

# Journal of the Senate

FIFTEENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS  
Monday, February 1, 2010—2:30 p.m.

The Senate was called to order by President Stephen Morris.  
The roll was called with forty senators present.  
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

I would like to pray the prayer of Daniel after You had revealed to him Your interpretation of King Nebuchadnezzar's dream:

Praise be to the name of God for ever and ever;

Wisdom and power are Yours.

You change times and seasons;

You set up kings and depose them.

You give wisdom to the wise

And knowledge to the discerning.

You reveal deep and hidden things;

You know what lies in darkness,

And light dwells with You.

I thank and praise you, O God of my fathers;

You have given me wisdom and power . . . Daniel 2:20-23a

I thank You in the Name of Jesus Christ,

AMEN

The Pledge of Allegiance was led by President Stephen Morris.

## INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

**SB 493**, An act concerning sales taxation; relating to exemptions; Project Able, Inc.; amending K.S.A. 2009 Supp. 79-3606 and repealing the existing section, by Committee on Assessment on Taxation.

**SB 494**, An act concerning county officers; relating to undersheriffs; amending K.S.A. 19-804a and repealing the existing section, by Committee on Judiciary.

**SB 495**, An act concerning STAR bonds; concerning use of sales tax revenues; concerning approval of certain projects; amending K.S.A. 2009 Supp. 12-17,164 and 12-17,168 and repealing the existing sections, by Committee on Commerce.

**SB 496**, An act concerning water; relating to rural water districts; amending K.S.A. 82a-617 and repealing the existing section, by Committee on Natural Resources.

**SB 497**, An act concerning crimes and punishments; relating to the criminal use of weapons; amending K.S.A. 2009 Supp. 21-4201 and repealing the existing section, by Committee on Natural Resources.

**SB 498**, An act relating to transportation; providing for a transportation works for Kansas program; relating to the financing thereof; amending K.S.A. 8-143b, 8-143c, 8-143g, 8-143h, 8-143i, 8-143k, 8-195, 8-234b, 8-2409, 12-1775, 68-416, 68-20,120, 68-2320, 68-2321 and

68-2328 and K.S.A. 2009 Supp. 8-142, 8-143, 8-143j, 8-143l, 8-145, 8-172, 8-2406, 8-2425, 12-6a35, 12-6a36, 12-1774, 12-1774a, 12-17,148, 12-17,149, 68-2315, 68-2331, 75-5063, 75-5064, 75-5160, 79-3408c, 79-3491a, 79-3492b, 79-34,118, 79-34,141 and 79-34,142 and repealing the existing sections; also repealing K.S.A. 68-2314a, by Committee on Ways and Means.

**SB 499**, An act concerning school districts; relating to nutrition and health education guidelines; amending K.S.A. 2009 Supp. 72-5128 and repealing the existing section, by Committee on Public Health and Welfare.

**SB 500**, An act concerning the healing arts act; regarding an exception to prohibited acts; amending K.S.A. 65-2867 and repealing the existing section, by Committee on Public Health and Welfare.

**SB 501**, An act concerning the Kansas board of healing arts; relating to licensure and education of perfusionists; establishing perfusion council, by Committee on Public Health and Welfare.

#### REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Assessment and Taxation: **SB 492**.

Education: **SB 487**.

Judiciary: **SB 488**.

Public Health and Welfare: **SB 489, SB 490, SB 491**.

#### MESSAGE FROM THE HOUSE

The House nonconcur in Senate amendments to **S Sub for HB 2353**, requests a conference, and has appointed Representatives Carlson, King and Menghini as conferees on the part of the House.

#### ORIGINAL MOTION

On motion of Senator Donovan, the Senate acceded to the request of the House for a conference on **S Sub for HB 2353**.

The President appointed Senators Donovan, D. Schmidt and Holland as conferees on the part of the Senate.

#### INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Hensley, Kelly and V. Schmidt introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1810—

A RESOLUTION congratulating and commending Julie Hejtmanek on her election as President of Sertoma International and for her service to Topeka.

WHEREAS, Julie Hejtmanek, of Topeka, Kansas, was named Woman of the Year by the American Business Women's Association; and

WHEREAS, As a paralegal with over thirty years experience, Julie Hejtmanek has served her profession in various state and national leadership roles and is the author of numerous articles in paralegal publications; and

WHEREAS, Julie was recently elected President of Sertoma International for 2009 to 2010; and

WHEREAS, Sertoma International is a not-for-profit civic organization with community minded members in service clubs across the United States, Canada, Mexico and Puerto Rico. Each year, Sertoma clubs raise more than \$20 million for local community service projects; and

WHEREAS, Sertoma's primary service project is assisting the more than 50 million people with hearing health issues; and

WHEREAS, Sertoma also sponsors community projects to promote freedom and democracy, to assist youth and to benefit a variety of other local community needs, as identified by the individual clubs; and

WHEREAS, Julie Hejtmanek has been an esteemed member of Sertoma for 17 years and has demonstrated her dedication to Sertoma on both the international and local levels by serving the organization in a number of capacities; and

WHEREAS, In addition to serving as the current International President, Julie Hejtmanek has served as International Director, Distinguished District Governor, Gold Honor President, Regional Outstanding Secretary, Life Patron of the Sertoma Foundation and as BANC Chair, Club Ambassador, she ably assisted in building three clubs; and

WHEREAS, Julie is a Life Member of Sertoma International and is the recipient of Sertoma International's Lifetime Achievement Award; and

WHEREAS, In addition to her work with Sertoma, Julie Hejtmanek has also served her community through being a mentor to students at Washburn University and in Big Brothers/Big Sisters programs; and

WHEREAS, Julie evinces her devout religious faith as an active member of the First Presbyterian Church; and

WHEREAS, It is fitting that we should salute those citizens who, through their extraordinary efforts, have distinguished themselves as community leaders of whom we can all be proud: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That we congratulate and thank Julie Hejtmanek for her numerous contributions and service to the Topeka community; and

*Be it further resolved:* That the Secretary of the Senate be directed to provide two enrolled copies of this resolution to Senator Anthony Hensley.

On emergency motion of Senator Hensley **SR 1810** was adopted unanimously.

Senator V. Schmidt introduced Julie Hejtmanek and her husband Dan. Julie Hejtmanek was recognized on her election as President of Sertoma International and for her service to Topeka. Julie was also named Woman of the Year by the American Business Women's Association.

#### REPORTS OF STANDING COMMITTEES

Committee on **Judiciary** recommends **SB 375** be amended on page 3, in line 5, after "for" by inserting "commutation of sentence,"; in line 6, after the comma, where it appears for the third time, by inserting "functional incapacitation release pursuant to K.S.A. 22-3728, and amendments thereto,";

On page 12, after line 24, by inserting the following:

"Sec. 10. K.S.A. 2009 Supp. 21-4642 is hereby amended to read as follows: 21-4642. (a) An aggravated habitual sex offender shall be sentenced to imprisonment for life without the possibility of parole. Such offender shall spend the remainder of the offender's natural life incarcerated and in the custody of the secretary of corrections. An offender who is sentenced to imprisonment for life without the possibility of parole shall not be eligible for *commutation of sentence*, parole, probation, assignment to a community correctional services program, conditional release, postrelease supervision, *functional incapacitation release pursuant to K.S.A. 22-3728, and amendments thereto*, or suspension, modification or reduction of sentence.

(b) Upon sentencing a defendant to imprisonment for life without the possibility of parole, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced to imprisonment for life without the possibility of parole.

(c) As used in this section:

(1) "Aggravated habitual sex offender" means a person who, on and after July 1, 2006: (A) Has been convicted in this state of a sexually violent crime, as described in paragraphs (3)(A) through 3(J) or (3)(L); and (B) prior to the conviction of the felony under subparagraph (A), has been convicted on at least two prior conviction events of any sexually violent crime.

(2) "Prior conviction event" means one or more felony convictions of a sexually violent crime occurring on the same day and within a single court. These convictions may result from multiple counts within an information or from more than one information. If a person

crosses a county line and commits a felony as part of the same criminal act or acts, such felony, if such person is convicted, shall be considered part of the prior conviction event.

(3) "Sexually violent crime" means:

- (A) Rape, K.S.A. 21-3502, and amendments thereto;
- (B) indecent liberties with a child, K.S.A. 21-3503, and amendments thereto;
- (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and amendments thereto;
- (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505, and amendments thereto;
- (E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;
- (F) indecent solicitation of a child, K.S.A. 21-3510, and amendments thereto;
- (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto;
- (H) sexual exploitation of a child, K.S.A. 21-3516, and amendments thereto;
- (I) aggravated sexual battery, K.S.A. 21-3518, and amendments thereto;
- (J) aggravated incest, K.S.A. 21-3603, and amendments thereto;
- (K) any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent crime as defined in this section;
- (L) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sexually violent crime as defined in this section;

or

(M) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.;

On page 13, in line 24, after the period by inserting "(a)"; in line 27, by striking "(a)" and inserting "(1)"; in line 28, by striking "or" and inserting "and not to"; in line 29, by striking all after "sentence"; by striking all in line 30; in line 31, by striking all before the semicolon; in line 32, by striking "(c)" and inserting "(2)"; in line 34, by striking "(d)" and inserting "(3)"; in line 35, by striking "(e)" and inserting "(4)"; after line 36, by inserting the following:

"(b) The governor shall not commute a sentence of life without the possibility of parole.;"

On page 22, after line 42, by inserting the following:

"Sec. 15. K.S.A. 22-3728 is hereby amended to read as follows: 22-3728. (a) (1) Upon application of the secretary of corrections, the Kansas parole board may grant release to any person deemed to be functionally incapacitated, upon such terms and conditions as prescribed in the order granting such release.

(2) The Kansas parole board shall adopt rules and regulations governing the procedure for initiating, processing, reviewing and establishing criteria for review of applications filed on behalf of persons deemed to be functionally incapacitated. Such rules and regulations shall include criteria and guidelines for determining whether the functional incapacitation precludes the person from posing a threat to the public.

(3) Subject to the provisions of subsections (a)(4) and (a)(5), a functional incapacitation release shall not be granted until at least 30 days after written notice of the application has been given to: (A) The prosecuting attorney and the judge of the court in which the person was convicted; and (B) any victim of the person's crime or the victim's family. Notice of such application shall be given by the secretary of corrections to the victim who is alive and whose address is known to the secretary, or if the victim is deceased, to the victim's family if the family's address is known to the secretary. Subject to the provisions of subsection (a)(4), if there is no known address for the victim, if alive, or the victim's family, if deceased, the board shall not grant or deny such application until at least 30 days after notification is given by publication in the county of conviction. Publication costs shall be paid by the department of corrections.

(4) All applications for functional incapacitation release shall be referred to the board. The board shall examine each case and may approve such application and grant a release. An application for release shall not be approved unless the board determines that the person is functionally incapacitated and does not represent a future risk to public safety. The board shall determine whether a hearing is necessary on the application. The board may request additional information or evidence it deems necessary from a medical or mental health practitioner.

(5) The board shall establish any conditions related to the release of the person. The release shall be conditional, and be subject to revocation pursuant to K.S.A. 75-5217, and amendments thereto, if the person's functional incapacity significantly diminishes, if the person fails to comply with any condition of release, or if the board otherwise concludes that the person presents a threat or risk to public safety. The person shall remain on release supervision until the release is revoked, expiration of the maximum sentence, or discharged by the board. Subject to the provisions of subsection (f) of K.S.A. 75-5217, and amendments thereto, the person shall receive credit for the time during which the person is on functional incapacitation release supervision towards service of the prison and postrelease supervision obligations of determinate sentences or indeterminate and off-grid sentences.

(6) The secretary of corrections shall cause the person to be supervised upon release, and shall have the authority to initiate revocation of the person at any time for the reasons indicated in subsection (a)(5).

(7) The decision of the board on the application or any revocation shall be final and not subject to review by any administrative agency or court.

(8) In determining whether a person is functionally incapacitated, the board shall consider the following: (A) The person's current condition as confirmed by medical or mental health care providers, including whether the condition is terminal;

(B) the person's age and personal history;

(C) the person's criminal history;

(D) the person's length of sentence and time the person has served;

(E) the nature and circumstances of the current offense;

(F) the risk or threat to the community if released;

(G) whether an appropriate release plan has been established; and

(H) any other factors deemed relevant by the board.

(b) Nothing in this section shall be construed to limit or preclude submission of an application for pardon or commutation of sentence pursuant to K.S.A. 22-3701, and amendments thereto.

(c) *This section does not apply to any person under sentence of death or life without the possibility of parole.*;

On page 50, in line 21, after "22-3705" by inserting ", 22-3728"; in line 22, after "21-4619," by inserting "21-4642,";

And by renumbering the sections accordingly;

In the title, in line 10, after "22-3705" by inserting ", 22-3728"; in line 11, after "21-4619," by inserting "21-4642,"; and the bill be passed as amended.

Committee on **Local Government** recommends **SB 451** be passed.

Also, **HB 2125**, as amended by House Committee of the Whole, 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 **Natural Resources** recommends **SB 380** be passed.

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Tuesday, February 2, 2010.

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

