

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Vice Chairperson David Adkins at 10:30 a.m. on January 30, 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
Debra Hollon, Kansas Legislative Research Department
Amory Lovin, Kansas Legislative Research Department
Carolyn Rampey, Kansas Legislative Research Department
Robert Chapman, 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:

Jerry Sloan, Office of Judicial Administration
Shelby Smith, Former Lt. Governor, former Secretary of Administration
Duane Goossen, Director, Division of the Budget
E. Dean Carlson, Secretary, Kansas Department of Transportation

Others attending: See attached guest list

Vice Chairman Adkins opened the continued public hearing on:

SB 49 - Submittance of judicial branch budget to the legislature without executive branch approval

Proponents:

Vice Chairman Adkins welcomed Jerry Sloan, Office of Judicial Administration, who spoke in favor of **SB 49**. Mr. Sloan mentioned in his testimony that the bill does not diminish nor eliminate the Legislature's constitutional authority and responsibility to review and approve budgets. It allows the Supreme Court, whose constitutional mandate is to administer the Judicial Branch, direct access to the Legislative Branch, the appropriating authority. Mr. Sloan noted that the bill does not create problems with harm the 7.5 percent ending balance statute (Attachment 1). Mr. Sloan also distributed copies of charts titled, "Judicial Branch SGF Budget History" (Attachment 2). The Vice Chairman thanked Mr. Sloan for his presentation before the Committee.

Vice Chairman Adkins welcomed Shelby Smith, former Lt. Governor and former Secretary of Administration, who spoke in favor of **SB 49**. Mr. Smith mentioned that the Separation of Powers doctrine, in his view, dictates that the Judicial Branch budget request should go directly to the Legislature and that there should be no intermediary in this communication. The Judiciary is not an agency. He felt that it would be a mistake not to look at this as a policy question (Attachment 3). Mr. Smith also distributed information regarding Separation of Powers (Attachment 4). The Vice Chairman thanked Mr. Smith for his presentation before the Committee.

Neutral:

Vice Chairman Adkins welcomed Duane Goossen, Director, Division of the Budget, who testified to supply some perspective regarding the Division of the Budget. He explained what it means for the Division of the Budget and the Governor to revise a budget. Director Goossen explained that in Fall the Judiciary, just like the Legislature, the Governor's Office and state agencies in general, submit a budget proposal to the Division of the Budget. That budget proposal or request is a public document, and at the same time is given to the Division of the Budget and also to the Kansas Legislative Research Department.

CONTINUATION SHEET

The documents are fully available to anyone to see what the Judiciary and any other branch of government or state agency is asking for or proposing for the next budget year. The Division of Budget fully reports the budget request in the Governor's Budget Report and does so for every agency and every branch of government. The budget requests show exactly what was requested and what the Governor recommends for that agency or branch of government. The Governor, taking into account all of the resources of the state, makes a recommendation about how the resources should be divided and then that recommendation is forwarded on to the Legislature. Budget requests from agencies in all branches of government are shown so the Governor can look at the whole picture when making decisions on budget priorities. With this information, the Legislature can proceed as it will to set its own version of the budget. Director Goossen mentioned that **SB 49** would prohibit the Governor from making any kind of recommendation or offer any kind of opinion on the Judiciary's budget proposal. Director Goossen distributed a 10-year history of how the Judiciary budget has been appropriated (Attachment 5). Director Goossen cautioned that during the length of time shown on the Judicial Branch chart, the State General Fund has taken on significant new responsibilities with school finance. Decisions have also been made to grant very generous tax reductions which have then caused the State General Fund to pay out more money for schools and this skews any kind of comparison or percentage increases. (No written testimony was presented.) Committee questions and discussion followed.

Senator Huelskamp requested information from Director Goossen regarding procedures used in other states with executive budgets for submission of judicial budget requests. Director Goossen mentioned that he knows that it is handled differently in different states. Senator Downey mentioned that she would like to know if judicial branch submission of budget requests directly to the legislature has been challenged in other states. The Chairman thanked Director Goossen for appearing before the Committee.

There being no further conferees, Chairman Morris closed the public hearing on **SB 49**.

Bill Introduction

Senator Kerr moved, with a second by Senator Salmans, to introduce a bill (1rs0387) regarding the Kansas Childrens' Cabinet and investment of certain moneys. Motion carried by a voice vote.

Chairman Morris welcomed E. Dean Carlson, Secretary, Kansas Department of Transportation, who gave an update on the FY 2000-2009 Comprehensive Transportation Program (CTP) (Attachment 6). Secretary Carlson mentioned in closing remarks regarding the summary as follows:

- there are no excess revenues
- the margin between success and failure is getting thinner. Revenue changes will impact the program
- KDOT is committed to the CTP as envisioned by **HB 2071** and will carefully manage the available funds.

Committee questions and discussion followed. Chairman Morris thanked Secretary Carlson for his presentation before the Committee.

Copies of the Performance Audit Report, Reviewing the Kansas Court System's Allocation of Staff Resources To the District Courts, A Report to the Legislative Post Audit Committee by the Legislative Division of Post Audit, State of Kansas, June 1997 was distributed (Attachment 7).

The meeting was adjourned at 11:40 a.m. The next meeting is scheduled for January 31, 2001.

Testimony to the Senate Ways and Means Committee on SB 49
by
Jerry Sloan, Office of Judicial Administration
January 30, 2001

You have already heard from a number of conferees in support of SB 49. In addition, prior to this bill's introduction, the Chief Justice discussed this idea in some depth. You may remember she indicated she had talked to the Governor about this bill and that he was not opposed and had no problem with the bill.

I want to discuss more the nuts and bolts of the bill. First, what the bill does not do. It does not diminish nor eliminate the Legislature's constitutional authority and responsibility to review and approve budgets. It merely allows the Supreme Court, whose constitutional mandate is to administer the Judicial Branch, direct access to the Legislative Branch, the appropriating authority. It also does not harm the 7.5% ending balance statute. The legislative ending balance requirement would be completely unchanged and the Governor's responsibility would be merely to incorporate it in his or her calculations.

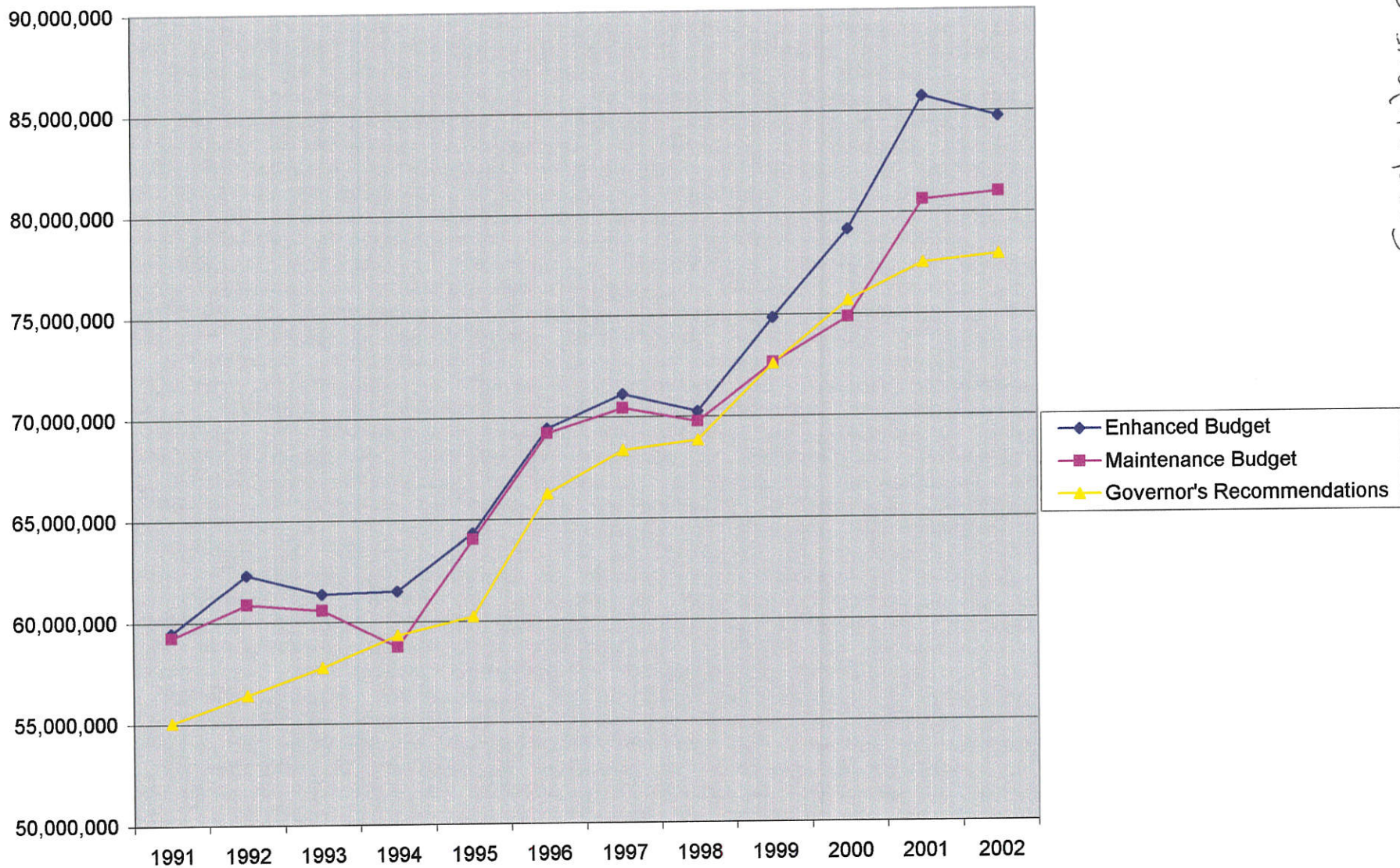
However, what the bill does do is to provide a better opportunity to discuss with the Legislature the needs of the Judicial Branch. There are a number of different numbers that can be looked at in discussing budgets, most of them relevant to certain analyses. The numbers that were presented by Mr. Collister were actual expenditures. Those, of course, are very important numbers. However, they are not the most relevant to this bill. What this bill impacts are the Governor's recommendations. I have provided you with a chart that shows our maintenance budget request, the total request, including enhancements and the Governor's recommendations of State General Fund expenditures over the past twelve years. I have attempted to make the numbers comparable by eliminating cost of living increases, which have not been included in our budgets by Division of the Budget instructions, but often are included in the Governor's recommendations. You can see that in most cases the Governor's recommendations are well below our maintenance budget request. This places the Judicial Branch in the awkward position of spending most of the time with the Legislature attempting to restore our budget to the maintenance level and not discussing our needs created by changing conditions.

The notes on the bottom of the chart indicate the increase over that time of our maintenance budget request. It has increased 36.71%. However, during that same period of time, the Governor's recommendations for State General Funds has increased 89.70% and his recommendations for all funds has increased by 81.42%.

I have also included in the packet you received three budgetary sheets that were included in the presentation the Chief Justice made earlier, but are also relevant to this issue.

Senate Ways and Means
1-30-01
Attachment 1

Judicial Branch SGF Budget History



*Senate Ways and Means
1-30-01
Attachment 2*

Judicial Branch Maintenance Budget Percent Increase: 36.71%
 State Wide SGF Percent Increase: 89.70%
 State Wide All Funds Percent Increase: 81.42%

Kansas Judicial Branch

State General Fund OOE Expenditures

Fiscal Year	Expenditures	
1996	\$1,727,051	
1997	\$1,572,815	
1998	\$1,951,482	
1999	\$2,406,082	
2000	\$1,663,915	
2001 (est.)	\$1,708,626	
2002	Judicial Branch Request	Governor's Recommendation
	\$1,744,141	\$1,419,317

Kansas Judicial Branch

District Court Nonjudicial Personnel

Fiscal Year	FTE
1991	1,404.0
1992	1,349.5
1993	1,348.5
1994	1,367.0
1995	1,380.0
1996	1,387.0
1997	1,389.0
1998	1,404.0
1999	1,419.0
2000	1,434.0
2001	1,434.0

Kansas Judicial Branch

Hiring Freeze History 1993 - Present

Fiscal Year	Freeze
1993	60 days or more
1994	60 days or more
1995	60 days or more
1996	60 days or more
1997	60 days or more
1998	45 days
1999	
2000	
2001	60 days



Testimony
Senate Bill No. 49
Senate Ways and Means Committee
January 30, 2001

Mr. Chairman and Members of the Committee:

I'm in no position to comment on the adequacy of the Judicial Branch budget. However, I'm very comfortable in supporting SB 49. It should not be threatening or damaging to anybody in the process.

For eleven years, I have been writing on the blurring of the lines between the Executive and Legislative Branches of state government – a most disturbing and deteriorating situation in Kansas.

The Separation of Powers doctrine in my view dictates that the Judicial Branch budget request should go directly to the Legislature. There should be no intermediary in this communication. The Judiciary is not an agency.

I can support legislation requiring the Judiciary to submit their budget request to the Director of the Budget for **INCLUSION** (not review and recommendation) to facilitate meeting the 7.5% ending balance requirement. I assume any differences in past requests and recommendations are only a small fraction of a percent of the State General Fund budget.

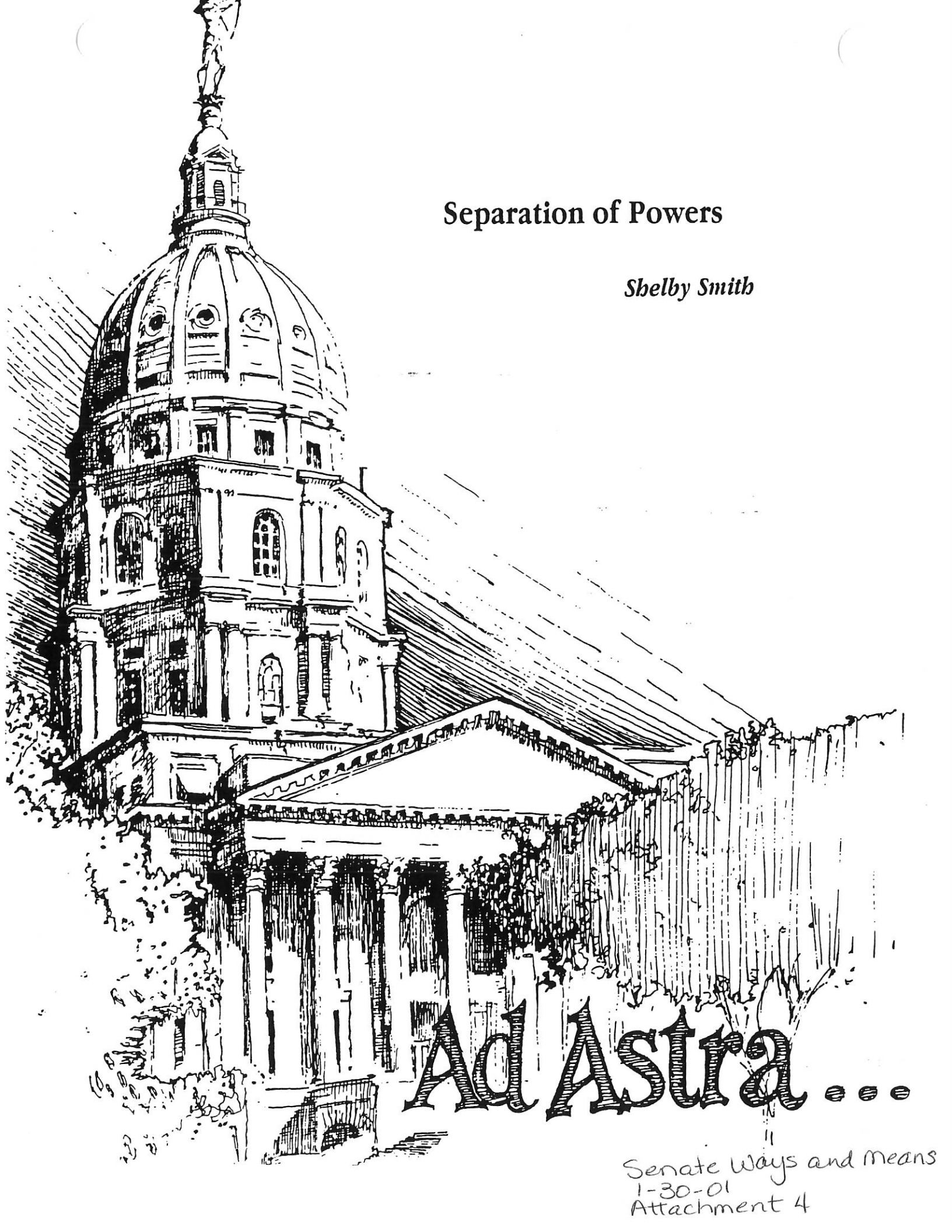
The mistake, in my view, would be to not look at this as a policy question. Current practice is an affront to the Constitution. Mr. Chairman, it would be refreshing to see your committee move this measure forward on a unanimous vote.

Thank you.

Respectfully,

Shelby Smith

Senate ways and means
1-30-01
Attachment 3



Separation of Powers

Shelby Smith

Ad Astra...

Senate Ways and Means
1-30-01
Attachment 4

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Separation of Powers in Kansas

Shelby Smith

Before power can corrupt, it must accumulate. On the advice and writings of two former colleagues, and drawing on their inspiration, I am expanding and updating the chapter on Separation of Powers in my history of the Kansas Department of Administration, "Insider's Chronicle," December, 1990. The situation has deteriorated dramatically in the past seven years.

I. The Legacy of Hill and Harder

The separation of powers, a government system of checks and balances, makes inevitable three types of conflict: one, between the Legislature and the Governor; two, between the Legislature and the Judiciary; and three, between the Executive and Judiciary.

The scope of this paper is limited to the separation of legislative and executive powers. I am not addressing the courts' adjudications of constitutional questions either federal or state. My objective is not academic, philosophical, or legalistic. Rather, I seek to explore the practical aspects of the problem, and the real world day-to-day consequences at the heart of the whole system.

The issue is power.

One of the stalwart Kansas legislators to address this issue was Clyde Hill from Yates Center, State Representative from 1955 to 1974, and former Speaker of the Kansas House of Representatives. During his tenure, he served on a Select Committee to Investigate Efficiency and Economy in State Government. Clyde emerged from this committee possessed with a strong belief that legislators often do not understand the separation of powers doctrine.

Hill advised and admonished fellow legislators, "*Don't you try to run the Executive Branch, you are not here to run the state!*" Clyde was insistent, demanding that a line be drawn on legislative over-reaching. He fully recognized the need for cooperation, but equally important, an arm's length in the dealings between the two branches.

As Speaker of the House in 1965, Clyde developed an orientation for freshman legislators. The seminar became known as the Clyde Hill School, and was used to educate new members on their expected roles, the limits of their powers, and the organization of state government.

In 1975 the Legislative Coordinating Council (LCC) formalized and expanded the program for all legislators. The Institute for Kansas Legislators was created and located at the KU Capitol Complex Center, Topeka. At this point, Dr. Marvin Harder, a political science professor at the University of Kansas, took the lead in

perpetuating the debate about appropriate separation of powers. Having served as Secretary of Administration under Governor John Carlin, and as Special Assistant for Policy Review in Governor Bob Docking's administration, Dr. Harder was highly respected in all branches of state government, and well-versed in the intricacies of executive, legislative, and judicial roles. As Director of the University's Capitol Complex Public Administration Center, he brought an exciting, academia perspective to this valuable educational program for legislators. It has since been abandoned by the Legislature.

Harder was also a strong supporter of the Governor's fellowship program, a course of study initiated in 1978 under Governor Robert F. Bennett to attract well qualified graduate and law students to careers in Kansas state government. Of the 61 Governor's Fellows, many have made invaluable contributions to the future of Kansas. Governor Joan Finney eliminated funding for this program in her FY '92 budget recommendation.

A Historic Perspective

Until the late 1960s, the executive branch of Kansas government had a big advantage over the legislative branch -- they maintained year round offices in Topeka with full time staff; the Legislature did not. That all began to change in 1968 with the publication of a small book, *The Sometimes Governments*, by the National Conference of State Legislatures (NCSL). The book detailed how many legislatures around the country were woefully understaffed and inadequately structured to handle major state problems. They even went so far as to grade state legislatures based on several different factors including number of legislators, facilities, staff, length of sessions, etc. Kansas scored low, ranking near the bottom of the survey.

This prompted the legislative leadership to initiate a series of legislative reforms starting in 1969 which ultimately led to the Kansas Legislature being chosen as the most improved legislative body in the nation in 1974. Much of the credit for this rests with the legislative leadership of that period which included House Speakers Cal Strowig and Pete McGill, House minority Leader Pete Loux, Senate Presidents Glee Smith and Bob Bennett, and Senate Minority Leader Harold Herd.

One result of these legislative reforms was to increase slowly but steadily the amount of influence that the Kansas Legislature asserted on the executive branch of state government. By lengthening the legislative sessions, increasing the number of interim studies, increasing full time staff for the leadership, providing key committee chairs with assistants during the legislative session, increasing the staff of Legislative Research, adding attorneys in the Revisors Office, allowing legislators to have individual offices and secretaries, and purchasing modern equipment (xerox machines, word processors, etc.), the legislative leadership gave legislators the tools and the time to more closely monitor the activities of the executive branch and, in many instances, figure out additional ways to become involved in influencing the decisions of that branch of state government.

Among the most significant legislative changes was the creation of the fiscal staff in Legislative Research. Heretofore, the Legislature had been forced to rely almost completely on the information provided them by the Budget Division of the Department of Administration which was first beholden to the Governor. By the mid-1970s, a legislative budget staff was in place to challenge each and every recommendation made by the Governor. This added a tough hurdle for the Governor's budget to clear -- and that process has become even tougher since the legislative budget staff has grown and become more experienced.

Due to the legislative reforms of the 1970s, there was also an increasing tendency for the Legislature to start imposing its presence on task forces, commissions, and special committees. Now, instead of the Governor making all the appointments, the legislative leadership, both majority and minority, were given opportunities to appoint their representatives who, in turn, had an obvious impact on the work of these various bodies.

What did this really mean? The answer lies in what followed with the legislative foxes in the executive henhouse.

All of the changes from 1969 to 1991 occurred during a period when the Governor's office was occupied by individuals who had been involved in implementing the legislative reforms. Starting with Governor Bennett in 1975, through Governor Carlin (1979-1987) and Governor Mike Hayden (1987-1991), the Cedar Crest residents were leaders in the "legislative revolution" of the 1970s. Thus, there was a subtle influence -- whether conscious or subconscious -- not to challenge the Legislature's continuing intrusion into executive branch affairs.

During Governor Finney's administration (1991-1995), the Legislature sensed a vacuum in the cabinet form of government, and installed a full court press on micro-managing the Executive Branch. It continues today.

A constitutional amendment in 1980 focused attention on the emerging encroachment of legislative authority on the Executive Branch. The Kansas Constitution prohibited the state from being a party in internal improvements, except for a state system of highways, flood control, and conservation or development of water resources. Senate Concurrent Resolution 1669 expanded the state's authority to carry on works of internal improvements. However, a procedural requirement mandated passing a law project by project before accepting or distributing a federal grant.

Legislative abuse also surfaced in the early 1980s when a Ways and Means Subcommittee blew the whistle, and Post Audit staffers refused to sign an inaccurate audit of the Kansas Corporation Commission (KCC). Several staff members stood steadfast and resigned their positions rather than succumb to the wishes of some legislators. Today, we sometimes have post audits initiated without adequate predication.

The Federalist Papers credit Montesquieu with having first formulated the Separation of Powers doctrine, although this phrase is somewhat misleading

since we have separate institutions sharing powers. For instance, the Governor is a participant in the law making process, and the Senate is a participant in the Chief Executive's appointive powers through the confirmation process. The courts talk of "the blending of powers," a term sometimes constructed narrowly, sometimes broadly.

Harder felt Montesqueiu's formalization was best conveyed by a syllogism: first premise, liberty is never secure where there is unchecked power; secondly, power can only be contained by power; thirdly, no power outside government can effectively restrain governmental power. Consequently, power must be set against power within government if the liberties of citizens are to be secure.

While the principle is fundamental and unchallenged like the Bill of Rights, it does not mean isolation. In today's world, seeking new methods for governmental efficiencies absolute independence is impractical. However, as Madison pointed out in Federalist No. 51, the Legislature necessarily predominates; and the executive will have to be "fortified."

II. Concerns

Legislators are trying to run agencies, and micro-manage programs instead of developing policy, goals, and objectives. In the process, they are blurring the lines of separate and co-equal branches of government. Two flaws emerge: one, divided authority is counter productive to efficiency, and two, abuse of power.

The State Finance Council was created in 1953 to serve as a legislative watchdog over the new Department of Administration. It has been the subject of test cases before the Kansas Supreme Court. In 1957, the challenge was based mainly on the issue of delegation of legislative power. The challenge in 1976 was focused on membership of the Council based on the separation of power argument.

Justice Praeger applied a four-part test: the essential nature of the power being exercised, the degree of control by one department over another, the objective sought by the Legislature, and the practical result of the blending of powers as shown by actual experience over a period of time. Based on that criteria, the court concluded that most of the functions entrusted by the Legislature to the State Finance Council were executive in nature, and the required participation by certain members of the Legislature violated the separation of powers.

Governor Bennett vetoed 1978 Senate Bill 983 which granted the Legislative Coordinating Council full control of space assignment in the Capitol. He felt unilateral action by the Legislature was inappropriate. It was Governor Bennett's opinion that these decisions should be made jointly by the Governor and the Legislature. The vetoed bill later appeared as an amendment in another piece of legislation and passed.

The Legislative Coordinating Council met on August 20, 1997 and grappled with such issues as space management and building maintenance. These issues are obviously administrative matters, not legislative matters. Addressing them is inefficient, and a waste and misdirection of legislative time and energy. Then, to compound the situation, due to Kansas law, the Council was involved in the controversy surrounding the 'court sessions' held in the Capitol by the Kansas Territorial Agricultural Society.

Fortunately, up to now, we have escaped the "space wars" like those in Minnesota. In an epic battle over office space in the Capitol, just three days before Christmas, 1994, the Governor was restrained by a court order from seizing House offices by force of arms. Kansans should stay tuned ... we may have a re-run of Quantrill's raiders when they attempt to evict the Secretary of Administration, Budget Director, and Secretary of State from the Capitol.

The Kansas Constitution, tradition, and expectation is for the Governor to speak his or her mind. The constitution requires "at every session of the Legislature, the Governor shall communicate in writing information in reference to the condition of the state, and recommend such measures as he deems expedient." Now, we have a law that says "the budget plan shall not include any proposed expenditures of anticipated income attributable to proposed legislation that would provide additional revenue from either current or new sources of revenue." When viewed from the perspective of the constitution, it limits the options of what a Governor can put in his recommended budget. This goes beyond an intrusion into executive authority; it is in all probability a constitutional violation. To the extent a Governor would comply with this law, it could cause an inadequate response to a disastrous flood or a devastating drought, or no Governor's budget plan to fund a follow-on of the 1989 comprehensive highway program.

Legislative Oversight Committees

Particularly disturbing is the emergence of ill defined roles for legislative committees, to wit:

- Joint Committee on Corrections and Juvenile Justice Oversight
- Special Committee on Child Support Enforcement Oversight
- House Fiscal Oversight Committee
- SRS Transition Oversight Committee
- Joint Health Care Reform Oversight Committee
- Joint Committee on Computers and Telecommunications
- Joint State Building Construction Committee
- Joint Committee on Administrative Rules and Regulations
- Travel and Tourism Council
- Legislative Coordinating Council compensation review

This year, Kansas has 31 interim and joint committees, Colorado has 22, Missouri has 20, Nebraska has 6 -- then there is Oklahoma with 128. It is not surprising that Oklahoma's 1997 comprehensive highway program found legislators designating their own specific projects in the law.

In 1996 and 1997, the Legislature heard proposals for "Privatization Oversight." Before proceeding down this path, serious review should be given to two Kansas experiments of economic regulation in the period between 1898 and 1925. Both failed. The intense conflict between economic and social factors in the body politic is sobering. Final word on the first experiment was a Kansas Supreme Court decision holding the legislation unconstitutional on separation of powers grounds. Twenty years later, the second experiment was declared unconstitutional by the U.S. Supreme Court since the Kansas Act exercised wage and hour regulation.

Of more concern than constitutionality is the vulnerability of privatization initiatives to improper legislative influence. The media could feast on this if the Legislature is not sensitive to the whole scheme of things -- the lines between separate but co-equal branches.

On the recommendation of the 1996 Interim Legislative Budget Committee, with the Legislative Coordinating Council concurring, the Legislature has hired a consultant and project manager to review the state's pay plan for Executive Branch classified employees and Judicial Branch unclassified nonjudicial employees. After the consultants have completed their analysis, and presented their findings to a strategy advisory group, the plan is for legislators to develop detailed implementation procedures. This is bizarre.

The August meeting of the Joint Committee on Corrections and Juvenile Justice Oversight (CJJO) speaks volumes. The first Commissioner of the new Juvenile Justice Authority (JJA) took office on May 5th. The organization became operational on July 1st. With less than two months to begin his work, he was required to provide the Committee with a status report, then followed by *monthly* briefings. His first briefing included such administrative matters as: job applications and interviews, five Memorandums of Understanding (MOUs) with other state agencies, office space requirements, field visits with professionals, two Requests for Proposals (RFPs), the securing of convenors and facilitators, and the activation of community planning teams. The Commissioner was asked to explain his communications system -- telephone calls, newsletter, other contacts and conversations with individuals and groups, the status of transitioning SRS employees to JJA, the need for a handbook, and detailed time-lines. To add insult to injury, the Commissioner was reminded to seek approval of the Computers and Telecommunications Committee, *before* purchasing a technology system.

The November meeting of the CJJO was no different than the August meeting. Intolerable public pressure on the Commissioner by legislators with different views -- 'do this, do that, add a fast-track staffer, no don't do that, the law says this, the provisos say that -- what's wrong Mr. Commissioner don't you understand legislative intent ... see you next month.'" The Chairman later summed it up, 'I

don't know if this committee is a blessing or a curse."

The Legislature has directly assigned the Commissioner 33 legislative bosses from three different oversight committees -- a formula for inefficiency, a formula for program failure. The Commissioner cannot possibly have the requisite time to do his work. The Legislature has imposed a reportorial burden that would be fatal even to a mature agency.

The Secretary of the Kansas Department of Corrections was asked this summer during a committee meeting to add parole officers and community programs to his budget. At this time in the process, such actions are the prerogatives of the Executive Branch for the Secretary to request and the Governor to recommend.

To some degree, all of the above micro-managing divides authority and responsibility. It creates an administrative straight jacket, a hindrance to economy and efficiency. It simply cannot be avoided. Legislators need to accept the inertial legacy of democracy.

Since 1939, Kansas statutes have provided for legislative oversight of rules and regulations with great detail: i.e. size of paper, grammar, type style, orthography, organization, method of public notice, etc. During the period 1939-1946, the Legislature exercised its veto authority only once -- rejecting a regulation concerning income tax deductions for state legislators. Although the Legislature had used its review authority sparingly, their interest in oversight of regulations adopted by state agencies has remained keen and aggressive. In 1947, 1965, 1976, and 1977, explicit law-writing stated the Legislature's intent to: wield complete authority; to expand legislative oversight to virtually all executive branch agencies; to create a Special Committee on Administrative Rules and Regulations; and then the Joint Committee.

In 1983, the Secretary of Administration asked the Attorney General to issue an opinion on the constitutionality of the Legislature's authority to reject, modify, or revoke an administrative regulation by adopting a concurrent resolution. The Attorney General found this practice unconstitutional (AGO 84-8) ... "an unlawful usurpation of the Governor's constitutional power to administer and enforce the laws...it attempts to authorize the Legislature to make law, without following the mandatory procedures of the Kansas Constitution."

Legislators should ask the hard questions. They should demand clear answers from sometimes entrenched and inflexible bureaucrats, and this understandably involves the legislator in administrative matters. Unfortunately, some legislators have tried to intimidate administrators with threats to their agencies' budget if they refuse to go along with a constituent's demand; i.e. the hiring, promotion, transfer, or firing of a certain person, or the preference for certain vendors.

Governing Boards

We have legislators serving on various boards and commissions. Some that come to mind are Kansas Inc., K-Tech, Kansas Turnpike Authority, Health Care Stabilization Fund Oversight Committee, and Travel and Tourism Council.

Currently pending in conference committee is Senate Bill 373. As originally introduced, the bill separates the KU Medical Center from the hospital, setting up a Public Authority governing board for the hospital. Legislative membership on the governing board poses the major obstacle. The debate on the number of legislators, their term (2 years or permanent), and who appoints them begs the real issue. Should legislators be on the board? No.

A 1997 enactment created the Travel and Tourism Council, a board consisting of 17 voting members. Eleven members are appointed by the Governor; the remaining six members are legislators. By a majority vote, the Council, not the Secretary of Commerce and Housing, will determine what is included in the Governor's expenditures of the newly created state tourism fund.

The state constitution follows the example of the federal constitution, it does not include a specific assertion of the separation of power principle. Instead, it enumerates the three branches of government. To parallel the federal constitution, we need a Kansas constitutional amendment on eligibility to serve. The article should provide that no State Senator or Representative shall during their term of office be appointed to or serve on any office, board, or commission under the authority of the State of Kansas. This is not likely to happen because it would take a two-thirds vote of both houses.

Omnibus Appropriation Bill

The omnibus bill is the final appropriation bill of the annual Kansas legislative session. It is designed to deal with unfinished business, the Governor's budget amendments, and appropriate monies required as a result of legislation passed during the session. This bill is the last opportunity legislators have to pass their pet projects and micro-manage state government.

The 1997 omnibus bill (Senate Substitute for House Bill 2576) offers numerous examples of the extent to which the Legislature has reached beyond its role as policy maker, and ventured into the realm of dictating how agencies must operate:

- It directs the Kansas Water Office to hire a consultant.
- It requires the Secretary of Aging to have State Finance Council approval before contracting with a private organization to administer the state long-term care ombudsman program.

- It requires regular quarterly reporting by the Juvenile Justice Commissioner to three different legislative committees.
- It dictates the structure of requests for proposals to construct correctional facilities.
- It dictates the scope of a ten-year corrections master plan.
- It directs the Department of Human Resources (DHR) to collaborate with the state library to develop a plan for one stop career center systems in libraries throughout the state.
- It mandates review of the DHR plan by the Joint Committee on Computers and Telecommunications.
- It requires Fort Hays State University to make a presentation to the State Finance Council on the reasonable division of gross square footage in the Sternberg Museum devoted to academic learning and the amount devoted to tourism.

The above are just a few examples of the 154 provisos in the 1997 omnibus bill. There are more than 30 instances in the bill where the Legislature has imposed special restrictions, dictated actions, required additional reports, or made an agency action subject to Finance Council approval. In many instances, these requirements are costly and time consuming. The Legislature's requirement of an agency to make a presentation prior to their taking action is interfering, not oversight.

For example, the fine print in the \$247,556 appropriation in operating expenditures to the Kansas Sentencing Commission (KSC) requires State Finance Council (SFC) approval *before* making any expenditures from the state matching funds account. Since the SFC does not meet on a regular basis, they cannot approve the KSC's expenditures in a timely manner. Therefore, this could create problems such as work interruptions, cash flow management, late payment of bills, and default of regulations jeopardizing federal grant funds.

On a broader scale of bad business structure is the fragmented responsibilities for the State Treasurer, Division of Accounts and Reports, and the Budget Director. Our state needs a CFO, a Chief Financial Officer to enhance accountability and affect efficiencies and economies.

Legislators have the right and duty to obtain all information germane to the appropriating process and formulation of public policy. This includes contacting an administrator to ask for an explanation, contacting the Governor to express concern, requesting a committee hearing, or introducing a bill to remedy a problem. The legislator can then make an appropriate response to the constituents who seek assistance without getting into micro-management.

III. Conclusion

Without reservation, I know if Clyde Hill and Mike Harder were alive today, they would be aghast with the meanderings of the Kansas Legislature into matters clearly executive in nature. Today, Clyde and Mike would shout to empty Chambers because this once hotly debated topic of separation of powers has fallen from the halls of our Capitol, and with it, the fundamental principles of democracy have lapsed. We need to be reminded that it is not fruitful to search for legal standards or guidelines, but rather to address the principle. While the boundaries remain vague and somewhat indeterminate, in one way or another, legislators *must* control the conduct of their peers.

Turning now to my thirty years' participation and observations of Kansas government,¹ I see a genuine threat, a wholesale blowing away of the balance of power to make laws and the power to execute them. The tentacles of the threat reach into:

- The efficiency and economy of state administrative organization and procedures
- Legislators trying to control and direct an executive officer's performance
- The private pitch of some legislators for a full-time Legislature
- Potential corruption

It might be helpful to try to identify the causes behind the blatant disregard to separate powers constitutionally mandated to the executive and legislative branches of state government:

- the growth and prescriptive/proscriptive nature of interim committees
- mistrust of government constituent pressure on the individual legislator
- Governors' proclivity for short range accommodation
- Cabinet members intimidated because of their agency's budget
- a pervasive ignorance of the Legislature's role

We must not lose sight of the ever-existing danger of unchecked power. If separation of powers means anything, it means the Legislature enacts laws, and the Executive Branch administers the law.

¹ State Representative, Chairman of the House Assessment and Taxation Committee, Lt. Governor, Pro Bono Acting Secretary Kansas Department of Human Resources, Secretary Department of Administration.

Procurement of commodities, professional services, and the leasing or acquisition of real estate should be the exclusive prerogative of the Executive Branch. Any meddling in this area by the Legislature leads to the perception of corruption. Legislators have been known to: seek Requests for Proposals (RFPs) for single source vendors; improperly request specific real estate leaseings or acquisitions; try to influence the criteria in RFPs; attempt to insert biased consultants into the procurement process. Knowingly or unknowingly, they were circumventing the competitive bid process. The blurring of the lines of separate and co-equal branches of government is the breeding ground for scandal.

Forewarned is forearmed. Our founding fathers issued ample warning. Thomas Jefferson's *Notes on Virginia* cautioned that "all the powers of government, legislative, executive, and judicial result to the legislative body -- the concentration of these governmental powers in the legislature is the definition of despotic government -- it is not the elective government we fought for."

The pragmatic and flexible James Madison prophesied in *Federalist Papers*, "the legislative department can with great facility mask their intrusion under complicated and indirect measures -- the legislative group will draw everything into their impetuous vortex, where they ought not to be involved."

The Kansas Legislature is tampering with democracy. The issues on Madison's mind still apply.

Acknowledgment:

A special thank you to Susan Hoffmann, whose most invaluable advise and contributions made this project possible. December, 1997.

SPECIAL COMMITTEE ON JUDICIARY

SEPARATION OF POWERS

CONCLUSIONS AND RECOMMENDATIONS

Proposed Legislation:

BACKGROUND

The Special Committee on Judiciary was assigned a study directing it to review the issue of recommending a state constitutional amendment to prohibit state legislators from holding any office, membership, or employment in the Executive Branch and Judicial Branch of state government or any instrumentality thereof. The proposal originated from 2000 HCR 5047 which would amend Article 2, Section 5 of the *Kansas Constitution* to prohibit legislators from holding any office, employment, or membership in the Judicial or Executive branches of government was assigned to the 2000 Select Committee. A hearing was held in March but no action was taken and the concurrent resolution died in the Select Committee.

COMMITTEE ACTIVITIES

The Committee held a hearing on the issue contained in HCR 5047. Proponents included a former Kansas Supreme Court Justice, a former Lieutenant Governor and state agency head, and a Wichita State University political science professor. A University of Kansas political science professor also submitted testimony.

A former Justice of the Kansas Su-

preme Court reviewed the history of the separation of powers issue and its application in both federal and state governments. He advised that the *Kansas Constitution* which does not specifically provide for separation of powers but accomplishes it by placing each of the branches of government and their power in separate articles in the *Constitution*. He noted that the Kansas Supreme Court has held that the separation of powers doctrine does not prevent a legislator from serving on administrative boards or commissions except when such service results in the usurpation of power. He supported legislators serving on Executive or Judicial Branch boards as long as their number do not allow them to control the boards.

A Wichita State University professor of political science said the proposal would strengthen the three branches of government, but saw no harm with having legislators serve on Executive and Judicial Branch committees or groups that only study issues but which do not have authority to make decisions.

A University of Kansas political science professor in his written testimony said that legislators should be responsible to their own constituents and to the Legislature itself, and shall not hold allegiance to another branch of government. He urged the Legislature to allow the citizens

to vote on HCR 5047.

A former Lieutenant Governor and secretary of several Executive Branch agencies said to allow legislators to serve on Executive and Judicial Branch boards or groups causes undue influence, conflicts of interest, and potential corruption. He suggested a clarifying amendment to HCR 5047 that would allow legislators to serve on study groups that have only advisory powers but not on boards that have authority to make decisions in the Executive or Judicial Branches.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommended that no action be taken on the issue contained in 2000 HCR 5047 since there had been no

clear showing of abuse.

The Committee, however, believes the Legislature should continue to be vigilant of the potential for abuse in the whole separation of powers arena.

Several members of the Committee expressed concern about legislative groups which attempt to micro manage certain state agencies such as the Juvenile Justice Authority. Others expressed concern about the Executive Branch intruding into the purview of the Judicial Branch in reference to handling child support disputes. The Kansas Turnpike Authority which has legislators as members was also pointed out as an area of potential concern.

Judiciary

	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001 App.	FY 2001 Req.	GOV FY 2001	FY 2002 Req.	Enhanc 2002	GOV FY 2002
Salaries & Wages	\$ 57,933,459	\$ 60,280,238	\$ 62,598,196	\$ 64,398,198	\$ 66,867,930	\$ 69,469,260	\$ 72,578,477	\$ 76,485,993	\$ 83,137,399	\$ 81,731,813	\$ 82,131,813	\$ 85,889,917	\$ 3,635,776	\$ 84,929,935
OOE, Aid, Grants	2,451,374	2,744,977	3,963,567	4,233,801	7,007,322	3,916,765	6,345,889	5,346,425	4,860,292	5,966,127	5,566,127	5,569,690	174,294	5,244,846
All Funding Sources Total	\$ 60,384,833	\$ 63,025,215	\$ 66,561,763	\$ 68,631,999	\$ 73,875,252	\$ 73,386,025	\$ 78,924,366	\$ 81,832,418	\$ 87,997,691	\$ 87,697,940	\$ 87,697,940	\$ 91,459,607	\$ 3,810,070	\$ 90,174,781
<i>Percent Change</i>	4.2%	4.4%	5.6%	3.1%	7.6%	-0.7%	7.5%	3.7%	7.5%	7.2%	7.2%	4.3%		2.8%
Total Positions	1,691.5	1,713.0	1,733.0	1,746.0	1,749.0	1,766.0	1,787.0	1,814.5	1,815.5	1,815.5	1,815.5	1,815.5	42.8	1,815.5
<i>Percent Change</i>	0.1%	1.3%	1.2%	0.8%	0.2%	1.0%	2.2%	3.7%	1.6%	0.1%	0.1%	0.0%		0.0%
State General Fund Total	\$ 58,006,701	\$ 59,942,154	\$ 63,678,123	\$ 65,552,129	\$ 69,806,059	\$ 69,797,928	\$ 73,213,808	\$ 76,736,257	\$ 78,058,920	\$ 78,058,920	\$ 78,058,920	\$ 81,004,866	\$ 3,719,472	\$ 79,630,787
<i>Percent Change</i>	2.8%	3.3%	6.2%	2.9%	6.5%	0.0%	4.9%	4.8%	1.7%	1.7%	1.7%	3.8%		2.0%

**FY 2000-2009 COMPREHENSIVE
TRANSPORTATION PROGRAM (CTP)
UPDATE**

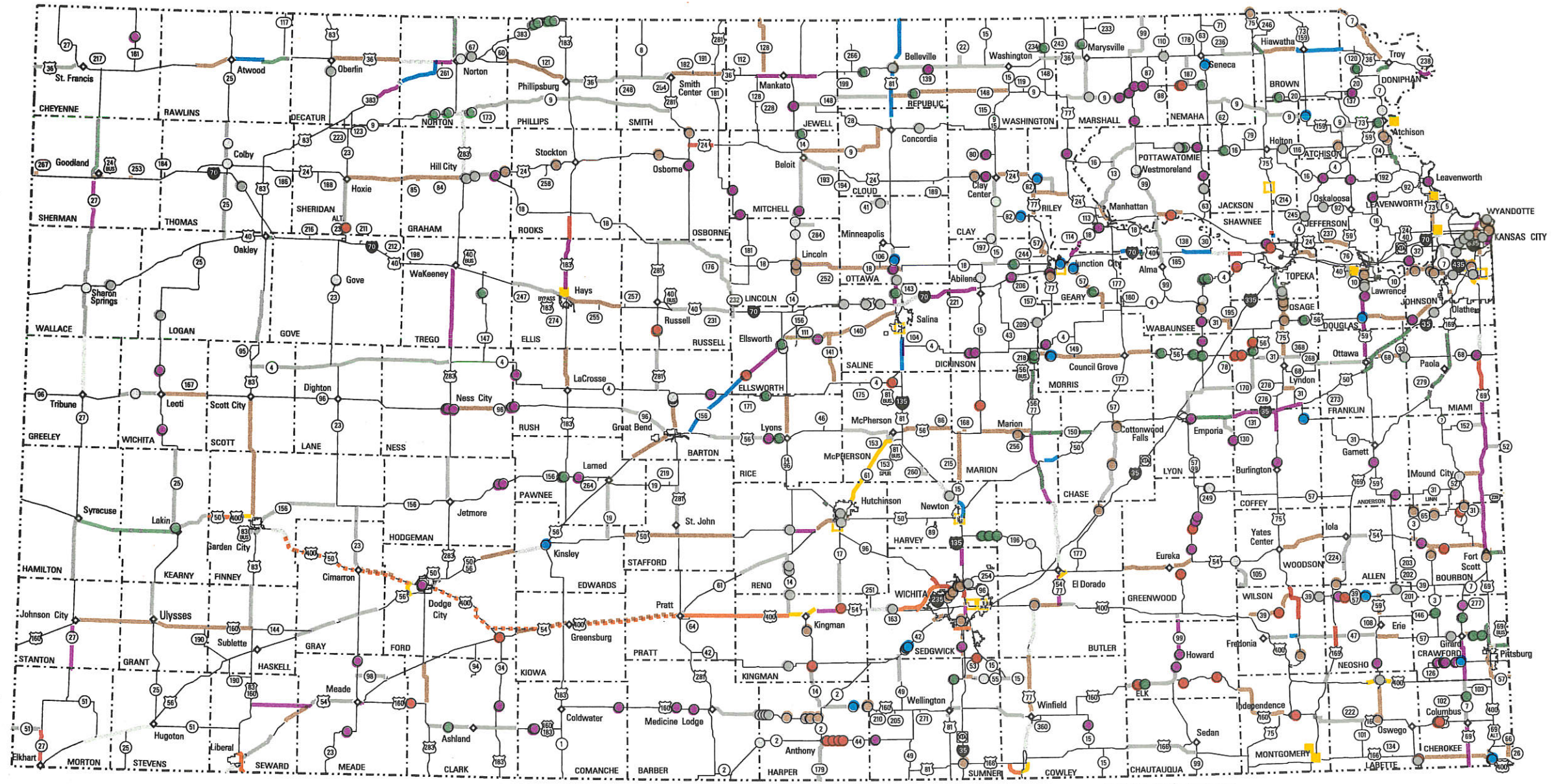
**Presentation to
Senate Ways and Means Committee
January 30, 2001**

**E. Dean Carlson
Secretary
Kansas Department of Transportation**

*Senate ways and means
1-30-01
Attachment 6*

FY 2000-2009 COMPREHENSIVE TRANSPORTATION PROGRAM

6-9



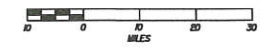
Major Modification Interstate and Non-Interstate and Priority Bridge Substantial Maintenance

	2000	2001	2002	2003	2004 - 2009	2000	2001
Bridge	●	●	●	●	●	●	●
Roadway	—	—	—	—	—	—	—

Substantial Maintenance Projects are selected one year at a time, and the remainder of the CTP Substantial Maintenance projects have not been selected.

System Enhancement Projects

- Interchanges ■
- Corridors & Bypasses —
- Corridor Studies - - -
- Preliminary Engineering and /or Right of Way Only —



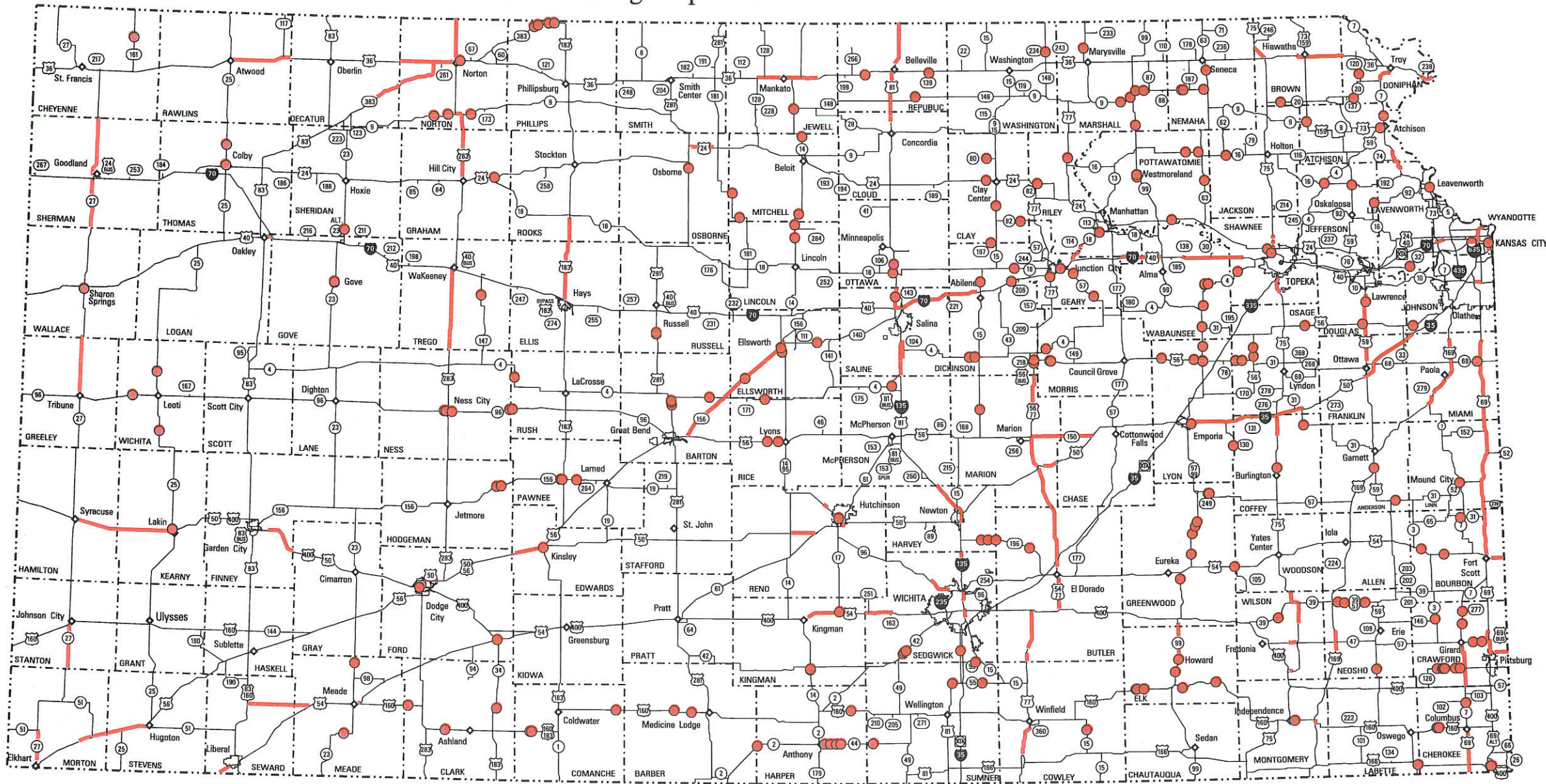
PREPARED BY THE
KANSAS DEPARTMENT OF TRANSPORTATION
 BUREAU OF TRANSPORTATION PLANNING
 CTP092800B2.DGN OCTOBER 10, 2000
 USING CANYS DATABASE 06/00
 BPM CTP DATA 07/01/00

COMPREHENSIVE TRANSPORTATION PROGRAM FY 2000-2009

Major Modification Interstate and Non-Interstate and Priority Bridge Only

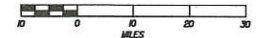
Assumes Funding as per HB2071 as Passed 4-30-99

6-3



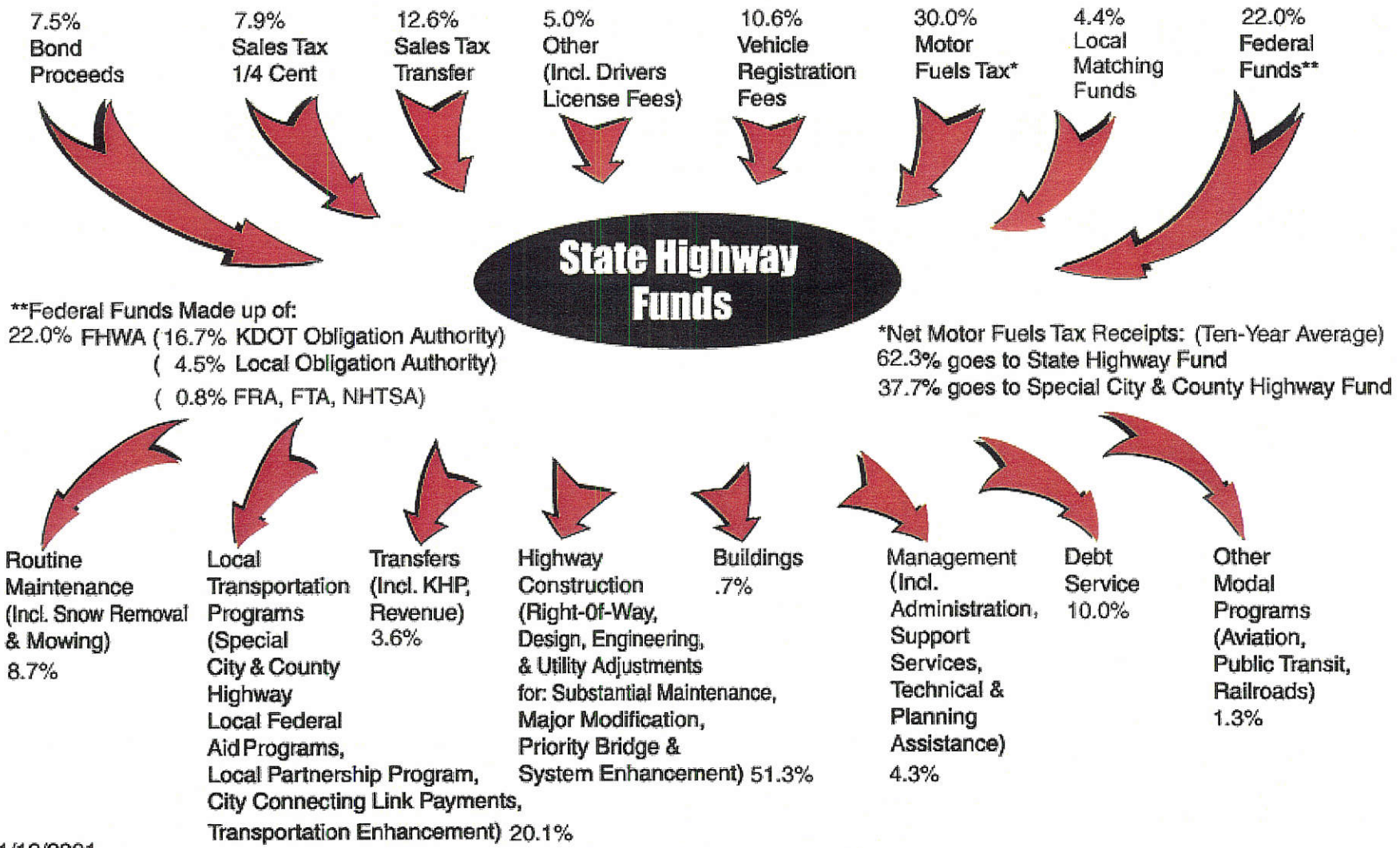
See project list for more specific project information.
 See separate list for explanation of changes from
 2000 annual report map.

Bridge ●
 Roadway —



PREPARED BY THE
 KANSAS DEPARTMENT OF TRANSPORTATION
 BUREAU OF TRANSPORTATION PLANNING
 CTP092800ALDGN OCTOBER 3, 2000
 USING CANSYS DATABASE 06/00
 BPM CTP DATA 07/01/00

Kansas Department of Transportation Fund Sources and Uses FY 2000-2009



1/12/2001

Fund Sources

- **Estimated total funds for the ten-year CTP have increased from the original House Bill 2071 (May 1999) estimate.**
 - **\$12.7 billion HB2071 estimate**
 - **\$13.1 billion 12/99 estimate**
 - **\$13.4 billion 1/01 estimate (FY 00 actual)**

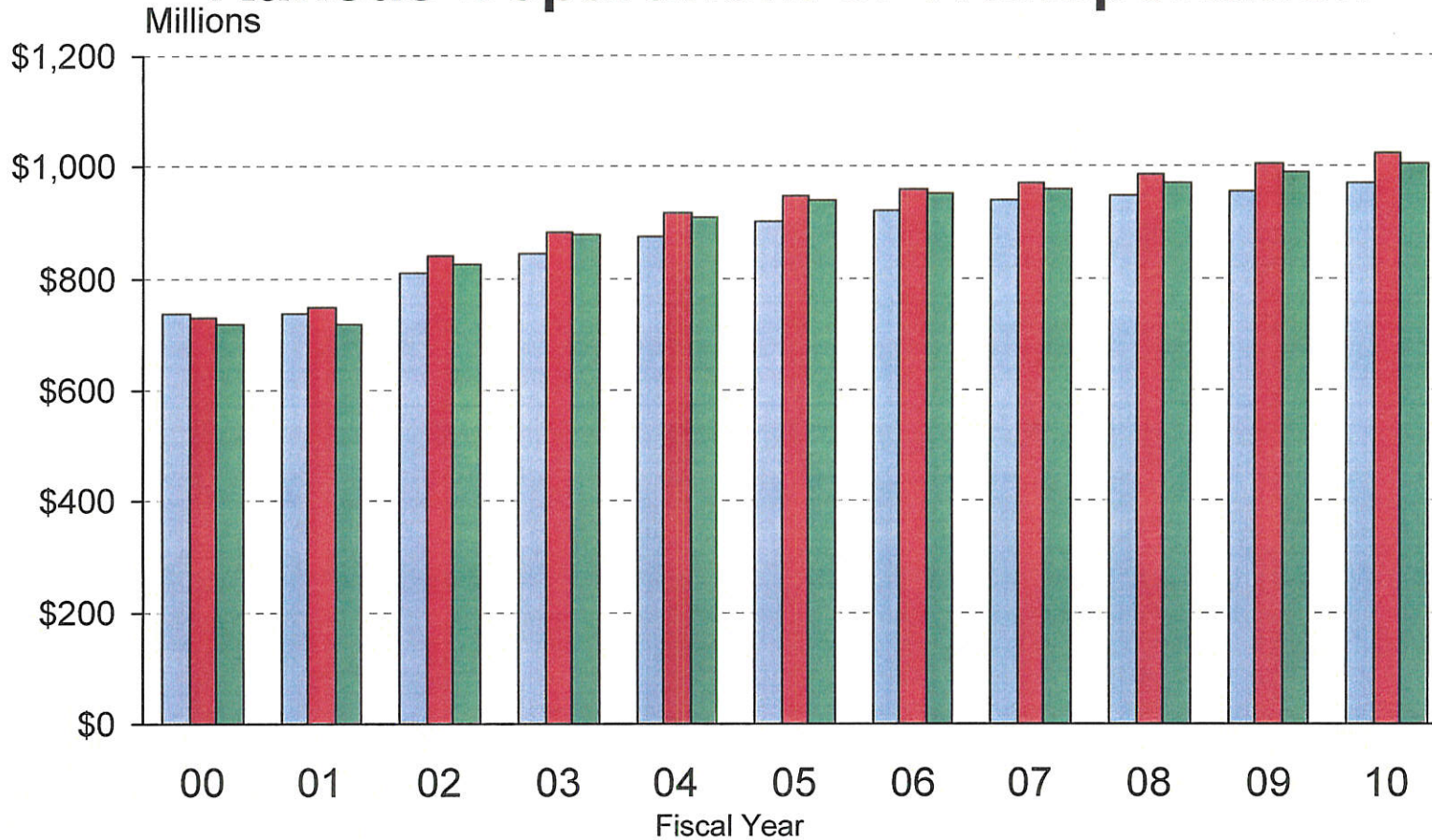
Fund Sources (continued)

- **Changes are due to:**
 - **Addition of federal demonstration funds earmarked for specific projects.**
 - **Addition of local matching funds for the System Enhancement Program.**
 - **Interest earnings are higher in part because favorable market conditions have resulted in the bond sales occurring earlier in the program than originally anticipated.**

Fund Sources (continued)

- **Changes (continued):**
 - **State Consensus and Highway Revenue Estimate Groups last year adjusted state revenue estimates upward, but have since revised estimates back down.**
 - **Sales Tax Transfers for FY 2000 and FY 2001 were reduced \$66 million from statutory amounts by the 2000 Legislature, reducing state revenues for the program. An additional \$25 million reduction for FY 2002 has been proposed by the Governor.**

Estimated CTP State Revenues Kansas Department of Transportation



At time of 99 HB2071 December 99 Est FY 2000 Actual, January 2001 Est.

Excludes Federal Aid, Local Funds, and Bonding

Includes State Highway Fund, Special City and County Highway Fund,
Bond Proceeds Fund, Debt Service Fund, and others

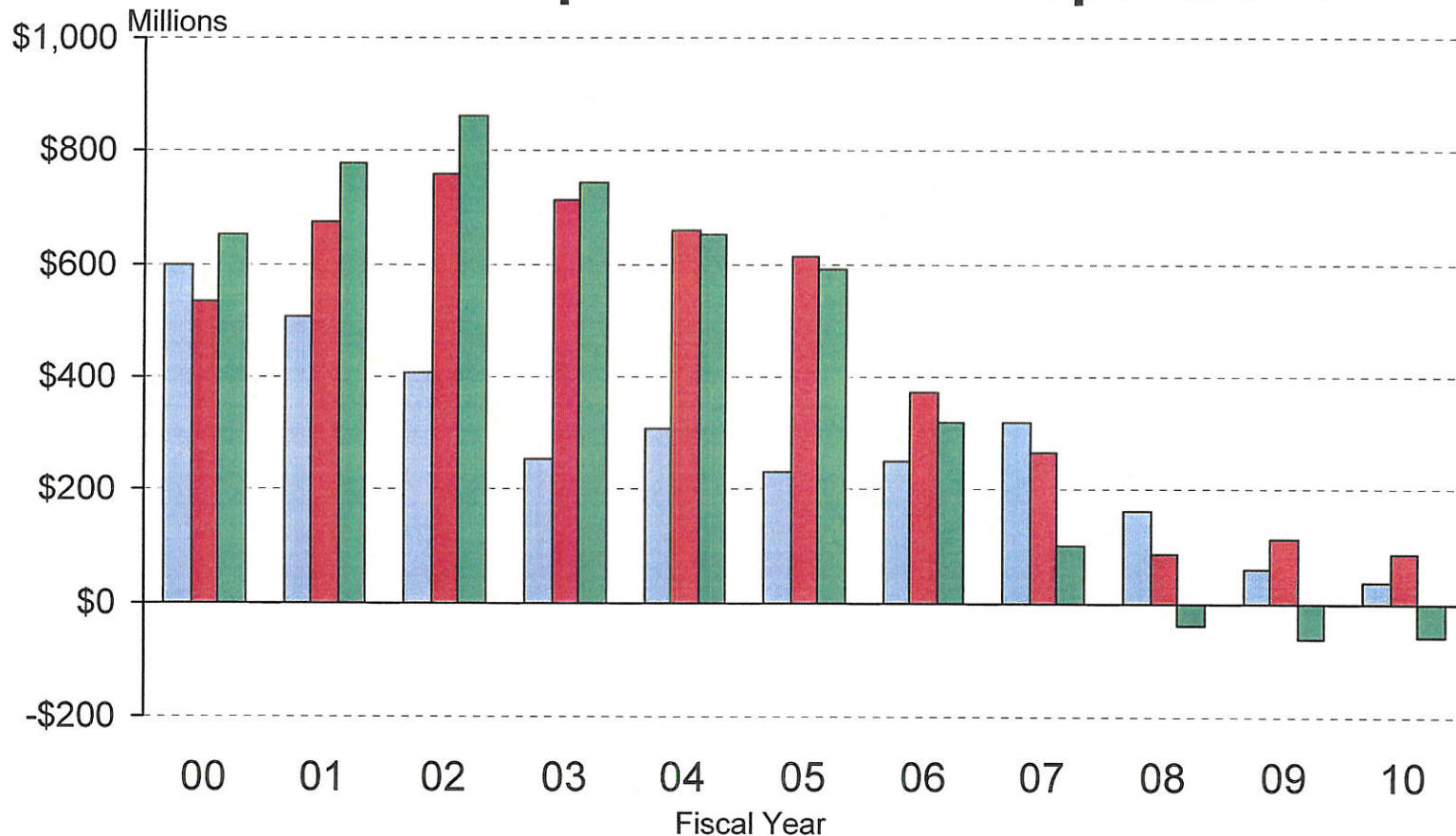
Fund Use

- **The estimated ten-year CTP total program cost has increased from the original House Bill 2071 (May 1999) estimate.**
 - **\$12.9 billion HB2071 estimate**
 - **\$13.3 billion 12/99 estimate**
 - **\$13.6 billion 1/01 estimate (FY 00 actual)**

Fund Use (continued)

- **Increases are due to:**
 - **Changes in Major Modification and Priority Bridge project cost estimates including the addition of federal demonstration funds earmarked for specific projects.**
 - **Addition of local matching funds for the System Enhancement Program.**
 - **Increased disbursements from the Special City and County Highway Funds due to estimated increases in motor fuel tax collections.**
 - **Debt service costs have increased due to early bond sales.**

Estimated CTP Ending Cash Balances Kansas Department of Transportation



■ At time of 99 HB2071
 ■ December 99 Est
 ■ FY 2000 Actual, January 2001 Est.

Numbers include dollars necessary to pay construction contracts let during the CTP but will be completed after June 30, 2009 and to meet the debt service and operating cash flow requirements.

Assumes continued Federal Aid matching, Substantial Maintenance, and Agency Operations beyond FY 2009

Includes State Highway Fund, Special City and County Highway Fund, Bond Proceeds Fund, Debt Service Fund, and others

Questions

- **How can revenue estimates be higher than originally anticipated, yet the estimated ending cash balance estimate has decreased?**
 - **Local contributions to the System Enhancement Program increase KDOT's revenues but also increase expenditures by a like amount.**
 - **Federal demonstration funds can only be spent on specific projects.**
 - **Increased interest revenue from early bond sales is offset by increased debt service during the CTP.**

Questions (continued)

- **Why are ending cash balances so high in the early years of the program, and why can't that money be diverted for other purposes?**
 - **The CTP is a ten-year plan. The revenue needs of the program were spread over the full ten years, and the interest earnings on those revenues was considered when calculating the amount of revenues needed.**
 - **While KDOT constructs projects as quickly as possible many expenditures can't be made until the end of the program.**
 - **Diversion of revenues early in the program has a negative impact larger than the diversion itself because of the reduced interest earnings.**

Questions (continued)

- **What is the status of CTP bond sales?**
 - **Bond Sales**
 - **September 1999** **\$325 million**
 - **October 2000** **\$150 million**
 - **November 2000** **\$200 million**
 - **Future Sales**
 - **Balance remaining** **\$320 million**
 - **Sales subject to market conditions**

Questions (continued)

- **Why is it beneficial to sell bonds early when it results in increased debt service through FY 2009?**
 - **By selling the bonds early, KDOT is able to use the proceeds to pay for construction costs which would otherwise have been paid for by state revenues. Those state revenues are then invested until needed to pay for projects later in the program.**
 - **Under current market conditions, KDOT is able to earn more money on invested state revenues than it pays on the bonds.**
 - **The total interest paid on the bonds is not increased. The amount paid out of future revenues after the end of the CTP is decreased.**
 - **Under current market conditions, selling the bonds early reduces the risk of higher interest rates in the future.**

Questions (continued)

- **Why were the System Enhancement (SE) project cost estimates submitted by project sponsors increased?**
 - **Estimates were submitted in FY 2000 dollars and had to be adjusted for inflation to reflect the actual estimated letting year. Most projects will be let to construction in the latter years of the CTP because of size and complexity. In addition, projects had to be modified to include appropriate design criteria and all required project components and to ensure that cost estimates were appropriate. Highest potential costs had to be estimated so that adequate funds are available to construct projects as promised. Specific alignments, project scopes, new bridge locations, and right of way requirements are not known at this time, all of which have a substantial impact on cost.**

Questions (continued)

- **Why were “freeway standards” used for some SE projects when project sponsors requested “expressway standards”?**
 - **Freeway standards were used for initial SE estimated costs so that adequate funds would be available to construct the projects should the freeway option be recommended as a result of the project development and design process. For major corridors such as US-54 and K-61, freeway standards must be considered to ensure that traffic and safety issues are addressed both at the time the facility is built and in the future as traffic and development along the corridor increases. Input from SE project sponsors and the public will be an important part of the design process along with engineering and safety considerations.**

Questions (continued)

- **What is the difference between a freeway and an expressway?**
 - **Both are multilane divided highways; the difference is the degree of “access control.” Freeways allow access only at grade separated interchanges; expressways allow access at public roads via at-grade intersections. The tradeoffs are safety, capacity, and function (freeways) versus cost (expressways). Some expressways may warrant a freeway in the future based on anticipated traffic and growth, and in those cases additional access control and right-of-way considerations may be a part of initial construction. For expressways that are built without future access control considerations, conversion to a freeway in the future may be cost prohibitive.**

Questions (continued)

- **What are some other factors that affect project costs in addition to freeway versus expressway standards?**
 - **Whether the roadway is constructed along the existing highway alignment or a new alignment has an impact on project cost. Several factors affect this decision including existing highway condition and geometrics, detour availability and cost, tradeoffs between right of way acquisition along the existing alignment versus new alignment, environmental and socio-economic issues, local road jurisdiction considerations, and engineering factors such as topography, water drainage, railroad crossings, and cross roads. All of these issues, costs, and tradeoffs must be examined during the project development and design process.**

Questions (continued)

- **Will additional SE projects be funded?**
 - **Funding projects beyond the original 29 SE projects depends on the status of the already selected projects and the amount of money available. It will be several years before it is known whether additional SE funds will be available due to cost savings. KDOT's estimates are just that- estimates. If money becomes available over the life of the program because of cost savings on the 29 SE projects, careful consideration will be given as to where those additional dollars should be allocated. The first priority would be to make sure that the originally selected projects are fully funded. Several projects were only partially funded, and those projects would need to be reviewed to see if there would be other work that could or should be done.**

Questions (continued)

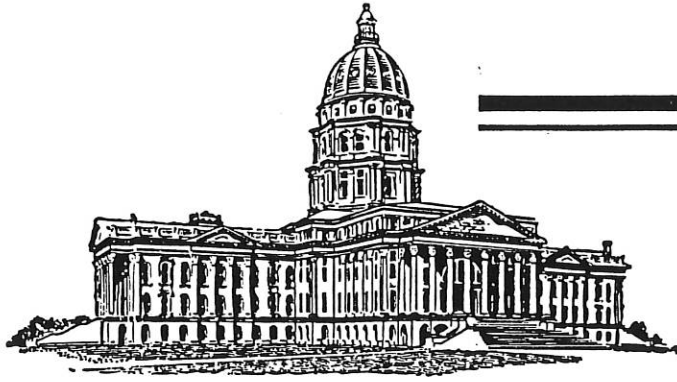
- **What is the status of the SE program?**
 - **KDOT met with all project sponsors during the month of August and met internally on all projects during August and September. Staff has continued to meet with project sponsors and discuss project details as city/county/state agreements are developed and project development and design begins. Design consultant selection has begun on many of the projects. It is critical to the success of the SE program that KDOT work hand-in-hand with the local governments that sponsored the projects and, in many cases, are providing local matching funds.**

Questions (continued)

- **Why have Major Modification and Priority Bridge project cost estimates increased?**
 - In late 1998 when KDOT made its initial projections for the CTP, the expenditure estimates were based on what was known about the anticipated projects at the time. Projects had been identified but development had only just begun on the majority of projects, and neither scopes nor schedules had been finalized. Since then, KDOT has been able to further investigate and research many of the projects as detailed project design has progressed. Two years later, based on this improved information, KDOT has refined its project cost estimates, and in many cases these estimates are higher than the initial estimates. KDOT must balance current and future project needs against design life and cost.

CTP Update Summary

- **There are no excess revenues.**
- **The margin between success and failure is getting thinner. Revenue changes will impact the program.**
- **KDOT is committed to the CTP as envisioned by House Bill 2071 and will carefully manage the available funds.**



PERFORMANCE AUDIT REPORT

Reviewing the Kansas Court System's Allocation of Staff Resources To the District Courts

A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
June 1997

97-53

*Senate Ways and means
1-30-01
Attachment 7*

EXECUTIVE SUMMARY
LEGISLATIVE DIVISION OF POST AUDIT

**Question 1: Is the Judicial Branch's
Current System for Allocating Judges And Other
Staff Resources Among the District Courts Reasonable,
Given the Workloads in those Courts?**

Because the location of each judge is specified in statute, the judicial branch can't permanently reallocate existing judgeships to help equalize their workloads, but it can and does make some reassignments on a temporary basis. page 5
One of the goals of court unification in 1977 was to permit more effective and efficient use of judges and court facilities, including equalization of judicial workloads. Although the Office of Judicial Administration collects caseload information, such as the number of cases files and disposed of, this information doesn't accurately reflect the workload of the courts because of differences in the type and complexity of cases being handled. Even so, caseload statistics for 1996 show a very large rang—from about 350 cases per judge in several rural judicial districts, to 2,322 cases per judge in Shawnee County.

Statutory constraints prevent wholesale reorganization to equalize judges' caseloads. State law requires each county to have at least one judge of the district court who is a resident of, and has the judge's principal office in, that county. In addition, State statutes list the counties which will have district magistrate judge positions, and also specify the number of district judge positions in each district. In some cases, the law further identifies, by county, where the district judge positions will be located.

The Office can temporarily reassign judges, but does so on a fairly limited basis because of the political constraints of reassigning judges who are elected or appointed to serve specific counties. In response to our survey, judges reported spending about four days a year on temporary assignment to other districts, and judges from multi-county districts reported spending about one day each week hearing cases in other counties within their districts. Since 1987, the number of authorized judgeships has increased by 4%, from 216 to 225, while the number of cases filed has increased by 40%.

Because of the statutory constraints on moving judges permanently to areas where caseloads are higher, districts with fewer cases filed still have proportionately more judges than districts with a greater number of cases filed. page 11
Judges in districts with a high volume of cases filed are handling more than twice as many cases as judges in districts with a low volume of cases. While reasons such as economies of scale, specialization, geography, and staff resources allow judges in "high volume" districts to handle more cases, this is still a greater discrepancy than might be expected.

Because judges caseloads' have increased significantly over page 12
time, district courts have taken a number of steps to become more efficient, but they seem to be falling behind in keeping up with their caseloads. Statewide, judges' caseloads are 34% higher than they were 10 years ago. The judges and clerks responding to our survey cited a number of changes they made to improve their efficiency in processing the increased caseload. These changes included improving the way they assign and schedule cases, using alternatives to trials, expanding their use of computers, and using fax machines. However, all sizes of districts were slightly less successful at keeping up with new cases in 1996 than they were in 1987.

Increasing caseloads have caused services to be cut back in page 15
some offices of the clerk of the district court. Between 1987 and 1996, case filings have increased 40% while nonjudicial staff have increased 7%. Because of this disparity, some Clerks' offices have reduced the level of service they provide; for example, by taking longer to make copies or retrieve files, only distributing child support moneys by mail, and requiring additional document work from attorneys. However, most Clerks' offices are open to the public during regular business hours, and a majority are open during the lunch hour.

Despite the current statutory barriers to changing the page 17
location of judges, the courts could make additional changes to operate more efficiently. Through our surveys, visits, and observations, we found options that could help the courts operate more efficiently, but those options would need to be reviewed in further detail. Changes that could be made within existing financial resources include clarifying whether judicial order's can be issued by fax machine, and publishing a newsletter or some other vehicle for sharing innovative ideas between districts. Changes that could be made with additional financial resources include considering State funding to improve the court's computer technology, relying more on district magistrate judges, senior judges, or retired judges, increasing access to mediation, ending the hiring freeze, increasing the number of non-judicial staff, and considering State funding to develop workload statistics.

Conclusion page 20

Recommendations page 21

APPENDIX A: How Surrounding States Allocate Personnel page 23

APPENDIX B: District Statistics for Fiscal Year 1996 page 24

APPENDIX C: Summary of Survey Responses from Judges and page 25
Chief Clerks or Court Administrators

APPENDIX D: Agency Response page 32

This audit was conducted by Cindy Lash, Barbara Coultis and Jill Shelley. If you need any additional information about the audit's findings, please contact Ms. Lash at the Division's offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call (913) 296-3792, or contact us via the Internet at: LPA@mail.ksleg.state.ks.us.

Reviewing the Kansas Court System's Allocation of Staff Resources to the District Courts

The Kansas Judiciary includes the appellate courts, the district courts, the Office of Judicial Administration, and several boards and commissions. In all, the Judiciary has more than 1,700 employees and a combined fiscal year 1997 budget of more than \$74 million. By far, the district courts account for the largest part of the budget—more than \$63 million in fiscal year 1997.

The Supreme Court is responsible for administering the judicial system in Kansas. The Office of Judicial Administration was established in 1965 to assist the Court in exercising its administrative and supervisory responsibilities.

The State is divided into 31 judicial districts. Each has an administrative judge, who is responsible for appointing a clerk of the district court in each county in the district as well as any assistants or support staff that may be needed to perform required duties. Some districts also have district court administrators to assist the administrative judge.

Legislative concerns have been raised that staff resources aren't being allocated among or within the district courts in the most effective way. Of specific concern is whether the current system for allocating staffing resources provides too few judges and other staff for courts in the more urban areas of the State to effectively handle the caseloads in those urban counties. A related concern is whether resource allocations are responsible for limiting the hours that the offices of clerks of the district courts are open to the public.

This performance audit answers the following question:

Is the Judicial Branch's current system for allocating judges and other staff resources among the district courts reasonable, given the workloads in those courts?

To answer this question, we analyzed caseload statistics collected by the Office of Judicial Administration, and interviewed officials to find out how staffing resources are allocated to the districts. We also visited a sample of judicial districts across the State to get a first-hand look at how different types of districts are staffed and organized, and surveyed all judges and the chief clerk or district administrator of each district to find out what types of changes in staffing or technology would help them do their jobs more efficiently. Finally, we talked with staff of the National Center for State Courts about measuring court workload, and interviewed judicial administrators in surrounding states to learn what type of systems they use to allocate staff resources among the courts. In conducting this audit, we followed all applicable government auditing standards.

Our findings begin on page five, after a brief overview of the organization and staffing of the State's district court system.

Overview of the Organization and Staffing Of the District Courts

January 1977 marked the start of a unified court system in Kansas. Unification brought together a variety of courts of limited jurisdiction (for example, probate, juvenile, and county courts) and State district courts to form a single Judicial Department. Under unification, the State became responsible for salaries and associated expenses for all staff, while counties assumed responsibility for court facilities and supplies. This funding split continues today. The Kansas Supreme Court has administrative authority over all courts in the State.

The State is divided into 31 judicial districts, comprising one to seven counties each. Each district is headed by an administrative judge, who is responsible for the clerical and administrative functions of courts within the district, including assignment of cases. The map on the facing page shows the districts. In addition, the 31 districts are grouped into six departments, each of which is generally overseen by one of the six Justices of the Kansas Supreme Court. The Chief Justice is the administrative head of the entire judicial branch of government.

The Office of Judicial Administration assists the Supreme Court by managing the day-to-day operations of the system. It handles budgeting, payroll, personnel, education and training, and caseload statistics, and has developed programs and systems related to mediation, juvenile intake and assessment, permanency planning for children, and child support enforcement.

Kansas Has Two Types of District Court Judges, Who Account for 14% of All District Court Employees

State law sets out two classes of judges—district judges and district magistrate judges. The differences between them are as follows:

- *District judges* are required to be attorneys, and can hear all types of cases that come before the district court. In fiscal year 1997, there were 156 district judges.
- *District magistrate judges* aren't required to be attorneys. Any magistrate who is not an attorney must, within 18 months of taking office, pass an examination and become certified by the Supreme Court. Their jurisdiction is limited to cases such as traffic and tobacco infractions, criminal misdemeanors, juvenile cases, and civil cases involving \$10,000 or less. In fiscal year 1997, there were 69 district magistrate judges, 12 of whom were attorneys.

In addition, the courts use senior judges and retired judges to help cover the workload. Senior judges are retirees who sign a contract to work 40% of the year for a stipend equal to 25% of the salary of a district judge. Senior judges and other re-

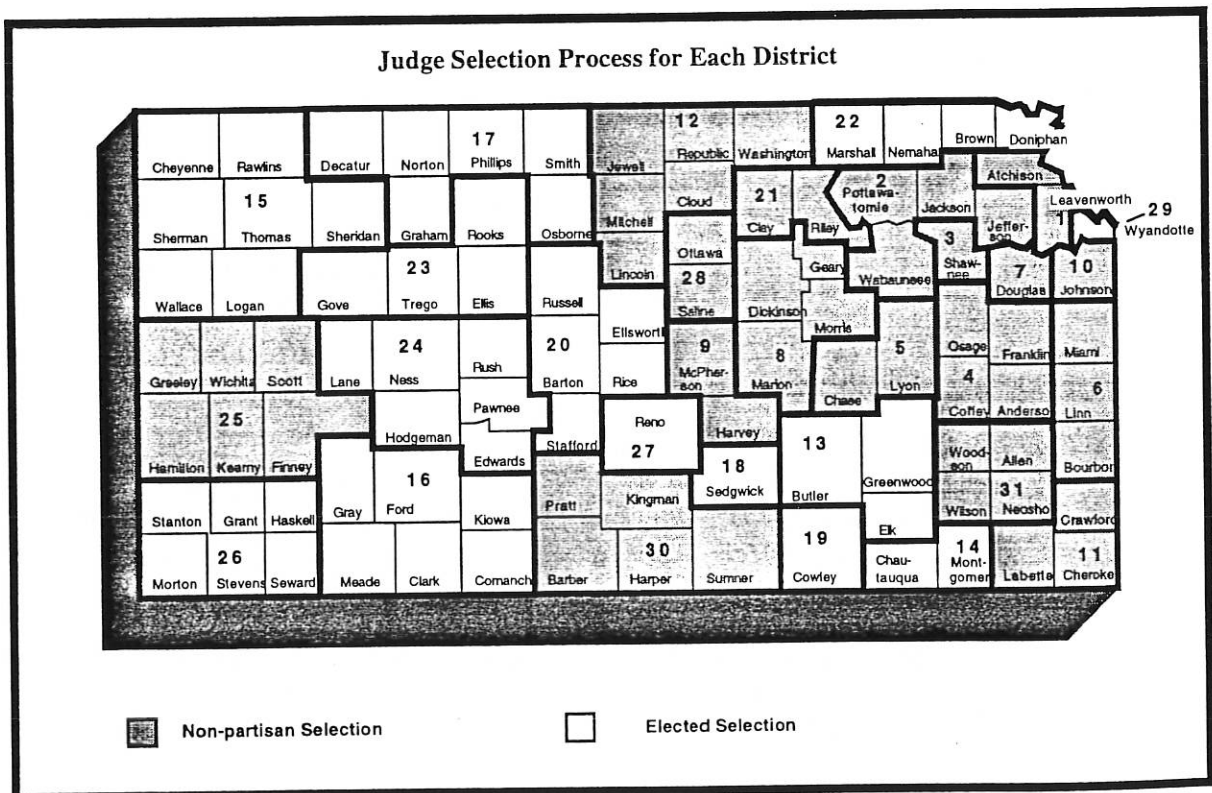
tired judges who don't have "senior" status also can hear cases on a temporary basis, for which they receive a daily stipend. In fiscal year 1997, the judicial branch funded nearly 400 days of retired judges (equal to about 1.5 full-time judges) and seven senior judges (equal to about 2.3 full-time judges) to help the district courts.

In all, judicial branch expenditures for judges of the district court, including senior and retired judges, will be about \$19.8 million in fiscal year 1997.

District court judges may be elected to office or may be appointed. Voters in each judicial district have chosen whether to elect judges or use a nonpartisan selection procedure. Elected judges are subject to partisan election every four years.

Under the nonpartisan selection procedure, when a judicial vacancy occurs, a local panel of 6-14 people is convened as a nominating committee, which is made up of equal numbers of attorneys and non-attorneys. For district judges, the nominating committee submits the names of two or three qualified individuals to the Governor, who makes the appointment. For magistrate judges, the nominating committee makes the appointment. All judges selected under the nonpartisan selection procedure are subject to a retention vote every four years.

Currently 14 districts covering 53 counties elect their judges. About 45% of district judges and 59% of district magistrate judges are elected. The remaining judges are appointed by the Governor. The map below also shows the selection process for each district.



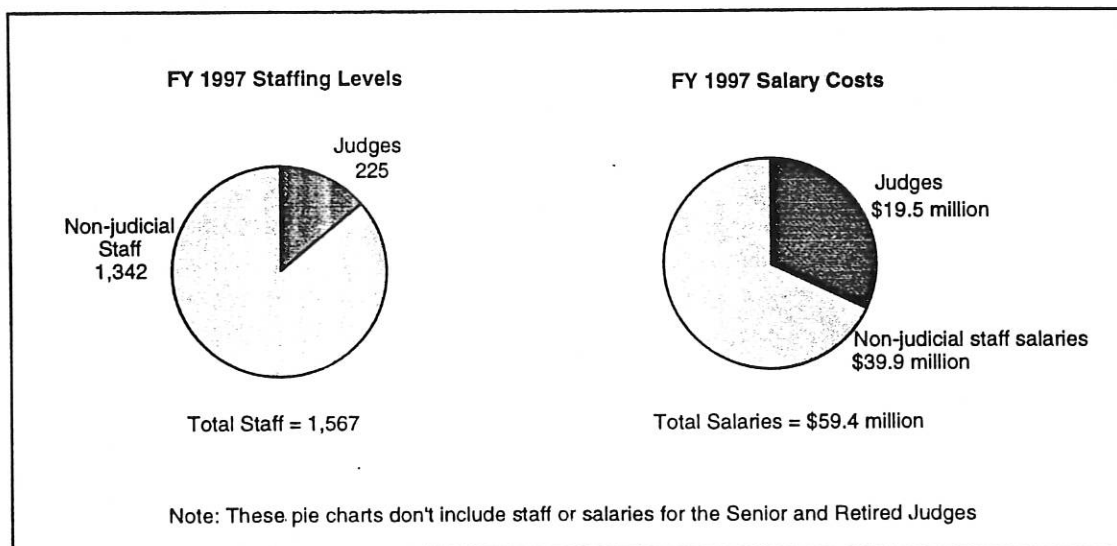
Non-Judicial Staff Account for 86% of All District Court Employees

The term "non-judicial staff" refers to court employees such as clerks of the district courts, court service officers (who do such things as supervise people on probation and conduct pre-sentence investigations), court reporters, records clerks, programmers, and general clerical support staff.

State law requires the administrative judge to appoint a clerk of the district court in each county within the district. Within staffing limits set by the Supreme Court and legislative appropriations, the administrative judge appoints the non-judicial staff necessary to operate the district court.

In all, judicial branch expenditures for non-judicial staff in the district courts, including temporary staff, will be nearly \$40 million in fiscal year 1997. The table below shows the job classifications of the 1,342 non-judicial staff. Federally funded child support enforcement staff are excluded.

Trial Court Clerks	463.0
Court Services Officers	341.0
Court Reporters	128.5
Clerks of the District Court	105.0
Administrative Assistants	103.0
Secretaries/Typists	88.0
Accounting and Records Clerks	68.0
Programmers and Systems Analysts	14.0
Court Administrators	14.0
Law Clerks	6.0
Transcriptionists	5.5
Other	6.0
	1,342.0



Is the Judicial Branch's Current System for Allocating Judges And Other Staff Resources Among the District Courts Reasonable, Given the Workloads in Those Courts?

Statutes that specify the location of each judge prevent the Judicial Branch from permanently reallocating existing judgeships to equalize workload, although the Branch does make temporary reassignments of judges. Still, judges are not always located where there appears to be the greatest amount of work. In spite of significant improvements in their ability to process cases, the district courts seem to be falling behind in their work, and increased caseloads have caused services to be cut back in some offices of the Clerk of the District Court. Finally, although there are some statutory barriers that reduce efficiency in the Judicial Branch, there are things the courts can do to improve their efficiency, although most of these would require additional resources.

Because the Location of Each Judge Is Specified in Statute, The Judicial Branch Can't Permanently Reallocate Existing Judgeships To Help Equalize Their Workloads, But It Can and Does Make Some Reassignments on a Temporary Basis

One of the goals of court unification was to permit more effective and efficient use of judges and court facilities, including equalization of judicial workloads. At the time, judges' caseloads varied greatly, and urban districts had much higher caseloads than rural districts. When unification took place, however, city and county judges in the local courts, who became associate district and magistrate judges, were assigned to the same judicial districts as before. Thus, the same potential for caseload inequities that existed before unification remained after unification.

To determine the extent to which variations in judges' caseloads still exist, we reviewed and analyzed the Office of Judicial Administration's caseload statistics for fiscal years 1987 and 1996. (Our analyses excluded traffic cases, which accounted for 44% of the cases filed Statewide in fiscal year 1996, because most traffic cases are fines that are paid and never come before a judge.) The number of cases a judge handles doesn't reflect his or her full workload because of differences in the type and complexity of cases being handled, and the differences in such things as travel time, the need to use interpreters, the use of senior and retired judges (which aren't counted in caseload figures), and the like. For example, a criminal misdemeanor case that takes 3 hours to hear doesn't take the same amount of judicial effort as a felony trial that takes 3 days to hear, but each is counted as a single case.

A "weighted" caseload system would take many of these differences into account, and provide a much more accurate picture of a judge's real workload. The Office of Judicial Administration currently doesn't have such a system. (Its requests for \$200,000 in fiscal years 1992 and 1993 to have the National Center for State Courts study the judicial workload and possibly establish a weighted caseload system were

denied by the Legislature.) Instead, the Office collects and reports on information from the district courts on such things as the number of cases filed and disposed of, and the length of time to process them. Although caseload information is useful to individual districts for managing their case flow and identifying cases that aren't progressing through the system, it doesn't accurately reflect judges' activities, and isn't very useful in making decisions about where and how to allocate staff resources.

Because workload information isn't available, we've reported on caseload information throughout this audit. Caseload information does provide a relative measure of judicial activity, and large differences in caseloads likely mean there are real differences in judicial activity. However, the reader needs to understand that some of the differences in caseloads described in this report may not be "real," if other factors could be taken into account. The box at right provides more information about weighted caseloads. Appendix A provides information on how surrounding states allocate positions in their courts.

The caseload statistics available from the Office show that caseloads still vary greatly. In 1987, they ranged from 245 to 1,460. In 1996, judges' caseloads ranged from 350 to 2,322. Caseload information by district is presented in Appendix B.

To identify the extent to which differences still exist between urban and rural districts, we divided the 31 judicial districts into three groups—small, medium, and large—based on the number of non-traffic cases filed in those districts. (The map on page eight shows how districts were classified.) As the following table shows, judges in large-volume districts still are handling more than twice as many cases as judges in small-volume districts. This has occurred even though more new judges were added to the larger districts than to the other 27 districts combined.

Volume of Cases Filed annually	Fiscal Year 1987			Fiscal Year 1996			Staff per Judge
	No. of Judges	No. Of Cases	Cases per Judge	No. Of Judges	No. Of Cases	Cases per Judge	
Small (18 districts) (2,000 - 5,500 cases)	95	51,131	538	95	70,452	742	4.4
Medium (9 districts) (6,200 - 11,000 cases)	53	43,424	819	57	66,761	1,171	5.4
Large (4 districts) (17,000 - 31,000 cases)	<u>68</u>	<u>88,865</u>	<u>1,307</u>	<u>73</u>	<u>118,878</u>	<u>1,628</u>	8.5
Statewide	216	183,420	849	225	256,091	1,138	

Measuring Workload Using a Weighted Caseload

Judges and court staff spend more time, on average, on a divorce case or felony case than on a small claims case. This seems obvious, but when workload is measured only by the number of cases, this difference is ignored. Counting only the number of cases a court hears also ignores these factors:

- Differences in travel time. Although most judges from multi-county districts who responded to a survey conducted for this audit reported they spend little time traveling between counties, a few reported spending up to eight hours a week.
- Time spent on language interpretation. Cases that require a language interpreter take at least twice as long to hear.
- Distribution of work. Different types of cases don't require the same proportion of time for judges and for non-judicial staff. For example, debt collection cases take minimal time for a judge to hear but require the clerk's staff to process much paperwork.

A weighted caseload is the method recommended by the National Center for State Courts as the best, most cost-effective way to take these differences into account when determining the need for judges or support staff.

The "weight" is a means to compare the amounts of effort required to perform certain activities. Simply put, if a divorce case takes more time than a small claims case, a divorce case would have more weight than a small claims case. If two courts have the same number of cases but the types of cases and therefore the total weights of those cases aren't the same, their workloads aren't equal.

Two main methods are used to determine the weight to assign to each type of case or activity, both of them based on time. One uses estimates, the other uses documented times.

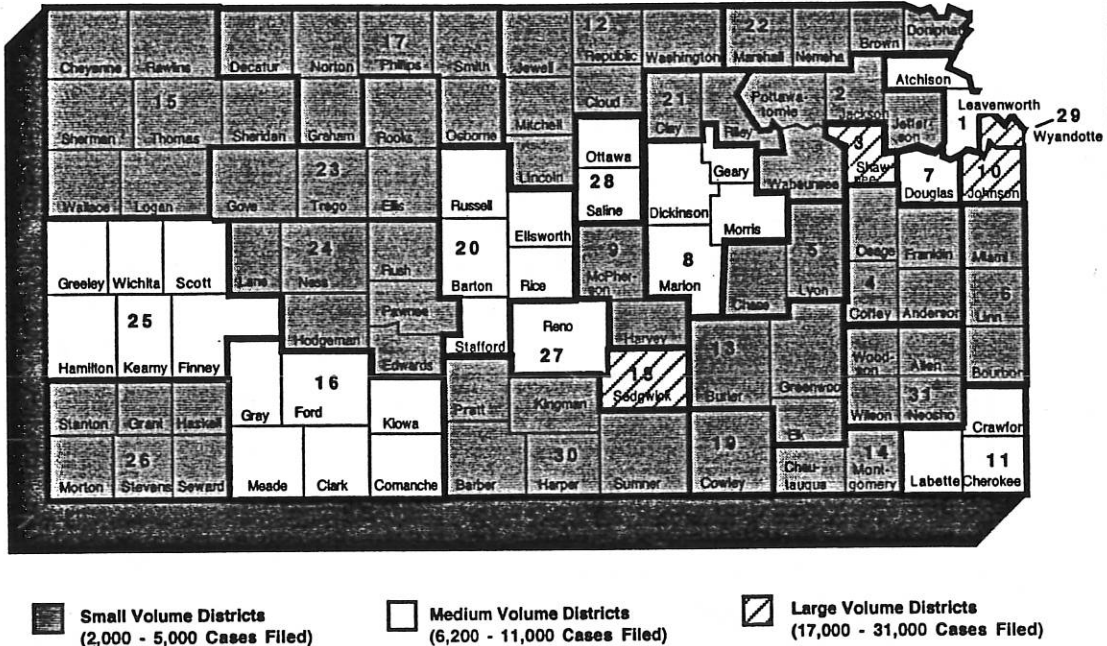
- People who perform the work estimate how much time it takes. For example, clerk respondents might agree on an estimate of 30 minutes to finish all the work required to file a small claims case.
- A sample of judges and court employees who perform the work log the actual time spent on each aspect of a case, or a researcher logs it for them. From those actual times, an average can be determined. For example, Missouri found that the filing of a small claims case used an average of 36 minutes of clerk time.

The logs and estimates can include time for activities such as translation and post-judgment work (e.g., garnishments, post-divorce custody hearings) that are required for specific cases. They also can include time spent on tasks not associated with specific cases, such as administrative work, travel, and general interaction with the public. A weighting system can include other factors, such as the amount of time-saving automation available in the court.

Court administrators can use the total weighted caseload to determine whether staffing is adequate. For example, if a district's cases could be expected to take more time than the district's judges have available, the district could be expected to need more judges to keep up with its cases. A complete system also could take into account retired and senior judges available to each district and occasional temporary staff used in clerk offices.

When asked whether they would prefer the use of a weighted caseload to help determine whether workloads across the state are equitable, a third of the judges who responded to a survey conducted for this audit said "yes," a third said "no," and a third offered no opinion.

Case Volume in the Districts



Court officials told us they haven't attempted any wholesale reorganization of judicial personnel to try to equalize judges' caseloads because of statutory constraints on their ability to do so. State law specifies where judges will be located, so the Judicial Branch can't reassign judges permanently without legislative change. The Chief Justice of the Supreme Court, although the administrative head of the judicial branch, has limited control over the allocation of judicial resources. State law requires each county to have at least one judge of the district court who is a resident of, and has the judge's principal office in, that county. In 1991, 1992, and 1996, bills were introduced that would eliminate this requirement, but none of those bills were passed by the Legislature.

In addition, State laws list the counties that will have district magistrate judge positions, and also specify the number of district judge positions in each district. In some cases, the law further identifies, by county, where the district judge positions will be located.

The Court can and does temporarily reassign judges between districts, but does so on a fairly limited basis because of the political constraints of reassigning judges who are elected or appointed to serve specific counties. State law provides the flexibility for judges to be moved temporarily to provide assistance to other counties and districts. Every judge has the authority to hear cases anywhere within his or her district, and can hear cases in other districts when directed to do so by a Supreme Court Justice.

The Supreme Court temporarily reassigns judges between districts, primarily to provide assistance during vacations, during extended sick leave, or for cases when

a judge has to disqualify himself or herself, and occasionally to help a district that is falling behind in processing its cases. During this audit, we sent surveys to the State's 225 judges. We received responses from 147 judges, for a 65% response rate. In response to our survey, judges indicated they spent about four days a year on temporary assignment to other districts. Appendix C contains a summary of survey responses.

However, because judges are either elected by voters from a specific county or district, or are appointed by the Governor for a specific county or district after being nominated by a committee representing citizens of that county or district, it is politically unfeasible to reassign judges between districts on a temporary basis for an extended period of time.

On the other hand, administrative judges in multi-county districts often bring district magistrate judges into the busiest court within their district to work one or more days per week. In response to our survey, judges from multi-county districts reported they spent about one day each week hearing cases in other counties within their district.

During our visits to district courts, however, some administrative judges pointed out practical considerations they say must be taken into account. For example, in District 25, Finney County (Garden City) has by far the greatest number of cases filed in the district. District magistrate judges from throughout the district work one day a week in Garden City, but the magistrates in Greeley and Hamilton Counties each drive across two counties and a change in time zone to get to work on those days. Further, it isn't practical to temporarily reassign judges from the smaller districts to larger districts with high caseloads that are located far away.

The Court also uses retired judges to hear cases for the district courts to help with workload. This can be done either on a temporary basis, for which the judges receive a daily stipend of \$138, or, in a few cases, judges have been granted "senior" status, which means they've signed a contract to work 40% of the year for a stipend equal to 25% of the salary of a district judge. (The senior judges program was approved by the 1995 Legislature, and received initial funding in fiscal year 1996.) As noted in the overview, in fiscal year 1997 the judicial branch funded nearly 400 days of retired judges (equal to about 1.5 full-time judges) and seven senior judges (equal to about 2.3 full-time judges) to help district courts.

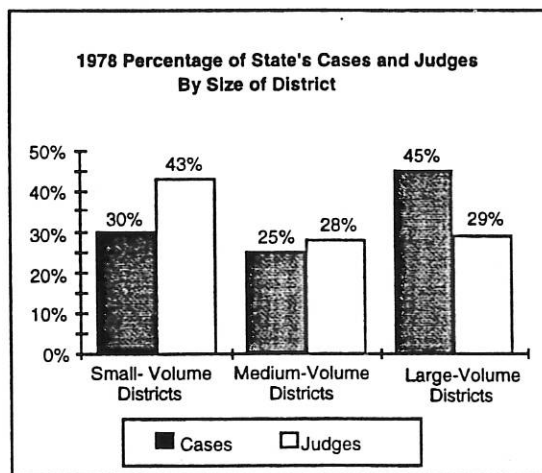
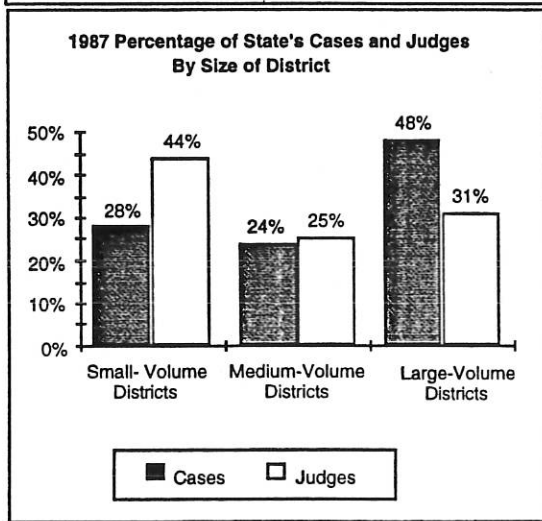
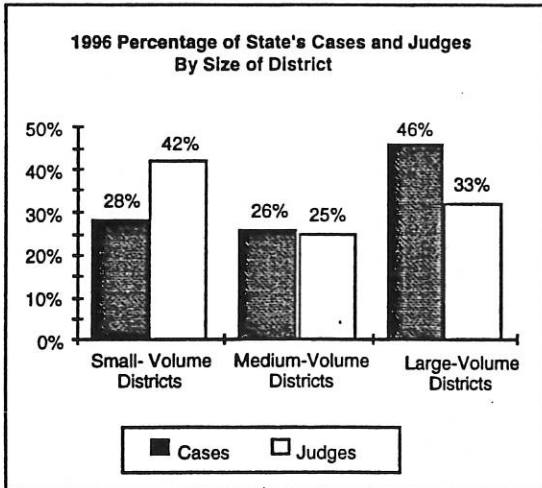
Because of the statutory constraints placed on judges' locations, court officials told us they've focused their efforts on adding new positions to the district

Training for New Magistrate Judges

Because district magistrate judges are not required to be attorneys, and only need a high school education, the Office of Judicial Administration has developed a series of training classes for them about court procedures. For example, during a recent three-month period, new magistrate judges attended 10 days of training. Magistrate judges also attend a three-day class to review the material before they take the certification exam.

In addition to the formal training classes, an official at the Supreme Court said almost all of the magistrate judges participate in a voluntary mentoring program that matches a veteran judge to a new magistrate judge. Magistrate judges also receive a handbook outlining the procedures for the different types of court cases.

However, one magistrate judge told us that the training was not adequate for someone just starting out, and that more detailed procedures would have been helpful.



As shown in the above three graphs, the small-volume districts have a higher share of the State's judges compared to their share of cases filed in the State, while the large-volume districts have a low share of the judges compared to their cases.

courts they think have the greatest need. According to court officials, new judges and non-judicial staff have been added over time based on an assessment of which districts seem to have the greatest need, and what can reasonably be requested in the budget.

Various court staff review case-load data, but as described earlier in this report, the judicial branch doesn't have a way to measure which courts actually have the greatest workload. The Court's personnel officer—who plays a key role in the decision—noted that each situation is unique, and that she must use her experience with the courts and various pieces of information to decide if a judicial or non-judicial position should be requested.

Since 1987, the number of authorized judgeships has increased by 4%, from 216 to 225, while the number of cases filed has increased by 40%. As can be seen from the table on page six, since 1987 the spread between caseloads in small and large districts has shrunk somewhat—in 1987, large districts had almost two and one-half times the caseloads of small districts; by 1996, that spread had shrunk to just over two times. Thus, adding new judges has helped equalize caseloads somewhat.

The Court has more flexibility to permanently reallocate non-judicial staff positions, although it has tended to move positions to different courts within a district, rather than across districts. State law requires the administrative judge for each district to appoint a clerk of the court for each county in the district. Court officials have decided that 1.5 staff positions is the minimum needed to maintain a clerk's office, regardless of workload, because of the

need to cover vacations, sick leave, and the like. Court officials told us that, although they have permanently reassigned a few positions to different courts within a district, they seldom move positions across districts.

The district administrative judges have the authority to move non-judicial staff within their districts. In our survey, clerks from 11 districts reported they share staff between offices, either regularly or on an as-needed basis. Small districts said they use this method to cover when a staff member in an office of 1.5 or 2 people is absent.

Because of the Statutory Constraints on Moving Judges Permanently to Areas Where Caseloads Are Higher, Districts With Fewer Cases Filed Still Have Proportionately More Judges Than Districts With a Greater Number of Cases Filed

The charts on page 10 compare district case filings to judgeships over time. As these charts show, there's been very little change in the proportion of judgeships to cases filed in the small, medium, and large districts since unification. The small-volume districts have a disproportionately high share of the State's judges compared to their share of cases filed in the State, while the large-volume districts have a disproportionately low share of judges compared to the number of cases they handle.

For a variety of reasons, judges in larger districts should be able to handle more cases than judges in smaller districts. These include the following:

- *economies of scale.* Large-volume districts simply have more of everything they do than smaller districts, and so can group activities together to process cases more efficiently.
- *specialization.* Judges can be assigned to a particular type of caseload (i.e., civil, criminal, juvenile) for some period of time, which maximizes their familiarity with statutes and case law relevant to that area.
- *geography.* Judges in larger districts generally don't have to travel, while judges in smaller, multi-county districts sometimes have to travel from county to county.
- *staff resources.* As the previous table showed, large-volume districts in Kansas have significantly more staff per judge than smaller districts—8.5 compared with 4.4. In some counties, district magistrate judges reportedly do all their own clerical work, while in the large, single-county districts, every judge has an administrative assistant and other staff to help process cases.

We couldn't find any standard criteria that would suggest how many more cases judges in large districts should be able to handle than judges in smaller districts. However, during our survey of surrounding states, Colorado officials told us that within their weighted caseload system, they assume large urban districts are able to handle 20% higher caseloads than rural districts, in part because of economies of scale. In Kansas, judges in larger urban districts are handling more than twice as many cases as judges in smaller-volume districts. Thus, there's far greater discrepancy than might be expected.

Because Judges Caseloads' Have Increased Significantly Over Time, District Courts Have Taken a Number of Steps To Become More Efficient, but They Seem To Be Falling Behind in Keeping Up With Their Caseloads

Judges' caseloads have increased significantly since 1987. As the following table shows, Statewide, judges are handling 34% more cases than they handled 10 years ago. The largest increase has been in the medium-volume districts. This is because, although both medium and large districts had a 7.5% increase in judges over the 10-year period, the number of cases filed in medium-sized districts increased by a greater amount (54%) than they did in the large districts (34%).

**Increases In Caseload Per Judge
Fiscal Year 1987 to 1996**

Volume of Cases Filed Annually	Caseload per judge		% increase in caseload
	FY 1987	FY 1996	
Small (18 districts) (2,000 - 5,500)	538	742	38%
Medium (9 districts) 6,200 - 11,000)	819	1,171	43%
Large (4 districts) (17,000 - 31,000)	1,307	1,628	25%
Statewide	849	1,138	34%

In addition to surveying the State's judges, we also sent a survey to the chief clerk or court administrator in each of the 31 judicial districts. We received responses from 28 of the 31 chief clerks, for a 90% response rate. The clerks who responded covered 97 of the State's 105 counties.

Among other things, our surveys asked judges and clerks to list the most effective actions their courts have taken to improve their efficiency in processing cases. They cited a number of factors, including streamlined processes and improvements in technology, as follows:

Actions taken to streamline case processing:

- 26 judges responded that they'd improved the way they assign and schedule cases, so that the cases can be heard more quickly. An additional 13 judges said they are scheduling routine cases for a single block of time. The profile on page 13 shows how Shawnee County and Sedgwick County have changed their methods for assigning and scheduling certain types of cases to save time.
- Using alternatives to a trial—23 judges responded that they are using mediation, alternative dispute resolution, and conferences with attorneys and parties to resolve cases, or at least to help move the cases through the courts more quickly and smoothly.

Actions taken with improved technology:

- Expanding use of computers—28 judges said that improved computer technology was one of the most effective actions their courts had taken. For example, judges said computers and statistical reports from the computer files allow them to monitor cases more closely. Eleven district clerks said computerization of case management activities had improved their efficiency, and 12 district clerks cited computerized accounting systems.

Three districts also said they'd begun sharing a computer database with other offices. By doing so, the courts can avoid having to re-enter data about a case that the sheriff's office already entered. The profile on the next page describes such a system used in Johnson County. Several clerks told us their courts have added computer terminals the public can use to access certain types of case information. Two counties are using imaging systems to store records, according to clerks who oversee those counties.

- Using fax machines—Judges and clerks said their courthouses were increasing their use of fax machines. The courts are allowing attorneys to fax their filings, and some of the judges are faxing orders and warrants. Several clerks commented that having documents filed by fax increased their efficiency by reducing the amount of time they spent interrupting their work to go to the counter to take documents from attorneys.

How Urban Districts Save Time

Shawnee County limited action docket

Urban areas often cluster high-volume, routine cases to save time. For example, the district court in Shawnee County recently streamlined its limited actions docket so that defendants move quickly through the court process. Now, the limited actions docket, typically debt cases, is processed at the Kansas Expo-centre. Without leaving the building or waiting to have their names called, the defendants talk to court staff, the law office representing the creditors, and, if necessary, a judge, simply by walking to the appropriate tables. If the defendant has a legal defense and wants a trial, a court date is set up. In the past, defendants often had to wait several hours until they were called, one-at-a-time, to go before the judge in a standard courtroom.

Shawnee County has an estimated 22,000 new cases and 100,000 on-going limited action cases each year. By making changes in the way these cases are handled, the district court spends only about two hours hearing these cases each week, instead of the 2.5 days court staff used to spend on them.

The District Administrative Judge said that when the new process was being developed, people were concerned debtors wouldn't take it seriously if they weren't called before a judge in a black robe in a formal court setting. However, he said

they haven't seen any changes in the number of debtors attending the docket and following the payment plan. In contrast, he said he has seen a reduction in the debtor's anger and frustration with the court.

Sedgwick County master calendar

In an effort to process cases faster, the district court in Sedgwick County uses a master calendar to schedule court cases. Instead of an entire case being assigned to one judge, the presiding judge for each department assigns the different stages of a case proceedings to different judges. For example, one judge will conduct the preliminary hearings, and another judge will conduct the sentencing for the case. However, the actual trial will be assigned to just one judge.

As a result of the master calendar, cases move through the courts quicker because they aren't delayed if a judge is sick or busy. In most courts, if a judge is sick, all parties of the case must be contacted to reschedule the case for another time. In Sedgwick County, if a judge is sick, the court can reassign another judge to hear the case at the scheduled time. According to the National Center for State Courts: "...the Wichita court on several measures of civil case processing disposed of its cases faster than 25 other metropolitan courts..."

- Using teleconferencing—23 judges reported that they'd increased their use of teleconferencing for many pre-trial meetings. Increased teleconferencing saves travel time and often allows cases to be scheduled quicker. Several courts also have begun using videoconferencing for certain types of hearings, which may offer greater efficiencies in the future.

Despite these improvements, district courts appear to be falling behind in keeping up with their caseloads. To see how well district courts have been able to keep up with case filings, we looked at a measure suggested by the National Center for State Courts, called "clearance rate." Clearance rate is calculated simply as the number of cases disposed of, divided by the number of cases filed. As recommended by the Center, we calculated a three-year average to compensate for annual fluctuations. The clearance rate is based on civil, criminal, and juvenile cases, which make up about 85% of all cases filed.

The measure isn't perfect. For one thing, there's no way to know whether judges worked 14-hour days or 6-hour days to achieve their clearance rates. It does,

Johnson County Has Developed an Integrated Criminal Justice Information System

Information about suspects and defendants in District 10 (Johnson County) is integrated into a computer database that can be accessed by major players in the local justice system: the district attorney's office, the sheriff's office, the clerk of the court's office, each court, the adult probation office, and the community corrections office.

So far, criminal and traffic cases are on the system. District attorney's office information about juvenile cases is already available, and more will be added. Information on civil cases is expected to be included in about a year. Personnel in all of the offices except community corrections can add information to the system. The sheriff's office is responsible for information about aliases.

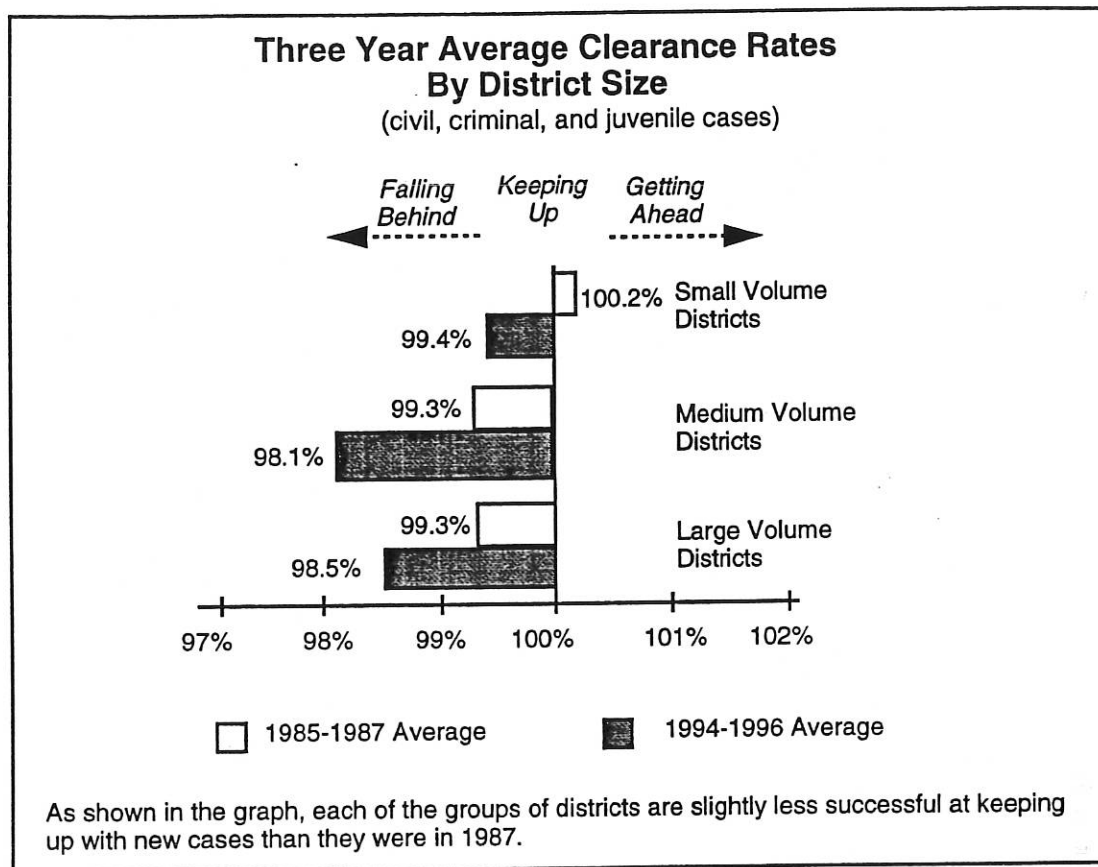
The system's main advantage is the sharing of information. For example, the court can learn very quickly whether charges against an individual are pending in another case, or the adult probation office can learn almost immediately what happened in court. Previously the sheriff's office, the district attorney's office, and the courts each had a separate system.

The system was developed using consultants under the direction of a project management team. The estimated cost, \$2.7 million, is being paid by the county.

however, give a general idea of whether districts are falling behind. The graph at right shows the average clearance rates in 1987 and 1996 for the small-, medium-, and large-volume districts.

As the graph shows, even with the efficiencies that have been instituted, all three groups of districts are slightly less successful at keeping up with new cases than they were in 1987. The small-volume districts, which have the lowest caseloads per judge, have been the most successful at keeping up with their work; medium-volume districts have been the least successful. (It's important to note that any assistance district courts receive from senior or retired judges or county-funded temporary judges aren't reflected in the caseload data, even though the work they do favorably impacts the districts' clearance rates.)

Even though the percentages seem small, they represent many cases. For example, the Statewide average clearance rate of 98.6% for fiscal years 1994 through 1996 means nearly 3,000 more cases were filed in each of those years than were heard. And, by the end of the third year, the backlog had grown by more than 8,800 cases.



Increasing Caseloads Have Caused Services To Be Cut Back In Some Offices of the Clerk of the District Court

The Office of the Clerk of the District Court is the place most people have contact with the court system. The Clerks are the official custodians of all court records, and so are responsible for ensuring public access to those records. They also enforce orders of garnishment and income withholding. In addition, they account for money judgments that pass through the court, as well as collect, account for, and forward to the State Treasurer's Office money due to the State from court collections. And, in most courts, the Clerk is the budget and fiscal officer, and handles statistical reporting to the Office of Judicial Administration.

Services in some offices of the Clerk of the District Court have been curtailed because of increases in workload. Like judges, non-judicial staff also have tried to cope with increases in case filings (40% between 1987 and 1996) that grew faster than increases in staff (7% for the same time period). One of the concerns raised when this audit was approved was whether the public was receiving adequate service from one segment of the non-judicial staff, the clerks' offices.

In response to our survey, a few districts reported they were providing more services, but most said they were doing less for the public than in the past, as follows:

- Eight respondents said people who request services such as having copies made or files retrieved must wait longer to receive them. For example, District 7 (Lawrence) told us attorneys must wait 24 hours for a file, and District 9 (Newton) said clerks ask for a three-day time period in which to make copies.
- Five districts told us they require additional document work from attorneys. For example, the clerk's office may require the attorney to provide prepared paperwork for a summons or a copy of a journal entry.
- Districts 14 (Coffeyville) and 21 (Manhattan) told us they distribute child support moneys only by mail, rather than allowing parents to pick up the payment at the clerk's office. District 14 said it no longer answers questions about child support payments by telephone, and District 21 said it now answers telephone questions about child support payments only 4 hours a week.
- Information that the clerks would give by telephone five years ago now must be requested in person or in writing in some of the offices. For example, District 2 (Wamego) said it gives no case information by telephone unless the litigant has no attorney.

Service increases include expanded office hours in at least one courthouse in three districts. In addition, the respondent from District 22 (Hiawatha) wrote, "We are possibly performing more services by making computer access so easy for the public."

Hours of operation aren't a problem in most districts. Overall, it appears that the Clerks' offices are open to the public during regular business hours, and a majority are open during the lunch hour.

hours of operation	number of offices with those hours	open or closed over lunch hour?	number of hours service is provided*
8 a.m.- 5:00 p.m.	85	46 open	9
		39 closed	8
8 a.m.- 4:30 p.m.	7	6 open	8.5
		1 closed	7.5
8:30 a.m.- 5:00 p.m.	2	2 open	8.5
8:30 a.m.- 4:00 p.m.	2	2 open	7.5
8:00 a.m.- 4:00 p.m.	1	1 open	8
7:30 a.m.- 4:30 p.m.	1	1 closed	8

* assumes an hour-long lunch hour

Office hours have changed in the past five years in some counties. Hours have been reduced in two offices, and in District 4 (Ottawa), we were told office hours are reduced when there is a staff shortage. Respondents who closed early typically said they did so in order to reconcile their books without interruption. On the other hand, three districts reported that at least one courthouse in the district had increased its hours of operation in the past five years.

Only one office, which is open from 8:30 a.m. to 4 p.m., reported receiving complaints “frequently” about the hours of operation. Based on survey results, complaints were received “occasionally” in 3 offices, “seldom” in 34, and “never” in 58.

Despite the Current Statutory Barriers To Changing the Location of Judges, the Courts Could Make Additional Changes To Operate More Efficiently

Some factors that contribute to inefficiencies in the judicial system will be hard to change on a permanent basis, and would require a major effort by the Supreme Court or the Legislature. As described earlier, these include the fact that State law requires a judge in every county, lists the counties that will have district magistrate judge positions, specifies the number of district judge positions in each district, and in some cases, identifies by county where the district judge positions will be located.

In addition, because judges are elected or appointed to represent a specific area, shifting them for an extended time period to areas with greater need can be problematic. (In contrast, a Colorado official told us the Colorado Court freely assigns its elected judges to work part-time in other nearby areas if the need exists to do so.) Further, the heaviest caseloads are in the urban areas of the State, often far removed from judges with lower caseloads.

Future Study of Kansas Courts

Since the unification of the courts, Kansas has seen changes in crimes, society, and court services. Some people think it may be time to look at the whole court system to see what is needed to address these changes. To this end, the Kansas Supreme Court is proposing a privately financed study, the Kansas Justice Initiative, which would study the Kansas judicial system and the manner in which civil justice is dispensed throughout the State. Some of the proposed issues include the efficiency, quality, and fairness of the justice system. The Kansas Bar Association supports the idea, and its officers are actively discussing the study and appointments to the study group with the Governor and with legislative leadership.

Finally, five counties—Crawford, Labette, Montgomery, Neosho, and Cowley—each have two courthouses. In some cases, this situation evolved because the county had a populous city that wasn’t the county seat. In other cases, it was because the county had two competing populous cities. Regardless of the reason, it is less efficient to staff two district courts in a county, including the clerk’s office, than to staff one larger office.

Even within these constraints, through our surveys, visits to districts, conversations with judges and non-judicial staff, and observations, we identified additional options the Supreme Court or the Legislature should consider in assessing how the courts could operate more efficiently. (The Supreme Court has recently proposed a broad-based review of the entire operations of the judicial system, as described in the profile above.) The options listed below appear to have merit, although many of them

will need to be reviewed in further detail to determine whether they are cost-beneficial for the court system. The options are grouped according to whether they could be done within existing resources, or whether additional resources would be required.

Changes that could be made within existing financial resources

- *Clarify whether judicial orders can be issued by fax machine.* The Rules of the Supreme Court allow attorneys to file cases by facsimile, and consider a facsimile signature valid. The Rules don't specifically address whether judicial orders can be issued by facsimile. Judges in some districts are transmitting orders by fax machine, while others don't think they have the authority to do so. If judicial orders can be issued by facsimile, emergency orders, such as search warrants and protection from abuse orders, would no longer require a judge to be physically present.
- *Publish a newsletter or some other vehicle for sharing innovative ideas between districts.* Identifying good practices, and then communicating them to court staff across the State, could help the districts operate more efficiently with existing staff. Although the Office of Judicial Administration will conduct a productivity review of a district court if one is requested by the administrative judge for that district, there doesn't appear to be any systematic way to share information about what's working well for the districts.

Changes that could be made with additional financial resources

- *Consider State funding to improve the court's computer technology.* Judges and clerks told us they want compatible, standardized software and a network system to link their computers throughout the courts. The computer network would allow staff to use e-mail and transfer case information and statistics electronically between courts. Clerks from small districts reported the most interest in scanning records and allowing the public greater use of terminals to access case information. Clerks from medium-volume districts were more interested in e-mail and computer networks.

County funding for the operations of the district courts makes it nearly impossible to achieve uniformity in an area such as computerization. Different counties operate different types of computer systems and have different levels of ability and willingness to fund equipment for their court. It took State and federal funding to achieve uniform computer equipment for child support collection and accounting in the district courts. The Office of Judicial Administration is currently working on a new caseload reporting system they hope will operate on the child support computers. It is possible that the federally-funded, multi-million dollar upgrade to the Criminal Justice Information System will result in additional computer capabilities for the district courts, but additional State monies may be needed to support specific applications.

- *Consider relying more on district magistrate judges, senior judges, or retired judges when additional judicial resources are needed in districts that currently have only district judges.* In response to our survey of judges, nearly 40% of the respondents thought more judges were needed (although 80% thought more non-judicial staff were needed, as is discussed below). If more judges are to be added to the system, district magistrate, retired, and senior judges are a very cost effective way to handle high-volume, less complex cases. District magistrate judges receive an annual salary of \$38,000, compared to \$81,000 for a district judge. As noted earlier, retired judges earn \$138 per day, while senior judges operate under a contract in which they agree to work 40% of the year for a stipend equal to 25% of the salary of a district court judge.

In the nine districts that have only district judges, approximately 68% of the cases filed (79% when traffic is included) could be heard by district magistrate judges. Those districts are District 1 (Leavenworth), District 3 (Topeka), District 7 (Lawrence), District 9 (Newton), District 10 (Olathe), District 18 (Wichita), District 19 (Arkansas City), District 27 (Hutchinson), and District 29 (Kansas City).

In response to our survey of judges, there was very little support for converting existing district judge positions to district magistrate judge positions, or vice-versa. Currently, statutes allow a magistrate position to be converted to a district judge position under certain circumstances, but there is no similar provision for converting a district judge position to a district magistrate judge position.

- *Consider increasing access to mediation.* Greater access to mediation could reduce the time cases spend in court but, typically, there is no funding available for this service. Mediation involves jointly working with the parties involved in the case to try to work things out beforehand. It is frequently used in divorce cases, particularly those involving child custody, to get the participants involved in developing an acceptable solution rather than fighting it out in court. Some districts use court services officers for mediation, but this means they have less time for their other duties, such as supervising probationers. In some districts, private attorneys or social workers are available to provide mediation services, however, the parties in the case must have sufficient financial resources to pay for the service.
- *Consider ending the hiring freeze.* In response to budget shortfalls, the Supreme Court has instituted a 60-day hiring freeze. Each time a position comes open because of retirement, resignation, or death, it must be left vacant for 60 days before it can be filled. During our visits to districts, judges and clerks frequently mentioned the morale problems and disruption of work caused by the 60-day hiring freeze, and many survey respondents commented on it as well.

- *Consider increasing the number of non-judicial staff.* Overall, 80% of the judges responding to our survey said increasing the number of non-judicial staff would help their courts process cases more quickly. Of the types of non-judicial staff, additional positions for the clerk's office were ranked most highly (with the large-volume districts identifying this most frequently and the small-volume districts identifying it less frequently), followed by the need for more court services officers. In addition, improved access to legal research could save time for judges. Judges not located near one of the State's two law schools typically don't have access to law clerks for legal research. A central pool of law school graduates that could be accessed by judges across the State by phone could help fill this void.
- *Consider State funding to develop workload statistics.* Many of the options listed above for improving court operations involve additional staff or different types of staff. To make the most effective use of any additional staff resources, the Supreme Court needs an objective way to measure workload in the district courts.

Conclusion

As long as State law specifies where and what type of judge will be located in each county or district court, the judicial branch's ability to reassign judges and other staff resources to most efficiently carry out the work of the district courts will be extremely limited. The Legislature hasn't been willing in the past to change the requirement for a judge in every county—any change now would require strong support from and cooperation between the Legislature and the Court.

The Court also is hampered by a lack of workload data, which would give a much better picture of each judge's actual effort in carrying out his or her responsibilities in different parts of the State. Having workload data under the current statutory constraints wouldn't allow the Court to permanently reassign judges to the areas of greatest need, but it could allow the Court to make better decisions when it temporarily reassigns judges to help process backlogs of cases; or when it's considering the need to request additional judge or staff positions.

Although this report has shown there are still significant differences in judges' caseloads, and judges in urban districts have significantly higher caseloads than judges in rural districts, judges in all districts are now handling an average of 34% more cases than they did 10 years ago. Judges in medium-sized districts actually have seen the largest increase in this area, partly because of the explosive growth in such areas as Garden City and Dodge City during the past decade. Because of the statutory lim-

itations on moving judges, this report has focused on ways the courts can use resources more efficiently and effectively. The only other viable options are adding new staff resources—either judicial or non-judicial. If some actions aren't taken, the figures presented in this report suggest the district courts could continue to fall further and further behind in processing the cases filed in their courts.

Because most of the potential improvements we identified in this report will cost money, these issues need further study to decide what actions are most desirable and cost-effective. The proposed study group—the Kansas Justice Initiative, with members appointed by the Legislature, the Supreme Court, and the Governor—could be an appropriate group to review all of these issues, including options for improving court operations.

Recommendations

1. To help improve efficiency of court operations on an immediate basis, the Supreme Court should do the following:
 - a. Determine whether the concept of issuing judicial orders by facsimile is allowable, and if so, immediately notify all judges of the district court of its decision.
 - b. Begin distributing to the district courts, on a regular basis, information about specific practices individual districts have adopted to save time or resources.
2. The Kansas Justice Initiatives study group, or representatives of the Legislature, the Supreme Court, and the Governor's Office, should review in detail the options available for improving the efficiency of the district courts, including those identified in the report. The options we identified include the following:
 - a. State funding of the court's computer technology.
 - b. Increasing the use of magistrate, retired, and senior judges when additional judicial resources are needed.
 - c. Funding to increase the availability of mediation or other alternative dispute resolution measures.
 - d. Additional funding or other actions to end the hiring freeze.
 - e. Increasing the number of non-judicial staff, particularly in the offices of the clerks of the district courts. Additional court services officers, administrative assistants, and law clerks should also be considered.

Based on this review and discussion, the Supreme Court should identify any additional equipment, staffing, or financial resources it determines are needed to cost-effectively address the increasing backlog of unprocessed cases in the district courts. As appropriate, it should request those resources in its fiscal year 2000 budget.

3. The Supreme Court should review its need to develop workload management information, and should again request funding for such a system. The Legislature should give strong consideration to funding such a request, so that both bodies can make informed decisions about the appropriate allocation of judicial and non-judicial staff resources.

APPENDIX A

How Surrounding States Allocate Personnel

Surrounding states vary in their methods of determining how personnel are allocated among courts, court officials in those states told us. Below are some highlights of each state's personnel allocation system.

	Missouri	Nebraska	Colorado	Oklahoma	Iowa	Kansas
judges						
how need is determined	formula based on population	county court requests personnel; local conditions are considered	formula using weighted workload system shows number of judges needed	district court requests personnel; local conditions are considered	formula for district judges based on population and case filings; formula for district associate judges based on population	district court requests personnel; local conditions are considered
is each county assured a judge?	judge is assigned to a circuit	only court services are assured for each county	district judge may split time between districts; state also has county judges	associate judge elected in each county	at least one magistrate; district judges routinely rotate	yes, either a district judge or a magistrate judge
court clerk staff						
how need is determined	number in each circuit is based on weighted workload system	county court requests personnel; local conditions are considered	number in each court is based on weighted workload system	district court requests personnel; local conditions are considered	number in each court is based on case filings	court requests personnel; local conditions are considered
is a minimum number assured?	yes (2 per court)	no	yes (1.25 per court)	yes (number at unification)	yes (2.5 per county)	yes (1.5 per county)
basic court organization						
	<ul style="list-style-type: none"> •Supreme Court •Court of Appeals •Circuit Court 	<ul style="list-style-type: none"> •Supreme Court •Court of Appeals •District Court •County Court 	<ul style="list-style-type: none"> •Supreme Court •Court of Appeals •District Court •County Court 	<ul style="list-style-type: none"> •Supreme Court •Court of Appeals •District Court 	<ul style="list-style-type: none"> •Supreme Court •Court of Appeals •District Court 	<ul style="list-style-type: none"> •Supreme Court •Court of Appeals •District Court

APPENDIX B

District Statistics for Fiscal Year 1996

District		Number of Cases Filed (excluding traffic)	Number of Judges			Number of Non-Judicial Staff	Cases Filed per Judge (excluding traffic)	Cases Filed per Staff (excluding traffic)	Staff Members per Judge
Number	Major City		District Judges	Magistrate Judges	Total				
1	Leavenworth	6,812	5	0	5	34.0	1,362	200	6.8
2	Wamego	3,701	2	3	5	19.5	740	190	3.9
3	Topeka	32,510	14	0	14	146.5	2,322	222	10.5
4	Ottawa	4,741	3	2	5	28.0	948	169	5.6
5	Emporia	4,555	3	1	4	25.0	1,139	182	6.3
6	Fort Scott	4,682	3	1	4	22.0	1,171	213	5.5
7	Lawrence	6,932	5	0	5	28.0	1,386	248	5.6
8	Junction City	10,829	5	2	7	42.5	1,547	255	6.1
9	Newton	4,075	3	0	3	26.0	1,358	157	8.7
10	Olathe	24,963	18	0	18	137.0	1,387	182	7.6
11	Pittsburg	7,074	6	1	7	37.5	1,011	189	5.4
12	Concordia	2,494	1	6	7	19.0	356	131	2.7
13	El Dorado	4,627	3	2	5	31.0	925	149	6.2
14	Coffeyville	5,324	3	1	4	23.0	1,331	231	5.8
15	Colby	2,800	2	6	8	21.2	350	132	2.7
16	Dodge City	6,483	3	5	8	28.5	810	227	3.6
17	Norton	3,273	1	6	7	16.0	468	205	2.3
18	Wichita	39,647	25	0	25	207.5	1,586	191	8.3
19	Arkansas City	3,293	3	0	3	16.0	1,098	206	5.3
20	Great Bend	6,238	3	4	7	40.0	891	156	5.7
21	Manhattan	4,782	3	1	4	24.5	1,196	195	6.1
22	Hiawatha	2,586	2	3	5	22.3	517	116	4.5
23	Hays	3,545	2	3	5	17.0	709	209	3.4
24	Larned	2,494	1	6	7	21.5	356	116	3.1
25	Garden City	9,614	4	5	9	33.0	1,068	291	3.7
26	Liberal	4,623	2	5	7	24.0	660	193	3.4
27	Hutchinson	6,267	4	0	4	28.0	1,567	224	7.0
28	Salina	6,512	4	1	5	33.5	1,302	194	6.7
29	Kansas City	21,758	16	0	16	128.5	1,360	169	8.0
30	Pratt	4,458	4	3	7	35.0	637	127	5.0
31	Iola	4,399	3	2	5	26.5	880	166	5.3
Statewide		256,091	156	69	225	1,342.0	1,138	191	6.0

APPENDIX C

Summary of Survey Responses from Judges and Clerks of the District Courts

We mailed surveys to the 156 district judges and 69 district magistrate judges in Kansas to obtain their opinions about improving the efficiency of the courts and what changes they would be interested in. We also asked questions about the judge's travel time, and county-funded court positions. Overall, 147 judges responded, for a response rate of 65.3%.

We mailed surveys to the chief clerk or court administrator in each of the 31 judicial districts to obtain their opinions about improving the efficiency of the courts and what changes they would be interested in. We also asked questions about the office hours, staffing, and services. Overall, 28 of the 31 chief clerks responded, for a 90% response rate. The clerks who responded covered 97 of the State's 105 counties.

This appendix is a summary of the responses we received from judges and clerks or court administrators.

Judges Survey

The Legislative Post Audit Committee has directed the Legislative Division of Post Audit to conduct a performance audit reviewing the allocation of staff resources in the District Courts in Kansas. As part of the audit, we are surveying judges about selected staffing issues, including what types of procedural changes or additional resources would help their district process cases more efficiently.

We would appreciate it if you would take the time to answer the following questions. The returned surveys will be included in the audit working papers which will become a matter of public record once the audit is completed. If you need additional space to make any comments, please attach additional pages. Please return the completed survey in the enclosed postage-paid envelope, or fax it to 913-296-4482, by **Friday, April 25, 1997**. If you have any questions related to the survey, please contact Cindy Lash at (913) 296-5541 or Barbara Coultis at (913) 296-5180.

District Magistrate Judge 52 surveys

District Judge 95 surveys

1. Which of the following options do you think would help the court(s) in your district process cases more efficiently while preserving adequate access to justice for Kansas citizens? Check all that apply, then please go back and indicate which, of all the options, are your top three priorities, with 1 being the highest ranking.

53.7% increased flexibility in making staffing decisions, specifically to decide :

	judges	non-judicial staff
how many are needed	<u>59.5%*</u>	<u>87.3%*</u>
where they should be located	<u>50.6%*</u>	<u>75.9%*</u>

10.2% converting some district judge positions to magistrate judge positions

12.2% converting some magistrate judge positions to district judge positions

38.1% increasing the number of judges

31.3% greater use of judges pro tem, retired judges, or senior judges

80.3% adding nonjudicial staff, specifically:

54.2%* court services officers

45.8%* administrative assistants

61.9%* clerk's office personnel

36.4%* transcriptionists or court reporters

16.9%* computer programmers

11.9%* paralegals

40.7%* central pool of law clerks available for phone consultation and research

82.3% changes in procedures or technology, including:

34.7%* ability to fax judicial orders

34.7%* expanded use of teleconferencing for meetings and hearings

47.1%* video-conferencing for selected types of hearings and meetings

60.3%* improved computer systems

39.7%* access to legal resources such as Lexis- Nexis

43.8%* greater use of mediation or other alternative dispute resolution

13.2% other (please list)

*The percentages of these sub-categories are based on the number responding to the preceeding main category

(OVER)
26.

District Court Clerk Survey

The Post Audit Committee of the Kansas Legislature has directed the Legislative Division of Post Audit to review the allocation of staff resources in Kansas' District Courts; this type of review is called a performance audit. As part of the audit, we are surveying the chief clerk or court administrator of each judicial district about personnel and procedure issues. The returned surveys will be included in the audit working papers, which will become public documents when the audit is completed. Please return the completed survey in the enclosed, addressed, postage-paid envelope or fax to Post Audit at 913-296-4482 by **Friday, April 25, 1997**. If you have any questions related to this survey, please contact Cindy Lash at 913-296-5541 or Jill Shelley at 913-296-5696.

Please answer the following questions for Judicial District __, using the lines provided after each questions. Attach additional pages if you need additional comment space.

1. When does the Clerk of the District Court's office open and close each day?

Is the office open over the lunch hour?

Do the clerks receive complaints frequently, occasionally, seldom, or never regarding hours of operation?

hours of operation and lunch hour opening:

hours of operation	number of offices with those hours	open or closed over lunch hour?	
8 a.m.-5 p.m.	86 (88%)	47 open	39 closed
8 a.m.-4:30 p.m.	7 (7%)	6 open	1 closed
8 a.m.-4 p.m.	1 (1%)	open	
8:30 a.m.-5 p.m.	1 (1%)	open	
8:30 a.m.-4 p.m.	2 (2%)	open	
7:30 a.m.-4:30 p.m.	1 (1%)		closed

frequency of complaints:

frequently	occasionally	seldom	never
1 (1%)	3 (3%)	34 (35%)	58 (60%)

2. How many employees of the clerk of the district court work in each county in your district?

Respondents reported these numbers of employees. The clerk of the court is included in the number.

# of employees	1.5	2	2.5	3	3.5	3.7	3.8	4	4.5	5	6
# county offices	14 (14%)	25 (29%)	5 (5%)	14 (14%)	2	1	1	8 (8%)	3	2	3

# of employees	7	9	10.5	11	11.5	12	13	14.5	15	other*
# of county offices	3	2	1	3	1	1	2	1	1	4

* other: one each at 49.5, 51, 53, and 100

3. Would you describe the staffing in the court clerk's office in each county as excessive, sufficient, or insufficient?

responses:

excessive	sufficient	insufficient
0	68 (70%)	29 (30%)

4. Are staff members in each county cross-trained so that work stays current in a staff member's absence?

Respondents said staff members in all counties are cross-trained.

5. Please list the most effective actions taken in your district to improve efficiency in the clerk's office in the past five years. (Examples of changes include specialized computer utilization, electronic data retrieval, uses of facsimiles, sharing of staff among counties, and adding county-funded staff.)

Computerization changes (24 of 28 surveys - 86%):

- accounting 12 surveys
- docketing/case management 11
- computerization of clerk's office 6
- simultaneous data entry with other justice-system offices 3
- hardware/software upgrades 3
- public access terminals 3

other responses include use of an imaging system, e-mail between offices, local area network, law library on CD-ROM

Other technologies (14 of 28 surveys - 50%):

- fax 14 surveys
- microfilm 5

Staff changes (15 of 28 surveys - 54%):

- sharing staff between counties 10 surveys
- use of temporary hours 3
- reassignment of staff from one county to another 2

Other types of changes - 6 of 28 surveys (21%)

These changes included changes in the paper filing system; setting of specific days and times for first appearance, preliminary hearings, arraignments; voice mail for judges; development of a forms manual for attorneys; a drop box for payments; and transfer of child support accounting to a court trustee office

6. What other changes would you like to implement to improve efficiency?

Computerization changes (16 of 28 surveys - 57%):

specific computerization changes mentioned:

- scanning and electronic data retrieval 7 surveys
- increased public access to computerized information 4
- electronic access between counties/districts 4
- electronic transfer of case statistics 3
- implement software for case management & statistics 3
- expand computerized docketing to allow use as an index 3
- statewide standardized software 2

other responses include completing a network with other parties in the justice system to reduce redundancy in data entry, upgrading software/hardware, and increasing the computerization of docketing

Staff changes (9 of 28 surveys - 32%):

- add programmers 2 surveys
- eliminate 60-day hiring freeze 2
- provide minimum of 2 clerks/county 2

other responses include raising salaries to be competitive in the local labor market, add a roving position to the district, and have specialized staff to wait on the public

Other types of changes (10 of 28 surveys - 36%):

responses include improving office equipment, adding space for personnel and files, providing for central payment, state-sponsored alternative dispute resolution, screening pro se litigants, close one office in 2--office county

7. Have services to the public changed in the past five years because of the workload? _____ If so, in what ways? For example, have any services to the public been curtailed?

services <u>have</u> changed	services have <u>not</u> changed
21 districts (75%)	7 districts (25%)

Negative changes (15 of 28 surveys - 54%):

- longer waits for copies, files, counter service 8 surveys
- require additional document work from attorneys 5
- no longer help public with records searches 3
- open to the public fewer hours 3
- no longer give child support payment information by telephone 2
- do not give out child support payments at the office 2
- make certified copies of marriage licenses under only certain circumstances 2
- have certain requestors make own copies 2

other responses include these: require requestor to have case number, no longer give out case information unless the litigant has no attorney

Positive changes (5 of 28 surveys - 18%):

- office hours expanded 3 surveys

other responses: office offers mediation for indigent clients, increased computer access by the public

8. The Office of Judicial Administration statistical manual defines the termination date of a case as either the date of the court decision or the date the journal entry is filed. Which date is used in each county in your district? Does the date vary by the type of case? If so, please specify.

court decision	journal entry	varies
41 counties (42%)	28 counties (29%)	28 counties (29%)

Respondents gave these reasons why the date may vary:

- recorded as court decision date or journal entry date depending on the type of case
- date is dependent on when paperwork is received
- date depends on when clerk becomes aware of the event
- date used depends on whether decision date is included in judge notes

The Legislative Division of Post Audit thanks you for your cooperation in completing this survey.

APPENDIX D

Agency Response

On June 4th we provided copies of the draft audit report to the Supreme Court. Its response is included as this appendix.



Supreme Court of Kansas

Kansas Judicial Center

301 W. 10th

Topeka, Kansas 66612-1507

HOWARD SCHWARTZ
Judicial Administrator

(913) 296-4873

June 18, 1997

Barbara J. Hinton
Legislative Division of Post Audit
Mercantile Bank Tower
800 SW Jackson Street
Suite 1200
Topeka, Kansas 66612-2212



Dear Ms. Hinton:

Thank you for the draft copy of your recent performance audit, *Reviewing the Kansas Court System's Allocation of Staff Resources to the District Courts*. I was happy to find the report to be an objective outsider's assessment of the Judicial Branch's attempts to use wisely the resources at our disposal.

Central to the examination of allocating resources is the hard fact you point out in the audit: Statewide case filings, excluding traffic cases, have increased 40 percent over the past 10 years, while the number of authorized judgeships have increased by only 4 percent. In addition to this increase in filings, the judicial branch has been held to a turnover rate of 2.5 percent, which is unrealistically high. The historical turnover rate for our nonjudicial employees is 1.5 percent and, for our judges, 1 percent. As the judicial branch budget is 97 percent personnel, we must impose a 60-day hiring freeze before any but the most critical positions may be filed. Your draft accurately reports the impact the freeze has on the district courts.

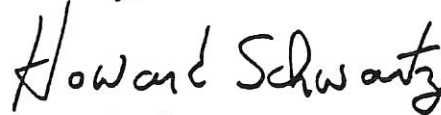
We sincerely thank the 1997 Legislature and Governor Graves for the new nonjudicial positions they authorized for FY 1998, and for the funding which will allow us to reduce our hiring delay from 60 to 45 days. At last, each of the 31 administrative judges will now have a secretary. A reduction of the hiring freeze and the 17 new positions, however important, will not alleviate all the staffing shortages identified in the audit. We need additional judges and nonjudge personnel to meet the challenges facing the judicial branch.

Barbara J. Hinton
June 18, 1997
Page 2

The draft suggests a weighted caseload statistical system would prove valuable in assisting allocation decisions. The report shows only two of the surrounding states uses a weighted caseload system. This may be because these systems are difficult and expensive to create and maintain, increasing the workload of court personnel. Over the years in which modern court administration has developed, both weighted caseload and counted caseload statistics have had their supporters. Until the superiority of a weighted caseload system is clearly established, and the resources necessary to create one are available, I would not support changing our present system.

Finally, I must tell you we concur in the audit's conclusions and recommendations so far as they go. We would urge our Legislature to provide the resources to implement them. Thank you once again for the opportunity to respond.

Sincerely,



Howard Schwartz
Judicial Administrator

HS:nrt