

Journal of the Senate

SIXTY-FIRST DAY

SENATE CHAMBER, TOPEKA, KANSAS
Tuesday, May 5, 2009—9:00 a.m.

The Senate was called to order by President Stephen Morris.

The roll was called with forty senators present.

Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

I want to thank You that Your influence on the Founders is obvious as their own words have shown:

George Washington: (May 14, 1787 at the Constitutional Convention) “Let us raise a standard to which the wise and the honest can repair; the event is in the hands of God.”

John Adams: (October 11, 1798) “Our constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.”

Ben Franklin: (June 28, 1787 at the Constitutional Convention) “. . . the longer I live, the more convincing proofs I see of the truth—that God governs in the affairs of men. And if a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without His aid?”

James Madison: (1778) “We have staked the future of all of our political institutions upon the capacity of mankind for self-government, upon the capacity of each and all of us to govern ourselves, to control ourselves, to sustain ourselves according to the Ten Commandments of God.”

These quotations, along with those of the rest of the founders, verify that they took seriously the words of the Psalmist, “Blessed is the nation whose God is the Lord.” (Psalms 33:12a) And that You intended to influence all layers of American government.

I pray in the Name of Jesus Christ,

AMEN

The Pledge of Allegiance was led by President Stephen Morris.

MESSAGE FROM THE HOUSE

The House concurs in Senate amendments to **Senate Substitute for HB 2032**.

The House concurs in Senate amendments to **Senate Substitute for HB 2099**.

The House nonconcur in Senate amendments to **HB 2195**, requests a conference and appoints Representatives Morrison, Kinzer and Pauls as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **HB 2060** and has appointed Representatives Colloton, Patton and McCray-Miller as third conferees on the part of House.

On motion of Senator D. Schmidt, the Senate recessed until 9:45 a.m.

The Senate met pursuant to recess with President Morris in the chair.

CHANGE OF REFERENCE

The President withdrew **HB 2369** from the Committee on **Ways and Means**, and referred the bill to the **Committee on Utilities**.

ORIGINAL MOTION

On motion of Senator Emler, the Senate acceded to the request of the House for a conference on **HB 2195**.

The President appointed Senators Vratil, McGinn and Kelly as conferees on the part of the Senate.

REPORTS OF STANDING COMMITTEES

Committee on **Assessment and Taxation** recommends **SB 337** be amended by substituting a new bill to be designated as "Substitute for SENATE BILL No. 337," as follows:

"Substitute for SENATE BILL No. 337

By Committee on Assessment and Taxation

"AN ACT concerning the settlement authority of secretary of revenue; relating to certain assessments.";

and the substitute bill be passed.

COMMITTEE OF THE WHOLE

On motion of Senator D. Schmidt, the Senate resolved itself into Committee of the Whole, for consideration of bills on the calendar under the heading of General Orders with Senator Apple in the chair.

On motion of Senator Apple the following report was adopted:

S Sub for HB 2373 be amended by adoption of the committee report recommending a substitute bill, be further amended by motion of Senator Emler, on page 49, in line 40, by adding \$487,500 to the dollar amount and by adjusting the dollar amount in line 40 accordingly;

On page 52, in line 19, by subtracting \$487,500 from the dollar amount and by adjusting the dollar amount in line 19 accordingly;

On page 55, after line 29, by inserting the following:

"(u) In addition to the other purposes for which expenditures may be made by the above agency from the state operations account of the state general fund for fiscal year 2010, as authorized by 2009 Senate Substitute for House Bill No. 2354, expenditures shall be made by the above agency from the state operations account of the state general fund for fiscal year 2010 to make expenditures to contract with Kansas legal services for the purpose of providing legal representation and disability determination case management for adult cash assistance recipients."

S Sub for HB 2373 be further amended by motion of Senator Emler, on page 1, in line 32, by striking "and" where it appears for the first time, and inserting a comma; also in line 32, after "2011," by inserting "June 30, 2012, June 30, 2013 and June 30, 2014,";

On page 4, in line 22, by adding \$469,766 to the dollar amount and by adjusting the dollar amount in line 22 accordingly;

On page 31, in line 1, by subtracting \$2,248,000 from the dollar amount and by adjusting the dollar amount in line 1 accordingly; after line 28, by inserting the following:

"(e) On July 1, 2009, of the \$369,788,630 appropriated for the above agency for the fiscal year ending June 30, 2010 by section 66(a) of 2009 Senate Substitute for House Bill No. 2354 from the state general fund in the special education services aid account, the sum of \$2,248,000 is hereby lapsed.";

On page 35, after line 7, by inserting the following:

"(o) On the effective date of this act, or as soon thereafter as moneys are available, notwithstanding the provisions of K.S.A. 79-4227, and amendments thereto, or any other statute, the director of accounts and reports shall transfer \$2,000,000 from the special county

mineral production tax fund of the department of revenue to the state general fund: *Provided*, That the transfer of such amount shall be in addition to any other transfer from the special county mineral production tax fund to the state general fund as prescribed by law: *Provided further*, That the amount transferred from the special county mineral production tax fund to the state general fund pursuant to this subsection is to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services and any other governmental services which are performed on behalf of the department of revenue by other state agencies which receive appropriations from the state general fund to provide such services.

(p) On the effective date of this act, or as soon thereafter as moneys are available, notwithstanding the provisions of any other statute, the director of accounts and reports shall transfer \$400,000 from the county drug tax fund of the department of revenue to the state general fund: *Provided*, That the transfer of such amount shall be in addition to any other transfer from the county drug tax fund to the state general fund as prescribed by law: *Provided further*, That the amount transferred from the county drug tax fund to the state general fund pursuant to this subsection is to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services and any other governmental services which are performed on behalf of the department of revenue by other state agencies which receive appropriations from the state general fund to provide such services.

(q) On the effective date of this act, or as soon thereafter as moneys are available, notwithstanding the provisions of K.S.A. 79-3387 or 79-3391, and amendments thereto, or any other statute, the director of accounts and reports shall transfer \$380,000 from the cigarette and tobacco products regulation fund of the department of revenue to the state general fund: *Provided*, That the transfer of such amount shall be in addition to any other transfer from the cigarette and tobacco products regulation fund to the state general fund as prescribed by law: *Provided further*, That the amount transferred from the cigarette and tobacco products regulation fund to the state general fund pursuant to this subsection is to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services and any other governmental services which are performed on behalf of the department of revenue by other state agencies which receive appropriations from the state general fund to provide such services.”;

On page 66, in line 10, by subtracting \$336,590 from the dollar amount and by adjusting the dollar amount in line 10 accordingly;

On page 73, in line 17, by striking “an”;

On page 1, in the title, in line 10, by striking “and” and inserting a comma

S Sub for HB 2373 be further amended by motion of Senator Emler, on page 63, in line 23, by adding \$2,427 to the dollar amount and by adjusting the dollar amount in line 23 accordingly; in line 27, by adding \$793 to the dollar amount and by adjusting the dollar amount in line 27 accordingly; in line 32, by adding \$10,983 to the dollar amount and by adjusting the dollar amount in line 32 accordingly; in line 37, by adding \$221 to the dollar amount and by adjusting the dollar amount in line 37 accordingly; in line 42, by adding \$370 to the dollar amount and by adjusting the dollar amount in line 42 accordingly;

On page 64, in line 3, by adding \$130 to the dollar amount and by adjusting the dollar amount in line 3 accordingly; in line 7, by adding \$350 to the dollar amount and by adjusting the dollar amount in line 7 accordingly; in line 11, by adding \$1,374 to the dollar amount and by adjusting the dollar amount in line 11 accordingly; in line 16, by adding \$648 to the dollar amount and by adjusting the dollar amount in line 16 accordingly; in line 21, by adding \$85 to the dollar amount and by adjusting the dollar amount in line 21 accordingly; in line 25, by adding \$311 to the dollar amount and by adjusting the dollar amount in line 25 accordingly; in line 30, by adding \$80 to the dollar amount and by adjusting the dollar amount in line 30 accordingly; in line 35, by adding \$8,146 to the dollar amount and by adjusting the dollar amount in line 35 accordingly; in line 41, by adding \$22,846 to the dollar amount and by adjusting the dollar amount in line 41 accordingly;

On page 65, in line 2, by adding \$1,084 to the dollar amount and by adjusting the dollar amount in line 2 accordingly; in line 6, by adding \$71,384 to the dollar amount and by adjusting the dollar amount in line 6 accordingly; in line 12, by adding \$296 to the dollar

amount and by adjusting the dollar amount in line 12 accordingly; in line 16, by adding \$53 to the dollar amount and by adjusting the dollar amount in line 16 accordingly; in line 21, by adding \$63 to the dollar amount and by adjusting the dollar amount in line 21 accordingly; in line 25, by adding \$140 to the dollar amount and by adjusting the dollar amount in line 25 accordingly; in line 31, by adding \$1,330 to the dollar amount and by adjusting the dollar amount in line 31 accordingly; in line 35, by adding \$537 to the dollar amount and by adjusting the dollar amount in line 35 accordingly; in line 40, by adding \$245 to the dollar amount and by adjusting the dollar amount in line 40 accordingly;

On page 66, in line 2, by adding \$297 to the dollar amount and by adjusting the dollar amount in line 2 accordingly; in line 6, by subtracting \$2,451 from the dollar amount and by adjusting the dollar amount in line 6 accordingly; in line 23, by adding \$76,511 to the dollar amount and by adjusting the dollar amount in line 23 accordingly; in line 28, by adding \$98 to the dollar amount and by adjusting the dollar amount in line 28 accordingly; in line 33, by adding \$133 to the dollar amount and by adjusting the dollar amount in line 33 accordingly;

On page 67, in line 9, by adding \$13,817 to the dollar amount and by adjusting the dollar amount in line 9 accordingly; in line 14, by adding \$22,053 to the dollar amount and by adjusting the dollar amount in line 14 accordingly; in line 26, by adding \$7,322 to the dollar amount and by adjusting the dollar amount in line 26 accordingly; in line 30, by adding \$280 to the dollar amount and by adjusting the dollar amount in line 30 accordingly; in line 38, by adding \$94,376 to the dollar amount and by adjusting the dollar amount in line 38 accordingly; in line 42, by adding \$4,388 to dollar amount and by adjusting the dollar amount in line 42 accordingly;

On page 68, in line 3, by adding \$98 to the dollar amount and by adjusting the dollar amount in line 3 accordingly; in line 14, by adding \$75,087 to the dollar amount and by adjusting the dollar amount in line 14 accordingly; in line 18, by adding \$1,951 to the dollar amount and by adjusting the dollar amount in line 18 accordingly; in line 23, by adding \$3,245 to the dollar amount and by adjusting the dollar amount in line 23 accordingly; in line 34, by adding \$24,071 to the dollar amount and by adjusting the dollar amount in line 34 accordingly; in line 38, by adding \$97 to the dollar amount and by adjusting the dollar amount in line 38 accordingly;

On page 69, in line 1, by adding \$201 to the dollar amount and by adjusting the dollar amount in line 1 accordingly; in line 8, by adding \$22,843 to the dollar amount and by adjusting the dollar amount in line 8 accordingly; in line 12, by adding \$159 to the dollar amount and by adjusting the dollar amount in line 12 accordingly; in line 16, by adding \$95 to the dollar amount and by adjusting the dollar amount in line 16 accordingly; in line 24, by adding \$24,861 to the dollar amount and by adjusting the dollar amount in line 24 accordingly; in line 31, by adding \$48,251 to the dollar amount and by adjusting the dollar amount in line 31 accordingly

S Sub for HB 2373 be further amended by motion of Senator Vratil, on page 69, following line 31, by inserting the following:

“Sec. 86. (a) On July 1, 2009, of the amount of each appropriation or reappropriation for a state agency for the fiscal year ending June 30, 2010, made by 2009 Senate Substitute for House Bill No. 2354 from the state general fund, the sum equal to 0.25% of such appropriation or reappropriation, which is not exempt, is hereby lapsed. The following are exempt from and shall not be reduced by such lapsing provision: (1) Any item of appropriation or reappropriation for debt service for payments pursuant to contractual bond obligations, and (2) any item of appropriation or reappropriation from the state general fund for the fiscal year ending June 30, 2010, for the department of social and rehabilitation services, Kansas health policy authority, or the department on aging which are required to meet caseload obligations under the state medicaid plan including nursing facilities, general medical, targeted case management, mental health, community supports and services, or addiction and prevention services or for the department of social and rehabilitation services to meet caseload obligations for nursing facilities for mental health, general assistance, temporary assistance for families, foster care and reintegration services contracts or adoption services contracts, as certified by the director of the budget to the director of accounts and reports for the purposes of this clause (2): *Provided*, That, at the same time that such certification

is made by the director of the budget to the director of accounts and reports under this clause (2), the director of the budget shall deliver a copy of such certification to the director of the legislative research department.”;

And by renumbering sections accordingly

S Sub for HB 2373 be further amended by motion of Senator Teichman, on page 31, by striking all in lines 2 through 28

S Sub for HB 2373 be further amended by motion of Senator V. Schmidt, on page 50, in line 11, preceding the period, by inserting the following:

“: And provided further, That, the Kansas health policy authority shall not expend any moneys appropriated for fiscal year 2009 or fiscal year 2010 for such agency as authorized by chapter 131 or 184 of the 2008 Session Laws of Kansas, House Substitute for Substitute for Senate Bill No. 23, Senate Substitute for House Bill No. 2354, or by this or other appropriation act of the 2009 regular session of the legislature, to implement or maintain a preferred drug formulary for medications prescribed for mental health purposes to individuals in the MediKan program during the fiscal years ending June 30, 2009, or June 30, 2010”;

S Sub for HB 2373 be further amended by motion of Senator Taddiken, on page 17, before line 18, by inserting the following:

“(d) On September 1, 2009, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer \$25,287,150 from the state highway fund of the department of transportation to the state general fund: *Provided*, That the transfer of such amount shall be in addition to any other transfer from the state highway fund of the department of transportation to the state general fund as prescribed by law: *Provided further*, That all moneys transferred shall be from revenue generated by moneys credited to the state highway fund pursuant to K.S.A. 79-3620 and 79-3710, and amendments thereto.”

S Sub for HB 2373 be further amended by motion of Senator D. Schmidt, on page 69, following line 31, by inserting the following:

“Sec. 86. (a) On the effective date of this act, the amount directed to be transferred by any subsection of any section of this act by the director of accounts and reports from any special revenue fund for any state agency to the state general fund, for the express purpose to reimburse the state general fund 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, on the effective date of this act, or as soon thereafter as moneys are available, is hereby decreased by the amount equal to 36% of the amount directed to be transferred by such subsection of such section of this act: *Provided*, That the director of the budget shall calculate and certify the amount of each such decrease prescribed by this subsection (a) to the director of accounts and reports: *Provided*, That, at the same time that such certification is made by the director of the budget to the director of accounts and reports under this subsection (a), the director of the budget shall deliver a copy of such certification to the director of the legislative research department.

(b) On July 1, 2009, the amount directed to be transferred by any section of this act by the director of accounts and reports from any special revenue fund for any state agency to the state general fund, for the express purpose to reimburse the state general fund 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, on July 1, 2009, or as soon thereafter as moneys are available, is hereby decreased by the amount equal to 36% of the amount directed to be transferred by such section of this act: *Provided*, That the director of the budget shall calculate and certify the amount of each such decrease prescribed by this subsection (b) to the director of accounts and reports: *Provided*, That, at the same time that such certification is made by the director of the budget to the director of accounts and reports under this subsection (b), the director of the budget shall deliver a copy of such certification to the director of the legislative research department.

(c) On June 30, 2010, the amount directed to be transferred by any subsection of any section of this act by the director of accounts and reports from any special revenue fund for any state agency to the state general fund, for the express purpose to reimburse the state

general fund 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, on June 30, 2010, or as soon thereafter as moneys are available, is hereby decreased by the amount equal to 36% of the amount directed to be transferred by such subsection of such section of this act: *Provided*, That the director of the budget shall calculate and certify the amount of each such decrease prescribed by this subsection (c) to the director of accounts and reports: *Provided*, That, at the same time that such certification is made by the director of the budget to the director of accounts and reports under this subsection (c), the director of the budget shall deliver a copy of such certification to the director of the legislative research department.”;

And by renumbering sections accordingly

S Sub for HB 2373 be further amended by motion of Senator Brownlee, on page 55, after line 29, by inserting the following:

“(u) On July 1, 2009, or as soon thereafter as moneys are available, of the \$11,099,830 appropriated for the above agency for the fiscal year ending June 30, 2010, by section 64(c) of 2009 Senate Substitute for House Bill 2354 from the children’s initiatives fund in the early childhood block grant account or any other account of the children’s initiatives fund, expenditures of \$50,000 shall be made during the fiscal year ending June 30, 2010, to provide training for the diagnosis of autism.”

S Sub for HB 2373 be further amended by motion of Senator Huelskamp, on page 81, preceding line 13, by inserting the following:

“Sec. 93. (a) During the fiscal year ending June 30, 2010, subject to any applicable requirements of federal statutes, rules, regulations or guidelines, any expenditures or grants of money by any state agency for family planning services financed in whole or in part from federal title X moneys shall be made subject to the following two priorities: First priority to public entities (state, county, local health departments and health clinics) and if any moneys remain then; second priority to non-public entities which are hospitals or federally qualified health centers that provide comprehensive primary and preventative care in addition to family planning services.

(b) As used in this section “hospitals” shall have the same meaning as defined in K.S.A. 65-425, and amendments thereto, and “federally qualified health center” shall have the same meaning as defined in K.S.A. 65-1669, and amendments thereto.”

And by renumbering the remaining sections accordingly

S Sub for HB 2373 be further amended by motion of Senator Hensley, on page 69, following line 31, by inserting the following:

“Sec. 86. (a) The amount directed to be transferred by any subsection of any section of this act by the director of accounts and reports from any special revenue fund for any state agency to the state general fund, for the express purpose to reimburse the state general fund 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, on the effective date of this act, or as soon thereafter as moneys are available, shall be transferred under such subsection of such section of this act on such date or dates and in such amount or amounts as determined by the director of the budget after considering the state agency’s cash flow circumstances, as certified to the director of accounts and reports by the director of the budget: *Provided*, That, at the same time that such certification is made by the director of the budget to the director of accounts and reports under this subsection (a), the director of the budget shall deliver a copy of such certification to the director of the legislative research department.

(b) The amount directed to be transferred by any subsection of any section of this act by the director of accounts and reports from any special revenue fund for any state agency to the state general fund, for the express purpose to reimburse the state general fund 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, on July 1, 2009, or as soon thereafter as moneys are available, shall be transferred

under such subsection of such section of this act on such date or dates and in such amount or amounts as determined by the director of the budget after considering the state agency's cash flow circumstances, as certified to the director of accounts and reports by the director of the budget: *Provided*, That, at the same time that such certification is made by the director of the budget to the director of accounts and reports under this subsection (b), the director of the budget shall deliver a copy of such certification to the director of the legislative research department.

(c) The amount directed to be transferred by any subsection of any section of this act by the director of accounts and reports from any special revenue fund for any state agency to the state general fund, for the express purpose to reimburse the state general fund 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, on June 30, 2010, or as soon thereafter as moneys are available, shall be transferred under such subsection of such section of this act on such date or dates and in such amount or amounts as determined by the director of the budget after considering the state agency's cash flow circumstances, as certified to the director of accounts and reports by the director of the budget: *Provided*, That, at the same time that such certification is made by the director of the budget to the director of accounts and reports under this subsection (c), the director of the budget shall deliver a copy of such certification to the director of the legislative research department.”;

And by renumbering sections accordingly

S Sub for HB 2373 be further amended by motion of Senator Teichman, on page 13, following line 5, by inserting the following:

“For the fiscal year ending June 30, 2009 \$1,500,000”;

Also on page 13, in line 6, by subtracting \$1,500,000 from the dollar amount and by adjusting the dollar amount in line 6 accordingly

S Sub for HB 2373 be further amended by motion of Senator V. Schmidt, on page 15, by striking all in lines 38 through 41; after line 41, by inserting the following:

“(a) There is appropriated for the above agency from the state general fund for the fiscal year or years specified, the following:

Operating expenditures

For the fiscal year ending June 30, 2010 \$255,327”

S Sub for HB 2373 be further amended by motion of Senator V. Schmidt, on page 16, after line 13, by inserting:

“On July 1, 2009, all of the encumbered balance in the land acquisition account of the state general fund in excess of \$100 as of June 30, 2009, is hereby reappropriated to the operating expenditures account of the attorney general—Kansas bureau of investigation for fiscal year 2010.”

S Sub for HB 2373 be further amended by motion of Senator Umbarger, on page 3, by striking all in lines 12 through 41;

On page 10, by striking all in lines 20 through 43;

On page 11, by striking all in lines 1 through 21;

On page 12, by striking all in lines 15 through 42;

On page 20, by striking all in lines 7 through 36;

On page 21, by striking all in lines 24 through 43;

On page 22, by striking all in lines 1 through 40;

On page 43, by striking all in lines 37 through 43;

On page 44, by striking all in lines 1 through 25;

And by relettering the subsections accordingly;

On page 55, by striking all in lines 30 through 43;

On page 56, by striking all in lines 1 through 43;

On page 57, by striking all in lines 1 through 25;

And by renumbering sections accordingly;

Also, in the amendment by Senator D. Schmidt which is designated as FAH2373t66 and numbered as 504, in the eighth line of subsection (a) of the section inserted into the bill on

page 69 following line 31, by striking “36%” and inserting “21.5%”; in the seventh line of subsection (b) of the section inserted into the bill on page 69 following line 31, by striking “36%” and inserting “21.5%”; by striking all of subsection (c) of the section inserted into the bill on page 69 following line 31

S Sub for HB 2373 be further amended by motion of Senator Emler, on page 63, in line 23, by adding \$482 to the dollar amount and by adjusting the dollar amount in line 23 accordingly; in line 27, by adding \$162 to the dollar amount and by adjusting the dollar amount in line 27 accordingly; in line 32, by adding \$2,244 to the dollar amount and by adjusting the dollar amount in line 32 accordingly; in line 37, by adding \$45 to the dollar amount and by adjusting the dollar amount in line 37 accordingly; in line 42, by adding \$76 to the dollar amount and by adjusting the dollar amount in line 42 accordingly;

On page 64, in line 3, by adding \$27 to the dollar amount and by adjusting the dollar amount in line 3 accordingly; in line 7, by adding \$72 to the dollar amount and by adjusting the dollar amount in line 7 accordingly; in line 11, by adding \$281 to the dollar amount and by adjusting the dollar amount in line 11 accordingly; in line 16, by adding \$132 to the dollar amount and by adjusting the dollar amount in line 16 accordingly; in line 21, by adding \$17 to the dollar amount and by adjusting the dollar amount in line 21 accordingly; in line 25, by adding \$63 to the dollar amount and by adjusting the dollar amount in line 25 accordingly; in line 30, by adding \$16 to the dollar amount and by adjusting the dollar amount in line 30 accordingly; in line 35, by adding \$1,664 to the dollar amount and by adjusting the dollar amount in line 35 accordingly; in line 41, by adding \$4,667 to the dollar amount and by adjusting the dollar amount in line 41 accordingly;

On page 65, in line 2, by adding \$222 to the dollar amount and by adjusting the dollar amount in line 2 accordingly; in line 6, by adding \$14,583 to the dollar amount and by adjusting the dollar amount in line 6 accordingly; in line 12, by adding \$61 to the dollar amount and by adjusting the dollar amount in line 12 accordingly; in line 16, by adding \$11 to the dollar amount and by adjusting the dollar amount in line 16 accordingly; in line 21, by adding \$13 to the dollar amount and by adjusting the dollar amount in line 21 accordingly; in line 25, by adding \$29 to the dollar amount and by adjusting the dollar amount in line 25 accordingly; in line 31, by adding \$272 to the dollar amount and by adjusting the dollar amount in line 31 accordingly; in line 35, by adding \$110 to the dollar amount and by adjusting the dollar amount in line 35 accordingly; in line 40, by adding \$50 to the dollar amount and by adjusting the dollar amount in line 40 accordingly;

On page 66, in line 2, by adding \$61 to the dollar amount and by adjusting the dollar amount in line 2 accordingly; in line 6, by subtracting \$14 from the dollar amount and by adjusting the dollar amount in line 6 accordingly; in line 23, by adding \$15,630 to the dollar amount and by adjusting the dollar amount in line 23 accordingly; in line 28, by adding \$20 to the dollar amount and by adjusting the dollar amount in line 28 accordingly; in line 33, by adding \$27 to the dollar amount and by adjusting the dollar amount in line 33 accordingly;

On page 67, in line 9, by adding \$2,823 to the dollar amount and by adjusting the dollar amount in line 9 accordingly; in line 14, by adding \$4,505 to the dollar amount and by adjusting the dollar amount in line 14 accordingly; in line 26, by adding \$1,496 to the dollar amount and by adjusting the dollar amount in line 26 accordingly; in line 30, by adding \$57 to the dollar amount and by adjusting the dollar amount in line 30 accordingly; in line 38, by adding \$19,280 to the dollar amount and by adjusting the dollar amount in line 38 accordingly; in line 42, by adding \$896 to dollar amount and by adjusting the dollar amount in line 42 accordingly;

On page 68, in line 3, by adding \$20 to the dollar amount and by adjusting the dollar amount in line 3 accordingly; in line 14, by adding \$15,339 to the dollar amount and by adjusting the dollar amount in line 14 accordingly; in line 18, by adding \$399 to the dollar amount and by adjusting the dollar amount in line 18 accordingly; in line 23, by adding \$663 to the dollar amount and by adjusting the dollar amount in line 23 accordingly; in line 34, by adding \$4,917 to the dollar amount and by adjusting the dollar amount in line 34 accordingly; in line 38, by adding \$20 to the dollar amount and by adjusting the dollar amount in line 38 accordingly;

On page 69, in line 1, by adding \$41 to the dollar amount and by adjusting the dollar amount in line 1 accordingly; in line 8, by adding \$4,667 to the dollar amount and by

adjusting the dollar amount in line 8 accordingly; in line 12, by adding \$32 to the dollar amount and by adjusting the dollar amount in line 12 accordingly; in line 16, by adding \$19 to the dollar amount and by adjusting the dollar amount in line 16 accordingly; in line 24, by adding \$5,079 to the dollar amount and by adjusting the dollar amount in line 24 accordingly; in line 31, by adding \$9,857 to the dollar amount and by adjusting the dollar amount in line 31 accordingly and **S Sub for HB 2373** be passed as amended.

A motion by Senator Pilcher-Cook failed and the following amendment was rejected; on page 81, following line 12, by inserting:

“Sec. 93. From and after July 1, 2010, each school district shall maintain a secure internet-based check register to record the receipts and expenditures of the district. The check register shall be freely available and accessible to the general public.”;

By renumbering sections

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 16, Nays 22, Present and Passing 0, Absent or Not Voting 2.

Yeas: Abrams, Apple, Brownlee, Colyer, Haley, Huelskamp, Kelsey, Lynn, Marshall, Masterson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Steineger, Wagle.

Nays: Barnett, Brungardt, Emler, Faust-Goudeau, Francisco, Hensley, Holland, Kelly, Kultala, Lee, McGinn, Morris, Owens, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wysong.

Absent or Not Voting: Bruce, Donovan.

The motion failed and the amendment was rejected.

A motion by Senator Steineger failed and the following amendment was rejected; on page 35, following line 39, by inserting the following:

“(b) The director of accounts and reports shall not make the transfer of \$5,000,000 from the state highway fund of the department of transportation to the state affordable airfare fund of the department of commerce which was directed to be made on or after July 1, 2009, by subsection (c)(4) of section 36 of chapter 216 of the 2006 Session Laws of Kansas: *Provided*, That, the provisions of subsection (c)(4) of chapter 216 of the 2006 Session Laws of Kansas are hereby declared to be null and void and shall have no force and effect.”

A motion by Senator Abrams failed and the following amendment was rejected; on page 61, after line 10, by inserting the following:

“Community correctional conservation camps

For the fiscal year ending June 30, 2010.....	\$3,371,324
El Dorado correctional facility—facilities operations	
For the fiscal year ending June 30, 2010.....	\$907,393
Lansing correctional facility—facilities operations	
For the fiscal year ending June 30, 2010.....	\$902,699
Norton correctional facility—facilities operations	
For the fiscal year ending June 30, 2010.....	\$1,647,927

(c) In addition to the other purposes for which expenditures may be made by the department of corrections from moneys appropriated to the above agency for fiscal year 2009 or 2010 as authorized by 2009 House Substitute for Substitute for Senate Bill No. 23, Senate Substitute for House Bill No. 2354, or by this or any other appropriation act of the 2009 regular session of the legislature, expenditures shall be made by the secretary of corrections from the moneys appropriated for fiscal year 2009 or 2010 to provide for and facilitate the facilities closure and realignment commission to make a study of the closure and realignment of correctional institutions.”;

And by relettering the remaining subsections accordingly;

On page 62, after line 31, by inserting the following:

“(o) On July 1, 2009, the position limitation established for the fiscal year ending June 30, 2010, by section 99(a) of 2009 Senate Substitute for House Bill No. 2354 for the department of corrections is hereby increased from 3,047.70 to 3,113.70.”

A motion by Senator Huelskamp failed and the following amendment was rejected; on page 84, after line 41, by inserting the following:

“Sec. 104. (a) Within 30 days after the effective date of this act, each state agency anticipating receipt of federal funds under the American recovery and reinvestment act of 2009, hereinafter referred to in this section as the “federal act,” shall report the following information to the director of the budget and the director of legislative research:

(1) The amount of federal funding the state agency anticipates receiving under the federal act;

(2) the date or dates when the state agency anticipates receipt of moneys under the federal act;

(3) whether the anticipated federal funding is allocated through an existing or new federal program;

(4) current levels of state funding for the state agency that is appropriated, requested or credited to and available in any fund or account appropriated for the state agency that would be impacted positively or negatively by the receipt of moneys under the federal act;

(5) whether additional appropriation authority would be necessary to expend moneys received under the federal act;

(6) whether any additional state employees are necessary to oversee or administer the moneys received under the federal act and, if so, how many full-time equivalent positions would be required;

(7) any requirements under the federal act associated with spending any moneys received under the federal act, including, but not limited to, state matching or cost sharing requirements, percentage limitations and any time requirements regarding expenditure of such moneys;

(8) the time or other conditions under which all or part of the funding ends under the federal act;

(9) a plan detailing how the moneys received under the federal act will be expended and how the state agency will address the absence of such funding after it ends; and

(10) to the extent such information is made available to the state agency, the amount of moneys any units of local government or local educational agencies anticipate receiving under the federal act and the purpose for which such moneys are to be used.

(b) Each state agency shall review and evaluate whether the state agency is eligible for and would request funding under any provision of the federal act. If any state agency determines it is eligible and desires to receive funding under any provision of the federal act, such state agency shall notify the director of the budget and the director of legislative research, within 30 days after the effective date of this act, of such determination and shall provide the following information in conjunction with such notification:

(1) The amount of moneys the state agency desires to receive under the federal act;

(2) each of the titles and sections of the federal act under which the desired moneys are provided;

(3) the requirements and deadline for applying for the desired funding under the federal act;

(4) the requirements associated with the desired funding, including, but not limited to, spending limitations, state matching or cost sharing requirements, percentage limitations and any time requirements regarding expenditure of such funding;

(5) when the funding provided under the federal act would end;

(6) whether additional appropriation authority would be necessary to expend moneys received under the federal act;

(7) whether any additional state employees are necessary to oversee or administer the moneys received under the federal act and, if so, how many full-time equivalent positions would be required;

(8) the number of potential jobs created by the use of any moneys received under the federal act, including all rationales and supporting data justifying the state agency’s estimate of the number of jobs to be created; and

(9) a plan detailing how the funds received under the federal act will be expended and how the state agency will address the absence of funding after the funding provided under the federal act ends.

(c) Each state agency that applies for and receives or is approved to receive moneys under the federal act shall notify the director of the budget and the director of legislative research

immediately of such receipt or approval and shall include such related information with such notification as may be requested by the director of the budget. Each such state agency expending moneys received under the federal act shall make such expenditures in accordance with the provisions of appropriation acts in compliance with the provisions of applicable state statutes.

(d) Within 60 days after the effective date of this act, the director of legislative research shall publish on the website for the legislative research department the following information received from state agencies: (1) The amount of moneys the state agency has received or is approved to receive under the federal act; (2) the dates when such moneys are received and when such funding would end, as the case may be; (3) a general description of the purpose for which the moneys are to be expended; and (4) to the extent such information is made available, the information required by paragraphs (1), (2) and (3) as they apply to units of local government or local educational agencies receiving moneys under the federal act. Such information shall be presented in a form whereby persons viewing the website can easily discern which agency has received or is approved to receive moneys under the federal act and purpose for which those moneys are to be used.

(e) Any individual employed by a state agency in connection with or as a result of funding received under the federal act shall be a temporary employee and such employment shall not continue beyond the expenditure of the moneys received under the federal act.

(f) The American recovery and reinvestment act advisory group that was established by the governor, hereinafter referred to in this section as the advisory group, shall review all state agency information submitted to the director of the budget under this section and shall submit a written report of its findings and non-binding recommendations to the governor, president of the senate, speaker of the house of representatives, vice-president of the senate, speaker pro tem of the house of representatives, majority leader of the senate, majority leader of the house of representatives, minority leader of the senate, minority leader of the house of representatives, chairperson of the committee on ways and means of the senate, chairperson of the committee on appropriations of the house of representatives, director of the budget, and director of legislative research within 60 days after the effective date of the federal act. The findings and recommendations of the advisory group shall include:

(1) Which funds under the federal act the governor should request or approve state agency requests for, with priority given to funds that are allocated under the federal act for one-time projects or reducing the need for expenditures from the state general fund dollars in the fiscal years ending June 30, 2010, or June 30, 2011, without the need for future, ongoing state expenditures;

(2) potential impacts or savings to the state general fund which may result from the receipt of the recommended funds under the federal act;

(3) positive and negative impacts to state agency budgets for the fiscal years ending June 30, 2010, June 30, 2011, and June 30, 2012, if the recommended funding is requested and received under the federal act;

(4) whether state agencies have adequate appropriation authority for expenditure of the funds recommended to be requested and received under the federal act; and

(5) any other recommendations or information as the governor may request.

(g) Records containing information submitted by state agencies to the director of the budget and the recommendations and findings of the advisory group are public records and subject to the provisions of the open records act.

(h) Nothing in this section shall prohibit local governments, local educational agencies as defined in the federal act, or any eligible entity as determined under the federal act from seeking federal funding under the federal act.

(i) As used in this section, "state agency" means any state office or officer, department, board, commission, institution, bureau or any agency, division or unit within any office, department, board, commission or other state authority.";

Any by renumbering the remaining section accordingly

A motion by Senator Masterson failed and the following amendment was rejected; on page 3, by striking all in lines 12 through 41;

And by renumbering the remaining sections accordingly;

On page 9, by striking all in lines 3 through 43;

By striking all on pages 10 and 11;
 On page 12, by striking all in lines 1 through 8;
 And by renumbering the remaining sections accordingly;
 Also on page 12, by striking all in lines 15 through 42;
 On page 14; by striking all in lines 6 through 33;
 On page 15, by striking all in lines 9 through 35; also by striking all in lines 42 and 43;
 On page 16, by striking all in lines 1 through 33;
 And by renumbering the remaining sections accordingly;
 On page 18, by striking all in lines 31 through 43;
 By striking all on pages 19 through 21;
 On page 22, by striking all in lines 1 through 40;
 And by renumbering the remaining sections accordingly;
 On page 23, by striking all in lines 4 through 43;
 By striking all on pages 24 and 25;
 On page 26, by striking all in lines 1 through 18;
 And by relettering the remaining subsection accordingly;
 And by renumbering the remaining sections accordingly;
 On page 27, by striking all in lines 19 through 43;
 On page 28, by striking all in lines 1 through 7;
 And by renumbering the remaining sections accordingly;
 On page 29, by striking all in lines 17 through 43;
 On page 30, by striking all in lines 1 through 31;
 And by renumbering the remaining sections accordingly;
 On page 31, by striking all in lines 2 through 28;
 On page 36, by striking all in lines 13 through 42;
 By striking all on pages 37 and 38;
 On page 39, by striking all in lines 1 through 9;
 And by renumbering the remaining sections accordingly;
 Also on page 39, by striking all in line 43;
 By striking all on pages 40 through 42;
 And by renumbering the remaining sections accordingly;
 On page 43, by striking all in lines 21 through 43;
 On page 44, by striking all in lines 1 through 41;
 And by relettering the remaining subsection accordingly;
 On page 55, by striking all in lines 30 through 43;
 By striking all on pages 56 and 57;
 On page 58, by striking all in lines 1 through 34;
 And by renumbering the remaining sections accordingly;
 Also on page 58, by striking all in lines 37 through 43;
 On page 59, by striking all in lines 1 through 23;
 And by relettering the remaining subsection accordingly;
 And further, I move to amend Senate Substitute for House Bill No. 2373, as amended
 by Senate committee of the whole, on motion of Senator Emler, on page 35, after line 7,
 by striking subsections (o), (p) and (q)
 Upon the showing of five hands a roll call vote was requested.
 On the roll call, the vote was: Yeas 17, Nays 20, Present and Passing 2, Absent or Not
 Voting 1.
 Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Colyer, Huelskamp, Kelsey, Marshall,
 Masterson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Steineger, Taddiken, Wagle.
 Nays: Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Kelly, Kul-
 tala, Lee, McGinn, Morris, Owens, Reitz, Schmidt D, Schodorf, Teichman, Umbarger,
 Vratil, Wysong.
 Present and Passing: Lynn, Schmidt V.
 Absent or Not Voting: Donovan.
 The motion failed and the amendment was rejected.

EXPLANATION OF VOTE

MR. PRESIDENT: Many state agencies are fee funded and do not receive any funding from the state. Fees supporting these agencies are collected from the industry which the agency regulates for a specific purpose. Raiding those funds is a violation of the trust between the fee-payer and the Kansas Legislature. Referring to fee fund sweeps as “spending cuts” is an insult.

It is more appropriate to call this measure a massive, back-door tax increase. Attorney General Opinion 2002-45 said it best, “If 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.”

The Legislature should not take what does not belong to it. I regard fee sweeps of this magnitude as being unconstitutional, and I flatly refuse to participate in or validate their existence. I vote yes on the amendment.—TERRY BRUCE

A motion by Senator Masterson failed and the following amendment was rejected; on page 17, in line 8, by striking all after “fund”; by striking all in lines 9 through 16; in line 17, by striking all before the period;

On page 35, after line 7, by inserting:

“(o) In addition to the other purposes for which expenditures may be made by the department of revenue from the moneys appropriated from the state general fund or from any special revenue fund or funds for fiscal year 2009 or fiscal year 2010 as authorized by chapter 131 or chapter 184 of the 2008 Session Laws of Kansas or by 2009 House Substitute for Substitute for Senate Bill No. 23, by 2009 Senate Substitute for House Bill No. 2354, or by this or other appropriation act of the 2009 regular session of the legislature, expenditures may be made by the department of revenue from moneys appropriated from the state general fund or from any special revenue fund or funds for fiscal year 2009 or fiscal year 2010 to provide for the secretary of revenue to enter into settlements to equitably resolve any assessment or other disputed matters of tax liability arising from an audit, or any portion of any such assessment, or other matter or tax liability, which is pending in the administrative appeals process before the secretary of revenue, or the secretary’s designee, pursuant to K.S.A. 79-3226 or 79-3610, and amendments thereto, is pending before the state court of tax appeals, or is pending in the judicial review process before any state or federal district or appellate court, pursuant to settlement agreements which are hereby authorized to be entered into during fiscal year 2009 or fiscal year 2010 by the secretary of revenue in the exercise of express and implied powers of the secretary of revenue under the statutes and laws of Kansas, including the authority of the secretary of revenue to resolve the amount of tax, penalty or interest due in any such settlement agreement, which are hereby recognized by the legislature: *Provided*, That all moneys received by the department of revenue pursuant to such settlements of such assessments or other disputed matters of tax liability shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75- 4215, and amendments thereto: *And provided further*, That, upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.”;

On page 43, in line 12, by subtracting \$81,940 from the dollar amount and by adjusting the dollar amount in line 12 accordingly;

On page 69, after line 31, by inserting:

“Sec. 86. (a) On July 1, 2009, of the amount of each appropriation or reappropriation for a state agency for the fiscal year ending June 30, 2010, made by 2009 Senate Substitute for House Bill No. 2354 from the state general fund, the sum equal to 0.75% of such appropriation or reappropriation, which is not exempt, is hereby lapsed. The following are exempt from and shall not be reduced by such lapsing provision: (1) Any item of appropriation or reappropriation for debt service for payments pursuant to contractual bond obligations, and (2) any item of appropriation or reappropriation from the state general fund for the fiscal

year ending June 30, 2010, for the juvenile justice authority, department of social and rehabilitation services, Kansas health policy authority, or the department on aging which are required to meet caseload obligations under the state medicaid plan including nursing facilities, general medical, targeted case management, mental health, community supports and services, or addiction and prevention services or for the department of social and rehabilitation services to meet caseload obligations for nursing facilities for mental health, general assistance, temporary assistance for families, foster care and reintegration services contracts or adoption services contracts, as certified by the director of the budget to the director of accounts and reports for the purposes of this clause (2): *Provided*, That, at the same time that such certification is made by the director of the budget to the director of accounts and reports under this clause (2), the director of the budget shall deliver a copy of such certification to the director of the legislative research department.”;

And by renumbering the remaining sections accordingly

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 17, Nays 22, Present and Passing 0, Absent or Not Voting 1.

Yeas: Abrams, Barnett, Brownlee, Bruce, Colyer, Huelskamp, Kelsey, Lynn, Marshall, Masterson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Steineger, Taddiken, Wagle.

Nays: Apple, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Kelly, Kultala, Lee, McGinn, Morris, Owens, Reitz, Schmidt D, Schmidt V, Schodorf, Teichman, Umbarger, Vratil, Wysong.

Absent or Not Voting: Donovan.

The motion failed and the amendment was rejected.

A motion by Senator Umbarger to amend **S Sub for HB 2373** was withdrawn.

Two motions by Senator Masterson to amend **S Sub for HB 2373** were withdrawn

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator D. Schmidt an emergency was declared by a $\frac{2}{3}$ constitutional majority, and **S Sub for HB 2373** was advanced to Final Action and roll call.

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.

On roll call, the vote was: Yeas 21, Nays 17, Present and Passing 0, Absent or Not Voting 2.

Yeas: Apple, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Kelly, Kultala, Lee, McGinn, Morris, Owens, Reitz, Schmidt D, Schmidt V, Schodorf, Teichman, Vratil, Wysong.

Nays: Abrams, Barnett, Brownlee, Bruce, Colyer, Huelskamp, Lynn, Marshall, Masterson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Steineger, Taddiken, Umbarger, Wagle.

Absent or Not Voting: Donovan, Kelsey.

The substitute bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote “no” on **Senate Sub for HB 2373**. This budget bill does not close the gap between revenue and expenditures which is setting us up for a tax increase. I cannot support an increased tax burden on Kansans during such a serious recession.—KARIN BROWNLEE.

On motion of Senator D. Schmidt the Senate adjourned until 10:00 a.m., Wednesday, May 6, 2009.

HELEN MORELAND, ROSE MARIE GLATT, SHIRLEY LAMOTT, *Journal Clerks*.
PAT SAVILLE, *Secretary of the Senate*.

