

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:35 a.m. on March 13, 2009, in Room 545-N of the Capitol.

All members were present except:
Senator David Haley- excused

Committee staff present:
Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Jerry Donaldson, Kansas Legislative Research Department
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the Committee:
Clint Patty, Frieden & Forbes Law Firm
Steve Glass, LRM Industries, Inc.
Representative Mike O'Neal
Richard Hayse, Kansas Judicial Council
Judge Stephen D. Hill, Kansas Court of Appeals
Joe Molina, Kansas Bar Association
Jerry Sloan, Budget and Fiscal Officer, Office of Judicial Administration
Helen Pedigo, Executive Director, Kansas Sentencing Commission
Ed Klumpp, Co-Chairman, Kansas Criminal Code Recodification Commission

Others attending:
See attached list.

The Chairman reopened the hearing on **SB 292 - Civil procedure, liens; requiring notice of commencement and notice of furnishings to be filed prior to filing certain commercial property liens.**

Clint Patty appeared in opposition stating **SB 292** is extremely restrictive and burdensome legislation that unfairly shifts the risk and responsibility from the general contractor to their suppliers and sub-contractors. Mr. Patty indicated it is a matter of fairness and that **SB 292** was unnecessary. (Attachment 1)

Steve Glass spoke in opposition indicating the reduction of the time frame within which a supplier or sub-contractor must make an initial filing in addition to being unfair presents many "real world" logistical problems. Mr. Glass provided an example illustrating the problems such a short time frame regarding the filing of liens can cause. This bill will only shift the risk and responsibility unfairly. (Attachment 2)

Written testimony in support of **SB 292** was submitted by:
Steve Mohan, President, Mohan Construction Company (Attachment 3)
Rick Kuhn, PKM Steel Service, Inc. (Attachment 4)
Rick McCafferty, Executive Vice President, Key Construction (Attachment 5)

Written testimony in opposition to **SB 292** was submitted by:
Woody Moses, Kansas Cement Council (Attachment 6)

There being no further conferees, the hearing on **SB 292** was closed.

The Chairman called for final action on **HB 2164 - Judges and justices, mandatory retirement at 75, may elect to serve until end of current term.**

Representative Mike O'Neal testified in support which would eliminate the age 70 mandatory retirement of judges. This requirement can cause term interruptions of duly elected judges who are otherwise healthy and active on the bench. (Attachment 7)

Senator Terry Bruce spoke in support indicating the mandate regarding retirement of elected officials is

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:35 a.m. on March 13, 2009, in Room 545-N of the Capitol.

contrary to the will of the public who elected them. Judges are the only public official required to retire at a mandatory age. Senator Bruce encouraged enactment of the bill. ([Attachment 8](#))

There being no further conferees, the hearing on **HB 2164** was closed.

The Chairman opened the hearing on **HB 2236 - Recodification of certain drug crimes.** Jason Thompson, staff revisor, reviewed the bill.

Ed Klumpp appeared in support stressing that while the bill moves drug crimes from Chapter 65 to Chapter 21 of the Kansas statutes and groups existing statutes into the core offenses of manufacture, distribution, and possession without revising existing Kansas law. There is no recodification involved with this bill and encouraged enactment of the bill. ([Attachment 9](#))

Written testimony in support of **HB 2236** was submitted by:

Helen Pedigo, Executive Director, Kansas Sentencing Commission ([Attachment 10](#))

There being no further conferees, the hearing on **HB 2236** was closed.

The Chairman opened the hearing on **HB 2111 - Removing sunset provision from Kansas commission on judicial performance statutes; retaining increase in docket fees to fund commission.**

Richard Hayse appeared in support reviewing the history of judicial performance reviews and an analysis of the program to date. The initial evaluations were of high quality and accepted by both judges and the public. Improvements continue to be made, it is functioning well and should continue. Mr. Hayse encouraged enactment of the bill. ([Attachment 11](#))

Judge Stephen Hill spoke in support stating he has seen positive results resulting from the initial round of evaluations. Judges take time to explain their decisions more thoroughly, they use less intimidating, arrogant behavior, and the list of pending opinions reduces. The job of judicial evaluations has begun well and should continue without a sunset provision. ([Attachment 12](#))

Joe Molina spoke in favor stating the Kansas Bar Association believes it is appropriate to provide some permanency to the work of the Commission regarding judicial reviews and urged enactment of the bill. ([Attachment 13](#))

Written testimony in support of **HB 2111** was submitted by:

Chief Judge Gary W. Rulon, Kansas Court of Appeals ([Attachment 14](#))

Judge Meryl Wilson, 21st Judicial District ([Attachment 15](#))

Richard Morrissey, Deputy Director of the Division of Health, KDHE ([Attachment 16](#))

There being no further conferees, the hearing on **HB 2111** was closed.

The Chairman opened the hearing on **SB 282 - Court of appeals; delay 14th Judge position to January 2011.**

Jerry Sloan appeared in support stating this bill will delay the continued expansion of the Court of Appeals by one year. Due to budget constraints this delay would generate \$155,955 in savings to the State General Fund and urged enactment of the bill. ([Attachment 17](#))

The next meeting is scheduled for March 14, 2009.

The meeting was adjourned at 10:28 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-13-09

NAME	REPRESENTING
Stephen D. Hill	COA - myself
John W. White	KCCRC
Kath Dammann	Strategic Comm of KS
Selen Ridge	Sentencing Commission
Dustin King	Sen Morris Intern
Jerry Steam	Judicial Branch
Kim Fowler	Judicial Branch
Eunice Peters	Judicial Branch
Ivory Goldstein	Judicial Branch
Tandy Harrell	Judicial Court
Ditch Wrefel	"
Skeene Hill	Court of Appeals
Wign Keck	Main Law firm

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**ALSO ADMITTED IN MISSOURI*

TESTIMONY

By
CLINT PATTY

Before the
SENATE JUDICIARY COMMITTEE
Regarding SB 292

March 12, 2009

Chair Owens, members of the committee, my name is Clint Patty. I am an attorney with the law firm of Frieden and Forbes in Topeka, Kansas, and am here representing my client, the Kansas Aggregate Producers Association and the Kansas Ready Mixed Concrete Association (the "Association") both as counsel and a member of the Association. I have been asked to provide testimony in opposition to SB 292.

Proponents of SB 292 are largely general contractors attempting to shift their subcontractor problems to remote suppliers of materials to construction sites. In doing so, they impose one of the most restrictive and burdensome preliminary lien requirements in the nation on mostly small businesses least equipped to bear this new and inequitable expense.

Regarding our Association, we do not view it as the aggregate and the ready mix supplier's responsibility to assure subcontractors bid compliance to an owner or general contractor. Remedies exist under Kansas law for these situations that general contractors can utilize, and burdening suppliers with an additional compliance issue for a problem where they have no involvement is inherently unfair and unnecessary. Not one proponent can point to a problem with suppliers that supports this radical change in public policy.

Only a handful of states place such burdensome requirements on suppliers. Kansas law has always created a level playing field for contractors and suppliers regarding lien rights. Currently, suppliers are afforded 90 days to perfect their lien rights. Under SB 292 that becomes 21 days or the lien rights are lost. As a practical matter, most aggregate producers will be unable to effectively comply with this requirement.

In closing, the Association urges rejection of SB 292, as an unnecessary and overly burdensome law that shifts the currently level playing field created by Kansas lien law against the very companies least capable of bearing a larger burden. Thank you once again for allowing me the opportunity to provide my client's position on this important matter.

Senate Judiciary
3-13-09
Attachment 1



ASPHALT

CONCRETE

CONSTRUCTION

March 12, 2009

COMMENTS TO THE SENATE JUDICIARY COMMITTEE

My name is Steve Glass and I am here today representing LRM Industries, Inc specifically, but also representing the many construction industry suppliers and subcontractors in our state. LRM Industries is a supplier of concrete and asphalt products and we are also both a subcontractor performing asphalt paving and site grading and a general contractor performing construction of streets, parking lots and related types of projects. The fact that we function as a supplier, subcontractor and general contractor provides us with a somewhat unique perspective in considering the merits of Senate Bill No. 292.

The bill before you today is an effort on the part of general contractors to address the problem they face of their subcontractors failing to pay suppliers and sub-subcontractors and as a result liens being placed on the project or claims filed against a payment bond by the unpaid suppliers and sub-subcontractors. In some cases, but not all, the ultimate responsibility for payment of the liens falls to the general contractor. When we at LRM wear our general contractor hat we agree that this is an issue that needs to be addressed, however, when wearing our supplier, subcontractor hats we feel very strongly that the proposed bill is not the appropriate way to address the issue.

The proposed legislation attempts to address the issue by eliminating the long standing process for the filing of liens or bond claims (KSA 60-1103, 60-1110 and 60-1111) on commercial properties and substituting a process that dramatically reduces the time frame within which a supplier or sub-subcontractor must make an initial filing by adding new procedural steps that one must follow in order to file a valid lien or bond claim. These changes, as identified below, are in actuality nothing but a shifting of risk and responsibility from the general contractors at the top of the pyramid of those involved in a commercial construction project to the suppliers and sub-subcontractors at the bottom of the pyramid.

CHANGES

1. Statute 60-1103 does not presently require the filing of a "warning statement" prior to filing a lien on commercial projects. Under Senate Bill 292 if the "original contractor" (general contractor) files a "Notice of Commencement" prior to starting a project then a "remote claimant" (sub-subcontractor or supplier to a subcontractor) is required to file a "Notice of Furnishing" within 21 days of the date of furnishing of labor or materials. Failure to file means the "remote claimant" loses the ability to file a lien or claim for labor for materials provided more than 21 days prior to the eventual filing date of a "Notice of Furnishing". The impact on material suppliers is that in order to secure our position on a project we will be required to determine for every sale we make to a sub-

contractor on a commercial project whether we have previously filed a "Notice of Commencement".

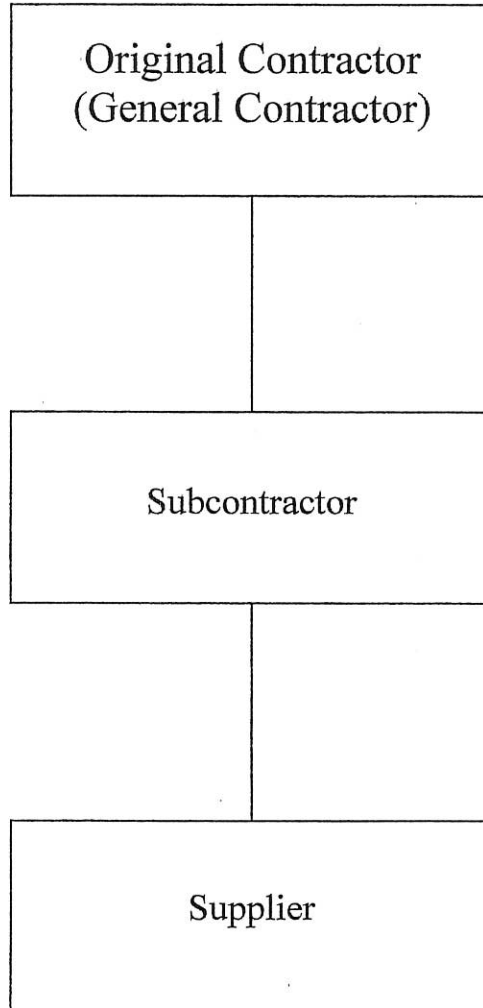
As a ready mix concrete supplier we often don't know that we will be supplying a particular customer until an order is placed, so even though the statute provides for listing multiple sub-contractors on a "Notice of Furnishing" filing the reality is that on larger projects we will likely have to make multiple filings each of which must be served upon the general contractor by certified mail, return receipt requested. The time and paper work required will be onerous, but the failure to timely file the "Notice of Furnishing" could be disastrous.

Aggregate producers are faced with an even more difficult situation in that if a customer picks up the aggregate in their own truck the aggregate producer may not even know where the material is being taken. If the customer pays for the material in a timely manner then the point of use of the aggregate is a non-issue. However, if prompt payment isn't made then, under today's lien statute, the supplier has 90 days to determine where the material was taken and then can file a lien. Under the proposed legislation the supplier has 21 days to file a "Notice of Furnishing" so the point of delivery will need to be identified for every sale if ones lien rights are to be protected.

2. The last sentence of Section 1(e) states "Remote claimants have no contact directly with the original contractor". Presumably "contact" is intended to be "contract". If that is correct then it poses an issue for companies such as ours who may function as both a subcontractor to the original contractor and a supplier to sub-contractors in which case we would be a "remote claimant", but also have a contract with the original contractor. It is not clear what this does to our rights under the statute.
3. Section 2(c) states that "The "Notice of Commencement" shall be recorded by the "original contractor" before commencing work on the construction or improvement of the commercial property." Unfortunately the statute doesn't define "commencing work" so there will undoubtedly be litigation as to what act constitutes "commencing work".
4. The definition of an "original contractor" is any contractor who has a contract directly with the owner and implies that a project may have more than one "original contractor". On large commercial projects this situation does in fact often occur. The issue that this presents for a "remote claimant" is identifying for which "original contractor" a particular subcontractor may have been working when labor or material was furnished so that the "Notice of Furnishing" is filed upon the appropriate "original contractor". Under today's statute a supplier simply files a lien on the owner of the property and is not concerned with the multiple potential relationships of general contractor and subcontractors.

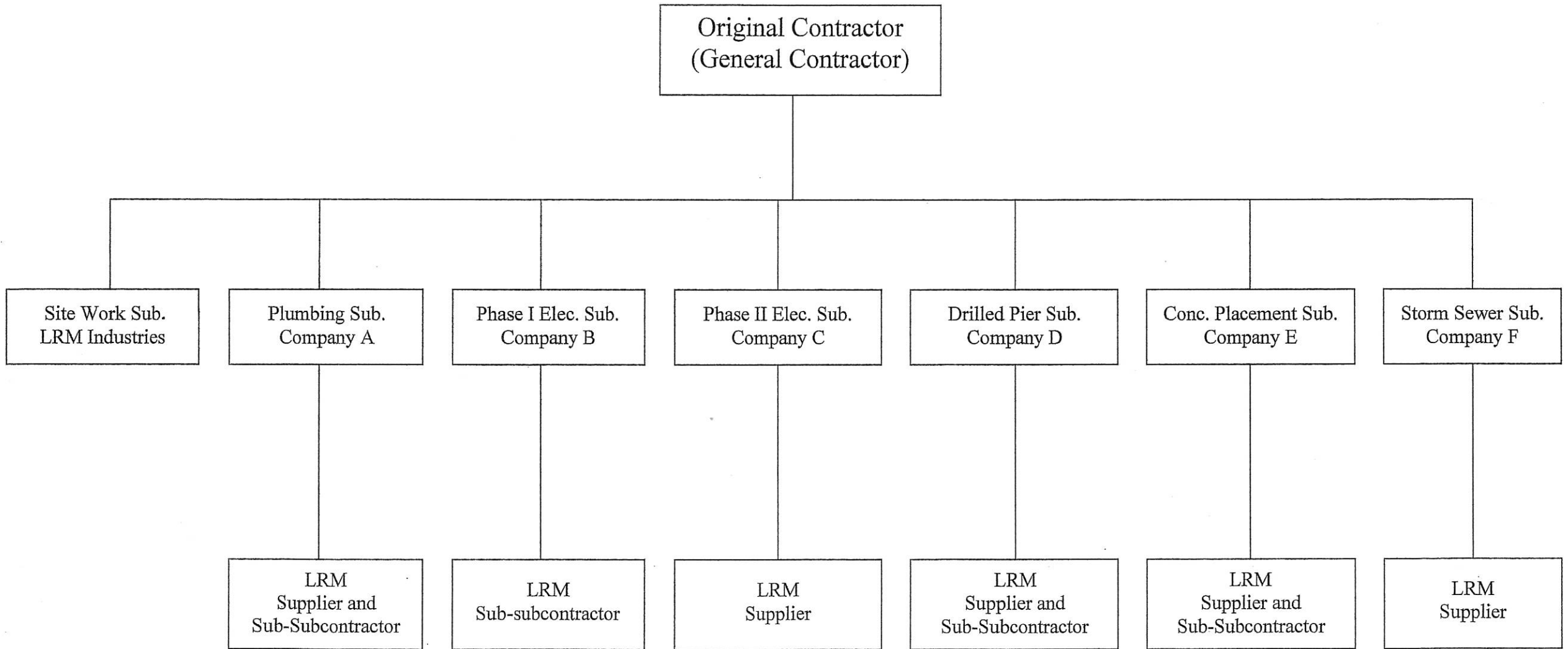
Your thoughtful consideration of the impact of the proposed changes to the lien statutes will be appreciated.

Conceptual Project



Current Project In Lawrence

2-4





March 12, 2009

Testimony Senate Bill 292
Senate Judiciary Committee

Mister Chairman and members of the committee,

My name is Steve Mohan, President of Mohan Construction, Inc. in Topeka, Kansas. We are a commercial general contractor that provides services for new construction, renovation, construction management and design-build.

I would like to take this time to offer my support for SB 292, regarding notice of furnishings for commercial construction projects. This legislation will benefit general contractors, subcontractors, and all vendors who supply labor and materials to a construction site. If a general contractor is aware of all the vendors on a jobsite before or at the time work is performed, the general contractor has a much better opportunity to make sure everyone is paid in the event a subcontractor is unable to pay.

For example, if a general contractor pays a subcontractor for work performed, and that subcontractor fails to pay his suppliers, the general contractor may have to pay those suppliers and, in effect, pay twice for the same work.

This could be a major financial burden for any general contractor, but could be devastating for a smaller general contractor like Mohan Construction. Most smaller general contractors do not have the financial resources of larger general contractors and an event such as this would reduce his working capital and bonding capacity and could force him out of business. If he is aware of all vendors furnishing labor and materials on a jobsite, before or at the time work is performed, it gives him an opportunity to pay those vendors and protect himself from financial difficulty.

Thank you for your time and I strongly urge you to support Senate Bill 292.

Sincerely,

MOHAN CONSTRUCTION, INC.

A handwritten signature in black ink that reads 'Steve Mohan'.

Steve Mohan
President

SM:hk

cc: File
OffAdmin/CorrGen/AGCSB292



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www.mohanconstruction.com

Senate Judiciary

3-13-09
Attachment 3

**Testimony of Rick Kuhn
Senate Judiciary Committee
Senate Bill 292**

Mister Chairman and members of the Committee, my name is Rick Kuhn. I am the Vice President of PKM Steel Service, Inc., Wichita, and a member of the AGC of Kansas. PKM Steel specializes in the fabrication of structural steel for commercial and industrial buildings.

PKM Steel Service, Inc. supports Senate Bill 292 and asks that the committee report it favorably.

PKM believes SB 292 will help to assure that downline subcontractors, or "remote claimants" as they are defined in the bill, are compensated for services rendered in a timely manner. This assurance minimizes the chance of remote claims after a project is completed, thereby saving all parties significant time and money.

Additionally, SB 292 not only protects the Owner and General Contractor from remote claims, but also protects each tier of subcontractors providing services to a specific project.

SB 292 places an obligation upon higher tier subs to assure that payments are made to lower tier subs, placing the highest burden upon the General Contractor or Construction Manager.

Again, with the structure of SB 292 in place the project's owner can be further assured of a lien free project and significant time and money can be saved by all participants.

Thank you for taking time to consider SB 292 and again, I ask that you support this legislation.



TESTIMONY OF
RICK MCCAFFERTY, EXECUTIVE VICE PRESIDENT,
KEY CONSTRUCTION
BEFORE SENATE COMMITTEE ON JUDICIARY
SB 292
MARCH 12, 2009

Mister Chairman and members of the committee, my name is Rick McCafferty. I'm an Executive Vice President with Key Construction, Inc.

The purpose of my testimony is to support the passage of Senate Bill 292 and explain the potential and actual risks that a general contractor (G.C.) faces with regard to claims for unpaid materials and/or services. Also, to cite examples where my company has fell victim to the circumstances of our current lien laws.

Under the current lien statutes, there are no formal notifications that a G.C. receives from a company when they have provided materials or services that are protected by our lien laws on a project for which that G.C. is under contract. The risk here in its simplest terms, is that after a first tier subcontractor is paid in full by a G.C., and that subcontractor fails to pay their sub or material subcontractor (2nd tier), that entity can successfully file a lien and recover its cost from the G.C. or owner, even though the first tier subcontractor was paid for the work.

The only protection or measures that a G.C. has to mitigate this risk is to investigate that every 2nd tier entity that has lien rights on a project has been paid by their 1st tier subcontractor and if not, force this payment action by the usage of Joint checks (jointly payable to 1st and 2nd tier subcontractors/vendors) for willing parties or direct payment, deducting the amount paid from the 1st tier sub's account. This process is obviously not 100% effective and leaves room for expensive claims at the end of a project.

Another way a Contractor can protect themselves is to require their subcontractor to provide a performance and payment bond. The bonding option is great for protection in matters such as these but does not come without a price. In addition to the cost of these bonds which can add up to 2-3% to the price of construction, limiting subcontractor awards to only "bondable" companies will eliminate a great number of small construction

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Senate Judiciary

3-13-09
Attachment 5

businesses that perform work in Kansas or any other state. This can also inhibit competition, and in turn, result in higher construction costs for private and public owners.

While some of the specific incidents our company has faced have been small in dollars, those dollars can add up significantly and in the past 10 years have cost us in excess of \$800,000 in the defense and settlement of these lien claims.

Most recently we had a plumbing subcontractor on a Grocery/Retail Super-center project that was paid in full for work that was performed on that job. 2-3 months after the completion of that project, and after the plumbing sub was paid in full, a 2nd tier material supplier files a lien on that project for non payment for materials that were sold to that plumbing sub and delivered to the project. Upon investigation of that claim, the plumbing sub claimed that they did pay the 2nd tier supplier from funds received from Key Construction, but did not specify where to apply the payment. The 2nd tier material supplier chose to apply the payment to older receivables that the plumbing sub had with this company instead of on the amounts due for materials that were supplied to the Super-center we were building. If the plumbing subcontractor cannot fund the \$101,000+ (which they claim they cannot), Key Construction will have to pay the 2nd tier material supplier \$101,000+ to release the lien and attempt to collect it from the plumbing sub who may or may not be out of business.

To summarize, if the notification requirements as set forth in this proposed legislation were enacted, a G.C. would know what companies had a lien protected interest in their projects, thus allowing that G.C. to ensure payment (by joint or direct payment) to that entity and be assured that all legitimate debts are satisfied prior to final payment to a subcontractor.

Thank you for your consideration.

Respectfully Submitted,
KEY CONSTRUCTION, INC



Rick McCafferty
Executive Vice President

KANSAS CEMENT COUNCIL

800 SW Jackson St., Ste. 1408

Topeka, KS 66612

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TESTIMONY

Date: March 12, 2009

By: Woody Moses, Director

Regarding: Senate Bill 292, An act concerning liens; relating to supplier's liens

Before: The Senate Committee on Judiciary

Good morning Mr. Chairman and Members of the Committee:

My name is Woody Moses, representing the Kansas Cement Council. The Kansas Cement Council is composed of Ash Grove Cement, Lafarge North America and Monarch Cement Company who all operate cement mills in Southeast Kansas. I appreciate the opportunity to appear before you today to express our opposition regarding SB 292.

My name is Woody Moses, Managing Director of the Kansas Aggregate Producers' Association and the Kansas Ready Mixed Concrete Association. The Kansas Aggregate Producer's Association (KAPA) and the Kansas Ready Mixed Concrete Association (KRMCA) is a state wide trade association comprised of over 170 members located or conducting operations in all 165 legislative districts in this state, providing basic building materials to all Kansans. I appreciate the opportunity to appear before you today to express our reluctant opposition regarding SB 292.

While we have considered why this bill is relevant and has been introduced, our thoughts go to the old saying, "If it is not broke, do not fix it". Over the course of many years we, as a state, have crafted a good lien law structure and it seems as though it works just as it was intended by spreading risk in a balanced manner. Now, SB 292 seeks to upset the carefully crafted balance by shifting the risk from one group (general contractors) to another (subcontractors and suppliers). Ironic, as general contractors profess to make a living out of accepting risk, which justifies their existence. It is even more ironic, as the contractor already enjoys automatic lien protection, pursuant to K.S.A. 60-1101. Yet they seek to limit those of others.

Senate Judiciary

3-13-09

Attachment 6

Lien laws exist in all 50 states for a good reason, by fairly assigning the risks and providing a means whereby the fruits of one's labor may be recovered. SB 292 unfairly tips the scale against suppliers and subcontractors, as it essentially changes the time to file a lien from 90 days to 21 days.

Our industry is aware of the problems general contractors have in identifying all the subcontractors and suppliers which may be furnishing materials or labor to a project. Consequently we have been working with the AGC of Kansas and others to come up with a workable solution envisioning some type of voluntary notification system. However, we are strongly opposed to any system which would require changes in current law.

In short, we urge this committee to reject SB 292 as its passage would:

- Drive construction costs higher as suppliers are forced to add more dollars to their estimates to cover the increased risk.
- Creates unnecessary paperwork and the labor involved.
- Creates even more uncertainty in an already uncertain marketplace, and
- Lacks a compelling reason for passage.

Thank you for your time and attention, I would be happy to respond to any questions at the appropriate time.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES



MICHAEL R. (MIKE) O'NEAL
SPEAKER

Testimony in support of HB 2164
Senate Judiciary Committee 3-13-09

CHAIRMAN Owens and members of the Senate Judiciary Committee, thank you for allowing me to appear in support of HB 2164, dealing with judicial retirement. The bill's provisions are straightforward. HB 2164 would establish a new mandatory retirement age provision for Kansas judges of 75, while allowing any judge reaching age 75 to continue until the end of his or her pending term.

The law was changed several years ago to establish a "hard 75" provision, amending the existing law that set the retirement age at 70 subject to allowing judges to finish out terms that had not yet expired. The "hard 75" amendment did not affect Supreme Court Justices as their terms were and are 6 year terms, as opposed to the 4 year terms possessed by all other judges. The "hard 75" was an improvement at the time as it addressed the need of several judges who would have otherwise been forced to retire while healthy and very active on the bench.

The impetus for this current proposal arises out of concern over age limits in general and term interruption specifically, particularly for elected judges. While no judge, to my knowledge, has raised the constitutional question about age limits or term

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Senate Judiciary

3-13-09
Attachment 7

interruption, the question exists. No other state officer is age limited. Judges in the federal system are not age limited and Kansas is noted for federal judges who have remained very active after reaching senior status. Our own Judge Wesley Brown, of the Federal District Court in Wichita, is still very active on the bench and is over 100 years old. I had the pleasure of trying a case before Judge Brown when he was 97 years young.

The bill does not propose to strike the age limit, although I would not oppose such a move. The current age limit provision, however, does result in term interruption in most cases and is problematic in the sense that it limits by law the term of a duly elected judge. The same limit applies to an appointed judge but the voter disenfranchisement issue does not apply with retained judges. Treating the two types of judges differently would not be a solution either, of course.

With the change to a "soft 75" provision, we'd want to pick up the Supreme Court and have the provision apply to all judges, retained or elected. Again, even this new provision will have the effect of age limiting some otherwise very healthy and active judges and consideration could and should be given to deciding whether an age limit should exist at all. However, this Bill is a reasonable step to take. Thank you for your favorable consideration.

STATE OF KANSAS

TERRY BRUCE
STATE SENATOR
34TH DISTRICT
RENO COUNTY



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
VICE CHAIR: JUDICIARY
MEMBER: JOINT COMMITTEE ON SPECIAL
CLAIMS AGAINST THE STATE
AGRICULTURE
ASSESSMENT & TAXATION
NATURAL RESOURCES

RE: Testimony on House Bill 2164

Chairman Owens and Committee Members,

Thank you for allowing me to address House Bill 2164. I have been contacted on several occasions by Reno County District Court Judge Richard Rome and members of the Reno County Bar Association to address the mandatory retirement age for elected district court judges contained in K.S.A. 20-2608. After reviewing the issue, I agree the current policy is ill conceived and, along with the rest of the practicing attorneys in the Reno County legislative delegation, seek its change.

Under existing Kansas law, every district court judge that reaches the age of 75 must retire. For judges serving in judicial districts that elect their judges, it means a judge would have to retire during the course of their term. I believe this mandate is contrary to the will of the public who elected them to fill these positions.

As a publicly elected official myself, I find this requirement troubling for the above-stated reason, as well as for the fact that judges are the only public officials required to retire at a mandatory age. This bill does not go so far as to remove the cap altogether, and that issue can certainly be discussed, but HB 2164 does offer some relief to jurists with whom the public has voiced its trust.

In addition to extending the retirement of elected judges, HB 2164 extends the mandatory retirement of a justice to the end of the term he or she attains the age of 75. This was done to be consistent.

I introduced a similar bill last session, Senate Bill 494. Although it received a hearing, the committee ran out of time to work it. Thankfully, the issue is now being discussed by the House, who I'm positive has better time management skills.

Terry Bruce,
Reno County State Senator

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Senate Judiciary
3-13-09
Attachment 8



Kansas Criminal Code Recodification Commission

Prof. Tom Stacy, Chair
Ed Klumpp, Co-Chair
Sen. John Vratil
Sen. David Haley
Rep. Lance Kinzer
Rep. Paul Davis
Rep. Jan Pauls
Hon. Christel Marquardt
Hon. Richard M. Smith

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Hon. John W. White, Reporter
Brett A. Watson, staff attorney

Ed Collister
Prof. Michael Kaye
Timothy Madden
Steve Opat
Kim Parker
Jacqie Spradling
Debra Wilson

DATE: March 13, 2009

TO: Senate Judiciary Committee

FROM: Kansas Criminal Code Recodification Committee

Appearing: Ed Klumpp, Co-Chairman
John W. White, Reporter
Brett Watson, Staff Attorney

We appear on behalf of the Kansas Criminal Code Recodification Commission to speak in support of House Bill 2236. The KCCRC proposes the following changes to existing drug crime statutes:

- To move drug crimes from Chapter 65 to Chapter 21 of the Kansas Statutes, and
- To group existing statutes into the core offenses of manufacture, distribution, and possession without revising existing Kansas law.

New Sections 1 through 17, on pages 1 through 15, represent the work of the KCCRC in recodifying Kansas drug crimes. We have prepared a comparison table that enumerates the existing statute(s) included in the proposed statute (New Section). The remainder sections of the bill are changes to other statutes identified by the revisor as necessary for those statutes to appropriately reference the new sections 1-17.

Move drug crimes from Chapter 65 to Chapter 21 of the Kansas Statutes.

Cases involving drug crimes have a major impact on the work of law enforcement, the courts, the department of corrections, and other agencies of the criminal justice system. Although drug convictions account for approximately 25% of our prison population drug offenses are not in the criminal code but are found in Chapter 65 of Kansas statutes in the section generally devoted to regulation of pharmacists.

Highly technical definitions included in the definitions statute (K.S.A. 65-4101) are not easily understood by law enforcement, prosecutors, defense attorneys, judges, and jurors. Criminal conduct need not comport with highly technical definitions understood by chemists and

pharmacists. Moving the drug offenses to the criminal code and providing traditional and readily understandable definitions of criminal conduct will improve and modernize our drug laws.

The Commission recommends that Chapter 65 drug offenses be moved to become a part of the Kansas Criminal Code, Chapter 21 of the Kansas Statutes.

Group existing statutes into the core offenses of manufacture, distribution, and possession without revising existing Kansas law.

Serious drug felonies currently are not grouped together in Chapter 65 and instead appear in different portions of that Chapter. Our proposed recodification groups all of these offenses together. In addition, it orders these offenses around the core offenses of manufacture, distribution, and possession. These changes make the drug provisions more coherent, clear, and user-friendly without revising current Kansas law.

In preparing New Sections 1 – 17, the Commission has solicited input from other experts from outside of the KCCRC membership. For example:

- We were able to take advantage of the knowledge of Kyle Smith, formerly of the Kansas Bureau of Investigation. He presented testimony to the Commission encompassing his vast knowledge of the drug codes, drug enforcement, and the legislative development of those codes. His comments provided valuable assistance to the Commission in our work on the drug crimes statutes. He has been supportive of our proposals.
- We also met with a representative of the Kansas Board of Pharmacy. The Board of Pharmacy has no objections to our proposals.
- We met with various crime labs used by Kansas law enforcement where drug evidence is processed and analyzed.
- We also met with members of the KBI technology section. We have attempted to avoid any changes that would affect the KBI's crime reporting and data collection systems.

In addition, we point out the new sections 1 – 17 are essentially the same as presented to the Senate Judiciary Committee last year and were ultimately approved by the full Senate.

This summarizes our work on New Sections 1 – 17 of HB 2236. We will be glad to answer your questions.

We encourage you to recommend this bill favorably for passage.



Ed Klumpp
Vice Chair

HB 2236 Comparison Chart

Section 1	K.S.A. 65-4101	Definitions
	K.S.A. 65-4150	Definitions
	K.S.A. 65-7003	Definitions
Section 2	New Statute	n/a
Section 3	K.S.A. 65-4159	Unlawful manufacturing or attempting such of any controlled substance; penalty
	K.S.A. 65-4159a	Same; violations on or before effective date; penalties
Section 4	K.S.A. 65-4158	Costs and expenses [clean up of meth labs]
Section 5	K.S.A. 65-4161	Unlawful acts relating to sale or distribution of opiates, opium, narcotic drugs or designated stimulants
	K.S.A. 65-4163	Unlawful acts relating to sale or distribution of depressants, stimulants or hallucinogenic drugs or other substances
	K.S.A. 65-4164	Unlawful acts relating to certain narcotic drugs
Section 6	K.S.A. 65-4160	Unlawful acts relating to possession of opiates, opium, narcotic drugs or designated stimulants
	K.S.A. 65-4162	Unlawful acts relating to possession of depressants, stimulants or hallucinogenic drugs or other substances
Section 7	K.S.A. 65-4141	Unlawfully arranging sales or purchases of controlled substances using a communication facility

9-4

Section 8	K.S.A. 21-4214	Obtaining a prescription-only drug by fraudulent means
	K.S.A. 21-4215	Obtaining a prescription-only drug by fraudulent means for resale
Section 9	K.S.A. 65-4152	Simulated controlled substances and drug paraphernalia; use or possession prohibited
	K.S.A. 65-7006	Unlawful acts [regarding drug precursors]
Section 10	K.S.A. 65-4153	Prohibited acts [regarding drug paraphernalia]
	K.S.A. 65-7006	Unlawful acts [regarding drug precursors]
Section 11	K.S.A. 65-4151	Determination of what is "drug paraphernalia"; factors to consider
	K.S.A. 65-4152	Simulated controlled substances and drug paraphernalia; use or possession prohibited
Section 12	K.S.A. 65-4165	Abusing toxic vapors
Section 13	K.S.A. 65-4153	Prohibited acts [regarding drug paraphernalia]
Section 14	K.S.A. 65-4155	Representation that noncontrolled substance is controlled substance
Section 15	K.S.A. 65-4105a	Treatment of a controlled substance analog
Section 16	K.S.A. 65-4142	Unlawful acts involving proceeds derived from violations of the uniform controlled substances act
Section 17	K.S.A. 65-4166	Uniformity of act



KANSAS

KANSAS SENTENCING COMMISSION

Honorable Ernest L. Johnson, Chairman
Helen Pedigo, Executive Director

KATHLEEN SEBELIUS, GOVERNOR

SENATE JUDICIARY COMMITTEE The Honorable Tim Owens, Chairman

WRITTEN TESTIMONY ON HOUSE BILL 2236 Drug Code Recodification Helen Pedigo, Executive Director March 13, 2009

Mr. Chairman and committee members, thank you for the opportunity to submit written testimony in support of HB 2236.

The Kansas Sentencing Commission is proud to have one board member appointed to serve on the Recodification Commission. Formerly, the Kansas Sentencing Commission appointment was Representative Janice Pauls and is now Ellis County Attorney, Tom Drees. In addition, several other members of the Sentencing Commission also serve on the Recodification Commission. Through these appointments, the Sentencing Commission is not only kept up-to-date, but is also responsible to assist in producing a work product that results in good public policy for the State.

The Kansas Sentencing Commission strongly supports the work of the Recodification Commission, and specifically this bill, as a means to clarify existing statutes, incorporate relevant case law, and merge these statutes into the Criminal Code, Chapter 21 of the Kansas Statutes Annotated. The Recodification Commission has worked diligently towards completing this endeavor, and should be commended.

The Sentencing Commission requested technical amendments that otherwise would have affected the group of offenders eligible for SB 123 alternative sentencing substance abuse treatment. This request was granted by the House. With those changes, the group of offenders eligible for 2003 SB 123 remains in the bill as it exists today. The Kansas Sentencing Commission supports the bill as amended.

I'd be happy to address questions or concerns that you may have.

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Voice 785-296-0923 Fax 785-296-0927 <http://www.kansas.gov/ksc>

Senate Judiciary

3-13-09

Attachment 10



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TO: Senate Judiciary Committee

FROM: Kansas Judicial Council – Richard F. Hayse

DATE: March 13, 2009

RE: 2009 HB 2111 Relating to Removal of Sunset Provision from Judicial Performance Evaluation Statutes

Introduction

In 2006, the Legislature passed 2006 SB 337 which established the Kansas Commission on Judicial Performance and created a program of judicial performance evaluations for all Kansas appellate and trial judges. The legislation established the qualifications, duties and procedures of the Commission. The Legislature funded the program with docket fees, rather than state general fund revenue. The concept was that the evaluation of the judges would be funded by the persons who are using the court system.

When the Legislature passed SB 337 in 2006, it was willing to approve the concept of judicial performance evaluations, but wanted to wait until actual evaluations had been conducted before considering making the program permanent. For this reason the Legislature put language in K.S.A. 20-3201 which will allow the program to expire on June 30, 2010 (this is called the sunset provision). HB 2111 removes this sunset provision and makes the program permanent, unless the program is repealed by a future Legislature.

Background

Currently, 20 states (including Kansas) and the District of Columbia have officially sanctioned judicial performance evaluation programs. Six additional states are developing

Senate Judiciary

3-13-09

Attachment 11

programs, and 12 states do not have formal judicial performance evaluation programs but have evaluations that are conducted independently by state or local bar associations.

While judicial performance evaluation programs vary from state to state, they also have many similar identifying characteristics. Judicial performance evaluations are generally centered around responses to standardized, scaled surveys provided by individuals who have dealt with a judge during an evaluation period. The questionnaires ask these individuals (who may include attorneys, jurors, witnesses, court staff, and litigants) to rate the judge on behavior-based items related to process and demeanor. The survey response data, along with other information such as court management data, courtroom observations, interviews with the judges, and disciplinary filings are considered by a non-partisan commission made up of attorneys and non-attorneys. After considering the information about a judge the commission prepares a report about the judge which, in some cases is only provided to the judge for self-improvement, and in some cases is made public. If the report is made public it usually contains a recommendation of whether or not the commission recommends the judge to be retained in office.

Judicial Performance Evaluations Generally

Judicial performance evaluation programs generally have the goals of promoting judicial accountability and independence, improving judicial performance and improving voter knowledge.

Judicial performance evaluation programs promote accountability and independence by measuring process rather than outcome. In other words, judicial performance evaluation programs focus on a judge's competence and impartiality rather than specific decisions a judge has made. By setting objective measurable standards for judges, it makes it easier for the public to identify the qualities that make a good judge and makes it easier to distinguish between judges whose performance is outstanding and those whose performance needs improvement. The characteristics measured by judicial performance evaluations are usually impartiality, temperament, knowledge of law, fair application of the law and efficiency. Widely disseminated information about the performance of judges from a non-partisan, objective source can enhance judicial independence by educating the public about the qualities that make a good judge and help protect a judge from the effects of an unfair attack.

Judicial performance evaluations permit a judge to see how he or she has performed against predetermined benchmarks, relative to his or her peers on the court and to identify areas of strength and weaknesses. Judicial performance evaluations also improve judicial performance by providing constructive criticism that would not be available to the judge in any other way. This is especially true for interpersonal performance issues such as treatment of people in the courtroom. Judicial performance evaluations also allow the judge to receive positive feedback about his or her performance, which a lawyer or litigant might otherwise withhold for fear it will be interpreted as an improper attempt to gain favor from the judge. Judges in many judicial performance evaluation programs have commented positively on the feedback they received and have acknowledged that, without the feedback, which was only possible through formal, anonymous evaluations, they would not have received the information that led to their self-improvement.

Judicial performance evaluations improve voter knowledge by disseminating to voters relevant information about a judge's overall performance and, often, by making a recommendation on whether the judge should or should not be retained in office. Thus, judicial performance evaluation programs result in more informed decision-making by voters. In addition to producing more informed voters, judicial performance evaluation programs can also increase the number of voters. Multiple studies have shown that, when voters have more information about a judicial candidate, they are more likely to vote in a judicial election. In contrast, when information about judges is lacking, voters are less likely to vote on judicial retention, and when they do vote, they are more prone to base their decisions on factors such as ethnicity, gender, name recognition, length of time on the bench, or no rationale whatsoever.

The Kansas Program

How Established

In November of 2004 the Judicial Council was requested to undertake a study of judicial performance evaluations. The Council agreed to the request and appointed a special advisory committee to undertake the study.

The study committee was chaired by Court of Appeals Judge Stephen D. Hill and included judges, lawyers, a legislator, a law professor, and a representative of the League of Women Voters. The Judicial Council also appointed to the committee representatives of groups which had been critical of the courts including the business community, faith based groups, domestic violence groups, and the media.

After a one-year study, the committee made a number of findings and recommendations and proposed Kansas adopt a system of judicial performance evaluations. The committee proposed legislation that served as the basis for 2006 SB 337. SB 337, as originally proposed, did not include a sunset provision. The bill was supported by the Supreme Court, the Court of Appeals, the District Judges Association, the District Magistrate Judges Association, and the Kansa Bar Association and was passed by the 2006 Legislature.

Goals

The specific goals of the Kansas judicial performance evaluation program are set out in K.S.A. 20-3203. Those goals are:

- (a) To improve the judicial performance of individual judges and justices and thereby improve the judiciary as a whole;
- (b) where judges and justices are subject to retention elections, to disseminate the results from the judicial performance evaluation process to enable voters to make informed decisions about continuing judges and justices in office; and
- (c) to protect judicial independence while promoting public accountability of the judiciary.

Implementation

Since the effective date of the 2006 legislation creating a program of judicial performance evaluations, the Kansas Commission has undertaken a number of steps to establish the Kansas program. Examples of work by the Commission to implement the program include: studied other states' programs to design the best format for Kansas; drafted the Commission's rules; prepared RFP's for the Commission's survey contractor; prepared and installed software in each courthouse to facilitate automated gathering of case file information so information would not have to continue to be gathered manually; established databases of all Kansas Judges and all Kansas attorneys for use in surveying; manually gathered information for mailing to jurors; manually gathered information for mailing to courthouse employees; sought and received statutory amendment to allow access to case information that was previously considered confidential; and reviewed 1,600 pages of comments about judges and removed any references that might identify the author. These are examples of a few of the dozens of tasks accomplished by the Commission to establish a "start up" program.

After the program was established the Commission began evaluating 87 judges and justices, of whom 80 stood for retention election in November of 2008.

How the Kansas Program Works

The Kansas program works very much like the description of judicial performance evaluation programs I previously gave. A great deal of detail about the Kansas program appears on the Commission's website. The web address is "www.kansasjudicialperformance.org". On the Commission's website the Commission statutes, rules, and questionnaires are posted along with a complete narrative description of how the Commission performs its statutory duties. Also, biographical information about the Commissioners, Commission meeting schedules, frequently asked questions, and the Commission's archives are on the website.

The end product of the Commission's evaluation of judges is the narrative profile and the report and the recommendations which also appear on the Commission's website. I have attached a copy of a narrative profile at page 9 of this testimony and a few pages from the report of Judge Jeff Jack of Labette County at pages 11-14. I chose to provide this example because many of you may have known Judge Jack when he served in the legislature prior to his appointment to the district court bench. I could have provided a copy of any of the evaluated judges' reports as an example because they are all in the public domain.

What is not in the public domain are the answers to the open-ended questions about the judge's strengths and weaknesses which the Commission refers to as "comments." Each judge received an average of 20 pages of comments. This material is confidential (only seen by the Commission and the judge). I have included examples of these comments at pages 15-18 of this testimony.

Dissemination of Results

K.S.A. 20-3204 directs that the Commission shall, with the aid of professionals where appropriate, make the evaluation results widely available when they are used to assist voters in evaluating the performance of judges and justices subject to retention elections.

The Commission widely circulated media kits and worked hard to provide information to the media. There was media interest in the program, partly because it was new. There were a number of non-paid newspaper, television, and internet placements about the program. Prior to the release of reports on judges there were stories in 25 newspapers (including four major dailies), one television report and two internet story placements.

The Commission also created a website on which the reports and recommendations and information about the Commission were posted. The Commission purchased internet advertising and print advertising in the state's four major dailies. In addition, paid advertisements which informed the public about the evaluations and the website were purchased in two separate editions of one newspaper in each county in which an evaluated district or district magistrate judge was on the ballot.

As a result of these dissemination efforts the total confirmed media placements including those preceding release of the reports, those when the reports were released, and those preceding Election Day were as follows:

Confirmed Kansas Placements	1,081,536
*Confirmed Out of State Placements	2,876,221
Television Stations	52,000
Internet Placements	334,321

*Number is high because on 8/4/08 USA Today picked up the story and this accounts for 2,228,439 of the placements.

In addition the Commission's website showed 107,422 "total downloads" and 1,739,881 "total webpage hits."

The Commission also distributed over twenty thousand brochures about the program. The brochures were provided to every library in the state, to each district court clerk's office, and to every Kansas attorney.

Evaluation of Program

Available information relating to judicial performance evaluation programs suggests there are two ways to evaluate the success of the programs. "Process evaluations" are an assessment of whether the program is operating as it was intended and "impact evaluations" are an assessment of whether the program objectives are being attained and the overall impact of the program.

Process Evaluation

A review of the Kansas Statutes and the Commission's rules confirms that the Commission has carefully followed the process as set forth in the Commission's statutes and rules.

Beginning with selection of the Commission and concluding with dissemination of the judicial performance evaluation results to assist voters in evaluating the performance of judges subject to retention elections, the Judicial Council and the Commission have followed the statutes and the rules.

Impact Evaluation

While the process evaluation is relatively easy, evaluation of the impact of the program is more difficult. I have heard dozens of positive comments and reports about the program. While these reports are anecdotal they have convinced me that the program is improving the judicial performance of individual judges and justices.

A more substantive measure of the success of the judicial performance evaluation program is the decrease in voter falloff in judicial elections. Dr. Richard Heil, former Chair of the Political Science Department at Fort Hays State University and a member of the Commission, prepared a paper titled "Report on Voter Falloff in 2008 Judicial Elections."

Dr. Heil analyzes the effect the Commission's recommendations and reports had on voter falloff in the 2008 judicial elections. Voter falloff for the purpose of Dr. Heil's report is defined as the difference in the number of voters who voted for the top office on the ballot (in 2008 this was President) and who voted in judicial retention elections. Dr. Heil's report concluded by stating:

"In the three Presidential elections preceding 2008 the average falloff in Supreme Court elections was 25.3%. In 2008 that number was 21.3% a 4.0% difference. Similarly, the average falloff in Court of Appeals elections was 26.6%. In 2008 that number was 23.0% a difference of 3.6%. Now 4.0% and 3.6% do not sound that impressive at first. However, in 2008 if the usual 25.3% had fallen off in the Supreme Court vote that would translate into 312,676 fewer votes instead of the 263,803 that actually occurred (an improvement of 48,873). Similarly, in 2008 if the usual 26.6% had fallen off in the Court of Appeals vote that would translate into 328,742 fewer votes instead of the 284,423 that actually occurred (an improvement of 44,319).

Tables B and C also reveal another important fact. The columns labeled Falloff represent the average number of voters who do not vote on the judicial retention questions. Note that in both tables the smallest number occurs in 2008. However the data is analyzed, what is clear is that the election of 2008 saw more voters expressing opinions on retention of judges in Kansas than in the previous decade. While it is not possible to prove that the reason for this improvement was the existence of the Kansas Commission on Judicial Performance I know of no other factors that would explain the fact that more voters than would be expected, based upon previous electoral behavior, did vote on judicial retention questions in 2008. If forty-some thousand Kansans benefited from the information provided by the Kansas Commission on Judicial Performance and cast a more informed vote, then one of the goals of the Commission has been accomplished."

Summary

The Kansas judicial performance evaluation program has had a successful start. Despite the effort that it took to establish the program and nearly simultaneously conduct the initial performance surveys for dissemination prior to the 2008 elections, the initial reports were of high quality and were accepted by the judges and the public.

Building on the quality of the initial evaluations, the Commission has already made changes to improve future surveys and will continue to make improvements in the process as it gains experience. The Kansas judicial performance evaluation program is in place, is functioning well, is meeting expectations and the program should be made permanent.

Kansas Commission on Judicial Performance



Honorable Jeffrey L. Jack

2008 Review

District: 11

County: Labette

The Kansas Commission on Judicial Performance recommends that Judge Jeffrey L. Jack BE RETAINED.

Judge Jack took the bench as District Judge in the 11th Judicial District in 2005. He handles a mixed docket of civil, criminal, juvenile and other cases in Labette County. A graduate of Harvard University and the University of Kansas School of Law, Judge Jack spent 16 years in the private practice of law before his appointment to the bench. He was also a Kansas State Representative from 2003 to 2005 and is a retired Major with the US Army Reserve/Kansas Army National Guard serving from 1984 to 2004.

Judge Jack was named State of Kansas Big Brother of the Year in 2008. He serves on a number of boards including the Labette County Big Brothers/Big Sisters Board of Directors, the Labette Correctional Conservation Camps Advisory Board, the Labette Community College Criminal Justice Advisory Board, the Juvenile Corrections Advisory Board, and the Labette County Law Library Board of Trustees.

Judge Jack lists compassion, integrity, intellectual ability, empathy and common sense as his greatest strengths. He recognizes that he could improve docket management and timeliness of written opinions. His professional goals are to improve his time management and his written opinions.

The Commission received survey responses from 21 attorneys and 138 non-attorneys. Survey results showed that 95% of the attorneys and 81% of the non-attorneys recommended that Judge Jack be retained in office. Judge Jack received an overall average score from attorneys of 3.47 on a 4.0 scale and an overall average score from non-attorneys of 3.20. Judge Jack's scores exceed the required minimum average grade of 2.0 from each category of respondents. The Commission recommends that he BE RETAINED.

View the complete Judicial Performance Report for the Honorable Jeffrey L. Jack in PDF format.

Survey of Non-Attorneys Regarding Trial Judges

Judge Jeffrey L. Jack

Sample Size = 138

Average

A

B

C

D

Fair

DK/NA

Jeffrey L. Jack

All Trial Judges

1. Performance Grade:

1a. Overall performance as a judge.	48%	28%	12%	8%	4%	1%	3.1	3.1
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2. Integrity:

2a. Conducts court free from impropriety or appearance of impropriety.	53%	24%	11%	7%	3%	2%	3.2	3.3
2b. Willing to make decisions even if they are politically unpopular.	37%	22%	10%	10%	3%	18%	3.0	3.1

Overall Integrity 3.1 3.2

3. Impartiality:

3a. Gives all participants a fair opportunity to be heard.	64%	16%	9%	4%	5%	1%	3.3	3.3
3b. Treats people fairly who represent themselves.	42%	19%	4%	4%	5%	25%	3.2	3.2
3c. Does not prejudge the outcome of cases.	45%	21%	12%	4%	4%	14%	3.1	3.1
3d. Presents a neutral presence on the bench.	58%	19%	12%	6%	3%	2%	3.3	3.2
3e. Treats everyone fairly regardless of who they are.	56%	18%	9%	4%	5%	7%	3.2	3.2

Overall Impartiality 3.2 3.2

4. Professionalism:

4a. Maintains appropriate control over proceedings.	60%	23%	11%	3%	1%	3%	3.4	3.4
4b. Is prepared for cases.	52%	23%	13%	3%	2%	7%	3.3	3.3
4c. Gives court proceedings a sense of dignity.	56%	20%	13%	2%	4%	4%	3.3	3.3

Overall Professionalism 3.3 3.4

5. Communication Skills:

5a. Makes sure participants understand what's going on in the courtroom.	61%	20%	8%	6%	4%	2%	3.3	3.4
5b. Uses language that everyone can understand.	60%	24%	8%	4%	3%	1%	3.4	3.4
5c. Speaks so everyone in the courtroom can hear what's being said.	61%	20%	11%	4%	2%	1%	3.4	3.4
5d. Gives reasons for rulings.	51%	22%	8%	7%	4%	7%	3.2	3.2

Overall Communication Skills 3.3 3.3

6. Temperament:

6a. Demonstrates a sense of compassion and human understanding for those who appear before the court.	52%	24%	8%	7%	7%	2%	3.1	3.1
6b. Is attentive during the proceedings.	57%	25%	11%	2%	2%	3%	3.4	3.4
6c. Acts with patience and self control.	61%	15%	16%	8%	0%	0%	3.3	3.4

Overall Temperament 3.3 3.3

7. Administrative:

7a. Begins court on time.	40%	36%	12%	6%	4%	3%	3.1	3.2
7b. Sets reasonable schedules for cases.	39%	25%	16%	3%	5%	12%	3.0	3.2
7c. Manages court proceedings to reduce wasted time.	41%	29%	13%	5%	4%	8%	3.1	3.2
7d. Provides prompt access to the court in emergency matters.	23%	17%	7%	2%	6%	45%	2.9	3.2

Overall Administrative 3.0 3.2

Overall Average Grade: 3.2 3.3

Judge Jeffrey L. Jack
Questions 8 & 9

Jeffrey L. Jack All Trial
Judges

8. Biased in favor of prosecution/defense.

Very biased in favor of the prosecution	10%	10%
Somewhat biased in favor of the prosecution	6%	10%
Completely Neutral	71%	71%
Somewhat biased in favor of the defense	6%	6%
Very biased in favor of the defense	6%	3%

9. How strongly do you recommend that Judge be retained or not retained in office?

Strongly recommend retain in office	66%	70%
Somewhat recommend retain in office	15%	13%
Somewhat recommend not retain in office	8%	5%
Strongly recommend not retain in office	12%	11%

Survey of Attorneys Regarding Trial Judges

Judge Jeffrey L. Jack Sample Size = 21							Average	
	A	B	C	D	Fail	DKNA	Jeffrey L. Jack	All Trial Judges

1. Performance Grade:

1a. Overall performance as a judge.	57%	24%	5%	5%	0%	10%	3.5	3.3
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2. Legal Ability:

2a. Bases decisions on the relevant evidence.	43%	29%	5%	5%	0%	19%	3.4	3.4
2b. Has knowledge of rules of procedure.	48%	29%	5%	5%	0%	14%	3.4	3.5
2c. Follows legal precedent in decisions.	48%	24%	5%	5%	0%	19%	3.4	3.4
2d. Uses judicial discretion to reach a fair decision.	43%	24%	10%	0%	0%	24%	3.4	3.4
Overall Legal Ability							3.4	3.4

3. Integrity:

3a. Conducts court free from impropriety or appearance of impropriety.	71%	14%	5%	0%	0%	10%	3.7	3.6
3b. Does not engage in inappropriate ex parte communications.	67%	10%	10%	0%	0%	14%	3.7	3.7
Overall Integrity							3.7	3.6

4. Impartiality:

4a. Does not prejudge the outcome of cases.	62%	24%	5%	0%	0%	10%	3.6	3.3
4b. Treats pro se parties fairly.	24%	14%	5%	0%	0%	57%	3.4	3.6
4c. Makes decisions and rulings without regard to the identity of the parties.	57%	14%	14%	0%	0%	14%	3.5	3.4
4d. Makes decisions and rulings without regard to the identity of counsel.	57%	24%	5%	0%	0%	14%	3.6	3.4
4e. Treats attorneys equally regardless of sex or race.	67%	14%	5%	0%	0%	14%	3.7	3.7
Overall Impartiality							3.6	3.5

5. Communication Skills:

5a. Makes sure participants understand the proceedings.	57%	19%	10%	0%	0%	14%	3.6	3.5
5b. Issues clear and logical oral communication while in court.	67%	14%	10%	0%	0%	10%	3.6	3.4
5c. Provides rulings that are clear, thorough and well reasoned.	57%	19%	14%	0%	0%	10%	3.5	3.3
Overall Communication Skills							3.6	3.4

6. Professionalism:

6a. Does the necessary homework and is prepared for cases.	52%	14%	5%	5%	0%	24%	3.5	3.4
6b. Maintains proper order, decorum and civility in the courtroom.	62%	19%	5%	0%	0%	14%	3.7	3.6
6c. Appropriately enforces court rules, orders and deadlines.	62%	14%	10%	5%	0%	10%	3.5	3.5
6d. Uses common sense and is resourceful in resolving problems that arise during proceedings.	62%	14%	14%	0%	0%	10%	3.5	3.5
6e. Promptly makes decisions and rulings.	35%	45%	5%	0%	5%	10%	3.2	3.5
Overall Professionalism							3.5	3.5

11-11

Judge Jeffrey L. Jack							Average	
	A	B	C	D	Fail	DKNA	Jeffrey L. Jack	All Trial Judges

7. Temperament:

7a. Gives proceedings a sense of dignity.	71%	14%	5%	0%	0%	10%	3.7	3.6
7b. Treats everyone in the courtroom with respect.	67%	14%	10%	0%	0%	10%	3.6	3.5
7c. Is attentive during the proceedings.	71%	14%	5%	0%	0%	10%	3.7	3.7
7d. Acts with patience and self-control.	71%	10%	10%	0%	0%	10%	3.7	3.4
Overall Temperament							3.7	3.5

8. Administrative:

8a. Begins court on time.	48%	33%	5%	0%	5%	10%	3.3	3.5
8b. Allots an adequate amount of time for presentation of cases.	57%	10%	14%	0%	5%	14%	3.3	3.5
8c. Manages court proceedings to reduce wasted time.	48%	10%	5%	14%	5%	19%	3.0	3.4
8d. Provides prompt access to the court in emergency matters.	29%	14%	5%	5%	5%	43%	3.0	3.5
8e. Appropriately uses settlement conferences and alternative dispute resolution mechanisms.	14%	14%	5%	5%	0%	62%	3.0	3.4
8f. Complies with time limits for rulings in Supreme Court Rule 166 relating to all civil matters taken under advisement.	19%	14%	10%	0%	0%	57%	3.2	3.5
Overall Administrative							3.1	3.5

Overall Average Grade: 3.5 3.5

Questions 9 & 10						Jeffrey L. Jack	All Trial Judges
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9. Biased in favor of prosecution/defense.

Very biased in favor of the prosecution	0%	5%
Somewhat biased in favor of the prosecution	20%	22%
Completely Neutral	60%	67%
Somewhat biased in favor of the defense	20%	5%
Very biased in favor of the defense	0%	1%

10. How strongly do you recommend that Judge be retained or not retained in office?

Strongly recommend retain in office	79%	79%
Somewhat recommend retain in office	16%	12%
Somewhat recommend not retain in office	0%	4%
Strongly recommend not retain in office	5%	5%

11-12

Judge Example Attorney Comments

11. Judge's Strengths

Respondent Comments

- 1 Courteous to litigants and counsel. He also appears to be pretty well prepared when hearing contested matters
- 2 Familiarity with computer processing and jargon.
- 3 He looks, talks and acts like a judge should. He is courteous and clearly intelligent and well prepared.
- 4 Pleasant demeanor. Informed. Uses common sense applied to law and facts. Treats everyone appearing before with respect.
- 5 Judge Example is fair, intelligent, and possesses a judicial demeanor which commands respect but does not make him unapproachable. He uses common sense and is clearly attentive during hearings which attitudes is reflected in his well reasoned decisions and rulings.
- 6 He is very intelligent and he is extremely courteous gentleman. He is reality based.
- 7 Fair and impartial. Does his best to manage the court and not manage the outcome of the case. Treats everyone with respect.
- 8 Fairness.
- 9 Fairness and willingness to listen to both sides and willingness to take the time to research legal issues to insure his ruling is based upon the law. I just think maybe his willingness to take time for last minute issues and motions is never demeaning to counsel.
- 10 He appears to be patient, listens to the comments of counsel and litigants, and never seems to get rattled.
- 11 I can always count of Judge Example to always try and render a decision that he believes is fair and based on the law, after giving me ample opportunity to present my client's position. He has always treated me with the utmost respect and courtesy.
- 12 Patience. Respect for parties rights Attempts to be thorough.
- 13 In my opinion Judge Example is deeply committed to fairness. He always goes that extra mile to make sure that each party has the opportunity to fully present his case, and my experience is that he makes his decisions on the facts and the law, without prejudice to either side. He treats all lawyers with respect both in and out of the courtroom, and has what I would call a perfect judicial temperament. In addition, he knows the law and is quite skilled in applying it to the facts before him. One has the confidence that he, and no one else, is the person in charge in his courtroom.
- 14 Judge Example combines a skill at efficient proceedings with a true concern that the results are very fair. This means my cases are handled effectively, but I still get personal attention. I always have confidence in his decisions.
- 15 Fair and unbiased.
- 16 He seems to be unusually prepared on the knowledge of the law and issues, you can see him pick up on what attorneys miss, he handles his case load very well and moves the case along without cutting you off.
- 17 Well versed in the law. Makes good decisions and rulings.
- 18 The fact is that he is very patient and gives all parties leeway to solve the problem and tries not to get in the middle
- 19 Overall understanding of the issues.
- 20 He is accommodating on things that are short set, his schedule is very flexible.
- 21 Communication skills. Common sense.

Judge Example Attorney Comments

11. Judge's Strengths

Respondent Comments

- 1 Not applicable.
- 2 He displays great patience, conducts the court's business in a dignified fashion and applies with good common sense his thorough knowledge of the law.
- 3 Straight forward, approachable, and fair – applies common sense.
- 4 Knowledge of the law and rules. Promptness.
- 5 He is very patient with all participants in any case. He has the type of decorum that you would want with a judge. He treats everyone with respect and dignity – even those who sometimes don't deserve it.
- 6 Brevity.
- 7 Generally patient, especially with pro se litigants and young lawyers; will let the parties try their case.
- 8 He knows and applies the law correctly and has abundant common sense.
- 10 Judge Example has a good mind; he's a lot "brighter than the average bear." He's dedicated to keeping cases moving – daily and over the long haul.
- 11 Good work ethic. Common sense. Good judicial demeanor in courtroom.
- 12 Judge Example has good common sense and applies that to each case and comes out with rulings that are appropriate for the parties. He very courteous to the attorneys and litigants.
- 13 Knowledge of the law and legal procedure. Willingness to give guidance to newer attorneys. Experience.
- 14 Most of the time he makes a fair decision. When he treats people badly he generally treats everyone badly.
- 15 Common sense rulings in cases involving best interests of children. Does not suffer fools gladly.
- 16 Judge Example moves cases through on a timely manner. He is insistent that attorney are ready to address cases on time.
- 17 Efficiency.
- 18 Since I've appeared in front of Judge Example only twice, both times involving the same case, which he mediated, I've had limited contact. But I thought he ran a very professional court and did an excellent job during the mediation.
- 19 His judicial decorum and knowledge of the law. His experience on the bench is an asset. He is civil to attorneys and clients and yet very businesslike. He is also fairly prompt in rendering decision.
- 20 Fair decisions.
- 21 Good temperament and treats everyone fairly.
- 22 Experience and ability to evaluate the facts and precedent and make a reasoned decision.
- 23 Order and dignity in the courtroom.
- 24 Knowledge of the law, appropriate review of applicable cases, and making decisions based on the law not the participants.
- 25 Clearly communicates, decides promptly, bases decisions on the law and facts.
- 26 He relates well to parties and makes good decisions.
- 27 Keeps good command of his division and the courtroom.

Judge Example Attorney Comments

12. Judge's Weaknesses

<u>Respondent</u>	<u>Comments</u>
1	Thinks his court is the only one that matters. Very rude if counsel has conflict. Distant and withdrawn outside courtroom. Obviously does not have much experience in the private practice of law.
2	Frankly, Judge Example does not have a judicial weakness that I see. There are some times where his patience may be strained but even then, he remains patient. I believe it takes someone who appears before his frequently to see when his patience is being tested.
3	His are insignificant.
5	None.
6	I lack sufficient knowledge to give my opinion as to weaknesses.
7	Allows pro se litigants too much time at scheduled court docket calls.
8	Failure to impose sanctions and attorney fees in circumstances where they should be imposed unfairly burdens the innocent who have no control over the other party's behavior and encourages behavior and lack of client control by certain attorney's who repeatedly engage in litigious behavior and take positions clearly not justified by the circumstances. It is general knowledge that he will not award fees, so there is no deterrent to and no risk from engaging in unacceptable behavior.
9	None.
10	Have not observed any.
11	For one, his administrative assistant. She is lazy, uncooperative, unhelpful, obstructionist and anti-lawyer. In my opinion, Judge Example needs to enforce the orders of the court, make the proceedings more gender-natural, establish a partnership with attorneys in the domestic process instead of being biased against them and not be intimidated by those practitioners who consider themselves to be 'established.'
12	Has some biases that sometimes clouds his approach – but he has been forthright in acknowledging those biases and does attempt to not let them overly influence his decisions.
13	None known.
14	I don't have enough time in Judge Example's court to know; he was definitely top notch in the matter I had before his.
16	Vaguely biased toward mothers over fathers. Seeks to maintain jurisdiction over the children of the parties, no matter where the parties may move their respective domiciles.
17	Has favorites: communicates openly about cases outside the courtroom.
18	In some instances, I am aware that he has been short with or rude to litigants and witnesses.
19	None.
20	Relies too heavily on reports from court services officers at times.
21	Don't know.
22	I can't think of any.
23	Could permit additional time to develop factual positions of parties, however docket restraints are a reality.
24	Over books cases. I have spent a lot of time waiting for a hearing. My client is required to incur greater expenses and I lost a witness who left after several hours of waiting.

Judge Example Attorney Comments

12. Judge's Weaknesses

<u>Respondent</u>	<u>Comments</u>
1	He can be a little short with people.
2	He is not an approachable person. He does not understand technical legal issues and as a result, many of his rulings are incorrect. As a result, he is often the topic conversation when members of the bar share their 'war stories.'
3	Sometimes confusing in his logic and basis for his rulings and answers.
4	Does not treat attorneys as equals in the legal system, treats them as inferiors. Makes rulings without notice to all parties.
5	Inattentive during trials or hearings. Unprepared for some hearings.
6	To full of his authority, does not let family law people run their own lives when there is agreement – judicial overreaching.
7	Not sure that I saw any in my case.
8	He can be impatient, or gives the appearance of impatience, to the point of being almost rude on occasion. On other occasions, he can be abrupt and not all engaging in looking for ways to diminish conflict in domestic cases.
9	His rulings are not always clear and sometimes actually contradictory. He sometimes makes snap decisions without thinking things through.
10	Requires too many hearings, including status conferences on all cases, instead of just where they are needed. Also one of few judges who requires hearing in settled divorce proceedings. He says that he wants to check to make sure everything is in order, but much of this could be done just as effectively with a checklist. As a result, his docket is often overscheduled with matters that don't really need to be heard, making it more difficult to be heard when it is necessary. Too many of these routine hearings are scheduled for the time allotted, and as a result, he routinely runs late. One often see lawyers and clients stacked up in the hall, waiting. This needlessly makes cases more expensive for clients, having to pay for their lawyers to attend hearing which weren't necessary in the first place, then run late and take more time than they should. His clerk is efficient and accommodating via e-mail, but rarely answers the phone and is often rude or indifferent (does not acknowledge you when you walk in, just keeps working at her computer). I have not tried a case in front of him with complicated financial facts, but many lawyers feel that he does not have good understanding of complex financial issues and makes bad rulings.
13	Is to rigid in requiring things be done in manner he desires.
14	Predictability – he is not predictable. He is moody.
15	Will not allow counsel to present motions, in person, to be heard by the court. One must submit motions to him through his AA for him to later decide if he will hear oral arguments, or not. Clients do not feel that they are receiving their 'day in court'. We do recognize the 'time constraints' facing all of the family law judges.
16	He is terribly overworked and busy.
17	I really do not think Judge Example has any weaknesses.
18	Inability to bring a case to a conclusion and inaccessibility.
19	He demands more from our agency and staff than what state regulations requires.
20	None really.
21	Hard to get a hold of. And his bailiff also.

11-17

As Amended by House Committee

Session of 2009

HOUSE BILL No. 2111

By Committee on Judiciary

1-27

AN ACT concerning the Kansas commission on judicial performance; relating to sunset provisions; amending K.S.A. 20-3201 and K.S.A. 2008 Supp. 20-367, 28-172a, 59-104, 60-1621, 60-2001, 61-2704 and 61-4001 and repealing the existing sections.

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

Section 1. K.S.A. 20-3201 is hereby amended to read as follows: 20-3201. ~~On and after July 1, 2006:~~ (a) (a) The commission on judicial performance is hereby established as an independent committee of the Kansas judicial council. The budget of the commission shall be a part of the budget of the judicial council. The judicial council shall provide administrative assistance to the commission. The commission on judicial qualifications and the office of judicial administration shall assist the commission, if requested by the commission.

(b) ~~The provisions of K.S.A. 20-3201 through 20-3207, and amendments thereto shall expire on June 30, 2010.~~

[(b) The provisions of K.S.A. 20-3201 through 20-3207, and amendments thereto shall expire on June 30, 2013.]

Sec. 2. K.S.A. 2008 Supp. 20-367 is hereby amended to read as follows: 20-367. (a) ~~On and after July 1, 2008 through June 30, 2010, Of (a)~~ **[On and after July 1, 2009 through June 30, 2013, of Of]** the remittance of the balance of docket fees received by the state treasurer from clerks of the district court pursuant to subsection (f) of K.S.A. 20-362, and amendments thereto, the state treasurer shall deposit and credit:

- (1) 3.00% to the judicial performance fund;
- (2) 4.17% to the access to justice fund;
- (3) 2.31% to the juvenile detention facilities fund;
- (4) 1.78% to the judicial branch education fund;
- (5) .47% to the crime victims assistance fund;
- (6) 2.27% to the protection from abuse fund;
- (7) 3.60% to the judiciary technology fund;
- (8) .29% to the dispute resolution fund;
- (9) 1.05% to the Kansas juvenile delinquency prevention trust fund;

Strike language in bold text to remove the sunset provision.

Strike language in bold text to remove the sunset provision and reinsert "Of".

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81-11

- 1 dren investment fund;
- 2 (11) 1.25% to the trauma fund;
- 3 (12) .94% to the judicial council fund;
- 4 (13) .57% to the child exchange and visitation centers fund;
- 5 (14) 15.29% to the judicial branch nonjudicial salary adjustment fund;
- 6 (15) 15.12% to the judicial branch nonjudicial salary initiative fund;

7 and
 8 (16) the balance to the state general fund.

9 (b) ~~On and after July 1, 2010, of the remittance of the balance of~~
 10 ~~docket fees received by the state treasurer from clerks of the district court~~
 11 ~~pursuant to subsection (f) of K.S.A. 20-362, and amendments thereto, the~~
 12 ~~state treasurer shall deposit and credit:~~

- 13 ~~— (1) 4.30% to the access to justice fund;~~
- 14 ~~— (2) 2.38% to the juvenile detention facilities fund;~~
- 15 ~~— (3) 1.83% to the judicial branch education fund;~~
- 16 ~~— (4) .48% to the crime victims assistance fund;~~
- 17 ~~— (5) 2.34% to the protection from abuse fund;~~
- 18 ~~— (6) 3.71% to the judiciary technology fund;~~
- 19 ~~— (7) .30% to the dispute resolution fund;~~
- 20 ~~— (8) 1.08% to the Kansas juvenile delinquency prevention trust fund;~~
- 21 ~~— (9) .19% to the the permanent families account in the family and~~
 22 ~~children investment fund;~~
- 23 ~~— (10) 1.29% to the trauma fund;~~
- 24 ~~— (11) .97% to the judicial council fund;~~
- 25 ~~— (12) .59% to the child exchange and visitation centers fund;~~
- 26 ~~— (13) 15.75% to the judicial branch nonjudicial salary adjustment fund;~~
- 27 ~~— (14) 15.57% to the judicial branch nonjudicial salary incentive fund;~~

28 and
 29 ~~— (15) the balance to the state general fund.~~

30 **[(b) On and after July 1, 2013, of the remittance of the balance**
 31 **of docket fees received by the state treasurer from clerks of the**
 32 **district court pursuant to subsection (f) of K.S.A. 20-362, and**
 33 **amendments thereto, the state treasurer shall deposit and credit:**

- 34 ~~— (1) 4.30% to the access to justice fund;~~
- 35 ~~— (2) 2.38% to the juvenile detention facilities fund;~~
- 36 ~~— (3) 1.83% to the judicial branch education fund;~~
- 37 ~~— (4) .48% to the crime victims assistance fund;~~
- 38 ~~— (5) 2.34% to the protection from abuse fund;~~
- 39 ~~— (6) 3.71% to the judiciary technology fund;~~
- 40 ~~— (7) .30% to the dispute resolution fund;~~
- 41 ~~— (8) 1.08% to the Kansas juvenile delinquency prevention trust~~
 42 ~~fund;~~
- 3 ~~— (9) .19% to the the permanent families account in the family]~~

Strike language in bold text to return to original bill provisions.

11-19

1 ~~and children investment fund;~~
 2 ~~(10) 1.29% to the trauma fund;~~
 3 ~~(11) .97% to the judicial council fund;~~
 4 ~~(12) .59% to the child exchange and visitation centers fund;~~
 5 ~~(13) 15.75% to the judicial branch nonjudicial salary adjustment~~
 6 ~~fund;~~
 7 ~~(14) 15.57% to the judicial branch nonjudicial salary incentive~~
 8 ~~fund; and~~
 9 ~~(15) the balance to the state general fund.]~~

Strike language in bold text to return to original bill provisions.

10 Sec. 3. K.S.A. 2008 Supp. 28-172a is hereby amended to read as
 11 follows: 28-172a. (a) Except as otherwise provided in this section, when-
 12 ever the prosecuting witness or defendant is adjudged to pay the costs in
 13 a criminal proceeding in any county, a docket fee shall be taxed as follows:

Strike language in bold text to remove sunset provision.

14 ~~(1) On and after July 1, 2008 through June 30, 2010:~~
 15 **[(1) On and after July 1, 2009 through June 30, 2013:]**

16 Murder or manslaughter.....	\$181.50
17 Other felony.....	172.00
18 Misdemeanor.....	137.00
19 Forfeited recognizance.....	73.50
20 Appeals from other courts.....	73.50
21 (2) On and after July 1, 2010:	
22 Murder or manslaughter.....	\$179.50
23 Other felony.....	170.00
24 Misdemeanor.....	135.00
25 Forfeited recognizance.....	71.50
26 Appeals from other courts.....	71.50
27 [(2) On and after July 1, 2013:]	
28 Murder or manslaughter.....	\$179.50
29 Other felony.....	170.00
30 Misdemeanor.....	135.00
31 Forfeited recognizance.....	71.50
32 Appeals from other courts.....	71.50

Strike language in (2) to return to original bill provisions.

33 (b) (1) Except as provided in paragraph (2), in actions involving the
 34 violation of any of the laws of this state regulating traffic on highways
 35 (including those listed in subsection (c) of K.S.A. 8-2118, and amend-
 36 ments thereto), a cigarette or tobacco infraction, any act declared a crime
 37 pursuant to the statutes contained in chapter 32 of Kansas Statutes An-
 38 notated, and amendments thereto, or any act declared a crime pursuant
 39 to the statutes contained in article 8 of chapter 82a of the Kansas Statutes
 40 Annotated, and amendments thereto, whenever the prosecuting witness
 41 or defendant is adjudged to pay the costs in the action, ~~on and after July~~
 42 ~~1, 2008 through June 30, 2010,~~ **[on and after July 1, 2009 through June**
30, 2013,] a docket fee of \$75 shall be charged, ~~and on and after July 1,~~

Strike language in bold text to remove sunset provision.

11-20

1 2010, a docket fee of \$73 shall be charged[, **and on and after July 1,**
 2 **2013, a docket fee of \$73 shall be charged**]. When an action is disposed
 3 of under subsections (a) and (b) of K.S.A. 8-2118 or subsection (f) of
 4 K.S.A. 79-3393, and amendments thereto, whether by mail or in person,
 5 ~~on and after July 1, 2008 through June 30, 2010, [on and after July 1,~~
 6 ~~2009 through June 30, 2013,]~~ the docket fee to be paid as court costs
 7 shall be \$75, and on and after July 1, 2010, the docket fee to be paid as
 8 court costs shall be \$73[, **and on and after July 1, 2013, the docket**
 9 **fee to be paid as court costs shall be \$73**].

Strike language in bold text to remove sunset provision.

Strike language in bold text to remove sunset provision.

Strike language in bold text to remove sunset provision.

10 (2) In actions involving the violation of a moving traffic violation un-
 11 der K.S.A. 8-2118, and amendments thereto, as defined by rules and
 12 regulations adopted under K.S.A. 8-249, and amendments thereto, when-
 13 ever the prosecuting witness or defendant is adjudged to pay the costs in
 14 the action, ~~on and after July 1, 2008 through June 30, 2010, [on and after~~
 15 ~~July 1, 2009 through June 30, 2013,]~~ a docket fee of \$75 shall be
 16 charged, and on and after July 1, 2010, a docket fee of \$73 shall be
 17 charged[, **and on and after July 1, 2013, a docket fee of \$73 shall be**
 18 **charged**]. When an action is disposed of under subsection (a) and (b) of
 19 K.S.A. 8-2118, and amendments thereto, whether by mail or in person,
 20 ~~on and after July 1, 2008 through June 30, 2010, [on and after July 1,~~
 21 ~~2009 through June 30, 2013,]~~ the docket fee to be paid as court costs
 22 shall be \$75, and on and after July 1, 2010, the docket fee to be paid as
 23 court costs shall be \$73[, **and on and after July 1, 2013, the docket**
 24 **fee to be paid as court costs shall be \$73**].

Strike language in bold text to remove sunset provision.

Strike language in bold text to remove sunset provision.

Strike language in bold text to remove sunset provision.

Strike language in bold text to remove sunset provision.

25 (c) If a conviction is on more than one count, the docket fee shall be
 26 the highest one applicable to any one of the counts. The prosecuting
 27 witness or defendant, if assessed the costs, shall pay only one fee. Multiple
 28 defendants shall each pay one fee.

29 (d) Statutory charges for law library funds, the law enforcement train-
 30 ing center fund, the prosecuting attorneys' training fund, the juvenile
 31 detention facilities fund, the judicial branch education fund, the emer-
 32 gency medical services operating fund and the judiciary technology fund
 33 shall be paid from the docket fee; the family violence and child abuse and
 34 neglect assistance and prevention fund fee shall be paid from criminal
 35 proceedings docket fees. All other fees and expenses to be assessed as
 36 additional court costs shall be approved by the court, unless specifically
 37 fixed by statute. Additional fees shall include, but are not limited to, fees
 38 for Kansas bureau of investigation forensic or laboratory analyses, fees for
 39 detention facility processing pursuant to K.S.A. 12-16,119, and amend-
 40 ments thereto, fees for the sexual assault evidence collection kit, fees for
 41 conducting an examination of a sexual assault victim, fees for service of
 42 process outside the state, witness fees, fees for transcripts and depositions,
 43 costs from other courts, doctors' fees and examination and evalu-

11-21

1 ation fees. No sheriff in this state shall charge any district court of this
2 state a fee or mileage for serving any paper or process.

3 (e) In each case charging a violation of the laws relating to parking
4 of motor vehicles on the statehouse grounds or other state-owned or
5 operated property in Shawnee county, Kansas, as specified in K.S.A. 75-
6 4510a, and amendments thereto, or as specified in K.S.A. 75-4508, and
7 amendments thereto, the clerk shall tax a fee of \$2 which shall constitute
8 the entire costs in the case, except that witness fees, mileage and expenses
9 incurred in serving a warrant shall be in addition to the fee. Appearance
10 bond for a parking violation of K.S.A. 75-4508 or 75-4510a, and amend-
11 ments thereto, shall be \$3, unless a warrant is issued. The judge may
12 order the bond forfeited upon the defendant's failure to appear, and \$2
13 of any bond so forfeited shall be regarded as court costs.

14 (f) The docket fee established in this section shall be the only fee
15 collected or moneys in the nature of a fee collected for the docket fee.
16 Such fee shall only be established by an act of the legislature and no other
17 authority is established by law or otherwise to collect a fee.

18 Sec. 4. K.S.A. 2008 Supp. 59-104 is hereby amended to read as fol-
19 lows: 59-104. (a) *Docket fee.* (1) Except as otherwise provided by law, no
20 case shall be filed or docketed in the district court under the provisions
21 of chapter 59 of the Kansas Statutes Annotated or of articles 40 and 52
22 of chapter 65 of the Kansas Statutes Annotated without payment of an
23 appropriate docket fee as follows:

24 (A) ~~On and after July 1, 2008 through June 30, 2010:~~

25 ~~[(A) On and after July 1, 2009 through June 30, 2013:]~~

Strike language in bold text to remove sunset provision.

26	Treatment of mentally ill	\$59.00
27	Treatment of alcoholism or drug abuse	36.50
28	Determination of descent of property	51.50
29	Termination of life estate	50.50
30	Termination of joint tenancy	50.50
31	Refusal to grant letters of administration	50.50
32	Adoption	50.50
33	Filing a will and affidavit under K.S.A. 59-618a	50.50
34	Guardianship	71.50
35	Conservatorship	71.50
36	Trusteeship	71.50
37	Combined guardianship and conservatorship	71.50
38	Certified probate proceedings under K.S.A. 59-213, and amendments	
39	thereto	25.50
40	Decrees in probate from another state	110.50
41	Probate of an estate or of a will	111.50
42	Civil commitment under K.S.A. 59-29a01 et seq.	35.50

3 (B) ~~On and after July 1, 2010:~~

11-22

1	Treatment of mentally ill	34.50
2	Treatment of alcoholism or drug abuse	34.50
3	Determination of descent of property	49.50
4	Termination of life estate	48.50
5	Termination of joint tenancy	48.50
6	Refusal to grant letters of administration	48.50
7	Adoption	48.50
8	Filing a will and affidavit under K.S.A. 59-618a	48.50
9	Guardianship	69.50
10	Conservatorship	69.50
11	Trusteeship	69.50
12	Combined guardianship and conservatorship	69.50
13	Certified probate proceedings under K.S.A. 59-213, and amendments	
14	thereto	23.50
15	Decrees in probate from another state	108.50
16	Probate of an estate or of a will	109.50
17	Civil commitment under K.S.A. 59-29a01 et seq.	33.50
18	[(B) On and after July 1, 2013:	
19	Treatment of mentally ill	34.50
20	Treatment of alcoholism or drug abuse	34.50
21	Determination of descent of property	49.50
22	Termination of life estate	48.50
23	Termination of joint tenancy	48.50
24	Refusal to grant letters of administration	48.50
25	Adoption	48.50
26	Filing a will and affidavit under K.S.A. 59-618a, and amendments	
27	thereto	48.50
28	Guardianship	69.50
29	Conservatorship	69.50
30	Trusteeship	69.50
31	Combined guardianship and conservatorship	69.50
32	Certified probate proceedings under K.S.A. 59-213, and amendments	
33	thereto	23.50
34	Decrees in probate from another state	108.50
35	Probate of an estate or of a will	109.50
36	Civil commitment under K.S.A. 59-29a01 et seq., and amendments	
37	thereto	33.50]

Strike language in (B) to return to original bill provisions.

38 (2) The docket fee established in this subsection shall be the only fee
39 collected or moneys in the nature of a fee collected for the docket fee.
40 Such fee shall only be established by an act of the legislature and no other
41 authority is established by law or otherwise to collect a fee.
42 (b) *Poverty affidavit in lieu of docket fee and exemptions.* The provisions
43 of subsection (b) of K.S.A. 60-2001 and K.S.A. 60-2005, and

11-23

1 amendments thereto, shall apply to probate docket fees prescribed by
2 this section.

3 (c) *Disposition of docket fee.* Statutory charges for the law library and
4 for the prosecuting attorneys' training fund shall be paid from the docket
5 fee. The remainder of the docket fee shall be paid to the state treasurer
6 in accordance with K.S.A. 20-362, and amendments thereto.

7 (d) *Additional court costs.* Other fees and expenses to be assessed as
8 additional court costs shall be approved by the court, unless specifically
9 fixed by statute. Other fees shall include, but not be limited to, witness
10 fees, appraiser fees, fees for service of process outside the state, fees for
11 depositions, transcripts and publication of legal notice, executor or ad-
12 ministrator fees, attorney fees, court costs from other courts and any other
13 fees and expenses required by statute. All additional court costs shall be
14 taxed and billed against the parties or estate as directed by the court. No
15 sheriff in this state shall charge any district court in this state a fee or
16 mileage for serving any paper or process.

17 Sec. 5. K.S.A. 2008 Supp. 60-1621 is hereby amended to read as
18 follows: 60-1621. (a) No post-decree motion petitioning for a modification
19 or termination of separate maintenance, for a change in legal custody,
20 residency, visitation rights or parenting time or for a modification of child
21 support shall be filed or docketed in the district court without payment
22 of a docket fee in the amount of \$42 ~~on and after July 1, 2008 through~~
23 ~~June 30, 2010, and \$40 on and after July 1, 2010, [on and after July 1,~~
24 ~~2009 through June 30, 2013, and \$40 on and after July 1, 2013,]~~ to
25 the clerk of the district court.

Strike language in bold text to remove sunset provision.

26 (b) A poverty affidavit may be filed in lieu of a docket fee as estab-
27 lished in K.S.A. 60-2001, and amendments thereto.

28 (c) The docket fee shall be the only costs assessed in each case for
29 services of the clerk of the district court and the sheriff. The docket fee
30 shall be disbursed in accordance with subsection (f) of K.S.A. 20-362, and
31 amendments thereto.

32 (d) The docket fee established in this section shall be the only fee
33 collected or moneys in the nature of a fee collected for the docket fee.
34 Such fee shall only be established by an act of the legislature and no other
35 authority is established by law or otherwise to collect a fee.

36 Sec. 6. K.S.A. 2008 Supp. 60-2001 is hereby amended to read as
37 follows: 60-2001. (a) *Docket fee.* Except as otherwise provided by law, no
38 case shall be filed or docketed in the district court, whether original or
39 appealed, without payment of a docket fee in the amount of \$156 ~~on and~~
40 ~~after July 1, 2008 through June 30, 2010, and \$154 on and after July 1,~~
41 ~~2010, [on and after July 1, 2009 through June 30, 2013, and \$154~~
42 ~~on and after July 1, 2013,]~~ to the clerk of the district court. The docket
3 fee established in this subsection shall be the only fee collected or moneys

Strike language in bold text to remove sunset provision.

42-11

1 in the nature of a fee collected for the docket fee. Such fee shall only be
 2 established by an act of the legislature and no other authority is estab-
 3 lished by law or otherwise to collect a fee.

4 (b) *Poverty affidavit in lieu of docket fee.* (1) *Effect.* In any case where
 5 a plaintiff by reason of poverty is unable to pay a docket fee, and an
 6 affidavit so stating is filed, no fee will be required. An inmate in the
 7 custody of the secretary of corrections may file a poverty affidavit only if
 8 the inmate attaches a statement disclosing the average account balance,
 9 or the total deposits, whichever is less, in the inmate's trust fund for each
 10 month in (A) the six-month period preceding the filing of the action; or
 11 (B) the current period of incarceration, whichever is shorter. Such state-
 12 ment shall be certified by the secretary. On receipt of the affidavit and
 13 attached statement, the court shall determine the initial fee to be assessed
 14 for filing the action and in no event shall the court require an inmate to
 15 pay less than \$3. The secretary of corrections is hereby authorized to
 16 disburse money from the inmate's account to pay the costs as determined
 17 by the court. If the inmate has a zero balance in such inmate's account,
 18 the secretary shall debit such account in the amount of \$3 per filing fee
 19 as established by the court until money is credited to the account to pay
 20 such docket fee. Any initial filing fees assessed pursuant to this subsection
 21 shall not prevent the court, pursuant to subsection (d), from taxing that
 22 individual for the remainder of the amount required under subsection (a)
 23 or this subsection.

24 (2) *Form of affidavit.* The affidavit provided for in this subsection
 25 shall be in the following form and attached to the petition:

26 State of Kansas, _____ County.

27 In the district court of the county: I do solemnly swear that the claim set forth in the
 28 petition herein is just, and I do further swear that, by reason of my poverty, I am unable to
 29 pay a docket fee.

30 (c) *Disposition of fees.* The docket fees and the fees for service of
 31 process shall be the only costs assessed in each case for services of the
 32 clerk of the district court and the sheriff. For every person to be served
 33 by the sheriff, the persons requesting service of process shall provide
 34 proper payment to the clerk and the clerk of the district court shall for-
 35 ward the service of process fee to the sheriff in accordance with K.S.A.
 36 28-110, and amendments thereto. The service of process fee, if paid by
 37 check or money order, shall be made payable to the sheriff. Such service
 38 of process fee shall be submitted by the sheriff at least monthly to the
 39 county treasurer for deposit in the county treasury and credited to the
 40 county general fund. The docket fee shall be disbursed in accordance
 41 with K.S.A. 20-362 and amendments thereto.

42 (d) *Additional court costs.* Other fees and expenses to be assessed as
 3 additional court costs shall be approved by the court, unless specifically

11-25

1 fixed by statute. Other fees shall include, but not be limited to, witness
2 fees, appraiser fees, fees for service of process, fees for depositions, al-
3 ternative dispute resolution fees, transcripts and publication, attorney
4 fees, court costs from other courts and any other fees and expenses re-
5 quired by statute. All additional court costs shall be taxed and billed
6 against the parties as directed by the court. No sheriff in this state shall
7 charge any mileage for serving any papers or process.

8 Sec. 7. K.S.A. 2008 Supp. 61-2704 is hereby amended to read as
9 follows: 61-2704. (a) An action seeking the recovery of a small claim shall
10 be considered to have been commenced at the time a person files a writ-
11 ten statement of the person's small claim with the clerk of the court if,
12 within 90 days after the small claim is filed, service of process is obtained
13 or the first publication is made for service by publication. Otherwise, the
14 action is deemed commenced at the time of service of process or first
15 publication. An entry of appearance shall have the same effect as service.

16 (b) Upon the filing of a plaintiff's small claim, the clerk of the court
17 shall require from the plaintiff a docket fee of \$39 ~~on and after July 1,~~
18 ~~2008 through June 30, 2010, and \$37 on and after July 1, 2010, [on and~~
19 ~~after July 1, 2009 through June 30, 2013, and \$37 on and after July~~
20 ~~1, 2013,]~~ if the claim does not exceed \$500; or \$59 ~~on and after July 1,~~
21 ~~2008 through June 30, 2010, and \$57 on and after July 1, 2010, [on and~~
22 ~~after July 1, 2009 through June 30, 2013, and \$57 on and after July~~
23 ~~1, 2013,]~~ if the claim exceeds \$500; unless for good cause shown the judge
24 waives the fee. The docket fee shall be the only costs required in an action
25 seeking recovery of a small claim. No person may file more than 20 small
26 claims under this act in the same court during any calendar year.

27 (c) The docket fee established in this section shall be the only fee
28 collected or moneys in the nature of a fee collected for the docket fee.
29 Such fee shall only be established by an act of the legislature and no other
30 authority is established by law or otherwise to collect a fee.

31 Sec. 8. K.S.A. 2008 Supp. 61-4001 is hereby amended to read as
32 follows: 61-4001. (a) Docket fee. No case shall be filed or docketed pur-
33 suant to the code of civil procedure for limited actions without the pay-
34 ment of a docket fee in the amount of \$37 ~~on and after July 1, 2008~~
35 ~~through June 30, 2010, and \$35 on and after July 1, 2010, [on and after~~
36 ~~July 1, 2009 through June 30, 2013, and \$35 on and after July 1,~~
37 ~~2013,]~~ if the amount in controversy or claimed does not exceed \$500; \$57
38 ~~on and after July 1, 2008 through June 30, 2010, and \$55 on and after~~
39 ~~July 1, 2010, [on and after July 1, 2009 through June 30, 2013, and~~
40 ~~\$55 on and after July 1, 2013,]~~ if the amount in controversy or claimed
41 exceeds \$500 but does not exceed \$5,000; or \$103 ~~on and after July 1,~~
42 ~~2008 through June 30, 2010, and \$101 on and after July 1, 2010, [on and~~

Strike language in bold text to remove sunset provision.

Strike language in bold text to remove sunset provision.

Strike language in bold text to remove sunset provision.

Strike language in bold text to remove sunset provision.

Strike language in bold text to remove sunset provision.

1 ~~after July 1, 2009 through June 30, 2013, and \$101 on and after~~
 2 ~~July 1, 2013,]~~ if the amount in controversy or claimed exceeds \$5,000. If
 3 judgment is rendered for the plaintiff, the court also may enter judgment
 4 for the plaintiff for the amount of the docket fee paid by the plaintiff.

5 (b) Poverty affidavit; additional court costs; exemptions for the state
 6 and municipalities. The provisions of subsections (b), (c) and (d) of K.S.A.
 7 60-2001 and 60-2005, and amendments thereto, shall be applicable to
 8 lawsuits brought under the code of civil procedure for limited actions.

9 (c) The docket fee established in this section shall be the only fee
 10 collected or moneys in the nature of a fee collected for the docket fee.
 11 Such fee shall only be established by an act of the legislature and no other
 12 authority is established by law or otherwise to collect a fee.

13 Sec. 9. K.S.A. 20-3201 and K.S.A. 2008 Supp. 20-367, 28-172a, 59-
 14 104, 60-1621, 60-2001, 61-2704 and 61-4001 are hereby repealed.

15 Sec. 10. This act shall take effect and be in force from and after its
 16 publication in the statute book.

Strike language in bold text to remove sunset provision.

11-26



STEPHEN D. HILL
JUDGE

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Testimony of Hon. Stephen D. Hill
Kansas Court of Appeals
Before the Senate Judiciary Committee
13 March 2009

Mr. Chairman and distinguished members of the Committee:

I appreciate the opportunity to come and speak with you about judicial evaluations. I stand before you in support of passage of HB 2111, but prefer the version of the bill that was introduced by the Judicial Council. I propose that your Committee amend HB 2111 to remove the sunset provision from the statutes, as opposed to delaying the sunset.

Frankly, judicial performance evaluations are just now getting started in Kansas. The first round of evaluations proved to be more challenging to get up and running than I thought. They served the purpose of a "shake-down" cruise, providing an opportunity to learn how to do the job. The logistics to put together evaluations in all of the districts that were covered as well as state wide judicial positions was enormous, but I think the task of developing adequate procedures has now been accomplished. Obviously improvements can be made and are being made. This process is no different than many governmental tasks; with constant feedback, constant adjustments to methods and procedures can be made, implementing efficiencies of scale can be accomplished and a history of

information can be developed.

In my prior testimony to the Legislature in 2006, I pointed out the two-fold goal of the Judicial Council Advisory Committee on Judicial Evaluations, which I was fortunate enough to chair. First, we wanted to collect and distribute to the decision makers of Kansas, the voters, accurate information about judges and the judicial process. Judging is not about the outcome of cases—it is more important than that. I have defined the judicial function as the proper application of the correct rules of law to a set of facts that are determined by an unbiased factfinder. Obviously, to perform this function a judicial officer must exhibit great skill and care in many different ways.

For example, questions such as how learned in the law is the judge, is the judge methodical and careful in handling his or her cases, is the judge patient, and does the judge listen to all sides of a case before deciding the matter, are more proper questions than how did she rule on this case or how long a sentence did she impose in that case. The many skills a Kansas judge must master are considerable but all are necessary to perform adequately. Those skills require training and education to achieve and maintain.

That training and education for judges was the second goal of our Committee for the judicial performance evaluations. All judges, no matter how great the office, need reliable feedback in the performance of their duties if they are to improve their performance. I can tell you unequivocally that you do not get feedback as a judge. Every one laughs at your jokes, those that agree with your decision heap praise upon you, and those that don't simply appeal because they think if they do otherwise it might jeopardize their next appearance before you.

Furthermore, the governor doesn't just strike the ground with her walking stick and

up from the dust arises a judge. There is a tremendous change from being an advocate to becoming a judge. After all, one practices law; the other makes it. The responsibility can seem to be overwhelming at times. I know for a fact that information gleaned from our first set of judicial evaluations, no matter how small, is being used to shape our upcoming judicial conferences. Our hope here is to match education and training to any perceived deficiencies of the judges. It helps us understand, in real terms, what is needed and then we can go about creating our education of judges to correct problems and enhance skills.

Finally, I would like to offer some personal observations. I travel throughout Kansas during the year when our court travels outside Topeka. That gives me the opportunity to see what is going on in the districts. Further, twice a year our judicial meetings afford opportunities to talk and mingle with judges of all rank. Some judges don't like evaluations, some judges do. Some judges say they don't care one way or another. But all know that an evaluation either has just occurred or is upcoming. All of a sudden some judges don't ask questions with an intimidating, arrogant demeanor. The 60-day list of pending opinions in our court goes to zero for the first time since the court has kept such a record. Judges are taking time to explain their decisions more thoroughly. Opinions are written with more clarity. Improvements are being made.

It has been said, "A job well begun is half done." I think the job of judicial evaluations has begun well in Kansas; let us not leave it half done. I will be glad to answer any questions you might have.



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TESTIMONY

TO: The Honorable Tim Owens, Chair
And Members of the Senate Judiciary Committee

FROM: Joseph N. Molina
behalf of the Kansas Bar Association

RE: HB 2111 Removing the sunset provision from Kansas Commission on Judicial Performance Statutes; retaining increase in docket fees to fund commission.

DATE: March 13, 2009

Good afternoon Chairman Owens and Members of the Senate Judiciary Committee. I am Joseph N. Molina and I appear before you today on behalf of the Kansas Bar Association in support of HB 2111 removing the sunset provisions on the Kansas Commission on Judicial Performance.

The KBA has been a longstanding advocate of judicial performance review and supported the creation of the Kansas Commission on Judicial Performance through the enactment of enabling legislation in 2006. As previous testimony has demonstrated, a significant amount of preparation was undertaken by the Commission prior to their first judicial evaluation being performed.

Anecdotally, as attorneys and legislators, we have all been placed in the situation of being asked for an opinion on the retention vote for a particular judge. Most often, unless someone has a working relationship with a particular judge, that opinion more closely reflects whether the judge has a good personality, is well-known in the courtroom or the community, rather than whether they are a competent jurist. The Kansas Commission on Judicial Performance sought to fill the void of information on a judicial retention and has developed a comprehensive evaluation process modeled after those successfully implemented in other states.

Given the extensive work of the Commission and their mission, the KBA believes it is appropriate to provide some permanency to their work and remove the sunset provisions in state law. Should there ever be reason or need to alter, amend or repeal the Kansas Commission on Judicial Performance; the Legislature is certainly able to revisit such matters at the appropriate time.

In conclusion, I would call your attention to several news articles that appeared in August of 2008 as the Commission was preparing to release their first evaluations. These articles appeared throughout the state and are illustrative of the Commission's efforts to communicate their work to the general public.

On behalf of the Kansas Bar Association, I thank you for your time this afternoon and I am happy to stand for questions.

JNM

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,000 members, including lawyers, judges, law students, and paralegals. www.ksbar.org

Attachments

Senate Judiciary

3-13-09

Attachment 13

Kansas judge evaluations now available to voters

Friday, August 29, 2008
Special To The Tribune

Topeka -- Kansas voters today obtained access to detailed and relevant information about district and appellate judges and justices standing for retention on election ballots this November, the Kansas Commission on Judicial Performance said.

"For years, voters have been asked to vote on whether to retain judges without the benefit of non-partisan information about their performance," said Randy Hearrell, executive director of the commission and the Kansas Judicial Council. "The Legislature created the commission to provide information so voters can be better informed."

Beginning today, Kansas citizens and voters are able to read individual evaluations of incumbent district judges, district magistrate judges, Court of Appeals judges and Supreme Court justices who are subject to a retention election on the Nov. 4 general election ballot. The evaluations, available at www.kansasjudicialperformance.org, are based in part on surveys of people who had business with the courts.

The Kansas Commission on Judicial Performance, an appointed state body, reviewed all survey results along with other information and recommended that all judges and justices standing for retention this year be retained on the bench.

"Judges who are now standing for retention election have previously passed a rigorous review process regarding their qualifications for appointment to the bench," said Fred N. Six, a retired Kansas Supreme Court justice and a member of the commission. "Our commission reviewed the attorney and non-attorney survey results and other information about the performance of these merit-selected judges to reach our recommendations."

Another commissioner, Mike O'Neal, a state representative from Hutchinson for 24 years and chairman of the Kansas House Judiciary Committee, said the commission carefully studied and discussed the recommendation for each individual judge.

"In this initial year of implementation of the evaluation process passed by the Legislature in 2006, we've laid a strong foundation for an improved judiciary statewide," O'Neal said. "As the phase-in of the process continues in 2010 and thereafter, our state's judicial system will only continue to get stronger."

Richard F. Hayse, a Topeka attorney and chairman of the commission, said the 2008 evaluations represent the beginning of a long-range process.

"Data will be gathered over a four-year period, and judges' ratings in the future will be based on a rolling average of survey results," Hayse said.

The surveys of attorneys and non-attorneys ask respondents' opinions of a judge's overall legal ability, impartiality, temperament and communication skills, among other categories.

"The commission's report, referred to as the Kansas Judicial Report Card, is designed to give judges feedback from the public on judicial performance and to give voters information on which to base their votes on whether to retain appointed judges and justices," Hayse said.

Among those who completed confidential surveys are attorneys, litigants, witnesses, court staff, jurors, law enforcement personnel, probation officers, social services caseworkers, appellate-level judges, and other people who have appeared before or had professional contact with the judge being evaluated.

To assure fairness and independence, all surveys are conducted and tabulated by Talmey-Drake Research & Strategy Inc., a professional public opinion research firm based in Boulder, Colo. Individual surveys are confidential, and judges and justices don't know who returns the surveys. The process is funded through Kansas court fees, not taxpayer dollars.

The commission includes six non-lawyers; six others who are lawyers, including retired judges and justices; and a chairman, who is a lawyer. At least one non-lawyer commission member and at least one lawyer commission member live in each of the state's four congressional districts.

The commission is appointed by the Kansas Judicial Council, a body established by the Legislature in 1927 to conduct an ongoing study of the judicial branch of government and recommend justice administration improvement options to both the Legislature and the Kansas Supreme Court.

Hayse said the process will play a key role in maintaining judicial independence.

"Like all who serve the public, judges and justices must be accountable," Hayse said. "This system enhances accountability while preserving the judicial independence that is the greatest strength of our judicial system."

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Story URL: <http://www.fstribune.com/story/1456818.html>

LJWorld.com

Reports on Kansas judges to go online this month

By John Hanna - Associated Press Writer

August 5, 2008

Topeka — Some of the state's appellate and district court judges are being graded, and their report cards will be posted online Aug. 29 to help voters determine whether they should keep their jobs.

The evaluations are being compiled by the state Commission on Judicial Performance. Its reports will cover Kansas Supreme Court justices, Court of Appeals judges and appointed district judges who are on the ballot this year.

Supreme Court justices are appointed but voters decide every six years whether they remain on the bench. Court of Appeals judges are appointed for four-year terms. A little more than half of the district court judges are appointed to four-year terms, while the others run in partisan elections.

In the past, even some supporters of appointing judges have acknowledged that most voters get little information about how well justices or judges perform. Legislators created the commission in 2006 to help correct that problem.

"Now we have information, based upon surveys, that can be used to help voters decide how to vote," commission spokesman Michael Grimaldi said Monday, adding that regular evaluations also should improve judicial performance.

According to the commission, six other states have such an evaluation system, with Alaska creating the first one in 1976. The others are Arizona, Colorado, New Mexico, Tennessee and Utah.

The Kansas commission has a budget of about \$813,000, financed from court fees. Its 13 members include six non-lawyers; one, Fred Six, is a retired Supreme Court justice and the father of Attorney General Steve Six.

Before legislators created the commission, a few local bar associations rated judges. But Senate Judiciary Committee Chairman John Vratil, a Leawood Republican, said a statewide system will make the ratings more professional - and widespread.

"There were a lot of judges who were never evaluated," Vratil said.

To grade the judges - on a 4-point scale - the commission is surveying attorneys, other judges and a random selection of people who've had cases before a particular judge. It's hired a Boulder, Colo., firm, Talmey-Drake Research & Strategy Inc., to conduct the surveys; the firm does similar surveys in its home state.

Originally published at: http://www2.ljworld.com/news/2008/aug/05/reports_kansas_judges_go_online_month/



Powered by Clickability

Kansas Judicial Evaluations Available Online

Posted: 1:40 PM Aug 28, 2008

Last Updated: 1:40 PM Aug 28, 2008

Reporter: AP

TOPEKA, Kan. (AP) _ As of Friday, evaluations will be online for every judge in Kansas who faces a retention vote in the November 4th general election.

[A](#) | [A](#) | [A](#)

The Kansas Judicial Report Card is designed to provide the information voters need in a non-partisan manner.

The evaluations are based on confidential surveys of attorneys, witnesses and others who have worked with the judges.

Find this article at:

<http://www.wibw.com/home/headlines/27614679.html>

Check the box to include the list of links referenced in the article.

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KANSAS COURT OF APPEALS

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WRITTEN TESTIMONY OF
CHIEF JUDGE GARY W. RULON
OF THE
KANSAS COURT OF APPEALS
BEFORE THE SENATE JUDICIARY COMMITTEE

March 13, 2009

The Kansas Court of Appeals unanimously endorses HB 2111, but prefers the version of the bill that was introduced by the Judicial Council which removed the sunset provision from the statutes rather than the current version which keeps the sunset provision but delays it until 2013.

The Court of Appeals Judges are aware of the value of these evaluations which provide the judges information to be used for self-improvement, and which provide voters with information about the Court of Appeals Judges in retention elections. The evaluation process provides information about the Court of Appeals Judges' performance in several areas, including legal ability, integrity, impartiality, communication skills, professionalism, temperament, and administrative capacity.

These evaluations are conducted by the Kansas Commission on Judicial Performance which consists of non-lawyers, lawyers, and retired judges who have outstanding credentials.

Four Court of Appeals Judges were evaluated by the Commission in 2008, and I can report that those judges have closely reviewed and taken the reports and recommendations of the Commission seriously. In 2010, nine more Court of Appeals Judges will be evaluated by the Commission.


Senate Judiciary

3-13-09
Attachment 14

**House Judiciary Committee
Testimony in Support of 2009 HB 2111**

The Kansas District Judges' Association joins with the Kansas Supreme Court and the Kansas Court of Appeals in supporting the removal of the sunset provision on Judicial Performance in 2010. We understand the public's desire to have more information about the judges and justices they are voting to retain. The Judicial Performance Advisory Committee's recommendations provide relevant, meaningful information to the voters. In addition, it appears that the recommendations also provide valuable feedback to both merit selected and elected judges.

The Kansas District Judges' Association was pleased to participate in the Judicial Performance Advisory Committee process through the participation of district judges, and we would be pleased to continue to participate in ongoing discussions of this issue. Thank you for the opportunity to support these recommendations, and please do not hesitate to contact us if any additional information or input would be helpful to you.



MERYL D. WILSON
President, KDJA



Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

www.kdheks.gov

Division of Health

Written Testimony on House Bill 2111

Senate Judiciary Committee

Presented by

Kansas Department of Health and Environment

March 13, 2009

Chairman Owens and members of the Committee, I am Richard Morrissey. I serve as Deputy Director of the Division of Health in the Kansas Department of Health and Environment.

KDHE is home to the Kansas Trauma Program that is one of the programs funded through docket fee funds. We would like to thank you for your continued support of this funding.

The Kansas legislature authorized establishment of the Kansas Trauma Program in 1999. The Secretary of KDHE was directed to develop and implement a statewide trauma system, including system components including a process for trauma center designation, regional trauma councils, quality improvement programs, and a statewide trauma data collection system. The legislation mandated that KDHE involve all levels of health care providers/organizations, urban as well as rural, in the planning and implementation of a trauma system that would meet the needs of injured patients. The legislation authorized establishment of a 24 member Advisory Committee on Trauma (ACT), including four legislative representatives, who advise the trauma program. Like many other states, the legislature recognized that motor vehicle crashes were a leading cause of injury and chose to utilize traffic fee fines to support the trauma system.

Before legislation was passed, a trauma system in Kansas was virtually non-existent. Today we have a state trauma plan that provides for education of health care providers, a statewide trauma registry database and six regional trauma councils that analyze data from the registry and promote evidence-based practices to improve quality for injured patients. Kansas has 5 designated trauma centers, and another 6 hospitals are building capacity in order to become a designated trauma center. The system supports the provision of quality trauma care statewide.

The docket fees made available to the trauma program are a critical program resource, providing about one-third of the annual funding for the program. Continued funding for the state's trauma system is a public health priority, and we support this bill as amended. We're grateful for the legislature's demonstrated interest in improving trauma care in Kansas and thank you for your support.



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
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Testimony before the Senate Judiciary Committee

On Senate Bill No. 282

Jerry Sloan
Judicial Branch Budget and Fiscal Officer

March 13, 2009

I appear today in support of SB 282 concerning the Court of Appeals. This bill would delay the continued expansion of the Court of Appeals until January 1, 2011. Legislation that phased-in an expansion of the Court of Appeals from 10 to 14 judges was passed during the 2001 legislative session to begin on January 1, 2003. The full expansion has been delayed a number of times in the past due to budgetary constraints and this bill would delay the addition of the last judge by a year.

During the Judicial Branch's Senate Ways and Means budget hearing, as budget reductions were required, options to generate savings for FY 2010 were discussed. Delaying the addition of Judge 14 would save \$155,955 in FY 2010 so SB 282 was introduced. The House Appropriations Committee adopted the budget subcommittee's report for the Judicial Branch last week. The report contained language which deletes the funding for judge 14 and staff from our FY 2010 budget. Given the budget crisis we are facing, we did not oppose that action. The statute currently requires the addition of the 14th judge on January 1, 2010, passage of this bill will complete the steps that are necessary to delay the addition of a judge to the Court of Appeals by one year.

Senate Judiciary

3-13-09
Attachment 17