Approved: March 7, 2003
Date

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson Stephen Morris at 10:30 a.m. on February 3, 2003, in Room 123-S of the Capitol.

All members were present except: Senator David Adkins - excused
Senator Dave Kerr - excused

Committee staff present:
Alan Conroy, Director, Kansas Legislative Research Department
J. G. Scott, Chief Fiscal Analyst, Kansas Legislative Research Department
Leah Robinson, Kansas Legislative Research Department
Martha Dorsey, Kansas Legislative Research Department
Norman Furse, Revisor of Statutes
Michael Corrigan, Assistant Revisor of Statutes
Judy Bromich, Administrative Analyst
Mary Shaw, Committee Secretary

Conferees appearing before the committee:
Chris Tymeson, Chief Legal Counsel, Kansas Department of Wildlife and Parks

Others attending: See attached list

Chairman Morris referred the following bill to the KPERS Issues Subcommittee:

SB 90--KPERS funding of unfunded obligations of certain benefits of employees of regents' institutions for prior service

The Chairman asked the committee to hold the dates of April 24, April 25, April 28 and April 29 this year for the Omnibus session.

Chairman Morris opened the public hearing on:

SB 73--Claims against the state

Staff briefed the committee on the bill.

Chris Tymeson, Chief Legal Counsel, Kansas Department of Wildlife and Parks, spoke in opposition to Section 5 of **SB 73** (Attachment 1). Mr. Tymeson explained several reasons for opposing Section 5 of **SB 73** which are listed in his written testimony.

Written testimony was received from Roger Werholtz, Secretary, Kansas Department of Corrections, regarding additional information concerning the November 4, 2002, legislative claim filed by Lyle Hanschu against the Kansas Animal Health Department (Attachment 2).

Committee questions and discussion followed. There being no further conferees to come before the committee, the Chairman closed the public hearing on **SB 73**.

Senator Feleciano moved, with a second by Senator Jordan, to amend **SB 73** with technical corrections. Motion carried on a voice vote.

Senator Jackson moved, with a second by Senator Barone, to remove Section 5 and Section 7 of **SB 73**. Motion carried on a voice vote. Senator Downey abstained from voting on this motion.

Senator Schodorf moved, with a second by Senator Jackson, to recommend **SB 73** favorable for passage as amended. Motion carried on a roll call vote.

CONTINUATION SHEET

Alan Conroy, Director, Kansas Legislative Research Department, presented an overview of the State General Fund ending balance requirements (Attachment 3). Senator Feleciano requested information from staff regarding the study on compensating use tax.

The meeting adjourned at 11:45 a.m. The next meeting is scheduled for February 3, 2002, 3:00 p.m., meeting at the rail.

SENATE WAYS AND MEANS COMMITTEE
GUEST LIST
DATE February 3, 2003

NAME	REPRESENTING
Debra Duncan	Ks. Animal Health
George Teagarden	Ks. Animal Health
Chris Tymeson	KDWP
Dick Koerth	KDWP
Kim Fowler	Judicial
Mike Hammond	Assoc. of CMHCs
Scott Schneider	GBBA
Micha Huttles	Ks. Governmental Consulting
Travis Barnhart	KNASW
Ray Ramirez	KHP
[illegible] Byrnes	SN. Salinas Ass
Lisa Becker	SRS
Julia Thomas	DOB
[illegible] Brunner	DOB
Ron Seeber	Hein Law Firm

STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS
Office of the Secretary
1020 S Kansas Ave., Room 200
Topeka, KS 66612-1327
Phone: (785) 296-2281 FAX: (785) 296-6953

SENATE BILL NO. 73
Testimony provided to
Senate Committee on Ways and Means
3 February 2003

Senate Bill 73 would authorize certain payments for claims against the state, including a claim against the KDWP by Mr. Duane Walker for a pasture fire that destroyed fencing and grass on Mr. Walker's property.

As background for the Committee, in 2002, a fire was started by a juvenile park patron, who later confessed, while playing with a lighter in a primitive camping area of the park. The fire was fought by department personnel, several neighboring landowners, several fire departments and a helicopter from Fort Riley. No structures were lost in the fire but many acres of native grasses within the park and the adjoining properties burned. Also destroyed in the fire were 250 railroad ties planned for use in primitive camping areas, a stack of wooden barrier posts and numerous adult pine trees planted within the park over the last 50 years.

Mr. Walker filed a claim with the Joint Committee on Special Claims Against the State after denial of the claim by the department and the Committee heard the claim on December 5, 2002. The Committee recommended after hearing the claim that the claim in the amount of $3,000 be paid to Mr. Walker.

The Kansas Tort Claims Act provides a governmental agency will be liable for damages caused by a negligent or wrongful act or omission if a private person would be liable given the same circumstances. Consequently, at a minimum, a claim must demonstrate that the governmental agency committed a negligent or wrongful act or omission in order to establish a legal claim for damages. Additionally, the fire arose on the state park and the KCTA, K.S.A. 75-6104(o) grants governmental entities immunity from liability for "any claim for injuries resulting from the use of any public property intended or permitted to be used as a park, playground or open area for recreational purposes, unless the governmental entity or an employee thereof is guilty of gross and wanton negligence proximately causing such injury."

The department opposes inclusion of Mr. Walker's claim, Section 5 of Senate Bill 73, for several reasons. First, there was no negligence on behalf of the department related to the fire. The department appropriately responded to the fire, the cause of which the department had no control over, and the department has an aggressive program designed to limit fires within the park. Second, even if negligence were asserted and proven, it would not rise to the level of gross and wanton negligence and the department would not be liable for damages to Mr. Walker's property. Finally, awarding Mr. Walker damages for this incident would set questionable public policy precedent, particularly in tough fiscal times. The department feels Mr. Walker could not have recovered damages in a lawsuit against the department and to award damages in this case would be circumventing the public policy of the State of Kansas and the Kansas Tort Claims Act.

Senate Ways and Means
2-3-03
Attachment 1

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

February 3, 2003

Senator Stephen R. Morris
Chairman, Ways and Means Committee
State Capitol, Room 123-S
Topeka, Kansas 66612

RE: Legislative Claim of Lyle Hanschu, Claim No. 5263

Dear Senator Morris:

I am writing to provide additional information concerning the November 4, 2002, legislative claim filed by Lyle Hanschu against the Kansas Animal Health Department (KAHD).

On or about December 6, 2002, the Joint Committee on Special Claims Against the State voted to recommend approval of this claim in the amount of $5,000.00 as "reimbursement for injuries to claimant's impounded horses while in the custody of the Hutchinson correctional facility following seizure, and related expenses incurred by claimant in obtaining the release of such horses. . . ." *See* Senate Bill 73, Sec. 7.

After investigation of this claim, I find no evidence to sustain any allegation that Mr. Hanschu's horses were injured or mistreated while housed at the Hutchinson Correctional Facility. Accordingly, I must strongly disagree with any implication as contained in SB 73, Sec. 7, that the Hutchinson Correctional Facility is in any way responsible for injury or mistreatment to Mr. Hanschu's horses following seizure by Marion County authorities.

This claim arises from the seizure of approximately 50 horses by KAHD and Marion County authorities from the Ray Lindgren farm. According to Mr. Hanschu, three (3) of his mares were among the animals seized. After seizure, Marion County authorities determined to board the seized horses at the Hutchinson Correctional Facility, where Mr. Hanschu alleges they were mistreated. He further alleges that "because of the extreme heat, blowing sand, and no shade or shelter - my one mare lost her sight."

Although this claim alleged mistreatment of the horses while boarded at the Hutchinson Correctional Facility, the Department was neither notified of the existence of the claim, nor permitted an

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Senate Ways and Means
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Attachment 2

opportunity to investigate the allegations and provide a written response to the allegations. Because I believe there is additional relevant information that should be considered before final approval of SB 73, I take this opportunity to provide the following facts:

1. On or about March 12, 2001, approximately 50 horses were seized from the Ray Lindgren farm following the initiation of criminal charges for cruelty to animals after Marion County and KAHD authorities discovered abused, ill and dead dogs at the farm. The horses seized were noted to be "obviously stressed and lacking nutrition," and "no hay or food was found on the premises." *See* Ex. 1, Probable Cause Affidavit filed March 12, 2001.

2. On or about March 31, 2001, Marion County officials transported the seized horses to the Hutchinson Correctional Facility (HCF) for boarding. When loading the horses, Marion County Sheriff Lee Becker observed an officer attempting to herd one of the three gray mares belonging to Mr. Hanschu. He reports that at one point, the officer "stepped out of the path of the mare and said, 'Ya blind bitch.' The [officer] moved because the horse was unable to see him." *See* Ex. 2, Letter dated January 13, 2003, to John Turner from Sheriff Becker.

3. On or about March 31, 2001, 59 horses were received at HCF. Upon arrival, prison officials and horse handlers noted that most of the horses were malnourished and underweight by 250 to 300 pounds. The three gray mares were in somewhat better shape on arrival than the other horses and were underweight by 200 to 250 pounds.

4. Initially, the horses were to be boarded at HCF for only a couple of weeks. When that time was extended, at the request of prison officials, Marion County authorities approved veterinary services for the horses. On April 13, 2001, a sorrel mare with a chronic sore on her shoulder required veterinary care, including the removal of a 4" splinter of bone. On April 19, 2001, a paint mare with a neurological problem in her hind legs was required to be euthanized. On April 23, 2001, the vet was called out to examine and treat a 25-year old paint mare that was starved, very thin, and who couldn't get up on her own. In approximately June 2001, about 15 horses had their hooves trimmed, and all the horses were wormed. Mr. Hanschu's three gray mares presented no particular problems during their stay at HCF and

appear to have improved by the time of their release to Mr. Hanschu in August 2001.

5. While boarded at HCF, 2 horses were destroyed after consultation with the veterinarian and 2 died. National By-Products provided rendering services to HCF for the Marion County seized horses on April 20, April 24, September 10, and September 26, 2001. Marion County authorities were responsible for payment for these and other veterinary services.

6. The horses were housed in a flat, fenced area east of the main facility at HCF in an area originally designed for additional private industry construction. However, the area was serviceable for housing horses. The corral area is "L" shaped, and approximately 50 yards wide by 100 yards long, similar to the size of a football field. The corral had a catch pen and a wide-open area for the horses. The corral was constructed of fencing that was free of protrusions, and there was no barbed wire, electric or mesh fencing. Inmate workers regularly cleaned the corrals. While there were no free standing shelters in the corral, the fencing and buildings provided shade in the morning and late afternoon. In addition, there was a run-off pond that the horses could, and did, stand in to cool off.

7. The horses were fed quality brome grass hay, and several of the smaller, stunted horses were supplemented with grain for approximately 3 months. The feeder(s) kept the brome grass hay off the ground to minimize ingestion of dirt and sand, were cleaned regularly to remove dirt and plant residue, and placed away from the fencing to allow feeding from all sides. Water troughs were also available and regularly filled with clean, potable water for all the horses. The troughs were also placed away from the fencing.

8. Correctional staff assigned to and assisting in the care of the horses included CS I Lyle Lundstrom and Doug Teter, who have both worked with and cared for horses since they were children. In addition, inmates were used to clean the corral, and feed and water the horses.

9. According to CS I Lundstrom, who worked with the horses on nearly a daily basis, with the exception of 1 - 2 geldings and 1 sickly male colt, only mares were housed in the HCF corral. There were no other

adult male horses or studs housed with the mares at HCF. The seized horses were not housed with the HCF mustangs due to concerns about transmission of disease.

10. The Marion County horses were boarded at HCF between March 31, 2001 and January 11, 2002, when they were released back to Marion County authorities. Mr. Hanschu obtained a court order granting him possession of the three gray mares, and he retrieved the mares on August 6, 2001.

The health and welfare of these mistreated horses was of paramount concern to both staff and inmates at the Hutchinson Correctional Facility. Every effort was made to ensure that they were well treated, well fed, and well cared for during their stay at HCF.

I trust the Committee finds this information helpful to its consideration of this claim. If I can provide further information, please do not hesitate to contact me.

Sincerely,

Roger Werholtz

Roger Werholtz
Secretary of Corrections

RW:LAM/sf

Enclosures

cc: Rep. Donald Dahl
Louie Bruce, Warden - HCF

Lyle Hanschu
3536 US HWY 56
Lost Springs, Kansas 66859

FILED
MARION COUNTY
01 MAR 12 PM 6:39
CLERK OF DISTRICT COURT

PROBABLE CAUSE AFFIDAVIT

STATE OF KANSAS
COUNTY OF MARION SS:

GROSDIDIER, 01 CR44

Keith Collett and Paul Grosdidier of lawful age, being first duly sworn upon oathy, says and deposes as follows: Keith Collett is assistant Marion County Attorney, and Paul Grosdidier is an employe of the Kansas Animal Health Department, accompanied by other department officials, sheriff and Highway Patrol officers, served an administrative search warrant at the residence of Ray Lindgren and and Karole Phillips, aka Karole Lindgren, on March 12, 2001. The home is located within Marion County approximately two miles west of Marion on old Highway 56, at 1753 190th Street, Marion. The officials looked in outbuildings and pasture/fields on the 40-acre homestead.

In a large, windowless machine shed, the officers found five pens holding approximately sixty Australian Shepherd dogs. One of the pens was 2-3 inches deep in excrement and urine, and the smell was overpowering. Four dead dogs were in the building; two were in pens, one was in an alleyway, and one was outside the building; it had been mostly eaten. The dog in the alleyway had abrasions and puncture wounds consistent with having been mauled prior to death. One of the dead dogs in the pens had been partially cannibalized. The live dogs were covered with excreta. There was no dry spot in any pen. Several additional dogs were in crates; six were large plastic crates, and one a medium sized crate. Five of the crates had two dogs. The crates and the dogs were covered with feces and were wet. The dog in the medium sized crate was unable to stand because the crate wasn't big enough. Its penis was swollen and infected.

In other buildings and open pens, the officers found more Australian Shepherd dogs: one group of three wire pens was completely soupy with mud and feces, and there was no shelter except for one crate ineach pen. In another shed, a dead dog was partially decomposed. In another wire pen without shelter were two dogs without shelter.

Many of the dogs in the machine shed appeared to have sore feet, the result of ammonia or urine burns or infection. Twenty-seven dogs were found in the basement of the house. Most of these dogs were housed two dogs in a one-dog crate. Thirteen more were in the living areas upstairs; of these, nine were 3-4-month-old pups housed in a approx,. four-foot-by four-foot crate.

Four adults live on the property, and share responsibility for maintaining and feeding the animals: Ray and Karole Lindgren, and two children, Ryun Lindgren and Keena Lindgren. Another adult in residence, Martha Phillips, may not have care responsibilities.

Karole testified at an emergency hearing before the state livestock commissioner on March 12, 2001, that all four Lindgrens cared for the animals. The dogs were ordered seized by the state livestock commissioner.

Affiant Keith Collett further states: There were approximately fifty horses on the property. Two were dead; one had been dragged to a dry pond, and one was in a pen. One live horse was on the ground, unable to stand; others were obviously stressed and lacking nutrition. No hay or food was found on the premises.

Officers reporting to this affiant included Animal Health Department officials Dr. Paul Grosdidier, Debra Duncan, Pat Harrington, and Carman Simon. Marion County Sheriff officers Lee Becker, Jeff Soyez, and Dean Keyes were also present.

Further Affiants say naught.

EXHIBIT 1

Paul A. Grosdidier

Paul Grosdidier

Keith Collett

Keith Collett

Subscribed and sworn to before me this 12 day of March, 2001.

Notary Public

My commission expires:

SUSAN C. ROBSON
Notary Public - State of Kansas
My Appt. Expires 10-28-2002

January 16, 2003

John Turner
Hutchinson Correctional Facility
1101 East "G" Avenue
Hutchinson, Kansas 67504

Dear John:

Here is a list of persons present when Lindgren animals were loaded. I personally observed Dean Keyes in the pen with one of the three gray mares. Keyes was attempting to herd the mare a certain direction. At one point, Keyes stepped out of the path of the mare and said, "Ya blind bitch". Keyes moved because the horse was unable to see him.

Please keep the home telephone numbers confidential.

Respectfully,

Lee M Becker

Lee Becker
Sheriff of Marion County

EXHIBIT 2

2-7

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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February 3, 2003

To: Senate Committee on Ways and Means

From: Alan D. Conroy, Director

Re: State General Fund Ending Balances

Kansas State General Fund Ending Balance Law

The 1990 Kansas Legislature enacted HB 2867, which dealt with several items regarding state finances. The legislation established five different requirements regarding the appropriations process and the State General Fund. These items included:

- Required projected State General Fund ending balance;
- Omnibus Reconciliation Spending Bill;
- $100 million minimum ending balance in the State General Fund;
- Statutorily established the Consensus Revenue Estimating Group; and
- Established the Cash Operating Reserve Fund.

Required State General Fund Ending Balance

The legislation provided for a required projected ending balance in the State General Fund beginning in FY 1992. The minimum State General Fund ending balances as a percent of expenditures were statutorily targeted at the following amounts:

- 5.0 percent in FY 1992;
- 6.0 percent in FY 1993;
- 7.0 percent in FY 1994; and
- 7.5 percent in FY 1995.

The required projected State General Fund ending balance only applies at two points in the state budget process. First, the Governor must present a budget for the out-year that leaves a minimum ending balance of no less than 7.5 percent of State General Fund expenditures. The second time is that the total amount of expenditures and demand transfers authorized from the State General Fund by the Legislature for the out-year or budget year cannot be less than 7.5 percent of expenditures. In general, the State General Fund ending balance in the current year is not affected by the ending balance law.

Since FY 1966 (the advent of the modern day State General Fund) the State General Fund's actual ending balance low point was in FY 2002 with a balance of $12.1 million or 0.3 percent of expenditures. The highest General Fund ending balance was FY 1998 with a balance of $756.3 million or 19.9 percent of expenditures. In the 1990 Session when HB 2867 was passed, the projected ending balance for FY 1991 was 4.1 percent of expenditures. The ending balances in the State General Fund since FY 1966 have been as follows:

Senate Ways and Means
2-3-03
Attachment 3

State General Fund Balances
(Amounts in millions)

Fiscal Year	Receipts*	Expenditures	Ending Balance	Percent of Expenditures
1966	**$250.8**	$222.4	$80.4	36.1%
1967	**254.1**	239.4	95.2	39.8%
1968	254.8	**258.7**	91.4	35.3%
1969	**282.1**	279.1	94.6	33.9%
1970	301.1	**343.6**	52.4	15.2%
1971	333.6	**354.9**	31.5	8.9%
1972	**375.8**	366.3	41.2	11.2%
1973	**436.2**	386.7	90.9	23.5%
1974	**547.1**	490.5	147.9	30.1%
1975	**627.7**	598.4	179.0	29.9%
1976	701.3	**701.6**	179.2	25.5%
1977	776.6	**816.6**	140.4	17.2%
1978	**854.8**	841.2	154.9	18.4%
1979	**1,007.3**	967.2	195.9	20.3%
1980	1,099.5	**1,113.6**	92.4	16.5%
1981	1,233.3	**1,265.7**	152.1	12.0%
1982	1,281.5	**1,342.1**	92.4	6.9%
1983	1,371.7	**1,414.1**	51.1	3.6%
1984	**1,561.7**	1,518.2	95.6	6.3%
1985	**1,679.1**	1,655.1	120.4	7.3%
1986	1,668.9	**1,770.5**	19.7	1.1%
1987	**1,820.7**	1,768.7	73.3	4.1%
1988	**2,147.1**	1,920.8	301.2	15.7%
1989	**2,228.3**	2,159.9	371.4	17.2%
1990	2,300.5	**2,400.3**	272.9	11.4%
1991	2,382.3	**2,495.4**	162.2	6.5%
1992	2,465.8	**2,491.3**	140.5	5.6%
1993	**2,932.0**	2,690.4	384.9	14.3%
1994	**3,175.7**	3,111.0	454.4	14.6%
1995	3,218.8	**3,309.8**	367.0	11.1%
1996	**3,448.3**	3,439.2	379.2	11.0%
1997	**3,683.8**	3,538.1	527.8	14.9%
1998	**4,023.1**	3,799.1	756.3	19.9%
1999	3,978.4	**4,196.2**	540.7	12.9%
2000	4,203.1	**4,367.6**	378.0	8.7%
2001	4,415.0	**4,429.6**	365.7	8.3%
2002	4,108.3	**4,466.1**	12.1	0.3%
2003 (Gov. Rec.)	4,346.6	**4,358.3**	0.4	0.0%
2004 (Gov. Rec.)	**4,395.5**	4,493.4	0.5	0.0%

* Excludes a small amount of released encumbrances.

Omnibus Reconciliation Spending Limit Bill

The 1990 legislation also specified that the last appropriation bill passed in any regular session which appropriates or transfers money from the State General Fund must be the Omnibus Reconciliation Spending Limit Bill. Each bill passed during a regular session which appropriates or transfers money from the State General Fund has to contain a provision that the bill will not take effect until after the Omnibus Reconciliation Spending Limit Bill. The reconciliation bill is relied upon to reconcile total State General Fund expenditure authorizations with the statutorily prescribed ending balance target. Since 1992, the practice has been to merge the omnibus appropriation bill and the omnibus reconciliation bill into one measure.

$100 Million Minimum Ending Balance

1990 HB 2867 also authorizes the Governor to issue an executive order or orders, with the approval of the State Finance Council, to reduce State General Fund expenditures and demand transfers if the estimated year-end balance in the General Fund is less than $100 million. The Budget Director must continuously monitor receipts and expenditures and certify to the Governor the amount of reduction in expenditures and demand transfers that would be required to keep the year-end balance from falling below $100 million. Debt service costs, the General Fund contribution to school employees retirement (KPERS-School), and the demand transfer to the School District Capital Improvements Fund are not subject to reduction.

If the Governor decides to make reductions, they must be on a percentage basis applied equally to all items of appropriations and demand transfers, *i.e.*, across-the-board with no exceptions other than the three mentioned above.

In August 1991 (FY 1992), the Governor issued an executive directive, with the approval of the State Finance Council, to reduce State General Fund expenditures (except debt service and the KPERS-School employer contributions) by 1 percent. At the time of the State Finance Council action, the projected State General Fund ending balance was approximately $76 million.

Consensus Revenue Estimating Group

Beginning in 1974 and in every year since, there was an informal consensus approach involving the legislative and executive branches (Division of the Budget, Legislative Research Department, and one consulting economist each from Kansas, Kansas State, and Wichita State universities) for estimating revenues to the State General Fund. 1990 HB 2867 placed in the law a timetable and certain procedures to be followed in the preparation of estimates of revenue to the State General Fund. The law requires that on or before December 4 and April 4, the Director of the Budget and the Director of the Legislative Research Department prepare a joint estimate of revenue to the State General Fund for the current and ensuing fiscal year. If legislation is passed affecting State General Fund revenue, the two directors are to prepare a joint estimate of revenue. If the two directors are unable to agree on the joint estimates, the Legislature must use the estimate of the Director of Legislative Research and the Governor must use the estimate of the Director of the Budget. (To date, the two directors successfully have reached agreement on these revenue estimates).

Cash Operating Reserve Fund

The 1990 legislation established a Cash Operating Reserve Fund. The bill required that 5.0 percent of State General Fund expenditures and demand transfers would be transferred into this fund on July 1 of each fiscal year. The reserve fund balance was then transferred back to the General Fund at the end of the fiscal year. This fund was abolished in 1994.

Cashflow Patterns and Requirements

Revenues for the State General Fund are realized from a variety of sources, however, the vast majority are from individual income (42.4 percent) and retail and compensating use (41.5 percent) taxation. While sales tax receipts are relatively constant throughout the fiscal year, income taxes are obviously concentrated in the later months of the fiscal year, around April when tax returns are due. Compounding this pattern within a given month, sales taxes and other excise taxes are remitted at the end of the month leaving significant gaps in the cashflow patterns that are not revealed by examining monthly receipts and expenditures. In addition, while spread fairly evenly throughout the year, expenditures also occur in predictable but varying levels during a given month. School aid payments, regular medical assistance payments, state payroll are just some of the examples of large payments that occur during different times of the month and fiscal year.

Given the combination of these structural factors, **<u>the ending balance requirement of 7.5 percent of State General Fund expenditures is not sufficient to assure a daily positive balance in the State General Fund without the use of certificates of indebtedness</u>**.

Other State's Budget Stabilization or "Rainy Day" Funds

The attached table (Table Q) lists information compiled by the National Association of State Budget Officers on whether a state has a state budget stabilization fund or a "rainy day" fund. The table provides the name of the fund, the determination on the size of the fund, and the procedure to make expenditures from the fund. Kansas does not have a budget stabilization or "rainy day" fund. Although, the required ending balance in the past has helped the state's financial solvency. Twelve states have various requirements of a 5.0 percent budget stabilization fund. These states are:

Connecticut	Maryland	South Dakota
Florida	New Hampshire	Vermont
Idaho	New Jersey	West Virginia
Iowa	Ohio	
Kentucky	South Carolina (between two funds)	

Our neighboring states have the following budget stabilization fund requirements:

Colorado	Constitutional 4 percent of revenues
Iowa	5 percent of net General Fund Revenue
Missouri	Minimum of 7.5 percent of net general revenue
Nebraska	Cash Reserve Fund balance is determined by statute
Oklahoma	Maximum of 10 percent of preceding year's general revenue
Oklahoma	Maximum of 10 percent of preceding year's general revenue

Contingency or Emergency Fund

The 2000 Legislature authorized transfers of up to $10 million from the State General Fund, with the State Finance Council approval for natural disasters or other emergencies. The attached (Table R) from the National Association of State Budget Officers provides information on the amounts that the various states have within their contingency or emergency funds.

Table Q

Budget Stabilization or "Rainy Day" Fund

State	Fund Name	Determination of Fund Size**	Procedure for Expenditure
Alabama	Education Trust Fund - Proration	20 percent of Education Trust Fund from preceding Fiscal Year as beginning balance in current fiscal year, up to $75 million.	1) Extent necessary to avoid across-the-board cuts by certification of the Governor. 2) 2/3 vote of the Legislature in each chamber.
	Prevention Account		
	General Fund-Rainy Day Fund	Appropriated by legislature	Same as Education Trust Fund
Alaska	Budget Reserve Account	Unexpended balance and appropriations	Appropriation
	Constitutional Budget Reserve Fund	Oil and Gas litigation/disputes settlements	3/4 vote of legislature
Arizona	Budget Stabilization Fund	*	1) By formula with majority legislative appropriation. 2) Non-formula with 2/3 legislative approval
	Medical Services Stabilization Fund	No limit.	Upon notice of a deficiency, the Joint Legislative Budget Committee may recommend that a withdrawal be made.
Arkansas	-	-	-
California	Special Fund for Econ. Uncertainties	Appropriation by Legislature	Appropriation by Legislature
Colorado	Tabor Reserve	Constitutional 4 percent of revenues	Procedure has not been tried thus far
Connecticut	Budget Reserve Fund	5 percent of net General Fund appropriations	Fund deficit after the books have been closed.
Delaware	Budget Reserve Account	Excess unencumbered funds, no greater than 5 percent of gross General Fund revenues	3/5 vote of legislature for unanticipated deficit or revenue reduction resulting from legislative action
Florida	Working Capital Fund	Appropriations Act	Governor declared emergency / or if Legislature Appropriates.
	Budget Stabilization Fund	1 percent of General Fund in Fiscal 1995, building to 5 percent by Fiscal 1999	Legislative appropriations to cover revenue shortfalls
Georgia	Revenue Shortfall Reserve	3 percent of prior year net revenue	Revenue shortfall during current year.
Hawaii	Emergency & Budget Reserve Fund	No limit. Receives 40 percent of tobacco settlement	2/3's vote of Legislature
Idaho	Budget Stabilization Fund	If General Fund grew more than 4 percent in the previous Fiscal Year, 1percent is transferred to the Budget Stabilization Fund. The Budget Stabilization Fund is capped at 5 percent of the General fund.	Legislative Action. The State Board of Examiners may take money from the BSF at the end of the fiscal year if they determine that there will be insufficient General Fund revenue to cover that year's appropriations.
Illinois	Budget Stabilization Fund	$225,000,000 (no limit)	Comptroller can direct tranfers to General Fund
Indiana	Counter-Cyclical Revenue	Cap is 7 percent of state revenue	Statutory formula
Iowa	Cash Reserve Fund	5 percent of net General Fund Revenue	Simple majority of General Assembly for 40 percent of the fund. 3/5's majority of General Assembly for 60 percent of the fund.
	Economic Emergency Fund	5 percent of net General Fund Revenue	Simple majority of General Assembly
Kansas	*	-	-
Kentucky	Budget Reserve Trust Fund	Goal of 5 percent of General Fund Budget	Budget Reduction Plan – statute
Louisiana	Budget Stabilization Fund	Revenues exceeding $750 million from production and exploration of minerals and 25 percent of nonrecurring revenue, which includes General Fund balances.	1/3 of fund with legislative approval
Maine	Rainy Day Fund	6 percent of General Fund in immediately preceding Fiscal Year	Legislation
Maryland	Revenue Stabilization Fund	Statutory- 5 percent of estimated General Fund revenues for that fiscal year.	Act of the General Assembly or authorized specifically in Budget Bill
Massachusetts	Commonwealth Stabilization Fund	*	Appropriation
Michigan	Countercyclical Budget and Economic Stabilization Fund	Cap set at 10 percent combined General Fund / General Purpose and School Aid Fund year-end balance.	Statutory formula
Minnesota	Budget Reserve	Set in Statute at $622 million.	Commissioner of Finance with the approval of the Governor and after consulting Legislative Advisory Commission
	Cash Flow Account	Set in statute at $350 million.	Used if needed to meet cash flow deficiencies resulting from uneven distribution of revenue collections and required expenditures during a fiscal year.
Mississippi	Working Cash Stabilization Reserve Fund	7 1/2 percent of the General Fund Appropriations*	Appropriation
Missouri	Budget Reserve Fund	Minimum 7.5 percent of net general revenue used for cash flow and rainy day fund. Can go as high as 10 percent with legislative approval.	Governor determines shortfall, subject to legislative disapproval
Montana	-	-	-

***Please specify formula.**

Table Q

Budget Stabilization or "Rainy Day" Fund

State	Fund Name	Determination of Fund Size**	Procedure for Expenditure
Nebraska	Cash Reserve Fund	Statute	Statute
Nevada	Budget Stabilization Designation	By comptroller for account purposes when reporting financial portion of fund balance; 40 percent of excess fund balance. A maximum of 10 percent of the General Fund.	Statute
New Hampshire	Revenue Stabilization	5 percent by statute	Statute
New Jersey	Surplus Revenue Fund	50 percent of amount by which actual revenue exceeds anticipated revenues added to the fund. The cap is set at 5 percent of anticipated revenues.	The Governor certifies to the Legislature that revenues are estimated to be less than certified. The Legislature appropriates the funds. Also, if the Governor declares an emergency and the Legislature approves.
New Mexico	Operating Reserve	*	Legislative appropriation.
	Risk Reserve Fund	**	Legislative appropriation.
New York	Tax Stabilization Reserve Fund	State finance law	Can be used when a deficit is incurred and for temporary loans.
North Carolina	Savings Reserve Account	1/4 of Credit Balance, maximum 5 percent of the amount appropriated the preceding year for the General Fund Operating Budget.	Legislative approval.
North Dakota	Budget Stabilization Fund	Any amount over $40 million at end of biennium goes into fund.*	Actual revenues must be 2 1/2 percent below forecast before the Governor can access the funds.
Ohio	Budget Stabilization Fund	By statute the stated intent is to have an amount in the fund that is approximately 5 percent of the General Revenue fund revenues for the preceding fiscal year.	Legislative action necessary.
Oklahoma	Constitutional Reserve Fund	Max of 10 percent of preceding year's general revenue. Revenues accrue when actual general revenue collections exceed 100 percent of the certified estimate.	Up to 1/2 if revenue certification is below previous year; 1/2 can be used upon declaration of the Governor and 2/3's vote of the Legislature, or by legislative declaration of emergency and 3/4's legislative vote.
Oregon	-	-	-
Pennsylvania	Tax Stabilization Reserve	Goal of 6 percent of General Fund revenue estimates. Receives revenue from sale of assets and annual transfer of 10 percent of the General Fund year-end surplus plus occassional non-recurring transfers.	2/3 legislative vote with the Governor's request
Rhode Island	Budget Reserve and Cash Stabilization Account	3 percent of resources	Used to cover deficit caused by general revenue shortfall
South Carolina	Capital Reserve Fund	2 percent of General Fund Revenue of last Fiscal Year	Use when year-end deficit is projected.
	General Reserve Fund	3 percent of General Fund Revenue of last Fiscal Year	Shortfall must be identified & CRF depleted.
South Dakota	Budget Reserve Fund	5 percent of General Fund in prior year's General Appropriations Act.	Legislative appropriation.
Tennessee	Reserve for Revenue Fluctuations	By appropriation	Revenue shortfall
Texas	Economic Stabilization Fund	Capped at 10 percent of general revenue fund deposits (excluding interest & investment income) during the preceding biennium.	3/5 vote of each house of Legislature to remedy deficits after budget adoption. Other appropriations from this fund require a 2/3's vote.
Utah	Budget Reserve Account	*	**
	Medicaid Transition Account	No Cap	***
Vermont	Budget Stabilization Trust Fund	Capped at 5 percent of prior year appropriations.	Automatic when deficit occurs at year end
Virginia	Revenue Stabilization Fund	Capped at 10 percent of average annual tax revenues on income and retail sales for the 3 years immediately preceding.	Legislative Appropriation
Washington	Emergency Reserve Fund	State general fund revenues in excess of expenditure limit are transferred to Emergency Reserve Fund by Treasurer.	Legislative appropriation
West Virginia	Revenue Shortfall Reserve Fund	Capped at 5 percent of the General Fund Appropriation.	Legislative Appropriation
Wisconsin	Budget Stabilization Fund	50 percent of unanticipated revenues.	Legislative Appropriation
Wyoming	Budget Reserve Account	Appropriation of unexpended appropriated balance.	Legislative appropriation
Puerto Rico	Rainy Day Fund	1.0 percent of net revenue from previous fiscal year	Budget Director determines shortfall, then authorizes transfer to the GF. Gov. then issues an order to fund unappropriated activities.

***Please specify formula.**

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Notes to Table Q

Arizona: Capped at 7.0 percent for FY 2000 and thereafter. Based on formula, withdrawals can occur only when annual adjusted income growth is both below 2% and below the 7 year average trend. The difference between the seven-year growth rate is multiplied times the current year actual revenue to determine the amount to appropriate to, or withdraw from the fund.

Illinois: The governor's comptroller can direct transfers to the general fund, but the funds must be paid back by the end of the year.

Kansas: Although Kansas has no separate "rainy day" fund as commonly defined, there is a statutory requirement for the ending balance in the general fund to be at least 7.5 percent of total expenditures for the forthcoming fiscal year. This balance requirement has served the same purpose as a rainy day fund and has been sufficient to ensure the state's financial solvency and maintain fiscal responsibility.

Kentucky: Funds from the budget reserve trust fund may be appropriated by the general assembly in either a regular or special session. Funds may also be utilized in instances where actual general fund revenue receipts are insufficient to meet appropriation levels authorized by the general assembly; in such instances, the Finance and Administration Secretary must formally notify the Interim Joint Committee on Appropriations and Revenue.

Massachusetts: Of fiscal year-end surpluses, an amount equal to 0.5 percent of the tax revenues in the fiscal year just ended are retained by the major operating funds as revenue in the current fiscal year. Of the amount in excess of the carry-forward, 40 percent, is deposited in a separate capital expenditures account for capital projects if the state's capital funds are in deficit. The remaining surplus (60-100 percent) is deposited in the Commonwealth Stabilization Fund, up to 7.5 percent of total budgeted revenues. Any excess of the 7.5 percent figure flows into the Tax Reduction Fund.

Mississippi: The executive director of Finance and Administration may transfer funds to alleviate deficits. Maximum transfer of $50 million per fiscal year from working cash/stabilization fund.

New Mexico: The Operating Reserve size is determined by the accumulation of general fund surpluses. 2) The Risk Reserve consists of any surpluses transferred from self-insurance funds; thereafter balances are available only for general operating purposes by legislative appropriation.

North Dakota: During the 2001-2003 biennium, an additional $25 million is available from the Bank of North Dakota if revenues fell below projections.

Utah: 1) 25 percent of General Fund year-end surplus shall be trans-

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Notes to Table Q

ferred to the account, except the account balance may not exceed 8 percent of the General Fund appropriation for that fiscal year. 2) Expenditures limited to retroactive tax refunds and operating deficits, upon legislative appropriation.

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Table R

Contingency/Emergency Funds^

State	Fund Name	FY 2001 Amount	Official/Agency Authorized to Allocate Funds	Purposes for Which Funds May Be Used	Unexpended Funds May be Carried Forward
Alabama	Departmental Emergency Fund	$3,055,000	Finance Director	ND,U,A,S,D	-
Alaska*	Disaster Relief Fund	-	Governor	ND	X
	Governor's Contingency Fund	410,000	Governor	U,A	-
Arizona	Gov.'s Cont. and Emerg. Fund	4,000,000	Governor	ND,S,A	*
	Wild Land Fire Emergency Fund	3,000,000	Emergency Council	ND,S,A	*
Arkansas	Governor's Emergency Fund	500,000	Governor	D,A,S,U,O	-
	Disaster Assistance Fund	9,500,000	Governor	ND	-
California	Augmentation for Contingencies and Emerg.*	5,000,000	Department of Finance	D,A,S,U,ND	X
Colorado	Emergency Fund	3,500,000	Governor	ND,S	X
Connecticut	Governor's Contingency	18,000	Governor	A,U,ND,S	-
Delaware	Contingency Funds	19,450,000	Budget Director	U,A	X*
Florida	Deficiency Fund	400,000	Leg. Budget Commission	U,D	-
	Emergency Fund	250,000	Governor	ND,S	-
Georgia	Governor's Emergency Fund	22,862,000*	Governor	ND,U,A,S	-
Hawaii	Governor's Contingency Fund	14,031	Governor	U	-
	Major Disaster Fund	600,000	Governor	ND	-
Idaho	Governor's Emergency Fund	192,300	Governor	ND,S	X
	Disaster Emergency Fund*	40,100	Governor	ND.S	X
Illinois	General Revenue Fund	326,000,000	Governor, Legislative Leaders	ND	-
Indiana	Personal Services Contingency Fund	38,500,000	Governor	A,U,D	*
	Dept. & Institutional Contingency	5,000,000			
Iowa	Performance of Duty	2,500,000	Executive Council	A,ND,U	X
Kansas	State Emergency Fund	45,000	State Finance Council	ND,S,O*	-
Kentucky	Surplus Account	*	Governor	ND,S,O*	-
Louisiana*	Interim Emergency Board Fund	9,500,000	Interim Emergency Board	ND,U,S,O*	-
Maine	State Contingent Account	300,000	Governor	N,D,U	X
Maryland	Contingent Fund	750,000	Board of Public Works*	Any	-
	Catastrophic Event Fund	1,700,000	Governor, with Legislative Policy Comm. approval	ND	X
Massachusetts	Welfare Caseload Increase Mitigation Fund	153,000,000	Governor, Legislature	U,A	X
Michigan	-	-	-	-	-
Minnesota	General Contingency	250,000	Gov., Legis. Advisory Comm.	ND,D,U	X*
Mississippi	-	-	-	-	-
Missouri	Government Emergency Fund	150,000	Committee	U	-
	Missouri Disaster Fund	66,264	Public Safety	ND	-
	Medicaid Supplemental	438,431,815	Social Services	A	-
	Corrections growth pool	31,755,958	Corrections	A	-
Montana	Governor's Emergency Fund	12,000,000 *	Governor	ND,S	-
Nebraska	Governor's Emergency Fund	3,891,817	Governor	ND,S	-
Nevada	Statutory Contingency Fund	3,000,000	Board of Examiners	A	-
	Emergency Fund	400,000	Board of Examiners	-	-
	Interim Finance Contingency Fund	11,000,000	Interim Leg. Finance Com.	U,O(Emerg.)	-
New Hampshire	Emergency Fund/Budget Contingency	25,000	Governor, Executive Council	ND,U	-
New Jersey	Emergency Funds	2,000,000	Governor	D,S,U,ND	-
	Contingency Fund	1,500,000	Budget Director	U	-

Codes:
ND....Natural Disaster
U....Unexpected Expenditures
A....Authorized Programs
S....Public Safety
D....Deficiencies
O....Other (Specify)

^Does not refer to budget stabilization funds or rainy day funds.

Table R

Contingency/Emergency Funds^

State	Fund Name	FY 2001 Amount	Official/Agency Authorized to Allocate Funds	Purposes for Which Funds May Be Used	Unexpended Funds May be Carried Forward
New Mexico	Appropriation Contingency Fund	5,000,000	Governor	ND,S*	-
New York	Contingency Reserve Fund	151,211,000	Legislature, Budget Director*	U,ND,O**	X
North Carolina	Contingency and Emergency Fund	1,125,000	Council of State	ND,U	-
North Dakota	Contingency Fund	300,000	Emergency Commission	U,ND,S	-
Ohio	Emergency Purposes Account	6,000,000	Controlling Board*	D,A,S,U,ND	**
Oklahoma	State Emergency Fund	1,000,000	Governor, Contingency Review	ND,U,A,S	X
Oregon	Emergency Fund	40,000,000 *	Emergency Board, Legislature	D,A,S,U,ND	-
Pennsylvania	Emergency and Disaster Assistance*	10,000,000 *	Governor	ND,S	X*
Rhode Island	Contingency Fund	1,500,000	Governor; Dir. of Admin.	A,U,ND,D,S,O	X*
South Carolina	Civil Contingency Fund	280,602	Budget and Control Board	ND,U,A,S	-
South Dakota	General Contingency Fund	*	Governor*	U	X
Tennessee	Emergency and Contingency Fund	819,300	Governor	D,A,S,U,ND	-
Texas	Disaster Contingency Grants	4,000,000*	Governor	ND	X
	Deficiency and Emergency Grants	4,500,000*	Governor	D,U,ND	X
Utah	Governor's Emergency Fund	100,000	Governor	O*	X
Vermont	Emergency Fund	0	Emergency Board	U	X*
	Contingent Fund	0	Emergency Board	D	X*
Virginia	Economic Contingency Fund	2,000,000	Governor	ND,U,A,D,S	X*
	Disaster Planning Fund	Sum Sufcnt	Governor	ND	X
Washington	Governor's Emergency Fund	850,000	Governor	U	X*
	Disaster Response Account	20,066,242	Legislature	ND	X**
West Virginia	Contingency Fund	10,701,000	Governor	D,A,S,U,ND,O	X
Wisconsin	Public Emergencies	48,500 *	Dept. of Military Affairs	ND,S	-
Wyoming	Governor's Contingency	716,704	Governor	D,A,S,U,ND,O	-
	Discretionary	50,000	Governor	-	-
Puerto Rico	Emergency Fund	65,983,650	Emergency Board; Governor	ND,S	X

Codes:
ND....Natural Disaster
U....Unexpected Expenditures
A....Authorized Programs
D....Deficiencies
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^Does not refer to budget stabilization funds or rainy day funds.

Notes to Table R

Alaska: Funds are not regularly appropriated to be available for future disasters. As disasters occur, the declaration process is used to make funds available. Retrospectively, the legislature passes supplemental appropriations to the disaster relief fund.

Arizona: Unallocated funds may not be carried forward. However, once an emergency is declared the amount specified may be carried forward if not entirely spent in one year.

California: The Augmentation for Contingencies or Emergencies is an appropriation, not a fund.

Delaware: Contingency Funds amount will vary year-to-year. Appropriations may be carried forward if approved in the next annual budget act. These appropriations are for specific purposes.

Georgia: The fiscal 1999 amount includes $19,231,789 state match for federal relief funds.

Idaho: The governor is authorized to declare a state of disaster emergency and upon doing so the governor is empowered to use all the resources (personnel, physical, and financial) of all state agencies to address the disaster. This includes using the cash available in all state funds to pay obligations and expenses.

Indiana: Only in case of biennial appropriations.

Kansas: Under a new law passed in 2000, after the State Finance Council has approved the use of emergency funds, the amounts are certified (up to $10 million) by the director of the budget and the funds are transferred to the state emergency fund. With this arrangement, only a small balance is maintained in the fund to pay rewards. Other purposes for which funds may be used include rewards for wanted criminals.

Kentucky: The June 30, 2001 balance was approximately $0.2 million. These funds can be used for the purposes identified and to the extent that funds accrue as a result of a revenue overage.

Louisiana: Interim Emergency Board may appropriate funds from the state general fund but funding shall not exceed .1 percent of total state revenue receipts for the previous fiscal year. It may also authorize deficit spending.

Minnesota: Unexpended funds maybe carried forward within a biennium.

Montana: A maximum of $12 million for disasters declared by the governor.

New Mexico: The Appropriation Contingency Fund is periodically replenished with legislative appropriations.

Notes to Table R

New York: 1) The governor's authority to spend against this appropriation is set out in state finance law. 2) This fund - created in legislation accompanying the 1993-94 budget - is intended, primarily, to provide a reserve to fund extraordinary needs arising from litigation actions against the state. To the extent fund moneys are not needed for this purpose, it may also be used for natural or physical disasters or to enhance the state's economy.

Ohio: 1) Members are the director of budget and management and six members of the general assembly, three each from the house and senate. 2) Funds may be transferred only between fiscal years in a biennium.

Oregon: General Purpose Emergency Fund appropriation as of July 1, 1999 for the 2001-2003 biennium. Excludes employee compensation and other special purpose appropriations or reservations.

Pennsylvania: For a declared disaster emergency, the governor has authority to transfer up to $10 million of unused monies in the General Fund. Unused authority may not be carried from one year to the next, due to a $10 million maximum per year. However, funds allocated for a specific disaster continue until spent or no longer needed.

Rhode Island: This fund is appropriated within the annual appropriation act.

South Dakota: Provisions exist for a contingency fund, but no funds have been appropriated in recent years.

Texas: The 2001 amounts are estimated unexpended balances from fiscal 2000. These funds are appropriated on a biennial basis with ongoing unexpended balance authority.

Utah: Fund cannot be used for activities denied funding by the legislature.

Vermont: Authority to carry-forward unexpended funds is annually conferred by the legislature.

Virginia: Unexpended funds may be carried over only within the biennium.

Washington: 1) The Governor's Emergency Fund's annual appropriation is not carried forward. 2) The Disaster Response Account balance is carried forward, subject to legislative appropriation in the next biennium.

Wisconsin: Appropriation may be re-estimated by the secretary of administration, as needed.