

MINUTES OF THE SENATE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Senator Dwayne Umbarger at 1:52 p.m. on March 13, 2001 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Avis Swartzman, Revisor of Statutes
Ben Barrett, Legislative Research Department
Carolyn Rampey, Legislative Research Department
Judy Steinlicht, Secretary

Conferees appearing before the committee: Natalie Haag, Chief Legal Counsel, Director Governor Affairs

Others attending: See Attached List

SB2289--School safety, suspension of driving privileges of pupils for commission of certain acts

Natalie Haag added comments to her previous testimony that the Motor Vehicle Department has been holding hearings under current law which means that when you make the changes the Governor suggested, the only practical affect is that the person who notified the Motor Vehicle Division has to be a law enforcement officer instead of a school administrator.

Senator Teichman offered a motion to move HB2289 favorably. Seconded by Senator Vratil. In discussion, Senator Jenkins reminded the Committee that an amendment had been discussed earlier and the Committee agreed the amendment was needed. The motion to pass the bill was withdrawn. The amendment is described in the testimony of Natalie Haag dated March 5, 2001. (Attachment 1) The wording of the amendment was discussed by staff and Natalie Haag. Senator Vratil made a motion to amend HB2289 by adding the proposed amendments submitted by Natalie Haag in her letter of March 5th and on page 4 of the bill, beginning in line 10 to make the bill read, "there are reasonable grounds to believe the pupil committed an act which involved possession of a weapon, controlled substance or illegal drug at school, upon school property or at a school supervised activity or engaged in behavior at school, upon school property or at a school supervised activity which resulted in, or was substantial likely to have resulted in, serious bodily injury to others" or words to that effect appropriately selected by staff. Motion was seconded by Senator Teichman. Motion carried.

Motion was made by Senator Vratil for passage of HB2289 favorably as amended. Seconded by Senator Teichman. Motion carried.

SB191--School districts, state grants to study teacher compensation plans for development of alternative compensation plans

Senator Vratil made a motion to amend SB191 as requested by Dr. Gary George, Olathe School District, to permit school districts to offer voluntarily to teachers a tax sheltered annuity. There would be nothing mandatory. A teacher could voluntarily request a deduction from their paycheck for the tax sheltered annuity and it would also authorize the Board of Education or Board of Trustees to contribute to an employee tax sheltered annuity up to or equal to what the teachers can contribute. Some districts are already doing this and this would legitimize this procedure. Seconded by Senator Teichman. Motion carried.

Senator Jenkins made a motion to further amend SB191 to change the wording on Line 21 to "that may include" components of peer mentoring and peer evaluation. The motion to amend was seconded by Senator Downey. Motion carried.

CONTINUATION SHEET

March 13, 2001

Senator Vratil made a motion to pass SB191 favorably as amended. Seconded by Senator Downey. Motion carried.

Chairman Umbarger recognized former Representative Richard Reinhardt, who served 12 years as a Representative, as a special guest today.

Senator Jenkins made a motion to approve the minutes of March 5, 6, 7 and 8, 2001. Seconded by Senator Vratil. Motion carried.

Chairman Umbarger adjourned the meeting at 2:28 p.m. The next meeting is scheduled for March 14, 2001.

STATE OF KANSAS

3-5-2001

BILL GRAVES, Governor
State Capitol, 2nd Floor
Topeka, Kansas 66612-1590



(785) 296-3232
1-800-748-4408
FAX: (785) 296-7973

OFFICE OF THE GOVERNOR

Before the Senate Education Committee
March 5, 2001

Testimony by Natalie G. Haag
Chief Legal Counsel
Director of Governmental Affairs
House Bill 2289

Chairman Umbarger and members of the committee:

Thank you for the opportunity to testify in support of House Bill 2289. As many of you will recall, two years ago Governor Graves proposed the State suspend driver's license privileges for students 13 years and older who possess weapons or illegal drugs at school, upon school property, or at a school-supervised activity and those pupils who engage in behavior at school, upon school property, or at a school supervised activity, which resulted in, or was substantially likely to have resulted in, serious bodily injury to others. Governor Graves' proposal was adopted into law. The purpose of this legislation was to encourage safe schools.

Under current law, when any of these acts is committed, the school administrator is required to notify the Division of Motor Vehicles. The school administrative hearing process provides the due process protections for the pupil. A few school districts are concerned that the school administrator's obligation to report student information to the Division of Motor Vehicles might violate the Federal Education Right to Privacy Act (FERPA). The Attorney General's office reviewed the provisions in question and found a potential violation of FERPA if a school district had a policy of disclosing protected student information.

The problem: School officials are prohibited from disclosing the personal information about the pupil to the Division of Motor Vehicles. However, this information is need to insure the pupil is properly identified for purposes of suspending the driving privileges.

The proposed solution: Governor Graves proposes avoiding this problem by requiring law enforcement officials provide the relevant information to the Division of Motor Vehicles.

This is the sole purpose of this legislation.

To accomplish this goal, House Bill 2289 would amend current law to require the school administrator to contact law enforcement officers when a pupil has committed one of the statutorily prohibited acts. The law enforcement agency will investigate the matter and report their findings to the Division of Motor Vehicles. The Division of Motor Vehicles will notify the pupil in question that his/her driving privileges will be suspended. The student is entitled to a hearing on the issue of the appropriateness of the suspension or revocation.

Senate Education
3-15-01
Attachment 1

As passed by the House, the bill would require the hearing officer to find the pupil committed an act which involved the possession of a weapon, controlled substance, or illegal drugs at school, on school property, or at a school-supervised activity. Arguably, this language would require the pupil to commit some act involving the weapon or illegal drugs. This was not the intent of the original legislation. Accordingly, the Governor requests the Senate amend House Bill 2289 to make it consistent with the current law which requires driver's license suspension for possession of the weapon or drug without the commission of a separate act involving the weapon or drug.

Based upon concerns raised by the House and unintended changes made to the current law, the Governor would propose the attached amendments to House Bill 2289. These amendments are consistent with the Governor's intent and reincorporate important aspects of the current law.

The proposed balloon amendments will make it clear that the pupil's driving privileges can be suspended for possession of a weapon, possession, use, sale or distribution of illegal drugs, or acts of violence as defined in the statute. This is current law and we have no intent to change current law on this point. The provisions of House Bill 2289, as adopted by the House, modify current law by requiring the chief administrative officer of the school to notify law enforcement officials when such an act occurred. The law enforcement official will have the responsibility of notifying the Division of Motor Vehicles. We are not recommending any changes to these provisions of the bill.

The attached amendments do attempt to address concerns raised by Representative Pauls by eliminating the need for a probable cause finding by the law enforcement officer. Representative Pauls was also concerned about law enforcement and school officials being available for the hearing. The hearing process imposed in this bill is the same hearing procedure for other driver's license suspension. Hearings are conducted at various locations statewide. The hearing process has been removed from the school's responsibility to avoid the FERPA concerns.

The House Education Committee adopted the recommendation of the Governor for a clearly stated standard of proof consistent with other driver's license suspension proceedings, such as those provided for driving under the influence in K.S.A. 8-1002(h). To make the standard of proof clear we suggest amending page 4, lines 10-13, consistent with the House Education Committee and modifying the language to make clear the intent to suspend a pupil for committing an act of violence. The proposed language would read: "there are reasonable grounds to believe the pupil engaged in the conduct set forth in K.S.A. 72-89c02(a)." (1)

The House floor debate also raised a potential issue regarding the notice of suspension. (2) The Governor would support any modifications necessary to clarify that the notice of suspension is mailed to the pupil 30 days prior to the actual suspension of the pupil's driving privileges. The Governor's bill was intended to provide for notice and the right to a hearing in the same manner provided for any other driver's license suspension.

HB 2289

Strike lines 31-43 on page 2 and lines 1-29 on page 3 and insert:

Sec. 2. K.S.A. 2000 Supp. 72-89c02 is hereby amended to read as follows: 72-89c02. (a) The chief administrative officer of that school shall make an immediate report to the appropriate law enforcement agency whenever a pupil who has attained the age of 13 years has committed one of the following acts:

(1) been found in possession of a weapon at school, upon school property, or at a school-supervised activity; or

(2) engaged in the possession, use, sale or distribution of an illegal drug or a controlled substance at school, upon school property, or at a school supervised activity; or

(3) engaged in behavior at school, upon school property, or at a school-supervised activity, which resulted in, or was substantially likely to have resulted in, serious bodily injury to others.

Upon receipt of the report, the law enforcement agency shall investigate the matter and give written notice to the division of vehicles of the department of revenue of the act, as defined herein, committed by the pupil. The notice shall be given to the division of vehicles by the law enforcement agency within three days, excluding holidays and weekends, after receipt of the report and shall include the pupil's name, address, date of birth, driver's license number, if available, and a description of the act, as defined herein, committed by the pupil.

Upon receipt of the notice, the division of vehicles shall suspend the pupil's driver's license or privilege to operate a motor vehicle on the streets or highways of this state. The duration of the suspension shall be for a period of one year. Upon expiration of the period of suspension, the pupil may apply to the division for return of the license. If the license has expired, the pupil may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another suspension or revocation of the pupil's privilege to operate a motor vehicle is in effect.

The House also amended the Governor's bill to include stun guns within the definition of "weapon" for both the Weapons Free School Act and the School Safety Act. The Governor is not opposed to these amendments.

House Bill 2289 will ensure the State's ability to enforce current law in all school districts. These modifications have been shared with the Attorney General's office and found to address the potential FERPA conflicts raised by a few school districts. On behalf of Governor Graves, I request your support for House Bill 2289.