

Journal of the Senate

SEVENTY-EIGHTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, May 31, 2017, 10:00 a.m.

The Senate was called to order by Vice President Jeff Longbine.
The roll was called with 40 senators present.
Senator Dan Goddard delivered the invocation:

Lord, we come before You today to ask for Your guidance as this body conducts the business of the people of Kansas. Please guide us and show us Your direction. Let us treat controversy as an ally and we ask for Your guidance in resolving differences so we may reach a fair and equitable result. We ask for Your blessing on staff members and all those who support this body. Amen

The Pledge of Allegiance was led by Vice President Longbine.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Francisco, Alley, Berger, Billinger, Bollier, Bowers, Denning, Doll, Estes, Faust-Goudeau, Fitzgerald, Givens, Goddard, Haley, Hardy, Hawk, Hensley, Hilderbrand, Holland, Kelly, Kerschen, Longbine, Lynn, Masterson, McGinn, Pettey, Rogers, V. Schmidt, Skubal, Sykes, Taylor, Wagle and Wilborn introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1754—

A RESOLUTION recognizing Chancellor Bernadette Gray-Little's dedicated service to the University of Kansas and the State of Kansas.

WHEREAS, The University of Kansas was founded in 1865 as the state university for the State of Kansas and is now recognized as one of the nation's top public institutions; and

WHEREAS, In 2009, Bernadette Gray-Little became the 17th chancellor of the University of Kansas; and

WHEREAS, After a remarkable eight-year term in which she guided KU to unprecedented success, elevated the university's national stature, and transformed how the university serves the state, the country, and the world, Chancellor Gray-Little will be stepping down this summer of 2017; and

WHEREAS, KU's mission is to lift students and society by educating leaders, building healthy communities, and making discoveries that change the world; and

WHEREAS, Chancellor Gray-Little advanced KU's mission to educate leaders by implementing new admissions standards, launching a new undergraduate curriculum,

strengthening the university's scholarship offerings, prioritizing retention and graduation rates, increasing the size of the freshman class for five consecutive years, and reinvigorating the university's academic environment; and

WHEREAS, Chancellor Gray-Little has advanced KU's mission to build healthy communities by expanding the School of Medicine to a four-year program in Wichita, establishing a new School of Medicine program in Salina, doubling the number of students studying to be pharmacists with the expansion of the School of Pharmacy in Lawrence and the new division in Wichita, and by overseeing the University of Kansas Cancer Center's successful application for National Cancer Institute Designation; and

WHEREAS, Chancellor Gray-Little has advanced KU's mission to make discoveries by securing funding for the Foundation Distinguished Faculty Initiative, along with overseeing multiple all-time high annual awards of federal funding to KU for research; and

WHEREAS, Chancellor Gray-Little has demonstrated courage, compassion and foresight by leading university conversations on sexual assault, diversity and inclusion, campus safety, sustainability, and the living and working environment on campus; and

WHEREAS, Chancellor Gray-Little has overseen KU's efforts to invigorate the Kansas economy by creating new jobs, launching startup companies, fostering corporate partnerships, licensing new technologies, developing an engineering initiative to increase the number of engineering graduates, and cultivating an entrepreneurial mindset among faculty, staff and students; and

WHEREAS, Chancellor Gray-Little has led a physical transformation of KU's campuses by securing support for Capitol Federal Hall, the Health Education Building, Self and Oswald Halls, the Central District Redevelopment Project, the DeBruce Center, and the Earth, Energy and Environment Center, as well as major renovations to Swarouth Recital Hall, the Spencer Museum of Art, and Jayhawk Boulevard; and

WHEREAS, Chancellor Gray-Little was instrumental to KU's record-setting Far Above campaign, which raised \$1.66 billion in private gifts to support scholarships, faculty research and other key initiatives; and

WHEREAS, While her term as chancellor would be considered historic based on her successes and achievements alone, Chancellor Gray-Little will also be remembered as the first woman and first African-American chancellor in KU's history; and

WHEREAS, In addition to her remarkable technical skills, Chancellor Gray-Little has led with dignity, grace and humility and, as such, has served as a role model and inspiration to students, staff, faculty and colleagues throughout the state: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we commend Chancellor Bernadette Gray-Little's transformative leadership at the University of Kansas during the past eight years, thank her for her dedicated service to the University of Kansas, the State of Kansas and the entire field of higher education, and wish her, her husband, Shade Little, and their family happiness and health in the future; and

Be it further resolved: That the Secretary of the Senate shall send five enrolled copies of this resolution to Senator Francisco.

On emergency motion of Senator Francisco **SR 1754** was adopted unanimously.

The Senate honored Chancellor Bernadette Gray-Little with a standing ovation.

MESSAGE FROM THE HOUSE

The House not adopts the Conference Committee report on **HB 2067**, requests a conference and appoints Representatives Johnson, Phillips and Sawyer as third conferees on the part of the House.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

S Sub HB 2186, AN ACT concerning education; relating to the instruction and financing thereof; making and concerning appropriations for the fiscal years ending June 30, 2018, and June 30, 2019, for the department of education; creating the Kansas school equity and enhancement act; amending K.S.A. 12-17,115 and 72-8803 and K.S.A. 2016 Supp. 10-1116a, 12-1677, 12-1770a, 12-1775a, 12-1776a, 72-978, 72-1046b, 72-1398, 72-1414, 72-1923, 72-3712, 72-3715, 72-5333b, 72-64b01, 72-64c01, 72-64c03, 72-64c05, 72-6622, 72-6624, 72-6625, 72-6757, 72-67,115, 72-7535, 72-8187, 72-8190, 72-8230, 72-8233, 72-8236, 72-8249, 72-8250, 72-8251, 72-8302, 72-8309, 72-8316, 72-8415b, 72-8801, 72-8804, 72-8908, 72-9509, 72-9609, 72-99a02, 72-99a02, as amended by section 92 of this act, 72-99a04, 74-4939a, 74-8925, 74-99b43, 75-2319, 79-201x, 79-213, 79-2001 and 79-2925b and repealing the existing sections; also repealing K.S.A. 2016 Supp. 46-1133, 72-6482 and 75-2319, as amended by section 46 of Senate Substitute for Substitute for House Bill No. 2052, was considered on final action.

On roll call, the vote was: Yeas 23; Nays 16; Present and Passing 1; Absent or Not Voting 0.

Yeas: Baumgardner, Berger, Billinger, Bollier, Bowers, Denning, Doll, Estes, Givens, Goddard, Hardy, Kelly, Kerschen, Longbine, Lynn, McGinn, Petersen, V. Schmidt, Skubal, Sykes, Taylor, Wagle, Wilborn.

Nays: Alley, Faust-Goudeau, Fitzgerald, Haley, Hawk, Hensley, Hilderbrand, Holland, Masterson, Olson, Pettey, Pilcher-Cook, Pyle, Rogers, Suellentrop, Tyson.

Present and Passing: Francisco.

The bill passed, as amended.

EXPLANATION OF VOTE

Mr. Vice President: After considerable consideration and debate in the Senate Select Committee on School Finance and the Senate Education Committee, we are here today with **S Sub HB 2186**. Committee members believe it “is reasonably calculated to have all Kansas public education students meet and exceed the standards set out in the Rose Capacities.” The Senate listened to the Kansas Supreme Court’s concerns about under performing students and drafted **S Sub HB 2186** to target money toward those individuals. **S Sub HB 2186** ends the use of at-risk dollars for general expenses, instead we mandate their use for “At-risk educational programs [and services] based on best practices...” What I particularly appreciate about this bill is that it requires school districts to account for all dollars spent specifically to enhance the education of under performing students. We consider this to be important verification of student outcome efforts. For the first time since the 1992 adoption of the SDFQPA, parents of students who have fallen short of the Rose Capacities will know how much has been spent on their child and will be assured that every dime of at-risk funding is dedicated to help

their child succeed. For this reason, I vote yes for **S Sub HB 2186**.—MOLLY BAUMGARDNER

Senators Berger, Goddard, Hardy, Kerschen and Lynn request the record to show they concur with the "Explanation of Vote" offered by Senator Baumgardner on **S Sub HB 2186**.

Mr. Vice President: "Spending is not dispositive of adequacy," but "the outcomes of the state's public education system" are. **S Sub HB 2186** does not focus only on the amount of money spent for under performing students, it also ensures that such dollars fund the best possible programs to help those students meet or exceed the Rose capacities as defined by the Kansas State Board of Education. **S Sub HB 2186** requires the State Board of Education to identify (and districts to use) best practices for increasing at-risk student performance. The Board, through its Kansas CAN effort, promotes assessing and enhancing student performance. **S Sub HB 2186** commits the Board to developing evidence-based best practices to maximize results for under performing students. Under **S Sub HB 2186**, the Board will also provide a series of assessment tools to best measure student performance based on what kids need to succeed in today's world. Schools can then use these best practices and assessment tools to put at-risk dollars to their most productive use. Because **S Sub HB 2186** is a concerted legislative effort to put dollars, research and classroom focus on promoting real growth for all students, I vote yes.—BARBARA BOLLIER

Senators Berger, Goddard and Hardy request the record to show they concur with the "Explanation of Vote" offered by Senator Bollier on **S Sub HB 2186**.

Mr. Vice President: As chair of the Select Committee on Education Finance, I tasked my committee with "reasonably calculating" K-12 funding to help students meet or exceed the Rose standards. As part of this process, we heard from Commissioner Randy Watson. He described the Kansas State Board of Education's process of analyzing districts whose students exceeded their expected performance by the greatest levels, using them as models to guide education policy and best practices for the rest of the state. My committee also focused on the forty districts that have most exceeded Board expectations of student achievement. **S Sub HB 2186** examines the per student funding provided to those forty districts and sets that amount as the base state aid for all districts. **S Sub HB 2186** further takes this base state aid figure and (after the 2018-19 school year) indexes this amount to inflation. By providing hundreds of millions of dollars in increased base state aid as determined by experts and applied by Kansas' most successful schools, **S Sub HB 2186** is reasonably calculated to promote student success. I vote yes.—JIM DENNING

Senators Goddard, Hardy, Kerschen and Lynn request the record to show they concur with the "Explanation of Vote" offered by Senator Denning on **S Sub HB 2186**.

Mr. Vice President: I vote "no" on **S Sub HB 2186**. While the new finance formula hews closely to the old pre-block grant funding scheme formula and has the potential to provide both adequate and equitable K-12 funding, I do NOT believe that our Senate chamber has provided the needed justification in showing how the proposed amounts of BSAPP spending for the 2017-18 and 2018-19 school years will translate into Kansas schoolchildren achieving the desired Rose standards. My concerns regarding the proposed BSAPP spending amounts are further heightened when reviewing the

significant cuts made to school funding starting with the 2009-10 school year and subsequent static funding levels. These proposed BSAPP amounts have not even kept up with inflation given the BSAPP amounts funded in the 2008-09 school year. While I sincerely appreciate the Senate's work on this most critical issue, I believe our work is incomplete and we must do better.—TOM HOLLAND

Senator Hawk request the record to show he concurs with the "Explanation of Vote" offered by Senator Holland on **S Sub HB 2186**.

Mr. Vice President: I vote NO on **S Sub HB 2186**. It does little more than reinstitute an archaic finance formula that had gotten out of hand from years of politically parochial weighting adjustments from the powerful. As a result of those parochial changes, the "base" remains artificially low while at the same time overall spending grows at rates well over the rate of inflation and enrollment. This was confirmed by the testimony of the KASB. In addition, it allows that some of our richest districts receive funds from BOTH a cost of living weighting, for their wealth in one part of the formula, AND equalization aid for their poverty in another. It also provides for a grand deception by implementing things like a weighting for BOTH enrollment above 1622 AND below 1622 pushing funding into the multiplier and further suppressing the base. Separate from the wholly political discussion of whether or not more tax payer dollars should be spent on K-12, this formula serves to keep the public, the media, the courts, and even a bulk of the legislature in the dark and gives the legal team suing our population the ability to confuse the issue and make millions doing it.—TY MASTERTSON

Senators Pilcher-Cook and Suellentrop request the record to show they concur with the "Explanation of Vote" offered by Senator Masterson on **S Sub HB 2186**.

Mr. Vice President: It's sad it took 102 days for this Chamber to debate School Finance. I appreciate yesterday – some bad amendments were defeated; some good amendments were lost but overall we made gains to a student focused school finance formula. As we heard multiple times, this bill does not meet adequacy. If this bill's new funding had not followed years of neglect by the State of Kansas, it might be enough. However, the Gannon 4 decision clearly stated we were millions below where we needed to be in 2012. School employees and our children have paid dearly. This formula, for the most part will be helpful to schools under the Rose Capacities. I am troubled by the systemic efforts in the formula to raise local property taxes that negatively effect equity. The Court was clear - "School districts must have reasonable equal access to similar educational opportunities through similar tax effort." Finally, this bill does not meet adequacy and we will be need to come back to fix it. Not only will that be expensive but we must bear the responsibility of playing chicken with the Court on school closing. Because I feel this bill in unconstitutional, I must vote no.—LYNN ROGERS

Senators Faust-Goudeau, Hawk, Hensley and Pettey request the record to show they concur with the "Explanation of Vote" offered by Senator Rogers on **S Sub HB 2186**.

Mr. Vice President: Today, I am a NO vote on **S Sub HB 2186**. While the Senate select committee did go to great lengths to address numerous issues in the Education bill, there remains a large segment of the K-12 cost, born by the taxpayers of the State of Kansas, that was not addressed. The cost of administration for Kansas K-12

administration has grown far faster and far greater than the rate of inflation and/or the rate of student growth over the last decade. Until this issue is given serious consideration and is addressed to control this spiraling growth, I cannot support this Senate K-12 education bill, therefore I vote NO.—GENE SUELLENTROP

Senators Masterson and Pilcher-Cook request the record to show they concur with the "Explanation of Vote" offered by Senator Suellentrop on **S Sub HB 2186**.

PROTEST

*Protest by Senator Hensley against Senate Substitute for HB 2186
May 31, 2017*

Mr. Vice President: I hereby exercise my right under Article 2, Section 10, of the Kansas Constitution to protest **Senate Substitute for House Bill 2186**.

On March 2, 2017, the Kansas Supreme Court affirmed the trial panel's decision that the public education financing system provided by the legislature for grades K-12 is constitutionally inadequate. In issuing its decision, the Court instructed the Legislature to implement a new school finance system which is "reasonably calculated to address the constitutional violations of the adequacy requirement while also satisfying the equity requirement." Senate Substitute for House Bill 2186 fails to satisfy both the adequacy and equity requirements of the Kansas Constitution.

Adequacy. Senate Substitute for House Bill 2186 is inadequate from the standpoint of new funding. It only provides \$233 million in new K-12 funding over the next two school years. While it does provide for an increase in the base state aid, that increase fails to achieve the high-water mark of \$4,400 in 2009. Meaning that five years from now we will be below where we were eight years ago. This also falls well short of the Kansas State Board of Education's recommended \$893 million in new funding over two years and even further short of the estimated \$1.4 billion in new funding called for in the legislatively commissioned cost studies.

This is crucial as the Court found that student achievement demonstrated CLASS's implementation was not reasonably calculated to meet the *Rose* standards due to underfunding. The Court instructed that "actual costs remain a valid factor to be considered during application of our test for determining constitutional adequacy under Article 6. Accordingly, the state should not ignore them in creating a remedy." This new funding is not based on consideration of actual costs and clearly ignores the cost studies and State Board's recommendations.

The at-risk floor contained in section 23 of the bill provides \$2 million for two school districts while many other districts with more at-risk students than free-lunch students do not get extra funds for their at-risk students. This floor is structurally flawed and not cost-based which creates an adequacy violation. Section 25 of the bill provides that no local school boards have any authority to spend at-risk funds until the State Board completes a best practice study on or before July 1, 2018. This is structurally unsound and creates an adequacy violation. The same is true for the increase in special education funding which is distributed by FTE as opposed to a formula. This causes funding to be distributed regardless of whether a district has special education students and costs causing an adequacy violation.

Equity. Sections 15, 17, 30, 31, 32, 49, 86 and 98 all contain equity violations

because they do not provide reasonably equal access to substantially similar educational opportunities through similar tax effort. Section 15 provides that 44 school districts will get \$30 million in additional funding without having an election while others will not have such access because they cannot get taxpayer approval for an increase in their LOB. Section 17 will result in delays in equalization to districts with declining AVPP while allowing districts with increasing AVPP to retain unwarranted equalization funds.

The Declining enrollment weighting, Ancillary school facilities weighting, Cost-of-living weighting and Capital outlay tax levy sections all violate the equity test by not providing equal access to similar tax efforts. The Ancillary school facilities weighting section will result in five districts raising \$24 million in local unequalized funding through this levy while districts with low valuations will be unable to access these funds. The Cost-of-living weighting will allow for six districts to raise \$20 million in unequalized local funding while 21 districts qualify for it. The inclusion of the protest petition also means that not all qualifying districts will be able to access these funds.

Section 86 provides for the addition of utility expenses and property and casualty insurance to the Capital outlay fund usage which creates a large equity violation. Property and casualty insurance expenses are approximately \$35 million statewide while utility expenses are approximately \$106 million statewide. The inclusion of both of these in Capital outlay would be an expansion by 53%. Expanding the use of a wealth limited fund allows districts with high wealth to shift vastly more operating expenditures into capital outlay, freeing up their general fund or LOB for offering additional education opportunities to their students. Districts with lower wealth will not have the same ability to shift expenditures as wealthy districts.

Section 98 provides the same equity violations as the other sections outlined above. By making facilities used primarily for extracurricular activity projects ineligible for capital improvement state aid unless necessary for safety or disability access, this section will force poor districts to raise unequalized funds for extracurricular activity projects which they will be unable to do. This is important because extracurricular activities have been found to be beneficial to increasing achievement.

For those reasons, it is clear that Senate Substitute for House Bill 2186 does not meet the constitutional requirements of the *Gannon* decision. This is in no way constitutional or acceptable for the school children of Kansas. —ANTHONY HENSLEY

ORIGINAL MOTION

On motion of Senator Tyson, the Senate acceded to the request of the House for a conference on **HB 2067**.

The Vice President appointed Senators Tyson, Kerschen and Holland as third conferees on the part of the Senate.

On motion of Senator Denning, the Senate recessed until the sound of the gavel.

The Senate met pursuant to recess with President Wagle in the chair.

REPORT ON ENROLLED BILLS

SB 83 reported correctly enrolled, properly signed and presented on the governor on May 31, 2017.

On motion of Senator Petersen the Senate adjourned until 10:00 a.m., Thursday, June 1, 2017.

CHARLENE BAILEY, CINDY SHEPARD, *Journal Clerks.*

COREY CARNAHAN, *Secretary of the Senate.*

