

(Special Session)

**[As Amended by Senate Committee of the Whole]**

Special Session of 2005

**SENATE BILL No. 5**

By Committee on Education

6-22

10 AN ACT concerning public schools; relating to maintenance and oper-  
11 ation thereof; authority of courts, appointed masters and judicial panel  
12 related to closure of public schools.  
13

14 WHEREAS, Section 2 of the Kansas Bill of Rights provides that “[a]ll  
15 political power is inherent in the people...”; and

16 WHEREAS, The people of the State of Kansas have, since territorial  
17 days, placed priority on making available a public education to the chil-  
18 dren of this state; and

19 WHEREAS, The people of the State of Kansas, through ratification  
20 of the Constitution of the State of Kansas, determined to set aside land  
21 and to operate public schools, and such commitment to the operation of  
22 public schools was a condition of Kansas’ acceptance into the United  
23 States as approved by the federal Act for Admission of Kansas in to the  
24 Union; and

25 WHEREAS, The people of the State of Kansas, through adoption of  
26 section 1 of article 6 of the Kansas Constitution, have directed that the  
27 legislature provide for “establishing and *maintaining* public schools” [em-  
28 phasis added]; and

29 WHEREAS, The people of the State of Kansas, through adoption of  
30 section 5 of article 6 of the Kansas Constitution, have directed that “[l]ocal  
31 public schools...shall be maintained, developed and *operated*...” [empha-  
32 sis added]; and

33 WHEREAS, No court of this state has authority, either expressed or  
34 inherent, to order an action that violates the express will of the people of  
35 the State of Kansas as expressed through the Kansas Constitution; and

36 WHEREAS, Any order of a court of this state that purports to close  
37 the public schools would violate the constitutional directives of the people  
38 of Kansas that the public schools be maintained and operated; and

39 WHEREAS, Despite those constitutional limitations, the district court  
40 in *Montoy v. State* ordered closure of the public schools. That order was  
41 stayed by the Kansas Supreme Court; and

42 WHEREAS, There is concern that the Kansas Supreme Court may  
43 contemplate such an order or other action to close public schools as part

1 of its remedy in *Montoy v. State*; and

2 WHEREAS, Such an order would exceed the authority of the Kansas  
3 Supreme Court because it would violate the clear constitutional directive  
4 of the people of Kansas that the public schools be maintained and op-  
5 erated; and

6 WHEREAS, The court-ordered closing of public schools would be  
7 counterproductive to the duty, imposed upon the legislature by the peo-  
8 ple of the State of Kansas by article 6 of the Kansas Constitution, to  
9 “provide for intellectual, educational, vocational and scientific improve-  
10 ment by establishing and maintaining public schools”: Now, therefore,

11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. No court of this state, nor any master or other person or  
13 persons appointed by a court of this state to hear or determine a cause  
14 or controversy or to make or enforce any order or remedy ordered by a  
15 court pursuant to K.S.A. 60-253, and amendments thereto, or any other  
16 provision of law, nor a judicial panel appointed pursuant to the provisions  
17 of section 22 of 2005 Senate Bill No. 43, and amendments thereto, shall  
18 have authority in the case of *Montoy v. State of Kansas*, No. 04-92032-S  
19 or any other case involving a violation of Article 6 of the Kansas Consti-  
20 tution to make or enforce any order or remedy that would result in the  
21 closure of public schools or otherwise enjoin the use of all statutes related  
22 to the distribution of funds for public education.

23 ***[Sec. 2. Except as specifically provided by this section, when-***  
24 ***ever any provision of law provides that the state board of education***  
25 ***shall determine the amount of and distribute state aid for school***  
26 ***districts, such provision shall be construed to require the legislature***  
27 ***to determine the amount of and distribute any such state aid as***  
28 ***otherwise provided in such provision. The legislature shall certify***  
29 ***to the director of accounts and reports the amount due as state aid***  
30 ***to each district. Such certification, and the amount of state aid pay-***  
31 ***able from the state general fund, shall be approved by the director***  
32 ***of the budget. The director of accounts and reports shall draw war-***  
33 ***rants on the state treasurer payable to the district treasurer of each***  
34 ***district entitled to payment of state aid, pursuant to vouchers ap-***  
35 ***proved by the legislature. Upon receipt of such warrant, each dis-***  
36 ***trict treasurer shall deposit the amount of state aid as otherwise***  
37 ***provided by law.]***

38 Sec. ~~2~~ [3.] This act shall take effect and be in force from and after  
39 its publication in the Kansas register.