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MEMORANDUM

TO: Mike Dulaney, NCSA Executive Director
FROM: Steve Williams
DATE: April 1, 2016
RE: LB 959

I am writing in response to your request for a brief analysis of the impact of LB 959 on a school's ability to use a Qualified Capital Purpose Undertaking Fund (QCPUF) for various projects.

Current Law. Section 79-10,110 currently allows schools to borrow money, establish a sinking fund, and issue bonds for certain purposes. These purposes include the abatement of environmental hazards, accessibility barrier elimination, modifications for life safety code violations, indoor air quality, or mold abatement and prevention ("health and safety modifications"); for a qualified capital purpose ("QCP") using qualified zone academy bonds ("QZABs"); or for an American Recovery and Reinvestment Act of 2009 purpose ("ARRA"). Rule 2 from the Nebraska Department of Education allows schools to establish a QCPUF for all of these purposes. State law limits the tax levy for the QCPUF to \$0.052 per hundred dollars of valuation.

LB 959. As of March 31, 2016, LB 959, as amended, would do the following:

- **Levy Limit Reduction.** The maximum levy for QCPUF will be reduced from \$0.052 per hundred dollars of valuation to \$0.03 per hundred dollars of valuation. This levy maximum applies to the combined levies made for projects approved before and after the effective date of LB 959. There are two exceptions to this levy limitation:
 - The taxable valuation of the district is lower than the taxable valuation in the year in which the district last issued bonds pursuant to section 11 of LB 959; and

- The maximum levy is insufficient to meet the combined annual principal and interest obligations for all bonds issued pursuant to section 11 of LB 959 *and* section 79-10,110.
- **Levy Limitation Exclusion.** Amounts levied for the QCPUF will be excluded from or in addition to the \$1.05 school district levy limitation.
- **Eliminates ARRA and QCP.** Schools will no longer be allowed to undertake any QCP in any qualified zone academy or levy a tax to repay QZABs. It also prohibits from undertaking any ARRA purpose. Nothing in LB 959 will affect levies made pursuant to the version of section 79-10,110 that existed prior to the effective date of LB 959.
- **Change in Health and Safety Modifications.** Schools may no longer use QCPUF funds for “indoor air quality” projects. However, schools may now use QCPUF funds for “life safety hazard” projects, although this term is not defined by LB 959 or any other provision of state law.
- **Project Limitations.** Schools will not be allowed to use the QCPUF for any projects related to the acquisition of new property, the construction of a new building, the expansion of an existing building, or the remodeling of an existing building *unless* they are for the abatement of environmental hazards, accessibility barriers, life safety code violations, life safety hazards, or mold.

What Does This Mean for Schools? If you are planning to use the QCPUF for indoor air quality or QZAB or ARRA for any project, all levies must be made and/or bonds issued prior to the effective date of LB 959. Some schools had used the QCPUF to fund HVAC projects in new construction and renovations. Schools may not be able to use QCPUF any longer to fund these projects because (1) “indoor air quality” has been removed from the list of qualified abatement projects, and (2) LB 959 specifically prohibits the remodeling of an existing building for purposes other than specifically listed abatement projects. Schools will still be able to use QCPUF to fund the abatement of an actual or potential environmental hazard, which is defined to mean “any contamination of the air, water, or land surface or subsurface caused by any substance adversely affecting human health or safety if such substance has been declared hazardous by a federal or state statute, rule, or regulation.” With the elimination of the “indoor air quality” abatement criteria and the new project limitations described above, it will be much more difficult for schools to use the QCPUF to fund HVAC projects.

Schools will not be able to approve new projects to be funded by the QCPUF if a school district already has a levy for its QCPUF fund that equals or exceeds \$0.03 per hundred dollars of valuation.

Effective Date. After the Legislature passes a bill on Final Reading, it goes to the governor for consideration. The governor has five days (excluding Sundays) to decide what to do with a bill after it is passed by the Unicameral. LB959 has an emergency clause. If the governor signs the bill, and he has indicated that he will, the bill becomes effective at 12:01 a.m. the day after the governor signs it. That means any school which is considering a QCPUF

project must have the bonds issued on or before the date the governor signs the bill into law. If the governor decides not to sign it, LB 959 will become effective five days after the Legislature approves it.

I hope that this memorandum is helpful. If you have any questions, please let me know.