

MINUTES

LEGISLATIVE BUDGET COMMITTEE

Wednesday, September 14, 2011
Room 351-S—Statehouse

Members Present

Representative Marc Rhoades, Chairperson
Senator Carolyn McGinn, Vice-chairperson
Senator Laura Kelly
Senator John Vratil
Representative Bill Feuerborn
Representative Kasha Kelly

Member Absent

Representative Jim Denning

Staff Present

J. G. Scott, Kansas Legislative Research Department
Audrey Dunkel, Kansas Legislative Research Department
Aaron Klaassen, Kansas Legislative Research Department
Alan Conroy, Kansas Legislative Research Department
Leah Robinson, Kansas Legislative Research Department
Jim Wilson, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Jason Long, Office of the Revisor of Statutes
Kathy Letch, Committee Secretary

The Chairperson called the meeting to order.

KDOT Federal Funding Update

The Chairperson recognized Deb Miller, Secretary, Kansas Department of Transportation (KDOT). Ms. Miller stated the latest extension to the Federal Surface Transportation Program extends the program through September 30, 2011, and is funded from the Highway Trust Fund (HTF). If an extension is not passed by September 30, 2011, all revenues to the HTF will sunset or be redirected. The disruption would be immediate. She stated the HTF dollars are not totally depleted; funds are, however, insufficient to continue spending at the current level ([Attachment 1](#)). Federal dollars make up 31.2 percent of the total revenue anticipated in FY 2012. These funds would be 40 percent of the state highway

construction funding over the next ten years, not for administrative, oversight, or management operations.

Kansas Department of Transportation (KDOT) has been planning ahead, so they would be able to continue for 16-24 weeks should the federal funding cease; if federal dollars are not in place by September 30, it will be necessary to begin suspending projects. KDOT would have to consider suspending for some period of time or stopping many projects and programs if the extension is not passed and funding stops.

Sooner or later, rather than to continue having the short-term extensions on the Act, it would be beneficial to have a new authorization act. The U.S. Senate and House each have proposed bills for a new authorization act.

State General Fund Update

The Chairperson recognized Alan Conroy, Director, Kansas Legislative Research Department, to give an update on State General Fund (SGF) receipts ([Attachment 2](#)).

Mr. Conroy stated the SGF total receipts, as of June 30, 2011 (end of the fiscal year), were 1.9 percent above the final adjusted estimate based on the April consensus revenue estimate and adjusted for any legislation that was enacted by the 2011 Legislative Session. Tax revenues in FY 2011 were 1.8 percent higher than the adjusted estimate, especially in individual income taxes. The strength in the individual income tax receipts for the fiscal year should be noted; the withholding receipts were up by 4.9 percent when comparing FY 2011 to FY 2010. Tax sources falling below the estimate were notably retail sales, corporation, severance, and motor carriers. Mr. Conroy noted, when comparing FY 2010 to FY 2011 figures, the increase in the sales tax rate skews the growth numbers considerably.

The SGF total receipts for the first two months of FY 2012 show an increase of 3.2 percent; taxes only show an increase of about 5.0 percent. Because of the 30-day lag from when the sales tax increase was implemented to when it shows up in receipts, this report is the first to show the full 12-month, August FY 2010 to August FY 2011, comparison.

The FY 2011 bottom-line is skewed because of some transfers of funds, *i.e.* \$10 million transfer in July out of SGF into the State Emergency Fund, and a \$5 million payment higher than expected for the School District Capital Improvement Fund, due to a timing issue and will right itself in September or October.

The balances are shown on the April Concensus Revenue Estimates sheet for FY 2011, FY 2012, and FY 2013. The ending balances for FY 2011 and FY 2012 are stronger than they have been in the last several years. No extraordinary transfers are reflected in the totals for FY 2013.

Overview of State Fire Marshal

Aaron Klaassen, Kansas Legislative Research Department, gave an overview of the history, functions, funding, and structure of the State Fire Marshal's office and how it might best fit into other agencies if the State Fire Marshal's office were to be abolished, as per 2011 SB 220 and 2011 HB 2370 ([Attachment 3](#)).

The Office of the State Fire Marshal's (KFM's) function is to protect the lives and property of the citizens of Kansas from the hazards of fire or explosion, and promotes prevention, education, and investigative activities to mitigate incidents and to promote life safety and to deter crime.

The KFM was established in 1913, abolished in 1933, and reestablished in 1939. The agency receives no SGF appropriation and is funded along with Emergency Medical Services (EMS) and the University of Kansas Fire Services Training Institute, primarily through a levy on fire insurance premiums collected in the state. Mr. Klaassen stated 2011 SB 229 effects the funding of KFM, as well as does 2011 Senate Sub. for HB 2014. The fire insurance premium levy deposited into the Fire Marshal Fee Fund is the primary source of funding for the agency.

Chairperson Rhoades asked about the situation in 2004 when the \$4.5 million in the Fire Marshal budget still could not meet its payroll. Mr. Klaassen stated that the agency personnel speaking at the meeting would be able to provide further information and details about the functions that go into that, but the budget includes agency payroll, capital outlay, and all the functions that go along with its purchase of commodities.

2011 House Bill 2370 and 2011 Senate Bill 220

Jason Long, Office of the Revisor of Statutes, spoke on 2011 HB 2370 and 2011 SB 220, which are identical bills, and would abolish the Office of the State Fire Marshal, transferring its statutory duties, responsibilities, and associated funding to three existing state agencies ([Attachment 4](#)).

Sections 2, 3, and 4 of the bill would transfer the fire safety and inspection duties and functions to the Division of Facilities Management within the Department of Administration.

Sections 5, 6, and 7 of the bill would transfer the duties and functions regarding the investigative duties of fire and explosion to the Kansas Bureau of Investigation (KBI) under the Office of the Attorney General.

Section 12 would be a new section that would be a rewrite of the fire and explosion investigatory duties, as well as establish a new KBI Fire Investigation Fund to receive certain portion of the money credited to the Fire Marshal Fee Fund to offset the expenditures incurred by the KBI in doing fire and explosion investigative functions.

Sections 8, 9, and 10 of the bill would transfer the duties and functions with respect to responding to the handling of hazardous materials to the Division of Emergency Management of the Office of the Adjutant General.

Sections 93 and 94 of the bill govern the Fire Marshal Fee Fund, expanding the purposes of the Fund, changes the name of the Fund, creates two statutory transfers – credit of 21 percent to the KBI Fire Investigations and 22 percent to the Hazardous Materials Emergency Fund.

There are a number of sections of law which would be repealed:

- Pertaining to dues and functions;
- Relating to state specific duties of the State Fire Marshal; or
- Pertaining to obsolete provisions of law.

Mr. Long stated the Senate Committee on Federal and State Affairs had the hearing to abolish the State Fire Marshal Office and divide the duties and functions, possibly as a cost saving measure. Senator McGinn asked Mr. Long to check to see if they had data showing the cost savings.

Senator McGinn asked if the Kansas Department of Health and Environment was involved in the role of fire and explosion investigation, overlapping with the State Fire Marshal. She also asked if the KBI and Attorney General have been in on the ground level of investigations in the past. Mr. Long said they may have become involved once the incidents became criminal investigations, but this could be addressed later in the meeting with the KBI.

Senator Vratil asked how the author of the bill came up with the transfer percentages of 21 percent and 22 percent. Aaron Klaassen, KLRD, stated the percentages were based on funding figures.

Senator Vratil asked what the Y-Fire Program is that is referred to on page 83. Mr. Klaassen explained the Y-Fire Program is for youth education and has been transferred to KDHE.

State Fire Marshal

The Chairperson recognized Terry Maple, Acting State Fire Marshal, to give an overview of the Office of the State Fire Marshal, its history, functions, statutory responsibilities, FTE positions, budget, and funding ([Attachments 5 and 6](#)). Mr. Maple distributed the organizational chart for the Office of the State Fire Marshal and gave a general overview of the mission and positions within the agency.

Mr. Maple discussed the divisions within the agency and their functions:

- Administration Division—6.8 FTEs; personnel; education; data collection; publications; youth fire prevention program; website and IT services; office spaces and supplies, statewide; and emergency management support.
- Hazardous Materials Division—2.2 FTEs supports 12 response teams across the state with the Regional Hazmat Response Program and Hazmat Reponse Training and Education Program – *i.e.*, meth lab in St. George with unknown chemicals; mercury spill at Kansas State Univeristy; threats in Junction City and on I-70; fuel leak in Cedarvale; ethanol truck turned over in Garnett; partnered with the civil support team for the National Guard near Great Bend; hospital decontamination training; and, currently, conducting 80-hour hazmat technician course for at least 26 individuals.
- Investigation Division—14.0 FTEs; police side of the agency – *i.e.*, fire origin and determination; partner with KBI; criminal fire investigation; explosive and fireworks licensing and storage; and training and reporting.
- Prevention and Inspection Division—25.0 FTEs; over 3,600 school inspections with plans of corrections; 3,600 childcare inspections; 2,000 colleges; healthcare facilities; 250 class 1 propane licenses in the state; and over 5,000 license renewals – over 22,000 different inspections for the year.

Investigations and inspections are integrally connected and it is extremely beneficial to have both programs within the same agency for efficient communication.

A Committee member asked who imposes fireworks violations fines. Mr. Maple stated the State Fire Marshal's Office has the statutory ability to impose fines, but do not do so at this time. It is a civil process subject to judicial review. Up to now, there is no penalty that is considered or levied.

The Chairperson recognized Doug Jorgensen, former Interim State Fire Marshal, from January 2011 to July 2011. Mr. Jorgensen address the challenges and improvements he implemented during his brief tenure.

In January, when Mr. Jorgensen took over the agency, there were concerns about the functions of the agency. Mr. Jorgensen stated the majority of complaints from legislators, regents, and customers were regarding inspections being done with attention to the lack of funding. In reviewing concerns, it was discovered that, over time, the agency had gotten off track with regard to the inspections process. In 1972, the statute stated that buildings were to be inspected and held to the standards in place at the time the buildings were built. Staff went back over inspections done within the last 18 months and rescinded some of the citations to make them appropriate to the year the buildings were built.

The Committee was told that many active grievances had not been addressed and that disciplinary actions also had not been addressed. There were productivity issues with investigators and inspectors. In researching the budget for the agency, they found it necessary to do a zero-based budget to be able to justify each entry. Audits were done on the investigations regarding workloads and tracking activity. Mr. Jorgensen instituted a new vehicle and activity logging system to track activity; this allowed the agency to estimate effort and time on different functions for budgetary purposes. It was necessary to rewrite job descriptions for positions that had been reassigned to different agencies. Individual desk audits on a number of positions were done by the Department of Personnel; job descriptions were rewritten and some responsibilities were changed; and the agency was able to move forward on efficiencies in many areas. It was discovered that the two deputy fire marshal positions were vacant, which left a number of commissions and committees that the State Fire Marshal's Office had previously staffed without agency representation. It was noted that a review of a performance audit report from 2004 still had some issues that had not been addressed; therefore, those issues were looked into and corrected. More face-to-face meetings were held with superintendents, sheriffs, and customers the agency serves to work through things to find middle ground and establish better lines of communication.

The Y-Fire Program, an educational program for the youth in fire safety and fire abuse counseling, was moved back to State Fire Marshal's Office from KDHE to add workload to a position and facilitate in bringing in more educational programs and a program for the elderly. The agency is involved in the oversight of the educational programs provided by local fire safety programs, but is not directly in schools.

A Committee member asked why the budget increase of \$800,000 was necessary if cost-savings was a main emphasis. Mr. Jorgensen stated that the cost-savings was not the main emphasis for him being put in the position of Interim Fire Marshal, but rather more oversight for the agency. Some cost-saving methods were implemented, however, *i.e.*, the new vehicles on order were canceled and 10 or 11 of the older vehicles were sold.

A Committee member asked how the inspectors are certified and to whom they are to report. Mr. Jorgensen stated it was a small percentage of the inspectors that had the backlog of inspections. They are to be supervised by a division chief who at times has had field supervisors who provide oversight of inspectors. He stated that it comes back to a lack of support, guidance, and direction from the upper administration to the division chiefs with regard to grievances and evaluations that were not complete. When some of these issues came to light, they simply were not acted upon. The issues have been rectified.

The Chairperson recognized Becky Bahr, Fiscal Officer, Office of the State Fire Marshal. Ms. Bahr referred to page 13 of Attachment 6 regarding the basis of the agency's funding source being fire insurance premiums, which has gone up and down over the years. Historically, the biggest problem is this funding comes in only twice each year, which requires juggling spending for cashflow. Page 14 of Attachment 6 shows the funding spike in 2004, which the agency has not re-attained since that time. On page 15, it shows in FY 2011, FY 2012, and FY 2013, the agency is able to start paying back the 2004 loan, and by FY 2015, the loan, it is planned, will be paid back.

Agency spending has been very controlled since 2009; it has not been funding education, or replacing anything, *i.e.*, equipment or cars; it has just been making payroll; and is now ready to move forward. Every expense has been accounted for; the agency is looking for places the agency can save; and it is looking to increase public safety and employee safety.

In looking at the bill that dissolves the agency, Ms. Bahr's concerns are the Department of Administration (DoA) budget does not have the funding for agency support for the additional programs they would be responsible for that are now within the Office of the State Fire Marshal. The DoA does not have money for agency support (*i.e.*, data services, rent, paper). Though the current agency needs every bit of its funding to meet its priority-based budget, future saving may be seen in the future by having conference call meetings and web-accessed meetings and classes, instead of some of the travel that is now done.

A Committee member asked about how the capital outlay (page 16 of Attachment 6) is spent, how it works, and if it is a separate fund. Ms. Bahr stated capital outlay is not a separate fund; it is in the agency fee fund; and is money spent on any equipment with significant value and a lifespan of one year or more. The agency does not have the authority to carry-over money on a separate "fund" line-item to save up for large expenses. Examples of capital outlay upcoming expenses are to be for laptop computers that are due for replacement; FY 2012 and FY 2013 budgets are going to replace the agency computer servers; hazmat equipment that is used daily on responses, as well as hazmat suits replacements; and hand-held radios.

Terry Maple spoke again, stating many changes have been implemented. Oversight has been stepped up considerably; expectations of staff has been and will continue to be communicated with them; agency personnel is working with customers to gain compliance; there is better communication with sheriffs, police chiefs, and others they work with on a regular basis; and they have quit going to meetings to cut costs. They also have been doing a lot more toward accountability and outreach to partners (*i.e.*, propane, gas service company, schools) to reintegrate the agency back into the public safety eye. Mr. Maple has been working with the Governor's Office to retain his certification as a law enforcement officer, so there would be a law enforcement person within the agency.

The agency has 13 functioning computer servers, which were all purchased at the same time, so the maintenance agreements all expire on the same date; the agency must have a plan. The agency is working with DISC on some recommendations to not need as many

servers. The agency fleet of vehicles is down to 28 cars with a person designated for keeping maintenance up-to-date on them.

Afternoon Session

Kansas Bureau of Investigation

Kirk Thompson, Director, Kansas Bureau of Investigation (KBI), was recognized by the Chairperson. He stated the KBI is neither for nor against the proposal regarding the abolishing of the Office of the State Fire Marshal. KBI is capable of supporting the Investigations Division of the State Fire Marshal if that is the decision of the Legislature ([Attachment 7](#)) and they have the existing infrastructure and support system in place to assume the additional responsibilities. He reviewed the qualifications the KBI already has to assume the responsibilities of the Investigative Division of the Office of the State Fire Marshal. He also reviewed the expectations, mostly funding expectations, of the KBI if it were to assume those responsibilities.

The KBI sees a shortfall of approximately \$205,000 in the proposed funding that would transfer to the KBI. The initial calculation figured that it would take to assume the responsibilities is 27.0 percent.

It is unknown how many computer servers the KBI has, but a large number of them are virtualized.

If there was any fire or explosion, the KBI could investigate; if there is any indication of insurance fraud or criminal conduct, the KBI would investigate. If a fire or explosion occurred involving hazardous waste, the KBI could investigate, but the Adjutant General's office would also investigate. The agencies would work together.

Department of Administration

The Chairperson recognized Randy Riveland, Deputy Director, Office of Facilities and Property Management, Department of Administration, who spoke on the inspection function of the Office of Facilities and Property Management ([Attachments 8 and 9](#)). Mr. Riveland reviewed the two statutes that guide the agency's inspection function, objective, and focus. Mr. Riveland explained the Office of Facilities and Property Management inspects new construction, remodels, and equipment replacement on state property. The focus is to attend required testing of sprinkler and fire alarm testing, inspect items prior to being covered up, and ensure construction is following current codes, including international building, mechanical, electrical, and plumbing codes, as well as handicapped accessibility. Their office review is broad and includes fire/life safety, ADA, and electrical, among other things, on new state construction, not subsequent yearly inspections. The State Fire Marshal is involved in the code footprint plan.

Department of Agriculture

The Chairperson called on Tawnya Taddiken Johnson, Staff Attorney, Kansas Department of Agriculture, and Lewis Hutfles, Weights and Measures Program, Kansas Department of Agriculture, who gave a brief presentation on weights and measures ([Attachment 10](#)).

Range hoods currently are not inspected; however, food inspectors already are inspecting restaurants for outdated food, unwashed hands, mice in kitchens, at least once a year. It would just add one item to the inspections.

The mission of Weights and Measures is to protect consumers, making sure they are getting the product they paid for, *i.e.*, scanners at retail stores, scales at delis or produce departments, as well as gasoline pump gauges, and water in fuel pumps. These inspectors could absorb aboveground fuel tank inspections and propane inspections. The program has the capacity and is on location. Propane is not inspected, currently. They need only one FTE to add propane inspections; training would be done in-house; they would not need to spend money on outside training. The Department of Agriculture inspects gas stations, but not propane stations nor propane truck stations. It was presented that Department of Agriculture could take over the propane duties for the Office of the State Fire Marshal, if necessary.

Terry Maple stated the Office of the State Fire Marshal has done propane inspections since 2004; it does the aboveground storage tank inspections; and KDHE does the underground storage tank inspections. There is a state licensing fee.

Brenda McNorton, Fire Prevention Division Chief, Office of the State Fire Marshal, stated they currently inspect licensing procedures, bulk fuel facilities, gauges, and big tanks at propane facilities. The State Fire Marshal's Office does not do the weights and measures features, only the safety features of valves and tanks. Mr. Maple stated Secretary Jordan is looking at trying to consolidate yearly inspections, to avoid duplication by KDHE, State Fire Marshal, Department of Agriculture, or others.

Mr. Huffles stated licensed service companies test yearly; the Department of Agriculture monitors those locations to make sure the testing is getting done. The service companies test at the fuel stations; it is their responsibilities that they be tested once a year. No inspections occur, unless it is a small spill inspection.

Office of the Adjutant General

The Chairperson recognized Angee Morgan, Deputy Director, Kansas Division of Emergency Management (KDEM), Office of the Adjutant General, discussed an error in SB 220 and HB 2370 (Attachment 11) and presented the amendment correcting the bills to show the 22 percent of the *Fire Prevention Fee Fund* will be transferred to the *Hazardous Materials Program Fund*.

Ms. Morgan continued to discuss KDEM's perspective of the assumptions of duties, training, requirements, and functions, as well as revisions of contracts with other agencies, office space, and staff. Immediate action would be needed with individual fire departments to revise procedures accordingly. There would need to be a realigning of regional hazmat teams and secure any additional necessary staff.

Improvement has been observed within the last few months at the State Fire Marshal's Office, and KDEM has worked very closely with the State Fire Marshal's office and local fire departments. KDEM uses the State Fire Marshal's Office as the primary agency in the Kansas Response Plan for fire management and search and rescue. The State Fire Marshal's Office would be relied upon heavily during chemical, biological, nuclear, or radiological emergencies.

Maintaining the Office of the State Fire Marshal

The Chairperson recognized Jack Taylor, Fire Chief of the Emporia Fire Department, Lyon County EMS, and President of the Kansas Professional Fire Chiefs Association. Mr. Taylor stated the Association is in support of maintaining the Office of the State Fire Marshal, though it has been dysfunctional until Mr. Jorgensen's term as Interim Marshal. Of the previous recommendations from the Association, such as putting the State Fire Marshal's Office under the Insurance Commissioner's oversight, none of them have been seriously considered or passed. At this time, the experienced fire fighters would recommend, rather than dissolving the State Fire Marshal's Office, forming a commission made up of no former Fire Marshals or employees of the Office other than Mr. Jorgensen, Mr. Maple, or any candidates for State Fire Marshal; fire chiefs from the seven homeland security regions; and members of the Kansas House and Senate come up with a bill proposal for the upcoming Legislative Session to make improvements (Attachment 12).

The Chairperson asked Chief Taylor if he has a job description written that could be used. Chief Taylor has a list of viable prerequisites. The Chairperson asked Chief Taylor to write a job description, prerequisites, vetting procedures, and a paper discussing what a board of directors would look like for submission to the Committee to discuss at a future meeting.

A Committee member requested staff to compile ideas from the Senate and the House where the efficiencies and cost savings are to be found, and what practical measures Mr. Jorgensen and Mr. Maple have already implemented. It was indicated the Office may have the proper people in place. Therefore, it would also be helpful if Mr. Maple would provide specifics on metrics and changes that have been made already. It would seem prudent to allow time to see if with this new leadership in the Office and the changes that have been made make enough of a difference in efficiencies and effectiveness to forgo having to implement restructuring of agencies.

It was discussed that the Committee would like to have further time to discuss this issue to be able to decide on formal recommendations on these matters. Therefore, these items the Committee has requested, possible statutory changes, or structural changes would need to be followed up on during a future meeting. The October 10 meeting will have at least 15 conferees speaking on Medicaid Dental Benefits; psychiatric residential treatment facilities (PRTFs) will be discussed at the November 14 meeting; so, the plan will be to discuss the State Fire Marshal issues the afternoon of November 14.

A Committee member asked if the agencies could work together before the next Committee discussion to determine where duplicated efforts are occurring. Mr. Jorgensen stated that the agency heads have met and that process is already underway. They have contacted other state agencies; they are checking statutory authority to determine what inspections and investigations are statutorily mandated to be done by whom and at what locations; and are reviewing that information to come up with suggestions and ideas to consolidate many of the inspections that state agencies perform. Mr. Jorgensen will try to get this updated information for the next meeting of the Committee. Also, he will get information on possible streamlining the duplicated licensing processes as well.

The Chairperson recognized Thomas Palace, Petroleum Marketers and Convenience Stores Association. Mr. Palace will bring information to the Committee from their September 21 meeting. He stated the Department of Agriculture does the quality and quantity testing; this is paid for from the merchants' small percentage per gallon sold to the Petroleum Inspection Fee Fund (PIFF). Weights and Measures inspect signage, scanners, and quality and quantity of

fuel. KDHE inspects all the underground storage tanks. The State Fire Marshal inspects all above ground storage tanks: bulk fuel farms, fuel tank farms, as well as anything at the facility, such as propane tanks. This is about inspections.

Licenses is another area where consolidation would be very beneficial. Mr. Palace stated the range of licenses a convenience store is required to have is from 18 to 21 licenses.

The meeting was adjourned. The next meeting is scheduled for October 10, 2011, regarding Medicaid Dental Benefits issue.

Prepared by Kathy Letch
Edited by Aaron Klaassen

Approved by Committee on:

November 14, 2011

(Date)