

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 a.m. on February 2, 2010, in Room 152-S of the Capitol.

All members were present.

Committee staff present:

Ken Wilke, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Beverly Beam, Committee Assistant

Conferees appearing before the Committee:

Gary Anderson, Gilmore & Bell
Larry Baer, Kansas League of Municipalities
Matt Goddard, Heartland Community Bankers
Doug Wareham, Kansas Bankers Association
Chip Wheelen, Healthcare Stabilization Fund
Dr. Kirk Benson, KU Medical Center
Jerry Slaughter, Kansas Medical Society
Bob Williams, Kansas Association of Osteopathic Medicine

Others attending:

See attached list.

Gary Anderson, Gilmore & Bell (Attachment 1)
Larry Baer, Kansas League of Municipalities (Attachment 2)
Matt Goddard, Heartland Community Bankers (Attachment 3)
Doug Wareham, Kansas Bankers Association (Attachment 4)
Chip Wheelen, Healthcare Stabilization Fund (Attachment 5)
Dr. Kirk Benson, KU Medical Center (Attachment 6)
Jerry Slaughter, Kansas Medical Society (Attachment 7)
Bob Williams, Kansas Association of Osteopathic Medicine (Attachment 8)

Hearing on

SB 415 - Municipalities; bond investments.

Melissa Calderwood gave an overview of the bill. Ms. Calderwood stated that current law allows the governing body of a municipality to invest the proceeds of bonds it has issued that are not currently needed in direct obligations of the United States government or any agency of the United States Government. She said **SB 415** also would allow such investment in any obligation unconditionally guaranteed by the United States Government and in general obligation bonds of any Kansas municipality. Current law also determines that the maximum stated rate of interest which may be fixed or variable rate bonds issued by a municipality or taxing subdivision of the State through June 30, 2010 shall be determined on the day the bonds are sold, she said. She continued, stating the interest shall not exceed the daily yield for the ten-year treasury bonds published by The Bond Buyer; New York, New York plus 5.0 percent, if the interest on the bonds is excluded from gross income for federal income tax purposes, or 6.0 percent, if the interest on the bonds is included in gross income for federal income tax purposes. She said **SB 415** would extend the time limitation through June 30, 2012, and the additional interest percentages to 6.0 and 7.0, respectively. She added that according to the League of Kansas Municipalities and the Kansas Association of Counties, passage of **SB 415** could result in increased revenues to cities by providing greater flexibility in investing funds and in issuing bonds with an interest rate high enough to ensure that the bonds are sold on the open market. She said this bill could also increase costs, with the higher interest rates on the bonds. She said the reporting agencies could not predict specific amounts of the fiscal effect; however, passage of **SB 415** would have no effect on the state budget.

CONTINUATION SHEET

Minutes of the Senate Financial Institutions and Insurance Committee at 9:30 a.m. on February 2, 2010, in Room 152-S of the Capitol.

budget.

Gary Anderson, Gilmore & Bell, testified in support of **SB 415**. Mr. Anderson said **SB 415** would do three things:

1. It would allow governmental entities to invest their bond proceeds in obligations guaranteed by the United States Government;
2. It would extend until June 30, 2012, the higher caps on interest rates for municipal bonds;
3. It would allow governmental entities to invest idle funds in general obligations issued by other Kansas governmental entities and this would make the investment statute parallel to the bond proceeds statute.

Mr. Anderson stated that changes one and three would allow governmental jurisdictions the ability to earn a little higher rate of return on their bond proceeds and the idle funds. He noted this would help local jurisdictions in these difficult economic times. He also noted that change two would continue the higher interest rate cap, which would be helpful. (Attachment 1)

Larry Baer, Assistant General Counsel, League of Kansas Municipalities, testified in support of **SB 415**. He stated that this bill would give municipalities and other taxing subdivisions of the state greater flexibility to issue bonds with an interest rate that is high enough to ensure that the bonds are sold on the open market. He said with historic low daily yields for ten-year treasury bonds, local taxing subdivisions may find it difficult to find buyers of bonds at the maximum interest rates allowed under current law. (Attachment 2)

Matt Goddard, Heartland Community Bankers Association, testified in opposition to **SB 415**. Mr. Goddard stated that although the bill makes three changes to current law, the primary concern is with Section 3 of the bill. He said it amends K.S.A. 2009 Supp. 12-1675(b) to allow public moneys to be invested in municipal bonds or other obligations issued by any municipality in the State of Kansas. He said Heartland Community Bankers would normally not object to this; however, **SB 415** does not add this new power to K.S.A. 2009 Supp. 12-1675© which requires units of government to give eligible public funds depositories an opportunity to at least match the PMIB-published investment rate before exploring other investment opportunities authorized by K.S.A. 2009 Supp. 12-1675(b). He said this omission eliminates the long-standing uniformity in Kansas law regarding the investment of public funds in eligible banks and savings and loans. Mr. Goddard added that if municipal bonds are to be an acceptable investment vehicle for public funds, then Heartland Community Bankers Association believes they should be subject to K.S.A. 2009 Supp. 12-1675© just like all other authorized outside investments. (Attachment 3)

Doug Wareham, Kansas Bankers Association, testified that while KBA does not object to allowing municipalities to invest their idle funds in municipal bonds or other obligations of the state of Kansas, it is opposed to exempting this type of investment from the longstanding policy found in K.S.A. 12-1675©, which first requires municipalities to offer their idle funds to eligible financial institutions. He said if the committee chooses to advance **SB 415**, KBA would respectfully ask that the new sub-section 8 found at the bottom of Page 4 (lines 40-43) be referenced in sub-section © found at the top of Page 5 (lines 1 and 2). (Attachment 4)

The Chair closed the hearing on **SB 415**.

Hearing on

SB 414 - Health care stabilization fund; certain fund transfers; period of coverage.

Charles L. Wheelen, Executive Director, Health Care Stabilization Fund, testified in support of **SB 414**. Mr. Wheelen stated that the enabling legislation that created the Health Care Stabilization Fund stipulates that "The Fund shall be held in trust in the state treasury and accounted for separately from other state funds. He said that for more than three decades, the State of Kansas has served as the fiduciary for the Health Care Stabilization Fund, and for two decades there has been a statutory self insurance plan administered by the

CONTINUATION SHEET

Minutes of the Senate Financial Institutions and Insurance Committee at 9:30 a.m. on February 2, 2010, in Room 152-S of the Capitol.

Stabilization Fund on behalf of the State of Kansas. He noted that during that same period of time, there has been an effective relationship between the University of Kansas Medical Center and either the Insurance Commissioner or the HCSF Board of Governors. He continued that the allotment orders imposed by the Secretary of Administration interfere with the long-standing statutory relationship between the State of Kansas and the Health Care Stabilization Fund, and jeopardize the actuarial integrity of the HCSF. He said **SB 414** would exempt the statutory reimbursements to the Fund for the claims and related expenses paid on behalf of the residents and faculty at KU Medical Center from the allotment authority delegated to the Secretary of Administration. He recommended passage of **SB 414** with one amendment. He requested this bill be made effective upon the publication in the *Kansas Register* in order to curtail the losses to the Stabilization Fund and restore the statutory relationship between the HCSF Board of Governors and the State of Kansas. (Attachment 5)

Dr. Kirk Benson, President, University of Kansas Physicians, testified in support of **SB 414**. Dr. Benson said **SB 414** will protect the financial integrity of the Kansas Health Care Stabilization Fund by preventing further cuts to the State General Funds transfers made to the Health Care Stabilization Fund on behalf of the KU School of Medicine faculty and residents in Kansas City and Wichita. He said at KU Medical Center, the goals of recruiting and retaining quality faculty physicians and training residents remain two of their highest priorities. He said because of the unique role the medical center plays in training physicians for Kansas and the importance of the Health Care Stabilization Fund in providing excess liability insurance, they fully support the Health Care Stabilization Fund and want to ensure its long-term financial stability. He said further cuts to the fund are simply unsustainable and will inevitably necessitate increases in insurance premiums for private practice physician partners across the state and certainly for KU Medical Center physician faculty. (Attachment 6)

Jerry Slaughter, Executive Director, Kansas Medical Society, testified in support of **SB 414**. Mr. Slaughter stated that for nearly three and a half decades, health care providers have met their responsibilities under the law, and provided the funds to operate a fiscally sound insuring mechanism, the Health Care Stabilization Fund. He said for the past twenty years, the state of Kansas has chosen to operate, in conjunction with the HCSF, the self-insurance arrangement that covers KU faculty and residents, in lieu of purchasing their insurance from the private insurance market. He noted that that self-insurance arrangement worked well. He urged the committee to pass **SB 414** and end the cost-shifting of state obligations onto the physicians, hospitals and other health care providers in the state. He said the state of Kansas must honor its legal and financial obligations. (Attachment 7)

Bob Williams, Executive Director of the Kansas Association of Osteopathic Medicine testified in support of **SB 414**. Mr. Williams stated that in 1989 the Kansas Legislature made the decision to self-insure the basic professional liability of residents in training and the full-time faculty members at the University of Kansas Medical Center. He said at that time, most, if not all of those involved in that decision agreed self-insuring residents in training and full-time faculty members at the University of Kansas Medical Center was in the best interest of all concerned. He said those involved in that decision, legislators, state agencies, and health care providers alike placed a tremendous amount of trust in the State of Kansas to maintain a viable, actuarially sound Health Care Stabilization Fund. He said the allotment orders imposed upon the Health Care Stabilization fund is a violation of that trust and that **SB 414** would restore that trust. (Attachment 8)

The Chair said she would keep the hearing open until all those wanting to testify have had an opportunity.

Senator Steineger moved to approve the Minutes of January 26, 27 and 28. Senator Masterson seconded. Motion passed.

The next meeting is scheduled for February 3, 2010.

The meeting was adjourned at 10:30 a.m.

**SENATE FINANCIAL INSTITUTIONS & INS. COMMITTEE
GUEST LIST**

DATE: 2-2-10

NAME	REPRESENTING
C Wheeler	HCSF
Denny Mays	Olathe
Samuel Forbes	United Health Group
Helen Duvall	Kema
GAY ANDERSON	Olathe
Lori Church	KS Life & Health Assoc.
Rick Benson	Kumc
Ashley Dupita	Pinegar, Smith & Assoc.
Kerri Spulman	KATA
Kathy Olsen	IC Banker Assoc.
Marilyn Carpenter	KAHP
Don Carles	KATHE
Bill Sneed	WKHA
Natalie Byrd	KAI
Jyle Hein	Hein Law Firm

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ST. LOUIS, MISSOURI
WICHITA, KANSAS
LINCOLN, NEBRASKA

February 2, 2010

The Honorable Ruth Teichman, Chairperson
Honorable Karin Brownlee, Vice Chairperson
And Members of the Senate Financial Institutions and Insurance Committee
Statehouse, Room 152-S
Topeka, Kansas

Re: SB 415

Ladies and Gentlemen:

As bond counsel to many cities, counties and school districts in the State, we request your approval of Senate Bill 415. This bill would simply do 3 things:

1. It would allow governmental entities to invest their bond proceeds in obligations guaranteed by the United States government (eg. GNMA's).
2. It would extend until June 30, 2012 the higher caps on interest rates for municipal bonds.
3. It would allow governmental entities to invest idle funds in general obligations issued by other Kansas governmental entities – this would make the investment statute parallel to the bond proceeds statute (KSA 10-131(a)(11)).

Changes #1 and #3 would allow governmental jurisdictions the ability to earn a little higher rate of return on their bond proceeds and idle funds. This would help local jurisdictions in these difficult economic times

Change #2 would continue the higher interest rate cap, which is helpful since we now have certain categories of taxable bonds under federal tax law (e.g. Build America Bonds and Recovery Zone Bonds).

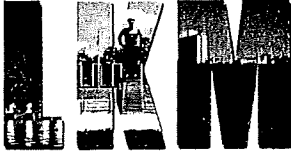
Thank you for your consideration.

Sincerely,



Gary A. Anderson

*FI&I Committee
2-2-10
Attachment 1*



Date: February 2, 2010
To: Senate Committee on Financial Institutions and Insurance
From: Larry R. Baer
Assistant General Counsel
Re: SB 415
Testimony in Support

Thank you for allowing me to appear before you today and present testimony in support of SB 415 on behalf of the League of Kansas Municipalities and its member cities.

SB 415 makes changes to three provisions in current law. Section 1 amends K.S.A. 10-131 to allow cities, and others, who issue bonds under general Kansas bond law, to invest in "any obligation unconditionally guaranteed by the United States government". This is in addition to the other forms of investments now permitted by K.S.A. 10-131(a). Section 3 amends K.S.A. 2009 Supp. 12-1675 to allow an additional form of investment to cities, and others, for the investment of idle funds – moneys not yet needed for the purposes for which they were collected. The new form of authorized investment would be "municipal bonds or other obligations issued by any municipality of the state of Kansas ... which are general obligation bonds of the municipality issuing the same".

The changes proposed in sections 1 and 3 of SB 415 are permissive and provide more flexibility to a city when considering where and how to invest idle funds. A city can choose whether or not to take advantage of the changes contained in the bill. As always, the choice remains a local option and one of a policy decision to be made by local elected officials.

Section 2 also deals with bond issuances. But, it has a different impact on the issuing of bonds. Prior to 2009, the interest rate on bonds issued by a municipality or local taxing subdivision could not exceed the daily yield for ten-year U.S. treasury bonds, plus 3.0 percent if the interest is not taxable or 4.0 percent if it is taxable. The 2009 Legislature amended this to be 5.0 and 6.0 percent, respectively, and provided that the 2009 rates would expire on June 30, 2010 and that the pre-2009 rates would again apply. SB 415 extends the rate change to June 30, 2012 and raises the rates to 6.0 and 7.0 percent respectively.

SB 415 would give municipalities and other taxing subdivisions of the state greater flexibility to issue bonds with an interest rate that is high enough to ensure that the bonds are sold on the open market. With historic low daily yields for ten-year treasury bonds, local taxing subdivisions may find it difficult to find buyers of bonds at the maximum interest rates allowed

*FI&I Committee
2-2-10
Attachment 2*

under current law, notwithstanding the changes made a year ago.

For these reasons the League of Kansas Municipalities supports SB 415 and asks for your support and that you pass it out favorably.

Thank you.

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To: Senate Financial Institutions and Insurance Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: February 2, 2010

Re: Senate Bill 415

The Heartland Community Bankers Association appreciates the opportunity to appear before the Senate Financial Institutions and Insurance Committee to share our concerns with Senate Bill 415.

Although Senate Bill 415 makes three changes to current law, our primary concern is with Section 3 of the bill. It amends K.S.A. 2009 Supp. 12-1675(b) to allow public moneys to be invested in municipal bonds or other obligations issued by any municipality in the state of Kansas. HCBA would normally not object to this, but SB 415 does not add this new power to K.S.A. 2009 Supp. 12-1675(c) which requires units of government to give eligible public funds depositories an opportunity to at least match the PMIB-published investment rate before exploring other investment opportunities authorized by K.S.A. 2009 Supp. 12-1675(b).

This omission eliminates the long-standing uniformity in Kansas law regarding the investment of public funds in eligible banks and savings and loans. The law does not allow local units of government to invest in US treasury bills or notes without first giving eligible depositories an opportunity to bid on the public funds. The law does not allow local units of government to invest with the Municipal Investment Pool Fund without first giving eligible depositories an opportunity to bid on the public funds. At present, there are no exceptions to the requirement that public moneys must first be offered to eligible depositories before they may be invested elsewhere. If municipal bonds are to be an acceptable investment vehicle for public funds then HCBA believes they should be subject to K.S.A. 2009 Supp. 12-1675(c) just like all other authorized outside investments.

While it is Section 3 that causes us the most concern, we would like to bring to the Committee's attention Section 1 which significantly broadens the investments available to local units of government that issue bonds. Senate Bill 415 allows bond proceeds to be invested in "any obligation unconditionally guaranteed by the United States government." While we leave it to the wisdom of the legislature to determine if that is good public policy, it should be noted that the Temporary Liquidity Guarantee Program created by the Federal Deposit Insurance Corporation *guarantees* senior unsecured debt of banks, thrifts and some bank holding companies. Although this program is being phased out, Washington could devise similar programs in the future.

The Heartland Community Bankers Association respectfully requests the Senate Financial Institutions and Insurance Committee not recommend Senate Bill 415 favorable for passage in its current form.

FI & I Committee
2-2-10
Attachment 3



February 2, 2010

To: Senate Committee on Financial Institutions and Insurance

From: Doug Wareham, Kansas Bankers Association

Re: SB 415: Municipalities-Pertaining to Investment in Bonds

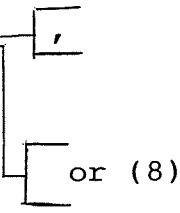
Thank you for the opportunity to appear before you today and share our concerns with Senate Bill 415. The KBA has long been an advocate for keeping public funds invested with local financial institutions – which give those dollars the opportunity to be re-invested in the community through loans made to individuals and businesses – who then spend those loan dollars in the community. We call this the “rollover effect” of local investment and studies have proven that in the long term, keeping local tax dollars invested with financial institutions has significant value to all communities across Kansas.

We do not object to allowing municipalities to invest their idle funds in municipal bonds or other obligations of the state of Kansas, but we are opposed to exempting this type of investment from the long-standing policy found at K.S.A. 12-1675(c), which first requires municipalities to offer their idle funds to eligible financial institutions. If the committee chooses to advance S.B. 415, we would respectfully ask that the new sub-section 8 found at the bottom of Page 4 (lines 40-43) be referenced in sub-section (c) found at the top of Page 5 (lines 1 and 2).

Thank you for the opportunity to share our concerns and we hope this committee will continue to follow the long-standing policy of the State of Kansas, which is to make an effort to keep Kansas dollars invested in the financial institutions that are the driving force for economic growth in Kansas.

*FI&I Committee
2-2-10
Attachment 4*

1 (c) The investments authorized in paragraphs (4), (5), (6) ~~or~~ (7) of
2 subsection (b) shall be utilized only if the banks, savings and loan asso-
3 ciations and savings banks eligible for investments authorized in para-
4 graph (2) of subsection (b), cannot or will not make the investments au-
5 thorized in paragraph (2) of subsection (b) available to the investing
6 governmental unit at interest rates equal to or greater than the investment
7 rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments
8 thereto.



9 (d) In selecting a depository pursuant to paragraph (2) of subsection
10 (b), if a bank, savings and loan association or savings bank eligible for an
11 investment deposit thereunder has an office located in the investing gov-
12 ernmental unit and such financial institution will make such deposits avail-
13 able to the investing governmental unit at interest rates equal to or greater
14 than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a,
15 and amendments thereto, and such financial institution otherwise quali-
16 fies for such deposit, the investing governmental unit shall select one or
17 more of such eligible financial institutions for deposit of funds pursuant
18 to this section. If no such financial institution qualifies for such deposits,
19 the investing governmental unit may select for such deposits one or more
20 eligible banks, savings and loan associations or savings banks which have
21 offices in the county or counties in which all or a part of such investing
22 governmental unit is located which will make such deposits available to
23 the investing governmental unit at interest rates equal to or greater than
24 the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and
25 amendments thereto, and which otherwise qualify for such deposits.

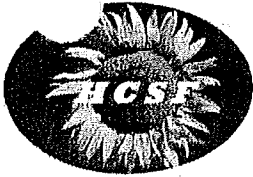
26 (e) (1) All security purchases and repurchase agreements shall occur
27 on a delivery versus payment basis.

28 (2) All securities, including those acquired by repurchase agreements,
29 shall be perfected in the name of the investing governmental unit and
30 shall be delivered to the purchaser or a third-party custodian which may
31 be the state treasurer.

32 (f) Public moneys deposited pursuant to subsection (b)(2) of K.S.A
33 12-1675, and amendments thereto, by the governing body of any govern-
34 mental unit listed in subsection (a) of K.S.A. 12-1675, and amendments
35 thereto, through a selected bank, savings and loan association or savings
36 bank which is part of a reciprocal deposit program in which the bank,
37 savings and loan association or savings bank:

38 (1) Receives reciprocal deposits from other participating institutions
39 located in the United States in an amount equal to the amount of funds
40 deposited by the municipal corporation or quasi-municipal corporation;
41 and

42 (2) for which the total cumulative amount of each deposit does not
43 exceed the maximum deposit insurance amount for one depositor at one



Health Care Stabilization Fund

Charles L. Wheelen, Executive Director
300 S.W. 8th Avenue, Second Floor
Topeka, Kansas 66603-3912

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Testimony
Senate Financial Institutions and Insurance Committee
Senate Bill 414
February 2, 2010

The Health Care Stabilization Fund Board of Governors endorses SB414 because it would restore the statutory relationship between the State of Kansas and the Health Care Stabilization Fund, and would improve the actuarial integrity of the Stabilization Fund.

Background

The Health Care Provider Insurance Availability Act became law in July 1976 in response to a statewide crisis. There were two essential features of the original Availability Act; the creation of the Health Care Stabilization Fund, and the creation of a joint underwriting authority (the Health Care Provider Insurance Availability Plan). There have been numerous amendments to the original Act during its thirty-four year history, but those two fundamental components have remained intact. The Availability Act and the Stabilization Fund have succeeded in achieving the original legislative intent; to provide a stable professional liability environment for Kansas health care professionals and medical care facilities.

Health care providers are required to purchase professional liability insurance from commercial companies or from the Availability Plan. The insurance policy must provide coverage limits of \$200,000 per claim with \$600,000 annual aggregate coverage. The health care providers are also required to select one of three options for additional coverage via the HCSF. Those options are:
\$100,000 per claim with \$300,000 annual aggregate,
\$300,000 per claim with \$900,000 annual aggregate,
\$800,000 per claim with \$2,400,000 annual aggregate.

K.S.A. 40-3414 allows certain health care providers to self-insure the basic layer of coverage (\$200,000/claim). There are currently fourteen self-insured hospitals and surgery centers that have been approved by our Board of Governors and have been issued a certificate of self insurance. In addition, there are a few state medical care facilities that are self insured pursuant to statutory provisions.

Elaine L. Ferguson, D.O.
Michael A. Dorsey
Larry Shaffer

BOARD OF GOVERNORS
Arthur D. Snow, Jr., M.D., Chairman
Jimmie A. Gleason, M.D., Vice Chairman
Steve Clifton, CRNA
Steven C. Dillon, M.D.

FI&I Committee
2-2-10
Attachment 5
J. Michael Frost
Timothy Bolz, D.C.
Deborah M. Burns, D.O.

University of Kansas Medical Center

In 1989 our Legislature decided to self-insure the basic professional liability of residents in training and the full-time faculty members at the University of Kansas Medical Center (both Kansas City and Wichita). The Insurance Commissioner was delegated responsibility for initial payment of claims and related expenses from the Stabilization Fund, to be subsequently reimbursed by the faculty foundations and the State of Kansas. This statutory duty was later transferred to the Health Care Stabilization Fund Board of Governors along with general responsibility for administration of the Fund.

Normally, the HCSF Board of Governors serves as the third party administrator and is periodically reimbursed by the State for claims paid on behalf of the residents and faculty at KU Medical Center. During the most recent ten-year history of this self insurance plan, average annual expenditures have been \$2,645,995 (\$1,456,465.25-faculty / \$1,189,529.52-residents).

Because the private practice foundations contribute \$500,000 annually to a Private Practice Foundation Reserve Fund, the HCSF receives reimbursements amounting to \$500,000 per year from that special revenue fund. Therefore the ten-year average annual cost to the State General Fund for self insurance of full-time faculty members has been \$956,465.

Allotments

In February 2009 the Secretary of Administration imposed an allotment order which discontinued SGF reimbursements to the Stabilization Fund for the remainder of the fiscal year. During FY2009, the HCSF paid claims and expenses amounting to \$3,505,592 on behalf of residents and faculty at KU Medical Center. During the first half of FY2009 the HCSF was reimbursed \$585,992. As a result of the Secretary's first allotment order last February, the net FY2009 losses to the HCSF amounted to \$2,919,600.

In July 2009 the Secretary ordered another allotment which denies SGF reimbursements to the HCSF for another fiscal year. During the first six months of FY2010 the HCSF has paid claims and expenses on behalf of residents and faculty at KU Medical Center amounting to \$1,462,310. Because of the second allotment order, the net losses to the HCSF have been \$962,310 for the first half of FY2010.

The HCSF Board of Governors questioned whether the allotment authority granted to the Secretary of Administration in K.S.A. 75-3722 could override the statutory reimbursement arrangement stipulated in K.S.A. 40-3403. Attorney General's Opinion 2009-16 says in pertinent part, "Nothing in the allotment system statute nor in the Health Care Provider Insurance Availability Act indicates that the statutory transfers of funds specified in K.S.A. 40-3403 are exempt from the allotment system."

HCSF Liabilities

In November 2009 our independent actuary provided a report to the Legislature's HCSF Oversight Committee. Mr. Sutter's report describes two different scenarios for the fiscal year ending June 30, 2010; (1) full reimbursement for KU/WCGME, and (2) limited reimbursement for KU/WCGME. Full reimbursement assumes that the HCSF would be reimbursed by the State for both fiscal years 2009 and 2010. Limited reimbursement assumes that our accounts receivable would be written off as uncollectible, there would be continued transfers from the Private Practice Foundation Reserve Fund, but there would be no reimbursements from the State General Fund for fiscal years 2009 and 2010.

The first scenario predicts that HCSF assets should slightly exceed HCSF liabilities by a 1.9% margin. The second scenario, which assumes the HCSF will not receive the SGF reimbursements, indicates that liabilities will exceed HCSF assets and the Health Care Stabilization Fund will have unfunded liabilities amounting to \$7.9 million at the end of the current fiscal year.

Conclusion

The enabling legislation that created the Health Care Stabilization Fund, K.S.A. 40-3403, stipulates that "The fund shall be held in trust in the state treasury and accounted for separately from other state funds." For more than three decades the State of Kansas has served as the fiduciary for the Health Care Stabilization Fund, and for two decades there has been a statutory self insurance plan administered by the Stabilization Fund on behalf of the State of Kansas. During that same period of time there has been an effective relationship between the University of Kansas Medical Center and either the Insurance Commissioner or the HCSF Board of Governors.

The allotment orders imposed by the Secretary of Administration interfere with the long-standing statutory relationship between the State of Kansas and the Health Care Stabilization Fund, and jeopardize the actuarial integrity of the HCSF. Senate Bill 414 would exempt the statutory SGF reimbursements to the Stabilization Fund for the claims and related expenses paid on behalf of the residents and faculty at KU Medical Center from the allotment authority delegated to the Secretary of Administration in K.S.A. 75-3722.

We urge you to recommend passage of SB414 with only one amendment. In order to curtail the losses to the Stabilization Fund as soon as possible and restore the statutory relationship between the HCSF Board of Governors and the State of Kansas, we request that SB414 be made effective upon publication in the *Kansas Register*.

Thank you.



**Testimony from
Kirk Benson, MD
President, University of Kansas Physicians
Professor, KU School of Medicine
before the
Financial Institutions and Insurance Committee
February 2, 2010**

Thank you Madam Chair and members of the Committee for the opportunity to testify today. My name is Dr. Kirk Benson. I am an anesthesiologist and Professor at the University of Kansas School of Medicine. I also serve as President of the University of Kansas Physicians (UKP, formerly KUPI), which is a not for profit corporation organized in 1996 to assist the University of Kansas School Of Medicine and its clinical faculty achieve their teaching, research, and patient care missions. The UKP organization is comprised of 350 faculty physicians. I am here on behalf of the University of Kansas School of Medicine and its faculty physicians to testify in support of S.B. 414, which will protect the financial integrity of the Kansas Health Care Stabilization Fund (HCSF) by preventing further cuts (allotments) to State General Fund (SGF) transfers made to the HCSF on behalf of KU School of Medicine faculty and residents in Kansas City and Wichita.

The HCSF serves a critical need for recruiting and retaining KUMC physician faculty.

Thanks to the foresight of the Kansas legislature, the HCSF has contributed to a stable medical malpractice insurance environment for physicians throughout Kansas, as well as for KUMC faculty and residents. Professional liability coverage for residents at the University of Kansas Medical Center (KUMC) was established on July 1, 1985, and is administered by the HCSF. On July 1, 1989, the program was expanded to include the faculty on both the Kansas City and Wichita campuses and the residents in Wichita and Salina, and to provide coverage to those residents who leave the state of Kansas (referred to as "tail coverage"). Providing professional liability coverage for faculty physicians and residents through the HCSF is critically important to support the training of physicians in our state.

Securing high quality faculty physicians to train our medical students and residents provides benefits to patients throughout Kansas and the region.

Prior to 1989, the purchase of private professional liability coverage created significant financial hardship for the University of Kansas Medical Center. Because of the unique responsibility of training medical students, higher premium costs and surcharges of 125 percent over basic insurance made recruitment and retention of faculty physicians increasingly difficult. In FY 1989 alone, we paid a total of \$3.9 million for professional liability coverage. A number of faculty left because they could earn more in private practice, and cover the rising cost of insurance. Our residents in training faced expensive individual payments for tail coverage if

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they left the state of Kansas which impacted resident recruitment. In short, maintaining private professional liability coverage threatened our ability to continue training physicians for our state and region, as well as our ability to attract the best residents. By expanding the HCSF to include Kansas City and Wichita faculty and residents, the state was able to ensure that high quality faculty physicians could afford to teach our medical students and train our residents.

The State has made a commitment to share responsibility for professional liability coverage with KUMC, and should honor that commitment.

Physicians in Kansas carry both “primary” professional liability coverage and “excess” liability that provides coverage for higher limits of exposure. For most physicians, the HCSF serves to provide excess liability coverage only. For KUMC, the HCSF also serves as a “backstop” for our partially self-funded liability coverage.

Primary liability coverage. KUMC’s primary liability coverage for physician faculty is partially self-insured and shared with the State of Kansas through the HCSF. KU’s faculty physician foundations pay \$500,000 annually into the Private Practice Reserve Fund on behalf of the physician faculty members. For full-time faculty physicians, the Private Practice Reserve Fund then provides reimbursement up to \$200,000 per malpractice claim. If the Private Practice Reserve Fund is exhausted, then reimbursement from the HCSF is provided by direct transfer from the State General Fund as defined in the statutory provisions KSA 40-3403(c) and (j); and also at KSA 40-3414(d), (h) and (i).

Excess liability coverage. KUMC’s excess liability coverage for physician faculty is exactly the same as other physicians in the state. An annual premium is paid to the HCSF to cover claims or judgments that exceed the \$200,000 level (the cut-off for primary insurance coverage). The faculty physician foundations pay on behalf of the faculty physicians, while the University pays on behalf of residents. Just as they do for other physicians in Kansas, these premiums cover the full cost for excess liability claims and no SGF demand transfer is provided to the HCSF.

Total liability coverage. In total, we paid more than \$1.7 million for liability insurance for physician faculty and residents at KUMC. For primary liability insurance, \$500,000 was paid by the KU faculty physician foundations. For excess liability coverage, \$856,900 was paid from the faculty physician foundations and \$362,000 was paid from the University on behalf of the residents.

Current budget challenges undermine the long-term stability of HCSF; SB 414 will help protect the HCSF from further budget shortfalls.

Facing revenue shortages in FY 2009 and FY 2010, both Governor Kathleen Sebelius and Governor Mark Parkinson suspended SGF demand transfers to the HCSF, either by line item veto or through the allotment process. For FY 2009, this in effect resulted in an overall loss to the HCSF of more than \$2.9 million. Although these are economically difficult times, it is vital to the long term interests of the state to protect the HCSF and preserve the current system given that it is both cost-effective and meets its intended policy goals: to stabilize the cost of professional liability insurance for physicians in Kansas.

The HCSF supports the unique role of faculty and residents at KUMC, whose priority is to train physicians for Kansas.

At KU Medical Center, our goals of recruiting and retaining quality faculty physicians and training residents remain two of our highest priorities. Because of the unique role we play in training physicians for Kansas and the importance of the HCSF in providing excess liability insurance, we fully support the HCSF and want to ensure its long term financial stability. Further cuts to HCSF are simply unsustainable and will inevitably necessitate increases in insurance premiums for our private practice physician partners across the state, and most certainly for KUMC physician faculty. Moreover, because of the \$14.4 million in cuts to the KUMC budget in FY 2010, the University is not in a financial position to fully self-insure our professional liability insurance. Instead, KUMC has been forced to eliminate 79 positions, shift salary portions of 363 positions to other sources of funding including clinical revenue, reduce the number of nursing students, and slowed down the recruitment for quality researchers and clinical staff needed for us to be successful in our application for NCI designation.

In summary, on behalf of KU School of Medicine faculty and residents in Kansas City and Wichita, we strongly support the integrity of the HCSF. Thank you again for the opportunity to testify in support of S.B 414, and I am happy to stand for any questions you may have.



To: Senate Financial Institutions and Insurance Committee

From: Jerry Slaughter
Executive Director

Date: February 2, 2010

Subject: SB 414; Concerning the Health Care Stabilization Fund and the allotment authority of the Secretary of Administration authorized by KSA 75-3722

The Kansas Medical Society appreciates the opportunity to appear in support of SB 414, which was introduced at our request by this committee. This bill contains two changes to existing law: one substantive, the other purely technical. The substantive change is found on page 8 of the bill at lines 32-34. It amends KSA 40-3403(j) with the addition of a new subsection (6), which exempts the statutorily required transfers from the state general fund to the HCSF pursuant to that section of the law from the Secretary of Administration's allotment authority contained in KSA 75-3722 *et seq.* The technical change is found on page 11 of the bill at line 24. It amends KSA 40-3404(a) by striking the word "fiscal" from the statute, which will allow the HCSF Board of Governors to wait until after the end of a fiscal year to set the annual premium surcharge that must be paid by health care providers. This technical change is not controversial, and the balance of our testimony will focus only on the substantive change involving the allotment statute.

Background

Since 1976, physicians, hospitals and several other categories of health care providers have been required by law to purchase professional liability, or as it is more commonly known, "medical malpractice" insurance. We have a somewhat unique structure in Kansas that blends privately-purchased, basic insurance limits with a statewide pooling mechanism that provides coverage for higher limits of exposure. The entity that provides higher insurance limits of insurance coverage is called the Health Care Stabilization Fund (found at KSA 40-3401 *et seq.*). For the past 34 years the HCSF has done its job well, and along with our tort reform measures such as the cap on noneconomic damages, has been a key factor in the stability of the Kansas medical malpractice insurance market. It should be noted that, with the sole exception of the issue that is the subject of SB 414, the HCSF is entirely funded by premiums charged to health care providers. It is also important to note for the record that the HCSF has been operated in a fiscally responsible manner, so that it will always be able to meet its responsibility to pay judgments and settlements that are due to injured persons who bring claims against health care providers.

In 1989, in order to lower the cost of medical malpractice insurance which the state purchased for the full-time faculty and the residents in training affiliated with the KU School of Medicine,

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the state of Kansas established a partially self-insured program which involves the HCSF. In essence, the HCSF administers the self-insurance program for the faculty and residents, which most importantly, includes the payment of claims and legal costs. The state of Kansas assumed liability for a portion of the cost of the insurance program, with the medical school faculty and their practice foundations paying for the balance. In any fiscal year, if the claims costs exceed the amount paid in by the faculty foundations, the State General Fund (SGF) is obligated by law to transfer to the HCSF the difference. The amount varies each year, but on average, the SGF responsibility for faculty and residents has been in the \$2.5 million range per year. The statutory provisions which govern this self-insurance arrangement are found at KSA 40-3403(c) and (j); and also at KSA 40-3414(d), (h) and (i).

The issue in SB 414

In February 2009 and then again in July 2009, the Secretary of Administration issued an allotment order pursuant to KSA 75-3722, which withheld the SGF transfers owed the HCSF for medical malpractice claims the HCSF had already paid. For FY 2009 the amount withheld was slightly over \$2.9 million. For FY 2010, it is estimated that the amount will be in a similar range. Apparently, the Governor has recommended that no transfer be made in FY 2011 as well. If the allotment orders for FY 2010 and 2011 are carried out, it will cost the HCSF (or more accurately, the health care providers who pay the premiums into the HCSF) somewhere between \$8-9 million. Those unreimbursed funds will have to be made up in the form of higher premiums to ensure that there are adequate funds to pay claims and expenses against the HCSF.

The effect of the allotment orders by Governor Sebelius and Governor Parkinson is a shifting to physicians, hospitals and other health care providers in the private sector, costs associated with claims against residents and faculty at KU, *that are legally the responsibility of the state of Kansas.*

Let me be clear that the neither the faculty, residents nor KU itself have in any way created this problem. All parties to this self-insurance arrangement, *except the state of Kansas*, are doing exactly what the law requires of them.

The effect of SB 414

Passage of SB 414 would exempt this self-insurance arrangement from the allotment statute, KSA 75-3722 *et seq.* In other words, the state's self-insurance program for faculty and residents would be restored to its proper operation, and the privately-practicing physicians and hospitals throughout the state would not be forced to pay for liabilities that are legally the responsibility of the state of Kansas.

There are numerous examples of other funds within state government that are not subject to the allotment statute. Some have specific language such as that suggested in SB 414, which exempts the particular fund from the allotment statute. Examples of such funds are the Solid Waste Management Fund (KSA 65-3415a), the Hazardous Waste Management Fund (KSA 65-3491), the Drycleaning Facility Release Trust Fund (KSA 65-34,146), the Underground Petroleum Storage Tank Release Trust Fund (KSA 65-34,114), and the Aboveground Petroleum Storage Tank Release Trust Fund (65-34,129).

Other funds are exempted from the allotment statute by virtue of classifying their transfers as “demand” transfers, which has the effect of not making them subject to allotment. Examples of such funds are the Local Ad Valorem Tax Reduction Fund (KSA 79-2959), the State School District Finance Fund (KSA 72-6438), and the County and City Revenue Sharing Fund (KSA 79-2964).

Conclusion

For nearly three and a half decades, health care providers have met their responsibilities under the law, and provided the funds to operate a fiscally sound insuring mechanism, the Health Care Stabilization Fund. For the past twenty years, the state of Kansas has chosen to operate, in conjunction with the HCSF, the self-insurance arrangement that covers KU faculty and residents, in lieu of purchasing their insurance from the private insurance market. That self-insurance arrangement has worked well, and we support its continuation. However, the physicians, hospitals and other health care providers throughout the state should not also have to cover the state of Kansas’ financial obligations under the self-insurance arrangement, by virtue of an allotment ordered by the Governor. If the state does not want to assume those obligations in the future, it should make other arrangements. It should not, in essence, levy a tax on health care providers for obligations that are not properly theirs.

These allotment orders have unfairly put KU, its medical faculty and residents in a bad light throughout the state, because it has created the unfortunate appearance that privately-practicing health care providers are subsidizing KU’s obligations, when in fact the KU medical school faculty, administration and residents have consistently met their obligations under the law, and done everything required of them. This is not a problem of their making, and they deserve no blame for it. The state voluntarily entered into this self-insurance arrangement two decades ago, and now the state, by virtue of these allotment orders, has unilaterally repudiated its legal obligation to KU faculty and residents, and to the broader provider community, by failing to live up to its financial obligations. The actions of the state are neither fair, nor defensible.

We believe a strong argument can be made that because medical school faculty have significant teaching and research responsibilities, and thus unable to accommodate a full clinical component in their professional activities, that the state should either provide for completely, or participate in a significant way, in providing their required professional liability coverage. Additionally, because residents are really students in the truest sense of the word, the state should pay the full cost of their liability protection.

We urge you to pass SB 414, and end this cost-shifting of state obligations onto the physicians, hospitals and other health care providers in the state. The state of Kansas must honor its legal and financial obligations. Thank you for allowing us the opportunity to offer these comments.



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TESTIMONY

Financial Institutions and Insurance Committee February 2, 2010 SB 414

My name is Bob Williams, Executive Director of the Kansas Association of Osteopathic Medicine. Thank you for this opportunity to address the committee regarding the SB 414.

The Kansas Association of Osteopathic Medicine (KAOM) supports SB 414 to prevent any future allotment orders which could interfere with reimbursements to the Health Care Stabilization Fund. SB 414 will restore the fiduciary relationship between the State of Kansas and the Health Care Stabilization Fund as well as restore the actuarial integrity of the Stabilization Fund.

The Health Care Stabilization Fund Board of Governors, in concert with the Kansas Insurance Commission, have made every effort over the past two decades to assure the Health Care Stabilization Fund was actuarially sound. Recent actions by the Secretary of Administration have undone their close scrutiny by jeopardizing the actuarial soundness of the Stabilization Fund.

Decreasing reimbursements to health care providers from Medicaid and Medicare have placed a financial burden on health care providers in Kansas. Additionally, to compensate for the loss of income, licensing agencies are considering increasing their licensing fees to health care providers. A 15% increase in the Health Care Stabilization Fund surcharge rate to providers will place an additional financial burden on health care providers in Kansas.

As was pointed out in Mr. Wheelan's testimony, in 1989 the Kansas Legislature made the decision to self-insure the basic professional liability of residents in training and the full-time faculty members at the University of Kansas Medical Center. At that time, most, if not all of those involved in that decision agreed self-insuring residents in training and full-time faculty members at the University of Kansas Medical Center was in the best interest for all concerned. Thus, those involved in that decision, legislators, state agencies, and health care providers alike, placed a tremendous amount of trust in the State of Kansas to maintain a viable, actuarially sound Health Care Stabilization Fund. The allotment orders imposed upon the Health Care Stabilization fund is a violation of that trust. SB 414 would restore that trust.

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If the Health Care Stabilization Fund were a “private” entity, such actions would not be tolerated and the Kansas Legislature would be petitioned to enact legislation to prevent placing an insurance fund in actuarial jeopardy. The recommendations by the Board of Governors’ will once again assure the stability and actuarial soundness of the Health Care Stabilization Fund for future generations by preventing the raiding of the Health Care Stabilization Fund for purposes other than what it was intended.

Thank you.