

MINUTES OF THE SENATE SENATE SELECT COMMITTEE ON EDUCATION FINANCE
COMMITTEE

The meeting was called to order by Chairperson Jim Denning at 9:00 am on Wednesday, May 24, 2017, in room 548-S of the Capitol.

All members were present

Committee staff present:

Amy Robinson, Kansas Legislative Committee Assistant
J.G. Scott, Legislative Research Department
John Hess, Legislative Research Department
Lauren Mendoza, Legislative Research Department
Nick Myers, Office of Revisor of Statutes
Tamera Lawrence, Office of Revisor of Statutes

Conferees appearing before the Committee:

Jeff King, Legislative Counsel
Eddie Penner, Legislative Research Department
Tamera Lawrence, Revisor of Statutes

Others in attendance:

[See Attached List](#)

Possible action on bills previously heard SB251 — Creating the Kansas school equity and enhancement act.

No minutes information to display

MEETING 1: 9-Noon SB251 — Creating the Kansas school equity and enhancement act.

Chairperson Denning called the meeting to order at 9am. He reviewed the daily agenda, noting the Committee would break for session at 10am, and continue in the afternoon as well if needed.

Chairperson Denning stated he had three conceptual amendments for the Committee. ([Attachment 1](#))

Chairperson Denning motioned to adopt a conceptual amendment that adds a reporting line for the Kansas Department of Education to report by line item the cost per pupil all funds. Seconded by Senator McGinn.

Senator Pettey asked whether the reporting would be by major categories that break out the per pupil funding like Base State Aid, high-density, at-risk, and the other categories identified. Chairperson Denning responded that it was by these major categories and was not broken out by district.

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Senator Bollier questioned if districts are going to be able to target money to specific schools for high-density at-risk, how would this be described or reported per pupil. Chairperson Denning stated it would be handled similar to Special Education and wouldn't be appropriated to any district, it would just show spending to help the Legislature and others fully account for all resources being provided to help Kansas kids under each category. Senator Bollier noted she would support the amendment, but wants to ensure the KSBE knows what to report. Discussion ensued to gain clarification on the new reporting line.

Chairperson Denning moved the conceptual amendment as discussed. The amendment passed.

Chairperson Denning motioned to adopt a conceptual amendment for amended appropriation sections. Seconded by Senator McGinn.

This amendment is for technical clean up as requested by KLRD and amends both appropriation sections other than the line items effected by formula pieces of the bill to match the Senate Mega and Omnibus bills.

Senator Bollier asked for clarification if the clean up will happen after the Omnibus bill has passed or before. Senator McGinn responded that if she is understanding it correctly, it will be similar to a reconciliation bill and it helps tie everything together for the books.

Chairperson Denning moved the conceptual amendment. The amendment passed.

Chairperson Denning motioned to approve a conceptual amendment that takes the major categories of funding and split out the appropriation into foundation funding, virtual aid, low and high enrollment, transportation, bilingual, at risk, and career and technical education. Seconded by Senator McGinn.

Chairperson Denning stated this is so we can see the weightings tied to these categories and it adds more transparency in amount and allocation of funding. Senators McGinn, Bollier and Hensley asked clarifying questions. Senator Pettey clarified if the list of major categories will be listed in section 1 and section 2 or a combination. Chairperson Denning responded that section 1 was more for reporting. Senator Hensley noted for the record, when this bill goes to the floor, it would not be subject to the pay-go rule.

Chairperson Denning moved the amendment. The amendment passed.

Senator Baumgardner motioned to adopt Balloon Amendment #22. Seconded by Senator Goddard. ([Attachment 2](#))

Senator Baumgardner stated the purpose is to codify the Committee's intent that at-risk funds are used

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for under-performing students in the best manner possible to help those students succeed. She further noted that current law does not ensure the full accounting of all dollars used to help under-performing students. For instance, when school districts use LOB dollars to help under-performing students, some districts run those funds through their at-risk accounts while other fail to do so, making it difficult to fully discern all of the resources dedicated to under-performing student success. She stated that starting on page 40, the amendment would help to ensure the best use of at-risk dollars by stating that the State Board will identify and approve evidence-based best practices for at-risk programs and instruction of students receiving at-risk program services. Senator Baumgardner stated it changes language to distinguish between at-risk students for funding purposes (which are free lunch students) and under-performing students (those who are identified as academically at-risk by the proposed amendment).

Senator McGinn questioned if the amendment locks the school districts into having something that is evidence-based that has to be approved when it could be as simple as after school apples and cookies. She commented this would not be an evidence based program, but that it helps the students. She noted she was concerned that we would get tied up into rigid rules and a definition of at-risk students, taking away the ability of the school to determine how to help their students. Senator Baumgardner responded that the State Board was going to identify and approve best practices and this will serve as a guide to districts for the best use of services specifically targeted to under-performing kids. Senator Baumgardner responded that the KSBE has already worked on this list and she anticipates the list will be expanded as more best practices are identified. Senator McGinn asked if the State Board is going to have this list approved by January 1st, 2018, and had concerns that the amendment boxes individuals into specific practices, not allowing individuals schools to undertake other programs if they feel this is beneficial. Senator Baumgardner noted that she did not feel it would exclude academic freedom on things that may help you teach specifics in lessons, but merely helped to ensure efficient and targeted use of at-risk funds. Senator Baumgardner noted that the State Board identifying best-practices was to help attain accountability. Senator McGinn stated she was troubled with the timeline, as well as feeling this would tie up local school districts.

Senator Estes asked what determines At-Risk students. Senator Baumgardner noted that for funding purposes, at-risk students were determined by qualification for free lunch. To determine under-performing students that are eligible for at-risk services, Senator Baumgardner referred to the presentation the previous week by Dr. Randy Watson. Senator Baumgardner concurred with his opinion on the methods of assessing whether students are under-performing, noting this amendment says the school district will determine what students are under-performing and does not tether funding with whether a parent or guardian fills out a free and reduced lunch form.

Senator Bollier noted that physicians have best-practices for procedures. She noted that physicians are not forced to do those, but they are provided a list of best-practices that have been researched and identified to improve their profession. She noted she likes the amendment as it wasn't requiring anything, and it was to be used as a guide for efficient and targeted assistance to under-performing

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students. Senator Bollier noted that the best-practice list is extensive and has been worked on for a long period of time, and will be a continuing effort of the State Board.

Senator Baumgardner asked for clarification on item D reporting, line 26, are the school districts already doing this. Nick Myers, Revisor of Statutes, stated that was correct.

Mr. King stated when looking at this balloon amendment he would point out three things:

- He agreed with Senator Bolliers description of the purpose, effect and intent of the amendment's linking of the use of at-risk funding to the State Board's list of general best-practices.
- This amendment not as a restriction requiring specific programs, but an assurance that the funds are used efficiently and exclusively for under-performing students.
- There is a difference in practice and in the law between at-risk students for funding purposes (free lunch students) and the students that qualify for at-risk services. The State Board has a worksheet, previously presented to the Committee and used routinely with districts, that does not limit at-risk services to free lunch students. The State Board authorizes such services on criteria that resembles the under-performing students highlighted at by the Court. Thus, Mr. King viewed the amendment as an effective was of targeting at-risk funding towards the students specified by the Court as needing additional funding.

Senator Pettey asked if presently districts are providing total expenditures for programs, but this amendment has the district providing a list of specific programs and services. Senator Baumgardner responded that this was not correct and that if you look at lines 29 and down, the districts will provide total expenditures for the categories. She noted that funds may come from a variety of places, but each category will have the total expenditures from all funds used. Senator Pettey noted she felt this would create overlapping. Discussion ensued to provide clarification.

Senator Bollier noted this amendment would track the funds used and it would not be to add additional funding above that already provided by the bill. She stated the goal is to track and identify total expenditures targeted specifically at under-performing students.

Chairperson Denning allowed the Committee to break for morning Senate Session. The Committee continued working the bill shortly after.

Chairperson Denning stated that the Baumgardner amendment was being revisited to reflect concerns in the earlier discussion and the Committee would revisit it later in the meeting.

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Senator McGinn told the Committee she was able to get more information as requested on the demographics to be added to her previous amendment. She would like to add gender, race, ethnicity, and economically disadvantaged, migrant, ELL, students with disabilities, and get attendance and enrollment reports.

Senator McGinn motioned to adopt the conceptual amendment for adding specific demographics that are reported. Senator Baumgardner seconded the motion.

Senator McGinn moved her amendment. The amendment passed.

The Committee revisited the Baumgardner amendment. Senator Baumgardner stated that the amendment simply states the State Board will list best practices as a guide for effective spending on under-performing students by local districts. She is confident, based on previous testimony from Dr. Watson, that the State Board will provide the wide variety of programs and instructional approaches as part of this list. She noted that nothing in the amendment restricts a school from using something that works for them. Senator Baumgardner noted this is a transparency effort and a means that the Legislature and Court can have access to precise financial data to help them make more informed decisions. She stated she is simply asking, regardless of what fund the money came from, the request would be to report total funding for transparency. Tamera Lawrence was asked to address the specific changes that would occur in subsection (d). She stated it was just to clarify the term at-risk students (both for at-risk weighting and program eligibility) for the purpose of the section.

Dale Dennis, KSDE, was asked to the podium to help clarify the amendment. Mr. Dennis discussed the definition of funds, and programs and services. Mr. Dennis noted that this bill strengthens a pre-existing requirement that specific funds such as at-risk weighting be used for their intended purpose. Mr. Dennis stated that the KSDE had no problem providing a list of general practices. He also stated that he did not believe the language change of at-risk would be of any issue.

Senator Hensley wanted to correct a few references discussed today. When stated we have a law, he noted we did not have a current law. He also noted that the definition of free/reduced lunch does not actually include the word reduced. He discussed his concerns with language, noting he agrees with Senator McGinn and has concerns with the language in this amendment, believing the language would require districts to use only best-practices. Senator Baumgardner and the Revisor Of Statutes helped clarify the amendment to address these concerns. Senator McGinn continued to question the language as she understood it to be language that would require only the best-practices listed by the KSDE. Senator McGinn noted that pilot programs are not yet approved as best-practice programs and she thinks this may restrict them. Senator Baumgardner responded with her intent again and asked for Chairperson Denning to provide guidance in moving forward. Chairperson Denning stated he felt she should withdraw the amendment and then work over the lunch hour to clarify language and bring it back later in the day.

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Senator Baumgardner withdrew her amendment #22. Senator Goddard withdrew his second to the motion.

Senator Hensley passed out a handout that would clarify a 2016 update that addresses state and local taxes. ([Attachment 3](#)) He discussed the history behind these changes. Senator Hensley also shared data that shows the higher your AVPP, the better the chances of passing LOB or Capital Outlay increases.

Senator Hensley motioned to adopt a conceptual amendment to return the 10 mills on capital outlay back to 8 mills. Seconded by Senator McGinn.

Senator Hensley believes increasing the mill levy would be a violation of equity and is concerned on the impact this change may have. Chairperson Denning spoke on the reasons behind increasing to 10% and how it would help specific districts if they can not pass property tax because they raise such little money. He noted that the Capital Outlay is equalized in a manner accepted by the Kansas Supreme Court. Chairperson Denning stated he sees more positive outcomes than negatives ones.

Chairperson Denning asked Mr. King to address the issue. Mr. King stated in the *Montoy case* back in 2003-2005, the Court had more concern with the level of LOB and Capital Outlay spending than the *Gannon* Court has expressed. The *Gannon* Court has instead emphasized the level of equalization funding for LOB and Capital Outlay, not on how much total spending derives from local sources. He noted that in the *Gannon*, the Court approved as constitutional Capital Outlay equalized at 75%, and Supplemental LOB funding at 81.2%. He commented that lifting the percentage on an amount on a fund that is equalized at a rate that has already been reviewed and approved by the Court in their equity analysis does not trouble him.

Senator Pettey asked Mr. King to remind the Committee what areas he stated would cause concern to the Courts. They discussed the formula components that utilized unequalized local property tax effort. Senator Pettey asked Mr. King to address the Cost of Living weighting. Mr. King stated that in the old formula there were three unequalized weightings: Cost Of Living, declining enrollment, and ancillary facilities weighting. He noted those 3 weightings were adopted in 2005, stayed by the Court shortly thereafter, and they had the stay permanently lifted in 2006. Senator Pettey and Chairperson Denning discussed equalization details as it pertains to property evaluations.

Senator Hensley noted the amendment did not address the expansion of usage of Capital Outlay to allow for the payment of utilities and property/casualty insurance. He discussed details of this equalization of Capital Outlay and LOB, and the differences. He stated that the usage is expanded, the more the tax cap is increased, he thinks that raises equity concerns. Senator Hensley stated that is why he has offered this amendment. Senator Bollier noted that it has been shown that the current rates are equitable, and unless she hears the Court state differently she does not feel like changes are needed.

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Mr. King was asked to discuss Senator Hensley's point about expanding the use of Capital Outlay to include the payment of utility bills. Mr. King stated there was a point that you could expand the use of Capital Outlay (such as permitting those funds to pay teacher salaries) that would likely raise equity concerns. Given the strong link between utilities and property/casualty insurance and capital expenditures, however, he believes the Legislature would have a strong equity position.

Tamera Lawrence, Revisor of Statutes, went over specifics of the bill in regards to what the bill states would fall under Capital Outlay.

Chairperson Denning and Senators McGinn and Hensley discussed the amendment details further.

Senator Hensley moved the amendment. The amendment passed.

The Committee stopped for a lunch break, but will resume at 1:30pm.

MEETING 2: 1:30pm - adjournment SB251 — Creating the Kansas school equity and enhancement act.

Chairperson Denning called the meeting to order.

Senator Kerschen motioned to adopt Amendment #29. Seconded by Senator Estes. ([Attachment 4](#))

This amendment excludes Capital Improvement State Aid for extracurricular facilities. The additional language would state the State Board shall exclude payments for any capital improvement project that proposes to construct, reconstruct, or remodel a facility that would be used primarily for extracurricular activities, unless the construction reconstruction or remodeling of such facility is necessary due to concerns relating to safety or disability access. Senator Estes and Senator Bollier asked clarifying questions. Mr. King and Dale Dennis helped address these questions. Mr. Dennis addressed how extracurricular activities tie into the *Rose* standards and graduation rates, noting that there are many ways to improve student achievement and that extracurriculars can play a significant role in that process. Senator Estes asked clarifying questions on the approval process for extra facilities. Senator Pettey asked clarifying questions on what facilities would qualify or be excluded, and Senator Kerschen noted it would be evaluated on a case by case basis. Senator Baumgardner noted that there is a form created by KSDE that addresses these reasons for facility needs.

Senator Kerschen moved his amendment. The amendment passed.

Senator Baumgardner motioned to adopt amendment #22. Seconded by Senator Bollier. ([Attachment 5](#))

This is a revised balloon amendment for at-risk clarifications. She noted that this only addresses

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expenditures that come from the at-risk fund. Senator Baumgardner discussed changes that were made from earlier in the day to help clarify language, noting that these changes helped improve the targeting and accounting of at-risk funds discussed in the morning debate.

Senator Baumgardner moved the amendment. The amendment passed.

Senator Bollier discussed her amendments and addressed a history behind her reasoning.

Senator Bollier motioned to adopt amendment #5. Seconded by Chairperson Denning. ([Attachment 6](#))

This amendment is to replace low and high enrollment weighting with a sparsity weighting. She also provided an attachment called Proposed Sparsity Weighting. ([Attachment 7](#)) Senator Bollier passed out runs as requested by the Committee. ([Attachment 8](#)) Discussion ensued on the need for sparsity weighting. Senator Estes noted that it appears that small schools in his district would be losing funds, and he did not believe the Committee should make a decision on this right away. Senator Goddard agreed that he would like to hear from the school districts that would lose funding from this proposed amendment. Senator Bollier noted she believes the State has not justified in the funding formula why the State has high and low enrollment weighting. She agreed that this may need to be studied, but believes it should be brought forward for discussion. Chairperson Denning noted that the Senate Education Committee is already being instructed through the bill to hold hearings on this in the future. Senator Estes discussed the importance of low enrollment weightings for small districts/schools. Senator Pettey stated she felt this could be part of an interim committee, noting 157 school districts would be adversely effected. Senator Baumgardner referred to yesterday's discussion that spoke on school districts that have out-of-state students and how fellow Committee members noted that these districts would lose money. She stated that almost 1/2 of the out-of-state students came from one county. She learned from this that we need to pass a funding formula and ensure that the Supreme Court is satisfied, however, she feels that more discussion is needed to address why we do what we do. Senator Baumgardner noted that she felt with an important issue such as this, the Committee should be holding hearings and having input from others. Senator Hensley noted he felt this should be brought to the Senate Education Committee next year.

Senator Bollier moved to pass the amendment. The amendment failed.

Senator Baumgardner discussed introducing an amendment for Senator Mike Peterson. Senator Mike Peterson spoke to the Committee last week during testimony about the specific changes. This amendment addresses having a student opportunity scholarship program.

Senator Baumgardner motioned to adopt amendment #3. Seconded by Senator McGinn. ([Attachment 9](#))

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Senator Pettey discussed her concerns with students possibly believing high school should take three years. Senator McGinn asked what the core reason would be for introducing this amendment. Senator Baumgardner answered that she believed it was to help students move forward, perhaps in a technical school, and be afforded that opportunity. Senator McGinn asked for clarification on if a high school student graduated in four years what would be the difference if graduating a year early, as well as any differences for virtual students. Senator Baumgardner stated that with the will of the Committee, they can recommend a State department or State Board explore an option instead of the Legislature.

Senator Baumgardner moved her amendment. The amendment failed.

Senator Baumgardner motioned to adopt amendment #13. Seconded by Senator Goddard. ([Attachment 10](#))

Senator Baumgardner discussed how the amendment addresses new special education money distributed on a FTE basis. Senator Baumgardner noted that Senator Givens spoke on this amendment in testimony last week.

Senator Givens was asked to the microphone to discuss the amendment. He discussed issues that arise when all districts get the same amount of funding, when their circumstances are different. He noted that what one district does may affect all other districts, and used an example of a district that decreased their workforce, and how all districts lost funding due to that district's action.

Senator Kerschen asked clarifying questions on where the \$12 million would go under the proposed amendment. Senator Givens responded that it would be distributed by the number of FTE students, instead of being used to increase the percentage of excess cost reimbursement. Senator Goddard and Senator Bollier asked clarifying questions. Senator Kerschen noted that the number was based on all students, and not just special education students. Senator Pettey noted that if passed, we would have two different pots of money. Senator Givens answered his goal was to equalize the funding, noting he did not feel it was fair that districts get the same funding when they have such different circumstances.

Senator Baumgardner moved the amendment. The amendment passed.

Chairperson Denning stated that with no further amendments, the Revisor of Statutes would review all amendments made.

Amendments that were adopted:

- Kindergarten count: allows all-day programs to use this year's student count (rather than the previous year's count) for the first year.

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- Out-of-State students remain counted as students for enrollment purposes.
- Sunset provisions and adding Legislative review for Bilingual and At-Risk weightings by both House and Senate Education Committees.
- Sunset changes to the Career Technical Education weighting.
- High-density at-risk weighting (10A) clarification.
- Adding Legislative reviews of reports such as LPA reports.
- Removal of the utility fee.
- Tax credit scholarship program clarifications.
- Reports list by line item per pupil.
- Appropriations to correct the fund names and numbers to match.
- Lists categories for funds, so a breakdown of state aid could be viewed.
- Adding specific demographics for reporting purposes.
- Reversing 10 mills back to 8 mills for Capitol Outlay.
- Exclude capital improvement state aid for extracurricular facilities.
- Language changes for at-risk to improve the accounting and targeting of funds used to help under-performing students.
- New Special Education money distributed on FTE basis rather than being used to reimburse excess costs.

Senator Bollier stated for the record that it is important when looking at school funding, we should not limit local money. It's about all of our students having opportunities.

Senator Pettey discussed that this Committee should vet the tax policy in **SB146** that no longer allows the exemption of the 20 mills tax levy. She feels it is a major tax policy and it's short sighted. She

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commented they need more information regarding this change. Senator Hensley noted that she should bring this to the floor. Chairperson Denning stated it was vetted in the Tax Committee.

Senator McGinn motioned to remove the contents of HB2186 and add the contents of SB251, as amended by the Committee, into the bill, allowing Revisor of Statutes staff to make changes discussed. Seconded by Senator Hensley.

Senator McGinn motioned to move SB251 as amended into HB2186 as a substitute bill. Seconded by Senator Hensley.

Senator McGinn moved Senate Sub. for HB2186 pass out favorably. Senate Sub. for HB2186 passed unanimously.

Chairperson Denning thanked everyone on the Committee and the staff for all the hard work. He then adjourned the meeting.