

Senator Jay Emler

Kansas Senate District 35



From the Desk of Jay Scott Emler

Week of April 22 to May 8, 2009

The 2009 Legislature has adjourned. The following is a synopsis of the legislative activity during the Veto Session. The Legislature will return for Sine Die on Thursday, June 4.

Ways and Means Committee Update

The Ways and Means Committee met April 22-23 to consider the Omnibus Budget Bill for FY 2010.

On Wednesday, April 22, the committee also held confirmation hearings for two members of the KPERS Board of Trustees. Michael Braude and Rachel Reiber were both approved for a term of four years. The committee also heard a report on SB 296 and staff reports from the Legislative Research Department concerning items that were marked for Omnibus consideration in the 2010 Mega bill.

On Thursday, April 23, the Committee made adjustments to the FY 2009 and FY 2010 budgets and placed those adjustments into Senate Sub. for HB 2373, an act making and concerning appropriations for the fiscal years ending June 30, 2009, 2010, 2011, 2012, 2013, and 2014, for state agencies.

On Wednesday, April 29, the Committee introduced three bills and had a hearing on HB 2374. HB 2374 concerns employment security law, allowance of alternative base periods and benefits for individuals forced to leave employment to care for an ill or disabled family member. Representative Raj Goyle, (D-Wichita); Wayne Michaels, Director of Employment Security, Department of Labor; and Dr. Charles Krider, University of Kansas; all provided testimony in support of the bill. The bill was recommended favorably for passage.

Also on Wednesday, the committee held a hearing on SB 311, which deals with the state budget and ending balances of the State General Fund. The bill would modify the current allotment or reduction process that the Governor may utilize to reduce the approved State General Fund budget when it

appears that the projected ending balance will be less than zero. Senator Jeff Colyer, (R- Overland Park), testified in support of the bill. The bill was not passed on Wednesday.

The Committee also held a hearing on SCR 1616, a concurrent resolution urging Kansas school districts to use carefully the federal stimulus funds received. Senator Steve Abrams, (R- Arkansas City), testified in support of the bill while Mark Tallman, Kansas Association of School Boards, provided neutral testimony. The resolution was recommended favorably for passage.

On Thursday, April 30, the Committee held a meeting at the rail. The purpose of the meeting was to reconsider action on SB 311. The bill was amended and Senate Substitute for SB 311 was recommended favorably for passage.

Senate Sub. for HB 2373- Omnibus Appropriations Bill:

S. Sub. for HB 2373 included \$154.5 million in cuts to the State General Fund. It also includes an increase of \$122.3 million in revenues. These adjustments included \$13 million in cuts and \$50.7 million in revenue increases for FY 2009. Further revenue adjustments totaling \$70 million are needed to achieve a positive ending balance.

The reductions in expenditures for FY 2010 included a 2.75% across-the-board reduction for all areas of state government for a total reduction of \$137.5 million. This includes reductions to K-12 education and the Board of Regents; \$83.7 million and \$22.1 million respectively. Exempted from the across-the-board cuts are debt service and human services caseloads. Expenditure increases included money for disaster relief, school finance, and KPERS School contributions. Language was deleted that would allow for a 1% state employee salary increase paid for out of the agencies; existing resources. Additionally, \$38 million in State General Fund bonds was authorized for Statehouse renovation.

The revenue adjustments include an assumption that the state will receive \$50 million in expanded gaming receipts from two privilege fee payments from new casinos in Northeast Kansas and South Central Kansas. Also on the revenue side, there will be \$17.4 million in transfers from various special revenue funds into the State General Fund. \$5 million is shifted from the State General Fund to the State Highway Fund for funding of the Special City County Highway Fund. Additionally, \$25.1 million will be transferred from the State Highway Fund to the State General fund for bond payments for the Comprehensive Transportation Plan. *S. Sub. for HB 2373 passed 21 to 17* on Tuesday, May 5. The

House concurred on Senate amendments to the bill. The 64 to 60 vote sent the bill to the Governor's desk rather than to Conference Committee.

Senate Bill 84- Cash Basis Exception for Schools:

SB 84 amends existing cash-basis law by creating an exception for school districts when expenditures exceed revenues because of a delay in the payment of general or supplemental state aid. The bill allows the state to make the remainder of the FY 2008-2009 state aid payment to school districts after June 30 and prevents schools from violating the current cash-basis law.

The bill creates an alternative formula for calculating the local option budget for a school district. Districts can authorize local option budget calculations that use a base state aid per pupil (BSAPP) amount of \$4,433 in any school year that has a BSAPP lower than that amount. School districts also have the option of calculating their local option budget using the amount appropriated from state aid for special education and related services for the 2008-2009 school year. The provisions in SB 84 expire on June 30, 2012.

The conference committee report for SB 84 passed the Senate 35 to 0 on Friday, May 8. The report passed the House 112 to 6.

Senate Bill 218

Thursday evening an attempt was made to override Governor Sebelius' veto of House Substitute for SB 218 (218). The attempt was two votes short. Some of you have asked why I did not support the override. The explanation is not simple. I believe that partial birth abortion is an abominable practice. I fully support limiting its use and requiring stricter measures be imposed upon any physician who attempts to use or recommend such a procedure. I met with Senator Mark Taddiken in December 2008 and told him I would support his proposed legislation. I believe part of his proposal is found in the following section of 218:

Each report required by subsection (c)(4) of K.S.A. 65-6703, and amendments thereto, shall specify the medical diagnosis and condition constituting a substantial and irreversible impairment of a major bodily function or the medical diagnosis and condition

which necessitated performance of an abortion to preserve the life of the pregnant woman. Each report required by K.S.A. 65-6703, and amendments thereto, shall include a sworn statement by the physician performing the abortion and the referring physician that such physicians are not legally or financially affiliated.

Sen. Taddiken's proposal went on to prohibit partial birth abortions. I fully supported his efforts.

Unfortunately, I believe 218 did more than the foregoing and perhaps required some measures that are of questionable constitutionality. Section 3 (k) amended the definition of "viable" as follows:

(k) "Viable" means that stage of gestation when, in the best medical judgment of the attending physician, the fetus is capable of sustained survival outside the uterus without the application of extraordinary medical means of fetal development when it is the physician's judgment, according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances, that there is a reasonable probability that the life of the child can be **continued indefinitely outside the mother's womb with natural or artificial life-supportive measures.** (Emphasis added)

This is a very significant change in policy with addition of "artificial life-supportive measures." Does that mean that even though a fetus may be clinically dead, it can and should be kept "alive" by artificial means forever? That question was never answered for me. The reason it was never answered is because the bill never had any hearings in the Senate. 218 passed the Senate as a bill dealing with wineries.

When it came back, it dealt with very significant issues related to abortion. Is that the way government should be run? Take a bill about grapes, turn it into one about abortion, not allow any hearings in one chamber and make it law? We provide a mechanism for adults to make end of life decisions about being kept on life support, but there is no provision in this bill for how that decision can be made on behalf of a fetus. Should not that have at least been discussed?

Section 4 (h) states:

(h) The prosecution of violations of this section may be brought by the attorney general, by the district attorney or county attorney for the county where the violation occurred or by the district attorney or county attorney for any county where acts or effects constituting or requisite to the consummation of the offense occurred. (Emphasis added)

Prior to the original passage of the bill, I asked what the highlighted language above meant. What are “effects constituting or requisite to the consummation of the offense”? Does this give every county or district attorney in the state authority to prosecute in every county or district? Neither of those questions was answered for me. That is why I voted “pass” originally. I have never received an answer. That is one of the reasons I voted no on the override.

Section 5(b)(5) requires the physician to provide in writing 24 hours before an abortion the following language:

(5) the abortion will terminate the life of a whole, separate, unique, living human being.

This language is another significant change in requirements. It may also be requiring the health care provider to essentially make a statement that the health care provider does not believe to be medically accurate. I believe that may be constitutionally inappropriate. Not all courts are in agreement about the accuracy of the statement.

Finally, instead of answering my questions, proponents elected to try and intimidate me into voting in favor of the override by contacting my home and my private office, knowing full well I was here in Topeka. Statements made to my family and my staff were inappropriate and convinced me this was not about making certain our law was constitutional. Those statements convinced me this process was about election issues that have no merit when we are trying to protect the lives of our unborn. Making derogatory remarks about me, my family or my staff is not the way to convince me to support a lobbyist’s position.

SB 311 amends existing law by reversing the current allotment process used by the Governor to reduce the approved State General Fund (SGF) Budget when the projected ending balance is less than zero.

If the projected SGF ending balance is deemed insufficient to cover the authorized expenditures and demand transfers by the Director of the Budget and the Director of Legislative Research, the bill authorizes the Governor to seek State Finance Council approval for across the board reductions in all SGF accounts with the exception of debt service payments, KPERS school employer contributions, and School District Capital Improvement Fund payments.

The bill allows the Governor to issue an executive order to make targeted reductions to authorized SGF expenditures and demand transfers if the projected SGF ending balance will be above zero but less than 3.5 percent of total authorized expenditures and demand transfers. Again, the reductions could not be made against debt service payments, KPERS school employer contributions, and the School District Capital Improvement Fund. ***SB 311 passed 24 to 16*** on Friday, May 1. It did not pass the House.

Senate Bill 336- Legislation Reconciliation

SB 336 is the Revisor's reconciliation bill for the 2009 session. ***SB 336 passed 40 to 0*** on Friday, May 1. The House amended the bill and passed 115-0. The Senate concurred with House amendments, 34 to 0 and bill has been sent to the Governor.

House Bill 2060 - Comprehensive Crime Bill

HB 2060 creates special sentencing rules for battery on a law enforcement officer resulting in bodily injury; enhances the sentence on drug manufacturing, drug trafficking, and some drug possession crimes where the offender carries or discharges a firearm; and amends the crimes of unlawful conduct of cockfighting, unlawful conduct of dog fighting, and unlawful attendance of dog fighting. The bill amends the sentence for third or subsequent drug felony convictions, subject to appropriations; adds the penalty of administrative driver's license suspension for transporting a controlled substance or controlled substance analog to the Kansas Sentencing Guidelines Act; amends the crime of fleeing or eluding a law enforcement officer; amends the crime of criminal threat or aggravated criminal threat; amends the burden of proof on a challenge to a defendant's prior established criminal history; and extends the standard probation term for a drug felony sentence from 12 to 18 months.

The bill creates the Joint Committee on Parole Board Oversight and requires the Kansas Parole Board to

make documents, records, and reports of 30 cases selected by the Secretary of Corrections available to the Joint Committee. In addition, the Kansas Parole Board is required to provide the Joint Committee a summary statement listing the factors and rationale used to grant or deny parole in each of the 30 selected cases. The Joint Committee would consist of the Chair, ranking minority, and an additional member appointed by the Chair of the Senate Judiciary Committee and the Chair, ranking minority, and an additional member of the House Committee on Corrections and Juvenile Justice. The Joint Committee must submit a report and recommendations to the Legislature by January 1, 2010.

The conference committee report for HB 2060 passed the Senate 37 to 2 on Thursday, May 7. The House adopted the report 100 to 17 on Friday, May 8.

House Bill 2099 - Kansas Open Records Act

HB 2099 adds to an existing exception in the Kansas Open Records Act that a public agency is not required to disclose the name, address, or other contact information of an alleged victim of stalking, domestic violence, or sexual assault. *HB 2099 passed 40 to 0 on Friday, May 1. The House concurred and the bill has been sent to the Governor.*

House Bill 2195 - State Records

HB 2195 directs the State Archivist to prepare and present recommendations to the State Records Board for preserving and maintaining the authenticity of electronic records; provide that electronic records are maintained in accordance to the preservation process and certified with the State Archivist's signature; and allow for reasonable fees to be charged for retrieving electronic copies.

The bill also amends several statutes to include an option for document transmittal via e-mail and other electronic means. *HB 2195 passed 40 to 0 on Friday, May 1. The bill went to conference. The Conference Committee agreed to the Senate language and amended the bill further to cure a conflict between the bill and SB 66, which has already been signed into law. The Conference Committee report passed the Senate 34 to 0 on Saturday, May 9.*

House Bill 2295 - Pesticides and Fertilizers

HB 2295 modifies and adjusts pesticide and fertilizer statutes and fees and extends the current fees for the dairy inspection program. The bill also transfers the responsibility of reviewing the swine nutrient

utilization plans from the Kansas Department of Agriculture to the Kansas Department of Health and Environment. HB 2295 contains provisions of HB 2121, vetoed by Governor Sebelius, with the exception of dairy labeling terms. *HB 2295 passed the Senate 40 to 0* on Monday, May 4. The House concurred with Senate amendments and passed the bill 120 to 2 on Wednesday, May 6.

House Bill 2365 - Revenue Package

HB 2365 contains several tax provisions necessary for closing the \$70 million hole left by the passage of HB 2373. The bill grants the Secretary of Revenue additional authority to resolve certain audit-related assessments pending in the administrative appeals process, the State Court of Tax Appeals, or in the judicial review process before any state or federal district or appellate court. By taking this action, an additional \$35 million in tax collections will be contributed to the State General Fund (SGF).

The bill reinstates vetoed language from HB 2172 by clarifying the deadlines for filing income tax refund claims. Taxpayers have three years from the claims original due date to file a refund claim. After receiving a revenue adjustment report, the Department of Revenue has 180 days to assess additional taxes. The 180 day period will be tolled if a taxpayer has failed to timely report a revenue adjustment to the Department of Revenue. Adopting the language will contribute \$3 million to the general fund for FY 2010.

The bill reduces the statute of limitations for sales and use tax refund claims from three years to one year beginning June 15, 2009. Taking this action will contribute an additional \$13.7 million to the State General Fund.

The bill suspends, for two years, production expenditure tax credits for eligible film production companies, saving the state \$1 million. In addition, a ten percent reduction will be assessed to numerous tax credits for the 2009 and 2010 tax years resulting in SGF savings of \$9.2 million.

The bill also clarifies the sales tax exemption for purchases made by or on behalf of Goodwill Industries Easter Seals of Kansas, Inc. and Goodwill Industries of Kansas, Inc. for providing education, training, and employment opportunities for those with disabilities and other employment barriers; clarifies that agricultural land is to be use-valued for Kansas estate tax purposes, regardless of whether such land was held directly by decedents or was held in non-publicly traded legal entities, including certain partnerships, corporations, limited liability companies, or limited liability partnerships; and expands the

definition of eligible claimants for the Homestead Property Tax Refund Program to include certain disabled veterans and surviving spouses of active-duty military personnel who have died in the line of duty. During the Senate debate, sales tax exemptions for Sheltered Living Inc., the Kansas Fairgrounds Foundation, and the All American Beef Battalion, Inc. were added to the bill. ***HB 2365 passed the Senate 25 to 14*** on Thursday, May 7. The House concurred 65 to 56 on Friday, May 8.

Senate Substitute for HB 2369 - Comprehensive Energy Plan

S. Sub. for HB 2369 establishes Renewable Portfolio Standard (RPS); this requires each public utility to include renewable energy sources in its generation portfolio to total at least 10% by 2011; 15% by 2016; and 20% after 2020. The bill also includes the Net Metering and Easy Connection Act which allows Kansans who produce their own electricity through renewable sources such as solar, wind, biomass, hydropower, and geothermal to sell excess power they produce back to their utility company at a fair price.

The bill ensures regulatory fairness and predictability by directing the KDHE to establish emissions standards that are no more stringent, restrictive or expansive than those required under the Federal Clean Air Act, and by prohibiting KDHE from denying or delaying any permit that meets state law requirements. The bill also clarifies when and how the KDHE Secretary use of emergency powers.

S. Sub. for HB 2369 promotes energy efficiency and conservation by requiring the Sec. of Administration to adopt rules and regulations for the purchase of energy-efficient products and equipment. It also requires that state-owned vehicles purchased during 2011 to be at least 10% higher than the fuel efficiency of state-owned vehicles in 2008.

S. Sub. for HB 2369 allows Kansas Electric Transmission Authority (KETA) to assist in the building of transmission lines that would serve small and local communities. It also requires new coal-fired plants to purchase at least 5% of its coal supply from Kansas coal mines.

The bill requires KDHE to adopt rules and regulations for the regulation of compressed air energy storage activities and for underground storage of liquid petroleum gas and hydrocarbons and natural gas embedded in salt. It also requires the KDHE Secretary to comply with the settlement between Sunflower Electric Power Corporation and the Governor.

Sunflower Compromise: This compromise between Gov. Parkinson and Sunflower Electric Power Corporation allows Sunflower to build one 895 megawatt plant- instead of the originally request to build two plants. Sunflower agrees to 179 megawatts of wind development, to achieve the 2020 RPS goal by 2015, and to use 10% biomass fuel in both the current and new Holcomb plants. They also agree to develop transmission lines to the western grid, to decommission two gas generation plants in Garden City, to develop Biodigester to capture methane, and to pursue an Algae Reactor. A second coal-fired plant is neither approved nor prohibited under the terms of the agreement. Sunflower has agreed not to make application for a second plant prior to April 30, 2011.

S. Sub for HB 2369 passed 37 to 2 on Thursday, May 7. The House concurred with Senate amendments on Friday, May 08 with a vote of 103 to 18.

House Bill 2374 - Employment Security Law

HB 2374 alters Kansas Employment Security Law, allowing the state to draw down \$69 million in federal stimulus funds for state unemployment benefits. The bill amends current law by enacting an alternative base period for workers who would otherwise not qualify for unemployment benefits. Under the bill, an additional 26 weeks of unemployment insurance coverage will be available for individuals who qualify for unemployment compensation and who are enrolled in a state approved training program or training program authorized by the Workforce Investment Act.

Current law calculates unemployment benefits with a base period of paid employment and provides, at max, 26 weeks of coverage for individuals who are enrolled in training programs authorized by the Workforce Investment Act. The \$69 million in federal funds are anticipated to expire in 2023. ***HB 2374 passed the Senate 39 to 0*** on Thursday, May 7. HB 2374 passed the House 111 to 8 on Friday, May 8.

Consideration of Appointments

On Friday, May 1, the Senate approved the following appointments:

Colonel Alexander Duckworth to Brigadier General, Kansas National Guard

Jeffrey E. Lewis to the Kansas Human Rights Commission

Michael Braude to the Kansas Public Employees' Retirement Board of Trustees

Rachel Reiber to the Kansas Public Employees' Retirement Board of Trustees

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