

MINUTES OF THE HOUSE EDUCATION COMMITTEE

The meeting was called to order by Chairman Kathe Decker at 9:00 A.M. on March 9, 2005 in Room 313-S of the Capitol.

All members were present except:

Tom Holland- excused

Committee staff present:

Kathie Sparks, Kansas Legislative Research
Theresa Kiernan, Office of the Revisor of Statutes
Art Griggs, Office of the Revisor of Statutes
Dana Wurdeman, Committee Secretary

Conferees appearing before the committee:

Proponents:

SB 48

Senator John Vratil
Representative Ward Loyd
Mark Tallman, KS Association of School Boards

SB 49

Senator John Vratil
Representative Ward Loyd
Mark Tallman, KS Association of School Boards

SB 154

Senator James Barnett
Cindy D'Ercola, KS Action for Children
Ron Hein, KS Beverage Association
Teresa Schwab, Oral Health KS
Chris Wilson, KS Dairy Association
Kevin Walker - American Heart Association

Neutral:

SB 154

Mark Tallman, KS Association of School Boards

SB 48 - concerning schools and school districts; relating to contracts.

Supplemental Note - SB 48 would place in statute that it is the policy of the State of Kansas that a school board's actions relating to a contract are the sole responsibility of the district. Contracts entered into by any representative of the school board, officer, or employee would carry the same provision. Finally, the bill would prohibit the use of language in the contracts that would indemnify or hold harmless other parties against damages, injury, or death resulting from the action of any party to a contract other than the school board or district. All contracts of a school board or district inconsistent with this bill would be void and unenforceable.

SB 49 - concerning schools and school district; relating to contracts.

Supplemental Note - SB 49 would create a new provision in state law with regard to contracts entered into by any unified school district in Kansas. The provision would state that it is the policy of the State of Kansas that all contracts entered into by a local school board will be governed by and interpreted in accordance with the laws of the State of Kansas. Contracts entered into by any officers or employees acting on behalf of the school board would carry the same provision. The local board, or any officer or employee acting on the board's behalf, would have no power to enter into a contract which provides that the contract must be governed by or interpreted in accordance with laws of any other state. Contracts not consistent with the provisions of this bill would be void and unenforceable.

CONTINUATION SHEET

MINUTES OF THE House Education Committee at 9:00 A.M. on March 9, 2005 in Room 313-S of the Capitol.

Senator John Vratil spoke as a proponent for **SB 48** and **SB 49**. No written testimony was offered. He explained that both bills apply to school districts, school boards and officers and employees of school districts. **SB 48** would make it public policy at this date for school districts and school boards when entering into contracts, to prohibit them from entering into any contract by which they are required to identify or hold harmless a third party for that third party's negligent acts or omissions.

SB 49 is a similar bill indicating that a school district or school board cannot enter into a contract whereby it agrees to submit to the jurisdiction of courts of a quorum jurisdiction in another state. Nor can they agree to submit to the venue in a different state.

Vice-Chair Horst took over the meeting as Chairman Decker left to testify at another committee meeting.

Discussion followed.

Ward Loyd presented his testimony in support of **SB 48** and **SB 49**. (**Attachment 1**).

Discussion followed.

Next to testify as a proponent of **SB 48** and **SB 49** was Mark Tallman. (**Attachment 2**).

Co-Chair Horst called for any others that would like to speak on **SB 48** or **SB 49**. Seeing none, the hearings on **SB 48** and **SB 49** were closed and the hearing on **SB 154** was opened.

SB 154 - relating to food and beverages available to students in Kansas school districts: providing for the adoption of certain standards.

Supplemental Note - SB 154 creates a new statute that directs the State Board of Education to prescribe nutritional standards for all foods and beverages made available to public school students during the school day. In developing the standards, the Board is directed to consult with other state agencies, private foundations, and other entities and to give attention to the provision of healthful foods and beverages, physical activities, and wellness education directed toward the prevention and reduction of childhood obesity. All Kansas school districts are to comply with the standards although waivers may be granted in appropriate circumstances.

Senator Jim Barnett was the first to speak as an proponent on **SB 154**. (**Attachment 3**).

Discussion followed.

Jody Mackey from the state Department of Education took questions with Senator Barnett.

Chairman Decker returned to the meeting.

Next to speak on **SB 154** as a proponent was Cindy D'Ercole. (**Attachment 4**).

Speaking as a proponent of **SB 154** was Ron Hein. (**Attachment 5**).

Discussion followed.

Teresa Schwab presented testimony as an proponent for **SB 154**. (**Attachment 6**).

Written only testimony in support of **SB 154** was presented to the committee by Chris Wilson (**Attachment 7**) and Kevin Walker (**Attachment 8**).

Speaking as a neutral on **SB 154**, Mark Tallman, presented his testimony. (**Attachment 9**).

This portion of the hearing on **SB 154** was closed.

CONTINUATION SHEET

MINUTES OF THE House Education Committee at 9:00 A.M. on March 9, 2005 in Room 313-S of the Capitol.

The Chair announced that the meeting scheduled for Thursday, March 10 was cancelled.

The meeting was adjourned at 10:50. The next meeting of the full Committee is scheduled for Friday, March 11, 2005.

WARD LOYD

123RD DISTRICT

"THE HEART OF GARDEN CITY"

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COMMITTEES

CHAIR: CORRECTIONS & JUVENILE JUSTICE

MEMBER: JUDICIARY

TOPEKA

HOUSE OF
REPRESENTATIVES

TESTIMONY IN SUPPORT OF SENATE BILLS 48 AND 49

BY REPRESENTATIVE WARD LOYD

BEFORE THE HOUSE EDUCATION COMMITTEE

March 9, 2005

Honorable Chairman Decker and Committee Members,

It is said that times change. And as with time, so change customs and laws.

It is in view of the changing times and customs that I appear to support both Senate Bill 48 and Senate Bill 49, and ask the favorable consideration of these measures by this committee. As many of you are aware, I am a practicing lawyer, and for the majority of my career and at least since 1971 have represented a number of public school districts, large and small, one special education cooperative, and a community college. I have great respect for education law, and those who daily work in education as a teacher, administrator or board member. My testimony is offered from the perspective of one who has observed the law at work in the educational setting for 34 years.

Daily both the administrators of our schools and members of our school boards are called upon to deal with a plethora of complex legal documents presented for educational services, products and supplies. The speed of business, including the business of education, is ever increasing. There is no time to think, it seems. This phenomena will not soon abate.

As resources available to our public schools dwindle there is less willingness among administra-

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House Education Committee
Date: 3-9-05
Attachment # 1-1

tors to have every legal document, whether some form of purchase order, invoice or contract, sent to and reviewed by the attorney for the school district, if the district has an attorney retained. As more business is done electronically, or via the Internet, the less inclination there is to realize the devil is in the detail and delay a purchase or payment decision until the electronic agreements have been considered and approved. It is, in fact, tedious work to read – much less realize the consequence – of the small print.

As business has matured, especially e-business, the legal staffs of vendors/providers have matured as well. Thus, the forms, invoices and contracts used in commerce have come to incorporate and standardize what are commonly referred to as “boilerplate” terms and conditions. Typical among these items are provisions which tilt the playing field in favor of the seller, service provider, or entity doing business with our public schools — indemnification and hold harmless clauses (not just for negligence of the school district and its agents or employees, but of the seller/provider and its agents and employees as well), jurisdictional provisions applying the law of a state other than Kansas, even though our public school districts have no authority to act beyond our state boundaries, and venue provisions providing for disputes to be resolved at a remote site.

It is worth noting that the State of Kansas, through the Department of Administration, has its own “boilerplate” document which sets forth mandatory contract provisions which must be attached to or incorporated into all contractual agreements entered into by any state agency over which D of A has responsibility. Attached to my testimony is a copy of the Contractual Provisions Attachment, Kansas Department of Administration Form DA-146a (Rev. 1-01). Please note the requirement that if the form is attached to the vendor/contractor’s standard contact form, then the form must be altered to contain the following provision:

“The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof.”

Our public schools are entirely creatures of statute, and have no authority beyond that which is expressly granted to them by the Legislature, or such authority that can be construed as reasonably necessary to carry out a grant of authority. Our public schools are funded solely by the citizens of the state, through legislative appropriation, locally approved ad valorem tax levy, or by student fees. Those are, as we know, scarce if not insufficient resources, which we can ill afford to have put the risk of forces beyond the jurisdiction of either the state of Kansas or this Legisla-

ture. In too many instances our school districts do not have an equality of bargaining position, or the sophistication, in dealing with vendors and contractors to insure they do not waive important rights.

Senate Bills 47 and 48 help address and resolve what I consider to be a growing problem, and the potential for a future loss or cost to a Kansas school district. The adoption of these measures eliminates the ability of vendors and contractors to insist or argue for a position to the contrary, and protects our schools, their patrons, and all Kansans.

As your committee deliberates these measures I would ask that you also consider two potential amendments:

First, please consider amending the language of the bills to extend the application of these laws to the community college system. Only in recent years have the community colleges been moved into the Regents system, and as yet many laws such as those contemplated by these bills have not been modified from those applicable during the days the community colleges were considered an extension of the public school system.

Second, please consider amending the language of the bills to include a section which provides in substance that all contracts made and entered into by the board of education of a school district, the board of trustees of a community college, or any officers or employees thereof legally authorized or empowered to so act, absent the affirmative recorded vote of the governing body to the contrary as to any provision or provisions thereof, shall contain those mandatory contract provisions as provided by and set forth in the State of Kansas Department of Administration Form DA-146a, as from time to time amended, and any contracts entered into from and after the effective date of these acts in the absence of the affirmative action of the governing body shall, to the extent any such mandatory contract provisions are omitted therefrom, shall be deemed incorporated therein and made a part thereof by this reference as though such contracts contained such required mandatory contract provisions.

If either such requested amendments are favored by this committee, I would be pleased to work with the Revisors Office to have drafted bill balloons for your consideration.

Thanks you.

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."



Testimony on
SB 48 – School District Contracts, indemnification or hold harmless clauses
SB 49 – School District Contracts, laws governing courts of jurisdiction

Before the
House Committee on Education

By Mark Tallman, Assistant Executive Director/Advocacy
March 9, 2005

Madam Chair, Members of the Committee:

Thank you for the opportunity to appear as proponents on these bills. **SB 48** makes it clear a school board or district is only responsible for its own action or inaction relative to a contract and that any attempt to include a hold harmless or indemnification provision for the acts of another violates public policy and voids the contract making it unenforceable.

SB 49 requires that all contracts be governed by and interpreted in accordance with the laws of the State of Kansas. It also prohibits the board or its employees from agreeing to submit to the jurisdiction of any court other than a Kansas court. Failure to comply renders the contract void and unenforceable.

The intent of this legislation is fully consistent with the legal advice KASB staff attorneys always provide to our members when entering into contracts. While KASB generally supports allowing local control by school boards, we believe these bills would protect boards from pressure to sign contracts that are not in the best interest of the district or the state of Kansas.

Thank you for your consideration.

House Education Committee

Date: 3-9-05

Attachment # 2

STATE OF KANSAS

JIM BARNETT
SENATOR, 17TH DISTRICT
CHASE, COFFEY, GREENWOOD
LYON, MARION, MORRIS, AND OSAGE
COUNTIES



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
CHAIR: PUBIC HEALTH AND WELFARE
MEMBER: FEDERAL AND STATE AFFAIRS
FINANCIAL INSTITUTIONS AND
INSURANCE
GOVERNOR'S HEALTH CARE
COST CONTAINMENT COMMISSION
HEALTH CARE STABILIZATION FUND

**House Education Committee
Testimony Re: SB 154**

March 9, 2005

Dear Chairperson Decker and other distinguished members of the House Education Committee, thank you for the opportunity to speak in support of SB 154.

This measure was introduced to help our state deal with the epidemic of childhood obesity. Numerous studies indicate that foods of low nutritional value compete with other nutritious foods in our schools. The intent of SB 154 is to help our state develop standards for the type of foods and beverages that are available in our schools during the school day. These efforts blend with federal efforts requiring the development of wellness policies in the school districts of our state. By passing SB 154, the state of Kansas would develop minimum standards. Jody Mackey from the state Department of Education is well versed on the process of developing a ground up approach to address this issue. By involving parents, school board member, and private citizens we can obtain a consensus based approach to deal with the issue of childhood obesity.

I appreciate your willingness to consider SB 154 and am honored to come before your Committee.

A handwritten signature in cursive script, appearing to read 'Jim Barnett'.

Senator Jim Barnett

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House Education Committee
Date: 3-9-05
Attachment # 3-1

Anthony School, Leavenworth, KS – Eat, Exercise, Excel

This school was struggling. Academic scores and attitudes were very poor. By changing the school environment to include quality nutrition and physical activity, the students' health, academic achievement, and attitude were quickly and dramatically improved.

Student Profile –

- 64% of students are racial/ethnic minorities
- 76% of students are eligible for free/reduced price lunch

Before the changes:

- Only 7 out of 334 students met National Fitness Standards
- 16% were significantly overweight
- State assessment scores in reading and math were dramatically below the state averages.

Private grant funds were obtained to pay for creating a healthier school environment. The cost per child was approximately \$200 per year.

Goals of the Eat, Exercise, Excel Program:

1. Increase academic achievement
2. Reduce antisocial behavior
3. Teach students how to live a healthy lifestyle

Nutrition Program – The students:

- Eat lunch in the classroom with their teacher.
- Eat a nutritious lunch reduced in fat and sugar and with increased vegetables and fruits.
- Keep water bottles at their desks.
- Take a daily, chewable, RDA multi-vitamin supplement.
- Participate in teacher led nutrition education during lunch.

Physical Activity Program – The students:

- Participate in daily structured recess with aides supervising aerobic activities for 40 minutes.
- Have PE class with aerobic activities three times a week for 30 minutes.
- Establish baseline fitness and goals in PE class and work towards meeting Kansas PE Standards.

The Results – After one year, there was:

- 98% reduction in office referrals for student behavior problems
- 1.8% improvement in student attendance
- 16% increase in attendance at parent teacher conferences
- Reading assessment scores increased by 10 points meeting the state target
- Math assessment scores increased by 54 points meeting the state Standard of Excellence
- 33 students are National Fitness qualifiers and 3 are Presidential Fitness qualifiers
- Halls are quiet and a positive, cooperative attitude prevails.



Child Nutrition & Wellness

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Update On Local Wellness Policy Requirement

Public Law 108-265 reauthorized federal Child Nutrition Programs. Section 204 of this law requires that not later than the beginning of the 2006-2007 school year, local educational agencies participating in the school meal programs must establish a local “school wellness policy” that, at a minimum:

1. Includes nutrition guidelines for all foods available on the school campus during the school day (e.g. school meals, a la carte, vending, school stores, fund-raisers etc.);
2. Provides an assurance that guidelines for school meals are not less restrictive than those set by the U.S. Secretary of Agriculture;
3. Includes goals for nutrition education, physical activity and other school-based activities designed to promote student wellness in a manner that the local educational agency determines appropriate;
4. Establishes a plan for measuring implementation of the local wellness policy; and
5. Involves parents, students and representatives of the “school food authority” (i.e. school nutrition program), the school board, school administrator and the public in development of the local wellness policy.

To help sponsors meet this requirement, KSDE is developing a model wellness policy that:

- Builds upon the best wellness policies from across our state and the nation;
- Includes input from national and Kansas experts in the fields of food service, nutrition education and physical education;
- Considers feedback from the various groups impacted by the wellness policy; and
- Provides for consensus, flexibility and local control.

Following is a brief overview of the steps and schedule for this process:

Jan-Feb. 2005..... KSDE has invited content experts to participate in the following work groups: Nutrition Standards, Physical Activity and Nutrition Education.

KSDE has evaluated standards and policies from other states. Based on this review, KSDE has developed a first draft model wellness policy.

There are three levels of standards in the draft policy:

- The “basic” level meets all requirements of the federal law.
- The “advanced” level sets healthier standards than the basic level.
- The “exemplary” level sets healthier standards than the advanced level.

Important: KSDE intends for sponsors to determine the level of the guidelines that will be implemented at the local level.

(Over)

Local Wellness Policy Update
March 2005
Page 2

- Mar. 2005 Work groups will review/revise the first draft of the policy resulting in draft two.
- Apr. 2005..... The second draft of the policy will be presented to stakeholders. Their input results in draft three.
- May 2005..... Draft three of the prototype policy will be posted on KSDE's website for review and comment. Interested groups and organizations will be invited to provide feedback.
- June 2005..... Public meetings will be held at locations around the state to obtain further input resulting in draft four.
- Aug 2005 –
June 2006..... KSDE and partners provide training and technical assistance to sponsors to support their efforts to adopt and/or adapt the policy to meet local needs.
- July 2006 All sponsors will have a local wellness policy in place. This policy will be incorporated into each sponsor's School Nutrition Program renewal agreement with KSDE.

In summary, this approach will enable sponsors to create a healthier environment for students based on quality standards, flexibility and local needs. Please contact Jodi Mackey (785-296-2276 or jmackey@ksde.org) or your area consultant if you have questions or suggestions regarding local wellness policies.

Kansas Eat Smart Nutrition Guidelines – Grades Pre-K-12 – DRAFT 1

5-1-16

Black = All grade levels Blue = Additional Options for Middle School/Junior High/High School Green = Additional Options for High School

Category	BASIC Compliance with Federal Regulations	ADVANCED (Healthier than BASIC)	EXEMPLARY (Healthier than ADVANCED)
<p>SCHOOL MEALS National School Lunch Program (NSLP) School Breakfast Program (SBP)</p>	<p>Programs are in compliance with USDA School Meals Initiative regulations.</p>	<p>Breakfast:</p> <ul style="list-style-type: none"> • On days when pre-packaged cereals are offered, at least one choice of cereal contains total sugar ≤ 35% by weight and at least 1 gram of fiber per serving. • Foods containing whole grains are offered at least 3 days a week. • Fresh, canned, dried or frozen whole fruit or vegetables are offered at least 3 days a week. • Milk types with varying fat contents are offered daily including low-fat (1% or ½%) and/or skim (nonfat) milk. <p>Lunch:</p> <ul style="list-style-type: none"> • An entrée choice with total fat ≤ 16 g. per serving is offered at least 3 days a week. • At least 3 fruits and/or vegetables are offered for lunch daily. • At least 5 different fruits and 5 different vegetables are offered weekly. • Fresh fruit or vegetables are offered at least 3 days a week. • Foods containing whole grains are offered at least 3 days a week. • Milk types with varying fat contents are offered daily including low-fat (1% or ½%) and/or skim (nonfat) milk. • Salad dressings contain no more than 12 grams of fat per ounce. • Desserts with more than 5 grams of fat per serving are offered no more than 2 times a week. 	<p>Breakfast</p> <ul style="list-style-type: none"> • All pre-packaged cereals offered contain total sugar ≤ 35% by weight and at least 1 gram of fiber per serving. • Foods containing whole grains are offered daily. • Fresh, canned, dried or frozen whole fruit or vegetables are offered daily. • Milk types with varying fat contents are offered daily including only low-fat (1% or ½%) and/or skim (nonfat) milk. <p>Lunch:</p> <ul style="list-style-type: none"> • An entrée choice with total fat ≤ 16 g. per serving is offered daily. • At least 3 fruits and/or vegetables are offered for lunch daily. • At least 10 different fruits and 10 different vegetables are offered monthly. • Fresh fruit or vegetables are offered daily. • Foods containing whole grains are offered daily. • Milk types with varying fat contents are offered daily including only low-fat (1% or ½%) and/or skim (nonfat) milk. • Salad dressings contain no more than 6 grams of fat per ounce. • Desserts with more than 5 grams of fat per serving are offered no more than once a week.

Kansas Eat Smart Nutrition Guidelines – Grades Pre-K-12 – DRAFT 1

3-6

Black = All grade levels Blue = Additional Options for Middle School/Junior High/High School Green = Additional Options for High School

Category	BASIC Compliance with Federal Regulations	ADVANCED (Healthier than BASIC)	EXEMPLARY (Healthier than ADVANCED)
<p>A LA CARTE All other food and beverage items sold in school cafeteria or other locations where school meals are served or eaten</p>	<p>If a la carte items are available, they are offered in compliance with USDA regulations prohibiting the sale of “foods of minimal nutritional value” where school meals are served or eaten during the meal period.</p>	<p>A la carte items are limited to:</p> <ul style="list-style-type: none"> • The same portion size of any food item served that day in the NSLP or SBP • Fruits or vegetables • Yogurt • Pre-packaged snacks – 50% of items offered must meet all of the following criteria per individual package or container: <ul style="list-style-type: none"> • Calories from total fat ≤ 35%, except for nuts, seeds and nut butters • Total sugar ≤ 35% by weight, except for fruits without added sugar. • Calories ≤ 200 <p>A la carte beverages are limited to:</p> <ul style="list-style-type: none"> • Water, non-sweetened • Milk ≤ 360 calories • 50-100% juice with no added sweeteners • Other non-carbonated beverages ≤ 110 calories 	<p>A la carte items are limited to:</p> <ul style="list-style-type: none"> • The same portion size of any food item served that day in the NSLP or SBP • Fruits or vegetables • Low-fat and/or nonfat yogurt • Pre-packaged snacks – 100% of items offered must meet all of the following criteria per individual package or container: <ul style="list-style-type: none"> • Calories from total fat ≤ 35%, except for nuts, seeds and nut butters • Total sugar ≤ 35% by weight, except for fruits without added sugar. • Calories ≤ 200 <p>A la carte beverages are limited to:</p> <ul style="list-style-type: none"> • Water, non-sweetened • 1% or nonfat milk ≤ 360 calories • 100% juice with no added sweeteners • Other non-carbonated beverages ≤ 55 calories
<p>SNACK VENDING Machines & School Stores</p>	<p>If vended snacks are available, they are offered in compliance with USDA regulations prohibiting the sale of “foods of minimal nutritional value” where school meals are served or eaten during the meal period.</p>	<p>Vended snacks are not available to students in elementary schools.</p> <p>50% of snack items offered must meet all of the following criteria per individual package or container:</p> <ul style="list-style-type: none"> • Calories from total fat ≤ 35%, except for nuts, seeds and nut butters • Total sugar ≤ 35% by weight, except for fruits without added sugar. • Calories ≤ 200 	<p>Vended snacks are not available to students in elementary schools.</p> <p>100% of snack items offered must meet all of the following criteria per individual package or container:</p> <ul style="list-style-type: none"> • Calories from total fat ≤ 35%, except for nuts, seeds and nut butters • Total sugar ≤ 35% by weight, except for fruits without added sugar. • Calories ≤ 200

Kansas Eat Smart Nutrition Guidelines – Grades Pre-K-12 – DRAFT 1

3-7

Black = All grade levels Blue = Additional Options for Middle School/Junior High/High School Green = Additional Options for High School

Category	BASIC Compliance with Federal Regulations	ADVANCED (Healthier than BASIC)	EXEMPLARY (Healthier than ADVANCED)
BEVERAGE VENDING Machines & School Stores	If vended beverages are available, they are offered in compliance with USDA regulations prohibiting the sale of “foods of minimal nutritional value” where school meals are served or eaten during the meal period.	Vended beverages are not available to students in elementary schools. Vended beverages are limited to: <ul style="list-style-type: none"> • Water, non-sweetened • Milk ≤ 360 calories • 50-100% juice with no added sweeteners • Other non-carbonated beverages ≤ 110 calories 	Vended beverages are not available to students in elementary schools, Vended beverages are limited to: <ul style="list-style-type: none"> • Water, non-sweetened • 1% or nonfat milk ≤ 360 calories • 100% juice with no added sweeteners • Other non-carbonated beverages ≤ 55 calories
EVENTS DURING THE SCHOOL DAY Classroom Celebrations & Parties Fundraisers Intramural Events	All foods and beverages are offered in compliance with USDA regulations prohibiting the sale of “foods of minimal nutritional value” where school meals are served or eaten during the meal period.	Additional guidelines are developed by the Local Wellness Policy Committee based upon the current Dietary Guidelines for Americans. The local guidelines are partially implemented.	Additional guidelines are developed by the Local Wellness Policy Committee based upon the current Dietary Guidelines for Americans. The local guidelines are fully implemented.
AFTER SCHOOL PROGRAMS	Snacks served under the USDA After School Care Snack Program must meet all program requirements	Snacks on three (3) days of the week meet the following standards: <ul style="list-style-type: none"> • Total calories from fat, excluding nuts and seeds, must be ≤ 35%. • Total sugar by weight must be ≤ 35%, except for fruits without added sugar. 	Snacks on all days of the week meet the following standards: <ul style="list-style-type: none"> • Total calories from fat, excluding nuts and seeds, must be ≤ 35%. • Total sugar by weight must be ≤ 35%, except for fruits without added sugar.

Kansas Eat Smart Nutrition Guidelines – Grades Pre-K -12 – DRAFT 1

3-8

Definitions:

Foods of Minimal Nutritional Value (FMNV) are those foods as defined in federal regulations for the National School Lunch Program (7CFR Part 210) and the School Breakfast Program (7CFR Part 220). FMNV includes all soda water, water ices, chewing gum, certain candies, hard candy, jellies and gums, marshmallow candies, fondant, licorice, spun candy and candy coated popcorn; except for individual items in these categories that have been specifically exempted by the U.S. Department of Agriculture.

Competitive foods are those foods sold in competition with the school's nonprofit National School Lunch Program and/or School Breakfast Program. Beverages are not included under this definition.

Fruits may be fresh, frozen, canned or dried. Snack foods (such as banana chips) and condiments (such as jam or jelly) made from fruit are not considered "fruit" under the Kansas Eat Smart Nutrition guidelines.

Grain food is labeled as a whole grain product or with a whole grain as the primary or first ingredient. Examples of whole grain ingredients include whole wheat flour, entire wheat flour, cracked wheat, graham flour, brown rice, old-fashioned oatmeal, quick-cooking oats and cornmeal.

Kansas Eat Smart Nutrition Guidelines defines three levels of nutrition standards for schools: basic, advanced, exemplary. The basic level complies with the minimum requirements found in federal Child Nutrition Program regulations and state policy. The standards for each subsequent level are healthier than those for the previous level.

National School Lunch Program (NSLP) is a federal Child Nutrition Program designed to provide students with healthful lunches that meet approximately 1/3 of their daily nutritional needs.

Nonprofit food service program refers to the National School Lunch Program and/or the School Breakfast Program, which are both federal Child Nutrition Programs.

School Breakfast Program (SBP) is a federal Child Nutrition Program designed to provide students with healthful breakfasts that meet approximately 1/4 of their daily nutritional needs.

Vegetables may be fresh, frozen or canned and should not be fried. Snack foods (such as potato chips) and condiments (such as pickle relish, catsup and chili sauce) made from a vegetable are not considered a "vegetable" under the Kansas Eat Smart Nutrition Guidelines.

March 9, 2005

To: Kansas House Education Committee
From: Cindy D'Ercole, Sr. Policy Analyst
Re: Senate Bill 154 – Food service standards for public schools

Kansas Action for Children supports enactment of Senate Bill 154.

SB 154 will assist the State Department of Education in its efforts to implement the federal Child Nutrition Act. The Act became effective on June 30, 2004, and requires every school district that receives federal funds to establish a local wellness policy by June 30, 2006. **This bill will help school districts comply with federal legislation by relying on the state's collective expertise coordinated by the Department of Education.**

Proper nutrition has an immediate impact on children's ability to learn, as well as on children's oral health and obesity prevention. Research shows that changes in the school food environment can impact food choices and improve the quality of children's diets while at school. Growing awareness of the importance of the obesity epidemic and oral health presents a clear opportunity to require schools to develop nutritional standards for all foods and beverages made available to students in Kansas public schools during the school day.

Obesity Prevention

There are serious, long-term health consequences of childhood obesity. Childhood and adolescent obesity contributes to asthma, diabetes, high blood pressure, sleep apnea, low self-esteem, and adult obesity. The prevalence of obesity among adults in Kansas has increased by almost 70 percent since 1992. More than one in five adult Kansans are now obese and almost three in five are at least overweight. Reversing the epidemic of obesity in Kansas will require focusing on obesity prevention in children.

Oral Health

When teeth come in frequent contact with soft drinks and other sugar-containing substances, the risk of decay formation is increased. Oral health is a critical but often overlooked component of overall health and well-being among children and adults. Dental caries (tooth decay) is the most common preventable chronic childhood disease. Pain from untreated dental disease can lead to eating, sleeping, speaking, and learning problems in children and adolescents, which affect a child's social interactions, school achievement, general health, and quality of life. In fact, approximately 51 million school hours per year are lost because of dental-related illness.

Improving the health status of Kansans begins with improving the health of Kansas kids. Healthy eating patterns are essential for students to achieve their full academic potential, full physical and mental growth, and lifelong health and well-being. Healthy eating is demonstrably linked to reduced risk for mortality and development of many chronic diseases as adults. Schools have the opportunity to help students establish and maintain lifelong, healthy eating patterns. Well-planned and well-implemented school nutrition programs have been shown to positively influence students' eating habits.

Both inside and out of the classroom, schools present opportunities to students to learn about good nutrition, physical activity and their relationship to health. We urge you to support efforts to improve the health of Kansas kids and SB 154.



**KANSAS
ACTION FOR
CHILDREN**

Making a difference for Kansas children.

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House Education Committee

Date: 3-9-05

Attachment # 4

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Ronald R. Hein

Attorney-at-Law

Email: rhein@heinlaw.com

**House Education Committee
Testimony Re: SB 154
Presented by Ronald R. Hein
on behalf of
Kansas Beverage Association
March 9, 2005**

Madam Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Beverage Association (KBA), the state trade association for beverage bottling companies operating in Kansas. Previously the Kansas Soft Drink Association, the KBA changed their name to more truly reflect the membership and the products made, which include carbonated diet and regular soft drinks, bottled waters, isotonic drinks, juice, juice drinks, sports drinks, dairy-based beverages, teas, and other beverages.

The KBA supports the concept of SB 154, which provides for the State Board of Education to establish nutritional standards for foods and beverages made available to school children during the school day.

The Kansas Board of Education has already testified before a House committee regarding the wellness program that they are implementing as a result of requirements set out in the recent re-implementation of the federal school nutrition lunch program legislation. This bill will fit in well with the steps they have already taken to deal with the very complex issue of obesity in our society in general, and childhood obesity in particular.

An analysis of federal health data by a nutrition researcher at the University of North Carolina indicates that caloric consumption increased only 1% between 1980 and 2000. However, during that same 20 years, she found that physical activity decreased 13% while obesity increased 10%. The experts in nutrition recommend that the solution to obesity lies with a comprehensive approach that focuses on activity and exercise, moderation in food choices and food consumption, and an over all healthy, nutritious diet. I am aware that there has been other testimony that according to the USDA, caloric consumption has increased more than that over the past 20 years. We are attempting to identify the discrepancies between the NC study and the USDA information so that the committee can have the most accurate information available, but I was unable to obtain that information by the time I prepared this testimony.

I also want to address other testimony that was given in the Senate regarding consumption of soft drinks and other beverages and dental cavities. Generally, no studies indicate that

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March 9, 2005

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increases in soft drink consumption lead to increased dental cavities. The American Dietetic Association (ADA) has stated, "As far as dental health is concerned, the sugar found in some juices or foods that contain sugar and stick to the teeth have a greater impact on dental cavities than soft drinks."

I have attached a sheet which further addresses some of the myths regarding soft drinks and dental health.

Some have suggested quick answers to this complex problem that involve restrictions on food choices, banning of certain foods, and other approaches, all of which numerous nutrition experts generally agree are not the answer. These experts recommend instead a comprehensive solution that involves a moderate diet and proper exercise. They agree that there are no bad foods, that there is room for all foods in a healthy diet, that moderation is key, and that banning or restricting of any foods can be counter-productive. Studies further indicate that restricting foods only increases the desire for those foods.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

Soft Drinks Are Not the Cause of Dental Cavities

- ❖ The allegation by some nutritionists and dentists that increased consumption of soft drinks is linked to cavities or serious tooth decay is both simplistic and incorrect. Research has shown that fruit juices, fruit drinks, carbonated beverages and sports drinks all have about the same potential for producing cavities as far as the total amount of sugars, acidity and the effect on plaque pH are concerned.
- ❖ Most importantly, a report from the National Institutes of Health, published in the Journal of the American Dental Association, indicates a continuing decline in cavities among U.S. children. In less than two decades the percentage of children with no cavities in permanent teeth has doubled. This is due to a number of factors including fluoridation of water, fluoride toothpaste, use of sealants, proper oral hygiene, periodic checkups, and a good diet.
- ❖ Recent studies conducted by the University of Michigan and Virginia Tech show that increased soft drink consumption does not lead to increases in cavities among people under the age of 25.
- ❖ Because of their liquid form and the short time they remain in the mouth, soft drinks that contain sugar do not have as significant an impact on tooth decay as sugar-containing sticky foods.
- ❖ The formation of dental cavities depends on a number of factors including the type and form of carbohydrate, the amount of time food is in the mouth, the amount of saliva, the presence of bacteria in plaque and factors that inhibit formation such as fluoride and good oral hygiene.
- ❖ Not just sugar but all carbohydrates, including starches, can be fermented by bacteria in the mouth to produce acid and potentially cause cavities.
- ❖ Several studies concluded that the variation seen in the amount of cavities in different populations is attributable to other factors; not the dietary intake of sugar. However, if there are individuals, especially susceptible to cavities, then limiting their intake of sugar may be one helpful activity.
- ❖ We drink and eat not only to appease thirst and hunger and fulfill nutritional needs, but also for enjoyment. An important consideration is the total dietary pattern, not the consumption of particular foods. Non-alcoholic beverages serve to quench thirst and provide a pleasant source of liquid needed by the human body to maintain proper hydration. Soft drinks are a complement to many types of food, which together form a proper diet.



Testimony before the House Education Committee

March 9, 2005

Chairman Decker and Members of the Committee:

Thank you for the opportunity to provide testimony today in support of SB 154, relating to the adoption of standards for food and beverages available to Kansas students. My name is Teresa Schwab, and I am the Executive Director of Oral Health Kansas, Inc.

There has been a lot of discussion this session in Kansas as well as in other states about the negative effects of poor nutrition and physical inactivity and their associated health care costs. This is especially important for children as this is when habits and patterns begin to develop that will likely last a lifetime. Certainly, obesity is a critical health issue, but I would also like to add oral health to the discussion since one's oral health is integral to one's overall health and well-being.

According to the 2000 Report of the Surgeon General on Oral Health, dental caries is one of the most common childhood diseases, more than 5 times as common as asthma and 7 times as common as hay fever. In a recent study of Kansas third graders, more than 50 percent of children in the study had experience dental decay in their lifetime. Each year, an estimated 51 million school hours are lost because of dental-related illness.

The American Dental Association (ADA) reports that American consumption of soft drinks, including carbonated beverages, fruit juice and sports drinks, increased 500 percent in the past 50 years. Americans drank more than 53 gallons of soft drinks per person in 2000, surpassing all other beverages including milk, beer, coffee, and water.

Our mouths are filled with bacteria, and when these bacteria come into contact with sugar or starch, like those found in soft drinks and other foods, acid is produced that attack teeth. Bacteria are particularly fond of foods containing sugars and carbohydrates. These foods provide bacteria with energy to grow, reproduce, and create enamel-eating acid.

Thus, when children have a prolonged exposure to sugary foods and beverages, the risk of early childhood caries (ECC) increases. The financial impact of dental disease caused by the consumption of sugary snacks and soft drinks is considerable and especially frustrating because it is totally preventable.

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House Education Committee

Date: 3-9-05

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For these reasons, Oral Health Kansas would like to add their support to the provisions of SB 154. We support the collaborative process proposed in this bill and look forward to oral health being a part of the discussion.

Once again, thank you for the opportunity to provide you with this testimony today. I would be happy to stand for questions.

Respectfully submitted,
Teresa R. Schwab, LMSW

6-2



Kansas Dairy Association

212 S.W. 8th Avenue Topeka, KS 66603
785/232-2131

**STATEMENT OF THE KANSAS DAIRY ASSOCIATION
TO THE HOUSE EDUCATION COMMITTEE
REPRESENTATIVE KATHE DECKER, CHAIR
REGARDING SB 154
MARCH 9, 2005**

Chairman Decker and Members of the Committee, I am Chris Wilson, Executive Director of the Kansas Dairy Association (KDA). KDA's membership includes the 470 dairies in Kansas. We are in support of SB 154. This bill is intended to address the concerns regarding student nutrition and well-being, through a study conducted by the Kansas Department of Education in cooperation with other state agencies, private foundations and other private entities.

We hear a lot about obesity issues, the need for exercise and a good diet, and for the development of good lifelong eating habits. This is a good time for Kansas to bring together those who can work cooperatively to address these issues.

Kansas Dairy Association and Kansas Dairy Commission, along with Midwest Dairy Association, conducted a one-year study of dairy vending in schools with lower enrollments (200-375) during 2003 and 2004. We have results from that study which should be beneficial to the effort suggested in SB 154. In addition, we have an ongoing program, through which Kansas Dairy Commission is at this time providing funding of \$500 and technical assistance to individual schools purchasing dairy vending machines. We have also worked with an area lender to develop a lease-purchase program for schools interested in obtaining machines. We would be glad to assist in the development of standards and in providing assistance to schools in whatever manner appropriate.

Thank you for the opportunity to come before you in support of SB 154. We hope that you recommend it favorable for passage and would be glad to respond to questions.

House Education Committee

Date: 3-9-05

Attachment # 7

**American Heart Association
Testimony in Support of SB 145**

**House Education Committee
9 AM; Room 313-S
9 March 2005**

Representative Decker and Members of the Committee I am Kevin Walker, Vice President of Advocacy for the American Heart Association. I appreciate the opportunity to present this testimony in support of SB 145.

Rates of obesity and overweight, leading risk factors for heart disease, have risen dramatically over the past 10 years. Over the last two decades, the rates for overweight children have doubled, so that today one-third of children in the United States are overweight.

Let me present you with a few alarming facts:

- In 1997-98, 38.3% of Americans age 18 or older reported no physical activity.
- Less-active, less-fit persons have a 30-50% greater risk of developing high blood pressure.
- By the age of 16 or 17, 56% of black girls and 31% of white girls reported no habitual leisure-time activity.
- The annual cost for diseases associated with physical inactivity is \$76 billion.
- An estimated 8,800,000 children and adolescents ages 6-19 are considered overweight or obese.
- Almost two-thirds (61%) of American adults are overweight or obese.
- Obesity rates among U.S. adults increased by 60% between 1991 and 2000 and rates doubled in children over the last 20 years.
- Each year, an estimated 300,000 U.S. adults die of causes related to obesity.
- In 1995, obesity among U.S. adults cost \$99.2 billion, of which \$51.6 billion was for direct medical costs.
- Among children and adolescents, annual hospital costs related to obesity were \$127 million during 1997-99.

Unless we do something about the shocking trends related to physical inactivity and obesity the health and economic problems will only get worse. The American Heart Association has established a goal of reducing disability and death from heart disease and stroke by 25% by 2010. By passing this bill you can join us in this goal and take a major step forward in ensuring that Kansas will be leader in reducing these alarming statistics.

On behalf our volunteers through the State of Kansas I urge you to approve this bill and recommend its passage to the House of Representatives.

House Education Committee
Date: 3-9-05
Attachment # 8

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
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Testimony on
SB 154 – Food and Beverage Standards in Kansas Schools

Before the
House Committee on Education

By Mark Tallman, Assistant Executive Director/Advocacy
March 9, 2005

Madam Chair, Members of the Committee:

Thank you for the opportunity to comment on SB 154. This bill is one of two measures addressing student health concerns, especially regarding school food programs, which have passed the Senate. The other is SCR 1604, which is the subject of a hearing today in the House Health and Human Services Committee.

KASB supports efforts to improve the health of Kansas children. The question is how to best achieve that goal.

The bill before you today, SB 154, would require the State Board of Education to adopt nutritional standards for all foods and beverages made available to students in Kansas public schools, and requires public schools to comply with these standards, although the standards may provide for waivers as established by the State Board. The bill does not specify how soon this must be accomplished. The Senate committee adopted some amendments to the bill that addressed concerns raised by KASB regarding the original bill.

SCR 1604, on the other hand, directs the Kansas Department of Education to develop a more comprehensive report to the Legislature on how to improve the diets and physical well being of Kansas students. That report should be presented to the 2006 Legislature.

Both HB 153 and SCR 1604 direct the State Board and the Department of Education to consult with other state agencies and private entities to carry out the assigned tasks. KASB hopes to participate in the process. While there is no direct conflict between these two measures, there certainly is a great deal of overlap, and we suggest that it might be most appropriate to complete the more comprehensive report addressed in SCR 1604 before adopting the more specific standards required by SB 154.

Thank you for your consideration.

House Education Committee

Date: 3-9-05

Attachment # 9