

Journal of the Senate

FIFTY-SEVENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, March 29, 2001—9:30 a.m.

The Senate was called to order by Vice-President Sandy Praeger.
The roll was called with forty senators present.

Vice-President Praeger introduced as guest chaplain, Father Mike Mullen, Pastor, St. Patrick's Catholic Church, Kansas City, Kansas, who delivered the invocation:

God our Father, as we gather today we are mindful of the blessings you have given to us, to our families, and to the many people we represent throughout the state of Kansas. In your goodness and wisdom you have created us to share a common human nature and to be brothers and sisters living under your guidance. You have also endowed your people with special gifts and talents, so that each person in society makes a unique contribution to the welfare of all. Today we ask your blessing on the men and women of this Senate. May their deliberations and decisions serve the common good of all our citizens. May this assembly always affirm the human life and dignity of every person and show a special concern for the poor and those most in need. May god bless all our Senators and those who serve in public office, rewarding them for their leadership in public life. May our youth, those here today from St. Patrick School in Kansas City, and all our young people, aspire to devote their lives to the welfare of others. May we listen attentively, Lord, to your voice in our heart, and seek in all things to do your will. This prayer we offer through Jesus, your Son, and in the Holy Spirit. Amen

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Assessment and Taxation: **HB 2219, HB 2458.**

Federal and State Affairs: **HB 2020.**

Financial Institutions & Insurance: **HB 2563.**

Ways and Means: **HB 2507, HB 2545, HB 2566.**

COMMUNICATIONS FROM STATE OFFICERS

KANSAS CORPORATION COMMISSION

John Wine, Chairman, Kansas Corporation Commission, submitted the Kansas State Energy Program 2000 Annual Report.

The President announced the above report is on file in the office of the Secretary of the Senate and is available for review at any time.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

HB 2128, An act relating to income taxation; allowing credits for certain historic preservation project expenditures, was considered on final action.

On roll call, the vote was: Yeas 34, Nays 6, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lyon, Morris, O'Connor, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Tyson, Umbarger, Vratil, Wagle.

Nays: Barone, Feleciano, Hensley, Lee, Oleen, Teichman.
The bill passed.

EXPLANATION OF VOTE

MR. PRESIDENT: I reluctantly vote no on **HB 2128** because this bill provides one more tax credit in a year when the states budget is more than strained and we are searching for additional funds so that additional cuts will not have to be made to the current years budget. We are all aware that next year is even bleaker than this. It is unwise to provide additional tax credits at this time.—JANIS LEE

Senators Barone, Feleciano and Hensley request the record to show they concur with the "Explanation of Vote" offered by Senator Lee on **HB 2128**.

HB 2145. An act relating to motor vehicles; concerning safety belts and child passenger safety seats; amending K.S.A. 8-2504 and 8-2507 and K.S.A. 2000 Supp. 8-1343a, 8-1344 and 8-1345 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 22, Nays 18, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Donovan, Downey, Emler, Gooch, Goodwin, Haley, Jenkins, Kerr, Lee, Morris, Oleen, Praeger, Schmidt, Schodorf, Teichman, Umbarger, Vratil.

Nays: Brownlee, Clark, Corbin, Feleciano, Gilstrap, Harrington, Hensley, Huelskamp, Jackson, Jordan, Lyon, O'Connor, Pugh, Salmans, Steineger, Taddiken, Tyson, Wagle.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote aye on **HB 2145**.

Normally, I would not support an additional tool for law enforcement to stop, detain, ticket and, possibly, arrest a motorist with little or no probable cause.

Amending **HB 2145** with the requirement that any one not wearing a safety belt under age 14 can be ticketed provides another flimsy erosion of probable cause and, subsequently, due process.

Statistics clearly indicate that young, men of color are "profiled" and stopped at an alarmingly high rate. This leads, of course, to further problems with the law.

I can hear the justification now by the biased officer: "He looked under 14 to me."

But statistics also show that children of color; black, yellow, red and brown; are *three times more likely* to be injured or to die in an automobile accident. For some reason, their families do not secure these children properly and safely with car seats/seat belts.

This is a public safety catastrophe and one that can be mitigated.

As the father of three children under 14, I always require my children to buckle up.

And though this measure may fail by a vote or two today, when the Kansas Legislature truly becomes responsible for the protection of our children, it will pass overwhelmingly.—

DAVID HALEY

HB 2268. An act concerning electric public utilities; relating to inclusion of certain property in ratebase; providing for issuance of bonds for certain purposes; providing for certain property tax exemptions; amending K.S.A. 2000 Supp. 66-128 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 38, Nays 2, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Feleciano, Oleen.

The bill passed, as amended.

HB 2550. An act concerning the director of the division of accounts and reports; relating to the powers and duties thereof; amending K.S.A. 75-3735 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed.

HB 2551. An act concerning the secretary of administration; relating to reimbursement rates for mileage and travel subsistence; amending K.S.A. 75-3101, 75-3203, 75-3203a, 75-3207 and 75-3207a and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 37, Nays 3, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Brownlee, Huelskamp, Jackson.

The bill passed.

HB 2552. An act concerning certain state institutions; relating to certain funds; amending K.S.A. 75-3728e, 75-3728f and 76-12a25 and K.S.A. 2000 Supp. 76-172 and repealing the existing sections; also repealing K.S.A. 75-3728h and 75-3728i, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed.

HCR 5009. A concurrent resolution urging the Congress of the United States to address the conservation and preservation of the High Plains Aquifer, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The resolution was adopted, as amended.

COMMITTEE OF THE WHOLE

On motion of Senator Oleen, the Senate resolved itself into Committee of the Whole for consideration of bills on the calendar under the heading of General Orders with Senator Donovan in the chair.

Recommended **SB 343** be passed.

Sub SB 85, Sub SB 306; SCR 1611; HB 2221, HB 2480 be passed over and retain a place on the calendar.

On motion of Senator Oleen, the Senate recessed until 2:00 p.m.

AFTERNOON SESSION

The Senate met pursuant to recess with President Kerr in the chair.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2030**, **HB 2557**.

Also, passage of **SB 35**, as amended.

The House nonconcurrs in Senate amendments to **HB 2178**, requests a conference and has appointed Representatives O'Neal, Loyd and Pauls as conferees on the part of the House.

The House nonconcurrs in Senate amendments to **HB 2505**, requests a conference and has appointed Representatives Mason, Aday and Kuether as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 14** and has appointed Representatives O'Neal, Loyd and Pauls as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 57** and has appointed Representatives Wilk, Neufeld and Nichols as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 263** and has appointed Representatives O'Neal, Loyd and Pauls as conferees on the part of the House.

Announcing, the House concurs in Senate amendments to **HB 2015** and requests the Senate to return the bill.

Announcing, the House concurs in Senate amendments to **HB 2369** and requests the Senate to return the bill.

The House announces the appointment of Representative Horst to replace Representative Campbell as a conferee on **HB 2119**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2030, **HB 2557** were thereupon introduced and read by title.

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

Senator Praeger moved the Senate concur in house amendments to **SB 58**.

SB 58, An act relating to consumer protection; prohibiting certain acts; charitable organizations; penalties; amending K.S.A 17-1764, 17-1773 and 50-636 and repealing the existing sections.

On roll call, the vote was: Yeas, 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelkamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The Senate concurred.

On motion of Senator Umbarger the Senate nonconcurred in the House amendments to **SB 161** and requested a conference committee be appointed.

The President appointed Senators Umbarger, Vratil and Downey as a conference committee on the part of the Senate.

On motion of Senator Morris the Senate nonconcurred in the House amendments to **H Sub for SB 322** and requested a conference committee be appointed.

The President appointed Senators Morris, Adkins and Feleciano as a conference committee on the part of the Senate.

ORIGINAL MOTION

On motion of Senator Umbarger, the Senate acceded to the request of the House for a conference on **HB 2289**.

The President appointed Senators Umbarger, Vratil and Downey as conferees on the part of the Senate.

On motion of Senator Schmidt, the Senate acceded to the request of the House for a conference on **HB 2316**.

The President appointed Senators Schmidt, Huelskamp and Downey as conferees on the part of the Senate.

REPORTS OF STANDING COMMITTEES

Committee on **Commerce** recommends **HB 2034, as amended by Senate Committee of the Whole**, be further amended on page 3, in line 12, after the period, by inserting "The surcharge imposed hereunder shall ensure, over a reasonable period of time, the full recovery by PSAPs and wireless carriers of costs associated with developing and maintaining an E911 system on a technologically and competitively neutral basis."; in line 25, by striking all after "retain"; in line 26, by striking all before the period and inserting "2% of the surcharge"; in line 30, by striking "tax" and inserting "surcharge"; in line 32, after the period, by inserting "Phases 1 and 2 of enhanced 911 service as described by the federal communications commission shall be deployed prior to July 1, 2004. No additional money beyond the surcharge assessed pursuant to section 2, and amendments thereto, shall be collected from a subscriber's bill."; in line 33, by striking "Each" and inserting "(a) Except as provided in subsection (c), each"; after line 43, by inserting additional subsections as follows:

"(b) Subject to modification by the administrator pursuant to section 8, and amendments thereto, and only upon certification to the administrator that the city or county has entered into an agreement with wireless carriers for the purpose of implementing E911 service as described in section 7, and amendments thereto, the administrator shall remit to a city or county which operates a PSAP an amount equal to 20% of the surcharge derived from wireless subscribers residing within such city or county. Such funds may only be expended subject to the restrictions provided in subsections (b)(1) and (b)(2) of section 8, and amendments thereto. Such remittances shall be distributed on a monthly basis.

(c) An amount equal to 20% of the surcharge may be retained by each wireless carrier for the purpose of recovering the costs described in subsection (b)(3) of section 8, and amendments thereto, and the cost of collecting and dispersing the surcharge.";

On page 5, in line 29, by striking "and"; after line 29, by inserting:

"(6) adjust the percentages of the surcharge allowed to wireless carriers, cities or counties pursuant to subsections (b) and (c) of section 3, and amendments thereto, to prevent over or under recovery of costs incurred to implement E911 service. Such adjustment may be made only once every two years; and";

Also on page 5, in line 30, by striking "(6)" and inserting "(7)"; and the bill be passed as further amended.

REPORT ON ENGROSSED BILLS

Sub SB 204 reported correctly re-engrossed March 28, 2001.

SB 348; SCR 1610 reported correctly engrossed March 29, 2001.

REPORT ON ENROLLED BILLS

SB 7, SB 29, SB 36, SB 41, SB 42, SB 43, SB 44, SB 64, SB 75, SB 133, SB 137, SB 139, SB 253, SB 334 reported correctly enrolled, properly signed and presented to the Governor on March 28, 2001.

SB 55, SB 125; Sub SB 123 reported correctly enrolled, properly signed and presented to the Governor on March 29, 2001.

SCR 1605 reported correctly enrolled, properly signed and presented to the Secretary of State on March 29, 2001.

COMMITTEE OF THE WHOLE

The Senate returned to Committee of the Whole for consideration of bills on the calendar under the heading of General Orders with Senator Donovan in the chair.

On motion of Senator Donovan the following reports were adopted:

Recommended **SCR 1611** be amended by adoption of the committee amendments, and the concurrent resolution be adopted as amended.

HB 2221 be amended by adoption of the committee amendments, be further amended by motion of Senator Corbin as further amended by Senate Committee, on page 14, after line 25, by inserting a new section to read as follows:

“Sec. 4. K.S.A. 79-3611 is hereby amended to read as follows: 79-3611. (a) For the purpose of ascertaining the correctness of any return, or for the purpose of determining the amount of tax due from any person engaged in the business of selling tangible personal property at retail, or furnishing services taxable hereunder, the director of taxation, or any officer or employee of the director of taxation designated, in writing, may hold investigations and hearings concerning any matters covered by this act, and may examine any books, papers, records, or memoranda bearing upon such sales of any such person, and may require the attendance of such person or any officer or employee of such person, or of any person having knowledge of such sales, and may take testimony and require proof for its information. In the conduct of any investigation or hearing, neither the director nor any officer or employee thereof shall be bound by the technical rules of evidence, and no informality in any proceeding, or in the manner of taking testimony, shall invalidate any order or decision made or approved by the director. The director, or any officer or employee thereof, shall have power to administer oaths to such persons.

(b) *The secretary may issue subpoenas to compel access to or for the production of such books, papers, records or memoranda in the custody of or to which the taxpayer has access, or to compel the appearance of such persons, and may issue interrogatories to any such person to the same extent and subject to the same limitations as would apply if the subpoena or interrogatories were issued or served in aid of a civil action in the district court. The secretary may administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition was in aid of a civil action in the district court. In case of the refusal of any person to comply with any subpoena or interrogatory or to testify to any matter regarding which such person may be lawfully questioned, the district court of any county may, upon application of the secretary, order such person to comply with such subpoena or interrogatory or to testify. Failure to obey the court's order may be punished by the court as contempt. Subpoenas or interrogatories issued under the provisions of this section may be served upon individuals and corporations in the manner provided in K.S.A. 60-304, and amendments thereto, for the service of process by any officer authorized to serve subpoenas in civil actions or by the secretary.”;*

By renumbering existing sections accordingly;

Also, on page 14, in line 26, after “K.S.A.” by inserting “79-3611 and K.S.A.”;

In the title, in line 19, after “K.S.A.” by inserting “79-3611 and K.S.A.”

Senator Schmidt amended the bill as further amended by Senate Committee, on page 6, following line 1, by inserting:

“Whenever the question of imposing a retailers’ sales tax has been submitted to and approved by the electors of any city or county at or pursuant to an election held prior to the effective date of this act, such tax may be imposed in accordance with the provisions of the law in existence on the date of such election.”, and **HB 2221** be passed as further amended.

Sub SB 85, Sub SB 306; HB 2480 be passed over and retain a place on the calendar.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator Oleen an emergency was declared by a $\frac{2}{3}$ constitutional majority, and **SB 343; SCR 1611; HB 2221** were advanced to Final Action, subject to amendment, debate and roll call.

SB 343, An act concerning the department of health and environment; relating to vital statistics; establishing the vital statistics maintenance fee fund; amending K.S.A. 2000 Supp. 65- 2418 and repealing the existing section.

On roll call, the vote was: Yeas 27, Nays 13, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Gilstrap, Gooch, Goodwin, Jackson, Jenkins, Jordan, Kerr, Lee, Morris, Oleen, Praeger, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil.

Nays: Barone, Emler, Feleciano, Haley, Harrington, Hensley, Huelskamp, Lyon, O'Connor, Pugh, Salmans, Steineger, Wagle.

The bill passed.

SCR 1611, A concurrent resolution expressing the Legislature's opposition to amendments to the Indian Gaming Regulatory Act which eliminate the Governor's right to concur in acquisitions of land for gaming purposes.

On roll call, the vote was: Yeas 34, Nays 6, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Gooch, Goodwin, Harrington, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Barone, Feleciano, Gilstrap, Haley, Hensley, Steineger.

The resolution was adopted, as amended.

HB 2221, An act relating to sales taxation; authorizing certain counties to impose countywide tax for economic development initiative and infrastructure purposes; concerning health care service sales tax rates; amending K.S.A. 79-3611 and K.S.A. 2000 Supp. 12-187, 12- 189, as amended by section 1 of 2001 Senate Bill No 216, and 12-192 and repealing the existing sections; also repealing K.S.A. 2000 Supp. 12-189 as amended by section 1 of 2001 Senate Bill No. 253 and 12-192c.

On roll call, the vote was: Yeas 26, Nays 14, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Corbin, Donovan, Downey, Feleciano, Gilstrap, Goodwin, Jackson, Jenkins, Jordan, Kerr, Lee, Morris, Oleen, Praeger, Schmidt, Schodorf, Steineger, Teichman, Umbarger, Vratil.

Nays: Clark, Emler, Gooch, Haley, Harrington, Hensley, Huelskamp, Lyon, O'Connor, Pugh, Salmans, Taddiken, Tyson, Wagle.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote "no" on **HB 2221**, not because of the underlying bill which seeks to make many county and city sales tax statutes uniform, but because of the floor amendment that added statutory subpoena powers to the department of revenue for sales tax purposes. I do not support the expansion of a "police state" and believe that the department, upon proper evidence can appear before a judge to receive this power. Mr. President, I vote "no".—STAN CLARK

Senators O'Connor and Salmans request the record to show they concur with the "Explanation of Vote" offered by Senator Clark on **HB 2221**.

CHANGE OF REFERENCE

The President withdrew **S Sub for HB 2040** from the Calendar under the heading of General Orders, and rereferred the bill to the Committee on Ways and Means.

ORIGINAL MOTION

Pursuant to Senate Rule 75, President Kerr determined **H Sub for Sub SB 330**, as amended by the House, to be materially changed, and referred the bill to the Committee on Ways and Means.

On motion of Senator Oleen the Senate adjourned until 9:30 a.m., Friday, March 30, 2001.

HELEN A. MORELAND, *Journal Clerk*.

PAT SAVILLE, *Secretary of Senate*.

