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## Nebraska Supreme Court Allows School Consolidation Law to Move Forward

J. David Aiken

*University of Nebraska-Lincoln*, [daiken@unl.edu](mailto:daiken@unl.edu)

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# CORNHUSKER ECONOMICS

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University of Nebraska–Lincoln Extension

## Nebraska Supreme Court Allows School Consolidation Law To Move Forward

On March 3, 2006 the Nebraska Supreme Court ruled that a district court's order stopping the implementation of a 2005 school consolidation statute was in error. *Pony Lake School District v. State Committee for Reorganization*, 271 Neb. 173 (2006). The Supreme Court's ruling paved the way for the mandatory June 15, 2006 termination of over 200 Class I School Districts pursuant to L.B. (Legislative Bill) 126, despite a November 7, 2006 voter referendum on LB126.

LB126 was enacted over Governor Heineman's veto on June 3, 2005. LB126 requires existing Class I (K-6/K-8) School Districts to merge with other school districts by June 15, 2006. The school district merger process began September 4, 2005.

In response to LB126, Class I School District supporters sponsored a referendum petition to place the repeal of LB126 on the November 2006 ballot. Under Nebraska Constitution Article III Section 3, petitions with signatures of at least 5 percent of registered Nebraska voters are necessary to place the repeal of LB126 on the November 2006 general election ballot. In order to suspend the operation of LB126 until after the referendum vote, LB126 opponents need to collect petitions with signatures of at least 10 percent of registered Nebraska voters. LB126 opponents filed their petitions with the Nebraska Secretary of State September 1, 2005. On October 24, 2005 the Secretary of State determined that LB126 opponents had collected petitions with signatures of 7.7 percent of registered voters, enough to force a referendum vote on LB126 but not enough to suspend the operation of the law until that vote was taken.

Market Report	Yr Ago	4 Wks Ago	3/3/06
<b><u>Livestock and Products,</u></b>			
<b><u>Weekly Average</u></b>			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight . . . . .	\$89.67	\$90.87	\$88.19
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb . . . . .	128.55	140.31	137.51
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb . . . . .	106.28	113.18	110.08
Choice Boxed Beef, 600-750 lb. Carcass . . . . .	141.74	151.25	152.64
Western Corn Belt Base Hog Price Carcass, Negotiated . . . . .	73.47	51.48	60.48
Feeder Pigs, National Direct 45 lbs, FOB . . . . .	81.72	60.55	57.73
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean . . . . .	68.74	57.57	67.43
Slaughter Lambs, Ch. & Pr., 90-160 lbs., Shorn, Midwest . . . . .	111.25	78.13	79.50
National Carcass Lamb Cutout, FOB . . . . .	269.69	218.06	213.23
<b><u>Crops,</u></b>			
<b><u>Daily Spot Prices</u></b>			
Wheat, No. 1, H.W. Imperial, bu . . . . .	3.47	3.76	4.00
Corn, No. 2, Yellow Omaha, bu . . . . .	1.89	1.98	1.98
Soybeans, No. 1, Yellow Omaha, bu . . . . .	5.93	5.56	5.58
Grain Sorghum, No. 2, Yellow Columbus, cwt . . . . .	2.80	3.13	2.93
Oats, No. 2, Heavy Minneapolis, MN, bu . . . . .	1.83	2.16	2.03
<b><u>Hay</u></b>			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton . . . . .	115.00	130.00	130.00
Alfalfa, Large Rounds, Good Platte Valley, ton . . . . .	62.50	65.00	65.00
Grass Hay, Large Rounds, Good Northeast Nebraska, ton . . . . .	57.50	52.50	55.00
* No market.			



The next day, on October 25, 2005, Class I School District supporters filed a lawsuit in Lancaster County District Court to stop implementation of LB126 until after the November 7, 2006 referendum vote. On November 14, 2005, Lancaster County District Judge Paul Merritt ruled that LB126's June 15, 2006 termination date for Class I School Districts unconstitutionally interfered with the referendum process and issued a temporary restraining order halting implementation of LB126. On November 22, 2005 the court held a trial and on November 29, 2005 the court issued a permanent injunction stopping implementation of LB126. That order was appealed by the Nebraska Attorney General to the Nebraska Supreme Court.

The major issue before the Supreme Court was whether the June 15, 2006 termination date for Class I School Districts interfered with the referendum process. The court noted that courts in general will rule that a state statute is unconstitutional only as a last resort, and that those challenging a statute's constitutionality must clearly demonstrate its unconstitutionality. The court first considered whether the various implementation deadlines in LB126 were constitutionally allowed. The Nebraska Constitutional Article III Section 27 requires that statutes cannot take effect until three months after enactment, unless the statute was approved by a two-thirds majority of senators as an emergency measure. LB126 took effect on September 4, 2005, more than three months after its June 3, 2005 enactment. So the effective date of LB126 was constitutional. Significantly, the court ruled that all of the LB 126 implementation deadlines, including the June 15, 2006 Class 1 School District termination date, were consistent with Article III Section 27.

The court next considered whether LB126 interfered with the referendum process. This was the key part of the court's decision. The district court had ruled that because implementation of LB126 would terminate Class I School Districts before the November 7, 2006 referendum vote, LB126 therefore interfered with the referendum process. The Nebraska Supreme Court disagreed with this conclusion. Article III Section 4 establishes legislation may be adopted to *facilitate* the Article III Section 3 initiative petition process. Several cases over the years have concluded that certain initiative petition legislation in fact interfered with the initiative petition process instead of facilitating the process, and therefore the legislation was unconstitutional. For example, a statute making it a crime to circulate a petition outside the county of the circulator's residence was ruled in 1992 to be unconstitutional because the county residence requirement interfered with the initiative petition process rather than facilitat-

ing it. Similar statutes making the initiative petition process itself more difficult have similarly been ruled unconstitutional.

But the Supreme Court ruled that the district court was mistaken in ruling that LB126 similarly interfered with the initiative referendum process. LB126 did not deal in any way with the initiative petition process at all, but instead with consolidation of Class I School Districts. Consequently the Supreme Court ruled that the court decisions cited by the district court did not support the conclusion that LB126 interfered with the initiative petition process under the Nebraska constitution.

Finally, the court ruled that the failure of the LB126 opponents to collect sufficient petition signatures to suspend the operation of LB126 meant that LB126 could be implemented with the deadlines established by the statute. Consequently, LB126 can be implemented, despite the subsequent referendum vote on whether or not the statute should be implemented.

This result is not a surprising one. It is difficult to have a statute declared unconstitutional. The apparent inconsistency of having a voter referendum on a statute that has already been completely implemented may strike some as nonsensical. However, such legal results are not that unusual. LB126 is unusual in that it will be completely implemented within 15 months of its enactment. This is uncommon; most statutes would not have served their intended purpose so quickly, so their repeal 19 months after their enactment would be meaningful. The fact that the November 7, 2006 referendum vote is largely a meaningless gesture is the result of the LB126 opponents' failure to obtain the required 10 percent petition signatures to suspend operation of the statute until after the referendum vote. The Nebraska Supreme Court chose not to ignore the Nebraska Constitution's 10 percent signature requirement, which the district court's opinion effectively did.

It is unlikely that any additional court challenge to LB126 will succeed. Unless the Unicameral acts to delay implementation of LB126, Class I School Districts will be dissolved on June 15, 2006.

J. David Aiken, (402) 472-1848  
Professor, Water & Agricultural Law Specialist  
Agricultural Economics Dept., UNL  
[daiken@unl.edu](mailto:daiken@unl.edu)