Approved: April 23, 1993
Date

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson August Bogina at 11:00 a.m. on March 31, 1993 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Leah Robinson, Legislative Research Department
Scott Rothe, Legislative Research Department
Norm Furse, Revisor of Statutes
Judy Bromich, Administrative Assistant
Ronda Miller, Committee Secretary

Conferees appearing before the committee:
Representative Michael O'Neal
Julene Miller, Deputy of Civil Division, Attorney General's Office
Robert Pirtle, Attorney for Prairie Bank of Potawatomi Indians
Lance Burr, Attorney General for the Kickapoo Indian Nation
Rance Hickson, Hiawatha Foundation for Economic Development
Nancy Bear, Elected Official of the Kickapoo Indian Council

Others attending: See attached list

SR 1844 - RESOLUTION DIRECTING ATTORNEY GENERAL TO BRING AN ACTION TO DETERMINE GOVERNOR'S AUTHORITY TO NEGOTIATE COMPACTS

Representative O'Neal testified before the Committee in support of the resolution and stated that Senate Resolution 1844 is patterned after the House resolution which was killed. He noted that **SR 1844** would require that the Attorney General ask for a Supreme Court opinion on the three issues left unanswered in the case of State versus Finney which are enumerated in the resolution. Rep. O'Neal explained to members that Kansas is in a state of confusion because the constitutional prohibition of casino gambling contradicts the opinion of the Attorney General which states that the constitutional amendment passed in 1986 opened the door to casino gambling. He said that the issue will not be decided in the courts until after the Legislature has been forced to approve or disapprove compacts, so the Legislature is trying to reserve all claims to defense it may have through this resolution.

In answer to Senator Karr, Rep. O'Neal stated that unlike the House resolution, **SR 1844** does not include any reference to injunctive relief. He said that the court takes into account public interest and criminality when determining whether a state has acted in good faith. Therefore, he believes it is important for the state to know the current status on what is criminal and what is not. Rep. O'Neal, in response to Senator Karr, stated that both bodies of the Legislature have approved anti-casino gambling constitutional amendments which were not placed on the ballot because of the unresolved issue of video gambling.

In answer to Senator Rock, Rep. O'Neal stated that Kansas can refuse to negotiate, but, in so doing, is outside the Indian Gaming Regulatory Act (IGRA). He indicated that Kansas does negotiate those issues that are in the public interest and are not criminal. It was Senator Rock's opinion that if the Legislature chooses not to approve the compact, they have no last best offer on the table.

Answering Senator Salisbury, Rep. O'Neal stated that a Kansas Supreme Court decision will put at rest what is allowed or disallowed by the Kansas constitution and should serve as a defense in Federal Court.

Senator Karr expressed concern about the costs involved with the resolution. Rep. O'Neal answered that he does not anticipate excessive costs because the Supreme Court has defined the issues.

Julene Miller appeared on behalf of the Attorney General in opposition to **SR 1844** and reviewed Attachment 1. In answer to three issues left unanswered in the court decision, Ms. Miller gave the following answers:

--It is the Attorney General's opinion that all states are subject to the provisions of IGRA.

--It is the Attorney General's opinion that casino gaming is not prohibited by the Kansas constitution, and the 1986 amendment which authorized state owned and operated lottery permits the state to conduct any game involving the three elements of surprise, consideration and chance.

--The Attorney General believes the court defined the term "lottery" prior to the time the amendment was enacted as including all games involving the elements of prize, consideration and chance. Since the constitutional provision does not otherwise define the term "lottery," that is what people voted on in 1986.

--The Attorney General believes the Kansas constitution does not prohibit casino gaming if it is state owned and operated.

Mr. Robert Pirtle testified before the Committee in opposition to **SR 1844** and explained that his written testimony (Attachment 2) addressed the injunctive relief which he had presumed to be included in **SR 1844.**

Mr. Pirtle reviewed the Indian Gaming Regulatory Act and stated that because Kansas law authorizes civil/regulatory gaming it is, under federal law, legal for a tribe to compact for it. He added that the tribes can revest that power back to the state through the compact. He stated that his goal was to protect Kansas, the tribes and gaming and, to ensure that protection, a number of provisions were written into the compact. Mr. Pirtle stated that the statute requires that Kansas be reimbursed for any regulatory activities, and that Kansas stands only to gain from the compact. However, if Kansas does not wish to participate in the compact, Mr Pirtle said that he would write Kansas out. He asked that members continue to negotiate in good faith by approving the compacts. Upon legislative approval of the compacts, Mr. Pirtle pledged to prevent out of state tribes from engaging in casino gambling. He told members that if the resolution passed, he would file a new action in federal court.

The Chairman expressed his hope that legislative intent, which did not include casino gambling, could have some basis in court. Mr. Pirtle maintained that because casino gambling was not strictly prohibited under the Kansas constitution and because it is a civil/regulatory class of gambling, it is allowed under federal law. Therefore, it was his opinion that this lawsuit would be frivolous.

In answer to Senator Karr, Mr. Pirtle said that if the Legislature approves the compacts, the lawsuit would be dismissed. However, if **SR 1844** were to pass and the compacts were rejected, it would be his opinion that Kansas was not acting in good faith, and he would immediately file a new lawsuit. At that point, he said, he would write Kansas out of the compacts and he would write in protections to satisfy the tribes and Congress.

Lance Burr, Attorney General for the Kickapoo Nation, quoted from IGRA that "any class III gaming activities shall be lawful on Indian lands only if such activities are located in a state that permits such gaming for any purpose by any person, organization, or entity." He promised to prove that Kansas has permitted casino gambling for 20 years by taking public officials involved in charitable fund raising via "Casino Night" to federal court. He expressed frustration that negotiations for the compacts have been put off for two years and stated that the period of time allowed by IGRA to act in good faith has expired. He stated even though the Senate may choose to adopt **SR 1844**, the Indians will eventually have casino gambling, but Kansas will not be involved.

Grant Hickson, representative of the Hiawatha Foundation for Economic Development, testified that the Kickapoo Indians have been good neighbors and urged members to give them the opportunity to raise themselves out of poverty. He opposed the adoption of **SR 1844.**

Nancy Bear, Treasurer and Assistant Tribal Manager for the Indian Nations, distributed Attachments 3, 4, 5 and 6 and testified in opposition to **SR 1844**. She told members that the nations realize that casino gambling is not the answer to long term problems, but they would like to take the revenue generated in the next 5-8 years to promote economic development. She mentioned the watershed project, health care, education, housing, road maintenance and a cultural center as projects the Indians would fund from gambling revenues. She added that the Indians are not asking for a handout or for the return of their land, but for approval of the compacts.

Senator Kerr moved, Senator Moran seconded, that **SR 1844** be adopted. Senators Rock and Karr expressed concern that the protections that have been written into the compacts will be lost if this resolution passes and the compacts are not approved. They expressed their opinion that the issue of whether Kansas voted for casino gambling was irrelevant. The Chairman complimented the work of the Joint Committee but stated that he would vote "no" on casino gambling because he believed his constituents did not approve casino gaming when they voted in favor of the lottery. The motion carried on a roll call vote.

HB 2047 - APPROPRIATIONS FOR FY94, DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND STATE MENTAL HEALTH AND MENTAL RETARDATION INSTITUTIONS

Chairman Bogina reviewed the FY93 subcommittee report (Attachment 7). He stated that the funding shortfall at Saint Joseph's Nursing Facility (item 7) was due to the number of indigent patients served.

The FY94 subcommittee report (Attachment 8) was reviewed by Chairman Bogina. In answer to a question regarding item 4 (Attachment 8-16), staff stated that the subcommittee recommendation would alleviate the impact on the nursing homes that would lose the most by shifting the case mix reimbursement during the hold harmless period to 50% on the case mix reimbursement methodology and 50% on the current reimbursement methodology. The Chairman explained that the subcommittee's intent was to protect the not-for-profit adult care homes who might be negatively impacted by full implementation of the case mix. Senator Petty added that the Secretary hoped to create an incentive in the not-for-profit homes to admit more clients with greater needs. Those health care costs at those facilities would then be reimbursed at the higher level.

The Chairman recessed the meeting from 1:05 P.M. until 3:20 P.M. and then continued with the review of the FY94 report.

Concern was expressed that the recommendation to contain reimbursement costs of nursing home beds (item 6) would not work as long as construction of facilities is allowed to continue.

In regard to item 12, it was noted that the recommendation is not an attempt to cut off services but to reduce the total amount available for mandatory and nonmandatory programs and allow the Secretary the discretion of which procedures will be covered.

There was discussion about the subcommittee's recommendation to add SRS Fee Fund monies to provide funding of 136 special project positions for medical support activities (item 15). Senator Vancrum noted that although the initiative is federally mandated, the 136 positions are not. Senator Rock explained that there are currently medical support orders on 12,000 children and that number will grow 30% annually. Chairman Bogina pointed out that all but $250,000 of the $822,791 is expected to be recovered through collections.

In answer to Senator Kerr, staff noted that the $600,000 for day care services was the amount necessary to increase reimbursement to providers to the 65th percentile and would have no impact on the number of available slots. Senator Kerr moved, Senator Vancrum seconded, that item 19 of the subcommittee report be amended by deleting $600,000 from the SGF in day care funding. The motion failed on a voice vote.

It was moved by Senator Brady that the subcommittee report be amended by the deletion of item 15. The motion died for lack of a second.

Senator Vancrum moved, Senator Kerr seconded that item 15 of the subcommittee report be amended by providing 86 special project positions for medical support activities. The motion carried on a voice vote.

Senator Rock moved and Senator Petty seconded that the FY93 report and the FY94 subcommittee report as amended be adopted. The motion carried on a voice vote.

It was moved by Senator Rock and seconded by Senator Morris that **HB 2047** as amended be recommended favorable for passage The motion carried on a roll call vote.

It was moved by Senator Rock and seconded by Senator Kerr that **HB 2087** as amended be recommended favorable for passage. The motion carried on a roll call vote.

The Chairman adjourned the meeting at 4:00 P.M.

The next meeting is scheduled for April 1, 1993.

GUEST LIST

COMMITTEE: SENATE WAYS AND MEANS DATE: March 31, 1993

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Sandra Strand	Lawrence	Kansans for Improvmt of Nursing Homes
Josie Torrez	Topeka	Families Together
HAROLD PITTS	TOPEKA	AARP-CCTF
Anne Kimmel	Topeka	AARP-CCTF
Peter Pyle	"	" "
Kendell Strom	"	AARP-CCTF
John Thomas	Horton, Ks.	Kickapoo Tribe
Robin McDonald	Topeka	KAKE
Mary Ellen Conlee	Wichita	Potawatomi Indians
Marlin Rees	Ks	Kumc
Dave M. Kerr	TOPEKA	Assn of Comm Mtl Hlth Ctrs of Ks Inc
Shaf Landers	TOPEKA	Ks Alliance for the Mentally Ill
ALAN. COBB	Wichita	Prairie Band Potawatomi
KATHRYN LEMOSY	TOPEKA	JAAA
Rand Shelby	"	OJA
Roger Towle	Topeka	Ks Gov Consulting
SCOTT FEEKEN	TOPEKA	Governor's Office
Bill McCormick	Topeka	Gov. Office
Janee Burr	Lawrence	Attorney General Kickapoo Nation
Paul Johnson	Topeka	PACK
Jo Ann Rowley	Topeka	Mental Health
Denise Apt	Topeka	KACC
Merle Hess	Topeka	KACC
Edward Maynard	Horton, Ks.	Kickapoo Nation
Merlin Lilly	Hiawatha, KS	Hiawatha Hearthand Care
Lyra Kalthoff	Topeka	Student
L. Dawn Nelson	Hiawatha, Ks.	HAN FOUND ECON DEV
Randall Stokes	Hiawatha Ks	HA Found Econ Dev
Charles L. Tice	Hiawatha, Ks	" " "
John Means	" "	" " "
Robert A. Innes	" "	" " "
John Grace	Topeka	KAMA
Doug Struble	Manhattan	KAPS
Marty Kennedy	Topeka	Budget

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Statement of
ROBERT T. STEPHAN
Attorney General
Re: Senate Resolution 1844
Before the Senate Committee on Ways & Means
March 31, 1993

Thank you for this opportunity to express my opinion on the proposed resolution requesting that I file an action to determine the scope of the state lottery amendment and related issues. First, let me say that I want to cooperate with the legislature and would honor any appropriate directive to seek resolution of this legal issue.

After much consideration, however, I believe to file such an action would be a waste of time with regard to Indian gaming for the following reasons:

-- We are dealing with a federal law issue. I believe such an exercise would have no beneficial effect on the ultimate conclusion of the present federal court cases.

-- The federal court will decide the issue of casino gaming on Indian reservations in Kansas, and I would expect any action requested by your resolution to be removed to federal court.

-- The filing of such an action will simply create another layer of confusion and an unnecessary diversion in the eventuality of the opening of Indian casinos in Kansas.

-- The Secretary of Interior has said with regard to the state of Arizona that he will approve casino gaming if a state presently has Class III gaming, except where games are specifically criminally prohibited.

-- I believe to file such an action damages our own position in pending federal litigation relative to the state acting in good faith.

In summary, I'll file an action if appropriately requested, but believe it is not wise or helpful to do so.

SWAM
March 31, 1993
Attachment 1

TESTIMONY OF ROBERT L. PIRTLE
ATTORNEY FOR THE POTAWATOMI INDIAN TRIBE
REGARDING SENATE RESOLUTION 1844
BEFORE THE SENATE WAYS AND MEANS COMMITTEE
MARCH 31, 1993

This testimony is presented on behalf of the Potawatomi Indian Tribe regarding the effectiveness of proposed Senate Resolution 1844 in light of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701-2721, and the on-going litigation between the Potawatomi Tribe and the State of Kansas. Specific questions which should be considered are the three raised by the Kansas Supreme Court in *State ex rel. Stephan v. Finney*the Indian Gaming Regulatory Act and *Potawatomi Indian Tribe v. Kansas*. For convenience, the three questions are listed verbatim below:

The Kansas Supreme Court's Questions:

1. **Is Kansas a state which is subject to the negotiation provisions of IGRA relative to Class III casino gaming?**

The first part of Senate Resolution 1844 would require the Attorney General to file an action in the Kansas Supreme Court to determine whether the Governor has authority to negotiate compacts with Indian tribes which authorize casino gambling or other Class III gaming not specifically authorized by Kansas statute or by the Kansas Constitution on Indian lands. The phrasing of this first part of Senate Resolution 1844 misses the point of the federal statute, the IGRA, altogether. The United States Supreme Court held in the *Cabazon* case that if a class of gaming is "civil/regulatory" rather than "criminal/prohibitory" an Indian tribe is entitled to conduct such gaming on Indian land without any compliance with state law. When Congress enacted the IGRA it adopted this philosophy with respect to Class

SWAM
March 31, 1993
Attachment 2

III games and authorized tribes to negotiate for tribal-state compacts for any such gaming permitted by the State "for any purpose by any person, organization or entity."

In Attorney General Opinion No. 91-119, dated September 30, 1991, Attorney General Bob Stephan pointed out that the State of Kansas itself—clearly an "entity" under the IGRA—is constitutionally permitted to conduct any class of game which involved the elements of consideration, chance and prize and that therefore Kansas Indian tribes are entitled to compact for any game which involves those three elements. In short, Kansas Indian tribes are entitled to compact for any Class III game. It was this indisputable legal conclusion which led the Attorney General to testify at a Senate Judiciary hearing earlier this month that while he would appear in the State Supreme Court to represent the State as required, nonetheless, he would go into Court knowing that the State would lose.

And apart from the Attorney General's clear understanding of proper application of the IGRA to Kansas, determination whether Kansas Indian tribes are legally entitled under the IGRA to compact for Class III gaming on their reservations in Kansas is a federal legal question to be determined by the federal courts and not by the Kansas Supreme Court.

The reason is underscored by the fact that the Kansas Supreme Court has ruled that Kansas constitutional provision authorizing "lottery" clearly permits any game involving the three elements of (1) consideration, (2) prize, and (3) chance. That includes all Class III gaming under the IGRA because Kansas constitutional provisions clearly make the category of Class III gaming "civil/regulatory" rather than "criminal/prohibitory". In conclusion, Kansas is clearly subject to the negotiation provisions of the IGRA respecting Class III casino gaming.

2. **Does any Kansas public official have authority to enter into a compact permitting an activity (casino gaming) which is prohibited by the Kansas Constitution?**

The word "casino" is not magic - it is mentioned neither in the Kansas Constitution nor in the IGRA. The Kansas Constitution does not prohibit casino gaming; the only section dealing with the subject is art. 15 § 3 which provides: "Lotteries and the sale of lottery tickets are forever prohibited." Subsequent amendments to the Constitution which authorize a state lottery and parimutuel wagering on horse and dog races clearly authorize Class III gaming under the IGRA because under Kansas Supreme Court's ruling "lottery" means any game involving the three elements of (1) consideration, (2) prize, and (3) chance.

It is true that state law forms the foundation of tribal-state compacts but, given the Kansas Supreme Court's rulings, nothing that the Kansas Supreme Court determines under the first part of Senate Resolution 1844 can make any difference to the right of Kansas tribes to compact for Class III gaming on their reservations.

Because the Supreme Court itself ruled in *State ex rel. Stephan v. Finney* that the Governor has authority to negotiate tribal-state compacts and because H.B. 2023 authorizes the Legislature to approve such compacts, the necessary Kansas public officials clearly have authority to enter into the tribal-state gaming compacts for Class III gaming.

3. **Does the federal government have the power to compel the State of Kansas to negotiate with an Indian nation for a compact under which the State would be required to regulate or otherwise condone or allow an activity situated within its borders which is in violation of the Kansas Constitution?**

The question whether Kansas tribes are legally entitled under the IGRA to compact for Class III gaming has already been answered. The question whether the federal government has the power to compel Kansas to negotiate tribal-state compacts is irrelevant because the IGRA does no such thing. Instead, the IGRA merely *invites* Kansas to negotiate tribal-state compacts; if Kansas chooses not to do so as is its right the IGRA provides for determination by the Secretary of the Interior of the method and specifics of regulating Class III gaming on the Kansas Indian reservations. Both the Potawatomi and Kickapoo gaming compacts provide for State jurisdiction and State regulation but include provisions for substitute federal and tribal regulation in the event that the State ultimately declines the federal invitation.

The Arizona Question:

It is claimed by some that Senate Resolution 1844 would merely allow Kansas to follow Arizona's lead in contesting the legal right of state tribes to compact for Class III games in a state which does not otherwise allow casino gaming. That is not true. The law of Arizona is quite different from that of Kansas and the difference is crucial. Arizona law specifically provides for "social gaming" and "amusement gaming." The Arizona statutes which authorize "social gaming" make it legal in Arizona for any persons to conduct gaming between themselves so long as there is no "house" involved—that is, five people can play poker or shoot craps for $10,000 stakes so long as no gaming establishment is involved which charges a share of the pot. The corresponding Arizona statutes which authorize "amusement gaming" allow any person to operate a "crane" machine which grapples for

silver dollars inside a glass case for a prize up to $35.00 even though a "house" is involved which owns and manages the gaming establishment in which the "crane" machine is located.

But the IGRA makes no similar distinctions with respect to involvement of the "house" or the limits of bets. If any such gaming permitted by the State "for any purpose by any person, organization or entity," a state Indian tribe is entitled to compact for such gaming. And unlike that of Arizona, Kansas law permits the State to conduct any Class III gaming; thus Arizona law is completely irrelevant to the Kansas situation. Besides, the federal court in Arizona appointed a mediator who then chose the "last, best offer" of each of the three Arizona tribes involved in the lawsuit with Arizona for delivery to the Secretary of the Interior as the law to govern gaming on the three reservations. Arizona then "outlawed" casino gaming within the State—a gesture clearly in bad faith under the IGRA and destined to fail in the end. It would be a mistake for Kansas to follow the false lead of Arizona.

The Injunction Problem:

Finally, the second part of Senate Resolution 1844 would require the Attorney General to enjoin approval and implementation of any tribal-state compact until the Kansas Supreme Court issues an opinion on the issues framed in the Attorney General's proposed lawsuit. The phrasing of this second resolution makes it self-defeating. The Kansas Supreme Court ruled in *State ex rel. Stephan v. Kansas House of Representatives*, 236 Kan. 45 (1984), that under art. 2 § 22 of the Kansas Constitution state legislators are immune from lawsuits arising out of the performance of legitimate legislative functions. Inasmuch as H.B. 2023 requires each House of the Kansas Legislature to approve or reject a proposed

tribal-state gaming compact, within ten days of its receipt from the Joint Committee on Gaming Compacts the legislative approval process is clearly a legitimate legislative function and the Attorney General is prohibited from seeking injunctive relief against the Legislature.

Worse, in view of all of the foregoing, adoption of Senate Resolution 1844 by the House of Representatives would be viewed by the federal court as a hollow mechanism designed only to forestall proper good faith negotiation of the Potawatomi-Kansas Compact by the Legislature. It may be that Senate Resolution 1844 holds out a false hope to legislators who oppose any casino gaming in Kansas; nevertheless, its effect will only be to substantiate the lack of good faith on the part of Kansas in violating its own tribal-state gaming compact negotiation procedure.

On behalf of the Potawatomi Tribe, I have worked long and hard with both the Senate and the House of Representatives. The Joint Committee, the Governor and the Attorney General have performed their required duties under federal law in good faith; however all of their work can be undermined by adoption by the Senate and any attempt by the State to follow the mandate of Senate Resolution 1844. I trust that the Senate will understand the true legal implications of the Resolution and reject it.

Robert L. Pirtle

A BIRD'S-EYE VIEW OF INDIAN GAMING

Please consider the following questions and answers before voting on the proposed Potawatomi and Kickapoo Gaming Compacts.

1. What is the single most important reason why the Potawatomi and Kickapoo compacts should be approved by the Kansas Legislature?

ANSWER: The Potawatomi and Kickapoo casinos will be built and operated with the input and regulatory control of Kansas or without Kansas Legislative approval. Both compacts contain hard-won and extensive provisions for state input and regulatory control. In short, the two compacts constitute the state's last, best hope of regulating Indian gaming in Kansas. If these compacts are rejected the tribes will negotiate with the federal government and Kansas will be a bystander in the process.

2. What is the second most important reason why these compacts should be approved?

ANSWER: The failure to approve these compacts which have been negotiated in a manner established by this legislature will result in costly litigation for both the state and the Indian nations. The Kansas Attorney General advised the House Federal and State Affairs committee early in this 1993 session that he believes that he cannot win litigation which would deny the implementation of Indian Gaming on reservation land within the boundaries of Kansas.

3. How can Kansas be forced to accept "casino gaming" when it is not authorized by the Kansas State Constitution?

ANSWER: The term "casino gaming" appears neither in the Kansas Constitution nor in the Indian Gaming Regulatory Act (IGRA). The subject matter of tribal/state compacts which are allowed by the IGRA is Class III gaming, the kind typically found in casinos. Of the states in which Indian gaming compacts are steadily going into effect, only Nevada specifically allows casino gaming. The Attorney General has advised that under Kansas law as already interpreted by the Kansas Supreme Court, the IGRA authorizes Kansas tribes to compact for any Class III game.

4. Will Kansas courts have jurisdiction over Indian casino gaming if the compacts are rejected by the Kansas Legislature?

ANSWER: No. The United States Supreme Court ruled in the Cabazon case that states have no jurisdiction over Indian gaming on Indian reservations where the constitutional language is "civil/regulatory" rather than "criminal/prohibitory." The IGRA preempts state jurisdiction altogether. The compact procedure, then, authorizes a tribe to re-vest criminal jurisdiction in state courts for regulating Indian gaming. Thus if the compacts are not

SWAM
March 31, 1993
Attachment 3

approved by the Legislature, Kansas Courts will have no criminal jurisdiction whatsoever over Class III gaming on the Potawatomi and Kickapoo Reservations.

5. What is the meaning of the term "last best offer" in the IGRA?

ANSWER: The IGRA provides that if a state does not enter into a compact with a qualified Indian tribe within 180 days after the tribes request, an action may be filed by the tribe in federal court to enforce the compact procedure. The federal court can order the parties to conclude a compact within 60 days and if, at the end of the 60-day period, the parties cannot agree, the federal court can appoint a mediator to choose between the "last best offer" the tribe and the "last best offer" of the state and forward the compact he or she chooses to the Secretary of the Interior.

6. If the Kansas Legislature rejects the Potawatomi and Kickapoo compacts, must the tribes submit them as their "last, best offer?"

ANSWER: No. The Potawatomi and Kickapoo tribes have already indicated that if the Legislature rejects these compacts, they will rewrite the compacts to exclude Kansas from having any regulatory control over gaming on the reservations. Worse yet, under HB2023, if the Kansas Legislature does not approve a tribal/state compact, there will be no "last best offer" on the part of the state. The mediator will be forced to transmit the tribe's "last best offer" to the Secretary of Interior exactly as it is presented.

KICKAPOO NATION POSITION PAPER
KICKAPOO NATION - KANSAS GAMING COMPACT
By Lance W. Burr, Attorney General for
Kickapoo Nation
(Endnotes to be provided later)

When the United States Congress enacted the Indian Gaming Regulatory Act (IGRA) on October 17, 1988, it did so with the understanding that Indian Nations were to be afforded the opportunity to be the primary beneficiaries of gaming operations on Tribal land.[1] Congress concluded that the principal goal of Federal Indian policy is to promote economic development, self-sufficiency and strong Indian Nation governments.[2] Indian Nations were to have the exclusive right to regulate gaming activities on Indian land if not prohibited by federal law and if the gaming activity occurs within a state which does not prohibit gambling.[3] Indeed, Congress even established an independent federal regulatory authority to protect Indian gaming activity as a means of generating much needed revenue for essential Indian Nation governmental services.[4]

So why is it that the people of the Kickapoo Nation (located in northeast Kansas) have been deprived of the benefits of IGRA? Once again, the federal government has failed to fulfill its trust responsibilities to the Kickapoo people as required by treaty law. And once again, the State of Kansas has seized upon the opportunity to delay and to infringe upon the federal right of the Kickapoo people to enjoy the benefits and opportunities promised to them with the passage of IGRA.

THE KICKAPOO NATION SURROUNDED BY KANSAS

The Kickapoo people have had a long history of opposing

SWAM
March 31, 1993
Attachment 4

intrusions on their sovereignty by the State of Kansas. The Kickapoo Nation along with other Indian Nations located within the boundaries of the United States have been recognized as distinct, independent communities with inherent rights to exercise powers of self-government, not because those powers were delegated to them by the United States, but because of their aboriginal sovereignty which predates the formation of the government of the United States.[5] The Courts have considered treaties and statutes enacted by Congress as limitations upon original Tribal powers rather than the founding source of those powers.[6]

Although the Kickapoo Nation operates through a Constitution and a Code of Laws, its legal authority is derived from the will and desire of the members of the Kickapoo Nation to rule themselves without interference from other sovereign powers. The Federal Courts of the United States have consistently confirmed the fact that treaties with Indian Nations have the same legal import as treaties with foreign nations notwithstanding the fact that later decisions characterized Indian Nations as "dependent sovereign nations". The United States Supreme Court in the landmark case of Worsester vs Georgia (1832) supra established the basis for Indian self-government and self-determination in an opinion that has been consistently followed by United States Courts for 160 years.

> "The Indian Nations had always been considered as distinct, independent, political communities, (p.559)... and the settled doctrine of the law of nations is, that a weaker power does not surrender its independence-its right to self-government-by associating with a stronger, and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a state. Examples of this kind are not wanting in Europe. 'Tributary and feudatory states,' says Vattel, 'do not thereby cease to be sovereign and independent states, so long as self-government, and sovereign and independent authority, are left in the administration of the state.' At the present day, more than one state may be considered as holding its right of self-government under the guarantee and protection of one or more allies.
>
> The Cherokee Nation, then, is a distinct community, occupying its own territory with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties and with the acts of congress. The whole intercourse between the United States and this nation, is, by our constitution and laws, vested in the government of the United States."

Traditionally the states have had no right to infringe upon the federal government's power to regulate relations with members of the Indian Nations and Indian Nations have been subject to federal law to the exclusion of state law and have been empowered to exercise their inherent rights of self-government as long as they were consistent with federal law. Indeed, Kansas could not have become a state without promising to honor the sovereignty of the Kickapoo Nation located on territory which is now known as Kansas. In "An Act for the Admission of Kansas into the Union",

passed January 29, 1861, the United States of America accepted Kansas into the Union with these very important conditions:

> "...that nothing contained in the said constitution respecting the boundary of said state shall be construed to impair the rights of person or property now pertaining to the Indians of said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty (with) such Indian tribe, is not, without the consent of such tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the state of Kansas, until said tribe shall signify their assent to the president of the United States to be included within said state..."

As pointed out in the landmark case of Parker vs Windsor,[7] Kansas accepted admission into the Union on the condition that Indian rights remain unimpaired as required by this most significant part of the Kansas Constitution.[8] A recent Kansas State Board of Tax Appeals case and a Kansas State District Court opinion have affirmed the conclusions reached by the Kansas State Supreme Court in these landmark decisions of the 1800's.[9]

Once these historic legal principles are understood, it is easy to see why the Kickapoo people have steadfastly maintained that they have no legal relationship with the State of Kansas, but only with the United States government because of treaty provisions, congressional enactments, and federal judicial decisions.

In order to better understand the disappointment,

frustration and anger of the Kickapoo people over the lost jobs and revenue guaranteed by IGRA, it might be instructive to know that the Kickapoo people were forcibly removed from their homeland near the Great Lakes region in north central United States during the late 1700's and early 1800's. Pursuant to the Caster-Hill Treaty of October 24, 1832, the Kickapoo people were removed to the northeast part of Kansas and their territory was reduced from several million acres to 768,000 acres, which included the City of Leavenworth and the Missouri River almost up to the Nebraska border on the eastern boundary, and Highway 75 coming out of Topeka, Kansas, on the western boundary. This was to be the home of the Kickapoo people forever and the first part of Article II of the Treaty provided:

> "The United States will provide for the Kickapoo Tribe a country to reside in southwest of the Missouri River, as their permanent place of residence as long as they remain a Tribe." (Emphasis added.)

As we now know, that Treaty provision as well as numerous others have not been honored either by the United States or the State of Kansas. Subsequent treaties were signed by persons who were not always the legal representatives of the Kickapoo people and these treaties were obtained through duress, fraud and misrepresentation. Landholdings of the Kickapoo Nation have been reduced to approximately 6,000 acres. However, the Kickapoo people have never lost criminal or civil jurisdiction over all

territory within their reservation boundaries. On February 26, 1937, the United States government approved the Constitution and By-laws of the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas and since that time the Kickapoo Nation has been governing the activities within its Reservation boundaries pursuant to the provisions of that Constitution. Article I-Territory provides:

> "The jurisdiction of the Kickapoo Tribe shall extend to the territory within the confines of the Kickapoo Reservation as defined under the Treaty of May 18, 1854, and to such other lands as may be hereafter added thereto under any law of the United States."

Article III of the Kickapoo Constitution provides that the governing body of the Kickapoo Nation shall be the Tribal Council which is composed of seven members elected by the general membership of the Kickapoo Nation. The General Council consists of all members of the Kickapoo Nation and they retain the ultimate power in controlling who shall represent the interests of the Nation.[10] Article IV sets forth various enumerated powers allowing the Kickapoo Nation Tribal Council to govern all activities within Reservation boundaries. Section 1, subparagraph (J) provides, in part:

> "The Tribal Council of the Kickapoo Tribe shall exercise the following powers subject to any limitations imposed by the statutes or the Constitution of the United States:
>
> (J) To govern the conduct of persons on the reservation: and to provide for the maintenance of law

> and order and the administration of justice by establishing appropriate courts on the reservation and defining their duties and powers."

In past years, the Kickapoo Nation Tribal Council served as an interim court, but during the last two years, the Nation has been served by a newly established Tribal Court system which includes District Court Judges and a Kickapoo Nation Supreme Court consisting of three Supreme Court Justices. The Kickapoo Nation Tribal Code governs all civil matters on the Reservation and the Nation is exercising limited criminal jurisdiction pursuant to a Criminal Code of Laws.

BACKGROUND TO IGRA

Against this backdrop of an exclusive relationship with the federal government, and because of the United States' trust responsibilities to the Indian Nations pursuant to treaties and congressional enactments, the United States Congress first examined the possibility of utilizing a federal commission that would have shared responsibility with the Indian Nations in regulating Indian gaming. Indian Nation leaders favored this arrangement because it would continue the traditional relationship between the federal government and the Indian Nations. Gaming activities would be governed by a compact between the United States and the various Indian Nations. Indian leaders felt that this would be the proper way to diffuse state resentment to Indian gaming operations which had begun to

flourish in the 1970's as a result of the Seminole Tribe of Florida opening high stakes bingo games on their Tribal land. Following the success of the Seminole Tribe, jealous state officials emphasized the need for federal or state regulation of Indian gaming in addition to or rather than self-regulation by Indian Nations. State officials objected to Indian bingo and other Indian gaming activities on the grounds that such enterprises would be infiltrated by organized crime. However, the real reason for the objections was the perceived notion that Indian gaming operations might jeopardize the states' rights to make money off similar gambling activities. The United States District Court for the Fifth Circuit held that the Florida Seminoles could operate high stakes bingo without interference from the state because the federal government had never authorized the State of Florida to impose gaming regulatory laws on Indian lands.[11] At the same time, litigation had been spawned by bingo games in other parts of the country and in 1987 the United States Supreme Court rendered the landmark Cabazon decision wherein the Court held that California's regulation of bingo and other gaming activities could not be used to prohibit the Cabazon Tribe from engaging in such activities on their reservation.[12]

Following Cabazon, Nevada-New Jersey casino owners and the leaders of several states stepped up pressure on congressional

leaders to introduce a bill that would force Indian Nations to relinquish sovereign rights to the states with regard to gaming operations on Indian Nation land. Objections by Kickapoo Nation Tribal leaders and the vast majority of elected leaders of other Indian Nations in the United States went unheeded and the states won out the right to force Indian Nations to negotiate what types of gaming activities would take place on Indian land.[13]

INDIAN GAMING REGULATORY ACT

Ostensibly, IGRA was passed by Congress to fulfill its historical trust obligation to guarantee that Indian Nations' interests and assets are guarded against encroachments by individuals, the states and even federal agencies. Unfortunately for the Kickapoo Nation, none of the findings and declarations by Congress in IGRA have been honored or fulfilled. The present controversy in Kansas concerning Indian gaming emanates from the fact that Congress has attempted to illegally co-mingle the sovereign rights of both the State of Kansas and the Four Indian Nations located within its borders.[14] The Act creates three forms of gaming and establishes an extensive regulatory scheme for such gaming: Class I gaming consists of social games played solely for prizes of minimal value or traditional forms of Indian gaming engaged in as a part of, or in connection with, Tribal ceremonies or celebrations.[15] Such gaming is controlled exclusively by the Kickapoo Nation and is not subject to the

provisions of IGRA. Class II gaming includes games of chance, commonly referred to as BINGO, including pull tabs, Lotto, punch boards, tip jars, instant BINGO and other similar games. IGRA excludes electronic or electro-mechanical facsimiles of any game of chance or slot machine of any kind from Class II gaming. Non-banking card games are permissible, but banking card games where the players play against the house are included under Class III gaming.[16] Class II gaming is not subject to state regulation but is regulated by the National Indian Gaming Commission, which is a three-member appointed commission within the Department of the Interior. Class III gaming consists of all other types of gambling, including banking card games such as Black Jack, and slot machines, pari-mutual racing, and electronic games of chance such as video poker. Under IGRA, the Kickapoo Nation is prohibited from conducting Class III gaming until the Tribe has entered into a Gaming Compact with the State of Kansas for the operation of such games.

IGRA requires good faith negotiation on the part of the State of Kansas but is silent as to what constitutes good faith. We do know that any demand made by the State of Kansas for direct taxation of the Indian Nation or of any Indian lands constitutes evidence that the State has not negotiated in good faith.[17] IGRA does place the burden of proof on the State to prove that it negotiated in good faith.[18]

IGRA is very specific concerning the procedure to be used by Indian Nations and the states with regard to the compacting process. The Act provides that the Indian Nation must have jurisdiction over the Indian lands upon which a Class III gaming activity is to take place. A Tribal-State compact may include provisions relating to civil and criminal regulatory laws of both the nation and the state that directly bear on the licensing and regulation of the activities.[19] For that purpose, criminal and civil jurisdiction may be divided between the state and the nation for the purpose of enforcing laws and regulations governing gaming activities. The state is entitled to receive enumeration to defray the costs of regulating such activity. However, Congress was adamant that state taxes, fees, charges or other assessments could jeopardize the compacting process and therefore it provided that the state may not refuse to enter into negotiations just because it has no right to impose taxes, fees, charges or other assessments.

Congress made it clear that the United States District Courts are to have jurisdiction over any actions initiated by an Indian Nation arising from the failure of the state to enter into negotiations. IGRA provides that an Indian Nation may sue the state in the United States District Court if the state does not respond to a request to negotiate a compact to its conclusion within 180 days after being requested to do so by the Nation or

if the state does not respond to the request to negotiate in good faith. The burden of proof is placed on the state to prove that it negotiated in good faith to conclude a Tribal-State compact. If the Federal District Court finds that the state has failed to negotiate in good faith to conclude the compact, the Court shall order the state and the Nation to conclude such a compact within a 60-day period. IGRA is specific as to what the Court may consider in its determination as to whether a state has negotiated in good faith. The Court may take into account public interest, safety, impact on criminal activity, financial considerations and adverse economic impacts on existing gaming activities. Also the Court can consider any demand by the state for direct taxation as evidence of lack of good faith negotiations.

In order to make sure that the state could not indefinitely prolong the conclusion of a Tribal-State compact, Congress provided that if the state and Indian Nation fail to conclude a Tribal-State compact within the 60-day period as set forth in the order of the Court, then the Indian Nation and the state shall each submit to a mediator appointed by the Court, a compact that reflects their last best offer. The mediator is then required to select from the two proposed compacts the one which best complies with the terms of the act and with applicable federal law and with the findings and order of the Court. The mediator is then

to present the compact to the state and the Indian Nation and if the state consents to the compact within 60 days after being submitted to the state, then the compact is finalized. If the state does not consent during the last 60-day period, the mediator shall notify the Secretary of the Interior and the Secretary shall prescribe, in consultation with the Indian Nation, procedures which are consistent with the compact selected by the mediator, IGRA and relevant state laws. The Secretary of the Interior may disapprove the compact only if it violates any other provisions of IGRA, provisions of federal law that do not relate to gaming matters, or the trust obligations of the United States to Indians. If the Secretary does not approve or disapprove the compact within 45 days, it is deemed approved, but only to the extent it is consistent with the provisions of IGRA.[20]

Indian gaming activities are highly regulated pursuant to IGRA. First, the Indian Nations must adopt ordinances or codes of law regulating gaming activities. The Act also establishes a National Indian Gaming Commission consisting of three full time members. The chairperson is to be appointed by the President of the United States with the advice and consent of the Senate, and the two associate members are to be appointed by the Secretary of the Interior. The powers of the chairperson are extensive and include his or her right to issue orders to temporarily close

gaming activities, levy and collect civil fines for violations of the Act, approve tribal ordinances regulating Class II and III gaming, and approve management contracts for Class II and III gaming. Also the chairperson will have such other powers as may be delegated to him or her by the commission. In general, the commission has extensive regulatory powers over Class II and Class III gaming. In addition, the Indian Nation may license and regulate Class II gaming on Indian lands if the gaming is located within the state that permits such gaming for any purpose by any person, organization or entity or if gaming is not prohibited by federal law. Class III gaming activities may be conducted on Indian lands only if the activities are authorized by a Tribal ordinance meeting requirements of the Act and approved by the chairperson of the commission. Likewise, the gaming activities must be located in the state that permits such gaming for any purpose by any person, organization or entity. Finally, the gaming activity must be in conformance with the Tribal-State compact.

The Act anticipates that the Indian Nation might choose to hire a management company to conduct the day-to-day operation of the gaming activities. The activities of the management company are highly regulated under the Act and the management contract cannot be for a term exceeding seven (7) years and the Nation must receive at least 60 percent of the net proceeds from the

gaming operation. Indian gaming operations throughout the country will be the most highly regulated of all gaming operations, be they state, private or otherwise. In the case of the Kickapoo Nation-Kansas Gaming Compact, the gaming operations will be scrutinized by the Federal Bureau of Investigation and the Justice Department, the State of Kansas Gaming Agency, the National Indian Gaming Commission, and the Kickapoo Nation Tribal Gaming Commission or Agency. Both the Kickapoo Nation and the State of Kansas shall exercise concurrent criminal jurisdiction over Indian people pursuant to 18 U.S.C. 3243,[21] but the compact provides that primary responsibility for criminal jurisdiction over Indian people shall rest with the Tribe and the State shall exercise criminal jurisdiction only in emergency situations or in the event that the Tribe fails to fulfill its responsibilities. With regard to non-Indian persons, the State of Kansas shall exercise exclusive criminal jurisdiction. The Compact also provides for a cross-deputization agreement with Kansas and the Kickapoo Nation to facilitate cooperation between State and Tribal law enforcement personnel. The compact further provides that nothing contained in it will modify or limit existing federal criminal jurisdiction over Kickapoo gaming operations.

It is readily apparent that the Kickapoo Nation is giving up a part of its sovereignty when in the Gaming Compact it allows the State of Kansas to exercise jurisdiction on Kickapoo Nation

Reservation Trust land - land that constitutes no part of the State of Kansas.[22]

WHY GAMBLING FOR THE KICKAPOO NATION

Since IGRA was passed in October 1988, the elected officials of the Kickapoo Nation have had several years to consider the question of whether or not to engage in Class III gaming. Like any elected officials, the governing body of the Kickapoo people must provide revenue to operate their government. The decision to construct and operate a destination gaming resort was based on economic considerations and the need to raise money to fund essential government services for the people. Numerous proposals for economic development have been considered over the years, but due to the remoteness of the Kickapoo Nation Reservation, business investors have declined to locate on or near the Reservation.[23] With unemployment ranging in the 60-80% range; with inadequate health care services being available for Kickapoo people; and with housing and educational opportunities being severely limited, elected officials of the Kickapoo Nation determined that they had no viable alternative other than to pursue economic self-sufficiency through the operation of a destination gaming resort facility. Equally disadvantaged due to their location and other factors, the citizens of Horton and Hiawatha (cities nearest to the Kickapoo Nation Reservation) banded together to form a strong coalition in support of the

Kickapoo Nation's gaming facility. Each city wanted it located nearest them, but due to the need for adequate utilities and water, Hiawatha was the better site. However, the Kickapoo Nation Tribal Council had not considered locating the gaming facility near Hiawatha until they were overwhelmed by requests of the citizens of Hiawatha to have them as their neighbors in what has proven to be a historic joint venture. The sincerity of the people of Hiawatha and the tremendous amount of time and energy that they have put into supporting the Kickapoo Nation gaming facility has made a significant impact on the Kickapoo people. As we attended meetings throughout the last year and one-half, we were reminded on many occasions that it was the first time, in as long as anyone could remember, that the governments of Horton, Hiawatha and the Kickapoo Nation all came together with full councils.[24] Now, 23 mayors and city councils throughout northeast Kansas have gone on record through petitions in full support of this Kickapoo Nation economic development project.[25]

The Kickapoo Nation Tribal leaders are fully aware of the tremendous benefits that have inured to states and foreign nations and to other Indian Nations and surrounding communities as a result of their good fortune in being able to have Class III gaming activities. Gambling has been recognized as the United States' largest industry surpassing the combined total volume of the 75 largest industrial organizations in the country, including

such giants as General Motors, U.S. Steel, and all the oil companies.[26] In 1984, Americans wagered twice as much as they spent on higher education, fifteen times what they donated to churches, and over half of what they spent on food.[27] The Kickapoo leaders also know that gaming has been an integral part of Indian life for thousands of years. Dice have been found in grave sites dating back to 40,000 B.C. Some of America's founding fathers were promoters of gambling and Benjamin Franklin organized a lottery in Pennsylvania in 1748 to raise funds for the purchase of military supplies. Lotteries were sponsored by George Washington for mountain road construction and by John Hancock for the rebuilding of Fanueil Hall in Massachusetts. In 1776 the Continental Congress organized a lottery with $5 million in prizes in order to raise money for the war against the English; George Washington purchased the first ticket. By 1832, 420 lotteries were being held in eight states in the new republic.[28]

In this century, Nevada had originally permitted gambling and later bowed to public pressure and ordered all gaming establishments to close their doors. However in 1931, the Nevada legislature once again legalized gambling due to the dire economic conditions of the depression. In recent years, Americans have been spending more money on gambling than ever before. In 1960, Americans spent $5 billion on legalized

gambling, and by 1974 this had risen to $17 billion. In 1984, Americans wagered an estimated $177 billion. During the 1980's dramatic growth took place with legalized gambling in the United States.[29] In 1991, gamblers in America bet $304.1 billion in casinos, on lottery tickets, horse and dog races, and other sporting events.[30] Now, except for Utah and Hawaii, it is legal to place a bet of some kind in every State of the Union.

The Kansas lottery has generated $115 million during the past five (5) years and lotteries are now legal in approximately 33 states. The world's richest lottery in Spain, the $1.1 billion Christmas Lottery, has been an annual event since 1818.[31]

In the area of Indian gaming, the United States Department of the Interior, Bureau of Indian Affairs, reports that as of October 8, 1992, there were 44 tribes with 57 Indian Nation-State gaming compacts in twelve different states.[32] The impact of Indian gaming for Tribes and for states is now significant and substantial. Indian Nation Reservation wagering totaled $5.44 billion in 1991 which doubled the 1990 record.[33] A brief review of the experiences in Minnesota and Michigan can be instructive to those who are judging the impact of Indian gaming on the Indian Nations and the states in the midwest. The Minnesota Indian Gaming Association (MIGA) conducted a study of the economic impact of Indian Nation gaming in Minnesota and analyzed the business operations of six Indian Nations which have just

entered the gaming business within the last few years. During the fiscal year of 1991, the gaming operations of the Boris-forte Chippewa Tribe, the Leach Lake Chippewa, Lower Sioux, Mille Lacs Chippewa, Prairie Island Sioux and Shakapee Sioux produced $143 million in revenues after payouts. Expenditures amounted to $89 million which resulted in profits to the Indian Nations of $54 million. MIGA reports $32 million paid in wages and benefits and proudly reports that these proceeds are being used for purposes consistent with IGRA, such as funding Tribal government; providing for the general welfare of the Tribe; promoting economic development; contributing to charities; and helping fund local non-Indian agency operations. Proceeds are being used for direct human services, education, housing and infrastructure improvements as well as investments in Tribal business enterprises. Tribal gaming has resulted in more than 4,700 new jobs in Minnesota for persons working directly for Tribal gaming enterprises, and non-Indians have benefited from 80% of the new jobs.

A more startling revelation is the fact that the number of AFDC recipients decreased by 16% between 1987 and 1991 in the four non-urban counties with Indian Nation gaming facilities while the state-wide number of recipients increased 15% for the same period. Also the study identifies sources of indirect jobs derived from induced spending and construction activity in the

amount of $69 million. It is estimated that that figure supports an additional 2,900 jobs. An estimated $38 million was spent constructing the gaming facilities through 1991 and an additional $37 million of construction work is scheduled for completion by the end of 1992. Estimates are that this activity will provide an estimated 2,400 construction related jobs. An additional $75 million of construction activity is planned for 1993 and beyond. The study estimates that out-of-state visitors spent approximately $26 million on various travel related goods and services in fiscal year 1991 and this level of spending created approximately 600 jobs.[34]

University Associates in Lansing, Michigan, compiled Indian gaming statistics which show that seven Indian Nation gaming establishments in Michigan employed 1,931 people, 62% of which were Indian persons. Thirty-seven percent of those employees were welfare recipients and 31% were unemployed prior to their employment in Indian casinos. As a result, unemployment rates on the Reservations have decreased by 64%, and from approximately November of 1991 to November of 1992, Indian casinos paid $3.9 million in state and federal employment taxes from an annual payroll of $13.5 million. Combined receipts of the seven Indian Nations totaled $41.8 million for 1991.[35]

The Indian Nations located in Michigan spent $8 million on supplies and services, 93.5% of which were purchased within the

state, and 80% of the customers spent tourist dollars in local restaurants, buying gasoline and other consumer items. Tribal leaders have indicated that gaming has had a very positive impact on employment of Tribal members, economic development of the Tribe and especially the surrounding non-Indian communities. This has resulted in more spending in both Tribal and non-Indian community businesses and increased tourism to the geographic areas where these casinos are located.[36]

As noted above, the findings of Congress in IGRA parallel the conclusions reached by Kickapoo Nation elected officials. Indian gaming should be used as a mechanism to promote economic development, self-sufficiency, and a strong Indian Nation government. IGRA was enacted to ensure that the Kickapoo Nation is the primary beneficiary of the gaming operation. So why has the State of Kansas failed to negotiate to its conclusion a Tribal/State gaming compact as required by federal law? What actions have the State of Kansas taken that would indicate that it has failed to negotiate with the Kickapoo Nation in good faith?

CHRONOLOGY OF EVENTS WITH KANSAS AND THE SECRETARY OF THE INTERIOR

Following the request made on August 28, 1991, by the Kickapoo Nation to negotiate a gaming compact with the State of Kansas, the Governor of Kansas concluded that she had the

authority to negotiate a compact with the Kickapoo Nation on behalf of the State of Kansas. Indeed, in the state of California, the governor negotiated and signed five compacts with Indian Nations without specific legislative authority authorizing the governor to do so.[37] The Secretary of the Interior approved those compacts without legislative approval. So the Governor of Kansas, in the very best of faith, instructed her staff to begin negotiations with the Kickapoo Nation to develop a gaming compact that would comply with the provisions of the Indian Gaming Regulatory Act while protecting the interests of the State of Kansas. On the 16th day of January, 1992, the Governor of Kansas, on behalf of Kansas, entered into a Kickapoo Nation-Kansas Gaming Compact with the Kickapoo Nation and sent the compact to the Secretary of the Interior, for approval. The question of who could negotiate and bind the State of Kansas was never specified in the Indian Gaming Regulatory Act. The Federal Act only refers to "the state". The decision as to whom or what entity the Secretary of the Interior shall accept as the signatory on behalf of a state is a federal question and should never have been presented to the Kansas State Supreme Court for their adjudication.[38]

Soon after the Kickapoo Nation-Kansas compact was sent to the Secretary of the Interior, the Attorney General of Kansas sent a one-and-one-half page letter (dated January 17, 1992) to

the Secretary of the Interior requesting that he not sign off on the compact as the Governor alone could not enter into the compact on behalf of the State of Kansas. On January 31, 1992, Governor Finney wrote to the Secretary of the Interior setting forth her legal authority to execute the compact on behalf of the State of Kansas and again the Governor requested that the Secretary of the Interior approve the compact pursuant to federal law. On February 5, 1992, Attorney General Stephan filed an original action in the Kansas Supreme Court seeking a determination of the scope of the Governor's authority to negotiate and execute Tribal-State compacts.[39]

In a letter dated February 28, 1992, Assistant Secretary Eddie Brown advised the Kickapoo Nation that Section 11 of the Kickapoo Nation-Kansas Compact violated IGRA because it permitted assessments by the State of Kansas over and above the State's actual regulatory costs. That same letter stated that the submitted compact between the Kickapoo Nation in Kansas and the State of Kansas is disapproved but it invited the Kickapoo Nation and the State to revise the compact and resubmit it. With that in mind, representatives of the Kickapoo Nation Tribal Council and the Governor's office met immediately and re-negotiated and revised Section 11 of the Compact to meet the objections outlined in Assistant Secretary (Brown's) letter. The revised compact was sent to Brown on March 2, 1992, and was received by him on March

4, 1992. Four days later, (Brown) acknowledged receipt of the revised compact and even though he stated that it met all requirements of IGRA, now he declined to either approve it or disapprove it. He said he was going to wait until the Kansas Supreme Court ruled on the question of the Governor's authority.

On July 10, 1992, the Kansas Supreme Court ruled that while the Governor had the authority to negotiate the Compact, action by the State legislature was necessary to make the compact binding on the State.[40] Assistant Secretary Brown returned the revised compact to the Kickapoo Nation on July 10, 1992, defending disapproval on the Kansas Supreme Court ruling.

Because of the Secretary of the Interior's failure to act within the statutory time periods of IGRA, the Kickapoo Nation filed suit against the Department of the Interior, Manuel Lujan, Secretary of the Interior, and Eddie Brown, Assistant Secretary of the Interior for Indian Affairs, on May 19, 1992, in the United States District Court for the District of Columbia.[41] The Kickapoo Nation seeks a declaratory judgment that the Kickapoo Nation-Kansas Gaming Compact has been entered into pursuant to IGRA and is valid and has been approved by operation of law because the Secretary of the Interior failed to approve or disapprove the compact within the statutory 45-day period provided for such action. The Secretary of the Interior denied the allegations, filed a motion to dismiss, or in the

alternative, for summary judgment, and the Kickapoo Nation moved for summary judgment. Briefs have been filed and oral arguments are pending.

Pursuant to IGRA, the State of Kansas has "180 days following the request by the Kickapoo Nation" to conclude the Indian gaming compacting process or be in violation of Federal law. Nevertheless, the Kansas Legislature chose not to take action on the Kickapoo compact during the 1992 legislative session. This was not a situation where time restraints prevented action or the Legislature did not have notice of its responsibilities. On September 30, 1991, the Kansas Attorney General informed the Kansas Legislature that they must take legislative action with regard to the compact.[42] The Governor of the State of Kansas signed the Kickapoo Nation-Kansas Gaming Compact on January 16, 1992, leaving the Legislature the entire session to provide a mechanism to conclude the compacting process. Instead of dealing with the issue in a good faith manner, the legislature introduced a series of bills designed to sabotage the efforts of the Kickapoo Nation to conclude the compacting process with Kansas, while at the same time, expanding the right of the State to engage in additional gaming activities, specifically Instant Lottery, Keno and Lotto games.[43]

Since Kansas, through the Kansas Legislature, chose not to conclude the compacting process in good faith and did not comply

with the provisions of IGRA, the Kickapoo Nation filed suit against the State of Kansas on October 1, 1992, in the United States District Court for the District of Kansas,[44] alleging a failure of the State of Kansas to negotiate in good faith to conclude and bind the State of Kansas to a Tribal-State gaming compact as required by IGRA. The suit further alleges that the failure of the State of Kansas to provide a mechanism to conclude the compacting process has created extreme economic hardships for the Kickapoo Nation, including the loss of significant tribal revenues and the loss of needed employment opportunities. The Kickapoo Nation is requesting that the Court enter a declaratory judgment that Kansas failed to provide a mechanism to conclude the compacting process and as such, that constituted a failure to conduct the negotiations in good faith in violation of IGRA. The Nation further requests that the Court intervene as provided by IGRA and conclude the Tribal-State Compact within a 60-day period after the Court's order.

THE LEGAL CONTROVERSY

Certain opponents of the Kickapoo Nation's efforts to establish a Las Vegas style casino on their land contend that Kansas law does not allow for casino-style gambling. However, the Attorney General of Kansas has opined that because of the Constitutional Amendments made in 1986 by the Kansas people, all forms of gambling, including Las Vegas style gambling, can be

conducted by the Kickapoo Nation. Opponents to the Kickapoo Nation gaming facility also raised the point that the 11th Amendment to the United States Constitution prohibits the suit by the Kickapoo Nation brought to remediate the State's failure to negotiate in good faith.[45] Lower Federal Courts have disagreed concerning this issue with some courts finding that §25 U.S.C. 2710 D (7)(a)(1) constitutes a clear statement of waiver of sovereign immunity,[46] while others hold that the 11th Amendment bars suits against the state by the Indian Nation regardless of the waiver set forth in IGRA.[47]

Senator Inouye of Hawaii, who is the Chairman of the Select Committee on Indian Affairs, and who was the primary sponsor of IGRA, has been outraged by the States speaking with "forked-tongues." In his statement at the May 6, 1992, oversight hearing on the implementation of IGRA, Senator Inouye pointed out that only the federal government and the Indian Nations were included in the original IGRA because that continued the traditional relationship of the federal government with Indian Nations. Such relationship excluded the States. When this was made known, the States vigorously argued that they must be allowed to play some role in the determination of what gaming activities would be conducted on Indian Nation Reservations. He pointed out to the committee that it was the States who advocated for a Tribal-State compact provision in the Act, and it was the States that wanted

to negotiate with Indian Nations on a government-to-government basis.[48] He is greatly angered now that the States seek to avoid the compacts based on the 11th Amendment defense and that as a result of this, negotiations with Indian Nations such as the Kickapoo Nation have come to an impasse. He asked the States these threshold questions: If the States don't want a federal commission; if the States don't want Tribal-State compacts; if the States don't want the Secretary of the Interior to prescribe compacts; if the States don't want the Secretary of the Interior to prescribe procedures for the conduct of Class III gaming on Indian lands; then what do the States want? He then asked the States "so I ask, what say you States? If it is your intention to make a dead letter of the law - the Indian Gaming Act - then by your actions you will compel our action." He concluded his remarks by observing that "this is unfair to the Indian Nations, and I for one, charged with the duties of the supreme trustee, will not allow this situation to continue. I will look for a response but I will also take action. I will not ask the Tribal governments to wait for six months or a year - I will not ask the Indian Nations to forego the limited economic opportunities that gaming operations afford to them for the several years that it may take to appeal these 11th Amendment cases to the Supreme Court."[49]

The State of Kansas, through its Attorney General, is one of

the states that has threatened to raise the 11th Amendment defense against the Kickapoo Nation in its suit in Federal District Court. However, in order to afford the 1993 Kansas Legislature the opportunity to take action to ratify the compact negotiated by the Governor, the Kickapoo Nation and the Attorney General of Kansas have reached an agreement which has been approved by the Federal District Court whereby the State of Kansas is given until February 12, 1993, in which to answer the Complaint alleging a lack of good faith negotiation on the part of the State of Kansas.[50] In so doing, the Attorney General has agreed not to raise the 11th Amendment sovereign immunity defense with the expectation that the Legislature will take action and the Complaint filed by the Kickapoo Nation will become moot. However, the Federal District Court Judge has placed this case on the fast track and has entered a scheduling conference order which provides that all briefs, discovery and responses thereto will be filed on or before March 22, 1993. Should the Legislature fail to take action during the first part of the 1993 Legislative session, the court will render an opinion concerning the jurisdictional issues and the merits of the case in the early part of April, 1993.

It is hoped that this unique agreement between the Kickapoo Nation and the Attorney General's Office representing the State of Kansas will provide the incentive to the 1993 Kansas

Legislature to approve the negotiated compact, either through a delegation of power to the appropriate entity, or by legislation approving the compact.

THE GREAT MIRAGE

Recently the newly elected Speaker of the Kansas House of Representatives and the current President of the Kansas Senate and other legislative leaders have agreed that it is time that the Legislature come to grips with the Indian gaming issue whether Kansas lawmakers approve of gambling or not.[51] But just as it appears that some legislative action will be taken, the powerful Mirage Resorts, Inc., a Las Vegas based casino management corporation which owns some of the largest casinos in the world, has announced that it is working with city and county officials of Kansas City, Kansas, Wyandotte County, to obtain the passage of a constitutional amendment to permit casino gambling in Kansas City, Kansas. It is ironic and predictable that this marriage between Mirage Resorts, Inc., and Kansas City, Kansas, is taking place. Mirage Resorts, Inc. had teamed up with the Sac and Fox Nation of Missouri to manage and operate a casino for that Indian Nation. But that union is no more and the elected officials of the Kickapoo Nation are concerned that such a union between Mirage Resorts, Inc., and Kansas City, Kansas, will birth a powerful lobbying effort to cut the legs out from under Indian gaming. The Mayor of Kansas City has said that the City of

Kansas City will push for a constitutional amendment to permit the ownership of casinos by non-Indians in Kansas City, Kansas. He has also said that the City's number one legislative priority is to provide increased employment opportunities, tourism and tax revenues by the establishment of a theme casino destination resort in conjunction with the present Woodlands facility, which is a dog and horse racing park near Kansas City, Kansas.

At a time when the United States Supreme Court and the states are mounting their most aggressive attack on Indian sovereignty, it is legally and morally improper to delay the Kickapoo Nation their lawful right to conduct gaming operations on its Reservation.[52]

I have heard many non-Indians say that the Indian people have been deceived and swindled out of their lands and out of treaty annuities in the past and that something should be done today to make up for those atrocities. The 1993 Kansas Legislature has a unique opportunity to foster a new attitude and policy towards the Kickapoo Nation and the other three Indian Nations surrounded by Kansas. If they refuse to take meaningful action, the Federal District Court, through an appointed mediator, may order that the compact negotiated by the Governor of Kansas be sent to the Secretary of the Interior for his approval. The Secretary has already ruled that the Kickapoo Nation-State of Kansas Gaming Compact is proper and complies with

all of the provisions of IGRA.[53] As Senator Inouye has asked, "What say you, States. Will you proceed to implement federal law?"

CONSTITUTION AND BY-LAWS OF THE KICKAPOO TRIBE OF INDIANS OF THE KICKAPOO RESERVATION IN KANSAS

PREAMBLE

We, the people of the Kickapoo Tribe in Kansas in order to form a recognized representative council to handle our tribal affairs; in order to take advantage of the benefits of the Indian Reorganization Act of June 18, 1934, and in order to improve the economic condition of members of the tribe, do establish this Constitution and By-Laws.

ARTICLE I - TERRITORY

The jurisdiction of the Kickapoo Tribe shall extend to the territory within the confines of the Kickapoo Reservation as defined under the Treaty of May 18, 1854, and to such other lands as may be hereafter added thereto under any law of the United States.

ARTICLE II - MEMBERSHIP

***SECTION 1.** The membership of the Kickapoo Tribe shall consist of:

(a) All persons of Indian blood whose names appear on the official census roll of the Kickapoo Tribe as of January 1, 1937, provided that within one year from the adoption and approval of Amendment No. I to this Constitution and By-laws corrections may be made in the said roll by the Tribal Council subject to the approval of the Secretary of the Interior.

(b) All children born during the period from January 1, 1937, the date of the census roll, to the effective date of Amendment No. I, (September 19, 1960), to any member of the Kickapoo Tribe who is a resident of the Reservation at the time of the birth of said children; provided that children born off the reservation during that period to any member of the Kickapoo Tribe may be admitted to membership by a majority vote of the tribal members in general council.

(c) All children of one-fourth degree or more of Kickapoo blood born on or after the effective date of Amendment No. I, both of whose parents are members of the Kickapoo Tribe in Kansas.

(d) All children of one-fourth degree or more of Kickapoo Indian blood born on or after the effective date of Amendment No. I of a marriage between a member of the Kickapoo Tribe in Kansas and any other person; provided such child is admitted to membership by a majority vote of the tribal members in general council.

**Amendment I, approved September 19, 1960*

SECTION 2. The Kickapoo Tribe shall have the power to adopt persons of one-fourth degree or more Indian blood who are residing within the boundaries of the jurisdiction of the Potawatomi Area Field Office of the Bureau of Indian Affairs, and who are intermarried with members of the tribe, subject to the approval of the Secretary of the Interior, provided that such persons relinquish their membership in any other tribe.

P.O. Box 271 • Horton, KS 66439-0271
Office: 913/486-2131 • FAX: 913/486-2801

SWAM
March 31, 1993
Attachment 5

SECTION 3. The Tribal Council shall have the power to make ordinances, subject to review by the Secretary of the Interior governing the adoption of other persons of Indian blood, and governing future membership.

ARTICLE III - GOVERNING BODY

SECTION 1. The governing body of the Kickapoo Tribe shall be the Tribal Council which shall be composed of seven members elected by the tribe.

SECTION 2. The election shall be held annually of the first Monday in October. Within 30 days after the adoption and approval of the Constitution and By-laws the present Business Committee shall call, hold and supervise an election for members of the Tribal Council. The four persons receiving the highest number of votes shall serve until their successors are elected at the second annual election and the three receiving the next highest number of votes shall serve until their successors are elected at the first annual election which shall be held on the first Monday in October following the approval of this Constitution and By-laws. After this first election called by the Business Committee, the Councilmen elected at each annual election shall serve for two years.

SECTION 3. After each election of Councilmen the Tribal Council shall meet and organize for business by electing from its own number a Chairman, a Vice-Chairman, a Secretary and a Treasurer, and by appointing from the members of the Council of the tribe such other officials, committees or boards as may be deemed necessary.

***SECTION 4.** All members of the tribe who are 21 years of age or over shall be qualified voters in General Council meetings and tribal elections.

****SECTION 5.** Any member of the tribe, 21 years of age or over, shall be qualified to hold office as Councilman.

** Amendment II, approved June 8, 1962*
*** Amendment III, approved June 8, 1962*

ARTICLE IV - VACANCIES AND REMOVAL OF COUNCILMEN

SECTION 1. Upon a petition signed by 30 percent of the qualified voters of the tribe stating a complaint against a member of the Tribal Council and asking for his recall, the Tribal Council shall call a meeting of the tribe to vote on whether or not the Councilman shall be recalled. At such meeting the accused Councilman shall be given an opportunity to speak in his own defense. If such Councilman is recalled, the tribe shall proceed to elect a person to fill the unexpired term.

SECTION 2. The Tribal Council may be a vote of five of its members remove a Councilman for neglect of duty or misconduct in office, after giving such Councilman notice of the charge and an opportunity to be heard.

SECTION 3. Vacancies in the Tribal Council caused by removal, death or resignation may be filled by the Tribal Council by appointment of a member of the tribe to serve as Councilman for the unexpired term.

ARTICLE V - POWERS OF THE TRIBAL COUNCIL

SECTION 1. *Enumerated powers.* - The Tribal Council of the Kickapoo Tribe shall exercise the following powers, subject to any limitations imposed by the statutes or the Constitution of the United States.

(a) To negotiate with the Federal , State, and local governments;
(b) To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior;
(c) To veto any sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other assets of the tribe;
(d) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Kickapoo Tribe prior to the submission of such estimates to the Bureau of the Budget and to Congress;
(e) To make and enforce ordinances, which shall be subject to review by the Secretary of the Interior, providing for the manner or making, holding and revoking assignments of tribal land or interests therein;
(f) To provide for the levying of taxes and the appropriation of available tribal funds for public purposes of the Kickapoo Tribe;
(g) To lease tribal land in accordance with the law;
(h) To regulate the procedure of the Council itself and other tribal agencies and of tribal meetings and elections;
(i) To charter subordinate organizations for economic purposes and to delegate to such organizations, or to any subordinate boards, committees, or officials of the tribe, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power;
* **(j) To govern the conduct of persons on the reservation; and to provide for the maintenance of law and order and the administration of justice by establishing appropriate courts on the reservation and defining their duties and powers. All codes and ordinances enacted by the Tribal Council pursuant to this authority shall be subject to the approval of the Secretary of the Interior;

SECTION 2. *Future powers.* - The Tribal Council may exercise such further powers as may in the future be delegated to the Council by any member of the tribe or by the Secretary of the Interior or any other duly authorized official or agency of the State or Federal Government.

SECTION 3. *Reserved powers.* - Any rights and powers heretofore vested in the Kickapoo Tribe but not expressly referred to in this Constitution shall not be abridged by this article, but may be exercised by the people of the Kickapoo Tribe through the adoption of appropriate by-laws and constitutional amendment.

**Amendment V, approved October 10, 1979*
***Amendment VI, approved April 3, 1992*

SECTION 4. *Manner of review.* - Any resolution or ordinance which by the terms of this Constitution, is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the reservation who shall, within ten days thereafter, approve or disapprove the same.

If the Superintendent shall approve any ordinance or resolution, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may, within 90 days from the date of enactment annul the said ordinance or resolution for any cause, by notifying the Tribal Council of such decision.

If the Superintendent shall refuse to approve any ordinance of resolution submitted to him, within ten days after its enactment, he shall advise the Tribal Council of his reasons therefore. If these reasons appear to the Tribal Council insufficient, it may, by a majority vote, refer the ordinance of resolution to the Secretary of the Interior who may, within 90 days from the date of its enactment, approve the same in writing, whereupon the said ordinance or resolution shall become effective.

ARTICLE VI - REFERENDUM

SECTION 1. Upon petition by 30 percent of the qualified voters of the tribe protesting any action of the Tribal Council, the Tribal Council shall call a special meeting of the tribe to vote on whether the action of the Council shall be vetoed or upheld. The action of the tribe shall be final.

ARTICLE VII - AMENDMENTS

This Constitution and By-laws may be amended by a majority vote of the qualified voters of the tribe voting at an election called for that purpose by the Secretary of the Interior, provided that at least 30 percent of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment upon receipt of a request from the Tribal Council or a petition signed by one-third of the qualified voters.

BY-LAWS OF THE KICKAPOO TRIBE IN KANSAS OF THE KICKAPOO RESERVATION IN KANSAS

ARTICLE I - DUTIES OF OFFICERS

SECTION 1. *Chairman of the Tribal Council.* - The Chairman shall preside over all meetings of the Council and of the tribe, and shall perform the usual duties of a Chairman, and exercise any authority delegated to him by the Council

SECTION 2. *Vice-Chairman of the Tribal Council.* - The Vice-Chairman shall assist the Chairman when called upon to do so and in the absence of the Chairman he shall preside. When so presiding, he shall have all the rights, privileges and duties as well as the responsibilities of the Chairman.

SECTION 3. *Secretary of the Tribal Council.* - The Secretary shall conduct all tribal correspondence and shall keep an accurate record of all matters transacted at tribal council meetings, which record shall be available to the Superintendent of the jurisdiction and the Commissioner of Indian Affairs, upon their request.

SECTION 4. *Treasurer of the Tribal Council.* - The Treasurer shall accept, receive, receipt for, preserve and safeguard all funds in the care of the Council. He shall deposit all funds in such depositary as the Tribal Council shall direct and shall make and preserve a faithful record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his possession and custody, at such times as are requested by the Tribal Council. He shall not pay out or otherwise disburse any funds in his possession or care except in accordance with a resolution duly passed by the Tribal Council. When in the opinion of the Tribal Council or the Commissioner of Indian Affairs, sufficient funds have accumulated to the Tribal Council Treasury to make it advisable to bond the Treasurer, he shall be required to give a bond satisfactory to the Tribal Council and Commissioner of Indian Affairs.

ARTICLE II - MEETINGS

SECTION 1. Regular meetings of the Tribal Council shall be held in October, January, April, and July on such date and at such place as may be designated by the Tribal Council, and at such other regular times as the Council may decide. Special meetings of the Council may be called by the Chairman at any time.

SECTION 2. Five members of the Tribal Council shall constitute a quorum.

SECTION 3. The Tribal Council shall call a regular meeting of the tribe in January and June of every year at which meeting the Council shall report its activities in the preceding six months and take up matters of general tribal interest. Special meetings of the tribe in addition to those required under the Constitution may be called in the discretion of the Tribal Council.

***SECTION 4.** Twenty-five qualified voters of the tribe shall constitute a quorum at any tribal meeting.

ARTICLE III - RATIFICATION OF CONSTITUTION AND BY-LAWS

This Constitution and By-laws, when adopted by a majority vote of the voters of the Kickapoo Tribe voting at a special election called by the Secretary of the Interior, in which at least 30 percent of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval, and shall be in force from the date of such approval.

**Amendment IV, approved June 8, 1962*

CERTIFICATION OF ADOPTION

Pursuant to an order, approved December 18, 1936, by the Secretary of the Interior, the attached Constitution and By-laws was submitted for ratification to the Kickapoo Tribe of the Kickapoo Reservation in Kansas, and was on January 23, 1937, duly ratified by a vote of 70 for , and 8 against, in an election which over 30 percent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935, (49 Stat. 378).

ALEX ALLEN
Chairman of Election Board.

ROBERT MASQUAT
Secretary of the Election Board.

H.E. BRUCE, *Superintendent.*

I, Harold L. Ickes, the Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached Constitution and By-laws of the Kickapoo Tribe in Kansas.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said Constitution or By-laws are hereby declared inapplicable to these Indians.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said Constitution and By-laws.

Approval recommended February 18, 1937.
WILLIAM ZIMMERMAN, JR.
Assistant Commissioner of Indian Affairs.

HAROLD L. ICKES,
Secretary of the Interior.
SEAL

WASHINGTON, D.C., *February 26, 1937.*

To: The Kansas Senate and House of Representatives

We the undersigned request that you vote to approve the Kickapoo Nation - State of Kansas Indian Gaming Compact.

Thank you. 1-19-05

Name	Address	Phone No.
Jim Hatton	Rt 3 Box 109 Savannah, Mo.	324-3568
Larry L Walker	5711 Amazonia Rd St Joe Mo.	233-4908
Lori M. Walker	5711 amazonia Rd St Joseph Mo	233-4408
Mike Sellers	2915 Angelique St Joe Mo	232-3349
[illegible]	1820 Clay St-Joe Mo	233-1884
Shirley McCasey	2308 S. 15th " "	232-7922
J B McCasey	2308 So 15th " "	232-7922
Henry L Bibb	3112 St Joseph ave	279-9722
Vicki Welter	3112 St Joe Ave	279-9722
Kelly L Reilly	2035 5th Apt B Savannah Mo	324-3264
Donna Brenno	2904 Olive St. Joe Mo	233-1859
Rich Hensley	3507 Monterey St. Joe Mo.	233-1859
Sherry Brenno	134 Hemwik St. Joe. Mo.	238-1804
Pam Bowers	3505 Monterey St. Joe Mo.	279-5993
DeWayne Bowers	" " " " "	" "
Gene King	Box 211 Elwood Kan	365-4224
Carol King	" " "	" "
Bob Howard	505 9th. Sav. Mo.	324-3059
Esta Howard	505 S. 6th Savannah Mo	324-3059
Francis A. Kneib	4621 Gene Field St. Joe Mo	232-8993
Alice E. Kneib	4621 Gene Field St. Joe MO	232-8993
Debbie Ash	1810 Blackwell Rd St Joe, MO	232-9756
Lois Allen	2210 Green Valley Pl St. Joe Mo	233-1564
Lewis Stroud	1002 prospect ave. St Joe Mo	233-2467
Lynda M. Stroud	1002 Prospect Ave St Joe Mo.	233-2467
Eddie Stroud	924 prospect ave. St Joseph mo.	279-5874
Francis E Higgins	924 Prospect St Joseph Mo.	233-5436
Merle E Yager	2924 Monterey	233-0890
Marcel Koch	2525 N. 3rd	279-7875
Kyle Koch	2525 N 3rd	279-7875
Mary Gable	4602 Gazelle	364-5882
Mark Furlong	4915 Stonecrest Terr	279-4968
Mary E Riddle	4602 Gazelle St Joe MO	364-5882
William J. Furlong	4915 Stonecrest Terr	279-4968 57

To: The Kansas Senate and House of Representatives

We the undersigned request that you vote to approve the Kickapoo Nation - State of Kansas Indian Gaming Compact.

Thank you.

Name	Address	Phone No.
Bernard Meng	Troy, Kansas	913-985-3779
Irene Meng	Troy, Kans.	913 985-3329
Mary Green	St Joseph Mo	233-3588
Jack McEnaney	St Joseph Mo	233-6804
Mike McEnaney	St Joseph Mo	387-8064
Robert Stafford	" "	
Darrell McEnaney	St Joe Mo.	
Angie Zimmerman	617 Powell St Joseph Mo	364-6647
Kenneth L. Dyson	Wathena Ks.	989-3592
Walter Reed	Os. P. Ks	451-1707
Dale Hostetter	Helena Mo.	816-369-3155
R. E. Christenson	Troy Ks.	
Floyd Blanton	502 Court Atchison, KS.	
Roger Myers	Schleswig Iowa	
Gary L. Dillon	5012 Addison St Joe MO	232-8579
Steven E. Peterson	2108 N. Leonard Rd St. Joseph MO.	
Charles D. Nemitz	RR 8 St. Joseph, MO	
Fred Falconer	2205 Park Ave St Jo. Mo	
Chris Butcher	5017 Addison	232-8579

The Kansas Senate and House of Representatives

We the undersigned request that you vote to approve the Kickapoo ...rion - State of Kansas Indian Gaming Compact.

Thank you.

Name	Address	Phone No.
Alberta Byer	Hiawatha, Ks.	(913) 742-2423
Sue Moler	Hiawatha, K-1	None
Alan B. Edwards	Hiawatha, Ks	(913) 742-2206
Charles McFeeters	Hiawatha Kansas	486-2457
Jerry W. Lewallen	Horton, Ks	
Leona R. Lewallen	Hiawatha, Ks	
Kathy M. Dupa	HIAWATHA, Ks.	
Keith McGuire	Hiawatha	913-742-3206
Alvin Edmondson	114 Iowa Hiawatha Ks	
Connie J. Smith	509 Delaware Hiawatha Kansas	742-7330
Sandra Inwood	727 Iowa Hiawatha, KS	
Helen Looney	727 Iowa Hiawatha, Ks.	
Pauline C. Herold	Hiawatha Ks	
Jerry L. Armstrong	614 Miami Ks, Hiawatha	742-3439
Teresa Cashman	508½ Oregon Hiawatha	None
Duane Cashman	508½ Oregon Hiawatha	none
Glenn Flanagan	410 N-7 Hiawatha.	
Bill Gaede	100 Kickapoo Hiawatha KS	742-2082
Gary Legus	508½ Oregon	
R. Meyer Sr.	RT 1 Box 414 Everest Ks. 66424	548-1499
Art Goodman	White Cloud, K.	
Robert Brown	402 E 11th Horton KS	486-2204
Bob Ann Hinkle	Same	Same
Rita Weber	Sabetha, Ks	336-2587
Rose Coulter	Hiawatha Ks	
Hazel Coulter	Hiawatha, Ks.	
Paul Ferris	Effingham, Kans.	872-3567
Carol J. Ferris	Effingham Kans.	872-3567
Elmer White	Hiawatha KS	none
Ricky Blunt	HiawAtha, KS	742-2174
Linda White	Hiawatha KS	
Jim Ellis	HIAWATHA, KS-	
Don Janeczek	Robinson KS	742-2772
J. A. Weber	Willis KS	547-3436

5-9

To: The Kansas Senate and House of Representatives

We the undersigned request that you vote to approve the Kickapoo Nation - State of Kansas Indian Gaming Compact.

Thank you.

Name	Address	Phone No.
Jerry Hulsenett	Rt. 1, Redfield, Ks. 66769	316-829-5285
Pete Nemec	210 Dewey, Plattsburg Mo. 64477	816-539-3885
Randy White	Box 350 Cosby Mo 64436	816-662-2495
BOB McMULLEN	2915 KARNES ROAD	816-364-3416
Jim Logan	2201 S 10th St. 64503	816-233-6100
Don Worley	2901 No 10	8162640000
Vernon Fuetters	1710½ Dewey ave StJo	8162335937
Darrel Spencer	Box 92 Clarksdale mo	816 3935312
Don McGhee	4720 Stonefield Rd R5. St Joseph	364-3868
Joe O'Day	R2 Box 164 Stewartsville Mo.	816-473-3931
Don Lance	Box 112 Graham Mo.	816 939-2737
Carol Sims	2219 Dewey Ave.	816 2793775
Loyetta Cassity	73 Leopard Cr	2793456
Janet Hodson	2508 No 4th	232-3730
Keith White	3001 Down-St Joseph Mo	233-5116
Mike Frieden	Faucett MO.	238-0626
JB McAvoy	2308 So 15th	2321922
Bill Dickerson	409 N. 1st Savannah, Mo	324-5104
Donald Reining	RR#2 Atchison Ks	367-7223
Evan Baldwin	6821 K Hwy St. Joseph, Mo	279-6181
Marlin Studer	St. Joe Mo.	232-0333
Tom Nickel	St Joseph	2330333
Keith Foster	Maund City MO	442-5844
Nelson Bricker	Maund City, Mo	442-5862
Jim Lalbaute	St Joseph MO R#3	364-2157
William W Foster	6156 Hyde Park St Joseph Mo. 64504	816-238-0202
Merle E. Yager	2924 MONTEREY St Joe Mo-64507	233-0890
Bob Anderson	St Joe R 3	2330006
Clarence Asher	RR1 St Joseph, Mo	279-8504
Betty Lou Wise	1020 Randolph St Joseph Mo	2334491
Donald A Hurst	216 Redman Dr.	238-9140
Ron Bailey	Union Star mo. 64484	593-2373
Robert Hill	P.O. Box 8183 St. Joseph, Mo	233-8603

...tate and House of Representatives

We the undersigned request that you vote to approve the Kickapoo - State of Kansas Indian Gaming Compact.

Thank you.

Name	Address	Phone No.
[illegible]	522 Bronco Hiawatha, Kansas	742-2480
Daniel W Hemmerle	R.R. 1 Box 243 Hiawatha, Kansas	742-3403
[illegible]	Box 445 Hiawatha, Kansas	742-3618
Cathy Herman	Box 105 Hiawatha, Ks	544-6621
Regenia Fuller	207 Teale Public Circle	345 4155
Freddye Keeple	244 W. 13th Horton Ks	486-3592
Jay Means	404 Woodbury Dr. Hiawatha, Ks.	742-3711
Darin Kimball	719 N 1st, Hiawatha, KS.	742-2516
Mark Layd	RR 4 Box 68, Hiawatha, KS	474-3715
[illegible]	RR 5 Box 181 Hiawatha, Ks	1742-3600
Robert Martha	Route 3 Box 176 Hiawatha KS	742-3903
[illegible]	Rt 1 Box 216 Hiawatha Ks	742-2358
[illegible]	2511 S.E. Shawnee - Tecumseh, KS	379-0848
Melodye F. Hathaway	Rt 1 Box [illegible] Hiawatha KS	742-7768
Vivian R. Constable	Rt 1 Box 81, Everest, KS	548-7323
[illegible]	507 Delaware St. Hiawatha KS	742-3036
Ruth + Lyle Dodge	Rt. 3 Box 31, Hiawatha, KS	467-5653
[illegible]	106 Hiawatha Pub. Hiawatha, Ks.	742 7314
Geraldine D. [illegible]	807 Shawnee St.	742-2644
[illegible]	Rt 2 Box 171	742-2377
Donald L Dodds	209 Wilson St. Falls City, NE	402-245-3917
Julie Y. Nutt	1121 Box 130, Hiawatha Kan	913 742-2809
Alvera Stokes	1102 Worthy Hia. KS	" 742-7462
[illegible]	RD Box 458, Elwood, KS	365-5156
Gregory N Allen	78 FORT ELFSBORG RD SALEM NJ	609 935-1432
Allen Ruff	Box 542 Union Star Mo.	816 5932587
Leonard Wiltt	St + Box 169 Rising Ks.	742-245-4517

5-11

MEMORANDUM

Kansas Legislative Research Department

300 S.W. 10th Avenue
Room 545-N – Statehouse
Topeka, Kansas 66612-1504
Telephone (913) 296-3181 FAX (913) 296-3824

March 29, 1993

To: Joint Committee on Gaming Compacts

From: Mary Galligan, Principal Analyst

Re: Potawatomi and Kickapoo Gaming Compacts

The following summarizes the manner in which the Committee's guidelines are addressed in the two tribal-state gaming compacts submitted for the Committee's review on March 19. Attached is a copy of recommended modifications the Committee has submitted to the Governor pursuant to 1993 Senate Sub. for House Sub. for H.B. 2023.

Guidelines

1. **Only one gaming facility on each reservation, to be located on reservation land. Lands should be definitely described in the compact and not by treaty.**

   Both compacts provide for gaming to be conducted at only one facility at a time, and would permit the facility to be located on the reservation or on land contiguous to the reservation. Both compacts specifically state that there is no requirement for approval of any tribal-state compact that would authorize class III gaming on land that is not within or contiguous to an existing reservation. The Potawatomi compact does not include a description of a specific location for the gaming facility.

   The Kickapoo compact includes specific descriptions of locations for both its temporary and permanent gaming facilities. The land on which the Kickapoo propose to build the permanent facility must be placed in trust in order for it to be used for gaming purposes. In the Kickapoo compact the Governor reserves the right to withhold concurrence or approval of gaming activities in land acquired after the effective date of the IGRA.

   Potawatomi compact: Section 3(H) and (I), page 6
   Kickapoo compact: Sec. 3(g), (h), and (i), pages 7-8

SWAM
March 31, 1993
Attachment 6

2. **Limitation on hours opened. Any gaming facility should be closed a minimum of six hours during each 24-hour period.**

This guideline is not addressed in either compact.

3. **No video gambling (games).**

Video lottery machines, as defined in Kansas statutes would be allowed, but a moratorium would be placed on their use until either the tribe and the state agree to lift the moratorium or state law is amended to repeal the existing prohibition against use of video lottery machines.

Potawatomi compact: Sec. 3(A), (B) and (D), pages 3-5 Sec. 5(E), page 7 and (AJ), page 13

Kickapoo compact: Sec. 3(a), (b), and (c), pages 4-5 Sec. 5(f), page 9 and (z) page 14

4. **No sports betting.**

Neither compact includes sports betting among the list of authorized games. Any game not included in the list of authorized games would be prohibited. In addition, sport pool wagering is included among a list of games that would be prohibited by the Potawatomi compact.

Potawatomi compact: Sec. 3(A) and (B), pages 3-4
Kickapoo compact: Sec. 3(a) and (b), pages 4-5

5. **Definite age restrictions. No one under 21 years of age allowed on the casino floor or allowed to play any of the games located thereon. Persons under 21 years of age would be allowed in all other areas of the facility. (Restaurants, etc.)**

Both compacts would require gaming employees to be 18 years of age or older. Persons under the age of 21 would be prohibited from gaming.

Potawatomi compact: Sec. 3(E), page 5 and Sec. 5(H), page 8
Kickapoo compact: Sec. 3(d), page 5 and Sec. 5(h), page 10

6. **Control of alcohol. No liquor of any type allowed on the gaming floor. No one under 21 years of age allowed to purchase or consume liquor on any part [of] the premises at any time.**

Both compacts would prohibit serving and consuming alcohol on the gaming floor

at any time. No liquor could be served or consumed between 2:00 a.m. and 9:00 p.m.

Potawatomi compact: Sec. 26(C), page 35
Kickapoo compact: Sec. 26(c), page 42

7. **Kansas state sales tax should be collected and remitted to the State of Kansas for sales of any product, equipment, or merchandise to non-Indians.**

These provisions essentially repeat the relevant portion of IGRA (25 USC §2710(4)) that prohibits the state from taxing gaming. The state's authority to collect taxes as provided by state and federal law would not be diminished by the compact.

Potawatomi compact: Sec. 31(C), page 43
Kickapoo compact: Sec. 31(c), page 51

8. **Kansas income tax should be collected and remitted to the State of Kansas for gaming winnings over $1,000 by non-Indians.**

Both compacts provide that the Tribe will furnish the state with federally required winnings reports. IGRA (§2719(d)(1)) imposes on gaming activities conducted under a tribal-state compact relevant sections of the IRS code concerning reporting and withholding of taxes on winnings from gaming or wagering in the same manner as those provisions apply to state gaming and wagering operations. In general, the IRS code (§3402(q)) requires that winnings over $5,000 (increased from $1,000, effective January 1, 1993) are subject to withholding at a rate of 28 percent (increased from 20 percent, effective January 1, 1993) as long as proceeds of the wager are at least 300 times as large as the amount wagered. Winnings from bingo, keno, and slot machines are not subject to federal withholding.

By statute, Kansas Lottery prizes are subject to withholding whenever federal income tax is required to be withheld. (Winnings of over $5,000 from state lotteries are subject to federal withholding.) Winnings at racetracks are also subject to tax withholding as required by the IRS Code discussed above.

Potawatomi compact: Sec. 31(C), page 43
Kickapoo compact: Sec. 31(c), page 51

9. **Infrastructure reimbursement should be agreed to by the Indian nation for any roads, highways, and maintenance of the same provided by either the state or adjoining cities, townships, *etc.***

Both compacts provide for consultation with local officials regarding maintenance and safety of roads, bridges, and other infrastructure made necessary by implementation of the compacts. Both compacts also include helping "fund

operations of local government agencies" among the list of purposes for which net revenues derived from gaming may be used.

Potawatomi compact: Sec. 26(E), page 35 and Sec. 27(E), page 36
Kickapoo compact: Sec. 26(e), page 42 and Sec. 27(e), page 43

10. **All Indian law enforcement agents or officers should be trained at the Kansas Bureau of Investigation Training Center.**

All members of the tribal police force would have to be trained at the Kansas Law Enforcement Training Center, or the Highway Patrol Training Center, or receive comparable training approved by the State Gaming Agency or the federal government. The state would be reimbursed through the assessment process for costs associated with that training.

Potawatomi compact: Secs. 5(AH), page 13 and 25(A), page 33
Kickapoo compact: Secs. 5(x), page 14 and 25(a), page 39

11. **Availability as to audit, inspection, and review of the books of the gaming facility and its management and/or its operation should be available at any time as often as needed or required by the State of Kansas.**

Both compacts limit access to the facility and to books to normal operating hours provided that monitoring and review of books and records does not interfere with normal business practices of the gaming operation.

Potawatomi compact: Sec. 12(A) and (B), pages 21-22
Kickapoo compact: Sec. 12(a) and (b), pages 24-26

12. **The State of Kansas and the proper gaming authorities should have available for their review any proposed management contract, background investigations, and reports before said management contract is ratified.**

Both compacts provide that any management contract will be submitted to the State Gaming Agency at the time it is submitted to the National Indian Gaming Commission for approval.

Potawatomi compact: Sec. 20, pages 28-29
Kickapoo compact: Sec. 20, page 34

13. **Any additional gaming facilities should be negotiated under a separate and properly negotiated compact.**

Both compacts include provisions that would specifically require another compact for gaming facilities on land that is not on or contiguous to an existing reserva

tion. The Kickapoo compact would reserve the Governor's right to withhold concurrence for gaming activities on land acquired after the effective date of IGRA.

Potawatomi compact: Sec. 3(I), page 6
Kickapoo compact: Sec. 3(h) and (i), pages 7-8

14. **There should be a requirement that any worker within the area in which gaming occurs should be 21 years of age or over, and that the employees be covered by Unemployment Compensation and Workers Compensation benefits.**

Both compacts would require gaming employees to be 18 years of age or older. All employees would be covered by unemployment compensation and workers compensation benefits.

Potawatomi compact: Sec. 5(H), page 8 and Sec. 26(D), page 35
Kickapoo compact: Sec. 5(h), page 10 and Sec. 26(d), page 42

15. **Background checks should be made available for review by the State of Kansas for any member of senior management, owners of 3 percent or more, and anyone connected with the actual running, overseeing or conducting of any of the games of chance on the gaming facility floor.**

Under terms of both compacts the state would conduct all required background checks. Licenses could be denied, suspended or revoked if the State Gaming Agency, the Tribal Gaming Agency, or the National Indian Gaming Commission determine that an applicant or licensee poses a threat to the public interest or effective regulation of gaming or creates or enhances the dangers of unsuitable, unfair, or illegal practices.

Potawatomi compact: Sec. 16, pages 24-25; Sec. 17, pages 25-26; Sec. 21, pages 29-30; and Sec. 22, pages 30-31

Kickapoo compact: Sec. 16, pages 27-29; Sec. 17, pages 29-31; Sec. 18, pages 31-33; Sec. 21, pages 34-36; and Sec. 22, pages 36-38

16. **There should be limits on bets.**

Both compacts leave establishment of bet limits to the rule-making process. Betting limits applicable to each table would have to be displayed at that table.

Potawatomi compact: Sec. 7(B)(4), page 16
Kickapoo compact: Sec. 7(b)(4), page 18

TO: Governor Joan Finney

FROM: Joint Committee on Gaming Compacts

DATE: March 26, 1992

RE: Recommended Modifications of Gaming Compacts

The Joint Committee on Gaming Compacts has completed its review of the proposed gaming compacts which you submitted to the Joint Committee on March 19, 1993. In accordance with 1993 Senate Substitute for House Substitute for House Bill No. 2023, the Joint Committee recommends the following modifications to these compacts.

Compact With Prairie Band of Potawatomi

1. Inclusion of a map of the reservation and the land where the gaming facility will be located.

2. Clarification of games to be prohibited by amending section 3(B), page 4, to prohibit "class III gaming not expressly enumerated in section 3(A), including but not limited to lotteries as defined in section 5, parimutuel wagering, off track betting, sports betting and club keno," unless the compact is amended.

3. Addition of a provision in section 26(C), page 35, that sale, possession and consumption of alcoholic and cereal malt beverages in the gaming facility shall be regulated pursuant to state law as provided in 18 U.S.C. 1161.

4. Addition of a provision in section 31(c), page 43, that, to the extent federal law requires the tribe to withhold federal income tax from gaming winnings, the tribe will withhold state individual income tax from gaming winnings of non-Indians in the amounts provided by applicable Kansas law.

5. Addition of a provision in section 16, pages 24-25, that, notwithstanding any other provision of the compact, additional background investigations shall be conducted upon every person and entity specified in, and to the extent required by, the regulations of the National Indian Gaming Commission.

6. Inclusion of restrictions on the use of credit to wager.

7. As required by section 2(f) of 1993 Senate Substitute for House Substitute for House Bill No. 2023, inclusion in section 34, page 44, of: (a) A provision recognizing the Kansas

legislature's right to request by concurrent resolution the renegotiation or replacement of the compact; and (b) a provision that, on request for renegotiation or replacement of the compact, the current compact remains in effect until renegotiated or replaced.

8. Modification of section 2(C) to provide that the state recognizes that the tribe believes gaming may provide positive benefits rather than the state recognizes that gaming may provide positive benefits.

Compact With Kickapoo Nation

1. Same as number 1 above.

2. Same as number 2 above and additionally defining "club keno" and "lottery" in the definition section (section 3(b), page 5).

3. Same as number 3 above (section 26(c), page 42).

4. Same as number 4 above (section 31(c), pages 51-52).

5. Same as number 5 above (section 16, pages 27-29).

6. Same as number 6 above.

7. Same as number 7(a) above (section 34, page 53).

8. Same as number 8 above (section 2(b) and (c), page 3).

9. Modification of section 12(a), page 24, to allow agents of the state gaming agency and the Kansas Bureau of Investigation to have "free and unrestricted" access to all areas of the gaming facility during normal operating hours without giving prior notice.

Clyde D. Graeber, Chairperson

Jerry Moran, Vice-chairperson

Tim Shallenberger

Mark V. Parkinson

Kathleen Sebelius

Richard R. Rock

SUBCOMMITTEE REPORT

H.B. 2047

Department of Social and Rehabilitation Services

Senator August Bogina, Jr.
Subcommittee Chair

Senator Marge Petty

Senator Richard Rock

Senator Alicia Salisbury

Senator Robert Vancrum

SWAM
March 31, 1993
Attachment 7

SUBCOMMITTEE REPORT

Agency: Social and Rehabilitation Services **Bill No.** 2087 **Bill Sec.** 17

Analyst: Howard **Analysis Pg. No.** 542 **Budget Page No.** 530

Expenditure	Agency Est. FY 93	Governor's Rec. FY 93	House Sub. Adjustments
All Funds:			
State Operations	$ 216,457,566	$ 204,764,429	$ (1,979,529)
Local Aid	56,060,011	56,060,011	--
Other Assistance	926,858,413	924,491,432	(12,815,102)
Subtotal -- Operating	1,199,375,990	$ 1,185,315,872	$ (14,794,631)
Capital Improvements	6,597,638	6,718,657	--
TOTAL	$ 1,205,973,628	$ 1,192,034,529	$ (14,794,631)
State General Fund:			
State Operations	$ 86,768,271	$ 80,655,985	$ (1,049,626)
Local Aid	47,938,715	43,450,485	--
Other Assistance	248,642,451	251,911,782	(4,428,943)
Subtotal -- Operating	383,349,437	$ 376,018,252	$ (5,478,569)
Capital Improvements	339,263	339,263	--
TOTAL	$ 383,688,700	$ 376,357,515	$ (5,478,569)
FTE Positions	3,955.7	3,917.0	--

Agency Estimate/Governor's Recommendation

The FY 1993 estimated operating budget submitted by the Department of Social and Rehabilitation Services (SRS) is an increase of $30.3 million from the amount approved by the 1992 Legislature as adjusted by State Finance Council action. The revised estimate from the State General Fund (SGF) equals the approved amount. However, the agency estimates increased expenditures of $11.4 million from the SRS Fee Fund above the amount approved by the 1992 Legislature. The state share of the supplemental request is funded from the SRS Fee Fund. No SGF supplemental is requested.

The agency's estimate of $30.3 million in expenditures in FY 1993 above the approved amount includes $10.0 million in state operations and $20.3 million in aid and assistance programs.

The Governor's FY 1993 operating budget recommendation is an increase of $16.2 million from the amount approved by the 1992 Legislature as adjusted by State Finance Council action. The recommendation from the State General Fund is a reduction of $7.3 million from the approved amount. The Governor's recommendation includes increased expenditures from the SRS Fee Fund of $9,952,048 above the approved budget. The recommendation is a reduction of $14.3 million from the agency's revised estimate including an SGF reduction of $7.3 million. The state share of the medical assistance supplemental is funded from the SRS Fee Fund.

The Governor's FY 1993 recommendation increases overall agency turnover savings to 6.0 percent and applies higher rates to selected programs: KanWork/JOBS Field Staff -- 20 percent; Youth Services Field Staff -- 16.6 percent; and Family Services Staff -- 35.9 percent. These salary reductions, generated by increasing agency turnover rates, comprise approximately $5.1 million in savings and are intended to reflect the pace of agency hiring of new staffing approved by the 1992 Legislature. The Governor also recommends a reduction in the agency's position authority of 39.0 FTE positions in Youth Services associated with the Zebley disability recoupments. Other operating expenditure increases from the approved budget include a $970,000 increase in federal Title IV-E funds to be matched with university dollars for training; $1.3 million as a technical adjustment to shift employment training under the KanWork program to state operations; and other miscellaneous adjustments in state operations, some of which are connected with new staffing.

House Subcommittee Recommendation

The House Subcommittee concurs with the recommendations of the Governor with the following adjustments:

1. In accordance with the Governor's Budget Amendment, delete $650,457 from the State General Fund as a technical adjustment in the cash assistance program.

2. Delete $1,013,081 from the State General Fund ($8,064,103 All Funds) in projected savings in regular medical assistance based on year-to-date expenditures.

3. The Subcommittee would note that the reductions made in items 1 and 2 take into account additional expenditures of $3.4 million that have been incurred by the agency as a result of the General Assistance and MediKan litigation and delay in program modifications from January 1 to March 1, 1993. Based on year-to-date expenditures, the agency can absorb these costs.

4. Delete $800,000 from the State General Fund ($1,818,182 All Funds) from the adult care home budget to delete a nursing facility rate adjustment. The Subcommittee would note that this action should still result in reimbursement rates to nursing facilities that meet minimum federal thresholds and the Subcommittee would note that nursing homes are paid a significantly greater percentage of their costs than many other providers. The Senate should review this item to determine whether litigation will be averted by this rate increase and to ensure that applicable federal requirements are met.

5. Reappropriate savings of $225,405 from the State General Fund ($542,360 All Funds) in the Home and Community Based Services waiver for the elderly and disabled to FY 1994 to increase funding for community based services in FY 1994.

6. Delete $1.5 million from the State General Fund in day care. The Subcommittee was informed that the agency held back $1.5 million in its allocations to the area offices for a potential rate increase based on the results of a new day care rate study.

7. The Subcommittee notes that current year-to-date expenditures for foster care reflect a projected shortfall of at least $2.3 million from the State General Fund. The Subcommittee notes that new initiatives recommended by the Legislature last year experienced delays in beginning and that the Governor deleted funding of approximately $5.1 million in state operations due to these delays. At the current time most staffing has been hired and foster care growth appears to be slowing. The Subcommittee was informed that the agency hopes to effect changes to halt the need for this supplemental and recommends that this item be reviewed by the Senate or during the Omnibus Session.

8. Delete $240,000 from the State General Fund in projected day reporting savings in FY 1993. The Subcommittee received late information that contracts have been let for the full amount of the appropriation although children did not begin to receive services until March. The contracts assumed certain start-up costs and upfront staff training expenses. The Subcommittee recommends that the Senate further review this project to determine whether any savings actually exist.

9. Delete $1,049,626 from the State General Fund ($2,085,029 All Funds) in projected agencywide salary savings based on year-to-date expenditures.

10. The Subcommittee received testimony from the agency regarding a projected deficit of approximately $750,000 from the State General Fund in other operating expenditures. The Subcommittee does not recommend additional funding and directs the agency to take necessary actions to limit expenditures in this area. A substantial portion of this deficit is attributed to the new staff authorized by the 1992 Legislature. The Subcommittee would note that the agency was specifically asked last year about the need for additional OOE for new staff and stated at that time that additional costs for other operating expenses could be absorbed within the agency budget.

11. Add $105,500 from federal funds in state operations as a technical adjustment as recommended by Budget Amendment No. 1 to reflect federal funds for the case mix demonstration project.

House Committee Recommendation

The House Committee concurs with the recommendations of the Subcommittee.

House Committee of the Whole Recommendation

The House Committee of the Whole concurs with the recommendations of the Committee.

Expenditure	House Adj. FY 93	House Rec. FY 93	Senate Sub. Adjustments
All Funds:			
State Operations	$ (1,979,529)	$ 202,784,900	$ 2,252,676
Local Aid	--	56,060,011	--
Other Assistance	(12,815,102)	911,676,330	(3,325,047)
Subtotal -- Operating	$ (14,794,631)	$ 1,170,521,241	$ (1,072,371)
Capital Improvements	--	6,718,657	--
TOTAL	$ (14,794,631)	$ 1,177,239,898	$ (1,072,371)
State General Fund:			
State Operations	$ (1,049,626)	$ 79,606,359	$ --
Local Aid	--	43,450,485	--
Other Assistance	(4,428,943)	247,482,839	997,111
Subtotal -- Operating	$ (5,478,569)	$ 370,539,683	$ 997,111
Capital Improvements	--	339,263	--
TOTAL	$ (5,478,569)	$ 370,878,946	$ 997,111
FTE Positions	--	3,917.0	39.0

Senate Subcommittee Recommendation

The Senate Subcommittee concurs with the recommendations of the House with the following adjustments:

1. Add $461,299 from the State General Fund in regular medical assistance in accordance with the agency's March caseload estimates. The recommendation is a net reduction of $1,388,515 in All Funds from the House recommendation.

2. Add $246,311 from the State General Fund ($559,797 All Funds) in the nursing home program in accordance with the agency's March caseload estimates.

3. Add $239,501 from the State General Fund ($238,671 All Funds) in cash assistance based on the agency's revised March caseload estimates.

4. Delete $2,785,000 from the LIEAP program in FY 1993, and add this funding to the program in FY 1994. The Governor's recommendation expends additional available federal block grant funds in FY 1993, resulting in a program reduction of approximately $5.6 million from FY 1993 to FY 1994. The Subcommittee recommendation would provide for roughly equivalent LIEAP funding of approximately $13.0 million in FY 1993 and FY 1994.

5. The Subcommittee received information regarding a potential shortfall in the foster care budget in FY 1993 and FY 1994. The Subcommittee requests a Governor's Budget Amendment to address these potential shortfalls which are due to a greater number of children in the system and higher costs than currently included in the budget.

6. Add 39.0 FTE positions and $2,252,676 from the SRS Fee Fund to restore the "Zebley" positions deleted by the Governor in FY 1993. Two years ago the Legislature authorized SRS to fund 39.0 FTE positions from reimbursements to the agency on behalf of expenditures made for children subsequently qualifying for federal disability benefits. The Governor's recommendation deletes 39.0 FTE in FY 1993 and FY 1994, and shifts the Zebley reimbursements to fund part of the regular family services budget and to alleviate the need for SRS Contingency funds in FY 1994. The Subcommittee was informed that these positions have in fact been filled during FY 1993, but that this fact was erroneously communicated to the Governor during the budget process due to a coding error. The Subcommittee recommendation would provide for funding of these positions in FY 1993 from higher than anticipated Zebley receipts ($275,878) and from remaining balances in the SRS Fee Fund ($1,976,798).

7. Add one-time funding of $50,000 from the State General Fund to assist St. Joseph's Nursing Facility with funding shortfalls. The Subcommittee would stress that this is a one-time appropriation and that it expects the facility to work with SRS in resolving its administrative cost problems.

SUBCOMMITTEE REPORT

Agency: Social and Rehabilitation Services **Bill No.** 2047 **Bill Sec.** 2

Analyst: Howard **Analysis Pg. No.** 542 **Budget Page No.** 530

Expenditure	Agency Req. FY 94	Governor's Rec. FY 94	House Sub. Adjustments
All Funds:			
State Operations	$ 251,376,577	$ 213,255,017	$ (12,659,120)
Local Aid	69,610,613	61,809,212	100,000
Other Assistance	1,083,190,497	990,200,803	(22,648,907)
Subtotal -- Operating	1,404,177,687	$ 1,265,265,032	$ (35,208,027)
Capital Improvements	16,657,656	4,002,648	--
TOTAL	$ 1,420,835,343	$ 1,269,267,680	$ (35,208,027)
State General Fund:			
State Operations	$ 104,010,489	$ 86,898,538	$ (7,753,336)
Local Aid	66,002,398	49,174,617	100,000
Other Assistance	341,901,740	282,497,384	(10,393,213)
Subtotal -- Operating	511,914,627	$ 418,570,539	$ (18,046,549)
Capital Improvements	6,957,759	73,313	--
TOTAL	$ 518,872,386	$ 418,643,852	$ (18,046,549)
FTE Positions	4,375.2	3,903.5	(44.0)

Agency Request/Governor's Recommendation

The SRS FY 1994 operating budget request is an increase of $204.8 million from the revised FY 1993 estimate, including a State General Fund increase of $128.6 million, and a reduction from the SRS Fee Fund of $20.4 million. The request includes funding for 419.5 FTE new positions for a total of 4,375.2 FTE positions. The reduction from the SRS Fee Fund reflects the spenddown of excess disproportionate share funds earned in FY 1992 in the FY 1993 budget (the "fifth quarter"), so that in FY 1994, no excess carryforward funds are available. The agency's budget request does not assume expenditure of any of the $50.0 million in retroactive disproportionate share funds set aside by the 1992 Legislature in a Social Services Contingency Fund.

The Governor recommends operating expenditures of $1.3 billion for SRS in FY 1994, an increase of $79.9 million (6.7 percent) from the FY 1993 recommendation. The recommendation is a reduction of $138.9 million from the agency request. The Governor does not recommend funding for any new positions in FY 1994; in fact, the Governor recommends a reduction of 13.5 FTE positions in concert with her recommendation to reduce by half the size of the Comprehensive Screening Unit at Topeka State Hospital. The Governor's recommendation is an increase of $42.6 million in State General Fund dollars from FY 1993, and reflects a reduction of $16.1 million from the SRS Fee Fund. The reduction from the Fee Fund reflects the spenddown of excess disproportionate share funds in FY 1993. The Governor's recommendation from the SRS Fee Fund includes

SWAM
March 31, 1993
Attachment 8

the expenditure of $25 million in FY 1994 from retroactive disproportionate share funds set aside by the 1992 Legislature in a Social Services Contingency Fund. The Governor's FY 1994 recommendation also includes a transfer of $500,000 from the Intermediate Care Facility (ICF) Revolving Fund to the State General Fund.

House Subcommittee Recommendation

The House Subcommittee concurs with the recommendations of the Governor with the following adjustments:

Decision-Making Model

1. In reviewing the SRS budget, the Subcommittee has attempted to work with the agency in developing a new decision-making model predicated on clear statements of program missions, objectives, strategies, and long-term budget implications. Essential in such a decision-making model is the ability to measure results and to track these projected results from year to year. The Subcommittee developed a model form designed to provide for uniform submission of information on selected agency programs each year. The model includes for each program the following components:

   PUBLIC POLICY GOALS (Articulated policy, desired results of program)

   OUTCOMES AND OBJECTIVES (specific, measurable aims or the desired results, including a time frame)

   STRATEGIES TO REACH GOALS (specific plans or methods for achieving goals, objectives and outcomes, including budget trends and progress towards reaching goals)

   BARRIERS (specific barriers that impede meeting stated goals, particularly those over which the Legislature can effect change)

   OUTCOME/EVALUATION MEASURES (specific measurable results; based on independent analysis and comparison to best operating programs in the country)

   The budget and outcomes reporting includes two years of projections beyond the budget year. The Subcommittee is hopeful that this model can assist in linking budget decisions to clear policy directions and will build accountability into the process from year to year. The Subcommittee recommends that the development and perfection of such a model takes time and recommends review during the interim in concert with activities of the Joint Committee on Children and Families which is charged with overseeing the development of outcome measures for state agency programs. Such a process should also include input from the Corporation for Change and the private sector. Work during the interim would allow the opportunity to further refine and implement such a process, including review of issues such as current database and information resources capacity as it relates to management and program evaluation.

Cash Assistance and Employment Preparation

2. Delete $950,625 from the State General Fund to eliminate the burial assistance program. State law places responsibility for burial on the counties. This is an optional program funded entirely from the State General Fund. The Subcommittee would also note that the surviving spouse or family member of a Social Security recipient receives $225 as a death benefit for burial purposes. The Subcommittee does recommend that the state continue to be responsible for burial costs for clients residing in state institutions where no other resources are available, and recommends that such expenditures be funding from the state institution budgets.

3. The Subcommittee would note that the modifications of the General Assistance program recommended by the 1992 Legislature result in changes in eligibility, specifically with regard to the disabled population. The Subcommittee heard testimony regarding differences between eligibility under the General Assistance program and federal social security eligibility criteria for disability determination. This testimony indicated that there may be individuals who lost eligibility under the recent program modifications who may in fact qualify for federal disability. The Subcommittee is concerned that the program modifications to the General Assistance program may not conform to the recommendations of the 1992 Legislature which were intended to mirror federal eligibility requirements. The program has now been modified to cover a more restrictive population. When recipients of General Assistance and MediKan subsequently qualify for federal Supplemental Security Income (SSI), the state recoups the federal share of expenditures made on behalf of this population. In FY 1992, expenditures of $32.1 million in state funds were made for General Assistance adults, some of whom subsequently qualified for SSI. During FY 1992, the state received federal reimbursement of $3.1 million for this population, or approximately 9.5 percent of expenditures. In FY 1994, the agency expects to spend approximately $17.3 million on behalf of a more restricted adult disabled population, and to receive federal reimbursement of $3.9 million, or approximately 22.8 percent of expenditures. The maximum level of reimbursement which the state could receive would total 68 percent of program expenditures if all adult recipients qualify for federal disability and the state received reimbursement for all of its expenditures on behalf of these clients. The Subcommittee also heard testimony regarding differences between SRS and Kansas Legal Services, with whom the state contracts to assist clients in applying for federal disability determination.

   The Subcommittee believes that there is potential for additional reimbursement from the federal government which would help to offset some state expenditures for this program. The Subcommittee recognizes that projected state revenues in future years leave entirely state funded programs such as General Assistance and MediKan at particular risk for further reductions or eliminations and believes that it is essential to design a program that not only protects those children and families receiving General Assistance, but that also maximizes federal reimbursements on behalf of the disabled population. In this way, state support for the program could be held constant or reduced in future years. The Subcommittee recommends that Corporation for Change staff facilitate a discussion between

SRS and Kansas Legal Services regarding ways to redesign the existing program, or to modify or simplify procedures with the goal of maximizing federal reimbursements and protecting children and their families. The parties should report back to the Subcommittee by March 31 regarding the outcome of these discussions.

4. The Subcommittee recommends introduction of legislation to modify the KanWork program. In response to concerns raised by the 1992 Legislature, by the KanWork Post Audit Report, and by several interim committees, a bipartisan Task Force has been meeting during the 1993 Session to discuss the future of the program. This recommendation for introduction of legislation embodies the recommendations of this task force. The recommended legislation would recognize that the mission of the KanWork program is to "assist in empowering cash assistance recipients to become economically self-sufficient." The recommended legislation is based on certain conclusions regarding the future direction of the KanWork program. The Subcommittee recommends that the KanWork program stress job preparation and jobs development, and enhance the level of involvement at the community level and by employers. The proposed legislation would establish local planning councils that would submit local KanWork/JOBS plans. Such local plans would include proposals to remove barriers to employment; to place clients in jobs; for job development activities; and for follow-up and evaluation. The local council plans are intended to reflect local needs and resources and are intended to maximize other resources at the local level available for the program. This proposal would shift the role of SRS from that of a direct service provider to the entity responsible for overall program administration, planning, integration and coordination. Direct service would be provided through local councils. The Subcommittee also recommends that volunteers be given priority for services on first-come, first-serve basis. This recommendation assumes reasonable caseloads (less than 50) for the client's advocate (case manager) who would be either an employee of a service provider in the local area or an SRS local office employee. Data collection and evaluation pieces are also included as vital components in the proposed legislation.

   In conjunction with this recommendation to introduce legislation, the Subcommittee makes the following budget recommendations regarding the KanWork program:

   a. Delete $2,791,199 from the State General Fund ($6,413,858 All Funds) and 44.0 FTE positions in the KanWork program. The recommendation assumes that 6,000 clients would receive services an estimated cost per client of $3,660. Currently almost twice as many clients receive some level of services; many however, have merely been screened and placed in a nonparticipation status. The cost per client assumes only funding from the SRS budget from state and federal JOBS funds and does not take into account other resources available through JTPA, adult basic education, or business and community resources. The reduction in staffing from the approved level reflects shifting service delivery from state employees to the local councils. The Subcommittee would expect to see the role of remaining SRS staff shift over the next year and would expect to see further

reductions in staff in subsequent budget requests as more services are contracted through the local councils. The Subcommittee understands that this revised program will allow the agency to meet federal requirements which mandate availability of a comprehensive program where 75 percent of AFDC recipients reside, and a minimal program where an additional 20 percent of the population reside. The Subcommittee also believes that this recommendation will allow the agency to meet certain federal targeting and participation mandates.

b. Add $210,136 from the State General Fund ($485,207 All Funds) and 4.0 special project positions for the pilot KanLearn project proposed in H.B. 2188. The Subcommittee also endorses passage of this legislation with amendment to include General Assistance children in the pilot projects. The Subcommittee notes that SRS has found that the lack of education among AFDC recipients is their greatest barrier to achieving self-sufficiency. The Subcommittee's review of the characteristics of KanWork clients supports this conclusion. More than 40 percent of the clients entering the KanWork program have not completed high school or obtained a GED. The Subcommittee believes that this pilot project should not be viewed as an expenditure, but as an investment in a better future for teens through providing incentives to complete their education. The Subcommittee would note that this project will require extensive coordination between SRS and the Kansas Board of Education to ensure accurate and efficient reporting tools to measure the success of the program.

c. Add $91,875 from the State General Fund ($183,750 All Funds) for programming time to develop tracking reports to monitor program results. This recommendation provides funding to ensure collection and tracking of data such as cash assistance recidivism, types of jobs received, average wage, and other measures. The Subcommittee would note that the lack of quantifiable, measurable data has always been a shortcoming of the KanWork program and that this new direction for the program is predicated on ongoing tracking and evaluation. This recommendation will enable the agency to produce seven specific tracking reports. The Subcommittee further recommends that SRS develop specific outcome measures and quantifiable goals it hopes to achieve and make those available for review by the Senate Subcommittee. The Subcommittee recognizes that any quantifiable goals will be estimates at this point in time but believes it is important to establish a baseline against which to measure program success.

5. The Subcommittee believes that modifications in the KanWork program are only the first step in designing a public assistance program that promotes self-sufficiency and client independence. Current disincentives in the public assistance system must be eliminated. The Subcommittee heard testimony from the agency regarding an agency task force on welfare reform and believes it is essential to move forward on comprehensive welfare reform. The Subcommittee was informed that the welfare reform committee is developing a proposal designed to: strengthen families; maximize work and training opportunities; and provide client-based service delivery. Examples of current disincentives include

the shared living penalty and the level of earned income disregards. The Subcommittee recommends interim review of the agency's welfare reform plan and expects this plan to be incorporated in the agency's budget request to the 1994 Legislature. The Subcommittee believes that success of the KanWork program is dependent upon eliminating other disincentives currently in the system and believes that savings from the JOBS program should be directed towards other areas of assistance to empower clients towards self-sufficiency.

6. Delete $1.3 million from the State General Fund for day care in conjunction with the FY 1993 recommendations to delete funding set aside for a provider rate increase.

7. The Subcommittee is supportive of the concept of family resource centers as proposed in H.B. 2246, which are designed to provide child care and supportive services to certain families through locations in public schools. The Subcommittee recommends the agency to fund such initiatives from enhanced federal funding that may become available.

Child Support Enforcement

8. Add $2,025,330 from the SRS Fee Fund ($5,182,378 All Funds) and 136 special project positions in child support enforcement for medical support enforcement. The Subcommittee heard testimony that the agency faces sanctions in the child support area without additional resources in the medical support enforcement area. Initial sanctions to the state could range from one to five percent of the state's AFDC funding ($700,000 to $1.4 million in federal AFDC funds), with sanctions progressively increasing. Title IV-D of the federal Social Security Act requires that a medical support order be sought whenever cash support is established or modified, or when group insurance coverage becomes available. Once coverage is ordered, the child support program must enforce the order to ensure that insurance coverage is maintained, children are enrolled, and coverage is maintained. Meeting federal child support requirements is the child support enforcement program's first priority. Under this priority the agency estimates that an additional 3,760 medical support orders will be established representing 5,640 children each year.

   The Subcommittee expects that in the first year of operation, revenue to the fee fund will total $1.8 million as compared to expenditures of $2.0 million. Projected revenue is expected to total $5.5 million in FY 1995 and $6.6 million in FY 1996. The Subcommittee recommends that the agency account separately for expenditures and revenue as a result of this program so that its cost-effectiveness can be evaluated in future years. The Child Support program has always been a revenue producing program for the state in addition to the benefits received on behalf of children and families. For example, in FY 1992, state expenditures for child support enforcement totaled $3.6 million. Recoveries of AFDC payments, federal reimbursements, and federal incentives resulted in reimbursements to the SRS Fee Fund of $10.9 million. The following summarizes expected increases in child support reimbursements to the fee fund from FY 1993

to FY 1996, including expected reimbursements or costs avoided due to the medical support initiative.

	FY 1993	FY 1994	FY 1995	FY 1996
Without New Resources:				
Baseline Estimate	$ 12,073,358	$ 15,125,676	$ 16,184,473	$ 17,317,386
With New Resources:				
Medical Support:				
Medical Judgments	$ --	$ 553,546	$ 1,383,865	$ 1,383,865
New Child Support Orders	--	396,360	812,160	812,160
Prior Years Child Support	--	--	1,624,320	2,436,480
Subtotal - Medical Support	$ --	$ 949,906	$ 3,820,345	$ 4,632,505
Total Fee Fund Collections	$ 12,073,358	$ 16,075,582	$ 20,004,818	$ 21,949,891
Medical Assistance:				
State Costs Avoided/Recovered	$ --	$ 894,094	3,075,859	$ 3,368,943
Total Reimbursement/Savings	$ 12,073,358	$ 16,969,676	$ 23,080,677	$ 25,318,834

9. The Subcommittee would note that H.B. 2013, recommended for introduction by the 1992 Joint Committee on Children and Families prohibits the charging of fees in non-AFDC child support enforcement cases. Currently, court trustees charge varying levels of fees to non-AFDC clients under the IV-D program, while SRS does not charge a fee. The federal government requires that fee policy be uniform throughout the state. The Subcommittee was informed that the state faces federal sanctions of $700,000 to $1.4 million if this issue is not resolved and was further informed that the House Judiciary Committee has failed to report the bill favorably and it remains in that Committee. The Subcommittee recommends that the Secretary of SRS and the Judicial Administrator meet with staff of the Corporation for Change in the next 30 days to discuss and make a joint recommendation on a solution to this problem to avoid potential federal sanctions.

Medical Assistance -- Long-Term Care

10. The Subcommittee reviewed various long-term care plans prepared by the Long-term Care Action Committee and others regarding shifting of resources to community-based services. The Subcommittee recognizes the efforts made by SRS, the Department on Aging and the Department of Health and Environment on attempting to move towards community-based services, as well as efforts by previous Legislatures. The Subcommittee was informed that the agency intends to submit a five-year long-term care plan to the Legislature by March 15 with clear demonstrable recommendations regarding how to shift resources from nursing homes to community based services to reduce the state's reliance on

nursing homes and increase the percentage of elderly clients served in the community. The Subcommittee recommends that the Senate Subcommittee review this plan and this Subcommittee intends to further discuss this issue during consideration of the Department on Aging Budget. The Subcommittee and the agency believe it is essential to move from the state's over-reliance on nursing homes to a system of community-based care for the elderly. It has been repeatedly stated that a goal of the long-term care program is to move from 90 percent reliance on nursing homes to 90 percent reliance on community-based services, using the model of Oregon which radically shifted its program in a period of less than ten years. As a part of this effort, the Subcommittee expresses its support for the proposed moratorium on nursing home beds and recommends that such a moratorium take into account geographic considerations. Such geographic considerations should include allowances for additional beds in rural underserved areas in concert with bed reductions in other parts of the state.

11. Delete $7,254,404 from the State General Fund ($17,139,891 All Funds) for homecare from the SRS budget. The Subcommittee recommends that this funding be appropriated to the Department on Aging. The Subcommittee is concerned that two different agencies with different client entry points provide essentially the same services to clients based solely on income level. The Subcommittee endorses the request for a Legislative Post Audit Study of Aging Services and believes that focus should be placed on establishing a single point of entry and consolidating service delivery. The Subcommittee intends to further review home care services during its review of the Department on Aging budget subsequent to the submission of the long-term care plan noted above. The Subcommittee believes that transfer of home care funding to the Department on Aging is only the first step towards consolidating aging services with one agency, including adult protective services, guardianship, and the nursing home program. The Subcommittee recommends that the Department on Aging be added to this bill and that this funding be appropriated to Aging in this bill to reflect the commitment of the Legislature to home care programs.

12. Shift $2,340,142 from the State General Fund ($5,318,505 All Funds) from the nursing home budget to community based services in the Department on Aging. The recommendation has the effect of freezing the nursing home caseload and redirecting those funds towards alternative community-based services. The Subcommittee believes this recommendation is consistent with moves made during the 1992 Session to expand the Senior Care Act and provide case management services through local area agencies on aging. The Department on Aging has been innovative in providing incentives in rewarding those areas that prioritize the provision of attendant care services over homemaker services. Attendant care services have been proven more effective in maintaining clients in their own homes.

13. The Subcommittee would note that during FY 1993 SRS changed its method of allocating income eligible home care funds to its area offices. Prior to the current year, allocations were based solely on historical spending. In FY 1993, SRS changed this allocation to a new formula with the following weightings: historical spending (weight 2), percent of population within area over age 65 (weight 2); and percentage of population living below poverty (weight 3). No area received

less funding than in FY 1992 and no area received greater than a 40 percent increase. Four areas of the state are forced to reduce spending through reducing service hours, closing cases, or prioritizing services based on this allocation while four other areas have developed plans to increase spending.

14. As recommended in FY 1993, delete $1,701,333 from the State General Fund ($3,866,667 All Funds) from the nursing home budget for a rate increase. The Subcommittee would stress that nursing homes receive reimbursement for a much higher percentage of their costs than most providers and that this action should still meet minimum federal reimbursement requirements. The Subcommittee would also note that other providers are not receiving reimbursement increases in the FY 1994.

15. The Subcommittee reviewed the status of preadmission screening initiated by the passage of 1992 S.B. 182. The Subcommittee would note that the original estimates of savings were predicated on a nursing home diversion rate of 11.6 percent. Very preliminary data based on the first 28 days of implementation shows only a two percent diversion rate. The Subcommittee believes it is premature to modify the budget at this time, and remains optimistic that the projected diversion rates will be met. Other states implementing preadmission screening, such as Oregon, have experienced diversion rates of as high as 22 percent. The Subcommittee recommends that the Senate review this item based on the first report from the service provider due March 1, and that the program be further reviewed by the 1994 Legislature.

16. The Subcommittee reviewed the impact of the 300 percent nursing home cap and reports the following information to the Committee. The agency projects that approximately 300 persons per year will be Medicaid ineligible due to the imposition of the 300 percent cap. Savings to the Medicaid program as a result of the cap are estimated to be $628,311 in FY 1993, and to grow to $4.1 million by the year 2000.

17. The Subcommittee heard testimony regarding St. Joseph's Nursing Home in Kansas City, Kansas and projected revenue shortfalls facing the Home. The Subcommittee recognizes that this facility has a high Medicaid caseload, but was also informed that at least 24 other facilities have just as high of a Medicaid caseload as St. Joseph's. Although the Subcommittee is sympathetic to concerns raised regarding this home, we do not recommend reimbursement modifications to this class of nursing homes. The Subcommittee believes that attention in long-term care must be focused not on enhancing nursing homes, but on alternative service enhancements to expand community-based care.

18. Reappropriate savings of $225,405 from the State General Fund ($542,360 All Funds) in the Home and Community Based Services waiver for the elderly and disabled to FY 1994 to increase funding for community based services in FY 1994.

19. The Subcommittee received testimony regarding a new federal mandate regarding veterans' spouses that may impact the adult care home budget in FY 1994. The Subcommittee believes it is premature to adjust the budget but recommends that

the 1994 Legislature review the nursing home budget to determine the actual impact of this mandate.

20. The Subcommittee heard testimony regarding the case mix reimbursement system for adult care homes. Kansas is part of a six-state pilot project begun in FY 1989 designed to modify reimbursement for Medicare and Medicaid to reflect nursing facility resident characteristics. The Subcommittee recommends that SRS proceed with changing to a case mix system in FY 1994, and that this be accomplished within the existing nursing home budgets. The Subcommittee is aware that reimbursement rates for some nursing homes that serve clients with less severe needs will be reduced under this proposal but believes it is appropriate to tie reimbursement to level of client need. The Subcommittee also heard testimony that modification to a case mix system should increase the potential for federal Medicare reimbursement for currently client expenses currently funded through the Medicaid program.

21. The Subcommittee reviewed the Department's policy regarding reimbursement for therapeutic beds. The Subcommittee is still unclear regarding the amount of funding in the Medicaid budget for therapeutic beds and recommends that the agency clearly delineate funding available for such services.

22. Add $105,500 from federal funds in state operations as a technical adjustment as recommended by Budget Amendment No. 1 to reflect federal funds for the case mix demonstration project.

Regular Medical Assistance

23. Delete $526,262 from the State General Fund ($1,289,383 All Funds) from regular medical assistance as a technical adjustment in accordance with the Governor's Budget Amendment.

24. Delete $3.8 million from the State General Fund ($9,268,293 All Funds) in regular medical assistance expenditures based on actual experience in FY 1993.

25. The Subcommittee recommends that the agency establish three pilot projects to move towards a managed care system of providing services to Medicaid clients. The Secretary is directed to establish pilot projects in three areas of the state in FY 1994. One project, in Wichita, would be developed in associated with the Hunter Health Clinic, and would utilize the federally qualified health center (FQHC) model. Another project, located in a mid-size community would be developed in conjunction with an existing primary care clinic projects funded through the Department of Health and Environment budget. A third project should be designed in a rural area. The goal of these projects is to move towards a managed primary care system. Other states have experienced savings of 5 - 15 percent in their Medicaid budgets upon implementation of such systems. The agency has appeared before the Joint Committee on Health Care Decisions for the 1990's to discuss managed care, particularly in relationship to the FQHC model. The agency recommends that SRS work with providers, advocates, clients, hospitals and the Department of Health and Environment in developing

these three model projects in order to determine how best to provide medical services to this population and that preliminary plans on how to implement this recommend be presented to the Legislature by the veto Session. Information being collected by Wichita hospitals in March regarding the use of emergency rooms for none-emergency care by Medicaid clients should be useful in developing these models. The proposals for the three models to be developed by the agency should include an independent monitoring mechanism. SRS is directed to provide further information to this Subcommittee by March 15 regarding its plans to implement this recommendation.

26. In order to provide funding for the commencement of these managed care projects, the Subcommittee recommends that SRS transfer three specialty hospitals that are currently reimbursed on a per diem basis to the DRG (Diagnosis Related Group) system. Initial estimates of FY 1994 savings from this reimbursement modification amount to $1.1 million, with annualized savings of $1.5 million. These reimbursements should be modified with the savings dedicated to the managed care projects.

27. The Subcommittee believes that in moving to a system emphasizing primary care, it is important that the design of the Medicaid program reflect this priority. Reimbursement rates should also favor primary care services. The Subcommittee recommends that the agency review its current reimbursement system to determine which services are in the best interest of the Medicaid population and that it look to shifting funds within the Medicaid budget to prioritize these services. Along with a review of reimbursement, the agency should review the covered services and criteria for such services with a view towards emphasizing primary care. The Subcommittee recommends that the agency present to this Subcommittee and to the Senate by March 15 its recommendations for Medicaid program modifications, including changes to the reimbursement system to modify the focus of the budget to primary care. The Subcommittee recommends that appropriate provider and recipient groups and other interested parties be included in these discussions and this prioritization process.

28. Add $1,260,000 from the State General Fund ($3,010,000 All Funds) to the regular medical assistance budget to increase the scope of services covered by the adult dental program. Currently, the adult dental program covers only very limited preventative and restorative services, including one oral exam, one cleaning, and x-rays once a year. Only one-surface filling are covered. This recommend would provide coverage for a comprehensive preventative and restorative program, including dentures, with a requirement for prior authorization for some procedures.

29. The Subcommittee heard testimony regarding some possible preventive effects of chiropractic services which are currently not covered under the Medicaid program and received information regarding a proposed pilot project. The Subcommittee believes that the proposal on chiropractic services may be worthwhile, but recommends consideration of this service occur as the agency reviews its entire hierarchy of services, prioritizes services, and adjusts reimbursement rates to emphasize primary care.

30. The Subcommittee reviewed the various Medicaid waivers received by the agency and reports the following information regarding the cost-effectiveness of these waivers.

Primary Care Network: This system which has some components of a managed care system saved $8.6 million in the last two years.

Home and Community Based Services (HCBS): The agency has several waivers to provide services in the community to clients who qualify for institutional based care. The following summarizes the savings from providing these services in the community. The Head Injured waiver is projected to save $1.0 million in FY 1993. The HCBS waiver for technology assisted children saves approximately $51,544 per child participating each year. The HCBS waiver for the elderly and disabled saves an average of $492 per person per year.

The Subcommittee is encouraged about the potential to receive additional waivers and the state's ability to design programs to serve persons in their homes and communities at decreased costs and encourages the agency to aggressively pursue federal waivers.

Youth and Adult Services

31. The Subcommittee reviewed the current status of initiatives recommended by the 1992 Legislature designed to increase the availability of family- and community-based services for children and their families and reduce the reliance of the state on out-of-home placements. The 1992 Subcommittee report included specific goals for the reduction of the number of children in SRS custody. This Subcommittee has learned that the agency experienced certain delays in hiring and some difficulty in recruiting Social Workers in certain parts of the state. Recently, as they have begun to implement these initiatives, the growth in the foster care system has begun to level off. Although the agency is uncertain of its ability to meet interim goals set for FY 1993, they remain confident of their ability to effect system change to meet the goal of 5,500 children in custody by 1996. The Subcommittee also heard testimony regarding the increasing costs of care for those children left in the foster care system. The Subcommittee remains committed to reducing the over-reliance of the state on out-of-home care but believes it is essential that budget projections and caseload projections reflect levels projected at the time additional family and community based resources were added to the budget. These additional resources recommended by the 1992 Legislature should be reassessed if progress towards the stated goals is not apparent in future years.

32. The Subcommittee heard testimony from community providers of services regarding problems with the implementation of the new youth services initiatives and a perception that prevention and intervention are competing philosophies. The Subcommittee recommends that SRS develop a committee or task force with providers to address and answer those problems that have been identified. The results and recommendations of this task force should be available for review by the appropriate summer interim committee.

33. The Subcommittee reviewed the Governor's recommendation to reduce the size of the youth services screening unit at Topeka State Hospital by one-half in FY 1994. Concern. The Subcommittee concurs with the Governor's recommendation and further expresses its concern regarding the mission of the two screening units. The Subcommittee recommends that the agency develop a detailed plan which either redefines the mission of the screening units or moves the screening unit functions to the community level. The Subcommittee believes these services can be performed in the community. The Subcommittee is concerned about the lack of secure beds for juvenile offenders in the community for evaluation purposes, but believes there is potential in the future to use the new juvenile detention facilities for such evaluations.

34. In accordance with Budget Amendment No. 1, add $730,000 from the State General Fund to provide annualized funding for juvenile offender day reporting systems in FY 1994.

35. The Subcommittee reviewed the agency's strategic plan presented regarding the adult services program within the Division of Youth and Adult Services. The Subcommittee is concerned that there is no clearly defined mission or priorities regarding this program. The agency does not appear to have clearly defined goals, specifically with regard to the relationship of adult protective services to guardianship, long-term care and other adult services programs. The Subcommittee recommends that the agency assess this program in light of the agency's overall mission and develop a clear sense of direction and goals for the adult services program.

Alcohol and Drug Abuse Services

36. The Subcommittee commends the Commissioner of Alcohol and Drug Abuse Services and his staff for their work on risk factors and prevention and commends them for their clear strategic vision, direction, goals and measurable results. The Subcommittee would note that additional federal funds have been made available for substance abuse purposes, and that these additional funds will allow expansion of both prevention and treatment services in order to meet identified programming needs.

37. The Subcommittee received testimony regarding reductions in State General Fund dollars for substance abuse treatment services in FY 1994. The Subcommittee believes there is sufficient flexibility within the State General Fund dollars and the enhanced federal funds allocated to substance abuse to prevent shortfalls in any existing programs. The Subcommittee recommends that the Senate review these allocations to ensure that reductions in current programs do not occur.

Vocational Rehabilitation

38. Add $100,000 from the State General Fund to match $400,000 in federal vocational rehabilitation funds to provide vocational services for the mentally ill. Along with funding recommended by the Subcommittee on Community Mental

Health, this recommendation will provide a total of $200,000 in state funds to match federal vocational rehabilitation funds as requested by the agency.

General Budget Issues

39. The Subcommittee reviewed the agency's budget for information resources and heard testimony regarding several new systems in various stages of development or proposed for the agency. The Subcommittee believes that a needs analysis is essential to determine how best to integrate systems and access information from the multitude of data collected by the agency. The Subcommittee believes it is essential that the agency develop a comprehensive vision of where it needs to go in the future to meet its information needs. The Subcommittee also believes that management system integration is essential in moving towards performance based measurements of program results and agency efficiencies and is a critical piece in moving the budget process to a performance based system. Evaluation is an essential component in designing outcomes, goals, and strategies to accomplish clear policy objectives and evaluation is in many cases impossible at the current time due to the unavailability of data. The Subcommittee further recommends that the Joint Committee on Computers and Telecommunications focus its attention on the overall coordination of the state's information resources system in light of management and policy information needed by both the executive and legislative branch.

40. The Subcommittee has identified several areas of the budget that need further consideration and review including welfare reform, managed care, and community-based long-term care. The Subcommittee recommends that the House and Senate Subcommittees on SRS meet jointly during the 1993 interim to review these and other topics in greater detail in preparation for the 1994 Session. Such work should be done in cooperation with and is intended to complement activities of the Joint Committee on Children and Families, the Joint Committee on Health Care Decisions for the 1990's, and the Corporation for Change.

41. The Subcommittee reviewed future budget projects for SRS and reports that additional state funds of approximately $46.4 million are anticipated in FY 1995 and of $120.7 million are anticipated in FY 1996 to maintain current populations and services. The Subcommittee would point out that static budget growth in a human services agency like SRS would actually result in a hard cut in direct client services. For these reasons, the Subcommittee believes it is essential to attempt to recoup as many expenditures as possible in programs such as General Assistance and Child Support Enforcement, and to maximize the receipt of funds from federal and other sources.

42. Make technical adjustments to the bill as needed to reflect the Governor's recommendation.

House Committee Recommendation

The House Committee concurs with the recommendations of the Subcommittee.

House Committee of the Whole Recommendation

The House Committee of the Whole concurs with the recommendations of the Committee with the following adjustments:

1. Delete $210,136 from the State General Fund ($485,207 All Funds) and 4.0 special project positions for the pilot KanLearn project proposed in H.B. 2188.

Expenditure	House Adj. FY 94	House Rec. FY 94	Senate Sub. Adjustments
All Funds:			
State Operations	$ (12,823,057)	$ 200,431,960	$ 18,676,862
Local Aid	100,000	61,909,212	--
Other Assistance	(22,970,177)	967,230,626	3,328,860
Subtotal -- Operating	$ (35,693,234)	$ 1,229,571,798	$ 22,005,722
Capital Improvements	--	4,002,648	--
TOTAL	$ (35,693,234)	$ 1,233,574,446	$ 22,005,722
State General Fund:			
State Operations	$ (7,821,370)	$ 79,077,168	$ 8,092,870
Local Aid	100,000	49,274,617	--
Other Assistance	(10,535,315)	271,962,069	1,278,839
Subtotal -- Operating	$ (18,256,685)	$ 400,313,854	$ 9,371,709
Capital Improvements	--	73,313	--
TOTAL	$ (18,256,685)	$ 400,387,167	$ 9,371,709
FTE Positions	(44.0)	3,859.5	96.5

Senate Subcommittee Recommendation

The Senate Subcommittee concurs with the recommendations of the House with the following adjustments:

Medical Assistance -- Long-Term Care

1. Restore $7,254,404 from the State General Fund ($17,139,891 All Funds) for home care services. This recommendation reverses the House recommendation to shift this funding to the Department on Aging.

2. Restore $2,340,142 from the State General Fund ($5,318,505 All Funds) in the nursing home budget to restore funding for a caseload adjustment. The House recommendation shifted all funding budgeted for nursing home caseload increases to the Department on Aging for community-based services designed to reduce the state's reliance on nursing homes.

3. Restore $800,000 from the State General Fund ($1,818,182 All Funds) to the nursing home budget as a technical adjustment to correct an error in posting the House recommendation regarding nursing home rate adjustments.

4. The Subcommittee reviewed information on the nursing home case mix reimbursement system. The Subcommittee concurs with the goals of the new system of improving access for persons with heavy care needs, and assuring quality care and quality of life for residents, and believes that reimbursement on the basis of the level of client need is appropriate. However, the Subcommittee heard testimony that implementation of case mix will actually reduce reimbursement rates for 68 percent of the not-for-profit adult care homes, although it will increase rates for 68 percent of all nursing homes.

   Under the case mix reimbursement system, only the health care component of the reimbursement system would be weighted accorded to the facility's case mix index. The remaining cost centers would continue to be reimbursed according to the existing system, with maximum reimbursement based on the following percentiles: Administration -- 75th percentile; Plant Operating (Property) -- 85th percentile; and Room and Board -- 90th percentile. The existing dollar caps on maximum reimbursement for each of these cost centers will not change.

   In an effort to alleviate some of the effects of the change to a new system, the Subcommittee recommends the addition of $1.3 million, including $533,000 from the State General Fund to the nursing home budget as a one-year partial "hold harmless" provision. The recommendation assumes implementation of a case mix reimbursement system effective in January, 1994. The recommendation also assumes phase in of the new reimbursement system so that 50 percent of health care costs would be reimbursed under the current system and 50 percent would be reimbursed under the case mix rate. The Subcommittee further recommends that the agency develop an interim report on the status of planning for case mix implementation for presentation to an appropriate interim committee, and that a full report on issues regarding reimbursement modifications be provided to the 1994 Legislature.

5. The Subcommittee was informed that the Governor's recommendation did not include funding for any cost increases in the nursing home budget, but rather assumed that the cost per client would remain stable. The agency's March caseload estimates reflect a shortfall of $12.8 million in the nursing home budget, including $5.7 million from state funds based on a projected 9 percent increase in the cost per client month from FY 1993 to FY 1994. The Subcommittee requests a Governor's Budget Amendment to address this issue.

6. The Subcommittee recommends the addition of proviso language which would allow the Secretary to restrict the number of nursing home beds to be reimbursed by the Medicaid program in FY 1994. The restriction would be based on the number of Medicaid nursing home beds as of January 1, 1993. The Subcommittee concurs that the agency needs to pursue methods of containing costs in this program, and was informed that the Secretary is pursuing the option of contracting out for nursing home services, and limiting the number of beds to be

reimbursed through the Medicaid program in this manner. The Subcommittee believes that legislation to impose a moratorium will not be enacted this Session and has serious concerns regarding proposed nursing home moratoriums. However, the Subcommittee does recommend granting the Secretary the authority for FY 1994 in an effort to contain the growth of the nursing home budget. The Subcommittee strongly believes that any plan designed by the Secretary must be very flexible, and must take into account geographic considerations, adjustments within regions of the state, and client residence and choice issues. The Subcommittee recommends that the Secretary provide information on her implementation plans to the Joint Committee on Health Care Decisions for the 1990s during the 1993 interim and that such plans address these concerns.

7. Add $686,400 from the State General Fund ($1,560,000 All Funds) for a new federal mandate which shifts the cost of care of veterans' spouses to the Medicaid program. The Subcommittee recommendation would fund approximately one-half of the cost anticipated by the agency. The Subcommittee recommends that the 1994 Legislature review the actual impact of this mandate on the budget when more accurate estimates of fiscal impact will be available.

8. The Subcommittee reviewed the prescreening program initiated as a result of the passage of 1992 S.B. 182. Based on two months of data, the agency has reported the following results:

   A total of 3,299 assessments were conducted in January and February. Of the total, 2,319 were for persons seeking nursing facility care, and 980 were for persons seeking community based services. Of those persons seeking nursing home care, a total of 119 chose community-based services, a diversion rate of 5.13 percent. Based on the availability of all needed services, 88 of the 119 persons seeking community-based services could actually be served in the community, a diversion rate of 3.8 percent.

9. The Subcommittee reviewed the impact of the 300 percent of SSI income cap for nursing home eligibility, including the current cost of nursing home clients "grandfathered in" with state funding and the savings to the Medicaid program from diverting new clients. The agency estimates net savings of $241,496 in FY 1993 and $1,992,960 in FY 1994 from the imposition of the income cap.

Regular Medical Assistance

10. Add $1,019,041 from the State General Fund ($2,412,222 All Funds) in regular medical assistance in accordance with the agency's March caseload estimates. The recommendation is still a reduction of approximately $3.3 million in State General Fund dollars from the Governor's recommendation.

11. Delete $1,260,000 from the State General Fund ($3,010,000 All Funds) in regular medical assistance for the adult dental program. The House recommendation added this funding to provide comprehensive preventative and restorative dental

services for adults, including funding for denture services. The Subcommittee recommends that the Secretary manage the adult dental program within its current $1.1 million allocation.

12. Delete $6.0 million from the State General Fund ($14.6 million All Funds) in the regular medical assistance budget. The Subcommittee directs the Secretary to adopt measures to control cost and utilization of services, to reduce or eliminate optional services, or to otherwise modify current service policies to implement this reduction. It is the Subcommittee's recommendation that the Secretary determine which procedures should be covered in the medical assistance program within available funding.

13. The Subcommittee reviewed recommendations made by the House Subcommittee and proposed in S.B. 119 regarding the implementation of managed care pilot projects for the Medicaid program. The Subcommittee recommends that the Secretary implement managed care pilot projects in three localities, including the two projects envisioned by S.B. 119, and a third pilot project at the University of Kansas Medical Center. The Subcommittee understands that under the provisions of S.B. 119, these projects would not be operational until FY 1995.

14. The Subcommittee reviewed funding of therapeutic beds within the Medicaid budget. The Subcommittee would note that these beds can be authorized for reimbursement when medically necessary, but was informed that the agency has rarely allowed such usage. The Subcommittee believes that these beds, when medically necessary, may have the potential to reduce overall medical costs, and urges the agency to review its existing criteria for medical necessity and its policy towards usage of these beds.

Child Support Enforcement

15. Delete $822,791 from the SRS Fee Fund ($1,943,391 All Funds) in child support to provide for phased-in implementation in FY 1994 of a medical support enforcement initiative. The House recommendation provided full-year funding of $5.2 million for 136 special project positions for medical support activities. The Subcommittee recommendation assumes that these positions would be phased in throughout FY 1994. The Subcommittee further recommends that SRS crosstrain existing collection officers where possible to perform medical support activities.

Cash Assistance and Employment Preparation

16. Add $950,625 from the State General Fund to restore the burial assistance program. The House recommendation deleted funding for this program.

17. Delete $361,028 from the State General Fund ($1,064,738 All Funds) in the cash assistance programs based on the agency's March caseload estimates.

18. Add $2,785,000 for the LIEAP program in FY 1994 in accordance with the recommendation in the 1993 report. The Governor's recommendation expends additional available federal block grant funds in FY 1993, resulting in a program reduction of approximately $5.6 million from FY 1993 to FY 1994. The Subcommittee recommendation would provide for roughly equivalent LIEAP funding of approximately $13.0 million in FY 1993 and FY 1994.

19. Restore $600,000 from the State General Fund in day care funding deleted in the House recommendation, leaving a net reduction of $1.5 million (SGF) in FY 1993 and $700,000 (SGF) in FY 1994 from the Governor's recommendation. The Subcommittee recommendation would allow the agency to increase reimbursement to day care providers to the 65th percentile of prevailing rates and allow for services to 800 additional children in FY 1994.

20. Restore $2,791,199 from the State General Fund ($6,413,858 All Funds) and 44.0 FTE positions deleted by the House for the KanWork program. The Subcommittee believes that federal mandates require expansion of the program as proposed by the agency. In addition, the Subcommittee would note that the House recommendation assumes modification of the program in accordance with the provisions of H.B. 2534 which has not yet passed the House or been considered by the Senate.

21. Delete $91,875 from the State General Fund ($183,750 All Funds) for programming time associated with the development of KanWork tracking reports to monitor program results. The Subcommittee directs the Secretary to redirect current program funding for this purpose and expresses its support for the need for ongoing tracking and evaluation.

Youth and Adult Services

22. In accordance with the recommendation in the FY 1993 Subcommittee report, the Subcommittee requests a Governor's Budget Amendment to address potential shortfalls in the foster care budget due to a greater number of children in the system and higher costs than currently included in the budget.

23. Add $271,500 from the State General Fund and 13.5 FTE positions to restore funding for the Topeka Screening Unit to provide for operation of 30 beds for the first half of FY 1994. The Governor's recommendation included reductions associated with downsizing the screening unit from 30 beds to 15 beds effective July 1, 1993. The Subcommittee further recommends that the Secretary report back to the 1994 Legislature regarding her plans for the screening unit and the potential for assessments being provided in community-based settings.

24. The Subcommittee recommends an interim study on juvenile services during the 1993 interim. The Subcommittee has real concerns regarding juvenile intake procedures, screening units, and various issues relating to juvenile offenders, including community based services for juvenile offenders. Such a study should also include a review of the regional juvenile detention facilities, including the potential of such facilities to provide community-based screening services for

juvenile offenders, and various issues related to the youth centers, including issues surrounding length of stay.

25. Add 39.0 FTE for family preservation to restore the Zebley positions deleted by the Governor. (See FY 1993 report, item 6). The Subcommittee was informed that in FY 1994 the agency expects to generate funding through its federal funds maximization activities sufficient to cover the $2.2 million cost of these positions.

Vocational Rehabilitation

26. Delete $161,699 from the State General Fund to provide the same portion of matching of federal vocational rehabilitation funds by private or donor funds as in FY 1993.