



**House K - 12 Education Budget Committee
H. B. 2324 School District Finance and Quality Performance Act of 2017**

Testimony submitted by Schools For Fair Funding
Bill Brady

February 16, 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 2324.

This bill was introduced 8 days ago and as of the deadline for testimony, KSDE runs were not available. It is difficult to do a full analysis without adequate time and printouts showing the effects of the bill, but outlined herein are the issues we found.

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 2324 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 \$4082 per pupil in FY18 to \$5000 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 2324 is roughly \$730 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 State Aid second preceding school year assessed valuation per pupil. Section 17 of the bill provides that the Local Option Budget should be equalized according to a formula that uses the assessed valuation per pupil (AVPP) from the second preceding school year. The prior court approved procedure was simply to use the past year’s AVPP. By moving to an AVPP from two years preceding, it may provide better planning for budgeting purposes, 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 stale AVPP hurts these districts by delaying their required equalization. By the same token, if a district has *increasing* valuation, the stale AVPP allows them to *retain* equalization payments when they are no longer warranted. 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 year AVPP.

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.

Ancillary Levy not equalized. Section 33 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 34 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 35 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 State Aid second preceding school year assessed valuation per pupil. Section 50 of the bill provides that capital outlay equalization be provided based upon a formula that uses the assessed valuation per pupil (AVPP) from the second preceding school year. See discussion above concerning LOB. This is an equity violation. This could be cured by returning to use of the prior year AVPP.