

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson John Barker at 9:45am on Thursday, June 23, 2016, 112-N of the Capitol.

All members were present

Committee staff present:

Robert Gallimore, Legislative Research Department
Jason Thompson, Office of Revisor of Statutes
Jenna Seematter, Office of Revisor of Statutes
Lauren Douglass, Legislative Research Department
Connie Bahner, Kansas Legislative Committee Assistant

Conferees appearing before the Committee:

No conferees present

Others in attendance:

[See Attached List](#)

Chairperson Barker called the meeting to order. He said this will be a short meeting, but we may have to meet later today, perhaps around 3:00 p.m.

Representative Carmichael moved to approve the minutes of June 16th and 17th with the understanding that some technical corrections will be made to them, seconded by Representative Macheers. A vote was taken, and the minutes of June 16, 2016 and June 17, 2016 were approved.

Bill introductions

Representative Rubin stated he has a constitutional amendment to introduce. He feels that the Kansas Supreme Court has overstepped its bounds and abrogated the separation of powers contained in the Kansas Constitution by ordering the Legislature to appropriate additional school funding. He will oppose legislation this Special Session that would add any additional school funding. This constitutional amendment is a long-term solution to school funding. He believes they can all agree that money spent endlessly litigating the equity or the adequacy of school funding doesn't get to the classroom. It enriches the plaintiffs' lawyers and it costs the State a lot of money. That money would be better spent for the education of children. The only way to end this wasteful cycle of litigation is to amend the Kansas Constitution.

Representative Carmichael called for a point of order. Chairperson Barker noted that the point was taken. He asked Representative Rubin to introduce the bill since they have to get back to the Appropriations Committee meeting.

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Representative Rubin stated that his constitutional amendment is the proposed **HCR 16rs9021** ([Attachment 1](#)). It removes the word "suitable" from Article 6, Section 6 of the Kansas Constitution and substitutes the following wording: "For any fiscal year that commences on and after July 1, 2017, the Legislature shall designate and appropriate for the finance of public elementary and secondary schools an amount that is 45 percent of the preceding fiscal year's total state revenue for the ensuing fiscal year."

In Section 6(b) of Article 6 of the Constitution, it leaves all determinations with regard to allocations to the State Board of Education. "The State Board of Education shall have exclusive authority and responsibility to allocate and distribute funds designated and appropriated by the Legislature for the finance of public elementary and secondary schools."

The second thing this amendment does is enshrine into the Constitution and existing law in the state that the court does not have the authority to close schools in conjunction with any civil action it may consider.

Representative Rubin moved to introduce HCR 16rs9021, seconded by Representative Hutchins. A vote was taken, and the motion carried.

Representative Ward stated that this morning the Appropriations Committee refused to introduce the Democratic ideas to solve the school finance problem, and he wondered if that got rectified when the Committee met. Chairperson Barker stated that when Appropriations meets later today, that will be introduced and it will be looked at at some point in time.

Representative McPherson moved to introduce 16rs9008 (Attachment 2), a bill concerning the jurisdiction of the Supreme Court and creating the Superior Court of Kansas, seconded by Representative Carpenter.

Representative Whitmer thinks they should focus on the task at hand and not get distracted by other issues.

A vote was taken, and the introduction of 16rs9008 was approved.

Representative Carmichael stated that he had asked the Revisor to draft two other bills, but he doesn't intend to introduce them because they're really bad bills. If the Revisor wants to share them with any other committee members, however, for alternative solutions, they are free to do so.

There were no further bill introductions.

Chairperson Barker noted that the Committee has a document to review from the Legislative Research

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Department relating to the history of *2005 Special Session House Sub. for SB 3*, which, among other things, prohibited the Kansas Supreme Court from closing schools. He understands this is still good law.

Chairperson Barker recognized Representative Finch to discuss the hold harmless clause.

Representative Finch stated that last week Senator King, Senate Vice-President and Chair of the Senate Judiciary Committee, stated that he did not believe a hold harmless clause was constitutional. He had Research do some additional figuring on putting in \$11.7 million in hold harmless money, and estimates showed that could result in an additional \$200 million to equalize funding.

Representative Finch disagrees that a hold harmless clause would be unconstitutional. A reading of Jason Long's memo and the Gannon decision showed that the State tried to say that the hold harmless provision would fix the deficiencies in LOB. The Court said you have to fully fund LOB, but it didn't say you couldn't do a hold harmless on top of that. If you do, however, it cannot further create dis-equity in the system. The way it did that before is it allowed money to go into the general fund of the school district so that they didn't have to lower the LOB or change their mill levy. He believes there is a way to do a hold harmless. If \$38 million is put in full funding, you can also do the \$11.7 million and not have to add anything else into the system because you are creating a one-year hold harmless for those districts who lose money by transitioning back to the old LOB formula. The blueprint is in Jason Long's memo. You just have to make sure the underlying system is constitutionally equitable and then do hold harmless on top of that. He would recommend that be done in two separate bills to avoid the severability issue. **2016 HB 2655** essentially had the State Board of Education making that determination in awarding extraordinary need funds. If the Court were to strike it down, it wouldn't be striking down the underlying equity fix and the Court would have no basis then to order schools not to open. We could then move forward with a system for fiscal year 2017 to help lessen the damage from moving backward into the LOB formula. He wanted the Committee to have a different perspective than the one which expressed that there was no way to do a hold harmless clause. He believes the memo and the opinion show otherwise.

Representative Carmichael is not advocating for or against hold harmless, but the Committee should also know that he asked Jason Long to draft some tentative language that would be a tighter severability clause that would refer directly to specific sections of a bill. He thinks the Revisor's Office has that available, and he would encourage the members who are thinking about trying to include hold harmless or do things with extraordinary needs to take a careful look at how they could pass a severability clause that deals with specific sections so that if the Court should find one of these ideas to not meet the constitutional test that we don't end up with the entire school finance plan stricken.

Representative Ward stated he doesn't think you can create a hold harmless clause that says all kids are equal but some kids are more equal. This money is a windfall that occurred from the block grants that were passed about a year and a half ago. He thinks we should try to make accommodation for those districts that lose money. He thinks an extraordinary needs fund is needed, but the money has to go to

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the districts that lose money. He believes they should give the State Board of Education the discretion to use educational criteria to disperse the funds. That would pass constitutional scrutiny because it is based on educational and extraordinary needs. There has been no court language indicating that that is not an appropriate tool to supplement school funding for those districts that present that information. He doesn't think hold harmless works, but an extraordinary needs fund could work.

Chairperson Barker stated that if this Committee has another meeting, it will probably be this afternoon at 3:00 p.m., but he is not setting it at this time.

Jason Thompson stated that the Senate Judiciary Committee is meeting at 11:00 to begin consideration of the constitutional amendment, **SCR1602**, and then again at 1:30 to discuss hold harmless and possibly work constitutional amendments. The Senate goes back in at 3:00 p.m.

The meeting was adjourned subject to call of the Chair at 10:15 a.m.

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