

Approved: 4-10-97  
Date

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairperson Phil Kline at 12:30 p.m. on March 27, 1997 in Room 514-S of the Capitol.

All members were present except:

Committee staff present: Julian Efird, Stuart Little, Legislative Research Department;  
Jim Wilson, Gordon Self, Revisor of Statutes Office;  
Marcia Ayres, Appropriations Secretary; Helen Abramson, Administrative Aide

Conferees appearing before the committee: Ms. Barb Hinton, Legislative Post Audit  
Ms. Trish Pfannenstiel, Legislative Post Audit  
Mr. Jeff Wagaman, Department of Administration  
Mr. Bernard Heffernon, Aetna Investment Services, Inc.  
Ms. Bobbi Mariani, Division of Personnel

Others attending: See attached list

Letters were distributed regarding **SB 125** heard yesterday. The Lincoln County Board of County Commissioners and the Leavenworth Board of County Commissioners urged adoption of **SB 125** as amended while the Thomas County Commissioners wrote in opposition to **SB 125**.

Representative Toplikar and Representative Pottorff reviewed the subcommittee report for **SB 11** on retirement and disability issues for the KPERS budget and issues which includes the bills and other proposals recommended. (Attachment 1)

Discussion followed and Representative Edmonds requested the minutes reflect that the intent of the committee was for the retirees to pay the cost of prior service claims and not the KPERS fund or the employers. The Chair agreed that was a unanimous condition of the subcommittee.

A motion was made by Representative McKechnie, seconded by Representative Weber, to amend the subcommittee report for SB 11 by allowing legislators the option to join the state's 8% deferred compensation plan. Discussion followed. A substitute motion was made by Representative Edmonds, seconded by Representative Pottorff, to defer taking action on the 8% deferred compensation plan and refer the proposal to the Joint Committee on Pensions, Investments, and Benefits for further study during the interim. Discussion followed. The substitute motion failed. Continued discussion. The original motion to further amend the subcommittee report for SB 11 carried. Representative Edmonds recorded as voting no.

Continued questions and discussion followed regarding additional KPERS bills.

A motion was made by Representative Pottorff, seconded by Representative Nichols, to adopt the subcommittee report for SB 11 as amended. The motion carried.

The meeting recessed at 1:30 p.m. until adjournment from the House or announcement by the Chairperson.

The meeting reconvened at 3:50 p.m. Written testimony from Senator Lana Oleen, vice chair of the Legislative Post Audit Committee, regarding **SB 11, 14, 15, and 16** was distributed. (Attachment 2)

**Hearing on SB 16 - Repeal K.S.A. 1996 Supp. 74-2137 relating to Kansas highway patrol motor vehicle program audit**

**Ms. Hinton.** Barb Hinton, legislative post auditor, gave background information on **SB 16**. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS, Room 514-S Statehouse, at 1:30 P.M. on March 27, 1997.

There being no questions, the hearing was closed.

**Hearing on SB 14 - KPERS deferred compensation program, oversight committee**

**Ms. Pfannenstiel.** Trish Pfannenstiel, senior auditor with the Legislative Division of Post Audit, gave background information and explained **SB 14**. (Attachment 4)

**Mr. Wagaman.** Jeff Wagaman, Deputy Secretary of the Department of Administration, testified in support of **SB 14**. He introduced the manager of compensation and benefits who was present to join in answering questions. Mr. Wagaman offered a friendly amendment that would further clarify Lines 32 and 33 to ensure better clarification of the law and incorporate language to ensure the deferred compensation program monies are protected. (Attachment 5)

**Representative Flora.** Representative Vaughn Flora appeared in support of **SB 14** and offered an amendment that would require the director to enter into a contract with one or more additional approved providers to provide additional options for benefits under the deferred compensation plan to state employees. (Attachment 6)

**Mr. Heffernon.** Bernie Heffernon, district manager for Aetna Investment Services, Inc., asked to speak in regard to **SB 14**. He clarified that **SB 14** was written to reinstate an oversight committee in the deferred compensation program as a result of the post audit last summer. He also clarified that the surrounding states who have multiple investment providers in their deferred compensation programs also have one administrator of the plan. He stated that the national average for deferred compensation participation rates is about 18%, but Kansas has a 50 percent participation rate which he feels is due to the service they have provided with the program.

In response to legislators not having much information on the plan, he reminded the members that Aetna representatives have been in the south lounge for two hours every morning to answer questions of state employees. He reviewed the investment options and outside providers that Aetna does business with and stressed that the one-administrator plan is less confusing in the long run.

After questions of the conferees, the hearing was closed.

**Hearing on SB 15 - Kansas life and health insurance guaranty association act, fixed-return accounts of state deferred compensation program**

**Ms. Pfannenstiel.** Trish Pfannenstiel, senior auditor with Legislative Post Audit, gave background information and explained **SB 15**. (Attachment 7)

**Ms. Mariani.** Bobbi Mariani, assistant director of the division of personnel services, appeared in support of **SB 15** because the proposed language would protect the value of fixed accounts by ensuring that these accounts are protected by the Guaranty Association in the event of insolvency. (Attachment 8)

There being no questions, the hearing was closed.

A motion was made by Representative Kejr, seconded by Representative McKechnie, to introduce a bill abolishing the Kansas Sentencing Commission. The motion carried.

The meeting adjourned at approximately 4:45 p.m.

The next meeting is scheduled for March 31, 1997.



**SUBCOMMITTEE REPORT #2 ON RETIREMENT AND DISABILITY ISSUES**

**Subcommittee on KPERS Budget and Issues  
House Committee on Appropriations**

**March 26, 1997**

  
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**Representative Jo Ann Pottorff, Chairperson**

  
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**Representative Phil Kline**

  
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**Representative Rocky Nichols**

  
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**Representative Joe Shriver**

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## SUBCOMMITTEE REPORT NO. 2 ON RETIREMENT AND DISABILITY ISSUES

### House Committee on Appropriations Subcommittee on KPERS Issues

March 27, 1997

The following items include the bills and other proposals that have been recommended by the House Subcommittee, either originally as part of proposed legislation or as additional provisions added by the House Subcommittee at its meeting of March 25, 1997, noted below:

**1. *The House Subcommittee recommends that S.B. 11 be amended to include its current subject matter and the provisions described in items 2, 3, 4, and 5 below.***

*S.B. 11:* Introduced by the Legislative Post Audit Committee, the supplemental note is included as Attachment 1 describing the bill as recommended by the Senate Committee on Ways and Means. The bill would change the cycle for KPERS performance audits from annual to at least once every three years and combine the performance topics with future financial-compliance audits. The provisions in the bill would be retained by the Subcommittee recommendation.

**2. *The House Subcommittee recommends that H.B. 2238, as amended by the House Appropriations Committee, be amended into S.B. 11.***

*H.B. 2238:* Introduced by the Joint Committee on Pensions, Investments, and Benefits, the bill's provisions would address many general employer and employee benefit items. The supplemental note is included as Attachment 2 describing the bill as amended by the House Appropriations Committee. The bill is currently on General Orders in the House. All provisions of the bill would be retained by the Subcommittee recommendation.

**3. *The House Subcommittee recommends that H.B. 2240, as amended by the House Subcommittee, be amended into S.B. 11.***

*H.B. 2240:* Introduced by the Joint Committee on Pensions, Investments, and Benefits, this bill pertains to issues related to disability benefits. The supplemental note is included as Attachment 3 describing the bill as amended by the House Appropriations Committee. The bill is currently on General Orders in the House. All provisions of the bill would be retained by the Subcommittee recommendation.

**4. The House Subcommittee recommends the following provisions in H.B. 2541 be added to S.B. 11.**

*H.B. 2541:* Introduced by the House Appropriations Committee upon recommendation of the Subcommittee on KPERS Issues, the bill would increase the minimum disability benefit from 25 to 50 percent payable under the Judges Retirement System. The KPERS actuary indicates because past incidences of disability are so few for this group and the size of the group is so small, that the best assumption is to assume there will be no disabilities and therefore no fiscal impact of this change in benefit level. Therefore, no increase in the state's contribution rate is required at this time. The KPERS actuary cautions that if members become eligible for disability benefits, then there could be an actuarial impact since benefits would be paid out the retirement funds. There is no actuarial reserve for disability payments in the Judges Retirement System that would be comparable to the reserve for the regular KPERS death and disability benefit program.

**5. The House Subcommittee recommends that the following item be included in S.B. 11.**

*Uniform Purchases of Nonparticipating Service:* The Subcommittee revisited this issue that was previously addressed by the full Committee and subsequently stricken from H.B. 2238 as amended. The Subcommittee points out one provision that was retained in H.B. 2238 as amended would allow District Magistrate Judges serving prior to June 30, 1987, who elected to purchase service under the Kansas Retirement System for Judges, to buy an additional 1.5 percent in order for the first ten years of service to be credited at 5.0 percent of final average salary rather than 3.5 percent under current law. In keeping with the legislative philosophy that members rather than employers, the state, or KPERS should pay or absorb any liability, any actuarial cost for purchasing the additional 1.5 percent multiplier for service credit is to be paid by the employee. This change would allow District Magistrate Judges to obtain the same formula for computing retirement benefits as other judges and justices.

The Subcommittee presents the following table that shows how current law treats different KPERS members relative to purchasing service credit and the multipliers valued at either 1.00 or 1.75 percent. All service credit purchases are mandated at actuarial cost in order that the employee pays the full cost, and none of the cost is paid by the state, the employer, or KPERS pursuant to current legislative policy. The matrix shows current state policy in regard to acquiring service credit where the individual KPERS member pays the actuarial cost for purchasing past service after working for a non-participating employer, either in Kansas or somewhere out-of-state. Proposed changes included in 1997 legislation as introduced are shown in italics.

Type of Service	Service Multiplier Of 1.00%	Service Multiplier Of 1.75%
In-State	ESU Memorial Union Employment <i>Leavenworth City-County Health Dept. (H.B. 2407); Nonfederal Public (H.B. 2238)</i>	Military & U.S. Public Health Service; Regents Unclassified Service; Legislators with School Board Service
Out-of-State	Nonfederal Public Employment; Peace Corps; School-Related	Military & U.S. Public Health Service <i>School-Related (H.B. 2517)</i>

The Subcommittee recommends that current law be simplified and amended to allow all KPERS members to purchase service credit based on the 1.75 percent multiplier and to permit any KPERS members who previously bought service credit at 1.00 percent to purchase the additional 0.75 percent of service credit. This Subcommittee recommendation addresses all groups of KPERS active employees, including the groups identified in bills introduced this Session: H.B. 2238 (in-state nonfederal public employees), H.B. 2407 (members employed by the Leavenworth City-County Health Department prior to 1985), and H.B. 2517 (out-of-state school-related employment).

**6. The House Subcommittee recommends the following report and studies be undertaken by the appropriate entities named below.**

- a. Request the Secretary of Administration to report to this Subcommittee prior to Omnibus regarding the possibility of establishing an optional disability benefit program to cover the 180-day waiting period before KPERS disability benefits become available to state employees. The Subcommittee would be interested in learning if the Health Care Benefits Commission could establish a program or if current law would need to be amended to authorize the Commission to develop a program that would allow state employees to purchase, at their own expense, supplemental disability coverage.
- b. Request the Joint Committee on Pensions, Investments and Benefits to study the issue of requiring public employees to retire under all systems for which they have service credit in order to receive retirement benefits. The Subcommittee has learned of instances involving KP&F members who are working for KPERS participating employers and have encountered a problem relative to this provision of having to retire under all systems. This provision was enacted by the Legislative in 1994 in order to address perceived abuses in similar matters.
- c. Reiterate the recommendation previously approved by the Committee that would request the Joint Pensions Committee to study the issue of purchasing service credit in order to allow any groups or situations not addressed in this legislation to be heard, or if this proposal is not passed by the 1997 Legislature, for an interim study to provide an opportunity for recommendations to be developed for the 1998 Legislature.

SESSION OF 1997

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 11**

As Recommended by Senate Committee on  
Ways and Means

**Brief\***

S.B. 11 would eliminate the statutory requirement that a separate performance audit of the Kansas Public Employees Retirement System (KPERS) be conducted each year. The bill would require that at least once every three years one or more performance audit subjects be included as part of the annual financial-compliance audit. Current law requires that a financial-compliance audit be conducted every year.

**Background**

The bill was recommended by the Legislative Post Audit Committee in order to reduce the audit requirements related to KPERS. Under current law, an annual financial-compliance audit is conducted by an accounting firm under contract with the Legislative Division of Post Audit. In addition, Post Audit staff have undertaken separate performance audits on an annual basis as required by current law. The Legislative Post Auditor appeared in support of the bill, noting that future performance audit work would be contracted to the same firm doing the annual financial-compliance audit.

No fiscal note was available from the Division of the Budget at the time of the hearing for this bill. KPERS has budgeted \$34,800 in FY 1997 and FY 1998 to pay for financial-compliance audits. The Legislative Division of Post Audit advised KPERS that passage of this legislation could add between \$10,000 and \$15,000 to the cost if performance auditing were undertaken as part of the contractor's work.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.ink.org/public/legislative/fulltext-bill.html>.

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SESSION OF 1997

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2238**

As Amended by House Committee on  
Appropriations

**Brief\***

H.B. 2238 as amended would address many general public employer and employee retirement benefit items. Many provisions originally were requested by the Kansas Public Employees Retirement System's (KPERS) Board of Trustees and also recommended by the Joint Committee on Pensions, Investments, and Benefits following its 1996 interim studies. The provisions included in the bill would:

1. **Require Separate Employer Contribution Rates for New KPERS Participating Employers.** Require new participating employers to pay their own prior service liability rather than the current practice of having the System as a whole absorb the new, additional liability.
2. **Make Employers Pay Member Arrearage.** Current law places the burden on employees if the employer fails to comply with notifying KPERS when eligibility occurs. Since employers have an obligation to continually monitor the eligibility status of their employees, this provision would shift responsibility from employee to employer for payment of arrearage when an eligible employee is not enrolled when first eligible. This change would not be applicable to the first year of service for those employees who are ineligible for first-day coverage.
3. **Raise Post-Retirement Earnings Limits and Require Employer Reporting on Retirants Exceeding Limit.** The bill as introduced contained a new reporting requirement. The Committee amended this section to incorporate the subject matter in H.B. 2430 which raises limits to \$13,500. In addition, an

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amendment clarifies that both KPERS and KP&F members would be covered by these provisions. A multiyear schedule to conform with federal Social Security graduated limits in P.L. 104-121 also was added as follows: 1997, \$13,500; 1998, \$14,500; 1999, \$15,500; 2000, \$17,000; 2001, \$25,000; and 2002, \$30,000. Employers are not currently required to report those retired members they have reemployed who earn in excess of the statutory earnings limitation. If the statutory maximum is exceeded, current law requires that the retired member's benefits be suspended for the remainder of that calendar year. The new reporting requirement is intended to allow KPERS to monitor those earning more than the limit in the future.

4. **Suspend Retirement Benefits for Retired Judges Elected or Appointed to a Judgeship.** Current law permits a retired judge who is reelected or reappointed after an initial retirement from the bench to continue to draw full retirement benefits and a full salary while accruing additional service credit and future benefits. The new provision would eliminate the possibility of drawing retirement benefits under these circumstances by suspending payments until a judge stops working.
5. **Reduce Eligibility for KSRS Retirement Benefits to Ten Years.** Current law provides that a school employee must have worked 12 years prior to 1938 to receive a benefit under the old Kansas School Retirement System. The change would reduce the vesting period to ten years which corresponds with the vesting requirement under KPERS School. There would be a negligible actuarial impact as most of these individuals would be aged 90 or older.
6. **Change Purchase of Withdrawn Service by Elected Officials to the Actuarial Rate.** This change would bring these purchases by public officials such as legislators in line with all other service credit purchases authorized for other KPERS members who must purchase service credit at actuarial rates.
7. **Allow KPERS Board To Appoint Benefit Appeal Hearing Officers.** Authorize KPERS Board to appoint and compensate someone other than a Board member or a KPERS employee as a hearing officer.

8. **Address Abuse of Inflating Final Average Salary.** Require KPERS participating employers to pay any actuarial liability incurred when reporting termination pay that increases a member's final average salary by 15.0 percent or more when computing retirement benefits.
9. **Delete Provision that Would Permit Purchases of In-State Public, Nonfederal Service.** The Committee strikes this provision from the bill as introduced in order to have the Joint Committee on Pensions, Investments, and Benefits conduct a comprehensive study of the groups and types of service credit purchases currently allowed by law, and review the groups that would like to purchase credit. Other pending bills are noted that provide different multipliers for service credit purchases (H.B. 2407 and H.B. 2517).
10. **Increase Certain Judge's Multiplier.** This provision incorporates H.B. 2339 to require District Magistrate Judges serving prior to June 30, 1987, who elected to purchase that service under the Kansas Retirement System for Judges, to have the first ten years of service credited at 5.0 percent. Any actuarial cost to purchase this additional 1.5 percent shall be paid by the employee in order to increase from 3.5 to 5.0 percent the value of the purchased service credit.
11. **Technical Amendments in S.B. 154.** The bill was introduced by the Joint Committee on Pensions, Investments, and Benefits. These provisions are considered technical clean up amendments to current law and were requested by the KPERS Board of Trustees. The provisions would:
  - a. **Provide survivor benefits upon the death of disabled correctional officers.** Disabled correctional employees were intended to have the same survivor provisions as disabled Tier I KP&F members. The appropriate language was never included in prior legislation.
  - b. **Clarify prior service.** Allow a member to receive credit for broken periods of prior service if employed on March 15 of the year preceding the participating employer's entry date.

- c. **Clarify definition of a member.** Expand definition to include inactive, nonvested members in the five-year protection period.
  - d. **Add separate definitions for "beneficiary" and "payments to a beneficiary."** Current definition commingles how benefits are to be paid with the definition of who is to be paid.
  - e. **Allow members to name different beneficiary for life insurance.** Under current law the named beneficiary is the beneficiary for all benefits. This change would allow members to name different beneficiaries for life insurance benefits than for other benefits.
  - f. **Allow "year of service" purchase at 4.0 percent.** Allow employees who had to wait a year to become a member to purchase this year within 12 months at 4.0 percent of compensation.
  - g. **Define compensation as related to the IRS code.** This would allow the Retirement System to more specifically define KPERS' compensation as the IRS code evolves.
  - h. **Allow certain benefits to be paid under the Uniform Transfer to Minors Act.** There are currently no provisions to pay benefits for minors to anyone other than a conservator.
  - i. **Provide that U.S. public health service, as included in the definition of military service, only includes the commissioned corps.** This change would correct 1994 legislation and narrow current law to cover only the commissioned corps.
  - j. **Remove outdated age 70 requirement from statute.** Delete outdated language relating to purchases of forfeited service by members aged 70 or older.
12. **Correct Statutory Language about Calculation of Judges' Retirement Benefits.** Current law needs to be corrected in order for the correct calculation to be in statute. KPERS has

been making the correct calculation. This item was requested by the Board of Trustees.

13. **Unclassify KPERS Deputy Secretary.** The Executive Secretary indicates that other key positions at KPERS have been unclassified in recent years and that the Deputy Secretary position, which is currently in the classified service, should be placed in the same category as other senior KPERS staff.

### **Background**

A House Appropriations Subcommittee on KPERS retirement and disability issues conducted a review of these matters and held a public hearing on the different legislative proposals. Other conferees addressed issues not contained in specific legislation. The Subcommittee recommended items to be included in H.B. 2238 as amended and the House Appropriations Committee adopted the Subcommittee report for these amendments contained in the Committee report on H.B. 2238.

The Division of the Budget indicates that H.B. 2238 as introduced, according to KPERS, would have no administrative or actuarial cost ramifications. KPERS reports to the House Subcommittee indicate \$15,000 of additional expenses are possible in FY 1998 as a result of using hearing officers for benefit appeals, depending on the number of hearings. For provisions of S.B. 154 incorporated, the KPERS indicates the impact would be \$95,900 from the KPERS Fund. The costs all relate to the designation of different beneficiaries: \$7,500 for printing of new beneficiary forms and \$88,400 for necessary computer programming adjustments. In addition, KPERS indicates S.B. 154 would have no actuarial cost ramifications.

SESSION OF 1997

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2240**

As Amended by House Committee on Appropriations

**Brief\***

H.B. 2240 as amended would amend provisions pertaining to the Kansas Public Employees Retirement System's (KPERS) disability benefits programs. The bill would:

1. **Provide Authority to Require Application for and Offset of Estimated Social Security Disability Payments During Pendency of Application and Appeal Process.** Under current law, KPERS disability benefits are offset by Social Security disability payments. Current practice implements an estimated offset during the pendency of the Social Security application and appeal process. This change provides statutory authority for current practice. The change also requires application for Social Security benefits. The provisions also were applied to KP&F members by Committee amendment.
2. **Provide Total Offset for Workers Compensation.** Under current law, KPERS disability benefits are reduced by a 50 percent offset for workers compensation. When coupled with the 66.67 percent benefit paid under KPERS, there is a potential for significantly greater benefits than are paid under other statewide disability benefit programs. This change would authorize a 100 percent offset for members of KPERS if they also receive Workers Compensation benefits.
3. **Change the Salary Assumption for KPERS Disabled Members.** Currently, the annual adjustment rate for progressing estimated salary earnings during the incapacitated period is statutorily set at 5.0 percent for disabled members until they reach retirement age. This change would index the annual

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.ink.org/public/legislative/fulltext-bill.html>.

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adjustment rate to the Consumer Price Index (CPI), with a cap of 4.0 percent.

### **Background**

A House Appropriations Subcommittee on KPERS retirement and disability issues conducted a review of these matters and held a public hearing on the different legislative proposals. Other conferees addressed issues not contained in specific legislation. The Subcommittee recommended items to be included in H.B. 2240 as amended and the House Appropriations Committee adopted the Subcommittee report for these amendments contained in the Committee report on H.B. 2240. All three items were requested by the KPERS Board of Trustees and the first two were included in H.B. 2240 as introduced by the Joint Committee on Pensions, Investments, and Benefits. The third item was requested during the 1997 Session.

All three items are estimated to have a positive fiscal impact on the KPERS death and disability benefits program, and the last item also should have a positive fiscal impact on the retirement program.

The Division of the Budget fiscal note on the bill as introduced indicates that the Kansas Public Employees Retirement System reports the System is paying benefits slightly in excess of the contributions being collected from the employers. The reason the System is paying out more than is being collected is cost-of-living adjustments for disabled members, the KPERS/workers compensation package, and the fact that many members do not apply for and appeal their right to Social Security disability benefits. However, a recent study by the KPERS actuary indicates that the current reserve for disability benefits is adequate. If the present trend continues, the Board of Trustees of KPERS would have to reduce benefit coverage, as allowed by statute, or ask the Legislature to increase the employers' contribution rate.

**TESTIMONY FOR THE  
HOUSE APPROPRIATIONS COMMITTEE  
ON SENATE BILLS 11, 14, 15, and 16**

Senator Lana Oleen, Vice-Chair  
Legislative Post Audit Committee  
March 27, 1997, Room 514-S, upon 1st adjournment

Mister Chairman and members of the Committee, I've prepared these remarks in support of the bills you have before you today. These bills were introduced by the Legislative Post Audit Committee during my tenure as Chair of that Committee.

Senate Bills 14 and 15 are intended to address issues raised by Legislative Post Audit in the performance audit, *Reviewing the Kansas Public Employees' Deferred Compensation Program*. The Committee authorized that audit because of questions about how moneys in the Program were being administered. Although this isn't a State-run program, it is certainly a State-sanctioned one that many State employees are participating in. Committee members felt the Legislature had an obligation to those employees to ensure the Program has sufficient oversight and offers good quality services at a reasonable cost. The audit was generally positive on both fronts, but made several recommendations for change. The Committee introduced these two bills to improve oversight of the Deferred Compensation Program, and to clarify that employees' investments in "fixed-accounts" offered by the Program are covered up to \$100,000 by the Kansas Life and Health Insurance Guaranty Association.

Senate Bill 16 repeals the requirement enacted by the 1996 Legislature to conduct three annual audits of the Highway Patrol's motor vehicle program. The first audit essentially provided all the information needed in this area, which the Highway Patrol can now keep up-to-date. Post Audit staff and Committee members agreed that no purpose would be served by the two additional audits mandated by law, and the Committee introduced this bill to keep the State from unnecessarily spending about \$45,000.

Finally, the Committee introduced Senate Bill 11 as a way of minimizing KPERS' audit requirements, while still providing for sufficient oversight. I appointed a subcommittee to review various options in this area. Noting that KPERS is subject to two annual audit requirements, as well as a high level of legislative and Board of Trustee oversight, the subcommittee recommended and the full Committee adopted a plan that would in essence consolidate the current performance and financial-compliance audit requirements into a single contracted audit, and provide more flexibility about the performance issues reviewed in that audit.

I am strongly supportive of all these bills, and would urge the Committee to consider them favorably.

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**Testimony on Senate Bill 16  
to the House Appropriations Committee  
Barb Hinton, Legislative Post Auditor  
March 27, 1997**

**Senate Bill 662, passed by the 1996 Legislature, calls for three annual performance audits of the Highway Patrol's Motor Vehicle Program.** Those audits are to include a review of the number and purchase price of new motor vehicles, the number and resale value of retired motor vehicles, and the average number of miles motor vehicles are driven before being "retired." The bill required the Patrol to pay for those audits.

The first audit was contracted out to a CPA firm at a cost of \$28,000, and was completed last December. That audit evaluated the Patrol's policies and procedures relating to motor vehicles, and provided the required information. Because the audit provided "baseline" information the Patrol could readily keep up-to-date—without the additional cost of two more audits—we concluded those audits would be a waste of money. The Legislative Post Audit Committee concurred, and introduced Senate Bill 16, which would repeal the requirement for two more performance audits of the Highway Patrol's Motor Vehicle Program.

**Senate Bill 662 also called for three annual performance audits of the Department of Revenue's Vehicle Information Processing and Computer-Assisted Mass Appraisal Systems. This bill would not affect those audit requirements.** Those audits are to include a review of the operations, maintenance, and improvements of the equipment and software of these two systems.

Because the concerns in this area focused on activities that would take place during several fiscal years, it seemed that one audit for the 1997 Legislature wouldn't fully address those concerns. For that reason, the Post Audit Committee authorized contracting for all three annual audits. The total contract amount is \$41,900, \$8,400 for the first year, and \$16,750 for each of the next two years.

For your information: the first annual audit, covering July-September 1996, indicated the Department had begun taking in additional moneys to fund system enhancements (almost \$600,000). However, spending was limited to about \$8,900. That expenditure was made to begin buying hardware to upgrade the Vehicle Information Processing System.

I'd be happy to answer any questions you may have about Senate Bill 16.

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TESTIMONY BEFORE THE HOUSE APPROPRIATIONS COMMITTEE

SENATE BILL No. 14

Legislative Division of Post Audit  
Trish Pfannenstiel, Senior Auditor  
March 27, 1997

When the Legislative Post Audit Committee reviewed the Statewide Single Audit, members of the Committee noted that the assets of the Kansas Public Employees' Deferred Compensation Program exceeded \$175 million in fiscal year 1995. That amount increased by 20% to more than \$210 million at the end of fiscal year 1996. Committee members raised a number of questions about how those moneys were being administered, including what oversight the State exercised over Aetna, the Program's third-party administrator and investment provider.

In response to those concerns, the Committee directed our office to conduct a performance audit entitled, *Reviewing the Kansas Public Employees' Deferred Compensation Program*. During that audit, we found that the legislation that established the Program provided for an Advisory Committee comprised of the Director of the Budget, the Secretary of Administration, the State Commissioner of Insurance, and two employees appointed by the Governor—the Secretary of Revenue and Executive Secretary of the Kansas Public Employees' Retirement System.

The Advisory Committee was charged with various statutory duties and responsibilities including those needed to set up the Program such as:

- *advise and consult*—with the Director of Accounts and Reports in the implementation and administration of the Program
- *assist in the preparation of the rules and regulations*—for participation in the Program
- *approve or disapprove insurers or other contractors*—for participation in the Program
- *recommend consultants*—to assist the Director of Accounts and Reports in the administration of the Program

However, the statute also provided for continued oversight of the operation of the Program with a requirement that the Committee:

- *review and analyze*—the Program's operation, and make recommendations to the Director of Accounts and Reports and the Legislature for improvements

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On July 1, 1988 the Advisory Committee was abolished, and the duties and responsibilities of the Committee were delegated to the Director of Personnel Services. However, the specific oversight duties and responsibilities that had been mentioned in the statute were removed.

Such oversight can help ensure that the deferred compensation "benefit" being offered to State employees continues to provide good customer service, generate investment performance comparable to that of the market, and is offered at a reasonable cost. Such oversight could include:

- reviewing participants' access to a number of investment options with varied risk levels
- periodically comparing the rates of return earned on investment options to standard investment performance indices
- reviewing administration and investment management (fund) fees for reasonableness
- reviewing audits conducted on the program and other reports to ensure its operations are following all applicable rules and regulations
- deciding whether, or how, to revise the Program, including the option of opening the Program for bids
- reporting findings to State decision-makers, including the Legislature

To ensure that oversight and administration responsibilities are clearly defined, we recommended that specific language about those responsibilities be added to State law. After discussion, Committee members decided to introduce legislation—Senate Bill No. 14—that would specify in statute the oversight requirements regarding the Deferred Compensation Program. The Legislative Post Audit Committee discussed the option of also re-establishing some type of oversight committee. When the audit was presented, the Department of Administration indicated it had established an administrative oversight committee comprised of officers and employees of the Department of Administration. As a result, Committee members included that provision in the bill.

I think it is fair to say, however, that their primary interest was in ensuring that adequate oversight was being provided, not the mechanism for providing it. I think one concern behind this bill is that Committee members remember the problems with the Retirement System, and don't want this Program to be self-monitored which may or may not lead to problems in the future.

**Testimony To The  
House Appropriations Committee  
Honorable Phil Kline, Chairperson**

**By  
Jeff Wagaman, Deputy Secretary  
Department of Administration**

**March 27, 1997  
RE: Senate Bill 14**

Thank you Mr. Chairman and members of the Committee. I appreciate you allowing me to testify as a proponent to Senate Bill 14. Before I begin, I would like to introduce Terry Bernatis, who is with me here today. She is Manager of Compensation and Benefits. Terry has appeared before you in the past and is here to join me in answering your questions.

Deferred Compensation is wholly separate of KPERS. Aetna has the state contract for management of the Deferred Compensation Program. Currently, almost 10,000 state employees or 50% of eligible employees participate in the Deferred Compensation Program. Compared to similar mid-western states, our rate of participation is much higher than our neighbors.

Senate Bill 14 is sponsored by the Legislative Post Audit Committee following the audit entitled "Reviewing the Kansas Public Employees Deferred Compensation Program." In summary, the Post Auditors found that employees were very satisfied with the Program, the services offered, and performance of the funds. The Auditors found the average rates of return for the fixed rate and variable funds were very comparable to funds based on market performance and industry averages. They found that the fees charged to Kansas employees in the variable return funds were actually lower than fees charged in other states. Management fees were some of the lowest charged compared to other states. Secretary Stanley concurs with the Post Audit findings that the state's Deferred Compensation Program is in very good shape and provides significant investment opportunities and services to state workers.

The Post Audit Report suggested that increased oversight of the Deferred Compensation Program could be useful. In response, the Department of Administration established an Administrative Oversight Committee to work with the vendor and represent employees to monitor the Deferred Compensation Program. This Committee is composed of three standing members: the Director of Personnel Services who is statutorily charged with oversight of the program and who will serve as chair; the Director of Accounts & Reports; and the Manager of Compensation and Benefits Section of Personnel Services. This group will meet at least on a quarterly basis and represent employees' interest in the Program. They will monitor legal and contractual requirements and interface with representatives from Aetna. This Administrative Oversight Committee is happy to have received input from state employees, legislators, legislative staffers, or others.

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One of the questions investigated by the Post Auditors was whether or not the State of Kansas has a liability for losses to the program if losses were to occur. We were not surprised to learn the state does not have liability. Deposits from state employees are held in trust and used by the Aetna Company for investment. New section 3 of this bill is very important to pass however.

In response to the Post Audit, this legislation has been introduced to clarify that monies are held in trust for the beneficiaries and may not be used any other way. We have been working with Division of Post Audit's legal counsel and representatives from Aetna to clarify the necessary language to ensure the assets are held in trust.

In September, 1996, the Pension Simplification Bill was signed into law. One of the provisions of the law is that Internal Revenue Code 457 which governs deferred compensation plans was amended so that the funds in these plans can be held in trust and annuities and custodial accounts are considered trust vehicles. This is a very important provision because until this change, the money in the plan was considered the state's money and in the event of insolvency, the employees who participate in the plan would have been considered creditors of the state and would have to file a claim for their money. This change was in direct response to the problems with Orange County, California and the fact that employees lost money in their deferred compensation plan through no fault of their own. Orange County was using the deferred compensation money for investments for their own purposes. This change protects participants in deferred compensation plans. Therefore, new section 3 of this bill is very important to pass because it codifies the Internal Revenue Code change.

Mr. Chairman, I would like to offer a friendly amendment that would further clarify Lines 32 and 33. We suggest on Line 32 following the words "assets of the state" insert the following:

*, shall be held in accordance with section 457 of the U.S. Internal Revenue Code for the exclusive benefit of participants and their beneficiaries,*

I will pass out the balloon amendment for you.

We believe clarifying the language that the assets are held in accordance with section 457 will ensure better clarification of the law and incorporates the section 457 language about annuities and custodial accounts being considered trust arrangements.

Mr. Chairman, I do appreciate the opportunity to appear as a proponent of Senate Bill 14. The Deferred Compensation Program is a valuable program for state employees. Section 3 of the bill is very important to ensure these monies are protected, hence our friendly amendment on behalf of the agency.

Thank you Mr. Chairman for the opportunity to appear before you today. I stand for questions.

[As Amended by Senate Committee of the Whole]

Session of 1997

SENATE BILL No. 14

By Legislative Post Audit Committee

1-10

5-3

10 AN ACT concerning the department of administration; relating to ad-  
11 ministration of the deferred compensation plan for public officers and  
12 employees; amending K.S.A. 75-5525 and repealing the existing  
13 section.

14

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

16 New Section 1. The provisions of K.S.A. 75-5521 through 75-5529a  
17 and sections 1 and 2 and amendments thereto shall be known and may  
18 be cited as the Kansas public employees deferred compensation act.

19 New Sec. 2. (a) ~~There is hereby established the~~ *[The secretary of*  
20 *administration shall establish an]* administrative oversight committee  
21 on deferred compensation ~~which is composed of the following officers~~  
22 ~~and employees of the department of administration: The director of per-~~  
23 ~~sonnel services, the director of accounts and reports and the manager of~~  
24 ~~compensation and benefits of the division of personnel services. The di-~~  
25 ~~rector of personnel services shall be the chairperson of the administrative~~  
26 ~~oversight committee on deferred compensation.~~ The members of the ad-  
27 ministrative oversight committee on deferred compensation shall meet at  
28 least once each calendar quarter. The members of the administrative  
29 oversight committee on deferred compensation shall receive no compen-  
30 sation or expenses for service on the committee.

31 (b) The administrative oversight committee on deferred compensa-  
32 tion shall:

33 (1) Advise and consult on the implementation and administration of  
34 the provisions of the Kansas public employees deferred compensation act  
35 and the deferred compensation plan;

36 (2) evaluate the program operations with respect to customer service  
37 and operations;

38 (3) evaluate investment performance as it relates to comparable op-  
39 tions;

40 (4) evaluate program operations with respect to federal and state stat-  
41 utes and contractual requirements and as compared to other deferred  
42 compensation programs;

43 (5) review the overall administration of each agreement entered into

1 under K.S.A. 75-5523 and amendments thereto for the deferred com-  
2 pensation plan and the overall performance by the qualified insurer or  
3 other qualified contracting party entering into such agreement;

4 (6) review the investment management fees under the deferred com-  
5 pensation plan for reasonableness compared with other deferred com-  
6 pensation programs;

7 (7) review audits conducted on the deferred compensation plan and  
8 other reports reviewing program operations thereunder to assure oper-  
9 ations are following all applicable statutes and rules and regulations and  
10 to assure coverage of appropriate deferred compensation plan accounts  
11 of participants under the Kansas life and health insurance guaranty as-  
12 sociations act;

13 (8) review overall performance of the contracting party under the  
14 agreement entered into under K.S.A. 75-5523 and amendments thereto  
15 for the deferred compensation plan that is in effect on the effective date  
16 of this act and determine whether or not competition should be initiated  
17 with other qualified insurers and other qualified contracting parties to  
18 enter into such agreements;

19 (9) review current procedures for handling complaints about the de-  
20 ferred compensation plan to ensure customer satisfaction and sharing of  
21 complaint information;

22 (10) evaluate on a continuing basis the need to provide participants  
23 with information regarding the provisions, requirements and procedures  
24 under the deferred compensation plan; and

25 (11) periodically prepare and present reports of the findings and re-  
26 sults of the activities of the committee to the secretary of administration,  
27 the governor and the legislature, as appropriate.

28 Sec. 3. K.S.A. 75-5525 is hereby amended to read as follows: 75-  
29 5525. (a) All moneys which are deferred and deducted by the director in  
30 accordance with the provisions of an agreement entered into under K.S.A.  
31 75-5524, and amendments thereto, and the provisions of this act, shall  
32 remain assets of the state, shall be held in trust for the exclusive benefit  
33 of participants and their beneficiaries, and shall be disposed of in accor-  
34 dance with the terms of the agreement between the employee and the  
35 director. The obligation of the state to the employee and approved in-  
36 surers or other contractors shall be a contractual obligation only and no  
37 preferred or special interest in the deferred moneys shall accrue to such  
38 employee or to such approved insurer or other contractor.

39 (b) Contributions payable to the deferred compensation plan pur-  
40 suant to the plan shall not be subject to any premium tax or other charges  
41 arising under the insurance laws of this state. If any such tax or charge  
42 has been paid prior to the effective date of this act, the same shall be  
43 refunded.

1 Sec. 4. K.S.A. 75-5525 is hereby repealed.

2 Sec. 5. This act shall take effect and be in force from and after its  
3 publication in the statute book.

CHANGE WORDING TO:

, shall be held in accordance with section 457 of the U.S. Internal Revenue Code for the exclusive benefit of participants and their beneficiaries,

5-4

VAUGHN L. FLORA  
 REPRESENTATIVE, 57TH DISTRICT  
 431 WOODLAND AVE  
 TOPEKA, KANSAS 66607



TOPEKA

STATE CAPITOL  
 RM 278-W  
 TOPEKA, KANSAS 66612-1504  
 913-296-7658

COMMITTEE ASSIGNMENTS  
 MEMBER BUSINESS, COMMERCE AND LABOR  
 INSURANCE  
 ENVIRONMENT

HOUSE OF  
 REPRESENTATIVES

Testimony Before House Appropriations: Deferred Compensation

This amendment simply requires the director to enter into a contract with one or more additional approved providers to provide additional options for benefits under the deferred compensation plan to State employees.

For every eligible participating state employee past and present, deferred compensation can play and has played a significant role in building a financially solid retirement. Other states have realized that additional providers can provide more options for increasingly sophisticated investors, and have sought to share these services among several providers. The logic is that the free market competition created between the providers would help heighten awareness of the benefits of the program.

Aetna has had the exclusive contract for the Kansas Public Employees Deferred Compensation Program for the last 17 years. .

In the Performance Audit Report reviewing the Kansas Public Employees' Deferred Compensation Program only one other state of the six neighboring states surveyed has only one provider for their deferred compensation program (pg. 33) of Post Audit booklet. That one state, Nebraska, has as of July 1, 1996 begun the process to open bids to allow in additional providers. (Pg. 33) Our neighbor in Missouri currently has four providers for their program (pg. 33) They began their deferred compensation plan in the same year Kansas began theirs, however, Missouri has 55% participation of their eligible employees compared to the 24% participation for eligible Kansas public employees. (Pg. 32 & 33) Iowa has over 40 providers and they have 38% participation of their employees. (Pg. 33)

I talked with Gloria Timmer yesterday and she said the new computer program would handle multiple providers.

Sincerely,

*Vaughn L. Flora*  
 Vaughn L. Flora

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 Attachment 6



[As Amended by Senate Committee of the Whole]

Session of 1997

SENATE BILL No. 14

By Legislative Post Audit Committee

1-10

6-2

10 AN ACT concerning the department of administration; relating to ad-  
11 ministration of the deferred compensation plan for public officers and  
12 employees; amending K.S.A. 75-5525 and repealing the existing  
13 ~~section~~.

agreements for plan benefits;

14  
15 *Be it enacted by the Legislature of the State of Kansas:*

75-5523 and

16 New Section 1. The provisions of K.S.A. 75-5521 through 75-5529a  
17 and sections 1 and 2 and amendments thereto shall be known and may  
18 be cited as the Kansas public employees deferred compensation act.

sections

19 New Sec. 2. (a) There is hereby established the *[The secretary of*  
20 *administration shall establish an]* administrative oversight committee  
21 on deferred compensation which is composed of the following officers  
22 and employees of the department of administration: The director of per-  
23 sonnel services; the director of accounts and reports and the manager of  
24 compensation and benefits of the division of personnel services. The di-  
25 rector of personnel services shall be the chairperson of the administrative  
26 oversight committee on deferred compensation. The members of the ad-  
27 ministrative oversight committee on deferred compensation shall meet at  
28 least once each calendar quarter. The members of the administrative  
29 oversight committee on deferred compensation shall receive no compen-  
30 sation or expenses for service on the committee.

31 (b) The administrative oversight committee on deferred compensa-  
32 tion shall:

33 (1) Advise and consult on the implementation and administration of  
34 the provisions of the Kansas public employees deferred compensation act  
35 and the deferred compensation plan;

36 (2) evaluate the program operations with respect to customer service  
37 and operations;

38 (3) evaluate investment performance as it relates to comparable op-  
39 tions;

40 (4) evaluate program operations with respect to federal and state stat-  
41 utes and contractual requirements and as compared to other deferred  
42 compensation programs;

43 (5) review the overall administration of each agreement entered into

1 under K.S.A. 75-5523 and amendments thereto for the deferred com-  
2 pensation plan and the overall performance by the qualified insurer or  
3 other qualified contracting party entering into such agreement;

4 (6) review the investment management fees under the deferred com-  
5 pensation plan for reasonableness compared with other deferred com-  
6 pensation programs;

7 (7) review audits conducted on the deferred compensation plan and  
8 other reports reviewing program operations thereunder to assure oper-  
9 ations are following all applicable statutes and rules and regulations and  
10 to assure coverage of appropriate deferred compensation plan accounts  
11 of participants under the Kansas life and health insurance guaranty as-  
12 sociations act;

13 (8) review overall performance of the contracting party under the  
14 agreement entered into under K.S.A. 75-5523 and amendments thereto  
15 for the deferred compensation plan that is in effect on the effective date  
16 of this act and determine whether or not competition should be initiated  
17 with other qualified insurers and other qualified contracting parties to  
18 enter into such agreements;

19 (9) review current procedures for handling complaints about the de-  
20 ferred compensation plan to ensure customer satisfaction and sharing of  
21 complaint information;

22 (10) evaluate on a continuing basis the need to provide participants  
23 with information regarding the provisions, requirements and procedures  
24 under the deferred compensation plan; and

25 (11) periodically prepare and present reports of the findings and re-  
26 sults of the activities of the committee to the secretary of administration,  
27 the governor and the legislature, as appropriate.

28 Sec. 3. K.S.A. 75-5525 is hereby amended to read as follows: 75-  
29 5525. (a) All moneys which are deferred and deducted by the director in  
30 accordance with the provisions of an agreement entered into under K.S.A.  
31 75-5524, and amendments thereto, and the provisions of this act, shall  
32 remain assets of the state, *shall be held in trust for the exclusive benefit*  
33 *of participants and their beneficiaries*, and shall be disposed of in accor-  
34 dance with the terms of the agreement between the employee and the  
35 director. The obligation of the state to the employee and approved in-  
36 surers or other contractors shall be a contractual obligation only and no  
37 preferred or special interest in the deferred moneys shall accrue to such  
38 employee or to such approved insurer or other contractor.

39 (b) Contributions payable to the deferred compensation plan pur-  
40 suant to the plan shall not be subject to any premium tax or other charges  
41 arising under the insurance laws of this state. If any such tax or charge  
42 has been paid prior to the effective date of this act, the same shall be  
43 refunded.

insert attached section 3 amending K.S.A. 75-5523

and by renumbering sections accordingly

6-3

Sec. 3. K.S.A. 75-5523 is hereby amended to read as follow 75-5523. (a) The director is authorized to establish a deferred compensation plan in accordance with the federal revenue act of 1978, Public Law No. 95-600, subject to the approval of the secretary of administration. Such plan shall be the Kansas public employees deferred compensation plan. All powers and duties heretofore conferred by such plan upon the advisory committee on deferred compensation are hereby transferred to the director of personnel services or the director's designees.

(b) The director ~~may~~ shall enter into an agreement or agreements with two or more approved insurers or other contracting parties whereby benefits under the Kansas public employees deferred compensation plan ~~would-be~~ are made available to those participants who contract with the director for deferred compensation under K.S.A. 75-5524, and amendments thereto. In addition, the director may enter into an agreement with one or more qualified private firms for consolidated billing services, participant enrollment services, participant accounts and other services related to the administration of the Kansas public employees deferred compensation plan.

(c) No significant costs shall be incurred by the state as a result of the administration of this act unless such costs are recovered by charging and collecting a service charge from all participants and in addition thereto or in lieu thereof, where the director has entered into agreements with ~~one~~ two or more qualified private firms under subsection (b), are recovered from such firms. The amount of any such significant costs incurred and to be recovered by the state shall be determined by the director.

(d) Subject to the approval of the secretary of administration, the director is authorized to negotiate and enter into contracts with qualified insurers and other contracting parties for the purposes of establishing a deferred compensation plan, including acquisition of actuarial and other services necessary therefor. The director shall advertise for deferred compensation proposals, shall negotiate with not less than three firms or other contracting parties submitting such proposals, and

shall select from among those submitting such proposals the firm or firms or other contracting party or parties to contract with for purposes of establishing a deferred compensation plan. Contracts entered into under this act shall not be subject to K.S.A. 75-3739, and amendments thereto.

(e) As soon as practicable after the effective date of this act, the director shall enter into a contract with one or more additional approved insurers or other contracting parties whereby benefits under the deferred compensation plan are made available to those participants who contract with the director for deferred compensation under K.S.A. 75-5524, and amendments thereto.

[75-5523 and 75-5525 are

- 1 Sec. 4. K.S.A. [75-5525 is] hereby repealed.
- 2 Sec. 5. This act shall take effect and be in force from and after its
- 3 publication in the statute book.

6-6

1729 Oakley  
Topeka, Kansas 66604  
March 3, 1997

TO: Kansas State Legislature  
FR: Timothy W. Petterson,  
RE: Deferred Compensation

It is my understanding that state employees are only allowed one company to provide financial services for deferred compensation. Because of the special status of my job I have the option of using a 403(b) or TSA plan for my retirement options in lieu of deferred compensation. I had a wide variety of companies to choose from and am personally pleased with the program and service I selected. This option is not available through deferred compensation which is the retirement savings option available to most state employees. I am supportive of any legislation that would provide state employees with greater choice, more personalized service, and lower cost benefit programs, particularly in the area of retirement planning. Thank you.

6-7

Jaymee Metzenthin  
10380 P-4 Road  
Hoyt, Kansas 66440

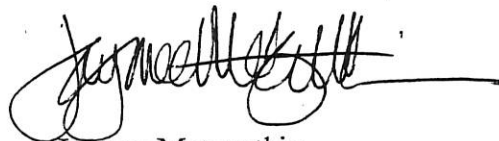
Rocky Nichols  
Representative 58th District  
State of Kansas

Re: Kansas Public Employees Deferred Compensation

Dear Mr. Nichols,

I understand that you are currently on a committee that is reviewing the deferred compensation program for state employees. I am currently using this service and am grateful that it is an option that can be used to bolster my retirement benefits. I would like to go on record as stating that I would be in favor of having additional providers for the plan.

The idea of having more investment options and services through other providers is a good idea whose time has come. Aetna has had the exclusive contract since 1980. Name one other company that does business with the state of Kansas that can make that claim. Recently Aetna has expanded investment choices and made the current plan more attractive. However, I would like other choices in addition to those that Aetna will provide. Having a choice in service appeals to me because I don't believe any company no matter how good should have an exclusive contract.



Jaymee Metzenthin  
STATE EMPLOYEE

TESTIMONY BEFORE THE HOUSE APPROPRIATIONS COMMITTEE

SENATE BILL No. 15

Legislative Division of Post Audit  
Trish Pfannenstiel, Senior Auditor  
March 27, 1997

During the performance audit of the Kansas Public Employees' Deferred Compensation Program, we found that, under State law, the State assumes no liability for any losses incurred by Program participants in the event of insolvency or mismanagement of funds by Aetna [K.S.A. 75-5524(c)].

However, in August 1992, in response to employees' questions about what would happen if Aetna were to become insolvent, the Department of Administration sent a letter addressed to all State employees stating that moneys invested in Aetna's fixed-return accounts were covered by the Kansas Life and Health Insurance Guaranty Association up to \$100,000. That letter is attached. As a result of that letter, the following unfolded:

- 1—we contacted officials at the Kansas Guaranty Association and were told that, because current law isn't clear, the moneys in the Deferred Compensation Program's fixed-return accounts may or may not be covered by the Association.
- 2—because of the representations made in the letter sent out by the Department of Administration, it's conceivable the State could be held liable for employees' losses in the unlikely event Aetna were to become insolvent, and employees' funds were determined not to be covered. In addition, participants may have made some investment decisions in the Program based on information provided in that letter.

To ensure that State law reflects legislative intent regarding the Guaranty Association's coverage of the Deferred Compensation's fixed-return accounts, the Legislature has several policy options available:

- 1—**do nothing**, and should this situation arise, leave the interpretation up to the courts as to whether or not the moneys in the Deferred Compensation Program's fixed-return accounts are covered by the Kansas Life and Health Guaranty Association

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2—the statute could be written to specifically **exclude the Program’s fixed-return accounts** from coverage by the Association

3—specify in statute that the Association’s coverage **includes moneys in the Program’s fixed-return accounts**

After a discussion of the options available, the Legislative Post Audit Committee decided to introduce legislation—Senate Bill No. 15—that would specifically state that moneys in the fixed-return accounts of the State’s Deferred Compensation Program are covered by the Kansas Life and Health Guaranty Association in the event an investment provider or third-party administrator would become insolvent or mismanage funds. Providing for this coverage won’t increase the State’s costs—any losses charged to the Guaranty Association would be assessed against all insurance companies doing business in Kansas. In addition, this bill would make the law in line with where the industry is headed in providing coverage for these types of funds.



**DEPARTMENT OF ADMINISTRATION  
DIVISION OF ACCOUNTS AND REPORTS**

JOAN FINNEY  
Governor

JAMES R. COBLER  
Director of Accounts and Reports

900 Jackson, Room 251  
Landon State Office Building  
Topeka, KS 66612-1220  
(913) 296-2311  
FAX (913) 296-6841

August 17, 1992

**TO EMPLOYEES OF THE STATE OF KANSAS:**

Some public employees have participated in the Kansas Deferred Compensation Plan for a long time and the accumulated cash value in their account is substantial. "What, if any, protection do I have if Aetna Life Insurance and Annuity Company, the company that administers my account, becomes insolvent?" is a typical question. The following is a brief but fair description of exactly what is at risk and what protection exists to reduce the risk.

In the first place, Aetna Life Insurance and Annuity Company (ALIAC) is a financially sound, well-managed subsidiary of the Aetna Life and Casualty Company whose affiliates comprise one of the most prominent multiple-line insurance groups in the country. As of June 29, 1992, Standard and Poors rated the claims paying ability of ALIAC 'AAA' (Superior) and stated: "The rating reflects its strong capitalization, good profitability and conservative investment portfolio." Consequently, the question posed relates to a situation that is highly unlikely to occur.

In addition, amounts invested in the Aetna Variable Fund (Common Stock), Aetna Income Shares (Bond Fund), Aetna Variable Encore (Money Market Fund), Aetna Guaranteed Equity Trust and Aetna Investment Advisors Fund are not and do not become the property of ALIAC. As a result, insolvency of ALIAC would have no effect on the funds in these accounts.

Amounts invested in the Fixed Account and Guaranteed Accumulation Account would be at risk if, despite the current strong financial condition of ALIAC, the company became insolvent, but there is a safety net. In 1972, the Kansas legislature created the Kansas Life and Health Insurance Guaranty Association. This Association provides a mechanism to protect policy holders, certificate holders and their beneficiaries in the case of financial impairment of life and health insurance companies. Therefore, in the event ALIAC becomes financially impaired, the accumulated cash value invested in the Fixed Account or Guaranteed Accumulation Account options of the deferred compensation plan would be covered by the Guaranty Association up to a maximum of \$100,000. In most cases participants may actually be entitled to a total recovery in excess of \$100,000 because even an insolvent insurance company can usually honor some portion of its contractual obligations. The \$100,000 Guaranty Association coverage would be in addition to any payments made by the insolvent insurer. For example, if the resources of the insolvent insurer were sufficient to accommodate a 70% payback and a participant in the Fixed or Guaranteed Accumulation option had an account balance of \$300,000, the participant would receive \$210,000 from the insurance company's estate and \$90,000 from the Guaranty Association. The total recovery could, of course, never exceed the cash value of the two accounts.

7-3

*Nancy Echols*  
Nancy Echols, Director  
Division of Personnel Services

*James R. Cobler*  
James R. Cobler, Director  
Division of Accounts and Reports

**Testimony To The  
HOUSE APPROPRIATIONS**

By  
**Bobbi Mariani, Assistant Director  
Division of Personnel Services**

**Thursday, March 27, 1997**

**RE: Kansas Public Employees Deferred Compensation Plan - Senate Bill 15**

Mr. Chairperson and members of the committee, thank you for the opportunity to appear before you today. I am here in support of Senate Bill 15, which concerns coverage of fixed accounts provided under the Kansas public employees deferred compensation plan and the protection offered by the Kansas Life and Health Insurance Guaranty Association. The proposed language is added to protect the value of fixed accounts by ensuring that these accounts are protected by the Guaranty Association.

A recent audit performed by the Legislative Division of Post Audit found that statutes relating to the State's Deferred Compensation Program do not address the issue of liability coverage by the Guaranty Association. The audit found a potential difference of opinion as to whether moneys invested in such fixed accounts would be covered if the investment provider should ever become insolvent. The Guaranty Association Act does not provide coverage for unallocated annuity contracts. Unallocated contracts are defined as ones that are not issued to and owned by an individual. Because the Internal Revenue Service requires that this money be held as assets of the State, it could be interpreted that participants' money is unallocated and, therefore, not covered. However, since the money is being held in trust on behalf of the individual investors, it might be considered allocated. Aetna has taken the position that these accounts are covered and, in fact, has been filing premium reports and has paid the assessments.

A similar debate is going on at the national level. Until model legislation is drafted and introduced by the National Association of Insurance Commissioners, the amendments in Senate Bill 15 will protect plan participants with fixed accounts in case of insolvency.

Thank you for the opportunity to speak to you today. I would be happy to provide additional information.

G:\MSS\LEGISLAT.97\TESTIMON.97\SB15.TST; March 21, 1997

*Appropriations  
3-27-97  
Attachment 8*