

Journal of the House

SIXTY-FIFTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Friday, May 28, 2010, 10:00 a.m.

The House met pursuant to **SCR 1632** with Speaker O'Neal in the chair.

Prayer by Chaplain Brubaker:

Our Heavenly Father,
As we come to the close of another session,
we pause for a time of reflection.
Thank you for these dedicated leaders
who have traveled hundreds of miles
and invested long and arduous hours.
Thank you for their families who willingly
gave up time with their husbands/wives/fathers/mothers
in order for them to serve us.
There have been numerous hours of discussion;
and times we wondered if we would ever pass a bill.
There were moments of misunderstanding;
and times of good laughter.
There have been heart-wrenching decisions
difficult for many to make.
Then there were the resolutions,
that brought smiles and satisfaction to everyone.
Some will walk away feeling a sense of victory,
some feeling defeat.
But now that it is over and we move on,
may everyone be able to say as the Apostle Paul,
"I have fought the good fight,
I have finished the race, I have kept the faith."
(2 Timothy 4:7)
As we leave this place,
we recognize that many will continue
to travel throughout the state,
campaigning and listening to the residents.
Watch over them and keep them safe.
And through everything they do and say,
may they remember Your Word to us,
"What God is looking for in men and women
is quite simple: do what is fair and just to your neighbor,
be compassionate and loyal in your love,
and don't take yourself too seriously—
take God seriously."
(Micah 6:8 — The Message)
In Christ's Name I pray, Amen.

The Pledge of Allegiance was led by Rep. Crow.

MESSAGES FROM THE GOVERNOR

S. Sub. for HB 2310; HB 2446; S. Sub. for Sub. HB 2509; Sub. HB 2528; HB 2561, HB 2656, HB 2668, HB 2691 approved on May 13, 2010.

Also, **S. Sub. for HB 2226; HB 2454, HB 2482, HB 2486, HB 2554; S. Sub. for HB 2582; HB 2595** approved on May 17, 2010.

MESSAGE FROM THE GOVERNOR

May 21, 2010

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

Enclosed herewith is Executive Directive No. 10-409 for your information.

EXECUTIVE DIRECTIVE No. 10-409
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 S. Sub. for HB 2650 approved on May 25, 2010.

Also, **HB 2130; S. Sub. for HB 2219; S. Sub. for S. Sub. for Sub. HB 2320; S. Sub. for HB 2356; S. Sub. for HB 2360; HB 2434; S. Sub. for HB 2506; HB 2660** approved on May 27, 2010.

COMMUNICATIONS FROM STATE OFFICERS

From Jim Garner, Secretary, Kansas Department of Labor, *2009 Kansas Green Jobs Report*.

The complete report is kept on file and open for inspection in the office of the Chief Clerk.

MESSAGE FROM THE SENATE

The Senate adopts conference committee report on **HB 2704**.

PROTEST

MR. SPEAKER: Pursuant to the provisions of Art. 2, Sec.10 of the Kansas Constitution and K.S.A. 2008 Supp. 46-233(c), I make formal written protest regarding the passage of those line items contained in 2010 SB 572 (2011 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 "*if an assessment so exceeds the cost of regulation that it is apparent the legislative 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 SB 572 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

2011. 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.

The effect of the fee sweeps will 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

REPORT ON ENGROSSED BILLS

HB 2130; S. Sub. for HB 2219; S. Sub. for S. Sub. for Sub. HB 2320; S. Sub. for HB 2360; S. Sub. for S. Sub. for HB 2650 reported correctly engrossed May 12, 2010.

HB 2434, HB 2660 reported correctly re-engrossed May 12, 2010.

REPORT ON ENROLLED BILLS

HB 2130; S. Sub. for HB 2219; S. Sub. for S. Sub. for Sub. HB 2320; S. Sub. for HB 2356; S. Sub. for HB 2360; HB 2434; S. Sub. for HB 2506; S. Sub. for S. Sub. for HB 2650; HB 2660 reported correctly enrolled, properly signed and presented to the governor on May 17, 2010.

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 2010 session, I do now declare the House adjourned sine die."

CHARLENE SWANSON, *Journal Clerk*.

SUSAN W. KANNARR, *Chief Clerk*.

MESSAGE FROM THE SENATE

The Senate announces the following bills and concurrent resolutions are hereby transmitted to the House of Representatives with final disposition:

House bills that died in conference: **HB 2265, HB 2540, Sub HB 2575.**

House bills that died in Senate Committees: **Sub HB 2029, S Sub HB 2079, S Sub HB 2082, HB 2084, HB 2166, HB 2206, Sub HB 2238, HB 2239, HB 2275, HB 2280, HB 2299, HB 2319, HB 2325, Sub HB 2340, HB 2383, HB 2388, Sub HB 2390, HB 2408, HB 2410, Sub HB 2428, HB 2442, Sub HB 2453, HB 2463, HB 2471, HB 2473, HB 2478, HB 2484, HB 2491, HB 2510, HB 2519, HB 2520, Sub HB 2521, HB 2548, HB 2572, HB 2578, HB 2601, HB 2620, HB 2621, HB 2637, HB 2657, HB 2667, Sub HB 2669, HB 2671, HB 2685, Sub HB 2689, HB 2729.**

House concurrent resolutions that died in Senate Committee: **HCR 5008, HCR 5026, HCR 5034.**

MESSAGE FROM THE SENATE

Announcing the Senate herewith transmits the veto message from the Governor on **H Sub for SB 572**, An act making and concerning appropriations for the fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, June 30, 2013, June 30, 2014, June 30, 2015, and June 30, 2016, 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. 2009 Supp. 2-223, 12-5256, 55-193, 72-8814, 75-2319, 75-6702, 76-775, 76-783, as amended by section 33 of 2010 House Bill No. 2557, 76-7,107, 79-2959, 79-2964, 79-2978, 79-2979, 79-3425i, 79-34,156, 79-34,171, 79-4801 and 82a-953a and section 14 of 2010 Senate Substitute for House Bill No. 2222 and section 52 of chapter 124 of the 2009 Session Laws of Kansas and repealing the existing sections, was read before the Senate on May 28, 2010.

Message to the Senate of the State of Kansas:

Pursuant to Article 2, Section 14 of the Constitution of the State of Kansas, I hereby return House Substitute for Senate Bill No. 572 with my signature approving the bill, except for the items enumerated below.

Division of Post Audit—Financial Compliance Audit

That portion of Section 46(b) that reads as follows has been line-item vetoed:

“And provided further, That the division of post audit is hereby authorized to fix, charge and collect fees for the costs of financial-compliance audits under K.S.A. 46-1106, and amendments thereto: And provided further, That such fees shall be fixed to recover the expenses incurred for financial-compliance audits under K.S.A. 46-1106, and amendments thereto:”

This FY 2011 appropriation language for Legislative Post Audit was offered as an alternative to providing the Division with a State General Fund appropriation. Because the Legislature’s budget was enhanced by \$639,522 beyond what was intended, I hereby line-item veto this appropriation language as an unnecessary assessment on the other state agencies that cannot afford to finance the statewide audit. From within the Legislature’s appropriation, funds could be transferred to Post Audit in order to finance this audit, once the actual costs are known.

Kansas Commission on Veterans Affairs—Transfer from Public Broadcasting to Veterans Affairs

Section 72(c) has been line-item vetoed in its entirety.

This section constitutes a 50 percent reduction in the operating grants for public broadcasting stations throughout Kansas. This type of drastic reduction would be particularly damaging to stations in rural Kansas, likely silencing an important voice for our rural communities. Despite this line-item veto, the budget for veteran services programs will increase 30 percent, including an additional \$534,309 for veteran services programs.

Kansas Health Policy Authority—KHPA Study

Section 76(h) has been line-item vetoed in its entirety.

This provision would require the Kansas Health Policy Authority (KHPA) to conduct a study on the topic of requiring insurance companies to reimburse specified mental health professionals for certain proactive mental health care treatments. This study includes several parameters and requires analysis of a considerable amount of data. No funding was provided for the study, although the imposed deadline for the study’s completion is December 31, 2010. KHPA does not currently have adequate resources to complete this assigned task. 2010 House Bill 2546, which would have mandated insurance coverage for these services, was the subject of a hearing in the House Committee on Insurance on February 4, 2010. This bill never made it out of committee, and so has not been thoroughly vetted by the Kansas Legislature. Mandating the use of scarce state resources to study a topic absent thorough legislative scrutiny is not a good policy decision in this budgetary climate. Therefore, I must veto this section.

Department of Education—Uniform Chart of Accounts

Section 79(l) has been line-item vetoed in its entirety.

At a time when school boards are making difficult budget decisions, including increasing class sizes, closing buildings, eliminating course offerings and imposing instructional and professional staff layoffs, the policy to require additional financial reporting causes a costly and unnecessary administrative burden. The Department of Education already requires a uniform chart of accounts for school district budgets. In fact, the State Department of Education already provides on its website a copy of the uniform chart of accounts, the complete budget for each school district, as well as the “Budget at a Glance” and a budget profile for each district in Kansas. As a result, I find it necessary to veto this section of the budget bill.

University of Kansas—Water Data Repository Fund

That portion of Section 91(a) that reads as follows has been line-item vetoed:

“Standardized water data repository fund \$300,000

Provided, That expenditures may be made from this account or any special revenue fund of the above named agency for the purposes of bathymetric mapping, sediment surveys and lake assessments and the development of a standardized water quality and quantity data repository relating to public water supply sources.”

The Standardized Water Data Repository Fund at the University of Kansas was inadvertently appropriated as a State General Fund appropriation in the bill, when it should have been established as a special revenue fund. This veto eliminates the State General Fund appropriation, but does not eliminate the new fund, that is financed with a \$300,000 transfer from the Clean Drinking Water Fee Fund.

Board of Regents—Postsecondary Operating Grant Adjustment

Section 94(j) has been line-item vetoed in its entirety.

Legislative intent for the Regents system was to lapse \$2.3 million from the State General Fund; however, the amendment to alter the lapse incorrectly took \$9.5 million. I veto this section in order to restore the funding, and instruct the Regents to submit a revised budget this fall with the \$2.3 million reduction. This veto also ensures our state’s compliance with requirements in accepting federal American Reinvestment and Recovery Act funding.

Kansas State Fair—Workers Compensation Insurance

Section 107(c) has been line-item vetoed in its entirety.

Allowing the State Fair to acquire private workers compensation insurance would set a bad precedent and has the potential to increase rates for all other state agencies that will continue to participate in the State Self Insurance Fund (SSIF). The SSIF would be responsible for the expense of medical and disability payments from ongoing claims by State Fair employees prior to the new private insurance becoming effective and the SSIF would have to pass these expenses to all other state agencies. Furthermore, it was recently announced that workers comp rates for the SSIF, including the State Fair, will decrease over the next year, making this proviso all the more unwarranted.

State Officers’ Pay

Section 163 has been line-item vetoed in its entirety.

Eighty percent of this reduction would be absorbed by the Judicial Branch which has already reduced its spending to the point of furloughing staff. Already, Kansas’ Circuit Court salaries rank 40th in the nation for pay; this makes it difficult to attract and retain quality individuals to these critical posts. Therefore, I believe that additional cuts in this area would further harm Kansas’ justice system. Additionally, for those state officers who might retire at this time of administrative transition, a cut will adversely impact retirement benefits. I would also remind Legislators and any other state officer that they may accept a voluntary pay reduction of any amount on their own accord without this provision. Toward that end, I and Lieutenant Governor Findley will continue the reduction in our pay until the end of our term.

Out of State Travel

Section 165 has been line-item vetoed in its entirety.

This provision requires additional layers of approval for every state employee’s out-of-state travel and creates an unnecessary level of government bureaucracy. Agency budgets have been significantly reduced in the past two years. One of the major areas of reduction has been travel. In fact, from the beginning of FY 2008 to date, total travel expenditures within executive branch agencies have been reduced over 50 percent. Within their budgetary authority, agency heads should have the flexibility to prioritize expenditures to allow travel as necessary to carry out essential functions of state government. Accordingly, I have instructed agency heads to continue to limit travel to only that which is essential to carrying

out their mission. Creating additional layers of bureaucracy does not improve government. Therefore, I veto this section of the budget bill.

Department of Health & Environment—Title X Family Planning Services

Section 167 has been line-item vetoed in its entirety.

This proviso is nearly identical to the one I vetoed in 2009, S. Sub. for House Bill 2373. Therefore, I find it appropriate to repeat many of the same points I made last year regarding this issue:

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 therefore find it necessary to line-item veto this proviso.

Clean Air Act Rules and Regulations

Section 168 has been line-item vetoed in its entirety.

Kansas has a proud history of being an energy producing state and an exciting future in the area of renewables.

As we look ahead to opportunities on the horizon, we must also uphold those bedrock industries, such as oil and gas, which provide prosperity to so many Kansans. Yet in doing so, we must ensure that we do not unintentionally harm the very sector of our economy we wish to protect.

This proviso has unintended consequences bringing forth regulatory uncertainty which would hinder Kansas' ability to serve our citizens, homes, farms and businesses. By abandoning productive progress with state agencies, sources would be required to work directly with the federal government to implement these programs which is considerably less expeditious.

Most importantly, this proviso is simply poor economic policy for Kansas. It would restrict the state's capacity to provide information and technical assistance to Kansas businesses and industries regarding federal standards, resulting in adverse impacts to local entities that need air quality permits to conduct business.

If there is a new federal law that will harm our state, it should be addressed and action should be taken through policy changes, not annual budget provisions. Decisions such as this are best made when they are developed through the proper legislative process, where expert testimony can be presented and debated in a transparent fashion. I therefore find it necessary to veto this section.

Mark Parkinson
Governor

Dated: May 27, 2010

Members were given the opportunity to reconsider the line item vetoes. There being no motion to reconsider the line items vetoes on **H Sub for SB 572**, the President ruled the line item vetoes sustained.

