

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Jay Emler at 10:30 a.m. on February 16, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

J. G. Scott, Kansas Legislative Research Department  
Michael Steiner, Kansas Legislative Research Department  
Dylan Dear, Kansas Legislative Research Department  
Aaron Klaassen, Kansas Legislative Research Department  
Reagan Cussimano, Kansas Legislative Research Department  
Cody Gorges, Kansas Legislative Research Department  
Jill Wolters, Office of the Revisor of Statutes  
Daniel Yoza, Office of the Revisor of Statutes  
Melinda Gaul, Chief of Staff  
Shirley Jepson, Committee Assistant

Conferees appearing before the Committee:

Ed Van Petten, Executive Director, Kansas Lottery Commission  
Don Cawby, Director of Administration, Kansas Racing and Gaming Commission  
Richard Smith, Chief Judge, 6<sup>th</sup> Judicial District  
Blaine Carter, District Magistrate Judge, 2<sup>nd</sup> Judicial District  
Michael Frelove, District Magistrate Judge, 16<sup>th</sup> Judicial District  
Kathy Porter, Office of Judicial Administration

Others attending:

See attached list.

**Subcommittee Report on Department of Transportation**

Senator Umbarger, Chair of the Transportation Subcommittee, presented the Subcommittee report on the Governor's budget recommendation for the Department of Transportation for FY 2011 and moved for the adoption of the Subcommittee recommendation on the Department of Transportation for FY 2011 (Attachment 1). The motion was seconded by Senator Kultala. Motion carried on a voice vote.

Responding to questions from the Committee, the Subcommittee stated that there would be the elimination of an additional \$5 million in FY 2011 over the FY 2010 transfer from the State General Fund (SGF) to the Special City and County Highway Fund.

**Subcommittee Report on Kansas Lottery Commission and Kansas Racing and Gaming Commission**

Senator Teichman, Chair of the Lottery/Racing and Gaming Subcommittee, presented the Subcommittee report on the Governor's budget recommendations for the Kansas Lottery Commission and the Kansas Racing and Gaming Commission for FY 2011 and moved for the adoption of the Subcommittee recommendations on the Kansas Lottery Commission and the Kansas Racing and Gaming Commission for FY 2011 (Attachment 2). The motion was seconded by Senator Schodorf. Motion carried on a voice vote.

Responding to questions from the Committee, the Subcommittee noted that the Problem Gambling and Addictions Grant Fund is administered by the Department of Social and Rehabilitation Services (SRS).

Ed Van Petten, Executive Director, Kansas Lottery, responded to questions from the Committee concerning the Kansas Lottery budget for commodities (Attachment 3).

- The Committee requested information on whether maintenance/custodial staff at the Capitol are required to purchase their own shirts.

With regard to the state owned casinos, the Subcommittee voiced a concern that there is a need for a

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CONTINUATION SHEET

Minutes of the Senate Ways and Means Committee at 10:30 a.m. on February 16, 2010, in Room 548-S of the Capitol.

regulatory authority. The Subcommittee noted that the privilege fee for the northeast casino facility has been deposited in the State General Fund (SGF). It was further explained that the privilege fee is first deposited in the Expanded Lottery and Racing Fund (ELARF) and then transferred to the SGF.

Responding to a question from the Committee regarding the Kansas Racing and Gaming Commission, Mr. Van Petten indicated that the casino manager is responsible for the operations and budget of the casino. Mr. Van Petten explained that 22 percent of the net winnings are transferred to the State, 73 percent to the Manager, 3 percent to the local government and 2 percent to the Problem Gambling and Addictions Grant Fund. Don Cawby, Director of Administration, Kansas Racing and Gaming Commission, noted that the percentages are based on a formula set forth in the casino contract. The contract is usually in effect for a term of 15 years.

A chart showing the year-to-date revenue from the Boot Hill Casino was distributed to the Committee (Attachment 4).

**Hearing on SB 481 - District judges; repealing requirement that each county have a judge.**

Jill Wolters, Revisor of Statutes, provided an explanation of **SB 481** (Attachment 5).

Senator Vratil presented testimony in support of **SB 481** (Attachment 6). Senator Vratil stated that there is a huge disparity between caseloads of district magistrate judges across the state. Senator Vratil noted that the purpose of the legislation is to allow the court to implement efficiencies by promoting a more efficient court system.

Richard Smith, Chief Judge, 6<sup>th</sup> Judicial District (Bourbon, Linn and Miami counties), provided testimony in opposition to **SB 481** (Attachment 7). Judge Smith stated that the Kansas District Judge's Association supports a comprehensive study of the judicial system before making substantial changes such as the legislation provides. The Judge noted that a court system should provide access and justice without delay.

Blaine Carter, District Magistrate Judge, 2<sup>nd</sup> Judicial District (Jackson, Jefferson, Pottawatomie, Wabaunsee), provided testimony on behalf of Kansas District Magistrate Judge's Association, in opposition to **SB 481** (Attachment 8). Judge Carter stated the Association has a number of concerns with the provisions of the bill and felt there is a need for a study of the true impact of access to justice for local communities and all costs involved with removing the framework of the current system.

Michael Frelove, District Magistrate Judge, Clark County 16<sup>th</sup> Judicial District, provided testimony in opposition to **SB 481** (Attachment 9). Judge Frelove testified that a comprehensive study on redrawing the judicial districts and the elimination of the resident judge statute should be done before any changes are made.

Kathy Porter, Office of Judicial Administration, provided testimony in opposition to **SB 481** (Attachment 10).

Written testimony in opposition to **SB 481** was received from:  
Terry Holdren, Kansas Farm Bureau (Attachment 11).  
Jack Frick, Kansas Legislative Policy Group (Attachment 12).  
Bruce Gatterman, Chief Judge, 24<sup>th</sup> Judicial District (Attachment 13).

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

**The hearing on SB 481 was closed.**

**Adjournment**

The next meeting is scheduled for February 23, 2010.

The meeting was adjourned at 12:00 p.m.

SENATE WAYS AND MEANS COMMITTEE

GUEST LIST

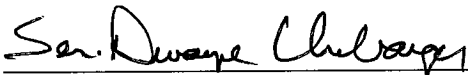
DATE: February 16, 2010

NAME	REPRESENTING
Jimmy Dickson Chanley	Staff Mgmt @ Amazon
Kathy J. Damron	KDJA
JUDGE Richard Smith	KDJA
Gethan Erickson	KDOT
Joe Laubon	LPA
Levi Henry	Sandstone Group LLC
Katelyn Porter	Medical Branch
Jerry Sloan	Judicial Branch
Bernard Koops	Hein Law Firm
KAD MEALY	KEARNEY & ASSOC.
Kari Presley	Kearney & Associates
BOB TOTTEN	Ks Contractors Association
Douglas Smith	KLPQ
TERRY HOLDREN	KFB

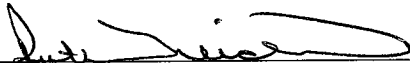
FY 2011

SENATE WAYS AND MEANS SUBCOMMITTEE

Kansas Department of Transportation

  
\_\_\_\_\_  
Senator Dwayne Umbarger, Chair

  
\_\_\_\_\_  
Senator Kelly Kultala

  
\_\_\_\_\_  
Senator Ruth Teichman

Senate Ways & Means Cmte

Date 2-16-2010

Attachment 1

## Senate Subcommittee Report

**Agency:** Kansas Department of Transportation

**Bill No. --**

**Bill Sec. --**

**Analyst:** Klaassen

**Analysis Pg. No. --**

**Budget Page No. 461**

Reportable Expenditure Summary	Agency Request FY 2011	Governor Recommendation FY 2011	Senate Subcommittee Adjustments
Operating Expenditures:			
State General Fund	\$ 0	\$ 0	\$ 0
State Highway Fund	358,669,104	339,955,131	0
Other Funds	352,233,814	341,170,150	0
Subtotal	<u>\$ 710,902,918</u>	<u>\$ 681,125,281</u>	<u>\$ 0</u>
Capital Improvements			
State General Fund	\$ 0	\$ 0	\$ 0
State Highway Fund	462,393,561	359,819,430	0
Other Funds	0	0	0
Subtotal	<u>\$ 462,393,561</u>	<u>\$ 359,819,430</u>	<u>\$ 0</u>
<b>TOTAL</b>	<u><u>\$ 1,173,296,479</u></u>	<u><u>\$ 1,040,944,711</u></u>	<u><u>\$ 0</u></u>
FTE positions	3,113.5	3,113.5	0.0
Non FTE Uncl. Perm. Pos.	51.0	51.0	0.0
<b>TOTAL</b>	<u><u>3,164.5</u></u>	<u><u>3,164.5</u></u>	<u><u>0.0</u></u>

### Agency Request

The **agency** requests a FY 2011 reportable budget of \$1.2 billion, which is a decrease of \$261.1 million, or 18.2 percent, below the FY 2010 revised estimate. Reportable expenditures from the State Highway Fund total \$821.1 million, which is a decrease of \$247.0 million, or 23.1 percent, below the FY 2010 revised estimate. The FY 2011 request includes: Non-reportable expenditures of \$183.7 million, which is a decrease of \$6.5 million, or 3.4 percent, below the FY 2010 revised estimate; a decrease of \$261.1 million, primarily due to Construction Program capital improvements project expenditures shifted into FY 2010 for projects that do not continue into FY 2011, and ARRA funds expended in FY 2010 that do not reoccur in FY 2011; and an enhancement request for \$4,853,909, all from the State Highway Fund, to replace 264 vehicles.

For FY 2011, the agency requests expenditures of \$7,400,561, all from the State Highway Fund, for building projects. Expenditures include \$3,946,422 for projects and \$3,454,139 for rehabilitation and repair.

### Governor's Recommendation

The **Governor** recommends a FY 2011 reportable budget of \$1.0 billion, which is a decrease of \$321.8 million, or 23.6 percent, below the FY 2010 recommendation, and a decrease of \$132.4 million, or 11.3 percent, below the agency's FY 2011 request. Reportable

1-2

expenditures from the State Highway Fund total \$699.7 million, which is a decrease of \$296.6 million, or 29.8 percent, below the FY 2010 recommendation, and a decrease of \$121.3 million, or 14.8 percent, below the agency's FY 2011 request. The Governor recommends the following adjustments: (1) Transfer \$105.0 million from the State Highway Fund to the State General Fund -- Reductions to the agency's FY 2011 budget in order to achieve this transfer include: (1) reduce operating expenditures by \$9.0 million; (2) reduce \$1.0 million in grants for public aviation development; (3) reduced planned construction lettings by \$101.0 million in preservation (\$91.0 million), modernization (\$3.0 million), expansion and enhancement (\$4.0 million), and local construction (\$3.0 million); (2) Reduce building project expenditures by \$1,574,131 (described later); (3) Do not recommend the agency's enhancement request for replacement vehicles for \$4.8 million; (4) Continuation of funding for the Kansas Highway Patrol Operations through a transfer to the State General Fund (\$36.2 million); (5) Cancellation of the FY 2009 loan repayment of of \$30,896,209 from the State General Fund to the State Highway Fund, that was delayed until FY 2011 by the 2009 Legislature; and (6) Do not make the transfer from the State General Fund to the Special City and County Highway Fund (SCCHF) in FY 2011 (\$10,063,664).

For FY 2011, the **Governor** recommends expenditures totaling \$5,826,430, all from the State Highway Fund, for building projects. Expenditures include \$2,372,291 for projects and \$3,454,139 for rehabilitation and repair. The Governor does not recommend \$1,574,131 in projects which include: the construction of one vehicle wash bay in Shawnee (\$300,329), Area Shop Renovation in Topeka (\$317,876), District Six Welding Shop Addition in Garden City (\$835,926), and the purchase of land in various locations (\$120,000).

### **Senate Subcommittee Recommendation**

The **Subcommittee** concurs with the Governor's recommendation with the following notations:

1. The Subcommittee heard testimony stating the effects and associated impacts of reduction made to the agency's budget, and notes the following impacts:
  - (a) Reductions to the Preservation Program result in: agency application of lighter preservation actions and maintenance of fewer miles, the Highway System will deteriorate at a faster pace, and it will cost more in the long run to return the system to a "good condition." The agency estimates that 84.0 percent of Kansas Highway's are currently in "good condition."
  - (b) The agency is no longer accepting applications for initiatives including: the Economic Development Program which is for highway and bridge construction projects intended to enhance the economic development of the State of Kansas; Geometric Improvement Program which is a Local Partnership Program where Funds are set aside annually to assist cities in funding geometric improvements on City Connecting Links (for example, adjusting or widening the footprint of a turning lane to make it easier for trucks to turn); Loans from the Transportation Revolving Fund which is designed to provide financial assistance to local governmental units for transportation projects, offering a wide range of loan and credit enhancement opportunities for eligible projects; and KLINK which is a program of resurfacing type projects intended to improve roadway surfacing of City Connecting Links of the State Highway System; and

- (c) Reducing local aviation grants by \$1.0 million in FY 2011.
2. The Subcommittee notes that actions taken in the FY 2010 budget are not isolated to that fiscal year, but also affect the agency's FY 2011 budget, as construction projects are spread out over a couple of years. The agency testified that the majority of expenditures take place in the second or third year, and provided an example in which reducing a four year \$100.0 million project would only capture an estimated \$15.0 million dollars in the current year. In addition to this, the Subcommittee would like to note the agency's actions in regards to the Governor's recommended FY 2010 allotments:
  - (a) The July Allotment recommended a \$30.0 million reduction to maintenance and operations and a transfer of funds to the State General Fund; and the November Allotment recommended a \$50.0 million reduction to maintenance and operations and a transfer of funds to the State General Fund.
  - (b) The agency provided testimony stating that it will accomplish the \$80.0 million in recommended FY 2010 allotments by: (1) Reducing the agency operations budget by \$24.9 million through: increasing shrinkage to 8.0 percent, holding vacant positions open longer, discouraging overtime, postponing two transportation studies (five County Study, and a freight study), cutting equipment purchases in half, and reducing travel by 30.0 percent; (2) Reducing the Preservation Program project lettings to capture \$45.5 million; (3) Postpone the Wichita Intelligent Transportation Systems project to capture \$3.4 million; and (4) Transfer \$6.2 million from existing State Highway Fund balances.
3. The Subcommittee notes construction spending comparisons provided by the agency highlighted that the disparity between the average annual spending during the 1999 Comprehensive Transportation Program at \$650.0 million, under the 1989 Comprehensive Highway Program at \$293.0 million, and with current reductions is estimated to be at \$279.0 million in FY 2011.
4. The Subcommittee notes that the Governor's recommendation includes the elimination of the \$10.1 million transfer from the State General Fund to the Special City and County Highway Fund in FY 2011.
5. The Subcommittee commends the Kansas Department of Transportation for its outstanding efforts in the prior two transportation programs, but also in dealing with the current budgetary constraints. The Subcommittee states that reports from cities and counties included a significant amount of positive feedback as to working with this agency.
6. The Subcommittee notes its concern that as the agency has had to reduce construction lettings to maintain operations within it's given budget limitations, and that there is a corresponding number of jobs lost. In the May 2009 report from the Executive Office of The President - Council of Economic Advisers called "Estimates of Job Creation from the American Recovery and Reinvestment Act of 2009," it was estimated that every \$92,000 spent would yield 1.0 job per fiscal year. The Subcommittee notes that applying this formula to just the recommended FY 2010 allotments in which the agency reduced Preservation

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Program lettings by \$91.0 million in order to capture FY 2010 savings, would equate to the loss of 989 jobs.

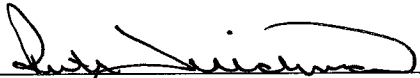
7. In addition, the Subcommittee emphasizes that current budget reductions do not reflect the full impact or magnitude of reductions to the agency's budget and transfers made from the State Highway Fund which have limited the agency's ability to create jobs through project lettings and fully provide the services for which they were created. The Subcommittee notes that these reductions can and will be reflected in the conditions of State roads.
8. The Subcommittee notes that as Kansas looks to the future for ways to turn the tide of the economic recession, past history has proven that there is a strong link between the strength of the states transportation program and the ability of the State to sustain and even hasten economic recovery.



FY 2011

SENATE WAYS AND MEANS SUBCOMMITTEE

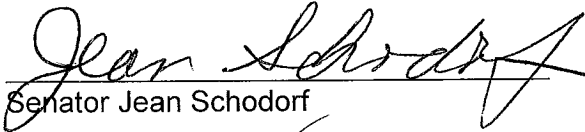
Kansas Lottery  
Kansas Racing and Gaming Commission



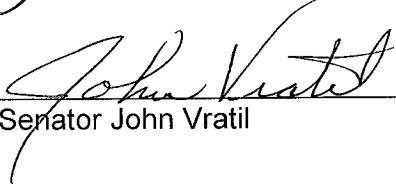
Senator Ruth Teichman, Chair



Senator Kelly Kultala



Senator Jean Schodorf



Senator John Vratil

Senate Ways & Means Cmte

Date 2-16-2010

Attachment 2

## Senate Subcommittee Report

**Agency:** Kansas Lottery

**Bill No.**

**Bill Sec.**

**Analyst:** Gorges

**Analysis Pg. No.**

**Budget Page No. 75**

Expenditure Summary	Agency Request FY 2011	Governor Recommendation FY 2011	Senate Subcommittee Adjustments
<b>Operating Expenditures:</b>			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	83,337,639	78,348,339	0
Subtotal	<u>\$ 83,337,639</u>	<u>\$ 78,348,339</u>	<u>\$ 0</u>
<b>Capital Improvements</b>			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	0	0	0
Subtotal	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 0</u>
<b>TOTAL</b>	<u><u>\$ 83,337,639</u></u>	<u><u>\$ 78,348,339</u></u>	<u><u>\$ 0</u></u>
FTE positions	99.0	99.0	0.0
Non FTE Uncl. Perm. Pos.	0.0	0.0	0.0
<b>TOTAL</b>	<u><u>99.0</u></u>	<u><u>99.0</u></u>	<u><u>0.0</u></u>

### Agency Request

The agency requests a FY 2011 budget totaling \$83.3 million, an increase of \$17.7 million, or 26.9 percent, above the FY 2010 revised request. All expenditures requested would come from special revenue funds. The agency estimates gaming facility operators will be accepted to run, on behalf of the state, one casino in each of the northeast and the south central gaming zones. The increase is primarily attributed to this activity. The agency also requests enhanced funding for six replacement vehicles, totaling \$119,200. Without the enhancements, the agency's request is \$17.6 million, or 26.7 percent, above the agency's revised FY 2010 request. The request includes 99.0 FTE positions, an increase to the FTE limitation of 10.0 positions. All new positions would be in in the Expanded Lottery program.

### Governor's Recommendation

The Governor recommends a FY 2011 budget totaling \$78.3 million, an increase of \$12.9 million, or 19.6 percent, above the FY 2010 recommendation. When compared to the agency's request, the Governor's recommendation is a reduction of \$4,989,300, or 6.0 percent. The Governor does not recommend enhanced funding for vehicles. The recommendation includes additional reductions to salaries and wages designed to encourage the agency to meet the recommended \$72.0 million transfer to the State Gaming Revenues Fund. The Governor also reduced the amount of payments made to the southwest gaming zone casino group based on updated estimates.

## Senate Subcommittee

The **Senate Subcommittee** concurs with the Governor's recommendation with the following notations:

1. The Subcommittee notes this agency is entirely funded from special revenue funds.
2. The Subcommittee notes that the agency transfers regular lottery proceeds into the State Gaming Revenues Fund. For FY 2011, the Governor recommended a total transfer of \$72.0 million. Any amount transferred above \$50.0 million is transferred to the State General Fund. Of the amount transferred into the State Gaming Revenues Fund, \$80,000 is transferred into the Problem Gambling and Addictions Grant Fund. The remainder is transferred into three funds: 85.0 percent to the Economic Development Initiatives Fund; 10.0 percent to the Correctional Institutions Building Fund; and 5.0 percent to the Juvenile Detention Facilities Fund. The Subcommittee further notes that the Governor's recommended transfer of \$72.0 million into the State Gaming Revenues Fund is an ambitious goal, but heard testimony from the agency that it is making its best efforts to achieve the transfer amount.
3. The Subcommittee notes the agency's recent success with new "Variable Imaged" pulltabs. The Subcommittee heard that sales of the old style pulltabs averaged approximately \$5,000 per week. Sales of the variable imaged pulltabs have been averaging over \$180,000 per week. The Subcommittee notes, with appreciation, the agency's willingness to offer new games as a means to generate more revenue on behalf of the state.

## Senate Subcommittee Report

**Agency:** Kansas Racing and Gaming Commission

**Bill No.**

**Bill Sec.**

**Analyst:** Gorges

**Analysis Pg. No.**

**Budget Page No. 77**

Expenditure Summary	Agency Request FY 2011	Governor Recommendation FY 2011	Senate Subcommittee Adjustments
<b>Operating Expenditures:</b>			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	9,441,582	8,140,134	0
Subtotal	\$ 9,441,582	\$ 8,140,134	\$ 0
<b>Capital Improvements</b>			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	0	0	0
Subtotal	\$ 0	\$ 0	\$ 0
<b>TOTAL</b>	<b>\$ 9,441,582</b>	<b>\$ 8,140,134</b>	<b>\$ 0</b>
<b>FTE positions</b>			
FTE positions	96.5	73.5	0.0
Non FTE Uncl. Perm. Pos.	0.0	0.0	0.0
<b>TOTAL</b>	<b>96.5</b>	<b>73.5</b>	<b>0.0</b>

### Agency Request

The **agency** requests a FY 2011 budget totaling \$9,441,582, all from special revenue funds. The request is an increase of \$2,451,254, or 35.1 percent, above the agency's FY 2010 revised budget request. The agency has several enhancement requests totaling \$1,301,448. Most of the enhancements are related to casino regulatory activity in the northeast and south central gaming zones. **Without the enhancements**, the agency's request is an increase of \$1,149,806, or 16.4 percent, above the current year revised estimate. The remaining increase is due to regulatory activity for a full year of operation at the casino in the southwest gaming zone. The request includes 96.5 FTE positions, an increase of 23.0 positions. The increase in positions are part of the agency's enhancement requests.

### Governor's Recommendation

The **Governor** recommends \$8.1 million, all from special revenue funds, for FY 2011. The recommendation is an increase of \$1.2 million, or 16.4 percent, above the Governor's FY 2010 recommendation. This is related to increases in casino regulation charged to the gaming facility operator in the southwest gaming zone for the first full year in which the casino is open. Additional increases are related to background checks and other regulatory duties necessary for the gaming facility operators in the northeast and south central gaming zones. The recommendation does not include any enhancement funding.

## Senate Subcommittee Recommendation

The **Senate Subcommittee** concurs with the Governor's recommendation with the following notations:

1. The Subcommittee notes this agency is entirely funded from special revenue funds.
2. The Subcommittee notes this agency asked for \$1.1 million, all from special revenue funds, for regulatory responsibilities at casino facilities within the northeast gaming zone and the south central gaming zone. The request included an increase of 22.0 in the agency's FTE limitation. When the agency submitted their budget, they included the enhancement funding, and positions, to allow flexibility in the event that both casinos opened in FY 2011. The agency withdrew the request when it became evident neither casino would open in FY 2011.
3. The Subcommittee heard testimony concerning the time line for the casino in the south central gaming zone. Assuming the gaming facility operator contract is approved by the Kansas Lottery, the contract will proceed to the Lottery Gaming Review Board. If the operator is approved by the Review Board, the agency will begin extensive background checks on the gaming facility operator group. In total, once the contract is approved by the Kansas Lottery, final approval will take between three to four more months. The Subcommittee requests the agency do all it can to expedite the process.
4. The Subcommittee notes that no specific state auditing process has been created to monitor the agency. The Subcommittee recommends some form of audit process be established, or conducted, to ensure the agency's accountability in its regulatory activities. Because of the impact of the casinos on the state, transparency in the regulatory process is vital to ensure all aspects of the regulation of the new casinos are reasonable and performed efficiently.

Kansas Lottery  
2/10/2010

	FY 2010	FY 2011
Commodities Include		
Clothing	3,000	5,000
Fuel	100	100
Maintenance, Materials, Supplies Parts	19,659	6,428
Building & Equipment repairs		
Motor Vehicle Parts & Supplies	106,600	142,200
Gasoline, Repairs, Maintenance, Tires		
Professional & Scientific Supplies	144,708	176,280
Retailer ticket dispenser units		
In-counter Glass		
Stationery & Office Supplies	211,390	137,896
Office & Computer supplies, Software,		
Office furniture, Printers, Calculators		
Copier Paper, Ink Cartridges		
Other Supplies, Materials, & Parts	199,355	229,705
Promotional Items, Entry drum,		
Display Units		
Non-capital outlay items		
Total Commodities	684,812	697,609

*82 filled positions @ 2011 - \$8507/person*

# Boot Hill Casino

As of: January 31, 2010

## Ford County - Year-to-Date

Month	Amount In	Amount Out	Validations	Net Revenue Adj	Adj. Net Sales	Adj. Net Revenue
December 2009	12,794,754.86	11,116,260.52	11,088,659.14	283,896.50	1,962,390.84	1,989,992.22
January 2010	21,183,566.33	18,516,135.26	18,514,399.98	463,239.50	3,130,670.57	3,132,405.85
February 2010	-	-	-	-		
March 2010						
April 2010						
May 2010						
June 2010						
<b>Total</b>	<b>33,978,321.19</b>	<b>29,632,395.78</b>	<b>29,603,059.12</b>	<b>747,136.00</b>	<b>5,093,061.41</b>	<b>5,122,398.07</b>

## YTD Distributions

Gaming Site Mgmt	73
	3,739,351
State Distribution	22
	1,126,921
Problem Gambling	2
	102,441
City of Dodge City	1.50%
	76,835.97
Ford County	1.50%
	76,835.97

Senate Ways & Means Cmte  
 Date **2-16-2010**  
 Attachment **4**

## Ford County - Week 4

Day	Amount In	Amount Out	Validations	Net Revenue Adj	Adj. Net Sales	Adj. Net Revenue
1/24/10	825,560.78	732,155.64	731,970.40	14,920.50	108325.64	108510.88
1/25/10	360,056.54	317,619.44	318,608.72	4,245.50	46682.60	45693.32
1/26/10	486,929.98	431,497.05	429,815.18	7,351.00	62783.93	64465.80
1/27/10	375,921.89	313,739.37	316,748.97	30,397.50	92580.02	89570.42
1/28/10	293,718.77	261,680.64	259,073.55	1,097.50	33135.63	35742.72
1/29/10	533,892.90	457,996.36	456,337.63	24,681.00	100577.54	102236.27
1/30/10	1,231,188.32	1,082,120.41	1,087,686.31	-52.00	149015.91	143450.01
<b>Total</b>	<b>4,107,269.18</b>	<b>3,596,808.91</b>	<b>3,600,240.76</b>	<b>82,641.00</b>	<b>593,101.27</b>	<b>589,669.42</b>

Gaming Site Mgmt	73.00%
	430458.68
State Distribution	22.00%
	129727.27
Problem Gambling	2.00%
	11793.39

Office of Revisor of Statutes  
300 S.W. 10th Avenue  
Suite 010-E, Statehouse  
Topeka, Kansas 66612-1592  
Telephone (785) 296-2321 FAX (785) 296-6668

MEMORANDUM

To: Chairman Emler and members of the Senate Ways and Means Committee  
From: Jill Ann Wolters, Senior Assistant Revisor  
Date: February 16, 2010  
Subject: SB 481

Senate Bill No. 481 repeals the statute requiring a judge in each county, and has the assignment of judges determined by the Judicial Branch. The statute in question is K.S.A. 20-301b which states: "In each county of this state there shall be at least one judge of the district court who is a resident of and has the judge's principal office in that county."

The bill would amend other statutes to provide that the Supreme Court would determine if a district magistrate judge position is unnecessary, due to the ability of the remaining judges in the judicial district to assume the workload of the district. If such determination is made, the position shall be eliminated or reassigned (page 12, starting at line 26). Current law allows the Supreme Court to make such a decision upon the death, resignation, retirement or removal of a district magistrate only if such county has two or more district magistrates or a district court judge. The amendments further provide for when the district magistrate judge's term would expire and allows counties where district magistrates are eliminated or reassigned to retain the position and pay the salary (page 13, lines 4-43). Other revisions include giving the Chief Judge of the district court the ability to assign cases filed in the district court to any county within the judicial district (page 11, lines 28-30); providing that if a county has a district magistrate position eliminated, the county remains responsible for all expenses incurred as that county's share of the operations of the district court within the judicial district, as determined by the Chief Judge of the judicial district (page 12, lines 21-25); and providing that district magistrates, if assigned to more than one county, would be selected/retained by the electors of the judicial district, not the county (page 12, lines 13-15). The bill amends 89 sections, however many of the sections are amended to reflect the policy concerning venue and jurisdiction in the judicial district, elections and jury lists.

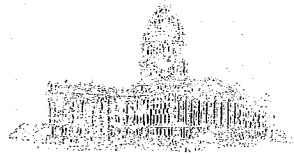
The act would take effect upon publication in the statute book.

Senate Ways & Means Cmte  
Date 2-16-2010  
Attachment 5



# State of Kansas

JOHN VRATIL  
SENATOR, ELEVENTH DISTRICT  
JOHNSON COUNTY  
LEGISLATIVE HOTLINE  
1-800-432-3924



## Vice President Kansas Senate

COMMITTEE ASSIGNMENTS  
VICE CHAIR: EDUCATION  
WAYS AND MEANS  
MEMBER: JUDICIARY  
ORGANIZATION, CALENDAR  
AND RULES  
INTERSTATE COOPERATION  
KANSAS CRIMINAL  
CODE RECODIFICATION  
COMMISSION

Testimony Presented to  
Senate Ways & Means Committee  
By Senator John Vratil  
February 16, 2010  
Concerning Senate Bill 481

Good morning! Thank you for the opportunity to appear before the Senate Ways & Means Committee in support of Senate Bill (SB) 481. The purpose of the language in SB 481 is to repeal the one judge per county requirement contained in current law. It would give the Kansas Supreme Court the authority to administer the court system and assign judges based on need rather than geographic boundaries.

Workload distribution is an administrative function of management. The assignment of judges and cases is a workload distribution activity. The Supreme Court is better positioned than the Legislature to know the capacity of each judicial district.

Senate Bill 481, however, recognizes the importance of local control. It allows a county that wants to retain a judge within the traditional county jurisdiction to assume responsibility for the costs of such retention and keep a judge within the county.

In this time of economic challenges, Senate Bill 481 allows us to streamline government. It facilitates a more efficient system of workload allocation; therefore, it enables us to make better use of our limited resources.

I ask that you to support SB 481.

A handwritten signature in black ink that reads "John Vratil".

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Senate Ways & Means Cmte  
Date 2-16-2010  
Attachment 6

# SENATE COMMITTEE ON WAYS AND MEANS

Hon. Jay Emler, Chairman  
Hon. Carolyn McGinn and John Vratil, Vice-Chairpersons  
Hon. Laura Kelly, R.M. Member

February 16, 2010  
10:30 a.m.  
Room 548-S

Chief Judge Richard M. Smith  
Sixth Judicial District  
P.O. Box 350  
Mound City, Kansas 66056-0350  
[judgeIndc@earthlink.net](mailto:judgeIndc@earthlink.net)

## **TESTIMONY ON BEHALF OF KANSAS DISTRICT JUDGE'S ASSOCIATION IN OPPOSITION TO SB 481**

I wish to thank this honorable committee for extending the opportunity to appear and present testimony in opposition to SB 481. I am Richard M. Smith, legislative co-chair of the Kansas District Judge's Association (KDJA) and Chief Judge of the Sixth Judicial District. SB 481 has several components. I will focus on two: Eliminating the one judge per county rule and changing venue from *the county* to *the judicial district*.

The Kansas District Judge's Association favors the appropriate allocation of judicial resources. Concern over whether judicial resources are being appropriately allocated should always be a concern of both the legislature and the courts, not just during trying financial times like the present. Obviously, during times of financial difficulties these issues tend to come to the forefront. It is easy to understand and appreciate the urgency some may perceive in making changes which some believe might save money. The system of justice our citizens enjoy provides consistent and prompt access. Access to justice must be a fundamental concern. Any substantial change in this structure might affect that access and have other unintended consequences which could be regrettable. For this and other reasons, we believe that a comprehensive study of the judicial system is appropriate and should be conducted prior to making substantial changes.

A few weeks ago I testified before the House Judiciary Committee in favor of a resolution under consideration. HCR 5026 provides a mechanism whereby the Legislature can be properly informed both as to the nature of the current system and changes which might be effective in saving revenue while still providing access to quality justice. The resolution as

Senate Ways & Means Cmte  
Date 2-16-2010  
Attachment 7

currently worded is rather broad. It includes a study of unification and restructuring of the courts, a review of administrative supervision of the courts, selection, tenure, compensation and retirement of judicial and non-judicial personnel, appellate review, financing of the courts, and such other areas of study as deemed appropriate by the Chief Justice. To provide a comprehensive study and survey of all of these areas within the one year time frame contemplated by the resolution might be too lofty a goal.

The mechanisms employed in SB 481, unifying venue, removing the requirement of a judge in each county and providing for the abolition and transfer of judicial positions should not simply be rejected out of hand but neither should they be considered without full comprehensive study.

It is the official position of the KDJA that the current structure of the Kansas judicial system, including the one judge per county statute, should not be modified unless and until an appropriate commission has conducted a thorough study similar to the study done evaluating court unification. The one judge per county statute or the imposition of an arbitrary percentage of magistrate judges without consideration of the individual characteristics of a particular judicial district greatly affects persons within and outside the judicial system. Any such modification may greatly affect allocation of resources, access to justice, local community concerns, and state-wide interests. For this reason, any change first deserves a comprehensive study by an appropriate commission. After receiving the final report from the commission, the Legislature could then consider all ramifications of any changes and make the appropriate policy decision.

Taking time to make an informed decision as to change should not be affected by the current fiscal crisis as SB 481 will not realize any immediate cost savings.

Legislative Post Audit (LPA) recently issued a report regarding consolidation of judicial districts. Within that report it suggested possible savings that might be achieved by elimination of the "one judge per county" statute. The savings that were suggested required LPA to ignore the one judge per county statute. The paragraph making that point concluded with the warning that that the effort to unify the courts in the 1960s and 1970s involved many people, a lot of study, and a systemic process and that any real effort to bring greater efficiency would require no less.

The other significant change this bill represents is the change of appropriate venue. Highly summarized, venue in the legal sense is where a lawsuit may be filed and heard. Currently, the basic territorial cornerstone is the county for both civil and criminal cases. As an example, generally a criminal case is tried in the county where the crime occurred. Civil cases are heard where the wrong, like a car wreck, took place or the county where the defendant can be found. Actions regarding real estate must be filed in the county where the land is located. Actions involving children are generally in their home county or where they are when the case is

filed. Basically the only time we do not follow these rules is when conducting the cases in a particular county will not be fair to one or more of the parties. Then venue goes to another county. Sometimes that is within the judicial district, sometimes not.

Under the provisions of SB 481, the basic geographic element comprising the Judicial Branch would be the entire judicial district. It appears that wherever the word county currently exists in nearly all venue statutes "county" is replaced with "judicial district." Under the bill, actions that now must be filed within the county where the crime happened, where the real estate is located, where the defendant may be served, or where the accident happened could be filed anywhere within the judicial district where the operative facts present. This does not represent much of a change, obviously, for the single county judicial districts such as Johnson, Shawnee, and Sedgwick counties, but this is a very substantial change when it comes to the rest of the state.

In analyzing the problems I believe are presented, I want to begin with two points in overview. First, this really may be a good concept; it is just that there are implementation issues that cannot be ignored. Second, I must assume the intent of the bill will actually occur. You see, the degree to which litigation would be moved around, so to speak, depends on the inclinations of the Supreme Court and individual chief judges. But if they do not use the powers granted them under the bill, litigation will remain in the county as per current law and we do not need this legislation. But, if the litigation is moved, probably to "population" centers in the judicial district, these problems will either exist or need to be addressed.

In criminal proceedings one question is where the persons in custody will be housed. You either have to transport them from the county where the crime was committed to the county of trial for each proceeding, or you have to make arrangements to house them and provide for the costs thereof.

Unless and until there is a central records mechanism, all real estate transactions would require a check by the title insurance agent or abstractor of every county court within the judicial district before being assured of good title. Absent this ability, the bill is an abstractor's nightmare. Purchase, setup, and maintenance of the computer software and hardware to link the counties together would either have to be provided by the state or mandated for the county to provide.

Regarding collections proceedings, one can presume that the county closest to a large urban area will be the location the collection attorneys of the major cities will utilize (for their convenience). They will simply drive the shortest possible distance and then file all cases pertaining to that judicial district in that county. Those cases will then either have to be moved or we will have to be in a position to process all that paperwork, whether or not it is the "centralized" county this bill envisions. It will also require the residents of the more remote

counties who are already probably of modest means to travel to a potentially far away county for the trial and appearance at post judgment proceedings.

The bill makes no provision for revenue that would have been realized locally from docket fees and court costs. Currently, the county where the action is filed receives either five or ten dollars, depending on the type of case, and a set amount is allocated for the county attorney's training fund and the local law library. Cases filed outside the county of occurrence will then be deprived of that revenue while a county with no real connection to the case will receive it.

Consideration needs to be given the abilities of some persons to travel the distances that could be required. Parents and family members in CINC cases, debt collection, replevin, landlord tenant cases, foreclosures, many domestic cases including Protection from Abuse and Protection from Stalking issues, child support collection, and several others routinely involve participants that have very limited resources (or no valid driver's license).

The bill begs questions about court appointed attorneys, their availability, and compensation. Counties are responsible for providing counsel for misdemeanors, juvenile offenders, children in need of care (CINC), and care and treatment (and child support if they are at risk of being incarcerated) cases. Smaller counties already struggle with getting attorneys to sign up for these cases. In most medium to small counties, court appointed counsel represents the single biggest line item in the court budget. If a case is moved, will court appointed counsel travel? Can the county of the offense afford windshield time? If counsel are used within the county of trial, who will pay for that? Who will be responsible for negotiating contracts for these services?

Under Sec. 10, pertaining to the establishment of district courts as courts of record, the language "general jurisdiction of all matters, both civil and criminal" is struck and "jurisdiction as determined by the Supreme Court or otherwise by law" is inserted. I would very respectfully suggest the determination of jurisdiction of the courts should be a responsibility of the Legislative Branch. Further, I do not see the proscription giving the district court jurisdiction over all civil and criminal matter ever reinserted.

Currently, if an appearance bond is forfeited, 40% of the bond is paid to the county where the case is prosecuted. The proposal is silent as to who would receive that bond as between the county where the crime occurred and the other county where case might be heard.

K.S.A. 22-2216 and 2217 govern changes of venue based on the inability of the defendant to obtain a fair trial within the charging county. Under this bill, if the case can be tried fairly in another county within the judicial district, the originating county bears no expense, but if the case is moved to another judicial district, the original county bears all the costs of trial.

One of the most troubling issues presented by the modification of "county" to "judicial district" is the drawing of jury pools from the entire district. This provision cannot be deleted, because otherwise a party would not be entitled to a jury drawn from a jurisdiction of residence or appropriate location. Juror selection is addressed in sections 44, 45, 46, and 47 of the bill. Jurors are drawn from the judicial district instead of just within the county. This entire area deserves study and input from all those affected. Who is responsible for the costs? There are no "district accounts" or budgets from which juror fees are paid. There will be increased costs related to increased mileage. Undoubtedly, there will be increased juror inconvenience, serving outside or literally counties away from their residence.

Section 60 on pages 34 and 35 illustrates the practical problems of simply substituting "judicial district" for "county." This relates to care and treatment of the mentally ill. Under current law, the county of residency is responsible for all costs incurred by the counties in which the state hospitals are located for costs such as court appointed counsel. Under the bill, the judicial district where the hospital is located will charge and the judicial district of residency should then pay this expense. There are no such accounts or budgets from which these costs can be paid. It should remain the county of residence's responsibility, but as worded the judicial district with the hospital will bill the judicial district of residency. This will require an entirely separate legislative mechanism to implement.

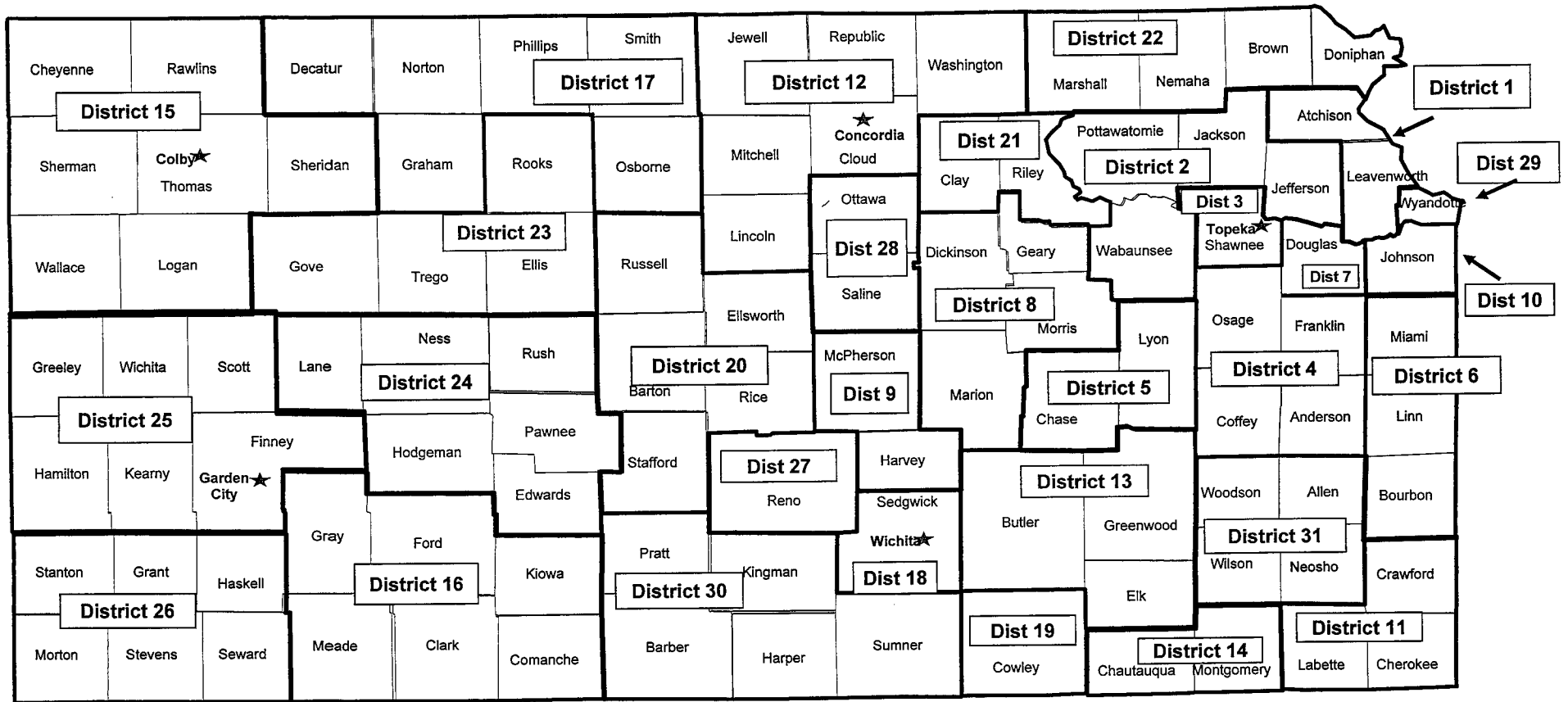
It is important that I emphasize one last point. It is not our design to purposefully delay and/or forever defer consideration of these important issues by effectively "pigeon-holing" them under the guise of being studied. Rather, it is the expectation of the Kansas District Judge's Association that, given the opportunity, district judges, OJA, and the Supreme Court will embrace the opportunity to thoroughly and honestly study the existing system, isolate and identify any inefficiencies then present comprehensive suggestions of what changes should be put in place, taking into consideration the philosophies and policies necessary to insure an exceptional system of justice remains in place for our citizens.

Thank you for this opportunity to present our position.

Respectfully submitted,

Richard M. Smith  
Legislative Chair, KDJA  
Chief Judge, Sixth Judicial District

# Kansas Judicial Districts



**TESTIMONY ON BEHALF OF KANSAS DISTRICT  
MAGISTRATE JUDGE'S ASSOCIATION IN OPPOSITION  
OF SENATE BILL No. 481**

JUDGE BLAINE A. CARTER  
DISTRICT MAGISTRATE JUDGE  
SECOND JUDICIAL DISTRICT  
P.O. BOX 278  
ALMA, KANSAS 66401-0278  
BACJUDGE@EMBARQMAIL.COM

Mr. Chairman, members of the committee thank you for giving me the opportunity to speak to you today. I am Blaine Carter, District Magistrate Judge of the Second Judicial District from Wabaunsee County, Kansas. I am here today on behalf of the Kansas District Magistrate Judge's Association as 1<sup>st</sup> Vice President and Legislative Chairman.

I stand before you, as have many of my colleagues in the past to oppose the repeal of the long-standing statute KSA 20-301b otherwise referred to as the "one judge per county requirement or rule." For more than 30-years, my association has faced a possible repeal of this statute. We understand that advocates for doing away with the one-judge-per-county rule argue that in a time of tight budgets, the Supreme Court should be able to allocate judges throughout the state based solely on the demands of caseloads. The theory of lets put judges only in the larger counties where most of the people and cases are verses the theory of a co-equal branch of government serving all of the people of this State is the true debate.

I would like to say that our association has opposed the repeal of this long-standing statute KSA 20-301b and will always continue to do so. We do so because we firmly believe in the basic philosophy of a representative system of the judiciary. The concept of accountability that this statute provides citizens and that delivers accessibility to our constituency is not broken. It is an efficient and quality driven system that has been recognized throughout the nation. What a great concept it has been to have people serving the county live in the county and be accountable and assessable to the people they serve. Local judges and local people solving local problems. It is comparable to the system you work under. The main difference is our delivery of services. We believe a Judiciary that is closest to the people is the most efficient and effective for the people. Otherwise I believe the Kansas Constitution would hold a reapportionment section in Article 3 *as it does for you in*

Senate Ways & Means Cmte  
Date 2-16-2010  
Attachment 8



Article 10. KSA 20-301b was created during court unification in the 1970's and provides for equal access to the court in every county of this state for all taxpayers regardless of where they choose to reside. This promise of a resident judge gave all citizens of this state confidence they would have a judge in their county to provide equal and timely access in resolving disputes and acquiring justice. When KSA 20-301b was drafted and continuing today, this statute is concise and consistent in setting the minimum expectation of one judge in each county of the state. This is just a continuation of the system in place prior to unification in 1977. Before unification, every county had a judge. Even though they heard other matters the judge was called a probate or juvenile judge. To remove this statute and to remove judges from rural counties is not good for the expectation of justice. It is not good for rural areas of this state. To replace this system with a "we'll pencil you in our calendar and get to you when we can find time system" would have a devastating effect on the statutory time frames we work under and the people left dealing with the logistics of such a system. There should remain a minimum standard for access to justice to which every Kansas citizen is entitled. This statute acknowledges the rights guaranteed by the state's Constitutional Bill of Rights that "all persons are entitled to have justice administered without delay." It should not matter where you live you should know there is a state judge in your county who can dispense justice promptly. Justice must be swift and sure. You have put in place law that requires the same. Our services are not just privileges they are rights. The stated intent of this bill and the repeal of this statute would be to eliminate District Magistrate Judge positions primarily in Western Kansas. People in urban areas would not loose access to the court. They would continue to have access to judges who live among them and know their community. In Western Kansas District Judges may be required to take on more cases if remaining Magistrate Judges are unable to handle what they will be given. Without question, statutory time frames will be difficult to maintain. Emergency situations will be more difficult to manage than they are today. We hope that you will ask yourselves is the amount saved worth the drastic change to the framework of our co-equal branch of government that has served our state so well for so long.

Our association also has concerns with the provision of the bill allowing the county commission to retain an eliminated position and pay the salary of the current district magistrate judge. In effect what this provision is saying to a minority of Kansans is if you like what you use to have and what the majority of Kansans will continue to have then you will have to pay for this service twice. More importantly, this provision rolls back the clock 33 years on court unification. We have made great strides over the past 33 years in our court system through unification. We would ask that you not turn the courts into an "us and them" judiciary without serious consideration of the impact of such decision.

Lastly, our association has numerous concerns with the provisions amending venue statutes. Just to name a few are issues concerning costs and logistic problems involving prosecutors, law enforcement, litigants and juries. I believe that this issue alone would require a separate hearing. I have already taken too much of your time,

however, I would like to refer the committee to In re OBERST. This case can be located at 133K364. In this 1931 case the Kansas Supreme Court found that the word district in section 10 of the Kansas Bill of Rights does not mean judicial district. In reference to criminal jury trials this case would require you to amend the Kansas Bill of Rights rather than just amend the statutes to achieve what SB-481 desires to achieve with changing venue in criminal cases. After 79 years this case is still good case law. We would ask that its findings be considered in venue changes in all cases.

We are in a difficult time. We understand the tasks that face you this session. A Performance Audit Report has been submitted addressing whether boundaries of Judicial and Prosecutorial Districts could be redrawn to increase efficiency and reduce costs. This study, which considered the one-judge-per-county issue, recommends further study is needed. House Concurrent Resolution No. 5026 requests survey and study of the Kansas court system.

In summary, our association asks that this committee view SB-481 very cautiously. We would ask that a repeal of KSA 20-301b not be considered until you study the true impact of access to justice for local communities and all costs involved with removing the framework of our system.

Thank you for giving me your time and attention.

Testimony in opposition to Senate Bill 481  
Kansas District Magistrate Judges Association  
Michael A. Freelove  
District Magistrate Judge Clark County  
16<sup>th</sup> Judicial District

Mr. Chairman, members of the committee, I am appearing here today on behalf of the District Magistrate Judges Association to present testimony in opposition to Senate Bill 481.

In reviewing this bill, I find sweeping changes to the present court system. The one that is most glaring is found on page 11 Section 10 of the bill. My interpretation of section 10 is that there will be only one district court in each judicial district.

Section 12 grants the chief judge of the district the authority to assign cases filed in the district court to any county within the judicial district. Venue shall be proper in any county within the judicial district, as assigned by the chief judge. In the 16th district which is comprised of 6 counties do we move the court from county to county at the chief judge's discretion? Would we have 31 district courts or 105 as we do now?

Section 16 requires the counties where a district magistrate judge's position has been eliminated to remain responsible for funding of the district court within the judicial district as determined by the chief judge. Are the counties also to be responsible for these expenses if they choose to retain *and* pay their district magistrate judge as set out in section 17?

Section 17 provides for the elimination or reassignment of a district magistrate judge's position if the Supreme Court determines that the position is unnecessary due to the ability of the remaining judges of the district to assume the entire judicial workload. It would place the expense of travel on the litigants, a burden that many of them can not afford. Let's not forget law enforcement and the

Senate Ways & Means Cmte  
Date 2-16-2010  
Attachment 9

transportation of prisoners to and from court. Not only does it place extra costs on the counties but raises the concern of safety for the general public.

In section (b) (1) the bill would allow the county where the district magistrate judge position was eliminated or reassigned to retain that position and pay the salary of the current district magistrate judge. The remaining sections under (b) set out how the county will pay the judge. It establishes the district magistrate judge compensation fund to be administered by the state treasury. Is this going require additional employees in the treasurer's office? Is the state going to pay for the clerk or is this an additional obligation that is placed on the county?

Section (c) gives the district magistrate judge retained by the county the same power and authority as a district magistrate judge position established by the Supreme Court. If my position were eliminated or reassigned and the county elected to retain my position, under the provisions of this bill I would be working for the commissioners who would send my pay to the state so the state could pay me.

Looking at the election process district magistrate judges would run district wide as do the district judges, however, there are no provisions for the district magistrate judge retained by the county. Are they required to run district wide or just in their county or do they serve at the discretion of the commissioners, who could hire and fire at their will? Will they be subject to the case assignments set out by the chief judge in the district? What does this do to court unification? I look at this as a step backwards instead of a step forward.

Much of the bill deals with revising venue for cases filed. Historically venue criminal cases have been in the county where the crime was committed. In civil case venue you have some options set out in the statutes that, if satisfied, will dictate in which county venue lies. The bill gives the chief judge the authority to set venue in any county in the district regardless of where the cause of action arose. It shows no regard for the crime victims that have a right to be present at

the trials, or the child of tender age, who is the subject of a child in need of care petition and must travel perhaps a long distance. The business community that has an unpaid account for a small amount that they might attempt to collect through court action in their county but under the provisions of this bill might not use this option if they had to travel, in some cases 70 or 80 miles to the judicial district court. If in the 16<sup>th</sup> judicial district only one district court existed, that one court would be serving approximately 5,417 square miles. This is not the largest district in western Kansas.

Looking at the provisions for a change of venue, under this concept venue would be changed to another district. There are some statutes that require a change of venue in juvenile offender, child in need of care cases and those routinely allowed in care and treatment cases where venue is changed from one district to another and even some of these are conditional on the other district accepting venue. In the multi-county districts a change of venue is generally to a county within that district. In my tenure as a judge I do not recall venue changed from one multi-county district to another. I am sure that it has been done but it is not a common practice.

Changes like those considered in this bill cause me concern due to the strict time lines set out in child in need of care, juvenile offender, protection from abuse and stalking cases, some of which if not met, will jeopardize federal funds. With the possibility of fewer judges, greater travel distance for litigants, social service agencies and attorneys involved, can and will these time lines be met?

Jury selection provisions of the bill make the entire district the jury pool. In my district that might have jurors, in some cases, traveling up to 90 miles one way. We all have the right to a trial by a jury of our peers and it is considered a civic duty to serve as a juror. How civic minded do you think a prospective juror would be if they refused to or couldn't travel the required 90 miles to court and are faced with a contempt citation from the judge hearing the case?

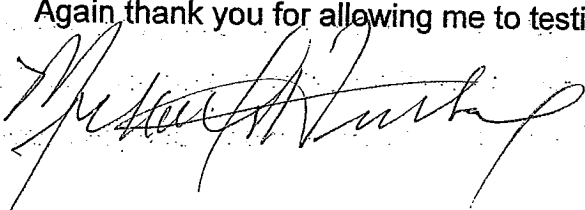
These are just a few of the concerns that the District Magistrate Judges Association have with this bill and we are sure that they are just the tip of the iceberg if this legislation is enacted.

If this measure is expected to be a cost saving measure, the fiscal note for the bill states that no positions could be eliminated without a study and the earliest any savings would be realized would not be until 2013.

The House Appropriations and Judiciary Committees have heard testimony on similar bills this session; House Bill 2417 that would replace district judges positions with district magistrate judge positions on a percentage basis, House Bill 2429 which repeals the resident judge statute and gives the supreme court the authority to eliminate or reassign district magistrate judge positions based on case load and House Resolution 5026 that provides for a study of these questions.

The Office of Judicial Administration, represented by Kathy Porter, and several judges including myself offered testimony on these bills. All but the district magistrate judges testified that a comprehensive study on redrawing the judicial districts and the elimination of the resident judge statute, as recommended by the legislative post audit, should be done before any changes are made. The District Magistrate Judges Association would like to see the bills killed but barring that join the others in requesting the recommended study. Dr. Howard Schwartz, Judicial Administrator, responded by letter to Ms. Barbara J. Hinton, Legislative Post Audit, on January 19, 2010, providing comments to the post audit study. I concur with Dr. Schwartz that any changes addressed in the report require an in-depth study, including a weighted case load study.

Again thank you for allowing me to testify.





State of Kansas

**Office of Judicial Administration**

Kansas Judicial Center

301 SW 10<sup>th</sup>

Topeka, Kansas 66612-1507

(785) 296-2256

Senate Ways and Means Committee

Tuesday, February 16, 2010

Testimony In Opposition to SB 481

Kathy Porter

Before you today is SB 481, which would provide for statutory reorganization of the Judicial Branch of government and its staffing. Before any reorganization of the Judicial Branch occurs, I request that a study commission be created, and that funding for the commission be appropriated. The overriding issue of how best to meet the needs of Kansas citizens for an effective judicial system must be determined before any reorganization should be considered. An independent, blue-ribbon study commission is the appropriate group to undertake this study.

The reorganization and judicial staffing measures contemplated by SB 481 are premature, at best, before a thorough study of the issues involved. Other states that have undergone study and reorganization efforts first obtained workload and weighted caseload studies from knowledgeable and experienced consultants, such as staff at the National Center for State Courts. Funding for workload and weighted caseload studies should be appropriated and the studies should be completed prior to the work of the blue-ribbon study commission, so that study results are available to assist the commission. Clearly, the commission must have this information to make reasoned and fact-based recommendations.

HCR 5026 is a resolution currently before the House Judiciary Committee. Its language is similar to the language used in 1973 Senate Joint Resolution No. 2, which authorized the Judicial Study Advisory Committee (known as the JSAC Committee). The JSAC committee met for one year before issuing its report. The significant changes that occurred through court unification in the 1970s resulted from the work of the Judicial Study Advisory Committee, which met for approximately one year. Additional information on the JSAC Committee is provided as Attachment 4 to this testimony. Given both the need for the weighted caseload and workload studies and the study time needed by a blue-ribbon study commission, the entire study process could not be completed prior to the 2011 legislative session. However, it would appear that progress could be made by that time. Of the areas of study noted in the resolution, it would appear that unification and restructuring of the courts, financing of the courts, and such other areas assigned by the Chief Justice would be the most critical areas of focus.

Senate Ways & Means Cmte

Date 2-16-2010

Attachment 10

It must be noted that the Kansas court system is not failing to deliver timely, effective, high-quality justice to the citizens of Kansas. Kansas courts are consistently recognized nationally for our case delay reduction program, effective jury management, uniform child support guidelines, and other key areas in the daily administration of justice in Kansas. The constitutional and statutory duty of the Kansas Judicial Branch is to administer justice in the most equitable manner possible, while maintaining a high degree of effectiveness and efficiency. Justice is effective when it is fairly administered without delay. This constitutional and statutory duty should be the guiding principle of any study of the Judicial Branch and any plan for reorganization.

Because SB 481 focuses on judicial staffing and the one judge per county issue, following is information and some historical perspective that may be of assistance to you. It was presented earlier to the interim 2010 House Appropriations Committee and to the House Judiciary Committee. The need for a thorough study should emerge as the complexity of these issues is considered.

### **One Judge per County Issue**

The Legislature has addressed whether one judge should be located in each county numerous times through the years. Attachment 1 provides a summary of the seven bills introduced since 2000. Copies were compiled and made available to staff.

In past years, legislative discussions have not included much background information regarding district magistrate judges and district court judges, where these judicial positions are located, and other facts. This testimony is intended to provide you this background.

**What Does the Phrase, “One Judge per County” Mean?** “One judge per county” paraphrases the statutory requirement in K.S.A. 20-301b, which provides: “[i]n each county of this state there shall be at least one judge of the district court who is a resident of and has the judge’s principal office in that county.”

The term, “judge of the district court” includes both district judges and district magistrate judges. The qualifications and jurisdiction of both types of judges are discussed in more detail below. Other statutory provisions also are relevant. K.S.A. 20-338 establishes the counties in which many, but not all, current district magistrate judges must be located. K.S.A. 4-202 *et seq.* sets forth the counties comprising the 31 current judicial districts, and specifies the counties in which many of the current district judge positions are to be located.

Past discussions and past legislative proposals focused on the Supreme Court’s authority to either abolish or relocate district magistrate judge positions. However, many other considerations also have been discussed. A potential concern is that public safety might be impacted in the absence of a resident judge in each county because of potential delays in the



review of applications for warrants or restraining orders, and in the conducting of criminal first appearances.

Also relevant is the fact that, in recent years, many changes in technology have significantly advanced the ability to communicate and transmit images and documents over distances. To the extent possible under current funding levels, the Judicial Branch has made use of those technological advancements. There is great interest in increasing the use of technology, where appropriate, including electronic case filing, or e-filing. E-filing is viewed as crucial to future court operation for many reasons, including the fact that it is a way to address growing caseloads and demands for information in a cost-effective manner, provides convenience and efficiency for practitioners and the public, and alleviates the need to store paper documents and files.

However, funding issues make a uniform, statewide approach to technology use difficult. While the state funds district court personnel costs, funding district court operations, including technology, is a county obligation as provided in K.S.A. 20-348. If the one judge per county issue as it has been discussed in the past were to be enacted, funding for technological efficiencies needs to be provided.

**Qualifications of District Judges and District Magistrate Judges:** K.S.A. 20-334 sets the qualifications of both district judges and district magistrate judges. District judges shall:

- Be regularly admitted to practice law in Kansas;
- be a resident of the **judicial district** for which elected or appointed to serve at the time of taking the oath of office and shall maintain residency in the judicial district while holding office; and
- For a period of at least five years, have engaged in the active practice of law as a lawyer, judge of a court of record or any court in this state, full-time teacher of law in an accredited law school, or any combination thereof.

District magistrate judges shall:

- Be a graduate of a high school or secondary school or the equivalent thereof;
- be a resident of the **county** for which elected or appointed to serve at the time of taking the oath of office and shall maintain residency in the county while holding office; and
- if not regularly admitted to practice law in Kansas, be certified by the Supreme Court, in the manner prescribed by K.S.A. 20-337 and amendments thereto, as qualified to serve as a district magistrate judge.

Please note that, although the statute specifies that district magistrate judges must reside in the county from which they are elected or appointed, they can and do travel to other counties

within the district to hear cases at the chief judge's direction. District magistrate judges may also be assigned to hear cases in other judicial districts.

All judges must meet continuing judicial education requirements to ensure they remain informed about developments in state and federal laws and maintain and increase their professional competence.

**Jurisdiction of District Judges and District Magistrate Judges:** K.S.A. 20-302b sets the jurisdiction of district magistrate judges. They have concurrent jurisdiction with district judges, with some exceptions.

A district magistrate judge does not have jurisdiction over the following actions: Any Chapter 60 (general civil) action involving more than \$10,000 (except that a district magistrate judge may hear a contract action involving an unsecured debt); actions against state officers for misconduct in office; actions involving real estate (other than those filed as limited cases or under the probate code); and actions for divorce, separate maintenance, or child custody. The statute also provides that a district magistrate judge does not have jurisdiction over petitions for habeas corpus, receiverships, change of name, declaratory judgments, mandamus and quo warranto, injunctions, class actions, rights of majority, and commitment of sexually violent predators.

Despite the limitations in statutory jurisdiction, K.S.A. 20-3026 provides that, in the absence, disability, or disqualification of a district judge, a district magistrate judge may grant a restraining order, appoint a receiver, and make temporary orders in a domestic case. The statute also provides for appeal to a district judge of rulings of a district magistrate judge and reassignment by the chief judge of actions from a district magistrate judge to a district judge upon motion of a party. Reassignment is mandatory upon request in child in need of care cases where termination of parental rights is sought, but otherwise is discretionary with the chief judge. K.S.A. 20-3026 also specifically notes some of the cases that district magistrate judges may hear, including traffic, cigarette and tobacco, and misdemeanor cases. A district magistrate judge may conduct the preliminary examination of felony charges and hear felony arraignments as assigned by the chief judge. A district magistrate judge may hear child in need of care cases and juvenile offender cases; may establish, modify, or enforce orders of support; and may enforce orders granting visitation rights or parenting time.

**Why Do Some Counties Have District Judges, Some Have District Magistrate Judges, and Some Have Both?** Some history regarding the court system and its judges may be helpful. Prior to court unification in the late 1970's, all district court operations were funded by the counties, with the exception of district judge and court reporter positions, which were funded by the state. Local districts were free to establish and fund county judge positions. The decision as to the type of judge needed was made on a local basis and could be funded on a local basis. With court unification, the state assumed the cost of all district court salaries, including those of

previously locally-funded county judges, and the Supreme Court became involved in the process of determining the need for new judge positions. At the same time, approving funding for all new judge positions became the Legislature's responsibility. The judicial positions currently in the Judicial Branch are those present at the time of court unification, plus those positions specifically added by the Legislature since unification. Prior to 1998, there was no statutory provision allowing the addition of district magistrate judge positions. In 1998, K.S.A. 20-355 was amended to provide that the Supreme Court shall examine the need for district magistrate judge positions, as well as the need for divisions of the district court.

**What is the Current Number of District Judges and District Magistrate Judges, and Where Are They Located?** There are currently 79 district magistrate judges. The map included as Attachment 2 shows the current location of all district magistrate judges, and specifies whether the judge is an attorney. The map also shows the locations of the 167 district judges.

Of the 79 district magistrate judge positions, ten were added by the Legislature since 2000 in response to caseload demands. Five district magistrate judge positions were added in 2000: three district magistrate judge positions for the 10<sup>th</sup> Judicial District (Johnson County) and two district magistrate judge positions for the 25<sup>th</sup> Judicial District (in Finney County). In 2005, three district magistrate judge positions were added, with one district magistrate judge position each provided for the 27<sup>th</sup> Judicial District (Reno County), the 9<sup>th</sup> Judicial District (in McPherson County), and the 8<sup>th</sup> Judicial District (in Geary County). In 2006, an additional district magistrate judge position was added for the 10<sup>th</sup> Judicial District (Johnson County), and in 2008 a district magistrate judge position was added for the 21<sup>st</sup> Judicial District (in Riley County).

**What Level of Funding Is Required to Support the District Magistrate Judge and District Judge Positions?** Funding has been central to past discussions of the one judge per county issue. The following table provides information on the funding needed for the 79 district magistrate judge positions and 167 district judge positions, including chief judges.

**FY 2010 Cost of District Magistrate Judge Positions\***

Number of District Magistrate Judges		Salary	Benefits	Total
1	District Magistrate Judge	\$61,746	\$25,657	\$87,403
Total 79	District Magistrate Judges	\$4,877,934	\$2,026,903	\$6,904,837

**FY 2010 Cost of District Judge Positions\***

Number of District Judges		Salary	Benefits	Total
1	District Judge	\$120,037	\$42,112	\$162,149
136	District Judges	\$16,325,032	\$5,727,313	\$22,052,345
31	Chief Judges	\$3,758,874	\$1,314,333	\$5,073,207
Total 167	District and Chief Judges	\$20,083,906	\$7,041,646	\$27,125,552

\*Please note that rounding is reflected in some totals.

*Travel Costs.* It is important to note that any savings generated by eliminating the requirement for a judge in each county would be offset, to some degree, by additional Judicial Branch travel expenditures, depending upon the legislation that might be enacted. For example, if venue in the county is required, rather than in the judicial district, as discussed in more detail below, judges would need to travel from county to county to hear cases in those counties that would not have resident judges.

#### **How Has the One Judge per County Issue Been Addressed in Past Legislation?**

Some proposed legislation would simply have repealed the one judge per county statute, K.S.A. 20-301b. Other proposed bills included more detail, but were silent regarding many other issues that would arise, such as venue, terms of office, elections, county financial responsibilities, and jury selection, all of which are discussed below. While 2003 HB 2307 and its substitute version did address some of those issues, additional information or discussion might be helpful.

Some past legislative approaches expressly left a great deal of discretion with the Supreme Court, which is consistent with the Kansas Constitution's placement of Judicial Branch administrative responsibility. However, even if it were expected that the Supreme Court would exercise its discretion in some areas, certain other statutory provisions could pose obstacles. For that reason, these issues should be included in any discussion of the one judge per county issue.

**Venue.** If the one judge per county requirement were repealed, should cases continue to be heard in the county in which they are filed, which would sometimes require judges to travel from one county to another, or should venue be anywhere in the judicial district, with the majority of cases being heard in the county in which the judge resides or the county that is the district's population center? 2003 HB 2307 and its substitute version addressed venue by providing that venue would be district-wide. With district-wide venue, the litigants, rather than the judge, would bear the travel burden. Although this would create efficiencies for the district courts, it would mean that the public, law enforcement officers, state agency personnel, and others would have to travel to other counties for hearings, dockets, motions, trials, and other proceedings, including those of an emergency nature, when necessary. Litigants would include petitioners for protection from abuse or protection from stalking orders, parties in child in need of care cases, and criminal defendants for whom the counties would bear the cost of transportation. Limited actions cases, the majority of which are debt collection cases filed by businesses, comprise the second-highest volume category of cases heard in the Kansas court system, and those businesses and cases would be impacted by any change in the current venue requirements.

If venue remained in the county, a judge might need to be present in each county several days per week, even in counties with smaller caseloads, to meet some time-sensitive requirements of federal and state law, as well as potential public and individual safety concerns. Requiring judges to travel imposes inefficiencies in the use of judges' time and additional costs for Judicial Branch travel expenditures.

**Terms of Office.** Whether by direct or retention election, judges of the district court are elected officials who serve four-year terms pursuant to K.S.A. 20-327. Given that, if the one judge per county requirement were repealed, could a judicial position be abolished or relocated to another county at any time, or must the judge be allowed to serve out the term? In other words, can the term of office of an elected official be shortened by eliminating or relocating that office? Should abolishing or relocating a judicial position be delayed until there is a vacancy in the office?

2003 HB 2307 addressed these questions to some extent by providing that the Supreme Court must designate any district magistrate judge positions to be abolished no later than one year prior to the end of the term for which the current district magistrate judge is serving. (Please note that perhaps this should be amended to refer to any district magistrate judge position to be abolished *or relocated*.) No previously proposed legislation allowed an individual district magistrate judge whose position was relocated to another county to transfer to that county and retain his or her office as a district magistrate judge. That district magistrate judge would have to be selected or elected in the new county to which the judicial position is relocated or in another county if that judge wished to remain a judge.

The terms of office of current district magistrate judges are shown on the map provided as Attachment 3. A total of 18 of the 79 district magistrate judges are currently serving terms that end in January 2011, and the remaining 61 district magistrate judges are currently serving terms that end in January 2013. Of the 167 district judges, 69 are currently serving terms ending in January 2011, and 98 have terms ending in January 2013.

**Elections.** Currently, those district magistrate judges who are elected run for office in the county in which they serve. If a district magistrate judge were to serve several or all counties within a judicial district, should that district magistrate judge be elected by voters in all of the counties in which the district magistrate judge serves? District magistrate judges have argued that running for election on a district-wide basis, particularly in districts in which one county has a significantly greater population than the other counties, places the district magistrate judges from the less populous counties at a distinct disadvantage. Viewed from another perspective, would the voters in a county from which district magistrate judge positions have been abolished be prohibited from voting for the district magistrate judge or judges who hear cases in their county?

**County Financial Obligations.** 2003 HB 2307 included a provision stating that counties for which district magistrate judges were abolished remain responsible for all expenses incurred as that county's share of district court operations within the judicial district, as determined by the chief judge. Either this provision or some other provision may be important so that one county would not be forced to assume expenses formerly assumed by another county.

**Jury Selection.** 2003 HB 2307 provided that venue would be based in the district, rather than in the county, and that jurors would be drawn from the district, rather than the county. If venue is district-wide, it is presumed that one county should not bear an expense previously assumed by another county, and residents of all counties should share the obligation of jury service.

**Conclusion and Supreme Court Recommendation.** Please note this information is not intended to be an exhaustive analysis. Additional legal issues will emerge, and there are other local concerns and practical considerations to be taken into account. The overriding issue is how to best meet the needs of Kansas citizens for an effective judicial system.

Because of the magnitude of the issues involved, a more comprehensive, detailed review and analysis, perhaps by an independent, "blue-ribbon" type study commission, could be beneficial. This commission should include representatives from all three branches of government, practitioners, the public, nonjudicial personnel, representatives of the business community, and others. Geographic diversity should be considered in making appointments. Funding for travel and other costs would be needed.

There are several potentially instructive precedents for this type of commission. Attachment 4 provides information about some of those precedents.

**Legislation Introduced on the One Judge per County Issue, as Required by K.S.A. 20-301b**

**K.S.A. 20-301b. Judge required in each county.** In each county of this state there shall be at least one judge of the district court who is a resident of and has the judge's principal office in that county. **History:** L. 1983, ch. 105, § 12; L. 1984, ch. 111, § 1; July 1.

Bill and Introduced By	Content	Results
2000 HB 3008 - Introduced by the House Appropriations Committee	Repealed K.S.A. 20-301b	Had a hearing and died in the Appropriations Committee.
2000 SB 618 - Introduced by Sen. Salisbury in the Senate Ways and Means Committee	The major provisions of 2000 SB 618 include: The Kansas Supreme Court shall allocate all judicial resources as the court determines necessary and appropriate. The Court shall assign the number of district judge positions and district magistrate judges as currently provided by law to each judicial district as the court determines necessary. The Court shall determine where each district judge's and district magistrate judge's office is to be located and shall assign the county in which such judge shall serve and hear cases.	Died in the Senate Ways and Means Committee – no hearing.
2002 HB 2755 - Introduced by Reps. Sloan and Findley in the House Appropriations Committee	<p>The major provisions of 2002 HB 2755 that include the one judge per county issue are: The Kansas Supreme Court shall allocate all judicial resources as the court determines necessary and appropriate. The Court shall assign the number of district judge positions and district magistrate judges as currently provided by law to each judicial district as the court determines necessary. The Court shall determine where each district judge's and district magistrate judge's office is to be located and shall assign the county in which such judge shall serve and hear cases.</p> <p>The bill also established the Judicial Caseload Management Fee Fund, funded by assessments on attorneys (\$100 from attorneys licensed less than three years, \$250 from attorneys licensed more than three but less than six years, and \$600 from attorneys licensed more than six years) to fund district court nonjudicial personnel.</p> <p>The bill also included a provision to allow the Chief Justice to increase docket fees as necessary to fund the Judicial Branch.</p>	Died in the House Appropriations Committee – no hearing.
2003 HB 2307 - Introduced by the House Judiciary Committee.	The major provisions of 2003 HB 2307 include: The elimination or reassignment of district magistrate judge (DMJ) positions upon a vacancy; venue and jurisdiction; terms of office; and county financial responsibilities.	Had a hearing in the House Judiciary Committee, with 2003 Substitute for HB 2307 resulting as

	<p><b>Venue</b> for cases pursuant to the statutes amended by 2003 HB 2307 shall be in the applicable judicial district. Under the bill, the word “county” is stricken and replaced with “judicial district.”</p> <p>Section 9 amends K.S.A. 20-331 to strike the language concerning judge of the <b>district court residency requirements</b>.</p> <p>Section 10 amends K.S.A. 20-333 (Abolishment of office of judge upon death, resignation or retirement in certain cases) to add “district magistrate judge” to the statute.</p> <p>Under Section 11, each DMJ shall be elected by the electors of the judicial district where the judge’s position is located.</p> <p>Section 12 states: The terms of office of DMJs determined to be unnecessary or reassigned for district magistrate judges holding office in January of the year following the determination shall expire on the last day of the term for which the district magistrate judge is currently holding office. The Supreme Court must designate any district magistrate positions to be abolished no later than one year prior to the end of the term for which the current district magistrate judge is serving.</p> <p>In counties where district magistrate judge positions are eliminated or from which district magistrate judge positions are reassigned, the county commission may elect to retain the position and pay the salary of the current district magistrate judge. Counties may elect to pay the salary of the successor district magistrate judges in accordance with the provisions of K.S.A. 20-310a (judges pro tem; power and authority; compensation; reports).</p> <p>Section 38 amends the <b>jury selection</b> process to permit a district-wide selection of jurors.</p> <p>Section 75 amends K.S.A. 20-329 to permit the chief judge to assign cases filed in the district courts to any county within the judicial district.</p> <p>Under Section 76, counties from which district magistrate judge positions have been eliminated pursuant to K.S.A. 20-333 (abolishment of office of judge upon death, resignation, or retirement in certain cases) or 20-354 (procedure for the elimination of certain district magistrate judge positions) shall remain responsible for all expenses incurred as that county’s share of the operations of the district court within the judicial district, as determined by the chief judge of the judicial district.</p>	<p>the committee’s work product.</p>
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<p>2003 Substitute for HB 2307 - This bill was recommended following the House Judiciary Committee hearing on 2003 HB 2307.</p>	<p>The major provisions of Substitute for HB 2307 include: Abolishing or reassigning district magistrate judge (DMJ) positions and district judge positions; terms of office for those district magistrate judges who are eliminated; and county financial responsibilities.</p> <p>Under Section 3, <b>election laws</b> applicable to district court judges shall govern the election of district magistrate judges (DMJs). Each DMJ shall be elected by the electors of the county or counties where the judge's position is located and assigned by the chief judge of the judicial district.</p> <p>Under Section 4, notwithstanding the provisions of K.S.A. 20-301b or 20-338 (district magistrate judge positions established), the Supreme Court may determine that the continuation of a DMJ position is unnecessary because the yearly average caseload of the DMJ is less than 600 cases and the judges in the judicial district are able to assume the workload of the county. The yearly average caseload shall not include traffic infractions or violations, but shall include CINC cases and cases pursuant to the Kansas Juvenile Justice Code and the Probate Code.</p> <p>Section 4 also provides that the <b>terms of office</b> for DMJs determined to be unnecessary and reassigned for DMJs holding office in January of the year following the determination shall expire on the last day of the term for which the DMJ is currently holding office.</p> <p>The Supreme Court shall designate any DMJ positions to be abolished no later than one year prior to the end of the term for which the current DMJ is serving. In counties where DMJ positions are eliminated, the chief judge is responsible for assigning a DMJ from another county to hear cases. If a DMJ is assigned to more than one county in a judicial district in which the proposition of nonpartisan selection of district court judges has been approved, the DMJ shall be subject to retention. If a DMJ is assigned to more than one county in a judicial district in which the proposition of nonpartisan selection of district court judges has not been approved, the DMJ shall be elected at the next general election held in November.</p> <p>Section 4 is further amended to permit counties where district magistrate judges are eliminated or reassigned to retain the position and pay the salary of the current DMJ. Counties may elect to pay the salary of the successor district magistrate judge in accordance with K.S.A. 20-310a.</p>	<p>Substitute for HB 2307 was passed by the House Judiciary Committee. Substitute for HB 2307 was considered by the House Committee of the Whole, but failed to pass on a vote of 61-62. A motion to reconsider Substitute for HB 2307 was withdrawn and the bill was killed on final action.</p>
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	<p>Section 6 would require counties where DMJ positions are eliminated to remain responsible for all expenses incurred for that county's share of the operations of the district court.</p> <p>Under Section 7, notwithstanding any other law to the contrary, if the Supreme Court determines that, in order to effectively expedite the business of the district court in any judicial district, the district judge position should be eliminated and that an additional position or positions of district magistrate judge should be created, the Supreme Court shall certify to the Secretary of State the elimination of the district judge position and the creation of the additional position or positions of district magistrate judge. If the position or positions are to be created in a judicial district in which the proposition of nonpartisan selection of district court judges has been approved, certification also shall be made to the chairperson of the district judicial nominating commission of the judicial district. When the certification has been made, the position or division shall be deemed created and the judgeship shall be deemed vacant, to be filled in the manner provided by law for filling vacancies in judgeships in the judicial district. If the position or positions are to be created in a judicial district in which the proposition of nonpartisan selection of district court judges has not been approved, the district magistrate judge shall be selected at the next general election held in November.</p>	
<p>2003 HB 2446 - Introduced by the House Appropriations Committee and referred to the House Judiciary Committee.</p>	<p>The major provisions of 2003 HB 2446 are the same as those found in 2003 Substitute for HB 2307.</p>	<p>Died in the House Judiciary Committee -- no hearing.</p>
<p>2004 HB 2495 - Introduced by the Special Committee on Judiciary in the House Judiciary Committee.</p>	<p>The major provisions of 2004 HB 2495 include eliminating the requirement of one judge per county and permitting the Supreme Court to reassign judges based on caseload. Under Section 13, in each county there shall be at least one district court judge who is assigned to that county by the Chief Justice. The language stating that the judge be a resident of and have their principal office in such county was stricken. Section 13 <b>also provides that such judge may be assigned to one or more counties or be appointed to a full-time or part-time position as determined by the Chief Justice.</b></p> <p>Section 18 amends K.S.A. 20-354 to give the Supreme Court the ability to eliminate or reassign district magistrate judge positions if the magistrate's yearly caseload is less than 600 cases and</p>	<p>Had a hearing and died in the House Judiciary Committee.</p>

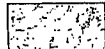
depending on the ability of the remaining judges of the judicial district to assume the entire workload of the county. The yearly average caseload shall not include traffic infractions or violations, but shall include cases filed pursuant to the CINC code, Juvenile Justice Code, and Probate Code.


If a district magistrate judge position were eliminated, the chief judge of the judicial district shall assign a magistrate from another county in the district to be the district magistrate judge for both counties. The elimination or reassignment of district magistrate judges would occur at the end of terms, with notice being given the prior year, or upon a vacancy in the office. Counties from which district magistrate judge positions are eliminated would remain responsible for all expenses incurred for that county's share of the operations of the district court within the judicial district.

If a district magistrate judge is assigned to more than one county in a judicial district in which the proposition of nonpartisan selection of district court judges has been approved, the district magistrate judge shall have been subject to retention by the electors of the counties to which such district magistrate judge has been assigned. If a district magistrate judge is assigned to more than one county in a judicial district in which the proposition of nonpartisan selection of district court judges has not been approved, the district magistrate judge shall be elected at the next general election held in November by the electors of the counties to which such district magistrate judge has been assigned.

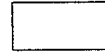
In counties where district magistrate judge positions are eliminated or from which district magistrate judge positions are reassigned, the county commission may elect to retain the position and pay the salary of the current district magistrate judge. Counties may elect to pay the salary of the successor district magistrate judges in accordance with the provisions of K.S.A. 20-310a.

10-14

 = non-attorney DMJ  
- 46 counties  
- 46 DMJs

 = attorney DMJ  
- 28 counties  
- 33 DMJs

79 = Total District Magistrate Judges (DMJ)  
167 = Total District Judges (DJ)


 = no DMJ  
- 31 counties


# Kansas

## Judges of the District Court

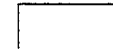
Cheyenne DMJ (1)	Rawlins DMJ (1)	Decatur DMJ (1)	Norton DMJ (1)	Phillips DMJ (1)	Smith DMJ (1)	Jewell DMJ (1)	Republic DMJ (1)	Washington DJ (1) DMJ (1)	Marshall DMJ (1)	Nemaha DMJ (1)	Brown DJ (2)	Doniphan DMJ (1)			
Sherman DJ (1)	Thomas DJ (1) DMJ (1)	Sheridan DMJ (1)	Graham DJ (1) DMJ (1)	Rooks BMJ (1)	Osborne DMJ (1)	Mitchell DMJ (1)	Cloud DMJ (1)	Clay DMJ (1)	Riley DJ (3) DMJ (1)	Pottawatomie DJ (1) DMJ (1)	Jackson DJ (1)	Atchison DJ (2)	Jefferson DJ (1) DMJ (1)	Leavenworth DJ (3)	Wyandotte DJ (4)
Wallace DMJ (1)	Logan DMJ (1)	Gove DMJ (1)	Trego DMJ (1)	Ellis DJ (2)	Russell DMJ (1)	Lincoln DMJ (1)	Ottawa DJ (1) DMJ (1)	Dickinson DJ (1) DMJ (1)	Geary DJ (3) DMJ (1)	Wabaunsee DMJ (1)	Shawnee DJ (15)	Douglas DJ (6)	Johnson DJ (19) DMJ (4)		
Greeley DMJ (1)	Wichita DMJ (1)	Scott DMJ (1)	Lane DMJ (1)	Ness DMJ (1)	Rush DMJ (1)	Barton DJ (2)	Ellsworth DJ (1) DMJ (1)	Saline DJ (3)	Morris DMJ (1)	Lyon DJ (3)	Osage DMJ (1)	Franklin DJ (1) DMJ (1)	Miami DJ (2)		
Hamilton DMJ (1)	Keamy DMJ (1)	Finney DJ (4) DMJ (2)	Hodgeman DMJ (1)	Pawnee DJ (1) DMJ (1)	Edwards DMJ (1)	Stafford DMJ (1)	Rice DMJ (1)	McPherson DJ (1) DMJ (1)	Marion DJ (1)	Chase DMJ (1)	Coffey DJ (1)	Anderson DJ (1)	Linn DJ (1)		
Stanton DMJ (1)	Grant DMJ (1)	Haskell DMJ (1)	Gray DMJ (1)	Ford DJ (3)	Kiowa DMJ (1)	Pratt DJ (1)	Reno DJ (4) DMJ (1)	Harvey DJ (2)	Butler DJ (3)	Greenwood DJ (1) DMJ (1)	Woodson DMJ (1)	Allen DJ (4) DMJ (1)	Bourbon DJ (1) DMJ (1)		
Morton DMJ (1)	Stevens DJ (2) DMJ (1)	Seward DJ (1)	Meade DMJ (1)	Clark DMJ (1)	Comanche DMJ (1)	Barber DMJ (1)	Harper DMJ (1)	Sedgwick DJ (28)	Eik DMJ (1)	Wilson DJ (1)	Neosho DJ (1)	Crawford DJ (3)			
								Sumner DJ (2)	Cowley DJ (3)	Chautauqua DMJ (1)	Montgomery DJ (3)	Labette DJ (2)	Cherokee DJ (1) DMJ (1)		

10-15

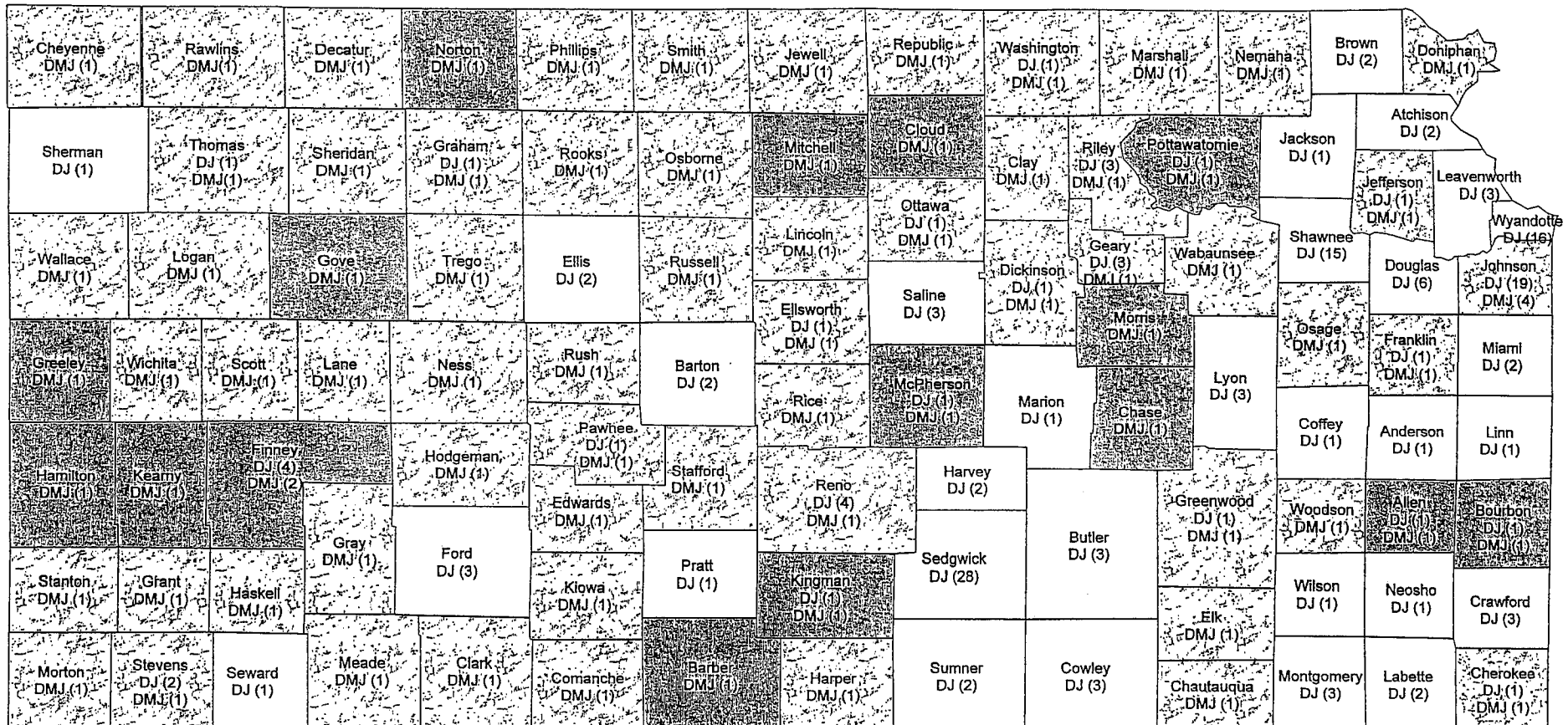
 = 2011  
- 18 DMJs

 = 2013  
- 61 DMJs

# Kansas

 = no DMJ (31 counties)

## District Magistrate Judge Term Expiration\*



\*District Judges' term expiration dates would also be split between 2011 and 2013. While the terms of 167 district judges are more difficult to illustrate in this manner, those term expiration dates are shown in the list included as attachment 3A.

\*Johnson County - 3 DMJ terms expire in 2013 and 1 DMJ term expires in 2011

\*Osage County - District magistrate judge leaves office in 2012 pursuant to K.S.A. 20-2608.

## District Judge Term Expiration

Judicial District	County	Number of District Judges with Terms that Expire in January 2011	Number of District Judges with Terms that Expire in January 2013
1	Leavenworth	2	2
1	Atchison	1	1
2	Jackson		1
2	Jefferson		1
2	Pottawatomie	1	
3	Shawnee	4	11
4	Anderson		1
4	Coffey	1	
4	Franklin		1
5	Lyon	1	2
6	Bourbon		1
6	Linn	1	
6	Miami	1	1
7	Douglas	4	2
8	Dickinson	1	
8	Geary	2	1
8	Marion		1
9	Harvey	1	1
9	McPherson		1
10	Johnson	8	11
11	Crawford		3
11	Cherokee	1	
11	Labette	1	1
12	Washington		1
13	Butler	1	2
13	Greenwood	1	
14	Montgomery	2	1
15	Sherman		1
15	Thomas		1
16	Ford	1	2
17	Graham		1
18	Sedgwick	8	20
19	Cowley	1	2
20	Barton		2
20	Ellsworth	1	
21	Riley	2	1
22	Brown	1	1
23	Ellis		2
24	Pawnee	1	
25	Finney	2	2

10-16

**District Judge Term Expiration**

Judicial District	County	Number of District Judges with Terms that Expire in January 2011	Number of District Judges with Terms that Expire in January 2013
26	Seward		1
26	Stevens	2	
27	Reno	2	2
28	Saline	3	1
29	Wyandotte	8	8
30	Pratt		1
30	Kingman	1	1
30	Sumner	1	
31	Allen		1
31	Neosho		1
31	Wilson	1	
Totals		69	98

10-17

**Previous Studies of Judicial Branch Resources and Structure**

**Judicial Study Advisory Committee**

In 1973, prior to court unification, Senate Joint Resolution No. 2 authorized the Judicial Study Advisory Committee (JSAC). The committee was charged with studying (1) unification and restructuring of the courts; (2) administrative supervision of the courts; (3) selection, tenure, and compensation and retirement of judges and court personnel; (4) appellate review; (4) financing of courts; and (5) other areas assigned by the Chief Justice. The committee met for one year and issued its report in May 1974.

The Judicial Study Advisory Committee was appointed by then-Chief Justice Harold R. Fatzer, who included representatives of the Judicial Branch, the bar, the Legislature, and the general public. He also authorized the committee to employ one or more consulting groups with expertise in court studies. The committee report lists the following persons as members of the Judicial Study Advisory Committee:

Edward F. Arn, Wichita, Chairman – Attorney; Former Attorney General; Supreme Court Justice; Former Governor of Kansas  
Whitley Austin, Salina – Publisher, *The Salina Journal*  
John Carlin, Smolan – Member of the House of Representatives; Dairyman  
Carol Chalmers, Manhattan – President, League of Women Voters of Kansas  
James P. Davis, Kansas City – Attorney; Former Assistant Prosecutor Wyandotte County; former Legislator; County Commissioner  
Ray E. Dillon, Jr., Hutchinson – Businessman; President, Dillon Stores Company  
Albert B. Fletcher, Jr., Junction City – District Court Judge; Former President, Kansas District Judges Association  
Kenneth Ingham, Wichita – Municipal Court Judge  
Patricia L. Jones, Lakin – Probate Judge; Juvenile Judge; County Court Judge; Secretary, Special Court Judges Association  
Jack McGlothlin, Pittsburg – Leader, Kansas Organized Labor  
W.A. “Ernie” Mosher, Topeka – Executive Director, League of Kansas Municipalities  
Don Matlack, Clearwater – Attorney; Former State Senator; Governor’s Liaison Representative to the Legislature  
John C. Peterson, Topeka – Student, Washburn University School of Law; Member of House of Representatives  
Robert “Bob” Wells, Garden City – General Manager, Harris Radio Group; Former Member 1964 Citizens’ Conference on Modernization of Kansas Courts  
John F. Steineger, Jr., Kansas City – Attorney; Senator; Senate Minority Leader  
A.L. “Al” Swart, Oakley – Swart-Park Motors, Inc.; Farmer  
Tyler C. Lockett, Wichita – Court of Common Pleas Judge  
Ray Freman Crofoot, Cedar Point – Stockman; Farmer  
J.C. Tillotson, Norton – Senator; Attorney; Senate Judiciary Committee Chairman



## Attachment 4

Additional sources also note as a member Robert F. Bennett of Overland Park, an attorney who served as a state senator, President of the Senate, and Senate Majority Leader, and who later was elected the Governor of Kansas.

A copy of the JSAC report is available upon request. The Judicial Study Advisory Committee's recommendations provided the basis for court unification in the late 1970's. Regarding the judges of the unified district court, the Judicial Study Advisory Committee recommended that:

1. The judicial authority of the district court should be exercised by district judges, associate district judges, and district magistrate judges under the supervision of district administrative judges.
2. Each county of Kansas should have either a resident associate district or district magistrate judge.
3. The present full-time attorney judges of state courts of special or limited jurisdiction should become associate district judges.
4. The present nonlawyer judges and part-time attorney magistrates of state courts or special or limited jurisdiction should become district magistrate judges.

### **The Kansas Citizens Justice Initiative**

The Kansas Citizens Justice Initiative was authorized by order of the Supreme Court on June 3, 1997. Members were appointed by then-Chief Justice Kay McFarland, then-Governor Bill Graves, and the chairpersons and ranking minority members of the Senate and House Judiciary Committees. In all, 46 members were appointed, including co-chairs Jill Docking, of Wichita, and former Governor Robert Bennett, of Shawnee Mission. The deans of the University of Kansas School of Law and the Washburn University School of Law served as co-reporters.

The commission met for the first time on September 29, 1997. The Docking Institute at Fort Hays State University provided technical support and administered two surveys for the commission. Hearings were held at Topeka, Leavenworth, Junction City, Wellington, Wichita, Lecompton, Iola, Pittsburg, Hutchinson, Hays, Independence, Kansas City, Overland Park, and Olathe. The communities of Garden City, Dodge City, Liberal, and Pratt had public hearings together through videoconferencing technology. Nearly 600 Kansans attended one of the hearings and more than 125 individuals submitted written comments. The commission's final meeting occurred on June 11, 1999, in Wichita, and its final report was issued shortly after that meeting.

The commission made a total of 23 recommendations. Regarding the allocation of judicial resources, the commission made the following recommendations:

10-19

## Attachment 4

- (a) The Legislature should fund the court system adequately. On the issue of one judge, one county, there is no need to require one judge to reside in each county for Kansas to have a properly functioning judicial system that provides all citizens, wherever located, adequate access to the courts and delivers justice of high quality. It is sufficient to require that every county have a judge assigned to the county and that specified services be available at the courthouse. Judges may be assigned so that they serve more than one county. However, the Legislature may choose to retain the requirement of a resident judge in each county for political, social or other reasons. Such a choice should be made only if the Legislature provides funding for additional judges and non-judicial personnel.
- (b) The Kansas Supreme Court should be granted authority to allocate all judicial resources, including the location of judges and judges' offices where the one county, one judge requirement is not implicated.
- (c) The Legislature should fund a weighted caseload study as suggested by the Legislative Post-Audit Report.

A copy of this report is available upon request.

### The Judicial Redistricting Advisory Committee

In 1989, the House Appropriations Subcommittee on the Judicial Branch requested a study of judicial redistricting. The main focus of the study became allocation of judicial and nonjudicial personnel. This shift in focus was based on a finding of "unequal and inefficient distribution of judicial and nonjudicial personnel."

The Judicial Council agreed to accept the study of judicial redistricting and the issues comprising the request. The committee members were appointed and met seven times between July 1990 and January 1991. Members included three district judges, one district magistrate judge, one retired Supreme Court justice, two representatives of nonjudicial personnel (clerks of the district court), one person not involved in the legal system, one House member, one Senate member, and two attorneys.

The Committee described its purpose as "to study the current geographical configuration of the 31 judicial districts, consider the possible need for judicial redistricting and the allocation of judicial and nonjudicial personnel. In addition, the committee will study the 'considerable use of temporary judicial assignments' and the concept of geographical pay differential for judges."

The committee also sought to answer the following questions:

1. How can the judicial districts best be organized on a district-wide basis?
2. How can changes be made that clarify and simplify the Supreme Court's authority to administer the judicial system?

10-20

## Attachment 4

3. Should some or all of the municipal courts be brought into the state court system?
4. Should the rulemaking authority of district courts be clarified as it relates to municipal courts?
5. If there is not a judge in each county, what procedures should be implemented to handle emergency matters that may arise?
6. Should a combination clerk/judge position be created in certain areas?
7. Should judges pro tem be used more widely?
8. Should the two tiered system of district judges and district magistrate judges be continued?
9. Should district magistrate judge positions be created in urban areas?
10. If the system is changed, should district magistrate judges be elected or retained on a district-wide basis?
11. If changes are made, should counties be allowed to pay a part of the salary in order to have a full-time district magistrate judge?
12. If there is some change in the number or location of judges or nonjudicial personnel, how can these positions best be created, shifted or terminated?
13. Should each judicial district have two district judges?
14. Should there be changes in the judicial districts that have two courthouses?
15. Should the Supreme Court appoint an ongoing committee to consider assignment of judicial and nonjudicial personnel throughout the system?
16. Should productivity studies be conducted on a regular basis in each judicial district?
17. Should the present method of assigning judges outside the judicial district be maintained?
18. Are the experience and abilities of retired justices and judges being used to the full extent possible?

The Judicial Redistrict Advisory Committee made the following recommendations based on the issues and philosophies discussed above:

1. The present geographical configurations of the Judicial Districts require no change.
2. The present allocation of judges has resulted in an unequal and inefficient distribution of judicial personnel.
3. The present allocation of nonjudicial personnel has resulted in an unequal and inefficient distribution of nonjudicial personnel.
4. Long distance out-of-district assignments are not the most efficient use of judicial personnel.
5. The concept of geographical pay differentials for judges should not be implemented.
6. In order to have efficient administration of the judicial system, the Supreme Court should be given broad discretion in the areas of assignment of judicial and nonjudicial personnel and the creation and elimination of judicial and

10-21

## Attachment 4

nonjudicial positions. The specific statutes which limit such discretion are impediments to judicial efficiency and should be amended or repealed.

One issue discussed by the committee was recommending the repeal of K.S.A. 20-301b, which requires at least one resident judge in each county of the state. Questionnaires were sent to 900 persons comprising both those directly involved with the court system and those indirectly involved. In total, 68% of those responding stated they were against the repeal of the statute.

The committee originally recommended that the statute be repealed based on a finding of unequal and inefficient distribution of judicial personnel. Additionally, the committee found an imbalance in the number of judges at the time of court unification, the difficulty of the Judicial Branch in eliminating and creating judicial positions, the reluctance of the Legislature to fund additional positions, and the fact that additional positions that are funded usually lag well behind the needs for those positions. The committee believed the requirement results in inefficient use of judges and that the number of judges in a district should not be determined on a county by county basis. The committee condoned making a clerk available in every county. However, they found that judges traveled to busier counties within their district because they were not needed full-time in their present county of residence. Additionally, law-trained or better qualified persons in adjoining counties may be available for a judicial position but may not want to leave family and friends.

The committee withdrew its recommendation before the final report and stated that K.S.A. 20-301b should be amended if recommended by a suggested study by the National Center for State Courts. The National Center for State Courts study was never conducted.

Additional Redistricting Studies are also available. Those include the Report of the 1979-1981 Judicial Council Study, the Report of the 1967-1968 Judicial Council Study, the Report of the 1957-1958 Legislative Council Study, and the Report of the 1943-1944 Legislative Council Study.



*PUBLIC POLICY STATEMENT*

SENATE COMMITTEE ON WAYS AND MEANS

**Re: SB 481; Eliminating/reassigning of district magistrate judges.**

**February 16, 2010  
Topeka, Kansas**

**Written Testimony by:  
Terry D. Holdren  
KFB Governmental Relations**

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Chairman Emler and members of the Senate Ways and Means Committee thank you for the opportunity to share our thoughts on SB 481 which would eliminate the statutory requirement that there be one judge of the district court in each county in the state. As you know KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through 105 county Farm Bureau Associations. Our members farm and ranch, and make their homes in communities across the state and benefit each day from the existence of an efficient and available judiciary.

We oppose SB 481. This measure removes the requirement in KSA 20-301b that there be a judge of the district court who resides in each county in the state. Perhaps more impacting is the bill's proposal to shift venue from counties to the judicial district – in some cases this could result in petitioners being forced to travel considerable distances to access the courts. We understand the need for judicial economy in these difficult economic times and appreciate the provisions allowing

Senate Ways & Means Cmte  
Date 2-16-2010  
Attachment 11

County Commissioners to fund district judge positions following elimination.

Our members have adopted policy strongly supporting the requirement that there be at least one judge in each county.

Judges in less populated communities play vital roles as community leaders and provide critical and timely service to local law enforcement. Their presence ensures access to the judicial system and facilitates compliance with Kansas law requiring timely hearings for any number of legal issues. They also provide jobs and contribute to the economies of struggling rural communities.

We appreciate the opportunity to present these comments today. KFB stands ready to assist this committee to ensure that all Kansans have the opportunity to have their concerns addressed by our judicial system.

Thank you.

*Kansas Farm Bureau represents grass roots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.*

11-2



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## **KANSAS LEGISLATIVE POLICY GROUP**

P.O. Box 555 • Topeka, Kansas 66601 • 785-235-6245 • Fax 785-235-8676

**Testimony of  
Commissioner Jack Frick  
Scott County Commissioner  
President, Kansas Legislative Policy Group**

**Before the Senate Committee on Ways and Means**

**Senate Bill No. 481**

**February 16, 2010**

Dear Chairman Emler and Members of the Committee:

Kansas Legislative Policy Group (KLPG) is pleased to provide written testimony today. The KLPG is a bipartisan, non-profit corporation of elected County Commissioners from 30 western Kansas counties. We appreciate the opportunity to submit remarks on this issue, which is of great importance to our member counties.

Senate Bill No. 481 seeks to reassign court resources across judicial districts. Our Commissioners fully understand the lack of State funding to meet court personnel requirements. We too, make decisions daily to meet our funding obligations for the courts as well. Judicial District/Counties with smaller caseloads may now lose the local presence of a district judge or magistrate within their communities. Generally, these counties also have a declining population and are located far from retail services found in larger communities, which likely contribute to the low caseload. Under the bill as drafted, these counties are also required by law to maintain court operations and pay all expenses with the potential of no daily judicial presence. Will our counties eventually lose the non-judicial staff dedicated to support the Courts as well?

KLPG has long supported and continues to advocate for one judge per county. We believe that the judges and magistrates have a responsibility to look out for the interests of the county they reside in. It will be difficult for a judge from another area to come into a community and know the community's interests and preside over cases. Situations and circumstances also arise that will require law enforcement personnel to immediately interact with a judge to obtain a search warrant or other imperative court orders. These occurrences can occur at any time of the day or

Senate Ways & Means Cmte

Date 2-16-2010

Attachment 12

night and immediate accessibility is paramount and Senate Bill No. 481 may impact law enforcement's ability to perform their duties expeditiously. Although interactive communications are always an option, we believe that judges would prefer to personally look across the table at law enforcement when reviewing a request for a warrant or other order requesting immediate action. The bill also permits the counties that lose a judicial position to fund their own replacement positions should they desire to maintain that local presence. This option creates a bigger financial burden on these smaller counties, with already shrinking tax bases, to generate such funding. This effort may relieve one problem area for the State by creating another problem area.

We therefore oppose the removal and reassignment of judicial positions between districts without a detailed study of the issue.

We believe in the equal sharing of resources between local governments and try to do so whenever possible. Senate Bill No. 481 doesn't seem to get there. KLPG hopes that there might be a formula for a more equitable remedy. We would support the Legislative Post Audit report which recommends establishing an advisory committee to further study Court boundaries and efficiency issues and have the advisory committee report back to the legislature.

Thank you for your consideration and the opportunity to present these written remarks.



# SENATE COMMITTEE ON WAYS AND MEANS

Hon. Jay Emler, Chairman  
Hon. Carolyn McGinn and John Vratil, Vice-Chairpersons  
Hon. Laura Kelly, R.M. Member

February 16, 2010  
10:30 a.m.  
Room 548-S

Chief Judge Bruce T. Gatterman  
24<sup>th</sup> Judicial District of Kansas  
P.O. Box K  
Larned, Kansas 67550  
[24thcj@pawnee.kscoxmail.com](mailto:24thcj@pawnee.kscoxmail.com)

## Written Testimony in Opposition to SB 481

My thanks to the Senate Ways and Means Committee for the opportunity to present written testimony today.

My name is Bruce Gatterman. I am the Chief Judge of the 24<sup>th</sup> Judicial District of Kansas. The district consists of the six counties of Edwards, Hodgeman, Lane, Ness, Pawnee, and Rush. The judicial configuration is that of one district judge for the entire judicial district, and one district magistrate judge in each county of the district.

The nonpartisan selection of judges of the district court has not been approved in the 24<sup>th</sup> Judicial District. All judges stand for election. District magistrate judges are elected on a county-by-county basis, while the district judge position is determined by the electors of all six counties.

My testimony will express support for HCR 5026 (which is before the House Judiciary Committee) and opposition to SB 481. My remarks will, in part, incorporate perspectives of operation of the court system in rural Kansas Districts.

### HCR 5026

House Concurrent Resolution 5026 represents the acknowledgment of the Kansas Legislature of the value and utility of a comprehensive survey and study of the Kansas court system. Specific areas identified for study include:

- Unification and restructuring of courts
- Administrative supervision of the courts
- Issues relating to selection, compensation, and retirement of personnel

Senate Ways & Means Cmte  
Date 2-16-2010  
Attachment 13

- Financing of the Judicial Branch
- Other areas identified by the Chief Justice of the Kansas Supreme Court

HCR 5026 provides a virtually identical charge to a Judicial Study Advisory Committee as contained within Senate Joint Resolution No. 2 enacted in 1973, which authorized creation of the Judicial Study Advisory Committee (JSAC). This committee and its report provided the blueprint for court unification in the late 1970's.

The JSAC report was issued 36 years ago this spring. Times have changed significantly, but the importance of a unified and efficient court system has not. The JSAC committee included, among others, legislators, attorneys in private practice and government service, judges, business persons, farmers, and members of the media.

Benefits of a survey and study from a similar committee in review of current court operations could potentially include:

- Input and opinion from a diverse representation of society
- An independent review of the court system, including urban and rural courts
- Identification of issues and services that would be important to the public, law enforcement officials, or the private sector
- A weighted case load study

Information obtained from the study would be extremely important to the Kansas Legislature and the Kansas Judicial Branch in determining effective allocation of judicial resources.

## SB 481

SB 481 eliminates the one judge per county requirement. The bill provides for the eliminating or reassigning district magistrate judge positions when the Kansas Supreme Court determines that a magistrate position is unnecessary.

1. District magistrate judges are elected by the electors of the entire judicial district. The result of SB 481 would most likely be an election of district magistrate judges from the more populous counties in the district. They will understandably want to have a main office in their home county. There is no extra room in the courthouse. If venue is district-wide, would districts be expected to build new courthouses for office and courtroom capability? And, most importantly, who is going to pay for any new or remodeled structures? Taxpayers and county commissioners from multi-county districts will not be pleased with this concept.
2. Under Sec. 17 of SB 481, county commissioners can agree to retain a local district magistrate judge and deposit salary and benefit funds to a district magistrate judge compensation fund maintained by the State. Under Section 17(c), this judge would

2. Under Sec. 17 of SB 481, county commissioners can agree to retain a local district magistrate judge and deposit salary and benefit funds to a district magistrate judge compensation fund maintained by the State. Under Section 17(c), this judge would have the same authority as a district magistrate position created by the Supreme Court "for all purposes under law." Would this judge only sit in his or her local county, or is the position subject to assignment throughout all other counties in the judicial district, as occurs now? County commissioners are going to feel, and rightly so, that if they are fully funding a judge, he or she should preside only in his or her home county.
3. If venue is district wide, which county will pay for expenses of prosecution? Who pays for jury fees and mileage? While the bill provides that this would be a shared expense of the counties, it is felt that chief judges will have a difficult time convincing county commissioners to pay for the expenses of trials and other proceedings that are not occurring in their home counties.
4. The changes contemplated in SB 481 appear to also include a move toward a district attorney system, rather than the current county and district attorney system. The district attorney suggestions have been uniformly rejected by rural Kansans in the past.
5. I start my jury trials at 9:00 a.m. With a district wide jury venire, that would require a juror from my furthest county to leave home at 6:30 every morning to drive 110 miles, after having made it home at 8:00 the night before, all for the minimal sum of \$10 a day and \$.50 a mile. And that's in perfect weather.
6. It is not realistic to expect an alleged victim of abuse or stalking to drive across a judicial district to find a judge for purposes of signing an emergency order. Issues of emergency and safety are involved, plus some of these folks don't own or have access to transportation or lack a driver's license.
7. Patrons in multi-county districts are taxpayers and many are employed full time. It makes no sense to require these litigants to travel 100 miles to file and pursue a small claims action. It probably makes even less sense to expect a defendant of limited means to make that same trip to defend himself.
8. SB 481 would significantly and permanently alter the structure of the Kansas court system. The impact upon individual judicial districts would be substantial, and the positive effect, if any, is unknown. No action should be taken without a comprehensive study similar to the Judicial Study Advisory Committee (JSAC) which provided the blueprint for court unification in the late 1970's. The recent Legislative Post Audit report recognized the value of an extensive study prior to embarking upon massive changes to the Kansas court system.

Following are some observations and questions that occur to me regarding SB 481:

The Kansas average caseload per district judge comparisons reflect that the single district judge in each of these identified rural districts (Judicial Districts 12, 17, and 24) handles a caseload of Chapter 60 civil, felony criminal, and domestic relations which consistently ranks within the top ten per district judge in the state of Kansas (Source: Annual Report of the Courts of Kansas FY 2009). Additionally, these district judges travel an average of 15-20 hours per week (see attached mileage chart for the 24<sup>th</sup> Judicial District), and perform the duties of chief judge, which can easily consume an additional average of five hours per week for personnel and budget issues.

SB 481 does not involve or relate to caseloads of a district judge. The importance of the statistical information I have included for rural districts with respect to consideration of SB 481 is to identify the valued presence of a district magistrate judge in each county as an available team member to hear cases within the magistrate judge's jurisdiction, which in turn promotes the efficient operation of the court system.

SB 481 is not a cost-saving bill. It is a bill for reallocation of judicial resources; the same judicial resources created by unification following the JSAC comprehensive report.

### **Conclusion**

Kansas courts are concerned about appropriation allocation of judicial resources. Allocation must be balanced with prompt access to justice. Informed determination of these issues can best be made through the comprehensive study and survey proposed by HCR 5026.

Actions proposed by SB 481 will significantly and permanently alter the structure of the Kansas court system. I respectfully submit my concern over enactment of these changes without consideration of the impact upon individual judicial districts, or the Kansas court system as a whole.

SB 481 should be rejected at this time pending the study envisioned by HCR 5026.

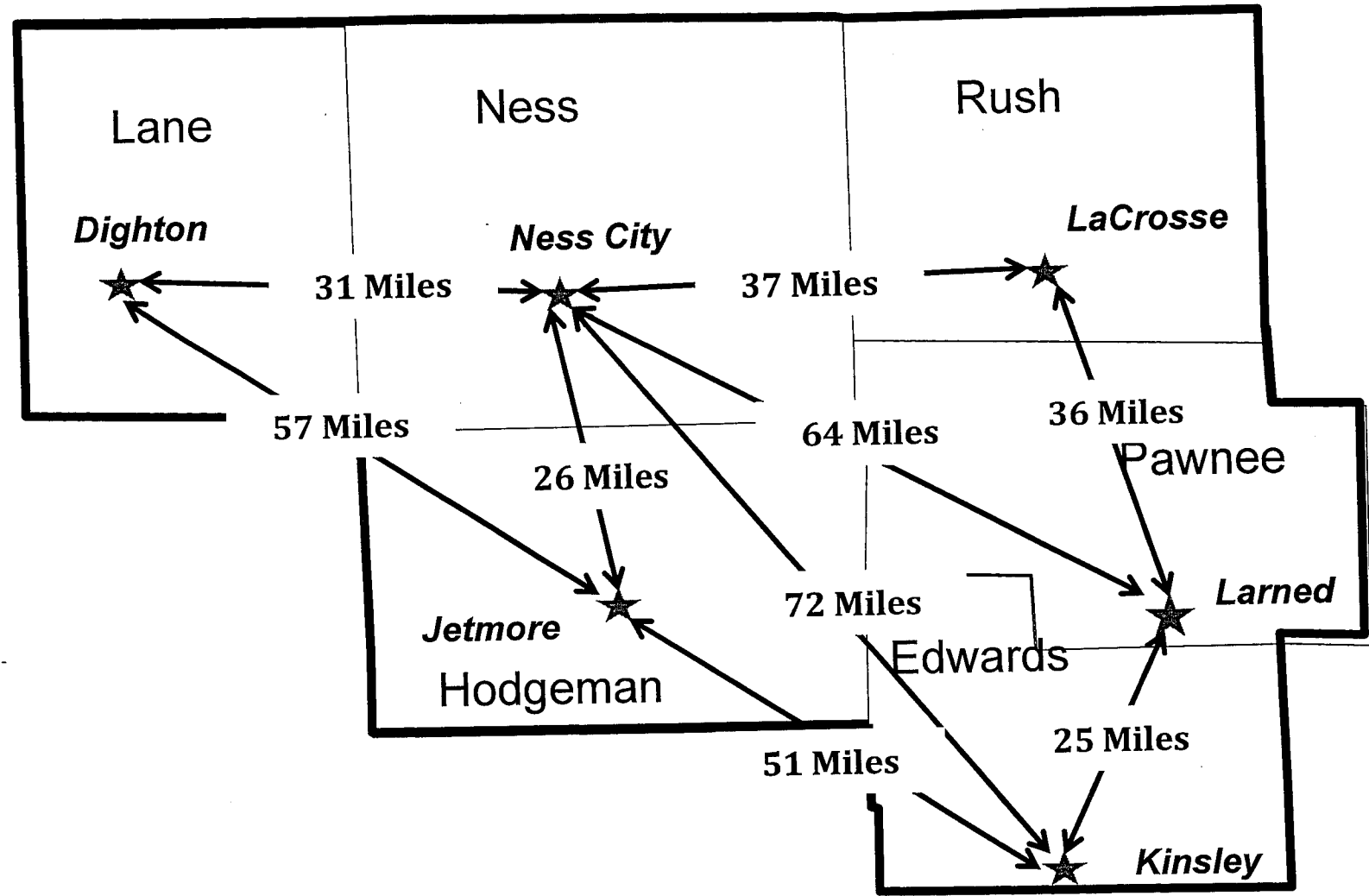
Thank you for this opportunity to present testimony to the Committee.

Respectfully submitted,

Bruce T. Gatterman, Chief Judge  
24<sup>th</sup> Judicial District

13-4

### 24th Judicial District Mileage Between County Seats\*



\* Mileage is noted as reported by the Kansas Department of Transportation Official Distance Chart. Due to construction and other factors, true mileage noted may vary.