

# Journal of the Senate

THIRTY-SECOND DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Thursday, February 25, 2010—2:30 p.m.

The Senate was called to order by Vice President John Vratil.  
The roll was called with thirty-nine senators present.  
Senator Emler was excused.  
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,  
After fifty years of pastoring,  
Including a Chaplain for twenty-nine,  
I've found a lot of people think  
That praying is a waste of time.  
  
They prayed for things they never got,  
And decided, "What's the use."  
But there's something they need to know  
Before deciding to turn loose.  
  
You have made it clear, O God,  
What really pleases You  
Is for us to live by faith  
Not by sight as others do.    II Corinthians 5:7; Hebrews 11:6  
  
And You told us we can find this faith  
By listening to Your Word.  
After we hear Your message, Lord,  
We'll gain faith through what we heard.    Romans 10:17  
  
I pray in the Name of Jesus Christ,  
AMEN

The Pledge of Allegiance was led by Vice President John Vratil.

## INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

**SB 558.** An act concerning interstate water; relating to the interstate water litigation fund; amending K.S.A. 82a-1802 and K.S.A. 2009 Supp. 82a-1804 and repealing the existing sections, by Committee on Ways and Means.

**SB 559.** An act concerning the Kansas taxpayer transparency act; amending K.S.A. 2009 Supp. 74-72,123 and repealing the existing section, by Committee on Federal and State Affairs.

## REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and resolution were referred to Committees as indicated:

Business and Labor: **HB 2676.**

Commerce: **HB 2540.**

Education: **SB 557; HB 2410, HB 2595, HB 2601.**  
 Judiciary: **Sub HB 2238; HB 2432; Sub HB 2453, Sub HB 2517; HB 2557, HB 2581, HB 2582, HB 2605, HB 2637, HB 2656, HB 2661, HB 2667, HB 2668; HCR 5026**  
 Local Government: **HB 2471, HB 2472, HB 2478.**  
 Public Health and Welfare: **HB 2448; Sub HB 2575; HB 2577, HB 2584, HB 2588, HB 2589, HB 2619.**  
 Transportation: **HB 2552, HB 2561, HB 2660.**  
 Ways and Means: **HB 2239, HB 2280, HB 2631.**

#### COMMUNICATIONS FROM STATE OFFICERS

##### SUPREME COURT OF KANSAS

February 24, 2010

Pursuant to KSA 8-1008, Howard Schwartz, Judicial Administrator, submitted the 2009 Annual Report of the Statement of the Alcohol Drug Safety Action Program.

The Vice President announced the above report is on file in the office of the Secretary of the Senate and is available for review at any time.

#### MESSAGE FROM THE HOUSE

Announcing passage of **HB 2657.**  
 Also, passage of **SB 62**, as amended; **SB 316**, as amended by **House Substitute for SB 316.**

#### INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

**HB 2657** was thereupon introduced and read by title.

#### CONFIRMATION OF APPOINTMENTS

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

Senator D. Schmidt moved the following appointments be confirmed as recommended by the Standing Senate Committees:

*By the Governor:*

On the appointment to the:

*Credit Union Administrator:*

John P. Smith, term expires December 31, 2013.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Faust-Goudeau, Haley, Hensley, Holland, Huelskamp, Huntington, 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.

Present and Passing: Francisco.

Absent or Not Voting: Emler.

The appointment was confirmed.

On the appointment to the:

*Kansas State Board of Regents, Member:*

Ed McKechnie, term expires June 30, 2010.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Huntington, 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.

Absent or Not Voting: Emler.

The appointment was confirmed.

On the appointment to the:

*State Banking Board, Member:*

James Needham, term expires March 15, 2012.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Huntington, 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.

Absent or Not Voting: Emler.

The appointment was confirmed.

On the appointment to the:

*State Librarian of Kansas:*

Joanne M. Budler, serves at the pleasure of the Governor.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Huntington, 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.

Absent or Not Voting: Emler.

The appointment was confirmed.

#### FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

**SB 460**, An act concerning children; relating to permanency; priority of certain orders; amending K.S.A. 38-1116 and 60-3107 and K.S.A. 2009 Supp. 38-1121, 38-2201, 38-2202, 38-2203, 38-2208, 38-2212, 38-2242, 38-2243, 38-2251, 38-2255, 38-2258, 38-2264, 38-2272, 38-2273, 38-2279, 38-2304, 38-2305, 38-2361 and 60-1610 and repealing the existing sections, was considered on final action.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Huntington, 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.

Absent or Not Voting: Emler.

The bill passed, as amended.

**SB 478**, An act concerning the Kansas cigarette and tobacco products act; violations of act; amending K.S.A. 79-3304, 79-3309, 79-3371 and 79-3378 and K.S.A. 2009 Supp. 79-3301, 79-3302, 79-3303, 79-3310, 79-3311, 79-3312, 79-3316 and 79-3321 and repealing the existing sections; also repealing K.S.A. 2009 Supp. 79-3310c, was considered on final action.

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

Yeas: Brungardt, Colyer, Faust-Goudeau, Francisco, Hensley, Huntington, Kelly, Kultala, Lee, McGinn, Morris, Owens, Reitz, Schmidt V, Schodorf, Teichman, Umbarger, Vratil.

Nays: Abrams, Apple, Barnett, Brownlee, Bruce, Donovan, Haley, Holland, Huelskamp, Kelsey, Lynn, Marshall, Masterson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Schmidt D, Steineger, Taddiken, Wagle.

Absent or Not Voting: Emler.

A constitutional majority having failed to vote in favor of the bill, **SB 478** did not pass.

**Sub SB 513**, An act concerning alternative project delivery building construction; amending K.S.A. 2009 Supp. 19-216b, 19-216c, 19-216d, 19-216e, 19-216f, 72-6760d, 72-6760f and 72-6760g and repealing the existing sections, was considered on final action.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Huntington, 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.

Absent or Not Voting: Emler.

The substitute bill passed.

**SB 532.** An act concerning alcoholic beverages; relating to licenses and eligibility; amending K.S.A. 2009 Supp. 41-308a, 41-308b and 41-311 and repealing the existing sections, was considered on final action.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Huntington, 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.

Absent or Not Voting: Emler.

The bill passed, as amended.

#### INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

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

SENATE RESOLUTION No. 1826—

A RESOLUTION congratulating Emporia State University on the celebration of Founders Day in recognition of 147 years of educational excellence.

WHEREAS, In 1863, two years after Kansas became a state, Kansas State Normal School was created by an act of the Kansas Legislature and dedicated to the instruction and preparation of teachers. That mission remains key to the education of Kansas students to this day; and

WHEREAS, In 2009, the Teachers College received national recognition during a speech by Arne Duncan, United States Secretary of Education, when he said, “At Emporia State University, home of the National Teachers Hall of Fame, the Teachers College is the crown jewel of the school.”; and

WHEREAS, Emporia State University continues as a prominent leader in teacher education and preparation as illustrated by the following citations: Described as a pioneer of professional development programs by Edutopia; presentation of the prestigious Edward C. Pomeroy Award for Outstanding Contributions to Teacher Education to Provost Tes Mehring; Presidential Award for Excellence in Science to Dr. Betsy Yanik for Mathematics and Engineering Mentoring; Distinguished Clinician Award, and International Reading Association’s Certification of Distinction to three professors; and

WHEREAS, Teacher education graduates have been recipients of the \$25,000 Milken family Foundation Education Awards five times since 1997. Additionally, Emporia State University alumni are well represented among each year’s KSDE Horizon Award winners; and

WHEREAS, Rigorous professional accrediting practices by these agencies distinguish all of the schools at Emporia State University: National Council for Accreditation of Teacher Education (NCATE); Association to Advance Collegiate Schools of Business (AACSB); National League of Nursing Accrediting Commission and the American Library Association; and

WHEREAS, Annual Leadership Days for African American and Hispanic high school students and Si Se Puede Ciencias y Matematicas focus Emporia State University's respect for diversity; and

WHEREAS, Emporia State University takes the lead in creating partnerships with Kansas community colleges, including Butler Community College, Hutchinson Community College, and Kansas City Kansas Community College to provide seamless bachelor degrees to place-bound students; and

WHEREAS, Emporia State University is one of the founding institutions and home of the National Teachers Hall of Fame, of which five inductees are Emporia State University alumni; and

WHEREAS, Emporia State University is the home of the Kansas Business Hall of Fame; and

WHEREAS, Tuesday, February 16, 2010 was celebrated as Emporia State University Founders Day in recognition of 147 years of educational excellence: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That we congratulate and commend Emporia State University on the celebration of Founders Day in recognition of 147 years of educational excellence; and

*Be it further resolved:* That we commend Emporia State University for its outstanding service to the people of Kansas for providing excellence in higher education; and

*Be it further resolved:* That we encourage all Kansans to reflect on the history and heritage of educational excellence provided by all colleges and universities in the great state of Kansas.

On emergency motion of Senator Barnett **SR 1826** was adopted unanimously.

Senator Barnett introduced Michael R. Lane, President of Emporia State University, present for the recognition of Emporia State University's celebration of Founders Day of 147 years of educational excellence. Also recognized were: Jonathan Krueger, Caroline Ewing, Jonathan Rivers, Laura Bosiljevac, Amy Stonebraker, Michael Olsen and Marjorie Werly.

#### REPORT ON ENGROSSED BILLS

**SB 460, SB 478, SB 532** reported correctly engrossed February 25, 2010.

#### REPORTS OF STANDING COMMITTEES

Committee on **Financial Institutions and Insurance** recommends **HB 2500** be amended on page 2, in line 20, after "insurance" by inserting "or reinsurance"; and the bill be passed as amended.

Also, **HB 2501**, as amended by House Committee of the Whole, be amended on page 1, by striking all in lines 33 through 43;

And by renumbering the remaining sections accordingly; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 399** be amended on page 1, by striking all in lines 23 through 27; in line 28, by striking "(4)" and inserting "(3)"; in line 35, by striking "(5)" and inserting "(4)";

On page 6, by striking all in lines 30 through 37; in line 38, by striking "(t)" and inserting "(s)";

On page 7, in line 5, by striking "(u)" and inserting "(t)"; in line 38, by striking "1 felony if" and inserting "2 felony if the trier of fact makes a finding that the offender is 18 or more years of age and"; in line 39, by striking "child under 18 years of age" and inserting "minor"; in line 41, by striking "that"; in line 42, by striking "person" and inserting "the trier of fact makes a finding that the offender"; also in line 42, by striking "occurs in the presence"; in line 43, by striking "of a minor," and inserting "occurred";

On page 9, in line 8, by striking "that person" and inserting "the trier of fact makes a finding that the offender is 18 or more years of age and that the offender"; in line 9, by striking "Distributes or causes" and inserting "Distributed or caused"; in line 10, by striking "child under 18 years of age" and inserting "minor"; in line 13, by striking "is 18 or more years of age and distributes or causes" and inserting "distributed or caused"; in line 14, by striking "in the presence of a minor,"; in line 18, by striking "that person" and inserting "the

trier of fact makes a finding that the offender is 18 or more years of age and that the offender"; in line 19, by striking "Distributes or causes" and inserting "Distributed or caused"; in line 20, by striking "child under 18 years of age" and inserting "minor"; in line 23, by striking "is 18 or more years of age and distributes or causes" and inserting "distributed or caused"; in line 24, by striking "in the presence of a minor,";

On page 10, in line 8, by striking "that person" and inserting "the trier of fact makes a finding that the offender"; in line 9, by striking "occurs in the presence of a minor," and inserting "occurred"; and the bill be passed as amended.

Also, **SB 494** be amended on page 1, in line 14 by striking all after "804a."; by striking all in lines 15 through 18; in line 19, by striking "member of house of representatives."; in line 22, by striking "; and when" and inserting ". When"; in line 23, by striking "his" and inserting "such sheriff's"; and the bill be passed as amended.

Committee on **Public Health and Welfare** recommends **SB 501** be amended by substituting a new bill to be designated as "Substitute for SENATE BILL No. 501," as follows:

"Substitute for SENATE BILL No. 501

By Committee on Public Health and Welfare

"AN ACT concerning the Kansas board of healing arts; relating to licensure and education of perfusionists; establishing perfusion council.";

and the substitute bill be passed.

Committee on **Transportation** recommends **HB 2436**, as amended by House Committee; **HB 2535** be passed.

#### COMMITTEE OF THE WHOLE

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

On motion of Senator Schodorf the following report was adopted:

Recommended **HB 2411** be passed.

#### 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 **HB 2411** was advanced to Final Action and roll call.

**HB 2411**, An act concerning controlled substances; relating to certain schedule I drugs; amending K.S.A. 2009 Supp. 65-4105 and repealing the existing section.

On roll call, the vote was: Yeas 37, Nays 1, Present and Passing 1, Absent or Not Voting 1.

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Faust-Goudeau, Hensley, Holland, Huelskamp, Huntington, 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.

Nays: Haley.

Present and Passing: Francisco.

Absent or Not Voting: Emler.

The bill passed.

#### EXPLANATION OF VOTE

MR. VICE PRESIDENT: Once again I am proud to be the "Lone Ranger" for the civil liberties of the citizens of Kansas by voting "NO" on **HB 2411**.

Since the Senate passed **SB 348**, my office has heard unqualified support for my lone opposition to this political posturing to make us "tough" on crime.

When this measure is one day repealed, K-2 (an "alternate to marijuana") will be perhaps proven less harmful to the human body and less addictive than tobacco, many currently prescribed drugs and alcohol. We should regulate this stuff and tax it as we do the others or at least continue to allow its proven medicinal value to alleviate pain, nausea, etc.

As youth and others continue to search for legal ways to explore their flights of fancy, I fear that they will encounter more dangerous ways to experiment and ultimately do their minds and bodies true harm.

Although I do not condone drug use in any form and, in fact, support the addition of “MDMA”, “TFMPP”, “BZP” and “HU 210” to the schedule, I remember the admonitions of the public hysteria associated with the movie “Reefer Madness” which attributed, falsely, ill effects to the smoking of marijuana.

It would be hypocritical to know this and repeat with my vote today a condemnation of a substance which no other state but Kansas, and one small county in Missouri, continues to rush to make illegal. — DAVID HALEY

On motion of Senator D. Schmidt the Senate adjourned until 8:00 a.m., Friday, February 26, 2010.

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

