

MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 9:00 a.m. on February 4, 2004 in Room 514-S of the Capitol.

All members were present.

Committee staff present:

J. G. Scott, Legislative Research
Amy VanHouse, Legislative Research
Deb Holman, Legislative Research
Michele Alishahi, Legislative Research
Jim Wilson, Revisor of Statutes
Mike Corrigan, Revisor of Statutes
Nikki Feuerborn, Administrative Analyst
Shirley Jepson, Committee Secretary

Conferees appearing before the committee:

Barb Hinton, Legislative Post Audit
Chris Clarke, Supervising Auditor, Legislative Post Audit
Jared Maag, Deputy Attorney General, Attorney General's Office
Randy Hearrell, Kansas Judicial Council

Others attending:

See Attached List.

- Attachment 1 Request by Social and Rehabilitation Services (SRS) for introduction of legislation regarding the child welfare tuition program.
- Attachment 2 Review of Legislative Post Audit Key Findings & Audit-Related Issues
- Attachment 3 Presentation by Jared Maag, Office of Attorney General
- Attachment 4 Presentation by Randy Hearrell, Kansas Judicial Council

Representative Schwartz moved to introduce legislation pertaining to the state water plan fund. The motion was seconded by Representative Osborne. Motion carried.

Representative Feuerborn moved to introduce legislation concerning state finance council voting procedures. The motion was seconded by Representative Howell. Motion carried.

Representative Bethell moved to introduce legislation, at the request of Social and Rehabilitation Services (SRS), regarding the child welfare tuition program. The motion was seconded by Representative Ballard. Motion carried. (Attachment 1)

Chairman Neufeld recognized Barb Hinton, Legislative Post Audit, who presented an overview of key findings and audit-related issues since the 2003 legislative session; audits currently under way or approved to be done; and audits issued during the last three years (Attachment 2). As a result of the food safety program audit, the audit showed that consolidation of all food safety-related inspections into a single agency would save the state approximately \$680,000. The Community Development Disability Organization (CDDO) audit, issued in October 2003, showed an inherent conflict of interest in the CDDO structure with CDDO's in competition with the Community Service Providers (CSP) that they contract with. The audit recommends the separation of client intake and service referral functions to allow service providers to receive discretionary state aid; however, the audit did not conclude that reorganization and consolidation of CDDO's would result in significant advantage to the system.

An audit conducted at the Kansas Department of Health and Environment (KDHE) showed that the agencies' computer security was at extremely high risk of fraud and misuse. This finding resulted in plans to perform other high-level audits of state agencies' computer security. A lack of prenatal care resulting in low-birthweight and premature babies has cost the Medicaid program excessive dollars. That audit recommends addressing women's awareness of prenatal-care programs. Another recommendation from an audit of the state's ability to draw down more federal funds, recommends that the Medicaid rate paid for special education

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services could be raised without federal approval. SRS has raised these rates and this action could result in an estimated increase of approximately \$7 million. An audit of Medicaid funds used for payroll compensation to payroll agents for home and community-based waiver programs, shows that payroll agents in Kansas are billing in excess of the amounts billed by other states. It was recommended that the Department on Aging address the issue. Responding to questions from the Committee concerning the fraudulent overcharge billed by payroll agents, Ms. Hinton noted that she did not know if any charges had been filed but would research and provide this information to the Committee. Ms. Hinton stated that some states use a bid process to contract for payroll agents. Ms. Hinton also noted that she would provide information, as requested by the Committee, as to whether any states provide a flat charge to payroll agents as opposed to an hourly rate. With reference to the CDDO audit and a question from the Committee, Ms. Hinton indicated that the audit showed a potential conflict of interest in quality assurance reviews and felt the audit showed further study is needed to address the separation of CDDO's and CSP's. Responding to a question from the Committee concerning the criticism of West Nile Virus reporting by KDHE, Ms. Hinton indicated that KDHE is currently entering information by hand as opposed to electronically and this has caused a delay in having current information available.

The Chair thanked Ms. Hinton for her presentation.

Chairman Neufeld recognized Chris Clarke, Supervising Auditor, Legislative Post Audit, who presented an overview of the "Performance Audit Report on Costs Incurred for Death Penalty Cases: A K-GOAL Audit of the Department of Corrections" completed by Legislative Post Audit in December 2003 ([a copy of this report is available from Legislative Post Audit](#)). The audit examined the total State and local costs of cases involving the death penalty; steps Kansas could take to reduce overall costs in capital punishment cases; and alternative sentences to the death penalty estimated to be less costly to governmental entities. The audit recommends the Judicial Council be requested to review potential cost saving measures highlighted in the report and provide recommendations as to which of those measures are most appropriate to consider in Kansas; and recommends that the Board of Indigents' Defense Service provide a sufficient number of qualified and trained staff so that death penalty cases do not need contracted counsel because of the workloads of existing staff, look at the feasibility of establishing a conflicts office; and look at whether there are cost controls other states have implemented that Kansas could adopt.

Responding to a question from the Committee, Ms. Clarke stated that billing and expense records are available for contracted-out counsel; however, hourly billing cost records are not maintained by local prosecutors or the Attorney General's office. The State bears approximately 85% of the costs in death penalty cases even though the local county or district attorney decides whether to prosecute a case as a death penalty. Ms. Clarke noted that cost referred to in the audit include the rate of inflation and longevity. In response to a question from the Committee, Ms. Clarke stated that "conflict of interest" was the reason different attorneys were assigned in the trial of the two Carr brothers, noting that there was the possibility of one of the brothers testifying against the other. Ms. Clarke noted that the Board of Indigents Services was not able to provide information on plea bargain cases at the time of the audit; however, has now reported that this information is available and will be provided to the Committee. Chairman Neufeld thanked Ms. Clarke for her presentation.

The Chair recognized Jared Maag, Deputy Attorney General from the Office of the Attorney General, who presented a response, on behalf of Attorney General Phill Kline, to the death penalty audit ([Attachment 3](#)). Mr. Maag indicated that the Attorney General's office felt that the death penalty is an effective tool and should be maintained. Responding to a question from the Committee regarding the employment of qualified judges and clerks to hear death penalty cases, Mr. Maag felt that it was an intriguing idea and could be explored further. The Chair thanked Mr. Maag for his presentation.

Chairman Neufeld recognized Randy Hearrell, Kansas Judicial Council, who presented an overview, as requested by the 2003 Legislature, of the death penalty audit relating to costs ([Attachment 4](#)). Mr. Hearrell stated that basically, the Council came to the same conclusions as Legislative Post Audit and felt the audit was the best study now available. The Judicial Council's report recommends that the law be amended to provide that life without the possibility of parole, instead of the "hard 50", be the sentence for persons who are convicted of capital murder but who do not receive the death penalty; and that the Supreme Court establish a position which will provide an experienced death penalty clerk to district judges who are trying death penalty cases. In response to a question from the Committee with regards to moving death penalty cases to a court in a specific location, Mr. Hearrell noted that the Council did not consider this aspect but felt the case should be tried in the locale where the crime occurred. The Chair thanked Mr. Hearrell for his presentation.

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Representative Bethell moved to approve the minutes of the January 28, 2004 meeting as written. The motion was seconded by Representative Feuerborn. Motion carried.

HB 2626 was referred to the Education Budget Committee.

HB 2669, HB 2670, HB 2671, HB 2672 and **HB 2673** were referred to the General Government and Commerce Budget Committee.

Representative Bethell moved to approve the minutes of the January 27, 2004 meeting as written. The motion was seconded by Representative Campbell. Motion carried.

The meeting was adjourned at 10:35 a.m. The next meeting of the Committee will be held on February 5, 2004, with a briefing and tour of the Statehouse Renovation Project.

Melvin Neufeld, Chairman