

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairperson Representative Kenny Wilk at 9:00 a.m. on March 8, 2002, in Room 514-S of the Capitol.

All members were present except: Representative Dean Newton, Excused  
Representative Jeff Peterson

Committee staff present: Amy Kramer, Legislative Research  
Becky Krahl, Legislative Research  
Alan Conroy, Legislative Research  
Martha Dorsey, Legislative Research  
Deb Hollon, Legislative Research  
Carolyn Rampey, Legislative Research  
Norm Furse, Revisor of Statutes  
Jim Wilson, Revisor of Statutes  
Mike Corrigan, Revisor of Statutes  
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Representative Dan Thimesch  
Tonya Van Sickle, Kansas Persian Gulf War Initiative  
Jim Bunker, veteran  
Nancy Armstrong, veteran  
Kenneth Ketchum, Commander of Disabled Veterans of KS  
Paul Cornelius, Sr. Vice-Commander of Disabled Veterans  
of Kansas  
Russell Haun, Legislative Chairperson of Disabled Veterans  
of Kansas  
Robert Frandsen, veteran  
John Campbell, Attorney General's office  
Robin Kempf, Board of Regents  
Charles Simmons, Secretary of Corrections  
Betsy Gillespie, Shawnee County Department of Corrections

**Hearing on HB 2770: Persian Gulf War veterans health initiative act, funding**

Representative Dan Thimesch appeared before the Committee to represent the 7,500 Gulf War veterans in Kansas in their quest to seek additional funding for data base upgrades and continued research for this group of veterans (Attachment 1). The revenue source would be the transfer of \$1.00 for each specialized veterans license plate sold by the Division of Motor Vehicles. Representative Thimesch also presented an amendment changing the time of the proposed funding to July 1, 2002.

Tonya Van Sickle, Program Assistant for the Kansas Persian Gulf War Health Initiative of the Kansas Commission on Veterans Affairs, explained the functions of their office as providing a networking service for the veterans with health problems due to their participation in the Gulf War (Attachment 2).

James A. Bunker, veteran of the Persian Gulf War, explained the difference in the participation by the Department of Defense for services to disabled Vietnam veterans due to Agent Orange and those disabled veterans who served in the Persian Gulf War (Attachment 3). Mr. Bunker explained how the Kansas Study, which was cited in a GAO report, was the first study to show that time and place mattered in the relationship of Gulf War Illness.

Nancy Armstrong, veteran, explained that the Department of Defense and the Department of Veterans Affairs have not been clear in their support of Gulf War veterans and they have stated that such veterans "may" receive disability payments this year (Attachment 4). She encouraged the State of Kansas to continue with its support and commitment to the veterans in their fight against Gulf War Illness.

Kenneth Ketchum, Commander of the Disabled Veterans of Kansas, explained that the 9,000 members of the DAV in Kansas need the support of Kansas as the federal government has stopped all studies of Gulf War Illness.

Paul Cornelius, Senior Vice-Commander of the Disabled Veterans of Kansas, shared his personal history of contracting cancer due to his experience with Agent Orange in Vietnam. He explained his experience of trying to negotiate with the Department of Defense and finally winning a Supreme Court decision which granted him full disability due to his illness.

Russell Haun, Legislative Chairman for Disabled Veterans of Kansas, re-emphasized their need for funding to continue studies on Gulf War Illness. The federal government appears to have adopted the attitude that this problem will ultimately cure itself with the deaths of those veterans with Gulf War Illness. "The fewer that live, the less they (the federal government) will have to pay."

Robert Frandsen, a Gulf War veteran from the Leavenworth area and member of a national committee on Gulf War Illness, praised the State of Kansas for its continued support of the veterans who have been afflicted with Gulf War Illness. He related the history of the World War II veterans who struggled to receive their benefits due to disability and illness. The federal government has been reluctant to agree that there is such a thing as Gulf War Illness—if they admit it exists, they would be forced to acknowledge their responsibility for payment for disabilities.

The Committee and conferees discussed the work Congressman Moran has done regarding the denial of GAO that they can track the military troops throughout the world. The consensus appeared to be that it is possible to track troops and maintain records of where they are and how long they have been in a certain area.

As there were no opponents to the bill, Chairman Wilk closed the hearing on **HB 2770**.

#### **Hearing on HB 2982—Tobacco product manufacturers making required escrow payments and being participating manufacturers**

John Campbell, Senior Deputy Attorney General, spoke in support of the bill which would require all non-participating manufacturers of tobacco products selling tobacco products within the state boundaries, to register with the Attorney General before licensed distributors can apply tax stamps to their products for sale (Attachment 5). Mr. Campbell also presented an amendment as identified in Attachment 5.

Written supporting testimony was received from Ronald R. Hein on behalf of R.J. Reynolds Tobacco Company (Attachment 6).

Chairman Wilk closed the hearing on **HB 2982**.

#### **Hearing on SB 374—State agency fee authorizations**

Robin Kempf, Associate General Counsel for the Kansas Board of Regents, proposed an amendment to the bill which relates to both the fees that may be assessed proprietary schools and the extent the Board can regulate proprietary schools (Attachment 7).

As there were no opponents to the bill, Chairman Wilk closed the hearing on **SB 374**.

#### **Hearing on SB 396—Payment of certain claims from secretary of corrections by the director of accounts and reports; local jails**

Norm Furse, Revisor of Statutes, stated that payments which were due and owing in one fiscal year, could be paid from another fiscal year's funds (Attachment 8). This bill would eliminate the need for an annual proviso in the Appropriations bill which allows such payment for claims regardless when services were rendered.

Charles E. Simmons, Secretary of the Department of Corrections, stated that this bill would improve their ability to manage funds appropriated to meet the department's responsibilities for reimbursement to county jails (Attachment 9). This bill would provide authority to use current year appropriations to pay prior year claims.

Elizabeth Gillespie, Director of the Shawnee County Department of Corrections, testified in support of this bill for the Kansas Association of Counties (Attachment 10). She stated that this bill would allow the Department of Corrections to pay local jail costs in a timely manner.

Chairman Wilk closed the hearing on **SB 396**.

Representative Schwartz, Chairperson of the Agriculture and Natural Resources Budget Committee, presented

the Budget Committee report on the Governor's budget recommendations for the Department of Wildlife and Parks for FY 2002 and moved for the adoption of the Budget Committee recommendations for FY 2002 (Attachment 11). Motion was seconded by Representative Klein. Motion carried.

Representative Schwartz, Chairperson of the Agriculture and Natural Resources Budget Committee, presented the Budget Committee report on the Governor's budget recommendations for the Department of Wildlife and Parks for FY 2003 and moved for the adoption of the Budget Committee recommendations for FY 2003 with adjustments and comments (Attachment 11). Motion was seconded by Representative Klein. Motion carried.

The Department of Wildlife and Parks now owns 114,358 acres with 1,272 acres being acquired this FY 2002.

The meeting was adjourned at 12:37 p.m. The next scheduled meeting is Monday, March 11, 2002.



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GULF WAR ADVISORY BOARD

TESTIMONY HB 2770

HOUSE APPROPRIATIONS COMMITTEE

I am here today to ask for favorable support of HB 2770. To continue our efforts helping our sick Kansas Gulf War Veterans.

The Kansas Legislature showed wisdom and a real vision in 1997 when we overwhelmingly passed the Persian Gulf War Veterans health initiative act. This act provided direction for a survey and research study, to identify the real problem of Gulf War illness.

This year our Kansas study was sided in a GAO report. Kansas was asked to testify in two sub committee hearings in Washington, DC. Other private researchers were also asked to testify. Our study and others have identified specific syndromes, correlations between different exposures and health problems, location and time spent in theater and severity of health problems.

The Federal Government has spent at least 3/4 of a billion dollars and has not answered any questions about Gulf War illness. Private research is asking for Federal research money to be redirected to them (Kansas is asking for 2 million) last year Texas received 5 million. We now believe that more than 130,000 veterans are ill, and more family members are showing symptoms. The Gulf War was the most toxic war ever fought. Gulf War illness is a progressive illness and many of our veterans health is becoming worse.

HOUSE APPROPRIATIONS

DATE 3/08/02  
ATTACHMENT 1

HB 2770 will continue our very important work in Kansas.

- Continue - Persian Gulf War Veterans information phone line.
- Up-dating our data base communicating with our 7,500 Kansas veterans that deployed to the Gulf.
- 
- To promote programs and activities designed to assist persons and families affected by Gulf War illness, to improve the general health of our veterans.

For so little, we have done so much but much more needs to be done.

Please support HB 2770

“We are not afraid to entrust the American people with unpleasant facts, Foreign ideas, alien philosophies...for a nation that is afraid to let it's people judge the truth and falsehood in an open market is a nation that is afraid of it's people.”

John F. Kennedy



The National Gulf War Resource Center, Inc.

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## Gulf War Mortality Figures Alarm Veterans

### Vietnam Veterans of America calls for appointment of Special Counsel

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WASHINGTON, DC, February 22, 2002 (ENS) - More than 34,000 Gulf War veterans are dying at a rate almost ten times higher than a comparable group, despite being told by Pentagon officials they were not exposed to chemical agents after Operation Desert Storm.

In 2000, the Department of Defense (DoD) revised its estimate of the dispersion pattern of chemical agent fallout from the demolition of the Iraqi chemical weapons depot at Khamisiyah in southern Iraq, which was destroyed by U.S. troops in 1991. The DoD first estimated that 99,825 veterans had been exposed to low levels of the nerve agent sarin after the demolition.

In 2000, DoD remodeled the Khamisiyah plume exposure data. The new model excluded 34,418 veterans who had been told they had been in the Khamisiyah downwind hazard zone. The agency then added 34,638 other Khamisiyah area veterans to the new exposure model, bringing the total number of exposed veterans to 100,045.

In late 2001, the Veterans Benefits Administration's Data Management Office (DMO) decided to compare mortality figures between the veterans excluded from the new DoD model and the veterans who were added in their place.

The mortality numbers released by the Veteran's Administration show that of the 34,418 who were excluded from DoD's remodeling of the Khamisiyah chemical weapons fallout plume, 1,011 have died, compared to just 105 of the 34,638 veterans who were added to the revised Khamisiyah plume model in 2000.

"This pattern is entirely consistent with past practices concerning information relating to toxic exposures in Gulf War veterans," said Thomas Corey, national president of the Vietnam Veterans of America (VVA). "We will request from Attorney General [John] Ashcroft the appointment of a special counsel to investigate this and other matters related to the Pentagon's conduct in dealing with Gulf War illnesses."

Since 1995, the Pentagon's Directorate for Deployment Health Support has spent more than \$150 million on Gulf War related research projects, Corey noted. None of these studies have been peer reviewed or otherwise subjected to independent scrutiny or the standards of legitimate medical science, he charged.

Corey reiterated VVA's call for the creation of an independent National Institute of Veterans Health within the National Institutes of Health (NIH) to study veteran's medical problems.

"We cannot have the agency that created the problem studying the problem," Corey said. "An independent institute within NIH that is dedicated to studying the full range of health problems affecting veterans is the only way to guarantee that we get good science and therefore good medical treatment for veterans."

POSTED TO NGWRC WEB Mon Feb 25 13:06:53 2002

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Last modified: February 25, 2002

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# Democratic Home Page

## NEWS FROM....

CONGRESSMAN LANE EVANS  
RANKING DEMOCRATIC MEMBER  
COMMITTEE ON VETERANS AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES

Room 333 Cannon HOB For More Information Contact:  
Washington, DC 20515 Mary Ellen McCarthy @ 202-225-9756

FOR RELEASE: February 22, 2002

**Evans Says Recent VA Report Shows Dramatic Differences  
in Death Rates for Certain Gulf War Veterans  
*Urges DoD and VA Investigation of Troubling Gulf War Data***

WASHINGTON, DC – Saying recently reported dramatic differences in Gulf War veteran death rates must be immediately examined, Lane Evans (D-IL), the senior Democratic member of the House Veterans Affairs Committee, today urged the Secretary of Veterans Affairs and the Secretary of Defense to launch an immediate investigation of the death rate differences. Data contained in reports issued by the Data Management Office of the Department of Veterans Affairs (VA) Veterans' Benefits Administration show dramatic differences in the death rates for certain Gulf War veterans.

According to Evans, the reported death rate for servicemembers who were not deployed to Southwest Asia is 1,141 per 100,000. The death rate for deployed veterans is somewhat lower at 885 per 100,000. However, the death rate for servicemembers reportedly exposed to the Khamisiyah plume was much lower at 341 per 100,000 and the rate for a group of veterans previously characterized as having been exposed to the plume, but now re-characterized as not exposed was dramatically higher at 2,937 per 100,000. Evans said, "this latest data is extremely puzzling and warrants further investigation."

Evans has long urged the VA to conduct research analyzing data concerning the location of veterans during the Gulf War and claims for VA compensation and pension benefits. In 1998, an Evans report found that veterans then characterized as having been exposed to the Khamisiyah plume were 20 times more likely to be service-connected by the VA for an undiagnosed illness than those who served in Southwest Asia after the conflict period ended on July 31, 1991. A 1999 Evans analysis indicated that the then Khamisiyah cohort was twice as likely to be granted a VA non-service-connected pension for permanent and total disability as veterans who served during the conflict, but were not near Khamisiyah. The earlier

Evans reports indicated significant differences in service-connected disabilities among servicemembers who served in Southwest Asia near Khamisiyah, Al Jubal, in other locations during the conflict and in Southwest Asia after July 31, 1991. The recent VA data is inconsistent with earlier findings.

While the troubling differences in death rates must be fully examined, Evans urged caution in speculating about causes of the data contained in VA's recent reports until a fuller analysis can be undertaken. "I expect Secretary Principi and Secretary Rumsfeld to take prompt action to clarify the current reports and to provide further follow-up research concerning veterans who served in the Gulf during and after the conflict."

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Congressman  
**JERRY MORAN**

*Representing the First District of Kansas  
United States House of Representatives*



*1519 Longworth - Washington, DC 20515 - P (202) 225-2715 - F (202) 225-5124 - jerry.moran@mail.house.gov*

**FOR IMMEDIATE RELEASE**  
February 22, 2002

**CONTACT: Travis Murphy**  
**(202) 225-2715**

**MORAN CONTINUES HEARINGS ON  
PROTECTING TROOPS IN THE WAR ON TERRORISM**

WASHINGTON, D.C. -- Congressman Jerry Moran, chair of the Veterans' Affairs Subcommittee on Health, announced today that he will conduct a hearing to review a recent report on deficiencies that exist in tracking the health of current American military personnel. The General Accounting Office report, released last month, details the inability of the Defense Department to maintain accurate medical records of soldiers deployed in active duty.

According to the report, investigations into the illnesses reported by Gulf War veterans revealed many deficiencies in the Defense Department's ability to collect, maintain and transfer information on the movement of troops, potential exposures to health risks, and medical incidents during deployment. The purpose of the hearing is to learn more about what has been done since those investigations, in order to better protect troops currently deployed in Operation Enduring Freedom.

"With today's technology, it's a disservice to our troops to not be able to accurately track their health and treatment while deployed overseas," Moran said. "The lack of ability to properly monitor our troops' health and exposure to disease and biological and chemical health threats, as well as difficulties in making medical assessments in the field, may lead to health problems in our future veterans."

The hearing will be held on **Wednesday, February 27, 2002 from 2:00 -3:00 p.m.** Those scheduled to testify include Department of Veterans Affairs Secretary Anthony Principi; Under Secretary of Defense for Personnel and Readiness for the Department of Defense, Dr. David Chu; and the author of the report, Director of Veterans Health and Benefits Issues for the General Accounting Office, Cynthia Bascetta.

"More work needs to be done to protect the health of today's active duty soldiers and tomorrow's veterans," Moran concluded.

*For more information, contact Congressman Moran at (202) 225-2715 or visit his web page at [www.house.gov/moranks01/](http://www.house.gov/moranks01/).*

###

# The Wichita Eagle

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SOME FEAR WAR ON TERRORISM COULD BRING NEW CASES OF GULF WAR ILLNESS



## VETERAN MYSTERY

AT LEFT: Hugh Grossman says he suffers from Gulf War illnesses. The former Gulf and Vietnam vet supports the war on terrorism, but is concerned about soldiers stationed in the Gulf. "We're going to make the same mistakes toward our veterans again."



File photo

8-1

Jim Hinson of Wichita spent 10 days near burning oil wells during the Gulf War. His health problems started shortly afterward. "All those who have borne battle are scarred one way or another," Hinson said.



Photos by Fernando Salazar  
The Wichita Eagle

BY ALAN BJERGA  
Eagle Washington bureau

SPRING HILL, Kan.

**H**ugh Grossman thinks the United States will soon return to war in the Persian Gulf. The Vietnam veteran guarded a prison camp in the Gulf as an Army reservist. If he were younger, he'd go back to fight the "axis of evil," a group of nations that President Bush says sponsors terrorism. Most prominent on that list is Iraq.

Grossman would go back, he says, in spite of the problems. His hands go numb without warning. He can't stop yawning while he speaks. Chronic fatigue and nerve damage have forced him to quit his job at the Spring Hill Police Department. His family lives off his early retirement checks and his wife's two jobs.

Grossman is one of an estimated 100,000 sufferers of Gulf War illness, a term loosely applied to a host of problems that disproportionately affect veterans of the Persian

Gulf War. About one-third of Kansas' approximately 8,000 Gulf War vets are thought to suffer from Gulf War maladies.

A decade after the conflict, the causes of Gulf War illness remain unclear. Deciding proper treatment and compensation for veterans remains controversial.

Now, as a possible Gulf War II looms, the problem is gaining new attention. Lawmakers, including Congressman Jerry Moran, R-Hays, are holding hearings to explore the causes and what the government can do. State Rep. Dan Thimesch, D-Cheney, is backing new Gulf vet aid in Kansas.

The efforts benefit Gulf War veterans. But those who have the most to gain — or lose — may be today's servicemen and women. If the government doesn't solve the Gulf War mystery soon, Grossman said, future Gulf vets might develop the same problems.

And from what he's seen, the government hasn't learned its lessons from the last conflict, he said.

"If they have, they aren't telling us."

Please see **GULF WAR**, Page 12A

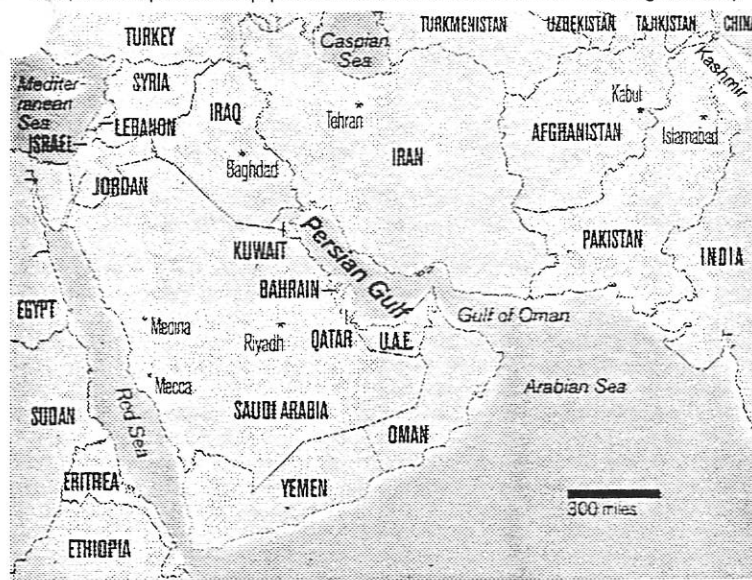
**Hugh Grossman, taking a convoy break in the Persian Gulf region in this undated picture, worries about sending more troops to the Gulf. "You can bet that Iraq has more up its sleeve now than it did 10 years ago, but I don't think we're any better prepared to deal with it."**



Courtesy photo

# The Persian Gulf

The 1991 Persian Gulf War involved a half-million U.S. and allied troops against Iraq. Today the Persian Gulf and surrounding region hosts 60,000 to 70,000 U.S. troops, with a quick buildup possible in the event of renewed action against Iraq.



The Wichita Eagle

## GULF WAR

From Page 1A

### 'A perfect war'

For Jim Hinson, the problems started before he left the Gulf in 1991. He felt tired all the time, but attributed that to Saudi Arabia's 120-degree heat.

When his hair started falling out and he developed eye infections, he suspected something worse — something connected to the Gulf. Hinson had received the full round of military vaccinations and had spent 10 days near burning oil wells in Kuwait.

Military doctors couldn't figure out what caused his illnesses.

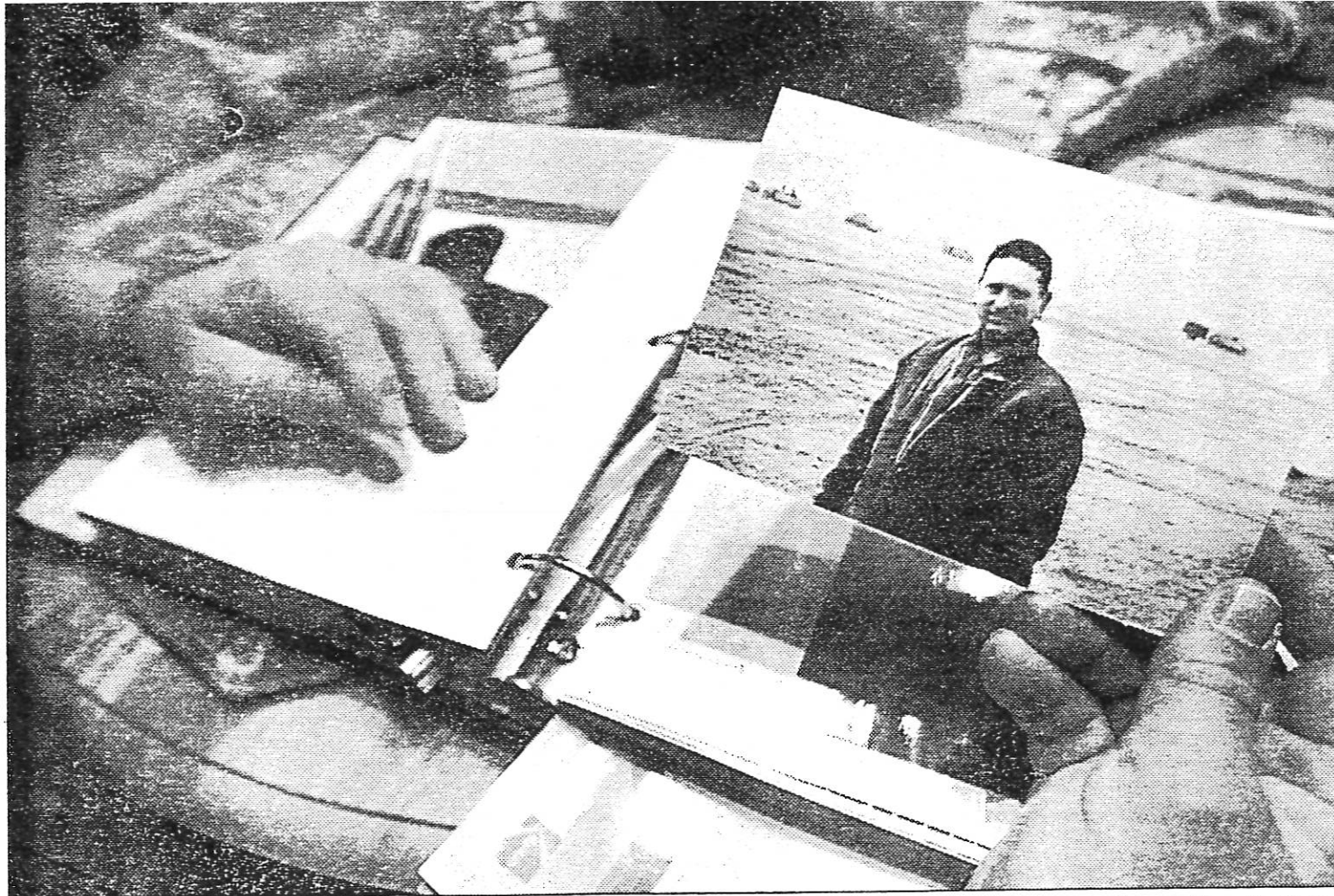
"I was told that I was a fake," said Hinson who retired in 1997 after 24 years in the Army. "I was embarrassed. Because the doctor couldn't find a cause, he said I was lying."

His condition worsened after his 1991 transfer to Wichita. Now 49, Hinson still doesn't know why his problems persist — but he's sure it's Gulf War illness.

### GULF WAR SYNDROME

Gulf War illnesses take many forms and are of uncertain origin. Common Gulf War illnesses fall into six categories and last one year or longer:

- Pain symptoms: Joint pain, muscle pain
- Neurologic symptoms: Memory problems, headaches, dizziness, mood changes
- Fatigue symptoms: Chronic fatigue, sleep disorders
- Gastrointestinal symptoms: Diarrhea, nausea
- Respiratory symptoms: Persistent cough, wheezing
- Skin problems: Rashes, skin cancers



Fernando Salazar/The Wichita Eagle

Jim Hinson holds a picture of himself during the Gulf War. Hinson joined the army in 1973 and retired in Wichita in 1997.

### FOR MORE INFORMATION:

If you are no longer in the military, you can contact the V.A. Gulf War Registry in Wichita at (800) 878-6881. Also, Gulf War treatment guidelines are available on the Internet at [www.mvhcb.gov/mvhcb-13h/CPG.htm](http://www.mvhcb.gov/mvhcb-13h/CPG.htm).

For Gulf War veterans still in the military, the U.S. Department of Defense has a Gulf Vets hot line at (800) 796-9699. The Defense Department also maintains a Gulf War illness page at [www.gulfink.osd.mil](http://www.gulfink.osd.mil).

Lea Steele agrees. She conducted the largest Gulf illness study in the nation, a full-scale study of Kansas Gulf War vets for the state in the late 1990s. Though the causes aren't clear, Steele found clear links between Gulf War service and health problems.

"Where people were, what vaccinations they received, all relate to Gulf War conditions," she said.

Grossman and Hinson both suffer from joint pain, fatigue and memory problems, as do many veterans. But more serious problems also occur. Gulf War vets are twice as likely to develop amyotrophic lateral sclerosis, also called Lou Gehrig's disease, according to a recent Veterans

Administration/Department of Defense study.

In response to that study, the VA will compensate veterans with ALS. The ALS research shows the government's commitment to investigate Gulf War veterans' concerns and prevent future problems, said Bill Winkenwerder Jr., assistant secretary of defense for health affairs.

Scientific research on ALS and other possible links, he said, "holds the promise for better protection of the health of our men and women during future deployments."

But the government's approach to ALS is the exception, not the rule. The VA and Defense Department hesitate to connect veterans' ailments to the Gulf War, much less

compensate them for their illnesses. Although the VA treats a host of Gulf War-related illnesses, "Gulf War syndrome" isn't recognized, and there are no coordinated treatment or compensation programs.

Grossman said that hinders research and disrespects veterans. "It's disappointing that the government isn't taking care of its veterans," he said.

### Revisiting the Gulf

With a new conflict possible, government struggles with Gulf War illnesses take on new urgency.

Since the Gulf War, the Pentagon has scaled back its mandatory

and implemented programs meant to track military health records on troop movements. Such procedure would make it easier to find cause

The Veterans Administration still isn't equipped to deal with new problems should they arise, said James Holsinger, the VA's chief medical officer during and immediately after the Gulf War.

"Every time something happens untoward toward our people in a combat zone, we have to ask for congressional authorization for a special program," he said. That hampered VA efforts to understand Vietnam's Agent Orange in the 1970s and Gulf War illness in the 1990s, he said.

Steele is now on a VA advisory committee on Gulf War health issues. She is working on another study tracing the role of veterans' genetic makeup in Gulf War illness. It's one more piece in putting together a better picture of what happened, she said.

In Washington, Moran is asking for \$2 million for further research. He said the military threat is pushing his hearings on Gulf War illness, the second of which is Wednesday.

"We care about (Gulf War illness) now because we have men and women in the Middle East. It's an issue of medical readiness," he said.

Thimesch said federal money is badly needed, and he sees political motives behind the slow response.

The Gulf War "was decisive, quick, and few casualties," he said. Political leaders "wanted a perfect war, and they almost had it."

"But they underestimated the exposures to biological and chemical agents," he said. Also, he said, the extent of Gulf War problems weren't clear until later. Thimesch would know — his son Brian fought in the Gulf War and developed lung lesions in the mid-1990s.

Thimesch helped get funding for Steele's study. Now, he is pushing state bill to spend \$100,000 from military license tag funds to continue

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Jaime Oppenheimer/The Wichita Eagle

State Rep. Dan Thimesch, D-Cheney, speaks to Maj. Gen. Greg Gardner, adjutant general for the state of Kansas, at the Capitol in Topeka. Thimesch wants more research into Gulf War illness, from which his son suffers.

ue information programs for Kansas Gulf War veterans. That bill is on the Statehouse agenda this week.

### Breaking silence

Hinson said he hopes new attention to Gulf War illness will help uncover answers.

The estimate of 100,000 sufferers is low, he said. "I know people in the military with problems like mine



Jaime Oppenheimer/The Wichita Eagle

Physician Lea Steele researches Gulf War issues at the Kansas Health Institute. She led the nation's largest study of Gulf War illnesses in the 1990s.

who won't say anything. Do you want to tell a military that's denied a problem that you're sick with Gulf War illness? What happens to your opportunities?"

Courtesy photo

**"I know people in the military with problems like mine who won't say anything. Do you want to tell a military that's denied a problem that you're sick with Gulf War illness? What happens to your opportunities?"**

Jim Hinson,  
Gulf War veteran

Grossman continues to file disability paperwork and visit doctors, trying to get the government to recognize his problems as Gulf War-related and waiting for another war to begin.

He said he's confident America would win another confrontation with Iraq — it's the aftermath he's worried about.

"You can bet that Iraq has more up its sleeve now than it did 10 years ago," he said, "but I don't think we're any better prepared to deal with it.

"The way it looks now, we're going to make the same mistakes toward our veterans again."

11-1

## HOUSE BILL No. 2770

By Representatives Thimesch, Aday, Ballard, Barnes, Beggs, Burroughs, Compton, Cook, Cox, Crow, DeCastro, Dillmore, DiVita, Dreher, Faber, Findley, Flaharty, Freeborn, Garner, Goering, Gordon, Grant, Hayzlett, Henry, Horst, Huebert, Huff, Humerickhouse, Hutchins, Huy, Kauffman, Klein, Kuether, Larkin, Levinson, Light, Lightner, Loganbill, M. Long, P. Long, Mason, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Jim Morrison, Judy Morrison, Myers, Nichols, Novascone, Osborne, Ostmeyer, Patterson, Pauls, E. Peterson, Phelps, L. Powell, Pyle, Rehorn, Ruff, Sharp, Showalter, Stone, Storm, Swenson, Tafanelli, Tanner, R. Toelkes, Vickrey, Wells, Welshimer, J. Williams and Wilson

2-5

19 AN ACT concerning the Persian Gulf War veterans health initiative act;  
20 providing for certain funding; amending K.S.A. 8-145 and K.S.A. 2001  
21 Supp. 73-1222, 73-1224, 73-1225, 73-1226, 73-1227, 73-1230 and 73-  
22 1231 and repealing the existing sections.

23  
24 *Be it enacted by the Legislature of the State of Kansas:*

25 Section 1. K.S.A. 8-145 is hereby amended to read as follows: 8-145.

26 (a) All registration and certificates of title fees shall be paid to the county  
27 treasurer of the county in which the applicant for registration resides or  
28 has an office or principal place of business within this state, and the county  
29 treasurer shall issue a receipt in triplicate, on blanks furnished by the  
30 division of vehicles, one copy of which shall be filed in the county trea-  
31 surer's office, one copy shall be delivered to the applicant and the original  
32 copy shall be forwarded to the director of vehicles.

33 (b) The county treasurer shall deposit \$.75 of each license applica-  
34 tion, \$.75 out of each application for transfer of license plate and \$2 out  
35 of each application for a certificate of title, collected by such treasurer  
36 under this act, in a special fund, which fund is hereby appropriated for  
37 the use of the county treasurer in paying for necessary help and expenses  
38 incidental to the administration of duties in accordance with the provi-  
39 sions of this law and extra compensation to the county treasurer for the  
40 services performed in administering the provisions of this act, which com-  
41 pensation shall be in addition to any other compensation provided by any  
42 other law, except that the county treasurer shall receive as additional  
43 compensation for administering the motor vehicle title and registration

1-12



1-13

1 laws and fees, a sum computed as follows: The county treasurer, during  
 2 the month of December, shall determine the amount to be retained for  
 3 extra compensation not to exceed the following amounts each year for  
 4 calendar year 1990 or any calendar year thereafter: The sum of \$60 per  
 5 hundred registrations for the first 5,000 registrations; the sum of \$45 per  
 6 hundred registrations for the next 5,000 registrations; and the sum of \$2  
 7 per hundred registrations for all registrations thereafter. In no event,  
 8 however, shall any county treasurer be entitled to receive more than  
 9 \$9,800 additional annual compensation.

10 If more than one person shall hold the office of county treasurer during  
 11 any one calendar year, such compensation shall be prorated among such  
 12 persons in proportion to the number of weeks served. The total amount  
 13 of compensation paid the treasurer together with the amounts expended  
 14 in paying for other necessary help and expenses incidental to the admin-  
 15 istration of the duties of the county treasurer in accordance with the  
 16 provisions of this act, shall not exceed the amount deposited in such spe-  
 17 cial fund. Any balance remaining in such fund at the close of any calendar  
 18 year shall be withdrawn and credited to the general fund of the county  
 19 prior to June 1 of the following calendar year.

20 (c) The county treasurer shall remit the remainder of all such fees  
 21 collected, together with the original copy of all applications, to the sec-  
 22 retary of revenue. The secretary of revenue shall remit all such fees re-  
 23 mitted to the state treasurer in accordance with the provisions of K.S.A.  
 24 75-4215, and amendments thereto. Upon receipt of each such remittance,  
 25 the state treasurer shall deposit the entire amount in the state treasury  
 26 to the credit of the state highway fund, except as provided in subsection  
 27 (d).

28 (d) (1) On July 1, 1997, through June 30, 2004, \$2.50 of each certifi-  
 29 cate of title fee collected and remitted to the secretary of revenue, shall  
 30 be remitted to the state treasurer who shall credit such \$2.50 to the  
 31 Kansas highway patrol motor vehicle fund. On July 1, 1999, through June  
 32 30, 2002, \$1 of each certificate of title fee collected and remitted to the  
 33 secretary of revenue, shall be remitted to the state treasurer who shall  
 34 credit such \$1 to the VIPS/CAMA technology hardware fund.

35 (2) For repossessed vehicles, \$3 of each certificate of title fee col-  
 36 lected and remitted to the secretary of revenue, shall be remitted to the  
 37 state treasurer who shall credit such \$3 to the repossessed certificates of  
 38 title fee fund.

39 (3) ~~The state treasurer shall credit the first~~ \$100,000 of registration  
 40 fees deposited in accordance with subsection (c), which are attributable  
 41 to license plates issued under K.S.A. 8-160, 8-177a, 8-177c, 8-1,139, 8-  
 42 1,140, 8-1,145 and 8-1,146, and amendments thereto, to the Persian Gulf  
 43 War veterans health initiative fund.

On July 1, 2002, and each July 1 thereafter, the



**THE KANSAS PERSIAN GULF WAR VETERANS HEALTH INITIATIVE**  
*A Project of the Kansas Commission on Veterans Affairs*

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Good afternoon Mr. Chairman and members of the committee. I would like to thank you for your time this afternoon. My name is Tonya Ricklefs Van Sickle, I am the Program Assistant for the Kansas Persian Gulf War Health Initiative, a program of the Kansas Commission on Veterans Affairs. I have worked there nearly two years, most of that time working directly with Dr. Lea Steele. I would like to share with you today what this program has accomplished for Persian Gulf War veterans.

It has been over a decade since the United States sent men and women to the Persian Gulf. The job of defeating Saddam Hussein was quick and casualties were few. Our military forces did a job that the world could be proud of. Soon after people began returning home, stories spread about unusual illnesses. Reaction from the federal government was slow and veterans quickly became frustrated and continued to be confused.

In 1997, the State of Kansas developed a program to address the issues Gulf War veterans are facing. This program made Kansas one of the few states assisting veterans with their disturbing health problems. I can also tell you that because of legislative support, we have been one of the few remaining successful programs across the country.

In November of 2000, Dr. Lea Steele's study of over 2,000 Kansas Persian Gulf War veterans was published in the American Journal of Epidemiology. This study has been nationally recognized because it has shown never before seen patterns in who is more likely to have Gulf War Illness. As a result of this national recognition, the former director of the Kansas Persian Gulf War Health Initiative, Dr. Lea Steele has been appointed to the VA advisory board on Gulf War Illness by Secretary of the VA, Anthony Principi. Dr. Steele's hard work has given this program a wonderful reputation and a sturdy foundation of knowledge that can be shared with veterans nationwide.

In April and May of 2001, we shared our knowledge of Gulf War Illness with veterans across Kansas. Newsletters were mailed to 6,500 veterans and their families informing them about what programs were available to them as Gulf War veterans, about our Kansas study results, and where we were conducting town hall meetings that they could attend. These meetings were held in towns as large as Kansas City and as small as Colby.

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Sharing information is one of the most important jobs that the Kansas Veterans Commission does. Everyday I talk to veterans who are just happy to find out that they are not alone. The nature of Gulf War Illness is that it is confusing to doctors and the patients. Many veterans are not satisfied with the health care that they receive from the VA, but more importantly, they feel that no one takes the time to really understand and listen to what they are experiencing.

Our program has a toll-free hotline that is there for veterans to contact us with questions. The idea is for me to share with them information that makes them better educated patients. But, more often, the veterans are sharing information with me. They are just happy that someone is listening and believes them. Gulf War Illness is something that veterans are suffering from in silence. They get up and go to work like you and I, have families and try to live their life the best way that they can. I have spoken to hundreds of Gulf War veterans and that opportunity to fully experience life has been taken from them. It can be simple things like constantly having to treat a skin condition, to having such impaired memory function that you forget how to find your way home. Some Gulf War veterans experience such exhaustion that they can no longer play for any length of time with their children or headaches that leave them physically drained for days. These are a few of the wide ranges of impairments that can effect Gulf War veterans.

There are still many questions that need to be answered for Gulf War veterans. Currently, I am working on a project involving Kansas City and Junction City veterans in conjunction with Midwest Research Institute in Kansas City and Dr. Lea Steele at the Kansas Health Institute. Recently, the Veterans Administration has decided to provide service-connected benefits to Gulf War veterans who have ALS (more commonly known as Lou Gerhigs disease). Also, a recent study conducted by the VA has shown that Gulf War veterans children do show a increase in birth defects and the VA has announced that there is a group of Gulf War veterans that seem to dying at a rate 10% higher than a comparable group.

There is more information that is going to be revealed about what happened to our men and women while they were in the Gulf. Kansas was there early on to provide an example of a program that educated and supported our veterans when they needed it. I personally feel proud everyday to work in such a unique and wonderful program. I also feel proud and honored to serve and work for such amazing veterans who were willing to go and protect me many years ago.



# Kansas Persian Gulf War Veterans Health Initiative

James A. Bunker Chairman

1703 SW 66th Street Pauline, Kansas 66619  
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Home Page: <http://www.geocities.com/kansasvet>

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## TESTIMONY HB 2770

### HOUSE FEDERAL AND STATE COMMITTEE

I am here today to ask for favorable support of HB 2770 and to continue helping our Kansas Veterans.

For over 200 years, this country has sent its son and daughters into harms way. They are given the best of everything to insure their safe return to their mother, father and loved ones. No matter how well our government tries to keep them safe, some will come home in need of care. This may be in long-term treatments in our hospital or in finding the answers to why they are getting sick from some unknown cause.

In the forties and fifties, the DoD looked at the power of the atom, not fully understanding how radiation will harm any one. To them, the atomic bomb was something that was going to save lives in war. It took over 40 years, and the willingness of those in power to spend money on research, for many of those veterans to get the help they need for the sickness that had befallen them.

In Vietnam, herbicides was used to clear away some of the hiding places of the enemies. At the time, it was something that would help the troops, in fact it saved who knows how many lives; but just like before, unforeseen health problem would arise for its' use. With the help of states and privet research, even the children of the veterans are now getting help. Because of ongoing studies, to this day the VA is still adding to the list of thing that is attributed to Agent Orange.

In the gulf war, our troops had been exposed to many different toxic elements, some of it to protect from CBW. Some of it was CBW along with the toxic smoke of the oil well fires. To date, the Gulf War has been the most toxic war ever fought and I pray that we ever do fight. Gulf War illness is a progressive illness and many of our veterans health is becoming worse. We have found in our studies that many of them do not want the VA comp; they just want their health back. Just 2 months ago, the VA said that GWV are 2 times more likely to get ALS than non-GWV veterans and who knows what else is yet to come.

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I do not know what has made the GWV sick, and I think the DoD is not sure on it either, nor are they really looking for ways to make use healthy again. I feel their focus is on how not to let this happen in war that is yet to be fought. After all, history has shown their job is to fight wars and to try to keep men safe. Moreover, it has shown that it takes politicians funding research to help the veterans after they leave the service.

I do feel we need to build on what we have done in our state, and that we need to keep on looking for ways that will help the veterans to lead a more productive life.

The Kansas Study was the first study to show that time and place mattered in the relationship of GWI. The study was cited in a GAO report. We sent someone to testify in two sub committee hearings in Washington, DC; and she is now a member of the VA Gulf War health board.

Some of what I feel that the state needs to do is:

- Do blood sample of both sick and healthy veterans to look and see what all the sick veterans have in common and look to see what is different with the non-sick veterans.
- To do a phone survey of the veterans to see how their health has changed. For those that report changes in health, look for why their health improved, (life style change, medication, other treatments)
- Look to see if there are some well defined illness common with the veterans, and see how that may contribute to their problems.

The Kansas study has shown the rest of the country that we care about our veterans, and that we intend to take care of them. Kansas is now known for its' leading role in finding help for ill Gulf War veterans. With your help, we can do even more.

Please support HB 2770

Nancy H Armstrong  
12956 NW Parallel St.  
Benton, KS 67017  
nharmstrong@yahoo.com

To our esteemed Representatives, fellow veterans, family and friends,

Wednesday afternoon, I was sitting at my computer with my fingers on the keyboard wondering what I could say today to convince you the Gulf War veterans need your help.

It suddenly came to me but the words are not my own. They belong to a veteran I have known for four years. Her words were I am afraid. I don't know that I can find the right words. And most of all I am not sure I am ready to go back all those years ago. These were the words I heard from another veteran as well. "Afraid" to come forward.

They are afraid because the past 11 years have offered them discouragement, disappointment and betrayal. The Department of Defense and the Department of Veterans Affairs have not been clear and concise in their support of Gulf War veterans or even willing at one point to admit there were illnesses. Many of them are still waiting for claims and health coverage for their ailments. As a matter of fact this year's Federal Benefits Book for Veterans says that Gulf War veterans "may" get disability payments for their undiagnosable illnesses. This does not mean that it will happen.

With these funds you will vote on today, the State of Kansas can "keep a promise" to our veterans. The State of Kansas can be on the front lines fighting this war of attrition. This war of attrition has cost us many veterans already, as cited in a report released by the Veterans Benefits Administration just a couple of weeks ago. If you have not read this yet I am enclosing it with my written testimony.

The State of Kansas, indeed this committee can be a healing resource for our veterans. Vote yes for these additional dollars. Be committed soldiers for our Gulf War Veterans. Build a relationship with them. And last but not least, help them come forward to get the help they need all these years later.

"Do not follow where the path leads. Rather, go where there is no path and leave a trail."

Sincerely,

Nancy Armstrong

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## Study Examines Gulf War Deaths

### VA Reports Dramatic Disparity in Death Rates for Khamisiyah veterans

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By Suzanne Gamboa

Associated Press Writer

Friday, February 22, 2002; 4:24 AM

WASHINGTON — Veterans groups want further investigation of a government analysis that shows a high death rate among Persian Gulf War troops thought to have escaped exposure to deadly toxins when an Iraqi chemical weapons depot was destroyed.

The analysis by the Veterans Benefits Administration, obtained by The Associated Press, found the soldiers were dying at 10 times the rate of those believed to have been exposed.

VA statisticians briefed veterans groups Thursday on the report but offered no explanations for the disparity in death rates, according to Patrick Eddington, associate director of government relations for Vietnam Veterans of America.

The Pentagon has said about 100,000 soldiers were exposed to deadly gases when the Khamisiyah chemical weapons facility was blown up by U.S. combat engineers. It said the level of exposure was not hazardous.

The Pentagon created computer models in 1997 to replicate the vapor cloud created after the Khamisiyah demolition. Three years later, the Pentagon said a revised computer model using new weather and troop location information showed a different track for the vapor cloud that took it over other soldiers.

The VA analysis did not include a review of how the veterans died — such as car accidents, natural causes or service-related illness — or whether any deaths or claims were attributable to exposure to nerve gases.

The analysis did say 3,689 of 42,167 claims processed were for undiagnosed illnesses.

"It's premature to say exactly what will be done" with the analysis, said Pentagon spokeswoman Barbara Goodno.

"The report is a VA report and the numbers to us appear to be raw data. For us to draw any conclusion would be premature," Goodno said.

VA spokesman Jim Benson had not seen the analysis and had no immediate comment.

Eddington said more investigation is needed to determine exactly who was exposed and whether they could face health problems as a result.

"If there is a benign explanation for this discrepancy, we don't know what it would be," said Eddington, whose group also advocates for Gulf War veterans.

For years the Pentagon discounted claims that mysterious illnesses cited by Gulf War veterans could be tied to toxic exposures. But last December, a Pentagon-supported report by the Rand Corp.'s National Defense Research Institute raised the possibility some undiagnosed illnesses could be explained by exposure to low levels of Iraqi nerve gas.

The report called for more research into the long-term health effects of exposure such as that experienced by American soldiers at Khamisiyah, where weapons caches were destroyed in March 1991. It was later learned that the depot and a nearby pit contained hundreds of weapons filled with lethal sarin, cyclosarin and mustard gases.

The Pentagon sent letters in 1997 to the troops it believed might have been exposed to a chemical vapor cloud from the explosion. The letter said the exposure level was not high enough to cause health problems.

After the Pentagon revised the computer model in 2000, a new round of letters went out.

Some 34,418 soldiers were told military officials no longer believed they were exposed. An additional 65,407 were told the Pentagon still believed they might have been exposed. And 34,638 others were told officials now believed they might have been exposed.

The VA's analysis found 221 deaths among the group that the Pentagon consistently said might have been exposed, a rate of 3.38 per 1,000. There were 105 deaths, or 3.03 per 1,000, among the group military officials added after the revised computer model.

But there were 1,011 deaths, or 29.37 per 1,000, among the group that first was told it might have been exposed, then that it was not.

Dave Autry, spokesman for Disabled American Veterans, said it is important to find out why groups of mainly young males would have such differing death rates.

Erik Gustafson, a Gulf War veteran from Washington in the group with the highest death rate, called the numbers "extremely alarming."

Gustafson was with the 864th Engineer Battalion in northeast Kuwait when Khamisiyah was destroyed. He said he has not had any serious health problems, but has seen friends from his battalion experience problems.

"What's happened is any trust I might have had is gone. It's really eroded over time,"

<http://www.ngwrc.org/news/content/FriFeb220925412002.asp>

3/6/2002



Gustafson said. "When I got the second letter, it was like, 'Can't they get any of this right?' Now, this just reinforces the skepticism."

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On the Net: Veterans Benefits Administration: <http://www.vba.va.gov/>

Veterans Affairs: <http://www.va.gov>

Vietnam Veterans of America: <http://www.vva.org/>

Disabled American Veterans: <http://www.dav.org>

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POSTED TO NGWRC WEB Fri Feb 22 09:25:40 2002

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Last modified: February 22, 2002

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Testimony in Support of  
House Bill 2982

John W. Campbell  
Senior Deputy Attorney General

March 8, 2002

Mr. Chairman, members of the Committee, my name is John Campbell. I am the Senior Deputy Attorney General of the State and I appear before the committee today in support of House Bill 2982.

In November of 1998, the State of Kansas settled its tobacco litigation by signing the Master Settlement Agreement (MSA). Currently 52 jurisdictions and 38 tobacco companies are parties to the MSA. To date, the State of Kansas has received some \$137,317,644.35 in payments as a result of the settlement. Our next payment will be on April 15<sup>th</sup> and is currently estimated at \$43,381,786.50

There are potential hazards to our continuing to receive payments. One is known as the Non-participating Manufacturer (NPM) adjustment. The MSA requires Kansas' diligent enforcement of K.S.A. 50-6a01, *et* which requires tobacco manufacturers to either join the MSA or establish NPM escrow accounts. These accounts hold a portion of the money received from the sale of cigarettes and cigarette tobacco by NPM. The principle must be held for 20 years in order to settle health related claims filed by citizens, though the interest on such accounts may be withdrawn at anytime

Our failure to diligently enforce the Kansas NPM escrow statute could result in the loss of some or even all of our tobacco settlement money in a given year. One major tobacco company is contending that none of the states have diligently enforced their NPM escrow statutes and has withheld \$280,000,000 from its January 10, 2002 payment. That matter will soon be the subject of arbitration.

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The Attorney General's Office, with the assistance of the Department of Revenue, has diligently enforced the Kansas NPM escrow statute. However, enforcement of that statute has been costly and difficult. HB 2982, developed in cooperation with one of the MSA tobacco companies, would greatly help in the enforcement of our NPM escrow statute.

Some manufacturers, often foreign, start a company, produce and sell a cheap brand of cigarettes for a year, and disappear before the escrow payment is made. The Attorney General has no choice but to sue the NPMs that do not obey the law. To not to do so would endanger our claim to tens of millions of dollars in tobacco settlement every year. However, our current methods are not an efficient use of time and resources. The cost of service of process alone may far exceed the value of the lawsuit. Our office sued one manufacturer for an annual escrow payment of less than \$30.

We were granted a default judgment in that case and, assuming we could ever find the manufacturer, going into another jurisdiction to enforce the injunctive orders of the Kansas court and collect the penalties is very expensive. HB 2982 creates a more efficient and effective approach by prohibiting distributors from selling the products of noncompliant manufacturers.

House Bill 2982 would make the escrow requirement nearly self-executing by prohibiting licensed distributors from applying tax stamps to the products of NPMs who have not complied with Kansas law. The Attorney General's Office would maintain a list of those brands which are part of the MSA, or which are sold by NPMs who are complying with the law. All the distributors would have to do is check the list.

We have some suggestions regarding the language and organization of the bill, attached as balloon amendment to my testimony. I can discuss those with the committee and would ask that they be adopted as committee amendments to the bill.

We would urge the committee to favorably pass this bill. While Kansas has and will continue to diligently enforce our NPM escrow statute, the passage of this bill would greatly assist that effort. Other states, including Maine and New York, have passed similar bills. South Dakota and Utah, as well as other states, have such bills in their legislatures. If Kansas enacts HB 2982 into law, it would provide assistance in any arbitration or litigation in which it is claimed our share of the tobacco settlement moneys should be reduced.

HOUSE BILL No. 2982

By Committee on Judiciary

2-15

AN ACT concerning the affixing of cigarette tax stamps and meter im-  
pressions and payment of tax on roll-your-own tobacco.

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

Section 1. (a) No person may affix, or cause to be affixed, tax stamps  
or meter impressions to individual packages of cigarettes or pay the re-  
quired tax on roll-your-own tobacco in accordance with K.S.A. 79-3371,  
and amendments thereto, unless the tobacco product manufacturer that  
makes or sells such cigarettes or roll-your-own tobacco has:

- (1) Become a participating manufacturer; or
- (2) made all required escrow payments.

(b) Not later than ~~May 15, 2002~~, the attorney general shall develop  
a list, to be posted on the attorney general's website, of all tobacco product  
manufacturers that have become participating manufacturers or made all  
required escrow payments. This list shall include the brand families iden-  
tified by each such tobacco product manufacturer under subsection (c).  
The list shall be updated as necessary. A person may rely upon the attor-  
ney general's list in affixing or causing to be affixed stamps or meter  
impressions to individual packages of cigarettes or paying the tax on roll-  
your-own tobacco as required by K.S.A. 79-3371, and amendments  
thereto, of any brand family included on the list.

July 1, 2002

(c) In order to be included on the list developed by the attorney  
general under subsection (b), a tobacco product manufacturer shall sub-  
mit to the attorney general a list of brand families whose cigarettes are  
to be counted in calculating the participating manufacturer's annual pay-  
ments under the master settlement agreement or required escrow pay-  
ments whichever is applicable. ~~A tobacco product manufacturer may up-  
date the list to reflect changes.~~

(d) In addition to or in lieu of any other civil or criminal penalty  
provided by law, upon a finding that a licensee has violated subsection  
(a) or any rules and regulations adopted pursuant thereto, the director  
may revoke or suspend the license of any licensee in the manner provided  
by K.S.A. 79-3309, and amendments thereto. The director may also im-  
pose a civil fine in an amount not to exceed the greater of 500% of the  
retail value of the cigarettes or roll-your-own tobacco involved or \$5,000

(1)

(2) appoint a registered agent for service of  
process in the state and identify such registered  
agent to the attorney general; and (3) certify,  
under penalty of perjury, that all escrow payments  
have been made by all other tobacco product manu-  
facturers that previously made or sold brand families  
identified under this subsection or brand style  
included within such brand families; provided, that  
if the brand family or brand style was made or sold  
by the manufacturer before the effective date of  
this statute, such manufacturer shall be required  
only to identify such predecessor manufacturer or  
manufacturers.

5-3

5-4

1 upon a finding of a violation of subsection (a) or any rules and regulations  
2 adopted pursuant thereto. Such fine shall be imposed in the manner  
3 provided by K.S.A. 79-3391, and amendments thereto.

4 (e) Any cigarettes or roll-your-own tobacco that are stamped, to  
5 which a meter impression is affixed or for which tax is paid as required  
6 by K.S.A. 79-3371, and amendments thereto, in violation of subsection  
7 (a) shall be deemed contraband under K.S.A. 79-3323, and amendments  
8 thereto, and shall be subject to seizure and forfeiture as provided therein  
9 and in K.S.A. 79-3324a, and amendments thereto. All such cigarettes and  
10 roll-your-own tobacco seized and forfeited shall be destroyed. Such cig-  
11 arettes and roll-your-own tobacco shall be deemed contraband whether  
12 the violation of subsection (a) is knowing or otherwise.

13 (f) (1) The director may require wholesale dealers and distributors to  
14 submit such information as is necessary to enable the attorney general to  
15 determine whether a nonparticipating manufacturer has made the re-  
16 quired escrow payments.

17 (2) The attorney general may require nonparticipating manufacturers  
18 to submit such information as the attorney general may determine is  
19 necessary to enable the attorney general to determine whether a non-  
20 participating manufacturer has made the required escrow payments.

21 (g) ~~To promote compliance with subsection (b)(1) of K.S.A. 2001~~ (delete)  
22 ~~Supp. 50-6a03, and amendments thereto,~~ the attorney general shall re- may  
23 quire each nonparticipating manufacturer to: a

24 (1) Make the required escrow payments in quarterly installments dur- in order to be placed on the list developed by  
25 ing the year in which the sales covered by such payments are made (and the attorney general under subsection (b).  
26 (2) ~~appoint a registered agent for service of process in the state and~~ (delete)

27 ~~identify such registered agent to the attorney general.~~

28 (h) (1) It shall be unlawful for a nonparticipating manufacturer to , directly or indirectly,  
29 falsely represent to any person, in Kansas

30 (A) Any information about a brand family pursuant to the list sub-  
31 mitted pursuant to subsection (b);

32 (B) that it is a participating manufacturer;

33 (C) that it has made all required escrow payments; or (delete)

34 (D) that it has ~~(made the installment payments or appointed the reg-~~ satisfied any other requirements imposed pursuant  
35 ~~istered agent required by subsection (g).)~~ to this statute.

36 (2) Violation of this section is a class A, nonperson misdemeanor.

37 (i) The director and the attorney general may enter into a written  
38 agreement authorizing the exchange of information reasonably necessary  
39 to the enforcement and administration of this section.

40 (j) As used in this section:

41 (1) "Participating manufacturer" has the meaning ascribed thereto in  
42 subsection (a) of K.S.A. 2001 Supp. 50-6a03, and amendments thereto.

43 (2) "Required escrow payments" means the amounts described in

5-5

1 subsection (b)(1) of K.S.A. 2001 Supp. 50-6a03, and amendments thereto.

2 (3) "Director" means the director of taxation.

3 Sec. 2. This act shall take effect and be in force from and after its  
4 publication in the Kansas register.

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*Ronald R. Hein*

*Attorney-at-Law*

Email: rhein@hwchtd.com

**Testimony re: HB 2982**  
**House Appropriations Committee**  
**Presented by Ronald R. Hein**  
**on behalf of**  
**R. J. Reynolds Tobacco Company**  
**March 8, 2002**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for R. J. Reynolds Tobacco Company.

RJR supports HB 2982, but also supports the balloon amendments that will be proposed by the Attorney General's office. A copy of the balloon amendments that we understand will be offered is attached, and RJR supports the bill with those amendments. HB 2982 will protect Kansas's payments under the Master Settlement Agreement (MSA) by increasing compliance with escrow legislation enacted by Kansas in 1999.

Under the MSA, participating cigarette manufacturers are obligated to make payments to Kansas projected to exceed \$1.6 billion over the next 25 years. These payments, however, are tied to the sales volumes of the four biggest participating manufacturers.

In 1999, Kansas enacted a "Model Statute" implementing the MSA. The Model Statute requires non-participating manufacturers (NPMs) to make payments into an escrow account, based on their sales in the state, to provide Kansas with a source of recovery if it sues them.

There is widespread concern that many NPMs are not making the escrow payments required by the Model Statute, and thus are able to charge lower prices for their cigarettes, resulting in sales being siphoned away from the participating manufacturers. When NPMs siphon sales away from participating manufacturers, the participating manufacturers' MSA payments to Kansas go down.

NPM sales have more than doubled since 1998. RJR estimates that NPM sales could grow significantly in the next few years. Meanwhile, Kansas has received significantly less than it was projected to receive under the MSA, due to sales declines by participating manufacturers.

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House Appropriations Committee  
HB 2982  
March 8, 2002  
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Some of that sales decline is due to reduced smoking, but some is due to NPM sales growth enabled by avoiding making the escrow payments required by the Model Statute.

HB 2982 would prohibit distributors from stamping cigarettes of manufacturers that are not either participating manufacturers or NPMs in compliance with the Model Statute. The bill would give the attorney general additional tools to ensure that escrow payments are being made by NPMs, thereby protecting Kansas's settlement payments under the MSA.

Five other states have already enacted Model Statute compliance legislation in 2001 and 2002. A sixth state has just passed legislation awaiting the Governor's signature, and other states are actively considering similar legislation.

We urge the Committee to approve HB 2982.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.



HOUSE BILL No. 2982

By Committee on Judiciary

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AN ACT concerning the affixing of cigarette tax stamps and meter impressions and payment of tax on roll-your-own tobacco.

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

Section 1. (a) No person may affix, or cause to be affixed, tax stamps or meter impressions to individual packages of cigarettes or pay the required tax on roll-your-own tobacco in accordance with K.S.A. 79-3371, and amendments thereto, unless the tobacco product manufacturer that makes or sells such cigarettes or roll-your-own tobacco has:

- (1) Become a participating manufacturer; or
- (2) made all required escrow payments.

(b) Not later than ~~May 15, 2002~~, the attorney general shall develop a list, to be posted on the attorney general's website, of all tobacco product manufacturers that have become participating manufacturers or made all required escrow payments. This list shall include the brand families identified by each such tobacco product manufacturer under subsection (c). The list shall be updated as necessary. A person may rely upon the attorney general's list in affixing or causing to be affixed stamps or meter impressions to individual packages of cigarettes or paying the tax on roll-your-own tobacco as required by K.S.A. 79-3371, and amendments thereto, of any brand family included on the list.

July 1, 2002

(c) In order to be included on the list developed by the attorney general under subsection (b), a tobacco product manufacturer shall submit to the attorney general a list of brand families whose cigarettes are to be counted in calculating the participating manufacturer's annual payments under the master settlement agreement or required escrow payments whichever is applicable. A tobacco product manufacturer may update the list to reflect changes.

(1)

(2) appoint a registered agent for service of process in the state and identify such registered agent to the attorney general; and (3) certify, under penalty of perjury, that all escrow payments have been made by all other tobacco product manufacturers that previously made or sold brand families identified under this subsection or brand style included within such brand families; provided, that if the brand family or brand style was made or sold by the manufacturer before the effective date of this statute, such manufacturer shall be required only to identify such predecessor manufacturer or manufacturers.

(d) In addition to or in lieu of any other civil or criminal penalty provided by law, upon a finding that a licensee has violated subsection (a) or any rules and regulations adopted pursuant thereto, the director may revoke or suspend the license of any licensee in the manner provided by K.S.A. 79-3309, and amendments thereto. The director may also impose a civil fine in an amount not to exceed the greater of 500% of the retail value of the cigarettes or roll-your-own tobacco involved or \$5,000

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KS ATTORNEY GENERAL

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1 upon a finding of a violation of subsection (a) or any rules and regulations  
2 adopted pursuant thereto. Such fine shall be imposed in the manner  
3 provided by K.S.A. 79-3391, and amendments thereto.

4 (e) Any cigarettes or roll-your-own tobacco that are stamped, to  
5 which a meter impression is affixed or for which tax is paid as required  
6 by K.S.A. 79-3371, and amendments thereto, in violation of subsection  
7 (a) shall be deemed contraband under K.S.A. 79-3323, and amendments  
8 thereto, and shall be subject to seizure and forfeiture as provided therein  
9 and in K.S.A. 79-3324a, and amendments thereto. All such cigarettes and  
10 roll-your-own tobacco seized and forfeited shall be destroyed. Such cig-  
11 arettes and roll-your-own tobacco shall be deemed contraband whether  
12 the violation of subsection (a) is knowing or otherwise.

13 (f) (1) The director may require wholesale dealers and distributors to  
14 submit such information as is necessary to enable the attorney general to  
15 determine whether a nonparticipating manufacturer has made the re-  
16 quired escrow payments.

17 (2) The attorney general may require nonparticipating manufacturers  
18 to submit such information as the attorney general may determine is  
19 necessary to enable the attorney general to determine whether a non-  
20 participating manufacturer has made the required escrow payments.

21 ~~(g) To promote compliance with subsection (b)(1) of K.S.A. 2001~~ (delete)  
22 ~~Supp. 50-6a03, and amendments thereto,~~ the attorney general shall re- may  
23 quire each nonparticipating manufacturer to: a

24 ~~(1) Make the required escrow payments in quarterly installments dur-~~ in order to be placed on the list developed by  
25 ~~ing the year in which the sales covered by such payments are made and~~ the attorney general under subsection (b)Ⓞ  
26 ~~(2) appoint a registered agent for service of process in the state and~~ (delete)  
27 ~~identify such registered agent to the attorney general.~~

28 (h) (1) It shall be unlawful for a nonparticipating manufacturer to directly or indirectly,  
29 falsely represent to any person: in Kansas  
30 (A) Any information about a brand family pursuant to the list sub-  
31 mitted pursuant to subsection (b);

32 (B) that it is a participating manufacturer;  
33 (C) that it has made all required escrow payments; or (delete)  
34 (D) that it has ~~(made the installment payments or appointed the reg-~~ satisfied any other requirements imposed pursuant  
35 ~~istered agent required by subsection (g).)~~ to this statuteⓄ

36 (2) Violation of this section is a class A, nonperson misdemeanor.  
37 (i) The director and the attorney general may enter into a written  
38 agreement authorizing the exchange of information reasonably necessary  
39 to the enforcement and administration of this section.

40 (j) As used in this section:  
41 (1) "Participating manufacturer" has the meaning ascribed thereto in  
42 subsection (a) of K.S.A. 2001 Supp. 50-6a03, and amendments thereto.  
43 (2) "Required escrow payments" means the amounts described in

1 subsection (b)(1) of K.S.A. 2001 Supp. 50-6a03, and amendments thereto.  
 2 (3) "Director" means the director of taxation.  
 3 Sec. 2. This act shall take effect and be in force from and after its  
 4 publication in the Kansas register.  
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# KANSAS BOARD OF REGENTS

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**Statement to the  
House Committee on Appropriations  
by Robin Kempf,  
Associate General Counsel**

**March 8, 2002**

**SB 374**

My name is Robin Kempf. I am the Associate General Counsel for the Kansas Board of Regents. I am here today on behalf of the Board to request an amendment to SB 374.

At its February meeting, the Board endorsed pursuing an amendment to the Kansas Proprietary School Act. This amendment relates to both the fees that may be assessed proprietary schools and the extent the Board can regulate proprietary schools.

The Kansas Proprietary School Act, K.S.A. 72-4916, et seq., establishes requirements for schools that provide professional or technical training to their students and are not otherwise regulated under other Kansas statutes. The Board of Regents, along with an the help of an advisory commission, administers the Act, which includes issuing certificates of approval to appropriate schools to do business in Kansas, registering school representatives, and adopting rules and regulations to administer the Act.

Funding for administering the Kansas Proprietary School Act comes solely from fees paid by proprietary schools. Fees are set in statute for the initial and annual renewals of certificates of approval, as well as the registration of authorized school representatives. The schedule of fees is

**HOUSE APPROPRIATIONS**

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currently set in K.S.A. 72-4938. The current revenue from these fees is enough to fund 0.5 full time equivalent (FTE) staff person to do this job.

The Board requests that the Legislature amend the fee statute to allow the Board to set fees in rules and regulations, instead of maintaining the current fixed levels.

The amendment would address three needs.

1. 0.5 FTE is not adequate for providing thorough oversight of proprietary schools. The fees could be raised to cover one FTE to handle these responsibilities.
2. Some tasks required to administer the Act, such as supplying copies of transcripts for students who attended a school that has closed, do not have any fee set in statute. The Board could establish fees to support these time consuming tasks.
3. Allowing the Board to set proprietary school fees through the regulatory process would allow the Board to be fiscally responsible by setting fees at a level necessary to cover actual costs. Further, its actions would be made with the advice and oversight of the Proprietary School Advisory Commission.

Given the general subject matter of SB 374, agency fees, we hope the Committee would agree to amend our proposal to that bill. I would be happy to address any questions you might have about this amendment request at this time.

PROPOSED AMENDMENT TO SB 374

For Consideration by Committee on Appropriations

On page 15, following line 7, by inserting the following material to read as follows:

"Sec. 42. K.S.A. 2001 Supp. 72-4938 is hereby amended to read as follows: 72-4938. Fees-for-certificates-of--approval--and registration--of--representatives-shall-be-collected-by-the-state board-in-accordance-with-the-following-schedule:

(a)--For-schools-domiciled-or-having-their-principal-place-of business-within-the-state-of-Kansas:

- (1)--Initial-issuance-of-certificate-of-approval-----\$800.00
- (2)--Renewal-of-certificate-of-approval.....300.00
- (3)--Initial-registration-of-representative.....50.00
- (4)--Annual---renewal---of---registration---of representative.....25.00

(b)--For-schools-domiciled-or-having-their-principal-place-of business-outside-the-state-of-Kansas:

- (1)--Initial-issuance-of-certificate-of-approval-----\$1500.00
- (2)--Renewal-of-certificate-of-approval.....750.00
- (3)--Initial-registration-of-representative.....100.00
- (4)--Annual---renewal---of---registration---of representative.....75.00

The state board shall fix, charge and collect fees for certificates of approval, registration of representatives and other associated services provided in the regulation of proprietary schools by adopting rules and regulations for such purposes. Prior to adoption of any such rules and regulations, the state board shall afford the advisory commission on proprietary schools an opportunity to make recommendations on the proposed rules and regulations. All fees prescribed by this section prior to the effective date of this act shall continue in effect and shall be charged and collected until amended, revoked or otherwise replaced by rules and regulations adopted by the state board pursuant to this section.

Sec. 43. K.S.A. 2001 Supp. 72-4938 is hereby repealed.";

1 *As Amended by Senate Committee*

2 *Session of 2001*

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4 **SENATE BILL No. 396**

5  
6 By Committee on Ways and Means

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8 1-17

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10 AN ACT concerning the director of accounts and reports; authorizing  
11 the processing and payment of certain claims from the secretary of  
12 corrections.

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. Notwithstanding K.S.A. 75-3731, and amendments  
16 thereto, the director of accounts and reports shall accept for payment  
17 from the secretary of corrections any duly authorized claim from the local  
18 jail payments account of the state general fund. This shall be for costs  
19 pursuant to subsection (b) of K.S.A. 19-1930, and amendments thereto.  
20 This duly authorized claim from the local jail payments account of the  
21 state general fund shall be paid even though such claim is not submitted  
22 or processed for payment within the fiscal year in which the service is  
23 rendered and even though the services were rendered prior to the effec-  
24 tive date of this act.

25 Sec. 2. This act shall take effect and be in force from and after its  
26 publication in the ~~statute book~~ **Kansas register**.

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## 19-1930

### Chapter 19.--COUNTIES AND COUNTY OFFICERS Article 19.--JAILS

**19-1930. County jails; U.S. prisoners, city prisoners and inmates on parole or conditional release; compensation for maintenance; payments by inmates to defray maintenance cost; Sedgwick county, tax levy.** (a) The sheriff or the keeper of the jail in any county of the state shall receive all prisoners committed to the sheriff's or jailer's custody by the authority of the United States or by the authority of any city located in such county and shall keep them safely in the same manner as prisoners of the county until discharged in accordance with law. The county maintaining such prisoners shall receive from the United States or such city compensation for the maintenance of such prisoners in an amount equal to that provided by the county for maintenance of county prisoners and provision shall be made for the maintenance of such prisoners in the same manner as prisoners of the county. The governing body of any city committing prisoners to the county jail shall provide for the payment of such compensation upon receipt of a statement from the sheriff of such county as to the amount due therefor from such city.

(b) The sheriff or the keeper of the jail in any county of the state shall receive all prisoners committed to the sheriff's or jailer's custody pursuant to K.S.A. 75-5217, and amendments thereto, and shall keep them safely in the same manner as prisoners of the county until discharged in accordance with law or until otherwise ordered by the secretary of corrections. The cost of maintenance of such prisoners, including medical costs of such prisoners shall be paid by the department of corrections in an amount equal to that provided by the county for maintenance of county prisoners.

(c) In lieu of charging city authorities for the cost of maintenance of prisoners as provided by subsections (a) and (b), the board of county commissioners of Sedgwick county may levy a tax not to exceed one mill upon all tangible taxable property of the county to pay such costs and the costs of maintaining county prisoners. No revenue derived from such levy shall be used to pay the costs of maintenance of prisoners committed to the jail by federal or state authorities, or authorities of other counties or cities in other counties. For the purpose of this subsection, if any portion of a city is located within a county levying a tax hereunder, all prisoners of such city shall be deemed prisoners of such county.

(d) The board of county commissioners of a county may provide by resolution that any inmate of the county jail who participates in a work release or job training program for which the inmate receives compensation or a subsistence allowance shall be required to pay to the



county an amount not exceeding \$10 per day to defray costs of maintaining such inmate in the county jail. Such resolution shall provide for reduction or waiver of such amount in instances in which payment would create undue hardship for an inmate. The inmate shall pay any amount charged pursuant to such resolution, in cash or by money order, to the county treasurer, who shall deposit the entire amount in the county treasury and credit it to the county general fund. If payment is made in cash, the county treasurer shall provide the inmate with a written receipt for such payment. If the county is otherwise entitled to receive reimbursement or compensation for the maintenance of an inmate who is required to pay an amount pursuant to such resolution, the amount paid by such inmate shall be deducted from the amount of the other reimbursement or compensation to which the county is entitled.

(e) If any sheriff or jailer neglects or refuses to perform the services and duties required by the provisions of this act, the sheriff or jailer shall be subject to the same penalties, forfeitures and actions as if the prisoners had been committed under the authority of this state.

(f) Attorneys of prisoners held in a county jail shall be permitted to visit them professionally at all reasonable hours.

**History:** L. 1963, ch. 174, § 1; L. 1981, ch. 350, § 2; L. 1984, ch. 101, § 1; L. 1988, ch. 104, § 1; L. 1990, ch. 66, § 25; May 31.

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## 75-3731

### Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 37.--DEPARTMENT OF ADMINISTRATION

**75-3731. Examination and payment of bills, claims, refunds and other demands on state funds, authority of director of accounts and reports; payroll processing procedures; audit of receipt documents.** (a) Unless a claim is ordered paid by act of the legislature, the director of accounts and reports may refuse to pay any account, bill, claim, refund or demand on funds in the state treasury when the director determines that it is not a valid obligation or was not incurred in accordance with applicable laws and rules and regulations.

(b) Procedures for the processing of payrolls shall be prescribed by the director of accounts and reports, subject to the approval of the secretary of administration.

(c) The state treasurer shall transmit to the director of accounts and reports copies of all receipt documents showing all receipts received by the state treasurer. Such receipt documents shall be audited and examined by the director of accounts and reports.

**History:** L. 1953, ch. 375, § 31; L. 1968, ch. 311, § 1; L. 1990, ch. 318, § 3; L. 1994, ch. 274, § 10; July 1.

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MEMORANDUM

RE: Reimbursement for Cost of Maintenance of State Prisoners by County

FROM: Norman J. Furse, Revisor of Statutes

DATE: July 2, 2001

Background: In a letter of May 23, 2001, Secretary of Corrections Charles E. Simmons notified county sheriffs that sufficient funding was not made available by the 2001 Legislature for the reimbursement of costs incurred from housing parole violators for all of the third quarter or any of the fourth quarter: "Sufficient funding was not made available to allow for the reimbursement of costs for all of the third quarter or any of the fourth quarter. Nor was authorization provided to allow the department to utilize FY 2002 funds to reimburse counties for costs incurred during the current fiscal year (FY 2001). Consequently, payments for the reimbursement of these costs will not be made." Mr. Simmons then suggested that if the county sheriffs decided to pursue payment for the unreimbursement costs they would need to file a claim with the Joint Committee on Special Claims Against the State. Forms were attached to the letter for the filing of such claims. Mr. Simmons indicated that \$1,950,000 was appropriated for FY 2002 costs and, accordingly, payments would be made for new costs incurred after July 1, 2001. (See attached letter)

Statutes. Subsection (b) of K.S.A. 19-1930 provides for payment by the Department of Corrections of the cost of maintenance of certain prisoners: "(b) The sheriff or the keeper of the jail in any county of the state shall receive all prisoners committed to the sheriff's or jailer's custody pursuant to K.S.A. 75-5217, and amendments thereto, and shall keep them safely in the same manner as prisoners of the county until discharged in accordance with law or until otherwise ordered by the secretary of corrections. The cost of maintenance of such prisoners, including medical costs of such prisoners shall be paid by the department of corrections in an amount equal to that provided by the county for maintenance of county prisoners."

In section 148 of 2001 SB 57, an appropriation for FY 2002 is made as follows: "Local jail payments . . . \$1,950,000." In addition, under section 40 of that act, there is an appropriation for FY 2001 which reads as follows: "Local jail payments . . . \$1,000,000."

K.S.A. 75-3726a authorizes a state agency, with the approval of the governor, to transfer "all or part of one of its items of appropriation to another of its items of appropriation."

Under section 51(c) of chapter 130 of the 2000 Session Laws of Kansas the secretary of corrections, with the approval of the director of the budget, may transfer any part of any item for appropriation for FY 2001 from the state general fund for the department of corrections or any correctional institution or facility under the secretary of corrections to another item of appropriation for FY 2001 from the state general fund for the department of corrections or any correctional facility under the secretary of corrections. Under section 148(c) of 2001 SB 57 the same transfer authority exists for

the secretary of corrections, with the approval of the director of the budget, for FY 2002 state general fund items of appropriations for the department of corrections or a correctional institution or facility under the secretary of corrections.

Fiscal Year Considerations. Secretary Simmons in his letter of May 23, 2001, to county sheriffs states in part the following: "Nor was authorization provided to allow the department to utilize FY 2002 funds to reimburse counties for costs incurred during the current fiscal year (FY 2001). Consequently, payments for the reimbursement of these costs will not be made." Is it necessary to specifically authorize payment in this matter for amounts due and owing in fiscal year 2001 from FY 2002 appropriations for this purpose?

The Kansas Supreme Court has held in *Smyth v. Adjutant General*, 214 Kan. 715, 522 P.2d 272 (1974), in a case concerning death benefits for a widow of a national guard general, that the payment of death benefits to the surviving spouse was not limited to funds appropriated for military forces of the state for the fiscal year in which the death occurred and that any funds subsequently appropriated for such purpose could be used by the adjutant general in payment of such claims. In this case, the widow's right to compensation accrued on February 10, 1971. The Kansas Supreme Court noted, "the books for the fiscal year 1971 have been closed and any balance existing in the funds have reverted to the general revenue funds of the state. However, the books were open when the appellant's rights under the statute vested and her claim should have been paid. As we have said before, '(t)here is no magic in bookkeeping. Books which may have been closed in derogation of a lawful outstanding claim which had been provided for by the legislature must be reopened and the claim paid, and the proper entries made to recite the pertinent facts.' (*Hicks v. Davis*, 97 Kan. 312, 317, 154 P. 1030, 1032 (1916).) But this court does not intend to limit payment of the appellant's claims from funds appropriated for the military forces of this state for the 1971 fiscal year. Any funds subsequently appropriated for such purpose may be used by the adjutant general for payment of her claims." (emphasis added)

In *Legislative Coordinating Council v. Stanley*, 264 Kan. 690, 957 P.2d 379 (1998), in a matter relating to court costs and attorney fees incurred in an election contest, Respondent Secretary of Administration Stanley contended that K.S.A. 75-3731 requires vouchers to be submitted in the same fiscal year as the expense was incurred. The court in concluding that both the costs and the fees continue to remain a valid obligation stated that "K.S.A. 75-3731 does not support the respondent's contention."

Transfers of Items of Appropriation. Apparently, according to the Capital-Journal of June 29, 2001, statutory transfer authority has been exercised making \$830,000 of additional moneys available to reimburse for local jail costs. That leaves according to the newspaper around \$470,000 still outstanding to be reimbursed for current costs. It was not clear whether the transfer authority used here was under K.S.A. 75-3726a or section 51(c) of chapter 130 of the 2000 Session Laws of Kansas. The statutory authority under section 51(c) of chapter 130 of the 2000 Session Laws of Kansas would allow transfer of parts of items of appropriations also from correctional institutions or facilities under the secretary of corrections to items of appropriation under the department of corrections, in this case the local jail payments account.

Parole violator

STATE OF KANSAS



DEPARTMENT OF CORRECTIONS  
OFFICE OF THE SECRETARY  
Landon State Office Building  
900 S.W. Jackson — Suite 400-N  
Topeka, Kansas 66612-1284  
(785) 296-3317

Charles E. Simmons  
Secretary

Bill Graves  
Governor

May 23, 2001

Dear County Sheriff:

I am writing to update you on the availability of funding for the reimbursement of costs incurred from housing parole violators. In my letter of January 22, 2001, I notified you that it was necessary to suspend payments to all counties until additional funding became available.

Additional funding of \$1.0 million was made available by the 2001 Legislature and based upon information that has been submitted to us, this amount will be sufficient to pay all counties for costs incurred through December and some portion of the costs incurred for the month of January. Payments have been processed for those counties that have returned printouts, which include the names of parole violators and the number of jail days, for the first and second quarters of this fiscal year. Quarterly printouts for the third quarter of the fiscal year will be mailed soon. The amount that you will receive for the month of January, if any, cannot be determined until these quarterly printouts are returned to us.

Sufficient funding was not made available to allow for the reimbursement of costs for all of the third quarter and any of the fourth quarter. Nor was authorization provided to allow the department to utilize FY 2002 funds to reimburse counties for costs incurred during the current fiscal year (FY 2001). Consequently, payments for the reimbursement of these costs will not be made.

Should you decide to pursue payment for the unreimbursed costs for the remainder of the month of January and for all of the months of February through June, you will need to file a claim with the Joint Committee on Special Claims Against the State. The required forms are attached. You should continue to review and return the quarterly printouts, because the amount of any claim cannot be determined until these reports are processed.

An amount of \$1,950,000 has been appropriated for FY 2002 costs. Accordingly, payments will be made for new costs incurred after July 1, 2001. If you have any questions, please contact Dennis Williams at (785) 296-4838 or Jim Rowe at (785) 296-5347.

Sincerely,

Charles E. Simmons  
Secretary of Corrections

CES:DW:gs

STATE OF KANSAS



DEPARTMENT OF CORRECTIONS  
OFFICE OF THE SECRETARY  
*Landon State Office Building*  
900 S.W. Jackson — Suite 400-N  
Topeka, Kansas 66612-1284  
(785) 296-3317

Bill Graves  
Governor

Charles E. Simmons  
Secretary

July 13, 2001

Rep. Rocky Nichols  
2329 S.E. Virginia Ave.  
Topeka, KS 66605

Dear Rep. Nichols:

I am responding to your recent letter concerning the issue of the reimbursement of counties for per diem costs of housing post incarceration violators prior to their return to a state correctional facility.

The opinion from the Revisor of Statutes office has been reviewed by the Legal Division of the Department of Administration. The enclosed memorandum concludes that the use of FY 2002 funds to pay FY 2001 expenses "could be unlawful from a legal perspective as well as poor policy in terms of accounting and budget processes."

The measures we have taken to date will allow for the payment of all FY 2001 reimbursements with the exception of approximately \$400,000. We should be able to pay all third quarter costs (January – March, 2001) and some fourth quarter costs. We have not yet been billed for fourth quarter costs. The normal process of certifying those costs would result in payment in September or October.

There are a couple of possibilities which could result in additional FY 2001 funds being available to pay some of the \$400,000 balance, although some amount will likely remain owing after all available FY 2001 funds are utilized. Any remaining balance could be paid early in calendar year 2002 if the Legislature passes a bill including the proviso language which authorizes paying FY 2001 costs with FY 2002 appropriations. We would then pay the balance of FY 2001 costs from the FY 2002 appropriation for jail reimbursement.

I am enclosing a copy of information I previously provided to Legislative Research regarding the background of this issue in case it has not been made available to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Simmons".

Charles E. Simmons  
Secretary

Enclosures



**BILL GRAVES**  
*Governor*

**DAN STANLEY**  
*Secretary of Administration*

**ART GRIGGS**  
*Chief Attorney*  
900 S.W. Jackson, Room 107  
Landon State Office Building  
Topeka, KS 66612-1214  
(785) 296-6000  
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## DEPARTMENT OF ADMINISTRATION

Legal Division

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### MEMORANDUM

TO: Dale Brunton, Director  
Division of Accounts & Reports

FROM: <sup>REN</sup> Robert E. North, Senior Staff Attorney

DATE: July 12, 2001

RE: Dept. of Corrections Reimbursement Issue

You requested review and analysis of an opinion from the Revisor of Statutes office involving, among other issues, whether the Department of Corrections (DOC) may use current fiscal year's funds to satisfy a prior fiscal year's obligation for which both appropriation and expenditure limits have been reached. As set forth below, we disagree with parts of the Revisor's opinion and believe that such a payment could be unlawful from a legal perspective as well as poor policy in terms of accounting and budget processes.

#### Use of Current Year Funds

One issue is whether DOC may use FY'02 funds to pay an obligation incurred in FY'01. The state fiscal year runs from July 1 through June 30 as provided in K.S.A. 75-3003. The Division of Accounts and Reports (A & R) year-end closing instructions allow agencies a very limited opportunity to process prior year payments after the end of a current fiscal year. There are a relatively minor number of exceptions to the general rule (established by K.S.A. 75-3731) prohibiting use of current year funds to pay a prior year obligation. These exceptions reflect legislative intent to allow payments across fiscal years. For example, K.S.A. 46-923 provides certain criteria whereby A & R may accept a payment request not exceeding \$500.00 for services or purchases even though such request was not processed for payment within the fiscal year in which the service was rendered or the purchase made. That statute reads:

Notwithstanding K.S.A. 75-3731, the director of accounts and reports shall accept for payment from the head of any state agency any claim not exceeding five

hundred dollars (\$500.00) for services or purchases **even though such claim was not submitted or processed for payment within the fiscal year in which the service was rendered or the purchase was made except that no claim** filed more than six months after the time the service was rendered or the purchase was made shall be allowed or paid. (Emphasis added.)

References in other statutes further support the position that express statutory authority is necessary to pay prior year obligations from current year funds. Those include K.S.A. 65-1,135 (Department of Health and Environment) which states in pertinent part:

. . . Even though such claim is not submitted or processed for payment within the fiscal year in which the service is rendered and even though the services were rendered prior to the effective date of this act . . . .

K.S.A. 75-52,126 (Department of Corrections):

. . . Even though such claims were not submitted or processed for payment within the fiscal year in which the services were rendered, . . . .

K.S.A. 65-5a15 (Kansas Department of Health & Environment):

. . . Even though such claim is not submitted or processed for payment within the fiscal year in which the service is rendered and whether or not the services were rendered prior to the effective date of this act . . .

K.S.A. 75-6513 (Cafeteria Benefits – Department of Administration):

The director of accounts and reports shall issue warrants pursuant to vouchers approved under this section for payments from the cafeteria benefits fund notwithstanding the fact that claims for such payments were not submitted or processed for payment from money appropriated for the fiscal year in which the fund first became liable to make such payments.

Other statutes provide similar legislative direction authorizing the payment of a prior year obligation from current year funds. By implication, if the Legislature fails to include such language, those types of transactions are prohibited. If all agencies were granted “carte blanche” authority to pay prior year obligations with current year appropriations as the Revisor has proposed, the above statutory exceptions would be meaningless.

#### **Legislative Intent**

Further expression of legislative intent not to allow such payments may be found in DOC’s appropriations bills. For example, for the fiscal year ending June 30, 2000, DOC had



Dale Brunton, Director  
Division of Accounts & Reports  
July 12, 2001  
Page 3

express legislative authority to utilize FY'01 monies to pay FY'00 obligations to the local jail payments account. Section 67(i) of Chapter 183 of the *2000 Session Laws of Kansas* stated as follows:

In addition to the other purposes for which expenditures may be made by the department of corrections from the local jail payments account of the state general fund for fiscal year 2001 as authorized by section 51a of *2000 House Substitute for Senate Bill No. 326*, **expenditures may be made by the department of corrections from the local jail payments accounts of the state general fund for fiscal year 2001 for reimbursement costs incurred during fiscal year 2000.** (Emphasis added.)

Previously, DOC had direct authority to take the very action currently being considered. However, the Legislature omitted such language from the 2001 appropriations bills for the DOC. Implicit in the Legislature's failure to include such language in the 2001 appropriations bills is a legislative intent to **disallow** DOC from having that type of expenditure authority for FY'01 obligations.

There is additional anecdotal evidence of legislative intent that DOC not be allowed to pay the FY'01 obligations with FY'02 funds. The Secretary of Corrections wrote memorandums dated March 29, 2001, to the Conference Committee on Appropriations and April 23, 2001, to the head of the Senate Ways and Means and House Appropriation Committees specifically requesting language which would authorize DOC to make expenditures for costs incurred during FY'01 from appropriations from the local jails payment account of the state general fund for FY'02. This language would have been virtually identical to that in the 2000 appropriations bill which expressly authorized DOC to pay prior year's obligations out of current year funds. The Legislature did not to adopt such language during the 2001 legislative session.

In another instance, the Division of the Budget requested confirmation from the Legislative Research Department that the Legislature intended to insert language authorizing such a transfer of funds but inadvertently failed to do so. It is our understanding that the Research Department was unwilling or unable to confirm that legislative intent and refused to sign the letter. All of this is useful in attempting to determine legislative intent concerning these issues.

### Case Law Unhelpful

The Revisor of Statutes opinion refers to two cases as allowing payment of FY'01 local jails obligations from FY'02 monies notwithstanding the fact DOC is without further appropriation authority to expend additional funds for local jail payments and has no FY'01 funds available to satisfy the FY'01 obligations. The case of *Smyth v. Adjutant General*, 214 Kan. 715 (1974) may be distinguished. Factually, the *Smyth* case involved a widow's statutory vested right to receive payment resulting from her husband's death while in the line of duty for

Dale Brunton, Director  
Division of Accounts & Reports  
July 12, 2001  
Page 4

the Adjutant General's office. Significant to the court was the fact that the vested right or claim of the plaintiff **had been specifically provided for by the Legislature** when it enacted the statute providing for guaranteed benefits for deaths in the line of duty. This contrasts to the current situation in which DOC apparently incurred obligations beyond appropriated funds in the year in which the obligations were incurred. The *Smyth* case should be restricted to its limited facts.

Similarly, any reliance upon *Legislative Coordinating Council v. Stanley*, 264 Kan. 690 (1998) is misplaced. In *Stanley*, the court found that the vouchers the LCC wanted paid were in fact submitted for payment in the proper fiscal year as were the appropriations from which the court ordered them paid. That is a separate and distinct issue from the issue at hand which involves paying a prior year's obligation from a future year's appropriation.

#### Policy Considerations

As a practical matter, following the opinion proposed by the Revisor of Statutes would eviscerate many existing budget and accounting practices. It is a fundamental principal of accounting that expenditures must be matched against the time period for which an agency has received its revenues. Additionally, the very term "appropriation bill" typically refers to a formal action by a legislative body that specifies exact amounts of the government's money that a state treasury may legally pay out for each of a list of particular pre-authorized programs carried out by governmental agencies over a specific period of time which is normally one year. Current budget and accounting procedures involve encumbering current year funds for payment of obligations incurred in that same year. Allowing agencies to use any future year's funds to pay a prior year's obligations would render the encumbrance and budget process meaningless. The Division of the Budget must also consider ending balances in order to properly close-out each fiscal year. Allowing year end encumbrances to be ignored would undoubtedly result in lackadaisical record keeping by agencies who would simply rely on their new found ability to use next year's funds to pay prior year obligations.

Hopefully this is responsive to your inquiry. If you have any questions, please let me know.

REN:bw

cc: Jerry Serk  
Art Griggs

Document No. 20331v1

8-13

STATE OF KANSAS



DEPARTMENT OF CORRECTIONS  
OFFICE OF THE SECRETARY  
*Landon State Office Building*  
900 S.W. Jackson — Suite 400-N  
Topeka, Kansas 66612-1284  
(785) 296-3317

Bill Graves  
Governor

Charles E. Simmons  
Secretary

MEMORANDUM

To: House Appropriations Committee

From: Charles E. Simmons, Secretary

Subject: Senate Bill 396

Date: March 8, 2002

Senate Bill 396 was introduced at the department's request in order to improve our ability to manage funds appropriated to meet the department's responsibilities under KSA 19-1930(b), which provides for KDOC reimbursement of county jail costs incurred for housing KDOC offenders who have been arrested for violation of post-incarceration supervision conditions.

Under current law, jail cost reimbursement claims must be paid from funds appropriated for the fiscal year during which the obligation is incurred, unless there is a specific proviso (as was done in FY 2001) in the appropriations bill authorizing use of current year funds for payment of claims incurred during a prior fiscal year. SB 396 provides authority in substantive law to use current year appropriations to pay prior year claims, thus avoiding the need to address this issue each year through proviso language.

The need for this authority became quite evident at the end of last fiscal year, when jail cost reimbursement claims submitted to the department exceeded the amount of funds appropriated for this purpose in FY 2001. Because the FY 2001 funds for jail cost reimbursement had been exhausted, and proviso language had inadvertently been omitted from the FY 2002 appropriation, I gave notice to county sheriffs that the department could make no more reimbursement payments for FY 2001 claims. Following this notification, much concern was expressed regarding the adverse impact this would have on the counties. After a thorough review of available financing options, the FY 2001 shortfall was addressed through: (1) use of \$600,000 in FY 2001 reappropriated funds that were originally intended to finance FY 2002 costs for health care and food service contracts; and (2) a temporary change in practice in FY 2002 whereby the larger counties were given \$189,000 in FY 2002 advance payments based on amounts owed for FY 2001 claims.

HOUSE APPROPRIATIONS

DATE 3/08/02  
ATTACHMENT 9

The department is in the same situation this year as it was in FY 2001. Our most recent estimate for FY 2002 jail cost reimbursement claims is approximately \$2.7 million. The amount appropriated for this purpose in FY 2002 is \$1.95 million. We very much want to avoid the difficulties we encountered in addressing the FY 2001 shortfall, and flexibility is needed to use FY 2003 appropriations in meeting FY 2002 obligations, if necessary. Proviso language continues to be an option, but an amendment to substantive law is a much better long-term alternative for implementing the policy to prevent recurrence of the FY 2001 experience.

At my request, the Senate Ways and Means Committee amended the bill to make it effective upon publication in the *Kansas Register*. The department still has some FY 2001 claims to be paid—specifically, those that correspond to the advance payment amounts made in FY 2002, as well as the smaller claim amounts held from FY 2001. The Senate passed the bill, as amended, by a vote of 40-0.

I request that the committee report SB 396 favorably, and would be pleased to respond to any questions you may have.



**Shawnee County  
Department of Corrections**

501 S.E. 8th Street - Topeka, Kansas 66607 - (785) 291-5100

**Elizabeth Gillespie, Director**

Adult Detention Facility - 501 SE 8th - Topeka, Kansas 66607 - (785) 291-5000 - FAX (785) 233-7765  
Youth Detention Facility - 401 SE 8th - Topeka, Kansas 66607 - (785) 233-6459 - FAX (785) 291-4963

DATE: March 8, 2002

TO: Honorable Members  
House Appropriations Committee

FROM: Elizabeth Gillespie, Director *Elizabeth Gillespie*

SUBJECT: **Senate Bill No. 396**

On behalf of the Kansas Association of Counties, I am testifying today in support of Senate Bill No. 396. I regard this bill as a very positive follow-up step to the problems that were first presented in January, 2001. Secretary of Corrections Charles Simmons at that time suspended payments to local jails until additional funding was received. The 2001 Legislature appropriated additional funding of one million dollars for this purpose, but Secretary Simmons told the counties in May, 2001 that the amount appropriated was enough only to pay a portion of the costs for the third quarter of the State's Fiscal Year 2001 and for none of the costs of the fourth quarter. He said that the counties would not receive timely payments for the costs incurred for housing parole violators from February through June, 2001. We were advised to seek reimbursement for these costs through the Joint Committee on Special Claims against the State.

The issue became more public when I requested the Shawnee Board of Commissioners to approve the submission of a claim for the costs owed. Following that request, the Governor, the Secretary of Corrections, and Senators Jackson, Hensley, and Kerr devised a plan to transfer other FY 2001 Kansas Department of Corrections (KDOC) funds available for the purpose of paying local jail costs. In a media release, the Governor and the Secretary of Corrections stated that they had never intended to shirk their responsibilities for paying local jail costs and were going to need to work with the 2002 Legislature to solve the problem.

Senate Bill No. 396 should greatly assist the KDOC in assuring that local jails are paid in a timely manner. If the KDOC owes local jails for the past fiscal year's services, the KDOC would be able to pay for the costs as soon as the new fiscal year's funds become available in July rather than waiting until the Legislature convenes in January.

**HOUSE APPROPRIATIONS**

DATE 3/08/02  
ATTACHMENT 10

In the case of Shawnee County, the payments received from the state are revenues that are applied to the next fiscal year for the County. While the Shawnee County DOC's budget is not directly affected by the non-payment of expenses in the County's current fiscal year, the next year's budget is affected based upon funds received and expected. The next year's budget is submitted and approved by August. The Shawnee County Commission could easily disapprove some expenditures requested by the Shawnee County Department of Corrections if the State's reimbursements have been delayed.

Shawnee County has received reimbursements from KDOC for all quarters of the State's Fiscal Year 2001 for a total of \$459,738.56. We have also received reimbursement for the first quarter of the State's Fiscal Year 2002. I have been advised that we will receive payment within approximately one week for the quarter that ended December 31, 2001.

In conclusion, I believe that the counties are providing a valuable service to the public by housing the state's parole violators until such time as they can be transferred to a state facility. We work well with Kansas Department of Corrections officials and want to see this relationship remain as cooperative and positive as possible.

I will be happy to answer any questions from the Committee.

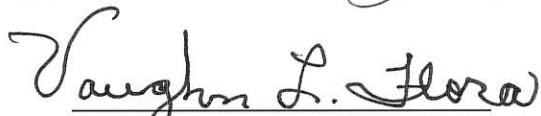
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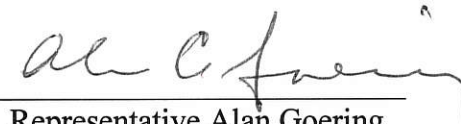
Cc: Kansas Association of Counties  
File


**HOUSE AGRICULTURE AND NATURAL RESOURCES  
2002 BUDGET COMMITTEE**

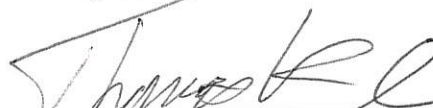
Department of Wildlife and Parks

  
Representative Sharon Schwartz, Chairperson

  
Representative Vaughn Flora

  
Representative Alan Goering

  
Representative Carl Holmes

  
Representative Tom Klein

  
Representative Don Myers

HOUSE APPROPRIATIONS

DATE 3/08/02  
ATTACHMENT 11

## Senate Subcommittee Report

Agency: Department of Wildlife and Parks

Bill No. 457

Bill Sec. --

Analyst: Efird

Analysis Pg. No. Vol. 1 - 80

Budget Page No. 473

<u>Expenditure Summary</u>	<u>Agency Est. FY 02</u>	<u>Governor's Recommendation FY 02</u>	<u>Subcommittee Adjustments</u>
State Operations	\$ 3,586,707	\$ 3,586,707	\$ 0
State Aid	1,735,000	1,735,000	0
Total-All Funds	<u>\$ 5,321,707</u>	<u>\$ 5,321,707</u>	<u>\$ 0</u>
State General Fund	\$ 4,282,387	\$ 4,282,387	\$ 0
All Other Funds	33,309,320	33,309,320	0
Total-All Funds	<u>\$ 37,591,707</u>	<u>\$ 37,591,707</u>	<u>\$ 0</u>
FTE Positions	407.0	407.0	0.0
Non FTE Uncl. Perm. Pos.	0.0	0.0	0.0
TOTAL	<u>407.0</u>	<u>407.0</u>	<u>0.0</u>

### Agency Est./Governor's Recommendation

The agency requests modest adjustments with a net reduction of \$24,130 in its operating budget. These changes result from an increase of \$12,829 in the State General Fund (SGF) expenditures from KSIP and a reduction of \$36,959 from all other funds for state operations.

The Governor concurs with the agency's revised FY 2002 budget for reduced expenditures of \$24,130 from the approved amount, including an increase of \$12,829 in the SGF expenditures from KSIP financing and a reduction of \$36,959 from all other funds for state operations.

### Senate Subcommittee Recommendation

The Subcommittee concurs with the Governor's recommendation.

### Senate Committee Recommendation

The Committee concurs.



### House Budget Report

**Agency:** Department of Wildlife and Parks

**Bill No.** 2743

**Bill Sec.** --

**Analyst:** Efird

**Analysis Pg. No.** Vol. 1-80

**Budget Page No.** 473

<u>Expenditure Summary</u>	<u>Agency Est. FY 02</u>	<u>Governor's Recommendation FY 02</u>	<u>Budget Adjustments</u>
State Operations	\$ 3,586,707	\$ 3,586,707	\$ 0
State Aid	1,735,000	1,735,000	0
Total-All Funds	<u>\$ 5,321,707</u>	<u>\$ 5,321,707</u>	<u>\$ 0</u>
State General Fund	\$ 4,282,387	\$ 4,282,387	\$ 0
All Other Funds	33,309,320	33,309,320	0
Total-All Funds	<u>\$ 37,591,707</u>	<u>\$ 37,591,707</u>	<u>\$ 0</u>
FTE Positions	407.0	407.0	0.0
Non FTE Uncl. Perm. Pos.	0.0	0.0	0.0
TOTAL	<u>407.0</u>	<u>407.0</u>	<u>0.0</u>

#### Agency Est./Governor's Recommendation

The agency requests modest adjustments with a net reduction of \$24,130 in its operating budget. These changes result from an increase of \$12,829 in the State General Fund (SGF) expenditures from KSIP and a reduction of \$36,959 from all other funds for state operations.

The Governor concurs with the agency's revised FY 2002 budget for expenditures to increase \$4,791,764 from reportable funds. These changes result from an increase of \$12,829 in the SGF expenditures from KSIP financing and a reduction of \$36,959 from all other funds for state operations.

#### House Budget Committee Recommendation

The Committee concurs with the Governor's recommendation.

## Senate Subcommittee Report

**Agency:** Department of Wildlife and Parks

**Bill No.** 640; 641

**Bill Sec.** 64; 24

**Analyst:** Efird

**Analysis Pg. No.** Vol. I - 80

**Budget Page No.** 473

<u>Expenditure Summary</u>	<u>Agency Req. FY 03</u>	<u>Governor's Recommendation FY 03</u>	<u>Subcommittee Adjustments</u>
State Operations	\$ 36,092,795	\$ 36,270,602	\$ 0
State Aid	2,235,000	1,735,000	0
Total-All Funds	<u>\$ 38,327,795</u>	<u>\$ 38,005,602</u>	<u>\$ 0</u>
State General Fund	\$ 4,310,753	\$ 4,220,301	\$ 0
All Other Funds	34,017,042	33,785,301	0
Total-All Funds	<u>\$ 38,327,795</u>	<u>\$ 38,005,602</u>	<u>\$ 0</u>
FTE Positions	407.0	407.0	0.0
Non FTE Uncl. Perm. Pos.	0.0	0.0	0.0
TOTAL	<u>407.0</u>	<u>407.0</u>	<u>0.0</u>

### Agency Req./Governor's Recommendation

**The agency requests** a net expenditure increase of \$736,088, with \$28,366 financed from the SGF and \$707,722 from all other funds for operating expenses.

- Program enhancements constitute \$600,000 of the requested FY 2003 increase in operating expenditures.
- Salary and benefits adjustments comprise most of the additional net growth of \$136,088 in FY 2003 increased expenditures. The agency's budget includes a 3.0 percent growth in salary and wage financing to provide an increase of \$601,248 in FY 2003 over the current fiscal year, primarily to reduce the shrinkage rate and fund additional fringe benefit increases.
- Reductions in spending are requested for commodities (\$88,684) and capital outlay (\$279,641) in order to reallocated funds to reduce the shrinkage rate in FY 2003 and to add financing for salaries and benefits with the other operating savings.

**The Governor recommends** a net expenditure increase of \$413,895, with a reduction of \$62,086 financed from the SGF and an increase of \$475,981 from all other funds for operating expenses, exclusive of capital improvements.

- One program enhancement is recommended in FY 2003: an additional \$100,000 for the walk-in-hunting access program.
- Salary and benefits adjustments comprise most remaining net \$313,895 growth in FY 2003 expenditures. The Governor's recommended budget includes a 4.7

percent increase for salary and wage financing to provide an additional \$926,901 in FY 2003 over the current fiscal year.

- Reductions in spending are recommended for commodities (\$88,684) and capital outlay (\$452,487) in order to shift financing for reducing the shrinkage rate in FY 2003 and funding salaries and benefits, and in conjunction with a 2.0 percent reduction package of \$86,423 in capital outlay.

### **Senate Subcommittee Recommendation**

The Subcommittee concurs with the Governor's recommendation and makes the following additional recommendations:

1. Express concern about the potential closure of the corrections facilities (Stockton, Osawatomie and Toronto) and the impact of reducing inmate labor currently used at the State Parks. The agency does not have adequate resources to replace inmate labor and also perform needed maintenance and cleanup at the parks.
2. Review at Omnibus the availability of new federal grant money and the amount of state match required to secure additional federal resources. The Secretary indicated that new federal legislation has authorized money for the states that must be matched with state or local resources.
3. Note that Kansas, with only three percent, has the smallest proportion of land under public control of any state. The pressure for additional hunting, fishing and recreation areas continues to grow, especially close to urban areas. The Subcommittee is pleased that an additional \$100,000 enhancement for the walk-in hunting program is recommended by the Governor in FY 2003 and notes that 900,000 acres will be available to the public under this program with the enhancement. The Subcommittee recognizes the need to balance public and private land use, and would support the Secretary's efforts in conjunction with Kansas State University to begin tracking how much private land is being used under lease for hunting and other recreational purposes. There is concern about decreasing wildlife populations for pheasants and quail, with increasing populations for deer and turkey. Additional hunting days for the latter two may be considered for public lands.
4. The Subcommittee encourages the Secretary to review the fees charged for activities under its jurisdiction, especially at the State Parks. With the nearing completion of work associated with the \$10 million park improvement program, enhanced revenues will allow the agency to preserve what has been renovated for public use. In addition, higher permit fees for additional hunting limits and days may yield more revenues for the wildlife activities. The Subcommittee understands that hunting on private lands leased by outfitters is generating considerable revenue for the private sector. Additional revenue for the public sector may be available given this trend.
5. Note the financial support from the State Highway Fund for maintaining roads and bridges recommended by the Governor in FY 2002 and FY 2003 at \$1.7 million each fiscal year and urge the Secretary to consider using funds for improved signage for the state facilities. In FY 2003, for instance, work is anticipated for Clinton, Hillsdale, Perry, Tuttle Creek, and Milford state parks. New signs could

be erected in conjunction with such road and bridge work at these parks to enhance visibility for travelers and tourists to visit the parks and facilities.

**Senate Committee Recommendation**

The Committee concurs.

**House Budget Report**

**Agency:** Department of Wildlife and Parks      **Bill No.** 3007; 3008      **Bill Sec.** 24; 64  
**Analyst:** Efird      **Analysis Pg. No.** Vol. 1-80      **Budget Page No.** 473

Expenditure Summary	Agency Req. FY 03	Governor's Recommendation FY 03	Budget Adjustments
State Operations	\$ 36,092,795	\$ 36,270,602	\$ 0
State Aid	2,235,000	1,735,000	0
Total-All Funds	\$ 38,327,795	\$ 38,005,602	\$ 0
Capital Improvements	5,253,627	4,423,735	100,000
Grand Total-All Funds	<u>\$ 43,581,422</u>	<u>\$ 42,429,337</u>	<u>\$ 100,000</u>
Operating Expenses:			
State General Fund	\$ 4,310,753	\$ 4,220,301	\$ 0
All Other Funds	34,017,042	33,785,301	0
Total Operating-All Funds	\$ 38,327,795	\$ 38,005,602	\$ 0
Capital Improvements:			
State General Fund	350,758	0	0
All Other Funds	4,902,869	4,423,735	100,000
Grand Total-All Funds	<u>\$ 43,581,422</u>	<u>\$ 42,429,337</u>	<u>\$ 100,000</u>
FTE Positions	407.0	407.0	0.0
Non FTE Uncl. Perm. Pos.	0.0	0.0	0.0
TOTAL	<u>407.0</u>	<u>407.0</u>	<u>0.0</u>

**Agency Req./Governor's Recommendation**

**The agency requests** a net expenditure increase of \$736,088, with \$28,366 financed from the SGF and \$707,722 from all other funds for operating expenses.

- Program enhancements constitute \$600,000 of the requested FY 2003 increase in operating expenditures.

- Salary and benefits adjustments comprise most of the additional net growth of \$136,088 in FY 2003 increased expenditures. The agency's budget includes a 3.0 percent growth in salary and wage financing to provide an increase of \$601,248 in FY 2003 over the current fiscal year, primarily to reduce the shrinkage rate and fund additional fringe benefit increases.
- Reductions in spending are requested for commodities (\$88,684) and capital outlay (\$279,641) in order to reallocated funds to reduce the shrinkage rate in FY 2003 and to add financing for salaries and benefits with the other operating savings.

The **Governor recommends** a net expenditure increase of \$413,895, with a reduction of \$62,086 financed from the SGF and an increase of \$475,981 from all other funds for operating expenses, exclusive of capital improvements.

- One program enhancement is recommended in FY 2003: an additional \$100,000 for the walk-in-hunting access program.
- Salary and benefits adjustments comprise most remaining net \$313,895 growth in FY 2003 expenditures. The Governor's recommended budget includes a 4.7 percent increase for salary and wage financing to provide an additional \$926,901 in FY 2003 over the current fiscal year.
- Reductions in spending are recommended for commodities (\$88,684) and capital outlay (\$452,487) in order to shift financing for reducing the shrinkage rate in FY 2003 and funding salaries and benefits, and in conjunction with a 2.0 percent reduction package of \$86,423 in capital outlay.

### **House Budget Committee Recommendation**

The Committee concurs with the Governor's recommendation and makes the following additional adjustments or comments:

1. In the Capital Improvements bill (HB ), expenditures for land acquisition are recommended for \$350,000 for wetlands and \$500,000 for other land from the Wildlife Conservation Fund. The Committee recommends that the agency be given authority to spend any unexpended money within these accounts and up to these limits in FY 2003 for a new pilot project of grass terracing designed to encourage bird populations. In FY 2002, the agency has allocated \$150,000 from the Wildlife Fee Fund for the pilot project in four Northwest Kansas counties (Gove, Logan, Sherridan, and Thomas). The Committee encourages the agency to also spend money out of the Wildlife Conservation Fund for this project and to expand it to other counties as an alternative to acquiring land, especially non-wetlands.
2. Add \$100,000 from the Boating Fee Fund to complete a river access project at Atchinson.
3. The Committee recommends that the Secretary consider limiting Playa Lake and other wetlands purchases to property within 1.1 miles of state-owned property and to consider prohibiting the pumping of groundwater into the Playa Lake.

4. The Committee wishes to note its concern over the pay for enforcement personnel within the agency. The Committee was told by the Secretary that there is potential for long-term problems in recruiting new people to fill these positions.
5. The Committee requests the Secretary to review its policies for walk-in hunting areas that are adjacent to cities of the first and second ~~third~~ class.
6. The Committee recommends the agency prepare a plan for spending federal Land and Water Conservation Fund money that has been or will be received, but for which there is no SGF or other matching money (such as EDIF) currently available. The Committee would like a report during Omnibus about providing local outdoor and recreation grants with local matching money if SGF money is not available. The Committee is concerned about the potential loss of federal funds awarded to Kansas and strongly suggests alternative spending arrangements be developed in this plan. The agency should include in the plan how local governments could receive help in writing grants to secure these federal funds and the appropriate agencies should be consulted. The Committee understands that as much as \$1.0 million may be available in federal funds if appropriate matching money can be found.
7. Add a proviso regarding river access on the Kansas and Missouri Rivers that: During the fiscal year ending June 30, 2003, no expenditures shall be made from any moneys appropriated for the Department of Wildlife and Parks from the State General Fund or any special revenue fund for construction of any new river access on the Kansas River or Missouri River unless the Secretary of Wildlife and Parks has obtained (1) the prior written permission for the proposed river access from each owner of each parcel of real property on the river which is immediately adjacent to the real property upon which the new river access project is to be constructed, and (2) if a parcel of such immediately adjacent real property is being leased, then the Secretary also shall obtain the prior written permission for the proposed new river access from lessor of such immediately adjacent real property.