Approved: April 1, 2011
Date

MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE

The meeting was called to order by Chairman Marc Rhoades at 9:10 a.m. on March 7, 2011, in Room 346-S of the Capitol.

All members were present except:
Representative Kelley – excused
Representative McLeland - excused

Committee staff present:
Jim Wilson, Office of the Revisor of Statutes
Nobuko Folmsbee, Office of the Revisor of Statutes
Alan Conroy, Kansas Legislative Research Department
Jarod Waltner, Kansas Legislative Research Department
Shirley Morrow, Kansas Legislative Research Department
Cindy O'Neal, Administrative Assistant, Appropriations Committee
Kathy Holscher, Committee Assistant, Appropriations Committee

Conferees:

Luke Bell, Executive Vice President-Government Affairs, Kansas Association of Realtors
Gary Reser, Executive Vice President, Kansas Veterinary Medical Association
Doug Wareham, Senior Vice President-Government Relations, Kansas Bankers Association

Others attending:
See attached list.

- Attachment 1 **HB 2368** Memorandum – Jim Wilson, First Assistant Revisor of Statutes
- Attachment 2 **HB 2368** Testimony – Kansas Veterinary Medical Association
- Attachment 3 **HB 2368** Testimony – Kansas Association of Realtors
- Attachment 4 **HB 2368** Testimony – Kansas Bankers Association
- Attachment 5 **HB 2368** Testimony – Kansas Real Estate Commission
- Attachment 6 **HB 2368** Testimony – Kansas Chiropractic Association
- Attachment 7 FY 2010 – FY 2016 Revenue and Expenditure Projections

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HB 2368 - Concerning appropriations; deleting the 20% credit to the state general fund

Chairman Rhoades welcomed committee members and reviewed the meeting agenda.

Chairman Rhoades made a motion to introduce legislation regarding the maintenance of effort adjustment for the Recission bill. The motion was seconded by Representative Feuerborn. Motion carried.

Chairman Rhoades made a motion to introduce legislation regarding the school district tax credit scholorship opportunities act and school accountability act. The motion was seconded by Representative Kleeb. Motion carried.

Representative Crum made a motion to approve the committee minutes from the February 17, 21 and 22 meetings. The motion was seconded by Representative Ballard. Motion carried.

Jim Wilson, First Assistant Revisor, Office of Revisor of Statutes, provided an overview of the Memorandum on **HB 2368** (Attachment 1) and reviewed the proposed technical amendments. It was noted that additional discussion may be necessary regarding the accounting and budgeting system. The bill would take effect upon the approval of the Governor, if passed by the Legislature, and upon publication in the stature book in FY 2012. He stated that upon effect, 20% of the fees would go back into the agency's budget from State General Funds (SGF) on July 1, 2011.

Discussion followed by committee members regarding contracted services.

Gary Reser, Executive Vice-President, Kansas Veterinary Medical Association presented testimony as neutral position with **HB 2368**, (Attachment 2). He stated that the association would be in favor of the bill with a change of language that would state the entire amount shall be credited to the Veterinary

Minutes of the House Appropriations Committee at 9:10 a.m. on March 7, 2011, in Room 346-S of the Capitol.
Examiners fee fund as is contained in all fee funded agencies. The Chairman noted that this language has been included.

Luke Bell, Vice-President-Government Affairs, Kansas Association of Realtors, presented testimony as a proponent of **HB 2368**, (Attachment 3).

Doug Wareham, Senior Vice-President-Government Relations, Kansas Bankers Association, presented testimony as a proponent of **HB 2368**, (Attachment 4).

Chairman Rhoades noted that written testimony was distributed to members from the Kansas Real Estate Commission (Attachment 5), and Kansas Chiropractric Association, (Attachment 6) as proponents of **HB 2368**.

Chairman Rhoades stated that members will work **HB 2368** in committee tomorrow. He introduced Steve Anderson, Director of the Divison of the Budget, State of Kansas.

Steve Anderson provided an overview of actual, estimated, recommended and projected revenues and expenditures for FY 2010 – FY 2016, (Attachment 7). He reviewed the five stages involved with instituing a management information system in order to become more efficient and effective. This would be at no additional cost to the state and would measure the cost per unit by output and the impact for trend anaylsis, cost per unit for output by employee, cost per united indirect overhead, allocation of indirect overhead of the inter-agency to determine the cost of doing business, and identifing cost per touch - per client.

Director Anderson responded to questions from committee members regarding cost drivers in relation to Mediciad, Kansas Public Employee Retirement System and K-12. Indirect and direct costs determined through the management information system was discussed. He stated that this technology would provide real-time data reports for evaluating effeciencies within state agencies, enabling agencys and the legislature to make better budgeting decisions. He discussed the transition team's recommendations to meet the $265 million budget shortfall, and it was noted that the consensus data for FY 2009 - FY 2010 is not ready for distribution. Discussion was held regarding the migration of personal income data provided in the distributed material, the Arts Council and public broadcasing system. The importance of the consolidation and seperation of the Budget Director's position from the Department of Administration was noted by the director. He noted that the Medicaid caseload shifts with economic trends, the elimination of shrinkage based on agency-by-agency basis is needed, increased costs for health care and capitol improvement bonds for schools was reviewed.

Meeting adjourned at 11:03 a.m.

Marc Rhoades, Chairman

APPROPRIATIONS COMMITTEE GUEST LIST

DATE: March 7, 2011

NAME	REPRESENTING
Justin McFarland	KDOL
Marilyn Jacobson	DOA
Doug Wareham	Kansas Bankers Assn.
Luke Bell	Kansas Association of REALTORS
Paje Routhier	Hein Law Firm
Colin Curtis	Sandstone Group
[illegible] Scott	Ks Funeral Directors Assn
Rob Mealy	Kearney & Assoc.
Judi Stork	OSBC
Ed Splichal	✓
Louise Monell	✓
Judy Bowman	✓
[illegible]	KCSL
[illegible]	KMHA
[illegible]	KCMA
Mary Jane Stankiewicz	KAEP
Leigh Keck	Capitol Strategies
Mark Tallman	KASB
Betty Wright	Ks Dental Board
Mack Smith	KS ST Board of Mortuary Arts
Jane Carter	KOSE

APPROPRIATIONS COMMITTEE GUEST LIST

DATE: ____________

NAME	REPRESENTING
Stephanie Bunten	Judicial Branch
Bill Brog	C.S.
Shannon Bell Little	LGR
Nancy Bryant	SOS

Office of Revisor of Statutes
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MEMORANDUM

To: Chairman Rhoades and Members of the House Appropriations Committee

From: Jim Wilson, First Assistant Revisor of Statutes

Date: March 7, 2011

Subject: 2011 House Bill No. 2368

K.S.A. 2010 Supp. 75-3170a sets forth the rationale for the statutes requiring that 20% of certain amounts remitted by state agencies for deposit in the state treasury be credited to the State General Fund with the balance to be credited to designated special revenue funds.

The rationale for this 20% credit is to reimburse the State General Fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services, and any and all other state governmental services, which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the State General Fund to provide such services.

HB 2368 would remove the requirement of this 20% credit by amending it from each statute presently requiring it.

The first section of the bill is amended to authorize each state agency, board or commission to enter into contracts with the Department of Administration, another state agency or a private vendor to acquire accounting, auditing, budgeting, legal, payroll, personnel and purchasing services, and any other services required. [See page 2, in lines 11 to 17. A technical amendment is attached to clarify this provision and to make other technical amendments recommended by staff.]

This remaining provisions of the bill amend 55 statutes to remove the requirement of the 20% credit . The first example appears on page 2, in lines 24 and 25, regarding the Board of Accountancy.

The bill would take effect upon publication in the statute book.

Appropriations Committee
Date March 7, 2011
Attachment 1

Proposed Technical Amendments to HB 2368

For Consideration by Committee on Appropriations

March 7, 2011

On page 2, in line 15, by striking all after "are"; by striking all in line 16; in line 17, by striking all before the period and inserting "required by such state agency, board or commission";

On page 8, in line 5, by striking all after the period; by striking all in line 6;

On page 9, in line 26, by striking all after "amount"; in line 27, by striking all before "shall";

On page 15, in line 37, by striking all after "be" where it first appears;

On page 36, in line 24, by striking all after "year"; in line 25, by striking all before "and"

Prepared by Office of Revisor of Statutes, Jim Wilson, First Assistant Revisor

KANSAS VETERINARY MEDICAL ASSOCIATION 816 SW Tyler, Suite 200, Topeka, KS 66612-1635 ■ (785) 233-4141 ■ FAX: (785) 233-2534

Testimony
House Taxation Committee
Presented by Kansas Veterinary Medical Association on H.B. 2368
Monday, March 7, 2011

Members of the House Taxation Committee, thank you very much for the opportunity to appear today and testify on **H.B. 2368**.

The Kansas Veterinary Medical Association (KVMA) represents and advocates on behalf of the Kansas veterinary profession through legislative, regulatory, educational, communications, and public awareness programs.

The KVMA supports the intent and the spirit of **H.B. 2368**, but is here today to offer what the KVMA hopes is just a technical amendment.

In Section 16, line 4, the language states, "~~Twenty percent of each such deposit~~ *"The entire amount* shall be credited to the state general fund and the balance shall be credited to the veterinary examiners fee fund."

This is obviously in conflict with the purpose of the bill and treats the Kansas Board of Veterinary Examiners differently than the other state agencies addressed in the legislation.

Suggested language would be, *"The entire amount* shall be credited to the veterinary examiners fee fund."

Thank you for your attention to what is assumed to be an oversight or a computer error.

The KVMA respectfully requests that the appropriate changes be made in **H.B. 2368** and the Kansas Board of Veterinary Examiners be treated the same way as the other impacted state agencies in the bill.

Thank you very much for your consideration of this request.

Respectfully submitted,

Gary Reser, KVMA executive vice president

Appropriations Committee
Date March 7, 2011
Attachment 2

KANSAS Association of REALTORS®

Luke Bell
Vice President of Governmental Affairs
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785-633-6649 (Cell)
Email: lbell@kansasrealtor.com

To: House Appropriations Committee

Date: March 7, 2011

Subject: **HB 2368** – Supporting the Repeal of the Requirement for Fee-Funded Agencies to Annually Remit 20% of Fee Revenues to the State General Fund

Chairman Rhoades and members of the House Appropriations Committee, thank you for the opportunity to appear today to offer testimony on behalf of the Kansas Association of REALTORS® in support of **HB 2368**. Through the comments expressed herein, it is our hope to provide additional legal and public policy context to the discussion on this issue.

KAR is the state's largest professional trade association, representing nearly 8,000 members involved in both residential and commercial real estate and advocating on behalf of the state's 700,000 home owners. REALTORS® serve an important role in the state's economy and are dedicated to working with our elected officials to create better communities by supporting economic development, a high quality of life, and providing affordable housing opportunities, while protecting the rights of private property owners.

As a starting point, we are extremely concerned about the extremely difficult budget challenges facing the Kansas Legislature in FY 2012 and FY 2013. Just like other citizens of this state, REALTORS® have family members who are enrolled in K-12 public education, attend public universities, depend on various disability and social service programs administered by the state and take advantage many other vitally important state services that have been and will continue to be cut by the Kansas Legislature.

<u>Fee Fund Sweeps Have Severely Inhibited the Fiscal Soundness of the Real Estate Fee Fund and the Commission's Ability to Adequately Regulate the Real Estate Industry</u>

Having said that, we are also very concerned about the continuing devastating impact that unconstitutional fee fund sweeps by the Kansas Legislature are having on the Kansas Real Estate Commission's budget and the Commission's ability to adequately regulate the real estate industry during this difficult economic environment. If the Kansas Legislature continues to decrease the Commission's budget during the 2011 Legislative Session, it will have an extremely detrimental impact on the Commission's ability to properly regulate the real estate industry and protect consumers.

In addition to the annual 20% transfer of fee revenues that would be repealed by **HB 2368**, the Kansas Legislature has swept more than <u>$700,000</u> from the real estate fee fund into the state general fund over the past six years to pay for unrelated state programs. In that same time span, the 20% annual transfer has resulted in the transfer of nearly <u>$1.2 million</u> from the real estate fee fund to the state general fund, which equals a total loss of <u>$1.9 million</u> (or over 170% of the Commission's annual budget) in that time span.

Appropriations Committee
Date March 7, 2011
Attachment 3

As Currently Enforced, the 20% Transfer Required by the Statutes is Unconstitutional Since No Services are Provided by Other State Agencies to the Fee-Funded Agency in Return for the Transfer

Contained within the statutes for each fee-funded agency, there is a provision that requires each agency to annually transfer 20% of all licensing fees, charges and penalties collected, up to a statutory maximum of $200,000, to the state general fund to pay for unrelated programs in the state budget. The Kansas Real Estate Commission is obligated to the 20% annual transfer by the provisions of **K.S.A. 58-3074(a)**.

Originally enacted in 1973, the current language in **K.S.A. 75-3170a(a)** was a legislative response to a Kansas Supreme Court decision in *Panhandle Pipeline Co. v. Fadely*, 183 Kan. 803 (1958), where the court had invalidated an earlier appropriation calling for the 20% transfer to the state general fund from a fee-funded agency. In this case, the court determined that the 20% transfer of fee funds to the state general fund was unconstitutional since the funds were used as general revenue instead of to regulate and supervise the industry from which they were collected. *Id.*

The original intent of the 20% transfer was to reimburse the state for the cost of services that were provided to fee-funded agencies by other state agencies that were funded through the state general fund. While these funds were originally funneled to the Kansas Department of Administration, these funds have been diverted directly to the state general fund and no services have been provided to fee-funded agencies from other state agencies in return for the 20% transfer since 2003.

K.S.A. 75-3170a(a) provides that the purpose of this transfer is "to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services, and any and all other state governmental services, which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the state general fund to provide such services" [Emphasis added]. Under this language, the 20% transfer required by each of these statutory provisions is intended to offset the cost of "any and all other state governmental services" provided to the fee-funded agency.

In FY 2009, the Commission was forced to transfer $199,725.41 in licensing fees, charges and penalties paid by real estate licensees to the state general fund to satisfy the obligations imposed by this statutory provision. However, the Commission also paid various fees and charges totaling $50,233.79 on top of the 20% transfer to the Kansas Department of Administration during FY 2009 for the following services ostensibly provided to the Commission (even though these services fall under the list of services that are supposed to be paid for by the 20% transfer under **K.S.A. 58-3170a**):

(1) Annual central mail assessment (for maintenance of mail facility and equipment): $5,627.10;
(2) non-state building lease administrative fee (fee charged to administer the lease): $142.89;
(3) monumental building surcharge (for maintenance of the Capitol, Judicial Center and Cedar Crest mansion): $11,050.16;
(4) surety bond: $13.50;
(5) data services (for internet and router connectivity): $3,381.00;
(6) central mail (actual mail costs): $14,061.73;
(7) telecommunications (for voice switching service, long distance and directory): $4,759.51;
(8) annual FMS (cost of state's new accounting system): $1,961.94;
(9) enterprise application (based on the number of spending warrants issued): $1,518.22; and
(10) miscellaneous data processing (email system and computer services): $7,717.74.

According to the language in **K.S.A. 75-3170a(a)**, the 20% transfer required by each of these statutory provisions is again intended to offset the cost of "any and all other state governmental services" provided to the fee-funded agency. However, it is explicitly clear that several of the services on the list above for which the Commission is directly billed by other state agencies fall within the meaning of the term "any and all other state governmental services."

Appropriations Committee
Date March 7, 2011
Attachment 3-2

If the funds collected by the state general fund through the 20% annual transfer from fee-funded agencies are not currently being used to provide services back to the fee-funded agencies, then the case law would establish that the transfer of those funds to the state general fund is an unconstitutional "fee fund sweep." Accordingly, we believe the Kansas Legislature should repeal these unconstitutional requirements and permanently repeal the obligation to transfer 20% of fee fund revenue to the state general fund.

In the alternative, the new language in lines 11 through 17 on page 2 of the legislation would explicitly allow the Commission to contract with the Kansas Department of Administration, other state agencies or private vendors for the types of services that are discussed in **K.S.A. 75-3170a(a)**. We absolutely support this language and strongly believe that the Commission should be statutorily obligated to pay for the actual cost of any and all services provided to the Commission by other state agencies.

If the Kansas Department of Administration or another state agency provides a legitimate service to the Commission and charges the Commission a fee based on the reasonable value of those services, we believe that the Commission has an absolute obligation to continue to pay for the cost of those services. Accordingly, we would strongly disagree that this legislation would allow the Commission to receive any "free" services or otherwise burden any other state agency.

<u>Fee Fund Sweeps are Unconstitutional Since They are an Illegitimate Use of the Police Power Authority to Generate General Tax Revenue in Violation of Article 11, Section 1 of the Kansas Constitution</u>

Fundamentally, the state government has the inherent power called the "police power" to regulate various businesses and industries for the protection of its citizens. While the term "police power" is difficult to define precisely, it basically "embraces the state's power to preserve and to promote the general welfare and it is concerned with whatever affects the peace, security, safety, morals, health and general welfare of the community." 16A Am. Jur. 2d *Constitutional Law* § 313 (June 2002) (citations omitted).

In regulating the real estate industry, the Kansas Legislature has chosen to exercise its police power to place certain requirements and restrictions on those individuals acting as real estate salespersons and brokers. In doing so, the Kansas Legislature promotes the general welfare of the public through a highly regulated real estate industry overseen by the Kansas Real Estate Commission.

While the police power provides the state with broad authority to regulate a particular business or industry, there is a definite constitutional distinction between a state's police power and its power to levy taxes and other revenue mechanisms to defray general state budget expenditures. Under long-established precedent, the Kansas Supreme Court has explicitly recognized a clear distinction between the Kansas Legislature's authority to exercise its police power and the ability to enact revenue raising measures.

> At the outset, it is clear that under its police power the state may reimburse itself for the costs of otherwise valid regulation and supervision by charging the necessary expenses to the businesses or persons regulated. A statute, however, is void if it shows on its face that some part of the exaction is to be used for a purpose other than the legitimate one of supervision and regulation or if more than adequate remuneration is secured. *Panhandle Eastern Pipe Line Co. v. Fadely*, 183 Kan. 803, 806-07 (1958).

In this respect, it is clear that the 20% annual transfer required by **K.S.A. 75-3170a(a)** is not merely providing the state with an avenue to "reimburse itself for the costs of otherwise valid regulation and supervision." When no actual services are being provided to the fee-funded agency in return for the 20% transfer of funds, the transfer becomes a simple revenue raising mechanism for the state general fund.

Appropriations Committee
Date March 7, 2011
Attachment 3-3

In *Executive Aircraft v. City of Newton*, 252 Kan. 421 (1993), the Kansas Supreme Court held that a fuel flowage "regulatory fee" assessed by a city and county was an illegal tax under the Kansas Constitution. In this decision, the Court addressed the distinction between a fee and a tax.

> Thus, a tax is a forced contribution to raise revenue for the maintenance of governmental services offered to the general public. In contrast, a fee is paid in exchange for a special service, benefit, or privilege not automatically conferred upon the general public. A fee is not a revenue measure, but a means of compensating the government for the cost of offering and regulating the special service, benefit, or privilege. *Id.* at 427.

In order to determine whether a charge is a fee or a tax, it is first necessary to determine whether the particular charge is an exercise of the police power or is a tax imposed for the purpose of raising general revenue. If the Kansas Legislature attempts to exercise its policy power by enacting a fee on a regulated industry, the amount of the fee must be reasonably approximate to the cost of regulation because once "adequate remuneration has been secured the police power is exhausted." *State ex rel. Brewster v. Cumiskey*, 97 Kan. 343, 352 (1916).

After a full analysis of the case law on this issue, it is possible to extract a basic rule of law regarding this issue. If an assessment, charge or fee paid by a regulated business or individual grossly exceeds the cost of regulating that business or individual and there is no reasonable relationship between the actual costs involved and the amount of the fee, the portion of that assessment, charge or fee that exceeds the actual costs involved in regulating that business or individual is an unconstitutional use of the state's police power authority as a revenue raising mechanism or tax. *Kansas Attorney General's Opinion 2002-45 (2002).*

<u>If the Obligation to Annually Transfer 20% of Fee Revenues to the State General Fund is Not Repealed, then the Kansas Real Estate Commission Will Have No Choice but to Increase Real Estate Licensing Fees</u>

Due to the nearly <u>$1.9 million</u> that has been transferred from the real estate fee fund to the state general fund from fee fund sweeps and the 20% transfer requirement over the last six years, the Commission has now been placed in the very difficult position of being unable to fully enforce the provisions of our state's real estate laws and running a substantial budget deficit beginning in FY 2013. If **HB 2368** does not pass, the Commission will have no choice but to increase real estate licensing fees over the next few years to stabilize the real estate fee fund and avoid extremely severe reductions in agency operations.

In the context of the challenges currently facing the Commission, the association believes they are acting with the utmost good faith to address the challenges and provide for the proper regulation of the industry. When faced with the amount of revenue improperly transferred to the state general fund, the Commission has responsibly and prudently reduced spending in a good faith effort to avoid licensing fee increases.

If the Commission is forced to increase real estate licensing fees, then real estate professionals will be faced with the objectionable task of paying licensing fees that are unreasonably too high and go to offset governmental expenses that provide no benefit or regulation to the real estate industry. This is clearly unconstitutional under the established case law and a glaring example of extremely poor public policy.

<u>Conclusion</u>

For all the foregoing reasons, we would respectfully request that the House Appropriations Committee support **HB 2368**. Once again, thank you for the opportunity to provide comments and I would be happy to respond to any questions from the committee members at the appropriate time.

Appropriations Committee
Date March 7, 2011
Attachment 3-4

Kansas Bankers Association

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.

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Appropriations Committee
Date March 7, 2011
Attachment 4

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
Summary 2002-2010				
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%**		
Fiscal Year 2011				
Annual Transfer	127,280	72,720	200,000	
Additional Funds Swept	-	-	-	
	127,280	72,720		$ 200,000
Fiscal Year 2010				
Annual Transfer	130,000	70,000	200,000	
Additional Funds Swept	21,098	12,619	33,717	
	151,098	82,619		$ 233,717
Fiscal Year 2009				
Annual Transfer	145,540	54,460	200,000	
Additional Funds Swept	510,339	241,416	751,755	
	655,879	295,876		$ 951,755
Fiscal Year 2008				
Annual Transfer	141,000	59,000	200,000	
Additional Funds Swept	30,374	378	30,752	
	171,374	59,378		$ 230,752
Fiscal Year 2007				
Annual Transfer	134,000	66,000	200,000	
Additional Funds Swept	56,629	24,924	81,553	
	190,629	90,924		$ 281,553
Fiscal Year 2006				
Annual Transfer	134,000	66,000	200,000	
Additional Funds Swept	59,206	31,993	91,199	
	193,206	97,993		$ 291,199
Fiscal Year 2005				
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
Fiscal Year 2004				
Annual Transfer	140,000	60,000	200,000	
Additional Funds Swept	262,576	229,650	492,226	
	402,576	289,650		$ 692,226
Fiscal Year 2003				
Annual Transfer	136,000	64,000	200,000	
Additional Funds Swept	230,000	270,000	500,000	
	366,000	334,000		$ 700,000
Fiscal Year 2002				
Annual Transfer	151,480	48,520	200,000	
Additional Funds Swept	-	-	-	
	151,480	48,520		$ 200,000

Appropriations Committee
Date March 7, 2011
Attachment 4-3

Kansas Real Estate Commission
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Sherry C. Diel, Director

Sam Brownback, Governor

To: House Appropriations Committee
From: Sherry C. Diel, Executive Director
Date: March 7, 2011
Subject: HB 2368—Proponent of abolishing 20% transfer from fee fund receipts to SGF

Chairman Rhoades and members of the House Appropriations Committee, thank you for the opportunity to share the Commission's comments regarding the benefit passage of HB 2368 will have on the Kansas Real Estate Commission's fiscal ability to properly regulate the real estate industry. Due to factors outside the Commission's control, the Commission's fee fund balance will not be sufficient to sustain anticipated revenues commencing in FY 2013 without substantially increasing revenues or reducing expenditures needed for regulatory purposes.

Quick Background on What Happened to the Commission's Cash Balance

The difficult economy has taken a devastating toll on the Commission's budget, but there are other factors involved to explain why the Commission's fee fund balance has been depleted so quickly. The Commission has been hit by the "perfect storm" caused by the following: (1) since FY 2005, over $700,000 has been swept from the Commission's fee fund and transferred to the State General Fund (SGF); (2) licensee counts have decreased by approximately 3,000 since FY 2007; and (3) the number of requests for hearings and severity of the cases have more than doubled since the housing market began to decline resulting in increased expenditures and an increase in the backlog of cases that require disciplinary orders to be drafted and a backlog of hearings to be held.

In FY 2005, $508,438 was swept from the Commission's fee fund. In FY 2009, another $195,671 of Kansas Savings Incentive Plan (KSIP) monies that the Commission had saved for updating its licensure system was swept from the fee fund and transferred to the SGF when the KSIP program was terminated. Ironically, the Division of Budget had also recommended that another $550,000 be swept from a combination of the Commission's recovery fund and fee fund in FY 2009, but fortunately that measure was defeated late in the Session.

The Commission Pay 20% for Indirect Costs and is Direct Billed

In addition to the fee fund sweeps, the Commission transfers 20% of fees received from licensees up to a maximum of $200,000 per year for "indirect costs" for accounting, legal and other centralized services. However, the Commission is also direct billed for most of those services by the Department of Administration.

For the past several years, the Commission has been required to transfer the entire statutory cap of $200,000 to meet the 20% transfer requirement. From FY 2006 through FY 2011, the Commission will have transferred $1.2 million of receipts from licensee fees to the SGF. Fee fund sweeps and direct bills for general services are added to the $200,000 per year transferred to SGF.

In FY 2011, the Commission anticipates that direct bills received from the Department of Administration will fall in the $52,000-$60,000 range. Examples of direct bills from the Department of Administration include:

$14,300 monumental building charge for upkeep of Capital, Judicial Center and Governor Mansion

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$5,500 postage equipment assessment
$150 Dept. of Facilities Mgmt. assessment for lease negotiation services
$50 per hour for services provided by DISC computer support staff
$5500 FMS assessment (charge for SMART accounting system)

Other items Department of Administration direct bills for:

Voice Switching, Long Distance, and Directory
Connectivity/router for information technology equipment
Monthly assessment for each email account
Monthly assessment for every warrant issued by the Commission to pay bills or refunds
Surety bond
Car insurance
Postage for all U.S. Mail processed by Central Mail

In FY 2009 alone, the direct bills received from the Department of Administration exceeded $50,000. A total of approximately $450,000 was transferred from the Commission's fee fund to the State General Fund in FY 2009 between the 20% receipts transfer of $200,000, the fee fund sweep of almost $196,000 and direct bills exceeding $50,000.

For the period FY 2006 through FY 2011, the Commission will have been required to transfer a total of $1.9 million to the SGF due to the 20% receipt transfer requirement and fee fund sweeps plus an additional $40,000-$60,000 per year is paid to SGF in response to direct billings from the Department of Administration.

How Will Passage of HB 2368 Benefit the Commission

Because of the past fee fund sweeps and significant drop in licensee counts, the Commission must increase revenue or it will have no choice but to cut expenditures resulting in less regulation of the real estate industry and less protection of the public. **The Commission has requested the introduction of SB 121 to increase the statutory cap for salespersons' and brokers' original and renewal license fees.** However, a fee increase would not be viewed as favorably by the Commission or the licensees as the option to abolish the requirement to transfer 20% of fee receipts to SGF.

If the 20% receipts transfer requirement was abolished, the Commission could then retain $200,000 of licensee fees received in FY 2012 and $200,000 of licensee fees received in FY 2013. The Commission could then start building back its depleted fee fund balance without the necessity of a fee increase. The influx of revenue would continue without any additional charge to the licensees. The Commission will still be direct billed $52,000-$60,000 for the services the Department of Administration currently direct bills for. If the Department of Administration decides to direct bill for additional services such as general legal, general personnel, budget and purchasing, the Commission would still be better off than losing $200,000 in receipts every year.

The Commission believes that HB 2368 is a "win-win" for the Commission, the real estate licensees, and the public who should expect that the Commission has been provided the appropriate budgetary and staffing resources to properly regulate the industry.

Kansas Chiropractic Association

Est. 1911

Celebrating 100 Years

TESTIMONY
Before the House Appropriation Committee
By
John Kiefhaber, Executive Director
March 7, 2011

Concerning HB 2368 – Supporting the Repeal of the Requirement for Fee-Funded Agencies to Annually Remit 20% of Fee Revenues to the State General Fund

Chairman Rhoades and members of the House Appropriations Committee, thank you for the opportunity to appear today to offer testimony on behalf of the Kansas Chiropractic Association in support of **HB 2368**.

KCA is the state's only professional association representing doctors of chiropractic practicing throughout the State of Kansas, delivering quality health care services to patients effectively and efficiently. Our doctors are concerned about the extremely difficult budget challenges facing the Kansas Legislature in FY 2012 and FY 2013 as are all citizens of this state. However, we cannot support any further raiding of the licensing fee funds as has occurred in the past.

In addition, the annual 20% transfer of fee revenues would be repealed by **HB 2368.** Contained within the statutes for each fee-funded agency, there is a provision that requires each agency to annually transfer 20% of all licensing fees, charges and penalties collected, up to a statutory maximum of $200,000, to the state general fund to pay for unrelated programs in the state budget. Most fee fund agencies do not utilize nearly that amount of central state administrative services. This overhead charge should be assessed based on a proper overhead utilization study by the Department of Administration that would apportion out the true cost of these services to each agency.

We respectfully request the Committee's support of **HB 2368.**

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	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
	Actual	Gov. Est.	Gov. Rec.	Projected	Projected	Projected	Projected
Beginning Balance	$ 49.6	$ (27.1)	$ 35.7	$ 7.5	$ (104.6)	$ (522.9)	$ (897.5)
Revenues							
Taxes	4,985.9	5,598.5	5,835.7	6,036.5	5,923.3	6,171.4	6,459.6
Interest	24.6	17.4	11.8	13.0	16.0	20.0	25.0
Agency Earnings	53.4	56.3	56.8	58.0	59.0	60.0	63.0
Transfers:							
School Capital Improvement Aid	(87.7)	(97.2)	(100.0)	(105.0)	(110.0)	(115.0)	(120.0)
Regents Faculty of Distinction	(2.9)	(1.6)	(1.6)	(1.6)	(1.6)	(1.6)	(1.6)
Regents Research Corp Debt Service	(4.9)	(9.9)	(5.9)	(1.0)	(0.2)	--	--
Biosciences Initiative	(35.0)	(35.0)	(35.0)	(35.0)	(35.0)	(35.0)	(35.0)
Business Incentives	(3.7)	(7.3)	(8.7)	(9.0)	(11.0)	(13.0)	(13.0)
Highway Patrol	36.0	36.0	32.7	35.0	37.0	38.0	38.0
Highway Fund	143.3	149.3	200.0	--	--	--	--
State-Owned Casino Revenue**	29.5	33.2	18.0	74.3	75.8	77.3	80.0
All Other Transfers	52.7	50.1	41.0	30.8	30.8	26.8	26.8
Total Revenues	$ 5,191.3	$ 5,789.9	$ 6,044.8	$ 6,096.0	$ 5,984.0	$ 6,228.8	$ 6,522.8
Total Available	$ 5,240.9	$ 5,762.7	$ 6,080.4	$ 6,103.5	$ 5,879.4	$ 5,705.9	$ 5,625.3
Expenditures							
Aid to K-12 Schools	2,698.8	2,671.9	2,680.5	2,680.5	2,734.1	2,788.8	2,844.5
Higher Education	743.7	756.7	768.2	768.2	768.2	768.2	768.2
Human Services Caseloads	655.9	759.6	998.8	1,068.7	1,143.5	1,223.5	1,309.2
KPERS State/School (Employer)*	226.5	373.7	362.1	402.1	442.1	482.1	522.1
All Other Expenditures	943.2	1,165.2	1,263.4	1,288.7	1,314.5	1,340.8	1,367.6
Total Expenditures	$ 5,268.0	$ 5,727.1	$ 6,072.9	$ 6,208.1	$ 6,402.3	$ 6,603.3	$ 6,811.6
Ending Balance	($27.1)	$ 35.7	$ 7.5	($104.6)	($522.9)	($897.5)	($1,186.3)
As Percentage of Expenditures	*(0.5%)*	*0.6%*	*0.1%*	*(1.7%)*	*(8.2%)*	*(13.6%)*	*(17.4%)*

Assumptions: 2% growth in K-12 and All Other Expenditures, 7% in Medicaid Caseload, statutory rate for KPERS and estimated on School Capitol Improvement Aid from KLRD

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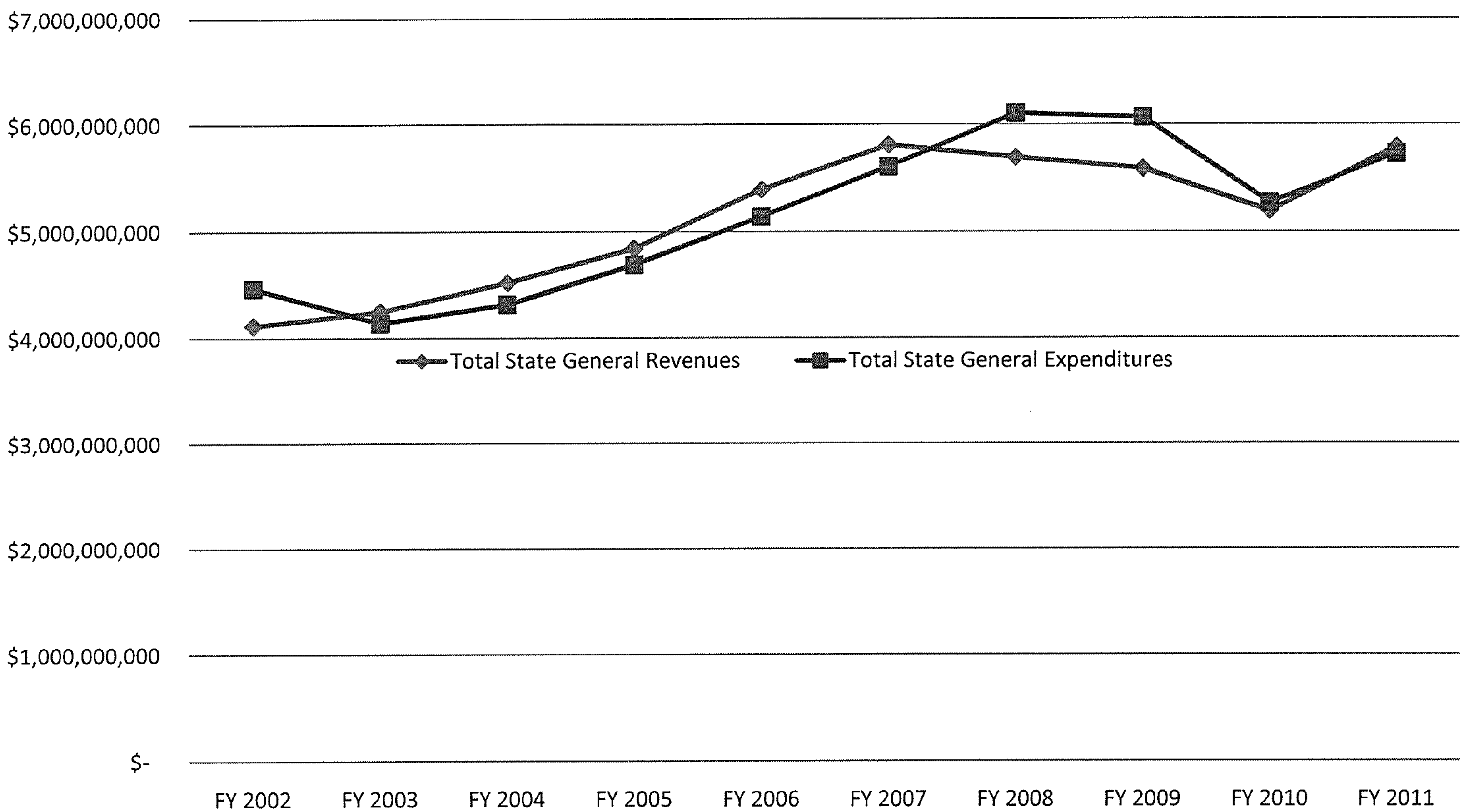
State General Fund Revenues & Expenditures
2002-2011



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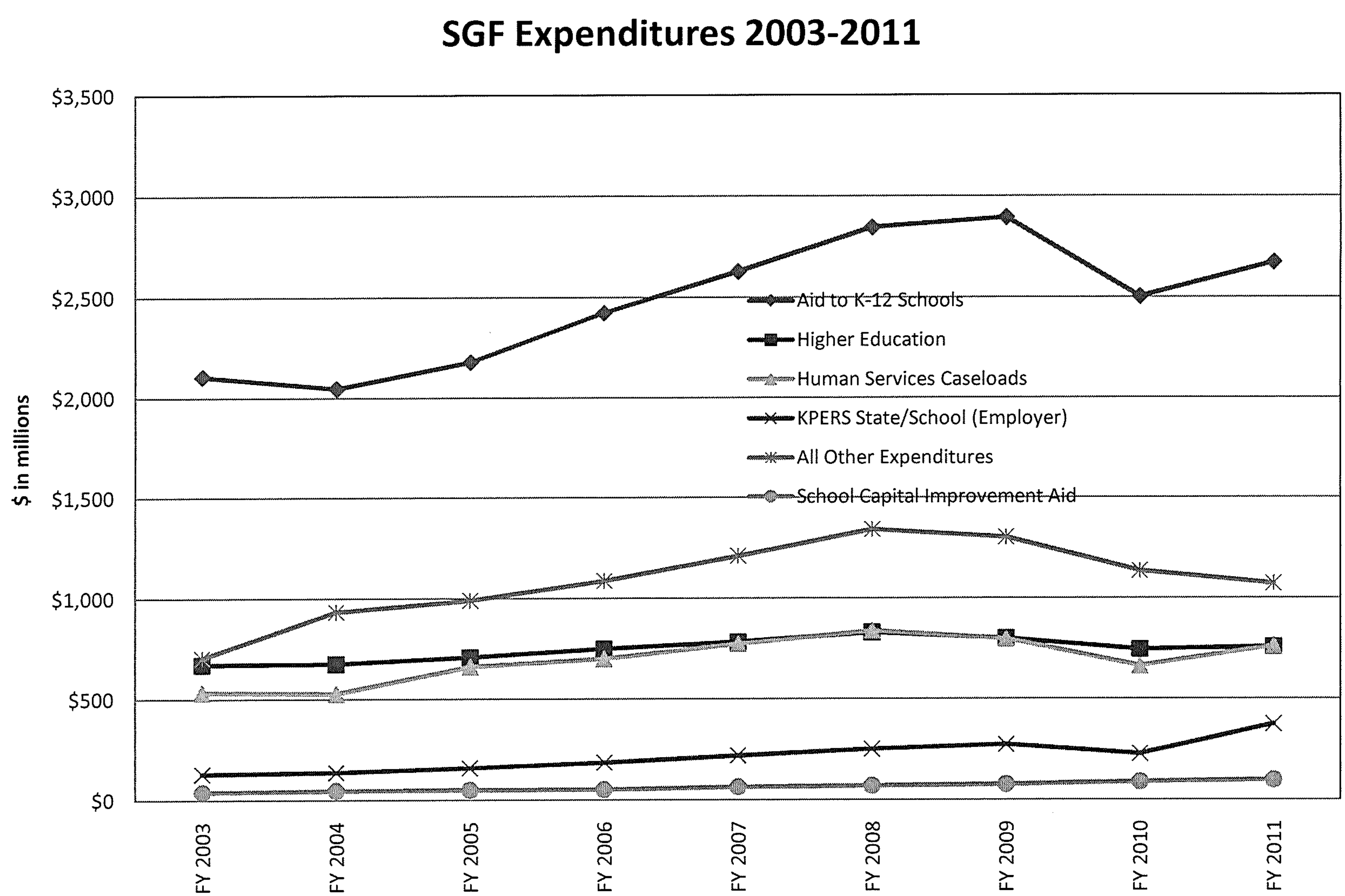

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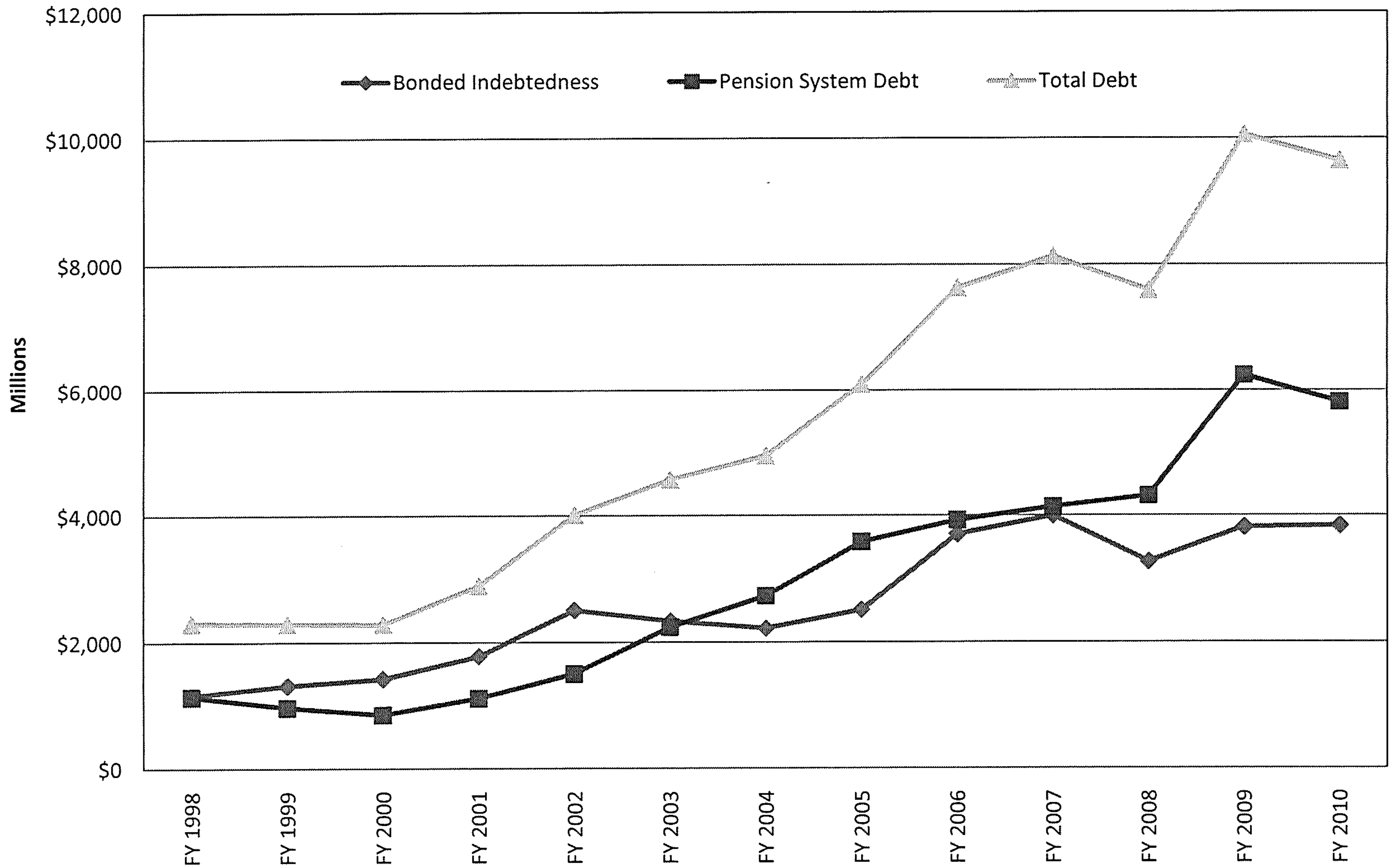
Kansas State Debt

Sources: Division of Budget *Bonded Indebtedness* & KPERS Actuarial Reports



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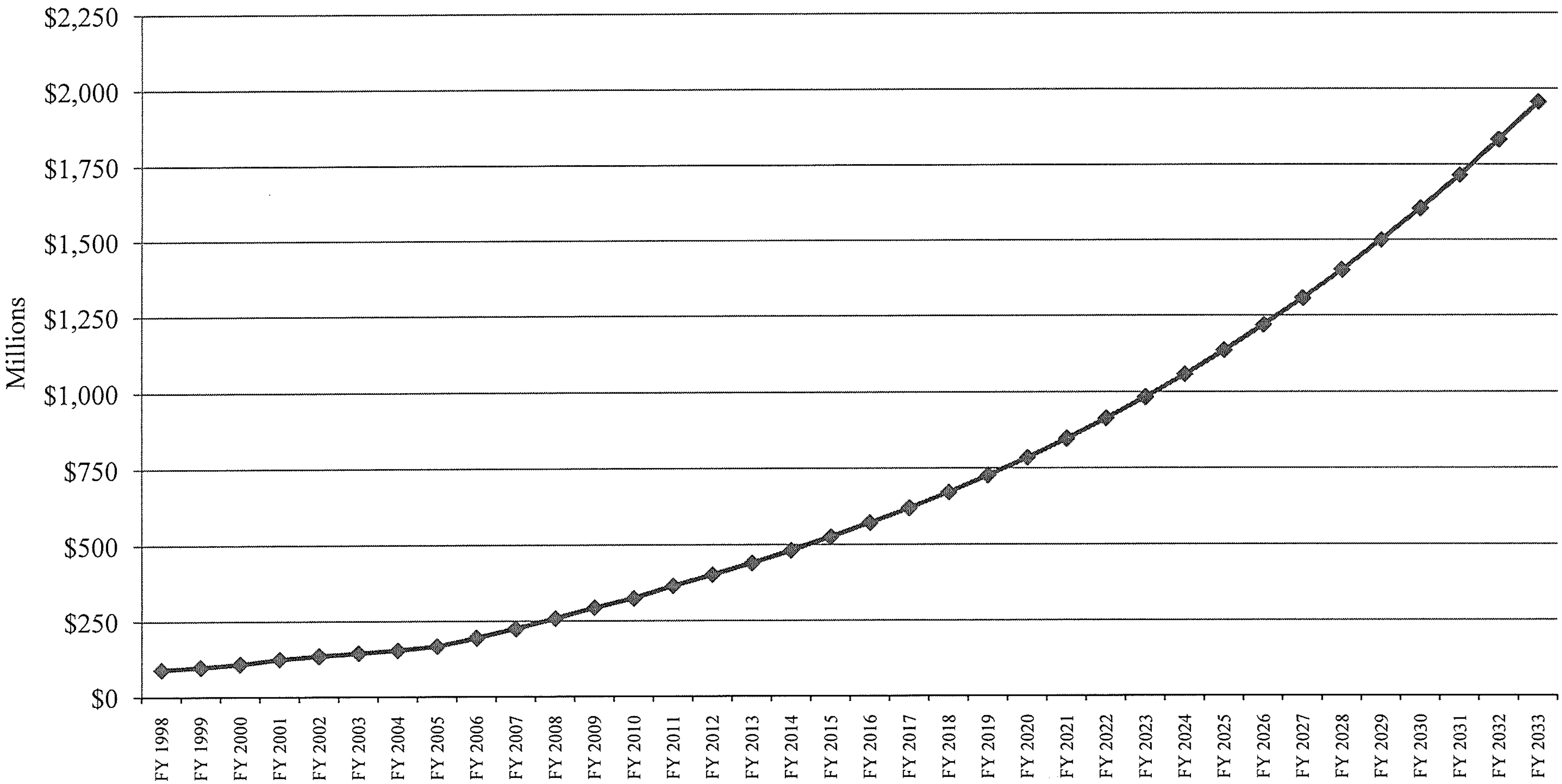
KPERS Statutory Required Employer Contribution Scheduled to Increase 387% FY 2012-2033



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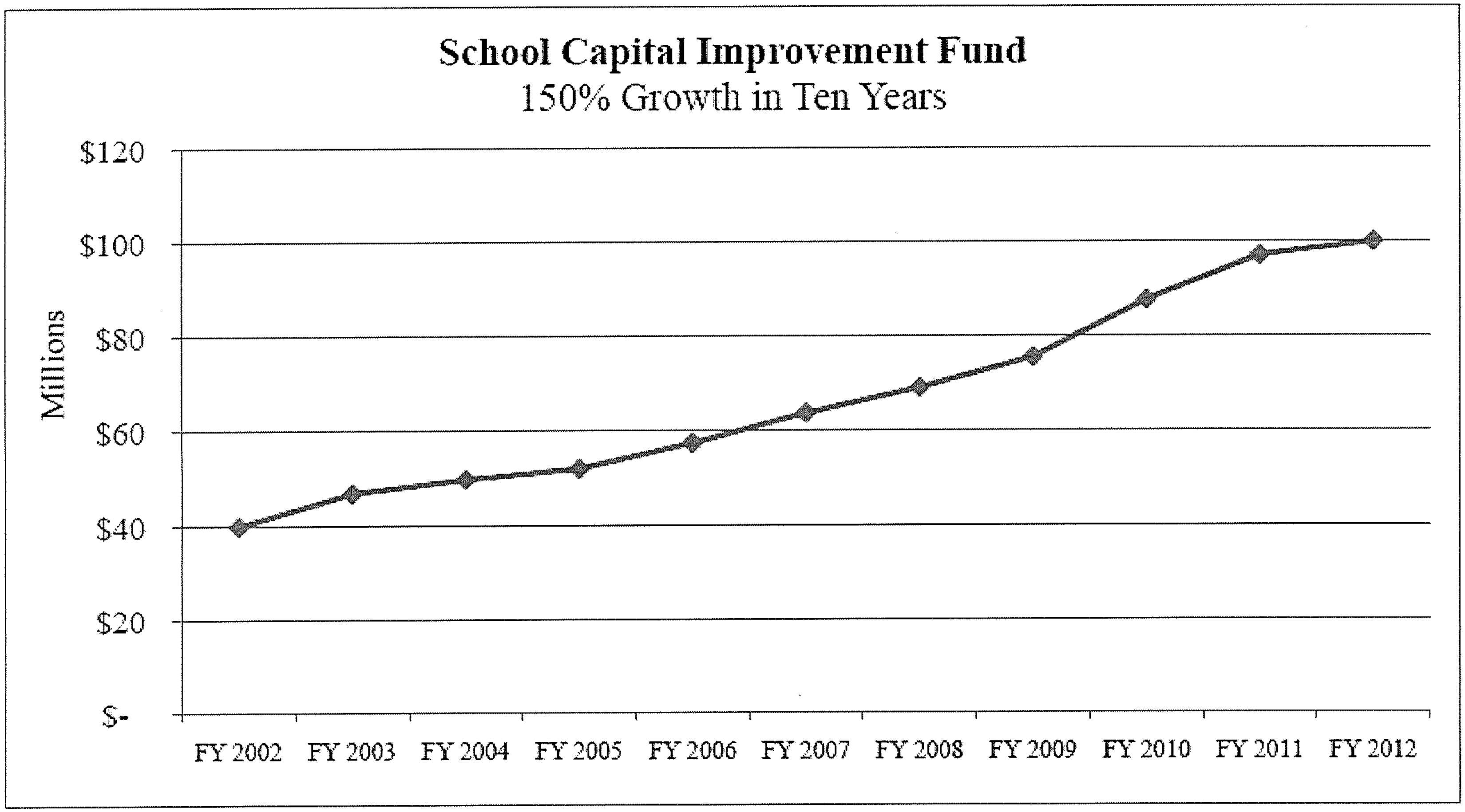
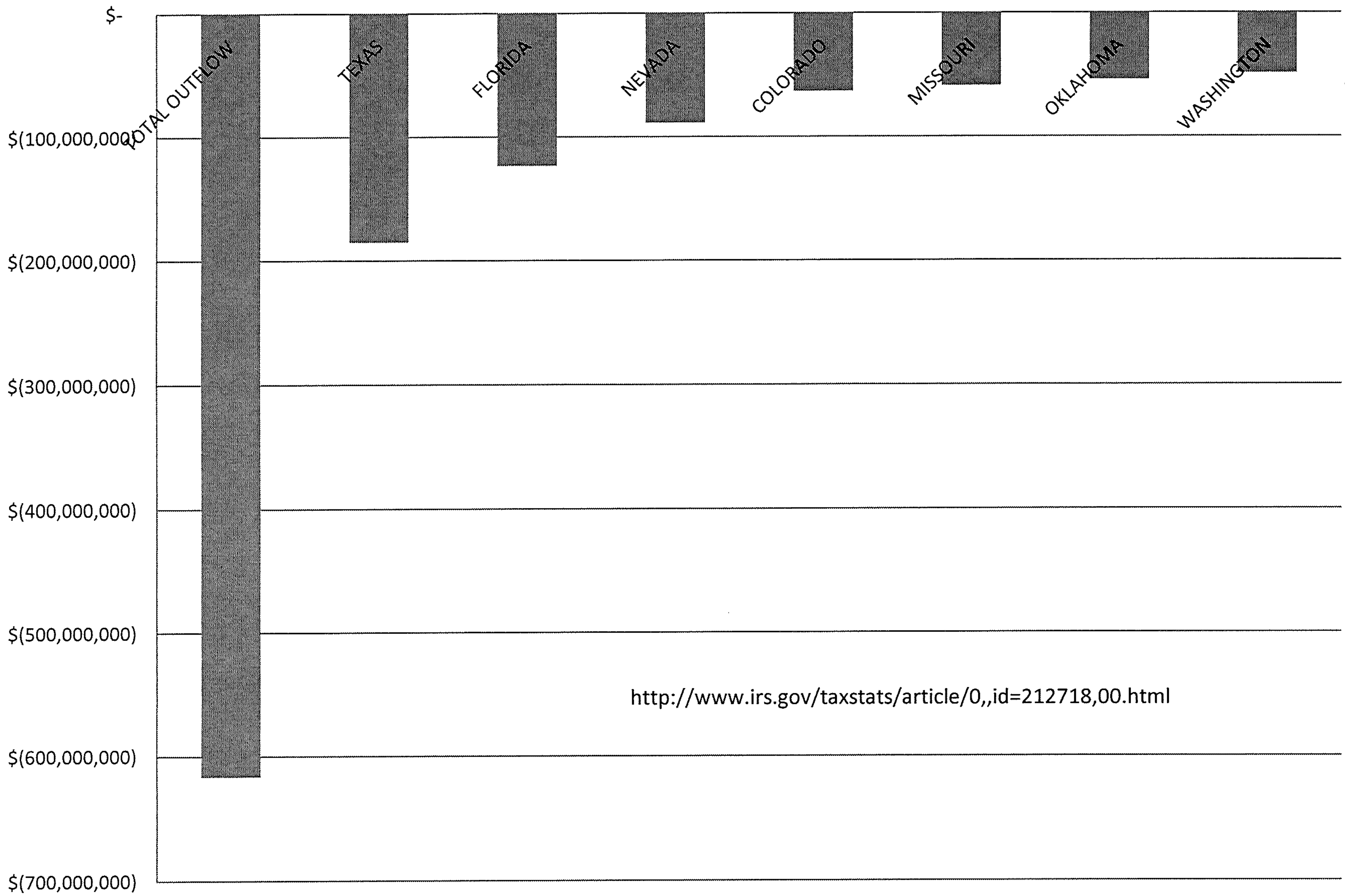


IRS MIGRATION OF PERSONAL INCOME DATA 2005-2008
(net of inflow/outflow of capital)



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Kansas

Absolute Domestic Migration

Cumulative 1999-2008 -68,171 Rank: 39

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