THE 1992 KANSAS SCHOOL FINANCE ACT: A POLITICAL AND LEGISLATIVE HISTORY

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Author's Introduction

The passage of the School District Finance and Quality Performance Act of 1992 was a landmark event in the history of Kansas government. It dramatically altered how the state funded its public school system, which was the largest consumer of both state and local taxes. At the same time, it attempted to address the quality of that school system at a time of growing concern about education. The influence of the act will likely be felt for years to come, not just on the education of Kansas school children, but also on the entire state budget (revenue and expenditures). These issues - the quality of the school system, the impact of the taxes and the level of governmental services that can be supported - will influence the economic development and quality of life of the state as a whole.

The story of the 1992 school finance act is important because it illustrates the reaction of state government to a particular set of problems in a particular environment. It is, therefore, a political story. All three branches of government were drawn into the process. Forces that influenced the legislation had been building up over time. The relative strength of political parties was unusual. Major constituency groups and organizations helped to shape the debate. Certain powerful personalities provided leadership to the process. In the end, it was a debate that transcended the issues of taxes and budgets, ultimately becoming a struggle over the state's political culture and core values.

I had a ringside seat for this battle. In the summer of 1990, I joined the staff of the Kansas Association of School Boards as Coordinator of Governmental Relations, and was a registered lobbyist during the legislative sessions discussed in this paper. As a result, I attended virtually over public meeting, hearing and event concerning school finance and quality during the 1992 session. My notes from those meetings, along with public records such as Legislative journals and agency memoranda, are the primary sources of this paper.

At the outset I should note that KASB supported most of the provisions of the 1992 act, although we initially opposed the original proposal upon which it was based. However, this paper is not presented as defense of the act. My purpose is to objectively tell how a significant bill became law. Nor does this purport to be an "inside" story. Space and time did not allow for personnel interviews with major participants. Instead, this is the "public record" - almost everything reported is based on public remarks, committee actions and legislative votes made in open meetings. The only exceptions are facts considered "common knowledge" by those of us following the issues closely (on both sides).

The final section of this paper reports on the first year and a half after the act was approved: through the 1992 general election, the first two years of school district budgets, and the unanticipated public reaction to some of the school reform elements that the legislature had included. By the fall of 1993, the state's educational community was awaiting a district court ruling in the case of four lawsuits filed against the new act. That will be another story.

Chapter 1 - Judge Bullock's Rules of Law

On Monday, October 14, 1991, an extraordinary gathering of state leaders assembled in the Kansas Supreme Court chamber, across the street from the State Capital building in Topeka. In attendance were Governor Joan Finney and many members of her cabinet; Attorney General Robert Stephan; and leaders of the state Senate and House of Representatives, including the chairs and ranking members of the committees dealing with appropriations, taxation and education. Also present were members of the State Board of Education (an elected body) and its appointed commissioner, along with most of the statehouse press corps and scores of school district superintendents and attorneys, and lobbyists for education organizations. Waiting for the Chief Justice of the Supreme Court to enter the chamber, no one could remember a time when so many representatives of every branch of state government had been together for anything other than ceremonial events.

They had been invited by state District Court Judge Terry Bullock for an announcement regarding a consolidated case challenging the constitutionality of the method used to finance the state's public school system, an issue which everyone present knew could have enormous consequences for the people of Kansas.

Perhaps no other aspect of state government touched more lives. The school system consumed more state tax dollars - and more local tax dollars - than any other program or function. It employed thousands of teachers, administrators and other staff; far more than any other public agency, and in many places the schools were the largest employer in the community. Every year, over 400,000 students attended over 1,600 elementary and secondary schools.

But for most Kansans, concern for education was not focused on the state system, but on their own local schools - schools they had attended, or those attended by their own children or grandchildren. Most educational decisions were made by elected boards of education in local school districts, ranging in enrollment from less than 100 to over 40,000. Schools were financed through a variety of federal, state and local programs and tax sources, but a majority of funds came from local taxes on property, largely determined by the local boards. Local boards also had broad autonomy in setting districts budgets. Although the amount of increase allowed each year was limited by the state, those limits could be exceeded by a vote of the district's patrons.

Issues Before the Court

This tension between state and local educational interest was at the heart of the issue before the court. One consequence of the system was a wide variation in local property tax rates and budgets per pupil among school districts. As a result, in 1990 and 1991 a number of school districts and citizens had filed suit over various aspects of the state school finance system. In essense, they charged that the state was failing its constitutional obligation to provide funding for equal education opportunties for the children of every district. But a system that would result in more equal school spending and taxes would probably require more state control over spending and taxing, and - if history was any guide - a great deal more state money.

Those cases had been consolidated in Shawnee County District Court. Judge Terry L. Bullock had received and reviewed briefs from the plaintiffs and defendents, and had called this conference of state government officials to announce the "rules of law" that he would apply to a trial on the constitutional issues. He would then ask the state's leaders to make a choice: attempt to respond to those points of law during the legislative session beginning in January with the hope of avoiding trial, or allow the trial to proceed at once.

The Chief Justice welcomed the audience to the high court's chamber, then introduced Judge Bullock, who began to read his opinion. He noted that the plaintiffs were challenging the constitutionality of the entire scheme of financing public schools of Kansas; specifically, the plaintiffs alleged that the system violated the requirements of the Education Article of the Kansas Constitution, the equal protection clauses of the Kansas and United States Constitutions, and the "uniform laws" clause of the Kansas Constitution. "Because of the magnitude of the challenges made in these cases, and because the impact which a decision of these issues may have on the financial and other affairs of the state and its schools, the Court has elected to identify and decide the essential questions of law in advance of trial," he said.

Education Articles of the Kansas Constitution

Bullock began with a review of the history and textual development of the Education Article of the Kansas Constitution, noting that the original document required that "The Legislature shall encourage the promotion of intellectual, moral, scientific and agricultural improvement, by establishing a uniform system of common schools." The current version of the Education Article had been amended by voters in 1966. Bullock noted that "A careful examination of the current text of the article reveals four essential, clear and unambiguous mandates from the people (the source of all power in our democratic form of government):

> **Section 1.** Schools and related institutions and activities. The *Legislature* shall provide for intellectual, educational, vocational, and scientific improvement by establishing and maintaining public schools...which may be organized and changed in such manner as may be provided by law. (emphasis added).
>
> **Section 2.** State board of education and state board of regents. (a) The *Legislature* shall provide for a state board of education which shall have general supervision of public schools...and all the educational interests of the state, except educational functions delegated by law to the state board of regents. (emphasis added).
>
> **Section 5**. Local public schools. Local public schools under the *general supervision* of the state board of education shall be *maintained, developed and operated* by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the Legislature. (emphasis added).
>
> **Section 6.** Finance. (b) The *Legislature* shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. (emphasis added)."

Judge Bullock then reviewed and cited court decisions in Kansas and other states dealing with issues of school finance and equal educational treatment, focusing on recent cases in Kentucky (1990), Texas (1989), Washington (1978), Montana (1989), and New Jersey (1972). In each case, school finance systems were found unconstitutional if they permitted wide variations in spending per pupil due to differences in local district wealth; generally because courts held that those states were constitutionally required to provide the benefits of education equally to each child.

Constitutional Rules of Law for School Finance

Turning to an interpretation of the Kansas Constitution, the Judge then posed a series of ten questions, which he then answered himself to establish the "rules of law" that would apply to a trial on school finance.

First, the sole and absolute duty to establish, maintain and finance public schools is imposed on the Legislature, not local school districts.

Second, this absolute duty is owed to the school children of Kansas. Third, the duty to provide an education is owed equally to each child.

Fourth, the Legislature must maintain free public schools. Fifth, the resources necessary to maintain the public schools must be provided equally to each child. The obligation is to children, not to districts, schools, towns or cities, voters, counties or personal constituents.

Sixth, this does not mean that equal dollars are owed to each child. Some children will require more dollars to have the same educational opportunity as others. But, differences in spending per child must be based on rational educational explanations.

Seventh, the state is responsible for all of the financing of the public schools, because (a) that is what the constitution says (as noted in the first statement), and (b) local school districts are subdivisions of the state; thus "local" taxation is actually state money.

Eighth, all educational costs, including school buildings, are the state's responsibility.

Ninth, in addition to equality of opportunity, there is a constitutional requirement that the opportunity afforded to children be suitable, or adequate. However, this issue is not raised in the cases before the court.

Tenth, the Legislature cannot be sued for "restitution" arising from past disproportionate funding, and any decision arising from these cases will be prospective only.

Perhaps anticipating that these conclusions were substantially different from how the state school finance system was actually operating in 1991, or at least how most people perceived the constitutional requirements, Judge Bullock suggested several reasons why the system had strayed from the standards outlined. First, no case challenging the system had ever reached conclusion, so the courts had never ruled on what the constitution really requires. Second, for many years the tax base of the state consisted primarily of prairie land that was relatively equally distributed among school districts so a tax system based on local property taxes was, at that point, relatively equal. Third, the Legislature had responded to changes in district wealth through a variety of programs that kept anyone from complaining to much, even if the present system did not strictly conform to the constitutional standard.

He concluded, however, that regardless of history, the political system must now respond to the constitutional mandate. "The Court has been presented with the questions now and it has an absolute constitutional duty to decide. However difficult, however popular or unpopular - that is the role of the court from which no judicial officer is permitted to retreat. There is no more solemn duty for any Court than to uphold, protect, and defend the Constitution." This duty, however, is not the sole responsibility of the judiciary. "All those in government service, the governor, legislators, state and local school board members, even educators and teachers who are on the front lines of education, have all taken the same oath and assumed the same duty."

With that in mind, Judge Bullock offered to delay trial until the end of the 1992 Legislative session, giving "all those in government service" a chance to address the issue outside of the court system.

That afternoon, the Governor, legislative leaders and the Chairman of the State Board met in a side courtroom, then told the Judge they would accept his offer to delay the trial and attempt to address the matter in the next session. Governor Finney agreed to create a special task force composed of executive branch appointees and legislative leaders. It would be charged with developing recommendations for the governor's consideration in the next budget. One of the great debates of Kansas government was underway.

Chapter 2 - Kansas School Finance in 1991

When John Koepke, Executive Director of the Kansas Association of School Boards, welcomes newly elected board members every other spring after local elections, he warns them to be prepared for controversy and emotion: "You will be making decisions about the two most important things to the people of every community: their kids and their money." The same is true for state legislators when they deal with school issues.

Koepke's biennial presentation also emphasizes the unique American characteristic of local control over schools by elected representatives: far different from the centralized state or federal systems operated by many other nations, which may also feature a greater role for professional educators in school administration and management.

Characteristics of Kansas School Districts

Kansas school boards predate statehood. The powerful concept of local control developed from the fact that schools were organized on a community basis. Throughout much of the state's history most school buildings had a school board, whether it was an elementary, junior high or high school, which meant there were literally thousands of school boards and districts. Schools were one of the most important unifying forces in communities across Kansas, for social as well as educational functions.

In the mid-1960's, the Legislature passed an enormously controversial act that required every patch of territory in the state to be assigned to a single, "unified" school district that would offer an educational program from the first to the twelfth grade, and set minimum levels for size, enrollment and assessed valuation. As each "unified school district" was formed, it received a U.S.D. number, beginning with 200. While "unification" is remembered as most difficult in rural areas where many small schools were closed, among the last districts to complete the process where three of the state's four largest communities: USD. 500 (Kansas City), USD 501 (Topeka) and last of all in suburban Johnson County, USD 512 (Shawnee Mission). If unified school districts further consolidate, they are assigned a new number beginning with 100.

In 1991, 304 unified school districts remained. Except for USD 207, which contains the Fort Leavenworth military base, each of these districts has the same governing structure: a seven member board of education, with members chosen in local elections for four-year terms. But, in many other ways, these districts vary dramatically. An understanding of the issues involved in Kansas school finance in 1991-92 must begin with an understanding of the diversity of Kansas school districts.

Kansas school districts reflect the state's population and economic patterns. The districts with the largest enrollments were found in the state's most urban areas. USD 259 (Wichita) contained most of the state's largest city with nearly 45,000 students; USD 512 (Shawnee Mission) included the Kansas City metropolitan area suburbs in the northeast corner of Johnson County with 29,000 students; USD 500 (Kansas City) enrolled 21,000 students. USD 501 (Topeka), and USD 233 (Olathe), each enrolled about 14,000. Under the school finance system operating in 1991, these five districts made up the Fifth Enrollment Category, and represented about 30% of the total student population in the state.

The Fourth Enrollment Catergory included thirty-three districts with enrollments between 2,000 and 10,000. Most of these districts primarily encompassed the territory of medium-sized cities and towns. But several were located in suburban areas around Wichita, Topeka and Kansas City. Because school districts cannot unilaterally change their boundaries, population growth out from these central cities was boosting the enrollments of several suburban districts, which were experiencing some of the fastest growth in the state. For example, USD 229 (Blue Valley) in southeast Johnson County would pass the 10,000 mark within a year. These Fourth Enrollment Category districts had a combined enrollment of nearly 130,000 - over 30% of the state's total, or about the same as the five largest districts.

Another 33% of the total state enrollment was divided among 162 districts with between 400 and 2,000 students. The smallest 103 districts, with less than 400 students each, enrolled only about 6% of the state's total student population. Obviously, these districts served the state's smallest communities and some of the least populated areas.

In addition to the range in enrollment, the geographic areas of school districts also varied dramatically, from a low of 10 square miles to a high of 992 square miles. The number of students per square mile ranged from 0.2 to 408.9. But only ten districts contained more than 100 students per square mile; while 70 districts (about one fifth of the total) had fewer than one student per mile.

Even more important to the discussion of school finance was the diversity of the tax base available to districts. A consequence of the local character of schools was a traditional reliance on local revenues. If every district had similar local resources, a school finance system based on local funding would offer similar funding opportunities. However, the tax base of school districts ranged as widely as enrollment and geographic size. In 1990, assessed valuation among districts ranged from a low of $4.8 million to a high of $1,481.2 million. On a per pupil basis, the low ranged from $7,974 in Galena, a district of about 700 students in Cherokee County, where a long-depressed economy formerly based on mining resulted in the state's poorest rural area; to a high of $580,749 in Burlington, a district of about 870 students in Coffey County, home of the state's only nuclear power plant, Wolf Creek. In other words, taxes in the district with the least property wealth would have to be nearly 73 times higher than in the district with the greatest property wealth to raise the same amount of money for each student.

The difference in taxable income, another potential source of local revenue, was also substantial, ranging from $13,017 per pupil to $145,045 per pupil. The highest extremes of wealth per pupil resulted from high concentrations of property, such as power plants or natural gas fields, in districts with relatively few students.

The State's "Equalization" Function

This kind of disparity was not unique to Kansas, and it had led to a series of court cases around the nation in which plaintiffs from property poor districts charged that local school finance systems denied their children equal educational opportunities because wealthier districts could spend more money per child at with a lower tax effort. In the landmark 1970 case *Serrano v. Priest*, the California Supreme Court decision expressed this concept: the quality of a child's education must not be dependent upon the wealth of the district in which the child resides, but upon the wealth of the state as a whole. Central to this concept is the notion that education is a "fundamental right" under state constitutions. In other words, many constitutions include education as a basic state function, although in practice, it has been governed and financed at the local level.

A Legislative Research Department memo to a special study committee in 1990 noted that school finance litigation in state courts is usually based on the following principles: 1) education is a fundamental state responsibility; 2) the benefits of the educational system are owed equally to all citizens; 3) an equal education system requires relatively equal expenditures, or at least equal ability to make those expenditures; and 4) if local resources are unequal, the state must assume responsibility.

In 1973, with a constitutional challenge advancing through lower courts, the Kansas Legislature enacted a finance system called the School District Equalization Act (SDEA). As the name implies, it accepted the idea that the state has an interest in "equalizing" school district capacity to expend. As a Legislative Research Department memo from 1990 stated:

> "At the heart of the 1973 legislative effort to revise the main school finance program was the concept of using state resources to "equalize" the capacity of local school districts to finance their educational program. This approach to financing schools is commonly referred to as district power equalization.
>
> Under a "pure" power equalization formula, spending for education in a district is not a function of district wealth, but of the wealth of the state as a whole. The budget per pupil may be determined locally, but when the local board decides to increase expenditures it also must make a commensurate increase in its taxing effort. The local board knows that at whatever level it chooses to spend, the district will be making the same taxing effort as other districts spending at the same level, regardless of the wealth of the various districts."

In other words, the concept behind the SDEA was that the state would attempt to allow each district to spend more or less with the same tax effort as every other district. A district with a great deal of local wealth and a district with very little local wealth could have the same budget, at the same tax rate. The SDEA contained a number of features for achieving this goal. The key elements of the law were as follows:

Features of the School District Equalization Act

Enrollment Categories. The SDEA used enrollment categories to partially determine appropriate budgets and local tax rates. Enrollment categories were based on the concept that economies of scale and other factors justify different expenditure levels, even under an "equalized" system; that larger school districts can deliver the same quality of education as smaller districts at a lower cost per pupil because of economies of scale. Like many other features of the SDEA, the enrollment categories had changed over time. At first, there were three categories: enrollments under 400, 400 to 999.9, and over 1,000. In the late 1970's, the "under 400" was divided to create a new "under 200" category, which provided additional budget authority for some of the smallest school districts. In the early 1980's, the Legislature created a fifth enrollment category for the largest districts - over 10,000 - which recognized that these districts tended to spend more than districts in the "fourth" enrollment category - generally those between 2,000 and 10,000. How enrollment categories affected budgets and taxes will be explained below.

Limits on District Budgets. Under the SDEA, the increase in a district's budget was limited each year. The amount of increase permitted was based on a comparison of each district's budget per pupil (BPP) - the general fund budget divided by enrollment - with the median budget per pupil of all districts in the same enrollment category (in other words, districts of a similar size.)

Under the "permanent" limits, if a district's BPP was higher than the median, it could increase its budget up to 3%. But if the district's BPP was lower than the median, it could increase its budget up to 9%, or 3% of the median, whichever was lower. The range in budget increases, therefore, was 3% to 9%. Lower spending districts were allowed an increase three times greater than higher spending districts to "catch up" in spending power. The Legislature, however, reviewed the budget limits annually and usually changed the range for the upcoming year. Beginning in 1986-87, the annual limits were always lower than the "permanent" limits. Between 1986-87 and 1989-90, the lower limit was 2% and the upper limit between 3.5% and 4.5%. For 1990-91, the limits reached the lowest point ever: 1-2%. However, beginning in 1987-88, the law allowed school boards to add one additional percentage point. This one percent "kicker," as it was called, was subject to a "protest petition." If 5% of a district's voters signed such a petition, the use of the additional budget authority had to be approved in a special election.

In addition to the budget increases permitted by the budget controls, districts could receive additional budget authority for exceptional increases in social security, utilities (water, heat and electricity) and insurance costs. Districts could appeal to the State Board of Tax Appeals for additional budget authority for certain costs (such as opening new school facilities.) Districts could also accumulate budget authority which was not used in previous years, and add a portion of that accumulation to the new budget year. A "declining enrollment" provision protected districts from losing budget authority on a per pupil basis up to a certain point. Finally, any district could hold an election to exceed its budget limits.

The effect of all of these provisions was to allow total district spending statewide to exceed what would be expected by the budget controls alone. But it is important to stress that a district could also set its budget lower than the law would allow. A district might choose to adopt a lower budget to hold down local property taxes, which was a factor of "local effort."

Determining Local Effort. After the district's budget was computed, its local effort was calculated. The local effort represented the amount of funding that had to be raised from local tax sources. Local effort was determined by two factors: district wealth and budget per pupil.

The SDEA used two factors to determine a district's wealth: the assessed property valuation in the district and the taxable income of district residents. District wealth had always been a combination of those two factors, but the Legislature had frequently modified the formula by averaging those factors over several years.

For each enrollment category, the State Board determined a "norm" budget per pupil and a "norm" local effort rate. The budget per pupil of each district in that category was then compared to the norm. If a district's BPP was higher than the norm, it's LER was proportionally higher.; if the BPP was lower, the LER was lower. In other words, as a district's budget increased compared to others in its enrollment category, its expected local contribution increased proportionately. The LER was a percentage rate multiplied by district wealth to determine how much of the district's budget would have to be raised from local tax sources. The resulting product was subtracted from the district's budget: the difference was provided by the state in general aid. If the total exceeded the district's budget, it received no state aid. The system could be expressed by the following formula:

District Budget minus (District Wealth x Local Effort Rate) = State Aid

The local effort rate was "backed into" by calculating the total general fund budgets of all districts and the total amount of state aid appropriated by the Legislature. The difference was the local effort. Therefore, the less state aid was available relative to total budgets, the more local effort was required.

Income Tax Rebate and Property Tax. Each district funded its local effort through two sources. A percentage of the state resident individual income tax liability after credits (except for credits for taxes paid to other states and for withholding and estimates) for the tax returns filed from each district was "rebated" back to the district. For tax years 1990 and after, the rebate was 24%. Whatever amount of local effort funding was required in addition to the rebate was levied on local property. In other words, districts with high taxable income needed less from property taxes. (There were several other local sources of revenue for schools: federal impact aid for certain U.S. governmental installations, a district's share of motor vehicle taxes, and payments-in-lieu-of- taxes from tax exempt property. All of this revenue was subtracted from the state aid entitlement.)

Other State Aid Programs. In addition to general state aid and the income tax rebate, the state funded a number of other "categorical" aid programs. These programs were directed at specific functions and were budgeted outside of the district's general fund. The two largest programs were transportation aid, which reimbursed districts for the cost of transporting students more than 2.5 miles to school; and special education aid, which funded a portion of the "excess costs" of students in special education programs. Other categorical programs funded incentive grants, food service, parent education and human sexuality/AIDS programs, inservice education, bilingual programs, adult basic education, and deaf-blind or students with severe disabilities. Finally, the state paid all "employer" contributions for the district employees covered under the Kansas Public Employees Retirement System.

None of these categorical programs were funded on an "equalized" basis; that is, funding was distributed to districts without regard to district wealth.

Capital Expenditures. A final element of school district costs was not addressed by the state in any way: capital expenditures for building construction, repair and remodeling. Districts funded these costs in several ways. A district could levy up to four mills for capital outlay, subject to protest petition every five years. A district could submit a bond issue to district voters. Repayment would be financed entirely by local property taxes. Finally, limited transfers could be made from the general fund under certain circumstances.

At this point, the reader's eyes may be glazing over. A simplified description of the SDEA might be: school district were allowed to set their own budgets, but the state imposed limits on how much increase was allowed each year. Low spending districts were allowed to increase their budgets somewhat more than high spending districts, and there were a variety of exemptions to those limits. Districts were divided into categories based on enrollment size, with the idea that schools of different size had different budget needs. The more a district spent per pupil compared to districts of similar size, the more local tax effort was required. State aid was provided to offset local taxes; the wealthier a district was in terms of property and income, the less state aid it received (in some cases, none at all). However, all districts received state aid for certain programs, and none received state help for building construction.

The purpose of the SDEA, then, was to "equalize" spending ability and tax rates despite differences in wealth. When the governor's task force began its work in response to Judge Bullock's "rules of law," it had been less than one year since a legislative study had looked at how well it was working.

Chapter 3 - The 1990 Special Committee

The Special Committee on School Finance had been created after growing controversy over school funding boiled over in the 1990 Legislative Session, when disagreements over how to distribute state aid through the formula could not be resolved. In order to pass a school funding bill at all, the Legislature "suspended" the formula for the 1990-91 school year and determined that each district would receive the same amount of state aid on a per pupil basis as it had the previous year, regardless of changes in wealth per pupil.

1990 Challenges to the SDEA

This action prompted a group of districts, led by USD 508 in Baxter Springs, to file a lawsuit against the state over school finance. It challenged the disparity in both district budgets and local taxes financing those budgets. While disparities had been permitted under the SDEA, the suspension of the equalization formula would inevitably compound the situation. The Baxter Springs case followed a suit by USD 202 (Turner), a fourth enrollment category district bordering two fifth enrollment category districts, Kansas City on the north and Shawnee Mission on the south. Turner's suit challenged the SDEA on the grounds that the Turner budget per pupil was lower than the two neighboring districts, yet still required a much higher local tax rate. Several months later, other fourth enrollment category districts led by USD 373 (Newton), filed another suit, also focusing on the fact that districts in that category tended to have the lowest budgets and the highest tax rates in the state.

A Legislative Research Department memo presented to the Special Committee looked at the differences in budget per pupil among districts of similar size. It found significant disparities at almost every level, as the following chart shows.

RANGE IN SCHOOL DISTRICT BUDGETS BY ENROLLMENT

Enrollment	High	Low	Difference	Percent Difference
0-199	$9,133	$3,294	$5,839	177%
200-299	7,115	3,983	3,132	79%
300-399	6,186	4,428	1,748	40%
400-499	5,654	4,012	1,642	41%
500-599	5,195	3,829	1,366	36%
600-799	5,020	3,879	1,141	29%
800-999	5,075	3,834	1,241	32%
1,000-1,299	4,725	3,818	907	24%
1,300-1,699	3,984	3,507	477	14%
1,700-2,499	3,772	2,518	1,254	50%
2,500-3,900	3,444	3,117	327	10%
4,000-over	4,332	3,049	1,283	42%

The report noted that the overall difference between high and low for all districts was $6,615, or 263%. The memo also reported on the general fund tax rates of high and low spending districts.

Although there was some correlation between high budgets and high taxes, in almost every enrollment group there were examples of high spending districts with lower tax rates than the lowest spending districts, as well as the opposite.

Examples of Tax and Spending Disparities

A microcosm of the situation can be seen by comparing the six school districts in Johnson County for the 1990-91 school year. The largest district, Shawnee Mission, had about twice as many students as one of its neighboring districts, Olathe. Each spent about the same general fund dollars per pupil, around $4,100. But Shawnee Mission, containing some of the wealthiest suburbs of the Kansas City metropolitan area, as well as extensive commercial real estate, had assessed valuation of about $50,000 per pupil, compared with $30,000 per pupil in Olathe. The difference in income per pupil was even greater: Shawnee Mission ($145,000) had three times the level of Olathe ($42,000). This was partly due to the fact that the residents of Shawnee Mission tended to be older and wealthier than those in rapidly growing Olathe, with more young families and more children to educate.

If the SDEA was working as a "pure" equalization formula would have expected, these two districts of the same size with the same budget per pupil would have the same general fund mill rate. But Olathe's mill levy was actually 67.04, compared to 39.79 for Shawnee Mission, although spending per pupil was almost identical. At the same time, the third largest and fastest growing district in Johnson County, Blue Valley, with similar income to Olathe ($46,000 per pupil), but more assessed valuation per pupil than either of the larger districts ($59,000), was able to spend considerably more than Olathe ($4,700 per pupil). Blue Valley also enjoyed a considerably lower mill levy (58.64).

Meanwhile, the smallest district in Johnson County, Spring Hill, with 1,200 students and almost no commercial development, had the lowest valuation per pupil ($19,000) and the second lowest income per pupil ($34,000). Spring Hill spent slightly less than Shawnee Mission and Olathe, but had a mill levy twice as high as Shawnee Mission (80.13). Similar comparisons could be made between districts across the state.

Recommendations of the 1990 Special Committee

Despite these problems, the 1990 Special Committee on School Finance concluded that the principals of the SDEA were sound and called for a restoration of that formula with several key modifications. However, it warned that these changes would create major shifts in state aid and tax burden if not accompanied by significant increases in state aid. The recommendations made by the Committee (and the issues that prompted them) were:

1. Change the definition of district wealth. Since its inception, the SDEA had counted property valuation and taxable income equally in defining district wealth. However, the relationship between these two elements had shifted dramatically. In 1974, the adjusted valuation of taxable property statewide was $11.6 billion, and total taxable income was $4.2 billion. In other words, property counted for 73.6% of statewide district wealth. By 1980, the property component had risen to 78%.

By 1988, however, the property component had dropped to 65.6%, as a result of two factors. First, a recession had caused a drop in land and other property values. Second, the Federal Tax Reform Act of 1986 reduced the amount of allowable income tax deductions, which increased the "taxable income" of many taxpayers. This meant that taxable income looked higher for calculating school district wealth. However, state income tax rates were eventually reduced (as federal rates had been) so that taxpayers were not actually paying more for increases in income that were only reflected on the federal tax return. This meant that revenue produced by the income tax rebate did not increase, despite the fact that districts had more "taxable income."

Then in 1989, the property component in district wealth dropped even more sharply, to 43.7%, as a result of a constitutional amendment on property taxation passed by the voters in 1986, and the statewide reappraisal of property ordered at the same time. Prior to that amendment, the Kansas Constitution required that all property subject to taxation be assessed at 30% of "fair market value." There was common agreement that many properties, especially residential and farm land, were being assessed far below that amount. To avoid court-ordered enforcement of the 30% standard, the 1986 amendment adopted a "classification" system, taxing residential, commercial, utility and other classes of property at different rates, mostly lower than 30%. Other types of property, notably livestock and the inventories of merchants and manufacturers, were exempted from property taxation all together.

Prior to reappraisal, the property component of district wealth was based on "adjusted valuation," which converted actual assessed valuation to the 30% standard through a "sales ratio study" that compared assessed values to actual sales of similar property. In 1988, the adjusted valuation was $26.8 billion; in 1989, after the new system went into effect, the assessed valuation - the new measurement of property wealth - was $14.1 billion, or only about half of what property wealth had represented for calculating school district wealth the year before.

The effect of these changes was to make "income intensive" districts "wealthier" under the SDEA, which reduced their state aid. However, these districts noted that revenue from taxable income had not kept pace with increased "weight" of income in the SDEA formula, because the Legislature had reduced tax rates. This forced such districts to compensate for the loss of general state aid by increasing property taxes to maintain their budgets.

The Committee recommended changing the definition of district wealth to the sum of assessed valuation and the same percentage of taxable income as used for the income tax rebate: in 1990, 24%. This would mean that income would count for less in the formula; districts with high income would be "less wealthy," and tend to receive more state aid (and lower local taxes.)

2. Establish a minimum mill levy. As noted above, some districts enjoyed extremely high concentrations of property wealth per pupil, generally due to the presence of large utilities or oil and gas operations. Although these districts received no state aid, they could easily fund their budgets with very low mill levies. In 1989, the median mill levy in the state was just under 50 mills. Ten districts operated at less than 25 mills. (At the other extreme, the mill levies in several districts exceeded 75 mills.)

The Committee recommended that the state require every district to levy at least 30 mills, which represented two-thirds of the median mill levy. If that rate raised more than the district's operating budget as authorized under the SDEA, the differences would be "recaptured" by the state and used for general state aid to other districts. Because this approach "took from the rich and gave to poor," it was inevitably nicknamed after Robin Hood - a term used derisively by wealthy districts who obviously did not consider Robin Hood a hero.

3. Combine the fourth and fifth enrollment categories over a three year period. Based on a study of actual expenditure patterns by the two largest enrollment categories, the Committee accepted the contention that separate enrollment categories for these districts could not be justified. This recommendation would raise the "norm" budget per pupil for fourth enrollment districts, which would tend to allow higher budget increases and more state aid. However, assuming a constant amount of state aid, this would shift state aid away from districts in the other enrollment categories.

4. Request the State Board of Education study the concept of pupil weighting. Many members of the Committee believed that differences in budgets and state aid should be reflected by a system that looked at specific student and district characteristics. Such a system would "weight" enrollments based on these features, and could offer a more precise system than categories based only on enrollment size. However, lacking the time for a complete study during the 1990 interim, the Committee requested that the State Board of Education study the issue over the next year.

5. Set budget controls for 1991-92 at 102% to 106%. The Committee believed these controls would allow budget increases comparable with inflation. It also reaffirmed the importance of a three-to-one spread between low and high spending districts, to more effectively narrow the range in per pupil budgets.

The Committee noted some additional problems that weakened the "equalizing" power of the SDEA. First, more than half of the funding provided for school districts came from the local property tax on assessed valuation, which obviously provided no equalizing at all. Second, as the taxable income rose, the income tax rebate provided a larger portion of state school funding. But the income tax rebate was also, obviously, unequalized. Third, the largest categorical aid program, state aid for special education, was also unequalized. The wealthiest district in the state received the same percentage of its special education budget from the state as the poorest.

As a result of these factors, the Legislative Research Department found that the percentage of state aid that was distributed on an equalization basis had fallen from nearly 80% when the SDEA was initiated in 1973-74, to just over 60% in 1982-83, and to about 50% in 1991-92. In other words, only about half of the funding provided by the state to schools (including the income tax rebate) was equalized, and state aid made up less than half of total school district budgets. This could only be changed by increasing equalized state aid as a percentage of district budgets, but this would require either a substantial shift in state funds from other programs, or a substantial tax increase. The Committee could not agree on what to recommend in this area - so no recommendation was made.

The Committee's proposals would form the basis of school finance debates in the 1991 Legislature, while the issue of funding loomed ahead. But while the Special Committee was working on its report, the 1990 general election was making state political history.

Chapter 4 - The 1990 Election and 1991 Session

In 1989, the completion of statewide property reappraisal produced a firestorm of controversy as many homeowners and commercial businesses were confronted with higher valuation and higher property taxes. Some of the increase was due to previous under-appraisal. The fact that many properties were being appraised and taxed far below market value was a major factor in the Legislature's decision to propose the 1986 amendment to the Kansas Constitution that set different assessment rates for different classes of property. But even though the amendment lowered rates of residential property from 30% to 12%, and commercial from 30% to 25%, some property still increased in assessed value. (Other properties were not affected, or actually declined in valuation, but owners in this category had no reason to complain.)

In addition, the amendment removed inventories and livestock from the tax rolls, shifting millions of dollars of the property tax burden to homes and businesses without inventories, but benefiting many large companies like Boeing. Although objective observers agreed that most homeowners would have done far worse if courts had ordered reappraisel without the new amendment, many critics contended the new system favored "special interests."

Despite the growing demands of taxpayer groups for property tax relief, the Legislature did not respond with any major modifications in either a special session called in December or the 1990 regular session. Providing tax relief for any sector would require either increasing property taxes on other sectors, raising other types of taxes (sales and income) or cutting state or local programs and services. Although Republicans controlled the governor's office and both houses of the Legislature, the party was suffering from splits between moderate and conservative forces, and could not agree on a property tax "solution."

The Election Upsets of 1990

First-term Governor Mike Hayden, a previous Speaker of the House, drew unusually strong competition in his 1990 primary campaign for re-election, particularly from Nestor Wiegand, a Wichita realtor who made property tax issues the central theme of his campaign. Hayden's strong backing from the state party organization created serious rifts within Republican ranks. He won the primary with a plurality over several opponents.

On the Democrat side, former governor John Carlin was considered the clear front-runner. Carlin had been the first Democrat Speaker of the House since the turn of the century when his party won control of the House in 1976. Two years later the Republicans regained control of the House, but Carlin upset incumbent Republican Governor Robert Bennett in the same year, and won re-election easily four years later. In 1986, the constitution barred Carlin from seeking a third term, and Hayden narrowly defeated Carlin's Lieutenant Governor, Tom Docking, to regain Republican control of both the executive and legislative branches. State Treasurer Joan Finney was left the highest ranking Democrat in state office.

On primary election night 1990, the state political establishment was shocked when Finney upset Carlin to win the Democrat nomination. Few had given Finney much chance, despite her relentless campaigning style. But Carlin had strongly pushed the 1986 classification amendment and statewide reappraisal, and had gone through two divorces while in office. Three months later, Finney won the governorship with just 49% of the vote to Hayden's 42% (an independent received 9%). In addition, the Democrats won control of the House by a one-vote margin, increasing their representation in the state's four largest counties. It was one of the best statewide showings by the Democrats in state history. The question was whether it represented a real increase in support for Democrats or a repuditation of a

Republican party that seemed unable to resolve the tax issue.

Governor Finney's First Year

From the beginning, the Finney administration operated outside normal political expectations. Her daughter, Mary Holliday, previously an income maintenance worker in the state welfare system, assumed a powerful role in the "inner cabinet." A record number of women were appointed to high state positions, including as Secretary of Commerce a Republican businesswomen from Johnson County who had business ties to Republican fundraiser and former Lieutenant Governor Dave Owen. Finney had been a Republican at the beginning of her political career, and she brought a number of G.O.P. associates into her circle. Her strong anti-abortion position produced support from conservative groups that rarely voted Democrat. (Hayden, in fact, had stressed his "pro-choice" stand as a major campaign issue.)

Finney made two issues from her campaign the top of her agenda for the 1991 Session: property tax relief and the enactment of initiative and referendum. The latter reflected her "populist perspective," but it drew most of its support from taxpayer groups organized around the property tax issue. Constitutional amendments on initiative and referendum received visible hearings and debate in the House, but failed to receive the necessary two-thirds vote to pass.

The governor's property tax strategy was also unsuccessful. In the campaign, she had seized upon a list of exemptions to state sales tax which, if repealed, were expected to generate hundreds of millions of dollars. In her first year budget proposal, Finney called for the repeal of many of those exemptions, and also extending the sales tax to a number of professional and personal services, to raise over $450 million. Most of this revenue would be used to increase state school aid, which would reduce property taxes for schools. The governor also endorsed several of the school finance changes recommended by the 1990 Special Committee on School Finance, including the new definition of district wealth and merging the fourth and fifth enrollment categories. This plan would clearly link property tax relief with changes in school finance.

Although Finney's tax proposal would raise state revenue by the largest amount in state history, she insisted that her proposal was not a tax increase because it repealed exemptions and taxed services without raising either sales or income tax rates. However, virtually every exemption was either politically popular (residential utility bills, for example), adopted for economic development reasons (retail sales of aircraft, which benefited the light aircraft industry in Wichita), or was defended by other powerful lobby groups (used farm equipment, manufacturing machinery).

The tax on services was strongly opposed by those professions which would be affected, notably lawyers, medical providers, engineers and accountants. Opposition was particularly intense in Johnson County, whose legislative representatives argued that providers of such services could easily move across the state line, or would be at a competitive disadvantage to services located in other states. At the same time, many contended that taxing personal services, such as haircuts, would be unfair to "the little guy" if the professions were not taxed. After weeks of hearings, the House Taxation Committee, controlled by Finney's own party, refused to approve most elements of her plan.

School Finance Reform in the 1991 Session

Meanwhile, a school finance bill was moving through the 1991 Legislature. The change in district wealth calculation and the merging of the two largest enrollment categories survived both chambers. On the other hand, the minimum mill levy was watered down by the first committee to review the bill. Instead of requiring a minimum tax and recapturing any excess, an amendment provided that any district with a tax levy below the 30 mill minimum would lose a portion of its categorical aid. (However, special education - the largest categorical aid program - was exempted.)

To soften the shifts in state aid these changes would produce - and the increase in property taxes required to make up the loss in some districts - the Legislature also provided for a three year "hold harmless" plan. In the first year, districts would receive 87.5% of any "loss" in state aid, dropping to 50% in the second year, 25% in the third year, then zero.

The Senate had passed the school finance bill first, with budget limits of 1-3%. Without an increase in state aid, school districts would have to raise property taxes by $150 million to fund budgets at that level. Especially hard hit by property tax increases would be those districts losing state aid under the new formula. Senate Republican leaders began to have second thoughts over the prospect of raising taxes for increased state school aid, or allowing property taxes to rise dramatically. Senator Eric Yost of Wichita, a self-styled "maverick conservative," launched a series of speeches from the floor blasting recent increases in school district budgets, which he called "feeding the beast" of school finance, and criticizing the quality of public education.

House Democrat leaders, strongly supported by the political action committee of the Kansas-National Education Association, were eager to "lock in" budget limits at 1-3%. They won passage of the Senate version without amendment, sending that bill directly to Governor Finney, who signed it. The House also passed a $120 million increase in personal and corporate income taxes dedicated to school finance, which would allow a property tax decrease of $35 million. (Because of the way property taxes are collected over two fiscal years, every dollar of increased state aid resulted in a property tax reduction greater than one dollar.) On the eve of the Legislature's traditional "first adjournment," the Senate Assessment and Taxation Committee approved a tax bill that would raise $100 million in individual income taxes, and $50 million from a quarter-percent increase in the state sales tax.

After adjourning the 90-day regular session, the Kansas Legislature traditionally takes a two-week break, then returns for a "veto session" to consider bills that have been vetoed and other clean-up measures. In 1991, the biggest issues - school finance, taxes and educational appropriations - were still unresolved. During the longest veto session up to that point, legislators finally reached agreement on a school finance plan, along with a tax bill raising $140 million in income and sales taxes. Most of the provisions in the school finance formula were maintained. But as a price for supporting the tax increase, several Senate Republicans demanded a new bill with budget limits lowered to 0.75-1.5%. Almost unnoticed, the same bill limited the amount of hold harmless aid a district could receive to $700,000. With increased state aid from the sales and income tax increase, this was expected to cap only a few districts that were growing. In effect, it simply meant that they would not receive "hold harmless" aid for additional students.

As House and Senate leaders finalized the agreement, the governor announced her biggest surprise of the session, issuing a terse press release saying she would veto the $140 million tax bill, calling it "too little and too late." When the Legislature passed the bill anyway, Finney ignored the pleas of her party's leaders in the House and vetoed both the tax bill and a $55 million line item appropriation for school aid. An override attempt by the House on the usually ceremonial final adjournment date fell a handful of votes short. The veto also required an across-the-board cut in budgets already approved by the Legislature to stay within the state's balanced budget and cash reserve law.

The result of the veto was less state aid for schools, which meant an overall increase in property taxes was required to simply spend the same amount as the previous year. Any increase in district budgets would require even more in property tax increases. Although the modified formula shifted state aid to some districts, other districts lost aid, which had to be made up in property taxes. For a number of districts in the most populated parts of the state, double-didget increases in mill levies were needed just to provide small increases in budgets, or no increase at all. It also meant that most Fourth Enrollment Category districts could not take advantage of the higher budget limits allowed by the new formula, because it would have required a politically unacceptable increase in the school district mill levy..

The final, unanticipated result of the veto came from the hold harmless provision and the $700,000 cap in hold harmless aid. The veto meant the reductions in state aid would be far greater than anticipated when the bill was passed. While most districts were "held harmless" at 87.5%, meaning that they would lose no more than 12.5% of their previous aid, the cap meant the districts with the largest losses would fare the worst. The most extreme case was Wichita, which lost $14 million in general state aid. Under the 87.5% provision, Wichita would have received over $11 million of the $14 million in hold harmless aid. But the cap limited such aid to $700,000, which meant the effective hold harmless rate for Wichita was not 87.5%, but 5%. Several other large districts, including Topeka and Olathe, also received much greater cuts in state aid due to the cap.

Within weeks of the end of the session, the Wichita school district filed the fourth school finance lawsuit. It was consolidated with the other cases. In June, the District Court denied a request from Wichita for an injunction that would remove the $700,000 hold harmless cap - or remove the hold harmless provision completely. Instead, Judge Bullock proceeded with preparations for trial, culminating in his October 15 ruling.

Chapter 5 - The Governor's Task Force

One day after Judge Bullock's preliminary ruling, Governor Finney issued Executive Order 91-147, which created a sixteen-member Task Force on Public School Finance. The order directed the Task Force to "consider the governing rules of law set forth in the Judge's October 14 order and shall make recommendations concerning public school finance in Kansas."

Members of the Task Force

The governor named Representative Rick Bowden, a high school teacher from a suburban Wichita district, to chair the committee. Like Finney, Bowden was a Democrat. Less than one year before, it appeared he had been defeated in the general election by 24 votes, until a recount indicated that he had actually won by nine votes. His narrow victory gave the House Democrats a one-vote majority, 63-62, which made it possible for Bowden to chair the House Education Committee.

Bowden had been a social studies teacher and cross country coach at Goddard High School when he was elected to the Legislature. Eventually, the Goddard school board refused to continue to hire a substitute for Bowden's position each spring during the session and Bowden was forced to resign from the district. He was then hired by the Wichita school district and ended up working in a new magnet high school. Bowden also did some work on the family farm, giving him a tie to the traditions of rural Kansas. His support for higher taxes to fund education and a sometimes liberal voting record - especially on abortion - made him vulnerable in a generally conservative district. But when he became chair of the Education Committee, he said that improving the school funding system was more important than re-election. Those who knew him believed him. Considered by most to be scrupulously fair, he would still give the K-NEA, the state's dominant teachers association, a more sympathetic hearing than the Republicans who had led the committee for the last twelve years.

Other Democrat legislators appointed by the governor included Bowden's committee vice chairman, Representative Bill Reardon, a government teacher who represented an urban Kansas City district but taught in a Catholic high school in Johnson County; Senator Nancy Parrish, a Topeka lawyer and former special education teacher who was the ranking minority member on the Senate Education Committee; and Senator Jerry Karr, an Emporia hog farmer with a PhD from Southern Illinois University, in his second year as Senate Minority Leader.

Two Republican appointees had been in the Legislature since the 1960's - before the last major change in school finance in 1972 when the SDEA began. Representative Don Crumbaker, a retired Thomas County farmer, had served over twenty years in the House and spent many years as chairman of the House Education Committee with Republican majorities. Greatly respected, especially by his successor as chairman, Rick Bowden, he was perhaps the most effective champion of rural schools. But with his party in minority status, his influence was lessened.

On the other hand, Senator Joe Harder of Moundridge, a retired executive of a McPherson county telephone company and at 75 years of age the longest-serving member of the Senate - 31 years, had chaired the Education Committee for almost a quarter-century. Often called the "dean" of school finance in the Legislature, he was known for his ability to find compromises among liberals and conservatives, urban and rural interests and Republicans and Democrats. He had quickly developed an effective working relationship with Bowden. The two Education Committee chairmen would have the most important responsibility for steering any change in school finance through the 1992 Session.

Other Republicans were Senator Sheila Frahm from Colby, vice chair of the Education Committee and a former member of the State Board of Education; and Representative Cindy Empson of

Independence. Crumbaker, Frahm and Empson were each former members of a local school board. The balance of the legislative appointments was obvious: the Democrats represented mostly urban areas and had personal ties to the teaching profession; the Republican represented mostly rural areas with ties to school board management.

Governor Finney also appointed eight non-legislative members to the Task Force: her chief of staff, Susan Seltsam; Secretary of Revenue Mark Beshears; Director of the Budget Gloria Timmer and the budget division's education analyst Dan Hermes; the governor's education liaison, Ladislado Hernandez; Appointments Secretary Mary Holladay (the governor's daughter); Legislative Liaison Gary Reser; and the Chairman of the State Board of Education, Tim Emert.

Activities of the Task Force

The Task Force moved rapidly, meeting November 1 to receive background information from state education department and legislative staff and legal counsel from attorneys representing the State Board of Education and the state attorney general's office. A week later, on November 7 and 8, the committee received a briefing from out-of-state consultants, held public hearings, and began drafting preliminary recommendations.

A panel of consultants, including John Myers, a former Kansas legislator serving as director of education programs for the National Conference of State Legislatures, and John Augenblick, a nationally-known consultant on school finance, outlined two broad options the Task Force could choose.

The first, and most revolutionary, option would be total state assumption of school finance. All revenue sources for schools, including any property tax, would be determined by the Legislature and assessed uniformly throughout the state. Funds would be distributed to school districts on a per pupil basis, with weighting for different costs established by the state. Local discretion in spending would be eliminated. The consultants noted that no state with multiple school districts had a system so completely controlled by the state.

The second option would retain the general concept of the SDEA, but perform major surgery - far beyond what the Special Committee had recommended just one year before. The consultants made the following recommendations. First, eliminate the income tax rebate as an excessively "unequal" source of district revenue. Second, "equalize" categorical programs such as special education and transportation, which would require wealthy districts to pay a greater share of the costs of the programs. Third, provide significantly higher budget limits for low spending districts: a spread of 1-15% was suggested.

The consultants also warned that the lack of any state support for capital expenditures was clearly a problem. Solutions suggested ranged from full state funding of buildings and other capital costs to providing state aid for on-going capital outlay and construction bond payments.

The idea of a "radical" restructuring of the school finance system, rather than modification of the SDEA, received support from two major educational organizations during public hearings. K-NEA, which represented local affiliates in a majority of school districts and was a major campaign contributor to legislators through its political action committee, proposed that the state assume full funding of the public school system. K-NEA recommended that a 56 mill statewide property tax levy be imposed as one source of financing, replacing local mill levies. The state would distribute funding to school districts on a per pupil basis, with weighting factors for certain high cost pupils and programs, as well as a factor for sparsity/density that would compensate districts that have low enrollments because of sparse populations.

The United School Administrators (USA), an "umbrella" organization representing superintendents, principals and others in school administration, proposed that a base budget per pupil of

$3,700 be established, with weighting for high cost students and programs. For low enrollment districts, this figure would rise by linear transition to the average cost of districts with enrollments under 400. Budgets for districts with budgets per pupil above this line would be restricted; below this line, districts would receive a 10% annually until they reached it. Both USA and K-NEA proposed that a statewide levy for capital outlay be imposed.

These proposals were similar to the "radical" first option presented by the consultant panel. They would depart from the concept of the SDEA by reducing or eliminating local discretion in setting budgets and tax rates. Despite clear reluctance on the part of Republican members, the Task Force moved quickly in this direction. Led by Democrat members and the governor's appointees, the task force put together the following plan:

The Task Force Proposal

Full State Funding. The state would set school district spending levels and provide all revenue to fund those levels. The income tax rebate would be eliminated, although the Legislature could continue to use these funds as a source of school financing. Another component of the plan would be a uniform statewide property tax. According to attorney general opinions requested by the Task Force, the Kansas Constitution would require that such a tax - imposed directly be the state - would have to be renewed by the Legislature at least every two years.

District Budgets Based on Weighting. A base budget per pupil would be established by using the median 1991-92 BPP for districts with enrollment of 2,000 and over. District expenditures would be determined by multiplying the base amount by weighted enrollment. Enrollment would be weighted to account for the following factors: the number of students in special education, vocational and bilingual programs; transportation costs; low enrollment costs; and other factors as determined by the Legislature. A few categorical programs would be continued, and districts could apply to the State Board of Education for additional funds in emergencies from a special state reserve fund.

School Facilities. Future school remodeling, reconstruction and construction would be subject to state level approval and full state funding. A uniform statewide property tax levy would be imposed as a revenue source.

Current Cash Balances. Any school district cash balances that remained at the conclusion of the 1991-92 school year would be "recaptured" by the state. This meant that districts which had built up large balances or "savings" would not have an advantage over other districts.

On November 13, the final report was adopted by consensus, but only with a statement that individual members of the Task Force were not bound to support the proposals when they reached the Legislature. It was to be "a first step." The Task Force recommendations were presented to Governor Finney for consideration prior to developing her budget proposal. Across the state, battle lines were quickly being drawn. The recommendations immediately generated fierce controversy for two basic reasons.

The Politics of the Task Force Plan

First, although the Task Force did not discuss the amount of funding from various tax sources, Governor Finney had previously announced her opposition to any increase in overall school spending, or any tax increase other than what she called "repealing loopholes" - taxing sales and services that were exempt from sales tax. This implied that a uniform statewide property tax for schools would have to raise the same total amount that individual district levies were currently raising, and that the state base budget and weighting factors would be set in such a way that overall spending would not increase.

In this situation, property tax reductions in some districts would be offset by increases in others. Likewise, every dollar of budget increase in low spending districts would be offset by reductions in others. Equalization would be achieved by both bringing up the low spending and bringing down the high spending. While this meant there would be many "winners," there would also many "losers," making it hard to argue that the state as a whole was clearly a winner.

Although the impact of the proposal on spending could not be immediately calculated because of the complexity in developing the weighting factors, the tax picture was easy to figure. It would take a statewide levy of about 60 mills to raise the same amount of property tax for schools. For over half the districts in the state (about 57%), property taxes would actually increase because current levies in those districts were less than 60 mills. On the other hand, those districts that would receive property tax reductions enrolled a majority of students in the state. Three of the five districts with enrollments over 10,000 and 30 of the 33 districts with enrollments between 2,000 and 10,000 had tax rates over 60 mills.

Those relatively high enrollment, high tax districts were dominant in three of the state's four largest counties: Sedgwick, Shawnee and the western half of Johnson County. In the 1990 election, Democrats had increased their representation in precisely those three areas by seven seats en route to winning the House majority by a single vote. (In fact, the net increase for House Democrats statewide was seven seats.) These areas of the state also had experienced the biggest increases in general fund mill levies following the school finance changes and tax veto in the 1991 Session. General fund operating levies had increased from 75.3 to 93.9 in Olathe; from 69.7 to 85.9 in Wichita; and from 73.0 to 82.9 in Topeka. For many suburban districts in these counties, high mill levies had gone even higher.

In addition to the "big four," about twenty counties also contained one or more school districts in the fourth enrollment category (2,000-10,000 enrollment). These districts contained a city that was the dominant voting bloc in one or more legislative districts. In addition to tax rates above the statewide median, these school districts were almost all among the lowest spending per pupil in the state. Although one of the school finance changes in the 1991 Session had allowed these districts additional budget increases to "catch up" with the fifth enrollment category, the cuts in state aid resulting from the governor's veto meant that many fourth enrollment districts had to increase mill levies just to maintain current budgets levels. As a result, little progress was made in "catching up". These populous, high tax and relatively low spending districts would likely benefit from a system that set a statewide base budget (that was not too low), and a statewide mill levy (that was not too high).

On the other hand, the strongest opposition was located at opposite ends of the state. Eastern Johnson County contained two of the state's largest schools districts, Shawnee Mission and Blue Valley, with large, affluent populations and concentrations of wealth that allowed for relatively low taxes. The mill levy in Shawnee Mission had actually decreased slightly between 1990 and 1991, from 39.8 to 37.9. While the general fund mill levy in Blue Valley was actually very close to the 60 mill statewide average, the district budget per pupil was not only much higher than any other fourth enrollment district, it was also considerably higher than any fifth enrollment district (Blue Valley's enrollment would soon pass 10,000). This high budget per pupil would be threatened by a statewide limit on per pupil spending.

At the other end of the state, southwest Kansas contained the Hugoton natural gas field and some of the state's most sparse populations. This gave a number of small districts very high wealth per pupil and very low tax rates. In addition, a handful of districts around the state with large power plants were also able to operate at very low tax rates. The most extreme example was USD 244 (Burlington) in Coffey County, home of Wolf Creek, the state's only nuclear power plant, which needed only nine mills to operate its school system. These "high wealth" districts made up a relatively small percentage of all Kansas school districts and were represented by far fewer legislators than the "high tax" group. However, they had potential allies among the two hundred or so school districts in the first, second and third enrollment categories (enrollments under 2,000) that made up the rest of the state. Such an alliance would have to be built on the second reason the Task Force plan was so controversial: the threatened loss of local control.

For many Kansans, especially in rural areas, anything that reduced local decision-making authority would be viewed with suspicion, or even hostility. The tradition of local control of education is especially strong, going back to the development of local boards to oversee one-room schools. Although the SDEA placed limits on district budget increases, it still allowed disparities in district spending, and allowed districts to exceed those limits by a vote of the people. Small districts, especially in rural areas, tended to believe that schools were vital to the continuing health - or even existence - of their communities. Because such districts are more expensive on a per pupil basis, representatives of these areas feared that greater state control and limits on district spending would force small districts to consolidate and close schools, to shift money to more populous urban areas. (In fact, calls for consolidation of school districts and other local services from urban legislators were increasingly common.) Any school finance plan that placed all decisions on spending, tax rates and facilities at the state level was bound to generate widespread opposition from many areas around the state.

As tension in political and education circles mounted in the weeks leading up to the beginning of the 1992 Legislative session in January, many observers felt the chances of a legislative solution to the issues raised by Judge Bullock's order seemed remote. As noted above, the Task Force plan would be extremely controversial. Even if the issue of local control could be minimized, the Legislature was unlikely to dramatically force down the budgets of so many school districts to increase spending in others, or to dramatically raise taxes in over half of the districts in the state with a uniform mill levy to lower rates in the rest.

A more acceptable alternative would be to provide increased funding for low budget districts while holding high budget districts harmless. Likewise, a uniform mill levy would be much more acceptable if it were set so low that taxes would be cut in most districts and increased in relatively few. But these steps could be accomplished only by increasing the proportion of school district budgets funded by state taxes, most likely sales and income taxes. These alternatives would likely require hundreds of millions of dollars. Governor Finney had vetoed a much more modest tax increase less than a year before, and had taken a firm position against any increase in total school spending. While the governor indicated she would accept raising revenue for property tax relief by repealing sales tax exemptions and taxing services - which she continued to argue would not be a tax increase - this alternative did not seem to be supported by a simple majority in either chamber of the Legislature. At the same time, it seemed highly unlikely that a two-thirds majority in both the House and Senate could agree on any alternative that could be passed over her veto.

In short, the chances of legislative deadlock - and judicial intervention - seemed far more likely.

Chapter 6 - Alternatives Develop in the House

Except during a new governor's first year in office, the chief executive traditionally gives the "State of the State" address on the second day of the Legislative session, which in 1992 fell on Tuesday, January 14. At the same time, the governor releases the Budget Message, which contains recommendations for budget adjustments in the current fiscal year and spending levels for the following fiscal year.

The Governor's Budget Proposal

Governor Finney's proposed budget for FY 1993, the 92-93 school year, included a school finance proposal based closely on the recommendations of her Task Force. On the spending side, she proposed total school budgets at the same amount per pupil as FY 1992 (with an overall increase to account for increased enrollment). This meant a base budget amount per pupil of $3,638.29. School districts would be able to "weight" their actual enrollment for students in special education, bilingual education and vocational education programs, and for transportation costs. Categorical programs in each of these areas were eliminated. Districts would also receive a low enrollment weighting.

On the tax side, Governor Finney proposed a uniform mill levy for operating budgets of 60.34 mills. However, she recommended that the Legislature reduce that levy to 45 mills by providing $217 million in additional state support. She would accept the $217 million increase if it came from the following sources: an estimated $30 million from a new state video lottery game, one-time "revenue accelerators" that would raise $22 million, and $165 million from repealing any combination of 35 sales tax exemptions.

For facilities, she proposed a uniform 3.33 mill levy "on top of" the uniform operating levy that would finance state-approved construction projects. This levy would raise the same amount as school districts were currently raising individually through capital outlay levies ranging from zero to four mills. This would mean that unless a district qualified to receive state construction aid, any district discretion in building and equipment purchases would have to be taken from the operating budget.

The Legislature's Staff Support

It took one week for the State Department of Education to convert the governor's recommendations to a computer print-out that showed the impact of the plan on individual districts. To understand the importance of the State Department's computer print-out, remember that any change in the school finance formula is likely to affect each district differently. The print-out is a simulation of a particular school finance plan, showing the impact on each district's tax rate and budget. Because legislators naturally tend to look first at the impact any policy decision has on their own constituents, the print-outs influence how legislators vote. This occurred despite the urging of Education Committee chairmen Rick Bowden and Joe Harder to consider the state as a whole, and to "stop voting by print-out." (In fact, as both admitted, Bowden and Harder represented a number of very different school districts, so almost any option was likely to please some of their constituents and displease others.)

The print-outs were prepared by the State Department of Education under the direction of Deputy Commissioner Dale Dennis, who ran the Department's fiscal services and quality control division. Mr. Dennis was enormously respected by both legislators and the education community for his competence and integrity. In fact, at the beginning of the 1992 Session, the Topeka Capitol Journal newspaper ran a highly complimentary profile of the Deputy Commissioner that reported nothing but praise. In a situation unique for an agency bureaucrat, when the Education Committees met, Mr. Dennis sat and worked with the legislature's own staff: Ben Barrett from the Legislative Research Department and Avis Swartzman from the Revisor of Statutes office. "Dale, Ben and Avis" had provided the staff support for the entire school finance debate in every session for at least the past 20 years. Every side was comfortable working with them, confiding, developing plans and seeking advice. None of the various proposals developed during the session would have been viable for consideration without their assistance.

The Governor's Proposal: Winners and Losers

As the first print-out of the 1992 Session, showing the results of the governor's proposals, was placed on the desks of House members, lobbyists joked that the thuds you were hearing was Johnson County legislators dropping from heart attacks. With a $3,656 budget per pupil, the three largest districts in that county would have had to cut their budgets by a combined total of over $38 million. As a percentage of budget, Blue Valley would be cut 28%, Olathe 14% and Shawnee Mission 13%. About 100 other districts also lost budget authority, most of them fairly small, rural districts. (Those districts receiving reductions were, of course, the higher spending districts - the higher the budget per pupil, the greater the loss).

Of course, this meant approximately 200 districts gained in budget per pupil, including every district in Sedgwick, Shawnee and Wyandotte County, and almost every fourth enrollment category district - a sizable block of legislative votes. Moreover, the general operating tax levy of over 250 of the 304 school districts would be lowered under the 45 mill statewide levy. In fact, taxes would be lower in every district with over 2,000 students except Shawnee Mission - in some cases, cut in half.

The governor's plan had not yet been introduced in bill form, and Representative Bowden announced he was working on a plan that would modify the governor's plan for introduction by the House Education Committee. He and Representative Joan Wagnon (D-Topeka), chair of the House Taxation Committee began a series of "Wednesday lunches" open to all House members to discuss school budget and tax issues. Hearings on school finance were put off several weeks into the session.

House Republicans Develop Alternatives

Meanwhile, House Republicans were trying out various responses to the school finance issue. Representative David Heinemann and 11 co-sponsors introduced a resolution requesting the state attorney general take action to get a fast answer from the court system as to what the constitution required for school finance.

Representative Crumbaker introduced the first bill based on "fixing the SDEA" - H.B. 2826. It would impose a minimum mill levy of eight mills (because the lowest mill levy at the time was nine mills, this provision would have little practical effect), and a 15% income tax surcharge that would be retained by local districts (this would be comparable to increasing the income tax rebate). It would also reverse one of the changes made the year before regarding the definition of district wealth by going back to the sum of assessed valuation and taxable income. It would set budget controls at 1-3%, plus continuing to merge the fourth and fifth enrollment categories for the next school year. Finally, districts could also increase the proposed income tax surcharge in increments of 10% on a local option basis, subject to a vote of the people.

Obviously, Crumbaker's plan did little to move in the direction either the 1990 Special Committee or the Task Force had recommended. The only additional state school aid would be approximately $25 million in new funding from the income tax surcharge, which would provide a statewide property tax reduction of nearly $18 million. However, taxes would actually increase in many of the districts with the highest levies, including most of the fourth and fifth enrollment categories (largely due to counting income more in district wealth).

A more serious surgery on the SDEA was proposed by Representative Jim Lowther of Emporia in H.B. 2914. His plan would have phased-out the income tax rebate over three years, and eliminated income from the definition of district wealth at the same rate. It provided a minimum mill levy of 80% of the statewide median, but districts with mill levies below that level would simply lose categorical aid. A state aid program for capital improvement would be established. Budget controls would be set at 0.5-1.5% for the upcoming school year. The print-out for Lowther's plan was attractive to many more school districts than Crumbaker's: it sharply reduced mill levies in most fourth enrollment districts and in Wichita, Topeka, Kansas City, Olathe and Blue Valley. Only Shawnee Mission would see a property tax increase among large districts, as well as many of the small, high wealth districts.

However, Lowther's proposal required over $200 million in new state aid, requiring a substantial state tax increase. The problem in developing any Republican alternative was the division of G.O.P. House members between those in Johnson County and western Kansas who wanted little change in the SDEA and little, if any, additional state taxes; and those in fourth enrollment districts and Sedgwick, Shawnee and Wyandotte Counties whose districts would need a substantial increase in state aid and a more equitable formula to see any advantage.

Democrats Modify the Governor's Plan

Nearly a month into the session, the House Democrat leadership finally introduced through the Education Committee a school finance plan based on the Task Force concepts and the governor's recommendations. H.B. 2891 would establish a statewide levy of 45 mills, as recommended by the governor. H.B. 2892 would establish a base budget per pupil of $3,675. District enrollments would be weighted for bilingual education, vocational education, a more generous low enrollment weighting than proposed by the governor, and transportation costs. The new plan did not provide a weighting for special education, meaning the state would continue to fund special education aid as a categorical program.

The leadership plan added a new concept: weighting for "at risk" students, based on the number of students who qualified for free meals under the National School Lunch Program (an income criteria). It was generally agreed that at risk children needed a greater effort on the part of schools to succeed; an effort that justified greater expenditures. There was also a political factor. The at risk weighting would give more budget authority to districts with large numbers of low income children, such as Kansas City, Topeka and Wichita, which were also areas where Democrats were strongest. Legislative votes from these districts were critical to passing the new plan. However, these fifth enrollment category districts already had higher budgets per pupil than the proposed base budget. The at risk weighting would help make up the loss.

A significant departure from the governor's plan was authority for a local option budget (LOB). School boards would be allowed to approve additional spending up to 10% of the base budget. "Supplemental" state aid would be provided for the LOB so as to treat each district as if its assessed valuation per pupil (AVPP) was equal to that of a district at the 75th percentile of AVPP. In other words, districts in the top 25% of AVPP would receive no state aid to fund the LOB. As district AVPP dropped below the 75th percentile, the state would pay an increasing share of the cost of the LOB. This feature added a degree of local budget discretion to the original Task Force plan. It would also allow districts losing budget authority under the new base budget to make up at least some of the loss with additional local tax effort.

Bowden's committee bills did not include the Task Force plan for the state to assume full funding of capital expenditures. Districts would continue to have the authority to levy up to four mills for capital outlay and to issue bonds for construction, all paid for with local funds.

In announcing introduction of these bills, Speaker Marvin Barkis also urged the Education Committee to consider a concept proposed by Representative Gary Blumenthal, a Democrat on the Education Committee who represented a part of the Shawnee Mission school district. The concept, called the local enhancement budget (LEB), would allow districts to spend an additional 15% of their base budget beyond the local option budget if approved by the State Board of Education. The LEB would have to be justified based on a rather broad list of factors, including cost of living variances, innovative programs, and unique student needs. No state aid would be provided for the LEB; instead, funding would be equalized in a rather unusual fashion. The State Board would calculate the total cost of approved local enhancement budgets, and a uniform mill levy would be assessed in all districts which were participating in the LEB. In other words, if ten districts were approved for LEBs, the state board would determine the total cost of the ten LEB's, the total assessed valuation in the ten participating districts, and the mill levy necessary to fund the total cost. Each of the ten districts would have the same additional mill levy for their LEB.

Because the House leadership plan had a higher base budget than the governor's plan, more weighting for low enrollment and an added weighting for at-risk pupils, the number of districts faced with budget reductions at the base level was reduced from about 100 under the governor's plan to 22 under H.B. 2892. With the 10% local option, only 12 districts (Shawnee Mission, Blue Valley and several very small or very high wealth districts in western Kansas) were budget losers. Representative Blumenthal's LEB concept would allow districts to cover most of those losses. The statewide mill levy was the same as the governor's, but those districts using the LOB and LEB would have additional local mill levies for those budgets.

Although the House Democrat plan would provide property tax reductions for most districts, increase the budgets of low spending districts, and provide opportunities for most high spending districts to maintain their budgets, it had a major drawback: cost. The governor's budget proposed no increase in total school spending. The House plan would require over $30 million in additional spending for the base amount alone. The local option amount would allow districts to spend an additional $190 million, although the State Department estimated that only about half of this amount would be used in the first year. The department also estimated that the LEB could total over $35 million. This meant that rather than holding school spending level, it would actually increase by nearly $200 million - by far the largest increase in state history. This would be the cost of "equalizing up" - increasing low spending districts toward a common base, while allowing high spending districts to continue to spend above the base.

But the cost to the state would be even greater. Combining the cost of the higher base budget spending and the state's equalizing aid for the local option budget with the $217 million needed to reduce a statewide mill levy from 60 to 45 mills, the state would need to raise over $320 million.

Even this total might not be enough, because House leaders in both parties seemed to be reaching a consensus that the issue of school building costs should be addressed another way. Under H.B. 2835, the state would provide equalization aid for district payments on school facility construction and remodeling projects financed with bonds. The State Board would calculate each district's assessed valuation per pupil (AVPP), rounded to the nearest $1,000. For a district at the median AVPP, the state would pay 50% of these costs. For every $1,000 a district's AVPP exceeded the median, the state would pay 1% less than 50%; for every $1,000 less than the median, the state would pay 1% more than 50%.

The cost of the program was estimated at $31 million, pushing the total school finance price tag to about $350 million - nearly three times the tax bill vetoed by the governor in the previous session.

House Committee Hearings

Representative Bowden scheduled hearings on school finance in the House Education Committee for the second week of February. It was a measure of the feeling surrounding the issue that the hearings themselves became controversial. Faced with the prospect of crowds that would overflow any room at the Statehouse, Bowden accepted an offer from the Kansas Association of School Boards to hold the hearings in a large room at the Kansas Expocentre, a convention facility ten blocks south of the Capitol. KASB had previously reserved several rooms for its annual Governmental Relations Seminar. Several Republicans charged that hearings should not be held away from the Statehouse in conjunction with a private association meeting. However, once the announcement had been made, the Democrat leaders stood by the decision, saying the location would make the proceedings more accessible to the public.

As it turned out, several hundred people packed the room for two days of hearings - the largest crowds for legislative committee hearings anyone could remember. Districts sent busloads of students, parents and patrons to plead their case. After six hours of hearings and dozens of speakers, there were no real surprises. Representatives of lower wealth districts (large and small), and fourth enrollment districts supported the concepts of the House leadership plan, as did most of the educational associations of teachers, administrators and school board members. Representatives of wealthy, low tax districts and high spending districts argued the plan would raise their taxes and reduce the quality of education in their schools.

Two weeks later, the House Education Committee took up consideration of H.B. 2892.

Chapter 7 - "We think we have a winner."

The eleven Democrats and ten Republicans on the House Education Committee assembled at their usual meeting time (3:30 p.m.) and in the usual place (Room 519-S) on February 25. Ben Barrett of the Legislative Research Department presented a memo outlining options the committee might consider.

First, the Legislature could do nothing and wait for the court to rule on the challenges to the current system.

Second, it could try to address those challenges by amendments to the SDEA, such as eliminating the income tax rebate and hold harmless aid, setting a minimum mill levy, equalizing categorical aid programs, establishing minimum and maximum budgets per pupil to limit the range of differences, and providing for pupil weighting instead of utilizing enrollment categories.

Third, it could recommend the model represented by H.B. 2892, the House leadership plan, which provided a statewide mill levy and base budget, with a limited local option budget and taxes, and budgets tied to weighted enrollment.

Fourth, it could return to the original Task Force concept: total state funding of operating and capital expenditures with no local discretion.

House Education Committee Action (Feb. 25)

Following Mr. Barrett's presentation, Chairman Bowden opened the floor for motions. Representative Blumenthal successfully moved to amend H.B. 2892 to include his proposal for the local enhancement budget.

Next, Representative Bruce Larkin, a Democrat who represented a number of small districts in north central Kansas, offered an amendment dealing with transfers from the general fund to the capital outlay fund. It would allow districts to put money budgeted for the current year but not spent into their capital outlay fund before the new plan went into effect. Under the SDEA, districts would simply carry over unspent money, and many districts deliberately "underspent" their budgets. These dollars allowed them to build up large cash reserves, in part because using reserves could help limit the need for future mill levy increases. Larkin's amendment was designed to counter concerns that "changing the rules in the middle of the game" would encourage spending excess cash recklessly to avoid having the state take over their reserves. But the amendment only dealt with unspent money already budgeted for the current year. In some districts, large balances that had not been budgeted would remain as a source of revenue for the first year of the new plan.

The issue of transfers and balances had a political dimension as well. Many Democrats opposed giving much flexibility to districts in transfering money from the general fund to other funds, or allowing much carryover. Their allies in K-NEA believed that schools boards used these transfers to avoid having it available for teacher salaries during negotiations, a practice referred to as "squirreling away" money. Bowden and his supporters argued that with the state setting most of the budget and tax levy, district budgets should be "spent on kids, not building up district savings accounts." For opponents, it was one more example of state control eroding local discretion.

Quality Performance Accreditation as School Reform

These were the only Democrat amendments offered as fine-tuning to the new plan. The silence from Republicans made it clear that no alternative plan would be offered in committee. However, the committee began discussing the need to address the issue of "school reform." Several Republicans said that some measure of "reform" had to be included in the bill for their support, but none had specific proposals to offer. Committee members remembered the relatively new accreditation program adopted by the State Board of Education about one year before that was being phased into school districts over several years. Under Quality Performance Accreditation (QPA), schools would be accredited based on meeting ten specified "outcomes." The committee on a voice vote adopted a requirement that all schools be participating in QPA by the 1996-97 school year in order for the district to receive state aid. Little attention was paid to the wording of the QPA documents, and because no one on the committee had prepared an amendment in advance, the revisor simply listed the ten outcomes in the bill.

Although Representative Bowden had set aside three days for discussion on the bill, after just two hours of discussion the committee voted 17-5 to report H.B. 2892 favorably. Several representatives voting "yes" said they were simply voting to move the process along, and that alternatives would be considered on the floor of the House. Still, the vote showed surprising bipartisan support.

House Tax Committee Action (Mar. 3-6)

Of course, the school finance distribution plan itself wasn't the only problem - it had to be funded. H.B. 2892 was next referred to the House Taxation Committee, which, on Tuesday March 3, began hearings on revenue sources for the plan. With almost every "tax on the table," a variety of business and other interest groups argued against any repeal of tax exemptions, or imposing any tax on services. The Kansas Chamber of Commerce and Industry did agree to support an increase in the general sales tax if the revenues were used to lower property taxes, and did support the concept of a minimum mill levy if set low enough. The governor continued to argue against any increase in the sales tax rate, but indicated she might support a "progressive" increase in the individual income tax.

On March 5, committee chairperson Joan Wagnon, a Topeka Democrat, began consideration of the funding bill, H.B. 2891, which contained the 45 mill statewide school levy. To make the 45 mill levy feasible, even without the additional costs of the school finance plan approved by the Education Committee, Representative Wagnon proposed a revenue target of $200 million in new taxes

Committee Democrats decided to first try to raise revenue the governor's way, repealing sales tax exemptions. The governor had submitted a list of 35 exemptions, saying she would support repealing any combination of them. First, the committee rejected a motion to repeal the exemption for all 35. Next, it rejected a motion to impose a 2% tax on all 35, rather than the general sales tax rate of 4.25%. A motion to impose a 1% tax also failed.

A motion to remove the exemption for original construction services came close to passage, but lost on a 10-10 tie. This exemption had long raised equity concerns, because it meant that the cost of labor when constructing a new building was exempt from sales tax, but the cost of labor when remodeling an existing building was not. A motion to repeal the exemptions for farm machinery, enterprise zones and manufacturing machinery and equipment also failed.

Finally, Representative Larkin, who served as House Tax Committee vice chair as well as on the Education Committee, moved to repeal the exemption for most utilities, including telephone, gas, electric, water and propane. The motion, which would raise about $63.5 million the first year and $72.6 million annually, carried. (It also contained a provision to increase a state rebate program for low-income energy customers that would cost the state an additional $7 million a year.) But for Democrats, this option was a bitter pill: ten years earlier Democrat Governor John Carlin had pushed through this exemption after making high utility rates a major campaign issue.

Then, Representative Bill Roy, a Topeka Democrat, moved to stop dedicating the sales tax rate of 0.25% to the state highway fund. This would free up about $58 million annually for the state general fund. Roy's motion would have raised the state gas tax four cents a gallon to replace revenue in the highway fund. This dedicated portion of the sales tax was part of a comprehensive highway plan passed with the strong support of former Republican Governor Mike Hayden. The highway plan was an issue that had divided Democrats; some calling the plan excessively expensive, but others strongly supportive because it would improve highway connections in their districts. Roy's motion failed.

At the end of the first day, the Democrat-controlled committee had accomplished nothing but repealing the one exemption most Democrats supported, and remained well over $100 million short of raising its revenue target. But the next day, March 6, the committee leadership came back with a new game plan and had apparently lined up the votes.

Representative Larkin successfully moved to repeal the exemption on lottery tickets, which would raise about $3 million. Then Representative Jesse Harder, a Democrat representing a rural district northeast of Hutchinson, proposed an increase in the state income tax that would raise about $138 million. It passed 12-9, mostly on party lines. An effort by Republicans to reduce the income tax increase by approximately $30 million failed 9-11 strictly on party lines. Next, Larkin moved to adopt a corporate income tax increase that would raise nearly $8 million, but would actually reduce the rate on companies with lower incomes. It carried 11-10. Republicans made a final effort to lower the state severance tax on natural gas at a cost to the state of $25 million, failng 10-11. Under Wagnon's direction, the now heavily amended H.B. 2891 was amended into H.B. 2892, the school finance measure just approved by the Education Committee, and H.B. 2892 was reported favorably. The school finance plan was now linked to a 45 mill statewide levy and $205 million state tax increase in a single bill.

The question was now: could the measure pass the House? The tax components had been approved by narrow margins in committee, and the Democrat leadership had only a single vote margin in the full House.

The House Republican Alternative

Meanwhile, House Republicans had crafted an alternative school finance plan that would modify the SDEA. But the Republicans had not been able to resolve their central problem: how much "equalization" and property tax relief were they willing to pay for with other taxes? The alternative plan proposed by the House Republican leadership was generally based on the bill introduced by Representative Crumbaker. First, it required a minimum levy of 15 mills (only one district in the state had a lower levy) and a 15% surcharge on income tax liability, and it retained the 24% income tax rebate. If these items provided more funding than the district's general fund budget required, the excess would be used to reduce categorical state aid. Money saved by these reductions would be redistributed to other districts as general state aid.

Second, it allowed districts to impose an additional local option income tax surcharge in 10% increments, if approved by district voters.

Third, it provided equalization aid for that portion of categorical programs that were not funded at 100% by the state. In other words, if the state paid directly 80% of special education costs, a district would receive equalization aid for the other 20% at the same percentage it received for the general fund budget. It also provided state aid at that percentage for capital outlay expenditures.

Fourth, it provided budget limits of 1-3%, plus an additional 5.9% for fourth enrollment districts up to the median budget per pupil of the fifth enrollment category for the next school year, 1992-93. This continued the merger of the two largest enrollment categories begun in the 1991 changes to the SDEA. However, it also reduced the definition of wealth for state aid from 100% to 50%, which would have a

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negative impact on income intensive (especially urban) districts.

The income tax surcharge would raise individual income taxes by $111 million statewide when fully implemented, compared to the $138 million increase in H.B. 2892 approved by the tax committee. As a surcharge, it was also less progressive than the committee version. With no other increase in state school funding, the Republican plan would reduce property taxes statewide by an estimated $106 million, or 7.1 mills. The property tax reduction provided at that level would not even make up for the increase experienced by school districts statewide in the previous year. Critics said this plan made only minimum progress toward equalization and even less toward significant property tax relief.

Because the plan continued the basic framework of the SDEA, adding more state aid with given budget limits would work through the formula to lower property taxes. The Republican leadership circulated a printout showing the effect of adding another $200 million, plus the 15% income tax surcharge. This would reduce property taxes statewide by $379 million statewide, or 25.3 mills. It would provide substantial reductions in high tax districts, but it would also reduce low tax district levies substantially as well. However, the Republican caucus could not agree on a plan to raise those additional revenues. Meanwhile, the Democrat leadership had prepared a new strategy for H.B. 2892. It was released at an open caucus meeting of House Democrats on Monday, March 9.

House Democrats Up the Ante

Reporters, lobbyists and a number of House Republicans who had been alerted crowded around the edges of Room 313-S, which had been the State Supreme Court chamber until the new judicial center had been built for the Court and attorney general. Now it was the largest meeting room in the State Capitol, used for special committee hearings, receptions and the House Democrat caucus meeting. Speaker Barkis began the meeting as his aides distributed a news release, stressing the main points of the revised plan.

"We have a proposal that we believe is a winner," said Barkis. "This proposal meets the needs of our children and the constitutional responsibilities of the state, and provides the greatest property tax reductions ever offered."

The plan called for sticking with the school finance system developed by the education committee: raising all low spending districts to a base level, and allowing high spending districts to maintain their budgets through local option mechanisms. "Rather than level the educational quality of all schools to the middle, we take an enormous first step toward the goal that all schools should be raised to a high standard of excellence," the Speaker said.

But the bold new feature was in the funding. Instead of a state mill levy of 45 mills, the Democratic leadership proposed a levy of 29 mills, which would cut statewide school property taxes in half. In addition to the $146 million increase in individual and corporate income taxes and the $60 million raised by ending exemptions which the tax committee had proposed, the new plan would repeal the exemptions for utilities used in production ($33 million) and for original construction services ($80 million). It would also increase the state sales tax rate from 4.25% to 5%, raising an additional $174 million.

Although it would represent the largest tax increase in Kansas history, the Democrat leadership was gambling that the new elements would pull in enough votes to pass. By driving down the minimum mill levy, the benefits of property tax relief were increased: school taxes would be cut by at least one-half and as much as two-thirds in most of the state's populous areas. The proposed progressive income tax increase, coupled with the repeal of several major tax exemptions, would make reimposing the sales tax on utilities easier for many Democrats - including the governor - to support. Finally, by including a sales tax rate increase, the Democrats showed "good faith bargaining" with the Senate and many House Republicans who had argued that a sales tax rate increase had to be part of any package.

Of course, the sales tax increase was the element which Governor Finney would find most objectionable, if not unacceptable. No one was optimistic enough to think the House leadership plan would pass the House by a veto-proof majority, much less the Senate. The same day the new plan was released, Representatives Bowden, Wagnon and Larkin, along with House Majority Leader Tom Sawyer, met with the governor. The next day, her office issued a brief statement.

"We are making progress, targeting a statewide mill levy of 29 mills and broadening the sales tax base," Finney was quoted as saying. "The school finance bill contains many major elements relating to equal educational opportunity for all Kansas children, property tax relief, voter participation and the development of state revenues to finance this. I have consistently called for a broader sales tax base that closes loopholes so more interests pay their fair share of the tax burden. I have opposed any new taxes on the average Kansan."

The governor hadn't exactly said yes, but she hadn't definitely said no. The debate on school finance was scheduled for the full House of Representatives the next day, March 11.

The New Plan Passes the House (Mar. 11)

The House convened at 9:00 a.m. for what was expected to be a long day. The seats of the 125 House members are arranged in semi-circular rows radiating out from a podium with two microphones where "debate" between members occurs. Behind the podium is a raised platform for house clerks; on a higher platform behind them is the speaker's desk and chair. On each side of the platform is a large electronic voting board with the name of every representative followed by three lights: green for "yes," red for "no," and white for "present" or seeking recognition from the chair to speak.

The rules of the House allowed just twenty members to request a roll call vote. In the 1991 school finance debate, this request was made on almost every major question. As a result, voting patterns were easy to see. If a roll call was not requested, voting was by voice and the winning side determined by the chair. If the chairperson was in doubt, or if any member questioned the decision of the chair, a "division" was asked for. Members pressed their green or red lights and the voting boards recorded the totals, but the votes of individual members were not recorded.

Majority Leader Sawyer moved to resolve the House into the Committee of the Whole, the usual procedural method for debating a bill and considering amendments. In the Committee of the Whole, the Speaker relinquishes the chair to another member; in this case, Representative Diane Gjerstad, who recognized Representative Bowden to "carry" H.B. 2892.

"We are faced with a great challenge, but also with a great opportunity to deal with this state's long standing over-reliance on the property tax, and to reduce disparity in spending on education," said Bowden. "Our goal must be to ensure that every child, regardless of where he or she lives, has an equal educational opportunity." He then moved a series of amendments: first a technical clean-up amendment that passed on a voice vote; second, lowering the base budget per pupil $50 to save $25 million, which passed 69-56; and third, requiring that districts spend $22.8 million in categorical program reserves (in addition to spending down general fund reserves) to reduce the first year cost of the plan, which passed 65-59. Every Democrat voted to support Bowden's motions (except maverick Kansas City freshman Tom Love on the second), plus a handful of Republicans.

Next Representative Wagnon was recognized to present the additional tax components of the

Democrat leadership plan, which was divided into six parts. Lowering the minimum mill levy from 45 to 29 mills carried by voice vote. Repealing the sales tax exemption on utilities used in production passed 66-59, with three Republicans joining every Democrat. Increasing the sales tax rate from 4.25% to 5% passed 73-51, with three Democrats voting no and thirteen Republicans voting yes. Repealing the sales tax exemption for original construction passed 63-59, with two Republicans voting yes and one Democrat voting no. The other components concerned technical amendments that carried by voice vote.

The Republicans who supplied the most "yes" votes were former Education Committee vice chair Cindy Empson from Independence, Al Ramirez of Bonner Springs and Sandy Praeger from Lawrence - all moderates representing fourth enrollment category districts - and freshman Mark Parkinson of Olathe, the Johnson County district that had the highest total tax levy in the state.

With the major elements of the leadership plan in place, Representative Lisa Benlon, an Overland Park Republican, moved to restore the exemption for residential utilities that had been removed in committee. This was the most unpopular element of the tax package for rank-and-file Democrats. But only two Democrats voted "yes" with 60 Republicans, and the motion lost on a 62-62 tie. The vote established clearly that the Democrat leadership had the votes to control the debate. But later in the day, they decided the utilities issue was not absolutely vital and some Democrat members were wavering. With the leadership's tacit approval, Benlon's motion was reconsidered, and passed 112-12.

The debate then turned to a concept that the House leadership hoped would sweeten the deal for the governor, who had suggested that the use of local option budget authority should require the approval of district voters in an election. Instead, Bowden offered an amendment that allowed school boards to propose use of LOB authority by publishing a resolution. However, if 10% of the qualified voters in the district signed a petition within 30 days protesting the resolution, the board would have to either drop the resolution or submit it to election. This motion failed; Bowden then offered a second amendment allowing 5% of the voters to protest, which passed.

After another technical amendment was adopted, Representative Clyde Graeber, a Leavenworth Republican, offered an amendment to make use of the local enhancement budget (LEB) subject to voter approval through a mandatory election. The motion passed 97-28. Proponents called it additional taxpayer protection. It was another example of the Republican problem: "anti-tax" conservatives would tend to support it, but the school districts that were most likely to need to use the LEB were high spending, high wealth areas represented primarily by Republicans. That made it an easier "pro-taxpayer" vote for Democrats, many of whose districts would be less likely to need it.

Republican Robert Vancrum of Overland Park proposed to remove the corporate income tax increase, losing 60-63. Three Democrats voted yes, but five Republicans, all from fourth enrollment districts, voted no. Republican Elizabeth Baker of Derby, a suburb of Wichita, proposed maintaining the exemption on original construction, and replacing the revenue that would be lost by an additional 0.25% on the sales tax and an eight cent tax on cigarettes. Her motion lost 29-99.

It was now mid-afternoon; debate on the bill had gone on for over four hours. Republican Robin Jennison of Healy, whose hometown was one of the smallest school districts in the state, rose to offer "the Republican alternative" - a last chance to "fix" the old system. His amendment was essentially the same as the Republican leadership had presented the week before. It would have removed the income tax increase proposed by the Democrat leadership and substituted the 15% increase income tax surcharge. The other tax increases were left in place. After lengthy debate, Jennison's motion failed 49-76. No Democrats voted for it; thirteen Republicans voted no. In addition to the fourth enrollment Republicans who had been supporting the Democrats, Republicans from Topeka and Wichita also joined to keep the new plan intact. It simply offered a much better deal to their districts than the "Republican" alternative.

By late afternoon, debate turned to another "local control" issue. To this point, the 29 mill statewide levy included in the bill was a tax imposed directly by the state. Republican Marvin Smith, representing suburban north Topeka and Jackson County, offered an amendment under which the state would require local districts to impose the 29 mill levy. This meant that the tax would be collected at the county level and sent to school districts as a local source of school funding. State aid would make up the difference needed to fund the base budget. As a result, the 29 mills would not be "sent to Topeka, then sent back," according to Smith. Psychologically, this seemed less threatening. (It also meant that local financial institutions could continue to bank these funds, an issue that had quietly brought these interests into the debate.)

Under Smith's motion, if the 29 mills raised more than was necessary to fund the base budget, the excess would be "recaptured," or transferred to the state. These funds would be used as the first source of any categorical aid the district was entitled to receive. After that, any excess would be transferred into the state school finance fund for general state aid. Smith's proposal lost 59-66, but Democrat Richard Reinhardt of Erie offered a similar motion that did not include any deductions for categorical aid. It passed 112-14. Most of the opposition was from representatives of Johnson County and southwest Kansas, the areas where any "recapture" was likely to come from.

Moving into early evening, Republicans had a few more shots to take. Republican Kerry Patrick of Leawood, generally acknowledged as the leader of a group of conservative Republicans called the "rebels," addressed the issue of tax abatements. Certain areas of the state, especially Sedgwick County, made extensive use of a provision in the state constitution adopted in 1986 that allowed cities and counties to abate certain business property taxes for economic development purposes. Johnson County, along with most rural areas, made relatively little use of abatements. Patrick argued that the new school finance plan, with a uniform base budget and uniform mill levy, meant that abating the school levy in one county would require taxpayers in the rest of state to make up for the lost revenue. In fact, he argued, the new plan would actually encourage local units to take property off the tax rolls for this very purpose.

These arguments were not new, even if the concept of a uniform or minimum mill levy was. Under the SDEA, abated property was not counted in district wealth, which made the district eligible for more state aid. However, supporters of abatements argued that the economic development stimulated by these policies created jobs and income that increased state sales and income tax receipts which benefited the rest of Kansas.

Patrick proposed an amendment to abolish the authority of cities and counties to abate school levies. It failed 45-75. Both Republicans and Democrats from areas using abatements were strongly opposed, and Democrat leaders argued that while the issue was important, it should not be addressed at this point, or in this bill. A second amendment from Patrick on a related subject, the treatment of property that was tax exempt because it was financed with industrial revenue bonds, was also defeated, 40-74.

Republican Georgia Bradford of Wichita then rose to offer amendments on a familiar Republican theme: increased funding for schools should be tied to school "reform." She offered an amendment that included a number of proposals she and other Republicans had introduced as bills; for example, a "high school warranty" plan that would require a district to pay the remedial costs of any graduate who was found to be deficient in basic skills. Democrats argued that the Quality Performance Accreditation requirements already included in the bill were adequate. Bradford's amendment lost 56-68.

The debate had continued for nearly eight hours, but a few more amendments were still to be offered. Republican Jim Lowther of Emporia proposed a slightly smaller income tax increase, losing 59-64. Republican Aldie Ensminger, a "rebel" from Moran in southeast Kansas, proposed a system that would give state-funded vouchers to parents sending children to private schools, losing 24-99. Another southeast Kansas "rebel," Tim Shallenburger of Baxter Springs, proposed (rather sarcastically) eliminating the need for the 29 mill levy altogether with an additional 2.5% increase in the sales tax. It lost 14-111. Susan Wagle, a freshman Republican from Wichita, offered an amendment to limit increases in educational spending to the growth in Kansas per capita income, losing 57-67. Tom Love, the Kansas City Democrat who had defected from his party more than anyone else during the day, proposed removing the sales tax from purchases of food, losing 48-75.

Finally, the debate ended. The motion by the Committee of the Whole to advance the bill for final action passed 81-44. Normally, final action would not be taken until the next day, but the House leaders had decided not to wait. H.B. 2892 was advanced to "emergency " final action with the required two-thirds vote. On final action, it passed 82-43.

The final vote was remarkably strong for a bill so controversial; in fact, it was only two votes short of the votes needed to override a veto when only a few days before having the votes to pass at all was in doubt. Among Democrats, only Love voted no; twenty Republicans voted yes, including almost every representative from fourth enrollment districts and from Topeka and Wichita. Operating with only a one-vote majority, the Democrats had not lost a single vote all day that the leadership had wanted to win. H.B. 2892 had been transformed from "the House Democrat plan" to simply "the House plan."

Two weeks later, the House voted 88-33 to pass H.B. 2835, the bond and interest aid bill. It was amended on the floor to reduce the percent of bond and interest payments the state would pay for a district at the median assessed valuation per pupil from 50% to 40%, reducing the estimated first year cost from $31 million to $24 million. Funding for this program would be a "demand transfer"; in effect, an automatic appropriation. Attention now turned to the Senate.

Chapter 8 -Back to the SDEA

The Republican Senate leadership referred H.B. 2892 to both the Assessment and Taxation Committee and the Education Committee. Both committees had a six to five Republican majority; both were chaired by long-time Senators who would be retiring at the conclusion of the session (Dan Thiessen on Tax and Joe Harder on Education); and both had a Senator Kerr (Fred on Tax, who was also the Majority Leader in the Senate, and his brother Dave on Education). The Kerr brothers would be major players in the ensuing debate.

Senate Committee Hearings (Mar. 23-25)

On Monday, March 23, a round of hearings began for both committees. Due to the crowds the issue was drawing, meetings were held in the Old Supreme Court chamber. At 11:00 the first day, with an audience dominated by business lobbyists, the Tax Committee met for a staff explanation of the tax provisions in the House bill. Well into the noon hour, the first committee ended and the room cleared. At 1:00, educational lobbyists filled the room for the Education Committee, which met until 2:30 for a staff briefing on the school finance distribution elements.

On Tuesday, proponents of the bill testified before each committee, stressing the same points: achieving significant property tax reduction and school budget equity would require the kind of fundamental change in tax and budget policy that this bill contained. On Wednesday, opponents of the bill testified. In particular, representatives of the construction industry and businesses that relied heavily on utilities used for production argued against repealing the sales tax exemptions on original construction and utilities.

A report from the Institute for Public Policy and Business Research at the University of Kansas on the business impact of the House plan essentially confirmed the obvious. Using economic projections and models, it reported that taxes would tend to increase for businesses in Overland Park (where school taxes in Shawnee Mission would increase) and would fall for businesses in Wichita (where school taxes would drop dramatically). The report concluded that "any new tax plan will of course produce a set of winners and losers. Under the House plan, whether a firm is a winner or a loser depends on the area of the state in which it is located, and just as importantly, on the amounts of newly taxable inputs (energy, etc.) that is consumed."

Other opponents included low tax/high budget districts who would be hurt by the plan, but they were joined by representatives of several fourth enrollment category schools who argued that the low enrollment weighting was too generous to small schools. They felt the House plan did not go far enough toward equalization.

The Education Committee worked the bill first. On Thursday and Friday, several alternative plans based on modifications to the SDEA were presented. Majority Leader Fred Kerr proposed a plan that would eliminate the income tax rebate and income in the definition of district wealth, as well as the hold harmless provisions adopted the previous year. It did not have a minimum mill levy, but the state would "recapture" 33 1/3% of the difference between a district's budget and total local effort expectation. It would also require every district to have a budget per pupil at 90% of the median for its enrollment category, and "freeze" budgets per pupil that were 25% above the median. It proposed budget limits of 0.5-1.5% for the next year, plus an additional 5.9% for the fourth enrollment category, with $385 million in new money. This was $53 million less than the House plan, and would allow a 32 mill statewide average (but not uniform) levy.

Senator Dave Webb, a freshman from Johnson County filling an unexpired term, offered a plan similar to Kerr's approach, but perhaps more acceptable to his Johnson County constituents. He proposed to reduce the income tax rebate from 24% to 18%, then reduce a further six percentage points a year until it was eliminated after four years. The percentage of taxable income in the definition of district wealth would be reduced in the same way. Like the Kerr plan, Webb's proposal would set a minimum budget of 90% and freeze budgets over 125% of the enrollment category median, and would eliminate hold harmless provisions. Webb also proposed budget limits of 0.5%-3% plus 5.9% for the fourth enrollment category, which would allow low budget districts to increase their expenditures more rapidly. He presented two different print-outs: one with $217 million more in state aid, the other with $299 million more.

As these plans were shaping up as the alternatives to the House plan, it should be noted how far the opposition had already moved toward the House position. Although Kerr and Webb indicated these plans would preserve local control, they accepted the idea of minimum and maximum budgets. In fact, since the House plan allowed a range of 25% if both full LOB and LEB were used, and the Kerr and Webb alternatives limited the range to 35%, the difference in local control on budget authority amounted to 10%. Under these Senate Republican plans, the income tax rebate would also be abandoned (sooner or later), and the House Republican idea of income tax surcharges appeared to be dead.

Calculating the Cost

The bigger fight seemed to be shaping up over taxes and spending at the state level. From the beginning, opponents of the uniform mill levy concept charged that however appealingly low it might be, pressure from school spending would soon force it back up, meaning that those parts of the state receiving property tax reductions would get only short term relief, and those areas facing property tax increases could look forward to more of the same. To answer those critics, first the governor's budget office and then Legislative Research began preparing "out year" projections which looked at revenue and expenditures over several future years. As Representative Bowden noted, it was the first time the Legislature was paying serious attention to the long-term consequences of school finance decisions. However, the process did not provide easy answers.

Not only did critics of the House plan charge that it was too expensive, they charged that even with $450 million in new taxes, the plan would be underfunded in the future. One reason was that the House plan required districts to spend down cash balances in the first year before receiving state aid. These balances were funds districts had accumulated as reserves that were not budgeted for the current year, and amounted to nearly $180 million. Spending these balances in the first year of the plan (FY 1993) reduced the need for state funding in that year, and therefore the initial cost of the plan to the state. However, this amount would have to be replaced in the second year of the plan (FY 1994).

There would be another problem in the second year. In the state's property tax cycle, each year's tax payment on a piece of property could be spread over several dates. Payments were sent to the counties, who processed collections and then distributed the money to schools and other local units. The result was that only about 65% of each tax year's levy was received by districts in the school year for which it was levied. The remaining 35% was received the following year. In other words, in the first year of the House plan, the 29 mill levy was expected to raise about $435 million, but school districts would only receive about $285 million. The remaining $150 million "tax in process" would be received in the second year.

But this amount in the second year was over $100 million less than the first year, because the "tax in process" for 1993 would be based on a statewide average mill levy of 65, rather than a minimum levy of 29 in 1994. This funding would also have to be made up in the second year.

A similar problem stretched into the third year of the plan (FY 1995). Taxes on motor vehicles were determined in each county based on an average of taxing district levies within the county. School districts, along with other local units, received a share of motor vehicle taxes based on their proportion of the tax burden. These taxes were based not on the current year or previous year average, but the average two years prior. The lower school taxes in the first year of the plan would reduce most countywide averages, which would, in turn, reduce county motor vehicle taxes in the third year of the plan. The school districts' share of these taxes would drop about $40 million, which would have to be replaced by the state if the plan would be funded at the same level.

The House leadership defended their plan by noting that the new state taxes, combined with funding the state was already providing to schools, would raise about $170 million more than was needed in state aid for the first year. This balance would be carried over to help fund the shortfalls created by property tax reduction "echoes."

Because the House plan provided for a uniform base budget per pupil and a uniform minimum mill levy, both set in statute by the state, it offered more control over school spending, and could be more easily projected into the future with relative accuracy. As the Senate committees began consideration of school finance issues, Dale Dennis and Ben Barrett developed a format for projecting expenditures and revenues under the House plan for FY 1993 through 1996. For each of these four years, it presented the total cost of school district base operating budgets, plus estimated state aid for the local option budget; total local revenues and deductions; and total state revenues from both new taxes and the "current share" of state spending on schools. The "bottom line" was the difference between base budgets plus LOB aid and total revenues. If revenues were greater, the balance could be carried over to fund the next year. If revenues plus carryover were inadequate, the state would either have to reduce school budgets, shift funding from other state programs, or raise more revenue.

The projections assumed that state revenues and property valuation would increase by 4% each year, and also made assumptions on growth in student enrollment. Based on these assumptions, if school budgets were allowed to grow 1% a year over the four year period, the plan would be in balance at the end of the fourth year. The $170 million carried over from the first year would be spent down, but even in 1996, the plan was projected to have a positive carryover of $32 million.

However, Senate Republican leaders pointed out the school budgets had not been limited to a 1% increase for even a single year since the SDEA was enacted, much less 4% over four years. Using a more "normal" estimate of school budget growth of 4% a year - the same rate of growth projected for state tax revenues - the House plan would be $141 million short by FY 1995, and $326 million short by FY 1996. Moreover, this projection did not include the cost of other school aid, such as special education funding and the bond and interest program (H.B. 2835).

On Monday, March 30, the Senate Education Committee received a report from Ben Barrett, who had prepared a memo at the direction of Senate Ways and Means Chairman Gus Bogina of Johnson County. Assuming 4% annual growth in school budgets and including special education costs and debt service aid, the increase in all other state spending would have to be limited to 2% in FY 1994 to maintain an ending balance in the state general fund of $100 million, an amount considered the minimum balance necessary for state cash flow needs. In 1995, even if all other state expenditures were to receive no increase at all, the state general fund ending balance would be a negative $70 million, or $170 million below the necessary ending balance, requiring either a tax increase, spending cuts or a combination of both in that amount.

But Democrats on the committee noted that the problem of property tax reduction "echoes" would result from any plan that reduced property taxes, including SDEA alternatives like Fred Kerr's proposal. They asked for a similar projection on that alternative. Presented the next day, it showed that in FY 1994 (the second year), spending on all other state programs would actually have to be reduced by 0.5% to fund the Kerr plan and retain a $100 million ending balance. By FY 1995, however, the alternative plan was back in relative balance.

Senate Education Committee Action (Apr. 29-30)

As consideration of school finance began in the Senate Education Committee, all five Democrats could be expected to support the House plan. Three were from high tax and/or low spending fifth enrollment districts: Nancy Parrish (Topeka) the ranking Democrat on the committee; Jack Steineger (Kansas City) and Jim Ward (Wichita). Jerry Karr represented Emporia, a fourth enrollment district, and a number of relatively poor rural districts; and Doug Walker, a former teacher, also represented a relatively poor region in southeast Kansas.

On the other hand, four Republicans would almost certainly oppose the House plan: Johnson Countians Audrey Langworthy and David Webb, along with Don Montgomery from rural northeast Kansas and Sheila Frahm, the vice chair of the committee who represented nine counties in the northwest corner of the state. Although both Montgomery and Frahm represented a number of districts that would tend to benefit financially from the House plan, they opposed it due to cost, local control concerns and general conservatism.

The swing votes were Republicans Joe Harder of Moundridge and David Kerr of Hutchinson. Both had broken ranks with many Republicans the year before to vote for the tax increase that Governor Finney had vetoed. Harder had chaired the Education Committee for more than two decades. His Senate district in relatively prosperous central Kansas included school districts ranging from enrollments of a few hundred to McPherson and Newton in the fourth enrollment category. He was not planning to seek re-election. More than almost anyone else in the Senate, he was seen as a "free agent" on school finance: he would do what he believed was right for the entire state. Kerr's Reno County district included fourth enrollment category district Hutchinson, which would do well under the House plan. But Kerr had assumed the role of chief education "reformer" in the Senate, demanding changes in the school system before supporting increased funding.

Committee discussion began with Kerr proposing three "reform" provisions to be amended into the bill. First, the State Board of Education would be given one year to develop "outcomes, standards and assessments" in communications, math, science and social studies, to be set equal to educational standards in other states and industrialized countries. This would go beyond the House Quality Performance Accreditation standards because it required the State Board to adopt specific academic standards in "core" curriculum areas, and would require by statute that state assessments be given. As adopted by the State Board, QPA did not contain "benchmark standards" and proposed tests only in communications and math.

Under Kerr's second proposal, school districts would be required to establish "site councils" in every school building, to be composed of the principal and representatives of teachers, parents, business and the community. This provision would be "sunset" to expire at the end of 1995-96 school year, pending an evaluation by the State Board. This concept reflected an emphasis on moving more education decisions to the "site" or school building level. However, Kerr's proposal gave these councils only advisory powers.

The third proposal would increase the minimum school year by 15 days, from 180 to 195, or from 1080 hours to 1170 hours. This, too, responded to concerns that the school year in Kansas, as well as in the rest of the nation, was too short to provide the level of education received in other industrialized countries. Kerr also argued this increase was justified by the additional funding most school districts could expect under a new finance plan.

With a rather conceptual amendment by Frahm that districts with only one school building would not have to set up a site council, the motion to adopt these three provisions carried without serious objections. Like the QPA language added in the House committee, these major changes in school policy were adopted without hearings or even much discussion.

Karr then moved to delete the protest petition and referendum requirements on the 10% local option budget and the 15% local enhancement budget in the House plan for the first year of the plan. The rationale was that it would be difficult for districts and voters to go through this process in time to set budgets for the first year. The amendment carried. Montgomery moved to delete the complicated LEB provision altogether, and Kerr moved to expand the LOB to 25%, both of which also carried. After a lengthy debate on the "at-risk" weighting provision, the committee adopted an amendment by Ward that funding from this weighting could only be used for at-risk pupil assistance programs approved by the State Board of Education.

To this point, the bipartisan support for these amendments seemed to suggest that the committee would support the concept of the House plan. Then Kerr spoke up again. "I have no philosophical problem with the House approach," he said. But he was concerned that there were too many unknowns in such a radical change. He would support a modification of the SDEA for one more year, but proposed a special commission to study the House plan.

With that, Langworthy moved to replace the House plan for school district budgets with Webb's proposal from the previous week: 0.5-3% budget limits, plus 4.9% for the fourth; minimum budgets of 90% and freezing budgets at 125% of the enrollment category median; phasing out the income tax rebate and equalizing the technology levy. With the Democrats looking rather deflated over this shift back to the SDEA, Walker made a substitute motion to pass H.B. 2892 as the House plan, along with the amendments adopted to that point. His motion failed on a 5-5 vote, with Chairman Harder not voting. Langworthy's motion was then considered, and failed 5-5, with Harder not voting again. The chairman called for each party to caucus, where he made clear the price of his support for keeping the SDEA was the inclusion of a minimum mill levy. Reconvening, Langworthy made the same motion, but with the addition of a minimum levy of 25 mills. Harder adjourned the committee to let everyone "sleep on it." Meeting the next morning at 9 a.m., Harder joined the other Republicans to adopt Langworthy's motion on a 6-5 vote. The bill then went to the Tax Committee.

Senate Tax Committee Action (Apr. 1)

On Wednesday, April 1, in the Tax Committee, Senate Majority Leader Fred Kerr laid out two options. Both assumed that the Education Committee's plan should include $300 million in "new" revenue, compared to about $450 million in the House plan. Option 1 would be to adopt the same rate increases contained in the House plan: $174.4 million from raising the state sales tax from 4.25% to 5%; $120.5 million from increasing individual income tax rates; and $8 million from increasing the corporate income tax. However, this option would strip out the repeal of sales tax exemptions that the House had included in H.B. 2892.

Option 2 trimmed the sales tax rate increase to 0.5% instead of 0.75%, raising $116.3 million; cut the individual income tax increase to $120.5 million; and the corporate income tax increase to $5 million. It then proposed a "partial repeal" of several sales tax exemptions: imposing a tax rate of 2.5% instead of the full rate. Three of the targeted exemptions were included in the House plan: utilities used in production ($16.7 million), original construction services ($39.9 million) and residential intrastate telephone ($3.1 million). Also included in this option were film rentals ($0.9 million), trade fixtures ($0.5 million), hotel/motel charges ($0.6 million) and new mobile homes ($0.3 million).

Kerr argued that including some amount of sales tax exemptions was the only likely way to get the governor to sign the bill. Senator Montgomery, also a member of the Education Committee, moved to adopt the second option (lower sales and income tax rate increases along with the repeal of several exemptions), which carried on a 6-5 vote. Kerr then moved to report the bill out of committee without a recommendation. That motion also passed 6-5. Senate leaders announced a rare Saturday session to debate the school finance plan on April 4.

Chapter 9 - Deadlock in the Senate

As the 40 Senators assembled on Saturday morning, it was clear that if the 22 Republicans voted together in support of the Senate committee's SDEA alternative, it would pass with one vote to spare. But as the vote in the House demonstrated, the circumstances of particular districts might count for more than party loyalty. The entire Senate would be up for election in 1992, and members hoping for re-election would have to explain their votes. Complicating this issue was the fact that Senators could not agree on a reapportionment plan, required after the 1990 census, that the governor was likely to sign. That meant some Senators did not even know for sure what their constituencies would be.

Counting Votes

All five Johnson County Senators (Bogina, Bond, Burke, Langworthy and Webb) were Republicans and all would oppose the House plan both because the tax increases would fall heavily on their prosperous constituents and the school finance system would limit their high spending school districts and require them to pay more in local taxes. (Caught somewhat in the middle was Senate President Burke. Under reapportionment, his new Senate district would probably include Olathe, which would be helped by the House plan.)

Across the county line to the north, the Wyandotte County Senators (Steineger, Strick and Kanan) would support the school finance parts of the House bill. But, along with Senator Ed Reilly of neighboring Leavenworth County, Jack Steineger was a relentless critic of the state's property classification system that excluded business inventories and certain agricultural property from taxation. All four were opposed to any increase in sales and income tax rates.

The other two metropolitan counties - were more likely to support the House plan. Sedgwick County Senators included four Democrats (Daniels, Feleciano, Francisco, and Ward) and two Republicans (Morris and Yost). Shawnee County was represented by two Democrats (Parrish and Petty) and one Republican (Salisbury). In addition, four Republicans represented Senate districts dominated by a large fourth enrollment category district: Wint Winter (Lawrence), Lana Oleen (Manhattan), Ben Vidricksen (Salina) and Dave Kerr (Hutchinson). These fourth and fifth enrollment category Republicans were considered the "swing" votes that would make the difference.

Three Democrats from low-wealth southeast Kansas (Brady, Martin and Walker), along with Minority Leader Jerry Karr from Emporia and Richard Rock from Arkansas City, both with at least one fourth enrollment district, and Janis Lee from Kensington in northwest Kansas had announced support for the House plan. Although southwest Kansas sent Republicans to the House, it was represented in the Senate by two Democrats (Hayden and McClure) who were opposed to the House plan, along with conservative Democrat Frank Gaines of Augusta.

The rest of the Senate members were mostly conservative Republican Senators from rural districts who were expected to oppose the House plan due to its high cost and impact on local control. Running along the northern boundary of the state from east to west were Don Sallee from Troy, Don Montgomery from Sabetha and Ross Doyen from Concordia. Sheila Frahm of Colby represented the northwest corner of the state.

The other Senate Republicans were Jerry Moran of Hays, Roy Erhlich of Hoisington, Joe Harder of Moundridge, and Dan Thiessen of Independence. Each had at least one fourth enrollment category district (Hays, Great Bend, McPherson and Independence), but also represented a number of small, rural districts. Harder was considered the most likely swing vote.

First Senate Debate (Apr. 4)

As Senate debate began, Senator Harder explained the three major parts of his committee's version of the bill, now called Senate Substitute for H.B. 2892: a distribution formula that made major modifications to the SDEA; a package of school reform measures; and a tax package designed to raise \$303 million. The first series of amendments dealt with tax issues. Senator Bogina, the chairman of the Ways and Means Committee from Johnson County, moved to increase the sales tax rate increase from 3/4 of a cent to one cent (to a rate of 5.25% rather than 5% in the House plan), cut the individual income tax increase from \$120 million to \$60 million, and maintain the exemption for original construction; keeping the rest of the tax package the same. The effect was a tax package raising \$320 million; Bogina said the additional \$17 million could be used to fund the debt service bill. This motion passed. So did amendments to retain the exemptions for new mobile home sales and film rentals (maintaining these exemptions would cost little money, but they weakened the plan's responsiveness to the governor's call for repealing exemptions). However, a motion by Senator Sallee to maintain the exemption for utilities in production failed.

Senator Parrish then offered an amendment developed by Senate Democrats: a "downsized" version of the House plan. Her proposal cut the base budget per pupil by \$10, reduced the cost of the low enrollment weighting by starting at enrollments of 1,500, rather than 2,000, and raised the minimum mill levy from the House's 29 to 31. It also included a 25% local option budget as discussed in the Senate Education Committee (the Local Enhancement Budget concept would not be heard from again). The motion carried 24-16. Unlike the House, Senate rules required a majority to request a recorded vote and none were taken except on final action. But observers in the gallery noted that most Democrats (excluding Hayden, McClure and Gaines) had been joined by most Sedgwick, Shawnee and fourth enrollment Republicans in supporting this amendment. The vote indicated that a majority of Senators were willing to abandon the SDEA in favor of a House-type plan.

But the celebration of House plan supporters did not last. On an unrecorded vote, Senator Yost successfully added an amendment to create a voucher program for students attending private schools, a concept opposed by all the public school organizations and overwhelmingly rejected by the House. It seemed likely that some Senators, angered by the adoption of Parrish's amendment, supported the voucher provision to kill the bill.

On final action, the entire bill was defeated, 17-23. The roll call showed that party lines were blurring. Seven Republicans supported the bill, now based on the House plan: all those from Sedgwick and Shawnee County (Morris, Yost and Salisbury), three from major fourth enrollment districts (Oleen, Vidricksen and Winter), and Joe Harder. But eight Democrats voted no: the three Wyandotte Countians (Steineger, Strick and Kanan), two from Sedgwick County (Daniels and Feleciano), the two southwest Kansas Senators (Hayden and McClure) and Gaines. The first five Democrats had voted to amend the bill with the House school finance plan, but opposed the tax increases in the bill for relying too much on sales and income taxes.

Senate Education's Second Plan (Apr. 6)

On Monday, April 6, the Senate voted to revive the defeated bill, and sent it back to the Education Committee, which met later in the day to attempt a new bill in the face of the Senate's action on Saturday. Dave Kerr began by announcing that because 24 Senators had voted for the House plan on school finance (although he had not), he would support basing the next committee plan on that approach. He suggested the committee modify the bill as amended by the Senate with the following concepts. First, use the more expensive low enrollment weighting of the House version. Second, the plan should require no more additional state revenue than the original Senate proposal (about $300 million). Third, to stay within that amount, the base budget per pupil would be trimmed from $3,615 to $3,600 and the minimum mill levy increased from 31 to 34. Fourth, the other weighting provisions would not be changed.

The last point was the first addressed by the committee. Senator Steineger proposed increasing the at-risk weighting from 0.05 to 0.1, doubling the value of this weighting at an estimated cost of $17.3 million. This weighting was especially important to the school districts with the largest enrollment of low income children: Wichita, Topeka and Kansas City. It would offset some of the budget loss to these fifth enrollment category districts due to the lower base budget. Steineger compared it to the low enrollment weighting for small schools, and his motion carried. But it would also be far less helpful to the higher income districts opposing the plan in Johnson County. Perhaps realizing that, Langworthy moved to reconsider, which carried. A compromise proposal from Steineger, increasing the at-risk weighting to 0.075, then prevailed.

Senator Montgomery moved to approve Kerr's proposal raising the minimum mill levy from 31 to 34 and reducing the proposed sales tax rate increase back to 0.75% as contained in the original committee plan (reversing Bogina's amendment for a full 1% increase). This motion carried. A second Montgomery motion to maintain the exemption for utilities used in production and increase the individual income tax increase from $73.8 million to $89.7 million failed. Later, when Senator Ward proposed raising the income tax increase to $120 million and to further reduce the sales tax increase by a quarter cent, Kerr made a substitue motion to reconsider Montgomery's motion, which then carried.

Senator Parrish successfully moved to delete the voucher plan added on the floor by Senator Yost. Senator Webb proposed a weighting factor for students attending school in new buildings the first two years after the facilities opened. The factor would be 0.25, and only available to districts using the entire 25% local option budget. Initially, it would only affect the rapidly growing Blue Valley district, which Webb represented, and which would receive no state aid for its LOB. The motion carried, as did a motion by Senator Frahm to include a "declining enrollment" provision that would allow districts losing students to use the previous year's enrollment, allowing a year to plan for budget reductions. Both the new building issue and the declining enrollment feature had been addressed by features in the SDEA.

Senator Langworthy then moved to amend the protest petition feature of the LOB so that when it took effect in the second year, only increases in spending would be subject to protest, not the entire LOB. Her motion received no second. Some Republicans either supported the protest feature or did not want to make the plan more acceptable; and several Democrats said privately they would not support Langworthy's proposal unless she was willing to vote for the House plan. With those modifications, the committee accepted the rest of Kerr's proposal, and reported the bill favorably.

Second Senate Debate (Apr. 8)

On Wednesday, April 8, Senate Substitute for H.B. 2892 went to the Senate floor for the second debate. After Senator Harder explained the bill, Senator Yost moved to restore the voucher plan, which failed 14-17. Senator Bogina moved to require that the statewide mill levy be imposed on all property financed by industrial revenue bonds after the effective date of the act. Because most business groups supported maintaining full exemptions of IRB and abated property, the issue split Republicans as well as Democrats, and the proposal failed on a 19-19 tie. Bogina also lost on a motion to allow districts to use unencumbered cash balances for the local option budget, rather than as a deduction in state aid for the first year of the plan. This would have reduced the "out year" cost of the plan, but required more state money the first year.

Senator Steineger then launched an assault on the tax sources for the plan. He first moved to use a one-time payment of $185 million the state would receive from the federal government because of underpaid Medicaid reimbursements, which would replace the entire sales tax rate increase. Of course, this money would be gone after one year, leaving the same amount to be replaced. The motion was defeated 13-19. Going after two favorite targets, Steineger then moved to impose a 2% inventory tax on inventories over $250,000, and to repeal the exemption on farm machinery. Both failed on voice votes.

Steineger's usual colleague on this issue of tax policy, Senator Ed Reilly of Leavenworth, then proposed an amendment that would have included in the school finance package one of the governor's proposals that had been languishing since the beginning of the session: legalizing video lottery games. Proponents of the idea said that taxes on these games would raise $50 million for the state; opponents said this was wildly optimist, an unreliable source of income, and inappropriate state policy. Reilly's motion was ruled not germane, but the Senate leadership agreed the debate on video lottery would have to be held at some point. So debate was suspended on the school finance bill to allow S.B. 695 to be brought up for debate on final action. After lengthy debate, it failed, 12-28, and a motion to reconsider failed, killing the bill for the session.

Debate resumed when Senator Dave Kerr moved to eliminate the capital outlay levy school districts could impose. As noted, districts had authority to adopt up to 4 mills for capital outlay (or nothing at all), with a statewide average of 3.3. Kerr's motion also increased the minimum mill levy another 2 mills to 36, reducing the need for state aid by $30 million. It carried.

But on final action, the bill lost 14-26, receiving three votes less than on the first vote. Although Feleciano switched to yes, Francisco, Oleen, Winter and Yost switched to no. Once again, the bill was reconsidered and sent back to the Education Committee.

Senate Education's Third Plan (Apr. 9)

Meeting Thursday, April 9, Harder proposed amending the bill back to the same school finance plan the committee had first adopted, the SDEA modification. He also proposed that another bill be introduced to create a "blue ribbon" committee to study the issue over the summer, including the concepts in the House package.

On the tax side, Webb proposed a plan similar to that contained in the second committee bill: a slightly higher individual income tax increase of $99.5 million; $5.2 million in corporate income tax; a 0.75% increase in the sales tax rate ($174.9 million), and a handful of sales tax exemptions repealed at the rate of 2.5% ($4.2 million from taxing trade fixtures, hotel/motel and residential intrastate telephone service). Both Harder and Webb's proposals were adopted as a substitute bill for Senate Substitute for H.B. 2892, the first example anyone could remember of a substitute for a substitute bill. It was recommended favorably on a party line vote of 6-4.

Third Senate Debate (Apr. 10)

On Friday, April 10, the bill was before the Senate for the third time. After Harder's explanation, Senator Winter of Lawrence, who had previously supported the House plan, said he would support the new SDEA version. "It's time to do something, whether it's right or not," he said. "We have to leave some of the fine points of legal issues aside."

Offering what he said was a gesture to the supporters of the House plan, Majority Leader Fred Kerr successfully added a "sunset" clause that would cause the bill to expire in one year, requiring the next Legislature to revisit the issue. Dave Kerr also supported staying with the SDEA for one more year, allowing the House plan to receive more study. Harder concluded by noting he had twice voted for the House plan. "But we are running out of time," he said. "It is time for the Senate to get a bill into conference with the House, to keep the process alive."

But on final action, the bill lost again. Although a block of Republicans who had supported the House plan on the first two votes (Harder, Morris, Oleen, Vidricksen, Winter) supported the SDEA alternative on this one, Salisbury of Shawnee County and Yost of Sedgwick County voted no, along with Reilly, who still objected to the tax provisions, and Doyen and Moran, who offered no reasons why. Among Democrats, only Hayden voted yes. The final vote was 18-22.

Fourth and Fifth Senate Debates (Apr. 11)

The next day, Saturday, April 11, was the last day of the regular session. H.B. 2892 was revived once again for debate on the Senate floor. Senator Parrish moved to restore the House-type plan previously approved by the Education Committee, but with the same weighting factors as the House had approved with one exception: the low enrollment weighting would be prorated to 87%. It carried 18-17. A second motion added to the bill a committee on school district finance and quality performance that would study the implementation of the new plan for its first two years.

After several unsuccessful amendments were offered to change the tax structure, the vote was taken on the bill as amended by Parrish. It failed 14-24. On this House-type version, Oleen, Winter and Yost voted yes, but Feleciano, Harder and Morris voted no.

Later that evening, the bill was brought up for a fifth time. A motion by Harder to remove the Parrish amendment and return to the SDEA modification proposed in the third committee version carried with 21 votes. An effort by Parrish to remove the increase in school days lost 19-20. But on final action, the bill was defeated once again, by a vote of 17-23. Five Republicans (Doyen, Montgomery, Moran, Oleen and Salisbury) voted no; only Hayden voted yes among Democrats. The Senate adjourned in frustration for a two week break.

The Senate had now rejected versions of the House concept three times and SDEA alternatives twice. In the five final action votes, six Democrats and three Republicans had voted no every time. Their main objections concerned the tax components, because they believed the increases were too much, the wrong type of taxes to increase, or both. The problem in passing a bill was that 21 of the 31 remaining Senators who had supported some combination of tax increases could not agree on a school finance plan to spend the money.

Chapter 10 - Compromise and Conference

It is not uncommon for most bills to be passed in the final days of the "regular" session of the Legislature. It then takes several days for a bill to be corrected and printed in a form to be presented to the governor, who has up to ten days to sign or veto it. As a result, a tradition developed for legislators to return several weeks after the end of the regular session to consider overriding any vetoed bills. Originally lasting only a couple of days, these "veto" sessions were also called "omnibus" sessions because they developed another function: consideration of the omnibus appropriations bill, the final funding bill that reconciled budget issues left over from the separate agency appropriations bills. But by the early 1990's, more and more issues were unresolved at the end of the regular session. Legislators were reluctant to compromise until the last moment, which tended to push that moment further out. The 1991 veto session had lasted over a week.

When the 1992 veto session began on April 29, the Senate had not been able to resolve the session's biggest issue - school finance. Not only did that issue involve the distribution of school district aid and budget authority, it would determine major changes in tax policy, including the only viable chance of meaningful statewide property tax relief. In contrast to the House, which had passed a major overhaul of school finance midway through the session with strong support, the Senate was looking incapable of effective governing.

Over the break, Majority Leader Fred Kerr announced he would support the House concept of school finance to break the deadlock. Even more surprising, there were rumors that Senate President Bud Burke was privately indicating the same thing. (Although Burke represented Johnson County, reapportionment would shift much of his senate district into Olathe, which stood to benefit from the school finance portions of the House plan.) With Senate Vice President Eric Yost and Education Committee Chair Joe Harder already having voted for the House plan, the Republican leadership was conceding that the only way to break the deadlock was with the House concept.

Sixth Senate Debate (Apr. 29)

On Wednesday, April 29, the full Senate once again took up H.B. 2892. Harder presented a new version of the House plan, which he had developed over the break. The details of the plan, which was adopted on a voice vote, will be described below. But before the Senate could take final action, Senator Frank Gaines, a conservative Democrat from Butler County who had been opposing the House plan, offered an amendment dealing with the explosive issue of school consolidation. Small districts were continually concerned about being forced to combine with other districts, with the potential loss of community schools. Urban areas tended to resent the fact that smaller districts required more money per pupil to operate, because with a limited "pie" of education dollars, a bigger slice for small districts resulted in smaller slices for everyone else.

What Gaines proposed was requiring that within two years, any school district would have to enroll at least 200 students or cover at least 400 square miles - or convince the State Board of Education that it had a valid reason to be exempt from this requirement. The State Board would be empowered to dissolve districts not meeting this standard and reassign the territory to other districts. Approximately 30 districts could be affected by this amendment.

Some thought Gaines was playing politics. His district contained a number of small districts who would likely oppose his amendment. On the other hand, Gaines wasn't planning to seek re-election. Either his proposal was a statesmanlike effort to deal with districts that many considered "inefficient" - or an effort to saddle the plan with an amendment that would drive away votes from rural areas. The amendment passed, 19-18, over the strong objection of Senator Janis Lee, a former school board member from tiny Kensington in Smith County. But later in the day, just before the final vote, Lee moved to strike the Gaines amendment, which was deleted on a voice vote.

The rest of the debate involved defeating a series of amendments proposed by Senator Steineger: to use the disproportionate share money to avoid a tax increase; to impose an excise tax on inventories; to remove the farm machinery sales tax exemption. All failed. Finally, Steineger tried to divide the question on final action between the school finance measures and the tax measures. After debate over whether a bill could be divided on final action (the chair ruled it could not), Steineger moved to amend by striking the tax increase sections. That motion also failed. At last, the final action vote came, for the sixth time in the Senate, on H.B. 2892.

This time the bill passed, 26-14. All the Senators from Sedgwick and Shawnee County voted yes, three Republicans and five Democrats. Other Republicans voting yes were Burke and Webb from Johnson County, Fred Kerr, Harder, Montgomery and Thiessen from mostly rural districts, and Dave Kerr, Oleen, Vidricksen and Winter from fourth enrollment districts. Every Democrat voted yes except the three Wyandotte Countians, along with Gaines and the southwest Kansas Democrats, Hayden and McClure.

Features of the House and Senate Versions

Although the Senate had now passed a school finance plan similar to the House's concept, enough differences remained that a conference committee would have plenty to talk about. Here is a review of the major features of each version.

Base Budget. The House version called for a $3,625 base. The Senate plan had a $3,600 base. This $25 difference amounted to about $13 million. In addition, the Senate plan imposed a 10% limit on annual budget increases. This meant that a number of low spending districts would not rise to the $3,600 base level in the first year of the plan. The lower the base, the less cost to the state. However, a lower base meant more high spending districts would need to use local option budget authority to maintain current operating budgets.

Enrollment Weighting Factors. The two chambers agreed on weightings for students in bilingual (0.2) and vocational (0.5) programs, and transportation weighting based on the prior year's formula costs. For at-risk students, both agreed on a weight of 0.05 for students eligible for free lunch, but the Senate plan contained its committee's recommendation that funding must be spent on programs specifically for at-risk students. For low enrollment, both agreed to a formula beginning with enrollments at less than 2,000, but the Senate prorated this amount at 95%. The Senate also added a weighting factor for opening new school facilities for districts using the full local option budget authority of 25%.

Local Option Budget. The House plan contained a local option budget of 10%, subject to protest petition; and a 15% local enhancement budget, subject to referendum. The Senate plan contained a 25% local option budget at the school board's discretion, without any protest or referendum features. Use of the LOB was also limited by the 10% cap on total budget increases.

Spending Cap. As noted above, the Senate plan limited annual budget growth to 10%, plus enrollment growth.

Base Budget Mill Levy. The House imposed a 29 mill levy; the Senate plan contained a 35 mill levy.

Contingency Reserve Fund. Both plans contained a 1% reserve fund.

School Reform. Both plans required districts to implement Quality Performance Accreditation. The Senate required the State Board to develop standards and assessments in math, science, communications and social studies, and required districts to implement site councils at every school building. The latter mandate would expire in 1995-96 unless extended.

Minimum School Term. The Senate plan increased the minimum school by 15 days or the equivalent hours - an 8.3% increase.

Monitoring Committee. The Senate created a 17 member committee on school district finance and quality performance.

Additional Revenues. The difference in tax proposals are shown in the following chart (amounts in millions). A difference of $120 million between the two plans would have to be bridged.

	House	**Senate**
Sales Tax		
Rate Increase	$174.9	$116.6
(Percent Increase)	(0.75%)	(0.5%)
Repeal of Exemptions:		
Utilities Used In Production	$33.3	-
Interstate Telephone	9.0	-
Original Construction	79.8	-
Res. Intrastate Telephone	6.1	6.1
Lottery Tickets	3.6	-
Trade Fixtures	-	0.9
Hotel/Motel	-	1.2
Income Tax Rate Increases		
Individual	138.0	99.5
Corporate	8.0	5.2
Disproportionate Share	-	40.0
Additional State General Fund	-	60.0
TOTAL	**452.7**	**329.2**

Most conference committees in the Kansas Legislature are made up of six members: two members of the majority party and one member of the minority party of each house, appointed by the Speaker and the President. The first six members appointed to the conference committee must reach unanimous agreement on a conference committee report. If they cannot agree unanimously on the provisions of a bill, they can "agree to disagree" and ask that a second conference committee be appointed. Second and any additional committees appointed on a bill need only two signatures from each house for the report to be considered. If a motion to approve a conference committee report on a bill is defeated in either house, the bill is killed. The alternative motion is that the report not be accepted, and that another conference committee be appointed. Additional conference committees are usually made up of the same members.

First Conference Committee (Apr. 30-May 2)

For H.B. 2892, the House Democrat members were Education Committee Chair Rick Bowden and Tax Chair Joan Wagnon. The Republican appointee was Keith Roe from Mankato in north central Kansas, ranking member of the tax committee and a rural balance to Bowden and Wagnon from Wichita and Topeka. The Senate Republican members were Education Chair Joe Harder and Tax Chair Dan Thiessen, who had initially opposed the bill. The Democrat was Nancy Parrish of Topeka, who provided urban balance. Both Senators Kerr attended most meetings, obviously playing a critical role. Also involved were representatives from the governor's office, especially Budget Director Gloria Timmer.

The conference committee on H.B. 2892 first met at noon on April 30 to review differences in each chamber's version. Bowden then placed a proposal on the table to deal with the non-tax issues. The House conferees would accept the Senate's lower base budget per pupil, agree with the requirement that at-risk weighting funds be spent on programs for at-risk pupils, and agree to the new school facilities weighting. The House would also agree with the 25% local option budget, and the Senate's school reform proposals, except for the longer school school year. In return, the Senate was asked to agree with the House's low enrollment weighting (no proration); to impose the protest petition for the LOB annually after the first year; to drop the 10% annual cap in budget growth; and to drop the longer school term. The House also proposed a 12-member oversight committee with legislative members only.

After the Senate conferees caucused, Senator Harder agreed with several elements of the House proposal. The Senate conferees had concerns about the low enrollment weighting. Noting the strong vote on Senator Gaines consolidation amendment, Harder suggested that small districts should be encouraged to look at consolidation. Suggesting that subjecting the LOB to annual protest would make planning difficult, Harder proposed that the House consider putting approval of the LOB on a multi-year cycle, like the capital outlay budget. He suggested that the budget cap be set at 15% annually for two years, then expire automatically. He did not agree to drop the longer school year. Senator Parrish suggested that four public members be added to the House's 12 legislator oversight committee.

Bowden responded by revealing the House's problem with the oversight committee: Speaker Barkis was pushing a "blue ribbon" commission on education restructuring that would include a number of "public" members. That bill was resting on the Senate calendar, and the House was concerned that the oversight committee would duplicate that idea and weaken support for Barkis' bill. After trading comments on the tax components, the conferees agreed to meet the next day. Over the noon hour on May 1, Bowden presented a new proposal. The low enrollment weighting would begin at 1,900 students, rather than 2,000, but there would be no proration. The House would agree with the Senate's proposal to put the LOB protest petition on a four-year cycle, if the Senate would agree to drop the cap on budget increases. The school term would not increase, and the conference committee would wait until the Senate had voted on the "blue ribbon" commission to resolve the oversight committee.

Harder responded that the Senate would agree to beginning the low enrollment weighting at 1,900 if the House agreed to keep the budget cap. Bowden made a counter offer to agree on 1,900, accept a one year 10% budget cap, and a "final offer" of adding three days to the school year, compared to the 15 days in the Senate plan. Harder rejected the proposal, but agreed the two sides were very close.

The conferees reconvened around 7 p.m. This time, tax issues were the topic, and the Senate made the first proposal. Senator Thiessen proposed a 0.6% increase in the sales tax, closer to the Senate's 0.5% than the House's 0.75%. But he also proposed an income tax increase of $120.4 million for individuals and $7 million for corporations, closer to the House position of $138.0 and $8 million than the Senate position of $99.5 and $5.2 million. He proposed that the conferees agree to repeal the sales tax exemptions for residential intrastate telephone and interstate telephone at the full sales tax rate, and impose a 2.5% sales tax rate on utilities in production and original construction (this would be half the full rate proposed by the House). The other exemption proposed for repeal (lottery tickets by the House; trade fixtures and hotel/motel by the Senate) would be dropped. The Senate would drop the $40 million from the disproportionate share windfall if the House would agree to using $60 million from the State General Fund.

Before the House conferees left to caucus on the proposal, Harder suggested a new idea for lengthening the school year: three more days the first year, an additional three days the following year, and an additional three days the following year; for a total of nine more days after three years.

After the break, the House made a counter offer on taxes: agreeing with the Senate proposal on exemptions (including the lower rate on utilities in production and original construction services), but with a 0.7% increase in the full sales tax rate, rather than 0.6%; and lowering the Senate's minimum mill levy from 35 to 31. The conferees agreed in discussion to split the difference on the rate increase to 0.65%, and to set the minimum mill rate at 32 for the first two years of the plan, increasing to 33 mills in the third year and 34 mills in the fourth.

The remaining big issue was the length of the school year. Meeting at 8 a.m. the next morning, Saturday, May 2, the committee reached an agreement. In the first year of the plan, the minimum school year would increase by one day to 181, but two of those days to be reserved for teacher inservice. The next year, one more school day would be added for a total of 182, with one day reserved for teacher inservice. The third year, the mandatory inservice requirement would be dropped, but four additional school days would be added for a total of 186.

A few additional issues were left. On the protest petition, the committee agreed to delay the requirement for one year. On the oversight committee, the House agreed to a sixteen member group with four public members. The staff went to work drafting the first conference committee report, a series of charts explaining the school finance and tax proposals, and a four year projection of the financing required. Late that night, the conference committee report went to the Senate first (because it was a House bill), and the Senate engaged in the seventh debate of the session on H.B. 2892.

First Senate Debate on the Conference Report (May 2)

Senator Rock expressed the issue simply. "First, we (the Legislature) need to do something, or the courts will," he said. "Second, doing something is going to take a lot of money. Third, the only way to get that money is to raise taxes. I don't like it, but that's the way it is."

Senators Hayden and McClure rose to oppose repealing the exemption for utilities used in production, arguing this would be especially damaging to the oil and gas industry.

Then Majority Leader Fred Kerr was recognized, and the Senate grew quiet. The week before, he had stunned the Statehouse by announcing he would not run for re-election to the Senate, possibly to focus on a race for governor in two years without the "baggage" of being an incumbent legislator. In what some observers thought was one of his best speeches, the majority leader, who had switched sides on the school finance issue, defended the conference committee report.

"This plan wasn't my first choice," he said. "But what plan that has a chance of passing is going to be any better?" He reminded those who criticized the cost of the plan in the "out years" that looking at the estimated future costs of school finance had never been done before. Passing plans on a year to year basis had caused the continuing shift to property taxes in the first place.

Many Senators, he realized, would oppose the conference committee report because it repealed more sales tax exemptions than the Senate version they had voted for. But maintaining those exemptions would only make the "out year" funding problem worse. The only alternative to the state tax increases - distasteful as they might be - was to maintain a heavier reliance on the property tax. "Is that what the people have been asking for?" Kerr asked.

Another way to lower the cost of the plan would be to reduce the local option budget. "But that hurts more districts than the current plan," he said, forcing higher spending districts to cut their programs. Despite the many objectionable features of this plan, all other choices would be worse. "And the worst choice of all," he concluded, "would be to do nothing; to turn over our responsibility as a Legislature to the courts, to again fail to address the property tax problem."

It was a well argued, well delivered speech - but in the end it wasn't enough. Eight Republicans who had voted yes on the final Senate version voted no on the first conference committee report, which was defeated 18-22. Johnson Countians Burke and Webb might have been able to support the school finance part of the Senate plan, which would give considerable tax relief to their Olathe constituents, but couldn't stomach the impact of the conference committee's higher taxes on Johnson County as a whole. Montgomery and Sallee objected to the major exemption repealers, especially on utilities in production (Sallee, for example, had a major rock quarry in his district that consumed a great deal of energy in its operation). Dave Kerr argued that the increase in the school year was not enough. Winter worried about the "out year" cost of the plan and the drain on the state general fund, in part because it could "crowd out" funding for his district's biggest employer, the University of Kansas. The other two vote switchers, Vidricksen and Yost, probably objected for a combination of these reasons.

Later that Saturday night, several House Republicans attempted a parliamentary move to concur in the less expensive Senate version of the plan. When a bill is in conference, a motion can be made in either house to agree to the other chamber's version, which would send the bill directly to the governor. The effort failed, 23-102. Once again, the House had closed ranks.

Chapter 11 - The Final Compromise

On Monday, May 4, the same conferees met again as the second conference committee. To be successful, the committee would have to find some plan that could lure at least three more Senators in the "yes" column without switching any others to "no." The House conferees made the first proposal - eliminate the utilities in production repeal, but increase the rate on original construction to the full rate, from 2.5% to 4.9%; add back in the repeal of exemptions for lottery tickets, trade fixtures and hotel/motel. This would allow the additional demand on the state general fund to drop from $60 million to $32.6 million.

The House also had a new offer on the school term. In addition to the one additional day in the first year of the plan for a total of 181, the two inservice days would have to be in addition to the 181 days. In the second year, two additional school days would be added for a total of 183, with one more inservice day required in addition to the 183. In the third year, the minimum school year would be 186 days, with no mandatory inservice days.

The Senate conferees now emphasized the "out year" cost of the plan, suggesting that the local option budget range should decrease as the base budget per pupil was increased in the future. In other words, if the base budget was increased by 5%, the maximum LOB would be cut by 5%, from 25% to 20%. At the second meeting of the day, Senators agree to the House suggestion on the revenue package and the school term, and the House agreed that the LOB would be reduced as the base increased, and that the minimum mill levy would rise from 32 in the first year to 33 in the second and 35 in the third.

Second Senate Debate on the Conference Report (May 4)

Late in the afternoon, the second conference committee report went to the Senate floor. Senator Bogina criticized the plan for underfunding the out years. Bond argued that repealing the exemption on original construction would devastate the housing industry, especially in border areas like Johnson County. Dave Kerr said the new plan on the school year was still not enough. On final action, Winter and Yost switched to yes, along with Democrat Janice McClure. Although many of McClure's constituents in the gas fields of southwest Kansas opposed the plan, she noted that the new version did not tax utilities in production, a major cost in the energy industry. But two Wichita Senators, Democrat Paul Feleciano and Republican Bill Morris, switched to no because of the full sales tax rate on original construction. The second conference committee had gained only a single vote over the first, and was still two short of the votes necessary for passage.

On May 5, the "third" conference committee met, and this time the Senate made the first proposal. The conferees suggested taking both the sales tax exemption on original construction and utilities in production back to the first version, taxing both at 2.5%; and keeping lottery tickets exempt. They proposed an additional draw on the state general fund of $40 million. The Senate conferees also proposed reducing the LOB range to 20%, and adding two more days to the school year in the fourth year of the plan. The House agreed to the revenue change, but rejected the change in LOB and the school term. The Senate conferees did not put up a fight.

Third Senate Debate on the Conference Report (May 5)

At 2:30 that afternoon, the Senate began debate on the third conference committee report. Harder cautioned the Senate that this plan was the best it was going to get. Bogina continued to oppose both the school finance components and the long term funding requirements of the plan. But Dave Kerr rose to say he was finally ready to vote yes. "The Senate has added much to this plan to raise educational quality by demanding 'world class' standards and accountability," he said. The longer school term was not as much as he wanted, but he believed it was as much as the Senate was going to get: "It's time to move forward toward greater fairness and quality."

Kerr's switch to yes was offset by McClure's switch to no because utilities in production were back in the revenue package. But with the lower rate on original construction, Feleciano and Morris switched to yes, as did Vidricksen. The final vote was 22-18. It was 3:30 p.m.

House Debate on the Conference Report (May 5)

Across the rotunda, the House leaders announced that each party would hold a caucus before debating the conference committee report. The House reconvened at 4:45, and Bowden moved to adopt the conference committee report.

Gary Blumenthal then offered a substitute motion to not adopt the conference committee report and request a new conference committee be appointed. As a Johnson County Democrat, Blumenthal walked a difficult line between supporting his party's school finance concept and responding to the strong opposition from much of this county. He objected to the conference committee plan on two grounds. First, he suggested that if a district needed to use local option budget authority to maintain its current year budget, that portion of the LOB should be exempt from the protest petition requirement. Second, he objected to the additional draw on the state general fund the plan required, arguing that it would "crowd out" funding for other state needs, such as the social welfare programs Blumenthal traditionally championed.

Representative Roe, as a member of the conference committee, opposed Blumenthal's motion. The House had already spoken to the protest petition, he said, and after three efforts in the Senate, it was obvious that the funding plan was a delicate balance of taxes that could easily be toppled. But Representative Rochelle Chronister, ranking Republican on the Appropriations Committee, argued that the plan was underfunded; that it would push the state into a negative balance in the future, requiring a tax increase, cuts in the base budget for schools and other programs, or both. Several other rural Republicans echoed Chronister, attacking the plan as underfunded, increasing school spending too much and providing too little property tax relief. But urban Republicans like JoAnn Pottorff of Wichita and Al Ramirez of Wyandotte County spoke in favor of the plan.

Speaker Barkis gave a final defense of the plan, beginning with an analogy that had become a legislative cliche under former Speaker and Governor Mike Hayden: making laws was like making sausage - something not very pretty to watch. But this proposal, said Barkis, "is the best deal we're going to get." Yes, it increased school district budgets. But that was the only way to bring those budgets closer together without forcing wealthy, high spending districts to spend less. Yes, the future might require painful choices. But that was true under any plan. This was the first time the Legislature had ever even considered school budgets for years into the future. The projections developed for the conference committee showed the plan could work if the current assumptions held. That was the only guarantee any budget proposal had. To bring the plan into balance quicker or reduce property taxes further would require more taxes to be raised now - something the Republicans in both the House and Senate had generally refused.

Republican "rebel" leader Kerry Patrick took the bait, grilling the Speaker angrily and impatiently about funding for the plan in the future, claiming it would require a $200 million tax increase within two years. His Johnson County colleague, Republican Vince Snowbarger, said that "With all due respect," he thought the Speaker sounded like Scarlet O'Hara, saying "I'll worry about it tomorrow." Democrat George Teagarden, chairman of the Appropriations Committee, rose to respond. "Representative Patrick's mouth seems to run faster than my mind," he said dryly, "because I don't understand his figures. When he tells you about his 'facts and figures,' I'd just say: consider the source."

On the substitute motion offered by Blumenthal to reject the conference committee report, the vote was 49-76. The only Democrats voting yes were three from Johnson County, plus Tom Love. Eighteen Republicans voted no, mostly from Wichita, Topeka and fourth enrollment districts, and were joined by Keith Roe and Don Crumbaker. On the final vote to adopt the conference committee report, which would send the bill to Governor Finney, the vote was overwhelming: 91-43. Twenty-nine Republicans - nearly half - voted yes, but many expressed reservations in "explanations of vote" that took up three pages in the House Journal. All but four Democrats (three from Johnson County and Tom Love) voted yes.

The Bond and Interest Aid Bill

The school finance debate had not been entirely resolved, however. On April 30, the Senate had passed H.B. 2835, the debt service bill for capital improvement construction bond payments. The Senate version provided that the state would pay 25% of the bond and interest cost for a district at the median assessed valuation per pupil. The House version provided for state payment of 40% of the cost at the median AVPP.

On May 6, one day after the final vote on H.B. 2892, a conference committee on the debt service bill began meeting. By this time, however, worries over the cost of school finance had deepened. Representative Bowden made the first offer for the House: the state would pay only 10% of the median AVPP in the first year the plan went into effect, but this rate would rise 5% a year until it reached 40%. This would delay some of the cost of the plan into the future. But Senator Harder responded that the future costs of supporting debt service was exactly what he was worrying about: it would be an "entitlement" that the state could not control.

The Senators made a counter offer that the program would be "prospective" - aid payment would only be made for bond issues passed after the bill took effect. But this approach was strongly opposed by the House Republican on the conference committee, the bill's chief sponsor, Kent Glasscock of Manhattan. He noted that many of the bill's supporters came from districts with existing bonded debt.

The next morning, the conferees met with an attorney for the State Board of Education. He suggested that Judge Bullock's opinion from the previous October indicated that his ruling would be prospective only: the state would not be legally obligated to support previously approved bond issues. Later that day, Bowden made another offer: the state would pay 5% of the median assessed valuation on "old" bonds and 40% on "new" bonds. Harder countered by proposing 10% on old bonds and 24% on new bonds, again voicing concerns about future costs. The House proposed 5% and 30%; the Senate countered with 5% and 25%, which was agreed to. The next day, the Senate approved the conference committee report 40-0, and the House soon followed, 94-29.

It took one more day to complete the 1992 Session. On Saturday, May 9, the House and Senate finally agreed to a third conference committee report on the Department of Education budget and approved the "omnibus" appropriations bill that made final spending adjustments to the state budget.

For the first time in the state's history, the Department of Education budget would top $1 billion dollars, and represent more than half of the funding source for local school districts. For the first time, the state would help fund capital improvement expenses for schools.

As the Senate prepared to adjourn near midnight, concluding the longest session in state history, members paused to recognize the retirement of its longest-serving member, Joe Harder. His voice thick with emotion, Harder remembered that in his first session school finance amounted to state aid of $15 per child. His last was ending with a state commitment of $3,600. Majority Leader Kerr, who had announced his own retirement, thanked Harder for his years of service "on behalf of the people - and especially the school children - of Kansas." From across the aisle, Senator Parrish spoke with heartfelt emotion. "Joe, I respect you and love you, and you'll always be the dean of Kansas education to me." As the Senators, staff and school lobbyists in the gallery rose in applause, it was clear an era was ending, just as a new one was beginning.

Chapter 12 - Implementation and Challenge

On May 11, the first Monday after the 1992 session finally adjourned, Judge Terry Bullock met with the four school finance plaintiffs whose lawsuits had prompted his ruling seven months before. From the bench, Judge Bullock offered his "heartfelt expressions of gratitude" to the lawyers in the case, the Chief Justice, Governor Finney, legislative leaderships and others: "To all who have worked so hard to avert a crisis and find a solution for Kansas and its children, we are deeply grateful." He went on:

> I have never been prouder to be a Kansan. I have never been prouder of our constitutional democracy with its three separate and equal branches. I believe the wisdom of our founders has been proved again -- the system works! Of course, the road to resolution was neither easy nor smooth. Such is the nature of democratic self-government. As we all know, democracy is messy, noisy, and just a little inefficient. But it works and it works better than anything else the world has every tried.
>
> I would like to conclude, finally, with a word to those who are not entirely satisfied with the new legislation. The work of humans is never perfect and never finished. Is the new school finance plan perfect? Probably not. Will it require refinement and adjustment as experience sheds light upon its results? Probably so. Such is the nature of the work of mere mortals. But of this much I am also certain, in the fullness of time those additional concerns will be also carefully addressed. And, if they can be addressed in the same spirit of cooperation and good will forged in the preparation of the plan now becoming law, your interests and the interests of all Kansans (and especially its children) will be very well served indeed.

Wichita, Turner and the Baxter Springs groups decided to drop their litigation in light of the new act. Only the fourth enrollment schools led by Newton asked that their case be kept open to more closely examine the workings of the new law. As it turned out, they would oppose several provisions of the new system, and be back in court in a little over a year.

Within weeks after the new act was passed, Dale Dennis and the State Department of Education had created a new set of forms to develop district budgets, and the school boards and superintendents began learning a new system. In November, Mr. Dennis reported to the special committee set up to oversee implementation of the new law, the Committee on School District Finance and Quality Performance, on how the new act had changed budgets and taxes for Kansas schools.

Impact of the New Law on School Taxes and Budgets

H.B. 2892 raised state sales and income taxes and repealed sales tax exemptions to generate an estimated $346.4 million in the first year - an increase of about 16% in the largest tax sources for the state. Total mill levies for school districts decreased by $263.1 million from 1991-92 to 1992-93, a reduction of nearly 32%. School district operating budgets rose by $160 million, over 9%.

Prior to the passage of the new act, school district operating tax levies ranged from a low of 9.12 to a high of 97.7. In the first year of the new act, the range was a low of 32 to a high of 66. Two-thirds of the districts in the state either chose not to adopt a local option budget, or could not because of the 10% cap on budget per pupil increases. All of these districts levied 32 mills. The remaining one-third of districts using the local option budget included all six district over 10,000 students. In the first year of the act, the mill levy declined in 289 districts and increased in 15.

On the spending side, 130 districts expected to increase budgets per pupil by the full 10% per pupil allowed by the law. Eleven districts expected to cut the budgets on a per pupil basis. (However, most of these districts did not usually spend the entire amount of their budget. They regularly carried over a large unspent balance.)

The Election of 1992

Because tax statements were mailed in November, many voters did not yet receive their bills before the general election of 1992, when every seat in the Legislature was on the ballot. Whether or not that would have made a difference, it turned out to be disappointing night for Kansas Democrats who had hoped that property tax relief and school finance reform would help their party expand on its success two years before. Instead, the Republicans won back a majority in the House and boosted their control of the Senate by the largest margin in years: a "veto-proof" majority of 27-13.

What did the election results say about the school finance act? Did the stronger Republican showing mean a repudiation of a plan devised by House Democrats and signed by a Democratic governor? A close look at those results does not present a clear answer.

In the Senate, Republicans picked up five seats. Two were in the southwest corner of the State where opposition to the new school finance plan was strongest, although the losing Democrats in those districts, Senators Hayden and McClure, had strongly opposed the new plan. In Wichita, conservative Republican Todd Tiahrt, who had lost to Rick Bowden by nine votes in the 1990 election, solidly defeated Senator Ken Francisco, who himself had lost a House seat in 1990 but had been appointed to fill the Senate seat of his brother Jim, who was elected Lieutenant Governor with Joan Finney that same year. Republicans won a new seat created in Sedgwick County through reapportionment.

In neighboring Butler County, Republican Representative Dave Corbin, who had voted for the new school finance plan, was elected to the seat of retiring Democratic Senator Frank Gaines, who had opposed the plan. In Wyandotte County, Representative Al Ramirez, one of the House Republicans who had consistently voted for the new plan, became the first Republican Senator in that county in years, defeating Senator B.D. Kanan, who had voted against the new plan because of its tax increases. In fact, of the nine House members elected to the Senate, all but one had voted for the new plan as Representatives.

In the House, the biggest shock was the defeat of Speaker Marvin Barkis, who local critics said had lost touch with this Louisburg constituents. In Johnson County, the other center of opposition to the new plan, two one-term Democrats who had supported the new school plan were defeated. Republicans also won two seats from retiring Democrats in Shawnee County districts that had traditionally voted Republican, but the new finance plan was not a major issue.

The election results suggested that the new school finance plan was not a major issue in most of the state because most incumbents had voted in what they believed their constituents wanted. In effect, the plan have little partisan advantage for either side; although Republicans seemed to be helped in areas where the plan was most unpopular.

Controversy Erupts Over QPA

The "sleeper" issue within the new finance act turned out to be the little discussed provisions dealing with Quality Performance Accreditation. By mid-summer, the Kansas Commission on School Restructuring and Accountability, Speaker Barkis's vehicle for improving school performance, began functioning with two recently retired business executives as co-chairmen and a membership of nearly 60 legislators, educators and business leaders. Max Heim, a professor of education at the University of Kansas and former school superintendent at Junction City, was selected a executive director for the commission. Heim had served as chair of the State Board of Education Task Force that developed the Quality Performance Accreditation plan which had been incorporated in the new School District Finance and Quality Performance Act.

From the beginning, some education critics had argued that QPA was inadequate. One point of controversy might be termed the "standards vs. improvement" debate. For each of the ten outcomes, QPA included a list of "standards and indicators" to define and measure the outcome. However, it did not define minimum standards of performance. Instead, schools would be expected to work toward continuous improvement on these measurement.

QPA critics argued that the state should define minimum standards, such as graduate rates and student performance on tests. QPA supporters argued that Kansas schools were so diverse that minimum standards would likely be based on some kind of average that would not challenge high performing schools, but would make schools serving harder to educate populations look inadequate, reinforcing a sense of failure. They argued that the important thing was to encourage all schools to improve, from wherever they were a performance scale.

The new school finance act endorsed the State Board's QPA system, based on the improvement model, but Senator Dave Kerr's amendment required the State Board to develop "standards and means of assessment" equal to the highest expectations of other states and nations within one year. How these concepts would fit together was unclear.

A second debate over QPA might be called "basic skills vs. higher order skills." The QPA system required schools to show that students were mastering basic, or "essential" skills. But the document did not define these skills. In addition, it also required schools to show that students were mastering "higher order thinking skills," defined as effective communicating, problem-solving and begin able to work effectively both individually and as part of a group.

To some critics, this structure provided too little emphasis on traditional academic disciplines like reading and writing, math, science and social studies. The Kerr amendment required standards and assessments to be developed in those academic areas.

As the Restructuring Commission launched a series of public forums around the state, as required by the statute that created it, school districts began reporting a growing wave of parent opposition to QPA. Unlike earlier criticism, which tended to come from business leaders and newspaper editors (especially the Wichita Eagle, which branded QPA a "hoax" when first adopted by the State Board), the new opposition received leadership from "pro-family" groups, many supported by conservative Christian churches. Some were linked to national campaigns, including Pat Robertson's Christian Coalition. One of the most visible groups in Kansas was affiliated with the Concerned Women of America. The organizational muscle of the "Religious Right" was demonstrated when its activists took control of Republican party leadership positions in Johnson, Sedgwick and Shawnee County. The "litmus test" issue for these groups was abortion, and the battle between pro-life and pro-choice forces within the Republican party was turning into a bitter struggle, but the broader issue was over "traditional" or "family" values.

Opposition to QPA from the religious right centered on several issues. One QPA outcome, dealing with student "health and well-being," required schools to adopt human sexuality and aids education programs. Actually, this requirement had been adopted several years earlier, and it allowed districts to develop their own curriculum in this area and parents to remove their children from these programs. But opponents argued that QPA would force schools to teach sex education in a way that would undermine traditional family values.

Another outcome called on schools to create a "learning community" by collaborating with community services to meet the needs of children and families, such as child care, health and nutrition. Conservatives opposed this as an expansion of schools into traditional family roles; an attempt to replace parents with social workers. Still another outcome contained a standard requiring tolerance and understanding of differences between people. Conservatives charged this would force children to "accept" homosexuality and other lifestyle choice.

In general, conservative Christian critics of QPA charged that it contains to many "values," which should be instilled by parents," and not enough "academics." Many also opposed the fact that QPA was an effort to impose state standards: another "local control" reaction reinforced by opposition to the new school finance act in some parts of the state. At most of the eight public forums held around the state, the largest number of speakers expressed opposition to QPA. Despite this, the commission voted to recommend continued development of an outcomes based system, state standards and assessments, rewards and sanctions for schools based on performance, and a number of other proposals. But with commission's chief sponsor, Speaker Barkis, defeated and absent from the 1993 session, the commission's report was largely ignored.

School Finance and Reform in the 1993 Session

However, the widening public concern over QPA did cause the House and Senate Education Committees to spend nearly all of the first five weeks of the 1993 session trying to figure out what the Legislature had really done in writing QPA and the development of "world class" standards and state assessments into the school finance law. After weeks of hearings, briefings by State Department of Education staff and presentations from schools already participating outcomes based education, the Legislature adopted a resolution that endorsed continued development of the QPA system but also recommended that the State Board revise the plan to stress student academic performance and clarify language that was driving public fears. A new document was adopted by the Board in July, 1993.

No serious attempt was made in the 1993 session to restore the SDEA. Instead, the Legislature made only minor changes in the new finance act. In addition to some technical changes, a declining enrollment feature was adopted to let districts losing enrollment continue to count a portion of the loss for one year. The idea was to allow more time to adjust their budgets downward. Also, the contingency reserve fund was increased from 1% to 2%. Another amendment required that if state appropriations were insufficient to fund the system, the base budget per pupil for all districts would be reduced, not just state aid. Because wealthy districts would generate more local resources under the minimum mill levy than poor districts, they would be hurt less by a proration of state aid than poor districts. The governor signed all these measures.

The House leadership refused to consider another amendment passed by the Senate. It would have changed the protest petition feature of the local option budget so that only increases over the previous year would be subject to protest. About one-third of the districts in the state used the LOB in first year, before the protest petition took effect. Many needed the LOB just to maintain their spending at the level prior to the new law, including the six largest districts in the state. However, when Blue Valley, Kansas City and Shawnee Mission did not receive protest petitions for their four-year resolutions, and when Olathe and Topeka voters approved use of the LOB after a protest was received, the House leadership seemed unwilling to bring up an issue that would limit taxpayer protest, face a probable veto by the Governor, and did not seem as important when local option budgets were being approved anyway.

In fact, when school district budgets were approved for 1993-94, the second year of the plan, the percentage of districts using the LOB had risen from about one-third to nearly one-half. Eighty percent of those districts that proposed an LOB in the second year did not receive a protest. Of those that went ahead with an election, about half were approved. Most of the districts that lost elections were former Fourth Enrollment Category districts.

1993 Legal Challenges to the New System

This issue was part of the challenge the Newton group of plaintiffs used in continuing its attack on the state school finance system, which finally came to trial in the summer of 1993. They argued that the local option budget allowed a continuing disparity in school budgets; that because the LOB was only equalized to the 75th percentile in valuation per pupil, the wealthiest districts could finance their LOB at a lower mill levy than poorer districts even with state aid; and that the protest petition made it more difficult for traditionally high tax areas to use the LOB. In short, they argued that the LOB continued to keep some districts at lower budgets per pupil simply due to lack of wealth.

The Newton group raised a second issue: the low enrollment weighting. Because that weighting had been based on the average spending at different enrollment levels under the SDEA, the new system did relatively little to narrow the actual differences in budgets per pupil from the highest enrollments to the lowest. The Newton group argued that there was no "rational educational reason" for giving districts with less than 1,900 students hundreds or even thousands of dollars more per pupil than a districts with over 1,900 students in the same county, perhaps only 10 or 15 miles away.

The Newton case had been consolidated with three new lawsuits brought against the new system. A group of southwest Kansas districts challenged the act mainly on the basis of "local control." They contended that the provision of the constitution's education article requiring that local schools be "managed, developed and operated by locally elected boards" meant that boards must be able to impose their own tax rates and set their own budgets. If the state has the absolute ability to control a district's budget level, then it could set that level so low that a district cannot operate. In that case, the ability of a local board to "manage, develop and operate" its schools would be eliminated.

Plaintiffs from USD 229 (Blue Valley) and USD 244 (Burlington) made similar arguments. Blue Valley was one of the few districts in state to have reached the full use of local option budget authority in the first year, meaning it was unable to increase its budget per pupil to meet rising expenditures. Burlington had faced the largest general fund tax increase in the state, from just over nine mill to the statewide minimum of 32. All four of the plaintiff groups argued that at least some portions of the new act had been adopted more due to political expediency than determination of "rational educational reasons."

Closing arguments in the case before Judge Marla Luckert in Shawnee County District Court were heard in August, 1993. On December 16, she issued a one hundred-fifty page decision that upheld almost every provision of the 1992 act, including the full authority of the state to determine school district finance. The only significant part of the new system found to be unconstitutional was the low enrollment weighting. Judge Luckert ruled that the Legislature had not demonstrated a "rational educational reason" for the level of support given to districts with enrollments under 1,900, although she stressed that some level of additional budget authority for smaller districts would be justified. She delayed the effect of this ruling until July 1, 1994 to allow the 1994 Legislature to correct this problem.

Most parties in the case quickly indicated they would appeal the ruling.