Approved: April 19, 2005
Date

MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 8:00 A.M. on March 31, 2005, in Room 514-S of the Capitol.

All members were present except:
Representative Newton- excused
Representative Sawyer- excused

Committee staff present:
Alan Conroy, Legislative Research Department
J. G. Scott, Legislative Research Department
Amy VanHouse, Legislative Research Department
Reagan Cussimanio, Legislative Research Department
Julian Efird, Legislative Research Department
Jim Wilson, Revisor of Statutes
Nikki Feuerborn, Administrative Assistant
Shirley Jepson, Committee Secretary

Conferees appearing before the committee:

Others attending:
See attached list.

- Attachment 1 Explainer on **Senate Substitute for HB 2037**
- Attachment 2 Retirement Subcommittee report on **HB 2075** and **H Sub for SB 270**
- Attachment 3 Information from Attorney General Phill Kline relating to private prisons

Discussion on Retirement Issues:
S Sub for HB 2037 - KPERS, benefits and contributions
HB 2075 - Plan design and contribution modifications to death and disability benefit plan for certain public employees.
SB 270 - Appropriations for FY2006 and FY2007 for various state agencies

Julian Efird, Legislative Research Department, explained the long-term retirement funding impact of **SB 20** and explained **Senate Substitute for HB 2037** includes a number of provisions that amend the Kansas Public Employees Retirement System (KPERS) retirement plans, the KPERS death and long-term disability benefits plan, and the Regents retirement plan (Attachment 1). Dr. Efird explained that because of action taken by the 2004 Legislature to split apart the state and school contribution rates for KPERS in order to reflect that portion of the state budget that is contributed to KPERS on behalf of each school district and include in the school district's budget reflected as state aid, the fiscal impact is greater than expected making it necessary for the Legislature to review this action and the possibility of reversing the action. This prior legislative action, plus the legislative action of the past two years relating to the increase in contribution rates, results in an impact between the current year and 2033, of approximately $18 billion on state and local government. **Senate Sub for HB 2037** is an attempt to combine the rates and fix the problem created by previous legislation.

Chair Neufeld presented the Appropriations Retirement Subcommittee report and recommendation on **HB 2075** and the Subcommittee report and recommendation on **House Substitute for SB 270** (Attachment 2).

Julian Efird, Legislative Research Department, explained that **HB 2075** would increase participating employer contributions from 0.6 percent to 0.8 percent of payroll effective July 1, 2005, and to 1.0 percent of payroll effective July 1, 2006; expand the KPERS Board of Trustees authority to administer the program within available funds and to adjust plan design as needed, with the maximum disability benefits set at not more than 66 2/3 percent of salary; maintain participating employer paid basic life insurance at 150 percent of annual compensation; and provide that benefits would not be reduced for employees who were disabled prior to the effective date of January 1, 2006. A provision was included that would authorize KPERS to borrow from the Pooled Money Investment Board during FY 2006 if fund balances became too low for maintaining benefits payments for either life insurance or disability.

MINUTES OF THE House Appropriations Committee at 8:00 A.M. on March 31, 2005 in Room 514-S of the Capitol.

Dr. Efird explained that the Retirement Subcommittee recommends several concepts from bills pertaining to the $15,000 cap on working after KPERS retirement to be included in **SB 270**.

In response to a request from Chair Neufeld for the Committee's reaction to the Retirement Subcommittee report on allowing retirees to return to work and eliminate the $15,000 earnings limit, it was noted by the Committee:

- There is an apparent shortage of teachers in some areas.
- This legislation allows for a pilot program and will sunset in three years with those on the program to continue for one additional year.
- All current retirees should be included and eligible for the program.
- Because of the time element in school budget funding, the pilot program could stipulate who is eligible for the program.
- Important to address the unfunded liability issue.

No further action was taken by the Committee at this time.

Information from Attorney General Phill Kline in response to Committee questions from the previous day relating to private prisons, was distributed to the Committee (Attachment 3).

Representative Sharp moved to approve the Committee minutes of March 7, March 8, March 9, March 10 and March 11, as written. The motion was seconded by Representative Light. Motion carried.

The meeting was adjourned at 9:15 a.m. The next meeting of the Committee will be "on call of the Chair"

Melvin Neufeld, Chair

HOUSE APPROPRIATIONS COMMITTEE
March 31, 2005
9:00 A.M.

NAME	REPRESENTING
Vicki Lynn Nelson	Budget
Kim Fowler	Judicial Branch
ERIC Sexton	WSU

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March 24, 2005

Senate Substitute for HB 2037

Senate Substitute for HB 2037 includes a number of provisions that amend the Kansas Public Employees Retirement System (KPERS) retirement plans, the KPERS death and long-term disability benefits plan, and the Regents retirement plan. In addition, other provisions implement new programs, including one that would establish a Regents long-term disability benefits plan and another that would allow nurses at state institutions to be exempt for three years from the $15,000 cap on working after KPERS retirement. The items in the substitute bill include:

1. **KPERS Death and Long-Term Disability Plan**. This provision would increase the current rate of 0.6 percent to 1.0 percent for participating employer contribution to the KPERS death and long-term disability benefits plan, effective July 1, 2005. The rate increase would raise participating employer payments for the state, judges, school, and local groups that participate in the death and long-term disability benefits plan offered by KPERS. Additional authority would be delegated to the KPERS Board of Trustees to make changes in plan design to operate the program within available financial resources and statutory guidelines as modified by Senate Sub. for HB 2037. This item would provide that benefits for eligible employees disabled prior to the effective date of this legislation would remain unchanged, if the KPERS Board modifies the plan for a subsequent period, and would maintain participating employer-provided basic life insurance at 150 percent of annual compensation.

2. **KPERS Death and Long-Term Disability Plan – Technical**. This provision would adjust the maximum duration of KPERS long-term disability benefit payments for employees disabled after age 65 to insure compliance with the federal requirements.

3. **KPERS Optional Life Insurance**. This provision would allow participating employers to affiliate for KPERS optional group life insurance either on January 1 or on July 1. The provision also would allow term coverage for spouses and dependents of KPERS members who would be able to purchase optional term life insurance for family members.

4. **Spouse KPERS Benefits**. This item would reduce the length of service required from 15 to 10 years for a surviving spouse to be eligible for retirement benefits if a member of KPERS or the Retirement System for Judges dies before reaching normal retirement eligibility for unreduced benefits.

5. **Regents Retirement Plan**. This provision would update current law regarding the Regents retirement plan for faculty and other unclassified employees of the State Board of Regents and the Regents institutions. This item would allow the use of mutual funds offered by a bank or approved non-bank custodian under section 401(a) of the Internal Revenue Code as a financial instrument for investing retirement funds. The other changes in the bill would make technical compliance revisions in order to conform with federal requirements.

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ATTACHMENT 1

6. **Regents Disability Benefits**. This provision would provide an additional long-term disability benefit to some faculty and other unclassified employees of the State Board of Regents. In addition, the bill would modify current law regarding contributions that the Board of Regents makes in paying both the employer and employee amounts into the employee's retirement account if a staff member becomes disabled and is eligible for coverage by the KPERS death and long-term benefits plan. This item would address the contractual rights of current Regents retirement plan participants and would divide those who might become disabled into four categories, depending upon length of service and retirement benefits accrued. Current and future employees who do not fall into one of the new groups with accrued benefits would receive the continuing employer and employee retirement contributions on a pre-tax basis for five years after becoming disabled, and thereafter would receive the Regents employer and employee contribution payment as a post-tax disability benefit under the new plan.

7. **Recombining State and School Calculations**. This provision would consolidate the KPERS state group and school group employer contribution rates by specifying that the rates will be calculated as if the two groups were combined in any year when the state rate is less than the combined rate.

8. **Outlawed Warrants**. This provision would authorize the Director of Accounts and Reports to reissue outlawed KPERS warrants based on a charge of 10 percent of the amount of the warrant or $30, whichever is less.

9. **Working After Retirement.** This provision would allow a three-year trial plan suspending the current statutory $15,000 cap for nurses who retire or are retired from a state agency and who return to work at the same state agency. The participating institutions would pay the actuarially calculated employer contribution to KPERS for each retired nurse who works under this plan if that nurse is retired from a KPERS state institution. The trial plan would be limited in scope to retired nurses who work for one of the following state institutions: Larned State Hospital, Osawatomie State Hospital, Rainbow Mental Facility, Kansas Neurological Institute, Parsons State Hospital and Training Center, the Kansas Soldiers Home at Fort Dodge, and the Kansas Veterans Home at Winfield.

Background

The Senate Subcommittee on KPERS Issues reviewed various bills and held public hearings on March 8, 2005, then presented its recommendations to the Senate Ways and Means Committee on March 15, 2005. The Senate Ways and Means Committee adopted the Subcommittee report and its recommendations at its meeting of March 15, 2005, then amended the following items into Senate Substitute for HB 2037 on March 21, 2005.

Item 1, concerning death and long-term disability benefits, would increase the participating employer contribution rate for the KPERS death and long-term disability benefits plan as requested by the KPERS Board of Trustees and recommended by the Governor originally in SB 291. The Senate Ways and Means Committee concurred with the recommendations of its Subcommittee on KPERS Issues to adopt the funding rate increase in SB 291 and to add certain specific provisions from 2005 HB 2075 that was recommended for introduction by the Joint Committee on Pensions, Investments and Benefits.

The fiscal note for item 1 addresses both the state and local governments that would be impacted by the rate increase. This item would implement the Governor's FY 2006 budget recommendation to increase by 0.4 percent the state and school employer contributions to the KPERS death and long-term disability benefits plan. The *Governor's Budget Report* includes $16.8 million, with $13.6 million financed from the State General Fund, for FY 2006, and an additional $3.2 million would be paid beginning July 1, 2005, by local units of government and other KPERS participating employers that are not part of the state, judges, and school groups.

Item 2, concerning death and long-term disability benefits, was requested by the KPERS Board of Trustees and recommended in HB 2037 by the Joint Committee on Pensions, Investments and Benefits. There would be an increasing fiscal impact over time for this change, with estimated costs in FY 2006 of $8,000; FY 2007 of $30,000; and FY 2008 of $57,000. Fully implemented, the cost impact could reach $250,000 in 15 to 20 years, according to the KPERS actuarial estimates.

Item 3, concerning optional life insurance, was requested by the KPERS Board of Trustees and recommended in SB 22 by the Joint Committee on Pensions, Investments and Benefits. Affiliation under current law is limited to only once per year on January 1. KPERS does not anticipate any additional costs associated with this item as introduced. The Senate Ways and Means Committee added the additional optional life insurance for family members on recommendation of its Subcommittee on KPERS Issues. No fiscal note was available, but all additional costs would be paid by KPERS members and not participating employers.

Item 4, concerning spouse KPERS benefits, initially was sponsored by Senator Lee and cosponsored by the other 39 members of the Senate in SB 95. KPERS estimates additional unfunded actuarial liability would result from this bill totaling $951,000, of which the state share would be $621,000 and the local cost would be $330,000. In order to pay the actuarial costs over time, the additional first year contributions for the state would be $41,100 and for the local units would be $21,800.

Item 5, concerning the Regents retirement plan, was requested by the State Board of Regents and recommended in SB 99 by the Legislative Educational Planning Committee. The bill resulted from comprehensive reviews by outside consultants to update the operation of the Regents retirement plan. The Board of Regents states that SB 99 would not have a fiscal effect on the state or any of its employees in the Regents system.

Item 6, concerning Regents disability benefits, was requested by the State Board of Regents and originally introduced in SB 279. Regents unclassified employees who participate in the Regents retirement plan also participate in the KPERS death and long-term disability benefits plan that is available to all other state employees who participate in the regular KPERS plan for retirement. The Board of Regents makes available an additional benefit to Regents unclassified employees since some retirement calculations only apply to other state employees who participate in the regular KPERS retirement plan and not to members of the Regents retirement plan. Under current law, members of the Regents retirement plan who become disabled have both the employee and employer contributions paid by their employer while disabled. Federal law passed in 2001 limits these additional contributions for disabled participants to a maximum of five years, depending upon their length of service and other accrued benefits. This bill was recommended by the Board of Regents after two outside consultants reviewed the Regents retirement plan. The Budget Director indicates that this item would have a fiscal effect on both the Regents institutions for the contributions made on behalf of the employee's retirement as well as the employee for the level of retirement and disability benefits. This item would not have a fiscal effect on either the Regents institutions' contributions or the employee's benefits, if the employee becomes disabled within five years of retirement. This period is covered under current law and would continue to be covered under this provision, according to the fiscal note.

Item 7, concerning the state and school groups' contribution rates, was requested by the KPERS Board of Trustees and recommended in SB 20 by the Joint Committee on Pensions, Investments and Benefits. The fiscal note indicates that without this amendment, the state would contribute approximately $1.0 billion more in employer contributions through the end of the amortization period in FY 2033. This estimated savings is based on the KPERS current actuarial valuation adjusted for actual investment performance during December 31, 2004. Another provision in current law would continue to require that KPERS school employer contributions paid by the state shall be distributed to the schools districts and reflected in their annual operating budgets. This item as introduced and incorporated into the substitute bill would shift a portion of the future annual state payments away from school district budgets and have that amount reflected in the state portion of annual budgets when the combined rate is greater than the state's actuarial rate, beginning in FY 2010. The multiyear fiscal impact is indicated in the following table, with the net savings impact shown in the totals after FY 2033.

Fiscal Impact Item 7
Annual Change in State Paid KPERS Contributions
for State and School Groups
(In Millions of Dollars)

Fiscal Year	State Cost (Savings)	School Cost (Savings)	Total Cost (Savings)
2006	0.0	0.0	0.0
2007	0.0	0.0	0.0
2008	0.0	0.0	0.0
2009	0.0	0.0	0.0
2010	4.0	0.0	4.0
2011	14.7	0.0	14.7
2012	22.9	0.0	22.9
2013	30.4	0.0	30.4
2014	38.4	0.0	38.4
2015	46.8	0.0	46.8
2016	56.0	0.0	56.0
2017	69.6	0.0	69.6
2018	80.1	0.0	80.1
2019	89.9	(5.3)	84.6
2020	95.5	(24.8)	70.7
2021	100.9	(47.2)	53.7
2022	106.1	(73.2)	33.0
2023	111.3	(103.0)	8.3
2024	116.4	(135.7)	(19.3)
2025	121.9	(171.9)	(50.0)
2026	127.5	(212.1)	(84.6)

Fiscal Year	State Cost (Savings)	School Cost (Savings)	Total Cost (Savings)
2027	133.6	(256.0)	(122.4)
2028	139.5	(305.4)	(165.9)
2029	146.2	(344.6)	(198.4)
2030	153.1	(376.4)	(223.3)
2031	160.4	(408.6)	(248.2)
2032	168.6	(440.4)	(271.8)
2033	177.2	(476.0)	(398.8)
Totals	2,311.1	(3,380.6)	(1,069.5)

Item 8, concerning outlawed warrants, was requested by the KPERS Board of Trustees and recommended as SB 21 by the Joint Committee on Pensions, Investments and Benefits. The original provision as introduced had higher limits, but was replaced on recommendation by the Subcommittee on KPERS Issues with the maximum amounts for outlawed warrants specified in SB 46 that passed the Senate earlier in the 2005 Session. KPERS estimates administrative costs of $1,000 to $2,000 per year. The Senate Ways and Means Committee concurred with using the provisions from SB 46.

Item 9 concerns working after retirement. Under current law, state employees who return to work after retirement and are employed by any state agency would be subject to an earnings cap of $15,000 in any calendar year. When a retired state employee reaches the $15,000 threshold, then the employee either must stop working for the remainder of that calendar year or KPERS will cease paying the monthly retirement benefits for the remainder of that calendar year. The Senate Subcommittee on SRS Institutions referred this issue for consideration by the Senate Subcommittee on KPERS Issues as it pertains to nurses at SRS institutions. KPERS reports that the fiscal note would not be significant, according to the actuary, since there would be relatively few employees eligible if the proposal addresses only nurses at state institutions.

Kansas Public Employees Retirement System
Long-Term Retirement Funding Impact of Senate Bill 20

	State Group Projections					School Group Projections					State/School Groups Combined		
	Employer Contribution Rate		Employer Contributions (in millions)			Employer Contribution Rate		Employer Contributions (in millions)			Employer Contributions (in millions)		
	Current	With SB 20	Current	With SB 20	Cost (Savings)	Current	With SB 20	Current	With SB 20	Cost (Savings)	Current	With SB 20	Cost (Savings)
FY 2005	4.87%	4.87%	$ 41.1	$ 41.1	$ -	4.87%	4.87%	$ 127.6	$ 127.6	$ -	$ 168.7	$ 168.7	$ -
FY 2006	5.27%	5.27%	45.5	45.5	-	5.27%	5.27%	141.7	141.7	-	187.2	187.2	$ -
FY 2007	5.77%	5.77%	51.1	51.1	-	5.77%	5.77%	159.0	159.0	-	210.1	210.1	-
FY 2008	6.37%	6.37%	57.9	57.9	-	6.37%	6.37%	179.8	179.8	-	237.7	237.7	-
FY 2009	6.97%	6.97%	65.1	65.1	-	6.97%	6.97%	201.6	201.6	-	266.7	266.7	-
FY 2010	7.15%	7.57%	68.6	72.6	4.0	7.57%	7.57%	224.2	224.2	-	292.8	296.8	4.0
FY 2011	6.68%	8.17%	65.8	80.5	14.7	8.17%	8.17%	247.9	247.9	-	313.7	328.4	14.7
FY 2012	6.51%	8.77%	65.9	88.8	22.9	8.77%	8.77%	272.6	272.6	-	338.5	361.4	22.9
FY 2013	6.45%	9.37%	67.1	97.5	30.4	9.37%	9.37%	298.5	298.5	-	365.6	396.0	30.4
FY 2014	6.38%	9.97%	68.3	106.7	38.4	9.97%	9.97%	325.8	325.8	-	394.1	432.5	38.4
FY 2015	6.32%	10.57%	69.6	116.4	46.8	10.57%	10.57%	354.6	354.6	-	424.2	471.0	46.8
FY 2016	6.23%	11.17%	70.7	126.7	56.0	11.17%	11.17%	385.1	385.1	-	455.8	511.8	56.0
FY 2017	5.81%	11.77%	67.9	137.5	69.6	11.77%	11.77%	417.3	417.3	-	485.2	554.8	69.6
FY 2018	5.72%	12.37%	68.9	149.0	80.1	12.37%	12.37%	451.5	451.5	-	520.4	600.5	80.1
FY 2019	5.60%	12.83%	69.6	159.5	89.9	12.97%	12.83%	487.7	482.4	(5.3)	557.3	641.9	84.6
FY 2020	5.49%	12.93%	70.5	166.0	95.5	13.57%	12.93%	526.2	501.4	(24.8)	596.7	667.4	70.7
FY 2021	5.38%	12.99%	71.4	172.3	100.9	14.17%	12.99%	567.1	519.9	(47.2)	638.5	692.2	53.7
FY 2022	5.26%	13.00%	72.2	178.3	106.1	14.77%	13.00%	610.5	537.3	(73.2)	682.7	715.7	33.0
FY 2023	5.12%	12.96%	72.7	184.0	111.3	15.37%	12.96%	656.7	553.7	(103.0)	729.4	737.7	8.3
FY 2024	4.98%	12.90%	73.2	189.6	116.4	15.97%	12.90%	705.7	570.0	(135.7)	778.9	759.6	(19.3)
FY 2025	4.81%	12.81%	73.2	195.1	121.9	16.57%	12.81%	757.7	585.8	(171.9)	830.9	780.9	(50.0)
FY 2026	4.61%	12.69%	72.8	200.3	127.5	17.17%	12.69%	812.9	600.8	(212.1)	885.7	801.1	(84.6)
FY 2027	4.39%	12.55%	71.9	205.5	133.6	17.77%	12.55%	871.5	615.5	(256.0)	943.4	821.0	(122.4)
FY 2028	4.15%	12.36%	70.5	210.0	139.5	18.37%	12.36%	933.6	628.2	(305.4)	1,004.1	838.2	(165.9)
FY 2029	3.84%	12.13%	67.7	213.9	146.2	18.67%	12.13%	983.6	639.0	(344.6)	1,051.3	852.9	(198.4)
FY 2030	3.49%	11.85%	63.9	217.0	153.1	18.74%	11.85%	1,023.8	647.4	(376.4)	1,087.7	864.4	(223.3)
FY 2031	3.03%	11.46%	57.6	218.0	160.4	18.67%	11.46%	1,058.0	649.4	(408.6)	1,115.6	867.4	(248.2)
FY 2032	2.41%	10.94%	47.6	216.2	168.6	18.43%	10.94%	1,083.7	643.3	(440.4)	1,131.3	859.5	(271.8)
FY 2033	1.51%	10.14%	31.0	208.2	177.2	17.94%	10.14%	1,094.8	618.8	(476.0)	1,125.8	827.0	(298.8)
Totals thru FY 2033			$ 1,859.3	$ 4,170.4	$ 2,311.1			$ 15,960.7	$ 12,580.1	$ (3,380.6)	$ 17,820.0	$ 16,750.5	$ (1,069.5)
SGF thru FY 2033					*$ 1,040.0*					*$ (3,380.6)*			*$ (2,340.6)*

NOTE: Savings will continue after the current amortization period ends in 2033. For example, projected savings would be approximately $336 million in FY 2034 and $497 million in FY 2035.

House Appropriations Retirement Subcommittee

Recommendation and Report on Death and Disability Modifications (HB 2075)

Recommendation and Report on Working After KPERS Retirement (H Sub SB 270)

March 30, 2005

The Subcommittee recommends HB 2075 concerning the death and long-term disability benefits plan, with amendments, favorable for passage by the House Committee on Appropriations. The Subcommittee also recommends several concepts from bills pertaining to $15,000 cap on working after KPERS retirement to be included in SB 270.

Melvin Neufeld, Chairperson

Bill Feuerborn

Doug Gatewood.

Brenda Landwehr

Bill McCreary

Sharon Schwartz

Shari Weber

HOUSE APPROPRIATIONS

DATE 3-31-2005

ATTACHMENT 2

HOUSE SUBCOMMITTEE REPORT ON KPERS ISSUES

Brief

House Bill 2075 would modify the funding and benefits for the KPERS death and long-term disability benefits plan for active public employees. The major provisions of the bill would:

increase participating employer contributions from 0.6 percent to 0.8 percent of payroll effective July 1, 2005, and to 1.0 percent of payroll effective July 1, 2006;

expand the KPERS Board of Trustees authority to administer the program within available funds and to adjust plan design as needed, with the maximum disability benefits set at not more than 66 2/3 percent of salary;

maintain participating employer paid basic life insurance at 150 percent of annual compensation; and

provide that benefits would not be reduced for employees who were disabled prior to the effective date of January 1, 2006.

A provision was included that would authorize KPERS to borrow from the Pooled Money Investment Board during FY 2006 if fund balances became too low for maintaining benefits payments for either life insurance or disability, with repayment required after rates increased in FY 2007.

Background

The KPERS death and long-term disability benefits plan currently provides group life insurance and long-term disability benefits for approximately 160,000 individuals who are employed by 1,450 participating public employers. The death and disability program is funded by participating employer contributions equal to 0.6 percent of covered payroll for those active employees who are covered. Because of state budgetary issues, 14 quarters of participating employer contributions were deferred between FY 2000 and FY 2005 when the contributions resumed. During that same period, the reserve fund's balance declined from $194 million in FY 2000 to an estimated $11 million by the end of FY 2005.

The Joint Committee on Pensions, Investments and Benefits recommended introduction of HB 2075 in order to raise participating employer contribution rates by 0.2 percent and to modify the benefits offered by the plan in adjusting to the financial resources that would be generated by its recommendation. The KPERS Board of Trustees had recommended an FY 2006 increase in contributions to 1.0 percent and also some of the adjustments in plan benefits to operate within financial resources that would be generated by a 0.4 percent increase in rates. The *Governor's Budget Report* for FY 2006 includes a recommendation for state and school funding that adds financing for a 1.0 percent rate recommended by the KPERS Board of Trustees.

The fiscal note for HB 2075 indicates that the KPERS Board of Trustees would need to reduce disability benefits from 66 2/3 percent to 60 percent for employees who become disabled after December 31, 2006, in order to adjust benefits within financial resources available after July 1, 2005, based on an increase of 0.2 percent in contribution rate authorized in the bill. The fiscal impact of the bill would increase the costs for both state and local governments that participate in this plan, and to reduce benefits for participants.

Estimated Cost of HB 2075 – FY 2006
Contributions in Millions of Dollars

	Current Rate 0.6%	New Rate 0.8%	Increased Cost
State General Fund	20.1	26.9	6.8
State All Other Funds	5.2	6.8	1.6
Subtotal – State	25.3	33.7	8.4
Local Governments	6.7	9.0	2.3
Total – All Units	32.0	42.7	10.7

The House Appropriations Subcommittee on KPERS Issues held a public hearing on March 16, 2005, to review HB 2075. The review continued on March 25, 2005, when the Secretary of Administration was invited to discuss alternative administration of the plan.

The Subcommittee reviewed the conference committee agreement on the FY 2006 Mega Appropriations Bill in which the rate of 0.8 percent was funded for state and school contributions. Information provided by KPERS staff indicates that the cashflow during FY 2006 could drop the fund below a $2.0 million balance , while maintaining death benefits at 150 percent rather than dropping life insurance to 100 percent of compensation. The Subcommittee agreed to raise the rate to 1.0 percent in FY 2007 in order to rebuild the cash reserve balance and to maintain death benefits at 150 percent. Also authorized was borrowing from the Pooled Money Investment Board if an emergency should arise during FY 2006, with payback in FY 2007 when the ending balance of the fund is projected at $4.9 million after the two rate increases in the bill.

Death & Disability Program Cash Flow Projections

0.8% Contribution Rate in FY 2006 & 1.0% Contribution Rate in FY 2007

2-7

	FY 2005	FY 2006	FY 2007	FY 2008
Group Insurance Reserve				
Beginning of Fiscal Year	$ 29,182,453	$ 10,994,621	$ 2,302,798	$ 4,910,360
Additions				
Employer Contributions	$ 31,142,710	$ 42,681,440	$ 55,085,734	$ 56,876,020
Investment Income	186,130	66,156	35,886	64,339
Total Additions	$ 31,328,840	$ 42,747,596	$ 55,121,620	$ 56,940,359
Deductions				
Disability	$ (34,806,734)	$ (36,294,765)	$ (36,915,453)	$ (37,761,991)
Basic Group Life Insurance	(13,079,938)	(13,444,654)	(13,881,605)	(14,332,757)
Administration	(1,630,000)	(1,700,000)	(1,717,000)	(1,734,170)
Total Deductions	$ (49,516,672)	$ (51,439,419)	$ (52,514,058)	$ (53,828,918)
Group Insurance Reserve				
End of Fiscal Year	$ 10,994,621	$ 2,302,798	$ 4,910,360	$ 8,021,801

Note: *Assumes 0.8% employer contribution rate effective July 1, 2005, 1.0% employer contribution rate effective July 1, 2006, 150% employer-provided basic life insurance, and disability plan design modifications effective January 1, 2006.*

House Subcommittee Report on KPERS Issues

Brief

Legislation on working after KPERS retirement would suspend the $15,000 annual earnings limitation for a four-year period from July 1, 2005 through June 30, 2009, for certain state institutions' nurses, school teachers, school administrators, and state computer personnel. Beginning July 1, 2008, no new participants would be eligible under this provision, and those previously hired under the provision would continue without the cap until June 30, 2009, after which date the earnings limitation to be restored, unless the 2008 Legislature would renew the legislation. The bill would require the KPERS Board of Trustees to review the impact by collecting designated data and reporting the results to the Legislature and Governor by January 1 each year that the suspension is in effect.

The legislation would allow nurses at specific state institutions who retire or who are retired to return to work for a state institution after retirement and without a $15,000 cap on their earnings while drawing KPERS retirement benefits, if they are filling a position at one of the following state agencies: Larned State Hospital, Osawatomie State Hospital, Rainbow Mental Facility, Kansas Neurological Institute, Parsons State Hospital and Training Center, the Kansas Soldiers Home at Fort Dodge, and the Kansas Veterans Home at Winfield.

The legislation would allow public school teachers who retire or who are retired to return to work for the same school district after retirement and without a $15,000 cap on their earnings while drawing KPERS retirement benefits, if they are filling a position identified by the State Board of Education as a hard-to-fill teaching position.

The legislation would allow public school administrators who retire or who are retired to return to work for the same school district after retirement and without a $15,000 cap on their earnings while drawing KPERS retirement benefits, if they are filling a position authorized by the school district's board.

The legislation would allow computer personnel working in state agencies who retire or who are retired to return to work for a state agency after retirement and without a $15,000 cap on their earnings while drawing KPERS retirement benefits, if they are filling a position defined by the Secretary of Administration as a hard-to-fill computer technology position.

The legislation also would require after the effective date of July 1, 2005, that all KPERS participating employers with retired KPERS members working after retirement to notify KPERS about the employment of such retired members, and in certain cases, to pay an employer contribution for each such employee that would be equal to the KPERS actuarially determined participating employer contribution rate plus 4.0 percent. This provision would be permanent and not scheduled for repeal on June 30, 2009. This provision would apply to all KPERS participating employers who hire any retired KPERS members after retirement, if the retiree receives total annual compensation above $15,000. For retirees paid $15,000 or more in a calendar year, the participating employer would pay the actuarial contribution rate plus 4.0

percent on the total amount of compensation in that calendar year. For retirees paid less than $15,000 in a calendar year, the participating employer would not pay any contributions for a retired employee.

The Subcommittee recommends that all provisions be included in House Substitute for SB 270 and that the bill be recommended favorable for passage.

Background

Under current law, if a KPERS retiree returns to work with the same employer from which retired, the retiree's annual earnings are limited to $15,000 in a calendar year. Upon reaching that threshold, the retiree must either stop working to continue to receive KPERS retirement benefits, or have KPERS retirement benefit payments suspended for the remainder of the calendar year if earnings are in excess of $15,000.

The House Appropriations Subcommittee on KPERS Issues reviewed several proposed bills that address working after retirement after the House Appropriations Committee held a public hearing on HB 2379 that concerns working after retirement. The Subcommittee heard from Representative Otto on HB 2251 that also concerns working after retirement.

No fiscal note was available on the House Substitute for SB 270. However, KPERS staff indicated that a positive fiscal note should result from the payments required from participating KPERS employers that might hire retired KPERS members if they were paid $15,000 or more in a calendar year.

MEMORANDUM

TO: Private Prison Research File
Phill Kline, Attorney General
David Davies, Deputy Attorney General

FROM: C.W. Klebe

DATE: March 30, 2005

RE: Private Prison Reasearch;
Harvard Law Review Article

In May of 2002, the Harvard Law Review issued an article entitled, "A Tale of Two Systems: Cost, Quality, and Accountability in Private Prisons" 115 Harv. L. Rev. 1868, where the Harvard Law Review Association put forth a basic and essentially neutral comparison of public versus private prison systems.

Without going too in depth on the issues surrounding the rising competition between the government regulated public prisons and the government contracted out for private prisons, the authors compare the "costs" and "qualities" of each, and concludes that private prisons, at this point in their life span, cost less and are "no worse" in quality.

The article lists private prisons as housing 87, 369 state and federal prisoners by the end of 2000 (22.7% more than the 71,208 in 1999); other current sources list this number at around 120,000 inmates under the control of private prisons today. *See*, Adrian T. Moore, Private Prisons: Quality Corrections at a Lower Cost, www.rppi.org/PRISON.PDF. Obvious from these numbers is a steady rise in the number of inmates being housed in private prisons.

The authors begin their formal discussion of the private prisons, by putting forth some of the objections surrounding said prisons. These objections listed include, inter alia: (1) that these prisons are unconstitutional violations of the nondelegation doctrine; and (2) the idea that these privately run facilities will become corrupt, political influences. To these arguments the authors counter that: (1) as long as correctional policy is well-defined and implemented with oversight, the delegation argument appears fruitless on the federal level; and (2) there are just as many groups in the public prison sector, i.e., the California prison guard union, who use their power to sway legislation in their favor.

As to the comparison of the "costs" and "quality" between public and private prisons, the authors begin with a qualifying statement that cost and quality are hard to compare between the two systems because the definitions of the terms are different between the two systems. For instance, the authors note that amongst the public prison system, the budget will not include such expenses as medical, legal, and personnel administration services as those expenses are handled through other state agencies; whereas the private prisons will include such expenses. Other arenas of saving money include the design and construction stages, the lack of purchasing restrictions and subcontracting quotas, lower wages for labor, minimization of guards to watch prisoners (through innovative design techniques that public prisons may not be able to implement), and the reduced amount of civil service rules for the private industry cuts down on administrative expenses.

Another area where the authors feel the private prisons are better suited than public prisons, or at least they should be in theory, is when it comes to quality and accountability. Included among this argument, are the areas of "Legal Accountability" and "Market Accountability". Under "market accountability" the authors list such factors as contract renewal and loss of stock price as important reasons for private prisons to maintain accountability for the manner in which their prisons are run.

Under "legal accountability," the authors discuss a few different factors which theoretically should keep a private corporation from running their institution outside the legal bounds. First, the authors note that juries are more apt to large damage awards when the defendant is a corporation rather than the government. As support for this contention, the authors list the $1.65 million damage awarded to 2000 inmates in a private prison in Ohio. Second, the authors note the Supreme Court's decision in Richardson v. McKnight, 521 U.S. 399 (1997) where the Court found that private prison guards are not allowed the protection of "qualified immunity" which is extended to the prison guards of public prisons for their discretionary functions, when those functions do not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v.Fitzgerald, 457 U.S. 800 (1982). The final area of "legal accountability" mentioned by the authors, is the notion of deference. Traditionally, courts and the judiciary have not wanted to second guess the decisions of the political branches when it comes to prison suits. The fact that a corporation is running the prison involved in a suit before a court, may negate that traditional deference.

Some solutions offered for current and future problems, include increasing the flow of information between the private prisons and the public; mandated training programs that mirror public prisons; disclosing conflicts of interest; and requiring these private firms to carry the necessary insurance to guard against civil liability judgments.

In summation, it appears that the authors believe the cost cutting capabilities of corporations, in constructing and maintaining their prisons, combined with the, what can only be described as, fear of "accountability," currently places the private prison system ahead of the public prison system in both cost and quality...however those terms are defined.

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Senator Derek Schmidt
15th District

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During Session

December 12, 2003

Honorable Phill Kline
Attorney General
2nd Floor, Memorial Building
120 S.W. 10th Avenue
Topeka, Kansas 66612

Dear General Kline:

Your Task Force Committee on Alternative Incarceration Options met December 12, 2003, in Yates Center. The committee conducted a full day of hearings on whether the State of Kansas should authorize construction and operation of one or more private prisons in Kansas for the purposes of improving public safety by expanding prison capacity in our state, increasing flexibility in the corrections system, and easing the cost that incarceration imposes on taxpayers.

The committee is of the opinion that public safety considerations will soon require Kansas to expand the capacity of our state prison system. To that end, the committee is supportive of the concept of authorizing construction and operation of a privately owned prison in Kansas *provided* sufficient statutory and contractual protections are in place to provide proper state oversight and control of the facility. This report contains a description of our deliberations and our recommendations.

Thank you for entrusting me with responsibility for the work of this Committee. I look forward to working with you to implement this report's recommendations.

Sincerely,

Derek Schmidt

Derek Schmidt
Kansas State Senator
Chairman, Committee on Alternative
Incarceration Options

COMMITTEE MEMBERS

*Derek Schmidt, Kansas State Senator (District 15) (Chairman)
*Doug Martin, Clay County Attorney (Vice Chairman)
Steve Bundy, Rice County Sheriff
Stan Clark, Kansas State Senator (District 40)
*Jeff Goering, Kansas State Representative (District 105)
Jim Hill, Salina Police Chief
**Paul Morrison, Johnson County District Attorney
*Currie Myers, Johnson County Sheriff
Mike O'Neal, Kansas State Representative (District 104)
*Tony Powell, District Court Judge (18th Judicial District)
Gary Steed, Sedgwick County Sheriff
John Vratil, Kansas State Senator (District 11)

***Dwayne Umbarger, Kansas State Senator (District 14)
***Mary Compton, Kansas State Representative (District 13)
***Stanley Dreher, Kansas State Representative (District 9)

* Indicates member attended the Yates Center meeting.
** District Attorney Morrison attended part of the meeting in Yates Center but had to leave early. He was present for most of the testimony and participated in the questioning of conferees but was not present for the committee's deliberations and did not participate in those deliberations.
*** Indicates a legislator who is not a member of the committee but who, at the invitation of the chairman, attended and participated in the Yates Center meeting.

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CONCLUSIONS AND RECOMMENDATIONS

The committee received testimony from persons listed on the agenda and other members of the public. Conferees who appeared before the committee can be grouped into three categories: Providers of neutral information (Biggs, Heim, Dorsey, Kirby*), supporters of authorizing private prisons in Kansas (Houston, Wiggins, Kirby*, Lampe, Call, Taylor, Burkhart, George), and opponents of authorizing private prisons in Kansas (Smith, Wilkinson, Ninemire).

Members of the committee listened to the testimony of all conferees and asked numerous questions of conferees. The committee also heard public discussion from members of the public present at the meeting. The committee also reviewed and considered written comments submitted by the following in support of authorizing construction of one or more private prisons in Kansas:

- Kansas Association of Counties
- Woodson County Board of Commissioners
- Bourbon County Board of Commissioners
- City of Yates Center
- City of Neosho Falls
- Southeast Kansas Regional Planning Commission
- Richard W. Clasen, Editor/Publisher, The Eureka Herald
- Chanute Workforce Development Center, Kansas Department of Human Resources
- Coffey County Office of Emergency Preparedness
- Coffey County Airport Commissioner
- Steve Robb, Director, Business and Technology Institute (Pittsburg State University)
- Jon Hotaling, Director, Coffey County Economic Development
- Larry J. Nelson, President, Piqua State Bank
- Honorable Stanley Dreher, State Representative, District 9
- Honorable C. Fred Lorentz, Chief Judge, 31st Judicial District

The committee then conducted deliberations among its members. The recommendations of the committee were reached by consensus and adopted by unanimous vote of those members present.

*Representative Kirby supports private prisons as good public policy in general but, as an Oklahoma state representative, takes no position on whether constructing one in Kansas is desirable.

Findings and Conclusions

Based on the testimony and upon members' individual knowledge of criminal justice policy and corrections policy in Kansas, the committee made the following findings and reached the following conclusions:

- The principal consideration of criminal justice policy should be the protection of public safety, not the management of prison space.
- Under current law, even taking into account sentencing changes in recent years designed to reduce the demand for prison space, Kansas prisons will reach overall capacity in 2007.
- Kansas prisons already have reached capacity for male inmates assigned to medium and maximum security.
- A proposal currently under consideration in the Kansas Legislature to build an additional cell "pod" at the El Dorado state prison would cost taxpayers more than $7 million and would add 128 maximum-security beds or 256 medium-security beds. The Kansas Sentencing Commission testified that if this additional capacity were built, the Kansas prison system would reach capacity in 2009 – only two years later than without construction of this additional state-owned capacity.
- Current Kansas law prohibits the construction or operation of private prisons in Kansas for the housing of state or local prisoners without additional authorizing legislation.
- Despite the general statutory prohibition on constructing most private prisons in Kansas, at least two private prison facilities currently are operated in Kansas. Corrections Corporation of America operates the juvenile boot camp in Labette County and also operates a major penal facility in Leavenworth that houses federal prisoners for the United States Marshal's Service and for the Department of Homeland Security (former the Immigration and Naturalization Service). The Leavenworth facility is currently undergoing significant expansion. Both facilities have been operated without notable problems and have been supported by their local communities.
- Despite the statutory prohibition on constructing most private prisons in Kansas, the State of Kansas currently relies on private prisons to manage its state inmate population. In recent years, Kansas has contracted with Corrections Corporation of America to house state inmates at a private facility in Colorado. This year, Kansas contracted with CiviGenics to house state inmates at the Limestone County Detention Center, a private facility in Texas.
- Private prisons have a notable record of cost-savings compared with state-owned facilities in the states that use them. Because construction of private prisons is financed by investors, taxpayers avoid the initial cost of construction associated with public facilities.

Because private prisons can contract with other authorities – such as the federal government or other states – to fill beds not needed by the host state, the host state avoids "overhead costs" associated with operating a state prison with more space than the state currently needs. There also is evidence that the operation of private prisons tends to generate efficiencies and drive down costs in the state system that is host to the private facility.

- The State of Kansas could save transportation costs by housing inmates in Kansas rather than in Colorado or Texas.

- Public fiscal policy would be better served if the State could contract with a private prison facility in Kansas, which would pay Kansas taxes and employ Kansas workers, rather than the current policy of contracting with private facilities out-of-state that take taxpayer dollars as well as jobs to other states.

- Corrections policy would be better served by housing Kansas inmates in Kansas – where visitation and other connections to local communities could be more readily maintained – than by sending inmates out-of-state.

- There is at least one community in Kansas apparently willing to play host to a private prison facility.

- More than half of the states in the United States have private prisons. In crafting authorizing legislation, Kansas can learn from the experience of other states.

- Most or all of the problems that have led to criticisms of private prisons operating in other states can be avoided by properly crafted authorizing legislation and well-structured operating contracts. For example, problems of "cherry picking" the most manageable prisoners, liability risks to the state, and the professionalism of private staff all can be addressed by proper authorizing legislation and contract terms.

- Proper legislation that ensures adequate state oversight and coordination of private prisons is essential to the successful use of private prisons as part of the state's corrections policy.

- Senate Bill 275, which is pending before the Committee on Ways and Means, would authorize the State of Kansas to contract for the construction and operation of one or more private prisons in Kansas. Among the notable provisions of Senate Bill 275 are a requirement for cost savings, strong provisions to ensure state oversight and regulation of any private facility, a requirement for indemnification of the state against lawsuits arising from the operation of a private facility, and a provision giving Kansas "bumping rights" for use of the space at any private facility constructed in the state.

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RECOMMENDATIONS

Though committee members might wish circumstances were otherwise, the committee is of the opinion that building more prison space in Kansas is necessary to ensure public safety. The committee has no objection to the State constructing additional publicly owned prison space in the traditional manner.

However, the committee is mindful of the significant financial constraints confronting state government. The committee also is mindful of pending issues regarding the financing of public schools, the financing of higher education, the financing of social services, and the financing of other popular and important state services. The committee questions whether Kansas public opinion would support dedicating sufficient taxpayer funds to prison construction at the expense of other important state priorities.

The committee also doubts that embarking on the expansion of public prison facilities alone will provide sufficient space and flexibility. The committee took particular note of testimony by the Kansas Sentencing Commission that, even with the sentencing adjustments made in recent years to help manage prison space, the investment of more than $7 million in taxpayer funds to construct 256 new medium-security prison beds at the El Dorado Correctional Facility would delay by only two years – from 2007 to 2009 – the filling to capacity of our state prison system.

Therefore, the committee believes it is necessary for the State of Kansas to pursue alternatives to traditional methods of incarceration for state inmates. Noting the broad experience of other states, the Committee believes the Kansas chief executive should have authority to contract for the construction and operation of one or more private prison facilities in Kansas as part of the state's overall approach to corrections policy.

To that end, the Committee recommends enactment of legislation that would authorize the construction and operation of private prisons in Kansas but only with adequate safeguards to ensure cost savings, safe and sound facility operation, adequate state oversight of facility construction and operations, full and proper integration of the private facilities into the overall Kansas corrections system, and the willingness of a local community to play host to a facility. The committee notes that Senate Bill 275 contains provisions intended to achieve these purposes.

Because the state corrections system already has reached capacity for male inmates assigned to medium and maximum security and because the overall state system will reach capacity in 2007, the Committee encourages the Attorney General to advocate adoption of such legislation during the 2004 session of the Kansas Legislature, encourages the Legislature to adopt such legislation, and encourages the Governor to sign it into law.