

MINUTES OF THE HOUSE COMMITTEE ON HIGHER EDUCATION.

The meeting was called to order by Vice Chairman Carl Krehbiel at 3:30 p.m. on February 18, 2002 in Room 231-N of the Capitol.

All members were present except: Sue Storm (E)

Committee staff present: Paul West, Legislative Research
Jim Wilson, Revisor of Statutes
Renaë Jefferies, Revisor of Statutes
Dee Ann Woodson, Committee Secretary

Conferees appearing before the committee: Representative Ward Loyd
Robin Kempf, Associate General Council, Kansas State
Board of Regents
Sue Peterson, Kansas State University

Others attending: See attached list.

HB 2831 - Community colleges relating to interlocal agreements

Vice Chairman Krehbiel opened the hearings on **HB 2831**. Representative Ward Loyd was the first proponent speaking in favor of the proposed legislation. He explained that this proposed bill would clarify that Boards of Trustees of the community colleges in Kansas would have the authority to enter into agreements for interlocal cooperation, within the contemplation of K.S.A. 12-2901 *et seq.* He stated that the advisability, if not the necessity, of this measure stems from six community colleges forming a distance learning consortium in 1999, identified as the Western Kansas Community College Virtual Education Consortium, or EduKan, which has continuously operated since that time with great success.

Representative Loyd testified that the Interlocal Cooperation Act required that all interlocal agreements be submitted to the Attorney General for review and approval as to both the form and legality of the agreement. He added that K.S.A. 12-2906 further requires that agreements dealing with the provision of services within a state agency's constitutional or statutory powers be approved by that agency. He clarified that means in addition to the approval of the EduKan interlocal agreement by the AG, the agreement must also be approved by the State Board of Regents. He told the Committee that the six community colleges did prepare and submit their interlocal agreement to the Attorney General's office for approval, but the AG refused to approve the agreement predicated on the opinion that the agreement creates a separate legal entity, and Boards of Trustees of community colleges do not have specific statutory authority permitting them to enter into any such interlocal agreement or to create separate legal entities.

Representative Loyd explained that the community colleges respectfully disagreed with the AG's opinion because, (1) community colleges may enter into contracts with one or more agencies, either public or private, for the conduct of academic or vocational education for students of the community colleges which are likewise authorized to enter into contracts; and (2) one of the stated purposes for authorizing public agencies to enter into interlocal agreements is to permit the separate entity to exercise any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state including but not limited to those functions relating to educational services. Representative Loyd submitted that is what community colleges in general, and EduKan in particular, are all about, but that the collective opinion of the six community colleges is not the one that counts.

Securing legislative authorization in order to be in full compliance with the law was needed according to Representative Loyd's testimony. He concluded by stating that the adoption of this legislation does not approve EduKan or the Western Kansas Community College Virtual Education Consortium, and that it still will be necessary for the review and approval of the proposed interlocal agreement by both the Attorney General and the State Board of Regents. (Attachment 1)

CONTINUATION SHEET

The Vice Chairman opened the floor for questions and discussion from members of the Committee. Representative Tanner asked what he envisioned the relationship with EduKan would be under the passage of this bill with KanEd, and would one conflict with the other. Representative Loyd replied that it would not, and that KanEd goes a long way in making EduKan more readily accessible. He said that EduKan is the offering of distance learning courses on line, and it has nothing to do with the hardware or technology to get there. His assumption was that the community colleges would be taking advantage of KanEd if they don't already, and use that mechanism to provide their distance education program.

Representative Tanner said there was also a bill now in the Appropriations Committee that spoke to the issue of funding tele-medicine programs across the state from the University of Kansas School of Medicine, and did Representative Loyd see any conflict that possibly come out of that piece of legislation. Representative Loyd said he did not think so since the courses that the community colleges are able to offer are only those that by statute authority the community colleges are able to offer and approved by the State Board of Regents.

General discussion followed regarding the time frame for this program to get up and running since it would take time to get it to the Attorney General, through the Board of Regents, and then published in the Register. Representative Loyd explained that originally the lawyer setting this up for the community colleges thought that they could enter into a sort of private entity partnership to offer these services, and some of us who represent the community colleges thought that the authority to do that did not exist thus we thought the better mechanism would be to use the Interlocal Cooperation Act.

Vice Chairman Krehbiel called the second proponent to testify, Robin Kempf, Associate General Counsel for the Kansas Board of Regents. She told the Committee that **HB 2831** did two things, and the first was to expand the powers of community colleges by allowing them to create separate legal entities under the Interlocal Cooperation Act, K.S.A. 12-2901, *et seq.* She explained that secondly it would "grandfather in" any community colleges' interlocal agreements that were entered into in accordance with the Interlocal Cooperation Act prior to the enactment of this bill. She noted that the "grandfathering" language as written would not apply to the situation EduKan is in, and it only grandfathers those agreements that were entered in accordance with the Interlocal Cooperation Act. She added that EduKan will still need to be approved by the Attorney General and the Board of Regents before their interlocal agreement will be legal and valid.

Ms. Kempf stated that the Board of Regents fully supports this proposal because it is the type of cooperation embodied in EduKan was precisely the type of initiative that the Kansas Board of Regents supports and encourages among the institutions of higher education that it coordinates. ([Attachment 2](#))

Representative Tanner questioned the requirement still needed regarding the approval of the Attorney General on the interlocal agreements with passage of this bill. Ms. Kempf explained that it was in order to comply with the Interlocal Cooperation Act.

General discussion and comments continued. Vice Chairman Krehbiel referred to a memo from the Division of the Budget that this bill would no have a fiscal effect on the state. ([Attachment 3](#))

The Vice Chairman closed the hearing on **HB 2831**.

HB 2900 - Kansas State University authorizing sale and conveyance of certain real estate in Riley County

HB 2901 - Kansas State University authorizing exchange of certain real estate in Rile County with the Kansas State University Foundation

Vice Chairman Krehbiel opened the hearing on **HB 2900** and **HB 2901**.

Sue Peterson, Kansas State University, testified in favor of these two bills. She explained that the first bill, **HB 2900**, grants authority to Kansas State University to sell property owned by the University to finance major renovations and improvements of livestock research facilities owned and operated by the University. She stated that the proceeds from the sale of this property will be used to relocate the KABSU operation and renovate current livestock facilities located north of Manhattan and campus.

CONTINUATION SHEET

Ms. Peterson explained that in **HB 2901**, the University was seeking authority through this legislation to exchange the property contained in the footprint of the Alumni Center with land owned by the Kansas State University Foundation. She stated that the Alumni Association would like to own the property where the Alumni Center sits, and pointed out that all separate University Alumni buildings in Kansas are sited on property owned by the Alumni Associations. (Attachment 4)

The Vice Chairman told the Committee that they had written testimony from Dick Carter with the Kansas Board of Regents in support of both proposed bills. (Attachment 5)

After general questions and Committee discussion, the Vice Chair closed the hearings on **HB 2900** and **HB 2901**.

Vice Chairman Krehbiel submitted for approval the minutes of the February 11 meeting. Representative Tanner made a motion to approve the minutes as written, seconded by Representative Phelps, and the motion carried.

The Vice Chairman adjourned the meeting at 4:05 p.m. The next meeting of the House Higher Education Committee will be Wednesday, February 20, Room 231-N, at the Capitol.

HOUSE TOURISM COMMITTEE GUEST LIST

DATE Mon, Feb. 18, 2002

| NAME | REPRESENTING |
|--------------|---------------------|
| Robin Kempf | KS Board of Regents |
| DICK CAUTION | KB OR |
| Sheila Kahn | KACCT |
| SUE PETERSON | K-STATE |
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WARD LOYD
 REPRESENTATIVE, 123RD DISTRICT
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 GARDEN CITY, KS 67846
 (316) 276-7280
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 TOPEKA, KANSAS 66612-1504
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TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEES
 CHAIR: RULES & JOURNAL
 VICE-CHAIR: JUDICIARY
 MEMBER: UTILITIES
 TAX, JUDICIAL &
 TRANSPORTATION BUDGET
 CORRECTION & JUVENILE
 JUSTICE OVERSIGHT

**TO: Chairman Benlon and Members
 Higher Education Committee**

**RE: Testimony in Support of House Bill 2831
 Community College Authority to Create Separate Legal Entities
 through Interlocal Agreements**

DATE: February 18, 2002

I thank your committee for the preparation and introduction of House Bill 2831, a bill which would clarify that boards of trustees of the community colleges of our state have the authority to enter into agreements for interlocal cooperation, within the contemplation of K.S.A. 12-2901 *et seq.*

As drafted, HB 2831 amends the powers section of the community colleges statute, specifically K.S.A. 71-201, by adding a subsection (b) (18) – see page 4 of the bill. This new subsection expressly acknowledges a legislative recognition, or directive, that community colleges are public agencies which may take advantage of the interlocal cooperation act, including the authority to create separate legal entities.

A final sentence is added to the amendatory language which validates any and all such interlocal cooperation agreement previously entered into.

The advisability, if not the necessity, of this measure stems from six community colleges forming a distance learning consortium in 1999, identified as the Western Kansas Community College Virtual Education Consortium, or “EduKan.” That consortium has continuously operated since that time with great success.

House Higher Education Committee
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 Attachment No.: 1

The Interlocal Cooperation Act requires that all interlocal agreements be submitted to the Attorney General, for review and approval as to both the form and legality of the agreement.

It should also be noted that K.S.A. 12-2906 further requires that agreements dealing with the provision of services within a state agency's constitutional or statutory powers be approved by that agency. That means that in addition to the approval of the EduKan interlocal agreement by the AG, the agreement must also be approved by the State Board of Regents.

The six community colleges which make up the EduKan consortium did prepare and submit their interlocal agreement to the Attorney General's office for approval. The AG refused to approve the agreement, predicated on the opinion that the agreement creates a separate legal entity, and boards of trustees of community colleges do not have specific statutory authority permitting them to enter into any such interlocal agreement or to create separate legal entities.

The community colleges respectfully disagree with the opinion expressed by the AG. First, community colleges may enter into contracts with one or more agencies, either public or private, for the conduct of academic or vocational education for students of the community college. K.S.A. 71-201(b) (16). They are likewise authorized to enter into contracts. K.S.A. 71-201(b) (7).

Second, one of the stated purposes for authorizing public agencies to enter into interlocal agreements is to permit the separate entity to exercise any power or powers,

Testimony Supporting H.B 2831
Rep. Ward Loyd
February 18, 2002
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privileges or authority exercised or capable of exercise by a public agency of this state including but not limited to those functions relating to educational services. K.S.A. 12-2904(a). I would submit that is what community colleges in general, and EduKan in particular, are all about. But, the collective opinion of the six community colleges is not the one that counts.

The next best step is to secure legislative authorization. Thus, HB 2831.

Because the AG continues to maintain its opinion, and because those members of EduKan want to be in full compliance with the law, we request favorable consideration of HB 2831. Please know that the adoption of this measure does not approve EduKan, or the Western Kansas Community College Virtual Education Consortium. That will still necessitate the review and approval of the proposed interlocal agreement by both the AG and the State Board of Regents.



KANSAS BOARD OF REGENTS

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TESTIMONY

TO: Members of the House Committee on Higher Education

FROM: Robin Kempf, Associate General Counsel

SUBJECT: HB 2831, a bill that would allow community colleges the authority to create separate legal entities through interlocal agreements

DATE: February 18, 2002

Bill Summary: HB 2831 does two things. First, the bill would expand the powers of community colleges by allowing them to create separate legal entities under the Interlocal Cooperation Act, K.S.A. 12-2901, et seq. Second, it would “grandfather in” any community colleges’ interlocal agreements that were entered into in accordance with the Interlocal Cooperation Act prior to the enactment of this bill.

Background: In 1999, six community colleges (Barton Co., Colby, Dodge City, Garden City, Pratt, and Seward Co.) created the Western Kansas Community College Virtual Education Consortium (WKCCVEC) or “EduKan.” EduKan was created to design and deliver distance education courses, programs and degrees.

After member colleges had questions about their roles and legal risks, EduKan decided to pursue an interlocal agreement under the Interlocal Cooperation Act, which among other things allows public agencies to create independent legal entities.

In 2000, pursuant to the requirements of the Interlocal Cooperation Act, EduKan submitted its proposal to both the Attorney General and to the Board of Regents for approval. The Interlocal Cooperation Act requires that all interlocal agreements be submitted to the Attorney General who reviews both the form and the legality of the agreement. K.S.A. 12-2904(f). The Act also requires agreements dealing with the provision of services within a state agency’s constitutional or statutory powers to be approved by that agency. K.S.A. 12-2906.

Before the Board of Regents responded, the Attorney General rejected the community colleges’ interlocal agreement stating that while community colleges can enter into contracts (including interlocal agreements), the colleges lack the statutory authority to create a legal entity.

House Higher Education Committee

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Attachment No.: 2

Board of Regents' position: The type of cooperation embodied in EduKan is precisely the type of initiative that the Kansas Board of Regents supports and encourages among the institutions of higher education that it coordinates. Because this legislation would promote this type of cooperation, the Board fully supports the proposal.

Furthermore, the Interlocal Cooperation Act will continue to require that the Kansas Board of Regents approve any interlocal agreements, including those creating separate legal entities. Consequently, the Kansas Board of Regents will have ability to review purposes of the agreement to ensure that it serves the Board's goals for the higher education system of Kansas and is consistent with Board policy.

Note that the "grandfathering" language as written would not apply to the situation EduKan is in. It grandfathers in only those agreements that were entered in accordance with the Interlocal Cooperation Act. EduKan will still need to be approved by the Attorney General and the Board of Regents before their interlocal agreement will be legal and valid.

STATE OF KANSAS



DIVISION OF THE BUDGET
State Capitol Building, Room 152-E
Topeka, Kansas 66612-1575
(785) 296-2436
FAX (785) 296-0231
<http://da.state.ks.us/budget>

Bill Graves
Governor

Duane A. Goossen
Director

February 18, 2002

The Honorable Lisa Benlon, Chairperson
House Committee on Higher Education
Statehouse, Room 115-S
Topeka, Kansas 66612

Dear Representative Benlon:

SUBJECT: Fiscal Note for HB 2831 by House Committee on Higher Education

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2831 is respectfully submitted to your committee.

HB 2831 would allow the board of trustees of community colleges to enter into interlocal cooperation agreements.

This bill would not have a fiscal effect on the state. Based on the agreements entered into, it could have an effect on local government and community colleges if the agreements involved fiscal issues.

Sincerely,

A handwritten signature in cursive script, appearing to read "Duane A. Goossen".

Duane A. Goossen
Director of the Budget

cc: Marvin Burris, Board of Regents
Dale Dennis, Education
Judy Moler, KS Association of Counties

House Higher Education Committee
Meeting Date: 2-18-02
Attachment No.: 3

STATE OF KANSAS



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 February 18, 2002

Bill Graves
 Governor

Duane A. Goossen
 Director

The Honorable Lisa Benlon, Chairperson
 House Committee on Higher Education
 Statehouse, Room 115-S
 Topeka, Kansas 66612

Dear Representative Benlon:

SUBJECT: Fiscal Note for HB 2900 by Legislative Educational Planning Committee

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2900 is respectfully submitted to your committee.

HB 2900 would authorize the State Board of Regents to sell and convey real property in Riley County, as described in the bill, on behalf of Kansas State University. The proceeds from the sale would be deposited in the state treasury and credited to the Restricted Fees Fund of Kansas State University. Those proceeds would be used to relocate the Kansas Artificial Breeding Service Unit and to renovate livestock research facilities.

| Estimated State Fiscal Effect | | | | |
|-------------------------------|----------------|----------------------|----------------|----------------------|
| | FY 2002 SGF | FY 2002 All Funds | FY 2003 SGF | FY 2003 All Funds |
| Revenue | -- | -- | -- | \$1,400,000 |
| Expenditure | -- | -- | -- | -- |
| FTE Pos. | -- | -- | -- | -- |

Kansas State University expects to receive approximately \$1.4 million for the sale of 10.95 acres of land.

Sincerely,

Duane A. Goossen
 Director of the Budget

cc: Marvin Burris, Board of Regents

STATE OF KANSAS



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Bill Graves
Governor

Duane A. Goossen
Director

February 18, 2002

The Honorable Lisa Benlon, Chairperson
House Committee on Higher Education
Statehouse, Room 115-S
Topeka, Kansas 66612

Dear Representative Benlon:

SUBJECT: Fiscal Note for HB 2901 by Legislative Educational Planning Committee

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2901 is respectfully submitted to your committee.

HB 2901 would authorize the State Board of Regents to exchange and convey real property in Riley County, as described in the bill, on behalf of Kansas State University. The exchange would be between the Kansas State University and the Kansas State University Foundation. All deeds and conveyances would have to be reviewed and approved by the Attorney General.

Kansas State University stated that the properties exchanged would be of equal value.

Sincerely,

A handwritten signature in cursive script that reads "Duane A. Goossen".

Duane A. Goossen
Director of the Budget

cc: Marvin Burris, Board of Regents



Office of the President
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TESTIMONY

House Higher Education Committee Feburary 18, 2002

House Bill 2900

This legislation grants authority to Kansas State University to sell property owned by the University to finance major renovations and improvements of livestock research facilities owned and operated by the University. The property proposed for sale currently houses the Kansas Artificial Breeding Service Unit (KABSU). This property is located at the intersection of College Avenue and Claflin Road. This parcel is defined in the legislation and is approximately 10.92 acres (480,000 sq.ft.)

Proceeds from the sale of this property will be used to relocate the KABSU operation and renovate current livestock facilities located north of Manhattan and campus.

The value of the property has not yet been determined. However, the estimated topside value (in early September of 2001) is \$3.00/sq.ft.

The University will follow all state procedures regarding the disposal of state-owned property.

House Bill 2901

The K-State Alumni is constructing a new Alumni Center on state owned property at the foot of Memorial Stadium. The University is seeking authority through this legislation to exchange the property contained in the footprint of the Alumni Center with land owned by the Kansas State University Foundation. The property owned by the Foundation is located in the University Research park northeast of the campus. The Alumni Association would like to own the property where the Center sits. All separate University Alumni buildings in Kansas are sited on property owned by the Alumni Associations. Kansas Board of Regents policy requires proposed exchange parcels of property to be of the same value.

The University will follow all state procedures regarding the disposal of state-owned property.

House Higher Education Committee
Meeting Date: 2-18-02
Attachment No.: 4



KANSAS BOARD OF REGENTS

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Statement to the House Committee on Higher Education

HB 2900, HB 2901

Dick Carter, Jr.
Director for External Relations
Kansas Board of Regents

February 18, 2001

Good afternoon Madam Chairman and members of the Committee. I am pleased to provide this written statement on behalf of the Kansas Board of Regents in support of HB 2900 and HB 2901. These bills simply allow Kansas State University to sell and/or exchange two tracts of land by according to state law. I will not speak to the specifics of the bill, as there are representatives from Kansas State University to explain the bill.

This proposal has been reviewed and approved by the Board of Regents. HB 2900 and 2901 are part of the Board's legislative initiatives for 2002, and I would ask that you give favorable consideration to this bill by passing out of Committee.

House Higher Education Committee
Meeting Date: 2-18-02
Attachment No.: 5