

## **Lids and Guaranteed Funding, 1998-1999**

### **A. Introduction**

The final year of Governor Ben Nelson's administration and the first year of Governor Mike Johanns' administration would both be remembered for significant legislation concerning public education.

Continuing with the mission toward accountability, Governor Nelson would propose to further reduce the base spending limitation for schools. His first successful attempt at spending control came in 1995 through the passage of LB 613. His second attempt, in his last year as Governor, would also prove successful. Without intervention by the Legislature, school districts were expecting to have the old "1059" spending limits reinstated following the sunset of provisions imposed under LB 299 (1996). This would not happen.

The year 1998 also marked the first year for implementation of the levy limits imposed under LB 1114 (1996), but technical and substantive problems with the levy lids had already been discovered. The Legislature would wrangle with multiple changes to the levy limit laws in 1998 and 1999. One of the most pressing issues before the Legislature in 1998 would correct an error in drafting that would otherwise prohibit a district from attempting to exceed the levy lid in the first year of implementation.

In 1999, the Legislature would make Governor Johanns' debut as Governor a nightmare to remember. The issue was guaranteed funding for schools under the state aid formula, and the pain experienced by Governor Johanns was equal only to the joy felt by school officials for the vote of confidence afforded to them by the Legislature over the Governor's objections.

### **B. The 1998 Legislative Session**

#### **LB 989 - Spending Lid**

*"Single most important bill"*

As he sat before his fellow members of the Revenue Committee, Senator George Coordsen of Hebron concluded his opening remarks to a bill that would help define the

1998 Session. “My analysis of it,” he said, “is that it is the single most important bill of the year.”<sup>1692</sup> And he was not too far off the mark in his analysis. At the beginning of the 1998 Session, Governor Ben Nelson was on a personal mission to ensure the property tax relief promised under the levy limitations of LB 1114 (1996). The Governor asked Senator Coordsen to serve as chief sponsor of what became LB 989, the spending limit bill of the 1998 Session. Demonstrating the seriousness of the proposal, the Governor asked the remaining seven members of the Revenue Committee to cosponsor the bill, giving it an all but guaranteed pass from committee to floor debate.

As introduced, LB 989 proposed to limit budget growth for all political subdivisions, including school districts and educational service units. The bill provided for an annual revenue lid of 2.5% for all political subdivisions other than school districts since schools are the only class of local government that operate under an expenditure lid.<sup>1693</sup> For school districts, the bill set a 2.5% base growth rate on general fund expenditures other than expenditures on special education, and permitted a lid range of 2% (i.e., 2.5% to 4.5%).<sup>1694</sup> The bill required NDE to certify the allowable growth percentage to each Class II through V district (K-12 districts) and Class VI district (high school only district) by December 1<sup>st</sup>.<sup>1695</sup> The old provision required the allowable growth percentage to be certified by July 1<sup>st</sup>.

Perhaps more troubling to school officials were provisions in the original bill that restricted flexibility in the spending lid due to extenuating circumstances. The bill eliminated the power of the State Board to approve applications for a district to exceed its growth rate for expenditures involving new programs required by state or federal law, orders by the Commission of Industrial Relations (CIR), and payment of judgments

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<sup>1692</sup> Committee on Revenue, *Hearing Transcripts, LB 989 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 22 January 1998, 2.

<sup>1693</sup> Legislative Bill 989, *Change budget limits for political subdivisions and school districts*, sponsored by Sen. George Coordsen, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 8 January 1998, §§ 1-4, pp. 2-8.

<sup>1694</sup> *Id.*, § 6, p. 10.

<sup>1695</sup> *Id.*, § 7, pp. 10-13.

against a district by a court of competent jurisdiction.<sup>1696</sup> These were provisions originally contained in LB 1059 (1990).

Just as troubling for school officials was a provision in the original bill to reduce the amount a district may exceed its growth rate due to student growth. Under the existing law, a district could apply to the State Board of Education to exceed its applicable allowable growth rate by a specific dollar amount if the district projected an increase in formula students in the district over the current school year. LB 989 proposed to change the student growth allowance by increasing the expected percentage growth that triggers an adjustment by the State Board of Education.<sup>1697</sup> In essence, it raised the threshold for the student growth provision to become accessible by a school district.

Finally, the bill, as introduced, proposed to limit the amount a district could carry over from the previous budget year. LB 989 stated that unused budget authority could not exceed 30% of a district's general fund budget of expenditures if its general fund budget is less than \$500,000, 25% if the district's general fund budget is between \$500,000 and \$1 million, and 15% if over \$1 million.<sup>1698</sup> The idea behind the change was to prevent what the administration believed was excessive reserves in district coffers.

#### *The way it was*

In order to understand the nature of the Governor's proposal, it must be remembered what school officials had endured in terms of spending limits for the prior two years and what school officials had hoped to regain in the 1998-99 school year.

School districts had existed under very stringent spending limitations leading up to the 1998 Legislative Session. The Legislature passed LB 299 in 1996 as a companion piece to the levy limitation bill (LB 1114). LB 299 was intended to force school districts to change spending patterns and make necessary operational changes in preparation for the levy limitations that would become operative for the 1998-99 school year. LB 299

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<sup>1696</sup> Id., § 8, pp. 14-17.

<sup>1697</sup> Id., pp. 14-15.

<sup>1698</sup> Id., § 10, p. 19.

imposed a 2% spending lid for 1996-97 and a 0% lid for 1997-98.<sup>1699</sup> The 1996 law permitted some leeway for student growth and also provided for some specific lid exceptions. The “299 lids” represented the most severe restrictions on spending that Nebraska school districts had faced in modern times.

For school officials, the only good thing about the lids under LB 299 was that they were temporary. The lid provisions would automatically sunset after the 1997-98 school year and the former “1059 lid” provisions would once again govern school budgets. Prior to 1996, school districts enjoyed a 3% base-spending lid with a lid range up to 5.5%. If school officials had to endure levy limits, they thought, at least they would be able to spend as much of their revenue as the “1059 lid” would allow. But any hope that school officials may have had going into the 1998 Session quickly evaporated with the Governor’s spending lid proposal.

In truth, most school officials assumed the Legislature would likely move to prevent the old spending limits from returning in the same fashion and shape as they had been prior to 1996. Many were aware of the Governor’s warning at the conclusion of the 1997 Session upon the passage of LB 271, which changed the motor vehicle tax system. Governor Nelson was concerned that school districts would attempt to raise their property tax levies to recapture any lost revenue due to the change in the way motor vehicles (personal property) were taxed. In a letter to the Legislature, the Governor acknowledged his approval of LB 271, but issued this ominous warning:

I have previously voiced my support for caps on local subdivision spending once the LB 299 spending limits expire. It is my intent to work in developing legislation for consideration next year to impose spending limits and, where appropriate, adjust the current LB 1059 limits. Taxpayers and local officials should understand that the response of local subdivisions to LB 271 will play an important role in what types of limits will be included in that bill.

Owners of real property and motor vehicles deserve tax relief. That was the purpose of LB 299 and LB 1114. Any attempt by political subdivisions to circumvent the spirit of these tax relief measures; and LB 271 becomes unacceptable to me, the Legislature, and the taxpayers.<sup>1700</sup>

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<sup>1699</sup> LB 299, Session Laws, 1996, § 28, p. 9 (92).

<sup>1700</sup> NEB. LEGIS. JOURNAL, 12 June 1997, 2704.

If school officials were paying attention, and most were, they would have known that the Governor was not about to let the “1059 lids” reactivate without modification.

Governor Nelson obviously realized that many local government officials would not react positively to his proposal to place additional limits on their operations. He respected their collective capacity to lobby the Legislature enough to at least give representatives of local governments a “heads up” about his intentions. Accordingly, at the beginning of the 1998 Session he dispatched his staff to meet with lobbying organizations representing local governments. Lobbyists were given a preview of the legislation and a not-so-disguised admonition that the parameters of the measure could yet become more restrictive depending upon the level of cooperation from association representatives. For most but not all associations, this translated to a position of “play along” or suffer the consequences. This was particularly evident during the public hearing for LB 989 on January 22, 1998 before the Legislature’s Revenue Committee.

Again, it has to be remembered that the entire Revenue Committee signed onto LB 989. Lobbyists may have had some hope to influence a delay or even defeat the measure in committee if the entire committee had not agreed to cosponsor the bill. But the Governor had this base covered. Therefore, for some groups the best choice of action was to support the legislation “with reservations” or “with concerns.” Other representative groups, however, believed they had nothing to lose by outright opposing the bill and putting up a full fledged lobbying campaign to prevent its passage. In the final analysis, the division among groups and the lack of a unified, uniform voice on the matter only served to promote the bill’s advancement.

The public school lobby was divided. Associations representing school boards and school administrators voiced support for LB 989 but also expressed concern with specific provisions in the bill. John Bonaiuto, Executive Director for the Nebraska Association of School Boards, testified in support of the measure with some reservations. Said Bonaiuto:

The student population growth area is an area of concern because, in the Governor’s bill, it is more restrictive than what is in law currently, and for

growing districts, the students are going to arrive. And they're going to require the board to make decisions that will ultimately cost more money.<sup>1701</sup>

The Nebraska Council of School Administrators also supported the bill while voicing concerns over specific provisions, including the restrictions on unused budget authority.

The Nebraska State Education Association, representing teachers, testified in opposition. Executive Director Jim Griess succinctly stated the problem posed by bills such as the one proposed by Governor Nelson:

Bills like LB 989 present organizations like ours with a dilemma. I think it's true for school boards, administrators, cities, counties. To be politically correct, does one testify in support with reservations, or do you just be honest and say, we don't like the bill, and testify in opposition? Our organization has chosen to oppose this bill because we have a number of serious concerns about it.<sup>1702</sup>

Griess said his organization could support reasonable limitations on growth and spending, and even reasonable limitations on property tax growth. But equally important, Griess said, was the pursuit of quality education and, generally, the quality of services provided by local governments. "Efficiency is important, but so is effectiveness," he said.<sup>1703</sup>

The League of Nebraska Municipalities also opposed LB 989. Executive Director Lynn Rex testified that the measure represented a "major shift from the philosophy of LB 299 and LB 1114."<sup>1704</sup> In fact, her sentiment resembled what many thought but dared not say aloud at the public hearing. Rex recounted the plan proposed under the 1996 property tax relief package:

[T]he whole theory of (LB) 1114 and (LB) 299 was LB 299 will be in effect for two years, to control the spending side, and then the public policy of LB 1114 would take place, and that public policy being that there would be a uniform levy, if you will, across the state. That was the plan. What you're saying today is, now that's not really the plan. The plan here is now we're going to be looking at some other things.<sup>1705</sup>

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<sup>1701</sup> *Hearings Transcripts, LB 989 (1998)*, 20.

<sup>1702</sup> *Id.*, 26.

<sup>1703</sup> *Id.*

<sup>1704</sup> *Id.*, 30.

<sup>1705</sup> *Id.*, 31.

The “other things” to which she referred involved many of the same issues brought forward by other testifiers. Similar restrictions on unused budget authority and the elimination of certain exceptions were applied to the revenue lid under which municipalities are governed.

As it turned out, both the proponents and opponents voiced many of the same concerns. Organizations chose to use one tactic or another to pursue the same general goal, which was to make an unpalatable yet inevitable bill as tolerable as possible. And to a certain extent the strategy paid off, or at least the representative groups would like to believe it paid off. As the bill emerged from committee on March 2<sup>nd</sup>, it was clear that some of the points made by proponents and opponents had been heard. In addition, between the time of the public hearing and the time LB 989 was advanced from committee, a considerable grassroots lobbying effort had been waged to influence changes to the bill.

For school districts, the bill that emerged from committee was far more acceptable than the original version. The power of the State Board of Education to grant additional spending authority to a district due to student growth was left in tact. This was particularly welcome news to growing school districts where unanticipated growth in student populations might cause additional expenditures for personnel and other needs. In addition, the existing provisions relating to unused budget authority were allowed to remain in tact, which was another major victory for school districts.

As advanced from committee, the bill proposed the same spending lid (2.5% to 4.5%) for schools as originally introduced.<sup>1706</sup> Several lid exclusions from the original school finance formula would be eliminated. These involved exclusions under which each individual district had to apply to the State Board of Education to obtain and included amounts to pay for CIR orders, new program mandates by virtue of state and federal law, and certain judgments against a district.<sup>1707</sup>

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<sup>1706</sup> NEB. LEGIS. JOURNAL, *Com AM3370*, printed separate, 2 March 1998, 847. Committee Amendments to LB 989 (1998), *Com AM3370*, §§ 7, 12, pp. 12, 20.

<sup>1707</sup> Committee Amendments to LB 989 (1998), *Com AM3370*, § 9, pp. 15-16.

The lid exemptions available to local school boards remained virtually in tact. These were the spending lid provisions enacted under LB 299 (1996) that did not require prior approval from the State Board of Education in order to utilize.<sup>1708</sup> Local boards were vested with the authority to access these particular lid exemptions by a simple majority vote of the board, and included:

- (1) Interlocal Agreements - expenditures in support of a service which is the subject of an interlocal cooperation agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or an independent joint entity;
- (2) Disaster Emergency - expenditures to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act;
- (3) Judgments - expenditures to pay for judgments, except orders from the Commission of Industrial Relations obtained against a school district which require or obligate a school district to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a school district; and
- (4) Early Retirement - expenditures to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment.<sup>1709</sup>

A fifth lid exemption, relating to lease purchase contracts, would be added during Select File debate.

The committee amendments to LB 989 did not impinge upon the existing authority of a local school board to exceed its basic allowable growth rate by up to an additional 1% with the affirmative vote of at least 75% of the board. Although it did clarify that only school boards of Class II-VI districts may utilize such authority.<sup>1710</sup> The amendments also assisted school districts in one crucial respect by changing the law relevant to exceeding the spending lid by election ballot. The existing law permitted a local board to submit, by adoption of a resolution, a ballot question to exceed its spending limit. The law also permitted such a question to appear on a ballot by petition of the

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<sup>1708</sup> LB 299, Session Laws, 1996, § 30, p. 10-11 (93-94).

<sup>1709</sup> Id. NEB. REV. STAT. § 79-1028 (1996).

<sup>1710</sup> Committee Amendments to LB 989 (1998), *Com AM3370*, § 10, p. 19.



voters. The committee amendments added a new provision to state that such a ballot question to exceed the spending lid may appear on the same election ballot to exceed the levy limits if so desired.<sup>1711</sup>

Another feature of the committee amendments, which was not contained within the original bill, was a provision to require the Revenue Committee to annually review the base limitation for political subdivisions. The committee imposed this new requirement upon itself in order to determine whether changes in prices of services and products warrant an adjustment to the base limitation. It also served to create good will between the Legislature and political subdivisions on the issue of spending authority. The amendments required the Revenue Committee to hold a public hearing by January 15th each year to receive and consider testimony, evidence, and reports.<sup>1712</sup> Interestingly, this annual requirement would be subsequently repealed in 2001.<sup>1713</sup>

#### *Debate and Passage*

General File debate on LB 989 occurred on March 5, 1998. Senator Coordsen had designated the bill as his individual priority, which gave it the proper status to ensure consideration.<sup>1714</sup> Senator Coordsen and Senator Wickersham, Vice Chair and Chair of the Revenue Committee respectively, guided the relatively short first-round debate. The committee amendments were adopted, as amended by several amendments, on a very strong 40-0 vote.<sup>1715</sup>

Interestingly, the drama of first-round debate occurred at the very end when the time had arrived for closing comments prior to a vote for advancement. While the bill had been sponsored or co-sponsored by all eight members of the Revenue Committee, one member chose to oppose its advancement from committee. Senator Dave Landis of

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<sup>1711</sup> Id., p. 20.

<sup>1712</sup> Id., § 12, p. 21.

<sup>1713</sup> Legislative Bill 365, in *Laws of Nebraska, Ninety-Seventh Legislature, First Session, 2001*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of John Gale, Secretary of State), § 1, p. 1 (653).

<sup>1714</sup> NEB. LEGIS. JOURNAL, 21 January 1998, 352.

<sup>1715</sup> Id., 5 March 1998, 932.

Lincoln was the lone dissenting vote.<sup>1716</sup> And, while perhaps not scripted or planned beforehand, Senator Landis would wind up sharing time for closing remarks prior to advancement.

As first-year chair of the Revenue Committee, Senator Wickersham began his remarks by characterizing LB 989 as “an extension of the LB 299 limitations on local governments.”<sup>1717</sup> He continued:

It is an attempt to assure the citizens of the state that if there are increases in valuation in their individual political subdivisions, that those increases in valuations do not translate into additional spending, at least not spending that they have not specifically authorized by the escape valve that’s in the amendment, and that is for either special elections or, in the case of miscellaneous political subdivisions, the possibility of a town ... of a town hall type meeting.<sup>1718</sup>

Wickersham called the legislation “an appropriate expression of policy” in the quest to reduce reliance on property taxes.<sup>1719</sup>

At this point, Senator Coordsen was meant to be the next speaker to conclude the closing remarks prior to advancement. But Senator Landis also had something to say, and was recognized to have his turn. Landis said he supported the lids imposed under LB 299 (1996) as a necessary transition leading to the effective date of the levy limitations, but LB 989 was a different story. Said Landis:

(LB) 989 is not the extension of the property tax package of the Revenue Committee over the last two years. It is the Governor’s agenda. It’s a political agenda. It’s an anti-spending agenda. It’s the normal reason for a lid. But since we’re back to the traditional reasons for a lid, I’m back to being the traditional opponent that I am here.<sup>1720</sup>

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<sup>1716</sup> Committee on Revenue, *Executive Session Report, LB 989 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 25 February 1998, 3.

<sup>1717</sup> Legislative Records Historian, *Floor Transcripts, LB 989 (1998)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 5 March 1998, 12877.

<sup>1718</sup> *Id.*, 12878.

<sup>1719</sup> *Id.*

<sup>1720</sup> *Id.*, 12879.

Landis labeled lid bills the “nemesis of local control” and called his own opposition to LB 989 “a gesture of my faith in local political subdivisions.”<sup>1721</sup> “I return to my skepticism of our shackling local political subdivisions and their leaders in how they attend to local governments’ business,” he said, “I oppose 989.”<sup>1722</sup>

For his part, Senator Coordsen wanted to characterize the bill from a larger perspective:

(LB) 989 provides not an extension of 299 but an extension of the idea and the requirement of local governments to continue to be modest in their approach to how they provide service, to continue to be modest in their uses of the tax resources that they collect from the citizens of their unit of government through property taxes.<sup>1723</sup>

Coordsen disagreed that the bill was entirely based on the Governor’s agenda. He chose to think of LB 989 as an outgrowth of the many and long discussions among members of the Revenue Committee over the years.

The remarks made by Senator Landis on that first day of debate were particularly poignant to local government officials, at least those who may have heard or read about the event. Such speeches are certainly not unusual during floor debate, in fact, far from it. Often, however, when the attack is waged against the executive branch it is due to differences in political parties. However, this was not the case with Senator Landis, at least on this occasion, since both he and Governor Nelson hailed from the same political party, both are Democrats. And while one might ask why Landis had signed onto the bill in the first place, he did, true to his word, oppose advancement of LB 989 at each stage of debate. His opposition alone, however, would not be enough. The measure would be advanced to second-round consideration by a solid 36-4 vote.<sup>1724</sup>

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<sup>1721</sup> Id.

<sup>1722</sup> Id.

<sup>1723</sup> Id., 12880.

<sup>1724</sup> NEB. LEGIS. JOURNAL, 5 March 1998, 932-33.

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Table 94. Record Vote: LB 989 (1998)  
Advancement to E&R Initial

*Voting in the affirmative, 36:*

Beutler	Cudaback	Janssen	Pederson	Schrock
Bohlke	Dierks	Jensen	Peterson	Suttle
Brashear	Elmer	Jones	Preister	Thompson
Bromm	Engel	Kiel	Raikes	Wehrbein
Brown	Hartnett	Kristensen	Robak	Wesely
Bruning	Hilgert	Lynch	Robinson	Wickersham
Coordsen	Hillman	Pedersen	Schellpeper	Willhoft
Crosby				

*Voting in the negative, 4:*

Chambers	Landis	Schimek	Tyson	
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*Present and not voting, 6:*

Matzke	Schmitt	Stuhr	Vrtiska	Will
Maurstad				

*Excused and not voting, 3:*

Abboud	Hudkins	Witek
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*Source:* NEB. LEGIS. JOURNAL, 5 March 1998, 932-33.

LB 989 returned to the agenda for second-round floor action on March 23<sup>rd</sup>. It was this stage of debate that consumed the majority of time and produced some of the more interesting discussions. Most of the pending amendments related to municipalities and various attempts to carve more flexibility under the lids. The League of Nebraska Municipalities, the principle lobbying organization for villages and cities, had been quite active in the background to affect changes to the measure. Perhaps the main item of contention involved some form of lid exception for municipalities concerning orders by the Commission on Industrial Relations (CIR).

Senator Gene Tyson of Norfolk lead the debate, although several other senators offered, then withdrew, CIR-related amendments for municipalities. Senator Tyson was a former member of the Norfolk City Council and a proponent of reform to the CIR.<sup>1725</sup> He had both sponsored and prioritized LB 1075 (1998), cosponsored by 20 other

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<sup>1725</sup> NEB. BLUE BOOK, 2002-03 ed., 310.

senators, to adopt the Nebraska Municipal Comparability Act.<sup>1726</sup> The bill was intended to change the manner by which the CIR examines labor issues related to municipalities. Interestingly, the bill found considerable opposition from various labor organizations that believed the bill would tilt labor cases in favor of management.<sup>1727</sup> The bill was referred to the Business and Labor Committee, which eventually took action to kill the bill.<sup>1728</sup>

However, once LB 989 emerged from the Revenue Committee, Senator Tyson had an opportunity to revive at least part of his priority bill by amending certain portions into the lid bill. The portions Tyson had in mind did in fact relate to a lid exception solely for municipalities. The Tyson amendment essentially provided that municipalities would be eligible to exclude payments for CIR orders depending upon whether the CIR adhered to certain criteria listed in the bill.<sup>1729</sup> Tyson called it “a very simple amendment, very straight forward,” which it may or may not have been, but the ramifications were anything but simple.<sup>1730</sup> The amendment was certainly germane since it related to lids, but it also opened the door to a very contentious debate on the standards by which the CIR uses to decide labor issues. It would also open the door to an issue of fairness for other political subdivisions that would not benefit from the Tyson proposal.

The Tyson amendment survived a challenge on the germaneness of the subject matter, and also created the most spirited debate of any amendment offered to the bill. Speaking on behalf of the majority of his committee, Senator Wickersham voiced his concern about the amendment and noted that the Revenue Committee had discussed the impact of a lid exception pertaining to CIR orders. “The judgment in the Revenue Committee was that we did not, in broad frame, want to provide that kind of an incentive,” he said.<sup>1731</sup> Wickersham said such a lid exception had the potential to produce

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<sup>1726</sup> Legislative Bill 1075, *Adopt the Nebraska Municipal Comparability Act*, sponsored by Sen. Gene Tyson, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, title first read 12 January 1998. NEB. LEGIS. JOURNAL, 13 January 1998, 273.

<sup>1727</sup> Leslie Reed, “Wage Exemption Cut as Lid Bill Advances,” *Omaha World-Herald*, 24 March 1998, 11.

<sup>1728</sup> NEB. LEGIS. JOURNAL, 25 February 1998, 770.

<sup>1729</sup> Id., *Tyson AM3769*, 17 March 1998, 1098.

<sup>1730</sup> *Floor Transcripts, LB 989 (1998)*, 23 March 1998, 14220.

<sup>1731</sup> Id., 14231.

“unusual results” within the CIR and would “gently coerce” the commission to make decisions it might not otherwise make in light of the available lid exception to cities.<sup>1732</sup> Wickersham also believed the amendment would encourage municipalities to take their labor disputes to the commission rather than resolving them via negotiations.

After a lengthy debate, the Tyson amendment failed on a 15-24 vote, but it garnered more support than some had thought it would.<sup>1733</sup> This vote really represented a collapse of any subsequent movement on other pending CIR-related amendments. Immediately after the vote on the Tyson amendment, no less than ten municipality/labor-related amendments were withdrawn one after another. All that remained on the Select File docket was one last amendment.

The amendment, offered by Senator George Coordsen, pertained to lease purchase contracts undertaken by local governments. As a matter of background, LB 1114 (1996) created a levy exclusion for preexisting lease-purchase contracts approved prior to July 1, 1998.<sup>1734</sup> The companion piece to the levy limit bill, LB 299 (1996), did not provide for any corresponding spending lid exception for lease purchase contracts. This would be remedied to some degree by the Coordsen amendment to LB 989. The amendment added a new lid exception for expenditures to pay for lease-purchase contracts approved on or after July 1, 1997, and before July 1, 1998, but only to the extent the lease payments are not budgeted expenditures for fiscal year 1997-98.<sup>1735</sup> The amendment provided identical provisions for school districts (expenditure lid) and for all other political subdivisions (resource lid). The Coordsen amendment was adopted on a 28-0 vote.<sup>1736</sup>

Immediately after adoption of the Coordsen amendment, the Legislature advanced LB 989 on a voice vote.<sup>1737</sup> On April 2, 1998 the Legislature took final action to pass LB

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<sup>1732</sup> Id.

<sup>1733</sup> NEB. LEGIS. JOURNAL, 23 March 1998, 1256.

<sup>1734</sup> LB 1114, Session Laws, 1996, § 1, p. 2 (1246).

<sup>1735</sup> NEB. LEGIS. JOURNAL, *Coordsen AM4057*, 23 March 1998, 1263.

<sup>1736</sup> Id.

<sup>1737</sup> Id.

989 with the emergency clause attached on a 39-5 vote.<sup>1738</sup> Governor Nelson signed the bill into law on April 7<sup>th</sup>.<sup>1739</sup>

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Table 95. Record Vote: Vote to Pass LB 989 (1998)

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*Voting in the affirmative, 39:*

Abboud	Crosby	Hudkins	Peterson	Thompson
Beutler	Cudaback	Jensen	Raikes	Vrtiska
Bohlke	Dierks	Jones	Robinson	Wehrbein
Brashear	Elmer	Kristensen	Schellpeper	Wesely
Bromm	Engel	Lynch	Schimek	Wickersham
Brown	Hartnett	Matzke	Schrock	Willhoft
Bruning	Hilgert	Pedersen	Stuhr	Witek
Coordsen	Hillman	Pederson	Suttle	

*Voting in the negative, 5:*

Chambers	Landis	Robak	Schmitt	Tyson
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*Present and not voting, 2:*

Maurstad	Preister
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*Excused and not voting, 3:*

Janssen	Kiel	Will
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Source: NEB. LEGIS. JOURNAL, 2 April 1998, 1676-77.

For school districts, LB 989 could have been far worse if it had passed as introduced. The grassroots lobbying effort yielded some improvements to the bill. One might speculate whether the bill would have been introduced at all if Governor Nelson had not decided to do so. Would a state senator have introduced the bill on his or her own initiative, or would the Legislature have allowed the pre-LB 299 spending lids to be reinstated? If the intent was not to allow the old lids to return, why did the Legislature leave these provisions in place, effectively suspending but not eliminating the old law? These questions relate back to what Lynn Rex of the League of Nebraska Municipalities had said during the public hearing for LB 989 when she referred to the bill as an unfair change in plans. In the final analysis, one cannot help but lend some credibility to the

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<sup>1738</sup> Id., 2 April 1998, 1676-77.

<sup>1739</sup> Id., 7 April 1998, 1818.

words spoken by Senator Landis on General File when he referred to the bill as the Governor's own political agenda. And it may have been the Governor's agenda, but the vast majority of legislators bought into that agenda.

There is, however, another perspective on the genesis of LB 989 that should not be overlooked, and this perspective requires an inward look at the activities of local governments and their representative organizations. Since the passage of the property tax relief package in 1996, it was widely believed that groups adversely affected by the levy and spending limits would attempt to improve their circumstances even before the levy limits took effect. LB 306, introduced in 1997, was a prime example of the effort to create more levying authority for schools (in this case for school building construction). The result of these efforts was a heightened awareness and resistance among certain lawmakers and the administration to carefully guard the underlying goal for real and lasting property tax relief. This guardianship would be encountered time after time, particularly within the Revenue Committee, when proposals to carve more room within the levy limits were systematically turned away.

As passed and signed into law, LB 989 implemented a permanent budget lid on expenditures for schools and on restricted funds for all other political subdivisions effective for 1998-99 and beyond. For school districts, the new law lowered the basic allowable growth rate for general fund expenditures (other than special education) to 2.5%, with a growth range up to 4.5%. The new law required NDE to determine and certify the applicable allowable growth percentage for each local system by December 1st of each year rather than July 1<sup>st</sup>. LB 989 required the Revenue Committee to annually review the base limitation to determine whether changes in prices of services and products warrant an adjustment to the base limitation. The Revenue Committee was required to hold a public hearing on or before January 15<sup>th</sup> of each year to receive and consider testimony, evidence, and reports.

LB 989 returned the student growth allowance provided under law prior to the implementation of LB 299 (1996). It allowed a school board of a Class II-VI school district to exceed the basic allowable growth rate by up to an additional 1% with the



affirmative vote of at least 75% of the board. While existing law already permitted a district to exceed the lid by submitting the issue to the voters within the district, LB 989 inserted new language to state that the issue may be approved on the same ballot as a vote to exceed the levy limits. LB 989 permitted unused budget authority to carry forward.

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Table 96. Expenditure Lid Exclusions Allowed under  
LB 989 (1998) for Class II-VI School Districts

- (1) Interlocal Agreement - expenditures in support of a service which is the subject of an interlocal cooperation agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or an independent joint entity;
  - (2) Disaster Emergency - expenditures to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act;
  - (3) Judgments - expenditures to pay for judgments, except CIR orders, obtained against a school district which require or obligate a school district to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a school district;
  - (4) Early Retirement - expenditures to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment, or
  - (5) Certain Lease Purchases - expenditures to pay for lease-purchase contracts approved on or after July 1, 1997, and before July 1, 1998, to the extent the lease payments are not budgeted expenditures for fiscal year 1997-98.
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*Source:* Legislative Bill 989, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 11, p. 7 (311).

Table 97. Summary of Modifications to TEEOSA  
as per LB 989 (1998)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
6	79-1007.02	School fiscal year 1998-99 and thereafter; cost groupings; average formula cost per student; local system's formula need; calculation	Changes one of the components used to calculate the cost growth factor that is then used to calculate total estimated general fund operating expenditures for each cost grouping. LB 989 changes the component to include in the cost growth calculation one-half of any additional growth rate allowed by special action of school boards for the school fiscal year when the aid is to be distributed as determined by December 1st of the school fiscal year immediately preceding the school fiscal year when aid is to be distributed. This provision was added on Select File to provide stability in budget setting for Class Is.

Table 97—*Continued*

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
7	79-1008.01	Equalization aid; amount	Amends the minimum levy adjustment to conform with the changes made in 79-1007.02.
8	79-1023	Class II, III, IV, V, or VI district; general fund budget of expenditures; limitation	Provides that no Class II, III, IV, V, or VI district may increase its general fund budget of expenditures more than the local system's applicable allowable growth percentage.
9	79-1025	Basic allowable growth rate; allowable growth range	Eliminates obsolete language that refers to the old spending lid (3 - 5.5%); establishes the new base limitation rate under a separate section of law (§77-3446) and allows a growth range of 2%. The base rate established in §77-3446 under LB 989 is 2.5%.
10	79-1026	Applicable allowable growth percentage; determination; target budget level	Eliminates obsolete language and requires NDE to certify the allowable growth percentage calculated to four decimal places for each Class II-VI district by December 1st. Previously, the allowable growth percentage was calculated for each district by July 1st. The allowable growth percentage for each district is a linear interpolation which places schools with average or above average spending at the minimum growth rate and lower spending school districts arrayed above that figure with the very bottom spender at the maximum. A 3/4s vote of the school board would be necessary for any increase greater than 2.5%.
11	79-1028	Applicable allowable growth rate; Class II, III, IV, V, or VI district may exceed; situations enumerated	Eliminates obsolete language and an exception for capital improvements and bonded indebtedness. Since the lid is on general fund expenses, building fund expenditures are considered outside by definition. Eliminates an exception for expenditures for new programs required by state or federal law and an exception for Commission of Industrial Relations orders. Provides a new exception for expenditures to pay for lease-purchase contracts approved on or after July 1, 1997, and before July 1, 1998, to the extent the lease payments are not budgeted expenditures for fiscal year 1997-98.
12	79-1029	Basic allowable growth rate; Class II, III, IV, V, or VI district may exceed; procedure	Maintains existing language permitting a school board to exceed its applicable allowable growth rate by up to 1%. Provides that a popular vote to exceed the levy limits and a vote to exceed the budget limits may be placed before the voters on the same ballot question.
13	79-1030	Unused budget authority; carried forward	Permits unused budget authority but clarifies that such authority applies to Class I through VI schools only.

*Source:* Legislative Bill 989, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 6-13, pp. 4-9 (308-13).

### LB 306 - Levy Lid Modifications

LB 306 was one of the last bills sponsored by Senator Jerome Warner. The bill was introduced in the 1997 Session and carried over to the 1998 Session where it was finally passed, but with an entirely different purpose.

As originally introduced, LB 306 proposed to create an efficiency commission consisting of the Commissioner of Education and four members appointed by the Governor.<sup>1740</sup> The commission was to be given authority to approve or deny capital construction projects of local governments. The measure found support from such groups as the Nebraska Association of School Boards and the Nebraska Association of Hospitals and Health Systems.<sup>1741</sup>

When the bill emerged from the Revenue Committee and placed on General File on April 1, 1997, it had retained essentially the same mission but with much more detail about the duties of the commission. More importantly, it also included a levy exclusion of up to 12¢ for school districts. The levy exclusion could only be accessed if the commission approved the building project.<sup>1742</sup> The addition of the levy exclusion, while certainly appealing to school officials, was a shock to many who believed the levy limits, which had yet to become operative, carried a promise to taxpayers for property tax relief. The new levy exclusion appeared to be a major reversal in policy just one year after the passage of LB 1114 (1996).

General File debate on LB 306 began on April 30, 1997, just ten days after the death of its sponsor, Senator Jerome Warner. Senator Warner was well respected in the area of revenue-related legislation and his absence from the scene would no doubt have a bearing on LB 306. Senator Stan Schellpeper, a member of the Revenue Committee, had designated the bill as his individual priority for the 1997 Session. Senator Schellpeper

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<sup>1740</sup> Legislative Bill 306, *Require state approval of certain capital construction projects proposed by political subdivisions and create the Government Efficiency Commission*, sponsored by Sen. Jerome Warner, Nebraska Legislature, 95<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1997, title first read 14 January 1997.

<sup>1741</sup> Committee on Revenue, *Committee Statement, LB 306 (1997)*, Nebraska Legislature, 95<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1997, 1.

<sup>1742</sup> *Id.*, 2.

would find himself carrying much of the weight to sell the bill to other members of the Legislature. And almost immediately the deck appeared stacked against him.

Senator Schellpeper made a good effort to demonstrate that LB 306 represented part of the Revenue Committee's overall plan to put the property tax package into place. Other pieces of the 1997 property tax package included:

- LB 180, prioritized by Senator Coordsen, to create the Property Tax Relief Incentive Fund to help local governments cope with lids that take effect in 1998;
- LB 269, prioritized by Senator Warner, to make changes in the property tax relief package of 1996, including to lid changes for community colleges; and
- LB 271, prioritized by Senator Robinson, to change the motor vehicle property tax to a fee-based system.

However, some members of the Legislature were not entirely impressed with the need to include LB 306 as a part of the overall property tax package of 1997.

The criticism focused on two issues. First, some legislators criticized the concept of a state efficiency commission as being something akin to Orwell's "Big Brother" overlooking what should be local decisions to construct or renovate buildings.<sup>1743</sup> The second criticism should not have been a surprise to anyone. Lawmakers generally disliked the idea of granting schools a new levy exclusion even if it did require the approval of the state commission in order to access. Senator John Hilgert of Omaha was one of the outspoken critics of the new levy authority. "Frankly, to the taxpayer this is a 12-cent retreat on the 1114 commitment we made last year," Hilgert said.<sup>1744</sup>

Within a short period of time, Senator Schellpeper realized his priority bill was in trouble. The following day, May 1<sup>st</sup>, Schellpeper requested to have the bill passed over on the agenda so he could confer with other members of the Revenue Committee on possible compromises.<sup>1745</sup> "We needed to get off on some other bills to allow the body time to negotiate what to do on some of these issues," Schellpeper later said.<sup>1746</sup> In truth,

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<sup>1743</sup> Bill Hord, "Fight Delayed; Senators Advance Tax-Lid Bill," *Omaha World-Herald*, 1 May 1997, 17sf.

<sup>1744</sup> *Id.*

<sup>1745</sup> NEB. LEGIS. JOURNAL, 1 May 1997, 1770.

<sup>1746</sup> Bill Hord, "Revenue Bill Moves; Tax-Lid Changes Sit," *Omaha World-Herald*, 2 May 1997, 13sf.

LB 306 had no hope of being revived in the 1997 Session, and, in fact, no further action would be taken on the measure that year. LB 306 would become the single piece of the 1997 property tax package that did not pass. It would, however, carry over to the 1998 Session for disposition.

For many school officials, the failure of LB 306 was a bitter disappointment. The levy caps under LB 1114 (1996) did allow for an exclusion for building funds but only if the fund was “commenced” prior to April 1, 1996.<sup>1747</sup> Any building project and corresponding building fund established after this date would be subject to the maximum levy provision. The existing law permitted schools to levy up to 14.5¢ for building construction and renovation and another 5¢ for compliance with the Americans with Disabilities Act (ADA) or for abatement of hazardous materials such as asbestos. Nevertheless, by the start of the 1998 Session it appeared very likely that LB 306 would not pass so long as it contained the existing provisions. “It seems like every time we discuss the building levy we don’t get anywhere,” Senator Schellpeper said of the decision to abort the legislative effort.<sup>1748</sup>

By the start of the 1998 Session, a new and more pressing issue arose concerning the levy limitations. The issue involved the ability of local governments, particularly school districts, to place a levy override question on an election ballot in time for the first year of implementation of the maximum levies. LB 1114 (1996) stated that the maximum levy provisions would become operative for fiscal years beginning “after July 1, 1998.”<sup>1749</sup> Given this operative date, some attorneys representing school districts questioned whether a levy override election could be held prior to the July 1<sup>st</sup> date. And a few school districts, particularly hard hit by the levy limits, had an immediate need to seek a levy override in order to sustain school operations.

This was an issue that probably should have been caught prior to 1998. The Legislature had made changes to the pending levy limitation provisions in 1997, so

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<sup>1747</sup> LB 1114, Session Laws, 1996, § 1, p. 1 (1245).

<sup>1748</sup> Bill Hord, “School Bill’s Odds Long, Backer Says; A legislator says another issue is likely to take priority over the proposed building levy; Changes in LB 306,” *Omaha World-Herald*, 20 January 1998, 9sf.

<sup>1749</sup> LB 1114, Session Laws, 1996, § 1, p. 1 (1245).

legislation was available had the issue been discovered. Since it was not brought forward until the 1998 Session, there was a sense of urgency surrounding the matter, at least for some school districts. The urgency was not only related to the July 1<sup>st</sup> operative date for the levy lids, but also the April 15<sup>th</sup> deadline to provide reduction-in-force notices to school employees. Some school districts faced teacher layoffs unless additional levy authority could be obtained through an override ballot issue. All these issues combined would require a legislative initiative on the fast track in order to have any chance of helping these school districts.

The normal legislative process necessitated a public hearing on new subject matter, and this issue certainly qualified as new subject matter. Accordingly, a new bill was introduced in the 1998 Session to carry changes to the levy limitation laws. Senator Bob Wickersham, chair of the Revenue Committee, introduced LB 994 (1998) to serve as the legislative vehicle. Within this bill were not only provisions concerning the levy override elections but also cleanup provisions relating to the new motor vehicle tax and fee system. The bill also provided a timeline for the allocation process for sub-county units of government seeking levy authority from cities and counties. This would include such local governments as library districts and fire control districts that were not allotted specific levy authority under LB 1114 (1996).<sup>1750</sup>

For school districts, however, the central focus of the bill was the levy override provisions. LB 994 provided a more specific election procedure and ballot language for elections to exceed the levy limits. It created a process for a local governing body to rescind or modify a previously approved levy override ballot issue, something not considered at the time LB 1114 (1996) was passed. The bill specified that a local governing body could only pursue one levy override attempt per calendar year, but the patrons of the district may bring forward any number of petition efforts to override the levy limit as they wish during a calendar year.<sup>1751</sup> The idea was to avoid placing limits on

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<sup>1750</sup> Senator William R. Wickersham, *Introducer's Statement of Intent, LB 994 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 21 January 1998, 1.

<sup>1751</sup> Legislative Bill 994, *Change property tax levy, property tax valuation and motor vehicle tax provisions*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 9 January 1998, § 30, pp. 45-50.

the will of the people. Finally, the bill changed the operative date of the existing law concerning the ability to override the levy limits from July 1, 1998 to December 1, 1997.<sup>1752</sup> The retroactive date would permit schools and other political subdivisions to exceed the levy limits in time for the first year of implementation (1998-99).

The public hearing for LB 994 was held before the Revenue Committee on January 21, 1998. Testifiers included representatives for city and county governments, and representatives from the public education community. Al Inzerello, Westside Community Schools (Omaha), Harry Weichel, Ralston Public Schools, Virgil Horne, Lincoln Public Schools, and Russ Hicks, Johnson-Brock Public Schools all testified in support of the legislation.<sup>1753</sup> Several of the districts represented at the hearing had, in fact, planned to pursue levy override elections in the immediate future. If the provisions of LB 994 became law, these districts would have the opportunity to pursue the levy overrides much sooner. Westside Community Schools in Omaha had intended to hold their special election on March 10<sup>th</sup> so long as the legal issues were resolved with the assistance of LB 994. The school board for Ralston Public Schools had voted not to pursue an override, but a petition circulated on behalf of the district had successfully achieved the necessary number of signatures. The Ralston election would also be held on March 10<sup>th</sup> assuming all legal issues were resolved.

Within five days of the public hearing, the Revenue Committee would act to advance the provisions of LB 994, but not LB 994 itself. The committee essentially had two available options. It could advance LB 994 and ask Speaker Kristensen to have the bill special ordered on the agenda. Or the committee could use an existing vehicle already on General File (such as LB 306) and amend the contents of LB 994, along with provisions of several other bills, into the “shell” bill. In fact, it would be the latter strategy that the committee chose to take, and for a very specific reason.

LB 306, as it existed at the end of the 1997 Session, posed a real threat in the minds of some lawmakers and perhaps to the administration. The idea of creating a new

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<sup>1752</sup> Id., § 35, p. 54.

<sup>1753</sup> Committee on Revenue, *Committee Statement, LB 994 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 1.

levy exclusion for school districts could have been seen by critics as a policy reversal even before the levy limits had a chance to be put into operation. And one way to put the issue to rest, at least for the time being, would be to “gut” LB 306 during floor action and replace the contents with the provisions of LB 994.

The urgency of the situation concerning the levy override provisions in effect had school officials and representatives over a barrel. If they wanted help on the override provisions, they had to give up the levy exclusion provisions currently pending on LB 306. As part of the agreed strategy, Speaker Kristensen would assist the effort to pass the revised version of LB 306 in an expedited manner. He agreed to designate the bill as a Speaker Priority and place it on the agenda for immediate action. The deal was sealed.

The Speaker placed LB 306 back on the General File agenda on January 29, 1998. Senator Wickersham explained the situation to his colleagues and the need to adopt the revised committee amendments to LB 306 in order to help school districts with the levy override elections. Senator Schellpeper, whose priority bill it had been in 1997, explained that the idea to forgo the levy exclusion provisions in the original committee amendment came about during the interim period. Schellpeper explained:

In hearings last summer with the Revenue Committee and Education Committee, basically, there was a lot of different ideas and a lot of different views of what that should be used for, how much it should be, whether it should be 15 cents, whether it should be 3 cents, or 5 cents. And the committee decided that maybe we’re not ready to move this forward yet this year.<sup>1754</sup>

Schellpeper said the levy override provisions were simply more crucial at that particular time than the levy exclusion provisions. “But the building fund levy is not dead, it will come back, we will address it later on,” he added.<sup>1755</sup> In truth, the issue would not return.

Perhaps aided through a substantial lobbying effort by public school interests, the discussion on the new version of LB 306 progressed smoothly. Legislators were made aware prior to the debate of the importance to pass the bill as soon as possible. Senator

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<sup>1754</sup> Legislative Records Historian, *Floor Transcripts, LB 306 (1998)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 29 January 1998, 10950.

<sup>1755</sup> Id., 10951.



Ardyce Bohlke, chair of the Education Committee, spoke to her colleagues about “getting this done” as urgently as possible.<sup>1756</sup> And, after a very short discussion, the revised committee amendments to LB 306 were adopted by a unanimous 26-0 vote.<sup>1757</sup> The bill would be advanced as amended to second-round consideration on a 35-0 vote.<sup>1758</sup>

Select File debate, occurring on February 5<sup>th</sup>, would move even faster than first-round debate. The Revenue Committee would add yet more provisions to the bill at this stage via a second omnibus committee amendment.<sup>1759</sup> While clearly on the fast track, LB 306 gave rise to an opportunity for members of the Revenue Committee to pile on a number of necessary revenue-related provisions. The legislation had become what Senator Jim Jensen of Omaha referred to as one of those “Heinz 57 bills, because it seems to be about 57 varieties in this one bill.”<sup>1760</sup> The bill advanced on a voice vote.<sup>1761</sup>

By the time LB 306 arrived at the third and final stage of consideration on February 12<sup>th</sup>, it had grown in both scope and length, and incorporated provisions from four different bills from the 1998 Session, including LBs 935, 994, 1054, and 1153. As amended, LB 306 contained provisions to eliminate the “preliminary” property tax levy, which was first enacted by LB 1085 (1996). It changed, from November 1<sup>st</sup> to October 15<sup>th</sup>, the date by which a county board of equalization must levy taxes each year for the current year. It also provided that the property “tax request” for the prior year would be the property tax request for the current year for purposes of the levy set by a county board of equalization, unless the governing body of a political subdivision passes by a majority vote a resolution or ordinance setting the tax request at a different amount. The bill provided that the property tax levy authority of certain miscellaneous districts would be determined by the county board of the county in which the greatest portion of the political subdivision’s valuation is located. The bill allowed a political subdivision (other

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<sup>1756</sup> Id., 10956.

<sup>1757</sup> NEB. LEGIS. JOURNAL, 29 January 1998, 462.

<sup>1758</sup> Id.

<sup>1759</sup> Id., *Revenue Committee AM2968*, 3 February 1998, 518.

<sup>1760</sup> *Floor Transcripts, LB 306 (1998)*, 29 January 1998, 10953.

<sup>1761</sup> NEB. LEGIS. JOURNAL, 5 February 1998, 544.

than a Class I school district) to exceed a final levy allocation with voter approval if the vote to exceed the allocation is approved prior to October 10<sup>th</sup> of the fiscal year that is to be the first to exceed the final levy allocation.<sup>1762</sup>

As it relates to school finance law, LB 306 had both direct and indirect consequences. The changes to the levy override provisions did not directly modify the statutes comprising the TEEOSA. But these changes would naturally have a bearing on the calculation of state aid since the success of a levy override election would result in additional resources to the school district.

The direct changes to TEEOSA did not receive as much attention during the public hearing and floor debate stages. The sole substantive change to the formula itself involved the inclusion of motor vehicle tax receipts as formula resources. In fact, LB 306 served as a cleanup bill, of sorts, to LB 271 (1997), which eliminated the property tax-based motor vehicle tax system. The 1997 legislation imposed instead a tax and fee system based on the age and type of vehicle. LB 306 would serve nicely as a technical modification bill to LB 271 (1997) due, in part, to the expedited effort to pass the legislation early in the 1998 Session.

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Table 98. Changes under LB 306 (1998) Relevant  
to the New Motor Vehicle Tax and Fee System

- Clarification that a county treasurer must distribute motor vehicle tax funds upon receipt from the State Treasurer to taxing agencies within the county in the same proportion that the levy of each such taxing agency bears to the total of such levies of all taxing agencies in the county.
- Resolution of the problem that if a taxing district has been annexed, merged, dissolved, or in any way absorbed into another taxing district, any apportionment of motor vehicle tax funds to which the taxing district would have been entitled would be apportioned to the successor taxing district that assumes the functions of the former taxing district.
- Requirement that the Department of Motor Vehicles annually furnish to the State Treasurer, by March 1<sup>st</sup>, a tabulation showing the total number of original motor vehicle registrations in each county for the immediately preceding calendar year, which will be the basis for computing the distribution of motor vehicle tax funds.

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<sup>1762</sup> Nebraska Legislative Research Division, "A Review: Ninety-Fifth Legislature, Second Session, 1998," June 1998, 100-103.

Table 98—*Continued*

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- Resolution of the problem that if a motor vehicle registration expired during 1997, the taxes and fees on renewal must be calculated under the law as it existed on December 31, 1997, regardless of when the taxes and fees are paid.
  - Elimination of references to the Property Tax Administrator with references to the Department of Motor Vehicles in relation to such duties as determining the value of vehicles weighing up to five tons and certifying such determinations to the proper county official of each county by November 15<sup>th</sup> (formerly September 1<sup>st</sup>).
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*Source:* Nebraska Legislative Research Division, “A Review: Ninety-Fifth Legislature, Second Session, 1998,” June 1998, 100-103.

For school districts, LB 306 provided that motor vehicle tax receipts constitute “other actual receipts” for purposes of calculating formula resources under the school finance laws.<sup>1763</sup> The existing law already included pro rata motor vehicle license fee receipts, which referred to the old property tax-based system. LB 306 clarified that motor vehicle tax receipts, referring to the new system, received by local school systems after January 1, 1998 would constitute “accountable receipts.” It was intended all along that these receipts be counted, but it had not been expressly provided under LB 271 (1997).

LB 306 passed with the emergency clause attached on February 12, 1998 by a 42-1 vote.<sup>1764</sup> It took only 14 days, from the time of first-round debate to Final Reading, to place the bill on the Governor’s desk. Governor Nelson signed the bill into law the same day he received it on February 12<sup>th</sup>.<sup>1765</sup> The addition of the emergency clause meant the bill would be operative one day after the Governor signed into law (i.e., February 13<sup>th</sup>). The passage of LB 306 effectively gave the green light to those school districts with pending levy override elections. As Table 99 illustrates, no less than 25 school districts set election dates for levy override questions prior to July 1, 1998, the former effective date for the excess levy limit authority. Had LB 306 not passed, these school districts would have had to wait until after July 1, 1998 to pursue levy override elections.

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<sup>1763</sup> Legislative Bill 306, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 43-44, pp. 22-23 (67-69).

<sup>1764</sup> NEB. LEGIS. JOURNAL, 12 February 1998, 609.

<sup>1765</sup> *Id.*, 627.

Table 99. 1998 Levy Override Elections

[Passed=20; Failed=10]

<i>Public School</i>	<i>Date of Election</i>	<i>Levy asking / Number of years</i>	<i>Vote Result</i>	<i>Vote Count</i>
Omaha Westside	Mar. 10	\$1.32 / 5 yrs.	Passed	3,235-3,172
Ralston	Mar. 10	\$1.27 / 3 yrs.	Failed	1,507-2,270
Meridian	Mar. 10	\$1.36 / 3 yrs.	Passed	393-77
Chester-Hubbell-Byron	Mar. 10	\$1.45 / 3 yrs.	Passed	359-62
Hebron	Mar. 10	\$1.40 / 5 yrs.	Passed	608-251
Wausa	Mar. 17	\$1.30 / 3 yrs.	Passed	368-106
Scribner	Mar. 17	\$1.30 / 5 yrs.	Failed	373-376
Johnson-Brock	Mar. 24	\$1.60 / 3 yrs.	Passed	478-195
Bloomfield	Mar. 31	\$1.30 / 2 yrs.	Passed	468-307
South Platte	Mar. 31	\$1.25 / 3 yrs.	Failed	170-242
Chappell	Mar. 31	\$1.28 / 3 yrs.	Passed	279-201
Arthur	Mar. 31	\$1.35 / 3 yrs.	Passed	163-63
Nelson	Apr. 7	\$1.30 / 3 yrs.	Passed	285-113
Lawrence	Apr. 7	\$1.60 / 3 yrs.	Passed	294-42
Sandy Creek	Apr. 7	\$1.25 / 3 yrs.	Failed	384-417
Morrill	Apr. 7	\$1.30 / 5 yrs.	Failed	308-311
Hildreth	Apr. 7	\$1.25 / 3 yrs.	Passed	306-36
East Butler	Apr. 7	\$1.20 / 5 yrs.	Failed	330-363
Waterloo	Apr. 7	\$1.35 / 3 yrs.	Failed	172-264
Elmwood-Murdock	Apr. 7	\$1.25 / 3 yrs.	Passed	305-186
Culbertson	May 12	\$1.25 / 3 yrs.	Passed	204-133
Hershey	May 12	\$1.30 / 1 yrs.	Passed	438-333
Medicine Valley	May 12	\$1.30 / 3 yrs.	Failed	116-336
Emerson-Hubbard	May 12	\$1.30 / 3 yrs.	Failed	263-517
Republican Valley	May 12	\$1.39 / 3 yrs.	Passed	311-110
Allen	July 14	\$1.30 / 3 yrs.	Passed	193-89
Scribner (2nd try)	July 14	\$1.30 / 4 yrs.	Failed	415-430
Lodgepole	July 28	\$1.35 / 3 yrs.	Passed	305-30
Giltner	Aug. 4	\$1.25 / 2 yrs.	Passed	205-41
Beemer	Aug. 11	\$1.30 / 3 yrs.	Passed	299-83

Source: Nebraska Council of School Administrators, "NCSA Levy Override Monitor," Internet, available at <http://www.ncsa.org/links/override.htm>, accessed 8 August 2004.

Table 100. Summary of Modifications to TEEOSA  
as per LB 306 (1998)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
42	79-1003	Terms, defined	Editorial change to definition of "special education allowance" in order to provide the correct subsection citation reference under § 79-1018.01 due to the addition of a new actual receipt category (motor vehicle tax receipts).

Table 100—*Continued*

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
43	79-1018	School fiscal years before 1998-99; district formula resources; other receipts included	Inserts “motor vehicle tax receipts” as a new category of actual receipts for purposes of calculating district formula resources.
44	79-1018.01	Local system formula resources; other actual receipts included	Inserts “motor vehicle tax receipts” as a new category of actual receipts for purposes of calculating formula resources beginning on January 1, 1998.

*Source:* Legislative Bill 306, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 42-44, pp. 20-24 (65-69).

#### LB 1134 and LB 1219 - Reorganization Incentives

LB 1134 (1998) modified a reorganization incentive program created under LB 1050, a comprehensive school finance measure passed in 1996. The program was created with the intent to “encourage consolidation” of school districts by offering monetary incentives for a three-year period in order to “reward the reorganized districts for their efforts to increase efficiency in the delivery of educational services.”<sup>1766</sup> To qualify, the reorganization had to occur within a five-year window of time (May 31, 1996 to August 2, 2001). The State Committee for the Reorganization of School Districts was given the authority to approve or deny applications for incentive funds if the reorganized district met certain requirements and would “most likely result in more efficiency in the delivery of educational services or greater educational opportunities.”<sup>1767</sup>

The incentive payments were based upon the number of students in the consolidating districts being moved from one tiered cost to a lower tiered cost. An incentive payment schedule was inserted into LB 1050 for the purpose of calculating the total incentive payments due to each approved reorganized district. The incentive payments would be paid from equalization funds under TEEOSA such that each year 1% of the total amount of available equalization funds would be set aside for incentive

<sup>1766</sup> LB 1050, Session Laws, 1996, § 19, pp. 17-18 (1131-32).

<sup>1767</sup> *Id.*, p. 18 (1132).

payments.<sup>1768</sup> As an example, for the 1996-97 school year, the program required about \$3.34 million to be set aside from a total pool \$334 million in available equalization funds.<sup>1769</sup> Naturally, this meant a shift of funds to reorganized districts from other districts entitled to equalization aid.

In 1998, Senator Ray Janssen of Nickerson introduced LB 1134 to make several changes and additions to the reorganization incentive program based upon concerns brought to his attention by his own constituent school districts and others across the state. The bill, as originally introduced, had three major goals. First, and perhaps most important, it changed the timeline for first-year incentive payments. Prior to 1998, payments were not made until at least the second fiscal year following the reorganization. This translated into a significant lag time between the time incentive payments were approved and the time payments actually commenced.

LB 1134 required that payments be made the first year in which the district offers educational services beginning with reorganizations that occur during the 1997-98 school year.<sup>1770</sup> “Improving the timing of these incentives might make a big difference in encouraging a school district to reorganize,” Janssen said during the public hearing for LB 1134 on January 27, 1998.<sup>1771</sup> Janssen argued that reorganized school districts potentially face immediate funding shortages at the time of reorganization. He listed the causes as hiring new staff, adjusting pay scales, and improving facilities. If the Legislature truly wished to encourage consolidation, Janssen said, then the incentive funds would be forthcoming sooner rather than later.

Second, the legislation proposed to double the reorganization incentives paid when the reorganization involved Class VI (high school only) and Class I (elementary

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<sup>1768</sup> Id., p. 19 (1133).

<sup>1769</sup> *Fiscal Impact Statement, LB 1050 (1996)*, 1 April 1996, 2.

<sup>1770</sup> Legislative Bill 1134, *Change Tax Equity and Educational Opportunities Support Act provisions relating to reorganization incentives*, sponsored by Sen. Ray Janssen, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 13 January 1998, § 2, pp. 3-4.

<sup>1771</sup> Committee on Education, *Hearing Transcripts, LB 1134 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 27 January 1998, 24.

only) school districts.<sup>1772</sup> This policy change, Janssen alleged, was justified on several grounds. For one thing, he said, the existing incentive payment schedule seemed geared toward two or more K-12 districts reorganizing rather than a Class VI and one or more Class I districts. The existing schedule did in fact separate payments by grade ranges (i.e., K-6, 7-8, and 9-12). A Class VI district reorganizing with one or more Class I district might only qualify for incentive funds from two of the three grade ranges even though the newly formed K-12 would offer instruction in all grade ranges. Another consideration, particularly brought out by subsequent proponent testifiers at the public hearing, concerned the additional expense of paying teachers at comparable salary levels with other K-12 districts. Teachers from the former Class I districts, for instance, may require payment of higher salaries under negotiated contracts by the reorganized district.

The third major provision of LB 1134, as introduced, created a hold harmless provision for reorganized school districts. The provision would ensure that school districts forming a reorganized district would receive, for the first year as a reorganized district, at least 100% of the state aid that the individual districts would have otherwise received in the previous year.<sup>1773</sup> “This protection would allow the district to have certainty in planning as they go through the reorganization process,” Janssen said.<sup>1774</sup>

Both the incentive funds and the cost of the hold harmless provision would be paid from a newly created Reorganized School Assistance Fund, which would be allocated an annual transfer of 1% of the TEEOSA funds.<sup>1775</sup> This would essentially maintain the existing process, except that, under the existing provision, any incentive funds remaining after each fiscal year were rolled back into the equalization formula.

There were no opponent testifiers at the public hearing for LB 1134. There were questions raised about whether some Class I districts were able to hold back significant cash reserves, which would, if true, require some measure of accountability within the reorganization process. Senator Janssen cast doubt about the claim:

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<sup>1772</sup> LB 1134 (1998), § 3, p. 16.

<sup>1773</sup> Id., § 4, pp. 16-17.

<sup>1774</sup> *Hearing Transcripts, LB 1134 (1998)*, 25-26.

<sup>1775</sup> LB 1134 (1998), § 3, p. 15.

Cash reserves, I don't think the Class I schools out there, after the last few years, have any cash reserves left. If there is, it doesn't amount to anything. So I think the horror stories of the large cash reserves is not the situation in most of the consolidated districts anyway.<sup>1776</sup>

Janssen stressed several times during the hearing that it was the responsibility of the Legislature to ensure proper operation of the incentive program. "I believe that it is time that we put our money where our mouth is and make the changes necessary to help make these incentives really work for the school districts," he said.<sup>1777</sup> He felt so strongly about the necessary changes that he designated LB 1134 as his individual priority bill for the 1998 Session.<sup>1778</sup>

The Education Committee obviously agreed with at least some assertions made by Senator Janssen. Approximately two weeks after the hearing, the committee voted unanimously (8-0) to advance the bill to General File, but not exactly in the form Janssen would have preferred.<sup>1779</sup> During closed session, the committee voted to eliminate the provision that would double incentive payments to reorganizations involving Class VI and Class I districts. The committee also eliminated the hold harmless provision, which would have provided at least 100% of the state aid that the individual districts would have otherwise received in the previous year. But the committee did preserve what Janssen, himself, called the "main goal of the bill," which was to move up the timeline for payment of reorganization incentives.<sup>1780</sup> Under the committee amendments, reorganization incentives (for reorganizations in 1997-98 and beyond) would be paid beginning in the year following the year in which the reorganization occurs rather than in the second year after the reorganization as the law previously provided.<sup>1781</sup>

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<sup>1776</sup> *Hearing Transcripts, LB 1134 (1998)*, 57.

<sup>1777</sup> *Id.*, 26.

<sup>1778</sup> NEB. LEGIS. JOURNAL, 15 January 1998, 336.

<sup>1779</sup> Committee on Education, *Executive Session Report, LB 1134 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 12 February 1998, 1.

<sup>1780</sup> *Hearing Transcripts, LB 1134 (1998)*, 21.

<sup>1781</sup> NEB. LEGIS. JOURNAL, *Com AM3137*, 13 February 1998, printed separate, 639. Committee Amendments to LB 1134 (1998), *Com AM3137*, § 2, p. 3.



During first-round debate on February 24, 1998, the body was accepting of LB 1134, as proposed by the committee amendments. The only real item of controversy, perhaps confusion, involved a one-time transfer of \$2 million from the State's Cash Reserve Fund to the newly created Reorganized School Assistance Fund under LB 1134.<sup>1782</sup> In truth, the transfer was necessary to make incentive payments for reorganizations occurring in 1997-98. Since state aid to schools had already been certified for 1998-99, there was no practical way to set aside \$2 million from equalization funds for the 1997-98 fiscal year. The transfer would be made from the Cash Reserve Fund and then repaid from equalization funds the following year. For 1999-00, 2000-01 and 2001-02, the committee amendments required \$2 million to be set aside for first year incentive payments from the amount appropriated for equalization aid.<sup>1783</sup> Any funds remaining from the annual set-aside amount would be funneled back into equalization aid the following year.

After an explanation of the proposed transfer process, the committee amendments were adopted by a unanimous 29-0 vote, and the bill was then advanced to second-round debate on a 30-1 vote.<sup>1784</sup>

Select File debate occurred on March 10<sup>th</sup>. Senator Janssen would make a last unsuccessful bid to reinsert the hold harmless provision contained in the original bill.<sup>1785</sup> Janssen had several pending reorganization efforts within his own legislative district, and he was aware of other efforts across the state. Senator Bohlke pointed out, however, that at least one of the reorganized districts within Senator Janssen's legislative area had an increase in property valuation due to the reorganization. The increase in valuation, she said, meant more revenue from property taxes and, correspondingly, less state aid. Senator Wickersham came to Bohlke's assistance by distinguishing state policy to reduce the disincentives to reorganize and new state policy to afford "special treatment" just

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<sup>1782</sup> Committee Amendments to LB 1134 (1998), *Com AM3137*, § 3, pp. 9-10.

<sup>1783</sup> *Id.*, § 4, pp. 15-16.

<sup>1784</sup> NEB. LEGIS. JOURNAL, 24 February 1998, 751.

<sup>1785</sup> *Id.*, *Janssen AM3229*, 6 March 1998, 945.

because districts choose to reorganize.<sup>1786</sup> Wickersham and Bohlke would both argue that making special allowances for increases in valuation might lead to calls for special allowances due to other circumstances, such as reductions in enrollment or corrections in state aid from the previous year. The Janssen amendment, they argued, would lead to a slippery slope of endless special circumstances disserving of a hold harmless provision.

Janssen argued that the Legislature needed to determine how serious it was about encouraging consolidation. If, he alleged, the Legislature was serious about encouraging reorganization then it would do all it could to make the concept attractive to schools. Janssen reminded his colleagues that he was not advocating any new appropriations to fund the hold harmless provision. The hold harmless payments would derive from the same \$2 million pot of money set aside for base year incentive payments. And Senator Janssen was not alone in his fight for adoption of the hold harmless amendment. Senator Jones and Bromm were also helpful to his cause. In the end, however, the votes were simply not on Janssen's side. His amendment failed on an 11-25 vote.<sup>1787</sup>

LB 1134 would pass on April 2<sup>nd</sup> by a 43-2 vote.<sup>1788</sup> Governor Johanns signed the bill into law on April 8, 1998.<sup>1789</sup>

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Table 101. Summary of LB 1134 (1998)  
as Passed and Signed

- Change the reorganization incentive program created under LB 1050 (1996), which provides incentive payments to approved reorganized districts for three years;
- Allow reorganization incentives to be paid beginning in the year following the year in which the reorganization occurs rather than in the second year after the reorganization;
- Allow base year incentives to be paid in 1998-99, 1999-00, 2000-01 and 2001-02;
- Change existing law to allow incentive payments through July 1, 2004 rather than up to July 1, 2006, since the legislation moved up the payment of base year funds;

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<sup>1786</sup> Legislative Records Historian, *Floor Transcripts, LB 1134 (1998)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 10 March 1998, 13134.

<sup>1787</sup> NEB. LEGIS. JOURNAL, 10 March 1998, 987.

<sup>1788</sup> Id., 2 April 1998, 1681.

<sup>1789</sup> Id., 8 April 1998, 1874.

Table 101 — *Continued*

- Establish a Reorganized School Assistance Fund from which first year reorganization incentives would be paid in 1998-99 since state aid for 1998-99 had already been certified;
- Transfer \$2 million from the State's Cash Reserve Fund to the Reorganized School Assistance Fund to make payments in 1998-99;
- Require a \$2 million transfer by September 1, 999 from the State's General Fund to the Reorganized School Assistance Fund, which amount would be immediately transferred to the Cash Reserve Fund to payback the \$2 million used to pay reorganization incentives in 1998-99;
- Terminate the Reorganized School Assistance Fund on September 2, 1999;
- Reduce the appropriation of state aid for TEEOSA by \$2 million in 1999-00 to offset the \$2 million transfer made from the General Fund to the Cash Reserve Fund;
- Require \$2 million be set aside in 1999-00, 2000-01 and 2001-02 for first year incentive payments from the amount appropriated for TEEOSA aid;
- Reappropriate any funds remaining from the annual set-aside for TEEOSA aid in the following year;
- Prorate the annual set-aside if the \$2 million is insufficient for first year incentive payments; and
- Exclude incentive funds from formula resources for purposes of calculating state aid.

*Source:* Legislative Bill 1134, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 1-5, pp. 1-6 (576-81).

Table 102. Summary of Modifications to TEEOSA  
as per LB 1134 (1998)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
1	79-1001	Act, how cited	Change the citation of TEEOSA. A new section of TEEOSA was added to create the Reorganized School Assistance Fund and to provide for a transfer of funds from the State's Cash Reserve Fund to the newly created fund.
2	79-1003	Terms, defined	Change definition of "base fiscal year" for school district reorganizations that occur during or after the 1997-98 school fiscal year to mean the first school fiscal year following the fiscal year in which the reorganization occurred.

Table 102—*Continued*

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
3	79-1010.01	Reorganized School Assistance Fund; created; use; investment; termination  [new section]	Establish a Reorganized School Assistance Fund from which first year reorganization incentives would be paid in 1998-99 since state aid for 1998-99 had already been certified. Transfer \$2 million from the State's Cash Reserve Fund to the Reorganized School Assistance Fund to make payments in 1998-99. Require a \$2 million transfer by September 1, 1999 from the State's General Fund to the Reorganized School Assistance Fund, which amount would be immediately transferred to the Cash Reserve Fund to payback the \$2 million used to pay reorganization incentives in 1998-99. Terminate the Reorganized School Assistance Fund on September 2, 1999. Reduce the appropriation of state aid for TEEOSA by \$2 million in 1999-00 to offset the \$2 million transfer made from the General Fund to the Cash Reserve Fund.
4	79-1010	Incentives to reorganized districts and unified systems; qualifications; requirements; calculation; payment	Allow base year incentives to be paid in 1998-99, 1999-00, 2000-01 and 2001-02. Change existing law to allow incentive payments through July 1, 2004 rather than up to July 1, 2006, since the legislation moved up the payment of base year funds. Require \$2 million be set aside in 1999-00, 2000-01 and 2001-02 for first year incentive payments from the amount appropriated for TEEOSA aid. Re-appropriate any funds remaining from the annual set-aside for TEEOSA aid in the following year. Prorate the annual set-aside if the \$2 million is insufficient for first year incentives. Exclude incentive funds from formula resources for purposes of calculating state aid.

*Source:* Legislative Bill 1134, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 1-4, pp. 1-6 (576-81).

Legislative Bill 1219 (1998) represents an example of grassroots policy development, and what Senator Ardyce Bohlke called “a creative way” to address the issue of consolidation.<sup>1790</sup> The bill was sponsored and prioritized by Senator “Cap” Dierks of Ewing and sought to implement a new form of reorganization. Under LB 1219, two or more Class II or III (K-12) districts may form a “unified system” as a sort of trial consolidation.<sup>1791</sup> If the trial period proved successful, the unified system may opt to

<sup>1790</sup> Committee on Education, *Hearing Transcripts, LB 1219 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 9 February 1998, 55.

<sup>1791</sup> Legislative Bill 1219, *Provide for unified school systems and temporary mitigation funds*, sponsored by Sen. Ardyce Bohlke, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, title first read, 20 January 1998, § 8, pp. 8-9.

formally consolidate into one local system, one identity. However, during the unification period, the individual districts comprising the unified system would retain most of their own identity. The districts would retain their individual district names, athletic programs, curriculum, etc. Senator Bohlke quipped during the public hearing that the process was similar to “being engaged to get married,” a time to try out the feel of being consolidated without necessarily being consolidated.<sup>1792</sup>

The idea originated from school officials within Senator Dierks’ legislative district. Representatives from the K-12 public school systems of Orchard, Clearwater, Ewing, and Elgin spoke to Senator Dierks during the 1997 interim about forming a type of “super district.”<sup>1793</sup> As Al Schleuter, superintendent of Orchard Public Schools, testified, “We believe the intent of the bill is to allow schools, such as our four districts, to unify under one central administrative district and still allow our districts to maintain their present facilities and K-12 status.”<sup>1794</sup> Each participating school system would retain its own school board, and at least one school board member from each system would comprise the unified system school board, the super board.<sup>1795</sup>

As introduced, LB 1219 defined unified system as two or more Class II or III school districts participating in an interlocal agreement with approval from the State Committee for the Reorganization of School Districts. Class I districts also may be part of the interlocal agreement. The bill provided that state aid and property tax resources were to be shared by the unified system. The board of a unified system would determine the general fund levy for all participating districts and the distribution of tax resources and state aid.<sup>1796</sup>

The interlocal agreement would also specify whether personnel would be employed by the individual districts or by the unified system. For any certificated staff employed by the unified system, tenure and seniority as of the effective date of the

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<sup>1792</sup> *Hearing Transcripts, LB 1219 (1998)*, 55.

<sup>1793</sup> *Id.*, 58.

<sup>1794</sup> *Id.*, 60.

<sup>1795</sup> LB 1219 (1998), § 8, p. 9.

<sup>1796</sup> *Id.*, § 8, pp. 8-11.

interlocal agreement would be transferred to the unified system and tenure and seniority provisions would continue in the unified system. If a district withdraws from the unified system or if the interlocal agreement expires, certificated staff employed by a participating district immediately prior to the unification would be reemployed by the original district and tenure/seniority as of the effective date of the withdrawal or expiration would be transferred to the original district. The interlocal agreement would address how certificated staff hired by the unified system, and not employed by a participating district immediately prior to the unification, would be treated if the interlocal agreement expires and is not renewed.<sup>1797</sup>

Application for a unified system would be made to the State Committee for the Reorganization of School Districts. If the interlocal agreement complies with the provisions of the act and all school boards of the participating districts have approved the interlocal agreement, the state committee must approve the application. The “super board” established in the interlocal agreement may begin meeting any time after the application has been approved by the state committee. Upon granting the application for unification, NDE would be required to recognize the unified system as a single Class II or III district for purposes of state aid, budgeting, accreditation, enrollment of students, state programs, and reporting. The class of district would be the same as the majority of participating districts, excluding Class I districts. If there were an equal number of Class II and Class III districts in the unified system, the unified system would be recognized by NDE as a Class III district.<sup>1798</sup>

Unified systems would be eligible for incentive payments through the state aid formula under the 1% set aside from TEEOSA funds. In order to encourage unification, incentive payments would be paid to each unified system based on grade ranges for a three-year period. Incentive payments would be calculated based on average daily membership in each affected district in the school year immediately preceding the first year of the unification. The unified system would receive 100% of the incentive

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<sup>1797</sup> Id.

<sup>1798</sup> Id.

payments calculated for the base fiscal year, 75% for the second year, and 50% for the third year.<sup>1799</sup> The base fiscal year was defined as the first school fiscal year following the school fiscal year in which the unification occurred.<sup>1800</sup>

The new local system would be allowed to maintain its unification status for a period of seven years. If the unified system discontinues its status as a unified system and does not consolidate prior to the beginning of the eighth year as a unified system, the districts in the unified system must pay back the incentives. The total incentives paid to the unified system would be divided between the districts based on the adjusted valuation of each district in the year prior to the discontinuation of the unified system, and each district's share must be paid back through reductions in state aid in equal amounts for five years. The bill provided that no incentive payments would be made after July 1, 2006, which created a limited window of opportunity for creation of unified systems.<sup>1801</sup>

LB 1219 was generally well received at the public hearing on February 9, 1998. Those offering support for the measure included the Nebraska Rural Community Schools Association, the Nebraska State Education Association, and the Commissioner of Education, Doug Christensen, who represented the State Board of Education.<sup>1802</sup> “We need this model out there so that other schools can see how we can do this and how we can do it right,” Christensen said.<sup>1803</sup> The commissioner added that there were three equally important issues surrounding the unification theory: “unifying on the concept of governance, unifying on the concept of finance, and unifying on the concept of curriculum.”<sup>1804</sup> Christensen stated that he and his staff had recently conducted area meetings, in part, to speak with school officials about the unification process and to encourage them to contact the four schools that originated the idea. Said Christensen:

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<sup>1799</sup> Id., § 10, pp. 20-26.

<sup>1800</sup> Id., § 9, p. 13.

<sup>1801</sup> Id., § 10, pp. 25-26.

<sup>1802</sup> Committee on Education, *Committee Statement, LB 1219 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 1.

<sup>1803</sup> *Hearing Transcripts, LB 1219 (1998)*, 69.

<sup>1804</sup> Id., 70.

We have talked to numerous other boards of education groups, administrative groups, and teacher groups about this same concept, getting a very favorable response. So once this particular union takes off, I would think that you will see a domino effect that others will look at it seriously. However, they need the incentives provided to make this happen.<sup>1805</sup>

Incentive payments may have been an important element of the unification process, but it certainly was not the only consideration, especially for the group representing teachers.

Attorney Mark McGuire, representing the NSEA, called the legislation “innovative and creative” and said it presented “a great amount of opportunity,” but he also had some issues to address relevant to collective bargaining within the concept of unification.<sup>1806</sup> McGuire had been involved with many of the major labor-oriented legislative initiatives concerning collective bargaining agreements and related issues. One of his major clients was the designated labor organization for Nebraska teachers, the NSEA, which retained his services beginning in 1974. McGuire’s concerns with LB 1219 were embodied in several *friendly* amendments designed to clarify the relationship of the new unified system to certificated instructional staff.

The first proposed amendment involved clarification that the unified system would be the employer for purposes of collective bargaining. The second involved clearer language stating that certificated personnel would become employees of the unified system. The third and final suggestion by McGuire addressed the hiring of new staff by the unified system and what would become of them if the unified system dissolved at some point in time. McGuire asked that language be included to designate the reduction-in-force policy adopted by the unified system’s super board as the appointed instrument to serve these particular employees.<sup>1807</sup> Those certificated staff employed prior to unification by a participating district would retain employment within the participating district if the unified system dissolved.<sup>1808</sup>

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<sup>1805</sup> Id.

<sup>1806</sup> Id., 65.

<sup>1807</sup> Id., 65-66.

<sup>1808</sup> LB 1219 (1998), § 8, p. 9.



The Education Committee would take action to advance LB 1219 on March 3, 1998 by a unanimous 7-0 vote.<sup>1809</sup> The committee amendments incorporated many of the suggestions made during the public hearing. The amendments stipulated that the unified system would be the employer for all certificated staff. The certificated staff hired by the unified system without being employed by a participating district prior to the unification would be subject to the reduction-in-force policy of the system if the agreement expires and is not renewed. The amendments clarify that the unified system would be deemed an employer for purposes of the Industrial Relations Act.<sup>1810</sup>

The bulk of the committee amendments contained language to permit limited re-affiliation of Class I districts in contemplation of unification. The amendments clarified that Class I districts could only participate in a unified system if the entire valuation was included within the unified system. A Class I district with more than 50% of its valuation affiliated with a single Class II or III district participating in a unified system may re-affiliate so that the entire valuation is affiliated with the Class II or III district. Similarly, if there is not 50% of the valuation affiliated with a single Class II or III district, the Class I district may re-affiliate so that its entire valuation is affiliated with a Class II or III district participating in a unified system.<sup>1811</sup>

Lastly, the committee amendments required a district withdrawing from a unified system prior to the beginning of the eighth year to repay incentives attributable to the district's participation. A provision was added to require interest to be calculated from the date the incentives were paid until the estimated repayment date for any repayments.<sup>1812</sup>

From the time the bill was introduced until the time it was advanced from committee, LB 1219 received strong support. It was a creative, innovative idea. It would encourage other districts to follow suit. It would enhance the educational opportunities of

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<sup>1809</sup> Committee on Education, *Executive Session Report, LB 1219 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 3 March 1998, 2.

<sup>1810</sup> NEB. LEGIS. JOURNAL, *Com AM3580*, 9 March 1998, 962-63.

<sup>1811</sup> *Id.*

<sup>1812</sup> *Id.*

students. But as the bill was prepared for first-round floor debate, the exuberance behind the legislative proposal would be tempered with skepticism by some and outright opposition from others. There were, after all, some serious policy issues to be addressed in the underlying proposition of unified school systems.

Unlike LB 1134, the other reorganization bill of the 1998 Session, LB 1219 would involve a much more lengthy deliberation due to the creation of an entirely new type of school organization. As one would expect, LB 1219 would foster general discussions on school finance and school organization. The very nature of the legislative proposal invited such philosophical discussion. Within these philosophical discussions, however, there also were discussions on the technical aspects of the legislation. Some of these debates lead to modifications of various components of the bill. As always, the art of compromise would win the day for LB 1219, but not necessarily to the full satisfaction of everyone concerned.

First-round debate would begin on March 26, 1998, just three days after Speaker Doug Kristensen designated LB 1219 a Major Proposal.<sup>1813</sup> The super priority status would ensure that the bill had an opportunity to be debated, but not necessarily final passage. In hindsight, it may have been this enhanced status that gave the legislation a chance at all, particularly in a 60-day, short session.

General File debate primarily focused on the technical, philosophical, and political aspects of the duration and outcome of unification agreements. Two camps of thought sprang from these discussions and would define the remainder of the debate. Some senators, particularly those representing urban areas, wanted a shorter unification timeline, the elimination of authority to renew the unification agreement, and more pressure placed on the participating districts to go through with the final consolidation. The other camp of thought represented the exact opposite viewpoint. They wanted to allot plenty of time for the *engagement* period and also permit the opportunity to renew the unification agreement. The one item both camps seemed to agree upon was the

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<sup>1813</sup> NEB. LEGIS. JOURNAL, 23 March 1998, 1273.

notion that a district would repay, with interest, the incentive payments if the district withdraws from the unified system or if the unified system dissolves entirely.

The first amendment addressing the duration and outcome of unification agreements was brought forward by Senator Ron Raikes of Waverly. His amendment proposed to establish a minimum two-year requirement for interlocal agreements that created a unified system and required participating districts to either remain a unified system or consolidate at the beginning of the fifth year.<sup>1814</sup> Under the Raikes amendment, districts would not be allowed to return to the status quo, as individual districts, following the fourth year of existence as a unified system. The idea would be supported by a number of legislators, but not by the chair of the Education Committee.

Senator Bohlke spoke to the Raikes amendment and admitted the minimum two-year requirement may have some justification. It would prevent any early bailouts and require at least a reasonable period of time to try out the unified arrangement. But Senator Bohlke could not agree with the idea of shortening the maximum duration of the unification agreement. She reminded her colleagues that the unified system would need a reasonable period of time to make structural and operational decisions, including decisions about retention of staff, facilities, curriculum, etc. “It gets very complicated and it’s going to cause people to make significant change in how they are reorganizing their schools,” Bohlke said.<sup>1815</sup>

The Raikes amendment resulted in one of the longer debates of any amendment offered on the bill, and would demonstrate the rural/urban split on the issue. The amendment failed by a 19-22 vote, but the narrow margin would serve to encourage further discussion on the matter.<sup>1816</sup> In fact, the very next amendment addressed by the Legislature, offered by Senator Deb Suttle of Omaha, proposed to require all participating districts to repay incentive funds if the unification dissolves without taking the next step

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<sup>1814</sup> Id., *Raikes AM4165*, 26 March 1998, 1459.

<sup>1815</sup> Legislative Records Historian, *Floor Transcripts, LB 1219 (1998)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 26 March 1998, 14827.

<sup>1816</sup> NEB. LEGIS. JOURNAL, 26 March 1998, 1470-71.

to formally consolidate.<sup>1817</sup> The committee amendments simply required repayment of funds if a participating district drops away from the unification agreement. The Suttle amendment carried an extra hammer to force participating districts to consolidate. The Suttle amendment also failed, this time by a 12-25 vote.<sup>1818</sup> Once again, the record vote demonstrated a largely rural/urban split on the issue.

The unification bill, as it came to be known, had survived any substantive changes during first-round debate, but the real battle was yet to come. Before the bill was advanced, however, LB 1219 would take on a secondary role to address an entirely different problem involving Class I districts. The focus of the issue concerned the budget setting process under the combined effects of the changes made to the state aid formula as per LB 806 (1997) and the levy limitations as per LB 1114 (1996). The recent changes in school law coupled with the affiliation and combined levy laws of the early 1990s had created an unintended and undesirable consequence.

As Senators Curt Bromm and Bob Wickersham explained during the debate, there were reported instances where the combined budgets of the primary high school district and the affiliated Class I districts would produce a levy asking that exceeded the property tax levy limitation. At the time, the levy limitation was \$1.10 for each local system, which included the primary high school district and all affiliated Class I districts. Each Class I district was required to submit its proposed budget to the high school district school board in order to establish a combined property tax asking. But nothing in existing law guaranteed a smooth process, as Senator Bromm explained:

When we have a district with a Class III that is the budget-setting district and we have several affiliated Class Is, if each entity submits their budget to the Class III and then the Class III absorbs that information and ... and adopts a budget, if that budget is over \$1.10, results in a levy over \$1.10, there is no process in the statute for how to resolve that problem. The only thing the Class III board has the authority to do is to not approve a budget for a Class I where they are proposing to spend more than the average cost per pupil when you average their cost and the Class IIIs cost for elementary students.<sup>1819</sup>

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<sup>1817</sup> Id., *Suttle AM4099*, 1471.

<sup>1818</sup> Id., 1471-72.

<sup>1819</sup> *Floor Transcripts, LB 1219 (1998)*, 26 March 1998, 14855.

The high school district was charged with the responsibility of overseeing the budget process, but it had no authority to resolve this type of problem.

In addition to the budget setting issue, another problem arose with regard to building funds established by Class I districts. LB 1114 (1996) provided an exclusion from the levy limits for building funds commenced prior to April 1, 1996. The building funds for any project commenced after this date would be subject to the maximum levy. But nothing precluded a district, including a Class I district, from initiating a building fund. This created the potential for what Senator Bromm called a “rogue building fund levy” initiated by a Class I district and forced upon the primary high school district.<sup>1820</sup>

Neither the budget setting issue nor the building fund issue amounted to a sudden revelation to lawmakers. The issues were raised during the 1997 interim period and were the subject of a legislative proposal in the 1998 Session (LB 1008). However, as time elapsed during the session, LB 1219 became one of the few viable and relevant vehicles to attach an amendment and address the problems.

Jointly introduced by Senators Bromm, Wickersham, Raikes, and Bohlke, the amendment to LB 1219 would create what Bromm called a “road map” for local systems to deal with these issues if they arise.<sup>1821</sup> The amendment added a new section to TEEOSA that provided a three-prong approach to resolving the issue if the total levy required for property tax requests for all general fund budgets in a local system exceeds the amount that can be generated by the maximum levy. In such cases, the high school district would be permitted to take “necessary steps” to comply with the maximum levy.<sup>1822</sup> The first step would be to reduce the property tax request for each district up to the amount by which the district’s budgeted general fund cash reserve exceeds 15% of the district’s general fund budget of expenditures for the preceding school fiscal year. It was estimated that 15% cash reserves roughly equates to two to three months of the average district’s operational expenses.

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<sup>1820</sup> Id., 14857.

<sup>1821</sup> Id., 14856.

<sup>1822</sup> NEB. LEGIS. JOURNAL, *Bromm AM4182*, 26 March 1998, 1472-73.

If the reductions under the first step do not resolve the problem, the primary high school district would utilize the second step. This step would reduce the property tax request for each district proportionately based on the amount of the difference between:

(Each district's general fund budget of expenditures — the special education budget of expenditures for the current budget year) — (a two-year average for the two preceding school fiscal years of the general fund budget of expenditures — the special education budget of expenditures).<sup>1823</sup>

If the reductions under steps one and two do not reduce the levy to the appropriate level, a high school district may reduce the property tax request for each district by an amount proportional to the district's share of the total property tax request for the preceding school fiscal year.<sup>1824</sup>

The second part of the amendment addressed the building fund issue. Under the amendment, the maximum building fund allowed for Class I districts would be reduced from 17.5¢ per \$100 million valuation to 5¢. This amount would include any amounts levied for environmental hazards or accessibility barriers. The amendment also required the approval by the primary high school board of any building fund for a Class I district within the local system.<sup>1825</sup>

"I will probably make some of my friends in the Class Is uncomfortable to hear Senator Bromm and I stand up and make this proposal," Senator Wickersham said during floor debate.<sup>1826</sup> "We were confronted last year with difficulties in finding ways to develop a structure so that the Class Is and the high schools that they were either affiliated with or a part of could develop budgets that met the 1114 objectives," he said.<sup>1827</sup> Unfortunately, Wickersham added, some districts within certain local systems were simply not cooperating with one another in the budget process and thereby not

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<sup>1823</sup> Id.

<sup>1824</sup> Id.

<sup>1825</sup> Id.

<sup>1826</sup> *Floor Transcripts, LB 1219 (1998)*, 26 March 1998, 14858.

<sup>1827</sup> Id.

doing what was “good and appropriate for the children of the district.”<sup>1828</sup> “I have been saddened that that does not always seem to me to be what has occurred and when that doesn’t occur then we have very little choice but to give the kind of direction that Senator Bromm’s amendment is now bringing to you for consideration,” Wickersham concluded.<sup>1829</sup>

The amendment represented a fairly significant policy for school districts, and further enhanced the authority of the primary high school district. There was no debate on the amendment, only an explanation of the problem and the recommended solution. The Bromm amendment was adopted by a 27-0 vote.<sup>1830</sup> LB 1219 was then advanced to second-round debate by a 31-1 vote.<sup>1831</sup>

Second-round debate on LB 1219 commenced on April 1<sup>st</sup>, just six days after its advancement from General File. It was at this stage that the bill would take yet another twist. The issue, brought forward by Senator George Coordsen, involved the impact on some school districts due to the changes in the state aid formula under LB 806 coupled with the levy limitations under LB 1114. In essence, the Coordsen amendment was meant to buy time for certain districts in order for their local boards to evaluate their available options, including reorganization.

Senator Coordsen proposed to create a special “temporary mitigation” fund for local systems that have property tax and state aid resources for school fiscal year 1998-99 less than 90% of their property tax and state aid resources for the previous year (1997-98).<sup>1832</sup> The funds would help those local systems particularly hard hit by the loss of state aid due to LB 806. The Coordsen amendment was actually the focus of a separately introduced bill (LB 1247), a bill sponsored by Senator Coordsen.<sup>1833</sup> LB 1247 was

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<sup>1828</sup> Id.

<sup>1829</sup> Id.

<sup>1830</sup> NEB. LEGIS. JOURNAL, 26 March 1998, 1473.

<sup>1831</sup> Id.

<sup>1832</sup> Id., *Coordsen AM4312*, 1 April 1998, 1622-24.

<sup>1833</sup> Legislative Bill 1247, *Appropriate funds to school districts and local systems*, sponsored by Sen. George Coordsen, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 21 January 1998. LB 1247 (1998) was

introduced with the acquiescence of Governor Nelson, as Senator Coordsen explained during floor debate:

LB 1247 was an outgrowth of a number of meetings that the Governor had with school administrators and school board members around the state who were suffering from a dramatic reduction in available funds for the '98-99 year as a result of a combination of effects of (LB) 806 and (LB) 1114. The Governor felt or at least he indicated to me that he felt that we needed to do some temporary assistance to those schools that were the most disadvantaged by the loss of revenue.<sup>1834</sup>

Coordsen said the original bill was expected to impact “about 61 schools,” although the precise number of schools that would ultimately qualify and take advantage of the mitigation funds was unknown.<sup>1835</sup> “I thought ... that 1247 could be an adjunct and an enhancement to 1219 in that it would provide a mechanism to tide a number of schools over ‘till they had a chance to look at this new way of organizing schools within an area, that is, unification,” Coordsen said.<sup>1836</sup>

Under the Coordsen amendment, the local system would receive a one-time, lump-sum payment in an amount equal to 90% of the 1997-98 property tax and state aid resources minus the 1998-99 property tax and state aid resources if the following criteria were met:

- (1) The local system’s 1997-98 general fund budget of expenditures minus the special education budget of expenditures *did not exceed* the 1995-96 general fund budget of expenditures minus the special education budget of expenditures *by more than 2%* plus the percentage growth in students for the local system; AND
- (2) One of the three scenarios held true for the local system:

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referred to the Education Committee and a public hearing was held on February 23, 1998. The committee had taken no action on the bill at the time Senator Coordsen proposed to amend its contents into LB 1219 (1998). NEB. LEGIS. JOURNAL, Chronology of Bills, 2163.

<sup>1834</sup> *Floor Transcripts, LB 1219 (1998)*, 1 April 1998, 15343.

<sup>1835</sup> *Id.*

<sup>1836</sup> *Id.*



- (a) The local system has “shown an intent to merge, consolidate, or unify” with at least one specified high school district by June 1, 1999, through a public affirmative vote by the school board of the high school district, and
  - a majority of the members of the school board sign an affidavit acknowledging that the intent of the signing board member is to proceed with a merger, consolidation, or unification, and
  - the affidavit is filed with NDE by August 1, 1998; OR
- (b) The local system is within the sparse cost grouping or the very sparse cost grouping; OR
- (c) The local system is subject to a loss of state aid due to clerical error.<sup>1837</sup>

The Coordsen amendment provided that if the payments due to local systems exceed the amount of funds appropriated by the Legislature, the funds would be distributed on a pro rata basis. Payments would be made by September 15, 1998. Payments to local systems that include Class I districts would be divided proportionally among the districts in the local system based on the weighted formula students attributed to each district in the local system for the certification of state aid to be paid in the 1998-99 school fiscal year. NDE was required to identify the local systems qualifying for payments and distribute the funds accordingly. The financing for the mitigation funds would derive from the State’s Cash Reserve Fund in the amount of \$4.5 million, which would be transferred to the State’s General Fund by September 1, 1998.<sup>1838</sup>

The principle critic of the Coordsen amendment was Senator Chris Beutler of Lincoln. Beutler expressed several concerns about the amendment, including the fact that the mitigation funds were outside the normal state aid distribution system. “The state aid formula is the system that this body agreed upon was the fair way to distribute money,” Beutler said.<sup>1839</sup> He was also concerned that the funds were not more directly tied to the intent on the part of the receiving districts to reorganize. He desired an “added measure of sincerity” on the part of the districts to form more efficient school systems if they were

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<sup>1837</sup> NEB. LEGIS. JOURNAL, *Coordsen AM4312*, 1 April 1998, 1623.

<sup>1838</sup> *Id.*, 1623-24.

<sup>1839</sup> *Floor Transcripts, LB 1219 (1998)*, 1 April 1998, 15346.

to receive mitigation funds.<sup>1840</sup> Accordingly, Beutler filed several amendments to the Coordsen proposal, one of which required the temporary mitigation funds to be returned if the receiving district does not merge, consolidate, or unify prior to June 30, 2000.<sup>1841</sup> “My amendment is to simply ensure that there is no way that the intent could be a subterfuge or treated in a frivolous manner by any school board,” he said.<sup>1842</sup>

The differing viewpoints brought out by Senators Coordsen and Beutler instigated an interesting debate that lasted through the morning session and into the afternoon. The debate focused in part on the changes made to the state aid formula a year earlier. Many of the proponents of the Coordsen amendment were also former opponents of LB 806 (1997). They argued that the comprehensive changes to the formula coupled with the levy limitations had caused some districts to take a serious look at reorganization, but the reorganization process took time. It takes at least two willing districts to move forward with a reorganization plan, and not all districts desiring to merge can find a willing partner. The proponents of the Coordsen amendment argued that the mitigation funds should be granted with no absolute pressure to merge, consolidate, or unify. It was not the policy of the state, they argued, to force people and local governments into situations they do not desire.

Those resisting the Coordsen proposal relied on two central arguments. First, LB 806 (1997) and LB 1114 (1996) were measures passed and signed into law. It was the will of the majority speaking through these policy directives. Both measures carried an underlying intent toward efficiency of government, even if that meant reorganization. In fact, the 1996 property tax relief package intended for local governments to pursue efficiencies. And, if the first argument had any flaws, the second argument was more difficult to counter. The provisions of the levy limitation law, they argued, permitted a district to exceed the lid through a levy override. If the school districts in question had

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<sup>1840</sup> *Id.*

<sup>1841</sup> NEB. LEGIS. JOURNAL, *Beutler FA676 to Coordsen AM4312*, 1 April 1998, 1624.

<sup>1842</sup> *Floor Transcripts, LB 1219 (1998)*, 1 April 1998, 15348.

reasonable claims to additional funding, they should pursue the appropriate spending and levy lid overrides.

Both sides put forward reasonably compelling arguments, but it may have been Senator Gerald Matzke of Sidney who put the issue into proper perspective using a nautical metaphor:

I think we have a decision to make. Is this bill going to be a penalty bill or is it going to be a life raft? We, when we passed 1114, we set in motion a Titanic of a property tax relief measure and then last year came along with another titanical bill in 806. And unfortunately, the two have collided. And the result is that we have a number of school districts floating in the freezing water about ready to be extinguished from being able to provide education. And that's all that this bill does. LB 1247 is a life raft proposed initially by the Governor, worked on by Senator Bohlke and Senator Coordsen to provide a life raft to certain school districts for a one-year transitional purpose.<sup>1843</sup>

The transitional purpose of the Coordsen amendment was intended to include such options as unification, the principle goal of LB 1219, or another form of reorganization. But the districts receiving temporary mitigation funds would not be forced into reorganization by virtue of accepting the funds.

Ultimately, the Beutler amendment, which required the return of mitigation funds if the district did not reorganize, failed by an 11-19 vote.<sup>1844</sup> Several other proposals would come forward, but all were either withdrawn or failed. Finally, Senators Bromm, Coordsen, and Beutler proposed a compromise amendment. The amendment proposed that temporary mitigation funds must be returned if the receiving district does not merge, consolidate or unify prior to June 30, 2000. However, the funds need not be returned if, prior to June 30, 2000, the receiving district is unable to merge, consolidate or unify despite good faith efforts to do so. The State Committee on the Reorganization of School Districts would have the authority to determine whether the district actually made a good faith effort.<sup>1845</sup>

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<sup>1843</sup> Id., 15365.

<sup>1844</sup> NEB. LEGIS. JOURNAL, 1 April 1998, 1638-39.

<sup>1845</sup> Id., *Bromm FA675 to Coordsen AM4312*, 1649.

The Bromm-Coordsen-Beutler compromise amendment was adopted by a unanimous 27-0 vote after a short discussion.<sup>1846</sup> However, the main amendment, the Coordsen amendment to provide mitigation funds, took two votes before adoption. On the first attempt, the amendment failed by a 23-12 vote.<sup>1847</sup> A successful motion to reconsider the vote brought about a triumphant conclusion with a 26-6 vote.<sup>1848</sup>

The main part of the bill, to permit unification agreements, would consume the remainder of second-round debate. Senators Bohlke and Raikes would successfully seek adoption of a compromise amendment concerning a minimum period of existence for unified systems. Senator Raikes had pursued such a proposal unsuccessfully on first-round debate. However, after speaking with some area superintendents, it was believed that a minimum three-year period would actually be beneficial to the participating districts.<sup>1849</sup> “I think it maybe gives the unification a better guarantee that it has some time to work,” Bohlke explained to her colleagues. The amendment was adopted by a 26-0 vote.<sup>1850</sup>

LB 1219 was passed on Final Reading with the emergency clause attached by a 35-13 vote on April 14, 1998.<sup>1851</sup> Governor Nelson would sign the bill into law on April 18<sup>th</sup>.<sup>1852</sup> As passed, LB 1219 contained three major components: (1) provide for unification agreements; (2) provide a budget process to meet the maximum levy provisions; and (3) provide mitigation funds to certain local systems.

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<sup>1846</sup> Id., 1649.

<sup>1847</sup> Id., 1649-50.

<sup>1848</sup> Id., 1652.

<sup>1849</sup> Id., *Bohlke-Raikes AM4256*, 31 March 1998, 1570.

<sup>1850</sup> Id., 1 April 1998, 1650.

<sup>1851</sup> Id., 14 April 1998, 1946.

<sup>1852</sup> Id., 1972.

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Table 103. Review of LB 1219 (1998)

I. Unification Agreements.

A. *Definition.* A unified system is defined as two or more Class II or III school districts participating in an interlocal agreement with approval from the State Committee for the Reorganization of School Districts. The interlocal agreement may include Class I districts if the entire valuation is included within the unified system.

B. *Interlocal Agreement.* The agreement for unification would have a duration of at least three years. The agreement must provide that all state aid and property tax resources are shared by the unified system. The agreement must also provide that a “super” board be created and comprised of school board members from among the participating districts. The super board must include at least one school board member from each district but may include more if the agreement so provides.

The agreement must provide that certificated personnel will be employees of the unified system rather than the individual districts. If a district withdraws from the unification or if the agreement expires and is not renewed, certificated staff must be reemployed by the original district.

The super board will act as the collective-bargaining agent for the unified system and will have the authority to hire and terminate teachers and other staff.

C. *Application.* Application must be made to the State Committee for the Reorganization of School Districts. The application must contain a copy of the interlocal agreement signed by the president of each participating school board. The state committee must approve/disapprove applications for unification within 30 days after receipt. Unification agreements will become effective on June 1st following approval from the state committee or on June 1st of the year specified in the agreement. The super board established in the agreement may begin meeting any time after the application has been approved by the state committee.

D. *Recognition.* Upon granting the application, NDE must recognize the unified system as a single Class II or III district for state aid, budgeting, accreditation, enrollment of students, state programs, and reporting. The class of district will be the same as the majority of participating districts, excluding Class I districts. If there is an equal number of Class II and Class III districts in the unified system, the unified system will be recognized as a Class III district.

The school districts participating in a unified system will retain their separate identities for most purposes. For instance, districts within a unified system may retain their individual athletic and other extracurricular programs.

Table 103—*Continued*

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- E. *Incentive Payments.* To encourage unification, incentives will be paid to unified districts in certain size ranges for a three-year period. Incentive payments will be calculated based on average daily membership in each affected district in the school year immediately preceding the first year of the unification. The unified system may file an application with the state committee for incentive payments either following approval or in conjunction with the application for unification. For unification, 100% of the amount calculated will be included in the distribution of state aid in the base fiscal year, 75% for the second year, and 50% for the third.
  - F. *Withdrawing.* If, prior to the beginning of the 8<sup>th</sup> year of operation, the unified system discontinues its status as a unified system and does not consolidate, the districts in the unified system must pay back the incentives plus interest. The total incentives paid to the unified system would be divided between the districts based on the adjusted valuation of each district in the year prior to the discontinuation of the unified system, and each district's share would be paid back through reductions in state aid in equal amounts for five years.

## II. Budget Process.

LB 1219 provides procedures for a high school district to follow to reduce property tax requests when the total levy for a local system budget exceeds the amount that can be generated by the maximum levy. It also reduces the amount which may be levied by a Class I school district for school buildings, sites or repairs from 17.5¢ to five cents on each \$100 valuation. This cap also includes any amounts levied for environmental hazards or accessibility barriers.

## III. Temporary Mitigation Funds.

The new law provides for a transfer of \$4.5 million from the Cash Reserve Fund to the General Fund on or before September 1, 1998. The funds transferred to the General Fund are appropriated to NDE in 1998-99 to distribute as one-time temporary mitigation funds to schools which have property tax and state aid resources in 1998-99 which are less than 90% of their 1997-98 property tax and state aid resources.

Systems must meet certain criteria in the new law in order to receive aid. First, the local system's 1997-98 general fund budget, minus expenditures made for special education, could not have exceeded its 1995-96 general fund budget, minus special education, by more than 2 percent plus the percentage growth in students. Second, the local system must fit into one of three categories: (a) it must be classified as sparse or very sparse for state aid purposes, (b) it must be subject to loss of state aid because of a clerical error in determining adjusted valuation, or (c) it must have shown an intent to merge, consolidate or unify with at least one specified high school district by June 1, 1999. This intent would be shown through a public vote of the board of the high school district, and a majority of board members would have to sign an affidavit acknowledging such intent.

Table 103—*Continued*

NDE is to calculate the systems eligible for aid and distribute the funds by September 15, 1998. Payments are to be prorated if the appropriation is not sufficient to fund all claims. The temporary mitigation funds must be returned if the receiving district does not merge, consolidate or unify prior to June 30, 2000. The funds need not be returned if the state reorganization committee determines a merger, consolidation, or unification is not possible.

*Source:* Legislative Bill 1219, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 1-23, pp. 1-13 (726-38).

Table 104. Summary of Modifications to TEEOSA  
as per LB 1219 (1998)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
13	79-1001	Act, how cited	Adds a new section to TEEOSA (Section 14)
14	79-1027.01 <i>new section</i>	Property tax requests exceeding maximum levy; reductions; procedure	Beginning with 1998-99, if the total levy required for property tax requests for all general fund budgets in a local system exceeds the amount that can be generated by the maximum levy, the high school district would be entitled to take the necessary sequential steps to comply with the maximum levy by:  (1) Reducing the property tax request for each district up to the amount by which the district's budgeted general fund cash reserve exceeds 15% of the district's general fund for the preceding school fiscal year; or  (2) Reducing the property tax request for each district proportionately based on the amount of the difference between the district's general fund minus the special education budget for the current budget year and a two-year average for the two preceding school fiscal years of the general fund budget minus the special education budget up to such difference; or  (3) Reducing the property tax request for each district by an amount proportional to the district's share of the total property tax request for the preceding school fiscal year such that the required local system levy would be the maximum levy allowed.
15	79-1003	Terms, defined	Defines base fiscal year for school district reorganizations or unifications that occur during or after the 1997-98 school fiscal year as the first school fiscal year following the school fiscal year in which the reorganization or unification occurred.

Table 104—*Continued*

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
16	79-1010.01	Reorganized School Assistance Fund; created; use; investment; termination	Amends Section 3 of LB 1134 (1998). The amended provision eliminates intent language to reduce the appropriation to the state aid for fiscal year 1999-00 by \$2 million. The provision was amended in order to harmonize with LB 1175, which essentially required full funding of the state aid formula. LB 1175 was subsequently vetoed based upon the full funding provision.
17	79-1010	Incentives to reorganized districts and unified systems; qualifications; requirements; calculation; payment	Provides for the establishment of unified school systems. A unified system is defined as two or more Class II or III school districts participating in an interlocal agreement with approval from the State Committee for the Reorganization of School Districts. Class I districts may also be part of the interlocal agreement if the entire valuation is included in the unified system. Agreements must last for a minimum of three years. Provides that state aid and property tax resources are to be shared by the unified system. The board of a unified system is to determine the general fund levy for all participating districts and the distribution of tax resources and state aid. Unified systems are eligible for incentive payments through the aid formula. Unified systems that discontinue the status prior to the eighth year of existence must repay incentives plus interest through a reduction in aid in equal amounts for five years.

*Source:* Legislative Bill 1219, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 13-17, pp. 5-12 (730-37).

### LB 1229 - Gifted Education

The policy history of gifted education in Nebraska was not particularly noteworthy until the early 1990s. In 1967 the Legislature passed a bill to grant the Department of Education the authority to employ a “special consultant trained and experienced in the field of special education for gifted children.”<sup>1853</sup> The consultant, if employed, would have the duty to encourage, advise, and consult with each district in the development and implementation of plans for special education of gifted children. The bill defined gifted children as:

<sup>1853</sup> NEB. REV. STAT., Laws 1967, c. 512, § 1, p. 1718; R.S.1943, (1994), § 79-339; Laws 1996, LB 900 (§ 787), § 79-1105.



[C]hildren who excel markedly in ability to think, reason, judge, invent, or create and who need special facilities or educational services or both such facilities and services in order to assist them to achieve more nearly their potentials for their own sakes as individuals and for the increased contributions they may make to the community, state, and nation.<sup>1854</sup>

The new law did not require the department to hire a consultant, nor did it appropriate funds to carry out the act. It only provided limited instruction for the department if it opted to hire a consultant. Generally speaking, the State of Nebraska did not place a particularly high level of concern on those students who required special services due to their gifted educational performance capacity. This would change in 1993.

On January 5, 1993, Governor Ben Nelson appointed Jan McKenzie of Harvard to replace Senator Rod Johnson, who resigned from office. McKenzie, a former teacher, had been very active in the cause of gifted education having been an honor student at the University of Nebraska-Lincoln. She had served as president of the Nebraska Association for the Gifted (NAG) from 1988-1990.<sup>1855</sup>

Senator McKenzie would waste little time after her appointment to place the issue of gifted education on the public agenda. In 1993, her first year as state senator, she introduced legislation to mandate the identification of *learners with high ability*. The bill, LB 647, defined a learner with high ability as a “student who gives evidence of high performance capability in such areas as intellectual, creative, or artistic capacity or in specific academic fields and who requires services or activities not ordinarily provided by the school in order to develop those capabilities fully.”<sup>1856</sup>

The bill was referred to the Education Committee and carried over to the 1994 Session where it was passed and signed into law.<sup>1857</sup> The stated purpose of the legislation was to assist and encourage school districts in the development, improvement, and

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<sup>1854</sup> Id.

<sup>1855</sup> NEB. BLUE BOOK, 1996-97 ed., 297.

<sup>1856</sup> Legislative Bill 647, in *Laws of Nebraska, Ninety-Three Legislature, Second Session, 1994*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 2, p. 1 (359).

<sup>1857</sup> LB 647 was passed on April 6, 1994 by a 36-0 vote. NEB. LEGIS. JOURNAL, 6 April 1994, 1735. The legislation was signed into law on April 12, 1994. NEB. LEGIS. JOURNAL, 6 April 1994, 1938.

implementation of educational programs or services that will serve the educational needs of learners with high ability at levels appropriate for their abilities.<sup>1858</sup> Beginning with the 1997-98 school year, each school district and educational service unit (ESU) was required to identify learners with high ability and to provide programs or services that would address the educational needs of the identified students.<sup>1859</sup> The requirement for provision of programs and services was contingent upon available local, state, or federal funding. In order to provide some financial assistance, the legislation permitted school districts and ESUs to apply for grants from the Education Innovation Fund (State Lottery) to be used for development and improvement of approved programs or services.<sup>1860</sup>

LB 647 specifically directed the Department of Education to monitor the efforts of school districts and ESUs to implement approved programs or services. It also took the 1967 legislation a step farther by requiring the department to appoint a full-time professional employee and the necessary support staff.<sup>1861</sup> This time, however, the Legislature would appropriate necessary funds to hire the additional staff.<sup>1862</sup>

Even with the potential availability of grant funds, some school districts looked upon LB 647 as just another unfunded mandate. It was not necessarily that school officials opposed the concept of gifted education. It had more to do with finding the resources to create the necessary programs and provide the services. These considerations were certainly brought out during the debate on LB 647. It was for these reasons that the legislation mandated programs and services contingent upon the availability of financial resources. It was for these reasons that grant funds were made available to school districts, and it was for these reasons that the effective date for the programs and services was delayed until the 1997-98 school year.

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<sup>1858</sup> LB 647, Session Laws, 1994, § 1, p. 1 (359).

<sup>1859</sup> *Id.*, § 3, p. 1 (359).

<sup>1860</sup> At the time LB 647 was introduced, the Nebraska State Lottery was in its first year of existence. Voters had approved a constitutional amendment to create a lottery in the 1992 General Election. The Education Innovation Fund was one of the major beneficiary funds created under the constitutional amendment.

<sup>1861</sup> LB 647, Session Laws, 1994, § 4, p. 1 (359).

<sup>1862</sup> *Id.*, § 6, p. 3 (361). LB 647 appropriated \$50,183 from the General Fund for FY1994-95 and \$43,513 for FY1995-96.

LB 647 would set in motion the promulgation of rules and regulations governing the approval process of gifted education programs and services and also the process of identifying students with high ability. The State Board of Education eventually adopted what became Rule 3 governing high ability learners.<sup>1863</sup> This regulation along with the state laws pertaining to high ability learners would be expanded four years later with the passage of LB 1229.

By the start of the 1998 Session, Senator McKenzie had resigned from her elected office and had become the consultant for gifted education under the Department of Education. While no longer a state legislator, her presence would still be known on the issue of high ability learners. In 1998, Senator Ardyce Bohlke, chair of the Education Committee, would introduce a series of financial incentive-based bills. The topics of the legislation ranged from encouraging certain districts to reorganize, to encouraging districts to adopt specific programs, such as programs for expelled students or teacher mentor programs. Another of Senator Bohlke's incentive-based bills would take up where LB 647 left off, and would further encourage the local adoption of programs for high ability learners.

LB 1229 (1998) was chiefly sponsored by Senator Bohlke and cosponsored by twelve other lawmakers.<sup>1864</sup> Six of the eight members of the Education Committee would sign on as co-sponsors with a seventh, Senator Chris Beutler, adding his name shortly after the bill was introduced. Senator Don Pederson of North Platte, another co-sponsor, took a personal interest in the legislation and designated LB 1229 as his priority bill for the 1998 Session.<sup>1865</sup>

The original intent of LB 1229 was to mandate the provision of approved accelerated or differentiated curriculum programs for students identified as learners with high ability beginning with the 1998-99 school year. The bill also provided funds for

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<sup>1863</sup> Title 92 Neb. Admin. Code Chapter 3, *Regulations Governing the Identification of High Ability Learners*.

<sup>1864</sup> Sponsors included Senators Bohlke, Abboud, Brashear, Brown, Hillman, D. Pederson, Raikes, Schimek, Schrock, Suttle, Wesely, Wickersham, and Willhoft.

<sup>1865</sup> NEB. LEGIS. JOURNAL, 2 February 1998, 505.

such programs and included those funds in the special education allowance. This represented a significant policy change since the existing state policy was to allow each district to determine for itself whether funds were available to provide such programs.

Under the bill, school districts would be required to annually provide the Department of Education with the criteria used to identify learners with high ability, the number of students identified and the number participating in an approved program.<sup>1866</sup> The State Board of Education was charged with the duty of adopting and promulgating rules and regulations to implement the provisions of the act. The regulation was to include criteria for the approval of accelerated or differentiated curriculum programs and data requirements for measuring academic progress of students participating in the accelerated or differentiated curriculum programs.<sup>1867</sup>

LB 1229 required the Legislature to appropriate funds for high ability learner programs. The original bill directed the appropriation of \$6 million in 1998-99. In each year thereafter, the appropriation was to be increased by the percentage growth in identified participating students plus the basic allowable growth rate.<sup>1868</sup> The distribution of funds to schools would fall within two categories. First, local systems would be eligible to receive a percentage of the total appropriation if they provide at least a 50% local match. Second, local systems may apply for start-up funds to initiate programs for high ability learners. A small portion of the total annual appropriation would be set aside for start-up grants, but the bulk of the appropriation would be used for matching funds.<sup>1869</sup>

LB 1229 would impact the state aid formula because the bill required that grant funds received by schools would be included as part of the special education

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<sup>1866</sup> Legislative Bill 1229, *Change provisions relating to educational funding, kindergarten admissions, and postsecondary education awards*, sponsored by Sen. Ardyce Bohlke, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 20 January 1998, § 8, p. 21.

<sup>1867</sup> Id., § 10, p. 23.

<sup>1868</sup> Id., § 9, p. 21.

<sup>1869</sup> Id., pp. 21-23. The bill provided that up to 5% of the appropriation for aid in 1998-99, 1999-00 and 2000-01 would be used for start-up costs for schools and would be distributed on a pro rata basis based upon eligible costs submitted by schools. Schools may also receive .1% of the appropriation as base funds plus a pro rate share of the remaining funds based on students participating in high ability learner programs.

allowance.<sup>1870</sup> The legislation would also classify the grant funds as local resources for purposes of calculating state aid.<sup>1871</sup> LB 1229 would infuse an additional \$6 million in the school finance system for both equalized and non-equalized local systems.

In order to maintain eligibility for grant funds, LB 1229 required local systems to operate an approved accelerated or differentiated curriculum program (i.e., as approved by NDE). Local systems had to provide funds from other sources for the approved program greater than or equal to 50% of the matching funds received from the state. Schools had to provide an accounting of the funds received, the total annual cost of the program, and the data regarding the academic progress of students participating in the program. Local systems also had to include identified students from Class I districts that are part of the local system.<sup>1872</sup>

At the public hearing on February 9, 1998, Senator Bohlke recognized the work of former Senator Jan McKenzie in the field of gifted education. McKenzie was present at the hearing in her new capacity as a consultant with the Department of Education. Bohlke proceeded to articulate what would become an often-used rationale for passage of the legislation. High ability learners, she said, were special education students although perhaps not in the traditional sense of the expression. “And I would say, as I think about special education, that students with high ability also could be looked as a part of special education; their needs are unique, as other student’s needs are unique,” Bohlke said.<sup>1873</sup>

LB 1229 received no opposing testimony at the hearing. Such notable groups as the Nebraska Parent Network, the Nebraska Association for Gifted, the State Board of Education, the Nebraska Rural Community Schools Association, and the Nebraska Council of School Administrators all cast their support for the bill.<sup>1874</sup>

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<sup>1870</sup> Id., § 2, p. 14.

<sup>1871</sup> Id., § 3, pp. 17-19.

<sup>1872</sup> Id., § 9, p. 22.

<sup>1873</sup> Committee on Education, *Hearing Transcripts, LB 1229 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 9 February 1998, 4.

<sup>1874</sup> Committee on Education, *Committee Statement, LB 1229 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 1.

Undoubtedly, some of the more compelling testimony derived from parents and several very bright students who appeared in support of the legislation. Daniel Naber, a seventh grader at Westridge Middle School in Grand Island, spoke to the Education Committee about the lack of challenge in the classroom experience:

They don't challenge us. Sometimes a lot of people that are the smarter people will mess around, not listen, they get bored. The day just seems to wear on and in sixth grade I had a lot of problems with going to school. I often played hooky and stuff like that.<sup>1875</sup>

Greg Bachman, also a seventh grader at Westridge Middle School in Grand Island, spoke of the disparities in educational opportunities for some students, although he did not quite use those terms. "I think that just because gifted people are talented, they shouldn't be neglected," he said, adding, "I think that the gifted people are just as important as the slower learners are."<sup>1876</sup>

Interestingly, the Nebraska Farmers Union appeared in a neutral capacity at the public hearing. Union President John Hansen said his organization supported the underlying concept of the bill, but he also noted the difficulty that some rural schools might have in carrying out its mission. Said Hansen:

[A]t some point, and I guess that point came when the Nebraska Legislature chose to pass LB 806, there gets to be a need for those of us who represent the interests of rural education across the state of Nebraska, to do what approximates a reality check. And the reality check is that, unfortunately, as a result of LB 806, those schools who are in the bottom of the end of the standard classification are not likely to get the amount of state education needs of financial support from the distribution formula to meet just basic needs.<sup>1877</sup>

Hansen spoke of the "double restrictions" imposed on schools due to the levy limitations under LB 1114 (1996) and the "shortfall" some districts received under LB 806 (1997).<sup>1878</sup>

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<sup>1875</sup> *Hearing Transcripts, LB 1229 (1998)*, 24.

<sup>1876</sup> *Id.*, 25.

<sup>1877</sup> *Id.*, 34.

<sup>1878</sup> *Id.*

Less than two weeks after the public hearing, on February 24<sup>th</sup>, the Education Committee met in executive session to consider the fate of LB 1229. On a 7-0 vote, the committee advanced the bill to General File in its original form (no committee amendments).<sup>1879</sup>

*“An island unto itself”*

First-round debate would take place on the morning of Monday, March 9, 1998, the date of one of the worst winter storms in recent years. Schools and businesses were closed throughout southeast Nebraska. Almost one-third of the legislative body was absent from the Chamber due to weather-related reasons. In normal circumstances, this particular situation may not have had a significant impact. However, in the case of LB 1229, at least one senator forced to be absent on that day would take exception with the actions of his colleagues and would later seek a reversal.

The only item of controversy throughout General File debate was the first amendment considered on LB 1229. Senators Don Pederson and Ardyce Bohlke jointly filed an amendment to change a major provision of the legislation. LB 1229, as originally introduced and advanced from committee, would have *required* all school districts to offer gifted education programs. The sponsors felt they could justify the mandate because the legislation also provided funding to help defray the costs of implementing such programs. The Pederson/Bohlke amendment, however, proposed to strike the mandatory element, thereby allowing but not requiring schools to create and offer gifted programs.<sup>1880</sup>

Senator Pederson introduced the amendment, he said, due to the realization that not all schools would be in a financial position to initiate a gifted program even with the help of the state. He and Senator Bohlke were well aware of the criticism that could befall such a move especially among those who strongly endorsed the idea of making gifted programs available to all children no matter where they might attend school. But, he argued, LB 1229 still makes a giant step forward in comparison to the surrounding

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<sup>1879</sup> Committee on Education, *Executive Session Report, LB 1229 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 24 February 1998, 1.

<sup>1880</sup> NEB. LEGIS. JOURNAL, *D. Pederson-Bohlke AM3446*, 3 March 1998, 881.

states that already provided funding to schools for gifted programs. “Nebraska is virtually an island unto itself,” said Pederson concerning the issue of funding for such programs.<sup>1881</sup> LB 1229 might at least encourage schools to launch a gifted program.

The Legislature would adopt the Pederson/Bohlke amendment by a unanimous 25-0 vote, but the issue was far from over.<sup>1882</sup> The Legislature then advanced the bill by a 28-0 vote.<sup>1883</sup> But as the snow melted away and the roads became unclogged, the legislator most discontent with the new twist on LB 1229 would be available to make his concerns known in time for second-round consideration.

On March 23, 1998, the Legislature took up debate on LB 1229 once again. And Senator Ernie Chambers of Omaha was ready, having filed a floor amendment on the same day to effectively reverse the decision to make gifted programs a discretionary choice of individual school districts.<sup>1884</sup> The amendment, he said, was offered both in respect to those who had tirelessly promoted gifted education in the past and to set the record straight on the power of the state over political subdivisions. Chambers acknowledged the past and present work of individuals like former Senator Jan McKenzie on the issue. “My impression, because of the respect that I have for these people, is that these programs were designed to benefit youngsters,” he said, “They were not for the convenience of school boards, school districts, teachers or anybody else.”<sup>1885</sup>

Senator Chambers used the age-old argument that political subdivisions, including school districts, were “creations of the state.”<sup>1886</sup> As such, Chambers argued, “They carry out the will of the state, and the state has the obligation to ensure that certain programs are available to every child in the state regardless of how backward and high bound the individual school board members are.”<sup>1887</sup> Obviously, Senator Chambers was less

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<sup>1881</sup> *Floor Transcripts, LB 1229 (1998)*, 9 March 1998, 13043.

<sup>1882</sup> NEB. LEGIS. JOURNAL, 9 March 1998, 971.

<sup>1883</sup> *Id.*

<sup>1884</sup> *Id.*, *Chambers FA629*, 23 March 1998, 1263.

<sup>1885</sup> *Floor Transcripts, LB 1229 (1998)*, 23 March 1998, 14268.

<sup>1886</sup> *Id.*, 14275.

<sup>1887</sup> *Id.*, 14275-76.



worried about offending local officials and more concerned about equity of educational opportunities, which was, after all, one of the underpinnings of the TEEOSA in 1990. And, as far as local school officials, they could hardly call LB 1229, as originally proposed, an unfunded mandate if the state was prepared to fund at least part of the program implementation. They could, of course, call it an under-funded mandate if the state funding did not quite cover all necessary costs.

Nevertheless, Senator Chambers had a point to make and it related as much to the process of establishing state policy as it did the fair treatment of those affected by such policy. “LB 1229 is to establish a policy, a state policy, based on deliberation, facts and an understanding and conviction that there are children in the schools throughout this state who need programs in addition to or beyond those which are given as a part of the core curriculum,” Chambers said.<sup>1888</sup> “Either all children situated in this manner should be entitled to the same services or they should not,” he concluded.<sup>1889</sup>

The rationale offered by Senator Chambers’ was difficult to refute. Of course, from the perspective of school officials, there are many programs and opportunities they wished to make available to their students if only funding were available. And contrary to what some may have thought, there were school boards that had the best of intentions in mind for the students under their care. They also had hard realities to face in terms of limited resources. The Chambers amendment failed on a 17-19 vote, which should have given all pause to think maybe he was on the right track after all.

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Table 105. Record Vote: Chambers FA629 to LB 1229 (1998)  
to Mandate Gifted Programs

*Voting in the affirmative, 17:*

Beutler	Hartnett	Kristensen	Raikes	Schmitt
Brown	Hilgert	Maurstad	Robak	Wesely
Bruning	Jones	Preister	Schimek	Witek
Chambers	Kiel			

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<sup>1888</sup> Id., 14268.

<sup>1889</sup> Id.

Table 105—*Continued**Voting in the negative, 19:*


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Bohlke	Engel	Landis	Schellpeper	Tyson
Brashear	Hillman	Lynch	Schrock	Wehrbein
Bromm	Janssen	Pederson	Stuhr	Wickersham
Coordsen	Jensen	Robinson	Suttle	

*Present and not voting, 2:*

Elmer            Vrtiska

*Excused and not voting, 11:*

Abboud	Dierks	Matzke	Peterson	Will
Crosby	Hudkins	Pedersen	Thompson	Willhoft
Cudaback				

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*Source:* NEB. LEGIS. JOURNAL, 23 March 1998, 1266.

Had the Chambers amendment succeeded, the fiscal impact on some schools might have been entirely different. As it turned out, the bill was allowed to advance under relative mandate-free provisions, excluding some minor reporting requirements upon school districts. LB 1229 advanced on a voice vote on March 24<sup>th</sup>, the day after Senator Chambers' attempt to amend the bill.<sup>1890</sup> The legislation received final passage on April 2, 1998 by a 36-9 vote.<sup>1891</sup>

In a final twist, Governor Nelson opted to line-item veto half the total funding originally proposed under LB 1229A, the appropriation bill to LB 1229. In a letter of explanation, Governor Nelson wrote:

With this letter, I am returning LB 1229A with line-item reductions. I believe LB 1229 is important in increasing quality educational opportunities; however, in lieu of recent increases in funding for education, I recommend appropriating \$3,025,500 for FY1998-99 and \$3,092,850 for FY1999-00 of the funds provided by the Legislature for accelerated and differentiated curriculum programs funded under LB 1229.

I believe that reducing the recommended appropriation of \$6,025,500 by \$3 million will leave intact adequate funding for local gifted education programs, taking into consideration that additional funding sources exist for these programs.

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<sup>1890</sup> NEB. LEGIS. JOURNAL, 24 March 1998, 1302.

<sup>1891</sup> *Id.*, 2 April 1998, 1684-85.

Since FY1996-97, state aid to schools has increased by \$145,445,902, and new spending for education I have supported this year equals \$11,725,000.

Under LB 1110A, local school districts and systems may receive assistance from Educational Service Units which received \$9.7 million for funding core services including instructional materials. New funding opportunities are also created under LB 1228 funded by the Education Innovation Fund, which allows schools to receive quality incentive payments which may be spent on programs for high ability learners. Schools may also apply for Education Innovation Fund competitive grants to receive funding to create accelerated and differentiated curriculum programs. Approximately \$9.4 million will be available for schools from the Education Innovation Fund for FY1998-99.

I believe increased educational funding from these sources and my recommendation for funding under LB 1229A will enable schools to provide quality educational opportunities for our state's best and brightest.<sup>1892</sup>

The line-item veto was officially announced on April 8<sup>th</sup>, the 58<sup>th</sup> day of the 1998 Legislative Session. There was certainly time to stage an override, but the prevailing political wind was not in the proponents' favor. No motion to override was filed and the line-item veto was sustained by the Legislature.

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Table 106. Review of LB 1229 (1998)

LB 1229 related to gifted education for high ability learners. The new law did not require districts to implement a gifted education program but did provide financial incentives to do so. LB 1229 also contained a provision concerning kindergarten enrollment.

I. Criteria for Identification. (mandatory)

A. *Reports.* School districts must annually provide NDE with a copy of:

- (i) criteria for identifying learners with high ability,
- (ii) the number of students identified according to the criteria, and
- (iii) the number of students participating in an approved accelerated or differentiated curriculum program.

B. *Inspection.* School districts must also have a list of the students identified and how the students compare to the criteria available for inspection by department personnel.

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<sup>1892</sup> NEB. LEGIS. JOURNAL, 8 April 1998, 1875-76.

Table 106—Continued

## II. Gifted Programs. (non-mandatory)

A. *Permissive Programs.* LB 1229 does not require school districts to offer gifted education programs, but it does provide an financial incentive to do so. In order to be eligible for funds to offset the cost of a gifted program, a district must adhere to the following items:

(a) Provide an approved accelerated or differentiated curriculum program for students identified as learners with high ability;

(b) Provide funds from other sources for the approved accelerated or differentiated curriculum program greater than or equal to 50% of the matching funds received;

*(Note: If a local system will not be providing the necessary matching funds, the local system must request a reduction in the amount received such that the local system will be in compliance with the matching fund requirement.)*

(c) Provide an accounting of the funds received and the total cost of the program on or before August 1st of the year following the receipt of funds in a manner prescribed by NDE, not to exceed one report per year;

(d) Provide data regarding the academic progress of students participating in the accelerated or differentiated curriculum program in a manner prescribed by NDE, not to exceed one report per year; and

(e) Include identified students from Class I districts that are part of the local system in the accelerated or differentiated curriculum program.

*(Note: Local systems not complying with the foregoing requirements will not be considered eligible local systems in the following year.)*

B. *Appropriation.* Beginning with school fiscal year 1998-99, the Legislature must appropriate funds to be distributed by NDE pursuant to local systems annually on or before October 15th.

*Notes: The original intent of LB 1229 was to appropriate, for FY1998-99, \$6 million and, for FY1999-00 and each year thereafter, the amount of the previous year's appropriation increased by the percentage growth in identified participating students plus the basic growth rate. In a letter to the Legislature, Governor Nelson indicated his support for gifted education but his opposition to the amount of the annual appropriation.*

*The Governor recommended through his line-item veto that \$3,025,500 be appropriated for FY1998-99 and \$3,092,850 for FY1999-00. The Governor rationalized that additional resources to help operate local gifted education programs may potentially be offered through the ESU core services. The Governor also noted that another measure, LB 1228, was designed to offer incentive payments to those districts that meet certain criteria. The incentive payments could be used by a district to offset the expenses of a gifted education program.*

Table 106—Continued

- C. *Distribution of Funds.* The new law provides that up to 5% of the appropriation for aid in 1998-99, 1999-00 and 2000-01 will be used for start-up costs for schools and will be distributed on a pro rata basis based upon eligible costs submitted by schools. School systems may also receive .1% of the appropriation as base funds. The remaining funds are to be distributed as a pro rata share based on the students participating in high ability learner programs. Up to 10% of the prior year's membership of students participating in accelerated or differentiated curriculum programs may be counted for aid purposes.

*NOTES: Based on an appropriation of \$6 million in 1998-99, up to \$300,000 of the funds appropriated can be used for start-up costs. If all 286 school systems qualify for base funds, then \$1,716,000 of the appropriation will be distributed on this basis. The remaining \$3,984,000 will be allocated based on students participating in high ability learner programs. Once again, a 50% match must be provided by a local school system to receive any of these funds.*

- D. *Special Education Allowance.* The inclusion of aid funds received for high ability learner programs as part of the special education allowance for state aid purposes and as an accountable receipt for purposes of determining local resources insures that school systems which receive aid for high ability learner programs will not be penalized by a loss in equalization aid.
- E. *Rules and Regulations.* The State Board of Education is authorized to adopt rules and regulations to implement LB 1229, including criteria for the approval of accelerated or differentiated curriculum programs and data requirements for measuring academic progress of students participating in the programs.
- III. *Kindergarten Enrollment.* Prior to LB 1229, a district could admit a child who will reach the age of five between Oct. 16 and Feb. 1 of the current school year if the parent/guardian requests such entrance and provides an affidavit stating that either the child attended kindergarten in another jurisdiction in the current school year, OR the family anticipates a relocation to another jurisdiction that would allow admission within the current year. LB 1229 added a third option to current law. Under the new law, a school board may approve "recognized assessment procedures" to determine whether a child is capable of carrying the work of kindergarten or the beginner grade. There is no requirement upon districts to adopt such a procedure.

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*Source:* Legislative Bill 1229, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 1-13, pp. 1-9 (748-56).

Table 107. Summary of Modifications to TEEOSA as per LB 1229 (1998)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
3	79-1003	Terms, defined	Change definition of special education allowance by adding the amount of accelerated or differentiated curriculum program receipts included in local system formula resources.
4	79-1018.01	Local system formula resources; other actual receipts included	The inclusion of funds received for high ability learner programs as part of the special education allowance and as an accountable receipt for determining local resources insures that systems receiving aid for high ability learner programs will not be penalized by a loss in equalization aid.

*Source:* Legislative Bill 1229, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 3-4, pp. 4-7 (729-32).

### LB 1228 - Quality Education Accountability Act

Unlike LB 1229, the gifted education bill, LB 1228 did not have a direct impact on the school finance formula. It would have an indirect impact, but it did not modify the actual statutes that comprise the TEEOSA. Nevertheless, the legislation should be classified among the other major proposals that shaped public school finance in Nebraska. From a policy perspective, the legislation brought out some important policy discussions, not the least of which was the true purpose of an equalization-based school finance system. LB 1228 was touted as a great achievement for public education with far reaching objectives. Although in recent times, most of the financial elements of the 1998 legislation have been set aside due to state budget shortfalls and economic troubles.

LB 1228 was the product of various contentious issues that arose in the previous four or five years. And some of the policy directives contained in LB 1228 represented attempts at resolving long standing debates and controversies. The bill was sponsored by Senator Ardyce Bohlke, chairwoman of the Education Committee, and co-sponsored by 20 other state senators.<sup>1893</sup> Senator Bohlke's commitment to the bill was such that she

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<sup>1893</sup> Legislative Bill 1228, *Adopt the Quality Education Accountability Act*, sponsored by Sen. Ardyce Bohlke, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, title first read 20 January 1998. Cosponsors included Senators Abboud, Brashear, Bromm, Brown, Elmer, Hilgert, Hudkins, Janssen, Dw. Pedersen, D. Pederson, C. Paterson, Raikes, Schimek, Schrock, Stuhr, Suttle, Thompson, Wesely, Wickersham, and Willhoft.

designated the measure as her personal priority just one day after the bill was officially introduced on January 20, 1998.<sup>1894</sup> Being a 60-day, short session, Senator Bohlke wasted no time in letting her colleagues know where much of her attention would be spent. In fact, She had used the interim period to carefully prepare the proposal, building a collaborative network of support, and testing the idea with consultants and advisors.

Bohlke's position on the Education Committee gave her the authority to establish the public hearing schedule for bills under her committee's jurisdiction. And LB 1228 was among the first to be heard in a public forum. The public hearing was held on February 2, 1998 and most every major representative group was there to support the bill, in addition to a variety of rural and urban school district representatives.<sup>1895</sup> The only opponent of the measure was Ross Tegeler, who represented the Excellence in Education Council, the governing body having statutory authority to disperse funds from the Education Innovation Fund (a beneficiary fund under the State Lottery). So why would a state created governing body oppose such a bill?

*"The heart of education"*

The opposition by the Excellence in Education Council sprang from what its members considered a raid on the monies within their oversight. The funding source for LB 1228 would largely derive from monies distributed to the council from the state lottery proceeds. Since 1992 these funds had been used for grants to schools that make application and vow to make certain improvements or innovations in educational services to students. But ever since its creation, the beneficiary funds under the State Lottery had been the subject of countless grabs or attempted grabs by lawmakers in order to bypass the more difficult task of procuring appropriations from the state's General Fund. In short, the beneficiary funds were easy and convenient targets for funding sources.

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<sup>1894</sup> NEB. LEGIS. JOURNAL, 21 January 1998, 357.

<sup>1895</sup> Committee on Education, *Committee Statement, LB 1228 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 1.

One year before the introduction of LB 1228, the Excellence in Education Council adopted a resolution, a set of guiding principles, to outline the mission of the council. As Ross Tegeler testified on February 2<sup>nd</sup>, the principles provide that:

- (1) the funds should be utilized to encourage innovation;
- (2) the funds should be considered as research and development resources for education in Nebraska;
- (3) the funds should be support local school improvement planning and the implementation of those local plans; and
- (4) the funds should be distributed through the grant application process as initially prescribed by the Legislature.<sup>1896</sup>

Tegeler emphasized it was not the goals within LB 1228 that the council opposed but rather the funding source. He noted that LB 1228 was but one of many bills designed to utilize funds under the council's supervision. "We are also aware that a number of other bills before this session of the Legislature would also seek to utilize resources from the Education Innovation Fund," he said, "In fact, the aggregate of the proposals to reallocate funds from the Education Innovation Fund far exceed the receipts to that fund."<sup>1897</sup>

In the case of LB 1228, Senator Bohlke believed the policy objectives justified usage of lottery proceeds. In fact, the objectives were so important, she felt, that both lottery proceeds and General Fund appropriations were justified. So what were these objectives that were so important as necessitate state appropriations along with a restructuring of the Education Innovation Fund?

Since coming to her position on the Education Committee, Senator Bohlke believed the dominant item of discussion had been the school finance formula. In 1995, her second year as chairwoman, the major piece of legislation was spending limitations and special education funding. In 1996, major modifications to the formula were enacted under LB 1050 while the Legislature also set about establishing levy limits under LB 1114. In 1997 the attention of the Legislature focused on major formula modifications

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<sup>1896</sup> Committee on Education, *Hearing Transcripts, LB 1228 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 2 February 1998, 55-56.

<sup>1897</sup> *Id.*, 56.



under LB 806. Through most of this timeframe, very little actual discussion occurred on what Senator Bohlke called the real issues of education. “I think we’ve set the parameters on the funding,” she said, referring to the school finance formula.<sup>1898</sup> “Now we’re looking at the heart of education,” she added.<sup>1899</sup>

As advanced from committee on February 24<sup>th</sup> by an 8-0 vote, LB 1228 proposed to create the Quality Education Accountability Act with four major components: (1) quality education incentives, (2) a financial reporting system, (3) a testing program, and (4) a mentor teacher program.<sup>1900</sup>

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Table 108. Summary of LB 1228 (1998) as Advanced Committee

1. Quality Education Incentives.

Quality education incentive payments would be provided to a local system each year it meets the qualifications. The first two years a system qualifies, the system must meet all of the “primary quality factors.” The third and fourth years, the system must meet all of the primary factors and at least two of the “premier quality factors.” The fifth and sixth years, the local system must meet all of the primary factors and at least three of the premier factors. The seventh year and each year thereafter, a local system must meet all of the primary factors and all of the premier factors.

*The primary quality factors are:*

- a. Adoption of state academic standards or standards approved by the State Board as being more rigorous;
- b. An alternative school, class, or educational program is available or in operation for all expelled students or there is a policy to have such a program available if any students are expelled;
- c. Each district has an approved program for learners with high ability or there is a policy to have a program available if any students are identified; and
- d. At least 60% of the graduating seniors have taken a standard college admissions test and the average most recent score is above the statewide average on any exam taken by at least 25% of the graduating seniors.

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<sup>1898</sup> Leslie Reed, “School Bill Advances The plan aims to use testing and financial reporting to increase schools' accountability,” *Omaha World-Herald*, 6 March 1998, 1.

<sup>1899</sup> *Id.*

<sup>1900</sup> Committee on Education, *Executive Session Report, LB 1228 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 24 February 1998, 2.

Table 108—*Continued*

*The premier factors are:*

- a. At least one teacher certified by the National Board for Professional Teaching Standards;
- b. At least 36% of the certificated teachers in the local system have advanced degrees;
- c. Each district participates in the mentor teacher program and provides a mentor for each first-year teacher or has a policy to participate and provide mentors if any first-year teachers are hired; and
- d. The high school district improves the annual percentage dropout rate from the prior year or maintains a dropout rate of 4% or lower.

If at least 40% of the formula students qualify for the poverty factor as per the school finance formula and meets all of the qualifications except that the average test scores are not above the statewide average, the local system would receive payments equal to \$50 per formula student multiplied by 2 times the percentage of seniors who scored above the statewide average on any test is divided by the number of seniors who have taken a standard college admissions test.

Applications would be submitted to the Excellence in Education Council on or before July 1 of each year, using the most recent information and data available. If the criteria are met, the local system would qualify and receive payments from the Education Innovation Fund on or before September 1. The payments would be \$50 per adjusted formula student or \$100 per adjusted formula student for local systems in the very sparse cost grouping. If the unobligated balance in the fund is less than the amount calculated, each system would receive a pro rata amount.

The incentive payments may only be used for the purposes set forth for major competitive grants from the Education Innovation Fund. The payments would be made to the high school district, which would determine how the payments are to be used after consultation with all Class I districts in the system. Payments may be transferred to Class I districts. Payments are not included as formula resources. The Excellence in Education Council may audit the use of quality education payments.

## 2. Financial Reporting System.

The State Board of Education must provide a financial reporting system for all local systems beginning in 1999. The reporting system must:

- a. Provide for standardization and uniformity in the classification of all receipts and expenditures;
- b. Report all receipts and disbursements to the public and to NDE in a consistent format that easily explains to taxpayers how education funds are spent and where the funds are generated for the state, each local system, and each attendance center;

Table 108—*Continued*

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- c. Be adaptable to changing requests for information;
  - d. Be provided in an electronic format;
  - e. Provide for the inclusion of Class I data with the primary high school district in a manner that allows for analysis of the Class I and the primary high school district separately and as an aggregate;
  - f. Provide for electronic filing of reports with the department and the Auditor;
  - g. Provide for electronic access to reports; and
  - h. Maintain compatibility with existing accounting systems.

NDE must, by rule and regulation, prescribe the format and content of financial reports that are to be filed or made available to the patrons of each system. The system may be purchased from a private vendor or developed by the department after a cost analysis. NDE must also provide periodic training to district and ESU personnel and to school board members and interested members of the public. The department and each local system must provide defined financial reports to the media and other interested parties. The state information must also be available on a statewide public computer information network. Districts may also provide additional financial reports and data generated by the financial reporting system.

### 3. Testing Program.

The State Board must implement a statewide testing program for students in a selected grade in each of the grade ranges 4-6, 7-9, and 10- 12 each fall semester beginning in 2000 and responsible for the cost of the test materials and scoring. The testing program must consist of one test purchased from a recognized testing service that tests students in the areas of mathematics, reading, science, and social studies, plus one writing test, either developed within the state by educators with expertise in writing assessment or purchased as a part of the test for the other specified subjects.

*The purposes of the testing program are:*

- a. Evaluate whether or not students have acquired skills and knowledge to meet or exceed state academic standards;
- b. Measure progress of students toward meeting state academic standards;
- c. Provide information for analysis of standards and consideration of new standards;
- d. Allow comparisons between the achievement between local systems; and
- e. Allow comparisons between Nebraska students in other states.

All public school districts must participate, and all students in the designated grade levels must be tested, except the State Board must establish criteria that may exempt special education students from testing in any or all subject areas. The state board may also adopt alternative tests or scoring for special education students and students with limited English proficiency.

Table 108—*Continued*


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The individual scores must be confidential, must be reported to the district, and must not be reported to the department. Aggregate results for each district must be reported to the department by the testing service and writing test scorers. Districts may also make aggregate data available based on attendance centers.

4. Mentor Teacher Program.

The state board must develop a mentor teacher program to for individuals entering teaching. The state board must conduct a comprehensive study of the needs of new teachers and how those needs may be met through a program of orientation and mentor support. The state board also must develop and coordinated mentor teacher training to be funded by the Education Innovation Fund and must develop criteria for selection excellent, experienced, and qualified teachers to be participants. The state board must report to the Legislature on or before December 1, 1998.

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*Source:* Committee on Education, *Committee Statement, LB 1228 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 3-5.

The legislation proposed to amend the law relevant to the Education Innovation Fund in order to allocate up to 10% of the available funds first for mentor teacher training and another amount for quality education incentive payments. Any remaining money would be allocated by the Governor through the existing provisions for mini-grants to school districts.<sup>1901</sup> At the time, the Education Innovation Fund received about \$9.4 million per year in lottery proceeds. This meant that about \$940,000 would be available for the teacher mentor program, and about \$6.5 million would be available for the quality incentive payment program.<sup>1902</sup>

*Debate and Passage*

Unlike LB 1229 related to gifted education, LB 1228 would consume a large amount of time for floor debate and deliberation during the 1998 Session. Most of the heated discussion focused on the proposed assessment system, and whether there should be a single test or a multiple test system. There was discussion about the varying impact the legislation would have on different sized school systems and how many students and teachers would be benefited from the various proposed programs. Generally, the debate

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<sup>1901</sup> *Committee Statement, LB 1228 (1998)*, 5.

<sup>1902</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 1228 (1998)*, prepared by Sandy Sostad, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 24 March 1998, 1-2.

was not so much whether the bill should become law, but exactly in what form. There was generally constructive, supportive dialogue among legislators on the outline of the proposal. “It is not often that a bill comes along that overall, in my opinion at least, has such a positive effect on the possible quality of education,” said Senator Chris Beutler.<sup>1903</sup> However, there were a few vocal dissenters among the body.

Those who opposed the legislation had various concerns, such as the proposed assessment system or the cost of the programs. At least at one point in the floor debate, Senator Ernie Chambers had a blanket complaint with the entire bill. “This bill is not about education,” Chambers warned.<sup>1904</sup> “This bill is about getting hold of some money and finding a way to implicate enough districts in this scheme to get enough votes to pass this bill into law,” he said, “It is very poorly considered legislation, and it is self-contradictory.”<sup>1905</sup> He believed that if funds were to be distributed by the state then programs should be mandated so that all children receive the benefit. This was a consistent argument that the Omaha senator voiced with regard to LB 1229.

The important item to note about LB 1228, as it relates to the school finance formula, is that the funds received for quality incentive payments or for the mentor teacher program were not considered as actual receipts. Equalized as well as non-equalized districts would be eligible for the funds and it would not be counted against the state aid they receive the following year. And this raises one of the more interesting questions about the legislation that did not come out during debate perhaps as much as it should have. The policy question might have been whether the funding programs contained in the bill were consistent with the concept of a true equalization formula.

LB 1059 (1990), LB 1050 (1996), and LB 806 (1997) all sought to implement or further implement an equalization aid-based formula. Those districts that need the funds most would receive them first. LB 1228, on the other hand, added another layer of state

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<sup>1903</sup> Legislative Bill 1228, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), 3 March 1998, 12485.

<sup>1904</sup> *Id.*, 12575.

<sup>1905</sup> *Id.*

aid, albeit a smaller amount, to those districts that met certain criteria unrelated to such considerations as property valuation, tax levies, spending lids, and student population. A further criticism of the 1998 legislation might have been that the measure tended to be more easily accessible to those districts that possessed the existing resources, both labor and finances, to apply for the funds. The latter criticism was, in fact, brought out during the debate, both on the floor and behind the scenes.

The argument could have been made that if the intent of the Legislature was to tap into the resources of the Education Innovation Fund, the funds should have flowed through the equalization formula. This would have been in keeping with the work completed and the legislative intent already forged in developing an equalization-based formula for public schools. Of course, one of the other elements of school finance is the *political* — the will of a legislative body to meet a policy objective. In the case of LB 1228 there were, what the sponsors believed, some very important educational themes, services, and programs to be promoted. These included programs for expelled students, so that they were not without educational opportunities, and gifted education, so the other side of the special services equation was addressed. The Legislature, through LB 1228, wanted to establish some of the priorities it collectively wished for public education, such as adoption of academic standards, high college admission scores, low dropout rates, and more teachers possessing graduate level education. The presumption made by the legislation was that if schools achieve or at least pursue some or all these objectives then students would benefit and public education would be improved.

LB 1228 did produce some long over due discussion about the educational issues that may have been ignored in previous sessions. In fact, the previous two legislative sessions were largely used on school finance issues. Perhaps this was by necessity in light of the property tax policy changes. But in 1998, the discussion turned directly to issues that impacted public education, at least in the collective opinion of the Legislature.

Senator Bohlke's priority bill may not have sailed through the legislative process as fast as she had hoped, but it did receive strong approval at each stage of debate.

Finally, on April 2<sup>nd</sup>, the body passed LB 1228 by a 40-6 vote.<sup>1906</sup> Governor Nelson signed the measure into law on April 8<sup>th</sup>, but he line-item vetoed the companion appropriation bill. In a letter dated April 8<sup>th</sup>, Governor Nelson wrote:

With this letter, I am returning LB 1228A with a line-item veto. This legislation also provides for the implementation of an annual statewide assessment beginning in the school year 2000-2001. I am vetoing \$1,728,000 General Funds provided by the Legislature for Fiscal Year 1999-00 for carrying out the provisions of the assessment program in LB 1228.

My decision allows the Department of Education time to prepare a Request For Proposal (RFP) and receive bids from national testing services on the cost of potential testing instruments. The department can return to the Legislature with this information and a more precise estimate of the costs for the implementation of this testing program.

I believe the state will benefit from taking more time to collect and review data on the implementation of a statewide assessment before committing the funding for this program.<sup>1907</sup>

Nelson's action may have been an annoyance to the department, and perhaps to Senator Bohlke, but he did have a point about getting the cart before the horse. It was simply not known for sure what the cost of the assessment instrument might be at that time.

On the whole, the passage of LB 1228 was a great victory for Senator Bohlke and other supporters. The bill caused a fairly significant collaborate effort by a variety of organizations and different sized school districts. Unfortunately, just a few years later the Legislature would find it necessary to siphon off the proceeds of the Education Innovation Fund to help the state with its budget difficulties following the "911" disaster and the economic chaos that ensued.

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Table 109. Review of LB 1228 (1998) as Passed and Signed into Law

Introduced and prioritized by Senator Bohlke, and co-sponsored by 20 other senators, LB 1228 created the Quality Education Accountability Act. The new can be divided into four components: (i) quality education incentive payments, (ii) financial reporting system, (iii) statewide assessment, and (iv) teacher mentoring.

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<sup>1906</sup> NEB. LEGIS. JOURNAL, 2 April 1998, 1682.

<sup>1907</sup> Id., 8 April 1998, 1874-75.

Table 109—*Continued*

## 1. Quality Education Incentive Payments.

- A. Criteria. Quality education incentive payments would be provided to local systems each year the local system meets the qualifications described below.

<i>Qualification Years</i>	<i>Qualifying Factors</i>
1st - 2nd .....	all primary quality factors
3rd - 4th.....	all primary quality factors and at least 2 premier quality factors
5th - 6th .....	all primary quality factors and at least 3 premier quality factors
7th & beyond .....	all primary quality factors and at least 4 premier quality factors

## Primary Quality Factors:

- *Academic Standards*. Each district in the local system has adopted academic standards adopted and promulgated by the State Board of Education OR academic standards approved by the state board as generally more rigorous than the academic standards adopted and promulgated by the state board.
- *Alternative Education for Expelled Students*. Each district in the local system has an alternative school, class, or educational program available or in operation for all expelled students or, for districts that do not have any expelled students, an adopted school board policy to have an alternative school, class, or educational program available or in operation for all expelled students if any expulsions occur.
- *College Admissions Test*. At least 60% of the graduating seniors in the local system have taken a standard college admissions test and those students have an aggregate average score, using the most recent test score on each test taken for each student who has taken at least one of the tests, above the statewide average score on any of the standard college admissions tests which at least 25% of the graduating seniors have taken.

## Premier Quality Factors:

- *National Certification*. The local system has at least one teacher who has received credentials from a national nonprofit organization the purpose of which is to establish high and rigorous standards in a broad range of educational areas for what accomplished teachers should know and be able to do and which issues credentials to teachers who demonstrate that they meet those standards;
- *Graduate Degrees/Courses*. At least 36% of the certificated teachers in the local system have advanced degrees or at least 30 graduate-level hours.
- *Teacher Mentoring*. Each first-year teacher in a local system is provided with a mentor participating in the mentor teacher program established under LB 1228 or a mentor teacher program established by a district in the local system and approved by the state board.



Table 109—*Continued*

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- *Dropout Rate.* The high school district improves the annual percentage dropout rate from the prior year or maintains a dropout rate not to exceed 4%.
  - *Gifted Education.* An approved program for learners with high ability is available to every student identified as a learner with high ability in the local system and there is at least one learner with high ability identified.
- B. Application Process. Local systems meeting the criteria may apply to the Excellence in Education Council for quality education incentive payments on or before October 1, 1998, for the 1998-99 school fiscal year and on or before July 1st of each fiscal year thereafter, using the most recent information and data available. If the information and data in the application indicate that the local system meets the criteria, the local system will qualify for quality education incentive payments.
- C. Payment Amounts. Incentive payments will be made from the Education Innovation Fund (State Lottery) on or before December 1, 1998, for the 1998-99 school fiscal year and on or before September 1st of each school fiscal year beginning with 1999-00 school fiscal year. The payments will equal \$50 per adjusted formula student or \$100 per adjusted formula student for local systems in the very sparse cost grouping based on the most recent certification of state aid. Pro Rata: If the unobligated balance in the fund is less than the amount calculated for quality education incentive payments due to qualified local systems, each qualified local system will receive a pro rata amount such that the amount of payments equals the unobligated balance in the fund.
- D. Permitted Uses for Incentive Payments. Incentive payments may only be used for pilot projects or model programs for the purposes set forth in section 9-812 for major competitive grants. Incentive payments may not be used to supplant federal, state, or local funds. The payments must be made to the high school district, and the high school district prior to the application must determine how the payments will be used after consultation with all Class I school districts in the local system. Incentive payments, or portions of such payments, may be transferred to the Class I school districts. (NOTE: Quality education incentive payments will not be included as local system formula resources. The Excellence in Education Council may audit the use of quality education incentive payments at the discretion of the council.)
2. Financial Reporting System.
- A. Feasibility Study. With NDE's assistance, the School Finance Review Committee is directed to complete a feasibility study and make recommendations for a financial reporting system for all K-12 local systems and report to the Legislature's Education Committee by December 1, 1998.

Table 109—*Continued*

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- B. System Specifications. The financial reporting system must:
- Provide for standardization and uniformity in the classification of all receipts and expenditures as a basis for preparing financial reports;
  - Report all receipts and disbursements to the public and NDE in a consistent format that easily explains to taxpayers how education funds are spent and where the funds are generated for the state, each local system, and each attendance center;
  - Be adaptable to changing requests for information;
  - Be provided in an electronic format;
  - Provide for the inclusion of Class I data with the data of its primary high school district in a manner that allows for analysis of the data for the Class I and the primary high school district separately and as an aggregate;
  - Provide for electronic filing of reports with NDE and the State Auditor;
  - Provide for electronic access to reports as filed; and
  - Maintain compatibility with existing accounting systems.
3. Statewide Assessment.
- A. Creation of Program. The State Board of Education is directed to implement a statewide assessment program for students in each of the grade ranges 4-6, 7-9, and 10-12 each fall semester beginning with the fall semester of 2000.
- B. Purchase/Development of Assessment Instrument. The assessment program will consist of one assessment purchased from an assessment service for each selected grade which tests students in the areas of mathematics, reading, science, and social studies, plus one writing assessment, either developed within the state by educators with expertise in writing assessment or purchased as a part of the assessment for the other specified subjects.
- C. Purposes of Assessment Program.
- Evaluate whether or not students in a school have acquired skills and knowledge that allow them to meet or exceed academic standards established by the state;
  - Measure progress of students in a school system toward meeting academic standards established by the state board;
  - Provide information for analysis of adopted standards and consideration of new standards;
  - Allow comparisons to be made between the academic achievement of students in a local system and students in another Nebraska local system; and
  - Allow comparisons to be made between the academic achievement of Nebraska students with the academic achievement of students in other states.

Table 109—*Continued*

- D. Participation. All public school districts are required to participate in the assessment program, and all students enrolled in the designated grade levels in such districts must be assessed except as follows: (i) the state board must establish criteria that schools may use to exempt special education students from assessment in any or all subject areas; and (ii) the state board may also adopt alternative assessments or means of scoring for special education students and students with limited English proficiency.
- E. Reporting. The individual assessment scores will be confidential, will be reported to the school district for educational purposes, and will not be reported to NDE. Aggregate results for each school district will be reported to the department by the assessment service and writing assessment scorers. School districts may also make aggregate data available based on attendance centers.
- F. Cost of Assessment Program. NDE is responsible for the cost of the assessment materials and scoring.

Notes: The Governor line-item vetoed a portion of the appropriation bill, LB 1228A, concerning the funding for the statewide assessment program. LB 1228A would have appropriated \$1,728,000 for FY1999-00 to fund the program. The Governor argued that the funds were not needed at this time since the program would not be implemented until the fall of 2000.

The Legislature's Fiscal Office estimates a General Fund cost of approximately \$1,945,000 (\$28.20 per test) for a multiple choice test and a writing assessment which is purchased from a major test publisher. If only a multiple choice test is purchased from a testing company and the writing assessment is developed and administered by educators in the state, then annual testing costs may be closer to \$1,511,000 (\$21.90 per test).

#### 4. Teacher Mentoring.

- A. Guidelines. The State Board of Education is directed to develop guidelines for mentor teacher programs in local systems in order to provide ongoing support for individuals entering the teaching profession.
- B. Funding. Funding for mentor teacher programs will be provided to local systems that provide a mentor for each first-year teacher in the local system. The mentor teacher programs will be funded by the Education Innovation Fund and must identify criteria for selecting excellent, experienced, and qualified teachers.
- C. Report. The state board must report to the Legislature on or before December 1, 1998, on its progress.

*Final Notes on LB 1228:* The quality education incentive payments and teacher mentoring programs are to be funded through the Education Innovation Fund. In 1998-99 the estimated receipts to the Education Innovation Fund is \$9.4 million. LB 1228 amends existing law to create the following order of priority to draw funds from the Education Innovation Fund: First Priority - up to 10% to fund mentor teacher programs; Second Priority - up to 70% for quality education incentive payments; and Third Priority - up to 20% for competitive grants (the original purpose of the Fund).

Table 109—*Continued*


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Using estimated annual receipts of \$9.4 million to the Education Innovation Fund, approximately \$6.58 million will be available in 1998-99 and 1999-00 for quality education incentives. If half of the adjusted formula students in the state qualified for incentive payments, then approximately \$8.3 million (332,000 adjusted formula students x \$50) would be needed for incentive aid, which would necessitate the prorating of available funds.

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*Source:* Legislative Bill 1228, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 1-7, pp. 1-6 (741-46).

### LB 1175 - Full Funding

LB 1175 (1998) was introduced as a technical clean-up bill for statutes pertaining to schools. The lengthy bill contained modifications to various sections of law in order to update them or otherwise edit them, but in most cases not produce substantive policy changes.

Clean-up bills are offered each year by just about every standing committee of the Legislature having jurisdiction over a specific area of law, whether it is criminal law, banking, health, education, etc. In many cases, once advanced from committee these clean-up bills become what lobbyists and legislators alike call “Christmas tree bills,” since interested parties attempt to attach ornaments (amendments) to them throughout the legislative process. The bills usually have such a broad scope that issues of germaneness are seldom raised. LB 1175 would befall the fate of all such bills and numerous amendments would be attached to the bill. But unlike most technical cleanup bills, LB 1175 would become known as the technical cleanup bill that caused a special session.

Among the provisions of the bill, LB 1175 sought to change the calculation of special education allowances in the state aid formula to include receipts for wards of the state and wards of the court.<sup>1908</sup> The bill changed the calculation of total adjusted formula students for local school systems qualifying for the extreme remoteness factor in the state aid formula.<sup>1909</sup> The bill changed the parameters and qualifications for local systems within the very sparse cost grouping so that additional systems would be eligible for such

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<sup>1908</sup> Legislative Bill 1175, Final Reading, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, § 25, p. 58.

<sup>1909</sup> *Id.*, § 17, p. 39.

cost grouping.<sup>1910</sup> The bill also outright repealed several sections of existing law that provided for the Special Education Accountability Commission and the termination of the existing special education funding formula.<sup>1911</sup> Without the repeal of these sections, Nebraska simply would not have a funding formula for reimbursement of special education costs to school districts.

In all, the bill contained 71 sections and was comprised of 107 pages. But it was one portion of the bill in particular that would escape the careful attention of the Legislature and the administration, and ultimately lead to its veto and later a special session. This chain of events would also lead to further legislation in the 1999 Session concerning the issues raised by LB 1175.

The event that set off a chain reaction in legislative activity was the adoption of an amendment to LB 1175 on the evening of April 6, 1998. The Legislature occasionally extends a session day into the evening in order to accomplish more business and make some headway on the overall legislative agenda. This often occurs toward the end of a legislative session when senators are desperate to finish as much business as possible. On April 6<sup>th</sup>, the Legislature was just eight days away from the end of the session, and there was a heightened sense of urgency to work through a number of bills, including LB 1175. By this point in time, the bill already had been amended seven times and also survived a motion by Senator Ernie Chambers to recommit to the Education Committee for further review.<sup>1912</sup>

By the time the bill arrived for debate on Select File, the tedium of the intricate educational issues being addressed had taken its toll on most members of the body. To be certain, members of the Education Committee were quite aware and knowledgeable about the amendments under discussion. But to other members of the body, LB 1175 represented just another cleanup bill. By the next morning, all this would change.

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<sup>1910</sup> Id., § 18, p. 40.

<sup>1911</sup> Id., § 70, pp. 106-107.

<sup>1912</sup> NEB. LEGIS. JOURNAL, 20 March 1998, 1219.

The amendment at issue was introduced and filed on March 30<sup>th</sup>, a week before it was to be debated, by Senator Bob Wickersham of Harrison. Wickersham, a member of the Education Committee, had filed the amendment for the purpose of incorporating the intent and language of another bill, LB 1124 (1998), into LB 1175. This is a common practice among legislators and it provides the opportunity to advance legislative proposals that might not otherwise have a chance for passage.

The Wickersham amendment to LB 1175 would change the method of calculating the amount of state aid to schools. The local effort rate in the school aid formula would be established at 90.97% times the maximum levy allowed schools under the property tax lid.<sup>1913</sup> The Legislature would then be required to provide sufficient annual appropriations to fully fund the amount of state aid certified by NDE based on the local effort rate established under the bill. In essence, there would finally be a guarantee, of sorts, by the Legislature to ensure complete funding from year to year. The formula would function without political influences. As Wickersham explained to his colleagues, “There is after, if this amendment is adopted, a clear, direct process formula for calculating the amount of money that should be appropriated to fund TEEOSA.”<sup>1914</sup>

The amendment established the local effort rate at \$1.00 (\$1.10 multiplied by .9097) for the state aid distribution in school years 1999-00 and 2000-01, which was the same local effort rate used in the distribution of state aid for the 1998-99 school year. Upon the reduction of the maximum levy to \$1.00 in 2001-02, as prescribed by LB 1114 (1996), the local effort rate would reduce to approximately 91¢. The Legislature’s Fiscal Office anticipated this would require an additional \$70 million in state aid appropriations once the maximum levy dropped to \$1.00.<sup>1915</sup>

Interestingly, only one legislator questioned Senator Wickersham about the automation of funding that would be set in place by the amendment. Senator Pam Brown

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<sup>1913</sup> Id., *Wickersham AM4207*, 30 March 1998, 1548.

<sup>1914</sup> Legislative Records Historian, *Floor Transcripts, LB 1175 (1998)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 6 April 1998, 15830.

<sup>1915</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 1175 (1998)*, prepared by Sandy Sostad, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, 8 April 1998, 2.

of Omaha asked Wickersham, “This is the amount that we will then automatically put into the TEEOSA amount for state aid?”<sup>1916</sup> To which Wickersham answered in the affirmative even though at the time of debate no one knew for sure what the future increases in state aid appropriations would entail. During his exchange with Senator Brown, Wickersham elaborated:

I’m not attempting to increase funding. It’s true that I did introduce a bill that had this formula in it that would in fact have increased funding and increased funding fairly significantly. It is not our expectation that this actually increases the level of funding that we would receive under the current estimating process.<sup>1917</sup>

Wickersham hastened to add, “I can’t tell you that that’s a hundred percent accurate, but that’s my intention.”<sup>1918</sup> Brown would later say that her colleagues simply did not understand what they were voting for.<sup>1919</sup> But this is certainly not the fault of Senator Wickersham who carefully explained the purpose of the amendment and offered to answer any questions posed to him.

In truth, the Wickersham amendment, which was adopted by a 25-0 vote, would have accomplished what Wickersham set out to achieve.<sup>1920</sup> It would have simplified the process of determining an annual appropriation to fund the formula from year to year. It would have eliminated some of the educated guesswork by legislative and department staff. Whether intended or not, it would have also increased state appropriations for public schools once the maximum levy dropped to \$1.00. And this became the catching point not only for the amendment but also for the bill itself.

The Governor’s office, which often takes an active role in shaping legislation, failed to take immediate note of the amendment. However, within a few days the administration had begun distancing itself from what it perceived as a blank check for

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<sup>1916</sup> *Floor Transcripts, LB 1175 (1998)*, 6 April 1998, 15831.

<sup>1917</sup> *Id.*, 15832.

<sup>1918</sup> *Id.*

<sup>1919</sup> Leslie Reed, “School-Aid Entitlement? Senators’ Commitment Would Start at \$70 Million,” *Omaha World-Herald*, 12 April 1998, 1.

<sup>1920</sup> NEB. LEGIS. JOURNAL, 6 April 1998, 1762.

public education. Leslie Reed, reporter for the *Omaha World-Herald*, said perhaps what the administration wanted to say when she wrote on April 12th, “With a five-minute debate and a 25-0 vote, the Nebraska Legislature has committed itself to an additional \$70 million a year for public schools beginning in the next few years.”<sup>1921</sup>

A Final Reading vote on LB 1175 was set for the very last day of the session, April 14, 1998. While the last day of most regular sessions usually entails ceremonial activities and perhaps final passage of non-controversial bills, the 1998 Session would end with drama, a few hard feelings, and perhaps a lesson to all about seemingly technical-related bills. During Final Reading discussion, Senator Ardyce Bohlke, chair of the Education Committee, filed a motion to recommit the bill to committee.<sup>1922</sup> The motion was not meant seriously, but rather to offer her and Senator Wickersham a chance to respond publicly to the controversy generated by the Wickersham amendment.

Bohlke noted several sections of the bill that required the Legislature’s immediate action and therefore justification for passage, but it was the termination of the existing special education formula that rose above all others. Bohlke admitted that special education cost reimbursement would continue for the current school year but the same would not be true for the following school year if LB 1175 did not pass. Said Bohlke:

The question is next year, next September when school begins until we would come into session, if we would not pass this, we would not have a special ed formula in place. Therefore, schools would not know what the state will be reimbursing them for special ed costs. That obviously would cause a great deal of confusion not only to schools as they try to determine which services they should offer, but more importantly to students in those special education programs and certainly to the parents of those students in those special education programs.<sup>1923</sup>

Bohlke said the lack of a special education formula would be particularly difficult for smaller, rural schools that might not have the resources or reserves to make up the difference.

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<sup>1921</sup> Reed, “School-Aid Entitlement?” 1.

<sup>1922</sup> NEB. LEGIS. JOURNAL, 14 April 1998, 1951.

<sup>1923</sup> *Floor Transcripts, LB 1175 (1998)*, 14 April 1998, 16409.



Bohlke then allowed Senator Wickersham to offer his comments on the situation. Wickersham said he was surprised by the controversy surrounding his amendment and adamantly denied any intent to create a “new spending issue.”<sup>1924</sup> He said the idea of accounting for the lost revenue to schools, due to the reduction in the maximum levy from \$1.10 to \$1.00, was an item of discussion dating back to the passage of LB 806 (1997). Said Wickersham:

I am glad that the controversy now surrounding [AM]4207 has perhaps brought it to the front of your consciousness because it is something we need to be aware of. It is something that we need to plan for. It is something in my opinion that we need to provide for because it will happen. I will not vote to raise the levy limitations. And I will not vote to deprive schools of the resources that they need to provide an adequate education for students in this state.<sup>1925</sup>

Wickersham said the Legislature made a policy decision when it passed LB 806 (1997) committing major modifications to the school finance formula. Part of the policy decision was to infuse more funds into the formula to account for the newly imposed levy limitations under LB 1114 (1996). The loss of local revenue would be made up by increased state aid. His amendment to LB 1175, he said, was simply a continuation of the goals set out in that policy.

Bohlke withdrew her motion in order to permit a final vote, but the discussion would continue through the remainder of that morning and resume in the afternoon. A number of legislators rose to speak in favor of the bill as it stood and endorsed the idea proposed by the Wickersham amendment. Others, including Senator Brown, rose to encourage a reconsideration of the Wickersham amendment and permit the remainder of the bill to pass. Ultimately, all attempts to stall the bill failed and a final vote for passage was allowed to happen. The bill passed by a surprisingly wide margin with 34 in favor and only eight opposed.<sup>1926</sup>

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<sup>1924</sup> Id., 16410.

<sup>1925</sup> Id., 16411.

<sup>1926</sup> NEB. LEGIS. JOURNAL, 14 April 1998, 1957.

Governor Nelson vetoed the bill, as expected, four days after the Legislature had adjourned sine die.<sup>1927</sup> In a letter to the Legislature, Nelson wrote that he understood the significance of the bill to Nebraska's schools. However, Nelson wrote:

I cannot support language in LB 1175 which changes the intentions of the State regarding policy to create greater efficiencies in political subdivisions and provide property tax relief for the citizens of Nebraska. I am always concerned with "Christmas tree" bills, and in this case, unfortunately, the last ornament collapsed the whole tree.

LB 1175 changes the formula to calculate state aid to schools and states the Legislature shall "fully fund" the amount certified. This formula alters what I believe Nebraskans expect in encouraging government to explore ways in which to become more efficient. Spending limitations were put into place to provide property tax relief, not to create a tax shift to the State. LB 806 was designed to address the changing financial challenges schools will face, and current statute allows the flexibility the State needs to determine the appropriate spending obligations of the State in the future.<sup>1928</sup>

Nelson reminded legislators that state aid to schools had increased by 86% since 1992. But increases in state aid were not the only priority of state government. Nelson wrote, "The answer to providing tax relief and creating efficiencies in government cannot be answered by increasing the obligations of the State."<sup>1929</sup> He urged, if not chided, the Legislature to give more consideration before committing the state to a "policy shift" such as that found in LB 1175.<sup>1930</sup> Governor Nelson was not insensitive to the other important elements of LB 1175, at least as he viewed them, and he would call the Legislature back into session to address the less controversial items contained in the bill.

### C. The 1998 Special Legislative Session

Governor Nelson and his staff may have been caught off-guard briefly during the debate on LB 1175 (1998). But they would ultimately have the final word. On May 4, 1998 the Governor exercised his constitutional prerogative to call the Legislature into

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<sup>1927</sup> Id., 20 April 1998, 1988.

<sup>1928</sup> Id.

<sup>1929</sup> Id.

<sup>1930</sup> Id.

special session for the purpose of addressing the matter.<sup>1931</sup> The Legislature would be convened in special session for the first time in six years.

The Nebraska Constitution gives the Governor the authority to convene the Legislature in extraordinary circumstances, and also gives the Governor the authority to limit the scope of the special session.<sup>1932</sup> The idea is to prevent the Legislature from enacting legislation beyond the original purpose set forth by the Governor. In this case, the Governor established a very narrow agenda. The Legislature was to meet beginning on May 13<sup>th</sup> and enact provisions of LB 1175 with the exception of the Wickersham amendment (AM4207) relating to “fully funding” the state aid formula.<sup>1933</sup>

For a legislative body that receives very little pay in terms of salary, special sessions are often viewed as intrusive to what little time legislators have away from the Capitol. Special sessions are not necessarily an economic hardship for all senators, but they are intrusion nonetheless. Therefore, when the Legislature convened on May 13<sup>th</sup> the general mood was one of anxiousness to finish its work, and quickly. The exception, perhaps, was Senator Ernie Chambers who used the special session to further his political agenda on the issue of closing Peru State College. The issue had been raised in the 1998 regular session, but the disposition, or perhaps lack of disposition, was not to Senator Chambers’ satisfaction.

Accordingly, one of the three bills introduced in the 1998 Special Session, LB 3, related to the closing of Peru State College. One of the bills, LB 2, related to necessary appropriations for the operation of the Legislature in special session. And the other bill, LB 1, pertained to the stated purpose of the special session as proclaimed by the Governor. Legislative Bill 1 would enact LB 1175 (1998) minus the controversial provisions contained in the Wickersham amendment.<sup>1934</sup>

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<sup>1931</sup> Id., 13 May 1998, 2.

<sup>1932</sup> NEB. CONST. art. IV, § 8.

<sup>1933</sup> NEB. LEGIS. JOURNAL, 13 May 1998, 2.

<sup>1934</sup> Legislative Bill 1 (1998), *Change provisions related to education*, sponsored by Sen. Ardyce Bohlke, req. of Gov., Nebraska Legislature, 95<sup>th</sup> Leg., 1<sup>st</sup> Spec. Sess., 1998, title first read 13 May 1998.

The Peru State College bill, LB 3, did have a public hearing on May 14<sup>th</sup>, but even Senator Chambers knew the bill would go no further. In fact, the bill was never advanced from committee. The public hearing for LB 1, also held on May 14<sup>th</sup>, was the real focal point of the special session. In truth, more words would be spoken and more time would be consumed at the hearing for LB 1 than the entire floor debate for the bill in the succeeding days of the special session. The public hearing would also make history in that it was the first such hearing to be broadcast via the Internet for public viewing.

Interestingly, Senator Bob Wickersham, whose amendment initiated the special session, would have the opportunity to face those who testified that day due to his membership on the Education Committee. And one of the individuals to testify on the bill would be the man who called the special session. Governor Nelson chose to testify personally at the hearing rather than delegating the duty to one of his staff. His comments were carefully crafted to avoid giving the impression that he was anti-education in light of his opposition to a provision that would fully fund the state aid formula. “Education continues to be a top priority of my administration,” Governor Nelson said in his opening comments.<sup>1935</sup>

He went on to defend his support for education, citing the major increases to public education within the past year. Said Nelson:

This past session we approved a significant increase in the amount of state aid going to benefit public schools, including \$9.7 million for educational service units, \$200,000 for school nursing services, and \$3 million for programs with students with high abilities. In the 1998-1999 fiscal year, the state will provide nearly \$744 million in general funds for state aid to education; an increase of more than \$143 million over the previous year.<sup>1936</sup>

Governor Nelson said his administration “addressed the demand for property tax relief” by adding a spending lid to the levy limits enacted in 1996, referring to LB 299 (1996), the companion bill to LB 1114 (1996).<sup>1937</sup>

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<sup>1935</sup> Committee on Education, *Hearing Transcripts, LB 1 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 1<sup>st</sup> Spec. Sess., 1998, 14 May 1998, 49.

<sup>1936</sup> *Id.*

<sup>1937</sup> *Id.*

The Governor was careful not to directly attack the merits of the Wickersham amendment to LB 1175, especially with the senator present at the hearing. He referred only briefly to the amendment saying, “A debate over the more controversial school funding issues for the future can and, I’m sure, will be dealt with at a later date.”<sup>1938</sup> The important thing, he said, was to take on the pressing issues within LB 1 and, specifically, to remove “the uncertainty regarding reimbursement for special education.”<sup>1939</sup>

LB 1 mirrored LB 1175 in that it repealed several existing sections of law that would have otherwise eliminated the existing special education cost reimbursement system. The sunset date of the special education funding formula was August 31, 1999, but it was believed that waiting until the 1999 Session would have left school officials in limbo as to funding expectations and budgeting.

Also testifying was Steve Milliken, Special Services Director for Westside Community Schools. Milliken spoke on behalf of the Nebraska Association of Special Education Supervisors and said his association supports the continuation of the existing funding formula as a means of funding special education programs. Said Milliken:

Although the current funding formula is not a perfect system, it’s a system which we believe has not only guaranteed that students with special needs become identified, but also assisted the state in providing quality services which we believe to be some of the best supports in the nation for students with disabilities.<sup>1940</sup>

Milliken and other testifiers wanted assurances that the Legislature would not re-evaluate its decision to maintain the existing system. But the Education Committee and the Legislature as a whole had no intention of taking on new substantive issues in this particular special session.

LB 1 was advanced from committee the very day of the hearing on a unanimous 8-0 vote.<sup>1941</sup> The bill then proceeded to advance and ultimately pass by unanimous votes

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<sup>1938</sup> Id.

<sup>1939</sup> Id.

<sup>1940</sup> Id., 58.

<sup>1941</sup> Committee on Education, *Committee Statement, LB 1 (1998)*, Nebraska Legislature, 95<sup>th</sup> Leg., 1<sup>st</sup> Spec. Sess., 1998, 14 May 1998, 1.

throughout the legislative process. Governor Nelson signed the bill into law and the controversy was put to rest, at least for 1998, but the issue of fully funding the state aid formula would not disappear for very long. In fact, Senator Wickersham would take up the mantle of full funding once again during the 1999 Legislative Session.

Table 110. Summary of Modifications to TEEOSA  
as per LB 1 (1998 Special Session)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
15	79-1003	Terms, defined	<p>Eliminated obsolete language and updated terminology to “school fiscal year,” “local system,” and “school board.”</p> <p>The definition for “formula students” was amended by moving the memberships used in calculating the adjustment to fall membership up one year to make the memberships closer to the year when the calculated aid would be distributed.</p> <p>The definition for “transportation allowance” was amended to clarify the procedures for calculating the transportation allowance for the final calculation of state aid. For the certification of aid, the transportation allowance was adjusted by the change in the two school fiscal years preceding the most recently available complete data year. With these changes, the transportation allowance for the final calculation, or recalculation, was not adjusted because the most recently available complete data year used was one year closer to the aid distribution. The adjustments were a mechanism for estimating the data to be used in the final calculation of aid.</p>
16	79-1005.01	School fiscal year 1998-99 and thereafter; income tax receipts; disbursement; calculation	Required the Tax Commissioner to certify income tax liabilities by November 15 for the preceding tax year, instead of the second preceding tax year.
17	79-1007.01	School fiscal year 1998-99 and thereafter; adjusted formula students for local system; calculation	Replaced the term “adjusted formula membership” with “adjusted formula students.” Provided that for local systems qualifying for the extreme remoteness factor, the total adjusted formula students would be greater than or equal to 150. The adjustments for the extreme remoteness factor would not be included in the calculation of the average formula cost per student in each cost grouping, but would be included in the calculation of local system formula needs.

Table 110—*Continued*

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
18	79-1007.02	School fiscal year 1998-99 and thereafter; cost groupings; average formula cost per student; local system's formula need; calculation	Amended LB 989 (1998) to clarify what data sources were used to determine cost groupings. The annual financial reports continue to be for the most recently available complete data year. The annual statistical summary reports and fall membership reports (including supplements) were for the school fiscal year immediately preceding the school fiscal year in which aid was to be paid. The district census was for the second year immediately preceding the year in which aid was to be paid. The cost grouping determination would be completed prior to the certification of state aid and would not be revised for the certification of state aid.
19	79-1008.01	Equalization aid; amount	Added the absolute value of any negative prior year adjustment to the maximum aid under the "lop-off" provisions. Language was also reworded to clarify that small school qualifications apply to distributions, which allowed amounts that were not distributed to "lop-off" systems to be distributed first to systems with less than 900 formula students with below average costs.
20	79-1008.02	Minimum levy adjustment; calculation; effect	Clarified that the levy used to determine the minimum levy adjustment was the general fund common levy.
21	79-1009	Option school districts; net option funding; calculation	Deleted obsolete language; harmonized provisions consistent with other changes.
22	79-1010	Incentives to reorganized districts and unified systems; qualifications; requirements; calculation; payment	Deleted obsolete language; harmonized provisions consistent with other changes.
23	79-1015.01	Local system formula resources; local effort rate; determination	Deleted obsolete language; harmonized provisions consistent with other changes.
24	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	Changed deadlines for nonappealable requests to correct adjusted valuations. Districts and county officials are allowed to file a request with the PTA for a nonappealable correction due to clerical error or assessed value changes due to the qualification status for special use valuation. The previous deadlines for filing the requests were March 15, 1997 for valuations certified in 1996 and October 31 thereafter. Changed the date to June 15, 1998 for valuations certified in 1997. The previous deadlines for the PTA to act on the requests were March 31, 1998 and November 30 thereafter.

Table 110—*Continued*

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
24	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited <i>Continued</i>	Another appeal process with a July 31 date was contained in this section for any type of objection to the adjusted valuations. A new procedure was established to allow lump-sum payments that were postponed due to failure to calculate aid correctly under the special valuation provisions or clerical errors.
25	79-1018.01	Local system formula resources; other actual receipts included	Amended LB 1229 (1998). Clarified other actual receipts to include special education receipts and non-special education receipts from the state for wards of the court and wards of the state.
26	79-1020	Aid allocation adjustments; department; duties	Deleted obsolete language; harmonized provisions consistent with other changes.
27	79-1021	Tax Equity and Educational Opportunities Fund; created; investment	Deleted obsolete language; harmonized provisions consistent with other changes.
28	79-1022	Distribution of income tax receipts and state aid; effect on budget	Deleted obsolete language; harmonized provisions consistent with other changes.
29	79-1024	Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect	Required the Auditor of Public Accounts to notify the commissioner of Education of any Class I district failing to submit the items required by such subsection to its high school districts by the date established in section 79-1083.03.
30	79-1025	Basic allowable growth rate; allowable growth range	Deleted obsolete language; harmonized provisions consistent with other changes.
31	79-1027	Budget; restrictions	Moved the date for certification of the applicable allowable reserve percentage from July 1 to December 1 each year.
32	79-1030	Unused budget authority; carried forward	Amended LB 989 (1998). Clarified that only high school districts may carry over budget authority if expenditures were not increased by the full amount of the local system applicable allowable growth rate.
33	79-1031	Department; provide data to Governor; Governor; duties	Moved the deadline for the department to provide data to the Governor from December 1 to December 15. The requirement for the Governor to establish a basic allowable growth rate and growth range was amended to clarify that they apply to local systems and limit the budgets of high school districts.



Table 110—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
34	79-1031.01	Legislative intent	Deleted obsolete language; harmonized provisions consistent with other changes.
35	79-1032	School Finance Review Committee; created; members; duties	Replaced membership tier terminology with cost grouping terminology for the duties of the School Finance Review Committee. Equalization adjustments and minimum levy adjustments were added to the review duties.
36	79-1033	State aid; payments; reports; use; requirements; failure to submit reports; effect; early payments	Deleted obsolete language; harmonized provisions consistent with other changes.

Source: Legislative Bill 1, *Slip Law*, Nebraska Legislature, 95<sup>th</sup> Leg., 1<sup>st</sup> Spec. Sess., 1998, §§ 15-36, pp. 9-26.

#### D. 1998 General Election: Initiative 413

Eight separate constitutional amendments appeared on the November 3, 1998 Nebraska General Election ballot. Seven of the amendments sprang from legislative resolutions passed and forwarded by the Legislature, while one amendment derived from a citizen-based initiative petition. The latter measure, Initiative 413, will undoubtedly be remembered as one of the most hard-fought, expensive, and bitterly contested issues in the history of Nebraska.

Table 111. Nebraska Constitutional Amendments, 1998 General Election

<i>No.</i>	<i>Origin</i>	<i>Subject</i>	<i>For</i>	<i>Against</i>	<i>Voting</i>
1	LR 20CA (1997)	Provide that no person shall be denied equal protection of the laws	336,672 *****	126,951	463,623
2a	LR 45CA (1998)	Change the way vehicle tax proceeds are allocated	266,513 *****	188,390	454,903
2b	LR 45CA (1998)	Authorize legislation relating to mergers and consolidations by local governments	240,554 *****	189,077	429,631
2c	LR 45CA (1998)	Provide that government property is exempt from taxation to the extent the property is used for public purposes	248,179 *****	181,220	429,399
2d	LR 45CA (1998)	Repeal references to townships and towns	150,394	255,093 *****	405,487
3a	LR 303CA (1998)	Allow Supreme Court judges to reside anywhere in the state	222,659 *****	213,458	436,117

Table 111—*Continued*

<i>No.</i>	<i>Origin</i>	<i>Subject</i>	<i>For</i>	<i>Against</i>	<i>Voting</i>
3b	LR 303CA (1998)	Provide for statewide votes on whether Supreme Court or appellate court judges should be retained in office	198,656	222,991 *****	421,647
413	Initiative Petition	Limit government spending by limiting state and local tax revenue increases	191,046	340,862 *****	531,908

*Sources:* Secretary of State Scott Moore, comp., *Official Report of the State Canvassers of the State of Nebraska, 1998 General Election, November 3, 1998* (Lincoln, Nebr.: Office of Sec’y of State); Nebraska Legislative Research Division, “A Review: Ninety-Fifth Legislature, Second Session, 1998 and First Special Session, 1998,” June 1998, *passim*.

The sheer number of voters participating in the vote on Initiative 413 in comparison to the other ballot issues is testament to the strong feelings on the issue. It may also be testament to the power of big budget television campaigns, both for and against a given issue. Voters were inundated with advertisements from both sides, and both sides accused the other of false statements, distortions, and misleading information.

The initiative petition drive was launched by a group calling itself the “Citizens for Nebraska’s Future,” and included the involvement of tax activist Ed Jaksha of Omaha. In fact, the movement was ostensibly funded and directed by the Omaha-area business community, particularly by a group calling itself the “Business Leaders Summit.” The opposition to the movement initially derived from a group calling itself the “Nebraskans for the Good Life,” which included professional associations representing political subdivisions. Groups representing school boards, school employees, county officials, municipal officials, and postsecondary institutions were among the members of the opposition group.

Many state legislators were also aligned against the initiative effort since the proposed constitutional amendment would similarly affect state government. Eventually, an opposition coalition would be formed in the name of “Agriculture, Mainstreet and Education Against Measure 413.” The group was comprised of the same local government groups but also included various business interests, including agricultural and banking associations. So what did the initiative measure propose to do, and why would government interests be so concerned about it?

Initiative 413 was unquestionably one of the largest amendments ever proposed to the Nebraska Constitution. The language of the amendment consisted of 3,525 words and, if adopted, would constitute 11% of the entire Constitution.<sup>1942</sup> The measure proposed to stem government spending by limiting the amount of tax revenues available for the state and local governments to expend. The “tax lid” was affixed to the prior year’s tax revenue multiplied by the Consumer Price Index (CPI) plus (i) population (or student) growth, (ii) temporary emergencies (if applicable) and (iii) unfunded federal mandates (if applicable). Voters would also be allowed to exceed the applicable lids.<sup>1943</sup>

The proposal gave any taxpayer and also the State Auditor standing in court to sue the state or any local government for enforcement of the provisions. The measure prohibited any court from issuing temporary or permanent injunctions while cases were pending. And a plaintiff who was successful must be reimbursed reasonable attorney fees and expenses, payable by the state or applicable local government.<sup>1944</sup>

The measure permitted the Legislature to change the methods or allocations of tax revenues on state aid to local governments. However, the measure prohibited the Legislature from disproportionately reducing state aid while not proportionately reducing spending of tax revenues on other matters.<sup>1945</sup> This seemed to be an attempt to require the Legislature to reduce its overall spending rather than just reducing state aid, which is only one segment of the state’s budget.

The measure contained an effective date of July 1, 1999, and also a conditional sunset date. The measure provided that at any time after January 1, 2004, the Legislature may enact legislation to “indefinitely suspend” the operation of the measure if the legislation enacts the same limitations set forth in the measure.<sup>1946</sup> A three-fourths vote of

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<sup>1942</sup> “Ballot Issues,” *Omaha World-Herald*, 25 October 1998, 1k.

<sup>1943</sup> The initiative petition was called the “Taxpayers Relief Amendment” and proposed to create a new Article XIX with the title, “Government Spending Limit by Limiting Taxation and Revenue,” which consisted of four separate sections.

<sup>1944</sup> *Id.*

<sup>1945</sup> *Id.*

<sup>1946</sup> *Id.*

the Legislature was required for such legislation, which also must be signed by the Governor.<sup>1947</sup>

On August 27, 1998, Secretary of State Scott Moore officially certified that the petition campaign had gathered sufficient signatures to place the issue on the November 1998 ballot. The petition organizers had gathered 125,310 valid signatures and had met all other statutory stipulations.<sup>1948</sup> Secretary of State Moore also officially assigned the measure as “Initiative 413,” a number in sequence with past initiative and referendum ballot issues.

The backers of the petition had certainly put together a well-organized effort to collect the necessary signatures. “Quite frankly, Citizens for Nebraska’s Future is the broadest coalition ever put together in Nebraska, because it represents 184,000 taxpayers from every county in the state,” said Steve Wolf, executive director for the petition movement.<sup>1949</sup> Wolf was referring to the number of unverified signatures gathered by petition circulators. The organization was also well funded. In October 1998, reports indicated that the mostly Omaha-area group had raise about \$2.7 million and expended \$2.6 million at that point in time. This was far and away more money than had ever been raised and spent on any previous ballot issue in Nebraska. Most of the funding came from major Nebraska corporations and individual corporate executives.<sup>1950</sup>

The deep pocket for the opposition was primarily the Nebraska State Education Association (NSEA) and local education associations, including the Omaha Education Association (OEA). But the amount of total funds available to the opposition was substantially less than the pro-413 effort. The anti-413 group chose to expend some of its resources for television advertisements in carefully chosen timeframes prior to the election. They painted Initiative 413 as “poison” for Nebraska and the necessary services

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<sup>1947</sup> Id.

<sup>1948</sup> Leslie Reed, “Phone, Tax Initiatives Set for Ballot The secretary of state certifies proposals on access charges and state and local revenues,” *Omaha World-Herald*, 28 August 1998, 17.

<sup>1949</sup> Leslie Reed, “Kerrey To Fight Tax Limits The senator is co-chairman of a new group seeking to block the ballot initiative,” *Omaha World-Herald*, 18 September 1998, 15.

<sup>1950</sup> Henry J. Cordes, “2 Initiative Campaigns Set Spending Records Both Sides on Initiatives Dig Deep Into Pockets,” *Omaha World-Herald*, 6 October 1998, 1.

provided by state and local governments.<sup>1951</sup> As the election grew nearer, the opposition distributed lawn signs containing the “poison” message accompanied by the well recognized skull and cross bones image. They also recruited such notable political leaders as U.S. Senator Bob Kerrey and Congressman Bill Barrett to serve as co-chairpersons of the campaign. “This is the wrong solution to the right problem,” Kerrey said at a campaign rally in Omaha, “It might lead to tax savings for some, but it will lead to higher user fees, college tuition and property taxes for all.”<sup>1952</sup>

Aside the obvious constraints of a constitutional revenue/spending lid, public school interests were particularly worried about the effect such a measure would have on recent strides made in capturing new appropriations for state aid. In 1997 the Legislature passed LB 806, which provided sweeping changes to the distribution formula and also appropriated \$110 million in additional state aid to schools. LB 806A appropriated \$110 million for 1998-99 in addition to the amount otherwise appropriated.<sup>1953</sup> The idea was to help schools compensate for the lost local revenue under the levy limitations set to be implemented in 1998. The opposition wondered how the 413 lids would treat this and other attempts by the Legislature to increase state aid to education. During the 1998 campaign, there was only conjecture about this and other questions, but no solid answers.

As occurred in previous gubernatorial election years, Initiative 413 would play a role, but not perhaps a deciding factor in the outcome of the Governor’s race. Democrat Bill Hoppner was a vocal critic of the constitutional amendment and attempted to use the issue to paint Republican Mike Johanns as being too supportive of corporate Nebraska. Johanns’ official position was somewhat unclear at times, but he seemed to believe that the lid proposal would inhibit the function of state government to react as necessary.

The major stir in terms of personalities in politics related to the position and actions taken by Kathleen McCallister, who served as President of the State Board of Education at the time. On October 1, 1998, the State Board of Education officially voted

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<sup>1951</sup> The opposition to Initiative 413 used the word “poison” in television advertisements, yard signs, and other materials distributed by the coalition.

<sup>1952</sup> Reed, “Kerrey To Fight Tax Limits,” 15.

<sup>1953</sup> Legislative Bill 806A, *Slip Law*, Nebraska Legislature, 95<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1997, § 2, p. 1.

5-3 to oppose Initiative 413.<sup>1954</sup> Nevertheless, McCallister appeared in television commercials under her official title in support of the constitutional amendment. There were calls for her resignation or at least an apology for providing what some thought was a misleading message about the board's official position.

McCallister fired back with charges that school employees had misused computer privileges by sending her email messages with complaints about her actions. The email issue gave the pro-413 camp new ammunition and cause to file complaints with the Political Accountability and Disclosure Commission. "The equipment in the school was put there for educational purposes," said J.L. Spray, legal counsel for the Citizens for Nebraska's Future, and a former employee of the Commission.<sup>1955</sup>

Of course, spending, or more accurately over spending, was the main thrust of the pro-413 movement. And proponents of the amendment had some fairly powerful allies, including the Omaha World-Herald. Just a few days prior to the election, the newspaper released its official endorsement of Initiative 413. "Nebraskans cannot afford another 10 years of government growth," the editorial stated.<sup>1956</sup> The editorial did little to sway opinion. Voters overwhelmingly opposed the resource/spending lid at the November 3, 1998 General Election.

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Table 112. Canvas Report: Initiative 413 (1998)

County	For	%	Against	%	County	For	%	Against	%
Adams .....	3,338.....	33.51%.....	6,623.....	66.49%	Jefferson .....	994 .....	31.74% .....	2,138.....	68.26%
Antelope.....	785.....	25.03%.....	2,351.....	74.97%	Johnson.....	513 .....	26.76% .....	1,404.....	73.24%
Arthur.....	46.....	21.90%.....	164.....	78.10%	Kearney .....	640 .....	25.49% .....	1,871.....	74.51%
Banner.....	80.....	20.00%.....	320.....	80.00%	Keith .....	1,076 .....	34.49% .....	2,044.....	65.51%
Blaine .....	43.....	13.83%.....	268.....	86.17%	Keya Paha.....	136 .....	26.25% .....	382.....	73.75%
Boone .....	637.....	24.05%.....	2,012.....	75.95%	Kimball.....	433 .....	28.01% .....	1,113.....	71.99%
Box Butte.....	1,101.....	27.39%.....	2,919.....	72.61%	Knox .....	794 .....	22.12% .....	2,795.....	77.88%
Boyd.....	328.....	27.77%.....	853.....	72.23%	Lancaster ....	23,329 .....	29.67% .....	55,297.....	70.33%
Brown.....	530.....	34.48%.....	1,007.....	65.52%	Lincoln.....	3,302 .....	28.34% .....	8,351.....	71.66%
Buffalo .....	3,597.....	29.71%.....	8,509.....	70.29%	Logan.....	73 .....	19.26% .....	306.....	80.74%
Burt .....	848.....	27.59%.....	2,226.....	72.41%	Loup.....	53 .....	20.38% .....	207.....	79.62%

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<sup>1954</sup> Nebraska State Board of Education, *Minutes of Board Meeting* (Lincoln, Neb.) 1 October 1998. Voting Yes - Endacott, Loschen, Mactier, K. Peterson, B. Peterson; voting No - Savage, Wilmot, McCallister.

<sup>1955</sup> Patrick Strawbridge, "E-Mails Critical Of Tax Lid Ad Spur Complaint," *Omaha World-Herald*, 23 October 1998, 13.

<sup>1956</sup> Editorial, "Our Recommendation; 20 Years of Government Income, Outgo," *Omaha World-Herald*, 30 October 1998, 24.

Table 112—Continued

County	For	%	Against	%	County	For	%	Against	%
Butler .....	1,069	31.05%	2,374	68.95%	Madison .....	3,106	32.03%	6,592	67.97%
Cass .....	3,384	44.36%	4,245	55.64%	McPherson.....	57	21.92%	203	78.08%
Cedar .....	813	22.36%	2,823	77.64%	Merrick .....	824	27.90%	2,129	72.10%
Chase .....	633	38.62%	1,006	61.38%	Morrill .....	449	25.08%	1,341	74.92%
Cherry .....	617	28.42%	1,554	71.58%	Nance .....	415	26.42%	1,156	73.58%
Cheyenne .....	742	23.35%	2,436	76.65%	Nemaha .....	982	33.40%	1,958	66.60%
Clay .....	585	22.08%	2,064	77.92%	Nuckolls.....	475	21.76%	1,708	78.24%
Colfax .....	837	30.15%	1,939	69.85%	Otoe .....	1,762	34.62%	3,328	65.38%
Cuming .....	866	23.93%	2,753	76.07%	Pawnee.....	440	30.86%	986	69.14%
Custer .....	1,040	23.89%	3,314	76.11%	Perkins .....	352	25.56%	1,025	74.44%
Dakota .....	1,987	42.59%	2,678	57.41%	Phelps .....	1,067	25.63%	3,096	74.37%
Dawes .....	523	19.24%	2,195	80.76%	Pierce .....	753	29.88%	1,767	70.12%
Dawson .....	1,728	28.05%	4,432	71.95%	Platte .....	3,423	35.82%	6,132	64.18%
Deuel .....	240	27.75%	625	72.25%	Polk .....	473	21.70%	1,707	78.30%
Dixon .....	613	25.81%	1,762	74.19%	Red Willow ...	1,238	31.06%	2,748	68.94%
Dodge .....	3,797	35.64%	6,856	64.36%	Richardson....	1,134	39.12%	1,765	60.88%
Douglas .....	61,276	47.83%	66,835	52.17%	Rock .....	218	27.66%	570	72.34%
Dundy .....	317	34.68%	597	65.32%	Saline .....	1,086	25.49%	3,174	74.51%
Fillmore .....	629	23.51%	2,047	76.49%	Sarpy .....	14,845	49.70%	15,024	50.30%
Franklin .....	437	29.55%	1,042	70.45%	Saunders .....	2,618	36.40%	4,574	63.60%
Frontier .....	214	18.69%	931	81.31%	Scotts Bluff...	3,247	28.03%	8,339	71.97%
Furnas .....	608	28.65%	1,514	71.35%	Seward .....	4,080	72.02%	1,585	27.98%
Gage .....	2,532	30.88%	5,667	69.12%	Sheridan .....	466	22.82%	1,576	77.18%
Garden .....	296	27.85%	767	72.15%	Sherman .....	418	27.20%	1,119	72.80%
Garfield .....	157	19.01%	669	80.99%	Sioux .....	201	28.51%	504	71.49%
Gosper .....	202	24.46%	624	75.54%	Stanton .....	572	27.79%	1,486	72.21%
Grant .....	74	22.36%	257	77.64%	Thayer .....	605	22.35%	2,102	77.65%
Greeley .....	219	17.86%	1,007	82.14%	Thomas .....	84	24.07%	265	75.93%
Hall .....	5,286	34.47%	10,047	65.53%	Thurston .....	607	32.37%	1,268	67.63%
Hamilton .....	945	26.06%	2,681	73.94%	Valley .....	605	30.82%	1,358	69.18%
Harlan .....	461	29.03%	1,127	70.97%	Washington ...	2,827	40.18%	4,208	59.82%
Hayes .....	156	31.33%	342	68.67%	Wayne .....	799	26.91%	2,170	73.09%
Hitchcock .....	420	30.88%	940	69.12%	Webster .....	461	27.25%	1,231	72.75%
Holt .....	1,549	34.36%	2,959	65.64%	Wheeler .....	83	19.26%	348	80.74%
Hooker .....	106	25.00%	318	75.00%	York .....	1,584	29.42%	3,800	70.58%
Howard .....	656	25.34%	1,933	74.66%	TOTAL .....	191,046	35.92%	340,862	64.08%

Source: Secretary of State Scott Moore, comp., *Official Report of the State Canvassers of the State of Nebraska, 1998 General Election, November 3, 1998* (Lincoln, Nebr.: Office of Sec’y of State).

There may have been several explanations for the 64% to 36% margin of defeat of Initiative 413. Some credited the grassroots effort of the coalition organized to oppose the amendment. “In their cafes, across the backyard fence, in their service clubs, the people of Nebraska were talking about this issue,” said Craig Christiansen, a principal leader within the opposition camp.<sup>1957</sup> “Even though we had high-powered East Coast ads (promoting Initiative 413), our campaign was truly a grassroots campaign,”

<sup>1957</sup> Henry J. Cordes and Leslie Reed, “Grass-Roots Push Foils Initiative 413,” *Omaha World-Herald*, 4 November 1998, 1.

Christiansen said.<sup>1958</sup> Some believe the almost exclusively Omaha-based petition movement hurt itself by not having a more broad geographic foundation of support. Some opponents of the measure were comfortable with the notion that voters valued the government services that would otherwise be harmed by passage of the constitutional amendment. The most obvious conclusion from the election results was that one side outspending the other does not necessarily translate to victory.<sup>1959</sup>

Some of the petition organizers and supporters dissected the election results somewhat differently than the victorious opposition. They believed, in retrospect, that Initiative 413 represented the wrong solution to the correct problem, very much like Senator Kerrey said at the campaign rally in Omaha. Retired publisher Harold W. Andersen perhaps best captured the essence of this thought when he wrote:

I hope that in celebrating their victory, leaders of the opposition to Initiative 413 - the tax-limiting proposal rejected by Nebraska voters two days ago - will take time to reflect on a reality that, I believe, still confronts them and other Nebraskans.

The reality is the fact that some Nebraskans - a good many, in my opinion - voted against Initiative 413 because they thought it was the wrong way to address the problem of tax and spending increases, which in 20 years have seen state and local taxes paid by Nebraskans increased by 368 percent. These voters want something done about this tax and spending explosion, but they felt that writing 3,500 words of detailed restrictions into the state constitution is the wrong way to go about it.<sup>1960</sup>

Andersen believed a ballot question merely asking voters whether they believed government spends too much would have been answered in the affirmative.

#### E. The 1999 Legislative Session

##### LB 149 - Guaranteed Funding

Anyone who questions the generally nonpartisan nature of the Nebraska Unicameral Legislature should take careful review of the passage of LB 149 in 1999. In

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<sup>1958</sup> Id.

<sup>1959</sup> Id.

<sup>1960</sup> Harold W. Andersen, "Tax, Spending Curbs Still Needed in State," *Omaha World-Herald*, 5 November 1998, 27.



addition to the major impact the measure had on public education and school finance, it made a strong case for the unique Nebraska legislative system. The system was founded in 1934, in part, on the principal that legislators would serve the people best if they looked upon issues from a nonpartisan perspective rather than along party lines. In fact, a reasonable assumption could be made that LB 149, which became law over Governor Johanns' objection, would not have passed at all had legislators abided the opinion of their partisan-elected governor.

The genesis of LB 149 was the discovery in late 1998 that a discrepancy existed between the Legislature's Fiscal Office and the Department of Education with regard to the projected state aid amount for 1999-2000. In October 1998, the Legislative Fiscal Office determined the funding level for state aid in 1999-00 at \$598.7 million. However, in December 1998, NDE certified state aid for 1999-00 in the amount of \$574.7 million — a difference of \$24 million. The department's lower amount was due to adjustments in state aid from the prior year (1998-99) in which the majority of all local systems had received more state aid than they should have received. In fact, it was believed that 62% of all Nebraska school systems had received more state aid than actually due to them in 1998-99.<sup>1961</sup> But how did this happen?

There were actually a number of factors that caused the over-funding of state aid for the 1998-99 school fiscal year. The department's certification amount was derived by taking the Fiscal Office's estimate of \$598.7 million (less \$2 million for reorganization incentives) less \$22 million for prior year adjustments due to the use of more recent data elements and a fixed Local Effort Rate (LER) of \$1.00 in the recalculation of 1998-99 aid. In essence, NDE had discovered that the 1998-99 state aid certification had been \$22 million more than what it should have been, resulting in local systems actually owing the state due to the receipt of excess state aid.

It must be remembered that in 1997 the Legislature passed LB 806 in order to conform the state aid formula to the pending implementation of the levy limits, which

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<sup>1961</sup> Leslie Reed, "Aid Bill Given Fast Track The Education Committee advances a \$22 million correction in state funding for schools," *Omaha World-Herald*, 20 January 1999, 13.

were established under LB 1114 (1996). Under LB 806, the Local Effort Rate (LER) would be determined each year by NDE. Beginning for the 1998-99 state aid year, the department would annually set the LER at the greater of:

- (a) The maximum levy less 10¢; or
- (b) the rate which, when multiplied by the total adjusted valuation of all taxable property in local systems receiving equalization aid under the school finance formula, will produce the amount needed to support the total formula need of such districts when added to state aid appropriated by the Legislature for the ensuing school year along with other actual receipts.<sup>1962</sup>

The local effort rate yield (total property tax) would then be determined by multiplying each local system's total adjusted valuation by the established local effort rate.

Ultimately, the department used \$1.00 for the LER to compute state aid for the 1998-99 school fiscal year. Senator Ardyce Bohlke would later explain to her colleagues during floor debate that the LER should have been set at 96¢ rather than \$1.00. The four-cent gap helped to cause an over-certification of state aid in 1998-99 in the amount of \$22 million. Bohlke explained:

A floor for the local effort rate was amended in LB 806, which kept it at a dollar this past December when actually it should have been 96 cents. This created a gap of 22 million. The reason the local effort rate tried to go down was because the calculated needs of the districts went down. Because we do not have complete data by December 1, it is necessary to use estimates.<sup>1963</sup>

But there were other factors involved in the \$22 million mistake. Not the least of these factors was the implementation of an entirely new tax system on motor vehicles.

LB 271 was passed in 1997 to replace the property tax system on motor vehicles with a tax and fee schedule based in part on the age of the vehicle. The new system became operative on January 1, 1998 and was meant to be relatively revenue-neutral, so that political subdivisions would not experience any major loss or gain in revenue from motor vehicle taxation. The problem faced by the Department of Education was the lack

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<sup>1962</sup> LB 806, Session Laws, 1997, § 38, p. 26 (1552). NEB. REV. STAT. § 79-1008.01 (Cum. Supp. 1997).

<sup>1963</sup> Legislative Records Historian, *Floor Transcripts, LB 149 (1999)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, 3 February 1999, 608.

of available revenue data concerning the new motor vehicle tax system for the computation of state aid in the 1999-2000 school fiscal year. LB 149 would attempt to correct this by including at least eight months of motor vehicle tax data within the recertification of state aid.

As Senator Bohlke alluded during floor debate, another factor in the miscalculation of state aid related to the actual spending of local systems. Along with the passage of LB 1114 (1996), the Legislature passed a companion measure, LB 299 (1996), which imposed strict spending limitations on school systems. For 1996-97, school systems were placed under a 2% spending lid, and, for 1997-98, school systems faced a 0% spending lid. In 1998 the Legislature passed LB 989 to impose a permanent 2.5% base spending limit for school districts. At the time of the state aid certification on December 1, 1998, the department, according to the law, utilized a three-year averaging of local system data. The result of these various spending lids and the three-year averaging process could not help but to cause anomalies in spending patterns among local systems, and a corresponding effect on actual local system needs.

#### *Introduction and Public Hearing*

The chair of the Education Committee, Senator Ardyce Bohlke, served as chief sponsor of LB 149, while all other members of the committee cosponsored the bill. But for all practical purposes, the bill was referred to as a “committee bill” in order to demonstrate the unification of the committee on the issues contained within the measure. LB 149, without doubt, represented the overriding objective of the Education Committee relevant to the agenda for public education in 1999. The measure would have the distinction of being the first bill to receive a public hearing before the Education Committee during the 1999 Session. In a rapid succession of events, LB 149 was introduced on the second day of the session (January 7<sup>th</sup>) and its public hearing was held on the ninth day (January 19<sup>th</sup>). Even before the tenth and final day of bill introduction for the 90-day session, LB 149 was advanced from committee and ready for floor debate.

The public hearing for LB 149 was held on the day after the first recess day of the 1999 Session (the Legislature had been in recess due to the state holiday honoring Martin

Luther King). The hearing is memorable for both the large number of proponent testifiers and the relative brevity of the event. It was very apparent that a number of organizations and school districts had organized ahead of time in order to make their case for advancement of the bill. In fact, almost all the organizations representing public education had met prior to the hearing and discussed how best to support the measure. It was decided to place at the forefront of the list of testifiers one of Nebraska's more respected and recognized education leaders, Liz Karnes, who was, at the time, a member of Omaha Westside Community Schools' Board of Education. Karnes would be followed by then President of the State Board of Education, Bev Peterson, who was followed by Kim Ma, a student within the Lincoln Public School system. Bryce Neidig of the Nebraska Farm Bureau was specifically asked to testify in order to give the measure a broader range of support.<sup>1964</sup>

The groups representing public education chose to communicate, for the most part, through a single spokesman. Duane Obermier, President of the Nebraska State Education Association, testified on behalf of his own organization along with such groups as the Nebraska Association of School Boards, the Greater Nebraska Schools Association, the Nebraska Rural Community Schools Association, Class Is United, Friends of Rural Education, and the Nebraska Council of School Administrators.<sup>1965</sup>

At the conclusion of the public hearing schedule for January 19<sup>th</sup>, the Education Committee met in executive session. The committee advanced LB 149 with committee amendments attached by a unanimous 8-0 vote.<sup>1966</sup>

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Table 113. Provisions LB 149 (1999) as Advanced from Committee

- Amend the school finance formula by requiring the recertification of state aid to be paid in the 1999-2000 school year by April 1, 1999;
- Set the local effort rate at 10¢ below the maximum levy for the certification of state aid;

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<sup>1964</sup> Committee on Education, *Committee Statement, LB 149 (1999)*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, 1.

<sup>1965</sup> *Id.*

<sup>1966</sup> Committee on Education, *Executive Session Report, LB 149 (1999)*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, 19 January 1999, 1.

Table 113—*Continued*

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- Change the certification deadline for future years to February 1<sup>st</sup>;
  - Remove a state aid estimation procedure;
  - Declare the certification of state aid made on December 1, 1998; and
  - Clarify that the estimate the Department of Education provides to the Governor, Appropriations Committee, and the Education Committee is meant for the necessary funding level for the following school fiscal year.
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*Sources:* Legislative Bill 149, *Provide for recalculation and recertification of state aid to schools*, sponsored by Education Committee, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, 7 January 1999; NEB. LEGIS. JOURNAL, *Com AM7 to LB 149 (1999)*, 20 January 1999, 272.

*“Time is of the essence”*

Floor debate on LB 149 began on the morning of February 3, 1999. “To my newly elected colleagues,” Senator Bohlke said in her opening remarks, “we are asking you to absorb a great deal in a short amount of time.”<sup>1967</sup> The chair of the Education Committee proceeded to give her colleagues, both new and veteran, an oral history of the school finance formula since 1990. Such an historical background is important, she felt, in order to explain the situation that arose in 1999 and the need for passage of LB 149. “The formula is meant to react, but the “respin” this December resulted in an overall loss of \$22 million to school districts,” Bohlke said.<sup>1968</sup> “Unless we react, schools will have to pay that back by debiting the aid they will receive next year,” she added.<sup>1969</sup> In the meantime, school districts will need to determine their staffing for the following year, and, by law, disperse reduction-in-force notices to teachers by April 15th. “Time is of the essence,” Bohlke said at the conclusion of her remarks.<sup>1970</sup>

Of course, not everyone was in a hurry to pass LB 149. Governor Mike Johanns, for instance, did not see the need to expedite the legislative process. Shortly after the bill

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<sup>1967</sup> *Floor Transcripts, LB 149 (1999)*, 3 February 1999, 606.

<sup>1968</sup> *Id.*, 608.

<sup>1969</sup> *Id.*

<sup>1970</sup> *Id.*, 610.

was advanced from committee, the newly elected Governor asked aloud, “Why rush?”<sup>1971</sup> “Let’s be careful and deliberate ... LB 149 is really bigger than a simple one-time adjustment to the formula,” he said, “It raises questions that I believe deserve debate and consideration.”<sup>1972</sup> At that point in time, Johanns had not yet unveiled his 1999 budget proposal to the Legislature. But it was known already that the proposal did not include an additional \$22 million for public education to make up for the error made during the calculation of state aid. Even before first-round debate began, it was clear that a battle lay ahead between the Legislature and the executive branch.

Nevertheless, on the first day of debate, Senator Bohlke was met with relative cooperation from her fellow legislators on the issues posed by LB 149. The committee amendments were adopted almost immediately by a solid 33-0 vote.<sup>1973</sup> Senator Bohlke attempted to steer the debate along the lines of enhancing predictability within the state aid formula, and creating a more stable system for school districts to count upon from one year to the next. And to a great extent, her strategy was successful. No one disagreed with the need for a more predictable state aid formula. But there were a few that disagreed with the overall impact of the legislation. Some felt the bill might tie the hands of future Legislatures on the issue of appropriations for state aid to schools. A thought that may have already crossed Governor Johanns’ mind by this time.

The debate on February 3<sup>rd</sup> had some very positive qualities, both on the merits of the legislation itself and on school finance policy generally. For instance, Senator Bohlke mentioned in her opening remarks that the Department of Education would soon have printouts available on the district-by-district impact of the legislation. This prompted Senator Pam Brown of Omaha to remark:

[L]ast year, I think it was, there was a statement made on the floor that we were going to ... we were no longer going to legislate by printout, and I was absolutely delighted with that statement because I thought, well, at least we’re going to talk

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<sup>1971</sup> Leslie Reed, “Johanns: No rush to Fix School-Aid Miscalculation,” *Omaha World-Herald*, 26 January 1999, 9.

<sup>1972</sup> *Id.*

<sup>1973</sup> NEB. LEGIS. JOURNAL, 3 February 1999, 432.

about the policy that is directing what we're doing in terms of funding for education rather than constantly pouring over the numbers and seeing who wins and who loses and not having some sort of stable policy that guides us and that ... that helps us know that what we're doing has some meaning besides whether it's a win or lose situation.<sup>1974</sup>

Senator Ron Raikes of Lincoln added his comments later in the debate. "Not having printouts is maybe not realistic, but certainly having printouts that are more simple and can be more quickly calculated is a possibility," Raikes said.<sup>1975</sup> The discussion certainly did not lead to any resolution on the issue of *printout politics*, but it was at least addressed. The Legislature recognized that it was likely to be dependent, to some degree, on how the numbers stacked up before it ratified a change in policy.

Another major theme of the February 3<sup>rd</sup> debate related to the history of school finance policy and tax policy in Nebraska. Speaker Doug Kristensen of Minden, for example, was very concerned that his colleagues understand how the Legislature arrived at the current school finance formula and also how property tax policy had evolved in recent years. "If we're going to talk about policy and philosophy this morning, I at least want to make sure that I put in what I believe that history was and try to get us on at least some agreement as to where our policies, in the past, have been," Kristensen said.<sup>1976</sup> The Speaker wanted his fellow lawmakers to know the difference between measures aimed at school finance reform and measures aimed at property tax relief:

Why [LB] 1059 came into being was we were afraid of being sued and so what that formula was designed to do was to bring people in and try to equalize and put more money in and give it to those school districts who needed the money and so we could try to form people into a more uniform opportunity. ... [LB] 1059 was not a property tax bill. [LB] 1059 was all about trying to keep us from being sued in this state and about equalization aid. ... [LB] 806 was about filling the gap that schools had. [LB] 806 was not about property tax relief. Property tax relief was [LB] 1114.<sup>1977</sup>

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<sup>1974</sup> *Floor Transcripts, LB 149 (1999)*, 3 February 1999, 614.

<sup>1975</sup> *Id.*, 620.

<sup>1976</sup> *Id.*

<sup>1977</sup> *Id.*, 620-21.

While some might differ about the true nature of these past legislative measures, Speaker Kristensen helped to frame the intent of LB 149. LB 149, the Speaker asserted, was about fixing a problem related to school finance, and not about property tax relief.

According to Senator Pam Redfield of Omaha, the policy questions related to LB 149 could not be divorced from the property tax relief initiatives already approved by the Legislature. “[T]his body has worked very, very hard to provide property tax relief to the people in the state of Nebraska and tried to equalize the spending in the schools across the state,” Redfield said.<sup>1978</sup> Passage of LB 149, she believed, would be contrary to those property tax relief efforts.

As occurred in so many previous policy discussions, Senator Bob Wickersham of Harrison seemed to have the appropriate answer at the appropriate time:

We made the policy decisions with [LB] 1114 and [LB] 806. What were those policy decisions? Those policy decisions were that we would have a calculation of an amount that would support schools. Needs, if you’ve seen the simplistic framework for the school aid formula, needs minus resources equals aid. In [LB] 806 we framed a means for calculating needs--average costs in two ... in three different groups: standard, sparse and very sparse. That’s the framework for calculating needs. In [LB] 1114 we set one of the important parameters for determining resources, and that was local property taxes.<sup>1979</sup>

Wickersham went on to say that the levy limitations and all the policy ramifications attached to those levy limits were the obligation of the state to address. LB 149, in his opinion, was designed to balance the policy decisions relevant to tax matters with those related to school finance.

In no small way, Senator Chris Beutler of Lincoln also helped to frame the discussion, first by placing the issue at a level any politician would have to consider:

[M]y commitment to the bill goes back to the question of trust, it goes back to keeping your word, it goes back to some things that have been said on the floor before. But this is not just a simple matter of trust, it’s at a higher level than that, especially considering this institution, the 49 of us and our relationship with our

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<sup>1978</sup> Id., 615.

<sup>1979</sup> Id., 617.



constituencies, and what we tell them, and what they expect from us, and what we expect from them.<sup>1980</sup>

Beutler used an analogy that both lawyers and non-lawyers alike could understand by relating the issues surrounding LB 149 with the legal doctrine of detrimental reliance. In this case, school districts and patrons of those school districts relied upon the Legislature to establish a functional property tax system and school finance system such that they would not be harmed or otherwise incur damages. Naturally, Senator Beutler did not mean to imply the existence of any literal and binding contract. But the meaning of his analogy, an expectation that the Legislature would resolve problems created by its own policy directives, was well spoken.

After several hours of discussion, the Legislature voted to cease debate. In her closing remarks, Senator Bohlke expressed her appreciation for the debate and promised to work with anyone having questions between first and second-round debate. She reiterated the urgency of the situation and assured her colleagues that printouts would soon be available. Lastly, she reminded her colleagues, the essence of the legislation lay in the long-range effect it would have in predicting future certifications of state aid. “I believe that the predictability that all of us have been talking about and the improvement of stability are absolutely key,” she said.<sup>1981</sup> And, likely based in part upon the trust factor mentioned by Senator Beutler and others, the Legislature voted to advance the bill by a 42-0 vote.<sup>1982</sup> It would be the last time LB 149 would receive unanimous support.

*“The long-awaited printout”*

It took over a month after advancement from General File, but the Legislature finally had the chance to view what Senator Bohlke called the “long-awaited printout” on Monday, March 8<sup>th</sup>.<sup>1983</sup> This date would mark the first of two separate days of second-round consideration. Staff from the Department of Education had worked through the

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<sup>1980</sup> Id., 642.

<sup>1981</sup> Id., 645.

<sup>1982</sup> NEB. LEGIS. JOURNAL, 3 February 1999, 433.

<sup>1983</sup> *Floor Transcripts, LB 149 (1999)*, 8 March 1999, 1870.

weekend to put together complete notebooks of information concerning the impact of LB 149. Legislators, staff, and media all received the information at basically the same time. And the information could hardly be classified as a mere printout as the case may have been in previous legislative sessions. It was evident that Senator Bohlke, her staff, and department staff truly wanted the data to paint a complete picture of each local system's fate under LB 149. Printout politics had gone high-tech.

As with all "printouts," there was both good news and bad. The figures demonstrated a need for increased appropriations for 1999-2000 state aid in the amount of \$19.4 million rather than the earlier projection of \$22 million.<sup>1984</sup> The majority of the state's local systems, numbering 286 at that time, would either break even or receive increases from the amount certified on December 1, 1999.<sup>1985</sup> Forty-seven local systems would stand to lose state aid under LB 149 as compared to the original certification amount.<sup>1986</sup> The loss or gain of state aid may have been due to any combination of factors, such as changes in other revenues, property tax valuations, or student enrollment.

Second-round debate began on March 8<sup>th</sup> with a motion by newly elected Senator Mark Quandahl to bracket the legislation until March 15<sup>th</sup>.<sup>1987</sup> The Omaha senator explained that he, along with his colleagues, had just received the notebook of data and he wanted time to digest the information. He would later withdraw the motion, but, until then, Senator Bohlke was allowed to explain some of the materials and data. And perhaps one of the more interesting questions about the data was how or why the total amount needed had been revised down to the \$19.4 million figure. Bohlke explained that the lower amount was due to the use of more accurate figures related to the new motor vehicle tax and fee system.

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<sup>1984</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 149 (1999)*, prepared by Sandy Sostad, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, 9 March 1999, 1-2.

<sup>1985</sup> Leslie Reed, "\$19.5 Million Is Projected Need for School Aid; Metro Area School Districts," *Omaha World-Herald*, 8 March 1999, 1.

<sup>1986</sup> *Id.*

<sup>1987</sup> NEB. LEGIS. JOURNAL, 8 March 1999, 858.

*“Autopilot System”*

One of the overriding themes of the debate on March 8<sup>th</sup> was not so much the data contained in the notebooks but rather when the notebooks were made available. In particular, Senator Pam Brown of Omaha expressed her dismay and concern about this situation. “[W]e get this data at what I would consider certainly the eleventh hour and are expected to digest it,” she said.<sup>1988</sup> Senator Bohlke responded that it was not her intention to take LB 149 to an immediate vote for advancement that day. “I want to reemphasize; in a short time, that we will obviously not be doing a vote today,” Bohlke said.<sup>1989</sup> Nevertheless, Senator Brown would repeat her concern that the body needed more time to digest the information.

In fact, Senator Brown was the first to use an expression that came to be the buzz word to describe LB 149, whether correctly labeled or not. And this was likely related to the true nature of Senator Brown’s concern about the legislation. During the debate, Senator Brown spoke of the process outlined in LB 149 to determine appropriate levels of state aid from year to year. Said Brown:

I am more concerned about the part of LB 149 that sets up the process for the future that automatically has a calculation that is going to set the amount for state aid, because the reason that got us here, even though there were ... there were certain circumstances that may have been unique, the reason that got us here is that we had unique problems in the way that we calculated the amount.<sup>1990</sup>

Brown compared LB 149 to the act of surrendering “our appropriating responsibility to a process,” the process she would call an “autopilot system.”<sup>1991</sup> From that moment forward, LB 149 became known as the state aid autopilot bill among legislative circles. Senator Brown’s concern would mirror that of the Governor, who would eventually veto the measure based upon that very reason.

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<sup>1988</sup> *Floor Transcripts, LB 149 (1999)*, 8 March 1999, 1875.

<sup>1989</sup> *Id.*, 1879-80.

<sup>1990</sup> *Id.*, 1887.

<sup>1991</sup> *Id.*, 1888.

So what did Senator Brown mean by autopilot? And why did she perceive this as a negative aspect of the legislation? To answer the first question, one must look no further than the Fiscal Note attached to the measure. On January 28, 1999, Sandy Sostad, an analyst for the Legislative Fiscal Office, wrote:

LB 149 changes the basis for determining the total amount to be appropriated for state aid. The amount of TEEOSA aid for the following school year is currently determined by the Legislative Fiscal Analyst based on language requiring the appropriation to ‘result in a statewide tax levy for each year’s state aid calculation that would be less than the maximum tax levy’ specified for schools in statute.

The bill provides that NDE will determine the appropriation level by using a LER [local effort rate] of \$.10 less than the maximum tax levy in statute. Use of a fixed LER to calculate the appropriation level means the amount of state aid to be appropriated will not be determined until NDE is able to run the formula with the required data elements in late January, for the February 1 certification of state aid.<sup>1992</sup>

Since the Legislature convenes in early January of each year, both the legislative and executive branches would need to wait until NDE certifies state aid in order to know the exact level of appropriation for state aid.

Once certified, school districts would begin budget plans based upon those funding expectations. Senator Brown equated this process to a sort of appropriation on autopilot because, in part, the Legislature does not typically begin its own budget debate until late in the session.<sup>1993</sup> It could conceivably be regarded, therefore, as tying the hands of the Legislature on the issue of state aid. Although the Legislature always retains the authority to pass legislation that effectively voids a given state aid certification and requires a new one based upon other parameters. Nevertheless, the overall advantage of the system proposed under LB 149 was most definitely in favor of school districts.

The other question posed by Senator Brown’s opposition to the system proposed by LB 149 is *why* she would perceive it as a negative. It certainly had nothing to do with negative sentiments toward public education since she had sponsored and/or supported

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<sup>1992</sup> *Fiscal Impact Statement, LB 149 (1999)*, 28 January 1999, 1.

<sup>1993</sup> The Legislature establishes a biennium budget in each odd-numbered year. The Legislature addresses any necessary changes to the budget during even-numbered years.

other K-12 oriented legislation in the past. The answer was found in her comments during floor debate on March 8<sup>th</sup>. The very term “autopilot” implies that the Legislature would have no say, or little say in this arena of state appropriations. In fact, Governor Johanns wrote in his veto message perhaps what Senator Brown was thinking during debate on bill. “LB 149 has severely limited elected officials’ flexibility in the state budgeting process,” Johanns wrote.<sup>1994</sup> In short, it was a matter of state control over political subdivisions versus the other way around.

After a lengthy discussion, Senator Quandahl withdrew his motion to bracket.<sup>1995</sup> Perhaps in an effort to close debate for the day, Senator Bob Wickersham, a proponent of the legislation, moved to indefinitely postpone the bill.<sup>1996</sup> Under the Rules of the Legislature, this automatically gave the chief sponsor of the bill, Senator Bohlke, an opportunity to request that the bill be laid over. And this she did. LB 149 was laid over ostensibly for the purposes of allowing legislators and staff to review the data.

*“One by land, two by sea”*

The second and final day of Select File debate occurred on March 10, 1999. The delay gave legislators about a day and a half to look over the data and come to grips with their opinion about the legislation. And there would be one last attempt by those who feared the loss of legislative control over school funding issues.

Speaker Kristensen offered what really was the only serious amendment to the bill since its advancement from committee. The amendment proposed to keep the provisions of LB 149 relatively in tact. In future years, as per the bill, state aid would be certified by February 1<sup>st</sup> during the legislative session. The Kristensen amendment would add a new provision to provide that if the Legislature decided to appropriate a lesser amount than what the certification called for, then the February 1<sup>st</sup> certification is automatically null and void.<sup>1997</sup> A new certification would be completed based on the final appropriation.

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<sup>1994</sup> NEB. LEGIS. JOURNAL, 18 March 1999, 1067-68.

<sup>1995</sup> Id., 8 March 1999, 858.

<sup>1996</sup> Id., 866.

<sup>1997</sup> NEB. LEGIS. JOURNAL, *Kristensen AM0715*, 9 March 1999, 878.

The Speaker's amendment was filed on March 9<sup>th</sup>, a day before the debate took place. The K-12 education community was alerted and communication was dispatched to urge senators' opposition to the measure. This lobbying effort certainly did not escape the attention of the Speaker. Said Kristensen:

I assume, by this morning, most of you have gotten a frantic panic call from your superintendent. Obviously, the K-12 educational lobby has probably visited with you. I suppose part of it is 'the British are coming, the British are coming, one by land, two by sea,' they're here to storm the state aid bill and we're not going to get our money, and we're going to create terrible calamity, we're going to create instability, and that you won't have state aid to schools.<sup>1998</sup>

Kristensen asked his colleagues to carefully consider the ramifications of LB 149 in its present form. "The issue is, who really are the stewards and what really is your job here as a state legislator towards the state budget," he cautioned.<sup>1999</sup>

The K-12 lobby may have had reason to worry considering the language contained in the Kristensen amendment. It certainly would have given back to the Legislature the ultimate control over its budget, but it also had the potential to create havoc on local school district budgets and staffing. The amendment essentially required schools to look forward to, but not count upon, the certification of state aid issued on February 1<sup>st</sup>. Since the Legislature typically does not finalize its own budget until late in the session, schools would be waiting with fingers crossed that the certification was worth the paper on which it was written. In the meantime, the April 15<sup>th</sup> deadline to issue reduction-in-force notices could lapse with still no word on the Legislature's final decision on state aid appropriations. But the Speaker's concern appeared to be first and foremost with the budget situations faced by the Legislature. And he certainly was not alone, since the administration's concern appeared to mirror that of the Speaker's.

However, while the education community may not have liked his proposal, some of his colleagues in the Legislature did like it. Speaker Kristensen raised some very good points about the state budget-making process and where the *buck* stops. He pointed out

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<sup>1998</sup> *Floor Transcripts, LB 149 (1999)*, 10 March 1999, 1981.

<sup>1999</sup> *Id.*, 1982.

that funding for Medicaid and public assistance were already two major areas where the Legislature had little control. If LB 149 passed in its present form, another major portion of the budget, state aid to education, would also be more or less taken off the table for debate. “That means that if we have an economic downturn, if we have short monies, half of the budget you’re not going to be able to touch,” Kristensen said.<sup>2000</sup> The Speaker also asked his colleagues to remember their constitutional responsibilities. “Who does watch the state budget?” he asked, “What is your ultimate role?”<sup>2001</sup>

In order to counter the Speaker’s move, Senator Bob Wickersham filed an amendment to the amendment. The Wickersham proposal would allow a school district to exceed the maximum property tax levy in the amount of the difference of the February 1<sup>st</sup> certified state aid and the recertified amount in the event the Legislature fails to appropriate sufficient funds to meet the initial certification.<sup>2002</sup> It would essentially hold the Legislature’s feet to the fire since few if any state lawmakers would want to cause an increase in property taxes.

Senator Wickersham most assuredly did not want to cause increases in property taxes, nor did he particularly relish offering the amendment that he did. “I’m going to ask you to vote for the amendment to the amendment even though I don’t like it, but I think it’s the only fair way that we can frame our discussion this morning,” he said.<sup>2003</sup> And his point in requesting such a vote was as compelling as anything the Speaker had to say in defense of his own initial amendment. Said Wickersham:

What does that mean? It means that if the schools had to go back to the property tax base because we wouldn’t keep our commitments to K-12 education, that they would go back to property taxes. They have no place else to go. Within the framework that we have imposed on them, they have no place else to go. And if we won’t keep our commitments, at least we ought to be honest about it and say that we know what the impact of failure to keep our commitment is, and that is

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<sup>2000</sup> Id.

<sup>2001</sup> Id.

<sup>2002</sup> NEB. LEGIS. JOURNAL, *Wickersham AM0728 to Kristensen AM0715*, 10 March 1999, 883-886.

<sup>2003</sup> *Floor Transcripts, LB 149 (1999)*, 10 March 1999, 1985.

higher property taxes. We ought to recognize that that is what Senator Kristensen's amendment is about and not play games with our constituents.<sup>2004</sup>

It may or may not have been Senator Wickersham's intent to use his own amendment to make his colleagues think twice about the Kristensen proposal. Whether a surprise or not, some legislators seemed to buy into both ideas, which would have flown in the face of the property tax relief concept promoted in the previous three sessions.

The chair of the Appropriations Committee, Senator Roger Wehrbein, seemed to like both amendments as an effort to maintain some flexibility for state lawmakers. Senator Pam Brown, whose concerns were prominently voiced during first-round debate, also seemed to go along with the proposals. Senator Chris Beutler, an ardent supporter of LB 149, also rose to cast his support for the Kristensen plan. But not all were enamored.

Senator Stan Schellpeper of Stanton wanted to color the Kristensen proposal in a different light. Said Schellpeper:

The real thrust behind the Kristensen amendment is Governor Johanns' property tax plan. You know, you can talk about anything you want but that's the real thrust behind the Kristensen amendment. This body has to decide if we want to support education with sales and income taxes or go back to using more ... more property taxes. ... We started it, let's not jump off the ship today.<sup>2005</sup>

Senator Schellpeper was referring to the Governor's budget proposal to apply additional funds to the property tax relief effort. It was widely known by then that the Governor had not intended to devote additional resources for state aid as required under LB 149.

For her part, Senator Bohlke knew full well what Senator Wickersham intended with his amendment to the amendment — to make the body completely aware of the impact the Kristensen amendment might have on schools. It also concerned the age-old discussion about shifting education funding toward state support through sales and income taxes and away from local property taxes. She asked her colleagues to consider the impact of the combined proposals on schools:

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<sup>2004</sup> Id.

<sup>2005</sup> Id., 2001-03.



And what would happen if we passed the Wickersham amendment and then passed the Kristensen amendment and then we would come in at the beginning of a session and we would certify aid February 1, and then schools would not know until we ended that session, after they have set their budgets, hired the teachers, as to really what they ... what amount of aid they would be receiving?<sup>2006</sup>

Bohlke urged her colleagues to stay the course on property tax relief by advancing LB 149 in its existing form and to uphold the proper funding of public education.

In his closing comments, Senator Wickersham reiterated that he neither liked his own amendment nor the Kristensen amendment. But he felt if the body was destined to adopt the Kristensen amendment, then it should accordingly vote in favor of his amendment first. The Legislature heeded his advice, but just barely. The Wickersham amendment was adopted by a 25-20 vote.<sup>2007</sup> This set the stage for the final item of discussion, the adoption of the Kristensen amendment as amended by the Wickersham amendment.

The body continued debate on the overall proposal. Senator Bohlke became more animated in her opposition to the Kristensen plan. She drew upon her recollection of prior school finance policy issues, including the inception of the TEEOSA in 1990. “I stand firm on that, that I think we definitely need to vote ‘no’ on the Kristensen amendment, because I think actually, if we would adopt the Kristensen amendment, it takes us back actually prior to LB 1059, on where we were on determining state aid for education,” she said.<sup>2008</sup>

Senator Ron Raikes of Lincoln, a member of both the Education and Revenue Committees, joined Senator Bohlke in opposition to the Kristensen amendment. Already a recognized authority on school finance issues, Senator Raikes drew the body’s attention to an important, yet undisclosed aspect of the Wickersham-Kristensen proposal. Raikes admitted that he voted in favor of the Wickersham amendment with reservation, which he then shared with members of the Legislature. The levy exclusion contained in the

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<sup>2006</sup> Id., 1989-90.

<sup>2007</sup> NEB. LEGIS. JOURNAL, 10 March 1999, 886.

<sup>2008</sup> *Floor Transcripts, LB 149 (1999)*, 10 March 1999, 2009.

Wickersham amendment, Senator Raikes noted, would treat schools disparately. He explained:

The state aid formula contributes aid to schools, to local school districts on an equalized basis, a capacity to pay. Nonequalized schools, you understand, with the Wickersham amendment, are, in effect, held harmless. If we cut state aid, nonequalized schools will not be affected. Nonequalized schools, and there are several in the state, have more resources than needs now, that's why they're nonequalized. Equalization is an effort to bring equalized districts up to the nonequalized ones.<sup>2009</sup>

Naturally, Senator Wickersham, himself an authority on school finance, was aware of the implications of his own amendment. But Raikes' comments were particularly helpful to those listening carefully to understand just how the packaged amendment might affect schools within their own legislative districts.

Drawing to some degree on Raikes' remarks, Speaker Kristensen closed on his amendment by urging his colleagues to remember their roles in state government. "My job is not to be the state super school board," he said, "My job is to be a state senator."<sup>2010</sup> He added, "My job is not to blindly close my eyes and say, whatever it takes, you're not going to be held harmless."<sup>2011</sup> He insisted that public schools would need to participate, like everyone else, in the state budget-setting process and to ride the peaks and valleys of the economic situations faced by the state.

In a rather dramatic moment in the legislative life of LB 149, all 49 members of the Legislature were present for the vote to adopt the Kristensen amendment, as amended by the Wickersham amendment. And all participated in the vote, which left the Speaker and perhaps the Governor on the short end. The amendment was defeated by an 18-31 record vote.<sup>2012</sup>

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<sup>2009</sup> Id., 2010.

<sup>2010</sup> Id., 2017.

<sup>2011</sup> Id.

<sup>2012</sup> NEB. LEGIS. JOURNAL, 10 March 1999, 886.

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Table 114. Record Vote: Kristensen AM0715, as Amended  
by Wickersham AM0728 to LB 149 (1999)

*Voting in the affirmative, 18:*

Baker	Byars	Jensen	Peterson	Smith
Beutler	Chambers	Kristensen	Quandahl	Tyson
Brown	Crosby	Matzke	Redfield	Wehrbein
Bruning	Engel	Pederson		

*Voting in the negative, 31:*

Bohlke	Dierks	Kiel	Price	Schrock
Bourne	Hartnett	Kremer	Raikes	Stuhr
Brashear	Hilgert	Landis	Robak	Suttle
Bromm	Hudkins	Lynch	Schellpeper	Thompson
Connealy	Janssen	Pedersen	Schimek	Vrtiska
Coordsen	Jones	Preister	Schmitt	Wickersham
Cudaback				

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Source: NEB. LEGIS. JOURNAL, 10 March 1999, 886.

Senator Bohlke and fellow members of the Education Committee had scored a major victory in the defeat of the Kristensen amendment. It meant that LB 149 would be considered for advancement in tact, as originally proposed. Another roll call vote was taken on the issue of advancement. LB 149 advanced to the final-round of consideration by a 46-3 vote.<sup>2013</sup> Speaker Kristensen was among those voting to advance the bill.

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Table 115. Record Vote: Advancement  
of LB 149 (1999) to E&R Final

*Voting in the affirmative, 46:*

Baker	Coordsen	Jones	Peterson	Schrock
Beutler	Cudaback	Kiel	Preister	Smith
Bohlke	Dierks	Kremer	Price	Stuhr
Bourne	Engel	Kristensen	Quandahl	Suttle
Brashear	Hartnett	Landis	Raikes	Thompson
Bromm	Hilgert	Lynch	Robak	Tyson
Brown	Hudkins	Matzke	Schellpeper	Vrtiska
Bruning	Janssen	Pedersen	Schimek	Wehrbein
Byars	Jensen	Pederson	Schmitt	Wickersham
Connealy				

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<sup>2013</sup> NEB. LEGIS. JOURNAL, 10 March 1999, 893-94.

Table 115—*Continued**Voting in the negative, 3:*

Chambers	Crosby	Redfield
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Source: NEB. LEGIS. JOURNAL, 10 March 1999, 893-94.

The failure of the Kristensen amendment dealt Governor Johanns a serious blow toward his property tax relief initiative. It also solidified his opposition to LB 149 as he made public the day after the bill moved to the final stage. “I don’t care if it’s 49-0,” Johanns said referring to a pending final-round vote, “I will still veto the legislation, because it’s bad public policy.”<sup>2014</sup> By this time, estimates had been released indicating that LB 149, coupled with a \$1 levy limit, would cost the state an additional \$84 million in state aid for the 2001-02 school year. Members of the Legislature were heading into final-round consideration with their eyes wide open and aware of the consequences.

*“A two-handed vote”*

On March 17, 1999, Senator Bohlke was ready to make a stand on passage of LB 149. She filed a motion to suspend the Rules of the Legislature and permit consideration of the bill on Final Reading.<sup>2015</sup> Speaker Kristensen had not placed the bill on the agenda, but Bohlke was anxious to move the bill forward. The motion passed by a 40-2 vote.<sup>2016</sup> The Legislature proceeded to vote in favor of passage of LB 149 by a solid 43-3 vote.<sup>2017</sup>

Table 116. Record Vote: Passage of LB 149 (1999)

*Voting in the affirmative, 43:*

Baker	Coordsen	Kiel	Preister	Schrock
Beutler	Cudaback	Kremer	Price	Smith
Bohlke	Dierks	Kristensen	Quandahl	Stuhr
Bourne	Engel	Landis	Raikes	Suttle
Brashear	Hartnett	Lynch	Robak	Thompson
Bromm	Hilgert	Matzke	Schellpeper	Tyson

<sup>2014</sup> Leslie Reed and Todd Von Kampen, “Johanns Vows Veto Of School-Aid Plan,” *Omaha World-Herald*, 11 March 1999, 1.

<sup>2015</sup> NEB. LEGIS. JOURNAL, 17 March 1999, 1031.

<sup>2016</sup> Id.

<sup>2017</sup> Id., 1031-32.

Table 116—*Continued*


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Bruning	Hudkins	Pedersen	Schimek	Wehrbein
Byars	Janssen	Pederson	Schmitt	Wickersham
Connealy	Jensen	Peterson		
<i>Voting in the negative, 3:</i>				
Chambers	Crosby	Redfield		
<i>Present and not voting, 1:</i>				
Brown				
<i>Excused and not voting, 2:</i>				
Jones	Vrtiska			

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*Source:* NEB. LEGIS. JOURNAL, 17 March 1999, 1031-32.

Governor Johanns wasted no time in taking action on the legislation. He returned the measure to the Legislature with his veto the next day, on March 18<sup>th</sup>, along with the following communication:

My veto of LB 149 has nothing to do with the additional \$19.4 million that this legislation will authorize to be distributed to Nebraska public schools under the state aid finance formula. To the contrary, had LB 149 centered solely on the issue of restoring additional funds to the school aid formula, then I would have signed the legislation into law. My objection to LB 149 arises from provisions of the bill which clearly obligate the State while removing the flexibility of elected officials to make spending decisions based upon the entire state budget.

LB 149 changes the state aid calculation process to require that state aid amounts be certified each year on February 1. The legislation also amends the statutory finance formula by fixing one calculation factor, the local effort rate, at ten cents below the maximum property tax levy. The practical effect of this change is that the statutory formula will dictate to the Legislature a “needed” appropriation level. Combined, these LB 149 provisions prohibit the Legislature from either increasing or decreasing the certified state aid amount during budget deliberations which occur later in each calendar year. Thus, as adopted by the Legislature, LB 149 has severely limited elected officials’ flexibility in the state budgeting process. This is poor public policy.<sup>2018</sup>

Interestingly, LB 149 represented the first veto of Johanns’ administration. It would also represent his first overturned veto.

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<sup>2018</sup> Id., 18 March 1999, 1067-68.

Senator Bohlke was quick to file a motion to override, doing so on the same day the Governor vetoed the bill.<sup>2019</sup> She asked the Speaker to place the issue on the Legislature's agenda just as soon as possible, which turned out to be the afternoon of Monday, March 22, 1999.

For the proponents of the measure, the veto override was a relative sure thing, although such an event is never taken for granted. The education community was unified in its support of the measure, and all representative organizations worked together to influence a successful outcome. For the K-12 lobby, the final passage of LB 149 symbolized the conclusion of the legislative session, for all practical purposes. This was *the* bill of the 1999 Session for public education interest groups.

There are not too many votes on veto overrides without accompanying political posturing on the floor of the Legislature. LB 149 was no exception. Even though most, if not all, legislators knew how they planned to vote, there was the inevitable discussion that precedes it. Of particular amusement was Senator Gene Tyson's comment about the nature of the veto override in his opinion. The Norfolk legislator said:

I was going to vote for LB 149, and then after our Governor vetoed it I was going to vote for the override, and I'm going to. But I thought maybe some of you might have a little problem in voting for it so I'll tell you about how to make a two-handed vote. With a two-handed vote, you take one hand and press the 'aye' button and use the other hand to hold your nose, because this requires a two-handed vote.<sup>2020</sup>

The "two-handed vote" comment related to the winner-loser situation faced within Tyson's own legislative district. His largest school system, Norfolk Public Schools, actually lost state aid under LB 149, while the other school systems within in his district gained funding. It was a good news, bad news situation for Senator Tyson, who did not particularly care for the existing school finance system. But he still felt the right thing to do was pass the bill over the Governor's objection.

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<sup>2019</sup> Id., 1068.

<sup>2020</sup> *Floor Transcripts, LB 149 (1999)*, 22 March 1999, 2530.

Senator Brown, one of the key opponents of LB 149, vowed to fight the measure to the last. “I dearly regret that we have ceded to the executive branch our responsibility to protect our legislative process and our legislative integrity,” she said.<sup>2021</sup> But the Omaha lawmaker also knew the likely outcome of the override vote. “The chickens will come home to roost from this legislation both fiscally but, more importantly I believe, in the public’s perception of whether we are doing our job and defending our institutional responsibility,” Brown warned.<sup>2022</sup>

Senator Ernie Chambers of Omaha had become an outspoken critic of LB 149 on the basis that it surrendered one of the major duties of the Legislature. Said Chambers:

When we think of the Legislature institutionally, we should never give over our duties, our responsibilities and our powers to anybody. We should not willingly and voluntarily give over to an automatic system, whether it’s a computer, a formula, or a board or agency, the duty and responsibility that we have to study serious matters and make independent decisions that are appropriate to that situation.<sup>2023</sup>

Senator Chambers would do his best to sway the body. He was joined by Senator Pam Redfield, also of Omaha, who reminded her colleagues about one of the more under emphasized facts concerning LB 149. This same issue, she said, was addressed in 1998 under LB 1175, which was vetoed by Governor Ben Nelson.

In 1998, the issue of guaranteed funding for public education took an entirely different course. The Legislature, as if snapped to its senses by the Governor, reversed its decision by sustaining the veto and then passing a bill during special session without the controversial provisions. Redfield thought the Legislature should remember its decision from just a year earlier, and remember why it had reversed itself. Said Redfield:

And so I would urge you to think carefully as we vote this issue, recognizing the fact that there are important things in this bill that we can, as a body, carefully, carefully look at and deal with this session and correct, but we need to be very careful that we are not creating a monster that we will regret.<sup>2024</sup>

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<sup>2021</sup> Id., 2525.

<sup>2022</sup> Id., 2525-26.

<sup>2023</sup> Id., 2522.

<sup>2024</sup> Id., 2532.

She reminded her colleagues that public education was but one of the very important “paramount” responsibilities of the state.<sup>2025</sup>

Since Senator Redfield raised the issue of recent legislation, at least one senator was not about to let it pass without adding his own thoughts. Senator Ron Raikes reminded Redfield that “fixing the local effort rate,” as he put it, was a double-edged sword.<sup>2026</sup> “It seems to be the presumption that that automatically means that we are going to be putting more money into state aid,” Raikes explained, “I would argue that that is not the case.”<sup>2027</sup> By examining the basic formula (needs minus resources equals aid), he said, it can be discerned that “if resources increase faster than needs, aid will in fact go down.”<sup>2028</sup> In other words, schools may or may not benefit from the autopilot policy proposed under LB 149.

For the most part, the discussion on March 22<sup>nd</sup> involved a one-sided debate among the opponents. Parting shots fired across the bow. The proponents were committed to seeing LB 149 through the legislative process. As to the potential precedent set by this legislation, Senator Bohlke said she would welcome any precedent that involved a positive for education. “I hope it continues to set the precedent that we in the Legislature have always done, and that’s our support of K-12 education,” she said in her closing remarks.<sup>2029</sup> The veto override was successful by a 39-7 vote.<sup>2030</sup>

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Table 117. Record Vote: Vote to Override Veto, LB 149 (1999)

*Voting in the affirmative, 39:*

Beutler	Dierks	Kristensen	Price	Smith
Bohlke	Hartnett	Landis	Quandahl	Stuhr
Bourne	Hilgert	Lynch	Raikes	Suttle
Bromm	Hudkins	Matzke	Robak	Thompson
Byars	Janssen	Pedersen	Schellpeper	Tyson

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<sup>2025</sup> Id.

<sup>2026</sup> Id., 2535.

<sup>2027</sup> Id.

<sup>2028</sup> Id.

<sup>2029</sup> Id., 2536.

<sup>2030</sup> NEB. LEGIS. JOURNAL, 22 March 1999, 1125.



Table 117—*Continued*


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Connealy	Jones	Pederson	Schimek	Wehrbein
Coordsen	Kiel	Peterson	Schmitt	Wickersham
Cudaback	Kremer	Preister	Schrock	
<i>Voting in the negative, 7:</i>				
Baker	Bruning	Crosby	Jensen	Redfield
Brown	Chambers			
<i>Present and not voting, 2:</i>				
Brashear	Engel			
<i>Excused and not voting, 1:</i>				
Vrtiska				

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*Source:* NEB. LEGIS. JOURNAL, 22 March 1999, 1125.

LB 149 was, in fact, Governor Johanns' first vetoed bill and represented his first overturned veto. This, no doubt, was something the Governor kept in the back of his mind for the remainder of his tenure as the state's chief executive officer. And for years afterward, members of the education community would be cognizant of their own part in helping to shape the outcome.

Governor Johanns apparently looked upon LB 149 as the final word on the issue of education funding. As early as April 1999, while the Legislature was still in session, the Governor was mingling among educators and promising to work toward "consensus" on the issue.<sup>2031</sup> Appearing before the Delegate Assembly of the Nebraska State Education Association (NSEA), the Governor vowed to find a solution to education funding while at the same time easing the burden of property taxpayers. "I will find a way to make that happen," Johanns promised.<sup>2032</sup> At the same NSEA event, Senator Bohlke was honored with one of the coveted NSEA Friend of Education Awards for her dedication to education and, one can surmise, her work toward passage of LB 149.

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<sup>2031</sup> Niz Proskocil, "Johanns: School Consensus Possible Governor tells teachers he still hopes to ease the property-tax burden in funding education," *Omaha World-Herald*, 25 April 1999, 1b.

<sup>2032</sup> *Id.*

Table 118. Summary of Modifications to TEEOSA  
as per LB 149 (1999)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
1	79-1001	Act, how cited	Adds one new section to the TEEOSA.
2	79-1022.01 <i>new section</i>	December 1, 1998, certification null and void; recertification	A new section declares the certification of state aid made on December 1, 1998 to be null and void and a recertification is required on or before April 1, 1999. The certification and the recertification contain both the calculation of aid for the 1999-2000 school year and prior year corrections based on the final calculation, or respin, of aid for the 1998-99 school year. For the respin for 1998-99 only, no district will receive less than was calculated for the respin on December 1, 1998.
3	79-1003	Terms, defined	Removes estimation language from the definitions of “general fund operating expenditures,” “special education allowance,” and “transportation allowance.” The definitions of “general fund operating expenditures” and “transportation allowance” were further amended by clarifying that the data to be used is for the school year 2 years prior to the year in which aid is to be paid.
4	79-1005.01	School fiscal year 1998-99 and thereafter; income tax receipts; disbursement; calculation	Removes language stating that the allocated income tax funds, or rebate are taken from the funds dedicated to public education and to clarify that reductions in allocated income tax funds due to minimum levy adjustments will not increase the amount available as allocated income tax funds. Previously, those amounts were redistributed as equalization aid.
5	79-1007.02	School fiscal year 1998-99 and thereafter; cost groupings; average formula cost per student; local system’s formula need; calculation	Clarifies that the data from the annual financial reports will be from the school year 2 years prior to the year in which aid is to be paid. The average formula cost per student is also calculated prior to the certification of state aid, which means the calculation will not change in the respin. A reference to the certification of state aid being on December 1 is deleted.
6	79-1008.01	Equalization aid; amount	Deletes a reference to the certification of state aid being on December 1.
7	79-1010	Incentives to reorganized districts and unified systems; qualifications; requirements; calculation; payment	Removes the provisions that the \$2 million set aside for base fiscal year incentive payments be subtracted from the TEEOSA appropriation and that unexpended balances of the set aside be reappropriated to TEEOSA. The provision that non-base year incentive payments be subtracted from the appropriation prior to any calculations is also removed.
8	79-1015.01	Local system formula resources; local effort rate; determination	Sets the local effort rate ten cents below the maximum levy for the certification of state aid. The previous procedure for determining the local effort rate would be used for the respin.

Table 118—*Continued*

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
9	79-1018.01	Local system formula resources; other actual receipts included	Clarifies that the formula resources are for the school year 2 ears prior to the year state aid will be paid. Estimation language similar to that in 79-1003 is also deleted in this section.
10	79-1022	Distribution of income tax receipts and state aid; effect on budget	Changes the date for the certification of state aid from December 1 to April 1 for 1999 and February 1 for each year thereafter. The section is also amended to remove the requirement for the Legislative Fiscal Analyst to provide an estimated funding level. A new provision requires the Department of Education to report the necessary funding level to the Governor, the Appropriations Committee, and the Committee on or before the certification date.
11	79-1026	Applicable allowable growth percentage; determination; target budget level	Changes the date for the certification of allowable growth percentages from December 1 to April 1 for 1999 and February 1 for each year thereafter.
12	79-1027	Budget; restrictions	Changes the date for the certification of allowable reserve percentages from December 1 to April 1 for 1999 and February 1 for each year thereafter.
13	79-1028	Applicable allowable growth rate; Class II, III, IV, V, or VI district may exceed; situations enumerated	Changes the date for the certification of revisions of allowable growth rates due to student growth from December 1 to April 1 for 1999 and February 1 for each year thereafter.
14	79-1031	Department; annual estimate required	Requires NDE, with assistance from the Property Tax Administrator, the Legislative Fiscal Analyst, and the budget division of the Department of Administrative Services, to provide in estimate to the Governor, the Appropriations Committee, and the Education Committee on or before November 15 of each year. The language is eliminated regarding legislation the Governor is required to submit as part of his budget request.
15	79-1031.01	Appropriations Committee; duties	Eliminates language stating that it is the Legislature's intent to ensure sufficient funding to result in a statewide tax levy less than the maximum levy and a requirement that the Legislative Fiscal Analyst calculate an amount to carry out that intent. The Appropriations Committee requirement to include that amount in its budget recommendations is modified to require the committee to include the amount necessary to fund the state aid certified.

Source: Legislative Bill 149, *Slip Law*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, §§ 1-15, pp. 1-14.

### LB 813 - Technical Cleanup

LB 813 was principally designed by the Department of Education to remove obsolete language, clarify various provisions, and address issues brought forward since the previous legislative session. For instance, the measure proposed to make some corrections and modifications to various criteria for quality education incentives established under LB 1228 (1998).<sup>2033</sup> The bill renamed the Nebraska School for the Visually Handicapped to the Nebraska Center for the Education of Children who are Blind or Visually Impaired, and modified the mission of the institution.<sup>2034</sup> The bill provided that reimbursements for wards of the court and short-term borrowings would be considered “special grant funds,” which would allow schools to receive the funds outside expenditure lids.<sup>2035</sup> But the bill would also contain some major substantive provisions, most of which were added later in the legislative process.

Leading up to the final stage of floor debate, one of the more significant aspects of LB 813 related to changes in the way Class I (elementary only) schools and their primary high school districts would coordinate the annual budget setting process.<sup>2036</sup> This had been an ongoing issue within some local systems, and LB 813 would represent the latest attempt to resolve the matter. However, the most controversial provision of LB 813 related to the cost groupings within the state aid formula, a provision that would not be added until the legislation had already reached the final stage of debate.

As Senator Bohlke would recall during floor discussion, she had been approached by several of her colleagues, Senators Baker and Schrock, concerning various school systems within their respective legislative districts. These school systems, numbering eight or nine, were classified under the standard cost grouping under the school finance formula, but officials from these systems believed they would be better served by the formula if they were classified under the sparse cost grouping. This would effectively

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<sup>2033</sup> Legislative Bill 813, *Slip Law*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, § 17, pp. 10-12.

<sup>2034</sup> *Id.*, § 29, p. 21.

<sup>2035</sup> *Id.*, § 19, p. 14.

<sup>2036</sup> *Id.*, § 32, pp. 23-24.

afford them additional state aid. At the time, the standard cost grouping produced approximately \$4,300 per student, about \$5,070 per student under the sparse cost grouping, and \$5,572 per student under the very sparse cost grouping.<sup>2037</sup>

The eight or nine school systems at issue did not meet the criteria, established under LB 806 (1997), to be classified as sparse. The criteria, at the time, defined the sparse cost grouping as those local systems that do not qualify for the very sparse cost grouping but which meet the following criteria:

The local system has less than two students per square mile in the county in which the high school is located, based on the school district census, less than one formula student per square mile in the local system, and more than ten miles between the high school attendance center and the next closest high school attendance center on paved roads;

The local system has less than one and one-half formula students per square mile in the local system and more than 15 miles between the high school attendance center and the next closest high school attendance center on paved roads; or

The local system includes 95% or more of a county.<sup>2038</sup>

These requirements, according to Senator Bohlke, precluded the qualification of the school systems brought to her attention by Senators Baker and Schrock. “Their school district just ... the high school happens to be in the wrong place, which does not let them qualify under the miles [criteria] to another school,” she explained on the floor.<sup>2039</sup> The “wrong place,” she would later clarify, refers to the exact location of the high school in relation to another high school.

In order to comply with the requests made by Senators Baker and Schrock, Bohlke agreed to file a motion for specific amendment to LB 813 in order to pull the bill back from Final Reading.<sup>2040</sup> The amendment would expand the sparse cost grouping criteria as follows:

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<sup>2037</sup> Legislative Records Historian, *Floor Transcripts, LB 813 (1999)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, 9 April 1999, 3685.

<sup>2038</sup> NEB. REV. STAT. § 79-1007.02 (Cum. Supp. 1997).

<sup>2039</sup> *Floor Transcripts, LB 813 (1999)*, 9 April 1999, 3678.

<sup>2040</sup> NEB. LEGIS. JOURNAL, *Bohlke AM1143*, 7 April 1999, 1345-46.

Less than two students per square mile in the county in which each high school is located, based on the school district census, less than one formula student per square mile in the local system, and more than ten miles between each high school attendance center and the next closest high school attendance center on paved roads;

Less than one and one-half formula students per square mile in the local system and more than 15 miles between each high school attendance center and the next closest high school attendance center on paved roads;

Less than one and one-half formula students per square mile in the local system and more than 275 square miles in the local system; or

Less than two formula students per square mile in the local system and the local system includes an area equal to 95% or more of the square miles in the largest county in which a high school attendance center is located in the local system.<sup>2041</sup>

The changes would become operative in time for the 2000-01 school fiscal year. But would it help those local systems identified by Senators Baker and Schrock? Just as importantly, does this change represent sound public policymaking?

In truth, LB 813 represented the second occurrence for Senator Bohlke to recommend changes to criteria of the sparse cost grouping. Perhaps out of political pressure, she had successfully recommended an amendment to LB 710 in 1997. The amendment effectively altered LB 806, which had passed earlier in the same legislative session. The amendment to LB 710 eliminated two of the original criteria proposed for the sparse cost grouping.<sup>2042</sup>

The amendment to LB 813, on the other hand, added a new criterion and modified another in order to qualify more local systems into the sparse cost grouping. Not everyone was thrilled with the idea, including Senators Ron Raikes and Chris Peterson, who questioned the rationale offered by Senator Bohlke. Senator Raikes, in particular, asked what impact the amendment would have on local systems within the standard cost grouping. Said Raikes:

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<sup>2041</sup> Id.

<sup>2042</sup> NEB. LEGIS. JOURNAL, *Bohlke AM2635*, printed separate, 3 June 1997, 2557.

[T]he issue is that if the eight systems that you happen to pull out of the standard cost grouping and put into the sparse cost grouping were among the higher cost ones in the standard cost grouping, then the standard cost grouping cost per student would go down for the ... maybe not very much, but it would go down.<sup>2043</sup>

Senator Peterson was somewhat more direct in her comments, “Whenever we’re dealing with the different classifications and there is change within those structures, it ultimately impacts the amount of the aid in the formula.”<sup>2044</sup> But were they correct in their criticism?

From an overall policy perspective, it may be argued that the criteria selected to be used in the formula passed under LB 806 may not have been as carefully determined as it could have been. A more careful analysis may have saved some back peddling in subsequent sessions. On the other hand, one might argue that no matter the amount of research into the proper criteria, nothing would prevent the inevitable political rambling and tweaking that ensued. Senator Bohlke was doing her best to accommodate as many requests to change the formula as possible within the limits of her own political agenda. Obviously, her amendment to LB 813 was not a violation of her own beliefs and objectives.

From an objective viewpoint, the Legislative Fiscal Office reported that the amendment would have “an impact on determining the cost groupings of schools in the certification of state aid beginning in 2000-01.”<sup>2045</sup> An analysis prepared by NDE demonstrated that if the provision had been in effect in 1999-00 the total amount of state aid would have decreased by \$579,231.<sup>2046</sup> The analysis indicated that nine school systems would move from the standard cost grouping to the sparse cost grouping. School systems in the sparse cost grouping would experience a \$1,562,363 increase in state aid and school systems in the standard cost group would experience a \$2,141,594 decrease in

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<sup>2043</sup> *Floor Transcripts, LB 813 (1999)*, 9 April 1999, 3683.

<sup>2044</sup> *Id.*, 3686.

<sup>2045</sup> Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 813 (1999)*, prepared by Sandy Sostad, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, 21 April 1999, 1.

<sup>2046</sup> *Id.*

state aid, thereby creating a net \$579,231 decrease.<sup>2047</sup> But it was not known exactly what impact the amendment would have for 2000-01 and subsequent years. Senator Bohlke would later justify the change as “very minimal percentage impacts.”<sup>2048</sup> She added, “The standard cost group decreases by less than two-tenths of 1 percent; the sparse cost group increases by five one-hundredths of 1 percent.”<sup>2049</sup>

Senators Raikes and Peterson may have had some good points to make, but they did not press the issue too terribly hard. The Legislature accepted Senator Bohlke’s rationale, approved her motion to return the bill to Select File, and eventually adopted her proposed amendment by a 29-1 vote.<sup>2050</sup> The Legislature would ultimately pass LB 813 on a unanimous 44-0 vote.<sup>2051</sup>

Table 119. Summary of Modifications to TEEOSA as per LB 813 (1999)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
19	79-1003	Terms, defined	Generally removes obsolete language from existing terms and definitions. The “special education allowance” is changed to the “special receipts allowance,” by deleting obsolete language, and modifying definitions. The “general fund operating expenditure” and “transportation allowance” definitions are modified to clarify that the data is for local systems, not districts. The “special grant fund” definition is expanded to include reimbursements for wards of the court and short-term borrowings including, but not limited to, registered warrants and tax anticipation notes.
20	79-1007.02	School fiscal year 1998-99 and thereafter; cost groupings; average formula cost per student; local system’s formula need; calculation	Adds a new criteria for the sparse cost grouping and changes another. The new criteria specifies that a local system would be qualified as a sparse system if it had less than one and one-half formula students per square mile in the local system and more than 275 square miles in the local system. The revised criteria was amended to provide that a local system would qualify if it had less than two formula students per square mile in the local system and the local system includes an area equal to 95% or more of the square miles in the largest county in which a high school attendance center is located in the local system.

<sup>2047</sup> Id.

<sup>2048</sup> *Floor Transcripts, LB 813 (1999)*, 6 May 1999, 6095.

<sup>2049</sup> Id.

<sup>2050</sup> NEB. LEGIS. JOURNAL, 9 April 1999, 1359.

<sup>2051</sup> Id., 6 May 1999, 1900.



Table 119—*Continued*

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
21	79-1009	Option school districts; net option funding; calculation	Streamlines existing language without changing the meaning or purpose.
22	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	Requires the Property Tax Administrator to certify school district adjusted valuations in addition to local system adjusted valuations.
23	79-1022	Distribution of income tax receipts and state aid; effect on budget	Requires school districts receiving less than \$10,000 per year in state aid to receive a lump-sum payment on the last business day of December, rather than the standard 10 equal payments.
24	79-1024	Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect	Editorial change, no substantive modification.
25	79-1026	Applicable allowable growth percentage; determination; target budget level	Harmonizes existing language with change in Section 19 to rename the “special education allowance” to the “special receipts allowance.”
26	79-1027	Budget; restrictions	Expands and clarifies the funds included in the allowable reserve limitations. Clarifies that the total requirements are included for contingency funds and depreciation funds. Necessary employee benefit fund cash reserves are added.
27	79-1027.01	Property tax requests exceeding maximum levy; reductions; procedure	Clarifies that reductions in property tax requests required to meet the levy limitations are modified for Class I districts by the percentage of affiliation with the high school district. A requirement is also added to clarify that Class I districts with multiple affiliations must make reductions necessary to effect the total required within each local system requiring the reduction.
28	79-1029	Basic allowable growth rate; Class II, III, IV, V, or VI district may exceed; procedure	Reduces the required notice from 7 to 5 days for school boards to vote on exceeding the basic allowable growth rate.

Source: Legislative Bill 813, *Slip Law*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, §§ 19-28, pp. 12-21.

### LB 272 - County Superintendents

The office of county superintendent had been a fixture on the public education landscape since territorial days and into statehood. On March 16, 1855, the Nebraska Territorial Legislature passed the Common Schools Act, which created the office of Superintendent of Public Instruction, the precursor to the office of Commissioner of Education.<sup>2052</sup> The measure also created the elected position of county superintendent. The early role of the county superintendent included the apportionment of the county school tax to schools within the county, an activity we now associate with county treasurers. The office of county superintendent evolved over the decades. The office was generally in charge of various recordkeeping on behalf of the districts within the county and also became an integral part of the school reorganization process.

In 1997 the Legislature took action to eliminate the elected office of county superintendent by passing LB 806. The measure was principally related to revising the school finance formula in connection with the levy limitations passed the previous year. But one of the major features of the legislation was to seek efficiencies in education, in part, through elimination of the elected office. In any other session, in any other year, perhaps, this would have posed political obstacles. However, the passage of LB 1114 in 1996 and the pending implementation of statutory levy lids created an atmosphere conducive for restructuring local government.

The idea of eliminating the office of county superintendent certainly did not originate in 1997. Senator Brad Ashford of Omaha introduced LB 184 in 1993 to do away with the office, but the measure was indefinitely postponed by the Education Committee just one day after its public hearing.<sup>2053</sup> As a compromise to the notion of eliminating the office, Senator Ardyce Bohlke offered a bill in 1997 to create regional superintendents of public instruction as opposed to one office per county. Her bill, LB 789, also was killed in committee.<sup>2054</sup> In the same session, Senator Elaine Stuhr of

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<sup>2052</sup> 1855 NEB. LAWS, *Joint Resolutions and Memorials*, 212-221.

<sup>2053</sup> NEB. LEGIS. JOURNAL, 9 March 1993, 935.

<sup>2054</sup> Id., 24 March 1997, 1188.

Bradshaw introduced LB 808 to phase out the office.<sup>2055</sup> In fact, it was Senator Stuhr who successfully engineered a plan to eliminate the elected office within the confines of a bill she would ultimately vote against final passage, LB 806.

As advanced from committee on March 25, 1997, LB 806 did not carry any provisions related to the elimination of the elected office of county superintendent. Then, during second-round floor debate of the measure, Senator Stuhr and Senator Paul Hartnett of Bellevue successfully amended LB 806 to provide intent to eliminate the office by June 30, 2000.<sup>2056</sup> (This was essentially the intent and purpose of LB 808, which had not been advanced from committee.) The Stuhr-Hartnett proposal required the Department of Education to make recommendations on the disposition of duties assigned to county superintendents and to report back to the Legislature by December 1, 1997.

The amendment was adopted by a unanimous 36-0 vote although Senator Bob Wickersham did voice concern about the impact it might have on rural-oriented counties.<sup>2057</sup> Senator Stuhr defended her amendment, in part, by noting the support of those most affected. “[W]e have been working very hard with the County Superintendents Association and also with the Nebraska Association of County Officials, and they have all agreed to this amendment,” Stuhr said.<sup>2058</sup>

As amended, LB 806 required the Education Committee to prepare legislation in time for the 1998 Legislative Session to carryout the intent to eliminate the elected county positions.<sup>2059</sup> This, in fact, was done in the form of LB 1217 (1998), introduced by Senator Stuhr.<sup>2060</sup> While the bill was advanced from committee, it was done so late in

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<sup>2055</sup> Legislative Bill 808, *State intent relating to county superintendents*, sponsored by Sen. Elaine Stuhr, Nebraska Legislature, 95<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1997, title first read 22 January 1997.

<sup>2056</sup> NEB. LEGIS. JOURNAL, *Stuhr-Hartnett AM2198*, 15 May 1997, 2018-20. NEB. REV. STAT. § 23-3312 (Cum. Supp. 1997).

<sup>2057</sup> NEB. LEGIS. JOURNAL, 15 May 1997, 2017.

<sup>2058</sup> *Floor Transcripts, LB 806 (1997)*, 15 May 1997, 7107.

<sup>2059</sup> LB 806, Session Laws, 1997, § 64, p. 37 (1563). NEB. REV. STAT. § 23-3313 (Cum. Supp. 1997).

<sup>2060</sup> Legislative Bill 1217, *Eliminate the office of county superintendent of schools*, sponsored by Sen. Elaine Stuhr, Nebraska Legislature, 95<sup>th</sup> Leg., 2<sup>nd</sup> Sess., 1998, title first read 20 January 1998.

the 60-day session, leaving it stranded on General File. Now dedicated to the mission, Senator Stuhr tried again in 1999 with the introduction of LB 272, the bill that finally carried out the intent of LB 806.

The introduced version of LB 272 did exactly what was expected under LB 806. The bill struck all references to the elected office of county superintendent effective June 30, 2000 and transferred the duties to county clerks and treasurers, and school officials. Based upon the recommendations of the study group organized by the Commissioner of Education, LB 272 also proposed to eliminate county reorganization committees. This was something of an unexpected turn since LB 806 did not specify the elimination of these committees.

LB 272 proposed to transfer the duties of the county reorganization committees to the State Committee for the Reorganization of School Districts. The move to eliminate these local committees was defended by Brian Halstead who represented the Department of Education and the Commissioner of Education. Testifying before the Education Committee on January 25, 1999, Halstead said:

When the Legislature gave us the duty to study the duties of the county superintendent, we weren't authorized to change the reorganization laws and we knew that very clearly. But in the meetings and in the discussion, there was a consensus that if it could be streamlined, that it would make it easier and more efficient and be more consistent across the state if there was one body overseeing it instead of multiple bodies.<sup>2061</sup>

Halstead indicated that the move to eliminate the county committees resulted in the request by the department for appropriations to hire additional staff. If the state-level committee on reorganization assumed the new duties, the department would need to hire another employee beginning in the 2000-01 fiscal year.

The dissolution of the county committees did not sit well with one member of the Education Committee. Senator Bob Wickersham questioned whether it was really necessary to eliminate the committees. He cast doubt about the rationale provided by Senator Stuhr. "I'd need to hear a more compelling reason and some protections at the

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<sup>2061</sup> Committee on Education, *Hearing Transcripts, LB 272 (1999)*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, 25 January 1999, 84.

state level assuring us that the state committee will be properly sensitive to what local conditions are,” Wickersham said during the public hearing.<sup>2062</sup> Wickersham reminded those present that the Legislature had committed a considerable amount of time in the previous two sessions to fine-tune the reorganization process. And now LB 272 proposed to eliminate one of the underpinnings from the reorganization procedures.

Senator Stuhr had stated in her opening remarks that the elimination of the local committees was a matter of efficiency in the reorganization process. “The current process of a County Reorganization Committee has actually lengthened the reorganization process ... one body responsible for overseeing reorganizations would provide a greater efficiency and consistency,” she stated.<sup>2063</sup> Later in the hearing she added that some reorganizations require multiple county committees and sometimes delayed the process due to logistics in bringing all concerned together at one time.

Senator Wickersham was not alone in his opposition to the bill, at least at the early stages of the legislative process. Christine Nielsen, who represented the Nebraska Association of County Superintendents, also cast her organization’s opposition to the bill.<sup>2064</sup> This was the same organization that supported the move to eliminate their elected offices, according to Senator Stuhr, during floor debate on LB 806 (1997). Nielsen’s testimony pointed out a number of perceived flaws in the legislation and many questions she believed were left unanswered in the bill.

The county superintendents’ organization may have officially opposed the bill, but some of their own members actually participated in developing the recommendations that became LB 272. In fact, the Commissioner’s study group was comprised of county superintendents, school superintendents, and school board members. LB 272 was the result of a broad-based consensus on how to carryout the intent of the Legislature to dissolve the elected office of county superintendent.

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<sup>2062</sup> Id., 80.

<sup>2063</sup> Id., 77.

<sup>2064</sup> Committee on Education, *Committee Statement, LB 272 (1999)*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, 1.

Interestingly, the bill did not preclude the appointment of county administrators to take on many of the same types of duties performed by the elected officials. This would remain a local decision by each county government. “If a county board wishes to continue the functions of a county school administrator, it may contract with a qualified individual to do so,” Stuhr wrote in her statement of intent.<sup>2065</sup> Absent an appointed officer, the former duties of the county superintendent would be divided among other county officials and individual school district personnel as directed by the legislation.

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Table 120. Provisions of LB 272 (1999) to Eliminate  
the Office of County Superintendent

1. Eliminate the office of county superintendent of public instruction effective June 30, 2000 and provide for an optional office of county school administrator.
  2. Records in the office of county superintendent transferred to the county clerks.
  3. County reorganization committees were to be eliminated.
  4. The State Committee for the Reorganization of School Districts was to be assigned the duties and responsibilities of the former county reorganization committee in the reorganization and unification processes.
  5. The State Board of Education would be authorized to adopt rules and regulations for the State Reorganization Committee.
  6. Additional responsibilities for school district superintendents:
    - Certificates allowing an individual under age 16 to work would be filed with school superintendents;
    - Superintendent would receive lists of students enrolled in public, private, denominational, or parochial schools;
    - Superintendent would compare lists to census information for compulsory attendance requirements;
    - Teachers and administrators would register certificates with superintendents of school district;
    - Superintendent would have the authority to endorse certificates; and
    - Superintendent of a primary high school district would be responsible for receiving applications for work permits for individual aged 14 to 16.
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*Source:* Legislative Bill 272, *Slip Law*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, §§ 1-114, pp. 1-42.

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<sup>2065</sup> Senator Elaine Stuhr, *Introducer’s Statement of Intent, LB 272 (1999)*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, 25 January 1999, 1.

LB 272 impacted the statutes relevant to the school finance formula but only in a minor way. Prior to LB 272, the Commissioner of Education was authorized to notify the appropriate county superintendent of any school district that had not submitted budget documents, financial reports, and statistical reports in a timely fashion. The county superintendent would then direct the applicable county treasurer to withhold funding to the school district until such documents and reports were received by the Department of Education. LB 272 eliminated the “middle man” and authorized the Commissioner to work directly with the appropriate county treasurer on such matters.<sup>2066</sup>

LB 272 was poised for the fast track in the legislative process. The Legislature had already committed itself to the action proposed in the measure. LB 272 was advanced from the Education Committee on a 7-1 vote on February 8, 1999.<sup>2067</sup> Senator Wickersham was the lone dissenting vote, but it would be the only time he would cast a negative vote on the measure. LB 272 received unanimous votes for advancement throughout all stages of floor debate and received final approval on March 20, 1999 by a 46-0 vote.<sup>2068</sup>

Table 121. Summary of Modifications to TEEOSA as per LB 272 (1999)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
93	79-1024	Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect	Eliminated references to county superintendents. Requires the Commissioner of Education to work directly with the county treasurers to withhold funding if individual school budget documents are not received in a timely fashion.
94	79-1033	State aid; payments; reports; use; requirements; failure to submit reports; effect; early payments	Eliminated references to county superintendents. Requires the Commissioner of Education to work directly with the county treasurers to withhold funding if individual school financial and statistical reports are not received in a timely fashion.

*Source:* Legislative Bill 272, *Slip Law*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, §§ 93-94, pp. 36-37.

<sup>2066</sup> Legislative Bill 272, *Slip Law*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, §§ 93-94, pp. 36-37.

<sup>2067</sup> Committee on Education, *Executive Session Report, LB 272 (1999)*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, 8 February 1999, 1.

<sup>2068</sup> NEB. LEGIS. JOURNAL, 20 March 1999, 2313.

### LB 194 - Property Tax and Assessment

For those who monitor school finance policy, it is essential to pay close attention to the revenue “side” of the equation. School officials and lobbyists for education organizations typically devote as much attention to revenue-related legislation as education-related legislation. Whether by design or happenstance, the Revenue and Education Committees meet in public hearing rooms directly across the hallway from each other on the first floor of the Capitol, although the committees do not conduct hearings on the same days of the week. In recent years, at least one member and as many as four members of the Education Committee also served as members of the Revenue Committee. The connection between the committees has had positive effects on both education and revenue policy decisions over the years since discussions on one subject are often interrelated with the other.

LB 194 (1999) is an example of this cross connection between revenue and education fields. The bill was introduced on behalf of the Property Tax Administrator, Cathy Lang, and the Property Tax Division of the Department of Revenue.<sup>2069</sup> Her office annually proposes technical and substantive cleanup provisions very similar to the way in which the Department of Education suggests cleanup bills to the Education Committee.

As introduced and advanced from committee, LB 194 did not change any sections of law directly related to the school finance formula nor education-related statutes generally. Instead, the bill contained both technical and substantive changes to laws related to property tax assessment and other revenue matters. For instance, the bill proposed that after July 25<sup>th</sup> of each year the county assessor, with approval of the county board of equalization, would correct the assessment roll and the tax list, if necessary, in the case of a clerical error that results in a change in the value of the real property.<sup>2070</sup> LB

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<sup>2069</sup> In 1999, LB 36 was passed to separate the Property Tax Division from the Department of Revenue and to create a separate state agency for this purpose, the Department of Property Assessment and Taxation. Legislative Bill 36, in *Laws of Nebraska, Ninety-Sixth Legislature, First Session, 1999*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State).

<sup>2070</sup> Legislative Bill 194, *Slip Law*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, § 30, p. 11.



194 changed the date by which the county assessor must complete the assessment of real property from April 1<sup>st</sup> to March 20<sup>th</sup> of each year.<sup>2071</sup>

The legislation took some rather dramatic steps toward centralization of standards used by county assessors. Previous to 1999, the Property Tax Administrator was required to produce various manuals and guidelines to assist county assessors carryout their duties. LB 194 changed the existing law to require all county assessors and deputy assessors to be educated and certified by the Property Tax Administrator.<sup>2072</sup> The bill required the Property Tax Administrator to establish, implement, and maintain a curriculum of educational courses for the certification and recertification for all county assessors.<sup>2073</sup> The Administrator must also establish, through rule and regulation, the required educational standards and criteria for certification and recertification.

The measure permitted the Property Tax Administrator to invalidate the certificate of any assessor or deputy assessor who willfully fails or refuses to diligently perform his/her duties concerning the assessment of property and the duties of each assessor and deputy assessor. If the certificate of a person serving as assessor or deputy assessor is revoked, the person is removed from office, the office declared vacant, and the person is not be eligible to hold that office for a period of five years after the date of removal.<sup>2074</sup>

LB 194 advanced from the Revenue Committee on February 3, 1999.<sup>2075</sup> The measure progressed through the legislative process and was amended several times before it reached the third and final stage of consideration. On March 25<sup>th</sup> Senator Bob Wickersham, chair of the Revenue Committee and member of the Education Committee, moved to return the bill to Select File for specific amendment. It was at this point in time that LB 194 would take on a direct relation to the school finance formula.

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<sup>2071</sup> Id., § 15, p. 5.

<sup>2072</sup> Id., § 22, pp. 7-9.

<sup>2073</sup> Id., § 14, p. 5.

<sup>2074</sup> Id., § 22, pp. 7-9.

<sup>2075</sup> Committee on Revenue, *Executive Session Report, LB 194 (1999)*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, 3 February 1999, 2.

The amendment filed by Senator Wickersham would not have been offered on that day if LB 149, the controversial school finance bill, had not been passed over the Governor's objection just three days earlier.<sup>2076</sup> One of the major provisions of LB 149 was to change the state aid certification date from December 1<sup>st</sup> each year to February 1<sup>st</sup> each year.<sup>2077</sup> The idea was, in part, to utilize the most current data available, and, by moving the date to February 1<sup>st</sup>, it allowed the Department of Education to use more current data. Senator Wickersham drew upon this objective in another change to the school finance formula. "This change is only possible because in LB 149 we moved the certification date from December 1st to February 1st, so this is a reaction, if you will, in part, to the changes that we made in LB 149," Wickersham said.<sup>2078</sup>

Prior to 1999, the Property Tax Administrator would compute and certify to the Department of Education the adjusted valuation for the current calendar year of each local system for each class of property in each such local system. This function had to be completed by July 1<sup>st</sup> of each year. The adjusted valuation of property for each local system would be used to calculate the state aid value in order to calculate state aid. The Property Tax Administrator would then notify each local system of its adjusted valuation for the current calendar year by class of property, again by July 1<sup>st</sup> of each year. The problem, as Wickersham explained, is that the "old July 1<sup>st</sup> date didn't allow the Property Tax Administrator's Office to use current information for that component of the valuation of a school district."<sup>2079</sup> The Property Tax Administrator had to use the prior year's data.

The Wickersham amendment to LB 194 proposed to change the July 1<sup>st</sup> deadline to October 10<sup>th</sup> beginning in 2000. To help the Property Tax Administrator carryout this objective, the amendment required county assessors to certify the total taxable value by

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<sup>2076</sup> The Legislature voted to override Governor Johanns' veto of LB 149 (1999) on March 22, 1999. NEB. LEGIS. JOURNAL, 22 March 1999, 1125.

<sup>2077</sup> LB 149 (1999), *Slip Law*, § 10, p. 11.

<sup>2078</sup> Legislative Records Historian, *Floor Transcripts, LB 194 (1999)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, 25 March 1999, 2883.

<sup>2079</sup> *Id.*

school district to the Property Tax Administrator by August 25<sup>th</sup> of each year.<sup>2080</sup> “[T]he effect is that we will have more current information in the adjusted valuation numbers that are given by the Property Tax Administrator’s Office to the Department of Education to be used in the state aid formula,” Wickersham asserted to his colleagues.<sup>2081</sup>

In addition to the foregoing date change, the Wickersham amendment also proposed to change the deadline by which a local system may file with the Property Tax Administrator written objections to the adjusted valuations prepared by the Property Tax Administrator. The date had been July 31<sup>st</sup> and the Wickersham amendment changed the date to November 10<sup>th</sup> of each year. The date by which the Property Tax Administrator had to respond to the request was changed from November 1<sup>st</sup> to January 1<sup>st</sup>. Finally, the amendment changed the deadline for requests by local systems to file nonappealable corrections of adjusted valuation due to clerical error or, for agricultural land, assessed value changes by reason of land qualified or disqualified for special use valuation (greenbelt). The date had been October 1<sup>st</sup> and the amendment changed the date to November 10<sup>th</sup> of each year and the Property Tax Administrator had to respond by January 1<sup>st</sup> of the following year.<sup>2082</sup>

Senator Wickersham’s amendment apparently made sense to his colleagues. There was no debate or discussion on the matter. The rationale for the amendment was in harmony with that proposed under LB 149, which the Legislature had already passed into law. “We have consistently worked to provide the most current information possible for use in the school aid formula, and I would suggest to you that this change is consistent with that,” Wickersham said.<sup>2083</sup> And his colleagues agreed by granting a unanimous 39-0 vote for adoption of his amendment.<sup>2084</sup> The Legislature passed LB 194 on April 23, 1999 by a 42-0 vote.<sup>2085</sup>

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<sup>2080</sup> NEB. LEGIS. JOURNAL, *Wickersham AM1007*, 25 March 1999, 1217-20.

<sup>2081</sup> *Floor Transcripts, LB 194 (1999)*, 25 March 1999, 2883.

<sup>2082</sup> NEB. LEGIS. JOURNAL, *Wickersham AM1007*, 25 March 1999, 1217-20.

<sup>2083</sup> *Floor Transcripts, LB 194 (1999)*, 25 March 1999, 2883.

<sup>2084</sup> NEB. LEGIS. JOURNAL, 25 March 1999, 1220.

<sup>2085</sup> *Id.*, 23 April 1999, 1645-46.

Table 122. Summary of Modifications to TEEOSA  
as per LB 194 (1999)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
34	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	<p>Changed from July 1<sup>st</sup> to October 10<sup>th</sup> the deadline by which the Property Tax Administrator (PTA) must compute and certify to the Department of Education the adjusted valuation of each local system for each class of property in each local system. Required county assessors to certify the total taxable value by school district to the PTA by August 25<sup>th</sup> each year.</p> <p>Changed the deadline by which a local system may file with the PTA written objections to the adjusted valuations prepared by the PTA from July 31<sup>st</sup> to November 10<sup>th</sup> of each year. The date by which the PTA had to respond to the request was changed from November 1<sup>st</sup> to January 1<sup>st</sup>.</p> <p>Changed the deadline for requests by local systems to file nonappealable corrections of adjusted valuation due to clerical error or, for agricultural land, assessed value changes by reason of land qualified or disqualified for special use valuation (greenbelt). The date had been October 1<sup>st</sup> and LB 194 changed the date to November 10<sup>th</sup>. The PTA must respond by January 1<sup>st</sup> of the following year.</p>
35	79-1022	Distribution of income tax receipts and state aid; effect on budget	Editorial change; harmonize with changes made in section 34.

Source: Legislative Bill 194, *Slip Law*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, §§ 34-35, pp. 12-14.

### LB 87 - Joint Public Agencies

In an era when the trend was fewer not more local governments, LB 87 (1999) seemed somewhat out of place at first glance. Legislative Bill 87 was sponsored by Senator Bob Wickersham, chair of the Revenue Committee, and was actually a second attempt from a bill introduced a year earlier. LB 1089 (1998) was advanced by the Revenue Committee and placed on General File on March 2, 1998.<sup>2086</sup> LB 1089 was designated a Speaker priority, but the session ended before the measure could be debate.

<sup>2086</sup> NEB. LEGIS. JOURNAL, 2 March 1998, 848.

The subject of both LB 1089 and its successor LB 87 was the creation of a new type of political subdivision called a joint public agency.<sup>2087</sup> The idea was to give existing political subdivisions and state agencies another possible avenue for cooperation on joint projects, somewhat similar to interlocal agreements. Under the Joint Public Agency Act, as created by LB 87, a school district, for instance, could form a joint public agency with a municipality (inside or outside Nebraska), a state agency, or even a federal agency. Whatever the combination of joining parties, the legislation would not create any new property tax authority. The levy limits would still apply and there would be no levy exclusion for such entities. If a city and school district formed a joint public agency, for example, their combined property tax authority would have to cover the new entity.

The joint public agency would be allowed to own property, make contracts, employ workers, and otherwise enjoy the benefits of a governmental entity. The agency would have its own board, would have the option to hire an executive director, would be subject to the open meeting laws, and would be subject to the Political Subdivision Tort Claims Act. The agency may also issue bonds if doing so was consistent with the agreement between the parties that formed the new political subdivision.<sup>2088</sup>

LB 87 amended the school finance laws only in one area and that was related to the spending lid exclusions available to school districts. Prior to LB 87, a K-12 or high school only (Class VI) district was granted the authority to exceed the local system's allowable growth rate for expenditures in support of a service that is the subject of an interlocal cooperation agreement or a modification of an existing agreement. LB 87 expanded this section of law to include joint public agencies.<sup>2089</sup>

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<sup>2087</sup> Legislative Bill 87, *Slip Law*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, §§ 1-100, pp. 1-46.

<sup>2088</sup> *Id.*

<sup>2089</sup> *Id.*, § 88, pp. 37-38.

Table 123. Summary of Modifications to TEEOSA  
as per LB 87 (1999)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
88	79-1028	Applicable allowable growth rate; Class II, III, IV, V, or VI district may exceed; situations enumerated	Prior to LB 87, a K-12 or high school only (Class VI) district was granted the authority to exceed the local system's allowable growth rate for expenditures in support of a service that is the subject of an interlocal cooperation agreement or a modification of an existing agreement. LB 87 expanded this section to include joint public agencies.

*Source:* Legislative Bill 87, *Slip Law*, Nebraska Legislature, 96<sup>th</sup> Leg., 1<sup>st</sup> Sess., 1999, § 88, pp. 37-38.

## F. Review

At the beginning of the 1998 Session, Governor Ben Nelson was on a personal mission to ensure the property tax relief promised under the levy limitations of LB 1114 (1996). The Governor asked Senator Coordsen to serve as chief sponsor of what became LB 989, the spending limit bill of the 1998 Session. Demonstrating the seriousness of the proposal, the Governor asked the remaining seven members of the Revenue Committee to cosponsor the bill, giving it an all but guaranteed pass from committee to floor debate. As introduced, LB 989 proposed to limit budget growth for all political subdivisions, including school districts and educational service units. The bill provided for an annual revenue lid of 2.5% for all political subdivisions other than school districts since schools are the only class of local government that operate under an expenditure lid. For school districts, the bill set a 2.5% base growth rate on general fund expenditures other than expenditures on special education and permitted a lid range of 2% (2.5% to 4.5%).

As passed by the Legislature, LB 989 implemented a growth rate of 2.5% to 4.5% for general fund expenditures (other than special education) effective July 1, 1998. The bill reinstated the student growth allowance and unused budget authority provided under law prior to the implementation of LB 299 (1996). It allowed a school board to exceed the basic allowable growth rate by up to an additional 1% with the affirmative vote of at least three-fourths of the board. Finally, the bill reinstated most of the spending lid exceptions in existence prior to 1996, including lid exceptions for (i) interlocal

agreements, (ii) repairs to infrastructure damaged by a natural disaster, (iii) judgments (except CIR orders) to the extent not paid by liability insurance, (iv) early retirement programs, and (v) certain lease purchase agreements.

Another important lid bill from the 1998 Session involved the levy limitations that would soon become operative for the 1998-99 school year. As originally introduced in 1997, LB 306 proposed to create an efficiency commission to approve or deny capital construction projects of local governments. By the start of the 1998 Session, a new and more pressing issue arose concerning the levy limitations. The issue involved the ability of local governments, including school districts, to place a levy override question on an election ballot in time for the first year of implementation of the maximum levies. LB 1114 (1996) stated that the maximum levy provisions would become operative for fiscal years beginning “after July 1, 1998.” Given this operative date, some attorneys representing school districts questioned whether a levy override election could be held prior to the July 1st date. And a few school districts, particularly hard hit by the levy limits, had a need to pursue a levy override immediately in order to sustain operations.

As passed by the Legislature, LB 306 made a number of modifications to revenue-related statutes. For school districts, however, the central focus of the bill was the levy override provisions. The provided a more specific election procedure and ballot language for elections to exceed the levy limits. It provided a process for a local governing body to rescind or modify a previously approved levy override ballot issue, something not considered at the time LB 1114 (1996) was passed. The bill specified that a local governing body could only pursue one levy override attempt per calendar year, but the patrons of the district may bring forward any number of petition efforts to override the levy limit as they wish during a calendar year. The idea was to avoid placing limits on the will of the people. Finally, the bill changed the operative date of the existing law concerning the ability to override the levy limitations from July 1, 1998 to the date of December 1, 1997. The retroactive date would permit school districts and other political subdivisions to exceed the levy limits in time for the first year of implementation (1998-99).

The idea of “fully funding” the state aid formula has long been an objective of public schools. The issue dates back to Senator Warner’s attempts in 1967 to fully fund the Foundation and Equalization Act, the predecessor to TEEOSA. The proponents of LB 1059 (1990) and LB 806 (1997) also fought to ensure sufficient funding to permit the state aid formula to function as intended. In 1998, the issue reappeared in, of all things, an amendment to a technical cleanup bill (LB 1175). An amendment to LB 1175, offered by Senator Bob Wickersham, sought to establish the local effort rate in the state aid formula at 90.97% times the maximum levy allowed schools under the property tax lid. The Legislature would then be required to provide sufficient annual appropriations to fully fund the amount of state aid certified by NDE based on the local effort rate established under the bill. In essence, there would be a guarantee, of sorts, by the Legislature to ensure complete funding from year to year. The formula would function with minimal political influences.

The Wickersham amendment would be adopted without initial fanfare, but that would not last for long. Once the Governor’s office understood the gravity of the amendment, the fate of LB 1175 was sealed. Governor Nelson would veto the bill, and subsequently call a special session of the Legislature to pass all provisions of the bill except the provisions contained within the Wickersham amendment.

In 1999 the issue would once again appear on the legislative agenda. This time the issue would involve the full attention of the Legislature and also the new executive administration under Governor Mike Johanns. The measure was LB 149, which was introduced due to an unexpected shortfall in state aid of approximately \$19.4 million.

Before 1999, the calculation of state aid to schools used both estimates and actual data. The state aid calculation was first based on an estimate using a three-year average growth trend. When actual data became available, the new data replaced the estimate, and any increases or decreases in state aid resulting from the use of actual data were subsequently reflected in the amount of state aid paid out to school systems the following year. In 1999, the disparity between the estimate and the actual data resulted in the \$19.4 million shortfall and the introduction of LB 149.



LB 149 proposed to declare the state aid amount certified by NDE for the 1998-99 school year null and void and required a recertification in order to correct the shortfall. The bill also changed the annual state aid certification date from December 1st of each year to February 1st. The change allowed state aid to be based on actual data rather than estimates.

The need to recertify state aid brought about a larger discussion concerning the state aid calculation process itself. Reasonable questions were asked about whether this would be an annual occurrence and whether anything could be done to bring about more stability in the funding process. The response by the Education Committee was the incorporation of provisions in the bill to provide that total aid would be the amount necessary to meet school needs after subtracting the revenue raised from local property taxes. The bill set the local effort rate (LER) at 10¢ below the maximum property tax levy (e.g., \$1.00 under a \$1.10 levy). Use of a fixed LER to calculate the level of appropriation meant the amount of state aid to be appropriated would not be determined until the required data elements were available. But the goal to achieve more accurate state aid appropriations would be met.

The Legislature passed LB 149 by a resounding vote, which was promptly followed by a veto. Undaunted, the Legislature took action to override Governor Johanns' veto by a 39-7 vote. The final passage of LB 149 was considered a major victory for public education, but the funding issue would return in subsequent sessions.