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MEMORANDUM

To: House Committee on Education
From: Eunice Peters, Assistant Revisor
Date: February 20, 2013
Re: HB 2320

Current Law

Currently, the board of education of any school district may authorize the establishment of a nonsectarian charter school.¹ Whenever a charter school has been approved by a board of education, the board then notifies the state board of education. The state board of education reviews the approved petition to determine whether the charter school can reasonably be expected to accomplish the program goals.² Once approved by the board and the state board, no other approval is required for a period of five years. The renewal of the operational status of the charter school shall be approved by the board of education and state board of education if the charter school has demonstrated progress in achieving program goals it established in K.S.A. 72-1906.³

The board of education of any school district in which a charter school is being operated is required to provide transportation to and from the school for pupils who qualify for free meals under the national school lunch act and who live 2 ½ or more miles from the school. The board may also provide transportation for all pupils attending the charter school.⁴

In addition, all employees who are participating in the operation of a charter school and who qualify for membership in KPERs shall be members of the system. These employees also are eligible to participate in health insurance and other fringe benefit programs provided for other school district employees if they qualify.⁵

HB 2320

This bill would repeal the current law on charter schools and create the Kansas public charter school act.⁶ This bill would also make amendments to current law in relation to this act.

¹ K.S.A. 72-1904.

² K.S.A. 2012 Supp. 72-1906.

³ K.S.A. 2012 Supp. 72-1907.

⁴ K.S.A. 72-1908.

⁵ K.S.A. 72-1909.

⁶ Title (also repealing), sec. 1 and sec. 32 (repealer section)

The purpose of the Kansas public charter school act is to: (1) Allow the creation of innovative public charter schools to achieve the highest level possible. To do so, these schools may operate independently of state laws or rules and regulations, other than those specified in this act; (2) establish multiple authorizers, in addition to unified school boards⁷; and (3) remove procedural and funding barriers to public charter school success.⁸

Authorizers

To become an authorizer, an entity may apply to the state board of education. These authorizers would be the state board of education, the state board of regents, the governing board of any public or private postsecondary educational institution, the local board of education; and the governing body of any city or county.⁹ Any local board of education operating a public charter school on or before July 1, 2013, would be deemed an authorizer by the state board of education, but their authority would be limited to authorizing additional public charter schools within the boundaries of that school district.¹⁰

The application to become an authorizer would include those items required in subsection (a)(1) through (8) of section 4.¹¹ The state board would review the application to determine if the entity complied with subsection (a), and if so, the state board would approve the application and grant authority to such entity to authorize public charter schools.¹²

Within 30 days after an authorizer is approved to authorize public charter schools, such authorizer is required to enter into an agreement with the local board of education of any school district in which the authorizer intended to authorize public charter schools. Such agreement would require the authorizer to agree to abide by the Kansas charter school act, and the local board of education to agree that such authorizer has the authority to authorize public charter schools. The agreement could not contain any provision that would be in conflict with the Kansas charter school act. The authorizer could also authorize a public charter school within the boundaries of another school district. If desired, a similar agreement would be entered into within 30 days of the authorizer notifying the local board of education of that school district.¹³

As a public charter school authorizer, the authorizer would have the following powers and duties: (1) Solicit and evaluate public charter school petitions; (2) approve public charter school petitions; (3) deny public charter school petitions; (4) negotiate and execute charter contracts with each approved public charter school applicant; (5) monitor the performance and legal compliance of public charter schools; and (6) determine whether each charter contract merits renewal, nonrenewal or revocation.¹⁴ The authorizer may also enter into an agreement

⁷ Technical amendment suggested on pg. 1, line 31, striking "public."

⁸ Sec. 2.

⁹ Sec. 4.

¹⁰ Sec. 5.

¹¹ Technical amendment suggested on pg. 3, line 13, striking "26" and adding "27."

¹² Sec. 4.

¹³ Sec. 6.

¹⁴ Technical amendment suggested on page 4, line 38 "nonrenewal" to "nonrenewal."

with any other person or entity for such person or entity to assume the duties and functions of the authorizer, provided that such agreement expressly provides that such person or entity remains at all times under the direction of the authorizer.¹⁵

The authorizer would be required to prepare two reports. First, the authorizer would annually report to the state board of education, the governor and the legislature as to the progress of the public charter schools.¹⁶ Second, the authorizer would be required to report to the state board of education the total enrollment of all the public charter schools under its oversight.¹⁷

If there is evidence that 30% or more of the public charter schools, which were authorized by an authorizer, failed to meet standards on the math and reading state assessments for three consecutive school years, then the authorizer would be prohibited from authorizing additional public charter schools until such percentage is less than 30%.¹⁸ Other than that limitation, there would be no limit in the number of public charter schools that may be authorized.¹⁹

Public charter school

Each authorizer is required to establish a charter petition process and timeline. The application to become a public charter school would include those items required in subsection (b)(1) through (19) in section 10.²⁰ If the petitioner were to be approved to become a public charter school, the school is considered a public school and part of the state's system of public education.²¹ The initial term of a charter contract would be five years, and then provided that the three-year rolling average of test scores on math and reading state assessments were at least equal to the three-year rolling average of test scores of comparative pupils attending a school in the same school district in which such public charter school is located, the charter contract could be automatically extended for one year.²²

A charter contract could be terminated if any of the instances in subsection (a)(1) through (5) of section 19 occurred, including a public charter school's failure to improve the percentage of high school graduates that have enlisted military service or completed a postsecondary educational certificate program or degree program as determined by the national student clearinghouse, or other postsecondary educational program completion database utilized by such public charter school.²³

¹⁵ Sec. 7.

¹⁶ Sec. 7(e). This report would include: (1) The number of public charter schools authorized during the preceding calendar year and a brief description of each school; (2) the academic progress or pupils attending its public charter schools; and (3) a comparison of the test scores on the math and reading state assessments as compared to the same assessments those pupils attending schools in the school district in which such public charter schools are located and that are reasonably reflective of the composition of such public charter schools; and (4) other information deemed necessary.

¹⁷ Sec. 20

¹⁸ Sec. 8.

¹⁹ Sec. 12(a).

²⁰ Sec. 10.

²¹ Sec. 13.

²² Sec. 11.

²³ Sec. 19.

The public charter school would be subject to all federal and state laws prohibiting discrimination and all laws and rules and regulations pertaining to the state assessment program, but would be exempt for all other laws and rules and regulations applicable to public schools in the state.²⁴ This exemption would include teacher certification requirements for teachers, laws concerning teacher contracts, and from any existing collective bargaining agreement between a school district and its employees.²⁵

The public charter school would function as a local educational agency and be required to meet all requirements of LEAs under federal law.²⁶ A public charter school would also be required to comply with subsection (b)(1) through (6) of section 12, which lists admissions requirements with certain preferences.²⁷

A public charter school would be prohibited to engage in sectarian practices in its educational program, admissions or employment policies or operations and from charging tuition. However, a public charter school would be able to charge for fees as may be imposed by public schools. A public charter school would also have the powers listed in subsection (a)(1) through (9), which include financial powers, and enter into or renew a management agreement with an educational management organization to carry out the operations of the public charter school.²⁸

Public charter school employees would be eligible to participate in KPERs, health insurance and other benefits programs. Teachers and other school personnel, including members of the governing board, would be subject to the same criminal history record checks and fingerprinting requirements applicable to other school district employees.²⁹

Public charter school funding

For a public charter school authorized by a school district, the public charter school shall receive an amount equal to the total enrollment of the public charter school multiplied by the general state aid per pupil plus the supplemental general state aid per pupil.³⁰

For each student enrolled in a public charter school authorized by an authorizer other than a school district, the state board shall distribute to the authorizer an amount equal to the general state aid per pupil plus the supplemental general state aid per pupil such student's resident school district would be otherwise entitled to receive if such student were enrolled in the resident school district. Upon receipt, the authorizer would pay, in 12 monthly installments, to each public charter school under its oversight an amount equal to the distribution received by such authorizer based on the enrollment of such public charter school.³¹

²⁴ Sec. 13.

²⁵ Sec. 17.

²⁶ Sec. 14.

²⁷ Sec. 12.

²⁸ Secs. 15 and 18. See sec. 2(b) and (e) for definitions of educational management organization and management agreement.

²⁹ Sec. 17.

³⁰ Sec. 20(b).

³¹ Secs. 20 and 29

In addition to the above funding, public charter schools would be entitled to special education and related services state aid and catastrophic state aid.³²

Lastly, public charter schools would have the authority to accept gifts, donations and grants of any kind made the public charter school with the conditions prescribed by the donor so long as such condition is not in direct conflict with any provision of law or the charter contract.³³

Tax credit

For tax years commencing after December 31, 2012, a taxpayer (individual or corporate) would be authorized to receive a tax credit in an amount equal to 100% of a contribution made to a school district or a public charter school.³⁴ This would only be a credit against state income tax.³⁵

Under current law such contributions are treated as a deduction at the federal level for the reason that such contributions are donations to 501(c)(3) organizations. Those federal deductions currently flow through to the state return and are applied through the federal adjusted gross income or federal taxable income at the state level. To prevent a taxpayer from getting both a credit and a deduction at the state level, sections 30 and 31 require the taxpayer to add back the amount of the deduction to the taxpayer's federal adjusted gross income or federal taxable income at the state level. Section 30 is for individual taxpayers; section 31 is for corporate taxpayers.

³² Sec. 21.

³³ Sec. 24.

³⁴ Sec. 28.

³⁵ Secs. 30 and 31.

activities. The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; original subject matter stricken and new subject substituted, L. 1966, ch. 10—Spec. Sess.; Nov. 8, 1966.

Revisor's Note:

Prior to 1966, section related to state and county superintendent of public instruction.

For annotations to original section, see K.S.A. Vol. 6, p. 936; copyright 1964.

Research and Practice Aids:

Schools and School Districts ¶ 9.
Hatcher's Digest, School Districts §§ 1 to 5.
C.J.S. Schools and School Districts §§ 13, 15.

Law Review and Bar Journal References:

Discussed in comment on the 1973 Kansas School District Equalization Act by James L. McNish, 22 K.L.R. 229, 235 (1974).

"Student Fees in Public Schools: New Statutory Authority," Joe Allen Lang, 16 W.L.J. 439, 442, 459 (1977).

"Constitutional Law: Privacy Penumbra Encompasses Students in School Searches [New Jersey v. T.L.O., 105 S.Ct. 733 (1985)]." J. Lynn Entriken Goering, 25 W.L.J. 135, 142 (1985).

Attorney General's Opinions:

Public television; works of internal improvement. 80-55.
Schools; teachers' contracts; constitutionality of binding arbitration provision in Senate Bill No. 718. 80-63.

Education; state board of education. 81-236.
State board of education; gifts and bequests; management and expenditure through trust fund. 83-58.

Education; legislature; authority. 83-154.
Schools; vocational education; plan for establishment; approval by state board of education. 83-169.

School attendance; G.E.D. 87-46.

CASE ANNOTATIONS

1. Constitution grants general supervisory powers over district boards directly to state board of education. State, ex rel., v. Board of Education, 212 K. 482, 485, 495, 497, 511 P.2d 705.

2. Article construed with Article 2, Section 1; 72-7108 not unconstitutional as unlawful delegation of legislative power. State, ex rel., v. State Board of Education, 215 K. 551, 554, 555, 556, 561, 562, 564, 527 P.2d 952.

3. Order dismissing action to determine constitutionality of 1973 School District Equalization Act as moot, vacated and remanded; rights hereunder unresolved. Knowles v. State Board of Education, 219 K. 271, 272, 273, 547 P.2d 699.

4. Teachers' collective negotiations within "related activities" category; constitutionality of act (72-5413 et seq.) upheld. NEA-Fort Scott v. U.S.D. No. 234, 225 K. 607, 608, 609, 612, 592 P.2d 463.

§ 2. State board of education and state board of regents. (a) The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.

(b) The legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. Public institutions of higher education shall include universities and colleges granting baccalaureate or postbaccalaureate degrees and such other institutions and educational interests as may be provided by law. The state board of regents shall perform such other duties as may be prescribed by law.

(c) Any municipal university shall be operated, supervised and controlled as provided by law.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; original subject matter stricken and new subject substituted, L. 1966, ch. 10—Spec. Sess.; Nov. 8, 1966.

Revisor's Note:

A proposition to amend this section was submitted to the electors Aug. 6, 1974 and was rejected (see L. 1974, ch. 465; SCR No. 22).

Prior to 1966, section related to the establishment of schools.

For annotations to original section, See K.S.A. Vol. 6, p. 937; copyright 1964.

Research and Practice Aids:

Colleges and Universities ¶ 7; Schools and School Districts ¶ 47.

Hatcher's Digest, Colleges and Universities § 3; School Districts § 68.

C.J.S. Schools and School Districts §§ 86 to 90.

Law Review and Bar Journal References:

"Student Fees in Public Schools: New Statutory Authority," Joe Allen Lang, 16 W.L.J. 439, 447 (1977).

Attorney General's Opinions:

Schools; teachers' contracts; constitutionality of binding arbitration provision in Senate Bill No. 718. 80-63.

Education; state board of education. 81-236.
State board of education; gifts and bequests; management and expenditure through trust fund. 83-58.

Education; legislature; authority. 83-154.
Schools; vocational education; plan for establishment; approval by state board of education. 83-169.

CASE ANNOTATIONS

1. Cited in holding local school board authorized to close attendance facility. Brickell v. Board of Education, 211 K. 905, 916, 917, 508 P.2d 996.

2. Held partially self-executing; state board of education possesses general supervisory powers over district boards. *State, ex rel. v. Board of Education*, 212 K. 482, 484, 486, 487, 488, 493, 495, 496, 497, 511 P.2d 705.

3. Article construed with Article 2, Section 1; 72-7108 not unconstitutional as unlawful delegation of legislative power. *State, ex rel., v. State Board of Education*, 215 K. 551, 554, 555, 556, 561, 562, 564, 527 P.2d 952.

4. Applied; school board not immune from liability (under 11th amendment) to teachers for failure to afford teachers' rights under 14th amendment to pretermination hearing. *Unified School District No. 480 v. Epperson*, 551 F.2d 254, 260.

5. Referred to; school board not immune to teachers for failure to provide pretermination hearing. *Unified School Dist. No. 480 v. Epperson*, 583 F.2d 1118, 1123.

6. Authority of secretary of human resources under teachers' collective negotiations act (72-5413 et seq.) not in violation hereof. *NEA-Fort Scott v. U.S.D. No. 234*, 225 K. 607, 608, 609, 611, 612, 592 P.2d 463.

7. Board of Regents held not subject to building code ordinances of Kansas City for construction at K.U. Medical Center. *State ex rel. Schneider v. City of Kansas City*, 228 K. 25, 31, 612 P.2d 578.

8. Board of regents is an employer under public employer-employee relations act. *Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA*, 233 K. 801, 811, 667 P.2d 306 (1983).

§ 3. Members of state board of education and state board of regents. (a) There shall be ten members of the state board of education with overlapping terms as the legislature may prescribe. The legislature shall make provision for ten member districts, each comprised of four contiguous senatorial districts. The electors of each member district shall elect one person residing in the district as a member of the board. The legislature shall prescribe the manner in which vacancies occurring on the board shall be filled.

(b) The state board of regents shall have nine members with overlapping terms as the legislature may prescribe. Members shall be appointed by the governor, subject to confirmation by the senate. One member shall be appointed from each congressional district with the remaining members appointed at large, however, no two members shall reside in the same county at the time of their appointment. Vacancies occurring on the board shall be filled by appointment by the governor as provided by law.

(c) Subsequent redistricting shall not disqualify any member of either board from service for the remainder of his term. Any member of either board may be removed from office for cause as may be provided by law.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; original subject matter stricken

and new subject substituted, L. 1966, ch. 10—Spec. Sess.; Nov. 8, 1966.

Revisor's Note:

Prior to 1966, section related to the state permanent school fund and sources of revenue for fund.

For annotations to original section, see K.S.A. Vol. 6, p. 937; copyright 1964.

Research and Practice Aids:

Schools and School Districts ¶ 47.

Hatcher's Digest, Schools and School Districts § 73.

C.J.S. Schools and School Districts § 87.

CASE ANNOTATIONS

1. Referred to in determining senate confirmation or rejection of appointees of governor under 22-3707 lawful. *Leek v. Theis*, 217 K. 784, 804, 539 P.2d 304.

§ 4. Commissioner of education. The state board of education shall appoint a commissioner of education who shall serve at the pleasure of the board as its executive officer.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; original subject matter stricken and new subject substituted, L. 1966, ch. 10—Spec. Sess.; Nov. 8, 1966.

Revisor's Note:

Prior to 1966, section related to the apportionment of income from the state permanent school fund.

Research and Practice Aids:

Schools and School Districts ¶ 47.

C.J.S. Schools and School Districts § 87.

§ 5. Local public schools. Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 59; original subject matter stricken and new subject substituted, L. 1966, ch. 10—Spec. Sess.; Nov. 8, 1966.

Revisor's Note:

Prior to 1966, section related to lease or sale of school lands.

For annotations to original section, see K.S.A. Vol. 6, p. 939; copyright 1964.

Research and Practice Aids:

School and School Districts ¶ 51.

Hatcher's Digest, School Districts §§ 69 to 71.

C.J.S. Schools and School Districts § 105.

Law Review a
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2012 Kansas Statutes

74-3201b. Definitions. As used in the Kansas higher education coordination act:

- (a) "Adult basic education program" and "adult supplementary education program" have the meanings respectively ascribed thereto in K.S.A. 72-4517, and amendments thereto.
- (b) "Community college" means any community college established under the laws of this state.
- (c) "Institute of technology" or "Washburn institute of technology" means the institute of technology at Washburn university.
- (d) "Municipal university" means Washburn university of Topeka or any other municipal university established under the laws of this state.
- (e) "Postsecondary educational institution" means any public university, municipal university, community college and technical college, and includes any entity resulting from the consolidation or affiliation of any two or more of such postsecondary educational institutions.
- (f) "Private postsecondary educational institution" and "out-of-state postsecondary educational institution" have the meanings ascribed thereto in K.S.A. 2012 Supp. 74-32,163, and amendments thereto.
- (g) "Public university" means any state educational institution.
- (h) "Representative of a postsecondary educational institution" means any person who is the holder of an associate degree, a bachelor's degree, or a certificate of completion awarded by a postsecondary educational institution.
- (i) "State board of regents" or "state board" means the state board of regents provided for in the constitution of this state and established by K.S.A. 74-3202a, and amendments thereto, except as otherwise specifically provided in this act.
- (j) "State educational institution" means any state educational institution, as defined in K.S.A. 76-711, and amendments thereto.
- (k) "Technical college" means any technical college established under the laws of this state.

History: L. 1999, ch. 147, § 2; L. 2001, ch. 26, § 1; L. 2002, ch. 188, § 1; L. 2006, ch. 66, § 5; L. 2009, ch. 24, § 25; L. 2011, ch. 97, § 40; July 1.

2012 Kansas Statutes

74-32,163. Definitions. As used in the Kansas private and out-of-state postsecondary educational institution act:

(a) "Academic degree" means any associate, bachelor's, professional, master's, specialist or doctoral degree.
(b) "Accreditation" means an accreditation by an agency recognized by the United States department of education.

(c) "Branch campus" means any subsidiary place of business maintained within the state of Kansas by an institution at a site which is separate from the site of the institution's principal place of business and at which the institution offers a course or courses of instruction or study identical to the course or courses of instruction or study offered by the institution at its principal place of business.

(d) "Commission" means the advisory commission on private and out-of-state postsecondary educational institutions established pursuant to K.S.A. 2012 Supp. 74-32,166, and amendments thereto.

(e) "Distance education" means any course delivered primarily by use of correspondence study, audio, video or computer technologies.

(f) "Out-of-state postsecondary educational institution" means a postsecondary educational institution chartered, incorporated or otherwise organized under the laws of any jurisdiction other than the state of Kansas.

(g) "Institution" means an out-of-state or private postsecondary educational institution.

(h) "Institution employee" means any person, other than an owner, who directly or indirectly receives compensation from an institution for services rendered.

(i) "Owner of an institution" means:

(1) In the case of an institution owned by an individual, that individual;

(2) in the case of an institution owned by a partnership, all full, silent and limited partners;

(3) in the case of an institution owned by a corporation, the corporation, its directors, officers and each shareholder owning shares of issued and outstanding stock aggregating at least 10% of the total of the issued and outstanding shares; and

(4) in the case of an institution owned by a limited liability company, the company, its managers and all its members.

(j) "Person" means an individual, firm, partnership, association or corporation.

(k) "Physical presence" means:

(1) The employment in Kansas of a Kansas resident for the purpose of administering, coordinating, teaching, training, tutoring, counseling, advising or any other activity on behalf of the institution; or

(2) The delivery of, or the intent to deliver, instruction in Kansas with the assistance from any entity within the state in delivering the instruction including, but not limited to, a cable television company or a television broadcast station that carries instruction sponsored by the institution.

(l) "Private postsecondary educational institution" means an entity which:

(1) Is a business enterprise, whether operated on a profit or not-for-profit basis, which has a physical presence within the state of Kansas or which solicits business within the state of Kansas;

(2) offers a course or courses of instruction or study through classroom contact or by distance education, or both, for the purpose of training or preparing persons for a field of endeavor in a business, trade, technical or industrial occupation or which offers a course or courses leading to an academic degree; and

(3) is not specifically exempted by the provisions of this act.

(m) "Representative" means any person employed by an institution to act as an agent, solicitor or broker to procure students or enrollees for the institution.

(n) "State board" means the state board of regents or the board's designee.

(o) "Support" or "supported" means the primary source and means by which an institution derives revenue to perpetuate operation of the institution.

(p) "University" means a postsecondary educational institution authorized to offer any degree including a bachelor, graduate or professional degree.

(q) "State educational institution" means any state educational institution as defined by K.S.A. 76-711, and amendments thereto.

History: L. 2004, ch. 185, § 3; L. 2010, ch. 150, § 2; July 1.