

MINUTES

LEGISLATIVE BUDGET COMMITTEE

November 17-18, 2003
Room 514-S—Statehouse

Members Present

Representative Melvin Neufeld, Chairman
Senator Anthony Hensley
Senator Dave Kerr
Representative Bill Feuerborn
Representative Dean Newton

Members Absent

Senator Stephen Morris, Vice-Chairman
Representative Clark Shultz

Staff Present

Alan Conroy, Kansas Legislative Research Department
J. G. Scott, Kansas Legislative Research Department
Leah Robinson, Kansas Legislative Research Department
Deb Hollon, Kansas Legislative Research Department
Audrey Dunkel, Kansas Legislative Research Department
Norman Furse, Revisor of Statutes Office
Michael Corrigan, Revisor of Statutes Office
Bruce Kinzie, Revisor of Statutes Office
Nikki Feuerborn, Administrative Analyst, House Appropriations Committee
Judy Bromich, Administrative Analyst, Senate Ways and Means Committee
Shirley Jepson, Committee Secretary

Conferees

Pat Scalia, Executive Director, Board of Indigents Defense Services
Honorable Rawley Dent, Chief Judge, 14th Judicial District
Larry Daniels, Member of Board of Indigents Defense Services, Dodge City
Randy Hearrell, Executive Director of the Judicial Council
Katrin Osterhaus, Legislative Division of Post Audit
Cindy Lash, Legislative Division of Post Audit
Margaret Zillinger, Director of Community Supports and Services,
Social and Rehabilitation Services

Tom Laing, Executive Director, InterHab
Mike Hutfles, The Alliance for Kansans with Developmental Disabilities
Deborah Stern, RN, JD, Vice President of Clinical & Quality Services, Kansas
Hospital Association
Dr. Ed Berger, President, Hutchinson Community College
Dr. Richard K. Burke, President, Dodge City Community College

Others Attending

See attached list.

November 17, 2003 Morning Session

Chairman Neufeld convened the meeting at 10:15 a.m. and recognized Deb Hollon, Kansas Legislative Research Department (KLRD), who presented an update on the Board of Indigents' Defense Services (BIDS) funding and expenditures ([Attachment 1](#)).

The Chairman recognized Pat Scalia, Executive Director, BIDS. Ms. Scalia introduced Rawley Dent, Chief Judge of the Fourteenth Judicial District, who presented testimony on a request for FY 2004 funds to establish a public defender office in Independence to handle cases in Montgomery and Chautauqua counties ([Attachment 2](#)). Judge Dent indicated that the Fourteenth District is experiencing a problem in securing attorneys to handle the cases of indigent persons accused of a felony crime. The proposed office would be a three-attorney office with staff, at a start-up cost of \$320,000. Judge Dent noted that it might be possible to secure office space from the county. Responding to a question from the Committee with reference to using attorneys from the Chanute office to assist, Ms. Scalia stated that it has been difficult to keep the Chanute office staffed. Chairman Neufeld thanked Judge Dent for his testimony.

With the Chairman's permission, Ms. Scalia introduced Larry Daniels, a member of BIDS and an assigned counsel panel member from Dodge City. Mr. Daniels presented testimony to explain the Board's request for assigned counsel funding in the amount of \$712,978 beyond that approved by the Division of the Budget in its preliminary recommendations ([Attachment 2](#)). Mr. Daniels requested that the Committee give attention to the hourly rate paid for assigned counsel, stating that it had not been increased in seventeen years. Mr. Daniels felt that the rate now paid is not competitive with the private sector or adjoining states. The Chairman thanked Mr. Daniels for his testimony.

With the Chairman's permission, Ms. Scalia introduced Randy Hearrell, Executive Director, Judicial Council, who presented a report from the Kansas Judicial Council Death Penalty Advisory Committee, as requested by language contained in Senate Substitute for HB 2444 ([Attachment 3](#)). Mr. Hearrell noted that the Legislative Division of Post Audit received a similar request to study costs in death penalty cases and their report will be available by the end of the year. Mr. Hearrell stated that the Advisory Committee's study found that death penalty cases cost considerably more than other cases because of the time involved in defense and the prosecution of the case. The post-conviction process is timely and costly because of the number of appeals available to the convicted offender. Mr. Hearrell indicated that the cost to maintain an offender sentenced to the death penalty,

could be two to three times that of a normal prisoner. The study also showed that the death penalty sentence is more costly than a sentence of life without possibility of parole. Mr. Hearrell noted that having an experienced law clerk is a valuable asset in a death penalty case. Mr. Hearrell noted that the written report from the Advisory Committee to the Legislature would be available in early February. Chairman Neufeld thanked Mr. Hearrell for his testimony.

Written testimony from Robin Maher, Director, American Bar Association Death Penalty Representation Project, was distributed to the Committee (Attachment 4).

Written testimony from Steve Kessler, Kansas Legal Services, was distributed to the Committee (Attachment 5).

With permission from the Chairman, Ms. Scalia continued with testimony on the BIDS funding and expenditures for Budget Year FY 2005 (Attachment 2). Ms. Scalia directed the Committee's attention to three requests which have not been recommended for funding by the Division of the Budget in its preliminary recommendations: (1) increase in assigned counsel hourly rate (\$4.0 million); (2) death penalty trial and conflicts office (\$535,000); and (3) public defender pay parity with classified state attorneys (\$400,000). Responding to a question from the Committee, Ms. Scalia stated that a \$50 application fee is being collected when an offender posts bond. With regard to staffing the proposed Independence office, Ms. Scalia indicated that she has three attorneys willing to staff that office if the funding is approved. In response to a question from the Committee concerning changes that would impact the BIDS budget, Ms. Scalia stated that she would like to eliminate all expense to the organization for forensics experts, possibly using the Kansas Bureau of Investigation (KBI) or something similar for an independent staff of experts to do this type of work. In addition, she suggested the hiring of an additional assistant director to review attorney billings and eliminate the over billings, which she felt, are now present because of the lack of staff time. Ms. Scalia felt that this position would pay for itself in savings on attorneys billings, screening of indigents, and assigning counsel. Chairman Neufeld thanked Ms. Scalia for her testimony.

Chairman Neufeld asked the Committee for recommendations to be included in the Committee's final report.

Senator Kerr moved to recommend the development of a pay increase plan for unclassified public defender attorney's salaries to bring them into a more equitable range with the State's classified attorneys; to recommend that public defender attorneys remain as unclassified; and to recommend that the pay increase be accomplished within a period not to exceed five years. The motion was seconded by Representative Newton. The motion carried.

Senator Kerr moved to recommend the establishment of a public defender's office in the 14th Judicial District in FY2005 with the contingency that the County enter into a long-term agreement to provide office space and one-year startup costs. The motion was seconded by Representative Feuerborn. The motion carried.

In addition, the Committee recommends that the following issues be reviewed by the appropriate legislative budget committees during budget hearings: (1) the establishment of a death penalty trial and conflict office; (2) the hiring of an additional BIDS assistant director to screen indigent requests and review attorney billings; (3) the involvement of the KBI or a hired person to perform forensic and other testing in indigent cases; and (4) the development of a long-term plan to increase pay for assigned counsel hours

Afternoon Session

The Committee toured the EDS facility at White Lakes. EDS has been operational in this facility for approximately thirty days. The state of Kansas is contracting with EDS to process and verify claims submitted by health care providers within the state. Representatives of EDS explained the software and the process used to verify the claims. The Committee expressed interest in the availability of reports that could be pulled from the data that the software is able to process.

November 18, 2003 Morning Session

Chairman Neufeld convened the meeting at 9:15 a.m. and recognized Katrin Osterhaus, Legislative Division of Post Audit, who presented the performance audit report on *Community Developmental Disability Organizations (CDDO): Reviewing Issues Related to the Funding of Community Services*. Copies of the CDDOs' *Comments on the Draft Performance Audit Report* were also distributed to the Committee. Copies of both documents are on file in the Legislative Research Department. In response to a question from the Committee, Ms. Osterhaus stated that Post Audit believed that the recommendation for the separation of CDDOs and community service providers, would resolve existing quality control issues. The Committee requested that Ms. Osterhaus provide additional information as to which CDDOs or Community Service Providers (CSP) had stated their concern that consolidation would result in a loss of local funding. The Committee voiced concern with the variance between CDDOs cost of services across the state. The Chairman thanked Ms. Osterhaus for her presentation.

Chairman Neufeld recognized Margaret Zillinger, Director of Community Supports and Services in the Health Care Policy Division of the Department of Social and Rehabilitation Services (SRS), who presented testimony on SRS's response and recommendations to the CDDO audit ([Attachment 6](#)). Responding to a question from the Committee, Ms. Zillinger indicated that SRS is continuing to review the "conflict of interest" issue between the CDDOs and CSPs, which was stated as the chief finding in the audit report and at this time, has not concluded that there is a problem. Ms. Zillinger stated that SRS agrees that it may be a problem and they will continue to do an internal audit of the program. In response to a question from the Committee, Cindy Lash, Legislative Post Audit, stated that the conflict of interest findings of the current audit are the same as findings in a previous audit of the CDDOs. The Committee voiced concern about quality assurance. Ms. Zillinger noted that SRS is continuing to review the quality assurance process and develop uniformity across the state. The Committee suggested that SRS visit with the Kansas Health Institute to review their quality assurance program. In response to a question from the Committee with regard to what the Legislature should do with the audit recommendation on CDDOs as case managers, Ms. Zillinger indicated that she felt the Legislature should encourage SRS to report back to them on a regular basis, look at what other states are doing and regularly evaluate the Medicare and Medicaid service process. In response to the Committee's concern about the inconsistencies in administrative costs, Ms. Zillinger indicated that SRS is looking into these inconsistencies. The Committee requested a copy of the review of the Kansas HCBS-MR/DD waiver, conducted by the federal Centers for Medicare and Medicaid Services (CMS) in September 2003. Chairman Neufeld thanked Ms. Zillinger for her testimony.

The Chairman recognized Tom Laing, Executive Director, InterHab, who provided InterHab's response to the CDDO audit ([Attachment 7](#)).

Chairman Neufeld recognized Mike Hutfles, Alliance for Kansans with Developmental Disabilities, who presented oral remarks in support of the current CDDO and CSP system. Mr. Hutfles stated that the post audit has issued a warning which should be addressed. The Chairman thanked Mr. Hutfles for his testimony.

The Chair recognized Candy Shively, Deputy Secretary, SRS, who provided an update on the closure of 28 offices and the closure of an additional 22 offices between January—June 2004 (Attachment 8). Ms. Shively stated that SRS is continuing to improve customer access to services in the areas where the offices have been closed. At the present time, customers are happy with the new service, being able to use the toll-free number and not having the expense of traveling to an office location. Responding to a question from the Committee, Ms. Shively noted that SRS has worked with the staff of the closed offices to relocate to other areas. Ms. Shively also indicated that there will be a cost savings with the closing of the offices and she will provide this information to the Committee. Chairman Neufeld thanked Ms. Shively for her testimony.

The Chair recognized Deborah Stern, Kansas Nursing Workforce Partnership, who presented testimony on the nursing shortage in Kansas (Attachment 9). With reference to the first recommendation of raising the income cap of \$15,000 for those workers returning to their previous employer after retirement, the Committee commented that information gathered during the 2003 Legislative Session in addressing the issue in HB 2127, projected that this would be a very costly issue. Chairman Neufeld thanked Ms. Stern for her testimony.

Chairman Neufeld recognized J. G. Scott, KLRD, who presented a review of Revised Consensus Revenue Estimates for FY 2004, the first Estimates for FY 2005 (Attachment 10), and a review of State General Fund (SGF) Receipts for FY 2004 (Attachment 11).

Audrey Dunkel, KLRD, presented a report on Consensus Caseload Estimates (Attachment 12).

Alan Conroy, KLRD, presented a State General Fund (SGF) Profile for FY 2002—FY 2006 with full statutory amounts (Attachment 13) and a State General Fund (SGF) Profile for FY 2002—FY 2006 incorporating FY 2004 budget decisions (Attachment 14).

Afternoon Session

Chairman Neufeld recognized Leah Robinson, KLRD, who presented an update on personal income and disposable personal income (Attachment 15).

The Chairman recognized Deb Hollon, KLRD, who presented a review of the community college funding mechanism (Attachment 16).

Chairman Neufeld recognized Dr. Ed Berger, President, Hutchinson Community College, who gave a presentation on the vision and goals of community colleges (Attachment 17). Dr. Berger noted that a goal of the community colleges is to get 65 percent state funding as provided in SB 345. Responding to a question from the Committee, Dr. Berger stated that community colleges are moving toward the goal of having all new state funding be performance based.

The Chairman recognized Dr. Richard K. Burke, President, Dodge City Community College, who noted that there is no incentive for community colleges to grow because of the funding formula

and felt this is an issue that needs to be addressed. Dr. Burke also explained a plan, which is being developed through the Board of Regents, to target populations in rural Kansas and give students the ability to receive a bachelor of general studies degree from Fort Hays State University. The classes would be taught and broadcast to satellite locations to reach students who are unable to travel long distances or leave their home areas to attend college. Dr. Burke stated that it is critical that no less than 20 students complete the program to make it successful. The Chairman thanked Dr. Burke for his comments.

Chairman Neufeld again recognized J. G. Scott, KLRD, who presented an overview of the proposed new budget analysis format (Attachment 18).

Chairman Neufeld asked the Committee to turn their attention to recommendations to be included in the Committee report. Recommendations include:

- With regard to community colleges, the Committee wishes to endorse the effort of the community colleges to work with the Board of Regents to promote a performance based funding plan for all new money.
- Rather than make a recommendation on the CDDO issue at this meeting, the Committee chose to further review the CDDO post audit and possibly develop a proposed bill to implement policy changes giving flexibility to communities, address the issue of case management, and quality assurance.

Representative Feuerborn moved to approve the minutes of the September 30, 2003 Committee meeting as written. The motion was seconded by Senator Kerr. The motion carried.

The meeting was adjourned at 3:00 p.m. The next meeting of the Legislative Budget Committee will be held on December 15, 2003.

Prepared by Shirley Jepson
Edited by Leah Robinson

Approved by the Committee on:

December 15, 2003
(date)