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TESTIMONY IN OPPOSITION TO HB 2738 (written only)  
K-12 EDUCATION BUDGET COMMITTEE  
FEBRUARY 13, 2024

Madam Chair and Committee members:

Thank you for allowing us to testify on behalf of the Kansas State Board of Education (KSBE) in opposition to HB 2738. HB 2738 proposes to change the way excess costs are calculated for special education expenses in K-12 schools and other modifications.

The needs of special education students, and the funding formula used to calculate the cost of providing those services are complex, so it is critical we get this right. This bill contains calculations and the misapplication of weightings that are very concerning.

We will attempt to outline these concerns.

## NEW SECTION 1 AND SECTION 2

New Section 1 and Section 2 both make changes to the special education excess cost calculations currently used to appropriate special education funding. New Section 1 calculates special education excess cost at the district level. District level excess cost would only be used for special education state aid above the FY24 appropriation. Since the bill sets the FY25 appropriation at the same level as FY24, New Section 1 would not be used at this time. However, as written, the bill appears to use the same method in both New Section 1 and Section 2.

### Modified Special Education Excess Cost Calculations

Section 2, Statewide.

**Weightings:** The new excess cost calculation includes all student weightings. This includes bilingual, CTE, At-Risk, and regular transportation. Although special education students may qualify for one or more of these weightings, it would not be part of their special education services. These weightings are used to help fund the cost of providing services beyond typical educational expenses. Counting these weightings toward special education excess costs reduces the amount of funds available for all students and limits their opportunities.

*Kansas leads the world in the success of each student.*

Clearly, counting all the weightings will show an increase in the regular education contribution thereby decreasing the amount of special education state aid required to reach the state's responsibility of funding 92% of excess costs.

**Local Option Budget (LOB):** The new excess cost calculation subtracts LOB funding three times from excess costs.

1. The LOB attributed to special education students being enrolled in the district. Although this is similar to the current excess cost calculation, it claims more LOB toward the state's portion since more weightings are included in the calculation.
2. An amount equal to the statewide average LOB percentage is removed from the excess special education costs (after federal funds and regular education funding are subtracted). This appears to be a misapplication of the LOB percentage since it was never intended to be applied to expenses.
3. Additionally, nearly 60% of the funds that the state would be claiming comes from local mill levies. This calculation is done after the first amount of LOB is subtracted, which appears to double count some funding.
4. The equalized portion of the LOB attributable to special education state aid being included in each district's LOB calculation is subtracted. This is especially concerning since this funding was already subtracted in the previous two steps. This could triple count some LOB funding.

Based on statewide calculations using FY24 estimates, 27% of total special education expenses would be paid with LOB funds.

Since LOB is defined as a local contribution, it is counter intuitive that any LOB is counted as a state contribution, let alone having it counted multiple times.

**Excess Cost Percentage:** Using the proposed excess cost calculation, the state's current funding level of 69% of special education excess cost would now show the state to be funding 109% without any increase in the appropriation.

Given that the changes to the calculation involve funding that is already designated for specific programming other than special education, it is difficult to comprehend how this is a state contribution for special education expenditures. Additionally, counting more than \$300,000,000 in locally authorized funding does not fit the definition of a state contribution.

It is important to note that the current special education excess cost formula was approved as part of the last two Supreme Court cases (Montoy and Gannon). Significantly changing the

excess cost calculation to reduce the appropriation needed to reach the 92% requirement would appear to be a violation of both rulings.

**Appropriation:** The bill sets the FY25 appropriation at the FY24 level removing the \$7.5 million that has already been appropriated.

**Additional Funding:** For FY25, \$528,018,516 (the FY24 appropriation) would be distributed in a manner very similar to FY24. This means that districts would receive nearly the same amount of special education state aid as they did this year. If any other funds are appropriated, they would be distributed based on a formula developed by the KSBE that considers the excess costs by district.

## CONCLUSION

If the legislature is serious about its expressed desire to work collaboratively with the KSBE, there is no better place to start than right here. This bill does not provide for the needs of our students. As we testified on HB 2594, the needs of special education students, and the methods needed to calculate the cost of providing those services are complex. The KSBE supports the continuance of the special education and related services funding task force. Once that group of experts has completed its work, then other fiscal experts should work with the Legislature to determine a fair way to calculate costs and distribute special education funds. Such important matters should not be decided by one group or one legislator on such short notice. Even the best experts in the field are having a difficult time wading through all the calculations.

We appreciate your time and hope the Committee will oppose HB 2738.