

## House Concurrent Resolution No. 5034

By Representatives Landwehr, Barbieri-Lightner, Brunk, Carter, Dahl, DeCastro, Faber, Goering, Goico, Hayzlett, Howell, Huebert, Hutchins, Huy, Kauffman, Long-Mast, Mason, Mays, McCreary, McLeland, Merrick, F. Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Novascone, Osborne, Ostmeyer, Powell, Powers, Schwab, Schwartz, Shultz, Siegfried and D. Williams.

2-3

---

14 A PROPOSITION to amend the constitution of the state of Kansas by  
15 adding a new article thereto, prescribing certain limits upon taxes,  
16 revenues and expenditures by the state.

17  
18 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*  
19 *members elected (or appointed) and qualified to the House of Repre-*  
20 *sentatives and two-thirds of the members elected (or appointed) and*  
21 *qualified to the Senate concurring therein:*

22 Section 1. The following proposition to amend the constitution of the  
23 state of Kansas shall be submitted to the qualified electors of the state  
24 for their approval or rejection: The constitution of the state of Kansas is  
25 amended by adding a new article thereto to read as follows:

26 **“Article 16. — TAX, REVENUE AND EXPENDITURE**  
27 **LIMITATIONS ON STATE GOVERNMENT.**

28 “§ 1. *Definitions.* As used within this article:

29 (a) “State” means the state government including all branches,  
30 state offices, authorities, agencies, boards, commissions, institu-  
31 tions, instrumentalities and any division or unit of state government  
32 which are directly supported with tax funds, except that “state” does  
33 not include any enterprise;

34 (b) “local government” means any county, township, city, ed-  
35 ucation district, other special district and any other taxing district  
36 or political subdivision of Kansas which is directly supported by tax  
37 funds, except that “local government” does not include any  
38 enterprise;

39 (c) “enterprise” means a state-owned or local government-  
40 owned business authorized to issue its own revenue bonds and re-  
41 ceiving less than 10% of annual revenue in grants or other direct  
42 cash benefit from the state and local governments combined;

43 (d) “bond” means any bond, note, debenture, interim certifi-

1 cate, grant and revenue anticipation note, lease-purchase agree-  
2 ment, lease certificate of participation or other evidence of indebt-  
3 edness which, in any such case, is entered into or establishes a debt  
4 obligation for longer than one fiscal year, whether or not the interest  
5 on which is subject to federal income taxation;

6 (e) “fiscal year” means the twelve-month fiscal period pre-  
7 scribed by law for the state;

8 (f) “fiscal year spending” means all expenditures and reserve  
9 increases except, as to both, (A) expenditures for refunds of any  
10 kind, (B) expenditures of moneys received from the federal govern-  
11 ment, moneys received as grants, gifts or donations which are  
12 to be expended for purposes specified by the donor, moneys that  
13 are collections for another government, moneys received for pen-  
14 sion contributions by employees and pension fund earnings, or (C)  
15 emergency reserve fund or budget stabilization reserve fund trans-  
16 fers or expenditures in accordance with this article;

17 (g) “inflation” means the change expressed as a percentage in  
18 the consumer price index for the Kansas City metropolitan area, all  
19 goods, all urban consumers, as officially reported by the bureau of  
20 labor statistics of the United States department of labor, or its suc-  
21 cessor index; and

22 (h) “population” means the more recent of either the periodic  
23 census conducted by the United States department of commerce  
24 or its successor agency or the annual update of such census as pre-  
25 scribed by the legislature by law, which shall be adjusted every  
26 decade to match the federal decennial census.

27 (i) “education district” means each school district, vocational or  
28 technical school, community college, technical college, municipal  
29 university, and any other public educational entity established as  
30 provided by law, except that “education district” does not include  
31 any state educational institution under the control and supervision  
32 of the state board of regents.

33 (j) “total state revenue” means all moneys received by the state  
34 from any source except any of the following:

35 (1) Moneys received as grants, gifts or donations which are to  
36 be expended for purposes specified by the donor;

37 (2) moneys received from the federal government; and

38 (3) moneys which are income earned on moneys in permanent  
39 endowment funds, trust funds, deferred compensation funds or  
40 pension funds and which are credited to such funds.

41 § 2. *Prior Elector Approval for Tax Increases or Issuance of*  
42 *Certain Bonds.* (a) For any fiscal year that commences on or after  
43 July 1, 2005, the state must have approval of the electors in advance

1 (1) for any new state income, sales or other excise tax rate increase  
2 before the state tax rate increase can take effect, (2) for any state  
3 mill levy ad valorem property tax rate increase above the state mill  
4 levy ad valorem property tax rate for the prior year before the state  
5 mill levy ad valorem property tax rate increase can take effect, (3)  
6 for any extension of any expiring state income, sales or other excise  
7 tax or expiring state ad valorem property tax before the extension  
8 can take effect, or (4) for any state tax policy change enacted into  
9 law by the state which would directly cause a net tax revenue gain  
10 to the state or local government, before such tax policy change can  
11 take effect.

12 (b) For any fiscal year that commences on or after July 1, 2005,  
13 the state must have approval of the electors before authorizing any  
14 bonds, except for refinancing existing bonded debt at a lower in-  
15 terest rate.

16 (c) The legislature shall provide by law for the manner of sub-  
17 mitting matters subject to approval under this section to the  
18 electors.

19 § 3. *Spending and Revenue Limits.* (a) For any fiscal year that  
20 commences on or after July 1, 2005, fiscal year spending by the  
21 state shall not increase above the fiscal year spending for the pre-  
22 ceding fiscal year by more than the maximum percentage increase  
23 determined pursuant to this section. The maximum percentage in-  
24 crease in fiscal year spending for a fiscal year shall be equal to the  
25 result obtained by adding the rate of inflation for the calendar year  
26 ending during the preceding fiscal year, plus the percentage change  
27 in state population during the calendar year ending during the pre-  
28 ceding fiscal year if a positive number, adjusted for revenue changes  
29 approved by electors under section 2 of this article.

30 (b) If the amount of the total state revenue for the preceding  
31 fiscal year exceeds the amount of total state revenue for the second  
32 preceding fiscal year, the total state revenue limitation for a fiscal  
33 year shall be the result obtained by adding (1) the lesser of (A) the  
34 amount of total state revenue for the preceding fiscal year or (B)  
35 the amount of the total state revenue limitation for the preceding  
36 fiscal year, and (2) the product of (A) the amount determined under  
37 clause (1) of this subsection, and (B) the sum of (i) the rate of  
38 inflation for the calendar year ending during the preceding fiscal  
39 year, plus (ii) the percentage change in state population during the  
40 calendar year ending during the preceding fiscal year if a positive  
41 number.

42 (c) If the amount of the total state revenue for the preceding  
43 fiscal year is less than the amount of total state revenue for the

1 second preceding fiscal year, the amount of the total state revenue  
2 limitation for a fiscal year shall be the lesser of (1) the amount of  
3 total state revenue for such fiscal year, or (2) the amount of the  
4 total state revenue limitation for the most recent fiscal year for  
5 which the amount of total state revenue exceeded the amount of  
6 total state revenue for the preceding fiscal year.

7 (d) The legislature, by law, shall provide a mechanism to adjust  
8 the amount of a limitation under this section to reflect any subse-  
9 quent transfer of all or any part of the cost of providing a govern-  
10 mental function. The mechanism shall adjust the amount of a lim-  
11 itation so that total costs are not increased as a result of the transfer.  
12 The adjustment mechanism provided for in this subsection shall be  
13 used in determining a limitation under this section beginning with  
14 the fiscal year immediately following the transfer.

15 (e) For the purposes of determining total revenue limitations  
16 under this section for the state, the total authorized fiscal year ex-  
17 penditures for the fiscal year ending on June 30, 2004, shall be  
18 construed to be the total revenue limitation for that preceding fiscal  
19 year and the total authorized fiscal year expenditures for the fiscal  
20 year ending on June 30, 2005, shall be construed to be the total  
21 revenue limitation for that preceding fiscal year.

22 § 4. *Emergency Reserve Fund.* (a) For any fiscal year that com-  
23 mences on or after July 1, 2005, if revenue from sources not ex-  
24 cluded from total state revenue exceeds the total state revenue lim-  
25 itation for that fiscal year and subject to the other provisions of this  
26 section, a portion of total state revenue in excess of the total state  
27 revenue limitation, determined in accordance with section 3 of this  
28 article, shall be transferred in the amount and in the manner pre-  
29 scribed by the legislature by law to the emergency reserve fund,  
30 which fund is hereby created in the state treasury, to the extent  
31 necessary to ensure that a balance of the emergency reserve fund  
32 at the end of the fiscal year is an amount equal to not more than  
33 3% of the total state revenue limitation for the ensuing fiscal year.  
34 Any amount required to be maintained in the ending balance of the  
35 state general fund as provided by law shall be excluded from the  
36 amount available for transfer to the emergency reserve fund by this  
37 section. Each transfer to the emergency reserve fund prescribed by  
38 this section shall be made before making any transfer to the budget  
39 stabilization reserve fund as provided in section 5 of this article or  
40 any refunds as required by section 6 of this article. The state shall  
41 not be required to transfer any moneys other than any amount of  
42 total state revenue in excess of the total state revenue limitation to  
43 the emergency reserve fund. The moneys in the emergency reserve

1 fund shall be in addition to, and shall not be used to meet, any other  
2 reserve requirement under this constitution or any law. In no case  
3 shall additional moneys be transferred to the emergency reserve  
4 fund if the balance in the emergency reserve fund is more than 3%  
5 of the total state revenue limitation for the ensuing fiscal year.

6 (b) Moneys in the emergency reserve fund may be expended  
7 only for emergencies declared by law. Two-thirds (2/3) of the mem-  
8 bers then elected (or appointed) and qualified in each house, voting  
9 in the affirmative, shall be necessary to declare an emergency within  
10 the state of Kansas as a whole and to pass any bill making an ap-  
11 propriation of money or transferring any moneys from the emer-  
12 gency reserve fund. Income earned on the emergency reserve fund  
13 of the state shall accrue to the fund.

14 (c) As used in this section “emergency” means an extraordinary  
15 event or occurrence that could not have been reasonably foreseen  
16 or prevented and that requires immediate expenditures to preserve  
17 the health, safety and general welfare of the people within the state  
18 and “emergency” does not mean a revenue shortfall or budget  
19 shortfall.

20 § 5. *Budget Stabilization Reserve Fund.* (a) For any fiscal year  
21 that commences on or after July 1, 2005, if total state revenue ex-  
22 ceeds the total state revenue limitation for that fiscal year, then the  
23 remaining excess amount, after making any transfer to the emer-  
24 gency reserve fund as required by section 4 of this article, shall be  
25 reserved as prescribed by this section or refunded as prescribed by  
26 section 6 of this article, subject to the other provisions of this sec-  
27 tion. Any amount required to be maintained in the ending balance  
28 of the state general fund as provided by law shall be excluded from  
29 the amount available for transfer to the budget stabilization reserve  
30 fund by this section.

31 (b) After any amount required to be transferred to the emer-  
32 gency reserve fund pursuant to section 4 of this article has been  
33 transferred, an amount of any remaining excess amount of total state  
34 revenue shall be transferred in the amount and in the manner pre-  
35 scribed by the legislature by law to the budget stabilization reserve  
36 fund, which fund is hereby created in the state treasury. The  
37 amount transferred to the budget stabilization reserve fund in ac-  
38 cordance with this subsection shall be equal to the lesser of (1) the  
39 amount necessary to ensure that the balance in the budget stabili-  
40 zation reserve fund at the end of the fiscal year is an amount equal  
41 to 10% of the total state revenue limitation for the ensuing fiscal  
42 year, or (2) the amount equal to 50% of any such remaining excess  
43 amount of total state revenue. Income earned on the budget sta-

1       bilization reserve fund shall accrue to the fund. In no case shall  
2       additional moneys be transferred into the budget stabilization re-  
3       serve fund if the balance in the fund is equal to or more than 10%  
4       of the total state revenue limitation for the ensuing fiscal year.

5       (c) For any fiscal year that commences on or after July 1, 2005,  
6       if the amount of the total state revenue is less than the amount of  
7       total state revenue for the prior fiscal year, the legislature shall pro-  
8       vide by law for the transfer of moneys from the budget stabilization  
9       fund to the state general fund in an amount equal to not more than  
10      the difference between the amount of total state revenue for the  
11      prior fiscal year and the amount of total state revenue for the cur-  
12      rent fiscal year. Under no other circumstances shall moneys be  
13      transferred or expended from the budget stabilization fund of the  
14      state.

15      § 6. *Disposition of Excess Revenues.* (a) Any excess amount of  
16      total state revenues for a fiscal year that remains after the transfers  
17      to the emergency reserve fund and budget stabilization reserve fund  
18      pursuant to section 4 or section 5 of this article, if any, shall be  
19      reserved in the current fiscal year and shall be refunded as provided  
20      by law during the next ensuing fiscal year to the taxpayers who paid  
21      the state ad valorem property taxes or state income, sales or other  
22      excise taxes for or during the preceding fiscal year, in a manner that  
23      is proportional, on a pro rata basis, to the manner in which such  
24      taxes were collected from such taxpayers. Any amount required to  
25      be maintained in the ending balance of the state general fund as  
26      provided by law shall be excluded from the amount available to be  
27      reserved and refunded by the state as prescribed by this section.

28      (b) In a case of any amount that is received pursuant to any tax  
29      and required to be reserved and refunded to taxpayers by the state  
30      pursuant to this section and that is determined by the state in the  
31      manner prescribed by law to be insufficient for refunds to be made  
32      during the ensuing fiscal year, such amount shall be reserved for  
33      refunds to be made thereafter when the amount reserved is suffi-  
34      cient therefor.

35      § 7. *Temporary Borrowing.* On or after July 1, 2005, during any  
36      fiscal year, transfers which are temporary and are to be repaid, or  
37      any other temporary borrowing, through certificates of indebted-  
38      ness or any other device or manner, of any moneys in the state  
39      treasury to be credited to the state general fund, are prohibited  
40      unless the moneys so transferred or otherwise borrowed are re-  
41      stored or repaid to the original funds or accounts of the state treas-  
42      ury from the state general fund within the same fiscal year. The  
43      provisions of this section do not apply to transfers from the emer-

1 agency reserve fund or the budget stabilization reserve fund to the  
2 state general fund in accordance with this article.

3 § 8. *General Revenue Supplanting.* On or after July 1, 2005, any  
4 appropriation of moneys in the state treasury that either supplants  
5 any appropriation from the state general fund, or that, if not made,  
6 would require an appropriation from the state general fund is pro-  
7 hibited. For purposes of this section, any appropriation of moneys  
8 in the state treasury that is funded by user charges or fees imposed  
9 on goods or services that do not exceed the cost of the goods or  
10 services provided shall not be deemed to be an appropriation that  
11 supplants any appropriation from the state general fund.

12 § 9. *State Mandates on Local Governments.* A local government  
13 may not be required to fulfill any mandate imposed by the state  
14 unless and until, and may be required to fulfill that mandate only  
15 to the extent that, funds are provided to the local government by  
16 the state for that purpose. The legislature is not required to appro-  
17 priate funds for mandates if more than two years have passed since  
18 the effective date of the mandate and no claim for funding has been  
19 made by the local government during that period.

20 § 10. *Construction and Enforcement.* (a) The provisions of this  
21 article shall be liberally construed for the purpose of effectuating  
22 the purposes thereof, except that nothing in this article shall be  
23 construed to authorize any new or increased tax of any kind other  
24 than as provided or authorized by law enacted by the legislature in  
25 accordance with and subject to the other provisions of this  
26 constitution.

27 (b) In any case of a conflict between any provision of this article  
28 and any other provision contained in the constitution, the provisions  
29 of this article shall control.

30 (c) All laws in force at the time of the adoption of this amend-  
31 ment and consistent therewith shall remain in full force and effect  
32 until amended or repealed by the legislature. The legislature shall  
33 repeal or amend all laws inconsistent with the provisions of this  
34 article to conform with the provisions of this article.

35 (d) Any individual or class of individuals shall have standing to  
36 bring a suit to enforce this article. A court of record shall award a  
37 successful plaintiff costs and reasonable attorney fees in the suit,  
38 but may not allow the state to recover costs and reasonable attorney  
39 fees unless a suit against it is ruled frivolous.”

40 Sec. 2. The following statement shall be printed on the ballot with  
41 the amendment as a whole:

42 “*Explanatory statement.* This amendment (1) would require the  
43 state to have prior voter approval for any new tax or tax increase

1 or extension of an existing tax and for any bonded debt other  
2 than refinancing bonds, (2) would impose spending and revenue  
3 limits on the state based on increases in the consumer price index  
4 and population, with provisions to adjust for economic down-  
5 turns or transferred functions, (3) would provide for emergency  
6 reserves to be used only for emergencies that are declared by  
7 law passed by  $\frac{2}{3}$  of all members of the House and Senate, and  
8 not to be used for any revenue shortfall, (4) would limit state  
9 temporary borrowing to that repaid within the same year and  
10 would prohibit the state from replacing general revenues with  
11 excessive fees and charges for goods and services, (5) would pro-  
12 vide that local governments could not be required to fulfill un-  
13 funded state mandates, and (6) would govern in case of conflicts  
14 with statutes or other state constitutional provisions and would  
15 permit individual or class action enforcement actions.

16 “A vote for the proposition would limit state legislative authority  
17 and would require voter approval for state tax increases or ex-  
18 tensions and certain bonded debt, would impose state spending  
19 and revenue limits, would require excess state revenues to be  
20 reserved for emergencies and economic downturns, with limits,  
21 or to be refunded to taxpayers, would limit state temporary bor-  
22 rowing, would prohibit unfunded mandates on local govern-  
23 ments and would permit enforcement actions.

24 “A vote against the proposition would continue the present consti-  
25 tutional and statutory authority for state government taxing and  
26 spending by law, for disposition of tax revenues and for other  
27 related matters in the exercise of the legislative power of this  
28 state.”

29 Sec. 3. This resolution, if approved by two-thirds of the members  
30 elected (or appointed) and qualified to the House of Representatives, and  
31 two-thirds of the members elected (or appointed) and qualified to the  
32 Senate shall be entered on the journals, together with the yeas and nays.  
33 The secretary of state shall cause this resolution to be published as pro-  
34 vided by law and shall cause the proposed amendment to be submitted  
35 to the electors of the state at the general election to be held on November  
36 2, 2004, unless a special election is called at a sooner date by concurrent  
37 resolution of the legislature, in which case it shall be submitted to the  
38 electors of the state at the special election.