

Journal of the Senate

THIRTEENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, January 27, 2011, 2:30 p.m.

The Senate was called to order by President Stephen Morris.
The roll was called with thirty-seven senators present.
Senators Donovan and Marshall were excused.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

I'd like to confess a tendency to turn to You only in an emergency:

I work through the day
And do my own thing,
Then at night ask You to bless it.
But I know I was wrong
In not asking You first,
But then I'm too proud to confess it.

I file legislation
And push it real hard--
As for God, I couldn't care less.
Then the whole thing collapses,
And I'm down on my knees
Asking You to clean up the big mess.

Please help me to learn
To *start* with a prayer
And not wait till my plans fall apart.
For up until now
I've specialized in
Hitching the horse to the *back* of the cart!

I pray 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 64, AN ACT concerning banking; allowing the obtaining of fingerprints from certain individuals for certain purposes; amending K.S.A. 9-532, 9-1722 and 9-1801 and K.S.A. 2010 Supp. 9-509 and repealing the existing sections, by Committee on Financial Institutions and Insurance.

SB 65, AN ACT concerning health insurance; pertaining to review of health care decisions; amending K.S.A. 40-22a13, 40-22a14 and 40-22a15 and repealing the existing sections, by Committee on Financial Institutions and Insurance.

SB 66, AN ACT concerning elections and campaign finance; relating to public service advertisements by candidates, by Committee on Ethics and Elections.

SB 67, AN ACT concerning gubernatorial inauguration contributions; amending K.S.A. 25-4186 and repealing the existing section; and also repealing K.S.A. 25-4188, by Committee on Ethics and Elections.

SB 68, AN ACT creating the Kansas healthy youth act, by Committee on Education.

SB 69, AN ACT concerning school districts; relating to bullying and dating violence; amending K.S.A. 2010 Supp. 72-8256 and repealing the existing section, by Committee on Education.

SB 70, AN ACT concerning school districts; relating to the school district capital improvements fund; amending K.S.A. 2010 Supp. 75-2319 and repealing the existing section, by Committee on Ways and Means.

SB 71, AN ACT concerning insurance agents and producers; relating to continuing education requirements; amending K.S.A. 2010 Supp. 40-4903 and repealing the existing section, by Committee on Financial Institutions and Insurance.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Assessment and Taxation: **SB 59**, **SB 61**.

Judiciary: **SB 60**, **SB 62**, **SB 63**.

MESSAGES FROM THE GOVERNOR

January 27, 2011

Message to the Senate of the State of Kansas:

Enclosed herewith is Executive Reorganization Order No. 36 and the Governor's Message for that ERO for your information.

Governor's Message
Executive Reorganization Order No. 36
By Governor Sam Brownback

January 27, 2011

Pursuant to Article 1, Section 6(b) of the Constitution of the State of Kansas, I am transmitting this day Executive Reorganization Order No. 36 to both houses of the Kansas Legislature. Simultaneously with this Order, I am transmitting the accompanying Governor's Message.

In these difficult economic times, state government must be organized to market our state's assets to national and international visitors more effectively. The purpose of this Executive Reorganization Order is to:

- 1) Rename the Department of Wildlife and Parks as established by K.S.A. 32-801 et seq. as the Department of Wildlife, Parks and Tourism.
- 2) Abolish the Assistant Secretary of Operations position as established by K.S.A. 32-802, and in its place establish an Assistant Secretary of Wildlife, Fisheries, and Boating and an Assistant Secretary of Parks and Tourism.
- 3) Transfer the powers, functions, and duties of the Division of Travel and Tourism Development at the Department of Commerce as established by K.S.A. 74-5032 and K.S.A. 74-5032(a) and amendments thereto, to the Department of Wildlife, Parks and Tourism.

As I said in my State-of-the State speech, as we set the stage for economic growth in Kansas we must take greater advantage of tourism opportunities in areas such as the Flint Hills and increase hunting opportunities that already draws millions of dollars to our state year after year. The new structure will allow state government to focus our resources on this important goal more effectively and encourage innovative partnerships between the private and public sectors that can improve our state park system and encourage more visitors to discover the treasures of Kansas. I look forward to working with the Legislature and my fellow Kansans on achieving these important goals in the months and years to come.

Sam Brownback
Governor

EXECUTIVE REORGANIZATION ORDER NO. 36

By Governor Sam Brownback

Transmitted January 27, 2011

Section 1. (a) The Kansas department of wildlife and parks as established by K.S.A. 32-801 et seq. is hereby renamed the Kansas department of wildlife, parks and tourism and the secretary of wildlife and parks is hereby renamed the secretary of wildlife, parks and tourism.

(b) Except as otherwise provided by this order, the Kansas department of wildlife, parks and tourism and the secretary of wildlife, parks and tourism shall be the successor in every way to the powers, duties and functions of the Kansas department of wildlife and parks and the secretary of wildlife and parks in which the same were vested prior to the effective date of this order. Every act performed in the exercise of such powers, duties and functions by or under the authority of the Kansas department of wildlife, parks and tourism or the secretary of wildlife, parks and tourism shall be deemed to have the same force and effect as if performed by the Kansas department of wildlife and parks or the secretary of wildlife and parks in which such powers, duties and functions were vested prior to the effective date of this order.

(c) Whenever the Kansas department of wildlife and parks, or words of like effect, are referred to or designated by a statute, contract or other document, and such reference or designation is in regard to any function, power or duty of the Kansas department of wildlife and parks, such reference or designation shall be deemed to apply to the Kansas department of wildlife, parks and tourism.

(d) Whenever the secretary of wildlife and parks, or words of like effect, are referred to or designated by a statute, contract or other document, and such reference or designation is in regard to any function, power or duty of the secretary of wildlife and parks, such reference or designation shall be deemed to apply to the secretary of wildlife, parks and tourism.

(e) All rules and regulations, orders and directives of the secretary of wildlife and parks that are in effect on the effective date of this order shall continue to be effective and shall be deemed to be rules and regulations, orders and directives of the secretary of wildlife, parks and tourism until revised, amended, revoked or nullified pursuant to law.

Sec. 2. (a) The secretary of wildlife, parks and tourism shall appoint an assistant secretary for wildlife, fisheries and boating and an assistant secretary for parks and tourism. The assistant secretaries shall serve at the pleasure of the secretary of wildlife, parks and tourism. The assistant secretaries shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of wildlife, parks and tourism with the approval of the governor. The assistant secretaries shall have such powers, duties and functions as are assigned to them by the secretary or are prescribed by law. The assistant secretaries shall act for and exercise the powers of the secretary of wildlife, parks and tourism to the extent authority to do so is delegated by the secretary of wildlife, parks and tourism.

(b) The position of assistant secretary for operations as established by K.S.A. 32-802 is hereby abolished.

Sec. 3. (a) There is hereby established, within the Kansas department of wildlife, parks and tourism, the division of tourism. The head of the division of tourism shall be the director of tourism, who shall be appointed by and serve at the pleasure of the secretary of wildlife, parks and tourism. The director of tourism shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of wildlife, parks and tourism.

(b) (1) The director of tourism shall appoint, in accordance with the provisions of the Kansas civil service act, such employees as may be needed, in the judgment of the director, to carry out the powers and duties of the division of tourism.

(2) All officers and employees of the division of tourism shall act for and exercise the powers of the director of tourism to the extent that authority to do so is delegated by the director. Subject to the provisions of this order, the director of tourism may organize the division of tourism in the manner the director of tourism deems most efficient.

Sec. 4. (a) The division of travel and tourism development of the department of commerce and the office of the director of travel and tourism development of the department of commerce that were created by K.S.A. 74-5032, and amendments thereto, are hereby abolished.

(b) Except as otherwise provided by this order, all powers, duties and functions of the division of travel and tourism development and the director of travel and tourism development under K.S.A. 74-5032 and 74-5032a, and amendments thereto, are hereby transferred to and imposed upon the division of tourism and the director of tourism of the Kansas department of wildlife, parks and tourism.

Sec. 5. (a) Except as otherwise provided by this order, the division of tourism and the director of tourism of the Kansas department of wildlife, parks and tourism shall be the successor in every way to the powers, duties and functions of the division of travel and tourism development and the director of travel and tourism development of the department of commerce in which the same were vested prior to the effective date of this order and that are transferred pursuant to section 3 of this order. Every act performed in the exercise of such transferred powers, duties and functions by or under the authority of the division of tourism and the director of tourism of the Kansas department of wildlife, parks and tourism shall be deemed to have the same force and effect as if performed by the division of travel and tourism development and the director of travel and tourism development of the department of commerce in which such powers, duties and functions were vested prior to the effective date of this order.

(b) Except as otherwise provided by this order, whenever the division of travel and tourism development of the department of commerce, or words of like effect, is referred to or designated by a statute, contract or other document, and such reference or designation is in regard to any function, power or duty of the division of travel and tourism development of the department of commerce, such reference or designation shall be deemed to apply to the division of tourism of the Kansas department of wildlife, parks and tourism.

(c) Except as otherwise provided by this order, whenever the director of travel and tourism development of the department of commerce, or words of like effect, are referred to or designated by a statute, contract, or other document, and such reference or designation is in regard to any function, power or duty of the director of travel and tourism development of the department of commerce, such reference or designation shall be deemed to

apply to the director of tourism of the Kansas department of wildlife, parks and tourism.

(d) All rules and regulations, orders and directives of the secretary of commerce, that are in effect on the effective date of this order and that relate to any function, power or duty of the director of travel and tourism development of the department of commerce, shall continue to be effective and shall be deemed to be rules and regulations, orders and directives of the secretary of wildlife, parks and tourism until revised, amended, revoked or nullified pursuant to law. All orders and directives of the division of travel and tourism development or the director of travel and tourism development of the department of commerce, that are in effect on the effective date of this order and that relate to any function, power or duty of the division of travel and tourism development or the director of travel and tourism development of the department of commerce, shall continue to be effective and shall be deemed to be orders and directives of the division of tourism or the director of tourism of the Kansas department of wildlife, parks and tourism until revised, amended, revoked or nullified pursuant to law.

Sec. 6. (a) The balances of all funds or accounts thereof appropriated or reapportioned for the department of commerce relating to the powers, duties and functions transferred by this order are hereby transferred within the state treasury to the Kansas department of wildlife, parks and tourism and shall be used only for the purpose for which the appropriation was originally made.

(b) Liability for all accrued compensation or salaries of officers and employees who are transferred to the division of tourism of the Kansas department of wildlife, parks and tourism under this order shall be assumed and paid by the Kansas department of wildlife, parks and tourism.

Sec. 7. (a) When any conflict arises as to the disposition of any property, power, duty or function or the unexpended balance of any appropriation as a result of any abolition or transfer made by or under the authority of this order, such conflict shall be resolved by the governor, whose decision shall be final.

(b) The Kansas department of wildlife, parks and tourism shall succeed to all property, property rights and records which were used for or pertain to the performance of powers, duties and functions transferred to the division of tourism of the Kansas department of wildlife, parks and tourism. Any conflict as to the proper disposition of property, personnel or records arising under this order shall be determined by the governor, whose decision shall be final.

Sec. 8. (a) No suit, action or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency or program mentioned in this order, or by or against any officer of the state in such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this order. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(b) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this order.

Sec. 9. (a) All officers and employees of the department of commerce who, immediately prior to the effective date of this order, are engaged in the exercise and performance of the powers, duties and functions transferred by this order, as well as all officers and employees of the department of commerce who are determined by the secretary of wildlife, parks and tourism to be engaged in providing administrative, technical or other support services that are essential to the exercise and performance of the powers, duties and functions transferred by this order, are hereby transferred to the division of tourism of the Kansas department of wildlife, parks and tourism. All classified officers and employees so transferred shall retain their status as classified employees.

(b) Officers and employees of the department of commerce transferred by this order shall retain all retirement benefits and leave balances and rights which had accrued or vested prior to the date of transfer. The service of each such officer or employee so transferred shall be deemed to have been continuous. Any subsequent transfers, layoffs or abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Nothing in this order shall affect the classified status of any transferred person employed by the Kansas health policy authority prior to the date of transfer.

(c) Notwithstanding the effective date of this order, the provisions of this order prescribing the transfer of officers and employees from the department of commerce to the division of tourism of the Kansas department of wildlife, parks and tourism established by this order, the date of transfer of each such officer or employee shall commence at the start of a payroll period.

Sec. 10. Except as otherwise provided by this order, all of the provisions of this order shall take effect and have the force of general law on July 1, 2011, unless disapproved by either house of the Kansas legislature as provided by subsection (c) of section 6 of article 1 of the constitution of Kansas, and unless so disapproved, this order is to be published as and with the acts of the legislature and the statutes of this state.

DONE AT the Chase County
Courthouse in Cottonwood
Falls Under the Great Seal
of the State of Kansas this
26th day of January 2011.

BY THE GOVERNOR
SAM BROWNBECK

KRIS W. KOBACH
SECRETARY OF STATE

SECRETARY
STATE

MARY DIANE MINEAR
ASSISTANT
OF

January 26, 2011

To the Senate of the State of Kansas:

Submitted herewith for confirmation by the Senate are appointments made by me as the Governor of the State of Kansas, pursuant to law.

Sam Brownback,
Governor

Secretary, Department of Transportation, Deb Miller (D) Topeka, pursuant to the authority vested in me by KSA 75-5001, effective upon the date of confirmation by the Senate, to serve at the pleasure of the Governor.

Secretary, Department of Aging, Shawn Sullivan (R) Newton, pursuant to the authority vested in me by KSA 75-5901 effective upon the date of confirmation by the Senate, to serve at the pleasure of the Governor.

CONFIRMATION OF APPOINTMENTS

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

Senator Emler moved the following appointments be confirmed as recommended by the Standing Senate Committees:

By the Governor:

On the appointment to the:

Kansas Lottery Commission:

Franklin Diehl, Member, term expires March 15, 2012.

On roll call, the vote was: Yeas 37, Nays 0, Present and Passing 0, Absent or Not Voting 2.

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Donovan, Marshall.

The appointment was confirmed.

By the Governor:

On the appointment to the:

Kansas Human Rights Commission:

Jerome Williams, Member, term expires January 15, 2013.

On roll call, the vote was: Yeas 37, Nays 0, Present and Passing 0, Absent or Not Voting 2.

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Donovan, Marshall.

The appointment was confirmed.

By the Governor:

On the appointment to the:

Kansas Technology Enterprise Corporation:

Kyle Elliott, Member, term expires January 15, 2013.

On roll call, the vote was: Yeas 37, Nays 0, Present and Passing 0, Absent or Not Voting 2.

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Donovan, Marshall.

The appointment was confirmed.

By the Governor:

On the appointment to the:

Adjutant General:

Lee Tafanelli, serves at the pleasure of the Governor.

On roll call, the vote was: Yeas 37, Nays 0, Present and Passing 0, Absent or Not Voting 2.

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Donovan, Marshall.

The appointment was confirmed.

By the Governor:

On the appointment to the:

Department of Revenue:

Nick Jordan, Secretary, serves at the pleasure of the Governor.

On roll call, the vote was: Yeas 37, Nays 0, Present and Passing 0, Absent or Not Voting 2.

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Donovan, Marshall.
The appointment was confirmed.

REPORTS OF STANDING COMMITTEES

Committee on **Commerce** begs leave to submit the following report:

The following appointments were referred to and considered by the committee and your committee recommends that the Senate approve and consent to such appointments:

By the Governor:

Secretary of Labor: 75-5701

Karin Brownlee, serves at the pleasure of the Governor.

Department of Commerce, Secretary: K.S.A. 74-5002a

Pat George, serves at the pleasure of the Governor.

Committee on **Federal and State Affairs** recommends **SB 26** be passed.

Also, **SB 25** be amended on page 2, in line 20, before "on" by inserting "either"; also in line 20, by striking the comma and inserting "or"; in line 21, by striking "or on a temporary basis as set forth in subsection (e)"; in line 29, by striking "license" and inserting "permit"; in line 30, by striking "license" and inserting "permit"; in line 31, by striking "unlicensed" and inserting "unpermitted"; in line 33, by striking "license" and inserting "permit"; in line 34, by striking "license" and inserting "permit"; in line 35, by striking "license" and inserting "permit"; also in line 35, by striking "a period of"; in line 36, by striking "time not to exceed three consecutive days" and inserting "the duration of the special event"; in line 37, by striking "license" and inserting "permit"; in line 38, by striking "licenses" and inserting "permits"; in line 40, by striking "license" and inserting "permit"; by striking all in lines 42 and 43;

On page 3, by striking all in lines 1 through 5 and inserting "(f) A special event retailers' permit holder shall not be subject to the provisions of the beer and cereal malt beverage keg registration act, K.S.A. 41-2901 et seq., and amendments thereto."; and the bill be passed as amended.

Committee on Organization, Calendar and Rules recommends HCR 5003 be amended on page 8, in line 10, by striking the first "the" and inserting "either"; in line 11, by striking "18" and inserting "23"; in line 12, by striking "16" and inserting "21"; and the concurrent resolution be adopted as amended.

REPORT ON ENROLLED BILLS

SR 1809 reported correctly enrolled, properly signed and presented to the Secretary of the Senate January 27, 2011.

On motion of Senator Emler, the Senate adjourned until 8:00 a.m., Friday, January 28, 2011.

HELEN MORELAND, ROSE MARIE GLATT, SHIRLEY LAMOTT, *Journal Clerks.*

PAT SAVILLE, *Secretary of the Senate.*