

MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE

The meeting was called to order by Chair Sharon Schwartz at 9:00 A.M. on March 20, 2007, in Room 514-S of the Capitol.

All members were present.

Committee staff present:

J. G. Scott, Legislative Research Department  
Becky Krahl, Legislative Research Department  
Michele Alishahi, Legislative Research Department  
Reagan Cussimano, Legislative Research Department  
Amy Deckard, Legislative Research Department  
Julian Efird, Legislative Research Department  
Aaron Klaassen, Legislative Research Department  
Jim Wilson, Revisor of Statutes  
Nikki Feuerborn, Chief of Staff  
Shirley Jepson, Committee Assistant

Conferees appearing before the committee:

Larry Buening, Executive Director, Kansas Board of Healing Arts  
Dr. Roger Warren, Member of the Board of Healing Arts  
Cindy Lash, Audit Manager, Legislative Post Audit  
Representative Carl Holmes  
Tory Head, Western Hills Golf Course  
Merril Vanderpool, Village Greens Golf Course  
Duane Simpson, Kansas Agribusiness Retailers Association  
Dick Stuntz, Alvamar, Inc.  
Sandy Jacquot, General Counsel, League of Kansas Municipalities  
Roger Werholtz, Secretary, Department of Corrections  
Jim Edwards, Kansas Association of School Boards (KASB)

Others attending:

See attached list.

- Attachment 1 Testimony on Board of Healing Arts Budget Request by Larry Buening
- Attachment 2 Resource materials provided by Larry Buening
- Attachment 3 Testimony on Audit Report by Cindy Lash
- Attachment 4 Letter in support of Board of Healing Arts by Jerry Slaughter, Executive Director, Kansas Medical Society
- Attachment 5 Report from Subcommittee on KPERS
- Attachment 6 Testimony in support of **HB 2566** by Torrey Head
- Attachment 7 Testimony in support of **HB 2566** by Meril Vanderpool
- Attachment 8 Testimony in support of **HB 2566** by Duane Simpson
- Attachment 9 Testimony in support of **HB 2566** by Dick Stuntz
- Attachment 10 Testimony in opposition of **HB 2566** by Sandy Jacquot
- Attachment 11 Testimony in opposition of **HB 2566** by Roger Werholtz
- Attachment 12 Testimony in opposition of **HB 2566** by Jim Edwards
- Attachment 13 Written Testimony in opposition of **HB 2566** by Erik Sartorius, City of Overland Park
- Attachment 14 Written Testimony in opposition of **HB 2566** by Dee Stuart, Mayor, Park City
- Attachment 15 Written Testimony in opposition of **HB 2566** by Department of Transportation
- Attachment 16 Written Testimony in opposition of **HB 2566** by Cheryl Semmel, United School Administrators

Chair Schwartz recognized Lawrence Buening, Executive Director, Kansas Board of Healing Arts, who provided information in support of the additional FTE positions requested by the Board of Healing Arts for FY 2008 and FY 2009 (Attachment 1). Also included is a copy of the testimony presented to the Education Budget Committee on budget requests for FY 2008 and FY 2009 and

## CONTINUATION SHEET

MINUTES OF THE House Appropriations Committee at 9:00 A.M. on March 20, 2007, in Room 514-S of the Capitol.

a copy of the response to the Legislative Post Auditor as a result of the Performance Audit Report of October 2006 (Attachment 2). Mr. Buening stated that he is presenting information today as a result of the Education Budget Committee's report to the full Appropriations Committee on March 7<sup>th</sup> which indicated that additional information was required on the Board's compliance with the findings of the Legislative Post Audit completed in October 2006 and recommended an interim study. Mr. Buening stated that he believes policies and procedures are in place to address the concerns raised by the audit.

Chair Schwartz recognized Dr. Roger Warren, member of the Board of Healing Arts, who testified that the Board of Healing Arts is supported by fee funds and not tax dollars. Dr. Warren also noted that delay of the investigation of complaints is not always caused by the Board.

The Chair recognized Cindy Lash, Audit Manager, Legislative Division of Post Audit, who presented testimony on the October 2006 audit of the Board of Healing Arts (Attachment 3). Ms. Lash noted that changes were made by the Board in 2005 to the way complaints were handled because there were too few resources available to adequately investigate all complaints and State law indicated that the Board can only take action against a licensee when there are repeated instances or a pattern of practice that is substandard. Ms. Lash stated that several recommendations were made to address the timely investigation of complaints including:

- Review and screen complaints on a timely basis.
- Investigate allegations of substandard patient care when they are received.
- Move from an annual review of investigation status to a quarterly review.
- Actively track the progress of open cases.

Responding to questions from the Committee, Ms. Lash noted that a prior audit on the Board of Healing Arts was performed by Legislative Post Audit in 1985. She indicated that any complaint received can be investigated; however, statute allows action only after three investigated complaints.

A letter from Jerry Slaughter, Executive Director, Kansas Medical Society, in support of the Board of Healing Arts' request for enhanced FTE positions for FY 2008 and FY 2009, was distributed to the Committee (Attachment 4).

### **Discussion and Action on:**

**HB 2151 - Increased maximum retirement benefit for KP&F members and increased employee contributions until the maximum retirement benefit is attained.**

**HB 2238 - Affiliation with the Kansas police and firemen's retirement system by adjutant general for membership of certain firefighters serving the 190th Kansas air national guard.**

Representative Tapanelli, Chairman of the House Appropriations Subcommittee on Kansas Public Employees Retirement System (KPERs), presented the Subcommittee report on **HB 2151** and **HB 2238** recommending an interim study in 2007 by the Joint Committee on Pensions, Investments and Benefits and moved for the adoption of the Subcommittee report (Attachment 5). The motion was seconded by Representative Ballard. Motion carried.

### **Discussion and Action on:**

**HB 2078 - Federal nontaxable distributions from KPERs retirement benefits to provide retired public safety officers a source to pay for health insurance or long-term care insurance.**

**HB 2077 - KPERs, withdrawal of accumulated contributions and service credit between systems.**

**HB 2076 - Increase in earnings limitation for certain members of the Kansas police and firemen's retirement system receiving disability benefits.**

Representative Tapanelli, Chair of the House Appropriations Subcommittee on Kansas Public Employees Retirement System (KPERs), presented the Subcommittee report on **HB 2078**, **HB 2077** and **HB 2076** and moved for the adoption of the Budget Committee recommendation

CONTINUATION SHEET

MINUTES OF THE House Appropriations Committee at 9:00 A.M. on March 20, 2007, in Room 514-S of the Capitol.

(Attachment 5). The motion was seconded by Representative Ballard. Motion carried.

Representative Tafanelli moved to recommend **HB 2078** favorably for passage. The motion was seconded by Representative Feuerborn. Motion carried.

Representative Tafanelli moved to recommend **HB 2077** favorably for passage. The motion was seconded by Representative Pottorff. Motion carried.

Representative Tafanelli moved to recommend **HB 2076** favorably for passage. The motion was seconded by Representative Pottorff. Motion carried.

Representative Tafanelli moved to reconsider previous action on **HB 2078**, **HB 2077** and **HB 2076** by amending the language of **HB 2078** and **HB 2076** into **HB 2077** and recommend **HB 2077** as amended favorably for passage. The motion was seconded by Representative Pottorff. Motion carried.

**Hearing on HB 2566 - Public entities may not compete with private businesses.**

J. G. Scott, Legislative Research Department, explained that **HB 2566** would make it unlawful for any public agencies, including counties and cities, to engage in the sale of goods or services, that are provided by private entities. There is a provision in the bill indicating that it will not apply if the goods or services are necessary for public welfare or are not otherwise unavailable to the public.

Testimony in support of **HB 2566** was received from the following:

- Representative Carl Holmes
- Torrey Head, Owner and Operator of Western Hills Golf Club in Topeka (Attachment 6).
- Meril D. Vanderpool, Owner and Operator of Village Greens Golf Course (Attachment 7).
- Duane Simpson, Vice President of Government Affairs, Kansas Agribusiness Retailers Association (Attachment 8).
- Dick Stuntz, Owner of the Oaks Golf Course, Leavenworth (Attachment 9).

Testimony in opposition to **HB 2566** was received from the following:

- Don Mohler, Executive Director, League of Kansas Municipalities (Attachment 10).
- Roger Werholtz, Secretary, Department of Corrections (Attachment 11).
- Jim Edwards, Governmental Relations Specialist, Kansas Association of School Boards (Attachment 12).

Written testimony in opposition to **HB 2566** was received from:

- Erik Sartorius, , City of Overland Park (Attachment 13).
- Dee Stuart, Mayor, Park City (Attachment 14).
- Department of Transportation (Attachment 15).
- Cheryl Semmel, United School Administrators (USA) (Attachment 16).

Testimony in support of **HB 2566** indicated that private businesses, who offer services or goods to the public, are subject to various taxes in the course of their business as opposed to government entities who may be engaged in the same business or service and exempt from taxes. It was also noted that there are a number of not-for-profit or non-profit entities who offer services or goods to the public and are tax-exempt.

Testimony in opposition of **HB 2566** stated that the legislation would have far-reaching consequences for governmental entities, including all educational facilities, hospitals, as well as cities and counties.

During discussion, the Committee noted that although the legislation may have merit, there are a number of issues that needed to be addressed before any action should be taken.

Representative Tafanelli moved to recommend **HB 2566** for further evaluation in an interim study. The motion was seconded by Representative Wolf. Motion failed on an 8-9 vote.

Some Committee members indicated that the legislation did not warrant an interim study because

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there were too many problems with the bill. Committee members also noted that a function of government is to provide service, noting also that the legislation would take away rights from local communities.

The meeting was adjourned at 10:50 a.m. The next meeting of the Committee will be held at 9:00 a.m. on March 21, 2007.

  
Sharon Schwartz, Chair

# House Appropriations Committee

March 20, 2007

9:00 A.M.

NAME	REPRESENTING
Emily Geier	Hein Law Firm
Kevin Balore	Park City
Drew Simpson	KARA
Whider Jam	KIC
SUE PETERSON	IC-STATE
Chip Wheelen	Asin of Osteopathic Med.

# KANSAS BOARD OF HEALING ARTS

LAWRENCE T. BUENING, JR.  
EXECUTIVE DIRECTOR



KATHLEEN SEBELIUS  
GOVERNOR

## MEMO

**TO:** House Appropriations Committee  
**FROM:** Lawrence T. Buening, Jr. *LTB*  
Executive Director  
**DATE:** March 20, 2007  
**RE:** Staffing Needs

Thank you for the opportunity to provide information to the Committee on behalf of the Kansas State Board of Healing Arts in support of the additional FTE positions requested by the Board for FY2008 and FY2009. At the meeting of this Committee on March 7, comments were made that additional information was required on the Board's compliance with a Legislative Post Audit Report submitted in October 2006. I hope the information presented today will provide adequate information to resolve any questions or concerns the Committee has on either of these issues.

Section 7 of H.B. 2542, as it was passed the House of Representatives on March 16, 2007, deletes \$208,000 from the Board's expenditure authority for FY2008 and \$208,486 for FY2009 as it was requested by the Board and recommended by the Governor. These reductions were solely attributed to the enhanced FTE positions and capital outlay for these positions that the Board had requested. Therefore, section 22 reduces the FTE positions from the 39.0 that was requested by the Board and recommended by the Governor to the existing FTE limitation of 32.0.

While the Board currently has a FTE limitation of 32.0, there are currently 34.0 individuals working full-time for the Board. The expenditure limitations contained in H.B. No. 2542 for FY2008 and FY2009 include the funding of two non-FTE positions. On June 21, 2004, the Governor approved a temporary, full-time attorney for which funding in both FY2008 and FY2009 is retained by H.B. No. 2542. The 2006 Legislature authorized the Board to hire an Administrative Assistant in the unclassified service during 2007. However, the authority for the Administrative Assistant was in the Omnibus Appropriations Bill---Senate Substitute for H.B. No. 2968, Section 5(a)---and is authorized only for FY2007. Therefore, even though H.B. No. 2542 includes funding of this position, the Board is prohibited by statute from retaining the person in this position after July 1, 2007, since K.S.A. 65-2878(c) requires her to be in the classified service.

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Goddard

BETTY MCBRIDE., Public Member, VICE-PRESIDENT  
Columbus

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MICHAEL J. BEEZLEY, M.D., Lenexa  
RAY N. CONLEY, D.C., Overland Park  
GARY L. COUNSELMAN, D.C., Topeka  
FRANK K. GALBRAITH, D.P.M., Wichita  
MERLE J. "BOO" HODGES, M.D., Salina

SUE ICE, Public Member, Newton  
MARK A. McCUNE, M.D., Overland Park  
CAROL SADER, Public Member, Prairie Village  
ROGER D. WARREN, M.D., Hanover  
NANCY J. WELSH, M.D., Topeka  
JOHN P. WHITE, D.O., Pittsburg  
RONALD N. WHITMER, D.O., Ellsworth

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HOUSE APPROPRIATIONS

DATE 3-20-2007  
ATTACHMENT 1

I have brought with me 50 copies of the Memo submitted to the House Education Budget Committee on March 5, 2007. This Memo details the Board's requests for FTE positions the past 10 years. It also describes the Board's plans for utilizing the additional FTE positions requested by the Board in its budget submission and recommended by the Legislative Post Audit Report submitted in October 2006.

I have also brought with me today 50 copies of a letter dated January 11, 2007, to the Legislative Post Auditor setting forth in detail the actions the Board had taken at that time on the recommendations made by the Legislative Post Audit submitted in October 2006. As an update to that letter, I wish to advise that on February 9, the Board did adopt the policy referred to in Question 1a recommendations. Further, in order to "assign sufficient staff resources to review and screen complaints so that the agency standard of reviewing complaints within two weeks is met", one of the FTE positions requested is that of a Public Service Administrator I to provide assistance to the Disciplinary Counsel. In regard to Recommendation 1b to Question 1, the Disciplinary Panel of the Board received a CD providing the information on 100% of the complaints not assigned for investigation by the Disciplinary Counsel in advance of its meetings January 19 and March 23. The Disciplinary Panel reviews these complaints to ensure that the decision made by the Disciplinary Counsel to not open an investigation was reasonable. In regard to Recommendation 5 to Question 1, attached please find a copy of a Conflicts of Interest Disclosure Statement that has been presented to and signed by each of the Board investigators. This statement will be annually reviewed with each investigator.

Of the 7.0 FTEs requested, two are currently working full time in the investigative and legal areas---the non-FTE attorney and Administrative Assistant positions. Three of the other five would be directly involved in assisting in the investigative, disciplinary and legal areas--- Public Service Administrator I; Legal Assistant; and Assistant General Counsel.

This provides a brief summary of the additional FTE requests for FY2008 and 2009 and the steps the Board has taken to date to address the concerns and recommendations presented in the Legislative Post Audit Report. I would be happy to answer any questions or provide any additional detail you may desire.

# KANSAS BOARD OF HEALING ARTS

LAWRENCE T. BUENING, JR.  
EXECUTIVE DIRECTOR



KATHLEEN SEBELIUS  
GOVERNOR

## CONFLICTS OF INTEREST DISCLOSURE STATEMENT

I, \_\_\_\_\_, Investigator for the Kansas Board of Healing Arts, understand that I have an affirmative duty to disclose to my supervisor any potential conflicts of interest that may arise in the conduct of Board business. I will make this disclosure upon discovery of the conflict of interest. An example of a conflict of interest or barrier to independence in conducting an investigation includes investigating my current or former personal physician or any other licensee that has treated me or my immediate family member(s) unless the treatment relationship is severed and the passage of time has rendered such former relationship so remote that it no longer constitutes a conflict of interest; or the nature of contact was so minimal as to be inconsequential. A further example includes having a personal or financial relationship with the licensee, unlicensed person who is the target of the investigation, complaining party or any other person important to the investigation, including a witness.

I further understand that my participation in any investigation should be free both in fact and appearance from personal and external barriers to independence. I have a responsibility to maintain independence so that any opinions, conclusions, judgments, and recommendations I make will be impartial and will be viewed as impartial by knowledgeable third parties. I will avoid situations that could lead reasonable third parties with knowledge of the relevant facts and circumstances to conclude that I am not able to maintain independence and, thus, am not capable of exercising objective and impartial judgment on all issues associated with conducting an investigation. An example of an external barrier to independence is pressure, actual or perceived, from management and/or employees of the licensee (or unlicensed person) being investigated with the objective of deterring me from acting objectively and exercising good investigative judgments. I will promptly report such pressures to my supervisor.

(please see next page)

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HOUSE APPROPRIATIONS

DATE 3-20-2007  
ATTACHMENT 2



**Conflicts of Interest Disclosure Statement**  
*Page two*

During my annual review, I will review this disclosure statement, and initial and date it, thereby signifying my continued commitment to disclosing and avoiding all conflicts of interest and barriers to independence in conducting Board investigations.

\_\_\_\_\_  
SIGNATURE OF INVESTIGATOR

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DATE FIRST SIGNED

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# KANSAS BOARD OF HEALING ARTS


LAWRENCE T. BUENING, JR.  
EXECUTIVE DIRECTOR



KATHLEEN SEBELIUS  
GOVERNOR

## MEMO

**TO:** House Education Budget Committee

**FROM:** Lawrence T. Buening, Jr.   
Executive Director

**DATE:** March 5, 2007

**RE:** Budget Requests for FY2008 and FY2009

Thank you for the opportunity to appear before you on behalf of the budget requests made by the State Board of Healing Arts for FY2007, 2008 and 2009. Simply stated, the Board concurs with the recommendations of the Governor for all three years.

For FY2007, the Board is not requesting any supplemental expenditures or funding to that previously authorized by the Legislature. Both the Division of the Budget and the Governor concurred with this.

For FY2008, the Governor granted the Board's request for 5.00 new FTE positions and the conversion of 2.0 non-FTE unclassified permanent positions to FTE positions. The Board had also requested \$30,000 for capital outlay for computers and office furniture for the 5.00 new FTE positions. The Governor recommended only \$1530 in expenditure authority for this purpose. The Board accepts the Governor's recommendation. The Senate Ways and Means Committee has concurred with the Governor's recommendations with the exception of \$67,008 for salary increases, indicating that funding for pay plan adjustments and increases in longevity payments would be considered later.

For FY2009, the Governor recommended that the FTE enhancements requested for FY2008 be continued. Since the Governor has recommended what the Board requested, the Board obviously agrees with the Governor's recommendation. The Senate Ways and Means Committee concurred with the Governor with the exception of \$67,008 for salary increases.

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Since submitting the budget proposal on September 15, 2006, the Legislative Division of Post Audit has completed a Performance Audit Report ("Report") and submitted it to the Legislative Post Audit Committee on October 17, 2006. I have brought several copies of the Report should you desire to review it in detail. The Scope Statement for the performance audit addressed three questions. One of the questions addressed by the audit was: "Does the Board of Healing Arts conduct timely and thorough investigations of complaints it receives, and take timely and appropriate actions to correct regulatory violations it finds?"

I won't go into great detail of the 39-page report and the recommendations made. However, several findings and recommendations directly relate to the Board's request and the Governor's recommendations for an increase in FTE positions. Five of the FTE positions being requested would be directly involved in the Board's investigation and disciplinary processes---Administrative Assistant; Public Service Administrator I; Legal Assistant; Associate Counsel; and Assistant General Counsel.

The audit found that in FY2006 the Board received 2587 "complaints". (Report, P.9). The Report also found that only one staff member is assigned to review and screen complaints and that 83% were reviewed within two weeks of receipt. The auditors were critical of the fact that the Board has a policy that provides that not all allegations of substandard patient care are investigated upon receipt. Included in this were 668 malpractice petitions received from the Health Care Stabilization Fund. Further, the Report found that there are a number of cases that have been open for two or more years. The Report recommended that sufficient staff resources be assigned to review and screen complaints and that all allegations of substandard patient care be investigated when received rather than waiting for a pattern to develop (Report, Recommendations 1a and 2a, page 19). Finally, the Report recommended that additional resources be requested if current staff resources are not sufficient to handle the increased workload that would result from investigating all allegations of negligence upon receipt (Report, Recommendation 2c, page 19).

The Board reviewed the recommendations at its meetings December 2 and February 9. Action on the recommendation to investigate all complaints that allege failure to adhere to the applicable standard of care has not yet been taken. Before adopting any new policy in this regard, the Board is awaiting a determination by the Legislature on the requests for additional FTEs. There were 346 investigative cases opened in FY2006 (Budget Request, page 23). Opening an investigation into each of the 668 malpractice petitions received in FY2006 would result in almost tripling the number of cases opened. However, the issues of the number of open investigative cases and the length of time to complete investigations have been a concern of the Board and its staff for many years. In FY1996, the FTE limitation of the Board was 27.0 (L.1995, Chapter 224, Section 22). At that time, the Board licensed 13,683 individuals (Budget request dated September 14, 1996, page 18). Today, the Board has 32.0 FTE positions, but regulates more than 7,000 additional individuals. **Attachment 1** lists the Board's FTE limitations and number of professionals regulated from FY1996 through FY2007. In the Budget Request dated September 14, 2004 for FY2006 and 2007, it was noted that open cases carried forward

had increased substantially as justification for the four additional positions being requested. On July 1, 2002, there were 477 open cases. These increased to 547 on July 1, 2003 and 719 on July 1, 2005.

For the past 10 years, the Board has been requesting additional positions for investigation and prosecution of disciplinary cases. In the Budget Request dated September 14, 1996 for FY 1998 and FY 1999, the request was made to add two additional FTEs in FY98--- one Office Assistant II in the Licensing Division and a Special Investigator I. Requests were also made to add a fifth Special Investigator II and an Office Assistant II for the Disciplinary Counsel for FY99. None of these positions were approved.

In hopes of getting at least some additional personnel, a request was again made that two additional FTEs be added for FY 2000 (Budget Request dated September 14, 1998). One of the positions was for an Associate Counsel and the other was for a fifth Special Investigator II (Budget request dated 9/14/1998, pages 5, 41 and 42). In the Budget request for FY2000, the following statements appear:

**“Current Services Request:** This level maintains essentially the same services as provided in FY 1998 and FY 1999. The number of open disciplinary cases will continue to rise to an unacceptable level....”(Budget request dated 9/14/1998, page 14)

and

**“Enhancement Level Request:** “ The principal increases in enhancement are for salaries for the addition of two FTEs....As illustrated in the Narrative Information provided in DA400, the number of investigative cases for FY2000 is projected to be almost triple of those new cases opened in FY1998. The reasons for this phenomenon are not precisely known. However, it appears the public is more aware of the Board’s mission because of its presence on the internet (INK and DocFinder), the publication of quarterly newsletters and several highly publicized cases. Whatever the reason, the number of new cases opened in the first 21/2 months of FY1999 makes it evident that matters requiring investigation are greatly increasing. The Board has reorganized somewhat so that the Disciplinary Counsel will be solely involved in case management and oversight and will no longer negotiate settlements or prosecute matters at the administrative level. A third medicine and surgery review committee is being formed so cases, once the investigation is complete, can receive peer review more expeditiously. However, the addition of another Special Investigator II and an attorney is necessary in order to meet the goals of the Investigation and Disciplinary Program...”

The Legislature did increase the FTE limitation from 27.0 to 29.0 starting FY2000.

In the Budget Request dated 9/16/2002, a Special Investigator II was requested for FY2004 and 2005. This was not authorized. As a result, the Board’s FTE limitation remained the same for six years, from July 1, 1999 until July1, 2005. 1.0 FTE was funded for the last three months of FY2005, but no FTE increase was authorized until FY2006. This position was an Administrative Assistant to assist in the licensing and renewal of

approximately 2500 newly-credentialed radiologic technologists.

On June 21, 2004 the Governor approved a temporary, full-time attorney whose duties are solely devoted to prosecuting disciplinary hearings in an effort to reduce the backlog of cases. In the September 2004 Budget Request, the Board requested that the position be made a permanent FTE. Although funding has been continued, this position has not been approved as an FTE.

In the Budget Request dated September 15, 2004, the request was made for additional FTEs---the attorney position referenced in the above paragraph, a Special Investigator II, and a Legal Assistant for FY2006. For FY2007, two more positions were requested---another Special Investigator II and an Administrative Assistant to provide support to the investigators. The 2005 Legislature authorized the addition of two positions--- the Special Investigator II and Legal Assistant positions were added for FY2006. The Board was authorized by the 2006 Legislature to hire an Administrative Assistant in the unclassified service during FY2007. However, the authority for the Administrative Assistant was in the Omnibus Appropriations Bill --- Senate Substitute for H.B. No. 2968, Section 5(a) --- and is authorized only for FY2007 and is not a FTE position. Therefore, the current FTE limitation for the Board is 32.0. **Attachment 2** is the current organizational chart of Board staff.

The Board's budget request and the Governor's recommendations include expenditures for FY2008 and FY2009 for continuation of the two unclassified non-FTE positions---the temporary, full-time attorney approved by the Governor June 21, 2004 and the Administrative Assistant position authorized by the 2006 Omnibus Appropriations Bill. The addition of these two positions as FTEs will not result in any increase to the Board's base budget for either FY2008 or FY2009. As to the Administrative Assistant position, this position works almost exclusively with investigators in coordinating the inspections of offices at which surgery is performed. This is a new responsibility that has been undertaken based upon the Board's adoption of rules and regulations governing sites at which office-based surgery is performed. However, K.S.A. 65-2878(c) requires all employees of the Board to be in the classified service under the Kansas Civil Service Act, except for attorneys, the Executive Director and one Administrative Assistant. Therefore, even though the Board's base budget includes expenditures for this position for both FY2008 and FY2009, the individual hired as authorized by the Omnibus Appropriations Bill cannot be retained after July 1, 2007, unless an FTE position is created.

Of the other five FTEs requested commencing FY2008, three would be directly involved in assisting in the investigative, disciplinary and legal areas---Public Service Administrator I; Legal Assistant; and Assistant General Counsel. The fourth would be an Administrative Assistant to assist with licensing and renewals and the fifth would provide assistance to the Executive Director and Executive Assistant.

In the Board's budget request, it was indicated that an increase in fee revenue would be required if the five new FTEs were authorized. DOB's cash flow analysis estimated a beginning fee fund balance on July 1, 2006 of \$908,122, \$908,680 on July 1, 2007, and \$974,679 on July 1, 2008. These figures do not take into account increased expenditure in FY2008 and FY2009 for the five new FTEs requested by the Board and recommended by the Governor. In our Budget Request, it was indicated that an increase in fees would be required if the additional FTE positions are approved. Although the method of funding the increased salary expenditures required for the five additional FTE positions was not included in the Budget Request, adequate means exist to fund these positions should they be granted. Please see **Attachment 3** in which the Kansas Medical Society and Kansas Association of Osteopathic Medicine indicate awareness of the need to increase license renewal fees next year.

The only pending legislation that would have an effect on the Board's expenditures is Senate Bill No. 81. This bill would enable the Board to require an individual to be fingerprinted and to submit to a criminal history record check. The bill would also enable the Board to charge and collect fees associated with the fingerprinting and record checks. That charge is currently \$54 and, therefore, the Board would have additional expenditures of \$86,400 if a fingerprint and background check was conducted on all of the approximately 1600 applications received each fiscal year. Senate Bill No. 81 passed the Senate 40-0 and was heard by the House Health and Human Services Committee on March 1. S.B. No. 81 was requested by the Board and supported by Legislative Post Audit (See Recommendation 1 to Question 2 on page 26 of the Legislative Post Audit Report.).

Again, thank you for the opportunity to appear before you and I would be happy to respond to any questions.

**Kansas State Board of Healing Arts  
Appeal of Division of Budget Recommendations**

**ATTACHMENT 1**

<b>Fiscal Years</b>	<b>FTE Limitation</b>	<b>Number of Professionals Regulated</b>
FY 1996	27	13,683
FY 1997	27	14,410
FY 1998	27	12,618
FY 1999	27	15,745
FY 2000	29	16,798
FY 2001	29	17,153
FY 2002	29	17,129
FY 2003	29	17,615
FY 2004	29	18,203
FY 2005	29	19,409
FY 2006	32	20,771
FY 2007	32	21,000 est.

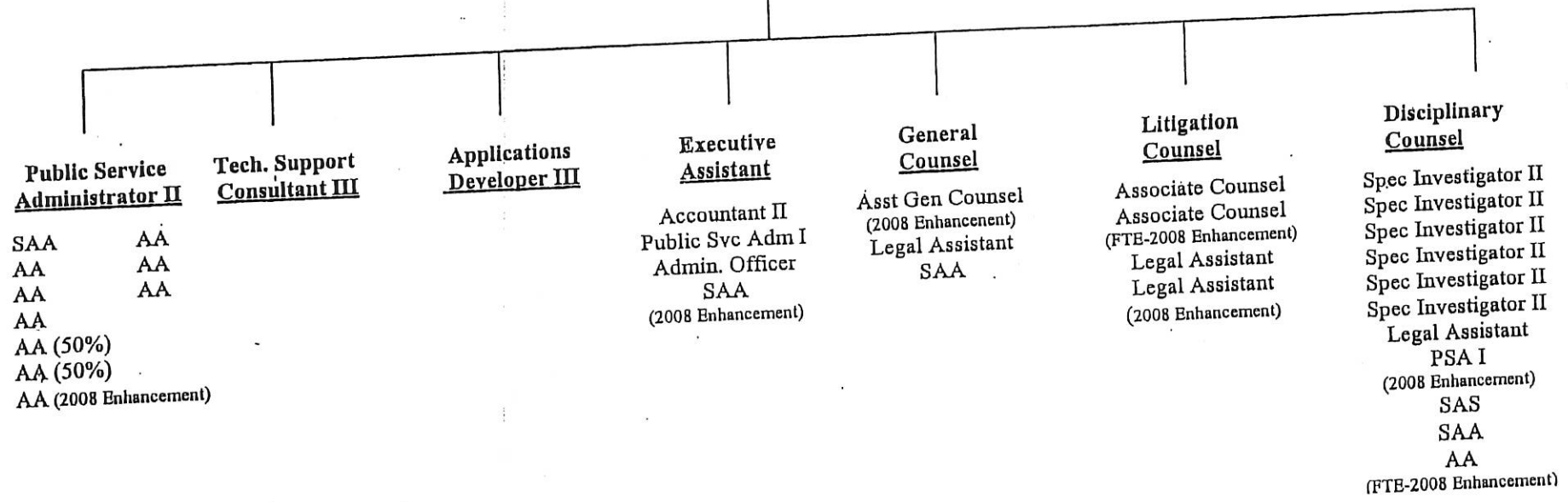
Funding granted for one FTE position for the last 3 months of fiscal year but no FTE position increase.

<b>Narrative Information for Biennial Agencies—DA 400</b> Division of the Budget State of Kansas	Page <u>6</u>
	Agency <u>Kansas Board of Healing Arts</u>
	Program <u>Administration and Regulation</u>

**KANSAS STATE BOARD OF HEALING ARTS**  
 Organization of Positions  
 With 2008/2009 Enhancements

**15-MEMBER BOARD**

Executive Director







November 15, 2006

Duane Goosen  
Secretary of Administration & Director of the Budget  
Curtis State Office Building  
1000 SW Jackson, Suite 500  
Topeka, Kansas 66612-1300

Re: FY 2008/2009 Budget Appeal for  
Healing Arts Board

Dear Secretary Goosen:

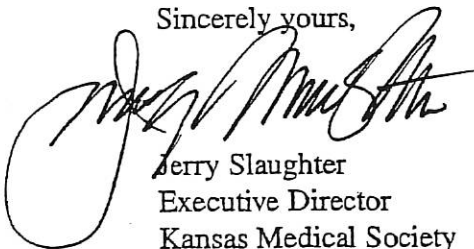
The Kansas Association of Osteopathic Medicine and the Kansas Medical Society would like to express support for the FY 2008 & 2009 budget appeal filed by the Kansas State Board of Healing Arts (BOHA). We strongly support the BOHA's request for additional FTE positions and related expenditure authority. The Board's capacity to perform its mission will be hampered without adequate funding and necessary position allocations.

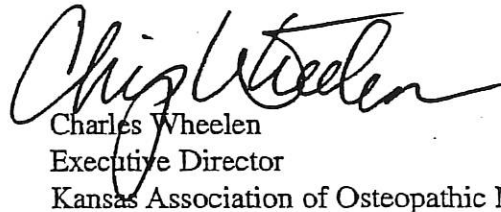
Over the years the Legislature has added numerous other health care provider groups to the Board's regulatory responsibilities, but has been reluctant to increase the resources available to the agency. The increasing workload, and recent fee balance "sweeps" have created cash flow problems for the Board. A number of operational problems, particularly backlogs, were recently identified by the Legislative Post Auditor. In order to meet the demands placed on the agency, and avoid running out of funds again, the Board may be compelled to increase its license renewal fees next year.

Since FY 2002, a little over \$1 million has been "swept" from the BOHA account. Those "swept" funds are in reality an inappropriate tax on the physician community (see Attorney General Opinion 2002-45). Those funds could have been used for the additional positions needed by the BOHA, as well as to avoid cash flow problems at the end of the fiscal year. In addition to our support for the BOHA budget appeal, we specifically request that the "swept" funds be reinstated for the coming fiscal year. Without reinstatement of those amounts, an increase in licensure fees is appears to be likely.

We urge you fully fund the BOHA budget request for FY 2008 and 2009, and to restore the funds swept from the BOHA account in FY 2002, 2003 and 2005. Thank you for considering our request.

Sincerely yours,

  
Jerry Slaughter  
Executive Director  
Kansas Medical Society

  
Charles Wheelen  
Executive Director  
Kansas Association of Osteopathic Medicine

# KANSAS BOARD OF HEALING ARTS

LAWRENCE T. BUENING, JR.  
EXECUTIVE DIRECTOR



KATHLEEN SEBELIUS  
GOVERNOR

January 11, 2007

Barbara J. Hinton, Legislative Post Auditor  
Mercantile Bank Tower  
800 SW Jackson St., Suite 1200  
Topeka, KS 66612-2212

Re: Response to Performance Audit Report

Dear Ms. Hinton:

This is in response to your letter dated October 18, 2006 in which you indicated the Chair of the Legislative Post Audit Committee wanted a response to the October 2006 Performance Audit Report from the Board at the beginning of the 2007 Session. I have waited to provide this response until the Board received a copy of the Governor's Budget Recommendations following the State of the State address as several of the responses are affected by the Governor's recommendation on the Board's budget requests for FY2008 and FY2009.

Since the Report was filed on October 17, the Board has had two meetings. At its meeting October 21, all Board members were provided with a copy of the Report and it was only briefly reviewed. The Board determined a Committee comprised of all Board members would meet from 9:00 a.m. until noon on Friday December 1 and spend the entire morning reviewing the Report. Eleven of the 15 Board members attended this meeting and recommendations were prepared to submit to the Board as a whole during the meeting that commenced at 1:00 p.m. that afternoon. The Board took action and gave staff direction on several of the recommendations contained within the Report. However, the Board has not yet had the opportunity to take action on all of the recommendations. The Report will be considered again during the upcoming Board meeting to be held February 9 and 10 and, as necessary, at subsequent meetings.

Following are the actions on the recommendations taken by the Board to date.

**MEMBERS OF THE BOARD:**

CAROLINA M. SORIA, D.O., PRESIDENT  
Goddard

BETTY MCBRIDE, Public Member, VICE-PRESIDENT  
Columbus

VINTON K. ARNETT, D.C., Hays  
MICHAEL J. BEEZLEY, M.D., Lenexa  
RAY N. CONLEY, D.C., Overland Park  
GARY L. COUNSELMAN, D.C., Topeka  
FRANK K. GALBRAITH, D.P.M., Wichita  
MERLE J. "BOO" HODGES, M.D., Salina

SUE ICE, Public Member, Newton  
MARK A. McCUNE, M.D., Overland Park  
CAROL SADER, Public Member, Prairie Village  
ROGER D. WARREN, M.D., Hanover  
NANCY J. WELSH, M.D., Topeka  
JOHN P. WHITE, D.O., Pittsburg  
RONALD N. WHITMER, D.O., Ellsworth

235 S. Topeka Boulevard, Topeka, Kansas 66603-3068  
Voice: (785) 296-7413 Toll Free: (888) 886-7205 Fax: (785) 296-0852 Website: [www.ksbha.org](http://www.ksbha.org)

2-11

## **Question 1 Recommendations. (Pages 19 and 20).**

**1. To help ensure that complaints are dealt with in a timely and appropriate manner when they are received, Board management should do the following:**

**a. assign sufficient staff resources to review and screen complaints so that the agency standard of reviewing complaints within two weeks is met.**

Following the Committee meeting on the morning of December 1, a recommendation was made to continue the agency standard of reviewing all complaints within two weeks of receipt. The Board, on December 2, accepted this recommendation. A copy of the Board internal policy on time standards for investigations that was approved by the Board on August 14, 1999 is attached as "Attachment 1". A draft revision of this policy that will be presented to the Board for consideration and approval on February 9 is included as "Attachment 2".

The Board and the Board Committee also reviewed the recommendation to assign sufficient staff and resources to meet the standard that complaints be reviewed within two weeks of receipt. As indicated in the October 6, 2006, response that was included in the Report as Appendix D, the Board requested an FTE position of Public Service Administrator I to provide assistance to the Disciplinary Counsel in the review of complaints. The Governor has approved this request starting FY2008. On December 2, the Board indicated that the addition of this FTE position should adequately address this recommendation.

**b. periodically review a sample of the complaints screened out (not assigned for investigation) by the Disciplinary Counsel to ensure that those decisions were reasonable.**

At its meeting the afternoon of December 1, the Board acted to adopt the recommendation made by the Committee to review 10% of complaints that were not assigned for investigation by the Disciplinary Counsel. The Information Technology staff of the Board is in the process of preparing a program that will enable random selection of 10% of cases that were reviewed but not opened for an investigation. Complaints that are currently being received and not opened for investigation are being placed on a CD which will be provided to Disciplinary Panel members during the meeting on January 19. At that meeting, staff will get direction from the Panel members on the manner in which they desire to review these complaints. It is expected that by the meeting of the Disciplinary Panel in March 2007, a system for the review of a sample of complaints not opened for investigation will be implemented and that such review will be performed by the Disciplinary Panel at each subsequent bi-monthly meeting.

**2. To help ensure that instances of substandard patient care have the best chance of being verified and corrected, Board management should do the following:**

**a. investigate allegations of substandard patient care when they are received, rather than waiting for a pattern of such complaints to develop.**

**b. notify the licensee when an investigation reveals a problem exists, even if no formal action can be taken at that time.**

Due to time constraints, these recommendations were only briefly discussed at the meetings held on December 1 and, as of this date, no action to address these issues has been taken. These recommendations will be on the Board agenda for discussion and possible action at the next meeting on February 9. However, it is possible that further action may be delayed until the Legislature acts on the Board's budget requests for FY2008 and FY2009.

**c. request additional resources if current staff resources are not sufficient to handle the increased workload that would result from this change.**

As part of its budget request for FY2008 and FY2009, the Board requested five new FTE positions and the reclassification of two non-FTE temporary positions as permanent FTE positions. Following appeal of the Division of the Budget Recommendations, the Governor has recommended the addition of expenditure authority for the 5.00 FTE positions requested as enhancements. Also, the Governor recommends converting the two non-FTE unclassified permanent positions to FTE positions as requested by the Board. Whatever enhancements are authorized by the Legislature will determine the Board's response to 2a and 2b above when it further considers these recommendations..

**3. To help ensure that investigations proceed in an efficient and timely manner, Board management should do the following:**

**a. move from annual review of investigation status to a quarterly review**

This recommendation has been implemented and review will be conducted at the end of each calendar quarter.

**b. pursue the ability to generate electronic reports to provide management a way to systematically review all investigations.**

Reports that are currently being generated were provided to Post Audit staff during the course of the audit. A list of reports that is being considered for development is enclosed as "Attachment 3". This list will be presented to Board staff and the Board as a whole at the February 9, 2007 Board meeting and a discussion will be held as to which of these reports would provide both the staff and the Board with appropriate information to analyze status of investigations and Board actions. Board Information Technology staff will then be requested to create the reports.

**4. To help ensure that adequate and timely action is taken on all cases, and that licensees receive timely resolution of complaints against them, Board management should do the following:**

**a. develop a system to actively and regularly track the progress of all open cases**

Reports relating to the number of open cases can currently be generated. As far as the progress of each case, the reports listed in Attachment 3 will be reviewed to determine which would most effectively assist in actively and regularly tracking the progress of open cases.

Since the issuance of the Report, Board Information Technology staff has been sent to classes and have received training on creating various reports from the disciplinary tracking system that was installed in July 2005.

Disciplinary Counsel has implemented the generation of a report on all open cases on a monthly basis.

**b. institute an immediate review of all open cases, beginning with the oldest cases, to see what action needs to be taken to appropriately resolve them.**

A review of all open cases has been conducted and decisions on actions to appropriately resolve them have been made.

**5. To help ensure that investigators are unbiased and impartial, the Board should require them to periodically disclose any actual or perceived impairments. This is a recognized best practice for a regulatory program's complaint investigators.**

The Board indicated at its meeting December 1 that this recommendation should be addressed, but no action has yet been taken. We have been unable to determine what was envisioned in the way of periodic disclosure and what would be the best practice for a regulatory program's complaint investigators. Inquiries have been made of the Kansas Bureau of Investigation, Department of Social and Rehabilitation Services, and Department of Aging and we have been unable to identify that these agencies require periodic disclosure of conflicts. The Board is still exploring the best manner of having investigators periodically disclose actual or perceived conflicts. Therefore, this recommendation will be further discussed at the Board meeting February 9.

**6. To ensure that enforcement actions or discipline ordered by the Board is consistent and equitable, the Board should adopt a formal list of graduated sanctions. This should include guidance regarding the number and severity of violations that could trigger each sanction. This is a recognized best practice for medical boards' disciplinary processes.**

Since the issuance of the Report, research on development of sanction guidelines has continued. The Board did discuss this recommendation at length at its meeting December 1. Guidelines that have been adopted in other states have been obtained. This issue will be further considered and reviewed at the next Board meeting on February 9.

2-14

## **QUESTION 2 RECOMMENDATIONS. (Page 26).**

**1. To ensure that the Board has all recommended information pertaining to applicants coming from other states-both professional and personal-Board staff should re-introduce a bill this session which would require applicants to be fingerprinted at a law-enforcement center, and allow the Board to submit those prints to the KBI and FBI for a background check.**

At its meeting December 1, the Board authorized staff to proceed with drafting a proposed bill to authorize fingerprinting and criminal background checks on all applicants for a new license or for reinstatement of an existing license. The Board also directed that the bill contain authority to require fingerprinting and criminal background checks during the course of an investigation involving an existing licensee. Today, the Board requested introduction of a bill that is enclosed as "Attachment 4". The Senate Public Health and Welfare Committee authorized introduction. As of this writing, no bill number has been assigned and the bill has not been assigned to a committee.

**2. The Board should continue to pursue readily available information on podiatrists and chiropractors applying for licensure in Kansas.**

For podiatrists, the only source of information that is readily available that has not previously been obtained as part of the application process is the information contained in the two national data bases that exist pursuant to federal law---NPDB and HIPDB. For chiropractors, the Board has not previously required a report from the two national data bases and has not required a report from the CIN-BAD database maintained by the Federation of Chiropractic License Boards. The Board has approved and staff is now requiring that all new applicants for podiatry and chiropractic licenses self query the two national data bases and have the report provided to the Board. A copy of the instructions that are being provided to applicants is enclosed as "Attachment 5". Further, since the Board may query CIN-BAD at no cost by virtue of being a member of the Federation of Chiropractic Licensing Boards, licensing staff is now doing a query and obtaining a report from CIN-BAD on all new chiropractic applicants.

**3. To ensure that all applicants are treated consistently, that records are maintained properly, and that errors and duplicative efforts are reduced, the Board should develop written policies and procedures for conducting background investigations of both in-State and out(sic)-of-State applicants.**

The Licensing Administrator is currently in the process of developing two training manuals containing written policies and procedures for conducting background information on all applicants. The manuals will include steps on how to review an application and computer application work flow. Information will include a worksheet that provides the analyst with a list of all requirements needed to complete an application, including all required background checks. It is expected that these two manuals will be finalized by April 1.

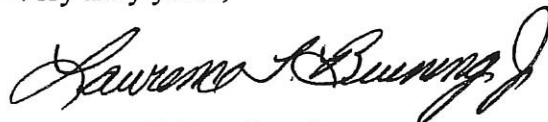
### Question 3 Recommendations. (Page 33).

No recommendations are directed to the Board. However, both the Committee and the Board expended considerable time at their meetings discussing this issue. It appeared that Legislative Post Audit interviewed officials from the professional associations representing the professions without a Board seat. The Board was concerned with the statement made on page 29 of the Report that officials "...from six of the nine professions said their interests weren't being adequately addressed by the Board". Therefore, at the meeting held December 1, the Board directed that a survey be sent so that these concerns could be addressed. Attached is "Attachment 6" which has been mailed to all professional associations and the non-Board members of all committee and councils of the Board. The Questionnaire is to be returned by January 15. Board staff will then process the responses and an analysis will be presented to the Board for review at the February 9 meeting.

The Board has also directed that the minutes from each advisory council meeting be forwarded to all Board members so the Board can be better advised of the topics and issues of concern that are addressed during these meetings. Finally, the Board directed that staff contact the councils and professional associations for those professions that do not have a member on the Board to invite them to attend Board meetings and present information. The Board directed staff to provide time on the agenda at each of the two-day meetings the Board holds to allow for these presentations.

Please advise if you have any questions or you or the Committee desire any additional information. Please be assured that as the Board takes action on those recommendations that have as yet not being fully addressed, we will advise you accordingly.

Very truly yours,



Lawrence T. Buening, Jr.  
Executive Director

*KANSAS STATE BOARD OF HEALING ARTS*

*POLICY STATEMENT NO. 99-01*

*Subject: Time Standards for Investigation Process*

*Date: August 14, 1999*

*Preamble:* The Board recognizes that it has a duty to protect the public from the unprofessional, improper, unauthorized and unqualified practice of the healing arts, while balancing the interests of all persons involved in the regulation of the healing arts. In addressing this dual responsibility, the Board adopts time standards to be applied to investigations initiated after adoption of this policy statement. By adopting this policy statement, the Board does not confer any legal right upon any person who files a complaint or upon any person who is a subject of an investigation. These time standards are intended to apply to all but extraordinary investigations, as determined by the Disciplinary Counsel.

*IT IS RESOLVED* that the following time standards for processing all but extraordinary investigations, as determined by Disciplinary Counsel, are adopted as the policy of the Board of Healing Arts:

1. **Receipt of Complaint**

In the majority of cases, an acknowledgment letter shall be sent by the Complaint Coordinator to the complainant within one week, and in the remaining cases within two weeks.

2. **Complaint to Complaint Committee**

A Complaint Committee should be held weekly. This step happens in the same time period during which the acknowledgment letter is sent.

2-17  
Attachment 1



**3. Case File Opened, Given to Investigator**

In the majority of cases, a case file shall be opened and forwarded to an investigator within one week following the Complaint Committee at which the case is assigned, and in the remaining cases within two weeks.

**4. Letter to Licensee Informing of Complaint, Requesting Response, or other first contact, as appropriate**

In the majority of cases, the assigned investigator shall make written or other appropriate contact with the respondent within 30 days after the case file is received, and in the remaining cases within 60 days.

**5. Subpoena Patient Records, Other Documents, as appropriate**

In the majority of cases, the assigned investigator shall serve appropriate subpoenas for records within 60 days after the case file is received, and in the remaining cases within 90 days.

**6. Complete Investigation**

Investigation of the majority of cases, including witness interviews, inspection of premises, obtaining documents, analyzing information and records, writing interim reports, and other related activities, as deemed appropriate by investigator and supervisor, shall be completed within six months after the investigator receives the case file, and in the remaining cases within nine months.

**7. File Final Report with Disciplinary Counsel**

In the majority of cases, a Final Report shall be filed within six months after the investigator receives the case file, and in the remaining cases, within twelve months.

**8. Submit Case to Review Committee or Disciplinary Panel**

Within 90 days after final report is submitted, Disciplinary Counsel shall present the case to the appropriate Review Committee, or if the case is not appropriate for Review Committee

consideration, Litigation Counsel shall present the case to the Disciplinary Panel.

**9. Reviewed Cases to Disciplinary Panel**

Litigation Counsel shall present cases considered by the Review Committee at the next Disciplinary Panel Meeting following date of authorization, where possible.

*APPROVED* by the Kansas State Board of Healing Arts this Fourteenth Day of August, 1999.

---

Donald B. Bletz, M.D.  
President

# KANSAS STATE BOARD OF HEALING ARTS

## POLICY STATEMENT NO. 07-

**Subject:** Time Standards for Investigation Process

**DRAFT**

**Date:** February \_\_\_\_, 2007

**This Policy Statement replaces Policy Statement No. 99-01.**

*Preamble:* The Board recognizes that it has a duty to protect the public from the unprofessional, improper, unauthorized and unqualified practice of the healing arts, while balancing the interests of all persons involved in the regulation of the healing arts. In addressing the dual responsibility, the Board adopts time standards to be applied to investigations initiated after adoption of this policy statement. By adopting this policy statement, the Board does not confer any legal right upon any person who files a complaint or upon any person who is a subject of an investigation. These time standards are intended to apply to all but extraordinary investigations, as determined by the Disciplinary Counsel.

*IT IS RESOLVED* that the following time standards for processing all but extraordinary investigations, as determined by the Disciplinary Counsel, are adopted as the policy of the Board of Healing Arts:

**1. Receipt of Complaint**

In the majority of complaints, the Complaint Coordinator will complete all tasks of screening and scanning each complaint and provide the complaint

**DRAFT**

2-20  
ATTACHMENT 2

plus agency background profile to the Disciplinary Counsel, by the Monday following receipt of the complaint, or Tuesday, if Monday is a holiday. In the remaining complaints this should be done by the second Monday following receipt of the complaint.

**2. Review by Disciplinary Counsel**

Disciplinary Counsel will review each complaint within two weeks of the Monday they are provided by the Complaint Coordinator. During this review, Disciplinary Counsel will decide to open an investigation, forward the information to the appropriate person or agency, profile the information, obtain further information, or other appropriate action.

**3. Emergency Complaints**

Complaint Coordinator or designee in the event of Complaint Coordinator's absence will screen every complaint within one or two days of receipt and bring all emergency complaints to the attention of the Disciplinary Counsel or, in her absence, the Litigation Counsel, within the same day or two for immediate review and decision.

**4. Opening Letter Sent, Case File Opened, Given to Investigator**

In the majority of cases, the Disciplinary Counsel's designee shall send a letter to the complainant advising the outcome of the review of the complaint, and if assigned for investigation, a case file shall be opened and forwarded to an investigator within one week following the review by the Disciplinary Counsel, and in the remaining cases within two weeks.

DRAFT

5. **Letter to Licensee Informing of Complaint, Requesting Response, or other first contact as appropriate**

In the majority of cases, the assigned investigator shall make written or other appropriate contact with the respondent within 30 days after the case file is received, and in the remaining cases within 60 days, unless a good investigative reason exists not to contact Licensee until later in the investigation.

6. **Subpoena Patient Records, Other Documents, as appropriate**

In the majority of cases, the assigned investigator shall serve appropriate subpoenas for records within 60 days after the case file is received and in the remaining cases within 90 days.

7. **Complete Investigation**

Investigation of the majority of cases, including witness interviews, inspection of premises, obtaining documents, analyzing information and records, writing interim reports, and other related activities, as deemed appropriate by investigator and supervisor, shall be completed within four months after the investigator receives the case file, and in the remaining cases within six months.

8. **File Final Report with Disciplinary Counsel**

In the majority of cases, a Final Report shall be submitted within six months after the investigator receives the case file, and in the remaining cases, within nine months.

9. **Submit Case to Review Committee or Disciplinary Panel**

DRAFT

2-22

DRAFT

Within 90 days after final report is submitted, Disciplinary Counsel shall present the case to the appropriate Review Committee. If the case is appropriate for the Disciplinary Panel instead of the Review Committee, Disciplinary Counsel shall forward the case to Litigation Counsel within 30 days after the final report is submitted. Litigation Counsel shall present the case to the next available Disciplinary Panel.

*APPROVED* by the Kansas State Board of Healing Arts this \_\_\_\_\_ day of February, 2007.

\_\_\_\_\_

Carolina Soria, D.O., President

DRAFT

**From:** Lawrence T. Buening [lbuening@ink.org]  
**Sent:** Tuesday, December 05, 2006 2:08 PM  
**To:** 'Shelly Wakeman'; 'Kelli Stevens'; 'Mark Stafford'  
**Subject:** Board reports

I would be interested in knowing what of the below listed reports we can generate at least on an annual basis:

1. Number of licenses denied in the past year?
2. Number of licensees about whom a complaint or other adverse item of information was received in the past year
3. Number of complaints/other adverse items of information received in the past year from each source category--i.e. hospitals, complain forms, malpractice petitions, etc.
4. Number of complaints/other sources of information received in the past year of each type--i.e. sexual abuse, impairment, prescribing, criminal conviction, etc.
5. Number of complaints/other items opened for investigation
6. Number of complaints/other items not opened for investigation
7. Number of complaints opened for investigation arising from each source category and type of complaint
8. Number of cases investigated that were found not to warrant action by the Board by: (1) staff ; (2) review/advisory committees; (3) disciplinary panel and (4) Board as a whole
9. Average length of time from the opening of a case to the completion of the investigation
10. Average length of time from the opening of a case to the completion of the investigation based upon type of case
11. Average length of time from the opening of a case to the completion of the investigation for each investigator
12. Average length of time from the opening of a case to final action
13. Average length of time from the opening of a case to final action based on the type of case
14. The number of cases opened in the past year resulting in disciplinary action
15. The number of cases opened in the past year resulting in non-disciplinary educational/monitoring action
16. The number of disciplinary actions, by category (eg. revocation, suspension, etc.) taken by the Board in the past year
17. The number of disciplinary actions taken in the past years stemming from each source of complaint/other item.
18. The number of disciplinary actions taken in the past year based on type of complaint
19. The number of non-disciplinary actions taken from each source of complaint
20. The number of cases settled through consent agreement
21. The number of cases resolved by conference hearing, summary hearing and formal hearing, respectively
22. The number of actions taken or instigated to halt the unlawful practice of a profession
23. Disciplinary actions based upon whether licensee was a resident or nonresident of Kansas

There may also be some others you will think of like number of applicants allowed to withdraw their application as opposed to going to a contested hearing. I'd like to know first what it is we can now generate. Secondly, I'd like your opinions on which of these reports might provide some assistance in the performance of the Board's disciplinary functions. Thirdly, if there are reports that would be helpful, but we cannot generate, now would be the time to get these developed.

Anyway, please let me know your thoughts.

Lawrence T. Buening, Jr.  
 Executive Director  
 Kansas State Board of Healing Arts  
 785-296-3680

ATTACHMENT 3

2-24

1/11/2007

SENATE BILL NO. \_\_\_\_\_

By

AN ACT concerning the state board of healing arts; fingerprinting and criminal history record checks.

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

Section 1. (a) As part of an application for or reinstatement of any license, registration, permit or certificate or in connection with any investigation of any holder of a license, registration, permit or certificate, the state board of healing arts may require a person to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of criminal history in this state or other jurisdiction. The state board of healing arts is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The state board of healing arts may use the information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person to be issued or to maintain a license, registration, permit or certificate.

(b) Local and state law enforcement officers and agencies shall assist the state board of healing arts in taking and processing of fingerprints of applicants for and holders of any license, registration, permit or certificate and shall release all records of adult and juvenile convictions, adjudications, expungements and nonconvictions to the state board of healing arts.

(c) The state board of healing arts may fix and collect a fee as may be required by the board in an amount necessary to reimburse the board for the cost of fingerprinting and the criminal history

2-25  
ATTACHMENT 4



record check. Any moneys collected under this subsection shall be deposited in the state treasury and credited to the healing arts fee fund.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

## PLEASE NOTE

ALL APPLICANTS for licensure by endorsement or examination in the State of Kansas, must COMPLETE THIS QUERY AND MAIL THE PROFILE DIRECTLY TO THE BOARD UNOPENED.

To obtain a self-query Data Bank form, please go to the National Practitioner Databank web page at <http://www.npdb-hipdb.com/queries.html> and complete the self-query form online. Follow the self-query instructions carefully. After completing the self-query form, you must print a hard copy and have it notarized. Please note that the date of your signature and notary date must be the same, otherwise the self-query form will be returned to you – this will delay the processing of your full license application. The self-query fee is listed on the form and payable by credit card only DO NOT SEND A CHECK OR MONEY ORDER. The Data Bank accepts the following credit cards only: Visa, MasterCard or Discover. Please remember to include your credit card number and expiration date.

**WHEN YOU RECEIVE YOUR DATABANK PROFILE, DO NOT OPEN THE ENVELOPE. YOU MUST MAIL IT DIRECTLY TO THE BOARD. IF THE DATA BANK ENVELOPE IS OPENED, IT WILL BE RETURNED TO YOU AND YOU WILL BE REQUIRED TO REPEAT THE PROCESS AND PAY AN ADDITIONAL FEE OF \$10.00. PROCESSING TIME FOR A NEW DATE BANK PROFILE IS 2 TO 4 WEEKS.**

If you have any questions, you may call the National Practitioner Data Bank at (800) 767-6732.

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ATTACHMENT 5

# SURVEY OF PROFESSIONS REGULATED BY THE STATE BOARD OF HEALING ARTS

**Return Survey To:** Kansas State Board of Healing Arts  
 Attn: Cathy Brown, Executive Assistant  
 235 South Topeka Blvd., Topeka, Kansas 66603

The statutory purpose and mission of the Board is to protect the health, safety and welfare of the citizens of Kansas against unprofessional, improper, unauthorized and unqualified practice in the professions regulated by the Board. The Board performs its regulatory function of protecting the public by authorizing only those persons who meet and maintain certain qualifications to engage in these professions. This is accomplished by use of processes for issuing new and renewal licenses to qualified applicants and for the enforcement of compliance with established requirements and standards. It is not the function or duty of the Board to represent or advocate for any of the professions regulated by the Board. To determine how its functions are being performed, the Board has requested that the following survey be sent to all professional associations representing the professions regulated by the Board and the members of each advisory council to the Board. **Please complete and return this survey to the address above by January 15, 2007.** The results will be placed on the Board agenda for review at its meeting on February 9, 2007.

1) Profession (please check one)

- |                              |                              |                                   |                             |
|------------------------------|------------------------------|-----------------------------------|-----------------------------|
| <input type="checkbox"/> MD  | <input type="checkbox"/> PT  | <input type="checkbox"/> RT       | <input type="checkbox"/> PA |
| <input type="checkbox"/> DO  | <input type="checkbox"/> PTA | <input type="checkbox"/> Rad Tech |                             |
| <input type="checkbox"/> DC  | <input type="checkbox"/> OT  | <input type="checkbox"/> AT       |                             |
| <input type="checkbox"/> DPM | <input type="checkbox"/> OTA | <input type="checkbox"/> ND       |                             |

2) Type of individual:

- Advisory Council Member
- Professional Association Staff Member
- Professional Association Officer
- Professional Association Member
- Other (please specify) \_\_\_\_\_

3) Please indicate your satisfaction for the following areas:

Highly Satisfied	Neutral	Very Dissatisfied	No Opinion
5	4      3	2      1	0

\_\_\_ A. Processing, reviewing and approving of new applications.  
 Comments \_\_\_\_\_

\_\_\_ B. Processing of annual renewals.  
 Comments \_\_\_\_\_

\_\_\_ C. Investigating complaints against licensees.  
 Comments \_\_\_\_\_

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 ATTACHMENT 6

\_\_\_ D. Prosecuting alleged violations of the practice act.  
Comments \_\_\_\_\_  
\_\_\_\_\_

\_\_\_ E. Sanctions taken by the Board against licensees in violation of practice act.  
Comments \_\_\_\_\_  
\_\_\_\_\_

\_\_\_ F. Monitoring compliance by sanctioned licensees with Board orders and impaired providers.  
Comments \_\_\_\_\_  
\_\_\_\_\_

\_\_\_ G. Providing education and interpretation to licensees and public of the practice act.  
Comments \_\_\_\_\_  
\_\_\_\_\_

\_\_\_ H. Amount of fees for initial licensure and annual renewal of license.  
Comments \_\_\_\_\_  
\_\_\_\_\_

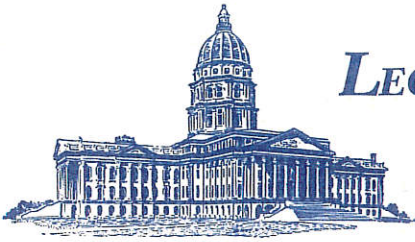
\_\_\_ I. Board's legislative activity.  
Comments \_\_\_\_\_  
\_\_\_\_\_

\_\_\_ J. Please provide any additional comments about the above items or any other items of concern.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4) What interests of your profession are not being adequately addressed by the Board?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5) Do you suggest any changes in the composition of the state entity regulating your profession. If yes, please specify your suggested changes?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_



LEGISLATURE OF KANSAS  
**LEGISLATIVE DIVISION OF POST AUDIT**

800 SOUTHWEST JACKSON STREET, SUITE 1200  
TOPEKA, KANSAS 66612-2212  
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FAX (785) 296-4482  
E-MAIL: [lpa@lpa.state.ks.us](mailto:lpa@lpa.state.ks.us)  
[www.kslegislature.org/postaudit](http://www.kslegislature.org/postaudit)

**Information for the House Appropriations Committee  
Regarding the Board of Healing Arts**  
Cindy Lash, Audit Manager  
March 20, 2007

Madam Chair and members of the Committee, thank you for allowing me to appear before you today. In October 2006 we issued an audit on the Board of healing Arts that looked at three areas: complaint handling, background investigations, and composition of the Board. Today I want to talk about just the complaint handling process, because that is the part of the audit that raised questions about staffing.

We looked at the complaint handling system from receipt of complaints through enforcement. When we assess a complaint handling system, we're looking for certain things:

Receipt/Screening

- Does the agency have a system that makes it easy for the public to submit a complaint?
- Do they screen out complaints that on their face have no merit or are outside the agency's jurisdiction?
- Do they identify and prioritize complaints that need action?
- Do they track complaints to ensure they're not slipping through the cracks?

Investigation

- Do they investigate as needed to determine whether a problem exists and if so, how serious it is
- Are their investigators trained
- Are investigations conducted in a timely, efficient manner
- Are investigations tracked?

Enforcement

- Do they have a graduated, equitable list of sanctions
- Do they have an appeals process?
- Do they take appropriate, consistent, and timely enforcement actions?

To make these types of judgments we looked at

- 30 complaints that were screened out (not assigned for investigation)
- 30 completed investigations
- 3 cases that had been open more than 3 years

In talking with you today, it's important to note that the staff of the Board did many things well. For instance the complaint investigations we reviewed were thorough, and disciplinary actions seemed reasonable. What I want to talk about are the things that aren't being done.

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ATTACHMENT 3

Issues related to Screening Complaints

*Since July 2005, it has been Board policy not to investigate allegations of substandard patient care until there's a historical pattern, which Board staff defines as the third complaint in three years. At that time, all three complaints are then assigned to be investigated. Prior to July 2005, they investigated all complaints of substandard care, but said they changed this because:*

- They had too few resources to adequately investigate all the complaints
- State law says the Board can only take action against a licensee when there are repeated instances or a pattern of practice that is substandard.

We think this delay means it is less likely complaints will be substantiated, even if true.

*Of the 30 complaints we looked at that were screened out, 4 1<sup>st</sup> time allegations of substandard care concerned us, as did two other complaints.*

*Only one person is assigned to review and screen complaints, and only about 2/3 of the complaints we looked (60 in all) were screened in a timely manner.*

Issues related to Investigating Complaints

*Board staff don't adequately track the progress of investigations. At the time of the audit, the supervisor was doing only an annual review of open investigations.*

*Of 30 closed cases, all but two were completed within the Board's timeline.*

*However, at the time of the audit, the Board had 533 open cases, 75 of which had been open 3 or more years. We looked at 3 of the older cases. One simply didn't get closed when it should have, but two raised serious concerns in our minds because the licensee retained an active license for years after an investigation showed problems. In both cases, after the investigation was completed, a review committee recommended further review by an expert witness, which never happened. The cases simply sat open.*

We made recommendations to the Board that it assign sufficient staff resources to:

- Review and screen complaints on a timely basis
- Investigate allegations of substandard patient care when they are received
- Move from an annual review of investigation status to a quarterly review
- Actively track the progress of open cases



March 19, 2007

The Honorable Sharon Schwartz  
Chair, House Appropriations Committee  
517S, Statehouse  
Topeka, Kansas

Dear Representative Schwartz:

It is respectfully requested that this letter be distributed to members of the House Appropriations Committee during discussion of the Board of Healing Arts budget.

The Kansas Medical Society and the Kansas Association of Osteopathic Medicine wish to express our support for the FY 2008 and 2009 Board of Healing Arts budget as recommended by the Governor and endorsed by the Senate. We are concerned as a result of the recommendations made by the House Education Budget Committee.

We strongly support the Board's request for additional positions and associated expenditure authority. The Board's capacity to perform its mission will be impaired without the additional staff and related funding.

Over the years the Legislature has added numerous other health care provider groups to the Board's regulatory responsibilities, but has been reluctant to increase the resources available to the agency. A number of operational problems, particularly backlogs, were identified by the Legislative Post Auditor as a result of an audit performed last year. And several members of the Legislature have expressed dissatisfaction because of the Board's inability to investigate and discipline licensees within an acceptable timeframe.

As you know, the Board's agency operations are funded entirely from the Healing Arts Fee Fund. In other words, our members finance the cost of regulating all Kansas physicians. Our members willingly pay the licensure fees necessary to promote acceptable standards of medical practice in this State.

For the above reasons, we urge the House Appropriations Committee to concur with the Governor and the Senate in regard to the Board of Healing Arts budget. Thank you.

Respectfully yours,

Jerry Slaughter  
Executive Director  
Kansas Medical Society

Charles Wheelen  
Executive Director  
Kansas Association of

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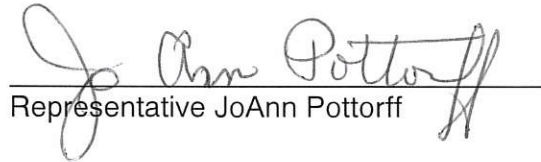
House Appropriations Subcommittee Report on KPERS Issues

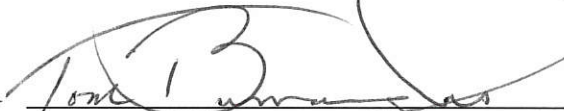
March 16, 2007

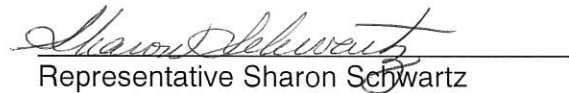
  
\_\_\_\_\_  
Representative Lee Tafanelli, Chair

  
\_\_\_\_\_  
Representative Pat George

  
\_\_\_\_\_  
Representative Barbara Ballard

  
\_\_\_\_\_  
Representative JoAnn Pottorff

  
\_\_\_\_\_  
Representative Tom Burroughs

  
\_\_\_\_\_  
Representative Sharon Schwartz

  
\_\_\_\_\_  
Representative Bill Feuerborn

HOUSE APPROPRIATIONS

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ATTACHMENT 5



## House Appropriations Subcommittee Report on KPERS Issues

The Subcommittee held meetings on March 8, 2007, with a hearing on HB 2151, and on March 14, 2007, with hearings on HB 2076, HB 2077, HB 2078, and HB 2238. At its meeting of March 16, 2007, the Subcommittee review the proposed bills and prepared its report and recommendations for the House Committee on Appropriations.

### Review of Proposed Bills

HB 2076 increases the annual earnings limitation from \$10,000 to \$20,000 beginning in calendar year 2007 for Tier II members of the Kansas Police and Firemen's (KP&F) Retirement System who are disabled and receiving disability payments. Fiscal Note: Additional KP&F Tier II annual disability benefits payments of approximately \$160,000.

HB 2077 includes two technical amendments for the Kansas Public Employees Retirement System (KPERS). First, the bill would provide that members retain the funds from improper withdrawals and forfeit service credit related to the withdrawal. Members would have the option of reinvesting withdrawn funds by purchasing the withdrawn service. Second, the bill would permit members retiring with credit from two different plans to access any funds left in one plan during the month immediately following retirement from the other plan. Fiscal Note: No cost.

HB 2078 authorizes KPERS to implement provisions of the federal Pension Protection Act of 2006 for federal tax-free distributions from pension payments to pay health and long-term care insurance premiums. Fiscal Note: Would benefit approximately 5,000 to 10,000 qualified retired public safety officers in Kansas. One-time costs of \$442,000 for information system changes and estimated annual operating costs of \$35,000 and 1.0 FTE new position for benefits processing.

HB 2151 increases the maximum retirement benefit for KP&F members from 80 to 100 percent of final average salary and provides for continued member contributions equal to 7.0 percent of compensation until that maximum is reached. Fiscal Note: State – Additional unfunded actuarial liability of \$1.1 to \$1.4 million, with additional first year employer contributions of \$63,000 to \$90,000. Local - Additional unfunded actuarial liability of \$8.9 to \$11.6 million, with additional first year employer contributions of \$487,000 to \$695,000.

HB 2238 authorizes membership for future service only in KP&F Retirement System for certain firefighters serving the 190<sup>th</sup> Air Refueling Wing, Kansas Air National Guard, within the Adjutant General's Department, effective July 1, 2007. Fiscal Note: FY 2008 – 5.95 percent of covered payroll (approximately \$44,150). FY 2009 – 5.89 percent of covered payroll (approximately \$45,000).

## Hearings on Bills

No one appeared in opposition to HB 2076, HB 2077 and HB 2088 that were recommended for introduction by the Joint Committee on Pensions, Investments and Benefits at the request of the Kansas Public Employees (KPERS) Board of Trustees. Proponents of HB 2076 included representatives of the Kansas Association of Chiefs of Police, the Kansas State Council of Firefighters, the Kansas Peace Officers Association, and KPERS. Appearing in support of HB 2077 was the KPERS Executive Director. Proponents of HB 2078 included representatives of the Kansas Association of Chiefs of Police, the Kansas State Council of Firefighters, and KPERS. No amendments were proposed for the three bills during Subcommittee hearings.

HB 2151 proponents included representatives of the Sedgwick County Sheriff's Office, International Association of Firefighters Local 64 (Kansas City), and the Kansas Association of Chiefs of Police. No amendments were proposed and no one appeared in opposition to the bill.

HB 2238 proponents included Representative Ann Mah and representatives of the Adjutant General's Office, the Kansas Air National Guard, and the Kansas State Council of Firefighters. A representative of the Kansas Association of Public Employees (KAPE) requested an amendment to the bill that would add certified law enforcement officers in the State Gaming Agency to membership in KP&F. An enforcement agent from the State Gaming Agency spoke in favor of the KAPE amendment to authorize KP&F membership. No one appeared in opposition.

## Subcommittee Consideration of Bills

The Subcommittee at its meeting on March 16, 2007 discussed bills previously heard:

HB 2076 would increase the KP&F Tier I annual cap of \$20,000 on income earned while disabled, after which one dollar is reduced for every two dollars earned above that cap. Subcommittee members discussed whether the threshold ought to be higher. KPERS staff reported that the average annual earnings for disabled members currently is \$18,000. No change in the new cap is recommended by the Subcommittee.

HB 2077 includes two technical amendments. Representative Feuerborn discussed the working after retirement provisions passed by the 2006 Legislature and indicated an amendment in this bill could clarify that retired KPERS members were not intended to pay KPERS contributions by having their compensation reduced by the employer. Following discussion, no action was taken by the Subcommittee on the working after retirement issue. Background information was requested on the working after retirement issue for discussion in the House Committee on Appropriations. No change in the bill is recommended.

HB 2078 would reduce federal income tax for retired public safety officers who choose to have KPERS pay health and long-term care insurance premiums. No change in the bill is recommended.

HB 2151 increases the maximum KP&F retirement benefit to 100 percent of final average salary. The Chair indicated he felt the bill needed further study during the 2007 Interim. Subcommittee discussion followed and on a 4-2 vote the bill was recommended for interim study. The bill would remain in the Subcommittee.

HB 2238 concerns KP&F members for certain firefighters. Membership in KP&F was requested by enforcement agents at the State Gaming Agency as an amendment to this bill. Representative Feuerborn asked to add Fire Inspectors in the State Fire Marshall's Office to be covered by KP&F. He indicated that Fire Investigators in the State Fire Marshall's Office were added to KP&F several years ago. Subcommittee discussion followed and further study on who in the different state agencies should be eligible for KP&F membership was recommended. The 2007 Interim study by the Joint Committee on Pensions, Investments and Benefits is requested to review public safety officers in state agencies who might be eligible for KP&F membership, the fiscal note, and the related issued of coverage by Social Security for public safety officers. The bill would remain in the Subcommittee.

### **House Subcommittee Recommendation**

The Subcommittee recommends two bills be studied during the 2007 Interim by the Joint Committee on Pensions, Investments and Benefits, with a report to be made available during the 2008 Session. The bills recommended for interim study include:

HB 2151 increasing the KP&F maximum retirement benefit.

HB 2238 adding state employees eligible for KP&F membership.

The Subcommittee recommends three bills favorable as introduced. The bills recommended for consideration by the House Committee on Appropriations include:

HB 2076 increasing the earnings cap for disabled KP&F members.

HB 2077 making two KPERS Board of Trustees technical amendments.

HB 2078 implementing provisions of the federal Pension Protection Act of 2006 to allow tax-free distributions for retired public safety officers.

## KPERS – WORKING AFTER RETIREMENT

2006 House Sub. for SB 270 included items related to retirement benefits and contributions of the Kansas Public Employees Retirement System (KPERS), working after retirement, early retirement plans, and technical changes in several retirement plans, including KPERS, the Kansas Police and Firemen's Retirement System and the Kansas Retirement System for Judges. Included in the bill were the following items related specifically to working after retirement:

1. **Working After Retirement – KPERS Cap.** One provision raised the working after retirement salary limitation from \$15,000 to \$20,000 for retired KPERS members who return to work after retirement for the same participating employer from which they retired. There is no salary limitation if a retiree returns to work for a different KPERS participating employer. For local elected officials and legislators who retire from a KPERS participating employer while serving in elected office and participating in KPERS as an elected official with a different participating employer, the bill raises the salary limitation from \$15,000 to \$20,000 per year while serving in public office and drawing a KPERS retirement benefit. The fiscal note indicated that the actuarial impact on KPERS would likely result in some additional unfunded actuarial liability, but that the added cost was not expected to be significant.
2. **Additional KPERS Contributions.** Another provision required any KPERS participating employer who hires a KPERS retired member to pay the KPERS actuarially-determined employer and employee contributions on behalf of the retired member. There is no payment required if a KPERS retiree returns to work for the same KPERS participating employer that employed the individual before retirement. The fiscal note indicated that this provision would increase contributions to KPERS, with the following FY 2007 (CY 2007 for the local group) rates attributed the members of the three principal KPERS groups of participating employers: Participating employers from all groups would pay the statutory employee rate of 4.0 percent. For FY 2007, those employers in the state group would pay an employer rate of 5.84 percent, the school group 9.75 percent, and the local group 7.69 percent.
3. **Working After Retirement – School Teachers.** A third provision in the bill changed the statutory definition of a professional employee to exclude, beginning in the 2006-2007 school year, any person who retires from school employment as a KPERS member, notwithstanding any agreement on terms and conditions of professional service between a board of education and an exclusive representative of professional employees. Another provision in the bill changed the statutory definition of teacher to exclude, beginning in the 2006-2007 school year, any person who retires from school employment as a KPERS member. No fiscal note was available.

### Subsequent Developments

Questions have been raised during the 2007 Session about the impact of the 2006 legislation and whether certain consequences were intended. Also questions have been raised about the process of developing that legislation and the public transparency of the process. Attached is the documentary history of the legislation.

## 2006 KPERS Legislation History

### Stage 1:

2006 KPERS legislation formulation

House Appropriations Subcommittee on KPERS Meeting of February 7, 2006

House Appropriations Subcommittee on KPERS Meeting of February 10, 2006

House Appropriations Subcommittee on KPERS Meeting of February 17, 2006

House Appropriations Subcommittee on KPERS Meeting of February 24, 2006

February 24, 2006 House Appropriations Subcommittee on KPERS Report approved

House Appropriations Committee Meeting of March 3, 2006

HB 2996 KPERS Retirement and Pensions recommended for introduction

### Stage 2:

House Appropriations Committee Meeting of March 13, 2006

2006 HB 2996 KPERS Retirement and Pensions public hearing

House Appropriations Committee Meeting of March 21, 2006

HB 2996 be amended into SB 270 and reported as amended

House Committee of the Whole on March 23, 2006

SB 270 be passed as further amended

House passed 121-0 on March 24, 2006

House and Senate Conference Committee appointed on March 24, 2006

Conference Committee: SB 270 Report as agreed on March 28, 2006

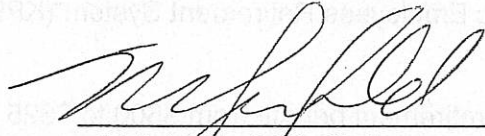
House passed 119-0 on March 30, 2006

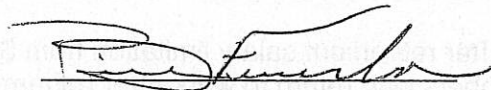
Senate passed 37-3 on March 31, 2006


Governor approved on April 18, 2006

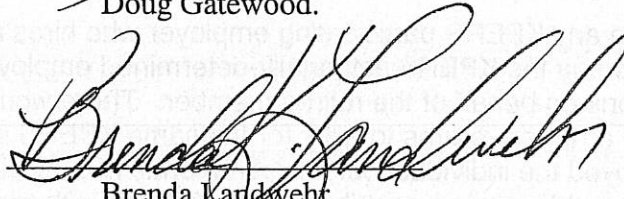
HOUSE APPROPRIATIONS RETIREMENT SUBCOMMITTEE

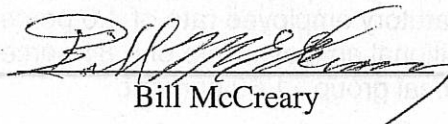
February 24, 2006

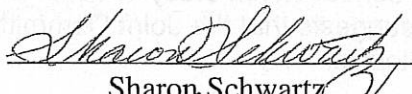
  
Melvin Neufeld, Chairperson

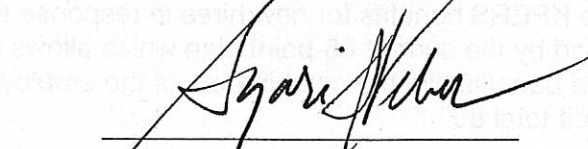
  
Bill Feuerborn

  
Doug Gatewood.

  
Brenda Landwehr

  
Bill McCreary

  
Sharon Schwartz

  
Shari Weber

## House Appropriations Subcommittee Report

February 24, 2006

The Subcommittee recommends introduction of a bill that would include the following items related to the Kansas Public Employees Retirement System (KPERS):

1. Increase the minimum retirement benefit from \$500 to \$625 beginning July 1, 2006, and to \$750 beginning July 1, 2007, for retired members of the Kansas School Retirement System with at least 20 years of service credit. The fiscal note for this benefit enhancement is \$300,000 from the State General Fund.
2. Raise the working after retirement salary limitation from \$15,000 to \$20,000 for retired KPERS members who return to work after retirement for the same participating employer from whom they retired. There is no salary limitation if a retiree returns to work for a different KPERS participating employer. The fiscal note suggests that the actuarial impact on KPERS will likely result in some additional unfunded actuarial liability, but that the added cost is not expected to be significant.
3. Require any KPERS participating employer who hires a KPERS retired member to pay the KPERS actuarially-determined employer and employee contributions on behalf of the retired member. There would be no payment required if a retiree returns to work for the same KPERS participating employer that employed the individual before retirement. The fiscal note indicates that this provision would increase contributions to KPERS, with the following FY 2007 (CY 2007 for the local group) rates attributed the members of the three principal KPERS groups of participating employers: Participating employers from all groups would pay the statutory employee rate of 4.0 percent. Those in the state group would pay an additional employer rate of 9.84 percent, the school group 13.75 percent, and the local group 11.69 percent.

The Subcommittee recommends interim study of several topics which were brought to its attention. The Subcommittee suggests that the Joint Committee on Pensions, Investments and Benefits review the following topics:

1. Restructuring the KPERS benefits for new hires in response to long-term funding issues caused by the current 85-point plan which allows employees to retire with unreduced benefits when a combination of the employee's age and years of service credit total 85.
2. Monitoring the implementation of new rules by the Governmental Accounting Standards Board, namely new standards 43 and 45 which address other post-retirement benefits reporting for public entities, including school districts,

5-8  
1-2

community colleges, technical colleges, and other municipalities. Other postemployment benefits (OPEB) are postemployment benefits other than pensions. OPEB generally takes the form of health insurance and dental, vision, prescription, or other healthcare benefits provided to eligible retirees, including in some cases their beneficiaries. It may also include some types of life insurance, legal services, and other benefits. Most governmental entities do not report information about the nature and size of their long-term financial obligations and commitments related to OPEB. Consequently, the readers of financial statements, including the public, have incomplete information with which to assess the cost of public services and to analyze the financial position and long-run financial health of a governmental entity. The purpose of the new standards, GASB Statement No. 43, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*, and GASB Statement No. 45, *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions*, is to address these shortcomings.

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MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 9:00 A.M. on March 3, 2006 in Room 514-S of the Capitol.

All members were present except:

Representative Joe McLeland- excused  
Representative Jerry Henry- excused  
Representative Tom Sawyer- excused

Committee staff present:

Alan Conroy, Legislative Research Department  
J. G. Scott, Legislative Research Department  
Becky Krahl, Legislative Research Department  
Matt Spurgin, Legislative Research Department  
Amy Deckard, Legislative Research Department  
Audrey Dunkel, Legislative Research Department  
Julian Efir, Legislative Research Department  
Amy VanHouse, Legislative Research Department  
Jim Wilson, Revisor of Statutes  
Mike Corrigan, Revisor of Statutes  
Nikki Feuerborn, Administrative Assistant  
Shirley Jepson, Committee Secretary

Conferees appearing before the committee:

Joe Lubarsky, BDO Seidman, LLP  
Jim Klausman, Midwest Health Management  
Cliff Fischer, Medical Lodges, Inc.  
Cindy Luxem, Kansas Healthcare Association  
Debra Zehr, Kansas Association of Homes & Services for the Aging  
Pam Bachman, Administrator, Eastridge Centralia  
Tom Church, CEO, Catholic Care Center  
Tom Williams, CEO, Asbury Park, Newton

Others attending:

See attached list.

- Attachment 1 Retirement Subcommittee report on Kansas Public Employees Retirement System (KPERs)
- Attachment 2 Budget Committee report on Governmental Ethics Commission
- Attachment 3 Budget Committee report on Department of Agriculture
- Attachment 4 Budget Committee report on Animal Health Department
- Attachment 5 Budget Committee report on Kansas State Fair
- Attachment 6 Testimony on **HB 2538** by Joseph Lubarsky, BDO Seidman, LLP
- Attachment 7 Testimony on **HB 2538** by Jim Klausman, Midwest Health Management
- Attachment 8 Testimony on **HB 2538** by Cliff Fischer, Medical Lodges, Inc.
- Attachment 9 Testimony on **HB 2538** by Cindy Luxem, Kansas Hospital Association
- Attachment 10 Testimony on **HB 2538** by Debra Zehr, Kansas Association of Homes and Services for the Aging
- Attachment 11 Testimony on **HB 2538** by Pam Bachman, Administrator, Eastridge Skilled Nursing Facility
- Attachment 12 Testimony on **HB 2538** by Tom Williams, Chief Executive officer for Asbury Park
- Attachment 13 Testimony on **HB 2538** by Tom Church, CEO, Catholic Care Center

Representative Weber moved to introduce legislation regarding a reorganization plan for K-12 administration. The motion was seconded by Representative Hutchins. Motion carried.

✓ | Julian Efir, Legislative Research Department, presented a report from the Retirement Subcommittee on Kansas Public Employees Retirement System (KPERs) (Attachment 1).

CONTINUATION SHEET

MINUTES OF THE House Appropriations Committee at 9:00 A.M. on March 3, 2006 in Room 514-S of the Capitol.

✓ | Representative Feuerborn moved to introduce legislation as proposed by the Retirement Subcommittee relating to the Kansas Public Employees Retirement System (KPERs). The motion was seconded by Representative Landwehr. Motion carried.

Representative Pottorff, Chair of the General Government and Commerce Budget Committee, presented the Budget Committee report on the Governor's budget recommendation for the Governmental Ethics Commission for FY 2006 and moved for the adoption of the Budget Committee recommendation for FY 2006 (Attachment 2). The motion was seconded by Representative Yoder. Motion carried.

Representative Pottorff, Chair of the General Government and Commerce Budget Committee, presented the Budget Committee report on the Governor's budget recommendation for the Governmental Ethics Commission for FY 2007 and moved for the adoption of the Budget Committee recommendation for FY 2007 (Attachment 2). The motion was seconded by Representative Lane.

Representative Landwehr moved to insert language into the Budget Committee report on the Governmental Ethics Commission for FY 2007 to indicate that the Committee highly recommends the agency develop a program to allow legislators to file reports electronically. The motion was seconded by Representative Lane. Motion carried.

Representative Pottorff renewed the motion to adopt the Budget Committee report on Governmental Ethics Commission for FY 2007 as amended. The motion was seconded by Representative Lane. Motion carried.

Representative Schwartz, Chair of the Agriculture and Natural Resources Budget Committee, presented the Budget Committee report on the Governor's budget recommendation for the Department of Agriculture for FY 2006 and moved for the adoption of the Budget Committee recommendation for FY 2006 (Attachment 3). The motion was seconded by Representative Williams. Motion carried.

Representative Schwartz, Chair of the Agriculture and Natural Resources Budget Committee, presented the Budget Committee report on the Governor's budget recommendation for the Department of Agriculture for FY 2007 and moved for the adoption of the Budget Committee recommendation for FY 2007 (Attachment 3). The motion was seconded by Representative Williams. Motion carried.

Representative Powell, member of the Agriculture and Natural Resources Budget Committee, presented the Budget Committee report on the Governor's budget recommendation for the Animal Health Department for FY 2006 and moved for the adoption of the Budget Committee recommendation for FY 2006 (Attachment 4). The motion was seconded by Representative Williams. Motion carried.

Representative Landwehr moved to amend the Budget Committee report by deleting Item No. 1 concerning animal identification readers on vehicles owned by out of state business or individuals, requesting that the agency provide further information to the Budget Committee before Omnibus. The motion was seconded by Representative Bethell. Motion withdrawn with approval of the second.

Responding to a question from the Committee, George Teagarden, Animal Health Department, stated that approximately 50,000 cattle travel across Kansas each day, noting that the animal ID program is important in order to track cattle who might be carrying disease.

Representative Powell, member of the Agriculture and Natural Resources Budget Committee, presented the Budget Committee report on the Governor's budget recommendation for the Animal Health Department for FY 2007 and moved for the adoption of the Budget Committee recommendation for FY 2007 (Attachment 4). The motion was seconded by Representative Williams.

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## HOUSE BILL No. 2996

By Committee on Appropriations

3-6

9 AN ACT concerning retirement and pensions; relating to the Kansas  
10 public employees retirement system and systems thereunder; employ-  
11 ment after retirement; minimum retirement benefits for certain retir-  
12 ants; amending K.S.A. 74-4950j and K.S.A. 2005 Supp. 74-4914 and  
13 repealing the existing sections.  
14

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

16 Section 1. K.S.A. 2005 Supp. 74-4914 is hereby amended to read as  
17 follows: 74-4914. (1) The normal retirement date for a member of the  
18 system shall be the first day of the month coinciding with or following  
19 termination of employment with any participating employer not followed  
20 by employment with any participating employer within 30 days and the  
21 attainment of age 65 or, commencing July 1, 1993, age 62 with the com-  
22 pletion of 10 years of credited service or the first day of the month co-  
23 inciding with or following the date that the total of the number of years  
24 of credited service and the number of years of attained age of the member  
25 is equal to or more than 85. In no event shall a normal retirement date  
26 for a member be before six months after the entry date of the participating  
27 employer by whom such member is employed. A member may retire on  
28 the normal retirement date or on the first day of any month thereafter  
29 upon the filing with the office of the retirement system of an application  
30 in such form and manner as the board shall prescribe. Nothing herein  
31 shall prevent any person, member or retirant from being employed, ap-  
32 pointed or elected as an employee, appointee, officer or member of the  
33 legislature. Elected officers may retire from the system on any date on  
34 or after the attainment of the normal retirement date, but no retirement  
35 benefits payable under this act shall be paid until the member has ter-  
36 minated such member's office.

37 (2) No retirant shall make contributions to the system or receive serv-  
38 ice credit for any service after the date of retirement.

39 (3) Any member who is an employee of an affiliating employer pur-  
40 suant to K.S.A. 74-4954b and amendments thereto and has not withdrawn  
41 such member's accumulated contributions from the Kansas police and  
42 firemen's retirement system may retire before such member's normal  
43 retirement date on the first day of any month coinciding with or following

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1 the attainment of age 55.

2 (4) Any member may retire before such member's normal retirement  
3 date on the first day of any month coinciding with or following termination  
4 of employment with any participating employer not followed by employ-  
5 ment with any participating employer within 30 days and the attainment  
6 of age 55 with the completion of 10 years of credited service, but in no  
7 event before six months after the entry date, upon the filing with the  
8 office of the retirement system of an application for retirement in such  
9 form and manner as the board shall prescribe.

10 (5) *On or after July 1, 2006, for any retirant who is first employed or*  
11 *appointed in or to any position or office by a participating employer other*  
12 *than a participating employer for which such retirant was employed or*  
13 *appointed during the final two years of such retirant's participation, such*  
14 *participating employer shall pay to the system the actuarially determined*  
15 *employer contribution and the statutorially prescribed employee contri-*  
16 *bution based on the retirant's compensation during any such period of*  
17 *employment or appointment. If a retirant who retired on or after July 1,*  
18 *1988, is employed or appointed in or to any position or office for which*  
19 *compensation for service is paid in an amount equal to \$15,000 or more,*  
20 *or commencing in calendar year 2006, and all calendar years thereafter,*  
21 *\$20,000 or more in any one such calendar year, by any participating em-*  
22 *ployer for which such retirant was employed or appointed during the final*  
23 *two years of such retirant's participation, such retirant shall not receive*  
24 *any retirement benefit for any month for which such retirant serves in*  
25 *such position or office. The participating employer shall report to the*  
26 *system within 30 days of when the compensation paid to the retirant is*  
27 *equal to or exceeds any limitation provided by this section. Any retirant*  
28 *employed by a participating employer shall not make contributions nor*  
29 *receive additional credit under such system for such service except as*  
30 *provided by this section. Upon request of the executive director of the*  
31 *system, the secretary of revenue shall provide such information as may*  
32 *be needed by the executive director to carry out the provisions of this*  
33 *act. The provisions of this subsection shall not apply to retirants employed*  
34 *as substitute teachers or officers, employees or appointees of the legis-*  
35 *lature. The provisions of this subsection shall not apply to members of*  
36 *the legislature prior to January 8, 2000. The provisions of this subsection*  
37 *shall not apply to any other elected officials prior to the term of office of*  
38 *such elected official which commences on or after July 1, 2000. The pro-*  
39 *visions of this subsection shall apply to any other elected official on and*  
40 *after the term of office of such other elected official which commences*  
41 *on or after July 1, 2000. Except as otherwise provided, commencing Jan-*  
42 *uary 8, 2001, the provisions of this subsection shall apply to members of*  
43 *the legislature. For determination of the amount of compensation paid*

1 pursuant to this subsection, for members of the legislature, compensation  
2 shall include any amount paid as provided pursuant to subsections (a),  
3 (b), (c) and (d) of K.S.A. 46-137a, and amendments thereto, or pursuant  
4 to K.S.A. 46-137b, and amendments thereto. Notwithstanding any pro-  
5 vision of law to the contrary, when a member of the legislature is paid an  
6 amount of compensation of \$15,000 or more in any one calendar year,  
7 the member may continue to receive any amount provided in subsections  
8 (b) and (d) of K.S.A. 46-137a, and amendments thereto, and still be en-  
9 titled to receive such member's retirement benefit. Commencing July 1,  
10 2005, and ending June 30, 2008, the provisions of this subsection shall  
11 not apply to retirants who either retired under the provisions of subsec-  
12 tion (1), or, if they retired under the provisions of subsection (4), were  
13 retired more than 30 days prior to the effective date of this act and are  
14 licensed professional nurses or licensed practical nurses employed by the  
15 state of Kansas at the Osawatomie state hospital, Rainbow mental health  
16 facility, Larned state hospital, Parsons state hospital and training center,  
17 Kansas neurological institute, the Kansas soldiers' home or the Kansas  
18 veterans' home. The participating employer of such retirant shall pay to  
19 the system the actuarially determined employer contribution based on  
20 the retirant's compensation during any such period of employment.

21 (6) For purposes of this section, any employee of a local governmental  
22 unit which has its own pension plan who becomes an employee of a  
23 participating employer as a result of a merger or consolidation of services  
24 provided by local governmental units, which occurred on January 1, 1994,  
25 may count service with such local governmental unit in determining  
26 whether such employee has met the years of credited service require-  
27 ments contained in this section.

28 Sec. 2. K.S.A. 74-4950j is hereby amended to read as follows: 74-  
29 4950j. The retirement benefit, pension or annuity payments to each re-  
30 tirant of the state school retirement system who retired prior to January  
31 1, 1971, and who had at least 20 years or more of service credit, shall:

32 (a) For retirement benefit, pension or annuity payments accruing af-  
33 ter June 30, 2001, be in an amount as otherwise provided by law but shall  
34 be an amount at least equal to \$500;

35 (b) *for retirement benefit, pension or annuity payments accruing after*  
36 *June 30, 2006, be in an amount as otherwise provided by law but shall*  
37 *be an amount of at least \$625; and*

38 (c) *for retirement benefit, pension and annuity payments accruing*  
39 *after June 30, 2007, be in an amount as otherwise provided by law but*  
40 *shall be in an amount at least equal to \$750.*

41 Sec. 3. K.S.A. 74-4950j and K.S.A. 2005 Supp. 74-4914 are hereby  
42 repealed.

43

March 13, 2006

The Honorable Melvin Neufeld, Chairperson  
House Committee on Appropriations  
Statehouse, Room 517-S  
Topeka, Kansas 66612

Dear Representative Neufeld:

SUBJECT: Fiscal Note for HB 2996 by House Committee on Appropriations

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2996 is respectfully submitted to your committee.

HB 2996 would change current law regarding KPERS benefits. First, under current law, when a KPERS retiree returns to work for the same employer from which he or she retired, the retiree's annual earnings are limited to \$15,000. Upon reaching this threshold, the retiree must either stop working in order to continue to receive KPERS retirement benefits, or continue working and have KPERS benefit payments suspended for the remainder of the calendar year. HB 2996 would increase the annual earnings limitation to \$20,000, beginning in calendar year 2006.

Second, HB 2996 would require KPERS employers who hire KPERS retirees who retired from a different KPERS employer to pay both the actuarially-determined employer contributions and the statutory employee contributions to KPERS. This requirement would apply only to KPERS retirees first employed on or after July 1, 2006.

Third, HB 2996 would increase the minimum monthly benefit for certain Kansas School Retirement System (KSRS) members who retired before January 1, 1971, with at least 20 years of credited service. The minimum monthly benefit would increase from \$500 to \$625 on July 1, 2006, and then to \$750 on July 1, 2007.

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According to KPERS, the fiscal effect of changing the earnings limitation to \$20,000 would be negligible to the retirement system. The KPERS actuary believes that the increase from \$15,000 to \$20,000 is a modest increase and is not expected to motivate behavioral changes, e.g., encouraging employees to retire earlier, for a large number of KPERS members.

Assuming the provisions of the bill regarding KPERS employers paying both the employer and employee retirement contributions to KPERS would not affect the rate and timing of KPERS retirements, HB 2996 would increase contributions to the retirement system without affecting the system's liabilities. Individual employers, including state agencies that hire KPERS retirees who retired from different KPERS employers, would be required to make additional contributions to KPERS, as outlined in the following table:

	<u>Actuarial Employer Rate</u>	<u>Statutory Employee Rate</u>	<u>Total Percent of Payroll</u>
KPERS State Group			
FY 2007	5.84%	4.00%	9.84%
FY 2008	6.99%	4.00%	10.99%
KPERS School Group			
FY 2007	9.75%	4.00%	13.75%
FY 2008	11.47%	4.00%	15.47%
KPERS Local Group			
FY 2007	7.69%	4.00%	11.69%
FY 2008	8.05%	4.00%	12.05%

Finally, KPERS estimates that increasing the minimum monthly benefit for KSRS members would increase the retirement system's unfunded actuarial liability by \$300,000. KPERS notes that the change would affect approximately 30 KSRS members who have an average age of 99. Any fiscal effect resulting from enacting HB 2996 has not been included in *The FY 2007 Governor's Budget Report*.

Sincerely,



Duane A. Goossen  
Director of the Budget

cc: Mary Beth Green, KPERS

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MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 9:00 A.M. on March 13, 2006 in Room 514-S of the Capitol. ✓

All members were present except:

- Representative Bonnie Huy- excused
- Representative Kevin Yoder- excused
- Representative Tom Sawyer- excused

Committee staff present:

- Alan Conroy, Legislative Research Department
- J. G. Scott, Legislative Research Department
- Becky Krahl, Legislative Research Department
- Matt Spurgin, Legislative Research Department
- Michele Alishahi, Legislative Research Department
- Amy Deckard, Legislative Research Department
- Julian Efirid, Legislative Research Department
- Mike Corrigan, Revisor of Statutes
- Nikki Feuerborn, Administrative Assistant
- Shirley Jepson, Committee Secretary

Conferees appearing before the committee:

- Shelly Starr, State Department of Corrections
- Glenn Deck, Kansas Public Employees Retirement System (KPERs)
- Chad Austin, Vice President of Government Relations, Kansas Hospital Association
- Diane Gjerstad, Wichita Public Schools
- Mark Tallman, Kansas Association of School Boards (KASB)
- Denise Moore, Director, Division of Information Systems and Communications (DISC)
- Morey Sullivan, Deputy Director, DISC

Others attending:

See attached list.

- Attachment 1 Technical corrections to **SB 480**
- Attachment 2 Proposed amendment to **SB 480**
- Attachment 3 Written testimony on **SB 340** from Roger Werholtz, Secretary, Department of Corrections
- Attachment 4 Testimony on **HB 2996** by Chad Austin, Kansas Hospital Association
- Attachment 5 Testimony on **HB 2996** by Diane Gjerstad, Wichita Public Schools
- Attachment 6 Testimony on **HB 2996** by Mark Tallman, Kansas Association of School Boards (KASB)
- Attachment 7 Written Testimony on **HB 2996** from Terry Forsyth, Kansas National Education Association (KNEA)
- Attachment 8 Presentation by Morey Sullivan, Deputy Director, DISC

Representative Powell moved to introduce legislation concerning retirement of state debt from unanticipated revenue. The motion was seconded by Representative McLeland. Motion carried.

**Hearing on SB 480 - Claims against the state.**

Amy Deckard, Kansas Legislative Research Department, explained that **SB 480** authorizes expenditures from the State General Fund and various special revenue funds for the payment of specific claims against the State of Kansas. The Senate Committee on Ways and Means amended the bill to add a claim for payment of an expired warrant. The bill, as amended by the Senate Committee on Ways and Means, authorized total expenditures of \$268,438, which includes \$87,963 from operating accounts of the State General Fund, and \$181,476 from other sources.

Representative Bethell moved to adopt a technical correction amendment presented by the Office



CONTINUATION SHEET

MINUTES OF THE House Appropriations Committee at 9:00 A.M. on March 13, 2006 in Room 514-S of the Capitol.

of Revisor of Statutes (Attachment 1). The motion was seconded by Representative Feuerborn. Motion carried.

Representative Pottorff moved to amend **SB 480** by adding language in Section 9, Line 16, stating "The Department of Agriculture is hereby authorized and directed to pay the following amount from the petroleum inspection fee fund as reimbursement for damages incurred by claimant when unleaded gasoline was mistakenly returned to an underground diesel tank following an inspection, to the following claimant: Mike Frisch, 6432 E Central, Wichita, KS 67206 in the amount of \$4,228.79." (Attachment 2) The motion was seconded Representative Feuerborn.

Responding to a question from the Committee, Representative Brunk stated that the damage was caused during an inspection of the facility when diesel that had been drawn for testing was returned to the wrong tank, containing 1500 gallons of gasoline. Representative Brunk indicated that the inspection was done by a contractor employed by the Department of Agriculture. The Committee voiced concern that the contracted service should be responsible for the damage charge.

Representative Feuerborn moved for a substitute motion to delete the language in the amendment stating "petroleum inspection fee fund" and replace with language stating "operating expenditures account of the State General Fund (SGF) of the Department of Agriculture" and include a proviso to request that the Department of Agriculture collect the funds from the contracted testing service. The motion was seconded by Representative Gatewood. Motion carried.

Representative McLeland moved to allow technical corrections to be made to **SB 480** as necessary by the Office of Revisor of Statutes. The motion was seconded by Representative Pilcher-Cook. Motion carried.

Responding to a question from the Committee, Shelly Starr, Department of Corrections, stated that four payments in the legislation to be paid to inmates of the Department of Corrections, are payments for injuries which occurred when the inmates were working in prison kitchens and not covered by workers' compensation.

**The hearing on SB 480 was closed.**

Representative Feuerborn moved to recommend **SB 480** favorable for passage as amended. The motion was seconded by Representative Pottorff. Motion carried.

**Hearing on SB 340 - Cap on employer retirement contributions for security officers employed by the department of corrections.**

Julian Efird, Kansas Legislative Research Department, explained that **SB 340** would establish a statutory rate cap on annual employer contribution rate increases for the corrections officer group in the Kansas Public Employees Retirement System (KPERs). The cap would be identical to the current statutory cap on annual rate increases for all other members in KPERs State, School, and Local groups. Without the cap and the passage of **SB 340**, the Department of Corrections estimates that approximately \$1.5 million of additional expenditures from the State General Fund would be required in FY 2007; with the cap, the increase would be limited to less than \$300,000..

Written testimony from Roger Werholtz, Secretary of the State Department of Corrections, in support of **SB 340**, was distributed to the Committee (Attachment 3).

**The hearing on SB 340 was closed.**

**Hearing on HB 2996 - KPERs, benefits, employment after retirement and minimum retirement benefits for certain retirants.**

Julian Efird, Kansas Legislative Research Department, explained that **HB 2996** included three items regarding the Kansas Public Employees Retirement System (KPERs):

- Increases the minimum retirement benefit from \$500 to \$625, beginning July 1, 2006, and

CONTINUATION SHEET

MINUTES OF THE House Appropriations Committee at 9:00 A.M. on March 13, 2006 in Room 514-S of the Capitol.

to \$750 beginning July 1, 2007, for retirees of the state school retirement system who had at least 20 years or more of service credit. The estimated fiscal note for this benefit is \$300,000 from the State General Fund if paid at one time to KPERs.

- Raise the working after retirement salary from \$15,000 to \$20,000 for retired KPERs members who return to work for the same employer from whom they retired. There is no cap on going to work for a different employer.
- Would require most participating KPERs employers who hire a retired KPERs employee to pay the KPERs actuarial employer and employee contribution on behalf of the retired member. There would be no payment if the employee returns to work for the same participating employer that they retired from.

Responding to questions from the Committee, Glenn Deck, Kansas Public Employees Retirement System, indicated that there are approximately 7,000 school staff personnel within the school district system who are currently eligible to retire. With regard to putting all school districts under one employer, Mr. Deck indicated that this would put all staff under the \$15,000 or \$20,000 limitation. Mr. Deck stated that the issue would need to be researched to determine if this action would raise other employment issues.

Chairman Neufeld recognized Chad Austin, Kansas Hospital Association, who presented testimony in support of **HB 2996** (Attachment 4). Mr. Austin noted that the increase from \$15,000 to \$20,000 would allow nurses to work more time throughout the year.

The Chair recognized Diane Gjerstad, Wichita Public Schools, who presented testimony in support of **HB 2996** (Attachment 5). Ms. Gjerstad indicated that she generally supported the legislation; however, felt that the section pertaining to the receiving district paying the actuarial costs, should be amended to make it clear that these retired employees who are returning to work are employees at will. This would make it clear that the district has flexibility to negotiate salary and conditions. The Committee noted that the suggestion was worthy of discussion and requested that Ms. Gjerstad develop language for an amendment to be presented to the Committee.

Chairman Neufeld recognized Mark Tallman, Assistant Executive Director/Advocacy, Kansas Association of School Boards (KASB), who presented testimony in opposition to **HB 2996** (Attachment 6). Mr. Tallman noted that his main concern is with the language which makes changes to state law regarding employment of individuals who are already retired under the KPERs system and would require the different participating employer, to pay the actuarial required employer contribution rate plus the employee rate. Mr. Tallman indicated that he would consider amendments to the legislation.

Written testimony from Terry Forsyth, Kansas National Education Association (KNEA), on **HB 2996** was distributed to the Committee (Attachment 7).

**The hearing on HB 2996 was closed.**

Chairman Neufeld recognized Denise Moore, Director, Division of Information Systems and Communications (DISC), who introduced Morey Sullivan, Deputy Director, to present a review of DISC services and the process used to retrieve costs for the service (Attachment 8). Mr. Sullivan stated that DISC performs services for most of state government, including payroll, and charges a fee to the agency for the service.

Mr. Sullivan indicated that rates are established each year and published in July. Mr. Sullivan noted that there has been a decline in funding from the State General Fund (SGF) since FY 2002. The Enterprise Application Rate (EAR) was established in FY 2006 and provides a method for DISC to offset the decline in funding from SGF. Prior to FY 2006, DISC had been operating at a loss. Responding to Committee questions and concerns with regard to the increase in fees charged to some state agencies, Mr. Sullivan indicated that within the new EAR system, some agencies would see declines and some agencies would see increases in the fees charged to their agency depending on the DISC services used by the agency.

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**House Appropriations Committee**  
**Terry Forsyth; KNEA**  
**March 13, 2006**

**House Bill 2996**

There are two sections to House Bill 2996 two of which we support and one with which we have concerns.

We support raising the cap on what a teacher returning to work in the school district from which they retired to \$20,000 from the current \$15,000. This would be of minimal cost to the KPERS system. Lifting the cap would be an incentive for teachers to return to the classroom and a benefit to school districts in need of teachers.

We support the provisions of the bill which would give a minimum retirement benefit to those who retired before January 1, 1971. These are the people who you helped by giving the 13<sup>th</sup> check, but the benefit for this small group remains as the smallest benefit paid by the system. This also would be of minimal cost to the KPERS system with approximately 30 former teachers who would qualify.

We are concerned about the unintended consequences of the section of the bill that would require the school district who hires a retired teacher to pay the actuarial employer and employee contribution to KPERS. This requirement could serve as a disincentive for districts to hire retired teachers for teaching positions that the district cannot otherwise fill.

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KANSAS  
ASSOCIATION



OF  
SCHOOL  
BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024  
785-273-3600

Testimony on **HB 2996**  
before the  
**House Committee on Appropriations**  
by

**Mark Tallman, Assistant Executive Director/Advocacy**  
Kansas Association of School Boards  
**March 12, 2006**

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to offer comments on **HB 2996**. This bill would make changes to state law regarding employment of individuals who already retired under the KPERS system. It would require that if school district or other participating employer hires someone who has retired from a different participating employer, that district must pay the actuarially required employer contribution rate plus the employee rate. It would also raise the threshold for persons working after retirement for the same employer from \$15,000 to \$20,000.

Over the past several years, our association has taken steps to help school board members understand the financial issues facing the KPERS system and develop positions in response to those issues. Several of these issues were considered in detail this summer by our Association's Legislative Committee. That committee recommended a position that was adopted in December by KASB members voting at our annual Delegate Assembly. That position contains the following points:

- We oppose requiring school districts to make contributions on behalf of employees working after retirement. School districts who hire these individuals often do so because they are the best qualified – if not the only qualified – persons available. We do not believe such districts should “pay a penalty” to hire individuals who retired as permitted by state law, to fill positions in order to meet standards set by state education policy.
- We particularly oppose making such a change apply to persons who have already been hired. In the case of teachers, these individuals have tenure and collective bargaining rights under state law. As we understand the intent of **HB 2996**, it is NOT retroactive; it only applies to persons who are hired after the effective date of the act.
- If a KPERS contribution is required for these employees, we believe these employees should also contribute. As **HB 2996** is currently written, we believe teachers and other members of the bargaining unit under the Professional Negotiations Act would be covered by the agreement between the district and the teacher association. Until the board was able to bargain a different arrangement, retired teachers would be entitled to the same rate of compensation as non-retired teachers. If the school district is responsible for making a significant contribution for these

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- Because KASB understands the funding issues facing KPERS, we do not support expansion of working after retirement, such as allowing continued employment in the same district.
- We are willing to consider supporting other steps to reduce the long-term cost of the KPERS system, including a higher retirement age. In general, we believe the system needs to encourage individuals to work longer, rather than retire sooner.
- We believe the state should continue to provide school districts with the funding to make the employer contributions for school district employees. If this changes, we believe it would lead to a major unfunded mandate. If the state makes the decisions about rates, benefits and investments, we believe the state should be responsible for funding the system.

Thank you for your consideration.

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**House Appropriations**  
**Representative Neufeld, chair**

**H.B. 2966 -- KPERS**

Diane Gjerstad  
Wichita Public Schools

March 13, 2006

Mr. Chairman, members of the Committee:

Today Wichita is short 25 special education vacancies and 4 math teachers. No Child Left Behind has increased requirements for 'highly qualified' teachers and paras. The State Board has increased graduation requirements. Recent changes in the State's special education regulations will mean Wichita will be required to hire a significant number of additional paras. The teacher workforce is aging. Colleges of Education have too few entrants, especially in science and math.

H.B. 2996 is a measured step in KPERS adjustments:

- We support the provision to increase the earnings limitation from \$15,000 to \$20,000. This is the issue I hear from the most clerical retirees. Clerks or secretaries who have been retired for a number of years and want to work a few months to pay the bills. To quote from the KPERS memo: "...increase from \$15,000 to \$20,000 annually is relatively modest...is not expected to motivate behavioral changes...do not expect the cost to be significant."
- We support the increase proposed by Rep. Ward to assist those few surviving teachers retired under the former teacher retirement system.
- And finally we support the provisions on page 2 (5) which would require the receiving district to pay the actuarial costs to hire a KPERS retiree. However, we doubt this provision will be useful because these retirees will walk into the receiving district with the as fully vested employees – not retirees. We would ask the committee to further amend this provision to make it clear these *retired* employees who return to work are employees at will. This would make it clear the district has flexibility to negotiate salary and conditions; some districts might not be able to afford the salary plus 15% actuarial cost. Or if after a year a new teacher candidate fresh from college comes to town, the district should be able to hire the new teacher without any collective bargaining consequences.

For these reasons, if school districts are going to be charged with a 15% 'surcharge' to hire this class of employees, we would ask for the concession of flexibility.

Thank you, Mr. Chairman and members of the committee, for your consideration.

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Thomas L. Bell  
President

**To: House Appropriations Committee Members**

**From: Chad Austin, Vice President of Government Relations**

**Date: March 13, 2006**

**RE: House Bill 2996**

#### **TESTIMONY IN SUPPORT OF HOUSE BILL 2996**

The Kansas Hospital Association (KHA) appreciates the opportunity to submit testimony in support of House Bill 2996. Last session House Bill 2623 was passed and amended current law by permitting retired LPNs and RNs to return to work at a KPERS-participating facility without being subject to an annual income cap of \$15,000 and was welcomed by our members. This was a good first step toward enabling experienced nurses to return to their former employer and assume a hard-to-fill position.

The Legislature became aware of the \$15,000 income cap problem when in 2003, nursing leaders and educators from across the state were asked to testify before the Legislative Budget Committee regarding the nursing shortage in Kansas. At the conclusion of the presented testimony, the Budget Committee requested that a group comprised of those who testified meet and report back to the Committee those ways in which the legislature could assist with the nursing shortage.

In response to the above request, KHA convened the Kansas Nursing Workforce Partnership to draft several recommendations for the legislature to implement to assist with the nursing shortage in Kansas.

One of these recommendations was to lift the KPERS restriction for all nurses wishing to return to a KPERS-participating hospital to work. The health care entities experiencing nurse shortages and impacted by this law are 18 community hospitals that participate in the KPERS program.

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**Kansas Hospital Association**

215 SE 8th Ave. • P.O. Box 2308 • Topeka, KS • 66601 • 785/233-7436 • Fax: 785/233-6955 • [www.kha-net.org](http://www.kha-net.org)

The Kansas Hospital Association supports the portion of House Bill 2996 that increases the current income cap from \$15,000 to \$20,000 for those retirees returning to the KPERS facility from which they retired. Our members have related to us that the income cap of \$15,000 severely restricts how much time one of these valuable, experienced health care employees can work before they hit this income threshold. For this reason, KHA strongly supports any initiative which increases or eliminates the income cap.

One aspect of House Bill 2996 that causes concern to our member hospitals is the provision in section 5 that requires employers, who hire KPERS retirees from another KPERS institution, to pay both the employer and employee KPERS contributions. According to KPERS officials, this amount would total approximately 11-12% of the salary paid to the employee. Current law does not require any employer to pay KPERS contributions for retirees who return to work. House Bill 2996 creates a burden for employers by requiring them to pay the KPERS contributions which discourages them from hiring KPERS retirees. This is especially troublesome as our state is experiencing a health care workforce shortage. For this reason, KHA does not support requiring employers to pay both the employer and employee KPERS contributions.

Retired workers, who are seasoned and possess invaluable experience, should be given every opportunity to return to the workforce and have the opportunity to earn more than \$15,000 per year.

**For this reason, the Kansas Hospital Association supports raising the income cap as outlined in House Bill 2996. KHA does not support requiring employers to pay both the employer and employee KPERS contributions.**

Thank you for the opportunity to present this testimony.

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SESSION OF 2006

**SUPPLEMENTAL NOTE ON HOUSE  
SUBSTITUTE FOR SENATE BILL NO. 270**

As Recommended by House Committee on  
Appropriations

**Brief\***

House Sub. for SB 270 includes five items related to retirement benefits of the Kansas Public Employees Retirement System (KPERs), working after retirement, and early retirement plans. Included in the bill are the following items:

- **Kansas School Retirement System Retirees.** One provision in the bill would increase the minimum retirement benefit from \$500 to \$625 beginning July 1, 2006, and to \$750 beginning July 1, 2007, for retired members of the Kansas School Retirement System with at least 20 years of service credit. The fiscal note for this benefit enhancement is \$300,000 for the actuarial cost of the program administered by KPERs.
- **Working After Retirement – KPERs Cap.** Another provision in the bill would raise the working after retirement salary limitation from \$15,000 to \$20,000 for retired KPERs members who return to work after retirement for the same participating employer from which they retired. There is no salary limitation if a retiree returns to work for a different KPERs participating employer. The fiscal note indicates that the actuarial impact on KPERs will likely result in some additional unfunded actuarial liability, but that the added cost is not expected to be significant.
- **Additional KPERs Contributions.** The bill would require any KPERs participating employer who hires a KPERs retired member to pay the KPERs actuarially-determined employer and employee contributions on behalf of the retired member. There would be no payment required if a KPERs retiree returns to work for the same KPERs participating employer that employed the individual before retirement. The fiscal note indicates that this provision would

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

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increase contributions to KPERS, with the following FY 2007 (CY 2007 for the local group) rates attributed the members of the three principal KPERS groups of participating employers: Participating employers from all groups would pay the statutory employee rate of 4.0 percent. For FY 2007, those employers in the state group would pay an additional employer rate of 9.84 percent, the school group 13.75 percent, and the local group 11.69 percent.

- **Working After Retirement – School Teachers.** A provision in the bill would change the statutory definition of a professional employee employed by a school district board of education to exclude, beginning in the 2006- 2007 school year, any person who retires from school employment as a KPERS member, regardless of whether an agreement on terms and conditions of employment between a board of education and an exclusive representative of professional employees provides to the contrary. Another provision in the bill would change the statutory definition of teacher to exclude, beginning in the 2006 to 2007 school year, any person who retires from school employment as a KPERS member. No fiscal note was available for this provision.
- **School District Early Retirement Incentive Plans.** The bill would replace a statutory reference to the normal retirement age of 65 with a reference to the federal Social Security Act that provides for increasing the retirement age for full Social Security benefits through a birth year referenced schedule. The amendment would apply to early retirement incentive programs established by school district boards of education for the benefit of school district employees prior to retirement. No fiscal note was available for this provision.

## **Background**

House Sub. for SB 270 contains three provisions from HB 2996 and two other amendments added by the House Committee on Appropriations.

A House Subcommittee on KPERS Issues recommended introduction of HB 2996. That bill included increasing in Kansas School Retirement System benefits, raising the working after KPERS retirement earnings limitation, and requiring KPERS employer to make contributions if hiring retired members that did not retire from that employer. The House Committee on Appropriations held hearings on HB 2996 and conferees included representatives of the Kansas

Association of School Boards, Wichita Public Schools – USD 259, the Kansas Hospital Association, and the Kansas National Education Association.

The House Committee on Appropriations amended the bill to include provisions related to the changing the definition of a “professional employee” and “teacher” to allow school districts to hire retired KPERs members without being subjected to the restrictions of current statutory requirements in school law. The Committee also included an amendment at the request of Representative John Edmonds to change the age of normal retirement referenced in the enabling legislation for school district early retirement incentive programs. The amendment references age defined in federal law for Social Security benefits. Federal law provides for an increasing retirement age for full Social Security benefits, with those born in 1937 or earlier eligible for unreduced Social Security benefits at age 65. A series of subsequent years of birth categories define other full retirement ages, depending upon the year of birth. The categories conclude with one for those born in 1960 or later, increasing the retirement age to 67.

MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 9:00 A.M. on March 21, 2006 in Room 514-S of the Capitol. ✓

All members were present.

Committee staff present:

Alan Conroy, Legislative Research Department  
J. G. Scott, Legislative Research Department  
Becky Krahl, Legislative Research Department  
Matt Spurgin, Legislative Research Department  
Michele Alishahi, Legislative Research Department  
Audrey Dunkel, Legislative Research Department  
Julian Efird, Legislative Research Department  
Debra Hollon, Legislative Research Department  
Amy VanHouse, Legislative Research Department  
Jim Wilson, Revisor of Statutes  
Mike Corrigan, Revisor of Statutes  
Nikki Feuerborn, Administrative Assistant  
Shirley Jepson, Committee Secretary

Conferees appearing before the committee:

Others attending:

See attached list.

- Attachment 1 Budget Committee Report on **HB 2978**
- Attachment 2 Budget Committee Report on **HB 2980**
- Attachment 3 Budget Committee Report on **HB 2985**
- Attachment 4 Proposed Amendment to **HB 2996**
- Attachment 5 Proposed Amendment to **HB 2996**
- Attachment 6 Information on Social Security Retirement Age/Benefits
- Attachment 7 Proposed Amendment to **SB 84/HB 2988**

**Discussion and Action on HB 2978 - Informal resolution of disputes of deficiencies cited by fire inspectors.**

Representative Light, Chair of the Public Safety Budget Committee, presented the Budget Committee report on **HB 2978** and moved for the adoption of the Budget Committee report (Attachment 1). The motion was seconded by Representative Tafanelli. Motion carried.

Representative Light moved to recommend **HB 2978** favorable for passage. The motion was seconded by Representative Tafanelli. Motion carried.

**Discussion and Action on HB 2980 - Pilot project on purchases by FHSU and WSU.**

Representative McLeland, member of the Education Budget Committee, presented the Budget Committee report on **HB 2980** and moved for the adoption of the Budget Committee report and the balloon on **HB 2980** (Attachment 2). The motion was seconded by Representative Hutchins. Motion carried.

Representative McLeland moved to recommend **HB 2980** favorable for passage as amended. The motion was seconded by Representative Hutchins. Motion carried.

Representative McLeland moved to reconsider Committee actions on **HB 2980**. The motion was seconded by Representative Hutchins. Motion carried.

Representative McLeland moved for a substitute motion to remove the language in **SB 52**, insert

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CONTINUATION SHEET

MINUTES OF THE House Appropriations Committee at 9:00 A.M. on March 21, 2006 in Room 514-S of the Capitol.

the language of HB 2980 as amended into SB 52, allow for technical corrections as needed, recommend SB 52 as amended favorable for passage and report as House Substitute for SB 52. The motion was seconded by Representative Hutchins. Motion carried.

**Discussion and Action on HB 2985 - Creating a crime of trafficking in counterfeit drugs.**

Representative Pottorff, Chair of the General Government and Commerce Budget Committee, presented the Budget Committee report on HB 2985 and moved for the adoption of the Budget Committee report (Attachment 3). The motion was seconded by Representative Lane. Motion carried.

Representative Pottorff moved to remove language from SB 51, insert language of HB 2985 into SB 51, allow for technical corrections, recommend SB 51 as amended favorable for passage and report as House Substitute for SB 51. The motion was seconded by Representative Yoder. Motion carried.

**Hearing on HB 3010 - Kansas health policy authority, health care database, statistical agent for experience data from insurers, statutory reference updated.**

Audrey Dunkel, Legislative Research Department, explained that HB 3010 is a technical clean-up bill that changes the administration of the health care database from the Secretary of Department of Health and Environment to the Kansas Health Policy Authority.

There were no conferees to appear before the Committee.

**The hearing on HB 3010 was closed.**

Representative Landwehr moved to remove the language from SB 577, insert the language of HB 3010 into SB 577, allow for technical corrections, recommend SB 577 as amended favorable for passage and report as House Substitute for SB 577. The motion was seconded by Representative Bethell. Motion carried.

**Discussion and Action on HB 2996 - KPERS, benefits, employment after retirement and minimum retirement benefits for certain retirants.**

Chairman Neufeld reminded the Committee that a hearing on HB 2996 was held on March 13, 2006, by the full Committee.

Julian Efird, Kansas Legislative Research Department, explained that HB 2996 included three items regarding the Kansas Public Employees Retirement System (KPERS):

- Increases the minimum retirement benefit from \$500 to \$625, beginning July 1, 2006, and to \$750 beginning July 1, 2007, for retirees of the state school retirement system who had at least 20 years or more of service credit. The estimated fiscal note for this benefit is \$300,000 from the State General Fund if paid at one time to KPERS.
- Raise the working after retirement salary from \$15,000 to \$20,000 for retired KPERS members who return to work for the same employer from whom they retired. There is no cap on going to work for a different employer.
- Would require most participating KPERS employers who hire a retired KPERS employee to pay the KPERS actuarial employer and employee contribution on behalf of the retired member. There would be no payment if the employee returns to work for the same participating employer that they retired from.

Mr. Efird stated that an amendment is proposed that amends current law providing an prospective amendment in the 2006-2007 school year, defines a retirant who retires from school employment under the Kansas Public Employees Retirement System (KPERS) as having an exception to the law in the amendment and allows a school district to hire back a retirant outside the contract procedures under the professional negotiations agreement those individuals who have retired and go back to work for the school district (Attachment 4).

CONTINUATION SHEET

MINUTES OF THE House Appropriations Committee at 9:00 A.M. on March 21, 2006 in Room 514-S of the Capitol.

The Committee noted that the amendment would allow the school district to negotiate a contract above or below the district's bargaining agreement and employ the retirant "at-will".

Representative McCreary moved to adopt the amendment on **HB 2996** (Attachment 5). The motion was seconded by Representative Pottorff. Motion carried.

Representative McCreary moved to further amend **HB 2996** with a technical amendment to Section 1. K.S.A. 72-5395 regarding the school district early retirement program (Attachment 5). The motion was seconded by Representative Weber. Motion carried.

Glenn Deck, KPERS, stated that the amendment would have no effect on KPERS.

Representative Edmonds noted that this amendment would allow school district to recognize current law as it applies to the federal law regarding social security age qualification (Attachment 6).

Representative McCreary moved to remove the contents of **SB 270**, insert the language of **HB 2996** into **SB 270**, allow for technical corrections, recommend **SB 270** as amended favorable for passage and report as **House Substitute for SB 270**. The motion was seconded by Representative Lane. Motion carried.

**Discussion on SB 84/HB 2988:**

Chairman Neufeld explained an amendment that pulls the section of **HB 2988** pertaining to the establishment and operation of the Kansas umbilical cord bank at the University of Kansas Medical Center (Attachment 7). It was noted that the amendment is subject to provisions of appropriation acts. The Chairman indicated that he has had communication and support from the Vice Chancellor of the University of Kansas and Congressman Brownback..

Representative Neufeld moved to remove the language in **SB 84**, insert selected language from **HB 2988** regarding the umbilical cord bank into **SB 84** (Attachment 7) for **House Substitute for SB 84**. The motion was seconded by Representative Pilcher-Cook. Motion carried.

A hearing will be held on March 22, 2006, to address concerns and issues on **House Substitute for SB 84**.

The meeting was adjourned at 10:00 a.m. The next meeting of the Committee will be held at 9:00 a.m. on March 22, 2006.

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Melvin Neufeld, Chairman

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SESSION OF 2006

**SUPPLEMENTAL NOTE ON HOUSE  
SUBSTITUTE FOR SENATE BILL NO. 270**

As Amended by House Committee of the Whole

**Brief\***

House Sub. for SB 270 includes five items related to retirement benefits of the Kansas Public Employees Retirement System (KPERs), working after retirement, and early retirement plans. Included in the bill are the following items:

- **Kansas School Retirement System Retirees.** One provision in the bill would increase the minimum retirement benefit from \$500 to \$625 beginning July 1, 2006, and to \$750 beginning July 1, 2007, for retired members of the Kansas School Retirement System with at least 20 years of service credit. The fiscal note for this benefit enhancement is \$300,000 for the actuarial cost of the program administered by KPERs.
- **Working After Retirement – KPERs Cap.** Another provision in the bill would raise the working after retirement salary limitation from \$15,000 to \$20,000 for retired KPERs members who return to work after retirement for the same participating employer from which they retired. There is no salary limitation if a retiree returns to work for a different KPERs participating employer. For local elected officials and legislators who retire from a KPERs participating employer while serving in elected office and participating in KPERs as an elected official with a different participating employer, the bill would raise the salary limitation from \$15,000 to \$20,000 per year while serving in public office and drawing a KPERs retirement benefit. The fiscal note indicates that the actuarial impact on KPERs will likely result in some additional unfunded actuarial liability, but that the added cost is not expected to be significant.
- **Additional KPERs Contributions.** The bill would require any KPERs participating employer who hires a KPERs retired member

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to pay the KPERS actuarially-determined employer and employee contributions on behalf of the retired member. There would be no payment required if a KPERS retiree returns to work for the same KPERS participating employer that employed the individual before retirement. The fiscal note indicates that this provision would increase contributions to KPERS, with the following FY 2007 (CY 2007 for the local group) rates attributed the members of the three principal KPERS groups of participating employers: Participating employers from all groups would pay the statutory employee rate of 4.0 percent. For FY 2007, those employers in the state group would pay an additional employer rate of 9.84 percent, the school group 13.75 percent, and the local group 11.69 percent.

- **Working After Retirement – School Teachers.** A provision in the bill would change the statutory definition of a professional employee employed by a school district board of education to exclude, beginning in the 2006-2007 school year, any person who retires from school employment as a KPERS member, regardless of whether an agreement on terms and conditions of employment between a board of education and an exclusive representative of professional employees provides to the contrary. Another provision in the bill would change the statutory definition of teacher to exclude, beginning in the 2006-2007 school year, any person who retires from school employment as a KPERS member. No fiscal note was available for this provision.
- **School District Early Retirement Incentive Plans.** The bill would replace a statutory reference to the normal retirement age of 65 with a reference to the federal Social Security Act that provides for increasing the retirement age for full Social Security benefits through a birth year referenced schedule. The amendment would apply to early retirement incentive programs established by school district boards of education for the benefit of school district employees prior to retirement. No fiscal note was available for this provision.

## **Background**

House Sub. for SB 270 contains three provisions from HB 2996 and two other amendments added by the House Committee on Appropriations.

A House Subcommittee on KPERS Issues recommended introduction of HB 2996. That bill included increasing in Kansas



School Retirement System benefits, raising the working after KPERS retirement earnings limitation, and requiring KPERS employer to make contributions if hiring retired members that did not retire from that employer. The House Committee on Appropriations held hearings on HB 2996 and conferees included representatives of the Kansas Association of School Boards, Wichita Public Schools – USD 259, the Kansas Hospital Association, and the Kansas National Education Association.

The House Committee on Appropriations amended the bill to include provisions related to the changing the definition of a “professional employee” and “teacher” to allow school districts to hire retired KPERS members without being subjected to the restrictions of current statutory requirements in school law. The Committee also included an amendment at the request of Representative John Edmonds to change the age of normal retirement referenced in the enabling legislation for school district early retirement incentive programs. The amendment references age defined in federal law for Social Security benefits. Federal law provides for an increasing retirement age for full Social Security benefits, with those born in 1937 or earlier eligible for unreduced Social Security benefits at age 65. A series of subsequent years of birth categories define other full retirement ages, depending upon the year of birth. The categories conclude with one for those born in 1960 or later, increasing the retirement age to 67.

The House Committee of the Whole amended House Sub. for SB 270 to make the adjustment to the annual income limitation apply to elected public officials, including local elected officers and legislators, who participate in KPERS and retire from a KPERS participating employer other than the one associated with the elected position. Under current law, an elected public official may retire from a participating KPERS employer and continue to serve in public office without having to retire if that public officer also participates in KPERS as an elected official. However, a salary cap applies to the elected public official who continues to serve in public office and who does not retire under KPERS from the covered public position. This amendment would raise the salary cap to \$20,000 for elected public officials while serving in elective office and receiving a KPERS benefit.

SESSION OF 2006

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE SUBSTITUTE FOR SENATE BILL NO. 270**

As Agreed to March 28, 2006

**Brief\***

House Sub. for SB 270 – the KPERS Omnibus Bill -- includes items related to retirement benefits and contributions of the Kansas Public Employees Retirement System (KPERS), working after retirement, early retirement plans, and technical changes in several retirement plans, including KPERS, the Kansas Police and Firemen's Retirement System and the Kansas Retirement System for Judges. Included in the bill are the following items:

- **Kansas School Retirement System Retirees.** One provision in the bill would increase the minimum retirement benefit from \$500 to \$625 beginning July 1, 2006, and to \$750 beginning July 1, 2007, for retired members of the Kansas School Retirement System with at least 20 years of service credit. The fiscal note for this benefit enhancement is \$300,000 for the actuarial cost of the program administered by KPERS.
- **Working After Retirement – KPERS Cap.** Another provision in the bill would raise the working after retirement salary limitation from \$15,000 to \$20,000 for retired KPERS members who return to work after retirement for the same participating employer from which they retired. There is no salary limitation if a retiree returns to work for a different KPERS participating employer. For local elected officials and legislators who retire from a KPERS participating employer while serving in elected office and participating in KPERS as an elected official with a different participating employer, the bill would raise the salary limitation from \$15,000 to \$20,000 per year while serving in public office and drawing a KPERS retirement benefit. The fiscal note indicates that the actuarial impact on KPERS will likely result in some additional unfunded actuarial liability, but that the added cost is not expected to be significant.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

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- **Additional KPERS Contributions.** The bill would require any KPERS participating employer who hires a KPERS retired member to pay the KPERS actuarially-determined employer and employee contributions on behalf of the retired member. There would be no payment required if a KPERS retiree returns to work for the same KPERS participating employer that employed the individual before retirement. The fiscal note indicates that this provision would increase contributions to KPERS, with the following FY 2007 (CY 2007 for the local group) rates attributed the members of the three principal KPERS groups of participating employers: Participating employers from all groups would pay the statutory employee rate of 4.0 percent. For FY 2007, those employers in the state group would pay an additional employer rate of 5.84 percent, the school group 9.75 percent, and the local group 7.69 percent.
- **Working After Retirement – School Teachers.** A provision in the bill would change the statutory definition of a professional employee to exclude, beginning in the 2006-2007 school year, any person who retires from school employment as a KPERS member, regardless of whether an agreement on terms and conditions of professional service between a board of education and an exclusive representative of professional employees provides to the contrary. Another provision in the bill would change the statutory definition of teacher to exclude, beginning in the 2006-2007 school year, any person who retires from school employment as a KPERS member. No fiscal note was available for this provision.
- **School District Early Retirement Incentive Plans.** The bill would replace a statutory reference to the normal retirement age of 65 with a reference to the federal Social Security Act that provides for increasing the retirement age for full Social Security benefits through a birth year referenced schedule. The amendment would apply to early retirement incentive programs established by school district boards of education for the benefit of school district employees prior to retirement. No fiscal note was available for this provision.
- **KPERS Correctional Officers Rate Cap.** The bill would establish a statutory rate cap on annual employer contribution rate increases for the corrections officer group in the Kansas Public Employers Retirement System (KPERS). The cap would be identical to the current statutory cap on annual rate increases for all other members in KPERS State, School, and Local groups.

In addition, House Sub. for SB 270 would provide for five technical

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amendments to the KPERS Act and the administration of the Retirement System.

- The first change would clarify terminology describing Tier II members of the Kansas Police and Firemen's (KP&F) Retirement System who become disabled.
- The second change would allow members of KPERS, KP&F, and the Retirement System for Judges to name individuals and trusts as co-primary beneficiaries for death benefits.
- The third change would make service purchase cost calculations reflect actual costs by specifying that such costs will be based on the higher of the current annual rate of pay or current final average salary.
- The fourth change would change a statutory reference for compensation and expense reimbursement for members of the KPERS Board of Trustees. The statutory reference would be changed from KSA 75-3212 (which is the legislative compensation and expense statute) to KSA 75-3223 which is the general governing board provision for compensation and expense reimbursement.
- The fifth change would delete an obsolete purchase of service credit provision pertaining to legislators and their 1983 to 1985 legislative expenses. In addition, an amendment would clarify that one irrevocable election shall determine each legislator's basis of compensation for KPERS participation. Each serving legislator shall make an election no later than August 1, 2006, if a change is desired for the basis of determining the employee KPERS contribution, beginning October 1, 2006. Future members of the Legislature would have only an initial election of the basis upon choosing membership in KPERS.

### **Conference Committee Action**

The Conference Committee agreed to all items in House Sub. for SB 270, as amended by the House Committee of the Whole. The Conference Committee agree to include in House Sub. for SB 270 all of the provisions from HB 2583 dealing with KPERS technical changes and the correctional officer rate cap, as amended by the Senate Committee on Ways and Means. In addition, the Conference Committee agreed to a clarification concerning each legislator's

election of a basis of compensation for determining the employee KPERs contribution.

## **Background**

House Sub. for SB 270 contains provisions of other bills as described below.

House Sub. for SB 270 contains three provisions from HB 2996 and two other amendments added by the House Committee on Appropriations. A House Subcommittee on KPERs Issues recommended introduction of HB 2996. That bill included increasing in Kansas School Retirement System benefits, raising the working after KPERs retirement earnings limitation, and requiring KPERs employer to make contributions if hiring retired members that did not retire from that employer. The House Committee on Appropriations held hearings on HB 2996 and conferees included representatives of the Kansas Association of School Boards, Wichita Public Schools – USD 259, the Kansas Hospital Association, and the Kansas National Education Association.

The House Committee on Appropriations amended the bill to include provisions related to the changing the definition of a "professional employee" and "teacher" to allow school districts to hire retired KPERs members without being subjected to the restrictions of current statutory requirements in school law. The Committee also included an amendment at the request of Representative John Edmonds to change the age of normal retirement referenced in the enabling legislation for school district early retirement incentive programs. The amendment references age defined in federal law for Social Security benefits. Federal law provides for an increasing retirement age for full Social Security benefits, with those born in 1937 or earlier eligible for unreduced Social Security benefits at age 65. A series of subsequent years of birth categories define other full retirement ages, depending upon the year of birth. The categories conclude with one for those born in 1960 or later, increasing the retirement age to 67.

The House Committee of the Whole amended House Sub. for SB 270 to make the adjustment to the annual income limitation apply to elected public officials, including local elected officers and legislators, who participate in KPERs and retire from a KPERs participating employer other than the one associated with the elected position. Under current law, an elected public official may retire from a participating KPERs employer and continue to serve in public office

without having to retire if that public officer also participates in KPERS as an elected official. However, a salary cap applies to the elected public official who continues to serve in public office and who does not retire under KPERS from the covered public position. This amendment would raise the salary cap to \$20,000 for elected public officials while serving in elective office and receiving a KPERS benefit.

The Conference Committee on House Sub. for SB 270 recommends including HB 2583, as amended by the Senate Committee. That bill includes two types of changes to current law, one of a substantive nature and the others of a technical nature.

**Substantive Change.** The corrections officer group rate increase cap previously was addressed by the Senate during the 2006 Session. The provisions originally passed in 2006 SB 340 earlier this Session. A Senate Subcommittee on KPERS Issues recommended adding this provision to the House-passed bill. The Senate Committee amended this change into HB 2583. The change was recommended for introduction by the Joint Committee on Pensions, Investments and Benefits. The Secretary of Administration, in his capacity as Budget Director, recommended the legislation during the 2005 Interim after the magnitude of the rate increase and its budget impact in FY 2007 were determined. Under current law, KPERS State, School, and Local groups have a statutory employer retirement contribution rate cap of 0.5 percent for FY 2007, increasing to 0.6 percent for FY 2008 and for subsequent years. When these rate caps were adjusted two years ago, the corrections officer group of KPERS was not included under the caps. As a result, the employer retirement contribution rate for correctional officers has been certified by KPERS to increase from 5.74 percent in FY 2006 to 7.72 percent in FY 2007.

Without the rate cap, the Department of Corrections estimates that \$1,498,224 of additional expenditures from the State General Fund would be required in FY 2007. With the passage of SB 340, the FY 2007 increase would be limited to \$281,378 from the State General Fund. The fiscal effect of passing this bill has been included in the *Governor's Budget Report* for FY 2007. If this bill does not pass, an additional \$1,498,224 from the State General Fund will be due KPERS in FY 2007 for the corrections officer group employer contributions.

**Technical Changes.** The KPERS Board of Trustees requested three technical amendments and the Joint Committee on Pensions, Investments and Benefits recommended three technical amendments during the 2005 Interim. A representative of KPERS appeared in support of the amendments and indicated that provisions could be

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implemented within current budget resources. The three amendments were described by the KPERS representative as technical in nature and intended to either correct or clarify several areas of current law.

The Senate Subcommittee on KPERS Issues recommended the last two technical amendments after reviewing HB 2583 and hearing from KPERS staff about the additional changes in current law that might be addressed this Session. The Senate Committee added the two other technical amendments to the bill.

TO: House Appropriation Committee Honorable Chair Schwartz  
and Committee Members  
FROM: Torrey Head & Jennifer Head  
RE: HB2566  
DATE: 3/20/2007

I would like to express our support for HB2566. My wife, Jennifer and I own and operate Western Hills Golf Club in Topeka. We are a public golf course in the western part of Topeka and Shawnee County. We provide the public with very affordable golf and a recreational atmosphere.

There is a tremendous amount of competition in the golf course industry. We are like many small businesses that operate in this state and pay our fair share of taxes. Unlike many businesses in our state, our competition does not pay taxes. Consumers are spending millions of dollars on recreation in this state on golf. Municipalities do not pay sales tax on green fees, equipment purchases, and real estate taxes as well as many other exemptions.

We are operating our business on an uneven playing field. It is time to stop all the exemptions offered to municipalities who are operating businesses in the private sector. The additional tax dollars received from the removal of these exemptions would lesson the tax burden on all Kansans. This would spread the tax burden equitably across the board. I would again like to extend our support for HB2566.

**HOUSE APPROPRIATIONS**

DATE 3-20-2007  
ATTACHMENT 6



March 20, 2007

To: Madam Chairman and other Members of the  
House Appropriations Committee

From: Meril D. Vanderpool  
9816 Fairway Drive  
Meriden, Kansas 66512

Re: House Bill No. 2566

I am writing in support of House Bill 2566.

My wife and I own and operate the Village Greens  
Golf Course located between Meriden and Ozawkie on  
Highway 92 in Jefferson County.

As a privately owned golf course we are required to  
collect sales tax on green fees, pay high property  
tax and pay sales tax on all equipment we purchase.

Municipal golf courses do not collect sales tax on  
green fees, do not pay property tax or sales tax  
on any equipment purchases.

During the last few years golf has become quite  
competitive in Kansas as well as across the nation.  
In Kansas privately owned golf courses are at a  
definate disadvantage.

I appreciate your consideration of this bill.

Thank you.

*Meril D. Vanderpool*

HOUSE APPROPRIATIONS

DATE 3-20-2007  
ATTACHMENT 7



# KANSAS AGRIBUSINESS RETAILERS ASSOCIATION

*SAFE AND ABUNDANT FOOD THROUGH SOUND SCIENCE*

**Statement in Support of House Bill 2566  
House Appropriations Committee  
Representative Sharon Schwartz, Chair  
March 20, 2007**

Thank you Madam Chair and Members of the Appropriations Committee, I am Duane Simpson, Vice President of Government Affairs for the Kansas Agribusiness Retailers Association. KARA is a voluntary statewide organization that represents primarily crop nutrient and crop protection retailers. I appreciate this opportunity to appear in support of House Bill 2566.

HB 2566 is relatively simple bill that answers a very important philosophical question. Should free enterprise be required to compete against the government for customers? In 2000, our association worked with the Kansas Department of Agriculture to address a specific instance where our members compete directly with County Noxious Weed Departments. We were unsuccessful in 2000 and again in 2001 when we attempted to change the law.

Currently, a farmer can go to a County Noxious Weed Department and buy chemicals at a subsidized price to control noxious weeds. While we do not object to a county or the state subsidizing noxious weed control, we do object to competing directly with government. In 2000, we attempted to change the method of reimbursement for farmers so that they would be reimbursed on a per acre basis. That way, a farmer would be able to choose where to purchase their chemicals and who they wanted to apply them. In 2002, the Legislature took a small step by allowing counties to issue certificates to reimburse producers if they purchase their chemicals from a retailer instead of government. However, there is no requirement that counties offer businesses the opportunity to compete against them.

There are many reasons why a farmer would prefer to use their local ag retailer instead of the County Noxious Weed Department. Farmers often have to travel 25 miles to go to their noxious weed department instead of the local retailer that is located on the edge of town. The local retailer carries the product in bulk so they can sell the necessary amount of chemicals rather than the retail package size. (The retail package size often leaves farmers with a dilemma on what to do with unused chemicals.) In addition, our members are in their customers fields on a regular basis and have a better understanding of each farmer's particular agronomic needs. Some noxious weed departments are only open partial days, a few days a week or by appointment only where the local retailer usually is open after regular business hours and on weekends.

I could continue to give more details about the problems our members face competing against the government, but I'll save those in case anyone has questions. While our complaint is just a small example of government intervention in the marketplace, it is one that prevents businesses from expanding and limits job growth in rural Kansas. Opponents to this bill might think it is overly broad, but the bill does provide a very simple safety valve. A public finding that the service cannot be provided by the private sector will exempt them from this statute. That minimal barrier is the least the state can do to make sure that small businesses can compete on a level playing field, instead of against their own tax dollars.

When I reviewed the testimony from the 2000 hearings, I found a quote that not only applies to noxious weed departments, but to this entire bill. Dustin Kuntz, the Vice President of Harveyville Seed Co, and the Mayor of Harveyville told the Senate Agriculture Committee, "As a tax paying business in a free country we should not have to compete with the government to sell noxious weed chemicals to customers in our trade territory." Dustin could just as easily been referring to any business that is forced to compete against the government. House Bill 2566 is a bill that strikes to the very core of what it means to live in a free society. On behalf of our members, I urge you to support this bill and will stand for questions at the appropriate time.



Dick Stuntz, President  
Alvamar, Inc.  
March 20, 2007

**To: Madam Chairperson and Members of the House Committee on Appropriations**

**From: Dick Stuntz, CGCS  
Owner of the Oaks Golf Course in Leavenworth  
President of Alvamar Inc., 36- hole Golf Facility in Lawrence**

**Re: House Bill No. 2566**

**As a private owner and operator of golf facilities in Kansas, I am in favor of House Bill No. 2566.**

**The golf business in Kansas has become increasingly difficult, due to the increase in supply of courses, and the decrease in the number of rounds of golf being played. The competition from government subsidized courses continues to take its toll on privately owned facilities. The following is a partial list of the advantages government owned facilities enjoy over privately owned courses:**

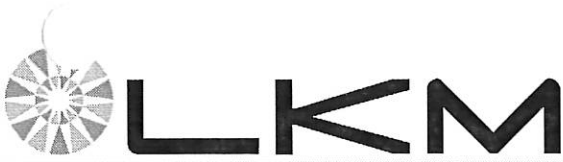
- 1. No sales tax on greens fees**
- 2. No sales tax on supplies for the course**
- 3. No Real-estate taxes**
- 4. Tax support of operations and capital improvements**
- 5. "Soft" support such as:**
  - free water**
  - use of large equipment pool**
  - use or donation of materials from other departments**
  - use or donation of labor from other departments**

**Not only is it unfair competition, but by funneling golf recreation dollars through government facilities, millions of tax dollars go uncollected.**

**Note: Privately owned "not-for-profit" clubs (private country clubs owned by the members) pay property tax at 11% of valuation. Privately owned "for-profit" courses pay at 28% of valuation.**

**HOUSE APPROPRIATIONS**

**DATE** 3-22-2007  
**ATTACHMENT** 9



League of Kansas Municipalities

300 SW 8th Avenue, Suite 100  
Topeka, Kansas 66603-3951  
Phone: (785) 354-9565  
Fax: (785) 354-4186

**To:** House Appropriations Committee  
**From:** Don Moler, Executive Director  
**Date:** March 20, 2007  
**Re:** Opposition to HB 2566

First I would like to thank the committee for allowing the League testify today in opposition to HB 2566. While a very short bill in length, passage of this legislation would fundamentally and irrevocably change government in Kansas. After several readings of the proposed legislation we have concluded that it would allow for private business to take over virtually any operation or service currently provided by the State or any local government.

We suspect that this would work as follows. Private business would put pencil to paper to determine if they thought a profit could be made from a given governmental service or operation. If they believed they could make a dollar on the operation or service, then they would simply offer to buy it. Clearly, this would create a number of difficulties, which we can only guess at from this vantage point. Public services which would be immediately impacted would include, we suspect, about 170 municipal gas and electric utilities, EMS, jails, social service programs, maintenance of parks, swimming pools, and other public facilities including the maintenance, construction, and ownership, of public buildings, streets and roads, and the immediate sale of the Kansas Turnpike Authority, to name just a few.

Public services are about more than the bottom line. The quality of such services cannot be compromised when many public services are essential to the health and well being of our citizens. Local services are currently being provided by officials who are directly accountable to the electorate for the quality of such services. It would set a very dangerous precedent to turn over critical public services to for-profit entities that are not accountable to the people.

Clearly we would suggest that if it is the intent of the State to completely reorder government in Kansas, that it should require more study and thought than a two section bill late in the legislative session. I would like to thank the Committee for allowing the League to offer our comments and opposition to HB 2566.

**HOUSE APPROPRIATIONS**

DATE 3-20-2007  
ATTACHMENT 10

Testimony on HB 2566  
to  
The House Appropriations Committee

By Roger Werholtz  
Secretary  
Kansas Department of Corrections

March 20, 2007

The Department of Corrections opposes HB 2566. HB 2566 would curtail the inmate work and vocational programs established by the department and Kansas Correctional Industries. The department utilizes inmate labor in a number of diverse endeavors that provide both a savings to the state, local units of government and charitable organizations as well as contributing to sound correctional practice. Department inmates provide labor to governmental entities and charitable organizations in rehabilitating homes, cleaning parks, and even repairing wheelchairs. Most recently, the department's vocational programs are engaged in constructing affordable housing for charitable organizations and cabins for state parks. Finally, Kansas Correctional Industries employs inmates to produce goods and services for sale pursuant to the Prison Made Goods Act.

The Department's industry and vocational programs provide work experience and vocational skills to inmates critical to their successful reentry into the community. In addition to addressing the correctional goal of successful reentry of inmates back into the community, facility work programs further safety in correctional facilities by decreasing inmate idleness which is always a concern to facility wardens and staff. Currently 388 inmates employed by Correctional Industries and over 200 inmates in vocational programs would be impacted by this bill. From FY 2000 through FY 2007, over \$8 million of Kansas Correctional Industries revenues has been used for the department's other rehabilitation programs and operating expenses. Correctional Industry funds have been used to construct \$2.8 million in state buildings from FY 1997 through FY 2007.

The provisions of HB 2566 not only negatively impact the correctional industry and vocational programs of the department, this bill would also prohibit correctional activities regarding transportation and utility services. The department has a statewide inmate bus system that transfers inmates between correctional facilities throughout the state. While private transport companies exist, their cost, lack of oversight, and delays in transporting inmates along with public safety considerations cause the department to rely on its own transportation system. The Lansing Correctional Facility and the Norton Correctional Facility also have their own water treatment plants to meet the water utility needs of those facilities at a cost savings to the state.

Due to the negative impact of HB 2566 on the Department of Corrections and the correctional interests of the state, the department urges that HB 2566 not be favorably considered, or in the alternative that the Department of Corrections be exempt from its provisions.

KANSAS  
ASSOCIATION



OF  
SCHOOL  
BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024  
785-273-3600

Testimony on **HB 2566**  
before the  
**House Appropriations Committee**  
by

**Jim Edwards, Governmental Relations Specialist**  
Kansas Association of School Boards

**March 20, 2007**

Madam Chair and Members of the Committee:

I thank you for the opportunity to appear before you today on **HB 2566**. We, as an association comprised of school boards members, appear as opponents of this bill.

This measure, while it seems simple, is fraught with far reaching consequences. As an example, would a school district be in violation of this law if it:

1. Sold food in its cafeteria?
2. Had its own bus service for transporting students?
3. Made its own periodic runs to the local landfill?
4. Operated a concession stand/booth during sporting events?
5. Sold students classroom supplies?

**HB 2566** would prohibit such actions. We are not sure if the authors of this measure had this in mind or not. In addition, there are no provisions in this measure that deal with price or quality. All that is required is a private entity that "*is willing and able*" to provide such service. As different legislative committees stress efficiency in the operations of government, this bill would not seem to assist in meeting that goal.

Thank you for the opportunity to present this testimony in opposition to **HB 2566** as well as your consideration of this important measure. I would stand for questions.

HOUSE APPROPRIATIONS

DATE 3-20-2007  
ATTACHMENT 12



8500 Santa Fe Drive  
Overland Park, Kansas 66212  
• Fax: 913-895-5003  
www.opkansas.org

Testimony Before The  
House Appropriations Committee  
Regarding House Bill 2566  
Submitted By Erik Sartorius  
March 20, 2006

The City of Overland Park appreciates the opportunity to appear before the committee and present testimony in opposition to House Bill 2566.

This legislation would prohibit governments from engaging in any activity that could be considered in competition with private businesses. The broad wording of HB 2566 could in many instances be detrimental to the citizens of a city.

Generally, cities do not seek to or enjoy being in the position to compete with private businesses. In many cases, the good or service being provided are those that have traditionally been considered a public good and supplied by local government. Sanitation services and some instances of recreational opportunities are good examples. Further, many of these goods and services are often not pursued by private enterprise without public subsidies or incentives, due to the low chance of profit.

Additionally, the bill prohibits governments from selling any technological or software services. While this broad prohibition may gain support, it would limit cities' ability to be the best stewards of taxpayer funds. Specifically, there have been instances when local governments have developed software or some technology on their own in order to aid their functionality. Later discovering a broader application of their invention, local governments have been able to sell or license their software. Doing so has been able to gain the local governments revenue to offset their initial investment in a needed technological solution.

The procedure for allowing a city to continue to provide a service is two-fold. First, it must find that the service or product is essential for the public welfare. Second, it must also find that the product or service would not otherwise be available to the public. As an example, apply this procedure to police protection. Is such service essential for the public welfare? Yes. Without the city supplying this service, would it not otherwise be available to the public? Possibly. Should a governing body be placed in the position of having to consider a private provider of public safety protection, regardless of qualifications, ability, or effect on the public's trust?

The City of Overland Park sees this legislation as a solution in search of a problem  
We urge the committee to not recommend this legislation for passage **HOUSE APPROPRIATIONS**

DATE 3-20-2007  
ATTACHMENT 13



City of Park City  
6110 North Hydraulic  
Park City, KS 67219-2499  
316.744.2026 • fax 316.744.3865

March 20, 2007

Committee on Appropriations

Re: House Bill No. 2566

Chairperson and Committee Members:

Thank you for allowing my written testimony in opposition of HB2566 concerning governmental entities competing with private businesses.

I would begin by saying that this act is so broad that it could encompass a number of services currently provided by governmental entities, more than even the presenter of the bill intended. There are prisons owned and operated by private businesses. Do you want our prisons all to be private?

There are many cities in the State of Kansas that provide services that could be eliminated under this bill. Cities that provide trash and recycling service, cities with their own gas or electricity, cities that have taken over operation of nursing homes when the previous owner gave up. Who will provide these services if this bill is passed?

Does this bill mean that a city with composting facilities cannot sell the end product in order to reduce the cost to taxpayers? Does this bill mean that, as the big two waste removal companies buy our or force out smaller businesses, we will be at their mercy regarding rates? Does this bill mean that a city must go through a bureaucrat in Topeka to get permission to provide an essential service to the community?

I believe that this concern came about when a city was unable to get cable service from the area provider and, as is the responsibility of a municipality to provide for its citizens, the city got the cable on its own. Obviously, the cable company felt no responsibility. Private business is rightly in business to make a profit and providing a service is a side benefit only if it benefits the owners of the company. Cities are in business to provide for the safety and welfare of their residents. Period.

I predict that passage of this dreadful infringement of rights of cities and counties would result in lawsuits for decades to come. Please consider carefully before voting for something that is clearly for the benefit of private business at a cost to taxpayers.

Thank you,  
Dee Stuart  
Mayor, Park City

HOUSE APPROPRIATIONS

DATE 3-20-2007  
ATTACHMENT 14



**TESTIMONY BEFORE  
HOUSE APPROPRIATIONS COMMITTEE**

**REGARDING HOUSE BILL 2566  
Government entities competing with private businesses**

**March 20, 2007**

Madam Chair and Committee Members:

The Kansas Department of Transportation (KDOT) is providing written testimony in opposition to House Bill 2566 (as written), which would prohibit services and products that KDOT currently provides to the public, to other state agencies, and to other units of government. This bill would also prohibit the purchasing of certain items by KDOT from other state agencies.

As written, this bill would prohibit KDOT from engaging in the following activities and services:

- vending at rest areas;
- fuel sales to other state agencies;
- selling of maps to other governmental entities;
- purchasing goods from the Kansas Correctional Industries;
- services provided to the traveling public through the KDOT traveler information system;
- the local public transportation for which KDOT provides federal funding wherein vans are purchased to provide public transportation in small communities across Kansas;
- wireless internet service that KDOT is providing as a pilot project at rest areas;
- materials testing and inspection services that KDOT provides to local governments;
- the sharing of KDOT fiber capability with DISC and the University of Kansas (KU); and
- the authority to lease radio and tower services to other governmental entities.

Therefore, KDOT proposes language revisions to HB 2566 that have been attached for your review and consideration.

Thank you for your time, I will gladly stand for questions.

**Testimony on HB 2566  
House Appropriations Committee  
March 19, 2007**

**Submitted by  
Cheryl L. Semmel, Executive Director, United School Administrators of Kansas**

Thank you for the opportunity to present testimony on HB 2566, a bill concerning governmental entities competing with private businesses. These comments are submitted on behalf of the United School Administrators of Kansas (USA|Kansas\*) in opposition to HB 2566. Administrators are concerned about the potential limitations and undue burden that the provisions of this legislation may impose upon school districts.

The proposed legislation would prohibit school districts from competing with private citizens or business in the sales of goods, food, wares or merchandise; from providing services ordinarily or customarily rendered by private enterprise; from providing trash, transportation, utility, cable television or Internet access unless no private entity is willing and able to provide such service; and from selling any computer software or other technological services. **Administrators believe that local school districts should retain authority over how to allocate resources and determine who can most effectively and efficiently provide necessary services and products.**

While the bill provides provisions for the local school board to opt out, it places additional requirements on the district by requiring demonstration that the service or product is essential to public welfare and is not otherwise available. In addition to the fact that districts should not be required to take action to opt out, we also believe that the reasons for opting are too limited in scope.

Thank you, again, for the opportunity to submit these comments and we would be happy to answer any questions that the committee may have.

\*USA|Kansas represents more than 2,000 individual members and ten member associations:

Kansas Association of Elementary School Principals (KAESP)  
Kansas Association of Middle School Administrators (KAMSA)  
Kansas Association of School Administrators (KASA)  
Kansas Association of School Business Officials (KASBO)  
Kansas Association of School Personnel Administrators (KASPA)  
Kansas Assoc for Supervision and Curriculum Development (KASCD)  
Kansas Association of Special Education Administrators (KASEA)  
Kansas Association of Secondary School Principals (KASSP)  
Kansas Council of Career and Technical Education Administrators (KCCTEA)  
Kansas School Public Relations Association (KanSPRA)

**HOUSE APPROPRIATIONS**

DATE 3-20-2007  
ATTACHMENT 16