

MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE

The meeting was called to order by Chairman Rhoades called the meeting to order at on March 29, 2011, in Room 346-S of the Capitol.

All members were present except:

Representative Kleeb – excused
Representative Lane - excused

Committee staff present:

Jim Wilson, Office of the Revisor of Statutes
Jason Long, Office of the Revisor of Statutes
J.G. Scott, Kansas Legislative Research Department
Jarod Waltner, Kansas Legislative Research Department
Shirley Morrow, Kansas Legislative Research Department
Cindy O'Neal, Administrative Assistant, Appropriations Committee
Kathy Holscher, Committee Assistant, Appropriations Committee

Conferees:

Mark Tallman, Kansas Association of School Boards
Joseph Molina, Kansas Bar Association
Helen Pedigo, Supreme Court of Kansas
Richard Hayse, Kansas Judicial Commission
Judge Larry McClain, Judicial Commission
Whitney Damron, Kansas Bar Association
Callie Denton, Kansas Association for Justice
Doug Wareham, Kansas Bankers Association
Luke Bell, Kansas Association of Realtors

Others attending: See attached list.

HB 2395: Concerning school districts; relating to the use of moneys by school districts

SB 97: Concerning courts; relating to court fees and costs, judicial branch surcharge fund requirement

HB 2396: Abolishing the commission on judicial performance

SB 229: fee agencies, implementing a 10% transfer for FY 2012 then repealing the the 20% transfer requirement

Chairman Rhoades welcomed committee members and reviewed the meeting agenda.

Chairman Rhoades made a motion to introduce legislation to reintroduce **HB 2193**. The motion was seconded by Representative Brown. Motion carried.

Chairman Rhoades made a motion to introduce legislation regarding the Kansas Bureau of Investigation direct fund issue. The motion was seconded by Representative Kelley. Motion carried.

HB 2395: Concerning school districts; relating to the use of moneys by school districts

Jason Long, Office of the Revisor of Statutes, provided an overview of **HB 2395**. He stated that this bill would allow school districts the flexibility to use unencumbered balances in specified funds for general operating expenditures.

Speaker of the House, Mike O'Neal, stated the bill would put the flexibility into statute form to assist the school districts in a couple of difficult years. He reviewed the Kansas State Department of Education cash balances (Attachment 1). With this legislation, \$357.7 million would be available in unencumbered funds to allow the school districts to get back to the base state aid per pupil (BSAPP) of \$4,012, which would be the combination of this year's and next year's reductions, he noted. He suggested that to the extent that

CONTINUATION SHEET

Minutes of the House Appropriations Committee at 9:10 a.m. on March 29, 2011, in Room 346-S of the Capitol.

the combination of this year's and next year's reductions, he noted. He suggested that to the extent that districts are encouraged to spend encumbered funds but it suggested that the funds should be targeted. Some districts have not used all of their local option budget authority and that could be a funding option, for those districts that may fall short of weighted cash balances, he noted

Speaker O'Neal responded to questions from committee members. He discussed discretionary funds that are accumulating balances and contingency reserve funds that have a cap.

Dale Dennis, Deputy Commissioner of Education, discussed legislative restrictions for use of money placed in specific funds. He stated that when there is an environment of a uniform system of accounts, the need for silos may no longer be necessary or caps on specific funds. This bill encourages districts to use balances in funds to address budgeting shortfalls, he added. For districts with a small amount in unencumbered funds with this legislation they would be able to get some help to get to the BSAPP of \$4012.

Mark Tallman, Associate Executive Director/Advocacy, Kansas Association of School Boards, provided testimony as a proponent of **HB 2395** (Attachment 2). He stated that this bill would allow school districts to access certain funds to help make up the difference between the actual BSAPP and the base budget of \$4012. He expressed concerns regarding textbook fees which are in large collected by student fees and local maintenance of effort requirements for Special Education, and he reviewed various reasons why districts carry cash balances and increased cash balances.

Mark Tallman responded to questions from committee members. He stated that the weighted enrollment resulted when stated aid was replaced with American Recovery and Reinvestment Act (ARRA) for Special Education. The Governor's recommendation of \$60 million was to meet maintenance of effort requirements in FY 2012, he noted.

Chairman Rhoades closed the hearing on **HB 2395**.

Jim Wilson, Office of the Revisor of Statutes, provided an overview of **HB 2395**, which would abolish the commission on judicial performance.

Jim Wilson responded to questions from committee members. He stated part of the docket fees would be removed as dedicated under current law, and any remaining balance would be credited to the State General Fund (SGF).

HB 2396: Abolishing the commission on judicial performance

Richard Hayse, Member, Kansas Judicial Commission, presented testimony as an opponent of **HB 2396**, (Attachment 3). He stated that the commission provides a valuable service to the judiciary, voters and citizens of the State.

Richard Hayse responded to questions from committee members. He stated that the commission was established in FY 2006. A performance evaluation of appellate and trial judges is conducted and recommendation to voters where or not they should be retained by the commission.

Judge Larry McClain, Member, Kansas Judicial Commission, presented testimony as an opponent of **HB 2396** (Attachment 4). He stated that the commission provides objective information regarding the judges for the voting public, assists the Chief Judges with the performance of judges and has improved and refined the process through an evaluation survey.

Whitney Damron provided testimony in opposition of **HB 2396** on behalf of the Kansas Bar Association (Attachment 5). He stated that the commission provides meaningful, nonpartisan information to the public regarding the performance of district judges, magistrate judges, Court of Appeals judges and Justices of the Kansas Supreme Court.

Whitney Damron responded to questions from committee members. It was noted that approximately 75 evaluations are conducted each year, and there are 266 judges. He stated that survey results may be found on county websites.

Callie Denton, Director of Public Affairs, presented testimony in opposition of **HB 2396** (Attachment 6).

CONTINUATION SHEET

Minutes of the House Appropriations Committee at 9:10 a.m. on March 29, 2011, in Room 346-S of the Capitol.

She provided an overview of the organization and stated that the importance of the commission, which provides a vital, nonpartisan source of information on Kansas judges and justices to Kansas citizens. In response to a committee members question she stated the surveys were never intended to target judges, but was intended to inform voters and target judicial resources. Without this resource, information would be received by word of mouth and we would be recreating a gap, she added.

Chairman Rhoades stated that copies of written testimony as an opponent of **HB 2396** from Judge Nancy Parrish (Attachment 7) has been distributed to members.

Chairman Rhoades closed the hearing on **HB 2396**.

SB 97: Concerning courts; relating to court fees and costs, judicial branch surcharge fund requirement

Matt Sterling, Office of Revisor of Statutes, provided an overview of **SB 97**. He stated that this bill would extend the judicial surcharge for one year and would delay the expansion of the Court of Appeals from 13 to 14 judges for one year.

Helen Pedigo, Special Council to the Chief Justice, Supreme Court of Kansas, provided testimony as a proponent of **SB 97** (Attachment 8). She also reviewed the types of cases filed in the court system and the docket fees for these cases with the proposed surcharge. These funds are used for non-judicial salaries in the Judicial Branch budget and would also help to avoid furloughs, she added.

Joseph Molina provided testimony as a proponent of **SB 97** on behalf of the Kansas Bar Association (Attachment 9). He responded to a question from a committee member and noted that if the fee goes to high the courts may see fewer civil cases and Chapter 60 cases resulting in limited access to courts.

Chairman Rhoades closed the hearing on **SB 97**.

SB 229: fee agencies, implementing a 10% transfer for FY 2012 then repealing the the 20% transfer requirement

Daniel Yoza, Office of Revisor of Statutes, provided an overview of **SB 229**. He stated the bill would request the preparation and presentation of a report on costs of all services provided to fee agencies, reduces the credit to SGF from 20% to 10% and reduces the maximum amount to the fee agency from \$200,000 to \$100,000.

Doug Wareham, Senior Vice President – Government Relations, Kansas Bankers Association, provided testimony as a proponent of **SB 229** (Attachment 10). He stated that this bill significantly reduces what fee funded agencies have to transfer to the SGF. And, requires the Department of Administration to provide a report to the committee on what government services could or should not be charged which would be determined by the committee and not the department, he added.

Luke Bell, Vice President of Governmental Affairs, Kansas Association of Realtors, provided testimony as a proponent of **SB 229** (Attachment 11). He stated that this bill would provide the committee with the necessary data to make decisions. This is a step in the right direction and the commission is intent on paying for actual legitimate costs of services, which is an attractive alternative for not increasing fees for services members have been receiving.

Chairman Rhoades stated that information on the State Fair Board Bond Payment was requested and has been distributed (Attachment 12), and he reviewed the agenda for tomorrow's meeting.

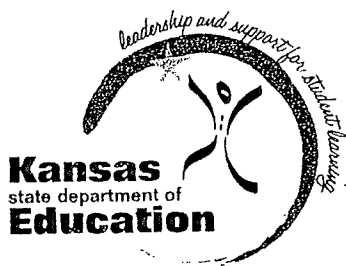
The meeting adjourned at: 1:55 p.m.


Marc Rhoades, Chairman

APPROPRIATIONS COMMITTEE GUEST LIST

DATE: 3-29-11

NAME	REPRESENTING
RJ Wilson	ICSAJ
Derek Hew	HEW LAW FIRM
Jane Carter	KOSE
Rich Hayse	KCTP
Callie Jill Denton	Ks Assn for Justice
Mark J. Galt	Dept of Adm
Mark Tallman	KASB
Whitney Jann	KS Bar Assn.
Dorrie Wellshear	UGA/KS
Kathy Olsen	Ks Bankers Assn.
Justin McFarland	KDOL
Angie Campbell	Kartie
Wigh Keck	Capitol Strategies
Luke Bell	KS Assn. of REALTORS
Jim Fawcett	GS



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March 18, 2011

TO: Rep. Mike O'Neal
Speaker of the House

FROM: Dale M. Dennis, Deputy
Commissioner of Education

SUBJECT: Cash Balances

Attached is a computer printout (SF1125) which provides the cash balances as of July 1, 2010 for twelve selected school district funds. As requested, we have also provided the weighted total cash balance per pupil as well as the effects on school districts if the base state aid per pupil is reduced from \$3,937 to \$3,780 and \$4,012 to \$3,780 (recommended by the Governor for the 2011-12 school year). Please review the column explanation carefully.

COLUMN EXPLANATION

- | | | |
|--------|------|--|
| Column | 1 -- | September 20, 2010, FTE enrollment |
| | 2 -- | July 1, 2010 Cash balance in the following funds: four-year-old at-risk, K-12 at-risk, bilingual, virtual, driver training, professional development, parents as teachers, summer school, vocational education, contingency reserve, one-third of textbook rental, and one-third of special education. |
| | 3 -- | Amount per weighted pupil (excluding special education weighting) for the cash balances in the funds in Column 2 |
| | 4 -- | 2011-12 Difference in the amount per pupil between the original base state aid per pupil (\$3,937) and the Governor's recommendation of \$3,780 which equates to \$157 multiplied by the weighted enrollment (excluding special education weighting) |
| | 5 -- | Difference (Column 2 - 4) |
| | 6 -- | 2011-12 Difference in the amount per pupil between the original base state aid per pupil (\$4012) and the Governor's recommendation of \$3,780 which equates to \$232 multiplied by the weighted enrollment (excluding special education weighting) |
| | 7 -- | Difference (Column 2 - 6) |

Appropriations Committee

Date March 29, 2011

Attachment 1

	3/18/2011		Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7
			2010-11	July 1, 2010	Amount Per	Cost of		Cost of	
			FTE	Total	WTD Pupil	BSAPP at	Difference	BSAPP at	Difference
USD #	County	District Name	Enroll.	Cash Bal.	(excl Sped)	\$157	(Col 2 - Col 4)	\$232	(Col 2 - Col 6)
256	Allen	Marmaton Valley	336.5	236,241	368	100,810	135,432	148,967	87,27
257	Allen	Iola	1,266.4	881,429	458	302,476	578,953	446,971	434,45
258	Allen	Humboldt	541.5	417,812	468	140,060	277,752	206,967	210,84
365	Anderson	Garnett	1,082.2	704,598	417	265,142	439,456	391,802	312,79
479	Anderson	Crest	211.5	69,300	149	73,225	-3,924	108,205	-38,90
377	Atchison	Atchison County	630.6	615,953	552	175,055	440,898	258,680	357,27
409	Atchison	Atchison	1,638.4	1,902,340	797	374,790	1,527,550	553,830	1,348,51
254	Barber	Barber Co.	438.5	942,260	1,230	120,262	821,998	177,712	764,54
255	Barber	South Barber Co.	217.7	179,598	403	69,896	109,702	103,286	76,31
355	Barton	Ellinwood	391.8	542,017	785	108,471	433,546	160,289	381,72
428	Barton	Great Bend	3,023.6	4,519,446	1,037	684,112	3,835,334	1,010,917	3,508,52
431	Barton	Hoisington	649.0	705,735	671	165,243	540,492	244,180	461,55
234	Bourbon	Ft. Scott	1,871.2	1,089,364	405	422,471	666,893	624,289	465,07
235	Bourbon	Uniontown	451.1	470,581	554	133,293	337,288	196,968	273,61
415	Brown	Hiawatha	841.8	901,303	676	209,438	691,865	309,488	591,81
430	Brown	Brown County	582.4	1,000,667	887	177,206	823,461	261,858	738,80
205	Butler	Bluestem	523.6	445,095	476	146,905	298,190	217,082	228,01
206	Butler	Remington-Whitewater	532.0	699,028	776	141,488	557,539	209,078	489,94
375	Butler	Circle	1,748.5	2,294,149	1,040	346,373	1,947,775	511,838	1,782,31
385	Butler	Andover	4,953.7	1,292,872	228	891,273	401,599	1,317,041	-24,16
394	Butler	Rose Hill	1,732.5	1,497,673	727	323,483	1,174,190	478,013	1,019,66
396	Butler	Douglass	719.0	638,805	560	179,106	459,699	264,666	374,13
402	Butler	Augusta	2,144.5	1,659,718	619	420,760	1,238,958	621,760	1,037,95
490	Butler	El Dorado	1,920.0	1,876,033	719	409,582	1,466,451	605,242	1,270,79
492	Butler	Flinthills	259.4	331,883	629	82,818	249,066	122,380	209,50
284	Chase	Chase County	388.5	152,826	217	110,764	42,063	163,676	-10,85
285	Chautauqua	Cedar Vale	134.7	70,634	224	49,549	21,085	73,219	-2,58
286	Chautauqua	Chautauqua	346.5	414,843	622	104,656	310,186	154,651	260,19
404	Cherokee	Riverton	766.0	639,853	493	203,739	436,114	301,066	338,78
493	Cherokee	Columbus	1,020.5	587,357	346	266,476	320,881	393,774	193,58
499	Cherokee	Galena	798.8	841,251	627	210,757	630,494	311,437	529,81
508	Cherokee	Baxter Springs	977.5	755,140	483	245,689	509,450	363,057	392,08
103	Cheyenne	Cheylin	137.5	72,768	220	52,046	20,723	76,908	-4,14
297	Cheyenne	St. Francis	289.8	214,170	420	80,054	134,116	118,297	95,87
219	Clark	Minneola	266.3	300,944	625	75,564	225,380	111,662	189,28
220	Clark	Ashland	206.0	189,583	440	67,589	121,994	99,876	89,70
379	Clay	Clay Center	1,333.2	1,735,654	947	287,828	1,447,826	425,326	1,310,32
333	Cloud	Concordia	1,061.4	731,256	455	252,487	478,769	373,102	358,15
334	Cloud	Southern Cloud	250.0	427,847	874	76,883	350,964	113,610	314,23
243	Coffey	Lebo-Waverly	517.5	353,592	404	137,391	216,202	203,023	150,56
244	Coffey	Burlington	841.4	866,033	666	204,210	661,823	301,762	564,27
245	Coffey	LeRoy-Gridley	224.5	164,067	351	73,476	90,591	108,576	55,49
300	Comanche	Comanche County	311.0	564,905	1,000	88,658	476,247	131,010	433,89
462	Cowley	Central	356.9	174,906	264	104,060	70,846	153,770	21,13
463	Cowley	Udall	358.0	529,291	840	98,910	430,381	146,160	383,13
465	Cowley	Winfield	2,345.9	242,747	76	501,772	-259,025	741,472	-498,72
470	Cowley	Arkansas City	2,605.0	1,004,917	257	614,058	390,859	907,398	97,51
471	Cowley	Dexter	138.9	275,588	854	50,680	224,909	74,890	200,69
246	Crawford	Northeast	544.0	503,741	505	156,623	347,118	231,443	272,29
247	Crawford	Cherokee	705.5	146,736	122	189,436	-42,701	279,931	-133,19
248	Crawford	Girard	1,008.5	1,047,921	668	246,113	801,807	363,683	684,23
249	Crawford	Frontenac	866.0	414,356	322	202,342	212,014	299,002	115,35
250	Crawford	Pittsburg	2,620.5	1,332,444	345	606,805	725,639	896,680	435,76
294	Decatur	Oberlin	350.5	668,252	1,085	96,696	571,556	142,889	525,36
393	Dickinson	Solomon	349.7	330,258	528	98,282	231,976	145,232	185,02
435	Dickinson	Abilene	1,545.3	3,430,367	1,764	305,287	3,125,081	451,124	2,979,24
473	Dickinson	Chapman	931.1	1,415,220	967	229,770	1,185,451	339,532	1,075,68
481	Dickinson	Rural Vista	366.5	374,580	527	111,580	263,000	164,882	209,69
487	Dickinson	Herington	489.7	605,601	700	135,852	469,749	200,750	404,85

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	3/18/2011		Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7
			2010-11	July 1, 2010	Amount Per	Cost of		Cost of	
			FTE	Total	WTD Pupil	BSAPP at	Difference	BSAPP at	Difference
USD #	County	District Name	Enroll.	Cash Bal.	(excl Sped)	\$157	(Col 2 - Col 4)	\$232	(Col 2 - Col 6)
111	Doniphan	Doniphan West Schools	346.5	228,501	345	103,871	124,629	153,491	75,00
114	Doniphan	Riverside	746.7	422,550	353	187,882	234,668	277,634	144,91
429	Doniphan	Troy	347.5	384,456	644	93,666	290,790	138,411	246,04
348	Douglas	Baldwin City	1,351.9	338,976	185	287,373	51,604	424,653	-85,67
491	Douglas	Eudora	1,488.5	526,526	251	329,543	196,983	486,968	39,55
497	Douglas	Lawrence	10,845.5	12,389,039	924	2,105,857	10,283,182	3,111,839	9,277,20
347	Edwards	Kinsely-Offertle	364.0	465,823	679	107,749	358,074	159,222	306,60
502	Edwards	Lewis	101.0	474,949	1,915	38,936	436,013	57,536	417,41
282	Elk	West Elk	310.5	233,906	350	104,907	128,998	155,022	78,88
283	Elk	Elk Valley	181.5	285,960	670	66,961	218,999	98,948	187,01
388	Ellis	Ellis	396.5	317,332	484	102,851	214,482	151,983	165,34
432	Ellis	Victoria	256.5	5,195	12	70,697	-65,502	104,470	-99,27
489	Ellis	Hays	2,926.4	6,773	2	595,077	-588,304	879,350	-872,57
112	Ellsworth	Central Plains	585.0	866,179	812	167,472	698,707	247,474	618,70
327	Ellsworth	Ellsworth	615.0	380,923	370	161,679	219,244	238,914	142,00
363	Finney	Holcomb	965.9	393,344	256	240,807	152,537	355,842	37,50
457	Finney	Garden City	7,033.5	3,168,045	293	1,695,663	1,472,382	2,505,693	662,35
381	Ford	Spearville	362.0	138,945	238	91,672	47,272	135,465	3,48
443	Ford	Dodge City	6,046.2	6,759,423	676	1,569,403	5,190,019	2,319,118	4,440,30
459	Ford	Bucklin	243.2	244,363	496	77,291	167,072	114,214	130,15
287	Franklin	West Franklin	646.0	1,977,247	1,642	189,012	1,788,235	279,305	1,697,94
288	Franklin	Central Heights	550.9	697,483	692	158,130	539,352	233,670	463,81
289	Franklin	Wellsville	807.1	213,431	171	196,187	17,244	289,907	-76,47
290	Franklin	Ottawa	2,420.2	2,699,977	832	509,339	2,190,638	752,654	1,947,32
475	Geary	Junction City	7,698.1	7,660,501	758	1,586,862	6,073,639	2,344,917	5,315,58
291	Gove	Grinnell	72.0	156,272	906	27,083	129,190	40,020	116,25
292	Gove	Wheatland	104.0	325,652	1,313	38,952	286,700	57,559	268,09
293	Gove	Quinter	266.0	91,009	188	75,957	15,053	112,242	-21,23
281	Graham	Graham County	362.0	524,265	836	98,439	425,826	145,464	378,80
214	Grant	Ulysses	1,616.5	1,759,639	757	364,852	1,394,787	539,145	1,220,49
102	Gray	Cimarron-Ensign	670.8	227,798	205	174,757	53,041	258,239	-30,44
371	Gray	Montezuma	229.6	417,634	909	72,157	345,477	106,627	311,00
476	Gray	Copeland	103.0	287,342	937	48,136	239,205	71,131	216,21
477	Gray	Ingalls	229.7	215,258	462	73,115	142,143	108,042	107,21
200	Greeley	Greeley County	190.5	205,736	470	68,735	137,002	101,570	104,16
386	Greenwood	Madison-Virgil	241.6	291,298	622	73,570	217,728	108,715	182,58
389	Greenwood	Eureka	623.9	1,026,424	920	175,149	851,275	258,819	767,60
390	Greenwood	Hamilton	90.0	177,851	794	35,168	142,683	51,968	125,88
494	Hamilton	Syracuse	473.0	941,468	1,000	147,863	793,605	218,498	722,97
361	Harper	Anthony-Harper	839.1	568,474	384	232,407	336,067	343,430	225,04
511	Harper	Attica	146.5	148,213	486	47,854	100,359	70,714	77,49
369	Harvey	Burrton	242.0	412,283	854	75,815	336,467	112,033	300,25
373	Harvey	Newton	3,346.1	1,614,884	350	724,304	890,581	1,070,309	544,57
439	Harvey	Sedgwick	536.6	1,025,346	1,197	134,533	890,813	198,801	826,54
440	Harvey	Halstead	781.0	783,410	631	195,025	588,385	288,190	495,22
460	Harvey	Hesston	818.6	646,045	539	188,322	457,724	278,284	367,76
374	Haskell	Sublette	485.9	275,388	291	148,758	126,631	219,820	55,56
507	Haskell	Satanta	333.5	312,859	451	108,911	203,948	160,938	151,92
227	Hodgeman	Jetmore	269.0	141,644	287	77,480	64,165	114,492	27,15
228	Hodgeman	Hanston	37.0	110,691	668	26,031	84,660	38,466	72,22
335	Jackson	North Jackson	391.0	554,385	763	114,092	440,293	168,594	385,79
336	Jackson	Holton	1,073.0	575,935	369	245,250	330,686	362,407	213,52
337	Jackson	Mayetta	912.1	720,746	492	230,068	490,678	339,973	380,77
338	Jefferson	Valley Falls	398.5	338,644	478	111,329	227,315	164,511	174,13
339	Jefferson	Jefferson County	477.5	408,502	511	125,537	282,965	185,507	222,99
340	Jefferson	Jefferson West	862.0	544,547	411	208,056	336,490	307,446	237,10
341	Jefferson	Oskaloosa	514.6	843,681	869	152,416	691,265	225,226	618,45
342	Jefferson	McClouth	489.6	515,801	614	131,880	383,921	194,880	320,92
343	Jefferson	Perry	934.1	988,771	682	227,681	761,090	336,446	652,32

Appropriations
March 29, 2011
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	3/18/2011		Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7
			2010-11	July 1, 2010	Amount Per	Cost of		Cost of	
			FTE	Total	WTD Pupil	BSAPP at	Difference	BSAPP at	Difference
USD #	County	District Name	Enroll.	Cash Bal.	(excl Sped)	\$157	(Col 2 - Col 4)	\$232	(Col 2 - Col 6)
107	Jewell	Rock Hills	286.0	577,514	1,095	82,786	494,728	122,334	455,18
229	Johnson	Blue Valley	20,593.0	17,971,926	645	4,371,838	13,600,088	6,460,295	11,511,63
230	Johnson	Spring Hill	3,172.4	499,307	130	600,839	-101,532	887,864	-388,55
231	Johnson	Gardner-Edgerton	4,752.3	724,733	127	898,338	-173,605	1,327,481	-602,74
232	Johnson	DeSoto	6,369.7	4,970,512	621	1,257,068	3,713,444	1,857,578	3,112,93
233	Johnson	Olathe	26,098.1	11,092,727	311	5,602,938	5,489,790	8,279,500	2,813,22
512	Johnson	Shawnee Mission	26,654.0	10,385,016	299	5,449,815	4,935,201	8,053,230	2,331,78
215	Kearny	Lakin	594.0	1,597,787	1,450	172,983	1,424,804	255,618	1,342,16
216	Kearny	Deerfield	296.1	770,163	1,311	92,253	677,910	136,323	633,84
331	Kingman	Kingman	1,005.7	574,312	377	239,064	335,248	353,266	221,04
332	Kingman	Cunningham	166.0	284,369	760	58,734	225,635	86,791	197,57
422	Kiowa	Greensburg	201.0	569,808	1,280	69,896	499,912	103,286	466,52
424	Kiowa	Mullinville	254.7	608,099	1,716	55,625	552,474	82,198	525,90
474	Kiowa	Haviland	115.0	252,983	843	47,100	205,883	69,600	183,38
503	Labette	Parsons	1,176.3	1,727,886	920	294,925	1,432,962	435,812	1,292,07
504	Labette	Oswego	475.5	824,298	1,014	127,625	696,672	188,593	635,70
505	Labette	Chetopa - St. Paul	468.1	841,865	970	136,198	705,668	201,260	640,60
506	Labette	Labette County	1,600.2	1,218,922	548	349,278	869,644	516,130	702,79
468	Lane	Healy	74.0	239,692	1,110	33,896	205,796	50,089	189,60
482	Lane	Dighton	240.5	296,641	658	70,776	225,866	104,586	192,05
207	Leavenworth	Ft. Leavenworth	2,061.5	3,701,704	1,536	378,244	3,323,459	558,934	3,142,76
449	Leavenworth	Easton	675.4	888,592	799	174,600	713,993	258,007	630,58
453	Leavenworth	Leavenworth	3,533.6	3,688,205	711	814,076	2,874,128	1,202,966	2,485,23
458	Leavenworth	Basehor-Linwood	2,146.2	770,266	280	431,813	338,454	638,093	132,17
464	Leavenworth	Tonganoxie	1,845.6	463,515	200	362,968	100,547	536,361	-72,84
469	Leavenworth	Lansing	2,549.1	2,631,256	892	462,915	2,168,342	684,052	1,947,20
298	Lincoln	Lincoln	357.0	455,981	704	101,642	354,340	150,197	305,78
299	Lincoln	Sylvan Grove	231.0	137,842	295	73,335	64,507	108,367	29,47
344	Linn	Pleasanton	322.7	180,468	290	97,576	82,892	144,188	36,28
346	Linn	Jayhawk	501.3	1,241,077	1,314	148,255	1,092,822	219,078	1,021,99
362	Linn	Prairie View	951.0	913,142	587	244,198	668,944	360,853	552,28
274	Logan	Oakley	403.0	292,205	413	111,046	181,159	164,094	128,11
275	Logan	Triplains	77.8	22,522	114	31,117	-8,595	45,982	-23,46
251	Lyon	North Lyon Co.	437.3	212,773	243	137,281	75,492	202,861	9,91
252	Lyon	Southern Lyon Co.	520.8	299,991	340	138,584	161,407	204,786	95,20
253	Lyon	Emporia	4,325.5	5,049,668	758	1,045,322	4,004,347	1,544,679	3,504,98
397	Marion	Centre	268.5	375,462	717	82,221	293,241	121,498	253,96
398	Marion	Peabody-Burns	304.5	501,035	860	91,515	409,519	135,233	365,80
408	Marion	Marion	563.6	269,077	284	148,805	120,272	219,890	49,18
410	Marion	Durham-Hills	562.2	416,335	439	149,056	267,279	220,261	196,07
411	Marion	Goessel	248.5	407,669	876	73,052	334,617	107,950	299,72
364	Marshall	Marysville	700.0	452,115	394	180,173	271,942	266,243	185,87
380	Marshall	Vermillion	514.3	684,526	771	139,463	545,063	206,086	478,44
498	Marshall	Valley Heights	354.5	366,301	545	105,535	260,765	155,950	210,35
400	McPherson	Smoky Valley	959.3	1,745,687	1,212	226,049	1,519,638	334,034	1,411,65
418	McPherson	McPherson	2,299.3	1,403,883	504	437,025	966,858	645,795	758,08
419	McPherson	Canton-Galva	366.8	436,388	685	99,962	336,426	147,714	288,67
423	McPherson	Moundridge	404.0	265,302	383	108,832	156,470	160,822	104,48
448	McPherson	Inman	419.5	236,805	327	113,527	123,278	167,759	69,04
225	Meade	Fowler	166.0	292,757	797	57,682	235,075	85,237	207,52
226	Meade	Meade	453.0	567,763	726	122,790	444,973	181,447	386,31
367	Miami	Osawatomie	1,124.0	218,001	124	275,786	-57,785	407,531	-189,53
368	Miami	Paola	2,010.3	1,392,701	547	399,659	993,041	590,579	802,12
416	Miami	Louisburg	1,653.0	995,764	495	315,570	680,194	466,320	529,44
272	Mitchell	Wacanda	378.3	191,197	275	109,225	81,972	161,402	29,79
273	Mitchell	Beloit	728.3	840,549	733	180,079	660,470	266,104	574,44
436	Montgomery	Caney	845.4	963,110	706	214,211	748,900	316,541	646,57
445	Montgomery	Coffeyville	1,808.7	1,150,906	438	412,706	738,200	609,858	541,04
446	Montgomery	Independence	1,805.7	1,361,385	547	391,087	970,298	577,912	783,47

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	3/18/2011		Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7
			2010-11	July 1, 2010	Amount Per	Cost of		Cost of	
			FTE	Total	WTD Pupil	BSAPP at	Difference	BSAPP at	Difference
USD #	County	District Name	Enroll.	Cash Bal.	(excl Sped)	\$157	(Col 2 - Col 4)	\$232	(Col 2 - Col 6)
447	Montgomery	Cherryvale	944.1	888,003	601	231,889	656,114	342,664	545,33
417	Morris	Morris County	740.5	576,328	478	189,326	387,001	279,769	296,55
217	Morton	Rolla	193.5	215,962	505	67,180	148,781	99,273	116,68
218	Morton	Elkhart	838.6	693,678	531	205,105	488,573	303,085	390,59
113	Nemaha	Prairie Hills	1,181.3	1,516,747	892	266,916	1,249,831	394,423	1,122,32
442	Nemaha	Nemaha Valley	421.8	1,195,927	1,553	120,874	1,075,053	178,617	1,017,31
451	Nemaha	B & B	169.5	359,238	961	58,718	300,520	86,768	272,47
101	Neosho	Erie	518.6	510,037	506	158,397	351,640	234,065	275,97
413	Neosho	Chanute	1,850.5	2,640,592	1,019	406,850	2,233,743	601,205	2,039,38
106	Ness	Western Plains	165.5	509,226	1,325	60,335	448,891	89,158	420,06
303	Ness	Ness City	302.4	472,852	924	80,337	392,515	118,714	354,13
211	Norton	Norton	726.3	881,486	777	178,195	703,291	263,320	618,16
212	Norton	Northern Valley	201.0	189,879	429	69,567	120,312	102,799	87,08
420	Osage	Osage City	674.4	519,031	488	167,017	352,015	246,802	272,23
421	Osage	Lyndon	454.5	181,209	244	116,384	64,825	171,982	9,22
434	Osage	Santa Fe	1,045.9	457,246	279	257,449	199,798	380,434	76,81
454	Osage	Burlingame	339.0	406,343	694	91,861	314,483	135,743	270,60
456	Osage	Marais Des Cygnes	261.0	435,439	815	83,854	351,586	123,911	311,52
392	Osborne	Osborne	315.2	685,092	1,112	96,759	588,333	142,982	542,11
239	Ottawa	North Ottawa Co.	608.5	872,609	855	160,313	712,296	236,895	635,71
240	Ottawa	Twin Valley	603.3	306,368	310	154,990	151,378	229,030	77,33
495	Pawnee	Ft. Larned	901.0	1,312,244	925	222,657	1,089,586	329,022	983,22
496	Pawnee	Pawnee Heights	179.7	186,791	528	55,547	131,245	82,082	104,71
110	Phillips	Thunder Ridge	249.5	587,805	1,157	79,772	508,034	117,879	469,92
325	Phillips	Phillipsburg	613.4	631,097	626	158,272	472,826	233,879	397,21
326	Phillips	Logan	176.0	479,358	1,228	61,261	418,096	90,526	388,83
320	Pottawatomie	Wamego	1,349.5	546,784	309	277,529	269,255	410,106	136,67
321	Pottawatomie	Kaw Valley	1,138.5	1,058,353	630	263,666	794,687	389,621	668,73
322	Pottawatomie	Onaga	309.0	580,626	1,032	88,328	492,298	130,523	450,10
323	Pottawatomie	Westmoreland	842.6	829,099	604	215,545	613,553	318,513	510,58
382	Pratt	Pratt	1,044.1	552,955	349	248,421	304,534	367,094	185,86
438	Pratt	Skyline	369.7	88,378	140	98,863	-10,485	146,090	-57,71
105	Rawlins	Rawlins County	300.0	628,873	1,149	85,926	542,947	126,974	501,89
308	Reno	Hutchinson	4,671.0	6,251,428	941	1,043,296	5,208,132	1,541,686	4,709,74
309	Reno	Nickerson	1,136.5	1,226,200	692	278,110	948,091	410,965	815,23
310	Reno	Fairfield	275.2	190,728	308	97,120	93,607	143,515	47,21
311	Reno	Pretty Prairie	265.0	284,424	583	76,632	207,792	113,239	171,18
312	Reno	Haven	1,030.9	14,455	9	245,046	-230,590	362,106	-347,65
313	Reno	Buhler	2,153.0	869,084	321	425,360	443,724	628,558	240,52
109	Republic	Republic County	483.5	927,210	1,116	130,467	796,743	192,792	734,41
426	Republic	Pike Valley	241.0	402,472	846	74,732	327,740	110,432	292,04
376	Rice	Sterling	524.2	87,198	95	143,702	-56,504	212,350	-125,15
401	Rice	Chase	146.3	316,281	929	53,474	262,807	79,019	237,26
405	Rice	Lyons	784.6	1,283,634	944	213,520	1,070,114	315,520	968,11
444	Rice	Little River	333.5	154,200	273	88,768	65,432	131,173	23,02
378	Riley	Riley County	688.5	366,752	331	173,721	193,032	256,708	110,04
383	Riley	Manhattan	6,047.1	5,178,079	691	1,177,060	4,001,019	1,739,350	3,438,72
384	Riley	Blue Valley	214.7	293,987	680	67,887	226,101	100,317	193,67
269	Rooks	Palco	143.0	214,495	643	52,407	162,088	77,442	137,05
270	Rooks	Plainville	368.9	500,276	810	97,010	403,266	143,353	356,92
271	Rooks	Stockton	278.6	201,265	395	80,054	121,210	118,297	82,96
395	Rush	LaCrosse	294.0	626,279	1,167	84,246	542,033	124,491	501,78
403	Rush	Otis-Bison	179.0	446,024	1,138	61,528	384,496	90,921	355,10
399	Russell	Paradise	149.0	60,665	186	51,198	9,467	75,655	-14,99
407	Russell	Russell	819.7	1,012,342	715	222,249	790,093	328,419	683,92
305	Saline	Salina	6,971.8	7,479,039	803	1,461,827	6,017,212	2,160,152	5,318,88
306	Saline	Southeast of Saline	713.0	650,891	580	176,311	474,580	260,536	390,35
307	Saline	Ell-Saline	461.0	1,056,618	1,351	122,821	933,797	181,494	875,12
466	Scott	Scott County	861.9	716,634	508	221,464	495,170	327,259	389,37

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	3/18/2011		Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7
			2010-11	July 1, 2010	Amount Per	Cost of		Cost of	
			FTE	Total	WTD Pupil	BSAPP at	Difference	BSAPP at	Difference
USD #	County	District Name	Enroll.	Cash Bal.	(excl Sped)	\$157	(Col 2 - Col 4)	\$232	(Col 2 - Col 6)
259	Sedgwick	Wichita	46,256.4	29,991,399	424	11,104,626	18,886,774	16,409,383	13,582,01
260	Sedgwick	Derby	6,220.4	3,150,284	399	1,239,813	1,910,470	1,832,081	1,318,20
261	Sedgwick	Haysville	4,987.6	6,956,500	1,039	1,051,351	5,905,150	1,553,588	5,402,91
262	Sedgwick	Valley Center	2,580.5	1,858,953	571	510,721	1,348,232	754,696	1,104,25
263	Sedgwick	Mulvane	1,822.6	1,693,978	763	348,619	1,345,359	515,156	1,178,82
264	Sedgwick	Clearwater	1,243.9	1,528,979	902	266,068	1,262,911	393,170	1,135,80
265	Sedgwick	Goddard	4,924.8	3,418,033	551	973,761	2,444,272	1,438,934	1,979,09
266	Sedgwick	Maize	6,401.2	4,303,079	527	1,280,853	3,022,226	1,892,726	2,410,35
267	Sedgwick	Renwick	1,918.0	203,293	87	367,019	-163,726	542,346	-339,05
268	Sedgwick	Cheney	765.4	706,712	616	180,016	526,696	266,011	440,70
480	Seward	Liberal	4,456.0	2,194,722	312	1,104,479	1,090,243	1,632,097	562,62
483	Seward	Kismet-Plains	714.5	1,268,935	836	238,373	1,030,562	352,246	916,68
345	Shawnee	Seaman	3,608.8	886,210	196	710,237	175,974	1,049,522	-163,31
372	Shawnee	Silver Lake	715.1	598,436	546	172,135	426,301	254,365	344,07
437	Shawnee	Auburn Washburn	5,541.2	4,436,874	641	1,086,566	3,350,308	1,605,626	2,831,24
450	Shawnee	Shawnee Heights	3,397.7	2,836,124	658	676,199	2,159,925	999,224	1,836,90
501	Shawnee	Topeka	13,222.7	9,495,516	492	3,028,373	6,467,143	4,475,048	5,020,46
412	Sheridan	Hoxie	305.5	327,041	630	81,452	245,589	120,362	206,67
352	Sherman	Goodland	924.5	682,764	478	224,118	458,647	331,180	351,58
237	Smith	Smith Center	416.0	484,023	657	115,709	368,314	170,984	313,03
349	Stafford	Stafford	268.6	754,192	1,440	82,221	671,971	121,498	632,69
350	Stafford	St. John-Hudson	305.5	403,868	710	89,333	314,535	132,008	271,86
351	Stafford	Macksville	274.5	401,633	736	85,628	316,006	126,533	275,10
452	Stanton	Stanton County	472.1	495,825	558	139,416	356,409	206,016	289,80
209	Stevens	Moscow	180.5	263,306	613	67,447	195,859	99,667	163,63
210	Stevens	Hugoton	1,007.6	731,640	444	258,705	472,935	382,290	349,35
353	Sumner	Wellington	1,626.1	168,301	78	340,203	-171,903	502,721	-334,42
356	Sumner	Conway Springs	503.8	552,559	647	134,031	418,528	198,058	354,50
357	Sumner	Belle Plaine	617.0	222,266	212	164,646	57,620	243,298	-21,03
358	Sumner	Oxford	335.2	296,572	506	92,049	204,523	136,022	160,55
359	Sumner	Argonia	171.0	179,666	505	55,892	123,774	82,592	97,07
360	Sumner	Caldwell	240.5	318,606	672	74,481	244,125	110,061	208,54
509	Sumner	South Haven	213.5	178,315	410	68,217	110,099	100,804	77,51
314	Thomas	Brewster	91.5	242,579	1,049	36,298	206,281	53,638	188,94
315	Thomas	Colby	906.2	953,102	684	218,638	734,464	323,083	630,01
316	Thomas	Golden Plains	203.6	348,516	786	69,614	278,902	102,869	245,64
208	Trego	WaKeeney	376.0	225,858	336	105,645	120,213	156,113	69,74
329	Wabaunsee	Alma	459.0	566,740	714	124,689	442,051	184,254	382,48
330	Wabaunsee	Wabaunsee East	485.0	914,657	1,047	137,155	777,501	202,675	711,98
241	Wallace	Wallace	188.0	260,755	645	63,507	197,248	93,844	166,91
242	Wallace	Weskan	110.0	132,754	529	39,391	93,363	58,209	74,54
108	Washington	Washington Co. Schools	399.0	428,890	620	108,675	320,215	160,590	268,30
223	Washington	Barnes	343.3	330,718	547	94,969	235,749	140,337	190,38
224	Washington	Clifton-Clyde	285.5	579,528	1,095	83,069	496,459	122,751	456,77
467	Wichita	Leoti	421.0	845,188	1,036	128,081	717,108	189,266	655,92
387	Wilson	Altoona-Midway	177.0	596,482	1,424	65,767	530,715	97,185	499,29
461	Wilson	Neodesha	698.0	332,612	286	182,717	149,895	270,002	62,61
484	Wilson	Fredonia	714.3	1,248,428	1,029	190,520	1,057,909	281,532	966,89
366	Woodson	Woodson	429.2	82,094	105	122,397	-40,304	180,867	-98,77
202	Wyandotte	Turner	3,764.8	1,927,965	347	873,124	1,054,841	1,290,222	637,74
203	Wyandotte	Piper	1,644.5	1,338,670	613	342,967	995,703	506,804	831,86
204	Wyandotte	Bonner Springs	2,382.0	551,217	179	484,376	66,841	715,766	-164,54
500	Wyandotte	Kansas City	18,729.9	11,624,982	377	4,846,041	6,778,941	7,161,028	4,463,95
TOTALS			455,135.8	357,790,426	537	104,545,845	253,244,582	154,488,127	203,302,295

Appropriations Committee

Date March 29, 2011

Attachment 1-6



Testimony before the
House Committee on Appropriations
on
HB 2395

by
Mark Tallman, Associate Executive Director/Advocacy
Kansas Association of School Boards

March 28, 2011

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to appear as a proponent of **HB 2395**. We believe this bill would provide school districts with additional flexibility to manage the reductions in operating budgets expected under proposals from the Governor and both the House and Senate.

Under the Governor's budget, the statewide average general operating fund per actual FTE pupil is expected to drop from \$6,666 in the current year to \$6,474 next year (slightly lower under the House committee budget and slightly more under the Senate committee plan). This is reduction of nearly 3 percent. It is also 11 percent below the high point of \$7,277 in FY 2009. Because most districts are at or nearing the maximum local option allowed, there is little local funding flexibility. There are, of course, other areas of school district budgets, such as KPERs, capital improvement, debt service, school meals and other federal programs, but these are mostly outside the operating budget for educational proposes.

HB 2395 would allow districts to access cash in certain funds for next year only to make up to the difference between the actual base budget per pupil, and \$4,012, which was the base budget used by districts for budgets published in the current year. The bill states that "The board of education of a school district shall consider the use of such funds in the following order of priority:

- (1) At-risk education fund, bilingual education fund, contingency reserve fund, driver training fund, parent education program fund, preschool-aged at-risk education fund, professional development fund, summer program fund, virtual school fund and vocational education fund;
- (2) Textbook and student materials revolving fund; and
- (3) Special education fund."

Appropriations Committee

Date March 29, 2011

Attachment 2

KASB has no concerns about ability of school districts to access the first group of funds. We do think consideration needs to be given to the second and third funds listed.

- The textbook and student materials revolving fund may contain transfers from the district general funds and perhaps other funds, but will also usually contain significant student fees. Districts use these funds for very expensive textbooks and other teacher material purchases. We question whether student fees collected for specific purposes should be used for general expenses.
- The second area of concern, the special education fund, also includes general fund and other transfers, but will contain state special education aid. Diversion of state and local special education funds could conflict with federal maintenance of effort requirements, which apply at the local, as well as state level. Districts will have to be extremely careful in using these funds.

While expressing our support for the flexibility provided by this bill, we want to caution the committee not to expect this bill alone to cause a significant reduction in cash balances. The primary reason districts have cash balances is NOT because of restrictions on various funds, but because of cash management needs.

Districts carry cash balances for the same reason as families and businesses: to meet known expenses that occur before scheduled revenue arrives, to provide cash flow if revenues are delayed or reduced, to cover unexpected expenses, and to save for long term building and equipment needs.

- Balances in **bond and interest** funds (\$361.9 million) are property taxes collected in one year to make scheduled bond payments that occur before taxes are received the next year.
- **Capital outlay** fund balances (\$429.8 million) are used for long term capital expenses such as buildings and equipment, often saved up to avoid the expense and interest costs of a bond issue.
- **Special education** balances (\$181.0 million) cover special education costs between the beginning of the school year in August and the first special education aid payment in October. Money in the special education fund on July 1 isn't there because districts didn't need it the previous year – they need it to operate in the current year until new funding arrives.
- **Contingency reserve** funds (\$193.9 million) are set aside for unexpected, emergency expenses or to cover shortfalls in revenue during the budget years. Last session, the Legislature increased the maximum contingency reserve amount from 6 to 10 percent of the general fund, and encouraged districts to set aside money to cover further reductions in state aid (which is occurring).
- **Special reserve** funds (\$102.4 million) pay claims, judgments and other expenses for health care, disability income benefits, group life insurance benefits and workers compensation costs. Districts have a fiduciary responsibility to maintain adequate reserves, just like insurance companies.
- **Textbook and student materials** revolving fund balances (\$50.5 million) are used to purchase textbooks and everything from physical education towels and uniforms to science and art supplies. Districts build up balances to make purchases on multi-year replacement schedules.

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- Balances in the **food service** fund (\$46.1 million) go to purchase food, supplies and pay salaries prior to receiving meal charges for students or federal reimbursement.

There are several other important reasons why districts carry those balances, and why they have been increasing.

First, the July 1 cash balances are overstated by the fact that they included about \$400 million this year that had not actually been paid by the state, but that districts must count on their books to avoid breaking the cash basis law. In other words, in order for the state to manage its own cash flow problems, state aid payments are routinely carried over into the next fiscal year, but school districts have to account for that money as though they have received it.

Second, the state has only been able to meet its cash flow needs by issuing certificates of indebtedness – which is essentially borrowing from other state funds. The state must issue \$700 million or more in certificates on July 1 to pay its bills until tax revenues arrive throughout the year. School districts must have enough cash on hand on July 1 to pay their bills until tax revenues and state aid arrives throughout the year.

Third, those state aid payments have consistently been distributed late during the past several years. Without flexibility in cash balances, school districts would be late in paying their own employees and vendors.

Fourth, many school districts have been increasing balances because they know state and federal funding is likely to decrease – as will happen this year. In other words, those districts have done what this committee has proposed in its own state general fund budget – build up an ending balance even though it makes painful cuts because the future is uncertain. Districts have been criticized for “firing teachers while increasing reserves.” But spending down reserves is using one time revenues. Keeping teachers by using cash balances may mean giving those teachers tenure without on-going revenue to pay for them in the future.

Fifth, KASB believes the money in the funds actually available for use – most of the funds identified in this bill – totaled about \$327 million on July 1. That equals about 8.2 percent of general operating budgets (\$3,036.6 million total general fund plus \$959.6 million total LOB). That amount is almost exactly one month’s operating costs (One month is 8.3 percent of a year). Our members believe that is a prudent amount. It is also fairly close to the state’s statutory ending balance requirement of 7.5 percent of the state general fund.

In conclusion, we expect that school district cash balances will drop this year, and we believe the flexibility provided by this bill will be helpful. However, it will not change many of the reasons that have led to reasonable and prudent cash balances in the first place. Any funds used under this bill are, by definition, one time revenues for Fiscal Year 2012 that would not be available in future years.

Thank you for your consideration.

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Attachment 2-3

School District Expenditures Per Pupil, 2006 to 2012 (Projected)

(Amounts in Thousands except for per pupil or per FTE)

(Multiply enrollment numbers by 1,000)

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Base Budget Per Pupil	\$4,257	\$4,316	\$4,374	\$4,400	\$4,012	\$3,937	\$3,780
Weighted FTE Enrollment	568.6915	592.1956	613.464	636	655.123	666.842	666.842
Special Ed Weighted Enr.	67.3533	76.0401	90.4067	97.2166	90.89	90.027	113.153
Total Weighted Enrollment	636.0448	668.2357	703.8707	733.2166	746.013	756.869	779.995
General Fund	\$2,707,643	\$2,884,105	\$3,078,730	\$3,226,153	\$2,993,004	\$2,979,793	\$2,948,381
ARRA Special Education					\$55,748	\$55,748	
General Fund+ARRA Sped	\$2,707,643	\$2,884,105	\$3,078,730	\$3,226,153	\$3,048,752	\$3,035,541	\$2,948,381
Unweighted FTE Enrollment	439.0958	441.115	442.9868	443.3304	448.7277	455.405	455.405
General Fund per Pupil	\$6,166	\$6,538	\$6,950	\$7,277	\$6,794	\$6,666	\$6,474
Local Option Budget	\$659,520	\$760,709	\$838,196	\$901,535	\$929,168	\$959,602	\$979,602
LOB Per FTE Enrollment	\$1,502	\$1,725	\$1,892	\$2,034	\$2,071	\$2,107	\$2,151
Bond and Interest Aid	\$57,488	\$63,697	\$69,128	\$75,591	\$86,700	\$94,647	\$100,000
Capital Outlay Aid	\$19,294	\$20,492	\$23,124	\$22,339	0	0	0
Total Capital Aid	\$76,782	\$84,189	\$92,252	\$97,930	\$86,700	\$94,647	\$100,000
Capital Aid per FTE Enroll.	\$175	\$191	\$208	\$221	\$193	\$208	\$220
KPERS School Contributions	\$161,531	\$192,426	\$220,813	\$242,277	\$249,856	\$283,502	\$319,862
KPERS Per FTE Enroll.	\$368	\$436	\$498	\$546	\$557	\$623	\$702
Note: Includes Community, Technical Colleges							
Total GF, LOB, Capital Aid,							
KPERS Per FTE Enrollment	\$8,211	\$8,890	\$9,549	\$10,078	\$9,615	\$9,603	\$9,547
Note: Does not include non-stimulus federal aid, local capital outlay and bond levies, students fees							
Total Expenditures Per							
Pupil, All Sources	\$10,596	\$11,558	\$12,188	\$12,660	\$12,330	NA	NA
FY 2011 and 2012 based on Governor's Budget							



KANSAS COMMISSION ON JUDICIAL PERFORMANCE

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SARA S. BEEZLEY, Girard
A. DALE CHAFFIN, Mission
PROF. JAMES CONCANNON, Topeka
HON. MICHAEL CORRIGAN, Wichita
MARTHA GARCIA, Wichita
RICHARD F. HAYSE, Topeka
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TESTIMONY OF RICHARD F. HAYSE BEFORE THE KANSAS HOUSE APPROPRIATIONS COMMITTEE IN OPPOSITION TO HB 2396 MARCH 29, 2011

My name is Richard F. Hayse. I am an attorney in private practice in Topeka. For the first four years of the Kansas Commission on Judicial Performance I was Chair of the Commission. The current chair of the Commission, Gloria Flentje, is out of the state today and unable to appear before you.

I appear in opposition to HB 2396 because the Kansas Commission on Judicial Performance provides valuable services to the judiciary, voters and citizens of the State of Kansas. The attached memorandum describes the program and its value to Kansas judges, voters, and citizens generally. A quick summary of the main points follows:

- The Commission evaluates all of the appellate and trial judges in Kansas by surveying both attorneys and non-attorneys about the judges' performance. The Commission attempts to specifically target survey respondents who have actually been in a judge's courtroom or have personal experience with that judge.
- For appointed judges, the Commission makes a recommendation to voters about whether those judges should be retained in office. Kansas voters have found the information valuable in making decisions about whether to retain judges in office, as evidenced by website hits and reduced voter falloff in judicial elections.
- Kansas judges have responded favorably to the program, indicating that it helps them to improve their performance. A recent survey of appointed judges showed that all of the appellate judges and more than half of the trial judges who responded believe that the evaluation process has been beneficial to their professional development and has allowed them to improve their job performance.

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Attachment 3

- The Commission is funded by docket fees, not state general fund money. The work of the Commission is paid for by those who use the courts, not Kansas taxpayers generally.
- Over half the states either have officially sanctioned judicial performance evaluation programs or are in the process of developing such programs. The national trend is definitely toward the use of such programs.

Kansas took a giant step forward when the judicial performance program was adopted by the Legislature in 2006. Since then, considerable time and effort has been expended by Commission members and staff to establish, obtain and disseminate the evaluations. I believe it is fair to say the program is a success, despite its critics. To abolish the program now would be a most regrettable step backward. I urge you not to favorably report HB 2396.

Appropriations Committee

Date March 29, 2011

Attachment 3-2



KANSAS COMMISSION ON JUDICIAL PERFORMANCE

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MEMORANDUM

TO: House Appropriations Committee

FROM: Kansas Commission on Judicial Performance

DATE: March 29, 2011

RE: Background Information About the Kansas Commission on Judicial Performance

The Kansas Judicial Performance Evaluation Program

The Kansas Commission on Judicial Performance was created by the Kansas Legislature in 2006 to establish a program of judicial performance evaluations for all Kansas appellate and trial judges. The Commission's evaluations are provided to the judges and justices for self-improvement. In addition, for appointed judges and justices who are subject to retention elections, the Commission's evaluations are disseminated to the public to help voters make informed decisions about whether to continue those judges and justices in office. Over the last four years, the Commission has completed and publicly disseminated evaluations for all of the appointed judges and justices in Kansas. The Commission has also completed either interim or full evaluations for all elected judges.

The Commission's evaluations are based almost entirely on surveys of people who have appeared in a judge or justice's courtroom or who have sufficient experience with the judge or justice to form an opinion about their performance. Survey respondents include attorneys, other judges and non-attorneys such as jurors, litigants, witnesses, law enforcement personnel and court staff. The surveys ask respondents to evaluate the judge or justice on his or her legal ability, integrity, impartiality, communication skills, professionalism, temperament and

administrative performance. In addition to the survey responses, the Commission considers the judge or justice's self-evaluation, any disciplinary actions, and may also rely on any other information that assists in the evaluation of the judge or justice, such as information from courtroom observation.

The judicial evaluation program is funded by docket fees, rather than state general fund revenue, so that evaluations are funded by the persons who are actually using the court system.

Standard for Retention Recommendation

Under its current rules, the Commission must recommend retention for any appointed judge or justice who receives an overall average score of 2.0 from each category of respondent surveyed unless other information reveals a serious deficiency in meeting judicial performance standards. If a judge's scores are above 2.0, but other information reveals a serious deficiency in meeting one or more judicial performance standards or there are a number of comments regarding the judge that the Commission is concerned about, the Commission has asked the judge for a meeting to discuss the evaluation and comments with the judge with the intent of assisting the judge's efforts to self-improve his or her performance.

Additional Background Information

A great deal of additional detail about the Kansas program appears on the Commission's website at www.kansasjudicialperformance.org, including the Commission's statutes, rules, and questionnaires along with a complete narrative description of how the Commission performs its statutory duties. Also, biographical information about the Commissioners, Commission meeting schedules, frequently asked questions, and the Commission's archived evaluation reports are on the website.

The end product of the Commission's evaluation of judges is the narrative profile, the evaluation report and the Commission's retention recommendations, which also appear on the Commission's website. I have attached a copy of a narrative profile and an excerpt from the evaluation report of Judge Jeff Jack of Labette County at pages 6-10. I chose to provide this example because some of you may have known Judge Jack when he served in the legislature prior to his appointment to the district court bench.

Judicial Performance Programs in Other States

Kansas is not alone in conducting a judicial performance evaluation program. Currently, 19 states (AK, AZ, CO, CT, FL, HI, ID, IL, KS, MA, MO, NH, NJ, NM, RI, TN, UT, VT, and VA) plus the District of Columbia and Puerto Rico have officially sanctioned judicial performance evaluation programs. Seven additional states (IN, MD, NV, NY, NC, and WA) are developing programs, and 11 states (CA, GA, KY, ME, NE, OH, PA, SC, TX, WV, and WY) do not have formal judicial performance evaluation programs but have evaluations that are conducted independently by state or local bar associations.

Value of the Program to the Judiciary

One of the Commission's statutory goals is to "improve the judicial performance of individual judges and justices and thereby improve the judiciary as a whole." K.S.A. 20-3203(a). Judicial performance evaluations permit a judge to see how he or she has performed against predetermined benchmarks, relative to his or her peers on the court and to identify areas of strength and weakness. Evaluations also improve judicial performance by providing constructive criticism that would not be available to the judge in any other way. This is especially true for interpersonal issues such as treatment of people in the courtroom. Evaluations also allow the judge to receive positive feedback about his or her performance, which a lawyer or litigant might otherwise withhold for fear it will be interpreted as an improper attempt to gain favor from the judge. Judges have commented positively on the feedback they received and have acknowledged that, without the feedback, which was only possible through formal, anonymous evaluations, they would not have received the information that led to their self-improvement. In addition, identification of weaknesses through the evaluation process allows judicial training and education programs to be tailored to focus specifically on those issues.

The Commission recently surveyed all of the appointed judges in Kansas to assess their perceptions about the evaluation process and to seek suggestions about whether there are areas of needed improvement. The results of the survey were positive, and a copy is attached at the end of this memorandum. All of the appellate judges and more than half of the trial judges who responded to the survey stated that the evaluation process has been beneficial to their professional development and has allowed them to improve their job performance.

Value of the Program to Kansas Voters

Another statutory goal of the Commission is, "where judges and justices are subject to retention elections, to disseminate the results from the judicial performance evaluation process to enable voters to make informed decisions about continuing judges and justices in office." K.S.A. 20-3203(b).

The Commission has worked to make judicial performance evaluations for the judges and justices standing for retention election widely available by posting them on the Commission's website, and publicizing them in radio spots, advertisements in and press releases to newspapers across the state, advertisements on other organizations' websites and in local bar associations' magazines and newsletters, and informational brochures placed in courthouses and libraries statewide.

The Commission's website received a large number of hits in the run-up to the 2010 elections. During the time period from August 3, 2010, to November 3, 2010, the website received 43,639 visits; 254,361 page views; and 954,992 hits. (A visit occurs when an individual comes to the website; page views refer to the number of pages viewed during a visit; and hits refers to the number of resources, such as images and text, requested during a visit.)

A number of voters have contacted the Commission to express their appreciation for the existence of the program. Typically, these voters have said that for the first time ever they have

felt comfortable that they know enough about the judges to cast an intelligent vote in the judicial retention elections.

In addition to producing more informed voters, judicial performance evaluation programs can also increase the number of voters. Multiple studies have shown that, when voters have more information about a judicial candidate, they are more likely to vote in a judicial election. In contrast, when information about judges is lacking, voters are less likely to vote on judicial retention, and when they do vote, they are more prone to base their decisions on factors such as ethnicity, gender, name recognition, length of time on the bench, or no rationale whatsoever.

Although it is difficult to measure how much impact the Commission has made on Kansas voters, one measure of that impact is the decrease in voter falloff in judicial elections. Dr. Richard Heil, former Chair of the Political Science Department at Fort Hays State University and member of the Commission, prepared a paper titled "Report on Voter Falloff in 2008 Judicial Elections."

Dr. Heil analyzed the effect the Commission's recommendations and reports had on voter falloff in the 2008 judicial elections. Voter falloff for the purpose of Dr. Heil's report is defined as the difference in the number of voters who voted for the top office on the ballot (in 2008 this was President) and who voted in judicial retention elections. Dr. Heil's report found a definite decrease in the percentage of voter falloff in 2008. He concluded by stating:

"However, the data is analyzed, what is clear is that the election of 2008 saw more voters expressing opinions on retention of judges in Kansas than in the previous decade. While it is not possible to prove that the reason for this improvement was the existence of the Kansas Commission on Judicial Performance I know of no other factors that would explain the fact that more voters than would be expected, based upon previous electoral behavior, did vote on judicial retention questions in 2008. If forty-some thousand Kansans benefited from the information provided by the Kansas Commission on Judicial Performance and cast a more informed vote, then one of the goals of the Commission has been accomplished."

In 2011, former Executive Director of the Commission Randy M. Hearrell prepared an updated version of Dr. Heil's paper analyzing voter falloff in the 2010 judicial elections. Just as in 2008, there was again a decrease in the percentage of voter falloff in 2010. Although a number of factors could have contributed to the decrease in voter falloff, Mr. Hearrell concluded that the Commission's efforts to publicize judicial performance evaluations in both 2008 and 2010 may have had some cumulative effect.

Value of the Program to the Citizens of Kansas

The Commission's last statutory goal is "to protect judicial independence while promoting public accountability of the judiciary." K.S.A. 20-3203(c). Judicial performance evaluation programs promote accountability and independence by measuring process rather than

outcome. In other words, judicial performance evaluation programs focus on a judge's competence and impartiality rather than specific decisions a judge has made. By setting objective measurable standards for judges, it makes it easier for the public to identify the qualities that make a good judge and makes it easier to distinguish between judges whose performance is outstanding and those whose performance needs improvement. The characteristics measured by judicial performance evaluations are usually impartiality, temperament, knowledge of law, fair application of the law and efficiency. Widely disseminated information about the performance of judges from a non-partisan, objective source can enhance judicial independence by educating the public about the qualities that make a good judge and help protect a judge from the effects of an unfair attack.

Conclusion

The Kansas judicial performance evaluation program plays an essential role in providing judges with useful feedback and informing voters about judges' performance. It promotes judicial accountability and provides transparency into the judicial process. The Commission on Judicial Performance respectfully requests that the Legislature continue to provide funding via docket fees so that the Commission may carry on this important work.

Kansas Commission on Judicial Performance



Honorable Jeffry L. Jack

2008 Review

District: 11

County: Labette

The Kansas Commission on Judicial Performance recommends that Judge Jeffry L. Jack BE RETAINED.

Judge Jack took the bench as District Judge in the 11th Judicial District in 2005. He handles a mixed docket of civil, criminal, juvenile and other cases in Labette County. A graduate of Harvard University and the University of Kansas School of Law, Judge Jack spent 16 years in the private practice of law before his appointment to the bench. He was also a Kansas State Representative from 2003 to 2005 and is a retired Major with the US Army Reserve/Kansas Army National Guard serving from 1984 to 2004.

Judge Jack was named State of Kansas Big Brother of the Year in 2008. He serves on a number of boards including the Labette County Big Brothers/Big Sisters Board of Directors, the Labette Correctional Conservation Camps Advisory Board, the Labette Community College Criminal Justice Advisory Board, the Juvenile Corrections Advisory Board, and the Labette County Law Library Board of Trustees.

Judge Jack lists compassion, integrity, intellectual ability, empathy and common sense as his greatest strengths. He recognizes that he could improve docket management and timeliness of written opinions. His professional goals are to improve his time management and his written opinions.

The Commission received survey responses from 21 attorneys and 138 non-attorneys. Survey results showed that 95% of the attorneys and 81% of the non-attorneys recommended that Judge Jack be retained in office. Judge Jack received an overall average score from attorneys of 3.47 on a 4.0 scale and an overall average score from non-attorneys of 3.20. Judge Jack's scores exceed the required minimum average grade of 2.0 from each category of respondents. The Commission recommends that he BE RETAINED.

View the complete Judicial Performance Report for the Honorable Jeffry L. Jack in PDF format.

Appropriations Committee

Date March 29, 2011

Attachment 3-8

Survey of Attorneys Regarding Trial Judges

Judge Jeffrey L. Jack Sample Size = 21							Average	
	A	B	C	D	Fail	DK/NA	Jeffrey L. Jack	All Trial Judges

1. Performance Grade:

1a. Overall performance as a judge.	57%	24%	5%	5%	0%	10%	3.5	3.3
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2. Legal Ability:

2a. Bases decisions on the relevant evidence.	43%	29%	5%	5%	0%	19%	3.4	3.4
2b. Has knowledge of rules of procedure.	48%	29%	5%	5%	0%	14%	3.4	3.5
2c. Follows legal precedent in decisions.	48%	24%	5%	5%	0%	19%	3.4	3.4
2d. Uses judicial discretion to reach a fair decision.	43%	24%	10%	0%	0%	24%	3.4	3.4
Overall Legal Ability							3.4	3.4

3. Integrity:

3a. Conducts court free from impropriety or appearance of impropriety.	71%	14%	5%	0%	0%	10%	3.7	3.6
3b. Does not engage in inappropriate ex parte communications.	67%	10%	10%	0%	0%	14%	3.7	3.7
Overall Integrity							3.7	3.6

4. Impartiality:

4a. Does not prejudge the outcome of cases.	62%	24%	5%	0%	0%	10%	3.6	3.3
4b. Treats pro se parties fairly.	24%	14%	5%	0%	0%	57%	3.4	3.6
4c. Makes decisions and rulings without regard to the identity of the parties.	57%	14%	14%	0%	0%	14%	3.5	3.4
4d. Makes decisions and rulings without regard to the identity of counsel.	57%	24%	5%	0%	0%	14%	3.6	3.4
4e. Treats attorneys equally regardless of sex or race.	67%	14%	5%	0%	0%	14%	3.7	3.7
Overall Impartiality							3.6	3.5

5. Communication Skills:

5a. Makes sure participants understand the proceedings.	57%	19%	10%	0%	0%	14%	3.6	3.5
5b. Issues clear and logical oral communication while in court.	67%	14%	10%	0%	0%	10%	3.6	3.4
5c. Provides rulings that are clear, thorough and well reasoned.	57%	19%	14%	0%	0%	10%	3.5	3.3
Overall Communication Skills							3.6	3.4

6. Professionalism:

6a. Does the necessary homework and is prepared for cases.	52%	14%	5%	5%	0%	24%	3.5	3.4
6b. Maintains proper order, decorum and civility in the courtroom.	62%	19%	5%	0%	0%	14%	3.7	3.6
6c. Appropriately enforces court rules, orders and deadlines.	62%	14%	10%	5%	0%	10%	3.5	3.5
6d. Uses common sense and is resourceful in resolving problems that arise during proceedings.	62%	14%	14%	0%	0%	10%	3.5	3.5
6e. Promptly makes decisions and rulings.	35%	45%	5%	0%	5%	10%	3.2	3.5
Overall Professionalism							3.5	3.5

Judge Jeffry L. Jack							Average	
	A	B	C	D	Fail	DK/NA	Jeffry L. Jack	All Trial Judges

7. Temperament:

7a. Gives proceedings a sense of dignity.	71%	14%	5%	0%	0%	10%	3.7	3.6
7b. Treats everyone in the courtroom with respect.	67%	14%	10%	0%	0%	10%	3.6	3.5
7c. Is attentive during the proceedings.	71%	14%	5%	0%	0%	10%	3.7	3.7
7d. Acts with patience and self-control.	71%	10%	10%	0%	0%	10%	3.7	3.4
Overall Temperament							3.7	3.5

8. Administrative:

8a. Begins court on time.	48%	33%	5%	0%	5%	10%	3.3	3.5
8b. Allots an adequate amount of time for presentation of cases.	57%	10%	14%	0%	5%	14%	3.3	3.5
8c. Manages court proceedings to reduce wasted time.	48%	10%	5%	14%	5%	19%	3.0	3.4
8d. Provides prompt access to the court in emergency matters.	29%	14%	5%	5%	5%	43%	3.0	3.5
8e. Appropriately uses settlement conferences and alternative dispute resolution mechanisms.	14%	14%	5%	5%	0%	62%	3.0	3.4
8f. Complies with time limits for rulings in Supreme Court Rule 166 relating to all civil matters taken under advisement.	19%	14%	10%	0%	0%	57%	3.2	3.5
Overall Administrative							3.1	3.5

Overall Average Grade: 3.5 3.5

Questions 9 & 10						Jeffry L. Jack	All Trial Judges
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9. Biased in favor of prosecution/defense.

Very biased in favor of the prosecution	0%	5%
Somewhat biased in favor of the prosecution	20%	22%
Completely Neutral	60%	67%
Somewhat biased in favor of the defense	20%	5%
Very biased in favor of the defense	0%	1%

10. How strongly do you recommend that Judge be retained or not retained in office?

Strongly recommend retain in office	79%	79%
Somewhat recommend retain in office	16%	12%
Somewhat recommend not retain in office	0%	4%
Strongly recommend not retain in office	5%	5%

Survey of Non-Attorneys Regarding Trial Judges

Judge Jeffrey L. Jack

Sample Size = 138

Average

Jeffrey L. Jack

All Trial Judges

A

B

C

D

Fail

DKNA

1. Performance Grade:

1a. Overall performance as a judge.	48%	28%	12%	8%	4%	1%	3.1	3.1
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2. Integrity:

2a. Conducts court free from impropriety or appearance of impropriety.	53%	24%	11%	7%	3%	2%	3.2	3.3
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2b. Willing to make decisions even if they are politically unpopular.	37%	22%	10%	10%	3%	18%	3.0	3.1
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Overall Integrity	3.1	3.2
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3. Impartiality:

3a. Gives all participants a fair opportunity to be heard.	64%	16%	9%	4%	5%	1%	3.3	3.3
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3b. Treats people fairly who represent themselves.	42%	19%	4%	4%	5%	25%	3.2	3.2
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3c. Does not prejudge the outcome of cases.	45%	21%	12%	4%	4%	14%	3.1	3.1
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3d. Presents a neutral presence on the bench.	58%	19%	12%	6%	3%	2%	3.3	3.2
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3e. Treats everyone fairly regardless of who they are.	56%	18%	9%	4%	5%	7%	3.2	3.2
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Overall Impartiality	3.2	3.2
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4. Professionalism:

4a. Maintains appropriate control over proceedings.	60%	23%	11%	3%	1%	3%	3.4	3.4
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4b. Is prepared for cases.	52%	23%	13%	3%	2%	7%	3.3	3.3
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4c. Gives court proceedings a sense of dignity.	56%	20%	13%	2%	4%	4%	3.3	3.3
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Overall Professionalism	3.3	3.4
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5. Communication Skills:

5a. Makes sure participants understand what's going on in the courtroom.	61%	20%	8%	6%	4%	2%	3.3	3.4
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5b. Uses language that everyone can understand.	60%	24%	8%	4%	3%	1%	3.4	3.4
---	-----	-----	----	----	----	----	-----	-----

5c. Speaks so everyone in the courtroom can hear what's being said.	61%	20%	11%	4%	2%	1%	3.4	3.4
---	-----	-----	-----	----	----	----	-----	-----

5d. Gives reasons for rulings.	51%	22%	8%	7%	4%	7%	3.2	3.2
--------------------------------	-----	-----	----	----	----	----	-----	-----

Overall Communication Skills	3.3	3.3
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6. Temperament:

6a. Demonstrates a sense of compassion and human understanding for those who appear before the court.	52%	24%	8%	7%	7%	2%	3.1	3.1
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6b. Is attentive during the proceedings.	57%	25%	11%	2%	2%	3%	3.4	3.4
--	-----	-----	-----	----	----	----	-----	-----

6c. Acts with patience and self control.	61%	15%	16%	8%	0%	0%	3.3	3.4
--	-----	-----	-----	----	----	----	-----	-----

Overall Temperament	3.3	3.3
---------------------	-----	-----

7. Administrative:

7a. Begins court on time.	40%	36%	12%	6%	4%	3%	3.1	3.2
---------------------------	-----	-----	-----	----	----	----	-----	-----

7b. Sets reasonable schedules for cases.	39%	25%	16%	3%	5%	12%	3.0	3.2
--	-----	-----	-----	----	----	-----	-----	-----

7c. Manages court proceedings to reduce wasted time.	41%	29%	13%	5%	4%	8%	3.1	3.2
--	-----	-----	-----	----	----	----	-----	-----

7d. Provides prompt access to the court in emergency matters.	23%	17%	7%	2%	6%	45%	2.9	3.2
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Overall Administrative	3.0	3.2
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Overall Average Grade:	3.2	3.3
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Judge Jeffrey L. Jack
Questions 8 & 9

Jeffrey L. Jack All final
Judges

8. Biased in favor of prosecution/defense.

Very biased in favor of the prosecution	10%	10%
Somewhat biased in favor of the prosecution	6%	10%
Completely Neutral	71%	71%
Somewhat biased in favor of the defense	6%	6%
Very biased in favor of the defense	6%	3%

9. How strongly do you recommend that Judge be retained or not retained in office?

Strongly recommend retain in office	66%	70%
Somewhat recommend retain in office	15%	13%
Somewhat recommend not retain in office	8%	5%
Strongly recommend not retain in office	12%	11%

**Summary Report on Survey of Kansas Retention Judges
About the KCJP Judicial Performance Evaluation Program**

January 2011

Appropriations Committee

Date March 29, 2011

Attachment 3-13

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Introduction and Methodology

The Kansas Commission on Judicial Performance (KCJP) was created in 2006 by the Kansas Legislature to improve the performance of individual judges and the judiciary as a whole. The Commission's evaluations of all of the state court trial and appellate judges are provided to the judges for self-improvement. In addition, for appointed judges who are subject to retention elections, the Commission's evaluations are disseminated to the public to help voters make informed decisions about whether to continue those judges in office.

Four years later, the Commission has now completed one full cycle of evaluations for all retention judges, both trial and appellate. In order to solicit feedback from those judges about the judicial performance evaluation process, the Commission designed an online survey to assess judges' perceptions about the process and seek their suggestions about whether there are areas of needed improvement. Eighteen appellate judges and 124 retention trial judges were sent a postcard informing them about the survey, followed by an email invitation containing a link to the site where the survey was hosted. One week after the first email invitation, a reminder email was sent to those judges who had not yet responded.

As an alternative to completing the online survey confidentially, the Commission also offered judges the option of completing the survey in hard copy rather than online, and several judges chose that option. When hard copies of the surveys were returned, Commission staff manually entered the results into the online survey form so that complete, combined results could be downloaded from the survey site without compromising anonymity.

Judges were also encouraged to provide detailed comments in response to each survey question. The Commission has reviewed these comments but chose not to include them in this summary report because of their length. The Commission has also omitted questions relating to demographic information; however, all questions directly relating to the judges' perceptions about the program have been included.

Appellate and trial judges completed the same survey, but their responses have been separated for purposes of this report. In all, 11 of 18 appellate judges (61%) and 86 of 124 trial judges (69%) responded to the survey.

Appropriations Committee

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Attachment 3-17

KCJP Judge Survey

1. Overall, how satisfied are you with the KCJP program using the following scale?

Answer Options	Response Percent	Response Count
Very satisfied	30.0%	3
Somewhat satisfied	70.0%	7
Neither satisfied or dissatisfied	0.0%	0
Somewhat dissatisfied	0.0%	0
Very dissatisfied	0.0%	0

2. To what extent do you believe going through the KCJP evaluation process has been beneficial or detrimental to your professional development?

Answer Options	Response Percent	Response Count
Significantly beneficial	20.0%	2
Somewhat beneficial	80.0%	8
No effect	0.0%	0
Somewhat detrimental	0.0%	0
Significantly detrimental	0.0%	0

3. Did the KCJP evaluation process provide information that allowed you to improve your job performance?

Answer Options	Response Percent	Response Count
Yes	100.0%	10
No	0.0%	0

4. How useful is the report format that KCJP uses to provide the evaluation information to you?

Answer Options	Response Percent	Response Count
Very useful	50.0%	5
Somewhat useful	50.0%	5
Neutral	0.0%	0
Not very useful	0.0%	0
Not at all useful	0.0%	0

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5. In your view, how fair is the Commission's recommendation process for the retention elections?

Answer Options	Response Percent	Response Count
Very fair	60.0%	6
Somewhat fair	40.0%	4
Neutral	0.0%	0
Somewhat unfair	0.0%	0
Very unfair	0.0%	0

6. In your estimation are there any problems with any of the following aspects of the current evaluation process?

6(a). Criteria used in the evaluation to measure job performance (e.g. legal ability, integrity, impartiality, communication skills, professionalism, temperament and administrative ability ?

Answer Options	Response Percent	Response Count
No Problem	70.0%	7
Minor Problem	30.0%	3
Major Problem	0.0%	0

6(b). How job performance criteria is measured (scale of A-F).

Answer Options	Response Percent	Response Count
No Problem	80.0%	8
Minor Problem	20.0%	2
Major Problem	0.0%	0

6(c). Targeted survey respondent groups (e.g. attorneys, judges, and non-attorneys such as parties, witnesses, jurors and resource staff including law enforcement officers).

Answer Options	Response Percent	Response Count
No Problem	40.0%	4
Minor Problem	40.0%	4
Major Problem	20.0%	2

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6(d). Number of survey responses.

Answer Options	Response Percent	Response Count
No Problem	0.0%	0
Minor Problem	70.0%	7
Major Problem	30.0%	3

6(e). Validity of survey responses.

Answer Options	Response Percent	Response Count
No Problem	50.0%	5
Minor Problem	40.0%	4
Major Problem	10.0%	1

6(f). Required self-evaluations by judges.

Answer Options	Response Percent	Response Count
No Problem	90.0%	9
Minor Problem	10.0%	1
Major Problem	0.0%	0

6(g). Bias in the evaluation program based on race, gender or other factors.

Answer Options	Response Percent	Response Count
No Problem	80.0%	8
Minor Problem	20.0%	2
Major Problem	0.0%	0

7. Do you think that courtroom observations should be used as part of the evaluation process?

Answer Options	Response Percent	Response Count
Yes	80.0%	8
No	0.0%	0
Depends	20.0%	2

Appropriations Committee

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Attachment 3-20

8. Do you think that the Commission should read and evaluate appellate opinions as part of the evaluation process?

Answer Options	Response Percent	Response Count
Yes	50.0%	5
No	10.0%	1
Depends	40.0%	4

9. How effective has the Commission been in informing the electorate of the Commission's retention recommendation?

Answer Options	Response Percent	Response Count
Very effective	20.0%	2
Somewhat effective	70.0%	7
Somewhat ineffective	0.0%	0
Very ineffective	0.0%	0
No opinion	10.0%	1

10. How much impact do you feel the Commission's recommendations have had on voters' decisions in retention elections?

Answer Options	Response Percent	Response Count
A lot of influence	0.0%	0
Some influence	70.0%	7
Just a little influence	0.0%	0
No influence	0.0%	0
Don't know	30.0%	3

11. Currently the general public is provided a four or five paragraph narrative profile that gives background on the judge and summarizes the Commission's findings for each judge. Detailed survey information is also available on the Commission's web site for each judge as well as a summary of the performance of all judges. Do you feel the amount of information provided is sufficient or do you feel other information should be shared with the public?

Answer Options	Response Percent	Response Count
Too much information is provided	0.0%	0
Information is sufficient	100.0%	9
Other information should be provided	0.0%	0

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Attachment 3-21

12. In your opinion, are the comments from survey respondents truly anonymous?

Answer Options	Response Percent	Response Count
Yes	100.0%	10
No	0.0%	0

13. To what extent do you believe the KCJP evaluation process is beneficial or detrimental to judicial independence?

Answer Options	Response Percent	Response Count
Significantly beneficial	70.0%	7
Somewhat beneficial	20.0%	2
No effect	0.0%	0
Somewhat detrimental	10.0%	1
Significantly detrimental	0.0%	0

Appropriations Committee

Date March 29, 2011

Attachment 3-22

KCJP Judge Survey

1. Overall, how satisfied are you with the KCJP program using the following scale?

Answer Options	Response Percent	Response Count
Very satisfied	15.5%	13
Somewhat satisfied	33.3%	28
Neither satisfied or dissatisfied	28.6%	24
Somewhat dissatisfied	13.1%	11
Very dissatisfied	9.5%	8

2. To what extent do you believe going through the KCJP evaluation process has been beneficial or detrimental to your professional development?

Answer Options	Response Percent	Response Count
Significantly beneficial	12.0%	10
Somewhat beneficial	55.4%	46
No effect	25.3%	21
Somewhat detrimental	2.4%	2
Significantly detrimental	4.8%	4

3. Did the KCJP evaluation process provide information that allowed you to improve your job performance?

Answer Options	Response Percent	Response Count
Yes	56.1%	46
No	43.9%	36

4. How useful is the report format that KCJP uses to provide the evaluation information to you?

Answer Options	Response Percent	Response Count
Very useful	23.2%	19
Somewhat useful	37.8%	31
Neutral	28.0%	23
Not very useful	3.7%	3
Not at all useful	7.3%	6

5. In your view, how fair is the Commission's recommendation process for the retention elections?

Answer Options	Response Percent	Response Count
Very fair	31.7%	26
Somewhat fair	25.6%	21
Neutral	25.6%	21
Somewhat unfair	8.5%	7
Very unfair	8.5%	7

6. In your estimation are there any problems with any of the following aspects of the current evaluation process?

6(a). Criteria used in the evaluation to measure job performance (e.g. legal ability, integrity, impartiality, communication skills, professionalism, temperament and administrative ability ?

Answer Options	Response Percent	Response Count
No Problem	73.8%	59
Minor Problem	17.5%	14
Major Problem	8.8%	7

6(b). How job performance criteria is measured (scale of A-F).

Answer Options	Response Percent	Response Count
No Problem	61.3%	49
Minor Problem	27.5%	22
Major Problem	11.3%	9

6(c). Targeted survey respondent groups (e.g. attorneys, judges, and non-attorneys such as parties, witnesses, jurors and resource staff including law enforcement officers).

Answer Options	Response Percent	Response Count
No Problem	37.5%	30
Minor Problem	36.3%	29
Major Problem	26.3%	21

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Date March 29, 2011

Attachment 3-24

6(d). Number of survey responses.

Answer Options	Response Percent	Response Count
No Problem	35.0%	28
Minor Problem	33.8%	27
Major Problem	31.3%	25

6(e). Validity of survey responses.

Answer Options	Response Percent	Response Count
No Problem	30.4%	24
Minor Problem	43.0%	34
Major Problem	26.6%	21

6(f). Required self-evaluations by judges.

Answer Options	Response Percent	Response Count
No Problem	76.5%	62
Minor Problem	16.0%	13
Major Problem	7.4%	6

6(g). Bias in the evaluation program based on race, gender or other factors.

Answer Options	Response Percent	Response Count
No Problem	76.5%	62
Minor Problem	11.1%	9
Major Problem	12.3%	10

7. Do you think that courtroom observations should be used as part of the evaluation process?

Answer Options	Response Percent	Response Count
Yes	47.0%	39
No	22.9%	19
Depends	30.1%	25

8. Do you think that the Commission should read and evaluate appellate opinions as part of the evaluation process?

Answer Options	Response Percent	Response Count
Yes	26.8%	22
No	46.3%	38
Depends	26.8%	22

9. How effective has the Commission been in informing the electorate of the Commission's retention recommendation?

Answer Options	Response Percent	Response Count
Very effective	19.8%	16
Somewhat effective	35.8%	29
Somewhat ineffective	8.6%	7
Very ineffective	22.2%	18
No opinion	13.6%	11

10. How much impact do you feel the Commission's recommendations have had on voters' decisions in retention elections?

Answer Options	Response Percent	Response Count
A lot of influence	0.0%	0
Some influence	21.7%	18
Just a little influence	33.7%	28
No influence	27.7%	23
Don't know	16.9%	14

11. Currently the general public is provided a four or five paragraph narrative profile that gives background on the judge and summarizes the Commission's findings for each judge. Detailed survey information is also available on the Commission's web site for each judge as well as a summary of the performance of all judges. Do you feel the amount of information provided is sufficient or do you feel other information should be shared with the public?

Answer Options	Response Percent	Response Count
Too much information is provided	12.3%	10
Information is sufficient	84.0%	68
Other information should be provided	3.7%	3

Appropriations Committee

Date March 29, 2011

Attachment 3-26

12. In your opinion, are the comments from survey respondents truly anonymous?

Answer Options	Response Percent	Response Count
Yes	58.4%	45
No	41.6%	32

13. To what extent do you believe the KCJP evaluation process is beneficial or detrimental to judicial independence?

Answer Options	Response Percent	Response Count
Significantly beneficial	13.8%	11
Somewhat beneficial	38.8%	31
No effect	30.0%	24
Somewhat detrimental	10.0%	8
Significantly detrimental	7.5%	6

Appropriations Committee
 Date March 29, 2011
 Attachment 3-27

McCLAIN MEDIATION, INC.
15425 ANTIOCH ROAD
OVERLAND PARK, KS 66221

LARRY McCLAIN
RETIRED DISTRICT COURT JUDGE

PH: 913-814-7955
FAX: 913-814-7511
mcmmediation@yahoo.com

**TESTIMONY OF LARRY McCLAIN BEFORE
THE HOUSE APPROPRIATIONS COMMITTEE
IN OPPOSITION TO HB 2396
March 29, 2011**

My name is Larry McClain. I am an attorney engaged in a mediation practice in Overland Park, Kansas. I am an original member of the Kansas Commission on Judicial Performance (KCJP). I have been an attorney for 40 years and about half of that time I was privileged to have the opportunity to serve as a District Judge. I served as Chief Judge in Johnson county for 4 years.

We are privileged to have an outstanding Judicial Branch. KCJP strives to improve the overall performance of our Kansas judges. Kansans deserve the best from our courts and KCJP has had a positive influence.

In addition to the materials submitted, I would encourage you to support continued funding for KCJP.

To summarize the reasons I urge your support of funding for the KCJP:

- KCJP provides objective information to the voting public regarding the judges on the ballot. Prior to KCJP this type of information was not available to voters in all 105 counties.
- KCJP has brought about positive improvement in many judges.
- KCJP provides a basis for Chief Judges to assist the performance of judges within their district.
- KCJP has continuously sought to improve the evaluation process and has improved and refined the process. Future positive impact on the Judicial Branch is imminent if the funding is continued.

I appreciate the opportunity to appear in support of the KCJP.

Appropriations Committee
Date March 29, 2011
Attachment 4



KANSAS BAR
ASSOCIATION

TO: The Honorable Marc Rhoades, Chair
And Members of the House Appropriations Committee

FROM: Whitney Damron
On behalf of the Kansas Bar Association

RE: HB 2396 – An Act concerning appropriations, Commission on Judicial
Performance

DATE: March 29, 2011

Good afternoon Chairman Rhoades and Members of the House Appropriations Committee. I am Whitney Damron and I appear before you today on behalf of the Kansas Bar Association in opposition to HB 2396. This legislation would eliminate the current funding stream necessary for the Commission on Judicial Performance to operate.

The KBA supported the creation of the Kansas Commission on Judicial Performance as well as legislation extending its sunset date that was adopted by the Legislature in 2009. The KBA also opposed efforts to redirect the Commission's funding in 2010.

Since its creation in 2006, the Commission has developed and implemented a comprehensive evaluation process that has been well-received by the public as evidenced by the news articles attached to my remarks.

Legislators may recall the impetus for the creation of the Commission is to provide meaningful, nonpartisan information to the public on the performance of incumbent district judges, district magistrate judges, Court of Appeals judges and Justices of the Kansas Supreme Court. Prior to the creation of the Commission, there simply was no substantive way for citizens to obtain information on judges and justices prior to casting their votes at retention elections. The Commission publishes this information on its website and publicizes its available in advance of elections. The general public is privy to this information and the evidence indicates that Kansas citizens have availed themselves of these statistics. For example, in the months preceding the 2010 elections the Commission's website was visited over 40,000 times, receiving nearly 955,000 hits.

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Attachment 5

Besides providing the public with information on judges up for retention the Commission also provides valuable information to judges themselves. A goal of the Commission is to improve the judiciary by improving the performance of individual judges and justices. Judicial performance evaluations allow judges to see how they measure up against preset standards and how they perform against other judges. The evaluations also identify strength and weakness of judges thru constructive criticism.

The Kansas Bar Association is concerned that any withdrawal of funding for the Commission could jeopardize the entire program, as the evaluation process is an ongoing process that simply cannot be started and stopped between elections. The Commission issues evaluations to judges every two years, the next evaluations are scheduled to be issued, this fall. To defund the program now would force the Commission to abandon these reports.

The State of Kansas is facing a significant budget shortfall and we recognize the intent of the bill is to reduce cost during these challenging times. However we believe other funding options should be considered before diverting funding from a program designed to provide information for a co-equal branch of government.

On behalf of the Kansas Bar Association, I thank you for your consideration of our comments today.

WBD

Attachments

About the Kansas Bar Association

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 6,900 members, including lawyers, judges, law students and paralegals.

Appropriations Committee

Date March 29, 2011

Attachment 5-2



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Website compiles judges ratings

Posted: October 22, 2010 - 11:02am

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By The Associated Press

SALINA — When faced with the list of judges up for retention on past election ballots, voters who hadn't studied their decisions or had a brush with the judicial system employed various strategies to mark their ballots.

"There have been studies done on that," said Randy Hearrell, executive director of the Kansas Commission on Judicial Performance. "Some marked all 'yes,' some all 'no.' Some said they did every other one. Some started and didn't finish."

Whatever method was used, the result was predictable: Judge retained.

For the first time in 2008 and again this election, voters have available a new source of information about judicial performance so they can take a more educated approach to retention votes, Hearrell said.

With a visit on the Internet to kansasjudicialperformance.org, voters can see which judges will appear on the Nov. 2 ballot in their judicial district and how those judges are rated by attorneys, jurors, court employees, peers and other people involved in court cases.

Voters can access specific survey results on the website for district judges, seven Court of Appeals judges and four Kansas Supreme Court justices whose names will appear on ballots.

The performance review process, which was created by legislation passed in 2006, is funded through court docket fees. A Colorado firm, Talmey-Drake Research and Strategy, is contracted to conduct the survey and compile results.

After the 2008 election, Hearrell said the number of voters who didn't mark the section of the ballot containing the list of judges decreased by about 5 percent. "We'd like to attribute that to this being out there and people having more information about the judges," he said.

He said since the first year the survey has been streamlined in an effort to improve participation. Questions seen as unnecessary or duplicative were removed, he said.

The site does not rank judges based on particular decisions in specific areas of political interest, and because of that, it has received some criticism from the anti-abortion organization Kansans For Life.

The statute that established the evaluation system set out certain criteria upon which judges must be evaluated, including legal ability, integrity, impartiality and temperament, Hearrell said.

Survey questions are along the lines of: "Does court start on time?"; "Is judicial discretion used to reach a fair decision?"; and "Are all parties treated with respect?"

"While it may not be perfect, at least now there's some information out there about the judges that never was available until this started," Hearrell said.

The site uses a grading system similar to the 4.0 grading scale used by schools and universities. Judges are required to have at least a 2.0 or C grade average for the site to recommend they be retained, and so far all judges have met that criteria, Hearrell said.

That criteria may become more stringent for future elections, he said. The agenda for the commission's November meeting includes consideration of raising the required minimum grade.

MOST COMMENTED

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My Gallery

Appropriations Committee

Date March 29, 2011

Attachment 5-3

However, he said high marks should come as no surprise with most judges.

"Generally the ones who get appointed aren't just average," he said. "Hopefully, they're the best of the pile."

Hearrell said computer software is used to extract the names and addresses of defendants and witnesses from court records so that they can be sent questionnaires. So far, he said, 4 to 6 percent of defendants have responded to the survey, and on average they give judges the lowest grades — an overall score of 3.08.

"You'd be surprised," he said. "Some will say things like, 'The judge saved my life,' Of course, there are those that say, 'The judge ruined my life,' too."

Typically, respondents who served as jurors give judges the highest marks, he said. Ratings from attorneys, other court employees and others involved in court proceedings usually fall somewhere in between, he said.

He said in other states where judicial performance evaluations have been used longer, judges who receive low grades have often chosen not to seek re-election so the results are never made public.

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Comments (3)



Judicial Un-Selection

By parkay | 10/22/10 - 02:09 pm

Kansas voters are not stupid enough, mostly, to fall for the sham Commission on Judicial Performance that rubber-stamps approval on every judge, including the bad ones, the soft-on-predator judges that hand down probation or 60 days for raping our children, the leftists who repeatedly put us at unnecessary risk by violating sentencing guidelines.

Vote NO on retention of Kansas Supreme Court "judges" for stalling the prosecution of Overland Park Planned Parenthood abortion mill crimes for so long, and for gagging a judge who is a witness. We've seen some of the criminal evidence published already, showing how Planned Parenthood abortionist quacks criminally exploited and abused mothers by falsifying state documents to cover up illegal abortions.

Now, if Johnson County DA Howe fails to get convictions on the numerous felony charges, he will be seen by voters as deliberately slacking the prosecution, and voted out. On the other hand, if DA Howe successfully attains convictions on the criminal, racist abortionist quacks, the abortion lobby will surely make a huge effort to destroy his career permanently. Also, if DA Howe is too vigorous in presenting evidence on the falsified documents that the second-trimester abortion mill submitted to the state of Kansas, the leftist baby-hating Kansas Supreme "court" will come down hard on him.

Do the right thing, Mr. Howe, if you have the guts for it.

LOGIN OR REGISTER TO POST COMMENTS



Oh My

By trojan84 | 10/22/10 - 03:32 pm

That was funny.

LOGIN OR REGISTER TO POST COMMENTS



What a *****.

By olddem | 10/22/10 - 05:46 pm

What a [filtered word].

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Appropriations Committee

Date March 29, 2014

Attachment S-4

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Appropriations Committee

Date March 29, 2011

Attachment S-S

Posted on Thu, Oct. 28, 2010

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Look at whole record when voting on judges, not just one ruling

2 Comments

By Bert Brandenburg

When should a judge be thrown out of office?

This year, Kansans will join voters in 15 states when they engage in a special type of ballot known as a retention election. Voters must choose "yes" or "no" on whether to grant another term to Kansas Supreme Court justices, Court of Appeals judges and, in some counties, local trial judges.

Citizens can, of course, vote however they choose, for any reason, in an election. But courts play a special role in our democracy. For this reason, it's important to consider the potential consequences of voting out judges based on a single ruling or issue.

We depend on courts that are impartial, even when they handle controversial cases or face political attacks. We don't want courts consulting with pollsters before issuing rulings. We want them to rule based on the Constitution and the rule of law.

Courts protect everyone's rights under the Constitution, even when at a moment in history, the rights belong to a minority with little power elsewhere.

Some Americans will point to Brown v. the Topeka Board of Education — a significant step in ending racial segregation in our schools — as one historic victory of law over injustice. The U.S. Supreme Court also has protected the rights of gun owners (in District of Columbia v. Heller and later, McDonald v. Chicago), the rights of property owners (in Lucas v. South Carolina Coastal Council) and the rights of parents to choose which school to send their children to (in Zelman v. Simmons-Harris).

The greatest danger of ousting justices over a single issue is that it could force courts to ignore important constitutional rights in the face of fluctuating political pressures.

Retention elections are intended to be an option for voters to remove a jurist in the rare instance in which one is unfit for office. For instance, removal may be warranted if a justice has defied the rule of law by taking bribes or committing other serious crimes. If a justice exhibits general incompetence or lacks the temperament or character to hear and decide cases fairly and impartially, removal may be reasonable. Finally, if a judge fails to reach timely decisions, or displays an unusually high reversal rate, removal may be appropriate.

Voters should have confidence that judges are fair and impartial, that they have appropriate character, capabilities and credentials, and that they will uphold the law. We expect judges to be smart, hardworking and invested in their communities.

To make sure your judges and justices have these qualities, you should consult multiple sources. In Kansas, you might start with biographical information distributed by the Kansas courts to learn about your judge's training and experience, as well as editorials in your local newspaper. You might also look at judicial performance evaluations, which allow attorneys, court staff and parties in lawsuits to rate judges based on criteria such as legal knowledge, integrity, judicial temperament, communication skills, administrative performance and service to the public. You can find judicial performance evaluations on the Kansas Commission on Judicial Performance's website. Finally, talk to your neighbors — they may have met the judges or appeared before them in court.

Considering a judge's entire record, using multiple sources of information, is the best long-term insurance to protect any state's system of justice. Beliefs and attitudes change with the decades, but the need for an impartial court system does not. If we undermine our courts through one-issue, litmus-test voting, the rights that get disregarded may someday turn out to be our own.

Bert Brandenburg is executive director of the Justice at Stake Campaign, a group based in Washington, D.C., that works to keep courts fair, impartial and free from special-interest agendas.

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Appropriations Committee

Date March 29, 2011

Attachment 5-6

TO: Representative Marc Rhoades, Chairman
Members of the House Appropriations Committee

FROM: Callie Jill Denton
Director of Public Affairs

DATE: March 29, 2011

RE: HB 2396—An Act Abolishing the Commission on Judicial
Performance

The Kansas Association for Justice (KsAJ) is a statewide, nonprofit organization of trial lawyers. KsAJ members support protection of the right to trial by jury and laws that are fair to all parties to a dispute. KsAJ members support policies that promote the independence of the judiciary so that all citizens are assured they will be treated with fairness and impartiality in a court of law.

KsAJ opposes HB 2396, which abolishes the Commission on Judicial Performance. **The Commission on Judicial Performance provides a vital, nonpartisan source of information on Kansas judges and justices to the citizens of Kansas.**

- The Commission is statutorily charged with evaluating judges and justices based on confidential surveys.
- Based on the survey results, the Commission is required by statute to publicly recommend that judges and justices subject to retention election either “be retained” or “not be retained”.
- Survey respondents are both attorneys and non-attorneys that have had sufficient experience with a judge or justice that allow them to form an opinion. Evaluations are based on legal ability, integrity, impartiality, communication skills, professionalism, temperament, and administrative performance. The Commission also considers

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the judge's or justice's self-evaluation and decisions of the Commission on Judicial Qualifications, which handles disciplinary matters.

- To promote the availability of the Commission's work to all Kansans, evaluation results are publicized throughout the state through radio spots, the Commission's website, paid advertising, informational brochures, press releases and other earned media opportunities.

Judicial performance evaluation is a process worth retaining in Kansas. At least 21 states, plus the District of Columbia, have evaluating procedures and official bodies for evaluating the members of their judicial branch. Abolishing Kansas' Commission would be a step in the wrong direction.

In addition to enabling voters to make informed decisions about retention elections, performance evaluations dovetail with many other initiatives underway that are intended to assure that scarce resources are targeted effectively in the judicial branch. A January 2010 Legislative Post Audit study recommended the performance of a weighted caseload study and the creation of a judicial advisory committee to review potential efficiencies and cost savings in the judicial branch. The Supreme Court has responded proactively to both recommendations; implementation is underway.

Now is not the time to eliminate the Commission, or its work. Since its establishment by the Legislature in 2006, the Commission has completed one full cycle of evaluations for all merit-selected trial judges and all appellate judges. Based on the practical experience gained, the Commission is implementing changes to make the process even more effective in Kansas, including increasing the score required for a presumptive "Retain" recommendation.

KsAJ respectfully urges the House Appropriations Committee to exercise caution in its consideration of HB 2396. In these lean budget times, no area of state government can be exempt from scrutiny—even the judiciary. At the same time, over the past few years, the Legislature and the Supreme Court have begun implementing practices that will result in improved fiscal efficiencies as well as better public information and transparency about the courts. Judicial performance evaluations, and the Commission on Judicial Performance, have been an important investment and should not be eliminated, especially at this crucial point.

On behalf of our members and their clients, KsAJ respectfully requests that the House Appropriations Committee oppose HB 2396.

Appropriations Committee

Date March 29, 2011

Attachment 6-2



KANSAS DISTRICT COURT

Chambers of
NANCY E. PARRISH
Chief Judge

Shawnee County Courthouse
Division Fourteen
Topeka, Kansas 66603-3922
(785) 233-8200 Ext. 4067
Fax (785) 291-4917

Officers:
NORMA DUNNWAY
Administrative Assistant
APRIL SHEPARD
Official Court Reporter

House Appropriations Committee

March 29, 2011

Testimony of Nancy Parrish, Chief Judge
Third Judicial District, Shawnee County

Mr. Chairman and Members of the House Appropriations Committee, I urge you to vote against H.B. 2396 which would abolish the Commission on Judicial Performance. The Commission on Judicial Performance was created by the 2006 Kansas legislature to develop a tool which would be used to conduct evaluations of judges. The stated purposes of the evaluations are to improve the performance of individual judges and the judiciary as a whole, to help voters make informed decisions in retention elections, and to protect judicial independence while promoting public accountability of the judiciary.

The individuals who are surveyed are persons who have appeared before a judge or who had professional contact with the judge or justice. The groups surveyed include jurors, witnesses, parties to the litigation, attorneys, and staff who have contact with a judge or justice.

In 2008 and 2010, the Commission evaluated all merit selected judges who were subject to retention election in those years. In 2009, the Commission evaluated elected judges. Midterm reports also were prepared for retention judges.

The initial task was mammoth and some judges were rather skeptical about the whole process. The Commission and the contractor who developed the evaluation tool have continued to refine the survey process. I believe that the Commission performs a very important function. Without the performance evaluations, there would be a total absence of information available to voters in a retention election. In addition, judges rarely receive any feedback from those who appear in their court. The surveys and the evaluations do provide judges with indications of their strengths and weaknesses.

In my personal opinion, it would be a mistake to discontinue the Commission after the difficult work of creating surveys and establishing a system to conduct judicial performance evaluations has been accomplished. I urge your opposition to H.B. 2396.

Thank you for your consideration.

Appropriations Committee

Date March 29, 2011

Attachment 7



SUPREME COURT OF KANSAS

KANSAS JUDICIAL CENTER
301 SW 10TH AVE.
TOPEKA, KANSAS 66612-1507

PHONE: (785) 368-6327
FAX: (785) 291-3274

HELEN PEDIGO
SPECIAL COUNSEL
TO CHIEF JUSTICE

HOUSE APPROPRIATIONS COMMITTEE

Honorable Representative Marc Rhoades, Chair

Testimony in Support

SB 97 Judicial Branch Surcharge Extension

March 29, 2011

Thank you for the opportunity to testify in support of SB 97, which amends the sunset on the Judicial Branch Surcharge to June 30, 2012. The surcharge is currently scheduled to end June 30, 2011. My purpose in testifying is twofold: First, to provide information regarding anticipated revenue, should the surcharge be increased; and second, to let you know that passage of this bill is essential to continue the present surcharge into FY 2012.

The Committee requested information regarding additional revenue anticipated, if the surcharge were to be increased. That information is attached. One additional dollar in surcharge for each type of court case filed would result in approximate revenue of \$490,000.

Both the statutes regarding the surcharge and the order authorizing the surcharge are effective only to the end of the present fiscal year. The Division of Budget requested that the surcharge be included in the Judicial Branch FY 2012 budget request, although it is set to expire at the end of FY 2011. We complied with that request. For FY 2012, \$9 million in surcharge revenue is included in the budget submitted for the Legislature's consideration.

Enactment of SB 97 would allow the surcharge to remain in effect, helping to fund the court system. Even with the surcharge, the Judicial Branch plans to continue holding 75 – 80 positions open throughout FY 2011 and FY 2012.

The 2009 Legislature considered a \$10 Judicial Branch Surcharge as a way to provide funding for the Judicial Branch budget, which was significantly underfunded. 2009 SB 66 authorized the Supreme Court to impose an additional charge, not to exceed \$10, on specified docket and other fees, to fund the cost of nonjudicial personnel. 2009 SB 66 also created the Judicial Branch Surcharge Fund, into which surcharge amounts are deposited.

The 2010 legislature, in HB 2476, increased surcharge amounts to a range of between \$10 and \$17.50, effective July 1, 2010. The Judicial Branch Emergency Surcharge was a fee that

Date March 29

Attachment 8

as charged in addition to the statutory docket fee when cases were filed. The revenue generated from the Emergency Surcharge kept Kansas courts open and operating. The Emergency Surcharge was in effect April 1, 2002, through fiscal year 2006. At that time, the state's fiscal situation had improved and the Legislature was able to fully fund the courts. Therefore, during the 2006 legislative session SB 180 was enacted, which stated that docket fees would be set by the Legislature and no other fee would be charged. Given the fiscal crisis the state is experiencing, the 2009 and 2010 Legislatures revisited the idea of a surcharge, enacting 2009 SB 66, and 2010 HB 2476, which contains the current surcharge. The surcharge allows the Legislature to use funds that otherwise would be appropriated to the Judicial Branch for other necessary expenditures, while helping to keep the courts open and functioning. The Court does not view the surcharge authority as permission to increase fees to fund enhancements or even operations when they choose. It is viewed as a temporary stopgap measure to react to severe underfunding. The Legislature is the appropriating body, and should remain so. The surcharge is a method through which additional fees can be generated that, for the specified time period, will take the place of State General Fund financing for the Judicial Branch.

The original bill provided a June 30, 2012 sunset. The Senate Judiciary Committee struck the sunset in its entirety. The Senate voted 30 – 9 in favor of the bill. The House Judiciary Committee amended the bill back to its original form, with a one-year sunset, and recommended the bill favorably. The bill remained on House General Orders, but under the line, when we asked for action to place it above the line. The bill was then referred to House Appropriations Committee. We ask for this committee's favorable consideration of this bill.

Thank you again for the opportunity to testify in support of SB 97, and I would be happy to answer your questions.

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Attachment 8-2

ESTIMATED REVENUE INCREASE FOR EACH \$1 OF ADDITIONAL SURCHARGE

Type of Fee	Current Fee	Current Surcharge	Proposed Additional Surcharge	Proposed Total	Estimated Increase From Additional Surcharge
Civil					
Chapter 60 Limited Action*	\$156.00	\$17.50	\$1.00	\$174.50	23,870
<=\$500	\$37.00	\$15.00	\$1.00	\$53.00	66,169
>\$500 or <=\$5,000	\$57.00	\$15.00	\$1.00	\$73.00	48,123
>\$5,000 or <=\$10,000	\$103.00	\$15.00	\$1.00	\$119.00	6,015
Small Claims					
	\$39.00	\$10.00	\$1.00	\$50.00	3,909
	\$59.00	\$10.00	\$1.00	\$70.00	3,198
Domestic Relations	\$156.00	\$17.50	\$1.00	\$174.50	21,973
Post Decree Motion	\$42.00	\$17.50	\$1.00	\$60.50	25,774
Hearings in Aid of Execution	\$0.00	\$10.00	\$1.00	\$11.00	8,650
Garnishments	\$0.00	\$10.00	\$1.00	\$11.00	60,548
Criminal					
Felony	\$173.00	\$17.50	\$1.00	\$191.50	2,693
Misdemeanor	\$138.00	\$17.50	\$1.00	\$156.50	5,573
Expungements	\$100.00	\$15.00	\$1.00	\$116.00	1,894
Juvenile					
Offender/ CINC	\$34.00	\$17.50	\$1.00	\$52.50	789
Probate					
Treatment of Mentally Ill	\$59.00	\$17.50	\$1.00	\$77.50	501
Treatment of Alcohol or Drug	\$36.50	\$17.50	\$1.00	\$55.00	125
Determination of Descent	\$51.50	\$17.50	\$1.00	\$70.00	1,014
Guardianship	\$71.50	\$17.50	\$1.00	\$90.00	279
	\$71.50	\$17.50	\$1.00	\$90.00	418
Guardianship and Conservatorship	\$71.50	\$17.50	\$1.00	\$90.00	386
Conservatorship/Trusteeship	\$71.50	\$17.50	\$1.00	\$90.00	205
Probate of an Estate or a Will	\$111.50	\$17.50	\$1.00	\$130.00	2,782
Other Costs and Fees					
Performance Bonds					
Delinquent Personal Property Tax					
Hospital Lien					
Intent to Perform					
Mechanic's Lien					
Oil and Gas Mechanic's Lien					
Pending Action Lien					
Total	\$14.00	\$17.50	\$1.00	\$32.50	4,550
Employment Security Tax Warrant					
Sales and Compensating Tax Warrant					
State Tax Warrant					
Motor Carrier Lien					
Total	\$24.00	\$17.50	\$1.00	\$42.50	9,211
Marriage License	\$59.00	\$21.00	\$1.00	\$81.00	16,337
Driver's License Reinstatements	\$59.00	\$17.50	\$1.00	\$77.50	25,217
Traffic	\$76.00	\$17.50	\$1.00	\$94.50	144,843
Fish and Game	\$76.00	\$17.50	\$1.00	\$94.50	2,000
TOTAL FEES COLLECTED					487,046

Appropriations
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8-3

Judicial Branch Overview

(in millions)

	FY 2011	FY 2012
State General Fund Budget	\$ 101.3	\$ 107.8
Surcharge Revenue	\$ 8.9	\$ 9.0
	<u>\$ 110.2</u>	<u>\$ 116.8</u>
FY 2011 State General Fund and Surcharge	\$ 110.2	
FY 2012 Adjustments (additions)		
Health Insurance Increase	\$ 1.6	
KPERS	\$ 0.9	
Pay Plan and Longevity	\$ 1.0	
Operations (mileage, printing)	\$ 0.1	
Judge 14 Court of Appeals	\$ 0.4	*
Temporary Hours/Retired Judges	\$ 0.7	*
E-filing Project	\$ 1.9	*
FY 2012 State General Fund and Surcharge	<u>\$ 116.8</u>	

The FY 2011 SGF appropriation of \$101.3 million did not require court closures, but required year-long continuation of: maintaining 75-80 vacancies, no budgeted temporary hours and maintaining significant cuts to operating expenditures. The FY 2012 budget request continues to keep 75-80 vacancies.

House Appropriations action to fund FY 2012 at FY 2011 SGF appropriation

FY 2011 appropriation	\$ 101.3
FY 2012 request	\$ 107.8
Result	<u>\$ (6.5)</u>

State General Fund Increases from FY 2011 to FY 2012 that are not mandated

Judge 14 Court of Appeals	\$ 0.4	* House recommendation delay 1 year
Temporary Hours/Retired Judges	\$ 0.7	*
E-filing Project	\$ 1.9	*
Total	<u>\$ 3.0</u>	
Remaining Reduction	\$ (3.5)	nondiscretionary obligations

Savings from one furlough day : \$209,000

Further action required as a result of House Appropriations recommendation is \$3.5 million reduction/\$209,000 per day, resulting in 17 days or 3 1/2 weeks courts closed and employees without pay.



KANSAS BAR
ASSOCIATION

TO: The Honorable Marc Rhoades, Chair
And Members of the House Appropriations Committee

FROM: Joseph N. Molina
On behalf of the Kansas Bar Association

RE: SB 97 – Extending the Surcharge Fee

DATE: March 29, 2011

Good afternoon Chairman Rhoades and Members of the House Appropriations Committee. I am Joseph Molina and I appear on behalf of the Kansas Bar Association in support of SB 97 as drafted which would extend the current judicial branch surcharge fee till June 30, 2012.

The KBA is acutely aware of the inadequate funding of most governmental agencies and institutions, and it is especially conscious of the continuing struggles facing the Judicial Branch. A properly funded court system ensures a citizen's right to meaningful access to the courts. A properly funded judicial system also allows for the efficient application of the legal process for lawyers and litigants. If the surcharge fee is allowed to sunset on June 30, 2011, the judicial branch could suffer a significant financial hardship and in turn subject Kansans to an inefficient court system.

It is also important to realize that a third increase in the surcharge fee in as many years could have a similar impact as closing courts. The KBA has supported past increases because it would help keep the courts open, however, another increase could force litigants to forgo legal action as the cost would simply be too high. The Judicial Branch is a significant part of Kansas government and funds should be appropriated from the State General Fund. Another increase in the surcharge fee would be another tax on the business community that all Kansans should support through general taxes.

The KBA recognizes and appreciates the steps taken by our Judicial Branch to deal with their fiscal situation. The Judicial branch continues to show sound fiscal discipline by continuing measures designed to weather difficult financial times. The Judicial Branch continues with a hiring freeze from last year, reducing travel and instituted other efficiencies throughout the court system. However, to maintain the level of stability created from past budget saving measures the surcharge fee needs to be maintained.

On behalf of the Kansas Bar Association, I thank you for your time this morning and would be available to respond to questions.

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,200 members, including lawyers, judges, law students, and paralegals. www.ksbar.org

Appropriations Committee

Date March 29, 2011

Attachment 9



Date: March 29, 2011

To: House Appropriations Committee

From: Doug Wareham, Senior Vice President-Government Relations

Re: Support for Senate Bill 229

Chairman Rhoades and members of the House Appropriations Committee, I am Doug Wareham appearing on behalf of the Kansas Bankers Association (KBA). KBA's membership includes 310 Kansas banks, which represents 99% of the state and federally chartered banks headquartered in Kansas.

Thank you for the opportunity to appear in support of S.B. 229, which reduces the percentage of fees annually deposited into the State General Fund from fee-funded agencies from 20% to 10%. S.B. 229 also reduces the maximum amount of fees transferred from \$200,000 annually to \$100,000 annually. While it is our understanding the original purpose of the 20% assessment was to reimburse the state for services provided to fee-funded agencies, we understand the department is actually billed for many of the services they receive from other state agencies.

Charges assessed to the Office of the State Bank Commissioner (for example) by other state agencies include, but are not limited to, rental fees, state building fees/surcharges, database access fees and accounting software maintenance fees. Some of these fees are significant. This year (2011), the monumental building fee/surcharge alone totaled \$66,967. We believe all fee-funded agencies should be required to provide reasonable compensation for services provided, but we object to the current process, which appears to serve as a funding source for the State General Fund.

In addition to providing immediate financial relief to fee-funded agencies, S.B. 229 also requires the Department of Administration to provide the legislature with a complete accounting and legal basis for each charge currently assessed to fee-funded agencies. We look forward to the department's findings and support that provision being included in S.B. 229.

Once again, thank you for the opportunity to submit comments in support of S.B. 229. I would be happy to stand for questions now or at the appropriate time.

For more information contact Doug Wareham at (785) 220-5820 or at dwareham@ksbankers.com.

As Currently Enforced, the 20% Transfer Required by the Statutes is Arguably Unconstitutional Since the State Has Not Detailed the Services Provided by Other State Agencies to the Fee-Funded Agency

Contained within the statutes for each fee-funded agency, there is a provision that requires each agency to annually transfer 20% of all licensing fees, charges and penalties collected, up to a statutory maximum of \$200,000, to the state general fund to pay for unrelated programs in the state budget. The Kansas Real Estate Commission is obligated to the 20% annual transfer by the provisions of **K.S.A. 58-3074(a)**. Under **SB 229**, the annual transfer would be reduced to 10% of all licensing fees, charges and penalties collected, up to a statutory maximum of \$100,000.

Originally enacted in 1973, the current language in **K.S.A. 75-3170a(a)** was a legislative response to a Kansas Supreme Court decision in *Panhandle Pipeline Co. v. Fadely*, 183 Kan. 803 (1958), where the court had invalidated an earlier appropriation calling for the 20% transfer to the state general fund from a fee-funded agency. In this case, the court determined that the 20% transfer of fee funds to the state general fund was unconstitutional since the funds were used as general revenue instead of to regulate and supervise the industry from which they were collected. *Id.*

The original intent of the 20% transfer was to reimburse the state for the cost of services that were provided to fee-funded agencies by other state agencies that were funded through the state general fund. While these funds were originally funneled to the Kansas Department of Administration, these funds have been diverted directly to the state general fund and no services have been provided to fee-funded agencies from other state agencies in return for the 20% transfer since 2003.

K.S.A. 75-3170a(a) provides that the purpose of this transfer is “to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services, and any and all other state governmental services, which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the state general fund to provide such services” [Emphasis added]. Under this language, the 20% transfer required by each of these statutory provisions is intended to offset the cost of “any and all other state governmental services” provided to the fee-funded agency.

In FY 2009, the Commission was forced to transfer \$199,725.41 in licensing fees, charges and penalties paid by real estate licensees to the state general fund to satisfy the obligations imposed by this statutory provision. However, the Commission also paid various fees and charges totaling \$50,233.79 on top of the 20% transfer to the Kansas Department of Administration during FY 2009 for the following services ostensibly provided to the Commission (even though these services fall under the list of services that are supposed to be paid for by the 20% transfer under **K.S.A. 58-3170a**):

- (1) Annual central mail assessment (for maintenance of mail facility and equipment): \$5,627.10;
- (2) non-state building lease administrative fee (fee charged to administer the lease): \$142.89;
- (3) monumental building surcharge (for maintenance of the Capitol, Judicial Center and Cedar Crest mansion): \$11,050.16;
- (4) surety bond: \$13.50;
- (5) data services (for internet and router connectivity): \$3,381.00;
- (6) central mail (actual mail costs): \$14,061.73;
- (7) telecommunications (for voice switching service, long distance and directory): \$4,759.51;
- (8) annual FMS (cost of state’s new accounting system): \$1,961.94;
- (9) enterprise application (based on the number of spending warrants issued): \$1,518.22; and
- (10) miscellaneous data processing (email system and computer services): \$7,717.74.

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Attachment 11-2



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To: House Appropriations Committee

Date: March 29, 2011

Subject: **SB 229** – Supporting the Partial Repeal of the Requirement for Fee-Funded Agencies to Annually Remit 20% of Fee Revenues to the State General Fund

Chairman Rhoades and members of the House Appropriations Committee, thank you for the opportunity to appear today to offer testimony on behalf of the Kansas Association of REALTORS® in support of **SB 229**. Through the comments expressed herein, it is our hope to provide additional legal and public policy context to the discussion on this issue.

KAR is the state's largest professional trade association, representing nearly 8,000 members involved in both residential and commercial real estate and advocating on behalf of the state's 700,000 home owners. REALTORS® serve an important role in the state's economy and are dedicated to working with our elected officials to create better communities by supporting economic development, a high quality of life, and providing affordable housing opportunities, while protecting the rights of private property owners.

As currently drafted, **SB 229** would reduce the required transfer to the state general fund from fee-funded agencies from 20% (up to \$200,000) to 10% (up to \$100,000) beginning in FY 2012. In addition, **SB 229** would require the Division of Budget to deliver a report to the House Appropriations Committee and the Senate Ways and Means Committee detailing the actual cost of providing "any and all" services provided to fee-funded agencies by other state agencies that receive funding from the state general fund (SGF).

Fee Fund Sweeps Have Severely Inhibited the Fiscal Soundness of the Real Estate Fee Fund and the Commission's Ability to Adequately Regulate the Real Estate Industry

As a starting point, we are very concerned about the continuing devastating impact that unconstitutional fee fund sweeps by the Kansas Legislature are having on the Kansas Real Estate Commission's budget and the Commission's ability to adequately regulate the real estate industry during this difficult economic environment. If the Kansas Legislature continues to decrease the Commission's budget during the 2011 Legislative Session, it will have an extremely detrimental impact on the Commission's ability to properly regulate the real estate industry and protect consumers.

In addition to the annual 20% transfer of fee revenues that would be partially repealed by **SB 229**, the Kansas Legislature has swept more than \$700,000 from the real estate fee fund into the state general fund over the past six years to pay for unrelated state programs. In that same time, the 20% annual transfer has resulted in the transfer of nearly \$1.2 million from the real estate fee fund to the state general fund, which equals a total loss of \$1.9 million (or over 170% of the Commission's annual budget) in that time span.

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According to the language in **K.S.A. 75-3170a(a)**, the 20% transfer required by each of these statutory provisions is again intended to offset the cost of “any and all other state governmental services” provided to the fee-funded agency. However, it is explicitly clear that several of the services on the list above for which the Commission is directly billed by other state agencies fall within the meaning of the term “any and all other state governmental services.”

If the funds collected by the state general fund through the 20% annual transfer from fee-funded agencies are not currently being used to provide services back to the fee-funded agencies, then the case law would establish that the transfer of those funds to the state general fund is an unconstitutional “fee fund sweep.” Accordingly, we believe the Kansas Legislature should partially repeal these unconstitutional requirements and by reducing the required transfer to 10% (up to \$100,000) of fee revenue to the state general fund.

In addition, the new language in Section 1 on page 1 of the legislation would instruct the Division of Budget to deliver a report to the House Appropriations Committee and the Senate Ways and Means Committee detailing the actual cost of providing “any and all” services provided to fee-funded agencies by other state agencies that receive funding from the state general fund (SGF). We absolutely support this language and strongly believe that the Commission should be statutorily obligated to pay for the actual cost of any and all services provided to the Commission by other state agencies.

If the Kansas Department of Administration or another state agency provides a legitimate service to the Commission and charges the Commission a fee based on the reasonable value of those services, we believe that the Commission has an obligation to continue to pay for the actual cost of those services. Accordingly, the required report that will be produced by the Division of Budget will allow the Kansas Legislature to further study this issue during the 2012 Legislative Session.

Fee Fund Sweeps are Unconstitutional Since They are an Illegitimate Use of the Police Power Authority to Generate General Tax Revenue in Violation of Article 11, Section 1 of the Kansas Constitution

Fundamentally, the state government has the inherent power called the “police power” to regulate various businesses and industries for the protection of its citizens. While the term “police power” is difficult to define precisely, it basically “embraces the state’s power to preserve and to promote the general welfare and it is concerned with whatever affects the peace, security, safety, morals, health and general welfare of the community.” 16A Am. Jur. 2d *Constitutional Law* § 313 (June 2002) (citations omitted).

In regulating the real estate industry, the Kansas Legislature has chosen to exercise its police power to place certain requirements and restrictions on those individuals acting as real estate salespersons and brokers. In doing so, the Kansas Legislature promotes the general welfare of the public through a highly regulated real estate industry overseen by the Kansas Real Estate Commission.

While the police power provides the state with broad authority to regulate a particular business or industry, there is a definite constitutional distinction between a state’s police power and its power to levy taxes and other revenue mechanisms to defray general state budget expenditures. Under long-established precedent, the Kansas Supreme Court has explicitly recognized a clear distinction between the Kansas Legislature’s authority to exercise its police power and the ability to enact revenue raising measures.

At the outset, it is clear that under its police power the state may reimburse itself for the costs of otherwise valid regulation and supervision by charging the necessary expenses to the businesses or persons regulated. A statute, however, is void if it shows on its face that some part of the exaction is to be used for a purpose other than the legitimate one of supervision and regulation or if more than adequate remuneration is secured. *Panhandle Eastern Pipe Line Co. v. Fadey*, 183 Kan. 803, 806-07 (1958).

In this respect, it is clear that the 20% annual transfer required by **K.S.A. 75-3170a(a)** is not merely providing the state with an avenue to “reimburse itself for the costs of otherwise valid regulation and supervision.” When no actual services are being provided to the fee-funded agency in return for the 20% transfer of funds, the transfer becomes a simple revenue raising mechanism for the state general fund.

In order to determine whether a charge is a fee or a tax, it is first necessary to determine whether the particular charge is an exercise of the police power or is a tax imposed for the purpose of raising general revenue. If the Kansas Legislature attempts to exercise its policy power by enacting a fee on a regulated industry, the amount of the fee must be reasonably approximate to the cost of regulation because once “adequate remuneration has been secured the police power is exhausted.” *State ex rel. Brewster v. Cumiskey*, 97 Kan. 343, 352 (1916).

After a full analysis of the case law on this issue, it is possible to extract a basic rule of law regarding this issue. If an assessment, charge or fee paid by a regulated business or individual grossly exceeds the cost of regulating that business or individual and there is no reasonable relationship between the actual costs involved and the amount of the fee, the portion of that assessment, charge or fee that exceeds the actual costs involved in regulating that business or individual is an unconstitutional use of the state’s police power authority as a revenue raising mechanism or tax. *Kansas Attorney General’s Opinion 2002-45* (2002).

If the Obligation to Annually Transfer 20% of Fee Revenues to the State General Fund is Not Partially Repealed, then the Commission Will Have No Choice but to Increase Real Estate Licensing Fees

Due to the nearly \$1.9 million that has been transferred from the real estate fee fund to the state general fund from fee fund sweeps and the 20% transfer requirement over the last six years, the Commission has now been placed in the very difficult position of being unable to fully enforce the provisions of our state’s real estate laws and running a substantial budget deficit beginning in FY 2013. If **SB 229** does not pass, the Commission will have no choice but to increase real estate licensing fees over the next few years to stabilize the real estate fee fund and avoid extremely severe reductions in agency operations.

In the context of the challenges currently facing the Commission, the association believes they are acting with the utmost good faith to address the challenges and provide for the proper regulation of the industry. When faced with the amount of revenue improperly transferred to the state general fund, the Commission has responsibly and prudently reduced spending in a good faith effort to avoid licensing fee increases.

If the Commission is forced to increase real estate licensing fees, then real estate professionals will be faced with the objectionable task of paying licensing fees that are unreasonably too high and go to offset governmental expenses that provide no benefit or regulation to the real estate industry. This is clearly unconstitutional under the established case law and a glaring example of extremely poor public policy.

Conclusion

For all the foregoing reasons, we would respectfully request that the House Appropriations Committee support **SB 229**. Once again, thank you for the opportunity to provide comments and I would be happy to respond to any questions from the committee members at the appropriate time.

State Fair Board Bond Payment Summary

Bonds Issued in 2 Series

The Kansas Development Finance Authority (KDFA) will begin bi-annual screens of the W-3 series on October 1, 2011 and of the A-2 series on April 1, 2014 to see if there are economic refunding opportunities for the state. If there is a greater savings than 1.0 percent, including the costs to refund, then the bonds are generally refunded.

2001 W-3*: \$17,570,000

Issued: FY 2002

Interest: 3.0-5.0 percent

Maturity: FY 2022

2004 A-2*: \$10,990,000

Issued: FY 2004

Interest: 2.0-5.0 percent

Maturity: FY 2022

Fiscal Year	Date	Bond Series	Principal Payments			Total Principal	Interest Payments			Interest Earned	Total Interest	Total Payment	Total Payment / Fiscal Year
			State	State Fair	City/County		State	State Fair	City/County				
FY 2003	9/16/2002	2001 W-3	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,984	\$ 300,000	\$ 407,348	\$ 715,332	\$ 715,332	\$ 1,105,514
	3/11/2003	2001 W-3	-	-	-	-	-	223,593	-	166,589	390,181	390,181	
FY 2004	9/23/2003	2001 W-3	538,103	80,732	11,165	630,000	-	-	288,835	101,348	390,183	1,020,183	1,400,914
	3/8/2004	2001 W-3	-	-	-	-	-	335,855	-	44,876	380,731	380,731	
FY 2005	9/17/2004	2001 W-3	645,000	-	-	645,000	10,133	69,292	300,000	1,308	380,733	1,025,733	2,247,873
	9/27/2004	2004 A-2	-	-	-	-	-	208,891	-	49,723	258,615	258,615	
	3/21/2005	2004 A-2	355,000	-	-	355,000	125,207	-	-	112,263	237,470	592,470	
	3/21/2005	2001 W-3	-	-	-	-	248,818	121,817	-	421	371,056	371,056	
FY 2006	9/23/2005	2004 A-2	-	-	-	-	177,456	-	-	56,189	233,645	233,645	2,249,531
	9/22/2005	2001 W-3	665,000	-	-	665,000	370,778	-	-	279	371,058	1,036,058	
	3/16/2006	2004 A-2	-	85,000	300,000	385,000	-	198,724	-	35,022	233,746	618,746	
	3/16/2006	2001 W-3	-	-	-	-	244,051	116,276	-	755	361,081	361,081	
FY 2007	9/20/2006	2004 A-2	-	-	-	-	206,268	-	-	20,676	226,944	226,944	2,246,028
	9/20/2006	2001 W-3	685,000	-	-	685,000	360,451	-	-	632	361,083	1,046,083	
	3/22/2007	2004 A-2	-	95,000	300,000	395,000	-	209,024	-	18,514	227,538	622,538	
	3/22/2007	2001 W-3	-	-	-	-	253,440	95,976	-	1,048	350,464	350,464	
FY 2008	9/21/2007	2004 A-2	-	-	-	-	208,383	-	-	13,964	222,346	222,346	2,248,172
	9/20/2007	2001 W-3	715,000	-	-	715,000	350,067	-	-	398	350,465	1,065,465	
	3/19/2008	2001 W-3	-	-	-	-	256,543	74,993	-	1,053	332,589	332,589	
	3/19/2008	2004 A-2	-	105,000	300,000	405,000	-	220,007	-	2,765	222,772	627,772	
FY 2009	9/9/2008	2001 W-3	745,000	-	-	745,000	167,741	164,560	-	289	332,590	1,077,590	1,830,693
	9/9/2008	2004 A-2	-	-	-	-	216,239	-	-	493	216,732	216,732	
	3/20/2009	2004 A-2	-	-	-	-	-	216,746	-	74	216,819	216,819	
	3/20/2009	2001 W-3	-	-	-	-	-	18,695	300,000	856	319,551	319,551	
FY 2010	9/15/2009	2004 A-2	-	-	-	-	210,650	-	-	41	210,691	210,691	1,041,864
	9/15/2009	2001 W-3	-	-	-	-	131,211	188,142	-	201	319,554	319,554	
	3/16/2010	2001 W-3	-	-	-	-	-	847	300,000	82	300,929	300,929	
	3/17/2010	2004 A-2	-	-	-	-	-	210,683	-	8	210,691	210,691	
FY 2011	9/22/2010	2004 A-2	-	-	-	-	204,229	-	-	6	204,236	204,236	2,249,847
	9/22/2010	2001 W-3	815,000	-	-	815,000	300,824	-	-	106	300,930	1,115,930	
	3/11/2011	2001 W-3	-	-	-	-	229,658	55,766	-	19	285,444	285,444	
	3/11/2011	2004 A-2	-	140,000	300,000	440,000	-	204,234	-	4	204,237	644,237	
Total			\$ 5,163,103	\$ 505,732	\$ 1,211,165	\$ 6,880,000	\$ 4,272,147	\$ 2,942,103	\$ 1,488,835	\$ 1,037,350	\$ 9,740,434	\$ 16,620,434	\$ 16,620,434

*Both 2001 W and 2004 A are bonds issued for State of Kansas projects. Bonds issued for several agencies are pooled into one large bond issue to achieve a more favorable interest rate and a lower cost of issuance. Each agency/project is then assigned a number to distinguish the bonds issued for that agency/project. The W-3 and A-2 designate the State Fair's portion of the 2001 W and 2004 A bonds respectively.

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Attachment 12