

MINUTES OF THE SENATE EDUCATION COMMITTEE

The meeting was called to order by Chairman Jean Schodorf at 1:40 P.M. on February 3, 2005, in Room 123-S of the Capitol.

Committee members absent:

Committee staff present: Carolyn Rampey, Kansas Legislative Research Department
Kathie Sparks, Kansas Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Bill Brady, Schools for Fair Funding
Senator John Vratil
Mark Tallman, Kansas Association of School Boards
Mark Desetti, Kansas National Education Association
Dale Dennis, Deputy Commissioner, State Board of Education

Bill Brady, representing Schools for Fair Funding, requested the introduction of a school finance bill which would redefine the state's finance formula in the manner outlined in the Augenblick & Myres study and which would include a funding component to raise revenue to fund the changes. (Attachment 1)

Senator Goodwin moved to introduce the bill, seconded by Senator Vratil. The motion carried.

Senator Apple moved to introduce a conceptual bill which would require that a wide strobe light be placed on the top of school buses as a means to improve safety, seconded by Senator Allen. The motion carried.

SB 48–School district contracts; indemnification or hold harmless clauses

Senator Vratil, sponsor of **SB 48**, explained that, as an attorney, he represents five school districts. In the last several years, he has noticed an increasing and disturbing trend involving a wide variety of vendors to school districts. The trend of vendors such as construction contractors, software manufacturers, and food vendors is to shift legal responsibility to somebody else. In a number of contracts presented to school districts, there are provisions which require the school district to indemnify the vendor against the vendor's own negligence. As a result, if the vendor does something that creates legal liability, the school district has to be responsible in terms of any financial damages. He went on to explain that there is an Attorney General's opinion which indicates that Kansas school districts do not have legal authority to enter into those kind of indemnification provisions. However, when he provides that Attorney General's opinion to vendors, they ask where that provision is located in Kansas statutes. The bill would statutorily ensure that everybody is responsible for their own negligent or wrongful acts. Senator Vratil noted that school districts must share their legal responsibility in the Tort Claims Act, and the bill would create a level playing field.

SB 49–School district contracts; laws governing and courts of jurisdiction

Senator Vratil was also the sponsor of **SB 49**. He explained that **SB 49** is very much the same as **SB 48**. In order to enhance their position in case there is litigation, vendors are insisting that contracts with Kansas school districts be governed by the laws of the state where the vendor is located. He noted that many software vendors are located in California, and the California vendors want Kansas school districts to agree to submit to the jurisdiction of a California court, which is contrary to Kansas law. The bill would require that any contract in which the school districts enter will be governed by Kansas law, and a school district could not agree to submit to the jurisdiction of another state; it could only be subject to Kansas courts.

Senator Vratil noted that in his experience in representing school districts, there have been battles which took a lot of time and costs to the school district to get these provisions sorted out. He noted, "Usually, we arrive at some kind of ambiguous language in the contract so that everybody can claim victory. But what that means is, if there's ever a dispute, it's certain to go to litigation to sort out that ambiguous language. And that's not a good resolution of the problem. These bills would provide a clear resolution."

CONTINUATION SHEET

MINUTES OF THE Senate Education Committee at 1:40 p.m. on February 3, 2005, in Room 123-S of the Capitol.

Senator Vratil commented further that problem began mainly with software vendors who, on a national basis, would not accept any responsibility for the software they produced. Now, software vendors want school districts, who spend tens of thousands of dollars on software, to indemnify them against their own negligence.

Senator Lee asked if the bills would result in software providers not wanting to do business in Kansas. Senator Vratil responded, "That potential exists, and I thought a great deal about that. On the one hand, it occurs to me that the market in Kansas is big enough that those software vendors are not going to just ignore the Kansas market. That would significantly reduce their revenue. The other possibility is that they will just agree to just abide by this law and take the offending indemnification provisions out of their contract." Senator Lee asked if other states have similar laws. Senator Vratil said, "None that I know of. I haven't done a survey of other states so I can't really say. All I can tell you is, I don't know of any."

Mark Tallman, Kansas Association of School Boards (KASB), testified in support of **SB 48** and **SB 49**. Mr. Tallman noted that the intent of the legislation was fully consistent with the legal advice KASB staff attorneys provide to KASB members when entering into contracts. He noted that KASB believes the bills would protect boards from pressure to sign contracts that are not in the best interest of the district or the state. (Attachment 2)

Mark Desetti, Kansas National Education Association (KNEA) testified in support of **SB 48** and **SB 49**. Mr. Desetti noted that KNEA views the bills as measures to protect Kansas public schools and Kansas taxpayers. With regard to **SB 49**, he said that KNEA's sole concern is the question of the impact it might have on insurance contracts with insurance companies located outside Kansas. He noted that he contacted the Insurance Commissioner to see if regulations would take care of this situation, but he had not yet received an answer. (Attachment 3)

In response to Mr. Desetti's concern about insurance contracts, Senator Vratil said, "I believe what you will find is that in order for a school district to enter into an insurance contract with an out-of-state insurance company, that out-of-state insurance company will have to be licensed in Kansas. And if they are licensed in Kansas, they are going to be subject to Kansas law." He agreed that Mr. Desetti should follow up with the Insurance Commissioner and report back to the Committee.

There being no others wishing to testify, Senator Schodorf closed the hearings on **SB 48** and **SB 49**.

Senator Goodwin moved to recommend **SB 48** as favorable for passage, seconded by Senator Pine. The motion carried.

Senator Schodorf reminded the Committee that samples of "Budget at a Glance," which can be found on the Internet for each school district, were distributed to members at the February 2 meeting. She called upon Dale Dennis, Deputy Commissioner, State Board of Education, for further information regarding other on-line information available which would be useful in comparing Kansas with Wisconsin's system for collecting financial data from school districts. Mr. Dennis informed the Committee that the Department of Education collects almost all school district financial data through the Internet. He explained that budgets are automatically calculated after the school district fills in the blanks on-line. He noted that other information such as the general fund budget and all the weightings can always be found on the Department's web site, www.ksde.org. He explained that the interest rate that banks are required to pay school districts on any idle funds are posted weekly in addition to all the state and federal aid which has been distributed. He went on to say that the federal government requires that the Department report expenditures by school district in federal format. He noted that an explanation of the school finance formula can be found on the Internet. In addition, there is a 15 year history of school district expenditures broken down by revenue and expenditures for state, federal, and local; the amount per pupil for state, federal and local; and the total expenditures. He explained that the school district information available to the public under "Budget at a Glance" is an eight page document which shows the budget for the two preceding years plus the current year. He also explained that the Department recently began condensing the current operating expenditures to approximately ten lines listing expenditures for instruction, food support, structural support, school administration, general administration, operation and maintenance, etc. The Department uses the same definitions which are used for the required federal report. The expenditures for each school district are compared to schools statewide.

CONTINUATION SHEET

MINUTES OF THE Senate Education Committee at 1:40 p.m. on February 3, 2005, in Room 123-S of the Capitol.

Mr. Dennis cautioned that the comparison should be used only a guideline. He went on to explain that a listing of such things as enrollment, reduced price lunch, and square miles by district is provided for school districts which are interested in data for comparable districts. In conclusion, Mr. Dennis listed the following data available for each school district: average teacher and principal salaries, enrollment, mill levies, graduates, drop outs, assessed valuation, noncertified personnel, and cash balances for every fund. He noted that the Department tries not to put anything on their website which will not be used and that most of the data collected is related to distribution of money or compliance with federal law.

Senator Schodorf called the Committee's attention to copies a summary of school finance discussions held by the Senate Education Committee which was prepared by Carolyn Rampey, Kansas Legislative Research Department. She pointed out that a staff note at the end of the summary indicated that the summary was based on staff notes taken during meetings, and, if necessary, any member could ask that the summary be revised or that additions be made. She informed the Committee that she planned to give a copy to the Senate President for informational purposes. (Attachment 4)

Senator Vratil moved that the minutes of the January 26, 27, and 31 meetings be approved, seconded by Senator Goodwin. The motion carried.

The meeting was adjourned at 2:15 p.m.

The next meeting is scheduled for February 7, 2005.

TESTIMONY
SENATE EDUCATION COMMITTEE
by Bill Brady
Schools for Fair Funding
February 3, 2005

Madame Chairperson and members of the Senate Education Committee:

On behalf of Schools for Fair Funding, which is comprised of 14 mid-size school districts, I would like to request the introduction of a school finance bill. This year's bill is nearly identical to SB 465 which this Committee introduced and held hearings on last session. Our proposal essentially redefines the state's finance formula in the manner outlined in the Augenblick & Myers study. The bill also includes a funding component to raise revenue to fund the changes.

We appreciate the committee's willingness to introduce the legislation.

*Senate Education Committee
2-3-05
Attachment 1*



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

Before the
Senate Committee on Education

By Mark Tallman, Assistant Executive Director/Advocacy
February 3, 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.

Senate Education Committee
2-3-05
Attachment 2



Mark Desetti, testimony
Senate Education Committee
February 3, 2005
Senate Bills 48 and 49

Madame Chairman, members of the committee, thank you for this opportunity to speak to you today in favor of both **Senate Bills 48 and 49**. Fundamentally, we view these bills as measures to protect Kansas public schools and Kansas taxpayers.

Senate Bill 48 protects school districts and taxpayers by holding contractors accountable for their work and any negative consequences that might come about because of their mistakes, oversight, or negligence. Bottom line here is – take responsibility. Too often responsibility and accountability are passed to others. Our schools take responsibility for their actions and are held accountable for their work; why shouldn't contractors?

Senate Bill 49 simply states that in disputes with out-of-state contractors, Kansas law shall apply. We think this is perfectly logical. If you look for work in Kansas, you ought to be willing to abide by and respect Kansas statutes, rules, and regulations. Additionally, this bill gives school districts the opportunity to find relief in a court system and under rules they are familiar with. It just makes sense.

Our sole concern is the question of the impact **SB 49** might have on insurance contracts with insurance companies located outside of Kansas. We have contacted the Insurance Commission to see how insurance regulations might take care of this but have not yet received an answer. We would hope that this committee knows how this would apply to insurance contracts.

Both of these bills will protect taxpayers. Litigation in courts outside of Kansas will almost certainly be more costly to pursue and where schools are concerned the costs are assumed by taxpayers. If contractors shift the responsibility for their mistakes to the contracting school district, again it is the taxpayer who shoulders the bill. That's just not fair.

Senate Education Committee
2-3-05
Attachment 3

**Summary of School Finance Discussions Held by
the Senate Education Committee**

“Suitable Education”

- Committee members discussed the definition of “suitable education” primarily in the context of the Augenblick & Myers (A&M) study. Senator Vratil emphasized the point that the definition of “suitable education” in the statute, which was expanded by the Legislative Educational Planning Committee, was for the purpose of the contract to be entered into by the Legislative Coordinating Council for the professional evaluation of school finance and is not a definition that binds the Legislature today.
- The A&M study was based on a definition agreed to in 2000 and did not take into account changes that have occurred since then, including increased graduation requirements imposed by the State Board of Education. The main and overwhelming change is enactment of the No Child Left Behind Act, which imposes greater requirements on school districts in the areas of testing, teacher quality, data collection and reporting, and parental choice. Thus, the definition of “suitable” has changed since the A&M study was completed and, as the Court says, is not stagnant.
- Committee members expressed the idea that “suitable education” should focus on outputs and student performance, not inputs or traditional lists of required courses and other items.
- Senator Goodwin pointed out that schools must meet state and federal mandates, such as special education, which impact how much money it costs to deliver educational services.

BSAPP

- There is general agreement that BSAPP must be increased in order to comply with the Court ruling. Increasing BSAPP, the at-risk weight, the bilingual weight, and special education are viewed to be at the heart of the Court’s opinion and the areas which must be addressed by the Legislature. In order to determine what the cost of education really is, the State Department of Education conducted a survey of 55 school districts that are representative of large and small, urban and rural districts, and asked them what it would cost for them to provide a suitable education, based on the definition of “suitable” used for the A&M study and the requirements of the No Child Left Behind Act. Sample districts were asked to provide the cost figures for a regular student, an at-risk student, and a bilingual student. Costs for special education students were among those excluded.

Weights

- There is general agreement that the Court singled out the at-risk and bilingual education weights as problematic. Other weights, such as transportation, new school facilities, and

*Senate Education Committee
2-3-05
Attachment 4*

vocational education, seem to be of lesser importance or were not focused on in the Court's opinion. The Committee seemed generally to agree that these are the weights that must be addressed in order to respond to the Court. (Committee members asked for additional information on at-risk funding.)

- Members discussed the A&M recommendation to delete the vocational education weighting because, in their opinion, vocational education courses are no more expensive to offer than some other courses which are not weighted. Senator Lee advocated leaving the vocational education weight in the formula, at least for the present. Senator Teichman strongly supported leaving the weight in.

Special Education

- There is general agreement that special education funding must be increased, based on the Court's decision. Special education is the one area in which we have information about actual costs, based on prior year expenditures. The present level of excess costs funding is 81.7 percent and will go to 79.4 in FY 2006, based on the Governor's recommendation. Committee members mentioned various funding levels, the highest being full funding of excess costs, and discussed a multi-year phase in of increased funding, including the suggestion that the phased-in funding should attain the 95 percent level for excess costs. The Committee also discussed funding special education on a per FTE basis, rather than on a teaching unit basis, or a combination of the two.

Performance Gap

- The Committee ties the performance gap to both findings of the Court and the implications of meeting requirements of the No Child Left Behind Act. In either case, there is acceptance of the fact that more money and effort must be put into ensuring that at-risk students and minority students succeed.

Rational Basis for Funding and Actual Costs

- The Court is less deferential to the Legislature than in its 1994 decision when it observed that "compromise is at the heart of the Legislative process." In *Montoy*, the Court observes that "the present financing formula increases disparities in funding, not based on a cost analysis, but rather on political and other factors not relevant to education." The Committee believes that actions of the Legislature must be justified on the basis of actual data or some other justification that is not arbitrary. Members discussed ways to accurately calculate true costs of an education on an ongoing basis. The role of the Legislative Division of Post Audit or an oversight committee was discussed in connection with periodically assessing school district costs and efficiencies.

Inflationary Index and Constant Monitoring

- Note was taken of the A&M recommendation that there be constant adjustments to a formula

based on the rate of inflation. The Committee also reviewed responsibilities and duties of the oversight committee created by the 1992 legislation, which terminated June 30, 1994, which was charged with monitoring implementation of the school finance act. In general, the Committee recognizes the need to keep funding for school finance current with inflation and with additional demands placed on the educational system. This is seen as a mandate of the Court, in recognition of the Court's statement that "the issue of suitability is not stagnant but requires constant monitoring."

USD Efficiency

- Senator Apple questioned how we know whether USDs are efficient and whether there is ongoing analysis or evaluation of USD efficiency. Senator Vratil responded that we have the A&M study, studies done by the Legislative Division of Post Audit, and informal analyses by legislators.

Reorganization and Cost Savings

- The Committee reviewed current arrangements whereby USDs share superintendents and services and reviewed current incentives for USDs to consolidate. (No data were available as to the cost savings that might result if more school districts shared administrative personnel or services with one or more other districts.)
- Senator Lee noted that Kansas has a strong tradition of local control and expenditures of USDs have to be approved by locally elected boards of education.
- Senator Pine believes that, before we give schools more money, we need to be sure we are spending money as efficiently as possible.
- Senator Apple stressed that we need to really understand our costs, in the same way a private business person is aware of cash flow, resources, and other components of operating a business.
- The Committee discussed other ways that districts cooperate, such as participating in interlocal or cooperative agreements.

Other Programs

- Senator Steineger specifically discussed other programs that ought to be included in a new funding scheme, such as all-day kindergarten and parent education. In general, the Committee understands the importance of other programs, such as professional development, early childhood, and extended day programs, although these were not specifically discussed, except by Senator Steineger.

USD Employee Health Benefits

- Senator Goodwin expressed concern about school districts that do not offer health benefits or pay very little toward employee health benefit plans. Reference was made to problems associated with USD employees entering the state employee health benefit plan or the option of developing a separate plan for USD employees. Note was made of the five-year pilot program that was considered in several school finance proposals during the 2004 Session.

Local Option Budget

- Very little discussion occurred specifically about the local option budget, except to observe that districts currently are equalized to the 75th percentile.

Funding Source

- The Committee has not discussed increasing the mill levy for school districts nor did it discuss in any detail alternative funding sources, such as sales taxes or a tax increase in general.

Timetable

- Members discussed the possibility of phasing in a new funding scheme over a several year period and generally agreed on the need for a long-term plan.

General

- The Committee reviewed demographic information compiled by the Kansas Association of School Boards which gave historical information about the loss of population in many Kansas counties and projected that, based on recent patterns, growth in most areas will not be as robust as in the past ten years, even in those parts of the state that have grown rapidly.

Staff Note: This summary is based on staff notes taken during meetings. If any member believes he or she was misquoted or if a member made a point that I failed to include, please contact Carolyn and I will revise the summary.