

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Jay Emler at 10:30 a.m. on January 28, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

J. G. Scott, Kansas Legislative Research Department
Michael Steiner, Kansas Legislative Research Department
Dylan Dear, Kansas Legislative Research Department
Amy Deckard, Kansas Legislative Research Department
Aaron Klaassen, Kansas Legislative Research Department
Estelle Montgomery, Kansas Legislative Research Department
Heather O'Hara, Kansas Legislative Research Department
Jonathan Tang, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Melinda Gaul, Chief of Staff
Shirley Jepson, Committee Assistant

Conferees appearing before the Committee:

Scott Gates, General Counsel, State Treasurer's Office
Steve Neske, Financial Economist, Department of Revenue
James Crowl, Assistant County Counselor, Shawnee County
Steve Irsik, Chairman, Kansas Water Authority
Tracy Streeter, Kansas Water Office

Others attending:

See attached list.

Introduction of Legislation

Senator Schmidt moved to introduce legislation concerning unclaimed property (9rs1394). The motion was seconded by Senator Kelly. Motion carried on a voice vote.

Senator Vratil moved to introduce legislation concerning one judge/one county (9rs0999). The motion was seconded by Senator Kelly. Motion carried on a voice vote. Senator Lee requested to be recorded as voting "no".

Senator Emler moved to introduce legislation concerning materials applied to license plates (9rs1166). The motion was seconded by Senator Teichman. Motion carried on a voice vote.

Briefing on Claims Against the State concerning Special City-County Highway Fund

Senator Owens presented testimony explaining that the Joint Committee for Special Claims Against the State heard testimony brought by twelve counties requesting payment of funds not received from the distribution of Motor Fuel Tax refunds from the Special City/County Highway Fund related to the use of the incorrect base year in the fuel tax refund formula for fiscal years 2000-2005 (Attachment 1). Because the information from the State Treasurer's Office was not provided until immediately prior to the hearing, the Joint Committee did not have time to fully evaluate the information and therefore, requested that the Senate Ways and Means/House Appropriations Committees fully explore the issue.

With reference to **SB 387**, Senator Owens testified that the Joint Committee for Special Claims Against the State recommends the payment of 12 claims, 10 from the Department of Corrections, for a total of \$109,933.36, including \$28,460.05 from the State General Fund (SGF).

Scott M. Gates, General Counsel, State Treasurer's Office, provided background information on the claim brought by the counties regarding the Special City-County Highway Fund (Attachment 2). Mr. Gates indicated

CONTINUATION SHEET

Minutes of the Senate Ways and Means Committee at 10:30 a.m. on January 28, 2010, in Room 548-S of the Capitol.

that there were two issues involved in the possible error in calculations: (1) The wrong year was used as the base year for the calculations; and (2) the Department of Revenue software was not calculating data from the counties' satellite offices correctly. Corrections to the system were made and payments made to twenty underpaid counties by legislation in FY 2009. New calculations revisited data back to 1997, resulting in underpayments to five counties totaling \$11,125,813.41.

Responding to questions from the Committee, Mr. Gates stated that the same amount underpaid to the five counties was overpaid to the remaining 100 counties. Mr. Gates indicated that some of the counties included in last year's legislation have been overpaid and annual audits have been performed.

Steve Neske, Financial Economist, Department of Revenue, responded to Committee questions, that the problem originated when new software was installed, numeric indicators were programmed incorrectly for those counties who had satellite offices - not allowing actual computations to be uploaded, only for this one program.

James M. Crowl, Assistant Shawnee County Counselor, presented testimony on behalf of the county/claimants involved in the matter (Attachment 3). Mr. Crowl indicated that originally there were 19 counties who appeared to be incorrectly paid; however, new calculations reduced the number to 5.

The Committee expressed concern for who may be responsible for the miscalculations; concern that the correct calculations are being produced; possible certification by an outside auditor; and how the statute of limitation applied to the issue.

There were no other conferees who requested to speak before the Committee concerning the issue.

Hearing on SB 387 - Claims against the state; appropriations.

Dylan Dear, Legislative Research Department, provided an explanation of **SB 387**. Responding to a question from the Committee, Mr. Dear indicated that the claims in Harvey and Finney Counties concern reimbursement of costs of determination proceedings brought forth by sexual violent predators who challenged their incarceration.

Written testimony was provided by Gregory Nye, Harvey County Counselor, directed at reimbursement for costs of representing a violent sexual predator (Attachment 4).

There were no other proponents, opponents or neutrals to request to appear before the Committee.

The hearing on SB 387 was closed.

Report by Kansas Water Authority

Steve Irsik, Chairman, Kansas Water Authority, presented an update on activities of the Kansas Water Authority. Mr. Irsik reported that one issue facing Kansas involved the Ozark Aquifer in southeast Kansas. Kansas is being asked to conserve water by restricting drilling in the area; however, Missouri is pumping excess water from the basin. Mr. Irsik indicated that there is action to place a moratorium on water usage from the Aquifer. Although, the Aquifer is primarily based under Kansas and fed from ground water in Kansas, the Spring River, which starts in Missouri, also feeds the aquifer.

Tracy Streeter, Kansas Water Office, provided testimony and an overview of the Kansas Water Authority 2010 Annual Report to the Governor and Legislature (Copy available from the Kansas Water Office).

Responding to a question from the Committee, Mr. Streeter stated that dredging is the most expensive way to produce more water storage in the state, although competition in the field could cause it to become more cost effective.

CONTINUATION SHEET

Minutes of the Senate Ways and Means Committee at 10:30 a.m. on January 28, 2010, in Room 548-S of the Capitol.

Approval of Minutes

Senator Teichman moved to approve the minutes of January 18, January 19, January 20, January 21 and January 22. The motion was seconded by Senator Schodorf. Motion carried on a voice vote.

Adjournment

The next meeting is scheduled for January 29, 2010.

The meeting was adjourned at 11:55 a.m.

SENATE WAYS AND MEANS COMMITTEE

GUEST LIST

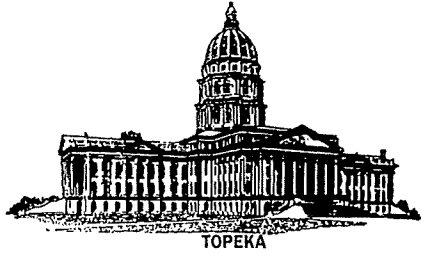
DATE: January 28, 2010

| NAME | REPRESENTING |
|-------------------------|-------------------------------|
| Rich Eckert | SNCO |
| James M. Crowl | SNCO |
| Phil STEVENSON | STO |
| Scott Gates | STO |
| Steve Neske | KDOR |
| Sean Muffey | CAPITOL STRATEGIES |
| Julie Thomas | |
| Dale Hollingsworth | Capital-Journal |
| Randall Allen | Ks. Association of Counties |
| Maji Farinokun | CKM |
| ROD MENLI | KEARNEY & ASSOC. |
| MARK HEIM | KWIO |
| Shane Lyle | KGS |
| Laci Henry | Sandstone Group LLC |
| Leslie Kaufman | Ks Co-op Council |
| Ethel ERICKSON | KDOT |
| Trent Fab | Intern for Rep. McClay-Miller |
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COMMITTEE MEMBERS

SENATE

Thomas C. (Tim) Owens, CHAIR
Terry Bruce
Kelly Kultala
Ty Masterson
Dennis Pyle



COMMITTEE MEMBERS

HOUSE OF REPRESENTATIVES

Rocky Fund, VICE-CHAIR
Bill Feuerborn
Robert (Bob) Grant
Broderick T. Henderson
Steve Huebert
Jeff King
Rob Olson
Joe Patton

**JOINT COMMITTEE ON
SPECIAL CLAIMS AGAINST THE STATE**
300 SW 10TH AVENUE
SUITE 68-W, STATEHOUSE
TOPEKA, KANSAS 66612

January 27, 2010

To: Senate Ways and Means Committee
From: Senator Thomas C. (Tim) Owens
Re: SB 387 Claims Bill and Claims by 12 Kansas Counties for \$9 million

Enclosed are copies of the materials I am referencing in my testimony to the Committee regarding:

- SB 387, the claims bill; and
- The \$9 million in claims filed by 12 counties for unpaid refunds from the Special City/County Highway Fund.

CJL/kal

Enclosures

Speaking Notes on Claims Bill (SB 387)

During the 2009 Interim:

Excluding Motor Vehicle Fuel Tax, the Joint Committee on Claims Against the State

Heard 124 claims, of which 80 claims or 64.5 percent of which were filed against the Department of Corrections or the correctional facilities.

The Committee's Recommendation is for payment of 12 claims. 10 of the claims are from the Department of Corrections or the correctional facilities. The remaining two are from Counties for the reimbursement of sexually violent predator legal expenses, which include:

- Harvey County - \$1,237.64
- Finney County - \$26,283.06

The Committee's recommendations in SB 387 total \$109,933.36, including \$28,460.05 from the State General Fund.

This recommendation includes:

- \$81,473.31 for motor fuel tax refunds
- \$939.35 from Department of Corrections or the correctional facilities
- \$27,520.70 from the State General fund for two counties

Speaking Points SB 387 as amended by the Senate Committee on Ways and Means

Section 2 pages 1-5 Motor Fuel Claims totaling \$81,473.31. Refunds paid by the Department of Revenue must be received within one year after the date of purchase. If the refund request is submitted after that date, only option is to file claim with Joint Committee on Claims Against the State. Refunds are allowed for taxes paid on fuel used for off-highway uses, including school buses and farming.

Section 3 pages 5-7 The Committee's recommendation includes \$939.35 from the Department of Corrections or the correctional facilities. Of this amount:

- \$500.00 is for reimbursement of hospital expenses when inmate was placed on the top bunk after having informed Topeka Correctional personnel that she suffered from diabetic seizures
- \$150 for destruction of claimant's family photos and letters while they were in the control of the El Dorado Correctional Facility. The family members in the photos are deceased.
- The remainder are for miscellaneous items; including, a book, some tennis shoes, a radio, a hotpot, headphones, etc.

Section 4 page 7 The Committee recommends the payment of \$27,520.70 from the State General Fund to reimburse two counties for legal expenses incurred relating to a sexually violent predator proceeding pursuant to KSA 59-29a04:

KSA 59-29a04 provides that whenever a determination is made regarding whether a person may be a sexually violent predator, the county responsible for the costs shall be reimbursed by the office of the Attorney General from the Sexually Violent Predator Expense fund. If there are no moneys in the fund, the county may file a claim against the state. The Legislature has never appropriated any moneys to that fund; however, the Governor recommends \$20,000 be appropriated to the fund in FY 2011.

The claims include:

- \$1,237.64 to Harvey County for legal fees paid to Breymer & Wise law firm for the defense costs of representing a defendant in a sexually violent predator proceeding;
- \$26,283.06 to Finney County for legal fees paid to Spencer & Spencer, P.A.; including \$18,508 for expert witness testimony and \$7,774.83 in billable hours and miscellaneous fees.

Section 5 page 7 Requires signed releases prior to payment being made.

Section 6 page 7 Act effective upon publication in the Register.

COMMITTEE MEMBERS

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Thomas C. (Tim) Owens, CHAIR
 Terry Bruce
 Kelly Kultala
 Ty Masterson
 Dennis Pyle



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HOUSE OF REPRESENTATIVES

Rocky Fund, VICE-CHAIR
 Bill Feuerborn
 Robert (Bob) Grant
 Broderick T. Henderson
 Steve Huebert
 Jeff King
 Rob Olson
 Joe Patton

**JOINT COMMITTEE ON
 SPECIAL CLAIMS AGAINST THE STATE**

300 SW 10TH AVENUE
 SUITE 68-W, STATEHOUSE
 TOPEKA, KANSAS 66612

January 14, 2010

Senator Jay Emler, Chairperson
 Senate Ways and Means Committee
 Room 545-S, 300 SW 10th Avenue
 Topeka, KS 66612

Representative Kevin Yoder, Chairperson
 House Appropriations Committee
 Room 351-S, 300 SW 10th Avenue
 Topeka, KS 66612

Dear Chairmen Emler and Yoder :

On December 3, 2009, the Joint Committee for Special Claims Against the State heard claims brought by twelve counties requesting payment of funds not received from the distribution of Motor Fuel Tax refunds from the Special City\County Highway Fund related to the use of the incorrect base year in the fuel tax refund formula for fiscal years 2000-2005. Richard Eckert, Shawnee County Counselor, representing Ness, Barton, Cowley, Geary, Grant, Lane, Leavenworth, Rice, Russell, Shawnee, Trego, and The Unified Government of Wyandotte County/Kansas City, Kansas, alleged that the State owes these 12 counties a total of \$9,007,349 in unpaid refunds. At the time of the hearing, Counselor Eckert admitted that the numbers used by the Counties were approximate due to some of the data being unavailable between 2000 and 2005.

Scott Gates, General Counsel for the State Treasurer, submitted testimony indicating that the missing data from 2000 to 2005 had been retrieved. He provided a new calculation for underpayments Statewide. The Treasurer's Office concluded that only five of the 105 counties have been underpaid, including Barton, Butler, Douglas, Leavenworth and Shawnee for a total loss of \$10,803,790. This is the amount remaining after the 2009 Legislature approved the transfer of \$6.6 million to the Special City/County Highway Fund from the State General Fund, to be paid to those counties affected by the past nine years of erroneous payments. The State Treasurer's new data indicates that many of the 2009 payments further overpaid counties which had already been overpaid through FY 2009. The new data also indicates the amount by which the five counties have been underpaid, \$10.8 million, is greater than the amount 12 counties combined sought in the claims filed with the Joint Committee on Special Claims Against the State.

Because the information from the Treasurer's Office was not provided until immediately prior to the hearing, Counselor Eckert was not prepared to discuss how the new calculations

changed his position, and Committee members had many questions about the calculations. The new data also may create a conflict of interest for some of the counties and they may seek separate representation. Given the limited amount of time the Special Claims Committee had to devote to this issue, the fact that the Legislature addressed the issue in the 2009 Mega Appropriations Bill, and the fact that a comprehensive review of the new calculations is needed, the Committee requests that the House Appropriations\Senate Ways and Means Committee convene an investigative hearing to fully explore the issue and determine an appropriate course of action in this matter.

Thank you for your consideration of this topic.

Sincerely,



Senator Tim Owens, Chair
Joint Committee on Special Claims Against the
State

DCD/kal

Enclosures



900 SW JACKSON ST., STE 201
TOPEKA KS 66612-1235

STATE OF KANSAS
Dennis McKinney
TREASURER

PHONE: 785-296-3171
FAX: 785-296-7950

Senate Ways and Means Testimony
Highway Fund Distributions
Scott M Gates, General Counsel

Background

The four quarterly payments to each county required by K.S.A. 79-3425c are based on each county's vehicle registration data from the Department of Revenue and each county's data for road miles and miles driven data from the Department of Transportation. Each April, \$2.5 Million is distributed in an equalization payment in which the amount paid to each county is compared to a base year with counties that received less than the base year receiving additional funds. In 2000, the base year was moved from 1970 to 1999 along with other changes to the formula by the 1999 legislature. Our staff continued to use the 1970 data as the base year for this comparison until this error was discovered in April of 2008.

2008 Calculations

When the Treasurer's Office discovered this error and was making calculations to correct it, the vehicle registration data just didn't seem accurate. We hired Grant Thornton, LLP, to audit the new software's calculations for making the distributions and the underlying data. **During this audit, Revenue discovered that vehicle registrations were not being properly reported for four counties: Butler, Douglas, Leavenworth, and Shawnee with satellite county treasurer offices.** Revenue was able to provide revised vehicle registration data back to 2004 which was used to recalculate the four quarterly distributions for FY2006, FY2007 and FY2008 which were then compared to the unchanged 1999 base year data to recalculate the equalization payments for these three years. Because Revenue was not able to provide vehicle registration data prior to 2004, we were not able at that time to recalculate the 1999 base year to determine what should have been paid in 1999. The 2008 calculations resulted in twenty counties being underpaid \$6,661,086 with eighty-five counties overpaid an equal amount. **The 2009 Legislature decided to pay the twenty underpaid counties without collecting from the overpaid counties in Senate Substitute for House Bill 2373, Section 86. These payments were made April 14, 2009.**

All quarterly payments since July 1, 2008 have been made with accurate vehicle registration data.

New calculations

We have continued to work with the Department of Revenue to recreate vehicle registration data all the way back to 1997. Actual numbers were supplied for the four counties with the satellite office issue and estimates based on the 2006 to 2008 adjustments were supplied for all of the other 101 counties. **Since the claims committee hearing, Grant Thornton has reviewed the underlying vehicle registration data and our methodology for calculating what should have been paid to all 105 counties from 2000 to 2009.** Steve Neske is here from the Department of Revenue to answer any questions about their data

Senate Ways & Means Cmte
Date 1-28-2010
Attachment 2

First, we used data from 1997 and 1998 to recreate what counties should have been paid in 1999 to form the new base year for the annual equalization payment. We then recalculated each quarterly distribution and the annual equalization payment for 2000 through 2008. Lastly, we recalculated the April 2009 equalization payment using the new 1999 base year data. All of these calculations were made using our new audited software system.

The following counties remain underpaid after applying the payments in 2008 Senate Substitute for House Bill 2373, Section 86 to the total recalculated balances for 2000 through 2009:

| | |
|--------------|------------------------|
| Barton: | \$159,699.86 |
| Butler | \$1,938,745.35 |
| Douglas | \$2,564,919.68 |
| Leavenworth | \$1,115,324.47 |
| Shawnee | <u>\$5,347,124.05</u> |
| Total | \$11,125,813.41 |

All other 100 counties would be overpaid. This also means that 15 of the counties that were paid in last year's bill were overpaid a total of \$368,980.82 when you take into account data for all 10 years.

I'd be glad to answer any questions you have about the calculations.

Going forward

Steps can be taken to improve the annual performance audit of our office. The Treasurer's Office has had an annual performance audit contracted by the Legislative Division of Post Audit every year since before this error occurred which has included examining whether these distributions were made "according to law." These audits from 2000 through 2008 failed to uncover this error. We are willing to work with the Legislative Division of Post Audit to further refine the scope statement and increase the amount budgeted for this audit so that the audit can help find human errors like these before they fester for several years. We have considered pursuing claims against the auditors and have consulted with the Attorney General's Office and the Legislative Division of Post Audit.

Another benefit of the new software system used for these distributions is that dual controls are in place so that one person selects the data sets for the calculation and another person confirms the accuracy of the data before authorizing the payments. We will be making sure that staff procedures maximize this feature.

We are also currently sending more data to the counties along with their quarterly payments and the annual equalization payment so that they can help verify the amounts they are receiving.

Given the cash flow problems currently being experienced by the state and the fact that a large part of the problem was corrected by the 2009 legislature, the Treasurer makes one recommendation. If the legislature decides that corrective payments should be made, the payments should be spread across multiple fiscal years. We are ready to assist the Legislature by providing any additional data that you may need.

Shawnee County Office of County Counselor

RICHARD V. ECKERT
County Counselor

Shawnee County Courthouse
200 SE 7th St., Ste. 100
Topeka, Kansas 66603-3932
(785) 233-8200 Ext. 4042
Fax (785) 291-4902



Senate Ways & Means Committee Briefing
January 28, 2010
Testimony of James M. Crowl, Assistant Shawnee County Counselor

Mr. Chairperson, members of the Committee, thank you for the opportunity to appear and speak on this matter this morning. My name is James Crowl, I am an Assistant Shawnee County Counselor, and I am appearing on behalf of the twelve (12) county/claimants involved in this matter.

Twelve (12) counties are seeking reimbursement for motor vehicle fuel and other taxes that were collected by the state but were never paid to the counties, as mandated by K.S.A. 79-3425c. These taxes are distributed to cities and counties through the Special City/County Highway Fund. As you are probably aware, state law requires that these taxes be distributed to all counties across the state according to a predetermined formula. That formula takes into account, among other things, the number of motor vehicle registrations in each county.

When the underpayment was discovered, representatives of Shawnee County met with State Treasurer Lynn Jenkins and her staff about the underpayment problem. During this meeting, Shawnee County representatives were told that two (2) problems had occurred with the payments to counties from the Fund—these problems dated at least as far back as the 2000 fiscal year.

First—there was a miscalculation with the formula that led to an underpayment from the Fund from the 2000 to the 2008 fiscal years for nineteen (19) counties.

Second—for certain counties, like Shawnee County, that had set up satellite offices for motor vehicle registrations, registrations from those satellite offices had not been counted—causing those counties to receive less funds than they should have.

Shawnee County representatives were told that these two (2) problems had caused the underpayment to nineteen (19) counties and had been occurring at least as far back as the 2000 fiscal year.

Last year the Kansas Legislature reviewed this issue and enacted Legislation to reimburse all affected counties for the underpayment for the 2006, 2007, and 2008 fiscal years. While we certainly appreciate the fact that this action was taken, the language of K.S.A. 79-3425c is mandatory—these monies “shall” be paid to counties—and therefore, the counties seek reimbursement for the remaining underpayments.

The twelve (12) county claimants submitted claims to the Joint Committee on Claims against the State. On the day of that Committee Hearing, Mr. Scott Gates, General Counsel for the State Treasurer, provided us with new calculations of the underpayment for each affected county. According to the new calculations, underpayments were made to five (5), rather than nineteen (19) counties: Barton, Butler, Douglas, Leavenworth, and Shawnee. Yesterday, we were contacted again by Mr. Gates and were advised that there were even newer calculations being done that would change the numbers given to us at the Joint Committee Hearing. At this time, the counties are not in a position to admit or deny the accuracy of the most recent numbers provided by the State Treasurer’s Office.

Thank you for your attention and consideration of this issue, and I would appreciate any questions you might have.

Senate Ways & Means Cmte
Date 1-28-2010
Attachment 3

HARVEY COUNTY, KANSAS
Administration Department
Gregory C. Nye
Harvey County Counselor
Court House

P. O. Box 687
Newton, Kansas 67114-0687

Telephone (316) 284-6806
Fax (316) 284-6811

January 27, 2010

KANSAS SENATE
WAYS and MEANS COMMITTEE
Attn: Shirley

EMAIL: shirley.jepson@senate.ks.gov

RE: Reimbursement for Costs of
Representing a Violent Sexual
Predator; Harvey County District
Court Case No. 08-PR-43

Dear Committee Members:

Thank you for receiving this written testimony concerning Senate Bill 387. I am the County Counselor for Harvey County, Kansas. On November 2, 2009 I appeared on a special claim before the Joint Senate Sub-Committee for payment of claims against the State. Harvey County's claim involved a request for reimbursement for costs of representing a violent sexual predator.

This claim concerns the representation of a defendant who has been convicted of a violent sexual crime, has served his time and is up for parole. The issue at the trial stage is whether there should be additional commitment and treatment pursuant to a civil commitment procedure. The end result of this representation was that testimony was received regarding the evaluation of the defendant and that based upon the testimony, the State withdrew its request for civil commitment.

At the hearing before the Joint Senate Sub-Committee I presented verification of the appointment of the attorney to represent the defendant and payment of Court appointed attorney's fees from the County's general fund.

The reimbursement request was made pursuant to K.S.A. 59-29a04(c). The statute provides that claims for reimbursement of this nature should be made first against the Attorney General's office but that if the State does not fund the Attorney General's office, that the claim then be made against the State, - - which is what occurred here. An Assistant Attorney General also spoke at the November 2, 2009 hearing and verified that their office had not been funded.

Because procedures against violent sexual predators involve continued confinement, the State and U.S. Constitution provides for the right of the defendant to be represented by an

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Attachment 4

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Page 2

attorney. As noted, K.S.A. 59-29a04(c) further provides for representation and payment.

The joint Senate Sub-Committee authorized recommendation of payment of the claim in the amount of \$1,237.64. I would respectfully request that Senate Bill 387 be approved so as to provided for reimbursement to Harvey County, Kansas in said amount.

Very truly yours,

Gregory C. Nye
Harvey County Counselor

GCN:ag

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