

Approved: March 16, 2011
Date

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairperson Carolyn McGinn at 10:30 a.m. on February 14, 2011, in Room 548-S of the Capitol.

All members were present

Committee staff present:

Jill Wolters, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
David Wiese, Office of the Revisor of Statutes
Alan Conroy, Director, Legislative Research Department
J. G. Scott, Chief Fiscal Analyst, Legislative Research Department
Aaron Klaassen, Senior Fiscal Analyst, Legislative Research Department
Dorothy Hughes, Fiscal Analyst, Legislative Research Department
Brea Short, Intern, Senator McGinn's Office
Jan Lunn, Committee Assistant
Josh Lewis, Chief of Staff

Others attending:

See attached list.

Bill Introduction

Senator McGinn moved introduction of a bill establishing the Kansas employment first initiative act and creating an oversight commission (#rs0903); Senator Masterson seconded the motion, which carried on a voice vote.

Senator Masterson moved introduction of a bill (#rs0927) concerning centers of excellence and centers of innovation and related to the Kansas Bioscience Authority funding stream; Senator Schodorf seconded the motion, which passed on a voice vote.

Follow-Up Information

Senator McGinn called attention to Dr. Andy Tompkins, Kansas Board of Regents, response relative to persistence and graduation rates for state universities (Attachment 1). This was discussed during the February 4 Senate Ways and Means Committee meeting.

Ways and Means Subcommittee Reports and Recommendations

Office of the Lieutenant Governor

Senator Huntington reported the Subcommittee concurred with the Governor's recommendation (Attachment 2). Senator Huntington moved to adopt the Office of the Lieutenant Governor Subcommittee report as presented; Senator Masterson seconded the motion, which passed on a voice vote.

Office of the Attorney General

Senator Huntington reviewed the agency funding request as well as the Governor's recommendation (Attachment 2, pg 2-3). It was noted that much of the increase in this agency was due to merging of the Kansas Human Rights Commission into the Office of the Attorney General. The Subcommittee concurred with the Governor's recommendation with the following adjustment and notation:

- In 2010, the Legislature authorized the Attorney General to issue bonds for funding water litigation. The Subcommittee recommended that no language be included for FY 2012 appropriations bill to continue that bonding authority.
- The Subcommittee recommended consolidation of funding for domestic violence prevention grants and Children's Advocacy Center grants into one agency (currently divided between Office of the Governor and the Attorney General), for consideration at Omnibus.

Discussion ensued concerning the merging of the Human Rights Commission into the agency. Consequently, action on the Attorney General Subcommittee report was delayed until the Human Rights Commission Subcommittee report was discussed.

CONTINUATION SHEET

MINUTES OF THE WAYS AND MEANS COMMITTEE on February 14, 2011, 10:30 a.m. 548-S

Office Secretary of State

Senator Huntington described the agency funding request as well as the Governor's recommendation for expenditures (Attachment 2, pg 2-5). The Senate Subcommittee concurred with the Governor's recommendation with the following notations:

- **SB 128**, currently referred to Senate Ethics and Election Committee, delays the Presidential Preference Primary from 2012 to 2016. Should this legislation fail, there is no funding included in the Governor's recommendation for primary elections costs. The Subcommittee recommends funding be reviewed at Omnibus.
- A number of Constitutional amendments have been introduced and are under consideration by the Legislature. Funding does not exist in the Governor's recommendations for required publication costs. Therefore, the Subcommittee recommends consideration for any constitutional amendment funding costs at Omnibus.
- Two agencies, the Secretary of State and the Office of the Revisor of Statutes, are responsible for the publication, sale, shipping, and distribution of the *Session Laws of Kansas*, *Kansas Administrative Regulations*, and the *Kansas Statutes Annotated*. The Subcommittee recommends consolidation of the responsibilities for these publications into one agency and directs the Revisor of Statutes and the Secretary of State to create a plan and report at Omnibus.

Senator Vratil moved to amend the Subcommittee Report to include recommendations will be considered at Omnibus; Senator Teichman seconded the motion, which carried on a voice vote.

Senator Huntington moved to accept the Secretary of State Subcommittee Report as amended; Senator Kelly seconded the motion, which carried on a voice vote.

Kansas Insurance Department

Senator Huntington reviewed the agency request and the Governor's recommendation. It was noted the agency request increased for FY 2012 due to a \$5 million increase in Other Claims within the Workers Compensation program (Attachment 2, page 2-7). The Subcommittee concurred with the Governor's recommendation with the following adjustment:

- The Subcommittee recommends other assistance expenditures in the Workers' Compensation program be reduced by \$3.5 million.

Senator Teichman moved adoption of the Subcommittee report and its recommendation; Senator Kelly seconded the motion which carried on a voice vote.

State Treasurer Report

Senator Huntington reviewed the agency request and the Governor's recommendation (Attachment 2, page 2-9). The Subcommittee concurred with the Governor's recommendation with the following notations:

- Legislation is anticipated to be introduced regarding the monitoring of applicants for the Kansas Investments Development Scholars (KIDS) matching grant program which concerns third party contributions.
- Additional information on the Tax Increment Financing Revenue Replacement Fund should be provided to the full Senate Ways and Means Committee during its consideration of the FY 2012 budget. Concerns exist that the fund may be outdated and further discussion is needed.

It was noted that under the "Governor Recommendation FY 2012" column, 52.5 FTE positions are listed. This is an error; it should read "44.5." Legislative Research Staff will correct the error on the State Treasurer Report. Considerable discussion was heard concerning full time equivalent (FTE) positions, classified and unclassified positions and funded and unfunded positions. Senator McGinn requested that Legislative Research Staff develop a spreadsheet indicating the number of classified and unclassified positions (by agency), the number of positions eliminated (by agency), and the amount of salary dollars (by position) saved or retained in the agency's budget.

Senator Huntington moved the State Treasurer Subcommittee Report be accepted as corrected; Senator Kelly seconded the motion which passed on a voice vote.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections. 2

CONTINUATION SHEET

MINUTES OF THE WAYS AND MEANS COMMITTEE on February 14, 2011, 10:30 a.m. 548-S

Health Care Stabilization Fund

Senator Huntington reviewed the agency request and the Governor's recommendation which includes a 1.0 FTE position reduction (Attachment 2, page 2-11). The Subcommittee concurred with the Governor's recommendation with one adjustment:

- Restore 0.5 of the Governor's recommended 1.0 FTE reduction.

Discussion was heard related to the possible lifting of the statutory cap of the Health Care Stabilization Fund and its possible impact on medical malpractice claims payments should a Supreme Court opinion include cases already in process. Senator Schmidt moved to add an additional notation to the Health Care Stabilization Fund Subcommittee report that the Subcommittee is aware of possible consequences should the Fund's statutory cap be lifted. The motion died for lack of a second.

Senator Huntington moved adoption of the Health Care Stabilization Fund Subcommittee Report; Senator Kelly seconded the motion which carried on a voice vote.

Human Rights Commission

Senator Emler outlined the agency request and the Governor's recommendation which was based on a reorganization order for FY 2012 that transferred all duties and responsibilities of the Human Rights Commission to the Office of the Attorney General (AG) (Attachment 3). Since the initial plan was developed, legislation (not an executive reorganization order) is currently being drafted to merge the Commission into the AG office. The Subcommittee concurred with the Governor's recommendation realizing it is contingent upon passage of legislation.

Senator Francisco filed a Minority Report, which becomes part of this record. Senator Francisco expressed concern that the agency's Executive Director, Administrative Specialist, and Chief Legal Counsel would be eliminated in the Governor's recommendation. Senator Francisco proposed retaining the above mentioned positions but eliminating funding for a Staff Attorney and a Special Investigator II. In addition, her proposal included a 0.5 Administrative Assistant position. If legislation is not approved, she recommended funding the Kansas Human Rights Commission as an independent state agency in the amount of \$1,748,853 (including \$1,252,820 from the SGF), an all funds increase of \$121,742 and a SGF increase of \$63,736 above the Senate Subcommittee's recommendation, which is adequate to cover the difference in staff salaries and wages.

Senator Emler moved to amend the Subcommittee Report to reflect consideration at Omnibus; Senator Vratil seconded the motion which carried on a voice vote. Senator Vratil moved to accept the Human Rights Subcommittee Report as amended; Senator Teichman seconded the motion, which carried on a voice vote

The Senate Ways and Means Committee returned to the Office of the Attorney General Subcommittee Report. Senator Huntington moved to adopt the Office of the Attorney General Subcommittee Report with a reduction of \$1.6 million (from the transfer of funds from the Human Rights Commission) and to reconsider at Omnibus. The motion was seconded by Senator Kelly and passed on a voice vote.

ERO 38 -- Reorganizing the Kansas Health Policy Authority as established by K.S.A. 2010 Supp. 75-7401 et seq. into the Division of Health Care Finance within the Department of Health and Environment.

Amy Deckard, Senior Fiscal Analyst from the Legislative Research Department was present to brief committee members on this executive reorganization order (Attachment 4). She indicated all duties and responsibilities of the Kansas Health Policy Authority (KHPA) would be transferred to the Kansas Department of Health and Environment (KDHE) under a newly-created division of Health Care Finance within KDHE. She discussed the budget adjustments related to the transfer including staff reorganization and summarized the agency's request as compared to the Governor's recommendation.

CONTINUATION SHEET

MINUTES OF THE WAYS AND MEANS COMMITTEE on February 14, 2011, 10:30 a.m. 548-S

Responding to Committee members' questions, Ms. Deckard indicated:

- There could be trailer legislation to change statutory language and Rules and Regulations if the ERO is adopted. Since the ERO provides for full transfer of duties, functions, responsibilities, funds, and liabilities, an immediate "clean-up" would be unnecessary and could be accomplished over a longer time period.
- The Lieutenant Governor will act in an oversight capacity with regard to broad healthcare policy. The Kansas Insurance Commissioner is involved with implementing the federal Patient Protection and Affordable Care Act (PPACA) and overlapping responsibilities may occur among various agencies.
- The majority of savings generated from this reorganization order come from elimination of duplicative administrative functions and processes (*i.e.*, human resources and payroll functions).
- Senator McGinn requested that Legislative Research prepare a spreadsheet listing KHPA FTEs including title, job function, and salary for FY 2011 compared with the proposed FY 2012 (when the transfer will occur) so Subcommittee members can visualize the new plan. Legislative staff will attempt to create this resource.
- KDHE has the broad authority to implement programs and processes required under PPACA.

Landon Fulmer, Policy Director from the Office of the Governor, was present to speak in support of ERO 38 (Attachment 5). He discussed the policy rationale behind the proposed ERO, the coordinated policy framework required for PPACA implementation, Medicaid transformation, and the necessity of providing a continuum of service. Mr. Fulmer indicated Governor Brownback had communicated with Insurance Commissioner Praeger clarifying the role of the Insurance Department in implementing PPACA. Mr. Fulmer will provide the letter to committee members.

Linda Sheppard, Kansas Insurance Department, confirmed clarification from the Governor had been received, and the Insurance Department had no further questions or concerns related to the reorganization plan.

Discussion was heard regarding Committee action on a reorganization order, trailer legislation, and statutory changes.

Dr. Robert Moser, Secretary of the KDHE, was present. However, time constraints prevented hearing his testimony. The hearing on ERO 38 will continue at a later meeting.

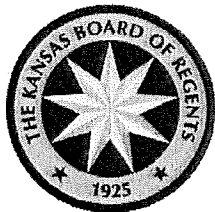
The meeting was adjourned at 12:01 p.m.

SENATE WAYS AND MEANS
GUEST LIST
February 14, 2011

NAME	AFFILIATION
Arnon Dunker	KDHE
ROBERT MOSER, MD	KDHE
KARI BRUFFET	KDHE
Stephen Koranda	KPR
Arnon Abbott	KPR
PAM GROUT	Wichita Eagle-Beacon
Jeff Zehnder	WIBW-AM
Mary Anderson	Intern, Sen. Kuitala
Linda Sheppard	KID
Scott Brunner	KHPA
Dustin Mayer	KHPA
Andy Allison	KHPA
Amy Benoit	DOB
Wailyn Helsel	DOB
Juli Green	DOB
Cheri Frotscher	DOB
Mary Finster	KID
Nancy Bryant	SOS
Colin Thomsen	ACMITCK
TK Shively	KCS
Chip Wheeler	HCSF Bd of Govs
Scott Frank	Post Audit
Nancy Zogelman	Polsinelli
Dan Martin	KS Medical Society
Paul Johnson	KS Rural Centers
Catrick Hurley	CRS
Elaine Frisbie	Div. of the Budget
April Holman	Kansas Action for Children
Sam Miller	CAPITOL STRATEGIES
KOB MEALY	

February 14, 2011

[illegible]



KANSAS BOARD OF REGENTS

TO: Senator Laura Kelly

FROM: Jonathan Krueger

CC: Andy Tompkins, Kip Peterson, Audrey Dunkel, Jan Lunn

DATE: February 11, 2011

RE: Senate Ways & Means Question on Persistence and Graduation Rates

In response to your question from the Senate Ways & Means Committee hearing on February 4, 2011, please see the attached spreadsheet for the one year retention rates of first-time, full-time freshmen, as well as the four-year and six-year graduation rates for our state universities.

According to the National Center for Higher Education Management Systems (NCHEMS), in 2008 the national retention rate average for first-time college freshmen returning their second year was 76.8%. NCHEMS also reports that the national average of six-year graduation rates for bachelor's students to be 55.9%.

Please let us know if there is anything else we can help with.

Encl.

Senate Ways and Means
Attachment:
Date:

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02/14/11

★ LEADING HIGHER EDUCATION

1-20

Kansas Board of Regents

Retention and Graduation Rates of Students Attending State Universities Academic Years 1999 - 2009

One Year Retention Rates of First-time, Full-time Freshmen

Institution	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Emporia State University	68.9%	67.7%	68.0%	69.8%	66.6%	67.3%	67.8%	74.2%	71.7%	68.9%	68.5%
Fort Hays State University	69.0%	69.3%	70.4%	72.2%	71.5%	72.4%	64.6%	70.6%	66.5%	73.9%	68.0%
Kansas State University	78.6%	75.2%	79.3%	79.3%	79.0%	80.5%	81.0%	79.0%	79.0%	77.8%	78.8%
Pittsburg State University	71.4%	73.6%	74.8%	74.2%	75.1%	72.4%	77.0%	73.2%	74.6%	72.2%	73.3%
University of Kansas	77.9%	80.3%	78.1%	81.0%	81.8%	82.7%	82.3%	80.5%	79.4%	79.7%	77.7%
Wichita State University	68.4%	67.8%	66.5%	71.1%	69.6%	67.6%	69.0%	70.2%	66.8%	72.6%	69.9%

4-Year Graduation Rates of First-time, Full-time Freshmen

Institution	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Emporia State University	19.0%	23.0%	25.0%	19.7%	21.7%	23.4%	22.2%	21.0%	22.1%	19.8%	22.7%
Fort Hays State University	19.0%	20.4%	27.8%	27.5%	26.4%	25.0%	23.5%	21.1%	24.4%	20.8%	18.7%
Kansas State University	17.3%	22.1%	22.1%	24.4%	22.0%	24.4%	24.9%	24.8%	26.1%	25.9%	22.7%
Pittsburg State University	24.5%	40.9%	42.2%	42.3%	25.2%	25.6%	27.3%	28.6%	26.7%	29.7%	25.8%
University of Kansas	26.1%	26.1%	28.7%	26.3%	30.5%	31.0%	31.4%	30.5%	31.6%	32.0%	32.3%
Wichita State University	7.8%	10.8%	11.9%	13.7%	14.6%	13.5%	16.9%	17.4%	15.0%	16.9%	20.3%

6-Year Graduation Rates

Institution	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Emporia State University	41.0%	39.0%	37.0%	43.1%	45.2%	42.7%	44.4%	44.4%	45.2%	44.1%	41.0%
Fort Hays State University	40.4%	42.5%	47.2%	48.0%	49.6%	52.0%	49.2%	46.3%	47.8%	46.8%	49.0%
Kansas State University	45.2%	53.9%	52.5%	55.4%	56.5%	59.3%	55.7%	59.0%	58.3%	57.9%	59.7%
Pittsburg State University	46.4%	45.8%	47.9%	50.3%	45.7%	45.7%	50.2%	50.2%	50.3%	52.2%	50.2%
University of Kansas	53.1%	55.1%	56.4%	56.7%	58.1%	57.4%	59.2%	58.9%	59.7%	59.6%	60.6%
Wichita State University	30.2%	28.6%	28.3%	36.6%	33.3%	36.8%	37.1%	35.1%	41.3%	38.4%	41.1%

data source: KBOR State University Databook; institutional submissions


FY 2012

SENATE WAYS AND MEANS SUBCOMMITTEE

Lieutenant Governor
Attorney General
Secretary of State
Insurance Commissioner
State Treasurer
Health Care Stabilization Board of Governors



Senator Terrie Huntington, Chair



Senator Laura Kelly



Senator John Vratil

Senate Ways and Means

Attachment:

Date:

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02/14/11

Senate Subcommittee Report

Agency: Office of the Lieutenant Governor **Bill No. --**

Bill Sec. --

Analyst: Robinson

Analysis Pg. No. --

Budget Page No. 114

<u>Expenditure Summary</u>	<u>Agency Request FY 2012</u>	<u>Governor Recommendation FY 2012</u>	<u>Senate Subcommittee Adjustments</u>
Operating Expenditures:			
State General Fund	\$ 195,551	\$ 185,773	\$ 0
Other Funds	0	0	0
Subtotal	\$ 195,551	\$ 185,773	\$ 0
Capital Improvements			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	0	0	0
Subtotal	\$ 0	\$ 0	\$ 0
 TOTAL	 \$ 195,551	 \$ 185,773	 \$ 0
 FTE positions	 3.5	 3.5	 0.0
Non FTE Uncl. Perm. Pos.	0.0	0.0	0.0
TOTAL	3.5	3.5	0.0

Agency Request

The **agency** requests \$195,551, all from the State General Fund, for FY 2012, an increase of \$3,198, or 1.7 percent, above the revised current year estimate. Requested increases in expenditures for other operating expenditures are partially offset by a decrease in requested salaries and wages expenditures. The request includes 3.5 FTE positions, the same as requested for the current fiscal year. No enhancement funding is requested.

Governor's Recommendation

The **Governor** recommends a total of \$185,773, all from the State General Fund, for FY 2012. The recommendation is a reduction of \$6,580, or 3.4 percent, below the revised current year recommendation. The recommendation reduces the agency's request by 5.0 percent.

Senate Subcommittee Recommendation

The Senate Subcommittee concurs with the Governor's recommendation.

Senate Subcommittee Report

Agency: Attorney General

Bill No. --

Bill Sec. --

Analyst: Robinson

Analysis Pg. No. --

Budget Page No. 116

Expenditure Summary	Agency Request FY 2012	Governor Recommendation FY 2012	Senate Subcommittee Adjustments
Operating Expenditures:			
State General Fund	\$ 2,741,667	\$ 2,793,668	\$ 0
Other Funds	17,650,419	18,813,982	0
Subtotal	\$ 20,392,086	\$ 21,607,650	\$ 0
Capital Improvements			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	0	0	0
Subtotal	\$ 0	\$ 0	\$ 0
 TOTAL	 \$ 20,392,086	 \$ 21,607,650	 \$ 0
 FTE positions	 110.0	 131.4	 0.0
Non FTE Uncl. Perm. Pos.	11.4	11.4	0.0
TOTAL	121.4	142.8	0.0

Agency Request

The **agency** requests The Attorney General requests an FY 2012 budget of \$20.4 million, a decrease of \$766,672, or 3.6 percent, below the revised current fiscal year estimate. The request includes State General Fund expenditures of \$2.7 million, a decrease of \$14,072, or 0.5 percent, below the revised current fiscal year estimate. The request includes 110.0 FTE positions, unchanged from the revised current year estimate.

Governor's Recommendation

The **Governor** recommends a total of \$21.6 million for the agency in FY 2012, including \$2.8 million from the State General Fund. The recommendation is an increase of \$1.7 million, or 8.6 percent, above the FY 2011 revised recommendation.

Most of the Governor's recommended increase is the result of the recommendation to merge the Kansas Human Rights Commission into the Office of the Attorney General. Expenditures recommended for the Human Rights Commission have been reflected in the Administration program for FY 2012. A total of \$1.6 million, including \$1.2 million from the State General Fund, and 22.0 FTE positions are associated with the move of the Commission.

Senate Subcommittee Recommendations

The Senate Subcommittee concurs with the recommendations of the Governor, with the following observations:

1. The Subcommittee notes that the 2010 Legislature authorized the Attorney General to issue up to \$19.0 million in bonds for necessary expenditures related to interstate water litigation activities during FY 2011. While this was intended to offset the loss of funding from the Interstate Water Litigation Reserve account of the State General Fund, which was inadvertently lapsed, the Subcommittee believes it is not good public policy to fund ongoing operating expenditures with bond proceeds. The Subcommittee recommends that no language be included in the FY 2012 appropriations bill to continue that bonding authority.
2. The Subcommittee notes concerns with funding for domestic violence prevention grants and funding for Children's Advocacy Centers. Funding for these programs is currently divided between the Office of the Governor, and the Attorney General. The Subcommittee received testimony from a number of advocates who expressed concerns with continuing availability of the funding in the Attorney General's office. The Subcommittee recommends consideration be given at Omnibus to consolidating all of the funding for domestic violence prevention grants and Children's Advocacy Center grants in one agency.

Senate Subcommittee Report

Agency: Secretary of State

Bill No. --

Bill Sec. 24

Analyst: Robinson

Analysis Pg. No. --

Budget Page No. 146

Expenditure Summary	Agency Request FY 2012	Governor Recommendation FY 2012	Senate Subcommittee Adjustments
Operating Expenditures:			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	6,759,609	6,759,609	0
Subtotal	\$ 6,759,609	\$ 6,759,609	\$ 0
Capital Improvements			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	0	0	0
Subtotal	\$ 0	\$ 0	\$ 0
TOTAL	\$ 6,759,609	\$ 6,759,609	\$ 0
FTE positions	54.0	51.0	0.0
Non FTE Uncl. Perm. Pos.	0.0	0.0	0.0
TOTAL	54.0	51.0	0.0

Agency Request

The **agency** requests a FY 2012 budget of \$6.8 million, a decrease of \$1.3 million, or 16.6 percent, below the revised current fiscal year estimate. The request includes 54.0 FTE positions, the same number as currently authorized. No enhancement funding is requested for FY 2012. Most of the decrease is the result of one-time expenditures from federal Help America Vote Act (HAVA) funds in the current year, which are not budgeted to be repeated in FY 2012.

Governor's Recommendation

The **Governor** concurs with the agency's FY 2012 request for expenditures. The Governor's recommendation, however, includes the deletion of 3.0 currently vacant FTE positions.

Senate Subcommittee Recommendation

The Senate Subcommittee concurs with the recommendations of the Governor, with the following observations:

1. The Subcommittee notes 2011 SB 128, currently referred to the Senate Ethics and Election Committee, delays the next scheduled Presidential Preference Primary from 2012 to 2016. Should this legislation not be enacted, the Secretary

of State estimates expenditures of \$1.3 million, all from the State General Fund, will be required to cover the Secretary of State's costs and to reimburse counties for primary election related costs. No funding is included in the Governor's recommendation for the primary election costs. The Subcommittee recommends that the issue of funding be reviewed at Omnibus, after the outcome of the legislation to delay the Presidential Preference Primary has been determined.

2. The Subcommittee notes that a number of proposed Constitutional amendments have been introduced and under consideration by the Legislature. Currently, when a proposed amendment is going to appear on an election ballot, statutes require that the notice and text of the amendment must be published for three consecutive weeks in a newspaper of general circulation in each county in Kansas. Generally, the costs for this process are at least \$100,000 for each Constitutional amendment passed by the Legislature. The exact amount of this expense depends upon the length of the amendment and the rate charged by each newspaper. The Secretary of State estimates the publication costs of those amendments currently under consideration, should they be enacted, to be \$650,000, all from the State General Fund. The Subcommittee recommends reviewing the issue of funding for any proposed constitutional amendments that may be enacted by the Legislature during Omnibus.
3. The Subcommittee notes that while the Secretary of State is responsible for publication, sale and shipment of the *Session Laws of Kansas* and the *Kansas Administrative Regulations*, responsibilities for the *Kansas Statutes Annotated* (KSAs) are divided between the Revisor of Statutes and the Secretary of State. The Revisor of Statutes is responsible for publication of the KSAs, while the Secretary of State is responsible for their distribution. The Subcommittee believes it would be more consistent to consolidate the responsibilities for all of these items in one agency, and directs the Revisor of Statutes and the Secretary of State to develop a plan and report back at Omnibus with recommendations to accomplish that consolidation.

Senate Subcommittee Report

Agency: Kansas Insurance Department

Bill No. --

Bill Sec. --

Analyst: Hughes

Analysis Pg. No. --

Budget Page No. 134

Expenditure Summary	Agency Request FY 2012	Governor Recommendation FY 2012	Senate Subcommittee Adjustments
Operating Expenditures:			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	31,608,368	31,608,368	(3,500,000)
Subtotal	\$ 31,608,368	\$ 31,608,368	\$ (3,500,000)
Capital Improvements			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	165,115	165,115	0
Subtotal	\$ 165,115	\$ 165,115	\$ 0
 TOTAL	 \$ 31,773,483	 \$ 31,773,483	 \$ (3,500,000)
 FTE positions	 138.4	 123.4	 0.0
Non FTE Uncl. Perm. Pos.	3.6	3.6	0.0
TOTAL	142.0	127.0	0.0

Agency Request

The **agency** requests an operating budget of \$31,608,368, all from special revenue funds, for FY 2012, an increase of \$6,294,725, or 24.9 percent, above the revised FY 2011 estimate. This increase is due primarily to a \$5.0 million increase in Other Claims within the Workers' Compensation program. The agency currently has 625 claims under review by the Centers for Medicare and Medicaid Services (CMS), and at the conclusion of the review the agency estimates it will be required to reimburse CMS \$5.0 million for workers' compensation claims payments. The rest of the increase is due to health insurance costs and an anticipated increase in workers' compensation claims.

Governor's Recommendation

The **Governor** concurs with the agency request for expenditures with one adjustment. The Governor also recommends a reduction of 15.0 FTE positions, all of which are vacant.

Senate Subcommittee Recommendation

The **Senate Subcommittee** concurs with the Governor's recommendation for FY 2012 with one exception.

1. The Subcommittee recommends other assistance expenditures in the Workers' Compensation program be reduced by \$3.5 million. The agency has estimated that it may owe the Centers for Medicare and Medicaid Services (CMS) up to \$5.0 million due to claims audited under recently implemented federal regulations. The Subcommittee believes that \$1.5 million would be a more appropriate amount for this purpose in FY 2012. Any additional amounts could be considered by the 2012 Legislature as a supplemental request.

Senate Subcommittee Report

Agency: State Treasurer

Bill No. --

Bill Sec. --

Analyst: Hughes

Analysis Pg. No. --

Budget Page No. 156

Expenditure Summary	Agency Request FY 2012	Governor Recommendation FY 2012	Senate Subcommittee Adjustments
Operating Expenditures:			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	26,612,322	20,912,322	0
Subtotal	\$ 26,612,322	\$ 20,912,322	\$ 0
Capital Improvements			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	0	0	0
Subtotal	\$ 0	\$ 0	\$ 0
 TOTAL	 \$ 26,612,322	 \$ 20,912,322	 \$ 0
 FTE positions	 52.5	 52.5	 2.0
Non FTE Uncl. Perm. Pos.	0.0	0.0	0.0
TOTAL	52.5	52.5	2.0

Agency Request

The **agency** requests \$26,612,322, all from special revenue funds, for FY 2012. This is an increase of \$3,387,253, or 14.6 percent, above the FY 2011 revised estimate. The increase is due primarily to a \$3,280,000 increase in Other Assistance, which consists of estimated claims in Unclaimed Property. The remainder of the increase is due to state employee group health insurance, KPERs retirement employer contributions, and various fees paid under contractual services. The request also includes 52.5 FTE.

Governor's Recommendation

The **Governor** recommends an FY 2012 budget of \$20,912,322, all from special revenue funds, which is an increase of \$642,253, or 3.2 percent, above the FY 2011 recommendation. It is also a decrease of \$5,700,000, or 21.4 percent, below the agency FY 2012 request. The decrease from the agency request is due to a \$420,000 reduction in the Kansas Postsecondary Education Savings Program and a \$5,280,000 reduction in estimated claims in Unclaimed Property. The Governor also recommends 44.5 FTE, which is a reduction of 8.0 FTE positions below both the FY 2011 Governor recommendation and the agency FY 2012 request.

Senate Subcommittee Recommendation

The **Senate Subcommittee** concurs with the Governor's recommendation for FY 2012 with the following notations.

1. The Subcommittee would like to note that legislation is anticipated to be introduced regarding the monitoring of the eligibility of applicants for the Kansas Investments Development Scholars (KIDS) matching grant program.
2. The Subcommittee would like further information on the Tax Increment Financing Revenue Replacement Fund to be provided to the full Senate Ways and Means Committee during its consideration of this budget. The Subcommittee is concerned that the need for this fund may be outdated and would like the Committee to further discuss this issue.

Senate Subcommittee Report

Agency: Health Care Stabilization Fund

Bill No. --

Bill Sec. --

Analyst: Hughes

Analysis Pg. No. --

Budget Page No. 60

Expenditure Summary	Agency Request FY 2012	Governor Recommendation FY 2012	Senate Subcommittee Adjustments
Operating Expenditures:			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	36,174,729	36,174,729	0
Subtotal	\$ 36,174,729	\$ 36,174,729	\$ 0
Capital Improvements			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	0	0	0
Subtotal	\$ 0	\$ 0	\$ 0
 TOTAL	 \$ 36,174,729	 \$ 36,174,729	 \$ 0
 FTE positions	 18.0	 17.0	 0.5
Non FTE Uncl. Perm. Pos.	0.0	0.0	0.0
TOTAL	18.0	17.0	0.5

Agency Request

The **agency** requests an FY 2012 budget of \$36,174,729, all from special revenue funds, which is an increase of \$1,042,571, or 3.0 percent, above the revised FY 2011 estimate. The increase is due in large part to an anticipated increase of \$855,970 in medical malpractice claims payments. The remainder of the increase is due to attorneys' fees, professional fees such as those paid to expert witnesses, and group health insurance.

Governor's Recommendation

The **Governor** concurs with the agency request with one adjustment. The Governor also recommends a 1.0 FTE position reduction as part of the Governor's broader initiative to reduce primarily vacant FTE positions.

Senate Subcommittee Recommendation

The **Senate Subcommittee** concurs with the Governor's recommendation with one exception.

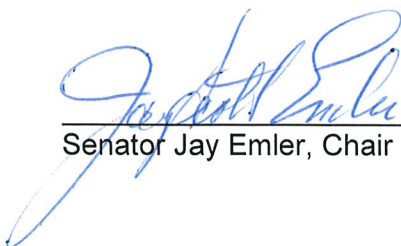
1. The Subcommittee recommends the restoration of 0.5 of the 1.0 FTE position that was eliminated in the Governor's recommendation. The 1.0 FTE position that was eliminated

is currently filled by a 0.5 FTE employee, whom the Subcommittee would like the agency to be able to retain.

FY 2012

SENATE WAYS AND MEANS SUBCOMMITTEE

Human Rights Commission



Senator Jay Emler, Chair

Senator Marci Francisco



Senator Terrie Huntington

Senate Ways and Means

Attachment:

Date:

3

02/14/11

Minority Report

FY 2012 Kansas Human Rights Commission

I do not agree with the Senate Subcommittee's recommendation of the Governor's recommendation to reorganize staff of the Kansas Human Rights Commission and reduce 3.0 non-vacant FTE positions, including a 1.0 FTE Executive Director, a 1.0 FTE Attorney, and a 1.0 FTE Administrative Specialist, in the transfer. I recommend the following:

1. I recommend a reduction of 2.5 non-vacant FTE positions, for a total of 22.5 FTE positions for FY 2012, an increase of 0.5 FTE positions above the Governor's recommendation. This amount would allow the agency to retain the Executive Director, classified Administrative Specialist, and Chief Legal Counsel identified for elimination in the Governor's Budget Recommendation, but would eliminate the funding and positions for a Staff Attorney (unclassified Attorney C) and a Special Investigator II, and make a classified Administrative Assistant a half-time position.
2. If the Executive Reorganization Order, or comparable legislation, is not approved, then I recommend funding the Kansas Human Rights Commission as an independent state agency, in the amount of \$1,748,853; including \$1,252,820 from the State General Fund, an all funds increase of \$121,742, and a State General Fund increase of \$63,736, above the Senate Subcommittee's recommendation. The increase in funds is adequate to cover the difference in staff salaries and wages.



Senator Marci Francisco

Senate Subcommittee Report

Agency: Kansas Human Rights Commission Bill No. --

Bill Sec. --

Analyst: Weir

Analysis Pg. No. --

Budget Page No. 56

Expenditure Summary	Agency Request FY 2012	Governor Recommendation FY 2012	Senate Subcommittee Adjustments
Operating Expenditures:			
State General Fund	\$ 1,576,538	\$ 0	\$ 0
Other Funds	492,400	0	0
Subtotal	\$ 2,068,938	\$ 0	\$ 0
Capital Improvements			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	0	0	0
Subtotal	\$ 0	\$ 0	\$ 0
TOTAL	\$ 2,068,938	\$ 0	\$ 0
FTE positions	34.0	0.0	0.0
Non FTE Uncl. Perm. Pos.	0.0	0.0	0.0
TOTAL	34.0	0.0	0.0

Agency Request

The **agency** requests \$2,068,938, including \$1,576,538 from the State General Fund, for operating expenditures for FY 2012. This is an all funds increase of \$302,545, or 17.1 percent, above the FY 2011 revised estimate and a State General Fund increase of \$136,326, or 9.5 percent, above the FY 2011 revised estimate. Fee funds comprise \$492,400 of the request, an increase of \$166,219, or 51.0 percent above the FY 2011 revised estimate. The increase is a result of a larger contract with the federal Equal Employment Opportunity Commission, which estimates 687 case resolutions, an increase of 149 cases. The commission estimates that the increase in federal funds will result in a FY 2011 carryover cash balance of \$116,333 in the Employment Discrimination Fund. This amount is scheduled to fund FY 2012 expenditures. The agency request maintains the 34.0 FTE position limitation.

Governor's Recommendation

The **Governor** recommends an Executive Reorganization Order for FY 2012 which includes the transfer of the duties and responsibilities of the Kansas Human Rights Commission, which has been a separate state agency, to the Office of the Attorney General.

The **Governor's** FY 2012 recommendation adds a total of \$1,627,111, including \$1,189,084 from the State General Fund, and 22.0 FTE positions to the Office of the Attorney General. This is an all funds decrease of \$441,827, or 21.4 percent, and a State General Fund

decrease of \$387,454, or 24.6 percent, and 12.0 FTE positions, below the amount requested by the Human Rights Commission for FY 2012. Changes from the amount requested by the agency and the amount recommended in the budget of the Attorney General include the following:

- **Enhancement Request.** The agency requested a total of \$138,553, all from the State General Fund, to fill 2.5 currently vacant FTE positions for FY 2012. The **Governor** does not recommend the enhancement.
- **Reduced Resources.** The agency's submitted budget for FY 2012 included reduced resources of \$71,899, all from the State General Fund, a 5.0 percent overall reduction to its request. The **Governor** concurs with this reduction.
- **Staff Reorganization.** The **Governor** recommends reorganizing agency staff, which is estimated to produce savings of \$231,375, including \$177,002 from the State General Fund. The Governor's recommendation eliminates 3.0 filled and funded FTE positions, including a 1.0 FTE Executive Director, a 1.0 FTE Attorney, and a 1.0 FTE Administrative Specialist, who serves as Secretary to the Executive Director. The **Governor** also recommends eliminating 9.0 vacant and unfunded FTE positions.

Senate Subcommittee Recommendation

The **Senate Subcommittee** concurs with the Governor's recommendation, but notes the following:

1. The Senate Subcommittee's concurrence is contingent upon approval of the Governor's Executive Reorganization Order, or passage of legislation that is comparable to the Governor's Executive Reorganization Order.
 - If the Governor's Executive Reorganization Order is not approved by the Legislature, and if no legislation comparable to the Governor's Executive Reorganization Order passes, then the Senate Subcommittee recommends funding the Kansas Human Rights Commission as an independent state agency, in the amount of \$1,627,111, including \$1,189,084 from the state General Fund, which is equal to the Governor's recommendation.
 - If the Governor's Executive Reorganization Order is not approved by the Legislature, the Senate Subcommittee recommends 23.0 FTE positions for FY 2012, an increase of 1.0 FTE position above the Governor's recommendation. The increase is to allow for 1.0 non-FTE, permanent, unclassified position to transfer to a classified, 1.0 FTE position.

Executive Reorganization Order (ERO) No. 38

The Governor recommends an Executive Reorganization Order for FY 2012 transferring all duties and responsibilities of the Kansas Health Policy Authority to the Kansas Department of Health and Environment, effective July 1, 2011. The ERO establishes a new division of Health Care Finance within the Department of Health and Environment. The ERO allows the Secretary of Health and Environment to appoint employees as needed as well as organize the division in the most efficient manner. The director of the Division of Health Care Finance would serve at the pleasure of the Secretary of Health and Environment, as an unclassified employee. The ERO specifically transfers all employees essential to the operations of the agency to the new Division and allows current classified employees their classified status.

The ERO abolishes the Kansas Health Policy Authority and all its duties and responsibilities, as granted to the agency and the Board in KSA 75-7401. The ERO transfers all accounts, funds and liabilities as well as rules and regulations authority from the Kansas Health Policy Authority to the Department of Health and Environment. In addition, the ERO gives the Governor the authority to resolve any conflicts associated with the transfer.

In addition, the ERO grants all powers, duties, and function of any state agency, department, board, commission, or council providing services or creating systems to comply with the federal Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (commonly referred to jointly as the Affordable Care Act) are transferred or granted to the Department of Health and Environment or the Secretary's designee.

Budget Adjustments Related to the Transfer. The Governor's FY 2012 recommendation adds a total of \$1.5 billion, including \$578.5 million from the State General Fund, and 161.7 FTE positions to the Department of Health and Environment reportable budget. This is an all funds increase of \$49.8 million, or 3.4 percent, and a State General Fund increase of \$39.7 million, or 7.4 percent, and a decrease of 29.8 FTE positions, below the amount requested by the Kansas Health Policy Authority for FY 2012. In addition, the Governor recommends transferring non-reportable expenditures of \$38.8 million. The changes from the amount requested by the Kansas Health Policy Authority and the amount recommended in the budget of the Department of Health and Environment include the following:

- **Enhancement Request.** The Kansas Health Policy Authority had requested a total of \$15.8 million, including \$5.3 million from the State General Fund, for FY 2012. The Governor does not recommend any of the enhancement requests. However, the Governor does recommend the addition of \$73.8 million, including \$49.6 million from the State General Fund, to fund the human services consensus caseload estimate.
- **Reduced Resources.** The agency's submitted budget for FY 2012 included reduced resources of \$4.0 million, including \$1.7 million from the State General Fund. The Governor did not recommend accepting the agency's reduced resources package. The Governor did recommend a 5.0 percent operating expenditures reduction totaling \$5.8 million, including \$1.7 million from the State General Fund.

- Staff Reorganization.** The Governor recommends reorganizing the Authority's staff, which is estimated to produce savings of \$2.4 million, including \$1.0 million from the State General Fund. These savings include reportable savings in the Administration Program of \$2,268,823, including \$949,012 from the State General Fund, and 28.8 FTE positions. Additional savings in non-reportable Administration expenditures total \$602,089 and 9.0 FTE positions. In addition, the Governor's recommendation includes Medicaid Administration savings of \$116,188 and 1.0 FTE position. The Governor's recommendation eliminates 29.8 FTE positions including all staff from the Executive Director's office, all staff from the Deputy Director's office, and the majority of the rest of the Administration program. The Governor recommends a portion of the Finance and Operations division be transferred to the Department of Health and Environment. The Governor's recommendation also includes the deletion of 32.3 currently vacant FTE positions. Additional information regarding FTE positions transferred is included in the attachment.

Transfer Summary

	Agency Request FY 2012	Gov. Rec. FY 2012	Gov. Rec. Difference From Agency Request	
			Amount	Percent
Salaries and Wages	\$ 12,116,789	\$ 9,209,078	\$ (2,907,711)	(24.0) %
Contractual Services	64,282,671	56,601,507	(7,681,164)	(11.9)
Commodities	81,922	71,508	(10,414)	(12.7)
Capital Outlay	123,134	43,220	(79,914)	(64.9)
Subtotal-Operating	\$ 76,604,516	\$ 65,925,313	\$ (10,679,203)	(13.9) %
Aid to Local Units	0	0	0	0.0
Other Assistance	1,406,699,949	1,467,206,314	60,506,365	4.3
TOTAL	\$ 1,483,304,465	\$ 1,533,131,627	\$ 49,827,162	3.4 %
Financing:				
State General Fund	\$ 538,757,882	\$ 578,481,753	\$ 39,723,871	7.4 %
Federal Funds	872,375,053	870,038,682	(2,336,371)	(0.3)
All Other Funds	72,171,530	84,611,192	12,439,662	17.2
TOTAL	\$ 1,483,304,465	\$ 1,533,131,627	\$ 49,827,162	3.4 %
FTE Positions	278.8	207.7	(71.1)	(25.5) %

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**Full-Time Equivalent Positions Transferred from the Kansas Health Policy
Authority (KHPA) to the Kansas Department of Health and Environment**

	KHPA Agency Request	KDHE Gov. Rec.	Difference
Administration	46.1	17.3	(28.8)
Medical Program Administration	94.2	79.2	(15.0)
Medicaid Program Administration	44.0	37.5	(6.5)
CHIP Program Administration	-	-	-
Other Federal Grants	30.0	25.5	(4.5)
State Employee Health On Budget	2.7	2.2	(0.5)
Medicaid Assistance	-	-	-
CHIP Assistance	-	-	-
Federal Only Assistance	-	-	-
	<u>217.0</u>	<u>161.7</u>	<u>(55.3)</u>
Off Budget/Nonreportable:			
State Employee Health Plan Off Budget	44.3	37.6	(6.8)
Administration Off Budget	17.5	8.5	(9.0)
	<u>61.8</u>	<u>46.0</u>	<u>(15.8)</u>
GRAND TOTAL	278.8	207.7	(71.1)

TESTIMONY ON EXECUTIVE REORGANIZATION ORDER NO. 38
SENATE WAYS AND MEANS COMMITTEE
FEBRUARY 14, 2011
LANDON FULMER, POLICY DIRECTOR, OFFICE OF THE GOVERNOR

Thank you for the opportunity to come before the Committee today and talk about the policy rationale behind Executive Reorganization Order No. 38. ERO 38 abolishes the Kansas Health Policy Authority and moves the duties, power, and functions to the Kansas Department of Health and Environment under the heading of a new division, the Division of Health Care Finance. Also, according to this ERO, the Division of Health Care Finance will be tasked with running point on anything related to implementation of program contained within the federal Patient Protection and Affordable Care Act.

There are many reasons why moving KHPA into KDHE is a good idea and a prudent move. First, the state's obligations in meeting consensus caseloads has expanded the Medicaid budget year after year, and there is no relief in sight outside of major reforms. Let me be clear, without changes, Medicaid is going to eat our lunch. If we're going to run pilot projects next year on bringing down our costs down with the possibility of using the results of these pilots to form the basis for long-lasting reform, the state's Medicaid agency has to be within a clearly defined chain of command that is subject to oversight by the Legislature.

Last month, Governor Brownback, Speaker O'Neal, and President Morris committed to taking on the mantle of reform as it relates to the three major cost drivers to the state: Medicaid, K-12 education, and KPERS. The Governor is taking on Medicaid, which is a highly technical process that will involve waiver requests from the CMS. He will also be providing leadership to bring together providers, insurers, and hospitals to form consensus on what needs to be done. It would be extremely difficult to manage this process if ERO 38 is disapproved because the major provider of Medicaid services would be outside of the Governor's chain of command.

Also, the legal situation surrounding PPACA and the multitude of mandated actions of the state that the law requires calls out for a coordinated policy framework. Kansas is a plaintiff on the lawsuit that produced a ruling from District Court Judge Roger Vinson that recently struck down PPACA in totality. However, he did not place a stay on implementation of the law because it is widely expected that his decision will be appealed all the way to the Supreme Court. So we're in legal limbo: plaintiff to a lawsuit that has produced a declaratory judgment in our favor, but still required to move forward with implementation per the federal law.

Although we hope for Judge Vinson's ruling to be upheld by the Supreme Court, we must continue to act as if it won't. In light of this, it is prudent for the state to continue to take the necessary steps toward implementation, and this is why the new Division of Health Care Finance will act as the central clearinghouse for

management of PPACA in Kansas if in fact the law is ruled constitutional by the Supreme Court.

I also feel that I should clear one thing up before concluding. I have heard the argument that the Governor doesn't have the authority to issue this ERO because the KHPA is an authority under the law rather than an executive branch agency. While the "A" stands for Authority, the KHPA is in fact part of the executive branch of government and is subject to reorganization by the Governor. I have included as an addendum to my testimony an opinion from Attorney General Derek Schmidt that outlines this conclusion.

Again, this ERO is extremely important in light of our long-term budget situation and our obligations under federal law. Also, I believe that the Legislature will enjoy the expanded oversight that this ERO will provide. Thank you for your time, and I would be happy to answer any questions you might have.

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STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

February 4, 2011

Caleb Stegall, Chief Counsel
Office of the Governor
Capitol Building
Room 257 – West
Topeka, Kansas 66612

RE: Constitution of the State of Kansas--Executive Reorganization of
State Agencies of Executive Branch; Whether Kansas Health Policy
Authority Subject to Executive Reorganization Order.

State Departments--Public Officers and Employees--Kansas Health
Policy Authority. Kansas Health Policy Authority; Whether Subject
to Executive Reorganization Order.

Dear Mr. Stegall:

As Chief Counsel to Governor Sam Brownback, you ask for an opinion on whether the Kansas Health Policy Authority, created by K.S.A. 75-7401, is subject to the reorganization power and authority of the Governor.¹ According to the Governor's budget documents the merger would ensure that each Kansas Health Policy Authority (KHPA) program will become a Kansas Department of Health and Environment (KDHE) program except for the agency's central administration, which would be folded into the existing administrative offices at KDHE. There would be a new division of health policy created at KDHE that presumably would oversee functions currently managed by KHPA. The question requires a review of the power of the Governor to reorganize executive branch agencies provided for in the Constitution of Kansas.² It also requires a review of the establishment of the Kansas Health Policy Authority (KHPA) pursuant to K.S.A. 75-7401.³

The Governor's power to reorganize agencies of the executive branch is found in the Constitution of Kansas in Article 1 § 6 which provides in pertinent part:

¹Kan. Const., Art. 1, § 6.

²*Id.*

³K.S.A. 2010 Supp. 75-7401.

For the purpose of transferring, abolishing, consolidating or coordinating the whole or any part of any state agency, or the functions thereof, it lies *within the executive branch of state government*, (emphasis added) when the governor considers the same necessary for efficient administration, he may issue one or more executive reorganization orders. . . . Agencies and functions of the legislative and judicial branches, and constitutionally delegated functions of state officers and state boards shall be exempt from executive reorganization orders.

The Kansas Supreme Court found that the provision is:

...self-executing, and, simply stated, it authorizes executive initiation of reorganization orders to abolish, transfer, or revise the whole or any part of existing executive agencies or functions effective July 1, subject to legislative veto within the time prescribed. The procedure is an innovation which is based upon the theory that reorganization of the executive department is first and foremost a responsibility of the governor, which should be sustained on a continuing basis. Thus, the plan reverses the usual legislative procedure in which legislative enactments are subject to executive veto. The clear intent is to facilitate executive reorganization desired by the chief executive. (Eley, *The Executive Reorganization Plan: A Survey of State Experience*, Institute of Governmental Studies, University of California, Berkeley [1967]; Council of State Governments.)⁴

The question of whether the KHPA is an executive branch agency is answered in the enabling legislation found at K.S.A. 2010 Supp.75-7401, which states in pertinent part:

On July 1, 2005, the Kansas health policy authority is hereby established as a state agency *within the executive branch of state government*. (Emphasis added.)

The fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained.⁵ An appellate court's first task is to "ascertain the legislature's intent through the statutory language it employs, giving ordinary words their ordinary meaning."⁶

"When a statute is plain and unambiguous, we do not speculate as to the legislative intent behind it and will not read the statute to add something not readily found in it. We need not resort to statutory construction. It is only if the statute's language or text is unclear or ambiguous that we move to the next analytical step, applying canons of construction or relying on legislative history construing the statute to effect the legislature's intent."⁷

⁴ *Van Sickle v. Shanahan*, 212 Kan. 426, 448 (1973).

⁵ *Winnebago Tribe of Nebraska v. Kline*, 283 Kan. 64, 77, 150 P.3d 892 (2007).

⁶ *State v. Stallings*, 284 Kan. 741, 742, 163 P.3d 1232 (2007).

⁷ *In re K.M.H.*, 285 Kan. 53, 79, 169 P.3d 1025 (2007).

The enabling statute, being plain and unambiguous, conclusively establishes the KHPA as an executive branch agency, thus within the governor's authority to reorganize if deemed necessary for efficient administration.

The final issue requiring analysis is whether an executive reorganization order issued to reorganize the KHPA in the manner described would exceed the authority of the Governor under Article 1, Section 6, because it would affect an entity that is exempt from executive reorganization orders. The Constitution of Kansas provides that "Agencies and functions of the legislative and judicial branches, and constitutionally delegated functions of state officers and state boards shall be exempt from executive reorganization orders."⁸

The proposed reorganization would affect both the KHPA and the KDHE. Both are state agencies within the executive branch of state government. Plainly, neither is an agency or function of the legislative or judicial branches.

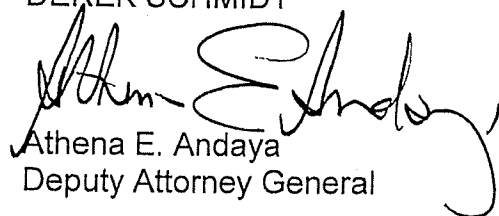
Nor does either KHPA nor KDHE exercise the constitutionally delegated functions of any state officers. The state officers are the governor, lieutenant governor, secretary of state, and the attorney general.⁹ Neither the KHPA nor the KDHE is within any of those offices.

In conclusion, the Constitution of Kansas, Article 1, § 6 and K.S.A. 75-7401 are clear that the KHPA is subject to the reorganization power and authority of the governor.¹⁰

Please note that this is an informal opinion. Generally, an informal opinion seeks to advise state and local officials how the law applies to particular factual situations. Informal opinions are not published and thus also will not be annotated in the Kansas statutes. If you think publication and annotation are important, please contact this office.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
DEREK SCHMIDT


Athena E. Andaya
Deputy Attorney General

AEA:ke

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⁸ Kan. Const., Art. 1, § 6.

⁹ Kan. Const., Art. 1, § 1.

¹⁰ It is interesting to note that Governor Kathleen Sebelius attempted to create the Kansas Health Policy Authority with Executive Reorganization Order No. 33 which was disapproved by the Legislature in 2005 House Resolution 6015.