

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Jeff King at 9:40 a.m. on Thursday, June 16, 2016, 346-S of the Capitol.

All members were present except:

Senator Terry Bruce – Excused
Senator Pat Pettey – Excused

Committee staff present:

Robert Gallimore, Legislative Research Department
Debbie Bartuccio, Kansas Legislative Committee Assistant
Lauren Douglass, Legislative Research Department
Jason Thompson, Office of Revisor of Statutes
Jason Long, Office of Revisor of Statutes

Conferees appearing before the Committee:

David Dorsey, Kansas Policy Institute
Mark Tallman, Associate Executive Director for Advocacy, Kansas Association of School Boards. Also Representing United School Administrators of Kansas and Kansas School Superintendents Association
Mike O'Neal, Kansas Chamber of Commerce
David Smith, Kansas City, Kansas Public Schools
Jim Freeman, Wichita Public Schools
Suzan Patton, Superintendent, Pratt USD 382. Also Representing Kansas School Superintendents Association
Sheryl Spalding, MainStream Coalition
Brian Koon, Kansas Families for Education
Erin Gould, Game On for Kansas Schools

Others in attendance:

See Attached List

Chairpersons King and Barker called the meeting to order at 9:40 a.m. and opened the joint meeting of the Senate and House Committees on Judiciary.

Chairperson King expressed his appreciation to the staff for their efforts in coordinating the work needed to have the meeting. He stated the first issue for consideration is how the Legislature should respond to the order of the Court that would close schools on July 1 without a legislative response. This is largely a financial issue; however, it was his hope this Committee would make detailed and thorough recommendations for consideration by the House Appropriations and Senate Ways and Means Committees and ultimately the full House and Senate Chambers.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 9:40 a.m. on Thursday, June 16, 2016 in Room 346-S of the Capitol.

Chairperson King stated the afternoon session would deal with the longer term issue concerning school finance litigation. He noted this is not the first time the Courts have threatened school closure in response to school finance litigation and the Legislature has been required to respond. We are dealing with equity issues and no constitutional amendment will solve the current equity issue. He said there will be future litigation after *Gannon*. What we are looking at with a Constitutional Amendment is to address the long-term issue of the threat of closing the schools.

Chairperson King drew Committee members' attention to two draft Concurrent Resolutions for their consideration. He said the Resolutions may be two potential approaches to looking at Constitutional Amendments which might deal with a prohibition on closing schools. Chairperson King said the Resolutions were not personal recommendations and he was not personally advocating at this time for any of them. He stated his belief that it was important to have draft proposals for discussion purpose. He indicated he felt Committee members should give strong consideration to taking the threat of school closures off the table. ([Attachment 1](#)) ([Attachment 2](#))

Chairperson King stated because of preexisting obligations this evening for some Committee members, the meeting would need to adjourn at 3:30 p.m. and would continue on Friday, June 17. There were no questions.

Overview of Gannon Rulings

Chairperson King recognized Jason Long, Office of Revisor of Statutes, who provided an overview of the *Gannon* Ruling. ([Attachment 3](#))

The following Executive Summary was provided in addition to comprehensive analysis information and a history of the *Gannon* litigation.

On May 27, 2016, the Kansas Supreme Court (Court) issued its decision regarding whether the 2016 Senate Substitute for House Bill No. 2655 (HB 2655) cured the unconstitutional wealth-based disparities in the distribution of capital outlay state aid and supplemental general state aid as required by the Court in its prior decision issued on February 11, 2016. The Court held that HB 2655 cured the capital outlay inequities, but failed to cure the supplemental general state aid inequities. The Court further held that the unconstitutional supplemental general state aid funding mechanism and the local option budget (LOB) provisions cannot be severed from the Classroom Learning Assuring Student Success (CLASS) Act, and therefore, ruled that the CLASS Act, as a whole, is unconstitutional.

In summary, the Court ruled that:

- HB 2655 cures the capital outlay inequities.
- HB 2655 fails to cure the LOB inequities due to disparities in the supplemental general state aid mechanism and is unconstitutional.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 9:40 a.m. on Thursday, June 16, 2016 in Room 346-S of the Capitol.

- The hold harmless provision of HB 2655 fails to mitigate the LOB inequities.
- The extraordinary need fund is insufficient to mitigate the LOB inequities.
- Despite the existence of a severability clause in HB 2655, the unconstitutional provisions of HB 2655 cannot be severed from the CLASS Act.
- If the State is unable to satisfactorily demonstrate compliance with the Court's mandate to cure the LOB inequities by June 30, 2016, then there will be no constitutionally valid school finance in existence for fiscal year 2017.

The comprehensive analysis covered the following topics:

- Recent Procedural History
- *Gannon III* (May 27, 2016)
- The Equity Standard under Article 6
- HB 2655 Cures the Capital Outlay Inequities
- HB 2655 Fails to Cure the LOB Inequities
- Plaintiffs are Not Entitled to Attorney Fees
- The Unconstitutional Provisions Cannot Be Severed From the CLASS Act

Chairperson King opened the meeting for questions.

There was discussion concerning Article 6 of the Constitution of the state of Kansas regarding education in the state. There was a question from Representative Carmichael concerning the possible elimination of the section of Article 6 requiring the adequate and equitable funding of public education and what affect it would have on the Court's ability to review school funding.

A Committee member asked if the Court has ever defined the meaning of "equitable and adequate" as it relates to school funding. Mr. Long shared some history on what has been provided over the years concerning these terms; however, there are no precise definitions available. There was discussion concerning the two terms as well as the authority of the three branches of government. As an example, the Executive branch must uphold the Constitution. The Judiciary has the authority to interpret the law.

Chairperson King requested Mr. Long to review his document concerning potential remedial orders following *Gannon III*. ([Attachment 4](#))

Mr. Long concluded in *Gannon III*, the Court held that the State had met its burden to demonstrate that it had cured the inequities in the capital outlay state aid funding mechanism that were identified in its prior opinion in *Gannon II*. However, the Court also held that the inequities found to be present in the supplemental general state aid funding mechanism under *Gannon II* had not been cured, but had been exacerbated by the provisions of HB 2655. The Court rejected arguments by the State that the hold

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 9:40 a.m. on Thursday, June 16, 2016 in Room 346-S of the Capitol.

harmless provision and the changes in the extraordinary need fund mitigated any remaining inequities in supplemental general state aid distribution. Due to the continued existence of such inequities in the supplemental general state aid funding mechanism, the Court held that portion of HB 2655 unconstitutional as a violation of Article 6's equity requirement.

He said the Court further rejected the State's argument that the unconstitutional provisions of HB 2655 could be severed from the CLASS Act allowing the remainder of the Act to continue in effect for school year 2016-2017. The Court held that the Legislature would not have passed HB 2655 without the LOB and supplemental general state aid provisions, and that the CLASS Act could not "operate effectively to carry out the intention of the legislature" without such provisions. For these reasons the Court declared the entire CLASS Act unconstitutional.

Mr. Long stated the Court stayed its order holding the CLASS Act unconstitutional until June 30, 2016, and gave the Legislature until such date to enact a legislative cure for the inequities that continue to exist in the supplemental general state aid funding mechanism. If no legislative cure is enacted by that time, the Court may lift its stay meaning "no constitutionally valid school finance system exists through which funds for fiscal year 2017 can lawfully be raised, distributed, or spent."

The Court gave the Legislature another opportunity to "craft a constitutionally suitable solution" and continued to "stay the issuance of our mandate - and the stay of the panel's broad remedial orders - until June 30, 2016." If no legislative action is taken on or before June 30, 2016, the Court would likely issue a remedial order lifting the stay of its order and potentially the panel's orders. The Court in *Gannon II* appeared to suggest that the Court's remedial order would lift the stay on the order declaring the CLASS Act unconstitutional thereby prohibiting the distribution of funds pursuant to the CLASS Act which would lead to school closures.

Mr. Long stated in *Gannon III*, the Court seemed to leave open the possibility that the Court's remedial order could also include lifting the stay on the panel's broad orders. Lifting the stay of the panel's orders creates two different scenarios. First, the Court could lift the stay on the equity portion of the panel's remedial orders. Under this scenario, the capital outlay state aid and supplemental general state aid formulas would be reinstated as they existed under the SDFQPA and full funding of such formulas would be required. Second, the Court could lift the stay on the panel's alternative order which judicially reinstated the SDFQPA as the school finance system.

Any subsequent remedial order to lift the stay and enjoin the operation of the school finance system would be unprecedented action on the part of the Court. No prior Kansas Supreme Court order has actually prohibited the operation of a school finance formula or reinstated statutory provisions to cure certain unconstitutional provisions in a school finance system. As such, predicting the details of a potential future remedial order is challenging. In addition, the Court could always adjust or modify any of the above remedial orders or it could create a wholly new remedial order that is not contemplated in this document.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 9:40 a.m. on Thursday, June 16, 2016 in Room 346-S of the Capitol.

Mr. Long then answered questions from the Committee concerning the ability for the Court to revive a repealed statute and the amount of funds needed to meet the Court's order. Representative Pauls asked if the 2005 statute which indicated the Courts could not close public schools was still valid and Mr. Long responded affirmatively.

Overview of Pre-Gannon School Finance Litigation

Jason Long provided a history of school finance litigation since the enactment of the School District Finance and Quality Performance Act in 1992. The review included the relevant constitutional provisions, the case-law immediately prior to *Montoy v State*, the *Montoy* decisions and subsequent legislation, and the *Gannon v State* decisions and subsequent legislation. ([Attachment 5](#))

Mr. Long's report covered the following topics:

- Constitutional Provisions
- History Prior to *Montoy*
- The *Montoy* Case
- Legislative Responses to Montoy
- The *Gannon* Case

Mr. Long addressed questions from Committee members.

Public Comment on Potential School Funding Changes in Response to the May 27, 2016, Gannon Order

Chairman King recognized conferees to provide public comment. He requested, in the interest of time, that comments be limited to six minutes.

David Dorsey, Kansas Policy Institute, provided testimony for Dave Trabert, President, Kansas Policy Institute. ([Attachment 6](#)) The following actions by the Legislature were requested.

- Put a funding mechanism in place to ensure that school districts are paid on time. Route the money through the Department of Administration if necessary.
- Indemnify state and school employees from contempt of court or other related charges.
- If any school districts choose not to open their doors, provide every student in those districts with state-directed vouchers to attend any public or private school of their choice.
- Make one last attempt to reallocate the same or similar amount of equity funding, even if that means taking money away from districts and giving it others as the Court suggested. The votes may not be there without the hold harmless provision the Court rejected, but that would show good faith and prove the Court wrong about the necessity of hold harmless.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 9:40 a.m. on Thursday, June 16, 2016 in Room 346-S of the Capitol.

Mark Tallman, Associate Executive Director for Advocacy, Kansas Association of School Boards presented testimony and also represented United School Administrators of Kansas and the Kansas School Superintendents Association. He stated the three organizations support the principle that both adequacy and equity are components of a constitutionally suitable provision of finance of the educational interests of the state. There may be other ways to achieve equity; however, at this point the quickest and more certain ways to ensure a constitutionally equitable system is to restore both the previous capital outlay formula (based on the median valuation per pupil) and the previous LOB formula (based on 81.2 percentile of valuation per pupil). He said the organizations support the concept of hold harmless in school funding. They understand there are proposals to provide additional funding to compensate districts which would lose funding by returning to the previous LOB equalization formula, so they would not be required to raise their mill levies. The organizations do not object to that concept, but believe such an approach should be provided to all districts in similar circumstances. ([Attachment 7](#))

As he would not be able to attend the afternoon session, Mike O'Neal, Kansas Chamber of Commerce provided testimony concerning both school funding and potential constitutional amendments. He stated a constitutional amendment could clarify that the Legislature "controls the state's purse strings" or could prohibit school closure. He suggested the Legislature work with the Department of Education to use block grants and identify unencumbered funds to address the Court's equity concerns. ([Attachment 8](#)) ([Attachment 9](#))

David Smith, Chief of Communications and Governmental Relations, Kansas City, Kansas, Public Schools said the impact of a legislative shutdown of the school finance system in Kansas, even for a short period of time, would be devastating to schools, to families, and to the state of Kansas. The most straight-forward and direct way to respond to the Supreme Court's ruling on equity is to reinstate and fully fund the previous equalization formula for the Local Option Budget (LOB) for the 2016/17 school year (\$16.5 million), and fully fund Capital Outlay equalization (\$24 million). The Supreme Court has already determined that this approach meets the constitutional test for equity. It is important that money necessary to pay for the restoration of LOB and Capital Outlay equalization should not come from others parts of the education funding formula. Any attempts to redirect existing resources or to artificially add to school district funding in an un-equalized manner would threaten the constitutionality of the equity fix. ([Attachment 10](#))

Jim Freeman, Chief Financial Officer, Wichita Public Schools stated given the short time frame and desire to provide Kansas schools and families with certainty, Wichita Public Schools supports reinstating the former local option budget formula and fully fund state aid. He said they believe the path to a constitutional resolution in fiscal year 2017 is to reinstate the previous constitutional formulas for both the local option budget funded (approx. \$16.5 million) and capital outlay (approx. \$23 million). ([Attachment 11](#))

Suzan Patton, Superintendent, Pratt USD 382 and also representing the Kansas School Superintendents Association, stated the former local option budget formula based on the 81.2 percentile of valuation per

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 9:40 a.m. on Thursday, June 16, 2016 in Room 346-S of the Capitol.

pupil will cost the state approximately \$38 million dollars. In addition, the hold harmless provision makes sure districts will not lose money. She urged Committee members to support this past formula to expedite the equity solution so school districts may move forward. ([Attachment 12](#))

Chairperson King asked if there were any other conferees who wished to address the Committee. There were none.

Written only testimony was provided by:

- Denise Sultz, President, Kansas PTA ([Attachment 13](#))
- Dan Huffman, Private Citizen ([Attachment 14](#))

The conferees addressed questions from Committee members.

Chairpersons King and Barker recessed the Senate and House Judiciary Committees at 12:20 p.m. to reconvene at 1:30 p.m.

Overview of School Finance Litigation in Other States and the Judicial and Legislative Response to that Litigation

Chairpersons Barker and King opened the afternoon session of the House and Senate Committee meeting. Chairperson King announced the meeting would begin at 10:00 a.m. on Friday with an adjournment at 2:00 p.m. with no lunch break.

Chairperson King recognized Lauren Douglass, Principal Research Analyst, Kansas Legislative Research Department. She announced a special web site has been developed which will contain all of the testimony from this meeting and information regarding the special session. Ms. Douglass then provided an overview of school finance litigation in other states and the Judicial and Legislative response to that litigation. ([Attachment 15](#))

She stated according to information provided by the National Conference of State Legislatures, all but four states have had some variation of school finance litigation since the late 1960's. Due to the extent of such litigation, her report was not comprehensive, but highlighted trends, where they could be found. She stated the nature of the topic requires cases to be decided under the differing terminology of state law making it difficult to compare one state's court rulings to another.

A 2009 law review article identifies seven states that have declined to intervene in challenges to K-12 school finance citing separation of powers principles or a determination that the issue is a nonjusticiable political question: Alabama, Florida, Illinois, Nebraska, Oklahoma, Pennsylvania, and Rhode Island. She said these cases often cite the test for the political question doctrine outlined in *Baker v. Carr*, 369 U.S. 186, 217 (1962). The first part of the test refers to a "textually demonstrable commitment of the issue to a coordinate political department", such that the analysis in these cases frequently relies on states' own constitutional provisions. Additionally, part two of the test refers to a

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 9:40 a.m. on Thursday, June 16, 2016 in Room 346-S of the Capitol.

"lack of judicially discoverable and manageable standards for resolving (the issue)," and thus lack of specificity in constitutional provisions or elsewhere in the law sometimes leads courts to decline to consider these cases.

Ms. Douglass stated where courts have ruled in favor of plaintiffs, some have declined to provide a specific remedy, deferring instead to the legislative branch. In *Rose V. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989), the Kentucky Supreme Court held Kentucky's entire system of common schools was unconstitutional, including statutes creating, implementing, and financing the system; the creation of local school districts, school boards, and the Kentucky Department of Education; school construction and maintenance; and teacher certification. The court instructed the General Assembly that the system must be efficient and set binding criteria; however, the court emphasized the General Assembly had sole responsibility for providing the system of common schools.

She said New Jersey is the only state known to have closed schools. In the case of *Robinson v. Cahill*, 351 A.2d 713 (1975), the New Jersey Supreme Court issued a deadline for legislative action similar to the deadline in *Gannon*, and schools closed for eight days.

The report included references to other remedies utilized by the states of Arkansas, Wyoming, and Washington.

Ms. Douglass addressed questions from Committee members.

Rep Ward inquired if she was an attorney and if she had read all cases regarding the remedies question. She indicated she is an attorney and she had not read all cases regarding the remedies question, noting her report was not comprehensive and that it can be difficult to compare school finance litigation across states due to differing law and circumstances. He stated his concern about not knowing all the information surrounding the various school finance cases in different states when trying to evaluate the Kansas Chamber of Commerce's comments regarding remedies.

Representative Rubin inquired if Ms. Douglass could research what legislation, if any, New Jersey may have enacted in response to the school closure.

Representative Todd asked if there was information regarding school finance cases in which plaintiffs have lost, and the grounds on which they have lost. Ms. Douglass indicated she had information from ALR and NCSL that she would provide to Committee members.

Overview of Possible Constitutional Amendment Prohibiting School Closure and Background on the Similar 2005 Law

Chairperson King referred Committee members to a document concerning Special Sessions in Kansas. ([Attachment 16](#))

Jason Long reviewed a memorandum which provided the legislative history and historical background

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 9:40 a.m. on Thursday, June 16, 2016 in Room 346-S of the Capitol.

for the two Kansas statutes enacted during the 2005 special session that prohibit Kansas courts from closing schools as a remedy in school finance litigation under Article 6 of the Constitution of the State of Kansas. ([Attachment 17](#))

Mr. Long next reviewed the two proposed Constitutional Amendments (16rs4395 and 2016rs4396) for consideration by the Committee. ([Attachment 18](#)) ([Attachment 19](#))

Chairperson King told Committee members he had specifically requested Mr. Long to include language that would prevent both the Courts and the Legislature from closing schools. He shared he had received feedback from some Committee members and others in the Legislature which requested both parties be included in the proposal.

Mr. Long addressed questions from the Committee. There was discussion concerning whether this legislation would invite more litigation. There was a question concerning when a House or Senate Resolution would need to be passed to be on the August ballot. Chairperson King responded the deadline was today. Part of the timing issue relates to having ballots ready in time for mailings that need to go overseas.

Chairperson King said Committee members should contact staff if they have any other ideas for amendments to be drafted.

Public Comment on the Proposed constitutional Amendment Prohibiting School Closure or Other Potential Constitutional Amendments Pertaining to School Finance

Chairperson King recognized the following conferees.

David Dorsey, Kansas Public Institute, provided testimony for Dave Trabert, President, Kansas Policy Institute. ([Attachment 20](#)) He stated they believe the Constitution must be amended to permanently resolve the litigation cycle and get the focus back in the classroom where it belongs. Given the funding and achievement realities, Mr. Dorsey proposed the following two constitutional amendments be placed on the ballot for voters' consideration, with the one receiving the largest number of votes being adopted:

- Remove "suitable" from Article 6 so that neither the Legislature nor school districts are held accountable for any specific action.

- Hold both parties accountable by clearly defining a formula-driven minimum funding level (i.e., not something subjective for courts to "interpret") the Legislature must provide and requiring school districts to achieve district-specific minimum achievement goals or lose their accreditation, at which point students in unaccredited districts receive a state-funded Education Savings Plan to attend a public or private school of their choice.

Mark Tallman, Associate Executive Director for Advocacy, Kansas Association of School Boards,

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 9:40 a.m. on Thursday, June 16, 2016 in Room 346-S of the Capitol.

provided testimony and also represented United School Administrators of Kansas and the Kansas School Superintendents Association. He stated the concern for avoiding educational harm to all students cannot be an excuse to fail to address constitutional issues of school finance adequacy and equity, regardless of the financial or political issues involved. The people of Kansas placed the requirement for suitable finance of the educational interests of the state in the state constitution precisely in order to provide a higher standard than ordinary legislative majorities. A constitutional right or requirement that cannot be enforced is no right at all. Mr. Tallman said if the Committee wished to advance a constitutional amendment to prohibit an interpretation in the operation of the public schools, it must ensure that the judicial system can enforce a remedy if the Legislature fails to provide constitutionally equitable and adequate funding. ([Attachment 21](#))

Sheryl Spalding, President, MainStream Coalition, stated her opposition to any Constitutional Amendments to the Kansas Constitution intended to limit or otherwise specify the role of the Kansas Supreme Court in matters of public education. She said the Kansas Supreme Court has not overstepped its bounds in regards to public school finance. In fact, it has performed the duties set for it by the people of Kansas admirably. Disliking the result of a ruling should not result in a constitutional amendment to change the rules. It instead requires that this body craft a school finance plan that meets the requirements set forth by the people of Kansas in their Constitution. ([Attachment 22](#))

Brian Koon, Kansas Families for Education, stated opposition to the proposed Amendment to the State Constitution which would limit judicial independence. He said Kansas Families for Education opposes this measure on grounds that it is a direct threat to the checks and balances set down by James Madison and our other forefathers at the birth of this nation. The goal of having three branches of government was to create a stable and fair government where no branch could reign supreme over the others. Kansas Families for Education wholeheartedly supports the independence of the Kansas Supreme Court and its defense of the Constitutional right of Kansas school children to receive an adequate and equitable education for which the State provides suitable financing, as specified in Article 6 of the Kansas Constitution. ([Attachment 23](#))

Erin Gould, Game On for Kansas Schools, said while they understand and share frustration over the multiple rounds of litigation over school funding, they believe that amending the Constitution is the incorrect solution. They oppose amending the Constitution to prohibit the Supreme Court from closing schools and believe the Legislature should devote its attention to meeting the needs of Kansas children rather than changing the Constitution to lower our standards. They also believe that constitutional amendments should be addressed during the regular session rather than a hastily-called hearing during the summer. ([Attachment 24](#))

Chairperson King asked if there was anyone else who wished to speak to the Committee. There were none.

Written only testimony was provided by:

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 9:40 a.m. on Thursday, June 16, 2016 in Room 346-S of the Capitol.

- Denise Sultz, President, Kansas PTA ([Attachment 25](#))
- Joseph Molina, Kansas Bar Association([Attachment 26](#))
- Nathan Leadstrom, Kansas Association of Defense Counsel ([Attachment 27](#))
- Callie Jill Denton JD, Executive Director, Kansas Association for Justice ([Attachment 28](#))

The conferees addressed questions from Committee members. There was discussion about the definition of "equitable" school funding. Legislative Research was asked to determine how much money the four school districts have spent suing the state as well as how much money has been spent by the Attorney General's office on the *Gannon* case.

There was concern expressed and discussion about how much money is enough for school funding and how can it best be determined. A Committee member expressed that it seems when a number is determined, it is never enough. Another member noted the difficulty of determining that number and the fact it is an ever changing number as requirements evolve in the school system.

At the conclusion of the question and answer session, Chairperson King stated the meeting on Friday, June 17, would begin at 10:00 a.m. and conclude at 2:00 p.m.

Chairpersons King and Barker adjourned the meeting at 3:28 p.m.

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Jeff King at 10:09 a.m. on Friday, June 17, 2016, 346-S of the Capitol.

All members were present except:

Senator Terry Bruce – Excused
Senator Pat Pettey – Excused

Committee staff present:

Robert Gallimore, Legislative Research Department
Debbie Bartuccio, Kansas Legislative Committee Assistant
Lauren Douglass, Legislative Research Department
Jason Thompson, Office of Revisor of Statutes
Jason Long, Office of Revisor of Statutes
J. G. Scott, Legislative Research Department
Eddie Penner, Legislative Research Department

Conferees appearing before the Committee:

Dr. Walt Chappell, President, Educational Management Consultants

Others in attendance:

See Attached List

Additional Public Comment on Potential School Funding Changes in Response to the May 27, 2016, Gannon Order or Potential Constitutional Amendments

Chairperson Barker opened the meeting of the House Judiciary Committee at 10:09 a.m. and recognized Representative Hawkins, who was continuing to fill in for Representative Whitmer, and Representative Highland, who was filling in for Representative Carpenter.

Chairperson King opened the meeting of the Senate Judiciary Committee meeting.

Chairperson Barker recognized J. G. Scott, Kansas Legislative Research Department, who provided the answer concerning a question raised at the meeting on June 16. Mr. Scott stated the amount of money the Attorney General's office has spent since 2011 on litigation in the school districts has been \$1.9 million dollars.

Chairperson King asked how much of the money requested by the Courts would make its way into the classroom and how much would be returned to taxpayers in the form of taxpayer relief. Mr. Scott replied all of the \$38.7 million would be in the form of taxpayer relief. Chairperson King inquired if there would be anything the school districts could do to change the result so all of the money would not be in the form of taxpayer relief. Mr. Scott stated if all the school districts had the ability to raise their LOB, a maximum of \$5 million could make its way to the classroom. There were no other questions for

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 10:09 a.m. on Friday, June 17, 2016 in Room 346-S of the Capitol.

Mr. Scott.

Chairperson Barker recognized Dr. Walt Chappell, President, Educational Management Consultants. Chairperson Barker limited Dr. Chappell's remarks to six minutes, as was done to the conferees testifying on June 16. Dr. Chappell's testimony included eleven key points with recommendations. He stated by eliminating the 1992 formula's LOB effort to equalize funding between districts, the 2016 Legislature can finally "get off the merry-go-round" of endless court battles and adopt a "similar tax effort". He said once the new school-based finance formula is developed and a computer model provided to the Legislature, it will result in the Courts, parents and taxpayers being assured that both equal and adequate funding is being appropriated by the Legislature. The new formula, with built-in cost controls, would be able to hold down costs, assure that most tax dollars are being spent in the classroom and improve student performance in all schools. ([Attachment 1](#))

Representative Carmichael asked Dr. Chappell if adding the \$38 million to the plan was a good idea. Dr. Chappell responded it was not a good idea. It would only go toward property tax relief and would not solve the problem.

There were no other questions for Dr. Chappell.

Chairperson Barker asked if there was anyone else who wished to provide public comment. There was no one else.

Committee Discussion and Possible Recommendations

Chairperson Barker opened the portion of the meeting concerning committee discussion and possible recommendations to the Senate Committee on Ways and Means and the House Committee on Appropriations regarding potential school funding changes in response to the May 17, 2016 *Gannon* Order.

There was discussion concerning the following points:

A Committee member asked if Lauren Douglass, Kansas Legislative Research Department, had determined if New Jersey had enacted legislation prohibiting the closure of schools. Ms. Douglass responded she had not been able to find anything on the books concerning such a measure.

A Committee member asked Mr. Long to explain the the hold harmless provision and LOB (local option budget) fund sources for the school districts. Following the explanation, Mr. Long said the Legislature might want to consider whether to direct how the hold harmless funds are deposited by the school districts. The Committee member asked if all of the plaintiffs in the lawsuit were at the 33% maximum. J. G. Scott replied they would get back to the Committee concerning this question.

Chairperson Barker asked Mr. Long if, in his opinion, there would be a way to draft a hold harmless provision that would comply with the Court's ruling. Mr. Long replied he did not know if such a

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 10:09 a.m. on Friday, June 17, 2016 in Room 346-S of the Capitol.

provision could be drafted, but an option might be to draft legislation that would direct the school districts to place the hold harmless money in their supplemental general fund, which would go toward meeting the funding required for the LOB for that year.

There was additional interest and discussion concerning the possibility of drafting language concerning the hold harmless fund which would meet the constitutional standards of the Supreme Court.

A Committee member inquired as to the amount which would be required over and above the \$38 million dollar figure in order to preserve the hold harmless funds. Mr. Scott reported the number would be \$11.7 million dollars. He also responded to the earlier question concerning the LOB cap and it was found all of the litigants were at the 30% level.

A Committee member inquired if all of the districts raised their LOB to the 33% maximum, would it help remedy the inequity in the funding. Mr. Scott replied it was a separate issue.

A Committee member asked if the hold harmless does not pass, could the school districts raise additional money via property tax increases by raising the mill levy. Mr. Scott replied affirmatively.

There was discussion as to if the hold harmless provision ends and we go back to the old school finance formula with some districts receiving supplemental aid, would that create inequality issues. Mr. Long stated the Court has never addressed equalization among school districts that are above the 81.2 percentile equalization point. He stated under the SDFQPA, the formula fluctuated and was calculated annually.

At the conclusion of member discussion on hold harmless, a Committee member stated it was his hope a constitutional hold harmless provision with an effective severability clause could be drafted by the Revisors for review by Committee members.

Chairpersons Barker and King stated their interest in having the Revisors draft recommendations for consideration by the Committee members during the Special Session.

Chairperson King stated his agreement with Representative Ward in that under *Gannon III*, he did not see how the Court would allow a hold harmless provision. He stated his personal support of the hold harmless concept, but indicated the Court was crystal clear in not approving hold harmless. He said the Legislature needs to look at the \$38 million dollar amount and then find other ways to assist school districts needing additional financial aid. To achieve the \$38 million dollar target, Chairperson King referred to the possible use of \$25 million dollars of highway project funds and \$12 or \$13 million dollars from an extraordinary needs fund. There would be approximately \$4 million dollars remaining in the extraordinary needs fund to address some of the hold harmless issues.

Chairperson Barker stated his agreement with Chairperson King's statements concerning hold harmless and that the Legislature fund the \$38 million dollars requested by the Court.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 10:09 a.m. on Friday, June 17, 2016 in Room 346-S of the Capitol.

Senator Lynn stated her agreement that kids are more important than roads, however, she did not know if she could support something that does not have a hold harmless provision. She also spoke concerning the need to return next year and look at a restructuring and the development of a formula that will pass the test of time.

Representative Ward stated the Committee needs to focus on the response to the Court and make the recommendation to fund the \$38 million dollars, without recommending a specific source of funding.

Chairperson Barker confirmed his support of leaving out the hold harmless provision unless there was a way to include it that would meet constitutional requirements.

Representative Davis inquired if information was available concerning what adding the \$38 million dollars would do to the school districts without including the hold harmless. Chairperson Barker said this information was provided to the Appropriations Committee and requested Mr. Scott to provide a copy of the report to Committee members.

Representative Finch stated his agreement that this body did not need to make recommendations concerning where the \$38 million dollars comes from, but should leave the decision to the Appropriations Committee. He stated his belief that the Court could find a hold harmless favorable if it was not set up in the same manner as in the CLASS Act. He suggested an alternate recommendation to study what kind of hold harmless provision would pass constitutional muster.

Representative Becker stated the Committee did not have the luxury of having a plan B, so in his opinion, there would be too much of a risk with sending a recommendation containing a hold harmless provision.

Senator Smith stated the Court refers to equitable and adequate funding but provides no guidance on what that means. He said in reviewing data with staff, he found in the first 100 years, there was no litigation on school finance. He requested J. G. Scott to provide the Committee members with what the amount of funds per pupil would be if the total dollars were divided by the total number of students.

There was additional discussion about the possibility of a hold harmless provision that was constitutional.

Chairperson King said he appreciated the discussion and said he thought it highlighted why the constitutional amendment to prevent the schools from being closed was needed.

Representative Powell commented he struggles with the idea of complying with the \$38 million dollars when the majority of it is not going to go the children in the classroom.

Representative Osterman referred to a school funding law passed in 2005 and suggested amending the

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 10:09 a.m. on Friday, June 17, 2016 in Room 346-S of the Capitol.

law to include a prohibition on use of LOB funding for school funding lawsuits. In addition to finding the \$38 million dollars to meet the court requirements, the Legislature needs to fix the legislation now to avoid continuing to have lawsuits over school funding.

Senator Love inquired what the hold harmless provision cost and Mr. Scott replied it was \$11.7 million dollars. There was discussion concerning the effects of variances in the price of oil and gas on fund allocations to the school districts.

Representative Rubin said he agreed with Representative Osterman's remarks about clarifying our role in the use of taxpayer money to fund litigation against the state. Otherwise, he has not agreed with much of the Committee's discussion. As a Judiciary Committee, we should not be talking about dollars and cents, but should be advising our colleagues in the full Legislature about the legal ramifications of the Court's decision. He said he believes all three branches of the government can act unconstitutionally and he thinks the Court's decision on *Gannon* is both unconstitutional and illegal. He stated the Court can provide opinions but does not have the authority to revoke decisions made by the Legislature concerning appropriation of funds to schools. He said he intended to vote against any proposal that would add additional funds to schools.

Chairperson Barker requested Mr. Scott to review a document which was prepared by the Board of Education. Any negative number in the fourth column illustrates the amount of funds that would be required to be added back if every school district was held harmless. The negative numbers total \$11.7 million dollars. ([Attachment 2](#))

Chairperson King questioned if we put the \$11.7 million dollars back in, what amount of money would be needed to be added to the remaining districts to meet the Court's definition? Mr. Scott indicated an estimate would be provided to the Committee after the break.

Representative Pauls expressed her concern that she would like to see the Committee provide solutions as opposed to simply agreeing with providing what the Court has requested. She referred to the 2005 statute prohibiting school closure. The public perception is that the Court's decision is wonderful for the schools. The public does not understand that the money will go to the taxpayers. She said the other problem is that the money never seems to be enough. And, what can the Legislature do to resolve the problem of continuing lawsuits and the threat of school closure by the Courts?

Chairpersons Barker and King recessed the House and Senate Judiciary Committees at 11:45 a.m. to reconvene at 12:30 p.m.

Chairpersons Barker and King reconvened the House and Senate Judiciary Committee meetings.

Representative Carmichael said he respectfully disagreed with the position of those who did not agree with the concept of a free and independent Court for a free and independent people. It is the obligation of the Courts to determine the constitutionality of the laws. He encouraged Committee members to be

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 10:09 a.m. on Friday, June 17, 2016 in Room 346-S of the Capitol.

respectful of the Court and each other as they work toward common goals.

Representative Hutchins shared she was a member of the Legislature in 2005 in which the Legislature followed the court's recommendations and it solved nothing as we found ourselves back in Court. She expressed hope that a more permanent solution can be determined to resolve the school funding issue.

Chairperson King restated his question concerning if the \$11.7 million dollars was added into the fund so that anyone that loses is held harmless, how much money would need to be added to equalize the formulas. Mr. Scott replied, based on some quick calculations, it appeared the cost would be \$261.8 million dollars.

Chairperson Barker requested Committee members to indicate whether they approve the recommendation from Senator King to fund the \$38 million dollars in order to comply with the Supreme Court ruling.

Senator Peterson inquired if the recommendation included the mechanism for providing the funding. Chairperson Barker replied it was only a recommendation to approve the funding. It would be the responsibility of the House Appropriations and Senate Ways and Means Committees to determine the source of the funding.

There was discussion concerning whether the recommendation from the Committee should specifically state a dollar amount. Chairperson King said he would be comfortable with the recommendation saying we need to work diligently to comply with the Court's order.

Chairperson Barker stated along with the recommendation, the minutes from this meeting the last two days, along with the testimony, would be provided to the House Appropriations and Senate Ways and Means Committees.

There was discussion concerning not including a hold harmless provision in the recommendation made by Chairperson King.

Some Committee members expressed concern about voting on a recommendation without having the written language in front of them.

Chairperson King said the most important guidance to the House Appropriations and Senate Ways and Means Committees will come from the minutes and testimony over the past two days.

Chairperson Barker said these Committees will then ultimately decide if and how they wish to craft a bill for consideration.

Chairperson King stated since the Committee is not an Interim Committee, there can be no voting except by consensus, unless the Committees decide to split and vote separately.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 10:09 a.m. on Friday, June 17, 2016 in Room 346-S of the Capitol.

Chairperson King stated his recommendation would be that the House Appropriations and Senate Ways and Means Committees strongly consider complying with the Court order through one or more of the methods articulated by members of the Judiciary Committees as shown in the minutes of the Committee meeting held on June 16 and June 17.

There was discussion concerning the determination of consensus. A decision was made for members of the two Committees to vote separately.

Representative Rubin stated his concern about consensus. He stated he would be voting no on most of the proposals and requested his vote be recorded.

Chairperson Barker announced he and Senator King agree the House and Senate Judiciary Committees would vote separately.

Chairperson King moved, seconded by Senator Love, to submit the Senate minutes of this meeting to the Senate Ways and Means Committee without recommendation on any item in those minutes for their consideration as well as the testimony that was received during the meeting held the past two days. The motion passed with Senator Haley voting nay.

Chairperson King referred to the discussion on the legality of the hold harmless. He said he would entertain discussion or a motion regarding keeping that item for consideration by the Senate Judiciary Committee when it convenes on June 23, 2016.

Senator Knox moved, seconded by Senator Love, to recommend caution in consideration by the Senate Ways and Means Committee regarding the legality of hold harmless, with further study by the Senate Judiciary Committee. The motion passed.

Chairperson King asked if there were any other items for discussion by the Senate Judiciary Committee concerning this subject. There were none.

Chairperson Barker inquired if there were any motions to be offered.

Representative Carmichael, seconded by Representative Macheers, moved the House Judiciary Committee adopt a motion in language mirroring Senator King's motion, substituting House Appropriations for Senate Ways and Means.

Representative Ward stated he would oppose the motion and that he felt the Committee could have mailed in the recommendation rather than taking two days to meet.

Representative Ward asked to amend Representative Carmichael's motion to state we should use all due diligence to comply with the Court's order of providing \$38 million dollars in equity.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 10:09 a.m. on Friday, June 17, 2016 in Room 346-S of the Capitol.

Representative Carmichael approved, but Representative Macheers withdrew his second of the amended motion. The motion was then considered a substitute motion, seconded by Representative Kuether.

Representative Kahrs and Representative Rubin stated they would be voting in opposition to the substitute motion.

Representative Ward said the Senate motion does nothing, so he is hoping Committee members could support the motion to fund the \$38 million dollars to comply with the Court's decision.

Representative Pauls stated she would oppose the motion. She said she appreciated the insight from the testimony submitted and the meetings have been helpful in crystalizing the issues.

Chairperson Barker requested a vote on the substitute motion. Division was requested. There were 8 yeas and 13 nays. The motion failed. Representatives Carmichael, Becker and Curtis voted in favor.

Representative Kahrs moved, seconded by Representative Pauls, that the House mirror the language of the Senate motion, submitting the minutes of this meeting to the House Appropriations Committee without recommendation on any item in those minutes for their consideration as well as the testimony that was received during the meeting held the past two days.

Representative Todd stated it would be important the House Appropriations Committee consider all the solution options that were addressed by the Committee the past two days.

Representative Davis stated she would be voting affirmatively, however, she believed it was important that the House Appropriations Committee consider all avenues possible for the schools across the state.

The motion passed. Representative Kuether voted nay.

Representative Kuether stated her agreement with Representative Ward in the lack of accomplishment by the Committee and her disappointment that no specific recommendations were made to the House Appropriations Committee.

Chairperson Barker moved, seconded by Representative Kahrs, to mirror the Senate's hold harmless recommendation, recommending caution in consideration by the House Appropriations Committee regarding the legality of hold harmless, with further study by the House Judiciary Committee.

Following discussion of the motion, the motion passed.

Committee Discussion and Possible Recommendations

Chairperson Barker opened the portion of the meeting for Committee discussion and possible

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 10:09 a.m. on Friday, June 17, 2016 in Room 346-S of the Capitol.

recommendations for the 2016 Special Session of the Kansas Legislature regarding the proposed Constitutional Amendment prohibiting school closure or other proposed amendment pertaining to school finance.

Chairperson Barker recognized Senator Smith who announced information had been prepared by staff concerning his question of school funding based on dividing the total available dollars by the total number of students. Senator Smith recognized Eddie Penner, Kansas Legislative Research Department, who reviewed the spreadsheet data. Mr. Penner reported this method equated to \$7,055 per student. The column labeled "difference" displayed the amount of money that would be gained or lost by the school district based on this method of calculation. ([Attachment 3](#))

There was discussion concerning the results of the calculations and the history of the various school funding methods.

Chairperson King stated one thing that is apparent is that we do not know what complying with the Court order actually means. He expressed concern that if the Legislature tries to comply and the Court indicates the wrong action was taken, telling our kids they have no schools to go to is not a remedy.

Chairperson King said his next proposal for consideration is not an attempt to preclude the remedies of the Courts, and is not an attempt to end school finance litigation. It is a recognition that this endless cycle of threatening the children of Kansas with school closures cannot continue and we need to let the people of Kansas decide if closing schools is an appropriate remedy when you are in the middle of school finance litigation. It is saying to the Courts and the Legislature that having schools open is so fundamental in our society that we should not threaten closure.

Chairperson King noted that after discussion, he would move forward with a motion for the standing Senate Judiciary Committee when it meets on June 23, 2016 to consider the amendments to **Article 6 - Education** as noted in 16rs4395. ([Attachment 4](#))

Representative Todd noted it had been brought up there is current statutory language concerning the Court's ability to close schools. He inquired how the language of the amendment relates to the current statutory language.

Chairperson King said the purpose of the proposed amendment was to mirror as much as possible the language already in statute. It is not a new concept. It is putting the language in the constitutional context and letting the people of Kansas vote on it. This also binds the Legislature. The 2005 language was directed at the Courts.

There was discussion concerning the language and effects of the amendment.

Representative Ward stated his opposition to the proposal and expressed concerns about unintended consequences without a thorough review of this amendment.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 10:09 a.m. on Friday, June 17, 2016 in Room 346-S of the Capitol.

Representative Rubin expressed his agreement with Chairperson King's proposed amendment. With the exception about the section concerning the Legislature, this proposal has been the law for 10 years. It would now be sent it to the people of Kansas for their consideration.

Representative Finch stated he believed more time and consideration needs to be given to the proposed constitutional amendment than what remains for this Committee meeting. A recommendation is not needed today on this issue. It can be taken up in the separate Judiciary Committee meetings during the Special Session.

Chairperson King opened the Senate Judiciary Committee's consideration of the amendment.

Senator Knox moved, seconded by Senator Pilcher-Cook, for the Senate Judiciary Committee to introduce the constitutional amendment at a meeting at the Rail on June 23, 2016.

Senator Haley inquired if the amendment being referred to is the language outlined in 16rs4395. Chairperson King answered affirmatively. Senator Haley stated he could not support the amendment as he did not believe it solves the issue. (Attachment 5)

The motion passed. Senator Haley voted nay.

Chairperson King reiterated this merely has the effect of recommending introduction of Senate Concurrent Resolution 16rsr4395 at the Rail around 8:15 a.m. on June 23, 2016. He asked Ms. Douglass to focus on providing information of alternative remedies to school closure that have occurred around the country and in Kansas.

Chairperson King asked if there was any other business on the constitutional amendments before the Senate Judiciary Committee. There was none.

Chairperson Baker asked if there were any recommendations from the House Judiciary Committee.

Representative Kahrs moved, seconded by Representative Carmichael, to make no recommendation on any constitutional amendment.

Representative Kahrs stated his belief Senator King's amendment is already in statute, being passed in 2005.

Representative Todd indicated his support, however, with the expectation this topic will be discussed in Committee.

The motion passed.

Chairperson Barker thanked the Committee members and staff for all of their work.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 10:09 a.m. on Friday, June 17, 2016 in Room 346-S of the Capitol.

Representative Rubin announced he would be introducing a constitutional amendment before the Committee next week.

Chairperson King expressed his appreciation for everyone's efforts. He said meetings times selected during the Special Session will take into consideration the staff involved with both the House and Senate Judiciary Committees.

Chairpersons Barker and King adjourned the House and Senate Judiciary Committees at 2:09 p.m.