

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 5, 2003, in Room 123-S of the Capitol.

All members were present except: All present

Committee staff present:

Alan Conroy, Director, Kansas Legislative Research Department  
Martha Dorsey, Kansas Legislative Research Department  
Melissa Calderwood, Kansas Legislative Research Department  
Debra Hollon, Kansas Legislative Research Department  
Carolyn Rampey, Kansas Legislative Research Department  
Michael Corrigan, Revisor of Statutes Office  
Judy Bromich, Administrative Analyst  
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Kay McFarland, Chief Justice, Kansas Supreme Court  
Jerry Sloan, Budget and Benefits Officer, Judicial Branch  
Jim Murphy, Assistant for Fiscal Management, Kansas Department of Health and Environment  
Tom Palace, Executive Director, Petroleum Marketers and Convenience Store Assoc. of Kansas

Others attending: See attached list

**Bill Introductions**

Senator Jackson moved, with a second by Senator Salmans, to introduce a bill concerning the school district capital improvements fund (3rs0324). Motion carried on a voice vote.

Chairman Morris welcomed Chief Justice Kay McFarland of the Kansas Supreme Court who presented an overview of the Judicial Branch. Justice McFarland explained that even though their caseloads have gone up, they have had very little change in personnel. To operate, the Chief Justice mentioned that they need their maintenance budget which is what it takes to do next year what they are doing this year with the same people and no enhancements. Justice McFarland emphasized that they are a branch of government. She explained that they can continue to give the State the kind of judiciary they have had and are entitled to, but they do need the maintenance. (Justice McFarland referred to the information provided in the testimony that follows from Jerry Sloan of the Judicial Branch.) Committee questions and discussion followed.

Chairman Morris welcomed Jerry Sloan, Budget and Benefits Officer, Judicial Branch, who mentioned that the Judicial Branch budget is now going directly to the Legislature (Attachment 1). Mr. Sloan explained the Judicial Branch Salary and Wages budget. He provided an additional chart regarding allocation by district size among urban, mid-sized and rural courts (divided by caseloads). Mr. Sloan noted that the Judicial Branch budget shows not adding anything new and their budget details the mandated cost increases and the gubernatorial recommendations (found on the last page of his testimony).

Committee questions and discussion followed. Senator Kerr requested additional detail regarding the chart showing allocation by district size to overlay the percentage of the state population and the percent of cases handled in each category.

Chairman Morris welcomed Jim Murphy, Assistant for Fiscal Management, Kansas Department of Health and Environment, who briefed the committee regarding the transfer from the underground petroleum storage tank release trust fund to the State General Fund. Mr. Murphy provided copies of the following information:

- 9377 Underground Petroleum Storage Tank Trust Fund, Firm Encumbrances by Fiscal Year and Firm Encumbrances Percent of Total (Attachment 2)

## CONTINUATION SHEET

- Information presented to the committee about the Storage Tank Funds (Attachment 3)

Mr. Murphy mentioned that in the Governor's budget there is a proposal to transfer \$10 million dollars from the underground storage tank funds to the State General Fund. He explained that what KDHE is being asked to do is take all the firm encumbrances and change them to contingent so they are still preserving the spending authority but to release the cash and make it available for other uses. He noted that this probably would not affect them in FY 2003 or FY 2004, but in FY 2005 and FY 2006 where there may be some concern if there is available money or not. Mr. Murphy noted that when the fund dips below \$2 million dollars, it automatically triggers the one cent tax to be turned on. Typically in one year it is turned on twice a year for an average of about seven months and generates approximately \$8 - \$10 million dollars. Committee questions and discussion followed.

Chairman Morris welcomed Tom Palace, Executive Director, Petroleum Marketers and Convenience Store Association of Kansas, mentioned that the firm encumbrances is what makes the Petroleum Storage Tank Trust Fund program so successful. Mr. Palace noted that it is like an insurance policy for the industry. He also raised a concern of delays in payments. Chairman Morris mentioned raising the trigger for the fund to come on with the one cent tax at \$5 million dollars rather than the \$2 million dollars and discussion followed. Committee discussion followed. (No written testimony was provided.)

Senator Feleciano requested a spreadsheet of information from Kansas Department of Health and Environment showing what kinds of encumbrances of contracts that are currently in place covering through a year and a half. Senator Barone requested a history of the one-cent tax from the Kansas Department of Health and Environment regarding when it was triggered by year over how many months and how much money was generated.

Chairman Morris mentioned that the Department of Health and Environment subcommittee needs to visit with the agency regarding any safeguards and recommendations that the Legislature could make for the remainder of the current fiscal year.

The meeting adjourned at 12:00 p.m. The next meeting is scheduled for February 6, 2003.

**SENATE WAYS AND MEANS COMMITTEE  
GUEST LIST**

DATE February 5, 2003

NAME	REPRESENTING
<del>John App</del>	Division of the Budget
Aaron Dunford	DOB
Kyle Kesler	DOB
Julie Thomas	DOB
Cathy McNorton	KTLA
Ryan Ryan	Banker
Travis Barnhart	KNASW
Ramona Deerpksen	KCSL
<del>Kenwood</del>	IPS
JACK FOWLER	Ks Sup Ct
Scott Kenefake	Fedisco Consulting
Andy Shaw	PMCA
TOM PALACE	PMCA OF KANSAS
Kini Fowler	Judicial Branch
Howard Schwartz	Judicial
Kathy Porter	Judicial Branch
James Murphy	KDHE
Tom Ammons Smith	KDHE
Gary Blackburn	KDHE
Mary Anne Stattelman	KGFA/ KARA
Ken Peterson	Ks Petroleum Council
Doug Smith	Pneger, Smith & Associates

SENATE WAYS AND MEANS COMMITTEE  
GUEST LIST

DATE February 5, 2003

NAME	REPRESENTING
Stephanie Buchanan	DOB

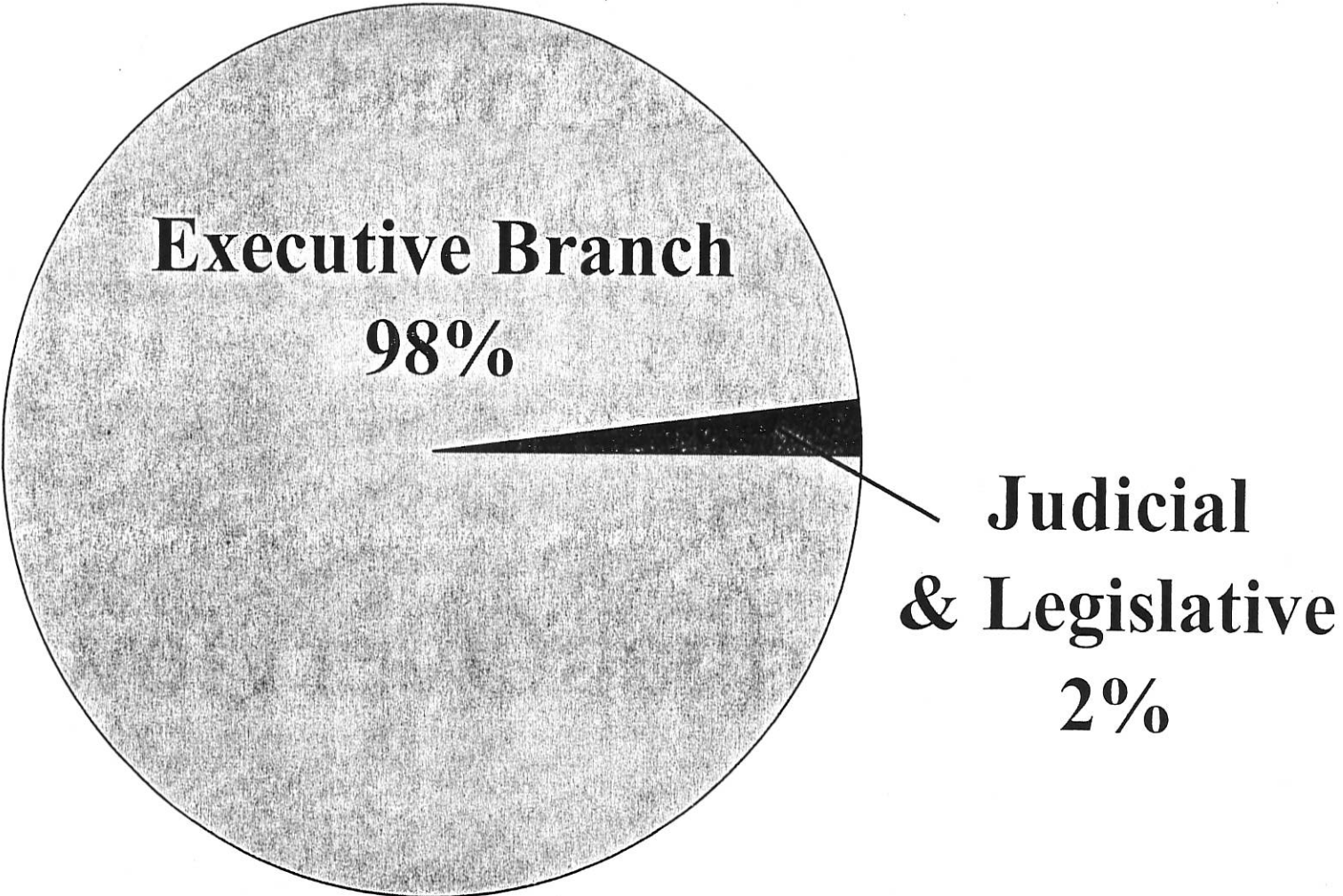


# State of Kansas Supreme Court

## Budget Overview

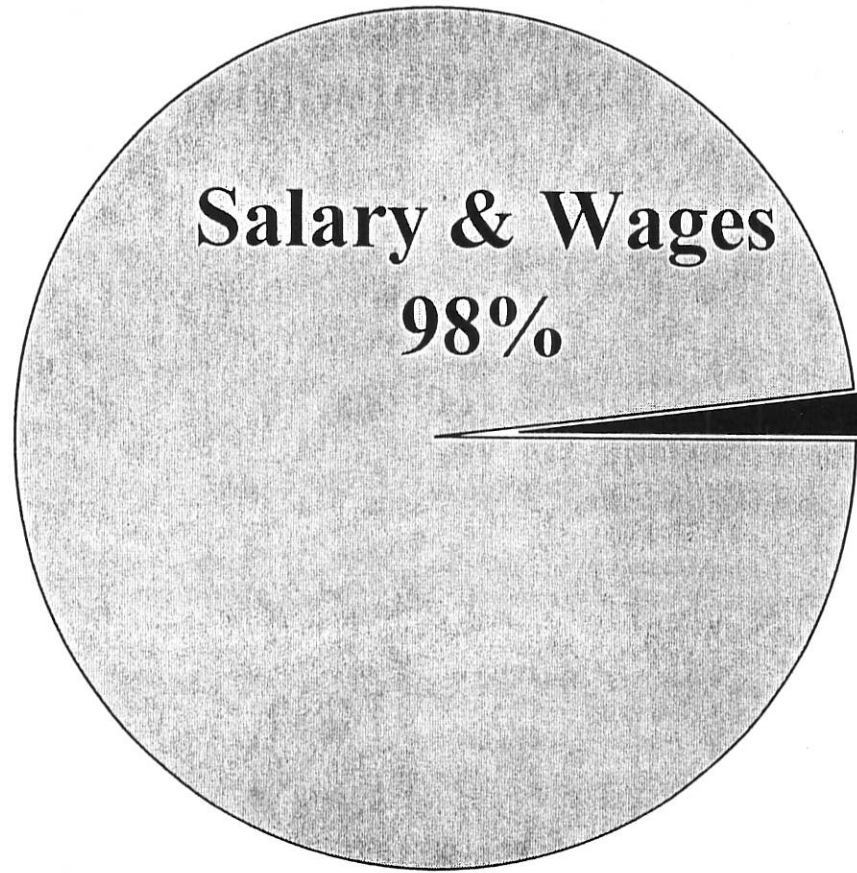
Senate Ways and Means  
2-24-03  
Attachment 1

# SGF Budget



# FY2004 Judicial Budget

98% of Judicial SGF Budget  
is Salary & Wages



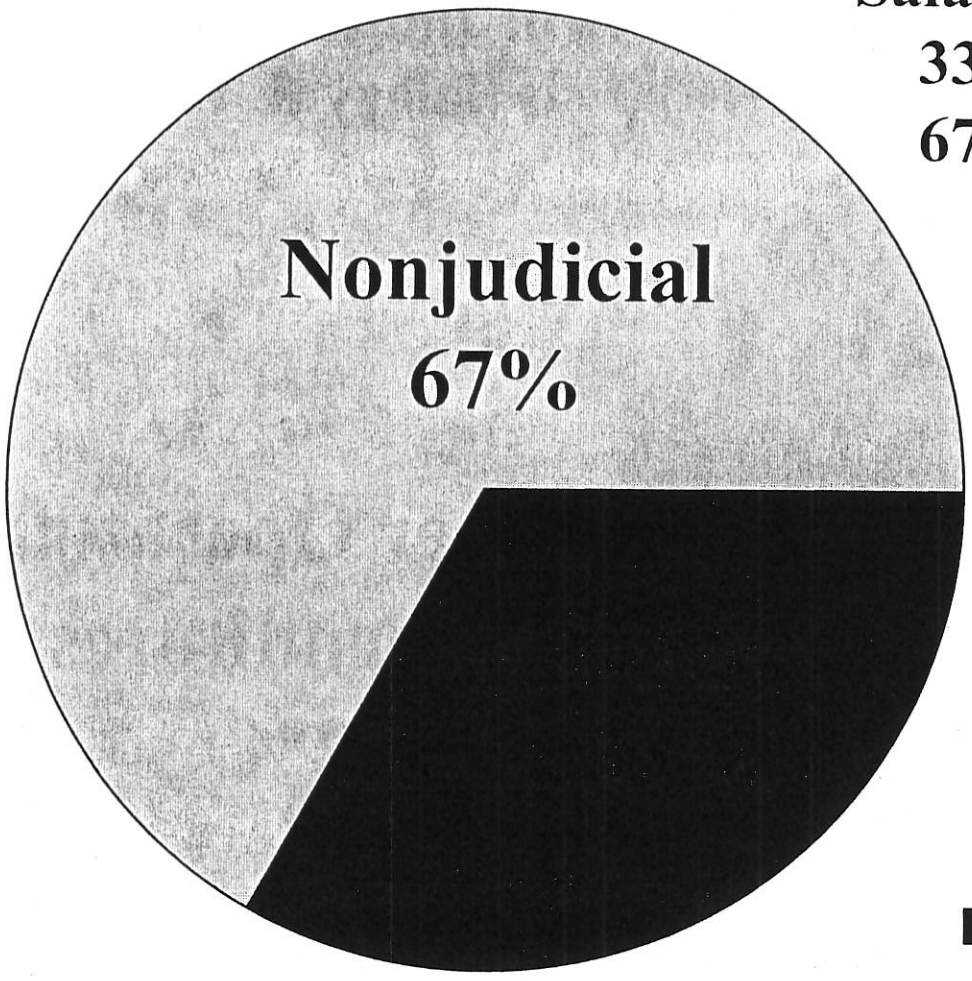
**Salary & Wages**  
98%

**Other Operating Expenditures**  
2%

# FY2004 Judicial Budget

## Salary & Wages

Salary & Wages broken down  
33% Judges  
67% Nonjudicial

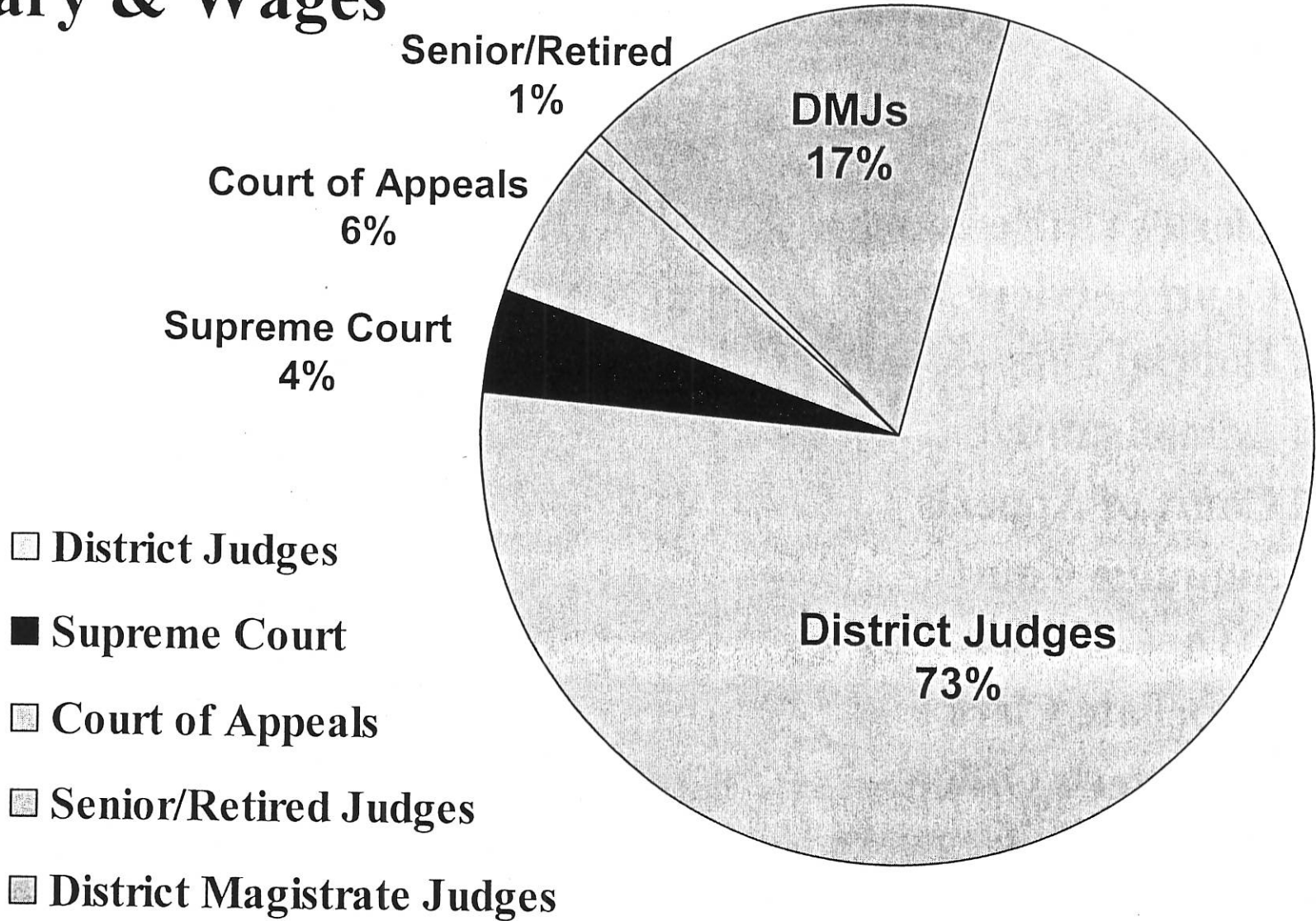


■ Judges    □ Nonjudicial



# FY2004 Judicial Budget

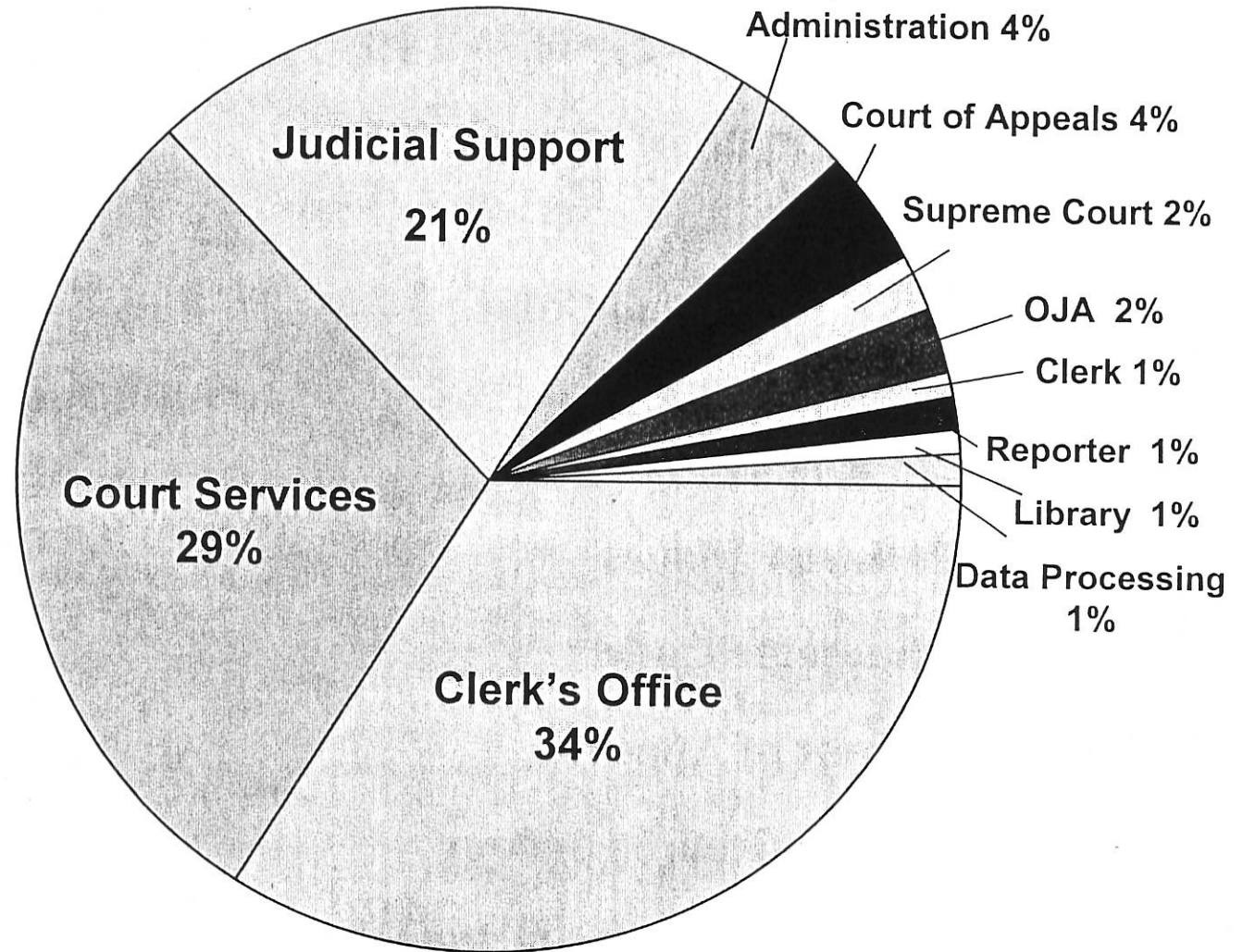
## Salary & Wages



# FY2004 Judicial Budget

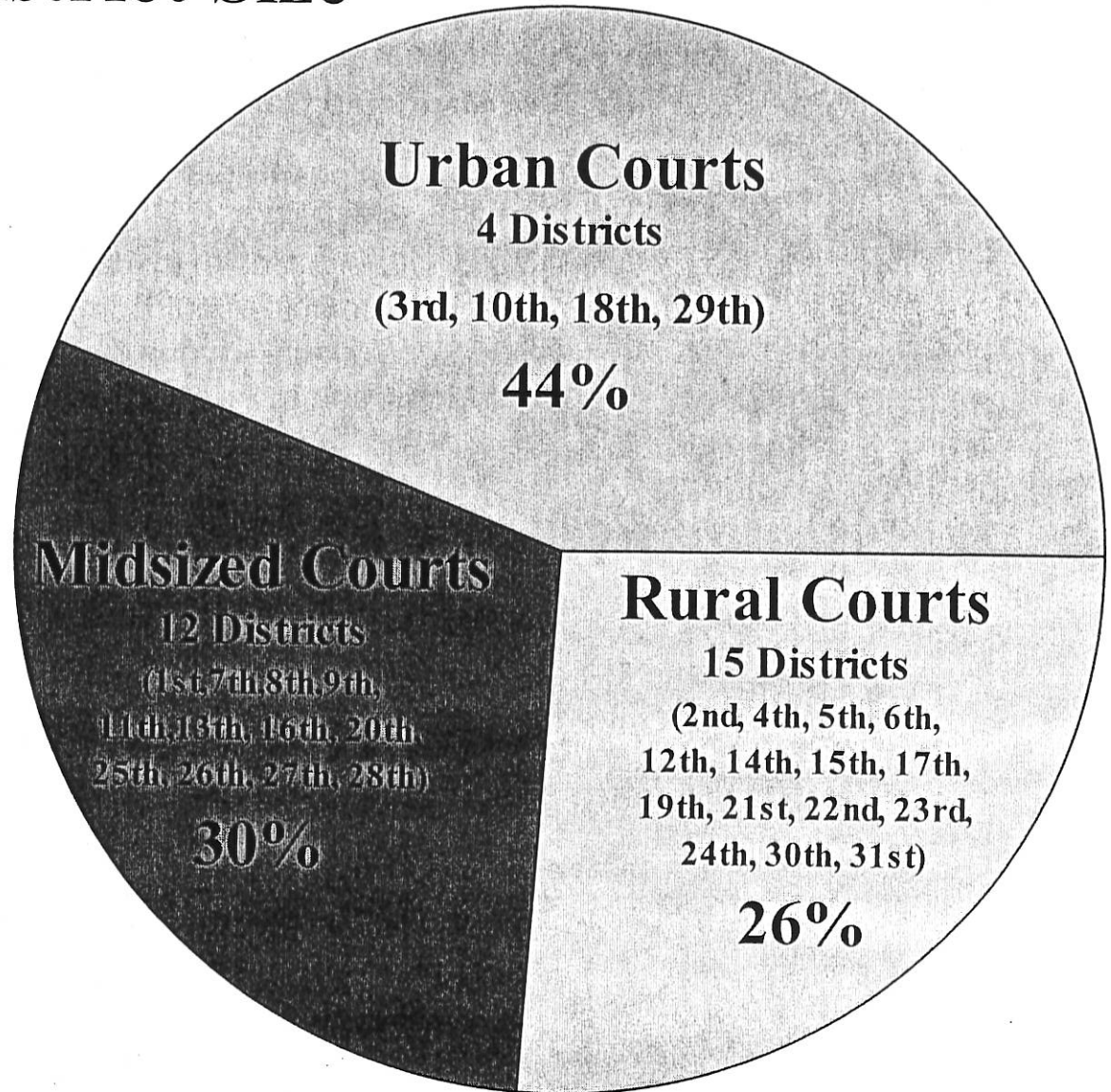
## SGF Budget – Nonjudicial Personnel

- Clerk's Office
- Court Services
- Judicial Support
- Administrative
- Court of Appeals
- Supreme Court
- OJA
- Appellate Clerk
- Reporter's Office
- Law Library
- Data Processing



# FY2004 District Court Budget Allocation by District Size

- Rural Courts
- Midsized Courts
- Urban Courts



Judicial Branch Budget Capsule

80,965,866	SGF FY 2003
<u>3,317,028</u>	Surcharge Implemented Due to Underfunding of Maintenance Budget
84,282,894	Adjusted FY 2003 Base

FY 2004 Mandated Cost Increases

	1,001,744	Judges Retirement
	263,927	KPERS
	833,815	Group Health Insurance
	24,784	Unemployment Compensation Insurance
	<u>58,165</u>	Worker's Compensation Insurance
2,182,435		Mandated Increase in Fringe Benefit Costs
391,557		Mandated Court of Appeals Expansion

FY 2004 Gubernatorial Recommendations

1,194,662	1.5% COLA
(378,000)	Moratorium on Death & Disability

<u>87,673,548</u>	SGF FY 2004
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**7399 Underground Petroleum Storage Tank Trust Fund  
Firm Encumbrances By Fiscal Year**

	As of Dec 31	FY 2003	FY 2002	FY 2001	FY 2000	FY 1999	FY 1998	FY 1997
FY 2003	5,850,673.32							
FY 2002	5,531,635.72 69.65%	7,942,344.16						
FY 2001	1,366,678.38 30.62%	1,956,907.13 43.85%	4,462,979.78					
FY 2000	1,045,134.82 22.59%	1,280,392.19 27.68%	2,486,718.08 53.76%	4,625,956.52				
<b>FY 1999</b>	<b>606,868.19 9.66%</b>	<b>1,729,014.35 27.52%</b>	<b>3,284,033.27 52.27%</b>	<b>4,295,760.39 68.37%</b>	<b>6,282,990.37</b>			
FY 1998			4,093,497.48	5,440,521.27	6,862,419.62	10,926,743.37		
FY 1997			905,255.96	2,005,988.16	2,669,638.56	4,366,399.57	7,655,678.90	
FY 1996				1,160,354.72	1,631,734.86	2,313,566.87	4,098,601.31	7,257,819.29
FY 1995					1,629,192.46	1,845,550.86	2,516,480.74	3,580,530.85
FY 1994					1,110,558.84	1,220,708.72	1,421,663.15	1,876,018.96
FY 1993					322,285.54	407,122.34	589,618.53	866,517.28
FY 1992					202,291.36	235,467.08	265,475.18	299,724.45
FY 1991					45,513.33	52,718.49	66,970.28	76,995.08
<b>Total</b>	<b>14,400,991.76</b>	<b>12,908,658.82</b>	<b>15,232,485.63</b>	<b>17,528,581.74</b>	<b>20,756,624.94</b>	<b>21,368,277.30</b>	<b>16,614,488.09</b>	<b>13,957,605.91</b>

**Firm Encumbrances Percent of Total**

FY 2003	40.63%							
FY 2002	38.41%	61.53%						
FY 2001	9.49%	15.16%	29.30%					
FY 2000	7.26%	9.92%	16.33%	26.39%				
FY 1999	4.21%	13.39%	21.56%	24.51%	30.27%			
FY 1998			26.87%	31.04%	33.06%	51.14%		
FY 1997			5.94%	11.44%	12.86%	20.43%	46.08%	
FY 1996				6.62%	7.86%	10.83%	24.67%	52.00%
FY 1995					7.85%	8.64%	15.15%	25.65%
FY 1994					5.35%	5.71%	8.56%	13.44%
FY 1993					1.55%	1.91%	3.55%	6.21%
FY 1992					0.97%	1.10%	1.60%	2.15%
FY 1991					0.22%	0.25%	0.40%	0.55%
	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

**Firm Encumbrances** - The amount of firm encumbrances recorded in the account. A firm encumbrance reserves both spending authority and cash at the time the encumbrance is recorded.

**Contingent Encumbrances** - The amount of contingent encumbrances recorded in the account. A contingent encumbrance reserves both spending authority but not cash.

Senate ways and means  
2-5-03  
Attachment 2

<b>7398 Aboveground Petroleum Storage Tank Release Trust Fund</b>	<b>FY 2002</b>	<b>FY 2001</b>	<b>FY 2000</b>	<b>FY 1999</b>	<b>FY 1998</b>	<b>FY 1997</b>	<b>FY 1996</b>
Reappropriation	1,298,915	1,813,018	2,732,224	852,672	776,846	6,217,103	7,036,269
Receipts							
5409 Other Fines, Penalties, and Forfeitures	175	4,000		700	2,550	2,050	1,800
5905 Environmental Assurance Fee	1,607,068			2,725,492	1,297,435		(4,228)
6211 Recovery of Current FY Expenditures	2						
6602 Operating Transfers Out	(88,336)	(40,369)				(4,727,240)	
6607 Operating Transfers In, Interest Alloc.	72,979	183,901	203,735	161,916	105,760	160,186	426,491
Total Receipts	1,591,888	147,532	203,735	2,888,108	1,405,745	(4,565,004)	424,063
Total Available	2,890,803	1,960,550	2,935,959	3,740,780	2,182,591	1,652,099	7,460,332
Balance Forward	1,364,791	783,858	1,734,129	2,321,055	782,599	341,560	6,217,103
Total Reportable Expenditures	1,526,012	1,176,692	1,201,830	1,419,725	1,399,992	1,310,539	1,243,229
Total Expenditures	1,526,012	1,176,692	1,201,830	1,419,725	1,399,992	1,310,539	1,243,229
Total Expenditure Limitation	No Limit	No Limit	No Limit	1,560,897	1,433,117	1,500,000	2,410,349

<b>7399 Underground Petroleum Storage Tank Release Trust Fund</b>	<b>FY 2002</b>	<b>FY 2001</b>	<b>FY 2000</b>	<b>FY 1999</b>	<b>FY 1998</b>	<b>FY 1997</b>	<b>FY 1996</b>
Reappropriation	6,761,480	8,662,696	4,464,005	749,471	84,242	2,035,886	5,778,281
Receipts							
2099 Other Service Charges	8,168	7,652	10,207	9,999	12,142	15,672	8,172
2250 Salvage & Obsolete/Condemned Materials	38		14	1,257	55		
2260 Usable Condemned Equipment		588	2,582	309			
5409 Other Fines, Penalties, and Forfeitures	12,335	10,925	22,673	24,697	31,630	65,566	117,705
5905 Environmental Assurance Fee	7,299,323	(68,247)	8,108,515	9,387,539	14,422,257	3,143,350	6,841,858
5909 Other Miscellaneous Revenue	458,837	469,824	674,537				
6211 Recovery of Current FY Expenditures	37			(3)	3,538	1,846	360
6290 Other Reimbursements and Refunds				4,347	9,402	2,393	43,825
6601 Operating Transfers In						4,727,240	
6602 Operating Transfers Out	(547,292)	(226,054)					
6607 Operating Transfers In, Interest Alloc.	489,264	1,337,550	1,377,582	1,331,052	1,243,641	1,056,016	1,044,237
6901 Recovery of Prior FY Expenditures					573,733	611,702	824,665
Total Receipts	7,720,710	1,532,238	10,196,110	10,759,197	16,296,398	9,623,785	8,880,822
Total Available	14,482,190	10,194,934	14,660,115	11,508,668	16,380,640	11,659,671	14,659,103
Balance Forward	1,769,214	1,195,726	6,376,982	1,070,934	488,947	(297,409)	2,028,063
Total Reportable Expenditures	12,712,976	8,999,208	8,283,133	10,437,734	15,891,693	11,957,080	12,631,040
Total Expenditures	12,712,976	8,999,208	8,283,133	10,437,734	15,891,693	11,957,080	12,631,040
Total Expenditure Limitation	No Limit	No Limit	No Limit	20,223,939	20,233,041	20,866,132	20,247,533



# K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

**Information Presented to  
the Senate Ways and Means Committee  
about the Storage Tank Funds  
Wednesday, February 5, 2003**

## **Collection and Expenditures**

The UST and AST funds are fueled by a periodic assessment of 1 cent per gallon. The assessment is triggered by the balance in the funds. The mechanics of collection of this fee and the business practices of the industry result in a gap of at least 90 days and potentially up to 180 days between the balance falling below the trigger amount and the first collection by the Department of Revenue of fees. The management of the fees and the timing of fee collection is crucial to the maintenance of fund solvency.

The rate of reimbursement requests within the UST fund average approximately one million dollars per month. The current practice of encumbering the entire obligation at the time of project approval has ensured that when reimbursement requests are received, funds will be available. If the encumbrances were not created, the reimbursement requests would exceed the available balance in the UST fund before fee could cycle on. The UST fund would trigger the collection when the balance reached the \$2 million threshold; however, about \$3 million in reimbursement requests would be received during that time.

## **II. Site Activities**

During fiscal year 2002, the average number of new applications received by the UST Fund decreased to about 5 per month as compared to the previous year average of 6 per month. The volume of applications for assistance was expected to decline slowly since all active underground storage tanks (USTs) were required to be upgraded during fiscal year 1999. The current new application rate has leveled out and is expected to remain steady for the foreseeable future.

Although upgraded tanks can still leak, the frequency and size of those releases should be decreasing. Current applications are primarily associated with property transfers and re-development activities following the discovery of orphaned tanks. The program estimates that several thousand of these tanks exist in the state. Total sites have increased since Jan 1992 from less than 500 to more than 1800 at the end of 2002.

Closed sites - 394

Ongoing Remediation - 230

Design of remediation - 45

Monitoring - 1093

Site Investigation (Assessment) - 91

Awaiting action - 33

*Senate Ways and Means  
2-5-03  
Attachment 3*

The number of applications received by the Aboveground Storage Tank (AST) Fund remained low during FY 2002. No federal mandate is in place to encourage owners of ASTs to upgrade their facilities and perform routine testing. Due to the similarity of the Underground Storage Tank (UST) program and the fact that many AST sites are adjacent to UST sites, the two storage tank reimbursement programs are operated by the same section.

While not as numerous as Underground Storage Tank projects, AST sites pose the same and often greater remedial challenges due to the fact that release detection is not mandated by law. Releases from AST systems account for many of the highest effort and highest cost projects to date. Technologies used to clean up AST sites are identical to those used at UST sites. It is the agency's policy to concentrate resources on contaminant source areas where the greatest risk reduction can occur. This also ensures cost effectiveness in program efforts.

AST fund activities for FY 2002 reflect an increased number of sites being remediated. In order to remain cost effective without increasing public exposure to contaminants, sites that do not pose substantial environmental or health risks are placed on a groundwater monitoring program. This approach facilitates the program's use of natural processes to address remediation, rather than implementing expensive technologies. As a result the statistics indicate a large percentage of sites are presently being monitored and the overall program costs have remained low.

#### ASTs

Closed sites - 17

Ongoing Remediation - 24

Design of remediation - 10

Monitoring - 65

Site Investigation (Assessment) - 9

Awaiting action - 7

### **III. Background**

The UST fund, as enacted by the Kansas Legislature (Session of 1989), and AST fund as enacted by the Kansas Legislature (Session of 1992) requires competitive bidding to establish reimbursement limits prior to the work being performed. Implementation of the bidding process required considerable effort to develop and implement; however the bidding process is presently working very effectively. Due to the technical nature of the activities, few tank owners are able to prepare the necessary bid documents needed to obtain three competitive bids for site investigation and remediation. The department developed pre-approved work-plans for each phase of corrective action needed to complete site remediation. These scopes of work are adapted for individual sites which reduce the overall level of effort required to bid each site. The department is actively involved in the entire process.

The number of sites being remediated continues to increase at a steady pace. Previously, several consulting firms who were awarded numerous bids were then unable to complete the work in a timely fashion. This problem prompted the agency to carefully track the activities of each consultant to insure that problems of this type do not recur. Compliance with deadlines is now tracked to prevent firms from continuing to accept new bids when existing work is not being completed. In order to limit cost, KDHE is careful not to approve unneeded remedial action. A large percentage of sites are being monitored.



In 1988 Federal regulations, 40CFR280 and 281, established the requirements for tank owner/operators to have both environmental cleanup insurance and 3<sup>rd</sup> party liability insurance as well as tank performance requirements. The federal requirements were implemented using a phased process with all tank performance requirements finally applied to all tank owners in December 1998. The Underground Storage Tank fund provides tank owners environmental cleanup backing to comply with the federal financial responsibility requirements. The 3<sup>rd</sup> party insurance requirement is fulfilled by insurance program supported by fees and backed by the fund. Both the cleanup and insurance programs have been determined by US EPA to satisfy the regulatory requirements for the owner/operators.

The department continues to use a site's risk to the public as the primary criteria for directing remedial efforts. Sites are analyzed for potential risk to the public immediately after the UST or AST Fund application has been approved. Conducting this analysis provides protection of public and domestic water supplies against impacts from storage tanks. The department has implemented a risk based corrective action (RBCA) program which incorporates nationally recognized procedures for determining risk at UST and AST sites. The risk based remedial system will result in the cleanup levels varying from site to site. While such procedures might result in more deliberate remedial activities at low risk sites, they help preserve the financial solvency of the Kansas UST fund and focus the greater resources on the higher risk sites.

Continuing efforts to support the use of improved and more efficient technologies and remedial approaches have been made. During FY 2002, the program has studied strategies that will allow active remedial efforts to be performed at an increased number of sites while continuing to ensure cost effectiveness. KDHE Storage Tank Staff closely supervised the installation and operation of over 200 active remediation systems and supply treated drinking water to over 250,000 residents statewide. This experience has taught project managers to determine which technologies are most appropriate for each site's conditions.

#### **IV. Remaining challenges**

Although the UST fund is operating very effectively at the present time, the large number of active facilities participating in the UST Fund program as well as the large number of abandoned sites, which may represent future trust fund sites, continue to pose a potential long term financial risk to the fund. Care must be taken to continue the safeguards that have been developed to maintain a strong program. As indicated in the attached UST fund balance information, KDHE encumbers funds for remedial activities as the site specific work is approved. This process insures that when invoices are submitted, funds are available to provide timely reimbursements. The Kansas UST fund is continuing to operate well within the budget constraints established by the legislation. During FY 2002, the processing of most reimbursement requests were performed in less than four weeks.

The goal of the Kansas program is, and always has been, to focus on and streamline actual cleanup activities. That goal is what sets the Kansas program apart from virtually all other state programs. Kansas continues to be a national leader in conventional remedial strategies and has earned national recognition for work performed in relation to the fuel oxygenates Methyl Tertiary Butyl Ether (MTBE) and Ethanol.

Although the AST fund is operating effectively at the present time and the number of sites being addressed remain relatively low, KDHE operates the fund under the same guidance as the UST fund to avoid inconsistent handling of sites and wasted resources. Funds are encumbered as the work is approved to insure that money is available to provide timely reimbursements when invoices are submitted. During FY 2002, the processing of reimbursement requests for the AST fund were performed in an average time of four weeks.