

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on March 17, 2006 in Room 519-S of the Capitol.

All members were present except:
Representative Lana Gordon- excused

Committee staff present:
Chris Courtwright, Legislative Research Department
Martha Dorsey, Legislative Research Department
Gordon Self, Revisor of Statutes
Rose Marie Glatt, Committee Secretary

Others attending:
See attached list.

SB 404 - Sales tax exemption for purchase of personal property by certain organization used for the collection, storage and distribution of food products.

Representative Goico made a motion to amend HB 2080, as passed out of the Committee, into SB 404. Representative Brunk seconded the motion. The motion carried.

Representative Huff made a motion to amend the version of HB 2640 that passed out of the Taxation Committee into SB 404. Representative Siegfried seconded the motion. The motion carried.

The Chairman called the Committee's attention to **HB 2997**, a bill pertaining to an agency that provides temporary lodging for children (TLC), a 34-year-old 501 (C) (3) non-profit agency serving children, youth, and families primary in Johnson, Wyandotte, Douglas, Miami, and Leavenworth Counties, whose focus is one services to abused and neglected children, youth and troubled teenagers. Representative Owens, O'Malley and Siegfried explained the benefits of the program (Attachment 1).

Representative Owens made a motion to incorporate HB 2997 into SB 404. Representative Siegfried second the motion. The motion carried.

Representative Davis explained that **HB 2866** deals with sales tax exemptions for homeless shelters, not affiliated with churches. He moved that they amend the contents of HB 2866 into SB 404. Representative Treaster seconded the motion. The motion carried.

Representative Huff made the motion they pass out SB 404, as amended, favorable for passage. The motion carried.

SB 564 - Authorizing countywide retailers' sales tax for Saline county for expo center.

The Chairman advised that he had considerable testimony from Senator Brungardt and county officials in support of this bill. He advised the Committee of the status of **HB 2689**.

Representative Thull made the motion to amend HB 2689 into SB 564. Representative Menghini seconded the motion. The motion carried.

Representative Thull made the motion to move out SB 564, as amended, favorable for passage. Representative Menghini seconded the motion. The motion carried.

SB 465 - Increasing income tax credit for adoption of certain Kansas children.

Representative O'Malley reviewed **SB 465** and **HB 2374** which deal with creating a task force to promote adoption. Copies of **HB 2374** were distributed (Attachment 2).

Representative O'Malley made a motion to amend the content HB 2374 into SB 465. Authority was

CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on March 17, 2006 in Room 519-S of the Capitol.

given the revisor to change the effective date on the bill. Representative Owens seconded the motion. The motion carried.

Representative O'Malley closed his motion. The motion carried.

Representative Davis made a motion to adopt **SB 465**, as amended, and pass it out favorable for passage. Representative Treaster seconded the motion. The motion carried.

Subcommittee Report on **HB 2680** - Excise tax on certain commercial establishments, businesses and individuals which provide sexually explicit products and services.

Representative Lance Kinzer briefed the Committee on the findings and recommendations of the subcommittee pertaining to **HB 2680**. The subcommittee, made up of: Representative Kinzer - Chair, and Representatives Kelley and Thull, was established for the purpose of studying all issues relevant to **HB 2680**, with particular focus directed to the issue of potential legal difficulties relating to the nature of the proposed new tax (Attachment 3).

In summary, he said "The subcommittee believes **HB 2680** identifies a real and pressing issue. We have little doubt that sexually-oriented businesses generate negative secondary effects. We believe a reasonable, but unproven, legal argument exists for taxation of these businesses. We believe stronger legal precedent exists for licensure or other time, place and manner restrictions. Given the complexity of adopting such regulations, the subcommittee believes further study of this issue by an interim committee is justified."

Extensive discussion followed regarding alternatives available to cities concerning these type of businesses. A recommendation was made that a study of this issue may be better served in a task force rather than an interim study. Representative Kinzer did not oppose that option. The Kansas Advisory Committee on Intergovernmental Relations was suggested as a possible task force to consider the issue.

Representative Kinzer made a motion to adopt the Subcommittee Report into **HB 2680**. Representative Kelley seconded the motion. The motion carried.

The Chairman thanked the sub-committee for an excellent report and acknowledged their hard work. He said he would not take up the bill, pursuant to the subcommittee's recommendation.

SB 365 - As amended, would create a stand-alone Kansas estate tax no longer tied directly to federal law, effective for the estates of decedents dying on and after January 1, 2007. The tax would sunset, effective for the estates of decedents dying on and after January 1, 2010.

Representative Goico offered a conceptional amendment that would match the state exemption to the federal level until 2009. Representative Brunk seconded the motion.

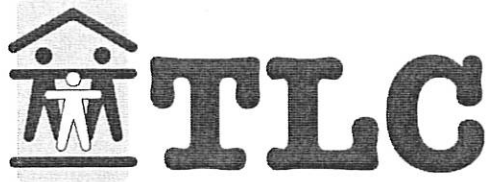
Chris Courtwright said that the amendment would change the following: Page two, line 40, change from \$1,000,000 to \$2,000,000; Page three, line seven, change form "Not over \$1,000,000" to "Not over \$2,000,000"; Page three, line 20, change from "Not over \$1,000,000" to "Not over \$3,500,000. The fiscal note is unknown at this time. It was Representative Goico's intent to retain the rates as applied to his new amounts.

Representative Goico closed his motion to amend **SB 365**. The motion carried.

A Committee request was made for staff to determine what the fiscal note would be for Representative Goico's amendment.

The Chairman said that they would take up **SB 365** on Monday.

The meeting adjourned at 10:30 A.M. The next meeting is March 20, 2006.



**TLC for Children and
Families, Inc.**

OUR VISION....

Children, youth and their families will live fulfilled and enriched lives

OUR MISSION...

TLC provides opportunities that encourage positive growth and change for children, youth and families while ensuring a safe environment

March 16, 2006

Taxation Committee

Hon. Kenny Wilk, Chair

House Taxation
3-17-06
Attachment 1

Thank you for the opportunity to present written testimony before this honorable body. I am Bob Drummond, President and CEO of TLC for Children and Families in Olathe, Kansas. TLC is a 34 year old 501(c)(3) non-profit agency serving children, youth, and families primary in Johnson, Wyandotte, Douglas, Miami, and Leavenworth Counties. Our focus is on services to abused and neglected children and youth and troubled teenagers. Our mission is: **Providing opportunities that encourage positive growth and change for children, youth and families while ensuring a safe environment.**

TLC is accredited by the Council on Accreditation for Children and Families, licensed by SRS as a child placing agency, as an emergency shelter and a Level 5 residential treatment facility. We provide the following services: (1) **Foster Care**; (2) **Youth Crisis Services** (counseling services for non-custodial youth and families); (3) **Street Outreach Services** for at-risk street youth (many of which are homeless); (4) **Juvenile Intake and Assessment Services** for Johnson County law enforcement and SRS; (5) **Case Management** services for youth experiencing truancy and domestic violence; (6) **Emergency Shelter** for youth in State custody who are waiting placement, needing respite care, or who are in crisis; and, (7) **Level 5 residential treatment** for youth in SRS or Juvenile Justice Authority custody who have mental health and/or behavioral management issues. In addition, we have a unique public/private partnership with USD #233 that provides educational services to these youth on our campus.

TLC provided services for over 7,000 children, youth, and families in 2005 and anticipates this number increasing in 2006. TLC's key partners are local, county, and state government agencies as well as a host of other non-profit entities. We, like many non-profits, are a unique organization. We are a private business driven by a volunteer Board and assisted by hundreds of community members.

Frankly, not only do thousands of children, youth, and families depend upon us, but so does the State of Kansas. Many of the services we provide in our region of the State are unduplicated. We are a major provider of services to SRS, JJA, Johnson County government and all the municipalities in Johnson County. We are deeply embedded in public safety services and safety net services for children, youth and families in Eastern Kansas.

One of the great challenges for all non-profits is finding the necessary resources to implement our mission. In this past decade governmental resources, which have seldom covered the costs of our services, have shrunk even more. TLC, as most non-profits, depend upon our local communities to help fill the gap between our governmental reimbursements, per diems, contracts, grants and the true costs of providing services.

Our operational budget in 2006 will be about \$6.1 million. Governmental sources of revenue will be approximately \$4.6 million. Simple math tells us that our short fall will be \$1.8 million. TLC's options are to eliminate programs, reduce services, or to raise funds from our community. We have chosen the later. This year we must raise over \$1.8 million from our community to balance our budget.

Page Two

Raising private dollars is hard work and takes a lot of time. However, this daunting task of raising over \$1.8 million from our community is even more challenging when the Kansas' statutes mitigate against our efforts by requiring nearly all non-profits in Kansas to pay sales tax on tangible personal property and services.

Senator Allen has drafted legislation to expand the sales tax exemption for TLC for Children and Families, Inc., so that TLC has a complete sales tax exemption. Currently, TLC's sales tax exemption does not cover taxable repair services, or material and labor for real property for habitation, and TLC is not authorized to obtain a Project Exemption Certificate (PEC).

This simply means we will have to pay taxes on services received (lawn care, etc), some fundraising activities (golf tournaments), and the purchase of materials, labor and equipment for the shelter and treatment center on our campus. We are particularly concerned about the purchase of materials and services, with the pending construction of \$6.3 million in new buildings and remodeling that will begin this summer.

Earlier this legislative session, Senator Allen and I decided not to introduce a TLC sales tax exemption bill in the Senate Taxation Committee, because the Kansas Department of Revenue wanted to study this issue and make an internal ruling. Given the outcome of that ruling, Senator Allen has suggested the possibility of amending the provisions of the bill that will grant TLC a complete sales tax exemption into SB 404. SB404, the sales tax exemption bill recently passed by the Senate, would grant a complete sales tax exemption to the Food Bank Warehouse in Wichita and to the Special Olympics of Kansas.

It is our contention that we should have the same standing as the other exempt non-profits listed in the statute. In fact, one would think that **home grown** Kansas based non-profits would have favor over the national affiliates that are currently exempt such as American Heart, American Lung, etc.

In conclusion, we strongly believe that TLC, which greatly supplements the work of the government, and in many cases does the work of the government should be exempt from Kansas State sales tax. The State we serve should not penalize us for our willingness to creatively find ways to underwrite services the State cannot fully fund. As best as we can discern, our surrounding States do not tax non-profits.

Thank you for this opportunity to present written testimony. Please feel free to contact me at 913-764-2887 if you have any questions.

Warmest personal regards,



Bob Drummond, Ed.D
President and CEO

As Amended by House Committee

Session of 2005

HOUSE BILL No. 2374

By Representatives O'Malley, Ballard, Carter, Freeborn, Jack, Kilpatrick, Newton, Otto, Pilcher-Cook, Siegfroid, Yoder and Yonally

2-9

11 AN ACT concerning adoption; creating a task force to promote adoption.

12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. (a) There is hereby established a task force to promote
15 adoption. The task force shall be composed of the following members,
16 **who shall be appointed not later than 45 days after the effective**
17 **date of this act:**

18 (1) Two members of the house of representatives and one member
19 of the public appointed by the speaker of the house of representatives;

20 (2) one member of the house of representatives appointed by the
21 minority leader of the house of representatives;

22 (3) two members of the senate and one member of the public ap-
23 pointed by the president of the senate;

24 (4) one member of the senate appointed by the minority leader of
25 the senate; and

26 (5) three persons appointed by the governor.

27 (b) One of the legislative members of the task force appointed by the
28 speaker of the house of representatives shall call and preside at the first
29 meeting of the task force. At such meeting the members of the task force
30 shall elect a chairperson and vice-chairperson. The task force shall meet
31 on the call of the chairperson. The task force shall meet at least quarterly
32 and at other times necessary to perform its functions. If a vacancy occurs
33 on the task force, the vacancy shall be filled in the same manner as the
34 original appointment.

35 (c) Members of the task force to promote adoption shall receive com-
36 pensation and travel expenses and subsistence expenses or allowances as
37 provided in subsection (e) of K.S.A. 75-3223, and amendments thereto,
38 when attending meeting of such task force.

39 (d) The task force to promote adoption may meet at any time and at
40 any place within the state on the call of the chairperson.

41 (e) It shall be the duty of the task force to provide statewide policy
42 recommendations aimed at encouraging adoption. Specifically, the task
43 force shall conduct an analysis of adoption in Kansas focused on the fol-

1 following questions:

2 (1) Is the current adoption tax credit adequate enough to encourage
3 adoption?

4 (2) Does the current adoption tax credit adequately offset adoption
5 expenses incurred by adoptive parents?

6 (3) What primary issues factor into the decision of birth parents when
7 faced with an unintended pregnancy?

8 (g) The staff of the office of revisor of statutes, the legislative research
9 department and the division of legislative administrative services shall
10 provide such assistance as may be requested by the task force.

11 (h) The task force shall submit a final report of its findings and rec-
12 ommendations to the legislature and to the governor on or before ~~De-~~
13 ~~ember 1, 2005~~ **February 15, 2006**.

14 Sec. 2. This act shall take effect and be in force from and after its
15 publication in the ~~statute book~~ **Kansas register**.

**HOUSE TAXATION COMMITTEE
SUBCOMMITTEE ON HB 2680**

SUBCOMMITTEE REPORT

The subcommittee was established for the purpose of studying all issues relevant to HB 2680, with particular focus directed to the issue of potential legal difficulties relating to the nature of the proposed new tax.

The subcommittee met on four separate occasions and gave detailed consideration to the following issues:

- 1) Identification of secondary effects, if any, relating to the operation of Sexually Oriented Businesses.
- 2) The existing state of the law as it relates to government taxation or regulation of sexually oriented businesses and or sexually oriented materials.
- 3) Identification of potentially lawful approaches to prevention or amelioration of secondary effects, if any, resulting from the operation of Sexually Oriented Businesses.

In considering these issues the Subcommittee reviewed, among other things, approximately 20 studies regarding secondary effects of sexually oriented businesses; over 40 relevant State and Federal Court case pertaining to the legal issues within the preview of the subcommittees charge; all written testimony presented to the interim committee and the House Committee on Taxation; over 20 relevant statutory provision from a variety of states; and considered input from the Kansas Attorney Generals Office, the Utah Attorney General's Office, the Juvenile Justice Authority and the Department of Corrections.

Based upon the above inquiry the Subcommittee unanimously offers the following recommendations:

- 1) Compelling evidence exists to establish that sexually oriented businesses generate significant negative secondary effects including, but not limited to, decreased property values, increased prostitution, increased sexual assaults, increased sexually transmitted disease, increased drug use and sales, and generally increased crime rates.
- 2) The legal status of taxation of sexually oriented businesses is a complex issue incapable of easy summarization. Currently only one State (Utah) has enacted such tax and it is currently subject to a legal challenge. That case has not reached a stage where it is possible to predict any particular outcome. Courts have long recognized the right of governmental entities to engage in some regulation of speech. In particular under the Federal Constitution's First Amendment, a valid basis for according differential treatment to a content-defined subclass of proscribable speech is that the subclass happens to be associated with particular secondary effects of the speech, so that the regulation is

justified without reference to the content of the speech. That having been said courts have typically ruled that the emotive impact of speech on its audience is not a secondary effect to which a regulation may be directed under this rule. With this in mind it is necessary to exercise extreme care in considering the nature of the alleged secondary effects which are the subject of a particular regulatory scheme. That having been said courts have upheld a wide range of time, place and manner restrictions relating to sexually oriented businesses.

The issue of taxation of sexually oriented businesses lacks any history of direct legal precedent upon which the legislature could rely. While it is certainly possible to make a reasonable argument that taxation of sexually oriented businesses represents a reasonable extension of those legal principles that justify time, place and manner restrictions, it must be equally conceded that significant legal objections can be raised to such a tax. In particular it must be noted that courts have been almost universally hostile to any tax that appears to in any way single out activities of materials that enjoy First Amendment protection.

3) While this is only the barest summary of the complex legal issue involved it is the subcommittee's conclusion that any attempt to impose a tax on sexually oriented businesses would invite a long and expensive legal challenge the result of which would be uncertain at best.

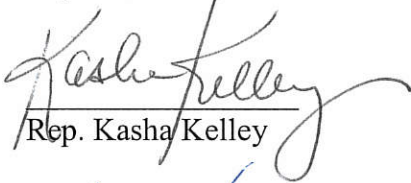
As such the subcommittee would recommend that any legislation regarding taxation of sexually oriented businesses be delayed at least until such time as the legal precedent in Utah produce a substantive ruling by a court. However, should the full committee decide to proceed with taxation the subcommittee would recommend against imposing a tax of greater than 10%; would caution the committee to avoid any overly detailed preamble that might invite collateral attack; and would suggest that consideration be given to altering the distribution of any revenue in section 3 of the bill to fund dual counseling of the community based sex offender program administered by the DOC, to establish a sex offender treatment at the Juvenile Correction Facility, and funding of existing grant programs within the Attorney General's Office including the Protection from Abuse Fund (sexual assault). In any event it would be crucial to tailor the expenditure of funds to programs directly related to the identified secondary effects of sexually oriented businesses.

Alternatively, it is the subcommittee's conclusion that implementation of state wide time, place and manner restrictions including but not limited to regulation of hours of operation, proximity restrictions, professional standards for employees, licensure requirements and the like could all be justified via a plethora of cases that have sound such regulation to be valid. Current statutory schemes in Arizona, Alabama and New Jersey, provide interesting examples of a starting point of this approach. That having been said prior to moving forward with such legislation the subcommittee believes it would be wise to seek further input from a variety of potentially interested parties including, with special attention to state and local law enforcement agencies, as well as city and county government.

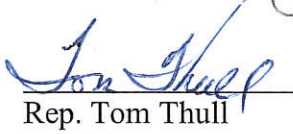
In summary, the subcommittee believes HB 2680 identifies a real and pressing issue. We have little doubt that sexually oriented businesses generate negative secondary effects. We believe a reasonable but unproven legal argument exists for taxation of these businesses. We believe stronger legal precedent exists for licensure or other time place and manner restrictions. Given the complicity of adopting such regulations, the subcommittee believes further study of this issue by an interim committee is justified.



Rep. Lance Kipzer



Rep. Kasha/Kelley



Rep. Tom Thull