

MINUTES OF THE SENATE EDUCATION COMMITTEE

The meeting was called to order by Chairman Jean Schodorf at 1:40 P.M. on February 3, 2005, in Room 123-S of the Capitol.

Committee members absent:

Committee staff present: Carolyn Rampey, Kansas Legislative Research Department
Kathie Sparks, Kansas Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Bill Brady, Schools for Fair Funding
Senator John Vratil
Mark Tallman, Kansas Association of School Boards
Mark Desetti, Kansas National Education Association
Dale Dennis, Deputy Commissioner, State Board of Education

Bill Brady, representing Schools for Fair Funding, requested the introduction of a school finance bill which would redefine the state's finance formula in the manner outlined in the Augenblick & Myres study and which would include a funding component to raise revenue to fund the changes. (Attachment 1)

Senator Goodwin moved to introduce the bill, seconded by Senator Vratil. The motion carried.

Senator Apple moved to introduce a conceptual bill which would require that a wide strobe light be placed on the top of school buses as a means to improve safety, seconded by Senator Allen. The motion carried.

SB 48–School district contracts; indemnification or hold harmless clauses

Senator Vratil, sponsor of **SB 48**, explained that, as an attorney, he represents five school districts. In the last several years, he has noticed an increasing and disturbing trend involving a wide variety of vendors to school districts. The trend of vendors such as construction contractors, software manufacturers, and food vendors is to shift legal responsibility to somebody else. In a number of contracts presented to school districts, there are provisions which require the school district to indemnify the vendor against the vendor's own negligence. As a result, if the vendor does something that creates legal liability, the school district has to be responsible in terms of any financial damages. He went on to explain that there is an Attorney General's opinion which indicates that Kansas school districts do not have legal authority to enter into those kind of indemnification provisions. However, when he provides that Attorney General's opinion to vendors, they ask where that provision is located in Kansas statutes. The bill would statutorily ensure that everybody is responsible for their own negligent or wrongful acts. Senator Vratil noted that school districts must share their legal responsibility in the Tort Claims Act, and the bill would create a level playing field.

SB 49–School district contracts; laws governing and courts of jurisdiction

Senator Vratil was also the sponsor of **SB 49**. He explained that **SB 49** is very much the same as **SB 48**. In order to enhance their position in case there is litigation, vendors are insisting that contracts with Kansas school districts be governed by the laws of the state where the vendor is located. He noted that many software vendors are located in California, and the California vendors want Kansas school districts to agree to submit to the jurisdiction of a California court, which is contrary to Kansas law. The bill would require that any contract in which the school districts enter will be governed by Kansas law, and a school district could not agree to submit to the jurisdiction of another state; it could only be subject to Kansas courts.

Senator Vratil noted that in his experience in representing school districts, there have been battles which took a lot of time and costs to the school district to get these provisions sorted out. He noted, "Usually, we arrive at some kind of ambiguous language in the contract so that everybody can claim victory. But what that means is, if there's ever a dispute, it's certain to go to litigation to sort out that ambiguous language. And that's not a good resolution of the problem. These bills would provide a clear resolution."

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Senator Vratil commented further that problem began mainly with software vendors who, on a national basis, would not accept any responsibility for the software they produced. Now, software vendors want school districts, who spend tens of thousands of dollars on software, to indemnify them against their own negligence.

Senator Lee asked if the bills would result in software providers not wanting to do business in Kansas. Senator Vratil responded, "That potential exists, and I thought a great deal about that. On the one hand, it occurs to me that the market in Kansas is big enough that those software vendors are not going to just ignore the Kansas market. That would significantly reduce their revenue. The other possibility is that they will just agree to just abide by this law and take the offending indemnification provisions out of their contract." Senator Lee asked if other states have similar laws. Senator Vratil said, "None that I know of. I haven't done a survey of other states so I can't really say. All I can tell you is, I don't know of any."

Mark Tallman, Kansas Association of School Boards (KASB), testified in support of **SB 48** and **SB 49**. Mr. Tallman noted that the intent of the legislation was fully consistent with the legal advice KASB staff attorneys provide to KASB members when entering into contracts. He noted that KASB believes the bills would protect boards from pressure to sign contracts that are not in the best interest of the district or the state. (Attachment 2)

Mark Desetti, Kansas National Education Association (KNEA) testified in support of **SB 48** and **SB 49**. Mr. Desetti noted that KNEA views the bills as measures to protect Kansas public schools and Kansas taxpayers. With regard to **SB 49**, he said that KNEA's sole concern is the question of the impact it might have on insurance contracts with insurance companies located outside Kansas. He noted that he contacted the Insurance Commissioner to see if regulations would take care of this situation, but he had not yet received an answer. (Attachment 3)

In response to Mr. Desetti's concern about insurance contracts, Senator Vratil said, "I believe what you will find is that in order for a school district to enter into an insurance contract with an out-of-state insurance company, that out-of-state insurance company will have to be licensed in Kansas. And if they are licensed in Kansas, they are going to be subject to Kansas law." He agreed that Mr. Desetti should follow up with the Insurance Commissioner and report back to the Committee.

There being no others wishing to testify, Senator Schodorf closed the hearings on **SB 48** and **SB 49**.

Senator Goodwin moved to recommend **SB 48** as favorable for passage, seconded by Senator Pine. The motion carried.

Senator Schodorf reminded the Committee that samples of "Budget at a Glance," which can be found on the Internet for each school district, were distributed to members at the February 2 meeting. She called upon Dale Dennis, Deputy Commissioner, State Board of Education, for further information regarding other on-line information available which would be useful in comparing Kansas with Wisconsin's system for collecting financial data from school districts. Mr. Dennis informed the Committee that the Department of Education collects almost all school district financial data through the Internet. He explained that budgets are automatically calculated after the school district fills in the blanks on-line. He noted that other information such as the general fund budget and all the weightings can always be found on the Department's web site, www.ksde.org. He explained that the interest rate that banks are required to pay school districts on any idle funds are posted weekly in addition to all the state and federal aid which has been distributed. He went on to say that the federal government requires that the Department report expenditures by school district in federal format. He noted that an explanation of the school finance formula can be found on the Internet. In addition, there is a 15 year history of school district expenditures broken down by revenue and expenditures for state, federal, and local; the amount per pupil for state, federal and local; and the total expenditures. He explained that the school district information available to the public under "Budget at a Glance" is an eight page document which shows the budget for the two preceding years plus the current year. He also explained that the Department recently began condensing the current operating expenditures to approximately ten lines listing expenditures for instruction, food support, structural support, school administration, general administration, operation and maintenance, etc. The Department uses the same definitions which are used for the required federal report. The expenditures for each school district are compared to schools statewide.

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Mr. Dennis cautioned that the comparison should be used only a guideline. He went on to explain that a listing of such things as enrollment, reduced price lunch, and square miles by district is provided for school districts which are interested in data for comparable districts. In conclusion, Mr. Dennis listed the following data available for each school district: average teacher and principal salaries, enrollment, mill levies, graduates, drop outs, assessed valuation, noncertified personnel, and cash balances for every fund. He noted that the Department tries not to put anything on their website which will not be used and that most of the data collected is related to distribution of money or compliance with federal law.

Senator Schodorf called the Committee's attention to copies a summary of school finance discussions held by the Senate Education Committee which was prepared by Carolyn Rampey, Kansas Legislative Research Department. She pointed out that a staff note at the end of the summary indicated that the summary was based on staff notes taken during meetings, and, if necessary, any member could ask that the summary be revised or that additions be made. She informed the Committee that she planned to give a copy to the Senate President for informational purposes. (Attachment 4)

Senator Vratil moved that the minutes of the January 26, 27, and 31 meetings be approved, seconded by Senator Goodwin. The motion carried.

The meeting was adjourned at 2:15 p.m.

The next meeting is scheduled for February 7, 2005.