



Date: March 7, 2011
To: House Appropriations Committee
From: Doug Wareham, Senior Vice President-Government Relations
Re: Support for H.B. 2368

Chairman Rhoades and members of the House Appropriations Committee, I am Doug Wareham appearing on behalf of the Kansas Bankers Association (KBA). KBA's membership includes 310 Kansas banks, which represents 99% of the state and federally chartered banks headquartered in Kansas.

Thank you for the opportunity to appear in support of House Bill 2368, which repeals the requirement for fee-funded agencies to annually remit 20% of their fee revenues to the State General Fund (SGF). KBA has a long-standing policy against the practice of sweeping dollars from fee-funded state agencies, and we want to commend members of this committee for helping change the tone of the conversation on this topic.

Banks operating in Kansas have the option of maintaining either a federal or state charter. In Kansas today, there are a total of 240 state-chartered banks whose primary regulator is the Office of the State Bank Commissioner (OSBC). The OSBC is funded entirely by fees paid by state chartered banks, trust companies and other financial service providers that are regulated by the department. While we support the bill in its entirety, I would like to draw your attention to Section 54 of the bill (found on Page 37, lines 27 through 29) which eliminates the 20% annual sweep that impacts the OSBC.

While it is our understanding the original purpose of the 20% annual sweep was to reimburse the state for services provided to the OSBC, we understand the department is actually billed for the services they receive from other state agencies. In addition to the 20% sweep, which amounts to an annual \$200,000 transfer from the OSBC to the SGF, the OSBC is also assessed for services they receive. Charges assessed by other state agencies include, but are not limited to, rental fees, state building fees/surcharges, data base access fees and accounting software maintenance fees. Some of these fees are significant. This year (2011), the monumental building fee/surcharge alone totaled \$66,967. We believe all fee-funded agencies should be required to provide compensation for services provided, but we object to the current process, which appears to require them to pay more than double for what they actually receive.

Additionally, we believe allowing the OSBC to retain the \$200,000 that has been annually swept to the state general fund will prove beneficial for the department. Having adequate financial resources is paramount, as the OSBC continues to deal with the impact of the slowly recovering economy and the challenges that economy has created for financial institutions in Kansas. During difficult economic times, the workload of the OSBC increases as the frequency of examinations for troubled banks increases. In the past, fee sweeps have threatened the ability of the OSBC to meet their role of ensuring the safety and soundness of Kansas banks by forcing the department to consider furloughing members of their examination staff. Fee sweeps also enhance the likelihood of an increase in the fee assessment that will affect the cost of doing business for state-chartered banks in Kansas.

Attached to my testimony is a list of the fee sweeps that have impacted the OSBC during the past decade. As you can see, in addition to the annual transfer of \$200,000, the OSBC was also tapped for an additional \$3,232,230 in fee sweep transfers since 2002. We support the premise of H.B. 2368, which will require fee funded agencies to pay for the services they are provided, but we strenuously object to unjustified fee sweeps that remove fees from the purpose for which they were collected.

KBA's position is supported by a 2002 Attorney General's opinion (Opinion No. 2002-45) issued by then Attorney General Carla Stovall who found that:

“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. If an assessment cannot stand on either police power or taxing authority, it would have to be reimbursed.”

In closing, I want to share that Kansas bankers do have a sincere appreciation for the financial challenges facing the State, and they contribute in many ways to the state general fund. Kansas banks support the state general fund through payment of the privilege tax, property taxes and sales taxes. We simply believe the sweeping of fees is poor public policy, and violates the trust between fee-payers and fee-funded agencies charged with providing regulatory oversight and consumer protection.

Once again, thank you for the opportunity to submit comments in support of H.B. 2368. I would be happy to stand for questions now or at the appropriate time.

For more information contact Doug Wareham at (785) 220-5820 or at dwareham@ksbankers.com.

Appropriations Committee

Date March 7, 2011

Attachment 4-2

Office of the State Bank Commissioner

Funds Transfers to State General Fund

	Division of Banking	Division of Consumer & Mrtg Lending	Total Transferred SGF (State)	Annual Total
<i>Summary 2002-2010</i>				
Annual Transfers	1,373,300	626,700	2,000,000	
Additional Funding	1,715,295	1,516,935	3,232,230	
Actual Sweeps to SGF				
Grand Totals	\$ 3,088,595	\$ 2,143,635		\$ 5,232,230
	59.0%	41.0%		
<i>Fiscal Year 2011</i>				
Annual Transfer	127,280	72,720	200,000	
Additional Funds Swept	-	-	-	
	127,280	72,720		\$ 200,000
<i>Fiscal Year 2010</i>				
Annual Transfer	130,000	70,000	200,000	
Additional Funds Swept	21,098	12,619	33,717	
	151,098	82,619		\$ 233,717
<i>Fiscal Year 2009</i>				
Annual Transfer	145,540	54,460	200,000	
Additional Funds Swept	510,339	241,416	751,755	
	655,879	295,876		\$ 951,755
<i>Fiscal Year 2008</i>				
Annual Transfer	141,000	59,000	200,000	
Additional Funds Swept	30,374	378	30,752	
	171,374	59,378		\$ 230,752
<i>Fiscal Year 2007</i>				
Annual Transfer	134,000	66,000	200,000	
Additional Funds Swept	56,629	24,924	81,553	
	190,629	90,924		\$ 281,553
<i>Fiscal Year 2006</i>				
Annual Transfer	134,000	66,000	200,000	
Additional Funds Swept	59,206	31,993	91,199	
	193,206	97,993		\$ 291,199
<i>Fiscal Year 2005</i>				
Annual Transfer	134,000	66,000	200,000	
Additional Funds Swept	545,073	705,955	1,251,028	
	679,073	771,955		\$ 1,451,028
<i>Fiscal Year 2004</i>				
Annual Transfer	140,000	60,000	200,000	
Additional Funds Swept	262,576	229,650	492,226	
	402,576	289,650		\$ 692,226
<i>Fiscal Year 2003</i>				
Annual Transfer	136,000	64,000	200,000	
Additional Funds Swept	230,000	270,000	500,000	
	366,000	334,000		\$ 700,000
<i>Fiscal Year 2002</i>				
Annual Transfer	151,480	48,520	200,000	
Additional Funds Swept	-	-	-	
	151,480	48,520		\$ 200,000