

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Dwayne Umbarger at 10:40 A.M. on January 12, 2006, in Room 123-S of the Capitol.

All members were present except:

Senator Steve Morris- excused

Committee staff present:

Jill Wolters, Revisor of Statutes Office

Michael Corrigan, Revisor of Statutes Office

J. G. Scott, Kansas Legislative Research Department

Reagan Cussimano, Kansas Legislative Research Department

Audrey Dunkel, Kansas Legislative Research Department

Susan Kannarr, Kansas Legislative Research Department

Carolyn Rampey, Kansas Legislative Research Department

Judy Bromich, Chief of Staff

Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Senator Derek Schmidt

Eric Rucker, Office of the Attorney General

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

Others attending:

See attached list.

Chairman Umbarger opened the public hearing on:

SB 327--Creating the office of inspector general within the Kansas health policy authority

Staff briefed the Committee on the bill.

The Chairman welcomed Senator Derek Schmidt, Chairman of the Interim Special Committee on Medicaid Reform, who testified in support of **SB 327** (Attachment 1). Senator Schmidt explained that the bill was drafted and is recommended by the Interim Special Committee on Medicaid Reform. The bill is one of several recommendations aimed at improving the accountability and integrity of the State's Medicaid program by improving oversight and scrutiny of these programs. Senator Schmidt expressed his concern regarding the system and not of individuals.

Senator Schmidt expressed concern that the Kansas Medicaid System has grown threefold since 1998 and today accounts for \$2.2 billion in public spending. At the current rate of growth, he noted that Medicaid expenditures will reach \$3.3 billion in 2011. Establishing an independent inspector general would liberate program staff to do their jobs of delivering services rather than trying to fill a dual role of service delivery and self-policing. In his written testimony, Senator Schmidt listed four potential refinements to **SB 327** for the Committee's consideration.

Senator Schmidt provided copies of a balloon amendment that would propose to incorporate some of the changes from the model language in the bill (Attachment 2). He also noted that in the course of discussions with interested parties, there is a policy decision to be made about who appoints the inspector general. Senator Schmidt noted that the way the bill is drafted, the Governor would be the appointive authority and the Senate would confirm the inspector general. He noted that the Attorney General is statutorily obligated, and the federal government is obligated, to do enforcement of fraud activities and this is where it might make more sense to have the Attorney General be the appointed authority for the inspector general, still subject to Senate confirmation.

There were additional areas that Senator Schmidt highlighted where others have suggested changes that are

CONTINUATION SHEET

MINUTES OF THE Senate Ways and Means Committee at 10:40 A.M. on January 12, 2006, in Room 123-S of the Capitol.

not in the balloon. He discussed where to put the office of the inspector general. It was noted that the interim committee discussed that in the drafting stage of the bill and came up with putting it in the Kansas Health Policy Authority. In the Kansas Bureau of Investigation there is a model of an independent entity that is not housed with any of the agencies designated to oversee or investigate which could be replicated, and there is a direct line of authority. He noted that federal law requires maintaining a surveillance utilization review unit, and by contract, there is EDS and they operate it. There is an issue that was discovered in the interim committee that right now the contract people interact directly with the program at Medicaid. It is humanly difficult when you have the watchdogs interacting and working with or working for the people that are supposed to be watched.

The Chairman recognized Eric Rucker, Chief of Staff, Office of Attorney General, who explained that the intention of the Attorney General's Office being listed as a neutral conferee was from the perspective of the views of law enforcement and to answer any questions related as to how the inspector general position would work. He noted that by federal law their office is limited and prohibited from data-mining information to ferret out fraud, waste, abuse, misconduct, etc. They operate under a system whereby someone, such as EDS, passes referrals to their office concerning suspicions of inappropriate conduct or other abuse and this is how their office becomes involved, and only at that juncture. Once the referral is made to their office, Mr. Rucker explained that they have professional criminal investigators who are licensed law enforcement officials of the State of Kansas that conduct a criminal investigation to determine whether or not, subsequently, prosecution is warranted. He noted that this is the current system.

Mr. Rucker continued and explained that as the investigator general system is proposed, or as they understand it, the inspector general would have responsibility to gather evidence which would be tantamount to a referral to their office for subsequent prosecution. He noted that the balloon language is highly favored by their office because of streamlining the result. Mr. Rucker noted that the mere creation of a state agency that would not have a direct link to the prosecutors that are responsible for bringing justice to the system, is believed to be unwarranted and by knocking down as many obstacles as possible, those making referrals, investigating and subsequent prosecution, would be favorable. (No written testimony was submitted.)

Senator Barone requested information regarding the fraud unit that is currently in place in the Attorney General's Office. He inquired how active the unit is and how many referrals, investigations, and prosecutions the unit has made. Mr. Rucker responded that he would provide this information.

Chairman Umbarger acknowledged Barb Hinton, Legislative Post Auditor, Legislative Division of Post Audit, who explained to the Committee that it is very important to have an inspector general in the Medicaid part of it. Ms. Hinton explained that the Medicaid program is a huge program and large amounts of dollars going to it. She noted that the Legislature, through their office, has the ability to get ad hoc kinds of reviews of the Medicaid program and noted that this has been done in the past. Ms. Hinton mentioned that every time Legislative Post Audit has looked at Medicaid, in whatever aspect, they have found things that are either abuse and potential fraud, but have no enforcement powers. She noted that if there were people that could be assigned to do that, and look at it full time, possibly significant amount of fraud, abuse or inefficiencies could be identified. Ms. Hinton, as Legislative Post Auditor, mentioned that she cannot stress enough how important it is to have independent reviews. She encouraged the Committee to think about it. Ms. Hinton also noted that she realizes it would mean spending more money, but their office with a staff of about 25 people spends approximately \$2 million dollars, excluding the financial audits. She encouraged the Committee to look at the return on the investment, if there is an investigator general in place regarding the Medicaid program. (No written testimony was submitted.)

Senator Kelly requested information regarding the number of other states that have offices of inspector generals and how do they house the offices. The Attorney General's Office will provide this information.

Chairman Umbarger thanked all the conferees for appearing before the Committee and requested that the Attorney General's Office visit with him, Senator Emler and Senator Barone regarding **SB 327**.

The meeting adjourned at 11:35 a.m. The next meeting was scheduled for January 13, 2006.

**SENATE WAYS AND MEANS
GUEST LIST**

Date January 12, 2005

NAME	REPRESENTING
ERIC RUCKER	AG OFFICE
KEVIN GRAHAM	AG O
Ref Beasley	KSAG
Julia Thomas	DOJ
Stuart Little	Little Govt. Relations
Luke Thompson	DHPF
Paul Johnson	KCC
Mike Rutledge	KAMU
LA May	LGR
Fred Lichy	KITA
Karen Ann Lower	KAHP
John Petersen	Capital Strategies
Derek Hein	Hein Law Firm
Bob VanCrum	Greater KC Chamber
CRAIG KABERLINE	K4A
Josie Torres	JLCK
John Kiefhaber	Ks. Pharmacists Assoc.
Matt Schweer	KARL
Gary HAAG	KARL
Doug Bassett	KARL
John Meetz	KID

Capitol Office

State Capitol, Room 356-E
Topeka, Kansas 66612-1504
(785) 296-2497

15th District Office

304 North Sixth Street
P.O. Box 747
Independence, Kansas 67301-0747
(620) 331-1800



Senator Derek Schmidt
Majority Leader

Committee Assignments

Chair: Confirmation Oversight
Vice Chair: Assessment & Taxation
Organization Calendar & Rules
Member: Judiciary
Agriculture
Legislative Post Audit
Message Only (800) 432-3924
Fax: (785) 296-6718
Email: schmidt@senate.state.ks.us

Testimony in Support of Senate Bill 327
Creating an Office of Inspector General within the Kansas Health Policy Authority
Presented to the Senate Ways & Means Committee
by Senator Derek Schmidt

January 12, 2006

Mr. Chairman and members of the Committee:

Thank you for inviting me to testify before you today in support of Senate Bill 327, which proposes to create a new, independent Office of Inspector General to oversee programs within the jurisdiction of the Kansas Health Policy Authority.

The bill was drafted and is recommended by the interim Special Committee on Medicaid Reform, which I chaired. It is one of several recommendations aimed at improving the accountability and integrity of the state's Medicaid program by improving oversight and scrutiny of those programs. Related bills are under consideration in the Judiciary Committee.

Kansas has many dedicated state employees and contractors administering the state's health care programs. I have no criticism of individuals, but I do have criticism for the system.

The Kansas Medicaid system that has grown threefold since 1998 and today accounts for \$2.2 billion in public spending. At the current rate of growth, our Medicaid expenditures will reach \$3.3 billion in 2011.

Whenever there is rapid growth coupled with such large sums of money, there are growing pains. That is what our Medicaid system has experienced. A federal report by the Government Accountability Office in 2001 suggested the rate of fraudulent and erroneous payments in our state's program might be as high as 20 percent. A 2002 report by our own Legislative Division of Post Audit suggested the rate of fraud may be 10 percent. Program officials recently have suggested the rate of erroneous payments may be only 5 percent.

But 5 percent of a \$2.2 billion program would be \$110 million each year. The state's share of that would be \$44 million. That's \$44 million per year that is unavailable to provide needed health-care services to low-income Kansans, unavailable to help with school finance, unavailable to repay money taken from the transportation program. So, even with the most conservative assumptions, this is a problem worth addressing.

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It is time to begin fixing the problem of erroneous payments rather than continuing to wrangle about the magnitude of the problem. The purpose of the new inspector general would be to focus intently and exclusively on ferreting our waste, fraud, abuse, mismanagement, misconduct, inefficiency, and other shortcomings within our Medicaid program that have the effect of fleecing Kansas taxpayers.

Several other states have taken similar steps. New York, Florida, Illinois, Texas and Tennessee are among the states that have inspectors general who focus specifically on Medicaid and health care programs. Other states have inspectors general with broader jurisdiction.

Establishing an independent inspector general also would liberate program staff to do their jobs of delivering services rather than trying to fill a dual role of service delivery and self-policing. As the Texas health programs inspector general said: “The Health Department, its mission is to deliver services. Whereas, an I.G.’s mission is to question the delivery of services. ... One is, ‘How fast can I get the French fries out the window.’ The other is, ‘Does the guy need the fries at all?’”

In the weeks since Senate Bill 327 was drafted and prefiled, I have had discussions with many interested parties. I also have discovered that a national organization of inspectors general exists. The Association of Inspectors General is based in Philadelphia and has produced “model legislation” for states considering establishing inspectors general. Based upon those discussions and upon a review of the model legislation, several potential refinements to Senate Bill 327 have come to light and I want to highlight those for this committee’s consideration:

First, although the concepts of the model legislation tracked with the concepts in Senate Bill 327, there are several areas where the model legislation’s detailed language is preferable. I have asked the Revisor to prepare balloon amendments to incorporate those improvements from the draft legislation, and a copy of that balloon is attached to this legislation.

Second, Senate Bill 327 was by default drafted with the standard mechanism for selecting an executive branch official, which is appointment by the governor with confirmation by the Senate. Upon further reflection, however, it seems to make more sense to have the appointment made by the attorney general, still with confirmation by the Senate, because the attorney general already has significant responsibility for prosecuting Medicaid fraud through the Medicaid Fraud Control Unit in his office. In addition, a principal duty of the inspector general will be to conduct investigations which, in many cases, will ultimately be referred to the attorney general for civil or criminal prosecution. So it makes sense to view this as analogous to an independent law enforcement agency, not unlike the Kansas Bureau of Investigation. This proposed change also is incorporated into the balloon amendments I have presented to you.

Third, consistent with the idea of having an independent inspector general’s agency that is analogous to the KBI, it may make sense to house the IG’s agency somewhere other than in the Health Policy Authority. Simply making it freestanding is one option, or housing it at the attorney general’s office is another. I mention this only for the committee’s consideration – this change is not included in the balloon amendments.

Fourth, the committee may wish to consider whether it makes sense to revise the process by which the state issues its contract with the private company (currently EDS) that operates the Medicaid Surveillance Utilization Review Unit (SUR Unit). Currently, the SUR unit – which is required by federal law and which performs a “watchdog” function – interacts directly with the Medicaid program’s policy staff. This is, at best, awkward to have the watchdogs so closely integrated with the people they are supposed to be watching. Upon creation of an office of inspector general, perhaps it would make sense to have the inspector general’s office responsible for contracting with the SUR unit. This would eliminate the inherent conflict in the current structure. Again, I mention this only for the committee’s consideration – this change is not included in the balloon amendments.

Thank you for considering this important legislation. I would stand for questions.

SENATE BILL No. 327

By Special Committee on Medicaid Reform

The purpose of the office of inspector general is to establish a full-time program of audit, investigation and performance review to provide increased accountability, integrity and oversight of the programs within the jurisdiction of the Kansas health policy authority and to assist in improving agency and program operations and in deterring and identifying fraud, abuse and illegal acts. The office of inspector general shall have a duty to prevent, detect and eliminate fraud, waste, abuse, mismanagement, inefficiency and misconduct by providers, contractors, agency employees, consumers, or any other person or entity involved in the delivery of services or the handling of funds of any program or agency within the jurisdiction of the Kansas health policy authority. The office of inspector general shall be independent and free from political influence and shall conduct investigations, audits, evaluations, inspections and other reviews in accordance with professional standards that relate to the fields of investigation and auditing in government.

9 AN ACT creating the office of inspector general within the Kansas health
10 policy authority; providing for the appointment of the inspector gen-
11 eral and the powers, duties and functions thereof; amending K.S.A.
12 46-2601 and K.S.A. 2005 Supp. 75-2973 and repealing the existing
13 sections.

14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) (1) There is hereby created the office of inspector
16 general within the Kansas health policy authority. The inspector general
17 shall be appointed by the governor with the advice and consent of the
18 senate and subject to confirmation by the senate as provided in K.S.A.
19 75-4315b and amendments thereto. Except as provided in K.S.A. 46-
20 2601, no person appointed to the position of inspector general shall ex-
21 ercise any power, duty or function of the inspector general until con-
22 firmed by the senate. The inspector general shall be a person with
23 extensive experience in investigations, auditing or relevant law enforce-
24 ment. The term of the person first appointed to the position of inspector
25 general shall expire on January 15, 2009. Thereafter, a person appointed
26 to the position of inspector general shall serve for a term which shall
27 expire on January 15 of each year in which the whole senate is sworn in
28 for a new term.

30 (2) The inspector general shall be in the unclassified service and shall
31 receive such compensation as is determined by law, except that such
32 compensation may be increased but not diminished during the term of
33 office of the inspector general. The inspector general shall report directly
34 to the governor on matters concerning the administration of the office of
35 inspector general. All budget requests of the inspector general shall be
36 made directly to the governor by the inspector general. Appropriations
37 for the office of inspector general shall be made by separate line item
38 appropriations for the office of inspector general.

39 (3) The inspector general may be removed from office by the gov-
40 ernor for cause, and it shall constitute cause for removal if the legislature
41 adopts a concurrent resolution expressing a lack of confidence in the
42 inspector general's ability to adequately fulfill the duties of the office. The
43 governor shall communicate the reasons for any such removal to both

(2)
attorney general

The inspector general shall be selected without regard to political affiliation and on the basis of integrity, capacity effectively carrying out the duties of the office of inspector general, demonstrated ability in accounting, auditing, financial analysis, law, law enforcement, management analysis, public administration, investigation, fraud examination, criminal justice administration or other closely related fields. The inspector general shall possess demonstrated knowledge, skills and abilities and experience in conducting audits and investigations and shall be familiar with the programs subject to oversight by the office of inspector general. No former or current executive or manager of any program or agency subject to oversight by the office of inspector general may be appointed inspector general within two years of that individual's period of service with such program or agency. The inspector general shall hold at time of appointment, or shall obtain within one year of appointment, certification as a certified inspector general from a national organization that provides training to inspectors general.

(3)
(4) The inspector general may be removed from office by the attorney general only for cause. It shall constitute cause for removal if the legislature adopts a concurrent resolution expressing a lack of confidence in the inspector general's ability to adequately fulfill the duties of the office. The attorney general shall communicate the reasons for any such removal to both houses of the legislature within five days of such removal.

(5)
The inspector general shall be independent and shall not be subject to direction by any other executive or legislative branch officer or agency. The inspector general shall report to the attorney general and to the leadership of the house of representatives and of the senate, which shall include the house committee on appropriations and the senate committee on ways and means

and such requests shall also be submitted by the inspector general directly to the legislature

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1 [houses of the legislature within five days of such removal.]

2 (4) Within the limits of appropriations therefor the inspector general
3 may hire such employees in the unclassified service as are necessary to
4 administer the office of the inspector general. Such employees shall serve
5 at the pleasure of the inspector general.

6 (b) In order to prevent, detect and eliminate fraud, waste, abuse,
7 mismanagement, inefficiency and misconduct, the inspector general shall
8 oversee the programs administered by the Kansas health policy authority,
9 which oversight includes, but is not limited to, the following:

10 (1) Investigation of misconduct by employees, vendors, contractors,
11 consumers, clients and health care providers.

12 (2) Audits of health care providers related to ensuring that appropri-
13 ate payments are made for services rendered and to the recovery of
14 overpayments.

15 (3) Monitoring of quality assurance programs generally related to the
16 medical assistance program and specifically related to any managed care
17 program.

18 (4) Quality control measurements of the programs administered by
19 the Kansas health policy authority.

20 (5) Investigations of fraud or intentional program violations commit-
21 ted by clients of the Kansas health policy authority or by consumers of
22 services administered by the Kansas health policy authority.

23 (6) Actions initiated against contractors or health care providers for
24 any of the following reasons:

25 (A) Violations of the medical assistance program.

26 (B) Sanctions against health care providers brought in conjunction
27 with the department of social and rehabilitation services or the depart-
28 ment on aging, or both.

29 (C) Recoveries of assessments against medical care facilities and long-
30 term care facilities.

31 (D) Sanctions mandated by the United States department of health
32 and human services against health care providers.

33 (E) Violations of contracts related to any managed care programs.

34 (F) Monitoring adherence to the terms of the contract between the
35 Kansas health policy authority and an organization with which the au-
36 thority has entered into a contract to make claims payments.

37 (c) The inspector general shall have access to all information, confi-
38 dential or otherwise, and to all personnel and facilities of the Kansas
39 health policy authority, their employees, vendors, contractors and health
40 care providers and any federal, state or local governmental agency that
41 are necessary to perform the duties of the office as directly related to
42 programs administered by the authority. No health care provider shall be
43 compelled under the provisions of this section to provide individual med-

(6) The inspector general shall have general managerial control over the office of the inspector general and shall establish the organization structure of the office as the inspector general deems appropriate to carry out the responsibilities and functions of the office.

Subject to appropriations, the inspector general may obtain the services of certified public accountants, qualified management consultants, professional auditors, or other professionals necessary to independently perform the functions of the office.

carry out the duties of the office, the inspector general shall conduct independent and ongoing oversight of

1 ical records of patients who are not clients of the medical assistance pro-
2 gram. State and local governmental agencies are authorized and directed
3 to provide to the inspector general requested information, assistance or
4 cooperation. Except as otherwise provided in this subsection, the inspec-
5 tor general and all employees and former employees of the office of in-
6 spector general shall be subject to the same duty of confidentiality im-
7 posed by law on any such person or agency with regard to any such
8 information, and shall be subject to any civil or criminal penalties imposed
9 by law for violations of such duty of confidentiality. The duty of confi-
10 dentiality imposed on the inspector general and all employees and former
11 employees of the office of inspector general shall be subject to the pro-
12 visions of subsection (e), and the inspector general may furnish all such
13 information to the attorney general, Kansas bureau of investigation or
14 office of the United States attorney in Kansas pursuant to subsection (e).
15 Upon receipt thereof, the attorney general, Kansas bureau of investigation
16 or office of the United States attorney in Kansas and all assistants and all
17 other employees and former employees of such offices shall be subject
18 to the same duty of confidentiality with the exceptions that any such
19 information may be disclosed in criminal or other proceedings which may
20 be instituted and prosecuted by the attorney general or the United States
21 attorney in Kansas, and any such information furnished to the attorney
22 general, the Kansas bureau of investigation or the United States attorney
23 in Kansas under subsection (e) may be entered into evidence in any such
24 proceedings.

25 (d) The inspector general shall serve as the authority's primary liaison
26 with law enforcement, investigatory and prosecutorial agencies, including,
27 but not limited to, the following:

28 (1) The Kansas highway patrol and Kansas bureau of investigation.

29 (2) The federal bureau of investigation and other federal law enforce-
30 ment agencies.

31 (3) The various inspectors general of federal agencies overseeing the
32 programs administered by the Kansas health policy authority.

33 (4) The offices of the United States attorney in Kansas.

34 (5) The office of the Kansas attorney general.

35 (6) The legislative post auditor.

36 (7) The unit of the organization which contracts with the Kansas
37 health policy authority to make claims payments which is maintained to
38 detect fraud pursuant to the contract. The inspector general shall meet
39 on a regular basis with these entities to share information regarding pos-
40 sible misconduct by any persons or entities involved with the programs
41 administered by the authority. Any inefficiency discovered by the inspec-
42 tor general shall be reported immediately to the legislative post auditor.
43 Copies of any reports and recommendations of the unit of the organiza-

1 tion which contracts with the Kansas health policy authority to make
2 claims payments which is maintained to detect fraud pursuant to the
3 contract shall be submitted to the inspector general.

4 (e) All investigations conducted by the inspector general shall be con-
5 ducted in a manner that ensures the preservation of evidence for use in
6 criminal prosecutions. If the inspector general determines that a possible
7 criminal act relating to fraud in the provision or administration of a pro-
8 gram administered by the Kansas health policy authority has been com-
9 mitted, the inspector general shall immediately notify the office of the
10 Kansas attorney general. If the inspector general determines that a pos-
11 sible criminal act has been committed within the jurisdiction of the office,
12 the inspector general may request the special expertise of the Kansas
13 bureau of investigation. The inspector general may present for prosecu-
14 tion the findings of any criminal investigation to the office of the attorney
15 general or the office of the United States attorney in Kansas.

16 (f) To carry out the duties as described in this section, the inspector
17 general and the inspector general's designees shall have the power to
18 compel by subpoena the attendance and testimony of witnesses and the
19 production of books, electronic records and papers as directly related to
20 programs administered by the Kansas health policy authority. No health
21 care provider shall be compelled to provide individual medical records of
22 patients who are not clients of the authority.

23 (g) The inspector general shall report all convictions, terminations
24 and suspensions taken against vendors, contractors and health care pro-
25 viders to the Kansas health policy authority and to any agency responsible
26 for licensing or regulating those persons or entities.

27 (h) The inspector general shall make annual reports, findings and
28 recommendations regarding the office's investigations into reports of
29 fraud, waste, abuse, mismanagement or misconduct relating to any pro-
30 grams administered by the Kansas health policy authority to the legislative
31 post auditor, the legislature and the governor. These reports shall include,
32 but not be limited to, the following information:

33 (1) Aggregate provider billing and payment information.

34 (2) The number of audits of the programs administered by the Kansas
35 health policy authority and the dollar savings, if any, resulting from those
36 audits.

37 (3) Health care provider sanctions, in the aggregate, including ter-
38 minations and suspensions.

39 (4) A detailed summary of the investigations undertaken in the pre-
40 vious fiscal year. These summaries shall comply with all laws and rules
41 and regulations regarding maintaining confidentiality in the programs ad-
42 ministered by the Kansas health policy authority.

43 (i) The inspector general shall make such recommendations to the

the attorney general,

1 executive director of the Kansas health policy authority, the ~~governor~~ or
2 the legislature for changes in law, rules and regulations, policy or pro-
3 cedures as the inspector general deems appropriate to carry out the pro-
4 visions of law or to improve the efficiency of programs administered by
5 the Kansas health policy authority. The inspector general shall not be
6 required to obtain permission or approval from any other official or au-
7 thority prior to making any such recommendation.

8 (j) The inspector general shall make provision to solicit and receive
9 reports of fraud, waste, abuse, mismanagement, misconduct or ineffi-
10 ciencies in the programs administered by the Kansas health policy au-
11 thority from any person or persons who shall possess such information.
12 The inspector general shall not disclose or make public the identity of
13 any person or persons who provide such reports pursuant to this subsec-
14 tion unless such person or persons consent in writing to the disclosure of
15 such person's identity. Disclosure of the identity of any person who makes
16 a report pursuant to this subsection shall not be ordered as part of any
17 administrative or judicial proceeding. Any information received by the
18 inspector general from any person concerning fraud, waste, abuse, inef-
19 ficiency, mismanagement, misconduct or inefficiencies in the programs
20 administered by the Kansas health policy authority shall be confidential
21 and shall not be disclosed or made public, upon subpoena or otherwise,
22 except such information may be disclosed if (1) release of the information
23 would not result in the identification of the person who provided the
24 information, (2) the person or persons who provided the information to
25 be disclosed consent in writing to its disclosure, (3) the disclosure is nec-
26 essary to protect the public health or (4) the information to be disclosed
27 is required in an administrative proceeding or court proceeding and ap-
28 propriate provision has been made to allow disclosure of the information
29 without disclosing to the public the identity of the person or persons who
30 reported such information to the inspector general.

31 (k) The scope, timing and completion of any audit or investigation
32 conducted by the inspector general shall be within the discretion of the
33 inspector general. Any audit conducted by the inspector general's office
34 shall adhere to the government auditing standards promulgated by the
35 United States government accountability office.

36 (l) Nothing in this section shall limit investigations by any state de-
37 partment or agency that may otherwise be required by law or that may
38 be necessary in carrying out the duties and functions of such agency.

39 Sec. 2. K.S.A. 2005 Supp. 75-2973 is hereby amended to read as
40 follows: 75-2973. (a) This section shall be known and may be cited as the
41 Kansas whistleblower act.

42 (b) As used in this section:

43 (1) "Auditing agency" means the (A) legislative post auditor, (B) any

1 employee of the division of post audit, (C) any firm performing audit
2 services pursuant to a contract with the post auditor, ~~or~~ (D) any state
3 agency or federal agency or authority performing auditing or other over-
4 sight activities under authority of any provision of law authorizing such
5 activities or (E) the inspector general created under section 1 and amend-
6 ments thereto.

7 (2) "Disciplinary action" means any dismissal, demotion, transfer,
8 reassignment, suspension, reprimand, warning of possible dismissal or
9 withholding of work.

10 (3) "State agency" and "firm" have the meanings provided by K.S.A.
11 46-1112 and amendments thereto.

12 (c) No supervisor or appointing authority of any state agency shall
13 prohibit any employee of the state agency from discussing the operations
14 of the state agency or other matters of public concern, including matters
15 relating to the public health, safety and welfare either specifically or gen-
16 erally, with any member of the legislature or any auditing agency.

17 (d) No supervisor or appointing authority of any state agency shall:

18 (1) Prohibit any employee of the state agency from reporting any
19 violation of state or federal law or rules and regulations to any person,
20 agency or organization; or

21 (2) require any such employee to give notice to the supervisor or
22 appointing authority prior to making any such report.

23 (e) This section shall not be construed as:

24 (1) Prohibiting a supervisor or appointing authority from requiring
25 that an employee inform the supervisor or appointing authority as to leg-
26 islative or auditing agency requests for information to the state agency or
27 the substance of testimony made, or to be made, by the employee to
28 legislators or the auditing agency, as the case may be, on behalf of the
29 state agency;

30 (2) permitting an employee to leave the employee's assigned work
31 areas during normal work hours without following applicable rules and
32 regulations and policies pertaining to leaves, unless the employee is re-
33 quested by a legislator or legislative committee to appear before a legis-
34 lative committee or by an auditing agency to appear at a meeting with
35 officials of the auditing agency;

36 (3) authorizing an employee to represent the employee's personal
37 opinions as the opinions of a state agency; or

38 (4) prohibiting disciplinary action of an employee who discloses in-
39 formation which: (A) The employee knows to be false or which the em-
40 ployee discloses with reckless disregard for its truth or falsity, (B) the
41 employee knows to be exempt from required disclosure under the open
42 records act or (C) is confidential or privileged under statute or court rule.

43 (f) Any officer or employee of a state agency who is in the classified

1 service and has permanent status under the Kansas civil service act may
2 appeal to the state civil service board whenever the officer or employee
3 alleges that disciplinary action was taken against the officer or employee
4 in violation of this act. The appeal shall be filed within 90 days after the
5 alleged disciplinary action. Procedures governing the appeal shall be in
6 accordance with subsections (f) and (g) of K.S.A. 75-2949 and amend-
7 ments thereto and K.S.A. 75-2929d through 75-2929g and amendments
8 thereto. If the board finds that disciplinary action taken was unreasonable,
9 the board shall modify or reverse the agency's action and order such relief
10 for the employee as the board considers appropriate. If the board finds
11 a violation of this act, it may require as a penalty that the violator be
12 suspended on leave without pay for not more than 30 days or, in cases of
13 willful or repeated violations, may require that the violator forfeit the
14 violator's position as a state officer or employee and disqualify the violator
15 for appointment to or employment as a state officer or employee for a
16 period of not more than two years. The board may award the prevailing
17 party all or a portion of the costs of the proceedings before the board,
18 including reasonable attorney fees and witness fees. The decision of the
19 board pursuant to this subsection may be appealed by any party pursuant
20 to law. On appeal, the court may award the prevailing party all or a portion
21 of the costs of the appeal, including reasonable attorney fees and witness
22 fees.

23 (g) Each state agency shall prominently post a copy of this act in
24 locations where it can reasonably be expected to come to the attention
25 of all employees of the state agency.

26 (h) Any officer or employee who is in the unclassified service under
27 the Kansas civil service act who alleges that disciplinary action has been
28 taken against such officer or employee in violation of this section may
29 bring an action pursuant to the act for judicial review and civil enforce-
30 ment of agency actions within 90 days after the occurrence of the alleged
31 violation. The court may award the prevailing party in the action all or a
32 portion of the costs of the action, including reasonable attorney fees and
33 witness fees.

34 (i) Nothing in this section shall be construed to authorize disclosure
35 of any information or communication that is confidential or privileged
36 under statute or court rule.

37 Sec. 3. K.S.A. 46-2601 is hereby amended to read as follows: 46-
38 2601. (a) There is hereby established the confirmation oversight com-
39 mittee which shall have six members. Except as provided by this subsec-
40 tion, members of the confirmation oversight committee shall be
41 appointed in the manner provided by senate rule for the appointment of
42 members of standing committees of the senate. The two major political
43 parties shall have proportional representation on such committee. In the

1 event application of the preceding sentence results in a fraction, the party
2 having a fraction exceeding .5 shall receive representation as though such
3 fraction were a whole number. One of the members of the committee
4 shall be the majority leader, or the majority leader's designee, who shall
5 be the chairperson. One of the members of the committee shall be the
6 minority leader, or the minority leader's designee, who shall be the vice-
7 chairperson. The committee shall meet on the call of the chairperson or
8 any three members of the committee.

9 (b) If a vacancy occurs in the membership of a board, commission,
10 council, committee, authority or other governmental body *or in the po-*
11 *sition of inspector general created under section 1 and amendments*
12 *thereto* and the appointment to fill such vacancy is subject to confirmation
13 by the senate as provided in K.S.A. 75-4315b, and amendments thereto,
14 the confirmation oversight committee may authorize, by a majority vote
15 thereof, the person appointed to fill such vacancy to exercise the powers,
16 duties and functions of the office until such appointment is confirmed by
17 the senate in the manner provided by K.S.A. 75-4315b, and amendments
18 thereto, at the next regular or special session of the legislature.

19 Prior to authorizing any person to exercise the powers, duties and func-
20 tions of an office pursuant to this section, the confirmation oversight com-
21 mittee may require such person to appear before the committee.

22 (c) (1) If the confirmation oversight committee authorizes a person
23 appointed to fill a vacancy to exercise the powers, duties and functions of
24 an office as provided by this section, such person shall not be subject to
25 confirmation by the senate if at the time of such person's appointment
26 there is less than six months in the unexpired term of such.

27 (2) The provisions of this subsection shall not apply to appointments
28 to the state board of regents.

29 Sec. 4. K.S.A. 46-2601 and K.S.A. 2005 Supp. 75-2973 are hereby
30 repealed.

31 Sec. 5. This act shall take effect and be in force from and after its
32 publication in the statute book.