

SESSION OF 2023

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 2138**

As Recommended by Senate Committee on  
Education

**Brief\***

Senate Sub. for HB 2138 would require each school district 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, and would address retaliation against a student who reports such violation. The bill would also provide for administrative review by the State Board of Education (State Board) of resolutions adopted by local school boards to permanently close a school building.

***Overnight Accommodations***

The bill would require the board of education of each school district to adopt a policy that would mandate 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

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

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.

### *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 nonambiguous 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.

### ***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 that 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 of Education 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.

### *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.

## **Background**

The Senate Committee on Education recommended a substitute bill 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 five 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 representatives of Kansas Family Voice and Kansas Catholic Conference, twenty (20) private citizens, and Senator Steffen.

**Opponent** testimony was provided by representatives of the Kansas Association of School Boards, Kansas National Education Association, and United School Administrators of Kansas, all of whom 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 Wilson, Kansas, and Wetmore, Kansas, and one private citizen. 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, both of whom 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 of Education 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 of Education 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.

## **Fiscal Information**

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

According to the fiscal note prepared by the Division of the Budget on SB 255, as introduced, the 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 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.

Kansas State Board of Education; school sponsored travel; accommodations; school districts; disorganized school district; school building; administrative review