

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Jeff King at 8:30 a.m. on Thursday, June 23, 2016, at the Rail of the Capitol.

All members were present except:

Senator Pat Pettey – Excused

Senator Anthony Hensley, appointed substitute member to the committee

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

Natalie Nelson, Legislative Research Department

Jenna Seematter, Office of Revisor of Statutes

Nick Myers, Office of Revisor of Statutes

Jason Long, Office of Revisor of Statutes

Conferees appearing before the Committee:

Mike O'Neal, President and CEO, Kansas Chamber of Commerce

David Dorsey, Senior Education Analyst, Kansas Policy Institute

Dave Trabert, President, Kansas Policy Institute

Others in attendance:

[See Attached List](#)

Note: Three Senate Judiciary Committee meetings were held on June 23, 2016. This document contains the minutes for the meeting at the Rail at 8:30 a.m. and for the meetings at 11:00 a.m. and 1:30 p.m. in Room 582-N of the Capitol.

Meeting at the Rail for Bill Introductions and Approval of Minutes

Chairperson King opened the meeting of the Senate Judiciary Committee at the Rail at 8:30 a.m. He welcomed Senator Hensley who was filling in for Senator Pettey. All other members were present.

Chairperson King stated the first order of business was for bill introductions. He proposed introduction of the two Senate Concurrent Resolutions, which were the two Constitutional Amendments approved in a motion made during Senate Judiciary Committee action during the joint meeting of the House and Senate Judiciary Committees on June 16 and June 17, 2016. He noted the motion last week was to introduce the Resolutions in that form. Those Resolutions both have an August election date. He said if either of the Resolutions are worked, he would request the August date be changed to the November election date. There is no effort to place this on the August ballot.

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

In response to a question from Senator Haley for clarification on the bill introductions, Chairperson King stated at the joint meeting, the Senate Judiciary Committee voted regarding the school finance proposal to merely introduce the minutes of the meeting and testimony, without recommendation to the Senate Ways and Means Committee. Secondly, the Senate Judiciary Committee recommended the introduction of one of the Senate Concurrent Resolutions. Chairperson King said he was introducing both of the Resolutions for discussion purposes. There would be hearings in the Senate Judiciary Committee meetings scheduled for 11:00 a.m. and 1:30 p.m. today.

There were no other comments and no objections to the introduction of the two Senate Concurrent Resolutions.

Chairperson King said the next item for discussion was approval of the minutes from the Joint House and Judiciary Committee meetings held on June 16 and June 17, 2016. He noted there were two typographical errors found after the minutes were distributed to Committee members. Approval of the minutes would include the ability for staff to make the corrections. There were no objections. The minutes were approved.

Chairperson King adjourned the meeting at 8:35 a.m.

Bill Introductions and Staff Overview:

Chairperson King opened the meeting at 11:08 a.m. All Committee members were present, with Senator Hensley filling in for Senator Pettey. The meeting was held in 582-N of the Capitol.

Chairperson King began with bill introductions and recognized Senator Vicki Schmidt, who requested the introduction of 16rs9022, an act concerning controlled substances; relating to the uniform controlled substances act; substances included in schedule I; amending K.S.A. 2015 Supp. 65-4105, as amended by section 2 of 2016 House Bill No 2018 and repealing the existing section. Senator Schmidt explained this bill concerns a substance that is 7 1/2 times stronger than morphine and is not a controlled substance at this time in the United States. She said the drug can be obtained over the internet from China and from domestic retailers. Ohio, Wyoming and Georgia have now scheduled the drug, which has no medicinal use. The KBI and the Kansas Board of Pharmacy have requested the bill for emergency scheduling. ([Attachment 1](#))

Chairperson King asked if there were any questions or objections to the bill introduction.

Senator Bruce questioned whether the drug could be controlled under existing statute. Senator Schmidt responded the drug is a brand new designer drug so it does not fall under existing regulations.

Senator Haley questioned whether there would be an opportunity to have the bill heard and worked during this Special Session. Chairperson King responded the schedule is the challenge, and the top priority is to address the finance portion of the *Gannon* ruling that threatens to close schools on July 1.

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Chairperson King stated his appreciation to Senator Schmidt for bringing this issue to the table. He noted there was a lengthy discussion this past year in the Corrections Committee concerning issues like this which highlight the need to have a way of criminalizing new drugs on the market that works more efficiently than waiting until the next Legislative session. He said if the matter cannot be addressed during the Special Session, he hoped it would be a topic at the next Legislative session.

There were no objections to the bill introduction.

Chairperson King noted the Committee had requested additional information on remedies both in prior Kansas litigation and in other states that have looked at school finance. Lauren Douglass, Kansas Legislative Research Department, reviewed a memorandum containing additional supplemental information. The report included information on cases in Arizona, New Jersey, Ohio, Washington and Wyoming. She said New Jersey is the only state that has been known to close schools. The closure was for eight days in 1975. ([Attachment 2](#))

Senator Haley inquired if there has been an effort by other states to change their Constitutions to limit remedies. Ms. Douglass responded her research had been primarily focused on case law and not constitutional provisions or amendments, so she could not respond to the question without further research. Chairperson King noted the Kansas Legislature passed a law in 2005 prohibiting the Courts from closing schools. However, it was not a Constitutional Amendment.

Senator Love inquired as to the vote count on the bill passed in 2005. Ms. Douglass said the bill was passed by the House on a vote of 75 to 48. The Senate approved the bill on a vote of 26 to 11. Governor Sebelius signed the law. She noted there were many parts to the legislation that was passed in 2005. She said she would provide Committee members with background information on House Sub. for SB 3 from the 2005 Special Session.

Senator Love questioned whether a ruling on the constitutionality of the 2005 statute had been determined. Ms. Lauren stated the Court had not ruled the statute unconstitutional. She said the Constitution would be a more binding authority than the statute. Jason Thompson, Office of the Revisor of Statutes, reported the State is arguing that the statute is applicable, however, the Court has not yet ruled on this argument.

There were no other questions. Chairperson King expressed his appreciation to staff for their work on this issue.

Chairperson King opened the hearing on **SCR 1602 - a proposition to amend Article 6 of the Constitution of the state of Kansas by amending Section 6 thereof to define the legal remedies for violations of Article 6.** ([Attachment 3](#))

Chairperson King requested Jason Thompson, Office of the Revisor of Statutes, to provide an overview

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of the Resolution. He referred Committee members to a document received at last week's Joint Judiciary Committee meeting from Jason Long, Office of the Revisor of Statutes, concerning statutory provisions prohibiting Courts from closing schools. He stated the purpose of this Amendment is to limit the legal remedies available to both the Courts of this state and the Legislature, by prohibiting the closure of schools as a legal remedy in cases where a law is held to be unconstitutional as a violation of Article 6 of the Constitution of the state of Kansas.

There was discussion concerning whether there would be enough time to place the issue on the August ballot. Chairperson King stated there is not enough time to place it on the August ballot, but there would be time to place it on the November ballot.

Chairperson King said from a practical standpoint as well as to allow time for military personnel who are stationed overseas to be given an opportunity to vote, that the proposed Constitutional Amendment should be placed on the November ballot. Senator Bruce stated his agreement with placing it on the November ballot. Mr. Thompson indicated an amendment could be prepared so that "August" would be replaced with "November" and "primary" would be replaced with "general" concerning the election.

Chairperson King recognized the following conferees:

Mike O'Neal, President and CEO, Kansas Chamber of Commerce, provided testimony to address the issue of whether a legislative response to the *Gannon* decision should include consideration of a Constitutional Amendment codifying in our State Constitution the current state law prohibiting lower and appellate Kansas Courts from taking any action to prohibit schools from opening by enjoining distribution of funds appropriated for that purpose. He said the Kansas Chamber of Commerce was a reluctant proponent for the Constitutional Amendment. In their opinion, the current statute should be sufficient. ([Attachment 4](#))

Mr. O'Neal suggested it should not be necessary to put in the State Constitution something that is current state law. However, as there is significant uncertainty with regard to this Court's apparent intent to ignore or violate state law, and given its insistence and acknowledgment that the Constitution is the work of the people and is to be respected, it is reasonable to codify in the State Constitution a prohibition against school closure. Since the proposed Amendment would apply the prohibition to both the Legislative and Judicial branches, this addresses any public concern that the proposal singles out the Judicial branch. He stated schools should not be closed by either branch.

David Dorsey, Senior Education Analyst, Kansas Policy Institute, provided testimony in support of prohibiting the Legislature and Courts from closing schools stemming from school finance litigation. He said it was hard to imagine that any Court would threaten to violate students' constitutional right to education by closing schools over a tiny funding dispute. What was lost in the Court's overreach is the impact on not only the students, but families, school employees and even entire communities. The Resolution is not a long-term solution, but it is a step in restoring some much needed confidence in the system. ([Attachment 5](#))

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Chairperson King asked if there were any others wishing to speak as a proponent. There were none.

There were no questions for the proponents.

No persons in opposition to the amendment appeared before the Committee.

Chairperson King directed Committee members to the written only testimony in opposition provided by:

- Callie Jill Denton JD, Executive Director, Kansas Association for Justice ([Attachment 6](#))
- Mark Tallman, Associate Executive Director for Advocacy, Kansas Association of School Boards. ([Attachment 7](#))

There was no neutral testimony.

Chairperson King closed the hearing on **SCR 1602**.

Chairperson King stated it was his intention to recess the meeting until 1:30 p.m., at which time there would be testimony and discussion concerning the legal issues with drafting a hold harmless provision to be in compliance with the latest *Gannon* ruling. Following this, he stated his intention to work **SCR 1602**.

The meeting was recessed at 11:48 a.m. to reconvene at 1:30 p.m.

Hearing and Committee Discussion On:

Chairperson King called the meeting to order at 1:37 p.m. All members were present except for Senator Julia Lynn. Senator Hensley filled in for Senator Pettey. The meeting was held in 582-N of the Capitol.

Chairperson King stated at last week's Joint House and Senate Judiciary Committee meetings, there was discussion concerning the hold harmless provision. He requested Jason Long, Office of Revisor of Statutes, to provide a recap of the *Gannon* ruling concerning the hold harmless provision. Mr. Long stated the Court concluded the hold harmless provision did not mitigate the disparities that were still present with respect to equalizing local option budget (LOB) tax levies, and therefore held that the LOB equalization formula in HB 2655 was unconstitutional. There were no questions for Mr. Long.

Chairperson King opened the hearing concerning potential ways to draft a hold harmless provision in compliance with the Court's latest order in *Gannon v State, No. 113,267 (Kan. Sup. Ct. May 27, 2016)*.

Chairperson King recognized the following conferee:

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Dave Trabert, President, Kansas Policy Institute. encouraged Committee members to resist the political pressure to spend more money. He stated school districts are actually asking for more money than the equalization formula says they should get, and their special treatment would come at the expense of higher taxes or resources taken away from other government services. Further, the wealthiest county would get 43% of "special treatment" aid. Four Johnson County school districts would absorb over \$5 million of the "special treatment" aid being requested. The largest recipient of the "special treatment" aid, USD 229 Blue Valley, would get \$2.4 million even though it used \$28 million to increase cash reserves that was intended to educate students. He said Blue Valley began the 2016 school year with \$56.6 million in operating cash reserves. They had a 26.8% carryover rate for the 2015 school year, or 3 1/2 times the rate that is statutorily required for the State General Fund. There were no questions for Mr. Trabert. ([Attachment 8](#))

There were no other conferees and no written only testimony submitted.

Chairperson King closed the hearing.

Chairperson King then moved to discussion and action concerning **SCR 1602**.

*Chairperson King moved, seconded by Senator Bruce, to amend **SCR 1602**, changing the word August to November, and changing the word primary to general, so the resolution would be placed on the general election ballot in November. There was no discussion. The motion passed.*

Chairperson King moved to discussion on **SCR 1602** as amended.

Senator Hensley noted the memorandum from Lauren Douglass, Kansas Legislative Research Department, concerning additional legislative history on statutory provisions prohibiting courts from closing schools. ([Attachment 9](#)) He referred to an item on page 26 which stated SB 3 provides that no court or court appointee or judicial panel may close public schools or prevent distribution of funds for schools as a remedy in a suit alleging a violation of the Education Article (Article 6) of the Kansas Constitution.

Senator Hensley stated it was his opinion the Legislature has already dealt with this issue so he did not plan to vote for **SCR 1602**, as he did not think it was necessary.

Senator Hensley next provided Committee members with a summary of a poll conducted by Public Policy Polling of 1,018 registered voters surveyed on June 14 and June 15, 2016. The question asked was "Should Kansas amend the state Constitution to limit judicial powers in light of school funding concerns facing the state?" The overall result of the poll was 16% Yes, 71% No, and 12% No Opinion. Other demographic breakdowns of the poll results were included in the handout. ([Attachment 10](#))

There was discussion concerning the poll results.

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Senator Smith questioned the method and margin of error for the polling. Senator Hensley explained it was a telephone poll, and given the large percentage of respondents who answered "No" (71%), the results should be considered at least somewhat credible.

Senator Love commented the same question can be asked in two different ways and receive the opposite results. He remarked if the question had more specifically asked whether the person was in favor of the Courts having the ability to close schools, the results may have been very different.

Senator Hensley responded the poll was conducted by a third party and he did not have any responsibility with the poll or the wording of the question. He reiterated his point is that a statute already exists preventing the Courts from closing schools, so there is no need for a Constitutional Amendment.

Senator Love agreed voters would support the current statute, however, he would be more comfortable if there was more certainty concerning the Court's position on the current statute.

Senator Bruce stated history has shown that Public Policy Polling has not always been very accurate. The only poll that counts is the general election. Given the Court's interpretation that it can deny school children the right to an education by closing the schools over a finance issue, it would seem prudent to present the Constitutional Amendment to the voters of Kansas. The Amendment would prevent both the Courts and the Legislature from having the ability to close schools.

There was no other discussion.

Chairperson King expressed his appreciation for having the poll brought forward. He said there is no more fundamental question that faces Kansas state government than whether our schools stay open. He agreed the only poll that matters is the general election. He said unless we put the Constitutional Amendment on the ballot in November that raises this question to Kansas voters, the only poll that matters will never happen.

Chairperson King moved, seconded by Senator Pilcher-Cook, to pass SCR 1602 as amended.

Senator Haley said he appreciated the discussion and agreed the most important poll would be the general election in November. He stated he did not support the amendment since there is already a statute in place. He said he was concerned that no other states have opted for a similar solution. He said the resolution troubled him and he did not think it was the way to go.

The motion carried. Senators Haley and Hensley voted Nay.

Chairperson King expressed his appreciation to the Committee members and staff for their work the past four years on the Judiciary Committee. He stated 38% of all the bills passed through the Senate during the past four years were approved by the Judiciary Committee.

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Chairperson King adjourned the meeting at 2:06 p.m.

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