

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 364

Introduced by Pankonin, 2.

Read first time January 16, 2009

Committee: Education

A BILL

1 FOR AN ACT relating to the Tax Equity and Educational Opportunities
2 Support Act; to amend sections 79-1003 and 79-1028.01,
3 Reissue Revised Statutes of Nebraska; to permit exceeding
4 expenditure limits for voluntary termination payments
5 as prescribed; to harmonize provisions; to repeal the
6 original sections; and to declare an emergency.
7 Be it enacted by the people of the State of Nebraska,

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

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

5 (1) Adjusted general fund operating expenditures means
6 (a) for school fiscal years before school fiscal year 2007-08,
7 general fund operating expenditures as calculated pursuant to
8 subdivision (21) of this section minus the transportation allowance
9 and minus the special receipts allowance, (b) for school fiscal
10 year 2007-08, general fund operating expenditures as calculated
11 pursuant to subdivision (21) of this section minus the sum of
12 the transportation, special receipts, and distance education
13 and telecommunications allowances, (c) for school fiscal year
14 2008-09, the difference of the product of the general fund
15 operating expenditures as calculated pursuant to subdivision (21)
16 of this section multiplied by the cost growth factor calculated
17 pursuant to section 79-1007.10 minus the transportation allowance,
18 special receipts allowance, poverty allowance, limited English
19 proficiency allowance, distance education and telecommunications
20 allowance, elementary site allowance, elementary class size
21 allowance, summer school allowance, and focus school and program
22 allowance, (d) for school fiscal years 2009-10 through 2012-13,
23 the difference of the product of the general fund operating
24 expenditures as calculated pursuant to subdivision (21) of this
25 section multiplied by the cost growth factor calculated pursuant

1 to section 79-1007.10 minus the transportation allowance, special
2 receipts allowance, poverty allowance, limited English proficiency
3 allowance, distance education and telecommunications allowance,
4 elementary site allowance, elementary class size allowance, summer
5 school allowance, instructional time allowance, and focus school
6 and program allowance, and (e) for school fiscal year 2013-14
7 and each school fiscal year thereafter, the difference of the
8 product of the general fund operating expenditures as calculated
9 pursuant to subdivision (21) of this section multiplied by the
10 cost growth factor calculated pursuant to section 79-1007.10
11 minus the transportation allowance, special receipts allowance,
12 poverty allowance, limited English proficiency allowance, distance
13 education and telecommunications allowance, elementary site
14 allowance, summer school allowance, instructional time allowance,
15 and focus school and program allowance;

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

1 from taxation;

2 (3) Allocated income tax funds means the amount of
3 assistance paid to a local system pursuant to section 79-1005.01 or
4 79-1005.02 as adjusted by the minimum levy adjustment pursuant to
5 section 79-1008.02;

6 (4) Average daily attendance of a student who resides on
7 Indian land means average daily attendance of a student who resides
8 on Indian land from the most recent data available on November 1
9 preceding the school fiscal year in which aid is to be paid;

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

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

19 (7) Board means the school board of each school district;

20 (8) Categorical funds means funds limited to a specific
21 purpose by federal or state law, including, but not limited to,
22 Title I funds, Title VI funds, federal vocational education funds,
23 federal school lunch funds, Indian education funds, Head Start
24 funds, and funds from the Education Innovation Fund;

25 (9) Consolidate means to voluntarily reduce the number of

1 school districts providing education to a grade group and does not
2 include dissolution pursuant to section 79-498;

3 (10) Department means the State Department of Education;

4 (11) District means any Class I, II, III, IV, V, or VI
5 school district;

6 (12) Ensuing school fiscal year means the school fiscal
7 year following the current school fiscal year;

8 (13) Equalization aid means the amount of assistance
9 calculated to be paid to a local system pursuant to sections
10 79-1007.11 to 79-1007.23, 79-1008.01 to 79-1022, and 79-1022.02;

11 (14) Fall membership means the total membership in
12 kindergarten through grade twelve attributable to the local system
13 as reported on the fall school district membership reports for each
14 district pursuant to section 79-528;

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

17 (16) Formula students means:

18 (a) For school fiscal years prior to school fiscal year
19 2008-09, (i) for state aid certified pursuant to section 79-1022,
20 the sum of fall membership from the school fiscal year immediately
21 preceding the school fiscal year in which the aid is to be paid,
22 multiplied by the average ratio of average daily membership to fall
23 membership for the second school fiscal year immediately preceding
24 the school fiscal year in which aid is to be paid and the prior
25 two school fiscal years, plus qualified early childhood education

1 fall membership plus tuitioned students from the school fiscal year
2 immediately preceding the school fiscal year in which the aid is
3 to be paid and (ii) for final calculation of state aid pursuant to
4 section 79-1065, the sum of average daily membership plus qualified
5 early childhood education average daily membership plus tuitioned
6 students from the school fiscal year immediately preceding the
7 school fiscal year in which the aid was paid; and

8 (b) For school fiscal year 2008-09 and each school fiscal
9 year thereafter, (i) for state aid certified pursuant to section
10 79-1022, the sum of the product of fall membership from the school
11 fiscal year immediately preceding the school fiscal year in which
12 the aid is to be paid multiplied by the average ratio of average
13 daily membership to fall membership for the second school fiscal
14 year immediately preceding the school fiscal year in which the aid
15 is to be paid and the prior two school fiscal years plus sixty
16 percent of the qualified early childhood education fall membership
17 plus tuitioned students from the school fiscal year immediately
18 preceding the school fiscal year in which aid is to be paid minus
19 the product of the number of students enrolled in kindergarten that
20 is not full-day kindergarten from the fall membership multiplied by
21 0.5 and (ii) for final calculation of state aid pursuant to section
22 79-1065, the sum of average daily membership plus sixty percent of
23 the qualified early childhood education average daily membership
24 plus tuitioned students minus the product of the number of students
25 enrolled in kindergarten that is not full-day kindergarten from the

1 average daily membership multiplied by 0.5 from the school fiscal
2 year immediately preceding the school fiscal year in which aid was
3 paid;

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

8 (18) Full-day kindergarten means kindergarten offered by
9 a district for at least one thousand thirty-two instructional
10 hours;

11 (19) General fund budget of expenditures means the total
12 budget of disbursements and transfers for general fund purposes as
13 certified in the budget statement adopted pursuant to the Nebraska
14 Budget Act, except that for purposes of the limitation imposed in
15 section 79-1023 and the calculation pursuant to subdivision (2) of
16 section 79-1027.01, the general fund budget of expenditures does
17 not include any special grant funds, exclusive of local matching
18 funds, received by a district;

19 (20) General fund expenditures means all expenditures
20 from the general fund;

21 (21) General fund operating expenditures means:

22 (a) For state aid calculated for school fiscal years
23 prior to school fiscal year 2008-09, the total general fund
24 expenditures minus categorical funds, tuition paid, transportation
25 fees paid to other districts, adult education, summer school,

1 community services, redemption of the principal portion of general
2 fund debt service, retirement incentive plans, staff development
3 assistance, and transfers from other funds into the general fund
4 for the second school fiscal year immediately preceding the school
5 fiscal year in which aid is to be paid as reported on the annual
6 financial report prior to December 1 of the school fiscal year
7 immediately preceding the school fiscal year in which aid is to be
8 paid;

9 (b) For state aid calculated for school fiscal year
10 2008-09, as reported for the second school fiscal year immediately
11 preceding the school fiscal year in which aid is to be paid
12 on the annual financial report submitted prior to December
13 1 of the school fiscal year immediately preceding the school
14 fiscal year in which aid is to be paid, the total general
15 fund expenditures minus (i) the amount of all receipts to
16 the general fund, to the extent that such receipts are not
17 included in local system formula resources, from early childhood
18 education tuition, summer school tuition, educational entities as
19 defined in section 79-1201.01 for providing distance education
20 courses through the Educational Service Unit Coordinating Council
21 to such educational entities, private foundations, individuals,
22 associations, charitable organizations, the textbook loan program
23 authorized by section 79-734, and federal impact aid, (ii)
24 the amount of expenditures for categorical funds, tuition paid,
25 transportation fees paid to other districts, adult education,

1 community services, redemption of the principal portion of general
2 fund debt service, retirement incentive plans authorized by section
3 79-855, and staff development assistance authorized by section
4 79-856, and (iii) the amount of any transfers from the general fund
5 to any bond fund and transfers from other funds into the general
6 fund;

7 (c) For state aid calculated for school fiscal year
8 2009-10, as reported for the second school fiscal year immediately
9 preceding the school fiscal year in which aid is to be paid
10 on the annual financial report submitted prior to December
11 1 of the school fiscal year immediately preceding the school
12 fiscal year in which aid is to be paid, the total general
13 fund expenditures minus (i) the amount of all receipts to
14 the general fund, to the extent that such receipts are not
15 included in local system formula resources, from early childhood
16 education tuition, summer school tuition, educational entities as
17 defined in section 79-1201.01 for providing distance education
18 courses through the Educational Service Unit Coordinating Council
19 to such educational entities, private foundations, individuals,
20 associations, charitable organizations, the textbook loan program
21 authorized by section 79-734, and federal impact aid, (ii)
22 the amount of expenditures for categorical funds, tuition paid,
23 transportation fees paid to other districts, adult education,
24 community services, redemption of the principal portion of general
25 fund debt service, retirement incentive plans authorized by section

1 79-855, and staff development assistance authorized by section
2 79-856, (iii) the amount of any transfers from the general fund to
3 any bond fund and transfers from other funds into the general fund,
4 and (iv) any legal expenses in excess of fifteen-hundredths of one
5 percent of the formula need for the school fiscal year in which the
6 expenses occurred; and

7 (d) For state aid calculated for school fiscal year
8 2010-11 and each school fiscal year thereafter, as reported for
9 the second school fiscal year immediately preceding the school
10 fiscal year in which aid is to be paid on the annual financial
11 report submitted prior to December 1 of the school fiscal year
12 immediately preceding the school fiscal year in which aid is to be
13 paid, the total general fund expenditures minus (i) the amount of
14 all receipts to the general fund, to the extent that such receipts
15 are not included in local system formula resources, from early
16 childhood education tuition, summer school tuition, educational
17 entities as defined in section 79-1201.01 for providing distance
18 education courses through the Educational Service Unit Coordinating
19 Council to such educational entities, private foundations,
20 individuals, associations, charitable organizations, the textbook
21 loan program authorized by section 79-734, federal impact aid,
22 and levy override elections pursuant to section 77-3444, (ii)
23 the amount of expenditures for categorical funds, tuition paid,
24 transportation fees paid to other districts, adult education,
25 community services, redemption of the principal portion of general

1 fund debt service, retirement incentive plans authorized by section
2 79-855, and staff development assistance authorized by section
3 79-856, (iii) the amount of any transfers from the general fund to
4 any bond fund and transfers from other funds into the general fund,
5 ~~and~~ (iv) any legal expenses in excess of fifteen-hundredths of one
6 percent of the formula need for the school fiscal year in which the
7 expenses occurred, and (v) expenditures to pay for sums agreed to
8 be paid by a school district to certificated employees in exchange
9 for a voluntary termination occurring prior to July 1, 2009.

10 For purposes of this subdivision (21) of this section,
11 receipts from levy override elections shall equal ninety-nine
12 percent of the difference of the total general fund levy minus
13 a levy of one dollar and five cents per one hundred dollars of
14 taxable valuation multiplied by the assessed valuation for school
15 districts that have voted pursuant to section 77-3444 to override
16 the maximum levy provided pursuant to section 77-3442;

17 (22) High school district means a school district
18 providing instruction in at least grades nine through twelve;

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

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

1 (25) Limited English proficiency students means (a) for
2 school fiscal years prior to school fiscal year 2009-10, the number
3 of students with limited English proficiency in a district from
4 the most recent data available on November 1 of the school fiscal
5 year preceding the school fiscal year in which aid is to be paid
6 and (b) for school fiscal year 2009-10 and each school fiscal year
7 thereafter, the number of students with limited English proficiency
8 in a district from the most recent data available on November 1 of
9 the school fiscal year preceding the school fiscal year in which
10 aid is to be paid plus the difference of such students with limited
11 English proficiency minus the average number of limited English
12 proficiency students for such district, prior to such addition,
13 for the three immediately preceding school fiscal years if such
14 difference is greater than zero;

15 (26) Local system means a learning community, a unified
16 system, a Class VI district and the associated Class I districts,
17 or a Class II, III, IV, or V district and any affiliated Class
18 I districts or portions of Class I districts. The membership,
19 expenditures, and resources of Class I districts that are
20 affiliated with multiple high school districts will be attributed
21 to local systems based on the percent of the Class I valuation that
22 is affiliated with each high school district;

23 (27) Low-income child means (a) for school fiscal years
24 prior to 2008-09, a child under nineteen years of age living in
25 a household having an annual adjusted gross income of fifteen

1 thousand dollars or less for the second calendar year preceding
2 the beginning of the school fiscal year for which aid is being
3 calculated and (b) for school fiscal year 2008-09 and each school
4 fiscal year thereafter, a child under nineteen years of age living
5 in a household having an annual adjusted gross income for the
6 second calendar year preceding the beginning of the school fiscal
7 year for which aid is being calculated equal to or less than the
8 maximum household income that would allow a student from a family
9 of four people to be a free lunch and free milk student during the
10 school fiscal year immediately preceding the school fiscal year for
11 which aid is being calculated;

12 (28) Low-income students means the number of low-income
13 children within the district multiplied by the ratio of the formula
14 students in the district divided by the total children under
15 nineteen years of age residing in the district as derived from
16 income tax information;

17 (29) Most recently available complete data year means
18 the most recent single school fiscal year for which the annual
19 financial report, fall school district membership report, annual
20 statistical summary, Nebraska income tax liability by school
21 district for the calendar year in which the majority of the school
22 fiscal year falls, and adjusted valuation data are available;

23 (30) Poverty students means (a) for school fiscal years
24 prior to school fiscal year 2009-10, the number of low-income
25 students or the number of students who are free lunch and free milk

1 students in a district, whichever is greater, and (b) for school
2 fiscal year 2009-10 and each school fiscal year thereafter, the
3 number of low-income students or the number of students who are
4 free lunch and free milk students in a district plus the difference
5 of the number of low-income students or the number of students
6 who are free lunch and free milk students in a district, whichever
7 is greater, minus the average number of poverty students for
8 such district, prior to such addition, for the three immediately
9 preceding school fiscal years if such difference is greater than
10 zero;

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

1 (32) Qualified early childhood education fall membership
2 means the product of membership on the last Friday in September
3 2006 and each year thereafter of students who will be eligible
4 to attend kindergarten the following school year and are enrolled
5 in an early childhood education program approved by the department
6 pursuant to section 79-1103 for such school district for such
7 school year multiplied by the ratio of the planned instructional
8 hours of the program divided by one thousand thirty-two if: (a)
9 The program is receiving a grant pursuant to such section for the
10 third year; (b) the program has already received grants pursuant to
11 such section for three years; or (c) the program has been approved
12 pursuant to subsection (5) of section 79-1103 for such school year
13 and the two preceding school years, including any such students in
14 portions of any of such programs receiving an expansion grant;

15 (33) Regular route transportation means the
16 transportation of students on regularly scheduled daily routes to
17 and from the attendance center;

18 (34) Reorganized district means any district involved
19 in a consolidation and currently educating students following
20 consolidation;

21 (35) School year or school fiscal year means the fiscal
22 year of a school district as defined in section 79-1091;

23 (36) Sparse local system means a local system that is not
24 a very sparse local system but which meets the following criteria:

25 (a)(i) Less than two students per square mile in the

1 county in which each high school is located, based on the school
2 district census, (ii) less than one formula student per square
3 mile in the local system, and (iii) more than ten miles between
4 each high school attendance center and the next closest high school
5 attendance center on paved roads;

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

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

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

18 (37) Special education means specially designed
19 kindergarten through grade twelve instruction pursuant to section
20 79-1125, and includes special education transportation;

21 (38) Special grant funds means the budgeted receipts for
22 grants, including, but not limited to, Title I funds, Title VI
23 funds, funds from the Education Innovation Fund, reimbursements
24 for wards of the court, short-term borrowings including, but
25 not limited to, registered warrants and tax anticipation notes,

1 interfund loans, insurance settlements, and reimbursements to
2 county government for previous overpayment. The state board shall
3 approve a listing of grants that qualify as special grant funds;

4 (39) State aid means the amount of assistance paid to a
5 district pursuant to the Tax Equity and Educational Opportunities
6 Support Act;

7 (40) State board means the State Board of Education;

8 (41) State support means all funds provided to districts
9 by the State of Nebraska for the general fund support of elementary
10 and secondary education;

11 (42) Statewide average basic funding per formula student
12 means the statewide total basic funding for all districts divided
13 by the statewide total formula students for all districts;

14 (43) Statewide average general fund operating
15 expenditures per formula student means the statewide total
16 general fund operating expenditures for all districts divided by
17 the statewide total formula students for all districts;

18 (44) Teacher has the definition found in section 79-101;

19 (45) Temporary aid adjustment factor means (a) for school
20 fiscal years before school fiscal year 2007-08, one and one-fourth
21 percent of the sum of the local system's transportation allowance,
22 the local system's special receipts allowance, and the product
23 of the local system's adjusted formula students multiplied by
24 the average formula cost per student in the local system's
25 cost grouping and (b) for school fiscal year 2007-08, one and

1 one-fourth percent of the sum of the local system's transportation
2 allowance, special receipts allowance, and distance education and
3 telecommunications allowance and the product of the local system's
4 adjusted formula students multiplied by the average formula cost
5 per student in the local system's cost grouping;

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

9 (47) Very sparse local system means a local system that
10 has:

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

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

22 Sec. 2. Section 79-1028.01, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 79-1028.01 (1) For school fiscal year 2008-09 and each
25 school fiscal year thereafter, a school district may exceed its

1 maximum general fund budget of expenditures minus the special
2 education budget of expenditures by a specific dollar amount for:

3 ~~(1)~~ (a) Expenditures for repairs to infrastructure
4 damaged by a natural disaster which is declared a disaster
5 emergency pursuant to the Emergency Management Act;

6 ~~(2)~~ (b) Expenditures for judgments, except judgments
7 or orders from the Commission of Industrial Relations, obtained
8 against a school district which require or obligate a school
9 district to pay such judgment, to the extent such judgment is not
10 paid by liability insurance coverage of a school district;

11 ~~(3)~~ (c) Expenditures pursuant to the Retirement Incentive
12 Plan authorized in section 79-855 or the Staff Development
13 Assistance authorized in section 79-856;

14 ~~(4)~~ (d) Expenditures of incentive payments or base fiscal
15 year incentive payments to be received in such school fiscal year
16 pursuant to section 79-1011;

17 ~~(5)~~ (e) Expenditures of amounts received from educational
18 entities as defined in section 79-1201.01 for providing distance
19 education courses through the Educational Service Unit Coordinating
20 Council to such educational entities;

21 ~~(6)~~ (f) Either (a) the first and second school fiscal
22 years the district will be participating in Network Nebraska for
23 the full school fiscal year or (b) school fiscal year 2008-09, if
24 the school district participated in Network Nebraska for all of
25 school fiscal year 2007-08, for the difference of the estimated

1 expenditures for such school fiscal year for telecommunications
2 services, access to data transmission networks that transmit data
3 to and from the school district, and the transmission of data on
4 such networks as such expenditures are defined by the department
5 for purposes of the distance education and telecommunications
6 allowance minus the dollar amount of such expenditures for the
7 second school fiscal year preceding the first full school fiscal
8 year the district participates in Network Nebraska; and

9 ~~(7)~~ (g) Expenditures to pay another school district for
10 the transfer of land from such other school district.

11 (2) For school fiscal year 2009-10 and each school fiscal
12 year thereafter, a school district may exceed its maximum general
13 fund budget of expenditures minus the special education budget of
14 expenditures by a specific dollar amount for expenditures for sums
15 agreed to be paid by a school district to certificated employees
16 in exchange for a voluntary termination occurring prior to July 1,
17 2009.

18 (3) The state board shall approve, deny, or modify the
19 amount allowed for any exception to the maximum general fund budget
20 of expenditures minus the special education budget of expenditures
21 pursuant to this section.

22 Sec. 3. Original sections 79-1003 and 79-1028.01, Reissue
23 Revised Statutes of Nebraska, are repealed.

24 Sec. 4. Since an emergency exists, this act takes effect
25 when passed and approved according to law.