MINUTES

LEGISLATIVE BUDGET COMMITTEE

November 18, 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
Audrey Nogle, Kansas Legislative Research Department
Norman Furse, Revisor of Statutes
Bruce Kinzie, Revisor of Statutes Office
Mary Shaw, Committee Secretary

Conferees

Janis DeBoer, Deputy Secretary, Kansas Department on Aging
J. G. Scott, Director of Budget, Department of Social and Rehabilitation Services
Janet Schalansky, Secretary, Department of Social and Rehabilitation Services
John Campbell, Senior Deputy Attorney General, Office of the Attorney General

Monday, November 18, 2002
Morning Session

Chairman Stephen Morris called the meeting to order at 10:10 a.m.

Janis DeBoer, Deputy Secretary, Kansas Department on Aging, presented background information on the Health Care Provider's Tax (Attachment 1). Ms. DeBoer provided information regarding nursing facility provider taxes. She explained that the Provider Tax Law established strict conditions that states must meet to use taxes levied on health care services, items, or providers as payment for medical assistance expenditures that qualify for federal matching funds. Ms. DeBoer further explained that specifically, under this law, state taxes must:

- Be broad-based—A tax must apply to all providers of a particular type of health care service;
- Be uniform—All providers of a particular service must be taxed at the same rate;
- Be imposed on a permissible class of health care items or services; and
- Avoid "hold harmless" arrangements—the taxes collected must not be returned to the taxpayers directly or indirectly.

Ms. DeBoer explained the "hold harmless" provisions in detail (page 2 of her written testimony) and explained the 6 percent criteria test example (page 3 of her written testimony). Committee questions and discussion followed.

In response to a question by Chairman Morris, Ms. DeBoer explained that there are some providers that are not realizing the benefit from the tax that has been levied against them because of the Medicaid utilization rate. Because the tax goes back to the Medicaid reimbursement system and there is a break even point, facilities with utilization of less than 20 percent would not see a benefit from the tax. In response to question by Representative Neufeld, Ms. DeBoer noted that if there is a tax, it must be assessed on all licensed beds, including private pay beds. In response to a question by Representative Wilk inquiring if other states are doing this, Ms. DeBoer responded that a majority of states are doing this and the taxes have been in place for several years.

Chairman Morris mentioned that he feels that this might be a beneficial mechanism but expressed concerns about the negative impacts on some providers and clients. Ms. DeBoer mentioned that the state is now at a 44 percent private pay rate. The Chairman requested more information on how that tax would affect the 44 percent private pay and the facilities that would not benefit from the tax. Chairman Morris also requested that this information be forwarded to the members of the House Appropriations and Senate Ways and Means Committees.

J. G. Scott, Director of Budget, Department of Social and Rehabilitation Services, provided an update on the federal funds reimbursement rate (Attachment 2). Mr. Scott explained that the federal Medicaid program developed a rate, the Federal Medicaid Assistance Percentage (FMAP), which is used to calculate the federal share of Medicaid costs. The FMAP is based on the relationship between each state's per capita personal income and the national average per capita personal income over three calendar years. It is recalculated each year. He mentioned that the FMAP formula is designed to give a state with average per capita personal income a federal share rate of 55 percent. The minimum is 50 percent and the maximum is 83 percent. For federal fiscal year 2002, Kansas' rate is 60.2 percent.

Committee questions and discussion followed. Representative Neufeld inquired about the status of TANF money because he thought that the federal bill was mis-printed and the state could be out of money by January 2003.

Audrey Nogle, Senior Fiscal Analyst, Kansas Legislative Research Department, briefed the Committee on statutes in other states regarding Developmental Disability Services (Attachment 3). She presented information regarding the neighboring states to Kansas and also included Maine, Texas and Utah. Ms. Nogle mentioned that she could not find a state with the wording "reasonable and adequate" as a standard for payment. Most states are subject to available appropriation. Representative Neufeld requested that Ms. Nogle look at the states of Alaska and New Hampshire. Ms. Nogle explained a chart with information regarding Direct Support Services Expenditures for Developmental Disabilities (Attachment 4).

Leah Robinson, Principal Fiscal Analyst, Kansas Legislative Research Department, presented a report on Kansas Personal Income and Disposable Personal Income (Attachment 5). Ms. Robinson mentioned that the three maps were also included to reflect 2001 per capita personal income for every state. She noted that Utah is at 79.4 percent and ranks about 45th which the disparity in the federal funding match rated noted during the SRS presentation earlier.

Chairman Morris requested that John Campbell, Senior Deputy Attorney General, Office of the Attorney General, give a brief summary on why the Committee can and needs to go into an executive session regarding the lawsuit filed by Community Developmental Disabilities Organizations (CDDOs) and Community Service Providers (CSPs). Mr. Campbell responded that the decision to go into executive session is the Committee's but if the Committee chose not to do so, he would recommend that the Committee not be told anything that was not available to the general public. By statute, the State of Kansas is a named party. The Attorney General has a supervisory responsibility for any such litigation even though they are having the SRS legal department handle the matter. He said this case is especially important for the Legislature to be aware of. Because of the claims contained in the action, the Legislature, as the branch of government which appropriates funding is more impacted than any other. To be fully informed, the Legislature needs the safeguard of attorney/client privilege. Since the client is the State of Kansas, the Legislature as one of the branches of government, is entitled to be briefed.

Representative Nichols asked that Mr. Campbell clarify his point about advising SRS not to tell the Committee anything that cannot be read in a newspaper if they fail to go into executive session. Mr. Campbell noted that this is difficult in the situation of elected officials. While, they represent the state, a defendant in this case, they also represent constituents who may be plaintiffs to the suit. Mr. Campbell made clear that by going into executive session to hear details of the case, the Committee would not be sending the message to constituents who might be on the other side of the issue that members of the Committee were in an adversarial relationship with those constituents.

Representative Nichols mentioned that he remembered a number of cases where Committees went into executive session where the state was a plaintiff, but could not remember occasions where the state was a defendant. Mr. Campbell mentioned that almost every time the State Finance Council meets there tort claims where the tate is the defendant.

Representative Nichols asked Mr. Campbell if there were any other instances where we were not the plaintiff. Chairman Morris noted the military retirement case.

Representative Nichols asked if there any guidelines in the state outlining specifically what we should or should not talk about regarding executive session and if Mr. Campbell had any advice in that regard. Mr. Campbell noted that nothing prohibited members who had heard information in executive session from talking about that information with others. He noted that, in the case of citizen legislators who might have a proprietary interest in the outcome, they should perhaps excuse themselves from the executive session.

Senator Kerr asked if a member of the Committee were, subsequent to the closed session, to be directly asked by the plaintiff to disclose information, what obligations beyond moral obligations or truthfulness would the Committee members have. Mr. Campbell reiterated that nothing could prohibit the legislators from talking about the issue but noted that anyone in the room could be called to testify in the case, and if legislators share this information for others, they would waive the right to claim attorney/client privilege. Senator Kerr asked that beyond this possibility and the presumed embarrassment that would result, whether anything else could keep a member of this Committee from disclosing what they hear in one of these sessions. Mr. Campbell responded that there was nothing that he is aware of.

Senator Kerr moved, with a second by Representative Wilk, that the open meeting of the Legislative Budget Committee be recessed for a closed, executive meeting pursuant to subsection (b)(2) of KSA 2001 Supp. 75-4319, for the purpose of consulting with the General Counsel and other staff attorneys for the Department of Social and Rehabilitation Services, and the members of the staff of the Attorney General regarding the status of Interhab, Inc., et. al. v. Janet Schalansky, Secretary of the Department of Social and Rehabilitation Services, and the State of Kansas, which are matters which would be deemed privileged in the attorney/client relationship, that the Legislative Budget Committee shall resume the open meeting in Room 123-S of the Statehouse at 12:00 p.m., and that this motion, if adopted, shall be recorded in the minutes of the Legislative Budget Committee and shall be maintained as part of the permanent records of the Committee. Adopted at 11:15 a.m. on November 18, 2002 (<u>Attachment 6</u>).

Copies of the Class Action Petition filed by all the Community Developmental Disability Organizations and Community Service Providers were distributed to the Committee (Attachment 7).

The Committee resumed the open meeting at 12:00 p.m. and recessed for lunch.

Afternoon Session

The meeting reconvened at 1:35 p.m.

Ben Barrett, Director, Kansas Legislative Research Department, presented information regarding the School Finance Consensus Estimates (Attachment 8). Mr. Barrett mentioned that the state is short about $6.6 million under aid to the school districts under the current formula. He noted that the more shocking figure is the shortfall in the Local Option Budget which is $21.9 million. It is a combined total for the current fiscal year of $28.6 million. Mr. Barrett discussed the components of the FY 2003 numbers.

Mr. Barrett explained that based on current levels of appropriations, their estimates for next year are that an additional $7.1 million would be needed in Base State Aid Per Pupil, and the additional money necessary for Local Option Budget matching would be $7.5 million for a combined total for next year about $14.6 million. Mr. Barrett also provided information regarding estimated special education excess costs—FY 2004. Committee questions and discussion followed.

Ms. Nogle presented information regarding the Department of Social and Rehabilitation Services and Department on Aging caseloads and distributed a chart titled Consensus Caseload Estimate, November 6, 2002 (Attachment 9).

Alan Conroy, Chief Fiscal Analyst, Kansas Legislative Research Department, distributed and discussed the following information regarding the November 2002, State General Fund Consensus Revenue Estimates and FY 2004 State General Fund Profile:

- Letter to Governor Bill Graves and Legislative Budget Committee from the Kansas Division of the Budget and Kansas Legislative Research Department regarding the Initial SGF Memo for FY 2003 (Revised) and FY 2004, dated November 5, 2002 (Attachment 10).

- State General Fund Revenue Estimates (in millions) (Attachment 11).

- State General Fund Profile Reflecting November 2002, Consensus Revenue Estimates (Attachment 12).

- State General Fund Profile, FY 2002 - FY 2006 (Attachment 13).

Mr. Conroy presented information regarding the economic forecast for Kansas. He noted that the consensus group discussion was there is a slower than expected recovery from a recession driven in part by limited capital investments by businesses, increasing unemployment, and continued sluggish retail sales collection. Overall, the consensus group indicated that the State's economy will mirror the national economy, however, Mr. Conroy noted that they are expecting that the state's recovery will lag the national recovery by at least several quarters.

Chairman Morris mentioned the figure regarding compensating use tax is a very disturbing figure and percentage-wise, is a drastic reduction Mr. Conroy responded that part of it relates to consumer spending and about 45 percent of the compensating use tax is paid by consumers with the largest share by out-of-state retailers who sell products in Kansas. In addition, business machinery and equipment for those that would be subject to this tax is involved and there is certainly a softening in terms in compensating use as well. He felt overall that it is a reflection of a slow-down in the economy and a consumer slow- down in purchases. Chairman Morris asked what percentage of that total is cars purchased outside the state. Staff indicated it was about 20 percent but they will verify that information.

In response to a request by the Committee, staff distributed information regarding Developmental Disabilities Reform Act legislation statutes for Alaska and New Hampshire. (Attachment 14).

Staff distributed the following drafts of information for Committee review and discussion regarding Committee recommendations on the interim report:

- Zero-Based Budgeting - Draft (Attachment 15).

- Agricultural Loan Program - Draft (Attachment 16)

- Constitutional Amendment to Limit Legislative Sessions - Draft (Attachment 17). It was decided to add the comment that the Committee studied this issue.

- State General Fund - Draft (Attachment 18). The Committee decided to look at this draft further and let staff know of any changes and Staff will mail a final draft to the Committee.

Senator Kerr asked if the Committee would be interested in changing the language in regard to the developmental disability waiver because it appears that Kansas is alone in the language "reasonable and adequate" as a standard for payment. The Committee agreed to flag this issue and recommend the issue be taken up during the 2003 Legislative Session. Staff will draft a letter to House Appropriations and Senate Ways and Means regarding study of this issue and for possible removal of that language in this and other statutes.

Chairman Morris noted this was the Committee's last meeting and thanked the Committee members for their good work.

Representative Wilk moved, with a second by Senator Kerr, to approve the minutes of the September 30 - October 1, 2002, meeting. Motion carried.

The meeting adjourned at 3:00 p.m.

Prepared by Mary Shaw
Edited by Leah Robinson

Approved by the Committee on:

December 16, 2002
(date)