

# **Committee Reports to the 2016 Kansas Legislature**



**Special Committees;  
Selected Joint Committees;  
Other Committees, Commissions,  
and Task Forces**

**Kansas Legislative Research Department  
January 2016**

## **2015 Legislative Coordinating Council**

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**Special Committees;  
Selected Joint Committees;  
Other Committees,  
Commissions, and  
Task Forces**

Special Committee on K-12 Student Success  
Special Committee on Taxation

Joint Committee on Corrections and Juvenile Justice Oversight  
Joint Committee on Information Technology  
Joint Committee on Kansas Security  
Joint Committee on Pensions, Investments and Benefits  
Joint Committee on State Building Construction

Capitol Preservation Committee  
Emergency Safety Intervention Task Force  
Health Care Stabilization Fund Oversight Committee



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# Foreword

In the 2015 Interim, the Legislative Coordinating Council appointed 6 special committees to study 17 study topics. Legislation recommended by the committees will be available in the Documents Room early in the 2016 Session.

Joint committees created by statute met in the 2015 Interim as provided in the statutes specific to each joint committee. Several of the joint committees have reported on their activities, and those reports are contained in this publication. Legislation recommended by these committees will be available in the Documents Room early in the 2016 Session.

This publication also contains reports of other committees, commissions, and task forces that are not special committees created by the Legislative Coordinating Council or joint committees.

Reports of the following are not contained in this publication and will be published in a supplement:

- Special Committee on Agriculture and Natural Resources
- Special Committee on Ethics, Elections and Local Government
- Special Committee on Foster Care Adequacy
- Special Committee on Insurance
- Legislative Budget Committee
- Robert G. ‘Bob’ Bethell Joint Committee on Home and Community Based Services and KanCare Oversight
- Clean Power Plan Implementation Study Committee

Minutes of the meetings of the special committees, joint committees, other committees, commissions, task forces, and panels are on file in the Division of Legislative Administrative Services. A summary of each reporting entity’s conclusions and recommendations may be found beginning on page i.

This publication is available in electronic format at <http://www.kslegresearch.org/KLRD-web/Publications.html>

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## ***Summary of Conclusions and Recommendations***

### ***Special Committee on K-12 Student Success***

#### **General Recommendations**

The Committee recommended a school funding mechanism that should focus on each student, include accountability measures, provide for multi-year stable funding for the state and school districts, and be equitable so that districts have reasonably equal access to substantially similar education opportunity through similar tax effort.

#### **Accountability and Assessments Recommendations**

The Committee recommended, at the state level, the current assessment approach should be re-evaluated; funding for each student to take the ACT should be provided; other outcome measures should be considered, such as Work Keys; and an exam aligned with the *Rose* standards should be developed by an objective third party.

At the school district level, arrangements should be made for all students to take the ACT; a recognized third-party assessment should be administered; and graduation, remediation, and drop out rates should be tracked, reported, and improved.

#### **Bonding by Local School Districts Recommendations**

The Legislature should repeal the current statute for bond and interest state aid and create a new statute with specific definitions and limits to avoid unforeseen demands on the State General Fund. A State building architect and project manager should be used in each new building project. And a special committee of the Legislature should be created to approve any new school district bond issues before being placed on a ballot, if a district desires to receive bond and interest state aid.

#### **Accounting Recommendations**

The Committee recommended a simpler school district budget document be developed; a single, central accounting interface should be developed and used by all school districts; and an independent financial audit should be conducted annually and published with other similar documents.

#### **Efficient Use of Taxpayer Money Recommendations**

The Committee recommended a new school funding mechanism should be based upon an efficient use of taxpayer money and reward districts providing necessary services at the best possible price. It also recommended district functions should be coordinated among districts or provided through regional service centers or statewide purchasing agreements.

#### **Standards Recommendations**

The Committee recommended the State Board of Education use school district compliance with the *Rose* capacities as criteria for accreditation.

## **Other Recommendations**

The Committee recommended that the appropriate standing committees of the Legislature form special subcommittees to examine and report on a variety of topics, including teacher pay; at-risk funding; special education; bond and interest state aid eligibility; a cost-benefit ratio of receipt of federal funds; use of interlocals, cooperatives, and service centers; current and future implications of district staffing levels on KPERS; establishing the *Rose* capacities as a “suitable education” definition; including personal finance as a mandatory area of instruction; analyzing Governmental Accounting Standards Board standards and Generally Accepted Accounting Principles for district compliance; and investigating all extracurricular and co-curricular activities on the basis of efficiency and efficacy to deliver a suitable education to students.

### ***Special Committee on Taxation***

The Committee recognizes an evaluation and sunset process must be conducted by the standing taxation committees of the Senate and House because those committees have the most legislative expertise in identifying the various interacting consequences of tax policy.

### ***Joint Committee on Corrections and Juvenile Justice Oversight***

The Committee recommended the 2016 Legislature consider appropriating additional funds in FY 2016 to the Kansas Department of Corrections (KDOC) for pay raises for uniformed staff, as well as consideration of any action recommended by the Juvenile Justice Workgroup, the criteria KDOC currently uses for placing inmates on house arrest, and use of designated crisis receiving centers. Further, the Committee recommended the introduction of legislation to increase program credits and change the severity level for the crime of unlawfully tampering with electronic monitoring equipment.

### ***Joint Committee on Information Technology***

In review of agency projects, the Committee noted the reoccurring prevalence of technology disparities, as well as many small free-standing information technology (IT) structures continually being created within individual agencies that could significantly benefit from the formalized structure and environment of a centralized system. The Committee noted a centralized system would have considerable strengths in system security and management, software updates and maintenance, cost savings and control, expertise sharing and sustainability, and overall effectiveness of statewide IT efforts. The Committee recommended consideration of a centralized statewide information technology policy, infrastructure, provision, and progression efforts. The Committee recommends the branch Chief Information Technology Officers, in collaboration with agencies and others with IT expertise, work to define, and, with the Legislature’s assistance, refine an action plan to provide and further efforts towards a centralized IT structure to be presented to the Legislature.

### ***Joint Committee on Kansas Security***

The Joint Committee recommended the position of lead analyst for power and energy infrastructure be added at the Kansas Intelligence Fusion Center, to focus on physical and cyber threats and risk assessment related to power and energy resources; the Kansas Department of Education be designated as the State agency responsible for coordinating Kansas school safety and preparedness activities and programming

the staff and funding of a Kansas Center for Safe and Prepared Schools into the State General Fund; and the House Committee on Veterans, Military and Homeland Security review possible unethical practices in the offering of certain types of financial products to veterans age 65 and older, during the 2016 Legislative Session.

### ***Joint Committee on Pensions, Investments, and Benefits***

The Committee should finalize guidelines for the new working-after-retirement provisions during the 2016 Legislative Interim. When future working-after-retirement modifications are proposed, a surcharge should be considered. The Committee notes its 2016 statutory responsibility to study whether the \$25,000 compensation limit placed on retirees who return to work should be adjusted.

### ***Joint Committee on State Building Construction***

The Joint Committee recommended all the agencies' five-year capital improvement plans and, in addition, recommends supplemental requests for the Judicial Branch, Kansas Commission on Veterans' Affairs Office, Kansas Bureau of Investigation, Department of Corrections, Department of Transportation, Kansas State Fair, and Department of Wildlife, Parks and Tourism.

The Joint Committee recommends changing the State Gaming Revenues Fund distribution (KSA 2015 Supp. 79-4803 and 79-4804) to 12.5 percent going to the Correctional Institutions Building Fund and 82.5 percent to the Economic Development Initiatives Fund.

The Joint Committee recommends the Department of Administration pursue legislation to repeal the statute that requires the Excessive Energy Use Report.

The Joint Committee rejected a lease in Chanute for the Department of Children and Families and requested the Department of Administration present a comprehensive plan to look at possible efficiencies in co-locating agencies and reviewing all available facilities in addition to possible new construction.

### ***Capitol Preservation Committee***

The Committee approved two forms for use by persons wishing to propose permanent changes to the Capitol or grounds. Four artists were selected by the Capitol Preservation Committee to be finalists for the *Brown v. Board of Education* mural. The Committee expressed its condolences regarding the untimely passing of an employee of the Kansas State Historical Society who provided tours at the Capitol.

### ***Emergency Safety Intervention Task Force***

The Emergency Safety Intervention (ESI) Task Force recommended changes to the Freedom from Unsafe Restraint and Seclusion Act, including the addition of a definition for "incident," changes to seclusion and restraint of a student with a medical condition, additions to the written documentation provided to parents, replacement of the requirement to meet after a third ESI incident in a school year with provisions allowing parents to call a meeting at any time after an ESI incident, adoption of policies related to such meetings, and changes to notification and reporting requirements.



## ***Health Care Stabilization Fund Oversight Committee***

The Committee considered two items central to its statutory charge: should the Committee continue its work and is a second, independent actuarial analysis of the Health Care Stabilization Fund (HCSF) necessary. The Committee continues in its belief that the Committee serves a vital role as a link among the HCSF Board of Governors, the health care providers, and the Legislature and should be continued. Additionally, the Committee is satisfied with the actuarial analysis presented and concluded a second, independent review was not necessary.

The Committee made other conclusions and recommendations relating to the recognition of the 40th anniversary of the Health Care Provider Insurance Availability Act and the impact of this law and the success of the public-private partnership it created, the statutory reimbursement schedule created in 2010 for the administrative services provided by the HCSF Board of Governors, a recent Kansas Supreme Court decision that, among other things, addresses the transfer of moneys from special revenue funds to the State General Fund, and the inclusion of a statement regarding the HCSF and the purpose of and use for this fund.

# Report of the Special Committee on K-12 Student Success to the 2016 Kansas Legislature

**CHAIRPERSON:** Representative Ron Highland

**VICE-CHAIRPERSON:** Senator Steve Abrams

**OTHER MEMBERS:** Senators Tom Arpke, Molly Baumgardner, Jim Denning, Anthony Hensley, Ty Masterson, Laura Kelly (substitute), and Steve Fitzgerald (substitute); Representatives Tony Barton, Sue Boldra, Larry Campbell, Dennis Hedke, Jerry Lunn, Ron Ryckman, Jr., Ed Trimmer, Valdenia Winn, Joe Siewert (substitute), Ken Corbet (substitute), and Nancy Lusk (substitute).

## STUDY TOPIC

*The objective of this study committee is to generate discussion, input, and research to further child-centric education that makes students the top priority.*

This committee is to study the following, but would not be limited to (these topics):

- The Rose Standards set by the Kansas Supreme Court as the goal Kansas schools will meet;
- Best funding mechanism by formula or other criteria to ensure adequate Kansas taxpayer dollars are invested in the classroom;
- Definition of what comprises as a “suitable” education;
- Outcomes to ensure that students are well-prepared for their future endeavors; and
- Uniform accounting across all districts so best practices to achieve student success can be replicated.

# Special Committee on K-12 Student Success

## REPORT

### Conclusions and Recommendations

#### General

A new school funding mechanism should:

- Focus on each individual student, understanding that students have different needs and will require varying levels of support to achieve success;
- Include accountability and reporting measures to ensure aid is being distributed according to the needs of each individual student;
- Provide for multi-year funding to provide budget stability to the State and USDs; and
- Be equitable so that school districts have reasonably equal access to substantially similar educational opportunity through similar tax effort.

#### Accountability and Assessments

##### *State Level*

- The current state assessment testing approach should be reevaluated and revised as necessary to avoid “teaching to the test,” inconsistent standards of proficiency, untimely return of test results, and cumbersome technology requirements.
- The State should provide funding for each student to take the ACT exam.
- The State should encourage other measures of outcome achievement, such as the Work Keys exam.
- An exam aligned with the *Rose* capacities should be developed by an objective third party with no connection to the State Department of Education or the Federal Department of Education.

##### *District Level*

School districts should:

- Arrange for all students to take the ACT exam;
- Administer a recognized third-party assessment that provides immediate, usable feedback for teachers and students;

- Track, report, and improve graduation and remediation rates; and
- Track, report, and improve dropout rates for all grade levels.

### **At-Risk Funding**

- At-risk funding should be based directly upon a student's ability to learn, rather than the poverty level of the student.
- Alternately, any poverty measure for at-risk funding should be based upon information provided by the Kansas Department of Revenue and the Kansas Department of Labor and should be available for audit. All applications by parents or guardians for a school district to receive at-risk funding should be available for audit.
- All at-risk funding should be used for no purpose other than one which is demonstrably intended to reduce achievement gaps of at-risk students. All expenditures of at-risk funding should be limited to programs which have a measurable effect on reducing achievement gaps of at-risk students. The State Department of Education should provide an annual report summarizing these expenditures and their measurable effects.

### **Bonding by Local School Districts**

- The Legislature should repeal the current statute for state aid for the payment of principal and interest on bonds for capital improvements.
- A new state aid statute for bond and interest payments should be created to specifically define and limit what projects may be funded with state aid for capital improvement.
- The new state aid statute should be limited to a specific dollar amount each fiscal year to avoid unforeseen demands on the State General Fund.
- A State building architect and project manager should be used in any new building project to reduce the costs associated with the project.
- A special committee of the legislature should be created to oversee and approve any bond issue before the issuance is placed on a ballot before local voters, if the local school districts desires to obtain capital improvement state aid (bond and interest state aid).

### **Accounting**

- A simpler budget document should be developed that shows major expenditure categories and is published by each USD on its website and is available at each local school board meeting in the form of a balance sheet.
- A single, central accounting interface should be developed and be used by all school districts to allow the financial information of the school districts to be retrieved and evaluated in a single system for all local school districts in the state.
- An independent financial audit should be conducted annually of each school district and

the report of the audit should be published with other school district budget documents. The audit should:

- Certify that the school district is correctly following the State Accounting manual;
- Certify that the published budget documents accurately reflect the finances of the school district;
- Provide an inventory of all assets of the school district; and
- Provide a separate listing of all unused equipment, supplies, and property of the school district.

### **Efficient Use of Taxpayer Money**

A new school funding mechanism should:

- Be based upon an efficient use of taxpayer money and should reward school districts who provide necessary services and commodities at the best possible price; and
- Require that functions such as transportation, accounting, information technology, food service, building and grounds maintenance, payroll, human resource services, and purchasing are coordinated between districts and/or provided through regional service centers or a statewide purchasing office.

### **Standards**

The State Board of Education should use school district compliance with the *Rose* capacities as criteria for accreditation.

### **Other**

The appropriate standing committees of the Kansas Legislature should form special sub-committees to examine and report on each of the following topics:

- Teacher pay;
- At-risk funding;
- Special education;
- Bond and interest state aid eligibility;
- The cost-benefit ratio of the receipt of federal funds;
- The relationship between school districts and interlocals, cooperatives, and service centers;

- The current and future implications of school district staffing levels on KPERS;
- Establishing the *Rose* capacities as the definition of a suitable education;
- Amending KSA 72-1127 to include personal finance as a mandatory area of instruction;
- Analyzing U.S. Securities and Exchange Commission (SEC) regulations concerning Governmental Accounting Standards Board (GASB) and Generally Accepted Accounting Principles (GAAP) to ensure all school districts are in compliance; and
- Investigating all extracurricular and co-curricular activities on the basis of efficiency and efficacy to deliver a suitable education to the students.

\*Other considerations identified for inclusion in the report appear on page 12.

***Proposed Legislation:*** None.

## BACKGROUND

The Special Committee on K-12 Student Success was charged by the Legislative Coordinating Council (LCC) to study the following:

- The *Rose* Standards set by the Kansas Supreme Court as the goal Kansas schools will meet;
- Best funding mechanism by formula or other criteria to ensure adequate Kansas tax payer dollars are invested in the classroom;
- Definition of what comprises a “suitable” education;
- Outcomes to ensure that students are well prepared for their future endeavors; and
- Uniform accounting across all districts so best practices to achieve student success can be replicated.

The Committee began its work by reviewing the foundation upon which school districts in Kansas operate, that is, Article 6 of the *Kansas Constitution*, as well as the seven *Rose* capacities, which were originally set out in *Rose v. Council for Better Education, Inc.*, 790 S.W.2d 186 (Ky.

1989) and held by the Kansas Supreme Court in *Gannon v. State* to be the standards against which to evaluate the adequacy of the K-12 funding system. Further, the 2014 Kansas Legislature in Senate Sub. for HB 2506 stated the purpose and intention of the Legislature was to provide a K-12 funding system that provides students with these capacities. Both Article 6 and the *Rose* capacities appear below.

## Article 6.—EDUCATION

**§ 1. Schools and related institutions and activities.** The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.

**§ 2. State board of education and state board of regents.** (a) The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.

(b) The legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. Public

institutions of higher education shall include universities and colleges granting baccalaureate or post-baccalaureate degrees and such other institutions and educational interests as may be provided by law. The state board of regents shall perform such other duties as may be prescribed by law.

(c) Any municipal university shall be operated, supervised and controlled as provided by law.

**§ 3. Members of state board of education and state board of regents.** (a) There shall be ten members of the state board of education with overlapping terms as the legislature may prescribe. The legislature shall make provision for ten member districts, each comprised of four contiguous senatorial districts. The electors of each member district shall elect one person residing in the district as a member of the board. The legislature shall prescribe the manner in which vacancies occurring on the board shall be filled.

(b) The state board of regents shall have nine members with overlapping terms as the legislature may prescribe. Members shall be appointed by the governor, subject to confirmation by the senate. One member shall be appointed from each congressional district with the remaining members appointed at large, however, no two members shall reside in the same county at the time of their appointment. Vacancies occurring on the board shall be filled by appointment by the governor as provided by law.

(c) Subsequent redistricting shall not disqualify any member of either board from service for the remainder of his term. Any member of either board may be removed from office for cause as may be provided by law.

**§ 4. Commissioner of education.** The state board of education shall appoint a commissioner of education who shall serve at the pleasure of the board as its executive officer

**§ 5. Local public schools.** Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and

carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change, or termination by the legislature.

**§ 6. Finance.** (a) The legislature may levy a permanent tax for the use and benefit of state institutions of higher education and apportion among and appropriate the same to the several institutions, which levy, apportionment and appropriation shall continue until changed by statute. Further appropriation and other provision for finance of institutions of higher education may be made by the legislature.

(b) The legislature shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. The legislature may authorize the state board of regents to establish tuition, fees and charges at institutions under its supervision.

(c) No religious sect or sects shall control any part of the public educational funds.

**§ 7. Savings clause.** (a) All laws in force at the time of the adoption of this amendment and consistent therewith shall remain in full force and effect until amended or repealed by the legislature. All laws inconsistent with this amendment, unless sooner repealed or amended to conform with this amendment, shall remain in full force and effect until July 1, 1969.

(b) Notwithstanding any other provision of the constitution to the contrary, no state superintendent of public instruction or county superintendent of public instruction shall be elected after January 1, 1967.

(c) The state perpetual school fund or any part thereof may be managed and invested as provided by law or all or any part thereof may be appropriated, both as to principal and income, to the support of the public schools supervised by the state board of education.

## **Rose Standards or Capacities**

(1) Sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;

(2) Sufficient knowledge of economic, social, and political systems to enable the student to make informed choices;

(3) Sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;

(4) Sufficient self-knowledge and knowledge of his or her mental and physical wellness;

(5) Sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;

(6) 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

(7) 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.

[Note: The legislation also stated:

Nothing in this section shall be construed as relieving the state or school districts from other duties and requirements imposed by state or federal law including, but not limited to, at-risk programs for pupils needing intervention, programs concerning special education and related services and bilingual education.]

## **COMMITTEE ACTIVITIES**

The LCC initially approved three meeting days and later approved two additional days. The Committee met all five days, with the first meeting on October 23, 2015, and the last on January 5, 2016.

Following is a brief description of the information and testimony presented in each of the meeting dates.

### **October 23, 2015**

#### **School district expenditures and personnel.**

Randy Watson, Commissioner, Kansas Department of Education presented a review of school district expenditures and personnel, including:

- Eleven school years (2005-06 through 2015-16) of classroom expenditure data by district. Classroom expenditures included costs in the following categories:
  - Instruction - Activities dealing directly with the interaction between teachers and students;
  - Student Support Services - Activities directly supporting students, including: social work, guidance, health, psychological, speech pathology, and audiology; and
  - Instructional Support Services - Activities related to improving instruction, such as library, media instruction-related technology, and academic student assessment services;
- Two school years (2014-15 and 2015-16) of non-classroom expenditures;
- Superintendent and principal salaries;
- Numbers of certified and non-certified staff in school districts, as well as staff to student ratios;
- Expenditures for athletic-related items, such as supplemental salaries for educators working as coaches and assistant coaches, costs to maintain facilities, and transportation; and
- Expenditures for textbooks.



Historical information presented included information for at-risk students counts, as well as bilingual students. Committee members spent time discussing the use of free lunch eligibility as a proxy for determining at-risk funding compared to the use of poverty as a determiner of such funding.

Expenditures for preschool programs also were discussed. (KSA 72-67,115 states school districts may offer and teach preschool programs.)

Information related to special education expenditures was discussed, including the fact that school districts serving as special education cooperatives have higher expenditures per pupil because the special education expenditures from several districts are represented in the hosting district's expenditures. To gain a clearer picture of actual expenditures per pupil for each district, the Department of Education provided information with each district's special education costs shown in the originating district, rather than in the sponsoring district.

**Bond and interest information.** Revisor of Statutes staff reviewed Kansas statutes related to capital improvement state aid, sometimes referred to as bond and interest state aid. Department of Education staff provided information on outstanding bonds by school district, as well as 2014-15 school year's bond and interest total expenditures, bond and interest state aid, bond and interest state aid percentage rates, and local revenue for bond and interest payments. Information related to the cost per square foot for recently-completed school district construction projects also was reviewed.

**Kansas Public Employees Retirement System (KPERS).** KPERS' Executive Director, Alan Conroy, addressed the Committee on the history of the KPERS School Group, as well as the current status of KPERS unfunded liability, particularly related to the school employees share of that liability.

## November 10, 2015

The Committee began with a review of information requested at the October 23 meeting.

**Student assessments, standards, and outcomes.** Kansas Department of Education Deputy Commissioner, Brad Neuenswander, presented information on student assessments and Kansas students' results on National Assessment of Educational Progress (NAEP), ACT, and SAT tests. In addition, a review of standards, curriculum, and accreditation was undertaken.

KSA 72-6439 requiring the State Board of Education to establish curriculum standards and statewide assessments reflecting high academic standards in core areas of mathematics, science, reading, writing, and social studies was outlined.

Testing of Kansas students was discussed at length. Department of Education staff described the history of state assessments and the purchase of assessment services *via* the Center for Educational Testing and Evaluation (CETE) at the University of Kansas. A new test aligned with current College and Career Ready Standards was administered in the spring of 2015.

The most recent NAEP test results were discussed. The annual state assessment and the NAEP test are the only required tests for Kansas students. While 99 percent of Kansas students take the annual state assessment, approximately 3,000 Kansas students take a NAEP test every other year. In addition, approximately 75 percent of Kansas students take the ACT. Neither the ACT nor the SAT is administered on a statewide basis, and typically students must cover the cost of these exams. Other testing and assessments are done during a school year to assess a student's progress.

In summary, the Deputy Commissioner told the Committee that Kansas student drop-out rates and remediation rates at Kansas colleges and universities are over 50 percent, an unacceptably high percentage. The College and Career Ready Standards and accompanying assessments are designed to raise the bar on student academic success.

**Review of school district audits.** Committee members reviewed efficiency audits of school districts conducted by the Legislative Division of Post Audit (LPA).

At a subsequent meeting, the Legislative Post Auditor, Scott Frank, presented information indicating school districts had implemented 25 percent of the LPA efficiency recommendations. If all recommendations were implemented, approximate savings could be \$7.8 million, so the actual savings are approximately \$2.0 million. Mr. Frank told members while past implementation of recommendations were skewed toward those of lower impact not affecting students or community members, lately more higher impact recommendations have been implemented, such as closing a school building.

## December 9, 2015

The Committee began with a review of information requested at the November 10 meeting.

**Educational standards.** Revisor of Statutes staff reviewed the constitutional standards for school finance, including the *Rose* capacities listed above, and the status of the ongoing *Gannon* litigation.

**Standards, curriculum, lesson plans, and assessments.** The Deputy Commissioner explained that standards are established at the state level, and, by statute, local districts determine their own curriculum. He differentiated the two saying standards are what students should know at each grade level, while curriculum is how students are taught. Lesson plans are teachers' daily guide for student instruction. With that explanation, Deputy Commissioner Neuenswander reviewed the process the state follows for developing standards and referenced the state law requiring the State Board to provide for statewide assessments compatible with those standards.

The State contract with CETE costs \$5.8 million, with less than \$1.0 million of that amount paid with state funding. The remainder is paid with federal funds. The average cost per student for Kansas assessments in math, English language arts, science, and history is \$17. Surrounding states costs per student are: Colorado - \$33; Nebraska - \$33; Oklahoma - \$32; and Missouri - \$31.

Information presented on the most recent NAEP state rankings showed Kansas' Grade 4 Mathematics ranking dropping from 11<sup>th</sup> in 2013 to 25<sup>th</sup> in 2015. A similar drop from 12<sup>th</sup> in 8<sup>th</sup> Grade Math in 2013 to 22<sup>nd</sup> in 2015 occurred. NAEP 4<sup>th</sup> Grade reading results saw Kansas dip from 23<sup>rd</sup> to 35<sup>th</sup>; and 8<sup>th</sup> grade reading saw an increase in the ranking from 29<sup>th</sup> to 28<sup>th</sup>.

**Review of 2006 LPA K-12 Education Cost Study.** The Post Auditor provided a summary of the process LPA used in 2006 to conduct its cost study, as well as key results. LPA found a strong association between the amounts districts spent and the outcomes they achieved. A 1.00 percent increase in performance was associated with a 0.83 percent increase in spending per student, and all else equal, districts with better outcomes spent more. He noted the results were statistically significant with a p value of less than 0.01.

He concluded with a reminder that the intent of the cost study was to help the Legislature decide appropriate funding levels, rather than to dictate a specific funding level. He also recognized the study is ten years old, and an updated study would likely produce similar, but not identical results.

**Funding, Outcomes, and Efficiencies.** Representatives of the Kansas Association of School Boards (KASB) and Kansas Policy Institute (KPI) presented information to the Committee on the relationship between funding and outcomes, as well as opportunities for efficiencies in Kansas' school finance system.

The KASB representative presented the result of its analysis comparing overall success of students in states performing better than Kansas ("aspiration states") and in states most like Kansas ("peer states"). Compared to the peer states, the two states ranking higher than Kansas provided more funding per pupil. Nearly half (four) of those peer states ranking below Kansas spent more, and (five) spent less. Based on this information, the analysis concluded Kansas is both a higher achieving state and a highly efficient state based on results for dollars spent. All of the aspiration states spent more per pupil than Kansas, but also tend to have lower rates of childhood poverty and eligibility for free and reduced lunch.

The testimony of the KPI representative critiqued the results of the LPA cost study, saying correlation is not the same as causation. Many factors aside from funding levels contribute to outcomes, including teacher effectiveness, how money is spent, and differences in curriculum. Further, the representative noted the LPA cost study concedes that it did not “examine the most cost-effective way for Kansas school districts to be organized and operated.” The KPI representative also stated cost study relied on data that misrepresented student performance on NAEP. To conclude, the KPI representative provided graphics showing funding and test scores over time to demonstrate that increased spending has not led to increased test scores and again emphasized that how money is spent ultimately is more important than how much is appropriated.

On the issue of efficiencies, the KASB representative reiterated his earlier assertion that districts already have found significant efficiencies as they are achieving better results, spending more on instruction and keeping class sizes small, and spending less in many support areas. The representative also stated data suggests more adults per student, whether teachers, administrators, or other support staff, are more likely to improve student outcomes than reducing positions by consolidating districts, closing schools, or combining programs. He concluded saying few choices will result in savings without some type of trade-off and urged a balance between the Legislature’s duty to provide suitable funding and that of local boards to “maintain, develop, and operate” local public schools.

The representative of KPI defined efficiency as providing the same or better quality service at the best possible price and offered information on spending differences, staffing variances, and efficiency opportunities. Because districts under local control can divert dollars in ways that remove funds from classroom instruction, KPI thinks it is important that the new funding mechanism contain some form of accountability to assure money is being spent both effectively and efficiently with a focus on student needs.

**Public Testimony.** The meeting concluded with oral and written testimony from private citizens and school district representatives.

## **December 16, 2015**

**Public testimony.** The Committee again received oral and written testimony from the public, including testimony from representatives of Game On for Kansas Schools, KASB, Kansas Parent Teachers’ Association, KPI, Kansas Superintendents Association, and United School Administrators, as well as several school districts and a number of private citizens. Representative Trimmer also provided testimony.

## **January 5, 2016**

The Committee met briefly to discuss a draft report and recommendations proposed by Committee members. The Committee moved to table the draft and resume discussion of the Committee’s recommendations to be held at a future meeting date.

## **Where To Find Meeting Minutes**

All the Committee’s meeting minutes, including all attachments to the minutes, can be found on the Kansas Legislature’s website and by locating the 2015 Session Year and the Special Committee on K-12 Student Success.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **General**

A new school funding mechanism should:

- Focus on each individual student;
- Include accountability and reporting measures to ensure aid is being distributed according to the needs of each individual student; and
- Provide for multi-year funding to provide budget stability to the State and USDs.

### **Accountability and Assessments**

#### *State Level*

- The current state assessment testing approach should be reevaluated and

revised as necessary to avoid “teaching to the test,” inconsistent standards of proficiency, untimely return of test results, and cumbersome technology requirements.

- The State should provide funding for each student to take the ACT exam.
- The State should encourage other measures of outcome achievement, such as the Work Keys exam.
- An exam aligned with the *Rose* capacities should be developed by an objective third party with no connection to the State Department of Education or the Federal Department of Education.

#### *District Level*

School districts should:

- Arrange for all students to take the ACT exam;
- Administer a recognized third-party assessment that provides immediate, usable feedback for teachers and students;
- Track, report, and improve graduation and remediation rates; and
- Track, report, and improve dropout rates for all grade levels.

#### **At-risk Funding**

- At-risk funding should be based directly upon a student’s ability to learn, rather than the poverty level of the student.
- Alternately, any poverty measure for at-risk funding should be based upon information provided by the Kansas Department of Revenue and the Kansas Department of Labor and should be available for audit. All applications by parents or guardians for a school district to

receive at-risk funding should be available for audit.

- All at-risk funding should be used for no purpose other than one which is demonstrably intended to reduce achievement gaps of at-risk students. All expenditures of at-risk funding should be limited to programs which have a measurable effect on reducing achievement gaps of at-risk students. The State Department of Education should provide an annual report summarizing these expenditures and their measurable effects.

#### **Bonding by Local School Districts**

- The Legislature should repeal the current statute for state aid for the payment of principal and interest on bonds for capital improvements.
- A new state aid statute for bond and interest payments should be created to specifically define and limit what projects may be funded with state aid for capital improvement.
- The new state aid statute should be limited to a specific dollar amount each fiscal year to avoid unforeseen demands on the State General Fund.
- A State building architect and project manager should be used in any new building project to reduce the costs associated with the project.
- A special committee of the legislature should be created to oversee and approve any bond issue before the issuance is placed on a ballot before local voters.

#### **Accounting**

- A simpler budget document should be developed that shows major expenditure categories and is published by each USD on its website and is available at each

local school board meeting in the form of a balance sheet.

- A single, central accounting interface should be developed and be used by all school districts to allow the financial information of the school districts to be retrieved and evaluated in a single system for all local school districts in the state.
- An independent financial audit should be conducted annually of each school district and the report of the audit should be published with other school district budget documents. The audit should:
  - Certify that the school district is correctly following the State Accounting manual;
  - Certify that the published budget documents accurately reflect the finances of the school district;
  - Provide an inventory of all assets of the school district; and
  - Provide a separate listing of all unused equipment, supplies, and property of the school district.

### **Efficient Use of Taxpayer Money**

A new school funding mechanism should:

- Be based upon an efficient use of taxpayer money and should reward school districts who provide necessary services and commodities at the best possible price; and
- Require that functions such as transportation, accounting, information technology, food service, building and grounds maintenance, payroll, human resource services, and purchasing are coordinated between districts and/or provided through regional service centers or a statewide purchasing office.

### **Standards**

The State Board of Education should use school district compliance with the *Rose* capacities as criteria for accreditation.

### **Other**

The appropriate standing committees of the Kansas Legislature should form special sub-committees to examine and report on each of the following topics:

- Teacher pay;
- At-risk funding;
- Special education;
- Bond and interest state aid eligibility;
- The cost-benefit ratio of the receipt of federal funds;
- The relationship between school districts and interlocals, cooperatives, and service centers;
- The current and future implications of school district staffing levels on KPERS;
- Establishing the *Rose* capacities as the definition of a suitable education;
- Amending KSA 72-1127 to include personal finance as a mandatory area of instruction;
- Analyzing SEC regulations concerning GASB and GAAP to ensure all school districts are in compliance; and
- Investigating all extracurricular and co-curricular activities on the basis of efficiency and efficacy to deliver a suitable education to the students.

## Other Considerations

At the final meeting of the Committee, a Committee member offered the following recommendations, which the Committee agreed to add to the Report.

- Eliminate the current September 20<sup>th</sup> student count and move to a process of determining student average daily attendance for the school year;
- Calculate State funding on the prior year district's average attendance numbers and valuations so both state and district can budget more efficiently, eliminating the need for an additional appropriation following the April consensus process; and
- Treat the eight mill capital outlay levy the same as the 20 mill levy in regarding to tax increment financing projects.

**2015 SPECIAL COMMITTEE ON K-12 STUDENT SUCCESS**

**MINORITY  
REPORT**

**Submitted by:**

**Senator Anthony Hensley  
Representative Ed Trimmer  
Representative Valdenia Winn**

**JANUARY 19, 2016**

After the enactment of 2015 House Substitute for Senate Bill No. 7, we believe there is a need to begin work on developing a permanent school finance formula. The majority party members of The Special Committee on K-12 Student Success failed to do that.

We also believe the Special Committee should have reviewed the school finance formulas in other states, particularly surrounding states and states with similar demographics as Kansas. One state's formula that would have proven useful to review is Pennsylvania's *Basic Education Funding Commission Report and Recommendations* - dated June 18, 2015. This Commission was created by the Pennsylvania General Assembly in 2014 and involved public hearings held across the state and solicited testimony from educators, business leaders, parents, and other education stakeholders. The Special Committee did not conduct such hearings.

Moving forward, the process of developing a permanent school finance formula should be as open and transparent as possible, which was NOT the process followed in the creation of 2015 House Substitute for Senate Bill No. 7.

The Special Committee also failed to review the history of our state's school finance formula, including judicial decisions. We believe that such a review would have resulted in the following conclusions reached by both the plaintiffs and the District Court in the *Gannon* case:

First, there is simply no need to wholly rewrite a new formula. The SDFQPA had existed since 1992. During its existence, the Supreme Court thoroughly evaluated the formula at least six times: in *U.S.D. 229*, in *Montoy I*, in *Montoy II*, in *Montoy IV*, in *Montoy V*, and again when this Court issued its first decision in *Gannon*. These decisions all resulted in the careful vetting and fine-tuning of the formula; a formula that, when fully funded, would arguably provide Kansas students with a suitable education in a manner that this Court suggested was constitutional. Plaintiffs' *Gannon v. State of Kansas* brief, January 12, 2016, page 36

First, we would say that the School District and Quality Performance Act, K.S.A. 72 - 6405 *et seq.*, as it currently stands, has not been shown to, itself, be unconstitutional at this point and on this record. All the problems raised by Plaintiffs in our view have not been shown to flow from the Act, but from a failure by the State to follow the Act's tenets and fully fund it as it directs. The unconstitutionality attendant here is due to underfunding, not the Act itself or, at least, not yet." District Court's January 2013 Opinion, pages 242-243

Finally, the Special Committee did not choose to review several important factors in consideration of a new formula including but not be limited to:

- Multi-Year Funding
- Enrollment
- Differential for size of school districts (the median size school district in Kansas is 550 students)
- Transportation tied to cost and density
- Differential for poverty and non-English speaking students
- Wealth as related to a district's tax base
- Cost-of-living increases
- Hold harmless provision so that no USD loses funds during implementation phase
- Differential related to career and technical education, *i.e.* differences in costs for differing types of career fields
- Special education costs

We wholeheartedly concur with the "fundamental requirements" of a new formula the United School Administrators/ Kansas School Superintendents Association school finance task force recommended in testimony to the Special Committee:

- Every student in Kansas' public schools will have an equal opportunity to be



college and career ready, as defined by the Rose Standards;

- Some students will require greater supports to meet standards;
- Any formula must meet constitutional requirements for equity and adequacy;
- The formula should recognize local control and provide funding of educational services; and,
- The Legislature and school districts need budgeting predictability.

In addition, we strongly urge the House and Senate education committees to give consideration to the following other recommendations:

### **Honoring Local Control**

The people of Kansas have long supported the concept of “local control” under which local citizens make the decisions that impact their communities. Nowhere is this concept more sacred than in the governance of our public schools. Decisions are best made by the policy makers closest to the voters.

In the name of “efficiency” or perhaps “lowering costs” there are many who recommend the consolidation of all services. Yet such recommendation is contradictory to the tradition of local control. The state should encourage such agreements among districts but the decision to participate must be made by local elected school boards considering the needs of their local community.

The state can assist school districts in making good decisions by providing stability in the funding mechanism, so that schools can plan for future years confident that the resources necessary will be available. This would also assist in making decisions about consolidation of services as districts would know what funding was available to them going forward.

Further, the state should refrain from imposing any unfunded mandates on school districts. Employee compensation, staffing, and

curriculum decisions should be left solely to the local school board in partnership with employees, parents and patrons, particularly local business people.

We strongly oppose the Majority Report recommendation for a special committee of the Legislature to oversee and approve bond issues of local school districts prior to being placed on a ballot before local voters. This recommendation is not only contrary to “local control,” it is an insult to the intelligence of every local elected school board member and local school district voter in Kansas. We, along with other Kansas legislators who believe in the power of the people through the democratic process, put our trust in local policy makers and voters to think for themselves and to make decisions and take actions that are in the best interests of the children, parents and taxpayers in their local community.

### **Supporting Individual Student Needs**

Any proposed changes to school funding in Kansas must take into consideration the individual needs of students. At-risk funding should be available to reduce the achievement gaps of at-risk students. Kansas and a number of other states use poverty as a proxy for at-risk status because research shows a strong correlation between poverty and low achievement in school. The Legislature has debated many times whether this should be based on poverty or actual student performance and has failed each time to find a better way to provide this funding. We believe at-risk funding should continue to be based on poverty.

We also continue to support the conclusion reached by Legislative Post Audit in its 2006 K-12 Education Cost Study, page 40. LPA found “a strong association between the amount districts spent and outcomes they achieved. In the cost function results, a 1.0% increase in district performance outcomes was associated with a 0.83% increase in spending – almost a one-to-one relationship.”

Special education funding is largely governed by federal law. The state’s obligation is to meet maintenance of effort requirements, and to ensure

that total resources are sufficient to meet the needs and services detailed in the child's Individualized Education Plan.

Kansas has an increasing population of English Language Learners (ELL) in our schools. These students present significant challenges to schools and any funding formula must take these challenges into consideration. Additional personnel with specialized training in modifying instruction for ELL students as well as classroom support through staff development and materials are needed.

The needs of Gifted and Talented Students also must be accounted for. Currently, these students receive funding through the state's special education program. But we know that their needs are also addressed in highly specialized, low enrollment classes including Advanced Placement and Dual Credit opportunities. The importance of these low-enrollment classes cannot be overlooked in the name of efficiency.

Career and Technical Education programs have widely varying costs generally related to the needed equipment or limitations on class size for safety purposes. The job market demands that we provide the resources necessary to provide these programs for our students.

### **Responding to Student, School, and District Needs**

Any proposed changes to school funding in Kansas must take into consideration the ability to respond to changing conditions. Enrollment fluctuates. There is a mistaken notion that all new students arriving in a school or school district can easily be absorbed into existing classes. This is not always the case. Increases in student populations require additional resources.

Declining enrollment must also be taken into consideration. The 1992 formula adjustments took this into consideration when designed to adjust funding decreases based on a rolling average. All students in Kansas deserve access to a robust curriculum. In order to provide such opportunities, efficiencies of scale must be considered. School districts that are very small by necessity must have access to resources to

support necessarily small class sizes as well as distance learning opportunities that require significant investments in technology.

Changes in student demographics also have consequences for school districts. Such changes happen when new businesses move into communities bringing ELL students or when businesses close putting families in stress and poverty. Such demographic changes bring new or increasing challenges to our schools and must be taken into account.

The difference and disparity in wealth as related to a district's tax base must also be taken into account. For example, for the 2015-16 school year, one mill of property tax in USD 499 Galena raises \$17,338, or \$24 per student, while one mill in USD 244 Burlington raises \$449,704, or \$550 per student.

### **Subject Matters Not Included in Special Committee's Charge**

Finally, there are subject matters in the Majority Report that were not included in the charge of the Special ,and therefore, should not be included in the report.

Merit pay for teachers is a matter for collective bargaining, best left to the local school board in negotiation with its employees. While a school finance formula should provide adequate resources in order to pay teachers well, the state should not interfere in local control regarding teacher pay.

The recommendation in the Majority Report for a financial literacy curriculum requirement is clearly outside the charge of the Special Committee. Moreover, it was never part of Committee discussions.

Finally, any consideration of KPERS was outside the scope of the Special Committee.

While teachers are part of the KPERS system, this is a separate issue from school finance. The Legislature has an obligation to fund KPERS regardless of the various components in a school finance formula.

# **Report of the Special Committee on Taxation to the 2016 Kansas Legislature**

**CHAIRPERSON:** Senator Ty Masterson

**VICE-CHAIRPERSON:** Representative Marvin KleeB

**OTHER MEMBERS:** Senators Steven Abrams, Tom Holland, Julia Lynn, Jeff Melcher, and Greg Smith; Representatives Ken Corbet, Mark Hutton, Jerry Lunn, Marc Rhoades, Tom Sawyer, Kathy Wolfe Moore; and (substitute members) Steve Brunk and Steven Johnson.

## **STUDY TOPIC**

- Review the policy, rationale, and justification for all exemptions and credits within the state's tax code; and establishing a potential time table to sunset many of those provisions.

# Special Committee on Taxation

## REPORT

### Conclusions and Recommendations

As Kansas transitions its tax policy from one that taxes income and production to one that taxes sales and use, as a means to tax consumption, the Committee finds it necessary for exemptions and credits to be evaluated. An evaluation and sunset process must be conducted by the standing taxation committees of the Senate and House.

The Committee recommends the standing tax committees develop a continual process to evaluate exemptions and credits, which would employ measurable goals and standards, and implement a sunset schedule for current and future tax exemptions, excluding those that are legally required, applicable to governmental entities, or which otherwise result in double taxation if repealed.

***Proposed Legislation:*** None.

### BACKGROUND

The Legislative Coordinating Council (LCC) established the Special Committee on Taxation to review the policy, rationale, and justification for all exemptions and credits within the state's tax code; and to establish a potential timetable to sunset many of those provisions.

### COMMITTEE ACTIVITIES

The Committee met on November 5 and 6 and December 9, 2015.

#### History of Sales Taxation in Kansas

During the two-day meeting in November, Committee staff from the Legislative Research Department presented an overview of sales taxation in Kansas, which included the history of enactment, Depression-era concerns regarding equity, food tax issues, rates and tax base, exemptions, revenue elasticity, and selected information from a 1991 Interim study and a 2006 study from the Kansas Advisory Council on Intergovernmental Relations. Information about

the sales tax rates and food exemptions for all 50 states was provided to the Committee.

#### Legal Issues Involving Sales Tax and Statutory Construction

Committee staff from the Office of Revisor of Statutes explained the legal issues involved with the sales tax. States are prohibited by the Commerce Clause of the *U.S. Constitution* and federal law from taxing the federal government or any of its instrumentalities. This includes the purchases made either directly by the federal government or by certain other entities on its behalf.

Kansas institutes a sales tax on the sale of all tangible personal property at retail, unless there is a specific exemption listed in statute. The majority of these exemptions are located at KSA 2015 Supp. 79-3606. The taxation of services is treated differently, however. There is no general statute which taxes all services. Pursuant to KSA 2015 Supp. 79-3603, services are taxable only if the service is specifically listed in statute. Therefore, services do not have equivalent sales tax exemptions.

## Legislative Audits Concerning Tax Exemptions and Credits

Staff from the Legislative Division of Post Audit (LPA) reviewed past audits concerning sales tax exemptions and tax credits. Part II of the 2010 audit evaluated whether Kansas has any sales tax exemptions that should be considered for elimination. Kansas had 99 sales tax exemptions at the time the audit was conducted, which cost the State an estimated \$4.5 billion in FY 2011. These exemptions generally fell into three broad categories.

- **Exemptions required by federal law.** Six exemptions are required by federal law relating to interstate commerce or to purchases made under certain federal programs. These exemptions accounted for an estimated \$33.6 million (less than 1 percent) in foregone tax revenues in 2011;
- **Exemptions needed to avoid double taxation or taxing governmental entities.** The reviewed tax policy literature generally concluded that such exemptions are necessary even if they are not required. Altogether, 21 of the 99 sales tax exemptions fit this category. These exemptions accounted for an estimated \$3.7 billion (81 percent) of the sales tax revenue the State gave up in 2011; and
- **Exemptions enacted as a matter of public policy.** These exemptions cover a variety of entities or type of sale or activity. Together, they account for an estimated \$835 million (18 percent) in foregone revenues in 2011. These exemptions included agricultural, business, consumer, charitable, religious, and benevolent exemptions, as well as exemptions for services, educational entities, and healthcare-related exemptions.

Within the last category, sales tax exemptions provide unequal treatment for similar types of taxpayers. The audit concluded the Legislature should review the following sales tax exemptions to determine what changes, if any, should be made: exemptions for specifically named

organizations or narrowly defined activities; the exemption for coin-operated laundries; and exemptions for not-for-profit entities, but not their for-profit counterparts.

Kansas provides exemptions for some not-for-profit organizations, but not all of them. Kansas had 18,200 entities registered under section 501 (c) of the Internal Revenue Service (IRS) Code in 2008. Current exemptions only partially cover charitable and educational organizations. Thirteen exemptions account for approximately 96 percent of the total cost of sales tax exemptions to the State. Recently, exemptions have been added to exempt “purchases made on behalf of” and “sales by” many entities. Regardless of the merits of granting exemptions to these entities, the practice reduces the control over whether the purchase is related to an organization’s purpose and could lead to abuse.

LPA staff next presented the findings from part I of the 2010 audit, which evaluated the effectiveness of tax credits. At the time of the audit, Kansas had 47 tax credits and 2 tax refund programs, costing nearly \$670 million in foregone revenues in 2007. The report recommended various tax credits for modification or repeal.

The 2010 audit concluded there are a number of legitimate reasons for allowing certain entities or transactions not to be taxed. However, the increased number of tax credits and exemptions has significantly reduced the State’s possible tax revenues. Kansas lacks a strong system for reviewing and evaluating tax credits.

### Earned Income Tax Credit—Temporary Assistance for Needy Families Maintenance of Effort

Staff from the Legislative Research Department explained the Earned Income Tax Credit and Temporary Assistance for Needy Families. States receive block grants and then design and operate individual programs to accomplish the program’s goals. Currently, Kansas receives \$102 million from the federal government. In order to receive the block grant, Kansas must spend a specified minimum amount of state funds, known as a maintenance of effort. The maintenance of effort for Kansas is \$65.9 million annually. If a state fails to meet its

maintenance of effort, the federal government assesses a penalty equal to the shortfall; the state would be required to increase spending back to the threshold level as well as pay the penalty. If the state did not meet the requirements, there would be additional penalties of up to 2 percent of the total block grant in subsequent years.

## **Review of Tax Exemptions and Credits**

Staff from the Kansas Department of Revenue (KDOR) reviewed tax exemptions and credits. The sales tax was first enacted in Kansas in 1937 at the rate of 2 percent. Currently, 45 states plus the District of Columbia have enacted a sales tax. Nationwide, sales tax is estimated to provide approximately a third of total state tax collections. Sales tax is imposed on the gross receipts received from the retail sale of tangible personal property or certain taxable services. Use tax is imposed on the use, storage, or consumption of tangible personal property in the state. It applies to goods purchased outside the state. The use tax complements the sales tax. It was developed to safeguard sales tax revenues from erosion by purchases of goods outside the state, and to protect local merchants from loss of business to border and other states that either have no sales tax or whose sales tax rate is lower than that of the merchants' state. Counties and cities have had the option of imposing local sales taxes since the 1970s. Local use taxes have existed since 2003. The city sales tax cannot exceed 2 percent for general purposes and 1 percent for special purposes. The countywide sales tax cannot exceed 1 percent.

For FY 2015, the value of all sales tax exemptions totaled \$6.507 billion. The top 14 sales tax exemptions totaled 96.5 percent of the total value of all exemptions.

States that have expanded their sales tax base on services generally have looked at categories such as cloud computing, digital downloading of photographs and video, and information software services.

KDOR staff next reviewed tax credits claimed in Tax Year 2012, which showed \$57 million were claimed. There are \$600 million in accumulated income tax credits due to the High Performance Incentive Program (HPIP), which are

nonrefundable, meaning a taxpayer must generate tax liability sufficient to use the tax credit. The total number of HPIP filers (198) is a small percentage of the approximate 35,000 corporate taxpayers.

## **Bioscience Initiative**

KDOR staff briefed the Committee on the Kansas Economic Growth Act, an initiative created by the 2004 Legislature to foster the growth of bioscience and to make the state a national leader in the industry. Bioscience is defined as the use of compositions, methods, and organisms in cellular and molecular research; development; manufacturing processes for such diverse areas as pharmaceuticals, medical therapeutics, medical diagnostics, medical devices, medical instruments, biochemistry, microbiology, veterinary medicine, plant biology, agriculture, industrial, environmental, homeland security applications of bioscience; and future developments in the areas mentioned above. Bioscience also includes biotechnology and life sciences. The initiative is funded by 95 percent of the Kansas withholding taxes in excess of 95 percent of the base year taxation (2003) from all bioscience companies and employees employed by state universities associated with bioscience research. Data were provided concerning bioscience distributions and the number of Kansas bioscience companies and employees.

The Legislature appropriated bioscience funds for specific projects in some cases, such as the \$5 million for orthopedic research at Wichita State University.

## **Special Tax Districts**

KDOR staff briefed the Committee on several types of special tax districts.

**Community Improvement Districts.** The Community Improvement District (CID) Act, enacted in 2009, provides authority to municipalities to set up local districts in which a CID tax is imposed on the sales by retail businesses located within those districts. The revenue is used to pay for the commercial development, certain business operations, or redevelopment projects in the district. A municipality may create a CID when petitioned by

owners of 55 percent of the land within the boundaries of the proposed district. The petition is subject to a public hearing, and the municipality's governing body may create the district by ordinance or resolution, including the levy of the local sales tax to finance the project. The total number of CIDs has grown to 74 and will continue to grow, as this program is very popular with municipalities and developers. In FY 2015, the KDOR distributed \$3.63 million in CID sales taxes.

**Transportation Development District.** The Transportation Development District (TDD) Act, enacted in 2003, provides authority to municipalities to establish TDDs for the purpose of financing transportation infrastructure improvements with up to 1 percent local sales tax imposed on retail sales occurring within that district, in connection with a commercial development or redevelopment project.

**Sales Tax and Revenue Bonds.** The Sales Tax and Revenue (STAR) Bond Financing Act provides authority to cities and counties, for certain development or redevelopment purposes, to acquire property and issue STAR bonds for financing an approved project. The city or county establishes a STAR bond project district. If the project is approved by the Secretary of Commerce, the city or county may issue STAR bonds, which are financed by the tax increment revenue from both state and local sales taxes generated by retail businesses located within the STAR bond project district.

The Committee received a list of the current CIDs, TDDs and STAR bond districts in place, along with the dates those districts were established, and amount of sales tax revenue distributed in FY 2015 per district.

**Tax Increment Financing.** Tax increment financing (TIF) is a tool that enables governments to fund infrastructure, land acquisition, and other public investments in private redevelopment projects within eligible redevelopment districts. It allows the financing of development costs with borrowing at generally lower interest rates. Kansas statutes permit only cities to create redevelopment districts. Cities must conduct public hearings and adopt ordinances with descriptions of proposed redevelopment districts. In most cases, TIF uses

the increased property taxes generated by real estate development within a TIF district to pay for certain eligible costs associated with the development.

## **Selected Economic Development Programs**

A deputy secretary of Commerce explained the Promoting Employment Across Kansas (PEAK) Program, HPIP, and the Job Creation Fund (JCF). PEAK encourages companies to relocate, locate, or expand business operations in Kansas. Participating companies may retain 95 percent of the payroll withholding tax of PEAK-eligible jobs for a period of 5 to 10 years. HPIP provides tax incentives to employers that pay above-average wages and have a strong commitment to skills development for their workers. According to the Department of Commerce, this program recognizes the need for Kansas companies to remain competitive and encourages capital investment in facilities, technology, and continued employee training and education. The JCF primarily helps attract new companies to Kansas, but it also may be used to entice Kansas companies to remain or expand in the state. Payments to companies from the JCF are typically made over three years as the companies meet certain benchmarks, such as creating jobs and making capital investments.

During the past three fiscal years, the Department has completed more than 500 successful projects that will result in more than 28,452 new jobs, \$2.5 billion in payroll increases, and \$4.12 billion in capital investment. Information was provided illustrating successful recruitment projects by type and industry in 2014 and 2015. Last year, LPA concluded its review of Kansas incentive programs. The performance audit found that the State's economic development programs generate excellent return on investment, including \$57.00 of economic activity generated by every dollar of foregone revenue through PEAK and \$56.20 for every dollar awarded through HPIP.

## **Tax and Economic Trends**

The Secretary of Revenue remarked on tax trends for the State. The corporate tax stream is always volatile. There was an unanticipated \$13.7 million refund in September, and there has been

approximately \$20 million of unanticipated refunds for the year. For seven of the past ten months, there has been an increase in the level of individual income tax receipts. Unemployment is down to 4.4 percent. According to the Department of Labor, well over 50 percent of those leaving the work force are retiring. Many areas of the state are now reporting a lack of people to fill jobs. Sales tax revenues are down; however, the situation is not unique to Kansas. There is an overall concern about the economy, as consumers are paying off debt and increasing their level of savings. Online sales have increased significantly. Healthcare insurance premiums are increasing by as much as 50 percent.

Kansas data match the trends found by the National Retail Federation and the U.S. Census Bureau. A new migration report from the IRS shows significant in-migration from Missouri in 2013. There were 10,402 returns from the net migration, with an average income increase of approximately \$27,000.

Johnson and Wyandotte counties have experienced the largest in-migration. KDOR estimates approximately \$600 million shifted from Missouri to Kansas in 2013, and the persons coming into the state were making on average approximately \$27,000 more than those persons leaving Kansas for Missouri. The flow of jobs out of the state is about equal to the number coming to Kansas; however, the inflowing jobs pay more than those leaving the state.

In 2013, there were 8,666 new small business tax filers in Kansas, bringing \$468.7 million of new income to the state. Johnson, Wyandotte, and Sedgwick counties have benefited the most from the new tax policy. The average net income of those new small businesses was less than \$25,000. Since 2011, 76,111 new private sector jobs have been created in Kansas.

### **Past Audits Concerning Economic Development**

LPA staff provided an overview of part I and part III of the Performance Audit Reports titled “Economic Development: Determining Which Economic Development Tools are Most Important and Effective in Promoting Job Creation and Economic Growth.” Part I answered what economic benefits have been realized as a result of

PEAK and HPIP and whether the Department of Commerce adequately enforces performance clauses for incentive programs. Part III analyzed whether the implementation of major Kansas economic development programs has been successful.

### **Tax Issues Related to Agriculture**

An assistant secretary for the Department of Agriculture provided an overview of each of the major sales tax exemptions in the agricultural industry, the estimated impact of each on profitability, and sales taxes paid by agricultural producers.

According to data from the U.S. Department of Agriculture and the Bureau of Economic Analysis, the farm-gate value, meaning the value of unprocessed crops and livestock, produced in Kansas in 2014 was approximately \$17.5 billion. Given Kansas’ gross regional product of \$146 billion, this figure implies that agriculture contributes 12 percent to the economy. However, this number encompasses only the farm value. Additional industries are present in the state that support agricultural production or add value to the commodities. For example, sectors such as meat processing, flour milling, and ethanol production are considered manufacturing, not agriculture. If the 66 sectors (out of 532) directly related to agriculture are taken into account, then the output is \$46 billion (32 percent) of the economy, contributing a total of \$63 billion (43 percent) of the economy when accounting for all impacts.

### **Tax Issues Related to Insurance**

The Director of Governmental Affairs for the Kansas Insurance Department explained insurance-related tax issues. Insurance premiums currently are taxed at 2 percent. The taxes on insurance premiums raise substantial revenue for the State. As premiums have increased, revenue has increased. Prior to 1997, the premiums collected by domestic insurance companies were taxed at a lower 1 percent rate, resulting in a pricing advantage for Kansas companies and the consumers who purchased policies through these companies. However, a 1985 U.S. Supreme Court case, *Metropolitan Life Insurance Co. v. Ward*, declared this type of disparate tax treatment was unconstitutional. The 1997 Legislature was faced



with the task of equalizing this tax policy by either increasing the premium tax on policies sold by domestic companies, or reducing the premium tax on policies sold by non-domestic companies. The Legislature chose to increase the premium tax to a uniform 2 percent but to allow companies to offset a portion of the premium tax based on salaries paid to Kansas employees. This resulted in thousands of jobs being maintained in or moved to Kansas.

According to the conferee, the Insurance Commissioner works to assure that Kansas citizens have numerous choices available when purchasing insurance products. A key component to reaching this goal is a tax policy that brings insurance companies to Kansas, creates jobs, and encourages the development of new insurance products. The salary premium tax credit is a sensible policy that continues to yield excellent results.

### **Public Testimony on Tax Credits and Exemptions**

Several dozen conferees explained how property, sales, and income tax exemptions and credits affect the lives and operations of various individuals and stakeholders.

### **Additional Information**

At the December meeting, staff from the Department of Revenue provided the Committee with information it requested concerning other states' processes for periodic reviews of exemptions and tax credits. Information came from Arizona, California, Illinois, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Nebraska, New Mexico, Ohio, Oklahoma, Oregon, South Dakota, Washington, West Virginia, and Wisconsin. Several states require tax expenditure reports, which KDOR does annually.

Two new Oklahoma laws were highlighted. The Incentive Evaluation Act (62 O.S. SS 7001-7005) creates a commission to evaluate tax expenditures at least once every four years. The Act, which went into effect on November 1, 2015, establishes evaluation criteria and provides a

timeline for implementation. Second, under 46A O.S. S 62, any economic incentive provision enacted after January 1, 2016, is required to include measurable goals. "Incentive" is defined as any provision available to a business entity in the form of a credit, exemption, deduction, or rebate pertaining to a state tax liability of any kind; any grant, loan or financing program offered by the state or a state-beneficiary public trust; or any program for incentive payments from the state.

KDOR staff also provided the Committee with other requested information pertaining to corporate income taxes, sales tax exemptions, and bioscience companies.

## **CONCLUSIONS AND RECOMMENDATIONS**

As Kansas transitions its tax policy from one that taxes income and production to one that taxes sales and use, as a means to tax consumption, the Committee finds it necessary for exemptions and credits to be evaluated. However, the Committee recognizes that not all exemptions and credits are created equal. Those that are legally required or which would have an adverse effect on the growth of the Kansas economy if repealed should remain. All other tax expenditures must be scrutinized to determine whether they are likely candidates for sunset.

An evaluation and sunset process must be conducted by the standing taxation committees of the Senate and House because those committees have the most legislative expertise in identifying the various interacting consequences of tax policy.

The Committee recommends the standing tax committees develop a continual process to evaluate exemptions and credits, which should employ measurable goals and standards, and implement a sunset schedule for all current and future credits and exemptions, excluding those that are legally required, applicable to governmental entities, or which otherwise would result in double taxation if repealed.

# **Report of the Joint Committee on Corrections and Juvenile Justice Oversight to the 2016 Kansas Legislature**

**CHAIRPERSON:** Representative John Rubin

**VICE-CHAIRPERSON:** Senator Carolyn McGinn

**RANKING MINORITY MEMBER:** Representative Jim Ward

**OTHER MEMBERS:** Senators Molly Baumgardner, Steve Fitzgerald, Forrest Knox, Jacob LaTurner, Pat Pettey, and Greg Smith; Representatives Sydney Carlin, Pete DeGraaf, Ramon Gonzalez, Amanda Grosserode, and Jerry Henry

## **STUDY TOPIC**

KSA 2014 Supp. 46-2801 directs the Joint Committee to monitor inmate and juvenile offender populations and to review and study the programs, activities, plans, and operations of the Kansas Department of Corrections (KDOC). As part of this charge, KDOC has requested study of juvenile justice reform; electronic monitoring as an alternative to prison; continuing implementation of the Justice Reinvestment Initiative (2013 HB 2170); and recruitment and retention of corrections staff. Additionally, the Joint Committee is authorized to study the following topics:

- Requiring body cameras for all law enforcement officers and, to fund this requirement, the feasibility of changing the civil asset forfeiture process to require all assets seized be sent to a centrally administered fund to disperse back to local law enforcement;
- Using the Problem Gambling and Addictions Fund, which, pursuant to KSA 2014 Supp. 79-4805, may be used for treatment of alcoholism, drug abuse, and other addictive behaviors, to fund juvenile substance abuse treatment, particularly as it relates to placements and Youth Residential Centers; and
- Treating offenders with mental health and substance abuse issues in a setting other than prison.

# Joint Committee on Corrections and Juvenile Justice Oversight

## ANNUAL REPORT

### Conclusions and Recommendations

- The Committee recommends the House Appropriations and Senate Ways and Means Committees consider appropriating additional funds in fiscal year 2017 to the Kansas Department of Corrections (KDOC) to provide pay raises for uniformed staff working at correctional facilities to make salaries commensurate with those of federal and private correctional officers in Kansas.
- The Committee recommends legislative consideration of:
  - The work of the Juvenile Justice Workgroup, the recommendations in its final report, and any legislation it recommends;
  - The criteria KDOC uses to put current inmates on house arrest to allow additional flexibility; and
  - Emergency observation and treatment in communities with designated crisis receiving centers.

***Proposed Legislation.*** The Committee recommends introduction of legislation in the House:

- Increasing from 90 to 120 days the amount of time an inmate can earn for successful completion of programs and have subtracted from the inmate's sentence for a nondrug severity level 4 through 10 crime or a drug severity level 3 through 5 crime; and
- Changing the severity level for the crime of unlawfully tampering with electronic monitoring equipment from severity level 6 to level 8.

### BACKGROUND

The 1997 Legislature created the Joint Committee on Corrections and Juvenile Justice Oversight to provide legislative oversight of the Kansas Department of Corrections (KDOC) and the Juvenile Justice Authority (JJA). Pursuant to Executive Reorganization Order No. 42, on July 1, 2013, the jurisdiction, powers, functions, and duties of the JJA and the Commissioner of Juvenile Justice were transferred to KDOC and the

Secretary of Corrections. KDOC operates eight correctional facilities: El Dorado Correctional Facility, Ellsworth Correctional Facility, Hutchinson Correctional Facility, Lansing Correctional Facility, Larned Correctional Mental Health Facility, Norton Correctional Facility, Topeka Correctional Facility, and Winfield Correctional Facility. KDOC also operates parole offices throughout the state and is responsible for the administration of funding and oversight of local community corrections programs. There are two operational juvenile correctional facilities

(JCFs): Larned Juvenile Correctional Facility and Kansas Juvenile Correctional Complex. Individuals as young as 10 and as old as 17 years of age may be adjudicated as juvenile offenders (JOs) and remain in custody in a JCF to age 22.5 and in the community to age 23.

The Joint Committee is composed of 14 members, with 7 members each from the House and Senate. In odd years, the chairperson and ranking minority member are House members and the vice-chairperson is a Senate member, while in even years, the chairperson and ranking minority member are Senate members and the vice-chairperson is a House member.

The Committee's duties, as outlined in KSA 2015 Supp. 46-2801(k), are to monitor the inmate population and review and study KDOC's programs, activities, and plans regarding its statutorily prescribed duties, including the implementation of expansion projects; the operation of correctional, food service, and other programs for inmates; community corrections; parole; and the condition and operation of the correctional institutions and other facilities under the Department's control and supervision. The Committee also is charged to review and study the adult correctional programs, activities and facilities of counties, cities, and other local governmental entities, including the programs and activities of private entities operating community correctional programs and facilities, and the condition and operation of jails and other local governmental facilities for the incarceration of adult offenders.

Similarly, the Committee is charged to review and study programs, activities, and plans involving JOs, including the responsibility for their care, custody, control, and rehabilitation, and the condition and operation of the State JCFs. Further, the Committee is charged to review and study the JO programs and activities and facilities of counties, cities, school districts, and other local governmental entities, including programs for the reduction and prevention of juvenile crime and delinquency, programs and activities of private entities operating community juvenile programs and facilities, and the condition and operation of local governmental residential or custodial facilities for the care, treatment, or training of JOs.

## COMMITTEE ACTIVITIES

The Joint Committee requested six meeting days and was granted two. In addition to its statutory duties, the Joint Committee was charged to study:

- Treatment of offenders with mental health and substance abuse issues in a setting other than prison;
- Use of the Problem Gambling and Addictions Fund, which, pursuant to KSA 2015 Supp. 79-4805, may be used for treatment of alcoholism, drug abuse, and other addictive behaviors, to fund juvenile substance abuse treatment; and
- Required use of body cameras for all law enforcement officers and, to fund this requirement, the feasibility of changing the civil asset forfeiture process to require all assets seized be sent to a centrally administered fund to disperse back to local law enforcement.

The Committee met November 2 and 3, 2015.

### November 2

The Secretary of Corrections gave an overview of KDOC operations, including adult inmate and JO populations; options for prison bed expansion; the work of the Prisoner Review Board; the status and effects of the Justice Reinvestment Initiative; the outcomes of statewide behavioral health interventions and substance abuse programs; and information on corrections officer turnover. Committee members asked about the challenges of available inmate bed space; the success of programs for the mentally ill prison population; and the Pew-MacArthur Results First Initiative in Kansas, a partnership with those organizations to establish a cost-benefit model customized to the Kansas criminal justice system.

By Fiscal Year (FY) 2018, the Kansas Sentencing Commission (KSC) projects the KDOC will be 609 over capacity on male beds. The Secretary described four options to address this shortage. The first would be increasing from

90 to 120 days the amount of time an inmate can earn for successful completion of programs and have subtracted from the inmate's sentence for a nondrug severity level 4 through 10 crime or a drug severity level 3 through 5 crime. This option is estimated to save 305 of the projected 609 beds. The KDOC also could increase contracts for beds at local jails at a cost of \$40 per day; however, this would not address the need for higher-custody-level beds. A third option would be to contract for private prison beds out of state at a cost of \$55 per day; however, those dollars would go to vendors in other states. The fourth option is to build 512 beds at the El Dorado Correctional Facility at a cost of \$55.37 per day, including the bond cost of \$2 million annually for 20 years. Construction costs would total \$27.0 million.

The KDOC Deputy Secretary for Facilities Management presented an overview of KDOC contracts for food and medical services, as well as information on the outcomes of programs in the facilities, including education and job training, substance abuse, and cognitive behavioral therapy programs.

The KDOC Deputy Secretary of Juvenile Services gave an overview of the Kansas Juvenile Justice System, including data trends for youth in state custody and updates on assessments, education, and substance abuse programming within the JCFs; the Council of State Governments' Justice Center recommendations and strategies to improve outcomes; and the Juvenile Justice Workgroup, which met several times during the 2015 interim, with technical assistance from The Pew Charitable Trusts' Public Safety Performance Project. A representative of The Pew Charitable Trusts provided additional information about the work of the Juvenile Justice Workgroup, including the Workgroup's research principles, key data findings, and key takeaways.

A representative of the Kansas County and District Attorneys Association shared concerns about recommendations of the Juvenile Justice Workgroup that suggest sweeping changes to the current Juvenile Justice Code.

## **Electronic Monitoring as an Alternative to Prison**

The Secretary of Corrections testified he did not believe Kansas needed new law concerning electronic monitoring. He stated electronic monitoring and house arrest were useful for persons who would otherwise be in minimum custody but would not address the need for higher custody level beds.

A representative of the Kansas Alternative Corrections Association testified in support of alternative forms of corrections, including alcohol-related monitoring devices and GPS electronic monitoring technology.

The Director of the Johnson County Department of Corrections testified in support of revising the current offense of unlawfully tampering with electronic monitoring equipment, KSA 2015 Supp. 21-6322, to a series of offenses similar to the categories of offenses for escape and aggravated escape from custody, KSA 2015 Supp. 21-5911.

## **November 3**

The Director of Reentry Services, KDOC, spoke to the Committee at the request of the Chairperson on the current Sex Offender Treatment Program.

The Executive Director of the KSC presented an overview of FY 2016 Adult Prison Population Projections, the Justice Reinvestment Initiative, and the 2003 SB 123 Program.

The SB 123 Program is an alternative sentencing policy for non-violent drug possession offenders. Funding for the SB 123 Program is projected to run out in FY 2017 or 2018, at which point treatment providers will no longer be paid for services and fewer offenders will have access to and receive substance abuse treatment. The KSC Director noted this is significant given the program's demonstrated success at reducing recidivism. A December 2014 study showed a 75 percent reduction in relative odds of a new conviction when the program is successfully completed. Further, SB 123 offenders are 25-30 percent less likely to recidivate and have a lower

rate of reconviction, 7.7 percent, compared to non-SB 123 offenders, 10.6 percent. Additionally, on average, the cost of the program is \$4,293 per offender per year, compared to \$25,000 per offender per year for incarceration. Without funding for the program, overall state expenditures are likely to increase due to increased prison populations.

**Alternatives to Detention or Incarceration for Offenders with Mental Health and Substance Abuse Issues and Possible Utilization of the Problem Gambling and Addictions Fund for Treatment of Alcoholism, Drug Abuse, and Other Addictive Behaviors**

Senator Steve Fitzgerald testified failure to properly address mental illness is costly. He stated mental health is a health problem not a corrections problem.

The Chief Strategic Management Officer of Wyandot, Inc.; a judge of the Wyandotte County District Court; an officer with the Overland Park Police Department; an officer with the Leawood Police Department; and the Executive Director of the Heartland Regional Alcohol and Drug Assessment Center testified together on behalf of a group working on Emergency Observation and Treatment (EOT) legislation. EOT applies only to patients who are deemed a danger to self or others.

A private citizen testified that this legislation gives a broad brush to law enforcement authority.

A representative of the Kansas Chapter of the National Association of Social Workers also testified in support of alternatives to incarceration and stated social workers stand ready to be part of the interdisciplinary services and alternatives to incarceration that would be necessary for positive change in the lives of these community members.

The Clinical Director of Four County Mental Health Center and President of the Kansas Association of Addiction Professionals testified there are gaps in the juvenile substance use disorder treatment array of services. He stated the Problem Gambling and Addictions Fund is a resource that has not yet been used to address these gaps.

**Mandating Law Enforcement Officers Wear Body Cameras and Possible Funding Sources, Including Proceeds of Civil Asset Forfeiture**

Representative Gail Finney and representatives of the American Civil Liberties Union of Kansas, Racial Profiling Advisory Board of Wichita, and Sunflower Community Action testified in support of 2015 SB 18, the Police and Citizens Protection Act, and the use of body cameras. More specifically, some proponents asked that body cameras not be required but regulated; that the subjects of the recordings be able to view the videos without hiring an attorney; and for minimal discretion when cameras are to be activated. Senator David Haley provided written testimony in support of body cameras.

A representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association testified that, while the organizations he represents are not opposed to the use of body-worn cameras, they are ardently opposed to unfunded mandates requiring immediate implementation among all officers, statutory determination of what should be local decisions on policies such as retention periods, the "gotcha" clause in SB 18 providing the law enforcement officer is guilty of any accusation if there is no video, and use of local forfeiture funds to fund the cameras.

Representatives of the Johnson County Sheriff's Office, the Arkansas City Police Department, and the Lenexa Police Department also testified they support the use of body-worn cameras and video technology, but strongly oppose legislative mandates requiring law enforcement officers to wear body-worn cameras and the use of civil asset forfeiture funds to purchase body-worn cameras.

A representative of the League of Kansas Municipalities testified in opposition to SB 18, saying the primary objection to the original bill was the mandate that all law enforcement agencies would be required to use body-worn cameras with no funding provided for the mandate.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee recommended introduction of legislation in the House:

- In response to bed-space demands, increasing from 90 to 120 days the amount of time an inmate can earn for successful completion of programs and have subtracted from the inmate's sentence for a nondrug severity level 4 through 10 crime or a drug severity level 3 through 5 crime; and
- Changing the severity level for the crime of unlawfully tampering with electronic monitoring equipment from severity level 6 to level 8.

Further, in light of the Secretary's testimony regarding the difficulty of recruiting and retraining uniformed staff and the potential impact on public safety, the Committee agreed to recommend that the House Appropriations and Senate Ways and Means Committees consider appropriating additional funds to KDOC in FY 2017 for the purpose of providing pay raises for uniformed staff working at correctional facilities to make salaries commensurate with those of federal and private correctional officers in Kansas.

Finally, the Committee recommended legislative consideration of the work of the Juvenile Justice Workgroup, the recommendations in its final report, and any legislation it recommends; the criteria KDOC uses to put current inmates on house arrest to allow additional flexibility; and emergency observation and treatment in communities with designated crisis receiving centers.

# **Report of the Joint Committee on Information Technology to the 2016 Kansas Legislature**

**CHAIRPERSON:** Representative Brett Hildabrand

**VICE-CHAIRPERSON:** Senator Mike Petersen

**OTHER MEMBERS:** Senators Marci Francisco, Tom Holland, Garrett Love, and Jeff Melcher; and Representatives J. R. Claeys, Keith Esau, Brandon Whipple, and John Wilson

## **CHARGE**

- Study computers, telecommunications, and other information technologies used by state agencies and institutions;
- Review proposed new acquisitions, including implementation plans, project budget estimates, and three-year strategic information technology plans of State agencies and institutions;
- Monitor newly implemented technologies of State agencies and institutions;
- Make recommendations to the Senate Committee on Ways and Means and House Committee on Appropriations on implementation plans, budget estimates, and three-year plans of state agencies and institutions;
- Report to the Legislative Coordinating Council (LCC) and make special reports to other legislative committees as deemed appropriate;
- Review, evaluate, and submit to the LCC a report regarding the Propylon contract; and
- Information technology security at Kansas government agencies, including findings from LPA reports and agency responses.



# Joint Committee on Information Technology

## ANNUAL REPORT

### Conclusions and Recommendations

In review of agency projects, the Committee noted the reoccurring prevalence of technology disparities as well as many small free-standing information technology (IT) structures continually being created within individual agencies that could all significantly benefit from the formalized structure and environment of a centralized system. The Committee noted a centralized system would have considerable strengths in system security and management, software updates and maintenance, cost savings and control, expertise sharing and sustainability, and overall effectiveness of statewide IT efforts.

The Committee recommends consideration of a centralized statewide information technology policy, infrastructure, provision, and progression efforts. The Committee recommends the branch Chief Information Technology Officers, in collaboration with agencies and others with IT expertise, work to define and, with the Legislature's assistance, refine an action plan to provide and further efforts towards a centralized IT structure to be presented to the Legislature. Areas of consideration discussed by the Committee included the following:

- **Policy:** The Committee recommends statewide Wi-Fi security and mobile device standards be created. This standard should include an architecture and security structure with policies created for mobile devices, encryption, and state email and cloud-based services.
- **Infrastructure:** The Committee recommends a project management function be prioritized to focus on infrastructure and asset centralization. This function should work to leverage current and future acquisition and maintenance of IT through the development and implementation of strategies in the areas of licenses, programs, equipment, systems, and services provisions.
- **Active Evaluation:** The Committee recommends all projects include some form of basic metrics by which the project can be evaluated for successes; refinements, revisions, or both; or other forms of resolution.

**Proposed Legislation:** None.

### BACKGROUND

The Joint Committee has statutory duties assigned by its authorizing legislation in KSA 46-

2101 *et seq.* The Joint Committee may set its own agenda, meet on call of its chairperson at any time and any place within the state, and introduce legislation. The Joint Committee consists of ten members, including five senators and five

representatives. The Joint Committee met during the 2015 Interim as authorized by the Legislative Coordinating Council (LCC) (2 interim days). The Committee met February 18, May 14, May 19, November 23 (interim), and November 24 (interim).

The duties assigned by its authorizing legislation in KSA 46-2102 and by KSA 2015 Supp. 75-7201 *et seq.* are as follows:

- Study computers, telecommunications, and other information technologies used by State agencies and institutions. The state governmental entities defined by KSA 2015 Supp. 75-7201 include executive, judicial, and legislative agencies and Regents institutions.
- Review proposed new acquisitions, including implementation plans, project budget estimates, and three-year strategic information technology plans of state agencies and institutions. All state governmental entities are required to comply with provisions of KSA 2015 Supp. 75-7209 *et seq.* in submitting such information for review by the Joint Committee.
- Monitor newly implemented technologies of State agencies and institutions.
- Make recommendations to the Senate Ways and Means and House Appropriations Committees on implementation plans, budget estimates, and three-year plans of state agencies and institutions.
- Report annually to the LCC and make special reports to other legislative committees as deemed appropriate.

In addition to the Joint Committee's statutory duties, the Legislature or its committees, including the LCC, may direct the Joint Committee to undertake special studies and to perform other specific duties. Additional items of study assigned to the Committee included the following items:

- Review, evaluate, and submit to the LCC a report regarding the Propylon contract; and
- Information technology security at Kansas government agencies, including findings from Legislative Division of Post Audit (LPA) reports and agency responses.

KSA 2015 Supp. 75-7210 requires the Legislative, Executive, and Judicial Chief Information Technology Officers (CITOs) to submit annually to the Joint Committee all information technology project budget estimates and revisions, all three-year plans, and all deviations from the state information technology architecture. The Legislative CITO is directed to review the estimates and revisions and the three-year plans and the deviations, then to make recommendations to the Joint Committee regarding the merits of and appropriations for the projects. In addition, the Executive and Judicial CITOs are required to report to the Legislative CITO the progress regarding implementation of projects and proposed expenditures, including revisions to such proposed expenditures.

## COMMITTEE ACTIVITIES

At the February 18 meeting, the Joint Committee was briefed on legislation proposed in the 2015 Session, SB 7 and HB 2010, by the Legislative Post Audit Committee, which would require LPA to conduct information technology (IT) audits of State agencies. LPA also presented an overview of the IT security audits that the office has been doing on an *ad hoc* basis since 2000.

At the May 14 meeting, LPA staff gave the Joint Committee a status update on the IT security audit being conducted by the office.

At the May 19 meeting, the Acting Executive CITO presented the most recent agency quarterly project reports and cited several initiatives that aim to increase efficiencies in executive branch agencies. Two representatives of the Legislative Office of Information Services provided the Joint Committee with project updates and initiatives considered by the office. The Judicial CITO

outlined current and future initiatives, including the statewide implementation of an electronic-based court filing system.

During the Interim, the Joint Committee met on November 23 to hear updates from all three branch CITO's. The Judicial CITO told the Committee that e-filing should be available in all Kansas counties by spring 2016 and the Judicial Branch hoped to have a request for proposal for a centralized case management system by next year. The Legislative CITO presented the Committee with a list of 15 in-progress or upcoming projects. The Executive CITO also presented an update on current executive IT projects, including the Executive Branch Technology Modernization project. The manager of the Office 365 project also provided an update of that project roll-out.

The Joint Committee met again on November 24. The Executive Director of the Kansas Eligibility and Enforcement System (KEES) project presented an update of that endeavor. Furthermore, two representatives from the Kansas Department for Aging and Disability Services presented information on the Kansas Aging Management Information System.

Also at the November 24 meeting, the Committee entered into a closed executive session in order to confer with an agency representative from the Kansas Department of Wildlife, Parks and Tourism regarding the progress of a project, then reentered an executive session in order to receive an update from LPA staff regarding security audits conducted and in progress. Upon resumption of the regular public meeting, no further discussion or action on these items took place.

### Interim Review Summary

During the 2015 Interim, as part of the Joint Committee's review of both active and proposed IT projects, the Executive CITO presented quarterly reports at the November meetings. Reports are available online at: <http://oits.ks.gov/kito/epmo/summary-of-information-technology-project-status-reports>

As of the quarterly report published on September 2015, there were 22 active projects totaling \$101,707,890. The following information

was prepared by the Enterprise Project Management Office of the Kansas Office of Information Technology Services and published in November 2015.

Projects are listed in the following format:

#### AGENCY

Project Name

Project Cost; Est. 3 Future Years of Operational Cost

All new Approved, Recast, Completed and Planned projects for this reporting period are in **BOLD**.

New Active projects for the quarter and projects that are in a Caution, Alert, or Recast status for the quarter will be noted in **BOLD** and **ALL CAPS**.

**"Project Cost"** means planning, execution and closeout dollars of a project.

**"Est. 3 Future Yrs of Operational Cost"** means three future years of operational, maintenance, and ongoing costs after the project is completed.

#### ADMINISTRATION, DEPARTMENT OF

**FOCUS ON CUSTOMER UPGRADE SUPPORT (FOCUS) PROJECT \$4,257,952; \$5,338,974**

Oracle BI Analytics Implementation – Data Warehouse Upgrade II \$2,063,061; \$692,679

#### CHILDREN AND FAMILIES, DEPARTMENT FOR (DCF)

Child Support Services System Modernization Planning Project \$972,480; \$0

HB 2015 Project \$2,467,454; \$16,578

DCF Cloud Computing (DCC) To Be Determined; To Be Determined

DCF Enterprise Content Management Assessment (DECMA) To Be Determined; To Be Determined

DCF Mainframe Application Migration (DMAM)  
To Be Determined; To Be Determined

DCF Office 365 Implementation (DOI); To Be  
Determined; To Be Determined

#### **CORPORATION COMMISSION, KANSAS**

Kansas Trucking Regulatory Assistance Network  
(KTRAN) \$990,115; \$90,000

Document Management System To Be  
Determined; To Be Determined

#### **CORRECTIONS, DEPARTMENT OF**

Kansas Juvenile and Adult Correction System  
(KJACS) \$17,000,000 - \$22,000,000; \$3,000,000

#### **EDUCATION, KANSAS STATE DEPARTMENT OF**

KN-CLAIM System Replacement \$1,381,163;  
\$203,747

#### **HEALING ARTS, KANSAS STATE BOARD OF**

Licensing/Enforcement Database Application  
\$343,359; \$120,000

#### **HEALTH AND ENVIRONMENT, KANSAS DEPARTMENT OF**

**KANSAS ELIGIBILITY ENFORCEMENT  
SYSTEM IV (KEES IV) PROJECT  
\$25,077,223; \$33,535,610**

**MEDICAID INFORMATION TECHNOLOGY  
ARCHITECTURE (MITA) / MEDICAID  
MANAGEMENT INFORMATION SYSTEM  
(MMIS) PRE-PROJECT III \$668,478; \$0**

KDHE/DHCF SSIF Claims Data Management  
System Project \$673,757; \$341,990

WIC SQL Server Project – Infrastructure  
\$300,917; \$0

KDHE/DHCF MMIS Modernization and Fiscal  
Agent Operations Takeover Services  
Reprocurement Project \$96,593,543; \$0

#### **HIGHWAY PATROL, KANSAS**

Digital Video Refresh – Infrastructure \$2,230,756;  
\$66,000

#### **INFORMATION TECHNOLOGY SERVICES, KANSAS OFFICE OF (OITS)**

OITS Executive Branch Electronic Mail  
Consolidation \$9,747,325; \$300,000

**OITS INFORMATION TECHNOLOGY  
FINANCIAL MANAGEMENT (ITFM)  
SYSTEM II \$1,002,826; \$0**

**OITS INTERNET UPGRADE FY 2015 –  
INFRASTRUCTURE \$2,361,834; \$0**

State Defense Building Fiber Infrastructure  
\$1,299,879; \$0

Executive Branch Technology Modernization  
(EBTM) – Infrastructure \$24,435,156; \$8,299,696

#### **INVESTIGATION, KANSAS BUREAU OF**

**KS DUI TRACKING SYSTEM (RECORD &  
POLICE IMPAIRED DRIVERS–RAPID) III  
\$2,252,043; \$454,500**

Security Architecture Modernization – Identity  
Access Mgmt. (SAM-IAM) \$533,840; \$90,000

Kansas Incident Based Reporting Replacement  
\$625,000; \$225,000

Livescan Equipment Purchase \$304,690 ; \$0

#### **JUVENILE JUSTICE AUTHORITY**

**JUVENILE JUSTICE INFORMATION  
SYSTEM (JJIS) REWRITE II \$622,460;  
\$246,584**

#### **KANSAS CRIMINAL JUSTICE INFORMATION SYSTEM**

**KANSAS ECITATION PROJECT II \$480,140;  
\$30,000**

#### **LABOR, KANSAS DEPARTMENT OF**

KDOL Unemployment Insurance Contact Center  
IVR Upgrade – Infrastructure \$2,925,612;  
\$420,000

**KDOL Worker’s Compensation Digitization  
Planning Project \$583,620; \$0**

KDOL Workers Compensation Digitization  
Implementation \$8,000,000 - \$12,000,000; To Be  
Determined

**LOTTERY, KANSAS**

**Sales Force Automation and Electronic Device  
Deployment \$588,152; \$678,385**

2012 Sub HB 2333 – Tier 3 Cash Balance System  
\$803,800; \$0

**REVENUE, KANSAS DEPARTMENT OF**

**DMV Modernization \$40,326,159; \$1,999,832**

**KanDrive– Insufficient Reporting**

**Taxation Imaging \$625,257; \$146,085**

Kansas Commercial Registration, Alcoholic  
Beverage Control, Fuel Tax System (K-CRAFTS)  
\$3,346,040; \$780,000

CDL Knowledge and Skill Testing System  
\$429,094; \$0

**County Scanner and Signature Pad  
Refreshment – Infrastructure \$406,740;  
\$62,136**

**SECRETARY OF STATE, KANSAS**

Elections and Voter Information System Renewal  
Renewal (ELVIS) \$693,220; \$1,950,000

**TRANSPORTATION, KANSAS  
DEPARTMENT OF**

**DOCUMENT MANAGEMENT SYSTEM  
REPLACEMENT \$1,300,385; \$538,000**

Capital Inventory Management System (CPIN)  
Replacement 300,000 - \$600,000; To Be  
Determined

**Construction Management System (CMS)  
Replacement – Planning Effort \$553,418; To Be  
Determined**

Consumable Inventory Management System  
(CIMS) \$300,000 - \$450,000; To Be Determined

Equipment Management System (EMS) \$600,000  
- \$1,200,000; To Be Determined

**FORT HAYS STATE UNIVERSITY**

FHSU ERP Implementation \$14,235,335;  
\$3,564,420

**KANSAS, UNIVERSITY OF**

Exchange 2013 To Be Determined; To Be  
Determined

Lync Enterprise Voice Implementation (Lync UC)  
To Be Determined; To Be Determined

**KANSAS STATE UNIVERSITY**

**KSU CONVERGED INFRASTRUCTURE  
\$5,140,135; \$78,750**

**PITTSBURG STATE UNIVERSITY**

**PSU Oracle Cloud Implementation \$2,564,563;  
\$664,957**

PSU Integrated Library System Project (ILS)  
\$512,072; \$211,500

**JUDICIAL BRANCH**

Active Judicial Branch (OJA) Electronic Filing  
Statewide Implementation Project \$315,867;  
\$152,049

Judicial Branch (OJA) Filings and Dispositions  
Data Submission Interface Project \$595,000; \$0

**LEGISLATIVE BRANCH**

2013 PC Lease Project-Infrastructure \$469,740;  
\$573,105

**CONCLUSIONS AND RECOMMENDATIONS**

No legislation was recommended for introduction. The members reached consensus on the following items to be included in the report:

In review of agency projects, the Committee noted the reoccurring prevalence of technology disparities as well as many small free-standing IT structures continually being created within individual agencies that could all significantly benefit from the formalized structure and environment of a centralized system. The Committee noted that a centralized system would have considerable strengths in system security and management, updates and maintenance, cost savings and control, expertise sharing and sustainability, and overall effectiveness of statewide information technology efforts.

The Committee recognizes efforts and successes in moving toward a more centralized and organized IT structure within the state. The Committee noted the State already has a significant presence in the cloud environment for such products as Microsoft Office 365, but could potentially harness even more economies of scale and more of the benefits which additional integration into a cloud-structured environment could potentially afford. This type of environment has the potential to significantly reduce capital expenditures, and the Committee recognizes that, while there could be some initial migration costs associated, the ongoing cost could potentially be minimized in the form of monthly recurring payment. The Committee heard reports regarding the OITS and noted a similarity to efforts that were started with the Division of Information Systems and Communications, which are now largely provided and continued by OITS. The Committee emphasizes the need for professionally managed oversight of information technology efforts and, in consideration of its importance, the Committee suggests consideration be given to utilization of the services a professional recruiting organization could provide in order to help manage personnel needs and, in collaboration, to structure and form such an oversight team.

The Committee recommends activities to centralize statewide IT policy, infrastructure, provision, and progression efforts. The Committee

recommends the branch CITO's, in collaboration with agencies and others with IT expertise, work to define and, with the Legislature's assistance, refine an action plan to provide and further efforts towards a centralized IT structure to be presented to the Legislature. Significant emphasis was placed by the Committee upon thorough consideration and utilization of an end-point structure analysis within each area involved. The Committee requests a preliminary plan including a timeline and initial recommendations be brought before the Committee for consideration towards the beginning of the 2016 Legislature to begin this conversation with continuing review and development. As part of this review, the Committee would like to evaluate the findings of the efficiency study, which may provide additional considerations in regards to centralization efforts, further noting the possibility of the Committee assisting with the introduction of legislation as the need arises. Areas of consideration discussed by the Committee included the following:

- **Policy:** The Committee recommends statewide Wi-Fi security and mobile device standards be created. This standard should include an architecture and security structure with policies created for mobile devices, encryption, and state email and cloud-based services.
- **Infrastructure:** The Committee recommends a project management function be prioritized to focus on infrastructure and asset centralization. This function should work to leverage current and future acquisition and maintenance of IT through the development and implementation of strategies in the areas of licenses, programs, equipment, systems, and services provisions.
- **Active Evaluation:** The Committee recommends all projects include some form of basic metrics by which the project can be evaluated for successes; refinements, revisions, or both; or other forms of resolution.

# **Report of the Joint Committee on Kansas Security to the 2016 Kansas Legislature**

**CHAIRPERSON:** Representative Mario Goico

**VICE-CHAIRPERSON:** Senator Greg Smith

**OTHER MEMBERS:** Senators Anthony Hensley, Mitch Holmes, Mike Petersen, Pat Pettey, and Steve Fitzgerald (substitute); and Representatives Carolyn Bridges, Kevin Jones, Adam Lusker, Peggy Mast, Tony Barton (substitute), and Louis Ruiz (substitute).

## **CHARGE**

The Joint Committee is directed by KSA 2015 Supp. 46-3301 to study, monitor, review, and make recommendations relating to security issues for the state. The Committee was directed to consider the following topics:

- The security of utilities in Kansas, specifically the electric grid, and what is done to ensure that security;
- The progress and potential security risks related to the National Bio and Agro-Defense Facility (NBAF);
- The rules for the use of deadly force at facilities including the NBAF and the nuclear facilities in Kansas;
- Safety planning and practices at K-12 schools and post-secondary institutions and the role of the Department of Education and other state agencies in increasing that safety planning;
- The extent to which certain persons may be claiming public and private benefits related to military service when not entitled to those benefits and how that could be reduced; and
- The governance of public emergency communications systems (as requested by the Adjutant General).

# Joint Committee on Kansas Security

## ANNUAL REPORT

### Conclusions and Recommendations

The Committee recommends the position of lead analyst for power and energy infrastructure be added at the Kansas Intelligence Fusion Center, to focus on physical and cyber threats and risk assessment related to power and energy resources.

The Committee recommends designating the Kansas Department of Education (KSDE) as the state agency responsible for coordinating Kansas school safety and preparedness activities and programming the staff and funding of a Kansas Center for Safe and Prepared Schools (KCSPS) into the State General Fund.

The Committee requests the House Committee on Veterans, Military and Homeland Security review possible unethical practices in the offering of certain types of financial products to veterans age 65 and older, during the 2016 Legislative Session.

**Proposed Legislation:** None. (However, implementation of Committee recommendations for addition of an analyst at the Kansas Intelligence Fusion Center and for the establishment of a KCSPS in the KSDE will require legislative action.)

### BACKGROUND

The 2004 Legislature created the Joint Committee on Kansas Security (KSA 2015 Supp. 46-3301) to study, monitor, review, and make recommendations for the following:

- Matters relating to the security of state officers and employees;
- Security of buildings and property under the ownership or control of the state;
- Matters relating to the security of a public body or agency, public building, or facility;
- Matters relating to the security of the infrastructure of Kansas, including any information system; and

- Measures for the improvement of security for the state.

The Legislative Coordinating Council (LCC) also directed the Committee to study the security of utilities in Kansas, specifically the electric grid, and what is done to ensure that security; the progress and potential security risks related to the National Bio and Agro-Defense Facility (NBAF), the rules for use of deadly force; safety planning and practices at Kansas schools and the role of the Department of Education and other state agencies in increasing that safety planning; the extent to which certain persons may be claiming public and private benefits related to military service for which they are not eligible; and the governance of public emergency communications systems (as requested in 2014 by the Adjutant General).



## **COMMITTEE ACTIVITIES**

The Committee received permission from the LCC to meet one day. It met November 6 in the Statehouse to hear information on the topics previously listed.

### **Security of Utilities**

Officials of Westar Energy briefed Committee members on security of electricity generation and distribution facilities in a session closed to the public under KSA 2015 Supp. 75-4319(b)(13). Staff were not present.

A member of the Kansas Corporation Commission briefed the Committee on security measures related to utilities and the Kansas Intelligence Fusion Center in a session closed to the public under KSA 2015 Supp. 75-4319(b)(13). Staff were not present. He provided an excerpt from U.S. Senate Committee on Appropriations Report 114-68 (June 18, 2015) that includes this statement: “The Committee is interested in the capabilities and successes of the Kansas Intelligence Fusion Center as a potential model for other fusion centers.”

### **Security at the NBAF**

Committee members received a briefing on security at the NBAF facility in Manhattan in a session closed to the public under KSA 2015 Supp. 75-4319(b)(13). Officials representing the NBAF and Kansas State University (KSU) were present to provide information. Staff were not present.

### **Security at the KSU Nuclear Reactor**

The manager of the nuclear reactor facility at the KSU College of Engineering briefed the Committee, in general terms, on the measures in place to ensure no release of radiation in case of an incident at that federally licensed research facility. He stated the facility’s physical security plan meets requirements of and has been approved by the Nuclear Regulatory Commission (NRC) and that additional planning for emergencies of any type has been done at KSU and with local emergency responders. He said many upgrades

were made to reactor security following the events of September 11, 2001, and noted state laws regarding firearms do not apply to the facility. He also discussed, in general terms, the measures in place to control access of persons to the facility. He stated the facility poses a very low radiological risk: the maximum calculated radiation dosages after a worst-case accident would be small fractions of NRC limits for members of the general public.

### **Use of Deadly Force**

A staff member provided an overview of federal law and Kansas statutes related to the use of deadly force, which is defined in Kansas law as “application of physical force likely to cause death or great bodily harm” (KSA 2015 Supp. 21-5221). She stated several federal regulations pertain to the use of deadly force and provided specific information about federal regulations pertaining to the Department of Energy protective force officers (10 CFR Part 1047), because of Committee member interest in law specific to nuclear facilities. A “protective force officer” is one authorized by the U.S. Department of Energy to carry firearms.

The staff member reviewed a memorandum provided to Committee members that included information on the circumstances under which the use of deadly force is justified for law enforcement officers making an arrest and for private persons. In general, the staff member said, the officer or private person must have a reasonable belief the deadly force is necessary to prevent death or great bodily harm to the person exercising the force or to another. She also outlined the justifications for use of deadly force by federal Department of Energy protective force officers, justifications that include preventing the theft, sabotage, or unauthorized control of special nuclear material. She noted Kansas case law has applied a two-part test: a showing the defendant sincerely and honestly believed the use of deadly force was necessary and a showing that a reasonable person in the defendant’s circumstances would have perceived the use of deadly force was necessary.

A special agent of the Kansas Bureau of Investigation (KBI) provided an overview of the extent of officer-involved shootings in Kansas and

reviewed the steps KBI officers take during any investigation of use of deadly force by a law enforcement officer. He provided a map showing, by county, where officer-involved shootings had occurred in state fiscal years (SFYs) 2013 through 2015, and he stated six such incidents had occurred in SFY 2016 through October 29. He stated the ultimate goal for investigators is to determine whether a criminal act occurred and whether an officer's use of force was legally justified. He noted the Force Science Institute at the University of Minnesota has determined that, on average, someone can shoot, turn, and begin to run before an officer can draw a weapon and return fire.

With regard to incidents on facilities such as the Wolf Creek Generating Facility or the NBAF, the KBI agent stated any use of deadly force at such a facility likely would be investigated by federal officials, with KBI assistance as requested by those federal officials. KBI agents would immediately step in to secure the scene of an incident if federal officers requested, even without a formal memorandum of understanding to that effect.

He noted the KBI participates in the Kansas Intelligence Fusion Center which monitors threats, including those to utilities, and the agency has investigated threats to schools in Kansas. He also answered questions of a general nature.

### **Safety Planning and Practices at Kansas Schools**

A deputy commissioner of the KSDE summarized for the Committee a proposal for a Kansas Center for Safe and Prepared Schools (KCSPS) that was presented to the Governor in 2014 but not included in the Governor's Budget.

The deputy commissioner reviewed the history of efforts to provide technical assistance to schools for preparedness to address hazards of many different types and the duties of the KCSPS that was active from 2009 into 2015: provide a clearinghouse on school safety and preparedness issues, create and deploy a school crisis resource center, establish training and exercise programs, and coordinate expectations and standards for school safety and preparedness. He stated the

former funding for the KCSPS – grants from the U.S. Departments of Homeland Security and Education – ended in May 2015. He reviewed the links between school preparedness and community preparedness (on a typical school day, between 20 percent and 25 percent of the population is in school settings) and challenges that include a lack of codified state standards or goals to guide K-12 school safety efforts and a lack of clarity on state government's role and responsibility for school safety.

The proposal would designate the KSDE as the state agency responsible for coordinating Kansas school safety and preparedness activities, with assistance from the Kansas Highway Patrol, the Kansas Adjutant General's Department, and other state entities as appropriate. It would program the staff and funding of the KCSPS into the State General Fund, and it proposes a budget equal to approximately 50 cents per student per year. The proposal would have the KCSPS make suggestions to the Governor's Office and Legislature regarding specific Kansas goals, roles, responsibilities, and authorities for school safety plus specific and measurable statewide goals.

### **Proof of Eligibility for Veterans' Benefits**

Staff reviewed documents often required as proof of military service, including Department of Defense Form 214 (DD 214) and National Guard Bureau Forms 22 and 23, and reviewed how those forms would be used in proving eligibility for disability compensation, certain home loans, and education benefits. She provided samples of those forms plus samples of military identification cards. She noted a grocery store chain and a pharmacy chain generally require military ID or a document from the U.S. Department of Veterans Affairs (VA).

An official from the Department of Revenue Division of Vehicles reviewed eligibility for veteran license plates, stating a DD 214 noting an honorable discharge must be shown upon initial application for the plate. Eligibility for the exemption from motor vehicle tax for full-time members of the military absent from the state due to military service must be documented each year.

A second Division of Vehicles official stated 22,473 driver's licenses and state-issued ID cards had "veteran" included on those licenses and cards to date, since 2014 SB 136 took effect (July 1, 2014). Adding such designation to a license or ID card for a spouse would require statutory amendment, he stated. He also provided a copy of the application for waiver of the skills test for a commercial driver's license that could be submitted by a person who operated certain commercial-size trucks while in military service; the application must be signed by the applicant's commanding office as well as by the applicant.

The Deputy Director of Veteran Services at the Kansas Commission on Veterans' Affairs Office (KCVAO) explained the role of the KCVAO in assisting veterans in applying for and claiming VA benefits. In general, a DD 214 is required.

The Deputy Director also expressed his concerns regarding a third-party annuity scam directed at veterans over age 65 and their families. He said the scheme involves attorneys, financial planners, and insurance agents trying to persuade veterans to make decisions about their pensions without giving them full information about the effects of placing assets into an annuity or insurance policy on eligibility for VA Aid and Attendance and for Medicaid. He listed eligibility requirements for VA Aid and Attendance.

### **Governance of Emergency Communications**

This topic was requested by the Adjutant General during the 2014 meeting of the Joint Committee. Staff reviewed portions of a memorandum provided to Committee members and other attendees.

Impetus to study state-level governance comes from the technological convergence of land mobile radio, broadband, and 911/Next Generation 911 and also from efforts to meet the federal First Responder Network Authority mission to provide wireless broadband dedicated to public safety. Staff reviewed aspects of the current governing structure, which includes the Statewide Interoperability Executive Committee established by Executive Order 07-27 (dated December 20, 2007) and the 911 Coordinating Council

established by the Kansas 911 Act (KSA 2015 Supp. 12-5362 *et seq.*).

Using a framework offered in the *Emergency Communications Governance Guide for State, Local, Tribal, and Territorial Officials* (October 2015) (developed by the National Council of Statewide Interoperability Coordinators and SAFECOM, a program of the U.S. Department of Homeland Security), KLRD staff summarized the emergency communications governance laws of Iowa, Minnesota, Oregon, and Utah. Those states were among those suggested by federal Office of Emergency Communications officials as having effective governance structures. However, staff said, those states approach governance differently, for example, oversight and coordination of multiple systems v. building and operating a single system, and one agency v. multiple agencies cooperating. A staff member reviewed how the states address such issues as the representation by stakeholders on the states' governing bodies, accountability for participation once selected for the governing body, the use of supplemental working groups and advisory committees, and aligning tasks to communications interoperability strategic plans.

### **CONCLUSIONS AND RECOMMENDATIONS**

The Committee recommends the position of lead analyst for power and energy infrastructure be added at the Kansas Intelligence Fusion Center, to focus on physical and cyber threats and risk assessment related to power and energy resources.

The Committee recommends designating the KSDE as the state agency responsible for coordinating Kansas school safety and preparedness activities and programming the staff and funding of a KCSPS into the State General Fund.

The Committee requests the House Committee on Veterans, Military and Homeland Security review possible unethical practices in offering of certain types of financial products to veterans age 65 and older, during the 2016 Legislative Session.

# **Report of the Joint Committee on Pensions, Investments and Benefits to the 2016 Kansas Legislature**

**CHAIRPERSON:** Representative Steven Johnson

**VICE-CHAIRPERSON:** Senator Jeff King

**OTHER MEMBERS:** Senators Anthony Hensley, Mitch Holmes, Laura Kelly, and Ty Masterson; Representatives John Alcala, John Edmonds, Daniel Hawkins, Jerry Henry, Charles Macheers, Gene Suellentrop, and Ed Trimmer

## **CHARGE**

The Joint Committee on Pensions, Investments, and Benefits is charged to study the following issues and topics during the 2015 Interim:

- Legislation enacted during the 2015 Legislative Session affecting the Kansas Public Employee Retirement System (KPERS), in particular:
  - Senate Sub. for HB 2095, which revised working-after-retirement provisions and created a pilot Deferred Retirement Option Program for members of the Kansas Highway Patrol; and
  - SB 228, which authorizes \$1.0 billion in bonds to be issued for KPERS' unfunded actuarial liability;
- The overall funding ratio for the Retirement System;
- Various reports statutorily required to be submitted by KPERS and other state agencies to the Joint Committee; and
- To fulfill the Joint Committee's duties and responsibilities, as provided by KSA 2015 Supp. 46-2201, to monitor, review, and make recommendations regarding KPERS.

The working-after-retirement legislation mentioned above also authorizes the Joint Committee to grant employment extensions if certain conditions are met. Procedures should be established by the Joint Committee prior to considering requests.

# Joint Committee on Pensions, Investments and Benefits

## REPORT

### Conclusions and Recommendations

The Joint Committee expresses its gratitude to the task force of superintendents for their effort in evaluating the new working-after-retirement provisions. The Joint Committee should finalize guidelines during the 2016 Legislative Interim.

When considering future modifications of working-after-retirement provisions, the Joint Committee suggests the Legislature consider the addition of a 30 percent surcharge to address cost concerns and provide needed flexibility to meet staffing needs. Pertinent Internal Revenue Service requirements should be examined during those discussions.

Finally, the Joint Committee notes its statutory responsibility to study in 2016 the issue of whether the \$25,000 compensation limit placed on retirees who return to work should be adjusted.

***Proposed Legislation:*** None.

### BACKGROUND

The Joint Committee on Pensions, Investments and Benefits was created in 1992 and is directed by KSA 46-2201 to:

- Monitor, review, and make recommendations relative to investment policies and objectives formulated by the Kansas Public Employees Retirement System (KPERS) Board of Trustees;
- Review and make recommendations related to KPERS benefits; and
- Consider and make recommendations on the confirmation of members nominated by the Governor to serve on the KPERS Board of Trustees.

The Joint Committee may introduce legislation it determines to be necessary.

### COMMITTEE ACTIVITIES

The Joint Committee met November 4, 2015, to review KPERS long-term funding, the issuance of pension obligation bonds that had been authorized by the 2015 Legislature, a KPERS performance audit, newly enacted provisions regarding working after retirement, and deferred compensation as it relates to final average salary calculations. The Joint Committee also received reports and information submitted by KPERS.

#### Review of KPERS Long-Term Funding

The Joint Committee reviewed the 2014 actuarial valuation, which is a snapshot of the financial condition of the Retirement System as of December 31, 2014. The actuarial valuation, which is different from the market valuation, was estimated to be \$15.662 billion. Actuarial assets are calculated by “smoothing” investment gains and losses over a five-year period. A market value higher than the actuarial value means that deferred

investment gains will flow through valuations over the subsequent four years. There is an estimated \$660 million in deferred gains that could be realized in the outlying years. Due in large part to investment gains over the past three years, the funding status has improved for all membership groups (KPERS state, school, and local groups; Kansas Police and Firemen's Retirement System; and Judges' Retirement System). The Unfunded Actuarial Liability (UAL) for the entire system decreased in 2014 by \$298 million, leaving \$9.468 billion remaining to be funded. The funded ratio increased from 59.5 percent in 2013 to 62.3 percent in 2014. Legislative reforms enacted in 2012, including increased employer and employee contributions, will continue to improve funding. Assuming all actuarial assumptions are met in the future, KPERS will be fully funded at the end of the amortization period in calendar year 2031. The valuation does not include the proceeds of the recently issued pension obligation bonds, which will be included in the 2015 actuarial valuation report.

### **Pension Obligation Bonds**

Staff from the Kansas Development Finance Authority (KDFA) presented information to the Joint Committee regarding the issuance of the Series 2015H pension obligation bonds. KPERS received the proceeds of the bonds on August 20.

The Executive Director of KPERS said the bond proceeds were distributed to asset managers within 24 hours of receipt and spread across KPERS' current asset allocation arrangement. Future debt service is the State's responsibility through the Department of Administration and not through KPERS.

### **KPERS Performance Audit Report**

Staff from Legislative Post Audit (LPA) briefed the Joint Committee on the findings of the Performance Audit Report *KPERS - Evaluating Controls to Detect Fraud and Abuse*. The audit report found KPERS had most of the controls needed to help ensure it collects accurate retirement contributions and distributes its controls to detect and prevent fraud and abuse. LPA identified one significant control weakness: the suspension of field audits for almost two years. KPERS reports it has since resumed that function,

which helps ensure KPERS receives accurate employer contributions. LPA identified options that would help KPERS verify the ongoing eligibility of disability recipients. Other identified issues were isolated in nature and have been since corrected.

The Executive Director of KPERS presented an overview of actions taken to address shortcomings identified in the audit. KPERS has entered into discussions with the Kansas Departments of Revenue and Labor to provide data that can be used to discern whether an employee is a member of the Retirement System.

### **2015 Senate Sub. for HB 2095; Working After Retirement**

Staff from the Office of Revisor of Statutes provided an overview of the provisions of 2015 Senate Sub. for HB 2095, regarding working after retirement.

The Executive Director of KPERS explained the impact of the enacted legislation on current KPERS members who are working after retirement. Under the current provisions no employer contributions are paid on the first \$20,000 earned; under the new provisions employer contributions will be paid on the first dollar paid to employed retirees.

The Joint Committee received a memorandum from the Department of Education that listed the hard-to-fill teacher positions as certified by the State Board of Education.

Representatives from a task force of school administrators from across the state, which was formed to evaluate the recently passed working-after-retirement legislation, applied the new provisions to various scenarios. While initially skeptical of the applicability, the task force recognized the effort taken to address many of the circumstances that can arise when hiring a retired employee. In employment situations involving emergency or hardship circumstances, the conferees expressed concern that using a legislative hearing process may not be practical. The conferees recommended an assurance protocol be filed with KPERS, which would be signed by the school's superintendent and board

president, documenting the steps taken by a school district to fill a position.

The conferees requested the Joint Committee members consider an additional actuarial fee, as established by KPERS, which would be paid by the participating employer, the working retiree, or both.

### **Deferred Compensation and Final Average Salary**

The Executive Director of KPERS provided information on current deferred compensation and final average salary calculations. Annual pension benefits for most retirees are based on the formula: final average salary multiplied by years of service, multiplied by a percentage multiplier. The final average salary variable—depending upon the member’s plan, tier, and membership date—is based on an average of three to five years of “compensation” or “salary,” as those terms are defined in statute, which include definitions for all salary and wages payable to a member for personal services performed for a participating employer. Both definitions specifically include deferred compensation derived from savings plans authorized by sections 403(b) and 457 of the Internal Revenue Code. There are two types of 457 plans, a 457(b) plan, which is offered by governmental employers to most, if not all, state and local government employees, and a 457(f) plan, which is used by employers to retain certain employees. A 457(f) plan is usually limited to particular employees; the employer establishes and funds the plan in a contract with the employee. The employee does not receive any income until the end of the contract period.

KPERS has found the use of 457(f) plans to be extremely rare; out of approximately 90,000 retirements in the past 20 years, there has been three instances where 457(f) benefits were included in the final average salary. Current retirement law caps the effect of 457(f) benefits on final average salary by excluding the salary amount which is greater than 15 percent or 7.5 percent for Tier 1 or Tier 2 members, respectively. A 457(f) plan would have a smaller impact on the KPERS 3 Cash Balance Plan because those benefits are calculated on an account basis rather than on final average salary. KPERS 3 accounts reflect compensation earned throughout a

member’s career, not the highest three or five years. Contributions to a 457(f) plan which is paid at or near retirement would earn interest for a limited period of time. The Internal Revenue Service (IRS) annually sets a contribution limit based on annual earnings and membership date. Kansas has adopted the IRS limitation levels by statute.

Moneys in 457(f) plans could be limited when calculating final average salaries—so long as the provision applied prospectively.

### **Submission of KPERS Reports and Other Requested Information**

The Executive Director of KPERS submitted reports on Alternative Investment Policy, including the implications of the legislative changes made to KPERS in 2012, and Sudan Divestment.

## **CONCLUSIONS AND RECOMMENDATIONS**

The Joint Committee expresses its gratitude to the task force of superintendents for their effort in evaluating the new working-after-retirement provisions and for making suggestions to improve the State’s retirement laws. The Joint Committee should finalize guidelines during the 2016 Legislative Interim. This should give participating employers and retired employees time to understand the new policy.

When considering future modifications of working-after-retirement provisions, the Joint Committee suggests the Legislature consider the addition of a 30 percent surcharge to address cost concerns and provide needed flexibility to meet staffing needs. The Legislature and KPERS should examine pertinent IRS requirements during those discussions.

Finally, the Joint Committee notes its statutory responsibility (KSA 2015 Supp. 74-4914) to study in 2016 the issue of whether the \$25,000 compensation limit placed on retirees who return to work should be adjusted. Adjustment to the limit must consider inflation and data on member retirement benefits and active employee compensation.

# **Report of the Joint Committee on State Building Construction to the 2016 Kansas Legislature**

**CHAIRPERSON:** Representative Steve Brunk

**VICE-CHAIRPERSON:** Senator Kay Wolf

**OTHER MEMBERS:** Senators Marci Francisco, Laura Kelly, Forrest Knox, and Larry Powell; Representatives John Alcala, Steve Alford, Mark Hutton, and Adam Lusker

## **CHARGE**

The Joint Committee is authorized by KSA 46-1701, which includes provisions allowing the Joint Committee to meet on call of its Chairperson at any time and any place within the state and to introduce legislation. The Committee is to:

- Study, review, and make recommendations on all agency five-year capital improvement plans; and
- Study, review, and make recommendations on leases, land sales, and statutory required reports by agencies.



# Joint Committee on State Building Construction

## ANNUAL REPORT

### Conclusions and Recommendations

The Joint Committee recommended all the agencies' five-year capital improvement plans and, in addition, recommends the following supplemental requests:

- Judicial Branch, \$402,778, all from the State General Fund, for two new judicial suites;
- Kansas Commission on Veterans' Affairs Office, FY 2016, \$22,500 for the Kansas Soldiers Home and \$43,750 for the Kansas Veterans' Home, both from the State Institutions Building Fund (SIBF); and in FY 2017, \$161,500 from the SIBF for the Custer House and \$100,000 from the Expanded Lottery Act Revenues Fund for the Cemetery Program;
- Kansas Bureau of Investigation, FY 2016, \$334,705 all from the State General Fund, for repairs to the parking garage at the headquarters and an amount not to exceed \$150,000, from the State General Fund, for roof repair at the Topeka Annex;
- Department of Corrections, FY 2017, \$222,500, all from the Inmate Benefit Fund, for a Visitor's Center at the Lansing facility;
- Department of Transportation, FY 2017, \$2.0 million, all from the State Highway Fund, for the Concordia subarea building relocation;
- Kansas State Fair, FY 2016, \$116,060 for emergency exit doors for Bison Arena, subject to a resolution between the agency and the State Fire Marshal; and
- Department of Wildlife, Parks and Tourism, FY 2016, \$120,000 from the Wildlife Fee Fund, Boating Fee Fund, and Park Fee Fund for replacement of a water line to the Region 2 Office in Topeka.

The Joint Committee recommends changing the State Gaming Revenues Fund distribution (KSA 2015 Supp. 79-4803 and 79-4804) to 12.5 percent going to the Correctional Institutions Building Fund and 82.5 percent to the Economic Development Initiatives Fund.

The Joint Committee recommends the Department of Administration pursue legislation to repeal the statute that requires the Excessive Energy Use Report.

The Joint Committee rejected a lease in Chanute for the Department of Children and Families and requested the Department of Administration present a comprehensive plan to look at possible efficiencies in co-locating agencies and review all available facilities in addition to possible new construction.

***Proposed Legislation:*** None.

## BACKGROUND

The Joint Committee was established during the 1978 Session. The Special Committee on Ways and Means recommended the bill creating the Joint Committee, 1978 HB 2722, as a result of its interim study of state building construction procedures.

The Joint Committee was expanded from six members to ten members by 1999 HB 2065. It is composed of five members of the Senate and five members of the House of Representatives. Two members each are appointed by the Senate President, the Senate Minority Leader, the Speaker of the House of Representatives, and the House Minority Leader. The Chairpersons of the Senate Committee on Ways and Means and the House Committee on Appropriations serve on the Joint Committee or appoint a member of such committee to serve (KSA 46-1701).

Terms of office are until the first day of the regular legislative session in odd-numbered years. A quorum of the Joint Committee is six members. The Chairperson and Vice-chairperson are elected by the members of the Joint Committee at the beginning of each regular session of the Legislature and serve until the first day of the next regular session. In odd-numbered years, the Chairperson is to be a Representative and the Vice-chairperson is to be a Senator. In even-numbered years, the Chairperson is to be a Senator and the Vice-chairperson is to be a Representative (KSA 46-1701).

The Joint Committee may meet at any location in Kansas on call of the Chairperson and is authorized to introduce legislation. Members receive the normal *per diem* compensation and expense reimbursements for attending meetings during periods when the Legislature is not in session (KSA 46-1701).

The primary responsibilities of the Joint Committee are set forth in KSA 2015 Supp. 46-1702. The Joint Committee is to review and make recommendations on all agency capital improvement budget estimates and five-year capital improvement plans, including all project program statements, presented in support of appropriation requests, and to continually review

and monitor the progress and results of all state capital construction projects. The Joint Committee also studies reports on capital improvement budget estimates that are submitted by the State Building Advisory Commission. The Joint Committee makes annual reports to the Legislature through the Legislative Coordinating Council (LCC) and other such special reports to the appropriate committees of the House of Representatives and the Senate (KSA 2015 Supp. 46-1702).

Each State agency budget estimate for a capital improvement project is submitted to the Joint Committee, the Division of the Budget, and the State Building Advisory Commission by July 1 of each year. Each estimate includes a written program statement describing the project in detail (KSA 2015 Supp. 75-3717b).

The budget estimate requirement does not apply to federally funded projects of the Adjutant General or to projects for buildings or facilities of the Kansas Correctional Industries of the Department of Corrections that are funded from the Correctional Industries Fund. In those cases, the Adjutant General reports to the Joint Committee each January regarding the federally funded projects, and the Director of Kansas Correctional Industries advises and consults with the Joint Committee prior to commencing such projects for the Kansas Correctional Industries (KSA 2015 Supp. 75-3717b and 75-5282).

The Secretary of Administration issues monthly progress reports on capital improvement projects including all actions relating to change orders or changes in plans. The Secretary of Administration is required to first advise and consult with the Joint Committee on each change order or change in plans having an increase in project cost of \$125,000 or more, prior to approving the change order in plans (KSA 2015 Supp. 75-1264). This threshold was increased from \$25,000 to \$75,000 in 2000 HB 2017, and to \$125,000 in 2008 HB 2744. Similar requirements were prescribed in 2002 for projects undertaken by the State Board of Regents for research and development facilities and state educational facilities (KSA 2015 Supp. 76-786), and in 2004 for projects undertaken by the Kansas Bioscience Authority (KSA 2015 Supp. 74-99b16).

If the Joint Committee will not be meeting within 10 business days and the Secretary of Administration determines that it is in the best interest of the state to approve a change order or change in plans with an increase in project costs of \$125,000 or more, 2000 HB 2017 provided an alternative to prior approval by the Joint Committee. Under these circumstances, a summary description of the proposed change order or change in plans is mailed to each member of the Joint Committee and a member may request a presentation and review of the proposal at a meeting of the Joint Committee. If two or more members notify the Director of Legislative Research and request a meeting on the matter within seven business days of the date the notice was mailed, the Director will notify the Chairperson of the Joint Committee, who will call a meeting as soon as possible. At that point the Secretary of Administration is not to approve the proposed action prior to a presentation of the matter at a meeting of the Joint Committee.

If two or more members do not request the proposed matter be heard by the Joint Committee, the Secretary of Administration is deemed to have advised and consulted with the Joint Committee and may approve the proposed change in plans or change in proposed use.

The comprehensive energy bill 2009 Senate Sub. for 2369 required the State to establish energy efficiency performance standards for State-owned and -leased real property, and for the construction of state buildings. State agencies are required to conduct energy audits at least every five years on all state-owned property, and the Secretary of Administration is prohibited from approving, renewing or extending any building lease unless the lessor has submitted an energy audit for the building. Each year, the Secretary of Administration shall submit a report to the Joint Committee that identifies properties where an excessive amount of energy is being used.

## **COMMITTEE ACTIVITIES**

The LCC approved two meeting days for the Joint Committee on State Building Construction with no travel days. Conference call meetings were held on July 9 and August 20. The Committee used the two days approved by the

LCC to meet on October 20 and 21. During the 2015 interim meetings, the Joint Committee reviewed agencies' five-year capital improvement plans. All plans were recommended for approval.

## **Five-Year Plans**

The Deputy Director, Design, Construction, and Compliance, Office of Facilities and Property Management, Department of Administration, presented the agency's five-year capital improvement plan. The work within the Landon State Office Building was discussed. The deferred maintenance of the Judicial Center also was discussed. It was stated that the \$75,000 annual appropriation was not sufficient to maintain the Judicial Center.

The Budget and Fiscal Officer for the Judicial Branch requested a supplemental budget of \$402,778 for two additional judicial suites. The Joint Committee recommended the supplemental request.

The Comptroller for the Department of Insurance presented the agency's five-year plan for an annual \$95,000 allocated for rehabilitation and repair. The Comptroller identified four projects for which the money would be used.

The Chief Fiscal and Property Officer for the Commission on Veterans' Affairs Office presented two supplemental requests with the FY 2016 budget and two enhancement requests with the FY 2017 budget for additional capital improvement projects. The FY 2016 supplemental projects were for an additional \$66,250 in expenditures from the State Institutions Building Fund (SIBF) and the FY 2017 request was for an additional \$161,500 in expenditures from the SIBF and \$100,000 in expenditures from the Expanded Lottery Act Revenues Fund (ELARF) for the Cemetery Program, which does not qualify for SIBF moneys. The Joint Committee recommended the five-year plan including the supplemental requests.

The Facilities Architect with the Department for Aging and Disability Services stated that much of \$3.0 million received for rehabilitation and repair projects was redirected to enhanced safety improvements to patient housing facilities. As a

result, many of the FY 2016 projects will be carried forward to FY 2017.

The Building Services Supervisor for the Department of Commerce described the rehabilitation and repair projects for the Workforce Centers; all the funds used are from the U.S. Department of Labor.

The Director of Facilities for the Kansas Board of Regents discussed the need for \$20.0 million in expenditures from the ELARF to reduce the backlog of deferred maintenance. The reduction of the amount of Educational Building Fund (EBF) moneys available in FY 2016 and for FY 2017 also was discussed. The Joint Committee recommended the Board of Regents request \$20.0 million from the ELARF for deferred maintenance and the full \$35.0 million from the EBF starting for FY 2018.

The Director of the Office of Facilities Planning at Fort Hays State University discussed the University's five-year plan.

The Director of Facilities Planning at Pittsburg State University discussed the University's five-year plan. The deferred maintenance needs and future plans also were discussed.

The Director of Facilities Planning at Wichita State University discussed the University's five-year plan. A project for the Innovative Campus involves a partnership with Airbus and other mixed-use buildings that may include space for private tenants, retail space, and a hotel.

The Executive Director of Campus Master Planning at Emporia State University discussed the completed forensic science classroom labs and future projects.

The Director of Projects and Planning at the University of Kansas Medical Center discussed the \$75.0 million Health Education Building. A new parking garage also was discussed with current parking nearing capacity.

The University Architect/Director at the University of Kansas provided an update on projects and the Central District Development project which will be a public-private partnership

(a "P3" project). The Joint Committee members asked questions on the financing of the project, which were answered by the Chief Financial Officer. Committee members discussed the proposed P3 financing at length and expressed the following concerns:

- There is a possibility that the State will, in fact, become liable in the event of a default;
- The P3 approach bypasses the legislative process, including appropriations, and sets a questionable precedent for future funding policies; and
- The use of student fees to fund new buildings is appropriate for non-revenue (classroom) buildings, but student-fee authority for other buildings falls into a gray area.

The Associate Vice President and University Architect for Kansas State University presented the University's five-year plan. This included completed and current projects with funding sources as well as planned or conceptual projects.

The Director of the Kansas Bureau of Investigation updated the Joint Committee on the completed Forensic Science Center located at Washburn University. Along with the five-year plan presentation, two supplemental requests were discussed: the parking garage at the Topeka headquarters and replacing a leaking roof at the headquarters annex. The Joint Committee recommended the five-year plan as well as the supplemental requests but recommended the roof replacement costs not exceed \$150,000.

The Corrections Manager for the Department of Corrections presented the five-year plan and expenditures from the Correctional Institutions Building Fund (CIBF). The Joint Committee discussed the current allocation to the CIBF and made a recommendation to change the State Gaming Revenues Fund distribution to 12.5 percent going to the CIBF and 82.5 percent to the Economic Development Initiatives Fund (EDIF). A supplemental request to build a new Visitor's Center at the Lansing facility using funds from the

Inmate Benefit Fund also was discussed and recommended by the Joint Committee.

The Director of Public Works for the Adjutant General's Department presented the agency's five-year plan. The discussion emphasized the importance of the State's contribution for rehabilitation and repair to supplement the federal funding for building maintenance.

The Director of Operations for the Department of Transportation discussed rehabilitation and repair projects, re-roofing, and subarea bay modernization projects. A FY 2017 supplemental request for \$2.0 million to relocate the Concordia subarea building was discussed and recommended by the Joint Committee.

The Chief Financial Officer for the Highway Patrol discussed the five-year plan as well as the moving of Troop F at the end of the year. The project was completed under budget.

The Executive Director of the Kansas State Historical Society expressed appreciation to the members of the Joint Committee on their continued support. The annual State allocation for rehabilitation and repair will be sufficient barring any unforeseen events.

The Chief Operating Officer for the Schools for the Blind and Deaf discussed the completed safety upgrades, boiler upgrades, and major maintenance projects.

The Chief Financial Officer for the Department of Labor discussed that agency's list of projects. All capital improvements for this agency are funded with federal funds.

The Interim General Manager for the Kansas State Fair updated the Committee on the deteriorating condition of the Expo Center and an engineering firm's recommendation to replace it. The State Fire Marshal is requiring emergency exit doors for Bison Arena which, if completed, would increase the FY 2016 budget by \$116,060. The Joint Committee recommended the agency's plan subject to a resolution between the agency and the State Fire Marshal regarding Bison Arena.

The Budget Director for the Department of Wildlife, Parks and Tourism discussed both new construction and rehabilitation and repair projects for the agency. A supplemental request for \$120,000 to replace a water line at the Topeka Region 2 office was requested. The Joint Committee recommended the plan, including the supplemental request.

### **Statutorily Required Reports**

The Deputy Director of Facilities Operations of the Department of Administration presented the Excessive Energy Use report. The Joint Committee discussed the value of the report and recommended the Department of Administration pursue legislation repealing the statute that requires the report.

The Deputy Director and State Transportation Engineer updated the Joint Committee on identifying excess property. In FY 2014 and FY 2015, a total of 47 tracts were sold and 43 tracts were released to the land owners. These actions disposed of 300 acres and produced revenue of \$1.2 million.

### **Sales and Leases**

The State Lease and Property Manager from the Office of Facilities and Procurement in the Department of Administration presented the following sales of property:

- 552 State Ave., Kansas City, office building for the Department of Commerce;
- 1500 W. Seventh Street, Chanute, office building for the Department for Children and Families (this sale to the Neosho Memorial Regional Medical Center was included as a proviso in 2015 House Sub. for SB 112); and
- 1020 S. Kansas Ave., Topeka, office building owned by the Department of Administration and sold to the Department of Wildlife, Parks and Tourism.

The Lease Administrator from the Office of Facilities and Procurement in the Department of Administration presented the following leases:

- Department of Credit Unions in Topeka;
- Department of Revenue Driver's License Examination State office in Olathe;
- Department of Health and Environment in Chanute; and
- Department for Children and Families in Chanute.

There was much discussion by the Joint Committee on the sale of the building in Chanute and the relocation of the five agencies from that building: the Department for Children and Families, Department of Health and Environment, Corporation Commission, Department for Aging and Disability Services, and Department of Wildlife, Parks and Tourism. The Joint Committee recommended the lease for the Department of Health and Environment. However, the Committee rejected the Department for Children and Families lease and requested a comprehensive plan by the Department of Administration be presented to the Joint Committee looking at possible efficiencies in co-locating agencies and reviewing all available facilities in addition to possible new construction.

## CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee recommended all the agencies' five-year capital improvement plans and, in addition, recommends the following supplemental requests:

- Judicial Branch, \$402,778, all from the State General Fund, for two new judicial suites;
- Kansas Commission on Veterans' Affairs Office, FY 2016, supplemental expenditures of \$22,500 for the Kansas Soldiers Home and \$43,750 for the Kansas Veterans' Home, both from the SIBF; and in FY 2017, \$161,500 from the SIBF for the Custer House and \$100,000

from the ELARF for the Cemetery Program;

- Kansas Bureau of Investigation, FY 2016, \$334,705 all from the State General Fund, for repairs to the parking garage at the headquarters and an amount not to exceed \$150,000, from the State General Fund, for roof repair at the Topeka Annex;
- Department of Corrections, FY 2017, \$222,500, all from the Inmate Benefit Fund, for a Visitor's Center at the Lansing facility;
- Department of Transportation, FY 2017, \$2.0 million, all from the State Highway Fund, for the Concordia subarea building relocation;
- Kansas State Fair, FY 2016 \$116,060 for emergency exit doors for Bison Arena, subject to a resolution between the agency and the State Fire Marshal; and
- Department of Wildlife, Parks and Tourism, FY 2016, \$120,000 from the Wildlife Fee Fund, Boating Fee Fund, and Park Fee Fund for replacement of a water line to the Region 2 Office in Topeka.

The Joint Committee rejected the Department for Children and Families lease in Chanute and requested the Department of Administration present a comprehensive plan to look at possible efficiencies in co-locating agencies and review all available facilities in addition to possible new construction.

The Joint Committee discussed the current allocation to the CIBF and made a recommendation to change the the State Gaming Revenues Fund distribution to 12.5 percent to the CIBF and 82.5 percent to the EDIF.

The Joint Committee discussed the value of the Excessive Energy Use report and recommended the Department of Administration pursue legislation repealing the statute that requires the report.

# Report of the Capitol Preservation Committee to the 2016 Kansas Legislature

**CHAIRPERSON:** Jennie Chinn, State Historical Society

**SENATE PRESIDENT'S APPOINTEES:** Senator Elaine Bowers; Harrison Hems

**HOUSE SPEAKER'S APPOINTEES:** Rachel Whitten; Lana Gordon, Secretary of Labor

**SENATE MINORITY LEADER'S APPOINTEE:** Tim Graham

**GOVERNOR'S APPOINTEES:** Kim Borchers; Dr. Richard Kyle; Peggy Palmer

**HOUSE MINORITY LEADER'S APPOINTEE:** Representative Valdenia Winn

**OTHER MEMBERS (*EX OFFICIO*):** Peter Jasso, Kansas Creative Arts Industries Commission; one vacant (Statehouse Architect)

## CHARGE

- Select finalists for the *Brown v. Board* mural;
- Finalize Capitol usage policies;
- Finalize guidelines for temporary exhibits, along with request forms; and
- Approve future renovation proposals, including permanent and temporary displays, in the Capitol and on the grounds.

# Capitol Preservation Committee

## REPORT

### Conclusions and Recommendations

The Committee approves two forms that shall be used by persons wishing to propose permanent changes to the Capitol or grounds.

The Committee selects four finalists for the *Brown v. Board of Education* mural. Artists will be invited to prepare final renditions of their artwork for presentation at a future meeting.

The Committee expresses its condolences regarding the untimely passing of Andrea Burton, an employee of the Kansas State Historical Society who provided tours at the Capitol.

***Proposed Legislation:*** None.

### BACKGROUND

The Capitol Preservation Committee was created by the Legislature in 2010 to approve renovation proposals in all areas of the Capitol, the Visitor Center, and the Capitol grounds to insure that the historical beauty of the areas are preserved; preserve the proper décor of those areas; ensure that any art or artistic displays are historically accurate and have historic significance; approve the location and types of temporary displays; and to oversee the reconfiguration or redecoration of committee rooms within the Capitol. As provided by KSA 75-2269, the Division of Legislative Administrative Services has the responsibility to implement the recommendations of the Committee.

The Committee has 12 members, with the Governor appointing 3, the President of the Senate and the Speaker of the House each appointing 2, and the Minority Leaders of the House and Senate each appointing 1. The Committee's three *ex-officio* members are the Statehouse Architect, the Executive Director of the Kansas State Historical Society, and the Director of the Creative Arts Industries Commission. The Governor has the authority to appoint the chairperson from amongst the Committee's membership.

### COMMITTEE ACTIVITIES

The Capitol Preservation Committee met November 17, 2015, to approve forms, select mural finalists, and honor the memory of an employee who worked at the Capitol.

#### Forms to Request Modifications

Staff from the Legislative Research Department provided the Committee with two form templates for architectural modifications and for commissioned or donated exhibit or artwork for permanent display. During the 2013 Interim, the Committee adopted the policy and procedures that are the basis for the forms.

#### *Brown v. Board of Education* Mural

Of the 34 artists who submitted qualifications for the *Brown v. Board of Education* mural, 14 artists were selected in 2013 to be semi-finalists and each was invited to submit a proposal. Nine artists submitted proposals in 2014.

Staff from the Legislative Research Department provided the Committee with a booklet of the nine semi-finalists' proposals. After



considering each one, the Committee heard testimony from a representative of the *Brown* Foundation and an Associate Dean from Washburn University. Conferees said the mural should tell a story which portrays the magnitude of *Brown v. Board* and the prior decades of work involved with the outcome. Specific elements of some of the proposals were discussed.

## **CONCLUSIONS AND RECOMMENDATIONS**

The Committee approves two forms that shall be used by persons wishing to propose permanent changes to the Capitol or grounds. The forms will be available to the public through the Kansas State Historical Society, Legislative Administrative Services, and the Department of Administration.

The Committee selects four finalists for the *Brown v. Board of Education* mural. Artists will be invited to prepare final renditions of their artwork

for presentation at a future meeting. The public will be given the opportunity to provide input prior to the Committee's selection of an artist.

Finally, the Committee expresses its condolences regarding the untimely passing of Andrea Burton, an employee of the Kansas State Historical Society who provided tours at the Capitol. Ms. Burton was often the first person to greet visitors when they came to the Capitol, enriching their knowledge of Kansas history and government. Her service to the State and people of Kansas did not stop at the end of work day, however. In addition to caring for their children, she and her husband were foster parents to dozens of children. The persons who work in the Statehouse benefited from Ms. Burton's service and friendship, and she will be missed.

# **Report of the Emergency Safety Intervention Task Force to the 2016 Kansas Legislature**

**CHAIRPERSON:** Jim Porter,\* Member, Kansas State Board of Education

**VICE-CHAIRPERSON:** Rocky Nichols\*, Executive Director, Disability Rights Center of Kansas

**OTHER MEMBERS:** Jane Adams, PhD, Executive Director, Keys for Networking, Inc.; Betty Arnold, Board of Directors, Kansas Association of School Boards; Terry Collins, Kansas Association of Special Education Administrators; Kris Ehling, parent member, Families Together, Inc.; Lesli Girard, Families Together, Inc.; John Hurla, parent member, Keys for Networking, Inc.; Catherine Johnson\*, Disability Rights Center of Kansas; Laura Jurgensen, attorney, Kansas State Department of Education; Dr. Valarie Kerschen, Center for Child Health and Development of the University of Kansas Medical Center; Katherine Kersenbrock-Ostmeyer, Kansas Association of Special Education Administrators; Sarah Loquist\*, attorney, Kansas Association of School Boards; Jawanda Mast\*, parent member, Kansas Council on Developmental Disabilities; Marvin Miller, Special Education Advisory Council; Dr. Joan Robbins\*, Special Education Advisory Council; and Representative John Rubin, Kansas Council on Developmental Disabilities.

\* denotes members appointed to the Drafting Subcommittee

## **CHARGE**

Study and review the use of emergency safety intervention (ESI) and to prepare and submit a report on its findings and recommendations concerning ESI to the Governor and the Legislature on or before January 20, 2016.

# Emergency Safety Intervention Task Force

## REPORT

### Conclusions and Recommendations

The Committee recommends the Freedom from Unsafe Restraint and Seclusion Act enacted in 2015 (Senate Sub. for Sub. for HB 2170) be amended in the following ways:

- Define “incident” in Section 2 (KSA 2015 Supp. 72-89d02) as “each occurrence of the use of an emergency safety intervention (ESI).”
- Amend Section 3(b) (KSA 2015 Supp. 72-89d03(b)) regarding the prohibition of seclusion of a student with a medical condition to include restraint; for both seclusion and restraint, require a licensed health care provider to include certain information in the written statement, including an explanation of the diagnosis and why seclusion, restraint, or both would put the student in mental or physical danger, as well as any potential alternatives the licensed health care provider might suggest to use instead; and include an exception for use of ESI in circumstances in which not using an ESI would result in significant physical harm to the student or others.
- Amend Section 4(a) (KSA 2015 Supp. 72-89d04(a)) to remove language allowing a school to notify an emergency contact person for a student if the student’s parents cannot be notified and add language requiring use of two or more methods to contact a parent. Notification requirements would be satisfied if the school uses multiple methods in an attempt to provide same-day notice.
- Allow parents to designate their preferred method of contact and to agree in writing to receive only one notification for a day’s worth of ESI incidents. Delivery of written documentation of each incident would still be required the following school day.
- Amend Section 4(a) (KSA 2015 Supp. 72-89d04(a)) to allow parents who have email to designate their preference to receive an electronic version of information currently required to be provided in printed form after a first ESI incident.
- Amend the requirement in Section 4(a) (KSA 2015 Supp. 72-89d04(a)) for written documentation that must be provided to parents to:
  - Require an incident report that would include: (1) a description of what happened leading up to the ESI incident; (2) what behaviors necessitated the ESI; (3) what was done to transition the child back into the educational setting; (4) the other basic information already provided concerning the type of ESI conducted, the start and stop time of the ESI, and total length of the ESI; (5) a space or additional form for parents to provide feedback and comments to the school on the use of ESI; (6) a statement that invites and strongly encourages parents to contact the school to schedule a meeting to discuss the ESI incident and how to prevent its future use (instead of the required meeting after the third incident of ESI in a school year in Section 5 (KSA 2015 Supp. 72-89d05)); and (7) email and phone information to contact the school to schedule the meeting.
  - Authorize schools to group incidents together for the purposes of items (1)-(3) of such written documentation when the triggering issue necessitating the ESI is the same.

- Amend Section 4(a) (KSA 2015 Supp. 72-89d04(a)) to require a school to notify parents, using the parents' preferred method of contact, if it is aware of law enforcement or a school resource officer using seclusion or restraint on their child, including mechanical restraint such as handcuffs. The written documentation required in Section 4(a) (KSA 2015 Supp. 72-89d04(a)) would not be required.
- Amend Section 4(c)(11) (KSA 2015 Supp. 72-89d04(c)(11)) to require reporting of the information in subsections (c)(1) through (c)(9) aggregated by gender and eligibility for free and reduced lunch on a statewide basis. Statewide reporting of age and ethnicity of the students already is required.
- Recommend to the Data Governance Board within the Kansas State Department of Education (KSDE) that the actual data value be used when providing statewide aggregate data for the KSDE report.
- In Section 5 (KSA 2015 Supp. 72-89d05):
  - Remove the requirement for schools to meet with parents after the third ESI incident.
  - Specify a meeting requested by the parent must be held within ten school days and retain Section 5(d), allowing an extension beyond the ten-school-day limit if the parent of the student is unable to attend within that time period.
  - Specify the parents of a student younger than 18 should decide whether their student will attend the meeting.
  - Modify the remaining language of that section to extend the requirements to a meeting that, after amendment, would be requested by a parent pursuant to Section 4(a) (KSA 2015 Supp. 72-89d04(a)).
  - Add language stating the focus of any meeting convened pursuant to Section 5 (KSA 2015 Supp. 72-89d05) would be discussing proactive ways to help prevent the need for ESIs and reduce the use of such interventions in the future. [Note: this language was proposed by the Archdiocese of Kansas City in Kansas, Office of Catholic Schools.]
  - Add language regarding students parentally placed in private schools to provide the meeting will be between the parent and the private school staff. If the student has an individualized education program (IEP), one topic of the meeting would be whether the parent should request an IEP Team meeting and, if the parent requests a meeting, the private school would help the parent facilitate such meeting. [Note: this language is adapted from that proposed by the Archdiocese of Kansas City in Kansas, Office of Catholic Schools.]
- Amend the ESI statutes to incorporate provisions currently found only in the ESI regulations or draft rules and regulations and amending regulations to mirror the language of the ESI statute.

**Proposed Legislation:** Though the recommended changes outlined above refer to section numbers in 2015 Senate Sub. for Sub. for HB 2170 and their corresponding provisions in the codified Freedom from Unsafe Restraint and Seclusion Act, KSA 2015 Supp. 72-89d01 to 72-89d08, no draft legislation has been proposed at this time.

## BACKGROUND

The Emergency Safety Intervention Task Force (Task Force) was created by 2015 Senate Sub. for Sub. for HB 2170, Section 7 (KSA 2015 Supp. 72-89d07) to study and review the use of emergency safety interventions (ESI) and to prepare and submit a report on its findings and recommendations to the Governor and the Legislature on or before January 20, 2016. The 17-member task force is composed of one practicing physician with experience treating children with disabilities appointed by the Center for Child Health and Development of the University of Kansas Medical Center and two members each appointed by:

- The Kansas State Board of Education (KSBE), including one Board member and one attorney for the Kansas State Department of Education (KSDE);
- The Disability Rights Center of Kansas;
- Families Together, Inc., including one parent of a child with a disability;
- Keys for Networking, Inc., including one parent of a child with a disability;
- The Special Education Advisory Council;
- The Kansas Association of Special Education Administrators;
- The Kansas Council on Developmental Disabilities, including one parent of a child with a disability; and
- The Kansas Association of School Boards (KASB), including one KASB attorney.

The statute allows the Task Force to meet at any time and place within Kansas on the call of the Chairperson and, if approved by the Legislative Coordinating Council, members would be paid for expenses, mileage, and subsistence.

A drafting subcommittee was appointed to prepare and present draft recommendations for the

Task Force's consideration as part of the Task Force's overall charge.

## COMMITTEE ACTIVITIES

### August 4, 2015

The Task Force had its first meeting August 4, 2015. The Task Force elected officers, and discussed petitioning the Legislative Coordinating Council (LCC) for assistance from the Kansas Legislative Research Department and the Office of Revisor of Statutes, as well as for approval for reimbursement for that meeting and all future meetings.

The KSDE attorney appointed to the Task Force explained prior guidelines promulgated by the KSDE's Special Education Advisory Council in 2007 were applicable to students with disabilities and, in 2010, were expanded to be applicable to general education students. The KSDE attorney then reviewed current rules and regulations, pending amendments to the rules and regulations, and 2015 Senate Sub. for Sub. for HB 2170, which took effect on publication in the *Kansas Register* on June 4 and will sunset in 2018. She also reviewed the data KSDE has collected concerning ESI and current resources available to school districts through the KSDE Technical Assistance System Network (TASN).

The representative of Families Together, described the interaction that organization has had with families on this issue.

The Task Force then took up several issues to determine which it would need to consider at future meetings. A member drew the Task Force's attention to the U.S. Department of Education's *15 Principles on the Use of Seclusion and Restraint (15 Principles)*, suggesting they could be compared to current Kansas law and used to develop additional policies.

### August 25

At the Task Force's second meeting, the KSDE attorney appointed to the Task Force gave an overview of the *15 Principles* and compared them to Kansas law, regulations, and TASN

training materials. The KSDE attorney and the representative of Families Together then presented on training offered through the KSDE and Families Together.

The Task Force discussed the addition of restraint to the statutory provisions prohibiting the use of seclusion if the student is known to have a medical condition that could put the student in mental or physical danger as a result of seclusion. The Task Force highlighted the importance of communication among a student's licensed healthcare provider, individualized education program (IEP) team, and parents if these restrictions were extended to the use of restraint.

The Task Force also discussed the same-day notification requirement and how to address parental preference about who should be contacted, the method of communication, and how often notification should be provided. Some parents are not able to receive phone calls during the day and may not have intended for the student's emergency contact to receive notification about ESI. Further, in instances where ESI is used multiple times a day, the parent may prefer not to be contacted after each occurrence. The Task Force discussed creating a form that would allow parents to specify preferences about each of these issues.

## **September 29**

The Task Force's third meeting began with a discussion of the LCC's decision to fund only one meeting, as well as plans for future meetings. The Task Force agreed to request approval of six total meeting days, including the two days the Task Force had already met, the current meeting day, and three additional meetings to be held in the coming months.

The rest of the meeting featured presentations from parents and the following interested parties: a current University of Kansas Ph.D. candidate and representatives of USD 229, Blue Valley; USD 271, Stockton; USD 305, Salina; USD 330, Mission Valley; USD 345, Seaman; USD 501, Topeka; USD 618, Sedgwick County Cooperative; Lakemary Center; the Archdiocese of Kansas City in Kansas, Office of Catholic Schools; and Heartspring.

At the conclusion of the presentations, the Task Force discussed the appointment of a subcommittee to prepare and present draft recommendations for the Task Force's consideration. The Task Force decided the subcommittee would consist of six members: the Chairperson, the Vice-chairperson, two members appointed by the Chairperson, and two members appointed by the Vice-chairperson. Members of the subcommittee were appointed at a later date, contacted by email, and polled for the best date for all to meet.

## **October 19—Subcommittee Meeting**

At its first meeting, the subcommittee compiled a list of issues for the full committee to consider.

## **October 20**

At the Task Force's fourth meeting, members heard from a parent from Sedgwick County, and it received the results of a survey conducted by the Kansas Association of Special Education Administrators. The KSDE attorney appointed to the Task Force provided an update on the status of pending rules and regulations, as well as an update on the Task Force's request for ESI data, which would have to be approved by KSDE's Data Governance Board (DGB) at its monthly meeting. The DGB had already met in October, so the earliest the request could be processed was the November 3 meeting.

The Task Force spent the rest of the day in extensive discussion of the issues the Subcommittee identified and agreed to the following [Note: Section numbers refer to sections of 2015 Senate Sub. for Sub. for HB 2170]:

- Amend Section 4(a) (KSA 2015 Supp. 72-89d04(a)) to remove language allowing a school to notify an emergency contact person for a student if the student's parents cannot be notified and add language requiring use of two or more methods to contact a parent. Notification requirements would be satisfied if the school uses multiple methods in an attempt to provide same-day notice.

- Allow parents to designate their preferred method of contact and to agree in writing to receive only one notification for a day's worth of ESI incidents. Delivery of written documentation of each incident would still be required the following school day.
- Clarify the time limit in Section 5 (KSA 2015 Supp. 72-89d05) is 10 school days, rather than simply "10 days."
- Allow parents to decide whether a student who is younger than 18 should attend the meeting currently required after a third ESI incident in a school year.
- Recommend to the DGB within KSDE that the actual data value, rather than a value less than ten, be used when providing statewide aggregate data;
- Clarify the meeting requested by a parent would be required within 10 school days and Section 5(d), allowing an extension beyond the ten-school-day limit if the parent of the student is unable to attend within that time period, would be retained;
- Specify the parents of a student younger than 18 can determine whether a student should attend a meeting requested by the parents; and

### **November 17—Subcommittee Meeting**

The Subcommittee met to further refine Task Force recommendations. In addition to those items the full Task Force previously agreed to, the Subcommittee agreed to recommend the addition of a definition for "incident"; changes to seclusion and restraint of a student with a medical condition; additions to the written documentation provided to parents after an ESI incident; replacement of the requirement to meet after a third ESI incident in a school year with provisions allowing parents to call a meeting at any time after an ESI incident; changes to notification and reporting requirements; and the addition of provisions currently found only in rules and regulations.

Given the Subcommittee's recommended removal of the requirement to meet after a third ESI incident in a school year, two of the Task Force's previous recommendations may no longer be applicable, specifically the 10 "school day" time limit and whether parents would decide if a student younger than 18 should attend such a meeting. The subcommittee did not specifically address whether these recommendations should stand.

### **December 10**

All members were present for the final meeting of the Task Force and voted unanimously to adopt the subcommittee's recommendations with the following additions:

- Clarify the recommendation concerning the addition of provisions currently found only in regulations or draft rules and regulations is, ultimately, for the statutes and regulations to mirror each other such that when one is amended, the other also is amended to reflect those changes.

## **CONCLUSIONS AND RECOMMENDATIONS**

The Task Force agreed to define "incident" for the purposes of the bill as "each occurrence of the use of an emergency safety intervention." Further, the Task Force recommended allowing restrictions on the use of restraint when a student has a medical condition and, for both seclusion and restraint, requiring the licensed health care provider to include certain information in the written statement, including an explanation of the diagnosis and why seclusion, restraint, or both would put the student in mental or physical danger, as well as any potential alternatives the doctor might suggest to use instead. An exception would exist for circumstances in which not using an ESI would result in such significant physical harm to the student or others that use of ESI is justified.

The Task Force made numerous recommendations concerning the notice and written documentation schools are required to provide to parents. The Task Force agreed to recommend removal of language allowing a school to notify an emergency contact person for a

student if the student's parents cannot be notified and to add language requiring use of two or more methods to contact a parent. Notification requirements would be satisfied if the school uses multiple methods in an attempt to provide same-day notice. Further, the Task Force agreed to recommend allowing parents to designate their preferred method of contact and to agree in writing to receive only one notification for a day's worth of ESI incidents. Delivery of written documentation of each incident would still be required the following school day. Additionally, parents could designate their preference to receive an electronic version of information currently required to be provided in printed form after a first ESI incident.

The Task Force recommended amendments to the requirements for the written documentation that must be provided to parents to include an incident form with: (1) a description of what happened leading up to the ESI incident; (2) what behaviors necessitated the ESI; (3) what was done to transition the child back into the educational setting; (4) the other basic information already provided; (5) a space or additional form for parents to provide feedback and comments to the school on the use of ESI; (6) a statement that invites and strongly encourages parents to contact the school to schedule a meeting to discuss the ESI incident and how to prevent its future use (instead of the required meeting after the third incident of ESI in a school year in Section 5 [KSA 2015 Supp. 72-89d05]); and (7) email and phone information to contact the school to schedule the meeting. For the purposes of the written documentation, the Task Force agreed to allow schools to group incidents together for items (1)-(3) when the triggering issue necessitating the ESI is the same.

The Task Force also recommended requiring schools to notify parents, using the parents' preferred method of contact, if the school is aware of law enforcement or a school resource officer using seclusion or restraint on their child, including mechanical restraint such as handcuffs. The written documentation otherwise required when an ESI is used would not be required.

Concerning reporting at the state level, the Task Force recommended requiring KSDE to

report statewide aggregate data for KSA 2015 Supp. 72-89d04(c)(1)-(9) by gender and eligibility for free and reduced lunch. The Task Force also recommended that the DGB use the actual data value, rather than a value less than ten, when providing statewide aggregate data for the KSDE report.

The Task Force recommended changes to meetings currently required after the third ESI incident in a school year. The Task Force recommended removing the requirement and instead recommended that parents be allowed to request a meeting after any ESI incident to be held within ten school days. Section 5(d) (KSA 2015 Supp. 72-89d05(d)), allowing an extension beyond the ten-school-day limit if the parent of the student is unable to attend within that time period, would be retained. The Task Force agreed that the parents of a student younger than 18 should be able to decide whether their student will attend the meeting.

The Task Force recommended modifying the remaining provisions of Section 5 (KSA 2015 Supp. 72-89d05) to extend the requirements of the meeting after the third incident to a meeting requested by a parent. Further, it recommended the addition of language proposed by the Archdiocese of Kansas City in Kansas, Office of Catholic Schools stating the focus of any meeting convened pursuant to Section 5 (KSA 2015 Supp. 72-89d05) would be discussing proactive ways to help prevent the need for ESI and reduce the use of such interventions in the future (see Appendix I). Other language proposed by the Archdiocese regarding students parentally placed in private schools would be modified to provide the meeting will be between the parent and the private school staff. If the student has an IEP, one topic of the meeting would be whether the parent should request an IEP Team meeting and, if the parent requests a meeting, the private school would help the parent facilitate such meeting.

Finally, the Task Force recommended incorporating in the ESI statutes the provisions currently found only in the ESI regulations or draft rules and regulations and amending regulations to mirror the language of the ESI statute.



# **Report of the Health Care Stabilization Fund Oversight Committee to the 2016 Kansas Legislature**

**CHAIRPERSON:** Gary Hayzlett

**LEGISLATIVE MEMBERS:** Senators Laura Kelly and Vicki Schmidt; and Representatives Jerry Henry and Rich Proehl

**NON-LEGISLATIVE MEMBERS:** Darrell Conrade; Dennis George; Dr. Jimmie Gleason; Dr. Paul Kindling; Dr. James Rider; and vacant position (health care provider)

**CHARGE**

- The Committee annually receives a report on the status of the Health Care Stabilization Fund and makes recommendations regarding the financial status of the fund.

# Health Care Stabilization Fund Oversight Committee

## ANNUAL REPORT

### Conclusions and Recommendations

The Health Care Stabilization Fund Oversight Committee considered two items central to its statutory charge: should the Committee continue its work and is a second, independent actuarial analysis of the Health Care Stabilization Fund (HCSF) necessary. The Oversight Committee continues in its belief that the Committee serves a vital role as a link among the HCSF Board of Governors, the health care providers, and the Legislature and should be continued. Additionally, the Committee recognizes the important role and function of the HCSF in providing stability in the professional liability marketplace, which allows for more affordable professional liability coverage to health care providers in Kansas. The Committee is satisfied with the actuarial analysis presented and concluded a second, independent review was not necessary.

The Committee considered information presented by the HCSF Board of Governors' representatives and health care provider and insurance company representatives. The Committee agreed to make the following recommendations:

- **The Health Care Provider Insurance Availability Act (HCPIAA) – Stability for Kansas Health Care Providers and the Medical Malpractice Insurance Marketplace in Kansas. The Committee recognizes an important milestone for the HCPIAA – the 40th anniversary of enactment of this legislation will occur on July 1, 2016.** The Committee appreciates the intent of the original law and amendments over time that have facilitated a healthy, working public-private partnership between health care providers, insurers, the Legislature, and the HCSF Board of Governors and the benefits of a stable HCSF and more affordable coverage to not only those in the professional liability insurance marketplace but also providing adequate remedy to injured persons seeking remedy under Kansas law. Over time, amendments to the law have expanded the defined “health care provider” and allowed additional providers and facilities to come into the HCSF and secure more affordable coverage. This partnership has helped to sustain the marketplace and support Kansas health care providers even in times of incredible market volatility. The Committee notes how the Court framed the purpose of and partnership created by the HCPIAA:
  - On October 5, 2012, the Kansas Supreme Court upheld the \$250,000 cap on noneconomic damage awards in *Miller v. Johnson*. The Committee notes the following from the Court’s findings about the *quid pro quo* relationship between the purposes of the HCPIAA and the requirement for certain health care providers to carry professional liability insurance and participate in the HCSF and the guaranteed source of recovery for persons seeking to recover pain and suffering damages (limited by the cap, as set by the Legislature).
  - “As noted in several of our prior cases, the legislature’s expressed goals for the comprehensive legislation comprising the Health Care Provider Insurance

Availability Act and the noneconomic damages cap have long been accepted by this court to carry a valid public interest objective.”

- [The statute was enacted] “in an attempt to reduce and stabilize liability insurance premiums by eliminating both the difficulty with rate setting due to the unpredictability of noneconomic damage awards and the possibility of large noneconomic damage awards.”
- **Reimbursement of the HCSF.** The Committee notes the reimbursement schedule created by 2010 SB 414. This law allowed for the reimbursement of deferred payments to the HCSF for administrative services provided to the self-insurance programs at the University of Kansas (KU) Foundations and Faculty and the University of Kansas Medical Center (KUMC) and Wichita Center for Graduate Medical Education (WCGME) residents for state Fiscal Years (FYs) 2010, 2011, 2012, and 2013. The Committee notes normal reimbursements occurred starting July 1, 2013; and, the HCSF Board of Governors have received 60 percent of the the accrued receivables for the last three years in July. The HCSF received \$1,544,084.43 reimbursement in July 2013, \$1,544,084.45 in July 2014, and \$1,544,084.45 in July 2015. The remaining reimbursement receivables are \$3,088,168.90 and is to be received in two remaining annual installments.
- ***Building Industry Workers Compensation Fund vs. State of Kansas update.*** The Committee notes the recent Kansas Supreme Court decision in this case that has questioned the constitutionality of transferring moneys from special revenue funds to the State General Fund (SGF). These funds were created for specific statutory purposes, much like the HCSF, and are funded by assessments paid by professional licensees or businesses. While there are several parts to this case and decision, the Committee notes the conclusion that it is unconstitutional to transfer moneys from special revenue funds to bolster the SGF balance.
- **Fund To Be Held in Trust.** The Committee recommends the continuation of the following language to the Legislative Coordinating Council (LCC), the Legislature, and the Governor regarding the Health Care Stabilization Fund.
  - The Health Care Stabilization Fund Oversight Committee continues to be concerned about and is opposed to any transfer of money from the Health Care Stabilization Fund to the State General Fund. The HCSF provides Kansas doctors, hospitals, and the defined health care providers with individual professional liability coverage. The HCSF is funded by payments made by or on the behalf of each individual health care provider. Those payments made to the HCSF by health providers are not a fee. The State shares no responsibility for the liabilities of the HCSF. Furthermore, as set forth in the HCPIAA, the HCSF is required to be “. . . held in trust in the state treasury and accounted for separately from other state funds.”
  - Further, this Committee believes the following to be true: All surcharge payments, reimbursements, and other receipts made payable to the Health Care Stabilization Fund shall be credited to the HCSF. At the end of any fiscal year, all unexpended and unencumbered moneys in such Fund shall remain therein and not be credited to or transferred to the SGF or to any other fund.

***Proposed Legislation:*** None.

## **BACKGROUND**

The Committee was created by the 1989 Legislature and is described in KSA 40-3403b. The 11-member Committee consists of 4 legislators; 4 health care providers; 1 insurance industry representative; 1 person from the public at large, with no affiliation with health care providers or with the insurance industry; and the Chairperson of the HCSF Board of Governors or another member of the Board designated by the Chairperson. The law charges the Committee to report its activities to the LCC and to make recommendations to the Legislature regarding the Health Care Stabilization Fund. The reports of the Committee are on file in the Legislative Research Department.

The Committee met October 21, 2015.

## **COMMITTEE ACTIVITIES**

### **Report of Towers Watson**

The Towers Watson actuarial report serves as an addendum to the report provided to the HCSF Board of Governors based on HCSF data as of April 30, 2015, with an addendum dated September 14, 2015. The actuary addressed forecasts of the HCSF's position at June 30, 2015, and June 30, 2016. The forecast of the HCSF's position at June 30, 2015, is as follows: the HCSF held assets of \$271.31 million and liabilities of \$223.03 million, with \$48.28 million in reserve. The projection for June 30, 2016, is as follows: assets of \$278.22 million and liabilities of \$230.02 million, with \$48.20 million in reserve. The actuary indicated the forecasts of unassigned reserves assume an estimate of surcharge revenue in FY 2016 of \$26.2 million; a 2 percent interest rate for estimating the tail liabilities on a present value basis; a 3.70 percent yield on HCSF assets for estimating investment income; continued full reimbursement for KU/WCGME claims; and no change in current Kansas tort law or the HCPIAA. The actuary stated, based on the review, it was suggested the Board of Governors consider a modest increase (2.5 percent to stay in a "break even" position) in surcharge rates for Calendar Year (CY) 2016.

The actuary addressed the following recent law changes affecting the HCSF: the expansion of the number of providers and types of providers who are covered by the HCSF; increases in the caps on non-economic damages in Kansas; restoration of the caps on the non-economic damages in Missouri; elimination of the five-year compliance requirement for tail coverage eligibility; and increasing the HCSF coverage for inactive providers by the minimum basic coverage required (essentially increased for most providers from \$800,000 to \$1 million); and in addition, the HCSF surcharge rates are now being established on a CY basis instead of a FY basis. The actuary indicated the changes will take effect January 1, 2016.

The actuary next reviewed the HCSF's liabilities at June 30, 2015. The liabilities highlighted included claims made against active providers as \$81.8 million; associated defense costs as \$15.4 million; claims against inactive providers reported by the end of FY 2015 as \$8.3 million; tail liability of inactive providers as \$103.5 million; future payments as \$14.4 million; claims handling \$7.1 million; and other (primarily plaintiff verdicts on appeals) as \$2.1 million. Total of gross liabilities were \$232.7 million; the HCSF is reimbursed \$9.7 million for the KU and WCGME programs, for a final net liability of \$223.0 million. The actuary detailed what the tail obligation includes, stating any provider who is in the system as of June 30, based on the current HCSF law, does not have to pay the HCSF any more money to be covered for claims made after that provider becomes inactive. The actuary indicated it became a much bigger number because of the HCSF law changes last year that waived the requirement that providers be in the system for at least five years to get the tail coverage for no additional premium or surcharge.

The actuary reviewed the HCSF's rate level indications for CY 2016, noting the indications assume a break-even target. The actuary highlighted payments, with settlements and defense costs of \$29,977,000; change in liabilities, an increase of \$4,460,000; administrative expenses of \$1,720,000; and transfers to the Availability Plan and the Kansas Department of Health and Environment (KDHE) are assumed to be \$200,000 (assumes no Availability Plan transfer). In total, the cost for the HCSF to "break-even" for another

year is \$36,357,000. The actuary stated the HCSF has two sources of revenue: investment income based on the 3.7 percent yield assumption of \$9,974,000 and surcharge from providers of \$26,382,000. The actuary indicated, if the HCSF did not change its surcharge rates next year, the company believes the HCSF would have earned a little less than that, at \$25,734,000. Therefore, there would be a positive rate indication of about 2.5 points in order to have a break-even situation. The actuary discussed the current environment for interest rates, noting if interest rates do rise and that translates to more investment income for the HCSF, that brings down the rate level indication. The actuary provided two examples of varying earnings from investment income and noted the HCSF's financials, in terms of its rate indication, are very sensitive to what the HCSF can earn on its assets.

The actuary also provided an overview on the rating by years of compliance (YOC). Since enactment of 2014 HB 2516, the HCSF provides tail coverage at no additional cost to all providers upon becoming inactive. He reviewed the decision process for the HCSF Board of Governors as it considered how to accommodate providers, in terms of rates associated with YOC. The law change, the actuary noted, creates an equity issue among the providers. Those providers in the five-years-plus category, who make up the overwhelming majority of the providers in the state, are essentially subsidizing those in YOC one through four. The actuary stated that when the actuarial firm's representatives met with the Board of Governors in July, it was suggested the Board start shifting the rates so those in the YOC one through four have increases to get them up to the rates being charged to those who are in the state five or more years.

The actuary then provided an overview regarding indications by provider class. The report states the analysis of experience by HCSF class continues to show differences in relative loss experience among classes. The actuary provided a history of surcharge rate changes since 2004 and then provided an overview of the options for CY 2016 surcharge rates that was provided to the Board of Governors. The actuary highlighted the Board of Governors' decision on the surcharge rate changes, indicating the estimated overall impact of

these changes was about a 1.6 percent increase in surcharge revenue.

The actuary concluded stating the firm's overall conclusions are that the HCSF remains in a very strong financial position and indicated last year's changes have caused upward pressure. The actuary and the Board of Governors also are going to continue to monitor the interest rate assumption because interest revenue is key to the HCSF's financials. The actuary stated the whole year compliance factor is an equity issue requiring further consideration, given the change to the tail coverage issues enacted last year. The actuary responded to Committee questions about tail liability of inactive providers (there was a large increase from the prior year's analysis to this year's analysis due to the law change; this amount, however will be a "one-time" hit); and, the effect of surcharge rates being established on a CY-basis instead of FY basis and when the change will be effective for a provider who is hired in August (the surcharges will start January 1, 2016. The actuary stated someone starting August 1, 2016, would have a full-year premium beginning on August 1; and then, when the provider renews August 1, 2017, that provider would get the rates that take effect January 1, 2017.)

## Comments

In addition to the report from the HCSF Board of Governors' actuary, the Committee received information from Committee staff detailing resource materials provided for consideration including the bill summary and excerpted copy of enacted legislation, 2015 HB 2064, the FY 2015, FY 2016, and FY 2017 subcommittee and budget committee reports, and the Committee's prior conclusions and recommendations from its most recent annual report. The analyst noted the report was provided to the Senate Financial Institutions and House Insurance Committees; the Committees heard two bills that would have amended the HCPIAA during the 2015 Session.

**2015 legislation.** SB 101 would have amended the HCPIAA to clarify exemptions from the defined term "health care provider" to designate certain health care providers who would not be subject to a requirement to purchase basic professional liability insurance coverage or pay

surcharges as required with such coverage. The bill would have specified this definition does not include persons holding an exempt license from the State Board of Nursing and would clarify language in the exclusion provision for Advanced Practice Registered Nurses and Physician Assistants who are employed in or on active duty in the federal government or who provide professional services as a charitable health care provider and would have extended this exclusion from the definition to nurse anesthetists. SB 117 would have amended the HCPIAA to allow health care systems that own or operate more than one medical care facility or more than one health care facility to aggregate insurance premiums for the purpose of obtaining a certificate of self-insurance from the HCSF Board of Governors. Both bills passed the Senate and were incorporated in the House committee report for SB 101. The provisions now contained in SB 101 were incorporated with other insurance related provisions into the Insurance conference committee report for HB 2064 [L. 2015, ch. 45].

The Committee analyst also reviewed the Missouri Legislature's enactment of Senate Sub. for SB 239. She explained this Committee has discussed the Missouri Supreme Court *Watts* decision over the past few years regarding the Missouri caps being declared unconstitutional. The Missouri Legislature has been working over the past few years to try to reinstate caps; under this new law, plaintiffs cannot recover more than \$400,000 in non-economic damages in medical malpractice actions. If, however, the case involves claims that are determined to be of "catastrophic personal injury" or wrongful death, the cap is increased to \$700,000. The two caps do not apply to economic damages or limit punitive damages and are to increase at a rate of 1.7 percent per year. The legislation also directly responded to the 2012 *Watts* decision in which the court indicated the limits established by the 2005 law violated the right to a jury trial that existed under common law when the Missouri Constitution was first adopted. The way the Missouri Legislature responded was to state medical malpractice actions are now statutory causes of action, rather than common law causes of action. The analyst noted the Kansas Legislature updated its cap in 2014 with \$250,000 for causes of action through July 1, 2014 (\$250,000 was the prior limit); the current period of \$300,000 for causes of action until July 1, 2018;

an increase to \$325,000 through July 1, 2022; and finally, a limit of \$350,000 for causes of action occurring on and after July 1, 2022.

**Chief Attorney's update.** The Deputy Director and Chief Attorney for the Board of Governors addressed the FY 2015 medical professional liability experience (based on all claims resolved in FY 2015 including judgments and settlements). The conferee began her presentation by noting jury verdicts. Of the 17 cases involving 18 Kansas health care providers tried to juries during FY 2015, 16 were tried to juries in Kansas courts and 2 cases were tried to juries in Missouri. An additional case was tried to the judge in small claims court. The trials were held in the following jurisdictions: Sedgwick County (8); Johnson County (4); Johnson County, Missouri (2); Harvey County (1); Reno County (1); Shawnee County (1); and Wyandotte County (1). Of those 18 cases tried, 13 resulted in defense verdicts and 3 cases ended in mistrial. Juries returned verdicts for plaintiffs in 2 cases and resulted in expenditures from the HCSF, with both of these cases now on appeal.

The Chief Attorney stated in the past few years, there have been fewer trials taking place. She also noted, since they have seen fewer claims being made over the past five or six years, fewer claims are going to result in fewer trials. Regarding the new Missouri legislation noted by Committee staff, the Chief Attorney indicated there are a number of provisions in the legislation fraught and ripe for challenges and, quite possibly before the year is up, there will be challenges to the new Missouri cap on non-economic damages.

The Chief Attorney highlighted the claims settled by the HCSF, noting in FY 2015, 60 claims in 53 cases were settled involving HCSF monies. Settlement amounts for the FY totaled \$24,322,582 (these figures do not include settlement contributions by primary or excess insurance carriers). She stated this FY data represents three fewer claims than the previous year, but the total aggregate amount of these claims incurred by the HCSF was \$316,668 more than the past year. The Chief Attorney noted for the past 16 years, FY 2000 through FY 2015, the average amount incurred by the HCSF for settlements was about \$20.8 million. Looking at the first five years of the century, the average

amount was \$17.6 million; however, over the past five fiscal years, from FY 2011 through FY 2015, the average was almost \$23 million per year. The Chief Attorney indicated the amount of settlements has been going up over the years. FY 2015 had 60 claims which was very similar to FY 2011 in which there were 61 claims; however, in FY 2015, 24 claims fell into the highest level of settlement compared to only 14 in FY 2011. This illustrates what has been said over the past few years, that settlements are higher than a decade ago, primarily because damages are higher. She stated often the largest component of a plaintiff's claim for damages is medical bills and future cost of care. So, as the cost of care rises, so do the potential for damages and the cost of settlements.

Of the 60 claims involving HCSF monies, the HCSF incurred \$24,322,582; the primary insurance carriers contributed \$11,200,000 to these claims. In addition, excess insurance carriers provided coverage for five of these claims for a total of \$14,400,000. So for these 60 claims involving the HCSF, the total settlement amount was \$49,922,582; it is a bit higher on the excess carrier for this past year due to one very large catastrophic case. The Chief Attorney stated, in years to come, it is likely there will be more claims involving coverage from excess insurance carriers. Further testimony also indicated, in addition to the settlements involving HCSF contributions, the HCSF was notified primary insurance carriers settled an additional 89 claims in 80 cases. The total amount of these reported settlements was \$7,268,626. The report included figures from FY 2000 to FY 2015 for comparison and also included a report of HCSF total settlements and verdicts, FY 1977 to FY 2015. The Chief Attorney stated that, during FY 2015, there were 60 settlements and 2 plaintiff verdicts for a total of 62 claims; the average was \$401,682.57 per claim.

The Chief Attorney reported there were 235 new cases during FY 2015. She noted there was a five-year decrease in the number of new claims from FY 2008 to FY 2013, with a modest increase in FY 2014, and another decrease in the number of new claims in FY 2015. The Chief Attorney stated what the HCSF has been experiencing in the numbers of claims, the primary insurance carriers and others around the country have also experienced. She noted the claims experience for

this past fiscal year is that the frequency of claims is down, but the severity of claims is up.

In response to Committee questions about the trend for FY 2016 claims, the Chief Attorney indicated for the first four months of FY 2016, the number of claims is stable. At this point, FY 2016 will look a lot like FY 2015 as far as the number of new claims and in regard to settlements. She noted the HCSF has not had any plaintiff verdicts since July 1. In answer to whether the severity of the claims are weighted in any one area of practice, the Chief Attorney indicated the HCSF was not seeing any one new area. She indicated, generally speaking, claims involving obstetrics or neurosurgery have the most catastrophic damage cases, so those claims settlements tend to be the larger settlements, but they are not seeing any more frequency of claims. The only notable item in the past year is robotic surgery claims. The Chief Attorney stated she has seen three or four this past year. She indicated 20 years ago when laparoscopic surgery was brand-new, they saw those kinds of new claims.

The Chief Attorney next addressed the self-insurance programs and reimbursement for the KU Foundations and Faculty and residents. She stated the FY 2015 KU Foundations and Faculty program incurred \$1,917,190.41 in attorney fees, expenses, and settlements and indicated this is down \$258,267.46 from the previous year, noting the settlement amounts are less. The Chief Attorney stated there were seven settlements involving KU full-time faculty members or foundations compared to nine settlements the previous year. The number of settlements was down, but the attorney fees and expenses were up. She indicated one of the reasons attorney fees and expenses were up was due to a large case that went to trial in Wyandotte County involving a KU faculty member. It was a defense verdict, but trials are very expensive and part of this additional expense was taking this case to trial.

In regard to the self-insurance programs for the KU and WCGME resident programs, the Chief Attorney indicated, in FY 2015, there was one settlement involving a Wichita resident with a settlement of \$40,000. She noted it was the first time in several years there had been any settlements involving the residents, but it was a small settlement. Overall, the attorney fees and

expenses for the residency programs, both Wichita and Kansas City, have gone down for at least two years in a row due to fewer claims made against the residents in training. However, since July 1, there has been an uptick in the numbers of claims being filed, especially involving the Wichita residents. The Chief Attorney indicated she is not optimistic there will be a decrease in the amounts next year. She also indicated that with increasing the presence in Missouri care, she has been concerned there would be more claims filed in Missouri, and Missouri laws are not as favorable as those in Kansas. The Chief Attorney noted, however, only one claim has been filed to date in Missouri.

The Chief Attorney's report listed the historical expenditures by fiscal year for the KU Foundations and Faculty and the KU and WCGME residents since inception. For FY 2015, the KU Foundations and Faculty was a little over the average. She noted the KU and WCGME residents programs have been below average for the past couple of years. The Chief Attorney then reviewed an allotment order issued in 2009, due to budget shortfalls, to stop reimbursement to the HCSF for these self-insurance programs and the legislative response in 2010 to amend the reimbursement statutes to provide that the HCSF would not be reimbursed for FYs 2010, 2011, 2012, and 2013. Beginning with FY 2014, two things were to take place: normal quarterly reimbursements were to begin and, for five fiscal years, FY 2014 through FY 2018, the HCSF was to be reimbursed 20 percent of the accrued receivable for those four years that the HCSF was not reimbursed. At the end of the four-year period, the time the HCSF was not reimbursed for the programs (June 30, 2013), the total amount of receivables was a little over \$7.7 million. The Chief Attorney stated that, for the past three years, the HCSF has been receiving normal quarterly reimbursements and, in July, the annual installment payments have been made. The HCSF received reimbursements of \$1,544,084.43 in July 2013, \$1,544,084.45 in July 2014, and \$1,544,084.45 in July 2015, which is 60 percent of the total amount. The HCSF is owed \$3,088,168.90 to be received in two remaining annual installments. The report also provided information about moneys paid by the HCSF as an excess carrier. The HCSF was involved in settling four claims greater than \$200,000 for \$1,013,000

on behalf of the KU Faculty and Foundations. (This amount is not reimbursed because it is the HCSF's excess coverage.)

The Chief Attorney also provided a synopsis of the syllabus issued by the Kansas Supreme Court regarding the Kansas Building Industry Workers Compensation Fund case. She stated this goes back to 2009 when there was a budget crisis and a gap of \$900 million between expenditures and revenues. To help make up the budget shortfall, the Governor recommended and the Legislature agreed to transfer monies from various state agencies' fee funds into the SGF (termed "cash sweeps"). In this case, the plaintiffs were persons who were required to pay fees to state agencies in order to practice their professions or to transact business in the State of Kansas. They sued the State of Kansas challenging the 2009 appropriations bill. The plaintiffs included insurers who provide workers' compensation insurance and pay assessments into the Workers' Compensation Fee Fund. They also include the Kansas Association of Realtors, which is made up of agents and brokers who pay license fees to the Real Estate Fee Fund, and the Kansas Bankers Association, whose members pay licensure fees and assessments to the Bank Commissioner Fee Fund. These plaintiffs argued that the Legislature's sweep of large sums of money from the fee-funded accounts into the SGF was an invalid exercise of the State's police powers and an unconstitutional exercise of its taxing authority. The case was filed in the Shawnee County District Court. The District Court did not get to the merits of the case; rather, this court dismissed the lawsuit finding the plaintiffs did not have standing to sue because the moneys were taken from the agencies and not from the individuals themselves. The plaintiffs appealed to the Kansas Court of Appeals, and the Court of Appeals reversed the trial court's order. An appeal was then taken to the Kansas Supreme Court. In August 2015, the Kansas Supreme Court upheld the Court of Appeals decision, which reversed the trial court's dismissal of the action, and remanded it back to Shawnee County District Court to take action on the merits of the case.

The Chief Attorney spoke to the merits of the case, noting the Supreme Court first addressed the issue of the political question doctrine whether the issue presented is an issue the Court can address or whether budgeting is a political issue on which



Courts cannot second-guess the Legislature. The plaintiffs in this case said they do not dispute the Legislature's authority to appropriate public moneys, but they challenge the diversion of funds from the fee funds of the State into the SGF for appropriations and for expenditures for purposes not authorized or contemplated by enabling legislation that allowed the agencies to collect the fees. The State of Kansas argued that all moneys in the state treasury are public money; therefore, fee funds are public money subject to appropriation at the sole discretion of the Legislature. The Kansas Supreme Court ruled that just because money is in the State Treasury does not give the State of Kansas unfettered discretion or general appropriation powers over that money. The Court also concluded that this issue is a justifiable issue because it is not a political question, the Chief Attorney noted, but rather it is a question of the appropriate exercise of the State's police powers.

The Chief Attorney also noted another important issue the Court discussed was standing. The State of Kansas argued in this case that State agencies caused the plaintiff's injuries, because they chose to replenish their funds with additional assessments rather than constricting their operations to live within their post-sweep means. The Court rejected this argument, stating agencies are granted the authority to assess fees for their respective funds for a reason and the agencies that have fee funds have responsibilities and duties prescribed by law. Agencies are not granted the discretion to simply quit operating if they run out of money; rather, it is their responsibility to raise funds to carry out their duties. The Court gave the example that the Insurance Commissioner cannot refuse to pay covered workers' compensation benefits to a claim simply to reduce expenditures from the Workers' Compensation Fee Fund. The final question the Kansas Supreme Court addressed was whether associations have the right to sue. The Court went through discussions and determined that, if the three criteria are met, associations have the right to sue on behalf of their members. In this case, the Kansas Bankers Association and the Kansas Association of Realtors have standing to sue.

**Medical malpractice insurance marketplace; Update on the Availability Plan; Comment from health care provider**

**representatives.** The Executive Director, Kansas Medical Society (KMS), was recognized and began his remarks addressing the necessity for the Oversight Committee, stating KMS believes this Committee provides an important bridge among the provider community, the insurance agent/broker community, others, and legislators. He indicated this law was enacted in 1976 and, during that time, there has been a lot of turnover in the Legislature and diminished institutional memory about the HCPIAA and professional liability insurance issues. It is important there be a continuing link between the Legislature that has full responsibility and those involved in the execution of this enterprise and therefore, KMS believes it is important to have the Oversight Committee still be active and engaged on the topic. The conferee addressed the necessity for an additional actuarial review, indicating KMS has a high level of confidence in the Towers Watson actuary and his colleague and stated there is no reason to expend the additional dollars for another review.

The KMS conferee also provided historical context to the HCSF, stating it has been operated in an actuarially sound manner. He believes it is important to include in the report each year to the Legislature the admonition that these funds are held in trust and should be expended only for those things in the statute. The KMS Executive Director concluded by expressing his appreciation to the Legislature and to the HCSF Board of Governors, stating both groups have acted responsibly over many years to see this process – the private-public partnership – works. Prior to the stability HCSF has been a part of, Kansas had a very volatile medical malpractice environment; it used to be in the top quartile in terms of cost of insurance for doctors, hospitals, and others. It has taken a long time, but Kansas has become a much better environment in which to insure doctors, hospitals, and others. Kansas is in a period of unparalleled tranquility now, not that there are not problems, but the KMS Executive Director believes many other states are a bit envious of the good liability environment here.

The President and CEO for the Kansas Medical Mutual Insurance Company (KaMMCO) commented, indicating that overall, from the stake-of-the-market standpoint, there is a very healthy and competitive medical malpractice

marketplace in Kansas. There are plenty of companies and rates are at all-time lows, which follows the fact that the Board of Governors representatives alluded to: the lower claim frequency levels. The conferee stated there is plenty of capacity to insure all of the new providers, even those that just came into the requirement of buying insurance this past year; he indicated it would remain true for the foreseeable future in terms of the overall insurance marketplace, not just Kansas, but nationwide.

The KaMMCO conferee also addressed a few changes that will ultimately affect the marketplace with the Affordable Care Act (ACA). He stated the ACA is changing the face of how health care is delivered, and with those changes comes challenges in terms of how providers are responding to health care delivery being mandated by the ACA. It puts pressure on hospitals and physicians; there is a lot of consolidation. It is difficult to estimate how health care delivery changes will impact the medical professional availability side of the equation. The conferee stated another challenge is that there is such a benign environment right now: low frequency of claims even though every once in a while there is a spike in the severity of claims, overall low inflationary trends, and low investment yields. He stated the challenge is the current environment for interest rates, as it is hard for rates to fall lower than they already are, it is hard for inflationary trends to be below where they already are, or claim frequency to decrease when the frequency is at an all-time low; there is nowhere for the trends to go but upward. With higher claim frequency, higher inflationary trends, and higher interest rates come volatility from the KaMMCO standpoint and increased costs and increased challenges to the industry.

The KaMMCO conferee concluded by stating, over the long term, issues related to the ACA and changes in health care delivery happening around the country and overall economic trends that could change will eventually have an impact on this business. Mr. Scott He indicated, for now, all is well in the industry and with the HCPIAA and the HCPIAA (Availability Plan) has actually subsidized the HCSF for the past couple of years due to the low claim environment. Providers and the state are very fortunate to have a well-run, well-funded HCSF.

Following the presentation, the Committee and the KaMMCO representative discussed potential liability issues relating to telemedicine. In answer to a question about potential risks telemedicine poses for the future, the conferee stated that is being wrestled with right now – both from a regulatory licensing standpoint for those providers, as well as from a professional liability standpoint. He indicated telemedicine could be reading of images or actually providing consults from different locations. The conferee further explained that for those providers not licensed in Kansas and not buying malpractice insurance in Kansas but providing care via some sort of long distance means, an issue can emerge. The Board of Healing Arts and the provider community are having discussions about how to address those issues.

Written testimony submitted by representatives of the New Birth Company, a Kansas birth center employing five certified nurse midwives. The testimony requested the Oversight Committee consider its recommendations to address concerns about the affordability for and availability of medical malpractice insurance for all health care providers subject to the HCSF coverage requirements. The testimony indicates efforts continue to seek full-practice authority (2015 HB 2280) for certified nurse midwives. Additionally, should the HCPIAA be amended in the future, the conferees requested consideration of adding licensed birth centers to the list of health care facilities subject to HCSF coverage requirements.

**Board of Governors’ Statutory report, Fund history, and implementation of legislation.** The Executive Director provided the Board of Governors’ annual statutory report (required by KSA 2015 Supp. 40-3403(b)(1)(C)). Among the items detailed in the FY 2015 report:

- The balance sheet, as of June 30, 2015, indicated assets of \$273,581,184 and liabilities amounting to \$231,467,025. The Executive Director indicated there basically is a margin for error of about 18 percent, and he believes this a very safe margin.

- Net premium surcharge revenue collections amounted to \$27,829,034. The report indicated the lowest surcharge rate for a health care professional was \$50 (chiropractor, first year of Kansas practice, opting for lowest coverage option) and highest surcharge rate was \$15,724 for a neurosurgeon with five or more years of HCSF liability exposure (selected highest coverage option). Application of the Missouri modification factor would result in a total premium surcharge of \$20,441 for this health care practitioner.
- The average compensation per settlement (53 cases involving 60 claims were settled) was \$405,376, a 6.4 percent increase compared to FY 2014. These amounts are in addition to compensation paid by primary insurers (typically \$200,000 per claim). The report states amounts reported for verdicts and settlements were not necessarily paid during FY 2015. Total claims paid during the fiscal year amounted to \$26,654,184.

The Executive Director also provided historical information about the creation and evolution of the HCPIAA, noting next July will be the Act's 40th anniversary. He indicated it is important to go back to October 2012 when the Kansas Supreme Court rendered its decision allowing the Legislature to impose caps on non-economic damages. The decision outlined a number of reasons for maintaining the cap, but one of the most important was the requirement for defined health care providers to have professional liability insurance as a condition of active licensure to render professional services in the State of Kansas. The decision generated a lot of renewed interest in the HCSF, and a number of organizations said they thought it would be in the best interest of their members to become defined health care providers. The Board of Governors did not take a position and left it to the Legislature to decide. During the 2014 Legislative Session, five new categories of health care providers were added. The Executive Director stressed that once the Legislature makes a profession or industry a defined health care provider, those providers must comply. The Board of Governors does not regulate the new providers, but it does keep track of those health care providers required to comply with the

HCPIAA. If there is a problem, the Board refers that problem to the appropriate licensing agency.

The Executive Director also explained that when the tail coverage improvements were enacted in 2014, the HCSF's liabilities immediately increased. Mr. Wheelen noted, while waiting for the *Miller vs. Johnson* decision, the Board of Governors was reluctant to increase or reduce surcharge rates. During that period of time, the HCSF's unassigned reserves gradually increased so, by 2014, there was enough of that margin to absorb the increase in liabilities. Mr. Wheelen stated, with a few exceptions described in his report, implementation of 2014 HB 2516 has been accomplished. He noted this has been accomplished largely because of the support the Board of Governors has had from the Board of Healing Arts, the Board of Nursing, and the Department for Aging and Disability Services.

The Executive Director provided an update on the medical professional liability insurance marketplace. At the conclusion of FY 2014, 26 approved companies actively were marketing professional liability insurance to health care providers. By the end of FY 2015, there were 37 companies; the 40 percent increase was primarily companies that wanted to sell coverage to adult care homes (these facilities became defined health care providers as a result of 2014 law).

The report also highlighted the two principal reasons the Kansas HCSF is more successful than similar funds in other states:

- The Board of Governors has made an extraordinary effort to maintain the actuarial integrity of the HCSF; and
- The Legislature has maintained fiscal discipline by avoiding the temptation to divert HCSF revenues.

The Executive Director addressed the importance of the HCSF being "held in trust" and past Oversight Committee recommendations. Holding a fund in trust in the State Treasury means it is going to be used exclusively for its statutory purposes. He noted the Legislature has always honored this doctrine. The Executive Director concluded by stating members of the Board

believe the HCPIAA has accomplished legislative intent; it has provided the stability the Legislature originally intended; actuarial integrity has been maintained; and the HCPIAA has become a successful public-private partnership. From a public policy perspective, it assures that, in the event of an unfortunate medical outcome, the patient will always have a reliable remedy available. The report stated, as a result of technical amendments enacted by the Legislature this year, the Board of Governors is unaware of any need to amend the HCPIAA in the 2016 Session.

Following the presentation, the Committee and the Executive Director discussed the inclusion of tail coverage for health care providers (there is no longer a five-year waiting period) as a recruitment tool. Additionally, the discussion included a potential increase to the primary coverage requirements to address the amounts currently paid by excess carriers and implications for the Fund and insurance carriers. The Executive Director indicated this topic has been explored and analysis suggested it was going to be very disruptive for primary insurance carriers and could cause a great deal of shifting of liability from the commercial insurance industry to the HCSF.

## CONCLUSIONS AND RECOMMENDATIONS

The Oversight Committee considered two items central to its statutory charge: should the Committee continue its work and is a second, independent actuarial analysis of the HCSF necessary. The Oversight Committee continues in its belief that the Committee serves a vital role as a link among the HCSF Board of Governors, the health care providers, and the Legislature and should be continued. Additionally, the Committee recognizes the important role and function of the HCSF in providing stability in the professional liability marketplace, which allows for more affordable professional liability coverage to health care providers in Kansas. The Committee is satisfied with the actuarial analysis presented and concluded a second, independent review was not necessary.

The Committee considered information presented by the HCSF Board of Governors' representatives and health care provider and insurance company representatives. The

Committee agreed to make the following recommendations:

- **The Health Care Provider Insurance Availability Act (HCPIAA) – Stability for Kansas Health Care Providers and the Medical Malpractice Insurance Marketplace in Kansas.** The Committee recognizes an important milestone for the HCPIAA – the 40th anniversary of enactment of this legislation will occur on July 1, 2016. The Committee appreciates the intent of the original law and amendments over time that have facilitated a healthy, working public-private partnership between health care providers, insurers, the Legislature, and the HCSF Board of Governors and the benefits of a stable HCSF and more affordable coverage to not only those in the professional liability insurance marketplace but also providing adequate remedy to injured persons seeking remedy under Kansas law. Over time, amendments to the law have expanded the defined “health care provider” and allowed additional providers and facilities to come into the HCSF and secure more affordable coverage. This partnership has helped to sustain the marketplace and support Kansas health care providers even in times of incredible market volatility. The Committee notes how the Court framed the purpose of and partnership created by the HCPIAA:
  - On October 5, 2012, the Kansas Supreme Court upheld the \$250,000 cap on noneconomic damage awards in *Miller v. Johnson*. The Committee notes the following from the Court’s findings about the *quid pro quo* relationship between the purposes of the HCPIAA and the requirement for certain health care providers to carry professional liability insurance and participate in the HCSF and the guaranteed source of recovery for persons seeking to recover pain and suffering damages (limited by the cap, as set by the Legislature):

“As noted in several of our prior cases, the legislature’s expressed goals for the comprehensive legislation comprising the Health Care Provider Insurance Availability Act and the noneconomic damages cap have long been accepted by this court to carry a valid public interest objective.”

[The statute was enacted] “in an attempt to reduce and stabilize liability insurance premiums by eliminating both the difficulty with rate setting due to the unpredictability of noneconomic damage awards and the possibility of large noneconomic damage awards.”

- **Reimbursement of the HCSF.** The Committee notes the reimbursement schedule created by 2010 SB 414. This law allowed for the reimbursement of deferred payments to the HCSF for administrative services provided to the self-insurance programs at the KU Foundations and Faculty and the KUMC and WCGME residents for state Fiscal Years 2010, 2011, 2012, and 2013. The Committee notes normal reimbursements occurred starting July 1, 2013; and, the HCSF Board of Governors have received 60 percent of the the accrued receivables for the last three years in July. The HCSF received \$1,544,084.43 reimbursement in July 2013, \$1,544,084.45 in July 2014, and \$1,544,084.45 in July 2015. The remaining reimbursement receivables are \$3,088,168.90 and is to be received in two remaining annual installments.
- ***Building Industry Workers Compensation Fund vs. State of Kansas update.*** The Committee notes the recent Kansas Supreme Court decision in this case that has questioned the constitutionality of transferring moneys from special revenue funds to the SGF.

These funds were created for specific statutory purposes, much like the HCSF, and are funded by assessments paid by professional licensees or businesses. While there are several parts to this case and decision, the Committee notes the conclusion that it is unconstitutional to transfer moneys from special revenue funds to bolster the SGF balance.

- **Fund to be held in trust.** The Committee recommends the continuation of the following language to the Legislative Coordinating Council, the Legislature, and the Governor regarding the Health Care Stabilization Fund:
  - The Health Care Stabilization Fund Oversight Committee continues to be concerned about and is opposed to any transfer of money from the Health Care Stabilization Fund to the State General Fund. The HCSF provides Kansas doctors, hospitals, and the defined health care providers with individual professional liability coverage. The HCSF is funded by payments made by or on the behalf of each individual health care provider. Those payments made to the HCSF by health providers are not a fee. The State shares no responsibility for the liabilities of the HCSF. Furthermore, as set forth in the HCPIAA, the HCSF is required to be “. . . held in trust in the state treasury and accounted for separately from other state funds.”
  - Further, this Committee believes the following to be true: All surcharge payments, reimbursements, and other receipts made payable to the Health Care Stabilization Fund shall be credited to the HCSF. At the end of any FY, all unexpended and unencumbered moneys in such Fund shall remain therein and not be credited to or transferred to the SGF or to any other fund.