

SESSION OF 2011

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2390**

As Amended by Senate Committee of the Whole

Brief*

Senate Sub. for HB 2390 would amend the KAN-ED Act. The bill would phase out the KAN-ED network and would specify that the purpose of the program would be to facilitate schools', libraries', and hospitals' use of broadband technology-based video communication for distance learning and telemedicine.

The bill would direct the Kansas Board of Regents (Board) to provide the KAN-ED program and to contract for a one-time needs assessment for schools, libraries, and hospitals to include current and future broadband service and quality needs, as well as current connectivity and service quality. The contractor would conduct a number of analyses on the overall program based on the results of the needs assessment.

The Board would assist schools, libraries, and hospitals to apply for federal grants, including e-rate, consistent with the purposes of the act. The Board also would be required to develop a plan, based on the needs assessment, to facilitate distance learning and telemedicine; transition schools, libraries, and hospitals from the KAN-ED network to a commercial broadband internet connection when feasible; and establish the maximum level of funding that could be provided to each school, library, and hospital.

The Board would be required to adopt rules and regulations to implement and administer the act; to submit

*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>

annual reports to the Legislature; and to submit a report to several legislative committees by January 15, 2013, that addresses, among other things, distance learning and telemedicine usage, options for a fee structure, and options for funding the program for FY 2014 and beyond.

The KAN-ED program would be funded by a \$6.0 million appropriation in FY 2013 from the Kansas Universal Service Fund. The changes are described below.

Purpose of KAN-ED

Under the substitute bill, the purpose of the KAN-ED Act would be to provide a program to facilitate use of broadband technology-based video communication for distance learning and telemedicine. "Program" would be defined as the KAN-ED program created to facilitate schools', libraries', and hospitals' use of broadband technology-based video communication for distance learning and telemedicine. "Broadband technology-based video communications" would be defined as a class of communications technologies which may include switched ethernet services, DSL, cable modem, private line service, multiprotocol label switching (MPLS) based networks, managed or dedicated internet technologies, and other future technologies capable of supporting such applications.

Responsibilities of the Kansas Board of Regents under the KAN-ED Program

The Board would be assigned a series of responsibilities under the new program and would be authorized to contract for goods and services necessary to administer the program. The Board would be directed to:

- Provide a program to facilitate the use of broadband technology-based video communication for distance learning and telemedicine by schools, libraries, and hospitals;

- Set the parameters for a one-time needs assessment for schools, libraries, and hospitals that have a KAN-ED connection as of January 1, 2012, as such entities transition to a commercially provided broadband internet connection, to determine each entity's need, and the scope of the need, for distance learning and telemedicine delivery services;
- Contract with a private, independent third party to conduct the needs assessment, which shall include current and future broadband service and quality needs of each school, library, and hospital and current connectivity and service quality of broadband for each entity connected to the KAN-ED network. Based on the results of the needs assessments, the third party contractor shall:
 - Compare the utilization, efficiency, and effectiveness of KAN-ED to other similar programs in other states for schools, libraries, and hospitals;
 - Determine if the KAN-ED program is worth its cost in terms of price, service, quality, needed network upgrades, and increased utilization of broadband by schools, libraries, and hospitals;
 - Determine if there are alternative models or opportunities for broadband procurement by a school, library, or hospital; and
 - Determine if the services and applications offered by KAN-ED lead to full utilization of broadband technology by schools, libraries, and hospitals and their surrounding communities;
- Assist schools, libraries, and hospitals to apply for federal grants consistent with the purposes of the act;

- Collect data regarding distance learning and telemedicine usage and the volume of data accessed, and develop a methodology for updating and validating the data;
- Establish technical standards for operation and maintenance of the program, the method of monitoring program operations, and the method for adjusting the program to reflect the needs of participants based on the needs assessment or ongoing data collection; and
- Develop a plan, based on the needs assessment and data collected, that would facilitate the use of broadband technology-based video communication for distance learning and telemedicine; transition schools, libraries, and hospitals that have a direct KAN-ED connection as of January 1, 2012, to a commercially provided broadband internet connection so long as such connection is available that meets the entity's needs as determined by the needs assessment; and establish a maximum level of funding that may be provided to each school, library, and hospital. The plan may require program participants to bear part of the cost.

The Board would be required to adopt rules and regulations to implement and administer the provisions of the the act and would be authorized to appoint advisory committees as necessary to carry out the purposes of the act.

In addition, the Board would be required to submit an annual report to the Legislature, the Governor, and the Department of Education by January 15th of each year. The report would specifically account for ways in which the purpose of the act have been carried out, and the recommendations would note what changes are necessary to better address the purposes of the act.

By January 15, 2013, the Board would be required to submit a report to the Senate Committees on Utilities and Ways and Means, the House Committees on Energy and Utilities and Appropriations, and the Joint Committee on Information Technology. The report would cover the following topics:

- Distance learning and telemedicine usage;
- Options for a shared resource fee structure for schools, libraries, and hospitals for distance learning and telemedicine usage;
- Options to fund the KAN-ED program for FY 2014 and beyond;
- The technical standards for operation and maintenance of the program and the methods for monitoring and adjusting the program which were established by the Board; and
- The plan developed by the Board to facilitate distance learning and telemedicine by schools, libraries, and hospitals; transition those entities directly connected to KAN-ED as of January 1, 2012, to commercial internet when feasible; and establish the maximum funding level for each entity.

Funding

For FY 2013, the program would be funded by a \$6.0 million transfer from the Kansas Universal Service Fund (KUSF). On or before the 10th of each month, the KUSF administrator would pay from the KUSF 1/12 of the \$6.0 million to the State Treasurer. Funding options for FY 2014 and beyond would be presented to various legislative committees in the report submitted by the Board, which would be due on or before January 15, 2013.

The bill would be in effect upon publication in the *Kansas Register*.

Background

Funding for KAN-ED was the subject of several bills during the 2011 Session and a special interim study committee was authorized to evaluate the efficiency and effectiveness of KAN-ED. In addition, a Legislative Post Audit of the program was conducted to identify the critical services provided by KAN-ED and whether program members could afford to pay for the services currently offered through KAN-ED. The audit identified a number of inefficiencies and weaknesses in the network and recommended the Legislature determine whether the State should continue to provide the network and whether it should continue to pay for on-line content.

In response to concerns identified in the interim study and the audit, the Board indicated it would decommission the KAN-ED network over an 18-month period, assist members in migrating to a commercial internet provider or to KanREN, develop a needs assessment, provide support and training to members filing applications for federal e-rate funding, continue to file e-rate applications for FY 2013 to allow members time to transition to filing on their own, move to a subsidy program that will complement federal funds received by members to make the state funds go further, provide no on-line content beginning in FY 2013, and request \$6.0 million from KUSF for FY 2013 to effectively manage the decommissioning of the network.

SB 398 contained many of the provisions of the Board's proposal. The President and CEO of the Board testified in support of the bill in the Senate Utilities Committee, as did a representative of the Kansas Association of School Boards. The Kansas Library Association KAN-ED Liaison testified in support of the bill, but noted that commercial internet connections in rural areas may not be adequate, that

bandwidth amounts delivered may be far less than advertised and libraries will need help paying for internet service.

The President of the Kansas Cable Telecommunications Association testified in opposition to the bill, citing unnecessary delay in implementing the changes and concern about the oversight of KAN-ED, including who would conduct the needs assessment. Neutral testimony was provided by representatives of AT&T, Kansas Farm Bureau, USD 113 Prairie Hill, Kansas Rural Independent Telephone Companies, and the Kansas Hospital Association.

The Senate Committee on Utilities amended SB 398 to require the needs assessment address the scope of entities' needs and to change the date of the report to the legislative committees from February 1, 2013, to January 15, 2013, and require the report also to be distributed to the Joint Committee on Information Technology. The Committee also made a technical amendment before placing the contents of SB 398 into HB 2390 (a 2011 bill that would have repealed the KAN-ED Act) and adopting a substitute bill.

The Senate Committee of the Whole amended Senate Sub. for HB 2390 to add a definition of broadband technology-based video communication; delete "assist schools, libraries, and hospitals that have a direct KAN-ED connection as of January 1, 2012, to transition from such network connection a commercially provided broadband internet connection" from the purpose of the act; direct the Board to set the parameters of, rather than perform, the needs assessment called for in the bill; and specify that the needs assessment is to be conducted by an independent, third party contractor who shall complete a series of comparisons, analyses, and assessments of the KAN-ED program based on the results of the needs assessment.

The fiscal note prepared by the Division of the Budget for SB 398 indicates the bill would have no fiscal effect in FY 2013, and the extent to which the subsidy program would incur costs for the State in FY 2014 is not yet known.