

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 351

Introduced by Brasch, 16; Bloomfield, 17; Hilkemann, 4; Johnson, 23;
Kolterman, 24; Kuehn, 38; Lindstrom, 18; Schilz, 47; Smith,
14.

Read first time January 15, 2015

Committee: Education

1 A BILL FOR AN ACT relating to the Tax Equity and Educational
2 Opportunities Support Act; to amend sections 79-1003, 79-1005.01,
3 and 79-1008.02, Reissue Revised Statutes of Nebraska; to change
4 provisions relating to allocated income tax funds; to harmonize
5 provisions; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 79-1003, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 79-1003 For purposes of the Tax Equity and Educational Opportunities
4 Support Act:

5 (1) Adjusted general fund operating expenditures means (a) for
6 school fiscal years 2013-14 through 2015-16, the difference of the
7 general fund operating expenditures as calculated pursuant to subdivision
8 (22) of this section increased by the cost growth factor calculated
9 pursuant to section 79-1007.10, minus the transportation allowance,
10 special receipts allowance, poverty allowance, limited English
11 proficiency allowance, distance education and telecommunications
12 allowance, elementary site allowance, summer school allowance,
13 instructional time allowance, teacher education allowance, and focus
14 school and program allowance, and (b) for school fiscal year 2016-17 and
15 each school fiscal year thereafter, the difference of the general fund
16 operating expenditures as calculated pursuant to subdivision (22) of this
17 section increased by the cost growth factor calculated pursuant to
18 section 79-1007.10, minus the transportation allowance, special receipts
19 allowance, poverty allowance, limited English proficiency allowance,
20 distance education and telecommunications allowance, elementary site
21 allowance, summer school allowance, and focus school and program
22 allowance;

23 (2) Adjusted valuation means the assessed valuation of taxable
24 property of each local system in the state, adjusted pursuant to the
25 adjustment factors described in section 79-1016. Adjusted valuation means
26 the adjusted valuation for the property tax year ending during the school
27 fiscal year immediately preceding the school fiscal year in which the aid
28 based upon that value is to be paid. For purposes of determining the
29 local effort rate yield pursuant to section 79-1015.01, adjusted
30 valuation does not include the value of any property which a court, by a
31 final judgment from which no appeal is taken, has declared to be

1 nontaxable or exempt from taxation;

2 (3) Allocated income tax funds means:

3 (a) For school fiscal years prior to school fiscal year 2016-17, the
4 amount of assistance paid to a local system pursuant to section
5 79-1005.01 as adjusted by the minimum levy adjustment pursuant to section
6 79-1008.02; and

7 (b) For school fiscal year 2016-17 and each school fiscal year
8 thereafter, the amount of assistance paid to a local system pursuant to
9 section 79-1005.01;

10 (4) Average daily membership means the average daily membership for
11 grades kindergarten through twelve attributable to the local system, as
12 provided in each district's annual statistical summary, and includes the
13 proportionate share of students enrolled in a public school instructional
14 program on less than a full-time basis;

15 (5) Base fiscal year means the first school fiscal year following
16 the school fiscal year in which the reorganization or unification
17 occurred;

18 (6) Board means the school board of each school district;

19 (7) Categorical funds means funds limited to a specific purpose by
20 federal or state law, including, but not limited to, Title I funds, Title
21 VI funds, federal vocational education funds, federal school lunch funds,
22 Indian education funds, Head Start funds, and funds from the Education
23 Innovation Fund. Categorical funds does not include funds received
24 pursuant to section 79-1028.02 or 79-1028.04;

25 (8) Consolidate means to voluntarily reduce the number of school
26 districts providing education to a grade group and does not include
27 dissolution pursuant to section 79-498;

28 (9) Converted contract means an expired contract that was in effect
29 for at least fifteen school years beginning prior to school year 2012-13
30 for the education of students in a nonresident district in exchange for
31 tuition from the resident district when the expiration of such contract

1 results in the nonresident district educating students, who would have
2 been covered by the contract if the contract were still in effect, as
3 option students pursuant to the enrollment option program established in
4 section 79-234;

5 (10) Converted contract option student means a student who will be
6 an option student pursuant to the enrollment option program established
7 in section 79-234 for the school fiscal year for which aid is being
8 calculated and who would have been covered by a converted contract if the
9 contract were still in effect and such school fiscal year is the first
10 school fiscal year for which such contract is not in effect;

11 (11) Department means the State Department of Education;

12 (12) District means any Class I, II, III, IV, V, or VI school
13 district and, beginning with the calculation of state aid for school
14 fiscal year 2011-12 and each school fiscal year thereafter, a unified
15 system as defined in section 79-4,108;

16 (13) Ensuing school fiscal year means the school fiscal year
17 following the current school fiscal year;

18 (14) Equalization aid means the amount of assistance calculated to
19 be paid to a local system pursuant to sections 79-1007.11 to 79-1007.23,
20 79-1007.25, 79-1008.01 to 79-1022, 79-1022.02, 79-1028.02, and
21 79-1028.04;

22 (15) Fall membership means the total membership in kindergarten
23 through grade twelve attributable to the local system as reported on the
24 fall school district membership reports for each district pursuant to
25 section 79-528;

26 (16) Fiscal year means the state fiscal year which is the period
27 from July 1 to the following June 30;

28 (17) Formula students means:

29 (a) For state aid certified pursuant to section 79-1022, the sum of
30 the product of fall membership from the school fiscal year immediately
31 preceding the school fiscal year in which the aid is to be paid

1 multiplied by the average ratio of average daily membership to fall
2 membership for the second school fiscal year immediately preceding the
3 school fiscal year in which the aid is to be paid and the prior two
4 school fiscal years plus sixty percent of the qualified early childhood
5 education fall membership plus tuitioned students from the school fiscal
6 year immediately preceding the school fiscal year in which aid is to be
7 paid minus the product of the number of students enrolled in kindergarten
8 that is not full-day kindergarten from the fall membership multiplied by
9 0.5; and

10 (b) For the final calculation of state aid pursuant to section
11 79-1065, the sum of average daily membership plus sixty percent of the
12 qualified early childhood education average daily membership plus
13 tuitioned students minus the product of the number of students enrolled
14 in kindergarten that is not full-day kindergarten from the average daily
15 membership multiplied by 0.5 from the school fiscal year immediately
16 preceding the school fiscal year in which aid was paid;

17 (18) Free lunch and free milk student means a student who qualified
18 for free lunches or free milk from the most recent data available on
19 November 1 of the school fiscal year immediately preceding the school
20 fiscal year in which aid is to be paid;

21 (19) Full-day kindergarten means kindergarten offered by a district
22 for at least one thousand thirty-two instructional hours;

23 (20) General fund budget of expenditures means the total budget of
24 disbursements and transfers for general fund purposes as certified in the
25 budget statement adopted pursuant to the Nebraska Budget Act, except that
26 for purposes of the limitation imposed in section 79-1023 and the
27 calculation pursuant to subdivision (2) of section 79-1027.01, the
28 general fund budget of expenditures does not include any special grant
29 funds, exclusive of local matching funds, received by a district;

30 (21) General fund expenditures means all expenditures from the
31 general fund;

1 (22) General fund operating expenditures means for state aid
2 calculated for school fiscal years 2012-13 and each school fiscal year
3 thereafter, as reported on the annual financial report for the second
4 school fiscal year immediately preceding the school fiscal year in which
5 aid is to be paid, the total general fund expenditures minus (a) the
6 amount of all receipts to the general fund, to the extent that such
7 receipts are not included in local system formula resources, from early
8 childhood education tuition, summer school tuition, educational entities
9 as defined in section 79-1201.01 for providing distance education courses
10 through the Educational Service Unit Coordinating Council to such
11 educational entities, private foundations, individuals, associations,
12 charitable organizations, the textbook loan program authorized by section
13 79-734, federal impact aid, and levy override elections pursuant to
14 section 77-3444, (b) the amount of expenditures for categorical funds,
15 tuition paid, transportation fees paid to other districts, adult
16 education, community services, redemption of the principal portion of
17 general fund debt service, retirement incentive plans authorized by
18 section 79-855, and staff development assistance authorized by section
19 79-856, (c) the amount of any transfers from the general fund to any bond
20 fund and transfers from other funds into the general fund, (d) any legal
21 expenses in excess of fifteen-hundredths of one percent of the formula
22 need for the school fiscal year in which the expenses occurred, (e)
23 expenditures to pay for sums agreed to be paid by a school district to
24 certificated employees in exchange for a voluntary termination occurring
25 prior to July 1, 2009, occurring on or after the last day of the 2010-11
26 school year and prior to the first day of the 2013-14 school year, or, to
27 the extent that a district has demonstrated to the State Board of
28 Education pursuant to section 79-1028.01 that the agreement will result
29 in a net savings in salary and benefit costs to the school district over
30 a five-year period, occurring on or after the first day of the 2013-14
31 school year, (f)(i) expenditures to pay for employer contributions

1 pursuant to subsection (2) of section 79-958 to the School Employees
2 Retirement System of the State of Nebraska to the extent that such
3 expenditures exceed the employer contributions under such subsection that
4 would have been made at a contribution rate of seven and thirty-five
5 hundredths percent or (ii) expenditures to pay for school district
6 contributions pursuant to subdivision (1)(c)(i) of section 79-9,113 to
7 the retirement system established pursuant to the Class V School
8 Employees Retirement Act to the extent that such expenditures exceed the
9 school district contributions under such subdivision that would have been
10 made at a contribution rate of seven and thirty-seven hundredths percent,
11 and (g) any amounts paid by the district for lobbyist fees and expenses
12 reported to the Clerk of the Legislature pursuant to section 49-1483.

13 For purposes of this subdivision (22) of this section, receipts from
14 levy override elections shall equal ninety-nine percent of the difference
15 of the total general fund levy minus a levy of one dollar and five cents
16 per one hundred dollars of taxable valuation multiplied by the assessed
17 valuation for school districts that have voted pursuant to section
18 77-3444 to override the maximum levy provided pursuant to section
19 77-3442;

20 (23) High school district means a school district providing
21 instruction in at least grades nine through twelve;

22 (24) Income tax liability means the amount of the reported income
23 tax liability for resident individuals pursuant to the Nebraska Revenue
24 Act of 1967 less all nonrefundable credits earned and refunds made;

25 (25) Income tax receipts means the amount of income tax collected
26 pursuant to the Nebraska Revenue Act of 1967 less all nonrefundable
27 credits earned and refunds made;

28 (26) Limited English proficiency students means the number of
29 students with limited English proficiency in a district from the most
30 recent data available on November 1 of the school fiscal year preceding
31 the school fiscal year in which aid is to be paid plus the difference of

1 such students with limited English proficiency minus the average number
2 of limited English proficiency students for such district, prior to such
3 addition, for the three immediately preceding school fiscal years if such
4 difference is greater than zero;

5 (27) Local system means a learning community for purposes of
6 calculation of state aid for the second full school fiscal year after
7 becoming a learning community and each school fiscal year thereafter, a
8 unified system, a Class VI district and the associated Class I districts,
9 or a Class II, III, IV, or V district and any affiliated Class I
10 districts or portions of Class I districts. The membership, expenditures,
11 and resources of Class I districts that are affiliated with multiple high
12 school districts will be attributed to local systems based on the percent
13 of the Class I valuation that is affiliated with each high school
14 district;

15 (28) Low-income child means a child under nineteen years of age
16 living in a household having an annual adjusted gross income for the
17 second calendar year preceding the beginning of the school fiscal year
18 for which aid is being calculated equal to or less than the maximum
19 household income that would allow a student from a family of four people
20 to be a free lunch and free milk student during the school fiscal year
21 immediately preceding the school fiscal year for which aid is being
22 calculated;

23 (29) Low-income students means the number of low-income children
24 within the district multiplied by the ratio of the formula students in
25 the district divided by the total children under nineteen years of age
26 residing in the district as derived from income tax information;

27 (30) Most recently available complete data year means the most
28 recent single school fiscal year for which the annual financial report,
29 fall school district membership report, annual statistical summary,
30 Nebraska income tax liability by school district for the calendar year in
31 which the majority of the school fiscal year falls, and adjusted

1 valuation data are available;

2 (31) Poverty students means the number of low-income students or the
3 number of students who are free lunch and free milk students in a
4 district plus the difference of the number of low-income students or the
5 number of students who are free lunch and free milk students in a
6 district, whichever is greater, minus the average number of poverty
7 students for such district, prior to such addition, for the three
8 immediately preceding school fiscal years if such difference is greater
9 than zero;

10 (32) Qualified early childhood education average daily membership
11 means the product of the average daily membership for school fiscal year
12 2006-07 and each school fiscal year thereafter of students who will be
13 eligible to attend kindergarten the following school year and are
14 enrolled in an early childhood education program approved by the
15 department pursuant to section 79-1103 for such school district for such
16 school year multiplied by the ratio of the actual instructional hours of
17 the program divided by one thousand thirty-two if: (a) The program is
18 receiving a grant pursuant to such section for the third year; (b) the
19 program has already received grants pursuant to such section for three
20 years; or (c) the program has been approved pursuant to subsection (5) of
21 section 79-1103 for such school year and the two preceding school years,
22 including any such students in portions of any of such programs receiving
23 an expansion grant;

24 (33) Qualified early childhood education fall membership means the
25 product of membership on the last Friday in September 2006 and each year
26 thereafter of students who will be eligible to attend kindergarten the
27 following school year and are enrolled in an early childhood education
28 program approved by the department pursuant to section 79-1103 for such
29 school district for such school year multiplied by the ratio of the
30 planned instructional hours of the program divided by one thousand
31 thirty-two if: (a) The program is receiving a grant pursuant to such

1 section for the third year; (b) the program has already received grants
2 pursuant to such section for three years; or (c) the program has been
3 approved pursuant to subsection (5) of section 79-1103 for such school
4 year and the two preceding school years, including any such students in
5 portions of any of such programs receiving an expansion grant;

6 (34) Regular route transportation means the transportation of
7 students on regularly scheduled daily routes to and from the attendance
8 center;

9 (35) Reorganized district means any district involved in a
10 consolidation and currently educating students following consolidation;

11 (36) School year or school fiscal year means the fiscal year of a
12 school district as defined in section 79-1091;

13 (37) Sparse local system means a local system that is not a very
14 sparse local system but which meets the following criteria:

15 (a)(i) Less than two students per square mile in the county in which
16 each high school is located, based on the school district census, (ii)
17 less than one formula student per square mile in the local system, and
18 (iii) more than ten miles between each high school attendance center and
19 the next closest high school attendance center on paved roads;

20 (b)(i) Less than one and one-half formula students per square mile
21 in the local system and (ii) more than fifteen miles between each high
22 school attendance center and the next closest high school attendance
23 center on paved roads;

24 (c)(i) Less than one and one-half formula students per square mile
25 in the local system and (ii) more than two hundred seventy-five square
26 miles in the local system; or

27 (d)(i) Less than two formula students per square mile in the local
28 system and (ii) the local system includes an area equal to ninety-five
29 percent or more of the square miles in the largest county in which a high
30 school attendance center is located in the local system;

31 (38) Special education means specially designed kindergarten through

1 grade twelve instruction pursuant to section 79-1125, and includes
2 special education transportation;

3 (39) Special grant funds means the budgeted receipts for grants,
4 including, but not limited to, categorical funds, reimbursements for
5 wards of the court, short-term borrowings including, but not limited to,
6 registered warrants and tax anticipation notes, interfund loans,
7 insurance settlements, and reimbursements to county government for
8 previous overpayment. The state board shall approve a listing of grants
9 that qualify as special grant funds;

10 (40) State aid means the amount of assistance paid to a district
11 pursuant to the Tax Equity and Educational Opportunities Support Act;

12 (41) State board means the State Board of Education;

13 (42) State support means all funds provided to districts by the
14 State of Nebraska for the general fund support of elementary and
15 secondary education;

16 (43) Statewide average basic funding per formula student means the
17 statewide total basic funding for all districts divided by the statewide
18 total formula students for all districts;

19 (44) Statewide average general fund operating expenditures per
20 formula student means the statewide total general fund operating
21 expenditures for all districts divided by the statewide total formula
22 students for all districts;

23 (45) Teacher has the definition found in section 79-101;

24 (46) Temporary aid adjustment factor means (a) for school fiscal
25 years before school fiscal year 2007-08, one and one-fourth percent of
26 the sum of the local system's transportation allowance, the local
27 system's special receipts allowance, and the product of the local
28 system's adjusted formula students multiplied by the average formula cost
29 per student in the local system's cost grouping and (b) for school fiscal
30 year 2007-08, one and one-fourth percent of the sum of the local system's
31 transportation allowance, special receipts allowance, and distance

1 education and telecommunications allowance and the product of the local
2 system's adjusted formula students multiplied by the average formula cost
3 per student in the local system's cost grouping;

4 (47) Tuition receipts from converted contracts means tuition
5 receipts received by a district from another district in the most
6 recently available complete data year pursuant to a converted contract
7 prior to the expiration of the contract;

8 (48) Tuitioned students means students in kindergarten through grade
9 twelve of the district whose tuition is paid by the district to some
10 other district or education agency; and

11 (49) Very sparse local system means a local system that has:

12 (a)(i) Less than one-half student per square mile in each county in
13 which each high school attendance center is located based on the school
14 district census, (ii) less than one formula student per square mile in
15 the local system, and (iii) more than fifteen miles between the high
16 school attendance center and the next closest high school attendance
17 center on paved roads; or

18 (b)(i) More than four hundred fifty square miles in the local
19 system, (ii) less than one-half student per square mile in the local
20 system, and (iii) more than fifteen miles between each high school
21 attendance center and the next closest high school attendance center on
22 paved roads.

23 Sec. 2. Section 79-1005.01, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 79-1005.01 (1) For school fiscal years prior to school fiscal year
26 2016-17:

27 (a) An amount equal to the amount appropriated to the School
28 District Income Tax Fund for distribution in school fiscal year 1992-93
29 shall be disbursed as option payments as determined under section 79-1009
30 and as allocated income tax funds as determined in this section and
31 sections 79-1008.01, 79-1015.01, 79-1017.01, and 79-1018.01, except as

1 provided in section 79-1008.02. Funds not distributed as allocated income
2 tax funds due to minimum levy adjustments shall not increase the amount
3 available to local systems for distribution as allocated income tax
4 funds; -

5 (b 2) Not later than November 15 of each year, the Tax Commissioner
6 shall certify to the department for the preceding tax year the income tax
7 liability of resident individuals for each local system. The 1996 income
8 tax liability of resident individuals of Class I districts that are
9 affiliated with multiple high school districts shall be divided between
10 local systems based on the percentage of the Class I district's valuation
11 affiliated with each high school district; and -

12 (c 3) Using the data certified by the Tax Commissioner pursuant to
13 subdivision (1)(b) subsection (2) of this section, the department shall
14 calculate the allocation percentage and each local system's allocated
15 income tax funds. The allocation percentage shall be an amount equal to
16 the amount appropriated to the School District Income Tax Fund for
17 distribution in school fiscal year 1992-93 minus the total amount paid
18 for option students pursuant to section 79-1009 and (i a) for aid
19 calculated for school fiscal year 2010-11, minus twenty million dollars
20 and (ii b) for aid calculated for school fiscal years 2011-12 and
21 2012-13, minus twenty-one million dollars with the difference divided by
22 the aggregate statewide income tax liability of all resident individuals
23 certified pursuant to subdivision (1)(b) subsection (2) of this section.
24 Each local system's allocated income tax funds shall be calculated by
25 multiplying the allocation percentage times the local system's income tax
26 liability certified pursuant to subdivision (1)(b) subsection (2) of this
27 section.

28 (2) For school fiscal year 2016-17 and each school fiscal year
29 thereafter:

30 (a) An amount equal to twenty percent of the aggregate statewide
31 income tax liability of all resident individuals shall be disbursed as

1 option payments as determined under section 79-1009 and as allocated
2 income tax funds as determined in this subsection;

3 (b) Not later than November 15 of each year, the Tax Commissioner
4 shall certify to the department for the preceding tax year the income tax
5 liability of resident individuals for each local system; and

6 (c) Using the data certified by the Tax Commissioner pursuant to
7 subdivision (2)(b) of this section, the department shall calculate the
8 allocation percentage and each local system's allocated income tax funds.
9 The allocation percentage shall be an amount equal to twenty percent of
10 the aggregate statewide income tax liability of all resident individuals
11 certified pursuant to subdivision (2)(b) of this section minus the total
12 amount paid for option students pursuant to section 79-1009, with the
13 difference divided by the aggregate statewide income tax liability of all
14 resident individuals certified pursuant to subdivision (2)(b) of this
15 section. Each local system's allocated income tax funds shall be
16 calculated by multiplying the allocation percentage times the local
17 system's income tax liability certified pursuant to subdivision (2)(b) of
18 this section.

19 Sec. 3. Section 79-1008.02, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 79-1008.02 (1) A minimum levy adjustment shall be calculated and
22 applied to any local system that has a general fund common levy for the
23 fiscal year during which aid is certified that is less than the maximum
24 levy, for such fiscal year for such local system, allowed pursuant to
25 subdivision (2)(a) or (b) of section 77-3442 without a vote pursuant to
26 section 77-3444 less five cents for learning communities and less ten
27 cents for all other local systems. To calculate the minimum levy
28 adjustment, the department shall subtract the local system general fund
29 common levy for such fiscal year for such local system from the maximum
30 levy allowed pursuant to subdivision (2)(a) or (b) of section 77-3442
31 without a vote pursuant to section 77-3444 less five cents for learning

1 communities and less ten cents for all other local systems and multiply
2 the result by the local system's adjusted valuation divided by one
3 hundred. The minimum levy adjustment shall be added to the formula
4 resources of the local system for the determination of equalization aid
5 pursuant to section 79-1008.01.

6 (2) For school fiscal years prior to school fiscal year 2016-17:

7 (a) If the minimum levy adjustment is greater than or equal to the
8 allocated income tax funds calculated pursuant to section 79-1005.01, the
9 local system shall not receive allocated income tax funds; and -

10 (b) If the minimum levy adjustment is less than the allocated income
11 tax funds calculated pursuant to section 79-1005.01, the local system
12 shall receive allocated income tax funds in the amount of the difference
13 between the allocated income tax funds calculated pursuant to section
14 79-1005.01 and the minimum levy adjustment.

15 (3) This section does not apply to the calculation of aid for a
16 local system containing a learning community for the first school fiscal
17 year for which aid is calculated for such local system.

18 Sec. 4. Original sections 79-1003, 79-1005.01, and 79-1008.02,
19 Reissue Revised Statutes of Nebraska, are repealed.