

Journal of the Senate

TWENTY-SEVENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, February 16, 2005—2:30 p.m.

The Senate was called to order by President Stephen Morris.
The roll was called with forty senators present.
President Morris introduced guest chaplain, Rev. Terrell Davis, New Hope Missionary Baptist Church, Wichita, Kansas, who delivered the invocation:

Heavenly Father, we want to take time out of our busy schedule to thank you for this day. We thank you for another opportunity to impact the great state of Kansas. I pray for this assembly of leaders who have been given a great charge to represent their communities. I pray for divine wisdom in their decision-making, and for your guidance in their discussions. Father, bless each person sitting in this room; bless their families, and their communities. In Jesus' Name I Pray. Amen

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 266, An act authorizing the secretary of the department of administration to transfer certain land, by Committee on Ways and Means.

SB 267, An act concerning alcoholic liquors; amending K.S.A. 41-308, 41-308a and 41-803 and K.S.A. 2004 Supp. 41-719 and repealing the existing sections, by Committee on Federal and State Affairs.

SB 268, An act concerning insurance products; relating to the interstate insurance product regulation compact, by Committee on Federal and State Affairs.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Agriculture: **SB 265**.

Assessment and Taxation: **HB 2187**.

Financial Institutions & Insurance: **SB 264**; **HB 2171**, **HB 2172**.

Judiciary: **HB 2130**.

Utilities: **HB 2042**, **HB 2045**, **HB 2047**.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2034**, **HB 2072**, **HB 2122**, **HB 2140**, **HB 2153**, **HB 2215**, **HB 2347**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2034, **HB 2072**, **HB 2122**, **HB 2140**, **HB 2153**, **HB 2215**, **HB 2347** were thereupon introduced and read by title.

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

Senator Allen moved the Senate concur in house amendments to **SB 23**.

SB 23, An act concerning sales tax on isolated or occasional sales of motor vehicles; relating to base of computation; verification; sales tax refunds; motor vehicle certificate of title; amending K.S.A. 79-3604 and K.S.A. 2004 Supp. 8-135 and 79-3603 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: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The Senate concurred.

CONFIRMATION OF APPOINTMENTS

In accordance with Senate Rule 56, the following appointment, submitted by the Governor to the senate for confirmation, was considered.

Senator D. Schmidt moved the following appointment be confirmed as recommended by the Standing Senate Committee:

On the appointment to the:

State Board of Tax Appeals:

Rebecca W Crotty, term expires January 15, 2009.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The appointment was confirmed.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

SB 37, An act concerning business entities; relating to franchise fees; amending K.S.A. 17-6709 and 17-6806 and K.S.A. 2004 Supp. 17-1513, 17-1618, 17-2036, 17-2037, 17-2718, 17-4634, 17-4677, 17-7002, 17-7503, 17-7504, 17-7505, 17-7507, 17-7509, 17-7510, 17-7512, 17-7514, 17-76,125, 17-76,139, 56-1a606, 56-1a607, 56-1a608, 56-1a610, 56a-1201, 56a-1202, 56a-1203, 56a-1204 and 75-446 and repealing the existing sections; also repealing K.S.A. 2004 Supp. 17-2036a, 17-7503a, 17-7504a, 17-7505a, 17-7507a, 17-7508, as amended by section 88 of 2004 Senate Bill No. 29, 17-7510a, 17-7512a, 17-76,139a, 56-1a606a and 56-1a607a, 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: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Journey, Petersen.

The bill passed, as amended.

SB 42, An act concerning teachers; relating to certification thereof; amending K.S.A. 72-1387 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: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Jordan, Journey, Kelly, Lee, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Huelskamp, O'Connor.

The bill passed.

SB 43, An act concerning payments to schools for driver training courses; amending K.S.A. 8-272 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: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed, as amended.

SB 49, An act concerning schools and school districts; relating to contracts, 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: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

SB 58, An act concerning sales taxation; relating to countywide retailers' sales tax in Sedgwick county; amending K.S.A. 2004 Supp. 12-187, 12-189 and 12-192 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 32, Nays 8, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Apple, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Goodwin, Haley, Hensley, Jordan, Kelly, Lee, McGinn, Morris, Petersen, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Barnett, Gilstrap, Huelskamp, Journey, O'Connor, Ostmeyer, Palmer, Pyle.

The bill passed.

EXPLANATION OF VOTE

MR. PRESIDENT: Although I vote "AYE" on **SB 58**, it is *not* due to an abandonment on my part of a well-established commitment to oppose all tax or fee increases; or large abatements.

David Haley remains, after a lifetime and eleven years in the Kansas Legislature, as fiscally conservative as they come. The people of Sedgwick County, during a well publicized election, voted overwhelmingly in favor of the imposition of this additional county specific sales tax to support proposed economic initiatives.

This referendum, and my corresponding vote today, merely reflects their will...and my sincere respect for them.—DAVID HALEY

SB 59, An act concerning wildlife; creating the wildlife violator compact, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 1, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Taddiken.

The bill passed, as amended.

SB 67, An act concerning campaign finance; relating to corrupt political advertising; amending K.S.A. 25-4156 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: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed, as amended.

SB 94, An act relating to roads and highways; concerning certain contracts; amending K.S.A. 68-521 and K.S.A. 2004 Supp. 68-1115 and 68-1117 and repealing the existing sections, 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: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed, as amended.

SB 101, An act concerning banks and trust companies; relating to employment of an officer or director who has been removed for cause; amending K.S.A. 9-1805 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 1, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Pyle.

The bill passed.

SB 102, An act concerning health insurance; relating to notice when a block of business is closed; amending K.S.A. 40-2255 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: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

SB 104, An act concerning banks; relating to examination of certain affiliated business entities; amending K.S.A. 9-1702 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 33, Nays 7, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Jordan, Kelly, Lee, McGinn, Morris, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Huelskamp, Journey, O'Connor, Ostmeyer, Palmer, Petersen, Pyle.

The bill passed, as amended.

SB 115, An act concerning social and rehabilitation services; relating to investigation of reports of abuse, neglect or exploitation; amending K.S.A. 2004 Supp. 39-1433 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: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Jordan, Journey, Kelly, Lee, McGinn,

Morris, O'Connor, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Huelskamp, Ostmeyer.

The bill passed.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Committee on **Judiciary** introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1820—

A RESOLUTION Requesting the United States supreme court to grant certiorari and reverse the Kansas supreme court's ruling in *State v. Marsh*.

WHEREAS, The current Kansas death penalty law was enacted in 1994 and was challenged in *State v. Kleypas*, 272 Kan. 894, decided by the Kansas supreme court December 28, 2001; and

WHEREAS, The Kansas supreme court unanimously affirmed Kleypas' conviction but set aside his death sentence because of a faulty jury verdict form; and

WHEREAS, The *Kleypas* court split 4-3 on a constitutional challenge to the death penalty statute based on the manner in which jurors were instructed to weigh aggravating and mitigating circumstances when deciding whether to impose a death sentence, but all seven Kansas justices in the *Kleypas* court found the Kansas death penalty law to be constitutional, either on its face or as construed; and

WHEREAS, The *Kleypas* majority, consisting of Justices Tyler C. Lockett, Donald L. Allegrucci, Fred N. Six, and Edward Larson, did not invalidate the Kansas death penalty statute, but held that the so-called "weighing equation," as applied, was unconstitutional: "Our decision does not require that we invalidate K.S.A. 21-4624 or the death penalty itself. We do not find K.S.A. 21-4624(e) to be unconstitutional on its face, but rather, we find that the weighing equation impermissibly mandates the death penalty when the jury finds that the mitigating and aggravating circumstances are in equipoise."; and

WHEREAS, The *Kleypas* dissent, written by Justice Davis and joined by Chief Justice McFarland and Justice Abbott, did not invalidate the Kansas death penalty statute because "the weighing equation was constitutional as written." The dissent further noted that the United States supreme court has held that as long as the weighing equation does not preclude the jury from considering relevant mitigating evidence, the specific method of balancing the aggravating and mitigating factors may be left up to the state; and

WHEREAS, In reaching the decision, the court reasoned that the Kansas legislature intended to enact a constitutional death penalty law and thus concluded that K.S.A. 21-4624(e) is not void on its face, but only in its application. The majority held that by requiring the "tie" to go to the defendant, the intent of the legislature may be carried out in a constitutional manner: "By simply invalidating the weighing equation and construing K.S.A. 21-4624(e) to provide that if the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 21-4625 exists and, further, that such aggravating circumstance or circumstances outweigh any mitigating circumstance found to exist, the defendant shall be sentenced to death, the intent of the legislature is carried out in a constitutional manner. So construed, we hold that K.S.A. 21-4624 does not violate the Eighth amendment prohibition against cruel and unusual punishment," the court concluded; and

WHEREAS, The *Kleypas* court held that the wording of a verdict form was confusing, misleading and inconsistent with Kansas law and improperly implied to a jury that the jury, in order to spare Kleypas' life, was required to be unanimous in its decisions against death. To cure that infirmity, the court provided substitute language for verdict forms to be used in all death penalty cases in Kansas. The revised verdict form, consistent with Kansas law, makes it clear that a single juror may block a death verdict; and

WHEREAS, After the *Kleypas* case was decided, both the senate judiciary committee and the house judiciary committee conducted hearings regarding the *Kleypas* decision and the Kansas death penalty law. In addition to hearings during the 2002 legislative session, the matter was studied further during interim committee hearings in the autumn of 2004. The focus of the hearings was to determine what legislative response, if any, was needed to

ensure the constitutionality of the Kansas death penalty law in light of the *Kleypas* decision; and

WHEREAS, Based on testimony received during those hearings, the legislature relied on the *Kleypas* court's decision and concluded that no amendment to statute was necessary because the *Kleypas* court has upheld the constitutionality of the death penalty statute and had cured the apparent flaw in the weighing equation by revising future jury instructions; and

WHEREAS, Only three years after deciding the *Kleypas* case the Kansas supreme court decided *State v. Marsh*, opinion number 81,135, on December 17, 2004; and

WHEREAS, In *Marsh*, the supreme court ruled 4-3 that the Kansas death penalty statute is unconstitutional because of its inclusion of the "weighing equation" - the same defect that the supreme court purported to cure with the prospective change in jury instructions it ordered in *Kleypas*; and

WHEREAS, In *Marsh*, the majority agrees with the four justices who decided in 2001's *State v. Kleypas* that the statute as written violated the eighth and fourteenth amendments but, unlike in *Kleypas*, the *Marsh* majority proceeded to invalidate the entire statute rather than severing the weighing equation provision from the remainder of the statute and allowing a change in jury instructions to cure the flaw; and

WHEREAS, The three justices who dissented in *Marsh* (Justice Davis, Chief Justice McFarland and Justice Nuss) continue to believe the death penalty statute, as written, is constitutional: "There seems to be a general feeling among the majority that the weighing equation which mandates death in the highly unlikely event that the jury finds the aggravating and mitigating factors to be exactly equal in weight is somehow 'unfair.' While it is certainly within the province of this court to interpret the eighth amendment, we cannot do so in a vacuum. We cannot simply rely on our inchoate feelings, but instead have a duty to examine, analyze, and apply the United States supreme court's jurisprudence on the matter."; and

WHEREAS, The *Marsh* majority states that the United States supreme court has never directly addressed the issue of the weighing equation presented in *Kleypas* and again in *Marsh*; and

WHEREAS, Chief Justice McFarland says in her separate dissent that legally the Court should follow the *Kleypas* precedent: "In *Kleypas*, in a 4 to 3 decision, all seven justices agreed the Kansas death penalty law was constitutional, either as construed in a very minor respect (majority) or as written (dissent). To now strike down the Kansas death penalty law, is, in my opinion, wholly inappropriate and unjustified."; and

WHEREAS, Justice Nuss also writes separately and says the United States supreme court has already implicitly approved of the death penalty sentencing scheme adopted in Kansas. In his opinion, an Arizona weighing equation "functionally identical" to the Kansas equation was approved by the United States supreme court in its 1990 *Walton v. Arizona* decision, and *Walton* therefore controls the result in *Marsh*; and

WHEREAS, It may be beyond the power of the legislature to amend the Kansas statute retroactively in order to apply a clearly constitutional death penalty law to the seven persons now on death row. Only a decision by the United States supreme court to overturn the Kansas supreme court's decision in *Marsh* is likely to result in the continued application of the death penalty law to those persons already sentenced to death; and

WHEREAS, The State of Kansas finds itself in this predicament not because of any change in the death penalty law but because of a change in the composition of the Kansas supreme court between the *Kleypas* and *Marsh* decisions; and

WHEREAS, Manifest injustice will result if the United States supreme court declines to review the *Marsh* case on appeal; and

WHEREAS, We believe that the Kansas death penalty law meets the requirements of the Kansas constitution and the United States constitution: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That, based on the evidence presented, we do hereby acknowledge and affirm that the opinion of the Kansas senate is that the Kansas death penalty law as written is constitutional and that if any single provision of that law is found to be unconstitutional that provision should be severed from the rest and other provisions of the statute upheld; and

Be it further resolved: That, the Kansas supreme court and the United States supreme court should be informed that the Kansas legislature relied on the Kansas supreme court's decision in *State v. Kleypas* in deciding not to amend the Kansas death penalty law to alter the weighing equation provisions during hearings in 2002 and 2004; and

Be it further resolved: That, the Kansas senate respectfully requests that United States supreme court grant certiorari to hear the *Marsh* case and find Kansas death penalty law constitutional as written or, in the alternative, as applied through the cure imposed by the Kansas supreme court in the *Kleypas* decision.

REPORTS OF STANDING COMMITTEES

Committee on **Agriculture** recommends **SB 56** be passed.

Also, **SB 234** be amended on page 1, following line 23, by inserting:

“(c) Any motor vehicle rental contract entered into by the state for the rent or lease of vehicles or renewed after the effective date of this act shall require that the lessor provide that all bulk motor-vehicle fuels purchased by lessor or on behalf of the lessor for use in vehicles leased to the state of Kansas, or any agency thereof, shall be motor-vehicle fuel blends containing at least 10% ethanol.”;

Also on page 1, in line 24, by striking “(c)” and inserting “(d)”; in line 31, by striking “(d)” and inserting “(e)”; and the bill be passed as amended.

Committee on **Assessment and Taxation** recommends **SB 195** be passed.

Also, **SB 158** be amended on page 1, in line 40, by striking “or cotton”;

Also on page 1, in the title, in line 9, by striking “and cotton”; and the bill be passed as amended.

SB 209 be amended on page 1, after line 13, by inserting the following:

“Section 1. K.S.A. 2004 Supp. 12-17,142 is hereby amended to read as follows: 12-17,142.

(a) In addition to any other power provided by law and as a complete alternative to all other methods provided by law, the governing body of any municipality may create a district as provided by this act for the purpose of financing projects. A municipality may create a district, or may modify a previously created district, upon receipt of a petition signed by the owners of all of the land area within the proposed district. The petition shall contain: (1) The general nature of the proposed project;

(2) the ~~estimated~~ maximum cost of the project;

(3) the proposed method of financing the project;

(4) the proposed amount and method of assessment;

(5) the proposed amount of transportation development district sales tax; and

(6) a map or boundary description of the proposed district.

(b) Names may not be withdrawn from the petitions by the signers thereof after the governing body commences consideration of the petitions or later than seven days after such filing, whichever occurs first. The petition shall contain a notice that: (1) The names of the signers may not be withdrawn after such a period of time; and (2) the signers consent to any assessments to the extent described therein without regard to benefits conferred by the project.

(c) Upon filing of the petition for a district financed only by assessments, the governing body may proceed without notice or a hearing to make findings by resolution or ordinance as to the nature, advisability and estimated cost of the project, the boundaries of the district and the amount and method of assessment. Upon making such findings the governing body may authorize the project in accordance with such findings as to the advisability of the project. The resolution or ordinance shall be effective upon publication once in a newspaper.

(d) The district boundaries and the method of financing for the project shall not require that all property that is benefited by the project, whether the benefited property is within or without the district, be included in the district or be subject to an assessment or the transportation development district sales tax.

(e) Following authorization of the project, the petition shall be submitted for recording in the office of the register of deeds of the county in which the district is located.”;

And by renumbering sections accordingly;

Also on page 1, in line 31, by striking “estimated” and inserting “maximum”;

On page 2, in line 21, after the period by inserting “Except as otherwise provided by the provisions of K.S.A. 12-17,141 et seq., and amendments thereto, the tax authorized by this section shall be administered, collected and subject to the provisions of K.S.A. 12-187 to 12-197, inclusive, and amendments thereto.”;

On page 3, in line 27, after “Supp.” by inserting “12-17,142,”;

On page 1, in the title, in line 10, after “Supp.” by inserting “12-17,142,”; and the bill be passed as amended.

Committee on **Elections and Local Government** recommends **SB 78** be passed.

Committee on **Financial Institutions and Insurance** recommends **SB 152** be passed.

Also, **SB 176** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Committee on **Judiciary** recommends **SB 52** be amended on page 1, in line 27, by striking “shall” and inserting “may”; in line 39, by striking “shall” and inserting “may”; and the bill be passed as amended.

Also, **SB 71** be amended on page 1, in line 16, by striking “to effect” and inserting “through the use of”; and the bill be passed as amended.

Committee on **Ways and Means** recommends **SB 89** be amended on page 1, in line 21, by striking all after “(b)”;

“(1) If a person is stopped by or is in the custody of a law enforcement officer, as defined in K.S.A. 22-2202, and amendments thereto, who is an employee of the state and such person is injured by the officer while acting within the scope of such officer’s authority, costs incurred for medical care and treatment of the person shall be paid by the state if such care and treatment is required due to the injury and a determination has been made that the person has no other resources.”;

Also on page 1, in line 37, by striking “the prisoner” and inserting “of prisoners held within the county”;

On page 2, after line 8, by inserting the following:

“Sec. 2. K.S.A. 2004 Supp. 19-1910 is hereby amended to read as follows: 19-1910. (a) When a prisoner is committed to a county jail in a criminal action, the board of county commissioners shall allow the sheriff reasonable charges for maintaining such prisoner.

(b) (1) If a person is stopped by or is in the custody of a law enforcement officer, as defined in K.S.A. 22-2202, and amendments thereto, who is an employee of the state and such person is injured by the officer while acting within the scope of such officer’s authority, costs incurred for medical care and treatment of the person shall be paid by the state if such care and treatment is required due to the injury and a determination has been made that the person has no other resources. When such medical expenses have been paid by the state, the state may seek reimbursement of such expenses from the prisoner. If the state determines that the prisoner is covered under a current individual or group accident and health insurance policy, medical service plan contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization contract, then the state may require the prisoner or the provider rendering health care services to the prisoner to submit a claim for such health care services rendered in accordance with the prisoner’s policy or contract.

(2) All other costs incurred by the county for medical care and treatment of prisoners held within the county shall be paid from the county general fund when a determination has been made that the prisoner has no other resources. When medical expenses have been paid out of the county general fund of any county in this state for a prisoner held within such county, the county may seek reimbursement of such expenses from the prisoner. If the county determines that a prisoner of the county jail is covered under a current individual or group accident and health insurance policy, medical service plan contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization contract, then the county may require the prisoner of such county jail or the provider rendering health care services to the prisoner to submit a claim for such health care services rendered in accordance with the prisoner’s policy or contract.

(b) (c) When a prisoner is delivered to a county jail pursuant to K.S.A. 75-5217 and amendments thereto, the costs of holding such prisoner shall be paid as provided in K.S.A. 19-1930 and amendments thereto.”;

And by renumbering the remaining sections accordingly;

Also on page 2, in line 9, after “Supp.” by inserting “19-1910 and”; also in line 9, by striking “is” and inserting “are”;

In the title, in line 10, after “Supp.” by inserting “19-1910 and”; in line 11, by striking “section” and inserting “sections”; and the bill be passed as amended.

REPORT ON ENGROSSED BILLS

SB 37, SB 43, SB 59, SB 67, SB 94, SB 104 reported correctly engrossed February 16, 2005.

REPORT ON ENROLLED BILLS

SR 1819 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on February 16, 2005.

COMMITTEE OF THE WHOLE

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

On motion of Senator Wagle the following report was adopted:

Recommended **SB 51, SB 108, SB 118** be passed.

SB 69 be amended by adoption of the committee amendments, and the bill be passed as amended.

SB 45 be amended by motion of Senator Journey on page 1, in line 36, by striking all after the period; by striking all in lines 37 and 38

A motion to rerefer **SB 45** to the Committee on Assessment and Taxation failed.

The Committee recommended **SB 45** be passed as amended.

SB 70 be amended by motion of Senator Francisco on page 1, in line 18, by striking “energy” and inserting “oil and gas”;

On page 2, in lines 10, 21, 24 and 30, by striking “energy” and inserting “oil and gas”;

On page 3, in line 33, by striking “energy” and inserting “oil and gas”;

On page 4, in lines 10, 25, 28, 30 and 34, by striking “energy” and inserting “oil and gas”;

On page 5, in lines 12 and 15, by striking “energy” and inserting “oil and gas”;

On page 6, in line 9, by striking “energy” and inserting “oil and gas”

Senator Huelskamp amended **SB 70** on page 1, in line 36, by striking “and any over-”; by striking all in line 37; in line 38, after “lease” by inserting “, but shall not include royalty interests”, and **SB 70** be passed as amended.

SB 27 be amended by adoption of the committee amendments, be further amended by motion of Senator Vratil as amended by Senate Committee, on page 5, in line 32, by striking “three” and inserting “four”

Senator D. Schmidt amended **SB 27** as amended by Senate Committee, on page 7, after line 31, by inserting the following:

“Sec. 8. K.S.A. 65-7001 is hereby amended to read as follows: 65-7001. K.S.A. 65-7001 through 65-7015 and amendments thereto shall be known and may be cited as the ~~Kansas~~ *sheriff Matt Samuels* chemical control act.”;

And by renumbering the remaining sections accordingly;

Also on page 7, in line 32, after “65-4159” by inserting “, 65-7001”;

In the title, in line 15, after “65-4159” by inserting “, 65-7001”, and **SB 27** be passed as further amended.

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Thursday, February 17, 2005.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks.*

PAT SAVILLE, *Secretary of the Senate.*

