

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE
SPECIAL LEGISLATIVE SESSION - 2005

The meeting was called to order by Chairman Dwayne Umbarger at 10:05 A.M. on June 20, 2005 in Room 123-S of the Capitol.

All members were present except:

Senator Jean Schodorf- excused
Senator Chris Steineger- excused

Committee staff present:

Norman Furse, Revisor of Statutes
Jill Wolters, Senior Assistant, Revisor of Statutes
Michael Corrigan, Assistant Revisor, Revisor of Statutes Office
Theresa Kiernan, Senior Assistant Revisor of Statutes Office
Mary Torrence, Senior Assistant, Revisor of Statutes Office
Alan Conroy, Director, Kansas Legislative Research Department
J. G. Scott, Kansas Legislative Research Department
Leah Robinson, Kansas Legislative Research Department
Chris Courtwright, Kansas Legislative Research Department
Julian Efird, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Susan Kannarr, Kansas Legislative Research Department
Carolyn Rampey, Kansas Legislative Research Department
Matt Spurgin, Kansas Legislative Research Department
Robert Waller, Kansas Legislative Research Department
Judy Bromich, Administrative Analyst
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Barb Hinton, Executive Director, Legislative Post Auditor, Legislative Division of Post Audit

Others attending:

See attached list.

Chairman Umbarger welcomed everyone to the meeting. He opened the meeting to the following conceptual bill introductions that will be officially introduced in Senate Ways and Means Committee on June 22, 2005, when the Special Legislative Session opens:

Senator Emler moved, with a second by Senator Barone, to introduce a conceptual bill regarding appropriations for school financing. Motion carried on a voice vote.

Senator Barone moved, with a second by Senator Emler, to introduce a conceptual bill regarding five destination casino zone areas with a funding component for education. Motion carried on a voice vote.

Senator Barone moved, with a second by Senator Wysong, to introduce a conceptual bill regarding gaming authorizing two destination casino zones, one in Wyandotte County and the other zone in Southeast Kansas with a funding component. Motion carried on a voice vote.

Senator Barone moved, with a second by Senator Wysong, to introduce a conceptual bill regarding gaming. The bill would be a replica of **2005 HB 2481** where the people of the State of Kansas would vote first (there are two counties that have already voted) and the other 103 counties could have a vote and then and after the vote, it would then come before the Legislature to be considered for approval. Motion carried on a voice vote.

Senator Barone moved, with a second by Senator Emler, to introduce a conceptual bill using the blueprint of the bill that was passed out of committee during the 2005 Legislative Session regarding military insurance where the State would purchase it. Motion carried on a voice vote.

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MINUTES OF THE Senate Ways and Means Committee at 10:05 A.M. on June 20, 2005 in Room 123-S of the Capitol.

Senator Emler moved, with a second by Senator Taddiken, to introduce a conceptual bill regarding the Office of the Attorney General. The U. S. Supreme Court is going to hear the Kansas death penalty appeal and the Attorney General needs more resources to defend the State's position with approximately \$200,000 requested. Motion carried on a voice vote.

The Chairman introduced Alan Conroy, Director, Kansas Legislative Research Department. Mr. Conroy provided a review of the State's current financial position. Mr. Conroy distributed information regarding State General Fund Receipts, July through May, FY 2005 (Attachment 1). He noted that total receipts through May of FY 2005 were \$75.6 million, or 1.8 percent above the estimate. The component of total State General Fund receipts from taxes only was \$72.6 million, or 1.6 percent above the estimate.

A letter addressed to Governor Kathleen Sebelius and the Legislative Budget Committee from the Kansas Division of the Budget and the Kansas Legislative Research Department, regarding an Update to the State General Fund Memo for FY 2005 (Revised) and FY 2006 (Revised), was distributed by Mr. Conroy (Attachment 2). He explained that the Consensus Estimating Group met on June 14, 2005, at the request of the Governor and legislative leadership, to update informally the estimates for FY 2005 and FY 2006 which were made on April 18 (and subsequently adjusted for legislation enacted during the Veto Session). The meeting was held to analyze receipts since mid-April prior to the start of the Special Legislative Session. The update increased the estimates by \$86.0 million, or 1.8 percent, in each fiscal year. Mr. Conroy noted that the informal finding of the group is that the combined estimate for FY 2005 and FY 2006 needs to be increased by \$172.0 million.

Information regarding State General Fund Receipts, Expenditures and Balances as Projected FY 2005-FY 2008, In Millions, (Reflects FY 2005 and FY 2006 Expenditure Action by the Legislature and April Consensus Revenue Estimates and June Updated Consensus Revenue Estimates) was provided by Mr. Conroy (Attachment 3).

Mr. Conroy addressed State General Fund Receipts, Expenditures and Balances as Projected FY 2005 - FY 2008, In Millions, (Reflects FY 2005 and FY 2006 Expenditure Action by Legislature and April Consensus Revenue Estimates and June Updated Consensus Revenue Estimates, Plus Court Ordered Spending) which had been handed out to the Committee (Attachment 4). In closing, Mr. Conroy provided information regarding State General Fund Out Year Demands (Attachment 5). There was committee discussion.

Chairman Umbarger acknowledged Chris Courtwright, Principal Economist, Kansas Legislative Research Department, who reviewed tax options to address the court-ordered funding for elementary and secondary education expenditure increases (Attachment 6). Mr. Courtwright explained that regarding sales tax, the streamlined sales tax agreement requires that all sales tax increases must begin at the start of a new quarter which would delay the effective date of any sales tax increases until October 1, 2005. He explained that an argument could possibly be made that the effective date could be accelerated to August 1, 2005, since the action would be taken to address a court order, but July 1, 2005, was not an option because the Kansas Department of Revenue would not have enough time to comply.

Chairman Umbarger acknowledged J. G. Scott, Chief Fiscal Analyst, Kansas Legislative Research Department, who provided a long history of the State General Fund going back to 1966. He also addressed All Funds, Kansas Personal Income and the CPI - Urban. Mr. Scott distributed and reviewed the following information:

- Expenditures From All Funds and State General Fund, Fiscal Years 1966 - 2006 in Thousands of Dollars (Attachment 7)
- State General Fund Expenditures by Program or Agency (In Thousands) (Attachment 8)
- Where An FY 2006 State General Fund Dollar Will Be Spent (Attachment 9)
- FY 2006 State General Fund Expenditures by Function of Government (In Millions) (Attachment 10)

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- FY 2006 State General Fund Expenditures By Major Purpose of Expenditure (In Millions) (Attachment 11)
- Where Each FY 2006 State General Fund Dollar Comes From (Attachment 12)
- FY 2006 Full-Time Equivalent (FTE) Positions By Function of Government (Attachment 13)
- State Debt Comparisons, 2002-2003 (Attachment 14), Mr. Scott noted that these were Census Bureau figures.

Committee discussion followed.

Chairman Umbarger noted that if the Committee would be interested, there is information available during discussion for the Committee to consider making agency cuts to fund \$143,000,000. For the full funding of the Augenblick & Myer study, it could be 33.7 percent cut and the funding of the \$143,000,000 would be approximately a 6 or 7 percent across the board cut, which would be excluding education and any debt service. The Chairman wanted the Committee to think about this information just as a reality check.

The Chairman called the Committee's attention to discussion of National Guard death benefits in regard to the conceptual bill introduction made at the start of the meeting. Staff explained that the original **2005 SB 211** when introduced on the Senate side basically called for \$250,000 of death benefit life insurance. Essentially the State per \$1,000 would pay \$16.25 or yearly \$390,000 per year to provide death benefit life insurance to Kansas members of the National Guard. On the House side the bill went from a life insurance policy to a death benefit payment which was passed in **2005 HB 2518**. In that bill a \$250,000 death benefit payment was approved so that when a member dies, \$250,000 would be proposed to the beneficiaries. Now a bill will be proposed that will revert to a death benefit life insurance policy for which the cost of the premium is estimated to be \$390,000. Staff explained that in addition, \$150,000 of life insurance is now paid for by the federal government and when added to the \$250,000 would make a total life insurance benefit of \$400,000. Chairman Umbarger noted that it was his intent to continue the \$250,000 death benefit in the bill until such time that the new statute is in place regarding the life insurance and grandfather-in the three deceased members of the National Guard that have died in action.

The Committee discussed procedures prior to and during the Special Legislative Session. The meeting recessed at 12:15 p.m. and reconvened at 1:45 p.m.

Chairman Umbarger welcomed Barb Hinton, Legislative Post Auditor, Division of Legislative Post Audit. Ms. Hinton reviewed the Scope Statement that the Legislative Post Audit Committee authorized which operationalizes the law that was passed in **2005 HB 2247** (Attachment 15). She addressed the Issues Relating to the Cost Study Analysis Required Under **2005 HB 2247** (Attachment 16).

Ms. Hinton explained that **2005 HB 2247** requires Legislative Post Audit to "conduct a professional cost study analysis to determine the costs of delivering the kindergarten and grades one through twelve curriculum, related services and other programs mandated by state statute in accredited schools." She noted that this language can be read as incorporating two distinctly different (and incompatible) interpretations of the costs to be included in the cost study and listed them in two scenarios:

- **Scenario 1** - Only the cost of those resources needed to fund what's mandated by State statute in schools that are accredited by the Board of Education (all schools currently are accredited), with additional costs added for special needs students.
- **Scenario 2** - The cost of those resources needed to achieve certain outcomes adopted by the Board of Education in its school accreditation standards, which schools are required to meet to be accredited.

Ms. Hinton noted that she was before the Senate Ways and Means Committee, in part, to get clarification

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about what the Legislature wants her to do. Questions and discussion by the Committee followed. Ms. Hinton mentioned that it would be her intention to report any input from the Senate Ways and Means Committee back to the Legislative Post Audit Committee which would be helpful to them. She also explained that in order for them to produce something that is credible, defensible and valid to the Legislature, and the Court, it would be helpful for them to hire an expert to aid in some of the sophisticated outcomes-based statistical analysis information. Senator Morris explained that the Legislature trusts Legislative Post Audit and it would be in the best interest of the Legislature to request that Legislative Post Audit do both input and output statistics. If the Legislature needs to provide more resources, it would be valuable to have a full fledged input and output audit. Ms. Hinton mentioned that it would be best if the Legislature would clarify what to focus on even if it was to do both an input and output audit. It will obviously be an issue of focus in the 2006 Legislative Session and the Legislature, not Legislative Post Audit, is making the decision of the scope of the Audit.

Chairman Umbarger recognized Theresa Kiernan, Senior Assistant Revisor of Statutes, who presented highlights of certain provisions contained in the most recent rulings of the Kansas Supreme Court relating to school finance and gave the history and rationale of the Court decision (Attachment 17).

The Chairman recognized Carolyn Rampey, Principal Analyst, Kansas Legislative Research Department, who provided the following information:

- Kansas Legislative Research Department memorandum, Kansas Supreme Court Supplemental Opinion in *Montoy, et al. v. State of Kansas, et al.* (Attachment 18)
- Kansas Supreme Court Summary of *Montoy v. State*, June 3, 2005 (Attachment 19)
- In the Supreme Court of the State of Kansas, No. 92,032, *Ryan Montoy, et al.*, Supplemental Opinion (Attachment 20)

Ms. Rampey explained that what the Court has talked about is a lack of empirical data on which the legislation is based and whatever the Legislature does, it cannot exacerbate any funding discrepancies that already exist. She further explained that when the Legislature adjourned and the Court looked at **2005 HB 2247**, it found that the bill that was passed fell short. The Court cited continuing a lack of constitutionally adequate funding and inequity producing local property tax measures. Ms. Rampey detailed additional information found in her memorandum.

Chairman Umbarger called the Committee's attention to discussion of the issue relating to the death benefit for the military and the issue regarding the request of the Attorney General's Office on the \$200,000 expenditures for preparation to defend the state's death penalty law before the U. S. Supreme Court. The Chairman noted that officially, due to the meeting being prior to the opening of the special legislative session on Wednesday, June 22, 2005, only recommendations, directions and requests could be made to staff until the bills are introduced and read in to the Senate.

Senator Barone requested written information from the Attorney General's Office regarding the \$200,000 to aid in any decision the Committee may make. Senator Morris requested that someone from the Attorney General's Office come to the meeting to discuss that request.

Chairman Umbarger recognized Jill Wolters, Senior Assistant, Revisor of Statutes Office, who reviewed the action taken on **2005 HB 2518** during the 2005 Legislative Session regarding the National Guard death benefit for those who have died in action. Senator Morris requested that someone from the Adjutant General's Office come to the meeting to help clarify what action should be taken regarding the death benefit and purchase of insurance. He also requested that staff check with other states to inquire if there is any available information on how this is handled in any other states. Questions and discussion followed.

The Chairman welcomed Eric Rucker of the Attorney General's Office who explained that there are two cases that will come before the U. S. Supreme Court in this session and that is very unusual. He noted that one is the Potawatomi Gas case before the high court as well as *State v. Marsh*, the death penalty appeal that was

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accepted and the Attorney General's Office is currently in the process of writing briefs. Their office has estimated that the total cost for both cases would be approximately \$200,000. Senator Betts requested information in writing from the Attorney General's Office regarding the two cases.

Chairman Umbarger recognized Mary Ann Torrence, Senior Assistant Revisor, who reviewed with the Committee the conceptual bills that were set to be introduced on Wednesday, June 22, 2005 (Attachment 21). The Revisor reviewed the following bill drafts with the committee: 5rs9043, 5rs9052 and 5rs9056. Committee questions and discussion followed. The Chairman noted that these three drafts would need to be sorted out and one re-drafted.

The meeting adjourned at 5:45 p.m. The next meeting was scheduled for June 21, 2005.

SENATE WAYS AND MEANS
GUEST LIST

Date June 20, 2005

NAME	REPRESENTING
Julia Thomas	DOB
Chris Jones	"
Troy Cocking	"
Jake Hein	Hein Law Firm
Tom Palace	PHCA OF KS.
Doug Smith	Pinegar, Smith & Associates
Joe Fund	KWO
Brent Haden	KLA
ED VAN PETTEN	KANSAS LOTTERY
KEITH KOCHER	K's Lottery
JARED HOLBOND	Medicaid / Health Policy & Finance
Kim Fowler	Judicial Branch
Jerry Sloan	Judicial Branch
Kim Phason	KITEC
Jim May	Foulston - Siefkin LLC
Jackie Mankowski Laize	KCC
Steve Solomon	The Farm, Inc.
Jenni Rose	KACCT
Masha Steinhilber	CWA
RONALD RICHEY	ME
Dave Servicek	citizen
Shannon Jones	SILCK
Jeff Armstrong	DOT

SENATE WAYS AND MEANS
GUEST LIST

Date June 20, 2005

NAME	REPRESENTING
John Peterson	K, Government of Consulting
BRAD HARRELSON	KFB
Mike Hammond	Assoc. of Counties of KS
ANDY SANCHEZ	KAFE
TERRY FORSYTH	KVETA
DOUG LAWRENCE	KGA
Janice Harper	Adjutant General's Dept
William VONDERSCHEMIDT	Adjutant General's Dept
RUSSELL MILLS	GACHES
Rudy Shaw	Kearney + Associates
John C. Bottenby	Woodlands
Joyce Jackson	TILRC
Don M. Ryan	SEAR
Sam Secker	Hin Law Firm
_____	AG.
Doug Henkle	AG
Whitney Johnson	Kickapoo / Sec i Fox Natives
Cathy Welheim	Senators Betts

June 8, 2005

To: Legislative Budget Committee

STATE GENERAL FUND RECEIPTS July through May, FY 2005

This is the second monthly report of State General Fund (SGF) receipts for FY 2005 based upon the revised estimates made by the Consensus Revenue Estimating Group on April 18, 2005.

Total receipts through May of FY 2005 were \$75.6 million, or 1.8 percent above the estimate. The component of total SGF receipts from taxes only was \$72.6 million, or 1.7 percent above the estimate.

The figures in the "Estimate" and "Actual" columns under FY 2005 in the following table include actual receipts through March, so this report focuses on a comparison of the estimated and actual receipts for April and May. The estimated receipts for these two months were \$964.0 million. Actual receipts were \$1,039.6 million.

Tax sources that exceeded the estimate by more than \$1.0 million were individual income (\$36.9 million, or 2.0 percent), corporation income (\$25.3 million, or 16.3 percent), corporation franchise (\$7.5 million, or 19.8 percent), insurance premiums (\$4.9 million, or 6.8 percent), and compensating use (\$2.9 million, or 1.3 percent). Of particular note is the amount by which actual individual and corporation income tax receipts exceeded the estimate. The actual receipts reflect stronger than anticipated growth in both sources, and were not the result of any one extraordinary tax event (*i.e.*, an unusual corporate assessment).

Taxes falling below the estimate by more than \$1.0 million were retail sales (\$2.8 million, or 0.2 percent) and motor carriers property (\$2.1 million, or 9.2 percent).

Interest earnings were \$2.6 million less than expected. Agency earnings were above the estimate by \$5.6 million and net transfers by \$0.06 million.

Total SGF receipts through May of FY 2005 were \$279.6 million, or 6.9 percent above FY 2004's for the same period. **Tax receipts only, for the same period, exceeded FY 2004's by \$285.3 million, or 7.2 percent.**

This report excludes the deposit to the SGF of \$450 million, due to the issuance of a certificate of indebtedness that was issued on July 1, 2004. This certificate will be discharged prior to the end of the fiscal year.

STATE GENERAL FUND RECEIPTS
July-May, FY 2005
(dollar amounts in thousands)

	Actual		FY 2005		Percent increase relative to:	
	FY 2004	Estimate*	Actual	Difference	FY 2004	Estimate
Property Tax:						
Motor Carriers	\$ 18,943	\$ 22,500	\$ 20,419	\$ (2,081)	7.8%	(9.2)%
General Property	8,451	500	507	7	(94.0)	1.4
Motor Vehicle	1,116	1,400	1,376	(24)	23.3	(1.7)
Total	\$ 28,510	\$ 24,400	\$ 22,302	\$ (2,098)	(21.8)%	(8.6)%
Income Taxes:						
Individual	\$ 1,706,668	\$ 1,812,000	\$ 1,848,914	\$ 36,914	8.3%	2.0%
Corporation	119,089	155,000	180,328	25,328	51.4	16.3
Financial Inst.	20,298	16,800	16,720	(80)	(17.6)	(0.5)
Total	\$ 1,846,055	\$ 1,983,800	\$ 2,045,961	\$ 62,161	10.8%	3.1%
Estate Tax	\$ 45,115	\$ 48,600	\$ 49,066	\$ 466	8.8%	1.0%
Excise Taxes:						
Retail Sales	\$ 1,479,012	\$ 1,511,000	\$ 1,508,246	\$ (2,754)	2.0%	(0.2)%
Comp. Use	200,808	223,000	225,947	2,947	12.5	1.3
Cigarette	109,059	107,500	106,746	(754)	(2.1)	(0.7)
Tobacco Prod.	4,344	4,525	4,551	26	4.8	0.6
Cereal Malt Bev.	1,971	1,900	1,871	(29)	(5.1)	(1.5)
Liquor Gallonage	14,450	14,200	14,315	115	(0.9)	0.8
Liquor Enforce.	36,296	38,700	37,983	(717)	4.6	(1.9)
Liquor Drink	6,539	6,850	6,791	(59)	3.9	(0.9)
Corp. Franchise	34,460	38,000	45,518	7,518	32.1	19.8
Severance	77,633	93,000	93,819	819	20.8	0.9
Gas	60,861	67,000	68,549	1,549	12.6	2.3
Oil	16,772	26,000	25,271	(729)	50.7	(2.8)
Total	\$ 1,964,572	\$ 2,038,675	\$ 2,045,788	\$ 7,113	4.1%	0.3%
Other Taxes:						
Insurance Prem.	\$ 71,153	\$ 72,800	\$ 77,728	\$ 4,928	9.2%	6.8%
Miscellaneous	3,545	3,400	3,388	(12)	(4.4)	(0.4)
Total	\$ 74,698	\$ 76,200	\$ 81,116	\$ 4,916	8.6%	6.5%
Total Taxes	\$ 3,958,950	\$ 4,171,675	\$ 4,244,233	\$ 72,558	7.2%	1.7%
Other Revenue:						
Interest	\$ 12,307	\$ 22,500	\$ 19,897	\$ (2,603)	61.7%	(11.6)%
Transfers (net)	\$ (15,760)	\$ (4,275)	\$ (4,269)	\$ 6	(72.9)	0.1
Agency Earnings and Misc.	\$ 96,919	\$ 66,550	\$ 72,169	\$ 5,619	(25.5)	8.4
Total	\$ 93,466	\$ 84,775	\$ 87,797	\$ 3,022	(6.1)%	3.6%
TOTAL RECEIPTS	\$ 4,052,416	\$ 4,256,450	\$ 4,332,030	\$ 75,580	6.9%	1.8%

* Consensus estimate as of April 18, 2005.

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.

KANSAS

DIVISION OF THE BUDGET
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

June 14, 2005

To: Governor Kathleen Sebelius and Legislative Budget Committee
From: Kansas Division of the Budget and Kansas Legislative Research Department
Re: Update to SGF Memo for FY 2005 (Revised) and FY 2006 (Revised)

The Consensus Estimating Group met today to update informally the estimates for FY 2005 and FY 2006 which were made on April 18 (and subsequently adjusted for legislation enacted during the veto session). The meeting was held at the request of the Governor and legislative leadership to analyze actual receipts since mid-April prior to the start of the special legislative session.

The update increased the estimates by \$86.0 million, or 1.8 percent, in each fiscal year. SGF receipts through May were more than \$75.0 million ahead of the adjusted estimate. Of this amount, approximately \$37.0 million is attributable to increases in individual income tax receipts; \$25.0 million in corporation income taxes; and \$8.0 million in corporation franchise taxes. Agency earnings also exceeded the estimate through May by nearly \$6.0 million. Stronger than anticipated tax receipts in May have, in general, been experienced by other states and the federal government.

The review of these and other major tax sources indicated that FY 2005 receipts are likely on pace to finish about \$86.0 million ahead of the previous estimate; and FY 2006 receipts would appear to be understated by approximately \$86.0 million. Thus, the informal finding of the group is that the combined estimate for FY 2005 and FY 2006 needs to be increased by \$172.0 million.

Final FY 2005 receipts will not be known until well into July, and the Consensus Group will not formally convene until this fall to review the FY 2006 estimate. The following factors were taken into consideration in the informal revisions of the estimates, which can be found in the attached tables.

Individual Income Tax

- Average balances due through May were running nearly \$100 ahead of the previous year. (Through April, average balances due had been running only \$7 ahead of the previous year.)

- The state received approximately 10,000 more remittances through May than in the previous year.
- By contrast, the state processed approximately the same number of refunds during this filing season compared to the previous year, but paid out only \$1.0 million more in refunds.
- Processing time was apparently three days slower in 2005, effectively pushing some receipts into May that otherwise would have been deposited in April.
- Strong growth in estimated payments and withholding in April and May also contributed to some of the unanticipated growth.

Corporation Income Tax

- The amount of balances due in April and May were nearly double (\$38.0 million versus \$19.0 million) the amount received a year earlier.
- Estimated payments also showed significant growth during these two months (\$37.0 million in April versus \$24.0 million in May).

Franchise Taxes

- Based on receipts through mid-April, the group had cut the franchise tax estimate for FY 2005 from \$48.0 million to \$40.0 million. Strong collections in late April and early May had receipts well in excess of \$45.0 million by the end of May.

Agency Earnings

- Unanticipated growth in agency earnings attributable to unclaimed property caused this source to be running almost \$6.0 million ahead of the estimate through May.

Table 1
Consensus Revenue Estimates for Fiscal Years 2005 and 2006, as Updated June 14, 2005
and FY 2004 Actual Receipts
(Dollars in Thousands)

	FY 2004 (Actual)		FY 2005 (Revised)		FY 2006 (Revised)	
	Amount	Percent Change	Amount	Percent Change	Amount	Percent Change
Property Tax:						
Motor Carrier	\$19,498	7.9 %	\$21,000	7.7 %	\$24,000	14.3 %
Motor Vehicle	1,541		1,400			
Ad Valorem	13,718		500			
Total	\$34,757		\$22,900		\$24,000	
Income Taxes:						
Individual	\$1,888,431	3.2	\$2,040,000	8.0	\$2,130,000	4.4 %
Corporation	141,173	50.3	205,000	45.2	210,000	2.4
Financial Inst.	25,435	(8.9)	22,000	(13.5)	22,000	--
Total	\$2,055,039	5.3 %	\$2,267,000	10.3 %	\$2,362,000	4.2 %
Estate Tax	\$48,064	(0.0) %	\$52,000	8.2 %	\$52,000	-- %
Excise Taxes:						
Retail Sales	\$1,612,067	9.6 %	\$1,650,000	2.4 %	\$1,700,000	3.0 %
Compensating Use	214,503	(8.2)	242,000	12.8	250,000	3.3
Cigarette	119,789	149.3	117,500	(1.9)	116,500	(0.9)
Tobacco Product	4,797	11.5	4,900	2.1	5,000	2.0
Cereal Malt Beverage	2,165	(9.0)	2,100	(3.0)	2,000	(4.8)
Liquor Gallonage	15,843	8.3	15,500	(2.2)	15,500	--
Liquor Enforcement	40,256	7.6	42,300	5.1	44,000	4.0
Liquor Drink	7,152	8.1	7,500	4.9	7,700	2.7
Corporate Franchise	36,806	99.0	46,000	25.0	46,000	--
Severance	84,641	52.0	101,200	19.6	102,200	1.0
Gas	66,054	58.1	71,700	8.5	72,700	1.4
Oil	18,587	33.8	29,500	58.7	29,500	--
Total	\$2,138,019	13.0 %	\$2,229,000	4.3 %	\$2,288,900	2.7 %
Other Taxes:						
Insurance Premium	\$106,864	25.8 %	\$102,000	(4.6) %	\$104,000	2.0 %
Miscellaneous	4,387	124.3	4,300	(2.0)	4,300	--
Total	\$111,251	28.0 %	\$106,300	(4.5) %	\$108,300	1.9 %
Total Taxes	\$4,387,130	9.8 %	\$4,677,200	6.6 %	\$4,835,200	3.4 %
Other Revenues:						
Interest	\$13,870		\$25,000		\$54,000	
Net Transfers	16,721		17,580		(15,153)	
Demand to Revenue Transfers	(62,699)		(70,593)		(73,783)	
Other Transfers	79,420		88,173		58,630	
Agency Earnings	101,005		74,000		66,152	
Total Other Revenue	\$131,596	17.7 %	\$116,580	(11.4) %	\$104,999	(9.9) %
Total Receipts	\$4,518,726	10.0 %	\$4,793,780	6.1 %	\$4,940,199	3.1 %

Table 2
State General Fund Receipts
FY 2005 Revised, as Adjusted for Legislation, and Updated June 14, 2005
Comparison of April 2005 Estimate to June 2005 Update
(Dollars in Thousands)

	FY 2005 CRE Est.	FY 2005 CRE Est.	Difference	
	Revised 4/18/05 and Adjusted for Legislation	Adjusted for Legislation and Updated 6/14/05	Amount	Pct. Chg.
Property Tax:				
Motor Carrier	\$23,000	\$21,000	(\$2,000)	(8.7) %
Motor Vehicle	1,400	1,400	--	--
Ad Valorem	500	500	--	--
Total	\$24,900	\$22,900	(\$2,000)	(8.0) %
Income Taxes:				
Individual	\$1,997,000	\$2,040,000	\$43,000	2.2 %
Corporation	170,000	205,000	35,000	20.6
Financial Inst.	22,000	22,000	--	--
Total	\$2,189,000	\$2,267,000	\$78,000	3.6 %
Estate Tax	\$52,000	\$52,000	\$ --	-- %
Excise Taxes:				
Retail Sales	\$1,650,000	\$1,650,000	\$ --	-- %
Compensating Use	242,000	242,000	--	--
Cigarette	117,500	117,500	--	--
Tobacco Product	4,900	4,900	--	--
Cereal Malt Beverage	2,100	2,100	--	--
Liquor Gallonage	15,500	15,500	--	--
Liquor Enforcement	42,300	42,300	--	--
Liquor Drink	7,500	7,500	--	--
Corporate Franchise	40,000	46,000	6,000	15.0
Severance	101,200	101,200	--	--
Gas	71,700	71,700	--	--
Oil	29,500	29,500	--	--
Total	\$2,223,000	\$2,229,000	\$6,000	0.3 %
Other Taxes:				
Insurance Premium	\$102,000	\$102,000	\$ --	-- %
Miscellaneous	4,300	4,300	--	--
Total	\$106,300	\$106,300	\$ --	-- %
Total Taxes	\$4,595,200	\$4,677,200	\$82,000	1.8 %
Other Revenues:				
Interest	\$27,000	\$25,000	(\$2,000)	(7.4) %
Net Transfers	17,580	17,580	--	--
Demand to Revenue Transfers	(70,593)	(70,593)	--	--
Other Transfers	88,173	88,173	--	--
Agency Earnings	68,000	74,000	6,000	8.8
Total Other Revenue	\$112,580	\$116,580	\$4,000	3.6 %
Total Receipts	\$4,707,780	\$4,793,780	\$86,000	1.8 %

Table 3
State General Fund Receipts
FY 2006 Revised, as Adjusted for Legislation, and Updated June 14, 2005
Comparison of April 2005 Estimate to June 2005 Update
(Dollars in Thousands)

	FY 2006 CRE Est. Revised 4/18/05 and Adjusted for Legislation	FY 2006 CRE Est. Adjusted for Legislation and Updated 6/14/05	Difference	
			Amount	Pct. Chg.
Property Tax:				
Motor Carrier	\$24,000	\$24,000	\$ --	-- %
Motor Vehicle	--	--	--	--
Ad Valorem	--	--	--	--
Total	\$24,000	\$24,000	\$ --	-- %
Income Taxes:				
Individual	\$2,085,000	\$2,130,000	\$45,000	2.2 %
Corporation	175,000	210,000	35,000	20.0
Financial Inst.	22,000	22,000	--	--
Total	\$2,282,000	\$2,362,000	\$80,000	3.5 %
Estate Tax	\$52,000	\$52,000	\$ --	-- %
Excise Taxes:				
Retail Sales	\$1,700,000	\$1,700,000	\$ --	-- %
Compensating Use	250,000	250,000	--	--
Cigarette	116,500	116,500	--	--
Tobacco Product	5,000	5,000	--	--
Cereal Malt Beverage	2,000	2,000	--	--
Liquor Gallonage	15,500	15,500	--	--
Liquor Enforcement	44,000	44,000	--	--
Liquor Drink	7,700	7,700	--	--
Corporate Franchise	40,000	46,000	6,000	15.0
Severance	102,200	102,200	--	--
Gas	72,700	72,700	--	--
Oil	29,500	29,500	--	--
Total	\$2,282,900	\$2,288,900	\$6,000	0.3 %
Other Taxes:				
Insurance Premium	\$104,000	\$104,000	\$ --	-- %
Miscellaneous	4,300	4,300	--	--
Total	\$108,300	\$108,300	\$ --	-- %
Total Taxes	\$4,749,200	\$4,835,200	\$86,000	1.8 %
Other Revenues:				
Interest	\$54,000	\$54,000	\$ --	-- %
Net Transfers	(15,153)	(15,153)	--	--
Demand to Revenue	(73,783)	(73,783)	--	--
Other Transfers	58,630	58,630	--	--
Agency Earnings	66,152	66,152	--	--
Total Other Revenue	\$104,999	\$104,999	\$ --	-- %
Total Receipts	\$4,854,199	\$4,940,199	\$86,000	1.8 %

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STATE GENERAL FUND RECEIPTS, EXPENDITURES AND BALANCES
AS PROJECTED FY 2005-FY 2008
In Millions
(Reflects FY 2005 and FY 2006 Expenditure Action by Legislature and April Consensus Revenue Estimates
and June Updated Consensus Revenue Estimates)

	Actual FY 2004	Revised FY 2005	Revised FY 2006	Projected FY 2007	Projected FY 2008
Beginning Balance	\$ 122.7	\$ 327.5	\$ 396.4	\$ 335.6	\$ 168.8
Released Encumbrances	2.4	0.0	0.0	0.0	0.0
Receipts (April 2005 Consensus, Adjusted for Legislation)	4,518.9	4,707.8	4,854.2	4,868.3	4,947.6
Informal Consensus Revenue Update - June 14, 2005	0.0	86.0	86.0	89.4	93.0
Additional SGF Revenue Receipts	0.0	0.0	0.0	0.0	0.0
Adjusted Receipts	4,518.9	4,793.8	4,940.2	4,957.7	5,040.6
Total Available	\$ 4,644.0	\$ 5,121.3	\$ 5,336.6	\$ 5,293.3	\$ 5,209.4
Less Additional Expenditures for School Finance - HB 2247	-	-	140.2	195.3	272.9
Supreme Court Ordered Spending by July 1, 2005	-	-	-	-	-
Less All Other Expenditures	4,316.5	4,724.9	4,860.8	4,929.2	5,017.8
Total Expenditures	4,316.5	4,724.9	5,001.0	5,124.5	5,290.7
Ending Balance	\$ 327.5	\$ 396.4	\$ 335.6	\$ 168.8	\$ (81.3)
Ending Balance as a Percentage of Expenditures	7.6%	8.4%	6.7%	3.3%	-1.5%

- 1) FY 2005 and FY 2006 expenditures as approved by the 2005 Legislature, including \$140.2 million for school finance - HB 2247.
- 2) FY 2007 and FY 2008 base receipts assume a four percent growth; and expenditures include out-year significant obligations (i.e., SRS and Aging caseloads).
- 3) Additional school finance expenditures - HB 2247; FY 2006 - \$140.2 million; FY 2007 - \$195.3 million; and FY 2008 - \$272.9 million (excludes Skills for Success, but including special education, local option budget and the CPI-U adjustments).
- 4) SGF receipts based on State General Fund Consensus Revenue Estimating Group estimate as of April, 2005, adjusted for legislation, and the June 14, 2005 informal update.

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**STATE GENERAL FUND RECEIPTS, EXPENDITURES AND BALANCES
AS PROJECTED FY 2005-FY 2008**
In Millions
(Reflects FY 2005 and FY 2006 Expenditure Action by Legislature and April Consensus Revenue Estimates
and June Updated Consensus Revenue Estimates, Plus Court Ordered Spending)

	Actual FY 2004	Revised FY 2005	Revised FY 2006	Projected FY 2007	Projected FY 2008
Beginning Balance	\$ 122.7	\$ 327.5	\$ 396.4	\$ 192.5	\$ (117.4)
Released Encumbrances	2.4	0.0	0.0	0.0	0.0
Receipts (April 2005 Consensus, Adjusted for Legislation)	4,518.9	4,707.8	4,854.2	4,868.3	4,947.6
Informal Consensus Revenue Update - June 14, 2005	0.0	86.0	86.0	89.4	93.0
Additional SGF Revenue Receipts	0.0	0.0	0.0	0.0	0.0
Adjusted Receipts	4,518.9	4,793.8	4,940.2	4,957.7	5,040.6
Total Available	\$ 4,644.0	\$ 5,121.3	\$ 5,336.6	\$ 5,150.2	\$ 4,923.2
Less Additional Expenditures for School Finance - HB 2247	-	-	140.2	195.3	272.9
Less Supreme Court Ordered Spending by July 1, 2005	-	-	143.1	143.1	143.1
Less All Other Expenditures	4,316.5	4,724.9	4,860.8	4,929.2	5,017.8
Total Expenditures	4,316.5	4,724.9	5,144.1	5,267.6	5,433.8
Ending Balance	\$ 327.5	\$ 396.4	\$ 192.5	\$ (117.4)	\$ (510.6)
Ending Balance as a Percentage of Expenditures	7.6%	8.4%	3.7%	-2.2%	-9.4%

- 1) FY 2005 and FY 2006 expenditures as approved by the 2005 Legislature, including \$140.2 million for school finance and \$143.1 million as ordered by the Supreme Court.
- 2) FY 2007 and FY 2008 base receipts assume a four percent growth; and expenditures include out-year significant obligations (i.e., SRS and Aging caseloads).
- 3) Additional school finance expenditures - HB 2247; FY 2006 - \$140.2 million; FY 2007 - \$195.3 million; and FY 2008 - \$272.9 million (excludes Skills for Success, but including special education, local option budget and the CPI-U adjustments).
- 4) SGF receipts based on State General Fund Consensus Revenue Estimating Group estimate as of April, 2005, adjusted for legislation, and the June 14, 2005 informal update.

June 17, 2005

STATE GENERAL FUND OUTYEAR DEMANDS

● Out-Year Demands on State General Fund Resources:

- **KPERS pension obligation bonds** (\$0.5 billion in bonds issued in 2004)
 - FY 2007 - \$15.0 million, **an increase of \$5.0 million**
 - FY 2008 - \$26.1 million, **an increase of \$11.1 million**
 - FY 2009 through FY 2034 - \$36.1 million, an increase of \$10.0 million in FY 2009)

- **KPERS increased employer contributions** (Statutory cap for state and school employer contribution increases from 0.2 percent annually to 0.4 percent in FY 2006; 0.5 percent in FY 2007; and 0.6 percent in FY 2008 and subsequent year, plus normal growth in the covered payroll):
 - FY 2007 - **an increase of \$31.0 million**
 - FY 2008 - **an increase of \$29.0 million**

- **KDOT Sales Tax Transfer** - Department of Transportation (Comprehensive Transportation Plan) State General Fund (Sales Tax) direct deposit to the State Highway Fund. The transfer amount is 0.25 percent in FY 2006; 0.38 percent in FY 2007; and 0.65 percent in FY 2008 thereafter:
 - FY 2007 - \$150.9 million, **an increase of \$51.5 million**
 - FY 2008 - \$267.1 million, **an increase of \$115.5 million**

- **KDOT Bond Payment** - Additional bonding authority granted by the 2004 Legislature to ensure the funding stream for the Comprehensive Transportation Plan:
 - FY 2007 - \$8.0 million
 - FY 2008 - \$11.0 million

- **KDOT Loan Repayment** - A repayment to the State Highway Fund for a diversion of State General Fund resources from the old demand transfer (\$94.6 million) and for operational support of the Kansas Highway Patrol (\$31.0 million); the loan is to be repaid over a four-year period:
 - FY 2007 - \$32.5 million
 - FY 2008 - \$30.9 million
 - FY 2009 - \$31.2 million
 - FY 2010 - \$30.9 million

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- **Regents Research Initiative** - Bond payments for Regents research facilities:
 - FY 2006 - \$4.9 million
 - FY 2007 - \$10.0 million
 - FY 2008 - \$10.0 million

- **Annualize FY 2006 State Employee Salary Increase** (funding for a 2.5 percent salary increase was only financed for six months):
 - FY 2007 - \$11.9 million

- **Department of Education** - Additional funding for School Finance - HB 2247. Special Education was raised to 88 percent in FY 2007 and to 91 percent in FY 2008. The Local Option Budget was raised to 88 percent in FY 2007 and to 91 percent in FY 2008. An inflation factor also begins in FY 2008, which is the Consumer Price Index-Urban.
 - FY 2007 - \$71.1 million
 - FY 2008 - \$77.6 million

- **Summary of Identified Out-Year Demands:**
 - **FY 2007 - \$208.1 million**
 - **FY 2008 - \$223.5 million**

- **Other Selected Potential Demands on the State Budget:**
 - SRS and Aging caseload increases - \$50 million estimated
 - Funding for K-12 education (base state aid per pupil, special education, and capital improvement aid)
 - Higher education - Funding for the Higher Education Reform Act
 - State employee health insurance
 - State employee salary increases

June 20, 2005

TAX OPTIONS TO ADDRESS COURT ORDERED FUNDING FOR ELEMENTARY AND SECONDARY EDUCATION EXPENDITURE INCREASES

Below is a chart that estimates the increase in various tax sources based on incremental increases. The streamlined sales tax agreement requires that all sales tax increases must begin at the start of a new quarter which would delay the effective date of any sales tax increase in Kansas until October 1, 2005. An argument could be made that the effective date could be accelerated to August 1, 2005 since the action would be taken to address a court order. Because of the streamline agreement, there are options for both August 1 and October 1 effective dates for the Sales and Compensating Use tax below.

Additional Revenue from Various Tax Sources (\$ in millions)

	Sales and Compensating Use Tax increase - each 0.1 percent increase up to 0.5 percent effective Oct. 1	Sales and Compensating Use Tax increase - each 0.1 percent increase up to 0.5 percent effective Aug. 1	One mill increase on Unified School District home- stead levy	Repeal Unified School District \$20,000 residential tax exemption	1.0 percent Individual Income Tax Surtax
FY 2006	\$ 25.743	\$ 32.178	\$ 23.978	\$ 41.613	\$ 22.600
FY 2007	39.965	39.965	25.368	42.624	18.400
FY 2008	41.364	41.364	26.304	43.212	19.600
FY 2009	42.812	42.812	27.270	43.800	20.900
FY 2010	44.310	44.310	28.272	44.388	22.200
5 yr-total	\$ 194.194	\$ 200.629	\$ 131.192	\$ 215.637	\$ 103.700

In order to raise \$143 million in FY 2006, for example; Sales and Compensating Use Tax (August 1) would have to increase by about 0.45 percent (from 5.3 to 5.75 percent); the mandatory USD general fund levy would have to increase by about 6 mills (from 20 to 26 mills); or a 6.3 percent individual income tax surtax would be necessary.

EXPENDITURES FROM ALL FUNDS AND STATE GENERAL FUND
Fiscal Years 1966-2006 In Thousands of Dollars

Fiscal Year	All Funds		State General Fund		Percent Increase	
	Actual Expenditures	Percent Increase	Actual Expenditures	Percent Increase	KPI ^a	CPI-U ^b
1966	\$ 526,544		\$ 222,417			
1967	558,165	6.0%	239,376	7.6%	7.3%	3.2%
1968	638,407	14.4	258,728	8.1	5.0	3.3
1969	666,880	4.5	279,136	7.9	8.4	4.9
1970	777,243	16.5	343,617	23.1	8.6	5.9
1971	942,139	21.2	354,939	3.3	7.7	5.2
1972	922,001	(2.1)	366,331	3.2	8.5	3.6
1973	960,964	4.2	386,701	5.6	11.9	4.0
1974	1,145,969	19.3	490,456	26.8	14.4	8.9
1975	1,319,138	15.1	598,387	22.0	8.2	11.1
1976	1,509,834	14.5	701,648	17.3	8.5	7.1
1977	1,711,868	13.4	816,589	16.4	9.9	5.8
1978	1,847,457	7.9	841,164	3.0	9.3	6.7
1979	2,023,233	9.5	967,214	15.0	11.3	9.4
1980	2,396,268	18.4	1,113,603	15.1	15.3	13.3
1981	2,607,136	8.8	1,265,711	13.7	9.5	11.6
1982	2,641,221	1.3	1,342,057	6.0	12.9	8.6
1983	2,909,648	10.2	1,414,109	5.4	7.3	4.3
1984	3,111,339	6.9	1,518,194	7.4	4.3	3.7
1985	3,257,347	4.7	1,655,127	9.0	7.9	3.9
1986	3,501,485	7.5	1,770,499	7.0	5.7	2.9
1987	3,628,861	3.6	1,768,718	(0.1)	4.7	2.2
1988	3,872,384	6.7	1,920,849	8.6	4.3	4.1
1989	4,287,036	10.7	2,159,915	12.4	5.6	4.6
1990	4,756,527	11.0	2,400,232	11.1	4.6	4.8
1991	5,081,988	6.8	2,495,418	4.0	7.9	5.5
1992	5,487,389	8.0	2,491,270	(0.2)	3.9	3.2
1993	5,933,345	8.1	2,690,098	8.0	6.6	3.1
1994	6,782,505	14.3	3,111,023	15.6	3.9	2.6
1995	7,218,366	6.4	3,309,835	6.4	5.2	2.9
1996	7,628,860	5.7	3,439,228	3.9	5.5	2.7
1997	7,844,649	2.8	3,538,106	2.9	5.9	2.9
1998	8,079,021	3.0	3,799,114	7.4	5.6	1.8
1999	8,306,423	2.8	4,196,192	10.5	5.6	1.6
2000	8,418,130	1.3	4,367,621	4.1	3.7	2.2
2001	8,849,944	5.1	4,429,642	1.4	3.8	2.8
2002	9,802,587	10.8	4,466,061	0.8	4.4	1.6
2003	10,082,038	2.9	4,137,498	(7.4)	3.1	2.3
2004	10,197,259	1.1	4,316,451	4.3	4.8	2.3
2005 Approved*	10,857,949	6.5	4,724,914	9.5	5.1	2.7
2006 Approved*	11,433,608	5.3	5,001,044	5.8	4.5	2.4

*Reflects expenditures authorized by the 2005 regular session of the Legislature.

a) Kansas personal income; The estimate for FY 2005 and FY 2006 is that of the Consensus Estimating Group as of April 2005

b) Consumer Price Index -- All Urban Consumers (1982-84 equals 100). The estimates for FY 2005 and FY 2006 are those of the Consensus Estimating Group as of April 2005 for the calendar year in which the fiscal year begins.

Kansas Legislative Research Department
 May 25, 2005

*Senate Ways and Means
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**STATE GENERAL FUND EXPENDITURES
by Program or Agency
(In Thousands)**

Program/Agency	FY 2004	FY 2005	FY 2006	FY 2006			
				Percent of Total	Cumulative Percent	Change From FY 2005	
						Dollar	Percent
Education							
State Aid to Local Units	\$ 2,277,115	\$ 2,456,556	\$ 2,559,363	51.18 %	51.18 %	\$ 102,807	4.2 %
Board of Regents and Institutions	565,897	589,039	620,201	12.40	63.58	31,162	5.3
Other Education	29,459	30,319	32,691	0.65	64.24	2,372	7.8
<i>Subtotal Education</i>	<u>\$ 2,872,471</u>	<u>\$ 3,075,914</u>	<u>\$ 3,212,255</u>	<u>64.23 %</u>	<u>64.23 %</u>	<u>\$ 136,341</u>	<u>4.4 %</u>
State Aid to Locals (Excluding Education State Aid)	93,117	95,769	104,518	2.09	66.32	8,749	9.1
Social and Rehabilitation Services, Including Hospitals	713,855	858,246	502,588	10.05	76.37	(355,658)	(41.4)
Department of Administration	18,040	20,282	457,960	9.16	85.53	437,678	2,158.0
Department of Corrections and Facilities	192,459	197,193	219,378	4.39	89.91	22,185	11.3
Department on Aging	144,135	168,417	168,211	3.36	93.28	(206)	(0.1)
Judicial Branch	82,658	90,791	97,384	1.95	95.22	6,593	7.3
Juvenile Justice Authority and Facilities	45,907	48,558	50,673	1.01	96.24	2,115	4.4
Highway Patrol and Kansas Bureau of Investigation	40,844	42,810	49,583	0.99	97.23	6,773	15.8
Legislative Agencies	18,638	22,115	24,561	0.49	97.72	2,446	11.1
Department of Revenue	19,494	20,046	20,487	0.41	98.13	441	2.2
Department of Health and Environment	16,844	17,484	18,106	0.36	98.49	622	3.6
Board of Indigents' Defense Services	15,779	18,119	17,964	0.36	98.85	(155)	(0.9)
Commission on Veterans Affairs	6,101	6,007	7,511	0.15	99.00	1,504	25.0
Sentencing Commission	1,595	5,044	6,601	0.13	99.13	1,557	30.9
Adjutant General	5,028	4,973	6,591	0.13	99.27	1,618	32.5
Attorney General	4,178	4,641	5,615	0.11	99.38	974	21.0
All Other	25,308	28,505	31,058	0.62	100.00 %	2,553	9.0
TOTAL	<u>\$ 4,316,451</u>	<u>\$ 4,724,914</u>	<u>\$ 5,001,044</u>	<u>100.00 %</u>		<u>\$ 276,130</u>	<u>5.8 %</u>

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Note: All amounts from Social and Rehabilitation Services and below exclude state aid to local units of government expenditures.

**WHERE AN FY 2006
STATE GENERAL FUND DOLLAR
WILL BE SPENT***

		Agency/Program	Amount (Millions)
\$	0.49	Department of Education	\$ 2,438.1
	0.15	Regents	747.8
	0.01	Other Education	25.9
\$	0.64	Subtotal, Education	<u>\$ 3,211.8</u>
	0.11	SRS and Hospitals	559.7
	0.09	Department of Administration	458.4
	0.05	Department of Corrections/Facilities	237.1
	0.03	Department on Aging	171.1
	0.03	Juvenile Justice and Other Public Safety	130.5
	0.02	Judicial Branch, Board of Indigents' Defense	115.3
	0.01	Legislative and Elected Officials	33.1
	0.01	Department of Health and Environment	28.3
	0.01	All Other	55.7
\$	1.00	TOTAL	<u>\$ 5,001.0</u>

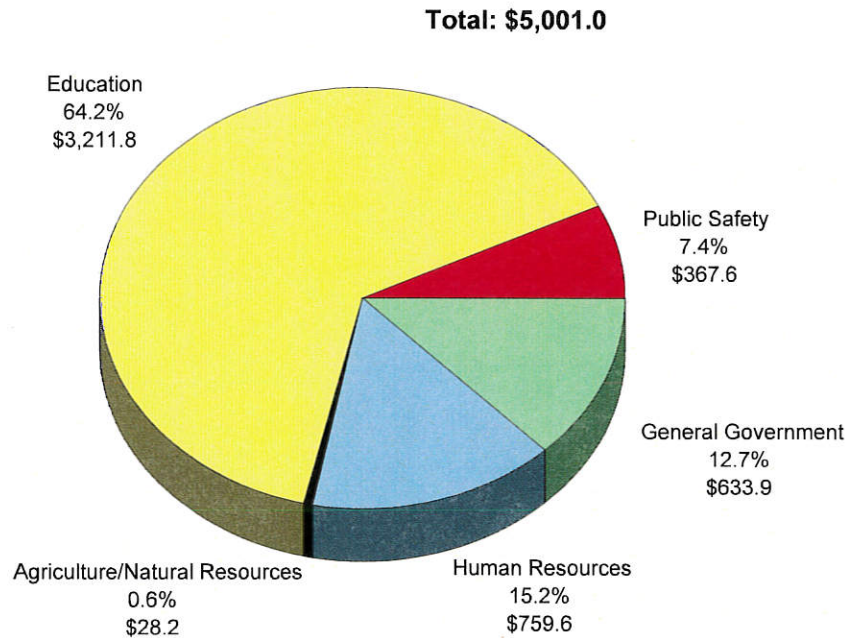
**HOW AN FY 2006
STATE GENERAL FUND DOLLAR
WILL BE SPENT***

		Major Purpose of Expenditure	Amount (Millions)
\$	0.53	Aid to Local Units of Government	\$ 2,663.9
	0.20	Other Assistance	976.7
\$	0.73	Subtotal - Aid and Assistance	<u>\$ 3,640.6</u>
	0.27	State Operations	1,346.2
	0.00	Capital Improvements	14.2
\$	1.00	TOTAL	<u>\$ 5,001.0</u>

*Reflects expenditures authorized by the 2005 regular session of the Legislature.

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**FY 2006 STATE GENERAL FUND EXPENDITURES*
BY FUNCTION OF GOVERNMENT
(In Millions)**



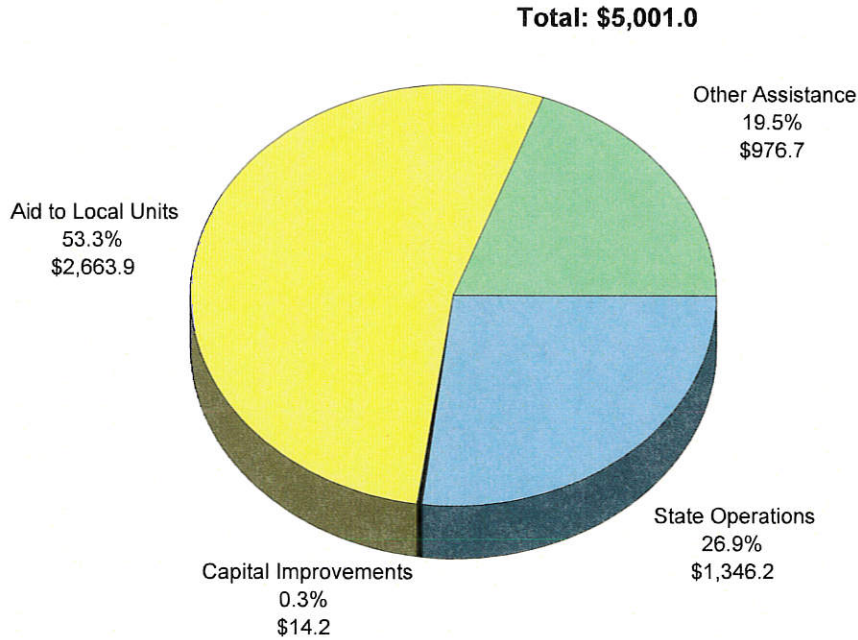
**FY 2006 STATE GENERAL FUND EXPENDITURES*
By Function of Government
(In Millions)**

	Amount	Change From FY 2005-FY 2006	
		Dollar	Percent
General Government	\$ 633.9	\$ 47.4	239.9 %
Human Resources	759.6	(346.1)	(31.3)
Education	3,211.8	136.4	4.4
Public Safety	367.6	37.8	11.5
Agriculture and Natural Resources	28.2	0.8	2.9
Transportation	-	-	-
TOTAL	\$ 5,001.0	\$ 276.1	5.8 %

*Reflects expenditures authorized by the 2005 regular session of the Legislature.

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**FY 2006 STATE GENERAL FUND EXPENDITURES*
BY MAJOR PURPOSE OF EXPENDITURE
(In Millions)**



**FY 2006 STATE GENERAL FUND EXPENDITURES*
By Major Purpose of Expenditure
(In Millions)**

	Amount	Change From FY 2005-FY 2006	
		Dollar	Percent
State Operations	\$ 1,346.2	\$ 102.6	8.3%
Aid to Local Units	2,663.9	111.6	4.4
Other Assistance	976.7	62.8	6.9
Subtotal - Operating	4,986.8	277.0	5.9
Capital Improvements	14.2	(0.9)	(6.0)
TOTAL	\$ 5,001.0	\$ 276.1	5.8%

*Reflects expenditures authorized by the 2005 regular session of the Legislature.

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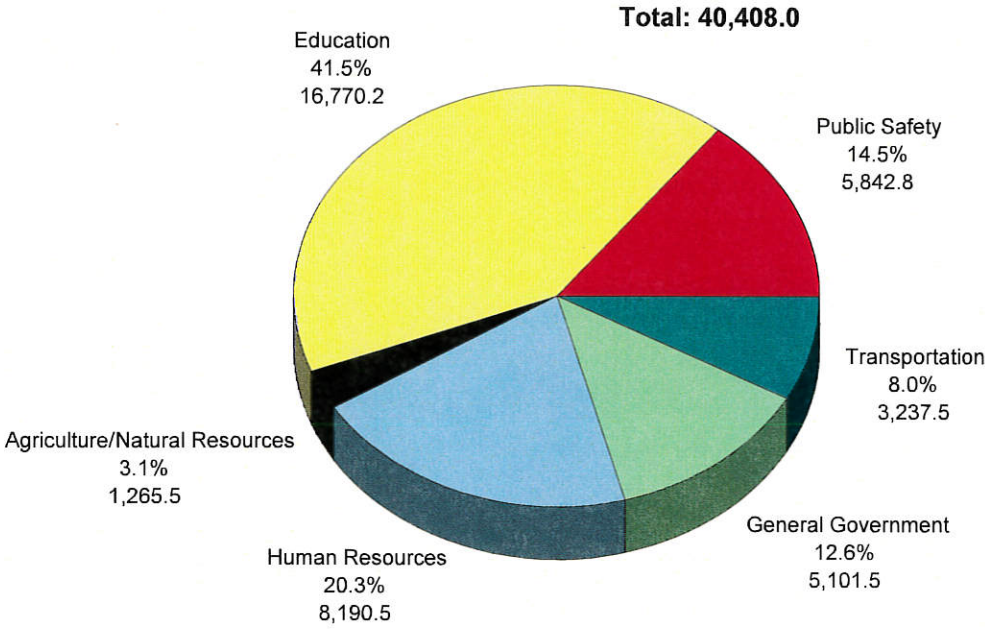
**WHERE EACH FY 2006
STATE GENERAL FUND DOLLAR COMES FROM**

		Source	Amount (Millions)*
\$	0.43	Individual Income Tax	\$2,130.0
	0.39	Sales and Compensating Use Tax	1,950.0
	0.05	Corporation and Financial Income Tax	232.0
	0.02	Tobacco Taxes	121.5
	0.02	Insurance Premium Tax	104.0
	0.02	Severance Tax	102.2
	0.01	Alcohol Taxes	69.2
	0.01	Estate/Succession Tax	52.0
	0.01	Other Taxes	74.0
	0.02	Other Revenue	105.3
\$	1.00	TOTAL Receipts	\$4,940.2

*Reflects the April 2005 estimates of the Consensus Revenue Estimating Group, as adjusted for legislation, and as adjusted by the June 14, 2005 informal consensus meeting.

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**FY 2006 FULL-TIME EQUIVALENT (FTE) POSITIONS
BY FUNCTION OF GOVERNMENT**



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**STATE DEBT COMPARISONS
2002-2003**

	2003		2002		Change from 2002-2003	
	Per Capita Debt	State Rank	Per Capita Debt	State Rank	Per Capita Debt	State Rank
United States	\$ 2,405	--	\$ 2,230	--	\$ 175	--
Alaska	\$ 8,997	1	\$ 8,281	1	\$ 716	-
Massachusetts	7,551	2	7,041	2	510	-
Connecticut	6,450	3	6,009	3	441	-
Rhode Island	5,752	4	5,483	4	269	-
Delaware	5,328	5	5,010	5	318	-
New York	4,770	6	4,696	6	74	-
Hawaii	4,526	7	4,558	7	(32)	-
New Hampshire	4,340	8	4,236	8	104	-
Vermont	4,091	9	3,707	9	384	-
New Jersey	3,889	10	3,586	10	303	-
Illinois	3,691	11	2,762	14	929	3
Maine	3,375	12	3,337	11	38	(1)
South Dakota	3,355	13	3,036	12	319	(1)
Montana	3,137	14	3,024	13	113	(1)
Wisconsin	2,704	15	2,733	15	(29)	-
California	2,685	16	2,036	29	649	13
South Carolina	2,649	17	2,465	19	184	2
North Dakota	2,526	18	2,639	16	(113)	(2)
New Mexico	2,449	19	2,426	20	23	1
Missouri	2,423	20	2,239	22	184	2
Washington	2,385	21	2,234	23	151	2
West Virginia	2,353	22	2,514	18	(161)	(4)
Maryland	2,350	23	2,258	21	92	(2)
Michigan	2,230	24	2,185	25	45	1
Wyoming	2,214	25	2,601	17	(387)	(8)
Louisiana	2,175	26	2,063	27	112	1
Utah	2,153	27	2,039	28	114	1
Oregon	2,094	28	2,178	26	(84)	(2)
Pennsylvania	1,967	29	1,702	34	265	5
Colorado	1,962	30	1,204	44	758	14
Oklahoma	1,924	31	1,856	32	68	1
Indiana	1,912	32	1,536	36	376	4
Idaho	1,904	33	1,895	30	9	(3)
Ohio	1,841	34	1,754	33	87	(1)
Virginia	1,837	35	1,892	31	(55)	(4)
Kentucky	1,726	36	2,210	24	(484)	(12)
Nevada	1,608	37	1,693	35	(85)	(2)
Iowa	1,455	38	1,265	42	190	4
Mississippi	1,445	39	1,451	37	(6)	(2)
North Carolina	1,442	40	1,340	39	102	(1)
Minnesota	1,412	41	1,275	41	137	-
Alabama	1,395	42	1,430	38	(35)	(4)
Florida	1,294	43	1,214	43	80	-
Nebraska	1,229	44	1,282	40	(53)	(4)
Arkansas	1,208	45	1,109	45	99	-
Georgia	1,025	46	965	47	60	1
Arizona	996	47	799	49	197	2
Kansas	907	48	844	48	63	-
Texas	661	49	1,104	46	(443)	(3)
Tennessee	598	50	627	50	(29)	-

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SCOPE STATEMENT

Elementary and Secondary Education in Kansas: Determining the Cost of Meeting State Mandates

In December 2003, the Shawnee County District Court declared Kansas' school funding formula in violation of Article 6 of the Kansas Constitution and the equal protection clauses of both the Kansas and U.S. Constitutions. At the request of the Board of Education, the District Court withheld final judgment and gave the legislative and executive branches a grace period to craft remedial legislation during the 2004 legislative session. The Legislature did not change the funding formula. On May 11, 2004, the Court ordered the State Treasurer, county treasurers, relevant city fiscal officers, the boards of all school districts, and anyone else involved in furnishing or spending funds for K-12 education to cease the expenditure of funds as of June 30. That order was stayed while the Kansas Supreme Court heard arguments in this case.

On January 3, 2005, the Kansas Supreme Court issued a memorandum opinion which found that the School District Finance and Quality Performance Act did not violate the equal protection clauses of either the Kansas or U.S. Constitutions, and that the Act was not unconstitutional based on "disparate impact," as the District Court had found. However, the Supreme Court affirmed the District Court's finding that the Legislature had failed to make suitable provision for financing public schools, and it gave the Legislature until April 12, 2005, to come up with a plan for funding education that would address the deficiencies it identified.

The 2005 Legislature passed House Bill 2247, which provides \$127 million in additional funding for public schools during fiscal year 2006. To "assist the Legislature in gathering information which is necessary for the Legislature's consideration when meeting its constitutional duties to: (1) Provide for intellectual, educational, vocational and scientific improvement in public schools established and maintained by the state; and (2) make suitable provision for the finance of educational interests of the state," the legislation also calls for Legislative Post Audit to conduct a "professional cost study analysis to determine the costs of delivering the kindergarten and grades one through 12 curriculum, related services and other programs mandated by state statute in accredited schools." That study, to be conducted at the direction of the Legislative Post Audit Committee, is required to be completed by the first day of the 2006 legislative session.

A performance audit that would fulfill the requirements of House Bill 2247 would answer the following questions:

- 1. What does it cost to provide an education that meets the requirements of State law for an accredited school for regular education students, and how does that cost vary by district size and location?** To answer this question, we would review relevant State laws and Board of Education regulations covering such things as high school graduation requirements, admissions requirements established by the Board of Regents pursuant to K.S.A 76-716, State scholarship requirements established by the Board of Regents, and courses of instruction required at the various grade levels. For all school districts, we would analyze expenditures reported to the Department of Education for fiscal years 2004 and 2005, as well as such information as staffing and enrollment data, school building reports, and the like. For a sample of districts or schools of various size and in various regions of the State, we would review financial records to determine the amount spent to educate regular-education students during the 2004-2005 school year. We would break out the costs into instruction, central administration, support, and other categories as appropriate. For any cost categories that seem to vary significantly for districts of various size or in various regions of the State, we would review additional records for the school districts in our sample, and talk to educators and administrators to identify factors that contribute to those cost differences. We would assess whether those differences appear to be caused by the school or district's size or location, or by some other factor such as local spending decisions or preferences.

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2. **What additional costs are incurred to provide an education that meets the requirements of State law for an accredited school for special-needs students, and how do those costs vary by district size and location?** For each category of special needs students funded through the Kansas school finance formula, we would determine what special requirements the State has placed on school districts to educate those students. For each school or district we visit, we would determine how they account for the costs of educating these students beyond the regular education costs they incur for all regular-education students. We also would interview administrators and educators to determine how they provide services to the various categories of special needs students in their districts. We would review the costs and identify those that appear to be reasonable and necessary. We would determine what factors seem to contribute to differences in the reasonable and necessary costs of providing special-needs education programs and services to students.
3. **Are students who are counted for the purposes of receiving special needs funding actually receiving the applicable services?** To answer this question, we would determine the various categories of special needs students for which additional State aid is provided, and how students are counted for the purposes of providing that funding. We would determine what the Department of Education auditors do to verify that students who are counted for funding purposes actually receive those services. We would test the Department's work in this area to determine the extent to which we could rely on it. To the extent that the Department's work is sufficient and reliable, we would report what it shows. If necessary, we would conduct additional sample testwork in the school districts we visit during the audit to confirm that students counted for special needs funding actually are receiving the services.
4. **What does educational research show about the correlation between the amount of money spent on K-12 education and educational outcomes?** To answer this question, we would gather and review the most recent studies available that examine the relationship between educational spending and educational outcomes. We would also interview any experts we can identify. We would summarize the findings of those studies and interviews and report on what they show.
5. **What percent of the cost of providing educational services and programs mandated by the State in the 2004-2005 school year was funded by the various types of State aid those districts received, and what percent of the cost was funded by districts' local option budgets?** To answer this question, we would determine the amount of general State aid and categorical aid for special needs students each district in our sample receives. We also would determine the amount of funding each sampled district provides through its local option budget. Based on the cost information we gather under questions 1 and 2 above, we would compute the percent of those costs that are covered by the State aid the district received, and the percent covered by districts' local option budgets. We would point out any differences in the percentages funded in each district, and to the extent possible, point out any factors that would contribute to the differences in the percent funded.

Estimated time to complete: All staff - approximately 6-8 months

STAFF NOTE: the descriptions of work to be performed are necessarily general at this point. Significant additional audit work beyond that listed likely will need to be done to address the issues spelled out in the legislation.

**Legislative Post Audit
Issues Relating to the Cost Study Analysis
Required Under HB 2247**

HB 2247 requires Legislative Post Audit to “conduct a professional cost study analysis to determine the costs of delivering the kindergarten and grades one through 12 curriculum, related services and other programs mandated by state statute in accredited schools.”

This language can be read as incorporating two distinctly different (and incompatible) interpretations of the costs to be included in the cost study:

Scenario 1. Only the cost of those resources needed to fund **what’s mandated by State statute** in schools that are accredited by the Board of Education (all schools currently are accredited), with additional costs added for special needs students.

An input-based (resource-oriented) approach that involves:

- *building one or more models to help estimate the resources needed to provide these curricula, services, and programs, and costing them out*
- *estimating the resources needed to educate special needs students*

NOTE: An input-based approach is much narrower than the outcomes-based approach. It doesn’t relate funding to outcome levels adopted by the Board. Because Kansas laws and regulations don’t specify the resource levels that schools and districts should have, under this approach Legislative Post Audit will make a significant number of judgments about what resource levels are considered to be “adequate” in such areas as class size, support staff, administrative costs, computer and software needs, etc. Such judgments may be based on evaluation studies, averages for similar-sized districts, industry “bench-marks,” and the like.

Scenario 2. The cost of those resources **needed to achieve certain outcomes** adopted by the Board of Education in its school accreditation standards, which schools are required to meet to be accredited.

An outcomes-based approach that involves building one or more models to estimate what it would cost for schools to meet performance outcomes adopted by the Board .

NOTE: Using an outcomes-based approach, it would be methodologically unsound to limit the cost study only to those curricula, related services, and other programs mandated by State statute, because other non-mandated programs, services, and resources (such as alternative high schools, extracurricular activities, after-school tutoring, nurses, etc.) may have contributed to students’ achievement of these outcomes.

Researchers generally use one of two methods when trying to estimate the cost of achieving performance outcomes:

- *successful schools method*—in general, involves determining how much schools that have met specific outcome criteria have spent (generally does not attempt to identify “inefficient” spending).
- *cost function analysis*—in general, involves statistical modeling that uses existing data to determine the relationship between district spending and student outcomes, and estimates the cost of achieving certain outcomes in districts with varied characteristics, serving varied student populations (generally attempts to identify and exclude relatively inefficient spending).

There’s no agreement within the research community as to which outcomes-based approach is best. Each has strengths and weaknesses, can be (and has been) criticized, and may produce what some perceive as winners and losers. There’s no way to know in advance what the results would be.

FYI: Under Board of Education accreditation standards that were adopted January 1, 2005 , relevant performance criteria relate to students’ performance on assessment tests, participation rate on those tests, and attendance and graduation rates. Schools either have to meet a target set by the Board or have to demonstrate improvement. Their accreditation status is affected only if they don’t meet these requirements for two years in a row.

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Legislative Post Audit Recommendation:

Based on discussions in conference committee hearings, we understood that HB 2247 had been expanded by the conference committee to include the Board of Education's QPA regulations and the achievement of the outcome measures adopted by the Board (Scenario 2). However, the Supreme Court apparently did not consider that the language in HB 2247 required an estimation of the cost to meet certain educational outcomes. Legislators also may have very different interpretations of this language as well. If there is a serious difference of opinion among legislators or between the Legislature and the Court on this subject, I believe Legislative Post Audit will be put in an untenable position if we have to choose between the two approaches.

1. We would ask the Legislature to clarify whether adding the words "in accredited schools" to new section 3(a) of HB 2247 expanded the scope of the cost study to include not only requirements mandated by State statute, but also the Board of Education's regulations for accredited schools (which brings in schools' achievement of QPA performance criteria). Based on that clarification, the Legislature should specify whether the cost study analysis should be based on:
 - a. the resources necessary to meet the requirements mandated by State statute (Scenario 1)
 - b. the cost of meeting targeted outcomes (Scenario 2)
 - c. both scenarios (would involve separate cost studies, which likely would produce different results)

In the absence of legislative clarification in these areas, we think the law can be read as requiring either scenario. To meet what we consider to be the conflicting provisions in the law, we would need to perform two separate cost analyses: both input-based and outcomes-based. To complete these studies on time, we likely would need to perform more limited reviews in some of the other areas called for in HB 2247, such as determining whether special needs students who are counted as a basis for computing funding actually receive those services.

2. New recommendation: We would also ask the Legislature to clarify which Board standards we are to use as a basis of the cost study analysis. New standards go into effect July 1st that were adopted by the Board and published in the Kansas Administrative Regulations before the passage of HB 2247.

Requirements for a Suitable Education

<p style="text-align: center;">High School Graduation Requirements Kansas State Board of Education - QPA (Effective 7/01/05)</p> <ul style="list-style-type: none"> • 4 units of English/ Language Arts • 3 units of History/ Government • 3 units of Science • 3 units of Mathematics • 1 unit of PE • 1 unit of fine arts • 6 elective courses 	<p style="text-align: center;">State Statute 72-116 and 76-717 Qualified Admissions Requirements (currently in effect)</p> <ul style="list-style-type: none"> • 4 units of English • 3 units of Math • 3 units of Natural Science • 3 units of Social Studies • 1 unit of Computer Technology 	<p style="text-align: center;">State Scholarship Requirements Kansas Board of Regents (currently in effect)</p> <ul style="list-style-type: none"> • 4 units of English/Language Arts • 3 units of Natural Science (1 each of biology, chemistry & physics) • 4 units of Math • 3 units of Social Studies • 1 unit of Computer Technology • 2 units of Foreign Language 	<p style="text-align: center;">State Statute 72-1117 State Law - high school graduation</p> <ul style="list-style-type: none"> • Kansas History and Government
<p style="text-align: center;">State Statute 72-1101 Required by Legislature Required subjects in elementary schools</p> <ul style="list-style-type: none"> • Reading • Writing • Arithmetic • Geography • Spelling • English Grammar and Composition • History of the United States • History of Kansas • Civil Government • Duties of Citizenship • Health and Hygiene • Such other subjects as the State Board may determine 	<p style="text-align: center;">State Statute 72-1103 Required by Legislature Required courses of instruction; graduation requirements</p> <ul style="list-style-type: none"> • Civil Government (elementary) • US. History (elementary) • Patriotism (elementary) • Duties of a Citizen (elementary) • Government and Institutions of the United States (secondary) • Constitution of the United States (secondary) 	<p style="text-align: center;">Regulation 91-31-32 (b) Kansas State Board of Education QPA Performance Criteria</p> <ul style="list-style-type: none"> • Percent at or above proficient on state assessments or having increased overall student achievement by a percentage prescribed by the State Board • 95% or more of all students and each subgroup take state assessments • Have an attendance rate equal to or greater than that set by the State Board • For high schools, have a graduation rate equal to or greater than that prescribed by the State Board 	
<p style="text-align: center;">Regulation 91-31-32(c) Kansas State Board of Education QPA Quality Criteria</p> <ul style="list-style-type: none"> • A school improvement plan that includes a results-based staff development plan • An external assistance team • Local assessments aligned with state standards • Training for teachers on state standards and assessments • 100% of faculty in core areas fully licensed and 95% or more of faculty in other areas • A curriculum that allows students to meet the Regents qualified admissions and state scholarship requirements • Local policies that comply with state graduation requirements 	<p style="text-align: center;">Regulation 91-31-32(c) Kansas State Board of Education QPA Quality Criteria Programs/services needed at elementary/secondary level</p> <ul style="list-style-type: none"> • Computer literacy • Counseling services • Fine Arts • Language Arts • Library Services • Mathematics • Physical Education, which shall include instruction in health & human sexuality • Science • Services for students with special learning needs • History and Government including Kansas history and government 	<p style="text-align: center;">Regulation 91-31-32(c) Kansas State Board of Education QPA Quality Criteria Program/services needed at secondary level</p> <ul style="list-style-type: none"> • Business • Family and consumer Science • Foreign language • Industrial and Technical Education 	

Additional programs and services included in the legislature's definition of a suitable education given for the Augenblich & Myers study that are not mandated by State Regulations, State Statute, Kansas Board of Regents (State Scholarship) or Kansas State Board of Education (QPA).

- Student and staff safety
- Early childhood programs - (except 3 & 4 year old special education)
- Extended learning time
- Alternative schools
- Activities programs
- Student transportation - (mandated over 2 ½ miles if outside the city limits)
- Nursing services

NORMAN J. FURSE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR



LEGAL CONSULTATION—LEGISLATIVE
COMMITTEES AND LEGISLATORS
LEGISLATIVE BILL DRAFTING
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OFFICE OF REVISOR OF STATUTES

300 SW TENTH AVE - STE 322, Statehouse—TOPEKA, KANSAS 66612-1592

PHONE (785) 296-2321 FAX (785) 296-6668

E-mail: Revisor'sOffice@rs.state.ks.us

To: Senate Committee on Education
From: Theresa Kiernan
Senior Assistant Revisor of Statutes
Date: June 20, 2005
Re: Montoy v. State

The following is a highlight of certain provisions contained in the most recent rulings of the Kansas Supreme Court relating to school finance.

In U.S.D. 229 v. State, the Supreme Court upheld the provisions of the 1992 school finance law. In particular the court held that:

- The court had a limited scope of review of the law and that was limited to whether the legislature had the power to enact the legislation, not the wisdom behind the enactment.
- The issue for judicial review was whether the SDFQPA provided suitable financing, not whether the level of finance is optimal or the best policy.
- The court would uphold funding differences among districts if there was a legitimate goal for the differences and the means to achieve that goal bear a rational basis to the goal.
- Upheld each weighting because it found that there was a rational basis for each. In overruling the district court's ruling that there was no rational basis grounded in educational theory for how the low enrollment weighting was determined, the court stated that the lack of scientific evidence is not determinative of whether or not the legislature had a rational basis for drawing the line where it did.
- The issue of suitability is not stagnant and must be closely monitored. When attacked upon enactment or modification, the law may be determined constitutional. At a later time as a result of underfunding and inequitable distribution of finances, a court could determine that the law no longer complies with constitutional provisions.

On January 3, 2005, the Supreme Court issued its ruling in the Montoy case. The court held that:

- The legislature had failed to make suitable provision for finance of the public school system.
- As funded, the SDFQPA failed to provide suitable finance for students in middle-sized and large districts with a high proportion of minority and/or at-risk and special education students.
- Districts were being forced to use LOB money to fund a constitutionally adequate education.
- Among the critical factors for the legislature to consider in achieving a suitable formula

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for financing education were "equity with which the funds are distributed and the actual costs of education, including appropriate levels of administrative costs." The court felt this guidance was necessary because the current formula increases disparities in funding, not based on cost analysis, but rather on political and other factors not related to education.

- Increased funding would be required.

In advance of oral arguments to consider the 2005 legislation, the Supreme Court issued an order in which it:

- Explained to the parties to the suit what it wanted to know about the 2005 legislation:
 - Did the legislature address the court's special concern as to whether it considered actual costs of providing a suitable education when drafting the law?
 - Did the law exacerbate and/or create funding disparities among the districts?
- Asked the parties to address whether additional fact-finding would be necessary.
- Asked the parties what remedial action should be ordered.

On June 3, 2005, the Supreme Court issued a supplemental opinion to the Montoy case in which it:

- Rejected the state's argument that the separation of powers doctrine limited the court's scope of review to the issue of whether the legislature had the authority to pass the legislation. Stating the remedial posture of this case made inapplicable any language in U.S.D. No. 229 which might be read to limit its scope of review. The court stated that the final decision as to the constitutionality of legislation rests exclusively with the courts. Citing the Marbury v. Madison case of 1803, the court states that the balance of power may be delicate, but the judiciary's sworn duty includes judicial review of legislation for constitutional infirmity. The court stated it is "not at liberty to abdicate our own constitutional duty."
- Reiterated its specific concerns about whether the actual costs of providing a constitutionally adequate education were considered as to each component of the school finance formula and the statutory formula as a whole and whether any unjustified funding disparities have been exacerbated rather than ameliorated.
- Used the Augenblick and Myers study as its guide in making its determination and stated the reasons for using the study:
 - It was competent evidence admitted at trial.
 - Commissioned by the legislature.
 - Only analysis resembling a cost study before the court or the legislature.
 - SBOE and KSDE recommended that the A&M recommendations be adopted at the time the study was completed and sent to the legislature.
- Retained jurisdiction of the appeal.

What is the Supreme Court telling the legislature in its latest decision as to suitable finance?

- The court has determined that to meet the constitutional requirement of providing suitable finance, the legislature needs to provide at least \$143 million more for the educational system of the state for school year 2005-2006.
- The court has left it to the legislature to determine how that \$143 million is to be

distributed for school year 2005-2006 so long as it is equitable and that method of distribution does not create or exacerbate unjustified funding disparities among the school districts.

- Unless the legislature, using a valid cost study, enacts legislation based on actual and necessary costs of providing a suitable system of finance and which equitably distributes the funding, funding for school year 2006-2007 and thereafter would be in amounts recommended by the Augenblick and Myers study.
- The court does not look favorably local funding mechanisms under which school districts are paying for the state's obligation to provide suitable finance for the educational interests or which create wealth-based disparities in funding.
- In addition to staying the new local funding authority, the court has concerns about numerous provisions in the school finance law, but it did not strike them as unconstitutional in this opinion.
- The court retained jurisdiction. The court stated that the "court's retained jurisdiction allows a review to determine if there has been compliance with our opinion." When reviewing any law passed during the special session, it most likely will use the broader scope of review it used with 2005 HB No. 2247.

June 16, 2005

Kansas Supreme Court Supplemental Opinion
in *Montoy, et al. v. State of Kansas, et al.*

The Kansas Supreme Court on June 3, 2005, issued a supplemental opinion in the school finance case, *Montoy, et al. v. State of Kansas, et al.*, in which the Court found that school finance legislation enacted by the 2005 Legislature falls short of standards set by Article 6 of the *Kansas Constitution*. Citing a "continuing lack of constitutionally adequate funding" and "inequity-producing local property tax measures," the Court retained jurisdiction and told the Legislature that it has until July 1, 2005, to increase funding for the 2005-06 school year by an additional \$143.0 million.

In addition, the Court examined four specific policies enacted by the 2005 Legislature in HB 2247, as amended by SB 43, and ordered that they not go into effect. They are described below, with the Court's findings in italics:

- **Increased Local Option Budget (LOB) Authority.** HB 2247 increases the maximum LOB authorization to 27 percent in school year 2005-06, to 29 percent in school year 2006-07, and to 30 percent in school year 2007-08 and thereafter. For school year 2005-06, the increase in the LOB would not be equalized. *The Court's position is that the increase in the LOB exacerbates wealth-based disparities between districts because districts with high assessed property valuations have access to additional funding with less tax effort than districts with lower assessed property valuations.*
- **Extraordinary Declining Enrollment Weighting.** HB 2247 creates the extraordinary declining enrollment weighting, which is applicable to a school district that has declined during the preceding three school years at a rate of at least 15 percent per year or by at least 150 pupils per year and has adopted an LOB that is equal to the state prescribed percentage. Such a school district could appeal to the State Board of Tax Appeals for permission to levy a property tax for up to two years. *The Court finds that this policy has the potential to be disequalizing because it benefits only a small number of school districts.*
- **Cost-of-Living Weighting.** The new school finance legislation creates a cost-of-living weighting applicable to school districts which have adopted LOBs that are at the state prescribed percentage and in which the average appraised value of a single family residence is more than 25 percent higher than the statewide average value. A qualifying district could levy additional property taxes. *The Court notes a lack of rationale for this provision, contends that resorting to additional property taxes demonstrates that the state has failed to meet its obligation to adequately fund schools, and finds that this property-tax based provision, "as with the other property-tax based provisions of HB 2247," has a potentially disequalizing effect.*
- **Approval to Receive State Aid for New Construction.** HB 2247 requires that any school district that has experienced at least a 5 percent per year decline or

at least a 50-pupil per year decline for the three previous school years must get a recommendation from the Joint Committee on State Building Construction prior to issuing new bonds. The recommendation from the Committee would be made to the State Board of Education, which has final authority to approve the building project. If the State Board disapproves the project, the school district may proceed, but it would not be entitled to receive capital improvement state aid. *The Court finds that this policy, like the extraordinary declining enrollment provision, is potentially disequalizing and was designed to benefit a very small number of school districts.*

Other Concerns

With the Augenblick and Myers (A&M) study as its background, and using as its “guiding considerations” those set forth in its January opinion—(1) actual costs of providing a constitutionally adequate education; and (2) funding equity—the Court examined various components of HB 2247, and concluded that they fall short, particularly in light of whether they were based on actual costs of providing a constitutionally adequate education and on funding equity. The items and the Court’s assessments are as follows:

- **Base State Aid Per Pupil (BSAPP).** The Court concludes that the increased rate for BSAPP in HB 2247 still “substantially varies” from cost information in the record and from recommendations for funding made by the State Board of Education.
- **At-Risk Weighting.** The Court notes that actual costs of educating at-risk students were not considered by the Legislature and cites the A&M study and another outside source in support of higher funding for at-risk students.
- **Bilingual Education Weighting.** Although the Court agrees that the 2005 Legislature increased the bilingual education weighting significantly, it points out that the weighting still is lower than cost information entered into evidence during the course of the litigation.
- **Special Education.** The Court notes the higher amount of special education funding recommended by A&M, acknowledges the concern that 100 percent funding of special education excess costs could lead to over-identification of special education students, but concludes that no evidence was presented that districts have, in fact, over identified students or inflated student counts in order to maximize reimbursement. It concludes that the higher funding level recommended by A&M [\$102.9 million in 2001 dollars] is “a stark contrast to the \$17.7 million provided by HB 2247.”
- **Local Option Budgets.** In addition to staying implementation of increasing the LOB above the current 25 percent, the Court makes other general comments about the LOB. It observes that the original purpose of the LOB was to give school districts access to additional property taxes to fund “enhancements to the constitutionally adequate education provided and financed under the legislative financing formula.” However, the Court says that, because the state’s funding formula has been inadequately funded, school districts have been forced to use

the LOB, not for enhancements, but simply to fund a constitutionally adequate education. The Court's argues that the *Constitution* places the burden of financing a constitutionally adequate education on the state, not on local districts. The Court believes that forcing districts to use their LOB's to supplement the state's funding leads to wealth-based disparities that hurt districts with lower property valuations.

The Court goes one step further and addresses the role of the LOB *after* the Legislature has added enough money to adequately fund education. It acknowledges that, once suitable funding for education has been provided, "there may be nothing in the *Constitution* that prevents the legislature from allowing school districts to raise additional funds for enhancements to the constitutionally adequate education already provided." The Court adds: "At least to the extent that funding remains constitutionally equalized, local assessments for this purpose may be permissible. Clearly, however, such assessments are not acceptable as a substitute for the state funding the legislature is obligated to provide under Article 6, section 6. That should pre-exist the local tax initiatives."

- **Low Enrollment Weighting.** The Court agrees that the 2005 Legislature did not change low enrollment weighting, but points out that no evidence has been presented to justify either the enrollment cut-off of 1,750 students or the actual weightings used. This lack of factual support for the policy is "particularly troubling" to the Court because HB 2247 eliminates correlation weighting for districts with enrollments above 1,750, thus eliminating funding earmarked for larger school districts. The Court finds that transferring funds allocated to correlation weighting to BSAPP "gives low-enrollment districts even more of the funds that previously were devoted to balancing the disparities in per pupil funding caused by the low-enrollment weighting."
- **Capital Outlay.** The Court notes that the 2005 Legislature reimposed a cap on the capital outlay mill levy, but says: "Because the provision is based on local property tax authority, the amount of revenue a district can raise is tied to property value and median family income; thus the failure to provide any equalization to those districts unable to access this funding perpetuates the inequities produced by this component."

The Legislative Division of Post Audit Cost Study

HB 2247 directs the Legislative Division of Post Audit to conduct a professional cost study to determine the costs of delivering the kindergarten and grades one through 12 curriculum, related services, and other programs *mandated by state statute* in accredited schools [emphasis added]. The study is to be presented to the 2006 Legislature.

The Court finds this directive to be "deficient" because it limits the study to "inputs" only—the cost of providing for programs and services that are statutorily mandated. The Court expands the scope of the study to include "outputs"—the cost of attaining "measurable standards of student proficiency." In the Court's view, merely determining how much it costs to pay for statutorily-required programs and services does not answer the question of how much it costs to enable students to meet the educational standards adopted by the State Board of Education and envisioned by the Legislature when it directed the State Board to "design and adopt a school performance accreditation

system based upon improvement in performance that reflects high academic standards and is measurable” (KSA 2004 Supp. 72-6439).

Further, the Court says that, in its report to the 2006 Legislature, the Division of Post Audit must be able to demonstrate how it has met the Court’s requirement that output data be considered and requires the Division to show how its use of historical cost data accurately arrives at current and projected cost data, considering that, in the Court’s opinion, historical costs have been underfunded. The Court also instructs the Division to consider all administrative costs in its study, not just costs of central administration.

Total Funding Required

The Supreme Court placed heavy reliance on the A&M study, which was completed in 2002. A study of a professional evaluation of school district finance to determine the cost of a suitable education was commissioned by the 2001 Legislature and overseen by the Legislative Educational Planning Committee (LEPC). For purposes of the study, what constituted a “suitable education” was defined by the Legislature and expanded by the LEPC, with input from the State Board of Education. The Court based its order on the estimated cost of \$853.0 million to implement the A&M recommendations. (The figure was arrived at by updating the original estimates by an annual 2 percent inflation factor through school year 2003-04.) The Court explains that it used the A&M study because it was “the only analysis resembling a legitimate cost study before us.”

The Court warns that one remedy available to it would be to require the Legislature to fully fund the \$853.0 million amount over a two-year period, except that the Legislature could substitute the cost study done by the Division of Post Audit if the study meets certain conditions. Specifically:

- For the 2005-06 school year, the Legislature has until July 1, 2005, to add \$143.0 million to the \$142.0 million already approved for FY 2006, for a total increase over FY 2005 of \$285.0 million. The total is approximately one-third of the \$853.0 million necessary to implement the A&M recommendations.
- Funding beyond the 2005-06 school year is contingent upon the results of the cost study done by the Legislative Division of Post Audit, according to the Court. But the Court says that if the study is not completed or submitted in time for the 2006 Legislature to consider it, if it is “judicially or legislatively determined not to be a valid cost study,” or if legislation is not enacted which is based upon “actual and necessary costs of providing a suitable system of finance and which equitably distributes the funding,” the Court would consider, “among other remedies, ordering that, at a minimum, the remaining two-thirds (\$568.0 million) in increased funding based upon the A&M study be implemented for the 2006-07 school year.”



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Kansas Supreme Court
Summary of *Montoy v. State*
June 3, 2005

For more information, contact: [Ron Keefover](#), Office of Judicial Administration, Kansas Judicial Center, 301 West 10th, Topeka, KS 66612-1507 (785-296-2256), e-mail: keefover@kscourts.org.

RE: Appeal No. 92,032: *Montoy v. State*

The Supreme Court today unanimously ordered school funding for the coming school year to be increased no later than July 1 from approximately \$142 million appropriated by the 2005 Legislature to \$285 million above the past school year's level of funding.

The figure is one-third of the \$853 million amount recommended by a consulting firm retained by the 2001 Legislature to determine the cost of educating students in Kansas.

"The case is extraordinary, but the imperative remains that we decide it on the record before us," the Court said in the decision. The State cites no cost study or evidence to rebut the 2001 study by Augenblick & Myers, the consultants retained by the Legislature. "Thus the A&M study is the only analysis resembling a legitimate cost study before us."

"Accordingly, at this point in time, we accept it as a valid basis to determine the cost of a constitutionally adequate public education in kindergarten through the 12th grade. The alternative is to await yet another study, which itself may be found legislatively or judicially unacceptable, and the school children of Kansas would be forced to further await a suitable education." The Court noted that the present suit was filed in 1999.

The Court also said a suggestion by the State Board of Education that the 2005 legislation be accepted as an interim step toward a full remedy is initially attractive, but arguments by the plaintiffs and numerous "friends of the court" briefs present compelling arguments for an immediate fix. "They remind us that we cannot continue to ask current Kansas students to 'be patient.' The time for their education is now," the Court wrote.

However, in deference to a Legislative Post Audit cost study analysis mandated by the 2005 session, the "implementation beyond the 2005-06 school year will be contingent upon the results of the study and this opinion."

"Further, if (1) the post-audit study is not completed or timely submitted for the legislature to consider and act upon it during the 2006 session, (2) the post-audit study is judicially or legislatively determined not to be a valid cost study, or (3) legislation is not enacted which is based upon actual and necessary costs of providing a suitable system of finance and which equitably distributes the funding, we will consider, among other remedies, ordering that, at a minimum, the remaining two-thirds (\$568 million) in increased funding based upon the A&M study be implemented for the 2006-07 school year."

"Clearly, the legislature's obligation will not end there; the costs of education continue to change and

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constant monitoring and funding adjustments are necessary. H.B. 2247's provisions regarding establishment of the 2010 Commission and mandating annual increases based upon the Consumer Price Index may satisfy these demands, but the legislature may seek other means to assure that Kansas school children, now and in the future, receive a constitutionally adequate education.

"In addition, . . . the new funding authorized by [the 2005 session] regarding the increased Local Option Budget authority over 25 percent, the cost-of-living weighting; and both extraordinary declining enrollment provisions are stayed." The Court left the remainder of the legislation intact.

The Court said it "readily" acknowledges that "our present remedy is far from perfect; indeed, we acknowledge that it is merely a balancing of several factors." Among the factors the Court listed are:

- The ever-present need for Kansas school children to receive a constitutionally adequate education.
- The role of the Court as defined in the Kansas Constitution
- The need for the legislature to bring its school finance legislation into constitutional compliance, with acknowledgment of the unique difficulties inherent in the legislative process.
- And the press of time caused by the rapidly approaching school year.

"Accordingly, we retain jurisdiction of this appeal. If necessary, further action will be taken by this court as is deemed advisable to ensure compliance with this opinion," the Court concluded.

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Comments to: [WebMaster, kscases@www.kscourts.org](mailto:kscases@www.kscourts.org).

Revised: June 3, 2005.

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IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 92,032

RYAN MONTROY, *et al.*,*Appellees/Cross-appellants,*

v.

STATE OF KANSAS, *et al.*,*Appellants/Cross-appellees.*

SUPPLEMENTAL OPINION

Appeal from Shawnee district court; TERRY L. BULLOCK, judge. Supplemental opinion filed June 3, 2005. 2005 House Bill 2247 is not in compliance with the January 3, 2005, opinion of this court and fails to remedy the constitutional infirmities in the Kansas School District Finance and Quality Performance Act (SDFQPA), K.S.A. 72-6405 *et seq.*, identified in that opinion.

Kenneth L. Wertz, of Lathrop & Gage L.C., of Overland Park, argued the cause, and *Curtis L. Tideman*, *Alok Ahuja*, and *Jeffrey R. King*, of the same firm, and *David W. Davies*, assistant attorney general, and *Phill Kline*, attorney general, were with him on the briefs for appellant/cross-appellee State of Kansas.

Dan Biles, of Gates, Biles, Shields & Ryan, P.A., of Overland Park, argued the cause, and *Rodney J. Bieker*, of Kansas Department of Education, and *Cheryl Lynn Whelan*, of Lawrence, were with him on the briefs for appellants/cross-appellees Janet Waugh, Sue Gamble, John Bacon, Bill Wagon, Connie Morris, Kathy Martin, Kenneth Willard, Carol Rupe, Iris Van Meter, Steve Abrams, and Andy Tompkins.

Alan L. Rupe, of Kutak Rock LLP, of Wichita, argued the cause, and *Richard A. Olmstead*, of the same firm, and *John S. Robb*, of Somers Robb & Robb, of Newton, were with him on the briefs for appellees/cross-appellants.

Wm. Scott Hesse, assistant attorney general, was on the brief for defendants/cross-appellees Governor Kathleen Sebelius and State Treasurer Lynn Jenkins.

Jane L. Williams, of Seigfreid, Bingham, Levy, Selzer & Gee, of Kansas City, Missouri, was on the briefs for *amicus curiae* Kansas Families United for Public Education.

Patricia E. Baker and *Zachary J.C. Anshutz*, of Kansas Association of School Boards, of Topeka, were on the briefs for *amicus curiae* Kansas Association of School Boards.

David M. Schauner and *Robert M. Blaufuss*, of Kansas National Education Association, of Topeka, were on the briefs for *amicus curiae* Kansas National Education Association.

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Joseph W. Zima, of Topeka Public Schools, was on the brief for *amicus curiae* Unified School District No. 501, Shawnee County, Kansas.

Michael G. Norris and *Melissa D. Hillman*, of Norris, Keplinger & Hillman, L.L.C., of Overland Park, were on the brief for *amici curiae* Unified School Districts Nos. 233, 229, and 232, Johnson County, Kansas.

Anne M. Kindling, of Goodell, Stratton, Edmonds & Palmer, L.L.P., of Topeka, was on the briefs for *amicus curiae* Unified School District No. 512, Shawnee Mission, Kansas.

Bernard T. Giefer, of Giefer Law LLC, of WaKeeney, was on the briefs for *amici curiae* Unified School District No. 208, Trego County, Kansas (WaKeeney), *et al.* (60 other Kansas school districts).

Thomas R. Powell and *Roger M. Theis*, of Hinkle Elkouri Law Firm L.L.C., of Wichita, were on the briefs for *amicus curiae* Unified School District No. 259, Sedgwick County, Kansas.

Janice L. Mathis, of Rainbow/PUSH Coalition, of Atlanta, Georgia, was on the brief for *amicus curiae* Rainbow/PUSH Coalition.

Cynthia J. Sheppard, of Weathers & Riley, of Topeka, was on the briefs for *amicus curiae* Kansas Action for Children.

Bob L. Corkins, of Lawrence, was on the brief for *amicus curiae* Kansas Taxpayers Network.

Kirk W. Lowry, of Kansas Advocacy & Protective Services, of Topeka, was on the brief for *amicus curiae* Kansas Advocacy & Protective Services.

Martha B. Crow, of Crow, Clothier & Associates, of Leavenworth, was on the brief for *amicus curiae* Martha B. Crow.

Dr. Walt Chappell, of Wichita, was on the brief for *amicus curiae* Educational Management Consultants.

Tristan L. Duncan and *Daniel D. Crabtree*, of Stinson Morrison Hecker L.L.P., of Overland Park, were on the brief for *amici curiae* Individual Students in the Shawnee Mission Unified School District No. 512.

Per Curiam: This case requires us to review recent school finance legislation to determine whether it complies with our January 3, 2005, opinion and brings the state's school financing formula into compliance with Article 6, § 6 of the Kansas Constitution. We hold that it does not.

FACTS

In our January opinion, this court reversed the district court in part and affirmed in part, agreeing that the legislature had failed to make suitable provision for finance of the public school system and, thus, had failed to meet the burden imposed by Article 6, § 6 of the Kansas Constitution. *Montoy v. State*, 278 Kan. 769, 102 P.3d 1160 (2005) (*Montoy II*). Among other things, we held that the Kansas School District Finance and Quality Performance Act (SDFQPA), K.S.A. 72-6405 *et seq.*, as funded, failed to provide suitable finance for students in middle-sized and large districts with a high proportion of minority and/or at-risk and special education students; some school districts were being forced to use

local option budgets (LOB) to finance a constitutionally adequate education, *i.e.*, suitable education; the SDFQPA was not based upon actual costs, but rather on former spending levels and political compromise; and the failure to perform any cost analysis distorted the low-enrollment, special education, vocational education, bilingual, and at-risk student weighting factors.

We further held that among the critical factors for the legislature to consider in achieving a suitable formula for financing education were "equity with which the funds are distributed and the actual costs of education, including appropriate levels of administrative costs." We provided this guidance because "the present financing formula increases disparities in funding, not based on a cost analysis, but rather on political and other factors not relevant to education." We also held that "increased funding will be required." *Montoy II*, 278 Kan. at 775.

We stayed the issuance of the mandate to allow the legislature a reasonable time to correct the constitutional infirmity in the then existing financing formula. Rather than suspend the funding of education, we ordered that the present financing formula and funding would remain in effect until the court took further action, noting: "The legislature, by its action or lack thereof in the 2005 session, will dictate what form our final remedy, if necessary, will take." We set a deadline of April 12, 2005. *Montoy II*, 278 Kan. at 776.

The legislature timely responded by enacting 2005 House Bill 2247 on March 30, 2005, which was modified by 2005 Senate Bill 43, passed during the veto session (collectively H.B. 2247). The Governor allowed the bill to become law without her signature, and the new legislation was delivered to this court.

On April 15, 2005, we issued an order which, among other things, directed the parties to file briefs addressing "whether the financing formula, as amended by H.B. 2247, meets the legislature's constitutional burden to 'make suitable provision for finance' of the public schools."

The parties were first directed to address 10 specific components of the financing formula. With respect to each of the components, as well as to the formula as a whole, the parties were asked to address our special concern as to whether the actual costs of providing a suitable education was considered and whether H.B. 2247 exacerbates and/or creates funding disparities among the districts.

Second, the parties were asked to address whether additional fact-finding would be necessary, and, if so, how that fact-finding should be pursued.

Third, the parties were asked to address what remedial action should be ordered and on what timetable in the event the court concludes, without additional fact-finding, that the financing formula, as amended by H.B. 2247, is still unconstitutional.

The parties were ordered to appear before this court on May 11, 2005, to show cause why the court should or should not find that H.B. 2247 complied with our January opinion. We recognized that the burden of proof had been on the plaintiffs to show that the SDFQPA, as it existed at the time of the filing of the action herein, was constitutionally infirm. We held that because the plaintiffs had prevailed, the burden of proof had "shifted to the defendants to show that the legislature's action has resulted in suitable provision for the financing of education as required by Article 6, § 6."

Pursuant to our April order, the defendants, State of Kansas (State) and the Board of Education members and Commissioner of Education (Board), filed separate briefs. The plaintiffs filed a response

brief. Ten *amici curiae* briefs were filed. Oral arguments were heard by this court on May 11, 2005.

We must now decide if H.B. 2247 remedies the SDFQPA infirmities identified in our January opinion and thus makes suitable provision for financing of education as mandated by Article 6, § 6 of the Kansas Constitution. To do that, we first need to identify the changes H.B. 2247 makes in the SDFQPA.

H.B. 2247 modifies the school finance system in several ways. First, it alters the Base State Aid Per Pupil (BSAPP) and several of the weightings and other factors that affect the formula. It increases bilingual and at-risk weightings; it eliminates correlation weighting; it provides for phased-in increases in funding of special education excess costs at a statutorily prescribed level; and it provides for increases in general state aid based on the Consumer Price Index-Urban (CIP-U). It does not substantively change the low-enrollment weighting provision as it existed at the time of the January opinion.

Second, it provides certain districts the authority to raise additional revenue through local ad valorem taxes upon taxable tangible property within the district. Specifically, it provides a phased-in increase in the LOB cap. Before H.B. 2247 was enacted, a school district could enact a LOB that was as much as 25 percent of its state financial aid. K.S.A. 72-6433(a)(1)(A)-(D); K.S.A. 72-6444. H.B. 2247 makes incremental increases in this cap of 27 percent in the 2005-06 school year, 29 percent in 2006-07, and 30 percent in 2007-08. H.B. 2247 also authorizes districts with high housing costs to levy additional ad valorem taxes upon the taxable tangible property within the district. The rationale for this provision is to allow districts to pay enhanced teacher salaries. In addition, districts with extraordinary declining enrollment may apply to the Board of Tax Appeals (BOTA) for permission to levy an ad valorem tax on the taxable tangible property of the district in an amount authorized by BOTA.

Third, H.B. 2247 makes several nonformula changes. It provides for statutorily mandated areas of instruction; establishes an 11-member "2010 Commission" to provide legislative oversight of the school finance system; and provides for a study by the Legislative Division of Post Audit to "determine the costs of delivering the kindergarten and grades one through 12 curriculum, related services and other programs mandated by state statute in accredited schools."

Fourth, H.B. 2247 limits all new local capital outlay mill levies to eight mills. SDFQPA originally capped the capital outlay level at four mills, but the cap was completely removed in 1999.

Fifth, certain changes to H.B. 2247 made by S.B. 43 are slated to become effective July 1, 2005, while other provisions became law upon publication in the Kansas Register. See S.B. 43, secs. 27, 28.

The estimated grand total for H.B. 2247's fiscal impact is approximately \$142⁽¹⁾ million in additional state funding for the 2005-06 school year.

DISCUSSION AND ANALYSIS

Overall, the State claims that the constitutionality of the school financing formula as amended by H.B. 2247 is not properly before this court. In its view, this case can address only the *former* financing formula, which no longer exists. Regarding the important issue of consideration of actual costs, the State contends that the legislature did consider such costs to the extent possible. At oral arguments, the State repeatedly claimed that our focus should be limited to whether the legislature had authority

to pass school finance legislation, suggesting any further intervention by this court would offend the separation of powers doctrine and the carefully calibrated system of checks and balances among our three branches of government.

In the alternative, the State generally argues that if the financing formula's constitutionality remains at issue, H.B. 2247 should enjoy a presumption of constitutionality and the burden of proof should be upon the plaintiffs to demonstrate otherwise. Moreover, if the court should determine that further fact-finding is necessary on the constitutional issue, the case should be remanded for further proceedings, with the present legislation remaining in effect until the remand produces another district court ruling. Finally, as another alternative, the State argues that if this court holds the legislation unconstitutional, without remand, then our only authority is to strike it in toto. In that event, the State contends, the legislature would have to enact new legislation, because this court has no authority to impose an interim funding plan.

In contrast, the Board argues that the issue before us is whether the State complied with our January opinion. It generally disagrees that the legislation fully meets the legislature's constitutional obligation. It also argues that H.B. 2247's modifications to the financing formula were not based upon the actual costs of providing a suitable education. However, because the legislature commissions a cost study, the Board asserts this court should uphold the legislation as an adequate interim first step in a multi-year remedial response. It urges us to hold that the changes made by H.B. 2247 are sufficient pending the results of the cost study, *i.e.*, an installment on the first remedy year toward what may very well be a much larger obligation based on the evidence in this case.

The Board strongly disagrees, however, with the legislation's provisions allowing increased funding authority based solely on local ad valorem property taxes, because it believes these provisions exacerbate funding inequities based on district wealth. It asks that these provisions be stricken, with the remainder of H.B. 2247 taking effect to enable school districts to plan for the rapidly approaching school year with the benefit of increased state aid. The Board also specifically disagrees with the parameters of the legislature's proposed cost study and expresses concerns that merely studying how much money has been spent over the years on a broken school financing system will be of little assistance. As a result, it argues that additional fact-finding will be necessary to determine the future costs of providing a suitable education.

The plaintiffs argue the increases in funding "fall grossly short of what is actually necessary to provide a constitutionally suitable education." They agree with the Board that actual costs were not considered and allege that the legislation was the result of political compromise and what the majority of the legislature believed it could provide without raising taxes. They also agree with the Board that the three provisions dependent on local ad valorem property taxes compound the formula's unjustified funding disparities.

The plaintiffs further argue that additional fact-finding is unnecessary. They ask us to (1) declare the legislation unconstitutional; (2) direct the Board to design a temporary school funding plan that incorporates recommendations from the 2001 Augenblick & Myers Study (A&M study), and direct the State to implement the plan, on a temporary basis, by July 1, 2005; (3) direct the State to enact constitutional legislation for funding public education; and (4) retain jurisdiction to ensure our orders are followed.

With this overview of the parties' arguments in mind, we turn to consideration of more specific contentions.

In support of its argument that the financing formula, as amended by H.B. 2247, is no longer properly before us, the State relies on *Knowles v. State Board of Education*, 219 Kan. 271, 547 P.2d 699 (1976). It characterizes *Knowles* as "indistinguishable" from the situation before us. In fact, the State's reliance on *Knowles* is misplaced because *Knowles* was before this court in an entirely different procedural posture.

In *Knowles*, the district court struck down the 1973 School District Equalization Act as unconstitutional. Because the legislature was in session when the judgment was entered, the district court withheld issuing a remedy in order to give the legislature time to correct "the inequities." The legislature amended the 1973 School District Equalization Act effective July 1, 1975. The district court took judicial notice of the new bill, declined to hear new evidence, dissolved the injunction, and dismissed the case. The district court held that because the legislature enacted new legislation, the law as it existed on the date of the decision no longer was in effect. Thus any determination concerning the constitutionality of the old law was moot, and any issue of the constitutionality of the new legislation was an entirely new matter that must be litigated in a new action. *Knowles*, 219 Kan. at 274.

The *Knowles* plaintiffs appealed the order dissolving the injunction and dismissing the case. This court found the new legislation had not rendered the case moot and reversed and remanded the matter to the district court for additional fact-finding on the changes made to the formula. This court rejected the plaintiffs' request that it rule on the constitutionality of the new legislation, stating that the facts and figures necessary to demonstrate plaintiffs' claims as to the new legislation were not part of the record before the court. *Knowles*, 219 Kan. at 278.

In *Knowles*, this court did not review the 1973 Act in the first instance; nor did it reach an independent conclusion as to the constitutionality of that Act. In contrast, in the instant case, not only was the issue of the constitutionality of the SDFQPA before this court pursuant to our appellate jurisdiction, but also we evaluated the district court's findings of fact to determine if they were supported by substantial competent evidence and determined the school financing formula was unconstitutional. In addition, the statutory amendments at issue in *Knowles* were made in response to the district court's declaratory judgment issued while it still had jurisdiction over the case. Here, H.B. 2247 arose as a remedy in response to a specific order of this court while we retained jurisdiction. Due to these differences, the following statement in *Knowles* actually supports our continuing review at this juncture:

"The right of persons to challenge the constitutional effect of a law upon their persons or property should not be aborted every time the law is amended by the legislature. In some instances amendments occur almost annually with minimal impact upon the overall effect of the law. It is entirely possible that the 1976 legislature will again amend this Act.

....

"The nature of this controversy is such that the rights of the parties continue to be affected by the law. It is an ongoing controversy which can be adjudicated in the present action as well, if not better, than in a new action filed." *Knowles*, 219 Kan. at 279-80.

In short, this court's retained jurisdiction allows a review to determine if there has been compliance with our opinion.

The State's next argument -- that if the provisions of H.B. 2247 are properly before us, we must presume that the new statute is constitutional -- has already been rejected. (Order, 4/15/05.) While this

presumption normally applies to initial review of statutes, in this case we have already determined the financing formula does not comply with Article 6, § 6. H.B. 2247 was passed because this court ordered remedial action. The State now presents its remedy for our determination of whether it complies with our order.

The Ohio Supreme Court faced the same argument after the Ohio Legislature passed school finance legislation in response to the court's ruling that the system was unconstitutional. It also rejected the argument, stating:

"The legislature has the power to draft legislation, and the court has the power to determine whether that legislation complies with the Constitution. *However, while it is for the General Assembly to legislate a remedy, courts do possess the authority to enforce their orders, since the power to declare a particular law or enactment unconstitutional must include the power to require a revision of that enactment, to ensure that it is then constitutional.* If it did not, then the power to find a particular Act unconstitutional would be a nullity. As a result there would be no enforceable remedy. A remedy that is never enforced is truly not a remedy." (Emphasis added.) *DeRolph v. State*, 89 Ohio St. 3d 1, 12, 728 N.E.2d 993 (2000).

Typically a party asserting compliance with a court decision ordering remedial action bears the burden of establishing that compliance, and our April 15 order made the allocation of that burden clear in this case. See also *DeRolph v. State*, 83 Ohio St. 3d 1212, 1212, 699 N.E.2d 518 (1998) (state must meet burden by preponderance of evidence standard).

We also reject the State's related argument that the doctrine of separation of powers limits our review to the issue of whether the legislature had the authority to pass such legislation. Any language in *U.S.D. No. 229 v. State*, 256 Kan. 232, 236-38, 885 P.2d 1170 (1994), to this effect is inapplicable here because of this case's remedial posture. Even now, however, we do not quarrel with the legislature's authority. We simply recognize that the final decision as to the constitutionality of legislation rests exclusively with the courts. Although the balance of power may be delicate, ever since *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 2 L. Ed. 60 (1803), it has been settled that the judiciary's sworn duty includes judicial review of legislation for constitutional infirmity. We are not at liberty to abdicate our own constitutional duty.

Again, like arguments have been raised in other state courts. Other state courts consistently reaffirm their authority, indeed their duty, to engage in judicial review and, when necessary, compel the legislative and executive branches to conform their actions to that which the constitution requires.

For example, in *Lake View Sch. Dist. No. 25 v. Huckabee*, 351 Ark. 31, 54-55, 91 S.W.3d 472 (2002), the court reviewed legislation passed after its 1994 determination that the Arkansas school financing system violated the education provisions of that state's constitution. The Arkansas Supreme Court stated:

"This court's refusal to review school funding under our state constitution would be a complete abrogation of our judicial responsibility and would work a severe disservice to the people of this state. We refuse to close our eyes or turn a deaf ear to claims of a dereliction of duty in the field of education. As Justice Hugo Black once sagely advised: '[T]he judiciary was made independent because it has . . . the primary responsibility and duty of giving force and effect to constitutional liberties and limitations upon the executive and legislative branches.' Hugo L. Black, *The Bill of Rights*, 35 N.Y.U.L. Rev. 865, 870 (1960).

....

"The Supreme Court of Kentucky has emphasized the need for judicial review in school-funding matters. The language of that court summarizes our position on the matter, both eloquently and forcefully, and, we adopt it:

'Before proceeding . . . to a definition of "efficient" we must address a point made by the appellants with respect to our authority to enter this fray and to "stick our judicial noses" into what is argued to be strictly the General Assembly's business.

' . . . [In this case] we are asked--based solely on the evidence in the record before us--if the present system of common schools in Kentucky is "efficient" in the constitutional sense. *It is our sworn duty to decide such questions when they are before us by applying the constitution. The duty of the judiciary in Kentucky was so determined when the citizens of Kentucky enacted the social compact called the constitution and in it provided for the existence of a third equal branch of government, the judiciary.*

' . . . To avoid deciding the case because of "legislative discretion," "legislative function," etc., would be a denigration of our own constitutional duty. To allow the General Assembly (or, in point of fact, the Executive) to decide whether its actions are constitutional is literally unthinkable.

'The judiciary has the ultimate power, and the duty, to apply, interpret, define, and construe all words, phrases, sentences and sections of the Kentucky Constitution as necessitated by the controversies before it. It is *solely* the function of the judiciary to so do. This duty must be exercised even when such action services as a check on the activities of another branch of government or when the court's view of the constitution is contrary to that of other branches, or even that of the public.'" (Emphasis added.)

Almost 60 years ago the Kansas Supreme Court addressed the separation of powers issue in the non-school finance case of *Berentz v. Comm'rs of Coffeyville*, 159 Kan. 58, 152 P.2d 53 (1944). There the appellants challenged a pension act on the grounds it violated Article 2, § 17 of the Kansas Constitution. Finding the challenge meritorious, this court noted:

"[T]his court has always approached consideration of questions challenging the constitutionality of statutes with a disposition to determine them in such manner as to sustain the validity of the enactment in question. It has repeatedly recognized, as we do now, the rule that *it is the duty of the court to uphold a law whenever such action is possible. In so doing it has not, however, lost sight of the fact that constitutions are the work not of legislatures or of courts, but of the people, and when in its calm and deliberate judgment, free from the influences frequently responsible for legislative enactments, it determines rights guaranteed by its provisions have been encroached upon it has, with equal consistency, recognized its duty and obligation to declare those enactments in contravention of constitutional provisions.*" (Emphasis added.) 159 Kan. at 62-63.

Our holding in *Berentz* is consistent with decisions in other states when a challenge has been made to the constitutionality of school finance systems and a separation of powers issue has arisen during the remedial phase. We agree with the conclusions drawn by one commentator reviewing those cases:

"[J]udicial monitoring in the remedial phase can help check political process defects and ensure that meaningful relief effectuates the court's decision.

"Thus, when these defects lead to a continued constitutional violation, judicial action is entirely consistent with separation of powers principles and the judicial role. Although state constitutions may commit educational matters to the legislative and executive branches, if these branches fail to fulfill such duties in a constitutional manner, 'the Court too must accept its continuing constitutional responsibility . . . for overview . . . of compliance with the constitutional imperative.' Moreover, unlike federal courts, state courts need not be constrained by federalism issues of comity or state sovereignty when exercising remedial power over a state legislature, for state courts operate within the system of a single sovereign.

"Nor should doubts about the court's equitable power to spur legislative action or to reject deficient legislation impede judicious oversight. An active judicial role in monitoring remedy formulation is well-rooted in the courts' equitable powers. As long as such power is exercised only after legislative noncompliance, it is entirely appropriate." (Emphasis added.) Note, "*Unfulfilled Promise: School Finance Remedies and State Courts*," 104 Harv. L. Rev. 1072, 1087-88 (1991).

We now turn to this court's specific concerns about whether the actual costs of providing a constitutionally adequate education were considered as to each of the formula components and the statutory formula as a whole, and whether any unjustified funding disparities have been exacerbated rather than ameliorated by H.B. 2247. In this determination we will be guided, in large part, by the A&M study, despite the State's criticism of it and our knowledge that, at best, its conclusions are dated. We do so for several reasons.

First, the A&M study is competent evidence admitted at trial and is part of the record in this appeal. See *Montoy II*, 278 Kan. at 774 (within the extensive record on appeal "there is substantial competent evidence, including the Augenblick & Myers study, establishing that a suitable education, as that term is defined by the legislature, is not being provided").

Second, the legislature itself commissioned the study to determine the actual costs to suitably and equitably fund public school systems; it also maintained the overall authority to shape the contours of the study and to correct any A&M actions that deviated from its directions during the process. (See K.S.A. 60-460[h]). As we stated in *Montoy II*:

"[T]he legislature directed that a professional evaluation be performed to determine the costs of a suitable education for Kansas school children. In authorizing the study, the legislature defined 'suitable education.' K.S.A. 2003 Supp. 46-1225(e). The Legislative Education Planning Committee (LEPC), to whom the task of overseeing the study was delegated, determined which performance measures would be utilized in determining if Kansas' school children were receiving a suitable education. The evaluation, performed by Augenblick & Myers, utilized the criteria established by the LEPC, and, in part, examined whether the current financing formula and funding levels were adequate for schools to meet accreditation standards and performance criteria. The study concluded that both the formula and funding levels were inadequate to provide what the legislature had defined as a suitable education." *Montoy II*, 278 Kan. at 773-74.

Third, the A&M study is the only analysis resembling a cost study before this court or the legislature.

Fourth, both the Board and the State Department of Education recommended that the A&M study recommendations be adopted at the time the study was completed and sent to the legislature.

With the A&M study as background, we next examine the provisions of H.B. 2247 in light of the two

guiding considerations set forth in our January opinion: (1) actual costs of providing a constitutionally adequate education and (2) funding equity.

BASE STATE AID PER PUPIL

BSAPP is the foundation upon which school district funding is built, as state financial aid to schools is determined by multiplying BSAPP by each district's "weighted enrollment." See K.S.A. 72-6410(b). When the SDFQPA was first implemented in 1992, BSAPP was set at \$3,600. It remained at that level until 1995, when it was increased by \$26 to \$3,626. Small increases were funded each year thereafter until the 2002-03 school year. During the years of increases, the amounts ranged from an additional \$22 to \$50 per student. From 2002 until 2005, the statute allowed for a BSAPP of \$3,890; however, only \$3,863 was funded. Over the span of time from when the SDFQPA was implemented in 1992 until 2005, the legislature increased the BSAPP only a total of \$263. As the plaintiffs point out, if the BSAPP had been increased to keep up with inflation, in 2001 alone the increase would have been \$557. The A&M study recommended increasing the base to \$4,650 in 2001, resulting in \$623.3 million in additional funding (in 2001 dollars).

H.B. 2247 increases the BSAPP from \$3,890 to \$4,222. Only \$115 of the \$359 increase is "new" money; the balance was achieved by eliminating the correlation weighting and shifting those dollars to BSAPP. The \$115 increase translates to \$63.3 million in additional funding flowing into the financing formula for the 2005-06 school year.

The State argues the legislature considered actual costs in deciding upon the increase.

The plaintiffs point out that the legislature had the A&M study recommendations, as well as the results of a 2005 survey conducted by Deputy Commissioner of Education Dale Dennis for the Senate Education Committee. The survey, which requested cost information from selected school districts, showed the BSAPP should be \$6,057. The plaintiffs argue that the legislature ignored the A&M and Dennis figures, instead looking at historical expenditures and arbitrarily choosing a BSAPP level based on political compromises and what it believed it could afford without raising taxes.

The Board contends that the increase in the BSAPP, coupled with increases in the at-risk and bilingual weightings, provide a substantial increase in funding for those middle-sized and large districts with a high proportion of such students. By implication, this is an argument that the BSAPP increase helps equalize the funding disparity suffered by those districts.

The plaintiffs, on the other hand, claim that increasing the BSAPP only exacerbates the inequities in the system because the formula was not adjusted to make distorted weights, such as the low-enrollment weight, correspond to actual costs. For example, for every \$1 of base funding that middle-sized or large districts receive, some low-enrollment districts receive \$2.14. The plaintiffs assert Dr. Bruce Baker's testimony at trial and his earlier report described this effect.

At a minimum, the increased BSAPP provided for in H.B. 2247 substantially varies from any cost information in the record and from any recommendation of the Board or the State Department of Education.

AT-RISK

H.B. 2247 increases funding for at-risk students from .10 of the BSAPP to .145. This increased

weighting, when applied to the higher BSAPP, results in an increase of \$26 million targeted to at-risk students. The A&M study recommended a weight of .20 for districts with 200 or fewer students, .52 for districts with 1,000 students, .59 for districts with 10,000 students, and .60 for districts with 30,000 students, resulting in a range of \$1,491 to \$2,790 per student (in 2001 dollars).

Both the State and the Board contend the increased funding for at-risk students is significant. The Board argues that, pending performance of a new cost study, H.B. 2247 should be viewed as a good faith effort toward legislative compliance with our January 3, 2005, opinion. The plaintiffs, on the other hand, contend that the increased funding level remains significantly lower than that recommended by the State's own expert witness in 1991, *before* the SDFQPA was enacted. That expert, Dr. Allan Odden, recommended a .25 minimum weight to provide an extra \$1,000 for each eligible at-risk student.

Neither the State nor the Board contend that actual costs of educating at-risk students were considered.

BILINGUAL

H.B. 2247 increases the weighting for bilingual programs from .2 to .395 for the 2005-06 school year and thereafter. When applied to the higher BSAPP, the result is an \$11 million increase in state aid. The Board computes the effects of these changes to be an additional \$1,668 per bilingual student, a 115.7 percent increase. A&M recommended that the bilingual weighting increase be based on student enrollment and that it range from .15 to .97, providing \$1,118 to \$4,510 per bilingual student.

The plaintiffs point out that this weighting is limited to "contact hours," usually a maximum of two hours per day for each student. This means the \$1,668 amount must be reduced by 2/3, to \$556 per actual bilingual student.

The State contends that it considered the actual costs of providing a suitable education for bilingual students. That contention is based solely on the House Select Committee on School Financing's reliance on historical data showing what school districts had already been spending under the financing formula we have held to be unconstitutional. The Board makes no argument as to the weighting's relationship to actual costs; it simply repeats that it regards the change in the weighting as a good faith effort toward compliance.

Although the increase in this weighting is significant, it still differs substantially from the cost information in the record.

SPECIAL EDUCATION

H.B. 2247 provides for a multi-year phased-in increase in state reimbursement for special education excess costs from 85 percent in the 2005-06 school year to 88 percent in 2006-07 and 91 percent in 2007-08 and thereafter. According to the evidence at trial, the State had been funding only 85 percent of the excess costs of special education. For fiscal year 2005, however, only 81.7 percent of the average excess costs of special education were funded. Reimbursement at 85 percent thus results in a total funding increase of \$17.7 million for the upcoming school year.

The plaintiffs contend that anything less than 100 percent reimbursement for a district's special education costs is a failure to fund the actual costs of a suitable education. The State and the Board

both disagree, contending less than 100 percent reimbursement furthers the State's policy of discouraging school districts from over-identifying students as eligible for special education money.

The defendants have failed to point to any evidence that any district has ever over-identified students; and, when asked at oral arguments, the State's counsel responded that he was not aware of any district that had intentionally inflated its number of such students to maximize reimbursement. Furthermore, the A&M study recommended a range, based on student enrollment, of weights from .90 to 1.50, resulting in a nearly \$102.9 million (in 2001 dollars) increase in funding -- a stark contrast to the \$17.7 million provided by H.B. 2247.

LOCAL OPTION BUDGET

H.B. 2247 provides a phased-in increase in the LOB cap from the current 25 percent to 27 percent in the 2005-06 school year, 29 percent in the 2006-07 school year, and 30 percent in the 2007-08 school year and thereafter.

The plaintiffs argue local districts have been forced to use the LOB to cover the inadequacies of state funding. They also argue the use of the LOB increases disparities and exacerbates inequities.

The Board takes issue with the legislature's failure to provide for equalization for the new level of LOB authority above 25 percent for the 2005-06 school year only. The absence of equalization means the dollars for the optional increases must come entirely from each district's property tax base, which can worsen wealth-based disparities.

The State argues that the LOB acts as a counterweight to low-enrollment weighting, at-risk weighting, and perhaps even bilingual weighting, because the middle-sized and large districts expected to benefit from the increased LOB "receive little, if any, of these weightings."

This argument fails because increasing the LOB does not address inadequate funding of middle-sized and large districts that have high concentrations of bilingual, at-risk, minority, and special education students, high pupil-to-teacher ratios, and high dropout rates, but also have low median family incomes and low assessed property valuation. For example, the Emporia school district demonstrates that size of enrollment does not necessarily correlate with high property valuations or low numbers of students who are more costly to educate.

The original intent and purpose of the LOB was to allow individual districts to levy additional property taxes to fund enhancements to the constitutionally adequate education provided and financed under the legislative financing formula. The evidence before the trial court demonstrated that the inadequacy of the formula and its funding had forced some districts to use the LOB to fund the State's obligation to provide a constitutionally adequate education rather than enhancements. See *Montoy II*, 278 Kan. at 774. H.B. 2247 does nothing to discourage this practice.

We also agree with the plaintiffs and the Board that, in fact, the legislation's increase in the LOB cap exacerbates the wealth-based disparities between districts. Districts with high assessed property values can reach the maximum LOB revenues of the "district prescribed percentage of the amount of state financial aid determined for the district in the school year" (K.S.A. 72-6433[a][1], amended by S.B. 43, sec. 17) with far less tax effort than those districts with lower assessed property values and lower median family incomes. Thus, the wealthier districts will be able to generate more funds for elements of a constitutionally adequate education that the State has failed to fund.

COST-OF-LIVING WEIGHTING

H.B. 2247 authorizes a new local property tax levy for cost-of-living weighting. As originally enacted, the purpose of this weighting was to "finance teacher salary enhancements." H.B. 2247, sec. 19. In S.B. 43, sec. 12, the legislature removed this limiting provision and no purpose for the additional funding is now stated in the law. This weighting is available in those districts where the average appraised value of a single-family residence exceeds 125 percent of the state average, as long as the district has already adopted the maximum LOB. This is estimated to amount to a total funding increase of \$24.6 million for the 17 districts that would currently qualify.

This provision, the State asserts, is necessary to allow districts with high housing costs to recruit and retain high-quality teachers and is based on the actual costs of providing an education in those 17 districts that would qualify.

Counsel for the State could not substantiate, when asked at oral arguments, its rationale that those 17 districts pay higher salaries or would pay higher salaries to teachers or that higher education costs are linked to housing prices. Further, as the plaintiffs noted, the evidence at trial demonstrated that it is the districts with high-poverty, high at-risk student populations that need additional help in attracting and retaining good teachers.

Furthermore, we note that this weighting, like the increase in the LOB cap, demonstrates the State is not meeting its obligation to provide suitable financing. Also, as with the other property-tax based provisions of H.B. 2247 there is a potentially disqualifying effect. Moreover, since the original reason given for the enhancement, teacher salary increases, has been removed from the legislation, the funds generated can be used for any purpose.

LOW-ENROLLMENT WEIGHTING

Low-enrollment weighting provides a sliding scale of adjustments for districts with fewer than 1,750 students; as district enrollment decreases past that number, the size of the adjustment increases. In other words, smaller school districts receive more favorable treatment based on the premise that they require additional funding to balance economies of scale at work for larger districts.

H.B. 2247 did not substantively change the low-enrollment weighting; it remains a significant component of the financing formula. Extrapolating from State Department of Education data, the plaintiffs argue that total state spending on the low-enrollment weighting in 2003-04 was \$226,189,852. In comparison, total state spending in 2003-04 on at-risk students was \$47,123,964 and on bilingual students was \$8,352,964. The plaintiffs also note that application of the various weighting factors results in a large disparity in per pupil aid, ranging in 2002-03 from \$16,968 to \$5,655, and this disparity is largely caused by the low-enrollment factor.

Because of the significant impact of low-enrollment weighting on the financing formula, in our January opinion and April order we sought cost justifications for it. In response to questions from the court at oral arguments, counsel for the State could not provide any cost-based reason for using the 1,750 enrollment figure or for the weight's percentage. This absence of support is particularly troubling when we consider the disparity this low-enrollment weighting may produce. H.B. 2247 has the potential to worsen this inequity because it eliminates correlation weighting for districts with 1,750 enrollment or more. The funds allocated for correlation weighting were transferred to the BSAPP; this gives low-enrollment districts even more of the funds that previously were devoted to

balancing the disparities in per pupil funding caused by the low-enrollment weighting.

EXTRAORDINARY DECLINING ENROLLMENT

In addition to the declining enrollment provision of K.S.A. 2004 Supp. 72-6407(e)(2), H.B. 2247, as amended by S.B. 43, created two provisions concerning extraordinary declining enrollment. First, H.B. 2247 authorizes a district with "extraordinary declining enrollment," defined as declining enrollment over 3 years at a rate of 15 percent or 150 pupils per year, to apply to the Board of Tax Appeals (BOTA) for permission to levy an additional property tax if it has already adopted the maximum LOB. See H.B. 2247, sec. 29, repealed and replaced by S.B. 43, sec. 13. Currently only four districts potentially would qualify for this provision. We will refer to this provision as the EDE-BOTA provision.

Second, H.B. 2247 requires districts entitled to equalizing supplemental capital improvements state aid on their bonds to seek approval from the Joint Committee on State Building Construction (JCSBC) prior to issuing new bonds if the district has had an "extraordinary declining enrollment," defined for purposes of this section as declining enrollment over 3 years at a rate of 5 percent or 50 pupils per year. If approval is denied, the district can still issue the bonds, but it does not receive any state aid on the bonds. See H.B. 2247, sec. 28, repealed and replaced by S.B. 43, sec. 14. We will refer to this provision as the EDE-JCSBC provision.

The State asserts that these provisions, which are intended to help districts absorb lost revenue from declining enrollments, ensure consideration of actual costs because districts seeking to access authority for this additional local tax levy must document need before BOTA or JCSBC.

The Board contends it is difficult to assess the financial impact of these provisions because the money available under them is potentially unlimited, subject to each district's willingness to tap into its property tax base, and, when the EDE-BOTA provision applies, BOTA's approval. The Board urges us to sever these provisions pending appropriate cost analysis.

The plaintiffs contend these provisions are not based upon cost and exacerbate funding inequities in two ways. First, the plaintiffs point to the EDE-JCSBC provision which allows issuance of bonds to construct new facilities but if permission is denied the district would not receive any state aid on the bonds. Plaintiffs contend that because wealthy districts with extraordinary declining enrollment such as Shawnee Mission receive no equalizing supplemental capital improvements state aid on their bonds, the new provision penalizes only districts with low property valuation and declining enrollment.

Second, the plaintiffs contend that these provisions exacerbate funding inequities because the extraordinary declining enrollment weight is added into the definition of a district's "adjusted enrollment" and thus adds to the base upon which the LOB is computed. The effect of this is to provide 127 percent of any revenues lost from extraordinary declining enrollment. This effect is further compounded for those districts, like Shawnee Mission, that also benefit from the cost-of-living weight, which is also included in the "adjusted enrollment."

These provisions have the potential to be extremely disequalizing because they are unlimited and have been designed to benefit a very small number of school districts.

CAPITAL OUTLAY

In support of this provision of H.B. 2247, the State relies upon an affidavit of Representative Mike O'Neal. The affidavit states the legislature was mindful that this court had noted the repeal of the capital outlay cap in its January opinion. The affidavit also states the decision to reimpose the cap at 8 mills was made after the legislature reviewed data from the Department of Education and heard from various districts. The Board does not offer any information as to whether actual costs were considered with respect to this provision.

The plaintiffs do not specifically address the extent to which actual costs were considered in imposing the new cap on capital outlay. The plaintiffs argue that, although H.B. 2247 reimposes a cap on the capital outlay authority, it still is disequalizing because it grandfathers those districts with a higher capital outlay resolution in place for up to 4 more years.

The State argues, without elaboration, that the 8 mill cap reflects the legislature's attempt to improve wealth equalization. The Board encourages the court to view this change favorably, despite the local property tax basis of this factor.

Because the provision is based on local property tax authority, the amount of revenue a district can raise is tied to property value and median family income; thus the failure to provide any equalization to those districts unable to access this funding perpetuates the inequities produced by this component.

FINANCING FORMULA AS A WHOLE

With regard to the financing formula as a whole, the parties basically restate the same arguments they made regarding the formula's components. The State claims that the increased funding provided by H.B. 2247 alleviates this court's constitutional concerns. The Board disagrees, but it considers the increased funding a good faith initial effort toward compliance and an installment on the first remedy year toward what may very well be a much larger obligation based on the evidence in this case. The plaintiffs argue the increases in funding "fall grossly short of what is actually necessary to provide a constitutionally suitable education." The State contends that overall it considered, to the extent possible, actual costs, including the A&M study. The plaintiffs respond that actual costs were not considered; rather the financing formula as amended by H.B. 2247 is merely a product of political compromise and the legislative majority's unwillingness to consider raising taxes to increase funding of schools. The Board argues H.B. 2247 does not fund actual costs and has many inequities.

We agree with the Board that although H.B. 2247 does provide a significant funding increase, it falls short of providing constitutionally adequate funding for public education. It is clear that the legislature did not consider what it costs to provide a constitutionally adequate education, nor the inequities created and worsened by H.B. 2247. At oral arguments, counsel for the State could not identify any cost basis or study to support the amount of funding provided by H.B. 2247, its constellation of weightings and other provisions, or their relationships to one another.

Particularly, we share the plaintiffs' and Board's concern that H.B. 2247's increased dependence on local property taxes, as decided by each school district, exacerbates disparities based on district wealth. We fully acknowledge that once the legislature has provided suitable funding for the state school system, there may be nothing in the constitution that prevents the legislature from allowing school districts to raise additional funds for enhancements to the constitutionally adequate education already provided. At least to the extent that funding remains constitutionally equalized, local assessments for this purpose may be permissible. Clearly, however, such assessments are not acceptable as a substitute for the state funding the legislature is obligated to provide under Article 6, §

6. That should pre-exist the local tax initiatives.

As of this time, the legislature has failed to provide suitable funding for a constitutionally adequate education. School districts have been forced to use the LOB to supplement the State's funding as they struggle to suitably finance a constitutionally adequate education, a burden which the constitution places on the State, not on local districts. The result is wealth-based disparity because the districts with lower property valuations and median incomes are unable to generate sufficient revenue. Because property values vary widely, a district's ability to raise money by the required mill levy also varies widely. The cost-of-living weighting and extraordinary declining enrollment provision also have the potential to exacerbate inequity. A higher LOB cap, cost-of-living weighting, and the extraordinary declining enrollment provisions cannot be allowed to exacerbate inequities while we wait for the legislature to perform its constitutional duty.

We conclude that, on the record before us, a continuing lack of constitutionally adequate funding together with the inequity-producing local property tax measures mean the school financing formula, as altered by H.B. 2247, still falls short of the standard set by Article 6, § 6 of the Kansas Constitution.

COST STUDY

As we prepare to consider an appropriate remedy and the mechanisms necessary to assure that future school financing will meet the requirements of the constitution, we agree with all parties that a determination of the reasonable and actual costs of providing a constitutionally adequate education is critical. H.B. 2247 provides for a Legislative Post Audit "cost analysis study."

Section 3 of the legislation reads in relevant part:

"(a) In order to assist the legislature in the gathering of information which is necessary for the legislature's consideration when meeting its constitutional duties to: (1) Provide for intellectual, educational, vocational and scientific improvement in public schools established and maintained by the state; and (2) make suitable provision for the finance of educational interests of the state, the division of post audit shall conduct a professional cost study analysis to determine the costs of delivering the kindergarten and grades one through 12 curriculum, related services and other programs mandated by state statute in accredited schools. . . .

"(b) Any study conducted pursuant to subsection (a) shall include:

- (1) A determination of the services or programs required by state statute to be provided by school districts. Such review shall include high school graduation requirements, admissions requirements established by the state board of regents pursuant to K.S.A. 76-716, and amendments thereto, state scholarship requirements established by the state board of regents and courses of instruction at various grade levels required by state statute.
- (2) A study of the actual costs incurred in a sample of school districts to provide reasonable estimates of the costs of providing services and programs required by state statute to be provided by school districts for regular elementary and secondary education, including instruction, administration, support staff, supplies, equipment and building costs.
- (3) A study of the actual costs incurred in a sample of school districts to provide reasonable estimates

of the costs of providing services and programs required by state statute to be provided by school districts for specialized education services including, but not limited to, special education and related services, bilingual education and at-risk programs.

(4) A study of the factors which may contribute to the variations in costs incurred by school districts of various sizes and in various regions of the state when providing services or programs required by state statute to be provided by school districts. Such study shall include the administrative costs of providing such services and programs.

(5) An analysis in a sample of districts as determined by the legislative post auditor showing such things as:

(A) The percent of the estimated cost of providing services and programs required by state statute that could have been funded by the various types of state aid the districts received in the most recently completed school year, as well as the percent funded by the district's local option budget;

(B) the percent of district funding that is spent on instruction;

(C) the percent of district funding that is spent on central administration; and

(D) the percent of district funding that is spent on support services.

(6) A review of relevant studies that assess whether there is a correlation between amounts spent on education and student performance.

(7) A review to determine whether students who are counted as a basis for computing funding for specialized educational services are actually receiving those services.

(8) Any additional reviews or analyses the legislative post auditor considers relevant to the legislature's decisions regarding the cost of funding services or programs required by state statute to be provided by school districts.

....

"(d) Following the completion of such cost analysis study, the legislative post auditor shall submit a detailed report thereon to the legislature on or before the first day of the 2006 legislative session. If additional time is needed to provide the most accurate information relating to any area of requested study, the legislative post auditor shall so report to the legislature, explaining the reasons for the need for additional time and providing a reasonable time frame for completion of that aspect of the study. In that event, the legislative post auditor shall submit a report on that portion of the study which has been completed before the start of the 2006 legislative session and the balance of such report shall be submitted within the time frame established by the legislative post auditor when requesting additional time." H.B. 2247, sec. 3.

The plaintiffs and the Board contend that the H.B. 2247 study is designed merely to determine the amounts of historical expenditures under the system and that the legislature will then equate those expenditures to reasonable and actual costs of a future system we should find constitutional. This characterization is not entirely correct.

Although the language of the statute is not completely clear, it can be read to require post audit,

among other things, to study historical costs in a sample of districts and then extrapolate from the collected data a reasonable estimate of the future cost of providing services and programs "required by state statute." Estimating future reasonable and actual costs based on historical expenditures can be acceptable if post audit ensures that its examination of historical expenditures corrects for the recognized inadequacy of those expenditures and ensures that a reliable method of extrapolation is adopted. Post audit must incorporate those components into its study, and its report to the legislature must demonstrate how the incorporation was accomplished.

It also appears that the study contemplated by H.B. 2247 is deficient because it will examine only what it costs for education "inputs" -- the cost of delivering kindergarten through grade 12 curriculum, related services, and other programs "mandated by state statute in accredited schools." It does not appear to demand consideration of the costs of "outputs" -- achievement of measurable standards of student proficiency. As the Board pointed out in its brief, nowhere in H.B. 2247 is there specific reference to K.S.A. 72-6439(a) or (c), which provided the criteria used by this court in our January 2005 opinion to evaluate whether the school financing formula provided a constitutionally adequate education. H.B. 2247 also does not mention educational standards adopted by the Board pursuant to its constitutional responsibilities under Article 6, § 2(a) or in fulfilling its statutory directives. Without consideration of outputs, any study conducted by post audit is doomed to be incomplete. Such outputs are necessary elements of a constitutionally adequate education and must be funded by the ultimate financing formula adopted by the legislature. See *Montoy II*, 278 Kan. at 773 (quoting K.S.A. 72-6439) (constitutionally suitable education is one in which "schools meet the accreditation requirements and [students are] achieving an 'improvement in performance that reflects high academic standards and is measurable.'"); see also Kan. Const., Art. 6, § 1 (legislature shall provide for intellectual, educational, vocational, and scientific *improvement*). The post audit study must incorporate the consideration of outputs and Board statutory and regulatory standards, in addition to statutorily mandated elements of kindergarten through grade 12 education. Further, post audit's report to the legislature must demonstrate how this consideration was accomplished.

The study parameters in H.B. 2247 do provide for analysis of the percentages of sample school district spending on instruction, central administration, and support services. They also specifically provide for exploration of several components of the current financing formula. We endorse these provisions with the exception that all administrative costs, not just costs of central administration, must be analyzed. All of this information should assist post audit and, eventually, the legislature and this court in evaluating the reasonableness or appropriateness of cost estimates. Suitable finance of a constitutionally adequate education does not necessarily include every item each school district or student *wants*; its focus must be on *needs* and the appropriate costs thereof.

REMEDY

In light of the legislature's unsatisfactory response to our January opinion we are again faced with the need to order remedial action. See *Montoy II*, 278 Kan. at 775 ("The legislature, by its action or lack thereof in the 2005 session, will dictate what form our remedy, if necessary, will take."). We are guided not only by our interpretation of Article 6, § 6, but also by the present realities and common sense. Time is running out for the school districts to prepare their budgets, staff their classrooms and offices, and begin the 2005-06 school year. School districts need to know what funding will be available as soon as possible.

The legislature has known for some time that increased funding of the financing formula would be necessary. In July 2002, the Kansas Department of Education prepared a computation of the cost of

implementing the recommendations in the A&M study. Calculated in 2001 dollars the total cost of the increase would have been \$725,669,901 for each school year. Additionally, the Department adjusted that number because of changes in LOB funding and applied a 2 percent inflation factor for each of the school years of 2001-02, 2002-03, and 2003-04. The resulting number was an increase in costs of approximately \$853 million. As noted, the A&M study was commissioned by the legislature, monitored by the legislature's committees, paid for by the legislature with tax dollars, and received by the legislature. Although the State claims it considered the A&M study, it in fact chose to impugn its design and ignore its recommendations. It can no longer do so.

This case is extraordinary, but the imperative remains that we decide it on the record before us. The A&M study, and the testimony supporting it, appear in the record in this case. The State cites no cost study or evidence to rebut the A&M study, instead offering conclusory affidavits from legislative leaders. Thus the A&M study is the only analysis resembling a legitimate cost study before us. Accordingly, at this point in time, we accept it as a valid basis to determine the cost of a constitutionally adequate public education in kindergarten through the 12th grade. The alternative is to await yet another study, which itself may be found legislatively or judicially unacceptable, and the school children of Kansas would be forced to further await a suitable education. We note that the present litigation was filed in 1999.

The initial attractiveness of the Board's suggestion that we accept H.B. 2247 as an interim step toward a full remedy pales in light of the compelling arguments of immediate need made by the plaintiffs and *amici curiae*. They remind us that we cannot continue to ask current Kansas students to "be patient." The time for their education is now. As the North Carolina Supreme Court eloquently stated:

"The children . . . are our state's most valuable renewable resource. If inordinate numbers of them are wrongfully being denied their constitutional right to the opportunity for a sound basic education, our state courts cannot risk further and continued damage because the perfect civil action has proved elusive. We note that the instant case commenced ten years ago. If in the end it yields a clearly demonstrated constitutional violation, ten classes of students as of the time of this opinion will have already passed through our state's school system without benefit of relief. We cannot similarly imperil even one more class unnecessarily." *Hoke Cty Bd. of Educ. v. State*, 358 N.C. 605, 616, 599 S.E.2d 365 (2004).

As set forth earlier in this opinion, the Legislative Division of Post Audit has been commissioned to conduct a comprehensive and extensive cost study to be presented to the 2005-06 legislature. With such additional information available, the legislature should be provided with the cost information necessary to make policy choices establishing a suitable system of financing of Kansas public schools.

We conclude, however, that additional funding must be made available for the 2005-06 school year to assist in meeting the school districts' immediate needs. We are mindful of the Board's argument that there are limits on the amount the system can absorb efficiently and effectively at this point in the budget process. We further conclude, after careful consideration, that at least one-third of the \$853 million amount reported to the Board in July of 2002 (A&M study's cost adjusted for inflation) shall be funded for the 2005-06 school year.

Specifically, no later than July 1, 2005, for the 2005-06 school year, the legislature shall implement a minimum increase of \$285 million above the funding level for the 2004-05 school year, which includes the \$142 million presently contemplated in H.B. 2247. In deference to the cost study analysis mandated by the legislature in H.B. 2247, the implementation beyond the 2005-06 school year will be

contingent upon the results of the study directed by H.B. 2247 and this opinion.

Further, if (1) the post audit study is not completed or timely submitted for the legislature to consider and act upon it during the 2006 session, (2) the post audit study is judicially or legislatively determined not to be a valid cost study, or (3) legislation is not enacted which is based upon actual and necessary costs of providing a suitable system of finance and which equitably distributes the funding, we will consider, among other remedies, ordering that, at a minimum, the remaining two-thirds (\$568 million) in increased funding based upon the A&M study be implemented for the 2006-07 school year.

Clearly, the legislature's obligation will not end there; the costs of education continue to change and constant monitoring and funding adjustments are necessary. H.B. 2247's provisions regarding establishment of the 2010 Commission and mandating annual increases based upon the Consumer Price Index may satisfy these demands, but the legislature may seek other means to assure that Kansas school children, now and in the future, receive a constitutionally adequate education.

In addition, on the rationale previously expressed, the new funding authorized by H.B. 2247's provisions regarding the increased LOB authority over 25 percent, the cost-of-living weighting, and both extraordinary declining enrollment provisions are stayed. The remainder of H.B. 2247, as amended by the legislature in compliance with this opinion, shall remain in effect for the 2005-06 school year.


We readily acknowledge that our present remedy is far from perfect; indeed, we acknowledge that it is merely a balancing of several factors. Among those factors are:

- (1) The ever-present need for Kansas school children to receive a constitutionally adequate education. *Montoy II*, 278 Kan. at 773.
- (2) The role of this court as defined in the Kansas Constitution. See *Berentz v. Comm'rs of Coffeyville*, 159 Kan. 58, 152 P.2d 53 (1944).
- (3) The need for the legislature to bring its school finance legislation into constitutional compliance, with acknowledgment of the unique difficulties inherent in the legislative process.
- (4) The press of time caused by the rapidly approaching school year.

Accordingly, we retain jurisdiction of this appeal. If necessary, further action will be taken by this court as is deemed advisable to ensure compliance with this opinion.

1. This total increase of \$142 million includes a \$7.35 million increase provided by 2005 H.B. 2059, which created a second enrollment count date for students who are dependents of active military personnel. The parties do not take issue with the provisions of H.B. 2059. Our discussion of the funding and provisions in H.B. 2247 collectively refers to H.B. 2247, S.B. 43, and H.B. 2059.

END

 | [Keyword](#) | [Name »](#) [SupCt](#) - [CtApp](#) | [Docket](#) | [Date](#) |

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Updated: June 03, 2005.

URL: <http://www.kscourts.org/kscases/supct/2005/20050603/92032.htm>.

March 31, 2005

GAMING

Explainer Senate Substitute for House Bill 2481

KANSAS EXPANDED LOTTERY ACT

Section 1

- Definitions section.
- Five Destinations development zones established: Wyandotte, Crawford and Cherokee, Sedgwick, Ford and Geary County.

Section 2

- Sections 2-48 are defined as the Kansas Expanded Lottery Act.

Section 3

- The Lottery Director is authorized to issue a certificate of authority to enter into a contract with a gaming facility manager who would operate a casino on behalf of the state.
- Manager must meet specific criteria as determined by the Director before the contract is issued.

Section 4

- Lottery Commission would adopt rules and regulations to approve management contracts. This section authorizes the Executive Director to enter a contract with the manager.
- The Lottery Commission must take into consideration the specifics of the approved facilities and the estimated number of tourists it would serve prior to awarding the contract. Manager would be prohibited from owning two contracts within 20 miles of one another.
- No management contract would be issued for Cherokee or Crawford counties if the manager owned other facilities in certain Missouri and Arkansas Counties.
- The Commission may issue more than one management contract per destination development zone.
- The Commission would not issue a contract in Wyandotte County and Sedgwick County unless the ancillary lottery gaming facility invests \$150 million for

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Attachment 21

development. For all other zones, the investment would be \$25 million and require 25% of the gaming consumers to reside outside of the state.

- Contracts would have a term of 15 years and would pay 22% of the residual lottery gaming facility revenue to the manager. This section establishes a mechanism for payment of expenses.
- Establishes an accelerated payment of \$15,000 per electronic game machine to repaid back to the manager by the state. The section would designate key employees, include a payment of 2% to the city, 2% to county for the casinos or 4% to the county if gaming facility is not located in a city.
- The Lottery Commission would be owners and operators of the lottery facilities and games.

Section 5

- County election required for approval for lottery gaming facilities.

Section 6

- Electronic gaming machines required to payout not less than 87% of amount wagered and be directly linked to the Lottery.

Section 7

- The Lottery Commission would be required to approve all electronic gaming machines and lottery facility games.

Section 8

- Establishes funds for division of the gaming revenues:
 - 50% for expenses and financing;
 - 0.5% for problem gambling fund;
 - 22% for the lottery gaming facility manager; and
 - 78% of residual lottery fund or 24% of the gaming revenues, whichever is greater, would go to the education fund.

Section 9

- Kansas Lottery rules and regulations to establish criteria for employees of the lottery gaming facility.

Section 10

- Powers granted to the Executive Director for oversight of machines and games, records and other aspects of gaming.

Section 11

- Crimes created for placing a wager for another person.

Section 12

- Restrictions for playing machines and games, crimes established for violations.

Section 13

- Restrictions of age allowance (21 years old) in any gaming operation.

Section 14

- Crimes established of a severity level 8, non-person felony, for persons manipulating the outcome of the games.

Section 15

- Crimes established of a Class A, non-person misdemeanor for unauthorized betting or playing of machines or games.

Section 16

- Requirement for facility manager to post signs regarding compulsive or problem gambling.

Section 17

- Transport of gaming devices in Kansas would be exempt for Section 2 of the Federal Act.

Section 18

- No excess taxes, fee or charges would be levied by any city or county except those ones authorized by the Kansas Expanded Lottery Act.

Section 19

- Sales of electronic gaming machines and lottery facility games are exempt from sales taxes.

Section 20

- No cause of action by the facility manager against the Lottery Director or his employees.

Section 21

- All prospective lottery gaming facility managers shall have a resident agent for service of process.

Section 22

- The Kansas Expanded Lottery Act, lottery gaming facility managers and the management contracts shall not be subject to the provisions of or restrictions on major procurement contracts process.

Section 23

- Alcohol, wine, spirits, cereal malt beverages are permitted in lottery gaming facility and ancillary lottery gaming facility.

**VIDEO LOTTERY TERMINALS (VTL)
at paramutuel locations**

Section 24

- Definitions Section.
- States share would not be less than 24 % of the net video lottery terminal income.

Section 25

- Kansas lottery shall develop rules and regulations governing VLTs at parimutuel tracks.

Section 26

- County approval required by elections before VLTs are placed at tracks.

Section 27

- Oversight provisions of the Lottery Commission in respect to VLTs.
- Require an 87 % payout per VLT.

- Authorizes: 2,000 VLTs at the Wyandotte parimutuel tracks
 1,500 at Sedgwick
 1,500 at Crawford
 500 at Greenwood and Harper Counties
Total: 5,500 VLTs
- Oversight by the Lottery of all VLTs at all parimutuel tracks.

Section 28

- Oversight of the Lottery for certificates to operate VLTs at the tracks.

Section 29

- Compulsory employee training program for service and maintenance of VLTs.

Section 30

- Requires a specific number of live thoroughbred and greyhound racing at each parimutuel track or VLTs would be prohibited.

Section 31

- Requirements for VLTs to operate at Parimutuel tracks.

Section 32

- Restrictions for employment dealing with interest conflicts in the gaming industry.

Section 33

- VLT revenue dispersement:
 - 22% of the net lottery terminal income to the manager;
 - 7% to the horses;
 - 7% to the greyhounds;
 - 1.5% to the city;
 - 1.5% to the county unless there is no city is located in the VLT zone, then 3% would go to the county; and
 - 0.5 % to the problem gambling fund; and
 - \$15,000 accelerated VLT payment per machine.

Section 34

- Kansas Lottery Commission shall adopt rules and regulations to administer the act.

Section 35

- Establishes ownership or leasing requirements of VLTs by the Lottery.

Section 36

- Creates the Video Lottery Revenues Fund, which authorizes the Lottery to disperse the funds to other funds created by the Lottery.

Section 37

- Creates the Video Lottery Oversight Fund which authorizes monies for oversight of the act by the Lottery Commission.

Section 38

- Creates the live greyhound and horse racing purse supplement fund which disperses percentage of the monies to the horse and dog industry.

Section 39

- Creates the Kansas Educational Opportunities fund, which disperses monies for funding of preschool, kindergarten, elementary, secondary and post secondary education.

Section 40

- Creates a crime of a severity level 9 non-person felony for one person to wage another person's bet.

Section 41

- Age restriction of 21 and 18 for wagering and employment.

Section 42

- Creates a crime for violation of Section 41.

Section 43

- Crimes establish a severity level 8, non-person felony for persons manipulating the outcome of the games.

Section 44

- Crimes of a Class A, non-person misdemeanor for unauthorized betting or playing of machines or games.

Section 45

- Crime of a severity level 9 nonperson felony for use of a gray machine.

Section 46

- Mandatory employee background checks.

Section 47

- No excess taxes, fee or charges would be levied by any city or county except those ones authorized by the Kansas Expanded Lottery Act.

Section 48

- Transport of gaming devices in Kansas would be exempt for Section 2 of the Federal Act.

Section 49

- Authorize contracts using the procurement negotiating committee process.
- Extensions would not have to be renegotiated, but would expire on June 30, 2006.

Section 50

- Authorize the Lottery Commission to establish rules and regulations to carry out the provisions of the Kansas Expanded Lottery Act.

Section 51

- Exempts the Kansas Expanded Lottery Act from lottery revenue dispersement under current law.

Section 52

- Extends the lottery to July 1, 2022.

Section 53

- The Kansas Racing and Gaming Commission shall create the Board of Directors of the official horse registering agency.

Section 54

- The Kansas Racing and Gaming commission shall create the Board of Directors of the official greyhound registering agency.

Section 55

- The Commission shall establish a greyhound promotion and development fund.

Section 56

- Prohibits counties from exempting out changes in the Kansas Lottery Act and out of changes in the Kansas Expanded Lottery Act.