

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

68-West-Statehouse, 300 SW 10th Ave.
Topeka, Kansas 66612-1504
(785) 296-3181 • FAX (785) 296-3824

kslegres@klrd.ks.gov

<http://www.kslegislature.org/klrd>

May 31, 2016

KANSAS SUPREME COURT'S SECOND DECISION ON EQUITY IN *GANNON V. STATE*

The Kansas Supreme Court issued its third opinion in *Gannon v. State* on Friday, May 27, 2016. The case currently is on appeal to the Kansas Supreme Court (Case No. 113267), after a three-judge panel in Shawnee County (Case No. 2010-CV-1569) found the K-12 block grant bill, 2015 House Sub. for SB 7 (SB 7) was unconstitutional in violation of Article 6, Section 6(b) of the *Kansas Constitution*.

In its February 11, 2016 opinion (*Gannon II*), the Supreme Court affirmed the panel's holding that SB 7 failed to cure inequities, continued its 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 opinion provided that if the State was unable to demonstrate compliance with that standard, the Court would lift its stay, invalidating the current school finance system. Without a constitutionally equitable school finance system, the schools in Kansas would not be able to operate beyond June 30. The Supreme Court also stayed the adequacy portion of the appeal and will hold additional arguments on that issue at a later date.

This memorandum summarizes the Supreme Court's May 27 opinion, the procedural history of *Gannon*, and legislative action following *Gannon I* and *II* and the December 2014 opinion of the three-judge panel.

Note: This memorandum is not intended to be a full legal analysis of the May 27, 2016, Supreme Court decision, but rather a summary discussion of important points of the decision in the context of broader school finance policy in Kansas. A full legal analysis of the panel's decision will be provided at a later date by the Revisor of Statutes.

Second Opinion of the Kansas Supreme Court on Equity (May 27, 2016)

The Supreme Court held 2016 Senate Sub. for HB 2655 (HB 2655) failed to remedy constitutional infirmities related to Supplemental General State Aid (LOB State Aid) in SB 7, also known as the Classroom Learning Assuring Student Success (CLASS) Act, which the Supreme Court identified in *Gannon II*. (Additional information about the bills is available in the "Legislative Action" section of this memorandum.) The Court found that although HB 2655 did remedy constitutional infirmities related to Capital Outlay State Aid, the unconstitutional LOB (Local Option Budget) State Aid funding mechanism was not severable from the CLASS Act, and the Act was unconstitutional. The Court also continued its stay of the panel's order, retained jurisdiction of the case, and denied attorneys fees to the plaintiffs. Justice Johnson, concurring with the majority opinion that the LOB State Aid provisions were unconstitutional, dissented as

to the stay of the panel's order that would require the Legislature to fully fund LOB State Aid as it existed prior to *Gannon*.

Constitutionality of Capital Outlay State Aid and LOB State Aid in 2016 HB 2655

Because HB 2655 was enacted in response to a court order, the State bore the burden of proving the bill cured constitutional infirmities identified in *Gannon II* with regard to equity. HB 2655 restored the former formula for calculating Capital Outlay State Aid, which the Court had previously held constitutional, so long as the formula was fully funded; removed Capital Outlay State Aid from the block grant, allowing aid-qualifying districts that raise their mill levies to receive corresponding additional Capital Outlay State Aid; and appropriated \$50.7 million, an amount the Kansas State Board of Education (Board) estimated to be sufficient for such purposes in the 2016-17 school year. According to materials provided to the Legislature and subsequently to the Court, these changes will significantly decrease disparities between districts and, consequently, the Court found the State met its burden of showing it had successfully responded to constitutional equity concerns for Capital Outlay State Aid.

HB 2655 also applies the Capital Outlay State Aid formula to LOB State Aid. The Court rejected the State's argument that the constitutionality of the Capital Outlay State Aid formula when applied to Capital Outlay State Aid should extend to its application to LOB State Aid, indicating the argument ignored the differences between the programs. The Court found use of the Capital Outlay State Aid formula creates inequities among districts that are too great considering the extent to which districts rely on those funds for basic educational funding. The Court also found the State failed to show reductions in mill levy disparity from 4.225 in school year 2014-15 to 3.148 in school year 2016-17 were due to HB 2655, rather than normal fluctuations in the Assessed Valuation Per Pupil (AVPP).

"Hold Harmless" Funds and the Extraordinary Need Fund

While the Court determined the use of "hold harmless" funds mitigates these disparities, the Court stated these funds only bring aid-qualifying districts back to LOB distribution levels *Gannon II* held were inequitable. Specifically, the legislative record shows the amount of LOB State Aid for 2016-17 subtracts \$82.9 million from the amount of aid provided by the CLASS Act in the 2015-16 school year, decreases the number of aid-qualifying districts, and reduces the amount of aid to those that remain eligible. Further, because the hold harmless funds are deposited in a district's general fund and are not required to replace lost LOB State Aid, aid-qualifying districts are left with a gap between the total funds that would have been generated through their local option budget (LOB) and funds actually in their LOB accounts. Aid-qualifying districts may use the hold harmless funds to fill this gap, but also may fill the gap by raising additional funds through new mill levies. HB 2655 does not require the State to equalize the new mill levies, which the Court predicted would result in additional local revenue for wealthier aid-qualifying districts with less effort than poorer aid-qualifying districts. Consequently, the Court found the hold harmless provision actually could increase inequities from the 2016-17 CLASS Act LOB State Aid. The Court indicated funds from the Extraordinary Need Fund (ENF) also mitigate disparities; however, the Court noted HB 2655 reduces the balance of that fund while expanding the grounds for awarding funds, making them a backup for both Capital Outlay and LOB State Aid. The Court held use of the ENF was an insufficient remedy for residual inequities in LOB State Aid.

Legislative Action and Documentation

While the State provided 700 pages of documents in response to the Court's suggestion in *Gannon II* that the Legislature show its work, the Court stated in addition to providing documents, the State must show its justification for legislative decisions. While acknowledging the political realities of the legislative branch, the Court stated it must review legislative action for conformity with the *Kansas Constitution*, and ultimately, the State failed to show HB 2655 addressed the constitutional equity concerns identified in *Gannon II*.

Severability

To determine whether the unconstitutional provisions were severable, the Court outlined a test requiring consideration of whether: (1) the act would have been passed without the objectionable portion; and (2) if the statute would effectively carry out the legislature's intent with such portion stricken. The presence of a severability clause creates a presumption of severability, but is not by itself conclusive. Looking at the CLASS Act, the Court asked whether the Legislature would have enacted it without the unconstitutional LOB State Aid provisions, which supply approximately \$1 billion—25 percent of all state funds—for K-12 public education. The Court deemed it very unlikely the Legislature would have done so given the ongoing school-finance litigation; the Court's warning in *Gannon II* that the funding system must meet equity requirements, while not running afoul of adequacy requirements; the presence of the hold-harmless provision along with statements in the legislative record emphasizing the necessity that school districts not lose any funding; and the Legislature's 2016 budget, which exempted K-12 school funding from allotment authority for FY 2017.

For the second part of the test, the Court noted provisions in HB 2655 that address the importance of avoiding disruption to public education, funding certainty for school districts, meeting students' education needs, and providing more funding for classroom instruction. Further, the State's brief indicated the Legislature's predominant goal was to create a constitutionally equitable system of school finance. Consequently, the Court found that severing only the LOB State Aid provisions would not effectively carry out the Legislature's intent. Quoting Kansas case law, the Court stated the unconstitutional act is void and "inoperative as though it had never been passed." Without a valid school finance system, Kansas schools cannot operate. Acknowledging the Legislature's intent, however, the Court continued its earlier stay of its own mandate, as well as the three-judge panel's order, until June 30, 2016, giving the Legislature more time "to craft a constitutionally suitable solution and minimize the threat of disruptions in funding for education."

Gannon Procedural History

In November 2010, plaintiff school districts filed suit alleging the Legislature had failed to adequately fund K-12 education. Since FY 2009, each district lost funding due to reductions in base state aid per pupil (BSAPP), the withholding of Capital Outlay State Aid, and the proration of LOB State Aid. A three-judge panel conducted a trial in Shawnee County District Court in June 2012 and, on January 10, 2013, ruled the amount of funding appropriated from the State General Fund (SGF) was constitutionally inadequate under Section 6, Article 6 of the *Kansas Constitution*. Further, the panel held the nonappropriation of capital outlay equalization state aid resulted in an unconstitutional, wealth-based distribution of capital outlay funds, and the proration of LOB State Aid created unconstitutional, wealth-based disparities among districts.

The State and plaintiffs appealed, and the Kansas Supreme Court heard oral arguments on October 8, 2013.

Appeal of District Court's January 2013 Opinion to the Kansas Supreme Court (Gannon I)

On March 7, 2014, the Kansas Supreme Court upheld the panel's ruling that the State created unconstitutional, wealth-based disparities by: (1) withholding all Capital Outlay State Aid payments to which certain school districts were otherwise entitled; and (2) prorating the LOB State Aid payments to which certain districts were entitled for their local LOBs. In determining the State violated the requirement of adequacy in public education, however, the Court held the panel did not apply the correct constitutional standard and remanded the case on that issue.

The Court noted a number of state courts have adopted the adequacy rationale and definition articulated in *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989), and the Kansas Supreme Court quoted it with approval in previous litigation concerning school finance. The *Rose* opinion requires an efficient system of education to have as its goal to provide each and every child with at least the seven following capacities:

- (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;
- (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices;
- (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;
- (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness;
- (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;
- (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and
- (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

The Court expressly adopted these standards for the education adequacy requirement it previously has held is contained in Article 6 and stated the adequacy component would be 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* and presently codified in K.S.A. 2013 Supp. 72-1127.” The Court did not express an opinion on whether the panel would need to reopen the record to make its adequacy determination, but did state that funds from all available resources, including grants and federal assistance, should be considered. Regardless of the source or amount of funding, however, the Court stated, “total spending is not the touchstone for adequacy.”

As to equity, the Court articulated the following test: “School districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort.” Analyzing the panel's findings under this test, the Court found those findings were supported by substantial competent evidence. The case was remanded to the panel to enforce the affirmed rulings on equity, fashion appropriate remedies, and apply the correct constitutional standard to plaintiff's claims as to adequacy. The Court included in its opinion options for the panel on remand. If by July 1, 2014, the Legislature had:

- Fully funded the capital outlay provisions and LOB State Aid provisions without proration as statutorily prescribed, the panel need not take further action.
- Taken action to cure—whether by statutory amendment, less than full restoration of funding to prior levels, or otherwise—the panel must determine whether the legislative action meets the equity test outlined in the opinion.
- Taken no curative action, transfers from SGF to capital outlay would occur automatically, and no district could utilize the LOB provision.

Ultimately, the Court required the panel to ensure the inequities are cured.

Remand to the District Court

Following the enactment of 2014 Senate Sub. for HB 2506 (HB 2506), which among other items, appropriated an additional \$109.3 million for LOB State Aid and made a revenue transfer of \$25.2 million to the Capital Outlay Fund from the SGF, the panel found the Legislature had substantially complied with the Supreme Court’s judgment concerning equity. It declined to dismiss the equity portion of the case, however, noting the Supreme Court’s order that it need not take further action if capital outlay and LOB State Aid were fully funded. For additional information on HB 2506, see the “Legislative Action” section below.

As to adequacy, the three-judge panel issued its opinion December 30, 2014, ruling the Kansas Legislature’s financing system for grades K-12—through structure and implementation—was not presently reasonably calculated to have all Kansas public education students meet or exceed the *Rose* factors and, as such, failed to satisfy the education adequacy requirement contained in Article 6 of the *Kansas Constitution*. The panel’s decision was a declaratory judgment and did not include specific instructions for remedying the inadequacy found, but rather indicated that the case should not be dismissed until the Legislature makes what the panel deemed “appropriate and necessary judgments” to adequately fund K-12 education and some time passes thereafter to gauge the effects of those judgments. The panel noted, while the obligation to adequately fund education is imposed by the *Constitution* and therefore is unavoidable, the approach to and timeliness of compliance with the decision may depend on practicality and reasonable accommodation. The panel recommended the parties undertake a renewed effort at mediation to identify a remedy.

In addition to the above finding and recommendations, the panel’s opinion contained several other points of analysis used in arriving at its conclusion, which includes the following:

- The principles of the *Rose* standards have been implicit in all Kansas school finance cases since 1994, have been paralleled since 2005 in Kansas statute, and were considered in the *Augenblick & Meyer* and Legislative Post Audit cost studies performed as part of the *Montoy* case.
- The Kansas K-12 school system was functioning to provide a constitutionally adequate education to Kansas children at the beginning of FY 2009. Based upon this conclusion, the panel extrapolated several possible approaches that might ensure a “brightline” of funding and formula structure.

- The LOB cannot stand as constitutionally acceptable support for a constitutionally adequate education without both a fail-safe to ensure a minimum amount of funds are provided in the event voluntary local taxation falls short of providing those funds and a floor defining the limits of the State's right to compel the use of such funds in meeting Article 6's adequacy requirement.
- Due to limits in flexibility and the fact that not all districts receive them, some federal funds should not be considered in establishing a BSAPP amount that will adequately fund all school districts.
- The inclusion of KPERS [Kansas Public Employee Retirement System], capital outlay, bond and interest funding, supplemental state aid, LOB revenues, and special education funding in the BSAPP cannot be considered a setoff or credit against the amount of funding required to provide a constitutionally adequate education.

In addition to the aforementioned findings and recommendations, the panel explicitly incorporated substantial portions of its January 10, 2013, ruling into its December 2014 opinion.

Following the enactment of SB 7, the CLASS Act, the three-judge panel issued another opinion on June 26, 2015. As to adequacy, the panel found SB 7 was unconstitutional in violation of Article 6, Section 6 of the *Kansas Constitution* due to its failure to fund the amounts necessary to provide a constitutionally adequate, *Rose*-factors-compliant education to all Kansas K-12 students. For additional information on the CLASS Act, see the "Legislative Action" section below. Further, the panel noted the block grant funding did not accommodate ordinary changes in the number and demographics of the K-12 student population.

As to equity, the panel referred to the Kansas Supreme Court's March 2014 opinion and found that while the Legislature's initial efforts to cure inequities in capital outlay and LOB State Aid funding were in compliance with the opinion, the Legislature's later actions were not. Consequently, the panel withdrew its previous finding of substantial compliance with the Supreme Court's judgment, noting none of the further curative actions assured to be taken if needed in the 2015 Legislative Session have occurred, and reopened equity compliance issues.

Further, the panel held section 38, concerning LOB State Aid, and section 63, concerning Capital Outlay State Aid, of SB 7 were unconstitutional in violation of the incorporated equity principles of Article 6, Section 6(b) of the *Kansas Constitution*, because they did not produce reasonably equal access to substantially similar educational opportunity through similar tax effort.

The panel issued a temporary restraining order of SB 7's flat-funding mechanism and required any distribution of General State Aid to a school district to be based on the weighted student count in the current school year in which a distribution is made.

The panel noted the Supreme Court had directed the panel to "enter such orders as the panel deems appropriate" and to "ensure the inequities in the present operation of the capital outlay statutes . . . are cured," and, consequently, struck sections concerning capital outlay from SB 7 and House Sub. for SB 4 and a section from Senate Sub. for HB 2353 (HB 2353) concerning changes to the array of AVPP used to determine Capital Outlay State Aid. The panel also struck provisions that would have repealed the Capital Outlay State Aid statutes as they existed as of January 1, 2015.

The panel indicated its order would allow sections 4-22 of the CLASS Act to proceed, but the block grant funds for FY 2016 and FY 2017 would include Capital Outlay State Aid, as calculated pursuant to the capital outlay levy statutes as they existed prior to January 1, 2015. The panel indicated that while this will require additional appropriations, it relies on the Legislature to provide this authority. Consequently, the panel directed the Board, immediately and prior to July 1, 2015, to certify any balance of Capital Outlay State Aid for FY 2015 and the entitlements of each school district so entitled. Further, the panel directed the Secretary of Administration to honor such certification and encumbrances by complying with the law governing distribution of Capital Outlay State Aid and the relevant provisions of HB 2506; directed the State Treasurer to honor transfers and payments from the Secretary; and enjoined the Kansas State Department of Education, the Kansas Department of Administration, the State Treasurer, and any other executive official of the State of Kansas from issuing or honoring any other directive that would affect the timely accomplishment of these orders.

In regard to LOB State Aid, the panel struck provisions in SB 7 and HB 2353 instructing LOB State Aid to be determined based on quintiles. Further, the panel stated that if FY 2015 LOB State Aid yet due as calculated pursuant to the law as amended (ignoring the “null and void” provisions now removed) is not paid, the Board is enjoined to distribute a like sum as soon as possible on or after July 1, 2015, from FY 2016 revenues available for LOB State Aid. These distributions would be credited as a FY 2015 receipt. The opinion directs for LOB State Aid for FY 2016 and FY 2017 to “conform to that corrected sum due for FY 2015.” Again, the panel indicated that while this will require additional appropriations, it relies on the Legislature to increase the funding.

The panel declined to exercise the plaintiff’s suggested remedy of immediate injunction of the CLASS Act, staying any remedy in reference to those provisions pending Kansas Supreme Court review. The panel characterized these remedies as the “least disruptive,” and stated these remedies would help to avoid uncertainty that would have been created if the present funding in SB 7 and its method of distribution became too uncertain, especially given school districts’ August budgeting deadline.

If the panel’s orders are not followed, the panel directed the stay on the order striking the CLASS Act, absent good cause to the contrary, would be lifted; the provisions of the CLASS Act, as well as sections 38 and 63 of SB 7, as amended by HB 2353, would be struck as unconstitutional, as well as those sections in these two bills, other than appropriations, that depend on, make reference to, or would not have been amended had it been expected those sections would be declared unconstitutional; and any remaining appropriated funds yet undistributed would be distributed pursuant to the School District Finance and Quality Performance Act. The panel then specified which portions of SB 7 and HB 2353 would remain in place under these circumstances; struck references to the CLASS Act; and instructed, when applicable, which alternate provisions of the law should be construed to apply.

Appeal of the District Court’s December 2014 Opinion to the Kansas Supreme Court (Gannon II)

The Supreme Court issued a stay of the district court orders and held oral arguments on November 6, 2015. In an opinion issued February 11, 2016, the Supreme Court affirmed the panel’s holding that the CLASS Act failed to cure the inequities affirmed in the Supreme Court’s March 2014 order (*Gannon I*). On the issue of whether the State cured the capital outlay inequities previously identified for FY 2015, the Supreme Court found the State had not carried its burden to show they were cured. In reaching this conclusion, the Court rejected the argument

that the inequities were cured because districts received millions more dollars in Capital Outlay State Aid than they had in previous years, stating:

Increased capital outlay aid beginning in fiscal year 2015 may have reduced dollar disparities between districts compared to the previous fiscal year but only because the State had completely eliminated funding for capital outlay state aid beginning in fiscal year 2010. . . . In short, a mere increase in aid does not necessarily cure unconstitutional inequities.

In reviewing evidence offered by the Plaintiffs, the Court noted, relative to the 2014 Legislature's plan to fully fund Capital Outlay State Aid under the previous formula, every district entitled to aid suffered a loss, 28 districts lost their entire entitlement, and the wealthier districts that did not qualify lost nothing. The Court stated the formula is structurally less equitable in that there is a remaining disparity between those districts that suffered a loss and the wealthier, self-funded districts. The Court found data offered to show an increase in funding did not show this increase provided students in districts entitled to Capital Outlay State Aid with reasonably equal access to substantially similar educational opportunity through similar tax effort. Thus, the Court held the State failed to carry its burden to show the changes made in 2015 to the Capital Outlay State Aid formula cured the unconstitutional wealth-based disparities identified in *Gannon I*.

On the issue of whether inequities in LOB State Aid for FY 2015 had been cured by 2015 legislative action, the Supreme Court found the State did not carry its burden to show they were cured. Again, the Court summarized the changes to law and rejected the State's argument that the inequity was cured because a greater amount of LOB State Aid was provided than in previous years for the same reasons it rejected that argument with respect to Capital Outlay State Aid. For a similar argument concerning districts' ability to lower their LOB mill levies, thus making their tax efforts more similar to those of wealthier districts, the Court found the change to calculating LOB State Aid deprives certain districts of LOB-based funds, while allowing others to remain at previous funding levels, making it more difficult for aid-receiving districts to provide substantially similar educational opportunities through tax effort similar to that of their wealthier counterparts. Further, the Court found unconvincing the State's argument that additional aid was required only as a result of a temporary spike in AVPP, as well as not particularly relevant in assessing equity.

By not providing the increased aid, the Court found the Legislature has dropped the districts residing below the 81.2 percentile even further from the wealthier districts residing above it, which can raise their budgeted LOB funds exclusively through local mill levels. Consequently, the Court concluded the State failed to carry its burden and again highlighted evidence provided by the Plaintiffs that demonstrated the Plaintiff districts were forced to reduce costs because of the reductions in LOB State Aid.

The Supreme Court again rejected the argument that the CLASS Act resulted in only a "relatively minimal change in aid" for the same rationale articulated above, based on the idea that the change still impacted those districts with lower property wealth the most. Further, the Court affirmed the panel's inference that by freezing already inequitable funding and carrying it into the next two fiscal years, the equity test had not been met for those years either.

With respect to LOB State Aid, the Court affirmed the panel's conclusion that the CLASS Act's failure to provide additional funds, even to those districts that chose to obtain more funds through their own efforts by increasing their LOBs before July 1, 2016, exacerbates wealth-based disparities between districts in the future and does not comply with the order in *Gannon I*.

The Supreme Court continued its stay of the panel's order and stayed the mandate in this opinion to give the Legislature "a second, and substantial, opportunity to craft a constitutionally suitable solution and minimize the threat of disruptions in funding for education." Accordingly, the Court ordered the State to demonstrate by June 30, 2016, that the Legislature, through additional remedial legislation or otherwise, has complied with the equity standard of providing school districts with reasonably equal access to substantially similar educational opportunity through similar tax effort. If the State is unable to demonstrate compliance with this standard, the Court indicated it would lift its stay, invalidating the current school finance system. Without a constitutionally equitable school finance system, Kansas schools would be unable to operate beyond June 30.

The Court noted the 2016 Legislature could cure the constitutional infirmities in a variety of ways, including reviving the relevant portions of the previous school funding system and fully funding them within the current block grant system. If the Legislature did not revive the prior system and fully fund, it would have to demonstrate any other funding system it enacted was capable of meeting the equity requirements of Article 6, while not running afoul of the adequacy requirement. If the Legislature choose the latter approach, the Court stated, "the State would help its case by showing its work in how it determined that any other proposed solution complies with *Gannon I*."

The Supreme Court retained jurisdiction over the State's appeal and stayed the issuance of the opinion's mandate through June 30, 2016. The Supreme Court also stayed the adequacy portion of the appeal and will hold additional arguments on that issue at a later date.

Legislative Action

Legislative Action Following Gannon I

2014 Senate Sub. for HB 2506 appropriated an additional \$109.3 million for LOB State Aid and made a revenue transfer of \$25.2 million to the Capital Outlay Fund from the SGF. Additionally, the bill stated the purpose and intention of the Legislature is to provide a K-12 funding system that provides students with the seven *Rose* capacities and required the funding system to be sufficiently flexible for the Legislature to consider and use financing methods from all available resources, including:

- Federal funding to school districts or schools;
- State moneys appropriated for the improvement of public education (the bill included a list of examples of such state funding sources);
- Any provision authorizing local tax levies for school funding purposes; or
- Any transfer of funds or appropriations from one object or fund to another approved for the purpose of funding public schools.

Further, the bill revised KSA 2013 Supp. 72-1127, concerning subjects and areas of instruction, to eliminate a set of goals similar, but not identical, to the *Rose* capacities, and replace these goals with the exact language of the *Rose* capacities. The revised language states the Board must design subjects and areas of instruction to achieve the goal established by the Legislature of providing every child with at least the seven *Rose* capacities.

Legislative Action Following the December 2014 Panel Opinion

SB 7, signed by the Governor on March 20, 2015, makes appropriations for K-12 education for FYs 2015, 2016, and 2017. The bill also repealed the existing school finance formula, the School District Finance and Quality Performance Act, and created the CLASS Act. Subsequent legislation amended SB 7. The major components of that legislation are described below.

Components of the Block Grant for FYs 2016 and 2017

The block grant includes:

- General State Aid school districts are entitled to receive for school year 2014-15, as adjusted by virtual school aid calculations (described below) and a 0.4 percent reduction for an ENF;
- LOB State Aid and Capital Outlay State Aid as adjusted in 2014-15 (adjustment described below);
- Virtual State Aid as recalculated for FYs 2016 and 2017 (described below);
- Amounts attributable to the tax proceeds collected by school districts for the ancillary school facilities tax levy, the cost of living tax levy, and the declining enrollment tax levy; and
- KPERS employer obligations, as certified by KPERS.

General State Aid for school year 2014-15 was adjusted to account for consolidated school districts. Adjustments also are made in all school years to ensure districts eligible for the new facilities weighting will receive that weighting as outlined in current law.

- General State Aid will be disbursed to districts in the same manner as in current law.
- ENF. For FYs 2016 and 2017, 0.4 percent of General State Aid will be transferred to the ENF. Any unencumbered funds remaining in this Fund at the end of the fiscal year will be transferred back to the SGF. Districts can apply to the State Finance Council for payments from this Fund. In reviewing a district's application for payment from the Fund, the Finance Council will consider:
 - Any extraordinary increase in enrollment;
 - Any extraordinary decrease in the district's assessed valuation; and
 - Any other unforeseen acts or circumstances substantially impacting a district's general fund.

Recalculation of LOB State Aid

LOB State Aid is recalculated based on quintiles below the 81.2 percentile of school districts' AVPP in school year 2014-15 and capped at that amount for subsequent school years with gradations as follows based on AVPP, beginning with the districts with the lowest AVPP. (Each quintile equals about 46 school districts.)

- Lowest quintile – 97 percent of LOB State Aid;
- Second lowest quintile – 95 percent of LOB State Aid;
- Middle quintile – 92 percent of LOB State Aid;
- Second highest quintile – 82 percent of LOB State Aid; and
- Highest quintile – 72 percent of LOB State Aid.

Districts continue to be authorized to adopt a LOB and levy a property tax in an amount not to exceed the LOB of the district in school year 2014-15, unless the district approved a higher amount for school year 2015-16 prior to July 1, 2015.

Recalculation of Capital Outlay State Aid

The state aid percentage begins at 75 percent for the district with the lowest AVPP and decreases by 1 percent for each \$1,000 incremental increase in AVPP.

Bond and Interest State Aid

The bill amended the calculation of state aid for general obligation bonds approved for issuance at an election held on or after July 1, 2015, using the same formula as the amended Capital Outlay State Aid formula.

Virtual State Aid

In school year 2014-15, there was no change in the calculation of Virtual State Aid.

In school year 2015-16, funding for full-time equivalent students will be calculated at \$5,000 per student; part-time students, \$4,045 per student; and students 19 and older, \$933 per 1-hour credit course successfully completed in the school year.

In school year 2016-17, funding for full-time equivalent students will be calculated at \$5,600 per student; part-time students, \$1,700 per student; and students 19 and older, \$933 per 1-hour credit course successfully completed in the school year.

A virtual student must reside in-state for the district to receive state aid for the student.

Special Levies

Districts are authorized to impose special local tax levies (for ancillary facilities, cost of living, and declining enrollment), if the district levied such tax in school year 2014-15 or if the district is qualified to levy such tax under current law.

Fund Flexibility

Districts have fund flexibility at the district level; that is, funds can be transferred to the general fund of the district with no cap on the amount of the transfer. Excluded from this flexibility are three funds: bond and interest, special education, and the special retirement contributions fund.

Other Provisions

The bill used the AVPP for school year 2015-2016 (instead of the 2014-2015 school year) for the purpose of determining LOB State Aid for any district if the district has a total assessed valuation for school year 2015-2016 less than the assessed valuation in the 2014-2015 school year; the difference in assessed valuation between the 2014-2015 school year and 2015-2016 is greater than 25 percent; and having such reduction be the direct result of the classification of tangible personal property by 2014 legislation changing the tax classification of commercial and industrial machinery used directly in the manufacture of cement, lime, or similar products.

Legislative Action Following Gannon II

Senate Sub. for HB 2655 amended statutes relating to school finance. Specifically, the bill altered statutory formulas for providing LOB State Aid and Capital Outlay State Aid for FY 2017; amended law related to the ENF; provided for School District Equalization State Aid; changed a non-severability provision to a severability provision; and amended law related to ancillary school facilities state aid. The bill made necessary appropriations for the statutory changes in the bill.

Appropriations

The bill appropriated \$367,582,721 for LOB State Aid, \$50,780,296 for Capital Outlay State Aid, and \$61,792,947 for School District Equalization State Aid. The bill also changed the appropriation for the ENF from \$17,521,425 to \$15,167,962, and lapsed \$477,802,500 from the block grants to unified school districts for fiscal year 2017. The bill also provided that, if the appropriated amounts for LOB State Aid or Capital Outlay State Aid are not sufficient to fund the statutory requirements for those two categories of aid, the amount of money necessary to satisfy such statutory requirements shall be transferred out of the ENF.

LOB State Aid

The bill revised the amount of LOB State Aid provided by SB 7 by adopting a new formula for determining the amount of LOB State Aid. Under the new formula, a school district's LOB State Aid is determined by multiplying the school district's local option budget by an equalization factor. The equalization factor is determined by arranging the AVPP of all school districts from largest to smallest, rounding the AVPPs to the nearest \$1,000 and identifying the median. The equalization factor of the median is 25 percent. For every \$1,000 a school district's AVPP is above the median, the school district's equalization factor is reduced from 25 percent by 1 percent and for every \$1,000 a school district's AVPP is below the median, the school district's equalization factor is increased from 25 percent by 1 percent.

Capital Outlay State Aid

The bill reinstated the Capital Outlay State Aid formula in effect prior to passage of SB 7.

ENF

The bill also moved the authority to review and decide upon applications for ENF funding from the State Finance Council to the Board, while adding school finance equity as a factor for the Board to consider in evaluating such applications.

School District Equalization State Aid

The bill provided funds to school districts if the changes to LOB State Aid or Capital Outlay State Aid in the bill resulted in the school districts being entitled to less state aid than under prior law.

Severability

The bill changed the non-severability provision in SB 7 to a provision specifically allowing the provisions of the CLASS Act to be severed and for the provisions of the bill to be severed.

Ancillary School Facilities

The bill also amended statutes related to the authority of a school district to levy a tax for the purpose of financing costs incurred that are directly attributable to ancillary school facilities. The bill allowed the levying of the tax for the operation of a school facility whose construction was financed by the issuance of bonds approved for issuance at an election held on or before June 30, 2016.