

# Journal of the Senate

THIRTY-SEVENTH DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Thursday, March 5, 2009—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 as guest chaplain, Rev. Dr. Donald C. Bakely, United Methodist Church, Kansas City, Kansas, who delivered the invocation:

Lord, it is you who has called us together to serve those who need us. And now we turn to you because we need your guidance. We need your wisdom when our wisdom doesn't stretch as far as it should.

When we look across this room, we see a house full of differences—different beliefs, different strengths, different hopes and causes, different pains and different answers.

It is so easy for us to see those differences and to concentrate on the potential conflicts in them. It is easy for us to become trapped by our desire to persuade others to accept our ideas.

Help us to see these differences as gifts from a loving God, as a warehouse of ideas from which we can shape the answers to the needs of our people. Help us to recognize the enormous strength in this room. Help us to use it to make Kansas strong, wise, and helpful. Give us the wisdom to see the truth, the courage to follow it, and the kindness to ease the pain of those who hurt.

We ask this in the name of Jesus. Amen

The Pledge of Allegiance was led by President Stephen Morris.

## INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill and resolutions were introduced and read by title:

**SB 303**, An act abolishing the Kansas technology enterprise corporation and Kansas, Inc. and transferring the powers and duties thereof to the department of commerce; amending K.S.A. 74-5001a, 74-5007a, 74-8102, 74-8103, 74-8106, 74-8107, 74-8108, 74-8109, 74-8110, 74-8111, 74-8204, 74-8310, 74-8316, 74-8317, 74-8318, 74-8319, 74-8401, 74-9303, 74-9306, 75-2935b, 75-3208 and 76-770 and K.S.A. 2008 Supp. 12-17,169, 12-17,177, 74-520a, 74-5005, 74-5049, 74-5089, 74-5095, 74-50,133, 74-50,151, 74-50,156, 74-8101, 74-8104, 74-8131, 74-8132, 74-8133, 74-8134, 74-8135, 74-8136, 74-8405, 74-99b03, 74-99b04, 74-99b09, 74-99b63, 74-99b66, 74-99c03, 74-99c07, 74-99e02 and 75-2935 and repealing the existing sections; also repealing K.S.A. 74-5050, 74-50,101, 74-8003, 74-8009a, 74-8011, 74-8012, 74-8013, 74-8014, 74-8015, 74-8016 and 74-8105 and K.S.A. 2008 Supp. 74-50,134, 74-8001, 74-8002, 74-8004, 74-8005, 74-8006, 74-8007, 74-8010, 74-8101 and 74-99c10, by Committee on Ways and Means.

## SENATE CONCURRENT RESOLUTION No. 1612—

By Senators Wagle, D. Schmidt, Abrams, Brownlee, Bruce, Colyer, Donovan, Emler, Huelkamp, Kelsey, Lynn, Masterson, Ostmeyer, Petersen, Pilcher-Cook, Pyle and Taddiken.

A PROPOSITION to amend section 5 of article 3 of the constitution of the state of Kansas, relating to the selection of justices of the supreme court.

*Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein:*

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Section 5 of article 3 of the constitution of the state of Kansas is hereby amended to read as follows:

- “§ 5. **Selection of justices of the supreme court.** (a) Any vacancy occurring in the office of any justice of the supreme court and any position to be open thereon as a result of enlargement of the court, or the retirement or failure of an incumbent to file ~~his~~ *such justice's* declaration of candidacy to ~~succeed himself~~ *be retained in office* as hereinafter required, or failure of a justice to be elected to ~~succeed himself~~ *be retained in office*, shall be filled by appointment by the governor, *with the consent of the senate*, of one of ~~three~~ six persons possessing the qualifications of office who shall be nominated and whose names shall be submitted to the governor by the supreme court nominating commission established as hereinafter provided.
- (b) In event of the failure of the governor to make the appointment within sixty days from the time the names of the nominees are submitted to ~~him~~ *the governor*, the chief justice of the supreme court, *with the consent of the senate*, shall make the appointment from such nominees.
- (c) *No person appointed pursuant to subsection (a) or (b) of this section shall assume the office of justice of the supreme court until the senate, by an affirmative vote of the majority of all members of the senate then elected or appointed and qualified, consents to such appointment. The senate shall vote to consent to any such appointment not later than 30 days after such appointment is received by the senate. If the senate is not in session and will not be in session within the 30-day time limitation, the president of the senate shall convene the senate for the sole purpose of voting on such appointment and no other action shall be in order during such session. In the event a majority of the senate does not vote to consent to the appointment, the governor may appoint another of the six persons whose names were submitted to the governor pursuant to subsection (a) and such subsequent appointment shall be considered by the senate in the same procedure as provided in this article. If the governor fails to make such subsequent appointment within 15 days after the senate vote on the previous appointee or if all six persons whose names were submitted to the governor pursuant to subsection (a) have been considered by, but did not receive the consent of, the senate, then the chief justice of the supreme court shall make the appointment from such nominees.*
- (d) Each justice of the supreme court appointed pursuant to provisions of subsection (a), (b) or (c) of this section *and consented to pursuant to the provisions of subsection (c) of this section* shall hold office for an initial term ending on the second Monday in January following the first general election that occurs after the expiration of twelve months in office. Not less than sixty days prior to the holding of the general election next preceding the expiration of ~~his~~ *such justice's* term of office, any justice of the supreme court may file in the office of the secretary of state a declaration of candidacy for election to ~~succeed himself~~ *be retained in office*. If a declaration is not so filed, the position held by such justice shall be open from the expiration of ~~his~~ *such justice's* term of office. If such declaration is filed, ~~his~~ *such justice's* name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party designation, reading substantially as follows:

“Shall \_\_\_\_\_  
 (Here insert name of justice.)

\_\_\_\_\_  
 (Here insert the title of the court.)

be retained in office?”

If a majority of those voting on the question vote against retaining ~~him~~ *such justice* in office, the position or office which ~~he~~ *such justice* holds shall be open upon the expiration of ~~his~~ *such justice's* term of office; otherwise ~~he~~ *such justice* shall, unless removed for cause, remain in office for the regular term of six years from the second Monday in January following such election. At the expiration of each term ~~he~~ *such justice* shall, unless by law ~~he~~ *such justice* is compelled to retire, be eligible for retention in office by election in the manner prescribed in this section.

(+) (e) A nonpartisan nominating commission whose duty it shall be to nominate and submit to the governor the names of persons for appointment to fill vacancies in the office of any justice of the supreme court is hereby established, and shall be known as the “supreme court nominating commission.” Said commission shall be organized as hereinafter provided.

(+) (f) The supreme court nominating commission shall be composed as follows: One member, who shall be ~~chairman~~ *chairperson*, chosen from among their number by the members of the bar who are residents of and licensed in Kansas; one member from each congressional district chosen from among their number by the resident members of the bar in each such district; ~~and~~ one member, who is not a lawyer, from each congressional district, appointed by the governor from among the residents of each such district; *one member, who is not a lawyer, appointed by the speaker of the house of representatives; and one member, who is not a lawyer appointed by the president of the senate.*

(+) (g) The terms of office, the procedure for selection and certification of the members of the commission and provision for their compensation or expenses shall be as provided by the legislature.

(+) (h) No member of the supreme court nominating commission shall, while ~~he~~ *such person* is a member, hold any other public office by appointment or any official position in a political party or for six months thereafter be eligible for nomination for the office of justice of the supreme court. The commission may act only by the concurrence of a majority of its members.”

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

“*Explanatory statement.* The purpose of this amendment is to require persons appointed by the governor or the chief justice to the office of justice of the supreme court to be consented to by the senate. A procedure is established whereby senate consent would occur within 30 days of receiving the appointment. If the senate does not consent by a majority vote, the supreme court nominating commission would submit six more names to the governor. The governor would then select an appointment which would again go to the senate for consent. The same nomination, appointment and consent procedure would be followed until a valid appointment is made. If the senate fails to vote on the appointment within 30 days, it will be considered that the senate has consented to the appointment.

“A vote for this proposition would provide a procedure whereby the senate, by majority vote, would consent to the appointment, by the governor or chief justice, of supreme court justices.

“A vote against this proposition would continue in effect the current provision whereby the supreme court nominating commission nominates three persons for the office of the supreme court and the governor appoints one of such persons.”

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as

provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election in November in the year 2010 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

SENATE CONCURRENT RESOLUTION No. 1613—

By Senators Wagle, Abrams, Brownlee, Bruce, Colyer, Donovan, Huelskamp, Kelsey, Lynn, Masterson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, D. Schmidt, Steineger and Taddiken

A PROPOSITION to amend section 24 of article 2 of the constitution of the state of Kansas, relating to appropriations.

*Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein:*

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Section 24 of article 2 of the constitution of the state of Kansas is hereby amended to read as follows:

“§ 24. **Appropriations.** No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law. *The executive and judicial branches shall have no authority to direct the legislative branch to make any appropriation of money or to redirect the expenditure of funds appropriated by law, except as the legislative branch may provide by law or as may be required by the Constitution of the United States.*”

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

*“Explanatory statement.* The purpose of this amendment is to clarify that the executive and judicial branches shall not direct the legislative branch to make any appropriation of money or to redirect the expenditures of funds appropriated by law, except as the legislative branch may provide by law or as may be required by the Constitution of the United States.

“A vote for this amendment would clarify that section 24 of article 2 of the Kansas Constitution provides that neither the judicial branch nor the executive branch can force the legislative branch to appropriate money, except as the legislative branch may provide by law or as may be required by the Constitution of the United States. The amendment would also prohibit the judicial branch from ordering a change in how money is spent after it has been appropriated by the legislative branch, except as the legislative branch may provide by law or as may be required by the Constitution of the United States. If money is appropriated for a particular purpose the judicial branch could not stop that money from being spent for that purpose.

“A vote against this amendment would provide no change to the Kansas Constitution and the existing order that directs the legislative branch to make an appropriation of money shall remain in effect.”

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election in November in the year 2010 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

#### REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Federal and State Affairs: **SB 301**; **HB 2206**, **HB 2311**.

Judiciary: **SB 299**.  
 Transportation: **SB 300, SB 302**.

#### CHANGE OF REFERENCE

The President withdrew **SB 299** from the Committee on **Judiciary**, and referred the bill to the Committee on **Utilities**.

#### TRIBUTE

Senator Kultala paid tribute to Major Ronnard Green, Major Janene Marshall-Gatling, Major Mark Winkler and Major Chris Whelan, who were visiting in the Senate. Senators joined her in honoring them with a standing ovation.

#### ACTION ON VETO MESSAGE

Members were given the opportunity to reconsider the line item vetoes on **H Sub for Sub SB 23**, AN ACT making and concerning appropriations for the fiscal years ending June 30, 2009, June 30, 2010 and June 30, 2011, for state agencies; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements and acts incidental to the foregoing; amending K.S.A. 2008 Supp. 55-193, 79-2978, 79-2979, 79-3425i, 79-34,156, 79-4801 and 82a-953a and repealing the existing sections, which was received on February 17, 2009, and was read before the Senate on February 18, 2009. There being no motion to reconsider the line item vetoes on **H Sub for Sub SB 23**, the President ruled the line item vetoes sustained.

#### FINAL ACTION ON CONSENT CALENDAR

**SB 49, SB 275** having appeared on the Consent Calendar for the required two full legislative days without objection from any member, were considered on final action.

**SB 49**, An act relating to insurance; concerning mental health and alcoholism, drug abuse or other substance use disorder benefits; amending K.S.A. 2008 Supp. 40-2,105a and 40-2258 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: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

**SB 275**, An act relating to implements of husbandry; amending K.S.A. 84-2a-104 and K.S.A. 2008 Supp. 8-197 and 84-9-311 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: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

#### EXPLANATION OF VOTE

MR. PRESIDENT: **SB 275** clarifies that the only method to perfect a security interest in implements of husbandry is by filing a financing statement with the Secretary of State. Since enactment of the titling statutes, all lenders in Kansas and all segments of the agricultural industry have known that implements of husbandry are not required to be titled by law. The Kansas Department of Revenue has never required the titling of implements of husbandry. It would not serve the public interest to interpret the law in any other manner.

This bill will not impair the property rights of any person in Kansas who currently owns a tractor or other implement of husbandry, or a lender who has complied with existing law

by perfecting a lien against that implement by filing a UCC financing statement. **SB 275** does not change existing law. It clarifies it. I vote aye on **SB 275**.—MARK TADDIKEN

Senators McGinn, Ostmeyer and Teichman request the record to show they concur with the “Explanation of Vote” offered by Senator Taddiken on **SB 275**.

#### INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Francisco and Lee introduced the following Senate resolution, which was read: SENATE RESOLUTION No. 1842—

A RESOLUTION in memory of Jana Mackey and calling all Kansans to carry her torch  
by serving others.

WHEREAS, Jana Mackey served as an advocate and a devoted civic servant working tirelessly to promote the rights of women, victims of violence and the voices of many often unheard and under-represented individuals; and

WHEREAS, Jana, a 25 year-old law student at the University of Kansas and resident of Lawrence, was well-known throughout Kansas for her work on many women’s issues, including the years she spent volunteering to aid victims of sexual assault and domestic violence, her active participation in the Kansas Commission on the Status of Women and her service as one of the youngest lobbyists at the Kansas State Capital for the National Organization for Women; and

WHEREAS, International Women’s Day, March 8, 2009, is an appropriate day to honor Jana Mackey and the contributions she made to the promotion of women’s issues; and

WHEREAS, Jana Mackey was murdered by an ex-boyfriend on July 2, 2008; and

WHEREAS, As a victim of an unjust crime, Jana was taken before her time. While we can never replace Jana, we can help her service live on through others. Symbolic of the number of people who attended Jana’s funeral, her family and friends have created the *Eleven Hundred Torches* national campaign to honor her by asking hundreds of ordinary citizens to serve others: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That, as part of International Women’s Day, we honor Jana Mackey for her tireless advocacy for many women’s issues and that we join the *Eleven Hundred Torches* campaign and call on Kansans to set aside time on March 8th to pick up Ms. Mackey’s torch by volunteering and making a difference in their communities; and

*Be it further resolved:* That the Secretary of the Senate be directed to provide seven enrolled copies of this resolution to Senator Marci Francisco.

On emergency motion of Senator Francisco **SR 1842** was adopted unanimously.

Senator Francisco introduced Jana’s mother, Christie Brungardt, and stepfather, Curt Brungardt and Senators joined her in recognizing them.

Senator Donovan introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1843—

A RESOLUTION congratulating and commending Matthew Heck.

WHEREAS, Matthew Heck, an esteemed resident of Wichita and a senior at Wichita High School East, has achieved national recognition for exemplary volunteer service by being named a Distinguished Finalist for the 2009 Prudential Spirit of Community Award; and

WHEREAS, This prestigious award, presented by Prudential Financial in partnership with the National Association of Secondary School Principals, honors young volunteers across America who have demonstrated an extraordinary commitment to serving their communities; and

WHEREAS, Mr. Matthew Heck earned this award by giving generously of his time and energy to organize a two-week, 1,300 mile relay run from Wichita to Washington, D.C., that promoted public awareness of genocide and raised more than \$25,000 for the Genocide Intervention Network; and

WHEREAS, In order to organize this cross-country marathon to promote genocide awareness, with the coordination of the Genocide Intervention Network in Washington, D.C., Matthew worked to: Set up a nonprofit organization to accept donations; plan the

logistics for the relay; recruit eight other teens to join him; solicit contributions from friends, family members and local businesses and create a website ([www.neverignore.org](http://www.neverignore.org)); and

WHEREAS, Matthew and his fellow runners left Wichita, Kansas on June 2, 2008, taking turns running 13 miles a day through eight states. To ensure that his endeavor raised awareness he contacted media along the relay route and afterwards would give speeches to schools, churches and other audiences; and

WHEREAS, In recognition of his service, Mr. Heck has received a \$1,000 award, an engraved silver medallion and a trip to Washington, D.C., where a distinguished National Selection Committee will name ten National Honorees who will receive additional \$5,000 awards, gold medallions, crystal trophies and \$5,000 grants from the Prudential Foundation for charitable organizations of their choice; and

WHEREAS, The success of the State of Kansas, the strength of our communities and the overall vitality of American society depends, in great measure, upon the dedication of young people like Mr. Heck who use their considerable talents and resources to serve others: Now, therefore,

*Be It Resolved by the Senate of the State of Kansas:* That we congratulate and commend Matthew Heck for being named a Distinguished Finalist for the Prudential Spirit of Community Award, that we recognize his outstanding record of volunteer service, peer leadership and community spirit and that we wish him luck and continued success; and

*Be it further resolved:* That the Secretary of the Senate be directed to send an enrolled copy of this resolution to Matthew Heck at 11420 West Douglas Avenue, Wichita, KS, 67212.

On emergency motion of Senator Donovan **SR 1843** was adopted unanimously.

Senators Barnett, Abrams, Apple, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Reitz, D. Schmidt, V. Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle and Wy-song introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1844—

A RESOLUTION encouraging participation in the American Public Health Association and the Kansas Public Health Association Public Health Week, April 6-12, 2009.

WHEREAS, April 6-12 has been designated as National Public Health Week in Kansas; and

WHEREAS, Our nation spends more on health care than any other country, yet our health care system is failing and leaving millions of Americans vulnerable; and

WHEREAS, American infant mortality rates are three times higher than those in some developing countries; and

WHEREAS, Ethnic minority populations have nearly eight times higher mortality rates for key health conditions, such as diabetes, than that for non-minority populations; and

WHEREAS, America has made the top 10 list of countries with the most HIV/AIDS infected people; and

WHEREAS, Despite these challenges, public health professionals have contributed to dramatic progress over the last century through many advances such as adding fluoride to our drinking water, introducing seat belt laws and eliminating polio; and

WHEREAS, Successful health care reform is impossible without the support of a strong public health infrastructure; and

WHEREAS, Through support of the country's public health system, we can build on the successes of the past and establish the solid foundation needed for a healthy state and nation; and

WHEREAS, We support these efforts and call upon the people of Kansas to observe this week by helping our families, friends, neighbors, co-workers and leaders better understand the importance of public health to a successful health care system in light of this year's theme, "*Building the Foundation for a Healthy America*": Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That we support the efforts of the American Public Health Association and the Kansas Public Health Association to recognize the week of April 6—12, 2009, as National Public Health Week; and

*Be it further resolved:* That the Secretary of the Senate be directed to provide an enrolled copy of this resolution to Elaine L. Schwartz, Kansas Public Health Association, P.O. Box 67085, Topeka, KS, 66667.

On emergency motion of Senator Barnett **SR 1844** was adopted unanimously.

#### REPORT ON ENROLLED BILLS

**SR 1840, SR 1841** reported correctly enrolled, properly signed and presented to the Secretary of the Senate on March 5, 2009.

#### REPORTS OF STANDING COMMITTEES

Committee on **Commerce** recommends **HB 2142**, as amended by House Committee, be passed.

Committee on **Ethics and Elections** recommends **HB 2158**, as amended by House Committee, be amended on page 3, in line 17, by striking “statute book” and inserting “Kansas register”; and the bill be passed as amended.

Committee on **Federal and State Affairs** recommends **SB 212** be passed.

Also, **SB 213** be amended on page 1, in line 29, after the period, by inserting “The boundaries of such special event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such special event.”;

On page 4, in line 42, after “closed” by inserting “to motor vehicle traffic”;

On page 5, in line 5, by striking “reasonable” and inserting “reasonably” and the bill be passed as amended.

Committee on **Financial Institutions and Insurance** recommends **SB 260; HB 2091; HB 2092**, as amended by House Committee, be passed.

Committee on **Judiciary** recommends **SB 208** be amended on page 1, in line 18, by striking “Ten inmates” and inserting “Inmates”;

On page 12, in line 8, by striking “2007” and inserting “2009”; and the bill be passed as amended.

Committee on **Local Government** recommends **SB 254** be passed.

Committee on **Ways and Means** recommends **SB 196** be amended on page 2, in line 37, after the period, by inserting “Any participating employer who contracts services with any such third-party entity to fill a position covered under subsection (a) of K.S.A. 72-5410, and amendments thereto, shall include in such contract a provision or condition which requires the third-party entity to provide the participating employer with the necessary compensation paid information related to any such position filled by the third-party entity with a retirant to enable the participating employer to comply with provisions of this subsection relating to the payment of contributions and reporting requirements.”; and the bill be passed as amended.

#### 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 Taddiken in the chair.

On motion of Senator Taddiken the following report was adopted:

Recommended: **SB 108, SB 174; HB 2147** be passed

**SB 147, SB 253** be amended by adoption of the committee amendments, and the bills be passed as amended.

**SB 153** be amended by motion Senator Umbarger, on page 2, in line 24, by striking “commercial”; also in line 24, before “motor” by inserting “commercial” and **SB 153** be passed as amended.

**S Sub for Sub HB 2014** be amended by adoption of the committee report recommending a substitute bill, be amended by motion of Senator Apple, on page 3, in lines 8, 15 and 22, after “peak” by inserting “retail”; in line 38, after “equipment” by inserting “not



less than 51% of the cost of which is attributable to goods"; in line 39, after the period by inserting "Within 18 months after the effective date of this act, the secretary of commerce shall adopt rules and regulations to establish criteria to determine whether such equipment used is manufactured in Kansas. A public utility shall submit to the secretary of commerce on a form prescribed by the secretary of commerce, satisfactory proof in accordance with rules and regulations adopted pursuant to this paragraph that not less than 51% of the cost of the equipment used was attributable to manufacturing located in Kansas. If the secretary of commerce determines that such public utility has complied with rules and regulations adopted pursuant to this paragraph, the secretary shall certify such compliance to the state corporation commission."

**S Sub for Sub HB 2014** be further amended by motion of Senator Peterson, on page 21, after line 41, by inserting the following:

"New Sec. 30. Within 18 months after the effective date of this act, the secretary of administration shall adopt rules and regulations that require that the average fuel economy standard for state-owned motor vehicles purchased during fiscal year 2011 shall not be less than 10% higher than the average fuel economy standard of state-owned motor vehicles purchased during fiscal year 2008, if such higher average fuel economy standards are life-cycle cost effective for such motor vehicles purchased during fiscal year 2011. The head of each state agency shall provide information to and cooperate with the secretary of administration for the purposes of implementing and administering this section and the rules and regulations adopted by the secretary of administration.

New Sec. 31. (a) The joint committee on energy and environmental policy established pursuant to K.S.A. 2008 Supp. 46-3701, and amendments thereto, in addition to the provisions of subsection (j) of K.S.A. 2008 Supp. 46-3701, and amendments thereto, shall include findings and recommendations concerning the use of moneys received by the state pursuant to the American recovery and reinvestment act of 2009, (U.S.C. 12501) for energy efficiency and conservation block grants, state energy programs, the weatherization assistance program and the alternative fueled vehicles pilot grant program in such joint committee's report to the 2010 and 2011 legislature.

(b) The provisions of this section shall expire on January 1, 2011."

And by renumbering the remaining sections accordingly;

Also on page 21, in line 42, by striking "sections 1 through 30 and amend-"; in line 43, by striking "ments thereto," and inserting "this act";

**S Sub for Sub HB 2014** be further amended by motion of Senator Lee on, page 21, after line 41, by inserting the following:

"New Sec. 30. (a) Except as provided in subsection (b), the commission shall grant or deny a certificate of public convenience as required by K.S.A. 66-131, and amendments thereto, or amendments to a certificate of public convenience, within 180 days of the receipt of the application unless the time for such decision has been extended by the applicant in writing.

(b) The time provisions of subsection (a) shall not apply to the consideration to grant or deny certificates of public convenience concerning cases involving acquisitions and mergers of utility companies.

Sec. 31. K.S.A. 2008 Supp. 74-99d07 is hereby amended to read as follows: 74-99d07. (a) Except as otherwise provided by this act, the authority shall have all the powers necessary to carry out the purposes and provisions of this act, including, without limitation:

(1) Having the duties, privileges, immunities, rights, liabilities and disabilities of a body corporate and a political instrumentality of the state;

(2) having perpetual existence and succession;

(3) adopting, having and using a seal and altering the same at its pleasure;

(4) suing and being sued in its own name;

(5) adopting bylaws for the regulation of its affairs and the conduct of its business;

(6) adopting such rules and regulations as the authority deems necessary for the conduct of the business of the authority;

(7) employing consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as the authority deems necessary and fixing the compensation thereof;

(8) making and executing all contracts and agreements necessary or incidental to the performance of the authority's duties and the execution of the authority's powers under this act;

(9) receiving and accepting from any federal agency grants, or any other form of assistance, for or in aid of the planning, financing, construction, development, acquisition or ownership of any property, structures, equipment, facilities and works of public improvement necessary or useful for the accomplishment of the purposes for which the authority was created and receiving and accepting aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(10) borrowing funds to carry out the purposes of the authority and mortgaging and pledging any lease or leases granted, assigned or subleased by the authority;

(11) purchasing, leasing, trading, exchanging or otherwise acquiring, maintaining, holding, improving, mortgaging, selling, leasing and disposing of personal property, whether tangible or intangible, and any interest therein; and purchasing, leasing, trading, exchanging or otherwise acquiring real property or any interest therein, and maintaining, holding, improving, mortgaging, leasing and otherwise transferring such real property, so long as such transactions do not conflict with the mission of the authority as specified in this act;

(12) as provided by K.S.A. 2008 Supp. 74-99d09, and amendments thereto, incurring or assuming indebtedness and entering into contracts with the Kansas development finance authority, which is authorized to borrow money, issue bonds and provide financing for: (A) The construction, upgrading or repair of transmission facilities of the Kansas electric transmission authority or the acquisition of right-of-way for such facilities, or both, and any such bonds shall be payable from and be secured by the pledge of revenues derived from the operation of such electric transmission facilities; or (B) making loans to finance the construction, upgrading or repair of transmission facilities not owned by the Kansas electric transmission authority or the acquisition of right-of-way for such facilities, or both, upon such terms and conditions as required by the authority, including a requirement that any entity receiving a loan under this act shall maintain records and accounts relating to receipt and disbursements of loan proceeds, transportation costs and information on energy sales and deliveries and make the records available to the authority for inspection, and any such bonds shall be payable from and be secured by the pledge of revenues derived from the operation of such electric transmission facilities;

(13) depositing any moneys of the authority in any banking institution within or without the state or in any depository authorized to receive such deposits, one or more persons to act as custodians of the moneys of the authority, to give surety bonds in such amounts in form and for such purposes as the board requires;

(14) recovering its costs through tariffs of the southwest power pool regional transmission organization, or its successor, and, if all costs are not recovered through such tariffs, through assessments against all electric public utilities, electric municipal utilities and electric cooperative utilities receiving benefits of the construction or upgrade and having retail customers in this state. Each such utility's assessment shall be based on the benefits the utility receives from the construction or upgrade, as determined by the state corporation commission upon application by the authority. In determining allocation of benefits and costs to utilities, the commission may take into account funding and cost recovery mechanisms developed by regional transmission organizations and shall take into account financial payments by transmission users and approved by the federal energy regulatory commission or regional transmission organization. Each electric public utility shall recover any such assessed costs from the utility's customers in a manner approved by the commission and each electric municipal or cooperative utility shall recover such assessed costs from the utility's customers in a manner approved by the utility's governing body;

(15) participating in and coordinating with the planning activities of the southwest power pool regional transmission organization, or its successor, and adjoining regional transmission organizations, or their successors; ~~and~~

(16) participating in and coordinating with the planning activities of the southwest power pool regional reliability organization, or its successor, and adjoining regional reliability organizations, or their successors; *and*

(17) *establish and charge reasonable fees, rates, tariffs or other charges, unless costs are recoverable under paragraph (14), for the use of all facilities owned, financed or administered by it and for all services rendered by it, and, if all costs are not recovered under paragraph (14), such costs shall be recovered through assessments against any entity or entities requesting use of facilities owned, financed or administered by the authority or for all requested services provided by the authority, or both.*

(b) On or before the first day of the regular legislative session each year, the authority shall submit to the governor and to the legislature a written report of the authority's activities for the preceding fiscal year. Such report shall include the report of any audit conducted pursuant to K.S.A. 2008 Supp. 74-99d10, and amendments thereto, of the preceding fiscal year.

(c) The authority shall continue until terminated by law. No such law terminating the authority shall take effect while the authority has bonds, debts or obligations outstanding unless adequate provision has been made for the payment or retirement of such bonds, debts or obligations. Upon dissolution of the authority, all property, funds and assets thereof shall be disposed of as provided by law.”;

And by renumbering the remaining sections accordingly;

Also on page 21, in line 42, by striking all after “of”; in line 43, by striking all before “are” and inserting “this act”;

On page 22, in line 5, by striking “and” and inserting a comma; also in line 5, after “66-1,184” by inserting “and 74-99d07”;

On page 1, in the title, in line 14, by striking “and” where it appears the first time, and inserting a comma; also in line 14, after “66-1,184” by inserting “and 74-99d07”

**S Sub for Sub HB 2014** be further amended by motion of Senator Marshall, on page 21, in line 42, by striking “sections 1 through 30, and amend-”; in line 43, by striking “ments thereto,” and inserting “this act”;

On page 22, after line 3, by inserting the following:

“New Sec. 31. (a) Any new coal-fired electricity generating facility in Kansas, construction of which commences on or after the effective date of this act, shall purchase Kansas coal for at least 5% of its coal requirements. For the purposes of this section, “Kansas coal” shall have the meaning ascribed thereto in K.S.A. 2008 Supp. 79-32,228, and amendments thereto.

(b) If the average cost, including all transportation costs, per ton during the preceding 12 months of the purchased Kansas coal requirement in this section would equal or exceed 125% of an out-of-state coal producer's average cost per ton, the purchased Kansas coal requirement of this section shall not apply to any new coal-fired electricity generating facility for that calendar year.

(c) If Kansas coal is not reasonably available for use, either due to insufficient supply, impractical means of transportation or any other contingencies, including, but not limited to, prior contractual obligations, the purchased Kansas coal requirement of this section shall not apply to any new coal-fired electricity generating facility for that calendar year.”;

And by renumbering the remaining sections accordingly

**S Sub for Sub HB 2014** be further amended by motion of Senator Apple, on page 21, in line 42, by striking “sections 1 through 30, and amend-”; in line 43, by striking “ments thereto,” and inserting “this act”;

On page 22, after line 3, by inserting the following:

“New Sec. 31. Sections 31 through 38, and amendments thereto, shall be known and may be cited as the compressed air energy storage act.

New Sec. 32. As used in the compressed air energy storage act:

(a) “Commission” means the state corporation commission.

(b) “Department” means the department of health and environment.

New Sec. 33. (a) Within 18 months after the effective date of this act, the commission shall establish rules and regulations establishing requirements, procedures and standards for the safe and secure injection of compressed air into storage wells, which shall include maintenance of underground storage of compressed air. Such rules and regulations shall include, but not be limited to:

(1) Site selection criteria;

- (2) design and development criteria;
- (3) operation criteria;
- (4) casing requirements;
- (5) monitoring and measurement requirements;
- (6) safety requirements, including public notification;
- (7) closure and abandonment requirements, including the financial requirements of subsection (d); and
- (8) long-term monitoring.

(b) The commission may adopt rules and regulations establishing fees for permitting, monitoring and inspecting operators of compressed air energy storage wells and underground storage. Fees collected by the commission under this section shall be remitted by the commission to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the compressed air energy storage fund.

(c) The commission or the commission's duly authorized representative may impose on any holder of a permit issued pursuant to this section such requirements relating to inspecting, monitoring, investigating, recording and reporting as the commission or representative deems necessary to administer the provisions of this section and rules and regulations adopted hereunder.

(d) Any company or operator receiving a permit under the provisions of the compressed air energy storage act shall demonstrate annually to the commission evidence, satisfactory to the commission, that the permit holder has financial ability to cover the cost of closure of the permitted facility as required by the commission.

(e) The commission may enter into contracts for services from consultants and other experts for the purposes of assisting in the drafting of rules and regulations pursuant to this section.

(f) Rules and regulations adopted under the compressed air energy storage act shall apply to any compressed air energy storage well, whether in existence on the effective date of this act or thereafter.

New Sec. 34. Within 18 months after the effective date of this act, the department shall establish rules and regulations establishing requirements, procedures and standards for the monitoring of air emissions coming from compressed air energy storage wells and storage facilities to ensure the wells and facilities comply with the Kansas air quality act.

New Sec. 35. The commission and the department may enter into a memorandum of understanding concerning implementation of the requirements and responsibilities under the compressed air energy storage act.

New Sec. 36. (a) The commission, upon a finding that a person has violated any provision of section 33, and amendments thereto, or rules and regulations adopted thereunder, may impose a penalty not to exceed \$10,000 per violation which shall constitute an economic deterrent to the violation for which it is assessed and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after an opportunity for hearing upon the written order of the commission to the person who committed the violation. The order shall state the violation and the penalty to be imposed.

(c) Whenever the commission or the commission's duly authorized representative find that the soil or waters of the state are not being protected from pollution resulting from the storage of compressed air, the commission or the commission's duly authorized representative shall issue an order prohibiting such storage. Any person aggrieved by such order may request in writing, within 15 days after service of the order, a hearing on the order. Upon receipt of a timely request, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(d) Any action of the commission pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

New Sec. 37. (a) In performing investigations or administrative functions relating to prevention of pollution of the soil or waters of the state, the commission or the commission's duly authorized representative may enter any property or facility which is subject to the

provisions of section 33, and amendments thereto, for the purpose of observing, monitoring, collecting samples, examining records and facilities to determine compliance or noncompliance with state laws and rules and regulations relating to air pollution, water pollution, soil pollution or public health or safety.

(b) The representatives of the commission shall have the right of ingress and egress upon any lands to clean up pollution from the storage of compressed air over which the commission has jurisdiction pursuant to section 33, and amendments thereto. Such representatives shall have the power to occupy such land if necessary to investigate and clean up such pollution or to investigate and plug any such compressed air energy storage well. Any representative entering upon any land to investigate and clean up such pollution or to investigate and plug any such compressed air energy storage well shall not be liable for any damages necessarily resulting therefrom, except damages to growing crops, livestock or improvements on the land. Upon completion of activities on such land, such representative shall restore the premises to the original contour and condition as nearly as practicable.

New Sec. 38. (a) (1) There is hereby established in the state treasury the compressed air energy storage fund. Such fund shall be administered by the commission in accordance with the provisions of this section for the purpose of administering the provisions of the compressed air energy storage act.

(2) The commission shall remit to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys received by the commission for the purposes of the compressed air energy storage act. Upon receipt of the remittance the state treasurer shall deposit the entire amount in the state treasury and credit it to the fund. The commission is authorized to receive from any private or governmental source any funds made available for the purposes of the compressed air energy storage act.

(3) All expenditures from the compressed air energy storage fund shall be made in accordance with appropriation acts and upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the commission or a person designated by the chairperson.

(b) The commission is authorized to use moneys from the compressed air energy storage fund to pay the cost of:

(1) All activities related to permitting activities, including, but not limited to, development and issuance of permits, compliance monitoring, inspections, well closures, underground storage closure, long-term monitoring and enforcement actions;

(2) review and witnessing of test procedures;

(3) review and witnessing of routine workover or repair procedures;

(4) investigation of violations, complaints, pollution and events affecting public health;

(5) design and review of remedial action plans;

(6) contracting for services needed to supplement the commission's staff expertise in facility investigations;

(7) consultation needed concerning remedial action at a permitted facility;

(8) mitigation of adverse environmental impacts;

(9) emergency or long-term remedial activities;

(10) legal costs, including expert witnesses, incurred in administration of the provisions of the compressed air energy storage act; and

(11) costs of program administration.

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the compressed air energy storage fund interest earnings based on:

(1) The average daily balance of moneys in the compressed air energy storage fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding months.

New Sec. 39. Any electric public utility, as defined in K.S.A. 66-101a, and amendments thereto, which after the effective date of this act is developing a new fossil fuel or nuclear baseload electricity generating facility in Kansas shall provide to any municipally owned or operated electric utility in Kansas or Kansas corporation organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, an option to own or enter

into a power purchase agreement to purchase, or a combination thereof, up to 15% of the rated capacity of the facility or 200 megawatts of power, whichever is less, which is not presently dedicated to Kansas consumers, from the new fossil fuel or nuclear baseload electricity generating facility. The aggregate amount of purchased power by all municipal utilities and cooperatives shall not exceed 200 megawatts. If the facility developer proceeds with construction of such generating facility, any municipally owned or operated electric utility in Kansas or corporation organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, shall have six months from the date of issuance of the construction permit under the Kansas air quality act for such generating facility or nine months from the effective date of this act, whichever occurs first, to exercise the option by executing an agreement to purchase an ownership interest in or to enter into a power purchase agreement, or a combination thereof, for up to 15% of the rated capacity of the facility or 200 megawatts of power, whichever is less, from the facility developer upon the same terms and conditions as participants in the facility other than the facility developer. If more than one municipally owned or operated electric utility in Kansas or corporation organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, exercises the option in this section, the available megawatts, in the absence of a mutual agreement otherwise, shall be allocated equally among the municipal utilities and cooperatives but no municipal utility or cooperative may exercise an option for less than 25 megawatts.

Sec. 40. K.S.A. 55-1,117 is hereby amended to read as follows: 55-1,117. (a) As used in this section, K.S.A. 65-171d and K.S.A. 55-1,118 through 55-1,122, and amendments thereto:

(1) *“Company or operator” means any form of legal entity including, but not limited to, a corporation, limited liability company and limited or general partnerships.*

(2) *“Secretary” means the secretary of health and environment.*

~~(2)~~ (3) *“Underground porosity storage” means the storage of hydrocarbons in underground, porous and permeable geological strata which have been converted to hydrocarbon storage.*

(b) For the purposes of protecting the health, safety and property of the people of the state, and preventing surface and subsurface water pollution and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, the secretary of health and environment shall adopt separate and specific rules and regulations establishing requirements, procedures and standards for the following:

(1) Salt solution mining;

(2) the safe and secure underground storage of liquid petroleum gas and hydrocarbons, other than natural gas in underground porosity storage; and

(3) the safe and secure underground storage of natural gas in bedded salt.

(c) Such rules and regulations shall include, but not be limited to:

(1) Site selection criteria;

(2) design and development criteria;

(3) operation criteria;

(4) casing requirements;

(5) monitoring and measurement requirements;

(6) safety requirements, including public notification;

(7) closure and abandonment requirements, including the financial requirements of subsection (f); and

(8) long term monitoring.

(d) (1) The secretary may adopt rules and regulations establishing fees for the following services:

(A) Permitting, monitoring and inspecting salt solution mining operators;

(B) permitting, monitoring and inspecting underground storage of liquid petroleum gas and hydrocarbons, other than natural gas in underground porosity storage; and

(C) permitting, monitoring and inspecting underground storage of natural gas in bedded salt.

(2) The fees collected under this section by the secretary shall be remitted by the secretary to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments

thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the subsurface hydrocarbon storage fund.

(e) The secretary or the secretary's duly authorized representative may impose on any holder of a permit issued pursuant to this section such requirements relating to inspecting, monitoring, investigating, recording and reporting as the secretary or representative deems necessary to administer the provisions of this section and rules and regulations adopted hereunder.

(f) Any company or operator receiving a permit under the provisions of this act shall demonstrate annually to the department of health and environment evidence, satisfactory to the department, that such permit holders have financial ability to cover the cost of closure of such permitted facility as required by the department.

(g) The secretary may enter into contracts for services from consultants and other experts for the purposes of assisting in the drafting of rules and regulations pursuant to this section.

(h) (1) For a period of two years from July 1, 2001, or until the rules and regulations provided for in ~~paragraph (3)~~ of subsection ~~(a)~~ (b)(3) are adopted, the injection of working natural gas into underground storage in bedded salt is prohibited, except that cushion gas may be injected into existing underground storage in bedded salt. Natural gas currently stored in such underground storage may be extracted.

(2) Any existing underground storage of natural gas in bedded salt shall comply with the rules and regulations adopted under this section prior to the commencement of injection of working natural gas into such underground storage.

(3) Rules and regulations adopted under ~~paragraph (3)~~ of subsection ~~(a)~~ (b)(3) shall be adopted on or before July 1, 2003.

(i) No hydrocarbon storage shall be allowed in any underground formation if water within the formation contains less than 5,000 milligrams per liter chlorides.”;

And by renumbering the remaining sections accordingly;

Also on page 22, in line 4, after “19-101m,” by inserting “55-1,117,”;

In the title, on page 1, in line 13, after “19-101a,” by inserting “55-1,117,”

**S Sub for Sub HB 2014** be further amended by motion of Senator Lee, on page 21, after line 41, by inserting the following:

“Sec. 30. K.S.A. 2008 Supp. 74-99d14 is hereby amended to read as follows: 74-99d14.

(a) Subject to the provisions of this act, the authority shall have the power to:

(1) Plan, finance, construct, develop, acquire, own, dispose of, contract for maintenance of and contract with electric public utilities, electric cooperative utilities or electric municipal utilities for operation of transmission facilities of the authority and any real or personal property, structures, equipment or facilities necessary or useful for the accomplishment of the purposes for which the authority was created, including the obtaining of permits and the acquisition of rights of way; and

(2) participate in partnerships or joint ventures with individuals, corporations, governmental bodies or agencies, partnerships, associations or other entities to facilitate any activities or programs consistent with the public purpose and intent of this act, including partnerships or joint ventures for the purpose of financing all or any portion of a project pursuant to subsection (a)(2) of K.S.A. 2008 Supp. 74-99d09, and amendments thereto.

(b) (1) Except as otherwise provided in this act, the authority shall not exercise any of the rights or powers granted to it in this section, if private entities are performing the acts, are constructing or have constructed the facilities or are providing the services contemplated by the authority and such private entities are willing to finance and own new infrastructure to meet an identified need and market.

(2) Prior to exercising any rights or powers granted to it in this section, the authority shall publish once in the Kansas register, and once in a newspaper and trade magazine in the area where the facilities or services are contemplated, a notice describing the acts, facilities or services contemplated by the authority and stating that private entities willing and able to perform the acts, finance and own and construct the facilities or provide the services described in the notice shall have a period of 90 days after the date of publication of the notice in the Kansas register within which to notify the authority of intention and ability to perform the acts, finance and construct the facilities or provide the services described in the notice. In the absence of notification by a private entity, the authority may proceed to

perform the acts, construct the facilities or provide the services originally contemplated. If a private entity has given notice of intention to perform the acts, finance and construct the facilities or provide the services contemplated by the authority, the authority may proceed to perform the acts, construct the facilities or provide the services originally contemplated if the private entity fails to commence performance within 180 days after the date of notification of the authority of its intention. Actions deemed to constitute commencement of performance of the acts, construction of the facilities or provision of the services within the required time shall include, but not be limited to, holding of public meetings on siting of facilities, acquisition of land or commencement of proceedings for condemnation of land, application to acquire any federal, state, local or private permits, certificates or other authorizations or approvals necessary to perform the acts, construct the facilities or provide the services.

(3) Notwithstanding commencement of performance of the acts, construction of the facilities or provision of the services by a private entity, if the authority is not satisfied with subsequent progress in performance of the acts, construction of the facilities or provision of the services, the authority may again give notice as provided in subsection (b)(2) with respect to completion of performance of the acts, construction of the facilities or provision of the services. In the absence of notification by a private entity willing and able to complete performance of the acts, construction of the facilities or provision of the services, the authority may proceed to complete performance. If a private entity has given notice of intention to complete performance, the authority may proceed to perform the acts, construct the facilities or provide the services if the private entity fails to complete performance within 180 days after the date of notice by the entity.

(c) The authority shall not operate or maintain transmission facilities.

(d) The authority shall exercise the rights and powers granted to it in this act only with respect to transmission facilities which the southwest power pool regional transmission organization, or its successor, has determined are compatible with plans adopted by such organization and, *for electric transmission lines with an operating voltage of 60 kilovolts or more*, which have been approved by such organization.

And by renumbering the remaining sections accordingly;

Also on page 21, in line 42, by striking all after "of"; in line 43, by striking all before "are" and inserting "this act";

On page 22, in line 5, by striking "and" and inserting a comma; also in line 5, after "66-1,184" by inserting "and 74-99d14";

On page 1, in the title, in line 14, by striking "and" where it appears the first time, and inserting a comma; also in line 14, after "66-1,184" by inserting "and 74-99d14"

**S Sub for Sub HB 2014** be further amended by motion of Senator Emler, on page 21, after line 41, by inserting the following:

"New Sec. 30. (a) There is hereby established the Kansas energy resources commission. The commission shall be made up of the following members:

- (1) Two members appointed by the speaker of the house of representatives;
- (2) two members appointed by the president of the senate;
- (3) one member appointed by the minority leader of the house of representatives;
- (4) one member appointed by the minority leader of the senate; and
- (5) one member appointed by the governor.

All appointments shall be from persons recognized for their breadth of knowledge on energy issues and initiatives. All appointments shall be residents of Kansas with expertise in the subject areas enumerated in subsection (d) and with either terminal professional degrees or at least 5 years of professional experience in the appropriate field. Except as provided in subsection (b), members shall be appointed for a term of four years and until a successor is appointed and qualifies. Nothing in this section shall be construed as prohibiting the reappointment of members to the commission.

(b) The appointing authorities indicated in subsection (a) shall make initial appointments on or before August 1, 2009. The terms of these initial appointments shall be as follows, as designated by the appointing authority:

- (1) One appointment by the speaker of the house of representatives shall expire on June 30, 2010, and the other appointment shall expire on June 30, 2013;



(2) one appointment by the president of the senate shall expire on June 30, 2010, and the other appointment shall expire on June 30, 2013;

(3) one appointment by the minority leader of the house of representatives shall expire on June 30, 2011;

(4) one appointment by the minority leader of the senate shall expire on June 30, 2011; and

(5) one appointment by the governor shall expire on June 30, 2013.

(c) The member appointed by the speaker of the house of representatives whose term expires June 30, 2013 shall call the first meeting. The members of the commission shall choose their own chairperson, vice-chairperson and secretary-treasurer for the commission, who shall serve for terms of two years and are eligible for re-election.

(d) The commission is hereby granted such specific powers as are necessary to carry out the functions enumerated in this section. The commission shall submit annual reports of the activities of the commission to the governor and the legislature. A preliminary report shall be submitted on or before September 1, 2010. The commission shall:

(1) Develop strategies to maximize productive use of the existing resources in Kansas, including, but not limited to: water, coal, oil, natural gas, coal-bed methane, wind, solar, municipal and other waste, agricultural ground, bio-mass and such other energy resources as shall be identified by the commission members as having economic value to the state;

(2) identify means of sustaining and, if possible, increasing production and use of identified resources;

(3) identify emerging technologies and technological opportunities to sustain or increase production and make better use of existing and potential resources, and recommend state investments in specific research projects. Development of sustainable policies shall include conservation, enhanced production technologies and other strategies;

(4) investigate and research scientifically derived literature on public health impacts of emissions from all natural and man-made sources and the technological ability to capture or reduce such emissions.

(5) investigate prospective permanent funding sources for energy sustainability research; and

(6) pursue such other issues as the council members may deem necessary.

(e) The commission shall hold meetings at least once in each quarter, and additional meetings as deemed necessary. Meetings shall be called and held at the discretion of the chairperson, or upon written request of a majority of the members of the commission. A majority of the members of the commission shall constitute a quorum for the exercise of powers conferred upon the commission. Members of the commission attending meetings of such commission, or subcommittee meetings thereof as authorized by the commission, shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

(f) In the event of a vacancy in the membership of the commission by reason of expiration of any member's term of office, a successor of like qualifications shall be appointed in the manner and for the term of office prescribed herein. In the event of a vacancy in the membership of the commission, before the expiration of the member's term, a successor of like qualifications shall be appointed by the appointing authority for the remainder of the unexpired term.

(g) The commission may receive and expend moneys appropriated to the commission from the public service regulation fund and received from any other source, whether public or private, to further the purposes of this section.

(h) The staff of the office of the revisor of statutes, the legislative research department and the division of legislative administrative services shall provide such assistance as may be requested by the energy resources commission and authorized by the legislative coordinating council. The state corporation commission shall also provide such assistance as may be requested.”;

And by renumbering the remaining sections accordingly;

Also on page 21, in line 42, by striking “sections 1 through 30 and amend-”; in line 43, by striking “ments thereto,” and inserting “this act” and **S Sub for Sub HB 2014** be passed as amended.

**FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS**

On motion of Senator D. Schmidt an emergency was declared by a  $\frac{2}{3}$  constitutional majority, and **SB 108, SB 147, SB 153, SB 174, SB 253; S Sub for Sub HB 2014; HB 2147** were advanced to Final Action and roll call.

**SB 108**, An act concerning the economic revitalization and reinvestment act; relating to the secretary of commerce and the Kansas development finance authority; authorizing the issuance of bonds for certain economic development projects; amending K.S.A. 2008 Supp. 74-50,136 and repealing the existing section.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

**SB 147**, An act concerning the department of health and environment; relating to HIV screening for pregnant women and newborn children; rules and regulations.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Owens, Petersen, Pilcher-Cook, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

Nays: Huelskamp, Ostmeyer, Pyle.

The bill passed, as amended.

**SB 153**, An act concerning motor vehicles; concerning the regulation thereof; relating to motor carriers; amending K.S.A. 2008 Supp. 66-1,108 and 66-1,109 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: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed, as amended.

**SB 174**, An act concerning group life insurance; removing mandatory participation requirements; amending K.S.A. 2008 Supp. 40-433 and repealing the existing section.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

**SB 253**, An act concerning zoning; amending K.S.A. 12-757 and repealing the existing section.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Haley, Holland, Kelsey, Lee, Lynn, Marshall, Masterson, Morris, Owens, Petersen, Pilcher-Cook, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

Nays: Francisco, Hensley, Huelskamp, Kelly, Kultala, McGinn, Ostmeyer, Pyle.

The bill passed, as amended.

**S Sub for Sub HB 2014**, An act concerning energy; relating to conservation and electric generation, transmission and efficiency and air emissions; amending K.S.A. 19-101a, 55-1,117, 65-3012 and 66-104d and K.S.A. 2008 Supp. 65-3005, 65-3008a, 66-1,184, 74-99d07 and 74-99d14 and repealing the existing sections; also repealing K.S.A. 19-101m.

On roll call, the vote was: Yeas 31, Nays 9, Present and Passing 0, Absent or Not Voting 0.

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Haley, Huelskamp, Kelsey, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Faust-Goudeau, Francisco, Hensley, Holland, Kelly, Kultala, Schodorf, Steineger, Wysong.

The substitute bill passed, as amended.

#### EXPLANATION OF VOTE

MR. PRESIDENT: Kansas needs a forward-looking comprehensive energy plan to meet the future needs of our citizens and position us to take advantage of upcoming opportunities rather than tie us to increasing expenditures associated with carbon production. Much of **S Sub for Sub HB 2014** is not forward looking, it is not comprehensive, and does not comprise a plan. The bill does not establish a clear and coherent direction for the department of administration with regard to energy efficient performance standards for state owned and leased facilities. The change in the definition of an electric cooperative will allow removal of protections for individual ratepayers. The discussion on the bill started with energy policy but turned into a discussion about the construction of coal plants. This year the Kansas Senate acted to clean up indoor air; we should be doing the same for our outdoor air.—  
MARCI FRANCISCO

Senator Hensley requests the record to show he concurs with the “Explanation of Vote” offered by Senator Francisco on **S Sub for Sub HB 2014**.

**HB 2147**, An act regulating traffic; concerning the removal of certain vehicles from highways; amending K.S.A. 8-1603 and 8-1605 and K.S.A. 2008 Supp. 8-2118 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: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

On motion of Senator D. Schmidt the Senate adjourned until 8:00 a.m., Friday, March 6, 2009.

HELEN MORELAND, ROSE MARIE GLATT, SHIRLEY LAMOTT, *Journal Clerks*.  
PAT SAVILLE, *Secretary of the Senate*.

