

significantly, dropping by approximately 48,000 from 1969-70 to 413,444. The number of students enrolled in public education declined by approximately 44,500 students. There were 287,570 students enrolled in K-12 public education during the 1979-80 school year.<sup>734</sup> The decline in public school student enrollment continued through the 1980s causing some schools to close their doors.

Taxation issues continued to be discussed. Local school boards did what they could to keep income available for teachers and staff. Tax levies increased in some areas and lids were also put in place. The total sum of school tax levied would double during the upcoming decade. The total assessed valuation for the state more than doubled, increasing from 5,375,575,178 in 1970 to 12,671,717,612 in 1980.<sup>735</sup>

As Nebraska legislators looked ahead they saw an upcoming recession, taxpayers demanding relief from an over reliance on property tax and more school finance litigation in the courts. There had been much change in Nebraska during the 1970s but perhaps more change was ahead for

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<sup>734</sup> 1993 Nebraska Blue Book, 919.

<sup>735</sup> Id, 576.

the 1980s in politics, economics, demographics, education, taxation and school finance.

Nebraska elected a new governor in November 1979. Charles Thone, a Republican and former U.S. Congressman, replaced Governor Exon. Exon, known for his strong fiscally conservative views, ran for the U.S. Senate and won the seat. Nebraska's economy was not productive and the new governor found himself continuing to hold the line on taxes and spending.

#### The 86th Legislative Session: 1979

The 86th Legislative Session convened in January 1979. Property tax and valuation, hotly debated issues, came under fire again in the legislature. Introduced by Warner, LB 187 (1979) altered the language in the statutes. Previously, the language called for taxes to be assessed on the "assessed valuation." Legislative Bill 187 changed "assessed valuation" to "actual valuation." Changing the language generally allowed county assessors to make adjustments in property value, thus altering the tax calls as levies could go up or down. Section 227 of the bill amended 79-432, adjusting the aggregate school tax levied for general school purposes in Class I, II, III,

and VI to \$.42. This was an increase of \$.30, as the old statute stated that the mill levy was to be in excess of 12 mills on each \$100.00 of assessed valuation. Another component of this bill restated the method for levying taxes. Previously, the levy was stated in mills. This bill altered the language to "cents," on \$100.00 of actual value.<sup>736</sup>

Legislative Bill 285 (1979), introduced by the Revenue Committee was an act to adopt the Political Subdivision Budget Limit Act of 1979, amending section 77-1356, Revised Statutes Supplement 1978. Dollars were limited and this bill limited spending amounts for all county government and school districts. A 7% lid was imposed.<sup>737</sup>

Legislative Bill 302 (1979) was introduced by the Revenue Committee and amended section 77-27, 119, Reissue Revised Statutes of Nebraska, 1943. Tax payers were now to place their school district number on their income tax forms. This bill added that the Department of Education, with the assistance of the Department of Revenue, would compile school district data, as required, and also include

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<sup>736</sup> 1979 Neb. Laws, LB 187.

<sup>737</sup> Id, LB 285.

the total adjusted gross income of each school district in the state. This legislation would provide vital statistical data regarding school districts and the income of residents within each school district. Compliance and confidentiality with state and federal laws was essential.<sup>738</sup>

In 1980, the Second Session of 86th Legislature began. Property tax issues continued to be at the forefront of legislative concerns. Legislative Bill 882 (1980) changed the distribution formula on exemptions of agricultural machinery, inventory, grain and livestock. It also exempted earth moving equipment, which was used by farmers for conservation purposes. The purpose of this bill was to solve problems with the distribution formula in LB 518 (1977). Legislative Bill 518s (1977) constitutionality was currently being challenged by the Nebraska State Education Association (NSEA). Each county was to get the same amount of property tax lost through LB 518 (1977), plus 10% of the property tax increases in that county. The taxes were to be distributed within the county based on the total taxes levied in the subdivision compared to the total taxes levied in the county for all subdivisions.

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<sup>738</sup> Id, LB 302.

Legislative Bill 486 (1980), amended section 79-1331, 79-1334, 79-1336, 79-1337, 79-1338 and 79-1344.01, Reissue Revised Statutes of Nebraska, 1943, section 79-1333, Revised Statutes Supplement, 1978, section 79-1335, Reissue Revised Statutes of Nebraska, 1943, as amended by Laws 1979, LB 187, section 247, relating to the School Foundation and Equalization Act, and changed the methods of distributing funds. Section 1, (3) defined per pupil costs. The district's current operating expense, listed in the district's annual financial report to the State Department of Education was to be divided by the ADM pupils for the preceding school year.

Section 2 amended 79-1333, Revised Statutes Supplement 1978. Beginning with the 1980-81 school year, all state financial assistance to districts pursuant to section 79-1330 and 79-1344 was to be based on the annual financial reports for the 1978-79 school year and the fall school district membership report for 79-80. In 1981-82, and each school year thereafter, the state financial assistance was to be based upon the second preceding school year's annual financial report as well as the preceding school year's fall school district membership report.

The calculation rate for each district and the county nonresident tuition funds from the School Foundation and Equalization Fund were adjusted in 79-1334. Kindergarten students were to receive 5/10 rate of that established for pupils in grades 1-6; the rate per pupil in grades 7-8 was to be 1 2/10 times the rate established for a pupil in grades 1-6, while the rate in grades 9-12 was to be one and 4/10 times the rate established for a pupil in grades 1-6. The rate per pupil in grades 1-6 was to be determined by multiplying the enrollment of each of the respective grade categories by the above determined rates and dividing the result into the amount which had been appropriated as foundation aid.<sup>739</sup> Previously, the statute identified each grade division with a specific dollar total. As a result of inflation, this language kept the intent of the legislation the same, but provided increased flexibility with regard to inflation. In essence, LB 486 (1980) guaranteed incentive aid as computed under the provisions of section 79-1334 and 79-1340.

Legislative Bill 964 (1980), proposed by Senator DeCamp, was a Constitutional Amendment to Article VII.

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<sup>739</sup> Id, LB 486.

The intent of this amendment was to add new language to Nebraska's Constitution. It read

The Legislature shall enact a method of financing public education in order to meet the state's responsibility to provide maintenance and support of a thorough and efficient system of common schools. The method of financing the common schools shall not rely on property taxes to such an extent that an unfair and excessive burden is imposed on the state's property.<sup>740</sup>

Nebraska continued to rely heavily on property taxes and because the constitution language did not contain thorough or efficient language, DeCamp suggested that it be included. With the issues of equality, efficiency and thoroughness at question in Nebraska, it was surprising that little was done to promote or defeat the proposed amendment.

Exactly what passage of the amendment implies, depends on who is asked. DeCamp, the sponsor, says it doesn't imply, as critics suggest, mandatory consolidation of school districts. He allows that small districts may choose that course in attempting to comply with the constitutional requirement for efficiency.

He said it would put the gun to the head of the 1981 Legislature, forcing lawmakers to restructure the tax system. It would bring an end, he said, to what he calls "the biggest dog on the block system," the legislative practice of granting tax relief to those interests with the toughest lobby.<sup>741</sup>

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<sup>740</sup> Id, LB 964.

<sup>741</sup> T. A. Fogarty, Little done to promote, defeat proposed schools amendment, *Lincoln Journal*, September 23, 1980, 5.

Another part of the proposed amendment called for limiting the amount of support that a school system could derive from property taxes. The limit was established at 45%. Noted tax-relief spokesman Ed Jaksha stated that he objected to promotion of the amendment as a tax-relief measure. He claimed that the proposal addressed only limitation of property taxes and if they were reduced, there would have to be a tax shift, probably to income and sales, to allow state aid to schools to continue.

"True tax relief, Jaksha said, would come only from a proposal that puts an overall limitation on the amount of taxes, or by a limitation on the total amount government may spend."<sup>742</sup> He estimated that the amendment could invite litigation. The phrase "thorough and efficient" had been key words that enhanced the role of the courts in school finance cases in other states. This law was approved on April 25, 1980 without the approval of the Governor. The amendment was placed on the November general election ballot but was defeated by a vote of 311,203 against the issue and 245,845 in favor of the issue.<sup>743</sup>

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<sup>742</sup> Id.

<sup>743</sup> 1993 Nebraska Blue Book, 229.



In October 1980, the Legislature received feedback from legislative aid Dale Siefkes regarding a survey of school districts. The legislature had granted an increased \$40 million in state aid as a means of reducing property taxes. In reality, the aid resulted in \$5 million worth of property tax reductions while the remaining \$35 million balanced losses of property tax.<sup>744</sup> Increasing the state's contribution for aid to public schools continued. If a policy was adopted to require the state to contribute 45%, a significant drop in property taxes was likely. King, Executive Director for the Nebraska State School Boards Association, urged the Legislature to consider this option. Don Andrews, a lobbyist for Omaha Public Schools echoed the concern.

In Omaha's case, additional assistance is needed to prevent a "disaster" because of the district's zero percent budget increase limitation imposed by local voters last fall, Andrews said. Between the lid and double-digit inflation, Andrews said, the district is "really going to be hurting" without more state financial assistance.<sup>745</sup>

In December 1980, the Nebraska Supreme Court struck down LB 508, the 1978 law which was designed to ease a

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<sup>744</sup> J. Joyce, School aid increase cut taxes \$5 million, *Lincoln Star*, October 9, 1980, 1.

<sup>745</sup> Id. .

school district's financial burden, when an electric utility construction project was initiated in new areas. These construction projects brought a large influx of new students to the school system. The legislature felt that this would be a burden to a school system and passed legislation requiring the company to provide dollars to help support schools with increased student populations due to the construction project. In a unanimous decision, the state's high court agreed with the decision that Lincoln County District Court Judge Keith Windrum reached.

It declared that the payments required by the law constituted taxes or payments in lieu of taxes, and "were not payment of a debt or for services rendered by the school districts for the benefit of the power district."<sup>746</sup>

An additional Nebraska Supreme Court decision impacting schools on December 29, 1980, declared that the distribution formula for the \$70 million personal property tax relief fund was unconstitutional. Larry Vontz, fiscal officer for the Nebraska Department of Education stated that one third to one half of the state's K-12 districts would suffer if the problem was not resolved.<sup>747</sup> The 7% lid that was imposed

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<sup>746</sup> B. Kreifel, School-burden law struck down, *Lincoln Journal*, December 5, 1980, 20.

<sup>747</sup> J. Kennedy, Double state payment asked to help money-tight schools, *Lincoln Journal*, December 30, 1980, 10.

in 1978 caused districts to spend their cash reserves, so borrowing dollars might be the only available funding resource left to schools. The State Department of Education asked Vontz to go to the Legislature and ask them to make a double payment in February from the regular \$95 million state school aid fund. This fund was not affected by the Supreme Court ruling. Payments were made on a monthly basis, nine times throughout the school year. State Commissioner of Education, Anne Campbell, stated that she would make a similar request.<sup>748</sup> If the schools received a double payment in February, officials felt that the districts would be able to complete the school year. Campbell reiterated

...a long-term solution through a new personal-property-tax relief fund formula won't come easily... "It's a hot subject. It will take a lot of debate" in the Legislature.<sup>749</sup>

Thus, the climate for beginning the 87th Legislative Session would again encourage lawmakers to address school finance and tax issues.

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<sup>748</sup> Id.

<sup>749</sup> Id.

The 87th Legislature Session: 1981

Governor Thone began his third year as Nebraska's governor when the 87th Legislature convened in 1981. There was legislation that needed to be modified due to legal challenges. Legislative Bill 15 (1981) was introduced by the Intergovernmental Cooperation Committee. One purpose of this bill was to state the intent of the bill, something that was suggested as a possible legal issue. It also repealed section 79-1370, Revised Statutes Supplement, 1980. This legislation was in direct response to the Supreme Court action taken on LB 508 (1978) in December. Payment was no longer required, but if a power district wanted to become a contributor to the school district, there were now procedures in place.

Legislative Bill 165 (1981) amending 79-1103.05, Reissue Revised Statutes of Nebraska, 1943, and provided tuition payments by the State Department of Education for aggrieved student situations. In these situations, the State Board of Education determined that it was in the best interest of the student to attend a school outside the state of Nebraska. The bill stated that the state would pay up to 50% of the high school tuition costs but the tuition

was not to exceed \$5,375. If there were insufficient funds to provide 50% of the tuition fees for the students who qualified in this category, then the appropriated funds were to be prorated among the students who did qualify.<sup>750</sup>

The oil crisis in the Middle East, prompted legislation for more efficient energy use. Legislative Bill 257 (1981) provided energy efficiency grants to school districts. Schools were able to replace old windows and heating systems with more efficient ones. School districts could write grants requesting these additional dollars to fund various conservation projects.<sup>751</sup>

Legislative Bill 318 (1981) was introduced by the Education Committee. This bill was developed because of concerns that school districts would not have ample funds to meet payroll or pay bills. An appropriation of \$70 million in state aid was granted to reimburse lost revenues from farm equipment, livestock and business inventory exemptions. Governor Thone vetoed the bill, however it was passed again over his veto and approved on May 29, 1981, assuring an early payment of state aid to districts in need. Both Omaha

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<sup>750</sup> Id, LB 165.

<sup>751</sup> Id, LB 257.

and Lincoln, the State's two largest school systems, had sufficient cash reserves on hand. This bill amended 79-1333.01, Reissue Revised Statutes of Nebraska, 1943, and section 79-1333 and 79-1334, Revised Statutes Supplement, 1980.<sup>752</sup>

The economic status of the state was still a concern. A special legislative session was called in November 1981 to reduce, defer and delete some appropriations. The State Aid, Lunch and Reserve Teacher fund were reduced from \$377,873 to \$366,531. Dollars were tight and this trend would continue.

In 1982, additional bills were passed impacting school finance and taxation. Legislative Bill 309 (1982) permitted the transfer of district property. It was possible to petition to have all owned property placed in one school district.<sup>753</sup> Another bill, LB 642 (1982) clarified that no tuition was to be charged for a child whose parents were divorced if the child attended school in a district in which either parent resides.<sup>754</sup>

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<sup>752</sup> Id, LB 318.

<sup>753</sup> Id, LB 309.

<sup>754</sup> Id, LB 642.

Legislative Bill 816 (1982) was a revenue bill which amended 77-27, 136 77-27, 137, 77-27, 137.01 and 79-2651, Revised Statutes Supplement, 1980 and provided state aid to political subdivisions. For the fiscal year 1982-83, and each fiscal year thereafter, the legislature was to appropriate an additional \$44,813,000 to the School Foundation and Equalization Fund. This was an additional sum over and above dollars that had been previously allocated to the School Foundation and Equalization Fund.<sup>755</sup>

Legislative Bill 933 (1982) adjusted the tuition for nonresident students attending high school outside the county if a Class VI school was not maintained within the county. The bill amended 79-4,102. The rates were to be determined annually by the receiving district on a uniform taxation basis for the support of the high school program. A specific method of calculation was defined in the law. Section 4 of the bill amended 79-1333, Revised Statutes Supplement, 1981 which again changed the distribution time for allocated dollars. The State was to distribute payments in nine equal payments beginning in October 1982 for the \$95 million allocation and the additional funds were

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<sup>755</sup> Id, LB 816.

to be disseminated in seven monthly payments beginning in December. The December payments corresponded with LB 816 (1982) appropriations.<sup>756</sup> There continued to be a section in the bill that addressed enrollment increases and allowed for adjustments if enrollments increased.

The Nebraska Tax Research Council annually completed a study regarding taxation within the state. The study's purpose was to monitor what was happening to Nebraska's taxes and keep the taxpayers aware of the continually increasing costs of local government. According to data published in the *Lincoln Star*, Nebraska's school systems received an average of 59.51% of all property tax dollars. The study used data in 25 Nebraska cities. The study showed:

Assessed valuation increased 3.57 percent in fiscal 1982 over 1981, and soared 144 percent during the 10-year period from 1972-82. Assessed valuation, coupled with the tax levy, equals total tax dollars spent. Valuations increased in 1982 in 24 of the 25 cities. Only Nebraska City recorded a decrease... School tax dollars increased 10.01 percent this year and 72.95 percent for the decade.<sup>757</sup>

Although Nebraska's political subdivisions were under a

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<sup>756</sup> Id, LB 933.

<sup>757</sup> Schools receive 59.51% of taxes, *Lincoln Star*, April 7, 1982, 22.



spending lid of 7%, and some tax dollar percentages showed an increase of more than 7%, the council emphasized that political bodies did not ignore the spending lid. It explained that there were various exclusions and exceptions allowed by law.

A Special Session of the Legislature was called by the Governor in November 1982. The purpose of this session, as defined in LB 1 (1982), was to reduce appropriations that had been previously approved by the 87th Legislature during the 2nd Session.<sup>758</sup>

Dollars continued to be tight for school districts. School superintendents were looking for alternative methods to provide additional dollars. Omaha Superintendent, Jack Taylor, and Millard Superintendent, Don Stroh, agreed that property taxes and state aid were no longer adequate for public school funding. Two ideas were being investigated by these districts. Taylor suggested that the Omaha Board of Education look into a foundation. Foundations are funded by private donations and would be an excellent source of additional funds. Stroh was interested in the foundation too but also wanted to start

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<sup>758</sup> 1982 Neb. Laws, 2nd Special Session, LB 1.

a lottery to raise additional money.

The two superintendents are part of a national trend of school officials seeking new sources of school funding to combat inflation, public resistance to higher taxes and declines in federal and state aid. . . Spawned in California, where tax-cutting Proposition 13 affected a number of school systems, the public school foundation movement has gained increasing popularity.<sup>759</sup>

Questioning the feasibility of foundations and lotteries for public education, an editorial in the *Lincoln Star* suggested that financing schools was the responsibility of everyone. Weakening support of public education would be risky business and there was danger in an approach that would make people less inclined to want to support the schools through taxation.

Our public school system ought to be a matter of high priority in the general tax system. Offhand, we would say that schools and police and fire protection are all essential government services and will always be supported by taxpayers without a great deal of grumbling... Public education is the bread and butter of our existence, and should be preserved at whatever the cost. And that means, almost totally, at the cost of all citizens. The only way this can be achieved is through general taxation and that is the only way the system will ever be preserved.

Any system that allowed schools to establish a foundation or operate a lottery would have to solve the problem of equality of education throughout that system. It would be most

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<sup>759</sup> *Lincoln Star*, Donation and lotteries viewed as possible school funding means, December 27, 1982, 5.

unfortunate if fund-raising programs come to the point where rich neighborhoods had well equipped schools and high paid teachers and poor neighborhoods had ill equipped schools with low paid teachers.<sup>760</sup>

88th Legislative Session: 1983

Governor Robert Kerry was inaugurated in January 1983. His term in the governorship would look different than any previous governor. Kerry was young, enthusiastic, divorced and a Democrat. He had served in Vietnam, came home with a purple heart and won a Congressional Medal of Honor. Trained as a pharmacist, but converted to a restaurant owner, at 38 years of age, Kerry brought renewed energy to the state's highest office. He spoke about getting Nebraska moving again, and he favored spending more money for education. Although winning with 50.7% of the popular vote over "colorless conservative" Thone.<sup>761</sup> Kerry asserted, "we will pay only for those necessary facets of government which we can afford under realistic tax rates."<sup>762</sup>

The tax laws continued to be revised during his tenure. The economy of the state was not on solid ground yet.

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<sup>760</sup> *Lincoln Star*, Financing of schools responsibility of all, December 29, 1982, 7 Editorial.

<sup>761</sup> J. C. OLSON & R. C. NAUGLE, HISTORY OF NEBRASKA (Lincoln, NE: University of Nebraska Press, 1997), 389.

<sup>762</sup> *Id.*, 389.

Legislative Bill 59 (1983) provided for an increase to the sales tax rate and changed provisions for aid to counties, incorporated municipalities and school districts. It also created a new fund to collect the additional tax. A Cash Reserve Fund was established. State sales tax was to increase one half of one percent.<sup>763</sup>

Legislative Bill 124 (1983) amended the provisions of the energy grants relating to lighting and thermal efficiency standards. Schools were eligible to apply for these grants. This new legislation stated that if no notification was received within 45 days regarding grant denial then it was to be considered as approved.<sup>764</sup>

Legislative Bill 624 (1983) was another bill related to asbestos in schools. School districts were required to make a plan for removal and a tax assessment could be added to local district levies to provide for removal. Estimates for removal of asbestos had to be presented no later than August 1985.<sup>765</sup>

The 88th Legislative Session began its Second Session

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<sup>763</sup> 1983 Neb. Laws, LB 59.

<sup>764</sup> Id, LB 124.

<sup>765</sup> Id, LB 624.

in January 1984. Significant changes occurred during this session. Undoubtedly, education was important to Nebraska. Through the passage of LB 994 (1984), Nebraska identified its mission in public education and the state's role and responsibility in accomplishing this task. Legislative Bill 994 would impact education dramatically.

Legislative Bill 994 (1984) was introduced by the Education Committee with Senator Tom Vickers as chair. Legislative Bill 994 declared the mission of the State of Nebraska, through its public school system. It stated:

- (1) Offer each individual the opportunity to develop competence in the basic skills of communications, computations, and knowledge of basic facts concerning the environment, history, and society;
- (2) Offer each individual the opportunity to develop higher order thinking and problem-solving skills by means of adequate preparation in mathematics, science, the social science, and foreign languages and through appropriate and progressive use of technology;
- (3) Instill in each individual the ability and desire to continue learning throughout his or her life;
- (4) Encourage knowledge and understanding of political society and democracy in order to foster active participation therein;
- (5) Encourage the creative potential of each individual through exposure to the fine arts and humanities;
- (6) Encourage a basic understanding of and aid the development of good health habits; and

- (7) Offer each individual the opportunity for career exploration and awareness.<sup>766</sup>

A second part of this bill discussed the Legislature's intent of a public school system. In Section 2, the Legislature stated that education was an investment in human resources and would impact the quality of life and economic development of the state. The Legislature stated that it wanted to join with local government in a partnership to further advance the quality and responsiveness of the education system.<sup>767</sup> It further stated that:

- (2) It is the intent of the Legislature to encourage and support all public schools in this state in order to carry out the state's mission to promote quality education as described in section 79-4, 140.01. ...The Legislature intends to foster high standards of performance for teachers, students, administrators, and programs of instruction in the public schools so that each person of school age shall have the opportunity to receive a quality education regardless of the size, wealth, or geographic location of the school district in which such person resides.

and

- (4) The Legislature recognizes that the resources of the state should be used efficiently to support the public school system of this state, The Legislature intends to foster, encourage, and where necessary, mandate the

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<sup>766</sup> 1984 Neb. Laws, LB 944.

<sup>767</sup> Id.

cooperation of all public education service providers, including public school districts, education service units, and the State Department of Education, in order to achieve a quality education system.<sup>768</sup>

Another funding component with LB 994 (1984) dealt with extending teacher contracts to assist students in need of remedial teaching or individualization and to provide enrichment curriculum.

Legislative Bill 944 (1984) also amended 79-1247.02. In this selection, the terms equality of opportunity and quality programs are introduced. Specifically, the amendment stated,

- (1) To ensure both equality of opportunity and quality of programs offered, after July 1, 1985, all public schools in the state shall be required to meet quality and performance-based approval or accreditation standards as prescribed by the State Board of Education. The State Board of Education shall establish a core curriculum standard, which shall include vocational education courses, for all public schools in the state. Accreditation and approval standards shall be designed to assure effective schooling and quality of instructional programs regardless of school size, wealth, or geographic location. The State Board of Education shall recognize and encourage the maximum use of cooperative programs, including the sharing of administrative and instructional staff, between school districts for the purpose

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<sup>768</sup> Id.

of meeting the approval and accreditation requirements established pursuant to this section and section 79-328.<sup>769</sup>

Another component of this bill required state testing for perspective teachers and administrators. It also changed the requirements for school attendance for both elementary students and high school students. Previously, this requirement was stated in days. The new legislation required 1032 hours for elementary students and 1080 instructional hours for high school students. Previously, the high school requirement was 175 days. This amended 79-201.06, Reissue Revised Statutes of Nebraska, 1943.<sup>770</sup>

Other legislation was passed during this session as well. Legislative Bill 768 (1984) amended section 79-445, Revised Statutes Supplement, 1982 and authorized attendance of students whose residency changed during the school year. This bill allowed students the ability to continue attending the same school for the remainder of that school year without paying tuition.<sup>771</sup> Additional changes were made to nonresident high school tuition.

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<sup>769</sup> Id.

<sup>770</sup> Id.

<sup>771</sup> 1984 Neb. Laws, LB 768.



Legislative Bill 930 (1984), authored by the Education Committee, amended 79-4,102, Revised Statutes Supplement, 1982. The tuition charges for nonresident students were changed from the receiving district to the finance division of the State Department of Education, based on data provided to the State Department pursuant to requirements of section 79-451, 79-1331 and 79-1333.02 and other data. The complexity of determining these fees increased. Also, with the State Department regulating the process, it was assumed that there would be increased consistency.<sup>772</sup> An accompanying appropriation bill was approved. Legislative Bill 930A (1984) appropriated \$15,000 from the General Fund for the period July 1, 1984 to June 30, 1985, and \$3,000 from the General Fund for July 1, 1985 to June 30, 1986 to the State Department of Education for program 508, to aid in carrying out the provisions. Salaries were not to come from this funding.<sup>773</sup>

Legislative Bill 1126 (1984) was presented by Senator Nichol for the Governor. Section 6 stated that for the fiscal year 1984-85, and each fiscal year thereafter, the

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<sup>772</sup> Id, LB 930.

<sup>773</sup> Id, LB 930A.

Legislature was to appropriate no additional dollars to the School Foundation and Equalization Fund. As a result of this legislation, no additional dollars would be added to the School Foundation and Equalization Fund. Bank failures, a continuing farm crisis and a depressed economy were factors resulting in this decision.

The School Foundation and Equalization Act appeared to be unable to meet the current needs of financing the public schools. Justin King, Executive Director of the Nebraska Association of School Boards, claimed that state school aid should be raised from the current 30% to the national average of 45%. In order to raise the money to do so, King suggested that both sales and income tax be raised 1%. King went on to say that the state must ease the property tax burden and equalize educational opportunities, while retaining local control. Senator Tom Vickers, Education Committee Chair, claimed that the goal projected by the school board association was not unrealistic, despite the failure of state-aid increases during the 1984 Legislative Session. The rural voices were being heard. Vickers stated that rural people were very concerned about taxes and the impact of a possible constitutional amendment regarding

farmland values.<sup>774</sup>

Urban taxpayers are equally unhappy, Vickers said. "I think the pressure is really going to be there" in the 1985 session to increase state aid and broaden the tax base, he said. "Rural and urban are going to have to work together." Vickers said he favors an increase in the present sales tax rate, but not broadening of the base to include a sales tax on services. . . .

The association released results of a study that indicate that although per pupil expenditures rose from \$1,394 in 1977-78 to \$2,297 in 1982-83, or 8 percent a year, the actual increase adjusted for inflation has been only 1 percent annually. During that period, enrollment statewide fell from 302,000 to 266,000.<sup>775</sup>

Additional data fueling possible legislative change in the school funding formula was released by the Education Department for 1983-84. School tax levies ranged from \$2.55 per \$100 of valuation in Decatur to \$.20 in Morrill County District 93.<sup>776</sup> State Commissioner of Education, Joe Lutjeharms, said that Nebraska was not putting its local school tax support or state aid where most of the students were. Furthermore, he stated that the primary reason for the existence of Class I districts was the tax advantages. Data reported in the 1983-84 report revealed:

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<sup>774</sup> J. Kennedy, Official: Raise school aid to 45 percent, *Lincoln Journal*, August 29, 1984, 32.

<sup>775</sup> Id.

<sup>776</sup> J. Kennedy, School taxes, Disparity prime factor in the cost of education, *Sunday Journal Star*, September 2, 1984, B-1.

Residents in Class Is tend to pay lower taxes to support their own schools, but the Class Is get a big chunk of their funds from state aid. All but three of the 10 districts that receive the most state aid per pupil are Class Is. The 10 school districts with the lowest tax levies are all Class Is.

Some small, poor Class Is may double or triple their state aid just by adding or dropping a student or two, but the Education Department has been unable to change the aid formula to make it more equitable, said Deputy Commissioner Larry Vontz.<sup>777</sup>

Vontz agreed that the present state aid formula had weaknesses. He agreed that state aid to districts totaling \$.20 levy might not be appropriate. The formula also did not consider the cost of urban problems and population shifts. Vontz was unsure about the impact of LB 994 1984), the education bill that was passed by the Legislature in 1984. Perhaps it would add to a district's financial woes.<sup>778</sup>

A Special Legislative Session was called on August 16, 1984. There were financial issues that needed to be resolved both in the banking and taxation areas. For taxing purposes, the Legislature proposed a constitutional amendment authorizing them to classify agricultural and

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<sup>777</sup> Id.

<sup>778</sup> Id.

horticultural land that was used solely for that purpose and make it a distinct class of property.<sup>779</sup> Legislative Resolution 7 was placed on the ballot in the General Election in November 1984. It was approved by the voters two to one.

#### The 89th Legislative Session: 1985

The 89th Legislative Session convened in January 1985. Amid turmoil of the continued farm crisis and bank closures, a significant piece of school legislation was passed. Legislative Bill 662 (1985) was known as the school consolidation or reorganization bill. The bill was introduced by Hoagland, Johnson, Landis, Lynch and Goodrich. It was approved by the governor on April 24, 1985, and amended section 79-402.07, 79-411, 79-426.11, 79-426.23, 79-426.25, 79-426.26, 79-451, 79-490, 79-1107, and 79-12.104, Reissue Revised Statutes of Nebraska, 1943, and section 79-701, Revised Statutes Supplement, 1984. The purpose of the bill was to provide that certain Class I school districts merge, affiliate or become a part of other school districts. The voluntary reorganization was to take place from July 1986 through March 1989. The financing of

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<sup>779</sup> 1984 Neb. Laws, 1st Special Session, LR 7.

**schools was discussed in section 17.**

**The Legislature hereby recognizes and establishes that providing an adequate financing system for primary and secondary public schools of the state is ultimately a state responsibility. The Legislature further finds that any financing system must not unduly rely upon excessive or unfair property taxes as the financing base for such educational system.**

**Therefore, recognizing the above facts, the Legislature hereby established that after fiscal year 1986-87, no more than 45 per cent of the total operational costs of the public school system shall be derived from taxes on real property and that the Legislature shall from time of passage of this legislative bill begin the process necessary to accomplish the above-stated goals.**<sup>780</sup>

**Section 18 of the bill detailed a finance system that would increase the state contribution. Starting on January 1, 1987, a sales and use tax of 1% in addition to the tax imposed under Chapter 77, article 27 would be put in place to fund schools. Section 19-25 of LB 662 (1985) further declared:**

**The Legislature hereby declares that it is the intent and purpose of sections 19 to 25 of this act to provide:**

- (1) An examination of school financing, including but not limited to:**
  - (a) The heavy reliance on property tax;**
  - (b) The decreasing valuations of agricultural land;**
  - (c) The basis on which state aid is distributed;**

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<sup>780</sup> 1985 Neb. Laws, LB 662.

- (d) The potential effect of implementing the constitutional amendment authorizing agricultural and horticultural land to be taxed as a separate and distinct class of property;
  - (e) The use of nonresident tuition;
  - (f) Revenue from school lands;
  - (g) Equitable taxation; and
  - (h) Recognition of higher costs in rural areas
- (2) An examination of the quality of education provided in counties throughout the state; and
- (3) A committee to propose recommendations for alleviating the inequities in the property tax burdens imposed to finance education and for addressing deficiencies in the current educational system.<sup>781</sup>

Sections 20 to 25 further detailed specific procedures to accomplish this task. It appeared that the Legislature was ready to lead the change effort in both school district reorganization and school finance.

Legislative Bill 592 (1985) amended section 79-447 Reissue Revised Statutes of Nebraska, 1943, and section 79-445, Revised Statutes Supplement, 1984. Section 1 dealt with nonresident students and clarified that nonresident students could be admitted without paying tuition if the students were in actual physical custody of a resident in the school district. Denying privileges of this student might be denying them the guaranteed right of free common

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<sup>781</sup> Id.

school privileges. . Section 2 amends 79-447, Reissue Revised Statutes of Nebraska, 1943, and admits nonmilitary federal employees residing in national parks or national monuments, to school, and charges a tuition of \$50 per week if in grade school, up from \$3, and \$75 per week, up from \$6, if the student is in high school. If there were more than 10 students in this category, and funds were insufficient, a pro rata share would be appropriated.<sup>782</sup>

Another important bill passed during 1985 altered tax bills for farmers. Legislative Bill 271 (1985) was introduced by the Revenue Committee and was to implement the constitutional amendment that was adopted in 1984, which called for separate treatment of agricultural land, basing the value on earning capacity.<sup>783</sup>

The farm crisis was impacting school finances in various school districts throughout Nebraska. Superintendent Dennis Spense, of Rock County High School, a Class VI high school district, reported that a combination of high property tax and delinquent tax payments, caused by

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<sup>782</sup> Id, LB 592.

<sup>783</sup> Id, LB 271.



the sagging farm economy, was trying his patience.<sup>784</sup> The delinquencies in payments had caused staff reductions and program adjustments. Currently the rate of delinquency was approximately 12 to 15 percent, but a potential rate of 25 percent was possible.<sup>785</sup> The Sandhills area of the state was hit the hardest by the depressed farm economy.

A major financial blow can be dealt by just one or two large farmers or ranchers not paying their taxes...Keya Phaha County Treasurer Tim Stephen said, "Our basic problem is population. If our population was more, it wouldn't hurt us as bad."... Margaret L. Higgins, Gage County Treasurer, said ... "It's the farm economy...It has to be. We have problems here. We have had more bankruptcies than I've ever seen."<sup>786</sup>

Governor Kerry continued to push for reform through his last legislative session. The Second Session of the 89th Legislature convened in January 1986. Additional school funding bills were approved.

Legislative Bill 212 (1985) was introduced by Warner. This bill was related to the Uniform Disposition of Unclaimed Property Act amending section 69-1305 and 69-1317, Reissue Revised Statutes of Nebraska, 1943. Section 2

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<sup>784</sup> M. Mulvey, Farm crisis robs schools of much-needed funds, *Sunday Lincoln Journal Star*, September 15, 1985, 1.

<sup>785</sup> Id.

<sup>786</sup> Id.

clarified that on or before November 1 of each year, any money in excess of \$50,000 remaining in the fund was to be transferred to the Permanent School Fund.<sup>787</sup>

Legislative Bill 84 (1985) was introduced by Wesely from Lincoln. This bill was related to Class IV schools and allowed this classification of school to have its own district treasurer, rather than using the city treasurer. The duties of the treasurer were amended and defined in Section 4, 79-911, Reissue Revised Statutes of Nebraska, 1943.<sup>788</sup>

The Education Committee introduced LB 419 (1985). This bill amended 79-1333.01, Revised Statutes Supplement, 1984, dealing with financial support to schools. If a school district's membership increased more than one half of one percent from the year prior, the total financial support pursuant to section 79-1336 was to increase by the percentage of increase, up to a maximum of ten percent of the student membership over the previous year. The language previously indicated that the percentage of increase could

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<sup>787</sup> 1986 Neb. Laws, LB 212.

<sup>788</sup> Id, LB 84.

be up to 100%.<sup>789</sup>

Legislative Bill 757 (1985) noted several changes impacting school finances. A change occurred with regard to language in the School Foundation and Equalization Act. Section 3, 79-1331 was amended to state that a membership report was due in January, which was to identify children enrolled in the district on the first Friday of January, who were between the ages of 5 and 21 years of age. Section 4, 79-1333, Revised Statutes Supplement, 1984, was further amended allowing school districts to use either the Fall report or the January report for membership. This gave schools a more accurate tool for requesting funds.<sup>790</sup>

The impact of LR 7, a constitutional amendment approved by the voters in November 1984, classifying agricultural land differently for determining the ad valorem tax, was noticed as tax bills were disseminated.

Town residents in rural school districts can expect to pay higher property taxes as a result of the state law linking the taxable value of agricultural land to its income-producing potential, says Lancaster County Assessor Bob Magee.

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<sup>789</sup> Id, LB 419.

<sup>790</sup> Id, 757.

Under a state law passed in 1985, farmland would be worth 13.5 percent less statewide and 26.3 percent less in Lancaster County.

Magee said the property owners hit hardest by valuation of changes will be urban residents of predominantly rural school districts.

...Crete Superintendent John Rogers said there will be a "whale of a difference" for urban residents in his school district. He anticipates a shift of \$251,000 in the district which had tax receipts of about \$2 million last year. Rogers said his district probably will request a levy increase from \$1.54 per \$100 of valuation to \$1.82. For the owner of a \$50,000 home this would mean about \$140 per year in taxes.<sup>791</sup>

A petition drive garnered 83,554 signatures to place a referendum on the ballot to repeal LB 662 (1985). Known as the "school consolidation law," this bill required Class I school districts to consolidate or affiliate with kindergarten-through-12th grade districts by September 1, 1989. It also imposed a 1 cent sales tax increase that was earmarked for state aid and reducing property taxes. Both sides of the issue had key political figures and groups rallied behind their cause. Supporters in the Legislature called the bill "the fruit of years of legislative efforts to reduce the number of Nebraska school districts."<sup>792</sup> The bill's proponents stated that it would promote tax equity,

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<sup>791</sup> *Lincoln Journal*, Towns about to feel ag land valuation law, June 4, 1986.

<sup>792</sup> *Lincoln Star*, Fierce fight expected over state school consolidation law, July 7, 1986, 14.

improve the quality of education and spur economic development.<sup>793</sup> Those opposing the bill stated that the bill guarantees a sales tax increase, loss of local control of schools and no property tax relief.

The battle lines were clearly drawn. The petition initiative was on the ballot in the November 1986 general election. A second initiative asked the voters to decide whether or not seat belts should be worn. Both issues were defeated. Legislative Bill 662 (1985) and efforts toward school consolidation and tax equity were defeated. The race for governor was a hotly contested battle too.

#### The 90th Legislative Session: 1987

The 90th Legislative Session began on January 7, 1987. Republican Kay Orr, the first woman governor for Nebraska as well as the United States, was inaugurated. She was not a stranger to politics, as she helped manage Thone's successful race for governor. She served as the State Treasurer during Kerry's governorship and often debated against him on fiscal issues. Taxation had been a key issue with every Nebraska administration since the 1960s. Major changes in tax policy occurred during Orr's tenure and

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<sup>793</sup> Id.

numerous bills impacted school finance legislation.

Legislative Bill 182 amended the laws related to the high school tuition rate for nonresident pupils. Class I districts were continuing to decline in number. As a result, new language was added, clarifying that the calculations were to be based on "existing" Class I districts. The State Department of Education was to recertify the charges yearly. The bill amended 79-4, 102, Revised Statutes Supplement, 1986, section 1.<sup>794</sup>

Legislative Bill 529 (1987) delayed the implementation of a previously approved Professional Staff Development Program that was part of LB 994 (1984). Amending section 1 of 79-4, 140.04, Revised Statutes Supplement, 1986, this bill noted that the Staff Development Program would not be initiated until the Legislature appropriated funds. The initial appropriation was intended for July 1, 1987.<sup>795</sup>

Legislative Bill 127 (1987) amended 79-432 and 79-548, Reissue Revised Statutes of Nebraska, 1943. This bill changed the provisions relating to the adoption of the school budget for Class II schools. This bill aligned

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<sup>794</sup> 1987 Neb. Laws, LB 182.

<sup>795</sup> Id, LB 529.

Class IIs with annual budget procedures identical to Class III, IV, V and VI schools. Thus, for Class I schools, except for taxes levied to pay principal and interest on bonds, the levy was not to be greater than \$.42 per one hundred dollars on the actual value of all the taxable property in this district. If the Class I wanted to increase the levy, it could do so by approving the increase at an election or special meetings where 50% of the people approved.<sup>796</sup>

Governor Orr placed economic development issues in the forefront. Her agenda was clear: provide tax relief and incentives to both large and small businesses. Many midwest states were vying for new manufacturing jobs, agricultural research jobs or data processing centers. To recruit business interest in Nebraska, the legislature adopted several bills to help the economic status of the state. Legislative Bill 270 (1987), The Employment Expansion and Investment Incentive Act, provided for income tax credits for businesses which increased employment by hiring two new employees and made a new investment in the business of at

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<sup>796</sup> Id, LB 127.

least \$75,000.<sup>797</sup> This bill targeted small business interests. On a larger scale, LB 775 (1987), known as The Employment and Investment Growth Act, provided for benefits for businesses which invested or increased employment by specific amounts. Employment numbers needed to increase by 30 employees and a \$3 million dollar investment in the business was required. Bigger businesses, guaranteeing a \$10 million investment and at least 100 new jobs received additional tax incentives including a 15-year personal property tax exemption for computers, aircraft, and business equipment used in connection with the project. The third level of qualification was for a business that was going to invest \$20 million and had fewer than 30 new employees would qualify for only the refund of sales taxes paid on tangible personal property used in the project.<sup>798</sup>

Both LB 775 (1987) and LB 270 (1987) sparked employment interest opportunities. The question remained about what impact these acts would have on the state's infrastructure. At this point the legislature was willing to take the risk.

With successful legislation for business interest, the

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<sup>797</sup> Id, LB 270.

<sup>798</sup> Id, LB 775.



Legislature returned to thinking about school finance and consolidation. An Issues Symposium, the first of its kind in Nebraska for legislators, was scheduled for mid-December. There were two issues that were selected for the symposium; leading questions were developed for each issue. The issues were "Promoting Rural Community Development" and "Education." The education question was: "What have we learned from the education reform movement?" The sessions were to focus on specific ways to foster quality local education, how to assess and evaluate local educational quality, the resources and information lawmakers need to make informed educational policy, and financial programs that have been effective in promoting quality local education.<sup>799</sup> Briefing reports were compiled by various university professors. Dr. Hudson from UNL served as the contact person for the briefing report titled, "Public School Finance in Nebraska and Selected States." Katherine Kasten, a professor from University of Nebraska at Omaha, authored another briefing report, "Do We Know What Promoted Quality Local Education?" It was hoped that by studying the issues, senators would be better informed and equipped to

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<sup>799</sup> Legislative Issues Symposium Packet materials, 1987 Education Committee Files, Capitol, Lincoln, NE.

make legislative change.

The Second Session of the 90th Legislative Session convened in January 1988. Property tax issues were now being raised by railroads. Litigation was in progress but school districts would feel the impact and lose dollars if the railroads won their case. Legislative Bill 1165 (1988) would permit a tax levy increase to political subdivisions to compensate for losses relating to railroad personal property. This bill amended section 77-619 and 77-620, Reissue Revised Statutes of Nebraska, 1943. It was dependent on the granting of an injunction under The Railroad Revitalization and Regulatory Reform Act of 1976.

In the area of property tax, LB 1207 (1988) was introduced by Senator Landis. Great differences in the value of land continued to exist even within a single county. The purpose of this bill was to try to equalize agricultural land values within a county. Amending section 77-508.01, Revised Statutes Supplement, 1987, this bill stated that to achieve intercounty equalization of both agricultural and horticultural land, the Tax Commissioner and the board were to use the agricultural land valuation

manual.<sup>800</sup> In amending 77-1358, Reissue Revised Statutes of Nebraska, 1943, Amendment 4 passed by the voters in 1984, permitted the Legislature to adopt a valuation method for these two types of land that was not uniform to other classes of property. The earning capacity valuation method would be adapted to both agricultural land and horticultural land as it was deemed an "accurate and fair measure."<sup>801</sup>

Legislative Bill 970 (1988) was introduced by Wehrbein and Baack. This bill amended sections 79-432 and 79-546, Reissue Revised Statutes of Nebraska, 1943. Section 1 eliminated restrictions for Class I school districts with regard to aggregate school tax levies. The language was simplified and it also called for Class I district financial records to be examined by a certified public accountant every three years.

Legislative Bill 435 (1988) amended 79-4, 154 Revised Reissue Statutes of Nebraska, 1943. It allowed governing boards to refinance lease or lease purchase agreements without a vote of the patrons if a lower finance agreement could be reached. Schools were looking for ways to save

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<sup>800</sup> Id, 1592.

<sup>801</sup> Id, 1593.

dollars and this bill allowed a school district to refinance easily.

The efforts of legislative study and the issues symposium appeared to pay off with the development of LB 940 (1988). This bill amended sections 79-102.01, 79-426.05, 79-426.08, 79-4,102 to 79-4,104, 79-1247.02 and 79-1335, Revised Reissue Statutes, 1943. This bill stated the intent of the legislature regarding reorganization. Section 1 noted

The Legislature hereby finds and declares that orderly and appropriate reorganization of school districts may contribute to the objectives of tax equity, educational effectiveness and cost efficiency. The Legislature further finds that there is a need for greater flexibility in school reorganization options and procedures. It is the intent of the Legislature to encourage an orderly and appropriate reorganization of school districts.

Section 5 stated that if a school district accepted at least 10 nonresident high school students that an advisory committee was to be formed. The bill discussed funding regulations. Section 10 established The School Financing Review Commission. The commissions' duties were defined in Section 12. The School Financing Review Commission was to:

- 1) examine options of using income as a component in financing schools,
- 2) examine methods used in other sates

which offered alternatives to the current heavy reliance on property tax, 3) examine financing issues related to quality and performance of schools and 4) prepare a report with recommendations as well as a plan to implement the recommendations. The report was to be submitted on March 1, 1989. The commission was to cease to exist on June 30, 1989.<sup>802</sup>

Section 15 documented that when a district merged to combine a new district, the accepting school district or the new district was not to receive less financial aid than they did previously. Funds were to be appropriated by the Legislature to the School District Reorganization Fund. If all the funds were not used, they were to be invested.

Section 16 amended 79-1335, Reissue Revised Statutes, 1943. It discussed the eligibility requirements for state aid. Class I districts with grades K-6 were to levy not less than \$.19, Class Is with K-8 were to levy not less than \$.26, Class II, III, IV, and V school districts not less than \$.42 and Class VI that were 7-12, not less than \$.23, and in a Class VI 9-12, not less than \$.16. Section 17 stated that it was the intent of the Legislature to restore

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<sup>802</sup> Id, LB 940.

funding to the School Foundation and Equalization Fund for the amount actually appropriated.

Legislative Bill 1073 (1988) changed provisions related to asbestos projects and the funding of these projects. Legislative Bill 1091 (1988) created the Railroad and Car Company Personal Property Tax Reimbursement Fund. Section 2 of the bill revised distribution methods. Reimbursement of the dollar loss resulting from the injunction granted to the railroads in the 1987 discrimination lawsuits, school districts would gain an amount equal to the amount that exceeds one percent of the tax dollars anticipated from property tax sources, excluding bonded indebtedness, as determined by the Tax Commissioner.<sup>803</sup>

The Syracuse Report: 1988

The Legislature had commissioned a comprehensive study to be completed analyzing taxation in Nebraska. Michael Wasylenko and John Yinger were Co-Directors of this project and both professors of economics. Additionally they were Senior Research Associates with the Metropolitan Studies Program at The Maxwell School which was part of Syracuse University in New York state. A team of researchers worked

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<sup>803</sup> Id, 1091.

on the project which was published in July 1988.<sup>804</sup> The summary and recommendations found in this report were considered important for possible tax policy change.

The report stated:

Nebraska's overall local property tax rates are among the highest in the nation, and state aid to local governments in Nebraska is far below the national average... Although fiscal disparities exist for all types of local governments in Nebraska, they are particularly striking across school districts. Nebraska's school system is unique both because it contains so many districts and because these districts range from many tiny elementary-only districts up to the large K-12 districts of Lincoln and Omaha. Neither the cost of education nor the ability to raise revenue are spread evenly across school districts; at all district sizes, particularly the smallest, some districts can provide a good education to their students at a much lower property tax rate than others. We also find that state aid is not directed toward the local governments in the poorest fiscal condition. Indeed, the school districts in the worst fiscal condition tend to receive slightly less aid than other districts.

Major changes in state policy are needed to lessen both the burden of local property taxes and the dramatic fiscal disparities across local governments in the state. The overall state and local government burden in Nebraska is reasonable, but we recommend an increase in state aid to local governments (financed by broadening the bases or increasing the rates of state taxes) as a way to cut reliance on local property taxes. Moreover, we recommend that, to some degree, state aid be redirected toward local government in poor fiscal conditions. In the case of school districts, a

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<sup>804</sup> M. Wasylenko & J. Yinger, Co-Directors, Nebraska Comprehensive Study, Metropolitan Studies Program, The Maxwell School. (Syracuse University, July, 1988).

consolidation plan could eliminate many of the inequities that currently exist among tiny districts and save the state's taxpayers money by creating new districts that can take advantage of economies of scale. We recommend that a school consolidation plan be implemented before reforming state aid to education. Finally, we reject two other routes for helping local governments, namely property tax limitations and new local taxes. Experience in other states indicates that property tax limitations either are evaded or else they place an unacceptable hardship on fiscally troubled jurisdictions. Moreover, new local taxes would not provide additional assistance to the local governments that need help the most.<sup>805</sup>

Twenty-five recommendations were summarized and presented with supportive data validating each recommendation. In the area of property tax, two recommendations were suggested:

Recommendation 5. The property tax should be levied on agricultural machinery and equipment, as recommended in Chapter 6 and 8.<sup>806</sup>

and

Recommendation 6. Nebraska should review assessment procedures and practices in the state and undertake reforms to improve the accuracy of property tax assessments.

In the area of state educational policy, five recommendations were developed:

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<sup>805</sup> Id, 1-2.

<sup>806</sup> Id.



Recommendation 12. Nebraska should design and implement a major school-district consolidation plan.

Recommendation 13. The Nebraska State Government should shift its emphasis in educational aid programs away from incentive aid and foundation aid toward equalization aid.

Recommendation 14. The Nebraska State Government should redesign its equalization aid formula so that it is more directed toward school districts that are in the poorest fiscal condition. This redesign should be coordinated with school-district consolidation, so that the new aid program can assist the districts in the poorest fiscal condition after consolidation has been implemented.

Recommendation 15. The Nebraska State Government should redesign its foundation aid formula to be consistent with the widely held view that foundation aid should bring all districts up to some minimum educational standard. This redesign also should be implemented after school-district consolidation.

Recommendation 16. The Nebraska State Government should increase its budget for aid to local school districts. The best sources of revenue for such increase are either the expansions in the sales tax base recommended earlier or a modest increase in state income tax rates, although a small increase in the sales tax rate also would be satisfactory. To insure that this policy change results in lower property taxes, any increase in state aid for education could be accompanied by a required one-time cut in school taxes.<sup>807</sup>

The Syracuse Report again brought up school

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<sup>807</sup> Id, 31-33.

consolidation issues and shifting of the tax burden away from property. A detailed evaluation was completed on Nebraska's property tax. Yinger and Wasylenko wrote chapter 6 entitled, "An Evaluation of the Property Tax in Nebraska." Chapter 11 discussed "The Fiscal Condition of School Districts in Nebraska: Is Small Beautiful?" In this chapter, the study concluded that the current system of funding schools was far too complex, lead to far too much inequity across districts and relied far too heavily on the property tax.<sup>808</sup> To resolve the problems, three steps were recommended:

First, the state should design and implement a major school-district consolidation. Not only could such a plan dramatically reduce fiscal disparities across school districts, at no cost to the state government, but it also has the potential to save local taxpayers a significant amount of money by creating school districts that can take advantage of economies of scale.

Second, the state should shift the emphasis in its educational aid programs away from incentive aid and foundation toward equalization aid, and it should redesign the equalization aid program so that it is more directed to districts in poor fiscal condition. To make it a true foundation aid program, that is, a program that helps all school districts provide at least the lowest acceptable quality of education, the foundation aid formula also should give more aid to districts with lower tax bases. Current aid programs actually

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<sup>808</sup> Id, 11-48.

exacerbate fiscal disparities across districts and need to be reformed. Because consolidation will greatly reduce fiscal disparities across districts, this second step should be taken after a consolidation plan is implemented; that is, state aid should be directed toward districts in the poorest fiscal health after consolidation.

Third, the state should increase the budget for educational aid. This step will help reduce reliance on the property tax in Nebraska and will bring Nebraska closer into line with the level of state aid to education in the rest of the nation.<sup>809</sup>

Recommendations were clearly identified in The Syracuse Report. The Legislature now had additional information upon which to develop alternatives for Nebraska's tax concerns and school finance issues based on a comprehensive research study from an organization outside the state.

Additional concerns regarding school funding were heard within the state. In the North Platte School District, fifteen teachers lost their jobs during the last three years. Superintendent Doug Christensen said that his district set its budget to collect the same number of local tax dollars for 1988-89 as it did the previous year. "Because of a shrinking property tax base, the tax levy needed to be increased 4.4 percent just to obtain the same

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<sup>809</sup> Id, 11-48, 11-49.

amount of money."<sup>810</sup> Another threat to the property tax base was the latest legal challenge by three railroads. The Union Pacific, Burlington Northern and Chicago & Northwestern, filed suit saying that they should be exempt from paying taxes on their personal business property in Nebraska because the state exempted some other types of commercial personal property, such as business inventory, farm machinery, livestock, feed and stored grain.

If the railroads escape taxation of business equipment, and if all businesses get the same tax break, the revenue loss to governmental subdivisions will be about \$100 million a year.<sup>811</sup>

The School Finance Review Commission, a group created less than a year ago, was "told to consider itself 'as guerrilla fighters in enemy territory.'"<sup>812</sup> John Jordison, president of the nonprofit Nebraska Tax Research Council, shared his concerns with the commission that their work might not be considered important. He stated that part of the problem might be that overhauling the method of public school finance "lacks political sexiness."<sup>813</sup> The

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<sup>810</sup> *Lincoln Star*, State's local officials say "ouch" as property tax base erodes, October 3, 1988, 7.

<sup>811</sup> *Lincoln Star*, Official asks for increased aid to schools, September 10, 1988, 14.

<sup>812</sup> J. Joyce, School finance reform group told to fight for recognition of its work, *Lincoln Star*, October 5, 1989, 12.

<sup>813</sup> *Id.*

commission, composed of state senators, educators and private citizens had worked on a plan that would sift about \$200 million of educational costs from property taxes to income taxes. In addition, noted tax activist, Ed Jaksha, launched a petition drive to limit spending on state and local government by putting a 2 percent lid on spending.

There were many issues sparking fires in the property tax arena. A new legislative session would be forced to keep taxation and school finance issues at the forefront of the agenda. As the 91st Legislative Session convened under Governor Orr in 1989, additional school finance laws would be proposed and approved.

### Summary

During the decade of the 1980s, increased attention was drawn to the issues of taxation, school funding and school district reorganization. At the onset of the decade, double digit inflation was common. This would directly impact farmers whose costs were growing and prices for crops were declining. Many farms went bankrupt. The banking industry was hit hard too and many bank closings occurred during the decade as well.

For the first time since 1869, the number of school

districts dropped to under 1,000. During the 1987-88 school year, the number of school districts numbered 891. Student enrollment numbers declined as well. Throughout this decade, public school enrollment declined by approximately 20,000 students.<sup>814</sup>

Property tax issues continued to impact school finance. Property was now to be assessed according to "actual value" rather than "assessed value." The Political Subdivision Budget Limit Act called for a 7% spending lid. Property tax law was challenged and changed due to several suits filed by public power districts and railroad companies. Economic incentives were granted to businesses in an effort to expand business opportunities within the state. Both The Employment Expansion and Investment Act and The Employment and Investment Growth Act encouraged big business to stay in Nebraska and expand.

Leadership came from Governor Kerry and Governor Orr. Senator Jerome Warner, Senator Vard Johnson, and Senator Tom Vickers were instrumental in pushing legislation to change taxation, school finance and reorganization efforts. New ideas surfaced as possible funding sources for schools

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<sup>814</sup> Nebraska Blue Book, 919.

including foundations and lotteries. The first Legislative Symposium was held giving senators in depth research on current issues prior to the next legislative session. With increased knowledge it was hoped that senators would have a better understanding of studied issues and thus make more informed decisions.

Numerous bills during the decade attempted to consolidate or reorganize the state's school districts. In 1985, LB 662 (1985), perhaps the most progressive school legislation to date, passed in the Legislature only to be removed due to a petition initiative that placed the issue on the ballot. The people decided and voted to throw LB 662 (1985) out. Another effort, LB 940 (1988), was known as the affiliation bill and it passed in 1988. In addition to providing for small districts to become affiliated with larger districts, this bill was a planned process to reduce the number of school districts in the state. It also established The School Finance Review Commission, a group that would study school finance and suggest alternatives for school funding. Legislative Bill 944 (1984), often referred to as the quality education bill, included a mission statement and improved standards for the state.

Constitutional language changes were also initiated. Legislative Bill 964 attempted to reword the constitution to include the words "thorough and efficient." Although passed by the Legislature as a proposed constitutional amendment, the issues failed on the general election ballot. LR 7, another ballot issue, asked the citizens to support classifying agricultural land as a distinctive class for tax purposes. Voters approved this measure.

Energy grants, asbestos removal and nonresident tuition charges forced school districts to levy tax dollars differently. The School Foundation and Equalization Act was still providing aid to schools but in limited amounts. The Syracuse Report analyzed taxation in Nebraska. The recommendations were clear about what direction school finance needed to take in Nebraska.



Chart M

	<u>1980</u>	<u>1990</u>
Number of districts	1,097	838
Number of school houses	1,703	1,485
K-12 Districts	319	278
Number of counties	93	93
Number of children, 5-21	413,444	384,679
Children enrolled	287,570	270,930
Number of teachers	19,301	20,517
Value of School Property	1,372,244,902	2,030,304,640
Receipts	589,457,945	1,183,451,888
Expenditures	584,861,327	1,162,693,038
Indebtedness	246,978,483	287,637,546
State Apportionment from Endowments	11,843,193	18,410,444

\*Nebraska Blue Book <sup>815</sup>

<sup>815</sup> Nebraska Blue Book, (1992-93), 918-920.

## School Finance Reform: 1989-1997

### Introduction

As Nebraska entered the last decade of the 20th Century, school finance issues ranked at the top of the Legislature's agenda. New studies, more data, and the possible litigation encouraged law makers to design legislation that would change school finance in the state. The School Financing Review Commission had been established in 1988 with LB 940. Their assigned task was complex but would be instrumental in directing the Legislature's reform plan.

The economic climate was starting to change by the mid-1990s. The impact of LB 775 (1987) created more business and job opportunities for Nebraskans. Several large manufacturing companies considered Nebraska as a possible new plant location. The housing industry marked record starts for new homes in both Lincoln and Omaha. Nebraska, along with the rest of the country, was out of the recession and enjoying "the good life."

The political scene also changed. Governor Orr was challenged in her 1990 reelection attempt by Omaha lawyer and businessman, Ben Nelson. President Reagan came to

Nebraska to back Republican Governor Orr in her reelection bid. Although the campaign was hard fought and extremely close, Nelson won the election by approximately 4,000 votes and put the Democrats back in power in 1991.

The state's population continued to grow slowly in the 1990s. Between 1980 and 1990, the population increased by approximately 8,500 people.<sup>816</sup> Between 1990 and 1995, Nebraska's growth was more dramatic, increasing by approximately 58,700 people.<sup>817</sup>

As the population continued to increase, the number of farms continued to decline. Urban sprawl and retiring farmers added to the decline in farm numbers. The Census of Agriculture reported that there were 52,923 farms in 1992, a decline of approximately 12,000 farms since 1979.<sup>818</sup> Additionally, farms continued to increase in size with the average farm size growing to 839 acres. Technology enhanced farming procedures dramatically during the 1990s. Computerized equipment and satellite technology assisted farmers in increasing crop production yields. A combination

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<sup>816</sup>Nebraska Blue Book 1996-97, 836.

<sup>817</sup>Id.

<sup>818</sup>Id, 463.

of larger equipment and no-till practices allowed farmers to plant more acres in less time. Research in alternative farm products, like sunflower oil, encouraged some crop production away from the traditional grain and sorghum crops. Limited dollars from the federal government in program subsidies also changed the nature of farms. Fish, buffalo and ostrich farms appeared across the state. Diversity in agricultural related business grew too. Ethanol plants increased demand for corn production while Japanese markets welcomed Nebraska beef. Nebraska's farm economy had grown in a positive direction from the previous decade.

Legislative mandates forced consolidation and affiliation of school districts during this decade. In 1988-89 Nebraska had 835 school districts and in 1995-96, the number decreased by 167 more, making the total 668 school districts.<sup>819</sup> Current figures for the 1997-98 school year calculated Nebraska's school district total at 640, down another 28.<sup>820</sup> School finance, taxation and consolidation continued to be top priority issues

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<sup>819</sup> Id, 491.

<sup>820</sup> Nebraska Department of Education Statistical Data, 1997-98.

as the Legislature met during the 1990s.

The 91st Legislative Session: 1989

The 91st Legislative Session convened under Governor Orr in 1989. The seeds of change had been planted with the recommendations of the Syracuse Report and the establishment of The School Financing Review Commission. Major legislative changes would impact Nebraska's school finance laws.

Legislative Bill 89 (1989) was a new law designed to promote excellence in education through increased teacher salaries. Titled, Help Education Lead to Prosperity Act, the intent of this bill was to recruit new teachers and retain quality teachers through the establishment of the Educational Excellence Fund. This fund was to provide general salary increases for teachers beginning in 1989-90 and continue through June 30, 1991, unless it was reenacted or established by the Legislature. The Legislature was to appropriate \$20,000,000 from the General Fund for fiscal year 1989-90 and the same for 1990-91. The distribution of the fund was based on a weighted formula.<sup>821</sup>

A major change in finance law occurred with LB 611

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<sup>821</sup> 1989 Neb. Laws, LB 89.

(1989), which became law without the approval of Governor Orr on May 28, 1989. It was introduced by Senators Moore, R. Johnson and Bernard-Stevens. This bill was a revenue and tax bill amending 77-27,119 and 79-1330, Revised Reissue Statutes of Nebraska, 1943. It stated Nebraska's intent concerning school finance, changed the requirement for filing income tax returns and provided a termination date for the School Foundation and Equalization Act.

Section 1 stated that the Legislature finds:  
(1) More than 60% of all real property taxes are assessed to support public schools; (2) Any proposal for lasting property tax relief must deal with the issue of school finance; and (3) It is appropriate to share income tax base with school districts in order to: (a) Assure all Nebraska children a more equitable opportunity for an appropriate education; (b) Provide a broad and stable system of financial support for public schools through an appropriate mixture of revenue sources; and (c) Provide equalization of fiscal ability and property tax burden among school district's ability to provide educational programs to the extent that such income is part of the accessible tax base.<sup>822</sup>

This bill further clarified that it was the intent of the Legislature to replace the current school finance system with a system which shared income tax base with districts to provide substantial and enduring property tax relief and

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<sup>822</sup> Id, 611.

a stable and lasting school finance system. It was further the intent of the legislature to assure property tax relief and tax equity by establishing limits on school district budget growth. The program was to be in place and operational prior to January 1, 1992.

Legislative Bill 970 (1989) was introduced by Wehrbein and Baack. This bill amended sections 79-432 and 79-546, Reissue Revised Statutes of Nebraska, 1943. Section 1 eliminated restrictions for Class I school districts with regard to aggregate school tax levies.<sup>823</sup>

Legislative Bill 288 (1989) was introduced by McFarland. The purpose of this bill was to provide a contingency fund to cover losses for certain school districts. It applied to Class II - VI school districts. The fund could not be greater than 5% of the district budget and was only to be used for defense against losses or payment of losses.<sup>824</sup>

#### The Enrollment Options Program

Legislative Bill 183 (1989) was known as The Enrollment Options Program or choice bill. It allowed educational

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<sup>823</sup> Id, LB 970.

<sup>824</sup> Id, LB 288.

options for parents when deciding what public school or public school district they wanted their children to attend. In 1990-91, participation was voluntary but agreement was needed between both the resident school and option school district. In 1991-92, up to five percent of the resident student enrollment of any resident school district could attend school in an option district. The percentage increased to ten percent in 1992-93 and by 1993-94, there were to be no restrictions. Financing this program was through a formula.<sup>825</sup>

Legislative Bill 706 (1989) provided loan money to schools for environmental hazards. School boards could add a tax levy on to their regular levy to fund asbestos removal projects. Districts could also borrow money to allow this to happen.<sup>826</sup>

Legislative Bill 312 (1989) granted an extension to The School Financing Review Commission. The Commission had worked hard in studying school finance but needed additional time before presenting reports and recommendations. The

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<sup>825</sup> Id, LB 183.

<sup>826</sup> Id, LB 706.



Commission's timeline was extended until January, 1990.<sup>827</sup>

At an early Commission meeting, the Commission members reaffirmed the traditional goals of state aid:

(1) providing a broad and stable support base for education with a shift away from excessive property tax support and

(2) reducing inequities in school districts' ability to provide educational opportunities for children. These two important goals underpinned the Commission's work.<sup>828</sup> The

members were immersed in statistical data highlighting current school finance in Nebraska. They heard from many noted experts and became familiar with the Kansas model, Colorado's model and the formula proposed by the Nebraska Council of School Administrators in 1985 and 1986.<sup>829</sup>

Awareness about Nebraska's property tax system and its current problems were explained by the Nebraska Department of Revenue. The Commission also was briefed on the Syracuse Report, the comprehensive study on Nebraska's tax system. A special Legislative Issues Symposium was also scheduled

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<sup>827</sup> Id, LB 312.

<sup>828</sup> *Funding Nebraska's Schools: Toward a More Rational and Equitable School Finance System for the 1990s*, 1990, Final Report of the Nebraska School Financing Review Commission to the Nebraska State Legislature, January 1, Education LRD Report 90-1, NE DOCS # L3800 BO12.0012-1990, Lincoln, NE, 9-10.

<sup>829</sup> Id, 10.

in November.

The Legislative Issues Symposium was held at Platte River State Park. John Augenblick, from Augenblick, Van DeWater & Associates, presented the keynote address entitled "School Finance and the Courts." Augenblick's national reputation as former director of the Education Finance Center at the Education Commission of the States made him a valued symposium presenter. He had assisted Kentucky, South Dakota and Montana in dealing with the complexities of school finance formulas. Other presenters included Nebraska's Tim Kemper, Data Processing Manager for the Nebraska Department of Education and Larry Vontz, Deputy Commissioner of Education. John Myers, Senior Program Director for the National Conference of State Legislatures' Education Program, presented information about school finance issues in other states. Vontz and Kemper shared Nebraska's proposed new finance structure with the Commission. Continued study would follow.

In December, the School Financing Review Commission issued its report and recommendations. After 16 months of study, the Commission proposed a finance plan which included the following elements:

1. Broadening and stabilization of the tax base for schools through dedication of 20 percent of all state income tax receipts and direct return of 20 percent of identifiable resident individual income tax receipts to the school districts where such individuals reside.
2. Increase in the overall level of state aid including dedicated income tax revenues, to effectuate an aggregate statewide 15 percent decrease in all property taxes to be levied (of a 20 percent decrease in property taxes to be levied in support of schools); and to provide state funding of schools, from all state sources, at a target level of 45 percent of the aggregate operational costs of the schools.
3. Implementation of a new equalization formula for state aid which is based on the realistic needs of schools and which considers all accessible resources of schools, including income tax revenues returned to the schools, and which is sensitive to the income wealth of school districts, as well as to the property tax wealth of school districts.
4. Implementation of rational and effective growth limitations for school budgets which are sensitive to local differences yet assure a substantial level of property tax relief.
5. The Commission also recommends that the proposed school finance plan be funded on an ongoing and sustainable basis from appropriate increases in state sales and/or income taxes as determined necessary by the Legislature.<sup>830</sup>

The report discussed the disparities the Commission found in school district levies, taxable property wealth and spending. The disparities in self imposed tax levies were also dramatic. A formula was proposed to address and

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<sup>830</sup> Id, 45.

lessen the disparities:

The Commission recommends a "foundation support level" 4 type equalization aid distribution formula which rests on the assumption that the state should assure equalized funding for each student attending public school in Nebraska up to a reasonable and current need level after deducting all accessible school district resources.<sup>831</sup>

In essence, the formula's concept was simple: "Needs less resources equals state aid."<sup>832</sup>

As the Commission's findings were reported, an editorial in the *Lincoln Star* reported that school finance reform was like a Russian novel.<sup>833</sup> The issue was complex, had hundreds of characters to memorize, was boring and in the end, everybody gets killed.<sup>834</sup> Yes, there were many players involved and they spent hundreds of hours attempting to understand the complexities of their task.

"And the Commission, now close to its end, is proposing a set of recommendations which include enough serious tax implications to possibly lead to the political death of those who push for school finance reform." Fear of this "political death" will abound next session as senators look at this worthy proposal.

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<sup>831</sup> Id, 49.

<sup>832</sup> Id, 49.

<sup>833</sup> School Finance Reform Like a Russian Novel, *Lincoln Star*, December 22, 1989, 14.

<sup>834</sup> Id.

Most politicians, who value their job, do not want to raise taxes right before an election. And this proposal will require a trade-off - higher state taxes for reduced local property taxes.

Governor Kay Orr, who is already battling the did-she-raise-our-taxes-after-she-promised-she wouldn't issue, is not likely to lead the pack toward any new tax increase. So far Orr has remained very safely neutral on the financing reform proposal.

If political fear prevails in this election year, only the school finance reform package will get killed in the end.<sup>835</sup>

Political suicide was indeed a possibility. Would legislators vote to pass this measure and then not be reelected by their constituents?

#### A Lawsuit Filed: 1990

On January 2, 1990, a petition was filed in Lancaster County District Court. Plaintiffs were W. Donald Gould and John S. Gould along with John's minor daughters, Donna Lee Gould and Rebecca Lynn Gould. The petition was filed against Governor Orr, Treasurer Frank Marsh, Commissioner of Education Joe Lutheharms, the State Board of Education, Director of Administrative Services Deborah Thomas and Lancaster County School District 161, AKA Raymond Central Public Schools. The suit challenged Nebraska laws governing school finance and stated they were in conflict with the

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<sup>835</sup> Id.

Nebraska Constitution. As the Legislature was about to convene, *Gould vs. Orr* added a new dimension to Nebraska's school finance issue.

The Tax Equity and Education Opportunities Support Act:

Legislative Bill 1059

The Second Session of the 91st Legislature began in January and the new school finance bill was introduced on January 9. Senators Withem, Moore, Baack, Barrett, Beck, Beyer, Bernard-Stevens, Byars, Chizek, Conway, Coordsen, Crosby, Elmer, Hall, Hartnett, R. Johnson, Korshoj, Kirstensen, Landis, Lindsay, Lynch, Morrissey, Nelson, Pirsch, Robak, Rogers, Schellpeper, Schimek, Scofield, Smith, Wehrbein and Weihing were listed as bill sponsors. The Tax Equity and Educational Opportunities Support Act, otherwise known as LB 1059, amended sections 77-2701.02, 79-490, 79-1369, and 79-12, 145, Reissue Revised Statutes of Nebraska, 1943, section 77-678 and 77-2701.01, Revised Statutes Supplement, 1988, and section 72-1237.01, 79-451, and 79-4, 102, Revised Statutes Supplement, 1989.<sup>836</sup>

Sections 1 to 24 of the bill were part of the tax equity act. The remaining sections of the bill discussed other tax

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<sup>836</sup> 1990 Nebraska Laws, LB 1059.

related issues, provided harmony with existing education statutes and contained implementation language to make statutes consistent.

Section 2 stated the Legislature's intent which was to provide state support for funding at a 45% rate, to reduce property tax and to include state income tax dollars as a source of funding. Keeping pace with increasing operation costs and assuring

...each district a foundation support level for the operation of schools within each district taking into consideration the taxable wealth and other accessible resources of the district;

(f) Assure a greater level of equity of educational opportunities for students in all districts;

(g) Assure a greater level of equity in property tax rates for the support of the public school system; and

(h) Assure that there is a shift to sustainable revenue sources, other than property tax for the support of the public school system through the establishment of limits on the growth of general fund budgets of districts.<sup>837</sup>

Section 3 included definitions while Section 4, 6 and 13 discussed how the 20% income tax would be distributed to different districts. Section 5 discussed how the calculations for tiered cost per student would be derived using weighted average daily membership figures. Section 6

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<sup>837</sup> Id.

contained a "hold harmless" clause guaranteeing districts that state aid would not be less than in 1989-90 for the upcoming three years. Section 7 explained the district's total formula need and how it was to be computed. Section 8 described the district formula resources which included local effort rate yield which was to be determined by multiplying each district's total adjusted valuation by the local effort rate. In Section 9, the Department of Revenue had the responsibility to compute the adjusted valuation of each district for the second preceding tax year while Section 10 stated that the district formula resources were to include the portion of income tax liability allocated in Section 4.

Section 11 defined what was and was not to be included in district formula resources. Receipts were to include sales tax revenue from public power districts, fines and license fees, nonresident high school tuition, other tuition receipts, transportation receipts, interest on investments, miscellaneous local or state receipts, special education receipts, receipts from wards of the court or state, Temporary School Fund receipts, Insurance Tax Fund receipts, pro rata motor vehicle license fee receipts, receipts from



the Help Education Lead to Prosperity Act, Johnson O'Malley receipts and all other noncategorical federal receipts.

Section 12 created a new fund in the State Treasury entitled the School District Income Tax Fund and the Tax Equity and Educational Opportunities Fund. Section 13 contained distribution language while Section 14 discussed the budget limitations beginning in 1990-91. It was the Legislature's duty to annually set the growth percentage for budgets which was based on cost-of-living and cost-of-education from nationally accepted cost indexes provided by the Nebraska Economic Forecasting Advisory Board, the Legislative Fiscal Office, the Department of Revenue, and the State Department of Education. Section 15 stated that each district needed to submit duplicate copies of the budget to the State.

Section 16 set lid ranges for expenditures other than special education. For the 1990-91 school year, the growth rate was set from 4 to 6.5% until changed by the Legislature. Section 17 stated that districts would be notified of their allowable growth percentage based on the district position within the tiers. Section 18 listed a schedule for budget allocations for contingency funds,

depreciation funds and necessary cash reserves based on average daily membership and an allowable reserve percentage.

Lid language was included in the bill. Section 19 discussed exemptions to the lid. Exemptions included new mandated programs, an increase in the number of new students attending in a district and construction, expansion or alterations of school district buildings which increased building operation and maintenance costs of at least 5%. Section 20 permitted a district to exceed the allowable growth percentages by an additional one percent when 75% of the board voted affirmatively to exceed the lid. If the district wanted to increase the budget beyond this amount, a vote of the people was needed.

In Section 21, if a district chose not to increase its general fund budget the full extent of the lid limit, it could carry over the unused dollar amount for future budget years. Section 22 required data to be submitted annually to the Governor so that appropriate legislation could be enacted regarding appropriations from the state to schools which would equal 45% of the estimated general fund operating expenditures of districts for the upcoming

school year.

Section 23 created the School Finance Review Committee. This committee was to monitor the operation of the school finance plan and suggest revisions. Specifically, they were to monitor the implementation and operation of the average daily membership tiers, budget growth limitations and expenditures of schools districts. Legislative Bill 259, known as the affiliation bill, would impact LB 1059 too. The Commission was charged to make specific recommendations for harmonizing the provisions of this act with LB 1059.

Section 24 stated submission deadlines for annual financial reports and listed penalties for late submissions or failure to submit reports.

Section 39 set high school tuition rates for nonresident pupils with weighted values per grade level. Kindergarten was set at .5, grades 1-6 at 1, grades 7-8 at 1.2 and grades 9-12 at 1.4.

There was significant debate on LB 1059 both in committee and on the floor of the Legislature. The bill was passed by the Legislature but Governor Orr was not happy with the vote. Dick Herman's *Lincoln Journal* editorial

discussed the gamesmanship of politics.<sup>838</sup> Orr had the Revenue Department produce a document showing how tax burden shifts would be potentially unappealing to urban citizens. As a candidate for reelection, Herman suggested

.....Orr is boxed in by the giant school finance measure, LB 1059. Her political options are fairly restricted....Signing the measure would knowingly violate Kay Orr's sacred 1986 campaign pledge not to raise state taxes, even though it would also mean an estimated aggregate \$211 million reduction in local property taxes in 1991...Going from a 4 percent to a 5 percent state sales tax and adjusting income tax withholding tables in the middle of an election year could be very dangerous to incumbents.

The reverse political chuckhole lies in angry reactions should Orr successfully veto LB 1059. That would inflame the organized educational community and the real estate lobby, never mind those charging the chief executive with blocking property tax relief.

The least-vulnerable approach if LB 1059 passes might be to let it become law without the governor's signature. Foes would have rich opportunities to discourse on the subject of political cowardice but that kind of bad-mouthing still could be the lesser of alternative practical political evils.

An outside strategy might be the well-known Exon Poker-Playing Ploy; veto with confidence that the Legislature subsequently will override, thus allowing the governor to have it both ways.<sup>839</sup>

Governor Orr vetoed the bill. She indicated that it

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<sup>838</sup> Dick Herman, \$211 Million School Bill Holds Political Snare for Governor, *Lincoln Journal*, February 1, 1990, 13.

<sup>839</sup> *Id.*

was flawed and identified ten reasons for her veto. In a letter to senators her rationale included:

Property taxes still would increase next year under the plan. It is unfair to renters, older people and disabled people who get a homestead exemption because they would get a "cruel" tax increase.

The spending lids are ineffective. She said the school district lid is too loose and claimed that some districts could increase their tax levies by 19.5 percent annually without a vote of the people. She objected that the lid on other local government would end in two years.

The plan does not allow financially poor districts to achieve average spending per pupil within a reasonable time.

The bill is underfinanced for the first year by \$33 million.

The bill assumes that the state will continue to pay teacher salary supplements of \$20 million per year, yet that program expires next year and more financing than before would be needed for LB 1059 after 1990.

The sales tax increase in LB 1059 includes \$17 million in motor vehicle sales taxes too, which would, as usual, go to the highway trust fund rather than to state aid to education.

A provision not to let any districts lose state aid in the first few years of the bill's operation will give some districts more aid than they need.

Major flaws were found in the bill hours before it passed, including an inadvertent repeal of the sales tax for 2 1/2 months.<sup>840</sup>

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<sup>840</sup> Fred Knapp & Kathleen Rutledge, Orr Cites 10 Reasons for Vetoing LB 1059, *Lincoln Journal*, April 6, 1990, 1, 10.

Despite Orr's veto and rationale for her move, the Legislature overrode the Governor's veto. Next, a citizen's petition drive was initiated placing the issue on the November ballot. In November 1990 the people would decide the fate of LB 1059.

Other bills were passed during the 91st session that impacted school finance. Another historic bill was LB 259 (1990), which was also introduced by Withem. This bill, amended 79-402, 79-402.03, 79-402.04, 79-402.11, 79-426.01, 79-426.02, 79-426.17 and 79-490, Reissue, Revised Statutes of Nebraska, 1943, and section 79-426.08 and 79-4,158.01 and 79-4,140.16, Revised Statutes Supplement, 1989 and Laws 1988, LB 940 section 18. This law clearly defined the procedures for Class I schools to affiliate with other districts and discussed the levy procedures. Class I districts could affiliate with one or more K-12 districts or a Class VI. This needed to be accomplished by February 1, 1992. This bill repealed nonresident tuition effective July 1, 1992, a statute that had been tinkered with more than any other educational finance law on the books.<sup>841</sup>

Another important bill, LB 943 (1990), revised the

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<sup>841</sup> 1990 Nebraska Laws, LB 259.

option enrollment program created earlier in LB 183.

This bill provided state funding, rather than district funding for students choosing to attend schools in another district.<sup>842</sup> Legislative Bill 1059 further clarified the funding changes that were to take place.

In June 1990, both Texas and New Jersey heard from their respective State Supreme Courts regarding school finance issues. In New Jersey, through previous court action, a new funding system needed to be devised. The New Jersey Legislature came up with a plan to assist poor districts by increasing state tax sources. Now, this too has been deemed inadequate.<sup>843</sup> In Texas, where no state income tax existed, the Legislature proposed increasing state aid by raising the state sales tax. The *Lincoln Journal* stated

At one time, we would have confidently said the Goulds can't win, based on the plain language of Nebraska's Constitution. It mandates no minimum quality or equity standards in the common schools. Nor is it explicitly offended by the heap of disparities in school opportunities which Nebraskans and their Legislature shamefully have tolerated for decades.

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<sup>842</sup> Id, LB 943.

<sup>843</sup> Other States, Courts Active Attacking School System Flaws, *Lincoln Journal*, June 8, 1990, 12 Editorial.

But looking back on the constitutional interpretation surprises that the Nebraska Supreme Court has sprung in recent years -- expenses for senators, gun control, the Kearney State College case, etc. -- well, who knows?<sup>844</sup>

The threat of repeal of LB 1059 brought many questions.

Senator Withem called a special meeting of the Education Committee to discuss repeal scenarios. Tim Kemper, from the Office of School Finance with the state Department of Education, said that districts would probably be forced to borrow money to get through the upcoming year if the bill is repealed.<sup>845</sup> Backers of the school funding bill began airing television ads while those opposing the bill were getting petitions signed to place the issue on the ballot.

The pending law suit filed by the Goulds, two Saunders County farmers, passed the first challenge to their school finance suit. On June 26, Lancaster County District Judge Paul Merritt refused a request from the state to dismiss the lawsuit. The State filed a demurrer in March, arguing the case should be dismissed because the issue of school finance should be decided by the Legislature, not the courts. Defending the state, Assistant Attorney General Harold

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<sup>844</sup> Id.

<sup>845</sup> J. L. Schmidt, Withem: LB 1059 Repeal Scenarios Discussed, *Lincoln Journal*, June 16, 1990, 9.



Mosher, claimed that the state was trying to address the issue with LB 1059. Merritt discarded other issues raised by the state. Issues that he discarded included the fact that the Gould case did not provide any facts that proved the finance system was violating the constitutional provisions. Another issue discarded by Merritt was the State's argument that it was improper to claim that all the defendants violated the Gould's rights.<sup>846</sup> Mosher's attempts at getting the case thrown out had failed.

In July, the figures were made available showing the impact of LB 1059 on Nebraska's school districts. Lincoln was to gain 123% more state aid totaling \$20.3 million while Omaha's aid would jump 170% from \$16.4 million to \$44.6 million.<sup>847</sup> There were questions about another lawsuit being filed challenging whether a referendum issue dealing with an appropriations measure was constitutional.<sup>848</sup> Alan Peterson, a Lincoln attorney, presented a letter to Attorney General Robert Spire and Secretary of State Allen Beerman arguing the constitutionality of repealing a state law that

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<sup>846</sup> Margaret Reist, Gould Education Suit Beats Challenges, *Lincoln Journal*, June 27, 1990, 24.

<sup>847</sup> *Lincoln Journal*, Enriched State School Aid Gives Other Side of LB 1059, July 13, 1990.

<sup>848</sup> *Id.*

appropriated funds to state agencies.<sup>849</sup> In September, Peterson filed a suit for eight plaintiffs challenging the constitutionality of this referendum issue. Time was short. The issue was scheduled for the November ballot as enough signatures had been secured during the petition effort. Judge Jeffre Chevront confined his consideration of the suit to two issues: 1) the validity of the petition and its signatures and 2) whether the petition was prohibited by the Constitution.<sup>850</sup> His decision stated that the petition was valid and not unconstitutional. Next, Peterson appealed the issue to Nebraska's Supreme Court.

Referendum Number 406 (1990) was on the November ballot. The issue passed. More voters were interested in retaining the Tax Equity and Educational Opportunities Support Act than repealing it.<sup>851</sup> Constitutional amendments were on the ballot too. The voters approved the issue of making agricultural and horticultural land a separate and distinct class of property for purposes of taxation. The voting citizens also favored the creation of a court of

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<sup>849</sup> *Lincoln Journal*, LB 1059 Petition Drive Constitutional, Spire Says, July 21, 1990, 8.

<sup>850</sup> John Rood, Bid to Stop Vote on LB 1059 Now Goes to Supreme Court, *Lincoln Journal*, September 18, 1990, 9.

<sup>851</sup> 1992-93 Nebraska Blue Book, 233.

appeals. Another successful amendment supported a State Lottery System. An amendment establishing a 2% limit on annual budget increases for all government subdivisions failed. The 2% budget limit would have impacted school district budgets too. With the election over, Nebraska could move forward and begin implementation of LB 1059.

In December 1990, Judge Earl Witthoff dismissed the Gould lawsuit that had been filed earlier challenging the constitutionality of Nebraska's finance system for schools. There had been numerous exchanges of legal briefs between Vard Johnson, legal counsel for the Goulds and Mosher, legal counsel for the State of Nebraska. In his judgment, Judge Witthoff ruled that education is not a fundamental right that requires a school finance system based on equal per-pupil expenditures for each school district. He also stated that because of LB 1059, the school finance reform law, the issue was moot. The Goulds were not satisfied with this decision and encouraged Johnson to appeal the issue to the State Supreme Court. The legal challenge to Nebraska's school finance laws continued. Change in political leadership for the state was ahead too.

Nebraska did not reelect Kay Orr as Governor but

instead elected Democrat Ben Nelson to the head position in the state. Orr demonstrated to the country that a woman could head state government. She held tight on not wanting to increase taxes and remained fiscally conservative. Nelson began his tenure as governor in January, 1991. Legislative Bill 1059 was on the books but additional legislation would probably be needed to mold this new bill - the old Kansas model - to meet Nebraska's schools.

#### The 92nd Legislative Session: 1991

The 92nd Legislative Session began on January 9, 1991, under the leadership of Democrat Governor Ben Nelson. The Legislature was pleased that their school finance bill survived the referendum. Senator Withem, a major player in the finance reform efforts of LB 1059 (1990), continued to chair the Legislature's Education Committee. From his perspective, educational funding in Nebraska was not finished business. More innovation would be forthcoming.

In the November 1990 election, Nebraskans adopted a Constitutional amendment to establish a state lottery system. A State lottery system had been previously discussed by the Legislature but no change in statutes appeared until now. The times were different; competition

from Iowa made Senators rethink their positions. Iowa had established lotteries and were using money to help fund education. Council Bluffs, located across the river from Omaha, drew gambling dollars from Nebraska. Legislative Bill 849 (1991) was an opportunity to change this.

Introduced by Baack, Will and Withem at the request of the Governor, Legislative Bill 849 (1991) was known as the State Lottery Act. The purpose of this act was to establish lottery games in the state which would allow Nebraskans to benefit from the additional money raised through such lottery games. The dollars gained from the games were to be used for education and community betterment projects.<sup>852</sup>

Section 12 of LB 849 (1991) created the Education Innovation Fund. This new fund was to be allocated by the Governor through incentive grants to encourage the development of strategic plans for accomplishing high performance learning and to encourage school districts to establish innovative programs or practices. The Governor was to establish the Excellence in Education Council. This council would be in charge of implementation of the

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<sup>852</sup> 1991 Nebraska Laws, LB 849.

Innovation Fund and distribute the funds.<sup>853</sup>

Legislative Bill 511 (1911) had many components regarding education and funding. The most important component of the bill related to enrollment options. This bill changed the provisions of payment of state aid to districts accepting option students. In statute 79-3806, equalization aid and how it was to be determined was discussed. No district was to receive equalization aid in an amount less than 60% of the districts local effort. The computation formula was complex but districts receiving option students were gaining additional state aid.<sup>854</sup>

Legislative Bill 829 (1991) was a revenue and tax bill. It provided a delay in statewide equalization formula under LB 1059 (1990) until 1994.<sup>855</sup>

There were other revenue and tax bills approved during this session that addressed changes in property tax impacting the property tax levy. Legislative Bill 9 (1991) and LB 203 (1991) altered real estate appraisal methods while LB 207 (1991) and LB 253 (1991) dealt with finance;

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<sup>853</sup> Id.

<sup>854</sup> Id, LB 511.

<sup>855</sup> Id, LB 829.

LB 300 (1991) and LB 320 (1991) were both revenue and tax bills and LB 404 (1991) dealt with property tax.

Throughout the United States, other districts were still laboring under court mandates to adjust financing for public schools. The Texas Legislature "Robin Hood" Law was supposed to take money from rich school districts and provide dollars for poorer districts. According to an *Education Week* article, the law was not doing the job. "As one of the law's winners, the district should receive \$1.1 million in new state funds--a 20% jump. At the same time, however, residents will see property-tax rates rise by 26%."<sup>856</sup> Nebraska legislators admitted that they looked at other new funding models. They observed nearby state models to find out what they were using. The Kansas model heavily influenced Nebraska's design. Interestingly enough, in a December 1991 article, Lonnie Harp, an *Education Week* school finance writer, unveiled concerns about what was happening in Kansas.

Setting aside the potential obstacles posed by politics, computer printouts, and local fallout, Kansas officials have recommended a bold new school-finance plan that would shift all

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<sup>856</sup> Lonnie Harp, Texas 'Robin Hood' Law Hits Poor Districts with Tax Hikes, Too, *Education Week* October 23, 1991, 1,23-24.

school-funding responsibility--and property-taxing authority--to the state.

If implemented, the proposal would profoundly reshape the way Kansas pays for its schools and challenge the principle of local funding that has guided American education throughout its history.

Members of the panel that proposed the plan late last month said they had little choice but to call for radical changes in light of a state judge's preliminary ruling arguing that, in Kansas, at least, the idea that local communities pay for their schools is scarcely more than an illusion.<sup>857</sup>

In the same issue, an article appeared about some of Nebraska's school officials who were interested in revamping Nebraska's new finance law. Superintendent James Grove, from Callaway School District, was not happy with LB 1059. Although he did not want to throw the bill out entirely, there were a group of schools who wanted to revisit some issues within the bill.

Mr. Grove said that the new group, which met for the first time last month, has formed a research committee and may hire a lobbyist. He said the coalition, which is scheduled to meet with officials of the state education department this week, is seeking to alter the formula to take into account above-average transportation costs in some districts.<sup>858</sup>

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<sup>857</sup> Lonnie Harp, Kansas Plan Would Put School-Funding Onus on State Legislature, *Education Week*, December 4, 1991, 1,20.

<sup>858</sup> Ellen Flax, Nebraska Districts Teaming Up To Revamp School-Finance Law, *Education Week*, December 4, 1991, 20.



Although Nebraska was still in its infancy with LB 1059 (1990), all school districts were not pleased with the outcome and impact the bill had on their district. The changes made in 1991 were minimal but as the impact of the bill was studied further, additional reshaping of the legislation was possible.

A Special Legislative Session was held in July 1991. This session repealed and amended the State Constitution on property tax issues. Several important bills were passed relating to property tax. The most significant change occurred with allowing the taxation of personal property by value and removing the uniformity and proportionality clause from personal property.

The Second Session of the 92nd Legislature convened in January 1992. Additional legislation impacted school funding. Legislative Bill 245 (1992) created the School Accountability Commission. This bill amended 10-716.01, 23, 3306, 43-2007, 77, 3438.01, 79-101.01, 77-3437 and 77-3438.

One of the more important funding bills during this session was LB 719 (1992), which was introduced by Withem and Lamb. This bill amended 79-402, 79-3806 and 79-3807

Revised Statutes Supplement, 1991 and section 79-3819, Revised Statute Supplement, 1991 as amended by section 205, LB 1063 (1992), 92nd Legislature, Second Session, 1992. This bill altered boundaries of school districts and also changed provisions relating to equalization aid and the computation of the total formula and provided limitations on budgets of school districts.<sup>859</sup> Section 3 of the bill provided a growth formula if a school district's ADM from the preceding year grew by more than 25 students and by more than one percent of the district's ADM. Funding was adjusted to compensate for this growth.<sup>860</sup>

Legislative Bill 1001 (1992) identified procedures for the dissolution of Class I districts. Step-by-step plans were written for districts to follow as they dissolved.<sup>861</sup>

Legislative Bill 1063 (1992) was a revenue and tax bill. It set budget limitations and established value of the taxable property in relation to a constitutional amendment proposed for the Primary Election in May 1992. Current taxable value for real property was to mean the

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<sup>859</sup> 1992 Nebraska Laws, LB 719.

<sup>860</sup> Id.

<sup>861</sup> Id, LB 1001.

value established by the county assessor and equalized by the county board of equalization and the State Board of Equalization and Assessment.<sup>862</sup> With new values and new methods, the statutes would again be altered if the amendment passed on the ballot. The ballot issue was successful and passed in May.

In February 1992, the Nebraska Tax Research Council completed an analysis of the effectiveness of LB 1059 (1990). The Executive Summary stated that the intent of the report was to determine if LB 1059 had been effective in achieving its four goals which were to: 1) provide a broadened and expandable tax base for schools; 2) to provide property tax relief by increasing state funding to 45%; 3) to equalize educational opportunities for students statewide; and 4) to equalize the school tax burden among property taxpayers. The findings of the Nebraska Tax Research Council were as follows:

1. The tax base has been broadened. The introduction of income tax revenue as a source of funding clearly expanded the tax base available to schools. Individual and corporate income tax collections increased FY 1989-90 to FY 1990-91, the years before and after LB 1059's enactment.

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<sup>862</sup> Id, LB 1063.

2. Statewide property tax relief has been provided. The average aggregate property tax levy decreased 10.6 percent in the first year of LB 1059 and 9.9 percent in the second year. The bill's passage also resulted in a 12.7 percent decrease in aggregate property tax collections in the first year and a 15.1 percent decrease in the second year. However, because of an increase in school spending, the state was only able to achieve funding of 40.35 percent of general fund operating expenditures for schools in 1990-91, instead of the announced target level of 45 percent of the cost of K-12 education to be provided by state funds.
3. As soon as the data are available, the Nebraska Tax Research Council will distribute an addendum detailing the effectiveness of LB 1059 regarding the goal of equalizing educational opportunities.
4. The property tax burden has been made more equitable. The decrease in the statewide general fund levy and the decrease in the number of school districts with larger-than-average general fund levies from 1989-90 to 1990-91 demonstrates a more equal tax burden among property taxpayers with the enactment of LB 1059.<sup>863</sup>

According to this report, LB 1059 (1990) was doing what the Legislature had intended. Another Special Session of the Legislature was called in July 1992. This session dealt with constitutional weaknesses of LB 1063 (1992), a personal property tax measure. Before the year's end, there was concern over the usefulness of the school lands. Held in

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<sup>863</sup> *Analysis of the Effectiveness of LB 1059 - The Tax Equity and Educational Opportunities Support Act*, 1992, Report of the Nebraska Tax Research Council, February.

trust for over 100 years, the 1.5 million acres continued to provide dollars for school districts. In 1991, Lancaster County schools gained \$2.7 million out of the \$24 million that was distributed to all of the state's public school districts.<sup>864</sup> L. J. Gildersleeve, general counsel for the state Board of Educational Lands and Funds, suggested that the land be kept but others recommended selling the land. Worth about \$295 million and located in northwest Nebraska, the majority of the land was rented to farmers and ranchers. Gildersleeve explained that the funds currently resulted from approximately 3,700 leases on land, mineral and oil, mineral lease royalties, oil and gas severance taxes, earnings and interest, which are used to help state public education.<sup>865</sup>

Two methods of payment occur with the school land. One is "in-lieu-of-tax" payments. The second payment method is based upon the number of public school students. The conflicts currently center on selling or leasing the land. Senator Loran Schmidt suggested it was time to sell the land

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<sup>864</sup> Mary Kay Roth, *Battle Continues over Funds from School Land in Nebraska*, *Lincoln Star*, December 14, 1992, 1,7.

<sup>865</sup> *Id.*, 7.

since the investment return was modest. Urban and rural senators often clashed over the lands. Lancaster County got \$11,000 in-lieu-of-tax payments while Cherry County got \$269,000.<sup>866</sup> "The less populated counties with more land, of course, want payments to continue, while areas without much land are not happy with the situation."<sup>867</sup> Another area of conflict was the \$2 million budget which funds 24 staff members and an office building.

Additional Special Sessions were held during 1992. In the Third Special Session, which was held starting on September 21, 1992, LB 3 changed reimbursement provisions for education costs for wards of the state or court. Legislative Bill 19 (1992) altered the provisions for payment of tuition for students who attended high school outside the state. The major emphasis of this session was to reduce appropriations made during the 1992 Second Legislative Session and appropriate funds for deficit appropriations.

#### The 93rd Legislative Session: 1993

The 93rd Legislative Session convened in January

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<sup>866</sup> Id, 7.

<sup>867</sup> Id, 7.

1993. Additional school funding laws were approved by the Legislature. Legislative Bill 1059 (1990) and the affiliation bill caused headaches and confusion according to some. "Legislators thought affiliation was the dream compromise, yet some officials now call it an administrative nightmare."<sup>868</sup> Dennis Pool, from the Department of Education, claimed that the affiliation was working. Of the 430 elementary only districts in the state, there were only four districts that had not met the deadline of February 1. Pool did admit there were some challenges and stated that the Department of Education was holding workshops for county officials to tutor them on calculation of the levy. Pool also asked for time. "'I don't think we're really going to know much for awhile. But maybe a year from now we'll find out how good a job we've done.'"<sup>869</sup>

The majority of the bills passed this session were revenue and tax bills. Legislative Bill 8 (1993), LB 46 (1993), LB 220 (1993), LB 345 (1993), LB 734 (1993) all related to this. Legislative Bill 839 (1993) was introduced by the Appropriations Committee. It changed district

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<sup>868</sup> Mary Kay Roth, High School Affiliations not so Simple, *Lincoln Star*, April 12, 1998.

<sup>869</sup> Id.

boundaries as well as provided a common levy for Class VI schools which now had Class Is affiliated with them.

Superintendent Richard Kamm, Lakeview High School

Superintendent, stated that LB 839 (1993) would put rural elementary schools on a collision course with consolidation.

"You hear all this talk about how revitalization of rural Nebraska is important to the whole state," Kamm said. "But you're sounding the death knell for rural Nebraska when you take away state funding for education."

The levy provision requires all patrons in a Class VI district, or high school only school district such as Lakeview, to pool their taxes into a single common levy even though they also belong to a different Class I, or elementary only, school district, he said.

Sen. Ron Withem of Papillion, chairman of the Legislature's Education Committee, defended the law, saying its only purpose is to eliminate unfair tax advantages in certain school districts.<sup>870</sup>

The bill also changed provisions relating to valuation of school and saline lands, eliminated tuition reimbursement by the state for children of parents residing on tax-exempt, state-owned airfields as well as, children of certain federal employees or children of persons in military service.<sup>871</sup>

Legislative Bill 348 (1993) was another bill approved

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<sup>870</sup> Id.

<sup>871</sup> 1993 Nebraska Laws, LB 839.



during this session. It was introduced by Withem and dealt with a variety of funding issues including bonded indebtedness, taxable property and valuation, taxation for abatement of environmental hazards and for accessibility barrier elimination, budget statements, applicability of the Nebraska Budget Act, apportionment of school funds, and the Tax Equity and Educational Opportunities Support Act.<sup>872</sup>

Legislative Bill 84 (1993) changed the provisions for state aid to reorganized school districts. This was an alignment bill.

In June, the Gould v Orr lawsuit was scheduled to be heard by the State Supreme Court. Attorney Vard Johnson argued for the Goulds that LB 1059 (1990) merely perpetuated the old inequities in Nebraska's schools. He stated that it was modeled after the Kansas model which had since been overhauled due to legal challenges in that state. He talked about the inequities in curricula at Raymond Central versus Lincoln Public Schools that was less than 20 miles down the road. Johnson told the court, "'We're in a rural ghetto. Raymond Central is not unique. There are rural ghettos

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<sup>872</sup> Id, LB 348.

throughout Nebraska.<sup>873</sup> The State continued to defend their positive ruling from district court. They stated that the case was moot due to LB 1059, there was a lack of evidence to show that there were inequities. The court's ruling would be forthcoming.

In September 1993, the Nebraska Supreme Court ruled on the school funding lawsuit initiated by the Goulds. The court dismissed the school funding lawsuit. The unsigned decision was a 4-3 split. Judge Thomas White dissented from the majority opinion saying the Goulds should have been allowed to amend their lawsuit. Judge Thomas Shanahan joined the dissent too. In a separate dissent, Judge David Lanphier said that the Goulds already have alleged that the disparity in school district funding results in inadequate education and claimed that the lawsuit should not have been dismissed. Judge D. Nick Caporale wrote a separate concurrence reiterating that the Nebraska Constitution requires "free instruction" in "common schools," but not the same instruction in all schools. The decision also stated that Lancaster County Judge Paul Merritt was wrong when he failed to dismiss the lawsuit when the State had requested

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<sup>873</sup> Paying for Public Schools: Fair or 50 Years Behind?, *Lincoln Journal*, June 14, 1993, 8 Editorial.

that in June 1990.<sup>874</sup>

The legal challenge from the Gould lawsuit was finished. It was felt that the door was left open since the decision was split and close. Other states where litigation was in progress looked at the Nebraska decision with reassurance.

The Second Session of the 93rd Legislature convened in January 1994. Continued fine tuning of LB 1059 (1990) took place. Legislative Bill 647 (1994) was the appropriations bill, LB 961 (1994) and LB 977 (1994) were revenue and taxation bills and LB 1257 (1994) was the Nebraska Budget Act and amended 13-503. Legislative Bill 1290 (1994) was introduced by Warner and amended the Tax Equity and Educational Opportunities Support Act amending section 79-3509.02, 79-3803, 79-3807 to 79-3809 and 79-3813, Revised Statutes Supplement, 1992, and section 43-2513, 79-3806, and 79-3824, Revised Statutes Supplement, 1993. This bill changed the meaning of adjusted valuation stating that for the school year 1994-95, adjusted valuation was to mean the adjusted valuation for the property tax year ending during

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<sup>874</sup> Jolene Daib, Supreme Court Dismisses School Funding Lawsuit, *Lincoln Journal Star*, September 18, 1993, 6.

the school year in which the aid based upon that value is to be paid.<sup>875</sup> Legislative Bill 858 (1994) was introduced by the Executive Board and deleted references to nonresident high school tuition and the county nonresident high school tuition fund since all schools now needed to be affiliated.<sup>876</sup>

Reports were generated analyzing LB 1059 (1990) and its impact on the school funding system. Augenblick, Van de Water & Meyers submitted a follow up report to The Nebraska School Finance Review Committee<sup>877</sup> and the Center for Rural Affairs published a "School Finance Task Force Report"<sup>878</sup> in August.

#### The 94th Legislative Session: 1995

As the Legislature convened in January 1995, the 94th Legislative Session got underway. Continued modifications to school funding occurred through legislative bills. Legislative Bill 5 (1995), the Nebraska Education Finance Authority Act was amended as were numerous revenue and

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<sup>875</sup> 1994 Nebraska Laws, LB 1290.

<sup>876</sup> Id, LB 858.

<sup>877</sup> Supplemental Material for an Evaluation of LB 1059 and its Impact on School Districts in Nebraska, 1994, March.

<sup>878</sup> School Finance Task Force Report, 1994, Center for Rural Affairs, Walthill, Nebraska, August 30.

taxation bills. Legislative Bill 49 (1995), LB 182 (1995), LB 286 (1995), LB 452 (1995), LB 490 (1995), LB 542 (1995), LB 613 (1995), LB 574 (1995) and LB 840 (1995) all pertained to educational funding. Statutes were amended in minor ways to reflect the changes within these bills.

Legislative Bill 860 (1995) amended section 79-2225 and 81-1634, Reissue Revised Statutes of Nebraska, and section 9-812, Revised Statutes Supplement, 1994. This bill assured K-12 schools that they were to have a direct connection to a statewide public computer information network by June 30, 2000. The equipment and services needed to meet this goal could be funded under this act. Lottery dollars would be used for this.

The budget lids under LB 1059 (1990) still kept local districts from spending too many dollars, yet citizens continued to complain about property taxes. As tax levies began to decline in some areas, valuation increased so the total impact of a decline in the levy was often not realized.

#### Legislative Bill 1114: 1996

During the Second Session of the 94th Legislature, which began in January 1996, another significant piece of

legislation was approved. Senator Warner was introduced LB 1114 (1996). This bill placed limits on property tax rates. It impacted all political subdivisions including schools. The property tax rate was capped at \$1.10 per \$100 assessed valuation beginning in 1998. The bill further stated that this tax rate was to be reduced to \$1.00 per \$100s in the fiscal year 2001-2002.<sup>879</sup> This legislation forced many schools to critically analyze their budget. Two exclusions were defined in the bill. The first exclusion allowed districts to place "buy-out" dollars from certificated employees, who voluntarily terminated their contracts of employment, outside the lid. The second exception for monies placed outside the lid included budgeted expenses levied for special building funds or sinking funds established prior to April 1, 1996. School districts reacted to this bill based on current levy amounts. Many school district levies exceeded the \$1.10 limit by \$.70 or more. Superintendents and boards of education in those districts tested their budget trimming skills. If a district was unable to reduce the budget to the \$1.10 limit, they were granted an alternative.

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<sup>879</sup> 1996 Nebraska Laws, LB 114.

Districts could decide to place the increased budget levy on the ballot. The voting patrons of the district decided on the fate of the levy amount.

Legislative Bill 1050 (1996) was introduced by the Education Committee with Bohlke as Chair. This bill amended section 77-913, 79-402, 79-516.08, 79-1522.01, 793404, 79-3409, 79-3805, 79-3807, 79-3808, 79-3810, 79-3811, 79-3817, and 79-3822, Reissue Revised Statutes of Nebraska, and section 79-4, 176.01, 79-4,179.01, 79-4,180, 79-3801, 79-3803, 79-3804, 79-3806, 79-3806.01, 79-3809, 79-3811.01, 79-3811.02, 79-3813, and 79-3819, Revised Statutes Supplement, 1995.<sup>880</sup> This bill created the Insurance Tax Fund. Money in this fund was available for investment and was to be invested by the state investment officer. Allocations from this fund were to go to counties in a per capita proportion; 10% of the fund was to be used in this manner. Municipalities received 30% of the fund in proportion to the population within the municipality. The remaining 60% of the fund was allocated to the State Department of Education for distribution to school districts and used as equalization aid according to the Tax Equity and

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<sup>880</sup> Id, LB 1050.

Educational Opportunities Act.<sup>881</sup> This portion of state aid would begin to provide aid to school districts that were more efficient, both in size of student population and budgeting.

Legislative Bill 1205 (1996) was introduced by Bromm and encouraged the sale of the educational lands. This bill amended section 72-240.26, 72-258, and 72-259, Reissue Revised Statues of Nebraska, 1943. Section 1 of the bill required the Board of Educational Lands and Funds to develop a plan for the sale of the educational lands by December 1, 1996, and submit the plan to the Legislature's Education Committee. The plan was to provide

...for the sale of enough of the total of the education lands by January 1, 2008, to result in one-fourth of the value of the school trust permanent portfolio being invested by the board in real property located within the State of Nebraska and the remaining three-fourths of the value of the school trust permanent portfolio being invested by the state investment officer. The plan shall be implemented beginning July 1, 1997.<sup>882</sup>

The land was to be offered for sale at public auction at either the appraised value or the fair market value.

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<sup>881</sup> Id.

<sup>882</sup> Id, LB 1205.



Proceeds from the sale were then to be placed into other types of investments.

A total of eleven constitutional amendments were placed on the ballot during 1996 during both the Primary Election and the General Election. A tax policy amendment was passed during the May Primary Election. This ballot issue established powers and duties for a Tax Equalization and Review Commission. This amendment eliminated the equalization powers from the governor, tax commissioner, secretary of state, state auditor and state treasurer. This amendment was approved.<sup>883</sup>

In the General Election in November 1996, additional issues were placed on the ballot. One amendment proposed mergers of county and other local governments. If passed duplication of county and city services would be eliminated. The issue failed. A second issue was placed on the General Election ballot through the initiative process. It was backed by the Nebraska Education Association and attempted to change Nebraska's constitutional language for education. This amendment proposed incorporating the language of "quality education," "a fundamental constitutional right,"

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<sup>883</sup> 1996-97 Nebraska Blue Book, 246.

"thorough and efficient education" and "it (education) shall be the 'paramount duty' of the state" in Nebraska's Constitution. The vote against this amendment was 506,246 to 146,426.<sup>884</sup>

A third amendment on the General Election ballot encouraged the creation of property tax levy limits for governmental subdivisions. It authorized the Legislature to prescribe means to determine fair market value of real property for property tax purposes. It further provided that value of real property for such purposes was not to exceed 80 percent of fair market value for agricultural and horticultural land, or 100 percent of fair market value for other real property. It also required the Legislature to establish standards of efficiency for delivery of local government services.<sup>885</sup> This issue was also a petition initiative but it too failed to garner enough votes to pass. The lack of support for these amendments made it clear that changes in the issues of local control, consolidation of governmental agencies, efficient government, property taxation and quality education were to remain the same.

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<sup>884</sup> Id, 247.

<sup>885</sup> Id.

The 95th Legislative Session convened in January 1997. Governor Nelson continued in office but began thinking about other political opportunities. Many education bills had been passed during his tenure and additional bills were being considered for the 1997 session. Taxation and school funding continued to be key issues for Nebraska lawmakers. The financial status of the state had changed. Nebraska's economy was healthy and a revenue surplus was now in place. The surplus dollars attracted the interests of many groups including the Legislature's Education Committee.

Legislative Bill 806: 1996

Under the leadership of Senator Ardyce Bohlke, the Education Committee supported efforts to have surplus dollars assist in funding education. Another significant education bill, LB 806 (1996), was sponsored by the Education Committee. It revamped the formula used to distribute state aid to public schools. The bill also removed the ability of elementary-only school districts to decide the amount of their budgets.<sup>886</sup> This bill amended section 77-27, 119, 77-34444, 79-403, 79-413, 79-415, 79-418, 79-419, 79-431, 79-432, 79-437, 79-438, 79-440 to

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<sup>886</sup> 1997 Nebraska Laws, LB 806.

79-446, 79-458, 79-479, 79-528, 79-611, 79-1001 to 79-1003, 79-1005, 79-1007 to 79-1011, 70-1014 to 79-1018, 79-1026, 79-1031, 79-1202 to 79-1204, 79-1209, and 79-1210, Reissue Revised Statutes of Nebraska, sections 23-3302 and 32-527, Revised Statutes Supplement, 1996, and section 79-1022, Reissue Revised Statutes of Nebraska, as amended by section 5, Legislative Bill 713, 95th Legislature, First Session, 1997. The bill increased state aid to schools by \$110 million. The increased state aid replaced some of the revenues lost as a result of the statutory limits placed on property taxes as a result of LB 1114 (1996). More importantly, LB 806 (1996) was designed to send aid to schools with the most need and make high-spending schools cut costs. The new aid formula was based on a philosophy of equalization. If the formula indicated that a school district's financial needs were greater than its resources, the district gained equalization aid to make up the difference. Previously, in LB 1059 (1990), the aid formula was first based on a school district's size. Tiers for different size districts were designed and average student costs were calculated within each tier.

Meaningful changes in state aid funding were made in

LB 806 (1996). Calculations for state aid were to be made for K-12 systems, not individual school districts. This forced Class I districts to be a part of a K-12 system. Rather than using ADM figures, an adjusted formula or weighted membership, was used in calculations. This weighted membership formula was based on student need. More weight was given to older students, those living on Indian lands, or those who had limited English skills, or lived in poverty. Three cost groups were developed based on sparsity factors - very sparse, sparse and standard. Systems were placed in one of these three groups. An average per pupil cost was calculated for each sparsity group. Higher costs were determined for the very sparse and sparse groups.<sup>887</sup>

A system's funding needs were calculated as follows: first, calculate the sum of: 1) the allowance for transportation cost, 2) the allowance for special education costs, and 3) the weighted formula membership; second, multiply that sum by the average cost per student in the specific cost grouping.<sup>888</sup> If needs exceed resources, a system received equalization aid.

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<sup>887</sup> Unicameral Update, Special Edition: The 1997 Session, Volume XX, Number 24, 10.

<sup>888</sup> Id.

Class I budgets were changed under LB 806 (1996) too. Each Class I needed to be connected to a primary high school district. If the district was a K-12 district, the Class I budget would be reduced each year until it matched the per pupil cost budgeted for the K-8 primary district. If the district was a 7-12 or 9-12 district, the primary district would decide the costs of the Class I budget.

The appropriations bill for LB 806 (1996) was LB 806a (1996). It appropriated an additional \$110 million for state aid for the 1998-99 fiscal year.

Legislative Bill 710 (1996) served as a vehicle to amend several bills that had already been passed in the session including LB 806 (1996). Several "fine tuning" measures were attached to LB 710 (1996).<sup>889</sup> Legislative Bill 118 (1996) amended the provisions of the Education Innovation Fund, allowing school districts with expenditures of less than \$350,000 to be eligible for mini-grants, similar to major competitive grants.<sup>890</sup>

Legislative Bill 180 (1996) was a revenue bill which created the Property Tax Reduction Incentive Fund. The

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<sup>889</sup> Id, LB 710.

<sup>890</sup> Id, LB 118.

purpose of this fund was to provide specific programs for property tax relief including increased state aid. Twenty million was to be transferred from the General Fund to the Property Tax Reduction Incentive Fund.<sup>891</sup>

Legislative Bill 271e (1996), another revenue bill, replaced the old motor vehicle property tax fee system with a new tax and fee schedule. Motor vehicle fees continued to provide dollars for school funding. Recommended as a revenue neutral bill, the Legislature was unsure of its impact on schools. A "wait and see" outlook was established for this bill.<sup>892</sup>

#### Summary

The decade of the 1990s brought reform to school finance law. After hearing the recommendations of the Syracuse Report in 1988, the Legislature began a strategic study of school finance. The 1967 School Foundation and Equalization Act needed revision. Statistical data proved that Nebraska's schools received very little state aid. Local district levies supporting schools had great disparities. Per pupil costs were unequal. Cries for

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<sup>891</sup> Id, LB 180.

<sup>892</sup> Id, LB 271e.

property tax relief were heard from both rural and urban constituents. In some states, the courts were demanding legislatures to make school funding systems more equitable.

With the establishment of the School Financing Review Commission, created by LB 940 (1988), the Legislature declared both interest and intent to address the funding needs of Nebraska's public schools. It was hoped that new legislation would require greater participation from the state.

Legislative Bill 89 (1989) granted one-time stipends, like a business bonus, to support Nebraska's teachers. State dollars were allocated to school districts and then paid directly to teachers. The intent of this bill was to recruit new teachers and to retain veteran staff. The Help Education Lead to Prosperity Act provided extra cash and improved teacher morale but lasted only a few years.

Legislative Bill 611 (1989) was another significant bill that altered state aid by including income tax dollars to support schools. It also terminated the School Foundation and Equalization Act. The Enrollment Options bill or LB 183 (1989), allowed parents to choose which school they wanted their children to attend. State dollars



followed these students to their new school.

The School Financing Review Commission had worked 18 months on new funding measures. They listened to experts in the school finance field and investigated various funding models. Senator Ron Withem introduced LB 1059 in January 1990, optimistic that it might become Nebraska's new school finance plan. The plan was presented to the Legislature only days after a lawsuit was filed in Lancaster County District Court challenging the constitutionality of the current finance system. Hotly debated by the Senators, the bill was approved but was then vetoed by Governor Orr. A successful referendum drive placed LB 1059 on the ballot in the November 1990 General Election. The voters chose to retain LB 1059, so a new funding system was in place, which encouraged the state to contribute up to 40% of the cost of funding schools.

Other funding sources contributed money to the education coffers. After a state lottery was approved, 60% of the funds collected were dedicated to fund innovative projects. Legislative Bill 849 (1991) established the Education Innovation Fund. School districts could apply for these dollars through grants. Although LB 1059 (1990) was

working to reduce the property tax burden, another bill, LB 1114 (1996), capped levy limits at \$1.10 and lowered the limit to \$1.00 in 2001-2002. Legislative Bill 806 (1996) altered the way state aid to education was to be distributed. The new funding formula for state aid was based on per-pupil spending levels, incorporating a weighted student calculation, K-12 system size and a sparsity factor. Class I districts were forced to align themselves with a K-12 district. "Small by choice" districts were penalized in the new formula. The companion funding bill, LB 806a (1996), created a state aid pool of \$572 million. Legislation during the 1990s changed school funding formulas, shifted funding sources to include income and sales tax money and established a levy lid. The state's participation in funding schools increased significantly during this decade.

The leadership in this decade came from committed senators, Ron Withem and Ardyce Bohlke, both chairs of the Legislature's Education Committee. Senator Jerome Warner and Deputy Commissioner Larry Vontz were both strong historians in school finance within the state, and their knowledge and insight was truly valued. Governor Nelson

supported the new legislation too. The School Financing Review Commission and Nebraska State Department personnel, including Tim Kemper and Dennis Donner, contributed a great deal. University of Nebraska professor Dr. Cale Hudson provided important statistical data and recommendations about funding plans during the early years of reform. Larry Scherer, Legal Counsel to the Education Committee, was very instrumental in designing the language of LB 1059 (1990).

Property tax legislation, constitutional amendments and a legal challenge to Nebraska's school finance system occurred during this decade. Attempts at changing Constitutional language were made but none were successful. Words such as "thorough and efficient," "fundamental right," and education being the "paramount duty" of the state were suggested for inclusion in Nebraska's Constitution.

The number of school districts decreased from 1988-89 by over 200. During the 1997-98 school year, Nebraska had 640 public school districts. The one room school house was slowly beginning to disappear across the state while consolidated, affiliated and unified school districts were increasing. This kind of school would be larger in size and benefit under the new funding formula. In an era of

streamlining business and government, Nebraska's school systems were following national trends.

The school lands continued to be a debated issue. Historically, they were given to the state to provide funding for education. The system had become expensive to manage. Many legislators felt it best to sell the land and invest the profits into other securities that were more easily managed. During this decade, legislation passed to begin this process. A target date of 2008 was established for the process to be complete.

The decade of the 1990s witnessed significant reform to Nebraska finance law. There were many problems yet to be addressed. How were schools to fund new buildings? Were equity and quality issues settled? Do students in small districts have equal opportunities in curriculum offerings? As Nebraska moved forward into a new decade and the 21st Century, school finance laws continued to evolve.

Chart N

	<u>1990</u>	<u>1995</u>
Number of districts	838	680
Number of school houses	1,485	1,347
K-12 Districts	278	269
Number of counties	93	93
Number of children, 5-21	384,679	394,049
Children enrolled	270,930	287,100
Number of teachers	20,517	22,036
Value of School Property	2,030,304,640	2,581,160,607
Receipts	1,183,451,888	1,510,736,324
Expenditures	1,162,693,038	1,500,327,499
Indebtedness	287,637,546	546,684,390
State Apportionment from Endowments	18,410,444	26,008,567

<sup>893</sup>  
\*Nebraska Blue Book

<sup>893</sup> Nebraska Blue Book, (1992-93), 918-920.