

MINUTES

LEGISLATIVE BUDGET COMMITTEE

September 30-October 1, 2002

Room 123-S—Statehouse

Members Present

Senator Stephen Morris, Chairman
Representative Kenny Wilk, Vice Chairman
Senator Paul Feleciano, Jr.
Senator Dave Kerr
Representative John Ballou
Representative Melvin Neufeld
Representative Rocky Nichols

Staff Present

Alan Conroy, Kansas Legislative Research Department
Leah Robinson, Kansas Legislative Research Department
Carolyn Rampey, Kansas Legislative Research Department
Audrey Nogle, Kansas Legislative Research Department
Paul West, Kansas Legislative Research Department
Nicoletta Buonasera, Kansas Legislative Research Department
Amy Deckard, Kansas Legislative Research Department
Norman Furse, Revisor of Statutes
Bruce Kinzie, Revisor of Statutes Office
Mary Shaw, Committee Secretary

Conferees

Bobbi Mariani, Director, Division of Personnel Services, Department of Administration
Randy Nelson, Vice President for Engineering, Cessna, Inc., Wichita
John Sattler, R.Ph., Executive Vice President, Sales and Account Management,
AdvancePCS
Tina Nye, AdvancePCS
Terry Bernatis, Acting Health Benefits Administrator, Division of Personnel Services,
Department of Administration
Dale Brunton, Director, Division of Accounts and Reports, Department of Administration
Karl McNorton, State Fire Marshal's Office
Brenda Erickson, National Council of State Legislatures, Denver, Colorado

Shelby Smith, Wichita
Julene L. Miller, Deputy Attorney General

**Monday, September 30
Morning Session**

Senator Stephen Morris, Chairman, called the meeting to order at 10:10 a.m. Chairman Morris asked that Alan Conroy, Chief Fiscal Analyst, Kansas Legislative Research Department, introduce the two new fiscal analysts. Mr. Conroy introduced Nicoletta Buonasera and Amy Deckard and mentioned that an additional fiscal analyst will begin the following week. Staff distributed current copies of the Legislative Fiscal Analyst Assignments—FY 2004 (Attachment 1).

Bobbi Mariani, Director, Division of Personnel Services, Department of Administration, addressed the Statewide Award and Recognition Program—SB 429 (Attachment 2). Ms. Mariani updated the Committee regarding the progress of the implementation of the Award and Recognition program. She also explained the provisions for the new award program. Ms. Mariani noted that the program guidelines are left broad to allow agencies flexibility when developing a program and explained that this would also allow the successful programs that agencies currently have established to continue under one of the categories in the new award program. Ms. Mariani mentioned that agencies have been very pleased with the program because it will allow them to give awards that they previously have been unable to give. However, many agencies will not be able to fully utilize the program because they do not have the funds to do so.

Ms. Mariani updated the Committee regarding the Employee Suggestion Program and explained that SB 429 also requires that agencies establish and administer an Employee Suggestion Program by allowing employees to submit cost reduction suggestions. Ms. Mariani explained the provisions for the suggestion program.

Ms. Mariani mentioned that there are no provisions that allow non-state employees to submit a suggestion. Even though there should not be an award associated with a non-state employee suggestion, there perhaps should be some avenue whereby they can offer ideas for cost-savings. The Division of Personnel Services will monitor these programs closely and will be generating reports that will be available for review in the future.

In closing, Ms. Mariani mentioned that currently the Governor has placed additional limitations on the payment of bonuses due to the state's present fiscal condition. No bonuses of any kind will be paid during FY 2003. Any exceptions to this requirement would have to be approved by the Governor's office.

Representative Nichols asked how the state agencies would be administering and promoting the Employee Suggestion Program and asked Ms. Mariani to explain the time line. She explained that since each agency will be designing its own program, they are anticipating that promotions for the program will be done within each agency. They have

done some general notification that the program has been established and that agencies will be developing programs. Information has been put out on the Department of Administration website and in newsletters that have been sent out to agencies, but she does not anticipate doing general overall statewide promotions of this program. Representative Nichols explained that it was his vision that something like this would take the leadership of the Department of Administration because he did not want to see 20 different fliers or slogans talking about the Employee Suggestion Program. He felt to get a message out, there should be a concerted, centralized effort. Ms. Mariani responded that she would not mind doing that, but she does not have the staff who could undertake a statewide promotion. She indicated that the bill was drafted to give each agency the responsibility to operate the program.

Ms. Mariani provided an overview of layoff and furlough procedures and distributed copies of layoff and furlough procedure instructions that the Division of Personnel Services provides as a service to agencies (Attachment 3).

In her testimony, Ms. Mariani detailed information regarding layoff, layoff scores, bumping rights, layoff conferences, re-employment rights, and furlough procedure. She explained that the reasons for proposing a layoff are limited to:

- A shortage of work or funds;
- The reinstatement of an employee returning from authorized leave; or
- The abolition of a position or other material change in duties or organization.

Chairman Morris indicated that during budget discussions in the last session they tried to structure final provisions to avoid layoffs, if possible, but noted that the fiscal situation has deteriorated since then. He asked if Ms. Mariani had any conversations with any agency head that anticipates any significant layoffs. Ms. Mariani mentioned that she will get information regarding what has come into their office during the last couple of weeks regarding pending layoffs and furloughs.

Ms. Mariani mentioned that, generally, agencies are trying to cope with the most recent allotment and their office has a few more layoffs pending. Because of that, she feels that if agencies see another allotment take place before the end of the calendar year, agencies cannot continue to absorb the reductions without actually laying off people.

The Chairman recognized Bud Burke, who in turn, introduced Randy Nelson, Vice President for Engineering, Cessna, Inc., Wichita, who spoke to the Committee regarding aviation research (Attachment 4). Mr. Nelson explained that the aviation industry is faced with global competition. He explained that one thing not noted in his testimony is that Toyota has started flying a small aircraft essentially the same size as the Cessna 172 and has announced the intention to be a dominant player in the transportation industry in the next 100 years. He also noted that Honda has started a program and has started flying a jet engine of its own development within the last three months and they have also indicated

their desire to develop a jet aircraft as well. More recently, in Japan, Mitsubishi was awarded a \$100 million dollar grant to look at a transport aircraft. Mr. Nelson noted that they are faced with global competition supported substantially by international governments who understand how important it is to their economies.

Mr. Nelson explained that the current situation in the aviation industry is a major contributor to the economic vitality of Kansas and has the potential for significant growth.

Regarding overall funding requirements, Mr. Nelson explained the following:

- Significant progress has been made;
- Over \$60 million for aviation-related research is needed at the Wichita State University National Institute for Aviation Research to support industry needs over the next decade; and
- State funding of \$20 million is needed during FY 2004 - FY 2007 (\$13 million of that amount was approved in 2002 Legislative Session - HB 2690).

He mentioned that what they are highlighting today is the need for the additional \$7 million for on-going research in the upcoming years as noted in testimony.

In closing, Mr. Nelson summarized the following:

- The industry must be capable of competing in a global economic environment;
- The industry cannot do it by themselves; and
- With the Legislature's help, the aviation industry can become;
 - A cluster of innovation, and
 - Significantly grow the economic base of Kansas.

Chairman Morris mentioned that they were proud of what they were able to do this past session, and in the discussions of HB 2690, all realize that the \$7 million spread over the next few years should come as no surprise. He noted that even in tough economic times, the Legislature should meet its obligations.

Chairman Morris expressed his concern regarding Toyota, Honda, and Mitsubishi and their long-term plans to become leaders in the aviation industry and the possible effect of that global competition on the aviation industry in Kansas.

Senator Kerr mentioned that often they get into actually providing the facilities for research and are sometimes accused by colleagues of "corporate welfare" and he asked

how they could respond to that. Mr. Nelson responded that the things they have asked for from a research point of view are general in nature and not specific from a corporate point of view. They are not specific designs or specific architectures that any of the companies are using and the funding supports.

Chairman Morris explained that since the Legislature has had a lot of turnover in the past couple of years, and while some have had the opportunity to go to Boeing, Ratheon, and Cessna from time to time, the vast majority of the Legislature has not. He asked if it would be possible to structure a legislative day, not during the session but before the session begins, to invite all the legislators to tour facilities to show the needs as well as the good things that are being done. He felt it might help as far as on-going support for the aviation industry to have legislators know what is being done. Mr. Nelson responded that he felt that they could do this.

Senator Feleciano moved, with a second by Representative Neufeld, to approve the minutes of the July 1-2, 2002 and August 26-27, 2002 meetings. Motion carried.

Mr. Conroy mentioned that the State General Fund receipts as of last Friday, September 27, 2002, for the month of September were approximately \$40 million below the estimate just for the month. He mentioned that today's deposit and what came in over the weekend are not included and we will not know exactly what the shortfall will be until later in the afternoon.

Chairman Morris mentioned that another topic assigned to the Committee by the Legislative Coordinating Council is the topic of the \$55 million regarding the agriculture loan program.

Representative Neufeld mentioned that it had been brought to his attention that there are some agencies that got very delinquent in paying accounts payable, much more than normal. He questioned how prevalent this is, and how many bills are 60 to 90 days overdue and if agencies are paying payroll in lieu of paying the bills.

Senator Kerr mentioned recent news articles encouraging the state to pay the 13th check to those that are retired and are eligible for the 13th check. His impression was that there was no choice and the payment is required by law. He indicated that it appeared to him people are trying to frighten retirees.

The meeting recessed at 11:15 a.m.

Afternoon Session

The meeting reconvened at 1:35 p.m.

John Sattler, R.Ph., Executive Vice President, Sales and Account Management, Advance PCS, spoke regarding the State Pharmacy Program (Attachment 5). Mr. Sattler

mentioned that their focus is driving down cost and trying to drive up the health outcomes for each and every member that they come in contact with. They are the largest pharmacy benefit manager (PBM) in the country.

Mr. Sattler presented the following information:

- Drug spending growth and projected prescription drug expenditures;
- The Biotech “revolution”;
- Potential private sector solution—to manage drug spending;
- Benefit management, pharmaceutical care consultants, clinical care consultations, and clinical information services;
- Kansas state employees strategic initiatives;
- Kansas state employees new initiatives in 2003; and
- Health improvement results.

Mr. Sattler turned over the Medicaid portion of the presentation to Tina Nye, AdvancePCS. She noted that at this time AdvancePCS manages about one-third of the Medicaid population that are enrolled in managed care plans, about 3,000,000 Medicaid lives. They have around 28 Medicare entities nationally that they manage. Information was presented as follows:

- How PBMs have managed Medicaid; and
- AdvancePCS results in managed Medicaid programs.

In response to a question by Chairman Morris, Ms. Nye responded that in Medicaid, in terms of rebates toward state Medicaid programs, 100 percent of those rebates go back to the states because it is administered under a federal program. In terms of the commercial side of their business they try, to the best of their ability, to bring the lowest net cost of a drug to their clients so they strive to bring as much of that rebate dollar to the client as possible. Mr. Sattler mentioned that PBMs handle rebates differently. It is a very contentious issue out in the marketplace.

Chairman Morris mentioned that the Legislature has been struggling the last few years trying to find ways to lower the increase on the pharmaceutical side in Medicaid, but have not really talked about the state employee health plan. They thought since AdvancePCS works with it, that it might be useful to know what things are being done for state employees, and if possible, for the Legislature to look at services for Medicaid, and that is the purpose of having AdvancePCS present.

Representative Neufeld asked how you would go about trying to design a plan that helped physician behavior so that you prescribe in Medicaid for the least cost, not necessarily the cheapest drug. Mr. Sattler responded that the one tool he feels is the ultimate tool for all, physician productivity.

Senator Feleciano asked how you influence a physician's behavior relative to the prescription for providing another drug when there is monetary incentive for a physician to prescribe a certain drug. Mr. Sattler responded that it was prevalent several years ago, but it now falls under a number of state statutes.

Senator Feleciano asked Mr. Sattler for information regarding potential savings under discounted rates and what that translates to in dollars for the State of Kansas.

Senator Kerr asked if there are some states that are moving to free generics in order to try to make the patient aware of the difference. Mr. Sattler responded that there are a number of programs, not just state entities, that waive co-pay for the generic product or provide a coupon for the first product. He mentioned that the percentage of prescriptions that are generic is as high as 42 percent.

Senator Kerr asked Mr. Sattler to describe two or three of the most successful steps clients are using to hold down costs. Mr. Sattler listed the following steps and the State of Kansas is about to employ some of the pieces that have not been available to them:

- Benefit design changes;
- Performance Rx, a program to better educate and monitor physician prescription activity;
- Clinical consulting in tandem with Performance Rx; and
- Adopting a preferred drug list in the key therapeutic side.

In response to a question by Representative Neufeld regarding the Ryan White Program, Ms. Nye noted that they are working with some compliance management programs and it has gone very well. They are working with certain manufacturers to get a lower cost for such drugs related to HIV/Aids. Representative Neufeld mentioned that the state is facing continued growth in that program and he requested more information from Ms. Nye.

Chairman Morris asked how many states have managed care on the Medicaid side. Ms. Nye responded about 12 to 15 states. She noted that it was primarily due to legislative initiative to put people into managed care programs and the decision in those states was to keep the pharmacy benefit as part of the managed care program and then the managed care health plan decided to contract with AdvancePCS. Mr. Sattler will provide comparative data to the Committee regarding this topic.

Representative Nichols requested information regarding the chart indicating national trends versus Kansas trends and how Kansas compares with similar states.

Chairman Morris thanked the representatives from AdvancePCS for their presentation and mentioned that he would appreciate any suggestions they could have for the Committee regarding the Medicaid side.

Representative Neufeld requested a follow up on the Ryan White Project.

Terry Bernatis, Acting Health Benefits Administrator, Division of Personnel Services, Department of Administration, presented information from Bobbi Mariani as discussed earlier in the morning session regarding pending layoffs and furloughs as of September 30, 2002 (Attachment 6). Representative Neufeld asked if the three positions listed for the Department of Health and Environment were state or federally funded and Ms. Bernatis responded that she will follow up on that information.

Karl McNorton, representing Gale Haag, State Fire Marshal, gave a report from the Office of the State Fire Marshal regarding sprinkler systems in local school facilities. (No written testimony was provided.) Mr. McNorton mentioned that the way the statutes are written, with an existing building they are basically not required to include sprinkler systems unless modifications being made to the building are considered substantial. There is currently no anticipation that there will be any requirement for all schools to have sprinkler systems.

Chairman Morris asked Mr. McNorton if he had any idea how this situation may have come about and Mr. McNorton mentioned that last year a bill was introduced to update KSA 31-150 which is the statute for new school construction and with that they were going to update to the latest model building code which is the international building code. This misunderstanding may have come about as the result of that legislation.

Mr. McNorton mentioned that if schools are doing significant remodeling that would cause major changes, by state law they are supposed to submit plans to the Department of Education for review.

Dale Brunton, Director, Division of Accounts and Reports, Department of Administration, responded to a question raised during the morning session regarding some agencies not paying their bills on time. Mr. Brunton explained that his office would not know if agencies were timely paying their bills unless the vendor calls his office regarding the lack of payment. He indicated that the prompt payment act has only been invoked once this fiscal year. It was noted that the Division of Accounts and Reports has no way of tracking accounts payable at this time under the current accounting system.

The meeting recessed at 3:00 p.m.

Tuesday, October 1, 2002

Morning Session

The meeting reconvened at 9:05 a.m.

Brenda Erickson, National Council of State Legislatures (NCSL), Denver, Colorado, provided information regarding the constitutional limits on the length of legislative sessions (Attachment 7). Ms. Erickson also provided the following information from the National Conference of State Legislatures:

- 2002 Legislative Regular Session Calendar as of July 31, 2002 (Attachment 8);
- Legislative Sessions (Attachment 9) ;
- Bills and Resolutions, Introductions, Enactments and Percentage Enacted, 1999, 2000, and 2001 (Attachment 10);
- General Legislative Procedures, End-of-Session Logjam (Attachment 11);
- Examples of Deadlines for Budget or Appropriation Bills (Attachment 12);
- Examples of Legislative Chamber Rules Regarding Deadlines for Governor or Agency Bills (Attachment 13);
- Bill Introduction Limits (Attachment 14);
- Bill Prioritization Mechanisms (Attachment 15); and
- Examples of Chamber Rules on Reintroduction of a Rejected Measure (Attachment 16).

Ms. Erickson mentioned that there are 41 part-time and 9 full-time legislatures, noting that Kansas is a part-time, citizen legislature. Ms. Erickson noted that according to the definition used by NCSL, a citizen (part-time) legislature spends comparatively little time in session, has lower member salaries, and has a smaller, more centralized staff. Its members typically have jobs in addition to their legislative responsibilities.

Ms. Erickson discussed the following:

- Session length;
- Organizational session;
- Session scope limit;
- Streamlining mechanisms;

- pre-filing,
 - deadlines,
 - bill introduction limits,
 - bill prioritization,
 - duplicate bills,
 - reintroduction of rejected measures,
 - bill carryover; and
-
- Floor session.

Ms. Erickson mentioned that a constitution provision is best if there is a desire for sessions to end by a certain date.

In response to a question by Representative Ballou, Ms. Erickson responded that 28 of the 38 states that have time limits are set by constitution.

Chairman Morris asked if any state legislatures have restrictions on introducing amendments. Ms. Erickson explained a little-used rule used by presiding officers of calling amendments out of order as dilatory. She mentioned that the dilatory rule is really for instances where an amendment keeps coming back and is only introduced to waste time.

Senator Kerr explained that the internal limitations were working well but what the Legislature runs into in more recent years are end of session strategies and pressure. The intent of some is to use time as a lever to help get done what they want done. He noted that the budget work is done timely and wondered how other states handled this problem. Ms. Erickson noted that either a chamber rule or pay stoppage might be appropriate, but would not lend itself well to a constitutional amendment.

Chairman Morris thanked Ms. Erickson for her presentation before the Committee. Staff distributed copies of "Kansas Legislative Sessions 1969-2002 Total Days and Regular Days" ([Attachment 17](#)).

Shelby Smith, Wichita, spoke regarding the constitutional length of legislative sessions ([Attachment 18](#)). Mr. Smith mentioned that there is value in deadlines, and 90 days is about right. He noted that the euphemistic "wrap-up" sessions have gone on too long and too far. He indicated that it is time to return to the concept of a "veto" session. Mr. Smith explained that the problem is systemic, not a question of leadership, and for that reason a constitutional amendment was needed.

Mr. Smith noted in his testimony that his concept of the constitutional amendment would be simple: remove the archaic 1974 reference to sessions held in even-numbered years; delete "Such sessions may be extended beyond ninety calendar days by an affirmative vote of two-thirds of the members elected to each house" (Article II, Section 16). Mr. Smith mentioned that this removes the escape valve and helps you enforce session rules.

Mr. Smith mentioned that continual extension of the 90-day session undermines our concept of citizen legislators. He feels very strongly that the ever-increasing indefinite time commitment of the legislative session is the problem. Families are saying no to loved ones who want to run for the legislature. Businesses are saying no to their associates. It is more and more difficult to persuade community leaders to run for legislative office.

Senator Kerr explained that there is a serious problem in this area in longer sessions and agreed with Mr. Smith's comments regarding driving people out of the legislature. The rules are working and the budget chairs are getting the work done. Senator Kerr noted that it is a matter of people using the end of session, by delay, to get their position. The issues are pay and a constitutional amendment. Senator Kerr mentioned that he has a constitutional amendment drawn up for an 88 day session and a 2-day veto session if the Committee would be supportive. Committee discussion followed.

Representative Neufeld suggested looking at shortening things and examine an 80-day session provided the 10 days are taken out immediately following submission of the Governor's budget. This would give staff time to get the budget analysis done with less interference.

Senator Kerr mentioned that the Budget Committees are limited to 80 days of actual work to look at budget issues, but sending members home for 10 days would not work. There is no option in sending people home for 10 days because they will be paid anyway. He noted the Governor's Office has been very cooperative in submitting budget recommendations to legislative staff earlier to facilitate completion of the budget analysis.

Representative Wilk mentioned that he agrees and realizes people were frustrated. He also explained that it was an unprecedented year in that last year's budget situation was like no other—there was the impact of September 11, 2001, and redistricting, in addition to the budget situation. Representative Wilk also noted that what government does now is more complex than 50 years ago. He likes Representative Neufeld's idea.

Chairman Morris suggested that the Committee digest the information that was discussed and think about recommendations for the next meeting.

Julene Miller, Deputy Attorney General, briefed the Committee regarding Attorney General Opinion No. 2002-45, dealing with the transfer of money from certain fee funds into the state General Fund (Attachment 19). Ms. Miller explained that the Opinion concluded that the facts they had were insufficient for them to make a definite finding as to the appropriateness of these specific transfers, and set out the rules and guidelines involved in making that determination.

Ms. Miller presented information regarding the 1958 case called *Panhandle Eastern Pipeline Company v. Fadely* where the Kansas Supreme Court held invalid an appropriation provision directing the transfer of money from a regulatory agency's fee fund to the State General Fund. She noted that this case stands for the rule that when the state exacts a fee for a police power/regulatory purpose, but then uses the money raised by the fee for the general expenses and obligations of the state rather than for the purpose of regulating and supervising the industry from which it was collected, the fee cannot stand on police power

authority. At that point, the exaction will be considered a tax and will only be valid if it meets all tax law requirements.

Ms. Miller explained that for purposes of Attorney General Opinion No. 2002-45, the 20 percent/\$200,000 transfer requirements of KSA 75-3170 and 75-3170a were not at issue. What was being questioned was the transfer of funds either in addition to this 20 percent/\$200,000 amount or greatly exceeding this amount. Without a full accounting of all of each agency's needs, expenditures, and uses of state services, they were unable to conclude whether the transfers so far exceeded the costs of regulating the particular industry or that they exceeded the state's police power authority.

Staff briefed the Committee regarding State General Fund Receipts/Year-End Report, distributed and discussed the Kansas Department of Revenue, "Comparison of Fiscal Year 2003 and 2002 Actual General Fund Collections," ([Attachment 20](#)).

Staff explained the State General Fund receipts through September 27, 2002. It was noted that these were preliminary numbers only and for tax sources only. September is a key month in that the first quarterly estimated individual income tax payments should be received. Individual income taxes are \$14.6 million below the estimate, but on a positive note, corporate income taxes are \$7.4 million above the estimate. Fiscal year-to-date, State General Fund receipts are down \$48 million.

Representative Wilk mentioned that the figures regarding the use tax are alarming. Chairman Morris asked staff to invite the Secretary of the Kansas Department of Revenue to the next meeting to speak on all categories of tax with emphasis on use tax. The Committee discussed the use tax for machinery and equipment purchased out of state.

Staff also discussed the following handouts:

- State General Fund Profile, FY 2002 Adjusted Receipt Projections and Allotments of FY 2003 Expenditures, In Millions ([Attachment 21](#));
- General Budget Overview - Fiscal Years 2002 and 2003 ([Attachment 22](#));
- State General Funds (SGF) Receipts, FY 2002 ([Attachment 23](#));
- State General Fund Revenue Estimates, In Millions ([Attachment 24](#));
- Memorandum addressed to the Legislative Budget Committee from Alan Conroy, Chief Fiscal Analyst and Leah Robinson, Principal Fiscal Analyst, Kansas Legislative Research Department, regarding Actual FY 2002 Resources, Demands, and Balances of the State General Fund -- Preliminary ([Attachment 25](#));
- State General Fund Receipts, July, FY 2003 ([Attachment 26](#)); and

- State General Fund Profile, FY 2002 - FY 2006 (Attachment 27). Staff explained that this would be the worst case scenario State General Fund Profile and a lot of assumptions are included.

SRS and Department on Aging caseloads and consensus estimates were discussed. The Consensus Estimating Group will be meeting the first week in November. Staff noted that 57 percent of the FY 2003 budget is state aid to local units of government. In response to a question by the Chairman, staff responded that approximately 13 to 15 percent of state aid to local units of government is caseloads.

Representative Wilk asked, regarding the first quarter actuals with no SRS caseloads, how far we are away from a June 30, 2003, zero balance. Staff explained that if you assume FY 2003 receipts will be short the same amount as FY 2002 receipts, \$212 million, and reduce expenditures by the allotment amount, the approved ending balance (not including any supplementals) would be a negative \$100 million or 2.3 percent for the current year.

Chairman Morris asked that staff work up an accounting of things such as estimated caseloads and estimated school aid with realistic figures of where we are at for the next meeting.

The next meeting is scheduled for October 31 and November 1, 2002.

The meeting adjourned at 11:25 a.m.

Prepared by Mary Shaw
Edited by Leah Robinson

Approved by the Committee on:

November 18, 2002