

MINUTES

LEGISLATIVE BUDGET COMMITTEE

October 14, 2010
Room 548-S—Statehouse

Members Present

Senator Jay Emler, Chairperson
Representative Ray Merrick, Vice-chairperson
Senator Laura Kelly
Senator John Vratil
Representative Bill Feuerborn
Representative Jeff Whitham
Representative Kevin Yoder

Staff Present

Alan Conroy, Kansas Legislative Research Department
J. G. Scott, Kansas Legislative Research Department
Audrey Dunkel, Kansas Legislative Research Department
Reagan Cussimano, Kansas Legislative Research Department
Dylan Dear, Kansas Legislative Research Department
Amy Deckard, Kansas Legislative Research Department
Aaron Klaassen, Kansas Legislative Research Department
Michael Steiner, Kansas Legislative Research Department
Jarod Waltner, Kansas Legislative Research Department
Laura Younker, Kansas Legislative Research Department
Shirley Morrow, Kansas Legislative Research Department
Michael Wales, Kansas Legislative Research Department
Dorothy Hughes, Kansas Legislative Research Department
Ryan Weir, Kansas Legislative Research Department
Jim Wilson, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Nobuko Folmsbee, Office of the Revisor of Statutes
Gordon Self, Office of the Revisor of Statutes
Carol Benoit, Chief of Staff, Office of the Senate Vice-president
Melinda Gaul, Chief of Staff, Senate Ways and Means Committee
Kathy Letch, Committee Assistant

Conferees

Chris Howe, Director, Division of Purchases, Department of Administration
Angela Wilson, Deputy Attorney General, Consumer Protection and Antitrust Division
Patrick Hurley, Chief Counsel and Deputy Attorney General, Civil Litigation
Kim Fowler, Assistant Fiscal Officer, Judicial Branch
Pat Scalia, Executive Director, Board of Indigents' Defense Services
Norma Jean Schaefer, Chief Information Officer, Kansas Department of Health and Environment
Scott Brunner, Chief Financial Officer, Kansas Health Policy Authority
Glenn Deck, Executive Director, Kansas Public Employees Retirement System
Dan McLaughlin, State Fire Marshal
Steve Sutton, Interim Executive Director, Emergency Medical Services
Glenn Pribbenow, Director, University of Kansas Fire and Rescue Training

Morning Session

The meeting was called to order by Chairperson Emler.

Legislative Research Fiscal Staff Agency Assignments

The Chairperson opened the meeting with introductions of Kansas Legislative Research Department fiscal staff and their agency assignments ([Attachment 1](#)).

Review of Possible Legal Services Request for Proposals—Kansas Sunshine Law

Nobuko Folmsbee, Office of the Revisor of Statutes, presented a summary of KSA 75-37,135 regarding proposed acquisition of legal services with fees possibly exceeding \$1 million and the requirements pertaining to submitting a Request for Proposal (RFP) involving the Legislative Budget Committee (LBC) ([Attachment 2](#)).

After submission of such an RFP to the LBC:

- The LBC has 30 days in which it may hold a public hearing, but it is not required;
- The LBC has 30 days to issue a report to the Director of Purchases detailing suggested changes;
- After the Director receives the report from the LBC, the Director must adopt and file a final RFP with the LBC;
- If the Director does not adopt the LBC's suggested changes, the Director must explain his reasoning; and
- If there are no suggested changes by the LBC, or if the LBC fails to make a

report within 60 days of submission of the RFP, the Director may release the RFP.

After awarding a contract for legal services stipulated above:

- The Director of Purchases shall submit the contract to the LBC;
- Within 30 days of submission of contract to the LBC:
 - The LBC may hold a public hearing on the contract, but it is not required; and
 - The LBC shall issue a report and any concerns of the LBC to the Director.

Subsection (c) does not involve the LBC; subsections (d) and (e) pertain to contingency agreement requirements; and subsection (f) pertains to KPERS, directing the Board of Trustees of KPERS to act as "Director of Purchases" as required in the afore-mentioned procedures.

A Committee member asked what the background was, prior to 2000, that precipitated the passing of KSA 75-37,135. Ms. Folmsbee answered that the tobacco litigation had been ongoing and there was the thought that the Legislature needed more transparency.

Chris Howe, Director, Department of Administration, Division of Purchases, presented RFPs developed for use with on-line travel companies and the Underground Storage Tank Release Trust Fund (Attachments 3 and 4).

On-line Travel Company RFPs

The Chairperson introduced Angela Wilson, Deputy Attorney General, Consumer Protection and Antitrust Division, who stated the hope is to send out RFPs regarding the state being the plaintiff in the recoupment of tax revenue that should have been paid to the state, but was not. The numbers are unknown, but have been estimated to be between \$1 million and \$40 million of potential recovery.

Responding to questions from the Committee, Ms. Wilson stated the contracted firm would be paid by a contingency fee, but percentages, currently, are not in the RFP. Payment on a contingency fee basis was chosen, instead of an hourly rate or another form of compensation, because it provides the least risk for the state; the state will be liable for payment of services only when and if recovery is made. Ms. Wilson said the Attorney General's Office does not have the manpower to research and investigate this issue, and there is an industry that has access to the information that could take on that advocacy role better.

Ms. Wilson stated that Kansas is on its own in this case; there would be no other states with whom Kansas must share the proceeds of recouped revenue. Whether or not to join other states or go it alone in the future would be decided on a case-by-case basis. There are no other states that have finished the process of litigation and recouped lost revenues. There may have been settlements made with municipalities. The Attorney General's Office was approached by a company that was interested in vying for the RFP.

The "typical market fee" is 30 percent and in the pending average wholesale price litigation the number is significantly less. There is not a cap on the percentage. If the proposed percentage is not acceptable, there is no contract signed. If the state does not win, the contracted firm does not receive a fee; if recovery is zero, it would have to absorb its expenses.

The Chairperson recommended that they state a cap percentage in the RFP and make it clear that expenses would not be paid by the state if there is no return on the lawsuit. A Committee member added that if you put a cap in the RFP, the contractors will try to get close to that cap.

Senator Vratil moved that the RFP state that expenses are not to be paid by the state if there is no return on the lawsuit; Representative Merrick seconded the motion. The motion carried.

*Senator Vratil moved that RFPs contain a cap of 30 percent, if that is the amount the Attorney General's office feels is a reasonable amount. The Chairperson recognized Patrick Hurley, Chief Counsel and Deputy Attorney General, Civil Litigation, to add information on the topic. Mr. Hurley stated that in this particular kind of lawsuit, the percentage amounts discussed have included 25 percent and 15 percent. A Committee member asked if the Attorney General's Office sees 30 percent as a reasonable maximum. Mr. Hurley stated that 30 percent is too high and probably not a number they would accept. They would like to see something in the 10 percent to 15 percent range, with 15 percent as the maximum. The question was put to Mr. Hurley whether a maximum contingent fee percentage would help or hinder the Attorney General's Office. Mr. Hurley stated it would not help and could possibly hinder. *Senator Vratil withdrew his motion.**

Underground Storage Tank Release Trust Fund RFP

Patrick Hurley spoke to the Committee regarding underground storage tanks owned by gas stations. He stated the fund helps with clean-up when tanks leak; they need to be repaired; and they need to be fixed in a timely fashion. A 1 cent tax is added to the cost of each gallon of gasoline and is put into a clean-up fund. \$15 million is spent each year with clean-up. The fund is for the small operator that cannot afford insurance. In the past, sometimes insurance was denied when claims were made, but eventually insurance paid. The state did not get reimbursed. This litigation is to pursue the companies for reimbursement when they have collected twice, once from the state and once from the insurance company.

Responding to Committee members' questions, Mr. Hurley stated that this issue goes back to 1989 and the amount could be as much as \$25 million, but more likely between \$1 million and \$6 million. Currently, two suits are in place, basically, for fraud. Those cases are slightly different as there is commercial insurance involved, so the vehicle is different. Currently, there are nine suits filed across the country. He stated that even \$1 million is worth pursuing if it would help clean up the 1,500 sites, annually.

Gary Blackburn, Kansas Department of Health and Environment, stated the personal tank owner's liability is \$3,000 plus \$500 per tank at each facility; therefore the deductible would be between \$3,500 and \$5,000. Many of the stations had insurance coverage back when the leak occurred. The tank owners have gone back to their former insurance companies and have gotten settlements on claims which were originally denied. Some of the insurance coverage goes back to the 1970s.

Mr. Hurley stated the RFP is a contingency fee contract to protect the state from the risk of expenses. Attorney-billable hours and discovery costs can be extremely high; documents must be located, reviewed, and organized. It is to protect the state from high attorney fees with the possibility of no recovery. In this way, the state can manage recovery costs. Having a contingency fee is most effective in this situation. The contractor assumes all the risk for recovery. Also, having the actual documentation, expertise, and subject matter experts is beyond the state's capacity. There are groups that have individuals that have the needed expertise. Attachment 4, pages 24 and 25, of the RFP, states if the State of Kansas is unsuccessful in recovering damages, the private firm will not

receive any compensation or expenses. The state would not pay any of the expenses, in any event. If compensation were to be paid, the general idea is that the money would go back into the fund.

Gary Blackburn stated the statute of limitations runs from discovery of the fraud and is two years. The discovery was made by the law firm that solicited the state within the last 18 months.

Mr. Blackburn stated that Kansas has an above-ground fund, as well. Therefore, above-ground storage clean-up issues are not included in this RFP.

Private market contingency fees are typically 25 percent. Expenses would be paid by the contracting private firm and are all encompassing. No matter how long a settlement may take, the percentage stays the same. All settlements have to be approved by the Attorney General.

Committee members discussed whether the language on page 24 was sufficient or needed further clarification. If it is sufficient, they may move forward with the RFP in ten days; if it is not sufficient, they have 60 days to review Committee comments and decide if they will amend the contract. A Committee member stated that the language on pages 22 and 23 should be clarified. The sentence in Section D states if the State of Kansas is unsuccessful in recovering damages, the firm will not receive any compensation or payment for expenses. Nowhere does it indicate that the firm is responsible for expenses even if the State of Kansas is successful. *Senator Vratil moved the Committee recommend the RFP contain language to clearly indicate that in no event can the law firm recover expenses incurred from the state. Representative Whitham seconded the motion. The motion carried.*

Senator Kelly moved to approve both contracts with the one recommendation. Senator Vratil seconded the motion. The motion carried.

Update on Judicial Branch Budget

Kim Fowler, Assistant Fiscal Officer, Judicial Branch, presented comments on the Judicial Branch Budget issues (Attachment 5). The bulk of the Branch expenditures is on personnel costs. Traditionally, the Branch "maintenance budget" submissions are for the funding necessary for the same people to perform the same services as in the current year. Budget cuts have required the Branch to keep all vacant positions open. The FY 2012 Judicial Branch budget request does not represent the Branch's maintenance budget. Instead, there are initiatives that will make the Judicial Branch more efficient and productive in the future. Those initiatives include the following:

- A Weighted Caseload study;
- An electronic filing of cases;
- Increasing the Court of Appeals to 14 members; and
- Continuing the surcharge, per Division of Budget's request.

Responding to Committee members' questions, Ms. Fowler stated she believed the court is now willing to take a position on reallocation of judicial resources, though they have not in the past, due to that being, according to the courts, the prerogative of the Legislature.

Ms. Fowler stated the amount of one additional appellate court position is just under \$400,000, as that includes the office suite and staff. The purpose of the request is to eliminate or reduce the use of retired judges.

The question was asked if the weighted caseload study is in process now. Ms. Fowler stated the Branch was not getting the resources it needed to fund the maintenance budget. The Branch entered into an agreement with the national center; the committee of clerks and committee of judges is working with the center to start the process of the weighted caseload study.

It was discussed that year after year the Legislature discusses loosening restrictions on courts, allowing for more judicial flexibility. Ms. Fowler stated that, based on other studies done, they would not have enough data to make big changes in 2011, but would, hopefully, be far enough along to make the changes in the FY 2012 budget.

Ms. Fowler stated it is not anticipated that a surge in caseloads will be seen. Due to the weighting of the numbers, it lends credibility to decisions that will have to be made. It will need to be a united effort statewide.

Ms. Fowler said there is not electronic filing at this time. There is some fax-filing now. E-filing is in process for implementation for the appellate court in the clerk's office this year. When it is ironed out, it will be implemented in the district courts.

A Committee member asked if, since the e-filing is being started in the appellate court, is this the right time to add the 14th judge. Ms. Fowler stated many of the efficiencies to be seen are with the court processing; cases will still need to be heard. Judicial resources will be needed.

The Judicial Branch took four furlough days in 2010. The projection for 2011 is no furlough days, if possible, but they are holding vacancies open just in case.

Update on Board of Indigents' Defense Services Budget

The Chairperson recognized Pat Scalia, Executive Director, Board of Indigents' Defense Services (BIDS). Ms. Scalia briefed the Committee on the FY 2012 budget request for the BIDS (Attachment 6).

Cost Saving Measures Already Taken

- Rent, legal research, court reporters, experts, interpreters:
 - Consolidated two offices into one;
 - Reduced staff by four;
 - Brought in six members of the Topeka Death Penalty Defense Unit;
 - Eliminated all legal research in paper form; and
 - Only hired experts who agreed to do indigent defense work at a reduced hourly rate.

- Public Defenders:
 - Public defenders and support staff costs were reduced by:
 - Receipt of grant funds totaling \$1.1 million over two years;
 - Leaving vacant support positions unfilled and only filling defender positions when grant funds became available;
 - Kansas Administrative Regulations regarding financial eligibility have been limited to those persons living at the federal poverty level; and
 - The Liberal public defender office was closed; and replaced by a firm on contract to handle indigent defense at low cost.

- Assigned Counsel:
 - Reduced assigned counsel costs when appropriations are insufficient;
 - Reduced hourly rate paid to assigned counsel from \$80/hr to \$62/hr after January 18, 2010.

Cost Issues by Budget Section

- Rent, legal research, court reporters, experts, interpreters:
 - Price-per-page increase—additional \$400,000 in FY 2012; and
 - Interpreters and experts—additional \$50,000.
- Public Defenders:
 - To fill public defender positions only—additional \$558,000; and
 - Replacement of grant funds paying public defender salaries—\$558,000.
- Assigned Counsel:
 - Delay in payment to assigned counsel by six weeks would increase to two months or more. Legal action would be taken against the state;
 - Assigned counsel may refuse to accept newly appointed cases due to lack of payment; and
 - The court would have to dismiss the case against anyone who has not been provided counsel to defend them.

A Committee member asked how much money the State of Kansas would save if the death penalty was repealed. Ms. Scalia stated a conservative figure is \$600,000. The cases would still have to be defended, but not with a team of attorneys and experts, as currently required.

The Chairperson recognized Norma Jean Schaefer, Chief Information Officer, Kansas Department of Health and Environment (KDHE), who presented information regarding the KDHE computer outage of August 2010. KDHE experienced a central storage area network failure, which caused KDHE to lose about 150 computer servers over the course of five hours. The situation actually began on July 30, but the network failed on August 5. Xiotech, the vendor for the storage area network (SAN), said the network was working; even five days into the disaster, they could not find anything wrong. KDHE lost 83 virtual machines. Much information needed to be copied, and restoring servers and rebuilding the system took much time and man hours.

Ms. Schaefer said, with 1,000 users needing the system and a few thousand more outside users wanting information, KDHE spent considerable time working on the problem, the communication plan, and applying the required intellectual knowledge and resources available. Xiotech picked up the expenses of overtime costs for personnel during the restoration period and working through the backlog. The company also paid for the new SAN due to lack of response in that first week. KDHE personnel learned a considerable amount from this experience.

Ms. Schaefer estimates complete restoration of all of KDHE services to be a cost of around \$2 million, plus an additional 20 percent. Personnel learned which systems need to be up at all times.

The Chairperson asked, if DISC was consolidated with the KDHE system, how that would have effected the situation. Ms. Schaefer stated if multiple agencies were to have been located on this storage area, the crash would have affected all of them. Anytime all eggs are in one basket, it is a risk.

Scott Brunner, Chief Financial Officer, Kansas Health Policy Authority, provided a response to previous questions about Medicaid funding for special education and the impact the cost-based settlement would have (Attachment 7). He provided the estimated gain or loss from cost settlement when checks are written in late December or early January.

The Medicaid special education cost settlement impact table ranked school districts statewide from highest benefit figures to the lowest (or greatest loss). The estimated net gain overall, the net benefit to the state, was \$6,380,665.88, though some districts showed a loss of benefit (more than \$11 million in increases and \$4 million in losses). In estimating the benefit to the state or the revenue that would be generated, the calculations were based on the total reportable costs of providing special education services to Medicaid-eligible children considering loss of attendant-care services.

One Committee member asked Mr. Brunner to articulate the characteristics of the school districts that receive more money in contrast with the districts that receive less money. Mr. Brunner said one factor is the percentage of total Medicaid revenue the district generated and what percentage of that is for attendant care; the more a district bills for attendant care, the more they will lose. District size and number of children on Medicaid are factors that do not seem to matter; it has to do with percentage of attendant care revenue to the total Medicaid.

A Committee member asked what it actually means to a school district when Mr. Brunner's table shows the district will lose. Mr. Brunner said the breakdown is the total cost of providing services minus the amount already generated in Medicaid billing. If the billable amount does not cover the cost of services used, the district will be asked to pay back or hold future billing until that debt is satisfied.

The Committee member asked what will happen to the services for those children. Mr. Brunner answered the children are still entitled to receive services; Medicaid will not underwrite the costs. The districts will have to pick up the part of the expense of services that Medicaid does not cover. Services will still be provided.

The Committee recessed for lunch at 12:15 p.m.

Afternoon Session

The Committee reconvened at 1:40 p.m.

Representative Feuerborn moved to approve the August 26-27, 2010, Committee meeting minutes; Representative Whitham seconded the motion; the motion carried.

Alan Conroy, Director, Kansas Legislative Research Department (KLRD), presented July through September, FY 2011, State General Fund (SGF) Receipts (Attachment 8). He stated the consensus revenue estimate is based on the April estimates, as suggested for legislation enacted after that date; the sales tax increase is reflected in the estimate. Total receipts for July through September were 1.3 percent above the estimate. Total taxes were 3.0 percent above the estimate; most of that is from retail sales. The largest single source, about half, of SGF is from individual income taxes. The majority of this comes from withholdings.

The Consensus Revenue Estimating Group has scheduled the next meeting for November 2 to revise the estimate for FY 2011 and make the first official estimate for FY 2012. That new

estimate will be what the new Governor will use to build his budget to be presented to the 2011 Legislature.

Total receipts through September are up by 11.4 percent, compared to one year ago. There was a tax increase that helped with that figure. These figures do not include the \$700 million Certificate of Indebtedness that will be redeemed before the end of this fiscal year.

The unemployment rate is still around 6.7 to 6.8 percent and is of concern. Until that comes down, the state will not have sizable growth in tax receipts.

A Committee member asked Mr. Conroy why the estate tax estimate was so far off. Mr. Conroy stated it is being phased out. When estates will be settled is unpredictable, and larger estates take longer to finish. The annual estimate was merely made and divided by 12.

Mr. Conroy presented the status of the SGF ([Attachment 9](#)). He stated the \$17 million increase through the end of September was input, as well as the latest economic stimulus funds and the education jobs money that was received. The numbers were adjusted for the higher Medicaid match rate, then the state got the unanticipated federal education jobs funding that was used to backfill funds. The profile captures those, showing a positive ending balance of over \$46 million, which is almost 1 percent of expenditures. This figure does not reflect requests for any supplemental expenditures, *i.e.*, Department of Education's \$72 million budget request in the current fiscal year caused by the drop in property valuations. The SGF will step in and fill that gap of \$28 million. Also, there has been increased use of free school lunches statewide, costing approximately \$50 million in the current year. There will be updated numbers for school finance in early November, though Social Services will not be in those numbers. FY 2012 went back to the traditional rate of growth of revenue of 4.0 percent. The consensus group will have the official number available for FY 2012 in November.

Mr. Conroy pointed out that he circled figures on the profile to remind the Committee that there was almost \$500 million of federal stimulus money in FY 2011 that will not be available in FY 2012. On this profile, the FY 2012 expenditures assume the following:

- Every SGF dollar and the federal economic stimulus funds continue;
- Some of the standard increases:
 - \$60 million for human services caseloads;
 - 0.6 percent increase in employer contributions for KPERS to reduce its debt;
 - One-half million dollars toward employees' undermarket pay; and
 - Special education increase.

Therefore, based on 4.0 percent growth, if the state is to replace the federal economic stimulus money and the SGF increase, the funds are short about 5.0 percent.

A Committee member asked if Mr. Conroy had prepared a profile reflecting a lower amount of growth. He had, and responded that if the state had no growth, the numbers would add about \$200 million to that negative number, making the state short about one-half billion dollars, approximately 8.5 percent.

The Chairperson recognized Glenn Deck, Executive Director, Kansas Public Employees Retirement System (KPERS), to provide an update on valuation of KPERS ([Attachment 10](#)). Mr. Deck provided background from 2001 on the funding background for KPERS, with notable figures being the market decline for FY 2009 of -19.6 percent and the FY 2010 rebound of 14.9 percent. The first quarter of FY 2011 has shown a return of 9.4 percent. All indications are that, going forward, it will be difficult to maintain an 8.0 percent return.

Mr. Deck said in planning and investing, we need to be realistic, especially in the fixed income markets. Interest rates are at an historical all-time low. It is unlikely investors will get more than 4.0 percent holding bonds for some time; bonds are held for diversity. Real estate will have to go down more before it will increase. The Board is taking a hard look at this.

Mr. Deck spoke about KPERS asset history, valuation results, and valuation measurements. The valuation results showed a modest short-term improvement, but it is necessary to realize that the School Group's funded ratio is 56.0 percent, which is extremely weak and can be considered at significant risk and in need of prompt remedial action to stabilize its funding. Mr. Deck spoke about the projections of the long-term funded status. The projected actuarial rates and statutory rates are not going to equal the actuarially required contribution (ARC) rates before FY 2033.

Mr. Deck presented the baseline projections for the State Group, the School Group, and the Local Group. He stated that the employer contribution rate is significantly below the ARC rates for each KPERS group, and will fall lower in FY 2012 to remain near 70.0 percent for the seven years after that. He shared some funding solution options, though no bills passed the Legislature in 2010 to provide some relief. The Joint Committee on Pensions, Investments, and Benefits is reviewing long-term funding issues during the 2010 Interim.

Mr. Deck's conclusions are:

- Current benefits are safe for a period of time;
- The fundamental, long-term funding shortfall remains and will continue to grow;
- KPERS' ability to withstand future economic downturns is compromised;
- Investment returns will not fix the problem—employers are still not contributing at the required actuarial rate;
- Legislative action is necessary, with additional employer contributions as a basic element; and
- Passing long-term funding legislation in the 2011 Legislative Session is essential.

A Committee member asked if the projected earnings rate is changed from 8.0 percent to a lower rate, would it not also be necessary to change the discount rate that is used to determine how many dollars the state must have in place for retirees' payments and would that not also cause the liability to increase. Mr. Deck answered that it would. That is why it is necessary to determine what can realistically be earned and then factor in the projections.

A Committee member asked if there are caps on total retirement compensation. Mr. Deck answered that only the IRS has a cap on compensation that is subject to retirement, and those limits are very high. KPERS does not have a cap on retirement benefits. Not many states have had yet to address this issue. It is not possible to limit the retirement compensation, so it is necessary to limit the compensation that is allowed to count toward retirement benefits. Mr. Deck said the state knows it must get where it needs to be incrementally. SB 564 was to raise the cap on employer contributions from 0.6 percent to 1.0 percent. That would begin the path to reform. The system would still be exposed to risk, but it would help the projections, as well as help survive another downturn.

The Chairperson recognized Aaron Klaassen, Senior Fiscal Analyst, Kansas Legislative Research Department, who presented historical information on funding the Fire Marshal's Office, the Emergency Medical Services Board, and the Fire Services Training Institute at the University of Kansas ([Attachment 11](#)).

The Chairperson recognized Dan McLaughlin, State Fire Marshal, who presented the distribution of fire insurance premium levies and their effects on the agency (Attachment 12). Legislative Division of Post Audit accurately predicted the negative impact on the agency for funding three agencies instead of one. Revenues have been down from 2004 and to the present day, they have not recovered.

The Chairperson presented Steve Sutton, Executive Director, Emergency Medical Services (EMS), who made a presentation stating that the .25 percent of fire insurance premium receipts the EMS Board receives has its budgeting challenges, but has not been insurmountably difficult (Attachment 13). They only have had to curtail education and ambulance activities for one month due to lack of funding. Across the state, EMS is helping city and county commissioners in trying to support their local ambulance services. Other fees that come in are renewal fees, examination fees, and certification fees, such as service renewal fees and ambulance permits. Prior to 2004, EMS funding was from the State General Fund.

The Chairperson recognized Glenn Pribbenow, Director, University of Kansas, Kansas Fire and Rescue Training, who introduced Gina Craig, Assistant Executive Director for Continuing Education, and Mark Bradford, Fire Chief of Lawrence-Douglas County Fire Medical Department (Attachment 14). Mr. Pribbenow stated their intent is to minimize the impact of the budget reduction. The short-term effect has not had an overly heavy impact, but the long-term effects are as fuzzy as the state budget outlook. It is a very lean organization and most of its resources are directed at training firefighters. The rough average of the cost of training a firefighter is \$62 per hour.

Mr. Bradford stated there are 12 organizations throughout the state that oversee that the funds directed to the Kansas Fire and Rescue Training Institute are spent wisely. This provides great oversight and accountability. When asked if they use virtual education, Mr. Bradford stated that they are slowly, cautiously, implementing online courses. Most of the training and teaching is needed to be hands-on. Many of the knowledge components are online. The hope is to eventually take a five-day class and make it a two- or three-day class with online teaching on the other two days of the week. The long-term benefits of online training could be tremendous for smaller communities in the state. However, it does take the self-motivation of the individual to make this successful. It is unknown at this point if this will work.

A Committee member asked if this was directed toward volunteer firefighters, as well, as it appears the training is directed toward the paid firefighters. Mr. Sutton stated the paid fire service thinks the training is directed toward the volunteer. They have always worked with all individuals to train at their convenience. Eighty-five percent are volunteer fire fighters. The desire is to have 15 students in a class to make it feasible to train the class, though class size has been as few as one. No one has been turned down. People have been asked to reschedule and to try to get more students for a class. They have successfully been able to absorb the \$40,000 loss in their current budget.

Alan Conroy, KLRD, presented information on state budget rainy day funds (Attachments 15, 16, and 17). The purpose of budget stabilization funds is to gather revenue when receipts are strong, saving that surplus to help when revenue collections see a downturn. Forty-seven states have some type of rainy day fund. They are statutorily or constitutionally created. Generally, the Legislature has to act to unlock the key to use the fund. They vary in their approach to funding—some are funded through appropriations and some from year-end general fund surplus. Thirty-seven states limit the size of their rainy day funds. It was not known how many states have not made a deposit into their rainy day funds in recent years or if they are ignoring their rainy day funds. The thought was posed whether there might be problems with the Legislature having the key to use the fund, or the authority to change the rules to get into the fund, *i.e.*, super majority. Mr. Conroy will ask the National Conference of State Legislatures if it has information on this matter.

A Committee member asked if Mr. Conroy knows when the Governor is going to inform the Legislature about the Beachcraft funds. Mr. Conroy stated the inquiry has been made. It is unknown when the information is to be available.

The Chairperson recognized Jill Wolters, Office of the Revisor of Statutes, who presented an overview of 2009 Senate Concurrent Resolution (SCR) 1614 on the Budget Stabilization Fund and Debt Prepayment Fund (Attachment 18). SCR 1614 proposed to add a new section to the *Kansas Constitution*. Ms. Wolters provided a summary of the history of the SCR. She also distributed a sheet showing the input side of the Debt Prepayment Fund (Attachment 19).

The meeting was adjourned at 3:15 p.m. The next meeting of the Legislative Budget Committee was planned for November 9, 2010. Consensus Revenue Estimates will be available at that meeting. Copies of pieces of the Preliminary Committee Report were distributed for members' review to be discussed at the November meeting (Attachment 20 and 21).

Prepared by Kathy Letch
Edited by Audrey Dunkel

Approved by the Committee on:

December 24, 2010

(Date)

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 670 State Treasurer
 331 Insurance Department
 694 Comm. Veterans Affairs/Soldiers
 Home/Veterans Home
 270 Health Care Stabilization Board
 of Governors
 206 Emergency Medical Services Board
 482 Board of Nursing
 102 Behavioral Sciences Regulatory Board
 105 Board of Healing Arts
 488 Optometry Board
 167 Dental Board

AARON KLAASSEN (6-4396)

Aaron.Klaassen@klrd.ks.gov
 276 Department of Transportation
 034 Adjutant General
 280 Highway Patrol
 083 Attorney General-Kansas Bureau
 of Investigation
 234 State Fire Marshal
 529 Commission on Peace Officers
 Standards
 and Training
 Coordinator, Joint Committee on
 Information
 Technology
 Coordinator, Fiscal Database

ESTELLE MONTGOMERY (6-4409)

Estelle.Montgomery@klrd.ks.gov
 039 Department on Aging
 410 Larned State Hospital
 494 Osawatomie State Hospital
 555 Rainbow Mental Health Facility
 363 Kansas Neurological Institute
 507 Parsons State Hospital
 247 Governmental Ethics Commission
 100 Board of Barbering
 149 Board of Cosmetology
 204 Mortuary Arts Board
 266 Kansas Board of Examiners in Fitting
 and Dispensing of Hearing Instruments

SHIRLEY MORROW (8-7260)

Shirley.Morrow@klrd.ks.gov
 296 Department of Labor
 434 State Library
 359 Kansas Arts Commission
 288 State Historical Society
 016 Abstracters Board
 543 Real Estate Appraisal Board
 549 Real Estate Commission
 291 Home Inspection Registration Board
 663 Board of Technical Professions
 700 Board of Vet. Medical Examiners

MICHAEL STEINER (6-4181)

Michael.Steiner@klrd.ks.gov
 565 Department of Revenue
 300 Department of Commerce
 562 Kansas Court of Tax Appeals
 360 Kansas Inc.
 371 Kansas Technology Enterprise Corp.
 365 Kansas Public Employees
 Retirement System (KPERS)
 Coordinator, Economic Development
 Initiatives Fund

JAROD WALTNER (8-7041)

Jarod.Waltner@klrd.ks.gov
 521 Department of Corrections
 177 Ellsworth Correctional Facility
 195 El Dorado Correctional Facility
 313 Hutchinson Correctional Facility
 400 Lansing Correctional Facility
 408 Larned Correctional Facility
 581 Norton Correctional Facility
 660 Topeka Correctional Facility
 712 Winfield Correctional Facility
 626 Sentencing Commission
 523 Parole Board

RYAN WEIR (6-0665)

Ryan.Weir@klrd.ks.gov
 350 Juvenile Justice Authority
 325 Beloit Juvenile Correctional Facility
 355 Atchison Juvenile Correctional Facility
 412 Larned Juvenile Correctional Facility
 352 Kansas Juvenile Correctional Complex
 058 Commission on Human Rights
 178 Office of Administrative Hearings
 625 Securities Commissioner
 159 Department of Credit Unions
 094 Bank Commissioner
 531 Board of Pharmacy

LAURA YOUNKER (6-4440)

Laura.Younker@klrd.ks.gov
 523 Parole Board
 143 Kansas Corporation Commission

MICHAEL WALES (1-0513)

Michael.Wales@klrd.ks.gov
 261 Kansas Guardianship Program
 122 Citizen's Utility Ratepayer Board

75-37,135. Same; legal services; submission to legislative budget committee, when; contingency fees, factors to consider. (a) (1) Prior to entering a contract for legal services where the amount of the fees paid to an attorney or firm of attorneys reasonably may exceed \$1,000,000, the director of purchases shall submit the proposed request for proposal to the legislative budget committee. Within 30 days after submission of such request for proposal, the committee may hold a public hearing on the proposed request for proposal and shall issue a report to the director of purchases. The report shall include any proposed changes to the proposed request for proposal suggested by the committee. The committee is not authorized to waive the evidentiary privileges of the state, or any of the persons or entities that state attorneys are representing or acting in concert with in any litigation or anticipated litigation. The committee, the director of purchases and their employees shall take all reasonable steps to protect such privileges. The director of purchases shall review the report and adopt a final request for proposal as deemed appropriate in view of the report and shall file the final request for proposal with the legislative budget committee.

(2) If the proposed request for proposal does not contain the changes proposed by the committee, the director of purchases shall submit with the final request for proposal a letter stating the reasons why such proposed changes were not adopted. The director of purchases shall not release the final request for proposal until at least 10 days after the date of submission of the final request for proposal to the legislative budget committee.

(3) If the legislative budget committee makes no suggested changes to the proposed request for proposal or fails to report any suggested changes within 60 days of the submission of the proposed request for proposal to such committee, the director of purchases may release the request for proposal.

(b) After awarding a contract for legal services where the amount of the fees paid to an attorney or firm of attorneys reasonably may exceed \$1,000,000, the director of purchases shall submit the contract to the legislative budget committee. Within 30 days after submission of such contract, the committee may hold a public hearing on the contract and shall issue a report to the director of purchases. The report shall include any concerns of the committee.

(c) The provisions of this section shall not apply in any action in which the state of Kansas or any state agency, officer or employee is a defendant and a contract for legal services is to be entered. The director of purchases shall prepare a report each calendar quarter while such legal proceeding is in progress. Such report shall include the case citation and the date upon which the action was filed. The director of purchases shall submit the report to the legislative coordinating council, the chairperson of the committee on ways and means of the senate, the chairperson of the committee on appropriations of the house of representatives and the chairperson of the Kansas performance review board.

(d) The director of purchases shall prepare a detailed report at least once in each calendar quarter of each legal proceeding which has been completed and for which a contingency fee arrangement was entered. Such report shall disclose the hours worked on the case, the expenses incurred, the aggregate fee amount and a breakdown as to the

hourly rate, based on hours worked divided into fee recovered, less expenses. The director of purchases shall submit the report to the legislative coordinating council, the chairperson of the committee on ways and means of the senate, the chairperson of the committee on appropriations of the house of representatives and the chairperson of the Kansas performance review board.

(e) Reasonable attorney fees to be paid by the state or defendant in an action where the attorney was hired by the state with a contingency fee agreement shall be approved by the judge after an evidentiary hearing and prior to final disposition of the case by the district court. Any individual may provide information to the court and be heard before the court with regard to the reasonableness of attorney fees paid by the state or defendant under the contingency fee agreement. Compensation for reasonable attorney fees for services performed in an appeal of a judgment in any such action to the court of appeals shall be approved after an evidentiary hearing by the chief judge or by the presiding judge of the panel hearing the case. Compensation for reasonable attorney fees for services performed in an appeal of a judgment in any such action to the supreme court shall be approved after an evidentiary hearing by the departmental justice for the department in which the appeal originated. In determining the reasonableness of such compensation, the judge or justice shall consider the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly.
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney.
- (3) The fee customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the client or by the circumstances.
- (6) The nature and length of the professional relationship with the client.
- (7) The experience, reputation and ability of the attorney or attorneys performing the services.
- (8) Whether the fee is fixed or contingent.

(f) In the case of any contract for legal services for the board of trustees of the Kansas public employees retirement system negotiated or to be negotiated in accordance with the provisions of K.S.A. 75-37,102, and amendments thereto, where the amount of fees paid to an attorney or to a firm of attorneys reasonably may exceed \$1,000,000, references to the "director of purchases" in subsections (a), (b) and (c) of this section shall be construed to apply to the board of trustees of the Kansas public employees retirement system and each duty or function prescribed in such subsections shall be assumed and performed by the board of trustees of the Kansas public employees retirement system.

History: L. 2000, ch. 124, § 10; L. 2001, ch. 209, § 48; May 31

October 5, 2010

Alan Conroy
Legislative Research Department
State Capitol
Topeka KS 66612

Subject: Professional Services Sunshine Act (KSA 75-37,130 et seq)
Notice of Intent to Bid a Professional Services Contract
Outside Counsel with Contingency-Based Fees

Dear Mr. Conroy,

The Division of Purchases has been working with the Office of the Attorney General on the development of a Request for Proposal (RFP) for the acquisition of Legal Services related to **On-Line Travel Companies**. The contract will be a contingency fee based contract which requires action by **K.S.A. 75-37,135**.

A copy of the Request for Proposal (RFP) is hereby attached for consideration by the Legislative Budget Committee.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Chris Howe". The signature is written in a cursive, flowing style.

Chris Howe
Director of Purchases

cc. Sen. Jay Emler, Chairman, Legislative Budget Committee
Rep. Ray Merrick, Vice-Chairperson, Legislative Budget Committee
Attorney General's Office
File

October 5, 2010

Sen. Jay Emler, Chairperson
2010 Legislative Budget Committee
State Capitol
Topeka KS 66612

Subject: Professional Services Sunshine Act (KSA 75-37,130 et seq)
Notice of Intent to Bid a Professional Services Contract
Outside Counsel with Contingency-Based Fees

Dear Sen. Emler,

The Division of Purchases has been working with the Office of the Attorney General on the development of a Request for Proposal (RFP) for the acquisition of Legal Services related to **On-Line Travel Companies**. The contract will be a contingency fee based contract which requires action by **K.S.A. 75-37,135**.

A copy of the Request for Proposal (RFP) is hereby attached for consideration by the Legislative Budget Committee.

If you have any questions, please let me know.

Sincerely,

Chris Howe
Director of Purchases

cc. Rep. Ray Merrick, Vice-Chairperson, Legislative Budget Committee
Alan Conroy, Legislative Research
Attorney General's Office
File

Copy

KANSAS
DEPARTMENT OF ADMINISTRATION

Mark Parkinson, Governor
Chris Howe, Director

<http://da.ks.gov/purch>

October 5, 2010

Rep. Ray Merrick, Vice-Chairperson
2010 Legislative Budget Committee
State Capitol
Topeka KS 66612

Subject: Professional Services Sunshine Act (KSA 75-37,130 et seq)
Notice of Intent to Bid a Professional Services Contract
Outside Counsel with Contingency-Based Fees

Dear Rep. Merrick,

The Division of Purchases has been working with the Office of the Attorney General on the development of a Request for Proposal (RFP) for the acquisition of Legal Services related to **On-Line Travel Companies**. The contract will be a contingency fee based contract which requires action by **K.S.A. 75-37,135..**

A copy of the Request for Proposal (RFP) is hereby attached for consideration by the Legislative Budget Committee.

If you have any questions, please let me know.

Sincerely,

Chris Howe
Director of Purchases

cc. Sen. Jay Emler, Chairperson, Legislative Budget Committee
Alan Conroy, Legislative Research
Attorney General's Office
File

3-3

Request for Proposal Number: _____

NOTE: This complete document can be viewed at our website: [http://da.ks.gov/purch/rfq/rfqdata/-----
-----doc](http://da.ks.gov/purch/rfq/rfqdata/-----doc)

PR Number:
Replaces Contract: NEW
Date Mailed: _____, 2010

Procurement Officer: Galen D. Greenwood
Telephone: 785-296-2401
E-Mail Address: galen.greenwood@da.ks.gov
Web Address: <http://da.ks.gov/purch>

Closing Date: _____, 2010 @ 2:00 PM

Item: Legal Services, Outside Counsel:
Recovery of Unremitted taxes from Online Travel Companies

Agency: Office of the Attorney General
Location: Topeka, KS

Term of Contract: Date of Award through January 15, 2012.
(with option to renew)

Questions/Addenda - No pre-proposal conference is scheduled for this Request for Proposal. Questions requesting clarification of the Request for Proposal must be submitted electronically (MS Word) to the Procurement Officer indicated above, prior to the close of business on _____. Each question or clarification should reference the appropriate RFP section.

Failure to notify the Procurement Officer of any conflicts or ambiguities in this Request for Proposal may result in items being resolved in the best interest of the State. Any modification to this Request shall be made in writing by addendum and posted on the Division of Purchases' website, <http://da.ks.gov/purch>. Only written communications are binding.

Answers to questions will be available in the form of an addendum on the Division of Purchases' website.

It shall be the responsibility of all participating vendors to acquire any and all addenda and additional information as it is made available from the web site cited above. Vendors are required to check the website periodically for any additional information or instructions.

READ THIS REQUEST CAREFULLY

Failure to abide by all of the conditions of this Request may result in the rejection of a bid.

It is the vendor's responsibility to monitor the Division of Purchase's website on a regular basis for any changes/addenda.

SIGNATURE SHEET

Item: **Legal Services, Outside Counsel:
Recovery of Unremitted taxes from Online Travel Companies**

Agency: **Office of the Attorney General**

Closing Date: _____, 2010

By submission of a bid and the signatures affixed thereto, the bidder certifies all products and services proposed in the bid meet or exceed all requirements of this specification as set forth in the request and that all exceptions are clearly identified.

Legal Name of Person, Firm or Corporation _____

Mailing Address _____ City & State _____ Zip _____

Toll Free Telephone _____ Local _____ Cell: _____ Fax _____

Tax Number _____ E-Mail _____

Signature _____ Date _____

Typed Name _____ Title _____

In the event the **contact for the bidding process** is different from above, indicate contact information below.

Bidding Process Contact Name _____

Mailing Address _____ City & State _____ Zip _____

Toll Free Telephone _____ Local _____ Cell: _____ Fax _____

E-Mail _____

If **awarded a contract and purchase orders** are to be directed to an address other than above, indicate mailing address and telephone number below.

Mailing Address _____ City & State _____ Zip _____

Toll Free Telephone _____ Local _____ Cell: _____ Fax _____

E-Mail _____

Pricing is available to political subdivisions of the State of Kansas.
(Refusal will not be a determining factor in award of this contract.)

Yes _____ No _____

Agencies may use the Business Procurement Card for contract purchases.
(Refusal will not be a determining factor in award of this contract.)

Yes _____ No _____

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State of Kansas
Department of Administration
Division of Purchases

Supplier Diversity Survey Form

Why is the Division of Purchases requesting this information?

Current statutes governing the activities of the Kansas Division of Purchases do not include preferences or set-asides for Small Business Enterprises (SBEs). The Division of Purchases is interested in determining to what extent purchase orders and contracts are awarded to SBEs under existing work efforts. **Please Note:** You must submit this form with each bid opportunity.

Persons or concerns wishing to receive a Purchase Order or Contract Award resulting from this bid opportunity must provide the information contained in this document before the award is made. To help expedite this procurement, it is requested that you submit this form with your bid.

COMPANY DATA

Legal Company Name _____

Doing Business As (if applicable) _____

Federal Tax ID Number / FEIN _____

Diversity Program Contact Name _____ Title _____

Phone Number _____ Fax Number _____

E-Mail Address _____ Company Web _____

Address _____

City _____ State _____ Zip Code _____

Legal Structure: Corporation Partnership Non-Profit Sole Proprietorship LLC

Signature _____ Date: _____

COMPANY DIVERSITY DATA

(A) Business Classification (See Appendix A for definitions):

Is your business a **Small Business Enterprise (SBE)** as defined by the SBA?

Yes No Don't Know

Check all that Apply: Disabled (DIS) SBA-Small Disadvantage Business (SDB)
 Veteran-Owned (VBE) Women-Owned (WBE) Service-Disabled Veterans-Owned (DVBE)
 African American Native American Minority-Owned Business Enterprise (MBE)
 Hispanic American Asian Pacific American Disadvantaged Business Enterprise (DBE)
 Asian Subcontinent American Other: _____

(B) Has your Business Classification Status been certified by a state, municipal, federal or other certifying agency?

No Yes Certifying Entity: _____

Other State of Kansas Resources for Small Business Enterprises (SBE)

376

State of Kansas
Department of Administration
Division of Purchases
Supplier Diversity Survey Form

Appendix A
Definition of Terms

Small Business Enterprise / Concern (SBE)

SBEs are businesses that do not exceed the size standard for the product or service it is providing as measured by its employment and/or business receipts in accordance with the U.S. SBA numerical size standards. These standards are defined as FAR 52.219-8, 13 CFR Part 121 and 13 CFR 121.410.

Disadvantaged Business Enterprise (DBE)

DBEs are defined as a business which are (a) owned by socially disadvantaged individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities; or (b) owned by economically disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged.

Disabled Business Enterprise (DIS)

DIS businesses are at least 51% owned and controlled by one or more U.S. citizens who has a physical or mental impairment which substantially limits one or more of such person's major life activities.

Small Disadvantage Business Concern (SDB)

SDB businesses are certified by the SBA as meeting the following criteria: (1) they are small business concern and (2) must be at least 51% owned and controlled by one or more U.S. citizens who are socially and economically disadvantaged. African Americans, Asian Pacific Americans, Asian Subcontinent Americans, Hispanic Americans and Native Americans are presumed to qualify as being socially disadvantaged. Other individuals can qualify if they show by a preponderance of the evidence that they are socially disadvantaged. In addition, the personal net worth of each eligible owner Bidder must be less than \$750,000, excluding the values of the Bidder's ownership interest in the business seeking certification and the owner's primary residence. Successful Bidders must also meet applicable size standards for small businesses in their industry. SDB regulations can be found in FAR 52.219-8 and 13 CFR parts 121 & 124.

Veterans-Owned Business Concern (VBE)

VBE businesses are at least 51% owned and controlled by one or more U.S. citizens who are Veterans of the U.S. Armed Forces. In the case of any publicly owned business, at least 51% of the stock is owned by one or more veterans and one or more veterans must control the management and daily business operation. The term "Veteran" means a person who served in the active military, naval or air service and who was discharged or released there from under conditions other than dishonorable. VBE regulations can be found in FAR 52.219-9 & 38 USC 101 (2).

Service-Disabled Veterans-Owned Business Concern (DVBE)

DVBE businesses are at least 51% owned and controlled by one or more U.S. citizens who are service-disabled Veterans of the U.S. Armed Forces. In the case of any publicly owned business, at least 51% of the stock is owned by one or more service-disabled veterans and one or more veterans must control the management and daily business operation. The term "Veteran" means a person who served in the active military, naval or air service and who was discharged or released there from under conditions other than dishonorable. The term "Service-Disabled" means a veteran of the U.S. Military Service has a service-connected disability with a disability rating of 0%-100%. In the case of permanent or severe disability, the spouse of caregiver of such a service-disabled veteran may control the management and daily operations. DVBE regulations can be found in FAR 52.219-9 & 38 USC 101 (2) & USC 101 (16).

Women-Owned Business Concern (WBE)

WBE businesses are at least 51% owned and controlled by one or more U.S. citizens who are female gender. In the case of any publicly owned business, at least 51% of the stock is owned by one or more women and one or more women must control the management and daily business operations. For Federal contracting regulations see FAR 52-219-8.

Minority-Owned Business Enterprise (MBE)

MBE businesses are at least 51% owned and controlled by one or more U.S. citizens belonging to certain ethnic minority groups. In the case of any publicly owned business, at least 51% of the stock is owned by one or more minorities, and one or more minorities must control the management and daily business operations. "Ethnic Minority Groups" are people of Asian Pacific American, Asian Subcontinent American, African American, Hispanic American and Native American descent.

- **African Americans:** People whose origins lay in any of the Black racial groups of Africa.
- **Asian Pacific Americans:** People whose origins lay in Brunei, Burma, China, Guam, Indonesia, Japan, Kampuchea (Cambodia), Korea, Laos, Malaysia, Northern Mariana Islands, Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau (U.S. Trust Territory of the Pacific Islands), the Philippines, Samoa, Singapore, Taiwan, Thailand and Vietnam.
- **Asian Subcontinent Americans:** People whose origins lay in Bangladesh, Bhutan, India, Pakistan, Sri Lanka or Nepal.
- **Hispanic Americans:** People whose origins are in the South and Central America, Mexico, Puerto Rico, Cuba or the Iberian Peninsula (including Portugal).
- **Native Americans:** American Indians, Inuit (Eskimos), Aleuts, and native Hawaiians of Polynesian ancestry.

TAX CLEARANCE

Per KSA 75-3740-(c), the Director of Purchases may reject the bid of any bidder who is in arrears on taxes due the State of Kansas. The Division of Purchases will confirm tax status of all potential contractors and subcontractors prior to the release of a purchase order or contract award. The State of Kansas reserves the right to allow a bidder an opportunity to clear tax status within ten (10) calendar days, or to proceed with award to the next lowest responsive bidder, whichever is determined by the Director of Purchases to be in the best interest of the State.

The Secretary of Revenue is authorized to exchange such information with the Director of Purchases as is necessary to determine the bidder's tax clearance status, notwithstanding any other provision of law prohibiting disclosure of the contents of taxpayer records or information.

Instructions on how to check Tax Clearance Status can be found at the following website:

<http://www.ksrevenue.org/taxclearance.htm>

Information about Tax Registration can be found at the following website:

<http://www.ksrevenue.org/busregistration.htm>

Tax Clearance Contact Information: Please provide the attached contact information for use should the State of Kansas need to contact the appropriate officials within your company to discuss your tax clearance / registration status.

CONTRACTOR

Contact Person for Tax Issues: _____
Company Name: _____ Tax Number: _____
Mailing Address _____
City & State _____ Zip Code _____
Toll Free Telephone _____ Local _____ Cell: _____ Fax _____
E-Mail _____

SUBCONTRACTOR(S)

Contact Person for Tax Issues: _____
Company Name: _____ Tax Number: _____
Mailing Address _____
City & State _____ Zip Code _____
Toll Free Telephone _____ Local _____ Cell: _____ Fax _____
E-Mail _____

Additional pages may be added, as required, indicating the same information for multiple subcontractors.

3-8

VENDOR RESPONSE CHECK-LIST

The following items are provided to assist bidders in ensuring all requirements are met and all required submissions are included with the bid. Vendors are instructed to utilize this list **and include it with their bid submission**. In order to ensure fair and accurate evaluation, page numbers indicating the location of your response within your bid shall be included, where indicated.

Bidders must complete the page numbers required below.

- | | | |
|------------------------|--|--|
| Response Page No. ____ | Signature Sheet | (RFP page 2) |
| Response Page No. ____ | Supplier Diversity Survey Form | (RFP page 3) |
| Response Page No. ____ | Tax Clearance | (including individual subcontractor information)
(RFP page 5) |
| Response Page No. ____ | Transmittal Letter | (RFP <u>Response Section</u>) |
| Response Page No. ____ | Experience | (RFP <u>Terms and Conditions Section</u>) |
| Response Page No. ____ | Exceptions | (RFP <u>Response Section</u>) |
| Response Page No. ____ | References | (RFP <u>Response Section</u>) |
| Response Page No. ____ | Qualifications | (RFP <u>Response Section</u>) |
| Response Page No. ____ | Subcontractor information, if applicable | (RFP <u>Response Section</u>) |
| Response Page No. ____ | Exceptions to RFP noted, if applicable | (RFP <u>Instructions Section</u>) |

The following items have been submitted, as required:

- | | | |
|-------|---|------------------------------------|
| _____ | Proper number of copies submitted | (RFP <u>Response Section</u>) |
| _____ | Cost and Technical packets separate | (RFP <u>Response Section</u>) |
| _____ | Proprietary/Confidential information in separate packet | (RFP <u>Instructions Section</u>) |
| _____ | Media on separate CD/disks, if applicable | (RFP <u>Response Section</u>) |
| _____ | Cost Sheet | |

Quarterly Report Contact Information (See RFP Specifications Section)

Contact Person for Quarterly Report Issues: _____

Company Name: _____

Mailing Address _____

City & State _____ Zip Code _____

Toll Free Telephone _____ Local _____ Cell: _____ Fax _____

E-Mail _____

Section I INSTRUCTIONS

1. **Proposal Reference Number:** The RFP number, indicated in the header of this page, as well as on the first page of this proposal, has been assigned to this Request and **MUST** be shown on all correspondence or other documents associated with this Request and **MUST** be referred to in all verbal communications. All inquiries, written or verbal, shall be directed only to the procurement officer reflected on Page 1 of this proposal. There shall be no communication with any other State employee regarding this Request except with designated state participants in attendance **ONLY DURING:**

Negotiations
Contract Signing
as otherwise specified in this Request.

Violations of this provision by vendor or state agency personnel may result in the rejection of the proposal.

2. **Negotiated Procurement:** This is a negotiated procurement pursuant to **K.S.A. 75-37,102 and K.S.A. 75-37,135**. Final evaluation and award will be made by The Procurement Negotiation Committee (PNC) consisting of the following entities (or their designees):

Secretary of Department of Administration;
Director of Purchases, Department of Administration; and
Head of Using Agency

3. **Appearance Before Committee:** Any, all or no vendors may be required to appear before the PNC to explain the vendor's understanding and approach to the project and/or respond to questions from the PNC concerning the proposal; or, the PNC may award without conducting negotiations, based on the initial proposal. The PNC reserves the right to request information from vendors as needed. If information is requested, the PNC is not required to request the information of all vendors.

Vendors selected to participate in negotiations may be given an opportunity to submit a revised proposal and/or their revised offer to the PNC. Prior to a specified cut-off time for revised offers, vendors may submit revisions to their technical and cost proposals. Meetings before the PNC are not subject to the Open Meetings Act. Vendors are prohibited from electronically recording these meetings. All information received prior to the cut-off time will be considered part of the vendor's revised offer.

No additional revisions shall be made after the specified cut-off time unless requested by the PNC.

4. **Cost of Preparing Proposal:** The cost of developing and submitting the proposal is entirely the responsibility of the vendor. This includes costs to determine the nature of the engagement, preparation of the proposal, submitting the proposal, negotiating for the contract and other costs associated with this Request.
5. **Preparation of Proposal:** Prices are to be entered in spaces provided on the proposal cost form if provided herein. Computations and totals shall be indicated where required. In case of error in computations or totals, the unit price shall govern. The Committee has the right to rely on any price quotes provided by vendors. The vendor shall be responsible for any mathematical error in price quotes. The Committee reserves the right to reject proposals which contain errors.

All copies of cost proposals shall be submitted in a separate sealed envelope or container separate from the technical proposal. The outside shall be identified clearly as "Cost Proposal" or "Technical Proposal" with the RFP number and closing date.

A proposal shall not be considered for award if the price in the proposal was not arrived at independently and without collusion, consultation, communication or agreement as to any matter related to price with any other vendor, competitor or public officer/employee.

Technical proposals shall contain a concise description of vendor's capabilities to satisfy the requirements of this Request For Proposal with emphasis on completeness and clarity of content. Repetition of terms and conditions of the Request For Proposal without additional clarification shall not be considered responsive.

6. **Signature of Proposals:** Each proposal shall give the complete mailing address of the vendor and be signed by an authorized representative by original signature with his or her name and legal title typed below the signature line. If the contract's contact will be a different entity, indicate that individual's contact information for communication purposes. Each proposal shall include the vendor's tax number.
7. **Acknowledgment of Addenda:** All vendors shall acknowledge receipt of any addenda to this Request by returning a signed hard copy with the bid. Failure to acknowledge receipt of any addenda may render the proposal to be non-responsive. Changes to this Request shall be issued only by the Division of Purchases in writing.
8. **Modification of Proposals:** A vendor may modify a proposal by letter or by FAX transmission at any time prior to the closing date and time for receipt of proposals.
9. **Withdrawal of Proposals:** A proposal may be withdrawn on written request from the vendor to the Procurement Officer at the Division of Purchases prior to the closing date.
10. **Competition:** The purpose of this Request is to seek competition. The vendor shall advise the Division of Purchases if any specification, language or other requirement inadvertently restricts or limits bidding to a single source. Notification shall be in writing and must be received by the Division of Purchases no later than five (5) business days prior to the bid closing date. The Director of Purchases reserves the right to waive minor deviations in the specifications which do not hinder the intent of this Request.
11. **Evaluation of Proposals:** Award shall be made in the best interest of the State as determined by the Procurement Negotiating Committee or their designees. Although no weighted value is assigned, consideration may focus, on but is not limited to:
 - Vendor's expertise and understanding of the nature of the potential claims
 - Experience and success in providing like services
 - Ability to Promptly Perform Services
 - Qualified staff
 - Methodology to accomplish tasks
 - Cost. Vendors are not to inflate prices in the initial proposal as cost is a factor in determining who may receive an award or be invited to formal negotiations. The State reserves the right to award to the lowest responsive bid without conducting formal negotiations, if authorized by the PNC.
 - Adequacy and completeness of proposal
 - Compliance with the terms and conditions of the Request
 - Value added services
 - Accessibility
 - Use of Technology
 - Response Time
 - Efficiency
 - Highest quality at the lowest reasonable cost
 - Response format as required by this Request
12. **Acceptance or Rejection:** The Committee reserves the right to accept or reject any or all proposals or part of a proposal; to waive any informalities or technicalities; clarify any ambiguities in proposals; modify any criteria in this Request; and unless otherwise specified, to accept any item in a proposal.

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13. **Proposal Disclosures:** At the time of closing, only the names of those who submitted proposals shall be made public information. No price information will be released. Interested vendors or their representatives may be present at the announcement at the following location:

State of Kansas Division of Purchases
900 Jackson Street, Room 102N
Topeka, KS 66612-1286

Bid results will not be given to individuals over the telephone. Results may be obtained after contract finalization by obtaining a bid tabulation from the Division of Purchases by sending (do not include with bid):

- A check for \$5.00, payable to the State of Kansas
- A self-addressed, stamped envelope
- Contract Proposal Number

Send to:

Kansas Division of Purchases
Attention: Bid Results/Copies
900 SW Jackson, Room 102N
Topeka, KS 66612-1286

Copies of individual proposals may be obtained under the Kansas Open Records Act by sending an email to janet.miller@da.ks.gov or calling 785-296-0002 to request an estimate of the cost to reproduce the documents and remitting that amount with a written request to the above address or a vendor may make an appointment by calling the above number to view the proposal file. Upon receipt of the funds, the documents will be mailed. Information in proposal files shall not be released until a contract has been executed or all proposals have been rejected.

14. **Disclosure of Proposal Content and Proprietary Information:** All proposals become the property of the State of Kansas. The **Open Records Act** (K.S.A. 45-205 et seq.) of the State of Kansas requires public information be placed in the public domain at the conclusion of the selection process, and be available for examination by all interested parties. (<http://da.ks.gov/purch/KSOpenRecAct.doc>) No proposals shall be disclosed until after a contract award has been issued. The State reserves the right to destroy all proposals if the RFP is withdrawn, a contract award is withdrawn, or in accordance with Kansas law. Late Technical and/or Cost proposals will be retained unopened in the file and not receive consideration or returned to the bidder.

Trade secrets or proprietary information legally recognized as such and protected by law may be requested to be withheld if clearly labeled "Proprietary" on each individual page **and** provided as separate from the main proposal. Pricing information is not considered proprietary and the vendor's entire proposal response package will not be considered proprietary.

All information requested to be handled as "Proprietary" shall be submitted separately from the main proposal and clearly labeled, in a separate envelope or clipped apart from all other documentation. The vendor shall provide detailed written documentation justifying why this material should be considered "Proprietary". The Division of Purchases reserves the right to accept, amend or deny such requests for maintaining information as proprietary in accordance with Kansas law.

The State of Kansas does not guarantee protection of any information which is not submitted as required.

15. **Exceptions:** By submission of a response, the vendor acknowledges and accepts all terms and conditions of the RFP unless clearly avowed and wholly documented in a separate section of the Technical Proposal to be entitled: "Exceptions". The State of Kansas reserves the right to choose not to allow the exceptions taken.

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16. **Notice of Award:** An award is made on execution of the written contract by all parties.
17. **News Releases:** Only the State is authorized to issue news releases relating to this Request, its evaluation, award and/or performance of the contract.

**Section 2
PROPOSAL RESPONSE**

1. **Submission of Proposals:** Vendor's proposal shall consist of:
- **One (1) original and Three (3) copies** of the Technical Proposal, including signature sheet, applicable literature and other supporting documents;
 - **One (1) original and Three (3) copies** of the cost proposal including signature sheet,
 - **One (1) electronic / software version(s) of the technical and cost proposals** are required. This shall be provided on diskette or CD, in Microsoft® Word or Excel and technical and cost responses shall be on separate media.

All copies of cost proposals shall be submitted in a separate sealed envelope or container separate from the technical proposal. The outside shall be identified clearly as "Cost Proposal" or "Technical Proposal" with the request number and closing date.

Vendor's proposal, sealed securely in an envelope or other container, shall be received no later than 2:00 p.m., Central Time, on the closing date _____, 2010, addressed as follows:

Kansas Division of Purchases
Proposal # _____
Closing Date: _____, 2010
900 SW Jackson Street, Room 102N
Topeka, Kansas 66612-1286

Faxed, e-mailed or telephoned proposals are not acceptable unless otherwise specified.

Proposals received prior to the closing date shall be kept secured and sealed until closing. The State shall not be responsible for the premature opening of a proposal or for the rejection of a proposal that was not received prior to the closing date because it was not properly identified on the outside of the envelope or container. Late Technical and/or Cost proposals will be retained unopened in the file and not receive consideration.

It is the vendor's responsibility to ensure bids are received by the closing date and time. Delays in mail delivery or any other means of transmittal, including couriers or agents of the issuing entity shall not excuse late bid submissions.

2. **Proposal Format:** Vendors are instructed to prepare their Technical Proposal following the same sequence as this RFP.
3. **Transmittal Letter:** All bidders shall respond to the following statements:
- (a) the vendor is the prime contractor and identifying all subcontractors;
 - (b) the vendor is a corporation or other legal entity;
 - (c) no attempt has been made or will be made to induce any other person or firm to submit or not to submit a proposal;
 - (d) the vendor does not discriminate in employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin or disability;
 - (e) no cost or pricing information has been included in the transmittal letter or the Technical Proposal;
 - (f) the vendor presently has no interest, direct or indirect, which would conflict with the performance of services under this contract and shall not employ, in the performance of this contract; any person having a conflict;
 - (g) the person signing the proposal is authorized to make decisions as to pricing quoted and has not participated, and will not participate, in any action contrary to the above statements;

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- (h) whether there is a reasonable probability that the vendor is or will be associated with any parent, affiliate or subsidiary organization, either formally or informally, in supplying any service or furnishing any supplies or equipment to the vendor which would relate to the performance of this contract. If the statement is in the affirmative, the vendor is required to submit with the proposal, written certification and authorization from the parent, affiliate or subsidiary organization granting the State and/or the federal government the right to examine any directly pertinent books, documents, papers and records involving such transactions related to the contract. Further, if at any time after a proposal is submitted, such an association arises, the vendor will obtain a similar certification and authorization and failure to do so will constitute grounds for termination of the contract at the option of the State;
 - (i) vendor agrees that any lost or reduced federal matching money resulting from unacceptable performance in a contractor task or responsibility defined in the Request, contract or modification shall be accompanied by reductions in state payments to Contractor; and
 - (j) the vendor has not been retained, nor has it retained a person to solicit or secure a state contract on an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the vendor for the purpose of securing business. For breach of this provision, the Committee shall have the right to reject the proposal, terminate the contract and/or deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee or other benefit.
4. **Vendor Information:** The vendor must include a narrative of the vendor's corporation and each subcontractor if any. The narrative shall include the following:
- (a) date established;
 - (b) ownership (public, partnership, subsidiary, etc.);
 - (c) number of personnel, full and part-time, assigned to this project by function and job title;
 - (d) resources assigned to this project and the extent they are dedicated to other matters;
 - (e) organizational chart;
 - (f) financial statement may be required.
5. **Qualifications:** A description of the vendor's qualifications and experience providing the requested or similar service, including resumes of personnel assigned to the project stating their education and work experience, shall be submitted with the bid. The vendor must be an established firm recognized for its capacity to perform. The vendor must have sufficient personnel to meet the deadlines specified in the Request.
6. **Timeline:** A typical timeline for implementing services once the Contractor has been retained to provide services must be submitted with the proposal.
7. **Methodology:** Bidders shall submit with the bid, a detailed explanation of the methodology for implementing services.
8. **References:** Provide **three (3) references** that have purchased similar items or services from the vendor in the last **three (3) years**. References shall show firm name, contact person, address, e-mail address and phone number. Vendor employees and the buying agency shall not be shown as references.
9. **Business Procurement Card:** Many State Agencies use a State of Kansas Business Procurement Card (currently Visa) in lieu of a state warrant to pay for certain purchases. No additional charges will be allowed for using the card. ***Bidders shall indicate on the Signature Sheet if they will accept the Business Procurement Card for payment.***
10. **Political Subdivisions:** Political subdivisions (City, County, School Districts, etc.) are permitted to utilize contracts administered by the Division of Purchases. ***Please state in the area provided on the Signature Sheet whether or not you will allow this usage.*** Conditions included in this contract shall be the same for political subdivisions. The State has no responsibility for payments owed by political subdivisions. The vendor must deal directly with the political subdivision.

Section 3
TERMS AND CONDITIONS

1. **Contract Documents:** This Request and any amendments and the response and any amendments of the Contractor shall be incorporated along with the DA-146a into the written contract which shall compose the complete understanding of the parties.

In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

- Form DA-146a;
 - written modifications to the executed contract;
 - written contract signed by the parties;
 - this Request including any and all addenda; and
 - Contractor's written proposal submitted in response to this Request as finalized.
2. **Contract:** The successful vendor will be required to enter into a written contract with the State. The vendor agrees to accept the provisions of form DA-146a (Contractual Provisions Attachment) which is incorporated into all contracts with the State and is attached to this Request.
3. **Contract Formation:** No contract shall be considered to have been entered into by the State until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the successful vendor.
4. **Notices:** All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either party to the other shall be **IN WRITING** and addressed as follows:

Kansas Division of Purchases
900 SW Jackson St, Room 102N
Topeka, Kansas 66612-1286
RE: Bid Number 10904

or to any other persons or addresses as may be designated by notice from one party to the other.

5. **Termination for Cause:** The Agency Head may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:
- the Contractor fails to make delivery of goods or services as specified in this contract; or
 - the Contractor provides substandard quality and/or workmanship;
 - the Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.

The Agency Head shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as State may authorize in writing), the Agency Head shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

6. **Termination for Convenience:** The Agency Head may terminate performance of work under this contract in whole or in part whenever, for any reason, the Agency Head shall determine that the termination is in the best interest of the State of Kansas. In the event that the Agency Head elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least 30 days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.

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7. **Debarment of State Contractors:** Any vendor who defaults on delivery or does not perform in a satisfactory manner as defined in this Request may be barred for a period up to three (3) years, pursuant to KSA 75-37,103, or have their work evaluated for pre-qualification purposes.

8. **Rights and Remedies:** If this contract is terminated, the State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials. The State shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to and/or goods were accepted by State subject to any offset by State for actual damages including loss of federal matching funds.

The rights and remedies of the State provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

9. **Force Majeure:** The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes, etc.

10. **Waiver:** Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by State shall not constitute a waiver.

11. **Independent Contractor:** Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

12. **Staff Qualifications:** The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the proposal specifications may result in termination of this contract and/or damages.

13. **Subcontractors:** The Contractor shall be the sole source of contact for the contract. The State will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.

The State of Kansas requires tax information regarding all subcontractors be disclosed on the Signature Sheet, indicating company name, contact information and tax number. Additional pages may be added, as required. (See Tax Clearances, Page 3)

14. **Proof of Insurance:** Upon request, the vendor shall present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to the Division of Purchases.

15. **Conflict of Interest:** The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of the State and who are providing services involving this contract or services similar in nature to the scope of this contract to the State. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two years after his/her termination of employment with the State.
16. **Confidentiality:** The Contractor may have access to private or confidential data maintained by State to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Contractor must agree to return any or all data furnished by the State promptly at the request of State in whatever form it is maintained by Contractor. On the termination or expiration of this contract, Contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by State, will destroy or render it unreadable.
17. **Nondiscrimination and Workplace Safety:** The Contractor agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws, rules and regulations may result in termination of this contract.
18. **Environmental Protection:** The Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rule or regulations may result in termination of this contract.
19. **Hold Harmless:** The Contractor shall indemnify the State against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The State shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to state property. The Contractor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property.
20. **Care of State Property:** The Contractor shall be responsible for the proper care and custody of any state-owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract, and Contractor will reimburse State for such property's loss or damage caused by Contractor, normal wear and tear excepted.
21. **Prohibition of Gratuities:** Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any State employee at any time.
22. **Retention of Records:** Unless the State specifies in writing a different period of time, the Contractor agrees to preserve and make available all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of state and/or federal agencies shall have access to and the right to examine records during the contract period and during the five (5) year post-contract period. Delivery of and access to the records shall be at no cost to the state.

23. **Antitrust:** If the Contractor elects not to proceed, the Contractor assigns to the State all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by the State pursuant to this contract.
24. **Modification:** This contract shall be modified only by the written agreement of the parties with the approval of the PNC. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.
25. **Assignment:** The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the State.

This contract may terminate in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the State.
26. **Third Party Beneficiaries:** This contract shall not be construed as providing an enforceable right to any third party.
27. **Captions:** The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.
28. **Severability:** If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.
29. **Governing Law:** This contract shall be governed by the laws of the State of Kansas and shall be deemed executed at Topeka, Shawnee County, Kansas, unless otherwise specified and agreed upon by the State of Kansas.
30. **Jurisdiction:** The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Shawnee County, unless otherwise specified and agreed upon by the State of Kansas.
31. **Mandatory Provisions:** The provisions found in Contractual Provisions Attachment (DA-146a) which is attached are incorporated by reference and made a part of this contract.
32. **Integration:** This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This contract between the parties shall be independent of and have no effect on any other contracts of either party.

33. **Criminal or Civil Offense:** Any conviction for a criminal or civil offense of an individual or entity that controls a company or organization or will perform work under this contract that indicates a lack of business integrity or business honesty must be disclosed. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.

34. **Immigration and Reform Control Act of 1986 (IRCA):** All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the contractor as well as any subcontractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) form.

With the submission of this bid, the contractor hereby certifies without exception that such contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State's option, may subject the contract to termination and any applicable damages.

Unless provided otherwise herein, all contractors are expected to be able to produce to State any documentation or other such evidence to verify Contractor's compliance with any provision, duty, certification or like under the contract.

35. **Injunctions:** Should Kansas be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the State, vendor shall not be entitled to make or assert claim for damage by reason of said delay.

36. **Statutes:** Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted; then on the application of either party the contract shall be amended to make such insertion or correction.

37. **Materials and Workmanship:** The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this solicitation, within the time specified, in accordance with the provisions as specified.

The contractor shall be responsible for all work put in under these specifications and shall make good, repair and/or replace, at the contractor's own expense, as may be necessary, any defective work, material, etc., if in the opinion of agency and/or Division of Purchases said issue is due to imperfection in material, design, workmanship or contractor fault.

38. **Industry Standards:** If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

39. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. The successful vendor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Request. **The State of Kansas is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the vendor's price quotation.**

The State makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

40. **Accounts Receivable Set-Off Program:** During the course of this contract if the vendor is found to owe a debt to the State of Kansas, agency payments to the vendor may be intercepted / setoff by the State of Kansas. Notice of the setoff action will be provided to the vendor. The vendor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes vendors against debts owed by the vendors to the State of Kansas. Payments setoff in this manner constitute lawful payment for services or goods received. The vendor benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.

41. **Definitions:** A glossary of common procurement terms is available at <http://da.ks.gov/purch>, under "Purchasing Forms".

42. **Other Information:** Contractor shall timely:

- a. Provide all relevant case information and documents to the Attorney General's Office;
- b. Notice of all case activity, including court dates and discovery deadlines;
- c. brief the Attorney General's Office of all case activity;
- d. Accurately track and record all time, fees and expenses.

TERMS AND CONDITIONS

1. **Term of Contract:** The initial term of agreements which may result from this Request for Proposal shall be from the date of award through completion of the potential litigation.
2. **Indefinite Quantity Contract:** This will be an open-ended contract between a vendor and the State to furnish an undetermined quantity of a good or service in a given period of time. The quantities ordered will be those actually required during the contract period, and the Contractor will deliver only such quantities as may be ordered. No guarantee of volume is made.
3. **HIPAA Confidentiality:** Per the Health Insurance Portability and Accountability Act (1996) (HIPAA), the agency is a covered entity under the act and therefore Contractor is not permitted to use or disclose health information in ways that the agency could not. This protection continues as long as the data is in the hands of the Contractor.

The Contractor shall establish and maintain procedures and controls acceptable to the agency to protect the privacy of members' information. Unless the Contractor has the member's written consent, the Contractor shall not use any personally identifiable information obtained for any reason other than that mandated by this agreement

4. **Off-Shore Sourcing:** Bidders shall disclose in their bid response the location where the contracted services will be performed and whether or not any of the work necessary to provide the contracted services will be performed at a site outside the United States.

If, during the term of the contract, the Contractor or subcontractor moves work previously performed in the United States to a location outside of the United States, the Contractor shall immediately notify the Division of Purchases and the respective agency in writing, indicating the new location and the percentage of work relocated.

5. **Ownership:** All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by the using agency. The Contractor may not release any materials without the written approval of the using agency.
6. **Data:** Any and all data required to be provided at any time during the bid process or contract term shall be made available in a format as requested and/or approved by the State.
7. **Transition Assistance:** In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to State to allow for a functional transition to another vendor.

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Section 4

SPECIFICATIONS

Attorney General Steve Six seeks competitive proposals from attorneys and law firms interested in assisting in the representation of the State of Kansas in matters related to the collection of unremitted taxes from Online Travel Companies ("OTC").

It is suspected that OTC collect more taxes than they actually pay to the State of Kansas. OTC purchase and pay taxes for hotel rooms at wholesale rates from various hotels. The OTC then mark up the prices on those same hotel rooms, resale them to consumers and collect taxes on the marked up rate without remitting the additional sales taxes collected to the State of Kansas.

Kansas retailers' sales tax act states: "The tax levied under the Kansas retailers' sales tax act shall be paid by the consumer or user to the retailer and it shall be the duty of each and every retailer in this state to collect from the consumer or user, the full amount of the tax imposed Such tax shall be a debt from the consumer or user to the retailer" K.S.A. 79-3604. Any transient guest tax levied "shall be based on the gross rental receipts collected by any business or accommodations broker". K.S.A. 12-1693.

OTC under Kansas law can also be liable for penalties and interest. See K.S.A. 79-3615 and K.S.A. 79-2968. Tax debts may be collected in the same manner as any other debt of the state. K.S.A. 79-2015.

The Attorney General's office is seeking proposals from law firms interested in and qualified to investigate whether one or more of the OTC have collected and failed to remit the statutorily required amount of retailer sales taxes. Such an investigation would include reviewing publicly available documents, and may also use the investigative tools available to the State.

The successful proposal will highlight the following:

- A. A description of the firm's experience with collection of retailer sales taxes and OTC issues, litigation, or other relevant complex litigation experience;
- B. A description of the investigation strategy and methods that the firm proposes to undertake in order to determine whether the State is owed money by one or more of the OTC;
- C. A proposed time frame for conducting and completing the investigation, timeline and completion of any such litigation; and
- D. A proposal and time line for a statewide class action lawsuit on behalf of state and political subdivisions.

II. Scope of Services

The Attorney General may appoint one or more private firms as outside counsel to work with designated staff of the Attorney General's Office in the recovery of the unremitted taxes from online travel companies, ("OTC"). The identity and responsibilities of the designated staff shall be determined solely by the Attorney General.

Members of the firm(s) employed will act under the control and direction of the Attorney General. Services shall include, but not be limited to, appropriate factual and legal investigation of claims; negotiating settlement of claims prior to filing of suit as deemed appropriate by the Attorney General, filing litigation in court(s) of appropriate jurisdiction; filing and responding to motions and other pleadings; conducting appropriate discovery; engaging appropriate expert, consulting, and litigation support services; negotiating with defendants; appearing on behalf of the State in hearings and at trial(s); prosecuting or defending appeals; and taking all appropriate steps to collect or enforce any recovery, injunctive relief, or settlement that may be obtained and/or negotiated.

In addition to all other appropriate and available relief, Contractor shall pursue attorneys' fees and expenses and costs as part of any appropriate claim and/ or settlement in the litigation. The Attorney General or his designee will be actively involved in all stages of any litigation and will have final authority over all aspects of the litigation, including, but not limited to, determining whether, when and where to file

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suit and against which parties; which claims to assert and whether and on what basis to settle or proceed to trial. Firms seeking this appointment should be prepared to go to trial as deemed appropriate by the Attorney General.

In addition, the Contractor will be required to meet, coordinate with and submit interim reports to the Attorney General and his designee on a regular schedule and as requested regarding the nature, progress, costs, and extent of the legal services rendered or remaining to be completed. At a minimum, interim status reports must include current status, any significant events that have occurred since the previous status report, and a prospective analysis of any significant future events. **See also: Statutory Reporting Requirements.**

At no time shall Contractor settle or compromise claims in this action without the express written authorization of the Attorney General.

Settlement Procedure: The Attorney General's Office must properly conduct a complete review of any settlement proposal. Contractor agrees to timely comply with the following before any settlement hearing:

1. a memorandum from outside counsel:
 - a. analyzing the specific case for settlement including substantive pros and cons of settling;
 - b. the original proposed settlement range;
 - c. an explanation for any settlement offer outside of the settlement range;
 - d. the reason why it is in the best interest of the State of Kansas to settle; and
 - e. include any relevant supporting documentation substantiating information in the memorandum.
2. All settlement documents, including the settlement memorandum must be submitted to this Office at least five (5) business days for final approval prior to any scheduled settlement hearing, otherwise the settlement hearing will be cancelled and re-scheduled.
3. Any settlement/Release must not release any other claims not otherwise set forth in the relevant complaint.
4. Develop with the Attorney General's Office and use only a settlement agreement developed for Kansas prior to any settlement discussions with individual parties.
5. Settlements are not final until they are approved by the Attorney General's Office.
6. Comply with K.S.A. 75-37,135(e). A complete case billing and fee statements from all counsel must be completed prior to any settlement hearing.
7. This Office should also timely receive a copy of any settlement hearing transcript.

Required RFP Response Information

Each response to this request for proposal must include the following information:

A. Qualifications

1. Have you and / or your firm represented Kansas or other states in matters related to the collection of unremitted retailer sales taxes from OTC in the past? Do you currently do so?
2. If yes, please describe the scope of this representation, including the clients represented, type of matters handled, outcome(s), and total number of matters currently assigned to you or your firm.
3. Describe your firm's experience in complex litigation, e.g., multidistrict, class action and/or litigation involving tax issues.
4. Is your firm currently coordinating state court discovery with discovery in any federal multidistrict OTC litigation or has your firm done so in the past? Describe your firm's knowledge of or experience with claims against OTC.
5. Describe your knowledge of or experience with state and federal law governing Kansas's retailer sales taxes.
6. Other than representation in the matters described above, have you or your firm represented Kansas or other states in other matters in the past ten years? Do you currently?
7. If yes, please describe the scope of that representation, including the clients represented, types of matters handled, and outcome(s).
8. Representation under this RFP may require participation in federal multidistrict litigation outside the State of Kansas. Please state your willingness and ability to do so as may be required by the proposed representation.

B. Attorney/Firm Resources

3-24

1. Please provide a statement of your law firm's history.
2. How many attorneys and investigators are expected to work on matters assigned under this appointment?
3. Please provide the number of OTC/collection of unremitted tax-related matters your firm currently handles on an annual basis. Please provide the name of each attorney expected to work under this assignment.
4. For each attorney expected to work under this assignment, please provide the following information:
 - a. Current Resume
 - b. A statement that each attorney is a member in good standing of the Kansas bar and has not been disqualified to practice law in any other jurisdiction or forum. If the attorney is outside the state of Kansas, a statement that he/she is eligible for admission pro hac vice in state and/or federal court as may be required by the proposed representation.
 - c. A statement of each attorney's usual and customary hourly billable rate.
 - d. A statement of any malpractice claims against your law firm or any attorney in your firm within the last five years and the status or outcomes of each claim.
 - e. A statement affirming that no ethics complaints have been filed against your law firm or any attorney in your firm within the last ten years or the status or outcomes of any such complaints.
 - f. A detailed description of each attorney's relevant experience. This description should include:
 - i. Years of experience;
 - ii. Relevant trial experience;
 - iii. Percent of practice related to environmental remediation matters;
 - iv. Designate lead trial counsel and indicate the person's availability to undertake the proposed representation.
5. Please describe any other staff/resources and their relevant experience (see 4(f)(i-iv) above) you expect to utilize under this assignment (i.e. Paralegals, Legal Assistants, IT professionals, etc.)
6. Describe your firm's capacity to engage in protracted litigation, including technological and financial resources.
7. For which clients were the services performed, and who can be contacted at each client for references?
8. How many cases has each attorney who will be assigned to this matter tried to verdict as the lead lawyer in the past five years?
9. What types of matters?
10. With what results?
11. When?
12. Did the attorney exceed, meet or under budget in each case?
13. Describe how the firm goes about assigning lawyers to new matters.
14. What has the law firm done in the last five years to become more cost-effective?
15. What technology does the firm use and how does the firm use the technology to achieve efficiencies?
16. What has been the turnover rate of associates and partners at each of your offices in the last three years? How do you explain these numbers?
17. Describe the kinds of lawyers you like to recruit to the firm. What qualities do you look for in a candidate - both entry level and lateral?
18. What has the firm done to promote internal diversity?
19. What are the firm's pro bono policies?
20. Give us an idea about the nature and extent of your training program (formal and informal) for associates.
21. Does the firm have an hourly billing requirement?
 - a. If so, what is it?
 - b. How does the firm set salaries and billing rates?
 - c. What factors drive the firm to increase rates?
22. On what basis are partners compensated?
23. On what basis are the associates compensated?
24. Please disclose and describe any fee sharing or other relationships with other entities (including experts) regarding this litigation?

C. Conflicts

Please provide a detailed explanation, if necessary, to the following:

3-25

Are you, your firm, or any of your firm's attorneys (whether expected to perform work under this appointment or not) unable to represent any state client(s) due to any conflict inasmuch as potential defendants include OTC?

D. Required Fee Structure Information

Legal services of the private firms will be paid through a **contingent fee arrangement**. If the State of Kansas is unsuccessful in recovering damages, the private firm(s) will not receive any compensation or payment for expenses.

Please propose a contingent fee arrangement and the manner in which the firm would advance the costs for compensation and expenses related to litigation.

Contingency Fee contracts are subject to the Kansas Professional Services Sunshine Act (K.S.A. 75-37,130 *et seq.*). Contractor will be expected to comply, and assist (in a timely fashion) any State of Kansas agency with responsibilities under the Act.

Please state whether your firm has access free of charge or at substantial savings to OTC-related discovery materials in other litigation and describe how this cost savings is reflected in your fee proposal or how your fee would be modified when appropriate to reflect such cost savings.

Please affirmatively state that you will not assign work to attorneys outside your law firm without express written consent of the Attorney General and further that you will not split fees for work assigned to you by the Attorney General's Office.

During and at the conclusion of any appointment of or representation by outside counsel on a contingent fee basis, outside counsel shall provide statements which report the hours worked on the case, expenses incurred, the aggregate fee amount and a calculation of hourly rate based on hours worked divided into fee recovered less expenses. See also: Statutory Reporting Requirements.

E. Other Information

Please provide any other information that you would like the Attorney General's Office to consider with respect to this Request for Proposal.

Statutory Reporting Requirements

The Kansas Legislature has mandated a detailed report at least once in each calendar quarter of each legal proceeding for which has been completed and for which a contingency fee arrangement was entered. To accomplish this requirement, the Contractor shall agree to file a quarterly report with the Director of Purchases containing, at a minimum the following information:

- Each day, accurately track and record all time, fees and expenses;
 - Hours worked on the case (if any);
 - Expenses incurred (if any);
 - Aggregate fee amount and a breakdown as to the hourly rate, based on hours worked divided into fee recovered, less expenses.

The Director of Purchases and / or agency representatives may choose to work with the contractor to modify report parameters format at any time during the contract.

Reports are due no later than 30 days after the end of each calendar quarter. Reports are to be filed with the Director of Purchases at the following address:

Director of Purchases
Kansas Division of Purchases
900 SW Jackson, Room 102N
Topeka, KS 66612-1286

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Electronic files shall be e-mailed to the following e-mail address: reports@da.ks.gov, in Microsoft® Excel or Microsoft® Access Database format.

Quarterly Report Contact Information: Contact information must be provided for use should the State of Kansas need to contact the appropriate officials within your company to discuss the issue of quarterly reports. Please complete the required information on the "Response Check List" found within this RFP.

COST SHEET

*Must be submitted separately from the Technical Proposal, unless otherwise specified.
(See Response Section, #1)*

Vendor Name: _____

Legal services of the private firms will be paid through a **contingent fee arrangement**. If the State of Kansas is unsuccessful in recovering damages, the private firm(s) will not receive any compensation or expenses.

Please propose a contingent fee arrangement and the manner in which the firm would advance the costs of any litigation. Cost structure shall remain firm for the entire contract period and subsequent renewals.

Contingency Fee contracts are subject to the Kansas Professional Services Sunshine Act (K.S.A. 75-37,130 et seq.). Contractor will be expected to comply, and assist (in a timely fashion) any State of Kansas agency with responsibilities under the Act.

State of Kansas
Department of Administration
DA-146a (Rev. 1-01)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

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October 5, 2010

Alan Conroy
Legislative Research Department
State Capitol
Topeka KS 66612

Subject: Professional Services Sunshine Act (KSA 75-37,130 et seq)
Notice of Intent to Bid a Professional Services Contract
Outside Counsel with Contingency-Based Fees

Dear Mr. Conroy,

The Division of Purchases has been working with the Office of the Attorney General on the development of a Request for Proposal (RFP) for the acquisition of Legal Services related to ~~Underground Storage Tank Release Trust Fund~~. The contract will be a contingency fee based contract which requires action by K.S.A. 75-37,135.

A copy of the Request for Proposal (RFP) is hereby attached for consideration by the Legislative Budget Committee.

If you have any questions, please let me know.

Sincerely,



Chris Howe
Director of Purchases

cc. Sen. Jay Emler, Chairman, Legislative Budget Committee
Rep. Ray Merrick, Vice-Chairperson, Legislative Budget Committee
Attorney General's Office
File

Copy

Mark Parkinson, Governor
Chris Howe, Director

<http://da.ks.gov/purch>

October 5, 2010

Sen. Jay Emler, Chairperson
2010 Legislative Budget Committee
State Capitol
Topeka KS 66612

Subject: Professional Services Sunshine Act (KSA 75-37,130 et seq)
Notice of Intent to Bid a Professional Services Contract
Outside Counsel with Contingency-Based Fees

Dear Sen. Emler,

The Division of Purchases has been working with the Office of the Attorney General on the development of a Request for Proposal (RFP) for the acquisition of Legal Services related to **Underground Storage Tank Release Trust Fund**. The contract will be a contingency fee based contract which requires action by K.S.A. 75-37,135.

A copy of the Request for Proposal (RFP) is hereby attached for consideration by the Legislative Budget Committee.

If you have any questions, please let me know.

Sincerely,

Chris Howe
Director of Purchases

cc. Rep. Ray Merrick, Vice-Chairperson, Legislative Budget Committee
Alan Conroy, Legislative Research
Attorney General's Office
File

4-2

Copy

KANSAS
DEPARTMENT OF ADMINISTRATION

Mark Parkinson, Governor
Chris Howe, Director

<http://da.ks.gov/purch>

October 5, 2010

Rep. Ray Merrick, Vice-Chairperson
2010 Legislative Budget Committee
State Capitol
Topeka KS 66612

Subject: Professional Services Sunshine Act (KSA 75-37,130 et seq)
Notice of Intent to Bid a Professional Services Contract
Outside Counsel with Contingency-Based Fees

Dear Rep. Merrick,

The Division of Purchases has been working with the Office of the Attorney General on the development of a Request for Proposal (RFP) for the acquisition of Legal Services related to ~~Underground Storage Tank Release Trust Fund~~. The contract will be a contingency fee based contract which requires action by K.S.A. 75-37,135.

A copy of the Request for Proposal (RFP) is hereby attached for consideration by the Legislative Budget Committee.

If you have any questions, please let me know.

Sincerely,

Chris Howe
Director of Purchases

cc. Sen. Jay Emler, Chairperson, Legislative Budget Committee
Alan Conroy, Legislative Research
Attorney General's Office
File

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Request for Proposal Number: _____

NOTE: This complete document can be viewed at our website: <http://da.ks.gov/purch/rfq/rfqdata/###.doc>

PR Number:
Replaces Contract: NEW
Date Mailed: _____, 2010

Procurement Officer: Galen D. Greenwood
Telephone: 785-296-2401
E-Mail Address: galen.greenwood@da.ks.gov
Web Address: <http://da.ks.gov/purch>

Closing Date: _____, 2010 @ 2:00 PM

Item: **Legal Services, Outside Counsel:**
Underground Storage Tank Release Trust Fund

Agency: **Office of the Attorney General**
Location: **Topeka, KS**

Term of Contract: Date of Award through _____
(with option to renew)

Questions/Addenda - No pre-proposal conference is scheduled for this Request for Proposal. Questions requesting clarification of the Request for Proposal must be submitted electronically (MS Word) to the Procurement Officer indicated above, prior to the close of business on _____. Each question or clarification should reference the appropriate RFP section.

Failure to notify the Procurement Officer of any conflicts or ambiguities in this Request for Proposal may result in items being resolved in the best interest of the State. Any modification to this Request shall be made in writing by addendum and posted on the Division of Purchases' website, <http://da.ks.gov/purch>. Only written communications are binding.

Answers to questions will be available in the form of an addendum on the Division of Purchases' website.

It shall be the responsibility of all participating vendors to acquire any and all addenda and additional information as it is made available from the web site cited above. Vendors are required to check the website periodically for any additional information or instructions.

READ THIS REQUEST CAREFULLY

Failure to abide by all of the conditions of this Request may result in the rejection of a bid.

It is the vendor's responsibility to monitor the Division of Purchase's website on a regular basis for any changes/addenda.

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SIGNATURE SHEET

Item: **Legal Services, Outside Counsel:
Underground Storage Tank Release Trust Fund**

Agency: **Office of the Attorney General**

Closing Date: _____, 2010

By submission of a bid and the signatures affixed thereto, the bidder certifies all products and services proposed in the bid meet or exceed all requirements of this specification as set forth in the request and that all exceptions are clearly identified.

Legal Name of Person, Firm or Corporation _____
Mailing Address _____ City & State _____ Zip _____
Toll Free Telephone _____ Local _____ Cell: _____ Fax _____
Tax Number _____ E-Mail _____
Signature _____ Date _____
Typed Name _____ Title _____

In the event the **contact for the bidding process** is different from above, indicate contact information below.

Bidding Process Contact Name _____
Mailing Address _____ City & State _____ Zip _____
Toll Free Telephone _____ Local _____ Cell: _____ Fax _____
E-Mail _____

If **awarded a contract and purchase orders** are to be directed to an address other than above, indicate mailing address and telephone number below.

Mailing Address _____ City & State _____ Zip _____
Toll Free Telephone _____ Local _____ Cell: _____ Fax _____
E-Mail _____

Pricing is available to political subdivisions of the State of Kansas.
(Refusal will not be a determining factor in award of this contract.) Yes _____ No _____

Agencies may use the Business Procurement Card for contract purchases.
(Refusal will not be a determining factor in award of this contract.) Yes _____ No _____

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State of Kansas
Department of Administration
Division of Purchases

Supplier Diversity Survey Form

Why is the Division of Purchases requesting this information?

Current statutes governing the activities of the Kansas Division of Purchases do not include preferences or set-asides for Small Business Enterprises (SBEs). The Division of Purchases is interested in determining to what extent purchase orders and contracts are awarded to SBEs under existing work efforts. Please Note: You must submit this form with each bid opportunity.

Persons or concerns wishing to receive a Purchase Order or Contract Award resulting from this bid opportunity must provide the information contained in this document before the award is made. To help expedite this procurement, it is requested that you submit this form with your bid.

COMPANY DATA

Legal Company Name _____
Doing Business As (if applicable) _____
Federal Tax ID Number / FEIN _____
Diversity Program Contact Name _____ Title _____
Phone Number _____ Fax Number _____
E-Mail Address _____ Company Web _____
Address _____
City _____ State _____ Zip Code _____
Legal Structure: Corporation Partnership Non-Profit Sole Proprietorship LLC
Signature _____ Date: _____

COMPANY DIVERSITY DATA

(A) Business Classification (See Appendix A for definitions):

Is your business a Small Business Enterprise (SBE) as defined by the SBA?

- Yes No Don't Know

Check all that Apply:

- Disabled (DIS) SBA-Small Disadvantage Business (SDB)
 Veteran-Owned (VBE) Women-Owned (WBE) Service-Disabled Veterans-Owned (DVBE)
 African American Native American Minority-Owned Business Enterprise (MBE)
 Hispanic American Asian Pacific American Disadvantaged Business Enterprise (DBE)
 Asian Subcontinent American Other: _____

(B) Has your Business Classification Status been certified by a state, municipal, federal or other certifying agency?

- No Yes Certifying Entity: _____

Other State of Kansas Resources for Small Business Enterprises (SBE)

4-6

State of Kansas
Department of Administration
Division of Purchases
Supplier Diversity Survey Form

Appendix A
Definition of Terms

Small Business Enterprise / Concern (SBE)

SBEs are businesses that do not exceed the size standard for the product or service it is providing as measured by its employment and/or business receipts in accordance with the U.S. SBA numerical size standards. These standards are defined as FAR 52.219-8, 13 CFR Part 121 and 13.CFR 121.410.

Disadvantaged Business Enterprise (DBE)

DBEs are defined as a business which are (a) owned by socially disadvantaged individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities; or (b) owned by economically disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged.

Disabled Business Enterprise (DIS)

DIS businesses are at least 51% owned and controlled by one or more U.S. citizens who has a physical or mental impairment which substantially limits one or more of such person's major life activities.

Small Disadvantage Business Concern (SDB)

SDB businesses are certified by the SBA as meeting the following criteria: (1) they are small business concern and (2) must be at least 51% owned and controlled by one or more U.S. citizens who are socially and economically disadvantaged. African Americans, Asian Pacific Americans, Asian Subcontinent Americans, Hispanic Americans and Native Americans are presumed to qualify as being socially disadvantaged. Other individuals can qualify if they show by a preponderance of the evidence that they are socially disadvantaged. In addition, the personal net worth of each eligible owner Bidder must be less than \$750,000 excluding the values of the Bidder's ownership interest in the business seeking certification and the owner's primary residence. Successful Bidders must also meet applicable size standards for small businesses in their industry. SDB regulations can be found in FAR 52.219-8 and 13 CFR parts 121 & 124.

Veterans-Owned Business Concern (VBE)

VBE businesses are at least 51% owned and controlled by one or more U.S. citizens who are Veterans of the U.S. Armed Forces. In the case of any publicly owned business, at least 51% of the stock is owned by one or more veterans and one or more veterans must control the management and daily business operation. The term "Veteran" means a person who served in the active military, naval or air service and who was discharged or released there from under conditions other than dishonorable. VBE regulations can be found in FAR 52.219-9 & 38 USC 101 (2).

Service-Disabled Veterans-Owned Business Concern (DVBE)

DVBE businesses are at least 51% owned and controlled by one or more U.S. citizens who are service-disabled Veterans of the U.S. Armed Forces. In the case of any publicly owned business, at least 51% of the stock is owned by one or more service-disabled veterans and one or more veterans must control the management and daily business operation. The term "Veteran" means a person who served in the active military, naval or air service and who was discharged or released there from under conditions other than dishonorable. The term "Service-Disabled" means a veteran of the U.S. Military Service has a service-connected disability with a disability rating of 0%-100%. In the case of permanent or severe disability, the spouse or caregiver of such a service-disabled veteran may control the management and daily operations. DVBE regulations can be found in FAR 52.219-9 & 38 USC 101 (2) & USC 101 (16).

Women-Owned Business Concern (WBE)

WBE businesses are at least 51% owned and controlled by one or more U.S. citizens who are female gender. In the case of any publicly owned business, at least 51% of the stock is owned by one or more women and one or more women must control the management and daily business operations. For Federal contracting regulations see FAR 52-219-8.

Minority-Owned Business Enterprise (MBE)

MBE businesses are at least 51% owned and controlled by one or more U.S. citizens belonging to certain ethnic minority groups. In the case of any publicly owned business, at least 51 % of the stock is owned by one or more minorities, and one or more minorities must control the management and daily business operations. "Ethnic Minority Groups" are people of Asian Pacific American, Asian Subcontinent American, African American, Hispanic American and Native American descent.

- **African Americans:** People whose origins lay in any of the Black racial groups of Africa.
- **Asian Pacific Americans:** People whose origins lay in Brunei, Burma, China, Guam, Indonesia, Japan, Kampuchea (Cambodia), Korea, Laos, Malaysia, Northern Mariana Islands, Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau (U.S. Trust Territory of the Pacific Islands), the Philippines, Samoa, Singapore, Taiwan, Thailand and Vietnam.
- **Asian Subcontinent Americans:** People whose origins lay in Bangladesh, Bhutan, India, Pakistan, Sri Lanka or Nepal.
- **Hispanic Americans:** People whose origins are in the South and Central America, Mexico, Puerto Rico, Cuba or the Iberian Peninsula (including Portugal).
- **Native Americans:** American Indians, Inuit (Eskimos), Aleuts, and native Hawaiians of Polynesian ancestry.

4-7

TAX CLEARANCE

Per KSA 75-3740-(c), the Director of Purchases may reject the bid of any bidder who is in arrears on taxes due the State of Kansas. The Division of Purchases will confirm tax status of all potential contractors and subcontractors prior to the release of a purchase order or contract award. The State of Kansas reserves the right to allow a bidder an opportunity to clear tax status within ten (10) calendar days, or to proceed with award to the next lowest responsive bidder, whichever is determined by the Director of Purchases to be in the best interest of the State.

The Secretary of Revenue is authorized to exchange such information with the Director of Purchases as is necessary to determine the bidders tax clearance status, notwithstanding any other provision of law prohibiting disclosure of the contents of taxpayer records or information.

Instructions on how to check Tax Clearance Status can be found at the following website:
<http://www.ksrevenue.org/taxclearance.htm>

Information about Tax Registration can be found at the following website:
<http://www.ksrevenue.org/busregistration.htm>

Tax Clearance Contact Information: Please provide the attached contact information for use should the State of Kansas need to contact the appropriate officials within your company to discuss your tax clearance / registration status.

CONTRACTOR

Contact Person for Tax Issues: _____
Company Name: _____ Tax Number: _____
Mailing Address _____
City & State _____ Zip Code _____
Toll Free Telephone _____ Local _____ Cell: _____ Fax _____
E-Mail _____

SUBCONTRACTOR(S)

Contact Person for Tax Issues: _____
Company Name: _____ Tax Number: _____
Mailing Address _____
City & State _____ Zip Code _____
Toll Free Telephone _____ Local _____ Cell: _____ Fax _____
E-Mail _____

Additional pages may be added, as required, indicating the same information for multiple subcontractors.

4-8

VENDOR RESPONSE CHECK-LIST

The following items are provided to assist bidders in ensuring all requirements are met and all required submissions are included with the bid. Vendors are instructed to utilize this list **and include it with their bid submission**. In order to ensure fair and accurate evaluation, page numbers indicating the location of your response within your bid shall be included, where indicated.

Bidders must complete the page numbers required below.

- | | | |
|------------------------|--|--|
| Response Page No. ____ | Signature Sheet | (RFP page 2) |
| Response Page No. ____ | Supplier Diversity Survey Form | (RFP page 3) |
| Response Page No. ____ | Tax Clearance | (including individual subcontractor information)
(RFP page 5) |
| Response Page No. ____ | Transmittal Letter | (RFP Response Section) |
| Response Page No. ____ | Experience | (RFP Terms and Conditions Section) |
| Response Page No. ____ | Exceptions | (RFP Response Section) |
| Response Page No. ____ | References | (RFP Response Section) |
| Response Page No. ____ | Qualifications | (RFP Response Section) |
| Response Page No. ____ | Subcontractor information, if applicable | (RFP Response Section) |
| Response Page No. ____ | Exceptions to RFP noted, if applicable | (RFP Instructions Section) |

The following items have been submitted, as required

- | | | |
|-------|---|----------------------------|
| _____ | Proper number of copies submitted | (RFP Response Section) |
| _____ | Cost and Technical packets separate | (RFP Response Section) |
| _____ | Proprietary/Confidential information in separate packet | (RFP Instructions Section) |
| _____ | Media on separate CD/disks, if applicable | (RFP Response Section) |
| _____ | Cost Sheet | |

Quarterly Report Contact Information (See RFP Specifications Section)

Contact Person for Quarterly Report Issues _____
Company Name _____
Mailing Address _____
City & State _____ Zip Code _____
Toll Free Telephone _____ Local _____ Cell: _____ Fax _____
E-Mail _____

4-9

**Section I
INSTRUCTIONS**

1. **Proposal Reference Number:** The RFP number, indicated in the header of this page, as well as on the first page of this proposal, has been assigned to this Request and **MUST** be shown on all correspondence or other documents associated with this Request and **MUST** be referred to in all verbal communications. All inquiries, written or verbal, shall be directed only to the procurement officer reflected on Page 1 of this proposal. There shall be no communication with any other State employee regarding this Request except with designated state participants in attendance **ONLY DURING:**

Negotiations
Contract Signing
as otherwise specified in this Request.

Violations of this provision by vendor or state agency personnel may result in the rejection of the proposal.

2. **Negotiated Procurement:** This is a negotiated procurement pursuant to **K.S.A. 75-37,102 and K.S.A. 75-37,135**. Final evaluation and award will be made by The Procurement Negotiation Committee (PNC) consisting of the following entities (or their designees):

Secretary of Department of Administration,
Director of Purchases, Department of Administration; and
Head of Using Agency

3. **Appearance Before Committee:** Any, all or no vendors may be required to appear before the PNC to explain the vendor's understanding and approach to the project and/or respond to questions from the PNC concerning the proposal; or, the PNC may award without conducting negotiations, based on the initial proposal. The PNC reserves the right to request information from vendors as needed. If information is requested, the PNC is not required to request the information of all vendors.

Vendors selected to participate in negotiations may be given an opportunity to submit a revised proposal and/or their revised offer to the PNC. Prior to a specified cut-off time for revised offers, vendors may submit revisions to their technical and cost proposals. Meetings before the PNC are not subject to the Open Meetings Act. Vendors are prohibited from electronically recording these meetings. All information received prior to the cut-off time will be considered part of the vendor's revised offer.

No additional revisions shall be made after the specified cut-off time unless requested by the PNC.

4. **Cost of Preparing Proposal:** The cost of developing and submitting the proposal is entirely the responsibility of the vendor. This includes costs to determine the nature of the engagement, preparation of the proposal, submitting the proposal, negotiating for the contract and other costs associated with this Request.

5. **Preparation of Proposal:** Prices are to be entered in spaces provided on the proposal cost form if provided herein. Computations and totals shall be indicated where required. In case of error in computations or totals, the unit price shall govern. The Committee has the right to rely on any price quotes provided by vendors. The vendor shall be responsible for any mathematical error in price quotes. The Committee reserves the right to reject proposals which contain errors.

All copies of cost proposals shall be submitted in a separate sealed envelope or container separate from the technical proposal. The outside shall be identified clearly as "Cost Proposal" or "Technical Proposal" with the RFP number and closing date.

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A proposal shall not be considered for award if the price in the proposal was not arrived at independently and without collusion, consultation, communication or agreement as to any matter related to price with any other vendor, competitor or public officer/employee.

Technical proposals shall contain a concise description of vendor's capabilities to satisfy the requirements of this Request For Proposal with emphasis on completeness and clarity of content. Repetition of terms and conditions of the Request For Proposal without additional clarification shall not be considered responsive.

6. **Signature of Proposals:** Each proposal shall give the complete mailing address of the vendor and be signed by an authorized representative by original signature with his or her name and legal title typed below the signature line. If the contract's contact will be a different entity, indicate that individual's contact information for communication purposes. Each proposal shall include the vendor's tax number.
7. **Acknowledgment of Addenda:** All vendors shall acknowledge receipt of any addenda to this Request by returning a signed hard copy with the bid. Failure to acknowledge receipt of any addenda may render the proposal to be non-responsive. Changes to this Request shall be issued only by the Division of Purchases in writing.
8. **Modification of Proposals:** A vendor may modify a proposal by letter or by FAX transmission at any time prior to the closing date and time for receipt of proposals.
9. **Withdrawal of Proposals:** A proposal may be withdrawn on written request from the vendor to the Procurement Officer at the Division of Purchases prior to the closing date.
10. **Competition:** The purpose of this Request is to seek competition. The vendor shall advise the Division of Purchases if any specification language or other requirement inadvertently restricts or limits bidding to a single source. Notification shall be in writing and must be received by the Division of Purchases no later than five (5) business days prior to the bid closing date. The Director of Purchases reserves the right to waive minor deviations in the specifications which do not hinder the intent of this Request.
11. **Evaluation of Proposals:** Award shall be made in the best interest of the State as determined by the Procurement Negotiating Committee or their designees. Although no weighted value is assigned, consideration may focus on but is not limited to:
 - Vendor's expertise and understanding of the nature of the potential claims
 - Experience and success in providing like services
 - Ability to Promptly Perform Services
 - Qualified staff
 - Methodology to accomplish tasks
 - Cost. Vendors are not to inflate prices in the initial proposal as cost is a factor in determining who may receive an award or be invited to formal negotiations. The State reserves the right to award to the lowest responsive bid without conducting formal negotiations, if authorized by the PNC.
 - Adequacy and completeness of proposal
 - Compliance with the terms and conditions of the Request
 - Value added services
 - Accessibility
 - Use of Technology
 - Response Time
 - Efficiency
 - Highest quality at the lowest reasonable cost
 - Response format as required by this Request
12. **Acceptance or Rejection:** The Committee reserves the right to accept or reject any or all proposals or part of a proposal; to waive any informalities or technicalities; clarify any ambiguities in proposals; modify any criteria in this Request; and unless otherwise specified, to accept any item in a proposal.

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13. **Proposal Disclosures:** At the time of closing, only the names of those who submitted proposals shall be made public information. No price information will be released. Interested vendors or their representatives may be present at the announcement at the following location:

State of Kansas Division of Purchases
900 Jackson Street, Room 102N
Topeka, KS 66612-1286

Bid results will not be given to individuals over the telephone. Results may be obtained after contract finalization by obtaining a bid tabulation from the Division of Purchases by sending (do not include with bid):

- A check for \$5.00, payable to the State of Kansas
- A self-addressed, stamped envelope
- Contract Proposal Number

Send to:

Kansas Division of Purchases
Attention: Bid Results/Copies
900 SW Jackson, Room 102N
Topeka, KS 66612-1286

Copies of individual proposals may be obtained under the Kansas Open Records Act by sending an email to janet.miller@da.ks.gov or calling 785-296-0002 to request an estimate of the cost to reproduce the documents and remitting that amount with a written request to the above address or a vendor may make an appointment by calling the above number to view the proposal file. Upon receipt of the funds, the documents will be mailed. Information in proposal files shall not be released until a contract has been executed or all proposals have been rejected.

14. **Disclosure of Proposal Content and Proprietary Information:** All proposals become the property of the State of Kansas. The **Open Records Act** (K.S.A. 45-205 et seq.) of the State of Kansas requires public information be placed in the public domain at the conclusion of the selection process, and be available for examination by all interested parties. (<http://da.ks.gov/purch/KSOpenRecAct.doc>) No proposals shall be disclosed until after a contract award has been issued. The State reserves the right to destroy all proposals if the RFP is withdrawn, a contract award is withdrawn, or in accordance with Kansas law. Late Technical and/or Cost proposals will be retained unopened in the file and not receive consideration or returned to the bidder.

Trade secrets or proprietary information legally recognized as such and protected by law may be requested to be withheld if clearly labeled "Proprietary" on each individual page **and** provided as separate from the main proposal. Pricing information is not considered proprietary and the vendor's entire proposal response package will not be considered proprietary.

All information requested to be handled as "Proprietary" shall be submitted separately from the main proposal and clearly labeled, in a separate envelope or clipped apart from all other documentation. The vendor shall provide detailed written documentation justifying why this material should be considered "Proprietary". The Division of Purchases reserves the right to accept, amend or deny such requests for maintaining information as proprietary in accordance with Kansas law.

The State of Kansas does not guarantee protection of any information which is not submitted as required.

15. **Exceptions:** By submission of a response, the vendor acknowledges and accepts all terms and conditions of the RFP unless clearly avowed and wholly documented in a separate section of the Technical Proposal to be entitled: "Exceptions". The State of Kansas reserves the right to choose not to allow the exceptions taken.

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16. **Notice of Award:** An award is made on execution of the written contract by all parties.
17. **News Releases:** Only the State is authorized to issue news releases relating to this Request, its evaluation, award and/or performance of the contract.

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Section 2
PROPOSAL RESPONSE

1. **Submission of Proposals:** Vendor's proposal shall consist of:
- **One (1) original and Three (3) copies** of the Technical Proposal, including signature sheet, applicable literature and other supporting documents;
 - **One (1) original and Three (3) copies** of the cost proposal including signature sheet,
 - **One (1) electronic / software version(s) of the technical and cost proposals** are required. This shall be provided on diskette or CD, in Microsoft® Word or Excel and technical and cost responses shall be on separate media.

All copies of cost proposals shall be submitted in a separate sealed envelope or container separate from the technical proposal. The outside shall be identified clearly as "Cost Proposal" or "Technical Proposal" with the request number and closing date.

Vendor's proposal, sealed securely in an envelope or other container, shall be received no later than 2:00 p.m., Central Time, on the closing date _____, 2010, addressed as follows:

Kansas Division of Purchases
Proposal # _____
Closing Date: _____, 2010
900 SW Jackson Street, Room 102N
Topeka, Kansas 66612-1286

Faxed, e-mailed or telephoned proposals are not acceptable unless otherwise specified.

Proposals received prior to the closing date shall be kept secured and sealed until closing. The State shall not be responsible for the premature opening of a proposal or for the rejection of a proposal that was not received prior to the closing date because it was not properly identified on the outside of the envelope or container. Late Technical and/or Cost proposals will be retained unopened in the file and not receive consideration.

It is the vendor's responsibility to ensure bids are received by the closing date and time. Delays in mail delivery or any other means of transmittal, including couriers or agents of the issuing entity shall not excuse late bid submissions.

2. **Proposal Format:** Vendors are instructed to prepare their Technical Proposal following the same sequence as this RFP

3. **Transmittal Letter:** All bidders shall respond to the following statements:

- (a) the vendor is the prime contractor and identifying all subcontractors;
- (b) the vendor is a corporation or other legal entity;
- (c) no attempt has been made or will be made to induce any other person or firm to submit or not to submit a proposal;
- (d) the vendor does not discriminate in employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin or disability;
- (e) no cost or pricing information has been included in the transmittal letter or the Technical Proposal;
- (f) the vendor presently has no interest, direct or indirect, which would conflict with the performance of services under this contract and shall not employ, in the performance of this contract, any person having a conflict;
- (g) the person signing the proposal is authorized to make decisions as to pricing quoted and has not participated, and will not participate, in any action contrary to the above-statements;

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- (h) whether there is a reasonable probability that the vendor is or will be associated with any parent, affiliate or subsidiary organization, either formally or informally, in supplying any service or furnishing any supplies or equipment to the vendor which would relate to the performance of this contract. If the statement is in the affirmative, the vendor is required to submit with the proposal, written certification and authorization from the parent, affiliate or subsidiary organization granting the State and/or the federal government the right to examine any directly pertinent books, documents, papers and records involving such transactions related to the contract. Further, if at any time after a proposal is submitted, such an association arises, the vendor will obtain a similar certification and authorization and failure to do so will constitute grounds for termination of the contract at the option of the State;
- (i) vendor agrees that any lost or reduced federal matching money resulting from unacceptable performance in a contractor task or responsibility defined in the Request, contract or modification shall be accompanied by reductions in state payments to Contractor; and
- (j) the vendor has not been retained, nor has it retained a person to solicit or secure a state contract on an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the vendor for the purpose of securing business. For breach of this provision, the Committee shall have the right to reject the proposal, terminate the contract and/or deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee or other benefit.
4. **Vendor Information:** The vendor must include a narrative of the vendor's corporation and each subcontractor if any. The narrative shall include the following:
- (a) date established;
 - (b) ownership (public, partnership, subsidiary, etc.);
 - (c) number of personnel, full and part-time, assigned to this project by function and job title;
 - (d) resources assigned to this project and the extent they are dedicated to other matters;
 - (e) organizational chart;
 - (f) financial statement may be required.
5. **Qualifications:** A description of the vendor's qualifications and experience providing the requested or similar service, including resumes of personnel assigned to the project stating their education and work experience, shall be submitted with the bid. The vendor must be an established firm recognized for its capacity to perform. The vendor must have sufficient personnel to meet the deadlines specified in the Request.
6. **Timeline:** A typical timeline for implementing services once the Contractor has been retained to provide services must be submitted with the proposal.
7. **Methodology:** Bidders shall submit with the bid, a detailed explanation of the methodology for implementing services.
8. **References:** Provide **three (3) references** who have purchased similar items or services from the vendor in the last **three (3) years**. References shall show firm name, contact person, address, e-mail address and phone number. Vendor employees and the buying agency shall not be shown as references.
9. **Business Procurement Card:** Many State Agencies use a State of Kansas Business Procurement Card (currently Visa) in lieu of a state warrant to pay for certain purchases. No additional charges will be allowed for using the card. ***Bidders shall indicate on the Signature Sheet if they will accept the Business Procurement Card for payment.***
10. **Political Subdivisions:** Political subdivisions (City, County, School Districts, etc.) are permitted to utilize contracts administered by the Division of Purchases. ***Please state in the area provided on the Signature Sheet whether or not you will allow this usage.*** Conditions included in this contract shall be the same for political subdivisions. The State has no responsibility for payments owed by political subdivisions. The vendor must deal directly with the political subdivision.

**Section 3
TERMS AND CONDITIONS**

1. **Contract Documents:** This Request and any amendments and the response and any amendments of the Contractor shall be incorporated along with the DA-146a into the written contract which shall compose the complete understanding of the parties.

In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

- Form DA-146a;
- written modifications to the executed contract;
- written contract signed by the parties;
- this Request including any and all addenda; and
- Contractor's written proposal submitted in response to this Request as finalized.

2. **Contract:** The successful vendor will be required to enter into a written contract with the State. The vendor agrees to accept the provisions of form DA-146a (Contractual Provisions Attachment) which is incorporated into all contracts with the State and is attached to this Request.

3. **Contract Formation:** No contract shall be considered to have been entered into by the State until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the successful vendor.

4. **Notices:** All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either party to the other shall be **IN WRITING** and addressed as follows:

**Kansas Division of Purchases
900 SW Jackson St, Room 102N
Topeka, Kansas 66612-1286
RE: Bid Number 10904**

or to any other persons or addresses as may be designated by notice from one party to the other.

5. **Termination for Cause:** The Agency Head may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:

- the Contractor fails to make delivery of goods or services as specified in this contract; or
- the Contractor provides substandard quality and/or workmanship;
- the Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.

The Agency Head shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as State may authorize in writing), the Agency Head shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

6. **Termination for Convenience:** The Agency Head may terminate performance of work under this contract in whole or in part whenever, for any reason, the Agency Head shall determine that the termination is in the best interest of the State of Kansas. In the event that the Agency Head elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least 30 days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.

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7. **Debarment of State Contractors:** Any vendor who defaults on delivery or does not perform in a satisfactory manner as defined in this Request may be barred for a period up to three (3) years, pursuant to KSA 75-37,103, or have their work evaluated for pre-qualification purposes.

8. **Rights and Remedies:** If this contract is terminated, the State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials. The State shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to and/or goods were accepted by State subject to any offset by State for actual damages including loss of federal matching funds.

The rights and remedies of the State provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

9. **Force Majeure:** The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes, etc.

10. **Waiver:** Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by State shall not constitute a waiver.

11. **Independent Contractor:** Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

12. **Staff Qualifications:** The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the proposal specifications may result in termination of this contract and/or damages.

13. **Subcontractors:** The Contractor shall be the sole source of contact for the contract. The State will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.

The State of Kansas requires tax information regarding all subcontractors be disclosed on the Signature Sheet, indicating company name, contact information and tax number. Additional pages may be added, as required. (See Tax Clearances, Page 3)

14. **Proof of Insurance:** Upon request, the vendor shall present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to the Division of Purchases.

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15. **Conflict of Interest:** The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of the State and who are providing services involving this contract or services similar in nature to the scope of this contract to the State. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two years after his/her termination of employment with the State.
16. **Confidentiality:** The Contractor may have access to private or confidential data maintained by State to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute either during the period of the contract or thereafter. Contractor must agree to return any or all data furnished by the State promptly at the request of State in whatever form it is maintained by Contractor. On the termination or expiration of this contract, Contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by State, will destroy or render it unreadable.
17. **Nondiscrimination and Workplace Safety:** The Contractor agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws, rules and regulations may result in termination of this contract.
18. **Environmental Protection:** The Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rule or regulations may result in termination of this contract.
19. **Hold Harmless:** The Contractor shall indemnify the State against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The State shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to state property. The Contractor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property.
20. **Care of State Property:** The Contractor shall be responsible for the proper care and custody of any state-owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract, and Contractor will reimburse State for such property's loss or damage caused by Contractor, normal wear and tear excepted.
21. **Prohibition of Gratuities:** Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any State employee at any time.
22. **Retention of Records:** Unless the State specifies in writing a different period of time, the Contractor agrees to preserve and make available all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

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Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of state and/or federal agencies shall have access to and the right to examine records during the contract period and during the five (5) year post-contract period. Delivery of and access to the records shall be at no cost to the state.

23. **Antitrust:** If the Contractor elects not to proceed, the Contractor assigns to the State all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by the State pursuant to this contract.
24. **Modification:** This contract shall be modified only by the written agreement of the parties with the approval of the PNC. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.
25. **Assignment:** The Contractor shall not assign, convey, encumber or otherwise transfer its rights or duties under this contract without the prior written consent of the State.

This contract may terminate in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the State.
26. **Third Party Beneficiaries:** This contract shall not be construed as providing an enforceable right to any third party.
27. **Captions:** The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.
28. **Severability:** If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.
29. **Governing Law:** This contract shall be governed by the laws of the State of Kansas and shall be deemed executed at Topeka, Shawnee County, Kansas, unless otherwise specified and agreed upon by the State of Kansas.
30. **Jurisdiction:** The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Shawnee County, unless otherwise specified and agreed upon by the State of Kansas.
31. **Mandatory Provisions:** The provisions found in Contractual Provisions Attachment (DA-146a) which is attached are incorporated by reference and made a part of this contract.
32. **Integration:** This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This contract between the parties shall be independent of and have no effect on any other contracts of either party.

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33. **Criminal or Civil Offense:** Any conviction for a criminal or civil offense of an individual or entity that controls a company or organization or will perform work under this contract that indicates a lack of business integrity or business honesty must be disclosed. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.

34. **Immigration and Reform Control Act of 1986 (IRCA):** All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA) as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the contractor as well as any subcontractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) form.

With the submission of this bid, the contractor hereby certifies without exception that such contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State's option, may subject the contract to termination and any applicable damages.

Unless provided otherwise herein, all contractors are expected to be able to produce to State any documentation or other such evidence to verify Contractor's compliance with any provision, duty, certification or like under the contract.

35. **Injunctions:** Should Kansas be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the State, vendor shall not be entitled to make or assert claim for damage by reason of said delay.

36. **Statutes:** Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.

37. **Materials and Workmanship:** The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this solicitation, within the time specified, in accordance with the provisions as specified.

The contractor shall be responsible for all work put in under these specifications and shall make good, repair and/or replace, at the contractor's own expense, as may be necessary, any defective work, material, etc., if in the opinion of agency and/or Division of Purchases said issue is due to imperfection in material, design, workmanship or contractor fault.

38. **Industry Standards:** If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

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39. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. The successful vendor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Request. **The State of Kansas is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the vendor's price quotation.**

The State makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

40. **Accounts Receivable Set-Off Program:** During the course of this contract if the vendor is found to owe a debt to the State of Kansas, agency payments to the vendor may be intercepted / setoff by the State of Kansas. Notice of the setoff action will be provided to the vendor. The vendor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes vendors against debts owed by the vendors to the State of Kansas. Payments setoff in this manner constitute lawful payment for services or goods received. The vendor benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.

41. **Definitions:** A glossary of common procurement terms is available at <http://da.ks.gov/purch>, under "Purchasing Forms".

42. **Other Information:** Contractor shall timely:

- a. Provide all relevant case information and documents to the Attorney General's Office;
- b. Notice of all case activity, including court dates and discovery deadlines;
- c. brief the Attorney General's Office of all case activity;
- d. Accurately track and record all time, fees and expenses.

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TERMS AND CONDITIONS

1. **Term of Contract:** The initial term of agreements which may result from this Request for Proposal shall be from the date of award through completion of the potential litigation.
2. **Indefinite Quantity Contract:** This will be an open-ended contract between a vendor and the State to furnish an undetermined quantity of a good or service in a given period of time. The quantities ordered will be those actually required during the contract period, and the Contractor will deliver only such quantities as may be ordered. No guarantee of volume is made.
3. **HIPAA Confidentiality:** Per the Health Insurance Portability and Accountability Act (1996) (HIPAA), the agency is a covered entity under the act and therefore Contractor is not permitted to use or disclose health information in ways that the agency could not. This protection continues as long as the data is in the hands of the Contractor.

The Contractor shall establish and maintain procedures and controls acceptable to the agency to protect the privacy of members' information. Unless the Contractor has the member's written consent, the Contractor shall not use any personally identifiable information obtained for any reason other than that mandated by this agreement

4. **Off-Shore Sourcing:** Bidders shall disclose in their bid response the location where the contracted services will be performed and whether or not any of the work necessary to provide the contracted services will be performed at a site outside the United States.

If, during the term of the contract, the Contractor or subcontractor moves work previously performed in the United States to a location outside of the United States, the Contractor shall immediately notify the Division of Purchases and the respective agency in writing, indicating the new location and the percentage of work relocated.

5. **Ownership:** All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by the using agency. The Contractor may not release any materials without the written approval of the using agency.
6. **Data:** Any and all data required to be provided at any time during the bid process or contract term shall be made available in a format as requested and/or approved by the State.
7. **Transition Assistance:** In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to State to allow for a functional transition to another vendor.

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Section 4

SPECIFICATIONS

Attorney General Steve Six seeks competitive proposals from attorneys and law firms interested in assisting in the representation of the State of Kansas and Kansas Department of Health and Environment (KDHE) in matters related to the Kansas Underground Petroleum Storage Tank Release Trust Fund and related funds ("the Fund") created pursuant to K.S.A. 65-34,114. The Fund receives money from mandatory fees and is available to reimburse eligible underground storage tank operators and owners for certain petroleum release clean up costs.

The Fund is a payer of last resort, and is not responsible for all costs. Specifically, the Fund will not reimburse costs "which are paid by or for which the owner or operator is entitled to reimbursement from insurance coverage, warranty coverage or any other source." K.S.A. 65-34,119(b)(13). In order to receive reimbursement, owners and operators are required to certify that they do not have applicable insurance coverage, warranty coverage or any other means of reimbursement.

The Attorney General's office is seeking proposals from law firms interested in and qualified to investigate whether one or more applicants to the Fund have received reimbursement from the Fund and have received or were entitled to receive reimbursement from private insurance policies for the same claims. Such an investigation would include reviewing publicly available documents and may also use the investigative tools available to the State.

The successful proposal will highlight the following:

- A. A description of the firm's experience with petroleum underground storage tank issues, insurance litigation, or other relevant complex litigation experience.
- B. A description of the investigation strategy and methods that the firm proposes to undertake in order to determine whether the Fund is owed money by one or more applicants to the Fund; and
- C. A proposed time frame for conducting and completing the investigation, timeline and completion of any such litigation.

II. Scope of Services

The Attorney General may appoint one or more private firms as outside counsel to work with designated staff of the Attorney General's Office and KDHE. The identity and responsibilities of the designated staff shall be determined solely by the Attorney General in consultation with the KDHE Secretary.

Members of the firm(s) employed will act under the control and direction of the Attorney General. Services shall include, but not be limited to, appropriate factual and legal investigation of claims; negotiating settlement of claims prior to filing of suit as deemed appropriate by the Attorney General, filing litigation in court(s) of appropriate jurisdiction; filing and responding to motions and other pleadings; conducting appropriate discovery; engaging appropriate expert, consulting, and litigation support services; negotiating with defendants; appearing on behalf of the State in hearings and at trial(s); prosecuting or defending appeals; and taking all appropriate steps to collect or enforce any recovery, injunctive relief, or settlement that may be obtained and/or negotiated.

In addition to all other appropriate and available relief, Contractor shall pursue attorneys' fees and expenses and costs as part of any appropriate claim and/ or settlement in the Litigation. The Attorney General or his designee will be actively involved in all stages of any litigation and will have final authority over all aspects of the litigation, including, but not limited to, determining whether, when and where to file suit and against which parties; which claims to assert and whether and on what basis to settle or proceed to trial. Firms seeking this appointment should be prepared to go to trial as deemed appropriate by the Attorney General.

In addition, the Contractor will be required to meet, coordinate with and submit interim reports to the Attorney General and his designee on a regular schedule and as requested regarding the nature, progress, costs, and extent of the legal services rendered or remaining to be completed. At a minimum,

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interim status reports must include current status, any significant events that have occurred since the previous status report, and a prospective analysis of any significant future events. **See also: Statutory Reporting Requirements.**

At no time shall Contractor settle or compromise claims in this action without the express written authorization of the Attorney General.

Settlement Procedure: The Attorney General's Office and KDHE must properly conduct a complete review of any settlement proposal. Contractor agrees to timely comply with the following before any settlement hearing:

1. a memorandum from outside counsel:
 - a. analyzing the specific case for settlement including substantive pros and cons of settling;
 - b. the original proposed settlement range;
 - c. an explanation for any settlement offer outside of the settlement range;
 - d. the reason why it is in the best interest of the State of Kansas to settle; and
 - e. include any relevant supporting documentation substantiating information in the memorandum.
2. All settlement documents, including the settlement memorandum must be submitted to this Office at least five (5) business days for final approval prior to any scheduled settlement hearing, otherwise the settlement hearing will be cancelled and re-scheduled.
3. Any settlement/Release must not release any other claims not otherwise set forth in the relevant complaint.
4. Develop with KDHE and the Attorney General's Office and use only a settlement agreement developed for Kansas prior to any settlement discussions with individual parties.
5. Settlements are not final until they are approved by KDHE and the Attorney General's Office.
6. Comply with K.S.A. 75-37,135(e). A complete case billing and fee statements from all counsel must be completed prior to any settlement hearing.
7. This Office should also timely receive a copy of any settlement hearing transcript.

Required RFP Response Information

Each response to this request for proposal must include the following information:

A. Qualifications

1. Have you and / or your firm represented Kansas or other states in matters related to petroleum storage tank (PST) release trust funds/litigation in the past? Do you currently do so?
2. If yes, please describe the scope of this representation, including the clients represented, type of matters handled, outcome(s), and total number of matters currently assigned to you or your firm.
3. Describe your firm's experience in complex litigation, e.g., multidistrict, class action and/or mass tort litigation involving technical or scientific issues.
4. Is your firm currently coordinating state court discovery with discovery in any federal multidistrict petroleum storage tank litigation or has your firm done so in the past? Describe your firm's knowledge of or experience with claims against major oil companies and other applicants to the Fund.
5. Describe your knowledge of or experience with state and federal law governing Kansas's PST Fund.
6. Other than representation in the matters described above, have you or your firm represented Kansas or other states in other matters in the past ten years? Do you currently?
7. If yes, please describe the scope of that representation, including the clients represented, types of matters handled, and outcome(s).
8. Representation under this RFP may require participation in federal multidistrict litigation outside the State of Kansas. Please state your willingness and ability to do so as may be required by the proposed representation.

B. Attorney/Firm Resources

1. Please provide a statement of your law firm's history.
2. How many attorneys and investigators are expected to work on matters assigned under this appointment?
3. Please provide the number of Petroleum Storage Tank-related matters your firm currently handles on an annual basis. Please provide the name of each attorney expected to work under this assignment.
4. For each attorney expected to work under this assignment, please provide the following information:

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- a. Current Resume
 - b. A statement that each attorney is a member in good standing of the Kansas bar and has not been disqualified to practice law in any other jurisdiction or forum. If the attorney is outside the state of Kansas, a statement that he/she is eligible for admission pro hac vice in state and/or federal court as may be required by the proposed representation.
 - c. A statement of each attorney's usual and customary hourly billable rate.
 - d. A statement of any malpractice claims against your law firm or any attorney in your firm within the last five years and the status or outcomes of each claim.
 - e. A statement affirming that no ethics complaints have been filed against your law firm or any attorney in your firm within the last ten years or the status or outcomes of any such complaints.
 - f. A detailed description of each attorney's relevant experience. This description should include:
 - i. Years of experience;
 - ii. Relevant trial experience;
 - iii. Percent of practice related to environmental remediation matters;
 - iv. Designate lead trial counsel and indicate the person's availability to undertake the proposed representation.
5. Please describe any other staff/resources and their relevant experience (see 4(f)(i-iv) above) you expect to utilize under this assignment (i.e. Paralegals, Legal Assistants, IT professionals, etc.)
 6. Describe your firm's capacity to engage in protracted litigation, including technological and financial resources.
 7. For which clients were the services performed, and who can be contacted at each client for references?
 8. How many cases has each attorney who will be assigned to this matter tried to verdict as the lead lawyer in the past five years?
 9. What types of matters?
 10. With what results?
 11. When?
 12. Did the attorney exceed, meet or under budget in each case?
 13. Describe how the firm goes about assigning lawyers to new matters.
 14. What has the law firm done in the last five years to become more cost-effective?
 15. What technology does the firm use and how does the firm use the technology to achieve efficiencies?
 16. What has been the turnover rate of associates and partners at each of your offices in the last three years? How do you explain these numbers?
 17. Describe the kinds of lawyers you like to recruit to the firm. What qualities do you look for in a candidate - both entry level and lateral?
 18. What has the firm done to promote internal diversity?
 19. What are the firm's pro bono policies?
 20. Give us an idea about the nature and extent of your training program (formal and informal) for associates.
 21. Does the firm have an hourly billing requirement?
 - a. If so, what is it?
 - b. How does the firm set salaries and billing rates?
 - c. What factors drive the firm to increase rates?
 22. On what basis are partners compensated?
 23. On what basis are the associates compensated?

C. Conflicts

Please provide a detailed explanation, if necessary, to the following:

Are you, your firm, or any of your firm's attorneys (whether expected to perform work under this appointment or not) unable to represent any state client(s) due to any conflict inasmuch as potential defendants include major oil companies and other applicants to the Fund?

D. Required Fee Structure Information

Legal services of the private firms will be paid through a **contingent fee arrangement**. If the State of Kansas is unsuccessful in recovering damages, the private firm(s) will not receive any compensation or payment for expenses.

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Please propose a contingent fee arrangement and the manner in which the firm would advance the costs for compensation and expenses related to litigation.

Contingency Fee contracts are subject to the Kansas Professional Services Sunshine Act (K.S.A. 75-37,130 *et seq.*). Contractor will be expected to comply, and assist (in a timely fashion) any State of Kansas agency with responsibilities under the Act.

Please state whether your firm has access free of charge or at substantial savings to PST-related discovery materials in other litigation and describe how this cost savings is reflected in your fee proposal or how your fee would be modified when appropriate to reflect such cost savings.

Please affirmatively state that you will not assign work to attorneys outside your law firm without express written consent of the Attorney General and further that you will not split fees for work assigned to you by the Attorney General's Office.

During and at the conclusion of any appointment of or representation by outside counsel on a contingent fee basis, outside counsel shall provide statements which report the hours worked on the case, expenses incurred, the aggregate fee amount and a calculation of hourly rate based on hours worked divided into fee recovered less expenses. **See also: Statutory Reporting Requirements.**

E. Other Information

Please provide any other information that you would like the Attorney General's Office to consider with respect to this Request for Proposal.

Statutory Reporting Requirements

The Kansas Legislature has mandated a detailed report at least once in each calendar quarter of each legal proceeding for which has been completed and for which a contingency fee arrangement was entered. To accomplish this requirement, the Contractor shall agree to file a quarterly report with the Director of Purchases containing, at a minimum, the following information.

- Each day, accurately track and record all time, fees and expenses;
 - Hours worked on the case (if any);
 - Expenses incurred (if any);
 - Aggregate fee amount and a breakdown as to the hourly rate, based on hours worked divided into fee recovered, less expenses.

The Director of Purchases and / or agency representatives may choose to work with the contractor to modify report parameters format at any time during the contract.

Reports are due no later than 30 days after the end of each calendar quarter. Reports are to be filed with the Director of Purchases at the following address:

Director of Purchases
Kansas Division of Purchases
900 SW Jackson, Room 102N
Topeka, KS 66612-1286

Electronic files shall be e-mailed to the following e-mail address: reports@da.ks.gov, in Microsoft® Excel or Microsoft® Access Database format.

Quarterly Report Contact Information: Contact information must be provided for use should the State of Kansas need to contact the appropriate officials within your company to discuss the issue of quarterly reports. Please complete the required information on the "Response Check List" found within this RFP.

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COST SHEET

*Must be submitted separately from the Technical Proposal, unless otherwise specified.
(See Response Section, #1)*

Vendor Name: _____

Legal services of the private firms will be paid through a **contingent fee arrangement**. If the State of Kansas is unsuccessful in recovering damages, the private firm(s) will not receive any compensation or expenses.

Please propose a contingent fee arrangement and the manner in which the firm would advance the costs of any litigation. Cost structure shall remain firm for the entire contract period and subsequent renewals.

Contingency Fee contracts are subject to the Kansas Professional Services Sunshine Act (K.S.A. 75-37,130 et seq.). Contractor will be expected to comply, and assist (in a timely fashion) any State of Kansas agency with responsibilities under the Act.

DRAFT

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State of Kansas
Department of Administration
DA-146a (Rev. 1-01)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

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State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

Legislative Budget Committee
Thursday, October 14, 2010

Comments on Judicial Branch Budget Issues
Kim Fowler, Judicial Branch Assistant Fiscal Officer

Thank you for the opportunity to discuss the Judicial Branch budget. Traditionally, when given this opportunity, I would provide background material regarding the unique budget relationship with the district courts that results in nearly our entire State General Fund budget being dedicated to personnel costs. Therefore, a majority of our budgetary issues relate to staffing. I would also discuss the Judicial Branch "Maintenance Budget," the funding necessary for the same people to perform the same services as in the present fiscal year. In short, the maintenance budget does not address expanded Judicial Branch needs caused by increased caseloads, greater case complexity, and rising federal and state demands. Our budget submission for FY 2012 represents a change in philosophy.

The FY 2012 Judicial Branch budget submission again fails to address our expanded needs, and, in fact, includes several reductions from our past maintenance budget submissions. For example, our budget requires leaving approximately 75 nonjudicial positions or 4.7 percent of our authorized nonjudicial work force vacant. Funding for temporary employees is a fraction of what has been included in the past. Further reductions would mean that we could not meet the mandates of state and federal laws. Additional cuts would also put us in the same fiscal situation as in FY 2010, when we were forced to close Kansas courts for four days and send our employees home without pay.

Maintaining 75 vacancies is no small concession. With almost 1,600 nonjudicial employees, the Judicial Branch does experience turnover and typically budgets accordingly. We do not, however, typically have a fixed number of vacancies used for shrinkage. You heard from our district court personnel last year regarding the impact of the hiring freeze and being short staffed. Over a third of our courts have closed the doors to the public either from 8:00 a.m. to 9:00 a.m. or from 4:00 p.m. to 5:00 p.m. so they can keep up with processing and filing documents. However, we are requesting less than needed in order to focus on some initiatives that will make the Judicial Branch more efficient and productive in the future so we can better address the needs later. We seek your support of these initiatives which are detailed below.

Legislative Budget Committee
October 14, 2010
Attachment 5

Weighted Caseload Study

For many years, the Legislature has shown interest in Judiciary resources. How many Judges does Kansas need? If one county is understaffed, is another county overstaffed? Even though we collect numerous statistics, many of these questions are difficult to answer. Different types of cases require different amounts of time to complete and the related impact is not necessarily the same for judge's and clerk's offices. Statutes place requirements on the Judicial Branch which impact the Supreme Court's ability to efficiently utilize all of its resources. A weighted caseload study will provide the Court and the Legislature with data which should help answer many of the questions regarding judicial and nonjudicial staffing. The Supreme Court intends to use the information to look at possible improvements in the Kansas court system and for ways to make better use of taxpayer money. The courts cannot continue to function as they have the last two years. This study is crucial to creating a court structure that can fully administer justice given the economy. While enduring another year of a hiring freeze is highly undesirable, to do nothing and continue this cycle for a longer period is inconceivable.

Electronic Filing of Cases

The Judicial Branch is also pursuing electronic case filing. Electronic case filing, as its name suggests, allows lawsuits and related legal documents to be filed with the courts electronically. After initial start-up costs, such filing systems in other states and at the federal level have demonstrated efficiencies that save both the public and the judiciary considerable time and resources. Combining these efficiencies with the possible efficiencies resulting from the weighted caseload study, the Judicial Branch will be in a position to address staffing patterns which will most effectively utilize judicial resources.

These two initiatives are such a high priority that, maintaining the forced vacancies in FY 2012 that are required for FY 2011 became a reasonable way to acquire funding. Again, these positions are not being left unfilled because they are not needed under current conditions. Rather, it has become prudent and fiscally responsible to focus efforts, energy, and financial resources on issues and technology that will carry the Judicial Branch into the next decade and beyond.

There are two other issues in our budget that you should be aware of.

The Expansion of the Court of Appeals

Increasing the Court of Appeals to 14 members is included in the budget since it is directed by statute (K.S.A. 20-3002) as part of the expansion of that court from 10 to 14 members that began in 2003. The expansion has been delayed six times since the original legislation was passed. The 13th judge was added in January 2008.

Surcharge

Both the statutes regarding the surcharge and the order authorizing the surcharge are only in effect for this fiscal year. The Division of the Budget requested we continue to include it in our FY 2012 budget and we complied with that request. For FY 2012, \$9 million in surcharge revenue is included.

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TESTIMONY

STATE BOARD OF INDIGENTS' DEFENSE SERVICES BEFORE THE LEGISLATIVE SUBCOMMITTEE

Chairman Emler, Members of the Committee and Staff:

Thank you for the opportunity to brief you on the FY 2012 budget for the Board of Indigents' Defense Services.

The Board's budget can be divided into three sections:

I. Rent, legal research, court reporters, experts, interpreters can be grouped into one section.

II. Public Defenders

III. Assigned Counsel

Some Cost Saving Measures Already Taken

Measures the Board has taken to reduce costs in the first section include consolidating two offices into one office space. We had reduced staff in the administration office by 4 and brought in the 6 members of the Topeka DPDU. Additionally, we have eliminated all legal research in paper form and we only hire experts who agree to do indigent defense work at a reduced hourly rate.

In the second section, all public defender and support staff costs were reduced by the receipt of Grant funds totaling \$1.1 million over two years. These grants have not previously been available for indigents' defense. The funds provided for nine public defenders and four support staff for FY 2010 and FY 2011. Public defender and staff costs were also reduced by leaving vacant support positions unfilled and only filling defender positions when grant funds became available. Additionally, the Kansas Administrative Regulations regarding financial

Legislative Budget Committee
October 14, 2010
Attachment 6

eligibility have been changed so that eligibility in Kansas is now limited to those persons living at the federal poverty level. Finally, the Liberal public defender office was closed because of the inability to hire and retain experienced public defenders who could defend the disproportionately high severity felonies in that district. The office has been replaced by a firm on contract to handle indigent defense at low cost.

Regarding the assigned counsel budget section, the Board exercised its statutory authority to reduce assigned counsel costs when appropriations are insufficient, and reduced the hourly rate paid to assigned counsel from \$80/hour to \$62/hour effective January 18, 2010 through June 30, 2011. The Board will take further initiatives to extend that action through FY 2012.

These cost cutting measures together with the successful grant applications have enabled the agency to accommodate the budget cuts to date. However, the agency is advised that the grant funds will not be replaced and that an additional \$1.1 M must be cut. These additional cuts will prevent the agency from meeting its statutory mission of providing the Sixth Amendment right to counsel and defense services in a cost effective manner. These budget cuts will be more costly.

Cost Issues by Budget Section

Returning to the first section, there is an increase in cost for court reporters which cannot be avoided. Statute and Supreme Court rule requires us to buy the original plus one copy of court transcripts and the price per page increased from \$3.25 in FY 2010 to \$3.50 in FY 2012. This increase alone will cost BIDS an additional \$400,000. Another large cost increase is expected to pay for interpreters and experts. Both are necessary defense services as determined by the U.S. Supreme Court. The increase in cost for these services is expected to be an additional, \$50,000.

The ARRA and JAG grants have paid the salaries for nine public defenders and four support staff. These positions represent 9% of the remaining public defenders. A total 11% of public defender positions would be vacant if these funds are not replaced and a total of 15% support

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positions would be vacant. We have asked in our budget submission that funds be made available to fill the public defender positions only. That cost is \$558,000.

Replacement of the grant funds paying public defender salaries is necessary for two reasons. First, each public defender cannot take on added cases. The average public defender caseload is already well above the national standards established by the American Bar Association. The ABA sets 150 felony cases as the maximum that can be defended per year before running the risk of providing "ineffective assistance of counsel" which would violate the Constitution. The average public defender caseload for FY 2010 was 166.39 completed cases per defender – well above the national standard.

Second, the caseload that would have been defended by public defenders will necessarily be defended by assigned counsel at an increased cost of over \$200 per case – even at the reduced hourly rate paid to assigned counsel from \$80 to \$62 per hour.

These nine public defenders are completing 166 cases each for a total of 1,494 cases. The cost of replacing the grant funds is \$558,000. However, the cost of assigned counsel is \$838 per case. To complete work on 1,494 cases, assigned counsel would cost \$1,251,972. Failing to replace the grant funds will cost \$693,972.00 rather than save costs.

It is similarly vital to restore the funds proposed for the new budget cuts. As has been demonstrated, cuts in public defender positions cost, rather than save funds. The hourly rate paid to assigned counsel cannot be further reduced from \$62 because that is probably the average hourly overhead for Kansas assigned counsel, and the Stephans case determined that paying assigned counsel less than their overhead cost, amounts to a taking of property without due process. Rather, if additional cuts must be suffered, the payment to assigned counsel must be delayed to the new fiscal year when funds become available. There are over 600 assigned counsel providing indigent defense services. Most of these attorneys perform this service for bread and butter and can ill afford any delays in payment.

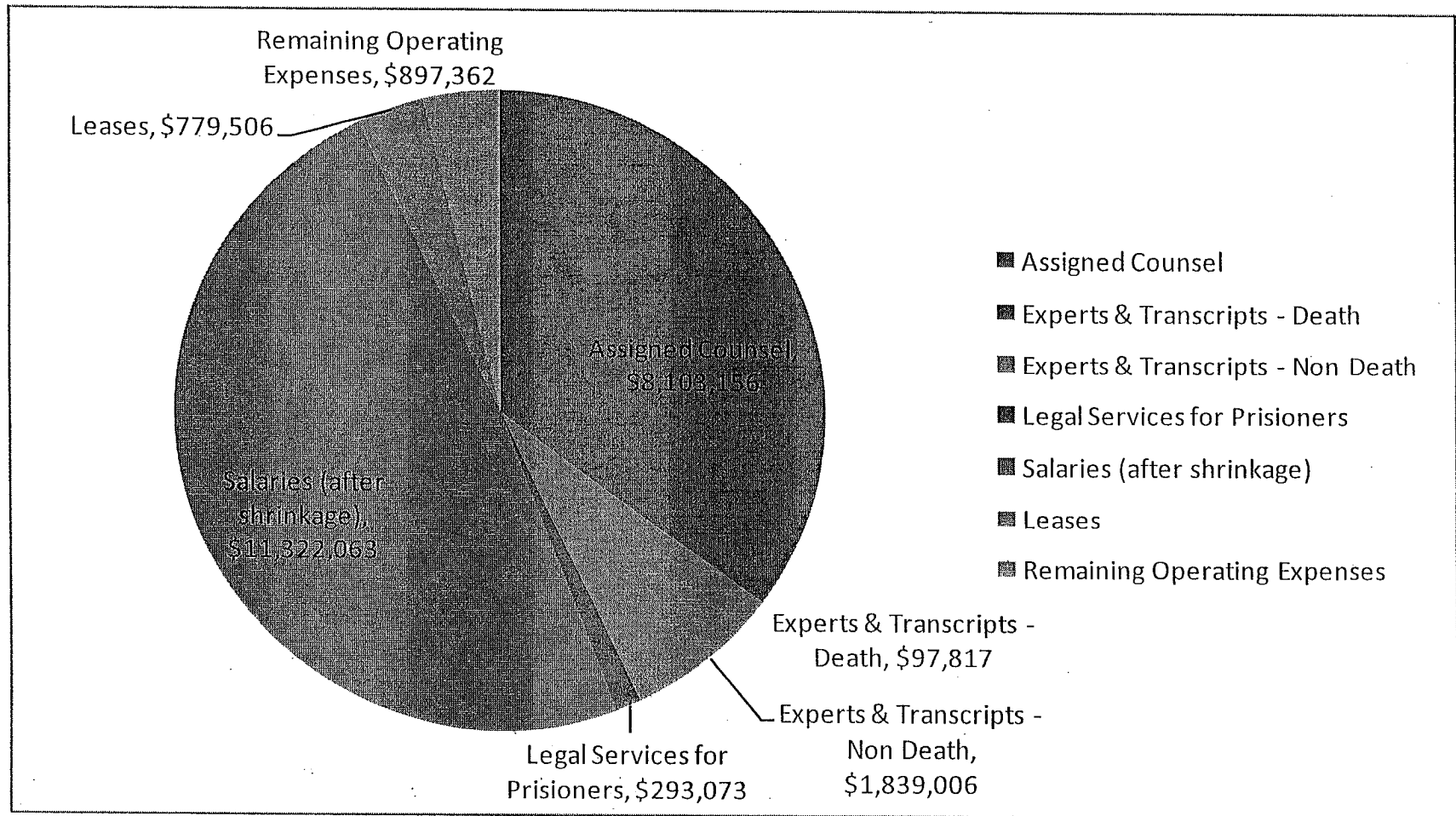
6-3

If the grant funds are restored to public defenders, but the additional budget cut is made, there would be a delay in payment to assigned counsel by about six weeks. However, if the grant funds are not restored, the payment to assigned counsel would be delayed for two months or more. Almost certainly, legal action for collection will be against the state. But there could be a more immediate crises, assigned counsel may refuse to accept newly appointed cases due to the lack of payment. That consequence would be dire – the court would have to dismiss the case against anyone who has not been provided counsel to defend them.

6-4

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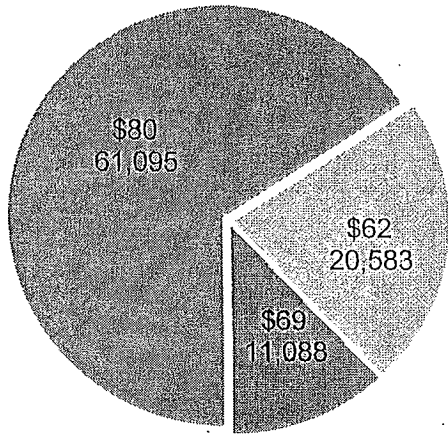
FY2011 Agency Need



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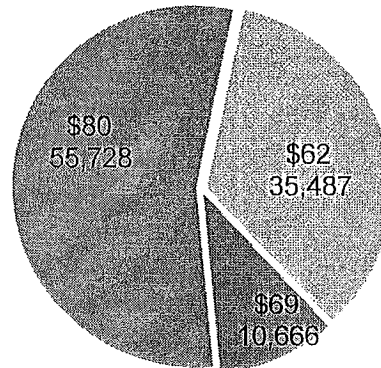
Claim Payment Rates

Hours for FY 2009



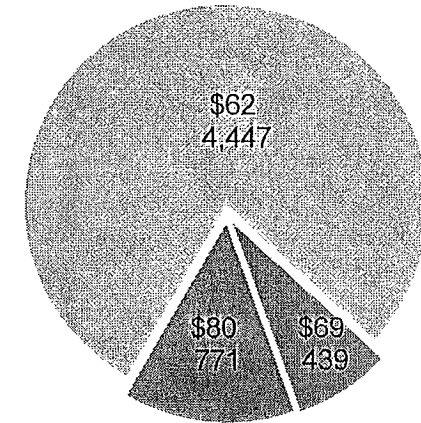
Hours at 62	Hrs Old Rate	Rate	Hours
	20,583.0	\$62	20,583
	11,088.0	\$69	11,088
	61,095.0	\$80	61,095

Hours for FY 2010



Hours at 62	Hrs Old Rate	Rate	Hours	
	7,431.7	13,130.7	\$62	35,487
	2,113.0	10,665.7	\$69	10,666
	12,811.3	55,727.6	\$80	55,728

Hours through July 31 FY 2011

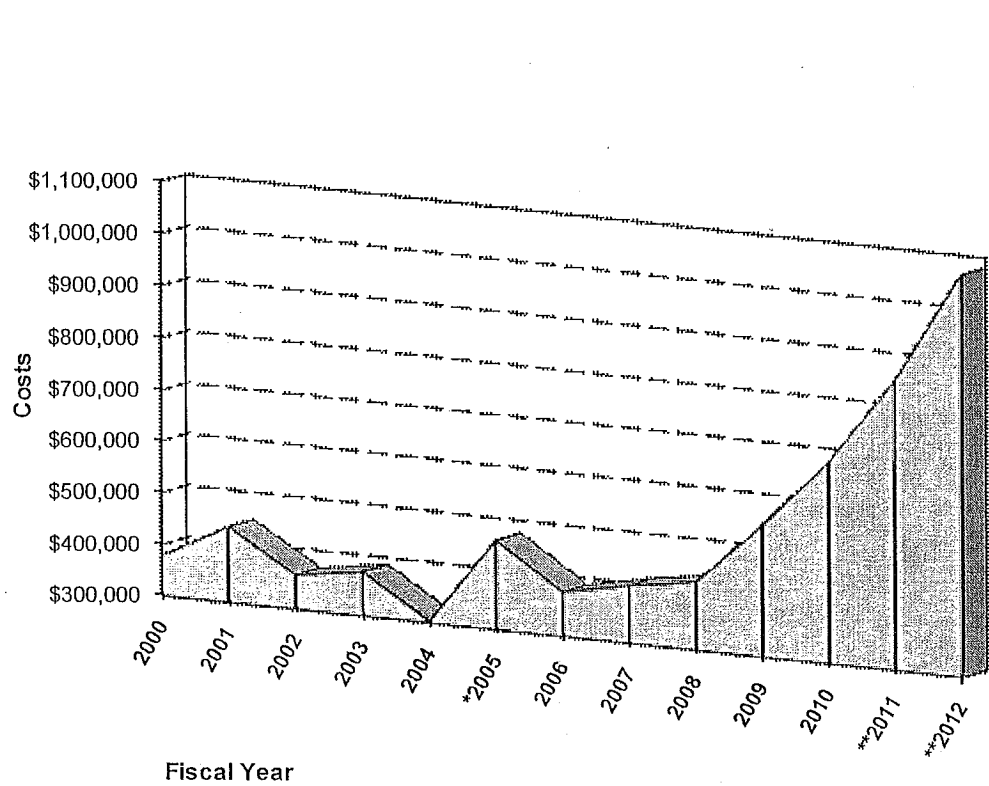


Hours at 62	Hrs Old Rate	Rate	Hours	
	771.3	-	\$62	4,447
	499.8	438.5	\$69	439
	3,175.5	770.7	\$80	771

As of September 30, 2010, 86% of all assigned counsel payments are made at the rate of \$62/hour. There are 13% paid at \$80/hour and 1% paid at \$69/hour.

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Transcript Costs

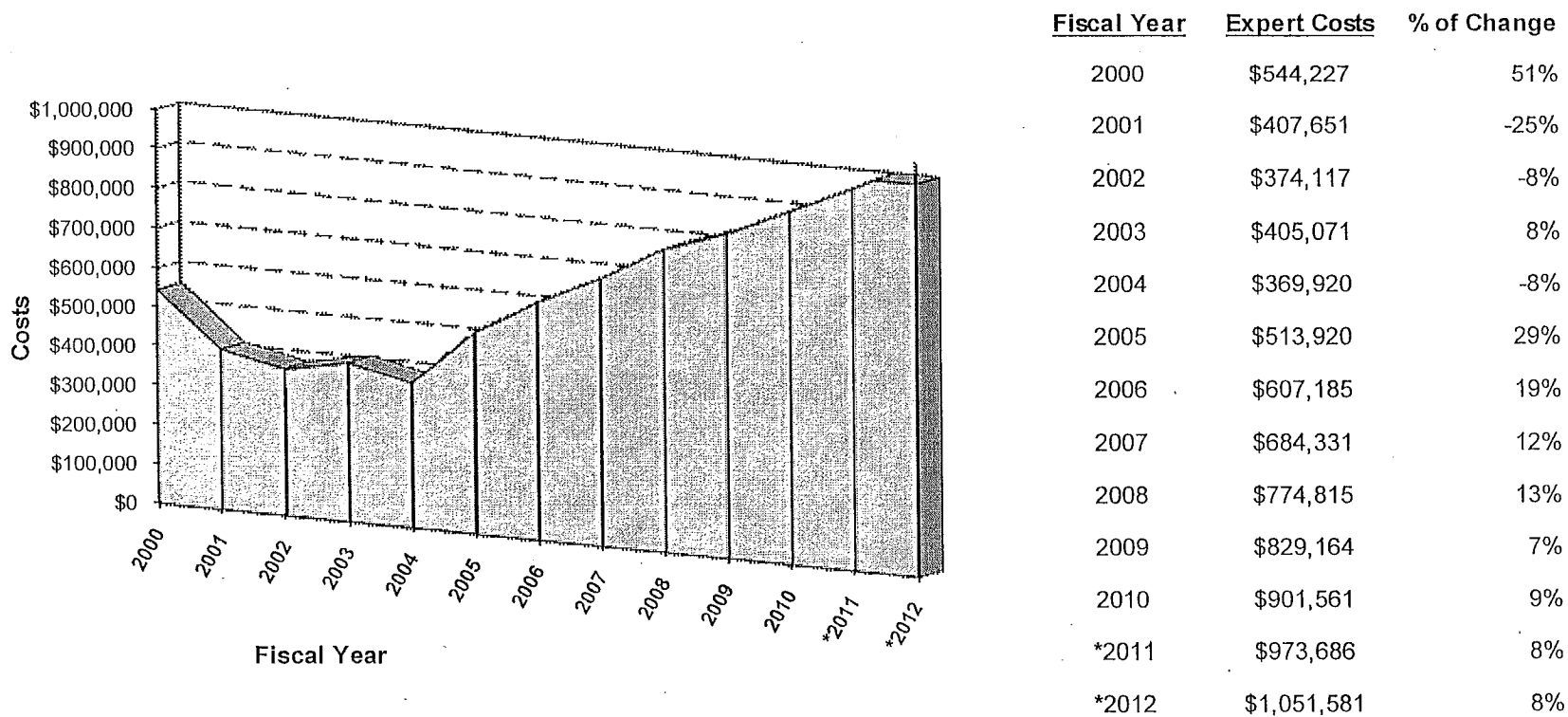


<u>Fiscal Year</u>	<u>Transcript Costs</u>
2000	\$378,561
2001	\$448,258 ***
2002	\$366,423
2003	\$386,002
2004	\$303,556
*2005	\$475,237
2006	\$386,595
2007	\$412,806
2008	\$433,209 ***
2009	\$557,598
2010	\$692,256 ***
2011	\$865,320 *
2012	\$1,081,650 *

- * This increase is due to the number of days per trial increasing
- ** Estimated Transcript Costs
- *** Reflects fee increase ordered by the Kansas Supreme Court

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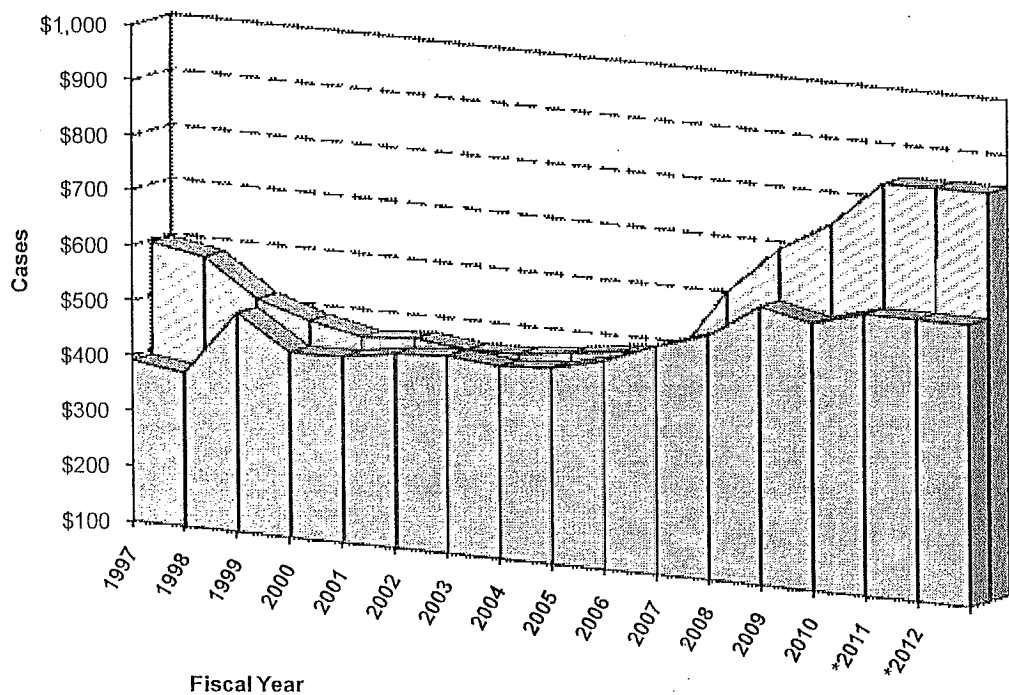
Expert Costs Number of Expert Payment Transactions



*Estimated Expert Costs

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Public Defender and Assigned Counsel Cost Per Case



<u>Fiscal Year</u>	<u>Public Defender</u>	<u>Assigned Counsel Payment Trans</u>	<u>Assigned Counsel Cases</u>
1996	\$391	\$595	
1997	\$378	\$579	
1998	\$498	\$513	
1999	\$435	\$483	
2000	\$437	\$463	
2001	\$452	\$470	
2002	\$458	\$459	
2003	\$449	\$461	
2004	\$456	\$473	
2005	\$478	\$486	\$519
2006	\$515	\$486	\$525
2007	\$544	\$615	\$713
2008	\$607	\$701	\$796
2009	\$587	\$755	\$831
2010	\$613	\$838	\$843
*2011	\$613	\$840	\$845
*2012	\$613	\$840	\$845

The administrative costs are included in both public defender and assigned counsel cost per case.
 * Estimated

*Coordinating health & health care
for a thriving Kansas*



Legislative Budget Committee
Medicaid Special Education Cost Settlement Impact
October 14, 2010

Scott Brunner
Chief Financial Officer

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State Employee Health Plan:

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Fax: 785-368-7180

Legislative Budget Committee
October 14, 2010
Attachment 7

Net Gain Overall>>>>

6,380,665.88

School	School	Estimated Gain (Loss) from Cost Settlement with Personal Care revenue subtracted
WICHITA PUBLIC SCHOOL 259	Wichita Public Schools	2,835,366.34
OLATHE USD #233	Olathe	1,465,201.29
SHAWNEE MISSION PUBLIC	Shawnee Mission Public Schools	1,341,467.31
TURNER PUBLIC #202	Turner-Kansas City	220,903.24
KANSAS CITY KANSAS PUBLIC SCHOOLS USD #500	Kansas City	212,076.99
DERBY USD 260	Derby	162,623.54
DESOTO USD 232	DeSoto	159,468.41
TOPEKA PUBLIC USD 501	Topeka Public Schools	159,337.88
DODGE CITY PUBLIC SCHOOLS USD 443	Dodge City	116,767.31
EL DORADO USD #490	El Dorado	115,029.63
EMPORIA USD #253	Emporia	114,601.40
BONNER SPRINGS SCHOOL DISTRICT USD #204	Bonner Springs	108,556.23
BUHLER USD 313	Buhler	92,316.65
CHEYLIN USD 103	Cheylin	91,797.67
WHEATLAND USD 292	Wheatland	84,810.75
FORT LEAVENWORTH USD 207	Ft Leavenworth	84,775.92
TRIPLAINS USD 275	Triplains	84,121.04
GRINNELL USD 291	Grinnell Public Schools	83,674.20
GOLDEN PLAINS USD 316	Golden Plains	82,773.63
HOXIE COMMUNITY SCHOOLS USD 412	Hoxie Community Schools	82,578.15
MANHATTAN U S D #383	Manhattan	82,412.22
QUINTER USD 293	Quinter Public Schools	82,039.17
LEAVENWORTH USD # 453	Leavenworth	80,398.66
WALLACE COUNTY SCHOOLS USD 241	Wallace County Schools	80,173.98
RAWLINS COUNTY USD 105	Rawlins County	80,054.61
OBERLIN USD 294	Oberlin	79,614.64
COLBY USD 315	Colby Public Schools	78,051.92
ST FRANCIS COMMUNITY SCHOOLS USD 297	St. Francis Comm Schools	77,657.49
WESKAN USD 242	Weskan	77,631.81
OAKLEY USD 274	Oakley	77,604.19
BREWSTER USD 314	Brewster	76,315.12
TREGO USD 208	Wakeeney	73,874.90
HEALY USD 468	Healy Public Schools	69,599.97
GRAHAM COUNTY USD 281	Hill City	65,834.12
LIBERAL PUBLIC SCHOOLS USD 480	Liberal	65,187.81
GOODLAND USD 352	Goodland	63,467.61
HAYS USD 489	Hays	56,853.80
GARDNER EDGERTON ANTIOCH 231	Gardner-Edgerton	56,842.42
USD 348 BALDWIN CITY	Baldwin City	54,781.15
USD #373 NEWTON	Newton	53,263.68
PIPER USD# 203	Piper-KC	50,912.01
OTTAWA PUBLIC SCHOOL	Ottawa	50,742.43
BASEHOR LINWOOD USD #458	Basehor-Linwood	50,691.05
BLUE VALLEY USD 229	Blue Valley 229	48,018.71
EUDORA USD 491	Eudora	47,104.28
TONGANOXIE USD #464	Tonganoxie	46,887.52
MADISON VIRGIL UNIFIED SCHOOL DISTRICT 386	Madison-Virgil	43,559.48
BELOIT USD #273	Beloit	42,177.74
USD 423 MOUNDRIDGE	Moundridge	41,739.98
USD 416 LOUISBURG	Louisburg	40,930.15

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School	School	Estimated Gain (Loss) from Cost Settlement with Personal Care revenue subtracted
LANSING USD # 469	Lansing	39,857.04
RENWICK USD 267	Renwick	37,706.23
USD 473 CHAPMAN	Chapman	37,064.10
CLAY CENTER USD 379	Clay County Unified School District	36,458.04
USD 400 SMOKY VALLEY	Lindsborg	36,199.54
GREAT BEND USD 428 BARTON CO	Great Bend	34,691.10
USD #251 NORTH LYON COUNTY SCHOOL DISTRICT	North Lyon County	33,581.41
WELLINGTON PUBLIC SCHOOLS	Wellington Schools	29,812.41
USD 421 LYNDON	Lyndon	28,159.89
SHAWNEE HEIGHTS USD 450	Shawnee Heights	27,921.63
USD #252 SOUTHERN LYON COUNTY	Southern Lyon County	24,941.16
USD 481 RURAL VISTA	Rural Vista	24,428.88
KANSAS SCHOOL FOR THE BLIND	Kansas State School for the Blind	23,024.36
KANSAS SCHOOL FOR THE DEAF	Kansas School For The Deaf	22,820.81
USD 289 WELLSVILLE	Wellsville	22,636.35
WAMEGO USD 320	Wamego	22,636.35
no fee reimbursements Not found	Education Service Center	22,546.78
USD 325 PHILLIPSBURG	Phillipsburg	21,740.42
USD 460 HESSTON	Hesston	21,467.25
USD 211 NORTON COMMUNITY SCHOOLS	Norton Community Schools	20,998.97
USD 223 BARNES	Barnes	20,890.01
RUSSELL COUNTY USD 407	Russell	20,215.23
UNIONTOWN USD 235	Uniontown	18,588.91
USD 441 SABETHA	Sabetha	17,814.35
USD 384 BLUE VALLEY	Blue Valley 384	17,557.08
ROCK CREEK USD 323	Rock Creek	17,232.75
UNIFIED SCHOOL DISTRICT NO 483 SOUTHWESTERN HEIGHT	Southwestern Heights (Kismet-Plains)	17,176.52
USD # 106 WESTERN PLAINS	Western Plains	17,022.82
USD 378 RILEY COUNTY	Riley County	16,851.15
USD 448 INMAN	Inman	16,814.00
USD 436 CANEY VALLEY	Caney Valley	16,767.95
no fee reimbursements Not found	Fowler	16,121.01
USD # 340 JEFFERSON WEST	Jefferson West	15,852.69
USD 237 SMITH CENTER	Smith Center	15,812.83
LYONS USD 405	Lyons	15,389.44
SOUTH HAVEN SCHOOL DISTRICT USD 509	South Haven	15,122.67
USD362 PRAIRIE VIEW	Prairie View	15,019.24
USD # 343 PERRY PUBLIC SCHOOLS	Perry Public Schools	14,957.43
USD # 377 ATCHISON COUNTY COMMUNITY SCHOOLS	Atchison County Community Schools	14,857.25
USD 306 SOUTHEAST OF SALINA	Southeast Of Saline	13,481.87
USD 102 CIMARRON ENSIGN	Cimarron-Ensign	12,319.99
UNIFIED DISTRICT NO 390	Hamilton	12,215.09
USD 431 HOISINGTON PUBLIC SCHOOLS	Hoisington	11,936.62
USD # 486	Elwood	11,701.07
INGALLS USD #477	Ingalls	11,659.92
NEMAHA VALLEY USD 442	Nemaha Valley Schools	11,551.94
LITTLE RIVER USD 444	Little River	11,456.86
USD 380 VERMILLION	Vermillion	11,384.96
USD 374 SUBLETTE SCHOOLS	Sublette	10,959.11
USD 487 HERINGTON	Herington	10,936.64
CALDWELL SCHOOL DISTRICT USD 360	Caldwell	10,653.25

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School	School	Estimated Gain (Loss) from Cost Settlement with Personal Care revenue subtracted
USD 392 OSBORNE COUNTY SCHOOLS	Osborne County	10,630.82
USD 307 ELL SALINE	Ell-Saline	10,544.96
USD 461 NEODESHA	Neodesha	10,429.40
USD 200 GREELEY COUNTY SCHOOLS	Greeley County	10,426.86
USD 494 SYRACUSE SCHOOLS	Syracuse	10,381.20
MEADE USD 226	Meade	9,876.98
MINNEOLA SCHOOLS USD# 219	Minneola	9,781.89
MORRIS COUNTY USD 417	Morris County	9,626.86
USD 209 MOSCOW SCHOOLS	Moscow Public Schools	9,607.27
USD 216 DEERFIELD SCHOOLS	Deerfield	9,565.96
DIGHTON USD #482	Dighton	9,530.30
USD #406 WATHENA	Wathena	9,522.25
FORT LARNED USD #495	Ft Larned	9,044.67
no fee reimbursements Not found	Ashland	9,031.27
USD # 364 MARYSVILLE	Marysville	8,905.90
USD 484 FREDONIA	Fredonia	8,375.23
PRETTY PRAIRIE USD 311	Pretty Prairie	8,328.13
OSWEGO USD 504	Oswego	8,030.41
USD 224 CLIFTON CLYDE	Clifton-Clyde	8,003.63
USD #429 TROY	Troy Public Schools	7,733.62
USD 227 JETMORE	Jetmore	7,686.82
USD #381	Spearville-Windthorst	7,302.39
USD 467 WICHITA COUNTY SCHOOLS	Leoti	7,277.28
ELLINWOOD PUBLIC SCHOOLS USD 355	Ellinwood	7,208.16
USD 303 NESS CITY	Ness City	7,144.10
USD 215 LAKIN SCHOOLS	Lakin	7,103.63
USD 346 JAYHAWK	Jayhawk	6,710.39
USD 344 PLEASANTON	Pleasanton	6,693.74
USD 334 SOUTHERN CLOUD	Southern Cloud	6,649.11
ELLIS USD 388	Ellis	6,463.30
USD 351 MACKSVILLE	Macksville	6,304.88
no fee reimbursements Not found	B & B	6,297.28
USD 440 HALSTEAD	Halstead	6,279.20
no fee reimbursements Not found	Axtell	6,174.88
USD 371 MONTEZUMA SCHOOLS	Montezuma	5,623.69
USD 507 SATANTA SCHOOLS	Satanta	5,506.70
no fee reimbursements Not found	Lewis	5,383.04
USD 239 NORTH OTTAWA CO	North Ottawa County	5,336.09
USD 403 OTTIS BISON PUBLIC SCHOOLS	Otis-Bison	5,178.32
USD # 338 VALLEY FALLS	Valley Falls	5,030.74
USD #354 CLAFLIN	Clafin	5,016.63
USD 422 GREENSBURG	Greensburg	4,945.70
USD 246 NORTHEAST	Northeast	4,749.23
USD 269 PALCO	Palco	4,707.02
USD # 339 JEFFERSON COUNTY NORTH	Jefferson County North	4,648.59
USD #299 SYLVAN GROVE	Sylvan Grove	4,635.61
GOESSEL USD 411	Goessel	4,582.78
USD 476 COPELAND SCHOOLS	Copeland	4,487.65
STERLING USD 376	Sterling	4,307.85
USD 328 LORRAINE	Lorraine	4,091.01
EASTON USD #449	Easton	3,922.68

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School	School	Estimated Gain (Loss) from Cost Settlement with Personal Care revenue subtracted
no fee reimbursements Not found	Mullinville	3,844.82
EUREKA USD 389	Eureka	3,805.51
USD 454 BURLINGAME PUBLIC SCHOOLS	Burlingame Public School	3,794.14
NORTHERN VALLEY USD # 212	Northern Valley	3,664.71
USD #111 DONIPHAN WEST	Doniphan West Schools	3,565.64
USD 332 CUNNINGHAM	Cunningham	3,486.97
UNIFIED SCHOOL DISTRICT 459	Bucklin	3,470.28
DOUGLASS PUBLIC SCHOOLS USD 396	Douglass Public Schools	3,381.75
USD # 342 MCLOUTH	McLouth	3,257.78
USD 496 PAWNEE HEIGHTS	Pawnee Heights	3,123.82
HAVILAND USD 474	Haviland Public Schools	3,000.30
USD 398 PEABODY BURNS	Peabody-Burns	2,995.92
USD 110 THUNDER RIDGE SCHOOLS	Thunder Ridge	2,597.65
USD 401 CHASE RAYMOND	Chase-Raymond	2,588.56
USD 419 CANTON GALVA	Canton Galva	2,522.79
IOLA USD 257	Iola	2,431.28
PARADISE UNIFIED SCHOOL DISTRICT #399	Paradise	2,326.63
PIKE VALLEY USD 426	Pike Valley	2,261.22
MARMATON VALLEY USD #256	Marmaton Valley	2,204.61
USD #498 VALLEY HEIGHTS	Valley Heights	2,115.79
no fee reimbursements Not found	West Solomon Valley Schools	2,011.97
USD 446 INDEPENDENCE	Independence	1,694.05
USD 463 UDALL	Udall	1,653.31
USD 326 LOGAN	Logan	1,397.57
USD #368 PAOLA	Paola	635.91
USD # 432 VICTORIA	Victoria	504.68
ATTICA PUBLIC SCHOOLS USD #511	Attica	500.77
USD 270 PLAINVILLE	Plainville	444.18
USD 445 COFFEYVILLE	Coffeyville	442.36
ARGONIA SCHOOL DISTRICT USD 359	Argonia Public Schools	296.56
USD #349 STAFFORD SCHOOL DISTRICT	Stafford	30.70
USD #438 SKYLINE PUBLIC SCHOOL	Skyline Schools	(78.38)
REPUBLIC COUNTY UNIFIED SCHOOL	Republic County	(185.44)
USD 322 ONAGA HAVENSVILLE WHEATON	Onaga-Havensville-Wheaton	(722.37)
USD # 341 OSKALOOSA PUBLIC SCHOOLS	Oskaloosa Public Schools	(1,049.02)
USD 282 WEST ELK	West Elk	(1,049.99)
FLINTHILLS USD 492	Flinthills	(1,147.18)
USD 462 CENTRAL	Central	(1,675.73)
ST JOHN HUDSON USD 350	St John-Hudson	(1,895.02)
USD 335 NORTH JACKSON	North Jackson	(1,995.53)
USD 245 LEROY GRIDLEY	LeRoy-Gridley	(2,391.18)
USD249 FRONTENAC PUBLIC SCHOOLS	Frontenac Public Schools	(2,800.51)
USD 466 SCOTT COUNTY SCHOOLS	Scott County	(3,219.23)
LA CROSSE USD 395	LaCrosse	(3,323.05)
USD 471 DEXTER	Dexter	(3,409.82)
USD 285 CEDAR VALE	Cedar Vale	(3,675.81)
USD 271 STOCKTON	Stockton	(3,972.12)
KAW VALLEY USD 321	Kaw Valley	(4,111.09)
USD 240 TWIN VALLEY	Twin Valley	(4,384.00)
UNIFIED SCHOOL DISTRICT 413	Chanute Public Schools	(5,223.65)
USD 447 CHERRYVALE	Cherryvale	(5,470.90)

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School	School	Estimated Gain (Loss) from Cost Settlement with Personal Care revenue subtracted
ALTOONA MIDWAY USD 387	Altoona-Midway	(5,478.38)
USD 452 STANTON COUNTY SCHOOLS	Stanton County	(5,691.10)
BURRTON SCHOOL DISTRICT USD 369	Burrton	(5,854.78)
USD 214 ULYSSES SCHOOLS	Ulysses	(6,513.03)
CHASE COUNTY USD 284	Chase County	(6,557.91)
USD 288 CENTRAL HEIGHTS	Central Heights	(6,910.55)
USD 217 ROLLA PUBLIC SCHOOLS	Rolla	(6,999.04)
USD 430 SOUTH BROWN COUNTY	South Brown County	(7,526.85)
SEDGWICK PUBLIC SCHOOLS USD 439	Sedgwick Public Schools	(8,625.30)
USD 228 HANSTON	Hanston	(9,088.92)
AUBURN WASHBURN USD 437	Auburn Washburn	(9,104.61)
USD 243 LEBOWAVERLY	Lebo-Waverly	(9,537.41)
USD 470 ARKANSAS CITY	Arkansas City	(10,855.85)
CENTRE UNIFIED SCHOOL DISTRICT #397	Centre	(11,106.74)
FAIRFIELD USD 310	Fairfield	(11,345.80)
USD 210 HUGOTON SCHOOLS	Hugoton Public Schools	(12,215.83)
GALENA USD 499	Galena	(13,490.32)
USD 218 ELKHART SCHOOLS	Elkhart	(13,543.80)
USD 363 HOLCOMB SCHOOLS	Holcomb	(14,290.05)
ERIE GALESBURG USD 101	Erie	(14,483.62)
USD 393 SOLOMON	Solomon	(14,981.36)
USD 465 WINFIELD	Winfield	(15,077.44)
USD 347 KINSLEY OFFERLE	Kinsley-Offerie	(15,802.44)
COMANCHE COUNTY USD 300	Comanche County	(16,733.21)
SILVER LAKE USD 372	Silver Lake	(16,758.43)
USD 327 ELLSWORTH	Ellsworth	(16,950.14)
HUMBOLDT USD 258	Humboldt	(17,424.39)
CREST USD 479	Crest	(17,715.87)
BARBER CO NORTH USD 254	Barber County North	(17,994.62)
USD 375 CIRCLE	Circle	(18,506.43)
USD 435 ABILENE	Abilene	(18,540.42)
GARDEN CITY USD #457	Garden City	(18,785.88)
WOODSON SCHOOL DISTRICT 366	Woodson	(18,825.87)
USD 255	South Barber	(20,860.70)
MULVANE USD 263	Mulvane	(21,333.01)
DURHAM HILLSBORO LEHIGH USD 410	Durham-Hillsboro-Lehigh	(21,467.69)
USD #404 RIVERTON	Riverton	(21,622.15)
CHENEY USD 268	Cheney	(22,413.35)
HOLTON USD 336 HOLTON SPECIAL	Holton	(22,452.94)
BLUESTEM USD 205	Bluestem	(22,833.58)
OXFORD UNIFIED SCHOOL DISTRICT USD 358	Oxford	(23,014.71)
USD 337 ROYAL VALLEY	Royal Valley	(25,761.98)
USD #298 LINCOLN	Lincoln	(25,842.64)
SPRING HILL USD #230	Spring Hill	(28,325.72)
USD 283 ELK VALLEY	Elk Valley	(28,508.11)
USD #329 MILL CREEK VALLEY	Mill Creek Valley	(29,736.93)
CHETOPA ST PAUL USD 505	Chetopa	(30,535.00)
SEAMAN USD #345	Seaman	(30,761.57)
USD 287 WEST FRANKLIN	West Franklin	(31,006.33)
BELLE PLAINE SCHOOL DISTRICT USD 357	Belle Plaine	(31,968.01)
ROSE HILL UNIFIED SCHOOL DISTRICT 394	Rose Hill Public Schools	(33,436.87)

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School	School	Estimated Gain (Loss) from Cost Settlement with Personal Care revenue subtracted
USD #272 WACONDA	Waconda	(34,338.67)
UNIFIED SCHOOL DISTRICT #333	Concordia	(35,432.30)
MARION UNIFIED SCHOOL DISTRICT 408	Marion-Florence	(36,286.11)
USD 286 CHAUTAUQUA CO COMMUNITY	Chautauqua County Community	(36,450.21)
USD 503 PARSONS	Parsons	(37,282.71)
COUNTY OF BUTLER UNIFIED SCHOOL DISTRICT 206	Remington-Whitewater	(37,881.06)
COFFEY CO USD 244	Burlington	(38,413.68)
USD # 456 MARAIS DES CYGNES VALLEY	Marais Des Cygnes Valley	(39,019.81)
USD 508 BAXTER SPRINGS	Baxter Springs	(39,044.52)
ANTHONY HARPER USD 361	Anthony-Harper	(41,953.65)
USD 247 CHEROKEE	Southeast	(44,087.08)
KINGMAN NORWICH USD 331	Kingman-Norwich	(45,769.92)
USD 108 WASHINGTON COUNTY SCHOOLS	Washington County Schools	(45,826.25)
PITTSBURG USD 250	Pittsburg	(46,822.34)
ATCHISON PUBLIC SCHOOL	Atchison Public Schools	(47,248.85)
USD 367 OSAWATOMIE	Osawatomie	(47,980.19)
USD #418 MCPHERSON	McPherson	(51,893.44)
USD 234 FORTSCOTT	Fort Scott	(52,556.11)
USD #107 ROCK HILLS	Rock Hills	(53,345.60)
USD 420 OSAGE CITY	Osage City	(54,486.23)
UNIFIED SCHOOL DISTRICT NO 356	Conway Springs	(55,307.97)
NICKERSON USD 309	Nickerson	(59,119.03)
GARNETT USD 365	Garnett	(59,248.35)
PRATT USD 382	Pratt	(59,824.39)
HAVEN PUBLIC SCHOOLS USD 312	Haven Public Schools	(60,499.78)
USD 506 LABETTE COUNTY	Labette County	(64,272.58)
USD 415 HIAWATHA	Hiawatha	(66,529.58)
USD #402	Augusta	(70,653.54)
HAYSVILLE USD # 261	Haysville	(74,116.38)
VALLEY CENTER SCHOOLS USD #262	Valley Center Public School	(79,858.66)
HUTCHINSON PUBLIC SCHOOLS #308	Hutchinson Public Schools	(83,860.55)
USD # 493 COLUMBUS	Columbus	(90,952.24)
CLEARWATER USD #264	Clearwater	(106,505.57)
UNIFIED SCHOOL DISTRICT NO 265	Goddard	(108,004.98)
MISSION VALLEY USD #330	Mission Valley	(114,142.83)
JUNCTION CITY USD 475	Junction City	(121,718.91)
USD 434 SANTA FE TRAIL	Santa Fe Trail	(126,930.01)
USD 248 GIRARD	Girard	(127,633.57)
ANDOVER USD 385	Andover	(171,274.91)
MAIZE USD #266	Maize	(179,265.12)
USD 305 SALINA	Salina	(209,859.14)
LAWRENCE USD 497	Lawrence	(308,002.74)
LAKEMARY CENTER INC	Lake Mary Center	(475,218.81)

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KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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October 6, 2010

To: Legislative Budget Committee

STATE GENERAL FUND RECEIPTS July through September, FY 2011

For the first four months of FY 2011, estimates of State General Fund (SGF) receipts are based upon the consensus revenue estimates of April 16, 2010, as subsequently adjusted for legislation enacted after that date.

Total receipts for July through September, the first three months or quarter of FY 2011, were \$17.1 million, or 1.3 percent, above the estimate. The component of total SGF receipts from taxes only was \$38.6 million, or 3.0 percent, above the estimate.

Tax sources that exceeded the estimate by more than \$1.0 million were: retail sales (\$21.4 million, or 4.7 percent); corporation income (\$5.3 million, or 9.6 percent); individual income (\$2.6 million, or 0.4 percent); cigarette (\$2.6 million, or 10.9 percent); corporation franchise (\$2.3 million, or 107.6 percent); motor carriers property (\$1.9 million); compensating use (\$1.9 million, or 2.9 percent); and severance (\$1.5 million, or 6.5 percent).

No tax source fell below the estimate by more than \$1.0 million.

September receipts reflect the first quarter's experience for FY 2011. The month's receipts include the first estimated payment of individual income taxes for the fiscal year. As such, September receipt balances are more of an indicator on the economic activity of the state than only one month's receipts. Individual income withholding through September was \$22.2 million, or 4.2 percent **more** than for the same period last fiscal year, while estimated individual income tax payments through September were **below** those for the same period in FY 2010 by \$5.4 million, or 5.9 percent. However, corporate estimated income tax receipts were **above** the estimate when compared with actual receipts of last fiscal year for the same period, and corporate estimated income tax receipts were \$6.0 million, or 11.3 percent, above those for FY 2010.

Interest and agency earnings were below the estimate by \$3.9 million and \$2.2 million, respectively. Net transfers were \$15.4 million less than anticipated. Two transfers – one for the School District Capital Improvement Fund and the other for the Regents Research Corporation – were both made sooner than had been anticipated.

Total SGF receipts through September of FY 2011 are \$134.2 million, or 11.4 percent, above FY 2010 for the same period. Tax receipts only for the same period were above tax receipts for FY 2010 by \$136.8 million, or 11.6 percent. Remember that the retail sales tax rate increase (5.3 percent to 6.3 percent) went into effect at the beginning of this fiscal year.

This report excludes the July 1 deposit to the SGF of \$700 million pursuant to issuance of a Certificate of Indebtedness. The certificate will be discharged prior to the end of the fiscal year.

STATE GENERAL FUND RECEIPTS
July - September, FY 2011
 (dollar amounts in thousands)

	Actual	FY 2011			Percent increase relative to:	
	FY 2010	Estimate*	Actual	Difference	FY 2010	Estimate
Property Tax:						
Motor Carriers	\$ 3,072	\$ 1,050	\$ 2,907	\$ 1,857	(5.4)%	176.8%
Income Taxes:						
Individual	\$ 585,985	\$ 625,000	\$ 627,628	\$ 2,628	7.1%	0.4%
Corporation	51,819	55,000	60,288	5,288	16.3	9.6
Financial Inst.	3,302	3,900	3,451	(449)	4.5	(11.5)
Total	\$ 641,107	\$ 683,900	\$ 691,367	\$ 7,467	7.8%	1.1%
Estate Tax	\$ 1,722	\$ 1,200	\$ 409	\$ (791)	(76.3)%	(65.9)%
Excise Taxes:						
Retail Sales	\$ 428,502	\$ 460,000	\$ 481,440	\$ 21,440	12.4%	4.7%
Comp. Use	44,748	64,000	65,854	1,854	47.2	2.9
Cigarette	26,820	23,500	26,062	2,562	(2.8)	10.9
Tobacco Prod.	1,649	1,660	1,726	66	4.7	4.0
Cereal Malt Bev.	582	600	525	(75)	(9.8)	(12.5)
Liquor Gallonage	4,624	4,800	4,812	12	4.1	0.3
Liquor Enforce.	13,626	14,500	14,152	(348)	3.9	(2.4)
Liquor Drink	2,120	2,200	2,225	25	5.0	1.1
Corp. Franchise	5,975	2,150	4,464	2,314	(25.3)	107.6
Severance	15,708	22,750	24,237	1,487	54.3	6.5
Gas	7,675	10,500	10,711	211	39.6	2.0
Oil	8,033	12,250	13,526	1,276	68.4	10.4
Total	\$ 544,353	\$ 596,160	\$ 625,498	\$ 29,338	14.9%	4.9%
Other Taxes:						
Insurance Prem.	\$ (7,237)	\$ (1,200)	\$ (543)	\$ 657	(92.5)%	(54.8)%
Miscellaneous	265	350	423	73	59.6	20.8
Total	\$ (6,972)	\$ (850)	\$ (120)	\$ 730	(98.3)%	(85.9)%
Total Taxes	\$ 1,183,281	\$ 1,281,460	\$ 1,320,061	\$ 38,601	11.6%	3.0%
Other Revenue:						
Interest	\$ 5,446	\$ 7,000	\$ 3,127	\$ (3,873)	(42.6)%	(55.3)%
Transfers (net)	(19,609)	(4,690)	(20,044)	(15,354)	2.2	-
Agency Earnings and Misc.	9,424	11,800	9,557	(2,243)	1.4	(19.0)
Total	\$ (4,740)	\$ 14,110	\$ (7,360)	\$ (21,470)	55.3%	(152.2)%
TOTAL RECEIPTS	\$ 1,178,541	\$ 1,295,570	\$ 1,312,701	\$ 17,131	11.4%	1.3%

* Consensus estimate as of April 16, 2010, as subsequently adjusted for legislation enacted after that date.
 Excludes \$700 million to the State General Fund due to an issuance of a Certificate of Indebtedness.

NOTES: Details may not add to totals due to rounding.

8-2

STATUS OF THE STATE GENERAL FUND
Actual FY 2010 and FY 2011 as Approved by the Legislature
and as Adjusted for Actual Receipts through September and New Federal Stimulus Funds

FY 2010-FY 2012
(In Millions)

	Actual FY 2010	Adjusted FY 2011	Estimated FY 2012
Beginning Balance	\$ 51.2	\$ (24.4)	\$ 46.4
Base Tax Receipts (April, 2010 Consensus Estimate for FY 2010 and FY 2011; 4.0% growth in FY 2012)	5,087.8	5,250.6	5,460.6 *
Additional Revenue from Senate Substitute for House Bill No. 2360	-	303.6	352.1
Subtotal - Base Tax Receipts Adjusted for Legislation	5,087.8	5,554.2	5,812.7
Other Revenue (transfers, agency earnings, interest)**	203.2	213.1	43.7
Less Actual Receipts Collections Through September, 2010	(98.6)	17.1	-
Total Available Revenue	\$ 5,243.6	\$ 5,760.0	\$ 5,902.8
Expenditures ***	5,871.4	6,203.8	6,210.3
Federal Economic Stimulus Legislation ****	(603.4)	(490.2)	-
Subtotal - Expenditures	5,268.0	5,713.6	6,210.3
Ending Balance	\$ (24.4)	\$ 46.4	\$ (307.5)
Ending Balance as a Percentage of Expenditures	-0.5%	0.8%	-5.0%
Adjusted Receipts in Excess of Unadjusted Expenditures	\$ (24.4)	\$ 46.4	\$ (307.5)

*) Assumes 4.0 percent growth in tax receipts in FY 2012, other than those related to the tax legislation as passed by the 2010 Session of the Legislature.

***) FY 2012 does not include a transfer of \$149.3 million from the State Highway Fund to the State General Fund.

****) FY 2012 expenditures include replacing federal economic stimulus funds; KPERS employer contribution increase; human services caseloads; special education increase and state employee undermarket salary adjustment.

*****) Federal economic stimulus funds include the August federal action regarding the extension of the Medicaid match rate and the Education Jobs Fund (\$87.2 million). The approved budget assumed \$131 million for the extension of the Medicaid match rate, while the federal legislation ultimately provided only \$85 million.

Kansas Public Employees Retirement System

Long-Term Funding Overview

Legislative Budget Committee

October 14, 2010

Retirement Funding Background

10-2

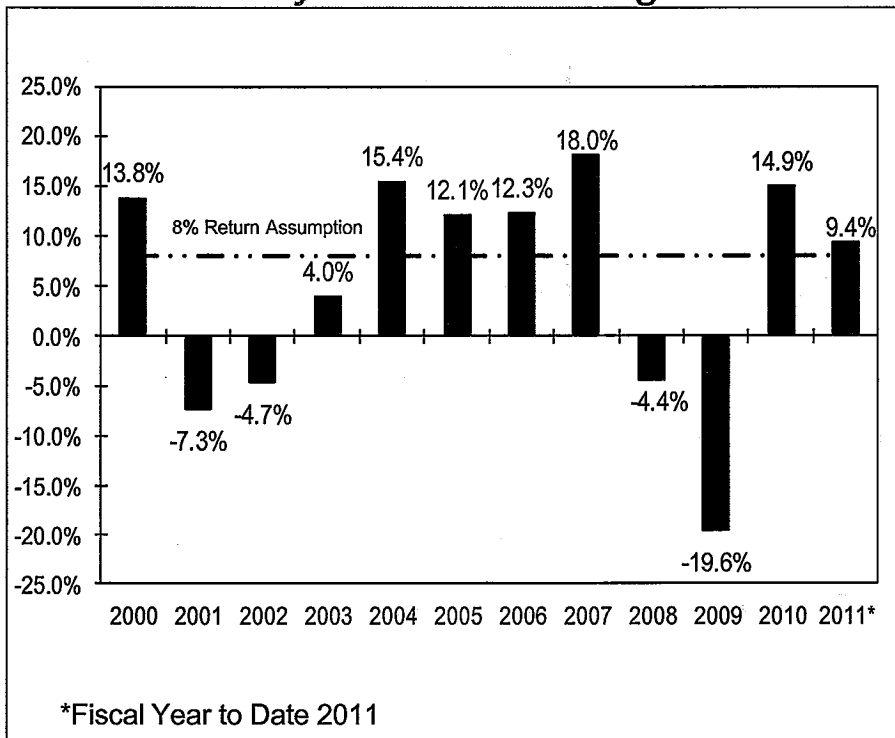
- In 2001 and 2002, actuarial projections indicated the KPERS retirement plan was not in actuarial balance.
- Following the 2001 actuarial valuation results, KPERS worked with the Legislature to develop a comprehensive, long-term funding plan to address the shortfall and bring the Plan into actuarial balance.
 - 2003 legislation raised statutory caps on employer contribution rate increases from 0.2% annually to 0.4% in FY 2006; 0.5% in FY 2007; and 0.6% in FY 2008 and subsequent years.
 - State issued \$500 million in pension obligation bonds in 2004.
 - 2007 legislation established a new plan design for employees hired on or after July 1, 2009, which increased retirement eligibility ages and employee contributions.
- These actions, along with strong investment returns in the 2004-2007 period, significantly improved the projected funding status of the System.

8-01
10-3

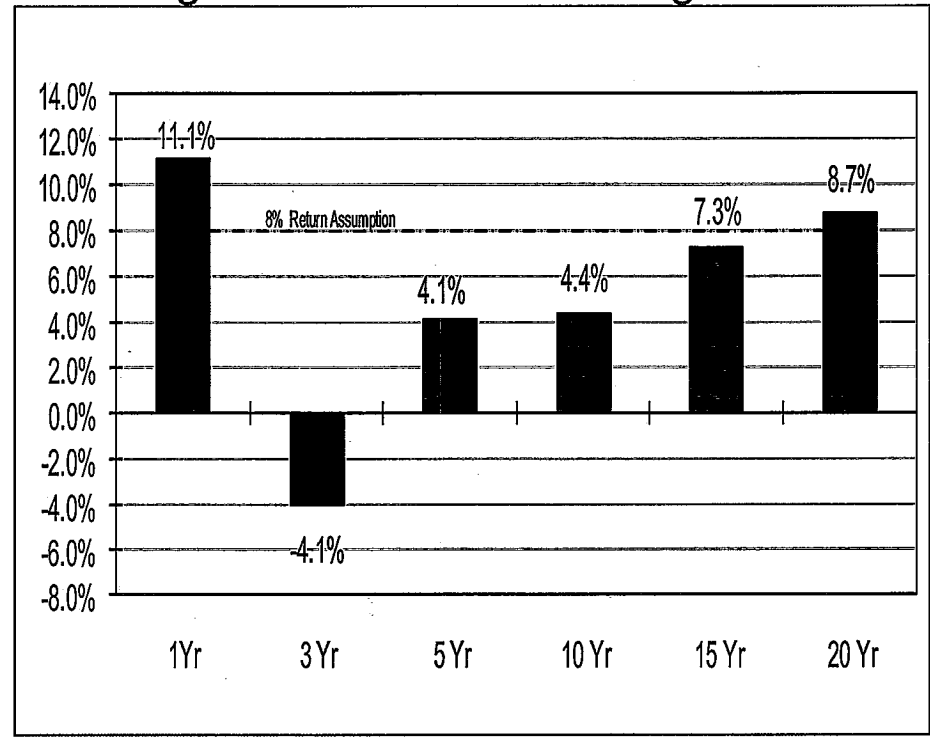
Investment Returns

- Due to unprecedented market declines, KPERS' investment returns for FY 2009 were -19.6%.
- KPERS' returns for FY 2010 reflect the market's rebound since March 2009.
 - KPERS' FY 2010 return = 14.9%
 - Preliminary first quarter, FY 2011 = 9.4%

Return History FY 2000 through 9/30/2010



Average Annual Return through 9/30/10

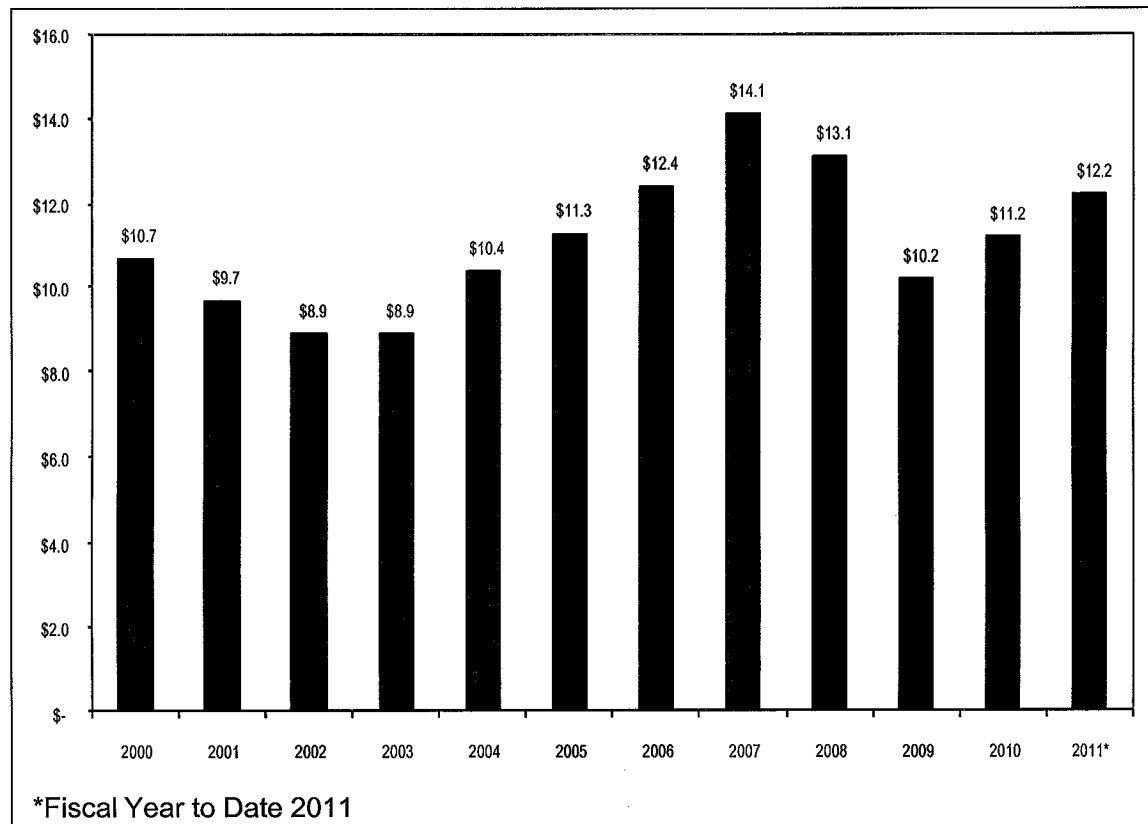


Asset History

10-H

KPERS manages the investment of \$12.2 billion in trust fund assets in the U.S. and international markets.

Fund History FY 2000 – 9/30/2010 (in billions)



Key 2009 Valuation Results

- The unprecedented investment market declines in 2008 had a substantial negative impact on the funding status of the System, reversing forward progress on long-term funding.
- The 12/31/08 actuarial valuation report reflected a 12% decline in the System's funded ratio to 59% and a \$2.7 billion increase in the unfunded actuarial liability (UAL) to \$8.3 billion.
- Due to strong investment performance during 2009, the 12/31/09 actuarial valuation report shows modest improvement in the System's funding status. The UAL decreased by \$602 million to \$7.7 billion, and the funded ratio rose to 64%.
- Despite this year's modest, short-term improvement in its funded status, the System's fundamental, long-term shortfall remains and will continue to grow.
 - KPERS will continue to absorb the remaining \$1.7 billion in deferred losses from 2008 over the next three years. For this reason –
 - The actuarial value of assets remains significantly greater than their market value. On a current market value basis, the funded ratio is 56%, and the UAL is \$9.4 billion.
 - Even assuming a yearly 8% investment return, the funded ratio of each group will continue to fall, and their UAL's will rise significantly.

10-5

Key 2009 Valuation Results (Continued)

9-81
10-6

- A key measurement of KPERS' long-term funding status is its funded ratio.
 - A funded ratio of 80% and rising is generally considered to indicate adequate funding for a public sector defined benefit plan.
 - A plan with a funded ratio of 60% or below can be considered at significant risk and in need of prompt remedial action to stabilize its funding.
- At a 56% funded ratio, the School Group's funded status is the weakest of the three KPERS groups.

Key Valuation Measurements

10-7

Group	Contribution Rates*		Actuarial Basis	
	Actuarial Rate	Statutory Rate	Unfunded Actuarial Liability (in Millions)	Funded Ratio
State	9.55%	9.37%	\$806.2	78%
School	14.69%	9.37%	\$4,998.8	56%
Local	9.44%	7.34%	\$1,315.5	64%
KP&F	16.54%	16.54%	\$530.3	76%
Judges	23.75%	23.75%	\$26.1	82%
System Totals			\$7,676.9	64%

*Effective for fiscal year beginning in 2012. (FY 2013 for State and School Groups, State KP&F employers, and Judges. CY 2012 for Local Group and Local KP&F employers.)

Projections of Long-Term Funded Status

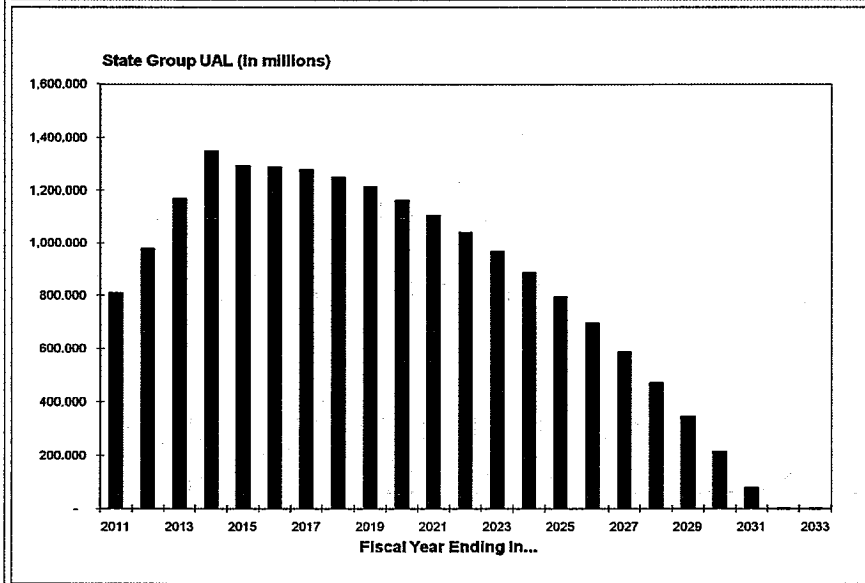
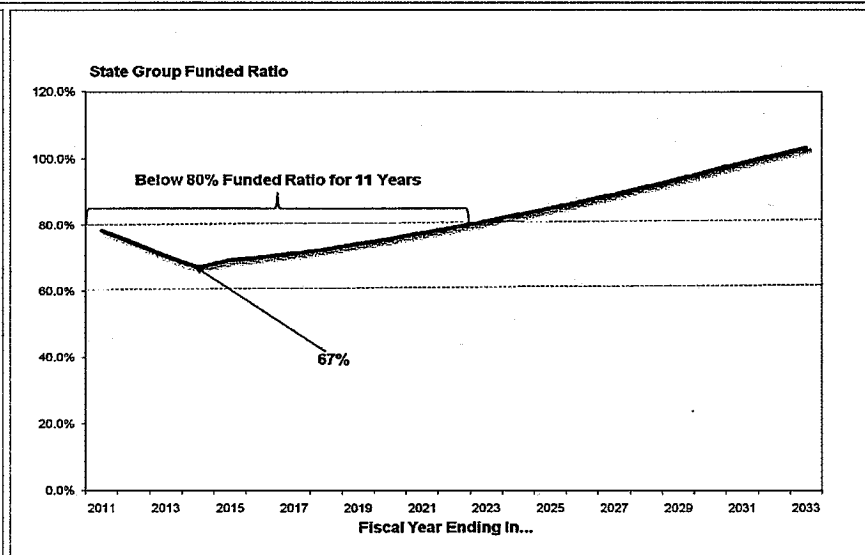
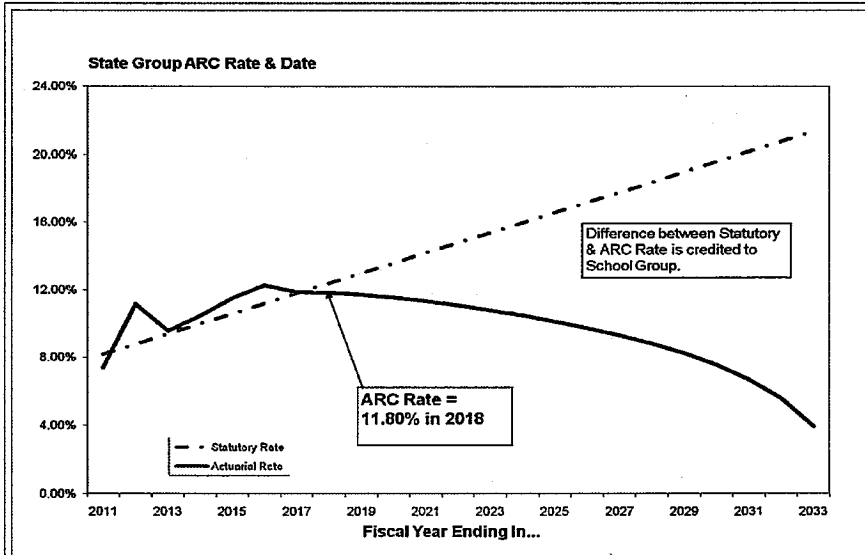
10-8

- In addition to the snapshot of KPERS' current status provided by the valuation, KPERS is able to model future trends in the System's long-term funding status, using the valuation's data.
- Projected actuarially required contribution (ARC) rates, statutory rates, funded ratios, and unfunded liability for each KPERS group through FY 2033 are set out on the following pages.
- These projections indicate that, in the absence of additional funding or plan design changes –
 - The UAL will continue rising significantly for all KPERS groups.
 - The School Group is out of actuarial balance, which means that the statutory rate will not equal the ARC rate before the end of the amortization period in FY 2033.
 - The School Group's funded ratio is projected to remain below 60% funded for 15 years.
 - Therefore, without additional steps to address the shortfall, the School Group's funded status is highly vulnerable to market downturns for a protracted period of time.

10-9

State Group: Baseline Projections

▪No change in the .6% employer rate increase cap. Assumes average annual investment return of 8%.

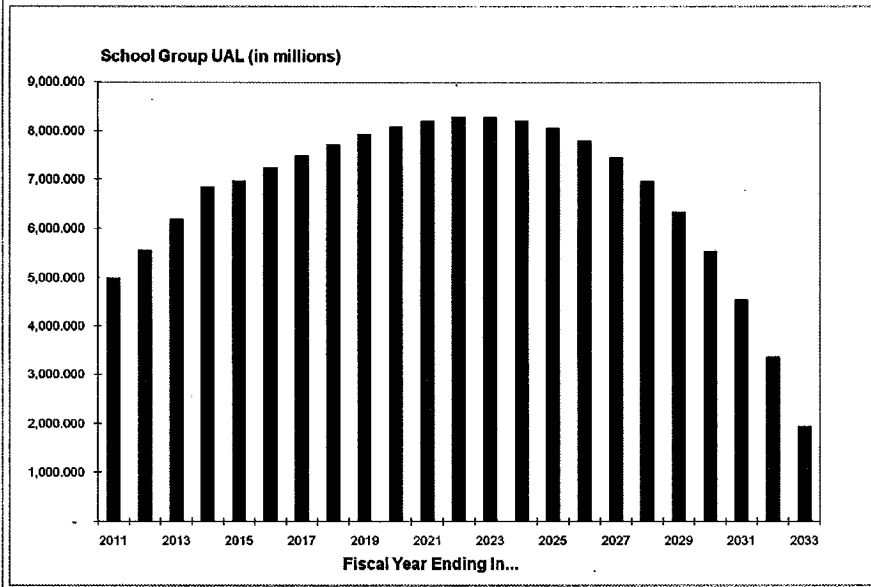
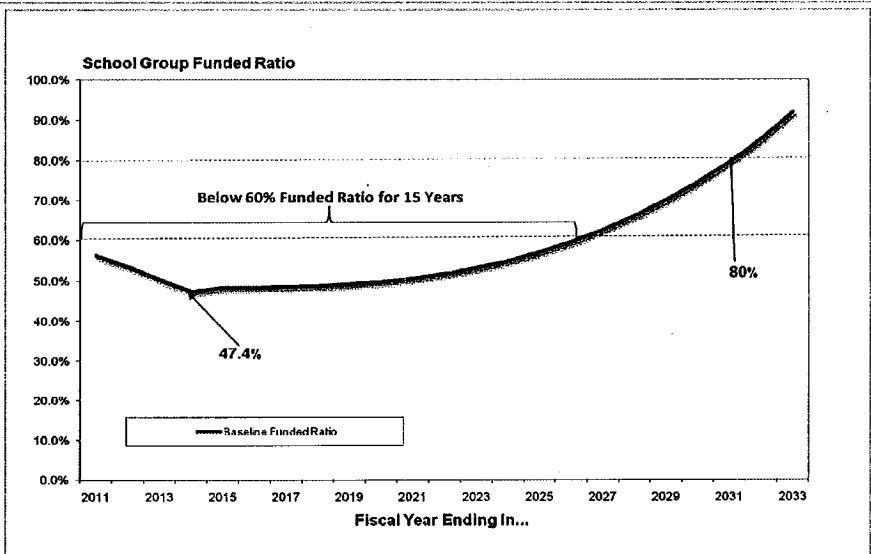
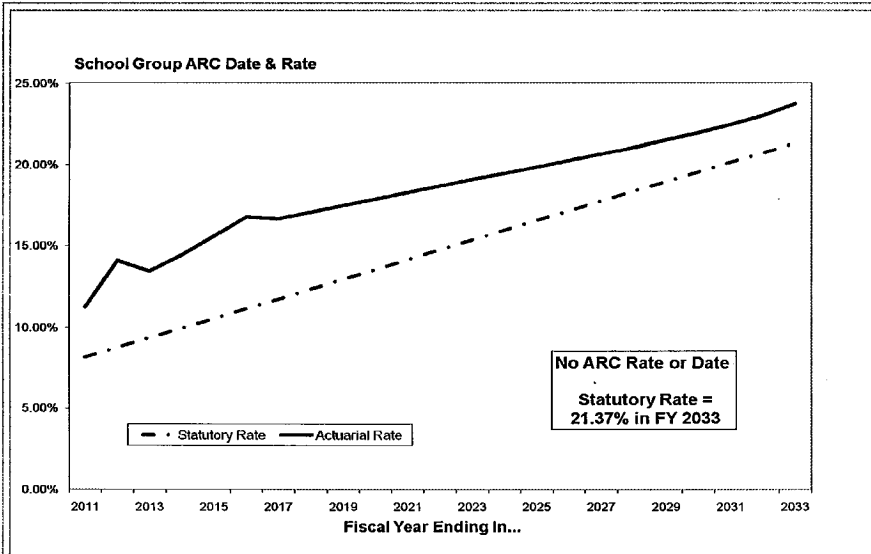


- The projected ARC rate of 11.8% is 44% higher than the State/School rate paid by state agencies in FY 2011 (8.17%).
- Funded ratios reach a low of 67% in FY 2014. They are projected to reach 80% in FY 2023.
- The projected UAL rises by 67% to \$1.35 billion in FY 2014.

10-10

School Group: Baseline Projections

▪ No change in the .6% employer rate increase cap. Assumes average annual investment return of 8%.

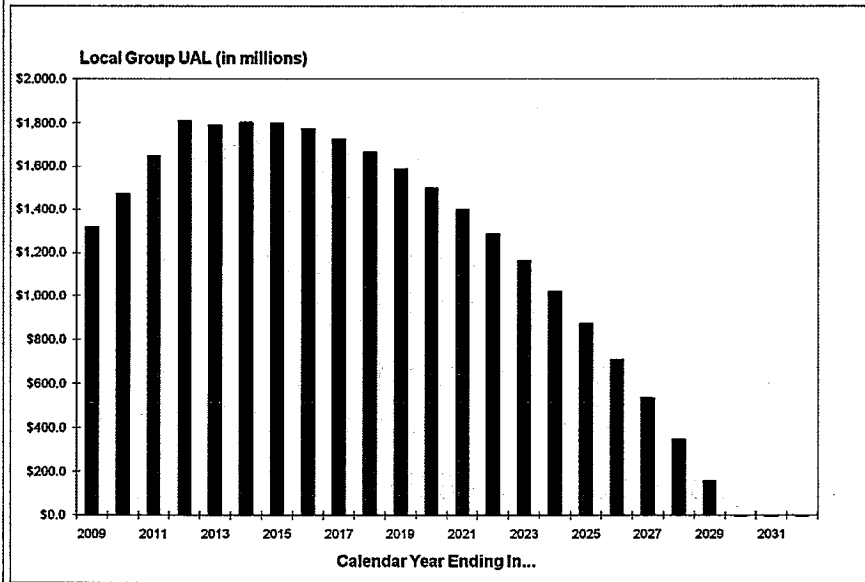
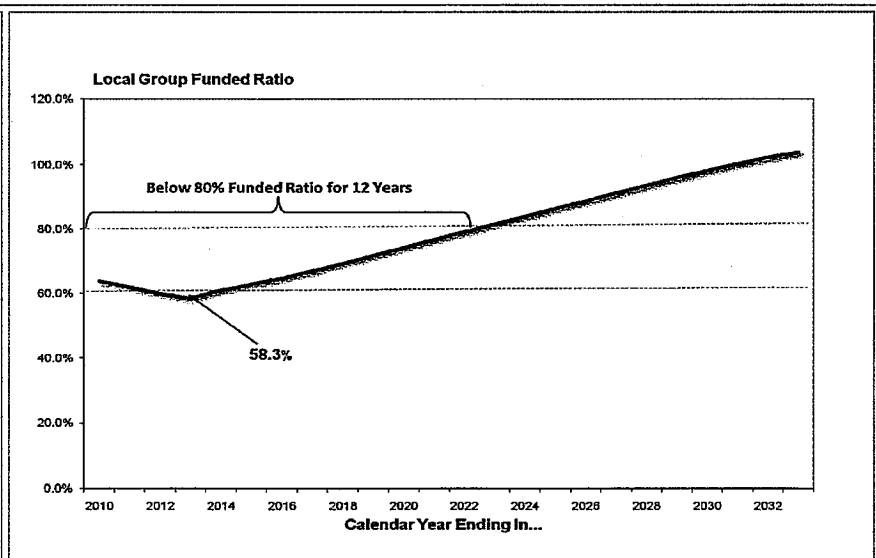
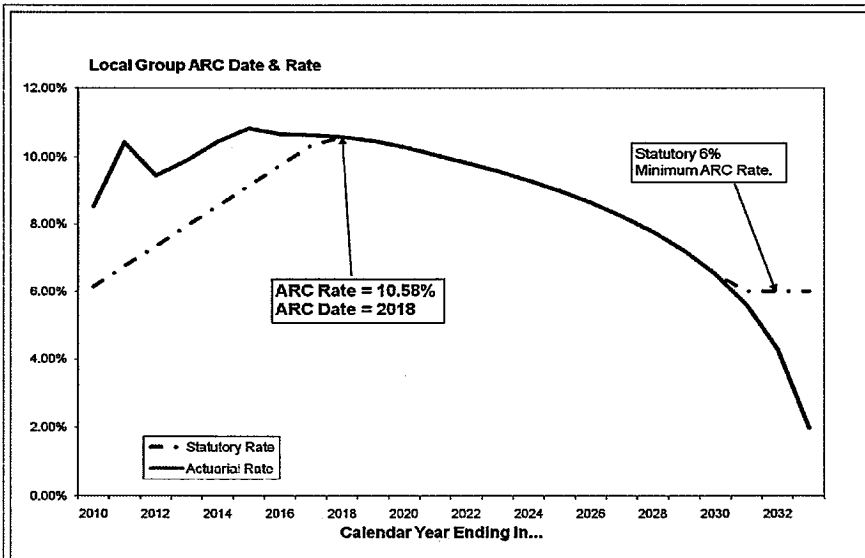


- The School Group is still not in actuarial balance by FY 2033, despite a peak statutory rate of 21.37%.
- Funded ratio projections reach a low of 47% in FY 2014 and remain below 50% until FY 2021.
- The funded ratio is not projected to reach 60% until FY 2027 and only reaches 80% in FY 2032.
- The projected UAL rises 66% to \$8.3 billion in FY 2023.

10-11

Local Group: Baseline Projections

▪No change in the .6% employer rate increase cap. Assumes average annual investment return of 8%.



- The Local Group ARC rate is projected to rise by 72% to 10.58% in CY 2018.
- The projected funded ratio will fall to 58% by CY 2013, regaining 60% the next year.
- The funded ratio is projected to reach 80% by CY 2023.
- The UAL is projected to increase by 38% to \$1.8 billion in CY 2013.

Employer Contributions

10/2

- A fundamental principle of sound funding for a defined benefit plan is to consistently pay the full ARC rate.
- Due to the statutory cap on employer rate increases of .6%, there is a significant gap between the statutory and ARC rates for each of the KPERs Groups.
 - This long-standing gap dates back to FY 1996 and is a result of the funding plan for the 1993 benefit enhancements.
 - In the current fiscal year, the statutory employer rate for the State/School Group is 72% of its ARC rate (8.17% statutory rate vs. 11.30% actuarial rate).
 - It is projected to fall to 62% of the ARC rate in FY 2012 (8.77% statutory rate vs. 14.09% actuarial rate) and to remain near or slightly above 70% for another seven years.
 - The State/School statutory rate is not projected to reach 100% of ARC before the end of the amortization period in FY 2033 – it is not expected to exceed 90% during that time period.

Funding Solution Options

10-13

KPERS modeled a series of funding solution options that were presented to the Joint Committee on Pensions, Investments and Benefits during the 2009 Interim. These options included:

- Increases to the statutory employer contribution rate cap.
- Increases in employee contribution rates.
- Changes in the statutory multiplier for future service.
- Bond issues in lieu of the statutory employer contribution cap increase.
- Various combinations of employer and employee rate increases and multiplier changes.
- Creating a new mandatory defined contribution plan for future employees.

2010 Legislative Activity

41-91
10-14

- **SB 564.** Based on its review of options for improving KPERS' funded status, the Joint Committee recommended introduction of SB 564 as an initial step in addressing the shortfall. This bill would have –
 - **Increased Contributions.** Raised the cap on employer contribution rate increases from .6% per year to 1.0% per year, beginning in FY 2012. Increased employee contribution rates for both Tier 1 and Tier 2 by a total of 2% over four calendar years, beginning January 1, 2012.
 - **Increased Multiplier for Future Service.** Effective January 1, 2012, raised the benefit formula's multiplier to 1.85% for all future years of service credited to members.
- **House Sub for HB 2400.** The House Select Committee on KPERS recommended this substitute bill, which would have raised the maximum increase in employer contributions for the KPERS State and School Groups to 1.0% a year, effective FY 2013.

2010 Legislative Activity (Continued)

10-15

- **HB 2751.** The House Appropriations Committee introduced a bill which would have created a Tier 3 KPERS defined contribution retirement plan for those hired after June 30, 2012.
 - Employees would contribute 7% of compensation to their retirement account.
 - Employers would contribute 5% to each employee account, as well as percentages set by the Board for death and disability plan benefits, a funding rate for the current defined benefit plan and a rate for plan administration expenses.
- Hearings were held for SB 564 and HB 2400, but neither of the bills passed out of its house of origin.
- No hearing was held on HB 2751, as it was introduced a few days before adjournment.
- The Joint Committee is reviewing long-term funding issues during the 2010 Interim.

Conclusions

- Current benefits are safe for a period of time. Assets of more than \$12 billion are available to pay benefits.
- While the 12/31/09 valuation indicates a modest, short-term improvement in KPERS' funding status, the fundamental, long-term funding shortfall remains and will continue to grow.
- KPERS' ability to withstand future economic downturns is compromised.
- Investment returns alone cannot fix the funding problem. Last year's strong investment returns do not happen every year. Employers are still not contributing at the required actuarial rate.
- Legislative action to begin the process of addressing the funding shortfall is necessary, with additional employer contributions as a basic element.
- Because the 2010 Legislature did not increase KPERS' funding beyond the current 0.6% statutory increase cap, passing long-term funding legislation in the 2011 session is essential.

10/16

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October 14, 2010

To: Legislative Budget Committee

From: Aaron Klaassen, Senior Fiscal Analyst

Re: Fire Insurance Premiums

Prior to 2002, KSA 75-1508 required each fire insurance company doing business in Kansas to pay a levy not to exceed 1.25 percent of the gross cash receipts on all fire business transacted by the company in the preceding calendar year. The levy was remitted to the Insurance Commissioner on or before March 15 of each year. This funding was transferred to the State Fire Marshal, and was utilized to support the operations of the Fire Marshal's Office.

KSA 75-1508 was amended by the 2002 Legislature reducing the portion received by the Fire Marshal from 1.25 percent to 1.0 percent, and providing the remaining 0.25 percent to the Emergency Medical Services (EMS) Board in support of its operations. At the time, the 0.25 percent was estimated to provide \$750,000 annually to the EMS Board.

KSA 75-1508 was further amended by the 2004 Legislature to reduce the amount received by the Fire Marshal from 1.0 percent to 0.8 percent. The remaining 0.2 percent is transferred to the Fire Services Training Institute at the University of Kansas. During FY 2003 and FY 2004, the Fire Services Training Institute was supported with a transfer of \$750,000 from the Fire Marshal Fee Fund which was discontinued beginning in FY 2005. In addition, the statute was amended to require the Fire Services Training Institute to submit an annual report of expenditures and activities to the House Appropriations Committee on or before February 1 of each year beginning in 2005.

KSA 75-1514 requires that 20 percent of the receipts received from the fire insurance premium levy, with a cap of \$200,000, be remitted to the State General Fund. This transfer is intended to reimburse State General Fund financed agencies for administrative services provided to this agency. KSA 75-1514 specifies that this amount shall be transferred from the portion of the funding credited to the Fire Marshal Fee Fund.

The table on the next page shows the amounts from the fire insurance premium levy received by each agency, and the amount credited to the State General Fund from FY 2000 through the FY 2011. KSA 75-1514 abolished the State General Fund transfers for FY 2003 and FY 2004.

Legislative Budget Committee
October 14, 2010
Attachment 11

<u>FY</u>	<u>SGF</u>	<u>Fire Marshal</u>	<u>EMS</u>	<u>KU F&RT</u>	<u>TOTAL</u>
2000 act.	\$200,000	\$3,441,816	-	-	\$3,641,816
2001 act.	200,000	3,741,088	-	-	3,941,088
2002 act.	200,000	4,194,396	-	-	4,394,396
2003 act.	-	4,979,219	-	-	4,979,219
2004 act.	-	4,449,340	622,269	419,198	5,490,807
2005 act.	200,000	3,376,228	1,119,049	895,080	5,590,357
2006 act.	200,000	3,428,131	1,133,791	907,033	5,668,955
2007 act.	200,000	3,486,720	1,150,221	920,176	5,757,117
2008 act.	200,000	3,572,989	1,179,059	943,249	5,895,279
2009 act.	200,000	3,762,617	1,238,318	990,654	6,191,589
2010 act.	200,000	4,017,388	1,317,933	1,054,347	6,589,668
2011 est.*	200,000	4,224,000	1,320,000	1,056,000	6,800,000

* 2011 Estimates reflect action taken in 2010 House Substitute for Senate Bill No. 572

2010 House Sub. for SB 572 includes a one-year proviso for FY 2011 that distributes the \$200,000 State General Fund administrative services fee (KSA 75-1514) across the three agencies it supports by the proportion of the levy each agency receives rather than being solely charged to the State Fire Marshal's portion. (Fee distribution at the current proportion: \$128,000 State Fire Marshal, \$40,000 Emergency Medical Services Board, \$32,000 University of Kansas Fire and Rescue Training Institute).

11-2



STATE OF KANSAS
OFFICE OF THE FIRE MARSHAL

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Testimony before the 2010 Legislative Budget Committee
Regarding the funding of the State Fire Marshal, Emergency Medical Services, and KU Fire Training

By Dan McLaughlin, State Fire Marshal

October 14, 2010

I would like to thank you Chairman Emler and the committee for the opportunity to discuss the distribution of fire insurance premiums levies and their effect on our agency. Much of my testimony is identical to that from the 2008 Legislative Budget Committee hearing on October 8, 2008 on this same subject.

That hearing was following a denied request of Legislative Post Audit to update the funding review portion of the Performance Audit Report done of our agency in June of 2004. As predicated by that initial report, the increase from funding one agency to three agencies out of these funds has had a negative impact on our agency and the services we provide.

The foundation and basis of funding of the Fire Marshal's Office goes back to the beginning of our agency. Since the early days of Kansas its residents have struggled with preventing and controlling fire itself as well as the losses resulting from unwanted and uncontrolled fires. While the fire insurance industry, state government, and the citizens in the beginning did not agree on what was the best way to control losses and set fire insurance rates they did agree on one thing, that the business of fire prevention needed to be institutionalized, and they set out on a mission to establish such an agency.

Three years before the establishment of the State Fire Marshal there was a movement by the Kansas insurance industry for this agency to centralize the enforcement of laws aimed at reducing fire losses. The Kansas Legislature also started discussing fire marshal laws aimed at reducing fire loss through prevention and regulation in 1910.

In 1913 State Representative Olinger of Shawnee County introduced House Bill 372 establishing the State Fire Marshal's Office, and funding it through the levying of a tax on fire insurance policy premiums as had been done in Illinois and Ohio. Once passed, this very powerful law for the first time required the investigation of all fires by the new office or by a designated local official. It gave Fire Marshal employees the authority to inspect buildings and

order the removal of hazardous conditions, while teaching fire prevention, and maintaining records of fire and insurance losses.

Over the years our agency's mission has increased with the adoption of national fire codes, technological advances in fire fighting, the war on drugs, 9/11, and homeland security all while our funding source has not only not increased, it has actually decreased through the change in distribution.

What once was a levy that was adjusted based upon the financial needs of the Fire Marshal's Office has now become set at the maximum allowed and used for the support of other agencies and the State General Fund. Since 1993 there have been an additional \$6,750,000 in discretionary transfers made from the Fire Marshal Fee Fund to the State General Fund.

In the spring of 2004 our agency's funding and administration were reviewed by the Legislative Division of Post Audit and they published their report in June. On page 34 the report states, "If the current estimates of revenues are correct, and moneys are transferred to the General Fund in fiscal year 2005 as planned, the Fire Marshal's Office will be in a difficult fiscal position at the start of 2006."

In May 2004, just one month before the audit report was published the Fire Marshal Fee Fund went negative and a loan from the Hazardous Materials Emergency Response Fund was made in the amount of \$250,000 and to this date it has not been repaid, and that fund has no funding source.

Fire insurance premiums are primarily received in June and December of each year; therefore, we need to have a balance in the fee fund at the end of each fiscal year equaling fifty percent of our expenditures for the new fiscal year in order to maintain a positive balance. This did not happen for four consecutive years.

This is documented in the bottom row of the "History of the Fire Insurance Levy and the Fire Marshal Fee Fund, Fiscal Years 2000 to 2012" that we have provided for you. This is like the one in the audit report and has been updated through FY2012 and includes the cash flow information at the bottom. As you can see between FY2007 through FY2010 we started with less money than was needed to effectively support the agency. We started FY2011 with a mere \$83,401 extra, but at least it was a positive amount.

Since 2004 we have only gone negative once in May 2008, and it was only for three days. In April of 2009 we did have to take a \$350,000 loan from the SGF, which we were required to repay a few months later when we received our June revenues. Since then, proactive agency budget cuts and keeping vacant positions open as long as possible, combined with increased revenues, and the change in the distribution of the levies has lead to our success. However we still need additional help to move forward so that we can meet unfunded legislative mandates, pay back the loan taken from the Hazardous Materials Emergency Response Fund, and replace an aging vehicle fleet.

12-2

**History of the Fire Insurance Levy and Fire Marshal Fee Fund
Fiscal Years 2000 to 2012**

As Of: 9/15/2010

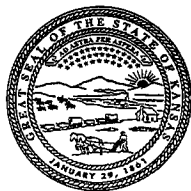
	Fiscal Year												
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011 est. (f)	2012 est.
FIRE INSURANCE LEVY													
Levy on Fire Insurance Premiums	3,641,805	3,942,012	4,394,396	4,979,219	5,490,807	5,590,357	5,668,955	5,757,117	5,695,297	6,191,589	6,589,668	6,800,000	7,000,000
Less Transfers of the Levy to:													
State General Fund	(200,000)	(200,000)	(200,000)	0	0	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)
Board of EMS (a)				(1,218,090)	(622,269)	(1,119,049)	(1,133,791)	(1,150,221)	(1,179,059)	(1,238,318)	(1,317,933)	(1,320,000)	(1,360,000)
KU Fire Serv Training (a)				(750,000)	(419,198)	(895,080)	(907,033)	(920,176)	(943,249)	(990,654)	(1,054,347)	(1,056,000)	(1,088,000)
Levy Revenues Available for the Fire Marshal's Office	3,441,805	3,742,012	4,194,396	3,011,129	4,449,340	3,376,228	3,428,131	3,486,720	3,372,989	3,762,617	4,017,388	4,224,000	4,352,000
% Difference		7.62%	10.29%	11.75%	9.32%	1.78%	1.39%	1.53%	-1.09%	8.02%	6.04%	3.09%	2.86%
KSFM %		8.02%	10.79%	-39.30%	32.32%	-31.78%	1.51%	1.68%	-3.37%	10.36%	6.34%	4.89%	2.94%
EMS %					-95.75%	44.39%	1.30%	1.43%	2.45%	4.79%	3.85%	2.91%	2.91%
KU Fire %					-78.91%	53.17%	1.32%	1.43%	2.45%	4.79%	3.85%	2.91%	2.91%
FIRE MARSHAL FEE FUND													
SOURCES OF FUNDS													
Beginning Balance (b)	2,167,826	2,864,326	3,531,279	3,905,708	2,155,721	1,934,585	1,879,431	1,889,966	1,819,425	1,388,728	1,606,381	2,223,766	2,509,577
Revenues from the Levy	3,441,805	3,742,012	4,194,396	3,011,129	4,449,340	3,376,228	3,428,131	3,486,720	3,572,990	3,762,617	4,017,450	4,224,000	4,352,000
Contract for Federal Inspections	147,270	168,884	160,161	162,364	185,357	330,202	285,402	364,702	298,441	305,441	288,653	305,441	305,441
Additional Revenues (c)	5,591	14,196	11,645	8,773	8,075	9,098	13,100	33,582	26,411	34,234	34,722	37,100	42,100
TOTAL SOURCES OF FUNDS	5,762,492	6,789,418	7,897,481	7,087,974	6,798,493	5,650,113	5,606,064	5,774,970	5,717,267	5,491,020	5,947,206	6,790,307	7,209,118
USES OF FUNDS													
Office Expenditures	2,452,982	2,829,707	2,810,382	2,793,835	2,673,657	2,619,431	3,070,511	3,384,296	3,667,249	3,181,618	3,182,974	3,931,566	4,041,968
Transfers to Haz Mat Fund	456,113	415,083	406,020	224,663	419,238	863,879	403,542	279,460	450,344	385,032	371,232	324,164	377,192
Other Transfers	0	0	754,862	0	0	0	0	0	0	154,928	169,234	25,000	25,000
Operating Expenses Subtotal	2,909,095	3,244,790	3,971,264	3,018,498	3,092,895	3,483,310	3,474,053	3,663,756	4,117,593	3,721,578	3,723,440	4,280,730	4,444,160
Transfers to SGF (e)	0	0	0	1,908,218	396,751	520,097	0	0	0	0	0	0	0
TOTAL USES OF FUNDS	2,909,095	3,244,790	3,971,264	4,926,716	3,489,646	4,003,407	3,474,053	3,663,756	4,117,593	3,721,578	3,723,440	4,280,730	4,444,160
Ending Balance (b)	2,853,397	3,544,628	3,926,217	2,161,258	1,881,795	1,901,080	1,801,486	1,811,607	1,389,738	1,599,936	2,223,766	2,509,577	2,764,958
50% of next years exp	1,622,395	1,985,632	1,509,249	1,546,448	1,741,655	1,737,027	1,831,878	2,058,797	1,860,789	1,861,720	2,140,365	2,222,080	2,222,080
Difference	1,231,002	1,558,996	2,416,968	614,811	140,140	164,054	(30,392)	(247,190)	(471,051)	(261,784)	83,401	287,497	542,878

- (a) For fiscal year 2003 and part of fiscal year 2004, all levy revenues were deposited into the Fire Marshal Fee Fund and these amounts were transferred to the 2 entities. For 2004, some of the levy revenues went directly to the 2 entities. For 2005, all revenues went directly to the entities.
- (b) According to officials from the Division of Accounts and Reports, discrepancies in ending and beginning balances are most likely due to released encumbrances.
- (c) These include fees on businesses that handle fire extinguishers for commercial cooking equipment. Agency update - This also includes open record requests and funds received from the sale of surplus property. FY2009 includes the
- (d) Includes a \$750,000 transfer to the Fire Marshal's Hazardous Materials Emergency Fund.
- (e) Agency comment, we lack the electronic data to confirm but included the figures to the best of our knowledge
- (f) The 2010 Legislature changed the distribution order of funds in the allocation bill so that the \$200,000 SGF contribution came out first and then the funds are to be distributed. This will result in \$72,000 additional revenue for KSFM.

Spike in revenue split deleted, expected to continue

Revenues down from 2004, never recovered

Estimated Figures - Blue



KANSAS

DENNIS ALLIN, M.D., CHAIR
STEVEN SUTTON, EXECUTIVE DIRECTOR

MARK PARKINSON, GOVERNOR

BOARD OF EMERGENCY MEDICAL SERVICES

Testimony

Date: October 14, 2010
To: Legislative Budget Committee
From: Steven Sutton, Executive Director
RE: Fire Insurance Premium Receipts

Chairman Emler and members of the Legislative Budget Committee, thank you for the opportunity to provide testimony on the Fire Insurance Premium Receipts. My name is Steven Sutton and I am the Executive Director for the Kansas Board of Emergency Medical Services (KBEMS).

SB 312 was passed by the 2004 Kansas Legislature giving the Board of EMS permanent funding in the amount of .25% from premiums from Fire Insurance Receipts. This source of funding has served the Agency well. The variable distribution of funds throughout the year creates a budgeting challenge but not currently insurmountable for our Agency. Attached is a document illustrating the disparity of monthly disbursement of funds for your information.

Conclusion

KBEMS is very appreciated of the fire insurance premiums as a funding source and respectfully requests that there be no reduction in funding provided. The funding allows for consistency in operations and the ability to focus on our Agency mission. We would be more than happy to answer any specific questions you may have for our Agency regarding this topic.

Legislative Budget Committee
October 14, 2010
Attachment 13

FIRE MARSHAL TAX DISTRIBUTION FY 2009 ACTUALS					
	Fund 2330	Fund 2326	Fund 2123	Fund 1000	
	Fire Marshal	EMS	KU	SGF	TOTAL
Jul-08	7,790	3,192	2,554	2,043	13,536
Aug-08	0	0	0	0	0
Sep-08	0	0	0	0	0
Oct-08	6,680	2,609	2,087	1,670	11,376
Nov-08	19,729	7,707	6,165	4,932	33,601
Dec-08	1,612,665	563,756	451,005	191,354	2,627,426
Jan-09	31,704	9,908	7,926	0	49,538
Feb-09	0	0	0	0	0
Mar-09	0	0	0	0	0
Apr-09	29,218	0	0	0	29,218
May-09	165,771	12,320	9,856	0	187,947
Jun-09	1,889,060	638,826	511,061	0	3,038,947
	3,762,617	1,238,318	990,654	200,000	6,191,589

FIRE MARSHAL TAX DISTRIBUTION FY 2010 ESTIMATES					
	Fund 2330	Fund 2326	Fund 2123	Fund 1000	
	Fire Marshal	EMS	KU	SGF	TOTAL
Jul-08	8,102	3,320	2,656	2,043	13,536
Aug-08	0	0	0	0	0
Sep-08	0	0	0	0	0
Oct-08	6,947	2,713	2,170	1,670	11,376
Nov-08	20,518	8,015	6,412	4,932	33,601
Dec-08	1,677,172	586,306	469,045	191,355	2,627,426
Jan-09	32,972	10,304	8,243	0	49,538
Feb-09	0	0	0	0	0
Mar-09	0	0	0	0	0
Apr-09	30,387	0	0	0	29,218
May-09	172,402	12,813	10,250	0	187,947
Jun-09	1,964,622	664,379	531,503	0	3,038,947
TOTALS	3,913,122	1,287,851	1,030,280	200,000	6,431,253

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FIRE MARSHAL TAX DISTRIBUTION FY 2011 ESTIMATES					
	Fund 2330	Fund 2326	Fund 2123	Fund 1000	
	Fire Marshal	EMS	KU	SGF	TOTAL
Jul-09	8,345	3,419	2,736	2,043	16,543
Aug-09	0	0	0	0	0
Sep-09	0	0	0	0	0
Oct-09	7,156	2,795	2,236	1,670	13,856
Nov-09	21,134	8,256	6,604	4,932	40,925
Dec-09	1,727,487	603,895	483,117	191,355	3,005,854
Jan-10	33,961	10,613	8,490	0	53,065
Feb-10	0	0	0	0	0
Mar-10	0	0	0	0	0
Apr-10	31,298	0	0	0	31,298
May-10	177,574	13,197	10,558	0	201,329
Jun-10	2,023,561	684,310	547,449	0	3,255,320
TOTALS	4,030,515	1,326,486	1,061,189	200,000	6,618,190

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The University of Kansas

Testimony to
Joint Committee on Legislative Budget
October 14, 2010
Kansas Fire & Rescue Training Institute, the University of Kansas

On October 9, 2008 we appeared before this committee as it considered the distribution of Fire Insurance Tax funds and the related payment of the administrative services fee by the three affected organizations. At that time we calculated that our share of the administrative fees would be approximately \$32,000. We agreed that requiring each organization to pay their share of administrative fees was fair. We did not oppose the change. While no organization enjoys losing funding, we acknowledge that this action is the "right thing to do." Our position on this matter has not changed.

It is our intent to manage this reduction in funding in a manner that will minimize the impact on delivery of training to Kansas fire departments; however, the loss of \$32,000 will not be without impact. We will postpone expenses related to replacement of equipment and supplies and use other "targets of opportunity" thereby avoiding expenses related to delivering training unless absolutely necessary. As expenses continue to rise, the long-term impact of this reduction is not clear. If funding increases incrementally over time, the impact may be reduced and disappear. If funding levels remain stagnant, the impact may increase over time as costs will continue to increase.

The following information is provided as background information on the costs associated with delivering our training throughout Kansas. Should reductions in service be required, the costs can be calculated using this information as a rough guide.

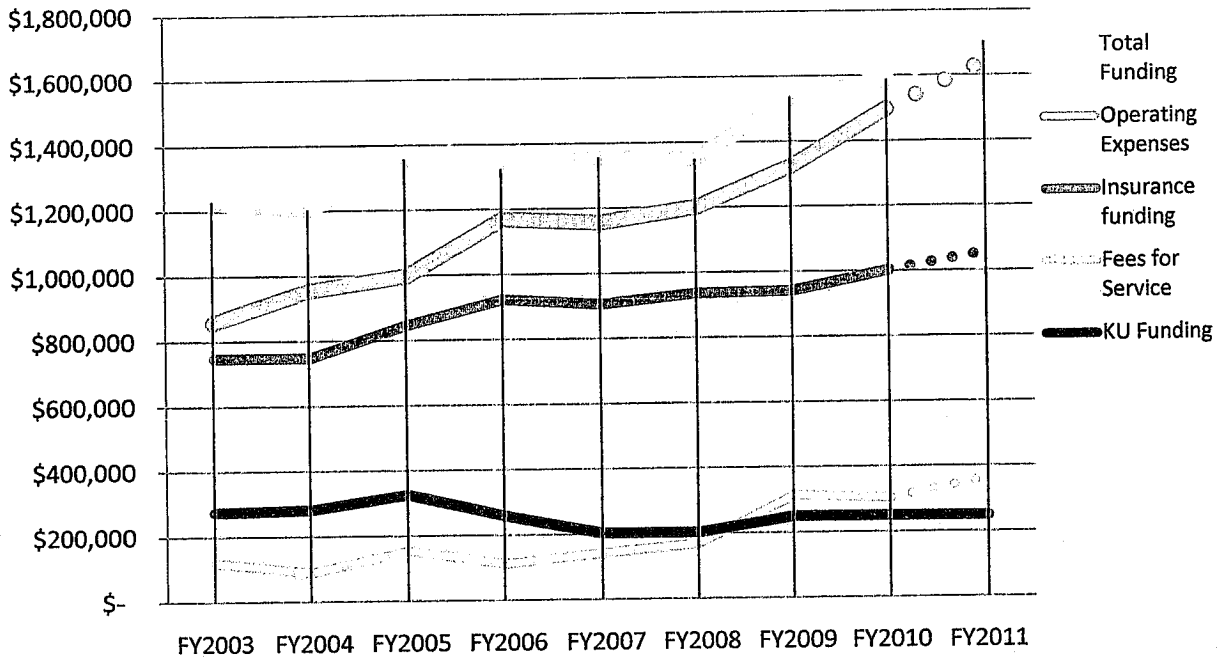
The cost of delivering an hour of training in our system ranges from \$30 per hour to \$200 per hour depending on the course and number of instructors required. The average cost per hour is approximately \$62. If we cannot absorb this reduction in other areas, we would be forced to reduce the number of courses scheduled. In lieu of reducing other areas of the budget, \$32,000 would translate into 516 instructional hours; 4 Fire Fighter I courses (140 hrs each); 13 Fire Officer or Instructor courses; or 32 basic fire education courses.

As stated, we plan to manage this reduction in a manner that will minimize the impact to our mission. Any reduction of service to fire departments will be taken only after exhausting other options.

The following charts are provided for your background information.

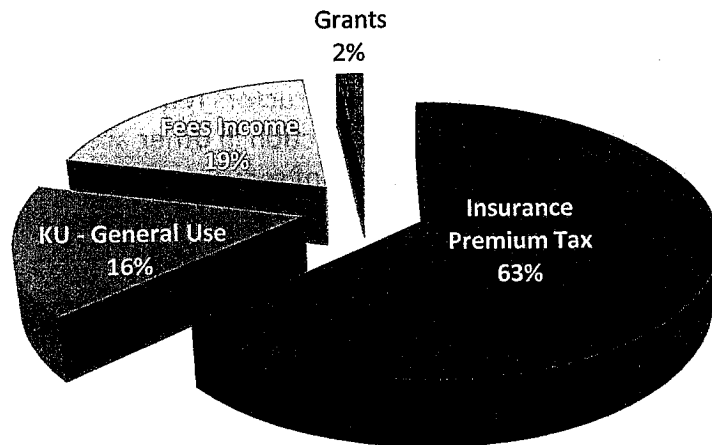
Legislative Budget Committee
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Funding Sources/Amounts & Expenses Comparison - FY2003 to FY2011



Insurance Funding total reflects actual funds received in the spring of 2010. Winter 2010 Insurance Funds (normally received in December) have been projected. Dotted lines represent projections for FY2011.

Percentage of Funding by Source



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October 14, 2010

To: Legislative Budget Committee

From: Alan D. Conroy, Director
J.G. Scott, Chief Fiscal Analyst

Re: State Budget Rainy Day Funds

Chairman Emler requested that this office provide the Committee with information concerning state budget stabilization funds or state rainy day funds. In particular, this memorandum will focus on whether or not other midwestern states had a state budget stabilization or rainy day fund. For purposes of this memorandum, the term rainy day fund will be used in lieu of state budget stabilization fund. The National Conference of State Legislatures (NCSL) was utilized as a major source in compiling this information.

Definition of State Budget Rainy Day Fund

There is no specific definition for a rainy day fund within state budgets. There is great variety between the states on the purpose of their rainy day funds. In general, **a rainy day fund is established to gather at least some of the revenue when the state receipts are strong, saving that surplus to help weather a downturn in future revenue collections.**

States with Rainy Day Funds

The latest information available from the NCSL indicates that 47 states have some type of rainy day fund. There are three states that do not have a rainy day fund. Those three states without a rainy day fund are:

- **Kansas;**
- **Arkansas; and**
- **Montana.**

Average Rainy Day Fund

Of those states that have a rainy day fund, the most common characteristics may be summarized as follows:

- The rainy day fund is statutorily created;
- There would be only one rainy day fund and not multiple ones for different purposes;
- Deposits to the rainy day fund would be made either by a direct appropriation or through a portion of the year-end surplus from a state's State General Fund;
- Rainy day funds can be used for a "revenue shortfall" or "budget deficit";
- Rainy day funds can be expended with authorization of the legislature; and

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- Rainy day fund balance has a target of at least 5.0 percent of State General Fund expenditures.

Characteristics of a Rainy Day Fund

Although the type and composition of rainy day funds vary greatly among the states, there are several characteristics of a rainy day that are helpful to review in understanding a rainy day fund. Following in Appendix A is additional information on each state's rainy day fund.

- **Legal Authorization** - Rainy day funds may be created either through statutory or constitutional authorization. The legal authorization for rainy day funds includes:
 - 36 states (76 percent) have a statutorily created rainy day fund;
 - 11 states (23 percent) have a constitutionally created one;
 - Five states have both a constitutionally created rainy day fund and a statutorily created fund; and
 - States near Kansas or other midwestern states legal authorization for their respective rainy day funds include:
 - **Statutory** - Iowa, Minnesota, Nebraska, New Mexico, North Dakota, and South Dakota; and
 - **Constitutional** - Missouri and Oklahoma.
- **Number of Funds** - The majority of the states with rainy day funds have created only one such fund and eight have created at least two rainy day funds. The creation of a second rainy day fund might be to earmark certain unanticipated revenues – one-time oil and gas royalty funds (Alabama), or money received from mineral extraction litigation and dispute settlements (Alaska). Or the second fund created from another tax source might help buffer the state if, during an economic downturn, one tax source might be stronger than another tax source, *i.e.*, income tax and severance tax.
 - 39 states have one rainy day fund;
 - Eight states have at least two rainy day funds; and
 - Of the states near Kansas, the number of rainy day funds include:
 - **One Rainy Day Fund** - Colorado, Minnesota, Nebraska, New Mexico, Missouri, North Dakota, and Oklahoma; and
 - **Two or More Rainy Day Funds** - Iowa and South Dakota.
- **Funding of Rainy Day Funds** - States have taken a variety of approaches to place resources in their rainy day fund. Most often, deposits come from either a line-item appropriation, or from a portion of a fiscal year-end surplus from the State General Fund – Utah transfers 25 percent of its general fund surplus; Wisconsin, 50 percent of its surplus. Other states may deposit funds into their rainy day fund when state revenues or economic growth exceed specified levels – Idaho transfers funds to its rainy day fund when the current fiscal year revenues exceed the previous year's revenues by 4 percent. A transfer of funds from a

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dedicated source, such as a portion of a state's lottery proceeds – Oregon deposits 18 percent of its lottery receipts.

- Of the states near Kansas, they fund their rainy day funds by:
 - Colorado - Four percent of general fund operating appropriations;
 - Iowa - By appropriation when there is a year-end general fund surplus;
 - Minnesota - If surplus in the general fund after close of biennium;
 - Missouri - Transfers from net general revenue from previous fiscal year;
 - Nebraska - When actual general fund net receipts for the preceding three months exceed estimated receipts for the three-month period;
 - New Mexico - Transfers from general fund;
 - North Dakota - Transfer of general fund surplus in excess of \$65 million at the end of the biennium;
 - Oklahoma - Transfer of surplus of previous fiscal year's general fund revenue estimates; and
 - South Dakota - Transfer of prior year's unobligated cash balance.
- **Method of Withdrawal** - The most common reason for withdrawal of funds from a rainy day fund is "revenue shortfall" or "budget deficit." In some states, the withdrawals are made pending approval of the legislature when revenues are insufficient to meet budget obligations. Other states require a super majority (three-fifths, two-thirds, or three-fourths) of their legislature for a withdrawal to be made from their rainy day fund. Still other states' withdrawals are triggered when anticipated revenues or other economic indicators fall below specified levels.
- Of the states near Kansas, they allow withdrawal of their rainy day funds by:
 - Colorado - Appropriation;
 - Iowa - Appropriation when there is a year-end general fund surplus;
 - Minnesota - By transfer authorized by the commissioner of finance, with the approval of the governor and in consultation with the legislative advisory commission;
 - Missouri - If the governor reduces the expenditures of the state or any state agencies below their appropriations, or in the event of a disaster, the governor may request the general assembly to appropriate funds from the rainy day fund;
 - Nebraska - By appropriation only if: (1) the total actual revenue of the state falls short by 5.0 percent or more of the total anticipated revenue for the biennium in which the appropriation is made; or (2) the legislature and the governor declare a fiscal emergency;
 - New Mexico - By specific authorization of the legislature only in the event that general fund revenues and balances are insufficient to meet authorized levels of appropriations;
 - North Dakota - Governor may transfer for revenue shortfall in excess of 2.5 percent of the estimate made by the most recently adjourned assembly;
 - Oklahoma - Up to three-eighths of the balance may be appropriated if: (1) forthcoming fiscal year general fund revenue is certified to be less than that of the current fiscal year certification; or (2) if a revenue failure has occurred with respect to the general fund. Also, up to one-fourth of the balance may be appropriated if: (1) emergency declaration by the

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governor with concurrence by the legislature with a two-thirds vote; or (2) joint emergency declaration by the speaker and the president pro tempore with concurrence by the legislature with a three-fourths vote; and

- South Dakota - By special appropriation of the legislature to redress unforeseen expenditure obligations or unforeseen revenue shortfalls.
- **Cap on the Size of the Rainy Day Fund** - A strong majority (37 states) limit the sizes of their rainy day funds in relation to state general fund revenues or appropriations. The caps vary from 2.0 percent to 15.0 percent of appropriations and 2.0 percent to 15.0 percent of revenues. One state, Minnesota, has set a specific dollar limitation of \$350 million for their cash flow account and \$653 million for their budget reserve account. Seven states do not have any limitation on their respective rainy day funds.
 - Of the states near Kansas, the limitation or cap on the size of their rainy day fund is:
 - Colorado - 4 percent of appropriations;
 - Iowa - 2.5 percent for the economic emergency fund and 7.5 percent for their cash reserve fund (cash flow fund);
 - Minnesota - Specific dollar limitation on their cash flow account (\$350 million) and their budget reserve account (\$653 million);
 - Missouri - 7.5 percent of net general revenue for previous fiscal year;
 - Nebraska - No cap or limitation;
 - New Mexico - No cap or limitation;
 - North Dakota - Currently at 5.0 percent of appropriations, but it is scheduled to move to 10.0 percent of appropriations;
 - Oklahoma - 10.0 percent of general revenue fund for the preceding fiscal year; and
 - South Dakota - 10.0 percent of the previous year's general fund appropriations.

Recent Utilizations of Rainy Day Funds

Information compiled by NCSL indicates that several states have drawn down or made withdrawals from their rainy day funds. Appendix B reflects those states that have responded to a recent NCSL survey on the status of their respective rainy day funds. States that have made sizeable withdrawals in FY 2010 or FY 2011 include Alabama, Arizona, Connecticut, Florida, Idaho, Iowa, Maryland, Massachusetts, Nebraska and Virginia.

Summary

Most states, 47 to be exact, have some type of rainy day fund. As you might expect, the size, purpose and availability of rainy day funds for expenditure varies greatly among the states. The one common thread is that most of these states have set aside funds in better economic times to address shortfalls during difficult economic times. Kansas is one of three states that does not have a formal established rainy day fund.

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State Budget Stabilization Funds, Appendix A

State	Fund	C or S	Citation	Most Recent Legislative Action	Method for Deposit	Method for Withdrawal	Supermajority Vote to Access Fund	Repayment Provision	Caps	Note
Alabama	Education Proration Prevention Fund (1988)	S	Ala. Code § 40-1-32.1	1999	Automatic appropriation of \$21M in the first year (following the fund's depletion) and \$8M thereafter up to \$75M. Automatic appropriation can be waived via emergency resolution. At the beginning of each fiscal year, 20% of the unappropriated and unanticipated ending balance of the previous fiscal year until the fund reaches at least \$75M.	Declaration of proration by governor, or declaration of emergency by legislature with a 2/3 vote of both House and Senate	See Method for Withdrawal.	Yes, as provided by the Legislature at its discretion.	Any amount of money in the Proration Prevention Account which is in excess of 10% of the preceding year's Education Trust Fund appropriations act shall revert back to the Education Trust Fund for the support and maintenance of public education.	Any monetary interest which accrues in the Proration Prevention Account shall be retained in said account from year to year.
Alabama	Education Trust Fund (ETF) Rainy Day Account	C	Ala. Const. art. XIV, § 260.01		By constitutional amendment; one time carve-out of oil and gas royalty funds equal to 6% of the ETF FY 2002 appropriation (\$248M)	Certification that proration would occur without the funds.		Yes, replenishment within 5 years; no provision for opting out of repayment.		
Alaska	Budget Reserve Fund	S	Alaska Stat. § 37.05.540		By appropriation.	By appropriation or by declaration of emergency by governor.				
Alaska	Constitutional Budget Reserve Fund	C	Alaska Const. art. IX, § 17		All money received by the state as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in State or federal court involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund.	If the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year; or, for any public purpose with a 3/4 vote.	Yes, 3/4 vote of both House and Senate.	Yes, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year is deposited in the budget reserve fund.		
Arizona	Budget Stabilization Fund	S	Ariz. Rev. Stat. Ann. § 35-144; Ariz. Rev. Stat. Ann. § 35-313; Ariz. Rev. Stat. Ann. § 35-314.02		By appropriation. (In a calendar year in which the annual growth rate exceeds the trend growth rate, the excess growth when multiplied by total general fund revenue of the fiscal year ending in the calendar year determines the amount to be appropriated by the legislature to the fund in the FY in which the calendar year ends.)	By appropriation (In a calendar year in which the annual growth rate is both less than 2% and less than the trend growth rate, the difference between the annual growth rate and the trend growth rate when multiplied by the total general fund revenue of the fiscal year ending in the calendar year determines the amount to be transferred by the legislature from the budget stabilization fund to the state general fund at the end of the fiscal year in which the calendar year ends. The transfer calculated pursuant to this subsection shall not exceed the available balance in the fund, nor shall the legislature transfer an amount which exceeds the amount sufficient to balance the general fund budget); 2/3 vote is required to waive formula-determined withdrawal.			Fund capped at 7% of FY's GF revenues.	
California	Budget Stabilization Account	C	Cal. Const. art. XVI, art. 20	Passed by voters in 2004 primary election.	In each FY, the controller shall transfer from the GF to the Budget Stabilization Account a sum equal to 3% of the estimated amount of GF revenues for the current FY. (Transfers may be suspended or reduced by executive order of the governor.)	Monies in the sinking fund subaccount (see Notes) are continuously appropriated to the treasurer to be expended for the purpose of retiring deficit recovery bonds. All other withdrawals are as prescribed by statute.			5% of estimated GF revenues or \$8B, whichever is greater.	Of the monies transferred to the Budget Stabilization Account each FY, 50% shall be deposited in the Deficit Recovery Bond Retirement Sinking Fund Subaccount (housed within the Budget Stabilization Account), for the purpose of retiring deficit recovery bonds.
California	Special Fund for Economic Uncertainties	S	Cal. Gov't Code § 16418	2006 Amendment: language cleanup.	Year-end surplus or by appropriation.	1) Transfer by controller to cover revenue shortfall or other GF deficiency; or 2) Director of finance can allocate funds for disaster relief (with notification to the Joint Legislative Budget Committee).		The Controller returns all of the monies transferred out of the Special Fund without payment of interest as soon as there are sufficient monies in the General Fund.		
Colorado	Required Reserve	S	Colo. Rev. Stat. § 24-75-201.1	2007 Colo. SB 222	For each FY, unrestricted GY year-end balances are retained as a reserve in an amount equal to 4% of the amount appropriated for expenditure (i.e., GF operating appropriations) from the GF for that FY.	By appropriation or other statutory authorization.			4% of GF operating appropriations.	

State Budget Stabilization Funds, Appendix A

State	Fund	C or S	Citation	Most Recent Legislative Action	Method for Deposit	Method for Withdrawal	Supermajority Vote to Access Fund	Repayment Provision	Caps	Note
Connecticut	Budget Reserve Fund	S	Conn. Gen. Stat. § 4-30a; see also Conn. Const. Amend. Art. 3, § 18		Year-end surplus is transferred by the state treasurer to the Budget Reserve Fund.	Automatic appropriation to cover immediately preceding fiscal year's deficit to the extent funds are available. To use surplus monies for purposes beyond budget deficit relief or reduction of bonded indebtedness, authorization must be granted by 3/4 of the members of each house.	See Method for Withdrawal.		Fund cannot exceed 10% of net GF appropriations for the fiscal year in progress. In the event a surplus exists after Fund appropriation, remaining surplus is appropriated to State Employees Retirement, subject to a 5% cap of the system's unfunded past service liability. In the event a surplus still remains, surplus is appropriated to reduction of bonded indebtedness as specified in statute.	Interest derived from the Fund is credited to the GF.
Delaware	Budget Reserve Account	C	Del. Const. art. VIII, § 6; Del. Code Ann. tit. 29, § 6533		Automatic deposit from previous year's unencumbered funds.	By appropriation to cover budget deficit or to compensate for revenue reductions; requires 3/5 vote.	See Method for Withdrawal.		5% of GF	
District of Columbia	Emergency Cash Reserve Fund	S	D.C. Code § 1-204.50a	Technical changes signed into law 2006.	Deposit required each year to maintain a balance of 2% of expenditures.	Based on a policy developed by the Chief Financial Officer, in consultation with the Mayor, for uses such as, but not limited to, unanticipated and nonrecurring extraordinary needs of an emergency nature including a natural disaster or in the event of a State of Emergency as declared by the Mayor.		Must be fully replenished within two years of use (50% per year).	2% of expenditures	
District of Columbia	Contingency Cash Reserve Fund	S	D.C. Code § 1-204.50a	Technical changes signed into law 2006.	Deposit required each year to maintain a balance of 4% of expenditures.	Based on a policy developed by the Chief Financial Officer, in consultation with the Mayor, for uses such as, but not limited to, unanticipated and nonrecurring extraordinary needs including a revenue shortfall.		Must be fully replenished within two years of use (50% per year).	4% of expenditures	
Florida	Budget Stabilization Fund	S	Fla. Stat. § 215.18; Fla. Stat. § 215.32; Fla. Stat. § 215.37; Fla. Stat. § 216.221; Fla. Stat. § 216.222	2004 Fl. ALS 239; 2005 Fl. ALS 152; 2006 Fl. ALS 122; 2007 Fl. ALS 6; 2007 Fl. ALS 217	By Sept. 15 of each year, the governor authorizes the chief financial officer to transfer to the Budget Stabilization Fund an amount equal to at least 5% of net revenue collections for the General Revenue Fund during the last completed fiscal year. Monies needed for the Budget Stabilization Fund may be appropriated by the legislature from any funds.	Budget Stabilization Funds may be used to offset a deficit in the General Revenue fund, to provide funding for states of emergency, or to provide temporary transfers as defined by law (see Fla. Stat. § 215.18). A transfer from the Budget Stabilization Fund may be approved: 1) by the Governor in response to a declared disaster within a declaration period (see § 252.37(2)); 2) by the Governor and Legislative Budget Commission to satisfy budget authority granted for declared disasters when not within the declaration period; 3) by the Comptroller to address an end-of-year revenue short fall (see § 216.222); 4) by the Governor and House/Senate Appropriations Chairs to offset a revenue shortfall under 1.5% of monies appropriated from the General Revenue Fund (see § 216.221); and, 5) by the Governor and House/Senate Appropriations Chairs for temporary transfers to General Revenue (see §§ 216.222(1)(c) and 215.18).		Repayment of budget stabilization funds shall be made in five equal annual transfers from the General Revenue Fund, beginning in the third FY following the year in which the expenditure was made. If the transfer was made to address an end-of-year revenue shortfall, the Comptroller shall first repay the fund with any general revenue carried forward.	Not to exceed 10% of the last completed fiscal year's net General Revenue Fund collections.	The Budget Stabilization Fund may be used as a revolving fund for transfers as provided in Fla. Stat. § 215.18; however, any interest earned must be deposited in the General Revenue Fund.
Georgia	Revenue Shortfall Reserve	S	Ga. Code § 45-12-71; Ga. Code § 45-12-93	2005 Ga. ALS 322	Surplus in state funds existing as of the end of each fiscal year are added and reserved to the Revenue Shortfall Reserve.	By appropriation to cover any deficit by which total expenditures exceed net revenues.			Not to exceed 10% of the previous fiscal year's net revenue.	General Assembly may appropriate up to 1% of the net revenue collections of the preceding fiscal year for funding increased K-12 needs.

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State Budget Stabilization Funds, Appendix A										
State	Fund	C OR S	Citation	Most Recent Legislative Action	Method for Deposit	Method for Withdrawal	Supermajority Vote to Access Fund	Repayment Provision	Caps	Note
Hawaii	Emergency and Budget Reserve Fund	S	Hawaii Rev. Stat. § 328L-3	2002 Haw. Sess. Laws, Act 178, § 3; 2002 Haw. Sess. Laws, Act 16, § 24; 2007 Haw. Sess. Laws, Act 78, § 4	By appropriation, plus 24.5% of tobacco settlement monies received by the state.	With a 2/3 majority approval of both houses, the legislature may make appropriations from the fund for the following reasons: to maintain levels of programs determined to be essential to the public health, safety, welfare, and education; to provide for counter cyclical economic and employment programs in periods of economic downturn; to restore facilities destroyed or damaged or services disrupted by disaster in any county; and to meet other emergencies when declared by the governor or determined to be urgent by the legislature. The governor, through an appropriations bill, may recommend expenditures from the fund.	Appropriations require 2/3 majority approval of both houses.			All interest earned from the fund will be credited to the general fund.
Idaho	Budget Reserve Account	S	Idaho Code § 57-814; Idaho Code § 57-814A		If the state controller certifies that the receipts to the general fund for the fiscal year just ending have exceeded the receipts of the previous fiscal year by more than 4%, then the state controller shall transfer all general fund collections in excess of said 4% increase to the budget stabilization fund, up to a maximum of 1% of the actual general fund collections of the fiscal year just ending. The state controller shall make the transfers in four equal amounts during Sept., Dec., March and June of the next fiscal year.	At the end of the fiscal year, if the state board of examiners determines that insufficient general fund monies are available to meet the level of general fund appropriations authorized by the legislature for that same fiscal year, the board is authorized to transfer certain unencumbered monies from the budget stabilization fund to the general fund. Such transfers will be the final accounting adjustment to close the fiscal year and shall be limited to the amount of the insufficiency or one-half of one percent (0.5%) of the original general fund appropriations made for the fiscal year just ending, whichever is less. Any transfer made pursuant to this section from the budget stabilization fund to the general fund shall be specifically addressed in the governor's executive budget recommendation for the following year which is then subject to review or action by the legislature.			5% of the total general fund receipts for the fiscal year just ending. Appropriations of monies from the budget stabilization fund in any year shall be limited to 50% after the fund balance has reached 5%. Interest earnings from the investment of monies in the Budget Reserve Account are credited to the permanent building account.	
Illinois	Budget Stabilization Fund	S	Ill. Rev. Stat. ch. 30, § 122/5; Ill. Rev. Stat. ch. 30, § 122/10; Ill. Rev. Stat. ch. 30, § 122/15; Ill. Rev. Stat. ch. 30, § 122/20; Ill. Rev. Stat. ch. 30, § 122/25; Ill. Rev. Stat. ch. 30, § 105/67-51	2003 ILL. ALS 660	If GF revenues increase by more than 4% from the prior fiscal year's revenues and appropriations from the GF do not exceed 99% of GF revenues, 0.5% of GF revenues are transferred to the Budget Stabilization Fund. If GF revenues increase by more than 4% for two consecutive fiscal years and appropriations from the GF do not exceed 98% of GF revenues, 1% of GF revenues are transferred to the Budget Stabilization Fund. Transfers to the Budget Stabilization Fund occur on the 1 st day of each month in shares of 1/12 of the total FY's Budget Stabilization Fund appropriation.	The State Comptroller may direct the State Treasurer to transfer monies from the Budget Stabilization Fund to the GF in order to meet cash flow deficits resulting from timing variations between disbursements and the receipt of funds within a fiscal year.		Monies borrowed must be repaid by June 30 of the fiscal year in which they were borrowed.	5% of the total of general fund revenues.	"The Budget Stabilization Fund is ... established for the purpose of reducing the need for future tax increases, maintaining the highest possible bond rating, reducing the need for short term borrowing, providing available resources to meet State obligations whenever casual deficits or failures in revenue occur, and providing the means of addressing budgetary shortfalls. In authorizing transfers from the Budget Stabilization Fund ... priority consideration should be given to meeting obligations for (K-12) education, child care, and other programs that may provide a direct benefit to children."
Indiana	Counter-Cyclical Revenue and Economic Stabilization Fund	S	Ind. Code Ann. § 4-10-18-1, et seq.; see also Ind. Code Ann. § 6-1.1-21.5-3 and Ind. Code Ann. § 6-1.1-21.9-2		Statutory formula triggered when the annual growth rate in adjusted personal income exceeds 2%.	Statutory formula triggered when the annual growth rate in adjusted personal income is less than negative 2%.			Fund capped at 7% of state GF revenue.	
Iowa	Cash Reserve Fund	S	Iowa Code § 8.56; Iowa Code § 8.57		By appropriation when there is a year-end GF surplus.	By appropriation for non-recurring emergency expenditures; requires 3/5 vote if the fund's balance drops to less than 3.75% of the adjusted revenue estimate for the year in which the appropriation is made.	See Method for Withdrawal.	Monies in the cash reserve fund may be used for cash flow purposes during a fiscal year provided that any monies so allocated are returned to the cash reserve fund by the end of that fiscal year.	Fund capped at 7.5% of the adjusted GF revenue estimate for the current fiscal year.	

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State Budget Stabilization Funds, Appendix A

State	Fund	C or S	Citation	Most Recent Legislative Action	Method for Deposit	Method for Withdrawal	Supermajority Vote to Access Fund	Repayment Provision	Caps	Note
Iowa	Economic Emergency Fund	S	Iowa Code § 8.55		By appropriation when there is a year-end GF surplus.	By appropriation for emergency expenditures. Appropriation may not exceed \$50M.			Fund capped at 2.5% of the adjusted revenue estimate for the fiscal year.	
Kentucky	Budget Reserve Trust Fund	S	Ky. Rev. Stat. § 48.705		The lesser of: 1) 50% of GF revenue surplus plus 50% of unexpended balance of GF appropriations; or 2) the amount necessary, from the GF revenue surplus plus the unexpended balance of appropriations, to make the balance of the budget reserve trust fund account equal to 5% of GF revenue receipts.	By 1) appropriation; or 2) if actual general fund revenue receipts are not sufficient to meet the GF appropriation levels authorized by the General Assembly in the branch budget bills for the executive, legislative, and judicial branches.			5% of GF revenue receipts.	
Louisiana	Budget Stabilization Fund	C	La. Const. art. VII, § 10.3; see also La. Rev. Stat. Ann. §§ 39:24; 39:25	2003 La. ALS 1307; 2005 La. ALS 34	Automatic deposit of revenues exceeding \$750M from taxes on the production of, or exploration for, minerals. With some limitations, the \$750M base may be increased every 10 years, beginning in the year 2000, by a law enacted by a 2/3 vote.	By appropriation, not to exceed one-third of the fund and requiring a 2/3 vote when: 1) the official forecast for a fiscal year is less than revenues received by the state in the preceding fiscal year; or 2) if a deficit for the current fiscal year is projected due to a decrease in the official forecast.	See Method for Withdrawal.		4% of total state revenue receipts for the previous fiscal year.	
Maine	Budget Stabilization Fund	S	Me. Rev. Stat. Ann. tit. 5, §§ 1531; 1532; 1533; 1534; 1535; 1536	2005, 2007	Transfer from the GF unappropriated surplus.	Subject to annual legislative deliberations.			Fund may not exceed 12% of total GF revenues in the immediately preceding state fiscal year and may not be reduced below 1% of total GF revenue in the immediately preceding state FY.	
Maryland	Revenue Stabilization Account	S	MD Code, State Finance and Procurement, § 7-311	2003	By appropriation. If Account balance is below 3% of estimated GF revenues, the governor shall include in the budget bill an appropriation equal to at least \$100M; if balance is at least 3% but less than 7.5% of estimated GF revenues, the governor shall include in the budget bill an appropriation equal to at least the lesser of \$50M or the amount necessary for the fund balance to exceed 7.5% of estimated GF revenues for the fiscal year.	Transferred by governor if authorized by an act of the General Assembly or specifically authorized in the state budget bill as enacted; Legislature may reduce amount transferred by amending budget bill.			7.5% of estimated GF revenues.	
Massachusetts	Commonwealth Stabilization Fund	S	Mass. Gen. Laws Ann. Ch. 29, § 2H; Ch. 29, § 5C		0.5% of the total revenue from taxes in the preceding FY shall be available to be used as revenue for the current fiscal year and 0.5% of the total revenue from taxes in the preceding FY shall be transferred to the Stabilization Fund. Any remaining amount shall be transferred to the Stabilization Fund.	By appropriation: 1) to make up any difference between actual state revenues and allowable state revenues when actual revenues fall below the allowable amount; or 2) to replace the state and local loss of federal funds; or 3) for any event that threatens the health, safety or welfare of the people or the fiscal stability of the state.			Fund capped at 15% of current fiscal year revenues.	
Michigan	Countercyclical Budget & Economic Stabilization Fund	S	Mich. Comp. Laws §§ 18.1351; 18.1352; 18.1353; 18.1354; 18.1355; 18.1356; 18.1357; 18.1358; 18.1359		Statute requires appropriation of an amount equal to: (annual growth rate in real personal income in excess of 2%) X (total GF revenues for the fiscal year ending in the current calendar year).	If annual growth rate in real personal income is negative, withdrawal equals (deficiency) X (total GF revenues for the fiscal year ending in the current calendar year), but no more than needed to balance budget. Also, if unemployment is between 8% and 11.9%, 2.5% of fund can be used for economic stabilization in calendar quarter; if unemployment is over 12%, 5% of fund can be used for economic stabilization in calendar quarter. Additionally, an emergency appropriation from the fund may be made with 2/3 majority vote of both houses.	See Method of Withdrawal.		10% of GF and school aid revenues for FY.	
Minnesota	Budget Reserve and Cash Flow Accounts	S	Minn. Stat. § 16A.152		If surplus remains in the GF after close of biennium, commissioner of finance allocates money to the following accounts in following order: (1) the cash flow account until that account reaches \$350M; (2) the budget reserve account until that account reaches \$653M; (3) the amount necessary to increase the aid payment schedule for school district aid and credit payments; and (4) the amount necessary to restore all or a portion of the net aid reductions under section 127A.441 and to reduce the property tax revenue recognition shift.	By transfer authorized by the commissioner of finance, with approval of the governor and in consultation with the Legislative Advisory Commission, when: (1) a negative budgetary balance is projected and when objective measures (such as reduced growth in total wages) reflect downturns in the state's economy; or (2) probable receipts for the GF will be less than anticipated and the amount available for the rest of the biennium will be insufficient.		The restoration of the budget reserve should be governed by principles based on the full economic cycle rather than the budget cycle. Restoration of the budget reserve should occur when objective measures, such as increased growth in total wages, retail sales, or employment, reflect upturns in the state's economy.	De facto cap of \$1,003M (\$350M cap on cash flow account; \$653M cap on budget reserve account).	

State Budget Stabilization Funds, Appendix A

State	Fund	C or S	Citation	Most Recent Legislative Action	Method for Deposit	Method for Withdrawal	Supermajority Vote to Access Fund	Repayment Provision	Caps	Note
Mississippi	Working Cash-Stabilization Reserve Fund	S	Miss. Code Ann. § 27-103-203		Year-end surplus until the fund reaches \$40M; thereafter, 50% of the unencumbered GF cash balance until the fund reaches 7.5% of GF appropriations.	Transfer by the executive director of the Department of Finance & Administration: 1) to meet cash-flow needs; or 2) to cover deficits (up to \$50M in any one fiscal year); or 3) to provide funds for disaster assistance.		Borrowed funds must be repaid within the same FY.	7.5% of GF appropriations if Working Cash-Stabilization Reserve Fund's balance exceeds \$40M.	
Missouri	Budget Reserve Fund	C	Mo. Const. art. IV, § 27(a); Mo. Rev. Stat. § 33.285		The commissioner of administration shall transfer from the GF to the budget reserve fund an amount equal to a "cash operating transfer" plus interest, prior to May 16 of the FY in which the transfer was made. A "cash operating transfer" is a transfer made by the commissioner of administration from the budget reserve fund to the GF to meet the cash requirements of the state.	If the governor reduces the expenditures of the state or any of its agencies below their appropriations, or in the event of a disaster, the governor may request the general assembly to appropriate funds from the budget reserve fund to cover the reduced expenditures or budget needs due to disasters. The maximum amount which may be appropriated at any one time for such budget stabilization purposes shall be 1/2 of the sum of the balance in the fund.	Any transfers requested of the general assembly by the governor require 2/3 vote of both houses of the general assembly.	1/3 of the amount transferred or expended from the budget reserve fund plus interest stand appropriated to the budget reserve fund during each of the next three fiscal years, and such amount, and any additional amounts which may be appropriated for that purpose, shall be transferred from the fund which received such transfer to the budget reserve fund by the fifteenth day of the fiscal year for each of the next three fiscal years or until the full amount, plus interest, has been returned to the budget reserve fund. The maximum amount which may be outstanding at any one time and subject to repayment to the budget reserve fund for budget stabilization purposes shall be one-half of the sum of the balance in the fund and all outstanding amounts appropriated or otherwise owed to the fund.	7.5% of net general revenue for previous FY.	
Nebraska	Cash Reserve Fund	S	Neb. Rev. Stat. § 84-612		Transfer by state treasurer when actual GF net receipts for the preceding three months exceed estimated receipts for the three-month period.	Transfer is made to the GF when the cash balance in the GF is inadequate to meet current obligations.				
Nevada	Fund to Stabilize Operation of State Government	S	Nev. Rev. Stat. § 353.288	2001, 2003, 2005	State comptroller must deposit into the Fund to Stabilize Operation of State Government 40% of the unrestricted balance of the state GF which remains after subtracting an amount equal to 10% of all appropriations made from the GF.	By appropriation only if: 1) the total actual revenue of the state falls short by 5% or more of the total anticipated revenue for the biennium in which the appropriation is made; or 2) the legislature and governor declare a fiscal emergency.			Balance in Fund not to exceed 15% of total appropriations from GF.	
New Hampshire	Revenue Stabilization Reserve Account	S	N.H. Rev. Stat. Ann. § 9:13-e		With some limitations, transfer by comptroller of any surplus at the end of each biennium.	Transfer by comptroller with the approval of fiscal committee and governor when: 1) GF operating deficit occurred for most recently completed fiscal year; and 2) unrestricted GF revenues in the most recently completed fiscal year were less than budget forecast. Fund cannot be used for any other purpose without a 2/3 vote and governor's approval.	See Method for Withdrawal.		Fund capped at 10% of actual GF unrestricted revenues for the most recently completed fiscal year.	
New Jersey	Surplus Revenue Fund	S	N.J. Stat. Ann. § 52:9H-14; N.J. Stat. Ann. § 52:9H-15; N.J. Stat. Ann. § 52:9H-16; N.J. Stat. Ann. § 52:9H-17; N.J. Stat. Ann. § 52:9H-18; N.J. Stat. Ann. § 52:9H-19; N.J. Stat. Ann. § 52:9H-20; N.J. Stat. Ann. § 52:9H-21; N.J. Stat. Ann. § 52:9H-22		50% of actual revenue collections in excess of governor's certification of revenues.	By appropriation only: 1) upon certification by the governor that anticipated GF revenues are estimated to be less than those certified upon approval of appropriations act; 2) upon findings by the legislature that to offset anticipated GF revenue declines, an appropriation from the fund is more prudent than a tax increase; 3) when the governor declares an emergency and notifies the Joint Legislative Budget Oversight Committee.			Fund capped at 5% of anticipated revenues.	If in a FY an appropriation is made from the Surplus Revenue Fund for reasons other than a declared emergency, no new taxes or increase in existing taxes can be enacted unless a decline in GF revenue is greater than 2%.

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State Budget Stabilization Funds, Appendix A										
State	Fund	C or S	Citation	Most Recent Legislative Action	Method for Deposit	Method for Withdrawal	Supermajority Vote to Access Fund	Repayment Provision	Caps	Note
New Mexico	Operating Reserve Fund	S	<u>N.M. Stat. Ann. § 6-4-2.1</u>		Transfer from GF.	By specific authorization of the legislature only in the event that GF revenues and balances are insufficient to meet authorized levels of appropriations.				
New York	Tax Stabilization Reserve Fund	S	<u>N.Y. State Fin. Law § 92; (See also N.Y. Const. art. 7, § 17)</u>		Any GF cash surpluses existing at year-end, up to a maximum contribution of 0.2% of total GF disbursements.	By transfer at the end of a fiscal year when GF receipts fall below the aggregate amount disbursed from the GF. The fund also can be temporarily loaned to the GF to assist with cash flow.		Once borrowed, fund must be paid back within six years in three equal installments. Repayments to the Tax Stabilization Reserve Fund shall be stipulated in annual budget bills. Monies loaned on a temporary basis must be repaid in cash by the end of the FY in which they were borrowed.	Reserve fund balance cannot exceed 2% of GF disbursements for the FY.	
New York	Rainy Day Reserve Fund	S	<u>N.Y. State Fin. Law § 92-cc</u>	Created 2007.	By appropriation.	In the event of an economic downturn or catastrophic event, and upon notification to leaders of the executive and legislative branches, the director of the budget may authorize and direct the comptroller to transfer from the rainy day reserve fund to the GF the amount needed to meet the requirements of the state financial plan. An economic downturn is defined as five consecutive months of decline in the composite index of business cycle indicators.		Withdrawals made due to economic downturn shall be repaid in cash within a period of three years. Withdrawals made due to catastrophic events shall be subject to repayment provisions to be proposed by the governor and implemented by appropriation or transfer of funds.	Fund cannot exceed 3% of projected GF disbursements for the upcoming FY.	
North Carolina	Savings Reserve Account	S	<u>N.C. Gen. Stat. § 143C-4-2</u>	<u>2006 N.C. ALS 203</u>	Transfer of 1/4 of any unreserved credit balance at the end of the fiscal year.	Funds reserved to the Savings Reserve Account shall be available for expenditure only upon an act of appropriation by the General Assembly "[...] to address unanticipated events and circumstances such as natural disasters, economic downturns, threats to public safety, health, and welfare, and other emergencies."			It is a goal of the General Assembly and the State to accumulate and maintain a balance in the Savings Reserve Account equal to or greater than 8% of the prior year's GF operating budget.	
North Dakota	Budget Stabilization Fund	S	<u>N.D. Cent. Code § 54-27.2-01; N.D. Cent. Code § 54-27.2-02; N.D. Cent. Code § 54-27.2-03</u>		Transfer of GF surplus in excess of \$65M at the end of the biennium.	Governor may transfer for revenue shortfall in excess of 2.5% of the estimate made by the most recently adjourned Assembly.			5% of the current biennial GF budget until June 30, 2009, thereafter, the cap moves from 5% to 10%.	
Ohio	Budget Stabilization Fund	S	<u>Ohio Rev. Code Ann. § 131.43</u>		General Assembly to maintain by appropriation an amount of money in the budget stabilization fund that amounts to approximately 5% of the GF revenues for the preceding FY.	Governor submits to the General Assembly proposals for appropriations between the GF and the budget stabilization fund.		Approximately 5% of GF revenues for the preceding FY.		The balance of the Budget Stabilization Fund may be combined with the balance in the GF for purposes of cash management.
Oklahoma	Constitutional Reserve Fund	C	<u>Okla. Const. art. X, § 23</u>		Transfer by the state treasurer of surplus of previous FY's GF revenue estimates.	Up to 3/8 of the balance may be appropriated if: 1) forthcoming fiscal year GF revenue is certified to be less than that of current fiscal year certification; or 2) if a revenue failure has occurred with respect to the GF of the State Treasury. Also, up to 1/4 of the balance may be appropriated if: 1) emergency declaration by governor with concurrence by Legislature with a 2/3 vote; 3) joint emergency declaration by speaker and president pro tempore with concurrence by Legislature with a 3/4 vote.	See Method for Withdrawal.		10% of GF revenue for the preceding FY.	

State Budget Stabilization Funds, Appendix A

State	Fund	C or S	Citation	Most Recent Legislative Action	Method for Deposit	Method for Withdrawal	Supermajority Vote to Access Fund	Repayment Provision	Caps	Note
Oregon	Education Stability Fund	C	<u>Ore. Const. art. XV, § 4 (see Ore. Rev. Stat. § 348.716)</u>	2002	18% of net proceeds from the state lottery is deposited in the fund until the fund cap is reached. The legislature may make additional appropriations into the fund.	Appropriation may be made with 3/5 of each house if: 1) the last quarterly economic and revenue forecast for a biennium indicates GF revenue's for the next biennium will be at least 3% less than appropriations from the state's GF for the current biennium; 2) there has been a decline for two or more consecutive quarters in the last 12 months in seasonally adjusted nonfarm payroll employment; or 3) a quarterly economic and revenue forecast projects that revenues in the state's GF in the current biennium will be at least 2% below what the revenues were projected to be in the revenue forecast on which the adopted budget for the current biennium was based; or 4) if the proposed appropriation, allocation or transfer is approved by 3/5 of each house and the governor declares an emergency.	3/5 of each house of the legislature.		5% of GF revenues from the previous biennium.	Appropriations from the fund must be used on public education.
Oregon	Rainy Day Fund	S	<u>Ore. Rev. Stat. § 293.144, et seq.; (Chap. 5 Oregon Laws 2007)</u>	2007	An amount equal to 1% of the GF appropriations made for that biennium is to be transferred to the Rainy Day Fund; if the ending balance is equal to or less than 1% of the GF appropriations, then the entire amount of the ending balance is to be transferred to the Rainy Day Fund.	Appropriation may be made with 3/5 of each house if: 1) the last quarterly economic and revenue forecast for a biennium indicates GF revenue's for the next biennium will be at least 3% less than appropriations from the state's GF for the current biennium; 2) there has been a decline for two or more consecutive quarters in the last 12 months in seasonally adjusted nonfarm payroll employment; or 3) a quarterly economic and revenue forecast projects that revenues in the state's GF in the current biennium will be at least 2% below what the revenues were projected to be in the revenue forecast on which the adopted budget for the current biennium was based.	3/5 of each house of the legislature.		7.5% of GF revenues from the previous biennium.	Legislature may not appropriate more than 2/3 of the fund for any one biennium.
Pennsylvania	Budget Stabilization Reserve Fund	S	<u>Pa. Stat. Ann. tit. 72, § 1701-A; Pa. Stat. Ann. tit. 72, § 1702-A; Pa. Stat. Ann. tit. 72, § 1703-A</u>	2002, 2005	In the event of a surplus in the GF, 25% of the surplus is deposited into the Budget Stabilization Reserve Fund, or by appropriation.	By appropriation with 2/3 vote when governor declares an emergency or to counterbalance downturns in the economy that will result in significant unanticipated revenue shortfalls.	By 2/3 vote of both chambers.		If the Budget Stabilization Reserve Fund exceeds 6% of the actual GF revenues received for the fiscal year in which the surplus occurs, 10% of the surplus shall be deposited by the end of the next succeeding quarter into the Budget Stabilization Reserve Fund.	Any money appropriated from Budget Stabilization Reserve Fund which has then lapsed is returned to the Budget Stabilization Reserve Fund.
Puerto Rico	Budgetary Fund	S	<u>PR ST T. 23 § 106</u>		Budgetary Fund to be maintained at not less than one third of one percent (1/3 of 1%) of the total Joint Budget Resolution (the governor may order a larger deposit).	The Governor may transfer funds to cover appropriations when resources are insufficient, to provide for payment of public debt service, to address any unexpected situation in the public service, or to honor obligations of programs funded with contributions or grants from the U.S. government that have not been received.			Fund capped at 6% of the appropriated funds of the Budget Joint Resolution in any year.	
Rhode Island	State Budget Reserve and Cash Stabilization Account	S (& C)	<u>R.I. Gen. Laws § 35-3-20; R.I. Gen. Laws § 35-3-20.1; see also R.I. Const. art. IX, § 16, and R.I. Gen. Laws § 35-6-1</u>	2006	State budget cannot exceed 98% (□FY09, 98.7%; FY10, 97.6%) of estimated state general revenues. An amount remaining between the budget cap (currently 98%) and 100% of estimated state general revenues is transferred by the controller into the Budget Reserve Account.	By resolution adopted by a majority vote of each house of the general assembly when the budget officer declares that actual GF revenue will not equal the original estimates upon which appropriations were based.		State statutes call for the fund to be repaid in the second fiscal year following the fiscal year in which a transfer was made from the fund and, when necessary, in subsequent fiscal years.	Fund capped at 3% (FY09, 3.4%; FY10, 3.8%) of total fiscal year resources.	
South Carolina	General Reserve Fund	C	<u>S.C. Const. art. III, § 36; see also S.C. Code Ann. § 11-11-310</u>		Transfer of prior year unobligated cash balance.	By appropriation.		Amount must be restored to the Budget Reserve Fund within three FYs at a rate of not less than 1% of GF revenue of latest completed FY until fund is restored to 3%.	Fund capped at 3% of GF appropriations for the prior fiscal year.	

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State Budget Stabilization Funds, Appendix A

State	Fund	C or S	Citation	Most Recent Legislative Action	Method for Deposit	Method for Withdrawal	Supermajority Vote to Access Fund	Repayment Provision	Caps	Note
South Carolina	Capital Reserve Fund	S	S.C. Code Ann. § 11-11-320; S.C. Code Ann. § 11-11-325; S.C. Code Ann. § 11-11-335; see also S.C. Const. art. III, § 36		By appropriation an amount equal to 2% of GF revenue of the latest completed fiscal year.	By appropriation when revenues at the end of the fiscal year are projected to be less than expenditures authorized by appropriation for that year.	If the Capital Reserve Fund is not tapped to address a budget deficit, the Legislature--with 2/3 vote of members present and voting, but not less than 3/5 vote of total membership--can appropriate money from the fund: 1) to finance in cash previously authorized capital improvement bond projects; 2) to retire interest or principal on bonds previously issued; or 3) for capital improvements or other nonrecurring purposes.		Fund capped at 2% of GF appropriations for the prior fiscal year.	Any monies remaining in the Fund at the end of the FY lapse and are credited to the GF.
South Dakota	General Reserve Fund	S	S.D. Codified Laws Ann. § 4-7-32	2002	Transfer of prior year unobligated cash balance to General Reserve Fund	By special appropriation of the Legislature to redress unforeseen expenditure obligations or unforeseen revenue shortfalls.	2/3 vote of each house of the Legislature.		10% of GF	http://legis.state.sd.us/IssueMemos/IssueMemos/Im02-02.pdf
Tennessee	Reserve for Revenue Fluctuations	S	Tenn. Code Ann. § 9-4-211	2003	By appropriation an amount 10% or greater of the estimated growth in state tax revenues.	By transfer by the commissioner of Finance and Administration to offset revenue shortfalls, with notification to the chairs of the Finance, Ways & Means Committees of the Senate and House. Expenditure from the fund cannot exceed \$100M or 1/2 of the available reserve to meet expenditure requirements in excess of budgeted appropriation levels.			5% of estimated state tax revenues to be allocated to the GF and education trust fund for given FY.	The statute declares legislative intent to be that, to the extent practicable, revenue shortfalls will be offset by reductions in expenditures before using amounts in the reserve fund.
Texas	Economic Stabilization Fund	C	Tex. Const. art. III, § 49-g		The constitutional amendment creating the fund mandates the following revenue transfers to it: 1) one-half of any unencumbered general revenue fund balance at the end of each fiscal biennium; 2) an amount of general revenue equal to 75% of the amount by which oil production tax collections in any future fiscal year exceed oil production tax collections in fiscal year 1987; 3) an amount of general revenue equal to 75% of the amount by which natural gas production tax collections in any future fiscal year exceed oil production tax collections in the fiscal year 1987; 4) the Legislature also may appropriate additional funds.	By appropriation with a 3/5 vote of members present if: 1) the comptroller certifies that appropriations from general revenue made by the preceding legislature for the current biennium exceed available general revenues for the remainder of the biennium; 2) an estimate of anticipated revenues for a succeeding biennium is less than the revenues estimated to be available for the current biennium; 3) for any purpose with 2/3 vote of members present.	See Method for Withdrawal.		Fund capped at 10% of general revenue fund deposits (excluding interest and investment income) during the preceding biennium.	
Utah	Budget Reserve Account	S	Utah Code Ann. § 63-38-2.5; see also Utah Code Ann. § 63-38-2.6		25% of GF surplus.	By appropriation to cover operating deficits, state settlement agreements, retroactive tax refunds, or deficits in public education appropriations.		If a surplus exists and if, within the last 10 years, the Legislature has appropriated any money from the General Fund Budget Reserve Account that has not been replaced, up to an additional 25% more of the surplus must be transferred to the General Fund Budget Reserve Account to replace the amounts appropriated from the fund.	Fund capped at 6% of the GF appropriation and Uniform School Fund appropriation amount for the FY in which a surplus occurred.	
Vermont	Budget Stabilization Trust Fund	S	Vt. Stat. Ann. tit. 32, § 308		Undesignated GF surplus; also, any additional amounts as may be authorized by the General Assembly.	Transfer by the commissioner of Finance and Management to the extent necessary to offset a GF deficit.			Fund is capped at 5% of GF appropriations for the prior fiscal year.	

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State Budget Stabilization Funds, Appendix A

State	Fund	C or S	Citation	Most Recent Legislative Action	Method for Deposit	Method for Withdrawal	Supermajority Vote to Access Fund	Repayment Provision	Caps	Note
Virgin Islands	Budget Stabilization Fund	S	V.I. Code Ann., tit. 33, § 33/3100m	2006	An annual appropriation of \$10M, and any FY end surplus.	Transfer by the commissioner of finance to: 1) offset a deficit in the GF at the end of a FY; 2) offset a temporary shortfall in the GF caused by lagging revenue collections; and, 3) provide emergency funding for disaster recovery.		Any monies disbursed to offset shortfall must be repaid to the fund by the end of the FY.	5% of total appropriations from the GF for FY in progress.	
Virginia	Revenue Stabilization Fund	C	Va. Const. art. X, § 8; (see also Va. Code § 2.2-1828; Va. Code § 2.2-1829; Va. Code § 2.2-1830; Va. Code § 2.2-1831)		By formula as specified in the state's constitution: Deposit $\geq 0.5 \times$ [(certified tax revenues) \times (FY's % increase - average increase over six years)]. Also, if: a) annual % increase in certified tax revenues $\geq 8\%$; and b) annual % increase in certified tax revenues $\geq 1.5\%$ of six year average increase; and c) estimated GF revenues for current FY $> 5\%$ of previous FY's actual GF revenues; then Governor shall submit in the budget recommendations an additional deposit into the fund $\geq 0.25 \times$ [(certified tax revenues) \times (FY's % increase - average increase over six years)].	General Assembly may make a withdrawal only if GF revenues appropriated exceed revised GF revenue forecast by more than 2% of certified tax revenues collected from previous FY. Withdrawal may not exceed 1/2 of the fund, and may not compensate more than 1/2 of the projected revenue shortfall.			Fund capped at 10% of the average annual tax revenues derived from income and retail sales for the three FYs immediately preceding.	
Washington	Budget Stabilization Account	C	Wa. Const. art. VII, § 12	SJR 8206 (approved in 2007 general election)	By June 30th of each FY, an amount equal to 1% of the general state revenues for that FY shall be transferred to the budget stabilization account.	Withdrawal may be made if: 1) Governor declares emergency, legislature may by majority vote of both houses provide an appropriation; 2) employment growth forecast is less than 1%, "moneys may be withdrawn and appropriated from the Fund" by a majority vote of both houses. Additionally, 3) an appropriation may be made at any time by 3/5 vote of both houses.	See Method for Withdrawal.		10% of estimated general state revenues.	
West Virginia	Revenue Shortfall Reserve Fund	S	W. Va. Code § 11B-2-20		By transfer of the first 50% of all surplus revenues accrued during the fiscal year just ended.	By appropriation to meet any anticipated revenue shortfall, for emergency revenue needs caused by acts of God or natural disasters or for other fiscal needs as determined solely by the legislature.		Any funds borrowed must be repaid, without interest, and redeposited to the credit of the fund within 90 days of their withdrawal.	Fund capped at 10% of GF appropriations for the fiscal year just ended.	The amount of funds borrowed shall not exceed 1.5% of general revenue estimate of the FY in which the funds are to be borrowed, or the amount the governor determines is necessary to make timely payment of the state's obligations, whichever is less.
Wisconsin	Budget Stabilization Fund	S	Wis. Stat. § 20.875; Wis. Stat. § 25.60; Wis. Stat. § 16.465; Wis. Stat. § 16.518		By transfer of 50% of surplus revenues.	By appropriation.			Fund capped at 5% of estimated expenditures from the GF.	
Wyoming	Budget Reserve Account	S	Wyo. Stat. § 9-2-1014.1; Wyo. Stat. § 39-14-801	2005	Year-end surplus plus appropriations.	By appropriation.				

Key:
 S-Statutory
 C-Constitutional
 M-Million
 B-Billion
 FY-Fiscal Year
 GF-General Fund

Source: Author's own compilation and analysis. Please contact the author for questions or revisions.

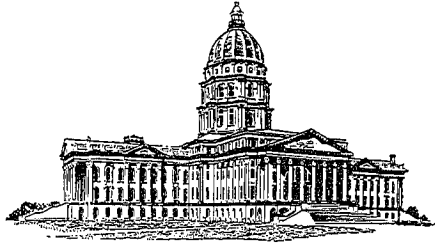
State	FY 2010	FY 2011
Alabama	Enacted: Post-enactment of the budget, governor released \$216 million from the state's education rainy day fund, completely depleting the fund.	Enacted: In April 2010, the governor declared 12% proration (i.e. an across the board cut) in the state general fund. According to the State Finance Director, most state agencies have been operating at that reduced funding level since FY 2010 began in October 2009. The purpose of the official announcement was to allow the governor to withdraw up to \$74 million from the rainy day fund for use in the remainder of FY 2010 ending September 30 or in FY 2011.
Arizona	Enacted: State treasurer transferred \$100 million from the budget stabilization fund to the general fund to cover expenses.	
Connecticut	Enacted: Legislature enacted a transfer of \$1,062.0 million from the state's budget reserve fund for FY 2010 and \$319.70 million from the fund for FY 2011. Combined, these two transfers (totaling \$1,381.7 million) deplete the entire budget reserve fund. Proposed: Post-enactment of the budget, the governor proposed using \$219 million in reserves slated for use in FY 2011, and apply them toward FY2010's budget gap.	
Florida	Enacted: Legislature withdrew \$258.6 million from the state's revenue shortfall reserve.	
Idaho	Enacted: Legislature withdrew \$86.8 million from the Public Education Stabilization Fund.	Governor plans to tap the rainy day fund to protect public schools. Assistant majority leader proposed creating a rainy day fund for higher education.
Iowa	Enacted: \$200.0 million	
Louisiana	Enacted: Legislation authorized utilization of \$86.2 million from the budget stabilization fund.	Enacted: The FY 2011 budget uses as much as \$2 billion in one-time funds, including money from the state's rainy day fund, tax amnesty proceeds, a state emergency response fund and other sources.
Maine	Enacted: \$51.0 million.	
Maryland	Enacted: Transfer of \$210 million from state reserve fund.	
Massachusetts	Enacted: Enacted budget uses \$214 million from the state's rainy day fund.	Enacted: Budget includes the use of \$100 million in rainy day funds.
Mississippi	Enacted: Enacted budget uses \$90 million from the state's rainy day fund.	House approved bill to use \$79 million from reserves to close the budget gap.
Nebraska	Enacted: \$101.0 million	Lawmakers approved tapping the state's rainy day fund for \$3 million.
Oklahoma		Budget passed by the legislature uses about \$272 million from the state's Rainy Day Fund. State treasurer stated that lawmakers have access to \$600 million in rainy day funds. Governor proposed using \$485 million from rainy day fund.
Oregon		Senate president stated that Oregon had \$175 million in reserves that could be spent on education.
Pennsylvania	Enacted: Enacted budget uses all of the money in the state's rainy day fund.	
Tennessee	Enacted: \$55.0 million	
Texas		The lieutenant governor and the Senate Finance Committee chairman have both indicated the rainy day fund could be used in 2011-2012 biennium. When the next budget is drafted, the more than \$8 billion is estimated to be in the fund.
Vermont	Enacted: \$2.7 million	
Virginia	Enacted: \$490.0 million	
Washington	Enacted: \$45.0 million	

Source: NCSL survey of state legislative fiscal offices: November 2009. Various media and government outlets: November 2009 – April 2010.

This table is intended to provide general information and does not necessarily address all aspects of this topic. The table reflects in summary form information gathered from media sources and NCSL surveys of legislative fiscal offices. Please contact us at budget.revenue.updates@ncsl.org if you know of any additional information that should be reflected here or any errors that should be corrected.

This report has been prepared under a partnership project of NCSL's Fiscal Affairs Program in Denver, Colorado and the Pew Center on the States, based in Washington, D.C.

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KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

MEMORANDUM

To: Senator Emler, Representative Merrick and Members of the Legislative Budget Committee
From: Jill Ann Wolters, Senior Assistant Revisor
Date: October 14, 2010
Subject: Senate Concurrent Resolution No. 1614, budget stabilization fund and debt prepayment fund

Senate Concurrent Resolution No. (SCR)1614, as introduced and as it passed the Senate in the 2009 Session, added a new section 14, to article 11 of the Kansas constitution establishing a budget stabilization fund in the state treasury.

The Senate version of the constitutional amendment would require that annually .25% of the state revenues collected in the preceding year be transferred to the budget stabilization fund. Moneys from such fund may only be transferred under the following circumstances:

(1) By a separate act of the legislature passed by an affirmative vote of not less than three-fifths of all members then elected (or appointed) and qualified to each house.

(2) By a separate act of the legislature, by simple majority, whenever the amount in such fund exceeds 5% of the state revenues collected in the previous fiscal year, moneys that exceed such 5% may be transferred from the budget stabilization fund.

The resolution, if approved by two-thirds of the members of the House and Senate, would have been submitted to the electors of the state at the general election in the year 2010 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election. This provision remains the same in all versions of the amendment.

SCR1614, as amended by House Committee of the Whole, adds an additional fund in the state treasury, the debt prepayment fund, and deposits moneys into both funds in a different manner.

The House version would:

(1) Require that annually, when state tax receipts for a fiscal year increase by more than 3% over the state tax receipts for the preceding fiscal year, up to the next 1% of state tax receipts collected in excess of 3% shall be deposited in the budget stabilization fund. Nothing in the amendment would require state tax receipts to be deposited in the budget stabilization fund when the budget stabilization fund balance exceeds 15% of the preceding fiscal year's state tax receipts.

(2) Require that annually, when state tax receipts for a fiscal year increase by more than 4% over the state tax receipts for the preceding fiscal year, up to the next .5% of state tax receipts collected in excess of 4% shall be deposited in the debt prepayment fund. Nothing in the amendment would require state tax receipts to be deposited in the debt prepayment fund when the debt prepayment fund balance exceeds 15% of the preceding fiscal year's total amount of principal of bonded indebtedness serviced by appropriations from the state general fund.

(3) Allow the legislature, by law, to provide for additional amounts of state tax receipts to be deposited in the budget stabilization fund and the debt prepayment fund.

(4) Allow, by a separate act of the legislature, withdrawals from the budget stabilization fund to occur:

(A) In the current fiscal only when the current fiscal year's estimated state tax receipts are less than the amount of actual state tax receipts collected or otherwise received in the preceding fiscal year. The amount withdrawn shall not exceed the difference between the current fiscal year's estimated state tax receipts and the amount of actual state tax receipts collected in the preceding fiscal year except that such difference shall be reduced by the amount of the current fiscal year's estimated state tax receipts not collected as a result of any kind of tax reduction legislation enacted by the legislature and approved by the governor in the current or preceding fiscal year; or

(B) in the ensuing fiscal year only when the ensuing fiscal year's estimated state tax receipts are less than the amount of estimated state tax receipts in the current fiscal year. The amount withdrawn shall not exceed the difference between the ensuing fiscal year's estimated state tax receipts and the amount of estimated state tax receipts in the current fiscal year except that such difference shall be reduced by the amount of the ensuing fiscal year's estimated state tax receipts not collected as a result of any kind of tax reduction legislation enacted by the legislature and approved by the governor in the current or preceding fiscal year.

The attorney general is responsible for determining whether tax reduction legislation was enacted and approved and the governor is responsible for certifying the amount of such reduction.

(5) Allow, by a separate act of the legislature, withdrawals from the debt prepayment fund only to provide for calling and redeeming selected bonds for which debt service is paid by appropriations from the state general fund on or after their first optional redemption date and prior to maturity. The governor shall be responsible for determining and selecting which bonds will produce the greatest debt service savings to the state general fund, and the attorney general shall be responsible for certifying that the selected bonds are available for optional redemption.

Amounts in the budget stabilization fund and the debt prepayment fund may be invested as provided by law and the earnings thereon shall be retained in the budget

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stabilization fund and the debt prepayment fund.

As used in the amendment, "state tax receipts" means receipts from any state income tax, sales tax, compensating use tax or other excise tax or tax in the nature of an excise tax, or estate or inheritance tax, or tax in the nature of an estate or inheritance tax, but shall not include receipts from any property tax, or tax in the nature of a property tax, or any tax on motor fuels.

The concurrent resolution was assigned to a conference committee in March, 2010. An agreement was reached and signed by some, but not all conferees. SCR 1614 died in conference committee on May 28, 2010.

The conference committee report that was circulated made two changes to the amendment. The name of the budget stabilization fund was changed to the contingency reserve fund and the explanatory statement was redrafted to be more brief. The following is the explanatory statement:

A vote for this amendment will:

- (1) Establish a contingency reserve fund and a debt prepayment fund in the state treasury. Each year, if state tax receipts increase by more than 3% over the amount of the preceding year, a portion of the increase would be deposited in the contingency reserve fund and, if the increase exceeds 4%, a portion of the increase would be deposited in the debt prepayment fund. Additional amounts could be deposited in these funds by act of the legislature.
- (2) Provide that amounts could be withdrawn from the contingency reserve fund when state tax receipts are less than the amount for the preceding year, other than amounts resulting from any tax reduction legislation.
- (3) Provide that amounts could be withdrawn from the debt prepayment fund to redeem state bonds payable from the state general fund that are selected to produce the greatest debt service savings.
- (4) Provide that any withdrawal from either fund must be a separate bill containing only a statement that the conditions exist for the withdrawal and the authority to withdraw and deposit in the state general fund.

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**State General Fund Adjusted Actual Receipts
FY 1991 - FY 2009
Change Amount Greater than Three Percent, But No More Than 4.5 Percent
(Amounts in millions)**

Fiscal Year	Adjusted Actual State General Fund Tax Receipts	Change		Change Greater Than 3.0 Percent	Budget Stabilization Fund -- Amount of 1.0 Percent * Excess Above 3.0 Percent	Change Greater Than 4.0 Percent but No More Than 4.5 Percent	Debt Prepayment Fund -- Amount of 0.5 Percent ** Excess Above 4.0 but No More Than 4.5 Percent
		Dollar	Percent				
1991	\$ 2,199.9	\$ 84.6	4.0%	Yes	\$ 21.1	No	
1992	2,275.1	75.3	3.4	Yes	8.9	No	
1993	2,751.0	475.9	20.9	Yes	22.7	Yes	11.4
1994	2,975.4	224.4	8.2	Yes	27.4	Yes	13.7
1995	3,055.6	80.2	2.7	No		No	
1996	3,251.9	196.3	6.4	Yes	30.7	Yes	15.3
1997	3,487.2	235.3	7.2	Yes	32.7	Yes	16.3
1998	3,856.2	369.0	10.6	Yes	34.8	Yes	17.4
1999	3,791.6	(64.5)	(1.7)	No		No	
2000	4,018.8	227.2	6.0	Yes	37.9	Yes	18.9
2001	4,144.1	125.3	3.1	Yes	4.0	No	
2002	3,891.4	(252.8)	(6.1)	No		No	
2003	4,027.4	136.0	3.5	Yes	19.4	No	
2004	4,256.4	229.0	5.7	Yes	40.2	Yes	20.1
2005	4,587.0	330.6	7.8	Yes	42.4	Yes	21.2
2006	5,185.9	598.9	13.1	Yes	45.7	Yes	22.9
2007	5,649.6	463.8	8.9	Yes	52.1	Yes	26.1
2008	5,755.6	106.0	1.9	No		No	
2009	5,257.7	(497.9)	(8.7)	No		No	
					\$ 420.0 ***		183.3

* Budget Stabilization Fund -- Amount up to 1.0 percent, as long as actual State General Fund adjusted tax receipts exceeded the prior year by more than a positive 4.0 percent.

** Bond Payment Fund amount up to 0.5 percent, as long as actual State General Fund adjusted tax receipts exceeded the prior year by more than a positive 4.0 percent.

*** \$420.0 million is 6.9 percent of FY 2009 actual expenditures.

Legislative Budget Committee
October 14, 2010
Attachment 19

18

Legislative Budget Committee

State General Fund

CONCLUSIONS AND RECOMMENDATIONS

Proposed Legislation:

BACKGROUND

The Legislative Budget Committee, as provided by law (KSA 46-1208) can set its own agenda. The statute charges the Committee to "compile fiscal information, study and make recommendations on the state budget, revenues and expenditures, the organization and functions of the state, its departments, subdivisions and agencies with a view of reducing the cost of state government and increasing efficiency and economy." At its August 2010 meeting, the Committee conducted its usual monitoring of State General Fund finances. In addition, the Committee reviewed the following: Learjet plant expansion; Medicaid and State Children's Health Insurance program eligibility processing delays and funding; disaster relief; Medicaid funding for schools; home and community-based waivers; an update on the Stockton Correctional Facility; and an overview of the Kansas economy.

COMMITTEE ACTIVITIES

State General Fund. Staff of the Legislative Research Department (KLRD), presented a preliminary overview actual FY 2010 resources, demands, and balances of the State General Fund (SGF). Actual receipts for FY 2010 were \$5.192 billion, or 1.9 percent, below estimates. Actual expenditures for FY 2010 were \$142.0 million less than the total approved by the 2010

Legislature, but \$138.6 million budgeted for FY 2010 was shifted to FY 2011. This shifting related primarily to the decision to delay state aid payments to school districts in June 2010. The aid will be paid in July 2011. Staff also presented an overview of SGF receipts for FY 2010. Total receipts to the SGF in FY 2010 were \$98.6 million, or 1.9 percent, below the final adjusted estimate, largely due to lower-than-estimated individual income taxes. Total SGF receipts in FY 2010 were below SGF receipts in FY 2009 by \$396.5 million, or 7.1 percent.

In addition, staff presented an update on SGF receipts for July, FY 2011 and noted that total receipts for July, the first month of FY 2011, were \$10.0 million, or 2.4 percent, below the April 16, 2010, consensus revenue estimate. Retail sales and individual income taxes fell below the estimate by more than \$1.0 million for this first month of FY 2011.

Staff also presented an update on the congressionally approved extension of elements of the *American Recovery and Reinvestment Act (ARRA) of 2009*. The extension will provide two funding sources to the states, an extension of the enhanced Federal Medicaid Assistance Percentage (FMAP) and additional funding for education jobs. The bill extends the FMAP enhancement from January 1, 2011, to June

30, 2011, at a reduced rate of 3.2 percent for January through March of 2011 and 1.2 percent from April through June of 2011. The current fiscal impact of the increased Medicaid funding is \$90.2 million to the state. The bill also includes an estimated \$92.7 million for Kansas education jobs funding; however, it would require a maintenance of effort on the part of the state.

Learjet Plant Expansion. Representatives of Bombardier Learjet presented an overview of the Bombardier Learjet operations in Wichita. A planned expansion of the Wichita facility for the Learjet 85 aircraft program will begin in the fourth quarter of 2010. The representatives indicated that the Learjet 85 is an upper-mid-sized plane designed to meet the needs of a growing customer base. The various parts for the construction of the aircraft will be made at other Bombardier Learjet plants across the country and around the world, and will then be shipped to the Wichita plant for assembly. The employees at the Wichita facility will be highly skilled employees. Presently, Learjet has approximately 2,100 employees in Kansas and plans to increase that number to 4,000 full-time employees. The representatives of Bombardier Learjet acknowledged the approval by the State Finance Committee on August 6, 2010, allowing Learjet to issue bonds in the amount of \$27 million for the expansion project. Repayment of the bonds will be made over a seven-year period with funding provided through withholding taxes of new and current employees.

Some members of the Committee expressed concern that the state is assisting large companies through the issuance of bonds, and noted there might be a need to put more emphasis on assisting more small businesses throughout the state.

Medicaid State Children's Health Insurance Program Eligibility Processing Delays and Funding. The Medicaid Director of the Kansas Health Policy Authority (KHPA), presented an update on Medicaid State Children's Health Insurance Program (SCHIP) eligibility processing delays and funding. She stated that the backlog in processing applications for the

Medicaid and SCHIP programs has been caused by an increase in the length of time needed to process the applications because of additional requirements. She indicated that the current budget does not allow for additional staff. Currently, the Clearinghouse staff is only able to process current applications and does not have the time to address the backlog. KHPA has received a letter from the Centers for Medicare and Medicaid Services (CMS) indicating that the agency needs to take corrective action to address the processing time. The Medicaid Director noted there is a concern that the backlog could result in a violation of federal processing time requirements and a loss of federal funds.

KHPA has responded with a three-pronged approach to resolve the application backlog:

- Implementation of system modifications to hasten the application processing over the next six months;
- Adoption of CMS-approved eligibility policy options to simplify the eligibility determination process; and
- Continuation of attempts to seek financial resources from multiple sources to increase application processing capacity, including private funding from philanthropic foundations, requesting budget enhancement, and seeking a favorable Children's Health Insurance Program Preauthorization Act (CHIPRA) bonus payment decision.

She stated that KHPA has received notice of an approved CHIPRA payment of \$1.2 million. The KHPA Board has endorsed the application of those funds to eliminate the backlog at the Clearinghouse; however, funding for the Clearinghouse in FY 2012 is not expected to be sufficient to keep up with the high volume of applications. KHPA will include a request in its FY 2012 budget for additional resources for the Clearinghouse.

Disaster Relief. The Adjutant General provided an update on disaster relief, including information on how a disaster is handled by state agencies, issues arising if current funding falls

short, the current status of outstanding disasters, and estimated total state disaster match requirements. He stated that the agency anticipates it will need an additional \$27.4 million from the State General Fund to address current state disasters for the remainder of FY 2011, mainly for utility infrastructure and for flooding in southeast Kansas.

Responding to a question from the Committee, a representative of the Adjutant General's Office explained that small projects are paid for directly up front. Bills on larger projects are paid for as they are presented by the contractors. The agency pays both the state and federal share in one payment.

Medicaid Funding for Schools. Staff presented background information and an update on Medicaid reimbursement of attendant care services. Staff stated that effective July 1, 2010, KHPA discontinued reimbursement for attendant care services to schools under the Medicaid School Based Services program. This change was made as a result of an interpretation made by Centers for Medicare and Medicaid (CMS), indicating that payment could not be made to school districts unless the Kansas Medicaid program also covered these services in non-school settings.

A report prepared by the Legislative Research Department on total Medicaid expenditures for special education and attendant care by school district for FY 2008, FY 2009 and FY 2010 was distributed to the Committee.

The Chief Financial Officer of the Kansas Health Policy Authority (KHPA) presented additional comments on Medicaid funding for schools. He noted that the state plan was presented to CMS in early 2009. Since that time, KHPA has been working with CMS to negotiate the final outcome. KHPA received word from CMS in March or April 2010 that there was a problem with the payments to school districts for attendant care services, with a final notification from CMS at the end of May, that these payments would not be allowed. KHPA then alerted school districts to this decision from CMS in the middle of June 2010. Responding to a question from the

Committee, he indicated that the effect of the action, based on estimates, would be an underpayment of approximately \$5 million-\$10 million to school districts. KHPA continues to work with CMS to find a solution to the problem.

The Chief Operations Officer of the Lawrence Public Schools and the Assistant Director of Special Education of the Lawrence Public Schools, presented testimony. They noted that the difficulty in receiving the notice so late (June 17, 2010), is that the reimbursement for attendant care services will be discontinued at such a late date in the school budgeting process for FY 2011. They indicated that the Lawrence Public Schools will continue to provide the attendant care services as needed by their students; however, the district will need to shift funding from other educational programs.

Additional testimony was received from: the Director of Special Education of Topeka Unified School District 501; the Superintendent of the Paola School District, who suggested that the implementation of the changes be delayed until the FY 2012 budget year in order for school districts to have time to adjust to the new data collection and realign their budgets; and the Chief Executive Officer, Lakemary Center, who stated that the Lakemary Center provides a statewide resource for children with the challenging combination of developmental disability and significant psychiatric and behavioral disorders. He indicated that a central component of the successful treatment is the specialized aides in the school who work is funded through the Medicaid service called Attendant Care. The services provided to children with an Individualized Educational Plan (IEP) are required by law. He noted that one-fifth of their total school budget comes from funds for attendant care with the removal of these services creating a budget crisis.

The Committee requested a listing of all school districts with the impact of the new ruling by district. The Committee also requested that KHPA research the possibility of holding school districts harmless for the 2010-2011 school year.

Home and Community-Based Waivers. Staff presented an update on the actions by the

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2010 Legislature regarding home and community-based (HCBS) waivers. A deputy secretary of the Department of Social Rehabilitation Services provided information on HCBS waivers, including:

- *Developmental Disability (DD) Waiver.* An additional \$3.3 million from the State General Fund was allocated to the DD waiver for FY 2011. As of August 2010, there are 2,444 people on the waiting list receiving no waiver services and another 1,047 people receiving some services, but who are waiting for additional services. To avoid further overspending, SRS eliminated oral health services on January 1, 2010, and temporary respite care services on February 1, 2010.
- *Physical Disability (PD) Waiver.* As of August 1, 2010, there were 2,286 individuals on the PD Waiver waiting list. Steps have been taken to avoid overspending by eliminating oral health services, limiting service, and changing the crisis criteria.
- *Traumatic Brain Injury (TBI) Waiver.* This program is considered a rehabilitation program and consumers are expected to transition off the program or to another program. Changes in the program to avoid overspending include elimination of oral health services; limiting personal services to ten hours per day unless there is a determination of a crisis situation; limiting assistive services to crisis situations only, with approval by the program manager; and moving third year continuation of service review to a program manager, as opposed to a committee. There is no waiting list for this program.
- *Technology Assisted (TA) Waiver.* Designed to serve children ages 0-22 years who are medically fragile and technology dependent, requiring intense medical care. There is no waiting list for this program.
- *Serious Emotional Disturbance (SED) Waiver.* During FY 2010, \$48,448,927 was paid through the SED waiver to service a total of 6,021 children.

- *Autism Waiver.* The target population for the autism waiver is children with autism spectrum disorders (ASD), including autism, Aspergers' Syndrome, and other pervasive development disorders. This waiver was implemented on January 1, 2008. There is a waiting list of 247 children at this time. The total expenditure for the waiver in FY 2010 was \$743,673.

The Deputy Secretary noted that the SRS Fee Fund balance was used to fill the gap between available SGF and waiver spending, and allocated to HCBS waivers. The fund is now depleted and SRS will be \$11 million short for FY 2012.

He also provided an update on the Money Follows the Person (MFP) Grant, a federally funded grant for Kansas with targeted population including persons currently residing in nursing facilities and intermediate care facilities for people with mental retardation (ICFs/MR). He also discussed Executive Order 10-01, regarding the Kansas Neurological Institute and Parsons State Hospital. He indicated that SRS has been working with the Executive Order Advisory Group to make recommendations on the downsizing of the facilities.

The Committee expressed concern that the cost of services in the private sector are not included. The Committee also felt that there should be more involvement on the part of KHPA with regard to the waivers.

The Secretary of the Department on Aging presented an update on home and community-based waivers for the frail elderly (HCBS-FE), and noted that oral health services, sleep cycle services, comprehensive support, assisted technology, and telehealth services have been discontinued in order to control expenses. The agency anticipates a \$7.0 million shortfall during the current fiscal year. The Committee suggested that options be explored for underwriting the funding of the oral health program.

Additional testimony on the effects of the budget cuts to the Home and Community-Based Waivers was received from: the Executive Director of the Kansas Area Agencies on Aging

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Association; the Executive Director of InterHab; and the Executive Director of the Statewide Independent Living Council of Kansas (SILCK).

Update on Stockton Correctional Facility.

The Secretary of the Kansas Department of Corrections (KDOC), presented an update on the Stockton facility, and informed the Committee that the Stockton facility would reopen on September 1, 2010, and will be filled to capacity with 128 inmates. The Secretary noted that the prison population will still be 237 over capacity after the opening of Stockton. At present, there are no inmates housed outside the state.

Responding to questions from the Committee, the Secretary of Corrections stated that there is no mechanism in place at this time which gives KDOC the authority to release inmates early. KDOC is in the process of developing recommendations to present to the Governor and the Legislature concerning prison capacity.

Overview of the Kansas Economy. The Secretary of the Department of Commerce presented an update on the state of the Kansas economy. He stated that the goal of the Department is to encourage job creation and capital investment in Kansas through the recruitment of out-of-state firms, the expansion of existing Kansas companies, and the creation of new companies. Responding to a question from the Committee concerning FY 2010 recruitment results, the Secretary stated that the jobs created and payroll figures are projected numbers associated with the expectation that the jobs will materialize.

The Secretary of the Department of Labor presented an update on Kansas economic data, and reported that the state, at 6.9 percent unemployment, is substantially below the national unemployment rate of 9.7 percent. He stated that there are some positive signs of growth in the construction industry; professional and business services; trade, transportation and utilities; mining and logging; manufacturing; and financial activities. Currently, the state is paying approximately \$10.0 million in unemployment

benefits per week. To date, the Secretary reported that it has been necessary to borrow \$88.2 million from the U.S. Treasury to pay unemployment benefits. As a part of the American Recovery and Reinvestment Act (ARRA), no interest will accrue on the loan until January 2011. Responding to a question from the Committee, the Secretary of Labor stated that unemployment taxes are collected on the first \$8,000 of salary; consequently, the state has already received the bulk of unemployment taxes at this time. It is anticipated that the state may need to borrow additional funds from the federal government during the fourth quarter of 2010. Interest will begin accruing on the federal loan on January 1, 2011, with the first payment due September 1, 2011.

The Director of the W. Frank Barton School of Business, Center for Economic Development and Business Research, presented testimony on the Kansas economy. He projected that unemployment will remain relatively high, with a forecast of slow recovery from the recession.

The President of Kansas, Inc. presented testimony on Indicators of the Kansas economy, and stated that the recession is worldwide and projects that it will last for a considerable period of time with a slow recovery. He stated that the recession was caused by consumer debt, commercial debt, and national debt. He indicated that the world economy is very unstable at this time and said that the state needs to position itself to welcome industry and business to the state, with a mix of large and small businesses, and needs to create an environment to attract opportunities and jobs.

Legislative Budget Committee

State Mental Health Hospitals Voluntary Admissions Policy

CONCLUSIONS AND RECOMMENDATIONS

Proposed Legislation:

BACKGROUND

In May 2010 and July 2010, the Department of Social and Rehabilitation Services (SRS) temporarily suspended voluntary admissions to the three Kansas mental health hospitals. The hospitals continued to accept people ordered to the facilities by the courts or escorted by police. Voluntary admissions require a referral by one of the state's 27 community mental health centers and involve adults who must have the capacity to consent to care, have a treatment facility that agrees the person is in need of services offered by a facility and are mentally ill as defined by law and medical understanding. When the hospitals are full, the community centers are expected to find placement alternatives for people who otherwise would be admitted. According to SRS, all three facilities were full beyond licensed capacities and the agency did not have additional resources to serve persons seeking voluntary admissions.

Currently, Kansas operates three mental health hospitals (Topeka State Hospital closed in 1997). Osawatomie State Hospital, Rainbow Mental Health Facility and Larned State Hospital serve persons experiencing serious symptoms of severe mental illness. Only persons who have been determined to be a danger to themselves or others and generally exhibit symptoms that

community providers cannot treat safely and effectively are referred to these facilities. Once severe symptoms are stabilized, they can successfully return home with supports provided by their CMHCs.

During the 2005 Interim Legislative Budget Committee meetings, the Secretary for the Department of Social and Rehabilitation Services (SRS), presented information on state mental health hospital admissions. The Committee was informed that the number of Kansans turning to the public mental health service system for services increased by 21.1 percent between FY 2000 and FY 2004. However, the rate of admissions was stated to be similar to rates across the country. A number of factors contributed to the increase in admissions, but the Secretary highlighted the decline in the number of private psychiatric hospital beds available in Kansas, the number of new patients who are unknown to the community public mental health system and the increased number of people with serious mental illness accessing public services. The Secretary's testimony also discussed treatment challenges at the hospitals which included patients who have a co-occurring diagnosis such as substance abuse, serious physical conditions or functioning issues that require more intensive hospital treatment. The Secretary added that increased admissions were coming at a time when hospitals were struggling

to meet budget allocations due primarily to higher drug costs, utility bills and outside medical expenses. The Secretary stated the Department was managing shortfalls internally by shifting money and holding staff positions vacant. However, the Secretary warned that with the increases in admissions, holding vacancies open could result in longer stays, inadequate care and endanger the safety of staff and patients. The Committee requested additional information on allocations for each Community Mental Health Centers (CMHCs) for admissions and the number of placements.

The 2006 Interim Legislative Budget Committee discussed census, admissions and capacity issues at the three state mental health hospitals. The Secretary for the Department of Social and Rehabilitation Services (SRS) stated that admissions had increased over the last several years, especially at Osawatomie, and this increase had forced hospitals to manage census issues within available resources. In addition, the Secretary indicated that the hospitals have begun reviewing treatment methods and practices to ensure patients are as stabilized as possible before re-entering the community to prevent readmission. The Secretary reviewed the ongoing discussions and ideas occurring between SRS and the CMHCs to address the census when it reached certain levels. Suggestions from conferees to address the shortage of inpatient beds included adding state hospital beds, regionalized inpatient services with day hospitals; and better utilization of community hospitals for acute care with adequate reimbursement. Another major topic of discussion, intertwined with the discussion of state hospital admissions, was the continuum of services to Kansans with mental illness. A number of conferees suggested that an intermediate level of care was needed between community services and state hospital care. The Committee recommended additional hearings to identify concerns relating to mental health issues, funding to open the an additional 30-bed Crisis Stabilization Unit at Osawatomie State Hospital, and funding to allow SRS to enter into contractual arrangements with local hospitals who have the capacity to provide acute care inpatient services.

The 2007 Legislature added \$3.0 million, all from the State Institutions Building Fund, to

remodel an existing building that would allow the opening of an additional 30-bed Crisis Stabilization Unit for FY 2009. The 2008 Legislature also added \$1.5 million, all from the State General Fund, and 49.0 FTE for the last half of FY 2009 for operations. Due to FY 2009 through FY 2011 budget reductions, the Department of Social and Rehabilitation Services opened the remodeled 30-bed Crisis Stabilization Unit but simply moved people from an existing 30-bed unit that was then closed. The shift avoided the need for an additional \$1.5 million in FY 2010 for six months of operations for the additional unit. Currently, SRS estimates opening the 30-bed unit in FY 2011 would require \$3,399,523 all from the State General Fund.

COMMITTEE ACTIVITIES

Staff of the Kansas Legislative Research Department provided a briefing on the history and current status of State Mental Health Hospitals Voluntary Admissions Policy. According to staff, in past situations and when funding allowed, the Department of Social and Rehabilitation Services would privately contract with Kaw Valley Behavioral Healthcare, Inc. to provide state mental health hospital level of care and treatment for children and adolescents for \$510-\$550 per day. In addition, SRS has a temporary arrangement with Via Christi to serve adults from Sedgwick County who have been determined to need state hospital level care and treatment. The daily rate for this temporary arrangement is approximately \$765 per day. SRS anticipates that a longer term, more permanent arrangement with a private psychiatric hospital to provide this level of care and treatment could potentially be obtained at a lower rate such as those paid to Kaw Valley Behavioral Healthcare. SRS estimated that FY 2010 Medicaid daily reimbursement rates for the same services at state mental health hospitals range between \$337-\$508 per day.

The Secretary of the Department of Social and Rehabilitation provided information to the Committee pertaining to the decision to cease voluntary admissions. According to the Secretary, there is not a precise number or exact census that warrants the decision to delay in voluntary admissions. The decision depends on many factors

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related to the acuity of patients in the facility, the ratio of male and female patients and the day of the week (admissions traditionally increase over weekends). As a system, the state mental health hospitals are budgeted to serve 305 persons at any one time. When the hospitals are over census it is considered dangerous to accept voluntary admissions. In conclusion, the Secretary stated that it is important to address overcrowding with a long-term strategy and added that the following actions were taken immediately after determining the need to delay admissions:

- SRS initiated an agreement with Via Christi to pay for otherwise uncompensated care for persons from Sedgwick County who would have otherwise been placed at Osawatomie State Hospital (OSH), when census is too high to accept voluntary patients;
- Larned State Hospital (LSH) immediately opened an additional 11 beds in a space on the LSH campus. Initially, LSH paid overtime to existing employees to staff the additional beds. Soon after, LSH was given authority to hire permanent employees to staff the expanded bed capacity; and
- SRS established an agreement with Prairie View whereby SRS would pay Prairie View for providing otherwise uncompensated inpatient hospital care for persons diverted to their facility from LSH and OSH when experiencing high census.

A conferee from the Kansas Mental Health Coalition testified that overcrowding in state mental health hospitals is not a new issue due to budget reductions over several recent years with combined increased population need. The conferee recommended no further budget reductions to the mental health system, adequate staffing for state hospitals and community services, establish funding for local private mental

health inpatient beds in various areas of the state and encourage development of public-private mental health inpatient bed partnerships.

A conferee from the Association of Community Mental Health Centers of Kansas testified that factors impacting increased admissions to the state mental health hospitals have contributed to a 47.0 percent increase in individuals served by community providers since FY 2009 (which is consistent with national data) in conjunction with funding reductions to the community-based mental health services, a 34.0 percent decline in private inpatient mental health hospital beds since 2002 and increases in the need for substance abuse treatment and crisis stabilization services. The conferee suggested solutions included exploring opportunities for a community mental health center in the OSH catchment area to open 26.0 additional crisis stabilization beds, appropriation by the Legislature in FY 2011 of \$3,399,523 all from the State General Fund to open and operate an additional 30-bed Crisis Stabilization Unit on the OSH campus, an appropriation of \$500,000 from the State General Fund to pay for operating expenditures and staffing of the 11 additional beds opened by LSH that have not been budgeted for within SRS and support funding to establish local private mental health inpatient hospital beds across the state to alleviate demand on the state mental health system.

Additional conferees included a consumer of mental health services and representatives from the Kansas Mental Health Coalition, the National Alliance on Mental Illness-Kansas, the Disability Rights Center of Kansas, KVC Hospitals, Via Christi Hospitals Wichita, Johnson County Community Mental Health Center and High Plains Mental Health Center.