

Journal of the Senate

THIRTY-SEVENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, March 3, 2005—2:30 p.m.

The Senate was called to order by Vice President John Vratil.

The roll was called with thirty-nine senators present.

Senator Betts was excused.

Vice President Vratil introduced as guest chaplain, Rev. Jeff Davis, Children's Minister, Tyro Christian Church, Tyro, Kansas, who delivered the invocation:

Heavenly Father,

My prayer today, on these Senators' behalf, is for them to be able to see as You see, to laugh at what You laugh at, to weep over what You weep over, to hate what You hate, and to love what You love.

I pray that you give each one of these Senators wisdom, understanding, and discernment today as they meet together. Lord continue to protect and guide them and their families as they serve here.

In Jesus Name

Amen

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Federal and State Affairs: **SB 285**.

Ways and Means: **SB 286; HB 2477**.

MESSAGE FROM THE GOVERNOR

SB 41 approved on March 3, 2005.

CONFIRMATION OF APPOINTMENTS

In accordance with Senate Rule 56, the following appointment, submitted by the Governor to the senate for confirmation, was considered.

Senator D. Schmidt moved the following appointment be confirmed as recommended by the Standing Senate Committee:

On the appointment to the:

Kansas Racing and Gaming Commission:

Glenn R. Braun, term expires January 15, 2008.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Allen, Apple, Barnett, Barone, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Betts.

The appointment was confirmed.

REPORTS OF STANDING COMMITTEES

Committee on **Transportation** recommends **HB 2123** be amended on page 2, in line 26, by striking “express companies,”; in line 27, by striking “sleeping-car companies,”; and the bill be passed as amended.

Committee on **Ways and Means** recommends **SB 87** be amended on page 1, in line 14, by striking “(a)”; in line 20, by striking “\$5” and inserting “\$4”; by striking all in lines 22 through 39;

On page 3, in line 26, by striking “Except as provided in paragraph (3), \$4” and inserting “Three dollars and twenty cents”; in line 29, by striking “\$4” and inserting “\$3.20”; in line 30, by striking “One dollar” and inserting “Eighty cents”; in line 33, by striking “\$1” and inserting “\$.80”; by striking all in lines 35 through 43;

On page 4, by striking all in lines 1 through 6; and the bill be passed as amended.

Also, **SB 128** be amended on page 3, in line 2, before “For” by inserting “(b)” and the bill be passed as amended.

COMMITTEE OF THE WHOLE

On motion of Senator D. Schmidt, the Senate resolved itself into Committee of the Whole for consideration of bills on the calendar under the heading of General Orders with Senator Emler in the chair.

On motion of Senator Emler the report for Wednesday, March 2, 2005 and the following report were adopted:

The Committee resumed consideration of **SB 246**, as amended by adoption of the committee report and further amended by Senators Schodorf and Apple in Committee of the Whole, Wednesday, March 2, 2005.

Senator Schmidt having voted on the prevailing side in Committee of the Whole, Wednesday, March 2, 2005, moved the Senate reconsider its action on Senator Apple’s amendment to **SB 246**. The motion carried and Senator Apple withdrew his amendment.

Senator Wagle further amended **SB 246**, as amended by Senate Committee, on page 9, in line 12, by striking the colon; by striking all in lines 13 through 16; in line 17, by striking all receding the comma; in line 18, by striking “\$4,263” and inserting “\$3,893”,

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 26, Nays 11, Present and Passing 2, Absent or Not Voting 1.

Yeas: Apple, Barnett, Brownlee, Bruce, Brungardt, Donovan, Huelskamp, Jordan, Journey, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson.

Nays: Allen, Barone, Francisco, Gilstrap, Goodwin, Haley, Hensley, Kelly, Lee, Steineger, Wysong.

Present and Passing: Emler, O’Connor.

Absent or Not Voting: Betts.

The motion carried and the amendment was adopted.

Senator Wagle having voted on the prevailing side, moved the Senate reconsider its action on the amendment she offered. The motion carried and the amendment was withdrawn.

Senator Wagle further amended **SB 246**, as amended by Senator Schodorf, on March 2, 2005, on page 9, in line 12, by striking “\$4,013” and inserting “\$3,983”

The motion carried and the amendment was adopted, and **SB 246** be passed as further amended.

The following amendments offered to **SB 246** were rejected:

Senator Barone moved to amend **SB 246**, as amended by Senate Committee, on page 22, following line 6, by inserting:

“New Sec. 12. (a) As used in this section:

(1) “School district” or “district” means any school district participating in the state health care benefits program.

(2) “State health care benefits program” or “program” means the state health care benefits program established pursuant to K.S.A. 75-6501 et seq., and amendments thereto.

(b) Within the limits of appropriations made or available therefor and subject to the provisions of appropriation acts relating thereto, each school district shall be paid an amount equal to \$50 for each teacher each month such teacher participates in the state health care benefits program.

(c) Any moneys received by a district pursuant to this section shall be used solely to reduce teachers' share of the cost of participating in the program.”;

By renumbering sections accordingly

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 9, Nays 26, Present and Passing 4, Absent or Not Voting 1.

Yeas: Barone, Francisco, Gilstrap, Goodwin, Haley, Hensley, Lee, Steineger, Wysong.

Nays: Allen, Apple, Barnett, Bruce, Brungardt, Donovan, Huelskamp, Jordan, Journey, McGinn, Morris, O'Connor, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson.

Present and Passing: Brownlee, Emler, Kelly, Ostmeyer.

Absent or Not Voting: Betts.

The motion failed and the amendment was rejected.

Senator Steineger moved to amend **SB 246**, as amended by Senate Committee, on page 4, in line 36, by striking “A” and inserting “Except as provided by section 12, and amendments thereto, a”;

On page 22, following line 6, by inserting:

“New Sec. 12. For school year 2005-2006, a pupil attending full-day kindergarten at an attendance center with an enrollment in the preceding school year of at least 60% pupils who are eligible for free or reduced price meals under the national school lunch act shall be counted as one pupil. For school year 2006-2007, a pupil attending full-day kindergarten at an attendance center with an enrollment in the preceding school year of at least 30% pupils who are eligible for free or reduced price meals under the national school lunch act shall be counted as one pupil. For school year 2007-2008 and each school year thereafter, a pupil attending full-day kindergarten shall be counted as one pupil.”;

By renumbering sections accordingly

Senator Steineger further moved to amend **SB 246**, as amended by Senate Committee, on page 6, in line 3, by striking “5,500” and inserting “6,000”

Senator Lee moved to amend **SB 246**, as amended by Senate Committee, on page 22, following line 6, by inserting:

“Sec. 12. K.S.A. 72-6441 is hereby amended to read as follows: 72-6441. (a) (1) *Subject to the provisions of subsection (d)*, the board of any district to which the provisions of this subsection apply may levy an ad valorem tax on the taxable tangible property of the district each year for a period of time not to exceed two years in an amount not to exceed the amount authorized by the state board of tax appeals under this subsection for the purpose of financing the costs incurred by the state that are directly attributable to assignment of ancillary school facilities weighting to enrollment of the district. The state board of tax appeals may authorize the district to make a levy which will produce an amount that is not greater than the difference between the amount of costs directly attributable to commencing operation of one or more new school facilities and the amount that is financed from any other source provided by law for such purpose, including any amount attributable to assignment of school facilities weighting to enrollment of the district for each school year in which the district is eligible for such weighting. If the district is not eligible, or will be ineligible, for school facilities weighting in any one or more years during the two-year period for which the district is authorized to levy a tax under this subsection, the state board of tax appeals may authorize the district to make a levy, in such year or years of ineligibility, which will produce an amount that is not greater than the actual amount of costs attributable to commencing operation of the facility or facilities.

(2) The board of tax appeals shall certify to the state board of education the amount authorized to be produced by the levy of a tax under subsection (a).

(3) The state board of tax appeals may adopt rules and regulations necessary to properly effectuate the provisions of this subsection, including rules relating to the evidence required in support of a district's claim that the costs attributable to commencing operation of one

or more new school facilities are in excess of the amount that is financed from any other source provided by law for such purpose.

(4) The provisions of this subsection apply to any district that (A) commenced operation of one or more new school facilities in the school year preceding the current school year or has commenced or will commence operation of one or more new school facilities in the current school year or any or all of the foregoing, and (B) is authorized to adopt and has adopted a local option budget in an amount equal to the state prescribed percentage of the amount of state financial aid determined for the district in the current school year, and (C) is experiencing extraordinary enrollment growth as determined by the state board of education.

(b) *Subject to the provisions of subsection (d)*, the board of any district that has levied an ad valorem tax on the taxable tangible property of the district each year for a period of two years under authority of subsection (a) may continue to levy such tax under authority of this subsection each year for an additional period of time not to exceed three years in an amount not to exceed the amount computed by the state board of education as provided in this subsection if the board of the district determines that the costs attributable to commencing operation of one or more new school facilities are significantly greater than the costs attributable to the operation of other school facilities in the district. The tax authorized under this subsection may be levied at a rate which will produce an amount that is not greater than the amount computed by the state board of education as provided in this subsection. In computing such amount, the state board shall (1) determine the amount produced by the tax levied by the district under authority of subsection (a) in the second year for which such tax was levied and add to such amount the amount of general state aid directly attributable to school facilities weighting that was received by the district in the same year, and (2) compute 75% of the amount of the sum obtained under (1), which computed amount is the amount the district may levy in the first year of the three-year period for which the district may levy a tax under authority of this subsection, and (3) compute 50% of the amount of the sum obtained under (1), which computed amount is the amount the district may levy in the second year of the three-year period for which the district may levy a tax under authority of this subsection, and (4) compute 25% of the amount of the sum obtained under (1), which computed amount is the amount the district may levy in the third year of the three-year period for which the district may levy a tax under authority of this subsection.

(c) The proceeds from the tax levied by a district under authority of this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state school district finance fund.

(d) The board of tax appeals shall not authorize a district to levy a tax under the provisions of this section after June 30, 2005. Districts authorized to levy a tax under subsection (a) prior to the effective date of this act may continue to levy such tax for a period of time not to exceed two years

Sec. 13. K.S.A. 72-6443 is hereby amended to read as follows: 72-6443. (a) The ancillary school facilities weighting of each district shall be determined in each school year in which such weighting may be assigned to enrollment of the district as follows:

(1) Add the amount authorized under subsection (a) of K.S.A. 72-6441, and amendments thereto, to be produced by a tax levy and certified to the state board by the board of tax appeals to the amount, if any, computed under subsection (b) of K.S.A. 72-6441, and amendments thereto, to be produced by a tax levy;

(2) divide the sum obtained under (1) by base state aid per pupil. The quotient is the ancillary school facilities weighting of the district.

(b) The provisions of this section shall ~~take effect and be in force from and after July 1, 1997~~ *be subject to the provisions of subsection (d) of K.S.A. 72-6441, and amendments thereto.*;

By renumbering sections accordingly;

Also on page 22, in line 14, by striking "and 72-6442" and inserting "72-6441, 72-6442 and 72-6443";

In the title, in line 12, by striking “and 72-6442” and inserting “, 72-6441, 72-6442 and 72-6443”

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 7, Nays 24, Present and Passing 8, Absent or Not Voting 1.

Yeas: Barone, Francisco, Goodwin, Hensley, Journey, Lee, Steineger.

Nays: Allen, Apple, Barnett, Bruce, Brungardt, Donovan, Gilstrap, Huelskamp, Jordan, Kelly, Morris, Petersen, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Present and Passing: Brownlee, Emler, Haley, McGinn, O'Connor, Ostmeyer, Palmer, Pyle.

Absent or Not Voting: Betts.

The motion failed and the amendment was rejected.

Senator Lee further moved to amend **SB 246**, as amended by Senate Committee, on page 20, by striking all in lines 14, 15 and 16; following line 16, by inserting:

“(B) “State prescribed percentage” means 25%.”

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 13, Nays 15, Present and Passing 11, Absent or Not Voting 1.

Yeas: Barone, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Journey, Lee, Ostmeyer, Petersen, Steineger, Teichman.

Nays: Allen, Apple, Barnett, Brownlee, Brungardt, Donovan, Jordan, Morris, Schmidt D, Schodorf, Umbarger, Vratil, Wagle, Wilson, Wysong.

Present and Passing: Bruce, Emler, Kelly, McGinn, O'Connor, Palmer, Pine, Pyle, Reitz, Schmidt V, Taddiken.

Absent or Not Voting: Betts.

The motion failed and the amendment was rejected.

HB 2059 be passed.

SB 139 be amended by adoption of the committee amendments, and the bill be passed as amended.

SB 138 be amended by adoption of the committee amendments, be further amended by motion of Senator Vratil as amended by Senate Committee, on page 1, in line 25, after “(b)” by inserting “In no event shall the total amount of credits allowed under this section exceed \$500,000 for any one fiscal year.

(c)”;

Also on page 1, in line 32, by striking “(c)” and inserting “(d)”;

On page 2, in line 7, by striking “(d)” and inserting “(e)”, and **SB 138** be passed as further amended.

SB 244 be amended by adoption of the committee amendments, be further amended by motion of Senator Jordan as amended by Senate Committee, on page 1, in line 17, preceding the period, by inserting “and one shall be a member from the business community”; in line 19, preceding the period, by inserting “and one shall be a member from the business community”; in line 21, preceding the period, by inserting “and one shall be a member from the business community”; in line 24, preceding the period, by inserting “and one shall be a member from the business community”

Senator Bruce further amended **SB 244**, on page 1, in line 31, by striking all after “(8)” and inserting “A member of the State Board of Education, or a designee thereof, selected by the State Board of Education”, and **SB 244** be passed as further amended.

SB 245 be amended by adoption of the committee amendments, be further amended by motion of Senator Pine, as amended by Senate Committee, on page 3, following line 28, by inserting:

“Sec. 3. In order to allow any person desiring to obtain, analyze and compare financial and performance data of school districts, the state board of education shall design and implement a uniform system of reporting of such data by school districts. Such system shall be an internet-based data reporting system which is freely available and accessible. Such system shall allow a person to search and manipulate the data and allow for the comparison of data on a district by district basis. Such system may be designed so that school districts

may input directly the district's financial and performance data in lieu of reporting data to the state board.”;

By renumbering the remaining section accordingly, and **SB 245** be passed as further amended.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator D. Schmidt an emergency was declared by a $\frac{2}{3}$ constitutional majority, and **SB 138**, **SB 139**, **SB 244**, **SB 245**, **SB 246**; **HB 2059** were advanced to Final Action and roll call.

SB 138, An act concerning taxation; providing for a tax credit against the income tax liability of certain business firms.

On roll call, the vote was: Yeas 34, Nays 5, Present and Passing 0, Absent or Not Voting 1.

Yeas: Allen, Apple, Barnett, Barone, Brownlee, Bruce, Brungardt, Donovan, Emler, Gilstrap, Haley, Huelskamp, Jordan, Journey, Kelly, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Francisco, Goodwin, Hensley, Lee, Steineger.

Absent or Not Voting: Betts.

The bill passed, as amended.

SB 139, An act establishing the Kansas academy of mathematics and science.

On roll call, the vote was: Yeas 36, Nays 3, Present and Passing 0, Absent or Not Voting 1.

Yeas: Allen, Apple, Barnett, Barone, Brownlee, Bruce, Brungardt, Donovan, Emler, Gilstrap, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Francisco, Goodwin, Lee.

Absent or Not Voting: Betts.

The bill passed, as amended.

SB 244, An act concerning school districts; establishing the 2010 commission; prescribing the powers and duties thereof.

On roll call, the vote was: Yeas 32, Nays 7, Present and Passing 0, Absent or Not Voting 1.

Yeas: Allen, Apple, Barnett, Brownlee, Bruce, Brungardt, Donovan, Emler, Gilstrap, Huelskamp, Jordan, Journey, Kelly, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Barone, Francisco, Goodwin, Haley, Hensley, Lee, Steineger.

Absent or Not Voting: Betts.

The bill passed, as amended.

SB 245, An act concerning school districts; concerning audits by the division of legislative post audit.

On roll call, the vote was: Yeas 34, Nays 5, Present and Passing 0, Absent or Not Voting 1.

Yeas: Allen, Apple, Barnett, Barone, Brownlee, Bruce, Brungardt, Donovan, Emler, Gilstrap, Haley, Huelskamp, Jordan, Journey, Kelly, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Francisco, Goodwin, Hensley, Lee, Steineger.

Absent or Not Voting: Betts.

The bill passed, as amended.

SB 246, An act concerning school districts; relating to school finance; amending K.S.A. 72-979, 72-6410, 72-6412, 72-6413, 72-6414, 72-6433 and 72-6442 and K.S.A. 2004 Supp. 72-978, 72-6407, 72-6409, 72-6431 and 79-201x and repealing the existing sections.

On roll call, the vote was: Yeas 29, Nays 10, Present and Passing 0, Absent or Not Voting 1.

Yeas: Allen, Apple, Barnett, Brownlee, Bruce, Brungardt, Donovan, Emler, Gilstrap, Jordan, Journey, Kelly, McGinn, Morris, Ostmeyer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Barone, Francisco, Goodwin, Haley, Hensley, Huelskamp, Lee, O'Connor, Palmer, Steineger.

Absent or Not Voting: Betts.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. VICE PRESIDENT: While I support enhanced funding for education, there is insufficient tax revenue to pay for the expanded spending proposed in **SB 246**. I fear this could result in a tax increase on already overtaxed Kansas citizens. Thus, I am forced to vote "No" on **SB 246**.—TIM HUELSKAMP

Senators O'Connor and Palmer request the record to show they concur with the "Explanation of Vote" offered by Senator Huelskamp on **SB 246**.

MR. VICE PRESIDENT: I reluctantly vote yes on **SB 246**.

I don't believe this bill meets the Supreme Court's expectations nor our schools' needs. My vote is a vote of faith that we will continue to address school funding issues and that at the end of the session we will pass a bill that provides long-term, adequate funding for our schools.—LAURA KELLY

MR. VICE PRESIDENT: **SB 246** is not a perfect bill. It does not eliminate correlation weighting, new facilities weighting, or ancillary weighting as directed by the State Supreme Court. While this has been characterized as a political solution and one that can be criticized based upon the opinion of the Court, **SB 246** has companion bills that deal with cost analysis of education and future planning and evaluation of proposals to improve the quality of education in Kansas. It is not a perfect bill and all three bills together offer a comprehensive approach to these issues placed before the Senate by the Kansas Supreme court. To my friends in the Senate I ask you to reconsider your opposition to **SB 245** to provide all here and in the State to see for themselves the true cost of education in Kansas.—PHILLIP B. JOURNEY

Senators Petersen, Pine, and Pyle request the record to show they concur with the "Explanation of Vote" offered by Senator Journey on **SB 246**.

MR. VICE PRESIDENT: I vote NO on **SB 246** for several reasons.

SB 246 further affirms that the Legislature has failed to meet its burden as imposed by Article 6 of the Kansas Constitution to make suitable provision for finance of the public schools.

SB 246 increases disparities in funding, and is not based on a cost analysis, but rather on political and other factors not relevant to education. The Supreme Court opinion references substantial competent evidence, including the Augenblick and Myers study, which indicates that \$850 million is required to finance education. The Kansas State Department of Education has recently conducted a competent study of 55 Kansas school districts which indicate \$598 million of additional revenue is required. Furthermore, **SB 246** does not adequately address the Court's explicit findings that At Risk and limited English proficiency children have increased in number in our state.

SB 246 fails, in particular, the plaintiff school districts (Salina and Dodge City) which established that the School District Finance and Quality Performance Act failed to provide adequate funding for a suitable education for their students. — CHRIS STEINEGER

Senators Barone and Francisco request the record to show they concur with the "Explanation of Vote" offered by Senator Steineger on **SB 246**.

MR. VICE PRESIDENT: I appreciate all the work that has gone into this bill, by the Committee Chair, her committee, including my friends and colleagues from Johnson County, and the Republican leadership. I greatly respect you all for the effort and intent of the work.

However, I can't respect the end result.

In business when you make a business and financial plan, which basically that's what this bill is supposed to be...only, based on education...it must have financial resources. This bill really has none to speak of except in the first year, and most of that comes from robbing

our savings account. It's very hard to support a plan that doesn't even address revenue sources after the first year.

I serve a great school district. Amendments for the benefit of my district were offered in Committee and to the greatest degree were dismissed. Amendments which called for only taxing my district, no other.

It's interesting that there are some really good things in each of the three proposed education funding bills, and I am hopeful that at the end of the day, items from all three will be included. I hope we demand that funding will be part of that final equation. I think that is only fair to the people who put their trust in us.

Sometimes you vote with your heart, sometimes with your brain. Today I am doing neither, because sometimes you have to vote with your district.

Today my district asked me to vote yes. It is against my personal better judgement. But that's what I'm doing. I only hope as the session goes on, the eventual end result will be positive and will include a plan, a three-year plan, and one with appropriate funding.—David Wysong

Senator Reitz requests the record to show he concurs with the "Explanation of Vote" offered by Senator Wysong on **SB 246**.

Protest of Senator Hensley against Senate Bill 246
March 3, 2005

MR. PRESIDENT, I hereby exercise my right under Article 2, Section 10, of the Kansas Constitution to protest Senate Bill 246.

This bill is the Kansas Senate's first attempt in the 2005 session to address the Kansas Supreme Court's ruling in *Montoy v State*, in which the Court affirmed "the district court's holding that the legislature has failed to meet its burden as imposed by Article 6, Section 6, of the Kansas Constitution to 'make suitable provision for finance' of the public schools." I believe this bill continues that failure.

For as long as I have served in this institution, public school funding is allocated by the Kansas Legislature on a year-to-year basis. In my opinion, this funding scheme has resulted in the inadequate and inequitable financing of our public schools. In addition, the Legislature has continued to place additional responsibilities on our public schools without providing them with the resources necessary to meet those responsibilities.

Many members of the Legislature, including myself, have in the past called for multi-year funding of our public schools. We were encouraged when the Senate majority party leadership announced on February 8, 2005, that they were proposing a school finance bill that would fund our schools on a multi-year basis.

Specifically, the original version of their bill, Senate Bill 246, would have provided a three-year school finance plan that would attempt to address the various admonitions set forth by the Supreme Court in *Montoy v State*. In describing their original bill, the Senate President was quoted in the Topeka Capital-Journal stating, "I believe they (the Court) will look at it as a good faith effort. I know it's not as much money as some people would like, but it's the best we can do in our current budget situation."

The Senate Education Committee then proceeded to spend several weeks of hearings and deliberation on the three-year plan.

When we debated Senate Bill 246 on General Orders, the very first amendment proposed by the chairwoman of the committee was to remove the expenditure increases in the second and third year of the plan. The one-year plan was never brought before the committee for public hearing or debate.

The one-year plan was an unfortunate retreat from the original version of the bill which had been subjected to hours and hours of public hearing, debate and deliberation by the committee.

In *Montoy v State*, the Court stated its decision "requires the legislature to act expeditiously to provide constitutionally suitable financing for the public school system."

I believe that a one-year plan is inadequate and threatens future funding for schools by continuing the legislative practice of pitting school finance against the other areas of our

state's budget. A one-year plan does not pass muster because the money is not there. If it is to be funded by using existing revenues, it depletes our treasury, relies on optimistic revenue projections and fails to provide the "suitable financing" of public schools in the years ahead.

Additionally, the Supreme Court stated:

"[O]ur examination of the extensive record in this case leads us to conclude that we need look no further than the legislature's own definition of suitable education to determine that the standard is not being met under the current financing formula. Within that record there is substantial competent evidence, including the Augenblick & Myers study, establishing that a suitable education, as that term is defined by the legislature, is not being provided."

This, along with an earlier reference to the Legislature's commission of the Augenblick & Myers study, suggests that the Court believes the Legislature has already defined suitable education in the Augenblick & Myers study. It is possible that unless and until the Legislature develops additional cost data to support a new formula, the Court will hold the Legislature to its own definition—i.e., Augenblick & Myers.

As noted before, the one-year plan has failed to identify any revenue source. This is not only short sided, it is fiscally irresponsible.

An amendment was offered that would have imposed a 7.5% surcharge on state income taxes owed, but that was soundly rejected. This surcharge would have provided the revenue for a multi-year, ongoing school finance plan.

In *Montoy v State*, the Court admonished the Legislature to determine the actual costs of providing a suitable education. The Court stated, "Specifically, the district court found that the financing formula was not based upon actual costs to educate children but was instead based on former spending levels and political compromise."

That is why I was encouraged when Senators from both parties requested that the State Department of Education survey our school districts in order to determine the actual costs associated with educating their students. A survey was conducted and the results were distributed to members of the Senate Education Committee. The survey provided conclusive evidence that we have failed to adequately fund the education of at-risk as well as bilingual children.

Attempts were immediately made to discredit the results because the survey illustrated what had been stated by both the Augenblick & Meyers study as well as the Court.

Disagreeing with the results of a survey doesn't make them less accurate. The unwillingness of the majority party to recognize and accept the data that was collected by our own State Department on Education from the experts in the field is unwise and foolish.

During floor debate on Senate Bill 246, an amendment was offered to implement the funding recommendations contained in the State Department's survey. The amendment would have increased funding for at-risk students from \$800 per student in school year 2005-2006 to \$1,600 per student in 2007-2008. This was rejected by the majority party.

The amendment also would have provided an increase in funding for bilingual students from \$1,200 per student in school year 2005-2006 to \$2,100 in 2007-2008. Again, this was rejected by the majority party.

The Kansas Supreme Court states that:

"There is substantial competent evidence, including the Augenblick & Myers study, establishing that a suitable education, as that term is defined by the legislature, is not being provided."

The majority party also rejected an amendment that would have increased the funding for at-risk students from .10 to .25, an increase that would have only brought us up to the national average for at-risk funding. This amendment was proposed in response to the Court's statement regarding at-risk students. The Court stated, "36% of Kansas public school students now qualify for free or reduced-price lunches."

There is a strong correlation between the number economically disadvantaged children and the number of failing students. However, failing to suitably fund at-risk education by not

providing the resources that are needed is irrational. These more vulnerable Kansans need support and increased resources.

Additionally, the Court stated:

“[T]he plaintiff school districts (Salina and Dodge City) established that the SDFQPA fails to provide adequate funding for a suitable education for students of their and other similarly situated districts, i.e., middle and large-sized districts with a high proportion of minority and/or at-risk and special education students.”

This appears to mean that the Legislature must adjust its formula to account for the underfunding of at-risk and special education students in middle and large-sized districts. Senate Bill 246 falls far short of any such adjustment.

Under this bill, the Local Option Budget (LOB) will be increased from 25% to 27%. There is an inherent inequality between larger, wealthier school districts who can easily increase their LOB and smaller, poorer school districts who are unable to utilize such a funding mechanism without drastically increasing their local property taxes. The responsibility is once again shifted from the state to the local districts.

A floor amendment to the bill was proposed that read, “If the amount of base state aid per pupil is increased by act of the legislature, the state prescribed percentage (25%) shall be reduced by a number of percentage points equal to the number of percentage points by which the amount of base state aid per pupil is increased.”

This was the original intent of the LOB when it was included in the school finance formula in 1992. The LOB was never intended to be a permanent part of the formula. And, it was never intended to fund the “essentials” of public education.

In fact, in *Montoy v State* the Court stated, “Additional evidence of the inadequacy of the funding is found in the fact that, while the original intent of the provision for local option budgets within the financing formula was to fund ‘extra’ expenses, some school districts have been forced to use local option budgets to finance general education.”

I truly believe inclusion of an LOB increase in this bill is merely a political consideration in order to obtain support from the Johnson County legislators.

An amendment was proposed that would have increased funding for bilingual education by increasing the weighting from .3 to .4. The amendment was rejected by the majority party even when it was intended to address the Court’s statement that, “the number of students with limited proficiency in English has increased dramatically, and the number of immigrants has increased dramatically.”

Again, the one-year plan that has been proposed by the majority party, fails to address the needs of our bilingual students and does little to address the strain placed on Kansas school districts to provide special services to these children.

The majority party failed to support an amendment that would increase special education funding to 100%. The Supreme Court has clearly stated that Kansas has failed to provide adequate funding for special education.

Our students in need of special education resources are a vital part of our community. To neglect their needs and fail to address the difficulties they and their teachers face is inexcusable.

By accepting this one-year funding plan as proposed by the majority party, we will continue to perpetuate the cycle of accepting that at-risk, special education and bilingual children are never going to receive the funding they deserve to achieve their god-given potential.

Finally, a few words about the process.

I believe an intentional attempt has been made to exclude the minority party from the process as a whole. While the minority party had a chance to complete a survey that was distributed at the beginning of the process, we have not been given an opportunity to review the results of that survey, nor have we been fully included in any subsequent discussions that led to the creation of the original three-year plan.

It appears the majority party is willing to recognize the results of some studies and not others. Does the majority party believe that they will soon discover a study that mirrors

their belief that our schools are already adequately and equitably funded? The minority party believes that our schools are suffering due to the Legislature's preoccupation with political posturing.

The reality of our education crisis is not a figment of the Kansas Supreme Court's imagination. It is the reality that our teachers, students, administrators, parents and special needs children experience everyday. Kansas schools require substantial additional resources.

The Kansas economy requires a solution to this crisis that will grow and strengthen our Kansas workforce.

More importantly, the state of Kansas requires a solution to this crisis that is fiscally responsible, long-term in its vision, and keeps control of our public schools out of the hands of the courts.

Senators Barone, Francisco, Goodwin, Lee, and Steineger request the record to show they concur with the "Protest" offered by Senator Hensley on **SB 246**.

HB 2059, An act concerning school districts; relating to enrollment; amending K.S.A. 2004 Supp. 72-6407 and repealing the existing section.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Allen, Apple, Barnett, Barone, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Betts.

The bill passed.

On motion of Senator D. Schmidt the Senate adjourned until 8:30 a.m., Friday, March 4, 2005.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks*.

PAT SAVILLE, *Secretary of the Senate*.

