

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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June 22, 2016

To: House Committee on Judiciary
From: Lauren Douglass, Principal Research Analyst
Re: Additional Legislative History on Statutory Provisions Prohibiting Courts from Closing Schools

At the request of Representative Barker, I have compiled additional background information on House Sub. for SB 3 (SB 3) from the 2005 Special Session, which, among other things, prohibited Kansas courts from closing schools as a remedy in school finance litigation under Article 6 of the *Kansas Constitution*. Attached to this memorandum, you will find:

- Excerpts from the *2005 Special Session Summary of Legislation* for SB 3 and other education bills enacted during the Special Session;
- The conference committee report (CCR) for SB 3, as published in the July 6, 2005, *House Journal* (pages 96-112);
- The House vote on the CCR for SB 3, as published in the July 6, 2005, *House Journal*, as well as explanations of vote (pages 112-115); and
- The Senate vote on the CCR for SB 3, as published in the July 6, 2005, *Senate Journal*, as well as explanations of vote (pages 68-69).

For additional information on the statutes prohibiting school closure as a remedy in school finance litigation, the Office of Revisor of Statutes prepared a summary of the legislative history, as well as *Montoy v. State*, the impetus of such legislation. It was distributed at the joint meeting of the House and Senate Judiciary committees and can be found at <http://www.ksrevisor.org/rpts/StatutoryProvisionsProhibitingCourtsfromClosingSchools.pdf>.

Attachments

LD/db

EDUCATION

Appropriations for Elementary and Secondary Education, Changes in the School Finance Formula, and Other Policy Changes

HB 2247, HB 2059, SB 43, and House Sub. for SB 3 (2005 Special Session) appropriate an additional \$289.5 million in state funds for school year 2005-06, consisting of \$261.8 million in increased state aid and \$27.7 million in potential local option budget property tax relief. The legislation is in response to orders of the Kansas Supreme Court.

Major features of the legislation are listed below.

Changes in the Formula

- Base State Aid Per Pupil (BSAPP)—Increases by \$150 from \$3,890 to \$4,257—\$82.5 million.
 - Correlation Weighting—SB 3 restores correlation weighting which had been eliminated in HB 2247. The threshold at which school districts qualify for correlation weighting is reduced from 1,725 to 1,622—\$28.7 million.
 - Low Enrollment Weighting—HB 2247 changes the computation formula for low enrollment weighting in order to offset the increase in BSAPP as the result of correlation weighting being eliminated and BSAPP being increased by an equivalent amount of funding. (This change in the computation of low enrollment weighting was unaffected by the restoration of correlation weighting in SB 3.)
- At-Risk Weighting—Increases the at-risk weighting from 0.145 to 0.193—\$53.7 million.
- Bilingual Education Weighting—Increases the bilingual weighting from 0.2 to 0.395 for school year 2005-06 and thereafter—\$11.0 million.
- Special Education—Increases special education excess costs funding from 81.7 percent to 89.3 percent for school year 2005-06 and to 92 percent for school year 2006-07 and thereafter—\$31.2 million (school year 2005-06).
- Capital Outlay—Limits the capital outlay mill levy to 8 mills and equalizes to the 8 mill levy limit—\$18.0 million.
- Local Option Budget (LOB) Maximum Authorization—Increases the LOB maximum authorization from 25 percent to 27 percent in school year 2005-06, 29 percent in school year 2006-07, and 30 percent in school year 2007-08—\$6.0 million (school year 2005-2006).

- Declining Enrollment Provision—Any USD that is at its maximum LOB and has declined from the prior year may seek approval from the State Board of Tax Appeals to make a levy for up to two years, capped at 5 percent of the district's general fund budget. The levy is equalized up to the 75th percentile. For school year 2005-06, the maximum LOB is considered to be 25 percent—(No estimate of cost made).
- Increase State Aid Percentile for LOB—Equalizes to the 81.2 percentile (prior law was 75th percentile)—\$27.7 million.
- Federal Impact Aid—Decreases the federal impact aid deduction from 75 percent to 70 percent—\$800,000.
- Four-year-old At-Risk Program—Eliminates the cap on the number of children who can be served and increases funding—\$0.8 million.

Revenues

- School District General Fund Mill Levy—HB 2247 renews the 20 mill levy, including the \$20,000 residential exemption for FY 2006 and FY 2007.
- Inflationary Index—HB 2247 provides that, for school years 2007-08, 2008-09 and 2009-10, the total amount of state aid, except for special education and related services, will be increased by the CPI-U index from the preceding fiscal year. If the CPI-U index has no change or has decreased, the state aid amount will be no less than the preceding year.
- Tax Increment Financing—HB 2247 provides that, within a redevelopment district, county clerks must use the value of the property before improvement to determine the adjusted valuation of a school district for purposes of computing the amount of general and supplemental general state aid and the School District Capital Improvements Program.

Policy Changes

- Skills for Success Grant Program—The legislation creates the Skills for Success Grant Program for kindergarten through grade three in reading and math. The program is to be administered by the State Board of Education and, beginning in FY 2007, provides grants to districts based on criteria established by the State Board. The grant amounts will be determined proportionally to the total number of students in the districts who apply. SB 43 transfers the oversight responsibilities for the program from the 2010 Commission to the Legislative Educational Planning Committee. Finally, the bill creates the Skills for Success in School Fund and permits carry forward balances without a penalty.
- Foreign Exchange Students—HB 2247 provides that a foreign exchange student will not be counted unless that student is enrolled for at least one semester or two quarters.

- Out-of-State Students—HB 2247 provides that no out-of-state student will be counted in the enrollment of the receiving school district unless the district has entered into an agreement with the sending state for payment of tuition or the district has a hardship application that has been approved by the State Board of Education. The State Board is required to grant hardship applications in cases of a student whose parent is an employee of the school district where the student is enrolled, whose parent has paid taxes on real property in Kansas during the current or preceding school year, or who has attended public school in Kansas during the 2004-05 school year.
- 2010 Commission—HB 2247 creates an 11-member 2010 Commission. The Speaker of the House, the President of the Senate, the Minority Leader of the Senate, and the Minority Leader of the House will each appoint one member. The Governor will make two appointments, one to be a person licensed by the State Board of Education. The Chairperson of the House Education Committee and the Chairperson of the Senate Education Committee also are members of the Commission. One member will be appointed jointly by the Speaker, the minority leaders, and the President. The Legislative Post Auditor and the Attorney General will serve as *ex officio* nonvoting members of the Commission. The Commission has the authority to appoint subcommittees to review and make recommendations to the Commission on all school finance issues. The Commission will sunset December 31, 2009.
- Legislative Educational Planning Committee (LEPC)—HB 2247 excludes school finance from the responsibilities of the LEPC.
- Areas of Instruction—HB 2247 provides that, in addition to the subjects and areas of instruction mandated in statute, accredited schools also must teach subjects and areas of instruction required by the State Board of Education as of January 1, 2005. The bill specifies that every high school must teach the subjects necessary to meet the State Board of Education's graduation requirements and outlines the goals for areas of instruction adopted by the State Board of Education as of June 1, 2005.
- Carry Forward Funds—HB 2247 creates the At-Risk Education Fund. The bill allows the at-risk, bilingual, and vocational education funds to carry forward balances from year to year without penalty. Under prior law, balances were deducted from the general state aid authorization.
- Expenditures for Instructional Purposes—SB 3 establishes a public policy goal that 65 percent of money provided by the state be used for classroom or instructional purposes and that all money derived from the \$35 increase in BSAPP under SB 3 be used for classroom or instructional purposes.
- Military Dependents—HB 2059 provides an alternative date on which the enrollment of districts is determined. The bill allows certain districts to count the number of pupils who are military dependents on February 20 when determining the enrollment of the district for school years 2005-06 and 2006-07. In order to qualify, a district must have an increase of a minimum of 25 students or 1 percent

of the district's enrollment consisting of students who are dependents of a full-time active duty member of the military service or military reserve who are engaged in mobilizing for war, international peacekeeping missions, national emergency, or homeland defense activities.

- School Closure—SB 3 provides that no court or court appointee or judicial panel may close public schools or prevent distribution of funds for schools as a remedy in a suit alleging a violation of the Education Article (Article 6) of the *Kansas Constitution*.
- SB 3 and HB 2247 direct the Legislative Division of Post Audit to conduct two studies; one will be input oriented, based on statutory requirements, and the other will be outcomes oriented, based on state statutes and State Board of Education rules and regulations and standards. The reports are to be made available to the 2006 Legislature.
- School Districts Audit Team—HB 2247 establishes the "School District Audit Team" within the Legislative Division of Post Audit. The Team will operate under the direction of the 2010 Commission. The Team is to conduct annual performance audits of selected school districts. Audits also could be conducted by qualified firms selected by the Legislative Post Auditor.
- Litigation Against the State—SB 3 prohibits school districts from making expenditures from their general funds in support of litigation concerning school finance against the state. However, districts could make expenditures for litigation from their LOBs.
- Legislative Counsel—SB 3 authorizes the Legislative Coordinating Council to enter into a contract with an attorney in private practice to represent the Legislature in school finance litigation or in any other matter as directed by the Legislative Coordinating Council. The attorney could not be a legislator or a member of a law firm in which a legislator is a member.
- USD Budget Submission Deadline—SB 3 extends the deadline to submit school district budgets to county clerks from August 25 to September 7 for school year 2005-06.
- USD Contingency Fund Cap—SB 3 raises the cap on school district contingency funds from 4 percent to 6 percent for school year 2005-06.
- Certification and Distribution of State Aid Payments—SB 3 provides that the Legislature, not the State Board of Education, is responsible for certification and distribution of state education aid. This provision sunsets June 30, 2007.
- Computer Reporting System Deadline—SB 3 and HB 2247 require that the Internet-based reporting system be operational by December 31, 2005.
- Legislature Not Bound by Cost Study—SB 3 provides that no cost study or audit commissioned or funded by the Legislature is binding on the Legislature,

including the Augenblick and Myers study commissioned in 1999 and cost studies provided for by 2005 HB 2247 or House Sub. for SB 3.

- Three-Judge Panel—SB 43 and SB 3 require the Chief Justice of the Kansas Supreme Court to notify the Chief Judge of the Court of Appeals, who would appoint a panel of three current or retired district court judges to hear any suit brought by a plaintiff alleging a violation of the Education Article (Article 6) of the *Kansas Constitution*. Under provisions of the bill, venue for such cases would be in the county designated by the three-judge panel which would take into consideration the location of the parties and witnesses. The bill provides that an appeal from the three-judge panel's decision may be made directly to the Kansas Supreme Court as a matter of right under KSA 60-2012(b).
- Written Notice Required for School Finance Litigation—SB 3 requires that any party alleging a violation of Article 6 of the *Kansas Constitution* must file a written notice with Legislative officials that includes a statement of allegation and amount of monetary damages being requested. No action would be allowed until after a written response by the Legislature or until 120 days after filing of the notice, whichever occurs first.
- At-Risk Council—The six-member "At-Risk Council" is created to do the following:
 - Identify those conditions or circumstances that contribute to making a student at-risk of not succeeding in school;
 - Develop and recommend public school programs and services which meet the needs of at-risk students and help close the achievement gap;
 - Develop and recommend tools to assess and evaluate the effectiveness of approved at-risk programs;
 - Recommend funding alternatives for approved at-risk programs; and
 - Make a report on its activities to the Governor and to the 2010 Commission by October 1, 2006. The Council must make a final report, including recommendations, to the Governor and the 2010 Commission by October 1, 2007. The Council will terminate June 30, 2007.

The Council consists of the following members:

- The chair, who will be appointed by the Governor from a list of four individuals, of whom two have been nominated by the President of the Senate and two have been nominated by the Speaker of the House; and
- Five members who have expertise in serving at-risk students, one each appointed by the President, the Speaker, the Senate Minority Leader, the House Minority Leader, and the Commissioner of Education, or a designee.

No current member of the Legislature may be a member of the Council. The Council is attached to the Legislative Coordinating Council for budgetary

purposes and is subject to the Legislative Coordinating Council's approval. Members attending authorized meetings shall be paid for travel and subsistence.

- **Distribution Limits Removed**—SB 43 removes the limits on the amounts of money that can be distributed for the following programs: School district driver training courses (former limit \$1,540,000); School district motorcycle safety courses (former limit \$210,000); and Kansas Board of Regents truck driver training courses (former limit \$70,000). The State Board of Education will determine the amount to be distributed each year for these programs.
- **Teacher Service Scholarship Program**—SB 43 amends the Teacher Service Scholarship Program statutes to maintain the inclusion of Washburn University.
- **Provisions Stayed by the Court**—HB 2247 and SB 43 contain two provisions which will not go into effect because they have been stayed by the Kansas Supreme Court. One provision is the cost-of-living weighting which would allow districts with family residences which are appraised at 25 percent higher than the state average to levy a property tax. The second would require districts with declining enrollments to obtain a recommendation from the Joint Committee on State Building Construction and approval from the State Board of Education in order to receive state aid under the Capital Improvements State Aid Program for new facilities.

The table below shows the amount of funding appropriated by House Sub. for SB 3 during the Special Session and the amount of funding already appropriated by the 2005 Legislature for HB 2247.

**Selected Changes to Formula Based
on 2005 HB 2247 and 2005 Special
Session House Sub. for SB 3**

Prior Law	2005 HB 2247	House Sub. for SB 3	Total
BSAPP – \$3,863 (allotment rate)	\$4,222 \$63.3 million	\$4,257 \$19.2 million	\$82.5 million
At-Risk Weighting – 0.10	0.145 \$26.0 million	0.193 \$27.7 million	\$53.7 million
Special Education – 81.5%	85% \$17.7	89.3% \$13.5 million	\$31.2 million
Bilingual Education – 0.20	0.395 \$11.0 million	--	\$11.0 million
LOB	Growth due to higher BSAPP \$6.4 million	Growth due to higher BSAPP \$7.6 million	\$14.0 million
LOB-equalize to 25%	27%, not equalized	27%, equalized \$6.0 million	\$6.0 million
LOB Property Tax-equalized to the 75 th percentile	--	81.2nd percentile \$27.7 million	\$27.7 million
Capital Outlay – no cap	Cap of 8 mills, not equalized	Cap of 8 mills, equalized \$18.0 million	\$18.0 million
Correlation Weighting – Threshold of 1,725	Threshold of 1,725 eliminated	Reimposed at 1,662 \$28.7 million	\$28.7 million
	Military dependents count (2005 HB 2059) \$7.4 million	--	\$7.4 million
Federal Impact Aid Deduction–75 percent	Reduced to 70 percent \$0.8 million	--	\$0.8 million
	Miscellaneous adjustments (enrollment, assessed valuation, etc.) \$7.7 million	--	\$7.7 million
	Increase the funding for 4-year-old at-risk \$0.8 million	--	\$0.8 million
FY 2006 TOTAL	\$141.1 million	\$148.4 million	\$289.5 million

INTRODUCTION OF ORIGINAL MOTIONS

Pursuant to Joint Rule 3 (f), Rep. Aurand moved that the rules be suspended for the purpose of considering the conference committee report on **H. Sub. for SB 3**. The motion prevailed.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 3**, submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed as Further Amended by House Committee of the Whole, as follows:

By striking all on pages 2 through 45 and by inserting:

"New Section 1. (a) It is the public policy goal of the state of Kansas that at least 65% of the moneys appropriated, distributed or otherwise provided by the state to school districts shall be expended in the classroom or for instruction.

(b) All moneys attributable to the increase in the amount of base state aid per pupil under the provisions of this act shall be expended in the classroom or for instruction.

(c) The amount of moneys expended per pupil in the classroom or for instruction in school year 2005-2006, shall not be less than the amount of moneys expended per pupil for such purposes in school year 2004-2005, plus \$35 per pupil.

(d) As used in this section, "instruction" means the activities dealing directly with the interaction between teachers and students and may be provided in a school classroom, in another location such as a home or hospital, and in other learning situations such as those involving cocurricular activities. Instruction also may be provided through the internet, television, radio, computer, multimedia telephone, correspondence that is delivered inside or outside the classroom and other teacher-student settings or through other approved media. Instruction also includes the activities of aides or classroom assistants of any type including, but not limited to, clerks, graders and teaching machines which assist in the instructional process.

New Sec. 2. Except as specifically provided by this section, whenever any provision of law provides that the state board of education shall determine the amount of and distribute state aid for school districts, such provision shall be construed to require the legislature to determine the amount of and distribute any such state aid as otherwise provided in such provision. The legislative coordinating council shall certify to the director of accounts and reports the amount due as state aid to each district in the amount determined by the legislature. Such certification, and the amount of state aid payable from the state general fund, shall be approved by the director of the budget. The director of accounts and reports shall draw warrants on the state treasurer payable to the district treasurer of each district entitled to payment of state aid, pursuant to vouchers approved by the legislative coordinating council. Upon receipt of such warrant, each district treasurer shall deposit the amount of state aid as otherwise provided by law.

(b) The provisions of this section shall expire on June 30, 2007.

New Sec. 3. (a) No school district shall expend, use or transfer any moneys from the general fund of the district for the purpose of engaging in or supporting in any manner any litigation by the school district or any person, association, corporation or other entity against the state of Kansas, the state board of education, the state department of education, other state agency or any state officer or employee regarding the school district finance and quality performance act or any other law concerning school finance. No such moneys shall be paid, donated or otherwise provided to any person, association, corporation or other entity and used for the purpose of any such litigation.

(b) Nothing in K.S.A. 72-6433 or this section, and amendments thereto, shall be construed as prohibiting the expenditure, use or transfer of moneys from the supplemental general fund for the purposes specified in subsection (a).

New Sec. 4. (a) As used in this section:

(1) "School district" or "district" means a school district which: (A) Has a declining enrollment; and (B) for school year 2005-2006, has adopted a local option budget in an amount

which equals at least 25%; or (C) for school year 2006-2007 and each school year thereafter, has adopted a local option budget in an amount which equals the state prescribed percentage at the time the district applies to the state board of tax appeals for authority to make a levy pursuant to this section.

(2) "Declining enrollment" means an enrollment which has declined in amount from that of the preceding school year.

(b) (1) A school district may levy an ad valorem tax on the taxable tangible property of the district each year for a period of time not to exceed two years in an amount not to exceed the amount authorized by the state board of tax appeals under this subsection for the purpose of financing the costs incurred by the state that are directly attributable to assignment of declining enrollment weighting to enrollment of the district. The state board of tax appeals may authorize the district to make a levy which will produce an amount that is not greater than the amount of revenues lost as a result of the declining enrollment of the district. Such amount shall not exceed 5% of the general fund budget of the district in the school year in which the district applies to the state board of tax appeals for authority to make a levy pursuant to this section.

(2) The board of tax appeals shall certify to the state board the amount authorized to be produced by the levy of a tax under this section.

(3) The state board shall prescribe guidelines for the data that school districts shall include in cases before the state board of tax appeals pursuant to this section.

(c) A district may levy the tax authorized pursuant to this section for a period of time not to exceed two years unless authority to make such levy is renewed by the state board of tax appeals. The state board of tax appeals may renew the authority to make such levy for periods of time not to exceed two years.

(d) The state board shall provide to the state board of tax appeals such school data and information requested by the state board of tax appeals and any other information deemed necessary by the state board.

(e) There is hereby established in every district a fund which shall be called the declining enrollment fund. Such fund shall consist of all moneys deposited therein or transferred thereto according to law. The proceeds from the tax levied by a district under authority of this section shall be credited to the declining enrollment fund of the district. The proceeds from the tax levied by a district credited to the declining enrollment fund shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state school district finance fund.

New Sec. 5. (a) In each school year, each district that imposes a declining enrollment levy pursuant to section 4, and amendments thereto, is eligible for entitlement to an amount of declining enrollment state aid. Entitlement of a district to such state aid shall be determined by the state board as provided in this subsection. The state board shall:

(1) Determine the amount of the assessed valuation per pupil in the preceding school year of each district in the state;

(2) rank the districts from low to high on the basis of the amounts of assessed valuation per pupil determined under (1);

(3) identify the amount of the assessed valuation per pupil located at the 75th percentile of the amounts ranked under (2);

(4) divide the assessed valuation per pupil of the district in the preceding school year by the amount identified under (3);

(5) subtract the ratio obtained under (4) from 1.0. If the resulting ratio equals or exceeds 1.0, the eligibility of the district for entitlement to declining enrollment state aid shall lapse. If the resulting ratio is less than 1.0, the district is entitled to receive declining enrollment state aid in an amount which shall be determined by the state board by multiplying the amount the district is obligated to pay under subsection (b) of section 4, and amendments thereto, by such ratio. The product is the amount of declining enrollment state aid the district is entitled to receive for the school year.

(b) If the amount of appropriations for declining enrollment state aid is less than the amount each district is entitled to receive for the school year, the state board shall prorate

the amount appropriated among the districts in proportion to the amount each district is entitled to receive.

(c) The state board shall prescribe the dates upon which the distribution of payments of declining enrollment state aid to school districts shall be due. Payments of such state aid shall be distributed to districts on the dates prescribed by the state board. The state board shall certify to the director of accounts and reports the amount due each district, and the director of accounts and reports shall draw a warrant on the state treasurer payable to the treasurer of the district. Upon receipt of the warrant, the treasurer of the district shall credit the amount thereof to the declining enrollment fund of the district to be used for the purposes of such fund.

(d) If any amount of declining enrollment state aid that is due to be paid during the month of June of a school year pursuant to the other provisions of this section is not paid on or before June 30 of such school year, then such payment shall be paid on or after the ensuing July 1, as soon as moneys are available therefor. Any payment of declining enrollment state aid that is due to be paid during the month of June of a school year and that is paid to school districts on or after the ensuing July 1 shall be recorded and accounted for by school districts as a receipt for the school year ending on the preceding June 30.

New Sec. 6. (a) There is hereby established the at-risk education council. The council shall be composed of six members as follows:

- (1) One member appointed by the president of the senate;
- (2) one member appointed by the minority leader of the senate;
- (3) one member appointed by the speaker of the house of representatives;
- (4) one member appointed by the minority leader of the house of representatives;
- (5) the commissioner of education or a designee thereof; and
- (6) a member appointed by the governor who shall be the chairperson of the council.

Such person shall be selected from two nominations submitted to the governor by the president of the senate and two nominations submitted by the speaker of the house of representatives.

(b) Members shall be selected with special reference to training, experience or expertise in serving at-risk children. No members of the legislature may be appointed to the council.

(c) All members of the council shall serve at the pleasure of the appointing authority.

(d) Members of the council attending regular or special meetings or subcommittee meetings authorized by the council, shall be paid amounts for expenses, mileage and subsistence as provided in subsection (e) of K.S.A. 75-3223, and amendments thereto. Expenses for the commission shall be part of the budget of the legislative coordinating council and shall be subject to the council's approval.

(e) The council may meet at any time and at any place within the state on the call of the chairperson as authorized by the legislative coordinating council. A quorum of the council shall be four members. All actions of the council shall be by motion adopted by a majority of those voting members present when there is a quorum.

(f) In accordance with K.S.A. 46-1204, and amendments thereto, the legislative coordinating council may provide for such professional services as may be requested by the council.

(g) The staff of the office of the revisor of statutes, the legislative research department and the division of legislative administrative services shall provide such assistance as may be requested by the council. Upon request of the council, the state board of education and the center for innovative school leadership established pursuant to K.S.A. 2004 Supp. 76-767, and amendments thereto, shall provide consultants and assistance when requested by the council. In addition and upon the request of the council, the state board of education and school districts shall provide any information and supporting documentation related thereto.

(h) The council shall cease to exist on June 30, 2007.

New Sec. 7. (a) The at-risk education council shall:

- (1) Identify those conditions or circumstances which contribute to making a student at-risk for not succeeding in school;
- (2) develop and recommend programs and services which meet the needs of at-risk students;

(3) develop and recommend programs and services which help close the achievement gap;

(4) develop and recommend tools to assess and evaluate the effectiveness of at-risk programs; and

(5) recommend funding alternatives for at-risk programs.

(b) On or before October 1, 2006, the council shall submit a report on its activities to the 2010 commission and the governor. On or before October 1, 2007, the council shall submit its final report, including its recommendations, to the 2010 commission and the governor.

New Sec. 8. (a) There is hereby established in the state treasury the school district capital outlay state aid fund. Such fund shall consist of all amounts transferred thereto under the provisions of subsection (c).

(b) In each school year, each school district which levies a tax pursuant to K.S.A. 72-8801 et seq., and amendments thereto, shall be entitled to receive payment from the school district capital outlay state aid fund in an amount determined by the state board of education as provided in this subsection. The state board of education shall:

(1) Determine the amount of the assessed valuation per pupil (AVPP) of each school district in the state and round such amount to the nearest \$1,000. The rounded amount is the AVPP of a school district for the purposes of this section;

(2) determine the median AVPP of all school districts;

(3) prepare a schedule of dollar amounts using the amount of the median AVPP of all school districts as the point of beginning. The schedule of dollar amounts shall range upward in equal \$1,000 intervals from the point of beginning to and including an amount that is equal to the amount of the AVPP of the school district with the highest AVPP of all school districts and shall range downward in equal \$1,000 intervals from the point of beginning to and including an amount that is equal to the amount of the AVPP of the school district with the lowest AVPP of all school districts;

(4) determine a state aid percentage factor for each school district by assigning a state aid computation percentage to the amount of the median AVPP shown on the schedule, decreasing the state aid computation percentage assigned to the amount of the median AVPP by one percentage point for each \$1,000 interval above the amount of the median AVPP, and increasing the state aid computation percentage assigned to the amount of the median AVPP by one percentage point for each \$1,000 interval below the amount of the median AVPP. The state aid percentage factor of a school district is the percentage assigned to the schedule amount that is equal to the amount of the AVPP of the school district, except that the state aid percentage factor of a school district shall not exceed 100%. The state aid computation percentage is 25%;

(5) determine the amount levied by each school district pursuant to K.S.A. 72-8801 et seq., and amendments thereto;

(6) multiply the amount computed under (5), but not to exceed 8 mills, by the applicable state aid percentage factor. The product is the amount of payment the school district is entitled to receive from the school district capital outlay state aid fund in the school year.

(c) The state board shall certify to the director of accounts and reports the entitlements of school districts determined under the provisions of subsection (b), and an amount equal thereto shall be transferred by the director from the state general fund to the school district capital outlay state aid fund for distribution to school districts.

(d) Payments from the school district capital outlay state aid fund shall be distributed to school districts at times determined by the state board of education. The state board of education shall certify to the director of accounts and reports the amount due each school district entitled to payment from the fund, and the director of accounts and reports shall draw a warrant on the state treasurer payable to the treasurer of the school district. Upon receipt of the warrant, the treasurer of the school district shall credit the amount thereof to the capital outlay fund of the school district to be used for the purposes of such fund.

New Sec. 9. (a) There is hereby established the office of legislative counsel. The legislative counsel shall be appointed by the legislative coordinating council and shall be an attorney in the private practice of law employed by the legislative coordinating council pursuant to a contract entered into by the legislative coordinating council and such attorney.

(b) No person shall be eligible for appointment as legislative counsel unless: (1) Such person has been admitted to practice law in Kansas for not less than five years prior to appointment; and (2) such person is admitted to practice in the federal court. In addition to the foregoing qualifications, in considering a person for appointment as legislative counsel the legislative coordinating council shall investigate such person's experience in legal research, trial and appellate practice and related areas in order that such person shall possess the experience and judgment deemed necessary to fulfill the duties and responsibilities of the office. The legislative coordinating council shall further make such investigation of a person considered for appointment as will ensure that such person is of high professional standing.

(c) No person who is a member of the legislature and no person who is a member or partner of a firm, partnership, corporation, limited liability company or other business entity of which a legislator is a member or partner shall be eligible for appointment as legislative counsel.

(d) The provisions of the contract entered into by the legislative coordinating council and the legislative counsel shall provide that the legislative counsel may be removed from the position and the contract terminated by a vote of five members of the legislative coordinating council taken at any regular meeting of the council. The legislative counsel shall receive compensation fixed by the legislative coordinating council in accordance with the contract. The contract shall provide for such other matters as the parties to the contract deem appropriate.

(e) Expenditures provided for in this act shall not be subject to approval under any other statute and shall be paid from appropriations for the legislature. No contract made under authority of this act shall require approval under any other statute.

(f) The legislative counsel shall represent the legislature, or either house thereof, in any school finance litigation or other cause or matter as directed by the legislative coordinating council. In cases of quo warranto and mandamus the legislative counsel shall have the same powers and standing in all courts of this state as any county attorney or district attorney has in such attorney's county or in the supreme court and as the attorney general has in any court. When the legislature is in session, either house thereof by its resolution, or both houses by concurrent resolution may authorize the legislative coordinating council to direct the legislative counsel to bring or participate in any cause or action by representing the legislature or either house thereof or the legislative coordinating council in any court of this state or of the United States. When the legislature is not in session, the legislative coordinating council may direct the legislative counsel to bring or participate in any cause or action by representing the legislature or either house thereof or the legislative coordinating council in any court of this state or of the United States in accordance with directions of the legislative coordinating council.

(g) The legislative counsel shall render unofficial advisory opinions upon such legal questions submitted by any member or any standing or special committee of the legislature, all in accordance with policies to be established by the legislative coordinating council. Upon direction of the legislative coordinating council, the legislative counsel shall act as counsel to special committees of the legislature and shall provide investigative assistance, conduct examination of witnesses and participate in committee hearings and deliberations as deemed necessary by the committee chairpersons.

(h) The legislative counsel shall perform such other duties as are directed by the legislative coordinating council.

Sec. 10. K.S.A. 2004 Supp. 72-6407, as amended by section 16 of 2005 Senate Bill No. 43, is hereby amended to read as follows: 72-6407. (a) (1) "Pupil" means any person who is regularly enrolled in a district and attending kindergarten or any of the grades one through 12 maintained by the district or who is regularly enrolled in a district and attending kindergarten or any of the grades one through 12 in another district in accordance with an agreement entered into under authority of K.S.A. 72-8233, and amendments thereto, or who is regularly enrolled in a district and attending special education services provided for preschool-aged exceptional children by the district.

(2) Except as otherwise provided in paragraph (3) of this subsection, a pupil in attendance full time shall be counted as one pupil. A pupil in attendance part time shall be counted as

that proportion of one pupil (to the nearest $\frac{1}{10}$) that the pupil's attendance bears to full-time attendance. A pupil attending kindergarten shall be counted as $\frac{1}{2}$ pupil. A pupil enrolled in and attending an institution of postsecondary education which is authorized under the laws of this state to award academic degrees shall be counted as one pupil if the pupil's postsecondary education enrollment and attendance together with the pupil's attendance in either of the grades 11 or 12 is at least $\frac{5}{6}$ time, otherwise the pupil shall be counted as that proportion of one pupil (to the nearest $\frac{1}{10}$) that the total time of the pupil's postsecondary education attendance and attendance in grade 11 or 12, as applicable, bears to full-time attendance. A pupil enrolled in and attending an area vocational school, area vocational-technical school or approved vocational education program shall be counted as one pupil if the pupil's vocational education enrollment and attendance together with the pupil's attendance in any of grades nine through 12 is at least $\frac{5}{6}$ time, otherwise the pupil shall be counted as that proportion of one pupil (to the nearest $\frac{1}{10}$) that the total time of the pupil's vocational education attendance and attendance in any of grades nine through 12 bears to full-time attendance. A pupil enrolled in a district and attending special education and related services, except special education and related services for preschool-aged exceptional children, provided for by the district shall be counted as one pupil. A pupil enrolled in a district and attending special education and related services for preschool-aged exceptional children provided for by the district shall be counted as $\frac{1}{2}$ pupil. A preschool-aged at-risk pupil enrolled in a district and receiving services under an approved at-risk pupil assistance plan maintained by the district shall be counted as $\frac{1}{2}$ pupil. A pupil in the custody of the secretary of social and rehabilitation services and enrolled in unified school district No. 259, Sedgewick county, Kansas, but housed, maintained, and receiving educational services at the Judge James V. Riddell Boys Ranch, shall be counted as two pupils.

(3) A pupil residing at the Flint Hills job corps center shall not be counted. A pupil confined in and receiving educational services provided for by a district at a juvenile detention facility shall not be counted. A pupil enrolled in a district but housed, maintained, and receiving educational services at a state institution shall not be counted. A pupil enrolled in a virtual school in a district but who is not a resident of the state of Kansas shall not be counted.

(b) "Preschool-aged exceptional children" means exceptional children, except gifted children, who have attained the age of three years but are under the age of eligibility for attendance at kindergarten.

(c) "At-risk pupils" means pupils who are eligible for free meals under the national school lunch act and who are enrolled in a district which maintains an approved at-risk pupil assistance plan.

(d) "Preschool-aged at-risk pupil" means an at-risk pupil who has attained the age of four years, is under the age of eligibility for attendance at kindergarten, and has been selected by the state board in accordance with guidelines consonant with guidelines governing the selection of pupils for participation in head start programs.

(e) "Enrollment" means: (1) (A) Subject to the provisions of paragraph (1)(B), for districts scheduling the school days or school hours of the school term on a trimestral or quarterly basis, the number of pupils regularly enrolled in the district on September 20 plus the number of pupils regularly enrolled in the district on February 20 less the number of pupils regularly enrolled on February 20 who were counted in the enrollment of the district on September 20; and for districts not specified in this paragraph (1), the number of pupils regularly enrolled in the district on September 20; (B) a pupil who is a foreign exchange student shall not be counted unless such student is regularly enrolled in the district on September 20 and attending kindergarten or any of the grades one through 12 maintained by the district for at least one semester or two quarters or the equivalent thereof;

(2) if enrollment in a district in any school year has decreased from enrollment in the preceding school year, enrollment of the district in the current school year means whichever is the greater of (A) enrollment in the preceding school year minus enrollment in such school year of preschool-aged at-risk pupils, if any such pupils were enrolled, plus enrollment in the current school year of preschool-aged at-risk pupils, if any such pupils are enrolled, or (B) the sum of enrollment in the current school year of preschool-aged at-risk pupils, if any such pupils are enrolled and the average (mean) of the sum of (i) enrollment of the

district in the current school year minus enrollment in such school year of preschool-aged at-risk pupils, if any such pupils are enrolled and (ii) enrollment in the preceding school year minus enrollment in such school year of preschool-aged at-risk pupils, if any such pupils were enrolled and (iii) enrollment in the school year next preceding the preceding school year minus enrollment in such school year of preschool-aged at-risk pupils, if any such pupils were enrolled; or

(3) the number of pupils as determined under K.S.A. 72-6447 or section 2 of 2005 House Bill No. 2059, and amendments thereto.

(f) "Adjusted enrollment" means enrollment adjusted by adding at-risk pupil weighting, program weighting, low enrollment weighting, if any, *extraordinary correlation weighting, if any*, declining enrollment weighting, if any, school facilities weighting, if any, ancillary school facilities weighting, if any, cost of living weighting, if any, special education and related services weighting, and transportation weighting to enrollment.

(g) "At-risk pupil weighting" means an addend component assigned to enrollment of districts on the basis of enrollment of at-risk pupils.

(h) "Program weighting" means an addend component assigned to enrollment of districts on the basis of pupil attendance in educational programs which differ in cost from regular educational programs.

(i) "Low enrollment weighting" means an addend component assigned to enrollment of districts having under ~~1,725~~ 1,662 enrollment on the basis of costs attributable to maintenance of educational programs by such districts in comparison with costs attributable to maintenance of educational programs by districts having ~~1,725~~ 1,662 or over enrollment.

(j) "School facilities weighting" means an addend component assigned to enrollment of districts on the basis of costs attributable to commencing operation of new school facilities.

(k) "Transportation weighting" means an addend component assigned to enrollment of districts on the basis of costs attributable to the provision or furnishing of transportation.

(l) "Cost of living weighting" means an addend component assigned to enrollment of districts to which the provisions of section 12 of 2005 Senate Bill No. 43, and amendments thereto, apply on the basis of costs attributable to the *extraordinary* cost of living in the district.

(m) "Ancillary school facilities weighting" means an addend component assigned to enrollment of districts to which the provisions of K.S.A. 72-6441, and amendments thereto, apply on the basis of costs attributable to commencing operation of new school facilities. Ancillary school facilities weighting may be assigned to enrollment of a district only if the district has levied a tax under authority of K.S.A. 72-6441, and amendments thereto, and remitted the proceeds from such tax to the state treasurer. Ancillary school facilities weighting is in addition to assignment of school facilities weighting to enrollment of any district eligible for such weighting.

(n) "Juvenile detention facility" means: (1) Any secure public or private facility which is used for the lawful custody of accused or adjudicated juvenile offenders and which shall not be a jail;

(2) any level VI treatment facility licensed by the Kansas department of health and environment which is a psychiatric residential treatment facility for individuals under the age of 21 which conforms with the regulations of the centers for medicare/medicaid services and the joint commission on accreditation of health care organizations governing such facilities; and

(3) the Forbes Juvenile Attention Facility, the Sappa Valley Youth Ranch of Oberlin, Salvation Army/Koch Center Youth Services, the Clarence M. Kelley Youth Center, the Clarence M. Kelley Transitional Living Center, Trego County Secure Care Center, St. Francis Academy at Atchison, St. Francis Academy at Ellsworth, St. Francis Academy at Salina, St. Francis Center at Salina, King's Achievement Center, and Liberty Juvenile Services and Treatment.

(o) "Special education and related services weighting" means an addend component assigned to enrollment of districts on the basis of costs attributable to provision of special education and related services for pupils determined to be exceptional children.

(p) "Virtual school" means any kindergarten or grades one through 12 course offered for credit that uses distance-learning technologies which predominantly use internet-based

methods to deliver instruction and for which the course content is available on an "anytime, anyplace" basis, but the instruction occurs asynchronously with the teacher and pupil in separate locations, not necessarily located within a local education agency.

(q) "Extraordinary Declining enrollment weighting" means an addend component assigned to enrollment of districts to which the provisions of section 23 4, and amendments thereto, apply on the basis of reduced revenues attributable to the declining enrollment of the district.

(r) "Correlation weighting" means an addend component assigned to enrollment of districts having 1,662 or over enrollment on the basis of costs attributable to maintenance of educational programs by such districts as a correlate to low enrollment weighting assigned to enrollment of districts having under 1,662 enrollment.

Sec. 11. K.S.A. 72-6426 is hereby amended to read as follows: 72-6426. (a) There is hereby established in every district a fund which shall be called the contingency reserve fund. Such fund shall consist of all moneys deposited therein or transferred thereto according to law. The fund shall be maintained for payment of expenses of a district attributable to financial contingencies as determined by the board. Except as otherwise provided in subsection (b), at no time in any school year shall the amount maintained in the fund exceed an amount equal to 4% of the general fund budget of the district for the school year.

(b) (1) In any school year, if the amount in the contingency reserve fund of a district is in excess of the amount authorized under subsection (a) to be maintained in the fund, and if such excess amount is the result of a reduction in the general fund budget of the district for the school year because of a decrease in enrollment, the district may maintain the excess amount in the fund until depletion of such excess amount by expenditure from the fund for the purposes thereof.

(2) *Except as provided in paragraph (1) of this subsection, at no time in school year 2005-2006, shall the amount maintained in the fund exceed an amount equal to 6% of the general fund budget of the district for such school year.*

Sec. 12. K.S.A. 2004 Supp. 72-6434, as amended by section 24 of 2005 House Bill No. 2247, is hereby amended to read as follows: 72-6434. (a) ~~Subject to the limitations of subsection (b)~~ In each school year, each district that has adopted a local option budget is eligible for entitlement to an amount of supplemental general state aid. Entitlement of a district to supplemental general state aid shall be determined by the state board as provided in this subsection. The state board shall:

(1) Determine the amount of the assessed valuation per pupil in the preceding school year of each district in the state;

(2) rank the districts from low to high on the basis of the amounts of assessed valuation per pupil determined under (1);

(3) identify the amount of the assessed valuation per pupil located at the ~~75th~~ 81.2 percentile of the amounts ranked under (2);

(4) divide the assessed valuation per pupil of the district in the preceding school year by the amount identified under (3);

(5) subtract the ratio obtained under (4) from 1.0. If the resulting ratio equals or exceeds 1.0, the eligibility of the district for entitlement to supplemental general state aid shall lapse. If the resulting ratio is less than 1.0, the district is entitled to receive supplemental general state aid in an amount which shall be determined by the state board by multiplying the amount of the local option budget of the district by such ratio. The product is the amount of supplemental general state aid the district is entitled to receive for the school year.

~~(b) For school year 2005-2006, districts shall not be paid supplemental general state aid for that portion of the local option budget in excess of the state prescribed percentage in effect prior to the effective date of this act.~~

~~(c) If the amount of appropriations for supplemental general state aid is less than the amount each district is entitled to receive for the school year, the state board shall prorate the amount appropriated among the districts in proportion to the amount each district is entitled to receive.~~

~~(d) (c) The state board of education shall prescribe the dates upon which the distribution of payments of supplemental general state aid to school districts shall be due. Payments of supplemental general state aid shall be distributed to districts on the dates prescribed by~~

the state board. The state board shall certify to the director of accounts and reports the amount due each district, and the director of accounts and reports shall draw a warrant on the state treasurer payable to the treasurer of the district. Upon receipt of the warrant, the treasurer of the district shall credit the amount thereof to the supplemental general fund of the district to be used for the purposes of such fund.

(e) (d) If any amount of supplemental general state aid that is due to be paid during the month of June of a school year pursuant to the other provisions of this section is not paid on or before June 30 of such school year, then such payment shall be paid on or after the ensuing July 1, as soon as moneys are available therefor. Any payment of supplemental general state aid that is due to be paid during the month of June of a school year and that is paid to school districts on or after the ensuing July 1 shall be recorded and accounted for by school districts as a receipt for the school year ending on the preceding June 30.

Sec. 13. Section 3 of 2005 House Bill No. 2247 is hereby amended to read as follows: Sec. 3. (a) In order to assist the legislature in the gathering of information which is necessary for the legislature's consideration when meeting its constitutional duties to: (1) Provide for intellectual, educational, vocational and scientific improvement in public schools established and maintained by the state, and (2) make suitable provision for the finance of educational interests of the state, the division of post audit shall conduct a professional cost study analysis to determine the costs of delivering the kindergarten and grades one through 12 curriculum, related services and other programs mandated by state statute in accredited schools. Subject to the provisions of subsection (b), the cost analysis study shall be conducted as directed by the legislative post-audit committee.

—(1) Any study conducted pursuant to subsection (a) shall include:

—(1) A determination of the services or programs required by state statute to be provided by school districts. Such review shall include high school graduation requirements, admissions requirements established by the state board of regents pursuant to K.S.A. 70-716, and amendments thereto, state scholarship requirements established by the state board of regents and courses of instruction at various grade levels required by state statute.

—(2) A study of the actual costs incurred in a sample of school districts to provide reasonable estimates of the costs of providing services and programs required by state statute to be provided by school districts for regular elementary and secondary education, including instruction, administration, support staff, supplies, equipment and building costs.

—(3) A study of the actual costs incurred in a sample of school districts to provide reasonable estimates of the costs of providing services and programs required by state statute to be provided by school districts for specialized education services including, but not limited to, special education and related services, bilingual education and at-risk programs.

—(4) A study of the factors which may contribute to the variations in costs incurred by school districts of various sizes and in various regions of the state when providing services or programs required by state statute to be provided by school districts. Such study shall include the administrative costs of providing such services and programs.

—(5) An analysis in a sample of districts as determined by the legislative post auditor showing such things as:

—(A) The percent of the estimated cost of providing services and programs required by state statute that could have been funded by the various types of state aid the districts received in the most recently completed school year, as well as the percent funded by the district's local option budget;

—(B) the percent of district funding that is spent on instruction;

—(C) the percent of district funding that is spent on central administration; and

—(D) the percent of district funding that is spent on support services.

—(6) A review of relevant studies that assess whether there is a correlation between amounts spent on education and student performance;

—(7) A review to determine whether students who are counted as a basis for computing funding for specialized educational services are actually receiving those services;

—(8) Any additional reviews or analyses the legislative post auditor considers relevant to the legislature's decisions regarding the cost of funding services or programs required by state statute to be provided by school districts.

(a) *The purpose of this section is to assist the legislature in the gathering of information which is necessary for the legislature's consideration when meeting its constitutional duties to: (1) Provide for intellectual, educational, vocational and scientific improvement in public schools established and maintained by the state; and (2) make suitable provision for the finance of educational interests of the state. The division of post audit shall conduct a professional cost study analysis to estimate the costs of providing programs and services required by law.*

(b) *As used in this section, "law" means any: (1) State statute; and (2) rules and regulations or standards relating to student performance outcomes adopted by the state board.*

(c) *The cost study analysis shall be based upon data available through school year 2004-2005. Subject to the provisions of subsection (d), the cost study analysis shall be conducted as directed by the legislative post audit committee.*

(d) *Any cost study analysis conducted pursuant to this section shall include:*

(1) *A determination of the services or programs required by law to be provided by school districts and a review of the high school graduation requirements and the school performance accreditation system, pupil assessments and other requirements of K.S.A. 72-6439, and amendments thereto.*

(2) *A review of the admissions requirements established by the state board of regents pursuant to K.S.A. 76-716, and amendments thereto, state scholarship requirements established by the state board of regents.*

(3) *A study of the actual costs incurred in a sample of school districts to provide reasonable estimates of the costs for regular elementary and secondary education as required by law, including instruction, administration, support staff, supplies, equipment and building costs.*

(4) *A study of the actual costs incurred in a sample of school districts to provide reasonable estimates of the costs for specialized education services as required by law including, but not limited to, special education and related services, bilingual education and at-risk programs.*

(5) *A study of the factors which may contribute to the variations in costs incurred by school districts of various sizes and in various regions of the state when providing services or programs as required by law. Such study shall include all administrative costs of providing program and services as required by law.*

(6) *An analysis in a sample of districts as determined by the legislative post auditor showing such things as:*

(A) *The percent of the estimated costs of providing programs and services as required by law that could have been funded by the various types of state aid the districts received in the most recently completed school year, as well as the percent funded by the district's local option budget;*

(B) *the percent of district funding that is spent on instruction;*

(C) *the percent of district funding that is spent on administration including central administration; and*

(D) *the percent of district funding that is spent on support services.*

(7) *A review of relevant studies that assess whether there is a correlation between amounts spent on education and student performance.*

(8) *A review to determine whether students who are counted as a basis for computing funding for specialized educational services are actually receiving those services.*

(9) *Any additional reviews or analyses the legislative post auditor considers relevant to the legislature's decisions regarding the cost of funding services or programs required by law.*

(e) *The division also shall conduct a professional cost study analysis considering the same factors specified in subsection (d), except that such cost study analysis shall consider only those curriculum, related services and programs mandated by state statute.*

(f) *In conducting such cost analysis study, historical data and expenditures may be used to estimate future reasonable and actual costs so long as any examination of historical data and expenditures corrects any recognized inadequacy of such data or expenditure through a reliable method of extrapolation. The cost study analysis shall incorporate these requirements and any report to the legislature must demonstrate how the incorporation was accomplished.*

(e) (g) In conducting such cost analysis study and subject to the limitations of the budget of the division and appropriations therefor, the legislative post auditor may enter into contracts ~~for with~~ consultants as the post auditor deems necessary ~~with consultants as needed~~.

(h) *In conducting such cost study analysis, the legislative post auditor shall have the authority to access all books, accounts, records, files, documents and correspondence, confidential or otherwise, as authorized in conducting an audit under the legislative post audit act.*

(d) (i) Following the completion of such cost analysis study, the legislative post auditor shall submit a detailed report thereon to the legislature on or before the first day of the 2006 legislative session. If additional time is needed to provide the most accurate information relating to any area of requested study, the legislative post auditor shall so report to the legislature, explaining the reasons for the need for additional time and providing a reasonable time frame for completion of that aspect of the study. In that event, the legislative post auditor shall submit a report on that portion of the study which has been completed before the start of the 2006 legislative session and the balance of such report shall be submitted within the time frame established by the legislative post auditor when requesting additional time.

(e) (j) For any agency required to be audited under K.S.A. 74-7283 et seq., and amendments thereto, in time to be reviewed and evaluated during the 2006, 2007 or 2008 regular session of the legislature, such review and evaluation shall be moved forward one year.

(f) (k) The provisions of this section shall be part of and supplemental to the legislative post audit act.

Sec. 14. Section 2 of 2005 House Bill No. 2247 is hereby amended to read as follows: Sec. 2. *In order (a) The purpose of this section is to allow any person desiring to obtain, analyze and compare financial and performance data of school districts the ability to do so.*

(b) *On or before December 31, 2005, the state board of education shall design and implement a uniform system of reporting of such data by school districts. Such system shall be an internet-based data reporting system which is freely available and accessible. Such system shall allow a person to search and manipulate the data and allow for the comparison of data on a district by district basis. Such system may be designed so that school districts may input directly the district's financial and performance data in lieu of reporting data to the state board.*

New Sec. 15. (a) Any cost study analysis, audit or other study commissioned or funded by the legislature and any conclusions or recommendations thereof shall not be binding upon the legislature. The legislature may reject, at any time, any such analysis, audit or study and any conclusions and recommendations thereof.

(b) A cost study analysis, audit or study shall include, but not be limited to, any cost study analysis, audit or study conducted pursuant to K.S.A. 46-1225, prior to its repeal, and sections 3 and 5 of 2005 House Bill No. 2247, and amendments thereto.

Sec. 16. K.S.A. 79-1801 is hereby amended to read as follows: 79-1801. (a) *Except as provided by subsection (b), each year the governing body of any city, the trustees of any township, the board of education of any school district and the governing bodies of all other taxing subdivisions shall certify, on or before August 25, to the proper county clerk the amount of ad valorem tax to be levied. Thereupon, the county clerk shall place the tax upon the tax roll of the county, in the manner prescribed by law, and the tax shall be collected by the county treasurer. The county treasurer shall distribute the proceeds of the taxes levied by each taxing subdivision in the manner provided by K.S.A. 12-1678a, and amendments thereto.*

(b) *In 2005, the board of education of any school district shall certify, on or before September 7, to the proper county clerk the amount of ad valorem tax to be levied.*

Sec. 17. K.S.A. 2004 Supp. 72-978, as amended by section 10 of 2005 House Bill No. 2247, is hereby amended to read as follows: 72-978. (a) Each year, the state board of education shall determine the amount of state aid for the provision of special education and related services each school district shall receive for the ensuing school year. The amount of such state aid shall be computed by the state board as provided in this section. The state board shall:

(1) Determine the total amount of general fund and local option budgets of all school districts;

(2) subtract from the amount determined in paragraph (1) the total amount attributable to assignment of transportation weighting, program weighting, special education weighting and at-risk pupil weighting to enrollment of all school districts;

(3) divide the remainder obtained in paragraph (2) by the total number of full-time equivalent pupils enrolled in all school districts on September 20;

(4) determine the total full-time equivalent enrollment of exceptional children receiving special education and related services provided by all school districts;

(5) multiply the amount of the quotient obtained in paragraph (3) by the full-time equivalent enrollment determined in paragraph (4);

(6) determine the amount of federal funds received by all school districts for the provision of special education and related services;

(7) determine the amount of revenue received by all school districts rendered under contracts with the state institutions for the provisions of special education and related services by the state institution;

(8) add the amounts determined under paragraphs (6) and (7) to the amount of the product obtained under paragraph (5);

(9) determine the total amount of expenditures of all school districts for the provision of special education and related services;

(10) subtract the amount of the sum obtained under paragraph (8) from the amount determined under paragraph (9); and

(11) (A) for school year 2005-2006, multiply the remainder obtained under paragraph (10) by ~~65%~~, 89.3%, *except such limitation is suspended if there is a transfer of moneys pursuant to subsection (b) of section 25; and*

(B) for school year, 2006-2007 and each school year thereafter, multiply the remainder obtained under paragraph (10) by 66%, and 92%.

~~(C) for school year, 2007-2008 and each year thereafter, multiply the remainder obtained under paragraph (10) by 91%.~~

The computed amount is the amount of state aid for the provision of special education and related services aid a school district is entitled to receive for the ensuing school year.

(b) Each school district shall be entitled to receive:

(1) Reimbursement for actual travel allowances paid to special teachers at not to exceed the rate specified under K.S.A. 75-3203, and amendments thereto, for each mile actually traveled during the school year in connection with duties in providing special education or related services for exceptional children; such reimbursement shall be computed by the state board by ascertaining the actual travel allowances paid to special teachers by the school district for the school year and shall be in an amount equal to 80% of such actual travel allowances;

(2) reimbursement in an amount equal to 80% of the actual travel expenses incurred for providing transportation for exceptional children to special education or related services; such reimbursement shall not be paid if such child has been counted in determining the transportation weighting of the district under the provisions of the school district finance and quality performance act;

(3) reimbursement in an amount equal to 80% of the actual expenses incurred for the maintenance of an exceptional child at some place other than the residence of such child for the purpose of providing special education or related services; such reimbursement shall not exceed \$600 per exceptional child per school year; and

(4) except for those school districts entitled to receive reimbursement under subsection (c) or (d), after subtracting the amounts of reimbursement under paragraphs (1), (2) and (3) of this subsection (a) from the total amount appropriated for special education and related services under this act, an amount which bears the same proportion to the remaining amount appropriated as the number of full-time equivalent special teachers who are qualified to provide special education or related services to exceptional children and are employed by the school district for approved special education or related services bears to the total number of such qualified full-time equivalent special teachers employed by all school districts for approved special education or related services.

Each special teacher who is qualified to assist in the provision of special education or related services to exceptional children shall be counted as $\frac{1}{2}$ full-time equivalent special teacher who is qualified to provide special education or related services to exceptional children.

(c) Each school district which has paid amounts for the provision of special education and related services under an interlocal agreement shall be entitled to receive reimbursement under subsection (b)(4). The amount of such reimbursement for the district shall be the amount which bears the same relation to the aggregate amount available for reimbursement for the provision of special education and related services under the interlocal agreement, as the amount paid by such district in the current school year for provision of such special education and related services bears to the aggregate of all amounts paid by all school districts in the current school year who have entered into such interlocal agreement for provision of such special education and related services.

(d) Each contracting school district which has paid amounts for the provision of special education and related services as a member of a cooperative shall be entitled to receive reimbursement under subsection (b)(4). The amount of such reimbursement for the district shall be the amount which bears the same relation to the aggregate amount available for reimbursement for the provision of special education and related services by the cooperative, as the amount paid by such district in the current school year for provision of such special education and related services bears to the aggregate of all amounts paid by all contracting school districts in the current school year by such cooperative for provision of such special education and related services.

(e) No time spent by a special teacher in connection with duties performed under a contract entered into by the Kansas juvenile correctional complex, the Atchison juvenile correctional facility, the Beloit juvenile correctional facility, the Larned juvenile correctional facility, or the Topeka juvenile correctional facility and a school district for the provision of special education services by such state institution shall be counted in making computations under this section.

Sec. 18. K.S.A. 72-6410, as amended by section 14 of 2005 House Bill No. 2247, is hereby amended to read as follows: 72-6410. (a) "State financial aid" means an amount equal to the product obtained by multiplying base state aid per pupil by the adjusted enrollment of a district.

(b) "Base state aid per pupil" means an amount of state financial aid per pupil. Subject to the other provisions of this subsection, the amount of base state aid per pupil is ~~\$4,222~~ \$4,257. The amount of base state aid per pupil is subject to reduction commensurate with any reduction under K.S.A. 75-6704, and amendments thereto, in the amount of the appropriation from the state general fund for general state aid. If the amount of appropriations for general state aid is insufficient to pay in full the amount each district is entitled to receive for any school year, the amount of base state aid per pupil for such school year is subject to reduction commensurate with the amount of the insufficiency.

(c) "Local effort" means the sum of an amount equal to the proceeds from the tax levied under authority of K.S.A. 72-6431, and amendments thereto, and an amount equal to any unexpended and unencumbered balance remaining in the general fund of the district, except amounts received by the district and authorized to be expended for the purposes specified in K.S.A. 72-6430, and amendments thereto, and an amount equal to any unexpended and unencumbered balances remaining in the program weighted funds of the district, except any amount in the vocational education fund of the district if the district is operating an area vocational school, and an amount equal to any remaining proceeds from taxes levied under authority of K.S.A. 72-7056 and 72-7072, and amendments thereto, prior to the repeal of such statutory sections, and an amount equal to the amount deposited in the general fund in the current school year from amounts received in such year by the district under the provisions of subsection (a) of K.S.A. 72-1046a, and amendments thereto, and an amount equal to the amount deposited in the general fund in the current school year from amounts received in such year by the district pursuant to contracts made and entered into under authority of K.S.A. 72-6757, and amendments thereto, and an amount equal to the amount credited to the general fund in the current school year from amounts distributed in such year to the district under the provisions of articles 17 and 34 of chapter 12 of Kansas Statutes

Annotated and under the provisions of articles 42 and 51 of chapter 79 of Kansas Statutes Annotated, and an amount equal to the amount of payments received by the district under the provisions of K.S.A. 72-979, and amendments thereto, and an amount equal to the amount of a grant, if any, received by the district under the provisions of K.S.A. 72-983, and amendments thereto, and an amount equal to 70% of the federal impact aid of the district.

(d) "Federal impact aid" means an amount equal to the federally qualified percentage of the amount of moneys a district receives in the current school year under the provisions of title I of public law 874 and congressional appropriations therefor, excluding amounts received for assistance in cases of major disaster and amounts received under the low-ent housing program. The amount of federal impact aid defined herein as an amount equal to the federally qualified percentage of the amount of moneys provided for the district under title I of public law 874 shall be determined by the state board in accordance with terms and conditions imposed under the provisions of the public law and rules and regulations thereunder.

Sec. 19. K.S.A. 72-6412, as amended by section 15 of 2005 House Bill No. 2247, is hereby amended to read as follows: 72-6412. (a) A low enrollment weighting factor shall be assigned to each school district as provided by this section.

(b) For districts with enrollment of ~~1,725~~ 1,662 or more, the low enrollment weighting factor shall be 0.

(c) For districts with enrollment of less than 100, the low enrollment weighting factor shall be equal to the low enrollment weighting factor of a district with enrollment of 100.

(d) For districts with enrollment of less than ~~1,725~~ 1,662 and more than 99, the low enrollment weighting factor shall be determined by the state board as follows:

(1) Determine the low enrollment weighting factor for such districts for school year 2004-2005;

(2) multiply the low enrollment weighting factor of each district determined under paragraph (1) by 3,863;

(3) add 3,863 to the product obtained under paragraph (2);

(4) divide the product obtained under paragraph (3) by 4,107; and

(5) subtract 1 from the product obtained under paragraph (4). The difference shall be the low enrollment weighting factor for school year 2005-2006 and each school year thereafter.

Sec. 20. K.S.A. 72-6414, as amended by section 17 of 2005 House Bill No. 2247, is hereby amended to read as follows: 72-6414. (a) The at-risk pupil weighting of each district shall be determined by the state board by multiplying the number of at-risk pupils included in enrollment of the district by ~~145~~ .193. The product is the at-risk pupil weighting of the district.

(b) Except as provided in subsection (d), of the amount a district receives from the at-risk pupil weighting, an amount produced by a pupil weighting of .01 shall be used by the district for achieving mastery of basic reading skills by completion of the third grade in accordance with standards and outcomes of mastery identified by the state board under K.S.A. 72-7534, and amendments thereto.

(c) A district shall include such information in its at-risk pupil assistance plan as the state board may require regarding the district's remediation strategies and the results thereof in achieving the third grade reading standards and outcomes of mastery identified by the state board. The reporting requirements shall include information documenting remediation strategies and improvement made by pupils who performed below the expected standard on the second grade diagnostic reading test prescribed by the state board.

(d) A district whose pupils substantially achieve the state board standards and outcomes of mastery of reading skills upon completion of third grade may be released, upon request, by the state board from the requirements of subsection (b).

New Sec. 21. The correlation weighting of each district with 1,662 or over enrollment shall be determined by the state board as follows:

(a) Determine the schedule amount for a district with 1,662 enrollment as derived from the linear transition under (d) of K.S.A. 72-6412, and amendments thereto, and subtract

the amount determined under (c) of K.S.A. 72-6412, and amendments thereto, from the schedule amount so determined;

(b) divide the remainder obtained under (a) by the amount determined under (c) of K.S.A. 72-6412, and amendments thereto, and multiply the quotient by the enrollment of the district in the current school year. The product is the correlation weighting of the district.

Sec. 22. Section 22 of 2005 Senate Bill No. 43 is hereby amended to read as follows: Sec. 22. (a) If a petition is filed in a district court of this state alleging a violation of article 6 of the Kansas constitution, the chief judge of such district court shall notify the chief justice of the supreme court of such petition within three business days thereafter.

(b) Within three business days of receiving such notice, the chief justice shall notify the chief judge of the court of appeals. Within 10 business days of receiving notice by the chief justice, the chief judge shall appoint a panel of three current or retired district court judges to preside over such civil action. The chief judge shall designate one of such judges to be the presiding judge of the panel. The judicial panel shall be considered a court of competent jurisdiction to hear and decide the civil action.

(c) The judicial panel shall establish venue pursuant to section 23 of 2005 Senate Bill No. 43, and amendments thereto.

(d) As a part of a remedy, preliminary decision or final decision in which a statute or legislative enactment of this state has been held unconstitutional as a violation of article 6 of the Kansas constitution, the judicial panel or any master or other person or persons appointed by the panel to hear or determine a cause or controversy or to make or enforce any order or remedy ordered by a court pursuant to K.S.A. 60-253, and amendments thereto, or any other provision of law, shall not have the authority to order a school district or any attendance center within a school district to be closed or enjoin the use of all statutes related to the distribution of funds for public education.

Sec. 23. K.S.A. 60-2106 is hereby amended to read as follows: 60-2106. (a) *Opinions.* It shall be the duty of the judges of an appellate court to prepare and file with the papers in each case, the opinion of the court upon the questions of law arising in the case, within ~~sixty~~ 60 days after the decision of the same; and the opinion so filed shall be treated as a part of the record in the case, but no costs shall be charged therefor, except for copies thereof ordered by a party, and no mandate shall be sent to the court below, until the opinion provided for by this section has been filed.

A memorandum opinion may be prepared in any case where no new question of law is decided or which is otherwise considered as having no value as a precedent. Such a memorandum opinion need not contain a syllabus or statement of facts. In all other cases a formal opinion shall be prepared.

(b) *Syllabus.* Each formal opinion shall contain a syllabus of the points of law decided, which shall be confined to those questions necessarily arising from the facts in the case.

(c) *Judgment and mandate.* The supreme court may by rule provide for post decision motions for rehearing or other relief. When under such rule a decision of an appellate court becomes final, such court shall promptly cause to be transmitted to the clerk of the district court its mandate containing such directions as are appropriate under the decision. A copy of the opinion of the court shall accompany and be a part of the mandate. The clerk of the district court shall make a notation thereof on the appearance docket. Such mandate and opinion, without further order of the judge, shall thereupon be a part of the judgment of the court if it is determinative of the action, or shall be controlling in the conduct of any further proceedings necessary in the district court.

(d) As a part of a remedy, preliminary decision or final decision in which a statute or legislative enactment of this state has been held unconstitutional as a violation of article 6 of the Kansas constitution, the appellate court or any master or other person or persons appointed by the appellate court to hear or determine a cause or controversy or to make or enforce any order or remedy ordered by a court pursuant to K.S.A. 60-253, and amendments thereto, or any other provision of law, shall not have the authority to order a school district or any attendance center within a school district to be closed or enjoin the use of all statutes related to the distribution of funds for public education.

New Sec. 24. (a) Before commencing an action pursuant to section 22 of 2005 Senate Bill No. 43, and amendments thereto, a party alleging a violation of article 6 of the Kansas

constitution shall file a written notice as provided in this section. The notice shall be filed with the chief clerk of the house of representatives and the secretary of the senate and shall contain the following: (1) The name and address of the party or parties and the name and address of the party's or parties' attorney, if any; (2) a concise statement of the factual basis of the alleged violation, including supporting documentation; and (3) a statement of the amount of monetary damages a specific relief that is being requested. In the filing of a notice of claim, substantial compliance with the provisions and requirements of this subsection shall constitute valid filing of a claim. The contents of such notice shall not be admissible in any subsequent action arising out of the claim. Once notice of the alleged violation is filed, no action shall be commenced until after the party has received a written response by the legislature or until after 120 days has passed following the filing of the notice of claim, whichever occurs first.

(b) Except as otherwise provided, before any alleged violation is presented to the legislature or before any alleged violation is acted upon by the legislature, the alleged violation shall be investigated by the legislative counsel.

Sec. 25.

DEPARTMENT OF EDUCATION

(a) There is appropriated for the above agency from the state general fund for the fiscal year ending June 30, 2006, the following:

General state aid.....	\$75,600,000
Supplemental general state aid.....	\$41,300,000
Capital outlay state aid.....	\$18,000,000
Special education services aid.....	\$13,500,000

(b) If the provisions of 2005 House Bill No. 2247 and 2005 Senate Bill No. 43 regarding the increased local option budget (LOB) authority over 25%, which were stayed by the order of the Kansas supreme court in the supplemental opinion issued on June 3, 2005, in the case of *Montoy, et al., v. Kansas*, case No. 92,032, are not released from such stay ordered by the Kansas supreme court in that case and such release is not effective prior to September 1, 2005, then, (1) on September 1, 2005, the director of accounts and reports shall transfer the amount which exceeds the amount necessary to fund supplemental general state aid, as certified by the state board of education, from the \$41,300,000 appropriated for the department of education for the fiscal year ending June 30, 2006, by subsection (a) of this section from the state general fund in the supplemental general state aid account to the special education services aid account of the state general fund of the department of education and, (2) on September 1, 2005, upon such transfer to the special education services aid account of the state general fund for fiscal year 2006, (A) such amount certified by the state board is hereby appropriated for the department of education from the state general fund for special education services aid for the fiscal year ending June 30, 2006, and (B) such amount certified by the state board is hereby lapsed from the \$41,300,000 appropriated for the department of education for the fiscal year ending June 30, 2006, by subsection (a) of this section from the state general fund in the supplemental general state aid account.

New Sec. 26. Except as provided by this section, the provisions of this act shall not be severable. If any provision of this act, other than the provisions relating to declining enrollment and the increase in supplemental general state aid attributable to the increase in the state prescribed percentage under K.S.A. 72-6433, as amended by section 17 of 2005 Senate Bill No. 43, is held to be invalid or unconstitutional by court order, the entire act shall be null and void.

Sec. 27. 46-1222, 46-1223, 46-1224, 60-2106, 72-6410, as amended by section 14 of 2005 House Bill No. 2247, 72-6412, as amended by section 15 of 2005 House Bill No. 2247, 72-6414, as amended by section 17 of 2005 House Bill No. 2247, 72-6426, and 79-1801 and K.S.A. 2004 Supp. 72-978, as amended by section 10 of 2005 House Bill No. 2247, 72-6407, as amended by section 16 of 2005 Senate Bill No. 43, and 72-6434, as amended by section 24 of 2005 House Bill No. 2247, and section 2 of 2005 House Bill No. 2247, section 3 of 2005 House Bill No. 2247, section 13 of 2005 Senate Bill No. 43, and section 22 of 2005 Senate Bill No. 43, are hereby repealed.

Sec. 28. This act shall take effect and be in force from and after its publication in the Kansas register.”;

On page 1, in the title, by striking all in lines 14 through 39 and inserting the following: “AN ACT concerning schools and school districts; relating to school finance; relating to the powers and duties of the legislature, courts, state board of education and school districts in relation thereto; relating to litigation in relation thereto; making and concerning appropriations for the fiscal years ending June 30, 2006, for the department of education; amending K.S.A. 60-2106, 72-6410, as amended by section 14 of 2005 House Bill No. 2247, 72-6412, as amended by section 15 of 2005 House Bill No. 2247, 72-6414, as amended by section 17 of 2005 House Bill No. 2247, 72-6426, and 79-1801 and K.S.A. 2004 Supp. 72-978, as amended by section 10 of 2005 House Bill No. 2247, 72-6407, as amended by section 16 of 2005 Senate Bill No. 43, and 72-6434, as amended by section 24 of 2005 House Bill No. 2247, and section 2 of 2005 House Bill No. 2247, section 3 of 2005 House Bill No. 2247, and section 22 of 2005 Senate Bill No. 43, and repealing the existing sections; also repealing K.S.A. 46-1222, 46-1223, 46-1224 and section 13 of 2005 Senate Bill No. 43.”;

And your committee on conference recommends the adoption of this report.

KATHE DECKER
MICHAEL R. O'NEAL
BRUCE LARKIN
Conferees on part of House

JEAN KURTIS SCHODORF
JOHN VRATIL
JANIS K. LEE
Conferees on part of Senate

On motion of Rep. Decker, the conference committee report on **H. Sub. for SB 3** was adopted.

On roll call, the vote was: Yeas 75; Nays 48; Present but not voting: 0; Absent or not voting: 2.

Yeas: Ballard, Bethell, Burgess, Burroughs, Carlin, Colloton, Cox, Craft, Crow, Davis, Decker, Dillmore, Faust-Goudeau, Feuerborn, Flaharty, Flora, Garcia, Gatewood, Gordon, Grant, Hawk, Henderson, Henry, Hill, Holland, Horst, Huff, Huntington, Jack, D. Johnson, Kilpatrick, Kirk, Krehbiel, Kuether, Lane, Larkin, Light, Loganbill, Long, Loyd, Mah, McKinney, Menghini, M. Miller, Myers, Newton, O'Malley, O'Neal, Otto, Owens, Pauls, Peterson, Phelps, Pottoriff, Powers, Roth, Ruff, Ruiz, Sawyer, B. Sharp, S. Sharp, Shultz, Sloan, Storm, Svaty, Swenson, Thull, Treaster, Vickrey, Ward, Wilk, Williams, Winn, Yoder, Yonally.

Nays: Aurand, Beamer, Brown, Brunk, Carison, Carter, Dahl, DeCastro, Edmonds, Faber, Flower, Friesborn, George, Goico, Grange, Hayzlett, C. Holmes, M. Holmes, Huebert, Humerickhouse, Hutchins, Huy, E. Johnson, Kelley, Kelsey, Kiegerl, Kinzer, Knox, Landwehr, Mast, Mays, McCreary, McLeland, Merrick, F. Miller, Jim Morrison, Judy Morrison, Neufeld, Novascone, Oharah, Olson, Peck, Pilcher-Cook, Powell, Schwab, Schwartz, Siegfried, Weber.

Present but not voting: None.

Absent or not voting: Showalter, Watkins.

EXPLANATIONS OF VOTE

MR. SPEAKER: I consider it a great honor to have served in the Kansas Legislature at such a momentous time in our history. “The Gladiator” movie comes to mind. In that movie a group of men fought to preserve their lives and try to win their freedom. My brave colleagues in the Kansas House of Representatives have fought to preserve the freedom of the Legislature from coming under the bondage of the Judicial system. We have fought a good fight my friends and I am honored to have fought with you. I vote no on **H. Sub. for SB 3**.—PEGGY MAST

MR. SPEAKER: I understand that schools can always use more money. This is especially true in the rural areas that lose students, therefore funding, every year. I have already voted for an increase of \$142 million for Kansas schools. We must balance school funding with the competing demands of other fundamental state interests in light of the constitutional obligation to balance the budget and the economic realities of limited resources. Mr. Speaker, I cannot vote for another \$145.4 million on top of the amount already passed with a clear conscience. I vote no on **H. Sub. for SB 3.** —MITCH HOLMES

MR. SPEAKER: As I considered the consequences to passing this measure to rural school districts, the negatives outweighed the positives. This measure increases the correlation weighting \$28.7 million. For every dollar increase in weighting, rural districts will lose \$2 dollars. Many who supported this measure are actually supporting a loss for rural districts of \$47.4 million. Who will pay the bill for this measure?? The burden will be on the property taxpayers when the bill comes due next year when we start the session with a projected \$128 million deficit and a deficit of \$526.5 million in FY 08. For this reason, I vote no on **H. Sub. for SB 3.**—SHARON SCHWARTZ

MR. SPEAKER: Kansas has been my home my entire life, and probably will be till the day I die. I vote no on **H. Sub. for SB 3.** I care deeply about the future of the children of Kansas and especially my children and grandchildren who live in Kansas. **H. Sub. for SB 3** is fiscally irresponsible, creating large budget deficits starting with next year's budget.

We all want good schools for Kansas children. Throwing money at them is not the answer. It will be necessary to look for additional sources of revenue, which means the State taking more money from the citizens of Kansas to fund **H. Sub. for SB 3.**—VIRGIL PECK, JR.

PROTEST

MR. SPEAKER: In accordance with Article 2, Section 10, of the Kansas Constitution, I hereby submit the following written protest on **H. Sub. for SB 3.** Article 2, Section 24, of our Constitution clearly states that the power of the purse is vested in the Legislature. When the Court mandated in its June 3, 2005 ruling on *Montroy vs. the State* that the Legislature increase K-12 spending by \$143 million in addition to the \$142 million appropriated by the Legislature during the 2005 Session — the debate shifted from education funding to the separation of powers doctrine between the three branches of government.

This protest is best explained by Constitutional Scholar Gerrit Wormhoudt when he wrote the following for the Flint Hills Center for Public Policy:

If the Kansas legislature acquiesces in our Supreme Court's exercise of the power to tax, assumed in its recent school finance decisions, it will have aided and abetted the Court's self-destructive actions. The judicial branch in our tripartite constitutional order was deliberately designed to be the least dangerous branch of government because the constitutional authority granted to it by the people of this state was limited to the exercise of judicial power. Throughout our history as a state and as a nation the power to tax and to appropriate money exacted from the people has been considered as a strictly legislative power.

Prior to its current school finance decisions, the Kansas Supreme Court was unequivocally committed to the proposition that the judicial power of the State could never be exercised so as to directly or indirectly impose a tax in any amount. In *Union Pac. Rld. Co. v. State Tax Comm.* 145 Kan. 715 at p. 728, our then Supreme Court said in the plainest language conceivable:

"It is fundamental that courts cannot be required or permitted to exercise any power or function except those of a judicial nature."

"The power to tax is a legislative power, and not in any sense judicial."

In the same case, on the same page, the Court recognized the long-standing "principle of noninterference by the judiciary in a legislative function." Article 6, Section 6 (b) of the Kansas Constitution unmistakably entrusts to the legislature the power to "make suitable provision for finance of the educational interests of the state."

How did this open-ended legislative power become transformed into a judicial power? Through the magic of a lawsuit naming the State of Kansas as a defendant, the members of our legislature have been ordered to immediately amend their determination as to the current amount of suitable funding by an additional number of some \$142 million. How did

the Court reach that amount and the further sum of \$568 million that it has warned may come in a possible future judicial order? The Court simply treated the lawsuit as the equivalent of a legislative proceeding over which it was presiding. Then it accepted a part of the evidence introduced in that suit as the equivalent of a legislative enactment.

That evidence consisted of nothing more than a study by a private company of school funding "experts" hired to assist the members of the legislature in their determination of a suitable amount to be appropriated to finance the educational interests of the state. Nothing in that study purported to discuss the total cost of the many, many other expenditures that the legislature has to consider in arriving at a suitable amount for any of them. Nor did it discuss whether the nearly one billion dollars in additional dollars suggested by the study, and ordered by the Court, should be raised by increasing taxes or by reducing funds for other government programs or by some combination thereof, nor what the effects might be upon the ability of Kansas taxpayers and the state's economy to foot the entire bill.

The Court has emphatically said that "The legislative power of this state is vested in the legislature and the legislature is prohibited from delegating legislative powers to nongovernmental associations or groups." *Gumbhir v. Kansas State Board of Pharmacy*, 228 Kan. 579, 585.

Nevertheless, the Court has now ruled that a study made by a private company of school finance "experts" is binding upon the legislature, notwithstanding that the constitution of this state, in the Court's own words, prohibits the delegation of legislative power to private groups. This conclusion by the Court, and its order to the legislature to implement it, simply cannot be reconciled with either the Court's prior rulings that legislative power may not be delegated to private groups nor with its long-standing commitment to the principle of non-judicial interference in legislative functions.

The retention of jurisdiction by the Court over future funding of school finance means that the Court may be engaged in supervising the exercise of legislative power not only during the current legislative session and in the following session, but most likely for years to come. Members of our House of Representatives are subject to removal from office through biannual elections. None of them are parties to this litigation, now in its sixth year, but the Court's orders are directed to them. The threat of sanctions if legislators do not cast their votes as ordered by the Court lends itself to possible additional constitutional violations that could lead to unending controversy and litigation as the Court continues to be enmeshed in legislative proceedings.

The Court's reliance upon Chief Justice Marshall's dictum in the seminal case of *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, that the judiciary has ultimate authority to review the constitutionality of legislation, is clearly futile. It ignores the limitations placed upon that authority in the very same case. The opinion there dealt with both the existence of the power of courts to control members of the other branches of government and the limits upon that power that courts must observe if our constitutional structure of government is to be preserved. The facts presented in *Marbury* involved the power of the Court to control acts of officers of the executive departments, but its language is, at the very least, equally applicable to the legislative branch. The Chief Justice said that "The province of the court is, solely, to decide on the rights of individuals, not to inquire how the executive, or executive officers, perform duties in which they have discretion. Questions in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court." Can there be even a glimmer of doubt that the power conferred by our constitution upon the State to make suitable provision for the funding of public schools is inherently and indisputably discretionary in nature and, therefore, has been given solely to the legislature under our constitution? Any doubt should be dispelled by simply asking what the Court would do if faced with a subsequent expert study concluding that some future legislature's determination of suitable funding is grossly excessive? Would it then order a refund to the taxpayers if a suit were filed on their behalf?

All concerned parties, the people of this State, and the members of all three branches of the government that the people created might benefit from re-reading the pertinent remarks in No. 58 of the *Federalist Papers* written by James Madison, the acknowledged father of our federal constitution.

"The House of Representatives cannot only refuse, but they alone can propose the supplies requisite for the support of government. They, in a word, hold the purse—that powerful instrument in which we behold, in the history of the British Constitution, an infant and humble representation of the people gradually enlarging the sphere of its activity and importance, and finally reducing, as far as it seems to have wished, all the overgrown prerogatives of the other branches of government."

At a time when all departments of government are under constant pressure from every imaginable special interest group to increase the tax burdens of the people of this state, and when the members of the judiciary are facing a storm of unwarranted accusations as judicial activists from the left and the right, our Supreme Court's assumption of power, constitutionally assigned solely to the legislature with respect to school financing, is most unfortunate and clearly inconsistent with the foundations of a constitutional democracy. As the looming collision over suitable school financing created by litigation proceeds, it is devoutly to be hoped that both the Kansas legislature and our Supreme Court will honor their respective, separate constitutional obligations in a manner that will permit the Court to retain the trust, confidence and respect to which that office is entitled.—BONNIE HUY

MESSAGE FROM THE SENATE

Announcing adoption of SCR 1604.

INTRODUCTION OF SENATE BILLS AND CONCURRENT RESOLUTIONS

The following Senate concurrent resolution was thereupon introduced and read by title:
SCR 1604.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

Speaker Mays announced the referral of the following resolution to committee as indicated:

Committee of the Whole: SCR 1604.

INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

The following resolution was introduced and read by title:

HOUSE CONCURRENT RESOLUTION No. 5007—

By Select Committee on School Finance

A CONCURRENT RESOLUTION responding to the Kansas supreme court's decision in the case of *Montoy v. State of Kansas*.

WHEREAS, It is the legislature's judgment that the Kansas supreme court's order of June 3, 2005, ordering the legislature to implement a minimum increase of \$285 million in additional funds for school finance intrudes upon the exclusive constitutional authority of the legislature to make appropriations; and

WHEREAS, The legislature respects the authority of the Kansas supreme court to interpret the constitution, and the legislature has recognized and acted in good faith to fulfill its constitutional obligation to make suitable provision for finance of the educational interests of the state, both through the enactment of 2005 House Bill No. 2247 and 2005 Senate Bill No. 43 and by attending a special session of the legislature to provide additional funding for schools; and

WHEREAS, The legislature must balance its constitutional duty to fund schools with the competing demands of other fundamental state interests in light of the constitutional obligation to balance the budget and the economic realities of limited resources: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the legislature hereby reaffirms and reserves its exclusive constitutional authority to make appropriations on behalf of the state; and

Be it further resolved: That the legislature hereby declares its view that the court lacks the constitutional authority to order the legislature to make a specific appropriation in sum certain by a specific date; and

in relation thereto; relating to litigation in relation thereto; making and concerning appropriations for the fiscal years ending June 30, 2006, for the department of education; amending K.S.A. 60-2106, 72-6410, as amended by section 14 of 2005 House Bill No. 2247, 72-6412, as amended by section 15 of 2005 House Bill No. 2247, 72-6414, as amended by section 17 of 2005 House Bill No. 2247, 72-6426, and 79-1801 and K.S.A. 2004 Supp. 72-978, as amended by section 10 of 2005 House Bill No. 2247, 72-6407, as amended by section 16 of 2005 Senate Bill No. 43, and 72-6434, as amended by section 24 of 2005 House Bill No. 2247, and section 2 of 2005 House Bill No. 2247, section 3 of 2005 House Bill No. 2247, and section 22 of 2005 Senate Bill No. 43, and repealing the existing sections; also repealing K.S.A. 46-1222, 46-1223, 46-1224 and section 13 of 2005 Senate Bill No. 43.”;

And your committee on conference recommends the adoption of this report.

KATHE DECKER
MICHAEL R. O'NEAL
BRUCE LARKIN
Conferees on part of House

JEAN KURTIS SCHODORF
JOHN VRATIL
JANIS K. LEE
Conferees on part of Senate

Senator Schodorf moved the Senate adopt the Conference Committee Report on **H Sub for SB 3**.

On roll call, a call of the Senate was requested by five senators.

The vote was: Yeas 26, Nays 11, Present and Passing 0, Absent or Not Voting 3.

Yeas: Apple, Barnett, Barone, Betts, Bruce, Brungardt, Francisco, Gilstrap, Goodwin, Halsey, Hensley, Kelly, Lee, McGinn, Morris, Pine, Reitz, D. Schmidt, V. Schmidt, Schodorf, Steineger Taddiken, Teichman, Umbarger, Vratil, Wysong.

Nays: Brownlee, Donovan, Huelskamp, Jordan, Journey, O'Connor, Ostmeyer, Palmer, Petersen, Pyle, Wilson.

Absent or Not Voting: Allen, Emler, Wagie.

The Conference Committee Report was adopted.

The call of the Senate was lifted by President Morris.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote no on **SB 3**. When I get a bit sloppy with my own spending habits, my husband is my check and balance. But who provides the checks and balances when the Legislature goes on a spending spree for which we don't have the money? Kansas taxpayers will eventually stop the buck that we are passing onto them.

Finally, how do we tell the Supreme Court no on \$568 million when we have said yes to more than their mandated \$143 million? We have set a precedent that we cannot keep.—
KARIN BROWNLEE

Senators O'Connor and Palmer request the record to show they concur with the "Explanation of Vote" offered by Senator Brownlee on **H Sub for SB 3**.

MR. PRESIDENT: I vote yes on **H Sub for SB 3**.

The 2005 special session was never about judicial activism or amending our state's constitution. This special session was about doing the right thing for the school children of Kansas.

And today, our school children scored a big victory in the Kansas Legislature. They scored this victory because we finally accomplished what we were called into special session to do—adequately and equitably fund our public schools.

The Governor successfully built a bipartisan coalition of Senate and House members that never wavered in their commitment to improving the quality and equity of our children's education. Despite numerous road blocks, the coalition held together to increase funding for our schools that will make a real difference for our children.

Following the Senate's earlier school finance plan, the House finally passed a solution which will not only improve our schools, but will also increase accountability for the use of taxpayer dollars, and provide property tax relief.

Frankly, I am relieved and satisfied by the outcome of this special session. This generation and future generations of Kansas school children will benefit greatly from today's historic actions.—ANTHONY HENSLEY

Senators Barone, Goodwin and Lee request the record to show they concur with the "Explanation of Vote" offered by Senator Hensley on **H Sub for SB 3**.

MR. PRESIDENT: Due to a call of the Senate, I was forced to cast a vote on this bill.

We were forced to appear this Special Legislative Session upon the demand of six members of the Kansas Supreme Court who ordered legislators to appropriate another \$143 million for school spending.

Since then, various constitutional lawyers have argued that the Court has the power to fine legislators, perhaps even throw me in jail if I do not follow their order. And just four days ago, the Court threatened to shut down every public school unless we do exactly as they demand.

Mr. President, I must protest this unconstitutional encroachment upon my oath of office. As an elected official, it is my responsibility to appropriate money out of the state treasury, not an unelected judiciary. Their attempt to compel my actions on this appropriation is an affront to our constitutional system. We may very well rue this day.

I must, therefore, vote No on this bill.—TIM HUELSKAMP

MR. PRESIDENT: During the 2005 session, education funding increased by \$142 million. Now under order of the courts, we're told to spend an additional 143 million. **H Sub for SB 3** spends beyond this.

There are those pointing at the '98 tax cuts as reason for this financial situation, ignoring the September 11th disaster and Governor Grave's 2002 tax increase, which slowed Kansas' recovery. These people are willing to spend Kansas into financial crises, legally plundering pockets of business and hard working families (who raise the children). They seem willing to keep Kansas on a path towards fewer congressional seats and less representation nationally. Their destructive policy harms the people of this state, and puts Kansas in a dangerous fiscal situation.

The best thing for Kansas children is to educate them and address out of control spending, stop legal plunder, create economic climates that grow revenue, grow business, grow this state and give us more job opportunities here. This gains Kansas more federal representation and influence.

MR. PRESIDENT: I've supported additional funding for education and believe Kansas should continue making education the top priority. However, under unconstitutional order of the courts, I cannot support \$148.4 million unnecessary, reckless, and irresponsible spending. I vote no.—DENNIS PYLE

Senators Journey and O'Connor request the record to show they concur with the "Explanation of Vote" offered by Senator Pyle on **H Sub for SB 3**.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following concurrent resolution was introduced and read:

SENATE CONCURRENT RESOLUTION No. 1605—

By Senators Morris, D. Schmidt and Hensley

A CONCURRENT RESOLUTION relating to the 2005 special session of the legislature and providing for the adjournment thereof.

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That the legislature shall adjourn sine die at the close of business of the daily session convened on July 6, 2005.

On motion of Senator D. Schmidt SCR 1605 was adopted by voice vote.