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CC297 Proposed Constitutional Amendments 1980

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PROPOSED CONSTITUTIONAL AMENDMENTS - 1980

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On November 4, 1980 Nebraska voters will have the opportunity to vote on four proposed amendments to the State Constitution. To make an informed judgement, the voter should study each issue separately and raise questions if there is something that is not understood or needs clarification.

The Cooperative Extension Service does not encourage you to vote either FOR or AGAINST the proposals. We provide this information to help you make an informed decision. The exact constitutional wording, the wording as it will appear on the ballot, and an explanation of each proposal follows.

PROPOSED AMENDMENT NO. 1

NUMBER AND FORMATION OF SUPREME COURT JUDICIAL DISTRICTS

A vote FOR this proposal will reduce the number of Supreme Court judicial districts from 6 to 3, with these to coincide with the 3 congressional districts; provide that 2 judges would be selected from each of these 3 districts; provide that any judge serving on the effective date of this amendment would continue to serve until his position became vacant for any reason; and repeal the provision for the redistricting of the former 6 Supreme Court districts following the U. S. Census every 10 years.

A vote AGAINST this proposal will retain the present 6 Supreme Court judicial districts and the provision for redistricting of them after the U. S. Census every 10 years.



FOR

Constitutional amendment to change the number and formation of Supreme Court judicial districts.



AGAINST



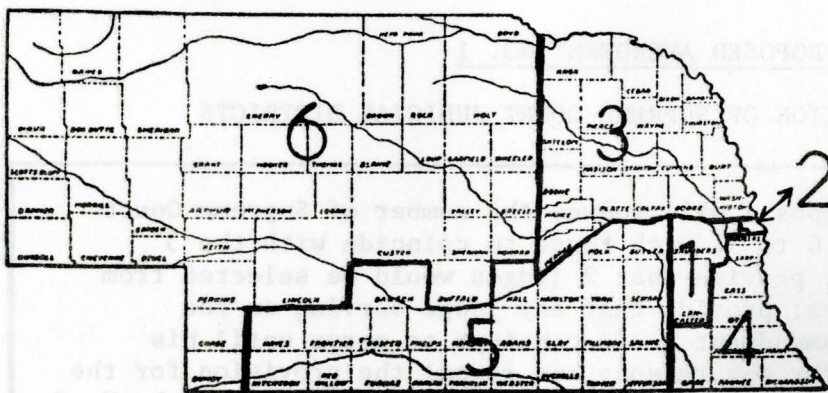
Institute of Agriculture
and Natural Resources

EXTENSION WORK IN "AGRICULTURE, HOME ECONOMICS AND SUBJECTS RELATING THERETO,"
THE COOPERATIVE EXTENSION SERVICE, INSTITUTE OF AGRICULTURE AND NATURAL RESOURCES,
UNIVERSITY OF NEBRASKA-LINCOLN, COOPERATING WITH THE COUNTIES AND THE U.S. DEPARTMENT OF AGRICULTURE
LEO E. LUCAS, DIRECTOR

Currently Nebraska has six Supreme Court districts. These districts are drawn by the Legislature every 10 years following the census. One Supreme Court Judge is elected from each of the districts, and the Chief Justice is selected at-large from the state.

This proposal, would realign the Supreme Court districts to correspond to the Congressional Districts. In the future, when the Legislature changes the boundaries of the congressional districts because of shifts in population or the number of districts allowed the State, the Supreme Court judicial boundaries would also change. This proposal will not effect the judges currently serving, nor would it effect a judge serving following any future boundary changes. In either case the current judge would continue to serve until his position became vacant.

The introducer of the bill contends that "the drawing of Supreme Court judicial districts has produced unfair and inequitable districts. Six districts are now required under the Constitution, and three of those districts cut into Douglas County in such a way that only one of the six judges comes from Douglas County. Having these judicial districts correspond with Congressional districts would more accurately reflect an equal lawyer population from which Supreme Court judges are selected...."



Current Supreme Court Districts.
One judge elected from each district.



Proposed--Supreme Court Districts would follow Congressional District boundaries. Two judges elected from each district.

The amendment as proposed would cause Article V, section 5 to read as follows (additions underlined, deletions ~~crossed out~~):

"Sec. 5. The Legislature shall divide the state into ~~six~~ contiguous and compact districts of approximately equal population, which shall be numbered ~~from one to six~~, and which shall be known as the Supreme Court judicial districts. ~~The Legislature shall redistrict the state after each federal decennial census. In any such redistricting, county lines shall be followed whenever practicable, but other established lines may be followed at the discretion of the Legislature. Such districts shall correspond in location and numbers with the congressional districts of the state. An equal number of judges of the Supreme Court shall be selected from each of the districts, except that any judge serving on the effective date of this amendment may continue to serve from the district from which he was originally selected until his position becomes vacant because of retirement, resignation, death, or removal from office whether by rejection by voters or otherwise.~~ Such districts shall not be changed except upon the concurrence of a majority of the members of the Legislature. Whenever the Supreme Court is redistricted, the judges serving prior to the redistricting shall continue in office, and the law providing for such redistricting shall where necessary specify the newly established districts which they shall represent for the balance of their terms."

Proponents of the amendment contend:

- That with the passage of this amendment every major population group would be equally represented.
- Following congressional district boundaries would not invite the opportunities for gerrymandering.
- Since 1867, only 8 of the 51 justices appointed to the Supreme Court have been from the Second Congressional District, an area that contains one-fourth to one-third of the states population.

Opponents of the amendment contend:

- That population groups may be represented with passage, but the geographical areas (particularly the rural areas to the west) would not have fair representation.
- Supreme Court judges should not be elected from any district, but should be appointed, much like the U. S. Supreme Court judges are appointed.
- Irregularities could occur on drafting congressional districts every 10 years just as easily as they could occur in drafting judicial districts.

PROPOSED AMENDMENT NO. 2

COMMISSION ON JUDICIAL QUALIFICATION,
AND DISCIPLINARY MEASURES

A vote FOR this proposal will reduce the membership of the Commission on Judicial Qualifications from 11 to 10; add the sanctions of reprimand, discipline, censure and suspension of judges without pay for not to exceed 6 months to the present ones of removal or retirement; add a new ground of conduct prejudicial to the administration of justice for such sanctions; and authorize the Supreme Court to disqualify a judge whenever there is pending against such judge a felony charge, and on its own motion or recommendation of the Commission remove a judge whenever such judge pleads guilty or no contest to a felony charge.

A vote AGAINST this proposal will retain the membership of the Commission on Judicial Qualifications at 11; will retain the present provisions allowing only the sanctions of removal or retirement of judges on certain grounds and not add the proposed additional sanctions listed above; will not add the additional ground for sanctions of conduct prejudicial to the administration of justice; and would not add the proposed new authority of the Supreme Court regarding the disqualifications or removal of judges when charged with or pleading guilty or no contest to felony charges.

☐ FOR

☐ AGAINST

Constitutional amendment to change membership of the Commission on Judicial Qualifications and to provide additional disciplinary measures and additional ground for discipline applicable to a Justice or Judge of the Supreme Court or other judge.

This proposed amendment would provide changes in sections 28, 29 and 30 of Article V, of the State Constitution and would cause them to read as follows (additions underlined, deletions ~~crossed out~~):

"Sec. 28. The Legislature shall provide for a Commission on Judicial Qualifications consisting of: (1) Two Judges of the Supreme Court, two judges of the various district courts, one judge of a municipal court, one judge of the Nebraska Workmen's Compensation Court, and one judge of the county courts. Three judges, including one district court judge, one county court judge, and one judge of any other court inferior to the Supreme Court as now exists or may hereafter be created by law, all of whom shall be appointed by the Chief Justice of the Supreme Court; (2) two three members of the Nebraska State Bar Association who shall have practiced law in this state for at least ten years and who shall be appointed by the Executive Council of the Nebraska State Bar Association; and (3) two three citizens, ~~neither none~~ of whom shall be a Justice or Judge of the Supreme Court or judge of any court, active or retired, nor a member of the Nebraska State Bar Association, and who shall be appointed by the Governor; and (4) the Chief Justice of the Supreme Court, who shall serve as its chairperson.

Sec. 29. ~~The Commission on Judicial Qualifications shall select one of its members to serve as its chairman.~~ The commission shall act by a vote of the majority of its members and no action of the commission shall be valid unless concurred in by the majority of its members.

Sec. 30. (1) A Justice or Judge of the Supreme Court or judge of any court of this state may be reprimanded, disciplined, censured, suspended without pay for a definite period of time, not to exceed six months, or removed from office for (a) willful misconduct in office, (b) willful disregard of or failure to perform his or her duties, (c) habitual intemperance, (d) conviction of a crime, involving moral turpitude, or (e) disbarment as a member of the legal profession licensed to practice law in the State of Nebraska, or (f) conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or he or she may be retired for physical or mental disability seriously interfering with the performance of his or her duties if such disability is determined to be permanent or reasonably likely to become permanent. Any citizen of the State of Nebraska may request the Commission on Judicial Qualifications to consider the qualifications of any Justice or Judge of the Supreme Court or other judge, and in the event, the commission shall make such investigation as the commission deems necessary and in its discretion may shall, upon a finding of probable cause, privately reprimand such Justice or Judge of the Supreme Court or other judge order a formal open hearing to be held before it concerning the reprimand, discipline, censure, suspension, removal or retirement of such Justice or Judge of the Supreme Court or other judge. In the alternative or in addition, the commission may request the Supreme Court to appoint one or more special masters who shall be judges of courts of record to hear and hold a formal open hearing to take evidence in any such matter, and to report to the commission. If, after formal open hearing, or after considering the record and report of the masters, the commission finds good cause therefor that the charges are established by clear and convincing evidence, it shall recommend to the Supreme Court that the Justice or Judge of the Supreme Court or other judge involved shall be reprimanded, disciplined, censured, suspended without pay for a definite period of time not be exceed six months, removed, or retired as the case may be.

(2) The Supreme Court shall review the record of the proceedings and in its discretion may permit the introduction of additional evidence. The Supreme Court shall make such determination as it finds just and proper, and may order the reprimand, discipline, censure, suspension, removal, or retirement of such Justice or Judge of the Supreme Court or other judge, or may wholly reject the recommendation. Upon an order for retirement, the Justice or Judge of the Supreme Court or other judge shall thereby be retired with the same rights and privileges as if he or she had retired pursuant to statute. Upon an order for removal, the Justice or Judge of the Supreme Court or other judge shall be removed from office, and his or her salary shall cease from the date of such order, and he or she shall be ineligible for judicial office. Upon an order for suspension, the Justice or Judge of the Supreme Court or other judge shall draw no salary and shall perform no judicial functions during the period of suspension. Suspension shall not create a vacancy in the office of Justice or Judge of the Supreme Court or other judge.

(3) Upon order of the Supreme Court, a Justice or Judge of the Supreme Court or other judge shall be disqualified from acting as a Justice or Judge of the Supreme Court or other judge, without loss of salary, while there is pending (a) an indictment or information charging him or her in the United States with a crime punishable as a felony under Nebraska or federal law or (b) a recommendation to the Supreme Court by the Commission on Judicial Qualifications for his or her removal or retirement.

(4) In addition to the procedure set forth in subsections (1) and (2) of this section, on recommendation of the Commission on Judicial Qualifications or on its own motion, the Supreme Court (a) shall remove a Justice or Judge of the Supreme Court or other judge from office when in any court in the United States such justice or judge pleads guilty or no contest to a crime punishable as a felony under Nebraska or federal law, and (b) may suspend a Justice or Judge of the Supreme Court or other judge from office without salary when in any court in the United States such justice or judge is found guilty of a crime punishable as a felony under Nebraska or federal law or of any other crime that involves moral turpitude. If his or her conviction is reversed, suspension shall terminate and he or she shall be paid his or her salary for the period of suspension. If he or she is suspended and his or her conviction becomes final the Supreme Court shall remove him or her from office.

~~(3)~~ (5) All papers filed with and proceedings before the commission or masters appointed by the Supreme Court pursuant to this section prior to any formal open hearing shall be confidential. and the The filing of papers with and the testimony given before the commission or masters or the Supreme Court shall be deemed a privileged communication. The Supreme Court shall by rule provide for procedure under this section before the commission, the masters, and the Supreme Court.

~~(4)~~ (6) No Justice or Judge who is a member of the commission or of the Supreme Court Judge of the Supreme Court or other judge shall participate, as a member of such the commission, or as a master, or as a member of the Supreme Court, in any proceedings involving his or her own reprimand, discipline, censure, suspension, removal, or retirement."

Sec. 28 pertains to the Commission on Judicial Qualifications. The change proposed is to shift the Commission from one heavily weighted by judges to one weighted by attorneys and citizens. The current commission consists of 7 judges, 2 attorneys and 2 citizens, with a chairman selected from within the group. The proposal calls for 3 judges, 3 attorneys and 3 citizens and the Chief Justice who shall serve as chairman.

Sec. 29 would be changed if the proposal is approved because section 28, of the proposed amendment specifies that the Chief Justice of the Supreme Court shall serve as chairman of the Commission on Judicial Qualifications.

Sec. 30 deals with actions the Commission on Judicial Qualifications can take when dealing with persons and situations presented before it. Currently a judge or justice can be removed or retired from office for certain acts. The proposal would allow other means of punishment for these same acts that would not be as final or permanent as removal or retirement. The other means of punishment could be in the form of expressed disapproval, removal from office for a period of not more than six months, or other measures deemed satisfactory by the commission.

In the current constitution there are several actions that may cause a judge or justice to face action of the commission, these would be retained in the proposed amendment with an additional prohibition prescribed. This addition says that any judge or justice who conducts himself or herself in any manner that is harmful or detrimental to the administration of justice or who causes the judicial office to be disgraced or have a bad reputation shall be subject to some form of punishment.

With regard to hearings, the current provision allows a hearing if the commission deems it necessary. The proposed amendment requires that if a hearing is held that it be a formal open hearing, that is, accessible to those wishing to listen to the hearing as presented.

There are other proposed guidelines for the Supreme Court to follow after examining the report of the commission. If the Supreme Court finds the judge or justice should be suspended, they can order that be done, during which time salary shall not be paid to the person suspended.

The Supreme Court can order that full pay be provided to a justice or judge who is waiting for an indictment or for information relating to felony charges or while waiting for the Commission on Judicial Qualifications to make a report to the Supreme Court on the judge or justice in question.

Additionally, a judge or justice who pleads guilty or no contest to a crime punishable as a felony will be removed. A judge or justice will be suspended if found guilty of a crime (felony). If the charge is reversed, the judge/justice shall have the suspension lifted and receive back pay.

Scattered throughout the amendment is the addition of "her" or "she" to acknowledge women as part of the judicial system.

Those who favor the amendment note:

-- It is good that more citizens and attorneys will be on the Commission, with fewer judges controlling decisions that affect the livelihood and future of their friends and associates.

-- The exactness and detail of any punishment to judges needs to be spelled out in the constitution, because the Legislature does not have the authority to enact laws pertaining to the judiciary because of separation of powers.

-- There has never been a judge or justice removed or retired by the Commission but there have been some judges and justices who have violated and prescribed rules and regulations, but not to the extent that they should be removed or retired. This proposal allows these intermediate levels of punishment.

Opposition to the amendment is:

--If a judge or justice is wrong he/she should be removed, a "slap on the hand" approach is not acceptable.

-- If we believe in a "jury of our peers" then the judges or justices in question should be examined by a commission primarily of judges.

PROPOSED AMENDMENT NO. 3

TAX INCENTIVE FOR ENERGY CONSERVATION IMPROVEMENTS

A vote FOR this proposal will authorize the Legislature to enact legislation providing that the increased value of real property resulting from improvements designed primarily for energy conservation may be exempt from taxation, such exemption to be upon any terms, considerations and restrictions prescribed by the Legislature.

A vote AGAINST this proposal will not authorize the Legislature to enact legislation of any kind providing that the increased value of real property resulting from improvements designed primarily for energy conservation may be exempt from taxation.

☐

FOR

A constitutional amendment to authorize the Legislature to provide a tax exemption on energy conservation improvements as prescribed.

☐

AGAINST

This proposal, if enacted, would give the legislature authority to enact legislation to exclude energy saving improvements of real property from taxation or grant a credit for these improvements. The proposal provides policy direction for the Legislature, but does not specify details. Whether the method would be by tax exemption or tax credit would be determined by the legislature. There are no restrictions on what improvements could be included or under what terms.

The reason given for the proposal is that our dependence on fossil fuel is great, and in keeping with national policy, we need to provide incentives that will encourage people to employ methods of reducing this dependence by implementing alternative energy systems or adapting other features that are energy efficient.

The introducer of the proposed amendment noted that the State Energy Office reports "that we import approximately 95% of our energy needs from other states." In addition, the introducer cited 38 states that currently have some form of a state tax incentive with regard to energy.

This proposal, if enacted, would change the State Constitution, Article VIII, section 2 to read as follows (additions underlined):

"Sec. 2. The property of the state and its governmental subdivisions shall be exempt from taxation. The Legislature by general law may exempt property owned by and used exclusively for agricultural and horticultural societies, and property owned and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not owned or used for financial gain or profit to either the owner or user. Household goods and personal effects, as defined by law, may be exempted from taxation in whole or in part, as may be provided by general law, and the Legislature may prescribe a formula for the determination of value of household goods and personal effects. The Legislature by general law may provide that the increased value of land by reason of shade or ornamental trees planted along the highway shall not be taken into account in the assessment of such land. The Legislature by general law and upon any terms, conditions, and restrictions it prescribes, may provide that the increased value of real property resulting from improvements designed primarily for energy conservation may be exempted from taxation. The value of a home substantially contributed by the Veterans' Administration of the United States for a paraplegic veteran or multiple amputee shall be exempt from taxation during the life of such veteran or until the death of his widow or her remarriage. The Legislature may exempt from an intangible property tax life insurance and life insurance annuity contracts and any payment connected therewith and any right to pension or retirement payments. The Legislature may classify personal property in such manner as it sees fit, and may exempt any of such classes, or may exempt all personal property from taxation. No property shall be exempt from taxation except as provided in the Constitution. The Legislature may by general law provide that a portion of the value of any residence actually occupied as a homestead by any classification of owners as determined by the Legislature shall be exempt from taxation."

Those who favor passage of the bill contend that our dependence on fossil fuel is too great, and we need to do whatever we can to encourage the use of other energy devices and energy saving techniques. The major barrier to implementing alternate systems is that they usually require a large expenditure at the outset for purchase and installation, this coupled with increased value for tax purposes makes the improvement appear uneconomical. The proponents also point out that a precedent has been set for special tax treatment, since the Constitution allows the Legislature to enact laws to provide that the increased value of land due to tree plantings along the highway shall not be considered in assessment of such land.

Opponents argue that the change is too vague, that the "terms, conditions and restrictions" should be more specific. They say that this would allow the legislature to give a full cost exemption or credit, when a partial exemption or credit would provide sufficient incentive. Also, the time period in which this exemption could be used should be stated. They believe that if such a law were enacted it could be for an indefinite period of time, and believe that the owner would not only benefit from the energy savings device itself, and the tax exemption, but would further benefit from the undepreciated part of the investment when the property was sold.

Proponents counter that the purpose of the Constitution is to provide general guidelines and should not be cluttered with numbers and amounts that will not be meaningful or proper in years to come. They believe the exact details of an energy exemption or credit should be worked out by the Legislature, and in the event the people did not like what the Legislature passed, the people could vote on the measure through the referendum process. If specific times and amounts were never specified by the Legislature, the people could suggest these specifications by the initiative process.

PROPOSED AMENDMENT NO. 4

STATE SUPPORT OF SCHOOLS

A vote FOR this proposal would provide that the Legislature shall enact a method of financing public education which would meet the state's responsibility to provide maintenance and support of a thorough and efficient system of common schools, which method shall not rely on property taxes to the extent that an unfair and excessive burden is imposed on property owners.

A vote AGAINST this proposal would not add to the constitution the above mandate to the Legislature relative to the enactment of a plan for financing of public education in the state.

☐

FOR

Constitutional amendment to provide that the Legislature enact a system of financing public education which does not impose an unfair and excessive property tax burden.

☐

AGAINST

The Legislature, in order to provide policy direction to the future of Nebraska common schools, has suggested that the following section be added to Article VII, of the State Constitution:

"Sec. 18. 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 owners."

This is a permissive amendment, authorizing the Legislature to enact legislation that will financially provide a thorough and efficient school system. Tied to this is a further requirement that property taxes can not be relied on to such an extent as to be an unfair and excessive burden to property owners. From this, one can assume that the continuing increase in the cost of education will be partially or wholly met with an increase in state-aid which is derived from sales taxes and income taxes. (The state does not receive any property tax revenue.)

The introducers of the proposed amendment noted five descriptive words that are included. These words are "a thorough and efficient system." To further the understanding and the intent of the amendment the following explanation is offered by the introducer:

"The word 'system' is singular. Therefore, a single system of schools with a single set of statutes applicable to all schools would be a legislative mandate."

"The word 'thorough' means a complete and basic curriculum for all schools and pupils. Each school system would therefore be fully accredited by the state through the Department of Education."

"The word 'efficient' means a form of accountability of the schools to the taxpayer for its thorough system of schools. This word coupled with the equal protection clause of the constitution, equates value received to money expended. It also means that there be some form of competency measurement of the pupils to determine if the schools are both thorough and efficient in their operation."

The end result is, that if the proposal is approved by the voters, the Legislature will have to make changes in the method and means of school finance, and also the Legislature will be required to set standards for curriculum, staffing, facilities, etc. of the public schools.

Those who support the proposal contend that:

-- There needs to be a continual shift to state-aid to support schools because property taxes are strained to the breaking point to support schools. These taxes also provide other services -- police, fire, and roads. Trying to support all these services on one kind of tax is too great a burden.

-- The 7% lid has required school districts to pare down any frills that may have existed and any additional paring that will need to take place without increased state-aid will mean elimination of vital programs.

-- Significant property tax relief is not possible without more state-aid to schools.

-- Shifting from property tax to state support derived from sales and income taxes shifts part of the cost of education to visitors and industry who benefit from dealing with educated persons. More specifically, shifting to state-aid derived from income taxes will cause industries and businesses who rent or lease property in Nebraska to share in the cost of educating their potential, future employees.

-- Methods of testing the adequacy of our schools need to be adopted. We need to know if our young people are receiving a good, adequate, complete education.

Those who oppose the proposal contend that:

--Allowing the legislature a "free hand" in determining the amount and extent of state-aid to be provided may be too great a risk.

-- State-aid is taxes any way you cut it, and a shift to state-aid will just mean an increase in sales and income taxes.

-- A "thorough and efficient" way of financing public schools may be by mandatory consolidation.

-- To measure "thorough and efficient" may require competency testing which was proposed by the last legislature.

--"Thorough and efficient" could mean new or additional minimum standards regarding curriculum or other attributes of a school system.

-- Local control of the schools could be lost, because an increase in state-aid could mean an equal or greater increase in state control.

Background Information on Nebraska Elementary and Secondary Public Schools

Nebraska has over 1100 school districts with a range from 1 to 53,000 students per district. There is a continual dialogue among concerned groups about which schools should be closed, which should be consolidated, or how students or districts should be grouped to provide the best educational opportunity to the individual student at the most reasonable, manageable, fair cost.

There is also frequent discussion of the amount of money that is or should be provided by the state to support public schools. State-aid to education usually consists of three types of financial support:

Foundation - An amount or grant per student to be given to each district.

Equalization - Financial support to reduce inequalities among school districts due to differences in local tax bases. If sufficient funds

are not available from local property taxes (after deducting qualifying mill levy dollars) and other state aid, then additional state-aid is provided to reach the assumed minimum dollar need per student.

Incentive - Allowances provided to a school district to help defray part of the cost of employing teachers with more experience and/or more education. The incentive aid involves classroom teachers only; it does not fund administrative costs.

State-aid to education has been \$55 million per year -- \$21 million foundation, \$4 million incentive aids and \$30 million equalization. During the last legislative session, the dollar amount appropriated for state-aid was increased to \$95 million. In addition, there was a bill passed that modified the distribution formula, with a greater percentage of the total dollar amount becoming foundation aid. This \$95 million will become effective with the October 1980 budgets with \$57 million designated as foundation aid, and approximately \$3.6 million as incentive aid and \$34.4 million equalization support.

Exactly how much this increase of \$40 million in state-aid to education will effect each individuals taxes will vary with each district. It will depend on the amount budgeted by each district.

Up until this latest aid increase, a very minimal amount of the total state's education cost was funded by state-aid as compared to surrounding states. Nebraskas' state-aid to education has contributed about 15 - 18 percent of the total educational cost of elementary and secondary schools. The primary source of education funds has been local property taxes -- about 75 - 80 percent of the total cost. The remaining 7 - 8 percent comes from Federal support.

The Cooperative Extension Service provides information and educational programs to all people without regard to race, color or national origin.