

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANSThe meeting was called to order by Senator Paul Hess at
Chairperson3:30 a.m./p.m. on February 6, 1984 in room 123-S of the Capitol.All members were present except:
Senator Doyen

Committee staff present:

Research Department: Ed Ahrens, Mary Galligan, Lynne Holt, Sherry Brown
Revisor's Office: Norman Furse
Committee Office: Mark Skinner, Doris Fager

Conferees appearing before the committee:

Representative Rochelle Chronister
Meredith Williams, Acting Post Auditor
Harley Duncan, Secretary of Revenue
Dr. Marvin Harder, Secretary of Administration
Dr. Robert Harder, Secretary of Social and Rehabilitation Services
Robert Epps, for Secretary of Health and Environment
Robert Haley, for Secretary of Department of Transportation
Gary Shikles, for Norman Hanson, Director, Division of Personnel Services
Bill Edgerly, American Federation of State, County and Municipal Employees
JoAnne Klesath, Kansas Association of Public Employees
Dave Levin, University of Kansas
Lynelle King, Kansas State Nurses Association
Art Griggs, Attorney, Department of Administration
Senator Elwaine Pomeroy
Merle Hill, Kansas Association of Community Colleges
Richard Klassen, Trustee, Hutchinson Community College
Dr. John Green, President, Washburn University
Tim Durst, President, Washburn University student body
Mark Tallman, Associated Students of Kansas
James Downing, President, Barton County Community CollegeINTRODUCTION OF BILL

Senator Hess explained that he had been requested by a private organization to introduce a bill providing that a certificate of need is not necessary for ambulatory surgical centers to build in a county of not less than 50,000 population.

Motion was made by Senator Gaines and seconded by Senator Werts to introduce the above requested bill. The motion carried by voice vote.

SB 577 - EMERGENCY SUPPLEMENTAL APPROPRIATIONS FY 1984

The Chairman explained that SB 577 will be debated on the Senate floor on February 7, and there is a floor amendment necessary. He called on Mr. Furse to explain the amendment.

Mr. Furse explained that the Fish and Game Commission property acquisition originally was included in this bill, but because of dire emergency was removed and placed in a bill already acted upon by the committee. Included in the section on Fish and Game was authorization for insurance to be purchased for their aircraft, and it was inadvertently omitted from SB 577. Mr. Furse stated this is necessary, and SB 577 should be amended to include authority to acquire aircraft insurance in the amount of \$3,035.

Motion was made by Senator McCray and seconded by Senator Gaines to approve a floor amendment for aircraft insurance for the Fish and Game Commission. The motion carried by voice vote.

HB 2655 - Reporting and payment of costs of frivolous litigation by state

Representative Chronister distributed copies of her written statement, and reviewed that statement before the committee. Members were given opportunity to question her. (See Attachment A)

No action was taken on HB 2655.

HB 2666 - Legislative Post Audit access to records

Mr. Williams explained that HB 2666 is designed to clarify the access to records provision of the act. He noted that this is specifically geared to audits of non-state entities.

Mr. Williams explained the background of the bill, indicated problems with audits done in the past, and reviewed the bill--section by section. There were questions from committee members and discussion concerning the proposal.

Secretary Duncan distributed his prepared remarks (Attachment B). In his statement he called attention to some possible problems with the contents of HB 2666. Mr. Williams said he had no objection to considering Mr. Duncan's suggestions.

The Chairman appointed a subcommittee to consider the objections to HB 2666 and make recommendations to the full committee. The subcommittee members are: Senators Hess, Werts and Warren.

Secretary Robert Harder said he would like to work with the subcommittee, in case his department had a problem with the proposal. Mr. Duncan said several department heads have expressed concern.

SCR 1651 - Rejecting K.A.R.'s employees' transfers and sick leave

Senator Werts explained that this resolution was introduced by the Joint Committee on Rules and Regulations. In the private sector, the practice seems to be not to allow sick leave for illness of employees' relatives, according to Senator Werts. He added that the Joint Committee felt this is a matter which should be resolved by the full Legislature rather than by an executive agency. (See Attachment C)

There was discussion concerning whether or not the subject should be discussed in committee, in light of an Attorney General's opinion that the Legislature's veto of rules and regulations is unconstitutional. It was decided that testimony would be taken, because legislation may be introduced at a later date concerning this subject.

Secretary Marvin Harder indicated he feels it is a matter of judgment whether or not state employees should take sick leave in order to take care of families.

Secretary Harder said the other regulation in question permits state employees to move from unclassified to classified positions.

Secretary Robert Harder indicated his Department would like to see the rules and regulations as proposed by the Department of Administration in effect. He admitted the sick leave proposal may be a deviation from private sector practice. However, in his opinion, especially young men and women would view this as a positive response to their employment, and lower salary ranges could use it.

SCR 1651 - Continued

Concerning the matter of transfers, Dr. Harder said he feels the Department of Administration has made the right move. His Department had hoped this would not be rejected. He said he had hired auditors from the Post Audit Division when that division was cut by the Legislature, and these auditors went from unclassified to classified.

Mr. Epps indicated that the Department of Health and Environment is in opposition to SCR 1651, particularly as it pertains to the regulation concerning sick leave. He said his Department feels the regulation's rejection would have a negative effect on employee morale. He added that it legitimizes wide-spread personnel practices.

Mr. Haley distributed Attachment D, which concerned the stand of the Department of Transportation on SCR 1651. His presentation particularly expressed opposition to rejection of the rule and regulation providing that an employee may use sick leave for illness of a family member.

Mr. Shikles distributed a memorandum prepared by Norman Hanson, Director, Division of Personnel Services, explaining the two regulations in question in SCR 1651. (Attachment E) He said a survey made by the Division last summer supports Senator Werts' statement that the sick leave proposal is not the practice in the private sector. He added that the survey showed that 37 of 50 state governments permit this, and Kansas is the only state in the Central region that does not permit it.

Ms. Klesath indicated her organization supports the sick leave for family illnesses; and she stated she did not think the regulation would be abused.

Mr. Edgerly said his organization also supports the idea of use of sick leave for family illnesses. He reminded the committee that this has been an issue since 1975. He stressed that, in this day of single parents, it is an important benefit, particularly since benefits have been rather slim in the last few years for state employees.

Mr. Levin stressed that there is a legitimate need to make provision for time off to attend a sick family member.

Ms. King distributed her statement (Attachment F) and presented it to the committee. She requested the committee to report SCR 1651 unfavorably. Her organization supports the allowance of reasonable use of sick leave for family illness.

The Attorney General's opinion regarding the matter of Legislative veto was distributed to committee members. (Attachment G).

Committee members asked questions of conferees. Senator Hein asked if the regulation in question allows people to be placed in classified service without going through the testing requirements. Mr. Griggs answered in the affirmative. When asked by Senator Warren if there is a fiscal note on this item, Mr. Griggs said it is not known how often the sick leave will be utilized; therefore, it is difficult to know if there will be a fiscal note. Dr. Robert Harder indicated that Regulation 1-6-24 says an employee must meet qualifications for the classified position. He stressed that, even though they may not take the test, they still meet the qualifications, and that sometimes experience is better than testing.

SB 508 - Increase in Credit Hour Aid to Community Colleges and Washburn

Senator Pomeroy explained that he and others interested in Washburn and community colleges introduced this measure. He reminded the committee that the statute anticipated that last year Washburn and Community Colleges would have received a fifty cent an hour increase in state aid, but that was not funded. He said SB 508 would provide for an increase up to \$26 per credit hour for state aid and would provide for a reimbursement by the state for graduate students and law school students at the rate of \$39, which is one and one-half times regular credit hour aid. This provision takes into account additional expenses for graduate students, particularly in law school. Presently, this rate is \$26 per credit hour.

Senator Hess commented that the Governor's recommendation for credit hour aid is \$23.50 and the State Board of Education would request \$24 a credit hour for both out-district tuition and credit hour aid.

Senator Pomeroy stated that out-district tuition at the present time is \$22 a credit hour and SB 508 does not affect that, nor vocational aid.

Senator Hess said the fiscal note from the Budget Division on this measure is \$2.795 additional money above the Governor's recommendation from the State General Fund.

Mr. Hill introduced Richard Klassen, Chairman, Legislative Committee, Kansas Association of Community Colleges. Mr. Klassen reviewed his prepared statement (Attachment H). Following his statement, there were questions from committee members. Senator Gaines asked if community colleges have become sufficiently endowed to give scholarships to students. Mr. Klassen said there is no overall plan; but that Hutchinson Community College has a scholarship plan which does not provide as much money as is needed. Senator Gaines then asked if a large number of students use Government guaranteed loans, and Mr. Klassen answered in the affirmative. When Senator Gaines asked if anyone would be cut out of those loans because of a tuition increase, Mr. Klassen said he felt they would not.

Senator Gaines then asked if it is time to have a conference among the people in education to solve problems in all colleges in the state. Mr. Klassen said he felt it would be good, and that there are efforts being made right now. However, he noted his current problem is to meet immediate needs.

Senator Gaines then questioned President Downing, Barton County Community College, about the handling of faculty salaries at that institution. President Downing said they are on a total merit system, with no salary schedule. An evaluation system was started in 1975, and there has been constant work in arriving at ways to deal with the merit system. He said that salary increases may be from zero to a large percentage, and it has not been a real problem.

*No Atch.
H.* Dr. Green distributed his presentation (Attachment J) which included two tables. He stressed the fact that Washburn students pay a much larger percentage of the cost of their education than students at Regents' institutions. There was extended discussion and many questions from committee members.

Mr. Durst distributed his statement (Attachment K) and read from that statement. When asked by Senator Gaines if Washburn students would consider going into the state system, Mr. Durst said he felt if a vote were taken at the present time, the vote would be against that move.

Mr. Tallman distributed his statement (Attachment L) but did not read it. He indicated Mr. Durst had expressed his sentiments.

No action was taken on SB 508. The meeting was adjourned.



TOPEKA

HOUSE OF
REPRESENTATIVES

ROCHELLE CHRONISTER
ASSISTANT MAJORITY LEADER
REPRESENTATIVE, NINTH DISTRICT
WILSON WOODSON COUNTIES
LIBERTY AND NEOSHO TOWNSHIPS
IN COFFEY COUNTY
ROUTE 2, BOX 321A
NEODESHA, KANSAS 66757

COMMITTEE ASSIGNMENTS
VICE CHAIRMAN: COMMUNICATION, COMPUTERS
AND TECHNOLOGY
MEMBER: CALENDAR AND PRINTING
WAYS AND MEANS

HB 2655 is follow-up legislation to that passed by this body a few years ago. K.S.A. 60-2007(e) allowed "the State of Kansas, or any agency thereof", to be subject to assessments for defendant's court costs and attorney's fees in case of a "frivolous" claim, defense or denial. The legislation before you calls for two things:

1) Section 1(a) is a reporting mechanism whereby any state agency which must pay costs under this statute must report the assessment, amount and reason for it to the Speaker of the House, President of the Senate and minority leaders of both bodies within 30 days after entry of the order making the assessment.

2) Section 1(b) says that payment of costs shall be made from the operating budget of the agency which conducted the litigation.

I believe a number of people were very supportive of the original legislation; however, since there is no reporting taking place, we have no way of knowing whether any state agencies in Kansas are being charged under this statute. The second section says that if the agency made a mistake so bad that they are assessed costs under this statute, that agency should suffer the consequences by taking those costs out of current operating expenses and not by charging the citizens of the state as a whole any further.

Every once in a while a "horror" story of frivolous court cases by the state surfaces, but somehow the person telling the story never quite has the facts as to who was prosecuted or what agency actually paid. This legislation would insure the legislature's ability to know whether the story was true. It should also guarantee that a state agency would be very sure of its facts before going to court.

Att A
2-6-84



Kansas
DEPARTMENT OF REVENUE

State Office Building
Topeka, KS 66625

MEMORANDUM

February 6, 1984

TO: The Honorable Paul Hess, Chairman
Senate Committee on Ways and Means

FROM: Harley T. Duncan *H. T. Duncan*
Secretary of Revenue

SUBJECT: HB 2666 - Legislative Post Audit Access to Records of Individuals

It is with some reluctance that I appear before you today to oppose HB 2666 as it is currently written. In particular the Department of Revenue objects to Sections 2 and 3 of the bill.

I want to stress at the outset, however, these objections are not an attempt by the Department of Revenue to seek unnecessary restrictions on the Division of Post Audit so as to limit the effectiveness of the Division. Rather, the objections arise out of some real concerns about the impact of the bill on the effectiveness of the Department of Revenue. I have been and will remain a firm believer in the post audit concept and function. Not only, is it critical to the proper operation of the Legislature, but the audits conducted of the Department of Revenue have been extremely valuable to me as a new administrator of the agency.

Section 2 of the bill would amend K.S.A. 46-1114 to authorize the Division of Post Audit, upon direction from the Legislative Post Audit Committee, to audit any person who is "regulated or licensed" by a state agency and to have access to the "books, accounts, records, files, documents and correspondence, confidential or otherwise," of such person to the extent that the state agency regulating or licensing the person has access to such records. Section 3 of the bill amends K.S.A. 79-3234 to add an audit conducted under K.S.A. 46-1114 to the list of conditions under which the Department of Revenue may properly disclose individual and corporation income tax return information.

While the exact scope of this grant of authority is somewhat vague, it appears that the intent of the bill is to authorize the Division of Post Audit to independently conduct audits of any taxpayer to the same extent that the Department of Revenue may audit such taxpayer. Which it is arguable that the Department of Revenue "regulates or licenses" an individual or corporation income taxpayer in the strictest sense of these terms, it appears that the intent of the amendment to K.S.A. 79-3234 is to authorize Post Audit to conduct independent audits of such taxpayers. It also seems arguable if the Department regulates or

Att. B
2-6-84

licenses persons responsible for remitting such other taxes as retail sales and use taxes, transient guest taxes, severance taxes, and withholding taxes where the Department only "registers" the taxpayer rather than actually licensing them to conduct business. Yet the intent seems to be to bring such taxpayers under the purview of the independent audit authority of the Division of Post Audit.

The Department of Revenue has several concerns with this rather broad grant of authority to the Division of Post Audit.

First, the bill is very likely to create a good deal of confusion for taxpayers, particularly if the Department and the Division of Post Audit were to audit a taxpayer at very nearly the same time. It seems reasonable that the taxpayer would fail to see the distinction between the missions of the two agencies and would feel he/she was being harassed by state government. The very likely result of this confusion is that taxpayers will be less willing to cooperate with the Department by making available their records. This will compromise the effectiveness of our audit program and could force us into the time-consuming and expensive processes of instituting legal proceedings to obtain access to necessary records. The problem of duplicative audits becomes particularly acute in such areas as corporation income taxes or sales and use taxes where the Division may apply different standards or legal interpretations than the Department. The result will be confusion and a lack of cooperation that will affect the Department's audit program.

Second, I am extremely concerned that the bill as drafted may abrogate the Department's agreement with the Internal Revenue Service for the sharing of tax return information. The current agreement provides that the Department may utilize federal return information for purposes of tax administration and that the Department may share that information with the Division of Post Audit when it is conducting an audit of the Department. The Department must notify the IRS when federal returns are provided to Post Audit. The effect on this agreement of a state law providing independent access to such federal returns by an agency other than the state tax agency is unknown. This is particularly true given that HB 2666 does not even require that Post Audit be conducting an audit of the Department of Revenue before it could invoke the provisions of K.S.A. 46-1114 as contained in the bill.

Access to the federal return information and continuation of the information sharing agreement is critical to the Department. Since July 1983, the Department has collected over \$600,000 as a result of information obtained from IRS audits of individual income taxpayers. The agreement also forms the basis of the Federal/State Compare program wherein the Department runs a computer match to identify persons who have filed a federal income tax return, but not a state tax return.

Finally, the Department questions whether the information which could be obtained under HB 2666 is a significant improvement over that already available under K.S.A. 46-1106. Under that statute, the Post Auditor has access to all records of the state agency being audited. This would include all tax returns and audit work papers. It would seem that the Division of Post Audit could complete an evaluation of the effectiveness of the Department from such information.

In short, the Department of Revenue considers HB 2666 to be of limited effectiveness and to be overly broad in its potential applications as it pertains to the Department. Accordingly the Department would request that HB 2666 be amended to exclude from its application the audit of any person for compliance with tax laws if that person is subject to audit by the Department of Revenue for such compliance.

If the Committee feels that exclusion is too broad, the Department recommends that at a minimum HB 2666 be amended as follows:

1. To exclude from its application an audit to determine compliance with the individual and corporation income tax. This is felt necessary to eliminate any questions concerning abrogation of the information sharing agreement with the IRS. Information in the hands of the Department would still be available to the Post Auditor under K.S.A. 46-1106.
2. To provide that an independent audit conducted under K.S.A. 46-1114 could be performed only in conjunction with an audit of the appropriate state agency.
3. To prohibit an independent audit by the Division under K.S.A. 46-1114 unless the Post Auditor has requested in writing that the head of the appropriate state agency provide the required records, etc. and the agency head has failed to respond or provide such records within a specified period of time.
4. To provide that the Division of Post Audit be accompanied, at the discretion of the agency head, by an authorized representative of the appropriate state agency.

In closing I want to stress again that these concerns are not raised in an attempt to limit the scope or abilities of the Division of Post Audit. They are raised, however, to create an awareness that HB 2666 could hamper the effectiveness of state government as a whole.

HTD:1/2/3126

leave requested. The appointing authority, with the director's approval, may require a physical examination of an employee by a physician designated by the agency at the agency's expense.

(e) Sick leave with pay shall be granted only for the following reasons:

(1) Illness or disability of the employee including pregnancy, childbirth, miscarriage, abortion, and recovery therefrom;

(2) Illness or disability, including pregnancy, childbirth, miscarriage, abortion, and recovery therefrom, of a member of the employee's family when the illness or disability reasonably requires the employee to be absent from work. An employee shall not use more than 40 hours of sick leave pursuant to this paragraph (2) in a 12-month period. "Employee's family" shall include:

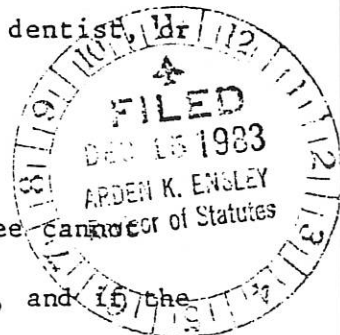
(A) persons related to the employee by blood, marriage or adoption; and

(B) minors residing in the employee's residence as a result of court proceedings pursuant to the Kansas code for care of children or the Kansas juvenile offenders code.

(3) The employee's personal appointments with a physician, dentist, or other recognized health practitioner; or

(4) Legal quarantine of the employee.

(f) If an appointing authority has evidence that an employee cannot perform the employee's duties because of illness or disability, and if the employee has accumulated sick leave, and if the employee refuses or fails to apply for sick leave, the appointing authority may require the employee to use sick leave and, upon exhaustion of the employee's sick leave, may



APPROVED
ATTORNEY GENERAL

By: RJB Asst.

Att C 2-6-84

DEPT. OF ADMINISTRATION

DEC 13 1983

APPROVED BY [Signature]

Kansas Department of Transportation

MEMORANDUM TO: Senate Ways & Means Committee

FROM: John B. Kemp, P.E.
Secretary of Transportation *John B Kemp*

RE: Proposed Change in Personnel Regulation 1-9-5
(Use of Sick Leave for Illness of a Family Member)

DATE: February 6, 1984

Personnel Regulation 1-9-5 which involves use of the employee's sick leave is being amended to allow use of the employee's sick leave for the illness of a family member, limited to 40 hours per year.

The Kansas Department of Transportation supports this revision and feels it would be a positive benefit for our employees. The change would allow an employee to use his/her own sick leave instead of annual leave for a family member illness. I feel allowing this option at the time of family illness would be a positive benefit supporting the employee in time of family crisis.

The Department of Administration indicates many other states have already granted this same type of benefit. I do not feel it would have a significant impact on agency productivity, and hope it will provide a positive work environment for our employees.

In times of economic constraint, this would be a positive benefit for State of Kansas employees and would not require monetary output.

*Att D
2-6-84*

STATE OF KANSAS



DEPARTMENT OF ADMINISTRATION
Division of Personnel Services

JOHN CARLIN,
Governor
NORMAN HANSON,
Director of Personnel Services

State Office Building
Topeka, Kansas 66612-1595

M E M O R A N D U M

DATE: February 2, 1984.
TO: Senate Ways and Means Committee
FROM: Norman Hanson, Director
Division of Personnel Services
RE: Senate Concurrent Resolution No. 1651

Kansas Administrative Regulations 1-6-24 and 1-9-5 were recommended by the Division of Personnel Services for the following reasons:

Regulation 1-9-5 regarding sick leave for family members.

Requests for this regulation came from a variety of sources including agency administrators, personnel officers, employees, employee organizations, supervisors, and equal employment opportunity officers. A study by the Division of Personnel Services showed that all of the central states - except Kansas - allow the use of sick leave for family illness as do 37 of the 50 states. Agency heads and personnel officers have indicated that they suspect that employees currently may be using sick leave for dependent care purposes and that this has the effect of demoralizing and penalizing other employees who are aware of this, but who do not circumvent the present regulation's intent. The difficulty of enforcing non-use for family members is evident.

Implementation of this regulation it is felt would have no significant impact upon productivity, as individuals with those needs addressed in this change, e.g. care of an ill child or dependent parent, would not be at work regardless of the type of leave they use. In this time of fiscal constraint, this allowance could serve as a benefit in an otherwise lean year.

Regulation 1-6-24 regarding the transfer of unclassified personnel into the classified service.

The rationale of this proposed regulation is to provide consistency within the personnel regulations. Not only does an existing regulation (1-6-1(c)) allow for the promotion of an unclassified employee into the

AAE
2-6-84

Senate Ways and Means Committee
February 2, 1984
Page Two

classified service, but two proposed regulations also speak to the issue of the movement from unclassified to classified service. Proposed regulation 1-6-27 allows for the voluntary demotion from unclassified to classified and proposed regulation 1-5-12 specifies the salary be the appointment a demotion, transfer or promotion.

The one existing regulation had already essentially established an avenue for unclassified employees to enter the classified service. The policy should be consistent, e.g. provide an avenue or block if excepted through competitive processes. The current recommendation was based on the efforts to hire expeditiously those employees impacted by the Legislative Post Audit layoff. They were seen as competent employees, valuable resource material, but not necessarily to be promoted.

Copies of the regulations mentioned in this memo are attached for your convenience.

NH:sj
Attachments

1-9-5. Sick leave. (a) Each permanent, probationary, and conditional employee in the classified service, excluding those who are on temporary or emergency appointments, shall be credited and accumulate sick leave as provided in this section.

(b) The maximum sick leave credit an employee is entitled to for any payroll period shall be as follows:

- (1) Eight hours for employees paid monthly;
- (2) Four hours for employees paid semi-monthly; and
- (3) Three and seven-tenths hours for employees paid bi-weekly.

An employee working a fraction of full time shall be credited sick leave in accordance with Tables A or B.

TABLE A
Sick Leave Earning Schedule
for Monthly and Semi-Monthly Paid Employees

<u>Hours Worked Per Pay Period*</u>	<u>Hours Earned Per Pay Period</u>
0-19	0.00
20-39	1.00
40-59	2.00
60-79	3.00
80-99	4.00
100-119	5.00
120-139	6.00
140-159	7.00
160-	8.00

* "Hours worked" means hours in pay status except that overtime worked and additional payment for holidays worked are not counted in determining sick leave earned.

TABLE B
Sick Leave Earning Schedule
for Biweekly Paid Employees

<u>Hours Worked Per Pay Period*</u>	<u>Hours Earned Per Pay Period</u>
0-7	0.0
8-15	0.4
16-23	0.8
24-31	1.2
32-39	1.6
40-47	2.0
48-55	2.4
56-63	2.8
64-71	3.2
72-79	3.6
80-	3.7

* "Hours worked" means hours in pay status except that overtime worked and additional payment for holidays worked are not counted in determining sick leave earned.

(c) On the first day following each payroll period, the sick leave accrued during the previous payroll period shall be credited to employees. In no case shall overtime worked be counted in determining sick leave credited. For monthly and semi-monthly paid employees, each eligible employee shall be credited sick leave credits at the rate of one hour for each 20 hours worked (excluding overtime worked) or in pay status, up to the maximum set forth in subsection (b).

(d) An employee wishing to use sick leave shall request its use in the form and at such time as prescribed by the appointing authority, as required by K.A.R. 1-9-3(a). The appointing authority or the director of personnel services may require such evidence as he or she deems necessary to establish that the employee is entitled to use sick leave credits under the circumstances of the request. If the employee fails to provide such evidence, the appointing authority or director may deny the use of sick

leave requested. The appointing authority, with the director's approval, may require a physical examination of an employee by a physician designated by the agency at the agency's expense.

(e) Sick leave with pay shall be granted only for the following reasons:

(1) Illness or disability of the employee including pregnancy, childbirth, miscarriage, abortion, and recovery therefrom;

(2) Illness or disability, including pregnancy, childbirth, miscarriage, abortion, and recovery therefrom, of a member of the employee's family when the illness or disability reasonably requires the employee to be absent from work. An employee shall not use more than 40 hours of sick leave pursuant to this paragraph (2) in a 12-month period. "Employee's family" means:

(A) persons related to the employee by blood, marriage or adoption; and

(B) minors residing in the employee's residence as a result of court proceedings pursuant to the Kansas code for care of children or the Kansas juvenile offenders code.

(3) The employee's personal appointments with a physician, dentist, or other recognized health practitioner; or

(4) Legal quarantine of the employee.

(f) If an appointing authority has evidence that an employee cannot perform the employee's duties because of illness or disability, and if the employee has accumulated sick leave, and if the employee refuses or fails to apply for sick leave, the appointing authority may require the employee to use sick leave and, upon exhaustion of the employee's sick leave, may

require use of any accumulated vacation leave or compensatory credits. If the employee has exhausted all sick leave, accumulated vacation leave, or compensatory credit, the appointing authority may grant the employee leave without pay as provided in K.A.R. 1-9-6(c).

(g) If an employee taking vacation leave becomes ill and, for all intents and purposes, due to such illness, is deprived of all or a significant portion of the vacation, the appointing authority, upon request of the employee, may charge to sick leave some or all of the time the employee was ill while on vacation.

(h) Employees who are injured on the job and awarded workers' compensation shall be granted use of accumulated leave. if The compensation for accumulated leave used each payroll period shall be that amount which, together with workers' compensation pay, equals the regular salary for the employee. Unless the employee requests otherwise, vacation leave credits and compensatory time credits shall be used only after sick leave credits have been exhausted. Workers' compensation days credited back to the employee shall be in multiples of half days only.

(i) A former employee who had unused sick leave at time of separation, and who returns to the service to a permanent position within a year, shall have his or her unused sick leave returned to the employee's credit. This provision shall not apply to a person who has retired from the state service.

(j) Persons retiring from the classified or unclassified service who have completed eight or more years of service and who have accumulated 800 hours or more of sick leave shall be compensated for a portion of the

accumulation pursuant to the provisions of K.S.A. 1981 1982 Supp. 75-5517.
(Authorized by K.S.A. 1982 Supp. 75-3747 as amended by L. 1983, Ch. 292,
Sec. 1; implementing K.S.A. 1982 Supp. 75-3746; effective May 1, 1979;
amended, E-81-23, August 27, 1980; amended May 1, 1981; amended May 1,
1983; amended May 1, 1984.)

1-6-24. **Transfer.** (a) The director shall be responsible for the preparation, implementation, and maintenance of a program to provide employees with the opportunity to apply for and be considered for transfer to vacancies in agencies and geographic locations other than those in which they are currently employed. That information shall be publicized on official bulletin boards and in appropriate personnel publications and materials.

(b) An Any appointing authority may transfer an any employee with permanent status in accordance with the following regulations:

(1) No permanent employee shall be transferred from a duty station in one county to a duty station in another county without the consent of the secretary of administration, unless the person being transferred has consented in writing to the transfer prior to being transferred.

(2) An Any appointing authority may accept, by transfer, a any permanent employee employed in another agency, if the employee is agreeable consents to the transfer.

(3) A transfer of a Any permanent employee may be made transferred from a position in one class to a position in a different class if both positions are allocated to classes which are assigned to the same salary range, have a close similarity of duties, and have essentially the same qualifications, and if the employee meets the qualifications for the new class.

(4) A Any permanent employee who is transferred from one position to another position shall retain permanent status in the new position.

(c) An Any appointing authority may transfer a probationary employee

from one position in a class to another position in the same class in the agency. An appointing authority may accept, by transfer, a probationary employee employed in another agency, if the transfer is to a position in the same class and if the employee is agreeable. The probationary period of an employee transferred pursuant to this regulation shall be determined in accordance with K.A.R. 1-7-4.

(d) An Any employee who has been appointed on a conditional basis may be transferred only with the approval of the director of personnel services, and only within the employing agency, and only between positions in the same class.

(e) Except as provided in subsection (b)(1) above, approval of the employee shall not be required in the case of when a transfer within an agency is made pursuant to this regulation.

(f) Any employee in the unclassified service may be transferred to a permanent position in the classified service if the employee has been employed continuously for six months immediately prior to the transfer in a position in the unclassified service and if the employee meets the qualifications for the classified position. Time spent on a temporary appointment in the unclassified service that was made pursuant to K.S.A. 1982 Supp. 75-2935(1)(i) shall not count towards the six month requirement. Each employee who is transferred from the unclassified service to a position in the classified service pursuant to the provisions of this subsection shall serve a probationary period of not less than three months and not more than six months. (Authorized by K.S.A. 1981 1982 Supp. 75-3747; implementing K.S.A. 75-2947, K.S.A. 1982 Supp. 75-3746; effective May 1, 1979; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984.)

1-6-1. Qualifications for examinations.

(a) For any examination, the director may establish reasonable standards or requirements concerning education, experience, age, physical condition, character, and other factors that are related to ability to perform satisfactorily the duties of positions in the class. Standards or requirements concerning education, age, and physical condition shall relate directly to the duties of positions in the class.

(b) For positions in the department of social and rehabilitation services, the department of health and environment, the department on aging, the division of emergency preparedness of the office of the adjutant general, and the division of employment and the division of staff services of the department of human resources, the director may establish different standards or requirements for the class if necessary to insure compliance with federal laws or regulations.

(c) Promotional examinations shall be open to employees otherwise qualified who have permanent civil service status, and to employees who had permanent status within the past year three years. Promotional examinations shall be open also to employees without permanent status who have been employed continuously immediately prior to the promotional examination for six (6) months in a lower related position in the classified or unclassified services, and who are otherwise qualified. The six (6) months of employment shall be continuous except that breaks in employment of thirty (30) days or less shall not break the continuity of the employment, but the time not employed shall not count towards the six (6) months. Time spent on a temporary appointment in the classified service, and time spent on a

4-1-83

1-6-1
Page Two

temporary appointment in the unclassified service made pursuant to K.S.A. 1980 Supp. 75-2935(1)(i), shall not count towards the six (6) months.

(Authorized by K.S.A. 1980 Supp. 75-3747; implementing K.S.A. 1980 Supp. 75-2944; effective May 1, 1979; amended May 1, 1981.)

1-6-27. **Demotion.** (a) A Any permanent employee may be demoted to a position in a lower class if that position is in the same series of classes, or if the qualifications for that position are such that the employee is presumed by the appointing authority to be qualified for the lower class by having obtained permanent status in the class from which the employee is demoted. Any permanent employee demoted pursuant to this regulation shall be granted permanent status in the class to which demoted, effective the date of the demotion.

(b) If a permanent employee voluntarily requests demotion, the request shall be subject to approval of the appointing authority and the director. In the case of a voluntary demotion, the employee shall not be entitled to appeal the demotion to the civil service board.

(c) An appointing authority may demote a any permanent employee for inefficient performance of duties, for disciplinary reasons, or for other good cause, following the procedures specified in Article 10 of these regulations.

(d) With regard to an any employee with probationary status as a result of an original appointment, an appointing authority may demote the employee to a class in a lower salary range within its agency if the employee meets the qualifications for the lower class, if the appointing authority feels has reason to believe the employee can satisfactorily perform the duties of the lower class, and if the employee provides consent. An Each employee so demoted shall start a new probationary period and that period shall be no less than six months in length, except that the employee shall have no probationary period if the employee previously had permanent status in the

class to which demoted. The provisions of this subsection shall not apply to the demotion of a probationer in a class designated as a direct entry class, pursuant to subsection (3) of K.S.A. 1981 1982 Supp. 75-2935.

(e) Any employee in the unclassified service may be voluntarily demoted to a permanent position in the classified service if the employee has been employed continuously for six months immediately prior to the demotion in a position in the unclassified service and if the employee meets the qualifications for the classified position. Time spent on a temporary appointment in the unclassified service that was made pursuant to K.S.A. 1982 Supp. 75-2935(1)(i) shall not count towards the six month requirement. Each unclassified employee who is voluntarily demoted pursuant to the provisions of this subsection shall serve a probationary period of not less than three months and not more than six months. (Authorized by K.S.A. 1981 1982 Supp. 75-3747; implementing K.S.A. 1981 1982 Supp. 75-2948 and 75-2949; effective May 1, 1979; amended May 1, 1983; amended May 1, 1984.)

1-5-12. Salary of employee appointed to classified service from unclassified service. (a) An Any unclassified employee who has been continuously employed in the unclassified service for at least six (6) months, and who, within ninety (90) days of separation from the unclassified service, is appointed to a position in the classified service, may be paid the same rate (dollar amount) in the classified position as he or she the employee has had been receiving in the unclassified position, provided if the rate is on a step of the range for the class. If the rate is not on a step of the range, it shall be adjusted to the next higher step in the range, provided if that step is within the range, or to any lower step in the range. The pay increase anniversary date shall be the first day of the payroll period on or after the date of the appointment.

(b) In addition, If the appointment of the person is handled as a promotion, the appointing authority may grant a one-step increase, provided that if the step is within the range. Nothing herein in this regulation shall prevent the appointment being made at a step in the range which is lower than permitted by this regulation, except that if the appointment is handled as a promotion However, the employee shall receive some increase in pay if the appointment is being handled as a promotion. The date of the appointment is the pay increase anniversary date. The pay increase anniversary date shall be the first day of the payroll period on or after the date of the appointment.

(c) If the appointment of the person is handled as a voluntary demotion, the employee may be paid at any step within the range assigned to the class to which appointed that is a decrease in rate (dollar amount) from the rate the employee was being paid in the unclassified service for

the position from which demoted. The pay increase anniversary date shall be the first day of the payroll period on or after the date of appointment. (Authorized by K.S.A. 1980 1982 Supp. 75-3747; implementing K.S.A. 1980 1982 Supp. 75-2938; effective May 1, 1979; amended, E-81-14, June 12, 1980; amended May 1, 1981; amended May 1, 1984.)

KSNA

the voice of Nursing in Kansas

Statement of Kansas State Nurses' Association
by Lynelle King, R.N., M.S., Executive Director
before the Senate Ways and Means Committee

February 6, 1984

Opposing SCR1651 which would reject K.A.R.'s State
Employees, Sick Leave

Mr. Chairman and members of the committee, my name is Lynelle King and I represent the Kansas State Nurses' Association, the professional organization for RNs in Kansas (a constituent of the 165,000 member American Nurses' Association). There are approximately 1000 RNs who are state employees, and thus would be affected by SCR 1651.

KSNA urges you to report SCR 1651 unfavorably.

The regulations in question are very similar to common practice in the private sector. Women, who compose about 97% of our membership, would be most affected by these regulations, since in our society it still falls generally to the women to stay home and take care of sick members of the family including children or aged parents. Note that there is a cap - no more than 40 hours per year sick leave could be used to assist sick relatives. Note that gives the employee no additional sick leave, just allows part of it to be used for complying with one's family responsibilities to sick relatives.

For equity and fairness we urge you to report SCR 1651 unfavorably and allow KAR 1-6-24 and 1-9-5 as adopted December 15, 1983 to stand.

Att F
2-6-84



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

February 3, 1984

ATTORNEY GENERAL OPINION NO. 84- 8

Marvin A. Harder, Secretary
Department of Administration
Room 263-E, State Capitol
Topeka, Kansas 66612

Re: Kansas Constitution--Legislative--Laws Enacted
Only by Bill; All Bills Passed Presented to the
Governor

Statutes--Rules and Regulations--Modification,
Rejection or Revocation of Same By Concurrent
Resolution

Synopsis: The provisions of subsections (c) and (d) of K.S.A. 1983 Supp. 77-426, which allow the legislature to reject, modify or revoke an administrative rule and regulation by means of the adoption of a concurrent resolution, are unconstitutional. Such action by the legislature is an unlawful usurpation of the governor's constitutional power to administer and enforce the laws. Such action violates the constitutional doctrine of separation of powers.

In addition, the legislative oversight mechanism prescribed in subsections (c) and (d) of K.S.A. 1983 Supp. 77-426 is unconstitutional for the reason that it attempts to authorize the legislature to make law, without following the mandatory procedures of the Kansas Constitution. The Kansas constitution requires that any law be enacted only by bill [not by resolution or concurrent resolution]; that every bill contain the constitutionally-specified enacting clause; and that all bills passed by the legislature be presented to the governor for approval

Att G
2-6-84

Marvin A. Harder
Page Two

or disapproval. The procedure set forth in subsections (c) and (d) of K.S.A. 1983 Supp. 77-426 does not meet these constitutional requirements and is unconstitutional. Cited herein: K.S.A. 1983 Supp. 77-426; Kan. Const., Art. 2, §§14, 20.

*

*

*

Dear Secretary Harder:

Your predecessor, Secretary Hurley, recently sought our opinion concerning the constitutionality of subsections (c) and (d) of K.S.A. 1983 Supp. 77-426. More specifically, he noted that these subsections purport to allow the legislature to modify, reject or revoke administrative rules and regulations by means of the adoption of a concurrent resolution, without presentment of any such resolution to the Governor. The question posed is whether this procedure is constitutionally permissible.

This inquiry, we understand, was prompted by a number of recent state and federal court decisions in which it has been concluded that provisions such as those in subsections (c) and (d) of K.S.A. 1983 Supp. 77-426 violate the doctrine of separation of powers and constitutional procedures for the enactment of law, and, thus, are unconstitutional. See Consumer Union of U.S., Inc. v. F.T.C., 691 F.2d 575 (D.C. Cir. 1982), aff'd U.S., 103 S.Ct. 3556, 77 L.Ed.2d 1403 (1983); Consumer Energy, Etc. v. F.E.R.C., 673 F.2d 425 (D.C. Cir. 1982), aff'd U.S., 103 S.Ct. 3556, 77 L.Ed.2d 1402 (1983); General Assembly of New Jersey v. Bryne, 448 A.2d 438 (N.J. 1982); and State ex rel. Barker v. Manchin, 279 S.E.2d 622 (W.Va. 1981). Also, the Kansas Supreme Court, in the recent case of State v. Kearns, 229 Kan. 207 (1981), made it clear that the legislature may enact a law only by the enactment of a bill. The Court specifically overruled its prior decision in State ex rel. v. Knapp, 102 Kan. 701 (1918), in which the Court held a joint resolution, adopted by the legislature and signed by the governor, substantially complied with the constitution and, thus, was a constitutionally-valid law. Thus, these recent decisions prompt this inquiry.

In State ex rel. v. Bennett, 219 Kan. 285 (1976), the Kansas Supreme Court was called upon to determine whether powers conferred upon the State Finance Council by state law constituted a violation of the constitutional doctrine of separation of powers. In resolving the issue, the Court said:

"[T]he Constitution of Kansas contains no express provision requiring the separation

of powers, but all decisions of this court have taken for granted the constitutional doctrine of separation of powers between the three departments of the state government-- legislative, executive and judicial. The separation of powers doctrine was designed to avoid a dangerous concentration of power and to allow the respective powers to be assigned to the department most fitted to exercise them." Id. at 287.

The Court, in Bennett, continued that the problem in any case involving an alleged violation of the separation of powers doctrine is:

". . . to determine whether or not a usurpation of powers has taken place. That term has not heretofore been clearly defined. It has been suggested that to have a usurpation one department of the government must be subject directly or indirectly to the coercive influence of the other. (State, ex rel. v. Fadely, supra, at page 696; Leek v. Theis, supra, at page 807.) It seems to us that to have a usurpation of powers there must be a significant interference by one department with the operations of another department. In determining whether or not an unconstitutional usurpation of powers exists, there are a number of factors properly to be considered. First is the essential nature of the power being exercised. Is the power exclusively executive or legislative or is it a blend of the two? A second factor is the degree of control by the legislative department in the exercise of the power. Is there a coercive influence or a mere cooperative venture? A third consideration of importance is the nature of the objective sought to be attained by the legislature. Is the intent of the legislature to cooperate with the executive by furnishing some special expertise of one or more of its members or is the objective of the legislature obviously one of establishing its superiority over the executive department in an area essentially executive in nature? A fourth consideration could be the practical result of the blending of powers as shown by actual experience over a period of time where

such evidence is available. We do not wish to imply that these are the only factors which should be considered but it seems to us that they have special significance in determining whether a usurpation of powers has been demonstrated." 219 Kan. at 290-291.

After stating the foregoing principles, the Supreme Court summarized the various powers conferred upon the State Finance Council. Among other things, the powers included the authority to approve, modify and approve, or reject proposed rules and regulations submitted by the secretary of administration. The Court noted:

"The state finance council exercises control and authority over the state department of administration as a whole. The council must approve any and all rules and regulations with respect to the manner of performance of any power or duty of the department and the execution of any business of the department and its relations to and business with other state agencies. (K.S.A. 1975 Supp. 75-3706.) The finance council may hear and determine appeals by any state agency from final decisions or final actions of the secretary of administration or the director of computer services. (K.S.A. 1975 Supp. 75-3711[a][1].) All regulations promulgated by the director of the division of accounts and reports pertaining to old-age and survivors insurance for public employees are made subject to approval of the state finance council (75-3749). The finance council must approve all rules and regulations adopted by the director of architectural services pertaining to uniform standards for mobile homes and recreational vehicles. (K.S.A. 1975 Supp. 75-1220[e].)" (Emphasis by the Court.) 219 Kan. at 294.

The Court then noted the above-indicated powers of the Council were challenged by the attorney general as a usurpation of executive powers by the legislature. The Court then stated:

"It is obviously a difficult task to classify these powers as executive or legislative and to determine which powers may constitutionally be exercised by the state finance council and

which may not. We have concluded that the statutory power and duties granted to the state finance council to supervise the operations of the department of administration and its various divisions are purely an exercise of executive power. In particular we hold the following duties or powers to be essentially executive or administrative in nature:

. . . .

"(2) Certain powers under the civil service act, such as the adoption of rules and regulations for carrying out the act . . . ;

. . . .

"(7) Approval of rules and regulations governing operations of the department of administration and each of its divisions;

. . . .

"(9) Approval of rules and regulations to carry out the uniform standard code for mobile homes and recreational vehicles;

. . . .

"All of these powers concern the day-to-day operations of the department of administration and its various divisions. The vesting of such powers in the state finance council in our judgment clearly grants to a legislatively oriented body control over the operation of an executive agency and constitutes a usurpation of executive power by the legislative department. All of the powers and functions set forth above are controlled by a majority vote of the nine-member finance council, only one of whom, the governor, is a member of the executive department. It is true that only the governor, as chairman, has the authority to call meetings of the finance council and that the governor has the power to set the agenda for any meeting. The trouble is that the governor has no real choice except to call a meeting of the state finance council since the department of administration cannot really

function unless its rules and regulations are approved and made effective and unless intra-departmental disputes can be finally determined. The legislature has by these statutes placed the state finance council, a body controlled by legislators, at the apex of the administrative structure of the state department of administration in a position where it exerts, both directly and indirectly, a coercive influence on that executive department. We, therefore, hold that all of the executive powers specifically set forth above may not constitutionally be performed by the state finance council with its present membership." (Emphasis added.) 219 Kan. at 297-298.

Bennett is the only case of which we are aware in which our Supreme Court has specifically held that the adoption of rules and regulations is "purely an exercise of executive power," and, as a consequence, struck legislative enactments which conferred these executive powers on a legislative body. State ex rel. v. Bennett, supra, at 297. However, this determination is not surprising when it is realized the Court has held repeatedly that the power to adopt rules and regulations is administrative in nature, not legislative. Moreover, the power to adopt rules and regulations is not the power to "legislate" in the true sense, and, thus, under the guise of a rule and regulation, legislation may not be enacted. See State ex rel. v. Columbia Pictures Corporation, 197 Kan. 448, 454 (1966). See also Wesley Medical Center v. Clark, 234 Kan. 13,17-19 (1983); Woods v. Midwest Conveyor Co., 231 Kan. 763, 771 (1982); Cray v. Kennedy, 230 Kan. 663, 675-677 (1982); Rhodes v. Harder, 211 Kan. 820, 830 (1973); and Willcott v. Murphy, 204 Kan. 640, 648 (1970). As careful as the Court has been to guard the legislative power to legislate from usurpation by the executive branch, it logically follows that the Court likewise would cautiously guard the executive power to execute and administer the laws from usurpation by the legislative branch. We must conclude that, if the separation of powers doctrine precludes the executive branch from "making the law," it follows that the doctrine also precludes the legislative branch from "executing the law."

In Leek v. Theis, 217 Kan. 784 (1975), the Court was confronted with an alleged usurpation of executive power by the legislature. In disposing of the allegation, the Court said: "There is no quarrel that our constitution creates three distinct and separate departments. In this respect, our state constitution is the same as our federal constitution." (Emphasis added.) Id. at 806.

Recently, the federal courts have determined that one- or two-house "legislative vetoes" of administrative rules and regulations

increases Congress' constitutional powers by allowing Congress, in effect, "to expand its role from one of oversight, with an eye to legislative revision, to one of shared administration." Consumer Energy, Etc. v. F.E.R.C., supra, 673 F.2d at 474. In regard to this, the courts have concluded: "This overall increase in congressional power contravenes the fundamental purpose of the separation of powers doctrine." Id. at 474.

The determinations of other state courts and the federal courts, and the determination of our own Supreme Court in State ex rel. v. Bennett, supra, convince us that the legislative oversight mechanism prescribed in subsections (c) and (d) of K.S.A. 1983 Supp. 77-426 contravenes the constitutional doctrine of separation of powers, and, thus, is unconstitutional. The legislative power is the power to make, amend, or repeal laws; the executive power is the power to enforce and administer the laws; and the judicial power is the power to interpret and apply the laws in actual controversies. See, e.g., Van Sickle v. Shanahan, 212 Kan. 426, 440 (1973). The oversight mechanism in these subsections of the law constitutes an unlawful intrusion by the legislature into the executive's power to enforce and administer the laws.

Subsections (c) and (d) of K.S.A. 1983 Supp. 77-426 are invalid for an additional reason. These subsections purport to allow the legislature to enact law without complying with the requirements prescribed in Article 2 of the Kansas Constitution. Specifically, Article 2, Section 20, provides: "The enacting clause of all bills shall be 'Be it enacted by the Legislature of the State of Kansas:'. No law shall be enacted except by bill." Also, Article 2, Section 14(a) of the constitution provides:

"Within ten days after passage, every bill shall be signed by the presiding officers and presented to the governor. If the governor approves a bill, he shall sign it. If the governor does not approve a bill, the governor shall veto it by returning the bill, with a veto message of the objections, to the house of origin of the bill. Whenever a veto message is so received, the message shall be entered in the journal and in not more than thirty calendar days (excluding the day received), the house of origin shall reconsider the bill. If two-thirds of the members then elected (or appointed) and qualified shall vote to pass the bill, it shall be sent, with the veto message, to the other house, which shall in not more than thirty calendar days

(excluding the day received) also reconsider the bill, and if approved by two-thirds of the members then elected (or appointed) and qualified, it shall become a law, notwithstanding the governor's veto.

"If any bill shall not be returned within ten calendar days (excluding the day presented) after it shall have been presented to the governor, it shall become a law in like manner as if it had been signed by the governor."

In Harris v. Shanahan, 192 Kan. 183 (1963), the Supreme Court held:

"Pursuant to Article 2, Section 14 of the Constitution of Kansas, the legislature and the governor exercise co-ordinate functions in enacting laws, and the governor is an essential part of the legislation. Until a bill has the final consideration of the three law-making powers, that is, the house, the senate, and the governor, it is not a law" Id. at Syl. ¶1. See also, State ex rel. v. Robb, 163 Kan. 502, 515-518 (1947).

Also, in the recent case of State v. Kearns, 229 Kan. 207 (1981), the Court held the requirement of Article 2, Section 20, that each bill have the constitutionally-specified enacting clause, prevented a bill from becoming law which contained the phrase: "Be it resolved by the Legislature of the State of Kansas," instead of the constitutionally-specified enacting clause. This case makes it clear that no law can be enacted except by bill, and that any bill must have the constitutionally-specified enacting clause.

Thus, if the legislature, in rejecting, modifying or revoking an administrative rule and regulation, in fact, is making a law, the action of the legislature must comply with the requirements of Article 2, §§14 and 20.

The question of whether the legislature, in effect, is making a law when it rejects an administrative rule and regulation was answered affirmatively in Consumer Energy, Etc. v. F.E.R.C., supra. The Court said: "[T]here is no question that the effect of a congressional veto is to alter the scope of the agency's discretion [as originally granted to the agency by federal statutes.]" 673 F.2d at 469. Thus, through its power to legislate, Congress, in effect, is amending the law pursuant to which the power to adopt rules and regulations was conferred upon the executive agency.

Moreover, in State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska (1980), the Supreme Court of Alaska, relying on decisions from the states of Illinois, California, and New York, held that, whenever the legislature takes action that is to have "a binding effect on those outside the legislature," it is making a law, and "may do so only by following the enactment procedure set forth in the State Constitution." State v. A.L.I.V.E. Voluntary, supra, at Syl. ¶6 and page 773. At issue in that case was the validity of a concurrent resolution passed by the Alaska legislature which purported to reject an administrative rule and regulation. The court found the action of the legislature was an unconstitutional attempt to make law because the concurrent resolution did not comply with the constitutional requirement that laws be enacted by bill.

We are persuaded by the above-referenced decisions that our state legislature, when it rejects, modifies or revokes an administrative rule and regulation, is making law. However, the legislature may make a valid law only by following the enactment procedures set forth in Article 2 of the Kansas Constitution. In subsections (c) and (d) of K.S.A. 1983 Supp. 77-426, the legislature has attempted to dispense with these procedures. Such cannot be done, however, and these subsections of law are unconstitutional.

Thus, in summary, it is our opinion that the provisions of subsections (c) and (d) of K.S.A. 1983 Supp. 77-426, which allow the legislature to reject, modify or revoke an administrative rule and regulation by means of the adoption of a concurrent resolution, are unconstitutional. Such action by the legislature is an unlawful usurpation of the governor's constitutional power to administer and enforce the laws. Such action violates the constitutional doctrine of separation of powers.

In addition, the legislative oversight mechanism prescribed in subsections (c) and (d) of K.S.A. 1983 Supp. 77-426 is unconstitutional for the reason that it attempts to authorize the legislature to make law, without following the mandatory procedures of the Kansas Constitution. The Kansas constitution requires that any law be enacted only by bill [not by resolution or concurrent resolution]; that every bill contain the constitutionally-specified enacting clause; and that all bills passed by the legislature be presented to the governor for approval or disapproval. The procedure set-forth in subsections (c)

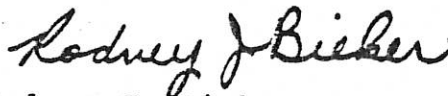
Marvin A. Harder
Page Ten

and (d) of K.S.A. 1983 Supp. 77-426 does not meet these constitutional requirements and is unconstitutional.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm



KANSAS ASSOCIATION OF COMMUNITY COLLEGES

Columbian Title Bldg., 820 Quincy • Topeka 66612 • Phone 913-357-5156

W. Merle Hill
Executive Director

To: Senate Ways and Means Committee

From: Richard Klassen, Chairman, Legislative Committee
Kansas Association of Community Colleges

Subject: Senate Bill 508

Date: February 6, 1984

Mr. Chairman and members of the Committee. I appear today in support of Senate Bill 508. Senate Bill 508 proposes increasing state credit-hour aid to the community colleges by \$3, from the current \$23 to \$26.

State Credit-hour aid to the community colleges from 1981-82 to 1983-84 has increased only 50¢, a 2.2% increase in a 3-year period.

Appropriations to the 6 Regents' universities have increased 10.75% in that same period (\$191,968,265 to \$212,613,434), and another 7.65% increase is being requested for 1984-85.

Equalization aid appropriations to the unified school districts have also increased significantly in this period. The increase has been 15.38%, and another 10.64% is proposed for 1984-85. (\$325,915,000 to \$376,056,000 to a proposed \$416,056,000)

The community colleges' request for a \$3 increase in state credit-hour aid appears to be quite modest when compared to these appropriations for the Regents' universities and the unified school districts.

When one considers that the community colleges are continuing to experience enrollment increases, compared to enrollment declines in the Regents' universities and the unified school districts, the modest request appears even more justified. As shown in Attachment A, FTE enrollment in the community colleges has increased 16.7% between 1981-82 and 1983-84, and another modest increase can be anticipated in 1984-85. Attachment B shows

*Att H
2-6-84*

FTE enrollments for the individual colleges. The Kansas Community colleges are playing an increasingly important role in the education of Kansas citizens.

Recognizing the importance of the community colleges to Kansas, the taxpayers have accepted the challenge of increasing educational costs. Between 1981 and 1983, the mill levies in support of the community colleges have increased from an average of 13.52 to 17.29, an increase of almost 28%. The lowest mill levy has increased 38%, from 7.75 in 1981 (Kansas City Kansas Community College) to 10.73 in 1983 (Garden City Community College), and the highest mill levy has increased 46%, from 21.61 (Independence Community College) to 31.53 (Highland Community College).

The community colleges' boards believe their students should pay a proportionate share of their educational costs and, consequently, are also requesting authority to increase tuition charges by 20% in 1984-85, from a range of \$10-\$15 to a range of \$12-\$18.

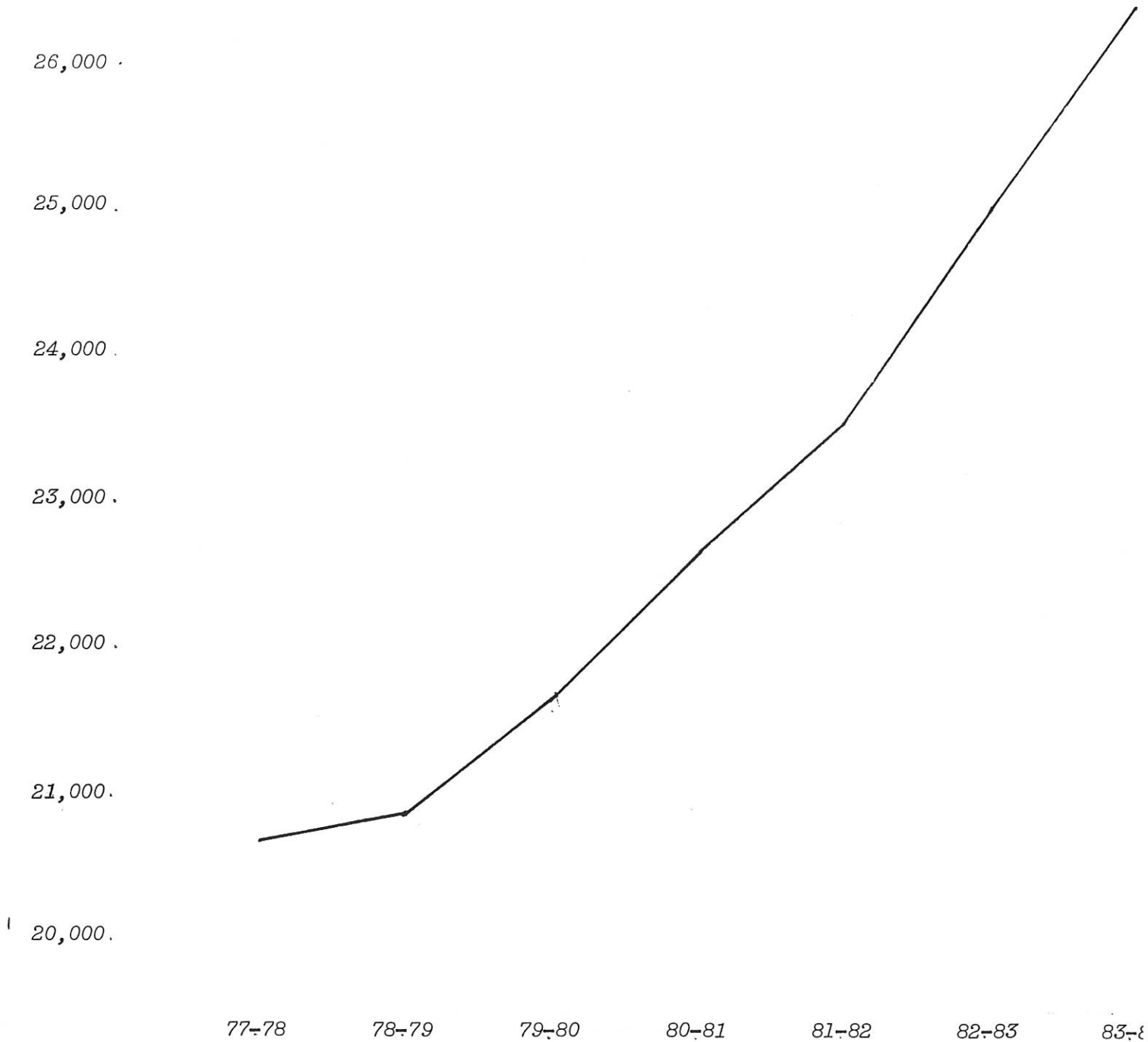
Figures from the State Department of Education show that the funding provided by local sources, as a percentage of actual revenue for operational purposes, increased from 49.53% in 1980-81 to 55.57% in 1982-83, while state aid, as a percentage, decreased from 31.24% in 1980-81 to 28% in 1982-83. I have subtracted from the state-aid category the amount of aid called "community college out-district aid." This is actually aid to the counties, not state aid to the community colleges.

The credit-hour aid increase in Senate Bill 508, in reality, suggests nothing more than having the state pay approximately the same percentage of total revenue it was contributing to the community colleges several years ago. The increase requested is not actually an increase but rather a request to be brought back to approximately the 31.5% level of state support of actual revenue.

The fiscal note, as shown in Attachment C, is \$2,819,026 and is based on a 5% enrollment increase.

The Kansas Association of Community Colleges requests favorable passage of Senate Bill 508. Thank you.

To: Senate Ways and Means Committee
From: W. Merle Hill, Executive Director
Kansas Association of Community Colleges
Subj: Senate Bill 508
Date: February 6, 1984



FTE ENROLLMENTS AT KANSAS COMMUNITY COLLEGES, 1977-78 TO 1983-84

Source: Statistical and Financial Information of Kansas Community Colleges
Kansas State Department of Education

To: Senate Ways and Means Committee
 From: W. Merle Hill, Executive Director, KACC
 Subject: Increases in Community College FTE Enrollments
 Date: February 6, 1984

KANSAS COMMUNITY COLLEGES FTE ENROLLMENTS*, 1977-78 TO 1983-84

(Enrollment on 20th day of class plus summer school
 and for courses after Sept. 15 & prior to Dec. 1)

<u>College</u>	<u>77-78</u>	<u>78-79</u>	<u>79-80</u>	<u>80-81</u>	<u>81-82</u>	<u>82-83</u>	<u>83-84</u>
ALLEN	573	595	629	582	564	583	789
BARTON	1,135	1,299	1,636	1,522	1,512	1,534	1,582
BUTLER	1,236	1,237	1,211	1,318	1,520	1,915	2,063
CLOUD	802	939	901	970	1,053	1,050	1,133
COFFEYVILLE	788	726	768	786	728	881	883
COLBY	1,143	1,086	1,106	1,043	1,062	1,017	988
COWLEY	716	862	780	830	805	1,043	988
DODGE CITY	1,025	1,065	1,056	970	1,031	1,016	1,088
FORT SCOTT	732	885	933	938	959	1,006	968
GARDEN CITY	1,133	1,062	1,064	1,131	994	1,087	1,070
HIGHLAND	668	720	730	760	820	829	691
HUTCHINSON	1,949	1,855	1,990	1,910	1,934	1,844	2,106
INDEPENDENCE	608	563	571	644	598	604	580
JOHNSON	3,724	3,525	3,744	4,004	4,480	4,828	5,239
KANSAS CITY	2,273	2,244	2,132	2,370	2,486	2,635	2,745
LABETTE	610	584	608	954	1,099	1,133	1,431
NEOSHO	486	512	564	528	496	563	596
PRATT	619	622	742	826	814	858	865
SEWARD	<u>468</u>	<u>506</u>	<u>544</u>	<u>609</u>	<u>624</u>	<u>604</u>	<u>679</u>
TOTAL	20,688	20,887	21,709	22,695	23,579	25,030	26,484

* Rounded

Source: Statistical and Financial Information of Kansas Community Colleges, KDOE

To: Senate Ways and Means Committee

From: W. Merle Hill

Subj: Senate Bill 508

Date: February 6, 1984

Senate Bill requests an increase of \$3 in credit-hour aid for the community colleges. The current rate of state aid per credit hour is \$23, and Senate Bill 508 proposes increasing this to \$26.

The figures below assume a 5% increase in community college hours filed:

<u>State Aid Category</u>	<u>State Aid in 1984-85 at \$23 per credit hr.</u>	<u>State Aid in 1984-85 at \$26 per credit hr.</u>
Regular credit hours (under 64/72)	\$9,688,382	\$10,952,084
Vocational credit hours (under 64/72)	\$6,927,979	\$ 8,112,819
Regular credit hours (over 64/72)	\$1,264,425	\$ 1,429,350
Vocational credit hours (over 64/72)	\$1,334,460	\$ 1,540,019
	<u>\$19,215,245</u>	<u>\$22,034,272</u>
Difference:		<u>\$2,819,026</u>

Attachment "C"

WASHBURN'S REQUEST FOR
INCREASED STATE AID

Washburn University Serving Close to 7,000 Kansans

Washburn University has demonstrated that it is one of the leading universities in the state, both from the standpoint of academic quality and of growth in student enrollments.

From an academic standpoint, Washburn is offering quality educational programs which are vital not only to the Shawnee County area, but to most areas in the state. For example, the Law School at Washburn services Kansans throughout the state. The Law School has had an outstanding reputation for years, and most of the students who graduate from the Washburn School of Law, stay in Kansas.

The School of Nursing at Washburn University is also of great service to the state with many of its baccalaureate graduates practicing nursing in towns all across Kansas.

The teacher education program at Washburn is growing, with a primary thrust to service the teacher education needs of Shawnee County. This thrust in teacher education and teacher training should reduce the demand placed on other state universities for these programs.

Washburn has introduced a number of allied health programs, such as physical therapy and radiologic technology, which are important to the regional health care services in Topeka. Regional health care in Topeka assists citizens throughout the State of Kansas.

Washburn is accommodating not only more and more students from the Shawnee County area, but also more and more students outside of Shawnee County. This year for the first time, 48 percent of the full-time freshman class at Washburn were students from outside of Shawnee County.

Washburn Enrollments Up 7.2%

Washburn has become the fastest growing public university in the state. The fifth week enrollment this fall was 6,987 students -- an increase of 472 students over last fall. Exhibit A shows a detailed listing of enrollments for Washburn and the regents' institutions after appropriate "cut-off" dates. The point here is that Washburn is playing an increasingly important role in educating Kansans, and this should be recognized in terms of providing increased state aid.

Washburn Cost-Effective

Washburn is also the most cost-effective university in the state. The most recent figures from the Kansas Legislative Research Department show that the education and general expenditures per FTE student for the state regents' institutions as

a whole (excluding the University of Kansas Medical Center) are \$5,201 for the 1981-1982 fiscal year. The community colleges as a whole have education and general expenditures per FTE student of \$3,787. The private institutions in Kansas have education and general expenditure per FTE student of \$5,491. Washburn's education and general expenditure per FTE student is \$3,630 -- or 30 percent less than the state regents' institutions as a whole. This of course not only shows our cost-effectiveness, but the excellent investment that Washburn is from the standpoint of using taxpayers moneys to obtain large benefits.

State Support Comparisons

Another measure of the outstanding investment benefits in Washburn for the Kansas taxpayers is the state appropriation per student credit-hour. For the regents' institutions as a whole, the state appropriation per credit-hour in 1981-1982 was \$106.51, excluding the University of Kansas Medical Center. For Washburn University, the comparable figure is \$22.57. This represents 78.8 percent less support per credit-hour from the state for Washburn University, than the state regents' institutions receive. Of course, Washburn is not asking for parity with the state regents' institutions, but the difference in the level of support is substantial.

Washburn's Request for Additional State Aid

Washburn joins the community colleges in requesting a

\$3.00 increase in state aid for undergraduate courses. This would mean that Washburn's \$23 per credit-hour of state aid would be increased to \$26 for the undergraduate level. Washburn also requests 1½ times the \$26 per student credit-hour for post baccalaureate and law school credit-hours. The fiscal note on only these two items is \$695,000. This rate increase would bring Washburn up to an average of \$26.69 per credit-hour for state aid. No requested increase in out-district tuition is being made at this time.

Washburn needs the additional state aid in the 1984-1985 budget to help cover faculty and staff salary increases, new faculty and staff personnel, and general operating expenses.

State Aid in 1983-84

Last year, Washburn University did not request nor receive an increase in state aid because of the financial problems the state was having. Instead, Washburn voluntarily agreed to forego 4 percent of its state aid appropriation in order to cooperate with the state and assist in solving the financial problems that Kansas was experiencing due to a shortfall in state revenue.

Tuition Increases

For the past two years, the tuition has increased dramatically at Washburn University. For the Fall of 1982, tuition increased 25 percent. For the Fall of 1983, tuition

increased 22.5 percent. We feel that it is important for Kansans not to be strapped with another 25 percent increase in tuition in the Fall of 1984, and we also feel that the tremendous gap between state support for the regents' institutions of \$106.51 per credit-hour in state aid, and Washburn's \$22.57 in state aid, should be reduced.

Summary

It is obvious that Washburn University is destined to continue to grow throughout the 1980's because of its location in an urban setting, the capital city of Kansas. Washburn is asking that its increasingly important role as a growing public higher education institution in the State of Kansas be recognized through additional state support.

Presented by:

Dr. John L. Green, Jr.
President, Washburn University

HIGHER EDUCATION - GENERAL FUND MONIES for 1984-85

Proposed in Budget Document

Institution	1984	1985		Percentage Increase
	Approp.	Proposed	Approp.	
Emporia State	\$ 14,987,655	\$ 15,953,645	\$ 965,990	6.4
Fort Hays State	13,875,940	14,881,544	1,023,604	7.4
K-State	67,029,717	72,778,051	5,748,334	8.6
K-State Vet. Med.	4,770,937	4,989,490	218,553	4.6
Ks. Tech. Institute	2,590,487	2,934,277	343,790	13.3
Pittsburg State	14,657,237	15,644,550	987,313	6.7
Ks. Board of Regents	5,713,808	11,699,242	5,985,434	104.8
K.U.	71,960,602	76,117,545	4,156,943	5.8
K.U. Med. School	58,649,281	62,019,757	3,370,476	5.7
Wichita State	30,977,480	33,487,842	2,510,362	8.1
Regents Total	285,173,166	310,414,943	25,310,799	8.9
Community College System ¹	23,636,745	25,565,104	1,928,359	8.1
Washburn University ¹	3,886,420	4,110,317	223,897	5.76

(1) Includes 50¢ per credit hour increase plus small amount for enrollment growth.

HIGHER EDUCATION 1983 FALL ENROLLMENT - HEAD COUNT

State Regents' Institutions	Actual	
	Fall 1982-83	Fall 1983-84
K.U.	24,400	24,219
K-State	19,497	18,470
Wichita State	17,187	17,242
Pittsburg State	5,438	5,271
Emporia State	5,768	5,358
Fort Hays State	5,513	5,476
Ks. Tech. Institute	628	710
K.U. Med. School	--	--
Total	78,431 ⁽¹⁾	76,746 ⁽¹⁾
Decrease		- 1,685 ⁽¹⁾
Washburn University	6,515 ⁽²⁾	6,987 ⁽²⁾
Increase		+ 472

(1) Student head count as of the 20th day of enrollment.

(2) Student head count as of the 5th week of enrollment. Head count reached a high of 7,255 students after the 2nd week of enrollment.

1982-83 Fiscal Year - HEGIS Report

(Higher Education General Information Survey)

U.S. Dept. of Education

164 EYE-EASE
464 20/20 BUFF
NATCO

	1	2	3	4	5	6	7	8	9	10	11	12	13	14
		Univ. Ks. Main. Campus		Ks. State Univ.		Wichita St. Univ.		Emporia State	Pi Hsborg State	Ft. Hays State	Ks. Tech. Inst.		Total Resent's Inst.	Washburn University
Educational and General Expenditures														
Instruction		52,641,708		40,792,784		22,957,761		9,662,126	19,067,173	9,374,823	1,540,528			8,590,215
Research		17,865,059		34,866,108		1,411,669		53,106	2,1187	80,419	-			-
Public Service		4,675,643		17,604,720		1,516,446		606,112	349,167	305,026	-			-
Academic Support		12,861,485		8,468,079		5,637,093		3,493,689	1,868,781	2,209,468	200,092			1,556,749
Student Services		6,422,284		5,012,515		4,411,195		2,119,059	1,778,152	2,053,730	87,443			1,247,593
Institutional Support		7,588,740		4,397,081		3,565,537		1,587,884	1,704,601	1,709,431	392,505			1,842,448
Oper. + Maint. of Plant		14,499,154		10,725,424		9,083,846		3,367,487	3,283,396	2,696,764	486,440			1,615,560
Scholarships and Fellows		5,080,025		4,221,687		4,170,177		1,137,948	1,099,863	1,167,366	125,461			1,446,446
Mandatory Transfers		3,350		-		403,150		-	-	612,367	-			-
Sub-Total		121,637,448	①	126,088,398		51,158,175		21,027,411	20,171,720	20,209,394	2,832,469			18,283,866
Auxiliary Enterprises		16,493,740		21,921,197		8,594,167		2,044,833	1,736,411	3,108,034	238,623			1,959,440
Hospitals		-		-		-		-	-	-	-			-
Total Current Funds Expend.		<u>138,131,188</u>		<u>148,009,595</u>		<u>59,752,342</u>		<u>23,072,244</u>	<u>21,908,131</u>	<u>23,317,428</u>	<u>3,071,092</u>			<u>20,243,306</u>

Educational and General Revenue

Category	22	23	24	25	26	27	28	29	30
<u>UNRESTRICTED:</u>									
Tuition and Fees	23,157,287	15,864,938	12,781,491	3,747,866	3,665,407	3,998,171	2,790,644	6,356,395	
State	7,915,929	69,345,354	29,924,432	15,475,340	15,017,426	19,528,761	2,434,107	3,697,846	
Local	-	-	1,582,137	-	-	-	-	2,782,215	
Govt. Grants & Contr.	3,002,116	2,337,507	1,310,941	4,860	-	92,557	-	2,895,155	
Priv. Grants & Contr.	791,760	721,110	1,941,175	7,795	-	-	-	3,322,799	
Endowment Income	53,214	127,840	117,041	17,000	-	-	-	5,844,299	
Sales and Serv. Educ. Act.	8,665,334	11,165,710	1,674,556	417,387	386,946	628,012	-	3,016,955	
Sales and Serv. Hosp.	-	-	-	-	-	-	-	-	
Other Sources	252,415	597,944	1,787,996	92,717	40,148	416,725	-	-	
<u>Sub-Total, Unrestricted</u>	<u>107,838,055</u>	<u>100,160,403</u>	<u>51,119,769</u>	<u>19,762,965</u>	<u>19,109,927</u>	<u>18,664,226</u>	<u>2,713,171</u>	<u>1,010,820</u>	<u>15,275,194</u>
<u>RESTRICTED:</u>									
Government Approp.	-	6,938,623	-	-	-	-	-	-	-
Fed. Grants & Contracts	13,455,480	12,314,036	3,448,285	2,294,758	1,478,037	1,971,665	125,461	1,189,095	
State Grants & Contracts	-	3,468,956	34,708	-	268,340	-	-	15,416	
Local Grants & Contracts	-	35,873	-	-	-	-	-	-	
Private Grants & Contracts	2,363,009	3,627,887	290,720	7801	6951	19,350	-	1,155,019	
Endowment Income	-	-	-	-	-	-	-	5,478,884	
<u>Sub-Total, Restricted</u>	<u>15,818,489</u>	<u>26,585,325</u>	<u>3,773,713</u>	<u>2,302,559</u>	<u>1,753,328</u>	<u>1,991,015</u>	<u>125,461</u>	<u>6,170,000</u>	<u>53,375</u>
Auxiliary Enterprises	12,654,531	28,676,380	6,664,224	1,862,370	1,717,679	2,560,570	227,918	2,024,246	
Hospitals	-	-	-	-	-	-	-	-	
<u>Total Current Funds Revenue</u>	<u>141,311,075</u>	<u>155,422,108</u>	<u>61,557,706</u>	<u>23,927,894</u>	<u>22,580,934</u>	<u>23,215,811</u>	<u>3,066,550</u>	<u>20,260,229</u>	
<u>Educ. & Gen. Expend. less</u>									
Restricted Funds and Auxiliaries	105,818,959	99,503,073	47,384,462	18,274,852	18,418,392	18,218,379	2,707,008	14,337,795	
Fall, 1982, FTE Students	21,974	17,979	11,357	4,795	4,570	4,376	513	4,457	
Expenditures per FTE Student	\$ 4,815	\$ 5,534	\$ 4,172	\$ 3,905	\$ 4,030	\$ 4,163	\$ 5,276	\$ 3,216	

* Excludes KTWU-TV operations from Public Service of 985,282.

HEGIS Report Financial Comparisons

1981-82 with 1982-83

Institution	1981-82 Fiscal Year			1982-1983 Fiscal Year		
	Educational and General Expend. Less Edu. & Gen. Restricted	Fall 1981 FTE Enrollment	Expenditures Per FTE Student	Educational and General Expend. Less Edu. & Gen. Restricted	Fall 1982 FTE Enrollment	Expenditures Per FTE Student
<u>Regent's Institutions</u>						
Univ. of Ks. - Main Campus	\$ 101,409,684	22,020	\$ 4,605	\$ 105,818,959	21,974	\$ 4,815
Ks. State Univ.	94,296,970 (1)	18,298	5,153	99,503,073 (1)	17,979	5,534
Wichita State Univ.	44,783,898	11,092	4,037	47,384,462	11,357	4,172
Emporia State	18,487,553	5,063	3,651	18,724,852	4,795	3,905
Pittsburg State	17,203,556	4,569	3,765	18,418,392	4,570	4,030
Ft. Hays State	17,576,076	4,571	3,845	18,218,379	4,376	4,163
Washburn University	12,092,387 (2)	4,351	2,779	14,337,795 (2)	4,457	3,216
(1) Excludes	Federal Appropriation for Land Grant Univ.					
(2) Excludes	KTWU-TV					

Wash
Stude.
Association
Washburn University
1700 College
Topeka, Kansas 66621
(913) 232-4297

Offices Located
in Memorial Union

President
Timothy S. Durst

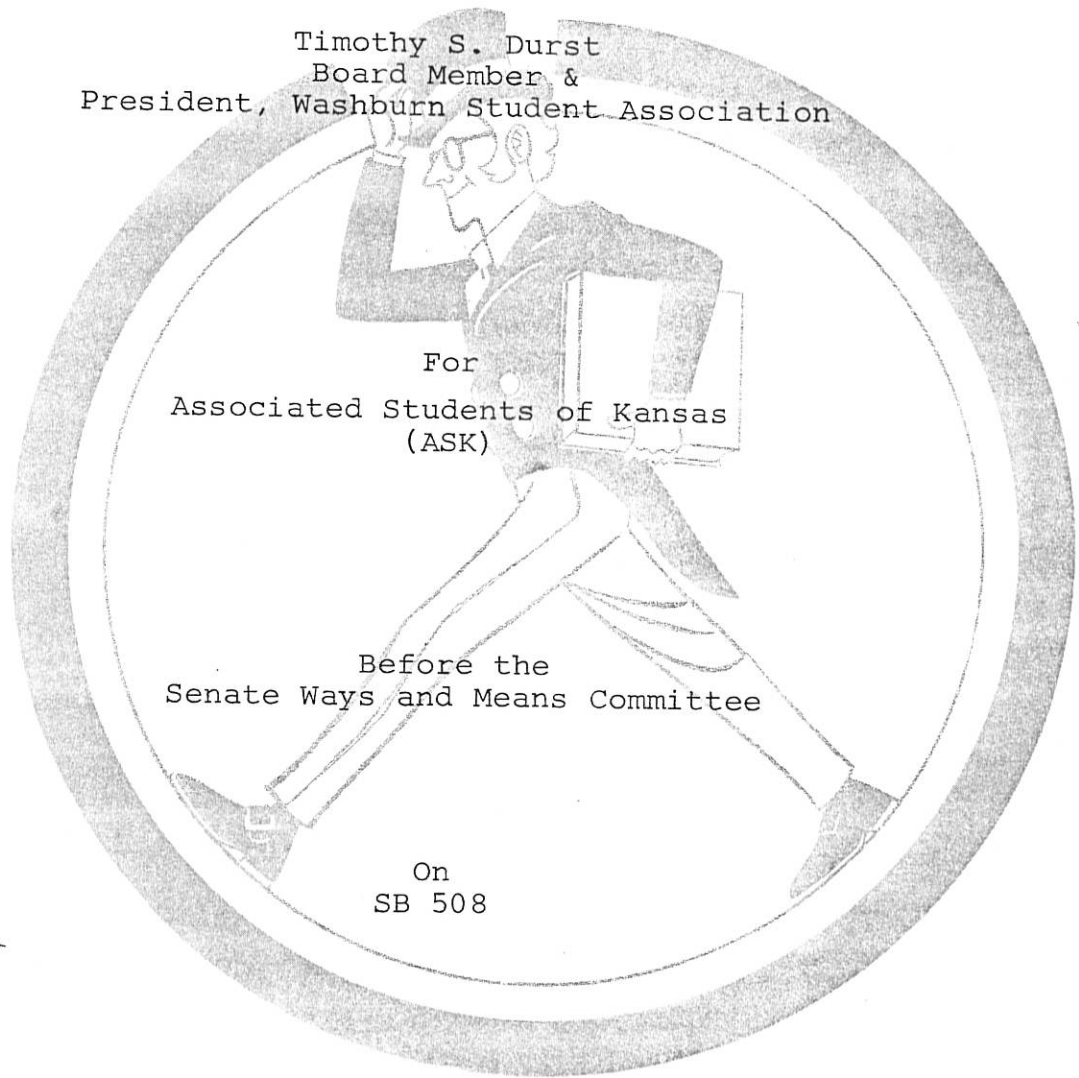
Vice-President
David P. Wurth



*"Students
Working For
Students"*

Statement by

Timothy S. Durst
Board Member &
President, Washburn Student Association



For
Associated Students of Kansas
(ASK)

Before the
Senate Ways and Means Committee

On
SB 508

February 6, 1984

2-6-84 AHR

Introductory Comments

Mr. Chairman, members of the Senate Ways and Means Committee, I would like to thank you for the opportunity to be with you today to express student views concerning S.B. 508. I am Tim Durst and I am President of the Washburn Student Association. Also, I am the Washburn member of the Associated Students of Kansas Board of Directors. On behalf of the students at Washburn, and the entirety of students represented by the ASK, I am here to ask your support for SB 508, state aid for Washburn University.

The students I represent, particularly the students of Washburn, have a direct interest in this legislation. To be simple and straightforward, we are in support of 508 as a major part of our effort to keep tuition increases at Washburn to a minimum. Obviously, there will be no group affected more directly, or more immediately, by increasing costs of education than the students in our universities.

Student Views

It is important from the outset that I stress the student support for the progress and the commitment to quality that Dr. Green just mentioned in his testimony. The new and expanding academic and extra-curricular programs, as well as the continuing emphasis on educational quality at Washburn, benefit the students - and we know it. We acknowledge that much progress has been made recently, particularly in the last three years, and want to be a part in insuring that the commitment continues. The atmosphere of the WU student body now is one of pride -- pride in our institution. The progress and excitement not only have awakened the current student body,

but also go far in attracting new students to Washburn. This is proven by increasing enrollments at WU. (See Appendix 1).

But unfortunately, for those paying the bill for our education, these strides have not come inexpensively. We are painfully aware of the increased revenues that have become necessary as a result of the progress at Washburn. As Dr. Green mentioned, the students of Washburn have called upon for tuition increases of 25 percent and 22.5 percent in the last two years, respectively. Appendix II of the information I have circulated indicates that Washburn tuition has increased twofold since the academic year 1979-80. When I was a senior in high school students at Washburn were paying \$24 a credit in tuition and fees. Now, as a senior in college, ^I ~~myself~~ and my fellow students pay twice that, \$49. This is obviously an increase that goes far beyond the increases felt by students in our sister public institutions. It would not be exaggerating to say that another increase of 25 percent might deal a death blow to the educational plans of some Washburn students.

Tuition, though, is not the only cost factor of attending college. Room and board costs are increasing rapidly as well. These costs at Washburn have kept pace with the other schools, meaning Washburn students haven't picked up any financial ground on students in this area. Text book prices continue to rise as well. These costs that go beyond tuition have increased significantly, only to compound the problem students face with increasing tuition.

These increasing costs have outpaced student income increases. According to one source, nearly 80 percent of the Washburn student body work at least part-time while they are attending school. As you all know,

the minimum wage, the wage at which many students work, has not increased significantly for some time. The minimum wage has been far out-distanced by tuition increases the last two years. The result is a new loss for those students in higher education.

The students of Washburn believe that an increase in state aid is justified on many levels. I think that too often Washburn's service to all of Kansas is easily overlooked. Increasingly, Washburn is attracting students from all over the state, continually expanding its' once Topeka-dominated educational market.

For example, I am from the opposite corner of the state from Topeka, Ulysses. More and more, students from all over are being attracted to Washburn. Their motivations vary as to why they choose Washburn, but one would be naive to suspect that the educational progress of WU is not a factor.

In addition, educating Kansans at Washburn is less expensive for the state than at any of the sister institutions. For example, when my good friend and I graduated from Ulysses High in the Spring of 1980 he chose to attend Kansas State University and I chose Washburn. He and I will graduate this May with our bachelor's degree--but his cost of education to Kansas will be roughly \$10,000 more than mine. These figures are based on a per-credit hour aid to Washburn of \$22.57 and per-credit hour aid to K-State of \$106.51. (I assumed we will both graduate with 130 hours.) In addition, I am supporting nearly 35 percent of my educational cost while his share is only 25 percent of the total.

These figures may not be exactly accurate--but the message should be clear--it costs the state much less to educate its citizens at Washburn than at the other public universities. We are not calling for absolute equality in state aid, but it only seems fair that the state narrow the gap between state aid to Washburn and state aid to our sister institutions.

I appear before you today to tell you that the concern among students at Washburn about these facts is at its height. I have never seen concern paralleling that among the student body right now. We are trying to be responsible in our position. For example, the Student Association has, since last fall, been involved in a tuition program aimed at getting more information to the students. We have hosted all of the academic deans of the university to question them about program goals and expenditures. Dr. Green spoke to the Washburn student senate last week. He was greeted with a barrage of questions about increasing state aid and increasing tuition. Rep. Bill Bunten can attest to the student concern at Washburn also. Mr. Bunten visited our senate January 25 and was questioned in depth about increasing Washburn state aid. All in all, tuition seems to be in the forefront among students at Washburn, not only in the student government meetings but also around the classrooms in our halls and around the coffee tables in our union. Students are wondering what will happen--we are looking for help.

That help can best come from you.

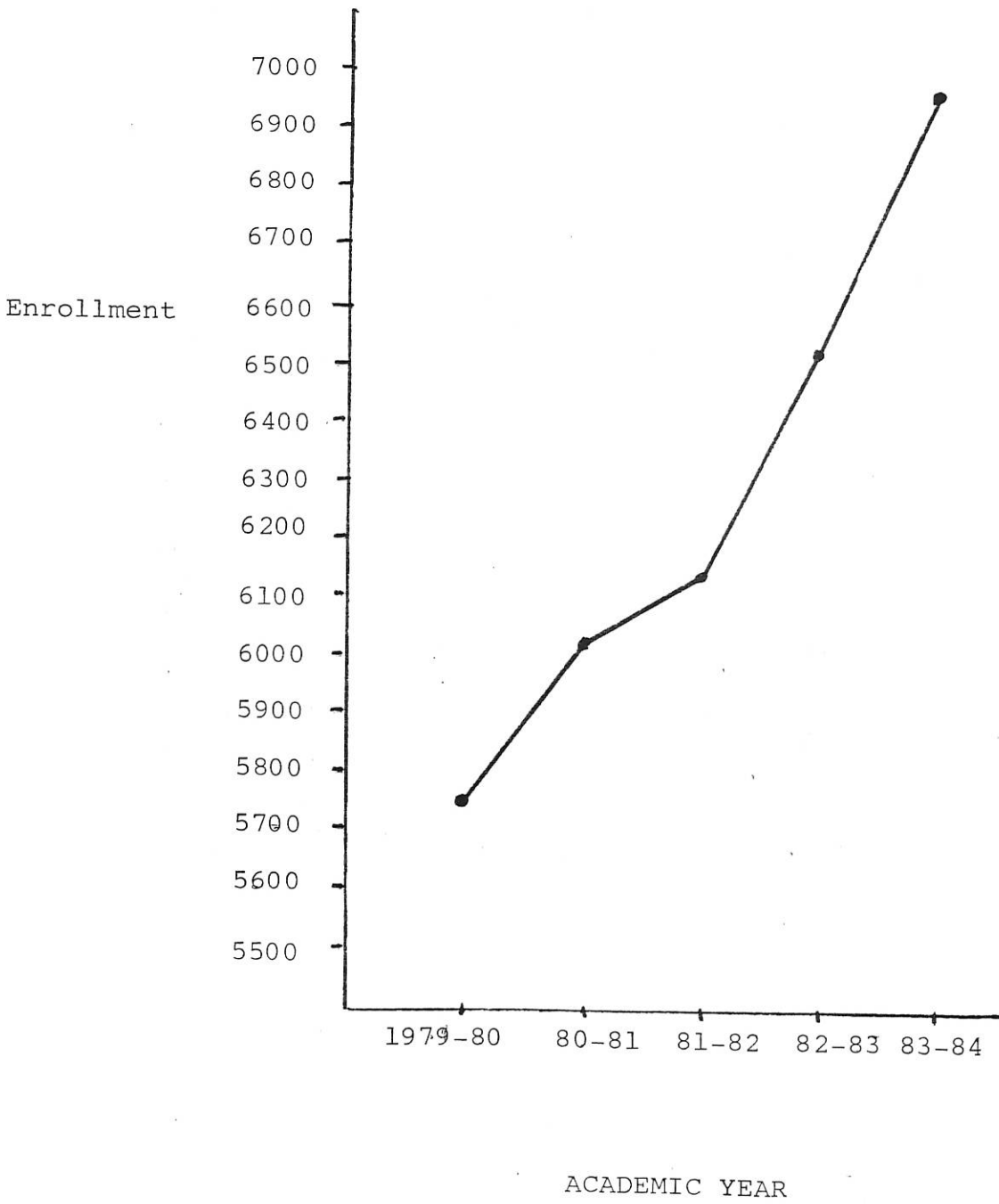
Conclusion

The students of Washburn are committed to quality education and progress in our school. We are convinced that WU offers educational services to the state that are unmatched by the other public institutions. We are also convinced that because of this commitment to quality, and the service to Kansans, the state must be called upon to lift some of the financial burden from our shoulders.

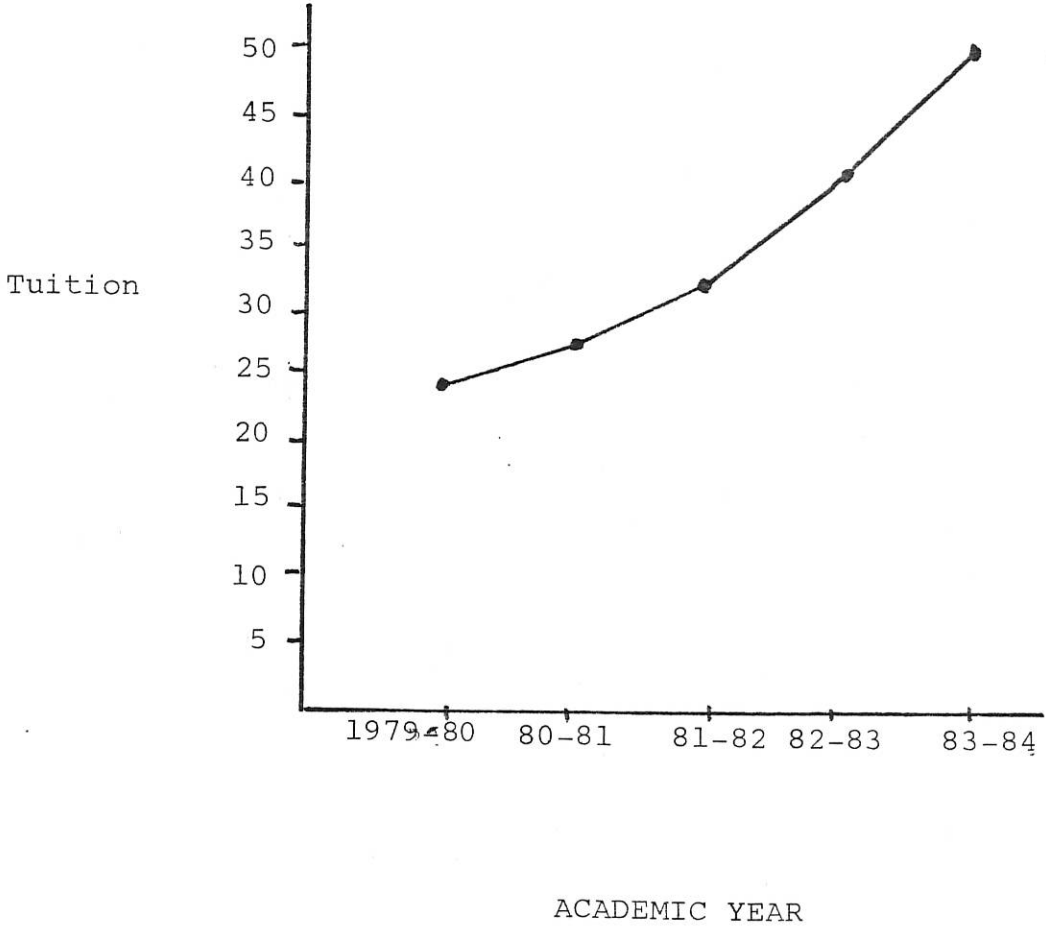
S.B. 508 is the best way to do that.

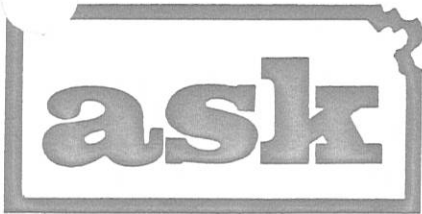
Thank you for your time and attention. I will be glad to answer any questions you might have.

INCREASING FALL ENROLLMENTS AT
WASHBURN UNIVERSITY



INCREASING TUITION AND FEES
AT WASHBURN UNIVERSITY





ASSOCIATED STUDENTS OF KANSAS

1700 College
Topeka, Kansas 66621
(913) 354-1394

Statement_of_Support_for_SB_508

From: Associated Students of Kansas
To: Members of the Senate Ways and Means Committee
Date: February 6, 1984

ASK is pleased to have this opportunity to discuss the funding of Washburn University. At a meeting of our legislative assembly this past fall, students from the six state universities, as well as Washburn, voted to support Washburn's funding request. Although the state schools sometimes disagree with WU's policies, students at each public university, whether state or municipal, share the belief that those public institutions must remain open to all qualified citizens of the state. We are concerned that without additional state support, the cost of attending Washburn may soon be beyond the reach of many students.

With some understandable reluctance, student leaders at the state schools have endorsed the expectation that they contribute 25% of the cost of their education through tuition, even though this has led to a series of sharp tuition increases. Consider, however, that Washburn students now pay 34.2% of the cost of their education. President Green has already stated that without additional state support, tuition could rise as much as \$5 per credit hour next year, or \$75 a semester for a full-time student.

Although students have accepted tuition increases in recent years with

Page 1

Representing the Students of:

Emporia State • Fort Hays State • Kansas State • Pittsburg State • University of Kansas • Washburn University • Wichita State

Att L
2-6-84

understanding in light of the state's financial situation, high tuition must be seen as a growing threat to equal educational opportunity. The truism that anybody who wants to attend college can afford to do so is becoming less and less true, for several reasons.

For one thing, federal financial aid programs have grown little or not at all in the past four years. At the same, tuition and other living costs have risen sharply. This means students must dig deeper into their own pockets to cover these higher costs. Often that means working while attending school. Unfortunately, wages have risen very little, if at all, during the past four years, particularly for the low-paying, part-time jobs most students hold. The only way these students can increase their income is to work more hours.

Working more can, in turn, mean a student must stop going to school full-time. The catch-22 is that less-than-full-time students do not qualify for as much financial aid. This is a particularly serious problem at Washburn, with such a large enrollment of part-time students.

Traditional financial aid programs also tend to provide less assistance to older, non-traditional students, who also make up a high percentage of Washburn's enrollment.

Although Washburn serves students from all over Kansas, it also serves as a community-based institution for the state's third-largest city. Yet it costs far more to attend than community colleges, or even a very comparable institution like Wichita State. ASK is supporting an increase in Washburn funding because it provides a much-needed service to the Capital city and surrounding area; but without that increase, that service may soon be beyond the reach of lower- and

even middle-income citizens. We believe the state must never be in the position of providing enough support to make a college education easily affordable for upper-income Kansans, but not enough to make that same education affordable for the less wealthy.

Thank you for this opportunity to share these concerns with you. We would be happy to answer any questions you might have, now or in the future.

ASC

4805

(a) Except as otherwise provided in subsection (d) or (e), projects requiring a certificate of need before they are undertaken include, and shall be limited to, the following:

(e) In order to facilitate and encourage competition in the health care delivery system and reduction of health care costs, any health facility designed, established, and operated for the purpose of providing ambulatory surgical procedures or any new service offered by a health care facility for the purpose of providing ambulatory surgical procedures shall be exempt from the requirements of obtaining certificates of need pursuant to K.S.A. 65-4801, et. seq., provided that such facility is in a county of not less than 50,000 population.

SENATE BILL NO. _____

Senator Hess

AN ACT relating to certificate of need for health facilities;
concerning ambulatory surgical centers in certain counties;
amending K.S.A. 65-4804 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-4804 is hereby amended to read as follows: 65-4804. A certificate of need may be granted only after an opportunity has been given to the appropriate health systems agency to review the project proposal, in accordance with procedures established in K.S.A. 65-4807 and amendments thereto, and the state agency has determined that: (1) On the basis of evidence in the record with respect to community need as reflected in the state health plan or other criteria specified by the statewide health coordinating council until a state health plan is developed and approved, there is a sufficient need for the proposed project; or (2) the certificate of need is for a project to construct, develop or establish an ambulatory surgical center and the state agency finds that the ambulatory surgical center is to be located in a county with a population of more than 50,000 people.

Sec. 2. K.S.A. 65-4804 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.