

MINUTES OF THE HOUSE HIGHER EDUCATION COMMITTEE

The meeting was called to order by Chairman Tom Sloan at 3:30 P.M. on March 13, 2006 in Room 231-N of the Capitol.

All members were present except:

Representative Valdenia Winn- excused

Committee staff present:

Mary Galligan, Kansas Legislative Research Department

Deb Hollon, Kansas Legislative Research Department

Art Griggs, Office of the Revisor

Haley DaVee, Committee Secretary

Conferees appearing before the committee:

Bill Sneed, University of Kansas Hospital Authority

Robin Kempf, Assistant Counsel, Kansas Board of Regents

Representative Melody Miller

Senator Donald Betts

Bill Rich, Associate Dean of Washburn School of Law

Julie Ariagno

Others attending:

See attached list.

Chairman Sloan directed the committee's attention to five sets of minutes from previous meetings and asked them to read the minutes and let the committee secretary know by 5 p.m. on Wednesday, March 15 if there are any changes to be made. Barring any requests for changes, the minutes will be considered adopted.

Chairman Sloan opened the hearing on **SB 375 - Retirement and disability benefits of employees of state board of regents or state educational institutions under the board's management** and welcomed Bill Sneed, University of Kansas Hospital Authority, to the committee as a proponent of **SB 375**. (Attachment 1)

Robin Kempf, Associate General Counsel for Kansas Board of Regents, was welcomed to the committee to testify in support of **SB 375**. (Attachment 2) She noted that the bill would clean up unintended consequences from the 2005 Legislative session's changes to make the Board of Regents' long term disability benefit program consistent with the U.S. Internal Revenue Code. Representative Pottorf asked a question.

Chairman Sloan closed the hearing on **SB 375** and opened the hearing on **HB 2864 - Chester I. Lewis Scholarship Program** and welcomed Representative Melody Miller to the committee to testify as a proponent. Representative Miller provided the committee with a brief introduction of the bill and why it would be beneficial to the state of Kansas.

Senator Donald Betts was welcomed to the committee to testify in support of **HB 2864**. (Attachment 3) He suggested that the bill would provide incentives for minority individuals to attend Kansas law schools, while also guaranteeing increased diversity of lawyers in Kansas by requiring scholarship recipients to practice law in Kansas for five years.

Julie Ariagno, testifying on behalf of Judge Eric Yost, who was unable to attend, was welcomed to the committee as a proponent of **HB 2864**. (Attachment 4) Chairman Sloan then welcomed William Rich, Professor of Law and Associate Dean of Academic Affairs of Washburn University School of law, to testify as a proponent of **HB 2864**. (Attachment 5)

Chairman Sloan drew the committee's attention to neutral written testimony submitted by the Kansas Board of Regents. (Attachment 6) Representatives Storm, Horst, Hill, and Sloan asked questions and provided comments on the bill.

The hearing on **HB 2864** was closed and Chairman Sloan turned the committee's attention to **SB 375 - Retirement and disability benefits of employees of state board of regents or state educational**

CONTINUATION SHEET

Minutes of the House Higher Education Committee at 3:30 P.M. on March 13, 2006 in Room 231-N of the Capitol.

institutions under the board's management.

Representative Menghini introduced an amendment that would allow universities to allot the same benefits to classified and unclassified employees as related to leave time. (Attachment 7)

Representative Menghini moved that her amendment to SB 375 be adopted. Representative Horst seconded the motion.

Representatives Pottorf and Krehbiel offered comments.

The motion carried.

Representative Horst moved that SB 375 be passed as amended. Representative Kelsey seconded the motion.

The motion carried. Chairman Sloan asked that Representative Menghini carry the bill.

The meeting was adjourned at 4:40 p.m. The next meeting is scheduled for March 20, 2006 at 3:30 in Rm. 231-N.

Memorandum

TO: THE HONORABLE TOM SLOAN, CHAIR
HOUSE HIGHER EDUCATION COMMITTEE

FROM: WILLIAM W. SNEED, RETAINED COUNSEL
UNIVERSITY OF KANSAS HOSPITAL AUTHORITY

RE: S.B. 375

DATE: MARCH 13, 2006

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent the University of Kansas Hospital Authority. This is the Authority that the Kansas Legislature created to run and operate the hospital commonly referred to as KU Med. We appear here today in support of S.B. 375. During the work by the Senate, an amendment was added at our request. It can be found on page 14, lines 39-43 and page 15, lines 1-7 and 13-15.

As you know, the Kansas Public Employees Retirement System ("KPERS") is a statewide pension system that provides retirement benefits to teachers and other employees of the State of Kansas. The program also benefits employees of various agencies and instrumentalities of the State of Kansas (such as the University of Kansas Hospital Authority) that "affiliate" with KPERS, which entities are considered to be "participating employers" in the KPERS pension system. In addition to providing pension benefits to employees of such participating governmental employers, KPERS also provides a program of life insurance and long-term disability (LTD) benefits for those employees (who are referred to in the statute as "members").

For many years, the long-term disability benefit under the KPERS statute has been a fixed monthly benefit equal to 66 2/3% of the member's monthly compensation, payable until the disabled member reaches age 65 (or dies or begins to receive pension payments). Under this program (which has been in place for many years), disability payments are limited to members who are totally disabled, but there is no limit on the amount of compensation taken into account, and no limit or "cap" on the monthly disability benefit. However, legislation passed in May of 2005 authorized the KPERS board to restructure the KPERS disability benefit, and the KPERS board has not exercised that authority, effective January 1, 2006. Under the new disability program implemented by the KPERS board, the disability benefit is reduced to 60% of the

member's monthly compensation, with a maximum disability benefit of \$5,000 per month. Although the new program has a more flexible "own occupation" definition of disability for the first 24 months, the reduction in the benefit percentage (from 66 2/3% to 60%), and in particular the \$5,000 "cap" on monthly disability benefits, represents a significant cutback in benefits for many members.

The new \$5,000/month cap on disability benefits effectively limits the amount of compensation taken into account under the KPERS disability program to the first \$100,000 of a member's annual salary (\$100,000 divided by 12 months is \$8,333.33 per month, and 60% of that amount is \$5,000 per month). In other words, a disabled member who was making \$100,000 per year would receive \$5,000 per month in disability benefits, and a disabled member who was making \$150,000 per year would also receive the same \$5,000 benefit. Therefore, the member making \$100,000 per year would receive a disability benefit equal to 60% of pay, but the member making \$150,000 per year would only receive a 40% benefit. Members with even higher salaries receive a proportionately smaller disability benefit (expressed as a percentage of their pre-disability pay).

At first blush, it would seem that participating employers could simply "supplement" the KPERS disability benefit (for those members affected by the \$5,000 cap) with additional disability payments or insurance. However, under the KPERS program, disability payments are offset or reduced by any additional disability income the participant may receive from Social Security, worker's compensation, or any other employer-funded disability pay or insurance. Therefore, in the case of the member making \$150,000 per year, if his or her employer attempted to supplement the \$5,000 KPERS disability benefit with an additional \$2,500 per month (to bring the individual's "total" disability pay up to \$7,500 per month, or 60% of their pre-disability compensation), the KPERS benefit would simply be reduced to \$2,500, and the member would still only receive a total of \$5,000 (\$2,500 from KPERS and \$2,500 from the employer-provided benefit).

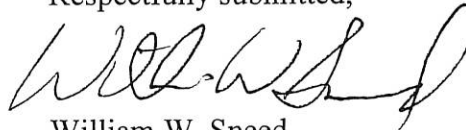
As outside counsel and legislative counsel for the University of Kansas Hospital Authority (UKHA), we were asked to develop a proposed legislative fix that would give outside authorities like UKHA the flexibility to "make up" this difference created by the KPERS change.

The proposed amendment to K.S.A. 74-4927 would create an exception to the general rule that employer-provided disability payments reduce or offset the KPERS disability benefit. Under the revised statute, the KPERS disability benefit would not be reduced or offset by a supplemental disability benefit provided by the disabled member's employer (whether through insurance or otherwise), so long as that supplemental benefit is based solely on the portion of the member's compensation that exceeds the maximum amount of compensation taken into account under the KPERS program (currently \$100,000 per year). By limiting the supplement to the portion of the member's salary that exceeds the maximum monthly compensation taken into account under the KPERS plan, there will be no duplication of benefits or unjust enrichment of the disabled member (which is what the KPERS offset provision is designed to prevent). Instead, it will allow participating employers to supplement the disability pay of those disabled members who, under the new program, will not otherwise be able to receive the full 60% of pay in the even they become disabled.

It should be noted that the proposed revision of the KPERS statute does not require any participating employer to provide a supplement, and does not mandate that the supplement (if any) be in any particular amount or percentage. More importantly, it will not increase KPERS' liability or cost for providing disability benefits. It simply allows participating employers, at their option, to provide a long-term disability supplement that will put all of its employees in the same position with respect to disability benefits, regardless of their level of compensation. It is our understanding that KPERS senior management is not opposed to this amendment, and has actually encourage the Hospital Authority to seek this legislative solution to the disparity in benefits caused by the \$5,000 cap on disability benefits under the new KPERS LTD program.

This bill passed the Senate 40-0. Neither KPERS nor the Kansas Board of Regents is opposed to this amendment to S.B. 375. Thank you, and we look forward to working with you on this bill.

Respectfully submitted,



William W. Sneed

WWS:kjb

023186 / 107006
WWSNE 1318601



KANSAS BOARD OF REGENTS

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

TELEPHONE – 785-296-3421
FAX – 785-296-0983
www.kansasregents.org

**House Higher Education Committee
March 13, 2006**

Testimony Regarding SB 375

**Robin Kempf
Associate General Counsel**

Chairman Sloan and Members of the Committee, thank you for allowing me to appear before you today to testify in support of Senate Bill 375. The Senate unanimously approved this legislation in a 40-0 vote on February 23.

As you may know, during the 2005 Legislative Session, a Board statute was amended to make the Board's long term disability benefit consistent with the U.S. Internal Revenue Code. Senate Bill 374 would clean up some unintended consequences of that 2005 legislation in two ways.

1. Senate Bill 375 combines two versions of K.S.A. 74-4927a that were passed during the 2005 Legislative Session. This amendment makes no substantive change in the legislation adopted last year.
2. Senate Bill 375 also clarifies the status of long term disability payments made under the KBOR long term disability plan. 2005 legislation amended the KBOR plan to make it compliant with the U.S. Internal Revenue Code. In doing so, the 2005 Legislature created a cash benefit for some recipients eligible for the long term disability benefit.

This cash benefit is now being assessed fringe benefits for the Workers' Compensation Self-Insurance Fund, the State Leave Payment Reserve Fund and KPERS death and disability even though the employees receiving the long term disability cash benefit could never be eligible for these three benefits. SB 375 would exempt the cash benefit from being assessed these fringes.

This exemption would generate some small savings to the Board and the state universities. In FY 2006, expenditures would be reduced by \$3,602; and in FY 2007, expenditures would be reduced by \$6,542. Over the long term, savings would drop to zero.

Thank you for your consideration of Senate Bill 375. I appreciate the opportunity to comment and would be happy to answer any questions.

House Higher Education Committee
3-13-06
Attachment 2

DONALD BETTS JR.

SENATOR, 29TH DISTRICT
SEDGWICK COUNTYSTATE CAPITOL BUILDING
ROOM 404-N
TOPEKA, KANSAS 66612-1504

(785) 296-7387 • 1-800-432-3924

1755 N. MADISON
WICHITA, KANSAS 67214
(316) 262-2812

COMMITTEE ASSIGNMENTS

RANKING MINORITY MEMBER: • ELECTIONS & LOCAL
GOVERNMENT

MEMBER: • WAYS & MEANS

• JOINT COMMITTEE ON
ADMINISTRATIVE RULES
& REGULATIONS

• JUDICIARY

March 13, 2006

Re: Testimony in Support of HB 2864

Dear Chairman Sloan and Honorable Committee Members:

The effectiveness of our state's legal system relies heavily on the public's respect and deference to the opinions and rulings of the courts. This deference to the "wisdom of the courts" is sustained by the public's confidence in the credibility and legitimacy of the lawyers prosecuting or defending the cases and the judges making the decisions. Unfortunately, based on historical and contemporary experiences, minority communities, when compared to whites, have a lower level of confidence in the judicial system.

This lack of trust is largely due to the lack of minority admissions to law schools contributing to the lack of minority representation in the courts. Included in your packet of testimony is a simple chart. It shows the enrollment of the two Kansas Law schools, broken down by ethnic group. It is both a tale of encouragement and discouragement. I am encouraged by the progress evident in the recruitment and matriculation of minorities overall. We should be proud that the percent of total minority enrollment has gone up each year. But I am discouraged that with all our efforts over the same time, we still have not achieved the level of participation that is necessary to have any hope of reassuring the minority community that they should have confidence in our judicial system, a judicial system designed to be fair and just for all people.

Unless it reflects the rich diversity of our state, our legal system's credibility and legitimacy will be questioned and challenged because perceptions of bias will persist. A young man in my district recounted his first experience as a defendant before the court on a traffic infraction.

"I stepped down into the court room...the judge and the prosecution was white. The court clerk, the court reporter, all white males...I felt all alone. My court-appointed attorney was white. Not even a member in the jury box was a minority. I had a serious question as to whether there could be justice in that courtroom. The only person that brought me comfort was my mother, and all she could do was watch me be sentenced."

Try to imagine the same scenario if the defendant were white, and there were no other whites in the room but the mother. How much faith would you have in the fairness of that process? Do these scenes not occur every day in our courts?

The only way to be certain that such scenes will become rare is to increase the number of minority attorneys being trained in our law schools and practicing in our state. That goal is the goal of the Chester I. Lewis scholarships. By providing tuition for minority students, more minority students will be encouraged to apply to our law schools. As more apply, more will be accepted and trained. Attrition due to financial problems will decrease, so more minority lawyers will graduate. Finally, as part of their receipt of the scholarship, these young minority lawyers have pledged to stay in Kansas to practice in Kansas courts for five years, meaning that there will be more Hispanic, more black, more Asian, more American Indian attorneys in our courtrooms.

I respectfully urge you to support HB 2864 to make sure that our justice system re-gains its credibility and legitimacy as all are represented in Kansas's courts.

Law School Enrollment in Kansas

3-3

Kansas University

	2001	2001	2002	2002	2003	2003	2004	2004
American Indian	7	1.3%	10	1.9%	14	2.5%	12	2.3%
Asian American	14	2.7%	19	3.5%	19	3.5%	36	6.9%
African American	16	3.1%	19	3.5%	25	4.5%	22	4.2%
Mexican American	0	0.0%	0	0.0%	35	6.4%	0	0.0%
Puerto Rican	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Hispanic	17	3.3%	29	5.4%	0	0.0%	42	8.0%
Total Minority	54	10.3%	77	14.3%	93	16.9%	112	21.4%
Caucasian	468	89.7%	462	85.7%	457	83.1%	412	78.6%
Total	522	100.0%	539	100.0%	550	100.0%	524	100.0%

Washburn University

	2001	2001	2002	2002	2003	2003	2004	2004
American Indian	4	1.0%	5	1.1%	8	1.7%	9	1.7%
Asian American	10	2.5%	11	2.4%	15	3.2%	13	2.5%
African American	21	5.3%	25	5.5%	21	4.4%	21	4.0%
Mexican American	5	1.3%	6	1.3%	8	1.7%	9	1.7%
Puerto Rican	2	0.5%	2	0.4%	1	0.2%	1	0.2%
Hispanic	7	1.8%	7	1.6%	5	1.1%	6	1.1%
Total Minority	49	12.5%	56	12.4%	58	12.3%	59	11.3%
Caucasian	344	87.5%	395	87.6%	415	87.7%	465	88.7%
Total	393	100.0%	451	100.0%	473	100.0%	524	100.0%

Combined Statistics

	2001	2001	2002	2002	2003	2003	2004	2004
American Indian	11	1.2%	15	1.5%	22	2.2%	21	2.0%
Asian American	24	2.6%	30	3.0%	34	3.3%	49	4.7%
African American	37	4.0%	44	4.4%	46	4.5%	43	4.1%
Mexican American	5	0.5%	6	0.6%	43	4.2%	9	0.9%
Puerto Rican	2	0.2%	2	0.2%	1	0.1%	1	0.1%
Hispanic	24	2.6%	36	3.6%	5	0.5%	48	4.6%
Total Minority	103	11.3%	133	13.4%	151	14.8%	171	16.3%
Caucasian	812	88.7%	857	86.6%	872	85.2%	877	83.7%
Total	915	100.0%	990	100.0%	1023	100.0%	1048	100.0%

DISTRICT COURT
EIGHTEENTH JUDICIAL DISTRICT
11TH FLOOR
525 N. MAIN
WICHITA, KANSAS 67203

ERIC R. YOST
JUDGE
DIVISION 12



(316) 383-7302
FAX (316) 383-7560

Written testimony of Judge Eric R. Yost
Before the House Committee on Higher Education
In support of House Bill 2864
March 13, 2006

Dear Chairman Sloan:

Thank you for holding a hearing on House Bill 2864. Please accept my apology for not being able to attend the hearing. I can assure you that I would have much preferred to have testified in person, but events beyond my control have interceded.

I strongly support the passage of House Bill 2864, introduced by Rep. Melody Miller. This legislation would establish the Chester I. Lewis scholarship program, by which qualified African-American and Hispanic college graduates would be given the incentive to attend one of our law schools through the waiving of the usual tuition. They would repay the generosity of the State by agreeing to remain in Kansas as practicing attorneys.

I am certainly aware that the general consensus among most of the citizenry is that there are too many lawyers, not too few. While that may arguably be true, in my opinion it is also true that there are acute shortages of certain types of attorneys, specifically African-American and Hispanic attorneys.

In the Wichita Bar, there are over 1,300 attorneys---but only a handful of minority attorneys. In civil, criminal and domestic courts, there is great demand on the part of an ever-growing minority population for legal services. Those individuals often prefer to hire as their attorney someone of their own ethnic background, but are often unable to do so because of a shortage of such attorneys. Many times, those who are unable to secure counsel of their first choice end up not being represented at all.

The legislation that is before your committee would, over time, rectify the shortage of minority attorneys. Right now, the best and brightest minority college graduates usually do not choose to attend law school. For some reason, they are making


House Higher Education Committee
3-13-06
Attachment 4

other choices. But just as we did in our program to increase the number of physicians who would be willing to practice in rural parts of the State, I think it incumbent on us to now create a financial incentive for bright young people to choose a career in the law. That incentive, of course, would be accomplished through the awarding of Chester I. Lewis scholarships to qualified students.

If properly motivated, I think we can entice our best and brightest minority college graduates to choose the law, and in so doing, fill a need that is very real--and which is growing every day. I can't help but think that the waiving of law school tuition, which would have only a minimal fiscal impact on the State, would serve as an effective incentive.

Thank you again for holding this hearing, and I appreciate the serious consideration that is being given to the passage of this much-needed legislation. If any member of the committee wishes to discuss this with me further, please feel free to call at 785-660-5612.

Good luck in your deliberations.



Judge Eric R. Yost
18th Judicial District

Kansas House of Representatives Committee on Higher Education

**Testimony in Support of House Bill 2864
Chester I. Lewis Scholarship Proposal
March 13, 2006**

**William J. Rich
Professor of Law and
Associate Dean for Academic Affairs
Washburn University School of Law**

The proposal to establish minority law scholarships for Kansas law students addresses a substantial need which Washburn Law School strongly supports. Legal education only succeeds when students learn to understand the perspectives that different segments of our community bring to the study of law, and equal justice will only be achieved when lawyers provide quality service to all segments of our society. In order to be sure that our classes will contain a full range in perspectives, we need to have more than mere token representation of racial and ethnic minorities within our student body. We endorse the goal of maintaining a student body that reflects the diversity of our state.

This endorsement is deeply rooted in the history of Washburn Law School. Ninety-six years ago Sam Cary became the first African American to graduate from Washburn in our fourth graduation class. All four of the African Americans who brought the case of *Brown v. Board of Education* to the federal courts were Washburn graduates. The first African American federal administrative law judge in the United States was a Washburn graduate. The first African American to serve as post-apartheid ambassador from the United States to South Africa was a Washburn graduate. We take great pride in this heritage, and in the knowledge that Washburn University has never tolerated discrimination against applicants on the basis of their race.

We also know how difficult it is to recruit and retain minority students, and we have devoted substantial efforts to that goal. Early minority recruitment efforts focused on hosting the regional Council on Legal Educational Opportunity (CLEO) summer institutes designed to prepare economically and educationally disadvantaged students for law school. When the United States Congress created the Patricia Roberts Harris Fellowships, with national objectives similar to those reflected in the Chester I. Lewis Scholarship proposal, Washburn Law School was selected as one of a small number of schools nationwide to receive repeated federal funding for minority law scholarships. Our experience with the Harris Fellowships demonstrates that government funded minority scholarship programs work: during the period in which a group of our students received those funds we experienced significant increases in both the number and the quality of applications that we received from minority applicants, and law school performance of our minority students also improved. At the time when we received that federal

House Higher Education Committee

3-13-06

Attachment 5

assistance, 15.5% of Washburn Law Students were minorities; that was the third highest percentage of the 44 law schools in the Midwest and Great Lakes regions as measured by the Law School Admissions Council.

It is important to note that receipt of federal funds for minority students did not result in lowering the law school's own financial commitment to that segment of our student body. Indeed, during the first three years in which we received fellowship money from the federal government, we also increased our own scholarship funding for minority students by more 28%. We are certainly prepared to make a comparable commitment to the State of Kansas: Funding for the Chester I. Lewis Scholarship Program would add to, and in no way diminish, this school's commitment to attracting minority students from throughout this state.

It is also important to note that, in spite of the efforts described above, there continues to be a serious need for additional funding for minority students. The Patricia Roberts Harris Fellowship Program was short-lived, and federal funds are no longer available for this purpose. The CLEO program has been scaled back and no longer receives the extent of support that was at one time available; students who participate in that limited program now must pay for the opportunity to do so. Data from the Law School Admissions Council indicates that, even at a time when nationwide law school applications have been rising, recent numbers of applications from Black and Hispanic students declined. The difficulty of recruiting minority applicants, and the particular problem of recruiting law students from within the Kansas minority communities, is reflected in our experience at Washburn. It should be noted that, to be consistent with current United States Supreme Court guidance, race is only one of a number of factors that we consider when seeking a diverse student body. While affirmatively seeking that diversity, in the last two years combined we have ended up with only 8 African Americans and 11 Hispanics or Native Americans who were Kansas residents at the time of their admission. Our experience tells us that if minority under-graduate students in Kansas had a greater likelihood of receiving financial assistance for obtaining a legal education, those numbers would increase.

Securing meaningful scholarship assistance for minority students is a constant challenge, and we would welcome additional state support of that effort. A disproportionately high percentage of minority students lack the financial resources needed for their legal education. We have never been able to independently fill that gap, and state scholarship assistance like the Chester I. Lewis program would help us meet a critical need.

It should be acknowledged that development of a scholarship program that limits assistance to targeted racial and ethnic groups brings with it a high risk of litigation, and therefore a need for careful drafting. Programs limited in that manner also create a need for extensive regulatory oversight. House Bill 2864 recognizes those risks, and goes a long ways towards establishing an acceptable program. Because we have such limited guidance in this area of the law, however, it is not clear that the proposal in its current form would survive judicial review. Courts give such programs close scrutiny, and may question why such a program should benefit some minority students who do not have significant financial need, and why some students who have substantial need and who bring different kinds of significant diversity to the classroom are being excluded. The key in this context is to give broad discretion to the state

agency that would be implementing the legislation so that it could tailor the program to legal constraints. as they develop.

Alternative approaches may give comparable recognition to the career of Chester Lewis and to the nature of the legal services that he provided to people of Kansas throughout his career. One alternative would be to provide funding for those who have demonstrated experience with and commitment to serving Kansas minority communities rather than targeting the race of the recipients per se. Another alternative would build upon recognition that the goal of maintaining racial and ethnic diversity runs parallel to the goal of maintaining socio-economic diversity. By using a broader definition of diversity, and by stating goals in economic rather than racial terms, it would be possible to design a scholarship program which would not be subject to constitutional challenge. For example, scholarships could be made available to Kansas residents who were eligible for Pell grants at the time when they attended college. By targeting those with recognized financial need, it would be possible to avoid serious challenges and to offer scholarships to a range of students who would bring important and diverse perspectives to the law schools. A substantial percentage of these students would belong to the racial and ethnic categories described in your current proposal.

I describe these alternatives in order to strengthen the prospects for successful adoption of the Chester I. Lewis Scholarship program. We want to give the proposal for that program our strong support, and recommend adoption by the Kansas Legislature.



KANSAS BOARD OF REGENTS

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

TELEPHONE – 785-296-3421
FAX – 785-296-0983
www.kansasregents.org

March 13, 2006

Representative Tom Sloan
Chairman
House Higher Education Committee
Statehouse, Room 446-N
Topeka, KS 66612

Representative Sydney Carlin
Ranking Member
House Higher Education Committee
Statehouse, Room 521-S
Topeka, KS 66612

Dear Chairman Sloan and Ranking Member Carlin:

On behalf of the Board of Regents, I write to you regarding House Bill 2864, legislation that would authorize the establishment of the Chester I. Lewis Scholarship Program. This legislation aims to address the under-representation of ethnic minority students in the Kansas law schools. It would authorize the Board of Regents to award scholarships for the study of law to students who belong to certain ethnic minority groups.

In sum, we thoroughly support the objectives of this legislative proposal, but have concerns about its legal viability given the approaches that courts have taken when reviewing higher education initiatives that define eligibility to receive benefits on the basis of race or ethnicity.

We appreciate that Representative Miller is so committed to proposing a scholarship program that would create enhanced opportunities for members of ethnic minority groups to acquire the education they need to join the legal profession. We applaud Representative Miller's recognition that members of such minority groups are under-represented in the legal profession, and we share her commitment to doing all we can to positively affect that situation. Not only would such a program operate to provide meaningful opportunities for aspiring minority lawyers, but by providing a tool that will be used to attract students of color into the state's law schools, this program would also help to produce the kind of diverse student body that enhances the educational experience for all of the students engaged in the study of law within these schools.

While we fully share the objectives and goals of this proposed legislation, however, we do have some concerns about its sustainability in the current legal environment. The United States Supreme Court has recognized in recent decisions that because the government has a powerful interest in creating diverse student bodies within their institutions of higher education, some consideration of race/ethnicity (race as a factor) is permitted as institutions make admissions decisions. Given that case law, it is logical to believe that public institutions could also take race/ethnicity into account as they make scholarship decisions.

House Higher Education Committee
3-13-06
Attachment 6

Our particular concern about House Bill 2864 is that it seems clearly to go beyond the “race as a factor” approach that the courts have approved, and essentially constitutes a “race/ethnicity as the factor” approach in which only members of particularly defined groups are eligible to receive the benefit, here a scholarship to law school. That approach has, in recent years, proved problematic when challenged in the courts. We recognize that the approach that seems to have court approval (race as a factor is okay, but limiting eligibility for benefits based membership in a particular racial or ethnic group is problematic) makes it difficult to achieve the very important and specific objectives sought by this proposal. However, we do believe that this is the reality within the current legal environment.

Because the proposed legislation would vest responsibility for implementing this scholarship program with the Board of Regents, we believe that it is incumbent upon us to raise these issues for your consideration. Again, we strongly support the objectives of House Bill 2864, and applaud Representative Miller’s commitment to expand opportunities for students of color to pursue legal education and legal careers. We are particularly grateful to have this opportunity to share our views with this Committee. Thank you very much for your attention to this testimony.

Sincerely,



Reginald L. Robinson
President & CEO

2006

Rep. Menghini

Proposed ~~Amendment~~ Amendme:

Sec. _____ (a) Any state educational institution, as defined by K.S.A. 76-711, is hereby authorized to provide vacation leave and discretionary day leave time in amounts not to exceed the vacation leave, and discretionary day leave time amounts applicable to unclassified employees of the institution.

(b) Subject to policies of the state board of regents, the policy regarding the amount of leave time for classified employees at state educational institutions shall be subject to the approval of the president or chancellor of the institution and may vary from leave amounts generally applicable to classified employees of state agencies that are not state educational institutions.