

Approved: March 10, 2000
Date

MINUTES OF THE SENATE WAYS & MEANS COMMITTEE.

The meeting was called to order by Chairperson Dave Kerr at 11:00 a.m. on March 7, 2000 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Alan Conroy, Chief Fiscal Analyst, KLRD
Rae Anne Davis, KS Legislative Research Department
Debra Hollon, KS Legislative Research Department
Norman Furse, Revisor of Statutes
Michael Corrigan, Asst. Revisor of Statutes
Judy Bromich, Administrative Assistant to the Chairman
Ronda Miller, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

The FY 2001 subcommittee reports on the **Judicial Council, the Board of Indigents' Defense Services, and the Judicial Branch** were presented by Senator Ranson ([Attachment 1](#)).

In discussing item 2 of the Board of Indigents' Defense Services report, Senator Salisbury noted the lower cost per case for both public defenders and assigned counsel and inquired how that had occurred with the simultaneous increase in the number of cases. Pat Scalia, Executive Director of the Board of Indigents' Defense Services, stated that the House and Senate granted the Board's attorneys pay parity last year and that has resulted in better retention of experienced attorneys. She stated that the geographic area has also been expanded by providing state cars so that additional counties are covered. In answer to a question, Executive Director Scalia stated that the definition of indigency is tied to federal poverty guidelines and there has been no change in the definition.

Senator Salmans inquired about the costs associated with expert witnesses and specialized laboratory tests, etc. noted in item 3 of the Board of Indigents' Defense Services report. The Director stated that, as the defense, the Board has to hire private attorneys and it is difficult to get a competitive contract because of the limited number of attorneys who will take the cases.

Senator Morris inquired whether there had been any positive results from opening new public defender offices. Executive Director Scalia stated that the recently opened offices are not cost effective. She told members that they exist because there was a refusal on the part of the private attorneys to handle cases.

The Chairman expressed his appreciation of the Executive Director's leadership of this agency.

Following Senator Ranson's review of the Judicial Branch, she noted that the subcommittee hopes to have a recommendation regarding the judicial branch nonjudicial salary initiative fund contained in the provisions of **SB 506** by the end of the week. She stated that the subcommittee is considering increased docket fees as a funding source. Chairman Kerr expressed his concern that the impact on the SGF in the second and subsequent years would be substantial.

Senator Downey noted that she would be addressing the subcommittee's recommendation for a district magistrate judge for the 9th judicial district even if revenue constraints are not relieved (Item 3, [Attachment 1-16](#)). In answer to Senator Salisbury, Senator Ranson stated that the subcommittee did not review the total number of cases filed by judicial district, but this recommendation was that of the Chief Justice. Because of Senator Downey's statement and the subcommittee recommendations regarding

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magistrate judge positions, Senator Salisbury encouraged the Chairman to conduct a hearing on a bill in Ways and Means which would eliminate the requirement that there be a resident judge in every county.

It was moved by Senator Ranson and seconded by Senator Jordan that the FY 2001 subcommittee reports on the Judicial Council, the Board of Indigents' Defense Services, and the Judicial Branch be adopted. The motion carried on a voice vote.

HB 2660: Claims against the state

It was moved by Senator Salmans that the amount of the claim to be paid in line 31 on page 6 be amended to read \$7,944.00. It was noted that this amount does not include loan deficiency losses. The motion was seconded by Senator Downey, and it carried on a voice vote.

Members discussed the Naramore claim at length (Sec. 12 on page 8). Again, the Chairman requested that members separate the issues:

- Should the claim be paid?
- If so, how much and from what source?

It was the general consensus of the Committee that the Health Care Stabilization Fund was an inappropriate source of revenue to fund the claim. Members discussed whether the state should be held liable in cases of people who are acquitted of criminal charges and whether payment of this claim would set a precedent. Chairman Kerr expressed his opinion that **if** anything was mishandled, it occurred in either the Attorney General's Office or the Board of Healing Arts. Members expressed frustration with not knowing how or where to place blame; Senator Downey stated that she did not want to send a message to the Attorney General to be any less aggressive in pursuit of cases.

Senator Lawrence moved, Senator Feleciano seconded, that \$250,000 be paid for the Naramore claim. In answer to Senator Salisbury, Senator Lawrence stated that she offered the motion because she believed the points submitted by the attorney for Dr. Naramore and believed that the state was overly aggressive in prosecuting this as a criminal case. She stated that she believed that this claim against the state is the only recourse available to Dr. Naramore. In answer to a question, Dr. Wolff stated that he believed prosecutors and judges are generally immune from liability for the actions they take for either bringing the case or following through on the case once it is brought because of the tort claims act. Senator Salisbury suggested that the Legislature look at this issue in the future.

Senator Ranson offered a substitute motion which was seconded by Senator Downey to pay \$200,000 for the Naramore claim. The motion carried on a voice vote.

Senator Morris moved, Senator Gilstrap seconded, that the payment of the Naramore claim be divided equally between the Consumer Recoupment Account of the Attorney General, the Board of Healing Arts, and the State General Fund. In answer to a question, it was stated that the balance in the Board of Healing Arts Fee Fund was \$270,000 and there is a carryover uncommitted balance of \$200,000 in the Consumer Recoupment Account of the Attorney General's Office. Senator Downey offered a substitute motion to pay the Naramore claim with \$50,000 from the Consumer Recoupment Fund within the Office of the Attorney General and \$150,000 from the SGF. The motion died for lack of a second.

The main motion carried on a voice vote.

Senator Ranson moved, Senator Downey seconded, that \$50,000 be appropriated from the SGF to pay the Schmidt family claim. It was noted that this issue is not about money, but is a recognition that the state should be expected to take an active role in protecting its citizens and this is a penalty assessed against the state. The motion carried on a voice vote.

It was moved by Senator Morris and seconded by Senator Petty that **HB 2660 as amended** be recommended favorably for passage. The motion carried on a roll call vote.

A motion was offered by Senator Jordan and seconded by Senator Gilstrap that the minutes of the March 2

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and 3 meetings be approved. The motion carried on a voice vote.

Information regarding the status of Senate and House adjustments to the amended Governor's budget recommendations was distributed to members (Attachment 2).

The Chairman adjourned the meeting at 12:10 p.m. The next meeting will be March 8, 2000.