

Approved: 5-7-10
Date

MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE

The meeting was called to order by Chairman Kevin Yoder at 9:09 a.m. on March 11, 2010, in Room 346-S of the Capitol.

All members were present except:
Representative Ray Merrick- excused

Committee staff present:
Jim Wilson, Office of the Revisor of Statutes
Nobuko Folmsbee, Office of the Revisor of Statutes
Alan Conroy, Kansas Legislative Research Department
J.G. Scott, Kansas Legislative Research Department
Heather O'Hara, Kansas Legislative Research Department
Jonathan Tang, Kansas Legislative Research Department
Stephen Huggins, Chief of Staff, Appropriations Committee
Kathy Holscher, Committee Assistant, Appropriations Committee

Conferees appearing before the Committee:
Jerry Slaughter, Kansas Medical Society, proponent
Chad Austin, Kansas Hospital Association, proponent
Dr. Doug Girod, KU Medical Center, proponent
Chip Wheelan, Health Care Stabilization Fund, proponent

Others attending:
See attached list.

- Attachment 1 Kansas Medical Society
- Attachment 2 Kansas Hospital Association
- Attachment 3 KU Medical Center
- Attachment 4 Health Care Stabilization Fund
- Attachment 5 Kansas Department of Commerce FY 2011 Budget Committee Report
- Attachment 6 Kansas Economic Opportunity Initiative Fund Awards

Representative Yoder made a motion to introduce legislation regarding alcoholic beverages relating to municipal corporations. The motion was seconded by Representative Merrick. Motion carried.

Representative Yoder made a motion to introduce legislation regarding school districts relating to finance, as requested by Representative Aurand. The motion was seconded by Representative Whitham. Motion carried.

SB 414 - Health care stabilization fund; certain fund transfers; period of coverage

Jim Wilson, First Assistant Revisor, Office of the Revisor of Statutes, provided an overview of **SB 414**. He stated that this bill would exempt transfers from the State General Fund (SGF) to the Health Care Stabilization Fund from the allotment authority delegated by statute (KSA 75-3722) to the Secretary of Administration.

Jerry Slaughter, Executive Director, Kansas Medical Society, presented testimony as a proponent of **SB 414**, (Attachment 1). He stated that if the Governor's allotment authority continues, premiums will substantially increase for hospitals, physicians and other health care providers in the private sector. This bill would exempt the self-insurance arrangement from the allotment deferring repayments over five years with no interest.

Tom Bell, Kansas Hospital Association, presented testimony as a proponent of **SB 414**, (Attachment 2).

Dr. Doug Girod, KU Medical Center, presented testimony as a proponent of **SB 414**, (Attachment 3). He stated that this bill would stabilize the cost of professional liability insurance and ensure long-term financial stability. Further cuts to the Health Care Stabilization Fund would increase insurance premiums, Dr. Girod noted.

CONTINUATION SHEET

Minutes of the House Appropriations Committee at 9:09 a.m. on March 11, 2010, in Room 346-S of the Capitol.

Chip Wheelen, Executive Director, Health Care Stabilization Fund, presented testimony as a proponent of **SB 414**, (Attachment 4). Mr. Wheelen noted that the fiscal note is no longer applicable. With the Senate amendment, the reimbursements to the Health Care Stabilization Fund would be deferred. He stated that the passage of this bill would enable the carryover of the accounts receivable, relieving the Health Care Stabilization Fund Board of Governors of the responsibility of collecting the surcharges.

Mr. Wheelen responded to questions from committee members. He responded that the state will begin repaying the Health Care Stabilization Fund any accrued amounts in FY 2014.

The hearing was closed on **SB 414**.

Representative Faber, Chairman, House Agriculture and Natural Resources Budget Committee, presented the FY 2011 Kansas Department of Commerce Budget Report, (Attachment 5). The Budget Committee concurs with the Governor's recommendation with the following adjustments: reduce the transfer from the Economic Development Initiatives Fund (EDIF) to the Kansas Economic Opportunity Initiatives Fund (KEOIF); transfer \$75,000 from the EDIF to the Dairy Inspections Fee Fund; transfer \$725,000 from the EDIF to the SGF; and add a proviso regarding contractual bidding.

Representative Faber made a motion to approve the FY 2011 Kansas Department of Commerce Budget Report. The motion was seconded by Representative DeGraaf.

Representative Faber responded to questions from committee members. Concerns were expressed on the impact of Item 1 in regards to economic development.

Representative Hineman made a motion to delete Item 1 from the House Budget Committee Recommendations. The motion was seconded by Representative Burroughs.

Representative Carlin referred to the Kansas Economic Opportunity Initiative Fund Awards, (Attachment 6). Discussion by committee members followed. It was noted that this report does not reflect current data.

Representative Hineman renewed the motion. Motion failed.

Erik Wisner, Legislative Liaison, Kansas Department of Agriculture, responded to questions from committee members. He stated that due to decreased State General Funds, staff reductions have been necessary and that after FY 2012 the department will no longer be able to keep up with interstate milk agreements, which represents 80% of the interstate commerce. He noted that \$75,000 for the Dairy Inspection Fee Fund, if passed, would support the Dairy Inspection Program through FY 2012.

Discussion followed by committee members regarding inspection programs that have been reduced or suspended.

Representative Burroughs made a motion for an amendment to remove Item 2 and place the \$75,000 in the Lodging Inspection Program budget. The motion was seconded by Representative Feuerborn.

Discussion followed by committee members regarding the need for hotel inspections and the impact on the economy of the dairy industry.

Representative Burroughs renewed the motion. Motion failed.

Representative Carlin made a motion for an amendment to remove the proviso from the Budget Committee recommendation. The motion was seconded by Representative Feuerborn.

Discussion followed by committee members.

Representative Carlin renewed the motion. Motion failed.


CONTINUATION SHEET

Minutes of the House Appropriations Committee at 9:09 a.m. on March 11, 2010, in Room 346-S of the Capitol.

Representative Faber renewed the motion to approve the FY 2011 Commerce Budget Committee Report. Motion carried.

The next meeting is scheduled for March 12, 2010.

The meeting was adjourned at 10:22 a.m.



Kevin Yoder, Chairman

APPROPRIATIONS COMMITTEE GUEST LIST

DATE: 10-11-10

NAME	REPRESENTING
Dodie Wellshear	Geographic Solutions
Chip Wheeler	HCSF Bd of Govs
Lise Ullery	" " "
Janie Rose	KCSL
Erik Wisner	KDA
Steve Solomon	TF 1
Robin Clamant	DRCCA Youthwork
Bob Vancoring	Geographic Solutions
Amy Campbell	KMITC
KOTB MENTAL	KENNEDY ASSOC
KIMMY CHOW	KSAS
Levi Henry	Sandstone Group



To: House Appropriations Committee

From: Jerry Slaughter
Executive Director

Date: March 11, 2010

Subject: SB 414; Concerning the Health Care Stabilization Fund and the allotment authority of the Secretary of Administration authorized by KSA 75-3722

The Kansas Medical Society appreciates the opportunity to appear in support of SB 414, which was introduced at our request. This bill contains amendments to existing law: one substantive, the other purely technical. The substantive changes are found on page 7, 8 and 9 of the bill, as amended by Senate Committee of the Whole. The bill amends KSA 40-3403(j) with the addition of two new paragraphs. New paragraph (6) exempts the statutorily required transfers from the state general fund to the HCSF pursuant to that section of the law from the Secretary of Administration's allotment authority contained in KSA 75-3722 *et seq.* New paragraph (7) further amends that section of the law to establish a plan for deferral of the amounts owed the Health Care Stabilization Fund by the state general fund for the next four fiscal years. The technical change is found on page 12 of the bill at line 4. It amends KSA 40-3404(a) by striking the word "fiscal" from the statute, which will allow the HCSF Board of Governors to wait until after the end of a fiscal year to set the annual premium surcharge that must be paid by health care providers. This technical change is not controversial, and the balance of our testimony will focus only on the substantive changes involving the allotment statute, and the repayment provisions for the deferrals.

Background

Since 1976, physicians, hospitals and several other categories of health care providers have been required by law to purchase professional liability, or as it is more commonly known, "medical malpractice" insurance. We have a somewhat unique structure in Kansas that blends privately-purchased, basic insurance limits with a statewide pooling mechanism that provides coverage for higher limits of exposure. The entity that provides higher insurance limits of insurance coverage is called the Health Care Stabilization Fund (found at KSA 40-3401 *et seq.*). For the past 34 years the HCSF has done its job well, and along with our tort reform measures such as the cap on pain and suffering awards, has been a key factor in the stability of the Kansas medical malpractice insurance market. It should be noted that, with the sole exception of the issue that is the subject of SB 414, the HCSF is entirely funded by premiums charged to health care providers. It is also important to note for the record that the HCSF has been operated in a fiscally responsible

manner, so that it will always be able to meet its responsibility to pay judgments and settlements that are due to injured persons who bring claims against health care providers.

In 1989, in order to lower the cost of medical malpractice insurance which the state purchased for the full-time faculty and the residents in training affiliated with the KU School of Medicine, the state of Kansas established a partially self-insured program which involves the HCSF. In essence, the HCSF administers the self-insurance program for the faculty and residents, which most importantly, includes the payment of claims and legal costs. The state of Kansas assumed liability for a portion of the cost of the insurance program, with the medical school faculty and their practice foundations paying for the balance. In any fiscal year, if the claims costs exceed the amount paid in by the faculty foundations, the State General Fund (SGF) is obligated by law to transfer to the HCSF the difference. The amount varies each year, but on average, the SGF responsibility for faculty and residents has been in the \$2.1 million range per year. The statutory provisions which govern this self-insurance arrangement are found at KSA 40-3403(c) and (j); and also at KSA 40-3414(d), (h) and (i).

The issue in SB 414

In February 2009 and then again in July 2009, the Secretary of Administration issued an allotment order pursuant to KSA 75-3722, which withheld the SGF transfers owed the HCSF for medical malpractice claims the HCSF had already paid. For FY 2009 the amount withheld was slightly over \$2.9 million. For FY 2010, it is estimated that the amount will be in a similar range. The Governor has recommended that no transfers be made in the coming two fiscal years as well. If the allotment orders for FY 2010 and 2011 are carried out, it will cost the HCSF (or more accurately, the health care providers who pay the premiums into the HCSF) somewhere between \$8-9 million, including the amount withheld for FY 2009. Those unreimbursed funds will have to be made up in the form of higher premiums charged to ensure that there are adequate funds to pay claims and expenses which are the responsibility of the Stabilization Fund:

The effect of the allotment orders by Governor Sebelius and Governor Parkinson is a shifting to physicians, hospitals and other health care providers in the private sector, costs associated with claims against residents and faculty at KU, *that are legally the responsibility of the state of Kansas.*

Let me be clear that the neither the faculty, residents, nor KU itself have in any way created this problem. All parties to this self-insurance arrangement, *except the state of Kansas*, are doing exactly what the law requires of them.

The effect of SB 414

Passage of SB 414 would exempt this self-insurance arrangement from the allotment statute, KSA 75-3722 *et seq.* In other words, the state's self-insurance program for

faculty and residents would be restored to its proper operation, and the privately-practicing physicians and hospitals throughout the state would not be forced to pay for liabilities that are legally the responsibility of the state of Kansas.

There are numerous examples of other funds within state government that are not subject to the allotment statute. Some have specific language such as that suggested in SB 414, which exempts the particular fund from the allotment statute. Examples of such funds are the Solid Waste Management Fund (KSA 65-3415a), the Hazardous Waste Management Fund (KSA 65-3491), the Drycleaning Facility Release Trust Fund (KSA 65-34,146), the Underground Petroleum Storage Tank Release Trust Fund (KSA 65-34,114), and the Aboveground Petroleum Storage Tank Release Trust Fund (65-34,129).

Other funds are exempted from the allotment statute by virtue of classifying their transfers as "demand" transfers, which has the effect of not making them subject to allotment. Examples of such funds are the Local Ad Valorem Tax Reduction Fund (KSA 79-2959), the State School District Finance Fund (KSA 72-6438), and the County and City Revenue Sharing Fund (KSA 79-2964).

In order to address concerns that the original SB 414 had a \$3 million fiscal note for FY 2010 and 2011, we proposed an amendment that was adopted by the Senate Committee of the Whole. The amendment (found on pages 8-9 at new paragraph (7) of the bill) defers the state's obligation to repay the Stabilization Fund for KU's claim costs for FY 2010, 2011, 2012 and 2013. The effect of this amendment is to delay the repayment amounts until after July 1, 2013, thus preserving the obligation of the state to eventually pay its share of these costs. The accumulated deferrals would then be repaid over a five year period, without interest. In addition to giving the state more time to meet its obligations in this difficult budget situation we are in, it preserves the certainty of eventual repayment, and thus avoids shifting that funding responsibility onto the private physicians and hospitals throughout the state.

Conclusion

For nearly three and a half decades, health care providers have met their responsibilities under the law, and provided the funds to operate a fiscally sound insuring mechanism, the Health Care Stabilization Fund. For the past twenty years, the state of Kansas has chosen to operate, in conjunction with the HCSF, the self-insurance arrangement that covers KU faculty and residents, in lieu of purchasing their insurance from the private insurance market. That self-insurance arrangement has worked well, and we support its continuation. However, the physicians, hospitals and other health care providers throughout the state should not also have to cover the state of Kansas' financial obligations under the self-insurance arrangement, by virtue of an allotment ordered by the Governor. If the state does not want to assume those obligations in the future, it should

make other arrangements. It should not, in essence, levy a tax on health care providers for obligations that are not properly theirs.

Though we strongly support SB 414, and urge its passage, we also feel that the faculty and residents at KU have been put in an unfortunate situation by the Governor's allotment orders. The KU medical school faculty, administration and residents have consistently met their obligations under the law, and done everything required of them. This is not a problem of their making, and they deserve no blame for it. The state voluntarily entered into this self-insurance arrangement two decades ago, and now the state – by virtue of the allotment orders - has unilaterally repudiated its obligation to KU faculty and residents by failing to live up to its legal obligations. The actions of the state are neither fair, nor defensible.

We believe a strong argument can be made, that because medical school faculty have significant teaching and research responsibilities, and thus unable to maintain a full clinical component in their professional activities, that the state should either provide completely or participate in a significant way in providing their required professional liability coverage. Additionally, because residents are really students in every sense of the word, the state should pay the full cost of their liability protection.

We appreciate the opportunity to offer these comments, and urge your favorable consideration of SB 414. Thank you.



Tom Bell
President and CEO

TO: House Appropriations Committee

FROM: Chad Austin
Vice President, Government Relations

DATE: March 11, 2010

RE: SB 414 - Health Care Stabilization Fund

The Kansas Hospital Association appreciates the opportunity to provide testimony in support of Senate Bill 414. The Health Care Stabilization Fund has played a significant role in our state in maintaining affordable medical professional liability coverage. Senate Bill 414 would exclude the Stabilization Fund from the Secretary of Administration's allotment orders and restore the Legislature's intent of reimbursing the Stabilization Fund for claims and related expense paid on behalf of the residents and faculty at KU Medical Center. The proposed legislation would also delay the state's repayment obligation for state fiscal years 2010 through 2013 until July 1, 2013 and thereafter. This amendment was added by the full Senate and has been agreed to by the Kansas Hospital Association.

The Kansas Health Care Stabilization Fund was created in 1976 by the enactment of the Health Care Providers Insurance Availability Act. Over the past three decades, the fund has provided stability in the availability and cost of medical professional liability coverage for Kansas health care providers. The primary function of the fund is to provide excess professional liability coverage, which is "triggered" when the basic professional liability insurer's projected loss exposure exceeds \$200,000.

In many ways, the Health Care Stabilization Fund has set Kansas apart from other states where the medical malpractice insurance crisis has made it extremely difficult to recruit and retain physicians. It is operated with funds that come from health care providers, not state government, and those funds are used responsibly to maintain an environment that helps protect our state from the vagaries of the insurance market. As mentioned in the testimony from the Health Care Stabilization Fund, KHA is concerned with the recent decisions by the Governor to discontinue reimbursement for claims paid on behalf of the University of Kansas Medical Center. We are concerned that this policy change may very well cripple a program that has proved essential to creating better access to healthcare across our state.

The Kansas Hospital Association appreciates your consideration of our comments and urge your support for Senate Bill 414.



**Testimony from
Doug Girod, MD
Senior Associate Dean, Clinical Affairs
Professor and Chair, Otolaryngology
KU School of Medicine
before the
Appropriations Committee
March 11, 2010**

Thank you Chairman and members of the Committee for the opportunity to testify today. My name is Dr. Doug Girod. I am Senior Associate Dean of Clinical Affairs, as well as Professor and Chair of the Otolaryngology Department at the University of Kansas School of Medicine. I am here to testify in support of S.B. 414, which will protect the financial integrity of the Kansas Health Care Stabilization Fund (HCSF) by preventing further cuts (allotments) to State General Fund (SGF) which, by law, are required to be transferred to the HCSF. Additionally, S.B. 414 would establish a system whereby SGF transfers to the HCSF are deferred until July 1, 2013. Beginning on that date, those deferred payments will then be transferred to the HCSF in twenty percent increments on an annual basis through July 1, 2017.

HCSF: a national model for stabilizing medical malpractice insurance.

Thanks to the foresight of the Kansas legislature, the HCSF has been a huge success for physicians throughout Kansas, as well as for KUMC faculty and residents. As you may know, professional liability coverage for residents at the University of Kansas Medical Center (KUMC) was established on July 1, 1985, and is administered by the HCSF. On July 1, 1989, the program was expanded to include the faculty on both the Kansas City and Wichita campuses and the residents in Wichita and Salina, and to provide coverage to those residents who leave the state of Kansas (referred to as "tail coverage"). Providing professional liability coverage for faculty physicians and residents through the HCSF is critically important to support the training of physicians in our state.

Challenges of providing medical malpractice insurance for KUMC faculty and residents.

Prior to 1989, the purchase of private professional liability coverage created significant financial hardship for the University of Kansas Medical Center. Soaring premium costs and a surcharge of 125 percent over the basic premium made recruitment and retention of faculty physicians increasingly difficult. In FY 1989 alone, we paid a total of \$3.9 million for professional liability coverage. Many faculty left because they could earn more in private practice. Residents faced expensive individual payments for tail coverage if they left the state of Kansas. In short, maintaining private professional liability coverage threatened our ability to continue training physicians for our state and region. By expanding the HCSF to include Kansas City and Wichita

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faculty and residents, the state was able to ensure that high quality faculty physicians could afford to teach our medical students and train our residents.

KUMC's contribution to medical malpractice insurance.

Physicians in Kansas carry both "primary" professional liability coverage and "excess" liability coverage. For most physicians, the HCSF serves to provide excess liability coverage only. For KUMC, the HCSF also serves as a "backstop" to our primary liability fund.

Primary liability coverage. KUMC's primary liability coverage for physician faculty is provided through the Private Practice Reserve Fund. KU's faculty physician foundations pay \$500,000 annually into this Fund on behalf of the physician faculty members. For full-time faculty physicians, the Private Practice Reserve Fund then provides reimbursement up to \$200,000 per malpractice claim for expenses, attorneys' fees, and settlements/judgments. If the Private Practice Reserve Fund is exhausted, then reimbursement from the HCSF is provided. *In order to keep the HCSF in actuarial balance, the HCSF then receives a direct transfer (or demand transfer) from SGF in the same amount.*

Excess liability coverage. KUMC's excess liability coverage for physician faculty is exactly the same as other physicians in the state. An annual premium is paid to the HCSF to cover claims or judgments that exceed the \$200,000 level (the cut-off for primary insurance coverage). The faculty physician foundations pay on behalf of the faculty physicians, while the University pays on behalf of residents. Just as they do for other physicians in Kansas, these premiums cover the full cost for excess liability claims and no SGF demand transfer is provided to the HCSF.

Total liability coverage. In total, we paid more than \$1.7 million for liability insurance for physician faculty and residents at KUMC. For primary liability insurance, \$500,000 was paid by the KU faculty physician foundations. For excess liability coverage, \$856,900 was paid from the faculty physician foundations and \$362,000 was paid from the University on behalf of the residents.

State economic challenges undermine stability of HCSF

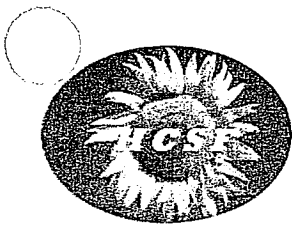
Facing revenue shortages in FY 2009 and FY 2010, both Governor Kathleen Sebelius and Governor Mark Parkinson suspended SGF demand transfers to the HCSF, either by line item veto or through the allotment process. For FY 2009, this in effect resulted in an overall loss to the HCSF of more than \$2.9 million. Although these are economically difficult times, it is vital to the long term interests of the state to protect the HCSF and preserve the current system given that it is both cost-effective and meets its intended policy goals: to stabilize the cost of professional liability insurance for physicians in Kansas.

Unique role of faculty and residents at KUMC

At KU Medical Center, our goals of recruiting and retaining quality faculty physicians and training residents remain two of our highest priorities. Because of the unique role we play in training physicians for Kansas and the importance of the HCSF in providing excess liability

insurance, we fully support the HCSF and want to ensure its long term financial stability. Further cuts to HCSF without remedy are simply unsustainable and will inevitably necessitate increases in insurance premiums for our private practice physician partners across the state, as well as for KUMC physician faculty. Over the past year KU Medical Center has worked with key stakeholders to achieve solutions to protect the HCSF's financial stability. S.B. 414, as amended, provides an equitable solution to protect the actuarial soundness of the HCSF by exempting it from allotments and by ensuring the HCSF is made whole after deferment of SGF transfers.

Thank you again for the opportunity to testify in support of S.B 414, and I am happy to stand for any questions you may have.



Health Care Stabilization Fund

Charles L. Wheelen, Executive Director
300 S.W. 8th Avenue, Second Floor
Topeka, Kansas 66603-3912

Web Site: <http://www.hcsf.org/>
Telephone: 785-291-3777
Fax: 785-291-3550

Testimony
House Appropriations Committee
Senate Bill 414
March 11, 2010

Background

The Health Care Provider Insurance Availability Act became law in July 1976 in response to a statewide crisis. There were two essential features of the original Availability Act; the creation of the Health Care Stabilization Fund, and the creation of a joint underwriting authority (the Health Care Provider Insurance Availability Plan). There have been numerous amendments to the original Act during its thirty-four year history, but those two fundamental components have remained intact. The Availability Act and the Stabilization Fund have succeeded in achieving the original legislative intent; to provide a stable professional liability environment for Kansas health care professionals and medical care facilities.

Health care providers are required to purchase professional liability insurance from commercial companies or from the Availability Plan. The insurance policy must provide coverage limits of \$200,000 per claim with \$600,000 annual aggregate coverage. The health care providers are also required to select one of three options for additional coverage via the HCSF. Most health care providers choose \$800,000 per claim coverage via the HCSF in order to have at least \$1 million per claim total coverage.

K.S.A. 40-3414 allows certain medical care facilities to self-insure the basic layer of coverage. There are currently fourteen self-insured hospitals and surgery centers that have been approved by our Board of Governors and have been issued a certificate of self insurance. These are all medical care facilities that have met the stringent criteria established by the HCSF Board of Governors.

University of Kansas Medical Center

In 1989 the Kansas Legislature decided the State of Kansas would self-insure the basic (\$200,000/claim) professional liability of residents in training and also the full-time physician faculty members at the University of Kansas Medical Center (both Kansas City and Wichita).

BOARD OF GOVERNORS

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The Insurance Commissioner was delegated responsibility for initial payment of claims and related expenses from the Stabilization Fund, to be subsequently reimbursed by both the faculty foundations and the State of Kansas. This statutory duty was later transferred to the Health Care Stabilization Fund Board of Governors along with general responsibility for administration of the Fund.

The residents in training and faculty members at KU Medical Center are self insured by the State of Kansas; not the Health Care Stabilization Fund. The HCSF Board of Governors serves as the third party administrator and the HCSF is periodically reimbursed by the State for claims paid on behalf of the residents and faculty at KU Medical Center. There is no compensation to the Stabilization Fund for the staff time and other resources devoted to administration of this program.

During the most recent ten-year history of this self insurance plan, average annual expenditures have been \$2,645,995 (\$1,456,465.25-faculty / \$1,189,529.52-residents). Because the private practice foundations contribute \$500,000 annually to a Private Practice Foundation Reserve Fund, the HCSF receives reimbursements amounting to \$500,000 per year from that special revenue fund. Therefore the ten-year average annual cost to the State General Fund for self insurance of full-time faculty members has been \$956,465 and the average net SGF cost for both residents and faculty has been \$2,145,995.

Allotments

In February 2009 the Secretary of Administration imposed an allotment order which discontinued SGF reimbursements to the Stabilization Fund for the remainder of the fiscal year. During FY2009, the HCSF paid claims and expenses amounting to \$3,505,592 on behalf of residents and faculty at KU Medical Center. During the first half of FY2009 the HCSF was reimbursed \$585,992. As a result of the Secretary's first allotment order last February, the net FY2009 losses to the HCSF amounted to \$2,919,600.

In July 2009 the Governor ordered another allotment to deny SGF reimbursements to the HCSF for another fiscal year. During the first six months of FY2010 the HCSF has paid claims and expenses on behalf of residents and faculty at KU Medical Center amounting to \$1,462,310. Because of the second allotment order, the net losses to the HCSF have been \$962,310 for the first half of FY2010.

The HCSF Board of Governors questioned whether the allotment authority granted to the Secretary of Administration in K.S.A. 75-3722 could override the statutory reimbursement arrangement stipulated in K.S.A. 40-3403. Attorney General's Opinion 2009-16 says in pertinent part, "Nothing in the allotment system statute nor in the Health Care Provider Insurance Availability Act indicates that the statutory transfers of funds specified in K.S.A. 40-3403 are exempt from the allotment system."

Conclusion

The enabling legislation that created the Health Care Stabilization Fund, K.S.A. 40-3403, stipulates that "The fund shall be held in trust in the state treasury and accounted for separately from other state funds." For more than three decades the State of Kansas has served as the fiduciary for the Health Care Stabilization Fund, and for two decades there has been a statutory self insurance plan administered by the Stabilization Fund on behalf of the State of Kansas. During that same period of time there has been an effective relationship between the University of Kansas Medical Center and either the Insurance Commissioner or the HCSF Board of Governors.

The allotment orders imposed by the Secretary of Administration interfere with the long-standing statutory relationship between the State of Kansas and the Health Care Stabilization Fund, and jeopardize the actuarial integrity of the HCSF. Senate Bill 414 would exempt the statutory SGF reimbursements to the Stabilization Fund for the claims and related expenses paid on behalf of the residents and faculty at KU Medical Center from the allotment authority delegated to the Secretary of Administration in K.S.A. 75-3722.

The Senate Committee of the Whole amended SB414 to defer until FY2014 the reimbursements to the HCSF for claims paid on behalf of KU Medical Center. The State would then reimburse the HCSF for claims paid in fiscal years 2010-2013 in installments of twenty percent per year for five years. As a result of this amendment, the original fiscal note on SB414 is not applicable to the bill as amended by the Senate.

In contrast, the Governor's recommendation contained in section 109 of both SB556 and HB2706, as introduced, would simply withhold SGF reimbursements for a third and fourth fiscal years. Based on actual losses in FY2009 and average annual losses during the past ten years, it is conservatively estimated that the Governor's recommendation would result in accrued losses of about \$9.5 million. This unfunded liability would be the equivalent of a tax on Kansas health care providers.

The Health Care Stabilization Fund Board of Governors requests that you recommend passage of Senate Bill 414, and equally important, delete the conflicting language in any appropriation bills that would amend the Health Care Provider Insurance Availability Act.

Thank you.

FY 2011

HOUSE AGRICULTURE AND NATURAL RESOURCES BUDGET COMMITTEE

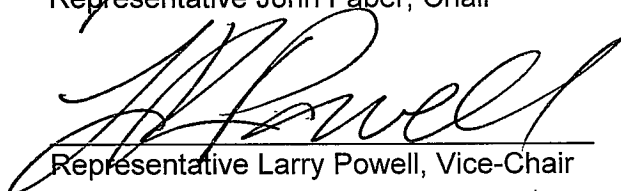
Kansas Department of Commerce



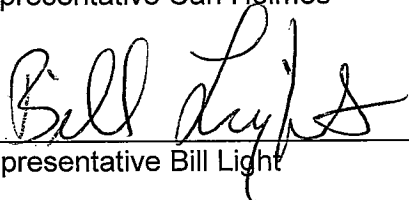
Representative John Faber, Chair



Representative Carl Holmes



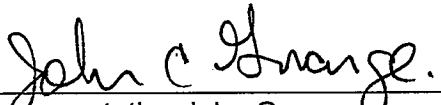
Representative Larry Powell, Vice-Chair



Representative Bill Light

Representative Sydney Carlin,
Ranking Minority Member

Representative Steve Lukert



Representative John Grange

Representative Jerry Williams

Appropriations Committee
Date 3-11-10
Attachment 5-1

Senate Subcommittee Report

Agency: Department of Commerce

Bill No. 556

Bill Sec. 57

Analyst: Steiner

Analysis Pg. No. --

Budget Page No. 75

Expenditure Summary	Agency Request FY 2011	Governor Recommendation FY 2011	Senate Subcommittee Adjustments
Operating Expenditures:			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	131,957,323	131,786,584	0
Subtotal	<u>\$ 131,957,323</u>	<u>\$ 131,786,584</u>	<u>\$ 0</u>
Capital Improvements			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	160,000	160,000	0
Subtotal	<u>\$ 160,000</u>	<u>\$ 160,000</u>	<u>\$ 0</u>
TOTAL	<u><u>\$ 132,117,323</u></u>	<u><u>\$ 131,946,584</u></u>	<u><u>\$ 0</u></u>
FTE positions	314.8	314.8	0.0
Non FTE Uncl. Perm. Pos.	46.0	46.0	0.0
TOTAL	<u><u>360.8</u></u>	<u><u>360.8</u></u>	<u><u>0.0</u></u>

Agency Request

The **agency** is requesting FY 2011 operating expenditures of \$131,957,323, including \$16,564,779 from the Economic Development Initiatives Fund (EDIF). The agency is not requesting any State General Fund appropriations for FY 2011. The all funds request is a decrease of \$22.2 million, or 14.4 percent, and an EDIF increase of \$312,471, or 2.0 percent, above the agency's FY 2010 revised request. The all funds decrease is largely attributable to a reduction in federal funding and the EDIF increase is attributable to the agency's one enhancement package of \$150,000 to fund the Kansas Sesquicentennial Celebration in 2011.

Governor's Recommendation

The **Governor** recommends FY 2011 operating expenditures of \$131,786,584, including \$15,594,040 from the Economic Development Initiatives Fund (EDIF). The Governor's FY 2011 recommendation does not contain any appropriations from the State General Fund. The Governor's recommendation is an all funds decrease of \$21,843,367, or 14.2 percent, and an EDIF decrease of \$658,268, or 4.1 percent, below the Governor's FY 2010 recommendation. The all funds decrease is largely attributable to the fact that the additional federal funds the agency received in FY 2010 did not continue to FY 2011.

The FY 2011 recommendation is an all funds decrease of \$170,739, or 0.1 percent, and an EDIF decrease of \$970,739, or 5.9 percent, below the agency's FY 2011 request. The EDIF decrease is a result of the Governor not recommending the agency's enhancement request of \$150,000, all from the EDIF, for the Kansas Sesquicentennial Celebration and accepting the agency's 5.0 percent reduced resources package of \$820,739. The all funds decrease is offset by an increase in the Kansas Economic Opportunity Initiatives Fund (KEOIF) of \$800,000. The KEOIF is funded through a transfer from the EDIF and for FY 2011 the agency requested \$1,250,000; however, the Governor recommended a transfer of \$2,050,000.

Senate Subcommittee Recommendation

The **Subcommittee** concurs with the Governor's recommendation.

Senate Committee Recommendation

The **Senate Committee** concurs with the Governor's recommendation.

House Budget Committee Report

Agency: Department of Commerce

Bill No. 2706

Bill Sec. 57

Analyst: Steiner

Analysis Pg. No. 1812

Budget Page No. 75

Expenditure Summary	Agency Request FY 2011	Governor Recommendation FY 2011	House Budget Committee Adjustments
Operating Expenditures:			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	131,957,323	131,786,584	(800,000)
Subtotal	<u>\$ 131,957,323</u>	<u>\$ 131,786,584</u>	<u>\$ (800,000)</u>
Capital Improvements			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	160,000	160,000	0
Subtotal	<u>\$ 160,000</u>	<u>\$ 160,000</u>	<u>\$ 0</u>
TOTAL	<u><u>\$ 132,117,323</u></u>	<u><u>\$ 131,946,584</u></u>	<u><u>\$ (800,000)</u></u>
FTE positions	315	315	0
Non FTE Uncl. Perm. Pos.	46	46	0
TOTAL	<u><u>361</u></u>	<u><u>361</u></u>	<u><u>0</u></u>

Agency Request

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The FY 2011 recommendation is an all funds decrease of \$170,739, or 0.1 percent, and an EDIF decrease of \$970,739, or 5.9 percent, below the agency's FY 2011 request. The EDIF decrease is a result of the Governor not recommending the agency's enhancement request of \$150,000, all from the EDIF, for the Kansas Sesquicentennial Celebration and accepting the agency's 5.0 percent reduced resources package of \$820,739. The all funds decrease is offset by an increase in the Kansas Economic Opportunity Initiatives Fund (KEOIF) of \$800,000. The KEOIF is funded through a transfer from the EDIF and for FY 2011 the agency requested \$1,250,000; however, the Governor recommended a transfer of \$2,050,000.

House Budget Committee Recommendation

The **House Budget Committee** concurs with the Governor's recommendation with the following adjustments:

1. Reduce the transfer from the Economic Development Initiatives Fund (EDIF) to the Kansas Economic Opportunity Initiatives Fund (KEOIF) by \$800,000 from \$2,050,000 to \$1,250,000 for FY 2011. The reduction returns the amount transferred from EDIF to the KEOIF to the 2009 amount and would result in savings of \$800,000.
2. Transfer \$75,000 from the Economic Development Initiatives Fund (EDIF) to the Dairy Inspection Fee Fund in the Kansas Department of Agriculture for FY 2011. The additional funding would support the Dairy Inspection Program.
3. Transfer \$725,000 from the Economic Development Initiatives Fund (EDIF) to the State General Fund for FY 2011. This would increase the overall transfer from the EDIF to the State General Fund by \$725,000 from \$3,018,605 to \$3,743,605 for FY 2011.
4. Add the following proviso to HB 2706, the Mega Appropriations Bill:

Provided that no state funds, federal funds, or other contract funds may be expended by the Department of Commerce to respond to requests for proposal or bids for contract work for the purpose of providing job search and/or labor exchange and/or case management software or any related work for state workforce agencies, or to otherwise attempt to obtain further contracts or subcontracts for services with any state agency other than (1) the Kansas Department of Commerce or (2) any other state agency in other states with which the Department has executed contracts as of March 2010.

Kansas Department of Commerce
Kansas Economic Opportunity Initiative Fund Awards
07/01/2008 through 04/30/2009

Industry	County	Award Amount	Jobs Created	Jobs Retained	Avg Wage	Committed Investment
Textile Mfg	ATCHISON	\$ 50,000	135	88	\$ 10.50	\$ 2,350,000
Plastic Fence Mfg	BARTON	\$ 2,500	10	0	\$ 10.00	\$ 100,000
Plastic Product Mfg	CRAWFORD	\$ 25,000	53	0	\$ 15.60	\$ 4,500,000
Nano Particles Mfg	DOUGLAS	\$ 50,000	100	0	\$ 36.06	\$ 25,000,000
Medicine/Botanical Mfg	DOUGLAS	\$ 30,000	60	0	\$ 54.57	\$ 500,000
Commercial Engineering Services	DOUGLAS	\$ 25,000	57	8	\$ 28.09	\$ 30,000,000
Musical Instrument Mfg	DOUGLAS	\$ 2,500	7	0	\$ 12.00	\$ 100,000
Aircraft Parts Mfg	ELLIS	\$ 5,000	18	55	\$ 10.00	\$ 83,000
AC/HVAC Mfg/Contractors	ELLIS	\$ 9,000	18	0	\$ 16.50	\$ 800,000
Farm Machinery Mfg	ELLSWORTH	\$ 40,000	100	0	\$ 14.00	\$ 12,600,000
Cheese Mfg	FORD	\$ 100,000	150	0	\$ 14.42	\$ 130,000,000
Bioscience	GEARY	\$ 30,000	59	0	\$ 38.46	\$ 300,000
Heating (Poultry) Systems Mfg	GRAHAM	\$ 20,000	40	0	\$ 14.42	\$ 600,000
Dairy/Milk Mfg	GRAY	\$ 15,000	75	0	\$ 10.50	\$ 45,000,000
Food Mfg	JACKSON	\$ 13,000	32	0	\$ 11.37	\$ 15,000,000
Lab Instrument Mfg	JOHNSON	\$ 50,000	100	0	\$ 28.85	\$ 5,000,000
Commercial Legal/Real Estate Services	JOHNSON	\$ 20,000	47	0	\$ 38.46	\$ 3,780,000
Misc Mfg	JOHNSON	\$ 60,000	110	0	\$ 13.85	\$ 39,600,000
Telemarketing	JOHNSON	\$ 25,000	120	0	\$ 14.50	\$ 1,000,000
Commercial Architectural/Engineer Services	JOHNSON	\$ 40,000	90	0	\$ 24.04	\$ 6,500,000
Biotech R&D	JOHNSON	\$ 100,000	150	0	\$ 32.05	\$ 22,000,000
Commercial Training Services	JOHNSON	\$ 45,000	0	130	\$ 31.65	\$ -
Life Sciences R&D	JOHNSON	\$ 30,000	60	0	\$ 33.65	\$ 1,500,000
Commercial Computer Systems	JOHNSON	\$ 20,000	38	0	\$ 45.25	\$ 900,000
Biological Product Mfg	JOHNSON	\$ 50,000	81	0	\$ 28.63	\$ 13,000,000
IT Ag Products	JOHNSON	\$ 10,000	20	0	\$ 33.65	\$ 772,000
Insurance Service Ctr	JOHNSON	\$ 30,000	106	0	\$ 18.13	\$ 3,700,000
Motor/Generator Mfg	JOHNSON	\$ 60,000	150	0	\$ 22.07	\$ 5,675,000
Commercial Mgmt/Scientific Services	JOHNSON	\$ 11,000	23	0	\$ 32.45	\$ 1,000,000
Humanities R&D	JOHNSON	\$ 15,000	35	0	\$ 20.43	\$ 9,404,000
Misc Wholesaler	JOHNSON	\$ 4,000	20	0	\$ 16.30	\$ 1,180,000
Photographic Equip Wholesaler	JOHNSON	\$ 20,000	46	0	\$ 43.27	\$ 1,170,000
Medical Lab	JOHNSON	\$ 5,000	12	43	\$ 14.19	\$ 2,670,000
Communication Tower Construction	LINCOLN	\$ 5,000	12	0	\$ 11.00	\$ 1,200,000
Animal Food Mfg	LYON	\$ 75,000	100	0	\$ 21.11	\$ 100,000,000
Roofing/Solar Product Mfg	MCPHERSON	\$ 15,000	40	0	\$ 13.45	\$ 2,000,000
Warehousing	MONTGOMERY	\$ 6,000	20	0	\$ 15.63	\$ 14,900,000
Petroleum Products	NEOSHO	\$ 50,000	100	0	\$ 15.00	\$ 90,000,000
Aviation Products Mfg	NORTON	\$ 10,000	20	0	\$ 13.00	\$ 3,940,000
Magazine Publishing	PHILLIPS	\$ 20,000	67	0	\$ 10.80	\$ 600,000
Wind Energy	RENO	\$ 500,000	400	0	\$ 17.04	\$ 50,000,000
Battery Mfg	SALINE	\$ 45,000	103	12	\$ 15.91	\$ 43,000,000
AC/HVAC Mfg	SEDGWICK	\$ 75,000	300	0	\$ 12.32	\$ 18,000,000
Aircraft Parts Mfg	SEDGWICK	\$ 10,000	25	0	\$ 21.20	\$ 900,000
Aviation Products Mfg	SEDGWICK	\$ 30,000	100	0	\$ 16.00	\$ 2,500,000
Structural Metals Mfg	SEWARD	\$ 50,000	100	0	\$ 12.00	\$ 19,007,832
Grocery Wholesaler	SHAWNEE	\$ 75,000	20	350	\$ 14.25	\$ 14,000,000
Warehousing/Storage	WYANDOTTE	\$ 15,000	70	0	\$ 21.16	\$ 450,000
Commercial Environmental Services	WYANDOTTE	\$ 10,000	21	0	\$ 20.00	\$ 1,200,000
Biotech R&D	WYANDOTTE	\$ 12,000	60	0	\$ 11.10	\$ 10,500,000
Inorganic Chemical Mfg	WYANDOTTE	\$ 5,000	8	0	\$ 22.80	\$ 16,500,000
Plastics Product Mfg	WYANDOTTE	\$ 5,000	20	0	\$ 19.79	\$ 910,000
Commercial Engineering Services	WYANDOTTE	\$ 5,000	20	0	\$ 25.00	\$ 413,000
Iron/Steel Mfg	WYANDOTTE	\$ 8,000	20	0	\$ 31.25	\$ 2,784,383
IT Wholesaler	WYANDOTTE	\$ 10,000	20	60	\$ 33.65	\$ 1,000,000

Appropriations Committee
Date 3-11-10
Attachment 6-1

Bold/Shaded projects indicate award has been declined or projected has been closed

Kansas Department of Commerce
Kansas Economic Opportunity Initiative Fund Awards
 07/01/2008 through 04/30/2009

Industry	County	Award Amount	Jobs Created	Jobs Retained	Avg Wage	Committed Investment
Wholesaler	WYANDOTTE	\$ 5,000	15	0	\$ 14.90	\$ 16,575,000
Apparel Mfg	WYANDOTTE	\$ 17,500	59	0	\$ 15.90	\$ 4,285,000
Commercial Architect/Engineer Services	WYANDOTTE	\$ 5,000	20	0	\$ 29.85	\$ 385,000
Motor Vehicle Mfg	WYANDOTTE	\$ 8,800	20	0	\$ 20.00	\$ 1,200,000
Wholesaler	WYANDOTTE	\$ 3,200	8	0	\$ 26.44	\$ 286,000
Data Center Storage	WYANDOTTE	\$ 25,000	45	0	\$ 38.46	\$ 90,000,000
Convention/Trade Show Org.	WYANDOTTE	\$ 37,000	74	0	\$ 25.57	\$ 6,800,000
Headquarters	WYANDOTTE	\$ 8,000	16	0	\$ 42.04	\$ 5,400,000
Fabricated Metal Mfg	WYANDOTTE	\$ 5,000	13	0	\$ 22.93	\$ 2,100,000
Wholesaler	WYANDOTTE	\$ 80,000	13	217	\$ 23.96	\$ 14,500,000
Fire Equipment Mfg	WYANDOTTE	\$ 10,000	25	29	\$ 20.22	\$ 828,000
Sheet Metal Mfg	WYANDOTTE	\$ 20,000	20	47	\$ 34.67	\$ 2,800,000
Meat Processing/Mfg	WYANDOTTE	\$ 40,000	35	166	\$ 12.02	\$ 6,700,000
Wind Energy	Multiple Sites	\$ 10,000	25	0	\$ 19.23	\$ 1,600,000
Hardware Mfg	Multiple Sites	\$ 40,000	101	0	\$ 19.80	\$ 13,000,000
		\$ 2,362,500	4257	1205	\$ 21.34	\$ 946,048,215