



February 1, 2016

To: House Appropriations Committee

From: Doug Wareham, Kansas Bankers Association

Re: HB 2530: Fee Sweeps of Fee Funded Agencies

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to offer comments on the proposed rescission bill that will make various state general fund spending cuts and fund transfers to help balance the state budget for FY 2016. The KBA is a nonprofit trade organization representing 98% of the banks and savings and loan associations chartered in Kansas. Approximately 2/3 of the banks we represent have state charters granted by the Office of the State Bank Commissioner.

Our concern stems from the proposed "fee fund sweep" of the bank commissioner fee fund that is contained in the rescission bill. We would respectfully request that you delete any fee fund sweeps from the bank commissioner fee fund specifically, and generally, from all fee-funded regulatory agencies.

The practice of raiding fee funded agencies' balances began in the late 1990's. As fee funded agencies collect fees from the industry they are required by law to regulate, fee fund balances increase and decrease depending on the time of year – as the funds are received from regulated entities, and are used for expenses incurred by the regulating agency. These funds are vital for the continued operation of these agencies, as they are the source of payment, for example, for bank examiners and their supervisors.

As the practice of raiding fee funds continued into the 2000's, several affected business groups sued the State of Kansas, requesting a declaratory judgment. The lawsuit asked for three things: 1) a determination that fee fund sweeps were actually an unconstitutional taking of fees; 2) an end to future fee fund sweeps; and 3) restitution of the fee funds that were swept in 2009.

After almost 5 years of litigation, the Kansas Supreme Court recently sided with the plaintiffs and unanimously found that the practice of sweeping fee funds is an unconstitutional tax on the entities which paid those fees to be used within the agency. The Court stated that the legislature was using these "fees" as if they were "public funds", and they are not. The case has been remanded back to the Shawnee County District Court for a determination whether any of the funds swept represented actual costs to the state for items purchased or used by each agency as that would be the only justification of the taking by the state of these funds for state general fund purposes.

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For these reasons, we would strongly urge the Committee to delete the fee fund sweep currently contained in the rescission bill for the bank commissioner fee fund – and generally, to reject all fee fund sweeps. Taking these fee funds for state general fund purposes potentially subjects regulated entities such as banks, to increased fees, which is effectively, a tax increase to these entities.

Thank you for your consideration of this matter. Please contact me if you have any questions.