

MINUTES OF THE SENATE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Dwayne Umbarger at 1:37 p.m. on March 20, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Hensley (excused)

Committee staff present: Ben Barrett, Legislative Research
Theresa Kiernan, Revisor of Statutes
Dale Dennis, Deputy Commissioner of Education
Judy Steinlicht, Secretary

Conferees appearing before the committee: Representative Ward Loyd
Carol Swinney, Directory of Distance Learning, SW Plains
Regional Service Center
Theresa Kiernan, Revisor of Statutes
Mary Prewitt, General Counsel, Board of Regents

Others attending: See Attached List

SB638--Employment after retirement for certain school retirants

Chairman Umbarger asked the Committee to have amendments on **SB638** ready to work the bill on Thursday.

HB2844--Allowing High Plains educational cooperative and Southwest Kansas area cooperative to form a separate legal entity, approval required by the attorney general

Representative Ward Loyd, co-author of the bill, testified in support of **HB2844**. This bill permits High Plains Educational Cooperative and Southwest Kansas Area Cooperative (SKACD), to enter into an agreement for interlocal cooperation. The reason for the bill is that the Attorney General raised concerns about its ability to approve the agreement for interlocal cooperation, because there was no longer a "public agency" as required by the law. Liberal USD 480 was the "public agency" but they are no longer a party to the agreement for interlocal cooperation leaving only the two cooperatives, High Plains and SKACD. The attorney general's office has reviewed the language of **HB2844** and has indicated in a letter that the language satisfies the concerns they have expressed. (Attachment 1)

In discussion, Rep. Loyd clarified that the purpose of the bill is to amend the Interlocal Cooperation Act so that the two interlocal cooperatives qualify as entities which can sponsor or continue the service center interlocal. Rep. Loyd agreed that the Act could have been amended to include an interlocal as a sponsoring entity so that it would apply statewide. The request was handled involving just the two cooperatives simply because it was proposed this way by a local attorney and the attorney general had signed off on the proposal to handle in this manner. The concern of the Committee was that more requests will be made by other cooperatives and the Legislature will be presented with more bills in years to come when it could be handled in one bill now to make the change statewide. Another concern was whether the new interlocal cooperative would intend to engage in any activity that would compete with private business. Objection would be that if they do, they would be operating on a tax exempt basis which would affect the amount of taxes collected by the State of Kansas.

Carol Swinney, Director of Distance Learning, SW Plains Regional Service Center (SWPRSC) presented supportive testimony for **HB2844** on behalf of Dr. Kathy Dale, Executive Director, SWPRSC. Carol gave some history of the center stating that they have existed for 13 years and are currently in their 3rd charter cycle which will expire in June 2004. The board of directors agreed to seek statutory authority to continue under the current successful model. (Attachment 2)

Chairman Umbarger recognized Theresa Kiernan, Revisor of Statutes, to explain questions raised regarding the Interlocal Cooperation Act. In the Act, the definition "public agency" includes school

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON EDUCATION at on March 20, 2002 in Room 123-S of the Capitol.

districts; interlocal cooperatives could be added to the definition so that interlocal cooperatives would be limited to the same powers as others included in the definition of "public agencies". **HB2844** seems to suggest that this new interlocal cooperative would have whatever powers they place in their interlocal agreement.

HB2831--Community colleges, interlocal cooperation agreements

Representative Ward Loyd gave testimony in favor of **HB2831**. This bill would clarify that boards of trustees of community colleges of Kansas have the authority to enter into agreements for interlocal cooperation which create separate legal entities. (Attachment 3)

Mary Prewitt, General Counsel, Kansas Board of Regents testified in support of **HB2831**. This bill expands the powers of community colleges by allowing them to create separate legal entities under the Interlocal Cooperation Act. It also retroactively validates any community college interlocal agreement that was entered in accordance with the Interlocal Cooperation Act prior to the enactment of this bill. (Attachment 4)

Senator Vratil stated that he believes by amending the definition of "public agency" in the Interlocal Cooperation Act to include community college and interlocal cooperative would satisfy the intention of both **HB2831** and **HB2844**. After considerable discussion, Chairman Umbarger agreed that we should hold final action until clarification can be made through the attorney general's office. Chairman Umbarger asked for a motion to combine the two bills so that we could use one of the bills as a vehicle for another bill.

Senator Teichman made a motion to amend **HB2844** as drafted into **HB2831** as drafted. Seconded by Senator Schodorf. Motion carried.

Debate on the two bills will continue tomorrow. The Attorney General's office will be contacted to clarify the interpretation of the proposed amendments to the bill.

Senator Teichman made a motion to delete language from **SB2844** and insert the language from **SB551**. **SB551** is a school finance bill concerning consolidation and reorganization of districts. Seconded by Senator Schodorf. Motion passed.

Senator Oleen would like to know which of the Senate Education bills have not yet been handled by the House that Senate Education might want to amend into House bills still in Senate Education Committee. Senator Corbin reminded the Committee that all of those bills passed by the Senate would be conferencable and it would not be necessary to amend them into a House bill. Chairman Umbarger will reevaluate the Senate Education bills that are still in the House and determine how they should be handled.

Meeting adjourned at 2:30 p.m.



TOPEKA

HOUSE OF
REPRESENTATIVES

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WARD LOYD

123RD DISTRICT

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 (316) 276-7280

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 TOPEKA, KANSAS 66612-1504
 (785) 296-7655

E-MAIL: loyd@gcnet.com

**TO: Chairman Umbarger and Members
 Senate Education Committee**

**RE: Testimony in Support of House Bill 2844
 Educational Interlocal Cooperatives**

DATE: March 20, 2002

I thank your committee for the opportunity to testify in support of House Bill 2844, a measure intended to extend to High Plains Educational Cooperative (High Plains) and Southwest Kansas Area Cooperative (SKACD) the authority to enter into an agreement for interlocal cooperation, within the contemplation of K.S.A 12-2901 *et seq.*

As drafted, HB 2844 confers the power to enter into agreements for interlocal cooperation with the view of establishing an interlocal cooperative which would exist as a separate legal entity, with the powers and duration as provided in K.S.A. 12-2904a.

This authority is consistent with the provisions of the Kansas Constitution. Article 6, Section 5, authorizes locally elected boards to make and carry out agreements for cooperative operation and administration of educational programs, subject to limitation, change or termination by the legislature. There are any number of provisions in the school laws authorizing both interlocal, such as for special education, and interdistrict agreements.

Any such agreement would, as always, require any such proposed agreement to be submitted to the office of the Attorney General for approval as to form and legality of purpose.

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 Attachment 1

Testimony Supporting HB 2844
Rep. Ward Loyd
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One provision of the Interlocal Cooperation Act, K.S.A. 12-2906, requires that agreements dealing with the provision of services within a state agency's constitutional or statutory powers be approved by that agency. That would require agreements of the nature we here are concerned with to also be approved by the State Board of Education. You will note, however, that subsection (c) of HB 2844 provides that an agreement entered into under the authority of this specific bill would not require such approval. That is because no such review or approval is necessary; it has already been done.

This measure is necessary so as to permit the recognition and continuation of the Southwest Plains Regional Service Center (Service Center), which now exists pursuant to an agreement for interlocal cooperation. When originally established in the late 1980's, the Service Center interlocal agreement was entered into between the two special education cooperatives identified in the bill (High Plains and SKACD), and the board of education of Unified School District No. 480, Liberal. Liberal USD 480 was a "public agency" as defined in the Interlocal Cooperation Act, at K.S.A. 12-2903, and on that basis the interlocal agreement could be approved. As it was.

Now, however, Liberal USD 480 is no longer a party to the agreement for interlocal cooperation, and the term of the approved agreement has run. Only the two Special Education Cooperatives remain as parties to the agreement. The Office of the Attorney General has raised concerns about its ability to approve the agreement for interlocal cooperation, because there is no "public agency" which is a party as required the Act. The concern is appropriate.

Testimony Supporting HB 2844
Rep. Ward Loyd
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The AG's office has reviewed the language of HB 2844, and has indicated in a letter to the attorney for the Service Center that such language will satisfy the concerns they have expressed.

So we request your favorable consideration of H.B. 2844. Such action will give legislative recognition of the right of the Service Center to continue its existence, and continue providing the valuable services it makes available to a multitude of school districts and cooperatives in Southwest Kansas. In this day of ever tightening revenues, and heightened need for fiscal conservation, the benefits of cooperation in purchasing power and delivery of educational services and supplies should be encouraged by all means available.



State of Kansas

Office of the Attorney General

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

December 11, 2001

MAIN PHONE: (785) 296-2215
FAX: (785) 296-6296

Richard Yoxall
P.O. Box 1278
Liberal, Kansas 67901

Re: Proposed legislation/Southwest Plains Regional Service Center

Dear Mr. Yoxall:

Attorney General Stovall has asked me to acknowledge receipt of your letter inquiring whether your proposed legislation would satisfy the concerns raised in the General's letter of May 12, 1999. As you know, our concerns were founded on the lack of statutory authority for two interlocal entities to create an interlocal entity to provide services. Your proposed legislation would satisfy those concerns regardless of where such legislation is placed in the statutes.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL

Mary Feighny
Assistant Attorney General

MF/mf



Southwest Plains Regional Service Center
P. O. Box 1010 / W. Hwy 56 & Lark Avenue
Sublette, Kansas 67877
Phone: 620-675-2241 Toll Free: 800-728-1022
Fax: 620-675-8396 Website: www.swprsc.org

Members of the Senate Education Committee:

In 1989, two special education cooperatives in Southwest Kansas recognized a need for a method of providing member school districts with quality staff in-service for regular education and special education purposes. It seemed logical for the two inter-locals to collaborate on this issue. As a result, both cooperatives joined their efforts to create a Regional Education Service Agency, Southwest Plains Regional Service Center (SWPRSC) in Sublette, to serve both cooperatives and their individual districts. The Charter for the inter-local of SWPRSC was submitted and approved by Attorney General, Robert Stephan.

This arrangement is unique to the way that other Education Service Agencies were formed in Kansas. Other ESA's were formed by member districts coming together to establish an inter-local agreement to serve the school districts. In the case of Southwest Plains Regional Service Center, two inter-locals, High Plains Educational Cooperative (HPEC) and Southwest Kansas Area Cooperative (SWKAC), along with their member districts went together to form another inter-local, Southwest Plains Regional Service Center.

This unique arrangement has existed for 13 years through two re-charter cycles. SWPRSC is currently in its 3d charter cycle that will expire in June 2004. Under the new Attorney General, Carla Stovall, SWPRSC asked for an Attorney General's opinion that found that High Plains Educational Cooperative and Southwest Kansas Area Cooperative had no statutory authority to form another inter-local agency. The attorney General's opinion provided two solutions:

1. Seek statutory authority for the two inter-local special education cooperatives to continue to charter SWPRSC under its current practice, or
2. Dissolve SWPRSC and form an inter-local based on individual school districts coming together to establish SWPRSC.

By a majority vote of the 35 participating districts, the board of directors of HPEC and SWKAC, and SWPRSC board of directors, all parties involved agreed to seek statutory authority to continue under the current successful model.

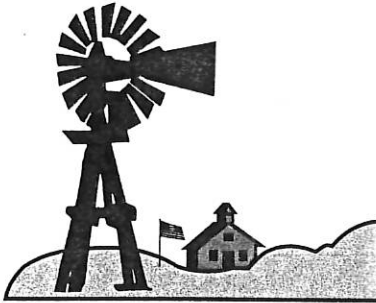
I stand before you today as the Executive Director of SWPRSC to ask for your affirmative support of this endeavor through your support of HB 2844.

Respectfully,

Dr. Kathy Dale
Executive Director, SWPRSC

The Southwest Plains Regional Service Center will provide leadership and promote a cooperative effort
in the establishment and maintenance of quality services for members and other clients. 3-20-02

Senate Education
Attachment 2



HIGH PLAINS EDUCATIONAL COOPERATIVE #611

621 E. Oklahoma • Ulysses, Kansas 67880 • (620) 356-5577 • Fax (620) 356-5522 • <http://users.pld.com/hpec>

February 21, 2002

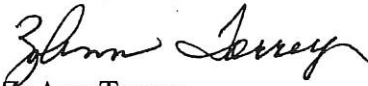
Senator Vratil
Room Number 120-S
State Capitol
300 SW 10th Ave.
Topeka, KS 66612-1504

Dear Honorable Senator Vratil:

The High Plains Educational Cooperative Board of Directors supports the statutory change proposed in House Bill No. 2844 that will allow the HPEC and Southwest Kansas Area Cooperative to enter into an interlocal agreement to create a separate legal entity.

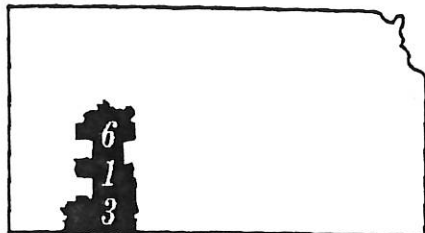
We appreciate your efforts on our behalf.

Sincerely,


ZoAnn Torrey
Director

USD CITY
476 Copeland
216 Deerfield
218 Elkhart
363 Holcomb
210 Hugoton
452 Johnson
215 Lakin
467 Leoti
371 Montezuma
209 Moscow
217 Rolla
507 Satanta
466 Scott City
374 Sublette
494 Syracuse
200 Tribune
214 Ulysses

SOUTHWEST KANSAS AREA COOPERATIVE DISTRICT 613



"WE HELP KIDS"

001 FORD Rd

P.O. BOX 70

ENSIGN, KANSAS 67841

PHONE (620) 865-2054 • FAX (620) 865-2055

EMAIL skacd@ucom.net • Web www.skacd.com

March 1, 2002

To: Senate Education Committee

The Southwest Kansas Area Cooperative District 613 Board of Directors supports the statutory change proposed in House Bill No. 2844 that will allow the High Plains Educational Cooperative and Southwest Kansas Area Cooperative to enter into an interlocal agreement to create a separate legal entity.

Sincerely,


Keith Reimer
Director

HOUSE BILL No. 2844

By Representatives Light and Loyd

2-12

9 AN ACT concerning interlocal cooperatives; relating to educational
10 cooperatives.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) Notwithstanding any other statutory provisions to the
14 contrary, High Plains Educational Cooperative and Southwest Kansas
15 Area Cooperative are hereby granted the authority, upon majority vote
16 of such cooperative's respective governing boards, to enter into an inter-
17 local agreement between such cooperatives to create a separate legal en-
18 tity for the purpose of and to conduct such business as provided for in
19 such interlocal agreement. Such separate legal entity shall have the pow-
20 ers and duration as provided in K.S.A. 12-2904a, and amendments
21 thereto.

22 (b) Any such interlocal agreement executed pursuant to the provi-
23 sions of this section shall be submitted to the attorney general for ap-
24 proval. The attorney general shall approve such agreement unless the
25 attorney general finds that it does not meet the conditions set forth herein
26 and shall detail in writing, addressed to the governing bodies of High
27 Plains Educational Cooperative and Southwest Kansas Area Cooperative,
28 the specific respects in which the proposed agreement fails to meet the
29 requirements of law. Failure of the attorney general to disapprove an
30 agreement submitted hereunder within 90 days of its submission shall
31 constitute approval thereof.

32 (c) Any agreement entered into under the provisions of this statute
33 shall not require the approval of the state board of education.

34 (d) This section shall be part of and supplemental to the interlocal
35 cooperation act.

36 Sec. 2. This act shall take effect and be in force from and after its
37 publication in the statute book.



TOPEKA

HOUSE OF
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**TO: Chairman Umbarger and Members
Senate Education Committee**

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

DATE: March 20, 2002

I thank your committee for the opportunity to testify in support 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 which create separate legal entities, 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, to insure their preservation in the event of any question about the validity of any existing agreement.

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 consor-

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Attachment 3

tium has continuously operated since that time with great success.

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 presented to and approved by the State Board of Regents.

The six community colleges which make up the EduKan consortium did prepare and submit their proposed interlocal agreement to the Attorney General's office for consideration and approval. The AG refused to approve the agreement, predicated on the opinion that the agreement would create a separate legal entity, and that boards of trustees of community colleges do not have express statutory authority 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 inter-

local 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. K.S.A. 12-2904(a). I would submit the foregoing is what community colleges in general – and EduKan in particular – are all about. However, 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

1000 SW JACKSON • SUITE 520 • TOPEKA, KS 66612-1368

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**Statement to the
Senate Education Committee
by Mary Prewitt,
General Counsel**

March 20, 2002

HB 2831

Good afternoon Mr. Chairman and members of the committee. My name is Mary Prewitt and I am the General Counsel to the Kansas Board of Regents. I am here to speak in support of HB 2831. HB 2831 expands 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. It also retroactively validates any community college interlocal agreements that were entered in accordance with the Interlocal Cooperation Act prior to the enactment of this bill.

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 create a separate legal entity under the Interlocal Cooperation Act. In 2000, pursuant to the requirements of the Act, EduKan submitted its proposal to both the Attorney General and the Board of Regents for approval. Before the Board of Regents responded, the Attorney General rejected the agreement stating that while community colleges can enter into contracts (including interlocal agreements), the colleges lack the statutory authority to create a legal entity.

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, entered by public higher educational institutions. Consequently, the Kansas Board of Regents will have the ability to ensure that these agreements serve the Board's goals for the higher education system of Kansas and are consistent with Board policy. If this bill is enacted, EduKan will still be required to seek the approval of the Attorney General and the Board of Regents for their interlocal agreement.

*Senate Education
3-20-02
Attachment 4*