

MINUTES OF THE HOUSE EDUCATION COMMITTEE

The meeting was called to order by Chairman Kathe Decker at 2:00 on June 23, 2005 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research
Carolyn Rampey, Kansas Legislative Research
Jill Wolters, Revisor of Statutes Office
Ann Deitcher, Committee Secretary

The Chair called on Kathie Sparks to explain the supplemental note on **SB 3**, (Attachment 1), as well as the adopted floor amendments, (Attachment 2).

Copies of the amended **SB 3** were distributed.

A motion was made by Representative Decker and seconded by Representative Merrick to delete sections 2 and 3 of **SB 3**. The motion passed on a voice vote.

Representative O'Neal made the motion that was seconded by Representative Gordon to remove from Section 4 of **SB 3** the reinstatement of the correlation weighting. The motion passed on a voice vote.

Representatives Crow, Larkin and Winn asked to be recorded as voting no.

Representative O'Neal made the motion to strike all funding pieces from **SB 3**. The motion failed for lack of a second.

Representative O'Neal moved that Section 5 of **SB 3** be deleted. Representative Merrick seconded the motion that passed on a voice vote.

Representatives Crow, Larkin and Winn asked to be recorded as voting no.

Representative O'Neal made the motion that the word "are" on line 14 of page 5 of **SB 3** be changed to "is". The motion was seconded by Representative Gordon and passed on a voice vote.

A motion was made by Representative Larkin and seconded by Representative Crow that was in regard to line 19 on page 5. It would delete "by a vote of five members" and instead require a unanimous vote for the hiring or termination of legislative counsel. The motion failed on a voice vote.

A motion was made by Representative O'Neal and seconded by Representative Hazlett to delete Section 8 of **SB 3**. The motion passed on a voice vote.

Representatives Crow, Larkin and Winn asked to be recorded as voting no.

A motion was made by Representative O'Neal to amend Section 10 of **SB 3** to include language that would make it clear that the cost study would include input and outcomes. The motion was seconded by Representative Gordon and passed on a voice vote.

Representatives Crow, Larkin and Winn asked to be recorded as voting no.

CONTINUATION SHEET

MINUTES OF THE House Education Committee at 2:00 on June 23, 2005 in Room 519-S of the Capitol.

Regarding page 16 of Section 11 of SB 3, a motion was made by Representative Winn and seconded by Representative Larkin to delete lines 13 through 17. The motion failed on a voice vote.

Representatives Crow, Larkin and Winn asked to be recorded as voting yes.

A motion was made by Representative Winn and seconded by Representative Larkin that lines 15 through 18 on page 15 of SB 3 be deleted. The motion failed on a voice vote.

A motion was made by Representative O'Neal that Sections 11 through 14 be deleted in SB 3. Representative Merrick seconded the motion which passed on a voice vote.

Representative O'Neal moved for the deletion of Section 16 in SB 3. The motion was seconded by Representative Gordon and passed on a voice vote.

Representatives Crow, Larkin and Winn wished to be recorded as voting no.

Representative Crow made a motion that regarding Section 17 in SB 3 the date be changed on line 25 from August 25 to September 30. The motion was seconded by Representative Winn but failed on a voice vote.

Representative O'Neal moved that (b) and (c) of New Section 18 of SB 3 be deleted. Representative Hazlett seconded the motion which passed on a voice vote.

Carolyn Rampey explained that New Section 19 consisted of the same language that was in SB 5.

Representative O'Neal moved that the language of SB 5 be moved into Section 19 of SB 3. The motion was seconded by Representative Gordon and carried on a voice vote.

Representatives Crow, Larkin and Winn wished to be recorded as voting no.

Representative O'Neal requested that language be reinstated to SB 3 regarding the cost of living provisions from last year. This would address concerns about the deletion of language regarding the teacher salary enhancement and state that the teacher must live in that district to receive it.

A motion was made by Representative O'Neal and seconded by Representative Merrick that this amendment be made in SB 3. The motion passed on a voice vote.

A substitute motion was offered by Representative Merrick and seconded by Representative O'Neal that would reinstate the extraordinary declining enrollment provision that was in HB 2247. An exception would be that every school district across the state having declining enrollment for 1 year and was utilizing the 25% LOB then would be entitled to appear before the Board of Tax Appeals to ask for permission to levy a property tax. The substitute motion carried on a voice vote.

Representative O'Neal offered a substitute motion for SB 3. The substitute motion was seconded by Representative Gordon and passed on a voice vote. (Attachment 3).

CONTINUATION SHEET

MINUTES OF THE House Education Committee at 2:00 on June 23, 2005 in Room 519-S of the Capitol.

Representative O'Neal requested an amendment to **SB 3** reinstating site-base budgeting that had originally been in the bill. The motion was seconded by Representative Merrick and passed on a voice vote.

Representative Decker moved for an amendment to **SB 3** that would put all funds distributed on an FTE basis.

The bill was made a substitute bill, seconded by Representative DeCastro and passed on a voice vote.

The meeting was adjourned at 5:10 p.m. The next meeting will be on call of the Chair.

SPECIAL SESSION OF 2005

SUPPLEMENTAL NOTE ON SENATE BILL NO. 3

As Amended by Senate Committee of the Whole

Brief*

SB 3 would provide an additional \$133,640,000 in state aid for schools and would provide \$27.1 million in potential local option budget property tax relief. New money attributable to the increase in Base State Aid Per Pupil (BSAPP) would be dedicated to classroom or instructional expenditures. The bill would equalize school district capital outlay levies, create the At-Risk Council to address the needs of the most vulnerable students, and amend provisions in current law to authorize the Legislative Coordinating Council to contract with an attorney to represent the Legislative Branch on legal issues. The bill would modify the scope of the Legislative Division of Post Audit cost study to take into account student outcomes. For school year 2005-06 only, the bill would delay from August 25 to September 7 the deadline for school districts to file their budgets with county clerks and increase the limit on school district contingency funds from 4 percent to 6 percent.

Major features of the proposed legislation are listed below. (Amounts of increase are in addition to appropriations made by the 2005 Legislature to fund HB 2247.)

Changes in the Formula

- BSAPP—Increase by \$50 from \$4,222 to \$4,272—\$27.3 million.
- At-Risk Weighting—Increase from 0.145 to 0.197—\$30.0 million.
- Special Education—Increase from 85 percent to 92 percent—\$21.4 million.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Select Comm. on School Finance

Date 6-23-05

Attachment # 1

- Capital Outlay Program—Equalize capital outlay program up to the 8 mill limit, based on the formula for Capital Improvements State Aid Program—\$18.0 million.
- KPERS-School—Fund payroll growth due to the BSAPP increase to \$4,272—\$2.5 million.
- Local Option Budget—Fund the increase due to the higher BSAPP—\$7.6 million.
- Property Tax Relief—Fund supplemental general state aid to the to the 81st percentile in order to allow school districts to reduce levies for local option budgets—\$27.1 million.
- Reimpose correlation weighting with the threshold at 1,671—\$26.8 million.

TOTAL: \$160.7 million

Other Policy Changes

- Legislative Division of Post Audit Cost Study—Statutes would be amended to make it clear that the study is output oriented and based on student performance and cost data available through the 2004-05 school year and reflects those rules and regulations and standards which are adopted by the State Board of Education and state statutes which are in effect on July 1, 2005.
- Litigation Against the State—No money from a school district's general fund could be spent for attorney fees or other costs in support of litigation against the State of Kansas or any state officer, official, agent, or agency.
- Legislative Counsel—Current law would be amended to authorize the Legislative Coordinating Council (LCC) to contract with an attorney in private practice to serve as Legislative Counsel and represent the Legislature in matters relating to Article 6 of the *Kansas Constitution* and such other matters as directed by the LCC.
- School District Budget Deadlines—For the 2005-06 school year only, delay from August 25 to September 7 the deadline for school districts to file their budgets with county clerks.

- New Funding Dedicated to Instruction—Require that, on a per pupil basis, increased funding attributable to the \$50 increase in Base State Aid Per Pupil be spent in the classroom or for instructional purposes. Also state that it is the public policy goal of the state that at least 65 percent of money appropriated by the state to school districts must be spent in the classroom or for instructional purposes.
- School Closure Prohibited—Specify that no court of the state, appointee of the court, or a judicial panel has the authority under any case involving a violation of Article 6 of the *Kansas Constitution*, including the *Montoy* case, to enforce any order or remedy that would result in the closure of public schools or prevent the distribution of funds for public education.
- School District Contingency Funds—For the 2005-06 school year only, increase the cap on school district contingency funds from 4 percent of general funds budgets to 6 percent.
- The “At-Risk Council”—Create a six–member body which will do the following:
 - Identify those conditions or circumstances that contribute to making a student at-risk of not succeeding in school;
 - Develop and recommend public school programs and services which meet the needs of at-risk students and help close the achievement gap;
 - Develop and recommend tools to assess and evaluate the effectiveness of approved at-risk programs; and
 - Recommend funding alternatives for approved at-risk programs.

The Council shall make a report on its activities to the Governor and to the 2010 Commission by October 1, 2006. The Council shall make a final report, including its recommendations, to the Governor and the 2010 Commission by October 1, 2007. The Council shall terminate June 30, 2007.

The Council shall consist of the following members:

- The chair, who shall be appointed by the Governor from a list of four individuals, of whom two have been nominated by the President of the Senate and two have been nominated by the Speaker of the House; and

- Five members who have expertise in serving at-risk students, one each appointed by the President, the Speaker, the Senate Minority Leader, the House Minority Leader, and the Commissioner of Education, who may appoint himself or herself.

No current member of the Legislature shall be a member of the Council. The Council shall be attached to the LCC for budgetary purposes and shall be subject to the LCC's approval. Members attending authorized meetings shall be paid for travel and subsistence.

Background

SB 3 is in response to the supplemental opinion issued by the Kansas Supreme Court on June 3, 2005, in the school finance case, *Montoy, et al. v. State of Kansas, et al.*, in which the Court found that school finance legislation enacted by the 2005 Legislature falls short of standards set by Article 6 of the *Kansas Constitution*.

The proposal by the Senate Education Committee increases funding for elementary-secondary education and dedicates that increased funding to areas of "concern" identified by the Court: BSAPP, the at-risk weighting, and special education. The legislation addresses equalization aspects of funding for schools by equalizing the capital outlay mill levy up to the 8 mill cap and providing more state aid for local option budgets.

The bill would clarify the scope of the cost study to be performed by the Legislative Division of Post Audit to conform to the Court's directive that it be outcomes oriented.

Amendments added by the Senate Committee of the Whole would require that new funding attributable to the increase in BSAPP be dedicated to classroom or instructional expenditures and would prohibit the closure of schools as the result of any court action. (The Senate Committee of the Whole also made a technical amendment to correct a definition.)

The table below shows, for selected aspects of the school funding formula, how SB 3 builds upon funding already appropriated for education by the 2005 Legislature.

**Selected Changes to Formula
Based on 2005 HB 2247 and SB 3**

Prior Law	HB 2247	SB 3	Total
BSAPP-\$3,863 (allotment rate)	\$4,222 \$63.3 million	\$4,272 \$27.3 million	\$90.6 million
At-Risk Weighting-0.10	0.145 \$26.0 million	0.197 \$30.0 million	\$56.0 million
Special Education- 81.5%	85% \$17.7 million	92% \$21.4 million	\$39.1 million
Bilingual Education-0.20	0.395 \$11.0 million	No change	\$11.0 million
Capital Outlay-not equalized, no cap	Cap at 8 mills	Equalize to 8 mills \$18.0 million	\$18.0 million
LOB Property Tax Relief-equalized to the 75 th percentile	No change	Equalized to the 81 st percentile \$27.1 million	\$27.1 million
Correlation Weighting-1,725 threshold	Eliminated	Reimposed with 1,671 threshold \$26.8 million	\$26.8 million
KPERS School	NA*	Increase due to higher BSAPP \$2.5 million	\$285.1 million
LOB	Growth due to higher BSAPP \$6.4 million	Growth due to higher BSAPP \$7.6 million	\$14.0 million
TOTAL	\$124.4 million	\$160.7 million	\$285.1 million

*Increases in KPERS-School due to higher BSAPP were not calculated separately from other increases.

SB 3 Floor Amendments Adopted

- **Technical Amendment.** Amend the definition of "adjusted enrollment" to include "correlation weighting." (Amendment corrects an inadvertent omission.)
- **Increased Funding for Instructional Purposes.** Require that, on a per pupil basis, increased funding attributable to the \$50 increase in Base State Aid Per Pupil be spent in the classroom or for instructional purposes. Also state that it is the public policy goal of the state that at least 65 percent of money appropriated by the state to school districts must be spent in the classroom or for instructional purposes.

Note: "Instruction" includes salaries for teachers and teacher aides; classroom supplies; activities such as field trips, music, and art; and payments to private institutions for special needs children. It does not include costs for administration; plant operations and maintenance; food service; transportation; instructional support such as librarians; staff professional development; curriculum development; student support services such as nurses and counselors; and costs for construction, major repairs, and renovation.

- **School Closure Prohibited.** Specify that no court of the state, appointee of a court, or a judicial panel has the authority under any case involving a violation of Article 6 of the *Kansas Constitution*, including the *Montoy* case, to enforce any order or remedy that would result in the closure of public schools or prevent the distribution of funds for public education.

House Substitute for Senate Bill 3

As Recommended by House Committee on School Finance

Summary of Proposal: This proposal would add an additional \$11.4 million in state aid for schools for the Cost of Living weighting and the Local Activities Budget within the school finance formula. In addition, the proposal would place in statute policy changes which are described below.

Major funding provisions of the proposal are as follows:

- The bill authorizes school boards to impose a new property tax levy for the Teacher Salary Enhancement Fund by creating a new Cost of Living weighting. The State Board of Education would be required to determine in which school districts the average appraised value of a single family residence is more than 25.0 percent higher than the statewide average value. If the value is higher and that district has adopted a local option budget (LOB) that is equal to the maximum percentage allowed by law, the district would qualify to levy the ad valorem tax. The weighting would be equalized by the state at the 75th percentile. The local school board would be required to pass and publish a resolution authorizing the levy, subject to protest petition. Moneys deposited into the Fund could only be used for teacher salary enhancement for teachers living within the district that levied the tax.

Estimated cost – \$1.0 million

- The bill would authorize school districts to make a levy for the Local Activities Budget (LAB) which would be limited to 2 percent of the school district general fund budget and be equalized at the 75th percentile. Local school board establishment of the Local Activities Budget tax would be subject to a protest petition. LAB revenue could be used only for classes or activities not required by state law or accreditation requirements of the State Board of Education. In addition, LAB revenue could not be transferred into the general fund or the supplemental general fund budgets of a district. Local school boards would be authorized to exempt certain classifications of property from the Local Activities Budget property tax.

Estimated cost– \$10.4 million

- The bill would create the extraordinary declining enrollment weighting, which is applicable to any school district that has experienced an enrollment decline from the preceding school year and has adopted the maximum LOB percentage. The bill permits a school district to appeal to the State Board of Tax Appeals for permission to levy a property tax for up to two years.

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Major policy features of the proposal are as follows:

- A provision is added in law the Legislature would not be required to pay cost attributable to meet accreditation requirements established by rules and regulations or standards adopted by the State Board unless expressly approved by legislative enactment.
- For the 2005-06 school year only, the school district budget deadline for filing the budget with county clerks would be delayed from August 25 to September 7.
- For the 2005-06 school year only, the cap on the school district contingency fund would be increased from 4 percent to 6 percent of the school district's general fund budget.
- A provision is added that it is the public policy goal of the State of Kansas that at least 65 percent of the moneys appropriated, distributed or otherwise provided by the state to school districts would be expended in the classroom or for instructional purposes as defined by the National Center for Educational Statistics.
- The scope of the Legislative Division of Post Audit cost study would be clarified to be input and outcome oriented and to be based on the State Board of Education accreditation requirements in place prior to July 1, 2005.
- A provision would be added to the School District Finance and Quality Performance Act providing that a district that has failed to meet State Board of Education standards and is in jeopardy of not being accredited, would be required to use discretionary funds for the programs implicated in the failure.
- A provision would require school districts to develop plans to implement site-based budgeting using a form prescribed by the State Department of Education, with full implementation by the start of school year 2006-07.
- A provision would be added that the State Board of Education would be required to design and implement an administrative reorganization plan for all school districts by July 1, 2007. In addition, the State Board would be required to submit to the Legislature a report on its progress in designing and implementing its plan by the first day of the 2006 Legislative Session.
- A provision would be added that no money from a school district's general fund could be spent for attorney fees or other costs in support of litigation against the State of Kansas or any state officer, official, agent or agency.
- A provision would be added that the Kansas Department of Education is to have the new computer reporting system required by 2005 HB 2247 in use by December 31, 2005.
- The bill would allow the preschool at-risk, at-risk, bilingual, and vocational education funds to carry forward balances or be used for teacher bonuses when the teachers' efforts resulted in achievement of mastery of basic reading skills

based on State Board guidelines (preschool at-risk and at-risk funds); in achievement of English for ESL students (bilingual education funds); or increase in the percent of student employment placements (vocational education funds).

- The bill would require that any party alleging a violation of Article 6 of the *Kansas Constitution* file a written notice with the Chief Clerk of the House of Representatives and the Secretary of the Senate that includes a statement of the factual basis of the violation and a statement of the amount of monetary damages that is being requested. Once the notice is filed, no action would be allowed until after a written response by the Kansas Legislature is received or until after 120 days has passed following the filing of the notice of claim, whichever occurs first.
- A provision would be added in law that the public policy of the state would be that the Legislature would not be required to pay costs attributable to meeting federal law or rules and regulations or standards adopted by the State Board in conformance with federal law unless federal funding is provided in an amount deemed adequate by the Legislature.
- A provision would be added that any cost study or audit would not be admissible as evidence in any action involving Article 6 of the *Kansas Constitution* action, unless adopted by the Legislature.
- A provision would be added in law that no court of the state, appointee of a court, or a judicial panel has the authority under any case involving a violation of Article 6 of the *Kansas Constitution*, including the Montoy case, to enforce any order or remedy that would result in the closure of public schools or prevent the distribution of funds for public education.
- A provision would be added in law that the Legislature, not the State Board of Education, would be responsible for determining the amount of money to be allocated to school districts under the various state aid programs and for distributing the money. The Legislature would certify to the Director of Accounts and Reports the amount of money due to each district, which would be payable to the district pursuant to vouchers approved by the Legislature.
- A provision would be added in law that prevents the Kansas Supreme Court from assuming original jurisdiction of a new legislative enactment under remedial action. Legislation would require challenge in a court of competent jurisdiction and the parties in the lawsuit would be afforded the right to a trial and its attendant due process.
- A provision would be added in law that establishes the burden of proof in any suit brought by a plaintiff alleging a violation of the Article 6 of the *Kansas Constitution*. The burden would be on the plaintiffs to prove that state funds appropriated and allocated are not sufficient to fund the cost of providing the subjects or areas of instruction required by state law, including reasonable and necessary related instruction, administration, support staff, supplies, equipment, and building costs. In determining whether the plaintiffs have met their burden of proof, the court would not be bound by the manner in which state funds were allocated, but would make a determination based on an analysis of adequacy, had state funds been utilized first to fund the reasonable and necessary costs of

providing the required subjects or areas of instruction and related services.

- Current law would be amended to provide for filling the office of “Legislative Counsel,” who shall be an attorney in private practice employed by the Legislative Coordinating Council (LCC) pursuant to a contract between the LCC and the attorney. The Legislative Counsel would represent the Legislature in matters relating to Article 6 of the *Kansas Constitution* and such other matters as directed by the LCC.
- A provision would be added in law that clarifies that persons representing the Legislature may present oral and written testimony in any Article 6, Section 6, of the *Kansas Constitution* action. In addition, nothing in the Act would constitute a waiver of any rights and immunities enjoyed by the Kansas Legislature under the federal or state constitutions or statutes of the state.