

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 763

Introduced by Louden, 49.

Read first time January 04, 2012

Committee: Education

A BILL

1 FOR AN ACT relating to schools; to amend section 79-458, Reissue
2 Revised Statutes of Nebraska, section 79-1007.15, Revised
3 Statutes Cumulative Supplement, 2010, and section
4 79-1001, Revised Statutes Supplement, 2011; to change
5 provisions relating to freeholder petitions and the
6 elementary site allowance; to provide duties for certain
7 districts as prescribed; to repeal the original sections;
8 and to declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 79-458, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 79-458 (1) Any freeholder or freeholders, person in
4 possession or constructive possession as vendee pursuant to a
5 contract of sale of the fee, holder of a school land lease under
6 section 72-232, or entrant upon government land who has not yet
7 received a patent therefor may file a petition on or before June 1
8 ~~for all other years~~ of any year with a board consisting of the county
9 assessor, county clerk, and county treasurer, asking to have any
10 tract or tracts of land described in the petition set off from an
11 existing school district in which the land is situated and attached
12 to a different school district which is contiguous to such tract or
13 tracts of land if:

14 (a)(i) The school district in which the land is situated
15 is a Class II or III school district which has had an average daily
16 membership in grades nine through twelve of less than sixty for the
17 two consecutive school fiscal years immediately preceding the filing
18 of the petition;

19 (ii) Such Class II or III school district has voted
20 pursuant to section 77-3444 to exceed the maximum levy established
21 pursuant to subdivision (2)(a) of section 77-3442, which vote is
22 effective for the school fiscal year in which the petition is filed
23 or for the following school fiscal year;

24 (iii) The high school in such Class II or III school
25 district is within fifteen miles on a maintained public highway or

1 maintained public road of another public high school; and

2 (iv) Neither school district is a member of a learning
3 community; ~~or~~

4 (b) Except as provided in subsection (7) of this section,
5 the school district in which the land is situated, regardless of the
6 class of school district, has approved a budget for the school fiscal
7 year in which the petition is filed that will cause the combined
8 levies for such school fiscal year, except levies for bonded
9 indebtedness approved by the voters of such school district and
10 levies for the refinancing of such bonded indebtedness, to exceed the
11 greater of (i) one dollar and twenty cents per one hundred dollars of
12 taxable valuation of property subject to the levy or (ii) the maximum
13 levy authorized by a vote pursuant to section 77-3444; or -

14 (c) The land described in the petition was in the
15 attendance area of an elementary site for which an elementary site
16 allowance was calculated pursuant to section 79-1007.15 for the
17 school fiscal year in which the petition is filed or the immediately
18 preceding school fiscal year and the school board of the school
19 district containing such land will not be holding school for any
20 elementary grades at the elementary site for the school year
21 following the filing of the petition.

22 For purposes of determining whether a tract of land is
23 contiguous, all petitions currently being considered by the board
24 shall be considered together as a whole.

25 (2) The petition shall state the reasons for the proposed

1 change and shall show with reference to the land of each petitioner:
2 (a) That (i) the land described in the petition is either owned by
3 the petitioner or petitioners or that he, she, or they hold a school
4 land lease under section 72-232, are in possession or constructive
5 possession as vendee under a contract of sale of the fee simple
6 interest, or have made an entry on government land but have not yet
7 received a patent therefor and (ii) such tract of land includes all
8 such contiguous land owned or controlled by each petitioner; (b) that
9 the conditions of subdivision (1)(a), (b), or (c) ~~or (1)(b)~~ of this
10 section have been met; and (c) that such petition is approved by a
11 majority of the members of the school board of the district to which
12 such land is sought to be attached.

13 (3) The petition shall be verified by the oath of each
14 petitioner. Notice of the filing of the petition and of the hearing
15 on such petition before the board constituted as prescribed in
16 subsection (1) or (4) of this section shall be given at least ten
17 days prior to the date of such hearing by one publication in a legal
18 newspaper of general circulation in each district and by posting a
19 notice on the outer door of the schoolhouse in each district affected
20 thereby, and such notice shall designate the territory to be
21 transferred. Following the filing of a petition pursuant to this
22 section, such board shall hold a public hearing on the petition and
23 shall approve or disapprove the petition on or before July 15
24 following the filing of the petition based on a determination of
25 whether the petitioner has complied with all requirements of this

1 section. If such board approves the petition, such board shall change
2 the boundaries of the school districts so as to set off the land
3 described in the petition and attach it to such district pursuant to
4 the petition with an effective date of August 15 following the filing
5 of the petition, which actions shall cause such transfer to be in
6 effect for levies set for the year in which such transfer takes
7 effect.

8 (4) Petitions requesting transfers of property across
9 county lines shall be addressed jointly to the county clerks of the
10 counties concerned, and the petitions shall be acted upon by the
11 county assessors, county clerks, and county treasurers of the
12 counties involved as one board, with the county clerk of the county
13 from which the land is sought to be transferred acting as chairperson
14 of the board.

15 (5) Appeals may be taken from the action of such board
16 or, when such board fails to act on the petition, on or before August
17 1 following the filing of the petition, to the district court of the
18 county in which the land is located on or before August 10 following
19 the filing of the petition, in the same manner as appeals are now
20 taken from the action of the county board in the allowance or
21 disallowance of claims against the county. If an appeal is taken from
22 the action of the board approving the petition or failing to act on
23 the petition, the transfer shall occur effective August 15 following
24 the filing of the petition, which actions shall cause such transfer
25 to be in effect for levies set for the year in which such transfer

1 takes effect, unless action by the district court prevents such
2 transfer.

3 (6) This section does not apply to any school district
4 located on an Indian reservation and substantially or totally
5 financed by the federal government.

6 (7) For school districts that have approved a budget for
7 school fiscal year 2007-08 that will cause the combined levies,
8 except levies for bonded indebtedness approved by the voters of the
9 school district and levies for the refinancing of such bonded
10 indebtedness, to exceed the greater of (a) one dollar and twenty
11 cents per one hundred dollars of taxable valuation of property
12 subject to the levy or (b) the maximum levy authorized by a vote
13 pursuant to section 77-3444, the school boards of such school
14 districts may adopt a binding resolution stating that the combined
15 levies, except levies for bonded indebtedness approved by the voters
16 of the school district and levies for the refinancing of such bonded
17 indebtedness, for school fiscal year 2008-09 shall not exceed the
18 greater of (i) one dollar and twenty cents per one hundred dollars of
19 taxable valuation of property subject to the levy or (ii) the maximum
20 levy authorized by a vote pursuant to section 77-3444. On or before
21 May 9, 2008, such binding resolutions shall be filed with the Auditor
22 of Public Accounts and the county assessors, county clerks, and
23 county treasurers for all counties in which the school district has
24 territory. If such binding resolution is filed on or before May 9,
25 2008, land shall not be set off and attached to another district

1 pursuant to subdivision (2)(b) of this section in 2008.

2 (8) Nothing in this section shall be construed to detach
3 obligations for voter-approved bonds from any tract of land.

4 Sec. 2. Section 79-1001, Revised Statutes Supplement,
5 2011, is amended to read:

6 79-1001 Sections 79-1001 to 79-1033 and section 4 of this
7 act shall be known and may be cited as the Tax Equity and Educational
8 Opportunities Support Act.

9 Sec. 3. Section 79-1007.15, Revised Statutes Cumulative
10 Supplement, 2010, is amended to read:

11 79-1007.15 ~~(1) For school fiscal year 2008-09, the~~
12 ~~department shall calculate an elementary site allowance for any~~
13 ~~district in which (a) the district has more than one elementary~~
14 ~~attendance site, (b) at least one of the elementary attendance sites~~
15 ~~does not offer any other grades, (c) the square miles in the district~~
16 ~~divided by the number of elementary attendance sites in the district~~
17 ~~equals one hundred square miles or more per elementary attendance~~
18 ~~site, and (d) the fall membership in elementary site grades in the~~
19 ~~district divided by the number of elementary site grades then divided~~
20 ~~again by the number of elementary attendance sites equals fifteen or~~
21 ~~fewer students per grade per elementary attendance site. Qualifying~~
22 ~~elementary attendance sites for such districts shall only offer~~
23 ~~elementary site grades and shall have an average of fifteen or fewer~~
24 ~~students per grade in the fall membership.~~

25 (2) For school fiscal year 2009-10 and each school fiscal

1 ~~year thereafter, the~~ (1) The department shall calculate an elementary
2 site allowance for any district which has at least one qualifying
3 elementary attendance site and which submits the information required
4 for the calculation on a form prescribed by the department on or
5 before October 15 of the school fiscal year preceding the school
6 fiscal year for which aid is being calculated. A qualifying
7 elementary attendance site shall be an elementary attendance site, in
8 a district with multiple elementary attendance sites, which does not
9 have another elementary attendance site within seven miles in the
10 same school district or which is the only public elementary
11 attendance site located in an incorporated city or village.

12 ~~(3)~~ (2) The elementary site allowance for each qualifying
13 district shall equal the sum of the elementary site allowances for
14 each qualifying elementary attendance site in the district. The
15 elementary site allowance for each qualifying elementary attendance
16 site shall equal five hundred percent of the statewide average
17 general fund operating expenditures per formula student multiplied by
18 the result of rounding the ratio of the fall membership attributed to
19 the elementary attendance site divided by eight up to the next whole
20 number if the result was not a whole number, except that if the
21 resulting whole number is greater than the number of elementary site
22 grades, the whole number shall be reduced to equal the number of
23 elementary site grades.

24 (3) The department shall not include the elementary site
25 allowance in the final calculation of state aid pursuant to section

1 79-1065 for any elementary site at which school was not held for the
2 full school year when the majority of such school year falls within
3 the school fiscal year for which the final calculation of state aid
4 is being completed.

5 (4) For purposes of this section:

6 (a) Each district shall determine which grades are
7 considered elementary site grades, except that (i) all grades
8 designated as elementary site grades shall be offered in each
9 elementary attendance site in the district, without any preference
10 indicated by the school board or any school district administrator
11 for students to attend different elementary attendance sites
12 depending on their elementary site grade level, for the school fiscal
13 year for which aid is being calculated and for each of the five
14 school fiscal years preceding the school fiscal year for which aid is
15 being calculated and (ii) elementary site grades shall not include
16 grades nine, ten, eleven, or twelve;

17 (b) An elementary attendance site is an attendance site
18 in which elementary site grades are offered;

19 (c) The primary elementary site shall be the elementary
20 attendance site to which the most formula students are attributed in
21 the district and shall not be a qualifying elementary attendance
22 site; and

23 (d) Fall membership means the fall membership for the
24 school fiscal year immediately preceding the school fiscal year for
25 which aid is being calculated.

1 (5) If the elementary attendance site is new or is being
2 reopened after being closed for at least one school year, the
3 requirements of subdivision (4)(a)(i) of this section with respect to
4 preceding school fiscal years shall not apply to school fiscal years
5 in which the elementary attendance site was not in operation.

6 (6) The department shall determine if the qualifications
7 for the elementary site allowance have been met for each elementary
8 attendance site for which information has been submitted. The
9 department may rely on the information submitted and any other
10 information available to the department, including, but not limited
11 to, past attendance patterns. The state board shall establish a
12 procedure for appeal of decisions of the department to the state
13 board for a final determination.

14 Sec. 4. On or before May 1 of each school year, if school
15 will not be held for any elementary grades in the immediately
16 following school year at an elementary site for which an elementary
17 site allowance has been calculated pursuant to section 79-1007.15 for
18 the school fiscal year containing the majority of such school year or
19 the immediately preceding school fiscal year, the school board of the
20 district in which such elementary site is located shall take public
21 action to cease holding school at such elementary site. The school
22 board shall provide notice to the department within fifteen days
23 following such action. If a school district has not taken such action
24 and there are not any students enrolled to attend school on at least
25 one day of the school year at an elementary site for which an

1 elementary site allowance has been calculated for the school fiscal
2 year containing the majority of such school year, the school board
3 may take public action to cease holding school at such elementary
4 site and notify the department within fifteen days following such
5 action. A school board shall not cease to hold school at an
6 elementary site for which an elementary site allowance has been
7 calculated for the school fiscal year containing the majority of the
8 first affected school year except as provided in this section.

9 Sec. 5. Original section 79-458, Reissue Revised Statutes
10 of Nebraska, section 79-1007.15, Revised Statutes Cumulative
11 Supplement, 2010, and section 79-1001, Revised Statutes Supplement,
12 2011, are repealed.

13 Sec. 6. Since an emergency exists, this act takes effect
14 when passed and approved according to law.