Approved: April 20, 2006
Date

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Dwayne Umbarger at 10:40 A.M. on February 9, 2006, in Room 123-S of the Capitol.

All members were present.

Committee staff present:
Jill Wolters, Revisor of Statutes Office
Michael Corrigan, Revisor of Statutes Office
Alan Conroy, Director, Kansas Legislative Research Department
J. G. Scott, Kansas Legislative Research Department
Reagan Cussimanio, Kansas Legislative Research Department
Amy Deckard, Kansas Legislative Research Department
Audrey Dunkel, Kansas Legislative Research Department
Julian Efird, Kansas Legislative Research Department
Susan Kannarr, Kansas Legislative Research Department
Becky Krahl, Kansas Legislative Research Department
Matt Spurgin, Kansas Legislative Research Department
Judy Bromich, Chief of Staff
Mary Shaw, Committee Secretary

Conferees appearing before the committee:
Don Heiman, Legislative Chief information Technology Officer
Thomas M. Rawson, Vice President for Administration, Kansas State University and Chairman, Regents Universities Council of Business Officers
Kansas Board of Regents (written)

Others attending:
See attached list.

Bill Introductions

Senator Emler moved, with a second by Senator Steineger, regarding an emergency medical services data collection system (5rs2029). Motion carried on a voice vote.

Copies of the Kansas Legislative Research Department Budget Analysis Report for FY 2006 and FY 2007 were made available to the Committee.

Subcommittee budget reports on:

Kansas Department of Social and Rehabilitation Services Hospitals (Attachment 1)
Developmental Disabilities Institutions
Kansas Neurological Institute
Parsons State Hospital and Training Center

Mental Health Institutions
Larned State Hospital
Osawatomie State Hospital
Rainbow Mental Health Facility

Subcommittee Chairman Dwayne Umbarger reported that the budget subcommittee on the Kansas Department of Social and Rehabilitation Services Hospitals Developmental Disabilities Institutions (Kansas Neurological Institute and Parsons State Hospital and Training Center) concurs with the Governor's recommendations in FY 2006 and concurs with the Governor's FY 2007 recommendations with exception.

Subcommittee Chairman Dwayne Umbarger reported that the budget subcommittee on the Kansas Department of Social and Rehabilitation Services Hospitals Mental Health Institutions (Larned State Hospital, MINUTES OF THE Senate Ways and Means Committee at 10:40 A.M. on February 9, 2006, in Room 123-S of the Capitol.

Osawatomie State Hospital, Rainbow Mental Health Facility) concurs with the Governor's recommendations in FY 2006 and concurs with the Governor's FY 2007 recommendations with exception.

Senator Wysong moved, with a second by Senator Teichman, to adopt the subcommittee budget report on the Kansas Department of Social and Rehabilitation Services Hospitals, Developmental Disability Institutions (Kansas Neurological Institute and Parsons State Hospital and Training Center) and Mental Health Institutions (Larned State Hospital, Osawatomie State Hospital, Rainbow Mental Health Facility) in FY 2006 and FY 2007. Motion carried on a voice vote.

Kansas Corporation Commission
Citizens Utility Ratepayer Board (Attachment 2)

Subcommittee Chairwoman Carolyn McGinn reported that the budget subcommittee on the Kansas Corporation Commission concurs with the Governor's recommendations in FY 2006 and FY 2007.

Senator Barone moved, with a second by Senator McGinn, to amend the Kansas Corporation Commission subcommittee budget report to add $182,535 from the Abandoned Oil and Gas Well Plugging Fund for well plugging activities in FY 2006. Motion carried on a voice vote.

Subcommittee Chairwoman Carolyn McGinn reported that the budget subcommittee on the Citizens Utility Ratepayer Board concurs with the Governor's recommendations in FY 2006 and FY 2007.

Senator McGinn moved, with a second by Senator Emler, to adopt the subcommittee budget report for the Kansas Corporation Commission, as amended in FY 2006 and FY 2007 and the Citizens Utility Ratepayer Board in FY 2006 and FY 2007. Motion carried on a voice vote.

Chairman Umbarger opened the public hearing on:

SB 364--State agency information technology projects; legislative oversight

Staff briefed the Committee on the bill. Julian Efird, Kansas Legislative Research Department, distributed copies of the Report of the Joint Committee on Information Technology to the 2006 Legislature (Attachment 3). Jill Wolters also briefed the Committee on the bill. Copies of a memorandum were distributed from Jill Wolters and Mary Torrence, Revisor's Office, addressed to the Senate Ways and Means Committee, dated January 30, 2006, regarding Legislative Oversight of Executive Agencies (Attachment 4).

The Chairman welcomed the following conferees:

Don Heiman, Legislative Chief Information Technology Officer, testified as a proponent on **SB 364** (Attachment 5). Mr. Heiman mentioned that most often projects fail because the project plans are incomplete, requirements are not properly understood, and work is not broken down into discrete task increments.

Thomas W. Rawson, Chairman, Regents Universities Council of Business Officers and Vice President for Administration and Finance, Kansas State University, testified on **SB 364** as a neutral conferee (Attachment 6). Mr. Rawson expressed concern about a provision contained in Section 1 of **SB 364** which he explained in detail in his written testimony regarding the language requiring the universities to report on all information technology project expenditures, regardless of their funding source.

Written testimony was submitted by Reginald L. Robinson, President and CEO, Kansas Board of Regents (Attachment 7).

There being no further conferees to come before the Committee, the Chairman closed the public hearing on **SB 364.**

The meeting adjourned at 11:40 a.m. The next meeting was scheduled for February 10, 2006.

SENATE WAYS AND MEANS
GUEST LIST

Date February 9, 2006

NAME	REPRESENTING
Ali Sultani	Senate Intern
Lindsey Douglas	Hein Law Firm
Julia Thomas	DOB
Donna Warner	self
Bonnie Batton	Visitor
Jackie Montfort Parji	KCC
Mark Boranyak	Capitol Strategies
Dianne Rosell	Sen. Steineger - intern
Sheli Sweeney	ACMHCK
Amy Campbell	Kansas Mental Health Coalition
Vickie Rogers	DISC-KITO
Denise Moore	Executive CITO
Sandy Shaw	Kearney + Associates
Mike Hutfles	Alliance
Beth Innes	Hutfles Gov't Relations
Brad Williams	KBOR
Eric Sexton	WSU
Sue Peterson	K-State
Tom Rawson	K-State

Senate Ways and Means
Subcommittee on SRS Hospitals

FY 2006 and FY 2007 Subcommittee Reports on

Developmental Disabilities Institutions
Kansas Neurological Institute
Parsons State Hospital and Training Center

Mental Health Hospitals
Larned State Hospital
Osawatomie State Hospital
Rainbow Mental Health Facility

Sen. Dwayne Umbarger
Senator Dwayne Umbarger, Chairperson

Jean Schodorf
Senator Jean Schodorf

Carolyn McGinn
Senator Carolyn McGinn

Sen. David Wysong
Senator David Wysong

Donald Betts Jr.
Senator Donald Betts

Senate Ways and Means
2-9-06
Attachment 1

Senate Subcommittee Report

Agency: Developmental Disabilities Institutions (DD Hospitals) **Bill No.** **Bill Sec.**

Analyst: Kannarr **Analysis Pg. No.** 1225, 1248 **Budget Page No.** 253, 319

Expenditure	Agency Req. FY 06	Governor Rec. FY 06	Senate Subcommittee Adjustments
Kansas Neurological Institute			
State General Fund	$ 12,818,599	$ 12,089,114	$ 0
Other Funds	15,040,964	15,040,964	0
TOTAL	$ 27,859,563	$ 27,130,078	$ 0
FTE Positions	588.2	588.2	0.0
Parsons State Hospital and Training Center			
State General Fund	$ 8,654,969	$ 8,403,787	$ 0
Other Funds	14,437,998	14,437,998	0
TOTAL	$ 23,092,967	$ 22,841,785	$ 0
FTE Positions	467.2	467.2	0.0

Kansas Neurological Institute (KNI)

Agency Request

The **agency** estimates FY 2006 expenditures of $27,859,563, including $12,818,599 from the State General Fund. The estimate is an all funds increase of $811,532 (3.0 percent) and a State General Fund increase of $729,485 (6.0 percent) above expenditures approved by the 2005 Legislature.

The revised estimate includes supplemental requests of $807,985, including $729,485 from the State General Fund. The State General Fund supplemental represents the entire change from the approved State General Fund budget. The supplementals include: $596,825 from the State General Fund to fund increased pharmaceutical costs; $54,000 from the State General Fund to pay for increased user fees from the Department of Administration, Division of Information Systems and Communications; $78,660 from the State General Fund to pay for increased utilities costs; and $78,500 from the Title XIX fund to pay KNI's portion of the replacement cost for the Patient Account Management system in all hospitals.

The salaries and wages portion of the budget includes base salary adjustments approved by the 2005 Legislature, funding for 27 payroll periods and payments for accumulated compensatory time due to staff for overtime worked in FY 2005 amounting to $229,272.

Governor's Recommendation

The **Governor** recommends FY 2006 expenditures of $27,130,078, including $12,089,114 from the State General Fund. The recommendation is an all funds decrease of $729,485 (5.7 percent) and a State General Fund decrease of $729,485 (5.7 percent) from the agency's revised FY 2006 estimate. The Governor's State General Fund recommendation is equal to the amount approved by the 2005 Legislature.

The Governor recommends expenditures of $78,500 from the agency fee fund for the replacement of the Patient Account Management system but does not recommend any of the other requested State General Fund supplementals. In addition, the recommendation increases the overall shrinkage rate from 2.77 percent to 6.13 percent resulting in a decrease of $813,390 from the State General Fund in salaries and wages. This same amount was added to pharmaceutical expenditures.

Parsons State Hospital and Training Center (Parsons)

Agency Request

The **agency** estimates FY 2006 expenditures of $23,092,967, including $8,654,969 from the State General Fund. The estimate is an all funds increase of $334,182 (1.5 percent) and a State General Fund increase of $251,182 (3.0 percent) above the amount approved by the 2005 Legislature. The salaries and wages portion of the budget includes base salary adjustments approved by the 2005 Legislature, funding for 27 payroll periods and payments for accumulated compensatory time due to staff for overtime worked in FY 2005 amounting to $63,000.

The FY 2006 estimate includes a supplemental request of $334,182 from the State General Fund. Items included in the supplemental request are $83,000 to pay the hospital's's portion of the replacement cost for the Patient Account Management system in all hospitals; $36,000 to pay for increased user fees from the Department of Administration, Division of Information Systems and Communications (DISC); $90,235 to pay for increased pharmaceutical costs; $63,919 to pay for increased utility costs; and $61,028 for increases in operating expenditures due to a rise in the resident census. [**Staff Note:** $83,000 of the supplemental was entered into the Budget Management System as a SGF supplemental but should have been entered as other funds.]

Governor's Recommendation

The **Governor** recommends FY 2006 expenditures of $22,841,785, including $8,403,787 from the State General Fund. The recommendation is an all funds decrease of $251,182 (1.1 percent) and a State General Fund decrease of $251,182 (2.9 percent) below the agency's revised estimate. The Governor does not recommend the agency's supplemental requests of $251,182 from the State General Fund for increased DISC charges ($36,000), increased pharmaceutical costs ($90,235), increased utilities ($63,919) or additional costs due to increased census ($61,028). The recommendation includes increased State General Fund shrinkage savings of $251,182 which was shifted to fund increased pharmaceutical costs, increased utilities costs and additional expenditures due to increased census. The Governor does recommend $83,000 from Title XIX funds for the replacement of the Patient Account Management system.

Senate Subcommittee Recommendation

The Senate Subcommittee concurs with the Governor's recommendation.

Senate Subcommittee Report

Agency: Developmental Disabilities Institutions (DD Hospitals) **Bill No.** **Bill Sec.**

Analyst: Kannarr **Analysis Pg. No.** 1225, 1248 **Budget Page No.** 253, 319

Expenditure	Agency Req. FY 07	Governor Rec. FY 07	Senate Subcommittee Adjustments
Kansas Neurological Institute			
State General Fund	$ 11,832,803	$ 11,670,591	$ 599,445
Other Funds	14,962,464	15,004,213	0
TOTAL	$ 26,795,367	$ 26,674,804	$ 599,445
FTE Positions	588.2	575.2	13.0
Parsons State Hospital and Training Center			
State General Fund	$ 8,652,673	$ 8,629,055	$ 36,000
Other Funds	14,966,158	14,354,998	0
TOTAL	$ 23,618,831	$ 22,984,053	$ 36,000
FTE Positions	467.2	467.2	0.0

Kansas Neurological Institute (KNI)

Agency Request

The **agency** requests FY 2007 expenditures of $26,795,267 including $11,832,803 from the State General Fund. The request is an all funds decrease of $1,064,296 (3.8 percent) and a State General Fund decrease of $985,796 (7.7 percent) below the FY 2006 estimate.

The request includes State General Fund enhancements of $196,690. These enhancements include: $64,030 to pay for increased pharmaceutical costs; $54,000 to pay for increased user fees from the Department of Administration; and $78,660 to pay for increased utilities costs.

Governor's Recommendation

The **Governor** recommends FY 2007 operating expenditures of $26,674,804, including $11,670,591 from the State General Fund. The recommendation is an all funds decrease of $120,463 (0.4 percent) and a State General Fund decrease of $162,212 (1.4 percent) below the agency request. As compared to the FY 2006 recommendation, the recommendation is an all funds decrease of $455,274 (1.7 percent) and a State General Fund decrease of $418,523 (3.5 percent).

- The Governor accepts a portion of the agency's reduced resources package and reduces expenditures by $402,755 ($223,753 State General Fund) and deletes a total of 13.0 FTE positions.

- The Governor does not recommend the agency enhancement package. However, the recommendation increases shrinkage from 2.77 percent to 3.83 percent and shifts the savings of $221,395 to pharmaceutical costs.
- The Governor adds $19,730 from the State General Fund for the reclassification of employees in skilled trades.
- The Governor adds $458,758, including $419,856 from the State General Fund, for the recommended 2.5 percent base salary adjustment which is offset by a decrease due to the absence of the 27th payroll period which occurred in FY 2006.

Parsons State Hospital and Training Center

Agency Request

The **agency** requests FY 2007 expenditures of $23,618,831, including $8,652,673 from the State General Fund. The request is an all funds increase of $525,864 (2.3 percent) and a State General Fund decrease of $2,296 (0.03 percent) from the revised FY 2006 estimate.

The major increase from FY 2006 to FY 2007 is in the salaries and wages portion of the budget which increases by $561,756 (2.9 percent). This increase the net of an enhancement request of $1,018,600 to reopen one of the vacant patient cottages and a decrease due to the absence of the 27th payroll period in FY 2007. The requested expenditures include an enhancement package totaling $1,205,863, including $594,703 from the State General Fund. Items in the enhancement package, described in more detail on the following page, include: $90,235 from the State General Fund for increased pharmaceutical costs; $36,000 from the State General Fund for increased user fees; $61,028 from the State General Fund for operating expenditures associated with the increased census; and $1,018,600, including $407,440 from the State General Fund, to reopen Willow cottage.

Governor's Recommendation

The **Governor** recommends FY 2007 expenditures of $22,984,053, including $8,629,055 from the State General Fund. The recommendation is an all funds decrease of $634,778 (2.7 percent) and a State General Fund decrease of $23,618 (0.3 percent) below the agency request. The Governor does not recommend any of the agency's requested enhancements totaling $1,205,863, including $594,703 from the State General Fund. The recommendation includes $14,274 from the State General Fund for the reclassification of skilled tradespeople. The Governor recommends $405,548 from the State General Fund for a 2.5 percent base salary adjustment which is offset by a decrease due to the absence of the 27th payroll period which occurred in FY 2006.

Senate Subcommittee Recommendation

The Senate Subcommittee concurs with the Governor's recommendation with the following exceptions:

1. **Kansas Neurological Institute.** Add $599,445 from the State General Fund and 13.0 FTE positions, as part of the recommendation to add $3,206,914 across all state mental health and developmental disabilities institution budgets in response to concerns about the adequacy of funding under the Governor's

recommendation to pay for operating expenditures. SRS was requested to suggest distribution of the funding based on an assessment of needs at each of the institutions. For this hospital, the recommended amount is used to reinstate positions and funding for 13.0 FTE eliminated as part of the reduced resources package and to off-set increases in shrinkage recommended to fund other operating expenditures.

2. **Parsons State Hospital and Training Center.** Add $36,000 from the State General Fund, as part of the recommendation to add $3,206,914 across all state mental health and developmental disabilities institution budgets in response to concerns about the adequacy of funding under the Governor's recommendation to pay for operating expenditures. SRS was requested to suggest distribution of the funding based on an assessment of needs at each of the institutions. For this institution, funding is suggested to return utilities funding back to the agency's requested level.

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Senate Subcommittee Report

Agency: Mental Health Hospitals **Bill No.** **Bill Sec.**

Analyst: Kannarr **Analysis Pg. No.** 1273, 1299, 1322 **Budget Page No.** 297, 315, 325

Expenditure	Agency Req. FY 06	Governor Rec. FY 06	Senate Subcommittee Adjustments
Larned State Hospital			
Operating Expenditures			
State General Fund	$ 34,888,988	$ 33,943,438	$ 0
Other Funds	11,571,835	11,571,835	0
TOTAL	$ 46,460,823	$ 45,515,273	$ 0
FTE Positions	938.2	938.2	0.0
Osawatomie State Hospital			
Operating Expenditures			
State General Fund	$ 10,150,386	$ 9,416,789	$ 0
Other Funds	13,073,589	13,073,589	0
TOTAL	$ 23,223,975	$ 22,490,378	$ 0
FTE Positions	398.6	398.6	0.0
Rainbow Mental Health Facility			
Operating Expenditures			
State General Fund	$ 4,241,293	$ 3,825,760	$ 0
Other Funds	3,732,099	3,732,099	0
TOTAL	$ 7,973,392	$ 7,557,859	$ 0
FTE Positions	115.2	115.2	0.0

Larned State Hospital

Agency Request

The **agency** estimates FY 2006 operating expenditures of $46,460,823, including $34,888,988 from the State General Fund. The estimate is an all funds increase of $998,530 (2.2 percent) and a State General Fund increase of $945,550 (2.8 percent) above the amount approved by the 2005 Legislature after adjustment. Subsequent to the 2005 Session, the hospital transferred $228,500 in State General Fund expenditure authority to the Department of Social and Rehabilitation Services to correct an over-appropriation in the Sexual Predator Treatment Program account.

The revised estimate includes supplemental requests of $1,063,550, including $945,550 from the State General Fund. Items in the supplemental include:

- $90,000 from the State General Fund to cover increases in the Enterprise Applications Fee charged by the Division of Information Systems and Communications at the Department of Administration;

- $118,000 from hospital fee funds to fund hospital's portion of the systemwide replacement of the Patient Account Management computer systems;

- $578,240 from the State General Fund to cover costs of the newly opened Isaac Ray building;

- $107,155 from the State General Fund to provide support staff for the reoccupation of Dillon building in the spring of 2006 by units from the Sexual Predator Treatment Program currently housed in Isaac Ray [**Staff note:** The agency intended to request 14.0 FTE positions but the positions were omitted from the Budget Management System.]; and

- $170,155 from the State General Fund to cover additional utility costs due to increased wastewater fees.

Governor's Recommendation

The **Governor** recommends FY 2006 operating expenditures of $45,515,273, including $33,943,438 from the State General Fund. The recommendation is an all funds decrease of $945,550 (2.0 percent) and a State General Fund decrease of $945,550 (2.7 percent) below the agency's revised estimate. The State General Fund recommendation is the same as the approved amount as amended by the transfer of spending authority to SRS subsequent to the session. The all funds recommendation is a decrease of $52,980 (0.1 percent) below the amended approved amount.

The Governor does not recommend any of the agency's State General Fund supplemental requests of $945,550 which accounts for the entire difference from the agency's estimate.

Osawatomie State Hospital

Agency Request

The **agency** estimates FY 2006 expenditures of $23,223,975 including $10,150,386 from the State General Fund. The estimate is an all funds increase of $1,338,972 (6.1 percent) and a State General Fund increase of $1,233,597 (13.8 percent) above the amount approved by the 2005 Legislature.

The revised estimate includes State General Fund supplemental requests totaling $1,233,597 which represents the entire difference from the approved amount. The supplemental request includes: $989,625 to fund additional pharmaceutical costs; $59,000 to pay for user fees implemented by the Department of Administration; $133,172 to pay for increased utility costs due to rising natural gas prices; and $51,800 to fund increased food costs.

In addition, the FY 2006 revised estimate includes an all funds supplemental request for additional expenditure authority of $105,375 to pay for the hospital's portion of the replacement of the Patient Account Management computer system in all state hospitals.

Governor's Recommendation

The **Governor** recommends FY 2006 expenditures of $22,490,378, including $9,416,789 from the State General Fund. The recommendation is an all funds decrease of $733,597 (3.2 percent) and a State General Fund decrease of $733,597 (7.2 percent) below the agency's revised estimate. The recommendation includes $500,000 from the State General Fund, plus $244,813 in increased shrinkage savings, for increased pharmaceutical costs and $105,375 from the agency fee fund for the hospital's portion of the systemwide replacement of the Patient Account Management system. The Governor does not recommend any of the other agency's State General Fund supplemental requests for increased utility costs ($133,172), increased food costs ($51,800), and increased user fees ($59,000).

Rainbow Mental Health Facility

Agency Request

The **agency** estimates FY 2006 operating expenditures of $7,973,392, including $4,241,293 from the State General Fund. The estimate is an all funds increase of $450,658 and an State General Fund increase of $415,533 above the amount approved by the 2005 Legislature. The revised estimate includes four supplemental requests totaling $450,658, including $415,533 from the State General Fund. This request represents the entire change from the approved amount.

Governor's Recommendation

The **Governor** recommends FY 2006 expenditures of $7,557,859 for Rainbow Mental Health Facility, including $3,825,760 from the State General Fund. The recommendation is an all funds decrease of $415,533 (5.2 percent) and a State General Fund decrease of $415,533 (9.8 percent) below the agency's revised estimate. The Governor does not recommend any of the agency's State General Fund supplemental requests. The recommendation increases the agency shrinkage rate from 2.8 percent to 5.7 percent, resulting in a State General Fund savings of $171,682 and shifts this funding to Ancillary Services to fund increased costs related to pharmaceuticals. The Governor recommends the agency's request for expenditure authority of $35,125 from the hospital fee fund to replace the Patient Account Management system.

Senate Subcommittee Recommendation

The Senate Subcommittee concurs with the Governor's recommendation.

Senate Subcommittee Report

Agency: Mental Health Hospitals **Bill No.** -- **Bill Sec.** --

Analyst: Kannarr **Analysis Pg. No.** 1273, 1299, 1322 **Budget Page No.** 297, 315, 325

Expenditure	Agency Req. FY 07	Governor Rec. FY 07	Senate Subcommittee Adjustments
Larned State Hospital			
Operating Expenditures			
State General Fund	$ 38,804,859	$ 36,870,796	$ 2,137,538
Other Funds	11,433,957	11,494,694	0
TOTAL	$ 50,238,816	$ 48,365,490	$ 2,137,538
FTE Positions	970.2	952.2	0.0
Osawatomie State Hospital			
Operating Expenditures			
State General Fund	$ 9,700,948	$ 8,823,246	$ 422,627
Other Funds	12,968,214	13,816,965	0
TOTAL	$ 22,669,162	$ 22,640,211	$ 422,627
FTE Positions	398.6	398.6	0.0
Rainbow Mental Health Facility			
Operating Expenditures			
State General Fund	$ 4,377,961	$ 3,792,488	$ 11,304
Other Funds	3,696,974	3,819,501	0
TOTAL	$ 8,074,935	$ 7,611,989	$ 11,304
FTE Positions	128.2	115.2	0.0

Larned State Hospital

Agency Request

The **agency** requests FY 2007 operating expenditures of $50,238,816, including $38,804,859 from the State General Fund. The request is an all funds increase of $3,777,993 (8.1 percent) and a State General Fund increase of $38,804,859 (11.2 percent) above the revised FY 2006 estimate. Absent the enhancement request, the agency request is an all funds decrease of $2,198,219 (4.7 percent) and a State General Fund decrease of $1,896,259 (5.4 percent) below the FY 2006 estimate. The salaries and wages budget reflects a decrease of decrease of $1,141,974 from the State General Fund due the absence of the 17th payroll period that occurred in FY 2006.

The agency request includes State General Fund enhancement requests of $5,812,130. Items in the enhancement package include:

- $3,647,897 for the annualization of costs for beds in Isaac Ray (State Security Hospital) added in FY 2006;

- $90,000 to cover increases in the Enterprise Applications Fee charged by the Division of Information Systems and Communications at the Department of Administration;

- $578,240 to cover costs of the newly opened Isaac Ray building;

- $170,155 to cover additional utility costs due to increased wastewater fees;

- $390,145 to provide support staff for the reoccupation of Dillon building in the spring of 2006 by units from the Sexual Predator Treatment Program currently housed in Isaac Ray [**Staff note:** The agency intended to request 14.0 FTE positions but the positions were omitted from the submitted request;

- $634,715 to provide support services for the 90 additional beds in Isaac Ray [**Staff note:** The agency intended to request 18.0 FTE positions but the positions were omitted from the submitted request; and

- $300,978 to annualize funding added for FY 2006 to support a 30-bed expansion in the Sexual Predator Treatment Program (SPTP).

Governor's Recommendation

The **Governor** recommends FY 2007 operating expenditures of $48,365,490, including $36,870,796 from the State General Fund. The recommendation is an all funds decrease of $1,873,326 (3.7 percent) and a State General Fund decrease of $1,934,063 (5.0 percent) below the agency request. The Governor recommends the following:

- $2,674,854 from the State General Fund for a portion of the agency's requested enhancement to annualize the 90 beds added to Isaac Ray (State Security Hospital) in FY 2006;

- $390,145 from the State General Fund for support staff to reoccupy Dillon building (**Staff Note**: The Governor appears to have intended to include the 14.0 FTE positions but inadvertently omitted them from the original budget recommendation.)

- $23,533 from the State General Fund for the salary reclassification of skilled tradespeople; and

- $850,272, including $789,535 from the State General Fund, for the recommended 2.5 percent base salary adjustment which is offset by a State General Fund decrease due to the absence of the 27th payroll period that occurred in FY 2006.

Osawatomie State Hospital

Agency Request

The **agency** requests FY 2007 expenditures of $22,669,162, including $9,700,948 from the State General Fund. The request is an all funds decrease of $554,813 (2.4 percent) and a State General Fund decrease of $449,438 (4.4 percent) below the revised FY 2006 estimate.

The FY 2007 request includes an enhancement package totaling $1,159,276, all from the State General Fund. Without these enhancements, the agency request is an all funds decrease of $1,714,089 (7.4 percent) and a State General Fund decrease of $1,608,714 (15.8 percent). The enhancements include: $946,419 to increase funding for pharmaceuticals; $59,000 to pay for user fees implemented by the Department of Administration; $81,957 to pay for increased utility costs due to rising natural gas prices; and $71,900 to fund increased food costs.

Governor's Recommendation

The **Governor** recommends FY 2007 expenditures of $22,640,211, including $8,823,246 from the State General Fund. The recommendation is an all funds decrease of $28,951 (0.1 percent) and a State General Fund decrease of $877,702 (9.0 percent) below the agency request. The recommendation includes: $500,000 from the State General Fund for increased pharmaceutical expenditures; $12,506 from the State General Fund for the reclassification of salaries for skilled tradespeople; and $381,170, including $132,419 from the State General Fund, for the recommended 2.5 percent base salary adjustment. The salaries and wages recommendations are offset by a decrease due to the absence of the 27th payroll period which occurred in FY 2006. The Governor does not recommend any of the remaining State General Fund enhancement requests of $59,000 for increased user fees, $81,957 for increased utility costs, and $71,900 for increased food costs.

Rainbow Mental Health Facility

Agency Request

The **agency** requests FY 2007 operating expenditures of $8,074,935, including $4,377,961 from the State General Fund. The request is an all funds increase of $101,543 or 1.3 percent, and a State General Fund increase of $136,668, or 3.2 percent, above the revised FY 2006 estimate.

The FY 2007 request includes an enhancement package of $682,468 from the State General Fund. Included in the enhancement package are the following items: $92,600 SGF for increases in drug costs; $13,000 SGF for increases in charges for the Enterprise Application fee implemented the by Division of Information Systems and Communication (DISC) at the Department of Administration; and $576,868 SGF to increase staff on treatment units to care for aggressive and/or combative patients.

Governor's Recommendation

The **Governor** recommends FY 2007 expenditures of $7,611,989, including $3,792,488 from the State General Fund. The recommendation is an all funds decrease of $462,946 (5.7 percent) and a State General Fund decrease of $585,473 (13.4 percent) below the agency request. The

Governor does not recommend any of the agency's requested enhancement items. The recommendation includes $122,593 from special revenue funds for a 2.5 percent base salary adjustment which is offset by a decrease due to the absence of the 27th payroll period which occurred in FY 2006. The Governor recommends $2,633 from special revenue funds for the reclassification of skilled tradespeople.

Senate Subcommittee Recommendation

The Senate Subcommittee concurs with the Governor's recommendation with the following exception:

1. **Larned State Hospital.** Add $2,137,538 from the State General Fund, as part of the recommendation to add $3,206,914 across all state mental health and developmental disabilities institution budgets in response to concerns about the adequacy of funding under the Governor's recommendation to pay for operating expenditures. SRS was requested to suggest distribution of the funding based on an assessment of needs at each of the institutions. For LSH, this funding is suggested to return utilities funding to the level requested by the agency ($838,395), to fund the entire agency request to annualize funding for new beds at the State Security Hospital for which the Governor recommended partial funding ($973,043), and to fund part of the requested enhancement for staffing at the State Security Hospital which the Governor did not recommend ($326,100).

2. **Osawatomie State Hospital**. Add $422,627 from the State General Fund, as part of the recommendation to add $3,206,914 across all state mental health and developmental disabilities institution budgets in response to concerns about the adequacy of funding under the Governor's recommendation to pay for operating expenditures. SRS was requested to suggest distribution of the funding based on an assessment of needs at each of the institutions. For OSH, the funding is suggested to return funding for utilities and pharmaceuticals to the level requested by the agency.

3. **Rainbow Mental Health Facility.** Add $11,304 from the State General Fund, as part of the recommendation to add $3,206,914 across all state mental health and developmental disabilities institution budgets in response to concerns about the adequacy of funding under the Governor's recommendation to pay for operating expenditures. SRS was requested to suggest distribution across institutions based on an assessment of needs at each of the institutions. For RMHF, the funding is suggested to return funding for utilities to the level requested by the agency.

4. The Subcommittee recommends an interim study examining the public mental health system, both state hospital and community services, in Kansas. In particular, the Subcommittee recommends the interim study look at what has taken place since the original Mental Health Reform legislation was passed in the early 1990's and the need for a process to be in place to address census increases at the state hospitals. Finally, the interim study should look at the adequacy of using the Diagnostically Related Group (DRG) methodology to reimburse community hospitals as opposed to a per diem reimbursement.

5. The Subcommittee recognizes the efforts of SRS, the state mental health hospitals (SMHHs) and community providers to develop a *Protocol for Managing SMHH Census Increases* to address issues with the significant growth in admissions and census at the SMHHs that has occurred over the last several years. According to testimony, increased admissions to the hospitals have caused the census level to rise to critical levels several times in the last year and the Protocol was developed to ensure these critical levels are not reached.

6. The Subcommittee supports the efforts of SRS and the hospitals to explore public/private partnerships for alternative service delivery options as part of the effort to manage the high hospital census.

Senate Subcommittee Reports

FY 2006
FY 2007

on

State Corporation Commission
Citizens Utility Ratepayer Board

Carolyn McGinn

Senator Carolyn McGinn, Chairperson

Jay Scott Emler

Senator Jay Emler

Chris Steineger

Senator Chris Steineger

Senate Ways and Means
2-9-06
Attachment 2

Senate Subcommittee Report

Agency: State Corporation Commission **Bill No.** **Bill Sec.**

Analyst: Deckard **Analysis Pg. No.** Vol. 1, p. 498 **Budget Page No.** 111

Expenditure Summary	Agency Estimate FY 06	Governor's Recommendation FY 06	Senate Subcommittee Adjustments
Special Revenue Funds:			
State Operations	$ 19,530,134	$ 19,347,599	$ 0
Aid to Local Units	58,010	58,010	0
Other Assistance	100,000	100,000	0
TOTAL	$ 19,688,144	$ 19,505,609	$ 0
FTE Positions	214.0	214.0	0.0
Non FTE Uncl. Perm. Pos.	6.5	6.5	0.0
TOTAL	220.5	220.5	0.0

Agency Estimate

The **agency's** estimate for FY 2006 is $19,688,144, an increase of $203,698 or 1.0 percent above the approved amount. The majority of the increase is in the amount estimated to be expended on costs associated with plugging abandoned oil and gas wells. Anticipated changes in federal funds for the Underground Injection Control program, the energy program and other items have necessitated changes in the budgeted amount.

Governor's Recommendation

The **Governor** recommends FY 2006 expenditures of $19,505,609, an increase of $21,163 or 0.1 percent above the approved amount. The recommendation is a decrease of $182,535 or 0.9 percent below the agency's revised estimate. The entire amount of the difference between the agency's estimate and the Governor's recommendation is the agency's request for an additional $182,535 from the Abandoned Oil and Gas Well Plugging fund which the Governor did not recommend.

Senate Subcommittee Recommendation

The Senate Subcommittee concurs with the Governor's recommendation.

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Senate Subcommittee Report

Agency: State Corporation Commission **Bill No.** **Bill Sec.**

Analyst: Deckard **Analysis Pg. No.** Vol. 1, p. 498 **Budget Page No.** 111

Expenditure Summary	Agency Request FY 07	Governor's Recommendation FY 07	Senate Subcommittee Adjustments
Special Revenue Funds:			
State Operations	$ 19,457,336	$ 19,221,124	$ 0
Aid to Local Units	58,010	58,010	0
Other Assistance	0	150,000	0
TOTAL	$ 19,515,346	$ 19,429,134	$ 0
FTE Positions	214.0	214.0	0.0
Non FTE Uncl. Perm. Pos.	6.5	6.5	0.0
TOTAL	220.5	220.5	0.0

Agency Request

The **agency** requests an FY 2007 operating expenditure limitation of $19,515,346, a decrease of $172,798 or 0.9 percent below the FY 2006 revised estimate. The decrease from the FY 2006 estimate includes: a decrease of $283,679 or 2.2 percent in salaries and wages due to the fact that there were 27 payroll periods in FY 2006 and only 26 payroll periods in FY 2007 and the Governor's Fellow Intern which is not scheduled to reoccur in FY 2007; an increase of $156,324 or 2.5 percent in contractual services mostly attributable to an increase in rent and professional services; an increase of $5,319 or 1.2 percent in commodities attributable to increase in gasoline and office supplies; and an increase of $49,238 or 24.2 percent in capital outlay attributable to the $152,000 enhancement package to replace ten of the agency's vehicles, partially offset by the fact that the agency is scheduled to replace eight vehicles in FY 2006. The request includes the statutory transfers from the State Water Plan Fund and the State General Fund of $400,000 each into the Abandoned Oil and Gas Well Fund.

Governor's Recommendation

The **Governor** recommends FY 2007 expenditures of $19,429,134, a decrease of $76,475 or 0.4 percent below the FY 2006 recommendation. The FY 2007 recommendation is a decrease of $86,212 or 0.4 percent below the agency's request. The Governor's recommendation does not include the $400,000 transfer from the State General Fund to the Abandoned Oil and Gas Well Plugging Fund, but does include an additional transfer of $400,000 from the Conservation Fee Fund to the Abandoned Oil and Gas Well Plugging Fund. Additionally, the salaries and wages shrinkage rate for the Administration, Utilities, and Conservation Program was increased from 2.5 percent to 6.0 percent, for a decrease of $404,601 in additional shrinkage. The Governor added $150,000 from the Public Service Regulation Fund to continue funding for the Kansas Energy Council (KEC). The

Governor's recommendation includes a reduction of $50,000 in contractual services and the addition of $264,889 for a 2.5 percent cost of living adjustment for state employees' salaries and wages. Included in the Governor's recommendation is the partial funding of the agency's enhancement request, $105,500 to replace seven of the ten requested vehicles.

Senate Subcommittee Recommendation

The Senate Subcommittee concurs with the Governor's recommendation.

Senate Subcommittee Report

Agency: Citizens Utility Ratepayer Board **Bill No.** **Bill Sec.**

Analyst: Deckard **Analysis Pg. No.** Vol 1, p. 515 **Budget Page No.** 87

Expenditure Summary	Agency Estimate FY 06	Governor's Recommendation FY 06	Senate Subcommittee Adjustments
Special Revenue Funds:			
State Operations	$ 746,794	$ 746,794	$ 0
FTE Positions	3.0	3.0	0.0
Non FTE Uncl. Perm. Pos.	3.0	3.0	0.0
TOTAL	6.0	3.0	0.0

Agency Estimate

The **agency's** estimate for FY 2006 expenditures is $746,794, an increase of $16,853 or 2.3 percent above the approved amount. The increase is attributable to the unexpended balance in professional services in the Utility Regulatory Fee Fund that carried forward from FY 2005. The agency is allowed to "carry forward" any unused balances in the Utility Regulatory Fee Fund for consulting fees from the previous year.

Governor's Recommendation

The **Governor** recommends $746,794 for FY 2006 operating expenditures, the same as the agency's estimate. The Governor also concurs with converting 3.0 FTE positions into unclassified Non-FTE positions, as was submitted in the agency's estimate.

Senate Subcommittee Recommendation

The Senate Subcommittee concurs with the Governor's recommendation.

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Senate Subcommittee Report

Agency: Citizens Utility Ratepayer Board **Bill No.** **Bill Sec.**

Analyst: Deckard **Analysis Pg. No.** Vol. 1, p. 515 **Budget Page No.** 87

Expenditure Summary	Agency Request FY 07	Governor's Recommendation FY 07	Senate Subcommittee Adjustments
Special Revenue Funds:			
State Operations	$ 730,060	$ 739,283	$ 0
FTE Positions	3.0	3.0	0.0
Non FTE Uncl. Perm. Pos.	3.0	3.0	0.0
TOTAL	6.0	6.0	0.0

Agency Request

The **agency** requests an FY 2007 expenditure limitation of $730,060, a decrease of $16,734 or 2.2 percent below the FY 2006 revised estimate. The decrease is mostly due to the $16,853 carried forward into FY 2006 for consulting fees that is unavailable in FY 2007.

Governor's Recommendation

The **Governor** recommends $739,283 for FY 2007 operating expenditures, a decrease of $7,511 or 1.0 percent below the FY 2006 recommendation. The FY 2007 recommendation is an increase of $9,223 or 1.3 percent above the agency's request. The recommendation includes $9,223 for a 2.5 percent cost of living adjustment for state employees' salaries and wages.

Senate Subcommittee Recommendation

The Senate Subcommittee concurs with the Governor's recommendation.

Report of the Joint Committee on Information Technology to the 2006 Kansas Legislature

CHAIRPERSON: Representative John Faber

VICE-CHAIRPERSON: Senator Tim Huelskamp

OTHER MEMBERS: Senators Janis Lee, Mike Petersen, Vicki Schmidt, and Chris Steineger; and Representatives Nile Dillmore, Harold Lane, Joe McLeland, and Jim Morrison

STUDY TOPIC

Statutory Study

December 2005

Senate Ways and Means
2-9-06
Attachment 3

Joint Committee on Information Technology

Statutory Study

Conclusions and Recommendations

The Committee recommends:

- Introducing legislation to update statutes on legislative oversight of information technology projects.
- Maintaining the Information Network of Kansas Board membership as presently constituted by law.
- Requiring information technology plans for Statehouse renovation to be filed by an agency doing the actual work.
- Receiving a report on FY 2006 personal computer purchases by Regents institutions after the conclusion of the fiscal year.
- Obtaining additional information about replacing the Statewide Accounting and Reporting System and about agency-specific software applications currently in use.
- Receiving a report from the Secretary of Social and Rehabilitation Services after completion of a feasibility study on the Enterprise Circle project.
- Referring certain topics to the House Appropriations Committee and Senate Ways and Means Committee for additional review during the 2006 Legislative Session.

Proposed Legislation: The Committee recommends one bill to update statutes on legislative oversight of information technology projects.

Background

The Joint Committee on Information Technology is authorized by KSA 46-2101 *et seq.* The Committee may set its own agenda, may meet on call of its chairperson at any time and any place within the state, and may introduce legislation. The Committee consists of 10 members, including five senators and five representatives. The Committee met May 20, June 16-17, July 14-15, September 21-22, November 16-17, and December 12-13. Copies of the minutes and attachments are filed with the Division of Legislative Administrative Services.

The duties assigned the Committee by its authorizing legislation in KSA 46-2102 are noted below, and the first three duties also defined its general areas of interim activity:

- Study computers, telecommunications, and other information technologies used by state agencies and institutions. The state governmental entities defined by KSA 75-7201 include executive, judicial, and legislative agencies, and Regents institutions.

- Review proposed new acquisitions, including implementation plans, project budget estimates, and three-year strategic information technology plans of state agencies and institutions. All state governmental entities are required to comply with provisions of KSA 75-7209 *et seq.* in submitting such information for review by the Committee.

- Monitor newly implemented technologies of state agencies and institutions.

- Make recommendations to the Senate Ways and Means and House Appropriations Committees on implementation plans, budget estimates, and three-year plans of state agencies and institutions.

- Report annually to the Legislative Coordinating Council (LCC) and make special reports to other legislative committees as deemed appropriate.

In addition to the Committee's statutory duties, the Legislature or its committees, including the Legislative Coordinating Council (LCC), may direct the Committee to undertake special studies and to perform other specific duties. A proviso in the 2005 Omnibus Appropriations and Budget Reconciliation Bill directed the Committee to review the Medicaid Management Information System modifications, including any components that might provide for implementation of an electronic prescriptions system (e-prescriptions).

KSA 75-7208(g) provides that the Legislative Chief Information Technology Officer (CITO) is staff to the Joint Committee. The position is appointed by the LCC and the Committee may recommend persons for consideration by the LCC in making the appointment. Among the duties assigned to the Legislative CITO by KSA 75-7211 are those of monitoring state agency execution of information technology projects and reviewing information technology project budget estimates and revisions to the estimates. The Legislative CITO also may perform other functions and duties as directed by the LCC or the Committee, as provided in KSA 75-7208(h).

KSA 75-7210 requires the Legislative, Executive and Judicial CITOs to submit annually to the Committee all information technology project budget estimates and revisions, all three-year plans, and all deviations from the state information technology architecture. The Legislative CITO is directed to review the estimates and revisions, the three-year-plans, and the deviations, then to make recommendations to the Committee regarding the merits and appropriations of the projects. In addition, the Executive and Judicial CITOs are required to report to the Legislative CITO the progress regarding implementation of projects and proposed expenditures, including revisions to such proposed expenditures.

The Committee presents this annual report in compliance with KSA 46-1207 that requires the LCC to receive information about the interim work for submission to the next session of the Legislature.

Committee Activities

The Committee reviewed a number of agency information technology (IT) projects that have received CITO approval. Several proposed projects were reviewed prior to CITO approval. In addition, reports were received from the Legislative, Executive and Judicial CITOs. Several other topics were reviewed during the 2005 interim in keeping with the statutory duties.

Legislative Branch. The Committee received periodic reports from the Legislative CITO. Information was received about purchase of laptops for legislators and the Statehouse restoration that involves technology enhancements for the Legislature. A project to replace the existing voice and data infrastructure in the East Wing of the Statehouse was presented. The reviewed project, cost and approval date are listed by agency:

- **Legislature**
  - Statehouse Restoration: Voice and Data Infrastructure
  - $731,942
  - CITO Approval: 10/21/05

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Judicial Branch. The Committee received a report from the Judicial CITO. Information was provided about the completion of a multiyear IT project. The reviewed project, cost and approval date are listed by agency:

- **Office of Judicial Administration**
  - District Court Accounting and Management System (Completed)
  - $5,726,913
  - CITO Approval: 7/01

Executive Branch. The Committee received periodic reports from the Executive CITO for the ongoing IT projects, including the following projects, costs and approval dates if given. In some cases, projects have not been submitted or approved, and in other cases only a high level approval has been issued, pending more detailed plans to be reviewed. Additional information about projects also was presented by the agency's staff:

- **Administration, Department of**
  - Medicaid Management Information System National Provider Identifier
  - $7,248,054
  - CITO Approval: 8/18/05

  - SHaRP Upgrade to Version 8.9
  - $2,768,900
  - CITO Approval: high level only

- **Health and Environment, Department of**
  - Kansas Immunization Registry
  - $2,085,690; $1,943,032
  - CITO Approval: 8/04; 3/17/05

  - Vital Statistics Integrated Information System
  - $1,096,682; $3,136,667
  - CITO Approval: 3/16/01; 5/16/05

  - Electronic Death Registration
  - $1,030,000
  - CITO Approval:

- **Investigation, Kansas Bureau of**
  - Automated Fingerprint Identification System (AFIS)
  - $4,795,092
  - CITO Approval: high level only

- **Labor, Department of**
  - Unemployment Insurance Benefits System Modernization
  - $20,965,190
  - CITO Approval: 8/04; 10/11/05

  - Unemployment Insurance Call Center Upgrade
  - $1,076,907
  - CITO Approval: 9/1/05

- **Revenue, Department of**
  - Computer Assisted Mass Appraisal (CAMA)
  - $1,510,000; $3,224,000; $3,839,235
  - CITO Approval: 4/6/99; 3/16/01; 12/17/03

  - Apportioned International Registration
  - $2,062,910
  - CITO Approval:

- **Retirement System, Kansas Public Employees**
  - Replacement of Core Systems
  - $1,616,009; $2,834,244; $3,732,588 of $4,756,000 with high level approval
  - CITO Approval: 2/28/05; 5/10/05; 11/3/05

  - Service Expansion
  - $2,654,000
  - CITO Approval: high level only

- **Secretary of State**
  - Election and Voter Information System
  - $5,833,627
  - CITO Approval: 7/29/04; 3/17/05

- Help America Vote Act Voting Equipment
- $6,105,000
- CITO Approval: 4/7/05

- **Wichita State University**
  - Information Management System
  - $10,038,209; $10,757,956
  - CITO Approval: 10/2004; 8/18/05

- **Social and Rehabilitation Services, Department of**
  - Enterprise Circle Plan; Enterprise Circle Plan II
  - $16,551,036; $16,720,000; $20,052,000
  - CITO Approval: 4/3/03; 6/5/03; 7/30/04; CITO Placed Project on Hold: 3/14/05

  - RFP issued for Enterprise Project Feasibility Study $293,700

- **Transportation, Department of**
  - Communications System Interoperability Program
  - $55,410,000; $62,910,080
  - CITO Approval: 5/10/05; 10/26/05

Regents Institutions

- **Emporia State University**
  - Enterprise Resource Planning System
  - $8,951,711
  - CITO Approval: 8/18/05

- **Fort Hays State University**
  - Administrative System
  - $1,174,692; $1,386,430
  - CITO Approval: 5/21/01; 11/20/03; 11/30/04

- **Kansas State University**
  - Legacy Application System Empower Replacement
  - $12,784,427; $9,766,498
  - CITO Approval: 3/14/03; 7/28/05

  - Student Recruitment System
  - $1,114,162
  - CITO Approval: high level only

Planned IT Projects. The Committee heard about a number of future projects that agencies included in their three-year plans. Some of the planned projects were reviewed, with agencies providing additional information for the projects, some of which do not have CITO approval. Included in the presentations were the following special reports: from the Department of Administration on two proposed projects, SHaRP and a replacement for the Statewide Accounting and Reporting System (STARS); from the Department of Health and Environment on Electronic Death Registration; and from the Department of Revenue on Apportioned International Registration. The replacement for STARS is not included in the project listing that precedes this section since it does not appear on a fast-track that the other three projects' time-frame suggests.

Statutory Review. The Legislative CITO undertook a review of KSA 75-7201, 75-7210 and 75-7211 that pertain to the Committee's oversight of IT projects. Changes were recommended by the Legislative CITO to update the statutes. The proposed revisions include:

- Changing the definition of a project to include those supported by non-state financing and in-kind contributions, such as user fees and contract enhancements not directly billed or reflected in the State Treasury.

- Changing a submission date from October 1 to November 1 for project budget estimates, three-year plans, and modifications to estimates and plans.

- Shifting responsibility from the Legislative CITO to the Joint Committee on Information Technology for review of project budget estimates, three-year plans, and modifications and changes to estimates and plans.

- Directing recommendations by the Joint Committee on Information Technology to be made to the House Appropriations Committee and Senate Ways and Means Committee.
- Changing responsibility for monitoring IT project implementation from the Legislative CITO to all CITOs.
- Requiring all CITOs to report quarterly to the Joint Committee on Information Technology.

Security Issues. The Committee reviewed a post audit report on Regents' security systems at three universities. The Committee met in executive session with the President and Chief Executive of the Board of Regents, as well as representatives of the two institutions, to discuss the confidential findings of the post audit report. The Committee also heard a report from the Chief Information Security Officer, Department of Administration, about the measures taken to protect state agencies and how a budget of $1.7 million is being used in support of 6.0 FTE who work on security issues confronting state agencies.

KAN-ED. The Committee conducted its annual review of this program and noted it had been dropped from the Quarterly Report on IT projects. The KAN-ED Director commented on the anticipated funding reductions from the Kansas Universal Service Fund and told the Committee that in order to avoid seeking appropriations from the State General Fund, alternatives are being explored to maintain the $10.0 million budget, including grants from various sources, STAR Schools federal funds, optional services fees, affiliate memberships, and corporate or industry partnerships or both.

Regents Campus Wiring. The Committee received reports on the use of Category 3 and Category 5 wiring at Regents institutions. The Regents institutions provided cost estimates for upgrading all Category 3 wiring to Category 5 or better.

Regents Computing. Information was presented by the Executive CITO as requested by the Committee concerning expenditures by Regents institutions for information technology upgrades and personal computer upgrades.

Representatives of the Regents institutions also were asked to present details for each facility regarding such purchases and to include estimates for FY 2006 and FY 2007 as well. The Regents institutions reported the following aggregate data:

- Expenditures for IT upgrades totaled $3,232,198 in FY 2003, $4,533,305 in FY 2004 and $4,510,551 in FY 2005. For FY 2006 and FY 2007, the Regents' estimated expenditures of $4,363,446 in each fiscal year.
- Expenditures for PC upgrades totaled $12,232,230 in FY 2003, $15,411,737 in FY 2004 and $13,027,513 in FY 2005. For FY 2006 and FY 2007, the Regents' estimated expenditures of $13,404,726 in each fiscal year.

The Committee compared the FY 2006 Regents' estimated expenditures for PC upgrades with data provided by the Executive CITO from the Division of the Budget for approved amounts in the current fiscal year, with $13,404,716 from Regents' reports and $19,187,997 from the Executive CITO report. The Regents' representatives were asked about the different totals in FY 2006, but no definitive answers were advanced at the December meeting on this subject.

By summing institutional expenditures, the differences in current fiscal year purchases for all Regents institutions total $5,783,281 more in their approved budgets when compared with the Regents reported amounts given to the Committee at the December meeting, with the institutional differences noted below:

Emporia State	$	33,993
Ft. Hays State		206,783
Kansas State		1,053,704
Pittsburg State		1,223,698
U Kansas		1,690,402
U Kansas Med Ctr		537,539
Wichita State		1,037,162
TOTAL	$	5,783,281

State Agency Contracting Issues. The Committee heard a report from the Director of Purchases, Department of Administration, about state procedures for bidding and contracting with vendors. Two contracts in particular were of interest to the Committee after learning about state procedures.

First, the Committee had representatives from the Department of Revenue discuss a no-bid contract with the American Automobile Association (AAA) of Kansas which is providing a driver license renewal site in Lawrence during a trial period. The Director of Vehicles testified that the experiment was successful and that such public-private partnerships might be expanded in order to provide better services for driver license renewals. Computer hardware and software for the local interface with the state are provided under a multiyear contract for a driver license system. The original contract predates 1998 SB 5 and was not subjected to review as a technology project. The annual cost based on 700,000 driver license issuances is $2.56 per license, or slightly less than $1.8 million per year, according to agency estimates to the Committee. The driver license system operates throughout the state, primarily in county treasurers' offices and local Division of Vehicles sites, using the same interface as provided the AAA office in Lawrence for driver license renewals.

Second, the Committee heard from representatives from the Department of Wildlife and Parks about a contract to provide a new automated statewide licensing system. Problems in implementing the new system in a timely manner had come to the Committee's attention during the 2005 Interim and its review of the issues took place over several different meetings with the agency's representatives and the Secretary of Wildlife and Parks. Originally, the contract was to be at no cost to the state, with the consumers to pay the added expense for the new automated system. Because of problems issuing new licenses, numerous complaints in September 2005, were made to legislators by both those seeking licenses and those selling licenses. The Secretary of Wildlife and Parks reported during November 2005, that the transition problems had been resolved and the new system was operating normally. Penalties had been assessed against the vendor for not having delivered a fully operational system on time, according to the Secretary. A revised cost estimate for the state was received, with an estimate of $143,000 in indirect costs over two fiscal years.

Information Network of Kansas (INK). The Committee heard reports from the INK Executive Director, as well as representatives from Kansas.gov and the National Information Consortium that provide the network management services for INK. A new portal look was introduced with the transition from AccessKansas to Kansas.gov during the fall of 2005.

The Committee discussed the possible addition of legislators to the INK Board and considered the advantages and

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disadvantages of making a change in the current statutory composition of the 11 member board.

Medicaid Management Information System (MMIS) Review. The Committee heard periodic reports from representatives of the Division of Health Policy and Finance, Department of Administration, in order to comply with provisions in Section 5(p) of Chapter 206 of the 2005 Session Laws of Kansas. The agency reported that an e-prescription component was not included in the current MMIS upgrades.

Attorney General Opinion Request. The Chairperson was asked by the Committee to write the Attorney General and request an update on Opinion No. 81-83 regarding whether there has been any modification of the separation of powers doctrine since the 1981 opinion was issued.

Statehouse Renovation. The Legislative CITO reported on the progress to the East Wing renovation and the technology infrastructure changes to be undertaken in the building. An issue regarding which branch should file a project plan for rewiring the East Wing was raised by the Legislative CITO after completing a project plan. It was pointed out that future plans should be prepared by the Division of Information Systems and Communications (DISC) since that agency does the actual wiring.

Conclusions and Recommendations

The Committee recommends introduction of one bill and makes a number of other recommendations, including further reviews of certain subjects by the House Appropriations Committee and Senate Ways and Means Committee during the 2006 Legislative Session.

The Committee recommends introduction of a bill to:

- Change the definition of an information technology project to include those supported by non-state financing and in-kind contributions, such as user fees not reflected in the State Treasury or contract enhancements not directly billed and paid by a state agency;
- Revise a submission date from October 1 to November 1 for project budget estimates, three-year plans, and modifications to estimates and plans;
- Shift from the Legislative CITO to the Joint Committee on Information Technology responsibility for review of project budget estimates, three-year plans, and modifications and changes to estimates and plans;
- Direct recommendations by the Joint Committee on Information Technology to be made to the House Appropriations and Senate Ways and Means committees;
- Change responsibility for monitoring IT project implementation from the Legislative CITO to all CITOs; and
- Require all CITOs to report quarterly to the Joint Committee on Information Technology.

The Committee makes a number of general recommendations as a result of its 2005 Interim study:

- Regarding the membership on the INK Board, the Committee recommends to continue the Board's membership as presently constituted by law.
- Regarding future IT projects involving infrastructure, the Committee recommends the agency performing the actual work, namely DISC, should file a project plan for projects exceeding the $250,000 threshold for reporting.

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- Regarding PC purchases by Regents institutions, the Committee requests a future report on actual FY 2006 expenditures in order to compare with reported amounts.

- Regarding a new statewide accounting system, the Committee intends to review information about the replacement of the STARS application as well as the other agency-based accounting systems in use. The Committee understands that Kansas was the last state to become compliant with Generally Accepted Accounting Principals (GAPP) and that replacement of STARS may eliminate the need for agency-based systems, as well as to facilitate complying with GAPP.

- Regarding the Enterprise Circle Project, the Committee requests a briefing from the Secretary of Social and Rehabilitation Services after completion of a feasibility study and prior to CITO approval of a new project plan preceding resumption of the project.

The Committee also recommends reviews by the House Appropriations Committee and the Senate Ways and Means Committee of the following topics:

- **PC Purchases by Regents Institutions**. The Committee directs attention to its review of FY 2006 expenditures and the differences in amounts reported by the Regents and by the Executive CITO. The Committee strongly suggests further review during the 2006 Session.

- **Campus Wiring**. The Committee suggests that as part of review during the 2006 Session, consideration should be given as to whether the Regents' deferred maintenance plan includes Category 3 to Category 5 wiring upgrades as part of the requested expenditures. The financial impact of such upgrades, if not included in specific projects that are included in any plan, should be determined and included in the specific projects that might be approved by the Legislature.

- **Fort Hays State University**. The Committee recommends adherence to the original revised plan for an administrative system that includes a comprehensive integration of activities. The Committee does not support shifting money away from the project. However, the Committee does support the upgrade of the mainframe computer, but not at the expense of delaying a portion of the administrative system project. Funding a necessary upgrade of the mainframe to perform at a sufficient level should be a priority on its own merits, but not at the expense of the other project.

- **Department of Social and Rehabilitation Services**. The Committee recommends monitoring of the Enterprise Circle Project and the feasibility study to determine the future direction of this $16.0 to $20.0 million project that already has expended over $3.0 million.

- **State Contracting**. Additional monitoring during the 2006 Session should be directed to the Department of Wildlife and Parks' automated licensing system and to the Department of Revenue's pilot project for driver license renewals by a private, non-governmental entity.

- **ePrescribing**. Both standing committees as well as the House Budget Committee and Senate Subcommittee should review available modules that would allow incorporation of this capability in the Medicaid Management Information System or as an additional tool to assist Medicaid participants, and representatives of the Division of Health Policy and Finance should assist in these efforts during discussions with legislators.

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MEMORANDUM

To: Senate Ways and Means Committee

From: Mary Torrence and Jill Wolters, Senior Assistants, Office of Revisor of Statutes

Date: January 30, 2006

Subject: Legislative Oversight of Executive Agencies

In 1981 the attorney general's office issued Attorney General Opinion No. 81-83 (see attached) on the subject of legislative oversight of executive agencies. The question was identical to a question before the Joint Committee on Information Technology in November, 2005: Does the legislature have authority to require prior legislative approval of executive agency contracts?

The request for the opinion arose when a legislative committee was considering introduction of a bill that would have required certain leases by executive agencies to be approved by the Joint Committee on State Building Construction before the leases were executed. Upon review of the case law on the subject, the attorney general concluded that the legislation would violate the constitutional doctrine of separation of powers because it would constitute "a usurpation of the powers of the executive department." This conclusion was based on findings that (1) executive agencies' power to acquire office space is executive in nature, (2) legislative approval of executive agencies' leases would exert a "coercive influence" over the executive department's exercise of that power and (3) the objective of the bill would be to "establish the legislature's superiority over the executive department" in an area which is executive in nature.

The opinion makes it clear, however, that the legislature may exert control over executive agency operations either by restrictions in substantive law or by appropriations and limitations and conditions placed on them. Thus, a requirement in substantive law that an executive agency report to a legislative committee before undertaking a project or a proviso in an appropriations act requiring

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an executive agency to consult with a legislative committee before expending money would be a permissible exercise of legislative authority.

In December, 2005, the Joint Committee on Information Technology requested an Attorney General Opinion on whether the separation of powers doctrine has been modified since the issuance of Opinion No. 81-83, specifically in light of the Supreme Court's decision in *Montoy v. State*, 279 Kan. 817 (2005).

In Opinion No. 2006-3 (see attached), the Attorney General reaffirms the conclusions in Opinion No. 81-83 and discusses the *Montoy* decision. The opinion states:

"The *Montoy* Court analyzed its authority to render a decision and fashion an enforceable remedy in that case. In doing so, it did not overrule or disavow the separation of powers doctrine, but rather applied the doctrine to its own actions. While there may be disagreement over the conclusions reached by the Court in *Montoy*, we do not believe the decision can be used as a basis to claim that the separation of powers doctrine no longer exists in our State's system of government, or that it has been substantially modified.

Even were we to find that the Court, in *Montoy* or elsewhere, has altered the way in which we are to analyze statutes under the separation of powers doctrine, the fact remains that each of the above-listed cases were decided based not only on that doctrine, but also on Article 2, Section 14(a) of the Kansas Constitution, the Presentment Clause: "[E]very bill shall be signed by the presiding officers and presented to the governor." As stated in Stephan v. Kansas House of Representatives, "[o]nce the legislature has delegated by law a function to the executive, it may only revoke that authority by proper enactment of another law in accordance with the provisions of art. 2, § 14 of our state constitution."(10) Thus, once the Legislature has appropriated to judicial or executive branch agencies funds that may properly be expended for information technology projects, it may not require those agencies to obtain an additional approval from a legislative body before exercising the delegated authority. If the Legislature desires to remove or block the authority to expend appropriated funds for a particular purpose, it must do so pursuant to a bill that is passed by both houses and presented to the Governor in accordance with Article 2, Section 14 of the Kansas Constitution."

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

April 9, 1981

MAIN PHONE: (913) 296-2215
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ATTORNEY GENERAL OPINION NO. 81- 83

The Honorable Paul Hess, Chairman
Senate Committee on Ways and Means
State Capitol, Room 123-S
Topeka, Kansas 66612

Re: State Departments; Public Officers, Employees -- Leases of Real Property by State Agencies -- Powers of Legislature

Synopsis: If enacted, the proposal under consideration by the Senate Committee on Ways and Means that would statutorily require a legislative committee to approve certain leases of real property by state agencies would constitute a significant interference with the operations of the executive department in an area that is essentially executive in character, thereby violating the separation of powers doctrine. However, the legislature may exert control over the lease of office space by state agencies through appropriations, and the conditions, limitations and qualifications imposed on them, and through the enactment of substantive laws prescribing such restrictions on state agencies' powers in this regard as the legislature deems necessary and appropriate. Cited herein: K.S.A. 75-3025, K.S.A. 1980 Supp. 75-3739, 75-3765, 75-3766, 75-5411.

*   *   *

Dear Senator Hess:

As chairman of the Senate Committee on Ways and Means you have requested, on its behalf, our opinion as to action contemplated by the committee. You advise that the committee "is considering introduction of a bill which would prescribe that any state agency contract for the lease of office space, buildings, or land for a term of more than ten years or for a term which is renewable for more than ten years or which involves an option for purchase shall first be approved by the Joint Committee on State Building Construction, but that this approval remain subject to legislative appropriations."

You further indicate that the constitutionality of the foregoing proposal has been questioned, and you have requested our opinion in this regard.

It would appear that the constitutional principle involved in your inquiry is that of separation of powers, which is an issue that has been considered quite extensively by our Supreme Court on several occasions in recent years. In State, ex rel. v. Bennett, 219 Kan. 285 (1976), the Court discussed the history and purpose of the doctrine, as follows:

> "Like the Constitution of the United States, the Constitution of Kansas contains no express provision requiring the separation of powers, but all decisions of this court have taken for granted the constitutional doctrine of separation of powers between the three departments of the state government -- legislative, executive and judicial. The separation of powers doctrine was designed to avoid a dangerous concentration of power and to allow the respective powers to be assigned to the department most fitted to exercise them. (Van Sickle v. Shanahan, 212 Kan. 426, 446, 511 P.2d 223.)" Id. at 287.

Subsequently, the Court expressed its opinion that strict application of the doctrine is impossible:

> "In our judgment a strict application of the separation of powers doctrine is inappropriate today in a complex state government where administrative agencies exercise many types of power including legislative, executive, and judicial powers often blended together in the same administrative agency. The courts today have come to recognize that the political philosophers who developed the theory of separation of powers did not have any concept of the complexities of government as it exists today. Under our system of government the absolute independence of the departments and the complete separation of powers is impracticable. We must maintain in our political system sufficient flexibility to experiment and to seek new

> methods of improving governmental efficiency. At the same time we must not lose sight of the ever-existing danger of unchecked power and the concentration of power in the hands of a single person or group which the separation of powers doctrine was designed to prevent." Id. at 288, 289.

In this case, the Court summarized the general principles of law necessary to a consideration of the separation of powers doctrine where the executive and legislative branches of state government are involved. However, we find the following statement of these principles by Justice Holmes in State v. Greenlee, 228 Kan. 712 (1980), to be more appropriate, since it also includes the principles developed in State, ex rel., v. Bennett, supra:

> "There have been a number of cases in Kansas dealing with the separation of powers and in them the following general principles are established:
>
> > "(1) A statute is presumed to be constitutional. All doubts must be resolved in favor of its validity, and before a statute may be stricken down, it must clearly appear the statute violates the constitution. Leek v. Theis, 217 Kan. 784.
> >
> > "(2) When a statute is challenged under the constitutional doctrine of separation of powers, the court must search for a usurpation by one department of the powers of another department on the specific facts and circumstances presented. Leek v. Theis, 217 Kan. at 785; State, ex rel., v. Fadely, 180 Kan. 652, 308 P.2d 537 (1957).
> >
> > "(3) A usurpation of powers exists when there is a significant interference by one department with operations of another deparment. State, ex rel., v. Bennett, 219 Kan. 285, 547 P.2d 786 (1976).
> >
> > "(4) In determining whether or not a usurpation of powers exists a court should consider (a) the essential nature of the power being exercised; (b) the degree of control by one department over another;

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> (c) the objective sought to be attained by the legislature; and (d) the practical result of the blending of powers as shown by actual experience over a period of time. State, ex rel., v. Bennett, 219 Kan. 285." 228 Kan. at 716.

It is clear, therefore, that the validity of the proposal before your committee depends on whether it constitutes a usurpation of the powers of the executive department. That is, it must be determined whether the involvement of the legislature's Joint Committee on State Building Construction in the long-term leasing of office space by agencies of the executive department constitutes "a significant interference" with the operations of that department. Such determination can be achieved by measuring the contemplated action against the considerations stated in State, ex rel., v. Bennett, supra, as the same are summarized above in paragraph (4) of the excerpt from State v. Greenlee, supra.

The first factor to be considered "is the essential nature of the power being exercised. Is the power exclusively executive or legislative or is it a blend of the two?" State, ex rel., v. Bennett, supra at 290. Here, the power in question is the acquisition of office space by state agencies. In our judgment, this is a purely executive or administrative power that has traditionally been exercised by the executive department.

Persuasive to our conclusion is State, ex rel., v. State Office Building Commission, 185 Kan. 563 (1959), where the Court had under consideration a seven-member commission whose membership was composed entirely of legislators appointed by the governor. The powers of this commission were discussed by the Court as follows:

> "The powers of the defendant commission are set out in the act as amended and are to be found in the General Statutes and the Supplement thereto following section 75-3601. Plaintiff's brief has summarized these powers as follows:
>
> "'1. To construct and equip a state office building on the tract now occupied by that structure. 2. To sue and be sued and to make all contracts necessary and convenient for the accomplishment of its authorized purposes and and for the carrying on of its business. 3. To accept gifts and grants and to contract with the federal agencies in connection therewith.

> 4. To borrow money and issue evidences of indebtedness in the name of the state of Kansas, and to secure payment thereof or of any or all obligations of the Commission by pledging all or any of its revenues. 5. To select and determine the number of its employees and their compensation and duties. 6. To permit the use of the office building by any state agency selected by the Commission; and to fix and charge such rentals therefor as it may determine to be necessary to pay the expenses of the Commission, the construction and equipment of the building and payment of the principal and interest on its obligations allocable to such building. 7. To rent unoccupied space in said building to others on month to month leases. 8. To acquire a parking lot and improving the same from the state office building fund, raze buildings on said property, regulate parking on said lot, fix and collect charges therefor, and to make rules for the removal and impoundment of vehicles unlawfully parked thereon. 9. To take title to and hold the parking lot real estate and to take title to and hold under and as against the state the interest of the state to the office building site.'" (Emphasis added.) Id. at 565, 566.

In concluding that the commission's powers were executive in nature, the Court relied upon a well-accepted encyclopedic statement as to the distinction between legislative and executive powers:

> "A standard and often used definition of legislative power is found in 16 C.J.S. 545, §130:
>
> "'As a general rule, under constitutional principles with respect to the division of powers, legislative power as distinguished from executive power is the authority to make laws, but not to enforce them.'" Id. at 566.

Thus, it is clear that the legislative branch of government has the power to make laws, while the executive branch has the responsibility to enforce or execute the laws so enacted. In our view, the provision of office space for state agencies established by laws duly enacted by the legislature is a power necessary to the implementation of such laws, and a review of existing statutory provisions reflects that this power has traditionally been exercised by the executive branch.

For example, subsection (8) of K.S.A. 1980 Supp. 75-3739 provides that, "[e]xcept as otherwise specifically provided by law, no state agency shall enter into any lease of real property without the prior approval of the secretary of administration." This section also grants to the secretary of administration the power to "approve, modify and approve or reject" any state agency's proposed lease. Further, pursuant to K.S.A. 1980 Supp. 75-3765, the secretary of administration is authorized to "assign space and facilities in all state owned or operated property or buildings" in Shawnee County, with certain exceptions, and is authorized to "determine, fix and establish a system of rental charges" for such space and facilities. Also of note are the provisions of K.S.A. 1980 Supp. 75-3766, which state:

> "Any state agency assigned office space in the state office building by the secretary of administration is hereby authorized to enter into agreements with the secretary of administration for the use and occupancy of such space, such rental to be paid by such state agency from any available funds or moneys authorized to be spent by such state agency."

When these statutory provisions are considered in conjunction with the general contractual authority conferred ~~on~~ most state agencies and, in some cases, the specific power given particular state agencies to lease property, it is apparent that the executive rather than legislative nature of the power to lease office space for state agencies has been recognized by legislative enactments. Based on the foregoing, it is our opinion that the leasing of office space by state agencies is a governmental function that is essentially executive in nature.

Having established the executive character of this governmental function, it is necessary to consider the additional factors prescribed by the Court in State, ex rel., v. Bennett, supra, in order to determine whether the committee's proposal would effect a "significant interference" by the legislature with the executive department.

"A second factor is the degree of control by the legislative department in the exercise of the power. Is there a coercive influence or a mere cooperative venture?" State, ex rel., v. Bennett, supra at 290. As you have described the proposed legislation, it does not appear to us that the legislature is intended to be a mere cooperative participant in the process of entering into long-term leases for office space by state agencies. Rather, the proposed legislation would vest absolute control over this process in the legislature. By requiring approval of all such leases by the Joint Committee on State Building Construction, it is our opinion that the legislative branch would exert "a coercive influence" over the executive department's exercise of its rightful authority.

A third consideration

> "is the nature of the objective sought to be attained by the legislature. Is the intent of the legislature to cooperate with the executive by furnishing some special expertise of one or more of its members or is the objective of the legislature obviously one of establishing its superiority over the executive department in an area essentially executive in nature?" Id.

Applying these considerations to the subject of your inquiry we must conclude that the obvious purpose of the proposal is to establish the legislature's superiority over the executive department in an area we have previously found to be "essentially executive in nature." While we have no doubt as to the particular expertise of the Joint Committee on State Building Construction, or of its individual members, regarding the acquisition of space and facilities for the various state agencies, the manner in which such expertise would be brought to bear upon this matter extends far beyond an effort to cooperate with the executive department. The practical effect of the proposal being considered by your committee would, in fact, usurp the executive department's prerogatives.

It should be noted that the proposal under consideration is quite distinct from other existing statutory procedures providing for legislative involvement in the acquisition of space and facilities for state agencies. For example, K.S.A. 1980 Supp. 75-5411 provides in part:

> "(a) The secretary of administration shall issue monthly reports of progress and advise, consult with and cooperate with the joint committee on state building construction.
>
> . . . .
>
> "(c) No change order or change in plans involving costs of twenty-five thousand dollars ($25,000) or more, and no change in the proposed use of any new or remodeled building shall be authorized or approved by the secretary of administration without having first advised and consulted with the joint committee

on state building construction." (Emphasis added.)

In our view, the procedure outlined in this statute represents a cooperative venture between the legislative and executive departments in the accomplishment of an apparent executive department function. It provides for the furnishing of the joint committee's special expertise without encroaching upon the executive department's prerogatives, and it is quite distinguishable from the proposal to vest in the joint committee the ultimate control over long-term leases of office space for state agencies. By withholding approval of any such lease, the joint committee can negate the exercise of the executive department's legitimate powers regarding the execution of such leases.

The fourth and final factor suggested in State, ex rel., v. Bennett, supra, for evaluating a legislative enactment's adherence to the separation of powers doctrine does not appear to be applicable to the situation you have described. The Court suggests that consideration should be given to "the practical result of the blending of powers as shown by actual experience over a period of time where such evidence is available." Id. at 290, 291. Obviously, evidence of actual experience is not available in this instance.

Therefore, in light of the relevant factors suggested by the Court for determining conformity to the separation of powers doctrine, it is our opinion that the proposal under consideration by the Senate Ways and Means Committee violates this doctrine. If enacted, the requirement of this proposal that there be obtained the Joint Committee on State Building Construction's prior approval of any lease of office space, a building or land for a term of more than ten years or for a term renewable for more than ten years, or which contains an option to purchase, would, in our judgment, constitute a "significant interference" with the operations of the executive department in an area that is essentially executive in nature.

Before concluding, it should be noted that the legislature is not without recourse to maintain fiscal control over long-term contractual commitments by state agencies. In this connection, we note K.S.A. 75-3025, which provides, in part:

> "Any officer or agent of the state who shall be empowered to expend any public moneys, or to direct such expenditures, is hereby prohibited from making any contract for the erection or repair of any building, or for any

> *other purpose*, whereby the expenditure of any greater sum of money shall be contemplated, agreed to, or required, than is expressly authorized by law . . . ." (Emphasis added.)

The foregoing provisions are in practical effect the state's equivalent of the cash basis law, which is applicable to local units of government. By its terms, contracts requiring the payment of money in excess of appropriations made for such purpose are prohibited. Thus, any lease agreement providing office space to a state agency that contemplates a term longer than the period in which appropriated moneys have been made available for such purpose would be prohibited by 75-3025, unless such agreement is made contingent upon the appropriation of moneys necessary to carry out the agreement. This is standard procedure in all state contracts.

The Department of Administration requires its form DA-146a, Contractual Provisions Attachment, to be incorporated in and made a part of state contracts, either expressly or by reference. Paragraph 3 of that form provides a procedure whereby the contract in which such form has been incorporated is terminated if the legislature fails to appropriate sufficient moneys "to continue the function performed in the agreement." Not only does this provision achieve compliance with K.S.A. 75-3025, but it also recognizes the fundamental power of the legislature to control expenditure of public funds, which was addressed in *State, ex rel., v. Bennett*, 222 Kan. 12 (1977), as follows:

> "As pointed out in *State, ex rel., (Anderson) v. Fadely,* supra, except as is restricted by the constitution, the legislature has the exclusive power to direct how, when and for what purpose the public funds shall be applied in carrying out the objects of the state government." *Id.* at 18, 19.

Therefore, since the duration of any such lease agreement is contingent upon the extent of appropriations made for such purpose, it is clear that the legislature has effective control over such leases through the appropriation process. In addition to controlling the amount of funds available, the legislature may impose conditions, limitations or qualifications upon the expenditure of moneys appropriated to a state agency, so as to ensure that public funds will not be expended in contradiction of the will and purpose of the legislature. Finally, even though it is stating the obvious, the legislature may enact substantive laws restricting the authority of state agencies to lease real property.

Accordingly, although the proposal before your Committee would be a direct intrusion on the executive department's operations, the legislature may exert control over the lease of office space by state agencies through appropriations, and the conditions, limitations and qualifications imposed on them, and through the enactment of substantive laws prescribing such restrictions on state agencies' powers in this regard as the legislature deems necessary and appropriate.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

W. Robert Alderson

W. Robert Alderson
First Deputy Attorney General

RTS:WRA:hle

January 9, 2006

ATTORNEY GENERAL OPINION NO. **2006-3**

The Honorable John M. Faber, Chairman
Joint Committee on Information Technology
State Representative, 120th District
State Capitol, Room 181-W
Topeka, Kansas 66612-1504

Re: Kansas Constitution--Legislative--Laws Enacted Only by Bill; All Bills Passed Presented to the Governor; Separation of Powers Doctrine

Synopsis: Statutorily requiring executive and judicial branch agencies to obtain approval of a legislative committee before expending previously appropriated moneys on certain types of information technology projects would run afoul of the Separation of Powers Doctrine and the Presentment Clause. However, the Legislature may place limitations on specific expenditures through appropriations and through enactment of substantive laws. Cited herein: K.S.A. 12-340; Kan. Const., Art. 2, § 14.

* * *

Dear Representative Faber:

On behalf of the Joint Committee on Information Technology, you request our opinion regarding the constitutionality of statutorily requiring executive and judicial branch agencies to seek approval from the Joint Committee prior to expending moneys on certain information technology projects. You indicate that the Committee has reviewed Attorney General Opinion No. 81-83, which concluded that such a requirement would violate the separation of powers doctrine, and ask whether there has been any modification to the doctrine since issuance of Opinion No. 81-83 that would render the Opinion invalid. The Committee specifically requests that we address whether the separation of powers doctrine remains intact in light of the Kansas Supreme Court's decision in *Montoy v. State*.(1)

In Attorney General Opinion No. 81-83, then Attorney General Stephan was asked to opine on a proposal being considered by the Senate Committee on Ways and Means to require state agencies in the executive branch to seek approval of a legislative committee prior to entering into certain property leases. Having determined that the constitutional principle raised by the proposal was the separation of powers doctrine, Attorney General Stephan explained the history and purpose of the doctrine. Essentially, "[t]he separation of powers doctrine was designed to avoid a dangerous concentration of power and to allow the respective powers to be assigned to the department most fitted to exercise them."[(2)] He then applied the general principles established by the Court to guide its review of statutes challenged under the separation of powers doctrine and concluded that a statute giving the legislature a "coercive influence" over a purely executive function traditionally exercised by the executive branch constituted significant interference by the legislative branch over the executive branch and was therefore in violation of the doctrine.

Subsequent cases and opinions have reached the same conclusion regarding similar legislative proposals and enactments. In 1984, the Kansas Supreme Court struck down the provisions in the Rules and Regulations Filing Act that allowed the Legislature to adopt, modify or revoke administrative rules and regulations by concurrent resolutions without presentment to the Governor as an unconstitutional usurpation of executive powers by the Legislature.[(3)] Also in 1984, Attorney General Stephan opined that while the Legislature may refuse to appropriate moneys to provide funds for a particular lease of office space already entered into by a state agency and may, through an appropriation or substantive legislation, direct that no appropriated moneys be used for such purpose, it may not proscribe an agency from entering into any lease for office space without the prior approval of a legislatively dominated committee.[(4)] In 1991, Attorney General Opinion No. 91-12 concluded that statutes authorizing the Legislature to disapprove and revoke executive branch water transfer decisions by the adoption of concurrent resolution violated the separation of powers doctrine. In 1998, the Court struck down a provision in the Consolidation Act[(5)] that gave the Legislature the right to reject or veto the Consolidation Plan for Kansas City, Kansas and Wyandotte County.[(6)]

In two instances, the opposite conclusion was reached. However, each of these situations involved significantly different facts. In *Manhattan Buildings, Inc. v. Hurley*,[(7)] the Kansas Supreme Court upheld a statute providing that no appropriated moneys or other funds of any state agency could be expended for the lease of a particular building. Attorney General Stephan pointed out the distinction between this case and those cited above.

> "In the *Manhattan Buildings, Inc.* case, the legislature reviewed a particular long-term lease that had been entered into by the Secretary of Administration. The legislature determined that the specific lease was not conducive to the best interests of the state. Thus, the legislature withheld funding for that particular lease. Thus, as the court said the legislature could do in an appropriations bill, the legislature expressed its direction as to a particular expenditure. *See*, *e.g.*, *Manhattan Buildings, Inc. v. Hurley*, *supra*, 231 Kan. at 31. In that case, however, it was the legislature itself that took action. It did not attempt to allow a committee thereof to make a determination on behalf of the entire legislative body. *Moreover, the legislature did not attempt to thrust itself or any of its committees into a position of participating* ***prospectively*** *in the executive department function of entering into lease agreements.* In short, the legislature did not attempt to expand its role from one of legislative oversight to one of shared administration.

4-14

> "In this case, however, the legislature has no specific, executed lease of office space . . . to review, as no such lease has been entered into. Moreover, the legislature has not expressed its direction as to a particular expenditure. Instead, it has attempted to allow an entity under the control of its leadership [the state finance council] to approve or disapprove of an executive agency action. Unlike the situation in *Manhattan Buildings, Inc.*, the legislature has attempted to expand its role from one of appropriate legislative oversight to one of shared administration. Rather than reviewing action already taken by an executive agency, the legislature is attempting to inject a controlling influence on prospective action by the executive department. This, in our judgment, may not be done under the separation of powers doctrine, and constitutes a significant interference by the legislative department with a function essentially executive in nature."(8)

In Attorney General Opinion No. 90-43, Attorney General Stephan found that a bill requiring agencies to submit proposed purchases of data processing equipment or programs to the Joint Committee on Governmental Technology prior to entering into a contract for such did not violate the separation of powers doctrine as it did not require the Committee's prior approval for such purchases.

We have located no cases or decisions that would cause us to alter the conclusions reached in Attorney General Opinion No. 81-83.

You specifically ask that we address whether the separation of powers doctrine remains intact subsequent to the Kansas Supreme Court's decision in *Montoy v. State*.(9) The *Montoy* Court analyzed its authority to render a decision and fashion an enforceable remedy in that case. In doing so, it did not overrule or disavow the separation of powers doctrine, but rather applied the doctrine to its own actions. While there may be disagreement over the conclusions reached by the Court in *Montoy*, we do not believe the decision can be used as a basis to claim that the separation of powers doctrine no longer exists in our State's system of government, or that it has been substantially modified.

Even were we to find that the Court, in *Montoy* or elsewhere, has altered the way in which we are to analyze statutes under the separation of powers doctrine, the fact remains that each of the above-listed cases were decided based not only on that doctrine, but also on Article 2, Section 14(a) of the Kansas Constitution, the Presentment Clause: "[E]very bill shall be signed by the presiding officers and presented to the governor." As stated in *Stephan v. Kansas House of Representatives*, "[o]nce the legislature has delegated by law a function to the executive, it may only revoke that authority by proper enactment of another law in accordance with the provisions of art. 2, § 14 of our state constitution."(10) Thus, once the Legislature has appropriated to judicial or executive branch agencies funds that may properly be expended for information technology projects, it may not require those agencies to obtain an additional approval from a legislative body before exercising the delegated authority. If the Legislature desires to remove or block the authority to expend appropriated funds for a particular purpose, it must do so pursuant to a bill that is passed by both houses and presented to the Governor in accordance with Article 2, Section 14 of the Kansas Constitution.

In conclusion, statutorily requiring executive and judicial branch agencies to obtain approval of a legislative committee before expending previously appropriated moneys on certain types of information technology projects would run afoul of the Separation of Powers Doctrine and the Presentment Clause. However, the Legislature may place limitations on specific expenditures through appropriations and through enactment of substantive laws.

Sincerely,

Phill Kline
Attorney General

Julene L. Miller
Deputy Attorney General

PK:JLM:jm

FOOTNOTES

Click footnote number to return to corresponding location in the text.

1. 279 Kan. 817 (2005). Your request does not specify which portion of the *Montoy* decision you are referring to; we assume it is the Court's discussion on pages 825-29 of the cited decision.

2. *State, ex rel. v. Bennett*, 219 Kan. 285, 287(1976), citing *Van Sickle v. Shanahan*, 212 Kan. 426, 446 (1973).

3. *State, ex rel. Stephan v. Kansas House of Representatives*, 236 Kan. 45, 59-64 (1984). *See also*, Attorney General Opinion No. 84-8.

4. Attorney General Opinion No. 84-91.

5. K.S.A. 12-340 *et seq.*

6. *State, ex rel. Tomasic v. Unified Government of Wyandotte County/Kansas City, Kansas*, 264 Kan. 293, 311-16 (1998). *See also*, Attorney General Opinion No. 97-18.

7. 231 Kan. 20 (1982).

8. Attorney General Opinion No. 84-91 (bold, italicized emphasis in original, other emphasis added).

9. *Supra*, note 1.

10. 236 Kan. at 60. *See also State, ex rel. Tomasic v. Unified Government*, 264 Kan. at 311-16.

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Testimony to Senate Ways and Mean
Senate Bill 364

Don Heiman
Legislative Chief Information Technology Officer
February 9, 2006

Mr. Chairman and members of the committee:

Thank you for the opportunity to testify on Senate Bill 364. This past year the Joint Committee on Information Technology has spent a considerable amount of time reviewing agency compliance to statutes which govern IT approval processes. Two years ago Legislative Post Audit reviewed how well agencies complied with the State's IT governance statutes. The audit documented that Executive Branch approvals in some cases were not given on projects and that bids had been let without proper project approvals. In order to make sure all projects have proper approval the committee recommends that KSA 75-7201 be amended to clarify that "all monies regardless of source which are under the control of the agency…" be included in the determination of projects whose cost is $250,000 or greater. Projects that meet this cost threshold must have their branch of government CITO approval. In addition to this change, the committee recommends that the JCIT have explicit authority to review cost estimates and project amendments. Current law states that these reviews should be done by the Legislative CITO. Replacing the references to Legislative CITO with Joint Committee removes any ambiguity about agency reporting responsibilities and committee oversight roles. The proposed legislation also contains language that requires branch CITO's to report on the status of projects not later than the 10th day following the end of each calendar quarter. This practice is occurring today and the recommended statute change makes the practice official.

Most often projects fail because the project plans are incomplete, requirements are not properly understood, and work is not broken down into discrete task increments. The State has successfully implemented hundreds of IT projects because we have historically practiced strong project planning and project management implementation. I believe requirements definitions, costing, work breakdown scheduling, and related planning activities should take 5% of the project effort, as a minimum. For these reasons, it is important that all IT projects have strong project plans. The savings from not failing a project more than offset the cost of proper project planning.

In my fiscal note to the bill I mentioned that proposed language to clarify funding sources will likely generate filing of 10+ additional projects per year. Oversight from the KITO office will take about 40 hours per year to track these projects and the CITO oversight will take about 30 hours per year. These hours are covered in existing budgets.

This concludes my testimony. May I answer any questions?

Senate Ways and Means
2-9-06
Attachment 5

K-STATE

Kansas State University

Vice President for
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105 Anderson Hall
Manhattan, KS 66506-0116
785-532-6226
Fax: 785-532-6693

February 9, 2006

Senator Dwayne Umbarger, Chairman
Senate Ways and Means Committee
Statehouse, Room 120-S
Topeka, KS 66612

Dear Chairman Umbarger:

On behalf of the University Council of Business Officers and the Regents Information Technology Council, I wish to express concern about a provision contained in Section 1 of Senate Bill 364.

Senate Bill 364 would change statutory language concerning information technology projects and funding sources that fall under the "IT Project Planning" requirements. State universities currently follow these requirements but do not include monies that are expended from grants or private sources. Language in Senate Bill 364 would require the universities to report on all IT project expenditures, regardless of their funding source.

Primarily as a result of your efforts, the state universities now operate under the "operating block grant" concept. We believe this new environment, which holds us responsible and accountable for managing our universities by effectively and efficiently deploying our resources, is a step in the right direction. If the language contained in Section 1 of SB 364 is adopted, we will be required to devote more resources to generate additional compliance reports. We believe the proposed change may also hamper the rapid implementation of research-related information technology by delaying specialized equipment acquisition. The end result would be the loss of valuable researcher time.

We support the other provisions proposed in SB 364 (including changes that clarify the State CITO responsibilities and authority) but would request that the changes proposed in Section 1 be deleted.

Thank you for hearing our concerns regarding the bill.

Respectfully,

Tom Rawson

Thomas M. Rawson
Chairman, Regents Universities Council of Business Officers

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2-9-06
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January 30, 2006

Senator Dwayne Umbarger
Chairman
Senate Ways & Means Committee
Statehouse, Room 120-S
Topeka, KS 66612

Senator Jim Barone
Ranking Member
Senate Ways & Means Committee
Statehouse, Room 181-E
Topeka, KS 66612

Dear Chairman Umbarger and Ranking Member Barone:

On behalf of the Board of Regents, I write to express the Board's concern about a provision contained in Senate Bill 364, legislation introduced by the Joint Committee on Information Technology (JCIT).

As you may know, this legislation would change certain statutory language concerning information technology (IT) projects and funding sources that fall under "IT Project Planning" requirements. Senate Bill 364 also makes some positive changes and clarifications regarding the establishment of the three chief information technology officers' (CITO) responsibilities.

Currently, the state universities follow established IT project planning requirements, but do not uniformly include monies that are expended from private sources, user fees, or other non-state general funds. Under the proposed language, the state universities would be required to report and identify all funds – public or private – user fees, and any other moneys, whether paid directly to the university or to a vendor or other private entity, and calculate the value of any good or service, license, franchise, privilege, or anything of value traded in exchange for all or part of an IT project. The Board does not believe that such a broadening of these requirements is either necessary or appropriate.

The state universities have shared their concerns with JCIT, and I have spoken with the Legislative CITO regarding the proposed language change. However, Senate Bill 364 still includes the problematic language, which was not modified in response to our concerns.

The Senate Ways and Means Committee has long supported the university "operating block grant" concept. Under this approach, state university leaders are given the responsibility to manage and maintain their institutions under the supervision of the Board of Regents. To require the universities to report private sources, user fees, and other funds that may be used for IT projects seems clearly inconsistent with administrative relief efforts that your Committee and the State Legislature have previously undertaken.

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The Board asks that you strike the proposed language contained in Section 1, Lines 20 through 27. The state universities will still continue to report all state general fund expenditures for IT projects according to project planning guidelines that are currently in force and those established by Information Technology Executive Council (ITEC) policy in the future. The Board supports the other provisions proposed in Senate Bill 364.

Thank you for your consideration of this important issue.

Sincerely,

RL Robinson

Reginald L. Robinson
President and CEO