

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairperson Carolyn McGinn at 10:30 a.m. on March 9, 2011, in Room 548-S of the Capitol.

Senator Vratil was excused; Senator Emler was absent.

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  
Dylan Dear, Fiscal Analyst, Legislative Research Department  
Estelle Montgomery, Fiscal Analyst, Legislative Research Department  
Christina Allen, 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.

Conferees:

Daniel Yoza, Assistant Revisor, Office of the Revisor of Statutes  
Luke Bell, Vice President of Governmental Affairs, Kansas Association of Realtors  
Gary Reser, Executive Vice President, Kansas Veterinary Medical Association  
Doug Wareham, Senior Vice President, Government Relations, Kansas Bankers Association  
Steve Anderson, Director of Budget, Kansas Division of the Budget

**Announcements**

Senators Schmidt and Francisco introduced their pages for the day.

**SB 229 - Fee agencies; implementing a 10% transfer for FY2012 then repealing the 20% transfer requirement.**

Daniel Yoza, Office of the Revisor of Statutes, briefed committee members on **SB 229**. He indicated the current law provides for fee boards to deposit 20.0 percent of fee fund revenue up to a maximum of \$200,000 to the State General Fund (SGF). This was established in order to provide a means of covering operating costs (payroll, purchasing, auditing, accounting, etc.) that are provided by the State to the agencies. **SB 229** reduces the 20.0 percent credit from fee fund receipts to 10.0 percent in FY 2012; then, for FY 2013, there would be no credit to the SGF (**Attachment 1**).

Luke Bell, Kansas Association of Realtors, spoke in support of **SB 229 (Attachment 2)**. He indicated that in challenging economic times, the proposed legislation would keep fee revenue with the agency and enhance its ability to adequately regulate the real estate industry. He indicated that in the past, funds have been swept for the purpose of raising SGF revenue. In the last six years, the Real Estate Commission has transferred nearly \$1.9 million to the SGF in fee fund sweeps plus the 20.0 percent statutory requirement.

Gary Reser, Kansas Veterinary Medical Association, spoke in support of **SB 229 (Attachment 3)**. He indicated that in addition to the 20.0 percent statutory transfer requirement, an additional \$65,000 has been swept that included revenues saved through the Kansas Savings Incentive Program (KSIP).

Doug Wareham, Kansas Bankers Association, spoke in support of **SB 229 (Attachment 4)**. Mr. Wareham testified that the Office of the State Bank Commissioner (OSBC) regulates 240 state-chartered banks. In addition to the statutory transfer of \$200,000 yearly, the OSBC is assessed for services received such as rental fees, state building fees, database access fees, and

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software maintenance fees. From 2002 through 2011, a total of \$5.2 million has been transferred or swept from the OSBC to the SGF. Mr. Wareham noted the Attorney General's opinion in 2002 (Opinion No. 2002-45).

Sherry Diel, Kansas Real Estate Commission, provided written testimony supporting the bill (Attachment 5).

Steve Anderson, Kansas Division of the Budget, addressed the committee (no written testimony) from a neutral position. He indicated that KPERS unfunded liabilities, health insurance, and fringe benefits are components included in the 20.0 percent statutory transfer requirement. Senator Kultala noted those items were not captured in the fiscal note provided. Discussion ensued. Several committee members requested that Mr. Anderson provide additional information. Senator McGinn requested that Mr. Anderson submit a written summary of his comments to the committee secretary. Senator Huntington, who chaired the Fee Board Subcommittee, indicated that in testimony heard in subcommittee meetings, there appeared to be inconsistencies in how fee agencies are billed for services. Mr. Anderson indicated he would investigate further and furnish that response at a later time. Mr. Anderson encouraged committee members to further evaluate and assess the impact of this legislation.

Senator Francisco reported that during subcommittee meetings, she suggested that monies from agencies' KSIP accounts be refunded in lieu of suspending the 20.0 percent statutory transfer requirement to allow further study of the bill's impact. Senator Francisco requested that staff develop a list of agencies (including account balances) that had KSIP funds transferred to the SGF.

### **SB 118 Changes to fees collected by the board of barbering**

Senator Francisco reported that in collaboration with the director of the Board of Barbering, an amendment was developed to bring additional flexibility to the board's fee structure. Specifically, "For shop inspection, and annual license fee---not more than \$60," "For issuance of new chair lease license or annual renewal thereof---not more than \$40," and "For restoration of expired chair lease license, if expiration is under three years, the lapsed fees plus a restoration fee of not more than \$60." Senator Francisco moved adoption of the amendment discussed. Senator Kelly seconded the motion, which passed on a voice vote.

Discussion was heard concerning collaboration between the Board of Barbering and the Board of Cosmetology to evaluate what efficiencies or savings could be realized with a possible merger of regulatory boards, consolidation of functions (i.e., one inspector for barber shops and cosmetology salons), and/or lowering fees. It was the consensus of committee members to request that staff draft a letter to the directors of these agencies.

Senator Huntington moved to pass out SB 118 as amended. Senator Francisco seconded the motion, which carried on a voice vote.

### **SB 154 Increasing the abstracter license fee to \$75**

Senator Huntington reported these services are necessary in rural Kansas areas. Committee members requested that staff draft a letter to encourage the Abstracters' Board of Examiners collaborate with the Real Estate Appraisal Board or other appropriate fee boards to investigate possible efficiencies and savings with the consolidation of boards and/or functions.

Senator Huntington moved to pass out SB 154. Senator Francisco seconded the motion, which carried on a voice vote.

## **Subcommittee Reports**

### **Kansas State Fair Board**

Senator Taddiken reviewed the Kansas State Fair board agency request as well as the Governor's recommendation. The Subcommittee concurred with the Governor's recommendation with adjustments (Attachment 6):

- Added 1.0 FTE position and \$39,740, all from the State Fair Fee Fund. The Subcommittee requested a follow-up report during FY 2013 budget hearings concerning any efficiency gained by the addition of the FTE position

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- Noted the State's failure to provide a matching amount (K.S.A. 2-2223) for capital improvements up to \$300,000 in FY 2004, FY 2005, FY 2010, and FY 2011. The Governor's recommendation was to suspend the match for FY 2012.

Senator Taddiken moved to clarify the agency's request was for operational funds as well as capital improvement funds and that the Governor's recommendation was to exclude the capital improvement request for building roof replacements for FY 2012. Senator Taddiken moved adoption of the Subcommittee report including the clarification discussed. The motion was seconded by Senator Teichman, which carried on a voice vote.

### Animal Health Department

Senator Taddiken reviewed the agency's request as well as the Governor's recommendation. The Subcommittee concurred with the Governor's recommendation with several notations:

- Should the Legislature not approve the Governor's Executive Reorganization Order and comparable legislation is not passed, the Subcommittee recommends funding the Animal Health Department as an independent state agency in the amount of \$2,677,152, including \$787,300 from the SGF. If the Governor's ERO is not approved, the Subcommittee recommendation includes 33.0 FTE positions for FY 2012.
- The Subcommittee supports the need for an additional veterinary position with the Animal Disease Control Program and suggests sharing the position with the Meat and Poultry Program within the Department of Agriculture.

Senator Francisco moved to include the following language in the Subcommittee recommendations: "As the State of Kansas continues to develop the animal health corridor, we should be mindful of the programs that ensure good publicity about the good health of animals in Kansas. The Animal Facility Inspection Program, within the Animal Health Department, is charged with the regulation and enforcement of the Kansas Pet Animal Act. The Subcommittee is aware of the ERO to make the Animal Health Department a part of the Department of Agriculture. The Subcommittee supports the need to maintain adequate staff, including a program director, in the Animal Facility Inspection Program if this reorganization takes place." Senator Huntington seconded the motion, which carried on a voice vote.

Senator Taddiken moved adoption of the Subcommittee report as amended. Senator Kelly seconded the motion, which carried on a voice vote.

### Department of Agriculture

Senator Taddiken discussed the agency request and the Governor's recommendation. The subcommittee concurred with the following notations:

- The Subcommittee expressed concern about the future funding of the Grain Warehouse Inspection Program and recommended the addition of proviso language to the FY 2012 appropriations bill: *"During the fiscal year ending June 30, 2012, the agency shall make every effort to ensure services performed in the grain warehouse inspection program will not be compromised by budget reductions for the fiscal year ending June 30, 2012."*
- Review available Grain Warehouse Program funding for FY 2012 prior to finalization of the FY 2012 appropriations bill.
- Recommend funding of the Livestock Market Reporting out of existing FY 2012 resources.
- Review funding of the Livestock Market Reporting prior to finalization of the FY 2012 appropriations bill.
- Add \$89,910, all from fee funds, and \$89,875, all from federal funds for replacement vehicles for FY 2012.
- Add proviso language to the FY 2012 appropriation bill: *"Licensing online transition . . . . \$0 Provided, that the Department of Agriculture may pro-rate license fees and/or alter license due dates as needed in order to transition to online license applications and renewals."*
- Support the need for an additional veterinary position within the Animal Disease Control Program (see the recommendation above in Animal Health Department).

Senator Taddiken suggested consideration of an amendment contingent upon \$40,000 coming into the Department of Agriculture budget from the Wildlife and Parks budget. Should that not occur, the \$40,000 will come from the State Water Plan fund under the Sub-basin Water

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Resource Management fund, all from SGF, to the Animal Health Department, Animal Health Facility Inspection fund. This transfer would provide for facilities inspections. He directed the Office of the Revisor of Statutes to create the amendment as discussed. Senator Taddiken moved the amendment to provide funding to the Animal Health Facility Inspection Program fund as discussed. Senator Francisco seconded the motion, which carried on a voice vote. Senator Francisco moved to include the identical language concerning the Animal Health Inspection Program within the Department of Agriculture Subcommittee report. Senator Schmidt seconded the motion, which passed on a voice vote.

Senator Taddiken moved adoption of the Department of Agriculture Subcommittee report as amended. Senator Teichman seconded the motion, which carried on a voice vote.

### State Conservation Commission

Senator McGinn reviewed the agency's request and the Governor's recommendation. The Subcommittee concurred with the recommendation and recommends adjustments within the Department of Agriculture's Subcommittee report for the Division of Conservation.

Since the recommendation was contingent on the approval of the Governor's Executive Reorganization Order 40, Senator Taddiken directed staff from the Office of the Revisor of Statutes to develop language that would provide funding for an independent State Conservation Commission. Senator Taddiken moved adoption of his amendment as discussed. Senator Teichman seconded the motion, which carried on a voice vote.

Senator McGinn moved adoption of the State Conservation Commission Subcommittee report as amended. Senator Kelly seconded the motion, which passed on a voice vote.

### Kansas Water Office

Senator McGinn reviewed the agency's request and the Governor's recommendation. The Subcommittee concurred with the Governor's recommendation with the following adjustments:

- Add 2.0 FTE positions for FY 2012; the agency inadvertently submitted a request for funded FTE positions instead of total approved FTE positions.
- Add \$100,000 all from the State Water Plan Fund, for FY 2012, to increase funding for the Wichita Aquifer Storage and Recovery Project.
- Add \$80,702, all from the State Water Plan Fund, for the Storage and Operations Maintenance Memorandum of Understanding (MOU), which is annually contracted with the Corps of Engineers at the reservoirs where the state owns water storage. This action would fully fund the obligation to the Corps of Engineers for FY 2012.
- Delete \$49,000, all from the State Water Plan Fund, for FY 2012, to eliminate funding for Weather Stations.
- Delete \$25,000, all from the State Water Plan Fund, to reduce funding for Technical Assistance to Water Users, leaving \$412,433 for FY 2012 expenditures for the program.
- Delete \$16,702, all from the State Water Plan Fund, to reduce funding for Assessment and Evaluation, leaving \$473,298 for FY 2012 expenditures for the program.

Senator McGinn moved adoption of the Kansas Water Office Subcommittee report. Senator Teichman seconded the motion, which passed on a voice vote.

### Kansas Department of Wildlife and Parks

Senator McGinn reviewed the agency's request and the Governor's recommendation. The Subcommittee concurred with the Governor's recommendation with adjustments that Senator McGinn reviewed. She indicated that the following adjustments concerning capital improvements to state fishing lake dams require additional review prior to finalizing the FY 2012 appropriations bill:

- Add \$100,000, all from the Sport Fish Restoration Fund, for repairs to state fishing lake dams at Leavenworth, Shawnee, and Douglas (capital improvement).
- Add \$100,000, all from the Wildlife Restoration Fund, for repairs to state fishing lake dams at Leavenworth, Shawnee, and Douglas (capital improvement).

Senator Umbarger requested that research staff provide the balances in the funds discussed.

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Senator McGinn moved adoption of the Department of Wildlife and Parks Subcommittee Report.  
Senator Francisco seconded the motion, which passed on a voice vote.

The meeting was adjourned at 12:05 p.m.

**SENATE WAYS AND MEANS  
GUEST LIST  
March 9, 2011**

NAME	AFFILIATION
Marilyn Jacobson	DOA
Vicki Lynn Helsel	Budget
Kenneth Heffler	Budget
John Surgeon	KDWP
Dick Werth	KDWP
Kevin Glendening	OSBC
Ed Splichal	OSBC
Judi Stark	"
Sarah Green	KDA
Chris Wilson	KDA
Mark Heim	KDA
Alexander Guerrero	KSNB
Kathleen J. Schler Ruppert	KSBHA
Mack Smith	KS STVR of Mortuary Arts (KSBA)
Bob Zook	Board of Barbering
McDawis	KBOC
MAX FOSTER	SCC
Bill Brown	KATHD
Debra Duncan	KATHD
<del>Harry Reser</del>	Kansas Veterinary Med. Assn.
Dan Morin	KS Medical Society
Jamison Akers	KMS-Intern
VERREL HEIN	HEIN LAW FIRM
Justin McFarland	KIDOL
Mary Jane Stankiewicz	KARA
Jacqueline Heiner	Quest Credit Union
Halley Duvall	KCHA
Betty Wright	Ks Debt Board
Melissa In	KDB

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MEMORANDUM

To: The Senate Committee on Ways and Means  
From: Daniel Yoza, Assistant Revisor  
Date: March 9, 2011  
Subject: Senate Bill 229

Senate bill 229 amends 56 Kansas statutes that deal with fee funds. The policy is to reduce the 20% credit from fee funds to the state general fund to 10% in fiscal year 2012, and then to eliminate the credit from fee funds to the state general fund in fiscal year 2013. This bill also reduces the maximum amount of the credit from \$200,000 to \$100,000.

Section 1 amends K.S.A. 75-3170a which is the statute that states the purpose of the 20% credit from fee agencies to the state general fund. This purpose 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. Subsection (c) is amended to reduce the maximum amount a fee agency must credit to the state general fund from \$200,000 to \$100,000. A new subsection (d) is added which states that for fiscal year 2013, and each fiscal year thereafter, fee agencies will not be required to credit fee money to the state general fund. There are also several technical cleanups in this section that involve reference to statutes that have been repealed.

For an example of how this bills works, you can look at Section 2.

The board of accountancy shall remit all moneys received by or for it from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto.

Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Ten percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the board of accountancy fee fund. After June 30, 2012, all moneys of each such deposit shall be credited to the board of accountancy fee fund.

Starting on July 1, the 20% credit from fee funds to the state general fund is reduced to 10% in fiscal year 2012. In fiscal year 2013 there will be no credit from fee funds to the state general fund.

If this bill passes, it will take effect on July 1, 2011.



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To: Senate Ways and Means Committee

Date: March 9, 2011

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

Chairperson McGinn and members of the Senate Ways and Means 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 a starting point, we are extremely concerned about the extremely difficult budget challenges facing the Kansas Legislature in FY 2012 and FY 2013. Just like other citizens of this state, REALTORS® have family members who are enrolled in K-12 public education, attend public universities, depend on various disability and social service programs administered by the state and take advantage many other vitally important state services that have been and will continue to be cut by the Kansas Legislature.

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

Having said that, we are also 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 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 span, 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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As Currently Enforced, the 20% Transfer Required by the Statutes is Unconstitutional Since No Services are Provided by Other State Agencies to the Fee-Funded Agency in Return for the Transfer

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)**.

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.

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."

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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 repeal these unconstitutional requirements and permanently repeal the obligation to transfer 20% of fee fund revenue to the state general fund.

In the alternative, the new language in lines 11 through 17 on page 2 of the legislation would explicitly allow the Commission to contract with the Kansas Department of Administration, other state agencies or private vendors for the types of services that are discussed in **K.S.A. 75-3170a(a)**. 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 absolute obligation to continue to pay for the cost of those services. Accordingly, we would strongly disagree that this legislation would allow the Commission to receive any "free" services or otherwise burden any other state agency.

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. Fadeley*, 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.

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In *Executive Aircraft v. City of Newton*, 252 Kan. 421 (1993), the Kansas Supreme Court held that a tax flowage "regulatory fee" assessed by a city and county was an illegal tax under the Kansas Constitution. In this decision, the Court addressed the distinction between a fee and a tax.

Thus, a tax is a forced contribution to raise revenue for the maintenance of governmental services offered to the general public. In contrast, a fee is paid in exchange for a special service, benefit, or privilege not automatically conferred upon the general public. A fee is not a revenue measure, but a means of compensating the government for the cost of offering and regulating the special service, benefit, or privilege. *Id.* at 427.

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 police 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 Repealed then the Kansas Real Estate 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 Senate Ways and Means 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.

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**Testimony**  
**Senate Ways and Means Committee**  
**Presented by Kansas Veterinary Medical Association**  
**Wednesday, March 9, 2011**

Members of the Senate Ways and Means Committee, thank you for the opportunity to appear today and testify in support of **S.B. 229**.

The Kansas Veterinary Medical Association (KVMA) advocates on behalf of the Kansas veterinary profession through legislative and regulatory representation and educational, communications, and public awareness programs.

**The KVMA respectfully requests the Senate Ways and Means Committee to vote "yes" on S.B. 229.**

The KVMA has been concerned in recent years about the twenty per cent of veterinary fee funds taken annually from the Kansas Board of Veterinary Examiners, an exclusively fee funded agency, and transferred to the State General Fund (SGF) and has worked with various legislative committees to address the issue.

It has been the impression of the KVMA during my 15 years with the Association that the Kansas Board of Veterinary Examiners is extremely efficient in its operations.

In addition to the twenty per cent transfer of veterinary fee funds each year, an additional \$65,000 in veterinary fee funds was swept into the SGF the year before last, one third of the agency's fee fund balance. An additional sweep, planned but averted in the closing days of the 2009 legislative session, would have actually put the agency out of business.

These additional sweeps included taking revenues the Board had saved through the legislatively approved Kansas Savings Incentive Program (KSIP) by way of careful planning and judicious budgeting.

The Board's plans to use the monies appropriately for computer upgrades and training for Board members would have resulted in additional savings, but those objectives had to be abandoned when the KSIP funds were swept.

Of course, the twenty per cent transfers result in funding for other state programs outside of the purpose of veterinary fee funds to license, regulate, and oversee the Kansas veterinary profession and to protect the public health, safety, and welfare.

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The Kansas Board of Veterinary Examiners has three full time employees. The assistance supposedly provided by the State in return for the twenty per cent transfer in the areas of computer services, human resources, and other areas doesn't really practically apply to an agency of this size.

In fact, it may even cause more non regulatory assignments for the Board in regard to responding to surveys, questionnaires, and forms supposedly to determine State services not really needed.

The KVMA strongly believes in the validity and necessity of licensing and regulating the Kansas veterinary profession and protecting the public health, safety, and welfare through the Kansas Board of Veterinary Examiners, a managerially disciplined and fiscally responsible regulatory body.

Once again, the KVMA respectfully urges the Senate Ways and Means Committee to vote "yes" on S.B. 229.

Respectfully submitted,

Gary Reser, KVMA executive vice president

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**Date:** March 9, 2011

**To:** Senate Ways and Means Committee

**From:** Doug Wareham, Senior Vice President-Government Relations

**Re:** Support for Senate Bill 229

Madam Chair and members of the Senate Ways and Means 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 phases out the requirement for fee-funded agencies to annually remit 20% of their fee revenues to the State General Fund (SGF). KBA has a long-standing policy against the practice of sweeping dollars from fee-funded state agencies, and we want to commend members of this committee for helping change the tone of the conversation on this topic. Banks operating in Kansas have the option of maintaining either a federal or state charter. In Kansas today, there are a total of 240 state-chartered banks whose primary regulator is the Office of the State Bank Commissioner (OSBC). The OSBC is funded entirely by fees paid by state chartered banks, trust companies and other financial service providers that are regulated by the department.

While it is our understanding the original purpose of the 20% annual sweep was to reimburse the state for services provided to the OSBC, we understand the department is actually billed for the services they receive from other state agencies. In addition to the 20% sweep, which amounts to an annual \$200,000 transfer from the OSBC to the SGF, the OSBC is also assessed for services they receive. Charges assessed by other state agencies include, but are not limited to, rental fees, state building fees/surcharges, data base 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 compensation for services provided, but we object to the current process, which appears to require them to pay more than double for what they actually receive.

Additionally, we believe allowing the OSBC to retain the \$200,000 that has been annually swept to the state general fund will prove beneficial for the department. Having adequate financial resources is paramount, as the OSBC continues to deal with the impact of the slowly recovering economy and the challenges that economy has created for financial institutions in Kansas. During difficult economic times, the workload of the OSBC increases as the frequency of

Senate Ways and Means

examinations for troubled banks increases. In the past, fee sweeps have threatened the ability of the OSBC to meet their role of ensuring the safety and soundness of Kansas banks by forcing the department to consider furloughing members of their examination staff. Fee sweeps also enhance the likelihood of an increase in the fee assessment that will affect the cost of doing business for state-chartered banks in Kansas.

Attached to my testimony is a list of the fee sweeps that have impacted the OSBC during the past decade. As you can see, in addition to the annual transfer of \$200,000, the OSBC was also tapped for an additional \$3,232,230 in fee sweep transfers since 2002. While we have no objection to fee-funded agencies being required to pay reasonable fees for the services they are provided; we strenuously object to unjustified fee sweeps that remove fees from the purpose for which they were collected.

KBA's position is supported by a 2002 Attorney General's opinion (Opinion No. 2002-45) issued by then Attorney General Carla Stovall who found that:

***"If an assessment so exceeds the cost of regulation that it is apparent the Legislature is using it as a general revenue raising measure, the overage cannot stand on police power authority. If the assessment is in fact a revenue raising measure, it must be analyzed as such, which may include a determination as to whether it meets Commerce Clause and Equal Protection requirements, as well as any state constitutional requirements applicable to the type of tax it is. If an assessment cannot stand on either police power or taxing authority, it would have to be reimbursed."***

In closing, I want to share that Kansas bankers do have a sincere appreciation for the financial challenges facing the State, and they contribute in many ways to the state general fund. Kansas banks support the state general fund through payment of the privilege tax, property taxes and sales taxes. We simply believe the sweeping of fees is poor public policy, and violates the trust between fee-payers and fee-funded agencies charged with providing regulatory oversight and consumer protection.

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](mailto:dwareham@ksbankers.com).***

**Office of the State Bank Commissioner**  
Funds Transfers to State General Fund

	Division of Banking	Division of Consumer & Mrtg Lending	Total Transferred SGF (State)	Annual Total
<b><u>Summary 2002-2010</u></b>				
Annual Transfers	1,373,300	626,700	2,000,000	
Additional Funding	1,715,295	1,516,935	3,232,230	
Actual Sweeps to SGF				
<b>Grand Totals</b>	<b>\$ 3,088,595</b>	<b>\$ 2,143,635</b>		<b>\$ 5,232,230</b>
	<b>59.0%</b>	<b>41.0%</b>		
<b><u>Fiscal Year 2011</u></b>				
Annual Transfer	127,280	72,720	200,000	
Additional Funds Swept	-	-	-	
	127,280	72,720		\$ 200,000
<b><u>Fiscal Year 2010</u></b>				
Annual Transfer	130,000	70,000	200,000	
Additional Funds Swept	21,098	12,619	33,717	
	151,098	82,619		\$ 233,717
<b><u>Fiscal Year 2009</u></b>				
Annual Transfer	145,540	54,460	200,000	
Additional Funds Swept	510,339	241,416	751,755	
	655,879	295,876		\$ 951,755
<b><u>Fiscal Year 2008</u></b>				
Annual Transfer	141,000	59,000	200,000	
Additional Funds Swept	30,374	378	30,752	
	171,374	59,378		\$ 230,752
<b><u>Fiscal Year 2007</u></b>				
Annual Transfer	134,000	66,000	200,000	
Additional Funds Swept	56,629	24,924	81,553	
	190,629	90,924		\$ 281,553
<b><u>Fiscal Year 2006</u></b>				
Annual Transfer	134,000	66,000	200,000	
Additional Funds Swept	59,206	31,993	91,199	
	193,206	97,993		\$ 291,199
<b><u>Fiscal Year 2005</u></b>				
Annual Transfer	134,000	66,000	200,000	
Additional Funds Swept	545,073	705,955	1,251,028	
	679,073	771,955		\$ 1,451,028
<b><u>Fiscal Year 2004</u></b>				
Annual Transfer	140,000	60,000	200,000	
Additional Funds Swept	262,576	229,650	492,226	
	402,576	289,650		\$ 692,226
<b><u>Fiscal Year 2003</u></b>				
Annual Transfer	136,000	64,000	200,000	
Additional Funds Swept	230,000	270,000	500,000	
	366,000	334,000		\$ 700,000
<b><u>Fiscal Year 2002</u></b>				
Annual Transfer	151,480	48,520	200,000	
Additional Funds Swept	-	-	-	
	151,480	48,520		\$ 200,000

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Sherry C. Diel, Director

Sam Brownback, Governor

To: Ways and Means Committee  
From: Sherry C. Diel, Executive Director  
Date: March 9, 2011  
Subject: SB 229—Proponent of abolishing 20% transfer from fee fund receipts to SGF

Chairperson McGinn and members of the Ways and Means Committee, thank you for the opportunity to share the Commission's comments regarding the benefit passage of SB 229 will have on the Kansas Real Estate Commission's fiscal ability to properly regulate the real estate industry. Due to factors outside the Commission's control, the Commission's fee fund balance will not be sufficient to sustain anticipated expenditures commencing in FY 2013 without substantially increasing revenues or reducing expenditures needed for regulatory purposes.

#### **Quick Background on What Happened to the Commission's Cash Balance**

The difficult economy has taken a devastating toll on the Commission's budget, but there are other factors involved to explain why the Commission's fee fund balance has been depleted so quickly. The Commission has been hit by the "perfect storm" caused by the following: (1) since FY 2005, over \$700,000 has been swept from the Commission's fee fund and transferred to the State General Fund (SGF); (2) licensee counts have decreased by approximately 3,000 since FY 2007; and (3) the number of requests for hearings and severity of the cases have more than doubled since the housing market began to decline resulting in increased expenditures and an increase in the backlog of cases that require disciplinary orders to be drafted and a backlog of hearings to be held.

In FY 2005, \$508,438 was swept from the Commission's fee fund. In FY 2009, another \$195,671 of Kansas Savings Incentive Plan (KSIP) monies that the Commission had saved for updating its licensure system was swept from the fee fund and transferred to the SGF when the KSIP program was terminated. Ironically, the Division of Budget had also recommended that another \$550,000 be swept from a combination of the Commission's recovery fund and fee fund in FY 2009, but fortunately that measure was defeated late in the Session.

#### **The Commission Pays 20% for Indirect Costs and is Direct Billed**

In addition to the fee fund sweeps, the Commission transfers 20% of fees received from licensees up to a maximum of \$200,000 per year for "indirect costs" for accounting, personnel, payroll, legal and other centralized services. However, the Commission is also direct billed for most services provided by the Department of Administration.

For the past several years, the Commission has been required to transfer the entire statutory cap of \$200,000 to meet the 20% transfer requirement. From FY 2006 through FY 2011, the Commission will have transferred \$1.2 million of receipts from licensee fees to the SGF. Fee fund sweeps and direct bills for general services are added to the \$200,000 per year transferred to SGF.

**In FY 2011, the Commission anticipates that direct bills received from the Department of Administration will fall in the \$52,000-\$60,000 range. Examples of direct bills from the Department of Administration include:**

\$14,300 monumental building charge for upkeep of Capital, Judicial Center and Governor Mansion

Senate Ways and Means

Date:

Attachment:

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\$5,500 postage equipment assessment  
\$150 Dept. of Facilities Mgmt. assessment for lease negotiation services  
\$50 per hour for services provided by DISC computer support staff  
\$5500 FMS assessment (charge for SMART accounting system)

Other items Department of Administration direct bills for:

Voice Switching, Long Distance, and Directory  
Connectivity/router for information technology equipment  
Monthly assessment for each email account  
Monthly assessment for every warrant issued by the Commission to pay bills or refunds  
Surety bond  
Car insurance  
Postage for all U.S. Mail processed by Central Mail.

In FY 2009 alone, the direct bills received from the Department of Administration exceeded \$50,000. A total of approximately \$450,000 was transferred from the Commission's fee fund to the State General Fund in FY 2009 due to a combination of the 20% receipts transfer of \$200,000, the fee fund sweep of almost \$196,000 and direct bills exceeding \$50,000.

**For the period FY 2006 through FY 2011, the Commission will have been required to transfer a total of \$1.9 million to the SGF due to the 20% receipt transfer requirement and fee fund sweeps plus an additional \$40,000-\$60,000 per year is paid to SGF in response to direct billings from the Department of Administration.**

#### **How Will Passage of SB 229 Benefit the Commission**

Because of the past fee fund sweeps and significant drop in licensee counts, **the Commission must increase revenue or it will have no choice but to cut expenditures** resulting in less regulation of the real estate industry and less protection of the public. **The Commission has requested the introduction of SB 121 to increase the statutory cap for salespersons' and brokers' original and renewal license fees.** However, a fee increase would not be viewed as favorably by the Commission or the licensees as the option to gradually abolish the requirement to transfer 20% of fee receipts to SGF commencing in FY 2012.

**If the Commission was only required to transfer 10% of receipts from license fees up to \$100,000 in FY 2012, and the transfer requirement was completely abolished in FY 2013, the Commission could then retain \$100,000 of licensee fees received in FY 2012 and \$200,000 of licensee fees received in FY 2013. The Commission could then start building back its depleted fee fund balance without the necessity of a fee increase.** The influx of revenue would continue without any additional charge to the licensees. The Commission will still be direct billed \$52,000-\$60,000 for the services the Department of Administration currently direct bills for. If the Department of Administration decides to direct bill for additional services such as general legal, general personnel, budget and purchasing, the Commission would still be better off than losing \$200,000 in receipts every year.

The Commission believes that SB 229 is a "win-win" for the Commission, the real estate licensees, and the public who should expect that the Commission has been provided the appropriate budgetary and staffing resources to properly regulate the industry.

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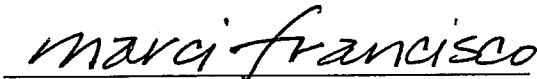
FY 2012

SENATE WAYS AND MEANS SUBCOMMITTEE

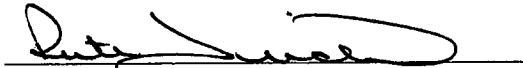
Department of Agriculture  
Animal Health Department  
Kansas State Fair



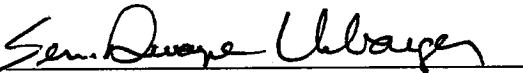
Senator Mark Taddiken, Chair



Senator Marci Francisco



Senator Ruth Teichman



Senator Dwayne Umbarger

Senate Ways and Means  
Date:  
Attachment:

03/09/11  
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# Senate Subcommittee Report

Agency: Kansas State Fair

Bill No. --

Bill Sec. --

Analyst: Allen

Analysis Pg. No. 81

Budget Page No. 440

Expenditure Summary	Agency Request FY 2012	Governor Recommendation FY 2012	Senate Subcommittee Adjustments
Operating Expenditures:			
State General Fund	\$ 540,469	\$ 540,469	\$ 0
Other Funds	5,206,152	5,046,412	39,740
Subtotal	\$ 5,746,621	\$ 5,586,881	\$ 39,740
Capital Improvements			
State General Fund	\$ 1,310,000	\$ 1,310,000	\$ 0
Other Funds	525,873	118,923	0
Subtotal	\$ 1,835,873	\$ 1,428,923	\$ 0
TOTAL	\$ 7,582,494	\$ 7,015,804	\$ 39,740
FTE positions	25.0	24.0	1.0
Non FTE Uncl. Perm. Pos.	0.0	0.0	0.0
TOTAL	25.0	24.0	1.0

## Agency Request

The **agency** requests a FY 2012 operating budget of \$5.7 million, including \$540,469 from the State General Fund, an increase of \$149,167, or 2.7 percent, above the revised FY 2011 estimate. The increase is primarily attributed to the agency's request for enhancement funding of \$159,740, including \$120,000 from the Economic Development Initiatives Fund (EDIF), for marketing and promotion of the State Fair and for competitive premiums for exhibitors, and funding for 1.0 additional FTE position for an administrative assistant position for the Competitive Exhibits Department funded from the State Fair Fee Fund (\$39,740). Absent the enhancement funding, the FY 2012 request totals \$5,586,881, which is a decrease of \$10,573, or 1.9 percent, below the revised FY 2011 estimate. The State General Fund increase is \$245,615, or 83.3 percent, above the FY 2011 estimate, and is due to debt service principal payments.

The **agency** requests capital improvement expenditures of \$1.8 million, including \$1.3 million from the State General Fund, an increase of \$404,281, or 28.8 percent, above the revised FY 2011 estimate. The increase is mostly due to the agency's enhancement request of \$376,950, all from special revenue funds, for roof replacements on several buildings. Absent the enhancement, the rehabilitation and repair request is \$118,923. In addition, the agency requests \$1.3 million, all from the State General Fund, for a debt service principal payment in FY 2012.

## **Governor's Recommendation**

The **Governor** recommends \$5.6 million for FY 2012 expenditures, including \$540,469 from the State General Fund. The recommendation is a decrease of \$10,573, or 0.2 percent, below the FY 2011 recommendation and a decrease of \$159,740, or 2.8 percent, below the agency's FY 2012 request. The Governor does not recommend the agency's enhancement requests, totaling \$159,740, including \$120,000 from the Economic Development Initiatives Fund (EDIF) and \$39,740 from the State Fair Fee Fund. The Governor recommends transferring \$50,000 from the agency's State Fair Fee Fund to the State Fair Capital Improvement Fund in FY 2012, which would increase the agency's total transfer from the State Fair Fee Fund to the State Fair Capital Improvements Fund \$350,000 from \$300,000. The transfer decreases the agency's expenditures by \$50,000.

The **Governor** concurs with the agency's request, but does not recommend the enhancement request of \$376,950, from the State Fair Capital Improvements Fund, for the building roof replacements.

## **Senate Subcommittee Recommendation**

The **Subcommittee** concurs with the Governor's recommendation with the following adjustments:

1. Add 1.0 FTE position and \$39,740, all from the State Fair Fee Fund, for an administrative assistant position for the Competitive Exhibits Department. The Subcommittee requests that the agency report back to the Subcommittee during FY 2013 budget hearings as to the greater efficiency gained by allowing the department director to concentrate more on increasing sponsorship and entries for the various departments instead of the duties that the new position will be performing.
2. The Subcommittee notes that the State of Kansas has failed its obligation according to K.S.A. 2-223 which provides that an amount to match capital improvements up to \$300,000 will be transferred to the State Fair Capital Improvements Fund from the State General Fund on July 1 of each year. The Legislature has suspended this match in FY 2004, FY 2005, FY 2010, and FY 2011. The Governor recommends suspending the match again in FY 2012, and due to the shortfall within the State Fair Capital Improvement Fund in FY 2012, recommends transferring \$159,207 from the Economic Development Initiatives Fund (EDIF) to the State Fair Capital Improvement Fund, leaving the State Fair Capital Improvement Fund with a \$0 ending balance in FY 2012.

## Senate Subcommittee Report

**Agency:** Animal Health Department

**Bill No. --**

**Bill Sec. --**

**Analyst:** Allen

**Analysis Pg. No. 60**

**Budget Page No. 434**

Expenditure Summary	Agency Request FY 2012	Governor Recommendation FY 2012	Senate Subcommittee Adjustments
Operating Expenditures:			
State General Fund	\$ 1,061,960	\$ 0	\$ 0
Other Funds	1,889,852	0	0
Subtotal	\$ 2,951,812	\$ 0	\$ 0
Capital Improvements			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	0	0	0
Subtotal	\$ 0	\$ 0	\$ 0
<b>TOTAL</b>	<b>\$ 2,951,812</b>	<b>\$ 0</b>	<b>\$ 0</b>
FTE positions	33.0	0.0	0.0
Non FTE Uncl. Perm. Pos.	1.0	0.0	0.0
<b>TOTAL</b>	<b>34.0</b>	<b>0.0</b>	<b>0.0</b>

### Agency Request

The **agency** requests a FY 2012 budget of \$3.0 million, an increase of \$381,818, or 14.9 percent, above the agency's revised FY 2011 estimate. The FY 2012 request includes a State General Fund budget of \$1.1 million, an increase from the revised FY 2011 estimate of \$282,482, or 36.2 percent. The increase is mainly attributable to the agency's enhancement request of \$274,660, all from the State General Fund. Absent the enhancement, the request is an increase of \$107,158, or 4.2 percent, above the agency's FY 2011 revised request, and a State General Fund increase of \$7,822, or 1.0 percent, above the FY 2011 revised request.

### Governor's Recommendation

The **Governor** recommends an Executive Reorganization Order for FY 2012 which includes a transfer of the duties and responsibilities of the Animal Health Department, which has been a separate state agency, to the Department of Agriculture.

### Senate Subcommittee Recommendation

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

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1. The 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 Subcommittee recommends funding the Animal Health Department as an independent state agency, in the amount of \$2,677,152, including \$787,300 from the State General Fund, which is the amount requested by the agency without enhancement funding.
  - If the Governor's Executive Reorganization Order is not approved by the Legislature, the Subcommittee recommends 33.0 FTE positions for FY 2012, the same as the amount approved for FY 2011.
2. The Subcommittee supports the need for an additional veterinary position within the Animal Disease Control Program and suggests sharing the position with the Meat and Poultry Program within the Department of Agriculture, if this is not an option, then the Subcommittee encourages the Department of Agriculture to work with the Animal Health Department to restore the veterinary position for the Animal Disease Control Program.

# Senate Subcommittee Report

**Agency:** Department of Agriculture

**Bill No. - -**

**Bill Sec. --**

**Analyst:** Allen

**Analysis Pg. No. 23**

**Budget Page No. 418**

Expenditure Summary	Agency Request FY 2012	Governor Recommendation FY 2012	Senate Subcommittee Adjustments
Operating Expenditures:			
State General Fund	\$ 10,783,297	\$ 10,420,624	\$ 0
Other Funds	17,449,744	29,855,818	179,785
Subtotal	\$ 28,233,041	\$ 40,276,442	\$ 179,785
Capital Improvements			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	0	0	0
Subtotal	\$ 0	\$ 0	\$ 0
<b>TOTAL</b>	<b>\$ 28,233,041</b>	<b>\$ 40,276,442</b>	<b>\$ 179,785</b>
FTE positions	341.5	353.5	0.0
Non FTE Uncl. Perm. Pos.	44.5	45.5	0.0
<b>TOTAL</b>	<b>386.0</b>	<b>399.0</b>	<b>0.0</b>

## Agency Request

The **agency** requests The agency requests a FY 2012 operating budget of \$28.2 million, a decrease of \$2.3 million, or 7.5 percent, below the revised FY 2011 estimate. The decrease is mainly attributable to the agency receiving less federal funding for FY 2012. The request includes enhancement funding that totals \$1.5 million, including \$1.3 million from the State General Fund. Absent the enhancement funding, the agency's FY 2012 request totals \$26.7 million, a decrease of \$3.8 million, or 12.4 percent, below the agency's revised FY 2011 estimate. The request would include 341.5 FTE positions.

The FY 2012 request detailed by funding source is as follows:

The **State General Fund** request totals \$10.8 million, an increase of \$1.5 million, or 15.9 percent, above the revised FY 2011 estimate. The request includes enhancement funding of \$1.3 million from the State General Fund. Absent the enhancement request, the State General Fund request would total \$9.5 million, an increase of \$188,800, or 2.0 percent, above the agency's revised FY 2011 estimate. The agency anticipates increases for operating expenditures within several of the agency's programs, primarily for salaries and wages and increased employee benefits.

The **State Water Plan Fund** request totals \$1.2 million, an increase of \$253,525, or 25.5 percent, above the revised FY 2011 estimate. The increase is attributable to the agency

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assuming the full statutory transfer of \$6.0 million from the State General Fund to the State Water Plan Fund.

The all other funds request totals \$16.2 million, a decrease of \$4.0 million, or 24.8 percent, below the revised FY 2011 estimate. The decrease is mainly attributable to less Federal Emergency Management Agency (FEMA) funding for FY 2012, in FY 2011 the funding was mostly carry forward from FY 2010.

### **Governor's Recommendation**

The **Governor** recommends FY 2012 operating expenditures of \$40.3 million, an increase of \$12.0 million, or 42.7 percent, above the agency's FY 2012 request, and an increase of \$9.8 million, or 32.0 percent, above the Governor's FY 2011 recommendation. The Governor recommends transferring the Animal Health Department, State Conservation Commission, and the Agriculture Marketing Program of the Department of Commerce to the Department of Agriculture.

### **Senate Subcommittee Recommendation**

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

1. The Subcommittee is concerned about the future funding of the Grain Warehouse Program. The Department of Agriculture requested \$75,000 for FY 2012 for this Program that was not included in the Governor's recommendation. The Subcommittee also notes that the lack of funding for this program will require the agency to layoff 1.0 FTE position for FY 2012. The Subcommittee recommends adding the following proviso language to the FY 2012 appropriation bill:

"During the fiscal year ending June 30, 2012, the above agency shall make every effort to ensure services performed in the grain warehouse inspection program will not be compromised by budget reductions for the fiscal year ending June 30, 2012."

2. The Subcommittee would like to review, before moving the FY 2012 appropriation bill to the floor, available funding for the Grain Warehouse Program for FY 2012.
3. The Subcommittee recommends the agency fund the Livestock Market reporting out of existing resources for FY 2012.
4. The Subcommittee would like to review, before moving the FY 2012 appropriation bill to the floor, available funding for the Livestock Market Reporting for FY 2012.
5. The Subcommittee recommends adding \$89,910, all from fee funds, and \$89,875 , all from federal funds for the replacement of vehicles for FY 2012.
6. The Subcommittee recommends adding the following proviso language to the FY 2012 appropriation bill:

"Licensing online transition.....\$0

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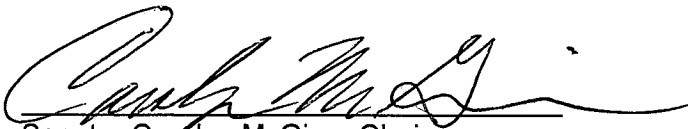
*Provided, That the Department of Agriculture may pro-rate license fees and/or alter license due dates as needed in order to transition to online license applications and renewals."*

7. The Subcommittee supports the need for an additional veterinary position within the Animal Disease Control Program and suggests sharing the position with the Meat and Poultry Program within the Department of Agriculture, if this is not an option, then the Subcommittee encourages the Department of Agriculture to work with the Animal Health Department to restore the veterinary position for the Animal Disease Control Program.

FY 2012

SENATE WAYS AND MEANS SUBCOMMITTEE

State Conservation Commission  
Water Office  
Department of Wildlife and Parks



\_\_\_\_\_  
Senator Carolyn McGinn, Chair



\_\_\_\_\_  
Senator Marci Francisco



\_\_\_\_\_  
Senator Mark Taddiken

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# Senate Subcommittee Report

**Agency:** State Conservation Commission      **Bill No. --**

**Bill Sec. --**

**Analyst:** Allen

**Analysis Pg. No. 99**

**Budget Page No. 438**

Expenditure Summary	Agency Request FY 2012	Governor Recommendation FY 2012	Senate Subcommittee Adjustments
Operating Expenditures:			
State General Fund	\$ 752,651	\$ 0	\$ 0
Other Funds	14,609,934	0	0
Subtotal	\$ 15,362,585	\$ 0	\$ 0
Capital Improvements			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	0	0	0
Subtotal	\$ 0	\$ 0	\$ 0
TOTAL	\$ 15,362,585	\$ 0	\$ 0
FTE positions	13.0	0.0	0.0
Non FTE Uncl. Perm. <u>Pos.</u>	0.0	0.0	0.0
TOTAL	13.0	0.0	0.0

## Agency Request

The **agency** requests a FY 2012 budget of \$15.4 million, including \$752,651 from the State General Fund. The request is an increase of \$2.0 million, or 15.0 percent, above the revised FY 2011 estimate. The State General Fund request is an increase of \$13,495, or 1.8 percent, above the revised FY 2011 estimate. The request includes enhancement funding of \$2.0 million, all from special revenue funds. Absent the enhancement funding, the FY 2012 request totals \$13.4 million, which is a decrease of \$8,595, or 0.1 percent, below the revised FY 2011 estimate.

## Governor's Recommendation

The **Governor** recommends the State Conservation Commission be transferred to the Department of Agriculture. Eight of the 13 positions, and \$10.0 million from all funding sources will be transferred. The transfer is estimated to produce a savings of \$3.3 million, including \$113,271 from the State General Fund, compared to the agency's request. The duties and responsibilities of the State Conservation Commission will remain the same within the Department of Agriculture, however the Commission will no longer have policy decision making responsibilities and will only have an advisory role.

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## Senate Subcommittee Recommendation

The **Subcommittee** concurs with the Governor's recommendation and recommends the Senate Ways and Means Committee make the following adjustments within the Department of Agriculture's Subcommittee report for the Division of Conservation:

1. Delete \$400,000, all from the State Water Plan Fund, to reduce funding for the Water Supply Restoration Program.
2. Add \$150,000, all from the State Water Plan Fund, to increase funding for the Non-Point Source Pollution.
3. Add \$150,000, all from the State Water Plan Fund, to increase funding for Aid to Conservation Districts.
4. Allow the agency to purchase a vehicle for up to \$28,000, all from the motor pool fund, for a non-reportable/off budget expenditure for replacement of an agency pick up truck that currently has 180,000 miles. The motor pool fund gains receipts from fees paid by agency programs for use of the agency's vehicles. This fund is also used to pay for vehicle maintenance and repair. The request would purchase a new four door half-ton 4x4 pick up for use in areas where 2 wheel-drive would not be adequate.
5. Add language to allow any unencumbered balance in items funded from the State Water Plan Fund, in excess of \$100 as of June 30, 2011, to be reappropriated to those items for FY 2012. This language was in the FY 2011 appropriation bill. (see attached)
6. Add proviso language to allow for up to 6.0 percent of the appropriated amount for FY 2011 from the water resources cost share account be expended for contractual technical expertise and/or non-salary state conservation commission administration expenditures. This language was in the FY 2011 appropriation bill. (see attached)
7. Add proviso language detailing specific expenditures within items funded by the State Water Plan Fund. This language was in the FY 2011 appropriation bill. (see attached)
8. Add proviso language detailing the Conservation Reserve Enhancement Program (CREP). This language was in the FY 2011 appropriation bill. (see attached)
9. Add language to authorize the agency to make expenditures, from the Water Transition Assistance Program (WTAP) account for the Conservation Reserve Enhancement Program (CREP). The State Conservation Commission administers the state's portion of the Conservation Reserve Enhancement Program. CREP has carried forward previous appropriations to meet the fiscal matching requirements of the USDA. Due to significant budget shortfalls, the Governor was forced to lapse the funding for CREP in the FY 2011 budget recommendations to the Legislature. Both the Governor and the Department of Agriculture support CREP. After consultation with the Kansas Water Office and the Department of Agriculture, the only methodical program area to reach into was the Water Transition Assistance Program. This program also makes a payment to the landowner to compensate for permanent dismissal of the water right, however, at 100% state and/or local funding.

As the subcommittee considered this option, it took into account the CREP only requires a one-time payment of \$62/acre for tier one soils or \$35 for tier 2 soil and the USDA is responsible for 15 annual payments of the county irrigated rental rate, \$125 to

*6/11*

\$155/acre. The acres enrolled in this program will reduce annual consumptive use at a very low cost for Kansas. (see attached)

## Senate Subcommittee Report

**Agency:** Kansas Water Office

**Bill No. --**

**Bill Sec. --**

**Analyst:** Allen

**Analysis Pg. No. 127**

**Budget Page No. 442**

Expenditure Summary	Agency Request FY 2012	Governor Recommendation FY 2012	Senate Subcommittee Adjustments
Operating Expenditures:			
State General Fund	\$ 2,640,296	\$ 1,806,036	\$ 0
Other Funds	9,196,754	5,577,197	100,000
Subtotal	\$ 11,837,050	\$ 7,383,233	\$ 100,000
Capital Improvements			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	0	0	0
Subtotal	\$ 0	\$ 0	\$ 0
 TOTAL	 \$ 11,837,050	 \$ 7,383,233	 \$ 100,000
 FTE positions	 25.0	 19.0	 2.0
Non FTE Uncl. Perm. Pos.	0.0	0.0	0.0
TOTAL	25.0	19.0	2.0

### Agency Request

The **agency** requests a FY 2012 operating budget of \$11.8 million, including \$2.6 million from the State General Fund, and 25.0 FTE positions. The request is an increase of \$1.7 million, or 16.9 percent, above the agency's revised FY 2011 estimate. The agency's request includes enhancement funding of \$3.4 million, including \$739,205 from the State General Fund and 4.0 FTE positions. Absent the enhancement request, the agency's FY 2012 request totals \$8.4 million, which is a decrease of \$1.7 million, or 16.9 percent, below the agency's revised FY 2011 estimate. The reduction is primarily attributed to the lack of federal American Recovery and Reinvestment Act funding in FY 2012.

### Governor's Recommendation

The **Governor** recommends operating expenditures for FY 2012 of \$7.4 million, including \$1.8 million from the State General Fund. This is a decrease of \$2.7 million, or 27.0 percent, below the FY 2011 recommendation. The reduction is primarily attributed to the lack of federal American Recovery and Reinvestment Act funding in FY 2012.

The recommendation is a decrease of \$4.5 million, or 37.6 percent, below the agency's FY 2012 request. The decrease is mainly due to the Governor not recommending the agency's enhancement request and not recommending the annual statutory transfer of \$6.0 million from the State General Fund to the State Water Plan Fund.

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The reduction in FTE positions is due to the Governor not recommending the agency's enhancement request of 4.0 FTE positions for a stream management team and then deleting two of the agency's FTE positions.

### **Senate Subcommittee Recommendation**

The **Subcommittee** concurs with the Governor's recommendation with the following adjustments:

1. Add \$100,000, all from the State Water Plan Fund, to increase funding for the Wichita Aquifer Storage and Recovery Project.
2. Add \$80,702, all from the State Water Plan Fund, for the Storage and Operations Maintenance Memorandum of Understanding (MOU), which is annually contracted with the Corps of Engineers at the reservoirs where the state owns water storage. This action would fully fund the obligation to the Corps of Engineers for FY 2012.
3. Delete \$49,000, all from the State Water Plan Fund, to eliminate funding for Weather Stations.
4. Delete \$25,000, all from the State Water Plan Fund, to reduce funding for Technical Assistance to Water Users, leaving \$412,433 for FY 2012 expenditures.
5. Delete \$16,702, all from the State Water Plan Fund, to reduce funding for Assessment and Evaluation, leaving \$473,298 for FY 2012 expenditures.
6. Add 2.0 FTE positions; the agency inadvertently submitted a request for funded FTE positions instead of approved FTE positions. Due to the submission error, the Governor's recommendation deletes 2.0 currently filled FTE positions.

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## Senate Subcommittee Report

Agency: Kansas Department of Wildlife and Parks Bill No. --

Bill Sec. --

Analyst: Allen

Analysis Pg. No. 147

Budget Page No. 444

Expenditure Summary	Agency Request FY 2012	Governor Recommendation FY 2012	Senate Subcommittee Adjustments
Operating Expenditures:			
State General Fund	\$ 5,138,068	\$ 4,881,763	\$ 0
Other Funds	51,455,619	55,539,048	1,000,000
Subtotal	\$ 56,593,687	\$ 60,420,811	\$ 1,000,000
Capital Improvements			
State General Fund	\$ 1,530,600	\$ 6,600	\$ 0
Other Funds	8,049,900	7,939,900	0
Subtotal	\$ 9,580,500	\$ 7,946,500	\$ 0
TOTAL	\$ 66,174,187	\$ 68,367,311	\$ 1,000,000
FTE positions	418.5	430.5	0.0
Non FTE Uncl. Perm. <u>Pos.</u>	34.0	34.0	0.0
TOTAL	452.5	464.5	0.0

### Agency Request

The **agency** requests a FY 2012 operating budget of \$56.6 million, including \$5.1 million from the State General Fund. The request is an increase of \$2.4 million, or 4.3 percent, above the agency's revised FY 2011 request. Included in the agency's FY 2012 request is operating enhancement funding of \$2.1 million. Absent the enhancement, the agency's request is \$54.5 million, including \$5.1 million from the State General Fund, which is an increase of \$271,375, or 0.5 percent, above the FY 2011 revised estimate. The increase is attributable to salaries and wages for fringe benefit adjustments.

### Governor's Recommendation

The **Governor** recommends a FY 2012 operating budget of \$60.4 million, including \$4.9 million from the State General Fund. The recommendation is \$6.2 million, or 11.5 percent, above the Governor's FY 2011 recommendation, and \$3.8 million, or 6.8 percent, above the agency's FY 2012 request. The Governor's recommendation is a State General Fund decrease of \$137,540, or 2.7 percent, below the Governor's FY 2011 recommendation, and \$256,305, or 5.0 percent, below the agency's FY 2012 request.

Changes are due to the recommendation including \$2.1 million, all from federal and fee funds, and 1.0 FTE position, for part of the agency's enhancement request, detailed in the enhancement section. The Governor also recommends transferring the Travel and Tourism

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Program from the Department of Commerce to the Department of Wildlife and Parks. The transfer adds \$4.3 million, all from special revenue funds, and 12.0 FTE positions

### **Senate Subcommittee Recommendation**

The **Subcommittee** concurs with the Governor's recommendation and makes the following adjustments:

1. Add \$70,000, all from the Sport Fish Restoration Fund, to fund a study for enhanced fishing opportunities at the Rocky Ford Wildlife Area.
2. Add \$310,000, all from the Sport Fish Restoration Fund, to enhance the Fishing Impoundments and Stream Habitats (FISH) public access for fishing program.
3. Add \$620,000, all from the Wildlife Restoration Fund, to enhance the Walk-in Hunter Area (WIHA) public access for hunting program.
4. Add \$40,000, all from the Wildlife Fee Fund, for the Stream Monitoring Program.
5. Delete \$40,000, all from the State Water Plan Fund, for the Stream Monitoring Program.
6. Add language to allow for hunting licenses and park permits to include a provision for the applicant to make a voluntary contribution of \$2 or more to support the annual licenses issued to Kansas disabled veterans, annual licenses issued to National Guard members, and annual park permits issued to National Guard members.
7. The Subcommittee recommends that the Senate Ways and Means Committee make the following adjustments to the agency's capital improvement budget prior to finalizing the FY 2012 appropriations bill:
  - Add \$100,000, all from the Sport Fish Restoration Fund, for minor repairs to three state fishing lake dams at Leavenworth, Shawnee, and Douglas. (Capital Improvement)
  - Delete \$100,000, all from the Wildlife Restoration Fund, for minor repairs to three state fishing lake dams at Leavenworth, Shawnee, and Douglas. (Capital Improvement)
8. The Subcommittee notes that the agency requested adjustments to the Governor's recommendation on capital improvements that shifts funding from capital improvements to operations. The increase in this Subcommittee report is offset by a decrease of the same amount in the Senate Subcommittee on Capital Improvements Report.

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## **Conservation Provisos - FY 2012**

### **State General Fund - Administrative Operations**

*And provided further,* That expenditures may be made from this account or any special revenue fund of the above named agency to allow 100% grant-funded projects relating to stream bank stabilization, and to and to allow lakes to be under the multi-purpose small lakes program if the lake is used for two of the following purposes: flood control, public water supply storage or recreation, not-withstanding the provisions of any other legislative enactment.

### **State Water Plan – Water Resource Cost-Share**

*Provided,* That any unencumbered balance in the water resources cost share account in excess of \$100 as of June 30, 2011, is hereby reappropriated to the water resources cost share account for fiscal year 2012:

*Provided further,* That the initial allocation for grants to conservation districts for fiscal year 2012 shall be made on a priority basis, as determined by the Division of Conservation of the Kansas Department of Agriculture and the provisions of the state water plan:

*And provided further,* That expenditures from this account for contractual technical expertise and/or non-salary administration expenditures of the Division of Conservation of the Kansas Department of Agriculture shall not exceed the amount equal to 6.0 percent of the budget amount for fiscal year 2012 for the water resources cost share account.

### **State Water Plan – Nonpoint Source Pollution Assistance**

*Provided,* That any unencumbered balance in the nonpoint source pollution assistance account in excess of \$100 as of June 30, 2011 is hereby reappropriated for fiscal year 2012.

### **State Water Plan – Conservation District Aid**

*Provided,* That any unencumbered balance in the conservation district aid account in excess of \$100 as of June 30, 2011 is hereby reappropriated for fiscal year 2012.

### **State Water Plan – Watershed Dam Construction**

*Provided,* That any unencumbered balance in the watershed dam construction account in excess of \$100 as of June 30, 2011, is hereby reappropriated for fiscal year 2012:

*Provided further,* That expenditures from the watershed dam construction account are hereby authorized for engineering contracts for watershed planning as determined by the state conservation commission:

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### **Lake Restoration – Water Supply Restoration Program (WSRP)**

*Provided*, That any unencumbered balance in the lake restoration (Water Supply Restoration) account in excess of \$100 as of June 30, 2011, is hereby reappropriated for fiscal year 2012:

*Provided further*, That the Division of Conservation of the Kansas Department of Agriculture shall make expenditures during fiscal year 2012 from the lake restoration account from fiscal year 2009 encumbered moneys under contract in the water supply restoration program, for the installation of an alternative public water supply solution for Washington county rural water district no. 1.

### **State Water Plan – Kansas Water Quality Buffer Initiative**

*Provided*, That any unencumbered balance in the Kansas water quality buffer initiatives account in excess of \$100 as of June 30, 2011, is hereby reappropriated for fiscal year 2012:

*Provided further*, That all expenditures from the Kansas water quality buffer initiatives account shall be for grants or incentives to install water quality best management practices.

*And provided further*, That such expenditures may be made from this account from the approved budget amount for fiscal year 2012 in accordance with contracts, which are hereby authorized to be entered into by the executive director of the Division of Conservation of the Kansas Department of Agriculture on behalf of the commission, for such grants or incentives.

### **State Water Plan – Riparian and Wetland Program**

*Provided*, That any unencumbered balance in the riparian and wetland program account in excess of \$100 as of June 30, 2011, is hereby reappropriated for fiscal year 2012.

### **Water Transition Assistance Program / Conservation Reserve Enhancement Program**

*Provided*, That any unencumbered balance in the water transition assistance program account in excess of \$100 as of June 30, 2011, is hereby reappropriated for fiscal year 2012. In addition, fiscal year 2012 expenditures, from the water transition assistance program account, are authorized to be made by the Division of Conservation of the Kansas department of Agriculture for the conservation reserve enhancement program.

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## **Conservation Reserve Enhancement Program (CREP)**

*Provided,* That any unencumbered balance in the conservation reserve enhancement program account in excess of \$100 as of June 30, 2011, is hereby reappropriated for fiscal year 2012:

*And provided further,* That all expenditures under the conservation reserve enhancement program, referred to as CREP in this subsection, are subject to the following criteria:

- (1) The total number of acres enrolled in Kansas in CREP for the five fiscal years 2008, 2009, 2010, 2011, and 2012 shall not exceed 40,000 acres;
- (2) the number of acres eligible for enrollment in CREP in Kansas shall be limited to one-half of the number of acres represented by contracts in the federal conservation reserve program that have expired in the prior year in counties within the CREP area, except that if federal law permits the land enrolled in the CREP program to be used for agricultural purposes such as planting of agricultural commodities, including, but not limited to, grains, cellulosic or biomass materials, alfalfa, grasses, legumes or other cover crops then the number of acres eligible for enrollment shall be limited to the number of acres represented by contracts in the federal conservation reserve program that have expired in the prior year in counties within the CREP area;
- (3) lands enrolled in the conservation reserve program as of January 1, 2008, shall not be eligible for enrollment in CREP;
- (4) no more than 25% of the acreage in CREP may be in any one county;
- (5) no water right that is owned by a governmental entity, except a groundwater management district, shall be purchased or retired by the state or federal government pursuant to CREP; and
- (6) only water rights in good standing are eligible for inclusion under CREP:

*And provided further,* That to be a water right in good standing the following criteria must be met: (A) At least 50% of the maximum annual quantity authorized to be diverted under the water right has been used in any three years from 2001 through 2005; (B) in the years 2001 through 2005 the water rights used for the acreage in CREP shall not have exceeded the maximum annual quantity authorized to be diverted and shall not have been the subject of enforcement sanctions by the division of water resources in the last four years; and (C) the water right holder has submitted the required annual water use report required by K.S.A. 82a-732, and amendments thereto, for each of the most recent 10 years;

*And provided further,* That the division of conservation of the Kansas department of agriculture shall submit a CREP report to the senate committee on natural resources and the house committee on agriculture and natural resources at the beginning of the 2012 regular session of the legislature which shall contain a description of program activities and shall include: (i) The total water rights, measured in acre feet, retired in CREP during fiscal year 2008, fiscal year 2009, fiscal year 2010, fiscal year 2011, and fiscal year 2012 to date, (ii) the acreage enrolled in CREP during fiscal year 2008 and fiscal year 2009 and in fiscal year 2010 and in fiscal year 2011 and in fiscal year 2012 to date, (iii) the dollar amounts received and expended for CREP during fiscal year 2008 and fiscal year 2009 and in fiscal year 2010 and in fiscal year 2011 and in fiscal year 2012 to date, (iv) the economic impact of the CREP, (v) the change in groundwater