

Journal of the House

SIXTY-FIFTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Thursday, June 4, 2009, 10:00 a.m.

The House met pursuant to **SCR 1619** with Speaker O'Neal in the chair.

Prayer by Chaplain Brubaker:

Our Heavenly Father,
Today we lift up our hearts to you
at the close of another session.
Thank you for your faithfulness
in leading, guiding and directing us.
For some of us, there were decisions made
for which we celebrate,
for others, there were decisions made that
we still struggle about within.
This was an unusually rough session
because of these difficult times.
Perhaps the atmosphere got a little tense
as we worked out the differences and opposing views.
Please forgive us if ever we allowed
our discussions and debates to become personal.
Forgive us if we ever used our position
to advance our own personal ambitions
rather than to advance a better life for our citizens.
And now, as we have opportunity to
step away and take a break,
please give us a sense of renewal and rejuvenation.
Keep us safe as we travel throughout the state,
touching base with those whom we serve.
Bring us back next session with a new sense of
purpose and determination to seek out the vision
and plans You have for us and our state.
In Christ's name I pray, Amen.

The Pledge of Allegiance was led by Rep. Roth.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following resolutions were referred to committees as indicated:

Appropriations: **SCR 1616**.

Transportation: **SCR 1618**.

MESSAGE FROM THE GOVERNOR

May 12, 2009

Message to the House of Representatives of the State of Kansas:

Enclosed herewith is Executive Directive No. 09-397 for your information.

EXECUTIVE DIRECTIVE No. 09-397
 Authorizing Expenditure of Federal Funds

MARK PARKINSON
Governor

The above Executive Directive is on file and open for inspection in the office of the Chief Clerk.

MESSAGES FROM THE GOVERNOR

S. Sub. for HB 2032; HB 2099, HB 2267, HB 2295 approved on May 15, 2009.

Also, **HB 2374** approved on May 19, 2009.

Also, **HB 2010, HB 2060; S. Sub. for HB 2072; HB 2158, HB 2162, HB 2214** approved on May 21, 2009.

Also, **S. Sub. for HB 2365; HB 2366, HB 2369** approved on May 22, 2009.

VETO MESSAGE FROM THE GOVERNOR

The following message with the Governor's objection to **S. Sub. for HB 2373**. An act making and concerning appropriations for the fiscal years ending June 30, 2009, June 30, 2010, June 30, 2011, June 30, 2012, June 30, 2013, and June 30, 2014, for state agencies; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements and acts incidental to the foregoing; amending K.S.A. 2008 Supp. 12-5256, as amended by section 136 of 2009 Senate Substitute for House Bill No. 2354, 76-7,107, as amended by section 139 of 2009 Senate Substitute for House Bill No. 2354, 79-2978, as amended by section 88 of 2009 House Substitute for Substitute for Senate Bill No. 23, 79-2979, as amended by section 89 of 2009 House Substitute for Substitute for Senate Bill No. 23, 79-3425i, as amended by section 144 of 2009 Senate Substitute for House Bill No. 2354, 79-34,156, as amended by section 91 of 2009 House Substitute for Substitute for Senate Bill No. 23, and 79-4801, as amended by section 145 of 2009 Senate Substitute for House Bill No. 2354, and repealing the existing sections; also repealing section 102 of 2009 Senate Substitute for House Bill No. 2354, 79-2978, as amended by section 142 of 2009 Senate Substitute for House Bill No. 2354, and 79-2979, as amended by section 143 of 2009 Senate Substitute for House Bill No. 2354, was received and read.

Message to the House of Representatives of the State of Kansas:

Pursuant to Article 2, Section 14 of the Constitution of the State of Kansas, I hereby return **S. Sub. for HB 2373** with my signature approving the bill, except for the items enumerated below.

Department of Education—KPERS—School Employer Contributions

That portion of Section 36(a) that reads as follows has been line-item vetoed:

“For the fiscal year ending June 30, 2010 \$1,850,000”

This FY 2010 appropriation for the KPERS—School employer contribution was accounted for in the agency's lapse contained in Section 36(b). In order to appropriate only those monies absolutely necessary, I hereby line-item veto this appropriation.

Kansas State University

Section 70(c) has been line-item vetoed in its entirety:

Financing of the Salina Aeronautical Center located at Kansas State University's Salina Campus is a lease purchase agreement that is by its nature equivalent to a debt service agreement. The 2009 Legislature intended that funding of debt service should not be lapsed, and I concur with that intent. In that spirit, I therefore find it necessary to veto this lapse so that this obligation can be met.

Department of Health and Environment

Section 89 has been line-item vetoed in its entirety:

“Regardless of one’s views on whether abortion should be allowed in this country, hopefully we can all agree that we should make every effort to prevent unplanned pregnancies. Access to affordable family planning services and contraceptives is critical if we are to continue reducing the number of abortions that occur in this state.

“This section would prohibit distribution of Title X moneys to private family planning providers unless they are either a hospital or provide comprehensive primary and preventative care in addition to family planning services. This proviso would prevent funding for two facilities of other eligible family planning providers. These facilities do not perform abortions, and by law, Title X funding cannot be used for abortion services.

“Both of these facilities provide affordable access to contraceptives and family planning services for women who are significantly below the poverty level. These women are most at risk for unplanned pregnancies. The family planning services provided by these facilities help lower the likelihood of unplanned pregnancy, and thus reduce abortions. Eliminating funding for programs intended to reduce the number of unplanned pregnancies does nothing to help reduce abortions in Kansas.

“I am also concerned this proviso violates Title X of the Public Service Act. The facilities ineligible for funding under this proviso are, by law, eligible under Title X to receive the grants. The Public Service Act is clear that states are not permitted to refuse the award of Title X funding to entities that meet the statutory requirements for the grants. I therefore find it necessary to line-item veto this proviso.”

MARK PARKINSON
Governor

Dated: May 22, 2009

CONSIDERATION OF VETOED LINE ITEMS

The governor’s line item objections to **S. Sub. for HB 2373** having been read (see this Journal, pp. 780-781), the time arrived for reconsideration of **S. Sub. for HB 2373**. An act making and concerning appropriations for the fiscal years ending June 30, 2009, June 30, 2010, June 30, 2011, June 30, 2012, June 30, 2013, and June 30, 2014, for state agencies; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements and acts incidental to the foregoing; amending K.S.A. 2008 Supp. 12-5256, as amended by section 136 of 2009 Senate Substitute for House Bill No. 2354, 76-7,107, as amended by section 139 of 2009 Senate Substitute for House Bill No. 2354, 79-2978, as amended by section 88 of 2009 House Substitute for Substitute for Senate Bill No. 23, 79-2979, as amended by section 89 of 2009 House Substitute for Substitute for Senate Bill No. 23, 79-3425i, as amended by section 144 of 2009 Senate Substitute for House Bill No. 2354, 79-34,156, as amended by section 91 of 2009 House Substitute for Substitute for Senate Bill No. 23, and 79-4801, as amended by section 145 of 2009 Senate Substitute for House Bill No. 2354, and repealing the existing sections; also repealing section 102 of 2009 Senate Substitute for House Bill No. 2354, 79-2978, as amended by section 142 of 2009 Senate Substitute for House Bill No. 2354, and 79-2979, as amended by section 143 of 2009 Senate Substitute for House Bill No. 2354.

There was no motion to reconsider the line items. The chair ruled the line items had been reconsidered and the veto sustained.

PROTEST

Pursuant to the provisions of Article 2, Section 10 of the Kansas Constitution and K.S.A. 2008 Supp. 46-2339(c), I make formal written protest regarding the passage of those line items contained in 2009 **S. Sub. for HB 2373** (Omnibus Appropriations bill) which purport to cause the transfer of statutory fee funds to the State General Fund under the guise of reimbursing the SGF for “accounting, auditing, budgeting, legal, payroll, personnel and purchasing services and any other governmental services which are performed on behalf of the state agency by other state agencies which receive appropriations from the state general fund to provide such services.”

Attention is directed to the holding and rationale of Kansas Attorney General Opinion No. 2002-45, where it was noted that “[i]f an assessment so exceeds the cost of regulation

that it is apparent the legislature is using it as a general revenue raising measure, the overage cannot stand on police power authority. If the assessment is in fact a revenue raising measure, it must be analyzed as such, which may include a determination as to whether it meets Commerce Clause and Equal Protection requirements, as well as any state constitutional requirements applicable to the type of tax it is. If an assessment cannot stand on either police power or taxing authority, it would have to be reimbursed..."

It cannot be argued that the fee sweeps contained in **S. Sub. for HB 2373** serve the legitimate purpose of reimbursing the SGF for the reasonable and necessary expenses of providing the purported services. Indeed, it is common knowledge that the fee sweeps were and are for the sole purpose of providing sufficient revenue within the SGF to balance the budget for FY 2010. Sweeping statutory fee funds held in trust for the specific purposes outlined in their enabling legislation constitutes a taking for which affected parties are entitled to a remedy under the law. That remedy is reimbursement.

That it is common knowledge that revenue raising was the primary, if not sole motivation for the fee sweeps is illustrated by the Notices of Assessment that were recently sent out by the Kansas Insurance Department with regard to assessing Kansas businesses for the Workers' Compensation Fee Fund, one of the funds targeted for sweeps in **S. Sub. for HB 2373**. The Notice states: "**Action by the 2009 Kansas Legislature included a sweep of monies from the Workers' Compensation Fee Fund into the State General Fund. This action was part of the Legislature's proposal to remedy a revenue shortage in the State General Fund. This legislative sweep makes it necessary that the Kansas Insurance Department levy an assessment this year of 1.0 percent.**"

The effect of the fee sweeps will, like the Notice above implies, cause individuals and businesses required to pay the statutory fees to pay a second time for the same services/programs they paid for previously with funds that are now swept. This constitutes an unauthorized tax. This practice of fee sweeps has occurred in the past, prompting the above-referenced Attorney General Opinion. The time has come for the Executive Branch and Legislative Branch to cease and desist the practice of attempting to balance the State General Fund by a subterfuge that is neither legal nor ethical, and which amounts to an unauthorized tax increase on affected Kansas taxpayers.—MICHAEL R. "MIKE" O'NEAL

MESSAGE FROM THE SENATE

Announcing the Senate herewith transmits the veto message from the Governor on **H. Sub. for SB 51**. An act concerning local governments, relating to boundary issues, amending K.S.A. 12-519, 12-520b, 12-521, 12-531 and 12-532 and K.S.A. 2008 Supp. 12-520, 82a-612 and 82a-646 and repealing the existing sections, which was received on May 22, 2009, and was read before the Senate on June 4, 2009.

Message from the Governor

The state should not take action that limits the ability of cities to pursue developments that will lead to economic growth, especially during these difficult economic times. Cities in Kansas must have the flexibility to annex property that will allow growth and economic development. Planning for growth in a way that promotes the health, safety and public welfare of its citizens and neighbors also is a fundamental responsibility of cities.

I support the procedural safeguards for landowners whose property is annexed over their objection that are contained in **H. Sub. for SB 51**. I also support the provisions limiting a city's future ability to annex a narrow corridor of land to reach a non-contiguous tract of land, and the provisions dealing with rural water districts. I hope the Legislature will focus on these aspects of House Substitute for SB 51 during the next legislative session.

I am concerned that the provisions in **H. Sub. for SB 51** that prohibit a city from annexing more than 65 acres of land devoted to agricultural use may prevent cities from growing in ways that would greatly benefit the economy. I have confidence that the current requirement for a county commission to approve a city's proposed annexation of property in the unincorporated county provides a safeguard from unreasonable annexation attempts.

Therefore, pursuant to Article 2, Section 14 of the Constitution of the State of Kansas, I veto **H. Sub. for SB 51**.

MARK PARKINSON
Governor

Dated: May 22, 2009

There being no motion to reconsidered the veto on **H. Sub. for SB 51**, the President ruled the veto sustained.

MESSAGE FROM THE SENATE

Announcing the Senate herewith transmits the veto message from the Governor on **SB 171**, An act concerning elections; pertaining to efficiency in handling ballots from military personnel and other official services absentee voters; pertaining to advance voting ballots; pertaining to candidate filing deadlines; amending K.S.A. 25-205, 25-1218 and 25-4004 and K.S.A. 2008 Supp. 25-1124, 25-1128 and 25-1216 and repealing the existing sections, which was received on May 22, 2009, and was read before the Senate on June 4, 2009.

Message from the Governor

This legislation contains a provision which I would be happy to sign into law, the opportunity for overseas and military voters to vote more easily. Allowing federal service voters to register and send ballots by e-mail will make it easier for more Kansans living abroad to participate. Fortunately, the Legislature still has time to send me these provisions in a clean bill before the 2010 elections.

However, this legislation also contains provisions which will discourage advance voting, burdening the democratic process in Kansas. Last year, more than 70 percent of registered voters in Kansas participated in the Presidential election. During that election, as with all elections before it, there was no conclusive evidence of voter fraud in Kansas. Despite this lack of a problem, SB 171 seeks to find a solution by adding affidavits and signature lines to an already crowded return envelope for an advance ballot. These unnecessary hurdles will inevitably confuse voters and discourage many of them from voting.

County election officials have suggested repeatedly that there is not conclusive evidence of voter fraud in Kansas. In fact, more and more Kansans are voting early; this is a trend we should be encouraging, not disrupting.

Again, I look forward to working with the Legislature next session to sign into law legislation that involves more people in our democracy, without creating new and needless obstacles to the voting process.

Therefore, pursuant to Article 2, Section 14 of the Constitution of the State of Kansas, I veto **SB 171**.

MARK PARKINSON
Governor

Dated: May 22, 2009

There being no motion to reconsidered the veto on **SB 171**, the President ruled the veto sustained.

REPORT ON ENGROSSED BILLS

HB 2060; S. Sub. for HB 2072; HB 2162, HB 2214; S. Sub. for Sub. HB 2365 reported correctly engrossed May 12, 2009.

HB 2158, HB 2374 reported correctly re-engrossed May 12, 2009.

REPORT ON ENROLLED BILLS

S. Sub. for HB 2267; S. Sub. for HB 2295 reported correctly enrolled, properly signed and presented to the governor on May 11, 2009.

Also, **HB 2010, HB 2060; S. Sub. for HB 2072; HB 2158, HB 2162, HB 2214; S. Sub. for Sub. HB 2365; HB 2366; S. Sub. for HB 2369; S. Sub. for HB 2373; HB 2374** reported correctly enrolled, properly signed and presented to the Governor on May 15, 2009.

REPORT ON ENROLLED RESOLUTIONS

HR 6033, HR 6034, HR 6035 reported correctly enrolled and properly signed on May 13, 2009.

Also, **HR 6021** reported correctly enrolled and properly signed on May 22, 2009.

The hour for final adjournment having arrived, Speaker O'Neal said, "By virtue of the authority vested in me, as Speaker of the House of Representatives of the 2009 session, I do now declare the House adjourned sine die."

SUSAN W. KANNARR, *Chief Clerk*.

CHARLENE SWANSON, *Journal Clerk*.

