

Journal of the Senate

FIFTY-SEVENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, April 4, 2002—9:30 a.m.

The Senate was called to order by Vice-President Sandy Praeger.

The roll was called with forty senators present.

Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

Many, if not most, of the major issues we encounter come to us in bills which cannot be considered all good or all bad, but in our judgment, partly good, partly bad, and partly who knows what.

When this happens . . . (if I'm fortunate to have enough time)

I study the bill.

I pay attention to conferees.

I listen to lobbyists.

I consult colleagues.

I listen to debates.

I listen to constituents, both supporters and opponents.

I read their letters and e-mails.

I read the analysts.

I attend the caucuses.

I send out surveys and read those returned.

And I pray. Not once, but many times.

And I pray today, O God, that my vote will not primarily reflect

My desire for re-election;

Nor my concern for my image;

Nor even the volume of support or opposition;

But that my vote, from my personal viewpoint, will primarily reflect what I perceive to be best for the people I represent.

I pray in Jesus' Name,

AMEN

REFERRAL OF APPOINTMENTS

The following appointments made by the Governor and submitted to the senate for confirmation, were referred to Committees as indicated:

Member, University of Kansas Hospital Authority, Eric T. Jager, effective upon the date of confirmation by the Senate to serve a three-year term ending March 15, 2005.

(Public Health and Welfare)

Member, University of Kansas Hospital Authority, Charles T. Sunderland, effective upon the date of confirmation by the Senate to serve a three-year term ending March 15, 2005.

(Public Health and Welfare)

COMMUNICATIONS FROM STATE OFFICERS

DEPARTMENT OF REVENUE

April 1, 2002

As required by K.S.A. 74-50,118(c), Stephen S. Richards, Secretary of Revenue, submitted the annual report estimating the state tax expenditures from income tax credits claimed and sales tax exemptions allowed under the Kansas Enterprise Zone Act.

The Vice-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.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2635, HB 3031**.

Passage of **Substitute SB 116, SB 547**.

Also, passage of **House Substitute for Senate Substitute SB 296**, as amended.

Also, adoption of **SCR 1614**, as amended.

The House nonconcur in Senate amendments to **Substitute HB 2469** and requests a conference 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 506** and has appointed Representatives Hayzlett, Vickrey and M. Long as conferees on the part of the House.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2635, HB 3031 were thereupon introduced and read by title.

REMOVE FROM CONSENT CALENDAR

An objection having been made to **HB 3021** appearing on the Consent Calendar, the Vice-President directed the bill be removed and placed on the calendar under the heading of General Orders.

ORIGINAL MOTION

Having voted on the prevailing side in Final Action on Wednesday, April 3, 2002, Senator Umbarger moved the Senate reconsider its adverse action on **SB 653**. The motion carried and the bill was returned to Final Action. On motion of Senator Umbarger the bill was returned to the calendar under the heading of General Orders.

REPORTS OF STANDING COMMITTEES

Committee on **Financial Institutions and Insurance** recommends **HB 2947**, as amended by House Committee, be passed.

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 Adkins in the chair.

Recommended **SB 438; HB 2613, HB 2703** be amended by adoption of the committee amendments, and the bills be passed as amended.

The Committee rose and reported progress (see Committee of the Whole, afternoon session).

On motion of Senator Oleen, the Senate recessed until 2:30 p.m.

AFTERNOON SESSION

The Senate met pursuant to recess with Vice-President Sandy Praeger in the chair.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 656, An act concerning social welfare; enacting the senior pharmacy plus act; providing for certain transfers and program suspensions, by Committee on Ways and Means.

SB 657, An act concerning school district budgeting; amending K.S.A. 12-1663 and 79-2927 and repealing the existing sections, by Committee on Ways and Means.

MESSAGE FROM THE GOVERNOR

SB 95, SB 390, SB 435, SB 464, SB 469, SB 480, SB 507, SB 546; Sub SB 556 approved on April 4, 2002.

April 2, 2002

Message to the Senate of the State of Kansas:

Enclosed herewith is Executive Directive No. 02-322 for your information.

Sincerely,

BILL GRAVES

Governor

The Vice-President announced Executive Directive No. 02-322, Authorizing Expenditures and Authorizing a Personnel Transaction, is on file in the office of the Secretary of the Senate and is available for review at anytime.

MESSAGE FROM THE HOUSE

Announcing passage of **Substitute SB 256**.

REPORTS OF STANDING COMMITTEES

Committee on **Elections and Local Government** recommends **SB 655** be amended on page 3, following line 14, by inserting

“(d) No provision in this section shall affect the rights of any property owner in a boundary dispute.”;

and the bill be passed as amended.

Also **HB 2878**, as amended by House Committee of the Whole, be amended on page 12, preceding line 1, by inserting the following:

“Sec. 5. K.S.A. 12-1922 is hereby amended to read as follows: 12-1922. When used in this act:

(a) “City” means any city in the state of Kansas;

(b) “School district” means any unified school district in the state of Kansas;

(c) “Recreation system” means any system of public recreation and playgrounds established pursuant to this act; ~~and~~

(d) “Taxing district” means (1) the area within the corporate limits of a city in the case of a city-established recreation system; (2) *subject to the provisions of section 6, and amendments thereto*, the area within the boundary lines of a school district in the case of a school district-established recreation system; or (3) *subject to the provisions of section 6, and amendments thereto*, the area within the corporate limits of a city or the area within the boundary lines of a school district, whichever has the greater assessed valuation, in the case of a jointly established recreation system.

New Sec. 6. Unless the boundaries of a taxing district are expanded as provided by section 7, and amendments thereto, whenever a school district which has established a recreation system or which is part of a joint recreation system established under K.S.A. 12-1922 *et seq.*, and amendments thereto, consolidates with another school district which has not established a recreation system or which is not a part of a joint recreation system, the “taxing district” of the recreation system shall mean the area of the taxing district as it existed on the day immediately preceding the effective date of the consolidation of the school districts.

New Sec. 7. (a) The provisions of this section shall apply only to those recreation systems with taxing districts as defined in section 6, and amendments thereto.

(b) Whenever a petition signed by at least 5% of the qualified voters of a school district of which only a portion is included within the taxing district of a recreation system is filed with the clerk thereof, requesting the governing body of the school district to extend the boundaries of the taxing district to be coterminous with the boundaries of the school district, the governing body of the school district shall submit the question to the qualified voters thereof. Such election shall be called and held in the manner provided by the general bond law, and the cost of the election shall be borne by such school district.

(c) The governing body of any school district may initiate the extension of the boundaries of the taxing district to be coterminous with the boundaries of the school district by adopting a resolution proposing to extend the boundaries of the taxing district. The proposal shall be submitted for approval by the voters of the school district, at an election called and held in the manner provided by the general bond law, and the cost of the election shall be borne by the school district.

(d) Upon approval of the proposition by a majority of those voting on it at the election, the governing body of the school district, by appropriate resolution, shall provide for the extension of the taxing district to be coterminous with the boundaries of the school district.

(e) When used in this section, "qualified voter" means a registered voter of a school district who is a resident of that portion of such school district which is not included in the taxing district of a recreation system following the consolidation of such school district with a school district which has established a recreation system or which is a part of a joint recreation system.;

And by renumbering the remaining sections accordingly;

Also on page 12, in line 1, after "K.S.A." by inserting "12-1922,;"

On page 1, in the title, in line 18, after "K.S.A." by inserting "12-1922,;" and the bill be passed as amended.

Committee on **Transportation** recommends **Substitute for HB 2653** be amended on page 1, by striking all in lines 14 through 43;

By striking all on page 2;

On page 3, by striking all in lines 1 through 11; by renumbering "Sec. 2." as "Section 1.;" in line 33, by striking "For any antique vehicle"; in line 34, by striking all preceding "application" and inserting "The"; in line 36, by striking all following "vehicle"; in line 37, by striking all preceding the period; in line 38, by striking all following "vehicle"; in line 39, by striking "of 1950 or later"; also in line 39, by striking "the vehicle"; by striking all in line 40; in line 41, by striking all preceding "inspection" and inserting "an"; in line 42, by striking "shall be re-"; by striking all in line 43;

On page 4, by striking all in lines 1 through 6; in line 7, by striking all preceding the period and inserting "has been completed"; in line 29, by striking "8-116a and 8-170 are" and inserting "8-170 is"; in line 31, by striking "statute book" and inserting "Kansas register";

By renumbering sections accordingly;

In the title, in line 9, by striking "in-"; in line 10, by striking "spections,;" also in line 10, by striking "8-116a and"; in line 11, by striking "sections" and inserting "section"; and the substitute bill be passed as amended.

Also **HB 2949**, as amended by House Committee, be amended on page 2, in line 17, by striking "Sales tax" and inserting "Transportation district excise tax"; also in line 17, by striking "sales"; in line 26, by striking "more than 1/2" and inserting "all"; in line 41, by striking "sales" and inserting "transportation district excise";

On page 3, in line 13, by striking "sales" and inserting "transportation district excise"; in line 25, by striking "sales" and inserting "transportation district excise"; in line 42, by striking all following "(a)"; by striking all in line 43;

On page 4, in line 1, by striking all preceding "municipality" and inserting "Any" in line 2, by striking "an additional retailers' sales tax" and inserting "a transportation district excise tax on the selling of tangible personal property at retail or rendering or furnishing services" in line 5, by striking "additional sales" and inserting "transportation district excise" in line 9, by striking "retailers' sales" and inserting "transportation district excise" in line 22, by striking all following the period; in line 23, by striking all preceding "subject" and inserting "Such tax shall be administered and collected by the municipality, except that such tax shall

be” also in line 23, preceding “provisions” by inserting “conditions or limitations contained in the” by striking all in lines 25 through 43;

On page 5, in line 1, by striking “sales” and inserting “transportation district excise” in line 14, by striking “a portion or” also in line 14, by striking “sales” and inserting “transportation district excise”

On page 6, following line 12, by inserting:

“Sec. 11. K.S.A. 12-194 is hereby amended to read as follows: 12-194. No city or county shall levy or impose an excise tax or a tax in the nature of an excise, other than a retailers’ sales tax and a compensating use tax, upon the sale or transfer of personal or real property, or the use thereof, or the rendering of a service, but the provisions of this section shall not be construed as prohibiting any city from (a) contracting with a utility for a fixed charge based upon a percentage of gross receipts derived from the service permitted by grant, right, privilege or franchise to such utility; (b) imposing an occupation tax or license fee for the privilege of engaging in any business, trade, occupation or profession, or rendering or furnishing any service, but the determination of any such license fee shall not be based upon any amount the licensee has received from the sale or transfer of personal or real property, or for the rendering or furnishing of a service, or on the income of the licensee; ~~or~~ (c) levying any occupation tax or license fee imposed by such city prior to the effective date of this act; or (d) levying a tax for the purpose of financing a transportation development district, created under sections 1 through 10, and amendments thereto. No license fee described in subsection (b) of this section shall be imposed upon any utility contracting with and subject to a charge, described in subsection (a) of this section, by such city.”

By renumbering sections accordingly;

On page 7, in line 14, by striking “25-432 is” and inserting “12-194 and 25-432 are” in line 16, by striking “Kansas register” and inserting “statute book”

In the title, in line 11, following “K.S.A.” by inserting “12-194 and” in line 12, by striking “section” and inserting “sections” and the bill be passed as amended.

Committee on **Ways and Means** recommends **HB 2982**, as amended by House Committee, be passed.

REPORT ON ENGROSSED BILLS

SB 603, SB 647, SB 654 reported correctly engrossed April 4, 2002.

COMMITTEE OF THE WHOLE

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

On motion of Senator Adkins the following report was adopted:

Recommended **SB 648** be amended by motion of Senator Gilstrap on page 1, in line 24, by striking “Kansas register” and inserting “statute book”

Senator Haley moved **SB 648** be returned to the Committee on Judiciary.

The motion failed.

Senator Steineger moved to amend **SB 648** on page 1, in line 18, by striking all after the period; by striking all in line 19; in line 20, by striking all before “The”

The motion failed and the amendment was rejected.

The Committee recommended **SB 648** be passed as amended.

SB 651 be amended by adoption of the committee amendments, be further amended by motion of Senator Oleen on page 3, in line 34, by striking “state general fund” and inserting “indigents defense services fund”;

On page 7, in line 25, by striking “state general fund” and inserting “indigents defense services fund”; in line 42, by striking “state general fund” and inserting “indigents defense services fund”, and **SB 651** be passed as further amended.

HB 2091 be amended by adoption of the committee amendments, be further amended by motion of Senator Jackson as further amended by Senate Committee, on page 8, in line 34, by striking the comma and inserting “and”; in line 35 by striking all after the comma; by striking all in lines 36 and 37, in line 38, by striking all before the first “and”; in line 42, after the period by inserting “For all taxable years commencing after December 31, 2004,

in the event any such manufacturing business has made an investment after July 1, 2002, in new machinery and equipment in an amount exceeding \$10,000,000, the amount of such credit shall be equal to 30% of the property tax levied for property tax year 2005, 35% of the property tax levied for property tax year 2006, and 40% of the property tax levied for property tax year 2007, and all such years thereafter, actually and timely paid during an income taxable year upon commercial and industrial machinery and equipment classified for property taxation purposes pursuant to section 1 of article 11 of the Kansas constitution in subclass (5) of class 2.”;

On page 9, in line 10, by striking all after the period; by striking all in lines 11 through 13; in line 14, by striking all before “Any”

Senator Brownlee moved to amend **HB 2091**, on page 8, line 26, by striking “or exceeds” and inserting “at least 90% of ”

The motion failed and the amendment was rejected.

The Committee recommended **HB 2091**, as amended by adoption of the committee amendments and further amended by motion of Senator Jackson, be passed as further amended.

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 438**, **SB 648**, **SB 651**; **HB 2091**, **HB 2613**, **HB 2703** were advanced to Final Action and roll call.

SB 438, An act concerning agriculture; relating to powers, duties and responsibilities of secretary of agriculture; fees and penalties; amending K.S.A. 2-1205, 2-2204, 2-2440, 2-2440b, 2-2441a, 2-2443a, 2-2445a, 2-2805, 2-2806, 2-2905, 2-2906, 2-3304, 2-3306, 2-3318, 65-6a34, 82a-727, 82a-732, 83-201 and 83-205 and K.S.A. 2001 Supp. 65-6a18, 65-771, 65-775, 65-778, 65-781, 65-782, 65-789, 82a-708a, 82a-708b, 82a-714, 83-302 and 83-402 and repealing the existing sections.

On roll call, the vote was: Yeas 21, Nays 18, Present and Passing 1, Absent or Not Voting 0.

Yeas: Allen, Barnett, Brownlee, Brungardt, Clark, Donovan, Emler, Jackson, Jenkins, Jordan, Kerr, Morris, Oleen, Praeger, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil.

Nays: Adkins, Barone, Corbin, Downey, Feleciano, Gilstrap, Gooch, Goodwin, Harrington, Hensley, Huelskamp, Lee, Lyon, O'Connor, Pugh, Salmans, Tyson, Wagle.

Present and Passing: Haley.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote no on **SB 438**, not because of a lack of support for the Department of Agriculture, but because we are using the wrong method to fund the shortfall in the Department of Agriculture.

Because the Department exists for the regulation and protection of Kansas citizens, the support for the agency should be the State General Fund.

Supporters of this measure have been convinced that if they don't vote for this fee increase, programs will be lost, permits delayed, etc. That is not true. What is needed is the courage to support this state agency with state money.

Instead, we are taxing a struggling segment of our economy to pay for regulation and protection of all Kansans. It is a bad precedent and indicates a collective inability to face the results of too many years of reduced funding for this agency. It is not the agency's fault, it's not the irrigator's fault, and it is not the farmer's fault. It is our fault. Instead of doing the right thing—we're doing the easy thing and excusing it by saying that there is no other way.—CHRISTINE DOWNEY

Senators Paul Feleciano, Jr., Greta Goodwin, Anthony Hensley and Janis K. Lee request the record to show they concur with the “Explanation of Vote” offered by Senator Downey on **SB 438**.

MR. PRESIDENT: **SB 438** is a major tax increase on one of our most economically-troubled industries-agriculture. On the same day of passage of this tax increase, the Senate in turn

voted to hand out millions of dollars in tax breaks to two profitable corporations by passage of **HB 2091**.

These actions taken together demonstrate the unfairness and inequity of our state's tax policy.—TIM HUELSKAMP

SB 648, An act concerning corrections; relating to day reporting center in Wyandotte county; application of local requirements or conditions.

On roll call, the vote was: Yeas 25, Nays 14, Present and Passing 1, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Brungardt, Clark, Corbin, Donovan, Emler, Goodwin, Jackson, Jenkins, Jordan, Kerr, Morris, O'Connor, Oleen, Praeger, Pugh, Schmidt, Schodorf, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Barone, Brownlee, Feleciano, Gilstrap, Gooch, Haley, Harrington, Hensley, Huelskamp, Lee, Lyon, Salmans, Steineger, Taddiken.

Present and Passing: Downey.

The bill passed, as amended.

SB 651, An act concerning courts; establishing an appearance bond fee and distribution thereof; amending K.S.A. 8-2107 and 22-2814 and K.S.A. 2001 Supp. 22-2802 and repealing the existing sections.

On roll call, the vote was: Yeas 28, Nays 12, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Barone, Downey, Feleciano, Gilstrap, Gooch, Haley, Hensley, Huelskamp, Lee, Lyon, O'Connor, Steineger.

The bill passed, as amended.

HB 2091, An act relating to income taxation; allowing credits therefrom for property tax paid on certain machinery and equipment; concerning the apportionment of business income of certain investment funds service companies; amending K.S.A. 79-3271 and 79-3279 and repealing the existing sections.

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, Harrington, Hensley, Jackson, Jenkins, Jordan, Kerr, Lee, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Haley, Huelskamp, Lyon.

The bill passed, as amended.

HB 2613, An act relating to state finances; concerning joint estimates of revenue to the state general fund; biennial budget estimates for state agencies; amending K.S.A. 75-6701 and K.S.A. 2001 Supp. 75-3717 and repealing the existing sections.

On roll call, the vote was: Yeas 38, Nays 1, Present and Passing 1, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, 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: Feleciano.

Present and Passing: Gooch.

The bill passed, as amended.

HB 2703, An act concerning solid waste; relating to construction and demolition landfills; amending K.S.A. 2001 Supp. 65-3402 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: Allen, Barnett, Barone, Brownlee, Clark, Corbin, Donovan, Gilstrap, Gooch, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Pugh, Salmans, Schmidt, Steineger, Taddiken, Teichman, Tyson, Umbarger.

Nays: Adkins, Brungardt, Downey, Emler, Feleciano, Goodwin, Haley, Jenkins, Oleen, Praeger, Schodorf, Vratil, Wagle.

The bill passed, as amended.

CHANGE OF CONFERENCE

The President announced the appointment of Senator Schmidt as a member of the Conference Committee on **Sub SB 467** to replace Senator Jordan.

ORIGINAL MOTION

On motion of Senator Vratil, the Senate acceded to the request of the House for a conference on **Sub HB 2469**.

The President appointed Senators Vratil, Adkins and Goodwin as conferees on the part of the Senate.

On motion of Senator Oleen the Senate adjourned until 9:30 a.m., Friday, April 5, 2002.

HELEN A. MORELAND, *Journal Clerk*.

PAT SAVILLE, *Secretary of Senate*.

