

CHAPTER V  
OBSERVATIONS

Printout politics

On February 3, 1999, the Legislature was in the process of debating LB 149, one of the more important pieces of school finance legislation ever to become law. At one point during the debate on this day, Senator Ardyce Bohlke rose to address her colleagues and mentioned that the Department of Education would soon have printouts available on the district-by-district impact of LB 149. This prompted Senator Pam Brown to remark:

[L]ast year, I think it was, there was a statement made on the floor that ... we were no longer going to legislate by printout, and I was absolutely delighted with that statement because I thought, well, at least we're going to talk about the policy that is directing what we're doing in terms of funding for education rather than constantly pouring over the numbers and seeing who wins and who loses and not having some sort of stable policy that guides us and that ... that helps us know that what we're doing has some meaning besides whether it's a win or lose situation.<sup>1</sup>

Senator Ron Raikes of Lincoln added his comments later in the debate. "Not having printouts is maybe not realistic, but certainly having printouts that are more simple and can be more quickly calculated is a possibility," Raikes said.<sup>2</sup> The discussion certainly did not lead to any resolution on the issue of *printout politics*, but it was at least refreshing to have various members of the body recognize what it was doing.

An ongoing source of controversy with regard to school finance debates is whether policymakers should allow themselves to base policy decisions on state aid models, or printouts, prepared by Nebraska Department of Education. With the advent of sophisticated computer hardware and software, it has become relatively easy for department staff to generate district-by-district data that reflect, as nearly as possible, the likely outcome of a particular policy alternative. Policymakers may then use these models to determine whether the schools within the jurisdiction of their own legislative districts fair well or do not fair well under the proposed policy.

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<sup>1</sup> *Floor Transcripts, LB 149 (1999)*, 3 February 1999, 614.

<sup>2</sup> *Id.*, 620.

Printout politics became most evident in the mid-1990s during the debate of LB 1050 (1996). It was also a prominent part of the debate of LB 806 (1997) and LB 149 (1999). After handing out the latest of a series of state aid models, Senator Ardyce Bohlke often found herself instructing her colleagues to look “down and to the right” in reference to columns and lines within the data spreadsheets.<sup>3</sup> It was not uncommon for department staff to be situated in an anteroom of the Capitol during these debates for the purpose of being available to help lawmakers and legislative aides understand the various printouts.

Given the reality of printout politics in today’s school finance policy decisions, it becomes necessary to examine some of the questions raised by such methods. The first of these questions involves the process by which printouts are requested and furnished. Another question involves the accuracy of the data contained in the printouts. Perhaps, a final question is whether utilizing printouts is a good idea at all.

The Nebraska Department of Education generally employs a first-come, first-served policy when it comes to preparing state aid models during sessions of the Legislature. Requested by a state senator, the department requires a specific set of data parameters in order to prepare the model. An example of a request might go something like this. As a school finance proposal moves through floor consideration, a given legislator may wish to offer an amendment to the measure. He or she may work with legal counsel for the Education Committee or with personnel from the department in order to fashion the amendment to do what it is he or she proposes to do. This legislator may also choose to request a computer model from the department to ascertain whether the proposal would actually produce the end result desired. The printout would, if requested and received, would then be used to further the cause of the amendment or of the legislative bill itself. Some legislators would use the models to determine a quick ratio of winners versus losers within their own legislative district, hence the phrase “printout politics.”

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<sup>3</sup> *Floor Transcripts, LB 1050 (1996)*, 13 February 1996, 11090.

One of many real examples of printout politics occurred during General File debate of LB 806 (1997). On April 29, 1997, Senator Jim Jones of Eddyville explained to his colleagues that Taylor Public Schools, a school within his own legislative district, had been classified within the standard cost grouping under the printout furnished by the department. He felt the district warranted special consideration due to very unique circumstances. Jones explained that the nine miles between Taylor and the school district at Sargent just barely missed the existing ten-mile requirement found under the sparse cost grouping. He suggested through an amendment to the bill that there should be other indicators to classify a local system as sparse under the state aid formula.<sup>4</sup> He worked with the appropriate department and legislative staff, along with Senator Bohlke, to produce other criteria in the cost grouping language in order to produce the desired result. Senator Jones successfully sought and achieved an amendment to the bill that placed Taylor within the sparse cost grouping.

One of the problems with state aid models is that the department must often rely upon best guesses on some of the data, such as data relating to projected adjusted valuation or student growth. This leads to the next question involving the accuracy of such models. There is little doubt that the department staff does its absolute best to produce the data spreadsheets, but some data elements are, at times, based upon projections, rather than real numbers. In short, the state aid models may or may not live up to the expectations of those who rely upon them.

The final question is whether printouts are a good idea at all. As Senator Brown alluded in 1999, should the Legislature focus on the overall policy objectives and let the chips fall where they may? Or, as conveyed by Senator Raikes, should the Legislature bow to the inevitability of spreadsheets to help policymakers but attempt to make them less complicated? Would less complicated printouts mean a sacrifice of crucial information that would otherwise be contained within the more complicated variety? There are after all many data factors to consider when examining the winners and losers within a state aid model.

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<sup>4</sup> NEB. LEGIS. JOURNAL, *Jones AM1610*, 21 April 1997, 1615.

The Legislature appears to recognize, for better or worse, that it will likely be dependent to some degree on how the numbers stack up before it ratifies any substantive policy change to the school finance formula. As computer systems become more sophisticated, this trend will likely continue. It may even come to pass that policymakers would have the opportunity to pull up data on the floor of the Legislature or even utilize simple database management systems while seated at their desks. Senators might be able to enter a query during debate and run their own figures on a given policy proposal, and then use the data output to argue for or against it. This may sound like an unlikely scenario to us today given the complex nature of the data and computations used to produce state aid models. But then who could have predicted in 1990, the year TEEOSA was passed, that one day each Nebraska lawmaker would have a personal laptop computer situated on their desks on the floor of the Legislature?

### Leadership

Tremendous leadership is a common thread within the legislative successes witnessed in the 1990s in terms of school finance reform and the school organization reform achieved in 2005, a level of leadership still talked about among those who were there. This is not to say that there was, or is, a universal appreciation for the policy outcomes achieved in those years. But anyone who looks back on the debate of LB 1059 in 1990, the debate of LB 806 in 1997, or the debate of LB 126 in 2005 has to wonder how such enormous, monumental pieces of legislation could be realized given the odds of success. How can one policymaker possess a vision for the future and then convince a majority of his or her colleagues to stake their own reputations on that vision? In fact, the three most recent chairs of the Legislature's Education Committee have done just that; they have each achieved historical reforms in either school finance or school organization within the past fifteen years.

It may be fairly argued that Senators Ron Withem, Ardyce Bohlke, and Ron Raikes have very different styles of leadership. In studying the approaches of each to the issues examined here, it seems evident that they possessed different temperaments from one another, different character traits, and different views on political strategy. But for

those who witnessed the events unfold and those who write about those events, it is plain to see that a common element to their leadership was a fierce belief in the policy objectives they pursued. They were able to speak articulately on the issues because they believed so strongly about them. There was a sense of passion to their speech that helped to draw others to their cause, both inside and outside the legislative chamber. They lead the way, in every sense of the expression, and they understood every nuance of the philosophical, technical, and political aspects of their legislative proposals.

There will, no doubt, be other attempts at major school finance reform. For those future state leaders in education policy, the history of previous successful legislative initiatives may prove beneficial. And the history demonstrates several important characteristics, including an articulated statement of a policy problem that requires immediate attention, and the inclusion, to one degree or another, of the member groups that comprise the education community.

*Statement of the problem*

As with any policy reform, there must usually be a well-articulated need for change, some form of catalyst that propels an issue to the forefront of the public agenda. Senator Withem lead the charge for school finance reform in 1988 under the premise that the existing school finance system produced inequities in both property tax obligations and educational opportunities for students. He used the then pending lawsuit filed by the Gould brothers as further justification to pass LB 1059 in 1990. In 1997 Senator Bohlke advocated major changes to the school finance formula in response to the Legislature's imposition of maximum property tax levy limitations a year earlier. In 2005, Senator Raikes argued, in part, that Class I assimilation was necessary because, "[W]e can no longer afford a structure that requires administration and budgeting of an extra 230 separate local government units."<sup>5</sup>

*Involvement of groups*

There is plenty of speculation about whether interest groups play an important role in the legislative process. When it comes to school finance, however, there is little

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<sup>5</sup> *Hearing Transcripts, LB 126 (2005)*, 18 January 2005, 67.

question that interest groups have indeed played a major role in shaping the outcome of legislative proposals. At a minimum, it appears from recent history that a policymaker having leadership authority over such important matters as school finance would be wise to involve as many education-related member organizations as possible. And this is far from a simple matter. The public education lobby is at times united on major issues, but that is the exception, not the rule. Each major group of school activists, the teachers, the administrators, and the school boards, has its own agenda and priorities. It takes a special brand of leadership from the state legislative ranks to bring all the parties together. In truth, by the very nature of their diverse positions and viewpoints, it is nearly impossible to please every single faction of the public education community at the same time on the same issue. But the effort to establish a working relationship with the major education groups is still a worthy endeavor for a lawmaker with lofty goals to change the funding mechanism for public education.

There may exist a mistaken belief by some policymakers that the representative organizations behind public education are easy targets to pick a part politically, to divide them, or minimize their collective will and power. This would be an unfortunate mistake since each member group of the public education community is capable of staging a grassroots level campaign to derail a legislative initiative. The better approach would be to at least attempt to mold a legislative proposal that most of the education community could embrace. Again, this is much easier said than done and it takes a well established and respected state leader to bring all parties to the table.

#### Education Special Interest Groups

In 2006, there were roughly 30 separate public education-oriented registered “principals” or entities actively engaged in lobbying activities at the state level, and each had at least one paid registered lobbyist. In a matter of speaking, these entities represent the public education community since they are organized to provide a voice on state issues. They are organized and motivated to influence state policy decisions, or at least to protect their own interests as the need arises from time to time. Most of these lobbying entities are individual school districts or special associations designed to look after the

interests of a particular class of school districts. Three of the lobbying entities have their own offices, support staff, and full-time executive administration. These particular groups, the Nebraska State Education Association, the Nebraska Council of School Administrators, and the Nebraska Association of School Boards, each have at least two paid, fulltime registered lobbyists.

Table 178. Registered Principals: Public Education Groups

<i>Principal</i>	<i>Base Address</i>
Adams Central Junior-Senior High .....	Hastings
Bellevue Public Schools .....	Bellevue
Bennington Public Schools.....	Bennington
Board of Educational Lands and Funds.....	Lincoln
Class Is United.....	Lincoln
Class VI Association of Schools .....	Hastings
Educational Service Units Administrators Association.....	Omaha
Elkhorn Public Schools.....	Elkhorn
ESU #3 Consortium .....	Murdock
Fremont Public Schools .....	Fremont
Grand Island Public Schools .....	Grand Island
Lakeview Community Schools .....	Columbus
Lincoln Education Association .....	Lincoln
Lincoln Public Schools .....	Lincoln
Millard Public Schools.....	Omaha
Nebraska Association For The Gifted.....	Norfolk
Nebraska Association of School Boards.....	Lincoln
Nebraska Coalition of Education Equity and Adequacy .....	Odell
Nebraska Council of School Administrators .....	Lincoln
Nebraska Rural Community School Association.....	Lincoln
Nebraska School Activities Association.....	Lincoln
Nebraska State Education Association .....	Lincoln
Northwest High School.....	Grand Island
Omaha Public Schools .....	Omaha
Papillion-LaVista Public Schools .....	Omaha
Ralston Public School District .....	Omaha
Westside Community Schools.....	Omaha

*Source:* Clerk of the Legislature’s Office, “Addresses of Principals & Registered Lobbyists,” Ninety-Ninth Legislature, as of March 10, 2006.

With so many lobbying entities and so many agendas, it is relatively easy to see why corralling them into one direction is next to impossible. There are times when the issue at hand has forced many of these lobbying groups to work together toward a common objective. A recent example was the fight against Initiative 413 in 1998 when most of the education community united to oppose the measure that would have

established tax and spending limits in the Nebraska Constitution. Another example came a year later when most of the education community fought for the passage of LB 149 in 1999. When it comes to the distribution of state aid or school organization, the community becomes fragmented and, at times, directly at odds with one another. So why does this matter?

Naturally, if the education community could join together on an ongoing basis, its lobbying influence would be enhanced greatly. The question is not so much how but who would bring the parties together. In the past, the Commissioner of Education has succeeded at times to bring education groups together at least for a while. There have been instances when various chairs of the Education Committee succeeded on one issue or another. But there have been just as many failed attempts as successes, perhaps more so. The problems usually stem from one group or another wanting to add an agenda item that other groups cannot abide. An example might be when the teachers' group angles to incorporate compensation-related issues and other groups feel such a move would be counter to their own viewpoints. More recently, there have been considerable tensions among the education community concerning stances on lawsuits against the state.

What appears relatively certain is that school finance reform initiatives are more easily attained if enough of the education community is "on board." Time will tell whether such collaboration between legislative leaders and education groups is possible, but history demonstrates that it has happened, albeit not very often.

### Nebraska's Unique Issues

Nebraska ranks 38<sup>th</sup> nationally in terms of total population<sup>6</sup> and 16<sup>th</sup> nationally in terms of total square miles.<sup>7</sup> Our population enjoys a substantial landmass in which to live, but our state government does not enjoy a substantial number of taxpayers. We simply do not have the sort of population that would produce high levels of tax revenue.

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<sup>6</sup> U.S. Census Bureau, "State & County QuickFacts," available from <http://quickfacts.census.gov/qfd/states/31000.html>, Internet, accessed 18 April 2006.

<sup>7</sup> Netstate.com, "States Ranked for Total Area, Land Area, and Water Area," available from [http://www.netstate.com/states/tables/st\\_size.htm](http://www.netstate.com/states/tables/st_size.htm), Internet, accessed 18 April 2006.



But are Nebraskans being taxed enough, too much, just about right? If Nebraska had greater revenue capacity, could the long-standing funding issue for public education be eased?

In terms of total tax burden, Nebraska appears to fall about in the middle in a national comparison. The Tax Foundation places Nebraska at 27<sup>th</sup> in the nation in terms of overall tax burden.<sup>8</sup> Nebraska has a relatively low income tax rate schedule but ranks much higher nationally in terms of property taxes. Nebraska ranks about average in state sales tax rate but one of the highest in terms of gasoline tax.<sup>9</sup> When it comes to public school finance, however, the predominant item of discussion is property tax burden. The largest portion of property taxes in Nebraska is levied for support of public schools. Therefore, any discussion of school finance reform automatically evokes concern for the impact on property taxpayers.

Whether perception or reality, Nebraskans seem to believe they are taxed too much. If the elected representatives in the Legislature represent a valid indication, then Nebraskans are generally looking for tax relief rather than expansion of taxation and spending. But as the history of Nebraska's public school finance system demonstrates, there has been at least one time in the past when the people, through the electoral process, essentially requested greater taxation in exchange for improvements in public education. In 1990, the voters knowingly embraced both higher sales and income tax rates in order to more adequately fund our schools and to reduce the overall property tax burden. Perhaps the bottom line for taxpayers is to be convinced that they receive a benefit in return for higher taxation.

### Executive leadership

Over the years, some states have witnessed extraordinary, sustained leadership at the highest level of state government. In other states, public education has suffered due

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<sup>8</sup> Tax Foundation, "Nebraska's State and Local Tax Burden, 1970-2005," available from <http://www.taxfoundation.org/taxdata/show/466.html>, Internet, accessed 18 April 2006.

<sup>9</sup> Id., "State Sales, Gasoline, Cigarette, and Alcohol Tax Rates by State, 2005," <http://www.taxfoundation.org/taxdata/show/245.html>, Internet, accessed 19 April 2006.

in part to ineffective leadership from the state's chief executive officer. In Nebraska, like any other state in the nation, it is politically expedient if not crucial for governors to claim to be pro-public education, even though actions do not always support such a claim. As with leadership at any level of government, there is talk and there is action.

Perhaps relating to the geographic, demographic, and economic challenges faced in Nebraska, some recent governors have obviously felt that improvement in the quality of public education is directly relational to the perception of acceptance from the public to fund it. Nebraska is, after all, considered from without and within as a fiscally conservative state. Most gubernatorial candidates have had to quickly grasp the notion that the avocation of major funding and spending programs does not usually coincide with success at the election polls. Instead, the typical campaign slogan relevant to public education is the advocacy of improvement in public schools with no additional resources to accomplish it. "We must do better with less," or some variation of the theme, is commonly used in statewide political campaigns. One rarely hears of campaign promises to devote substantial new funding for public education or promises to increase teacher salaries, for example, without the inevitable cringe from the taxpayer/voter.

In Nebraska, leadership toward public school finance reform has been found in the legislative branch, not the executive branch. This is not to say that various Nebraska governors, over the years, have failed to support such reform, but they usually did so only when political circumstances permit it or demand it. Some political scientists may suggest this is to be expected. The ultimate motivation, after all, for any elected officer is re-election. A smart politician will sense what the public expects and adjust his or her political agenda accordingly. But what would it be like to have such a major legislative initiative as school finance reform derive from the top?

One could argue that we in Nebraska have not, in recent years, witnessed executive leadership with a paramount concern for public education reform. Such leadership could only serve to enhance the discussion and perhaps offer the Legislature the support and guidance necessary for such a vital purpose of government.

### Informed Decisions

Accurate, timely information and knowledgeable policymakers are two important keys to careful, considered decisions relevant to school finance policy.

Lawmakers bring to the Legislature the sum of their life and work experiences, which may or may not include a working knowledge and understanding of school finance. There is only so much detail a policymaker can absorb at any one time and school finance is one of the most complicated policy arenas imaginable. In his biography, the late Senator Jerome Warner said, “It takes at least four years to get oriented if you’re really going to be active.”<sup>10</sup> New lawmakers often find themselves at first simply learning the ropes of the legislative process itself, a much more involved process than some might think. School finance, for most lawmakers, is but one of many important subject areas to “learn as you go.”

Lawmakers often rely heavily on the research and knowledge base of the various state agencies having regulatory jurisdiction over policy areas. The Department of Education, for instance, offers critically important information and data to lawmakers during and in between legislative sessions. Similarly, the Department of Revenue and the Department of Property Assessment and Taxation provide information and data to various standing committees of the Legislature. The agency personnel take their work very seriously and understand how important it is to the legislative process. But state agencies are not the only available resources.

There are ample research and professional organizations that could be used to a greater level within the legislative process. Perhaps the concern among some policymakers is that such organizations often represent special interests and cannot be totally trusted in terms of motivation. In truth, however, state agencies also have at times less than obvious motivations. State agencies are constantly working toward increased appropriations for operations and staffing. Agency reporting to the Legislature often includes fiscal statements that include requests for additional funding in order to carry out various legislative measures. Sometimes these requests are honored and other times they

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<sup>10</sup> Berens, *Leaving Your Mark*, 202.

are ignored or considered as invalid requests. Some state agencies are governed to some degree by independent boards, including the State Department of Education, which is governed by the State Board of Education. These boards have political as well as administrative interests in promoting or discouraging legislative initiatives.

Associations and other organizations outside the arena of state government do offer policymakers an important resource for research and study on various issues, including school finance. The Nebraska Tax Research Council (NTRC), for instance, has offered valuable data to the Legislature over the years. The Mission Statement of the NTRC is, "To encourage fair taxation, efficiency in public administration and economy in public finance, which is in the best interest of all citizens."<sup>11</sup> The NTRC is a statewide, non-partisan, non-profit public policy organization that has promoted and advocated economy and efficiency in government since 1951. The mission of this organization is certainly embraceable by any state government interested in the same objectives.

Another organization having outstanding resources available to its members and to the public is the Nebraska Rural Community Schools Association (NRCSA). The executive director of this organization, Mr. Mathew Blomstedt, has earned a well-deserved reputation for producing state aid models and other school finance-related data that have been and continue to be used by various members of the Legislature. While it is true that this organization possesses a special interest in the circumstances of rural schools, it is also true that this organization possesses the capacity to offer useful recommendations for the enhancement of the state aid formula for all Nebraska schools.

There are too many credible organizations to name here. Some are more researched-based than others. Some are more member-welfare oriented than others. Some are more established than others. However, many such organizations are capable of participating in the legislative process, but do not. Many are worthy of the Legislature's trust, but are not sought out for advice and counsel.

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<sup>11</sup> Nebraska Tax Research Council, available at <http://www.nebraskataxresearch.org>, Internet, accessed 14 April 2006.

### The Structure of Debate

Not unlike other major policy areas, the debates on school finance policy involve three approaches: (1) the philosophical (e.g., the concept of equity of educational opportunities or the concept of tax equity), (2) the political (i.e., the motives of individual policymakers), and the (3) technical (e.g., the mechanics of the distribution formula). Lawmakers, whether consciously or unconsciously, hinge their own agendas on one or more of these approaches and may even intertwine the approaches to advance their own cause. This is understandable given the nature of the legislative process. In an ideal setting, however, lawmakers would focus on the philosophical grounds on which a given policy change is based. The technical aspects of a policy proposal would receive the bulk of attention after the philosophical issues are established, and the political “tug and pull” would be kept at a minimum.

Of course, we do not often witness the ideal setting in a political environment, even the non-partisan environment of the Nebraska Legislature. This is not to say that policymakers do not mean well. They almost always do mean well. But the varying levels of understanding and willingness to understand the issues involved causes varying degrees of knowledgeable participation and insightful interaction. We, as constituents, have every reason to expect the most of our policymakers, which includes sound policy evaluation, policy analysis, and policy decision-making. It is not outside the realm of reason to expect our lawmakers to practice appropriate policymaking skills. These skills involve careful review of policy proposals, asking questions, seeking advice, analyzing data, and contributing to the debate.

### Complexity of the Formula

There are those who would say the Nebraska state aid formula is relatively easy to understand. They would say the formula is simply, “Needs minus resources equals equalization aid.” And they are certainly not incorrect, at least on the most basic level. But the formula, as provided in state statute, is indeed complicated. The specific language used in the TEEOSA is legalese at its finest and not a particularly spellbinding

read for the average layperson. Within the 48 sections of law that comprise the TEEOSA, there are ample examples of lawyerly sentences that often stretch into full paragraphs. Contained within most sections are numerous references to other sections of law that require the reader to move back and forth from one chapter of law to another in order to understand what is being communicated. There are enumerable terms of art and legal phrases that cause one to pause just long enough in confusion to forget all that had been read and understood just a minute earlier.

There are, of course, provisions within the TEEOSA that are simple to grasp and understand. The “findings” and “intent” of the act, for instance, represent straightforward English such that anyone can comprehend the meaning. The findings include such statements as: “The overreliance on the property tax for the support of the public school system has resulted in great disparities in local property tax rates.”<sup>12</sup> The intent of the TEEOSA includes statements concerning the creation of a finance system that will: “Reduce the reliance on the property tax for the support of the public school system.”<sup>13</sup>

There also are very complicated provisions within the TEEOSA. The following is an example of the existing language from one subsection of one section of the TEEOSA:

(4) Except as provided in subsection (2) of this section, no local system may receive equalization aid such that, when total aid is added to a levy equal to the maximum levy, for the school fiscal year for which aid is being certified, pursuant to subdivision (2)(a) of section 77-3442 without a vote pursuant to section 77-3444, less ten cents, multiplied by the local system’s adjusted valuation, would result in total local system revenue from state aid plus property tax receipts which exceeds the total of:

(a) The sum of state aid, receipts from other school districts related to annexation, and property tax receipts received by the local system during the preceding school fiscal year multiplied by the total of (i) 1.01 plus (ii) the applicable allowable growth rate for the local system calculated pursuant to section 79-1026 as determined for the school fiscal year immediately preceding the school fiscal year when aid is to be distributed plus (iii) the percentage growth in formula students from the certification of state aid for the immediately preceding school fiscal year to the formula students for the certification of state

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<sup>12</sup> NEB. REV. STAT. § 79-1002(1)(e) (Cum Supp. 2004).

<sup>13</sup> Id., § 79-1002(2)(b) (Cum. Supp. 2004).

aid for the current school fiscal year, except that the percentage growth shall not be less than zero;

(b) Unused budget authority authorized pursuant to section 79-1030;

(c) The difference between the other actual receipts included in local system formula resources for the certification of state aid in the preceding school fiscal year and other actual receipts included in local system formula resources for the certification of state aid for the current school fiscal year, except that such difference shall not be less than zero; and

(d) The absolute value of any negative prior year adjustment pursuant to section 79-1065.

For local systems that have reorganized, state aid, property tax receipts, and number of formula students shall be attributed based on valuation. The revenue from property tax receipts shall be calculated by multiplying the reported general fund common levy by the assessed valuation subject to the levy divided by one hundred.<sup>14</sup>

This particular subsection embodies the lop-off calculation, which became a part of the state aid formula in 1997 under LB 806.<sup>15</sup> There is nothing in the title of this section of law, called the “catch-line,” to indicate the lop-off calculation is contained within. One must simply know the lop-off calculation exists, where to find it in statute, and what it means within the larger picture of the computation of equalization aid.

For many of us who are math-challenged, the statutory language is more easily understood by drawing a picture of the various sub-formulas within the school finance system. Only then can we truly appreciate the nature of our complicated state aid formula (see Chart A).

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<sup>14</sup> NEB. REV. STAT. § 79-1008.01 (Cum. Supp. 2004). The lop-off calculation is designed to prevent any district from receiving a windfall profit in equalization aid. This calculation essentially lops off a certain amount of aid and returns the aid back through the formula. A portion of the lop-off funds is used for the Small School Stabilization Adjustment to help rural schools in need of additional funding.

<sup>15</sup> LB 806, Session Laws, 1997, § 38, p. 26 (1552).

Chart A. Lop-off Calculation under the Tax Equity and Educational Opportunities Support Act

If the result of **Column A** exceeds the result of **Column B**, then the local system will lose state aid to the extent Column A exceeds Column B.

**A.**

$$\frac{\text{State Aid} + \text{Levy of 95c} \times \text{Prior Year Adjusted Valuation}}{100}$$

**B.**

$$\frac{\text{State Aid} + \text{Receipts Related to Annexation} + \text{Prior Year Property Tax Receipts}}{1.01 + \text{Applicable Allowable Growth Rate} + \text{Percentage Student Growth Prior Year}}$$

$$+ \text{Unused Budget Authority}$$

$$+ \left( \text{Prior Year Other Actual Receipts} - \text{Current Year Other Actual Receipts} \right)$$

$$+ \text{Value of Negative Prior Year Adjustment}$$

← The difference cannot be less than zero.

Source: NEB. REV. STAT. § 79-1008.01 (Cum. Supp. 2004).



So the question is whether the state aid formula could be written in such a way as to be more straightforward, more easily understood, more accessible to laypeople. Must the law be written in legalese?

The simple answer is “yes.” In fact, there is a reason why lawyers typically write the language that is used for consideration by the Legislature. It is to offer a reasonable chance of surviving any legal challenges that might ensue. Everyday English, as used in our daily lives, simply invites too much speculation about what is meant and what is excluded from being meant. The law, on the other hand, is meant to be as precise as humanly possible so as to leave no doubt about its meaning.

Nevertheless, one thing is certain. There are always alternative approaches to writing anything, even in legalese. There simply must be ways to write the law in such a way as to withstand judicial scrutiny, at least on the issue of exact meaning, and still possess a certain degree of readability. Part of the problem, as encountered by the Education Committee in 1995, is that state law, over time, becomes fragmented by constant revisions year after year. Senator Ardyce Bohlke believed Chapter 79 of the Nebraska Revised Statutes, relating to public education, had become so fragmented that she proposed, as chair of the Education Committee, to commission a recodification of that portion of state law.<sup>16</sup> But it does not require too many intervening years of revision for the same chapter of law to become fragmented once again, requiring yet another recodification effort.

One possible approach is group drafting whenever practicable. If time permits it, the legal counsel for the Education Committee, for instance, might confer with other qualified legal counsel to perfect the language proposed in legislation. To be sure, this is not always possible, especially in the heat of the legislative session when amendments are demanded on the spur of the moment. In the end, the responsibility usually rests with the legal counsel of the standing committee having jurisdiction of the legislation at issue. However, in the days and weeks leading up to a session of the Legislature, there may be time to bounce ideas off other qualified individuals, whether they be of the legal

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<sup>16</sup> The recodification effort was principally contained in LB 900 (1996).

profession or not. This seems entirely reasonable in a political environment where building consensus and support is of crucial importance to the ultimate objective of success in the legislative arena.

### Term Limits

The underlying motivation for this study on the history of the TEEOSA was the advent of term limits for Nebraska legislators. Term limits will, without doubt, have an impact on the Nebraska political landscape. Term limits will very likely have an impact on major policy decisions. The attempt here was to catalogue, to document the policy evolution of the current public school finance policy so that others might acknowledge what has been tried and why. Such an effort should be made for all major policy arenas if we are to preserve the institutional memory of the Nebraska Legislature, and to afford new lawmakers a glimpse at the past in order for a better vantage point toward the future.