

Journal of the House

SEVENTEENTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Wednesday, February 1, 2012, 11:00 a.m.

The House met pursuant to adjournment with Speaker O'Neal in the chair.

The roll was called with 125 members present.

Prayer by Chaplain Brubaker:

Our Heavenly Father,
help our leaders today to remember
they lead as an expression of who they are,
yet they must always be more
than the leadership role they play.
People may see them in terms of
the visible leadership role
which You have entrusted to them,
but only You know who they really are inside.
Their integrity as a person—
and as a leader—
depends on seeing themselves
and what they do as You see them.
Help them to remember
“Man looks at the outward appearance,
But the Lord looks at the heart.”
Today I ask that
in the midst of all their responsibilities,
You guard their hearts.
In Christ's Name I pray, Amen.
(1 Samuel 16:7, NIV)

The Pledge of Allegiance was led by Rep. Mah.

Kansas Trivia Question – Which town boasts the oldest surviving courthouse in the state?

Answer: Cottonwood Falls in Chase County, whose courthouse was built between 1871 and 1873

INTRODUCTION OF GUESTS

There being no objection, the following remarks of Rep. Mast are spread upon the Journal:

In 2010, the Olpe Lady Eagles were playing St. John Hudson in a Championship match and lost in a very close set 23 to 25.

In 2011 the Olpe Lady Eagles were once again in the championship game and beat Lebo to be crowned Champions in Class 2A State Volleyball.

Two of the team members were chosen Class 2A All Tournament Team. I will ask them to be recognized. Elena Flott, a Sophomore and Janae Haag, a Junior. The coaches are Marilyn Stueve and Staci Garriott. Players are: Cara Garretson, Kayla McDougald, Kendyl McDougald, Marah McIlvain, Emmy Redeker, Taylor Redeker, Ashlyn Spellman, Sarah Wendling, Mindy Woods and Jordan Ziegler. Managers are Jennifer Bechtel, McKenzie Gulick, Sai Potchana, and Audrey White-Dold.

Rep. Mast presented the team with a framed House certificate.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

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

HB 2590, AN ACT concerning roads and bridges; relating to advertising signs; application fees; amending K.S.A. 2011 Supp. 68-2236 and repealing the existing section, by Representative Garber.

HB 2591, AN ACT concerning income taxation; relating to credits; amending K.S.A. 79-32,141 and K.S.A. 2011 Supp. 79-32,160a and repealing the existing sections; also repealing K.S.A. 2011 Supp. 79-32,160f, by Committee on Taxation.

HB 2592, AN ACT concerning employer leave policies for employees; declaring certain city ordinances and county resolutions to be against public policy, by Committee on Commerce and Economic Development.

HB 2593, AN ACT concerning interstate banking; relating to commission approval; amending K.S.A. 9-532, 9-533 and 9-534 and K.S.A. 2011 Supp. 9-535 and repealing the existing sections, by Committee on Financial Institutions.

HB 2594, AN ACT concerning school districts; relating to changes to the school finance formula; amending K.S.A. 2011 Supp. 72-3607, 72-6407, 72-6410, 72-6412, 72-6414a, 72-6414b, 72-6421, 72-6423, 72-6426, 72-6431, 72-6433, 72-6434, 72-6441, 72-6449, 72-6451, 72-6460, 72-8237, 72-9509, 72-9609 and 79-201x and repealing the existing sections, by Committee on Vision 2020.

HB 2595, AN ACT concerning counties; relating to countywide retailers' sales tax; amending K.S.A. 2011 Supp. 12-187 and repealing the existing section, by Committee on Local Government.

HB 2596, AN ACT repealing K.S.A. 2011 Supp. 74-509; concerning the duties of the irrigation commissioner, by Committee on Government Efficiency.

HB 2597, AN ACT repealing K.S.A. 2-1426 and K.S.A. 2011 Supp. 2-1424a and 2-1425; concerning agricultural seeds; relating to a seed laboratory, seed testing, the seed examination fee fund, and publication reports of inspections and exams, by Committee on Government Efficiency.

HB 2598, AN ACT concerning abortion; relating to restrictions on late term abortions; relating to the woman's-right-to-know act; creating the no taxpayer funding

for abortion act; amending K.S.A. 60-1901 and K.S.A. 2011 Supp. 40-2246, 65-6701, 65-6703, 65-6709, 65-6710, 79-32,117, 79-32,138, 79-32,182b, 79-32,195, 79-32,261 and 79-3606 and repealing the existing sections; also repealing K.S.A. 2011 Supp. 79-3606g, by Committee on Federal and State Affairs.

HOUSE CONCURRENT RESOLUTION No. **HCR 5030**—

By Representatives O'Brien, Arpke, Calloway, Garber, Goodman, Gregory, Grosserode, M. Holmes, Huebert, Kelley, Knox, Mast, Meigs, O'Hara and Scapa

A CONCURRENT RESOLUTION urging the United States Congress to adopt the parental rights amendment, a joint resolution proposing an amendment to the Constitution of the United States relative to parental rights.

WHEREAS, The right of parents to direct the upbringing and education of their children is a fundamental right protected by the Constitution of the United States and the state of Kansas; and

WHEREAS, Our nation has historically relied first and foremost on parents to meet the real and constant needs of children; and

WHEREAS, The interests of children are best served when parents are free to make child-rearing decisions about education, religion and other areas of a child's life without state interference; and

WHEREAS, The United States Supreme Court in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), held that “This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition”; and

WHEREAS, The United States Supreme Court in *Troxel v. Granville*, 530 U.S. 57 (2000), however, produced six different opinions on the nature and enforceability of parental rights under the Constitution of the United States; and

WHEREAS, This decision created confusion and ambiguity about the fundamental nature of parental rights in the laws and society of the several states; and

WHEREAS, Representative John Fleming of the state of Louisiana introduced House Joint Resolution 3 in the United States House of Representatives, proposing an amendment to the Constitution of the United States to prevent erosion of the enduring American tradition of treating parental rights as fundamental rights, which reads as follows:

“Section 1. The liberty of parents to direct the upbringing and education of their children is a fundamental right.

Section 2. Neither the United States nor any State shall infringe upon this right without demonstrating that its governmental interest as applied to the person is of the highest order and not otherwise served.

Section 3. No treaty may be adopted nor shall any source of international law be employed to supersede, modify, interpret, or apply to the rights guaranteed by this article.”; and

WHEREAS, This amendment will add explicit text to the Constitution of the United States to protect in perpetuity the rights of parents as they are now enjoyed, without substantive change to current state or federal laws respecting these rights; and

WHEREAS, Such enumeration of these rights in the text of the Constitution of the United States will preserve them from being infringed upon by the shifting ideologies and interpretations of the United States Supreme Court: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the Congress of the United States is urged to adopt and submit to the states for ratification the Parental Rights Amendment to the Constitution of the United States proposed by Representative John Fleming in House Joint Resolution 3; and

Be it further resolved: That the Chief Clerk of the House of Representatives shall send an enrolled copy of this resolution to the President of the Senate, each member of the United States Senate, the speaker of the United States House of Representatives and each member of the United States House of Representatives.

HOUSE CONCURRENT RESOLUTION No. **HCR 5031**—

By Joint Committee on Kansas Security

A CONCURRENT RESOLUTION urging the United States Department of Defense to reevaluate the types of treatment facilities where the TRICARE military health care program provides coverage of substance abuse treatment and to seriously consider allowing coverage in less restrictive outpatient environments.

WHEREAS, The United States Department of Defense requires that substance abuse treatment, referred to as substance use disorder treatment (SUD), covered by the TRICARE military health care program must be provided in an authorized hospital or a treatment program in an authorized freestanding or hospital-based substance abuse treatment program; and

WHEREAS, Kansas community mental health centers are not hospitals and do not meet the requirements for freestanding or hospital-based substance abuse treatment programs; and

WHEREAS, Restrictions on the types of facilities where TRICARE SUD treatment may be provided were adopted in the late 1970s, while current treatment models permit active treatment in less restrictive outpatient environments; and

WHEREAS, Other insurers provide coverage of substance abuse treatment provided to many Kansans by community mental health centers and other state licensed community-based providers; and

WHEREAS, The military is facing growing demand for substance abuse and mental health services and their own SUD treatment programs are routinely reserved for active duty service members; and

WHEREAS, Kansans covered by TRICARE are dispersed throughout the state, many in areas where there are few, if any, SUD treatment providers: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the Legislature urges the United States Department of Defense to reevaluate requirements placed on the types of facilities where TRICARE provides coverage of SUD treatment and give serious consideration to allowing coverage of treatment provided in less restrictive outpatient environments, including community mental health centers and other state licensed community-based providers, without regard to whether the client has a mental health diagnosis; and

Be it further resolved: That the Secretary of State is directed to send enrolled copies of this resolution to the President of the United States, to the United States Secretary of Defense and to each member of the Kansas Congressional delegation.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to committees as indicated:

Aging and Long-term Care: **HB 2583**.

Agriculture and Natural Resources: **HB 2587**.

Commerce and Economic Development: **HB 2581**.

Corrections and Juvenile Justice: **HB 2584**

Education: **HB 2589**.

Education Budget: **HB 2580**.

Energy and Utilities: **HB 2588**.

Federal and State Affairs: **HB 2575, HB 2576, HB 2577, HB 2578, HB 2579**.

Financial Institutions: **HB 2582**.

Taxation: **HB 2585, HB 2586**.

CHANGE OF REFERENCE

Speaker O'Neal announced the withdrawal of **HB 2561** from Committee on Taxation and referral to Committee on Commerce and Economic Development.

COMMUNICATIONS FROM STATE OFFICERS

From the Hon. Frank J. Yeoman, Jr., Chair, Board of Directors, Kansas Guardianship Program, 2011 Annual Report, July 1, 2010-June 30, 2011.

From Nick Jordan, Secretary of Revenue, Kansas Department of Revenue, Annual Report, pursuant to K.S.A. 79-32,262(b)(3), Declared Disaster Capital Investment Tax Credit.

From Nick Jordan, Secretary of Revenue, Kansas Department of Revenue, Annual Report, pursuant to K.S.A. 79-32,261(f), Higher Education Deferred Maintenance Tax Credit.

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

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

HB 2273, AN ACT designating part of K-99 as the Frankfort Boys World War II Memorial highway; amending K.S.A. 2011 Supp. 68-1057 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 125; Nays 0; Present but not voting: 0; Absent or not voting: 0.

Yeas: Alford, Arpke, Aurand, Ballard, Bethell, Billinger, Bollier, Boman, Bowers, Brookens, Brown, Bruchman, Brunk, Burgess, Burroughs, Calloway, Carlin, Carlson, Cassidy, Collins, Colloton, Crum, Davis, DeGraaf, Denning, Dillmore, Donohoe, Fawcett, Feuerborn, Finney, Flaharty, Frownfelter, Garber, D. Gatewood, S. Gatewood, Goico, Gonzalez, Goodman, Gordon, Grange, Grant, Gregory, Grosserode, Hayzlett, Hedke, Henderson, Henry, Hermanson, Hildabrand, Hill, Hineman, Hoffman, C. Holmes, M. Holmes, Howell, Huebert, Johnson, Kelley, Kelly, Kerschen, Kiegerl, Kinzer, Kleeb, Knox, Kuether, Landwehr, Lane, LeDoux, Loganbill, Mah, Mast, McCray-Miller, McLeland, Meier, Meigs, Mesa, Montgomery, Mosier, Moxley, O'Brien, O'Hara, O'Neal, Osterman, Otto, Patton, Pauls, Peck, Peterson, Phelps,

Pottorff, Powell, Prescott, Proehl, Rhoades, Roth, Rubin, Ruiz, Ryckman, Scapa, Schroeder, Schwab, Schwartz, Seiwert, Shultz, Siegfried, Slattey, Sloan, Smith, Spalding, Suellentrop, Swanson, Tietze, Trimmer, Tyson, Vickrey, Victors, Ward, Weber, Wetta, Williams, Winn, B. Wolf, K. Wolf, Wolfe Moore and Worley.

Nays: None.

Present but not voting: None.

Absent or not voting: None.

The bill passed as amended.

HB 2428, AN ACT concerning health care providers; relating to the university of Kansas medical center; amending K.S.A. 2011 Supp. 65-4915 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 125; Nays 0; Present but not voting: 0; Absent or not voting: 0.

Yeas: Alford, Arpke, Aurand, Ballard, Bethell, Billinger, Bollier, Boman, Bowers, Brookens, Brown, Bruchman, Brunk, Burgess, Burroughs, Calloway, Carlin, Carlson, Cassidy, Collins, Colloton, Crum, Davis, DeGraaf, Denning, Dillmore, Donohoe, Fawcett, Feuerborn, Finney, Flaharty, Frownfelter, Garber, D. Gatewood, S. Gatewood, Goico, Gonzalez, Goodman, Gordon, Grange, Grant, Gregory, Grosserode, Hayzlett, Hedke, Henderson, Henry, Hermanson, Hildabrand, Hill, Hineman, Hoffman, C. Holmes, M. Holmes, Howell, Huebert, Johnson, Kelley, Kelly, Kerschen, Kiegerl, Kinzer, Kleeb, Knox, Kuether, Landwehr, Lane, LeDoux, Loganbill, Mah, Mast, McCray-Miller, McLeland, Meier, Meigs, Mesa, Montgomery, Mosier, Moxley, O'Brien, O'Hara, O'Neal, Osterman, Otto, Patton, Pauls, Peck, Peterson, Phelps, Pottorff, Powell, Prescott, Proehl, Rhoades, Roth, Rubin, Ruiz, Ryckman, Scapa, Schroeder, Schwab, Schwartz, Seiwert, Shultz, Siegfried, Slattey, Sloan, Smith, Spalding, Suellentrop, Swanson, Tietze, Trimmer, Tyson, Vickrey, Victors, Ward, Weber, Wetta, Williams, Winn, B. Wolf, K. Wolf, Wolfe Moore and Worley.

Nays: None.

Present but not voting: None.

Absent or not voting: None.

The bill passed.

HB 2490, AN ACT concerning doctor of nursing practice degrees at Washburn university; amending K.S.A. 72-6508 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 125; Nays 0; Present but not voting: 0; Absent or not voting: 0.

Yeas: Alford, Arpke, Aurand, Ballard, Bethell, Billinger, Bollier, Boman, Bowers, Brookens, Brown, Bruchman, Brunk, Burgess, Burroughs, Calloway, Carlin, Carlson, Cassidy, Collins, Colloton, Crum, Davis, DeGraaf, Denning, Dillmore, Donohoe, Fawcett, Feuerborn, Finney, Flaharty, Frownfelter, Garber, D. Gatewood, S. Gatewood, Goico, Gonzalez, Goodman, Gordon, Grange, Grant, Gregory, Grosserode, Hayzlett, Hedke, Henderson, Henry, Hermanson, Hildabrand, Hill, Hineman, Hoffman, C. Holmes, M. Holmes, Howell, Huebert, Johnson, Kelley, Kelly, Kerschen, Kiegerl, Kinzer, Kleeb, Knox, Kuether, Landwehr, Lane, LeDoux, Loganbill, Mah, Mast, McCray-Miller, McLeland, Meier, Meigs, Mesa, Montgomery, Mosier, Moxley, O'Brien, O'Hara, O'Neal, Osterman, Otto, Patton, Pauls, Peck, Peterson, Phelps,

Pottorff, Powell, Prescott, Proehl, Rhoades, Roth, Rubin, Ruiz, Ryckman, Scapa, Schroeder, Schwab, Schwartz, Seiwert, Shultz, Siegfried, Slattery, Sloan, Smith, Spalding, Suellentrop, Swanson, Tietze, Trimmer, Tyson, Vickrey, Victors, Ward, Weber, Wetta, Williams, Winn, B. Wolf, K. Wolf, Wolfe Moore and Worley.

Nays: None.

Present but not voting: None.

Absent or not voting: None.

The bill passed.

H Sub for SB 191, AN ACT concerning the Kansas department of agriculture; authorizing certain fees; creating the laboratory testing services fee fund, was considered on final action.

On roll call, the vote was: Yeas 107; Nays 18; Present but not voting: 0; Absent or not voting: 0.

Yeas: Alford, Arpke, Aurand, Ballard, Bethell, Billinger, Bollier, Boman, Bowers, Brookens, Bruchman, Brunk, Burgess, Calloway, Carlin, Carlson, Cassidy, Collins, Colloton, Crum, DeGraaf, Denning, Donohoe, Fawcett, Finney, Flaharty, Frownfelter, Garber, D. Gatewood, Goico, Gonzalez, Goodman, Gordon, Grange, Gregory, Hayzlett, Hedke, Henry, Hermanson, Hildabrand, Hill, Hineman, Hoffman, C. Holmes, M. Holmes, Howell, Huebert, Johnson, Kelly, Kerschen, Kiegerl, Kleeb, Knox, Loganbill, Mah, Mast, McCray-Miller, McLeland, Meier, Meigs, Mesa, Montgomery, Mosier, Moxley, O'Brien, O'Hara, O'Neal, Osterman, Otto, Patton, Pauls, Peck, Peterson, Phelps, Pottorff, Powell, Prescott, Proehl, Rhoades, Roth, Rubin, Ryckman, Scapa, Schroeder, Schwab, Schwartz, Seiwert, Shultz, Siegfried, Slattery, Sloan, Smith, Spalding, Suellentrop, Swanson, Trimmer, Tyson, Vickrey, Victors, Weber, Wetta, Williams, Winn, B. Wolf, K. Wolf, Wolfe Moore and Worley.

Nays: Brown, Burroughs, Davis, Dillmore, Feuerborn, S. Gatewood, Grant, Grosserode, Henderson, Kelley, Kinzer, Kuether, Landwehr, Lane, LeDoux, Ruiz, Tietze and Ward.

Present but not voting: None.

Absent or not voting: None.

The substitute bill passed, as amended.

On motion of Rep. Siegfried, the House resolved into the Committee of the Whole, with Rep. Gordon in the chair.

COMMITTEE OF THE WHOLE

On motion of Rep. Gordon, Committee of the Whole report, as follows, was adopted: Recommended that **HB 2451** be passed.

Committee report to **HB 2424** be adopted; also, on motion of Rep. Bethell, be amended on page 2, in line 8, after "center" by inserting "and providers subject to the provisions of K.S.A. 38-1801, *et seq.*, and amendments thereto"; and the bill be passed as amended.

Committee report to **HB 2335** be adopted; and the bill be passed as amended.

Committee report to **HB 2453** be adopted; and the bill be passed as amended.

REPORTS OF STANDING COMMITTEES

Committee on **Federal and State Affairs** recommends **HB 2421** be amended on page 3, in line 16, by striking "a central metallic part, such as"; also in line 16, by striking "or"; in line 17, by striking "frame"; and the bill be passed as amended.

Committee on **Local Government** recommends **HB 2420** be passed.

Committee on **Pensions and Benefits** recommends **HB 2460** be amended on page 8, following line 7, by inserting:

"Sec. 3. K.S.A. 2011 Supp. 74-49,123 is hereby amended to read as follows: 74-49,123. (a) This section applies to the Kansas public employees retirement system and to all other public retirement plans administered by the board of trustees.

(b) As used in this section:

(1) "Federal internal revenue code" means the federal internal revenue code of 1954 or 1986, as amended and as applicable to a governmental plan as in effect on July 1, 2008; and

(2) "retirement plan" includes the Kansas public employees retirement system and all other Kansas public retirement plans and benefit structures, which are administered by the board.

(c) In addition to the federal internal revenue code provisions otherwise noted in each retirement plan's law, and in order to satisfy the applicable requirements under the federal internal revenue code, the retirement plans shall be subject to the following provisions, notwithstanding any other provision of the retirement plan's law:

(1) The board shall distribute the corpus and income of the retirement plan to the members and their beneficiaries in accordance with the retirement plan's law. At no time prior to the satisfaction of all liabilities with respect to members and their beneficiaries shall any part of the corpus and income be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.

(2) Forfeitures arising from severance of employment, death or for any other reason may not be applied to increase the benefits any member would otherwise receive under the retirement plan's law. However, forfeitures may be used to reduce an employer's contribution.

(3) All benefits paid from the retirement plan shall be distributed in accordance with a good faith interpretation of the requirements of section 401(a)(9) of the federal internal revenue code and the regulations under that section. Notwithstanding any other provision of these rules and regulations, effective on and after January 1, 2003, the retirement plan is subject to the following provisions:

(A) Benefits must begin by the required beginning date, which is the later of April 1 of the calendar year following the calendar year in which the member reaches 70½ years of age or April 1 of the calendar year following the calendar year in which the member terminates employment. If a member fails to apply for retirement benefits by April 1 of the calendar year following the calendar year in which such member reaches 70½ years of age or April 1 of the calendar year following the calendar year in which such member terminates employment, whichever is later, the board will begin distributing the benefit as required by this section.

(B) The member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary. Death benefits must be distributed in accordance with section 401 (a)(9) of the federal internal

revenue code, including the incidental death benefit requirement in section 401 (a)(9)(G) of the federal internal revenue code, and the regulations implementing that section.

(C) The life expectancy of a member, the member's spouse or the member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.

(D) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death and no longer than the remaining period over which distributions commenced.

(E) If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be either:

(i) In accordance with federal regulations, distributed over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year immediately following the calendar year of the member's death; or

(ii) distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(F) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the federal internal revenue code.

(G) The death and disability benefits provided by a retirement plan are limited by the incidental benefit rule set forth in section 401(a)(9)(G) of the federal internal revenue code and treasury regulation 1.401-1(b)(1)(i).

(4) Distributions from the retirement plans may be made only upon retirement, separation from service, disability or death.

(5) The board or its designee may not:

(A) Determine eligibility for benefits;

(B) compute rates of contribution; or

(C) compute benefits of members or beneficiaries, in a manner that discriminates in favor of members who are considered officers, supervisors or highly compensated, as prohibited under section 401(a)(4) of the federal internal revenue code.

(6) Subject to the provisions of this subsection, benefits paid from, and employee contributions made to, the retirement plans shall not exceed the maximum benefits and the maximum annual additions, respectively, permissible under section 415 of the federal internal revenue code.

(A) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in section 415(b) of the federal internal revenue code, subject to the applicable adjustments in that section. Beginning January 1, 1995, a participant may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the federal internal revenue code, subject to the applicable adjustments in section 415 of the federal internal revenue code.

(B) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the retirement plans if the amount of the contribution would exceed the limits under section 415(c) or 415(n) of the federal internal revenue code subject to the following:

(i) Where the retirement plan's law requires a lump-sum payment, for the purchase of service credit, the board may establish a periodic payment plan in order to avoid a

contribution in excess of the limits under section 415(c) or 415(n) of the federal internal revenue code.

(ii) If the board's option under subdivision (i) will not avoid a contribution in excess of the limits under section 415(c) or 415(n) of the federal internal revenue code, the board shall reduce or deny the contribution.

(C) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if an active member makes one or more contributions to purchase permissive service credit under a retirement plan, then the requirements of this section shall be treated as met only if:

(i) The requirements of section 415(b) of the federal internal revenue code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of such section; or

(ii) the requirements of section 415(c) of the federal internal revenue code are met, determined by treating all such contributions as annual additions for purposes of such section. For purposes of applying subparagraph (i) a retirement plan shall not fail to meet the reduced limit under section 415(b)(2)(C) of the federal internal revenue code solely by reason of this paragraph (C), and for purposes of applying subparagraph (ii), a retirement plan shall not fail to meet the percentage limitation under section 415(c)(1)(B) of the federal internal revenue code solely by reason of this paragraph.

(iii) For purposes of this paragraph, the term "permissive service credit" means service credit:

(a) Specifically recognized by a retirement plan's law for purposes of calculating a member's benefit under that retirement plan;

(b) which such member has not received under a retirement plan; and

(c) which such member may receive under a retirement plan's law only by making a voluntary additional contribution, in an amount determined under the retirement plan's law and procedures established by the board, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

(iv) A retirement plan shall fail to meet the requirements of this paragraph if the retirement plan's law specifically provides for a purchase of nonqualified service purchase, and if:

(a) More than five years of nonqualified service credit are taken into account for purposes of this paragraph; or

(b) any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under a retirement plan. For purposes of this paragraph, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means the same as provided in section 415(n)(3)(C) of the federal internal revenue code.

(v) In the case of a trustee-to-trustee transfer after December 31, 2001, to which section 403(b)(13)(A) or 457(e)(17)(A) of the federal internal revenue code applies, without regard to whether the transfer is made between plans maintained by the same employer:

(a) The limitations of subparagraph (iv) shall not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) the distribution rules applicable under federal law to a retirement plan shall apply to such amounts and any benefits attributable to such amounts.

(vi) For an eligible member, the limitation of section 415(c)(1) of the federal internal revenue code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the statute as in effect on August 5, 1997. For purposes of this subparagraph, an eligible member is an individual who first became a member in the retirement plan before January 1, 1998.

(D) Subject to approval by the internal revenue service, the board shall maintain a qualified governmental excess benefit arrangement under section 415(m) of the federal internal revenue code. The board shall establish the necessary and appropriate procedures for the administration of such benefit arrangement under the federal internal revenue code. The amount of any annual benefit that would exceed the limitations imposed by section 415 of the federal internal revenue code shall be paid from this benefit arrangement. The amount of any contribution that would exceed the limitations imposed by section 415 of the federal internal revenue code shall be credited to this benefit arrangement. The qualified excess benefit arrangement shall be a separate portion of the retirement plan. The qualified excess benefit arrangement is subject to the following requirements:

(i) The benefit arrangement shall be maintained solely for the purpose of providing to participants in the retirement plans that part of the participant's annual benefit otherwise payable under the terms of the act that exceeds the limitations on benefits imposed by section 415 of the federal internal revenue code; and

(ii) participants do not have an election, directly or indirectly, to defer compensation to the excess benefit arrangement.

(E) For purposes of applying these limits only and for no other purpose, the definition of compensation where applicable shall be compensation actually paid or made available during a limitation year, except as noted below and as permitted by treasury regulation section 1.415(c)-2. Specifically, compensation shall be defined as wages within the meaning of section 3401(a) of the federal internal revenue code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under sections 6041(d), 6051(a)(3) and 6052 of the federal internal revenue code. Compensation shall be determined without regard to any rules under section 3401(a) of the federal internal revenue code that limit the remuneration included in wages based on the nature or location of the employment or the services performed, such as the exception for agricultural labor in section 3401(a)(2) of the federal internal revenue code.

(i) However, for limitation years beginning after December 31, 1997, compensation shall also include amounts that would otherwise be included in compensation but for an election under sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b) of the federal internal revenue code. For limitation years beginning after December 30, 2000, compensation shall also include any elective amounts that are not includable in the gross income of the employee by reason of section 132(f)(4) of the federal internal revenue code.

(ii) The definition of compensation shall exclude employee contributions picked up under section 414(h)(2) of the federal internal revenue code.

(iii) For limitation years beginning on and after January 1, 2007, compensation for the limitation year will also include compensation paid by the later of 2¹/₂ two and a half months after an employee's severance from employment or the end of the limitation

year that includes the date of the employee's severance from employment if:

(a) The payment is regular compensation for services during the employee's regular working hours or compensation for services outside the employee's regular working hours, such as overtime or shift differential, commissions, bonuses or other similar payments, and absent a severance from employment, the payments would have been paid to the employee while the employee continues in employment with the employer; ~~or~~

(b) the payment is for unused accrued *bona fide* sick, vacation or other leave that the employee would have been able to use if employment had continued; ~~or~~

(c) for limitation years beginning on and after January 1, 2012, the payment is made pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includable in the member's gross income.

(iv) Any payments not described in paragraph (iii) are not considered compensation if paid after severance from employment, even if they are paid within two and a half months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service, within the meaning of section 414(u)(1) of the federal internal revenue code, to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(v) An employee who is in qualified military service, within the meaning of section 414(u)(1) of the federal internal revenue code, shall be treated as receiving compensation from the employer during such period of qualified military service equal to: (a) The compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service; or (b) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve-month period immediately preceding the qualified military service, or if shorter, the period of employment immediately preceding the qualified military service.

~~(iv)~~(vi) Back pay, within the meaning of treasury regulation section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(7) On and after January 1, 2009, for purposes of applying the limits under section 415(b) of the federal internal revenue code, the following shall apply:

(A) A member's applicable limit shall be applied to the member's annual benefit in the first limitation year without regard to any automatic cost-of-living increases;

(B) to the extent the member's annual benefit equals or exceeds such limit, the member shall no longer be eligible for cost-of-living increases until such time as the benefit plus the accumulated increases are less than such limit;

(C) thereafter, in any subsequent limitation year, the member's annual benefit including any automatic cost-of-living increase applicable shall be tested under the then applicable benefit limit including any adjustment to the dollar limit under section

415(b)(1)(A) or 415(d) of the federal internal revenue code and the regulations thereunder; and

(D) in no event shall a member's annual benefit payable from a retirement plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to section 415(d) of the federal internal revenue code and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity, then the preceding sentence is applied by reducing the limit under section 415(b) of the federal internal revenue code applicable at the annuity starting date to an actuarially equivalent amount determined using the assumptions specified in treasury regulation section 1.415(b)-1(c)(2)(ii) that take into account the death benefits under the form of benefit. This subsection applies to distributions made on and after January 1, 1993. A distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a transfer made from the retirement system.

(i) An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (a) Any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life or the life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary or for a specified period of 10 years or more; (b) any distribution to the extent such distribution is required under section 401(a)(9) of the federal internal revenue code; (c) the portion of any distribution that is not includable in gross income; and (d) any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the federal internal revenue code, or to a qualified defined contribution plan described in section 401(a) of the federal internal revenue code or to a qualified plan described in section 403(a) of the federal internal revenue code, that agrees to separately account for amounts so transferred and earnings on such amounts, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not so includable, or on or after January 1, 2007, to a qualified defined benefit plan described in section 401(a) of the federal internal revenue code or to an annuity contract described in section 403(b) of the federal internal revenue code, that agrees to separately account for amounts so transferred and earnings thereon, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not so includable.

(ii) An eligible retirement plan is any of the following that accepts the distributee's eligible rollover distribution:

(a) An individual retirement account described in section 408(a) of the federal internal revenue code;

(b) an individual retirement annuity described in section 408(b) of the federal internal revenue code;

(c) an annuity plan described in section 403(a) of the federal internal revenue code;

(d) a qualified trust described in section 401(a) of the federal internal revenue code;

(e) effective January 1, 2002, an annuity contract described in section 403(b) of the federal internal revenue code;

(f) effective January 1, 2002, a plan eligible under section 457(b) of the federal internal revenue code that is maintained by a state, political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into the plan from a retirement plan; or

(g) effective January 1, 2008, a roth IRA described in section 408(A) of the federal internal revenue code.

(iii) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the federal internal revenue code.

(iv) A distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the federal internal revenue code. Effective July 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the federal internal revenue code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(v) A direct rollover is a payment by the retirement system to the eligible retirement plan specified by the distributee.

(8) Notwithstanding any law to the contrary, the board may accept a direct or indirect eligible rollover distributions for the purpose of the purchase of service credit. In addition, the board may accept a direct trustee to trustee transfer from a deferred compensation plan under section 457(b) of the federal internal revenue code or a tax sheltered annuity under section 403(b) of the federal internal revenue code for: (A) The purchase of permissive service credit, as defined under section 415(n)(3)(A) of the federal internal revenue code; or (B) a repayment to which section 415 of the federal internal revenue code does not apply pursuant to section 415(k)(3) of the federal internal revenue code. Any such transfer shall be allowed as provided in this subsection to the extent permitted by law, subject to any conditions, proofs or acceptance established or required by the board or the board's designee.

(9) Where required by the act, an employer shall pick up and pay contributions that would otherwise be payable by members of a retirement plan in accordance with section 414(h)(2) of the federal internal revenue code as follows:

(A) The contributions, although designated as employee contributions, are being paid by the employer in lieu of contributions by the employee;

(B) the employee must not have been given the option of receiving the amounts directly instead of having them paid to the retirement plan; and

(C) the pickup shall apply to amounts that a member elects to contribute to receive credit for prior or participating service if the election is irrevocable and applies to amounts contributed before retirement.

(10) (A) Notwithstanding any provision of this plan to the contrary, contributions,

benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the federal internal revenue code and the uniformed services employment and reemployment rights act of 1994.

(B) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in chapter 43 of title 38, United States code, to the extent required by section 401(a)(37) of the federal internal revenue code, survivors of a member in the system, are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. A deceased member's period of qualified military service must be counted for vesting purposes.

(C) Effective with respect to deaths or disabilities, or both, occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in chapter 43 of title 38, United States code, to the extent permitted by section 414(u)(9) of the federal internal revenue code, for the benefit accrual purposes and in the case of death, for vesting purposes, the member will be treated as having earned years of service for the period of qualified military service, having returned to employment on the day before the death or disability, or both, and then having terminated on the date of death or disability. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(D) Beginning January 1, 2009, to the extent required by section 414(u)(12) of the federal internal revenue code, an individual receiving differential wage payments, as defined under section 3401(h)(2) of the federal internal revenue code, from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the federal internal revenue code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(11) Upon the complete or partial termination of a retirement plan, the rights of members to benefits accrued to the date of termination, to the extent funded, or to the amounts in their accounts are nonforfeitable, and amounts in their accounts may be distributed to them.

(d) The plan year for the retirement plan begins on July 1.

(e) The limitation year for purposes of section 415 of the federal internal revenue code is the calendar year.

(f) The board may not engage in a transaction prohibited by section 503(b) of the federal internal revenue code.

(g) For purposes of determining an "actuarial equivalent" or of an "actuarial computation" for members hired prior to July 1, 2009, the board shall use the following:

(A) The applicable mortality table is specified in revenue ruling 2001-62 or revenue ruling 2007-67, as applicable; and

(B) the applicable interest factor is 8% per year.

(2) For purposes of determining an "actuarial equivalent" or an "actuarial computation" for members hired on or after July 1, 2009, the board shall use the following:

(A) The applicable mortality table is the 50/50 male/female blend of the RP 2000 health annuitant mortality table, projected to 2025; and

(B) The applicable interest factor is 8% per year.

(3) For converting amounts payable under the partial lump sum option, the board shall use the following:

(A) The applicable mortality table is a 50/50 male/female blend of the 1983 group annuity mortality table; and

(B) the applicable interest factor is 8% per year.

(4) For benefit testing under section 415(b) of the federal internal revenue code, the factors required by treasury regulations shall be used. The applicable mortality table is specified in revenue ruling 2001-62 for years prior to January 1, 2009, and notice 2008-85 for years after December 31, 2008.";

And by renumbering sections accordingly;

Also on page 8, in line 8, after "74-4920" by inserting "and 74-49,123";

On page 1, in the title, in line 3, after "rate;" by inserting "applicability of certain federal internal revenue code provisions;"; in line 4, after "74-4920" by inserting "and 74-49,123"; and the bill be passed as amended.

Committee on **Pensions and Benefits** recommends **HB 2461** be amended on page 3, in line 25, by striking "and"; in line 28, by striking the period and inserting "; and

(ix) the total of alternative investments does not exceed 25% of the total investment assets of the fund.";

Also on page 3, in line 29, by striking "means nontraditional"; by striking all in lines 30 through 33 and inserting "includes a broad group of investments that are not one of the traditional asset types of public equities, fixed income, cash or real estate. Alternative investments are generally made through limited partnership or similar structures, are not regularly traded on nationally recognized exchanges and thus are relatively illiquid, and exhibit lower correlations with more liquid asset types such as stocks and bonds. Alternative investments generally include, but are not limited to, private equity, private credit, hedge funds, infrastructure, commodities and other investments which have the characteristics described in this paragraph; and"; and the bill be passed as amended.

Committee on **Taxation** recommends **HB 2454** be passed.

Committee on **Transportation** recommends **HB 2441** be passed.

Upon unanimous consent, the House referred back to the regular business, Introduction of Bills and Concurrent Resolutions.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill and concurrent resolution were thereupon introduced and read by title:

HB 2599, AN ACT concerning motor vehicles; relating to certain antique license plates; providing for registration decals; amending K.S.A. 2011 Supp. 8-172 and repealing the existing section, by Committee on Transportation.

HOUSE CONCURRENT RESOLUTION No. **HCR 5032**—

By Committee on Corrections and Juvenile Justice

A CONCURRENT RESOLUTION commending the positive approach and best practices of the Crisis Intervention Team program and encouraging the development of active crisis intervention team programs statewide.

WHEREAS, Mental illness is a serious medical condition that affects children, adolescents, adults and the elderly; and

WHEREAS, In response to the need for law enforcement officers to better understand and resolve issues arising from persons with mental illness, 1,250 Crisis Intervention Team (CIT) programs have been developed nationally and in the Kansas counties of Reno, Lyon, Johnson, Shawnee, Sedgwick and Wyandotte; and

WHEREAS, More than 900 law enforcement officers statewide have been trained by local CIT councils and the Kansas Law Enforcement Training Center, including officers of the Capitol Police, Kansas Department of Corrections, as well as School Resource Officers and local jail and dispatch personnel; and

WHEREAS, CIT training is a 40-hour curriculum, based on the Memphis Police Department Crisis Intervention Team model of best practices for law enforcement intervention with persons who have a mental illness;

WHEREAS, The CIT program trains law enforcement officers to effectively and humanely intervene and assist in situations involving children and adults who find themselves in psychiatric crisis; and

WHEREAS, Implementing the CIT program on a statewide basis means building strong working partnerships between law enforcement agencies and mental health resources in the community, which enable law enforcement and mental health agencies to collaborate to identify appropriate and long-term solutions for persons with mental illness; and

WHEREAS, The CIT program is proven to reduce the likelihood of physical confrontation and use of force in intervention situations, improve officer safety and decrease injuries to law enforcement officers involved in crisis intervention; and

WHEREAS, The CIT program decreases the use of arrest and detention of persons experiencing a mental health crisis by providing these persons with better access to timely and appropriate mental health treatment and community services; and

WHEREAS, The CIT program provides an immediate response to crisis intervention situations by specially trained law enforcement officers; and

WHEREAS, Many local jails now operate as the largest mental health institutions in their community and CIT programs reduce the number of nonviolent persons with mental illness in local jails as a result of minor offenses; and

WHEREAS, Most of those incarcerated with mental illness also have alcohol and drug problems and are categorized as having "co-occurring disorders"; and

WHEREAS, Such persons are better served through treatment of their mental illness in the community than by being detained in jail, thereby resulting in significant cost savings for both police and jails, while providing treatment that will reduce the likelihood of recidivism; and

WHEREAS, The CIT program promotes good will between law enforcement and members of the community; and

WHEREAS, Not all law enforcement agencies in Kansas have CIT-trained officers; and not all CIT-trained officers are connected to a CIT program that is implemented in partnership with mental health providers: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the Legislature of the State of Kansas recognizes the outstanding leadership of the Crisis Intervention Team programs and CIT as a model of best practice for law enforcement intervention with persons who have a mental illness;

and

Be it further resolved: That the Legislature encourages law enforcement agencies to lead the effort in partnership with community mental health centers and local advocacy organizations representing individuals living with mental illnesses and their family members to establish local and regional CIT programs; and

Be it further resolved: That the Chief Clerk of the House of Representatives shall send an enrolled copy of this resolution to the Kansas Association of Chiefs of Police, the Kansas Sheriffs Association, the Kansas Peace Officers Association, the Kansas Law Enforcement Training Center, and the Secretaries of Social and Rehabilitation Services and the Kansas Department of Corrections.

PERSONAL PRIVILEGE

Remarks by Rep. Mosier:

It has been my honor and privilege to serve the people of the 67th District and the people of Kansas. And it has been my honor and pleasure to serve with each and every one of you!

On your desks, you will find my new address in the Landon Office Building. I look forward to seeing you again when I return to Topeka in March.

Thank you and good-bye.

REPORT ON ENGROSSED BILLS

HB 2273 reported correctly engrossed, January 31, 2012.

On motion of Rep. Siegfried, the House adjourned until 11:00 a.m., Thursday, February 2, 2012.

CHARLENE SWANSON, *Journal Clerk.*

SUSAN W. KANNARR, *Chief Clerk.*

