

The Budget Crisis, 2000-2004

A. Introduction

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

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

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

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

B. *Hawkins v. Johanns*

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

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

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

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

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

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

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

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

²⁰⁹² *Hawkins v. Johanns*, 1027.

²⁰⁹³ *Id.*, 1029.

²⁰⁹⁴ U.S. CONST. art. XIV, § 1.

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

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

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

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

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

²⁰⁹⁶ *Hawkins v. Johanns*, 1047.

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

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

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

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

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

²⁰⁹⁸ *Hawkins v. Johanns*, 1045.

²⁰⁹⁹ *Id.*

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

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

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

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

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

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

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

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

²¹⁰⁰ Id.

²¹⁰¹ Id.

²¹⁰² Id., 1046.

²¹⁰³ Id.

²¹⁰⁴ Id.

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

C. The 2000 Legislative Session

LB 1213 - Levy Overrides

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

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

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

²¹⁰⁵ Id., 1047.

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

²¹⁰⁷ Id.

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

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

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

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

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

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

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

Omaha, eliminated all Class I and Class VI school districts by July 1, 2002.²¹¹² Even more draconian, LB 1447, offered by Senator Dan Lynch of Omaha, intended to eliminate Class I and Class VI districts by July 1, 2000.²¹¹³ This did not necessarily mean the closing of buildings, but it did mean the end of separate school boards and administration for these classifications of schools.

Senator Lynch said the pending federal lawsuit filed by Class I patrons (*Hawkins v. Johanns*) had played a role in his decision to offer LB 1447.²¹¹⁴ And he recognized the severity of the action. “However, it is simply a logical step in the progression this state has been taking for a great many years toward a rational, comprehensive K-12 education system in Nebraska,” Lynch said.²¹¹⁵ Whether intended or not, it was as though Lynch’s and Quandahl’s bills were meant as retribution against those who dared file suit against the state. This may or may not have been the case, but it certainly had the Class I advocates scrambling to defend their schools. Over 100 small school patrons, board members, administrators, and students attended the hearing that day.²¹¹⁶

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

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

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

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

²¹¹⁴ *Hawkins v. Johanns*.

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

²¹¹⁶ *Id.*

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

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

However, we will never know how this scheme would have improved the budget and levy situation between Class Is and their primary high school districts. The committee amendments were, in fact, adopted and the bill advanced on March 15, 2000.²¹¹⁹ The bill was, in fact, advanced on second-round consideration on March 24th.²¹²⁰ But none of the provisions advanced from committee and advanced on the floor ever became law. So what happened?

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

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

²¹¹⁸ NEB. LEGIS. JOURNAL, *Com AM2305*, 17 February 2000, 720-25.

²¹¹⁹ *Id.*, 15 March 2000, 1097.

²¹²⁰ *Id.*, 24 March 2000, 1291.

²¹²¹ *Hawkins v. Johanns*, 1027.

²¹²² *Id.*, 1029.

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

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

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

²¹²³ Id., 1045.

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

²¹²⁵ Id., 13106.

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

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

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

²¹²⁶ NEB. LEGIS. JOURNAL, *Wehrbein AM3374*, 10 April 2000, 1689.

²¹²⁷ *Id.*, 23 March 2000, 1232.

²¹²⁸ *Id.*, *Raikes AM3369*, 10 April 2000, 1686-87.

²¹²⁹ *Id.*, 1687.

²¹³⁰ NEB. REV. STAT. § 79-1065 (Cum. Supp. 1998).

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

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

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

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

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

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

²¹³¹ NEB. LEGIS. JOURNAL, *Bromm AM3364*, 10 April 2000, 1688.

²¹³² *Id.*, 12 April 2000, 1768.

LB 968 - Property Tax Relief

George Kilpatrick, legal counsel for the Revenue Committee, labeled LB 968 (2000) as “one of series of bills” to update what he called the “property tax relief project,” which commenced in 1996.²¹³³ Speaking before the Revenue Committee during the public hearing for LB 968, Kilpatrick outlined the legislation while making references to the various historical pieces of legislation that it affected. The bill updated components of LB 1114 (1996) relating to levy limitations, LB 271 (1999) relating to taxation of government property not used for public purpose, and LB 87 (1999) relating to creation of joint public agencies. Kilpatrick was careful not to refer to LB 968 as a technical cleanup bill. “I try never to use the word, technical, because it implies that there’s nothing substantive, and there is substantive change,” he said.²¹³⁴

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

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

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

²¹³⁴ Id.

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

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

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

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

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

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

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

²¹³⁷ NEB. REV. STAT. §§ 77-1343 - 1348.

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

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

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

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

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

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

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

²¹⁴⁰ *Floor Transcripts, LB 968 (2000)*, 15 March 2000, 10821.

²¹⁴¹ *Id.*

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

²¹⁴³ *Floor Transcripts, LB 968 (2000)*, 15 March 2000, 10822.

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

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

So what did this mean for state aid to education? What impact would the legislation have on public schools? The final fiscal impact statement for LB 968 stated that the bill “could increase state aid to schools by \$4.5 million,” but that no definitive impact would “show up” until fiscal year 2004.²¹⁴⁷ While the fiscal note did not specify a reason, an increase in state aid often derives from a loss of property tax revenue due to changes in valuation and assessment practices. The state aid formula is designed to compensate for losses in local revenue sources. LB 968 did not answer the question of fiscal impact to schools, but it would launch a series of changes to the greenbelt laws in the next few years to fine-tune the special valuation provisions.

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

²¹⁴⁴ LB 968 (2000), *Slip Law*, § 51, p. 20.

²¹⁴⁵ *Id.*, § 80, p. 31.

²¹⁴⁶ *Id.*, § 48, pp. 18-19.

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

large portion of law for potential amendment. Before the bill passed on April 3, 2000, the measure had been amended several times, but no further changes were made to the school finance formula. LB 968 passed on a unanimous 44-0 vote.²¹⁴⁸ Governor Mike Johanns, who was presumably briefed on the potential increase the bill may cause in state aid to education, signed the bill into law on April 6, 2000.²¹⁴⁹

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

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

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

D. The 2001 Legislative Session

LB 313 - Reorganization Incentives

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

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

²¹⁴⁸ NEB. LEGIS. JOURNAL, 3 April 2000, 1520.

²¹⁴⁹ Id., 6 April 2000, 1656.

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

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

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

The genesis of the incentive program that Senator Coordsen wanted to amend was an idea originally proposed under LB 600 in 1995 by Senator Bohlke.²¹⁵² A modified version of LB 600 would eventually be absorbed into LB 1050, a comprehensive school finance modification bill passed in 1996.²¹⁵³ The program created under LB 1050 provided incentive payments to school districts that reorganize. The payments were to be made from funds appropriated to schools as equalization aid based upon a per pupil

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

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

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

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

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

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

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

²¹⁵⁴ Id.

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

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

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

LB 313 was introduced early in the 2001 Session, which helped to put it into position for an early public hearing date. As introduced, LB 313 extended the termination date for applications to the incentive aid program to August 2, 2004.²¹⁵⁷ This meant that incentive aid payments would extend through 2006-07 since payments continue for three years after approval. The bill also proposed to increase the amount allocated for base year incentive aid from \$2 million to \$5 million in 2001-02. The \$5 million level for base year incentive aid would be continued in 2002-03, 2003-04 and 2004-05.²¹⁵⁸ The idea was simply to make more funds available to ensure that at least the base year, the first year of the incentive aid program would be met in full.

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

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

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

²¹⁵⁸ *Id.*, § 1, p. 7.

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

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

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

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

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

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

²¹⁶¹ *Hearing Transcripts, LB 313 (2001)*, 63.

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

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

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

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

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

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

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

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

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

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

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

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

²¹⁶⁴ Id.

²¹⁶⁵ Id., 363.

²¹⁶⁶ Id.

²¹⁶⁷ Id., 25 January 2001, 419.

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

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

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

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

²¹⁶⁸ NEB. LEGIS. JOURNAL, 25 January 2001, 422.

²¹⁶⁹ Id., 9 February 2001, 614.

²¹⁷⁰ *Floor Transcripts, LB 313 (2001)*, 9 February 2001, 1066.

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

²¹⁷² NEB. REV. STAT. § 77-27,156.

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

The board has a purely advisory role in government, but the advice afforded by the board is supposed to be heeded by policymakers. Otherwise, there would not be any reason for its existence. And by the time the board adjourned its meeting on February 23, 2001, the advisory position was not particularly good news. For the first time in five years, the board gave a downward projection on state tax revenues. The actual reduction in tax projections was slight, \$8 million subtracted from a \$2.5 billion revenue projection, but it was enough to cast a shadow on the 2001 Legislative Session. It was anticipated that the Legislature would have no more than \$26 million in discretionary spending authority for 2001.²¹⁷⁴

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

²¹⁷³ *Id.*, § 77-27,158.

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

²¹⁷⁵ *Floor Transcripts, LB 313 (2001)*, 7 May 2001, 6557.

²¹⁷⁶ NEB. LEGIS. JOURNAL, *Coordsen AM1641*, 24 April 2001, 1641.

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

Economic circumstances rather than politics had forced Senator Coordsen to advocate a compromise to his own measure. He won the battle to increase base year incentive aid, which would theoretically encourage more school districts to seek application for the program. He also successfully extended the deadline to apply for incentive payments by one year. LB 313 would win final approval on May 21, 2001 by a 34-7 vote.²¹⁷⁸ Governor Johanns signed the bill into law on May 25, 2001.²¹⁷⁹

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

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

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

²¹⁷⁷ Id., 7 May 2001, 1840.

²¹⁷⁸ Id., 21 May 2001, 2157-58.

²¹⁷⁹ Id., 25 May 2001, 2269.

Table 126—Continued

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

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

LB 797 - Technical Cleanup

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

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

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

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

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

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

²¹⁸¹ NEB. LEGIS. JOURNAL, 1 May 2001, 1765.

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

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

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

Also included in LB 797 was a harmonizing provision stating that a representative of the Department of Property Assessment and Taxation serve as a member of the School Finance Review Committee.²¹⁸⁵ Prior to LB 797, the law called for a representative of the Office of Property Tax Administrator, which had been a division of the Department of Revenue. In 1999 the Legislature created a separate department for administration of property tax and assessment, hence the harmonizing provision found in LB 797.²¹⁸⁶

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

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

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

²¹⁸⁵ *Id.*, § 30, p. 23.

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

²¹⁸⁷ LB 1059, Session Laws, 1990, § 23, p. 18 (817).

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

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

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

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

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

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

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

Table 127—Continued

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

Table 127—Continued

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

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

LB 833 - Distance Education/Converted Contracts

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

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

²¹⁹¹ NEB. LEGIS. JOURNAL, 31 January 2001, 470.

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

As a matter of background, the Legislature passed LB 860 in 1995 to establish legislative intent that by June 30, 2000, all public school districts would have a direct connection to a statewide public computer network.²¹⁹³ Grants from the Education Innovation Fund (state lottery), the telecomputing levy authorized for ESUs, which existed at the time, and a newly created School Technology Fund were designated for use to finance the connection. LB 860 created the School Technology Fund consisting of the balance of funds existing in the School Weatherization Fund on July 1, 1996 (about \$3.5 million) along with any transfers made by the Legislature from the General Fund. The School Weatherization Program was facilitated by the State Energy Department and was designed to provide loans for school energy efficiency projects. LB 860 eliminated this old fund effective June 30, 1996.²¹⁹⁴

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

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

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

²¹⁹⁴ *Id.*, § 4, p. 4 (1261).

²¹⁹⁵ *Id.*, § 2, p. 3 (1260).

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

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

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

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

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

school improvement plans by individual school districts.²¹⁹⁷

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

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

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

²¹⁹⁷ NEB. REV. STAT. § 9-812 (Cum. Supp. 2000).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²²⁰⁶ NEB. LEGIS. JOURNAL, 9 May 2001, 1896.

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

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

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

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

²²⁰⁷ Id., *Bromm AM1850*, 7 May 2001, 1845.

²²⁰⁸ Id., 9 May 2001, 1899.

²²⁰⁹ Id., 16 May 2001, 2065-66.

Table 128—Continued

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

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

LB 170 - Property Taxation and TERC

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

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

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

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

²²¹² *Id.*

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

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

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

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

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

²²¹⁵ *Id.*

²²¹⁶ *Id.*

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

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

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

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

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

²²¹⁸ NEB. REV. STAT. § 79-1016 (Cum. Supp. 2000).

²²¹⁹ Id., § 77-1359 (Cum. Supp. 2000).

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

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

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

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

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

E. The 2002 Legislative Session

LB 898 - Temporary Aid Adjustment Factor

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

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

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

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

²²²³ Id., LB 170 (2001), 6 March 2001, 1.

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

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

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

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

recertification of state aid since state aid certification notices are dispersed by February 1st each year for aid in the following year. The bill proposed to reduce each local school system's formula need, transportation and special receipts allowances, allocated income tax funds and net option funding by 5%.²²²⁴ It was estimated that the bill would decrease the state commitment to public education by \$86 million for 2002-03.²²²⁵ This represented a sizable contribution to the state's overall financial situation.

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

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

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

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

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

²²²⁷ *Id.*, 5-6.

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

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

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

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

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

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

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

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

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

Speaker Kristensen would up the ante on the following session day when he formally prioritized LB 898.²²³⁶ Senator Raikes had already established LB 1172, relating to student fees, as his own personal priority for the 2002 Session.²²³⁷ The expectation, of course, was that the Education Committee would follow the lead of the Speaker by utilizing LB 898 as the vehicle for some form of state aid reduction. But it would be the members of the Education Committee, not the Speaker, who proposed in their collective good judgment the contents of the Speaker’s individual priority bill.

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

²²³³ *Id.*

²²³⁴ *Id.*, 8-9.

²²³⁵ *Id.*, 9.

²²³⁶ NEB. LEGIS. JOURNAL, 20 February 2002, 665.

²²³⁷ *Id.*, 24 January 2002, 345.

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

LB 898 was advanced from committee by a 7-1 vote on March 14, 2002.²²³⁸ The committee amendments essentially incorporated the contents of LB 1252, Senator Raikes' proposal for state aid reduction. The amendments proposed to change the calculation of state aid to education for 2002-03, 2003-04, and 2004-05. The legislation would establish a new phrase within the school finance lexicon: the temporary aid adjustment factor. The factor would reduce each local school system's formula need, allocated income tax funds and net option funding by 1.25%. The amendments also reduced the factors used to compute the stabilization factor and small stabilization adjustment by 1.25%. Finally, the amendments required the recertification of state aid for 2002-03 prior to May 1, 2002.²²³⁹

The legislation would reduce state aid, and thereby assist the state's financial crisis, by \$22.3 million in 2002-03 and roughly \$23 million in 2003-04.²²⁴⁰ But what would the temporary aid adjustment factor translate into actual loss of state aid to each school district? It was estimated that the statewide average decrease in state aid for school districts, in comparison to the amount certified in February 2002, would be

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

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

²²⁴⁰ *Fiscal Impact Statement, LB 898 (2002)*, 10 April 2002, 1.

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

“Talk about a dilemma, this is a dilemma”

First-round debate on LB 898 took place on March 21, 2002, just one week after its advancement from committee. The first words spoken on the legislation came from the bill’s sponsor. “LB 898 is a priority bill that I assumed and thought I would never, ever introduce in my life,” Speaker Kristensen said.²²⁴² “And I would tell you that LB 898 is not the bill that I would be proud of if I was out on the campaign trail,” he added.²²⁴³ But the events and circumstances, he said, had evolved radically for the worse since the Legislature met in special session in October 2001.²²⁴⁴ It was then that the Legislature met for the first time in the wake of “9/11” to address a growing budget shortfall. It was then that the Legislature vowed to hold harmless state aid to education from any budget cuts. Said Kristensen:

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

²²⁴¹ Id.

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

²²⁴³ Id.

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

²²⁴⁵ *Floor Transcripts, LB 898 (2002)*, 21 March 2002, 12132.

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

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

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

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

²²⁴⁶ Id., 12135.

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

²²⁴⁸ Id., § 7, p. 19.

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

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

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

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

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

²²⁵¹ *Id.*, § 10, p. 25.

²²⁵² *Id.*, § 5, pp. 11-12.

windfall profit to the local system when added to the property tax revenue. The small school stabilization adjustment, created under LB 806, was a mechanism by which funds funneled back into the formula by virtue of the lop-off calculation would be distributed. And, as the name of the adjustment implies, small schools were the beneficiaries of this particular provision. The stabilization factor, also created under LB 806, represented the hold harmless provision within the formula to protect local systems from sharp losses in state aid from year to year.

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

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

²²⁵³ *Floor Transcripts, LB 898 (2002)*, 21 March 2002, 12143.

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

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

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

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

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

²²⁵⁴ Id., 12142.

²²⁵⁵ Id., 12144.

²²⁵⁶ Id.

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

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

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

Levy Lid Exclusion

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

²²⁵⁷ Id.

²²⁵⁸ NEB. LEGIS. JOURNAL, 21 March 2002, 1069.

²²⁵⁹ *Floor Transcripts, LB 898 (2002)*, 21 March 2002, 12159.

²²⁶⁰ Id.

²²⁶¹ NEB. LEGIS. JOURNAL, 21 March 2002, 1069.

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

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

Of particular significance to school officials was a provision contained within the committee amendments to LB 1085 that allowed qualified local systems to exceed the levy limitation in the amount of lost state aid due to the provisions of LB 898.²²⁶³ The levy exclusion would exist for three years (FYs 2002-03, 2003-04, and 2004-05) and required a three-fourths majority vote of the school board to access the levy exclusion.²²⁶⁴

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

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

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

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

²²⁶⁴ *Id.*

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

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

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

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

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

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

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

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

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

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

²²⁶⁷ Id., 12358.

²²⁶⁸ NEB. LEGIS. JOURNAL, 25 March 2002, 1106.

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

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

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

²²⁶⁹ Id., 11 April 2002, 1621.

²²⁷⁰ NEB. LEGIS. JOURNAL, *Raikes AM3604*, 8 April 2002, 1542-45.

²²⁷¹ *Floor Transcripts, LB 898 (2002)*, 8 April 2002, 13900.

²²⁷² NEB. LEGIS. JOURNAL, 8 April 2002, 1545.

Local budget decisions

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

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

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

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

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

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

²²⁷⁴ NEB. LEGIS. JOURNAL, *Bourne AM3326*, 8 April 2002, 1546.

²²⁷⁵ *Floor Transcripts, LB 898 (2002)*, 8 April 2002, 13904.

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

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

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

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

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

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

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

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

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

²²⁷⁷ *Floor Transcripts, LB 898 (2002)*, 8 April 2002, 13903.

²²⁷⁸ *Id.*, 13904.

²²⁷⁹ *Id.*, 13902.

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

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

"Legislation I cannot support"

In some cases, there are last minute speeches on the floor of the Legislature before a final vote is taken. A sponsor might, for instance, file a motion to strike the enacting clause of his or her own bill in order to have that last chance to sway lawmakers to vote in favor of the measure. In the case of LB 898, however, there was no such last minute attempts, no last minute speeches. In the case of LB 898, it was not necessary and the proponents knew it. Just two days after advancement from Select File, the Legislature voted to pass LB 898 by a 46-3 vote and passed the accompanying appropriation (A) bill by a 45-3 vote.²²⁸³ LB 898A was designed to amend the biennium budget to reflect the reduced amount of state aid for FY2001-02 and 2002-03.²²⁸⁴

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

²²⁸⁰ Id., 13902-03.

²²⁸¹ NEB. LEGIS. JOURNAL, 8 April 2002, 1546.

²²⁸² Id.

²²⁸³ Id., 10 April 2002, 1580-81.

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

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

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

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

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

And on the same day Governor Johanns vetoed the legislation, Speaker Kristensen filed a motion to override the veto of LB 898.²²⁸⁶ The showdown between the executive and legislative branches was set for the next day.

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

²²⁸⁵ NEB. LEGIS. JOURNAL, 10 April 2002, 1589-90.

²²⁸⁶ *Id.*, 1601.

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

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

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

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

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

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

Voting in the affirmative, 38:

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

²²⁸⁷ *Floor Transcripts, LB 898 (2002)*, 11 April 2002, 14221.

²²⁸⁸ *Id.*, 14223.

²²⁸⁹ NEB. LEGIS. JOURNAL, 11 April 2002, 1620.

Table 130—*Continued*

Bruning	Hartnett	Maxwell	Schimek	
Byars	Hudkins	McDonald	Schrock	
<i>Voting in the negative, 5:</i>				
Burling	Cunningham	Dierks	Jones	Tyson
<i>Present and not voting, 6:</i>				
Baker	Pederson	Synowiecki		
Chambers	Preister	Wickersham		

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

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

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

Table 131—Continued

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

Table 131—Continued

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

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

LB 1172 - Student Fees

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

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

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

“An illegal tax”

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

²²⁹⁰ NEB. CONST. art. VII, § 1.

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

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

“Free is free”

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

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

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

²²⁹³ *Id.*

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

²²⁹⁵ *Id.*

²²⁹⁶ *Id.*

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

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

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

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

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

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

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

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

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

Table 132—*Continued*

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

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

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

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

Source: NEB. REV. STAT., passim.

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

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

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

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

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

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

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

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

²³⁰⁰ *Id.*

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

Mistaken Assumption

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

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

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

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

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

²³⁰² *Id.*

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

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

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

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

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

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

²³⁰⁴ Id.

²³⁰⁵ Id.

²³⁰⁶ Id.

²³⁰⁷ Id.

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

A range of ideas

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

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

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

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

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

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

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

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

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

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

²³¹⁰ *Id.*, 7.

²³¹¹ *Id.*

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

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

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

In addition, school entities would be permitted to:

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

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

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

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

²³¹⁵ Id.

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

²³¹⁷ NEB. LEGIS. JOURNAL, 24 January 2002, 345.

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

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

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

²³¹⁹ Id.

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

²³²¹ Id.

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

²³²³ Id.

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

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

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

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

²³²⁴ Id., §§ 3-10, pp. 2-3.

²³²⁵ Id., §§ 12-17, pp. 5-7.

²³²⁶ Id., § 18, pp. 7-10.

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

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

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

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

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

²³²⁹ Id.

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

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

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

LB 1254 required districts to adopt a written policy regarding the assessment and collection of student fees. The policy must provide for the waiver of fees when the student or his/her parent or guardian or the person with legal or actual charge or control of the student is financially unable to pay the following: (i) fees for extracurricular activities; (ii) fees for optional summer or other programs; (iii) fees for optional before- or after-school, behind-the-wheel driver education programs; and (iv) fees for musical instrument rental for optional instrumental music programs.²³³³ “This particular proposal identifies particular courses or categories of courses in which fees could and could not be-charged,” Raikes said of LB 1254.²³³⁴ “So it goes a little bit beyond what the others have in terms of identified specifics rather than just principles,” he added.²³³⁵

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

²³³² Id.

²³³³ Id., §§ 1-14, pp. 2-7.

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

²³³⁵ Id.

²³³⁶ Id., 19-20.

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

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

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

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

²³³⁷ Id., 27.

²³³⁸ Id., 28.

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

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

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

²³³⁹ Id., 32.

²³⁴⁰ Id.

²³⁴¹ Id., 32-33.

²³⁴² Id., 39.

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

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

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

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

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

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

“It’s the perfect storm”

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

²³⁴⁵ Id., 39-40.

²³⁴⁶ Id.

²³⁴⁷ Id., 42.

²³⁴⁸ Id.

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

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

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

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

²³⁵⁰ Stenberg, AG Opinion 02004, 1 February 2002.

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

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

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

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

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

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

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

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

²³⁵⁵ *Id.*, § 6, p. 14.

²³⁵⁶ *Id.*, § 3, p. 2.

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

“Safe haven”

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

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

²³⁵⁷ NEB. LEGIS. JOURNAL, 28 February 2002, 769

²³⁵⁸ *Id.*, 5 March 2002, 787.

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

²³⁶⁰ *Id.*

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

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

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

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

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

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

²³⁶² LB 1059 (2002), § 1, pp. 1-6.

²³⁶³ *Floor Transcripts, LB 1172 (2002)*, 6 March 2002, 11022.

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

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

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

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

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

²³⁶⁴ Id., 11024.

²³⁶⁵ Id., 11038.

²³⁶⁶ RULES OF THE NEB. LEG., Rule 6, § 3(h).

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

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

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

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

Voting in the affirmative, 31:

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

Voting in the negative, 10:

Coordsen	Landis	Price	Stuhr	Vrtiska
Janssen	Maxwell	Raikes	Synowiecki	Wickersham

Present and not voting, 2:

Brown	Engel
-------	-------

Absent and not voting, 1:

Chambers

Excused and not voting, 5:

Brashear	Bruning	Jensen	McDonald	Pedersen
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Source: NEB. LEGIS. JOURNAL, 6 March 2002, 858.

²³⁶⁷ *Floor Transcripts, LB 1172 (2002)*, 6 March 2002, 11055.

²³⁶⁸ NEB. LEGIS. JOURNAL, 6 March 2002, 858.

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

The Compromise

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

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

²³⁶⁹ *Floor Transcripts, LB 1172 (2002)*, 6 March 2002, 11057.

²³⁷⁰ NEB. LEGIS. JOURNAL, 6 March 2002, 859.

²³⁷¹ *Floor Transcripts, LB 1172 (2002)*, 6 March 2002, 11058.

²³⁷² *Id.*

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

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

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

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

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

²³⁷⁴ Id.

²³⁷⁵ Id., § 9, pp. 1209-10.

²³⁷⁶ Id., § 10, p. 1210.

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

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

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

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

²³⁷⁷ Id., § 11, p. 1210.

²³⁷⁸ Id., § 3, pp. 1208-09.

²³⁷⁹ Id., § 4, p. 1209.

²³⁸⁰ Id., § 5, p. 1209.

²³⁸¹ Id., § 8, p. 1209.

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

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

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

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

²³⁸² Id. § 6, p. 1209.

²³⁸³ Id., § 7, p. 1209.

²³⁸⁴ *Floor Transcripts, LB 1172 (2002)*, 2 April 2002, 13077.

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

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

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

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

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

Reaction and Implementation

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

²³⁸⁵ Id., 13083.

²³⁸⁶ NEB. LEGIS. JOURNAL, 2 April 2002, 1292.

²³⁸⁷ Id., 11 April 2002, 1651.

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

On May 31, 2002, Commissioner Christensen issued a memorandum to school superintendents concerning the implementation of LB 1172.²³⁸⁸ He reminded district chiefs that the effective date of LB 1172 was July 20, 2002, but that much work had to be completed in time to meet some of the deadlines contained in the bill. Local public hearings on district student fee policies had to be held by August 1, 2002.²³⁸⁹ “Regardless of the issues and difficulties involved in implementing LB 1172, I know you will work hard to continue to assure that all students in Nebraska receive a quality education,” Christensen wrote.²³⁹⁰ He added that:

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

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

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

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

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

²³⁹⁰ Christensen, Memorandum, 31 May 2002.

²³⁹¹ *Id.*

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

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

LB 460 - Allowable Reserves and Class Is

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

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

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

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

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

Table 134. Percentage of Allowable Reserves under TEEOSA

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

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

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

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

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

²³⁹⁴ NEB. REV. STAT. § 79-3818 (Cum. Supp. 1990).

²³⁹⁵ *Id.*

shortage, become dependent upon the district's reserve fund. It was believed by some that the reserve provision in effect penalized some school districts while benefiting, or potentially benefiting, others. Accordingly, Senator Chris Beutler of Lincoln introduced LB 460 during the 2001 Session on behalf of Lincoln Public Schools. School officials from other districts, mostly larger school districts, would also demonstrate their support for the measure at the public hearing on March 12, 2001.²³⁹⁶

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

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

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

²³⁹⁷ NEB. REV. STAT. § 79-1072.03 (Cum. Supp. 1999).

²³⁹⁸ *Id.*

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

However, the real heart of LB 460 lay in the section of the bill that outright repealed the reserve fund provision of the state aid formula.²⁴⁰⁰ The “repealer” section of a bill is often overlooked or taken for granted. In the case of LB 460, the repealer section was the main thrust of the bill. The proposed change to the Hardship Fund was merely to harmonize existing law with the intent to repeal the reserve fund section of the state aid formula. While the collateral impact of LB 460 was to make it easier for some districts to apply for and receive Hardship Funds, the simple fact remained that no district had ever applied for the funds since its creation in 1999. In fact, the Hardship Fund would be repealed during the 2001 Session under LB 313.²⁴⁰¹

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

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

²⁴⁰⁰ Id., § 3, p. 6.

²⁴⁰¹ LB 313, Session Laws, 2001, § 5, p. 7.

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

²⁴⁰³ Id.

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

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

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

In addition to Lincoln Public Schools, other supporters of the bill included the member districts of the Greater Nebraska Schools Association (GNSA), Omaha Westside Community Schools, and the Nebraska Association of School Boards (NASB).²⁴⁰⁶ As no surprise, many of the districts that supported the legislation were also among those currently at the maximum reserve limitation. In fact, the Department of Education reported there were 37 K-12 or high school-only school districts out of 263 that were at the maximum reserve percentage in 2000.²⁴⁰⁷ The only outward opposition came not from any testifier, but from one member of the committee. Senator George Coordsen of Hebron stated his concerns during the hearing:

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

²⁴⁰⁶ *Committee Statement, LB 460 (2002)*, 1.

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

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

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

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

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

²⁴⁰⁸ *Hearing Transcripts, LB 460 (2002)*, 38.

²⁴⁰⁹ *Id.*

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

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

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

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

²⁴¹¹ NEB. LEGIS. JOURNAL, 28 January 2002, 386.

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

²⁴¹³ *Id.*, 12 March 2002, 922.

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

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

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

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

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

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

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

²⁴¹⁶ *Id.*, 12 March 2002, 922.

²⁴¹⁷ *Id.*

²⁴¹⁸ *Id.*, 2 April 2002, 1339.

²⁴¹⁹ *Id.*, 11 April 2002, 1636.

LB 994 - Omnibus Property Tax Cleanup

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

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

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

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

²⁴²¹ NEB. REV. STAT. § 79-1016 (Cum. Supp. 2001).

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

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

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

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

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

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

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

F. The 2003 Legislative Session

LB 540 - Levy Increase

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

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

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

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

²⁴²⁵ NEB. LEGIS. JOURNAL, 19 April 2002, 1787.

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

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

Three Scenarios

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

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

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

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

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

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

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

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

* Includes Insurance Premium Tax Rebate

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

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

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

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

* Includes Insurance Premium Tax Rebate

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

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

“The difficult fiscal environment we face”

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

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

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

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

doubling the temporary aid adjustment factor from 1.25% to 2.5%.²⁴²⁷ The temporary aid adjustment factor was first implemented in 2002 under LB 898 to artificially reduce the needs and resources of each local system. The result of LB 540 would be a savings to the state of approximately \$23.5 million for 2003-04 and presumably a similar amount for 2004-05.²⁴²⁸ The legislation allowed school districts, as LB 898 before it, to exceed the levy limitation with a three-fourths majority vote of the school board by an amount equal to the amount of state aid that would have been provided without the changes made in LB 540. Finally, LB 540 required the recertification of the 2003-04 state aid before June 15, 2003.²⁴²⁹ This meant another long wait-and-see for school officials anxious to finalize a school budget for 2003-04. It meant another period of anxiety for teachers who worried for their own jobs while the Legislature wrangled with the state budget.

Compounding the situation, Senator Raikes filed an amendment to his own measure just seven days before the public hearing was to be held on March 10, 2003. Senator Raikes was attempting to forward a proposal in concert with the work of the Appropriations Committee and its preliminary budget plan. The amendment proposed to strike the original contents of the bill and insert new language. The newly proposed version of the bill would use a different tactic on the budget situation as it related to public schools. First, the amendment proposed to increase the maximum levy for schools from \$1.00 to \$1.03 for 2003-04 and 2004-05 only. Second, the spending limitation would be lowered from 2.5% to 1.5% for same two-year period, but school boards would be allowed to exceed their applicable spending lid by 2% rather than 1% by a super majority (3/4s) majority vote. Finally, the amendment proposed to void the February state aid certification for 2003-04 and to require a recertification by June 15, 2003.²⁴³⁰

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

²⁴²⁸ *Id.*

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

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

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

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

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

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

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

²⁴³¹ *Hearing Transcripts, LB 540 (2003)*, 29.

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

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

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

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

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

²⁴³² Id.

²⁴³³ Id., 25.

²⁴³⁴ Id., 24.

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

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

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

²⁴³⁵ Id., 25.

²⁴³⁶ Id., 28.

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

- Void the February 5, 2003 certification of state aid;
- Maintain the existing 1.25% temporary aid adjustment factor as per LB 898 (2002);
- Maintain the existing authority to exceed the maximum levy to recover lost state aid due to the temporary aid adjustment factor;
- Increase the maximum levy from the current \$1.00 to \$1.04 for 2003-04 and 2004-05 only;
- Increase the Local Effort Rate (LER) from the current \$.90 to \$.94 for 2003-04 and 2004-05 only;
- Lower the base spending lid from 2.5% to 0% for 2003-04 and 2004-05 only;
- Permanently extend the spending lid range from 2% to 3% thereby creating a lid range of 0 - 3% for the 2003-05 biennium and 2.5% to 5.5% thereafter;
- Authorize a school board to exceed its annual growth rate by 1% with a 3/4s vote (consistent with existing authority); and
- Provide for a recertification of the 2003-04 state aid by June 15, 2003.²⁴³⁸

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

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

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

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

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

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

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

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

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

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

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

²⁴³⁹ Id.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁴⁴³ Id.

²⁴⁴⁴ Id., 5045.

²⁴⁴⁵ Id., 5056-57.

²⁴⁴⁶ Id., 5057.

The Legislature, on the other hand, has no choice but to address the circumstances dealt to it, which on occasion involves severe economic distress and budget shortfalls.

Senator Raikes may have felt put on the spot by Senator Maxwell's comments, but the chair of the Education Committee had to like the outcome of the debate over all. The committee amendments, which became the bill, were adopted by a unanimous 26-0 vote (although 14 were present, not voting, and nine were excused, not voting).²⁴⁴⁷ The bill was advanced to second round consideration by a more reassuring 33-0 vote.²⁴⁴⁸

"We're heavy in administration"

Select File debate of LB 540 began on May 7, 2003 but would not conclude until the following day. The topic of discussion on May 7th was a rehash of a familiar theme of legislative debate: Nebraska has too many school administrators, and classroom teachers need to be protected from budget cuts. The topic of conversation dates back perhaps as far and long as the history of the Nebraska Legislature itself. The more modern version of the subject peaked in 1996 when the Legislature adopted an amendment to LB 299 (1996), the companion spending lid bill to LB 1114 (1996), stating that:

It is the intent of the Legislature that any reductions in a school district budget, made to comply with the budget limitation in the Tax Equity and Educational Opportunities Support Act, affect classroom expenses as a last resort.²⁴⁴⁹

Many of the provisions of LB 299 automatically expired two years after its passage, just prior to the time when the levy limitations became operative. However, the intent language relevant to reductions in school district budgets remained in place permanently.

Senator Pat Bourne of Omaha, on behalf of the Nebraska State Education Association (NSEA), filed an amendment to LB 540 in time for second-round consideration that would take the intent language to the next level.²⁴⁵⁰ The amendment proposed to strike the phrase in the existing law that classified it as merely intent

²⁴⁴⁷ NEB. LEGIS. JOURNAL, 24 April 2003, 1405.

²⁴⁴⁸ *Id.*, 1406.

²⁴⁴⁹ NEB. REV. STAT. § 79-1083.01 (1996).

²⁴⁵⁰ NEB. LEGIS. JOURNAL, *Bourne AM1616*, 1 May 2003, 1584.

language and inserted the word “shall” in relation to the objective to affect classroom expenses as a last resort. In other words, Senator Bourne proposed to change the law from intent language to a state mandate. The amendment also expanded the existing statute to define “classroom expenses” to include programs and courses offered as part of the school curriculum and the cost of instructional and administrative employees needed to offer such programs. It would not include technology, equipment, supplies, maintenance, the cost of non-certificated employees, transportation, extracurricular programs and activities, capital expenditures, and national travel.²⁴⁵¹

As he defended his amendment during floor debate, Senator Bourne produced a chart depicting state rankings of ratios between numbers of classroom teachers and “district-level” administrators.²⁴⁵² The chart apparently illustrated that Nebraska ranks as one of the more administrator-laden states in the nation. “[W]e’re heavy in administration here in this state when you compare us to a similar demographically situated state where there is 204 teachers in Utah for every 1 administrator, versus Nebraska, where we have 37 teachers for every administrator,” Bourne said.²⁴⁵³

Senator Bourne was not alone in his beliefs. Senators Mike Foley of Lincoln, John Synowiecki of Omaha, Adrian Smith of Gering, Matt Connealy of Decatur, and Don Preister of Omaha all voiced their support of the amendment. Senator Preister said the amendment provides a system of prioritization:

I think this says that it takes one component off the table. It says that the instruction and the classroom work has top priority and that can’t even be played with in a political kind of way to generate opposition to those cuts. It says we, as a legislative body, value what takes place in that classroom, we value it above all of the other extracurricular, transportation, administrative, all of the other kinds of things that could be done to cut when monies are tight, and that’s where I think the priority should lie.²⁴⁵⁴

²⁴⁵¹ Id.

²⁴⁵² *Floor Transcripts, LB 540 (2003)*, 7 May 2003, 6285.

²⁴⁵³ Id., 6286.

²⁴⁵⁴ Id., 6277-78.

Senator Bourne seemed to gain some momentum on the theme of prioritization. “I’d rather have our kids have books than, you know, replacing the fleet, the cars in a school district, or ‘re-Astroturfing’ the stadium,” Bourne said.²⁴⁵⁵

For many school officials, Bourne’s comments as well as the comments of those who supported his amendment were considered demeaning if not outright insulting. How many school board members would knowingly and willingly choose to re-turf the football field over purchasing needed instructional materials? But Bourne admitted his concern for the feelings of school officials were not an issue to him. Said Bourne:

If this hurts the administrators’ feelings or if they’re upset by this, it doesn’t matter to me because I think that, you know, the kids are a priority, the students are a priority, and that’s all I can say and that’s my intent here, is that, again, that we recognize that priority, that the kids of our students are the future of this state.²⁴⁵⁶

Of course, school board members too would have had hard feelings about the Bourne proposal. After all, school boards approve the budgets and the spending priorities at the local level. Were school boards incapable of establishing the appropriate priorities in the best interests of the students under their care?

Senator Raikes rose to speak against the amendment several times. He did not necessarily disagree with the concept of reducing the number of administrators, but he did have a problem with mandating such a scheme upon school boards. “This would convert that intent language into a mandate,” Raikes said, “It would trap schools into a situation where, despite declining enrollments, they couldn’t reduce their teaching staff, they couldn’t reduce administrators.”²⁴⁵⁷ Senator Raikes’ remarks seemed to highlight the contradiction between Senator Bourne’s objective to reduce the number of administrators and the language he chose for his own amendment. Bourne defined “classroom expenses” to include “programs and courses offered as part of the school curriculum and

²⁴⁵⁵ Id., 6279.

²⁴⁵⁶ Id., 6291.

²⁴⁵⁷ Id., 6283.

the cost of teaching and administrative certificated employees needed to offer such programs.”²⁴⁵⁸ Would this not protect administrative staff as well as instructional staff?

Joining Senator Raikes in opposition to the amendment was fellow Education Committee member Senator Elaine Stuhr of Bradshaw, herself a former educator. “I feel that it would tie the hands of those that have been elected to serve in that capacity and those that have been selected as being administrators of our schools,” Senator Stuhr said, “I believe that it would limit the local district’s ability to control their budget.”²⁴⁵⁹ Senator Roger Wehrbein of Plattsmouth echoed the concern for local control of such decisions. “I think that leads to all kinds of unintended consequences that will certainly not accomplish what we might want to do and, in the same process, cause some serious damage at the local level,” he said.²⁴⁶⁰ Senator Wehrbein also reiterated concerns brought forth by Senator Raikes and others about potential lawsuits against school boards deemed to have violated the mandate contained in the amendment.

Behind the scenes, the Bourne amendment pitted various members of the K-12 lobby against one another, perhaps at a time when unity was most needed. The Nebraska Council of School Administrators (NCSA), in particular, found itself at odds with those promoting the amendment. And the forces at work had not escaped Senator Bourne’s attention. “I’ve been in the Legislature five years,” Senator Bourne said during his closing comments.²⁴⁶¹ “It’s interesting to me what a well-organized group with a blast e-mail type system can do to generate what I would call the Chicken Little syndrome,” he added.²⁴⁶² Whether the sky was falling or not, the curtain was certainly falling on the Bourne amendment, which was defeated by an 8-28 vote.²⁴⁶³

²⁴⁵⁸ NEB. LEGIS. JOURNAL, *Bourne AM1616*, 1 May 2003, 1584.

²⁴⁵⁹ *Floor Transcripts, LB 540 (2003)*, 7 May 2003, 6281.

²⁴⁶⁰ *Id.*, 6284.

²⁴⁶¹ *Id.*, 6298.

²⁴⁶² *Id.*

²⁴⁶³ NEB. LEGIS. JOURNAL, 7 May 2003, 1678.

The “Bourne again” amendment

Senator Pat Bourne may have been down but certainly not out. Following the rejection of his first amendment on May 7th, he launched yet another campaign on the following day to amend LB 540. This time the subject was the proposed zero percent spending lid to be imposed upon schools for the two-year period specified in the legislation. On behalf of Omaha Public Schools (OPS), Senator Bourne introduced and advocated an amendment to substantially increase the spending authority of school districts in 2005-06, the year after the zero percent lid was set to expire. In essence, the amendment would allow schools to double their allowable growth rate for 2005-06 in order to recapture some of the spending authority lost during the previous two years.²⁴⁶⁴

Senator Bourne said the amendment would require the Legislature to track the spending growth of school districts as if the zero percent base lid did not exist. This would allow everyone to witness just how much school expenditures would have grown under normal circumstances. In fact, it was estimated that the Bourne amendment would require an additional \$49 million in state aid for 2005-06. However, Bourne explained, the Legislature would not be obligated to fund or support that amount of additional spending once the zero percent lid expires:

But again, that’s not a real number ... we don’t have to fund that. It just simply allows us to say, okay, had we left the formula alone, had we left in agreement what we said we would do in terms of state aid, the number would be \$49 million higher in four years than it is today. It doesn’t increase our budget, doesn’t increase our contribution there. It just simply allows us to track what it would have been.²⁴⁶⁵

But no matter how thorough Senator Bourne’s explanation, the nagging question was, “Why?” The political nature of the amendment seemed obvious, especially in light of the increasing talk from OPS officials about legal action against the State concerning the state aid formula. In fact, OPS would file suit shortly after the 2003 Session.

²⁴⁶⁴ NEB. LEGIS. JOURNAL, *Bourne AM1757*, 8 May 2003, 1684-87.

²⁴⁶⁵ *Floor Transcripts, LB 540 (2003)*, 8 May 2003, 6338.

To the amusement of those on the floor and a welcome break from the tense debate, Senator Raikes referred to the second Bourne proposal as the “Bourne again” amendment.²⁴⁶⁶ But Senator Raikes was not going for this Bourne proposal either. Raikes noted that the two Omaha area senators pushing the amendment (Bourne and Maxwell) spoke of the integrity of the Legislature in relation to its commitment to schools and the state aid formula. “We should honor whatever our formula is,” Senator Maxwell said, “We can’t just change the dials and change the settings from year to year to accommodate our problems.”²⁴⁶⁷ To Senator Raikes, however, the Bourne amendment was anything but honorable, or even honest. “To me, I interpret that as directly opposite of honest,” said Raikes.²⁴⁶⁸ “That is doing something to try to make a political or other point, but not one that represents good fiscal management,” he added.²⁴⁶⁹

The discussion evolved into a course on the mechanics of the school spending limitation. Senator Raikes explained to his colleagues that, even under the existing 2.5% base spending lid, school district spending increased about 5.5%. The individual growth rates certified to each school district by the Department of Education ranged between 2.5% and 4.5%. School districts were the only political subdivisions that had such a statutory range of spending growth. However, in addition to the statutory lid range, school boards may exceed their applicable growth rate by another 1% with a supermajority (3/4s) affirmative vote. In addition, there were various factors that might increase spending authority such as increases in enrollment. Raikes also noted that school districts, like other political subdivisions, are authorized to use interlocal agreements with other entities to procure services. The amounts expended by virtue of interlocal agreements are excluded from the spending limitations.

Therefore, Raikes argued, the proposed zero percent base spending lid under LB 540 would not necessarily create a zero percent growth in spending. In fact, the

²⁴⁶⁶ Id., 6342.

²⁴⁶⁷ Id., 6336.

²⁴⁶⁸ Id., 6339.

²⁴⁶⁹ Id.

legislation increases the lid range from 2% to 3% so that the applicable allowable growth rate of each district would be set at between 0% and 3%. School boards would retain the authority to exceed the allowable growth rate by 1% by a supermajority vote, enrollment increases would continue to be addressed, and interlocal agreements remained an available option. The temporary decrease in the spending limitation was necessary, Raikes believed, in relation to the temporary increase in levy authority. The chair of the Education Committee wanted to help schools by offering a higher maximum levy, but he did not want to hand out blank checks for unbridled growth in spending.

The Bourne amendment, Raikes concluded, “definitely weakens our effort to make the signal to schools that that is what we need to do, plus I would argue that it definitely fiscally impacts school aid in the future.”²⁴⁷⁰ In truth, the Bourne amendment would have merely added to what was expected to be a tremendous increase in state aid at the conclusion of the 2003-05 biennium, assuming LB 540 was passed into law. Estimates ranged between \$140 and \$160 million in additional state aid following the two-year period wherein schools would be subjected to the lower spending lid and higher property tax levy. The need side of the formula would continue to rise during this two-year period. Just as Senators Bourne and Maxwell alleged, the necessary spending of schools would not stop or otherwise be suspended just because the Legislature imposed a zero percent lid. Teachers were not about to abide a freeze on salaries for two years, maintenance costs would exist no matter what the Legislature did, vendors were not about to hold off price increases to accommodate schools, utility costs would continue to be dictated by supply and demand, etc.

The floor discussion on the Bourne amendment primarily focused on the viewpoints of four members of the Education Committee, Senators Bourne and Maxwell on one side and Senators Raikes and Stuhr on the other. “We on the Education Committee are a tight group,” Senator Raikes joked, “We hardly ever disagree, as you can see.”²⁴⁷¹ But the amendment did produce a good examination of the spending

²⁴⁷⁰ Id.

²⁴⁷¹ Id., 6342.

limitation and how it works. It also heightened the Legislature's awareness that LB 540 would have fiscal consequences after the 2003-05 biennium. The second Bourne amendment to LB 540 failed on a relatively close 18-26 vote.²⁴⁷²

Table 142. Record Vote: Bourne AM1757 to LB 540 (2003)

Voting in the affirmative, 18:

Bourne	Connealy	Hartnett	Mines	Stuthman
Byars	Cudaback	Kruse	Preister	Synowiecki
Chambers	Cunningham	Louden	Quandahl	
Combs	Erdman	Maxwell	Schimek	

Voting in the negative, 26:

Aguilar	Foley	Landis	Redfield	Vrtiska
Baker	Friend	McDonald	Schrock	Wehrbein
Brashear	Hudkins	Pedersen	Smith	
Bromm	Jensen	Pederson	Stuhr	
Burling	Jones	Price	Thompson	
Engel	Kremer	Raikes	Tyson	

Present and not voting, 4:

Beutler	Janssen	Johnson	Mossey
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Excused and not voting, 1:

Brown

Source: NEB. LEGIS. JOURNAL, 8 May 2003, 1687-88.

The second Bourne proposal would be the last amendment debated on LB 540 during Select File consideration. The Legislature voted to advance the legislation to the third and final round of debate on a 46-1 vote.²⁴⁷³

Another Penny

By mid May, the Legislature was close to meeting the \$761 million budget shortfall. Roughly half the amount would be met through state spending reductions in the mainline budget bill, LB 407, and other companion bills. And roughly half the amount would derive from various tax increases and tax policy changes under LB 759. By May

²⁴⁷² NEB. LEGIS. JOURNAL, 8 May 2003, 1687-88.

²⁴⁷³ *Floor Transcripts, LB 540 (2003)*, 15 May 2003, 1688.

14th, the Legislature was down to about a \$16 million gap standing in the way of a balanced budget proposal. Some final decisions had to be made.

The Legislature voted to further reduce state aid to education by \$16 million for the biennium. Although no overt deal was made on the floor of the Legislature, the behind-the-scenes negotiations involved an understanding that an amendment would be offered to LB 540 in order to recapture the additional lost state aid. The chosen method was to increase the maximum levy from \$1.04, as prescribed in the bill, to \$1.05 for each year of the 2003-05 biennium.

On May 15, 2003, the Legislature took up final-round consideration of LB 540. As expected, Senator Raikes had filed a motion the day before to pull the measure back to Select File for specific amendment in order to adjust the maximum levy provision.²⁴⁷⁴ This important move would mark the last major piece of the biennium budget package. “This is obviously an important and difficult decision,” Senator Raikes said of his amendment.²⁴⁷⁵ He explained that each penny added to the maximum levy would account for about \$8 to \$10 million in state aid to education. This would correlate with the action of the Legislature the day before with regard to LB 407 in which state aid was reduced by \$8 million for each year of the biennium.

The response by his fellow legislators was mixed, but generally supportive. Senator Jim Cudaback of Riverdale represented the typical view in that he vowed not to raise property taxes any further, but the need to protect K-12 education weighed heavier in his mind. “I guess only a fool never eats his crow when he’s starved, and I guess we’re starved here on this issue,” Senator Cudaback said, “So I’m going to eat some crow here.”²⁴⁷⁶ Speaker Curt Bromm of Wahoo had a similar view. “[T]he changes that we made to LB 407 to reduce the state aid to our K-12 schools really only works if we do this,” he said, “Unless someone has a better plan.”²⁴⁷⁷

²⁴⁷⁴ NEB. LEGIS. JOURNAL, *Raikes AM1926*, 14 May 2003, 1821.

²⁴⁷⁵ *Floor Transcripts, LB 540 (2003)*, 15 May 2003, 6926.

²⁴⁷⁶ *Id.*, 6946.

²⁴⁷⁷ *Id.*, 6930.

And there were some policymakers who thought they had a better plan, although perhaps not to the immediate problem. Senator Chip Maxwell used the occasion of the Raikes amendment to once again label the current school finance formula a broken system. Said Maxwell:

K-12 got jerked around last year. K-12 is getting jerked around in a big way this year, including another little jerk yesterday. K-12 is going to get jerked around every year that we continue using an unrealistic formula that produces unrealistic numbers. K-12ers, when you're ready to break out of this mess and get into your own state variable tax that provides you stable, solid, increasing revenue, please talk to me.²⁴⁷⁸

The “K-12ers” to whom he referred were apparently the education groups and individual school districts comprising the K-12 education community. “Until then, I wish you good luck thrashing around in the current dysfunctional system,” Maxwell said.²⁴⁷⁹ The Omaha legislator would introduce his own comprehensive school finance reform bill during the 2004 Session, but the measure would never emerge from committee.²⁴⁸⁰ Senator Maxwell said he would not support the additional penny on the maximum levy, but that he would support passage of the legislation. And he kept his word.

Senator Raikes closed on the motion to return the bill to Select File with the caution that, “If we don’t do this, our budget bill does not match our funding formula.”²⁴⁸¹ It was that simple. The Legislature had but nine days remaining in the session, which would make it difficult to go back to the drawing board in order to investigate new options. The Legislature accepted Senator Raikes’ proposal to increase the maximum levy by a 27-8 vote.²⁴⁸²

²⁴⁷⁸ Id., 6942.

²⁴⁷⁹ Id.

²⁴⁸⁰ In 2004, Senator Maxwell introduced LB 1248 to fund schools by a uniform \$6000 per student subsidy. The funding for schools would derived from a state tax on all taxable income and a state property tax. Maxwell also filed LR 228CA, a constitutional amendment to allow the state to levy a tax on real property to fund K-12 education. The Education Committee took no action on either measure.

²⁴⁸¹ *Floor Transcripts, LB 540 (2003)*, 15 May 2003, 6947.

²⁴⁸² NEB. LEGIS. JOURNAL, 15 May 2003, 1852.

“This critical spending issue”

A showdown between the Legislature and Governor Johanns was relatively certain going into final-round consideration of the biennium budget package. The Governor had threatened to veto the entire budget if lawmakers took action to close the Lincoln Correctional Center. And such a plan was, in fact, incorporated into the budget package. Therefore, political insiders and lawmakers alike were carefully watching the vote tallies on May 20, 2003 to determine whether the various bills that comprised the budget package were “veto-proof.” A motion to override a veto requires 30 affirmative votes, but it first takes a solid vote on Final Reading to determine what kind of strength a measure has overall. For supporters of the budget package, the news would be good.

The Legislature voted to pass LB 407, the mainline budget bill, by a 37-11 vote.²⁴⁸³ LB 540, the school finance bill, was passed by a solid 42-6 vote.²⁴⁸⁴ The revenue measure, LB 759, was passed by a 36-13 vote.²⁴⁸⁵ The package would produce a \$5.4 billion biennium budget with tax increases to generate some \$343 million in new revenue. The package would allow schools to raise their property tax levies to offset lost state aid. Total state spending would continue to grow under the proposal. In 2003-04, spending would increase by 1.3%, and in 2004-05 spending would increase by 3.6%.²⁴⁸⁶

Governor Johanns had intimated that he would likely take the allotted five days to consider any veto actions, and he would hold true to his word. On May 26, 2003, the Legislature was officially told of the Governor’s action to veto the entire budget package, a somewhat unusual move, but not entirely unexpected. The Legislature had all but abandoned the Governor’s initial budget recommendations early in the legislative process. Many believed the Governor had offered an unworkable if not unconscionable budget plan at the outset of the session, especially as it related to public education. Johanns had proposed to cut state aid to education and special education funding by 10%

²⁴⁸³ Id., 20 May 2003, 1945.

²⁴⁸⁴ Id., 1957.

²⁴⁸⁵ Id., 1959.

²⁴⁸⁶ Leslie Reed, “Legislature approves budget, tax-increase bills; Both measures receive enough votes to override a veto by Gov. Mike Johanns,” *Omaha World-Herald*, 21 May 2003, 1a.

and then freeze the appropriation for the second year of the biennium. He did not seem to care what impact this would have on school districts, parents, and, most especially, students. In fact, for some policymakers it was relatively easy to take the high road with regard to supporting tax increases given the Governor's attitude about public education.

In separate letters for each vetoed measure, Governor Johanns outlined his objections and reasons for returning the bills without his signature. "Legislative Bill 407 and certain other budget-related legislation you have presented me are in conflict with the basis of my original budget recommendations and my continuing position about the size of state spending that can be afforded by the citizens of Nebraska during these difficult economic times," Johanns wrote about the budget bill.²⁴⁸⁷ "Once again, the Legislature is balancing the State's budget by asking Nebraskans to pay more taxes from their already limited resources," the Governor wrote with regard to the tax bill (LB 759).²⁴⁸⁸

Governor Johanns' veto message concerning LB 540 was much shorter and to the point. He acknowledged and appreciated the cuts to state aid, something he advocated himself, but he could not abide any effort by the Legislature to make schools whole. Johanns wrote:

I appreciate the difficult decision that the Legislature has made to address our State's current budget shortfall by including a reduction in public school aid and community college aid funding for the next two fiscal years. I cannot, however, support the provisions of the bill that raise the maximum allowable levy from \$1.00 to \$1.05 without a vote of the people. I firmly believe that Nebraskans are asking for greater spending restraint at all levels of government. That is not the approach taken by this legislation. Rather, if the full authority granted by LB 540 were exercised by schools and community colleges, property taxes levied statewide in the next fiscal year, alone, could be increased by \$63 million dollars.

LB 540 provides a two-year approach to the direction that our State is heading with respect to our school aid formula. The bill fails to address the anticipated growth that the current formula will generate in the out-biennium and into the future. I believe that, collectively, we need to address this critical spending issue.²⁴⁸⁹

²⁴⁸⁷ NEB. LEGIS. JOURNAL, 26 May 2003, 2023.

²⁴⁸⁸ Id., 2025.

²⁴⁸⁹ Id., 2024.

The so-called “critical spending issue” would, in fact, be something for future Legislature’s to wrangle over. In the ultimate irony, Governor Johanns would, in 2004, develop an appreciation for the work of the Legislature in 2003.

On May 27, 2003, one day after the veto actions, the Legislature convened to deliberate a list of motions to override vetoes. The motions were filed by the respective chairs of the standing committees from which the various components of the budget package derived. All motions would meet with success. When it came time to consider Senator Raikes’ motion to override the veto of LB 540, various members of the body rose to voice their support for the effort. Perhaps no one captured the moment better than Senator Ed Schrock of Elm Creek. “[A]s a farmer, if you eat your seed corn, you don’t harvest much,” he said, “And if we don’t fund our education, we’re not going to harvest a very good crop of students.”²⁴⁹⁰ LB 540 was passed into law over the Governor’s objections by a 44-4 vote.²⁴⁹¹ The measure actually gained two affirmative votes in the vote to override Governor Johanns’ veto.

Table 143. 2003 Budget Package: Votes to Pass and Override Gubernatorial Vetoes

	<i>Vote to Pass May 20, 2003</i>	<i>Vote to Override Veto May 27, 2003</i>
LB 407 (Mainline budget bill)	37-11	37-11
LB 540 (School finance bill)	42-6	44-4
LB 759 (Revenue bill)	36-13	37-12

Source: NEB. LEGIS. JOURNAL, 27 May 2003, 2045, 2046, 2048.

Table 144. Summary of Modifications to TEEOSA as per LB 540 (2003)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
4	79-1008.01	Equalization aid; amount	Amended by replacing the 90¢ levy rate currently used for the calculation of “lop-off” with language making the levy rate to be used equal to the maximum levy minus 10¢.

²⁴⁹⁰ *Floor Transcripts, LB 540 (2003), 27 May 2003, 7818.*

²⁴⁹¹ NEB. LEGIS. JOURNAL, 27 May 2003, 2048.

Table 144—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
4	79-1008.01	Equalization aid; amount <i>Continued</i>	For the calculation of “small school stabilization” for school fiscal years through 2004-05, the levy rate of \$1.00 used in the calculation would be replaced with language making the levy rate to be used equal to the maximum levy.
5	79-1022	Distribution of income tax receipts and state aid; effect on budget	Changed the deadline for the certification of state aid from February 1 to June 15 for 2003-04. The deadline for notifying the Governor and Legislature of the total aid amount was moved from February 1 to June 15 for 2003-04.
6	79-1022.02	School year 2003-04 certification null and void; recertification	Amended by declaring the 2003-04 certifications of state aid, applicable allowable growth rates, and Class I budget authority to be null and void. A recertification would be required to be completed on or before June 15, 2003.
7	79-1025	Basic allowable growth rate; allowable growth range	Increased the allowable growth range from 0-2% to 0-3%. The allowable growth range allows additional growth for school systems that spend less than their formula needs. The amount of additional allowable growth depends on how much less spending is than formula needs. Systems that spend 20% below their formula needs are allowed an additional allowable growth equal to the range maximum.
8	79-1026	Applicable allowable growth rate; determination; target budget level	Amended by changing the deadline for the certification of applicable allowable growth rates from February 1 to June 15 for 2003-04.

Source: Legislative Bill 540, *Slip Law*, Nebraska Legislature, 98th Leg., 1st Sess., 2003, §§ 4-8, pp. 4-6.

LB 67 - Technical Cleanup

At the public hearing for LB 67 on January 21, 2003, Tammy Barry, Legal Counsel for the Education Committee, introduced the bill as a technical cleanup bill on behalf of the Department of Education. “And for those of you that are new to the committee, this will be the most boring bill that you hear this session,” she said jokingly.²⁴⁹² She was not too far off the mark, although the legislation would carry several important provisions before it was all said and done. In fact, the measure was placed on the legislative fast track in order to fix a component of the school finance formula in time for the February certification of state aid.

²⁴⁹² Committee on Education, *Hearing Transcripts, LB 67 (2003)*, Nebraska Legislature, 98th Leg., 1st Sess., 2003, 21 January 2003, 17.

The issue arose after the hearing. It was discovered that an error existed in one of the sections of the TEEOSA, which, if left uncorrected, would cause a miscalculation of the cost growth factor. The cost growth factor is used within one of the more intricate sub-formulas. It is used to calculate the average formula cost per student in each of the three cost groupings (standard, sparse, and very sparse). And this is how it works.

Each year the Department of Education calculates the average formula cost per student in each cost grouping by dividing the total estimated general fund operating expenditures (GFOE) for the cost grouping by the total adjusted formula students for all local systems in the cost grouping, as follows:

$$\begin{array}{rcccl} \text{Total estimated} & & \text{Total adjusted} & = & \text{Average} \\ \text{GFOE expenditures} & + & \text{formula students} & & \text{formula cost per} \\ \text{for the cost} & & \text{all local systems} & & \text{student in each} \\ \text{grouping} & & \text{in the cost grouping} & & \text{cost grouping}^{2493} \end{array}$$

This calculation is performed for each of the three cost groupings. However, in order to arrive at the total estimated GFOE for each cost grouping, the department must multiply the total adjusted GFOE for all local systems in the cost grouping by a *cost growth factor*.

The cost growth factor for each cost grouping is equal to the sum of:

- (a) One; plus
- (b) the product of two times the ratio of the difference between the formula students attributable to the cost grouping without weighting or adjustment and the average daily membership attributable to the cost grouping for the most recently available complete data year divided by the average daily membership attributable to the cost grouping for the most recently available complete data year (however, the ratio may not be less than zero); plus
- (c) the basic allowable growth rate for the school fiscal year in which the aid is to be distributed; plus
- (d) the basic allowable growth rate for the school fiscal year immediately preceding the school fiscal year in which the aid is to be distributed; plus
- (e) one-half of any additional growth rate allowed by special action of school boards for the school fiscal year in which the aid is to be distributed as determined for the school fiscal year immediately preceding the school fiscal year when aid is to be distributed; plus

²⁴⁹³ NEB. REV. STAT. § 79-1007.02 (Cum. Supp. 2002).

- (f) one-half of any additional growth rate allowed by special action of the school boards for the school fiscal year immediately preceding the school fiscal year when the aid is to be distributed.²⁴⁹⁴

Naturally, one of the important elements of the cost growth factor is the proper calculation of formula students. And this is where the error in the formula was discovered.

As it turned out, the existing cost growth factor did not account for “tuitioned students.” Tuition students, as one might suspect, are students in kindergarten through grade twelve of the district whose tuition is paid by the district to some other district or education agency.²⁴⁹⁵ These students needed to be accounted for in the state aid formula in order to produce an accurate cost growth factor, which ultimately produces an accurate average formula cost per student in each of the three cost groupings.

This may seem like a rather prolonged and overly detailed explanation of one change in one component of one sub-calculation within the state aid formula. And indeed it is. But it serves to illustrate the intricate nature of the formula and the extent to which those monitoring the formula perform their duties. And, given the complexity of some portions of the formula, it is not difficult to envision how mistakes can be made, no matter how diligent the effort.

If left unchecked, the error most likely would not have produced wild aberrations in the calculation of state aid, but it would have meant that a few individual districts would not have received the full allotment of financial assistance from the State. It would have meant that some districts would have received slightly more assistance than deserved. In short, it would not have been accurate.

Accordingly, Senator Raikes filed an amendment to LB 67 on the day it was taken up for first-round consideration. The amendment corrected the language in existing law relevant to the cost growth factor. It also delayed the date for certification of the 2003-04

²⁴⁹⁴ Id.

²⁴⁹⁵ Id., § 79-1003(45) (Cum. Supp. 2002).

state aid from the usual February 1 to February 5.²⁴⁹⁶ This would buy time, so to speak, for the department to rerun the state aid computation with the proper data elements. The trick, of course, would be to pass LB 67 into law as quick as possible since the department cannot perform a rerun unless the applicable statute is first corrected.

The legislation was advanced from committee on January 21st and passed on January 30th.²⁴⁹⁷ The bill was signed into law on January 30th, which made it operative on February 1, 2003.²⁴⁹⁸ The department reran the state aid computation and certified the proper amounts to each school district by February 5th. And for all the work of all concerned, the effort was largely in vain. LB 540 (2003) would become a major part of the budget fix package of 2003 and would void the February 5th certification of state aid. A new state aid certification would be issued on June 15, 2003.

Naturally, no one knew what lay ahead when Senator Raikes was asking for a fast track process on LB 67. In the absence of a crystal ball, the Legislature had to deal with each issue or each emergency as they arose. For the Education Committee, the first emergency was correcting a mistake in the state aid formula and moving it forward as fast as possible in order to meet the requirements of existing law.

There were other provisions of LB 67 that still had significance. For instance, the measure outright repealed laws pertaining to the payment of state aid for the cost of reorganization studies by school districts.²⁴⁹⁹ In 2002-03, there was \$18,400 of general funds appropriated for the reimbursement of school districts for reorganization studies. Schools were eligible to receive up to \$2,500 for the cost of one-fourth of a reorganization study. Upon approval of a reorganization plan by the school boards and legal voters of the participating districts, the school districts would receive an additional one-fourth of the cost of the study, up to \$2,500. During the public hearing for LB 67, Russ Inbody of the Department of Education explained the elimination of this provision:

²⁴⁹⁶ NEB. LEGIS. JOURNAL, *Raikes AM27*, 23 January 2003, 288-291.

²⁴⁹⁷ NEB. LEGIS. JOURNAL, 30 January 2003, 364.

²⁴⁹⁸ *Id.*, 379.

²⁴⁹⁹ Legislative Bill 67, *Slip Law*, Nebraska Legislature, 98th Leg., 1st Sess., 2003, § 34, p. 17.

[T]he budget was cut in one of the Special Sessions. And the past two years it's been less than \$20,000 that we've had requested for payments. So in helping the fiscal crisis, we thought this would be a good idea, because it wasn't being used fully.²⁵⁰⁰

The idea to offer financial assistance for reorganization studies originated under LB 1050, the comprehensive school finance bill of 1996. The legislation mandated such studies in order to apply for other reorganization incentives contained in the bill, so the Legislature opted to provide limited financial assistance to prepare the studies.

LB 67 also extended the time period for judicial review proceedings of special education placements from 30 days to two years. Under prior law, proceedings for judicial review had to be instituted by filing a petition in the district court of the county in which the main administrative offices of the school district were located within 30 days after service of the final decision and order on the party seeking the review.²⁵⁰¹ The provision in LB 67 was an obvious attempt to benefit those who might choose to initiate such proceedings.

Table 145. Summary of Modifications to TEEOSA
as per LB 67 (2003)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
11	79-1007.02	Cost groupings; average formula cost per student; local system's formula need; calculation	Technical change to assure that the students used to compute the cost growth factor are comparable and that state aid is not erroneously allocated based on an incorrect growth rate.
12	79-1022	Distribution of income tax receipts and state aid; effect on budget.	Changed the state aid certification date from February 1 st to February 5 th for 2003 only.
13	79-1023	Class II, III, IV, V, or VI district; general fund budget of expenditures; limitation	Changed the term "applicable allowable growth percentage" to "applicable allowable growth rate."
14	79-1024	Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect	Removed requirement that the Auditor of Public Accounts consult with NDE before reviewing budget statements.

²⁵⁰⁰ *Hearing Transcripts, LB 67 (2003)*, 21 January 2003, 23.

²⁵⁰¹ Legislative Bill 67, *Slip Law*, Nebraska Legislature, 98th Leg., 1st Sess., 2003, § 27, p. 16.

Table 145—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
14	79-1024	Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect <i>Continued</i>	Added the word “shall” to the requirement for the Auditor to notify the Commissioner of a district that does not submit a budget or required corrections to a budget. Changed the term “applicable allowable growth percentage” to “applicable allowable growth rate.”
15	79-1026	Applicable allowable growth rate; determination; target budget level	Repealed obsolete language regarding school fiscal years and changed the date for certification of the applicable allowable growth rate (Budget Factors) to February 1 st of each year.
16	79-1027	Budget; restrictions	Changed the term “applicable allowable growth percentage” to “applicable allowable growth rate.”
17	79-1027.01	Property tax requests exceeding maximum levy; reductions; procedure	Added language to clarify that a Class VI high school may require a Class I school within its system to reduce their tax request (Class I) if the system tax request exceeds the statutory maximum levy plus exclusions.
18	79-1028	Applicable allowable growth rate; Class II, III, IV, V, or VI district may exceed; situations enumerated	Clarified that a Class II-VI may exceed the local system’s applicable allowable growth rate in subsection (1), changes the date in subsection (2) for recovery of projected formula students, and adds language in subsection (3) to reflect current practice for recovering building operation and maintenance exclusions. Changed the term “applicable allowable growth percentage” to “applicable allowable growth rate.”
19	79-1029	Basic allowable growth rate; Class II, III, IV, V, or VI district may exceed; procedure	Changed the term “applicable allowable growth percentage” to “applicable allowable growth rate.”

Source: Legislative Bill 67, Nebraska Legislature, 98th Leg., 1st Sess., 2003, §§ 11-19, pp. 5-10.

G. School Organization Interim Study

Toward the conclusion of the 2003 Session, Senator Raikes along with 20 other lawmakers, sponsored an interim study resolution, LR 180, to examine:

[T]he organizational structure of elementary and secondary education in Nebraska and to develop a proposal to refine the structure to support an effective and efficient delivery of education to the students of Nebraska now and into the future.²⁵⁰²

²⁵⁰² NEB. LEGIS. JOURNAL, *Legislative Resolution 180 (2003)*, 15 May 2003, 1864-65. In addition to Senator Raikes, LR 180 was co-sponsored by Senators Wehrbein, Byars, Bromm, Bourne, Pedersen, Stuhr,

Legislative staff performed the bulk of the data compilation, including staff employed by members of the Education Committee, Appropriations Committee, and Revenue Committee. Staff from the Legislative Fiscal Office and Department of Education also participated in the in-depth analysis.

The “LR 180 Staff,” as they referred to themselves, actually began meeting before the end of the 2003 Session knowing the immensity of the task ahead of them. They consulted with sources and experts outside the Legislature, including professors at the University of Nebraska. The basic plan was to divvy up the items to be researched among the various staff according to their own fields of expertise. The staff planned to release the findings of their study in late August 2003. The materials would be handed over to the Education Committee for review. The committee would in turn develop a number of scenarios or options for purposes of public discussion at a series of hearings to be held in the fall of 2003. Legislation would then be drafted in time for the 2004 Session.

The staff collected data regarding the existing school structure, data regarding demographic trends in Nebraska, including predicted changes in the concentration of students in various geographic areas, and analysis of regional and national information regarding organizational structures of elementary and secondary education. The underlying objective and foundation of the data collection was to develop “a process to move Nebraska elementary and secondary education toward a structure that will effectively and efficiently support education with the available funds, taking into account predicted demographics and potential accreditation rules.”²⁵⁰³

The data was formally unveiled at a special briefing on August 21, 2003 at the State Capitol. Attending the briefing were various members of the Legislature, the staff who performed the analysis, lobbyists, school officials, and news media. Over the course of several hours, members of the LR 180 Staff reviewed the findings within their respective research assignments. Some of their “observations” are provided in Table 146.

Schrock, Maxwell, Jensen, Janssen, Kremer, Hartnett, Jones, Brashear, Baker, Connealy, Beutler, Loudon, McDonald, and Synowiecki.

²⁵⁰³ NEB. LEGIS. JOURNAL, *Legislative Resolution 180 (2003)*, 15 May 2003, 1865.

Table 146. Observations: Nebraska Historical And Current Data
Prepared and submitted by the LR 180 Staff (2003)

- I. *Number of Administrators* - Historically the number of pupils per certificated administrative staff has been dropping despite declining numbers of school districts. Another observation is that as districts increase in size so do the number of midlevel administrators. There does not appear to be much research on the optimum number of students per administrator or teachers per administrator.
- II. *Pupil/Teacher Ratios* - State pupil/teacher ratios have been affected by the largest school districts lowering their pupil/teacher ratios at both elementary and secondary levels.
- III. *General School Spending Patterns* - The percentage of statewide school expenditures attributed to different district size categories is not very different than the percentage of enrollment attributed to each of the categories. Small school spending is growing at a significantly slower rate than spending for larger school districts. However, declining enrollments in the small districts v. increasing enrollment in the larger districts affects per pupil expenditures. The percent of school district budgets expended on various categories does not vary dramatically based on district size.
- IV. *Administrative Costs* - A table comparing administrative costs for different sizes of districts reveals an interesting phenomenon. The administrative costs go down as school districts increase in size, but the support services costs increase at about the same rate, canceling out the savings.
- V. *Historical Savings* - Don Uerling, a professor at the University of Nebraska-Lincoln, completed a study of costs for several recently reorganized districts. The staff group enhanced the study by analyzing a few more reorganized districts using Uerling's methods. Both Uerling and the staff group found that the costs for reorganized districts two years later were less than predicted if the consolidating districts remained separate. However, the savings vary dramatically, which may depend on local decisions made in implementing the reorganization.

Source: Legislative Resolution 180, "School District Organization Background Information," prepared by the L.R. 180 Staff, Interim 2003.

The LR 180 Staff found that in 2003 Nebraska ranked high nationally in terms of total number of school districts, and near the national average in expenditures per pupil. However, the expenditures per pupil varied among different sizes of school districts. The school size grouping with the lowest expenditures per pupil contained districts with 2,000 to 5,000 students. The staff found that most of the school districts in rural areas of Nebraska had experienced declining enrollments, and demographic trends suggested

those districts would continue to lose students.²⁵⁰⁴ Districts with more than 5,000 students were the only schools that had increased enrollment within the previous five years (an increase of about 2.9%). Districts with fewer than 250 students had the slowest measure of growth in spending within the previous five years (on average 2.8% annually). Interestingly, the spending habits of the state's largest seven districts grew at the fastest pace (on average 5.9% per year). All other sizes of districts had declining enrollment.²⁵⁰⁵

The study group found that there were limited cost savings when districts consolidate. Although reorganized districts experienced local savings, those amounts were not as much as would be predicted by some models, especially at a statewide level. It was also found that past incentives for reorganization were helpful in covering costs that were unique to reorganization. While a reduction in the number of school districts could result in a reduction in the number of teachers, the salaries of the remaining teachers would most likely increase. Increases in transportation for reorganized districts appear to create more of an issue with regard to the effect on students rather than an issue of significant cost.²⁵⁰⁶

The important item to note about the initial research was that, at least at that point in time, the notion of reorganization was evaluated in terms of all school districts, including the state's largest school districts. The LR 180 Staff looked at all options for possible reorganization. This naturally gave reason for everyone involved in K-12 education to be concerned.

Following the compilation of the background materials, the Education Committee met twice in the fall of 2003 to develop ideas for public input. Hearings were planned in three separate cities, Mullen, Broken Bow, and Wahoo. In order to provide some guidance for public discussion, the Education Committee developed three alternatives.

²⁵⁰⁴ Committee on Education, "Legislative Resolution 180, Executive Summary of Final Report," 29 October 2003.

²⁵⁰⁵ Leslie Reed, "Officials float ideas for school savings; One of the ideas suggested by lawmakers is breaking up the Omaha school district," *Omaha World-Herald*, 22 August 2003, 1.b.

²⁵⁰⁶ "Legislative Resolution 180, Executive Summary of Final Report," 29 October 2003.

The three ideas to be discussed at the public hearings could either operate together or individually to encourage a more financially viable school organizational structure.

The three ideas involved the “assimilation” of Class I districts into K-12 systems, reorganization incentives to encourage consolidation, and the recommendation for passage of LB 698, a carryover bill from the 2003 Session. The assimilation idea would garner the most attention and the most controversy. Class I supporters would demonstrate their displeasure with the concept during the three public hearings. The idea to offer financial incentives to encourage school districts to reorganize obviously was not a new concept, but the LR 180 Staff did find that such incentives were helpful to the cause of reorganization.

The third idea, passage of LB 698, was perhaps a favorite to Senator Ron Raikes and various members of the Education Committee. The bill was developed for the Education Committee during the 2002 interim and would base funding on districts of similar size and account for demographically based spending differences using actual approved costs. There would also be adjustments for systems in size ranges that spend below average, teachers with above average levels of education, systems with growing numbers of students, and systems with less than 390 students that are not sparse or very sparse. The last adjustment would require local taxpayers to support half of the additional costs associated with having less than 390 students in situations where sparseness is not a major factor. LB 698 was, at the time, held in committee and awaited final disposition.

Table 147. LR 180 (2003) Study Recommendations

Recommendation #1: Class I Assimilation

- I. All Class I districts would be required to dissolve prior to the 2005-06 school year and all Class VI districts would become K-12 districts beginning with the 2005-06 school year.
- II. The Class I school board would determine and notify the State Reorganization Committee and County Assessor before November 1, 2004 of the board’s decision for either:

Table 147—Continued

-
- a. All of the property of the Class I district to be merged into the K-12 district with which the property is affiliated or the Class VI system of which the property is a part;
 - b. All of the property of the Class I district to be merged into the Class I school district's primary high school district; or
 - c. All of the property of the Class I district to be merged into K-12 districts according to an agreement between the school boards of: (i) The Class I district; (ii) all K-12 districts with which the property is affiliated; (iii) all Class VI systems with which property is a part; and (iv) all districts that will receive property pursuant to the agreement.
- III. If the Class I school board fails to notify the State Reorganization Committee of their decision before November 1, 2004, the district will be dissolved by the Committee and all of the property of the Class I district will be merged into the K-12 district with which the property is affiliated or the Class VI system of which the property is a part.
 - IV. If all of the property of a Class I district is merged into a single K-12 district or former Class VI district, all of the assets and liabilities of the Class I district (including the facilities) would be assigned to the single K-12 district or former Class VI district.
 - V. If the property of a Class I district is merged with multiple K-12 districts or former Class VI districts, the assets and liabilities of the Class I district would be divided based on the proportion of the valuation each K-12 district or former Class VI district receives (current law).
 - VI. If all of the property of a Class I district is merged into a single K-12 district or former Class VI district and 15 or more resident students attended school in the building in the prior year, the Class I school building could not be closed unless:
 - a. A vote is taken by the voters in the K-12 school district after the Class I district has dissolved and the voters who reside on property formerly in the Class I district are included as voters in the K-12 school district; or
 - b. The school board of the K-12 school district is composed completely of members who have been elected in elections that included the voters who reside on property formerly in the Class I school district.
 - VII. The certification of state aid would need to be moved from February 1, 2005 to March 1, 2005 for the 2005-06 school year in order to attribute the valuation of the Class I district to K-12 districts or former Class VI districts according to the method of dissolution chosen by the Class I school board.
 - VIII. Class I dissolutions occurring prior to September 1, 2004 would follow the current rules.

Table 147—Continued

Recommendation #2: Reorganization Incentives

- I. Incentives would be offered for mergers (not unifications) of K-12 districts effective for 2005-06 or later and resulting in a combined district of at least 390 students according to statistics from the school year prior to the merger.
- II. For incentives to be paid in 2005-06, the membership of Class I districts would be incorporated into the high school districts either:
 - a. Based on the percentage of valuation affiliated with the district or part of the system if the Class I district is dissolving along affiliation lines; or
 - b. With the high school district if the Class I district is merging completely with the primary high school district.
- III. The reorganization must be approved by the State Reorganization Committee prior to November 1st preceding the reorganization so that the incentive payments would be included in the calculation and appropriation of state aid.
- IV. The schedule for incentives would be as follows:

Average daily membership range before consolidation	Average daily membership range after consolidation	Total per student incentive amount
0.00 - 129.99	390.00+	\$4,100
130.00 - 194.99	390.00+	\$1,900
195.00 - 259.99	390.00+	\$1,100
260.00 - 389.99	390.00+	\$900
- V. One half of the calculated incentives would be paid in each of the first two years of the combined district.
- VI. Beginning with mergers taking effect for the 2010-11 school year, the incentives would be reduced by 50%.
- VII. Additional budget authority would be authorized in the amount of the incentives for the two years in which the incentives are paid.

Example: A district with 150 students merges with a district with 250 students.
 $(150 \text{ students} \times \$1,900/\text{student}) + (250 \text{ students} \times \$1,100/\text{student})$
 $\$285,000 + \$275,000 = \$560,000$ Total Incentives
 $\$560,000 / 2 = \$280,000$ Annual Incentives for 2 Years

Example: A district with 100 students merges with a district with 5,000 students.
 $(100 \text{ students} \times \$4,100/\text{student}) + (5,000 \text{ students} \times \$0/\text{student})$
 $\$410,000 + \$0 = \$410,000$ Total Incentives
 $\$410,000 / 2 = \$205,500$ Annual Incentives for 2 Years

Table 147—Continued

Recommendation #3: Legislative Bill 698

- I. Replace cost groupings (standard, sparse, & very sparse) with averaging technique based on the next 5 larger and next 5 smaller systems in terms of membership.
 - a. The new averaged base cost would be called basic funding.
 - b. Techniques are included to address the smallest and largest systems.
- II. Replace current system of weightings and allowances with new allowances and adjustments.
 - a. Allowances subtract unique costs from the system's expenditures before the averaging process and add them back to the individual system's needs.
 - b. The new allowances would be for costs attributed to: (i) Poverty; (ii) limited English proficiency; (iii) special education; (iv) special receipts; (v) transportation; and (vi) remote elementary sites.
 - c. Adjustments add or subtract from the individual system's needs.
 - d. The adjustments are: (i) an averaging adjustment for systems with below average basic funding per student; (ii) a teacher education adjustment for systems with above average teacher education; (iii) a student growth adjustment; (iv) a student growth correction adjustment for overestimates of student growth; and (v) a local choice adjustment for systems with less than 390 students and not sparse or very sparse.
 - e. Grade weightings would not be replaced, except that half-day kindergartners would count as 1/2 of a formula student.
- III. Replace adjusted valuation with assessed valuation for the calculation of state aid.
- IV. Provide an exception to the budget limits to allow for the growth in the poverty and limited English proficiency allowances.
- V. Increase the stabilization factor from 85% to 90% to assist in the transition and in stabilizing resources for school districts.

Source: Handout distributed by the Education Committee, 29 October 2003.

H. The 2004 Legislative Session

LB 1093 - Extension of the Levy Increase/Aid Adjustment Factor

For the third consecutive year, the Nebraska legislature faced an uphill battle to address the economic plight of the State. Although at long last, it seemed there was a

light at the end of the tunnel. Revenue receipts had demonstrated a turn-around in the months leading up to the 2004 Session, and there was a general feeling of hopefulness among policymakers and the administration. Nevertheless, there was still a budget shortfall to address and the forecast for the next biennium was not entirely pleasant. Some projected as much as a \$315 million shortfall for the 2005-07 biennium, although it was hoped that healthier revenue receipts would help to dissipate some of this gap. Included within the shortfall was the ultimate thorn in any state government's side: a judgment. In 2004 Nebraska had nearly exhausted its legal options to delay or negotiate a \$160 million judgment over the State's withdrawal from the Central Interstate Low-Level Radioactive Waste Disposal Compact.²⁵⁰⁷

The most accurate way to describe the 2004 Session was that it positioned the State to deal with the projected financial problems of the next biennium. In fact, the 2005-07 biennium, the "out years" as lawmakers referred to it, was a constant focus of the 2004 Session. But without question one of the more remarkable footnotes of the 2004 Session was the about-face by Governor Mike Johanns concerning critical issues from the two previous sessions. What he had objected to in both 2002 and 2003, he would embrace in 2004.

"The Governor is sometimes wrong"

The 2004 Session found the Legislature's Education Committee once again a pivotal cog for the successful outcome of the budget crisis. State aid to public education was once again placed on the table and open for discussion and revision. The public education community was once again expected to "play ball" for the betterment of the overall budget situation, even though it may not have been in the best interests of the taxpayer or, some would argue, the consumers of public education services: the students.

At the request of the Governor, Senator Raikes introduced LB 1093 (2004) to make permanent two of the major issues of the previous two years. First, the bill

²⁵⁰⁷ Nebraska Legislative Research Division, "A Review: Ninety-Eighth Legislature, First Session, 2003," July 2003.

proposed to permanently extend the maximum levy for schools to \$1.05.²⁵⁰⁸ The \$1.05 levy was meant to sunset after the 2004-05 school fiscal year, as per LB 540 (2003). LB 1093 also proposed to make permanent the temporary aid adjustment factor first established in 2002 under LB 898.²⁵⁰⁹ In fact, the factor would be renamed the “total aid adjustment factor” rather than the “temporary aid adjustment factor.”²⁵¹⁰ As before, the total aid adjustment factor would equal 1.25% of the formula needs of a local system. State aid for the local system would then be reduced by the amount of the factor using three different components of the state aid calculation. The factor essentially reduced the amount of aid owed by the State in order to reduce the State’s financial burden. As recompense, of sorts, the Legislature permitted an exclusion to the levy limitation in the amount of state aid lost by a local system by virtue of the aid reduction factor. This provision also would become permanent under LB 1093.²⁵¹¹

Several important notes about LB 1093 include the fact that it applied to the next biennium and beyond. In order to extend the levy provisions and to prepare for the 2005-06 state aid certification, it was necessary to pass the bill in 2004. The provisions of LB 898 (2002) and LB 540 (2003) were due to automatically sunset after the 2004-05 school fiscal year. On the positive front, at least for school officials, LB 1093 did not extend the zero percent base spending lid that was imposed under LB 540 (2003). In fact, the legislation did not even mention the spending limitation. This meant that schools would enjoy a 2.5% to 5.5% spending lid range beginning with the 2005-06 year. The range had been extended from 2% (i.e., 2.5% to 4.5%) to 3% (i.e., 2.5% to 5.5%) under LB 540 (2003).²⁵¹² The wider range would help to some degree in recapturing some of the spending authority lost under the temporary two-year 0% base lid.

²⁵⁰⁸ Legislative Bill 1093, *Change dates relating to calculation of state aid to schools*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, title first read 15 January 2004, § 1, p. 2.

²⁵⁰⁹ *Id.*, §§ 3, 5-6, 8, pp. 14-15, 22-26, 28.

²⁵¹⁰ *Id.*, § 2, p. 13.

²⁵¹¹ *Id.*, § 1, p. 2.

²⁵¹² Legislative Bill 540, *Slip Law*, Nebraska Legislature, 98th Leg., 1st Sess., 2003, § 7, p. 6.

Of particular importance to state lawmakers and the administration, LB 1093 was expected to take a sizable bite out of the projected budget shortfall for the 2005-07 biennium as illustrated in Table 148.

Table 148. Projected Savings to the State:
Reductions in State Aid as per LB 1093 (2004) as Introduced

	2005-06	2006-07
\$1.05 maximum levy/LER \$.95*	\$49,076,711	\$51,615,547
Total aid adjustment factor	\$26,507,329	\$28,034,653
Total projected savings to State	\$75,584,040	\$79,650,200

* LER = Local Effort Rate

Source: Nebraska Legislative Fiscal Office, Fiscal Impact Statement, LB 1093 (2004), prepared by Sandy Sostad, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, 3 March 2004, 1.

LB 1093 was given special status as one of the first bills to be publicly reviewed by the Education Committee in 2004. The hearing was conducted on January 27th, the 14th day of the 60-day session. Senator Raikes, who guided the Legislature through two veto overrides in as many years, presented opening remarks on the legislation that represented the content and issues the vetoing Governor once opposed. The irony was not lost on Senator Raikes, members of the committee, or the representatives of education organizations present that day. “The Governor and I don’t always agree, which is another way of saying that the Governor is sometimes wrong,” Raikes said jokingly, adding, “In this particular case, we do agree.”²⁵¹³

Senator Raikes provided a summary of the events of the past two years leading up to the introduction of LB 1093. He admitted the financial circumstances of the State necessitated the continuation of programs that would otherwise be considered distasteful for all concerned. The programs, to which he referred, included the extension of the levy limitation and the aid reduction factor coupled with the corresponding levy exclusion. Raikes explained:

²⁵¹³ Committee on Education, *Hearing Transcripts, LB 1093 (2004)*, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, 27 January 2004, 2.

We can not, however, in my judgment and also, I think, in that of the Governor, end these programs after the 2004-2005 school year, the next year, and have any reasonable hope of balancing the budget for the next biennium without sizable tax increases or major cuts elsewhere or a revenue miracle.²⁵¹⁴

He mentioned the fact that LB 1093 effectively ended what he called the “most troublesome” of the provisions within LB 540 (2003), which was the zero percent base lid.²⁵¹⁵ Of course, LB 1093 eliminated this provision by simply not addressing it. The temporary lid would be allowed to expire.

While it is not uncommon for the Governor to appear and testify at a public hearing when a measure is introduced on his behalf, Governor Mike Johanns chose instead to send his Chief of Staff, Larry Bare. “In the mid-biennium budget assessment presented on January 15, 2004, the Governor recommended that a portion of the 2004 Legislative Session be used to plan and prepare for the development of the state’s 2005-2007 biennial budget,” Bare said.²⁵¹⁶ LB 1093, he added, was a significant component of the plan. And the plan, of course, meant avoiding what Bare called a “sudden increase” in necessary appropriations for state aid.²⁵¹⁷ In fact, there would have been sudden increases if the provisions of LB 898 (2002) and LB 540 (2003) were allowed to fall away. If the maximum levy were allowed to return to \$1.00, the State would, theoretically, owe the difference in state aid to schools. Similarly, if the temporary aid adjustment factor lapsed, the State would owe the difference in state aid.

The education lobby did what was expected. It came to the table to voice support for the measure, albeit reluctant support. John Bonaiuto, Executive Director for the Nebraska Association of School Boards (NASB), testified:

[I]deally if the state were able to maintain the amount of state aid that it looked like schools would need to meet their needs, it would be terrific to be able to stay at the \$1 levy. Schools were used for property tax relief and that was the target,

²⁵¹⁴ Id., 3.

²⁵¹⁵ Id.

²⁵¹⁶ Id., 5.

²⁵¹⁷ Id.

but I think this is fluid right now that the state needs some help to relieve the pressure that is on the state budget based on the revenues that the state can generate.²⁵¹⁸

Mike Dulaney, Associate Executive Director for the Nebraska Council of School Administrators (NCSA), agreed with Bonaiuto's testimony. "[W]e would like to reserve the opportunity, at some point when the economy improves, that we come back and talk to you about maybe increasing the state obligation with regard to state aid, but we do support LB 1093," he said.²⁵¹⁹

The only opposition to the bill came from the Nebraska Farm Bureau. "I'm sure it comes as no surprise to you that our members do not like property taxes," testified Jay Rempe, Bureau Director of Governmental Relations.²⁵²⁰ Rempe reminded members of the Education Committee of the policy established in 1996 to implement maximum levy limitations for political subdivisions for the purpose of property tax relief. "I think the Legislature set the course a few years back on trying to work towards property tax reduction and set the levies to ratchet down to \$1, and the \$1 on schools kind of became the benchmark, if you will, for property tax relief for schools," he said.²⁵²¹ Rempe encouraged the committee to re-evaluate the notion of making the \$1.05 school levy permanent. "In our view, we should continue to look at the \$1.05 as a temporary measure and not something that's on a permanent basis," he said.²⁵²²

In his closing remarks, Senator Raikes acknowledged the change of policy outlined in LB 1093. "We ... the Legislature has, for a number of years, been working on the issue of property taxes and the goal was \$1," he said, "This is a retreat from that."²⁵²³ He expressed regret that more of the burden to finance public education was being placed on the backs of property taxpayers. He also expressed his hope that, someday, the

²⁵¹⁸ Id., 8.

²⁵¹⁹ Id., 10.

²⁵²⁰ Id.

²⁵²¹ Id., 10-11.

²⁵²² Id., 11.

²⁵²³ Id.

Legislature could re-evaluate the \$1.05 levy. “If a future Legislature can see to it to return it to \$1, I hope they will and I think they deserve the appropriate credit, or whoever deserves the credit at the time it happens,” Raikes said.²⁵²⁴

Temporary versus permanent; \$1.05, \$1.10, \$1.07?

The Education Committee met in executive session on February 9, 2004 to review LB 1093. Senator Ed Schrock of Elm Creek, a second year member of the committee who began his service in the Legislature in 1995, moved to amend the bill so that the temporary aid reduction factor and the \$1.05 maximum levy would remain in effect for two additional years and then fall away.²⁵²⁵ The motion failed on a 3-3-1-1 vote.²⁵²⁶ The committee met again on February 24th. This time the committee would find consensus, and those anxious to maintain a temporary status to the provisions contained in the bill would be pleased. The committee voted to advance the bill with committee amendments attached. The amendments would extend the \$1.05 levy, the temporary aid reduction factor and the accompanying levy exclusion for a period of three years (2005-06, 2006-07, and 2007-08).²⁵²⁷ The bill was advanced on a 7-1 vote with Senator Chip Maxwell casting the lone dissenting vote.²⁵²⁸ The committee appeared relatively united on a course of action, but the issue was far from resolved.

On February 27, 2004 the Nebraska Economic Forecast Advisory Board (NEFAB) met at the State Capitol to review the latest economic reports and revise, if necessary, the State’s revenue projections. The board not only found it necessary, but necessary in a big way. The nine-member appointed board is comprised of citizens having expertise in tax policy, economics, or economic forecasting. One of the board’s principal duties is to make educated guesses about the immediate future of tax revenue

²⁵²⁴ Id.

²⁵²⁵ Committee on Education, *Executive Session Report, LB 1093 (2004)*, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, 9 February 2004, 1.

²⁵²⁶ Id. Voting aye, Senators McDonald, Schrock, and Stuhr; voting nay, Senators Bourne, Byars, and Raikes; present, not voting, Senator Maxwell; absent, Senator Brashear.

²⁵²⁷ NEB. LEGIS. JOURNAL, *Com AM2792*, 3 March 2004, 858. Committee amendments, *Com AM2792 to LB 1093 (2004)*, §§ 1-7, pp. 1-19.

²⁵²⁸ *Executive Session Report, LB 1093 (2004)*, 2.

projections. In the case of the February 2004 meeting, the board voted to decrease revenue projections over the next two years by a combined \$104 million. Their decision would throw a large wrench in the proposed budget plan crafted early in the session by the administration and key members of the Legislature. It meant doubling the amount of the shortfall state leaders had planned to address in 2004 and it meant additional worries for the next biennium budget. “It’s pretty serious stuff,” said Senator Roger Wehrbein, chair of the Appropriations Committee.²⁵²⁹ “It’s going to make us examine more closely how deep we can go into many of the state’s services,” he added.²⁵³⁰

The Legislature is not necessarily bound to the advisory board’s projections, but, if the projections are ignored, then why have the board in the first place. The initial reaction from Wehrbein matched that of the Governor. The news meant more cuts in the budget, but additional taxation was not immediately in the cards. This too would change, at least in the minds of some members of the Legislature’s budget-setting committee.

In February 2004 the Appropriations Committee was already hard at work trying to mold and massage all the many complicated budgetary considerations into a final proposal for the full Legislature to consider. However, the advisory board’s downward revenue projections required the committee to evaluate options not previously imagined. The most startling of these options actually became part of the committee’s final budget report, which was unveiled on March 16, 2004. The report stated in part:

Without the February revenue forecast changes, the projected status for the following biennium would have been only \$53 million below the required 3% reserve when annualizing the Appropriations Committee’s FY04-05 budget actions into the following biennium. Unlike the remainder of the current biennium, the minimum 3% reserve requirement is applicable to the next biennial budget. This relatively balanced position (at least from the standpoint of estimating three years into the future) was estimated even incorporating a large increase in TEEOSA school aid (average growth of 13.5% per year) due to the expiration of the temporary aid adjustment factor and the school levy limit returning to \$1.00 after two years at \$1.05 per current law.

²⁵²⁹ Martha Stoddard, “Revenue forecast takes dip Gov. Johanns says the \$104 million drop means deeper cuts, but probably no tax increase,” *Omaha World-Herald*, 28 February 2004, 1a.

²⁵³⁰ *Id.*

However the February forecast revisions significantly altered the outlook. The revised NEFAB forecasts, and subsequent adjustments to the revenue estimates for the “out years” yielded a cumulative revenue reduction of \$245 million over the four years raising the \$53 million shortfall to \$292 million. Even when incorporating an extension of the current \$1.05 school levy limit and temporary aid adjustment factor per LB1093, the projected shortfall is still \$137 million. For this reason, the Committee proposal reflects an increase in the school levy limit to \$1.10 resulting in an additional \$102 million savings in TEEOSA school aid and reducing the “shortfall” to a manageable \$35 million.²⁵³¹

Considering the difficult challenge endured by the Legislature to raise the maximum levy from \$1.00 to \$1.05 in 2003, it seemed almost unfathomable for the same body to buy into a \$1.10 levy for schools.

Table 149. Projected Savings to the State Reductions in State Aid as per LB 1093 (2004) as Advanced to General File and the \$1.10 Levy Proposed by the Appropriations Committee

	2005-06	2006-07
\$1.05 maximum levy/LER \$.95*	\$49,076,711	\$51,615,547
Increase levy to \$1.10/LER \$1.00*	\$49,646,229	\$52,128,540
Temporary aid adjustment factor	\$26,507,329	\$28,034,653
Total projected savings to State	\$125,230,269	\$131,778,740

* LER = Local Effort Rate

Sources: Nebraska Legislative Fiscal Office, Fiscal Impact Statement, LB 1093 (2004), prepared by Sandy Sostad, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, 3 March 2004, 1. Committee on Appropriations, “Budget Recommendations, Mid-Biennium Budget Adjustments FY2003-04 and FY2004-05,” March 2004, 1-2.

As stated in the excerpt of the committee’s report, the proposed increase in the maximum levy for schools to \$1.10 would bring the State very close to fully addressing the shortfall for the out years (i.e., the 2005-07 biennium). The bulk of the overall budget crisis would be placed on the backs of school districts and property taxpayers. Of course, the notion of a \$1.10 maximum levy for schools was certainly not unprecedented. In fact, the original levy limitation for schools was established under LB 1114 (1996) at \$1.10 for fiscal years 1998-99 through 2000-01.

²⁵³¹ Committee on Appropriations, “Budget Recommendations, Mid-Biennium Budget Adjustments FY2003-04 and FY2004-05,” March 2004, 1-2.

 Table 150. Public Schools' Maximum Levy (1998-2005)

1998-99	\$1.10	as per LB 1114 (1996)
1999-00	\$1.10	as per LB 1114 (1996)
2000-01	\$1.10	as per LB 1114 (1996)
2001-02	\$1.00	as per LB 1114 (1996)
2002-03	\$1.00	as per LB 1114 (1996)
2003-04	\$1.05	as per LB 540 (2003)
2004-05	\$1.05	as per LB 540 (2003)

Sources: Legislative Bill 1114, in *Laws of Nebraska, Ninety-Fourth Legislature, Second Session, 1996*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 1, p. 1 (1245); Legislative Bill 540, *Slip Law*, Nebraska Legislature, 98th Leg., 1st Sess., 2003, § 2, p. 2.

But would the Legislature go along with this fast and easy approach to pulling the State out of the budget doldrums? And, even if the Legislature accepted the idea of a \$1.10 levy, would the Governor sign such a measure into law or veto it?

The trial balloon on the concept of a \$1.10 levy would be floated on the morning of Thursday, March 18, 2004 when the Legislature took up first-round debate on the budget package. The body devoted the entire first day to discussion on LB 1089, the mainline budget bill. Since the entire budget package depended upon the acceptance of the \$1.10 levy for schools, it was not surprising that property taxes and state aid to education consumed the better portion of the discussion time. Just before the body adjourned in mid afternoon, the committee amendments to LB 1089 were adopted, narrowly.²⁵³² The bill was advanced, again narrowly, by a 25-6 record vote.²⁵³³ So what did this mean?

To the casual observer, it might have appeared that the Legislature reluctantly bought into the idea of increasing the maximum levy for schools. The levy change was, after all, a major provision of the budget proposal. However, the truth of the matter was more complicated since LB 1089 did not actually pertain to the levy provision. Nor did the measure have the capacity to reduce appropriations to state aid for the out years since it was designed only to address the second year of the 2003-05 biennium. In essence, the

²⁵³² NEB. LEGIS. JOURNAL, 18 March 2004, 1149.

²⁵³³ Id., 1150.

Legislature could agree to LB 1089 without necessarily agreeing to the levy increase. Nevertheless, it was important to the Appropriations Committee that the Legislature go along with the \$1.10 levy since other decisions to reduce or not reduce various line items was contingent upon the reduction in state aid owed in the out years. It all tied in together.

The Legislature would continue debating the budget package through the remainder of the week. On Monday, March 22nd, the body finally arrived at the anticipated showdown on property taxes. LB 1093 was the subject of intense debate from morning until late in the afternoon. In fact, it was the only bill considered that day, and the policy decision at stake warranted at least that much time and attention. LB 1093 would be unraveled and reassembled all in the course of one legislative day.

Senator Wehrbein's mission that day was to ask his colleagues to formally approve his committee's recommendation concerning the \$1.10 levy. He did so in the form of an amendment to the committee amendments. The Wehrbein amendment would leave the temporary aid adjustment factor in tact along with the accompanying levy exclusion to win back lost revenue from state aid. The amendment would also leave in tact the notion that the levy increase applied only for three additional years and would then automatically return to \$1.00. The only proposed change in the Wehrbein amendment was to increase the maximum levy from \$1.05 to \$1.10.²⁵³⁴

Senator Wehrbein emphasized to his colleagues that, without the \$1.10 levy and the savings the State would incur, the bigger problem faced in the out years would be magnified. He also stressed the need to warn school officials of the severity of the situation. Said Wehrbein:

And if we're going to leave a bigger gap out there, or whether we're going to try to narrow it, whether we're going to try to give warnings to the schools, which, to me, is one of the most critical parts of this, is giving some kind of direction or at least a guide to the school districts as to what they will be able to do in two years hence²⁵³⁵

²⁵³⁴ NEB. LEGIS. JOURNAL, *Wehrbein AM3027 to Com AM2792*, 16 March 2004, 1061.

²⁵³⁵ Legislative Records Historian, *Floor Transcripts, LB 1093 (2004)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, 22 March 2004, 11995.

He asked fellow members to look at the issue in terms of an overall timeframe involving the current year and three years into the future. “The one thing I can promise is, our demands are going to continue to go up on the state budget,” Wehrbein said.²⁵³⁶

After a very tense, sometimes heated, debate, the body voted to reject Senator Wehrbein’s amendment, and, accordingly, one of the underpinnings of the Appropriations Committee budget proposal. Perhaps one of the more interesting aspects of the debate and subsequent vote was the disagreement among members of the Appropriations and Education Committees. Senator Raikes, chair of the Education Committee, supported the Wehrbein amendment, but no other member of his committee followed suit. The majority of the Appropriations Committee voted in favor of the Wehrbein amendment, but there were several notable dissenters.

Table 151. Record Vote: Wehrbein AM3027 to
Committee Amendments, LB 1093 (2004)

(A) = Appropriations Committee (E) = Education Committee

Voting in the affirmative, 15:

Aguilar	Engel (A)	Kruse (A)	Pederson (A)	Redfield
Brown	Jensen	Landis	Price (A)	Synowiecki (A)
Cudaback (A)	Johnson	Mines	Raikes (E)	Wehrbein (A)

Voting in the negative, 31:

Baker	Connealy	Janssen	Pedersen	Thompson (A)
Beutler (A)	Cunningham	Jones	Preister	Tyson
Bourne (E)	Erdman	Kremer	Quandahl	Vrtiska
Brashear (E)	Foley	Louden	Schimek	
Burling	Friend	Maxwell (E)	Smith	
Chambers	Hartnett	McDonald (E)	Stuhr (E)	
Combs	Hudkins	Mossey	Stuthman	

Present and not voting, 1:

Schrock (E)

Excused and not voting, 2:

Bromm Byars (E)

Source: NEB. LEGIS. JOURNAL, 22 March 2004, 1168-69.

²⁵³⁶ Id., 11996.

In the spirit of compromise, Senator Ernie Chambers of Omaha believed he had the solution for the issue. Shortly after the failure of the Wehrbein amendment, Senator Chambers offered a floor amendment to establish a \$1.07 maximum levy for schools for a period of three years.²⁵³⁷ “Senator Wehrbein felt that what is being presented by the committee amendment is betwixt and between,” Senator Chambers said referring to the committee amendments to LB 1093.²⁵³⁸ “Well, I’m offering another ‘tweener,’” he added.²⁵³⁹ Perhaps desperate at this point in time, Senator Wehrbein appeared eager to support the Chambers’ amendment. “I think I will support \$1.07, because it’s better than \$1.05 in terms of solving our problem,” Wehrbein said.²⁵⁴⁰ Senator Raikes also consented the compromise plan. “This gets us closer, and I’m in favor of that,” Raikes said.²⁵⁴¹

Senator Chris Beutler of Lincoln, on the other hand, attempted to bring the Legislature back to the impact on property tax relief. Senator Beutler, a member of the Appropriations Committee, had voted against the Wehrbein amendment and now rose to oppose the Chambers amendment. Beutler said:

I’m not sure that this retreat from our position on property taxes is necessary at this particular point in time. If we leave it at \$1.05, we’re already 5 cents worse than we were a year or two ago when we were on our path to property tax reform. If you take it to \$1.07, then instead of being \$100 million short, you’ll be \$60 million short.²⁵⁴²

Senator Beutler urged his colleagues to consider other options in order to address the shortfall, such as an income tax increase. He believed the body could always return to the concept of a \$1.07 levy if all else failed.

Senator Chambers had to be commended for offering the compromise in an attempt to help the situation. “I love having Senator Chambers playing the role of the reasonable compromiser on General File,” said Senator Kermit Brashear, a fellow Omaha

²⁵³⁷ NEB. LEGIS. JOURNAL, 22 March 2004, 1177-78.

²⁵³⁸ *Floor Transcripts, LB 1093 (2004)*, 22 March 2004, 12005.

²⁵³⁹ *Id.*

²⁵⁴⁰ *Id.*, 12006.

²⁵⁴¹ *Id.*, 12009.

²⁵⁴² *Id.*, 12011.

legislator.²⁵⁴³ But this proposal also failed to meet consensus among members of the body. The Chambers amendment failed on a 17-26 vote.²⁵⁴⁴

Table 152. Record Vote: Chambers FA1580 to
Committee Amendments, LB 1093 (2004)

(A) = Appropriations Committee (E) = Education Committee

Voting in the affirmative, 17:

Aguilar	Cudaback (A)	Jensen	Price (A)	Stuhr (E)
Bromm	Engel (A)	Johnson	Raikes (E)	
Brown	Hartnett	Landis	Redfield	
Chambers	Janssen	Pederson (A)	Schrock (E)	

Voting in the negative, 26:

Baker	Foley	Maxwell (E)	Quandahl	Vrtiska
Beutler (A)	Friend	McDonald (E)	Schimek	Wehrbein (A)
Bourne (E)	Hudkins	Mines	Smith	
Burling	Jones	Mossey	Stuthman	
Cunningham	Kremer	Pedersen	Synowiecki (A)	
Erdman	Louden	Preister	Tyson	

Present and not voting, 2:

Combs	Kruse (A)
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Excused and not voting, 4:

Brashear (E)	Byars (E)	Connealy	Thompson (A)
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Source: NEB. LEGIS. JOURNAL, 22 March 2004, 1178.

Following the failure of the Chambers amendment, Senator Wehrbein immediately offered a motion to reconsider the vote, and another round of debate ensued. Senator Wehrbein attempted to redirect the discussion from taxes to the best interests of students. Said Wehrbein:

I think we're forgetting about the kids, the students, those that need to be educated. We're sitting here talking all morning talking about taxes and taxes. And I agree that that's a serious problem. But the issue is, what all this is about, is trying to get adequate funding into our schools. And whether it comes from the state or whether it comes from local property taxes, it appears to me education for our kids is important. I think education for our kids is important.²⁵⁴⁵

²⁵⁴³ Id., 12012.

²⁵⁴⁴ NEB. LEGIS. JOURNAL, 22 March 2004, 1178.

²⁵⁴⁵ *Floor Transcripts, LB 1093 (2004)*, 22 March 2004, 12023.

However, to many lawmakers that day it was not a matter of choosing between students and taxpayers. “I could see people digging their heels in here and bringing kids into it,” said Senator Tom Baker of Trenton.²⁵⁴⁶ “So we’re all concerned about kids, I understand that, but that to me is not a good argument,” he added.²⁵⁴⁷ To Senator Baker and others, time was not of immediate essence in this discussion. He believed the Legislature could always re-address the issue of raising property tax rates in the following year if necessary.

The result of the motion to reconsider was the same as the original decision. Wehrbein’s motion failed on a 22-21 vote.²⁵⁴⁸ LB 1093 had nearly suffered an unraveling on the floor of the Legislature, but survived. Most lawmakers were willing to make a concession with regard to extending the \$1.05 levy, but were unwilling to move beyond that with regard to property taxes. This was demonstrated by the ultimate adoption of the committee amendments to the bill on a unanimous 33-0 vote.²⁵⁴⁹ This was eventually followed by a successful vote to advance the bill on a 27-3 vote.²⁵⁵⁰

“It’s time to focus on school finance”

Second-round consideration of LB 1093 on April 2nd would have been merely a formality had Senator Chip Maxwell not decided to make one last plea for school finance reform. The Omaha lawmaker threw out a motion to bracket the bill in order to make his point. “I’m just trying to take one last shot to convince you of the basic proposition that change is necessary in school finance,” Maxwell said, “If you want to do something, if you are really serious about fundamental long-term reform, then it’s time to focus on school finance.”²⁵⁵¹ Senator Maxwell had introduced several measures to effectuate a comprehensive overhaul of the school finance system. He proposed LB 1248 in 2004 to fund public schools by a uniform \$6000 per student subsidy. The funding for public

²⁵⁴⁶ Id., 12028.

²⁵⁴⁷ Id.

²⁵⁴⁸ NEB. LEGIS. JOURNAL, 22 March 2004, 1179.

²⁵⁴⁹ Id., 1183-84.

²⁵⁵⁰ Id., 1185.

²⁵⁵¹ *Floor Transcripts, LB 1093 (2004)*, 2 April 2004, 13146.

schools would derive from a state tax on all taxable income and a state property tax. He introduced LR 228CA as a companion piece to LB 1248. The constitutional amendment would allow the state to levy a tax on real property to fund K-12 education.²⁵⁵² The Education Committee took no action on either measure. “How far can we push the burden back on property and not cross some threshold that does make us vulnerable to a lawsuit, to a lawsuit,” Maxwell said before withdrawing his motion.²⁵⁵³ “Remember, the other states, the more they relied on property tax, the more vulnerable they’ve been to legal challenges,” he said.²⁵⁵⁴

LB 1093 advanced to the third and final stage of consideration by a 26-5 vote.²⁵⁵⁵ By this time, the mainline budget bill, LB 1089, along with the remainder of the budget package had already advanced to Final Reading. Of all the pieces to the budget package of 2004, LB 1093 was one of the few that remained unchanged throughout the legislative process. This was a testament to the will of the members of the Education Committee who held fast to their original commitment upon advancing the bill out of committee. It was also proof of the Legislature’s belief in holding as true to the objectives of property tax relief as fiscally possible. The final demonstration of the unity of the body, or near unity, came on April 7, 2004 when LB 1093 was passed by a sturdy 43-5 vote.²⁵⁵⁶ Governor Johanns, having reversed his opinions about the content of the legislation in comparison to years past, signed LB 1093 into law on April 13th.²⁵⁵⁷

²⁵⁵² Legislative Bill 1248, *Provide for a system of funding elementary and secondary education as prescribed*, sponsored by Sen. Chip Maxwell, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, title first read 21 January 2004. Legislative Resolution 228CA, *Constitutional amendment to authorize a state property tax for school funding and to restrict local property taxes for such purpose*, sponsored by Sen. Chip Maxwell, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, title first read 21 January 2004.

²⁵⁵³ *Floor Transcripts, LB 1093 (2004)*, 2 April 2004, 13148.

²⁵⁵⁴ *Id.*, 13146.

²⁵⁵⁵ NEB. LEGIS. JOURNAL, 2 April 2004, 1460.

²⁵⁵⁶ *Id.*, 7 April 2004, 1542-43.

²⁵⁵⁷ *Id.*, 13 April 2004, 1590.

Table 153. Summary of LB 1093 (2004) as Passed into Law

- (1) Extended the existence of the \$1.05 levy through the 2007-08 school year. After 2007-08, the maximum levy would return to \$1.00.
- (2) Extend the existence of the \$.95 Local Effort Rate (LER) through the 2007-08 school year.
- (3) Extend the existence of the 1.25% temporary aid adjustment factor through the 2007-08 school year.
- (4) Extend the existence of the authority of local school boards to exceed the maximum levy to recover lost state aid due to the temporary aid adjustment factor through the 2007-08 school year.
- (5) Because LB 1093 did not address the spending lid provisions, the zero percent base spending lid would end after the 2004-05 school year. The base spending lid would then return to 2.5% with a lid range to 5.5% beginning in 2005-06.

Source: Legislative Bill 1093, *Slip Law*, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, §§ 1-6, pp. 1-7.

The actions of the Legislature in 2004 resulted in a balanced budget for the remainder of the 2003-05 biennium, but the State would still face as much as a \$295 million shortfall in the next biennium. This figure included the \$160 million final judgment against the State for failure to act in good faith concerning its involvement in the Central Interstate Low-Level Radioactive Waste Disposal Compact.²⁵⁵⁸

Table 154. Summary of Modifications to TEEOSA as per LB 1093 (2004)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
2	79-1005.01	State aid calculation generally; income tax receipts; disbursement	Extended the temporary aid adjustment factor in the state aid formula for an additional three years, 2005-06, 2006-07 and 2007-08.
3	79-1005.02	State aid calculation; school fiscal years 2002-03 through 2007-08; income tax receipts; disbursement	Extended the temporary aid adjustment factor in the state aid formula for an additional three years, 2005-06, 2006-07 and 2007-08.
4	79-1007.02	Cost groupings; average formula cost per student; local system's formula need; calculation	Extended the temporary aid adjustment factor in the state aid formula for an additional three years, 2005-06, 2006-07 and 2007-08.

²⁵⁵⁸ "A Review: Ninety-Eighth Legislature Second Session, 2004," May 2004, 7.

Table 154—*Continued*

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
5	79-1008.01	Equalization aid; amount	Extended the temporary aid adjustment factor in the state aid formula for an additional three years, 2005-06, 2006-07 and 2007-08.
6	79-1009	Option school districts; net option funding; calculation	Extended the temporary aid adjustment factor in the state aid formula for an additional three years, 2005-06, 2006-07 and 2007-08.

Source: Legislative Bill 1093, *Slip Law*, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, §§ 2-6, pp. 3-7.

LB 1091 - Resurrection of Reorganization Incentives

The 2004 Session was generally considered an inappropriate time to launch new spending programs no matter how well intended. After all, the session's primary focus appeared to be fixing the current 2003-05 biennium budget and situating the State in a favorable position to deal with the next biennium budget crisis. On the other hand, the administration itself had requested, and ultimately received, new spending authority for such necessary services as mental healthcare and child protection and advocacy. As bad as things were on the budget front, there was in fact new spending in 2004. Some of the spending derived from General Fund resources, while other spending resulted from shifts in existing funds.

In 2004, the legislative vehicle to address transfers of funds was LB 1091, which was one of a series of bills comprising the official budget package forwarded by the Appropriations Committee. Introduced by Speaker Bromm on behalf of the Governor, LB 1091 provided for cash transfers from various State created funds in an effort to cover necessary expenses and generally lighten the overall budget shortfall. Such transfer bills are introduced almost every year, in good economic times and bad, but the 2004 transfer vehicle contained some significant, if not ominous, provisions. Of most interest to public education, LB 1091 transferred \$8 million over the 2005-07 biennium from the Education Innovation Fund to the General Fund.²⁵⁵⁹ The Education Innovation Fund is one of the

²⁵⁵⁹ Legislative Bill 1091, *Slip Law*, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, § 1, pp. 1-2.

main beneficiary funds under the State Lottery Act.²⁵⁶⁰ Of the \$8 million transferred, \$6 million was earmarked to remain in the General Fund while the other \$2 million would be used for a new program, or perhaps more accurately termed a resurrected program.

In 2004, Senator Ron Raikes, chair of the Education Committee, had introduced legislation, LB 1105, to revive the state policy of encouraging school districts to voluntarily merge or consolidate in exchange for monetary incentives to ease the financial burden of reorganization. This state policy was instigated in 1995 under LB 840 at the request of then Governor Ben Nelson. The underlying idea was simple. The State would provide a mechanism within the state aid formula to eliminate what many called the “disincentives” to reorganize. The disincentives referred to past reorganization efforts that actually produced more hardships to the joining school districts than when the districts were separate and distinct entities. The formula, in effect, penalized some districts for the act of merging or consolidating, an act otherwise supported and encouraged by the State.

LB 840 (1995) created a system within the formula to reward reorganized school districts by offering additional state aid over a period of years to offset any possible dips in aid the individual districts comprising the reorganized district would have otherwise received. The program was later expanded in 1998 to include unification districts. LB 1219 (1998) created a new type of reorganization effort that involved two or more K-12 districts joining for all intent and purposes with the general objective of someday uniting as one district. And, similar to other forms of mergers and consolidations, unified districts also were provided incentive aid under the school finance formula.

The state policy relevant to financial incentives to reorganize reached its pinnacle when the Legislature passed LB 313 in 2001. Under the efforts of Senator George Coordsen, the State would obligate additional funds and extend the timeframe to take advantage of the incentive aid program. Unfortunately, 2001 would also mark a black year for the nation and for Nebraska as the economic morass following “9/11” took hold. The Legislature met in special session in October and November 2001 to begin what

²⁵⁶⁰ NEB. REV. STAT. § 9-812 (Cum. Supp. 2003).

would be a three-year effort to right the ship, to address shortfalls in tax revenue through budget cuts and tax increases. As part of this effort, the Legislature passed LB 3s1 (2001), which reversed the action taken under LB 313 (2001). LB 3s1 essentially closed the book on the incentive aid program by affixing a retroactive date of August 2, 2001 as the deadline for reorganized districts to apply.²⁵⁶¹ For all practical purposes, the reorganization incentive aid program was shut down except for any existing obligations to those reorganization districts that applied prior to August 2, 2001.

In 2004, Senator Raikes attempted to revitalize the incentive aid program through the introduction of LB 1105. The measure was designed to “encourage consolidation of Class II and III school districts” that had less than 390 students into existing K-12 districts that had greater than 390 students.²⁵⁶² In 2002-03, there were 134 Class II and III school districts with less than 390 students.²⁵⁶³ Similar to the original incentive aid program established in 1995, LB 1105 proposed to set aside an amount of funds otherwise allocated for equalization aid each year. This meant, of course, that less money would be available for equalization aid in order to pay for reorganization incentives. The bill called for \$1 million to be set aside from TEEOSA funds in fiscal years 2005-06 through 2009-10 and \$500,000 per year thereafter.²⁵⁶⁴

The public hearing for LB 1105 was held before the Education Committee on January 26, 2004, but the bill was never advanced.²⁵⁶⁵ Instead, Senator Raikes used a different legislative strategy, and a different funding source. During first-round debate on LB 1091, one of the pieces of the budget package, Senator Raikes floated a trial balloon on the subject. The amendment he offered would transfer the bulk of the proceeds from

²⁵⁶¹ Legislative Bill 3, *Slip Law*, Nebraska Legislature, 97th Leg., 1st Spec. Sess., 2001, § 7, p. 5.

²⁵⁶² Legislative Bill 1105, *Provide incentives for school district consolidation*, sponsored by Sen. Ron Raikes, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, 15 January 2004, § 2, p. 2.

²⁵⁶³ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 1105 (2004)*, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, 22 January 2004, 1.

²⁵⁶⁴ LB 1105 (2004), § 2, p. 4.

²⁵⁶⁵ NEB. LEGIS. JOURNAL, 16 January 2004, 318.

the Education Innovation Fund to the State’s General Fund for the 2005-07 biennium.²⁵⁶⁶ While not stated in the amendment, Senator Raikes intended that \$2 million of that amount be set aside for reorganization incentive aid (\$1 million for each year of the following biennium). Said Raikes:

This reorganization incentive proposal was a part of the Education Committee’s interim work. The committee came to the conclusion that if you want to achieve efficiencies among particularly smaller K-12 schools, it makes good sense to see to it that mergers and consolidations occur. Those activities are expensive initially, even though long-run benefits occur in terms of cost savings. So it just makes good fiscal sense, I think the committee believed, to go ahead and provide the school systems that are interested in reorganization some up-front money to help them cover these initial costs.²⁵⁶⁷

Senator Raikes told his colleagues that he did not intend to “press this amendment,” on that particular day, on that particular stage of consideration.²⁵⁶⁸

The act of pressing the issue had not escaped a somewhat nervous chair of the Appropriations Committee, whose job it was to watch over every aspect and every decision made with respect to money flowing in and out of the State’s General Fund. “You said you weren’t going to press this,” said Senator Roger Wehrbein, “Are you ... does that mean you’re not going to iron the money, or what?”²⁵⁶⁹ “How far are you going to push this amendment?” he inquired.²⁵⁷⁰ “Boy, you guys are tough to deal with,” Raikes responded good-naturedly.²⁵⁷¹ Of course, Senator Raikes, true to his word, would pull the amendment, but not before he had a chance to hear the debate on his trial balloon.

What followed on March 19th was what Senator Raikes had hoped to hear, a reasonably good discussion on the floor of the Legislature on the merits of renewing such a program. “[I]t’s just sad to me that we put money in new initiatives when we badly

²⁵⁶⁶ *Id.*, *Raikes AM3232 to Com AM3075 (LB 1091)*, 19 March 2004, 1154.

²⁵⁶⁷ Legislative Records Historian, *Floor Transcripts, LB 1091 (2004)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, 19 March 2004, 11822-23.

²⁵⁶⁸ *Id.*, 11823.

²⁵⁶⁹ *Id.*, 11829.

²⁵⁷⁰ *Id.*

²⁵⁷¹ *Id.*

need money to reorganize government and we can't even squeeze out enough dollars to reorganize government to get us on the right track before we start with new initiatives again," said Senator Chris Beutler of Lincoln.²⁵⁷² Beutler encouraged Senator Raikes to bring the amendment back on second-round debate of LB 1091.

Not everyone was all together sure about Senator Raikes' idea to rejuvenate the reorganization incentive aid program, especially on the basis of a bill that had not yet nor ever would be advanced from committee. Senator Pat Bourne of Omaha, for instance, was concerned about whether such use of lottery funds would violate the intent of the Education Innovation Fund. Senator Wehrbein was concerned that the Raikes proposal would pull another \$2 million away from the General Fund and would widen the budget shortfall for the next biennium. But on the whole, Senator Raikes had good reason to be optimistic about his chances to amend LB 1091 during second-round debate.

Senator Raikes would, in fact, try again during Select File consideration of LB 1091 on April 2, 2004. Unlike the amendment he withdrew during first-round debate, Raikes intended to take the second attempt to a vote. This amendment would provide incentive payments to encourage Class II and III school districts with less than 390 students to reorganize into K-12 school districts with greater than 390 students. The incentive payments apply only to consolidations occurring after May 31, 2005 and before June 1, 2007, so the window of opportunity was limited.²⁵⁷³

Under the new program, incentives would be paid to reorganized schools for a period of two years (rather than three years as prescribed in the original program created in 1995). Base year incentives would be paid in the initial year of reorganization and would be equal to 50% of the "per-student incentive amount" multiplied by the number of students in the district or districts having less than 390 students.²⁵⁷⁴ This amount would be calculated using a formula established in the amendment as follows:

²⁵⁷² *Id.*, 11831.

²⁵⁷³ NEB. LEGIS. JOURNAL, *Raikes AM3480 to ER AM7203 (LB 1091)*, 31 March 2004, 1407-11.

²⁵⁷⁴ *Id.*

$$\$4,000 - ((ADM \times (3,000 / 390)) = \text{per student incentive amount}^{2575}$$

The “ADM” used in the formula represents the average daily membership of each district having less than 390 students prior to the reorganization. Therefore, in a simple example involving the consolidation of District A, with 100 ADM, into District B (the district already having greater than 390 students) the per-student incentive amount would be approximately \$3,230.77. The per-student incentive amount (\$3,230.77) multiplied by the 100 ADM equals a total reorganization incentive amount of \$323,077. Half this amount would be paid as base year funds and the other half in the second year.²⁵⁷⁶

The amendment required \$1 million to be transferred from the Education Innovation Fund to the State’s General Fund in both 2005-06 and 2006-07 for base year incentive payments. Second year incentives would be funded through General Funds as part of the distribution of state aid in 2006-07 and 2007-08. Incentive payments would be prorated to reorganized districts if the payments exceeded the amount of funds available. The amendment provided that base year incentive payments would not be included in the formula resources for purposes of calculating state aid and schools may exceed the spending lid by the amount of incentive payments received.²⁵⁷⁷

Senator Adrian Smith of Gering posed one of the more obvious questions about the proposal during debate on the amendment. “I guess to cut to the chase, why 390?” he asked Senator Raikes.²⁵⁷⁸ The chair of the Education Committee had actually anticipated the question in his opening remarks on the amendment. Even before Senator Smith’s question, Senator Raikes had distributed a handout to his colleagues to illustrate the sizable increase in cost per student for local systems with fewer than 390 students. “In rough numbers, at ... for an average at 390 students or thereabout, it looks like it’s \$7,760 or \$7,800 per student; whereas, you go back to an enrollment of 150 or so, it approaches

²⁵⁷⁵ Id.

²⁵⁷⁶ Id.

²⁵⁷⁷ Id.

²⁵⁷⁸ *Floor Transcripts, LB 1091 (2004)*, 2 April 2004, 13101.

or exceeds \$10,000 per student,” Raikes explained.²⁵⁷⁹ The theory went that local systems with at least 390 students would generally have lower per student costs, and would, therefore, require less overall financial resources, including state aid. Senator Raikes believed this would produce more efficient school systems and ultimately provide savings to the state. “[T]he idea is this ... if you move a school system in size from, say, 150 students to 390 or more, probably on a year-in/year-out basis, there may be as much as a \$4,000 per student saving,” he said.²⁵⁸⁰

Senator Raikes’ assertions were supported by the research performed by the Legislative Fiscal Office. In a fiscal impact statement submitted on April 5, 2004, analyst Scott Danigole wrote:

The reorganization of schools into districts with 390 or more students will result in reorganization efficiencies which will reduce the amount expended by schools to operate with less than 390 students. These efficiencies should result in a savings for property taxpayers in those merged school districts with costs greater than their cost grouping cost prior to the merger. The state will also realize a savings in state aid payments two years after the consolidation due to lower overall school expenditures. Lower school spending results in lower cost group costs which will reduce state aid for schools receiving equalization aid.²⁵⁸¹

Danigole noted, however, that any savings in state aid would not be realized until the 2007-08 fiscal year. This would become the first year in which any participating reorganized school districts would graduate, so to speak, from the incentive aid program.

Following Senator Smith’s question, Senator Raikes also disclosed that “390” was the product of an efficiency model based upon an optimum K-12 system. He noted there were thirteen grade levels in a kindergarten through twelfth grade school system. If one assumes an optimal class size of 15 students per classroom and two classes per grade level multiplied by 13 (the number of grade levels), one arrives at 390. Senator Raikes admitted there was not anything particularly magical about 390. It depended upon what assumptions one wishes to make when creating a financial aid program. Perhaps no

²⁵⁷⁹ Id., 13098-99.

²⁵⁸⁰ Id., 13099.

²⁵⁸¹ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 1091 (2004)*, prepared by Scott Danigole, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, 5 April 2004, 2.

different than when the Legislature makes various assumptions and political decisions concerning the school finance formula on the whole. There is an inevitable element of educated guesswork in the parameters and factors used in any formula.

Another question anticipated by Senator Raikes related to the manner in which the program would actually encourage districts to consolidate. Senator Raikes explained that the process of reorganization does not immediately produce cost savings to anyone involved. In fact, the opposite is true. For example, obtaining appropriate facilities to house the additional students often produces expenses. There is also the possibility that the state aid formula would produce less state aid for the reorganized district than if the participating districts had remained a part. The needs minus resources equation within the state aid formula tends to produce less equalization aid to those local systems with greater property tax revenue generating capacity.

Generally, the physical landmass and property tax capacity of a school district increases once joined with one or more other districts. The incentive aid program was meant to provide a financial bridge for the initial years of the reorganized district's existence. "The reorganization incentive proposal here is simply one that would provide school systems that amount of money to sort of get over the hump, if you will, to make the change," Raikes said.²⁵⁸² It would provide state financial assistance over and above the amount of state aid due to the reorganized district.

The amendment received mostly positive comments during Select File debate. There was considerable discussion about the use of 390 students as the benchmark for qualification. There also was discussion on the merits of encouraging rather than mandating consolidation of school districts. "I don't know if the 390 number is right, but certainly the way it's been described I think it's extremely logical," Speaker Curt Bromm said, "Taking this approach is consistent with what Nebraskans have wanted us to do in terms of the way we approach school reorganization for years and years."²⁵⁸³ Support was also evident among some of the urban legislators, including Senator Chris Beutler of

²⁵⁸² *Floor Transcripts, LB 1091 (2004)*, 2 April 2004, 13099.

²⁵⁸³ *Id.*, 13102.

Lincoln and Senator Pam Redfield of Omaha. “I agree that it is always preferable to encourage people with positive incentives to change behavior that might be in the best benefit of all,” said Redfield.²⁵⁸⁴ Senator Bob Kremer of Aurora agreed. “I believe in incentives more than I do forced consolidation,” he said.²⁵⁸⁵

Several lawmakers were less concerned about the mechanics of the amendment as the fiscal aspects. Senator Pat Bourne of Omaha continued his opposition launched during first-round debate to using monies from the Education Innovation Fund for programs other than what was intended. Said Bourne:

I don’t want to see the money continue to be diverted from the lottery. Whether it’s from the education side or the environment side, I think we need to stop diverting that money. If we’re going to divert it, we should divert it into the General Funds and it should be on an equal basis.²⁵⁸⁶

Senator Bourne’s comments were certainly supported by some school officials who had hoped to see things return to normal with regard to lottery funds following the 2003-05 biennium. The Raikes amendment appeared to some as a continuation of a dangerous precedent to raid the Education Innovation Fund upon the whim of the Legislature.

Senator Roger Wehrbein, in keeping with his role as the Legislature’s budget guru, also cast some concerns about the potential cost of the program if all 134 eligible K-12 districts having fewer than 390 students sought reorganization and applied for funds. Part of Wehrbein’s function, of course, was to look at worst-case scenarios. The Legislative Fiscal Office examined the concern raised by Wehrbein and reported that:

The fiscal impact of the amendment for the state depends upon the consolidations that occur. In 2002-03, there were 134 Class II and III school districts with less than 390 students. These systems had an average daily membership (ADM) of 32,891 students. It is estimated that if all school districts (76) in the standard cost grouping with less than 390 students were to consolidate, the fiscal impact for incentives will be \$36.4 million over the three-year period from 2005-06 to 2007-08.

²⁵⁸⁴ Id., 13110.

²⁵⁸⁵ Id., 13123.

²⁵⁸⁶ Id., 13132.

The potential fiscal impact is overstated since all Class II and III school districts in the standard cost group with less than 390 students will probably not consolidate. The fiscal impact is understated due to the use of 2002-03 ADM. This is because declining membership in smaller school systems results in a greater number of schools being eligible for future incentives which may be higher as membership declines. The fiscal impact may also be understated if school systems in the sparse or very sparse cost groups consolidate. The fiscal impact may also be impacted by consolidations of Class I and Class VI districts with Class II and III districts.²⁵⁸⁷

But how likely was the worst-case scenario? The Fiscal Office assumed that only about 5-10% of all eligible districts would actually utilize the program based upon historical trends with regard to school consolidation in Nebraska. “If this number of consolidations occur, then the total fiscal impact will range from \$1.8 to \$3.6 million over the three year period,” the Fiscal Office reported.²⁵⁸⁸

In truth, the Raikes amendment contained language to prorate incentive payments if the number and amount of requests exceeds the available funds. This would be the safety valve for the State in terms of its overall financial commitment to the program. Although pro-consolidation policymakers would be delighted to encounter a problem such that additional funding became necessary due to large numbers of reorganization efforts. This would, after all, meet their ultimate objective: fewer districts.

Senator Raikes’ amendment was adopted after several hours of discussion on a 26-7 vote.²⁵⁸⁹ Reorganization incentives were once again a part of the school finance formula, at least for a period of a few years. It also meant that the Education Innovation Fund would once again be diverted to the State’s General Fund to help the budget circumstances faced by the Legislature. For each year of the 2005-07 biennium, \$1 million would be set aside for the reorganization incentive aid program and another \$3 to \$4 million would be transferred to the General Fund. LB 1091 was passed on a unanimous 48-0 vote on April 7, 2004 and signed into law by Governor Mike Johanns.²⁵⁹⁰

²⁵⁸⁷ *Fiscal Impact Statement, LB 1091 (2004)*, 5 April 2004, 2.

²⁵⁸⁸ *Id.*

²⁵⁸⁹ NEB. LEGIS. JOURNAL, 2 April 2004, 1451.

²⁵⁹⁰ *Id.*, 1540.

Table 155. Summary of Modifications to TEEOSA
as per LB 1091 (2004)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
8	79-1001	Act, how cited	Adds two new sections to the Tax Equity and Educational Opportunities Support Act.
9	79-1011	Incentives for consolidation; qualification; requirements; payment	<p>Provides that the state will fund incentive payments to encourage Class II and III school districts with less than 390 students to reorganize into Class II, III, IV or V school districts with greater than 390 students. The incentive payments apply to consolidations after May 31, 2005 and before June 1, 2007. Incentives are paid to reorganized schools for two years. Base year incentives are paid in the initial year of reorganization. \$1 million in transfers from the Education Innovation Fund (lottery proceeds) will be available in 2005-06 and 2006-07 for base year incentives. The funds are to be prorated if the total is insufficient to fund all schools qualified for incentives. Base year incentives will be equal to 50% of the amount calculated based upon a formula established in the amendment.</p> <p>Incentives in the second year of a consolidation will equal the other 50% of the original calculation unless funds were prorated for the base year. If funds were prorated, the second year incentive will include the amount not paid in the first year due to pro-ration of funds. Second year incentives will be funded with General Funds as part of the distribution of state aid in 2006-07 and 2007-08. Base year incentives are not included in formula resources for purposes of state aid and schools may exceed the budget lid by the amount of incentive payments received.</p>
10	79-1012	School District Reorganization Fund; created; use; investment	Creates the School District Reorganization Fund to be administered by NDE. The fund would consist of money transferred from the Education Innovation Fund and must be used to provide payments to reorganized school districts under Section 9. Any money remaining in the fund on July 1, 2008, must be transferred to the General Fund on such date.
11	79-1028	Applicable allowable growth rate; Class II, III, IV, V, or VI district may exceed; situations enumerated	Provides that a Class II, III, IV, or V district may exceed its applicable allowable growth rate by the specific dollar amount of incentive payments or base fiscal year incentive payments to be received in such school fiscal year under section 9.

Source: Legislative Bill 1091, *Slip Law*, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, §§ 8-11, pp. 8-10.

Legislative Bill 973 (2004) represented an omnibus technical cleanup bill for the Tax Equalization and Review Commission (TERC). The legislation was intended to clarify and improve existing law relevant to the equalization responsibilities incumbent upon the commission. The Commission was created in 1996 to provide a less complicated, less expensive avenue of appeal for taxpayers challenging real property valuation decisions. The Commission also carries the duty to hear and decide other petitions and appeals.

By the time the bill passed, LB 973 also had absorbed several other provisions from revenue-related bills. In general, LB 973 made various appeal timelines and procedures uniform throughout state law and adopted more general language concerning appeals. Procedures covering perjury, subpoenas and continuation of an action after the death or disability of a party or sale of the underlying property would be outlined in statute. The TERC would be provided more flexibility to decide whether an adjustment must be made, and requirements for subclass adjustments would be modified.

During General File debate on March 16, 2004, an amendment was successfully offered by Senator Ray Janssen of Nickerson that would allow certain taxpayers who are eligible for a special valuation (greenbelt) under existing law to apply for the valuation within 30 days of receiving a property valuation notice from the county. Senator Janssen said the amendment was introduced in response to a clerical error in Dodge County that caused about 900 property owners to miss a deadline for filing for a special valuation.²⁵⁹¹

The amendment also provided that, by June 30th of the year following the certification of adjusted valuation, a local school system or county official may file with the Property Tax Administrator a written request for a “nonappealable correction” of the adjusted valuation due to changes to the tax list that change the assessed value of taxable property.²⁵⁹² Upon the filing of the written request, the Property Tax Administrator must require the county assessor to recertify the taxable valuation by school district in the

²⁵⁹¹ NEB. LEGIS. JOURNAL, *Janssen AM3032 to AM2384 (LB 973)*, 10 March 2004, 975-80.

²⁵⁹² *Id.*, 978.

county. The recertified valuation must be the valuation that was certified on the tax list increased or decreased by changes to the tax list that change the assessed value of taxable property in the school district in the county in the prior assessment year. By the following July 31st, the Property Tax Administrator must approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from the action to the Department of Education.²⁵⁹³

The impact of the Janssen amendment was not immediately known at the time of its adoption. The Department of Education reported that the year-end recalculation of state aid could cause a shift in the distribution of state aid. A statewide decrease in adjusted valuation may cause the local effort rate (LER) in the year-end recalculation of state aid to increase. Such an increase in the LER may cause local systems to receive less equalization aid. Similarly, any local system that witnesses a decrease in adjusted valuation may receive an increase in equalization aid.²⁵⁹⁴

The Janssen amendment also made changes to existing law concerning corrections and errors in adjusted valuation for purposes of calculating state aid. Under the provisions of the school finance formula at the time, county assessors must, by August 25th, certify to the Property Tax Administrator the total taxable value by school district in the county for the current assessment year. LB 973 amended the formula to state that the county assessor may amend the filing for changes made to the taxable valuation of the school district in the county if corrections or errors are discovered on the original certification. Amendments must be certified to the Property Tax Administrator by September 30th.²⁵⁹⁵

Other changes contained in LB 973 included clarification of existing law relevant to orders from the Property Tax Administrator concerning changes in adjusted valuation. The previous law required the Property Tax Administrator to enter an order modifying or declining to modify the adjusted valuations by January 1st each year and must certify the

²⁵⁹³ Id.

²⁵⁹⁴ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 973 (2004)*, prepared by Doug Nichols, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, 17 March 2004, 1.

²⁵⁹⁵ NEB. LEGIS. JOURNAL, *Janssen AM3032 to AM2384 (LB 973)*, 10 March 2004, 976.

order to the Department of Education. The final determination of the Property Tax Administrator may be appealed to the TERC. LB 973 clarified that the order must be in written form. The legislation also required a copy of the written order to be mailed to the local school system within seven days after the date of the order. The written order of the Property Tax Administrator may then be appealed within 30 days after the date of the order to the TERC.²⁵⁹⁶

Finally, LB 973 included provisions of LB 970 relating to special valuation or greenbelt land. Greenbelt land involves agricultural land actively devoted to agricultural or horticultural purposes but has value for purposes other than agricultural or horticultural uses and meets the qualifications for special valuation. LB 973 specified that such land constitutes a separate class of property and would be valued at 80% of its agriculture-only use for purposes of taxation and recapture.²⁵⁹⁷ LB 973 changed the acceptable range for greenbelt land from 92% to 100% of the special or recapture value, to 74% to 80%.²⁵⁹⁸ While LB 970 clarified the assessment and equalization of greenbelt land, it did not change the valuation or taxation of such land.

LB 973 passed on April 1, 2004 by a 46-0 vote.²⁵⁹⁹

Table 156. Summary of Modifications to TEEOSA
as per LB 973 (2004)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
66	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	Existing law stated that, on or before August 25, the county assessor must certify to the Property Tax Administrator the total taxable value by school district in the county for the current assessment year on forms prescribed by the Property Tax Administrator.

²⁵⁹⁶ Legislative Bill 973, *Slip Law*, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, § 66, p. 27.

²⁵⁹⁷ *Id.*, § 6, p. 5.

²⁵⁹⁸ *Id.*, § 64, p. 25.

²⁵⁹⁹ NEB. LEGIS. JOURNAL, 1 April 2004, 1427.

Table 156—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
66	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited <i>Continued</i>	<p>LB 973 amended this section to state that the county assessor may amend the filing for changes made to the taxable valuation of the school district in the county if corrections or errors on the original certification are discovered. Amendments must be certified to the Property Tax Administrator on or before September 30.</p> <p>LB 973 also provides that, by June 30th of the year following the certification of adjusted valuation, a local school system or county official may file with the Property Tax Administrator a written request for a “nonappealable correction” of the adjusted valuation due to changes to the tax list that change the assessed value of taxable property.</p> <p>Upon the filing of the written request, the Property Tax Administrator must require the county assessor to recertify the taxable valuation by school district in the county on forms prescribed by the Property Tax Administrator. The recertified valuation must be the valuation that was certified on the tax list increased or decreased by changes to the tax list that change the assessed value of taxable property in the school district in the county in the prior assessment year. By the following July 31st, the Property Tax Administrator must approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from the action to the Department of Education.</p> <p>LB 973 changed the provisions relating to state aid value relevant to special valuation (greenbelt) land. The changes in this section harmonize the state aid value provision with the acceptable range for greenbelt land from 92% to 100% of the special or recapture value, to 74% to 80%.</p>
67	79-1022	Distribution of income tax receipts and state aid; effect on budget	Editorial changes to harmonize with changes to Section 66, which amended 79-1016.

Source: Legislative Bill 973, *Slip Law*, Nebraska Legislature, 98th Leg., 2nd Sess., 2004, §§ 66-67, pp. 26-28.

I. Review

In 2002, Nebraska economic crisis required almost every facet of state government to expect to take its lumps in order reduce state expenditures and then hope for better times. The three largest pools of expenditures were, and still are, Medicaid, the University, and public education, and at least two of these major pools would be prime

targets for budget reductions during the 2002 Session. The question was less *if* but *how* state aid would be reduced to help balance the state's biennium budget.

The Education Committee reviewed a number of proposals introduced in the 2002 Session designed to reduce the state's financial burden by somehow shifting more burden to the local level, at least temporarily. Ultimately, the vehicle of choice would be LB 898 (2002). The original version of LB 898, as introduced by Speaker Doug Kristensen, would have increased the local effort rate and thereby reduced the amount of state aid necessary to fund the school finance formula. As advanced from committee, LB 898 would accomplish a decrease in state aid by use of a "Temporary Aid Adjustment Factor," which would reduce calculated needs, allocated income taxes and net option funding to local systems by 1.25%. The reduction would be in place for three years and would result in a decrease of state appropriations of about \$22 million each year.

During second-round debate, the Legislature would amend the legislation in order to permit school districts to exceed the levy limitation by an amount equal the amount of state aid lost by virtue of the Temporary Aid Adjustment Factor. The bill required NDE to certify the amount by which the levy can be exceeded for each local system. The additional levy authority could only be accessed by a super majority (three-fourths) vote of a local school board.

If LB 898 had landed on the Governor's desk without the additional levy authority, he apparently would have signed the bill into law. This was not the case, and on April 10, 2002, the same day the Legislature voted to pass the bill by a 46-3 vote, Governor Johanns vetoed LB 898. Lead by Speaker Kristensen, the Legislature would take immediate action to override the veto. The majority of the body believing that it would be inappropriate to preclude some form of remedy to local school districts.

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

state's budget deficit, and a shift of funding responsibility to local school districts.

The bill was LB 540, introduced by Senator Ron Raikes. As advanced from the Education Committee, and ultimately passed by the Legislature, the bill provided what were intended to be temporary adjustments to the school finance formula. LB 540 would leave in place the Temporary Aid Adjustment Factor and the accompanying levy exclusion, both of which were incorporated into the formula the year before. The heart of the bill was to raise the maximum levy for schools from \$1.00 to \$1.05 beginning with the 2003-04 school year. It also increased the Local Effort Rate (LER) from 90¢ to 95¢ in order account for the higher maximum levy. But there was a catch.

LB 540 also proposed to lower the base spending lid for schools from 2.5% to 0% for both 2003-04 and 2004-05. In exchange, the lid range was increased from 2% to 3%. This meant that instead of the existing 2.5% to 4.5% spending lid range, schools would be subject to a 0% to 3% lid range for two consecutive fiscal years. The idea was that if the Legislature planned to offer additional levy authority to schools, then there had to be a tighter control on local spending. (The bill retained a local school board's authority to exceed its growth rate by an additional 1% by a three-fourths vote of the board.)

As a virtual repeat from the year before, the Legislature would pass LB 540 only to have it returned and stamped with a gubernatorial veto. The Legislature once again voted to override the veto, this time by a unanimous vote.

The Legislature had proposed and passed legislation within two consecutive sessions to implement a mechanism for across-the-board reductions in formula need calculations, provide a relief valve through a levy exclusion, and increase the maximum levy for schools up from \$1.00 to \$1.05, and reduce the schools' spending authority. The efforts were met, for one reason or another, with vetoes and subsequent veto overrides. All this would change in the 2004 Session.

By 2004 there were some positive signs of economic recovery, but there were still pressing state budget issues to address. The Legislature once again set out to reduce costs to the state through a variety of means. But the general feeling was that public schools had already contributed sufficiently to the cause so as to avoid any new reductions and

funding shifts. That is not to say, however, that existing reductions and shifts could not be extended. And, in fact, this is what the Legislature chose to do.

The Legislature passed LB 1093 (2004) to extend the existence of the \$1.05 levy (and the 95¢ LER) through the 2007-08 school year. After 2007-08, presumably, the maximum levy would return to \$1.00. In addition to the levy provision, the legislation would maintain the Temporary Aid Adjustment Factor and the corresponding levy exclusion through the 2007-08 school year. However, the 0% base spending lid, imposed under LB 540 (2003), would be allowed to expire after the 2004-05 school year. Unless the Legislature takes further action in the 2005 Session, school districts would return to the 2.5% to 4.5% spending lid range beginning with the 2005-06 school year.

LB 1093 did not propose anything new. It extended the life of existing provisions for a formula need reduction, maximum levy authority, and levy exclusion. And yet this time, the Governor would sign into law rather than veto the proposal.