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Re: Summary of Legislation Enacted and Proposed Addressing School Funding in Response to *Montoy v. State of Kansas*

Following are summaries of bills considered since, and in response to, the 2005 decision *Montoy v. State of Kansas*. The enacted bills are summarized in the text below. All bills, whether enacted or not, are presented in the attachments.

ENACTED LEGISLATION (bill numbers printed in bold text)

Legislation Enacted in 2005—Background

On January 3, 2005, the Kansas Supreme Court ruled the Legislature had failed to meet its burden to “make suitable provision for finance” of public schools as required by the *Kansas Constitution* (Article 6, Section 6). The Court gave the Legislature until April 12, 2005, to enact corrective legislation. The 2005 Legislature, in its Regular Session, enacted HB 2247, HB 2059, and SB 43, which amended portions of the school finance formula or otherwise affected the distribution of state aid, and appropriated \$141.1 million in additional funding for public elementary and secondary schools. Then, on June 3, 2005, the Supreme Court issued a supplemental opinion finding HB 2247 fell short of standards set by Article 6 of the *Kansas Constitution*. Citing a “continuing lack of constitutionally adequate funding” and “inequity-producing local property tax measures,” the Court retained jurisdiction and informed the Legislature it had until July 1, 2005, to increase funding for the 2005-06 school year by an additional \$143.0 million. House Sub. for SB 3 was enacted in the 2005 Special Session in response to this supplemental opinion.

HB 2247, HB 2059, SB 43 (all from the 2005 Regular Session), and House Sub. for SB 3 (2005 Special Session) appropriate an additional \$289.5 million in state funds for school year 2005-06, consisting of \$261.8 million in increased state aid and \$27.7 million in potential local option budget (LOB) property tax relief.

Major features of the legislation are listed below.

Changes in the Formula

- **Base State Aid Per Pupil (BSAPP)**—HB 2247 placed the funding attributable to this weighting into the BSAPP, which increased it to \$4,107. In addition, \$115 was added to the BSAPP, which increased the amount to \$4,222. The 2005 Special Session provided additional funding of \$35 for a total BSAPP amount of \$4,257 in House Sub. for SB 3.
- **Correlation Weighting**—House Sub. for SB 3 restored correlation weighting, which had been eliminated in HB 2247. The threshold at which school districts qualified for correlation weighting was reduced from 1,725 to 1,622.
- **Low Enrollment Weighting**—HB 2247 changed the computation formula for low enrollment weighting in order to offset the increase in BSAPP as the result of correlation weighting being eliminated and BSAPP being increased by an equivalent amount of funding. (This change in the computation of low enrollment weighting was unaffected by the restoration of correlation weighting in House Sub. for SB 3.)
- **At-Risk Weighting**—Increased the at-risk weighting from 0.145 to 0.193.
- **Bilingual Education Weighting**—Increased the bilingual weighting from 0.2 to 0.395 for school year 2005-06 and thereafter.
- **Special Education**—Increased special education excess costs funding from 81.7 percent to 89.3 percent for school year 2005-06 and to 92 percent for school year 2006-07 and thereafter.
- **Capital Outlay**—Limited the capital outlay mill levy to 8 mills and equalizes to the 8 mill levy limit.
- **Local Option Budget (LOB) Maximum Authorization**—Increased the LOB maximum authorization from 25 percent to 27 percent in school year 2005-06, 29 percent in school year 2006-07, and 30 percent in school year 2007-08.
- **Declining Enrollment Provision**—Allowed any USD that is at its maximum LOB and has declined from the prior year to seek approval from the State Board of Tax Appeals to make a levy for up to two years, capped at 5 percent of the district's general fund budget. The levy was equalized up to the 75th percentile. For school year 2005-06, the maximum LOB is considered to be 25 percent.
- **Increased State Aid Percentile for LOB**—Equalizes to the 81.2 percentile (prior law was 75th percentile).
- **Federal Impact Aid**—Decreased the federal impact aid deduction from 75 percent to 70 percent.

- **Four-year-old At-Risk Program**—Eliminated the cap on the number of children who can be served and increases funding.

Revenues

- **School District General Fund Mill Levy**—HB 2247 renewed the 20 mill levy, including the \$20,000 residential exemption for FY 2006 and FY 2007.
- **Inflationary Index**—HB 2247 provided that, for school years 2007-08, 2008-09 and 2009-10, the total amount of state aid, except for special education and related services, would be increased by the CPI-U index from the preceding fiscal year. If the CPI-U index had no change or has decreased, the state aid amount would be no less than the preceding year.
- **Tax Increment Financing**—HB 2247 provided that, within a redevelopment district, county clerks must use the value of the property before improvement to determine the adjusted valuation of a school district for purposes of computing the amount of general and supplemental general state aid and the School District Capital Improvements Program.

Policy Changes

- **Skills for Success Grant Program**—The legislation created the Skills for Success Grant Program for kindergarten through grade three in reading and math. The program was to be administered by the State Board of Education and, beginning in FY 2007, was to provide grants to districts based on criteria established by the State Board. The grant amounts would be determined proportionally to the total number of students in the districts who apply. SB 43 transferred the oversight responsibilities for the program from the 2010 Commission to the Legislative Educational Planning Committee. Finally, the bill created the Skills for Success in School Fund and permitted carry forward balances without a penalty.
- **Foreign Exchange Students**—HB 2247 provided that a foreign exchange student would not be counted unless that student was enrolled for at least one semester or two quarters.
- **Out-of-State Students**—HB 2247 prohibited out-of-state students from being counted in the enrollment of the receiving school district unless the district had entered into an agreement with the sending state for payment of tuition or the district had a hardship application that had been approved by the State Board. The State Board was required to grant hardship applications in cases of a student whose parent is an employee of the school district where the student was enrolled, whose parent had paid taxes on real property in Kansas during the current or preceding school year, or who had attended public school in Kansas during the 2004-05 school year.

- **2010 Commission**—HB 2247 created the 11-member 2010 Commission. The Speaker of the House, the President of the Senate, the Minority Leader of the Senate, and the Minority Leader of the House each were to appoint one member. The Governor was to make two appointments, one to be a person licensed by the State Board of Education. The Chairperson of the House Education Committee and the Chairperson of the Senate Education Committee also were deemed members of the Commission. One member was to be appointed jointly by the Speaker, the minority leaders, and the President. The Legislative Post Auditor and the Attorney General were to serve as *ex officio* nonvoting members of the Commission. The Commission had the authority to appoint subcommittees to review and make recommendations to the Commission on all school finance issues. The Commission was to be terminated on December 31, 2009. (Reports from the 2010 Commission were published by KLRD.)
- **Legislative Educational Planning Committee (LEPC)**—HB 2247 excluded school finance from the responsibilities of the LEPC.
- **Areas of Instruction**—HB 2247 provided that, in addition to the subjects and areas of instruction mandated in statute, accredited schools also must teach subjects and areas of instruction required by the State Board of Education as of January 1, 2005. The bill required every high school to teach the subjects necessary to meet the State Board's graduation requirements and outlined the goals for areas of instruction adopted by the State Board as of June 1, 2005.
- **Carry Forward Funds**—HB 2247 created the At-Risk Education Fund. The bill allowed the at-risk, bilingual, and vocational education funds to carry forward balances from year to year without penalty. Under prior law, balances were deducted from the general state aid authorization.
- **Expenditures for Instructional Purposes**—House Sub. for SB 3 established a public policy goal that 65 percent of money provided by the State be used for classroom or instructional purposes and that all money derived from the \$35 increase in BSAPP under the bill used for classroom or instructional purposes.
- **Military Dependents**—HB 2059 provided an alternative date on which the enrollment of districts is determined. The bill allowed certain districts to count the number of pupils who are military dependents on February 20 when determining the enrollment of the district for school years 2005-06 and 2006-07. In order to qualify, a district would be required to have an increase of a minimum of 25 students or 1 percent of the district's enrollment consisting of students who are dependents of a full-time active duty member of the military service or military reserve who are engaged in mobilizing for war, international peacekeeping missions, national emergency, or homeland defense activities.
- **School Closure**—House Sub. for SB 3 provided that no court, court appointee, or judicial panel may close public schools or prevent distribution of funds for schools as a remedy in a suit alleging a violation of the Education Article (Article 6) of the *Kansas Constitution*.

- House Sub. for SB 3 and HB 2247 directed the Legislative Division of Post Audit to conduct two studies; one was to be input oriented, based on statutory requirements, and the other was to be outcomes oriented, based on state statutes and State Board of Education rules and regulations and standards. The studies were made available to the 2006 Legislature in one report. (See *Cost Study Analysis: Elementary and Secondary Education in Kansas: Estimating the Costs of K-12 Education Using Two Approaches*, January 2006, at http://www.kslpa.org/all_reports.php)
- **School Districts Audit Team**—HB 2247 established the “School District Audit Team” within the Legislative Division of Post Audit. The Team was to operate under the direction of the 2010 Commission and conduct annual performance audits of selected school districts. Audits also could be conducted by qualified firms selected by the Legislative Post Auditor.
- **Litigation Against the State**—House Sub. for SB 3 prohibited school districts from making expenditures from their general funds in support of litigation concerning school finance against the state. However, districts could make expenditures for litigation from their LOBs.
- **Legislative Counsel**—House Sub. for SB 3 authorized the Legislative Coordinating Council to enter into a contract with an attorney in private practice to represent the Legislature in school finance litigation or in any other matter as directed by the Legislative Coordinating Council. The attorney could not be a legislator or a member of a law firm in which a legislator is a member.
- **USD Budget Submission Deadline**—House Sub. for SB 3 extended the deadline to submit school district budgets to county clerks from August 25 to September 7 for school year 2005-06.
- **USD Contingency Fund Cap**—House Sub. for SB 3 raised the cap on school district contingency funds from 4 percent to 6 percent for school year 2005-06.
- **Certification and Distribution of State Aid Payments**—House Sub. for SB 3 provided that the Legislature, not the State Board of Education, is responsible for certification and distribution of state education aid. This provision was to terminate June 30, 2007.
- **Computer Reporting System Deadline**—House Sub. for SB 3 and HB 2247 required the Internet-based reporting system be operational by December 31, 2005.
- **Legislature Not Bound by Cost Study**—House Sub. for SB 3 provided that no cost study or audit commissioned or funded by the Legislature is binding on the Legislature, including the Augenblick and Myers study commissioned in 1999 and cost studies provided for by 2005 HB 2247 or House Sub. for SB 3.

- **Three-Judge Panel**—SB 43 and House Sub. for SB 3 required the Chief Justice of the Kansas Supreme Court to notify the Chief Judge of the Court of Appeals, who would appoint a panel of three current or retired district court judges to hear any suit brought by a plaintiff alleging a violation of the Education Article (Article 6) of the *Kansas Constitution*. Under provisions of the bill, venue for such cases would be in the county designated by the three-judge panel which would take into consideration the location of the parties and witnesses. The bill allowed an appeal from the three-judge panel's decision to be made directly to the Kansas Supreme Court as a matter of right under KSA 60-2012(b).

- **Written Notice Required for School Finance Litigation**—House Sub. for SB 3 required any party alleging a violation of Article 6 of the *Kansas Constitution* file a written notice with Legislative officials that included a statement of allegation and amount of monetary damages being requested. No action would be allowed until after a written response by the Legislature or until 120 days after filing of the notice, whichever occurred first.

- **At-Risk Council**—The six-member “At-Risk Council” was created to do the following:
 - Identify those conditions or circumstances that contribute to making a student at-risk of not succeeding in school;
 - Develop and recommend public school programs and services which meet the needs of at-risk students and help close the achievement gap;
 - Develop and recommend tools to assess and evaluate the effectiveness of approved at-risk programs;
 - Recommend funding alternatives for approved at-risk programs; and
 - Make a report on its activities to the Governor and to the 2010 Commission by October 1, 2006. The Council was required to make a final report, including recommendations, to the Governor and the 2010 Commission by October 1, 2007. The Council was scheduled to terminate on June 30, 2007.

The Council consists of the following members:

- The chairperson, who was to be appointed by the Governor from a list of four individuals, of whom two have been nominated by the President of the Senate and two have been nominated by the Speaker of the House; and
- Five members who have expertise in serving at-risk students, one each appointed by the President, the Speaker, the Senate Minority Leader, the House Minority Leader, and the Commissioner of Education, or a designee.

No current member of the Legislature could be a member of the Council. The Council was attached to the Legislative Coordinating Council for budgetary

purposes and was made subject to the Legislative Coordinating Council's approval. Members attending authorized meetings were to be paid for travel and subsistence.

- **Distribution Limits Removed**—SB 43 removed the limits on the amounts of money that could be distributed for the following programs: School district driver training courses (former limit \$1,540,000); School district motorcycle safety courses (former limit \$210,000); and Kansas Board of Regents truck driver training courses (former limit \$70,000). The State Board will determine the amount to be distributed each year for these programs.
- **Teacher Service Scholarship Program**—SB 43 amended the Teacher Service Scholarship Program statutes to maintain the inclusion of Washburn University.
- **Provisions Stayed by the Court**—HB 2247 and SB 43 contained two provisions which would not go into effect because they were stayed by the Kansas Supreme Court. One provision was the cost-of-living weighting which would allow districts with family residences which are appraised at 25 percent higher than the state average to levy a property tax. The second would have required districts with declining enrollments to obtain a recommendation from the Joint Committee on State Building Construction and approval from the State Board of Education in order to receive state aid under the Capital Improvements State Aid Program for new facilities.

The table below shows the amount of funding appropriated by House Sub. for SB 3 during the Special Session and the amount of funding already appropriated by the 2005 Legislature for HB 2247.

**SELECTED CHANGES TO FORMULA BASED ON 2005 HB 2247
AND 2005 SPECIAL SESSION HOUSE SUB. FOR SB 3**

Prior Law	2005 HB 2247	House Sub. for SB 3	TOTAL
BSAPP – 3,863 (allotment rate)	\$4,222 \$63.3 million	\$4,257 \$19.2 million	\$82.5 million
At-Risk Weighting – 0.10	0.145 \$26.0 million	0.193 \$27.7 million	\$53.7 million
Special Education – 81.5%	85 \$17.7 million	89.3% 13.5 million	\$31.2 million
Bilingual Education – 0.20	0.395 \$11.0 million	--	\$11.0 million
LOB	Growth due to higher BSAPP \$6.40 million	Growth due to higher BSAPP \$7.6 million	\$14.0 million
LOB – equalize to 25%	27%, not equalized	27%, equalized \$6.0 million	\$6.0 million

Prior Law	2005 HB 2247	House Sub. for SB 3	TOTAL
LOB Property Tax – equalized to the 75 th percentile	--	81.2 nd percentile \$27.7 million	\$27.7 million
Capital Outlay – no cap	Cap of 8 mills, not equalized	Cap of 8 mills, equalized \$18.0 million	\$18.0 million
Correlation Weighting – Threshold of 1,725	Threshold of 1,725 eliminated	Reimposed at 1,662 \$28.7 million	\$28.7 million
	Military dependents count (2005 HB 2059) \$7.4 million	--	\$7.4 million
Federal Impact Aid Deduction – 75 percent	Reduced to 70% \$0.8 million	--	\$0.8 million
	Miscellaneous adjustments (enrollment, assessed valuation, etc.) \$7.7 million	--	\$7.7 million
	Increase the funding for 4-year-old at-risk \$0.8 million	--	\$0.8 million
FY 2006 TOTAL	\$141.1 million	\$148.4 million	\$289.5 million

- **HR 6006 (2005 Special Session)** stated it is the responsibility of the Legislature to determine the amount of money to be provided for public education or any other program. The resolution also stated the Kansas Supreme Court order is an infringement on the right and responsibility of the Legislature as determined by the *Kansas Constitution*. The reasons stated for these statements were as follows:
 - The Legislature has shown good faith to comply with the Kansas Supreme Court's preliminary ruling (January 3, 2005) by appropriating \$142.0 million in new moneys for education.
 - The Kansas Public Employees Retirement System, the comprehensive highway plan and growth in education spending place significant new demands on the out-year budgets of the State.
 - The Kansas Supreme Court order of June 2005 will result in a financial crisis to the State of Kansas as complying with the order would result in an ending balance deficit of \$117.4 million in FY 2007 and an ending balance deficit of \$510.6 million in fiscal year 2008.
 - The Kansas Supreme Court demands would necessitate a \$1.2 billion tax increase beginning in FY 2007 in order to repair the fiscal damage caused by the Court's order.

HR 6007 (2005 Special Session) also was a resolution responding to the Kansas Supreme Court's decision in the case of *Montoy v. State of Kansas*. The resolution made a number of detailed findings regarding the Court's order and the Legislature's actions.

- The Legislature passed provisions in 2005 HB 2247 in response to the Kansas Supreme Court order of January 3, 2005.
- The Legislature considered all relevant data, including information from the Kansas State Department of Education; other state agencies and conferees who appeared before various committees of the Legislature; and the input of school officials, community leaders and constituents when crafting this legislation.
- The Legislature also considered data from various studies commissioned by the Legislature in past years, including the Augenblick & Myers (A&M) study referenced in the Court's decision.
- The Legislature enacted a statutory definition of "suitable education" for the purpose of the professional evaluation of school district finance. The definition included statutory references to the subjects and courses required by law, as well as the courses in foreign language, fine arts and physical education required for a state scholarship and the courses included in the pre-college curriculum prescribed by the State Board of Regents.
- The Legislature included in the above referenced bill the initiation of a cost study to determine the cost of providing the courses mandated for K-12 Kansas students.
- The resolution pointed out the A&M study acknowledges the fact the legislatively enacted definition of "suitable education" was not used for purposes of their study. The study incorporated not only what the state required, but also included everything else districts chose to teach or offer. The A&M study did not address the question asked by the Legislature, *i.e.*, the cost of providing what every Kansas K-12 student is required to be offered.
- The A&M study noted the "professional judgment" approach employed in the study "assumes that people can be reasonably precise in specifying the resources schools need if they are expected to meet a particular set of objectives, however our experience contradicts that assumption. . . . people tend to overestimate the resources schools need."

In addition, the resolution indicated the A&M study employed the "successful school" approach; however, this approach fails to accurately account for actual costs.

- It was apparent throughout consideration of school finance legislation that plaintiffs cited A&M to the extent it suggested additional funding and criticized the study when it recommended action not favorable to the school districts' position.
- The A&M study was not adopted by the Legislature due to a lack of usefulness in determining the actual cost of a "suitable education."

- The school finance plan outlined in the bill requires a uniform system of reporting data by school district in a user-friendly, Internet-based system. This requirement in the Legislation was based on a Legislative Division of Post Audit report and a presentation by representatives from the State of Wisconsin on its system.
- The Legislature was hindered by the fact that funds allocated to school districts were commingled and it was not possible to sort out what districts actually had spent on certain categories of services. Therefore, the Legislature was prohibited from performing a true cost analysis in all areas of the Court inquiry. The school finance plan passed in 2005 HB 2247 solved the problem in the future by requiring the Legislative Division of Post Audit to conduct a professional cost study to determine the costs of delivering the K-12 curriculum, related services and other programs mandated by statute in accredited schools.
- The Legislature made full, proper and judicious use of the legislative process which is an integral part of the system of government set forth in Article 2 of the *Kansas Constitution*.
- The Legislature received evidence demonstrating extraordinarily large declines in enrollment in larger school districts present a unique problem meriting legislative attention. Enrollment declines spread over a large number of buildings and grade levels do not result in significant savings on expenditures. Class size must remain within reason and some schools must be allowed to operate at diminished capacity to avoid significant overcrowding at another facility, until such time as the low enrollment center can be closed. The extraordinary declining enrollment provisions of HB 2247 ensure cost justification as school districts must document to the State Board of Tax Appeals its inability to absorb all the lost revenue from declining enrollment and eligibility must be reaffirmed every two years. The extraordinary declining enrollment provision is particularly important for districts with low per pupil operating expenses. These districts have less flexibility and are more at risk of having to cut programs without assistance; therefore, the issue of extraordinary declining enrollment represents an important matter of compelling public policy and merits reenactment and immediate implementation.
- The Legislature received evidence that regional factors such as cost-of-living differences have been addressed in other states and should be considered in Kansas. The Legislature determined housing costs are a major factor in cost-of-living differences and are costs easily determined on a district-by-district basis. As a matter of public policy, the Legislature determined qualifying school districts should be allowed the authority to seek and access local funds to compensate teachers at a level that would enable them to purchase an average home in the district where they teach and for these reasons the cost-of-living provision merits reenactment and immediate implementation.
- The Legislature determined increasing the Local Option Budget (LOB) authority would not cause or contribute to increased disparity in school district operating expenses per pupil. Larger school districts tend to use LOB authority more than smaller school districts. Larger school districts generally have lower operating

expenses per pupil. The resolution points out 15 of the 17 school districts that may qualify for the cost-of-living weighting are in the bottom 25 percent of all school districts in terms of operating expenses per pupil. The Legislature found this new weighting is unlikely to result in increased disparity of spending.

- A total of \$587,599,145 of additional funding to school districts was not considered by the Kansas Supreme Court in its decision on funding of public schools. The Legislature provided \$56 million to match bond and interest requirements for local capital improvements, provided \$403 million to satisfy KPERS unfunded liability and \$127,949,577 for a variety of programs during FY 2004. Therefore, these moneys should be counted as part of the K-12 funding for Kansas schools.
- The Legislature has the benefit of relevant school finance and performance data that was not available to the Court or the parties prior to the decision. For example, Education Week released its annual “Quality Counts” report card and ranked Kansas 19th in the country for per pupil expenditures. Kansas scored in the top ten states in the area of equity and was the top state in school climate. Kansas also scored well with standards and accountability. Kansas rated among the top ten states in student participation in the ACT college entrance exam and among these ten high participation states Kansas students had the second highest composite scores on the ACT. Finally, performance data for the 2003-2004 school year shows that, with respect to state assessment tests, Kansas students improved in all subject areas and across all grade levels.
- The report of the Kansas Legislative Council in December 1965 speaks to “equality of educational opportunity” and not adequacy of funding. The report refers to “finance” as the determination of sources of available funding, not to the level of funding.
- In considering the constitutionality of a statute enacted by the Legislature, certain basic principals apply. When a statute is attacked as unconstitutional a presumption of constitutionality exists and the statute must be allowed to stand unless it is shown to violate a clear constitutional prohibition. It is generally agreed the *Kansas Constitution* limits rather than confers power and any power and authority not limited by the Constitution remains with the people and their legislators. If a legislative enactment is constitutional, it is not for the Court to set policy or to substitute its opinion for that of the Legislature no matter how strongly individual members of the Court may personally feel on the issue. In determining whether a statute is constitutional, courts must guard against substituting their views on economic or social policy for those of the Legislature.
- The Kansas Supreme Court in a case involving USD #229 held that the issue for judicial determination was “whether the Act provides suitable financing, not whether the level of finance is optimal or the best policy. . . .” Also, in the same case the Court found “[s]uitability does not mandate excellence or high quality. In fact, suitability does not imply any objective, quantifiable education standard against which schools can be measured by a court.”

- The determination of the amounts, sources, and objectives of expenditures of public moneys for educational purposes is largely left in the areas of legislative and executive activity. This the resolution states is the essence of our governmental and political polity. It would be inappropriate, therefore, for the courts to intrude on such decision-making.
- The judiciary is not free to exercise all state power; it may exercise only the judicial power. The federal and state governments confine the ability to make appropriations to the Legislative Branch of government and it was not a random act. It reflects the national ideal that the power of appropriation must be under the control of those whose money is being spent. However, the Kansas Supreme Court has issued an order stating, “Neither chamber of the legislature is a party to this action.” However, as a nonparty the Legislature was the subject of an order by the Court to appropriate a specific amount of money on a specific date.
- The resolution, after listing the above mentioned points, finds:
 - 2005 HB 2247 was, as a matter of public policy, a proper legislative response to the Court’s January 2005 ruling;
 - The order of the Court directing the Legislature to appropriate a specific level of funding for public schools is viewed by this body (House of Representatives) as advisory in nature; and
 - With respect to the determination of a specific amount to be appropriated, the House of Representatives of the State of Kansas will act based solely on its own deliberative judgment as to the proper public policy determination in this area.

Legislation Enacted after 2005—Background

On July 12, 2005, the Supreme Court ruled the Legislature had made an “interim effort” to comply with its order by providing additional funding; maintained a stay on certain provisions of the 2005 legislation; directed the 2006 Legislature to make policy choices based on actual costs of education, with specific reference to the Legislative Division of Post Audit (LPA) cost study authorized by the 2005 Legislature; and retained jurisdiction in the case.

In January 2006, the LPA issued a cost study analysis entitled *Elementary and Secondary Education in Kansas: Estimating the Costs of K-12 Education Using Two Approaches*. The report consisted of an “input-based” study, estimating how much it would cost school districts to deliver services and programs mandated by state statutes and certain requirements of the State Board of Education and the Kansas Board of Regents, and an “outcomes-based approach”, estimating how much it would cost school districts to meet educational performance outcome standards set by the State Board of Education. The latter approach was the one the Court considered in determining whether the Legislature had met its constitutional obligations.

In July 2006, after the Legislature had further responded, the Supreme Court dismissed the case, ruling the Legislature had complied with its prior orders and the 2006 legislation is

“new law” whose constitutionality was not presently before the Kansas Supreme Court. The Legislature continued to address school funding issues in later legislative sessions.

SB 549 and HB 2809 (2006) provided a three-year school finance plan with increased funding totaling \$466,200,000 over the three-year period. The legislation included the following major provisions:

Expenditures

- Base State Aid Per Pupil (BSAPP) was increased by the following amounts:
 - School year 2006-2007—from \$4,257 to \$4,316 (\$59 increase), at a cost of \$33,450,000.
 - School year 2007-2008—from \$4,316 to \$4,374 (\$58 increase), at a cost of \$33,800,000.
 - School year 2008-2009—from \$4,374 to \$4,433 (\$59 increase), at a cost of \$34,000,000.

- The at-risk weighting was increased by the following amounts:
 - School year 2006-2007—from 0.193 to 0.278, at a cost of \$49,350,000.
 - School year 2007-2008—from 0.278 to 0.378, at a cost of \$58,000,000.
 - School year 2008-2009—from 0.378 to 0.456, at a cost of \$45,200,000

- A new weighting called the “high density at-risk weighting” was created for school districts with high percentages of students who receive free meals. Those districts that have free meal percentages between 40.0 percent and 49.9 percent would receive an additional weighting of 0.04 percent and districts with 50.0 percent or more free meals would receive an additional weighting of 0.08 percent; and districts with a density of 212.1 students per square mile and a free lunch rate of 35.1 percent and above would receive an additional weighting of 0.08 percent during school year 2007-2008, and the weightings would increase each year. Those districts that qualify would receive an additional at-risk weighting in the amount of 0.05/0.09 in school year 2007-2008; and 0.06/0.10 in school year 2008-2009. The weighting generated the following amounts:
 - School year 2006-2007—\$22,700,000.
 - School year 2007-2008—\$ 3,400,000.
 - School year 2008-2009—\$ 3,500,000.

- A new weighting was created for students who, based on state assessments, are not proficient in reading or math and who are not eligible for the federal free lunch program. This weighting is computed on a percentage of students below

proficient and not on free lunch divided by the number of students taking the test and applied to the enrollment (less the number of students on free lunch) of the school district. The provisions of this new weighting was set to expire on June 30, 2007. The cost of the new weighting in FY 2007 was estimated to be \$10,000,000.

- The high enrollment weighting (formerly correlation weighting) threshold was lowered by 25 students in school year 2006-2007; and 15 students in school year 2007-2008.
 - School year 2006-2007—from 1,662 to 1,637, (25 students) at a cost of \$11,700,000.
 - School year 2007-2008—from 1,637 to 1,622, (15 students) at a cost of \$6,800,000.
- Pursuant to prior law, the statutory percentage of special education excess cost was increased for school year 2006-2007, from 89.3 percent to 92.0 percent. The additional estimated cost would be as follows:
 - School year 2006-2007—\$30,300,000.
 - School year 2007-2008—\$25,000,000.
 - School year 2008-2009—\$25,000,000.
- The Local Option Budget authority was increased and equalized to the 81.2 percentile.
 - School year 2006-2007—from 27 percent to 30 percent, at a cost of \$37,000,000.
 - School year 2007-2008—from 30 percent to 31 percent, at a cost of \$22,000,000.
 - School year 2008-2009—31 percent, at a cost of \$15,000,000.
- A resolution authorizing the adoption of a Local Option Budget in excess of 30 percent required a school district election.

Policy Amendments

- The legislation stated, for the purposes of determining the total amount of state moneys paid to school districts, all moneys appropriated as supplemental general state aid would be deemed to be state moneys for educational and support services for school districts.

- Whenever the State Board determines a school has failed either to meet the accreditation requirements or provide the curriculum required by state law, the State Board will notify the school district. The notice will specify the accreditation requirements the school has failed to meet and the curriculum the school has failed to provide. The local board of education was encouraged to reallocate the resources of the district to remedy all deficiencies identified by the State Board and when making such reallocation, the local board should take into consideration the resource strategies of highly resource-efficient districts as identified in Phase III of the Kansas Education Resource Management Study conducted by Standard and Poor's (March 2006).
- The legislation required school districts, in order to achieve uniform reporting of expenditures, report their expenditures in the manner required by the State Department of Education.
- School districts were given flexibility to spend money received for at-risk, preschool at-risk, and bilingual education programs interchangeably. All expenditures attributable to these programs would have to be paid from the specific program weighted fund. The legislation amended the reporting requirements for the at-risk program, the four-year-old at-risk program, and the bilingual education program to require the following: specify the number of pupils served; type of services provided; research upon which the school district relied to determine the need for services; and results of providing such services. In addition, expenditures for the non-proficient weighting are to be expended from the at-risk fund.
- The legislation allowed at-risk funding, by statute, to fund the part of all-day kindergarten not funded by the state; and local school districts would be allowed to charge a fee for all-day kindergarten. In addition, the bill required, to charge a fee or to use at-risk funds, the districts that offer all-day kindergarten also are required to offer half-day kindergarten.
- The legislation required any school district that has experienced the greater of at least a 5 percent or at least a 50-pupil decline each year for the three previous school years must seek a recommendation from the Joint Committee on State Building Construction prior to issuing new bonds. The Building Committee would make a recommendation to the State Board of Education and if the State Board of Education, by a majority vote, did not recommend the building project, the district would not be entitled to receive state aid if it proceeds to issue such bonds. The bill did not require a district that does not receive state aid for construction projects to go before the Joint Committee on State Building Construction or the State Board.
- The legislation provided, with the exception of the Building Committee recommendations provisions, that the provisions of this act would not be severable nor could they be stayed by a court order. If any provision was held to be invalid or unconstitutional, the entire act would be null and void. The provisions that deal with the Building Committee making recommendations to the State Board were severable and subject to a court stay order.

- The legislation extended the school district contingency reserve fund from 4 percent to 6 percent.
- The legislation clarified Supplemental General State Aid is funding intended to be used to meet the requirements of the performance accreditation system adopted by the State Board, and also to provide programs and services required by law and to improve student performance.
- The legislation changes the requirement that the State Board review curriculum standards from three to seven years. In addition, the bill provided clarification language about high academic standards for the core academic areas.
- The legislation provided that the increases in the amount of state aid attributable to the new weightings created by this act, the increases in the existing weightings and the increases in the amount of BSAPP for school years 2007-2008 and 2008-2009, were deemed to satisfy the requirements of the CPI-U provision in law.
- The legislation required each school district conduct a needs assessment of every attendance center and use this information in preparing the school district budget.
- The legislation amended the capital outlay state aid payments statutes to be a demand transfer.
- The legislation required any district would qualify for the new school facilities weighting or the ancillary facilities weighting if the district has adopted a local option budget which equals at least 25 percent.
- The legislation allowed that any amount of moneys attributable to percentage over 25 percent of state financial aid also may be transferred and then used for bond and interest and capital outlay payments if specified in the resolution authorizing a local option budget over 25 percent. In addition, if a school district transfers funding from the local option budget to bond and interest fund, the district would not receive state aid on the amount of funding transferred from the local option budget.
- The legislation also provided technical clean-up to prior law.
- The legislation also provided the appropriations required for the three-year period, which includes State General Fund appropriations for FY 2008 and FY 2009 in the amount of \$2.73 billion and \$2.85 billion, respectively.

SB 531 (2008) addressed school finance by establishing a Base State Aid Per Pupil (BSAPP) rate of \$4,492 for the 2009-2010 school year and beyond. Specifically, the bill did the following:

- Increased BSAPP by \$59 (from \$4,433 to \$4,492) for the 2009-2010 school year and beyond;
- Appropriated \$37.2 million from the State General Fund in general state aid in FY 2010;
- Created the Keeping Education Promises Trust Fund with a \$0 expenditure limit in FY 2009;
- Transferred \$37.2 million from the State General Fund to the Keeping Education Promises Trust Fund in FY 2009; and
- Transferred the \$37.2 million back from the Keeping Education Promises Trust Fund to the State General Fund in FY 2010.

(Note: The bill also addressed Medicaid replacement state aid and school district consolidation.)

SB 84 (2009), in part, provided an alternative formula for the calculation of the local option budget of a school district. The bill authorized a school district to calculate its LOB using a base state aid per pupil (BSAPP) of \$4,433 (the amount of BSAPP for the current school year) in any school year in which the BSAPP is less than that amount. The bill also authorized a school district to calculate its local option budget using an amount equal to the amount appropriated for state aid for special education and related services in school year 2008-2009. (A school district may enact a local option budget up to a maximum of 31 percent of the district's state financial aid, which includes the BSAPP multiplied by a district's adjusted enrollment, and state aid for special education.) This provision was set to expire on June 30, 2012.

House Sub. for Sub. for SB 111 (2011), in part, allowed school districts to expend a portion of the unencumbered balances held in particular funds. The following funds would be considered the first priority for use: at-risk education; bilingual education; contingency reserve; driver training; parent education; preschool-aged at-risk; professional development; summer program; virtual school; and vocational education. The textbook and student materials revolving fund was the second priority with the special education fund the last priority for use. Local school boards were not limited to using the funds in the priority list and were not required to expend the total unencumbered balance before utilizing the unencumbered balance in another fund.

The bill limited the amount of money a school district can use from its unencumbered balance through a formula that will be calculated by the State Board.

The formula follows:

- Determine the adjusted enrollment of the district, excluding special education and related services weighting;
- Subtract the amount of Base State Aid Per Pupil (BSAPP) appropriated to the Department of Education for FY 2012 from \$4,012; and

- Multiply the difference between the amount of BSAPP appropriated to the Department of Education and \$4,012 by the adjusted enrollment.

HB 2015 (2011) extended the termination date to June 30, 2014, for the current method of calculating the local option budget of a school district. Under this continued law, when the BSAPP is \$4,433 or less, a school board may calculate the LOB based on a BSAPP of \$4,433, or an amount not to exceed an amount of 30.0 percent of its general fund budget, whichever is greater, plus the amount received in special education state aid in school year 2008-09, or the current appropriation, whichever is higher.

SB 11 (2012), in part, provided an alternative formula for calculation of the LOB of a school district. The bill allowed a school district to choose the 2008-09 special education state aid or the current year's special education state aid, whichever amount is greater, to calculate the amount of state aid the district receives for its LOB. Additionally, the bill allowed a school district to continue to transfer unencumbered cash balances for the 2012-13 school year for general operating expenses of the district from each of the following funds: at-risk education, bilingual education, contingency reserve, driver training, parent education program, preschool-aged at-risk education, professional development, summer program, textbook and student materials, special education, virtual school, and vocational education. Up to one-third of the textbook and student materials and special education funds could be transferred for general operating expenditures of the district. The maximum allowed to be transferred from the unencumbered funds may not exceed \$250 multiplied by the adjusted enrollment of the district.

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Attachments

Sources: Kansas Legislative Research Department *Summary of Legislation* from various years.

MEASURES RELATED TO *MONTOY V. STATE OF KANSAS* THAT WERE ENACTED

Bill Number(s)	Summary
2005-06	
HB 2247, HB 2059, SB 43 (Regular Session); House Sub. for SB 3 (Special Session)	Response to Supreme Court admonition to enact corrective legislation by April 15, 2005; and response to Court's supplemental opinion finding that the legislation enacted fell short of standards set in the <i>Kansas Constitution</i> .
HR 6006 (Special Session)	House resolution stating it is the Legislature's responsibility to determine the amount of money to be provided for public education or any other program.
HR 6007 (Special Session)	House resolution, also in response to the Supreme Court's decision, making a number of detailed findings regarding the Court's order.
2007-08	
SB 531	Established a Base State Aid Per Pupil (BSAPP) rate of \$4,492 for the 2009-10 school year and beyond
SB 549 and HB 2809	Provided a three-year school finance plan with increased funding totaling \$466 million over the three-year period
2009-10	
SB 84	In part, provided an alternative formula for the calculation of a school district's local option budget (LOB); was set to expire on June 30, 2012.
2011-12	
SB 11	In part, provided an alternative formula for calculating a school district's LOB.
House Sub. for Sub. for SB 111	In part, allowed school districts to expend a portion of the unencumbered balances held in particular funds.
HB 2015	Extended the termination date to June 30, 2014, for the current method of calculation the LOB of a school district.

MEASURES RELATED TO *MONTROY V. STATE OF KANSAS* THAT DID NOT PASS

Chamber of Origin	Bill Number	Summary	Status
2005-06			
	SB 250	Introduced by Senate Education Committee; change computation of base state aid per pupil and weightings	Died in Senate Committee
	SCR 1615	Proposition to amend Section 6, Article 6 of the <i>Kansas Constitution</i> eliminating the "suitability" wording	Died in Senate Committee
	HB 2474	House Select Committee on School Finance's proposal to answer the Supreme Court decision	Died in Senate Committee
	HB 2493	Introduced by House Select Committee on School Finance; Increase base state aid per pupil and reduce or eliminate several weightings	Died in House Committee
2007-08			
	SCR 1601	Proposition to amend Section 6, Article 6 of the <i>Kansas Constitution</i> eliminating the "suitability" wording and further revising ("in a manner determined solely by the Legislature")	Died in Senate Committee
	HB 2028	Changing 20-mill statewide tax to 25 mills	Died in House Committee
	HB 2361	Reduced 20 mills to 18 and then 16 mills	Died in House Committee
2009-10			
	SB 385	Temporary education economic recovery act: would allow a district to increase LOB percentage when base state aid per pupil did not meet \$4,433	Amended to eliminate contents; died in House Committee
	HB 2460	Increase base state aid per pupil; reduce LOB percentage; revise school facilities weightings; increase 20-mill statewide tax to 35 mills	Died in House Committee
	HB 2477	Remove 2010 Commission termination date of December 31, 2010	Died in House Committee
	HB 2539	Penalize use of supplemental state aid to pay for school finance lawsuit expenses by denying supplemental state aid in the following year	Died in House Committee
	HB 2607	Increase base state aid per pupil and reduce weighting commensurate with increase	Died in House Committee
	HB 2710	Same as above	
	HB 2739	Similar to HB 2269 during the 2011-12 Session	Died on House General Orders
2011-2012			
	SB 28	Dealt with appropriations for school districts and how money applied related to litigation	Died in Conference Committee
	SB 202	School districts; purpose of state aid to public schools, whether supplied by the state or local fulfills suitability clause in <i>Kansas Constitution</i>	Died in Senate Committee
	SB 361	Governor's Excellence in Education Act	Career and Technical Education portion enacted in another bill; remainder dealing with school finance and teacher-related issues not enacted.
	HB 2024	Creating the constitutional education suitability commission	Died in Education Committee
	HB 2269	Required a portion of local option budget be counted as foundation funding	Provision placed in other bills, never enacted.
	HB 2397	Major provisions the same as SB 28	
	HCR 5010	Constitutional amendment concerning school finance; suitable finance of public school funds in the amount and manner determined by the legislature	Died on the Calendar