

Testimony before House K-12 Budget Committee
HB 2561 & HB 2697 – Neutral Testimony
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Policy Institute
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Mr. Chairman and members of the Committee

Thank you for the opportunity to appear and provide comments with regard to proposals to address an appropriate approach to K-12 transportation funding. Our purpose in providing neutral testimony on these proposals is to remind the Committee of the reason these bills were introduced, as current law already covers transportation aid and its calculation.

HB 2561, candidly, is an effort to codify, not current law, but the manner in which the KSDE has chosen to implement the law. While the fiscal note states: “According to the Department of Education, enactment of HB 2561 would have no fiscal effect, as the bill would conform the Act to the Department’s current practice of calculating state aid for transportation weighting for districts with high-density enrollment”, in reality, reference should be made to the recent LPA Performance Audit which found that over the past five years, KSDE’s decision to implement a funding minimum that was repealed in 1973 has provided a total of \$45M more in transportation funding than allowed by law. This is not inconsequential. The fiscal impact dating back to this unilateral decision since 1973 is significant and unprecedented. More troubling is the fact that this was apparently done intentionally and allegedly at the direction of “some legislators”. But for the LPA audit we must presume the unlawful practice would have continued unabated.

Whether this Legislature determines that an appropriate funding mechanism going forward would include restoring the funding minimum that was repealed in 1973 or possibly adopting the formula proposed in HB 2697 is, of course, uniquely within the exclusive power of the Legislature as the Legislative branch. It is, however, a breach of the separation of powers doctrine and an unauthorized delegation of legislative power to allow another body, either directly or indirectly, to amend current law by the manner in which it chooses to execute a law.

That such a delegation was never intended is made clear by the provisions of K.S.A. 2017 Supp. 72-5136 which provides, in part:

“In the event any school district is paid more than it is entitled to receive under any distribution made under this act or under any statute repealed by this act, the state board shall notify the school district of the amount of such overpayment, and such school district shall remit the same to the state board. The state board shall remit any moneys so received to the state treasurer in accordance with the provisions of K.S.A. 75-4215....”

To our knowledge, notwithstanding the fact that KSDE candidly admitted to LPA that this unlawful funding method was being used because “some legislators” directed it be done in this manner, no efforts were made at the time to either amend the law or comply with the directive of the above-quoted statute, and that continues to be the case even following the release of the LPA report. This is troubling on many levels.

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The passage of either of these two bills does not and should not be considered to legitimize, endorse or immunize an unlawful practice that has apparently been implemented for the past several decades. The Legislature and the public deserve better. The fact that the law may have been ignored out of "benign motives" does not justify actions outside of the law and contrary to the law. In a democratic republic, such as ours, there are rules that an attitude of "the ends justifying the means" will only serve undermine, and create a disrespect, for the rule of law. There are school finance bills every year. You must ask yourself why there was never one, until the LPA disclosure, to address this issue which has been known by KSDE staff for decades. Trust is a two-way street.

Give thoughtful consideration to the appropriate method of transportation funding going forward but learn from this violation of the process and include a stronger level of vigilance over taxpayer funds.