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Oral, Opponent Testimony

Before the House K12 Education Budget Committee

on

SB 235 - enacting the Back to School act; requiring school districts to provide for a fulltime, in person attendance option.

By Mark Tallman, Associate Executive Director

March 10, 2021

Madam Chair, Members of the Committee:

Thank you for the opportunity to appear today on SB 235. We appear in opposition based on both philosophical and practical concerns about this bill.

First, is this a requirement?

The plain language of the text indicates this is a mandate on local school districts: "Notwithstanding ANY OTHER PROVISION of LAW...every school district... SHALL provide..." However, proponents have stated in the Senate Committee discussion, Senate committee of the whole debate and in the media that this is NOT a mandate because there is no enforcement mechanism or penalty.

If that is the true intent, you can disregard our other concerns. But we would ask the committee to change this bill into a resolution, or add wording that the Legislature "strongly encourages," or state the return to school as a goal. Otherwise, how are local school boards, or members of the public, or future Legislators, going to be able to interpret when a directive in state law is meant to be a requirement or not?

Second, should this be a requirement?

The committee could reject our recommendation to clarify that this is not a requirement because you think it SHOULD be a requirement. We would respectfully disagree. We think the final decision on local health matters should be made at the local level. In the 2020 special session, the Legislature placed greater power for managing the COVID pandemic in the hands of local elected officials and the professionals they hire. This bill would appear to reverse that decision for school boards, even if actions by county officials are part of the reasons for board actions.

The Legislature has every right to be concerned about the impact of remote learning and has the ultimate authority to pass mandates onto local boards. But the people of Kansas placed in the constitution that public schools should be "maintained, developed, and operated by locally elected boards." That concept is based on the belief that local officials generally have a better understanding of the actual and unique needs of community than state government.

Of course, that must be balanced against the state's rights and interests. This issue in this bill is whether the Legislature should now decide that on a specific date, and then forever after, regardless of local circumstances, the option of in person learning must always be provided.

Dissatisfied parents and patrons have the same recourse over the actions of their local school boards as they do over their elected state and county officials: the ballot. Voters will decide later this year whether to retain or replace those who have made decisions about school operations. This bill would seem to permanently remove options for those elected this fall and in the future.

Third, should this bill apply only to this particular public health emergency, or become part of permanent law?

All this discussion about SB 235 has been about this particular pandemic and this school year. However, the bill does not make any exceptions for any future pandemics, other health and safety issues, natural disasters, or any other factors that might cause schools to close. If this bill is intended to deal with the current COVID-19 emergency, we suggest it should say so, or have a sunset.

Even for the balance of the current year, the bill could raise issues. Local districts have had to reach agreements with teachers, adopt safety protocols, set assignments and space utilization to accommodate in person, hybrid, and virtual learning. Some parents may have agreed in advance to have their child in remote setting this semester. This bill would appear to require changes even in voluntary agreements.

Fourth, this bill raises a number of concerns about local operations that should be clarified if this bill is a mandate and permanent.

- The bill does not remove the county health department's authority to put people under quarantine orders. Without enough teachers or other staff, districts would apparently have to shut down all operations or attempt to provide in person learning without staff.
- It does not appear to actually require that school districts be providing in person learning, only that in person attendance must be an OPTION. This suggests schools could not offer learning by hybrid or remote methods unless in person was also allowed. It appears that under this bill, NO learning would be considered a better option than some period of time when remote learning CAN be provided but in person learning is not an option; for example, "snow days."
- The bill requires offering "full-time" in-person learning. That could be interpreted to include the summer (if the district offers summer school), so a parent could potentially claim a right to attend school full-time during the summer. For districts, teacher vacations, hours and amounts of work, etc. are all mandatorily negotiable for members of the bargaining unit. As a result, districts might have to offer full-time school hours, or not offer summer programs at all.
- The bill does not provide an exception for students who are enrolled in school but are currently suspended or expelled from school.
- Current law allows districts to provide education services to students who are over age 19 but have not completed high school away from the regular education setting. This allows districts to keep their adult learners out of in person learning with minors for safety and other reasons. Currently, these programs can include remote learning. This bill does not provide an exception for adult learners.

Thank you for your consideration.