

KANSAS  
ASSOCIATION



OF  
SCHOOL  
BOARDS

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Testimony before the  
**Senate Committee on Education**  
on  
**SB 196 – Public Charter Schools**

by  
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Kansas Association of School Boards

**February 21, 2013**

Mr. Chair, Members of the Committee:

Thank you for the opportunity to comment on **SB 196**. We oppose this bill on two grounds. First, it is clearly unconstitutional. It removes the right of people in each district to manage the public schools in their community, as provided in the Kansas Constitution. Second, the bill is unnecessary, because there is no evidence that expanding charter schools results in better statewide educational outcomes.

**SB 196 would be unconstitutional**

Constitutions are adopted by the people to direct their government to do certain things, and to limit power of the government to do other things. In 1966, the people of Kansas adopted the current education article, which is attached. The clear, plain language of this article provides the people's original intent, and a simple reading shows this bill violates that intent.

First, Article Six, Section One, directs the Legislature to “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.” Public charter schools are defined in this bill as “public schools” (see Sections 13 and 14), so they are clearly not other “educational institutions or related activities.” They have exactly the same mission as “public schools.”

Second, Section Two makes clear that only one entity shall have “general supervision” of public schools – the State Board of Education. In fact, the State Board has supervision of *all* educational institutions and interests of the state, *except* those duties delegated to the Kansas Board of Regents. No other entity, such as boards of postsecondary institutional, or cities or counties, or anything else, is constitutionally authorized to supervise or oversee public schools or any other educational interests.

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Third, Section Five specifically provides that “public schools under the general supervision of the State Board” – which means *all* public schools since no exception is provided – “shall be maintained, developed and operated by locally elected boards.” The Kansas constitution does not allow for any other governing, authorizing or managing structure. The constitution simply does not allow cities, counties, colleges, or anyone other than local public school boards to authorize or operate public schools. Other state constitutions may do so. Ours does not. This is the plain language of the text.

Furthermore, this bill creates “authorizers,” which are defined as an entity “to approve and oversee public charter schools,” which appears indistinguishable from “general supervision.” Only the State Board has authority for general supervision of public schools. The bill also creates “applicants” which are defined as an entity seeking approval to “operate a public charter school.” Only locally elected school boards are authorized to “maintain, develop and operate” public schools.

The intent of the people is very clear. They wanted the schools *in* their community to be managed *by* elected officials *from* and *for* their community. That is the essence of republican democracy: of the people, by the people, for the people. Kansans did not want the state, or colleges, or other local governments, or some unknown organizations creating or operating schools with no direct accountability to the community.

The people certainly did not envision a system that runs from the State Board to “authorizers” (Section 4), which may turn over their duties to “any other person or entity” (Section 7), which then approves a school with an “independent governing board,” (not elected by voters) that may contract with an educational management organization to actually “maintain, develop and operate” the school. How could that system possibly be more accountable, accessible and responsive than the current system? Please remember, school boards are elected by the same voters who elect you.

#### **SB 196 in unnecessary, or even counter-productive**

Even if this bill were constitutional, there is no conclusive evidence that more charter schools improve a state’s education achievement. We have previously shared with this committee a ranking of states on four key measures of education outcomes. On the final two pages of this testimony, we compare state performance to charter school activity. The first chart ranks states based on an overall average of performance indicators. We have added the percentage of students enrolled in charter schools (from the federal Condition of Education), and the ranking of each state’s charter school law in 2011 by the National Alliance for Public Charter Schools (1 equals the best ranking; states without charter schools were all give a rank of 50). This table then looks at states in performance groups of ten.

The top ten states, including Kansas, have an average of 2.1 percent of students in charter schools, compared to 1 percent in Kansas, which is the second lowest average percentage. The bottom ten states in performance have the highest average percent of students in charter schools, 3.1 percent. There is really no correlation at all between state ranking on charter school law and actual performance, except that, again, the bottom 10 states in performance have the lowest (supposedly best) average charter law ranking.

The final table ranks the state by the percentage of students in charter schools, from high to low. The ten states with the most students in charter schools had the worst average performance rank (30.4). The group including Kansas, which ranges from 0 percent to 1.4 percent, had the best average performance rank (19.3). The group of states with no charter schools at all had the second best performance rank. It seems clear that increasing the number of students in charter schools does not improve state performance. If anything, the opposite is true.

Thank you for your consideration.

## **Kansas Constitution: Article 6 -- Education**

**§ 1: Schools and related institutions and 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.

**§ 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 post-baccalaureate 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.

**§ 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.

**§ 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.

**§ 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.

**§ 6: Finance.**

(a) The legislature may levy a permanent tax for the use and benefit of state institutions of higher education and apportion among and appropriate the same to the several institutions, which levy, apportionment and appropriation shall continue until changed by statute. Further appropriation and other provision for finance of institutions of higher education may be made by the legislature.

(b) The legislature shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. The legislature may authorize the state board of regents to establish tuition, fees and charges at institutions under its supervision.

(c) No religious sect or sects shall control any part of the public educational funds.

**§ 7: Savings clause.**

(a) All laws in force at the time of the adoption of this amendment and consistent therewith shall remain in full force and effect until amended or repealed by the legislature. All laws inconsistent with this amendment, unless sooner repealed or amended to conform with this amendment, shall remain in full force and effect until July 1, 1969.

(b) Notwithstanding any other provision of the constitution to the contrary, no state superintendent of public instruction or county superintendent of public instruction shall be elected after January 1, 1967.

(c) The state perpetual school fund or any part thereof may be managed and invested as provided by law or all or any part thereof may be appropriated, both as to principal and income, to the support of the public schools supervised by the state board of education.

Attachments:

| Average Overall Rank |                |                 |                        |                         |                              |              |                                  |                 |                           |                 |
|----------------------|----------------|-----------------|------------------------|-------------------------|------------------------------|--------------|----------------------------------|-----------------|---------------------------|-----------------|
| Overall Average Rank | State          | Pre-High School | High School Completion | Preparation for College | Adult Educational Attainment | Average Rank | % of Students in Charter Schools | Decline Average | 2011 Charter by Remaining | Decline Average |
| 1                    | Massachusetts  | 1               | 6                      | 2                       | 1                            | 2.5          | 2.9%                             |                 | 3                         |                 |
| 2                    | New Hampshire  | 2               | 4                      | 7                       | 7                            | 5.0          | 0.4%                             |                 | 16                        |                 |
| 3                    | Vermont        | 3               | 3                      | 11                      | 5                            | 5.5          | 0.0%                             |                 | 50                        |                 |
| 4                    | New Jersey     | 5               | 7                      | 9                       | 6                            | 6.8          | 1.7%                             |                 | 26                        |                 |
| 5                    | Minnesota      | 8               | 10                     | 4                       | 9                            | 7.8          | 4.2%                             |                 | 1                         |                 |
| 6                    | North Dakota   | 6               | 5                      | 2                       | 27                           | 10.0         | 0.0%                             |                 | 50                        |                 |
| 7                    | Kansas         | 9               | 11                     | 9                       | 13                           | 10.5         | 1.0%                             |                 | 38                        |                 |
| 8                    | Connecticut    | 25              | 14                     | 4                       | 2                            | 11.3         | 0.9%                             |                 | 24                        |                 |
| 9                    | Maryland       | 14              | 12                     | 20                      | 2                            | 12.0         | 1.4%                             |                 | 40                        |                 |
| 10                   | Colorado       | 11              | 30                     | 15                      | 4                            | 15.0         | 8.0%                             | 2.1%            | 4                         | 25.2            |
| 11                   | Virginia       | 21              | 15                     | 17                      | 8                            | 15.3         | 0.0%                             |                 | 35                        |                 |
| 12                   | Utah           | 25              | 17                     | 7                       | 16                           | 16.3         | 5.8%                             |                 | 10                        |                 |
| 12                   | Wisconsin      | 23              | 1                      | 17                      | 24                           | 16.3         | 4.1%                             |                 | 34                        |                 |
| 14                   | Nebraska       | 28              | 8                      | 11                      | 22                           | 17.3         | 0.0%                             |                 | 50                        |                 |
| 15                   | Pennsylvania   | 16              | 9                      | 22                      | 23                           | 17.5         | 4.5%                             |                 | 12                        |                 |
| 16                   | Maine          | 10              | 16                     | 24                      | 21                           | 17.8         | 0.0%                             |                 | 50                        |                 |
| 17                   | Montana        | 4               | 13                     | 35                      | 20                           | 18.0         | 0.0%                             |                 | 50                        |                 |
| 18                   | Illinois       | 33              | 21                     | 6                       | 15                           | 18.8         | 1.7%                             |                 | 30                        |                 |
| 19                   | South Dakota   | 11              | 23                     | 13                      | 28                           | 18.8         | 0.0%                             |                 | 50                        |                 |
| 20                   | Wyoming        | 7               | 28                     | 19                      | 25                           | 19.8         | 0.3%                             | 1.6%            | 31                        | 35.2            |
| 21                   | Washington     | 19              | 38                     | 13                      | 10                           | 20.0         | 0.0%                             |                 | 50                        |                 |
| 22                   | Iowa           | 25              | 2                      | 30                      | 26                           | 20.8         | 0.1%                             |                 | 36                        |                 |
| 23                   | New York       | 32              | 27                     | 15                      | 11                           | 21.3         | 1.6%                             |                 | 5                         |                 |
| 24                   | Ohio           | 11              | 20                     | 31                      | 33                           | 23.8         | 5.2%                             |                 | 27                        |                 |
| 25                   | Missouri       | 29              | 18                     | 22                      | 30                           | 24.8         | 2.0%                             |                 | 13                        |                 |
| 26                   | Rhode Island   | 30              | 24                     | 28                      | 19                           | 25.3         | 2.3%                             |                 | 37                        |                 |
| 27                   | Delaware       | 24              | 39                     | 26                      | 18                           | 26.8         | 7.3%                             |                 | 18                        |                 |
| 27                   | Oregon         | 35              | 25                     | 33                      | 14                           | 26.8         | 3.3%                             |                 | 17                        |                 |
| 29                   | Idaho          | 15              | 22                     | 39                      | 34                           | 27.5         | 5.3%                             |                 | 28                        |                 |
| 30                   | Indiana        | 17              | 29                     | 30                      | 39                           | 28.8         | 1.8%                             | 2.9%            | 25                        | 25.6            |
| 31                   | Hawaii         | 40              | 26                     | 39                      | 12                           | 29.3         | 4.4%                             |                 | 33                        |                 |
| 32                   | Michigan       | 38              | 32                     | 20                      | 28                           | 29.5         | 6.9%                             |                 | 14                        |                 |
| 33                   | North Carolina | 19              | 33                     | 35                      | 36                           | 30.8         | 2.6%                             |                 | 32                        |                 |
| 34                   | Kentucky       | 17              | 35                     | 28                      | 46                           | 31.5         | 0.0%                             |                 | 50                        |                 |
| 35                   | Tennessee      | 45              | 19                     | 24                      | 42                           | 32.5         | 0.4%                             |                 | 29                        |                 |
| 36                   | Texas          | 21              | 31                     | 46                      | 43                           | 35.3         | 3.1%                             |                 | 21                        |                 |
| 37                   | Oklahoma       | 33              | 36                     | 37                      | 41                           | 36.8         | 1.0%                             |                 | 22                        |                 |
| 38                   | Alaska         | 41              | 42                     | 48                      | 17                           | 37.0         | 3.9%                             |                 | 39                        |                 |
| 39                   | Arkansas       | 36              | 37                     | 33                      | 48                           | 38.5         | 1.8%                             | 2.6%            | 15                        | 28              |
| 40                   | Florida        | 31              | 43                     | 46                      | 35                           | 38.8         | 5.2%                             |                 | 2                         |                 |
| 40                   | Georgia        | 37              | 49                     | 37                      | 32                           | 38.8         | 2.3%                             |                 | 7                         |                 |
| 42                   | California     | 49              | 41                     | 43                      | 30                           | 40.8         | 5.1%                             |                 | 6                         |                 |
| 43                   | South Carolina | 39              | 45                     | 41                      | 40                           | 41.3         | 1.8%                             |                 | 19                        |                 |
| 44                   | Arizona        | 42              | 40                     | 50                      | 37                           | 42.3         | 10.6%                            |                 | 11                        |                 |
| 44                   | Louisiana      | 48              | 48                     | 26                      | 47                           | 42.3         | 4.6%                             |                 | 9                         |                 |
| 46                   | West Virginia  | 44              | 34                     | 43                      | 49                           | 42.5         | 0.0%                             |                 | 50                        |                 |
| 47                   | Alabama        | 46              | 44                     | 41                      | 45                           | 44.0         | 0.0%                             |                 | 50                        |                 |
| 48                   | New Mexico     | 47              | 46                     | 48                      | 38                           | 44.8         | 3.9%                             |                 | 20                        |                 |
| 49                   | Nevada         | 43              | 50                     | 50                      | 44                           | 46.8         | 2.7%                             |                 | 23                        |                 |
| 50                   | Mississippi    | 50              | 47                     | 44                      | 49                           | 47.5         | 0.1%                             | 3.1%            | 41                        | 23.6            |

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| Average Overall Rank |                |                 |                        |                         |                              |              |                                  |                |  |
|----------------------|----------------|-----------------|------------------------|-------------------------|------------------------------|--------------|----------------------------------|----------------|--|
| Overall Average Rank | State          | Pre-High School | High School Completion | Preparation for College | Adult Educational Attainment | Average Rank | % of Students in Charter Schools | Decile Average |  |
| 44                   | Arizona        | 42              | 40                     | 50                      | 37                           | 42.3         | 10.6%                            |                |  |
| 10                   | Colorado       | 11              | 30                     | 15                      | 4                            | 15.0         | 8.0%                             |                |  |
| 27                   | Delaware       | 24              | 39                     | 26                      | 18                           | 26.8         | 7.3%                             |                |  |
| 32                   | Michigan       | 38              | 32                     | 20                      | 28                           | 29.5         | 6.9%                             |                |  |
| 12                   | Utah           | 25              | 17                     | 7                       | 16                           | 16.3         | 5.8%                             |                |  |
| 29                   | Idaho          | 15              | 22                     | 39                      | 34                           | 27.5         | 5.3%                             |                |  |
| 24                   | Ohio           | 11              | 20                     | 31                      | 33                           | 23.8         | 5.2%                             |                |  |
| 40                   | Florida        | 31              | 43                     | 46                      | 35                           | 38.8         | 5.2%                             |                |  |
| 42                   | California     | 49              | 41                     | 43                      | 30                           | 40.8         | 5.1%                             |                |  |
| 44                   | Louisiana      | 48              | 48                     | 26                      | 47                           | 42.3         | 4.6%                             | 30.4           |  |
| 15                   | Pennsylvania   | 16              | 9                      | 22                      | 23                           | 17.5         | 4.5%                             |                |  |
| 31                   | Hawaii         | 40              | 26                     | 39                      | 12                           | 29.3         | 4.4%                             |                |  |
| 5                    | Minnesota      | 8               | 10                     | 4                       | 9                            | 7.8          | 4.2%                             |                |  |
| 12                   | Wisconsin      | 23              | 1                      | 17                      | 24                           | 16.3         | 4.1%                             |                |  |
| 38                   | Alaska         | 41              | 42                     | 48                      | 17                           | 37.0         | 3.9%                             |                |  |
| 48                   | New Mexico     | 47              | 46                     | 48                      | 38                           | 44.8         | 3.9%                             |                |  |
| 27                   | Oregon         | 35              | 25                     | 33                      | 14                           | 26.8         | 3.3%                             |                |  |
| 36                   | Texas          | 21              | 31                     | 46                      | 43                           | 35.3         | 3.1%                             |                |  |
| 1                    | Massachusetts  | 1               | 6                      | 2                       | 1                            | 2.5          | 2.9%                             |                |  |
| 49                   | Nevada         | 43              | 50                     | 50                      | 44                           | 46.8         | 2.7%                             | 26.2           |  |
| 33                   | North Carolina | 19              | 33                     | 35                      | 36                           | 30.8         | 2.6%                             |                |  |
| 26                   | Rhode Island   | 30              | 24                     | 28                      | 19                           | 25.3         | 2.3%                             |                |  |
| 40                   | Georgia        | 37              | 49                     | 37                      | 32                           | 38.8         | 2.3%                             |                |  |
| 25                   | Missouri       | 29              | 18                     | 22                      | 30                           | 24.8         | 2.0%                             |                |  |
| 30                   | Indiana        | 17              | 29                     | 30                      | 39                           | 28.8         | 1.8%                             |                |  |
| 39                   | Arkansas       | 36              | 37                     | 33                      | 48                           | 38.5         | 1.8%                             |                |  |
| 43                   | South Carolina | 39              | 45                     | 41                      | 40                           | 41.3         | 1.8%                             |                |  |
| 4                    | New Jersey     | 5               | 7                      | 9                       | 6                            | 6.8          | 1.7%                             |                |  |
| 18                   | Illinois       | 33              | 21                     | 6                       | 15                           | 18.8         | 1.7%                             |                |  |
| 23                   | New York       | 32              | 27                     | 15                      | 11                           | 21.3         | 1.6%                             | 28.1           |  |
| 9                    | Maryland       | 14              | 12                     | 20                      | 2                            | 12.0         | 1.4%                             |                |  |
| 7                    | Kansas         | 9               | 11                     | 9                       | 13                           | 10.5         | 1.0%                             |                |  |
| 37                   | Oklahoma       | 33              | 36                     | 37                      | 41                           | 36.8         | 1.0%                             |                |  |
| 8                    | Connecticut    | 25              | 14                     | 4                       | 2                            | 11.3         | 0.9%                             |                |  |
| 2                    | New Hampshire  | 2               | 4                      | 7                       | 7                            | 5.0          | 0.4%                             |                |  |
| 35                   | Tennessee      | 45              | 19                     | 24                      | 42                           | 32.5         | 0.4%                             |                |  |
| 20                   | Wyoming        | 7               | 28                     | 19                      | 25                           | 19.8         | 0.3%                             |                |  |
| 22                   | Iowa           | 25              | 2                      | 30                      | 26                           | 20.8         | 0.1%                             |                |  |
| 50                   | Mississippi    | 50              | 47                     | 44                      | 49                           | 47.5         | 0.1%                             |                |  |
| 3                    | Vermont        | 3               | 3                      | 11                      | 5                            | 5.5          | 0.0%                             | 19.3           |  |
| 6                    | North Dakota   | 6               | 5                      | 2                       | 27                           | 10.0         | 0.0%                             |                |  |
| 11                   | Virginia       | 21              | 15                     | 17                      | 8                            | 15.3         | 0.0%                             |                |  |
| 14                   | Nebraska       | 28              | 8                      | 11                      | 22                           | 17.3         | 0.0%                             |                |  |
| 16                   | Maine          | 10              | 16                     | 24                      | 21                           | 17.8         | 0.0%                             |                |  |
| 17                   | Montana        | 4               | 13                     | 35                      | 20                           | 18.0         | 0.0%                             |                |  |
| 19                   | South Dakota   | 11              | 23                     | 13                      | 28                           | 18.8         | 0.0%                             |                |  |
| 21                   | Washington     | 19              | 38                     | 13                      | 10                           | 20.0         | 0.0%                             |                |  |
| 34                   | Kentucky       | 17              | 35                     | 28                      | 46                           | 31.5         | 0.0%                             |                |  |
| 46                   | West Virginia  | 44              | 34                     | 43                      | 49                           | 42.5         | 0.0%                             |                |  |
| 47                   | Alabama        | 46              | 44                     | 41                      | 45                           | 44.0         | 0.0%                             | 23.1           |  |