

SESSION OF 2021

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 175**

As Agreed to April 8, 2021

Brief*

SB 175 would make appropriations for the Kansas State Department of Education (KSDE) for FY 2021, FY 2022, and FY 2023; create the Student Empowerment Act Program; require in-person instruction of students and allow for only 240 remote learning hours in a school year; charge school districts to use needs-assessment to ensure improvement in student academic achievement; provide a different calculation for school finance related to remote learning; reauthorize the 20-mill tax property levy and the exemption of a portion of resident property from that levy; and expand the Tax Credit for Low Income Students Scholarship Program.

The bill would also make technical changes.

The bill would be in effect upon publication in the *Kansas Register*.

Appropriations for FY 2021, FY 2022, and FY 2023

FY 2021 (Section 1)

The bill would modify the State General Fund (SGF) appropriation, in FY 2021, for KSDE. The bill would authorize

*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/klrd>

the following be lapsed from moneys appropriated from the SGF in FY 2021:

- \$2.0 million for the Kansas Public Employees Retirement System (KPERS) non-Unified School Districts (USDs);
- \$6.9 million for the KPERS-USDs;
- \$1.2 million for the Mental Health Intervention Team (MHIT) Pilot Program;
- Any unencumbered balance in the Education Super Highway Account;
- \$782,064 for the School District Juvenile Detention Facilities and Flint Hills Job Corps Center Grants;
- \$140,755 for the Governor's Teaching Excellence Scholarships and Awards; and
- \$18.9 million for State Foundation Aid.

The bill would further recommend that additional compensation of \$500 be provided to classroom teachers from federal moneys received under federal COVID-19-related legislation for extra duties performed during the pandemic. The bill would define "classroom teacher" as any person holding a certificate to teach who is under a full-time contract to teach, or who is under a contract to teach full-time but who does so *via* a licensure waiver. "Classroom teacher" would not include any superintendent, assistant superintendent, supervisor, or principal employed under the school district board of education powers and duties, student teachers, paraprofessionals, and any other person employed by a board of education.

FY 2022 (Section 2)

The bill would appropriate \$5.8 billion, including \$4.2 billion SGF, for FY 2022 for KSDE. This would include \$5.2 billion, including \$4.1 billion SGF, for the major categories of school finance and KPERS-USDs and KPERS-non-USDs. Appropriations from the SGF would include the following:

- \$14.1 million for operating expenditures;
- \$41.9 million for KPERS-non-USDs;
- \$538.0 million for KPERS-USDs;
- \$25.8 million for KPERS layering payments;
- \$2.8 million for the ACT and WorkKeys Assessments Program;
- \$7.5 million for the MHIT Pilot Program;
- \$67,700 for the Education Commission of the States dues;
- \$10,000 for the School Safety Hotline;
- \$5.1 million for the School District Juvenile Detention Facilities and Flint Hills Job Corps Center Grants;
- \$2.5 million for School Food Assistance;
- \$1.3 million for the Mentor Teacher Program;
- \$110,000 for Educable Deaf-blind and Severely Handicapped Children's Programs Aid;
- \$512.8 million for Special Education Services Aid;
and
- \$2.4 million for Supplemental State Aid.

The bill would also appropriate funding from several no limit special revenue funds, including federal funds and fee funds. The bill would appropriate the following from the Children's Initiatives Fund (CIF):

- \$375,000 from the Children's Cabinet Accountability Fund;
- \$18.1 million for CIF Grants;
- \$500,000 for Quality Initiative Infants and Toddlers;
- \$50,000 for Early Childhood Block Grant Autism Diagnosis;
- \$8.4 million for the Parent Education Program, also known as Parents as Teachers;
- \$1.0 million for Communities Aligned in Early Development and Education; and
- \$4.2 million the Pre-K Pilot Program.

The bill would also provide for the following transfers:

- \$550,000 on March 30, 2022, and June 30, 2022, from the State Safety Fund to the SGF to reimburse costs associated with services provided by other state agencies on behalf of KSDE;
- \$73,750, quarterly, from the State Highway Fund of the Department of Transportation to the School Bus Safety Fund of KSDE;
- An amount certified by the Commissioner of Education from the Motorcycle Safety Fund of KSDE to the Motorcycle Safety Fund of the Kansas Board of Regents, to cover costs of driver's license programs conducted by community colleges; and

- \$70,000 from the Universal Service Administrative Company E-rate program federal fund in Kansas Board of Regents to the Education Technology Coordinator Fund of KSDE.

The bill would appropriate \$260,535 from the Kansas Endowment for Youth Fund for the Children's Cabinet administration.

The bill would also allow the Commissioner of Education to transfer any part of an appropriation from the SGF to another SGF appropriation in KSDE.

The bill would appropriate \$41.1 million from the Expanded Lottery Act Revenues Fund for KPERS-non-USDs.

The bill would lapse \$3.3 million of the \$2.4 billion appropriated from the SGF for State Foundation Aid for FY 2022.

The bill would also direct KSDE to expend \$5.0 million for School Safety and Security Grants, \$3.9 million for expanding the MHIT Pilot Program, and \$100,000 for the Communities in Schools program, all from federal funds received from federal COVID-19-related legislation, unless the program would not qualify for the federal funds.

The bill would also direct KSDE to expend moneys from federal funds received from federal COVID-19-related legislation, unless the program would not qualify for the federal funds, and then from within existing resources, to implement Phase 3 of the Language Assessment Program in the Kansas State School for the Deaf.

FY 2023 (Section 3)

The bill would appropriate from the SGF for FY 2023 \$2.5 billion for State Foundation Aid and \$534.1 million for Supplemental State Aid. The bill would also authorize

expenditures from the State School District Finance Fund and the Mineral Production Education Fund.

Student Empowerment Act (Sections 4 to Section 20, 29, and Section 32)

The bill would designate sections 4 through 20 as the Student Empowerment Act.

Purpose (Section 5)

The bill would state the purpose of the bill is to acknowledge that each student has unique educational, social, emotional, and environmental needs and that for each student to become a productive member of society that diversity must be supported through different educational approaches. The bill would further invite parents to act on behalf of their child when determining the best educational approach. The bill would specify that this section take effect beginning July 1, 2021.

Definitions (Section 6)

The bill would define terms, including the following:

- “BASE aid” would mean the base aid for student excellence defined in the Kansas School Equity and Enhancement Act (KSEEA), and amendments, for the immediately preceding school year;
- “Eligible student” would mean a Kansas resident who has not graduated from high school or obtained a general educational development credential and who, on or after July 1, 2022:
 - Has been identified by the resident school district as eligible to receive at-risk

educational services because of below-grade-level performance in English language arts or mathematics, a high rate of absenteeism, or any other reason specified by the school district; or

- Has a Student Empowerment Account established pursuant to the bill;
- “Parent” would mean a parent, legal guardian, custodian, or other person with authority to act on behalf of an eligible student;
- “Qualified private school” would mean a nonpublic school that:
 - Provides elementary or secondary education to students;
 - Is accredited by the Kansas State Board of Education (State Board) or a national or regional accrediting agency recognized by the State Board for the purpose of satisfying the teacher performance assessment for professional licensure;
 - Provides specified instruction required in current law; and
 - Is approved by the State Treasurer (Treasurer) according to provisions in the bill; and
- “Resident school district” would mean the school district in which the student is currently or would be enrolled based on the student’s residence.

The bill would also define the terms “account,” “postsecondary educational institution,” “program,” and “Treasurer.”

The bill would specify that this section take effect beginning July 1, 2021.

Establishment (Section 7)

The bill would establish the Treasurer as the administrator of the Student Empowerment Program (Program) beginning July 1, 2022. The bill would require the Treasurer to maintain a description of the Program on the Treasurer's website and provide, upon request, a hard copy of:

- Options for participation in the Program;
- Allowable uses of the funds;
- Responsibilities of students and parents;
- The effects of an Individualized Education Program (IEP) on eligible students in the Program;
- Duties of the Treasurer;
- The appeals process;
- The contact information for the Treasurer's employee who can answer questions about the Program; and
- A list of qualified schools.

The bill would specify that this section take effect beginning July 1, 2021.

Notification of Eligibility (Section 8)

The bill would establish that, when a student in a resident school district becomes eligible, the school district must notify the parent of the student. That notification must include:

- The basis of the student's eligibility;

- A copy of the student's results from the most recently administered state assessment for English language arts and state assessment for mathematics; and
- The name and telephone number for the school district employee, KSDE employee, and the Treasurer's office employee who can be contacted regarding the Program.

The bill would require notification to also include either a written description of the Program, including the information that must be published on the Treasurer's website or the website address for the Treasurer's website where such information can be found. Notice must be provided annually so long as the student remains enrolled in the school district and remains eligible for the Program.

The bill would specify that this section would take effect beginning July 1, 2022.

Written Agreement (Section 9)

The bill would require a written agreement between the parent of an eligible student and the Treasurer for the student to participate in the Program. If a parent has more than one eligible student, the bill would require a separate written agreement for each student.

The written agreement would be terminated on July 31 immediately after the agreement is effective if the parent fails to consent to renewal, or if the Treasurer determines the money was not used for an allowable purpose, the student is no longer eligible, or the student no longer participates in the Program. The parent may end the agreement at any time.

When a written agreement is terminated, the account would become inactive.

The Treasurer would be authorized to terminate a written agreement when one of the following has been determined:

- Moneys in the account have been used for ineligible purposes;
- The student no longer qualifies as an eligible student; or
- The eligible student no longer participates in the Program in accordance with the Program.

The bill would allow the parent to terminate the written agreement at any time as long as they notify the Treasurer with a written letter of termination.

The bill would require that the Treasurer shall not enter into a written agreement with the parent of an otherwise eligible student who is participating in the Tax Credit for Low Income Students Scholarship Program or establish an account on behalf of such a student. The bill would state that if a written agreement has already been entered into for such a student, the Treasurer shall terminate the agreement and close the account.

The bill would specify that this section would take effect beginning July 1, 2022.

Student Empowerment Fund (Section 10)

The bill would create the Student Empowerment Fund (Fund). The bill would require the Director of Accounts and Reports to establish a process for eligible students to have individual accounts within the Fund that will earn interest based on the average daily balance and the net earnings rate of the pooled money investment portfolio for the preceding month. The bill would require the amount of interest to be added monthly to each student's account.

When an account is created within the Fund, the Treasurer would be required to notify the student's resident school district of its creation.

If an eligible student is enrolled in a qualified private school, the Treasurer would be required to transfer the aggregate annual amount equal to the BASE aid into the student's account or, if the student is still enrolled part-time in the resident school district, the amount of BASE aid inversely proportional to the amount of time the student is enrolled in the resident school district.

The Treasurer would be allowed to deduct a percentage of the transfer for administrative costs. The bill would authorize up to 5.0 percent each year for the first two years and 2.5 percent each year thereafter.

The bill would also state that accounts are to be considered active unless:

- A written agreement is terminated;
- The date is July 31 following the graduation of the student from high school; or
- There have been two consecutive years of nonrenewal of agreement.

The Treasurer would be authorized to close any accounts determined to be inactive and the money remaining in the accounts would remain in the Fund. The Treasurer would be required to contract out the system by which the funds will be distributed to parents.

The bill would specify that this section would take effect beginning July 1, 2022.

Student Participation (Section 11)

The bill would state that eligible students would participate in the Program by receiving additional services under the Program while still enrolled in their resident school district part-time or by enrolling in a qualified private school. The parent of the eligible student would report to the Treasurer if the student is still enrolled in the resident school district, and, if so, the number of hours the student attended.

The bill would specify that this section would take effect beginning July 1, 2022.

Amount Transferred (Section 12)

The bill would require the Treasurer to determine the amount to be transferred to the Fund on or before August 1 of each year. The amount transferred would be the BASE aid multiplied by the number of eligible students enrolled in qualified schools and the total amount of the inverse proportion of the BASE aid for those students enrolled part-time in the resident school district. The bill would require the Treasurer to certify that amount and the Director of Accounts and Reports would transfer that certified amount from the SGF to the Fund.

The bill would specify that this section would take effect beginning July 1, 2022.

Allowable Uses of Money (Section 13)

The bill would allow moneys in each student's account of the Fund to be expended only for:

- Tuition and fees charged by qualified schools;
- Textbooks and supplies required by qualified schools;

- Costs for transporting students to qualified schools, if the qualified school provides transportation;
- Educational therapies or services provided by a licensed or accredited education provider;
- Tutoring provided by a certified tutor;
- Curriculum materials;
- Tuition or fees charged by an accredited private online learning program;
- Fees for any nationally standardized norm-referenced achievement test, advanced placement examination, or other examination related to admission to a postsecondary educational institution;
- Classes, services, programs, activities, classes, or any other resources or programs provided or contracted by a school district;
- Tuition and fees charged by a postsecondary educational institution; and
- Any other education expenses approved by the Treasurer.

The bill would require the Treasurer to notify the parent if non-allowable expenditures are made and the parent would have 30 days from that notification to repay the cost. The money remaining in the account at the end of the school year would shift into the next year.

If a qualified private school provides educational services, the funds would be reimbursed directly into the student's account. No personal deposits would be allowed to be made into an account.

The bill would require the Treasurer to conduct, or contract for, an annual audit of the accounts to ensure compliance with this act. If the Treasurer determines money in an account has been used for non-allowable purposes, the Treasurer would be authorized to prohibit expenditures from the account, prorate the deposit into that account by the amount used for non-allowable purposes, or terminate the account.

The bill would specify that this section would take effect beginning July 1, 2022.

State Board of Education (Section 14)

The bill would require the Treasurer to provide to the State Board, on or before August 1, 2023, and every year thereafter:

- The names of students participating in the Program;
- The resident school districts with participating students; and
- The qualified private schools where each participating student is enrolled in the current school year.

On or before September 1, 2022, and each year thereafter, the State Board would determine the adjusted weightings funding amount for the Director of Accounts and Reports to transfer to the Fund. This amount would be determined for any participating student who has participated for less than three years and is the amount of the state foundation aid for the student's last year enrolled in the resident school district attributable to the low enrollment weighting, high enrollment weighting, bilingual weighting, at-risk student weighting, and career technical education weighting. The aggregate of those amounts for each resident

school district totaled would be the adjusted weightings funding amount.

The bill would specify that this section would take effect beginning July 1, 2022.

School Approval and Revocation (Section 15)

The bill would require that, to become a qualified private school under the Program, a school must submit to the Treasurer an application of the Treasurer's making. The application must include proof that the applicant is an accredited private school. The Treasurer must then accept the application, ask for additional information, or deny the application within 45 days of the application's receipt.

The bill would require the Treasurer to audit a qualified private school, randomly selected, each year to ensure compliance. If the Treasurer determines a qualified private school has routinely failed to comply with the provisions of the Act or applicable rules and regulations or failed to provide educational services to an eligible student receiving instruction from the school, if the school is accepting payments from the student's account, the Treasurer may revoke approval.

Prior to revocation, the Treasurer would be required to notify the school and allow 30 days for the school to cure the defect. If a school's approval has been revoked, the school may not participate in the Program until the Treasurer determines the school is in compliance with the act. Upon revocation of a school's approval, the Treasurer must notify the parent of a participating student receiving instruction from the school. If a school's approval was revoked due to misuse of moneys from the account, the Treasurer may notify the Attorney General or the county or district attorney of the county where the school is located.

The bill would specify that this section would take effect beginning July 1, 2022.

Parental Placement (Section 16)

The bill would consider enrollment in a qualified private school as parental placement under the federal Individuals with Disabilities Education Act. The bill would specify that this section would take effect beginning July 1, 2022.

Report to the State Board (Section 17)

The bill would require the Treasurer to report to the State Board on the Program on or before December 31, 2022, and each December 31 thereafter, including the:

- Number of students participating in the Program;
- Number of participating students enrolled on a part-time basis in a school district and the average number of hours such students attended public school;
- Number of participating students enrolled in a qualified private school;
- Number of qualified private schools;
- Results of any audits the Treasurer conducted or contracted for; and
- Total cost to administer the Program.

The State Board would present the information included in that report, along with the State Foundation Aid adjustments, in a report to the Governor and Legislature on or before January 15, 2023, and every January 15 thereafter.

The bill would specify that this section would take effect beginning July 1, 2022.

Rules and Regulations (Sections 18-20)

The bill would subject the Treasurer's actions for the Program to the Kansas Administrative Procedure Act and they would be deemed reviewable under the Kansas Judicial Review Act.

The bill would require the Treasurer to adopt rules and regulation to carry out the Act on or before January 1, 2022.

The bill would state it should not be deemed to limit the autonomy of the qualified private school or deem the actions of a qualified private school those of state government.

The bill would specify that the sections regarding the review of the Treasurer's actions and the autonomy of private schools would take effect beginning July 1, 2022.

State Foundation Aid Adjustment Per the Student Empowerment Act (Section 30)

The bill would amend the KSEEA to reflect the State Board's determination of State Foundation Aid beginning in FY 2023 to include subtracting the adjusted weightings amount calculated under the Student Empowerment Act from the State Foundation Aid amount each school district shall receive in the year.

Student Empowerment Act Tax Implications (Section 33)

The bill would amend a statute to allow the amounts deposited in a student empowerment account by a taxpayer to be subtracted from the federal adjusted gross income for taxable years beginning after December 31, 2021.

Remote Learning Calculation (New Section 21)

The bill would amend KSEEA to include remotely enrolled state aid.

The bill would define “remotely enrolled student” as a student enrolled in a school district in the current school year, if the student attended school full-time through remote learning:

- During a declared state of disaster emergency for more than a total of 240 school term hours during the school year, regardless of the length of the declared state of disaster emergency; or
- For more than a total of 40 school term hours during the school year if no such state of disaster emergency is declared.

The bill would state that when calculating a student’s total school term hours, the school term hours for each day instruction is provided *via* remote learning would be counted.

The bill would require that each school district that offers remote learning, on or before June 30 of each school year, to determine the remote enrollment of the district based on the number of remotely enrolled students and for the clerk or superintendent of that school district to certify to the State Board a report showing remote enrollment by the grades of the schools in that school district.

The bill would require the State Board determine the number of remotely enrolled students by school district, provide remote enrollment state aid of \$5,000 per remotely enrolled student, and notify each school district of the amount of remote enrollment state aid. The bill would not provide remote enrollment state aid for students enrolled part-time in remote learning during the school day. The bill would also require the State Board to require each such school district return any payment over \$5,000 (an overpayment) in the

current school year for such students, or to deduct the excess amounts over \$5,000 to be paid to the school district from future payments to be made to the school district.

The bill would specify that a remotely enrolled student is not included in the adjusted enrollment of the school district for the current school year.

The bill would require each school district that determines remote enrollment for the purposes of this section submit any requested documentation or information to the State Board.

The bill would provide that if a school district is granted a waiver due to disaster by the State Board, the remote learning hour limitations will not apply and the school district shall not be required to determine remote enrollment nor the State Board be required to adjust the school district's funding.

The bill would specify that this section take effect beginning July 1, 2021.

At-Risk Services Student Eligibility (New Section 22)

The bill would amend the Kansas School Equity and Enhancement Act to identify a student as eligible for at-risk programs and services if the student meets one or more of the following requirements:

- Is not working at academic grade level;
- Is not meeting requirements for promotion to the next grade level or is failing subjects or courses of study;
- Is not meeting requirements for graduation from high school or has the potential to drop out of school;

- Has insufficient mastery of skills or is not meeting state standards;
- Has been retained;
- Has a high rate of absenteeism;
- Has repeated suspensions or expulsions from school;
- Is homeless or migrant;
- Is identified as an English language learner;
- Has social-emotional needs causing the student to be unsuccessful in school; or
- Is identified as a student with dyslexia.

The bill would specify that this section will take effect beginning July 1, 2021.

Using Needs-Assessment in Budget Process (Section 23)

The bill would amend law that requires the board of education of each school district to conduct an assessment of the educational needs of each school in the district and requires the information from the needs assessment to be used when preparing the school district's budget. The bill would require the information obtained from the needs assessments to be used to ensure improvement in student academic performance. The bill also would require school district budgets to allocate sufficient moneys in a manner reasonably calculated to ensure all students achieve the "Rose capacities," which are codified in KSA 72-3218(c).

Requiring In-Person Instruction (Sections 24 and 25)

School Days and School Hours Definitions (Section 24)

The bill would amend KSA 72-3115, relating to school attendance, to limit the days of the school term as only those during which each student enrolled in the school district is allowed to physically attend school in person on a full-time basis. Further, the bill would limit school hours to include only those hours in which a school district allows each student enrolled in the school district to physically attend in person on a full-time basis.

The bill would create an exception to the hours and days requirements set in school attendance law. This exception would allow a school board to provide for 40 days or less of school using remote learning or 240 hours or less of remote learning, if the State Board authorizes that exception. The bill would allow the State Board to authorize this days and hours exception if:

- The school district certifies that, due to disaster, property damage caused by a disaster, or other conditions, the operation of public schools will be restricted for an inordinate period of time; and
- The State Board determines that the school district cannot reasonably adjust the school schedule to comply with the days and hours requirements set forth in law unless remote learning is conducted, not to exceed the limitation of 40 days or 240 hours.

The bill would allow the State Board to waive the in-person requirements in any school year, upon application by a school district.

The bill would allow the waiver to be granted upon the following criteria being met:

- Certification by a board of education that conditions restricting the operation of public schools for an inordinate period of time exist due to a disaster;
- Determination by the State Board that the school district cannot reasonably adjust its schedule to comply with the law; and
- Remote learning beyond the limitations in law would allow the school district to continue the provision of education to its students.

The bill would create the following definitions:

- “Disaster” would mean:
 - A state of disaster declared by the Governor pursuant to the Kansas Emergency Management Act;
 - Closure of a school ordered by a county or joint Board of Health, local health officer under Chy J. Miller’s law, or the Secretary of Health and Environment under Chy J. Miller’s law; or
 - Occurrence of any widespread or severe damage, injury, or loss of life or property resulting from natural or man-made causes; and
- “Remote learning” would mean a method of providing education in which a student is regularly enrolled in a school district, does not physically attend the attendance center where the student would otherwise attend in person on a full-time basis, and the instruction is prepared, provided, and supervised by teachers and staff of such

school district to replace the instruction that would have occurred in the attendance center classroom.

Waiver of School Term Duration (Section 25)

The bill would amend the definition of disaster in KSA 72-3117, which defines when a State Board may waive the school term duration. “Disaster” would mean only the occurrence of widespread or severe damage, injury, or loss of life or property from natural or man-made causes.

Tax Credit for Low Income Students Scholarship Program (Sections 26, 27, and 32)

The bill would expand the Tax Credit for Low Income Students Scholarship Program by amending the Tax Credit for Low Income Students Scholarship Program provisions relating to student eligibility requirements, school eligibility requirements, and reporting requirements.

Student Eligibility for the Tax Credit for Low Income Students Scholarship Program (Section 26)

The bill would amend the Tax Credit for Low Income Students Scholarship Program to expand student eligibility in two ways.

First, the bill would amend the definition of “eligible student” to include students who are eligible for free or reduced-priced meals under the National School Lunch Program. Current law limits eligibility to students who are eligible for free meals. Continuing law requires the student to also reside in Kansas and be enrolled in a public school or eligible to enroll in a public school.

Second, the bill would amend the definition of “public school” to be any school operated by a unified school district

in Kansas. Current law defining public school limits eligibility to those students enrolled or eligible to be enrolled in the lowest 100 performing elementary schools, as identified by the State Board.

Accountability Reports (Section 32)

The bill would require KSDE to prepare one-page accountability reports for all accredited nonpublic schools in the state. The bill would also require KSDE to include accredited nonpublic schools in the longitudinal achievement report submitted to the Governor and Legislature each year.

Publication of Accountability Reports and Exclusion of Student Empowerment Program Students (Section 27)

The bill would require the websites of accredited nonpublic schools participating in the Tax Credit for Low Income Students Scholarship Program to include a prominent link to KSDE's website where the one-page accountability reports are published.

The bill would state that scholarshipgranting organizations shall not provide educational scholarships to otherwise eligible students who are participating in the Student Empowerment Program.

Technical Amendments

The bill would also make technical amendments to and retain two provisions in current law. The first provision allows any student who has previously received a scholarship under the Tax Credit for Low Income Students Scholarship Program and has not graduated high school or is not 21 years old to remain eligible for the Tax Credit for Low Income Students Scholarship Program.

The second provision includes in the definition of qualified school that the school is accredited by the State Board or a national or regional accrediting agency that is recognized by the State Board for the purpose of satisfying the teaching performance assessment for professional licensure.

Kansas School Finance (Sections 28-29)

Citation (Section 28)

The bill would amend the KSEEA to include Section 21 of the bill, which relates to the calculation of remote enrollment state aid.

Definitions (Section 29)

The bill would amend the definitions of “adjusted enrollment” and “enrollment” to exclude remote enrollment as determined under Section 21 of the bill.

The bill would define “remote enrollment” and “remote learning” as follows:

- “Remote enrollment” would mean the number of students regularly enrolled in a school district who attended school *via* remote learning in excess of 40 school days or 240 school term hours; and
- “Remote learning” would mean a method of providing education in which a student is regularly enrolled in a school district, does not physically attend the attendance center where the student would otherwise attend in person on a full-time basis, and the instruction is prepared, provided, and supervised by teachers and staff of such school district to replace the instruction that would

have occurred in the attendance center classroom. This definition would not include virtual school as defined in the the Virtual School Aid Act.

These definitions would not apply to any school year prior to the 2021-2022 school year.

The bill would amend the calculation of one student to include a student enrolled in the school district attending school part-time *via* remote learning and part-time in-person to the nearest tenth of the student's proportion of in-person attendance to full-time attendance. The bill would not count as a student any remotely enrolled students.

High-Density At-Risk Weighting (Section 31)

The bill would extend the high-density at-risk weighting through June 30, 2022.

Conference Committee Action

As it entered conference, SB 175 would have enacted the Rural Emergency Hospital Act, created a category of licensure to enable certain Kansas hospitals to receive federal health care reimbursement as rural emergency hospitals, established the Rural Hospital Innovation Grant Program and Fund. The bill would also have appropriated \$10.0 million from the State General Fund (SGF) to the Fund on July 1, 2021.

The second Conference Committee agreed to replace the contents of SB 175, as amended by the House Committee on Health and Human Services, with contents modified from Sub. for HB 2119, as amended by the House Committee of the Whole, regarding the KSDE budget, Student Empowerment Program, KSEEA, in-person instruction, Tax Tax Credit for Low Income Students

Scholarship Program, student assessment, and the high-density at-risk weighting.

The second Conference Committee amended Sub. for HB 2119 to:

- List the criteria for school districts to determine student eligibility for at-risk programs and services;
- Modify the definition of “qualified school” to mean any nonpublic school that provides elementary or secondary education, is accredited by the State Board or a recognized national or regional agency for teacher licensure assessments, provides instruction as required in law, and is approved by the Treasurer;
- Require the Treasurer to not enter into Student Empowerment Program written agreements or open accounts for students participating in the Tax Credit for Low Income Students Scholarship Program, or to terminate such an agreement and account if entered into;
- Bar scholarship-granting organizations in the Tax Credit for Low Income Students Scholarship Program from providing scholarships to students participating in the Student Empowerment Program;
- Modify the remote learning limitations to provide that if a school district is granted a waiver by the State Board due to disaster, the remote learning limitations will not apply and the school district shall not be required to determine remote enrollment; and

- Remove the reauthorization of the 20-mill property tax levy and the homestead exemption for FY 2022 and FY 2023.

Background

As amended and passed by the House, SB 175 contained contents related to rural hospitals. The second Conference Committee agreed to replace these provisions with the modified contents of Sub. for HB 2119, as amended by the House Committee of the Whole.

[*Note:* In the background of Sub. for HB 2119 below, the provisions and amendments retained or modified and included in the Conference Committee agreement are noted. The background information for HB 2067 and HB 2068, which were inserted by the House Committee on K-12 Education Budget, follows.]

Substitute for HB 2119

The bill was introduced by the House Committee on K-12 Education Budget. The substitute bill, as recommended by the House Committee, incorporates provisions pertaining to the KSDE budget, creating the Student Empowerment Program, modifying student attendance and enrollment law, levying the 20-mill property tax, and including the contents of HB 2067 and HB 2068.

House Committee on K-12 Education Budget

In the House Committee hearing on HB 2119, as introduced, on February 8, 2021, **proponent** testimony was provided by representatives of Americans for Prosperity, EdChoice, Frontier Peace Advisors, Kansas Policy Institute, and Urban Preparatory Academy in Wichita, and two private citizens. Written-only proponent testimony was provided by

representatives of the Berean Academy and ExcelinEd. The proponent testimony generally stated the bill allows for greater choice, which leads to better outcomes for students and accountability in the education system. Further, proponent testimony noted the COVID-19 pandemic has widened the gap between low-income students and high-income students, in part because high-income students could take advantage of school choice or educational services that low-income students could not afford.

Opponent testimony was provided by representatives of GameOn for Kansas Schools, Kansas Association of School Boards, Kansas PTA, and Piper School District (USD 203), and by three private citizens. Written-only opponent testimony was provided by representatives of Americans United for Separation of Church and State, Blue Valley Schools (USD 229), Dighton School Board (USD 482), Education First Shawnee Mission, Garden City High School (USD 457), Geary County Schools Board of Education (USD 475), Goddard Public Schools (USD 265), Kansas Association of Retired School Personnel, Kansas National Education Association, Kansas State Board of Education, Mainstream Coalition, Maize Board of Education (USD 266), Olathe Public Education Network, Olathe Schools (USD 233), Renwick Board of Education (USD 267), Seaman School District (USD 345), Shawnee Mission School District, Spring Hill School District (USD 230), and Topeka Public Schools (USD 501), and four private citizens. The opponent testimony generally stated the bill failed to focus on the students most in need of educational services and would instead give the choice to private schools to seek out high-performing students both academically and athletically. Further, opponent testimony noted private schools need not serve all students or meet the special needs of students.

Written-only neutral testimony was provided by the Kansas Department of Administration. The Department of Administration noted concern with some language in the bill that appears contradictory in regards to the account and fund creation. The Department of Administration also noted a

presumption that the Student Empowerment Fund would be created within SMART using existing Department of Administration resources.

The House Committee amended the bill to:

- Modify the definition of “eligible student” to include students who qualify for free and reduced-price lunch only if the student is enrolled in any school in a school district;
- Modify the definition of “eligible student” to include students who have attended school through a remote learning or hybrid model learning for set hours in the current school year or current calendar year after January 1, 2021;
- Specify that “qualified private school” does not mean any nonaccredited private home school or home school organization, community, consortium, or group;
- Provide that the Treasurer must contract with a third party *via* competitive bids for the system that would provide the electronic funds transfers for participating parents [*Note:* The Conference Committee included this provision.];
- Modify one of the allowable uses of the funds to reflect both services provided by and contracted by a school district, not just services contracted by the school district [*Note:* The Conference Committee included this provision.]; and
- Amend the KSEEA to require the State Board to calculate the high-density at-risk weighting for each school district on or before July 1, 2021, and extend the weighting through July 1, 2022 [*Note:* The Conference Committee included this provision.].

*Re-Referred to the House Committee on K-12 Education
Budget*

The bill was withdrawn from the House Calendar on February 23, 2021, and re-referred to the House Committee on K-12 Education Budget.

The House Committee further amended the bill on February 25, 2021, to:

- Appropriate moneys for the KSDE budget for FY 2021, FY 2022, and FY 2023 [*Note: The Conference Committee included these provisions.*];
- Define “eligible student” to not include remote and hybrid learning methods [*Note: The Conference Committee included this amendment.*];
- Remove the definitions of remote and hybrid learning [*Note: The Conference Committee included this amendment.*];
- Amend the Student Empowerment Program start date to be July 1, 2022 [*Note: The Conference Committee included this amendment.*];
- Insert HB 2068, which would expand the Tax Credit for Low Income Students Scholarship Program [*Note: The Conference Committee included this provision.*];
- Insert HB 2067, which would require each board of education use the information from the needs-assessment to improve student academic achievement and to allocate sufficient moneys to ensure all students achieve the “Rose capacities” [*Note: The Conference Committee included this provision.*];

- Modify the Kansas school attendance law to limit school days and hours to only those days and hours in which a school district allows students to physically attend school in person full-time [*Note*: The Conference Committee included this amendment.];
- Modify the ability of the State Board to waive the school days and school hours required under school attendance law;
- Modify school attendance law to include definitions of “disaster” and “remote learning” [*Note*: The Conference Committee included this amendment.];
- Modify the KSEEA to include remote enrollment state aid [*Note*: The Conference Committee included this amendment.];
- Modify the definitions of “adjusted enrollment” and “enrollment” under KSEEA to exclude those students remotely enrolled [*Note*: The Conference Committee included this amendment.];
- Modify the calculation of one student under KSEEA to include a student enrolled in the school district attending school part-time *via* remote learning and part-time in-person to the nearest tenth of the student’s proportion of in-person attendance to full-time attendance [*Note*: The Conference Committee included this amendment.];
- Modify KSEEA to not count as a student any remotely enrolled students [*Note*: The Conference Committee included this amendment.]; and
- Reauthorize the 20-mill property tax levy and the Homestead exemption for FY 2022 and FY 2023.

The House Committee recommended the amended contents be incorporated into a substitute bill.

House Committee of the Whole

The House Committee of the Whole adopted the following amendments:

- Changed the word “bonus” to “additional pay” related to use of federal moneys for pay for classroom teachers and included reasoning for the provisions of said additional pay [*Note:* The Conference Committee included this amendment.];
- Removed nonaccredited private schools from the definition of “qualified school” and from the school application requirement [*Note:* The Conference Committee included this amendment and further modified the definition of “qualified school.”];
- Removed receipt of free or reduced lunches from the definition of “eligible student” [*Note:* The Conference Committee included this amendment.];
- Clarified the method for expending federal coronavirus relief funds as directed for legislative priorities [*Note:* The Conference Committee included this amendment.]; and
- Provided a mechanism for the State Board to provide waivers during times of disaster if specific criteria is met and the waiver would allow the school district to continue students’ education [*Note:* The Conference Committee included this amendment and further provided that such a waiver would waive remote learning enrollment requirements.].

HB 2067 (Student Academic Achievement)

The bill was introduced by the House Committee on K-12 Education Budget.

[*Note:* HB 2067 is identical to 2020 SB 353, as recommended by the Senate Committee on Education.]

House Committee on K-12 Education Budget

In the House Committee hearing, **proponent** testimony was provided by a representative of the Kansas Policy Institute, who stated the focus of schools should be on instruction so that all students attain statutory educational goals.

Opponent testimony was provided by a representative of the Kansas Association of School Boards, stating that student achievement is not solely about the allocation of resources and the bill does not consider that local needs differ.

No other testimony was provided.

HB 2068 (Tax Credit for Low Income Students Scholarship Program)

The bill was introduced by the House Committee on K-12 Education Budget.

[*Note:* A companion bill, SB 61, has been introduced in the Senate. HB 2068 is identical to 2020 HB 2465, as amended by the House Committee on K-12 Education Budget.]

House Committee on K-12 Education Budget

In the House Committee hearing on January 26, 2021, **proponent** testimony was presented by representatives of ACE Scholarships SGO, Kansas LLC; Catholic Education Foundation; EdChoice; Frontier Peace Advisors; Holy Savior Catholic Academy in the Catholic Diocese of Wichita; and Support for Catholic Schools; and a private citizen. Written-only proponent testimony was provided by representatives of Americans for Prosperity; Catholic Diocese of Wichita; ExcelinEd in Action; Kansas Catholic Conference; Kansas Policy Institute; Holy Family Catholic School (Topeka); Sacred Heart Cathedral Catholic School (Dodge City); St. Anne Catholic School (Wichita); and St. Patrick Catholic School (Wichita); and two private citizens. The proponents generally stated the changes would open the Program to more students who may be struggling and better align the Program with similar programs in other states.

The **opponent** testimony was presented by representatives of Game On for Kansas Schools; Kansas Association of School Boards; Kansas Association of Special Education Administrators; Kansas PTA; Mainstream Coalition; Olathe Public Education Network; Pittsburg Community Schools; Shawnee Mission School District; and USA-Kansas and Kansas School Superintendents Association. Written-only opponent testimony was provided by representatives of Blue Valley Schools; Gardner Edgerton School District (USD 231); Goddard Public Schools (USD 265); Kansas Association of Special Education Administrators; Kansas City Kansas Public Schools; Kansas National Education Association; Olathe Public Schools (USD 233); Schools for Quality Education; Shawnee Mission School District; Spring Hill School District (USD 230); Stand Up Blue Valley; and the State Board; and a private citizen. The opponents generally stated the changes to the Program would draw funding away from public schools that must accept and educate every child, allow students to transfer from a better performing public school to a lower performing private school, and expand the

Program beyond its usual intent to aid poorly performing, low-income students.

No neutral testimony was provided.

Fiscal Information

Substitute for HB 2119

A fiscal note for Sub. for HB 2119 was not immediately available.

According to the fiscal note prepared by the Division of the Budget on HB 2119, as introduced, affected agencies estimate the following fiscal effects.

State Treasurer

According to the Treasurer, the agency would need to establish a new division within the agency with start-up costs in FY 2022 totaling \$596,155, including 5.0 FTE positions. These costs include salaries and wages (\$187,375) and fringe benefits for six months, computer equipment and software licensing expenses (\$17,560), postage and printing (\$15,000), and the purchase and development of banking software for account management and a system of electronic funds transfer payments (\$400,000). The Treasurer indicates the scope of the Program would make it unfeasible to rely on in-house programming resources. The estimate for this pricing is based on similar software used by the Unclaimed Property Division of the Treasurer.

In addition, the Treasurer estimates each student account would have a monthly maintenance fee of approximately \$4 per account per month, with the cost possibly increasing or decreasing depending on the total number of transactions that would occur each month. As an

example, the Treasurer states that if 200,000 accounts would be established, an estimated monthly cost of \$800,000 would be required, or \$9.6 million annually.

The Division of the Budget notes that the monthly account costs and all other administrative costs for the Treasurer would eventually be funded from the allowable administrative reimbursement mechanism of account transfers. Until the reimbursement mechanism can generate sufficient revenues, the Treasurer would need an appropriation from the SGF or another funding source for the Program's administrative expenditures.

According to the Treasurer, if the management of the accounts was outsourced with the State's contract bidding process, the management of these accounts would cost an estimated \$5 per account per month per year. The Treasurer indicates this estimate is based on information from financial institutions for the average fees for managing similar transactional records and could fluctuate depending on the total transactions per account per month. The agency assumed annual cost \$12.0 million for 200,000 accounts. However, with this option, the Treasurer would still need to employ 4.0 FTE positions at the costs indicated above and would estimate similar operating expenses.

Kansas State Department of Education

KSDE indicates the number of students that would participate in the Program cannot be estimated. However, the agency made certain assumptions to describe a potential fiscal effect with the enactment of the bill.

KSDE has identified four main costs in the bill that would affect the agency: participating current private school students; participating current public school students who would transfer to private schools (or who partially transfer to private schools); adjusted weightings for school districts; and additional administrative costs.

For current private school students, there would be an additional cost to the State if these students participate in the Program. Assuming only those students who qualify for free or reduced-price meals are eligible, KSDE estimates approximately 20.0 percent of the 26,000 students in accredited private schools currently would qualify, or 5,200 students. KSDE does not have data for the number of students who would qualify in nonaccredited private schools. However, if KSDE would assume half of the number that would qualify in these schools relative to those in accredited private schools, a total of 2,600 students would qualify from nonaccredited private schools. This would equal a total of 7,800 eligible students from private schools. Using the BASE aid in the prior school year of \$4,569, a total of \$35,638,200 would be transferred from the SGF in FY 2022 to the accounts of current eligible private school students under this scenario.

For current public school students who would transfer to private schools, the current school finance formula provides that school district funding is based on the higher FTE student count from the prior year or second preceding year, whichever is greater. In the first year that an eligible student would choose to move into a private school with the Program, the state would pay the BASE aid to the original public school, as well as the student's account.

If KSDE assumes that 10.0 percent of the state's 476,000 public school students would participate in the Program, a total of \$217,474,400 would be transferred from the SGF to the students' accounts under this scenario in FY 2022. If 5.0 percent of the state's public school students would participate, a total of \$108,742,200 would be transferred to students' accounts in FY 2022.

These amounts assume these students would transfer full-time to private schools. If the students attend only part-time as allowed by the bill, it would reduce these estimated amounts.

For the adjusted weightings provision, KSDE notes the amount that would be transferred to the public schools would also depend on the number of students that would participate in the Program. KSDE reports that for FY 2020, the total eligible weightings that would be calculated in the bill for the adjusted weighting provision totaled 156,876 FTE students, which is an average of 0.318 FTE per student.

Using these formula weightings and assuming 10.0 percent of the 476,000 total public school students would participate in the Program, the total amount that would be transferred from the SGF to the State Foundation Aid account for additional state aid to school districts in FY 2022 is \$69,160,039. If the participation rate would be 5.0 percent, a total of \$34,580,020 would be transferred from the SGF to the State Foundation Aid account for additional state aid to school districts in FY 2022.

The Division of the Budget notes that additional students would qualify for the Program in addition to these scenarios presented by KSDE.

In addition, KSDE would require \$60,000 from the SGF for 1.0 FTE accountant position to complete the required calculations, to coordinate with the Treasurer, to provide technical assistance to school districts and private schools, and to complete the required reports.

Kansas Department of Revenue

The Department of Revenue states the implementation of the Program would affect SGF income tax collections, as the contributions to the student accounts would be considered income and the bill would allow the parent of the eligible student to deduct the amounts credited from their federal adjusted gross income. The Department of Revenue notes that because the number of students that would participate in the Program cannot be determined, the fiscal effect of the bill on tax collections cannot be estimated.

The Division of the Budget notes that although the bill creates additional federally reported income for parents of Program participants, the bill creates a corresponding reduction of the income tax liability for state tax purposes.

The enactment of the bill would not reduce SGF receipts as included in *The FY 2022 Governor's Budget Report*.

Kansas Department of Administration

The Department of Administration states that the State's accounting system and related procedures are not currently designed to implement the Program with individual student accounts within the State Treasury. The Department of Administration indicates it is likely that additional staff and expenditures would be required to implement the Program; however, an estimate cannot be made. The Department of Administration notes that if the Treasurer would track the individual student accounts with a vendor, there would be no additional costs for implementation.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

HB 2067

According to the fiscal note prepared by the Division of the Budget on HB 2067, enactment of the bill would have no fiscal effect, as the bill requires a school district to allocate funding within its available resources.

HB 2068

According to the fiscal note prepared by the Division of the Budget on HB 2068, the Department of Revenue cannot estimate the additional number of contributions to scholarship-granting organizations resulting from enactment

of the bill, but stated any additional tax credits would reduce revenues to the SGF. The Department of Revenue notes the maximum individual scholarship is \$8,000 per eligible student and the total amount of tax credits provided each year is capped at \$10.0 million. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Education; student empowerment program; tax credit for low income students scholarship program; appropriations; high-density at-risk weighting; remote learning; school finance

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