

## MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 9:00 a.m. on January 21, 2004 in Room 514-S of the Capitol.

All members were present.

### Committee staff present:

Alan Conroy, Legislative Research  
J. G. Scott, Legislative Research  
Amy VanHouse, Legislative Research  
Leah Robinson, Legislative Research  
Michele Alishahi, Legislative Research  
Nicoletta Buonasera, Legislative Research  
Audrey Dunkel, Legislative Research  
Susan Kannarr, Legislative Research  
Melissa Calderwood, Legislative Research  
Julian Efird, Legislative Research  
Becky Krahl, Legislative Research  
Robert Waller, Legislative Research  
Amy Deckard, Legislative Research  
Debra Hollon, Legislative Research  
Carolyn Rampey, Legislative Research  
Jim Wilson, Revisor of Statutes  
Mike Corrigan, Revisor of Statutes  
Nikki Feuerborn, Administrative Analyst  
Shirley Jepson, Committee Secretary

### Conferees appearing before the committee:

### Others attending:

See Attached List.

- Attachment 1 Summary of School Finance Litigation
- Attachment 2 GA/MediKan Lawsuit Update
- Attachment 3 Consensus Revenue Estimates for FY 2004 and FY 2005
- Attachment 4 Update on Phase Two of Tax Amnesty Collections

Chair Melvin Neufeld welcomed the Committee and introduced new member Representative Bonnie Sharp, noting that Representative Bill Feuerborn is the Ranking Minority Leader. The Legislative Research Fiscal Analyst staff was introduced by J. G. Scott. Jim Wilson, Revisor of Statutes, will assist the Committee with legal matters, with assistance from Mike Corrigan.

The Chair recognized Carolyn Rampey, Legislative Research Department, who presented an overview of the two lawsuits which currently challenge the present system in Kansas for funding elementary and secondary education (Attachment 1). Ms. Rampey's testimony included the background of the state case of Montoy vs. the State of Kansas, filed in Shawnee County District Court in 1999 by Salina Unified School District (USD) 305 and Dodge City USD 443; the federal case of Robinson vs. State of Kansas, filed in U. S. District Court in 1999 by Salina USD 305 and Dodge City USD 443; and an analysis of Judge Bullock's December 2, 2003, memorandum decision and preliminary interim order which found that the current school funding scheme is in violation of Article 6 of the Kansas Constitution. Responding to questions from the Committee concerning the May 2002 education study which was completed by Augenblick and Myers (A&M) as directed by the 2002 Legislature, Ms. Rampey indicated that the Legislative Educational Planning Committee (LEPC) had determined what the study should include and that A&M had worked closely with LEPC as they completed the study. Ms. Rampey indicated that the A&M study did not look at accreditation or the Quality Performance Act (QPA) of 1992, but looked at what is a suitable education for students as directed by statute.

Chairman Neufeld recognized Audrey Dunkel, Legislative Research Department, who presented an update on the General Assistance and MediKan Lawsuit, which was filed in Sedgwick County on December 31,

CONTINUATION SHEET

MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE at 9:00 a.m. on January 21, 2004 in Room 514-S of the Capitol.

2003, challenging the implementation of the 24-month lifetime limit for receiving General Assistance and MediKan, a program for disabled adults who are unable to work and who are awaiting the decision of the Social Security Administration regarding their eligibility for federal disability benefits (Attachment 2). The 24-month lifetime limit was approved by the 2003 Legislature and became effective retroactive to January 1, 2002. The two issues addressed in the lawsuit, are lack of a hardship clause in the General Assistance and MediKan program; and an alleged violation of the constitution by imposing a time-limit of 24 months on the program. A temporary injunction hearing was held on January 16, 2004. The judge took the case under advisement and requested additional information from the Department of Social and Rehabilitation Services (SRS).

The Chair recognized Alan Conroy, Legislative Research Department, who presented an update from the Consensus Estimating Group and State General Fund Receipts for FY 2004 (Revised) and FY 2005 (Attachment 3). Mr. Conroy noted that the state's economy is expected to grow; however at a somewhat slower rate than the national economy.

The Chair recognized J. G. Scott, Legislative Research Department, who presented an update on Phase Two of the Tax Amnesty program (Attachment 4).

Representative Feuerborn moved to introduce the Governor's Budget. The motion was seconded by Representative Shultz. Motion carried.

Representative Landwehr moved to introduce legislation:

- To extend the funding source for Emergency Medical Services Board (EMS) which was to expire in FY 2004 and extend to FY 2009,
- As requested by SRS, relating to certified copies of birth certificates from Kansas Department of Health and Environment (KDHE) to be used in legal action to establish parentage,
- As requested by the Joint Committee on Children's Issues to create and prescribe certain standards regarding requirements for child advocacy center,
- As requested by the Joint Committee on Children's Issues, to establish a funding mechanism for children's advocacy center,
- As requested by the Joint Committee on Children's Issues enacting the child abuse and neglect central registry act.

The motion was seconded by Representative Bethell. Motion carried.

Representative Schwartz moved to introduce legislation to create a benefit district and provide for a board of governors for the Horse Thief Reservoir. The motion was seconded by Representative Osborne. Motion carried.

Representative Schwartz moved to introduce legislation:


- For a technical clean-up regarding errors and omissions for insurance agents.
- As requested by Wildlife and Parks concerning fishing licenses for attendants of disabled licensees.

The motion was seconded by Representative Gatewood. Motion carried.

Representative Neufeld moved to introduce legislation regarding the state fire marshal's office.. The motion was seconded by Representative Shriver. Motion carried.

Representative Light extended an invitation to all Committee members to join the Public Safety Budget Committee on a tour of the Topeka Correctional Facility on January 22, 2004.

The meeting was adjourned at 10:35 a.m. The next meeting will be held at 9:00 a.m. on January 27, 2004.

  
\_\_\_\_\_  
Melvin Neufeld, Chair



January 19, 2004

## SUMMARY OF SCHOOL FINANCE LITIGATION

Two lawsuits currently challenge the present system in Kansas for funding elementary and secondary education. A memorandum decision and preliminary interim order has been issued by Shawnee County District Court Judge Terry Bullock on one, with the final order to be issued July 1, 2004. The other case is pending before the United States District Court. Both cases have been brought by essentially the same parties and are represented by the same attorneys. This memorandum has been prepared by the Legislative Research Department and the Office of the Revisor of Statutes to provide a summary of major issues raised in the litigation and to put the current litigation in context with regard to prior challenges to the 1992 School District Finance and Quality Performance Act. The background section of this memorandum relies on information presented to legislative committees by Dan Biles, Attorney for the State Board of Education, and Scott Hesse, Office of the Attorney General.

## BACKGROUND

### State Court Case Summary

*Montoy, et. al. v. State of Kansas, et.al.*  
Shawnee County District Court  
Case No. 99 C 1788, Div. 6

This case was filed December 14, 1999, by USD 305 (Salina) and USD 443 (Dodge City) and by 31 students from those districts who primarily comprise various protected classes, including African-American, Hispanic, Asian-American, students with disabilities, and those of non-United States origin. Defendants named in the case were the State of Kansas; Governor Kathleen Sebelius; State Treasurer Lynn Jenkins; each member of the State Board of Education; and Commissioner of Education Andy Tompkins.

The plaintiffs brought all of their claims under the *Kansas Constitution*, including a challenge as to whether the Legislature has made "suitable provision for finance of the educational interests of the state" as required by Article 6. They also alleged violations of state equal protection and due process principles and specifically challenged the total amount of funds provided to their school districts, the low enrollment weight, the local option budget, special education excess cost funding, and funding for capital outlay. Finally, they contended that the school funding formula is an encroachment on the constitutional authority of the State Board of Education.

HOUSE APPROPRIATIONS

DATE 1-21-2004  
ATTACHMENT 1-1

Judge Bullock originally dismissed the plaintiffs' claims for procedural and other reasons when the case came before him, but the Kansas Supreme Court remanded the case to his court.<sup>1</sup> Judge Bullock heard the case in a trial that was completed October 1, 2003, and issued a memorandum decision and preliminary interim order on December 2, 2003. It is almost certain that the case will be appealed to the Kansas Court of Appeals when the order is made final in July 2004 and that the Kansas Supreme Court will take jurisdiction.

### **Federal Court Case Summary**

*Robinson, et. al v. State of Kansas, et al.*  
U.S. District Court for the District of Kansas  
Case No. 99-1193 MLB

This case was filed May 21, 1999, by 32 students from USD 305 (Salina) and USD 443 (Dodge City) who represent various protected groups. Defendants are the State of Kansas; Governor Kathleen Sebelius; State Treasurer Lynn Jenkins; each member of the State Board of Education; and Commissioner of Education Andy Tompkins.

The plaintiffs present themselves as representatives of mid-sized school districts which do not receive the same amount of school funding per student as the smaller enrollment school districts. They bring their claims under federal law and the *United States Constitution* and contend that the school funding system in Kansas violates the federal Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, implementing regulations to Title VI, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the *United States Constitution*. They claim there are more minority and disabled students in larger districts than the smaller ones, resulting in a financing scheme that has a discriminatory impact on the students in larger districts.

No trial date has been set in the *Robinson* case.

### **Activities Related to *Montoy***

Prior to start of the trial in late September 2003, Judge Bullock issued a pretrial memorandum in which he laid down principles and guidelines that would apply in the case.<sup>2</sup> Observing that "the constitutional school funding mandate is directed at the Legislature alone," he dismissed the Governor and the State Treasurer from the case and proceeded to discuss the following issues:

- Appropriate Level of Judicial Scrutiny. Judge Bullock informed the parties that he would use the "rational basis analysis" in reaching his decision. He explained that the rational basis test requires that, in order to pass constitutional muster, acts of the Legislature must bear a rational or reasonable relationship to a legitimate

---

<sup>1</sup> *Montoy, et al. v. State of Kansas, et.al.*, 275 Kan. 145, 62 P 3d 228 (2003).

<sup>2</sup> *Memorandum Decision and Order Concerning Conclusions of Law. Montoy, et al.* State Case No. 99-C-1738 (Shawnee County District Court, September 8, 2003). Along with the September decision, Judge Bullock issued a letter decision, dated September 8, 2003, concerning the issues of procedure and parties.

goal. He observed that the reason for equal funding is to guarantee an equal educational opportunity for every child and that differential funding must be justified by a rational explanation, "based on actual increased costs" necessary to provide an equal educational opportunity, such as the higher cost of educating children in smaller districts. (This is the same level of scrutiny used in prior school finance cases.) With regard to the plaintiffs' allegation that state equal protection and due process principles are being violated, Judge Bullock informed the parties that he would use the same rational basis test in determining due process claims as he would use to determine matters of equity and suitability.

- The Constitutionality of Statutory Funding Schemes. Judge Bullock put the parties on notice that he considered the case to be about equity and suitability. *Equity* involves providing each child with equal educational opportunities and being able to justify varying levels of appropriations among districts on the basis that they are necessary to provide students in one district with educational opportunities that are equal to those provided to other students. To illustrate the point, Judge Bullock offered two examples: (1) School districts need additional funding to transport students who live further from school so that those students have the same opportunity to attend school as those who live nearer; and (2) schools need additional funding to teach English to non-English-speaking students so that those students can learn subjects regularly taught to all students. *Suitability* is independent of equity and pertains to whether the total amount of money available for education is adequate to provide educational opportunities that meet constitutional requirements. Judge Bullock noted that there is no appellate court or even legislative suitability standard and concluded that he must craft one. Rejecting the idea of compiling a list of standards that are too specific to meet changing needs and conditions, he arrived at the following general definition:

The Court holds that a constitutionally suitable education (much like an efficient education or an adequate education as provided for in the constitutions of our sister states) must provide all Kansas students, commensurate with their natural abilities, the skills necessary to understand and successfully participate in the world around them both as children and later as adults. Because this is the constitutional right of every Kansas child, whether the legislature has met this standard is ultimately a decision for the judicial branch.

Judge Bullock indicated that, in determining matters of equity and suitability, he intended to take into account the entire funding scheme for school finance, including general purpose funding, capital outlay, sales tax supplements, and special education.

- Usurpation of the Self-Executing Powers of the State Board of Education. The plaintiffs contended that the school funding formula was an encroachment on the constitutional authority of the State Board of Education to provide general supervision of schools, which previously has been deemed to be "self-executing" or derived from the *Kansas Constitution* without need for supplemental legislation.

Judge Bullock dismissed this contention by pointing out that the *Constitution* gives the Legislature the authority to provide funding to the public schools and that the Legislature and the State Board of Education play two distinct roles: "The *Kansas Constitution* provides the Legislature with the duty to develop a method with which to provide funding to the public schools and provides the Board with the duty to supervise local school boards to ensure the educational interests of the state are being met. The Board simply does not have the power to develop or alter provisions for funding, nor does it have the power to control the funding of the school districts."

Judge Bullock also listed the following issues, initially raised by plaintiffs, which the Supreme Court asked him to address:

- "The state law no longer contains educational goals or standards, nor has the State Board of Education issued any regulations containing academic standards or objective criteria against which to measure the education Kansas children receive.
- The amount of Base State Aid Per Pupil has not kept up with inflation.
- School districts are required to raise capital outlay expenses locally and the four mill levy limit has been removed, allowing wealthier districts even greater access to capital outlay expenditures than poorer districts and thus increasing funding disparities.
- The school finance formula provides widely differing amounts of revenue to different districts.
- The number of minority students in the plaintiff school districts has increased dramatically and a substantial gap exists between the performance of minorities and whites and between students in the free and reduced lunch programs and those not in these programs on the state standardized tests.
- Plaintiff school districts must raise money locally through the 'local option budget' or the capital outlay fund to meet the minimum school accreditation requirements.
- Plaintiff school districts raise less money per pupil with each mill levy than wealthier districts and increased reliance on local taxes has resulted in a less advantageous education in the plaintiff school districts than in wealthier districts."

Accompanying Judge Bullock's pretrial memorandum was a letter to the parties that summarized his opinions regarding the issues involved in the litigation. The letter concluded with the following sentence: "Finally, in case the Court has not been crystal clear, the Court takes the view that this case is about children and their suitable, and equal educational opportunities. Nothing else. If we all keep our focus on the children, I believe we shall reach the goal our constitution mandates." [Emphasis in the original.]

## Prior Challenges to School Finance Acts

The recent history of school finance legislation is replete with challenges to various school finance acts. The School District Equalization Act (SDEA), enacted in 1973, was a response to a Johnson County District Court decision which found the prior act unconstitutional because the state had not provided enough aid to offset disparities among school districts in taxing efforts and per pupil expenditures.

The SDEA was challenged in four lawsuits filed in 1990 and 1991 that were consolidated in the Shawnee County District Court.<sup>3</sup> Prior to the trial for the consolidated cases, Judge Bullock—the same judge who heard the 2003 *Montoy* case—held a pretrial conference in the fall of 1991 attended by the Governor and the Legislative leadership at which he announced a series of principles the Court would apply in deciding the pending issues.

Judge Bullock agreed to delay the trial in order to give state policymakers the chance to consider enacting a new school finance formula in light of the principles he had identified. A task force comprised of appointees of the Governor and the Legislature considered school finance and submitted its recommendations prior to the 1992 Session. In 1992, the Legislature enacted the current school finance formula, the School District Finance and Quality Performance Act. In that same year, the Legislature also established the School District Capital Improvements State Aid Program, based on an equalization concept, in order to assist school districts in making bond and interest payments. The latter was enacted in response to Judge Bullock's pretrial ruling that all costs—including capital expenditures—are included in the constitutional mandate placed on the Legislature by the Education Article of the *Kansas Constitution*.

In the months immediately following passage of the new act, Judge Bullock dismissed three of the consolidated cases and transferred jurisdiction of the remaining school finance litigation to Judge Marla Luckert, another Shawnee County District Court judge. In the fall of 1992, three new suits brought by school districts against the new school finance law were consolidated with pending litigation. The cases were brought to trial the following summer (1993). Judge Luckert issued her opinion in December 1993, in which she found two constitutional infirmities in the law:

- The uniform school district general fund tax levy was construed to be a state property tax and, as such, subject to a constitutional provision which limits such levies to two years in duration. (The legislative response to this finding has been to subject the tax to renewal every two years.)
- The low enrollment weight was found constitutionally deficient because it was not "grounded upon education theory." (Judge Luckert did not, however, reject the principle of an enrollment weight *per se* to reflect economies of scale.) Because the low enrollment provision was so intertwined with other provisions of the formula, Judge Luckert found the entire act unconstitutional.

In order to give the 1994 Legislature time to remedy the Act, Judge Luckert stayed the effective date of the finding until July 1, 1994. Litigants appealed Judge Luckert's opinion to the Kansas Court of Appeals in December 1993. The Kansas Supreme Court took jurisdiction and in

---

<sup>3</sup> *Mock v. Kansas*, Case No. 91-CV-1009.



December 1994 upheld the constitutionality of the 1992 School District Finance and Quality Performance Act, including its provisions for low enrollment weighting.<sup>4</sup> The Court concluded that "there is a rational relationship between the legislature's legitimate objective of more suitably funding public schools and the classifications created in the low enrollment weighting factor." In so concluding, the Supreme Court overruled Judge Luckert's finding that the low enrollment weight was constitutionally deficient. (Judge Luckert's finding that the school district general fund tax levy did not pass constitutional muster was responded to by the legislative practice, begun in 1994, of setting the district general fund tax rate for two-year periods.)

## Observations

School finance litigation nationwide has generally been at the state, not federal, court level because it is state constitutions that have the most to say about the responsibility to provide for public schools. Because constitutions vary from state to state, what is decided in one state court often does not have direct applicability to other states. The Kansas Supreme Court decision, issued in 1994, is the only decision issued by Kansas' highest court on a school finance case and the legal precedent established by that case doubtless will have a bearing on the litigation that is proceeding almost a decade later. (It also should be noted that, in the interval since the Supreme Court's 1994 decision, Judge Luckert has become a Supreme Court justice.)

One of the principles underscored in the 1994 case was that the *Kansas Constitution* makes the Legislature responsible for providing for the funding of the educational interests of the state and that this responsibility does not impede the power of locally elected boards to operate schools. Judge Bullock made a similar finding in his pretrial memorandum in the *Montoy* case when he determined that the Legislature's authority in this area does not infringe upon the general supervision responsibilities of the State Board of Education.

In its 1994 decision, the Supreme Court addressed the matter of the appropriate level of scrutiny in addressing litigation involving equal protection rights of students and concluded that the rational basis test was the appropriate level. This is the lowest level of judicial scrutiny, meaning that greater deference is given to the Legislature and its role. Indeed, Justice McFarland wrote in the 1994 opinion: ". . . the judiciary's role is very limited in its scope. The wisdom or desirability of the legislation is not before us. The constitutional challenge goes only to testing the legislature's power to enact the legislation."

The original School Finance and Quality Performance Act enacted in 1992 contained a list of ten outcomes-based goals for schools that could be measured and evaluated. These goals were part of the Quality Performance Accreditation system. One example is that "schools have a basic mission which prepares the learners to live, learn, and work in a global society." The Supreme Court in 1994 considered these goals to be the standard of adequacy set by the Legislature and adopted by the State Board of Education in determining whether funding provided by the Legislature was "suitable" in the context of the constitutional requirement.

Basically, the Supreme Court in 1994 decided not to substitute its judgment as to what was "suitable" and opted to use standards set by the Legislature. Judge Bullock initially interpreted the Supreme Court's 1994 ruling to mean that the Court had *no* role in determining whether funding for

---

<sup>4</sup> *Unified School District Number 229 v. State*, 256 Kan. 232, 885 P. 2d 1170.

education was suitable and dismissed *Montoy* when it first came before him. The Supreme Court reversed his ruling and remanded the case to his Court, observing that the ten goals originally contained in the Act had been removed by the 1995 Legislature. In addition, the Supreme Court noted issues raised by plaintiffs in the case which it wished Judge Bullock to address.

In providing his own definition that a suitable education is one that "must provide all Kansas students, commensurate with their natural abilities, the skills necessary to understand and successfully participate in the world around them . . .", Judge Bullock asserted the role of the Judicial Branch to determine whether the Legislature has met its constitutional responsibilities. His pretrial admonition to the parties that the case is about children indicated that the focus of the case was not on school districts but on individual students and whether, in the view of the Court, they had been provided suitable and equal educational opportunities.

## JUDGE BULLOCK'S DECISION

### Memorandum Decision and Preliminary Interim Order

On December 2, 2003, Judge Bullock issued a memorandum decision and preliminary interim order finding that "the current school funding scheme stands in blatant violation of Article 6 of the *Kansas Constitution* and the equal protection clauses of both the Kansas and United States Constitutions in the following three separate and distinct aspects in that:

- "It fails to equitably distribute resources among children equally entitled by the *Constitution* to a suitable education or in the alternative to provide a rational basis premised on differing costs for any differential;
- It fails to provide adequate total resources to provide all Kansas children with a suitable education (as that term has been defined by both this court and the Legislature itself); and
- It dramatically and adversely impacts the learning and educational performance of the most vulnerable and/or protected Kansas children. This disparate impact occurs by virtue of underfunding, generally, and selective underfunding of the schools where these vulnerable and/or protected children, of course, are: the poor, the minorities, the physically and mentally disadvantaged, and those who cannot or nearly cannot yet speak the primary language of America and its schools."<sup>5</sup>

The Judge found that the school funding mechanism violates Section 1 of the Kansas Bill of Rights (which pertains to equal rights), the Fourteenth Amendment of the *United States Constitution*

---

<sup>5</sup> *Memorandum Decision and Preliminary Interim Order*, issued December 2, 2003. *Montoy, et al. v. State Case No. 99-C-1738* (Shawnee County District Court, December 2, 2003).

(which pertains to equal protection), and Article 6(b) of the *Kansas Constitution* (which requires the Legislature to make suitable provision for finance of the educational interests of the state).

The Judge's decision, written in blunt language, lists numerous specific components of school funding that he finds unconstitutional or objectionable. They include:

- "The Court finds as a matter of fact and law that the funding scheme presently in place and as applied in Kansas by its underfunding in general and by its mid and large-school underfunding specifically, clearly and disparately injures vulnerable and/or protected students and thus violates both Article 6 of the *Kansas Constitution* and the equal protection clauses of both the United States and Kansas constitutions.
- Based on the Augenblick and Myers (A&M) study to calculate the cost of providing a suitable education in Kansas (May 2002), the true amount of the suitability shortage, taking all A&M exclusions and inflation into account, appears to be well in excess of a billion dollars (as Kansas schools are presently configured and managed—both legislative choices).
- The lowest per pupil FTE allotment, received by students in USD 489 (Liberal), is \$5,655.95, while students in USD 301 (Nes Tres La Go) receive the highest per pupil FTE allotment of \$16,968.49, a differential of slightly more than 300 percent! Accordingly, as a matter of uncontroverted fact and law, the current funding scheme containing, as it does, a 300 percent unexplained FTE pupil disparity for which no rational basis has been shown or proved, violates Article 6 of the *Kansas Constitution* in its failure to provide equity in funding for all Kansas Children.
- The Court finds that these broad averages [of math and reading scores on the Kansas assessments] conceals the fact that most of Kansas' most vulnerable and/or protected students are failing or giving up; hardly proof of a suitable education made available to all.
- Regarding special education, the state only provides reimbursement for 85 percent of the costs of the salary of a special education teacher or paraprofessional incurred by local school districts. Local school districts, at a minimum, must use general fund dollars to pay for at least 15 percent of all special education services. Obviously, this reduces the available funds for regular education services, a built-in deficiency by legislative design. Defendants have intentionally failed to fully fund the costs to meet the needs of Kansas children with disabilities.
- The 4-mill limit on school district capital outlay was removed in 1999, the result being that wealthy districts are able to raise virtually unlimited funds for the construction and maintenance of buildings and the purchase of new equipment, with no provision for power equalization for poor districts unable to do likewise.
- It is significantly easier for districts with high assessed property values to raise substantial funds through a local option budget (LOB). Obviously, the higher the value of the property in the district, the more dollars each mill of tax will raise.

Thus, in districts with low property valuations, it is virtually impossible to raise adequate funds to supply basic education needs (for which LOBs are now used) without severely impacting district taxpayers.

- Kansas has no 'bottom-up' budgeting system for public schools whatsoever! No one, in the history of Kansas, has ever asked our schools what resources they need to provide a suitable education for our children. And this in a vital, constitutionally protected endeavor already consuming nearly four billion dollars (well over half the entire revenues of the state). Instead, these billions of tax dollars are distributed annually by legislative fiat (the financing scheme) without any requests, estimates, or other input on costs or needs from the "boots on the ground" superintendents, principals, or teachers in the field.
- The ten outcomes-based goals for schools associated with Quality Performance Accreditation, which were part of the original school finance act and were important to the Supreme Court in its decision to uphold the act in 1994, were removed in 1995.
- The current financing scheme was never based upon costs or even estimated costs to educate children, but was, in fact, the result of a 'political auction. . .' In fact, it is now revealed that the present scheme was actually premised not upon costs but upon former spending levels of districts under the old unconstitutional School District Equalization Act, thus freezing the inequities of the old law into the new."

### **Status of the Order**

Judge Bullock issued his decision as a "memorandum decision and preliminary interim order" which is not final. He intends to withhold the final order and judgment until July 1, 2004, in order to give the Governor and the Legislature "the luxury of a full legislative session (while our schools remain open) to correct the constitutional flaws outlined in the opinion." The Court specifically retains jurisdiction to:

- Determine whether the problems outlined have been corrected and, if so, to dismiss the cases; or
- Issue such further orders and take such further steps as may be required to enforce the constitutions if the other branches of government fail to do so.

Based on the preliminary order, it appears that Judge Bullock intends to review any action taken by the 2004 Legislature to change the current method of funding public schools to determine if they satisfy the constitutional objections he raises. If the Court finds that no changes have been made or finds that made changes do not satisfy constitutional requirements, the Court has the option of ordering that no money be distributed to schools through statutes that are deemed to be unconstitutional or even to impose a funding mechanism devised by the Court.

Because the decision is not final, it is not a "final appealable order" as defined by statute. In order to appeal an order that is not final, it is necessary to get the district judge who issued the order

to issue a certification for an "interlocutory appeal" (an appeal of a point preliminary to final disposition of a case.) If the district court judge agrees, the Kansas Court of Appeals may permit an appeal.

Attorney General Kline decided not to ask Judge Bullock for permission to appeal, but the State Board of Education directed its attorney to do so. Judge Bullock denied the request.

## Observations

One difference between how the Kansas Supreme Court in 1994 approached its decision, which upheld the constitutionality of the School District Finance and Quality Performance Act, and how Judge Bullock reached his decision, which finds the law unconstitutional, is that Judge Bullock expands the traditional rational basis test. The Supreme Court said in 1994 that legislative enactments must implicate legitimate goals and the means chosen by the Legislature must bear a rational relationship to those goals. Judge Bullock imposes a more stringent requirement that a rational basis must be based on cost differences supported by empirical studies.

Judge Bullock had available to him the Augenblick and Myers study – commissioned by the Legislature and the State Board of Education – that took what Kansas policy makers had defined as "suitable" and put a price tag on it. The Supreme Court in 1994 did not require that the rational basis test be justified by evidence as to actual costs and, indeed, did not have such a study at its disposal. Clearly, Judge Bullock attached great significance to the Augenblick and Myers study. Whether the Supreme Court will do so remains to be seen, assuming that it hears the case on appeal.

Other changes have taken place since the school finance law was found to be constitutional, including changes to the law itself that make it different from the law the Supreme Court upheld. The Supreme Court itself, in its 1994 school finance decision, anticipated the possibility that the law it found constitutional then might later be found to be deficient. The 1994 decision included the following quote from the district court opinion of Judge Luckert:

"The issue of suitability is not stagnant; past history teaches that this issue must be closely monitored. Previous school finance legislation [the School District Equalization Act], when initially attacked upon enactment or modification, was determined constitutional. Then, underfunding and inequitable distribution of finances led to judicial determination that the legislation no longer complied with constitutional provisions."

---

---

## GA/MediKan Lawsuit Update

---

---

### Program Overview

#### General Assistance/MediKan

General Assistance programs have existed in various forms at the county level since statehood. The state-funded program was made uniform statewide when SRS was created in 1973. The General Assistance program serves only disabled adults who are unable to work and who are awaiting the decision of the Social Security Administration regarding their eligibility for federal disability benefits. Disabled adults with income less than 32.0 percent of the federal poverty level (for a household of one, an annual income of \$2,818) may qualify for this cash assistance. A medical benefit package more restrictive than Medicaid, known as MediKan, is also provided to General Assistance clients. General Assistance is limited to 24 months in a lifetime. This limit, as approved by the 2003 Legislature, became effective January 2002. Assistance received on or after this date would be counted toward the 24-month limit. The following presents the number of persons served and the amount of cash assistance. (Note: The caseload amounts for fiscal years 2004 and 2005 reflect the Spring 2003 consensus caseload estimates.)

General Assistance	FY 2002	FY 2003	FY 2004	FY 2005
	Actual	Actual	Estimate	Current Resource
Average Monthly Persons	3,152	3,660	3,971	3,971
Cash Assistance	\$5,972,720	\$6,910,262	\$7,517,103	\$7,517,103

MediKan	FY 2002	FY 2003	FY 2004	FY 2005
	Actual	Actual	Estimate	Current Resource
Average Monthly Persons	3017	3458	3971	3971
Average Monthly Cost	\$474	\$496	\$502	\$617
Total Cost	\$17,164,879	\$20,573,779	\$23,923,836	\$29,419,200

The 2002 Legislature recommended a 24-month limit for the GA/MediKan program, with a start date for counting toward the limit of July 1, 2002. The 2003 Legislature approved the Governor's recommendation to make the start retroactive to January 1, 2002 for an estimated savings of \$494,739 SGF for the General Assistance program and \$2,198,417 for MediKan.

The agency estimated during the caseload estimating process in October that the FY 2004 savings for MediKan would be \$1.0 million SGF, while General Assistance would be \$397,051 SGF. The FY 2005 savings for MediKan is estimated to be 2.0 million SGF, while the General Assistance savings is estimated to be \$1.1 million SGF.

#### Wichita Lawsuit

The lawsuit filed in Sedgwick County on December 31, 2003, challenges the implementation of the 24-month lifetime limit for receiving General Assistance and MediKan. The challenge is based on two issues: the lack of a hardship clause in K.A.R. 30-4-90 as mandated by the 2002 appropriations bill, and the unconstitutionality of the 24-month time limit. The 24-month time limit would have ended benefits for 439 Kansans as of January 1, 2004. A temporary restraining order was issued on December 31, and the 439 persons received benefits for January.

A temporary injunction hearing was held on January 16, 2004. The judge took the case under advisement, and requested additional information about the programs by January 30, 2004. The 439 persons who have exceeded the time limit will continue to receive benefits for February of 2004.

**Attachment D: REED, et al. v. SCHALANSKY, et al.**

This case was filed in Sedgwick County District Court on December 31, 2003, by three named plaintiffs on behalf of themselves and other indigent and disabled Kansans who receive cash benefits and medical services from the Secretary, and who have cases pending before the Social Security Administration in which they are pursuing their rights to receive Supplemental Security Income (SSI). Plaintiffs are seeking a declaratory judgment, a temporary restraining order, and injunctive relief. An Ex Parte Restraining Order was issued by Judge Karl Friedel on December 31, 2003, ordering that defendants not implement Kansas Administrative Regulation 30-4-90 limiting General Assistance to twenty-four months of a recipient's lifetime, until a hearing can be held on plaintiffs' Motion for Temporary Injunction which is now scheduled for January 16, 2004.

For their first cause of action plaintiffs claim that K.A.R. 30-4-90 did not include the hardship clause as mandated by the 2002 appropriation bill, and as a result, this violated a constitutionally imposed duty of due process in making provisions for disabled and impoverished citizens who have claims upon society.

For their second cause of action plaintiffs claim the promulgation of K.A.R. 30-4-90 limiting assistance to 24 months violates the constitutional duty imposed upon the Secretary to provide benefits to plaintiffs and class members as set forth in Bullock v. Whiteman, the 1993 Kansas supreme court case dealing with GA and Medikan reductions.

Plaintiffs ask the Court to grant a Temporary Restraining Order prohibiting the Secretary from implementing the regulation, both temporary and permanent injunctive relief prohibiting its enforcement, and a declaration that the regulation is in violation of the due process clauses of both the Kansas and Federal Constitutions and therefore subject to remedies provided by 42 U.S.C. §1983. Plaintiffs also ask for an order selecting them as class representatives for all indigent and disabled citizens of Kansas who are entitled to GA and medical benefits under the Medikan program.

Defendant has filed a motion to dismiss for improper venue or in the alternative to change venue to Shawnee County; and a motion to vacate, set aside and dissolve the Ex Parte restraining order. It is anticipated these motions will be taken up at the hearing on January 16, 2004. Next steps in the litigation will depend on the outcomes of those proceedings.

**Kansas Administrative Regulation 30-4-90**

**30-4-90 Eligibility factors specific to the GA program.** (a) To be eligible for GA, each applicant or recipient shall meet the applicable general eligibility requirements of K.A.R. 30-4-50, and the specific eligibility requirements set forth below.

(1) Each applicant or recipient, and the members of the assistance family group for whom the applicant or recipient is legally responsible, shall be ineligible for GA under either of the following circumstances:

(A) The applicant or recipient is eligible for a federal program.

(B) The applicant or recipient has been denied or rendered ineligible for a federal program due to a voluntary action on the part of the applicant or recipient.

(2) Each applicant or recipient and each person for whom the applicant or recipient is legally responsible, if living together, shall be within at least one of the following categories to be eligible for GA:

(A) A person whose presence is required at home because another member of the home has a verified condition that meets the criteria in paragraph (a)(2)(B) and that does not permit self-care, if the care is not available from another person in the home; or

(B) a person who has been medically or psychologically determined to be physically or mentally incapacitated based on one of the following conditions:

(i) Fractures or soft tissue injuries requiring at least 12 months of surgical management to restore function or preventing full weight-bearing for at least 12 months;

(ii) amputation of a lower extremity when the amputation involves hip disarticulation, when the amputation is at or above the tarsal region due to circulatory problems or when the amputation results in an inability to use a lower prosthesis for at least 12 months;

(iii) permanent loss of use of any two limbs;

(iv) active inflammatory arthritis, corroborated by laboratory results, persisting at least three months despite prescribed treatment;

(v) arthritis, demonstrated on x-ray, with inability to stand or walk unassisted, surgical reconstruction or arthrodesis preventing full weight-bearing for at least 12 months, or gross deformity and functional limitation of joints in both arms;

(vi) osteomyelitis or septic arthritis of a major bone or joint that persists at least five months despite prescribed treatment and that is based on systemic signs and abnormal laboratory findings;

(vii) ankylosis or fixation of the spine at 30 or more degrees flexion, as confirmed by x-ray;

(viii) osteoporosis with either multiple vertebral fractures that are not due to trauma, or at least 50 percent compression of vertebral body that is not due to trauma;

(ix) marked difficulty standing or walking that is expected to persist for at least 12 months;

(x) blindness with either best corrected central visual acuity of 20/100 in the better eye, or constriction of visual fields to 25 degrees or less in each eye;

(xi) best corrected visual efficiency of 26 percent or less in the better eye;



(l) other severe and persistent mental illness that is not controllable by medications or other treatment, that causes severe functional limitations precluding competitive employment, and that requires ongoing psychiatric or psychological treatment;

(li) any seizure disorder that is not controllable by medications either with major motor seizures occurring on an average of one each two months despite at least three months of treatment or with minor motor seizures occurring on an average of one each week despite at least three months of prescribed treatment;

(lii) cerebral palsy with mental retardation, severe emotional lability, abnormal behavior, severely limited ability to communicate, or severe limitations in motor functioning;

(liii) any other chronic neurological disease that is not controllable by treatment, or persistent manifestations of central nervous system insult, when the disease or insult results in any of these conditions: a severely limited ability to stand, walk, or use the hands; a persistent, severe difficulty swallowing or breathing; a severe expressive or receptive aphasia resulting in severely decreased ability to communicate; or frequent acute exacerbations of the disease resulting in severe functional limitations;

(liv) histologically malignant brain tumors, as proven by a pathology report, or other brain tumors causing severe functional limitations despite treatment;

(lv) lymphoma that is not controlled despite treatment or metastatic disease of a lymph node from an undeterminable primary site;

(lvi) hormone-dependent or isotope-sensitive malignancies or sarcoma of soft parts that are not currently controlled despite treatment;

(lvii) solid malignancies that are not hormone-dependent or isotope-sensitive, with evidence of active disease, and that have any of these qualities: are inoperable, unresectable, or incompletely excised; are recurrent after radical surgery; are metastatic beyond the regional lymph nodes; are not controlled despite treatment; or are generally considered uncontrollable by established medical or surgical procedures;

(lviii) permanent residuals of neoplastic disease resulting in severe functional impairment; or

(lix) one or more other medically determinable impairments that prevent the performance of gainful employment, that are expected to last 12 months or longer or to result in death in fewer than 12 months, and that are not controllable by medication, surgery, or other treatment within 12 months of onset, excluding alcoholism, drug addiction, or other impairments that can be controlled through treatment;

(3) The needs of the applicant or recipient and each person for whom the applicant or recipient is legally responsible shall be included in the same assistance plan, if living together, except for persons who are not otherwise eligible. In determining eligibility, the needs of each of the following persons in the family group who are not otherwise eligible shall be excluded while the resources of those persons shall be included, unless the resources are specifically exempt:

(A) Any SSI recipient;

(B) any person denied assistance based on the provisions of K.A.R. 30-4-50 (c) or (d);

(C) any person who is ineligible due to a sanction; and

(D) any alien who is ineligible because of the citizenship and alienage requirements or sponsorship provisions.

(b)(1) A presumptive eligibility determination shall be made for each person who is being released from a medicaid-approved psychiatric hospital or from the Larned correctional mental health facility in accordance with an approved discharge plan. Minimally, the presumptive determination shall be based on available information concerning the

person's income and resources. The general eligibility requirements of K.A.R. 30-4-50 may be waived until a formal eligibility determination is completed.

(2) Assistance provided shall equal 100 percent of the applicable GA budgetary standards, and the provision of K.A.R. 30-4-140 (a)(1) shall be waived. Assistance under this provision shall not extend beyond the month of discharge and the two following months, except that assistance under this provision may be extended by the secretary beyond the three-month limitation for good cause.

(c) Each applicant or recipient who refuses to authorize the department to file for and claim reimbursement from the social security administration for the amount of GA provided to the individual, pending a determination of eligibility for the supplemental security income program, shall be ineligible for GA.

(d) Assistance under this regulation shall be limited to a lifetime maximum of 24 calendar months.

(e) This regulation shall be effective on and after July 1, 2002. (Authorized by and implementing K.S.A. 39-708c and 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended, T-84-8, March 29, 1983; amended May 1, 1983; amended, T-84-9, March 29, 1983; amended May 1, 1984; amended, T-85-34, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended, T-30-6-10-91, July 1, 1991; amended Oct. 28, 1991; amended, T-30-6-10-92, July 1, 1992; amended Oct. 1, 1992; amended Dec. 31, 1992; amended, T-30-2-15-93, Feb. 15, 1993; amended June 1, 1993; amended July 1, 1994; amended Jan. 1, 1997; amended March 1, 1997; amended Oct. 1, 1997; amended July 1, 2002.)

# Kansas Session Law No. 204

## CHAPTER 204

### SENATE BILL No. 517

Sec. 95.

#### DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

(p) In addition to the other purposes for which expenditures may be made by the department of social and rehabilitation services from moneys appropriated from the state general fund or any special revenue fund for fiscal year 2003 for the department of social and rehabilitation services as authorized by this or other appropriation act of the 2002 regular session of the legislature, expenditures shall be made by the department of social and rehabilitation services for fiscal year 2003 to make adjustments, which are hereby authorized and directed to be made, in the eligibility and other provisions of the MediKan program to prescribe that assistance under the MediKan program is limited to 24 months for each recipient and in the eligibility and other provisions of the general assistance program to prescribe that assistance under the general assistance program is limited to 24 months for each recipient: *Provided*, That no such twenty-four-month period of assistance shall commence prior to July 1, 2002: *Provided further*, That the secretary of social and rehabilitation services shall include provisions in the MediKan program and in the general assistance program to exempt recipients of assistance under such programs from such twenty-four-month limitations on assistance in cases of undue hardship: *And provided further*, That at no time shall more than 20% of the persons receiving assistance under the MediKan program or under the general assistance program be exempted from such twenty-four-month limitations on assistance because of undue hardship.

# Constitution of the State of Kansas

## 2. Article 7.--PUBLIC INSTITUTIONS AND WELFARE

**§ 1: Benevolent institutions.** Institutions for the benefit of mentally or physically incapacitated or handicapped persons, and such other benevolent institutions as the public good may require, shall be fostered and supported by the state, subject to such regulations as may be prescribed by law.

**§ 4: Aged and infirm persons; financial aid; state participation.** The respective counties of the state shall provide, as may be prescribed by law, for those inhabitants who, by reason of age, infirmity or other misfortune, may have claims upon the aid of society. The state may participate financially in such aid and supervise and control the administration thereof.

**§ 5: Unemployment compensation; old-age benefits; taxation.** The state may provide by law for unemployment compensation and contributory old-age benefits and may tax employers and employees therefor; and the restrictions and limitations of section 24 of article 2, and section 1 of article 11 of the constitution shall not be construed to limit the authority conferred by this amendment. No direct ad valorem tax shall be laid on real or personal property for such purposes.

**§ 6: Tax levy for certain institutions.** The legislature may levy a permanent tax for the creation of a building fund for institutions caring for those who are mentally ill, retarded, visually handicapped, with a handicapping hearing loss, tubercular or for children who are dependent, neglected or delinquent and in need of residential institutional care or treatment and for institutions primarily designed to provide vocational rehabilitation for handicapped persons, and the legislature shall apportion among and appropriate the same to the several institutions, which levy, apportionment and appropriation shall continue until changed by statute. Nothing herein contained shall prevent such further appropriation by the legislature as may be deemed necessary from time to time for the needs of said charitable and benevolent institutions. Nothing in this amendment shall repeal any statute of this state enacted prior to this amendment, and any levy, apportionment or appropriation made under authority of this section before its amendment, and any statute making the same, shall remain in full force and effect until amended or repealed by the legislature.

---

November 7, 2003

**To:** Governor Kathleen Sebelius and Legislative Budget Committee

**From:** Kansas Legislative Research Department  
Kansas Division of the Budget

**Re:** State General Fund Receipts for FY 2004 (Revised) and FY 2005

Estimates for the State General Fund (SGF) are developed using a consensus process that involves the Legislative Research Department, Division of the Budget, Department of Revenue, and three consulting economists from state universities. This estimate is the base from which the Governor and the Legislature build the annual budget. The Consensus Group met on November 3, 2003, and increased the FY 2004 estimate by \$11.9 million and developed the first estimate for FY 2005. The revised FY 2004 estimate is \$4.484 billion and the FY 2005 estimate is \$4.469 billion.

For FY 2004, the estimate was increased by \$11.9 million, or 0.3 percent, above the previous estimate (made in April and subsequently adjusted for legislation enacted after that point and for the implementation of the property tax accelerator provisions by the Governor in August). The overall revised SGF estimate of \$4.484 billion represents a 5.6 percent growth forecast above final FY 2003 receipts. It should be noted that the FY 2004 receipt estimate was significantly influenced by one-time monies (tax amnesty, property and motor vehicle taxes, \$50 million in tax refund deferrals, and revenues from the federal government) which for the most part are not expected to continue as an ongoing part of SGF receipts.

The initial estimate for FY 2005 is \$4.469 billion, which is \$14.4 million, or 0.3 percent, below the newly revised FY 2004 figure. The FY 2005 growth rate also is heavily influenced by removal of many of the one-time monies from the SGF-receipts base, in addition to the economic forecast for the state.

## Economic Forecast for Kansas

The Kansas economy is expected to continue to grow more slowly than the national economy. Estimates of nominal US Gross Domestic Product for 2003, 2004, and 2005 are 4.15 percent; 5.50 percent; and 5.70 percent, respectively, compared with Kansas Gross State Product estimates for the same three years of 3.40 percent; 4.75 percent; and 4.80 percent. Aviation manufacturing remains an area of particular concern, a concern which is further magnified by the ripple effect that sector has on the entire state economy. The Consensus estimates contained herein are based on the assumption that the relatively modest growth in the Kansas economy will lag behind the growth in the US economy for the foreseeable future.

HOUSE APPROPRIATIONS

DATE 1-21-2004  
ATTACHMENT 3-1

## **Kansas Personal Income**

Kansas Personal Income (KPI) in 2002 grew by only 1.9 percent over the 2001 level. The growth rate for KPI is expected to accelerate throughout the forecast period, with the estimates now set at 3.0 percent for 2003, 4.6 percent for 2004, and 4.8 percent for 2005. It should be noted, however, that the estimates have been lowered significantly since the April Consensus forecast, when the 2003 KPI growth was expected to be 4.4 percent and the 2004 growth was expected to be 5.3 percent. Current estimates are that overall US Personal Income growth – 3.4 percent for 2003, 6.2 percent for 2004, and 5.7 percent for 2005 – will be much faster than the growth in Kansas.

## **Employment**

The employment outlook for Kansas remains sluggish. The overall Kansas unemployment rate was 5.0 percent in FY 2003 (the highest in nine years) and is expected to again be 5.0 percent in FY 2004 before dropping to 4.9 percent in FY 2005. Over 27,000 fewer manufacturing jobs are expected to exist statewide in FY 2004 than did in FY 1999. One forecast suggests an additional 2,000 manufacturing jobs could be lost in and around the Wichita area alone during calendar 2004. The events of 9/11/2001 and new competitive pressures affecting the airline industry have continued to cause a downward spiral in aviation manufacturing employment. Any kind of modest recovery in general aviation manufacturing would appear to be at least two years away.

## **Agriculture**

The All Farm Products Index of Prices received by Kansas farmers was 109 in September, compared with 103 a year ago. Kansas' 2003 wheat crop, which was 480 million bushels, represents an 80 percent higher yield than the 2002 crop and is the third largest on record. Cattle prices in 2003 are continuing to run significantly ahead of 2002 levels. The lack of moisture in the western one third of the state remains a significant concern.

## **Oil and Gas**

The average price per taxable barrel of Kansas crude oil is estimated to be \$27.00 for FY 2004 and \$25.00 for FY 2005. Gross oil production in Kansas, which generally had been declining steadily for more than a decade until FY 2000, appears to be stabilizing at around 33 million barrels per year. More than half of all Kansas oil produced is not subject to severance taxation because of various exemptions in that law. The price of natural gas, which has been relatively high over the summer and fall, is expected to further increase over the winter months, based on an industry source's analysis of futures markets. Various market forces, including historically low storage levels earlier in 2003, have contributed to the higher prices. Natural gas production in FY 2003 of 445 million cubic feet represented a continuing decrease from the recent peak of 730 million cubic feet in FY 1996. Production is expected to continue to decline for the foreseeable future as natural gas reserves, especially those in the Hugoton field, are depleted. But the rate of decline is expected to decelerate slightly throughout the forecast period, attributable in part to the aforementioned market forces and higher prices. The current forecast is for 420 million cubic feet for FY 2004 and 390 million cubic feet for FY 2003.

## **Inflation Rate**

The Consumer Price Index for all Urban consumers (CPI-U) is expected to increase by 2.4 percent in 2003. The national forecasts for both 2004 and 2005 are for inflation to continue at moderate levels, 1.8 percent and 2.2 percent, respectively.

## **Interest Rates**

The Pooled Money Investment Board is authorized to make investments in US Treasury and Agency securities, highly rated commercial paper, repurchase agreements and certificates of deposit of Kansas banks. In FY 2003, the state earned 1.63 percent on its SGF portfolio. The average rate of return forecasted for FY 2004 is 1.28 percent. For FY 2005, the forecasted rate is 1.79 percent.

## **Accounts Receivable**

As a result of additional collection resources provided to the Department of Revenue by the 2001 Legislature, estimated SGF receipts for the next several fiscal years were at the time increased by over \$49 million per year. The latest information available suggests that the enhanced accounts receivable collections attributable to the resources provided by the 2001 legislation is in the range of \$20 million to \$25 million per year. At the time of enactment, the assumption was made that the enhanced collections would be gone from the tax base by the end of FY 2006.

## **Tax Amnesty**

Legislation enacted in 2003 establishes a tax amnesty program from October 1 through November 30, wherein an additional \$19.5 million of revenue is expected to be produced (\$12.5 million from individual income taxes and \$7.0 million from sales taxes). The Department of Revenue reported that as of late October, collections for the first several weeks of the amnesty program tended to support the \$19.5 million estimate.

## **New Federal Tax Law Impact**

An analysis completed by the Department of Revenue indicates that the impact of the new federal tax law on SGF tax receipts is a reduction in FY 2004 of \$14 million (\$11.5 million in corporation income tax receipts; \$2.5 million in individual income tax receipts) and a reduction in FY 2005 of \$12 million (\$11 million, corporate; \$1 million, individual). But Kansas has received in FY 2004 an additional \$45.7 million in SGF receipts (which is shown as agency earnings and miscellaneous receipts) attributable to flexible grant monies provided in the same federal legislation. (It should be noted that the state also received \$45.7 million in similar funding during FY 2003.) Additional Medicaid funds the state will receive from the federal legislation will not be deposited directly into the SGF but will instead reduce SGF expenditures.

### Property Tax Accelerator

Based upon a law enacted in 2003 and upon a subsequent finding by the Governor over the summer as to the state's fiscal condition, the property tax payment date for the second half of the prior year's property taxes has now been accelerated from June 20 to May 10, beginning in 2004. Although the primary intent of that action was to increase FY 2004 local effort for purposes of the school finance formula, a number of other statutory adjustments to state property tax levies also occurred once the accelerator provisions were triggered. For tax year 2003 only, a temporary property tax levy of 0.6 mills is imposed for the SGF, while the levy for state building funds is decreased by 0.6 mills. The SGF also will receive a similar portion of the state's receipts attributable to the in-lieu-of property tax on motor vehicles through the end of calendar year 2004.

### Economic Forecasts

	CY 02	CY 03*	CY 04*	CY 05*
KPI Growth	1.9%	3.0%	4.6%	4.8%
Inflation (CPI-U)	1.6%	2.4%	1.8%	2.2%
		FY 03	FY 04*	FY 05*
SGF Interest		1.63%	1.28%	1.79%
Oil and Gas				
Oil Price per bbl	\$	27.33 \$	27.00 \$	25.00
Gross Prod. (000)		33,244	33,000	33,000
Gas Price per mcf	\$	3.45 \$	4.25 \$	3.90
Gas Taxable Value		1,425,402	1,677,900	1,425,938

\* Estimated

### Attached Tables

Table 1 compares the revised FY 2004 and new FY 2005 estimates with actual receipts from FY 2003. Table 2 shows the changes in the FY 2004 estimates. Tables 3 and 4 compare the new estimates with a second set of estimates under the assumption that the Governor subsequently will decide to use a statutory prerogative to pay an additional \$50 million in refunds by the end of FY 2004 that under current law are scheduled to be decelerated until FY 2005. Under such a contingency, FY 2004 receipts would be reduced by \$50 million, while the new FY 2005 estimate would be increased by \$50 million.

### State General Fund Receipts Estimates

**FY 2004.** The revised estimate of SGF receipts for FY 2004 is \$4.484 billion, an increase of \$11.9 million from the previous estimate made in April and subsequently adjusted for legislation enacted after that point and for the implementation of the property tax accelerator provisions by the

3-4



Governor in August. The revised estimate is \$238.0 million or 5.6 percent above actual FY 2003 receipts, but as noted previously, the new FY 2004 figure would have represented much lower growth but for a number of one-time enhancements affecting SGF receipts. Assuming the Governor were to exercise her authority to pay tax refunds in the traditional manner, the overall growth rate would be 4.4 percent. The overall growth rate would be 3.6 percent if the \$50 million of tax refund deferrals; \$19.5 million in tax amnesty; and \$15.3 million in property and motor vehicle taxes were all excluded from the estimate. Growth in total taxes would have been 3.4 percent (in lieu of 5.4 percent) but for those provisions. Details of the revised estimate are reflected in Tables 1 and 2.

Each individual SGF source was reevaluated independently and consideration was given to revised and updated economic forecasts, collection information from the Departments of Revenue and Insurance, and year-to-date receipts.

The estimate of total taxes was decreased by \$31.6 million, while the estimate of "other revenue" was increased by \$43.5 million – due in large part to the \$45.7 million receipt of federal grant funds.

The estimate for individual income taxes was decreased by \$36.0 million. A number of factors contributed to this downward revision, including the reduced KPI growth projection, the impact of the new federal tax law, and the fact that receipts through October were running \$11.4 million below the prior fiscal-year-to-date estimate. Final FY 2003 receipts for this source finished almost \$30 million below the final estimate for that year, and overall individual income tax receipts fell by a combined \$227.3 million for the FY 2001-FY 2003 period.

Compensating use taxes also underwent a substantial cut of \$21.0 million in the estimate. Final use tax receipts for FY 2003 actually declined relative to FY 2002, notwithstanding a tax rate increase. Receipts through October were already \$9.5 million below the prior fiscal-year-to-date estimate. The relatively weak economy over the last 18 months and its impact on taxable purchases by businesses have likely played a major role in the lack of use tax growth.

The cigarette tax receipts forecast was decreased by \$15.0 million. Though final receipts in FY 2003 came within \$1 million of the final estimate for the year after the major tax rate increase, receipts have been extremely sluggish in FY 2004 and were \$5.2 million below the prior estimate through October. The current forecast calls for receipts to remain virtually flat in FY 2004, notwithstanding the fact that the fully phased in rate increase (55 cents per pack) will have been in effect for the entire fiscal year. (The tax rate for the first six months of FY 2003 was only 46 cents per pack higher than the prior law before going up an additional nine cents per pack on January 1, 2003.)

On the positive side, the estimate for sales taxes was increased by \$16.0 million. Sales tax receipts were running \$7.0 million ahead of the prior estimate through October, and growth is expected to continue for this source based on some recent positive indications in the national economy about consumer confidence and spending.

The overall severance tax estimate was increased by \$13.3 million. Of this amount, \$10.2 million is attributable to an increase in the estimate for the tax on natural gas and \$3.1 million is attributable to an increase for the tax on oil. As noted previously, the change in the gas estimate is primarily due to the increase in the forecasted price per mcf from \$3.75 to \$4.25.

Other positive changes in tax sources in excess of \$1.0 million included the corporation income tax estimate, which was increased by \$5.0 million, the insurance premiums tax estimate,

which was increased by \$3.0 million, and the estate tax estimate, which was increased by \$2.0 million.

The relatively strong growth in the estimates of the liquor gallonage and liquor enforcement taxes is based on collections through October as well as the implementation of Sunday sales in a number of cities.

**FY 2005.** SGF receipts are estimated to be \$4.469 billion in FY 2005, a decrease of \$14.4 million or 0.3 percent when compared to the newly revised FY 2004 figure. The overall FY 2005 growth rate would be 1.9 percent under the aforementioned assumption that the Governor would opt to pay tax refunds in the traditional manner. This figure represents slower growth relative to the comparable FY 2004 figure largely because the \$45.7 million in federal grant funding is not expected to repeat in FY 2005. Total taxes in FY 2005 would have grown 3.6 percent over the new FY 2004 estimate if the latter did not contain the amnesty and property and car tax estimates and if refunds were to be paid in the more timely manner. Details of this estimate are shown in Table 1.

Modest growth is expected to continue in the "base" estimates (adjusted for the tax refund deceleration and tax amnesty provisions) of individual income and sales taxes in FY 2005, based on the expectations that the economic recovery will continue and that KPI growth will accelerate. The compensating use tax, however, is expected to remain virtually flat throughout the forecast period. The overall severance tax estimate for FY 2005 is \$12 million lower than the FY 2004 estimate, based largely on the assumptions that prices of both oil and gas will decrease somewhat and that gas production will continue to decline.

### **Accuracy of Consensus Revenue Estimates**

For 29 years, SGF revenue estimates for Kansas have been developed using the consensus revenue estimating process. Besides the three state agencies identified on the first page, the economists currently involved in the process are Joe Sicilian from the University of Kansas, Ed Olson from Kansas State University, and John Wong from Wichita State University. Each of the entities and individuals involved in the process prepared independent estimates and met on November 3, 2003, to discuss estimates and come to a consensus for each fiscal year.

### STATE GENERAL FUND ESTIMATES

Fiscal Year	Adjusted Original Estimate*	Adjusted Final Estimate**	Actual Receipts	Difference from Original Estimate*		Difference from Final Estimate**	
				Amount	Percent	Amount	Percent
1975	--	\$614.9	\$627.6	--	--	\$12.7	2.1%
1976	\$676.3	699.7	701.2	\$24.9	3.7%	1.4	0.2
1977	760.2	760.7	776.5	16.3	2.1	15.8	2.1
1978	830.1	861.2	854.6	24.5	3.0	(6.5)	(0.8)
1979	945.2	1,019.3	1,006.8	61.6	6.5	(12.5)	(1.2)
1980	1,019.3	1,095.9	1,097.8	78.5	7.7	1.9	0.2
1981	1,197.1	1,226.4	1,226.5	29.4	2.5	0.1	0.0
1982	1,351.3	1,320.0	1,273.0	(78.3)	(5.8)	(47.0)	(3.6)
1983	1,599.2	1,366.9	1,363.6	(235.6)	(14.7)	(3.2)	(0.2)
1984	1,596.7	1,539.0	1,546.9	(49.8)	(3.1)	7.9	0.5
1985	1,697.7	1,679.7	1,658.5	(39.2)	(2.3)	(21.3)	(1.3)
1986	1,731.2	1,666.4	1,641.4	(89.8)	(5.2)	(25.0)	(1.5)
1987	1,903.1	1,764.7	1,778.5	(124.6)	(6.5)	13.8	0.8
1988	1,960.0	2,031.5	2,113.1	153.1	7.8	81.6	4.0
1989	2,007.8	2,206.9	2,228.3	220.5	11.0	21.4	1.0
1990	2,241.2	2,283.3	2,300.5	59.3	2.6	17.2	0.8
1991	2,338.8	2,360.6	2,382.3	43.5	1.9	21.7	0.9
1992	2,478.7	2,454.5	2,465.8	(12.9)	(0.5)	11.3	0.5
1993	2,913.4	2,929.6	2,932.0	18.6	0.6	2.4	0.1
1994	3,040.1	3,126.8	3,175.7	135.6	4.5	48.9	1.6
1995	3,174.4	3,243.9	3,218.8	44.4	1.4	(25.1)	(0.8)
1996	3,428.0	3,409.2	3,448.3	20.3	0.6	39.0	1.1
1997	3,524.8	3,642.4	3,683.8	159.0	4.5	41.4	1.1
1998	3,714.4	3,971.0	4,023.7	309.3	8.3	52.7	1.3
1999	3,844.7	4,051.9	3,978.4	133.7	3.5	(73.4)	(1.8)
2000	4,204.1	4,161.0	4,203.1	(1.0)	0.0	42.1	1.0
2001	4,420.7	4,408.7	4,415.0	(5.7)	(0.1)	6.4	0.1
2002	4,674.5	4,320.6	4,108.9	(565.6)	(12.1)	(211.7)	(4.9)
2003	4,641.0	4,235.6	4,245.6	(395.4)	(9.3)	9.9	0.2

\* The adjusted original estimate is the estimate made in November or December prior to the start of the next fiscal year in July and adjusted to account for legislation enacted, if any, which affected receipts to the SGF.

\*\* The final estimate made in March or April is the adjusted original estimate plus or minus changes subsequently made by the Consensus Estimating Group. It also includes the estimated impact of legislation on receipts.

The table (above) presents estimates compared to actual receipts since FY 1975, the fiscal year for which the current process was initiated. First, the adjusted original estimate is compared to actual collections and then the final estimate is compared to actual receipts. In each of the last two fiscal years, actual receipts have been slightly lower than original estimates.

As might be expected, there has usually been a smaller difference between actual receipts and the final estimate because only three months remained in the fiscal year when the final estimate was made. In the last 15 fiscal years, the most significant shortfall in receipts relative to the final estimate was FY 2002 (4.9 percent); while the largest percentage underestimate occurred in FY 1994 (1.6 percent).

## Concluding Comments

Consensus revenue estimates are based on current federal and state laws and their current interpretation, including the provision of law enacted in 2003 that would defer \$50 million in tax refunds from FY 2004 until FY 2005. The Consensus group will meet again in April to revise these estimates. Developments which occur between the November and April meeting will be taken into account at that time.

**Table 1**  
**State General Fund Receipts**  
**(In Thousands)**

	Consensus Estimates, November 3, 2003					
	FY 2003		FY 2004 (Revised)		FY 2005	
	Amount	Percent Increase	Amount	Percent Increase	Amount	Percent Increase
<b>Property Tax:</b>						
Motor Carrier	\$ 15,729	(12.9) %	\$ 17,500	11.3 %	\$ 18,000	2.9 %
General Property	0	0.0	13,600	---	400	(97.1)
Motor Vehicle	0	0.0	1,700	---	1,200	(29.4)
Total	<u>\$ 15,729</u>	<u>(12.9) %</u>	<u>\$ 32,800</u>	<u>108.5 %</u>	<u>\$ 19,600</u>	<u>(40.2) %</u>
<b>Income Taxes:</b>						
Individual	\$ 1,750,054	(4.3) %	\$ 1,855,000	6.0 %	\$1,850,000	(0.3)
Corporation	105,222	12.0	120,000	14.0	110,000	(8.3)
Financial Inst.	31,120	11.5	34,250	10.1	34,250	0.0
Total	<u>\$ 1,886,396</u>	<u>(3.3) %</u>	<u>\$ 2,009,250</u>	<u>6.5 %</u>	<u>\$1,994,250</u>	<u>(0.7)</u>
Estate/Succession	\$ 46,952	(2.4) %	\$ 46,250	(1.5) %	\$ 48,250	4.3 %
<b>Excise Taxes:</b>						
Retail Sales	\$ 1,567,722	6.6 %	\$ 1,635,000	4.3 %	\$ 1,685,000	3.1 %
Compensating Use	225,923	(3.3)	220,000	(2.6)	225,000	2.3
Cigarette	129,250	169.0	130,000	0.6	128,000	(1.5)
Tobacco Prod.	4,510	4.8	4,900	8.6	5,000	2.0
Cereal Malt Bev.	2,273	(4.5)	2,500	10.0	2,500	0.0
Liquor Gallonage	14,802	1.2	16,000	8.1	16,500	3.1
Liquor Enforce.	38,833	3.8	41,750	7.5	44,000	5.4
Liquor Dr. Places	6,847	3.5	7,400	8.1	7,700	4.1
Corp. Franchise	31,090	67.9	35,000	12.6	36,000	2.9
Severance	72,775	30.7	85,450	17.4	73,450	(14.0)
Gas	56,261	34.6	67,850	20.6	57,150	(15.8)
Oil	16,515	18.9	17,600	6.6	16,300	(7.4)
Total	<u>\$ 2,094,025</u>	<u>10.7 %</u>	<u>\$ 2,178,000</u>	<u>4.0 %</u>	<u>\$ 2,223,150</u>	<u>2.1 %</u>
<b>Other Taxes:</b>						
Insurance Prem.	\$ 94,455	11.2 %	\$ 95,000	0.6 %	\$ 95,000	0.0 %
Miscellaneous	4,427	82.9	4,500	1.6	4,500	0.0
Total	<u>\$ 98,882</u>	<u>13.2 %</u>	<u>\$ 99,500</u>	<u>0.6 %</u>	<u>\$ 99,500</u>	<u>0.0 %</u>
<b>Total Taxes</b>	<b>\$ 4,141,984</b>	<b>3.6 %</b>	<b>\$ 4,365,800</b>	<b>5.4 %</b>	<b>\$ 4,384,750</b>	<b>0.4 %</b>
<b>Other Revenues:</b>						
Interest	\$ 19,075	(50.7) %	\$ 12,800	(32.9) %	\$ 21,500	68.0 %
Net Transfers	(13,036)	---	6,300	(148.3)	9,500	---
Ag. Earn. & Misc.	97,556	89.5	98,700	1.2	53,500	(45.8)
Total Other Revenue	<u>\$ 103,595</u>	<u>(7.5) %</u>	<u>\$ 117,800</u>	<u>13.7 %</u>	<u>\$ 84,500</u>	<u>(28.3) %</u>
<b>Total Receipts</b>	<b><u>\$ 4,245,579</u></b>	<b>3.3 %</b>	<b><u>\$ 4,483,600</u></b>	<b>5.6 %</b>	<b><u>\$ 4,469,250</u></b>	<b>(0.3) %</b>

**Table 2**  
**State General Fund Receipts – Comparison of Estimates for FY 2004**  
**Made on April 22, 2003, as adjusted, with those made on November 3, 2003**

	Estimate* 4/22/03	Revised Estimate 11/3/03	Difference
<b>Property Tax:</b>			
Motor Carrier	\$ 17,500	\$ 17,500	\$ 0
General Property	13,778	13,600	(178)
Motor Vehicle	2,122	1,700	(422)
Total	<u>\$ 33,400</u>	<u>\$ 32,800</u>	<u>\$ (600)</u>
<b>Income Taxes:</b>			
Individual	\$ 1,891,000	\$ 1,855,000	\$ (36,000)
Corporation	115,000	120,000	5,000
Financial Inst.	34,250	34,250	0
Total	<u>\$ 2,040,250</u>	<u>\$ 2,009,250</u>	<u>\$ (31,000)</u>
Estate/Succession	\$ 44,250	\$ 46,250	\$ 2,000
<b>Excise Taxes:</b>			
Retail Sales	\$ 1,619,000	\$ 1,635,000	\$ 16,000
Compensating Use	241,000	220,000	(21,000)
Cigarette	145,000	130,000	(15,000)
Tobacco Prod.	4,900	4,900	0
Cereal Malt Bev.	2,600	2,500	(100)
Liquor Gallonage	15,200	16,000	800
Liquor Enforce.	41,250	41,750	500
Liquor Dr. Places	7,400	7,400	0
Corp. Franchise	35,000	35,000	0
Severance	72,150	85,450	13,300
Gas	57,650	67,850	10,200
Oil	14,500	17,600	3,100
Total	<u>\$ 2,183,500</u>	<u>\$ 2,178,000</u>	<u>\$ (5,500)</u>
<b>Other Taxes:</b>			
Insurance Prem.	\$ 92,000	\$ 95,000	\$ 3,000
Miscellaneous	4,000	4,500	500
Total	<u>\$ 96,000</u>	<u>\$ 99,500</u>	<u>\$ 3,500</u>
Total Taxes	\$ 4,397,400	\$ 4,365,800	\$ (31,600)
<b>Other Revenues:</b>			
Interest	\$ 12,000	\$ 12,800	\$ 800
Net Transfers	6,815	6,300	(515)
Ag. Earn. & Misc.	55,448	98,700	43,252
Total Other Revenue	<u>\$ 74,263</u>	<u>\$ 117,800</u>	<u>\$ 43,537</u>
Total Receipts	<u>\$ 4,471,663</u>	<u>\$ 4,483,600</u>	<u>\$ 11,937</u>

\* As adjusted for legislation enacted subsequent to that meeting and for the accelerator provisions.

**Table 3**  
**State General Fund Receipts – Comparison of Revised Estimates for FY 2004**  
**with Assumption Governor will Waive Refund Deceleration Provisions**

	Revised Estimate 11/3/03	Refund Decelerations Waived *	Difference
<b>Property Tax:</b>			
Motor Carrier	\$ 17,500	\$ 17,500	\$ 0
General Property	13,600	13,600	0
Motor Vehicle	1,700	1,700	0
<b>Total</b>	<b>\$ 32,800</b>	<b>\$ 32,800</b>	<b>\$ 0</b>
<b>Income Taxes:</b>			
Individual	\$ 1,855,000	\$ 1,819,000	\$ (36,000)
Corporation	120,000	110,000	(10,000)
Financial Inst.	34,250	34,000	(250)
<b>Total</b>	<b>\$ 2,009,250</b>	<b>\$ 1,963,000</b>	<b>\$ (46,250)</b>
Estate/Succession	\$ 46,250	\$ 46,000	\$ (250)
<b>Excise Taxes:</b>			
Retail Sales	\$ 1,635,000	\$ 1,633,000	\$ (2,000)
Compensating Use	220,000	219,000	(1,000)
Cigarette	130,000	130,000	0
Tobacco Prod.	4,900	4,900	0
Cereal Malt Bev.	2,500	2,500	0
Liquor Gallonage	16,000	16,000	0
Liquor Enforce.	41,750	41,500	(250)
Liquor Dr. Places	7,400	7,400	0
Corp. Franchise	35,000	35,000	0
Severance	85,450	85,200	(250)
Gas	67,850	67,600	(250)
Oil	17,600	17,600	0
<b>Total</b>	<b>\$ 2,178,000</b>	<b>\$ 2,174,500</b>	<b>\$ (3,500)</b>
<b>Other Taxes:</b>			
Insurance Prem.	\$ 95,000	\$ 95,000	\$ 0
Miscellaneous	4,500	4,500	0
<b>Total</b>	<b>\$ 99,500</b>	<b>\$ 99,500</b>	<b>\$ 0</b>
<b>Total Taxes</b>	<b>\$ 4,365,800</b>	<b>\$ 4,315,800</b>	<b>\$ (50,000)</b>
<b>Other Revenues:</b>			
Interest	\$ 12,800	\$ 12,800	\$ 0
Net Transfers	6,300	6,300	0
Ag. Earn. & Misc.	98,700	98,700	0
<b>Total Other Revenue</b>	<b>\$ 117,800</b>	<b>\$ 117,800</b>	<b>\$ 0</b>
<b>Total Receipts</b>	<b>\$ 4,483,600</b>	<b>\$ 4,433,600</b>	<b>\$ (50,000)</b>

\* See provisions of 2003 HB 2444 granting the Governor this power.

Table 4

**State General Fund Receipts – Comparison of Estimates for FY 2005  
with Assumption Governor will Waive Refund Deceleration Provisions**

	Estimate <u>11/3/03</u>	Refund Decelerations <u>Waived *</u>	<u>Difference</u>
<b>Property Tax:</b>			
Motor Carrier	\$ 18,000	\$ 18,000	\$ 0
General Property	400	400	0
Motor Vehicle	<u>1,200</u>	<u>1,200</u>	<u>0</u>
Total	\$ 19,600	\$ 19,600	\$ 0
<b>Income Taxes:</b>			
Individual	\$ 1,850,000	\$ 1,886,000	\$ 36,000
Corporation	110,000	120,000	10,000
Financial Inst.	<u>34,250</u>	<u>34,500</u>	<u>250</u>
Total	\$ 1,994,250	\$ 2,040,500	\$ 46,250
Estate/Succession	\$ 48,250	\$ 48,500	\$ 250
<b>Excise Taxes:</b>			
Retail Sales	\$ 1,685,000	\$ 1,687,000	\$ 2,000
Compensating Use	225,000	226,000	1,000
Cigarette	128,000	128,000	0
Tobacco Prod.	5,000	5,000	0
Cereal Malt Bev.	2,500	2,500	0
Liquor Gallonage	16,500	16,500	0
Liquor Enforce.	44,000	44,250	250
Liquor Dr. Places	7,700	7,700	0
Corp. Franchise	36,000	36,000	0
Severance	73,450	73,700	250
Gas	57,150	57,400	250
Oil	<u>16,300</u>	<u>16,300</u>	<u>0</u>
Total	\$ 2,223,150	\$ 2,226,650	\$ 3,500
<b>Other Taxes:</b>			
Insurance Prem.	\$ 95,000	\$ 95,000	\$ 0
Miscellaneous	<u>4,500</u>	<u>4,500</u>	<u>0</u>
Total	\$ 99,500	\$ 99,500	\$ 0
<b>Total Taxes</b>	\$ 4,384,750	\$ 4,434,750	\$ 50,000
<b>Other Revenues:</b>			
Interest	\$ 21,500	\$ 21,500	\$ 0
Net Transfers	9,500	9,500	0
Ag. Earn. & Misc.	<u>53,500</u>	<u>53,500</u>	<u>0</u>
Total Other Revenue	\$ 84,500	\$ 84,500	\$ 0
<b>Total Receipts</b>	<u>\$ 4,469,250</u>	<u>\$ 4,519,250</u>	<u>\$ 50,000</u>

\* See provisions of 2003 HB 2444 granting the Governor this power.



November 3, 2003

**To:** Governor Kathleen Sebelius and Legislative Budget Committee

**From:** Kansas Legislative Research Department  
Kansas Division of the Budget

**Re:** Initial SGF Memo for FY 2004 (Revised) and FY 2005

The Consensus Estimating Group met today to revise the estimates for FY 2004 and to make its first estimates for FY 2005.

A more detailed memo will be available soon which contains the economic forecast for Kansas upon which the forecasts are based, as well as a discussion of other factors influencing the individual source estimates.

For FY 2004, the estimate was increased by \$ 11.9 million, or 0.3 percent, above the previous estimate (made in April and subsequently adjusted for legislation enacted after that point and for the implementation of the property tax accelerator provisions by the Governor in August). The overall revised SGF estimate of \$4.484 billion represents a 5.6 percent growth forecast above final FY 2003 receipts. It should be noted that the FY 2004 receipt estimate includes one-time monies (tax amnesty, property and motor vehicle taxes, the deferral of \$50 million in tax refunds, and revenues from the federal government) which for the most part are not expected to continue as an ongoing part of SGF receipts. The longer version of the memo will contain additional details.

The initial estimate for FY 2005 is \$4.469 billion, which is \$14.3 million, or 0.3 percent, below the newly revised FY 2004 figure. The FY 2005 growth rate is heavily influenced by removal of many of the one-time monies from the SGF-receipts base, in addition to the economic forecast for the state.

Table 1 compares the new FY 2004 and FY 2005 estimates with actual receipts from FY 2003. Table 2 shows the changes in the FY 2004 estimates. Tables 3 and 4 compare the new estimates with a second set of estimates under the assumption that the Governor subsequently will decide to use a statutory prerogative to pay an additional \$50 million in refunds by the end of FY 2004 that under current law are scheduled to be decelerated until FY 2005. Under such a contingency, FY 2004 receipts would be reduced by \$50 million, while the new FY 2005 estimate would be increased by \$50 million.

**Table 1**  
**State General Fund Receipts**  
**(In Thousands)**

	Consensus Estimates, November 3, 2003					
	FY 2003		FY 2004 (Revised)		FY 2005	
	Amount	Percent Increase	Amount	Percent Increase	Amount	Percent Increase
<b>Property Tax:</b>						
Motor Carrier	\$15,729	(12.9) %	\$17,500	11.3 %	\$18,000	2.9 %
General Property	0	0.0	13,600	---	400	(97.1)
Motor Vehicle	0	0.0	1,700	---	1,200	(29.4)
<b>Total</b>	<b>\$15,729</b>	<b>(12.9)</b>	<b>\$32,800</b>	<b>108.5</b>	<b>\$19,600</b>	<b>(40.2)</b>
<b>Income Taxes:</b>						
Individual	\$1,750,054	(4.3)	\$1,855,000	6.0	\$1,850,000	(0.3)
Corporation	105,222	12.0	120,000	14.0	110,000	(8.3)
Financial Inst.	31,120	11.5	34,250	10.1	34,250	0.0
<b>Total</b>	<b>\$1,886,396</b>	<b>(3.3)</b>	<b>\$2,009,250</b>	<b>6.5</b>	<b>\$1,994,250</b>	<b>(0.7)</b>
Estate/Succession	\$46,952	(2.4)	\$46,250	(1.5)	\$48,250	4.3
<b>Excise Taxes:</b>						
Retail Sales	\$1,567,722	6.6	\$1,635,000	4.3	\$1,685,000	3.1
Compensating Use	225,923	(3.3)	220,000	(2.6)	225,000	2.3
Cigarette	129,250	169.0	130,000	0.6	128,000	(1.5)
Tobacco Prod.	4,510	4.8	4,900	8.6	5,000	2.0
Cereal Malt Bev.	2,273	(4.5)	2,500	10.0	2,500	0.0
Liquor Gallonage	14,802	1.2	16,000	8.1	16,500	3.1
Liquor Enforce.	38,833	3.8	41,750	7.5	44,000	5.4
Liquor Dr. Places	6,847	3.5	7,400	8.1	7,700	4.1
Corp. Franchise	31,090	67.9	35,000	12.6	36,000	2.9
Severance	72,775	30.7	85,450	17.4	73,450	(14.0)
Gas	56,261	34.6	67,850	20.6	57,150	(15.8)
Oil	16,515	18.9	17,600	6.6	16,300	(7.4)
<b>Total</b>	<b>\$2,094,025</b>	<b>10.7</b>	<b>\$2,178,000</b>	<b>4.0</b>	<b>\$2,223,150</b>	<b>2.1</b>
<b>Other Taxes:</b>						
Insurance Prem.	\$94,455	11.2	\$95,000	0.6	\$95,000	0.0
Miscellaneous	4,427	82.9	4,500	1.6	4,500	0.0
<b>Total</b>	<b>\$98,882</b>	<b>13.2</b>	<b>\$99,500</b>	<b>0.6</b>	<b>\$99,500</b>	<b>0.0</b>
<b>Total Taxes</b>	<b>\$4,141,984</b>	<b>3.6</b>	<b>\$4,365,800</b>	<b>5.4</b>	<b>\$4,384,750</b>	<b>0.4</b>
<b>Other Revenues:</b>						
Interest	\$19,075	(50.7)	\$12,800	(32.9)	\$21,500	68.0
Net Transfers	(13,036)	---	6,300	(148.3)	9,500	---
Ag. Earn. & Misc.	97,556	89.5	98,700	1.2	53,500	(45.8)
<b>Total Other Revenue</b>	<b>\$103,595</b>	<b>(7.5)</b>	<b>\$117,800</b>	<b>13.7</b>	<b>\$84,500</b>	<b>(28.3)</b>
<b>Total Receipts</b>	<b><u>\$4,245,579</u></b>	<b>3.3</b>	<b><u>\$4,483,600</u></b>	<b>5.6</b>	<b><u>\$4,469,250</u></b>	<b>(0.3)</b>

**Table 2**  
**State General Fund Receipts – Comparison of Estimates for FY 2004**  
**Made on April 22, 2003, as adjusted, with those made on November 3, 2003**

	Estimate* 4/22/03	Revised Estimate 11/3/03	Difference
<b>Property Tax:</b>			
Motor Carrier	\$17,500	\$17,500	\$0
General Property	\$13,778	13,600	(178)
Motor Vehicle	2,122	1,700	(422)
Total	<u>\$33,400</u>	<u>\$32,800</u>	<u>(\$600)</u>
<b>Income Taxes:</b>			
Individual	\$1,891,000	\$1,855,000	(\$36,000)
Corporation	115,000	120,000	5,000
Financial Inst.	34,250	34,250	0
Total	<u>\$2,040,250</u>	<u>\$2,009,250</u>	<u>(\$31,000)</u>
Estate/Succession	\$44,250	\$46,250	\$2,000
<b>Excise Taxes:</b>			
Retail Sales	\$1,619,000	\$1,635,000	\$16,000
Compensating Use	241,000	220,000	(21,000)
Cigarette	145,000	130,000	(15,000)
Tobacco Prod.	4,900	4,900	0
Cereal Malt Bev.	2,600	2,500	(100)
Liquor Gallonage	15,200	16,000	800
Liquor Enforce.	41,250	41,750	500
Liquor Dr. Places	7,400	7,400	0
Corp. Franchise	35,000	35,000	0
Severance	72,150	85,450	13,300
Gas	57,650	67,850	10,200
Oil	14,500	17,600	3,100
Total	<u>\$2,183,500</u>	<u>\$2,178,000</u>	<u>(\$5,500)</u>
<b>Other Taxes:</b>			
Insurance Prem.	\$92,000	\$95,000	\$3,000
Miscellaneous	4,000	4,500	500
Total	<u>\$96,000</u>	<u>\$99,500</u>	<u>\$3,500</u>
<b>Total Taxes</b>	<b>\$4,397,400</b>	<b>\$4,365,800</b>	<b>(\$31,600)</b>
<b>Other Revenues:</b>			
Interest	\$12,000	\$12,800	\$800
Net Transfers	6,815	6,300	(515)
Ag. Earn. & Misc.	55,448	98,700	43,252
Total Other Revenue	<u>\$74,263</u>	<u>\$117,800</u>	<u>\$43,537</u>
<b>Total Receipts</b>	<b><u>\$4,471,663</u></b>	<b><u>\$4,483,600</u></b>	<b><u>\$11,937</u></b>

\* As adjusted for legislation enacted subsequent to that meeting and for the accelerator provisions.

Table 3

**State General Fund Receipts – Comparison of Revised Estimates for FY 2004  
with Assumption Governor will Waive Refund Deceleration Provisions**

	Revised Estimate 11/3/03	Refund Decelerations Waived *	Difference
Property Tax:			
Motor Carrier	\$17,500	\$17,500	\$0
General Property	13,600	13,600	0
Motor Vehicle	1,700	1,700	0
Total	<u>\$32,800</u>	<u>\$32,800</u>	<u>\$0</u>
Income Taxes:			
Individual	\$1,855,000	\$1,819,000	\$(36,000)
Corporation	120,000	110,000	(10,000)
Financial Inst.	34,250	34,000	(250)
Total	<u>\$2,009,250</u>	<u>\$1,963,000</u>	<u>\$(46,250)</u>
Estate/Succession	\$46,250	\$46,000	\$(250)
Excise Taxes:			
Retail Sales	\$1,635,000	\$1,633,000	(\$2,000)
Compensating Use	220,000	219,000	(1,000)
Cigarette	130,000	130,000	0
Tobacco Prod.	4,900	4,900	0
Cereal Malt Bev.	2,500	2,500	0
Liquor Gallonage	16,000	16,000	0
Liquor Enforce.	41,750	41,500	(250)
Liquor Dr. Places	7,400	7,400	0
Corp. Franchise	35,000	35,000	0
Severance	85,450	85,200	(250)
Gas	67,850	67,600	(250)
Oil	17,600	17,600	0
Total	<u>\$2,178,000</u>	<u>\$2,174,500</u>	<u>\$(3,500)</u>
Other Taxes:			
Insurance Prem.	\$95,000	\$95,000	\$0
Miscellaneous	4,500	4,500	0
Total	<u>\$99,500</u>	<u>\$99,500</u>	<u>\$0</u>
Total Taxes	\$4,365,800	\$4,315,800	\$(50,000)
Other Revenues:			
Interest	\$12,800	\$12,800	\$0
Net Transfers	6,300	6,300	0
Ag. Earn. & Misc.	98,700	98,700	0
Total Other Revenue	<u>\$117,800</u>	<u>\$117,800</u>	<u>\$0</u>
Total Receipts	<u><u>\$4,483,600</u></u>	<u><u>\$4,433,600</u></u>	<u><u>\$(50,000)</u></u>

\* See provisions of 2003 HB 2444 granting the Governor this power.

**Table 4**  
**State General Fund Receipts – Comparison of Estimates for FY 2005**  
**with Assumption Governor will Waive Refund Deceleration Provisions**

	Estimate 11/3/03	Refund Decelerations Waived *	Difference
<b>Property Tax:</b>			
Motor Carrier	\$18,000	\$18,000	\$0
General Property	400	400	0
Motor Vehicle	1,200	1,200	0
Total	<u>\$19,600</u>	<u>\$19,600</u>	<u>\$0</u>
<b>Income Taxes:</b>			
Individual	\$1,850,000	\$1,886,000	\$36,000
Corporation	110,000	120,000	10,000
Financial Inst.	34,250	34,500	250
Total	<u>\$1,994,250</u>	<u>\$2,040,500</u>	<u>\$46,250</u>
Estate/Succession	\$48,250	\$48,500	\$250
<b>Excise Taxes:</b>			
Retail Sales	\$1,685,000	\$1,687,000	\$2,000
Compensating Use	225,000	226,000	1,000
Cigarette	128,000	128,000	0
Tobacco Prod.	5,000	5,000	0
Cereal Malt Bev.	2,500	2,500	0
Liquor Gallonage	16,500	16,500	0
Liquor Enforce.	44,000	44,250	250
Liquor Dr. Places	7,700	7,700	0
Corp. Franchise	36,000	36,000	0
Severance	73,450	73,700	250
Gas	57,150	57,400	250
Oil	16,300	16,300	0
Total	<u>\$2,223,150</u>	<u>\$2,226,650</u>	<u>\$3,500</u>
<b>Other Taxes:</b>			
Insurance Prem.	\$95,000	\$95,000	\$0
Miscellaneous	4,500	4,500	0
Total	<u>\$99,500</u>	<u>\$99,500</u>	<u>\$0</u>
<b>Total Taxes</b>	<b>\$4,384,750</b>	<b>\$4,434,750</b>	<b>\$50,000</b>
<b>Other Revenues:</b>			
Interest	\$21,500	\$21,500	\$0
Net Transfers	9,500	9,500	0
Ag. Earn. & Misc.	53,500	53,500	0
Total Other Revenue	<u>\$84,500</u>	<u>\$84,500</u>	<u>\$0</u>
<b>Total Receipts</b>	<b><u>\$4,469,250</u></b>	<b><u>\$4,519,250</u></b>	<b><u>\$50,000</u></b>

\* See provisions of 2003 HB 2444 granting the Governor this power.

January 9, 2003

To: Legislative Budget Committee

## STATE GENERAL FUND (SGF) RECEIPTS July through December, FY 2004

This is the second monthly report based on the revised estimate of SGF receipts in FY 2004 made by the Consensus Estimating Group on November 3, 2004. The figures in both the "Estimate" and "Actual" columns under FY 2004 on the following table include actual amounts received in July-October. Thus, the report essentially deals with the difference between the estimated and actual receipts in November and December.

**Total receipts through December of FY 2004 were \$17.6 million or 0.8 percent above the estimate.** The component of SGF receipts from taxes only was \$12.7 million, 0.6 percent above the estimate. Total receipts through November of FY 2004 were \$17.7 million or 1.0 percent above the estimate, and taxes only were \$13.6 million or 0.8 percent above the estimate.

Generally, a comparison of only two months is of little value in identifying a trend for the remainder of the year, as the timing and processing of receipts can substantially affect comparisons of the estimate with actual receipts over such a short period of time. In addition, receipts through the end of January will include sales tax receipts on Christmas business and individual income tax estimated payments due in January. Both of these factors will make the January report more helpful in ascertaining a picture of SGF receipts.

Taxes that **exceeded** the estimate by more than \$1.0 million were: corporate income (\$12.1 million); individual income (\$8.9 million); insurance premiums (\$6.2 million); and motor carrier property (\$1.4 million). It should be noted that approximately \$10 million in corporate income tax amnesty receipts were received in December, which had not been part of the total estimated corporate income tax receipts for FY 2004.

Taxes that fell **below** the estimate by more than \$1.0 million were: retail sales (\$5.6 million); compensating use (\$4.6 million); cigarette (\$2.5 million); and financial institutions privilege (\$2.1 million).

Interest earnings exceeded the estimate by \$0.3 million, while agency earnings exceeded the estimate by \$4.8 million. Net transfers to the SGF were \$0.2 million less than the estimate.

Total SGF receipts through December of FY 2004 were \$246.6 million or 12.4 percent above FY 2003 for the same period. **Tax receipts only for the same period exceeded FY 2003 by \$131.0 million or 6.5 percent.** Individual income and corporate income taxes increased by \$44.6 million (5.2 percent) and \$44.4 million (181.9 percent), respectively, when comparing this period to the same period in FY 2003. Retail sales taxes increased by \$24.7 million (3.1 percent)—again, comparing the July through December receipts of FY 2004 to FY 2003.

This report excludes the July 1 deposit to the SGF of \$450 million certificate of indebtedness. This certificate will be discharged prior to

HOUSE APPROPRIATIONS

DATE 1-21-2004  
ATTACHMENT 4

**STATE GENERAL FUND RECEIPTS**  
**July-December, FY 2004**  
**(dollar amounts in thousands)**

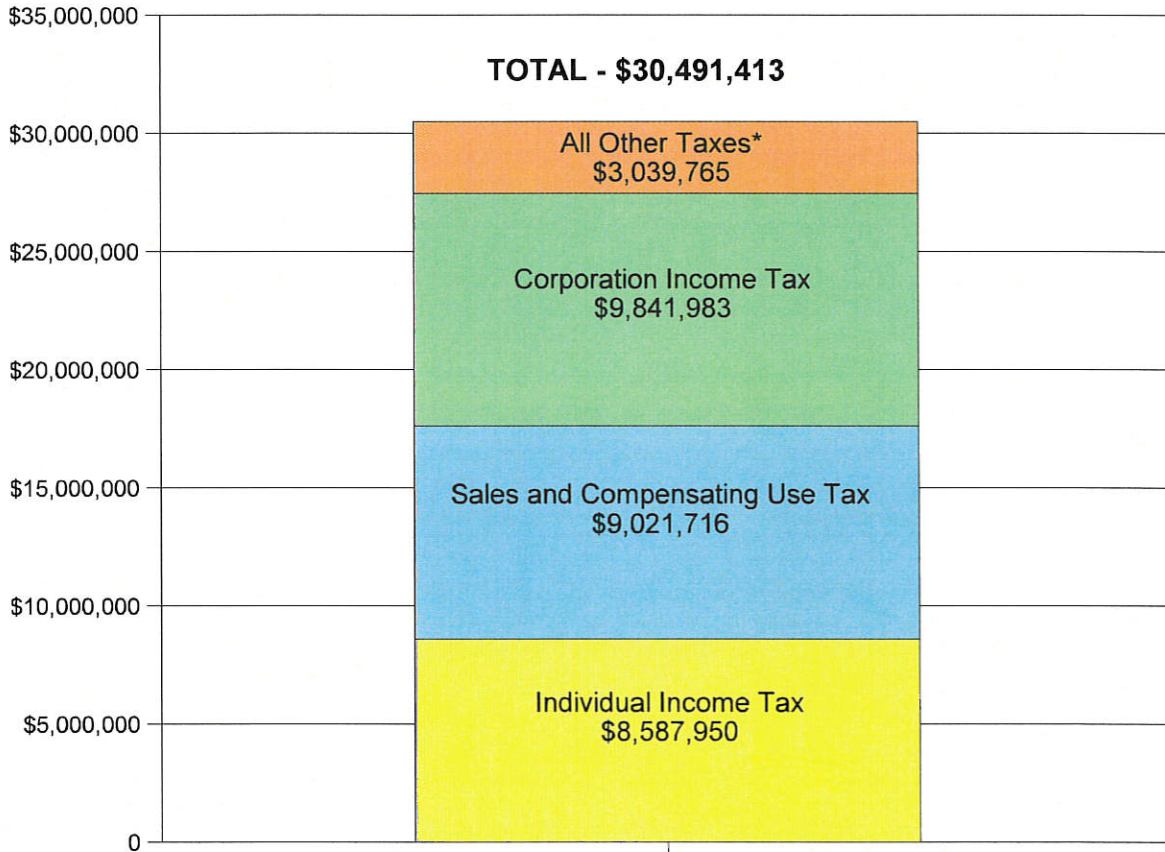
	Actual FY 2003	FY 2004			Percent Increase-- FY 2004 Over	
		Estimate*	Actual	Difference	FY 2003	Estimate
<b>Property Tax:</b>						
Motor Carriers	\$ 9,968	\$ 10,200	\$ 11,613	\$ 1,413	16.5 %	13.9 %
General Property	0	0	0	0	--	--
Motor Vehicle	0	800	663	(137)	--	(17.1)
<b>Total</b>	<b>\$ 9,968</b>	<b>\$ 11,000</b>	<b>\$ 12,276</b>	<b>\$ 1,276</b>	<b>23.2 %</b>	<b>11.6 %</b>
<b>Income Taxes:</b>						
Individual	\$ 863,331	\$ 899,000	\$ 907,949	\$ 8,949	5.2 %	1.0 %
Corporation	24,438	56,800	68,884	12,084	181.9	21.3
Financial Inst.	12,051	15,500	13,358	(2,142)	10.8	(13.8)
<b>Total</b>	<b>\$ 899,820</b>	<b>\$ 971,300</b>	<b>\$ 990,190</b>	<b>\$ 18,890</b>	<b>10.0 %</b>	<b>1.9 %</b>
Estate/Succession Tax	\$ 27,939	\$ 23,000	\$ 22,148	\$ (852)	(20.7) %	(3.7) %
<b>Excise Taxes:</b>						
Retail Sales	\$ 794,711	\$ 825,000	\$ 819,415	\$ (5,585)	3.1 %	(0.7) %
Comp. Use	106,628	110,000	105,422	(4,578)	(1.1)	(4.2)
Cigarette	64,703	64,500	62,029	(2,471)	(4.1)	(3.8)
Tobacco Prod.	2,290	2,450	2,382	(68)	4.0	(2.8)
Cereal Malt Bev.	1,188	1,275	1,162	(113)	(2.2)	(8.9)
Liquor Gallonage	7,589	8,000	8,370	370	10.3	4.6
Liquor Enforce.	19,102	20,500	20,104	(396)	5.2	(1.9)
Liquor Drink	3,316	3,550	3,558	8	7.3	0.2
Corp. Franchise	8,200	11,500	11,916	416	45.3	3.6
Severance	30,542	42,100	41,666	(434)	36.4	(1.0)
Gas	22,157	33,500	33,128	(372)	49.5	(1.1)
Oil	8,384	8,600	8,538	(62)	1.8	(0.7)
<b>Total</b>	<b>\$ 1,038,268</b>	<b>\$ 1,088,875</b>	<b>\$ 1,076,023</b>	<b>\$ (12,852)</b>	<b>3.6 %</b>	<b>(1.2) %</b>
<b>Other Taxes:</b>						
Insurance Prem.	\$ 34,554	\$ 34,700	\$ 40,933	\$ 6,233	18.5 %	18.0 %
Miscellaneous	2,073	2,000	2,037	37	(1.7)	1.8
<b>Total</b>	<b>\$ 36,627</b>	<b>\$ 36,700</b>	<b>\$ 42,970</b>	<b>\$ 6,270</b>	<b>17.3 %</b>	<b>17.1 %</b>
<b>Total Taxes</b>	<b>\$ 2,012,623</b>	<b>\$ 2,130,875</b>	<b>\$ 2,143,608</b>	<b>\$ 12,733</b>	<b>6.5 %</b>	<b>0.6 %</b>
<b>Other Revenue:</b>						
Interest	\$ 10,498	\$ 6,200	\$ 6,491	\$ 291	(38.2) %	4.7 %
Transfers (net)	(70,310)	(700)	(862)	(162)	--	(23.1)
Agency Earnings and Misc.	27,858	73,250	78,021	4,771	180.1	6.5
<b>Total</b>	<b>\$ (31,955)</b>	<b>\$ 78,750</b>	<b>\$ 83,651</b>	<b>\$ 4,901</b>	<b>-- %</b>	<b>6.2 %</b>
<b>TOTAL RECEIPTS</b>	<b>\$ 1,980,669</b>	<b>\$ 2,209,625</b>	<b>\$ 2,227,259</b>	<b>\$ 17,634</b>	<b>12.4 %</b>	<b>0.8 %</b>

\* Consensus estimate as of November 3, 2003. Excludes \$450 million to State General Fund due to issuance of a certificate of indebtedness.

NOTES: Details may not add to totals due to rounding.

4-2

**COMPONENTS OF PHASE TWO TAX AMNESTY COLLECTIONS  
Through January 14, 2004**



\*All Other Taxes include: withholding, estate, liquor enforcement, and retail liquor

Source: Kansas Department of Revenue



4-4

**DISTRIBUTION OF PHASE TWO TAX AMNESTY COLLECTIONS  
Through January 14, 2004**

<u>Tax Source</u>	<u>Amount to State General Fund</u>	<u>Amount to State Highway Fund</u>	<u>Amount to Local Governments</u>	<u>Other</u>	<u>TOTAL</u>
Individual Income	\$ 8,587,950	\$ -	\$ -	\$ -	\$ 8,587,950
Retail Sales	5,562,645	298,506	2,035,846	0	7,896,997
Retail Compensating Use	366,358	19,684	10,020	0	396,063
Consumers Compensating Use	593,855	31,915	102,886	0	728,656
Corporation Income	9,841,983	0	0	0	9,841,983
Withholding	2,237,065	0	0	0	2,237,065
Estate	606,882	0	0	0	606,882
Liquor Enforcement	65,685	0	0	0	65,685
Retail Liquor	32,533	0	91,093	6,507	130,133
<b>TOTAL</b>	<b>\$ 27,894,955</b>	<b>\$ 350,106</b>	<b>\$ 2,239,846</b>	<b>\$ 6,507</b>	<b>\$ 30,491,413</b>

Source: Kansas Department of Revenue