intent, LB 401 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 7 February 1997, 1.

¹⁶⁷³ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 401 (1997)*, prepared by Doug Nichols and Don Yelick, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 3 February 1997, 1.

¹⁶⁷⁴ LB 1050, Session Laws, 1996, § 14, pp. 11-12 (1125-26).

by the Governor's emissaries present to testify and explain the legislation. It was, therefore, left to the members of the Revenue Committee to sort out the facts and produce a bill similar to what the Governor wished. And this alone was no small task. The committee was deadlocked (4-4) on advancement until Senator Wickersham, a member of the committee, proposed a compromise. The compromise would provide a 3% across-the-board income tax cut and a \$20 per dependent increase in the personal exemption credit, but these provisions would only apply to the 1997 and 1998 tax years.¹⁶⁷⁵ In other words, a two-year, temporary income tax reduction instead of a permanent reduction as proposed by the Governor. And a 3% rather than 5.5% across-the-board cut as originally proposed.

As for public schools, the committee amendments to LB 401 made no provision for any potential loss of funding due to the income tax cut. It was generally believed that, so long as the biennium budget accounts for approximately \$102 million in annual income tax rebate to schools, there would be no need to insert any kind of "hold harmless" provision. So long as the income tax cut was a temporary, two-year reduction.

At first the Governor was simply happy to have his bill advanced from committee. "We've gone from a dead-on-arrival bill to a bill on the floor," Governor Nelson said.¹⁶⁷⁶ He believed there was support among the body to restore provisions of his original bill during floor action. His real concern had more to do with whether the bill would even see floor action. Senator John Hilgert of Omaha had designated LB 401 as his individual priority bill, but he did so late. In fact, his priority filing came dead last among the 49 state senators. Since priority bills were placed on the agenda in the order they were filed with the Speaker's office, LB 401 did not stand much chance. Not much chance, that is, unless the bill received additional help. And here is the point at which LB 401 became a political football and would in fact have a bearing on the outcome of such important issues as LB 806, the comprehensive school finance bill.

¹⁶⁷⁵ Committee on Revenue, *Executive Session Report, LB 401 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 3 April 1997, 2.

¹⁶⁷⁶ Bill Hord, "Income-Tax Cut Moves To Next Stop, Nelson Plan Lacks Priority For Debate," *Omaha World-Herald*, 4 April 1997, 1.

Both Governor Nelson and Speaker Withem had fired shots across each other's bow during the 1997 Session. The political sparring was particularly evident at the time LB 401 was advanced from committee on April 3rd. "I don't see any assurance that it will be debated," Speaker Withem said, referring to the Governor's bill.¹⁶⁷⁷ However, he added, "If there is a sense of cooperation from the Governor's Office, there will be a reciprocal cooperation from the speaker's office."¹⁶⁷⁸

The Governor wanted an income tax cut as per LB 401 and the Speaker wanted the successful passage of LB 806, the school finance bill. The two politicians were potentially quite useful to one another, but for the time being the ball was in the Speaker's court. The Speaker had the authority to special order a bill to the top of the agenda, but this would not be fair to the other senator priority bills awaiting floor debate. The other alternative would be to make LB 401 a Speaker major proposal, a super priority bill for the 1997 Session. This would have the same effect as special ordering the bill for purposes of agenda setting, but it would also allow the Speaker more control over the order of amendments debated on the bill. And this is exactly what he did. On April 29th, LB 401 officially became a Speaker super priority bill.¹⁶⁷⁹ In the end, however, Speaker Withem would not be entirely happy with the final product in LB 806 and neither would Governor Nelson find LB 401 entirely to his liking. Both measures and both politicians endured compromises.

The debate on LB 401 may not have lasted quite as long as the school finance bill, but the debate was just as intense. The income tax cut bill just barely cleared the first stage of debate on a 27-4 vote.¹⁶⁸⁰ The bill was almost at the point of stalling once again during Select File debate. Once again, it took a compromise, suggested by Senator Wickersham, to move the bill forward. The compromise amendment provided for a 5% across-the-board income tax cut for both the 1997 and 1998 tax years, an increase in the

¹⁶⁷⁷ "Income-Tax Cut Moves To Next Stop, Nelson Plan Lacks Priority For Debate," *Omaha World-Herald*, 4 April 1997, 1.

¹⁶⁷⁸ *Id.*

¹⁶⁷⁹ NEB. LEGIS. JOURNAL, 29 April 1997, 1722.

¹⁶⁸⁰ *Id.*, 13 May 1997, 1967.

individual personal exemption credit by \$10 per individual, and a full deduction on the Nebraska income tax return for health insurance premiums paid self-employed individuals. The amendment also provided for a \$40 million transfer from the State's Cash Reserve Fund to, in part, make the fiscal status come out in an even balance.¹⁶⁸¹

The Wickersham amendment also provided some protection for schools in light of the income tax cut. It amended the section of law within the school finance formula that required the Governor to annually appropriate sufficient funds from income tax revenue to facilitate the income tax rebate to school districts. Specifically, the amendment required the Governor to set aside 20.28% of income tax revenue for tax year 1997 and 21.25% for tax year 1998.¹⁶⁸² The Wickersham amendment was adopted by a solid 34-2 vote.¹⁶⁸³ The Legislature passed LB 401 on June 4th by a 38-7 vote.¹⁶⁸⁴ Governor Nelson signed the bill into law one day later.¹⁶⁸⁵

Table 92. Summary of Modifications to TEEOSA
as per LB 401 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
4	79-1031	Department; provide data to Governor; Governor; duties	Accounts for the temporary income tax reduction as per LB 401 (1997) by requiring the Governor to submit budget proposals containing an increase in the appropriations from income tax revenue to schools in tax years 1997 and 1998.

Source: Legislative Bill 401, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 4, pp. 3-4 (951-52).

Adjusted Valuation for Greenbelt Land

LB 595 (1997) could fairly be classified as an anomaly given the many major legislative proposals debated in the 1997 Session. The bill was referred to the Government, Military & Veterans Affairs Committee for disposition and related to

¹⁶⁸¹ Id., *Wickersham AM2565*, 29 May 1997, 2475-81.

¹⁶⁸² Id.

¹⁶⁸³ Id., 29 May 1997, 2489.

¹⁶⁸⁴ Id., 4 June 1997, 2658.

¹⁶⁸⁵ Id., 5 June 1997, 2699.

election law for school boards, specifically Class III school boards. Introduced by Senator Bud Robinson of Blair, then chair of the Government Committee, the bill would simply permit, not require, the members of a Class III school board to be nominated by district or ward and elected at large.¹⁶⁸⁶ At the time, members were to be nominated and elected at large or by district or ward.

The bill was never prioritized and its prospects appeared bleak given the major agenda items waiting to be debated. Senator Robinson managed to place the bill on special consent calendar agenda for “non-controversial” legislation. LB 595 successfully made it through the first and second stages of debate. But when the legislation arrived on Final Reading, Senator Robinson asked his colleagues to expand the purpose of the bill to include an entirely different subject matter.

During Final Reading deliberation, Senator Robinson rose to ask that the bill be returned to Select File for specific amendment. Robinson explained that school administrators from his legislative district had approached him about an issue involving the use of adjusted valuation one year in arrears and the designation of land for special valuation (greenbelt). Some districts had encountered an unanticipated side effect of adjusted valuation for purposes of calculating state aid when the county involved adopts special valuation for qualifying property. The higher adjusted valuation resulted in a lower state aid certification because the school finance formula attributed a greater level of formula resources to the district.

As a matter of background, special valuation came about in the early 1970s. The Nebraska Constitution had long provided that, “Taxes shall be levied by valuation uniformly and proportionately upon all real property... .”¹⁶⁸⁷ But there were exceptions to this “uniformity” clause and one such exception was created in 1972 when voters approved an amendment to the Nebraska Constitution to permit the classification of

¹⁶⁸⁶ Senator C. N. “Bud” Robinson, *Introducer’s Statement of Intent, LB 595 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 28 February 1997, 1.

¹⁶⁸⁷ NEB. CONST. art. VIII, § 1.

certain agricultural land.¹⁶⁸⁸ In 1974, the Legislature took action to create necessary laws to implement the “special valuation” of agricultural land.¹⁶⁸⁹

Often referred to as “greenbelt,” these new provisions addressed the problem of land that is being used for agricultural production, but which has a much higher value than land used solely for agricultural production due to its proximity to urban development, which can have an economic impact on neighboring agricultural land. The actual purpose of the greenbelt laws was perhaps best stated in a March 1985 Attorney General Opinion in which was stated:

The purpose of the greenbelt provision was not only to allow preferential tax treatment for this particular agricultural land, but to promote the conservation of agricultural land and the orderly and controlled growth of urban areas.¹⁶⁹⁰

The laws enacted in 1974, and subsequently modified from time to time, allowed such land to be valued solely on the basis of its value for agricultural use and also contained a tax-related recapture provision when the land is subsequently developed.

Whatever good special valuation possesses to the overall property tax system, it also reduces the value base for property tax purposes and greenbelt land is included in the adjusted valuation used for purposes of calculating state aid. The Robinson amendment to LB 595 provided that when a county board adopts special valuation for qualifying property in the county, the adjusted valuation used to calculate state aid may not exceed 108% of the assessed valuation for the property tax year on which the adjusted valuation is based. The new provision would take effect in the 1997-98 school year.¹⁶⁹¹

The amendment would affect the valuations used by some counties for state aid purposes. It would lower the adjusted valuation of property for some counties, which will decrease the yield of a school district from the local effort rate in the state aid

¹⁶⁸⁸ Amendment No. 7 appeared on the 1972 General Election Ballot and passed by a 53% to 47% vote margin. NEB. BLUE BOOK, 2004-05 ed., 261.

¹⁶⁸⁹ NEB. REV. STAT. §§ 77-1343 - 1348 (Cum. Supp. 1974).

¹⁶⁹⁰ Attorney General Robert M. Spire, *Opinion No. 85578*, req. by Senator Jerome Warner and Senator David Landis, 21 March 1985, 2.

¹⁶⁹¹ NEB. LEGIS. JOURNAL, *Robinson AM2731*, 27 May 1997, 2327-28.

formula. In turn this would decrease the formula resources of a school in the state aid calculation and potentially increase the district's equalization aid. Overall, the effect of the amendment would be a shift in state aid between school districts, albeit just slight.

Table 93. Summary of Modifications to TEEOSA
as per LB 595 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
6	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	Provides that when a county board adopts special valuation for qualifying property in the county pursuant to sections 77-1343 to 77-1348 (greenbelt land), the adjusted valuation used to calculate state aid to schools may not exceed 108% of the assessed valuation for the property tax year on which the adjusted valuation is based, beginning in the 1997-98 school year. Provides that when a county board adopts special valuation for qualifying property in the county pursuant to sections 77-1343 to 77-1348 (greenbelt land), the adjusted valuation used to calculate state aid to schools may not exceed 108% of the assessed valuation for the property tax year on which the adjusted valuation is based, beginning in the 1997-98 school year.

Source: Legislative Bill 595, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 6, pp. 3-4 (1111-12).

E. Review

LB 806 (1997) was undoubtedly an historic measure. It would become the subject of analysis by both critics and proponents for years to come. Not unlike many major initiatives, the legislative life of LB 806 had a number of twists and turns along the way. LB 806 was introduced by a majority of the Education Committee and was advanced out of committee by a unanimous vote, which included Senators Bromm, Stuhr, and Wickersham. These three senators would later become the backbone of the opposition to the legislation, although Senator Wickersham would ultimately vote in favor of passage of the legislation.

The original version of LB 806 did not contain a provision to force consolidation of Class I school districts. It was not until the bill emerged from committee that the issue of consolidation once again raised. Then, on General File, one of the major concessions

by the proponents was to give up the consolidation mandate and thereby make the opponents feel as though a victory had been scored. In truth, the proponents were giving up something they never originally intended to achieve, at least by the standard of the original bill.

Both the proponents and opponents of the legislation accused one another of politicizing school finance issues in order to meet their own agenda. In truth, both sides seemed to have the best of interests of children in mind, but simply had different viewpoints on the state's role in public education.

In the end, one of the great advantages of the proponents was their collective knowledge of the existing school finance formula along with the proposed changes to the formula. They were consistently able to articulate the strengths of their own proposals while exposing the weaknesses of the opponents' proposals. The proponents had the advantage of an historical policy perspective from Senator Ron Withem, who just happened to also serve as Speaker at the time. Several times during the debate, Speaker Withem recalled the original intent of LB 1059 (1990) in order to add credibility to the changes proposed under LB 806.

However, the overriding advantage for proponents of LB 806 was likely the action of the Legislature to enact levy caps a year earlier along with the perceived need to change the formula in order to facilitate the new limitations on local resources. Senator Bohlke used this argument time after time during debate on LB 806 to draw her colleagues' attention back to the need to move the legislation forward. Governor Nelson also used this argument as a basis for signing the legislation into law. Without the levy limitations looming over the Legislature, the changes to the formula proposed under LB 806 may have been exposed as a clear attempt to shift state aid funding away from smaller, rural schools. Proponents may have had a more difficult time justifying their proposal even if they had argued that LB 806 was intended to move the state closer to a true equalization formula.