

MINUTES OF THE SPECIAL SESSION SENATE EDUCATION COMMITTEE

The meeting was called to order by Chairman Jean Schodorf at 3:40 p.m. on June 28, 2005, in Room 123-S of the Capitol.

Committee members absent: Barbara Allen - excused (Karin Brownlee appointed for Special Session)
Chris Steineger -excused (Anthony Hensley appointed for Special Session)

Committee staff present: Carolyn Rampey, Kansas Legislative Research Department
Kathie Sparks, Kansas Legislative Research Department
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Dale Dennis, Deputy Commissioner, State Board of Education

Senator Schodorf opened the meeting by stating, "In the spirit of being open and honest, I've been asked to call the Senate Education Committee for a meeting. I have not been involved in this, but I think most of you know that there has been a bi-partisan group in the House, predominantly from Johnson County and some other Republicans and Democrats, who formed a coalition. They have been working on an education plan similar to the education plan that the Senate passed out. We've been asked to look at that plan to see if we can endorse it and send it to the Ways and Means Committee."

Kathie Sparks, Kansas Legislative Research Department, distributed copies of a summary of the new proposal, **Senate Substitute for HB 2004**, which would provide an additional \$159,956,00 in state aid for schools and would provide \$30.0 million in potential local option budget property tax relief. Ms. Sparks outlined the changes in the formula, noting that the amounts of increase were in addition to appropriations made by the 2005 Legislature to fund **HB 2247**. She also discussed other policy changes regarding the Legislative Post Audit cost study, litigation against the state, legislative legal counsel, school budget deadlines, new funding dedicated to instruction, prohibition of school closure, school district contingency funds, and the creation of an At-Risk Council. ([Attachment 1](#))

Carolyn Rampey, Kansas Legislative Research Department, distributed copies of a chart comparing current law with **SB 3**, the proposed changes to **SB 3**, and the new proposal. She explained that the amount shown in the last column makes an adjustment to take into account the additional funding over and above **HB 2247** that would be affected by the new proposal. She noted that adoption of the new proposal would add a total of \$284.3 million. She called attention to footnotes on page four which indicate that the chart does not reflect the money for the military dependents or miscellaneous adjustments made because of enrollment and adjusted valuation, which add \$16,628,000. She pointed out that the grand total increase for school year 2005-06 would be \$300.9 million. ([Attachment 2](#))

Committee discussion followed regarding the proposed changes and increases. Senator Vratil commented that the bill would equalize the authorized LOB to the 82nd percentile. In response to questions raised by Senator Teichman, he clarified that the intent was to equalize to the 82nd percentile the increase of 27 percent this year. He stated, "I think the feeling of people who discussed this was that we're going to be starting a new legislative session in about six months. Everything is on the table again. This is just sort of an interim step, and I'm sure we'll make some changes in the school finance formula in the next session. I don't think we need to explain to the Court that the other two years are not equalized because we're concerned only with the 2005-06 school year. The Legislature's intent is to focus on the 05-06 school year. That's what the Court has focused on. The Court has not told us what they will do for the second and third year. I don't know that we can do anything regarding the second and third year until we know what the Court says it will do."

Senator Lee commented, "We've taken \$5.8 million from the base, out of **SB 3**. We've cut \$5.6 million out of special ed. And the base was one of the three legs to our equalized stool, but we've now changed that. We've added \$6.0 million into the LOB because we've increased the LOB, and then we've added another \$2.9 million back into the LOB because we've equalized it to a higher percentage and increased the percentage. And, secondly then, we've increased the correlation weighting by \$4.3 million, again, unbalancing the balanced stool that we had."

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Senator Schodorf asked if the Supreme Court stayed the LOB because it was not equalized. Senator Vratil responded, "As I recall, the Supreme Court didn't precisely say why they stayed it, but they criticized it in two respects. They said it was disqualifying, and they said it contributed to wealth-based disparity. The change in this bill speaks to both of those, the disparity in spending and the wealth-based disparity, because it equalizes to the 82nd percentile and; therefore, with 82 percent accuracy, creates the same ability to raise local property taxes among all schools based on the same equity. It will not only do it for more school districts but it will increase the state match for school districts that are below the 75th percentile as well."

Dale Dennis, Deputy Commissioner, State Board of Education, distributed a computer printout based upon the increase as a result of new proposal, **Senate Substitute for HB 2004**. (Attachment 3) Senator Lee commented that, in the interest of comparing "apples to apples," she would prefer to see either a printout showing only what was in **SB 3** or a printout comparing the new proposal with what was passed during the 2005 Legislative Session. Mr. Dennis agreed to provide an additional printout as requested in approximately one hour.

With regard to the two LOB provisions on page two of Ms. Rampey's handout, Senator Hensley commented, "Basically, I think what we're looking at here is a shift of \$9.0 million in the original **SB 3**. The shift of \$6.0 million, which would basically fund the equalized LOB that was in **HB 2247**, and that \$6.0 million is assuming that 40 percent of the districts will actually use that additional authority. I think 40 percent is almost a liberal figure, in my estimation. And the other \$3.0 million shift is going back to our Education Committee's original position on the property tax buy down, if you recall, the property tax buy down by \$3.0 million. So this proposal is to add that \$3.0 back in, which, at least I felt, was a really important equalization factor in the whole issue of the LOB. Now, if you look at the very last page and you look at the single asterisk, that's a very good description as to what happens if the Supreme Court continues to stay the LOB increase of up to 27 percent. The \$6.0 million then would be actually reallocated to special education, which then would put us back to the 92 percent excess cost level. What happens in the event the Supreme Court does not continue the stay? Frankly, I would like to see this bill or this proposal say that for the school year 05-06, excess cost is at 90 percent but then for school year 07-08, it's at 92 percent. I'd like us to be able to have that additional feature as it relates to special ed. Knowing that the point that the Senator from Johnson, Senator Vratil, made, we're going to be back here six months from now anyway re-debating the issue. But I still believe our position of 92 percent when it left the Senate ought to be in this bill for the 07-08 school year." Senator Vratil stated that he agreed with Senator Hensley's comments.

Senator Schodorf began a discussion regarding how the provision for declining enrollment for all districts was different from the provision in **HB 2247** which was stayed. Senator Vratil commented, "Extraordinary declining enrollment in **HB 2247** applied only to those school districts who for a period of three preceding years had declining enrollment equal to either 150 students per year or 5 percent. When the Department of Education looked at that, there were only four school districts in the state that qualified. Under the extraordinary declining enrollment provision in **HB 2247**, those school districts that qualified would have been allowed to present an application to the Board of Tax Appeals requesting that they be authorized to increase their budget by whatever amount of money they could justify as a result of their declining enrollment. There was no limit on it. Their petition, if granted, would have been good for two years. This bill attempts to respond to the Supreme Court's criticism of that. The Supreme Court said that there is no limit under what could have been petitioned for under **HB 2247**, and so this bill puts a 5 percent of general fund limitation on that. The Supreme Court criticized it because they said it only applied to four school districts. This bill would open it up to every school district in the state. What's in this bill is attempting to respond to the Supreme Court's criticism."

Following questions raised regarding the amount of districts' LOB, Senator Vratil explained, "For this current school year, a school district would have to be a 25 percent LOB. In each subsequent year, they would have to be at the maximum authorized LOB at the time they applied to the Board of Tax Appeals. We anticipate that the cost will be zero because, in this first year, we anticipate that there probably will be only one school district that will make application, and that school district was not qualified for equalization aid. Because of the additional money that's being placed into the school finance formula, \$300 million, we think that most school districts will find it unnecessary to increase their LOB to 27 percent. The anticipation was that, if there are other school districts that apply to the Board of Tax Appeals and are granted permission, then we'll use a supplemental appropriation in the next session to fund that. But it's virtually impossible to know

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what school districts would use the additional LOB authority.”

Senator Goodwin voiced her support of using 92 percent for special education excess costs for the second year. Senator Hensley responded, “We need to let the revisor know about that because the revisor is in the process of drafting this bill. But in our discussions, previously among some of us, that was one of the things we agreed on – to make sure that 92 percent in the second year is in the bill.”

With regard to the severability clause, Senator Teichman commented, “It is my understanding that, whether the severability clause is in or out, the Court still has the ability to sever out any provision they want to. Am I correct on that?” In response, Senator Vratil responded, “I think this Court probably has the ability to do whatever they want to do. So, my answer to your question would be yes.” Senator Teichman stated, “At the appropriate time, I would like to discuss putting the severability clause back in.” Senator Vratil responded, “I think during the discussions there were some people who wanted to put a severability clause in this. There were some people who wanted to put in a reverse severability clause in this. During the course of the discussions, we concluded that two of the provisions that were stayed by the Court now have contingencies in this bill, and therefore; it was not necessary.”

Senator Lee asked Senator Vratil to identify what committee he referring to when using “we.” Senator Vratil explained, “Over the past two days, at the invitation of the Governor, a group of people have met with her. She has tried to facilitate an agreement between the Senate and the House. The people who met from the Senate included Senate leadership from both parties. The members from the House included minority party leadership, other interested persons from the minority party, and the Republicans from the House who have a particular interest in reaching a solution to the school budget this year.” He went on to explain, “The strategy to obtain the majority approval in both houses is, hopefully, to seek the endorsement of the Senate Education Committee, then ask the Senate Ways and Means Committee to put this proposed bill into a House bill and to also put the appropriate provision into that bill, and present that to the Senate. And, if that bill passes (**Senate Substitute for HB 2004**), send it over to the House for a motion to concur.”

Senator Brownlee questioned Senator Vratil regarding the appropriation to be included in the proposed bill. She commented, “What I would like for us to consider is to cut in half the basically \$160 million figure and appropriate half of that to the 2006 fiscal year, and then the other half, commit that in statute to the 2007 fiscal year. What that accomplishes is that it allows us to basically commit to a very, very significant sum of money, a 12.5 percent increase. Certainly no other state agency is enjoying that kind of increase. But yet, it doesn’t cause us to be in red ink on the 2007 budget when we come in January.”

In response to Senator Brownlee, Senator Hensley said, “As I recall, the Supreme Court was very explicit. The additional money, \$143 million, would have to be for the 2005-2006 school year. I don’t know if we have any real option to pursue that proposal.” Senator Vratil added, “Even if we did take that approach, it would save us \$80 million in the 2006 fiscal year, but we would still be in red ink in the 2007 fiscal year because current projections based upon adding \$160 million to this bill shows we’ll be about \$120 million in red ink.”

Senator Brownlee responded, “I think it still removes a lot the fiscal pressure that we have. And then we can determine, after knowing the results of the Post Audit study, if we want to reallocate it in different ways. I think it would provide a lot more flexibility. And, as far as how the Supreme Court would respond, I believe that Steve McCallister said, please correct if somebody heard differently, but I understand it would say that you didn’t really think the Court necessarily would respond, you know, take an action against us.” Senator Teichman commented, “My recollection of it was, I don’t think they would take action against us, meaning the Legislature.”

Senator Schodorf reminded the Committee, “This is day seven, and unless you all want to stay here for a couple more days, or fifteen days, or whatever it is, we’ve got to come up with a proposal. This isn’t my proposal. It is a proposal from another group so it’s the decision of this Committee whether you want to endorse this or not. And if you want to endorse this, fine. If you don’t, then we’re back at pretty much zero, and we’ll have to come up with another solution.”

Senator Goodwin commented, “I think that we need to realize we did for two years put \$50 on base into our

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educational system, but I think we need to realize how many years we put nothing in. I don't know that we'll ever catch up to be equal to what we should have been putting in as the cost of everything in the school system as well as our personal lives increased. This bill has some good things, and it has some bad things in it. I mean, things that I would like to have changed. Over the years, I have found the longer the Legislature debates anything, the worse it gets. So, I would hope that we would move this bill out. It isn't going to suit everyone, but my comment is, can I live with it. I think, in the long-term, we can live with it, and in six months we're going to be back. I would hate for us to say, no, we want something better. Rest assured, it's going to get worse. In the talk in the hallways, the talk with my fellow House members that I served with in years past, I have the feeling that's what's going to happen. So, I would strongly encourage everyone to take a good look at this bill and see if it's something we can live with until we get back and maybe do additional work on what our educational system needs."

Senator Hensley responded, "I agree with Senator Goodwin. I, for one, at the appropriate time when the motion is made for the Senate Education Committee to support this proposal, am willing to support the motion. Senator Vratil pointed out the fact that the bill is actually in Senate Ways and Means Committee, and so, if this Committee endorses this proposal, then the Senate Ways and Means Committee can do their job of putting this into a House bill. Then we can have a full blown debate on the floor of the Senate just as we did the other day on **SB 3**. We have until this Friday to be able to accomplish what I believe the Senate set out to accomplish on day one of this special session. I just think this is as best a proposal that can be assembled in the short period of time we have left to us. We just need to continue the process and have a debate on the floor of the Senate on what will then be **Senate Substitute for HB 2004**."

Senator Ostmeyer commented, "I'm totally against it. I don't know what direction we're heading. I'm as busy as anyone in this room. I'm really concerned with the direction we're going. We've got different things going. The House has their business to run. They need to learn how to run it. I've served over there. For us to come over there and settle their problems for them, I think we're heading down the wrong direction. We're going to lose the main thing I came up here for. I'm going to lose this education fight too. But, I can tell you, Senator Lee and I will show you the small rural schools are going to be the total losers in this deal."

Senator Schodorf responded, "When I became Senate Ed Chair, I put on a hat of helping all school districts. In our Senate proposal, I supported your belief that we needed more equalization and have property tax relief. It has stayed in here, and that was very important to me. The second thing that I think benefits you all – is there another way we could add to the declining enrollment? Because most of the low enrollment districts are declining in enrollment and need extra help. And I see those two areas that would benefit small schools plus on the base. I see both of these bills helping small schools, medium size district schools, and large schools. The question is, do you want to get out of here? I believe that this will help everybody. It's not as pretty as the other one. But it's your position, and respect you for that."

Senator Ostmeyer and Senator Schodorf opened a discussion regarding the possibility of adding another provision to help small schools. Senator Lee commented, "The issue of the extraordinary declining enrollment is the fact that you have to be at 25 percent LOB. You understand that it takes many of those very poor rural schools 30 mills to get to 25 percent. I envision that the reason a poor district won't ever be able to use it regardless of the amount of their declining enrollment is the fact that they simply cannot tax their people that heavily." Senator Schodorf responded, "I'm not even talking about taxes. I'm not talking about the LOB. I'm saying, is there another provision that could help small schools that wouldn't have to increase the LOB, like a five-year average for declining enrollment? It's three years now. Is there something else that would help small schools as well as the larger urban districts that are losing, not the LOB part, but a five-year rolling average or something to that effect where you could use the five-year average instead of the three. Is there something else that you can think of that would be included that would help your district that's losing enrollment?"

Senator Teichman commented, "I appreciate your trying to find a solution for us. But, if we did a five-year rolling percentage, the percents just won't work in small schools."

The meeting was recessed at 4:55 p.m. until the requested computer printout to be prepared by Mr. Dennis was available. Senator Schodorf noted that Mr. Dennis estimated that the printout would be ready by 5:30 p.m.

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Senator Schodorf called the meeting to order at 5:45 p.m. at which time Mr. Dennis distributed copies of the requested computer printout and briefly reviewed the data shown on the first page. (Attachment 4) He noted that the figures shown included the total increases resulting from the provisions in 2005 **HB 2247**, **SB 43**, and the proposal being considered. He then responded to questions from the Committee.

Senator Goodwin moved that the Committee endorse the proposed plan, seconded by Senator Teichman.

Senator Brownlee expressed concern about the process, noting that the Committee actually did not have a hearing on a bill with testimony from the public. She stated, "I realized that the process is that we can put this into a House bill and then it goes immediately to conference or the hope that there would be a concur in the House. But I want my colleagues to understand that this is an invitation to gambling. That's just plain and simple because we cannot afford it. And I think the Senate already spoke on gambling, but I'm concerned if we forget that that's what's happening here, that we're going get put into an entire box when we pass this out. I am concerned about how the money is parceled out, but my overriding concern is this is twice as much as what we can afford. I think we need to look at half the amount, and then it would be something I could support."

Senator Lee and Senator Ostmeyer also stated that they could not support the plan.

Senator Schodorf commented, "The process is trying to vote on something. We've been voting on a lot of proposals. Special session is a little different. I'm going to vote for this because this isn't the last plan. I remember two years ago when we had 14 or 16 plans, and we kept thinking that there was another plan and another plan, and when we said it was the last one, that was it. And we were left with nothing. Senator Brownlee, I firmly believe, and this the difference of opinion, this is the split in the Senate and the House; but it is my opinion that we have to put in \$143 million or be taken over by the Court. That's why I can't support \$80 million, but your proposal makes sense too."

On a call for a vote on Senator Goodwin's motion, the motion carried with Senators Brownlee, McGinn, Ostmeyer, and Lee voting "No."

Senator McGinn explained her "No" vote as follows: "I look at the different parts of the plan, and I think it's a very good attempt of trying to balance and get where we need to get as far as funding education. This is where perhaps, I think, our body is split, and we haven't had the opportunity to have this discussion. But, we're putting out a plan that means increased taxes, cut services, or gaming. That's what we're going to have to figure out how to do. And we haven't even talked about a plan that comes in less than that. And the reason we haven't talked about it is because there are some, maybe many, that fully believe that we have to totally comply with the dollar amount the Court says. I think there are some that also want to try to figure out what we can afford, and that we do want to give schools more money. I feel very strongly about wanting to give schools more money, but am trying to figure out how we're going to pay for that. So, that's a concern that I have about this bill, and, so far, we haven't had the opportunity to even have a discussion about what a lesser amount would look like and try to move forward."

The meeting was adjourned at 6:15 p.m.

No further meetings were scheduled.

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