



**House K - 12 Budget Committee
H. B. 2270 Education Finance Act**

Testimony submitted by Schools For Fair Funding
Bill Brady

February 15, 2017

Chairman Campbell, Members of the Committee:

Schools For Fair Funding is a coalition of 40 Kansas school districts comprised of 135,241 students, or 30% of the students in Kansas. Thank you for the opportunity to present our views on HB 2270.

While we are testifying neutral on this bill due to the issues outlined herein, there are many aspects of the bill that are a vast improvement over the block grant system. We urge that the bill be adjusted to cure the following issues and that it be moved forward. If the following issues are not cured, we cannot support the bill.

In judging the constitutionality of any school finance bill, the Kansas Constitution is the guidestar. The Kansas Supreme Court has further defined just what our Constitution requires to guide us. Most recently, in the *Gannon* case, the Court has provided the most detailed articulation of the requirements. There are two components a bill must provide to pass constitutional muster: It must provide for adequacy and equity.

“To determine compliance with the adequacy requirement in Article 6 of the Kansas Constitution, Kansas courts apply the test from *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989), which establishes minimal standards for providing adequate education. More specifically, the **adequacy requirement is met when the public education financing system provided by the legislature for grades K-12—through structure and implementation—is reasonably calculated to have all Kansas public education students meet or exceed the standards set out in Rose....**”

“To determine compliance with the equity requirement in Article 6 of the Kansas Constitution... **school districts must have reasonably equal access to substantially**

similar educational opportunity through similar tax effort.”

HB 2270 must pass these two tests to meet constitutional requirements.

Foundation aid. Section 4 of the bill sets forth an increasing amount of Foundation Aid each year from \$4253 per pupil in FY18 to \$4895 in FY21. The *Gannon* trial court found this amount of “base” to be close. The trial court suggested that in 2012 dollars the base should be set at \$4980 to meet adequacy requirements. At a 2.5% rate of inflation this base would increase at the rate of \$125 per pupil per year. This equates to a base or Foundation amount of \$5730 in 2018 dollars. It would appear that HB 2270 is roughly \$835 per pupil short in FY21, after being fully phased in. While stated amounts in court decisions and the bill may be close, the courts have recognized and applied inflation factors to education funding to maintain adequacy. This bill does not appear to pass the adequacy test according to the trial court in *Gannon*. This can be cured by increasing the foundation aid amounts in the bill.

Grandfathering LOB amounts. Section 15 of the bill grandfathers every district’s former Local Option Budget into the new scheme. While most districts had a LOB of 30%, the more wealthy districts were able to implement a 33% LOB. Grandfathering this level of LOB for the more wealthy districts does not pass the constitutional equity test. It does not provide “substantially similar educational opportunity.” These districts are grandfathered to a 3% advantage. This could be cured by simply allowing all districts to adopt a 33% LOB should they so choose.

LOB Protest petition and election requirement. Section 15 provides for a district to increase its Local Option Budget only by a protest petition and election process. This procedure was found to be unconstitutional by the *Gannon* trial court as a violation of the equity test. It does not allow equal access to resources. This could be cured by simply allowing the adoption of LOB by local board resolution and vote.

LOB Three year average assessed valuation per student. Section 17 of the bill provides that the Local Option Budget should be equalized according to a formula that uses a three year average of assessed valuation per student (AVPS). The prior court approved procedure was simply to use the past year’s AVPP. By moving to a three year average, it may remove perceived volatility in AVPS, but it does so at the expense of delaying LOB equalization for districts with shrinking valuations. If a district is *losing* valuation, they should be entitled to more state equalization to balance out the declining valuation. Using a three year average hurts these districts by delaying their required equalization until their three year average adjusts. By the same token, if a district has *increasing* valuation, the three year average allows them to *retain* equalization payments when they are no longer warranted until their three year average catches up. Delay of equalization or continuation of unwarranted equalization does not provide equal access to resources or similar tax effort and violates the equity test. This could be cured by returning to use of the prior single year AVPS.

Proration of Local Option Budget equalization. Section 17 provides that the state board shall prorate down any LOB equalization payments if the amount appropriated for LOB state aid is insufficient. This places the burden of filling a state budget hole solely on the less wealthy

districts who receive LOB state aid. This practice was specifically found to be unconstitutional by the Kansas Supreme Court in *Gannon*. This can be cured by backfilling any underappropriation of LOB state aid by a transfer from moneys appropriated for Foundation aid. If Foundation aid is thereby underappropriated, Foundation aid could be prorated and ALL districts would share the pain. This may be an adequacy violation but would be closer to meeting the equity test.

LOB equalization paid on prior year LOB. Section 17 provides that LOB equalization aid will be paid on the *prior* year's LOB rate. This does not pay equalization on any *increases* in LOB and delays that equalization for a year. Interestingly, if a district abolished its LOB in any certain year, it would still receive LOB state aid that year. This is a violation of the equity test. This can be cured by paying LOB state aid on the current year's LOB amount.

Low income (at-risk) weight moved to census measure rather than free lunch measure. Section 26 of the bill moves calculation of low income weight from the current free lunch measure to a census based measure after two years. While a census based measuring stick may be appropriate under certain circumstances, the bill sets the amount of the weight at a significantly reduced factor. The bill reduces total statewide at-risk funding by approximately \$63M to \$73M. Over 240 of the state's 286 school districts will receive less at-risk funding under census based measurement. It sets the weight using census at a multiple of 2.0 times current at risk weight. The actual current at risk to census multiplier is approximately 2.85 times. This change to census based weight removes funding from the exact students that have been shown to NOT be performing to standards. This does not provide substantially similar opportunity to at risk kids. This violates the equity test. This can be cured by retaining free lunch as the measuring stick.

Ancillary Levy not equalized. Section 31 provides that districts with new facilities may levy additional funds, but this local levy is not equalized. This is an equity test violation. This can be cured by adding an equalization scheme that mirrors LOB equalization.

Cost of living levy protest petition and election requirement. Section 32 provides that cost of living levy be subject to the protest petition and election requirement. This violates the equity test. See discussion above. Additionally, cost of living levy is not equalized which is another equity test violation. This can be cured by simply making cost of living levy available upon board of education resolution and equalization scheme that mirrors LOB equalization.

Declining Enrollment Levy not equalized and only available to districts with a 31% LOB. Section 33 provides that districts with declining enrollment may levy additional funds, but this levy is not equalized. This is an equity test violation. In addition, only districts with an LOB of 31% are eligible for this levy, and the 31% LOB is not attainable for some districts due to the protest petition requirement. This can be cured with the changes to LOB outlined above and by adding an equalization scheme that mirrors LOB equalization.

Capital outlay equalization three year average assessed valuation per student. Section 49 provides that capital outlay equalization be provided based upon a three year average assessed

valuation per student. See discussion above concerning LOB. This is an equity violation. This could be cured by returning to use of the prior single year AVPS.

Capital outlay equalization aid paid only if at least 4 mills levied. Section 49 provides that capital outlay equalization aid will only be paid if a district levies at least 4 mills of capital outlay. This is a clear violation of the equity test. If local moneys are to be allowed, they must be equalized. This can be cured by removing this requirement.

Allocating and/or prorating capital improvements (bond and interest) equalization aid. Section 97 contains a limit on bond and interest equalization aid at the “six-year average” of bond and interest aid paid over past years. This artificial limit on paying equalization aid to poorer districts violates the equity test. The section also has an allocation system to pay reduced amounts of equalization aid if the six-year average is exceeded. Both of these procedures allow local moneys to be used without proper equalization. The equity test requires equal access to substantially similar educational opportunity through similar tax effort. This bond and interest equalization scheme attempts to limit equalization payments. It does not effect wealthy districts and disadvantages less wealthy districts. This can be cured by adopting an equalization scheme akin to LOB equalization or capital outlay equalization and appropriating sufficient funding to operate the system. Shortfalls could be charged to the foundation aid fund requiring ALL districts to share the pain of underappropriation.

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