Senate Select Committee on Education Finance
S.B. 251 Creating the Kansas school equity and enhancement act

Testimony submitted by Schools For Fair Funding
Bill Brady

May 22, 2017

Chairman Denning, Members of the Committee:

Schools For Fair Funding is a coalition of 40 Kansas school districts comprised of 135,241 students, or 30% of the students in Kansas. Thank you for the opportunity to present our views on SB 251.

While we are testifying OPPOSED to this bill due to the issues outlined herein, there are many aspects of the bill that are a vast improvement over the block grant system. We generally appreciate the structure of the formula (with exceptions listed below) but cannot support the bill because it continues to woefully under-fund adequacy. It does not solve the problem. We urge that the bill be adjusted to cure the following issues and that it be moved forward. If the following issues are not cured, we cannot support the bill.

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

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

Equity:
"To determine compliance with the equity requirement in Article 6 of the Kansas Constitution... **school districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort**."

SB 251 must pass these two tests to meet constitutional requirements.

Structure of the formula in SB 251. Generally the bill does a good job of simply returning to the old formula. There are several pieces, however, that we do not support. These need removed from the new structure.

1. **All day Kindergarten.** Kindergarten students are counted as full students in this bill. We support this. We do have concerns that funding is based on prior year enrollment. This means that districts that do not already have full-day kindergarten will have to cannibalize funding from other sources to fund a full-day program the first year they implement it.

2. **Grandfathering LOB amounts- Section 15.** The bill grandfathers every district's former Local Option Budget into the new scheme. While most districts had a LOB of 30%, the more wealthy districts were able to implement a 33% LOB. Grandfathering this level of local funding for the more wealthy districts does not pass the constitutional equity test. It does not provide "substantially similar educational opportunity." These 44 districts are grandfathered to a 3% advantage totaling $30M in additional resources. This could be cured by simply allowing all districts to adopt a 33% LOB should they so choose.

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

4. **LOB Three year average assessed valuation per student- Section 17.** The bill provides that the Local Option Budget should be equalized according to a formula that uses a *three year average of assessed valuation per student* (AVPS). The prior court-approved procedure was simply to use the *past year's* AVPP. By moving to a three year average, it may remove perceived volatility in AVPS, but it does so at the expense of delaying LOB equalization for districts with shrinking valuations. If a district is losing valuation, they should be entitled to more state equalization to balance out the declining valuation. Using a three year average hurts these districts by delaying their required equalization until their three year average adjusts. By the same token, if a district has increasing valuation, the three year average allows them to retain equalization payments when they are no longer warranted until their three year average catches up. Delay of equalization or

continuation of unwarranted equalization does not provide equal access to resources or similar tax effort and violates the equity test. This could be cured by returning to use of the prior single year AVPS.

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

6. **10% At-risk floor - Section 23.** The bill provides that all districts shall be entitled to funding for at least 10% At-Risk even if they do not have that many free lunch students. This provision only benefits two districts and allows these two districts to split almost $2M for free lunch students they do not have. While those districts may have 10% or more of their students who meet at-risk program criteria, many districts, including all of the Gannon plaintiff districts have more students meeting at-risk program criteria than they have free lunch students upon which the funding is based:

District	Free Lunch Students	Students Meeting At-Risk Program Criteria
USD 259 Wichita	32,841	34,631
USD 308 Hutchinson	2,549	3,265
USD 443 Dodge City	4,915	5,637
USD 500 Kansas City	16,816	17,324

7. **Ancillary Levy not equalized.** Section 30 provides that districts with new facilities may levy additional funds, but this local levy is not equalized. A total of 5 districts raise $24M through this levy. This is an equity test violation. This can be cured by adding an equalization scheme that mirrors LOB equalization.

8. **Cost of living levy protest petition and election requirement and has no equalization.** Section 31 provides that cost of living levy be subject to the protest petition and election requirement. This procedure was found to be unconstitutional by the Gannon trial court as a violation of the equity test. It does not allow equal access to resources. Additionally, cost of living levy is not equalized which is another equity test violation. This can be cured by simply making cost of living levy available upon board of education resolution and equalization scheme that mirrors LOB equalization.

9. **Declining Enrollment Levy not equalized and only available to districts with a 31% LOB.** Section 32 provides that districts with declining enrollment may levy additional funds, but this levy is not equalized. A total of 2 districts raise $3.7M through this levy. This is an equity test violation. In addition, only districts

with an LOB of 31% are eligible for this levy, and the 31% LOB is not attainable for some districts due to the protest petition requirement. This can be cured with the changes to LOB outlined above and by adding an equalization scheme that mirrors LOB equalization.

10. **Capital Outlay Equalization based on Preceding Year Assessed Valuation Per Student.** Section 49 provides that capital outlay equalization be provided based upon the preceding year's assessed valuation per student. The prior court approved procedure was simply to use the current year's AVPP. By moving to the preceding year's valuation, it may remove perceived volatility in Assessed Valuation, but it does so at the expense of delaying equalization for districts with shrinking valuations. If a district is *losing* valuation, they should be entitled to more state equalization to balance out the declining valuation. Using the prior year's valuation hurts these districts by delaying their required equalization by a year. By the same token, if a district has *increasing* valuation, using the preceding year allows them to *retain* equalization payments when they are no longer warranted. Delay of equalization or continuation of unwarranted equalization does not provide equal access to resources or similar tax effort and violates the equity test. This could be cured by continuing the use of the current court-approved equalization.

11. **Capital Outlay Cap Increased to 10 Mills - Section 87.** Capital Outlay is equalized at a lower rate than LOB and has a tax cap rather than a budget cap. Recall that capital outlay is equalized only at around the 62nd percentile while LOB is equalized at the much more favorable 81.2 percentile. The equalization formula for Capital Outlay just does not do as good a job of equalizing the dollars available to districts. This means that while tax effort is similar between districts, the amount of funding varies greatly between districts. This has been allowed in the past because the cap was at 8 mills and the usage was only for capital needs, but the more the usage is expanded (see below) and the more the tax cap is increased, the more it raises equity and adequacy concerns.

12. **Utilities Expenses and Property and Casualty Insurance from Capital Outlay- Section 87.** The bill provides that Capital Outlay be expanded, allowing funds to be spent on utilities and insurance. These are clearly operational expenses. To date, the lesser equalized Capital Outlay has largely been limited to non-operational expenses, with a few exceptions. It is a violation of the equity test to move operational expenditures, like utilities and insurance, into a lesser form of equalization. Additionally, capital outlay capacity is "wealth determined." It is a function of how much 8 mills, or soon to be 10 mills, will raise in your district. It is an equity violation to move operational expenses into a wealth limited category like Capital Outlay. Utilities are a $106M item statewide and Property and Casualty Insurance cost about $35M. This is a $141M shift of operational expenses to a local, less equalized source. Transferring this amount of operational expense to Capital Outlay is a violation of the equity test.

13. **Allocating and/or prorating capital improvements (bond and interest) equalization aid.** Section 99 contains a limit on bond and interest equalization aid at the "six-year average" of bond and interest aid paid over past years. This artificial limit on paying equalization aid to poorer districts violates the equity test. The section also has an allocation system to pay reduced amounts of equalization aid if the six-year average is exceeded. Both of these procedures allow local moneys to be used without proper equalization. The equity test requires equal access to substantially similar educational opportunity through similar tax effort. This bond and interest equalization scheme attempts to limit equalization payments. It does not effect wealthy districts and disadvantages less wealthy districts. This can be cured by adopting an equalization scheme akin to LOB equalization or Capital Outlay equalization and appropriating sufficient funding to operate the system. Shortfalls could be charged to the foundation aid fund requiring ALL districts to share the pain of underappropriation.

14. **Capital Improvements Equalization Violates the Equity Test.** Section 99 continues the change made in the 2015 block grant bill to a less equalizing formula. The new equalization is tied to the lowest AVPP instead of the median AVPP. This is the exact formula that was found to be unconstitutional for Capital Outlay. It further violates the equity test by changing from current year Assessed Valuation Per Pupil to the preceding year's Assessed Valuation Per Pupil. See above discussion for Capital Outlay Equalization. This could be cured by returning to the same formula as for Capital Outlay State Aid, and returning to using current year AVPP in the formula.

15. **The Sunset of Weightings is a structure violation.** Section 22 sunsets the bilingual weighting July 1, 2020. Section 23 sunsets the at-risk weighting July 1, 2020. Section 27 sunsets the career technical education weighting July 1, 2018. Section 44 sunsets the low and high enrollment weightings July 1, 2018. Section 64 sunsets the virtual school funding July 1, 2020. We believe the structure of the formula is flawed by including these weights to address costs, but then having them expire over time. This shows the intent is not to fund these provisions on a long term basis. The default action in the bill is to eliminate these weights. Studying the weightings is certainly appropriate but they should continue until such time as a study would deem them appropriate for elimination. The sunset of these provisions subject the structure of the formula to a slow death by omitting the cost based components that make up the structure. The default for these components should be to stay in the formula until a new cost-based structure has been designed and implemented.

16. **Additional $2M for Preschool A-Risk Programs.** While increased funding to preschool at-risk students is a step in the right direction, this funding is not enough for all districts who would like to implement a program to take advantage of it. This creates a "Hunger Games" type competition among school districts for

preschool dollars. These preschool dollars will not be available to all districts. This is an equity and an adequacy violation.

Adequacy in the bill. The bill provides roughly $167M the first year and $74M the second year. Total two year program of $241M. This is not even close to adequate. Our guidestar has been the State BOE request for $893M over two years. The State BOE number should be viewed as the bottom line number for adequacy.

Some sources say that the Supreme Court did not say that additional funding is necessary. This is simply not true.

The Supreme Court said that the formula under SDFQPA was <u>UNDERFUNDED</u>.
They addressed the underfunding by blessing what the trial court found. They <u>affirmed</u> the trial court. From the opinion:

Gannon IV - 03/02/2017 Supreme Court Decision, p. 75-76

> (p. 75) **"The panel concluded that student achievement demonstrated CLASS's implementation was not reasonably calculated to meet the *Rose* standards—so CLASS was inadequate and unconstitutional. Based upon its finding that a correlation existed between funding and achievement, the panel determined <u>the inadequacy was caused by underfunding.</u> …. As a result of this and other findings, the panel determined that more money was needed to make the inadequate CLASS legislation constitutional.**"
>
> (p. 76) **"<u>WE AGREE,</u>** based upon the demonstrated inputs and outputs found by the panel and those contained in the updated standardized testing results which we have observed are not inconsistent with its findings. **We independently conclude as a matter of law that through its implementation, CLASS is not reasonably calculated to have all Kansas K-12 public school students meet or exceed the *Rose* standards.** See *Gannon I*, 298 Kan. at 1170 (constitutional inadequacy is a question of law). "

Thus the Supreme Court AGREES that "the inadequacy was caused by underfunding." If the formula is underfunded, additional funding must be added.

How much additional funding is needed to fix it?
There are multiple indicators of the amount needed. Here are four indicators.

<u>(1) The Supreme Court affirmed the trial court. Use the trial court number: Total needed is $689M to $882M</u>.

<u>(2) The State Board of Education number: $893M</u>.
The State BOE is the constitutionally elected body charged with supervising the schools. After the Gannon I decision, the State BOE began integrating the Rose Factors into the required

program in Kansas. In July of 2016, the State BOE submitted its recommendation to the legislature of the amount needed to meet the Rose Factors for FY2018 and FY2019. The State BOE asked for a base of $4604 in FY2018 and $5090 in FY2019. This costs **$893M**.

After the Gannon IV decision, the State BOE affirmed that these numbers were still valid and appropriate to meet the constitutional standard of adequacy.

(3) The cost studies: $1.4B.
The Supreme Court said in their Gannon IV decision:

"And we acknowledge that the estimates of the various cost studies are just that: estimates. But they do represent evaluations that we cannot simply disregard. "[A]ctual costs remain a valid factor to be considered during application of our test for determining constitutional adequacy under Article 6." Accordingly, the State should not ignore them in creating a remedy."

The average of the cost studies show that the base should be set at $5944. This costs **$1.4B**.

Nobody can seriously argue that the appropriation in SB 251 was arrived at ***without ignoring the levels of funding recommended by the cost studies.*** The cost studies recommend increased funding that is more than ***five (5) times (500%) higher than the increased appropriation in SB 251.***

(4) Context... Simply returning to the post-Montoy legislated base of $4492 costs $449M in 2009-10 dollars (8 years ago). The appropriation in this bill is less than ***half of the amount that this legislature found appropriate eight years ago.***

In this discussion it is helpful to remember that inflation alone costs approximately $100M per year. (Total system expenditures of $5.2 billion x 1.9% inflation)

A note on the "reasonable calculation" using "successful schools" in Section 44. Apparently the second year base of $4080 was determined by using a successful schools approach. We believe the methodology was flawed and based upon illogical assumption.

This provision compares several performance indicators among school districts, and determines which schools are successful, based on whether they are performing better than expected considering their free-lunch percentage. All this does is determine which districts are apparently more effective than the others at educating their free lunch students. Looking at the list of successful schools put out by Legislative Research, the percentage of students that are not on grade level for Math and ELA in these districts ranged from 6% to 27%. These schools may be more successful than expected, but there are significant numbers of students in those schools not meeting the Rose capacities and clearly more funding is needed to those schools, and all other schools.

Certainly studying those schools and considering whether the at-risk programs they have are more effective than others could be very helpful, but without determining what makes those

districts more successful, there is no way to reasonably ascertain whether funding all other students at that same base will be reasonable or not. Some of those districts are very small, and may naturally have smaller class sizes and so their free lunch students may get more individual attention. Other districts have fewer free lunch students, and their students may get more individual attention because there are just fewer struggling students overall. Simply funding every other student in the state at the successful base per pupil amount will not guarantee that students in other schools will meet the Rose capacities. Especially since even those "successful" districts are not meeting the Rose standards for all of their students.

Districts Losing Funding: Please also note that SB 251 will see 50 districts lose $9.4 million in funding. These 50 districts that see reduced funding under this bill still have large numbers of students who are not achieving up to the Rose levels of competency. It is not reasonable to expect that these losing districts can increase their students achievement with additional funding cuts.

Additional issues with sections of HB 2410 that appear to have been removed from the Senate bill but may still be under consideration:

The LEB (Local Excellence Budget) - Section 20 of HB 2410. This addition to the bill is an attempt to replace the former Cost of Living weight with something new. It will allow $60M of resources to be accessed only by districts that do NOT have substantial at-risk populations. Compare this $60M of resources with the $20M of resources gained by at-risk students by the increase in the at-risk weight from .456 to .484 in that bill. The at-risk students get $20M while the non-at-risk students get $60M. This new LEB budget is equalized, for those that can access it, but with an equalization formula that is even less equalizing than the 81.2 percentile method for LOB or the median method used for capital outlay. It only offers lip service to the concept of equalization. If this section gets added to the bill, it is a violation of the equity test. It does not provide reasonably equal access to substantially equal educational opportunity through similar tax effort. This section needs to stay out of the bill.

ABA Therapy Mandate for Autism. Section 52 of HB 2410 mandates ABA therapy for students with Autism under certain conditions and attempts to fund that provision with less than $2 million in appropriation. The actual cost to districts is unknown, and estimates being reported by districts are much higher than the appropriation. The cost of the therapy could also strain already underfunded Special Education dollars. Students already receiving this therapy through their health insurance may request that the school provide it instead. More study is needed on this provision.

Structure removed from HB 2410 that we did support:

Increase to At-Risk Weighting. The latest version of HB 2410 increased the At-Risk Weighting from 0.456 to 0.484. This is in line with the LPA cost study and gets more funding to the students and districts that need it. We support this and would like to see it inserted into the bill.