

**SECOND CONFERENCE COMMITTEE REPORT BRIEF  
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2138**

As Agreed to April 6, 2023

**Brief\***

Senate Sub. for HB 2138 would require school district boards of education to adopt a policy regarding separate oversight accommodations for students of each biological sex during school district sponsored travel; permit local broadcasters to broadcast a school's regular or postseason activities under certain criteria; and provide for administrative review by the State Board of Education (State Board) of resolutions adopted by school district boards to permanently close a school building.

***Effective Date***

The bill would provide that the provisions relating to a resolution to close a school building, and the potential subsequent review of such resolution, would go into effect and be in force from and after January 1, 2024, and publication in the statute book. All other provisions would be in effect upon publication in the statute book.

***Overnight Accommodations***

The bill would require each school district's board of education to adopt a policy requiring that separate overnight accommodations be provided for students of each biological sex during school district sponsored travel that requires overnight stays.

***Reporting and Retaliation***

The bill would provide a private cause of action against a school district for any student who is subject to retaliation or adverse actions by a school district or its employees as a result of reporting a violation relating to the overnight accommodations policy. The bill would require such civil actions to be initiated within two years after the harm occurred. Students prevailing in such action would be entitled to monetary damages, including monetary damages for psychological, emotional, and physical harm suffered; for reasonable attorney fees and costs; and for other appropriate relief.

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

## *Definitions*

The bill would establish definitions for the following terms:

- “Biological sex” to mean the biological indication of male and female in the context of reproductive potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads and non-ambiguous internal and external genitalia present at birth, without regard to an individual’s psychological, chosen, or subjective experience of gender; and
- “School district sponsored travel” to mean any travel that is necessary for students to attend, participate, or compete in any event or activity that is sponsored or sanctioned by a school operated by the school district, including, but not limited to, any travel that is organized:
  - By any club or organization recognized by the school;
  - Through any communication facilitated by the school, such as email; or
  - Through fundraising activities conducted, in whole or in part, by school district employees or on school district property.

## ***Local Broadcasters; Postseason Activities; Contracts and Agreements***

The bill would permit local broadcasters to broadcast a school’s postseason activities, notwithstanding exclusive contracts entered into by the Kansas State High School Activities Association (KSHSAA) for the purpose of broadcasting postseason activities. [*Note:* KSHSAA is entered into an exclusive broadcast agreement with the National Federation of State High School Associations (NFHS). The current agreement has five years remaining, along with an optional extension if specific performance metrics are met.]

## ***Definitions***

The bill would define various terms, including:

- “Activity” and “activities” would mean school activities and contests in the fields of athletics, music, forensics, dramatics, and any other interschool extracurricular activities by students enrolled in any of the grades from seven (7) to twelve (12), inclusive;
- “Broadcast” would mean the live or recorded audio or video transmission of an activity, play-by-play, or similar accounts of such activity via radio, television, internet, or other technologies;
- “Exclusive broadcast agreement” would mean an agreement entered into between KSHSAA and an organization to broadcast association activities under which such organization retains:
  - Sole rights to broadcast such activities; or
  - First right to broadcast such activities; and

- “Local broadcaster” would mean an organization, located in Kansas, that provides local broadcast services for any activity of a local school. [Note: “Local broadcaster” would include a student organization broadcast that is offered as an educational course or program by the school.]

### ***Applicability***

Current law allows KSHSAA to enter into an exclusive broadcast agreement for a postseason activity. The bill would provide that if KSHSAA enters into or renews an exclusive broadcast agreement to broadcast a regular season activity or postseason activity, local broadcasters would not be prohibited from broadcasting a school’s regular season activity or postseason activity if the local broadcaster:

- Provides broadcast services for the school that is participating in the postseason activity;
- Broadcasts at least one-third of the events of such activity during the regular season; and
- Entered into valid broadcast agreements to broadcast the events of the activity during the regular season.

The bill would not prohibit KSHSAA from requiring local broadcasters to enter into a postseason broadcast agreement with stipulations. Stipulations would include, but would not be limited to:

- Reasonable compensation for broadcasts, except that no fee shall be charged for such broadcasts;
- Approval by the site hosting the event;
- Limitations on organizations that are permitted to sponsor part of the broadcast; and
- Requirements for competent and professional announcers.

### ***Resolution to Close a School Building***

Under current law, a board of education of any unified school district may adopt a resolution to close any school building at any time the board determines the building should be closed to improve the school system. Prior to the adoption of the resolution, a public hearing on the proposal to close a school building must be held. In order for the resolution to be adopted, a majority of the members of the local board of education must vote to adopt the resolution.

### ***Request for Review***

The bill would allow citizens to request the State Board to conduct an administrative review of a resolution to close a school building. The State Board would be required to conduct an administrative review of a resolution if at least 5.0 percent of registered voters of such school district sign a request for administrative review.

The bill would specify that a request for administrative review would need to be received by the State Board no later than 45 days after the adoption of the resolution to close a school building. If the State Board receives more than one request for review on the same resolution to close a school building, the request(s) received after the initial request could be dismissed or could be combined with the initial request. The bill would clarify that a resolution to close a school building would not be effective until the 45-day time period to request a review has lapsed, so long as no request for review has been received by the State Board.

### *Administrative Review*

The State Board would be required to review the resolution to determine whether it is reasonable under the totality of the circumstances. The bill would require an advisory determination to be issued to the school district no later than 45 days after receipt of the request for review. The advisory determination could include recommendations to modify or to rescind the original resolution to close the school building.

### *Reconsideration*

Upon receipt of the State Board's advisory determination, the local board of education would be required to reconsider the original resolution to close a building. In reconsidering the resolution, the local board of education would be required to hold a public hearing. Upon the conclusion of a hearing, the local board of education would issue one of the following determinations on the original resolution:

- Approve the resolution to close the school building;
- Modify and approve the resolution to close the school building; or
- Rescind the resolution to close the school building.

### *Definitions*

The bill would define the term "school building" to mean any building or structure operated or maintained by the board of education of a unified school district.

### **Conference Committee Action**

The second Conference Committee agreed to the Senate amendments to the bill and further agreed to insert provisions pertaining to local broadcasters (SB 13, as amended by House Committee).

[*Note:* Provisions pertaining to the original subject of HB 2138 (career technical education [CTE]) are incorporated in the Conference Committee Report for SB 123.]

## **Background**

The bill, as agreed to by the second Conference Committee, contains provisions of Senate Sub. for HB 2138 and SB 13.

### ***Senate Sub. for HB 2138 (Overnight Accommodations; Resolution to Close a School Building)***

The Senate Committee on Education recommended Senate Sub. for HB 2138, incorporating provisions originally contained in SB 255, pertaining to school district policies related to overnight accommodations, and in SB 304, pertaining to administrative review of local school board resolutions to close a school building.

The original provisions of HB 2138 were removed from the bill. [Note: HB 2138, as passed by the House, would have created the Career Technical Education Credential and Transition Incentive for Employment Success Act.]

#### *SB 255 (Overnight Accommodations)*

SB 255 was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Thompson.

#### *Senate Committee on Education*

In the Senate Committee hearing, **proponent** testimony was provided by 5 private citizens who generally stated that the bill would help prevent biological girls and biological boys from sharing rooms on school sponsored overnight trips and could prevent uncomfortable situations that might arise as a result of sharing rooms with the opposite sex. Written-only proponent testimony was provided by Senator Steffen, representatives of Kansas Family Voice and Kansas Catholic Conference, and 20 private citizens.

**Opponent** testimony was provided by representatives of the Kansas Association of School Boards, Kansas National Education Association, and United School Administrators of Kansas, who generally stated that issues pertaining to school sponsored travel are best left to the local school districts and other parties who may be involved. Written-only opponent testimony was provided by a representative of the American Civil Liberties Union of Kansas.

No other testimony was provided.

#### *SB 304 (Resolution to Close a School Building)*

#### *Senate Committee on Education*

In the Senate Committee hearing, **proponent** testimony was provided by two representatives of the Wetmore Community Action Association, an attorney who represents citizen groups in the cities of Wilson and Wetmore, and one private citizen. The proponents

generally testified that the bill would provide local citizens with the ability to request an administrative review of decisions that have the potential to effect entire communities in Kansas.

Neutral testimony was provided by a representative of the Wilson High School Future Committee and one private citizen, who generally testified that the bill could incentivize small schools in consolidated districts to seek disorganization.

**Opponent** testimony was provided by Representative Garber, who generally stated that the bill would affect decisions already made by local school boards that have followed current law.

The Senate Committee on Education amended the contents of SB 304 prior to incorporating its provisions into the Senate Sub. for HB 2138. The Senate Committee on Education amended the bill to:

- Remove the authority of the State Board to establish new school districts for purposes of attachment of territory of a disorganized school district;
- Require the request for administrative review be made by at least 5.0 percent of registered voters of the school district within 45 days, rather than 60 days, after adoption of a resolution to close a school building;
- Require the State Board to issue an advisory determination within 45 days, rather than 60 days, after receipt of a request for administrative review;
- Require local school boards of education, upon receipt of an advisory determination, to reconsider an original resolution to close a school building;
- Remove provisions relating to judicial review; and
- Make technical amendments to ensure consistency in statutory phrasing.

[*Note:* The Conference Committee retained these amendments.]

### ***SB 13 (Local Broadcasters)***

SB 13 was introduced by Senators Hawk and Billinger.

#### *Senate Committee on Education*

In the Senate Committee hearing on January 23, 2023, **proponent** testimony was heard by former Senator Hawk and by representatives of Harris Media Services, LLC, Kansas Association of Broadcasters, Kiowa County Media Center, KNZA Radio Group, Open Spaces Sports, Inc., and St. Francis Community High School. The proponents generally stated the current exclusive contract prevents local broadcasters from covering postseason activities. During the regular season, local broadcast companies work with local businesses in their communities to provide live coverage and commentary of athletic activities to fans free-of-charge. The proponents also stated that student-athletes and coaches watch previously

recorded broadcasts for training and scouting purposes, and high school students volunteer with and work for local broadcast companies to gain real-world experience.

Written-only proponent testimony was provided by a representative of the Kansas Press Association and nine private citizens, three of whom identified themselves as educators or administrators in the public school system. These proponents generally stated the bill would promote local economic growth and allow fans from all over to listen and watch postseason activities.

The Executive Director of KSHSAA provided **opponent** testimony, stating the current broadcast agreement with NFHS ensures that events not broadcast by NFHS are available to local broadcast companies. The Executive Director also stated that KSHSAA and NFHS regularly broadcast all skill-levels of activities administered by KSHSAA.

The Senate Committee amended the bill to:

- Include exclusive broadcast agreements that are renewed by KSHSAA;
- Provide that it would apply to both regular season activities and postseason activities;
- Replace the requirement that a local broadcaster would need to broadcast a majority of a school's activity during the regular season in order to broadcast the postseason activity, to instead state that a local broadcaster would need to broadcast at least one-third of a school's activity during the regular season in order to broadcast the postseason activity; and
- Make technical changes to ensure consistency in statutory phrasing and grammar.

[*Note:* The Conference Committee retained these amendments.]

#### *House Committee on Education*

In the House Committee hearing on March 13, 2023, **proponent** testimony was provided by Representative Rahjes and representatives of the Kansas Association of Broadcasters, KNZA Radio Group, and Open Space Sports, Inc. Written-only proponent testimony was submitted by former Senator Hawk and a representative of the Kansas Press Association.

Representative Rahjes spoke to his role as program director for KBUF Radio and the exclusive agreement that keeps community broadcasters, including student broadcasters, from broadcasting and streaming certain matches or games during the season. The KNZA representative also noted local broadcast companies lose revenue from local advertisers who want to support and be part of these postseason games and state events.

**Opponent** testimony was provided by the KSHSAA Executive Director and a NFHS Board member. The NFHS testimony addresses the current agreement, which has an end date of July 2028, along with an extension of up to five additional years if specific metrics are met. The testimony indicated KSHSAA receives an annual guaranteed rights fee, guaranteed coverage of all sports, activities, and levels of championship events, and an adherence to KSHSAA's mission and values in all broadcasts. Since the beginning of this agreement in 2018, the NFHS network has broadcast 2,946 KSHSAA postseason events.

Written-only opponent testimony submitted by a representative of Sports Radio 810 WHB, which stated the bill could take away guaranteed coverage for student athletes in several sports and could create legal issues with NFHS and other media in the future.

The House Committee amended the bill to modify a provision pertaining to broadcast agreement stipulations on reasonable compensation for video broadcasts by providing that no fee could be charged for such audio or video broadcasts. [*Note:* The Conference Committee retained this amendment.]

## **Fiscal Information**

### ***Senate Sub. for HB 2138***

#### *SB 255 (Overnight Accommodations)*

According to the fiscal note prepared by the Division of the Budget on SB 255, as introduced, the State Department of Education indicates the bill would have a negligible fiscal effect on school districts. The Office of Judicial Administration indicates it is not possible to estimate the number of additional court cases and therefore, the fiscal effect cannot be estimated.

#### *SB 304 (Resolution to Close a School Building)*

According to the fiscal note prepared by the Division of the Budget on SB 304, as introduced, the State Department of Education indicates the provisions of the bill regarding the review of a district resolution to permanently close a school building could require additional administrative time to implement; however, any additional costs would be negligible.

#### ***SB 13 (Local Broadcasters)***

According to the fiscal note prepared by the Division of the Budget on SB 13, as introduced, enactment of the bill would have no fiscal effect on state government. The bill potentially could change revenue sharing agreements between KSHSAA and broadcasters, but a fiscal effect cannot be estimated.

Education; schools; State Board of Education; school sponsored travel; accommodations; school districts; disorganized school district; school buildings; administrative review; KSHSAA; contracts; exclusive agreements; broadcasts; postseason activities

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