Approved: <u>April 18, 1996</u>
Date

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson Dave Kerr at 11:30 a.m. on April 4, 1996 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Alan Conroy, Legislative Research Department
Kathy Porter, Legislative Research Department
Eric Milstead, Legislative Research Department
Laura Howard, Legislative Research Department
Norman Furse, Revisor of Statutes
Michael Corrigan, Revisor of Statutes
Judy Bromich, Administrative Assistant
Ronda Miller, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

A graph representing the latest consensus estimates of receipts in excess of expenditures from FY 95 to FY 97 was distributed to members (<u>Attachment 1</u>).

The Chairman told members that the Senate subcommittee on Hospital Closure had reviewed the House subcommittee's recommendations (<u>Attachment 2</u>) and added that the House subcommittee had made KPERS issues a principle feature of their study. He noted that the Senate subcommittee was apprised of legal problems involved with item 2 which would allow withdrawal of employee and employer contributions plus interest (<u>Attachment 2-2</u>) and rejected that issue. In answer to Senator Rock, the Chairman stated that the subcommittee had based its decision on a letter received from a KPERS attorney who had sought the opinion of outside counsel (<u>Attachment 3</u>). He added that there were different legal opinions in regard to the issue of whether hospital or direct care employees could be treated differently than other state employees who are laid off.

The Chairman reviewed the recommendations of the House subcommittee on Hospital Closure. In discussing item 7 (<u>Attachment 2-4</u>), he stated that the state is expecting a $2 million federal grant which will pay for such things as retraining, counseling and moving expenses if the laid-off employee becomes employed by a different employer.

A summary illustrating the fiscal impact of the House subcommittee's recommendations was distributed to members (<u>Attachment 4</u>).

The Chairman reviewed the Senate subcommittee's report on Hospital Closure (<u>Attachment 5</u>). He informed members that the subcommittee had established goals and tried to target their efforts toward meeting those goals.

In discussing item 1 of the report (<u>Attachment 5-1</u>), the Chairman stated that the subcommittee did not differentiate between direct care and hospital employees, believing that all employees are necessary to provide quality care through the last day of operation. He added that the subcommittee believes that the state will probably capture some federal monies with the recommended payment for accumulated sick leave. In answer to Senator Salisbury, Chairman Kerr stated that calculations were based on December 31, 1997 because that is the final closure date. Senator Rock expressed concern that employees who may have numerous days of accumulated sick leave might choose to take those days while employed and receive full pay which would affect the quality of health care provided to residents.

In reviewing the subcommittee's recommendation regarding health care insurance (item 2 of <u>Attachment 5-2</u>), the Chairman stated that the recommendation provides an incentive for laid-off employees to seek employment. He added that neither the House nor the Senate subcommittees had been advised that their recommendations for payment of health care insurance would disqualify an employee from unemployment insurance.

The Chairman noted that the proposed amendment to the "meet and confer" requirements (item 7, Attachment 5-4) would be a permanent law change.

Chairman Kerr stated that he had not included any legislator whose district includes any part of the counties of Shawnee or Cowley on the subcommittee, and the subcommittee put the same prohibition on the membership of the legislative oversight committee (item 8, Attachment 5-4).

Senator Brady pointed out that the fiscal note for the Senate subcommittee's recommendations totaled $2.9 million (Attachment 5-6) versus the $9.7 million cost associated with the House subcommittee's proposals.

In answer to questions, the Chairman advised members that the House had amended its recommendations into SB 388 which was in a conference committee. He noted that the Senate could have agreed to conference on the bill, but he, in respect to Senator Rock's wishes, brought the issues before the full Committee for consideration.

It was moved by Senator Lawrence and seconded by Senator Morris that the language in **HB 2724** be deleted and the provisions of the subcommittee report be amended into the bill. The motion carried on a voice vote.

Concern was expressed that the proposed change in meet and confer requirements would affect all meet and confer contracts in the state and were not specific to the state hospitals. The revisor stated that K.S.A. 75-4326 is part of the Public Employer-Employee Act and, therefore, the amendment would apply to anyone under that act. Senator Petty noted that she may offer a floor amendment once the issue is clarified by the revisor.

SB 752: State officers and employees salaries and compensation

The Chairman summarized the components of **SB 752** which are the Governor's recommendations for state employee pay:

- -a 2.5% merit pool for 6 months for unclassified employees
- -step increase for classified employees
- -a 2.5% merit pool for 12 months for judges
- -$1.4 million SGF and $2.8 million all funds for longevity

He advised members that it would be his intent to amend **SB 752** into **HB 2724**.

Senator Brady noted that he did not support the Governor's recommendations regarding longevity. Senator Brady moved, Senator Karr seconded, that **SB 752** be amended by deletion of the language which enables the Governor's version of longevity (as opposed to the statutory language regarding longevity) and by the addition of approximately $4.3 million from the State General Fund and $9 million from all funds to make longevity consistent with current statute.

Senator Vancrum stated that he would rather support a cost of living adjustment than longevity if the monies were available. Senator Vancrum offered a substitute motion which was seconded by Senator Burke to amend **SB 752** into **HB 2724** and to send **Sub. 2724** (which would now contain the Senate subcommittee's version of Hospital Closure issues and the provision of **SB 752**) to the Senate floor without recommendation.

Senator Salisbury and Senator Morris stated that they did not support the Governor's recommendation regarding longevity but did support advancing the bill to the floor for debate. Senator Salisbury expressed her support of the plan for employees affected by closure.

The substitute motion carried on a roll call vote. Senator Burke noted that he would propose an amendment on the floor to adopt an NCSL recommendation to provide two sets of statute books for freshman legislators and provide only the updates thereafter.

It was moved by Senator Rock and seconded by Senator Moran that the minutes of the March 28 and 29 meetings be approved. The motion carried on a voice vote.

The Chairman adjourned the meeting at 1:10 P.M. The next meeting is scheduled for April 18, 1996.

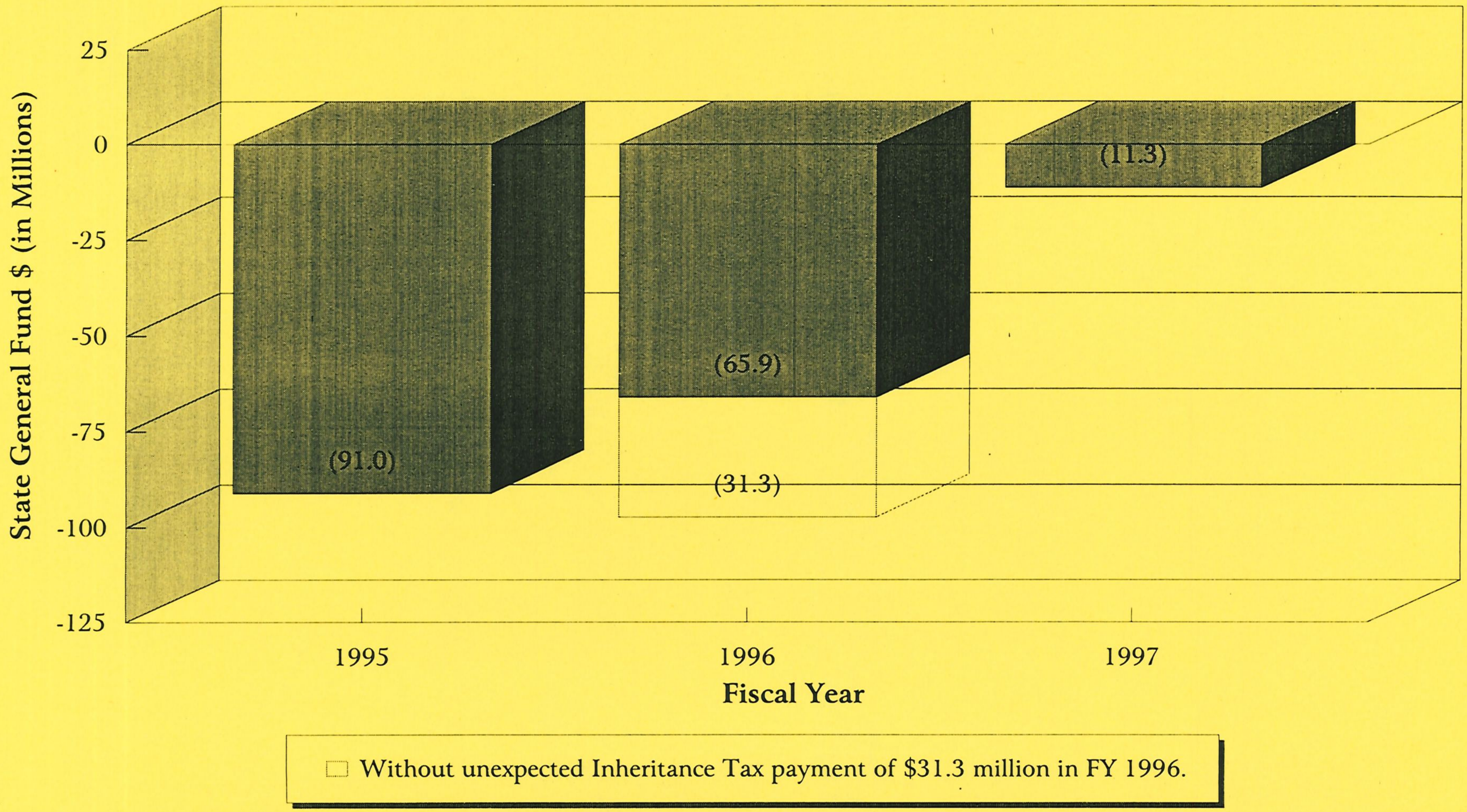
SENATE WAYS AND MEANS COMMITTEE GUEST LIST

DATE: APRIL 4, 1996

NAME	REPRESENTING
Eric Sexton	WSU
Greg Jones	Wichita Federation of Teachers
Bob Elliot	Wichita Federation of Teachers
Don Rezac	S.E.A.K
Jeff Wagaman	DofA
Patty Reece	DPS
Sherrill Little	City of Topeka
Vern Kamp	City of Topeka
Mike Hutfles	SRS

SGF: Receipts in Excess of Expenditures***

FY 1995 - FY 1997 est.



Senate Ways & Means
April 4, 1996
Attachment 1

* FY 96 and FY 97 receipts reflect consensus estimate as of April 2, 1996, as adjusted for Conference Committee action.
** FY 96 and FY 97 expenditures reflect Conference Committee action as of March 29, 1996.

Kansas Legislative Research Department, April 3, 1996

Subcommittee Report

House Appropriations Subcommittee on

State Institution Employees and Closure

Tim Carmody
Representative Tim Carmody
Subcommittee Chairperson

Tom Bradley
Representative Tom Bradley

Melvin Minor
Representative Melvin Minor

Representative Melvin J. Neufeld

Rocky Nichols
Representative Rocky Nichols

Senate Ways & Means
April 4, 1996
Attachment 2

House Appropriations Subcommittee on State Institution Employees and Closure Subcommittee Report

This report is intended to be an overview of the issues that were discussed by the Subcommittee. This report also includes items that were discussed but not accepted by the Subcommittee or do not need to be included because they already exist in current law or come under the authority of the executive branch for implementation. The Subcommittee notes that, in each case in which a fiscal note is stated, the Subcommittee has assumed the most costly scenario: *i.e.*, that all staff at both Topeka State Hospital and Winfield State Hospital will stay until the layoff date and that all staff will choose to take advantage of the available options.

A. KPERS ISSUES RECOMMENDED

1. Waive the requirement that a purchase of prior military service has to be completed within five years prior to retirement. The fiscal note is $0 and two people are affected. The employee must pay the full actuarial cost and the Subcommittee recommends that this policy be changed in substantive law so that the five-year buffer is eliminated on the military buy-back for any state employee.

2. The Subcommittee recommends the introduction of legislation that would allow the withdrawal of the employee contributions, plus interest (allowed under current law) as well as withdrawal of the employer contribution, plus interest. This right would be subject to the following terms and conditions:

   a. Initially, the payout must be a trustee-to-trustee transfer. This would allow transfer into an IRA or other qualified retirement plan.

   b. The option would be available only to a class specified as those who are employed by the state on the date immediately preceding their "layoff date" as that term is defined in statute and regulation.

   c. The option would apply only to employees of the two state institutions affected by closure. The rationale for this is that this is one of the major incentives offered to remain on duty and provide patient care until the layoff date.

   d. This option would be at the discretion of the employee and the employee may choose to remain in KPERS. However, if the employee chooses to exercise this withdrawal option, they must do so within 90 days after the layoff date.

   e. Inclusion of a savings clause to state that if it is later determined by the IRS that this procedure would disqualify either the KPERS plan or the recipient, the state would reimburse KPERS, on an actuarially based method, for any liability.

   f. KPERS would provide a full disclosure to each employee of the consequences of exercising this option including, but not limited to, the relative cost of the present value of staying in the system versus the present value of withdrawing from the system and the possible tax consequences.

   g. Provide independent financial counseling to employees considering this option. This is an authorized use of money obtained through the anticipated Department of Human Resources (DHR) grant.

3. The Subcommittee rejected the following concepts:

   a. Allowing institutional employees or any other laid off employee to retire with 75 points (combination of years of service and age) instead of the currently required 85 points. The Subcommittee was uncomfortable with the precedent that might be set and the limited number of employees that would benefit from such an option. In addition, the state could have to contribute an additional $3.5 million to the KPERS fund.

b. Allowing immediate vesting in KPERS. The fiscal note on this would be $0, but again it would only affect a limited number of employees.

c. Allowing 501(c) charitable organizations to affiliate with KPERS. The Subcommittee was extremely uncomfortable with the uncertainty of the effect allowing affiliation might have on the tax exempt status of the fund.

d. The Subcommittee concluded that the first two of the items it rejected did not focus on the primary objective of these benefits, which is keeping employees on the job until their layoff date, and do not focus on those employees who are necessary to maintain patient care.

4. The following items are in current law and the Subcommittee concludes that no change is necessary, but provides the following for informational purposes:

   a. If laid off employees are later re-employed by the state, they can buy back their prior KPERS service on an actuarially determined basis.

   b. The current outside earnings limit of $11,280 for anyone drawing KPERS retirements would not apply to those who exercise their withdrawal option.

5. The Subcommittee requested that KPERS return with information about the cost of extending the term life insurance option to employees beyond the current 30-day limit after termination. Since the Subcommittee is unsure of the cost of this option, it was not included in this Subcommittee report.

B. PERSONNEL POLICIES AND PROCEDURES

1. Legislatively change personnel policies to grant a rehiring preference for those employees who serve until their layoff date. They would then go into the re-employment pool and would be granted a right of first refusal for any position in the same or a higher pay grade for which they are otherwise qualified. They would only be allowed to exercise their right of first refusal once and the option has be to exercised within 30 months following termination.

2. The state would continue to pay the employer portion of health insurance coverage for 12 months after the layoff date. A continuation would not be dependent upon re-employment. The Subcommittee was informed after it completed its hearings that the employee would then be eligible for 18 months of health coverage under COBRA concurrent with the 12-month period. Therefore, the Subcommittee recommends offering an 18-month "COBRA-like" extension after the 12-month "match" period. The 18-month extension would be employee paid. The conditions of this option are that it applies only to employees at Winfield and Topeka State Hospitals and only if they serve until their layoff date. The fiscal note is approximately $3.1 million annually if all full and part time employees of both institutions would take advantage of it. This would be a cost in FY 1997, FY 1998, and FY 1999, although it would be somewhat unevenly spread across those three years. The Subcommittee notes that receipt of this benefit would not disqualify recipients for unemployment insurance. The employees would also be covered under worker's compensation if they were in a retraining program being operated through the DHR Grant.

3. The Subcommittee recommends that the state pay 50 percent of accumulated sick leave to those hospital employees who remain on the job until the layoff date. The Subcommittee recommends payment of 50 percent of accumulated sick leave. The total cost, all funds, would be approximately $3.4 million (see Attachment A).

As a side note, the payment of accumulated sick leave would be counted for salary purposes towards KPERS retirement but would not be included in the calculation of length of service.

4. The Subcommittee recommends the adoption of House Bill 2784. This bill waives the restriction on persons leaving state employment to go to work for an entity with which the state contracted and when that employee participated in the making of the contract. The bill applies to both classified and unclassified personnel and the Subcommittee was informed that some state contracts prohibit the hiring by the contractor of the state employee negotiating the contract. These contracts would not be affected by this bill. The Subcommittee does recommend that that proposal be modified to apply only to those employees who are laid off and not to employees who are demoted, transferred, or voluntarily terminated.

5. The Subcommittee considered, but does not recommend, any change in regulations regarding "bumping rights." Any change would negatively impact employee morale throughout the ranks of all state employees and would create a personnel system that would border on chaotic.

6. The Subcommittee considered, but did not adopt, any proposal for payment of severance pay. The cost of a full 52 weeks of severance pay is approximately $42 million and 26 weeks would be half that amount, or $21 million. Moreover, if the severance pay were paid out in by-weekly payments, the employee would be disqualified for unemployment insurance. The Subcommittee feels that the unemployment insurance fund would be a more appropriate source of funding rather than the state general fund if an employee were unable to find employment. The Subcommittee would note, however, that the fiscal impact noted above would include the full cost for salaries and wages and all benefits, including health care insurance, for all employees of both hospitals. The fiscal note prepared by the Division of the Budget for this item states that the Department of Social and Rehabilitation Services estimates that slightly more than 70 percent of the current employees would participate in the special compensation. Further, this Subcommittee has made a separate recommendation to fund the employer cost of health insurance coverage for 12 months after the layoff date. Taking these two factors into consideration, a revised fiscal note of approximately $27.2 million for 52 weeks and $13.6 for 26 weeks would result.

7. **Layoff procedures.** The notice of layoff, which is currently required to be given 30 days before the layoff, should be lengthened to 180 days and the Department of Administration should be allowed to give a "global" layoff notice to all the employees in a given unit or institution. The purpose for this would be that the expanded layoff window would open up more options under the dislocated worker grant and would allow employees to begin retraining earlier than 30 days prior to termination.

8. The Subcommittee recommends no change in the policy on vacation leave payout upon separation.

NOTE: The Subcommittee feels that the proposals in this Section B should be in the form of legislation rather than allowing the Department of Administration to amend these procedures administratively. The reason for this is that any administrative change by the Department of Administration would probably be subject to the "meet and confer" requirements of state law.

C. TRANSITION AND RETRAINING

1. The key component of this is the Dislocated Worker Grant which is being applied for by the Department of Human Resources. The grant is anticipated to be a little over $2 million and the funds will be able to be used for the functions outlined in Attachment B. DHR intends to establish career centers at Topeka State Hospital and Winfield State Hospital as soon as the grant money is received. The grant money can also be used to assist in moving expenses.

2. The Subcommittee was presented with information from the Department of Commerce and Housing on the availability of start up programs for small businesses, both in the area of counseling and initial financing.

3. The Subcommittee considered, but did not adopt, proposals to provide tuition waivers or tuition reimbursement for laid off employees.

4. The Subcommittee recommends and supports the provisions in SB 459, which changes the SKILL Program to the IMPACT Program. In addition, the Subcommittee supports H.B. 2905, which presently is in a Senate Committee.

D. MISCELLANEOUS

The Subcommittee was presented with information that the Department of Corrections is studying alternative uses for Topeka State Hospital and Winfield State Hospital. The study is a preliminary one only and the approximate cost of that conversion of facilities is available, but the Subcommittee did not feel that it was within the scope of their review.

0017141.01(3/19/96{2:10PM})

2-6

Attachment A

Estimated Cost of Alternative Sick Leave Payout Proposals

Item	Topeka State Hospital	Winfield State Hospital	Total
Estimated Number of Employees	474	693	1,167
Estimated Cost of Proposed Sick Leave Payout @ 30 Days			
State General Fund @ 40%	603,462	755,637	1,359,099
Other Funds @ 60%	905,193	1,133,455	2,038,648
Total All Funds	1,508,655	1,889,092	3,397,747
Estimated Cost of Proposed Sick Leave Payout @ 60 Days			
State General Fund @ 40%	884,138	1,060,143	1,944,281
Other Funds @ 60%	1,326,207	1,590,214	2,916,421
Total All Funds	2,210,345	2,650,357	4,860,702
Estimated Cost of Proposed Sick Leave Payout @ 50 % Leave Balance			
State General Fund @ 40%	651,446	721,023	1,372,468
Other Funds @ 60%	977,168	1,081,534	2,058,703
Total All Funds	1,628,614	1,802,557	3,431,171
Estimated Cost of Current Annual Leave Payout @ Maximum Accruals for All Employees			
State General Fund @ 40%	545,095	721,583	1,266,678
Other Funds @ 60%	817,643	1,082,374	1,900,017
Total All Funds	1,362,738	1,803,957	3,166,695

Notes:

Currently all employees leaving state service are eligible to receive their accrued balance of annual leave.

Normally, sick leave payments upon retirement would come from the State Leave Reserve Fund which is made up of a FY 1997 assessment of .45% of agencies' total payroll.

The bill would need to provide for this to come from SRS if that is desired.

These estimates assume employees who are <u>eligible</u> to retire receive payment based on these provisions, which may not provide the biggest payment.

Legislation would need to specify which statutes applied.

SUMMARY SHEET OF GRANT FUNCTIONS

Counseling and/or Training

- employment preparation
  - resume writing
  - interviewing skills
  - skills identification
- continuing education opportunities
- strategies for seeking employment
- unemployment information
- benefits summary information

Referral to LIFELINE Employee Assistance Program)

- financial counseling
- emotional counseling
- personal and family counseling
- referrals to local resources for additional help on above

Career Assistance

- job search database
- testing
- counseling
- resume writing
- labor market information

Workshops

- job search
- career assistance
- networking

Training

- on-the-job training
- special training
- training support services

Referral to Community Resources

- legal aid
- financial services
- education services

Attachment B

FEDERAL GRANT
FOR
TOPEKA AND WINFIELD STATE HOSPITAL EMPLOYEES

1. Request special grant dollars be set aside to serve this specific population.

   This would allow us to:

   - Set up career centers on site
   - Staff these centers
   - Provide hardware, software and other types of materials to enhance a job search
   - Provide job development and access Automated Labor Exchange system which lists jobs nationally, regionally and locally
   - Make appropriate referrals to local resources
   - Develop specific training, retraining components
   - Encourage networking and active involvement is the career transition process
   - Counseling - vocational, emotional and financial
   - Providing for a location to continue services off site, after closure of the facility has occurred

2. Rapid Response meetings should be conducted early in the process so that employees are aware of the services available.

   - These are formal meetings, conducted on site, which take about one and one half hours. At these meetings information is provided about training, job search assistance, unemployment benefits and other support services available in the local community. Encouragement and career transition options are provided to laid off employees during these sessions.

3. Services available are:

   - Training, tuition, books and support services
   - On the job training
   - Relocation assistance (Paying for moving to another city)
   - Job Search assistance (Paying for job interviews out of the area)
   - Career assistance centers
   - Job search workshops

   These workshops modules are designed to provide the most current information available to assist individuals with career exploration, job search planning, resume development and interviewing techniques. They are designed to be presented in three to four hours. Each module provides intensive training in job search methods, access to local resources and guidance in finding the right job for the individual participant. Participants may elect to attend some or all of the modules. Handbooks, resource information and resume' completion are included.

- Automated Labor Exchange

  Computerized Job Bank Listing of employer openings at both the national, regional and local level. Information is in a user friendly format and can be accessed on a walk in basis.

- Access to America on Line through the Internet connection.
- Testing - computerized testing of clerical skills
- Vocational counseling
- Resume' preparation software
- Job referral and placement
- Labor market Information
- Executive accounts (employer applications)
- CAREER CENTERS set up on campus:

  State of the art, computerized job seeking information.
  Career exploration
  Resume' preparation
  Interviewing
  Application completion
  Job lead materials
  Library of job seeking information
  Fax machines
  Lazer printers
  Copy machines
  Video players

- Unemployment Insurance Benefits:

  While completing a active job search
  While enrolled in an approved training program

- Referral to other community resources such as:

  Legal aid
  Small Business Development Center
  Mental health services
  Medical services
  Financial counseling services
  Adult Basic Education
  Community colleges
  Technical schools

National Grant Timeline for Topeka and Winfield State Hospitals

Tasks	Date
Complete grant application & mailed out for review	March 22, 1996
Review & comment on grant application	April 5, 1996

- Private Industry Councils(PIC) Winfield and Topeka
- Winfield AFSCME#2777
- Oklahoma SDA PIC
- SRS
- Dept. of Labor Region Seven
- Kansas Dept. of Human Resources

Update grant with comments from reviews	April 12, 1996
Submit grant application:	April 15, 1996
Federal DOL response to grant application:	May 15, 1996
Grant implementation/ estimated start date:	June 1, 1996
Grant completion/ estimated end date:	June 1, 1999

KPERS

Liabilities for Certain Hospitals as of January 1, 1998

	Participants Who Are Better off with: Two Times Employee Contributions	Regular Plan Benefits	Total
Number of Participants	885	235	1,120
Liability under Proposed Legislation	$ 14,803,935	$ 18,548,415	$ 33,352,350
Employee Contributions with Interest	7,401,968	6,145,624	13,547,592
Liability under Current Plan	11,646,822	18,548,415	30,195,237
Net Cost to System	(3,157,113)	0	(3,157,113)

The above liability determinations were calculated based on the participants from the two designated hospitals. It is assumed that participants would receive the greater of two times their employee contributions with interest or the regular pension benefits.

0017189.01(3/20/96{8:32AM})

KPERS

Kansas Public Employees Retirement System

March 25, 1996

Senator Dave Kerr
State Capitol, Room 123 South
Topeka, Kansas

Re: Hospital Closures / Pension Questions

Dear Senator Kerr:

Below are answers to certain questions recently posed to me by Representative Carmody's subcommittee on the question of hospital closures. To answer these questions, which I knew to be complex, and which I had never encountered before in my experience as an in-house attorney for public pension systems (five years in Illinois and two and one-half years in Kansas), I sought outside counsel from two attorneys expert in the field of Internal Revenue Service regulation of qualified pension plans.

First, I consulted with Cal Karlin of Barber, Emerson, Springer, Zinn & Murray in Lawrence, Kansas. Tom Murray of that firm acts as the KPERS Board of Trustees' outside general counsel. Mr. Karlin teaches a course in sections 401(a) through 417 of the Internal Revenue Code (the sections governing plan qualification) at Washburn University School of Law. Mr. Karlin believed that issues surrounding the qualification of governmental plans are sufficiently specialized that we should also seek advice from an attorney experienced in representing large, preferably statewide, governmental plans, specifically relative to IRS plan qualification issues. Thus, we consulted with Mary Beth Braitman, a partner in the firm of Ice, Miller, Donadio & Ryan in Indianapolis, Indiana. Ms. Braitman is an active member of the National Association of Public Pension Attorneys, is a nationally known expert in governmental plan qualification, and represents a number of large, statewide governmental systems, including direct representation in dealings and negotiations with the Internal Revenue Service relative to plan qualification. The combined advice and counsel of these experts is as follows:

(1) Is a rollover or trustee-to-trustee transfer of employer and employee contributions to a plan set up by a 501(c) corporation for laid off KPERS members permitted?

Answer: This is not permitted if the 501(c) corporation has a plan under Internal Revenue Code Section 403(b). There is no statutory authority authorizing a rollover or trustee-to-trustee transfer for a 401(a) plan (such as KPERS) to a 403(b) plan, which is what most tax-exempt organizations would have if they have a plan at all.

Senate Ways & Means
April 4, 1996
Attachment 3

While it would be possible for a small tax-exempt organization to have a 401(a) plan, this is unlikely. It would be unlikely that a small tax-exempt organization would have or want to adopt a defined benefit plan, since this would require continuing funding obligations and the payment of PBGC insurance premiums. While large hospitals may have defined benefit plans, small mental health service providers would be unlikely to have defined benefit plans. As a state plan, KPERS is not subject to the federally required funding and PBGC insurance requirements. In addition, a rollover only works to the extent that a person has a vested benefit immediately payable. A transfer only works if a person's accrued benefit under the old plan is protected under the terms of the new plan. Consequently, if rollovers or transfers were allowed at all, each such transaction would have to be carefully analyzed by KPERS and the outcome would likely be that in some cases no rollover or transfer could be done, in some cases it could be done only if the 501(c)(3) maintained a plan that might not really work for them, and in a few cases a rollover or transfer would work.

(2) Can the retirement benefits of laid off KPERS members be augmented?

Answer: One possibility may be to vest the laid off members with their years of participating service regardless of whether they have attained the minimum years of service required to receive a KPERS benefit. The increased benefit would need to be retained within the KPERS system. This approach would need to be first approved by the IRS, but might be acceptable on the theory that the hospital closures effectively constitute a partial plan termination.

Other methods of augmenting benefits could jeopardize KPERS' tax-exempt status This results primarily from the fact that additional contributions and/or immediate payouts to laid off members would be similar to a defined contribution plan rather than the defined benefit plan approach of KPERS. A defined benefit plan (such as KPERS') is designed to provide a definable monthly benefit at retirement rather than the accumulation of amounts deposited for payout at termination of employment. For this reason, it is important that the approach used be consistent with the defined benefit methodology.

Another issue deals with the IRS nondiscrimination rules. The Internal Revenue Service has been struggling with the nondiscrimination issues for governmental plans and has yet to provide definitive guidance. If different benefit formulas are utilized, KPERS may be put in a difficult situation requiring complex discrimination testing. By treating the layoffs as a partial termination with vesting enhancement, it is believed that additional testing problems may be avoided.

(3) There was an inquiry concerning a prior implementation, when Board of Regents employees were transferred into the TIAA-CREF system and took with them not only their employee contributions but also matching employer contributions. The conclusion is that this

would not be advisable in the current regulatory environment. The issues raised currently regarding transfer from the State's KPERS plan are even more problematic because each new employer of the laid off employees will likely have a different plan (if they even have a plan), and each of those plans will be subject to different rules and procedures than the KPERS plan.

(4) There was an inquiry concerning how early retirement incentives are handled where a plant closes (in the private sector). The answer is that those plans would typically be treated as being terminated and provide full vesting. This is analogous to the suggestion of vesting laid-off hospital employees' years of KPERS service even though the minimum service requirements have not been met.

Please let me know if there are further questions.

Sincerely,

Joan Hancock

Joan Hancock
Attorney

cc: Jack Hawn
Meredith Williams

ESTIMATED FISCAL IMPACT OF 1996 HOUSE SUB. FOR S.B. 388

The following three provisions of 1996 House Sub. for S.B. 388 would have a fiscal impact:

1. Allowing laid off employees to withdraw the employer contribution from KPERS would have a net cost to the KPERS system of $3,157,113. The Subcommittee on State Institution Employees and Closure did not state if this amount would be paid as a lump sum payment from the State General Fund to KPERS, if this amount would be paid through increasing the employer contribution rate, or some other option.

2. Paying the employer portion of health insurance coverage for 12 months after the layoff date would have a fiscal impact of $3.1 million if all full- and part-time employees of both institutions were to take advantage of this. This cost was calculated by the Division of Personnel Services and represents the total annual cost of the employer portion of health insurance for one full year. The Subcommittee stated that this cost could be spread out over FY 1997, FY 1998, and possibly FY 1999, depending upon the dates of the layoffs.

3. Paying 50 percent of the accumulated sick leave to those hospital employees who remain on the job until their layoff date would have a fiscal impact of $3,431,171, again assuming all employees stay until their layoff date. The Subcommittee assumed that, of the total, $1,372,468 (40 percent) would come from the State General Fund and $2,058,703 (60 percent) would come from other funds.

TOTAL COST ALL FUNDS:	$	3,157,113
		3,100,000
		3,431,171
	$	9,688,284

Other than specifying the amounts from the State General Fund and other funds in Item 3, the Subcommittee did not specify the amounts that would be funded from the State General Fund and other funds. If the funding split used in item 3 were applied to all three items, 40 percent of the total cost, or $3,875,314, would come from the State General Fund and $5,812,970 would come from other funds.

0017584.01(4/4/96{9:10AM})

Senate Ways & Means
April 4, 1996
attachment 4

Senate Subcommittee Recommendations on State Hospital Closure Issues

The following recommendations on state hospital closure issues are based on the following goals:

- To treat all laid off employees fairly, whether those employees are laid off from a state hospital or another state agency.
- To provide an incentive to direct care and other hospital workers to provide quality care and a quality hospital environment until the workers' layoff date.
- To assist all laid off employees in obtaining employment, either with the state or in the private sector.
- To avoid setting precedents, the probable long-term consequences of which are not acceptable or cannot be foreseen.
- To avoid the unintentional creation of disincentives to seeking re-employment after layoff.

The Senate Subcommittee makes the following recommendations:

1. **Payment for Accumulated Sick Leave – All Employees of Topeka State Hospital and Winfield State Hospital and Training Center.** All employees of these two institutions who are not eligible to retire and who remain on the job until their layoff date would receive payment for 20 percent of their accumulated sick leave. Those employees who are eligible for retirement under current law would have the option of accepting payment for accumulated sick leave under current law or accepting this 20 percent payment proposal, depending upon which of the two options is more beneficial to the individual employee.

   Rationale for the Recommendation: The state is vulnerable to the early departure of state hospital employees, including those employees who provide direct care to hospital clients and other employees whose work contributes to the overall operation of the hospitals. It is appropriate to offer a special incentive to those who stay until the layoff date and provide quality care.

   Fiscal Impact: If all current employees of both institutions remain on the job until their layoff date and do not use another sick leave day before December 31, 1997, the estimated fiscal impact would be $1,372,468. The Subcommittee notes that this represents the maximum total cost, and that the actual cost would, in all probability, be significantly less.

The Subcommittee recommends that all payments pursuant to this recommendation be made from the State Leave Payment Reserve Fund. This would require an amendment to current law, which provides that the State Leave Payment Reserve Fund is liable for compensation payments for accumulated sick and vacation leave upon retirement from state service (K.S.A. 1995 Supp. 75-5542). Current law requires the Secretary of Administration to determine annually the rate of the leave payment reserve assessment for all state agencies. The Subcommittee recommends that the revised FY 1997 rate and the recommended FY 1998 rate be set to reflect this recommendation.

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2. **Health Care Insurance – All Employees of Topeka State Hospital and Winfield State Hospital and Training Center.** Those employees of Topeka State Hospital and Winfield State Hospital and Training Center who stay until their layoff date would have health insurance coverage provided in the following manner:

- An account would be established on the employee's last day of service. An amount equal to the full cost of the employer contribution for full-time single member health care insurance for six months ($1,246 in FY 1997) would be deposited in each employee's account.

- The state would use money from this account to continue to pay the employer portion of health care insurance until notified by the employee that they are re-employed or otherwise covered by health care insurance. **At this time, the employee would receive payment for any remaining balance in the account.**

- This benefit runs concurrently with the first six months of the 18-month COBRA benefit.

- This benefit is available to all Topeka State Hospital and Winfield State Hospital and Training Center employees, including those who are later re-employed by the state or other employers.

Rationale for Recommendation: This benefit is proposed for state hospital employees because the state needs something special from those employees who are providing both direct and indirect care to state hospital clients.

Fiscal Impact: If all 1,167 current employees of the two hospitals stay until the layoff date, the fiscal impact would be $1,454,082 from all funds, using the FY 1997 employer contribution rate. As with item no. 1, this represents the maximum total cost, and the actual cost could be less.

3. **Moving Expenses -- All Laid Off State Employees.** State agencies that subsequently hire employees who are laid off from any state job or employees who are transferred in lieu of layoff may pay actual moving expenses of up to $2,000 per family for those employees, if the employee's new official duty station is more than 25 miles from the employee's old duty station. Moving expenses may include, but are not limited to, the cost of packing and transporting household goods and personal effects, subsistence payments while en route from the old residence to the new residence, subsistence expenses while occupying temporary quarters in the new location, and the expenses of a premove trip to look for a new residence.

The Subcommittee intends that any state agencies paying moving expenses be reimbursed through a supplemental appropriation during the 1997 and 1998 Legislative Sessions. The Subcommittee does not intend that state agencies be penalized financially for providing this benefit to employees or that this benefit act as a disincentive to hiring laid off employees or allowing employees to transfer in lieu of layoff.

Rationale for Recommendation: The state wants to retain reliable employees whenever possible. The Department of Human Resources is applying for a federal grant to assist workers laid off from these two hospitals. While the anticipated federal grant would allow paying the moving expenses of those employees who obtain a job with a new employer, the state is considered to be one employer, regardless of the agency and location of the job, and the grant would not pay moving expenses for those employees who take another state job.

Fiscal Impact: Because of the highly speculative nature of this item, the Subcommittee declines to state a fiscal impact for this item, but it is thought to be modest.

4. **Rehiring Preference for All Laid Off Employees.** All employees of any state agency who serve until their layoff date would receive a rehiring preference. These employees would be placed into a re-employment pool and would be granted a right of first refusal for any position in the same or a lower pay grade for which they are otherwise qualified. The right of first refusal may be exercised one time within the 18 months immediately following termination. Any laid off employees who subsequently accept re-employment with the state would forfeit the right of first refusal, regardless of the pay grade of the new job. If more than one laid off employee wishes to exercise the right of first refusal for the same position, the agency may select the employee based on the applicant's interview and skills inventory.

   Laid off employees would be assured an interview for any job in the same or a higher pay grade for which they are otherwise qualified. However, no state agency would be required to interview more than seven applicants for any one position.

   Subject to the approval of the Secretary of Social and Rehabilitation Services (SRS), SRS is to hold open all unfilled FTE positions that might be filled by laid off hospital employees. Hospital employees would be allowed to transfer to open jobs that are in the same pay grade or below the jobs from which the employees are laid off or transferred. The Subcommittee was informed that SRS is currently holding jobs open for this purpose and that it intends to continue this practice to the extent possible.

   Rationale for Recommendation: The state should try to retain reliable employees whenever possible. However, it is not good for either the state or the employee to extend the right of first refusal for a lengthy period of time. If state employment is not possible within a reasonable period of time, employees should seek employment elsewhere.

   The Subcommittee concludes that this item has no fiscal impact.

5. **Notice of Layoff.** Currently, the notice of layoff is required to be given at least 30 days before the layoff date. The Subcommittee recommends that employees be given up to 180 days of notice whenever possible, and that the Department of Administration be allowed to give a "global" notice of layoff to all employees in a given unit or institution. Under the terms of the anticipated federal grant, tuition and retraining expenses may be paid as early as 180 days before the layoff date. This recommendation would allow employees to take early advantage of education and retraining benefits.

   The Subcommittee concludes that this item has no fiscal impact.

6. **KPERS Military Service Buy-Back.** Current law requires that KPERS members who buy back military service years must complete the purchase five years prior to retirement. The Subcommittee was informed that two state hospital employees would not meet the five year requirement before the anticipated hospital closure date. The Subcommittee recommends that, if this issue is to be addressed, it should be addressed in a KPERS Omnibus bill.

   KPERS states that this recommendation has no fiscal impact.

7. **Meet and Confer Requirements.** The Subcommittee recommends an amendment to K.S.A. 75-4326, which lists the existing rights of a public employer that are not circumscribed or modified by the provisions of the Kansas Public Employer-Employee Relations Act. The recommended amendment would provide that a public employer has a right to "adopt, revoke or amend personnel regulations pursuant to K.S.A. 77-416 and amendments thereto and such regulations shall not be deemed mandatory subjects for meet and confer purposes."

   Rationale for Recommendation: Some of the actions recommended by this subcommittee which are intended to benefit state employees could not be implemented in time if they are subject to the meet and confer process.

8. **Legislative Oversight Committee on Hospital Closure.** Establish statutorily a legislative oversight committee to monitor state hospital closure and related activities.

Composition of the Committee

- 6 members, appointed as follows: two by the President of the Senate; one by the Minority Leader of the Senate; two by the Speaker of the House of Representatives; and one by the Minority Leader of the House of Representatives.
- No legislator shall serve on the oversight committee whose district includes any part of the counties of Shawnee or Cowley.
- Chairing of the Committee shall alternate between a majority member from the House of Representatives and a majority member from the Senate, with the House having the chair for the first year of the oversight committee's existence.

Charge to the Committee

- Monitor privatization efforts at the state hospitals, the closure of hospital beds, the downsizing of staff, the closure of Topeka state hospital and Winfield state hospital, the funding of community services, and the availability of adequate community services.
- Also oversee and monitor an evaluation component (see below) which assesses the success of the closure of the two institutions, with particular emphasis on how the process might be improved if the additional closure efforts are undertaken in future years.

Evaluation Component

Authorize the Legislative Oversight Committee on Hospital Closure to recommend a contractor (with approval of the Legislative Coordinating Council) for evaluation of hospital closure, including, but not limited to, evaluation of the following components:

(1) Tracking of community placements and hospital transfers;

(2) Appropriateness of placements and quality of community services;

(3) Change in capabilities of those placed in the community and those placed in other hospitals;

(4) Consumer, parental and guardianship knowledge of available options prior to placements;

(5) Impact on parental or guardian opinions regarding closure;

(6) Change in community attitudes towards hospital closure and persons with developmental disabilities or severe and persistent mental illness; and

(7) Identification of elements of the closure process which are successful, and the elements which are unsuccessful, including recommendations on how the process might be improved

The contractor would be expected to attend and provide reports and updates to the Legislative Oversight Committee at its regular meetings.

The Subcommittee was informed that the Board of the Kansas Planning Council on Developmental Disabilities has recommended allocation of $30,000 in FY 1997 for a partial grant to evaluate the closure process, and the Council has also indicated its interest in managing the request for proposal process. The Subcommittee believes the Planning Council is an appropriate entity to manage the request for proposal process and recommends that the Legislative Oversight Committee work with the Planning Council in developing and reviewing a request for proposal, and in the selection of a contractor. Further, the Subcommittee recommends that the 1996 Legislature, during the Omnibus Session, appropriate $30,000 from the State General Fund to be used along with the $30,000 dedicated by the Planning Council for first year funding to contract for evaluation of the closure process. The Subcommittee expects that a lesser amount of funding will be required in the subsequent two years to continue contracting for closure evaluation.

Time Periods and Reporting

- The Oversight Committee would begin on July 1, 1996 and terminate on December 31, 1998.
- The Committee is directed to prepare interim reports of its findings and recommendations which shall be provided to the Legislature on or before the first day of the 1997 Session and the 1998 Session, with a final report of its findings and recommendations on or before the first day of the 1999 Session.
- The Committee is further directed to prepare a separate report of how the process and activities surrounding closure might be improved, and in particular, recommendations for improvements in the process in the event that additional closures of similar facilities occur in future years. Interim progress reports regarding needed improvements in the process should be presented separately on or before the first day of the 1997 Session and the 1998 Session, with a final report on or before the first day of the 1999 Session.

FISCAL IMPACT SUMMARY – ALL FUNDS

20 Percent Sick Leave Payout (State Leave Payment Reserve Fund)	$ 1,372,468
Six-Month Health Insurance Coverage Accounts (SGF, federal funds, and special revenue funds)	1,454,082
Evaluation of Closure Process ($30,000 federal funds, $30,000 SGF)	60,000
TOTAL	**$ 2,886,550**

Dave Kerr

Senator Dave Kerr
Subcommittee Chair

Stephen R. Morris

Senator Stephen R. Morris

Bill Brady

Senator Bill Brady

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