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Prior Legislation Addressing School Finance Litigation

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Since the passage of the School District Finance and Quality Performance Act in 1992, the Kansas Legislature has introduced, considered, and passed various pieces of legislation to address school finance litigation. Generally, school finance litigation has focused on the Legislature's obligations to fund public K-12 education under Article 6, §6(b) of the Constitution of the State of Kansas (Article 6). While some legislation has focused solely on such litigation, other legislation has addressed school finance litigation issues through a few provisions contained in a broader school finance bill. Regardless of the form of the legislation, the bills and resolutions can be classified by six distinct categories. Those six categories can be described as follows:

1. Legislation barring the courts from exercising jurisdiction over claims of Article 6 violations.
2. Legislation modifying the rules and practices of civil procedure as they apply to claims of Article 6 violations.
3. Legislation prohibiting the expenditure of public moneys to finance the litigation of claims of Article 6 violations.
4. Legislation redefining the phrase "make suitable provision for finance of the educational interests of the state."
5. Legislation granting the constitutional power of appropriation exclusively to the Legislature.
6. Legislation prohibiting the closure of schools as a remedy for violations of Article 6.

This memorandum will provide a brief overview of each category including examples of such legislation. A table is attached to this memorandum listing each bill or resolution introduced since 1992 that has addressed school finance litigation. Because much of the legislation is duplicative in nature, only certain bills and resolutions are included as examples of

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each category. However, a brief description of each bill and resolution that has been introduced is included in the table.

Category 1: Creating a bar to the courts' jurisdiction

Category 1 legislation sought to either limit the courts' jurisdiction over claims of Article 6 violations, or outright bar courts from exercising such jurisdiction. The most notable proposal was House Concurrent Resolution No. 5002 (HCR 5002) from the 2005 Special Session. This proposition to amend the state constitution would have added a new section to Article 6 stating that "[t]he courts of the state of Kansas shall have no jurisdiction to review the financing of public education or the distribution of education expenditures in the state, or to apply section 6 of Article 6 of this constitution." After its introduction, HCR 5002 was referred to the Committee of the Whole, but the resolution was never voted upon.

In 2006, an amendment was adopted in the House of Representatives late in the session on House Substitute for Substitute for Senate Bill No. 584 (SB 584). The amendment proposed to add two new sections of law limiting the jurisdiction of the courts on Article 6 constitutional challenges. The first section would have restricted the Kansas Supreme Court to appellate jurisdiction only. The second would have granted original jurisdiction over such claims exclusively to the district court. SB 584 ultimately failed by ten votes in the House on final action.

Category 2: Modifying civil procedure rules and practices

Legislation in Category 2 sought to impact the procedure under which claims of Article 6 violations are adjudicated. Unlike Category 1 legislation, three measures under Category 2 have been enacted. In 2004, Senate Bill No. 324 (SB 324) amended K.S.A. 60-2102 to allow for an appeal directly to the Kansas Supreme Court as a matter of right of a final decision holding that a statute violates Article 6.

The next enactment occurred during the 2005 Regular Session. Senate Bill No. 43 (SB 43) contained a provision modifying the courts' procedure for hearing claims of Article 6 violations. Section 22 of SB 43 provided that upon the filing of a petition claiming a violation of Article 6, the chief judge of the Court of Appeals is to appoint a three-judge panel of current or retired district court judges to preside over the case. This provision is now codified in K.S.A. 2017 Supp. 72-5633, and was applied in the current *Gannon* litigation.

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Finally, during the 2005 Special Session, House Substitute for Senate Bill No. 3 (SB 3) included a provision that required a party challenging legislation as a violation of Article 6 to notify the Legislature prior to filing a lawsuit. This requirement is now codified in K.S.A. 2017 Supp. 72-5632, and was also applied in the *Gannon* litigation.

Additionally, 2016 House Bill No. 2741 (HB 2741) contained provisions that sought to modify the court procedures established in SB 43. The bill would have amended K.S.A. 60-2102 to grant a right of appeal as a matter of right to the Court of Appeals sitting *en banc*. Such an appellate right would allow the party to have the decision of the three-judge panel reviewed by the entire the Court of Appeals instead of the typical three-judge appellate review. The bill also would have amended the three-judge district court panel selection process to have the judges selected by random lottery with the first judge selected to serve as presiding judge on the panel. HB 2741 did not receive a hearing and died in committee.

Other legislation, that also did not become law, sought to establish legal standards and evidentiary burdens for claims of Article 6 violations. One such bill was 2011 House Bill No. 2397 (HB 2397). First, HB 2397 would have provided that “all state moneys appropriated, distributed or otherwise provided by the state to school districts *shall be deemed by the court* to have been first applied to pay the costs related to providing areas of instruction” required by law (emphasis added). This provision attempted to set a standard for determining adequacy. Second, HB 2397 would have provided that the State’s burden at all times was to prove that state moneys were not sufficient to fund the cost of providing areas of instruction required by law. This provision sought to establish the State’s burden of proof at all stages of litigation. HB 2397 did not receive a hearing and died in committee.

Category 3: Prohibiting the use of public moneys to finance litigation costs

Legislation in Category 3 sought to limit the expenditure of moneys derived from tax revenues for the costs of litigating claims of Article 6 violations. The only legislation enacted from this category was SB 3 from the 2005 Special Session. SB 3 contained a new section of law that prohibited school districts from using any money in the district’s general fund to finance the cost of litigating claims of Article 6 violations. However, the legislation allowed districts to use supplemental general fund moneys for such purposes. These provisions are now codified in K.S.A. 2017 Supp. 72-5631.

This statute was the subject to two bills introduced in later sessions. First, 2010 House Bill No. 2539 (HB 2539) proposed to render a school district ineligible for future supplemental

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general state aid if the district used supplemental general fund moneys to finance the costs of litigating claims of Article 6 violations. HB 2539 died in committee.

Second, 2013 House Bill No. 2290 (HB 2290) would have prohibited the use of moneys from both the general fund and supplemental general fund of a school district unless such use was approved by a majority of the qualified voters of the school district. HB 2290 did not receive a hearing and died in committee.

Category 4: Redefining “make suitable provision for finance”

This category of legislation sought to address the question of adequacy, itself. The first approach was to modify the key constitutional phrase, “make suitable provision for finance.” In 2004, Senate Concurrent Resolution No. 1618 (SCR 1618) proposed to amend Article 6, §6(b) by adding the phrase “as determined by the legislature,” after “make suitable provision.” This amendment attempted to give the Legislature sole discretion to determine what constituted suitable provision for finance of the educational interests of the state. SCR 1618 did not receive a hearing and died in committee.

During the 2005 Special Session, Senate Concurrent Resolution No. 1602 (2005 SCR 1602) was introduced. Rather than modify the phrase “make suitable provision,” 2005 SCR 1602 would have struck this language and provided for the finance of the educational interests of the state “in the manner and amount as determined solely by the legislature.” The resolution was referred to the Committee on Judiciary, but died in committee.

In 2011, Senate Bill No. 202 (SB 202) would have declared that the moneys provided by the state to cover the instructional cost of K-12 education fulfilled the constitutional duty to make suitable provision for the finance of the educational interests of the state. The bill included a lengthy definition of “instructional cost.” SB 202 was referred to the Senate Committee on Education, but died in committee.

Category 5: Granting the Legislature the exclusive power of appropriation

The last two categories of legislation address potential remedies that may be ordered by the court if there is a violation of Article 6. The first of these categories is the prospect that the court will order the additional appropriation of funds for school districts as was done in the *Montoy* litigation. Legislation in Category 5 sought to address this possibility by clarifying the exclusivity of the power of appropriation in the Legislature.

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During the 2005 Special Session, House Concurrent Resolution No. 5003 (HCR 5003) proposed to amend Article 2, §24 of the Constitution of the State of Kansas, which governs the appropriation of money. New language would have been added to §24 stating that “[t]he executive and judicial branches shall have no authority to direct the legislative branch to make any appropriation of money.” The new text also would have declared any existing order directing the legislative branch to appropriate funds, such as the order issued in the *Montoy III* decision, unenforceable. Amendments were made to HCR 5003 by the House Committee on Federal and State Affairs and the resolution was adopted by the House Committee of the Whole, but the House did not take final action on HCR 5003.

In 2013, Senate Concurrent Resolution No. 1608 (SCR 1608) proposed to amend Article 6, §6. Following the phrase in §6(b) that requires suitable provision for finance, the resolution proposed adding, “[t]he financing of the educational interests of the state is exclusively a legislative power under article 2 . . . and as such shall be established solely by the legislature.” This provision tied the exclusivity of the appropriation power directly to the school finance provision of Article 6, §6(b). SCR 1608 was adopted by the Senate in February 2013. Upon arriving in the House it was referred to the House Committee on Judiciary where it stayed until the end of the biennium in May 2014. No hearing was held in the House and it died in committee.

Category 6: Prohibiting the closure of schools

The final category of legislation also addresses a potential remedy if there is a violation of Article 6. Legislation in Category 6 sought to prohibit the closure of schools both by direct order and indirectly by the enjoinder of the distribution of state aid.

Several bills and resolutions were introduced during the 2005 Special Session to address this issue. House Concurrent Resolution No. 5004 (HCR 5004) proposed amending Article 6, §6(b) to include language that “public schools shall not be closed by any entity other than a locally elected board of education, as a remedy for finding that the legislature has not made suitable provision for finance of the educational interests of the state.” Senate Concurrent Resolution No. 1604 (SCR 1604) took a different approach and proposed amending Article 6, §1 by adding “[n]o court shall order any remedy for a violation of any provision of this article that shall cause the closure, or prevent the operation of public schools.” HCR 5004 was referred to the House Committee on Calendar and Printing where it died in committee. SCR 1604 was

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adopted by the Senate and sent to the House where it failed to garner the $\frac{2}{3}$ vote needed to pass on final action.

Two bills were also introduced during the 2005 Special Session that contained provisions addressing school closure. Senate Bill No. 5 (SB 5) addressed the *Montoy* case directly by prohibiting the closure of schools or the enjoinder of school finance statutes as a remedy in that particular case. Although SB 5 passed the Senate, upon reaching the House it was referred to the House Select Committee on School Finance where it died in committee.

The other bill was SB 3, which was enacted into law. SB 3 amended K.S.A. 60-2106 and K.S.A. 2017 Supp. 72-5633 to prohibit courts in Kansas from ordering the closure of schools or enjoining the distribution of state aid. Both provisions are in current law.

The 2016 Special Session once again saw the introduction of concurrent resolutions addressing the issue of school closure. Senate Concurrent Resolution No. 1602 (2016 SCR 1602) proposed amending Article 6, §6 by adding a new subsection (c) that would have prohibited the closure of schools or any other order having the effect of closing schools as a remedy for violation of Article 6. Senate Concurrent Resolution No. 1603 (SCR 1603) took a different approach in that it would have added a new section to Article 6 prohibiting the closure of schools and any other order that would deny the provision of public education to students. Finally, House Concurrent Resolution No. 5001 (HCR 5001) included the same provision as SCR 1602, but also proposed adding a provision to Article 6, §6(b) directing the Legislature to appropriate an amount equal to 45% of the prior fiscal years total state revenue for K-12 education. All three resolutions also included a provision prohibiting the Legislature from taking any action that would result in school closure or the denial of public education. No action was taken on any of these resolutions.

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Table of Legislation Since 1992

Legislation	Description	Disposition
Category 1: Creating a bar to the courts' jurisdiction		
2005 HCR 5002 (Special Session)	Proposed adding a new section to Article 6 that would prohibits courts in Kansas from exercising jurisdiction over school finance constitutional claims.	Referred to the Committee of the Whole. No vote taken.
2006 SB 584	Granted district courts with exclusive original jurisdiction over school finance constitutional claims, and limited the Kansas Supreme Court to only appellate jurisdiction.	Rejected on final action vote in the House.
Category 2: Modifying civil procedure rules and practices		
2004 SB 324	Established appeal as a matter of right to the Kansas Supreme Court.	Signed into law on February 27, 2004. The relevant section is codified at K.S.A. 60-2102.
2005 SB 43	Established the 3-judge district court panel procedure.	Signed into law on May 12, 2005. The relevant section is codified at K.S.A. 2017 Supp. 72-5633.
2005 SB 181	Required a 3-judge district court panel be appointed to hear school finance constitutional claims, and establish the plaintiffs' burden of proof for such claims.	Passed both the Senate and the House, but in different forms. The final conference committee report was not adopted by the Senate.
2010 HB 2718	Amended K.S.A. 72-5632 to require investigation of school finance constitutional claims by the Revisor of Statutes.	Referred to House Committee on Education Budget. Recommended favorably by the committee. No action taken by the House.
2011 HB 2397	Established legal standards for expenditure of state aid, and established the State's burden of proof in showing constitutional compliance.	Referred to the House Education Budget Committee. Died in committee without a hearing.
2012 SB 28	Same provisions as 2011 HB 2397.	Passed both the Senate and the House, but in different forms. No conference committee report agreed upon.
2014 HB 2773	Provided presumption that school finance provisions are in constitutional compliance.	Referred to the House Committee on Appropriations. Died in committee without a hearing.
2014 HB 2774	Same provisions as 2014 HB 2773.	Referred to the House Committee on Appropriations. Died in committee.

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2013 HB 2297	Established the State's burden of proof in showing constitutional compliance.	Referred to the House Education Budget Committee. Died in committee without a hearing.
2016 HB 2741	Changed the selection of the 3-judge panel to a lottery system, and provided a right to appeal to the Court of Appeals en banc.	Referred to the House Committee on Appropriations. Died in committee without a hearing.
Category 3: Prohibiting the use of public moneys to finance litigation costs		
2005 SB 3 (Special Session)	Prohibited the use of general fund moneys to finance litigation costs, but allowed use of supplemental general funds. Also, required notice of school finance constitutional claims be submitted to the Legislature prior to the filing of a petition.	Signed into law on July 20, 2005. The relevant sections are codified at 72-5631 and 72-5632.
2005 HB 2534	Prohibited the use of general fund moneys to finance litigation costs, but allowed use of supplemental general funds.	Referred to House Committee on Appropriations. Died in committee without a hearing.
2010 HB 2539	Prohibited the use of supplement general funds to finance litigation costs.	Referred to the House Committee on Education. Died in committee.
2013 HB 2290	Prohibited the use of any funds received other than by gift to finance litigation costs unless approved by district electorate.	Referred to the House Committee on Appropriations. Died in committee without a hearing.
Category 4: Redefining "make suitable provision for finance"		
2004 HB 2940	Defined areas of instruction and established those as priorities for school finance provisions.	Passed by the House. Failed on final action in the Senate.
2004 SCR 1618	Amended Art. 6, §6 to modify "suitable provision" as determined by the Legislature.	Referred to Senate Committee on Education. Died in committee without a hearing.
2005 SCR 1602 (Special Session)	Amended Art. 6, §6 to strike "make suitable provision" and allow for provision determined by Legislature.	Referred to Senate Committee on Judiciary. Died in committee without a hearing.
2006 SCR 1615	Same as provisions of 2005 SCR 1602 (Special Session).	Referred to Senate Committee on Judiciary. Died in committee without a hearing.
2007 SCR 1601	Same as provisions of 2005 SCR 1602 (Special Session).	Referred to the Senate Committee on Judiciary. Died in committee.
2011 HCR 5010	Same as provisions as 2004 SCR 1618.	Referred to House Committee on Education. Recommended favorably by the committee. No action taken by the House.

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2011 SB 202	Provided that appropriations for school finance were in constitutional compliance.	Referred to Senate Committee on Education. Died in committee.
Category 5: Granting the Legislature the exclusive power of appropriation		
2005 HCR 5003 (Special Session)	Amended Art. 2, §24 to declare that appropriation power is exclusive power of the Legislature.	Referred to House Committee on Federal and State Affairs. Committee reported the resolution favorably with amendments. No final action taken by the House.
2005 SCR 1603 (Special Session)	Amended Art. 2, §24 to declare that appropriation power is exclusive power of the Legislature.	Adopted by the Senate and failed in the House on final action.
2006 SCR 1613	Same provisions as 2005 SCR 1603 (Special Session).	Referred to Senate Committee on Judiciary. Died in committee without a hearing.
2007 HCR 5012	Same provisions as 2005 SCR 1603 (Special Session).	Referred to the House Committee on Federal and State Affairs. Died in committee without a hearing.
2009 SCR 1613	Same provisions as 2005 SCR 1603 (Special Session).	Referred to the Senate Committee on Judiciary. Died in committee.
2013 SCR 1608	Amended Art. 6, §6 to make school finance exclusive power of the Legislature.	Adopted by the Senate. Referred to the House Committee on Judiciary. Died in committee.
2015 HCR 5014	Same provisions as 2005 SCR 1603 (Special Session).	Referred to the House Committee on Federal and State Affairs. Died in committee without a hearing.
Category 6: Prohibiting the closure of schools		
2005 SB 3 (Special Session)	Prohibited the closure of schools as a remedy by any court.	Codified at 60-2102 and 60-2106
2005 HCR 5004 (Special Session)	Amended Art. 6, §6 to prohibit the enjoinder of school fund distribution and prohibit the closure of schools.	Referred to House Committee on Calendar and Printing. Died in committee without a hearing.
2005 HCR 5005 (Special Session)	Same provisions as 2005 HCR 5004 (Special Session).	Referred to the House Committee of the Whole. No action taken.
2005 SB 5 (Special Session)	Prohibiting all courts from closing schools as a remedy.	Passed by the Senate and referred to the House Select Committee on School Finance. Died in committee.
2005 SCR 1604 (Special Session)	Amended Art. 6, §1 to prohibit the closure of schools.	Adopted by the Senate and failed in the House on final action.

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2006 HCR 5026	Same as provisions of 2005 SCR 1604 (Special Session).	Referred to the House Committee on Federal and State Affairs. Died in committee without a hearing.
2016 SCR 1602 (Special Session)	Amended Art. 6, §6 to add new subsection prohibiting the closure of schools.	Referred to Senate Committee on Judiciary. Recommended favorably with amendment by the committee. Failed on final action in the Senate.
2016 SCR 1603 (Special Session)	Amended Article 6 to add a new section prohibiting the denial of a public education.	Referred to Senate Committee on Judiciary. Died in committee.
2016 HCR 5001 (Special Session)	Amended Art. 6, §6 to allocate 45% of total state revenue for school finance, and add new subsection prohibiting the closure of schools.	Referred to House Committee on Judiciary. Died in committee without a hearing.