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SCHOOL FINANCE OVERVIEW

This memorandum summarizes the history of school finance in Kansas, including organization and governance of school districts, legislation governing school finance, current funding, and recent school finance litigation.¹

History of School Districts in Kansas

Early in its statehood, Kansas had separate districts for elementary schools and high schools, resulting in more than 9,000 districts by the turn of the 20th century. In the 1940s and 1950s, the Legislature relied on county reorganization committees to merge elementary and high school districts. By 1958, Kansas had approximately 2,800 districts, with 237 districts operating high schools and elementary schools. Legislation enacted in 1963 divided the state into planning units, which recommended districts with either an enrollment of at least 400 students in grades 1-12 or at least 200 square miles and an assessed valuation of at least \$2.0 million. This effort eliminated elementary-only districts. Legal challenges accompanied unification efforts; however, by 1969, Kansas had 311 districts. Kansas currently has 286 districts.

Constitutional and Structural Changes in Education Governance

The first State Board of Education (State Board) was created in 1873 and consisted of an elected State Superintendent and the four state college and university presidents; however, it did not have policy-making authority. Local boards held primary power over the State's education structure, even after enactment of a compulsory attendance law in 1874, requiring children ages 8 through 14 to attend school. In 1915, the Legislature established the State Department of Education, consisting of the State Board and State Superintendent of Public Instruction, as well as county superintendents. A 1957 survey of the Kansas education system led to restructuring, including statutes dividing responsibilities of the State Board and State Superintendent; degree standards for all teachers; and a constitutional amendment providing for an elected State Board.

The 1966 amendment to Article 6 of the *Kansas Constitution* took effect in January 1969 and transferred responsibilities formerly exercised by the State Superintendent to the ten-member State Board. The State Board also received authority to appoint a Commissioner of Education to serve at the Board's pleasure. Kansas Supreme Court rulings in 1973 and 1979 affirmed the State Board's authority over many of its rules, regulations, and policies, as well as use of school accreditation and certification of teachers, to equalize and promote the quality of

¹ Other education resources can be found at <http://www.kslegresearch.org/KLRD-web/Education.html>.

Kansas education. Proposed constitutional amendments to limit the State Board's authority or change its composition failed in statewide elections in 1974, 1986, and 1990.

Historic School Finance Legislation

Prior to passage of the School Foundation Act (Act) in 1965, school funding was provided by at least a dozen local and state funding sources. The Act included a basic allotment of \$760 per pupil with an adjustment based on teachers' education and experience and a multiplier based on a district's pupil-to-teacher ratio relative to the state average. Annual increases in district budgets were limited to 4.0 percent. The Act was challenged due to funding disparities between districts with well-trained and experienced teachers compared to districts with less-experienced teachers; large, urban districts and small, rural districts with fewer pupils per teacher; and rich and poor districts in wealthy counties. The 1973 Legislature passed the School District Equalization Act (SDEA), which replaced the pupil-to-teacher ratio with base budgets based on districts' sizes and limited annual budget growth based on median spending of similarly sized districts. The SDEA was later amended in response to legal claims it was unconstitutional due to unequal benefits provided to districts and unequal *ad valorem* tax burdens.

The Shawnee County District Court case *Mock v. Kansas* and the School District Finance Act consolidated 42 districts' legal challenges brought in the late 1980s and into 1991. District Court Judge Terry Bullock issued a pre-ruling order requiring the State to provide a "rational education justification" for differences in education funding. Governor Finney responded by convening a task force charged with recommending a new school finance formula. When the 1992 Regular Legislative Session did not produce a new formula, Judge Bullock warned failure to comply with his earlier ruling by June 1 would result in school closure in the fall. The School District Finance and Quality Performance Act (SDFQPA) was passed during the 1992 Veto Session and included the following:

- A statewide uniform property tax of 32 mills (scheduled to increase to 35 mills in tax year 1994) and a base state aid per pupil (BSAPP) of \$3,600; the statewide levy decreased to 20 mills in 1998 and continues at that rate;
- Weightings and adjustments to fund additional costs incurred to accommodate differences in districts and student populations (*i.e.*, the at-risk weighting, bilingual weighting, and low-enrollment weighting); and
- A Local Option Budget (LOB) allowing districts to levy mills above the uniform 32 mills, as much as 25 percent of a district's base budget, as well as State-funded equalization aid (LOB State Aid).

The 2015 Legislature (2015 House Sub. for SB 7 [SB 7]) replaced the SDFQPA with a block grant of funding for years 2015-2016 and 2016-2017. Until its repeal, the SDFQPA was often discussed and amended.²

2 For more information, see the "2016 Block Grant Funding Formula and School Finance History (11-2-2016)" document available at <http://www.kslegresearch.org/KLRD-web/Education.html>.

Current Funding

The current school finance formula, the Kansas School Equity and Enhancement Act (Act), was enacted by 2017 SB 19 and amended by 2018 Sub. for SB 423 and 2018 House Sub. for SB 61. Under the Act, Total Foundation Aid (TFA) is provided to school districts by multiplying the base aid for student excellence (BASE) by the district's adjusted enrollment. SB 61 set the BASE for five school years, as follows: 2018-2019, \$4,165; 2019-2020, \$4,302; 2020-2021, \$4,439; 2021-2022, \$4,576; and 2022-2023, \$4,713. Beginning in school year 2023-2024, the BASE will increase by the average percentage increase in the Consumer Price Index for all urban consumers in the Midwest region during the three immediately preceding school years.

The district's adjusted enrollment is calculated by adding to the district's enrollment the weightings for at-risk students, high-density at-risk, bilingual, low and high enrollment, new school facilities, ancillary school facilities, cost of living, special education, career technical education, and transportation. Major changes relative to prior school finance law include the at-risk weighting being increased from 0.456 to 0.484, expanding preschool-aged at-risk programs to include three-year-old children, full-day kindergarteners being counted as a full student rather than 0.5 FTE, options for districts to use by-building counts for high-density at-risk students and headcount for bilingual weighting, revision of the transportation weighting, and changes to capital improvement funding.

SB 61 adopted a statement of public policy of the State of Kansas to require an LOB of at least 15 percent of the school district's TFA, which shall be included in determining the adequacy of the amount of total funding, and other moneys provided by LOBs may also be included. Districts may adopt an LOB up to the statewide average from the preceding year and may adopt an LOB up to 33 percent of the district's TFA if the district's board of education has adopted a resolution providing for such authority that has been subject to a protest petition. TFA for these purposes will be calculated as if the BASE was \$4,490 in all years in which the BASE is less than \$4,490. Further, districts may use the Special Education Aid amount from school year 2008-2009 for purposes of calculating the district's LOB authority in any year in which the district's actual Special Education Aid amount is less than that year. Districts also must transfer from the LOB an amount proportional to the amounts of its TFA attributable to the at-risk and bilingual weightings to their at-risk and bilingual funds, respectively.

In addition to changes in funding, SB 423 removed language that provides for a 10.0 percent minimum for the at-risk student weighting and that allowed capital outlay funds to be used for utility expenses and property and casualty insurance premiums; changed the process for calculating LOB State Aid from a district's LOB for the immediately preceding school year to a district's current-year LOB; and voided any resolution providing LOB authority in excess of 30.0 percent that was adopted by a local school board prior to July 1, 2017, under SB 7 and not submitted to the electors of the district for approval (any district affected by this provision must adopt a new resolution subject to protest petition to adopt an LOB above 27.5 percent).

School Finance Litigation, *Gannon v. State*

The *Gannon* litigation concerns whether the Legislature is in compliance with Article 6, Section 6 of the *Kansas Constitution*, which, in relevant part requires the Legislature to "make suitable provision for finance of the educational interests of the state." In March 2014, the Kansas Supreme Court issued *Gannon I* and reiterated its prior holding that Article 6 contains at least two components: equity and adequacy. The Court provided the following test for equity: "School districts must have reasonably equal access to substantially similar educational

opportunity through similar tax effort.” Further, the Court stated adequacy would be achieved when the school finance system is reasonably calculated to have all Kansas public education students meet or exceed the capacities set out in *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989), including sufficient oral and written communication skills; knowledge of economic, social, and political systems; understanding of governmental processes; self knowledge and knowledge of one’s mental and physical wellness; grounding in the arts; training or preparation for advanced training in either academic or vocational fields; and academic or vocational skills that enable favorable competition in academics or the job market.

The 2015 Legislature subsequently enacted SB 7, which, on remand, a three-judge panel found to be unconstitutional. In *Gannon II*, issued in February 2016, the Court affirmed that SB 7 failed to cure inequities in the school finance system, continued the stay of the panel’s order, and ordered the State to satisfactorily demonstrate the Legislature has complied with the equity standard by June 30, 2016. The 2016 Legislature enacted HB 2655 in response. *Gannon III*, issued in May 2017, found the LOB State Aid funding mechanism was unconstitutional, and efforts to minimize districts’ loss of funds were insufficient to mitigate LOB inequities. The Court continued its stay until June 30 and, on June 28, found HB 2001 (2016 Special Session) brought the Legislature into compliance and retained jurisdiction over the issue.

In *Gannon IV*, the Court affirmed the three-judge panel’s holding that the finance system was constitutionally inadequate as its structure and implementation were not reasonably calculated to have all Kansas public education students meet or exceed the *Rose* capacities. Looking at structure, the Court found the block grant was not a finance system, but rather a stopgap measure that froze districts’ funding with minimal response to financially important changing conditions such as increased enrollment. Further, the Court held SB 7 does not meet the implementation requirement for adequacy as plaintiffs’ evidence shows the State is failing to provide approximately one-fourth of students with basic reading and math skills. Additionally, the Court stated plaintiffs have proven student performance is related to funding. The Court retained jurisdiction and continued the stay, calling for the State to satisfactorily demonstrate by June 30, 2017, that its proposed remedy meets the constitutional standards for adequacy and equity.

The 2017 Legislature enacted SB 19. *Gannon V* held the State failed to show the overall level of funding in the bill was adequate and rejected the “successful schools model” put forward by the State, as well as the State’s claim that the “effective base” amount—including both TFA and the LOB of the districts—is sufficient to meet the inflation-adjusted cost estimates of previous cost studies. The Court also identified inequities related to the allowed use of capital outlay funds, the process to reach the maximum LOB authority, the determination of LOB State Aid, and the 10.0 percent floor for the at-risk weighting.

The Court extended its stay until June 30, 2018, noting at that time it will not “be placed in the position of being complicit actors in the continuing deprivation of a constitutionally adequate and equitable education.” The Court retained jurisdiction over the case and scheduled briefing deadlines and oral arguments, which will be conducted May 22, 2018. In seeking constitutional compliance, the Court advised the Legislature has the duty to make suitable provision for finance of the educational interests of the State and has a myriad of choices available to perform that duty, *i.e.* no specific level of funding is required for adequacy and no particular brand of equity is mandated; the State bears the burden of establishing compliance; the State would help its case by “showing its work”; and the State should be cautious of challenges arising from an increased reliance on LOB-generated funding.³

3 For more information, see “Kansas Supreme Court’s Fifth Opinion in *Gannon v. State* - Third Opinion on Adequacy (10-3-2017)” available at <http://www.kslegresearch.org/KLRD-web/Education.html>.