

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson Steve Morris at 10:40 a.m. on January 24, 2001, in Room 123-S of the Capitol.

All members were present except: All present

Committee staff present:

Alan Conroy, Chief Fiscal Analyst, Kansas Legislative Research Department
Leah Robinson, Kansas Legislative Research Department
Amory Lovin, Kansas Legislative Research Department
Robert Waller, Kansas Legislative Research Department
Michael Corrigan, Assistant Revisor, Revisor of Statutes Office
Julie Weber, Administrative Assistant to the Chairman
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Barbara Hinton, Legislative Post Auditor, Legislative Division of Post Audit
Kyle Smith, Kansas Bureau of Investigation
Col. Donald W. Brownlee, Superintendent, Kansas Highway Patrol

Others attending: See attached guest list

Bill Introduction

Senator Barone moved, with a second by Senator Feleciano, to introduce a bill (1rs0524) regarding how the Board of Accountancy collects and pays fees. Motion carried by a voice vote.

Chairman Morris mentioned that there will be hearings on **SB 33** and **SB 57**.

The Chairman opened the public hearing on:

SB 33 – Law enforcement, seized property forfeitures and certain tax assessment and penalty collection proceeds, authorized uses, reports and accounting

Staff briefed the Committee on the bill.

Chairman Morris welcomed Barbara Hinton, Legislative Post Auditor, Legislative Division of Post Audit, who testified in favor of **SB 33** (Attachment 1). Ms. Hinton mentioned in her testimony that the bill addresses issues raised in their audit in the following three ways:

- it requires State and local law enforcement agencies to separately account for any proceeds they receive from different types of forfeitures.
- it creates a mechanism for State and local governmental units to reallocate a portion of any “windfall” forfeiture proceeds.
- it requires State law enforcement agencies to report information about the forfeitures they receive under federal law, not just State law, and it identifies the KBI as the agency responsible for collecting this information and submitting it to the Legislature.

Committee questions and discussion followed.

Chairman Morris welcomed Kyle Smith, Director of Public and Governmental Policy, Kansas Bureau of Investigation, neutral conferee (Attachment 2). In his testimony, Mr. Smith mentioned that on behalf of the KBI, they have no objection to the amendments as set out in **SB 33**. He noted that the need for

CONTINUATION SHEET

legislation is not overwhelming: The reporting failings seemed to have been acts of ignorance and they have been addressed. The "windfall provision" is designed to address a situation that has happened only once in the history of Kansas. Committee questions and discussion followed.

Written testimony was received from Col. Donald W. Brownlee, Superintendent, Kansas Highway Patrol, neutral (Attachment 3).

The Chairman thanked the conferees for appearing before the Committee.

The Chairman closed the public hearing on **SB 33**.

The Chairman opened the public hearing on:

SB 57 – Claims Against the State

Chairman Morris welcomed Dr. Bill Wolff, Kansas Legislative Research Department, who detailed **SB 57** by Section in detail. Committee questions and discussion followed.

There being no further conferees on the bill, the Chairman closed the public hearing on **SB 57**.

Chairman Morris requested that Staff contact the Kansas Department of Revenue to ask that they come before the Committee and explain how motor vehicle tax refunds are processed.

Senator Kerr expressed concern regarding Section 11, subsection (a) and the standard that was utilized to arrive at the amount for Coffey County. The Senator asked Dr. Wolff if the State might be liable for considerable money to other local governments because people were not transferred in a timely way.

Dr. Wolff responded that there is a potential for that, however, this is the first time anyone has ever made this type of claim during his time with the Committee. Dr. Wolff mentioned that the Department of Corrections did not contest it.

Senator Kerr moved, with a second by Senator Downey, to remove Section 11, subsection (a) from the bill. Senator Kerr mentioned that, if concluded it is appropriate when the bill is debated on the floor, it can be added back in at that time. Senator Kerr expressed concern that this would set a precedent. Motion carried by a voice vote.

Chairman Morris expressed concern regarding the \$32,525.34 claim against SRS and if more time might need to spent on it because it could also set a precedent.

Mr. Wolff mentioned that he has received several claims since the Claims Committees met:

- Claim by Dr. Michael Weber, a local dentist, who has provided some services to SRS clients where his billing was not received in the proper fiscal year and the agency recommends that he be paid in the amount of \$220.00, and
- three small claims from motor fuel tax refunds that will added to the list under Section 2 and were received by the Department of Revenue and the agency has verified the payments.

Senator Feleciano moved, with a second by Senator Schodorf, to add the SRS claim regarding Dr. Weber and the three claims from motor fuel tax refunds. Motion carried by a voice vote.

The Chairman thanked Dr. Wolff for his presentation before the Committee.

A letter dated January 23, 2001, was distributed to the Committee from Ed Van Petten, Executive Director, Kansas Lottery, regarding Carribean Stud Poker Advertising (Attachment 4).

The meeting was adjourned at 11:45 a.m. The next meeting is scheduled for January 25, 2001.

SENATE WAYS AND MEANS COMMITTEE

GUEST LIST

DATE January 24, 2001

NAME	REPRESENTATIVE
Ken Pierce	Shawnee Co. Sheriff Dept
Cindy Lash	Legislative Post Audit
Barb Horton	" " "
DeAnn M. Schmitt	" " "
Kyle Smith	KBT
Mike Hutches	Ks. Gov't Consulting
Julie Thomas	DOB
Jin Liu	DOB
Pat Korman	City of Lenexa
Jeff Bottner	Kansas State Bar Ass'n
Jim Richard	KCDAA
Paul Davis	KS Bar Assn.
Jim Grew	Federico Consulting
Pete Bodyk	KDOR/ABC
Doug Smith	Pinegar-Smith Company
David Hades	KDOR-ABC
Danielle Kloe	D of A
EDWARD F. BRITTON, JR	KS DEPT OF CORRECTIONS
Raymond Dalton	SRS

**Testimony for the
Senate Ways and Means Committee
on Senate Bill 33**
Barb Hinton, Legislative Post Auditor
January 24, 2001

Mr. Chairman and members of the Committee, thank you for allowing me to appear on behalf of the Legislative Post Audit Committee to testify in support of SB 33. This bill addresses recommendations we made in our recent performance audit, *Seized Property in Kansas: Determining Whether Laws Governing the Sale of Property Are Being Followed, and How the Proceeds Are Spent*, as well as changes to the law suggested by Committee members.

Let me give you just a bit of background in this area. The Kansas Standard Asset Seizure and Forfeiture Act allows law enforcement agencies to seize money obtained from—or property used in—the commission of certain crimes. Most seizures in Kansas result from drug offenses, but the Act also applies to such crimes as cattle rustling and money laundering. Seized property (cash or goods) is held in the custody of law enforcement agencies until a judge determines whether it should be “forfeited” to the agency, or returned to its owner. Forfeited property can be sold, and moneys can be used only for “special, additional law enforcement purposes.”

This bill addresses issues raised in our audit in 3 ways:

- **it requires State and local law enforcement agencies to separately account for any proceeds they receive from different types of forfeitures.** During our audit, we found that 4 of the 6 agencies we reviewed were “commingling” State forfeiture money with moneys forfeited under the federal forfeiture act or the State’s drug tax laws. This practice violates federal guidelines, which call for moneys generated under the federal act to be accounted for separately. In addition, because all 3 laws have slightly different restrictions on how moneys can be used, there’s no way to be sure those restrictions are being followed if the money isn’t accounted for separately.

Law enforcement agencies currently deposit these moneys into one fund. This bill **would not require** them to create 3 separate funds; instead, they’d only need to attach an accounting “code” to the records for each deposit and expenditure, indicating the source of the funding. This is a standard accounting practice.

- **it creates a mechanism for State and local governmental units to reallocate a portion of any “windfall” forfeiture proceeds.** The State Forfeiture Act allows forfeited moneys to be spent only on “special, additional law enforcement purposes” deemed appropriate by the head of the law enforcement agency. If multiple agencies are involved in a forfeiture, they share the proceeds based on their level of involvement.

In 1999, 40 Kansas law enforcement agencies received \$1.1 million under the State Forfeiture Act, or an average of about \$27,000 each. Those figures were similar in the 2 previous years. But an extraordinary **\$3.7 million forfeiture** in Colby in January 2000 resulted in payments of approximately \$2 million to the Colby Police Department (more than 3 times its annual budget), \$750,000 to the KBI/Attorney General's Office, \$375,000 to the Thomas County Sheriff's Office (about 85% of its annual budget), and smaller amounts to 4 other law enforcement entities. Federal forfeiture law would allow part of these moneys to be reallocated to benefit other public programs in the communities; State law currently doesn't allow that.

This bill adds language mirroring most provisions in federal law dealing with such "windfalls." Specifically, if the amount of forfeited money a law enforcement agency receives in a fiscal year exceeds 25% of its annual budget, the amount over 25% could be reallocated to support drug abuse treatment programs, drug and crime prevention and education programs, housing programs, jobs skills programs, or other community-based programs, including grants to not-for-profit community organizations for such purposes. One difference between this bill and federal law: this bill lets the entity with authority over the law enforcement agency's budget decide how to reallocate funds; the federal law lets the receiving agency decide.

- **it requires State law enforcement agencies to report information about the forfeitures they receive under federal law, not just State law, and it identifies the KBI as the agency responsible for collecting this information and submitting it to the Legislature.** Four State agencies are covered by the Kansas Forfeiture Act—the Highway Patrol, the KBI, the Department of Corrections, and the Kansas National Guard. Current law requires them to report to the Legislature about the forfeitures they receive and the expenditures they make under the State Forfeiture Act. These moneys can't be considered a source of revenue to meet "normal" operating expenditures, but it's useful for the Legislature to know how much additional money an agency has available as it decides whether to fund special projects and non-ordinary budget requests.

During our audit, we found that the moneys 2 of these agencies received under the State Forfeiture Act in 1999 were a fraction of what they received under the federal forfeiture act (about \$20,000 State vs. \$96,000 federal for the KBI, and \$82,000 State vs. \$880,000 federal for the Highway Patrol). By requiring agencies to attach a copy of their federal report to their State report, this bill will give the Legislature information on the total amount of forfeiture moneys available to State law enforcement agencies to spend. The bill also contains new language requiring these agencies to submit their reports to the KBI by February 1st, and requiring the KBI to compile the reports and submit them to the Legislature as soon as possible after February 1st.

Mr. Chairman, that concludes my remarks. I'd be happy to answer any questions.



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

TESTIMONY
BEFORE THE SENATE JUDICIARY COMMITTEE
KYLE G. SMITH, KANSAS BUREAU OF INVESTIGATION
SB 33
January 24, 2001

Mr. Chairman and Members of the Committee:

I am Kyle Smith, Director of Public and Governmental Affairs at the Kansas Bureau of Investigation (KBI), and appear today on SB 33. Last year Legislative Post Audit reviewed forfeiture in Kansas by doing a survey of all Kansas law enforcement agencies and detailed audits of several state and local agencies. I was very pleased that absolutely no incidents of abuse or misuse of funds were found. Part of that is a tribute to the men and women in Kansas law enforcement and part of it is due to the excellent forfeiture reform law that this legislature passed in 1994.

The Post Audit report did find two areas of concern and SB 33 addresses those two areas. First, numerous agencies were not preparing their annual report to their budgetary authority as required by current law. The auditors found that many agencies were unaware of the requirement and most simply had no forfeitures to report. After the Post Audit findings were published, the Attorney General sent a letter to all Kansas law enforcement agencies advising them of this concern and reminding the agencies of the reporting requirement.

Second, the auditors noted that windfalls could occur in the area of forfeiture, as happened in Colby last year when a large marijuana dealer was caught with 3.4 million dollars in his trunk. Post Audit noted that federal law provides that if forfeitures exceed 125% of an agency's budget in a given year then the restrictions concerning what proceeds can be spent on is lifted. Again SB 33 incorporates this language into the Kansas act.

As some of you may remember, I served as the chair of the task force that drafted our forfeiture reform act in 1992 – 1994. On behalf of the KBI, we have no objection to the amendments as set out in SB 33. However, the need for the legislation is not overwhelming: The reporting failings seemed to have been acts of ignorance and they have been addressed. And the 'windfall provision' is designed to address a situation that has happened exactly once in the history of Kansas. Fortunately or unfortunately, this is not L.A. or South Florida; we just don't have many large scale dealers and their money settling in Kansas. The Colby case was in fact money in transit through the state. I have attached a letter from Colby setting out how they are proceeding to handle this windfall. First, they set the money up in trust and then created an advisory board of various community leaders to decide how to spend the interest. You will note that they are already spending some of the money on things such as Big Brothers/Big Sisters and the Red Cross. While reasonable as written, I'm not sure there is any problem that needs precious legislative time.

I would be happy to answer any questions. Thank you.

The City of COLBY

225 N. Court • Colby, Kansas 67701-2498 • FAX (913) 462-3877

785
(913) 462-4460
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Police Department

Randall W. Jones
Chief of Police

Jan. 17, 2001

Colin Wood, Senior Special Agent
Forfeiture Program Manager
P.O. Box 45
Caldwell, Kansas 67022

Dear Special Agent Wood,

The Colby Police Department Special Law Enforcement Trust Committee met to discuss my proposals for expenditures for the 2001 budget year. The Trust will generate \$134,000.00 from interest on our investments and I budgeted for approximately \$120,000.00 in expenditures. The committee agreed that I should provide you with my proposals and request your input as to whether or not you feel the expenditure(s) fall within the guidelines. The following was my recommendation to the committee:

Salary & Benefits for Cpl. Shull. (This was already approved.)	\$40,000.00
Wireless Net: (Connects the PD with the other City entities and will enable us to access addresses, records, utility listings, post work orders, budget preparation, etc.)	\$20,000.00
Training: (This would be an enhancement to my existing training budget in the general fund.)	\$7,500.00
Equipment: (This would include cabinets, shelving, TV, VCR, and Camcorder for the squad room in the LEC. A quality digital camera for investigations, numerous investigative supplies, shelving for the radio equipment in the new radio building, expenses for moving radio equipment, other shelving for records storage, and possibly for a new radio repeater.)	\$15,000.00
Memberships: (This would be a reimbursement program for Officers and Communications Officers for dues or memberships into local organizations, health club facilities, etc. to assist them in getting more involved with the youth and citizens of the community.)	\$8,500.00

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Replace K-9 dog. (Sadly, our K-9 Blitz is slowing down)	\$8,000.00
SRT Equipment: Rangefinder, Gas Masks, T-15 Vest Plates, Thermal Imaging device, ammunitions, simmunitions, bean bag rounds, etc.)	\$6,450.00

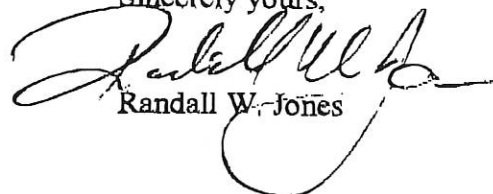
Total Law Enforcement Expenditures: \$105,450.00

Other Expenditures Requested:

Criminal Justice Scholarships (CCC) (2 Students per year.)	\$3,000.00
Big Brothers Big Sisters (Thomas County) (Equipment)	\$1,500.00
Prevention Center Community Awareness Team (Alc. & Drug)	\$2,500.00
Red Cross (TH. CO. Chapter) (CPR & Lifeguard Video & Mannequins.)	\$ 850.00
Smart Start (Prevention Center)	\$2,500.00
Colby Recreation Dept. (Equipment for children's baseball program & team sponsorship by the PD.)	\$1,200.00
Total other requested expenditures.	<u>\$11,550.00</u>
TOTAL ALL LE EXPENDITURES & REQUESTS:	<u>\$117,000.00</u>

Please let me know if you feel any of the above would not be an appropriate expenditure of our Special Law Enforcement Trust Funds. Thank you and please don't hesitate to call if you need anything further.

Sincerely yours,



Randall W. Jones

KANSAS HIGHWAY PATROL

Service—Courtesy—Protection

Bill Graves
Governor



Col. Donald W. Brownlee
Superintendent

**Kansas Highway Patrol
Summary of Written Testimony
2001 Senate Bill 33
Senate Ways and Means Committee
January 24, 2001**

The Kansas Highway Patrol appreciates the opportunity to comment on the changes set forth in 2001 SB33, as introduced. The following elements will directly effect the Patrol by modifying current law regarding property forfeiture to:

1. Clarify that each source of forfeitures must be accounted for separately within the state accounting system. The Patrol has already taken steps to implement this type of system and currently meets this provision;
2. Add a provision that allows the governing body of any agency receiving a forfeiture amount in excess of 25% of its annual budget to shift the amount in excess of the 25% amount to other uses, as stipulated in the bill. The Patrol does not anticipate an amount in forfeiture that will exceed 25% of its budget;
3. Modify an existing provision requiring annual reports to the Legislature to stipulate that each state agency will instead make its report to the Kansas Bureau of Investigation;
4. Stipulate that the annual report on forfeitures under this act by state law enforcement shall include the fund balance on December 1, the deposits and expenditures for the previous twelve month period, and a copy of the agency's most recent federal annual certification report.

Current state and federal forfeiture programs have been a major benefit to the Patrol, local law enforcement and ultimately, the citizens of Kansas. These programs have allowed the Patrol to modernize and automate many operations. These enhancements have resulted insignificant improvements including, more effective, efficient and safer officers. Additionally, the Patrol has also utilized these programs to provide necessary specialized services and assistance to local law enforcement agencies. This assistance would have not been possible without these programs.

Most importantly, our improvements have been implemented without expanding our use of monies from the State General Fund. Revenues from this source are relatively small when compared to many state agency budgets, however they are extremely significant to the Patrol. The Patrol's budget is smaller than many other state agencies and these programs provide an opportunity to make a large impact on our programs. They also have a direct impact on public safety in Kansas.

We are concerned that other modifications to these programs could significantly impact our agency. Although additional changes are not included in SB 33 at this time, we wish to note our concern with sweeping changes, which would remove these benefits for law enforcement.

The Kansas Highway Patrol appreciates the opportunity to provide these comments and respectfully requests the committee keep our comments in mind while addressing 2001 Senate Bill 33.

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Senate Ways and Means
1-24-01
Attachment 3



Bill Graves
Governor

Ed Van Petten
Executive Director

January 23, 2001

Senator Jim Barone
State Capitol, Room 136-N
Topeka, Kansas 66612

Re: Carribean Stud Poker Advertising

Dear Senator Barone:

Subsequent to your request this morning in the Senate Ways and Means Committee, I reviewed the tape and transcript of the commercial you questioned. I enclose a transcript thereof, however, the tape itself is the only copy the Lottery had, therefore, I have not included it at this time. Certainly, if you wish to listen to the tape itself, I would be glad to provide a copy for you or bring our tape down to your office for you to listen to.

After my review, I determined that you are absolutely correct, and have pulled any future airings of the commercial. I certainly apologize to you and the State of Kansas for any embarrassment caused by this advertising campaign. Future commercials such as this will be watched and listened to very carefully to avoid even the appearance of impropriety in this regard.

I certainly welcome any additional inquiries you may have regarding this or any other matter.

Sincerely,

Ed Van Petten
Executive Director

Enclosure

Client Kansas Lottery
Job Name Caribbean Stud
Job Number 569701-0056
Title The True Caribbean Stud
Length :60
Date 11/15/00
Version 1.0

ENRIQUE: (WITH A SPANISH ACCENT) Hello, my name is Enrique. I am the
Caribbean Stud. I have to say this because there seems to be...
confusion. I have heard that there is this new game from the
Kansas Lottery called Caribbean Stud. I do not know you Kansas
Lottery, but I, Enrique Phillippe San Jussepi am the true Caribbean
Stud. I have heard that this Caribbean Stud lottery game has a top
prize of 20 thousand dollars, but does it have bulging pectoral
muscles like Enrique? No. Yes, it offers 20 free Carnival Cruises to the Carribbean
instantly, and seven more in a second chance drawing, but does it
make women all giddy with it's God-like bronzed skin? I do not
think so. I would like to see this lottery game slip into a leopard-
skin bikini briefs and look at fabulous as Enrique Phillippe San
Jussepi.

ANNCR: Play Caribbean Stud Poker from the Kansas Lottery and put
yourself in a winning state.

ENRIQUE: But stay away from the Caribbean. You would not enjoy the eye of
hurricane Enrique.

ANNCR: Caribbean Stud is a registered trademark of Mikohn Gaming
Corporation.