

# Journal of the House

NINETEENTH DAY

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HALL OF THE HOUSE OF REPRESENTATIVES,  
TOPEKA, KS, Friday, February 5, 2010, 9:00 a.m.

The House met session pro forma pursuant to recess with Speaker pro tem Siegfried in the chair.

## INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and concurrent resolution were introduced and read by title:

**HB 2657**, An act concerning information technology; establishing the Kansas partnership for accessible technology, by Committee on Federal and State Affairs.

**HB 2658**, An act concerning the state fair board; authorizing the purchase of workers compensation insurance, by Committee on Appropriations.

**HB 2659**, An act concerning lodging establishments; relating to license requirements; amending K.S.A. 36-505, 36-515a and 36-517 and K.S.A. 2009 Supp. 36-503, 36-515, 36-518 and 79-201b and repealing the existing sections; also repealing K.S.A. 2009 Supp. 36-502, by Committee on Appropriations.

**HB 2660**, An act relating to motor vehicles; concerning recreational off-highway vehicles; amending K.S.A. 2009 Supp. 8-126, 8-128, 8-197, 8-198, 8-1486, 8-1493, 8-1494 and 8-2118 and repealing the existing sections, by Committee on Transportation.

HOUSE CONCURRENT RESOLUTION No. 5031—

By Committee on Appropriations

A CONCURRENT RESOLUTION concerning the expenditure of public moneys to finance certain litigation against the Legislature or the State of Kansas.

WHEREAS, The people have all governmental power and exercise it through the legislative branch of the government, the legislature is free to act except as it is restricted by the state constitution; and

WHEREAS, The constitution of the state of Kansas limits rather than confers power, hence, we look to it to see what it prohibits instead of what it authorizes; and

WHEREAS, Any power and authority not limited by the constitution remains with the people and their legislators; and

WHEREAS, The people have given the judiciary the obligation to interpret legislative action within the framework of the constitution; and

WHEREAS, If a legislative enactment is constitutional, it is not for the court to set policy or to substitute its opinion for that of the legislature; and

WHEREAS, In determining whether a statute is constitutional, courts must guard against substituting their views on economic or social policy for those of the legislature. Courts are concerned only with the legislative power to enact statutes and appropriate money, not with the wisdom behind those enactments or appropriations; and

WHEREAS, The determination of the amounts, sources and objectives of expenditures of public moneys, especially at the state level, presents issues of enormous practical and political complexity, and resolution appropriately is largely left to the interplay of the interests and forces directly involved and indirectly affected in the arenas of legislative and executive activity. This is of the very essence of our governmental and political polity. It

normally would be inappropriate, therefore, for the courts to intrude upon such decision-making; and

WHEREAS, The court in *State ex rel. Stephan v. House of Representatives* 236 Kan. 45 (1984) provided a detailed discussion of the doctrine of separation of powers. The court recognized the doctrine and that through it “a dangerous concentration of power is avoided through the checks and balances each branch of government has against the other,” and that, generally speaking, “the legislative power is the power to make, amend, or repeal laws; the executive power is the power to enforce the laws; and the judicial power is the power to interpret and apply the laws in actual controversies.”; and

WHEREAS, Under article 2, section 24 of the constitution of the state of Kansas, the power of appropriation is vested exclusively in the legislative branch; and

WHEREAS, The judiciary is not free to exercise all state power; it may exercise only the judicial power. The confinement of appropriations to the legislative branches, both in our federal and state governments, was not random. It reflects our national ideal that the power of appropriation must be under the control of those whose money is being spent: Now, therefore,

*Be it Resolved by the House of Representatives of the State of Kansas, the Senate concurring therein:* That given the delegation of the appropriation powers under the constitution of the state of Kansas, any order of the court directing the legislature to appropriate a specific level of funding is viewed as advisory in nature; and

*Be it further resolved:* That with respect to the determination of specific amounts of appropriations, the legislature of the state of Kansas should act based solely upon its own deliberative judgment as to the proper public policy determination and the amount of funding to be provided; and

*Be it further resolved:* That the legislature hereby declares its view that courts lack the constitutional authority to order the legislature to make specific amounts of appropriations; and

*Be it further resolved:* That the legislature hereby declares that no public moneys or moneys derived from the imposition of any tax shall be expended to finance or support litigation challenging the constitutionality of the amount of any legislative appropriation.

#### REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to committees as indicated:

Corrections and Juvenile Justice: **HB 2655.**

Elections: **HB 2654.**

Energy and Utilities: **HB 2652.**

Federal and State Affairs: **HB 2649.**

Judiciary: **HB 2651, HB 2656.**

Transportation: **HB 2650, HB 2653.**

#### COMMUNICATIONS FROM STATE OFFICERS

From Joan Wagnon, Secretary of Revenue, pursuant to K.S.A. 79-32,261(f) , Annual Report concerning Higher Education Deferred Maintenance Tax Credit.

The complete report is kept on file and open for inspection in the office of the Chief Clerk.

On motion of Rep. Merrick, the House recessed until 11:30 p.m.

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#### LATE MORNING SESSION

The House met pursuant to recess with Speaker pro tem Siegfried in the chair.

#### INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

**HB 2661**, An act concerning crimes, criminal procedure and punishments; concerning drug crimes; amending K.S.A. 2009 Supp. 12-4104, 21-36a05, 21-36a06, 21-36a08, 21-36a10, 21-4203, 21-4204, 21-4226, 21-4704, 22-3901, 22-4902, 59-2132, 65-516, 72-1397, 72-5445, 75-7c04 and 76-11a13 and repealing the existing sections, by Committee on Corrections and Juvenile Justice.

**HB 2662**, An act concerning energy; establishing the wind generation permit act, by Committee on Energy and Utilities.

**HB 2663**, An act concerning cities and counties; creating energy management districts, by Committee on Energy and Utilities.

**HB 2664**, An act concerning income taxation; relating to credits; certain contributions by taxpayers to employment security fund, by Committee on Commerce and Labor.

**HB 2665**, An act concerning labor and employment; providing for the individual unemployment insurance savings account program, by Committee on Commerce and Labor.

**HB 2666**, An act concerning the animal health department; relating to fees; amending K.S.A. 47-1001e and K.S.A. 2009 Supp. 47-1011, 47-1503 and 47-2101 and repealing the existing sections, by Committee on Appropriations.

**HB 2667**, An act concerning domestic relations; relating to recodification of certain domestic relations matters; amending K.S.A. 20-164, 20-165, 20-302b, 23-4,118, 60-1606, 60-1613, 60-1620, 60-1629 and 60-3107 and K.S.A. 2009 Supp. 12-5005 and repealing the existing sections; also repealing K.S.A. 23-101, 23-201, 60-1608, 60-1611, 60-1612 and 60-1616 and K.S.A. 2009 Supp. 60-1610, by Committee on Judiciary.

**HB 2668**, An act concerning crimes, punishment and criminal procedure; recodification; amending K.S.A. 22-3427 and repealing the existing section; also repealing K.S.A. 21-3101, 21-3102, 21-3103, 21-3104, 21-3105, 21-3106, 21-3107, 21-3108, 21-3109, 21-3110a, 21-3111, 21-3112, 21-3201, 21-3202, 21-3203, 21-3204, 21-3205, 21-3206, 21-3207, 21-3208, 21-3209, 21-3210, 21-3211, 21-3212, 21-3213, 21-3214, 21-3215, 21-3216, 21-3217, 21-3218, 21-3219, 21-3301, 21-3302, 21-3303, 21-3401, 21-3402, 21-3403, 21-3404, 21-3405, 21-3406, 21-3408, 21-3409, 21-3410, 21-3411, 21-3412, 21-3413, 21-3414, 21-3415, 21-3416, 21-3418, 21-3420, 21-3421, 21-3422, 21-3422a, 21-3423, 21-3424, 21-3425, 21-3426, 21-3427, 21-3428, 21-3430, 21-3434, 21-3435, 21-3437, 21-3439, 21-3442, 21-3443, 21-3444, 21-3445, 21-3446, 21-3447, 21-3448, 21-3449, 21-3450, 21-3451, 21-3452, 21-3501, 21-3502, 21-3503, 21-3504, 21-3505, 21-3506, 21-3507, 21-3508, 21-3510, 21-3511, 21-3512, 21-3513, 21-3515, 21-3516, 21-3517, 21-3518, 21-3520, 21-3521, 21-3522, 21-3601, 21-3602, 21-3603, 21-3604, 21-3604a, 21-3605, 21-3608, 21-3609, 21-3610b, 21-3612, 21-3701, 21-3703, 21-3704, 21-3707, 21-3709, 21-3710, 21-3711, 21-3712, 21-3713, 21-3715, 21-3716, 21-3719, 21-3720, 21-3721, 21-3722, 21-3724, 21-3725, 21-3726, 21-3727, 21-3728, 21-3729, 21-3730, 21-3731, 21-3734, 21-3738, 21-3739, 21-3742, 21-3743, 21-3744, 21-3748, 21-3749, 21-3750, 21-3751, 21-3755, 21-3756, 21-3757, 21-3758, 21-3759, 21-3760, 21-3761, 21-3762, 21-3763, 21-3764, 21-3765, 21-3766, 21-3801, 21-3802, 21-3805, 21-3807, 21-3808, 21-3809, 21-3810, 21-3812, 21-3813, 21-3814, 21-3815, 21-3816, 21-3817, 21-3818, 21-3819, 21-3820, 21-3821, 21-3822, 21-3823, 21-3824, 21-3825, 21-3827, 21-3828, 21-3829, 21-3830, 21-3831, 21-3832, 21-3833, 21-3834, 21-3835, 21-3836, 21-3837, 21-3838, 21-3839, 21-3840, 21-3841, 21-3842, 21-3844, 21-3845, 21-3846, 21-3847, 21-3848, 21-3849, 21-3850, 21-3851, 21-3852, 21-3853, 21-3854, 21-3855, 21-3856, 21-3901, 21-3902, 21-3903, 21-3904, 21-3905, 21-3910, 21-3911, 21-3912, 21-4001, 21-4002, 21-4003, 21-4004, 21-4005, 21-4006, 21-4009, 21-4010, 21-4011, 21-4012, 21-4013, 21-4014, 21-4016, 21-4017, 21-4018, 21-4019, 21-4101, 21-4102, 21-4103, 21-4104, 21-4105, 21-4106, 21-4106a, 21-4107, 21-4110, 21-4111, 21-4113, 21-4202, 21-4204a, 21-4206, 21-4207, 21-4208, 21-4209, 21-4209a, 21-4209b, 21-4210, 21-4211, 21-4212, 21-4213, 21-4216, 21-4219, 21-4220, 21-4221, 21-4222, 21-4223, 21-4224, 21-4225, 21-4227, 21-4228, 21-4229, 21-4230, 21-4231, 21-4232, 21-4301, 21-4301a, 21-4301b, 21-4301c, 21-4302, 21-4303, 21-4303a, 21-4304, 21-4305, 21-4306, 21-4307, 21-4308, 21-4309, 21-4311, 21-4312, 21-4313, 21-4314, 21-4317, 21-4318, 21-4401, 21-4402, 21-4403, 21-4404, 21-4405, 21-4406, 21-4407, 21-4408, 21-4409, 21-4410, 21-4501, 21-4501a, 21-4503, 21-4503a, 21-4504, 21-4601, 21-4602, 21-4603, 21-4603b, 21-4604, 21-4605, 21-4606, 21-4606a, 21-4606b, 21-4607, 21-4609, 21-4610, 21-4610a, 21-4612, 21-4613, 21-4614, 21-4614a, 21-4615, 21-4618, 21-4620, 21-4621, 21-4622, 21-4623, 21-4624, 21-4625, 21-4626, 21-4627, 21-4629, 21-

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#### MESSAGE FROM THE SENATE

The Senate accedes to the request of the House for a conference on **HB 2195** and has appointed Senators Vratil, McGinn and Kelly as second conferees on the part of the Senate.

#### REPORTS OF STANDING COMMITTEES

Committee on **Appropriations** recommends **HB 2442** be amended on page 1, following line 27, by inserting the following:

“(c) The Kansas streamlining government act shall not apply to any fee-funded state agency. The Kansas streamlining government commission shall have no authority to review or make recommendations regarding any fee-funded state agency.”;

Also on page 1, in line 38, by striking “and”; in line 43, by striking the period and inserting “; and

(g) “Fee-funded state agency” means the abstracters’ board of examiners, behavioral sciences regulatory board, board of accountancy, board of examiners in optometry, board of nursing, consumer credit commissioner, Kansas board of barbering, Kansas board of examiners in fitting and dispensing of hearing aids, Kansas dental board, Kansas real estate commission, Kansas state board of cosmetology, office of the securities commissioner of Kansas, real estate appraisal board, state bank commissioner, state board of healing arts, state board of mortuary arts, state board of pharmacy, state board of technical professions, state board of veterinary examiners, state department of credit unions and Kansas home inspectors registration board.”;

On page 2, in line 18, by striking “five” and inserting “four”; in line 43, following “member” by inserting “shall be disqualified to serve as a member of the commission and”; also in line 43, by striking “within 10 days”;

On page 3, in line 1, by striking “from” and inserting “effective on”; and the bill be passed as amended.

On motion of Rep. Merrick, the House adjourned until 11:00 a.m., Monday, February 8, 2010.

CHARLENE SWANSON, *Journal Clerk*.

SUSAN W. KANNARR, *Chief Clerk*.

