



March 20, 2017

To: Senate Judiciary Committee

From: Kathleen A. Taylor, Kansas Bankers Association

**Re: HB 2153: Prohibiting Fee Sweeps of Fee Funded Agencies**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present testimony on **HB 2153**, which effectively removes the statutory authority for allowing fee sweeps of fee funded agencies into the general fund, and which provides notice to those who pay fees to these agencies should fees be swept to the general fund. The Kansas Bankers Association (KBA) is a nonprofit trade organization whose membership includes 99% (250 of 252) of the commercially chartered banks headquartered in Kansas. Our membership also includes 19 out-of-state commercial banks and 6 savings and loans operating in Kansas. Our member banks employ more than 13,000 Kansans that provide financial services in more than 400 towns and cities across the state. Approximately 2/3 of the banks we represent have state charters granted by the Office of the State Bank Commissioner (OSBC).

The practice of raiding fee funded agencies' balances began in the late 1990's. As fee funded agencies collect fees in the form of assessments from the industry they are required by law to regulate, fee fund balances build, and then are gradually used for expenses incurred by the regulating agency. In the past, these growing balances have become a target for helping to fill budget gaps.

This practice is very problematic for fee funded agencies and for the industry they regulate. For example, the OSBC has its budget approved by the Legislature, and then determines on a per bank basis, what its assessments for the year will be. These funds are vital for the continued operation of the OSBC as they are the source of payment, for example, for the salaries of bank examiners and their supervisors. If these funds are lost to the state general fund, there is a likelihood that assessments will have to be increased in order to meet the year's budget costs.

As the practice of raiding fee funds continued into the 2000's, several affected business groups sued the State of Kansas, requesting a declaratory judgment. The lawsuit asked for three things: 1) a determination that fee fund sweeps were actually an unconstitutional taking of fees; 2) an end to future fee fund sweeps; and 3) restitution of the fee funds that were swept in 2009.

After almost 7 years of litigation, the Kansas Supreme Court recently sided with the plaintiffs and unanimously found that the practice of sweeping fee funds is an unconstitutional tax on the entities which paid those fees to be used within the agency. The Court stated that the legislature was using these “fees” as if they were “public funds”, and they are not. The case has been remanded back to the Shawnee County District Court for a determination whether any of the funds swept represented actual costs to the state for items purchased or used by each agency, as this would be the only justification for the taking by the state of these funds for state general fund purposes.

The KBA supports **HB 2153** as it has supported the litigation to end the practice of fee sweeps. Our members agree with the Supreme Court’s ruling: the practice of taking these fee funds that were collected to run the state agency whose responsibility it is to maintain a viable and thriving industry, and using them for state general fund purposes potentially subjecting regulated entities such as banks, to increased fees, is effectively a back door tax to these entities.

Thank you for your consideration of this matter, and the KBA would respectfully request, that when the Committee considers **HB 2153** for action, you consider it favorably.