

# Journal of the Senate

SIXTY-FIRST DAY

---

SENATE CHAMBER, TOPEKA, KANSAS  
Thursday, May 3, 2012, 10:00 a.m.

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

Heavenly Father,

When the pressure's on and tempers short,  
We tend to turn to You,  
And beseech Your power to employ  
To pull our measures through.

But every time this happens  
We seem to hear You say,  
"You ought to know by now  
That I don't work that way."

So remind us that your power  
Must never be abused;  
That You're our God to worship,  
Not one who can be used.

But there is a prayer that we should pray,  
Whether we've lost or won.  
Help us to pray sincerely,  
"Lord, Thy will be done!"

I pray in the name of Jesus Christ, AMEN

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

## INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Faust-Goudeau, Abrams, Brungardt, Emler, Francisco, Haley, Hensley, Holland, Kelly, Kelsey, Kultala, Longbine, Love, Masterson, McGinn, Merrick, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, A. Schmidt, V. Schmidt, Taddiken, Teichman, Umbarger, Vratil and Wagle introduced the following Senate resolution,

which was read:

SENATE RESOLUTION No. **1870**—

A RESOLUTION congratulating and commending the Kansas Highway Patrol on its 75 years of service to the citizens of Kansas.

WHEREAS, In 1933, the Kansas Legislature, Governor Alfred Landon and Highway Department Attorney Wint Smith acted to halt the rampant bank robberies and crime sprees of the 1920s and 1930s. They created a force of ten motor vehicle inspectors, the forerunners of Kansas troopers. The Kansas Legislature created the Kansas Highway Patrol in 1937, staffed with 45 patrolmen; and

WHEREAS, The duties, powers and authority of the Kansas Highway Patrol are still largely unchanged from this early law concerning the enforcement of traffic and drivers' license laws promoting safety and protecting life upon the highways of Kansas; and

WHEREAS, In 1945, legislation was passed to provide the Kansas Highway Patrol with two-way state radio communications; and

WHEREAS, In the 1960s, each trooper was assigned a patrol car to improve coverage of Kansas roadways and provided access to the Law Enforcement Teletype System and National Crime Information Center, which improved the Kansas Highway Patrol's communications. The Kansas Highway Patrol began the use of aircraft in its enforcement program in 1963. The plane was used to detect violators from the air and report them to ground units for action; and

WHEREAS, The first female troopers joined the Kansas Highway Patrol in 1981. Today, the agency actively recruits both women and men to be troopers as well as to fill other uniformed and civilian positions; and

WHEREAS, The Kansas Highway Patrol is vested with the power and authority of peace, police and law enforcement officers anywhere in the state irrespective of county lines; and

WHEREAS, The quality and sanctity of community life are cherished values, worthy of safeguarding. The Kansas Highway Patrol has preserved and protected such values with unwavering courage and dedication in the daily performance of their duties; and

WHEREAS, The Kansas Highway Patrol's history is replete with commendations for innovation, expertise in criminal investigations, traffic enforcement and accommodation to continuing technological advances in the law enforcement industry. Members of the Kansas Highway Patrol have served the citizens of Kansas with great distinction and honor, exhibiting unparalleled professionalism and excellence for the past 75 years; and

WHEREAS, Members of the Kansas Highway Patrol have faced extremely dangerous situations, doing so with bravery, while protecting themselves and others. The extensive training, experience and strong will of the Kansas Highway Patrol has enabled the agency to respond to major accidents and natural disasters occurring throughout the state: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That we congratulate and commend the Kansas Highway Patrol for its 75 years of service, protection and dedication to the citizens of the state of Kansas. Kansas citizens have come to rely on these valiant law enforcement officers in times of civil disorder or personal distress and their trust has been well founded. We are indeed fortunate and grateful for the

contributions of the members of the Kansas Highway Patrol to the people of this state; and

*Be it further resolved:* That we pay tribute to the Kansas Highway Patrol for 75 years of selfless dedication, devotion and commitment of the highest caliber in providing service, public safety and law enforcement to the residents and visitors of the great state of Kansas; and

*Be it further resolved:* That the Secretary of the Senate shall send 18 enrolled copies On emergency motion of Senator Faust-Goudeau **SR 1870** was adopted unanimously. Senator Faust-Goudeau congratulated the Kansas Highway Patrol on its 75 years of service to the citizens of Kansas. The Patrolmen and women in attendance were introduced as follows: Colonel Ernest Garcia, Lieutenant Colonel Alan Stoecklein, Major Mark Bruce, Captain Dennis Gassman, Captain Jimmie Atkinson, Captain Scott Harrington, Lieutenant Joe Vajgrt-Been, Lieutenant David Bogina, Lieutenant Harold Tillman, Lieutenant Allan Lytton, Lieutenant Josh Kellerman, Lieutenant Eric Hatcher, Sergeant Terry Golightley, Motor Carrier Inspector Sergeant Tony Stewart, Master Trooper Wayne Faulkner, Technical Trooper Robyn Goss, Technical Trooper Adam Winters, Trooper Sean Hankins, Public Service Administrator April McCollum, Media Production Supervisor & Highway Employee Will Downing and Don Cackler, Retired Lieutenant, now the Senate security officer. The Senate acknowledged the Highway Patrol with a standing ovation.

On motion of Senator Emler, the Senate recessed until 11:00 a.m.

---

The Senate met pursuant to recess with Vice President John Vratil in the chair.

#### MESSAGE FROM THE HOUSE

The House adopts the Conference Committee report on **SB 14**.

The House adopts the Conference Committee report on **House Substitute for Substitute SB 148**.

The motion to concur in Senate amendments to **Senate Substitute for HB 2371** failed.

#### ORIGINAL MOTION

Senator Emler moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bills: **SB 14; H Sub for Sub SB 148; SB 262; S Sub for HB 2313, S Sub for HB 2596**.

#### CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 14** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill as printed with House Committee of the Whole amendments, as follows:

On page 1, by striking all in lines 7 through 34;

By striking all on pages 2 through 5 and inserting:

"Section 1. K.S.A. 2011 Supp. 65-180, as amended by section 39 of 2012 Substitute for Senate Bill No. 397, is hereby amended to read as follows: 65-180. The secretary of health and environment shall:

(a) Institute and carry on an intensive educational program among physicians, hospitals, public health nurses and the public concerning congenital hypothyroidism, galactosemia, phenylketonuria and other genetic diseases detectable with the same specimen. This educational program shall include information about the nature of such conditions and examinations for the detection thereof in early infancy in order that measures may be taken to prevent intellectual disability or morbidity resulting from such conditions.

(b) Provide recognized screening tests for phenylketonuria, galactosemia, hypothyroidism and such other diseases as may be appropriately detected with the same specimen. The initial laboratory screening tests for these diseases shall be performed by the department of health and environment or its designee for all infants born in the state. Such services shall be performed without charge.

(c) Provide a follow-up program by providing test results and other information to identified physicians; locate infants with abnormal newborn screening test results; with parental consent, monitor infants to assure appropriate testing to either confirm or not confirm the disease suggested by the screening test results; with parental consent, monitor therapy and treatment for infants with confirmed diagnosis of congenital hypothyroidism, galactosemia, phenylketonuria or other genetic diseases being screened under this statute; and establish ongoing education and support activities for individuals with confirmed diagnosis of congenital hypothyroidism, galactosemia, phenylketonuria and other genetic diseases being screened under this statute and for the families of such individuals.

(d) Maintain a registry of cases including information of importance for the purpose of follow-up services to prevent intellectual disability or morbidity.

(e) Provide, within the limits of appropriations available therefor, the necessary treatment product for diagnosed cases for as long as medically indicated, when the product is not available through other state agencies. In addition to diagnosed cases under this section, diagnosed cases of maple syrup urine disease shall be included as a diagnosed case under this subsection. Where the applicable income of the person or persons who have legal responsibility for the diagnosed individual meets medicaid eligibility, such individuals' needs shall be covered under the medicaid state plan. Where the applicable income of the person or persons who have legal responsibility for the diagnosed individual is not medicaid eligible, but is below 300% of the federal poverty level established under the most recent poverty guidelines issued by the United States department of health and human services, the department of health and environment shall provide reimbursement of between 50% to 100% of the product cost in accordance with rules and regulations adopted by the secretary of health and environment. Where the applicable income of the person or persons who have legal responsibility for the diagnosed individual exceeds 300% of the federal poverty level established under the most recent poverty guidelines issued by the United States department of health and human services, the department of health and environment shall provide reimbursement of an amount not to exceed 50% of the product cost in accordance with rules and regulations adopted by the secretary of health and

environment.

(f) Provide state assistance to an applicant pursuant to subsection (e) only after it has been shown that the applicant has exhausted all benefits from private third-party payers, medicare, medicaid and other government assistance programs and after consideration of the applicant's income and assets. The secretary of health and environment shall adopt rules and regulations establishing standards for determining eligibility for state assistance under this section.

(g) (1) Except for treatment products provided under subsection (e), if the medically necessary food treatment product for diagnosed cases must be purchased, the purchaser shall be reimbursed by the department of health and environment for costs incurred up to \$1,500 per year per diagnosed child age 18 or younger at 100% of the product cost upon submission of a receipt of purchase identifying the company from which the product was purchased. For a purchaser to be eligible for reimbursement under this subsection, the applicable income of the person or persons who have legal responsibility for the diagnosed child shall not exceed 300% of the poverty level established under the most recent poverty guidelines issued by the federal department of health and human services.

(2) As an option to reimbursement authorized under subsection (g)(1), the department of health and environment may purchase food treatment products for distribution to diagnosed children in an amount not to exceed \$1,500 per year per diagnosed child age 18 or younger. For a diagnosed child to be eligible for the distribution of food treatment products under this subsection, the applicable income of the person or persons who have legal responsibility for the diagnosed child shall not exceed 300% of the poverty level established under the most recent poverty guidelines issued by the federal department of health and human services.

(3) In addition to diagnosed cases under this section, diagnosed cases of maple syrup urine disease shall be included as a diagnosed case under this subsection ~~(g)~~.

(h) The department of health and environment shall continue to receive orders for both necessary treatment products and necessary food treatment products, purchase such products, and shall deliver the products to an address prescribed by the diagnosed individual. The department of health and environment shall bill the person or persons who have legal responsibility for the diagnosed patient for a pro-rata share of the total costs, in accordance with the rules and regulations adopted pursuant to this section.

(i) ~~Not later than July 1, 2008,~~ the secretary of health and environment shall adopt rules and regulations as needed to require, to the extent of available funding, newborn screening tests to screen for treatable disorders listed in the core uniform panel of newborn screening conditions recommended in the 2005 report by the American college of medical genetics entitled "Newborn Screening: Toward a Uniform Screening Panel and System" or another report determined by the department of health and environment to provide more appropriate newborn screening guidelines to protect the health and welfare of newborns for treatable disorders.

(j) In performing the duties under subsection (i), the secretary of health and environment shall appoint an advisory council to advise the department of health and environment on implementation of subsection (i).

(k) The department of health and environment shall periodically review the newborn screening program to determine the efficacy and cost effectiveness of the program and determine whether adjustments to the program are necessary to protect the

health and welfare of newborns and to maximize the number of newborn screenings that may be conducted with the funding available for the screening program.

(1) There is hereby established in the state treasury the Kansas newborn screening fund which shall be administered by the secretary of health and environment. All expenditures from the fund shall be for the newborn screening program. All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of health and environment or the secretary's designee. Each month, the director of accounts and reports shall determine the amount credited to the state general fund pursuant to K.S.A. 40-3213, and amendments thereto, and shall transfer the portion of such amount that is necessary to fund the newborn screening program for the preceding month as certified by the secretary of health and environment or the secretary's designee, to the newborn screening fund, except that such amount shall not exceed the amount to be credited to the state general fund pursuant to K.S.A. 40-3213, and amendments thereto.

Sec. 2. K.S.A. 2011 Supp. 65-180, as amended by section 39 of 2012 Substitute for Senate Bill No. 397, is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.":

On page 1, in the title, by striking all in lines 1 through 4 and inserting:

"AN ACT concerning the department of health and environment; relating to education and screening for congenital hypothyroidism, galactosemia, phenylketonuria and other genetic diseases and disorders; creating the Kansas newborn screening fund; amending K.S.A. 2011 65-180, as amended by section 39 of 2012 Substitute for Senate Bill No. 397, and repealing the existing section.";

And your committee on conference recommends the adoption of this report.

BRENDA LANDWEHR

OWEN DONOHOE

GERALD FLAHARTY

*Conferees on part of House*

RUTH TEICHMAN

TY MASTERSON

A. SCHMIDT

*Conferees on part of Senate*

Senator Teichman moved the Senate adopt the Conference Committee Report on **SB 14**.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

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

The Conference Committee Report was adopted.

**CONFERENCE COMMITTEE REPORT**

Senator Taddiken moved the Senate adopt the conference committee report on **H Sub for Sub SB 148**.

Senator Bruce offered a substitute motion to not adopt the conference committee report on **H Sub for Sub SB 148** and a new conference committee be appointed. The motion carried and Vice President Vratil appointed Senators Taddiken, Teichman and Francisco as second conferees for the Senate.

**CONFERENCE COMMITTEE REPORT**

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 262** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill as printed with House Committee amendments, as follows:

On page 1, in line 8, by striking "preference" and inserting "substantial consideration"; following line 10, by inserting "Such evaluation of custody, visitation or residency arrangements shall be stated on the record."; in line 26, by striking "preference" and inserting "substantial consideration"; in line 32, by striking "placement" and inserting "finding";

And your committee on conference recommends the adoption of this report.

LANCE KINZER

JOE PATTON

JANICE L. PAULS

*Conferees on part of House*

PETE BRUNGARDT

ROGER P. REITZ

OLTHEA FAUST-GOUDEAU

*Conferees on part of Senate*

Senator Brungardt moved the Senate adopt the Conference Committee Report on **SB 262**.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

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

The Conference Committee Report was adopted.

**CONFERENCE COMMITTEE REPORT**

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **Senate Substitute for HB 2313** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on

conference further agrees to amend the bill as printed as Senate Substitute for HB 2313, as follows:

On page 1, by striking all in lines 5 through 36;

On page 2, by striking all in lines 1 through 43;

On page 3, by striking all in lines 1 through 13 and inserting:

"Section 1. (a) This section shall be known as the transparency in lawsuits protection act and shall be part of and supplemental to the Kansas code of civil procedure.

(b) It is the intent of the legislature that no statute, rule, regulation or other enactment of the state shall create a private right of action unless such right is expressly stated therein.

(c) Any legislation enacted in this state creating a private right of action shall contain express language providing for such a right. Courts of this state shall not construe a statute to imply a private right of action in the absence of such express language.

(d) Nothing in this act shall be construed to prevent the breach of any duty imposed by law from being used as the basis for a cause of action under any theory of recovery otherwise recognized by law, including, but not limited to, theories of recovery under the law of torts or contract.";

On page 1, in the title, in line 1, by striking all after "concerning,;" by striking all in line 2 and inserting "civil procedure; relating to private rights of action; certain restrictions.";

And your committee on conference recommends the adoption of this report.

THOMAS C. OWENS

JEFF KING

DAVID HALEY

*Conferees on part of Senate*

LANCE KINZER

JOE PATTON

JANICE L. PAULS

*Conferees on part of House*

Senator Owens moved the Senate adopt the Conference Committee Report on **S Sub for HB 2313**.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

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

The Conference Committee Report was adopted.

## CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **S Sub for HB 2596** submits the following report:



The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed as Senate Substitute for House Bill No. 2596, as follows:

On page 3, by striking all in lines 21 through 28;

On page 10, in line 41, by striking "(a)";

On page 11, by striking all in lines 7 through 14;

On page 12, in line 24, by striking "(a)"; by striking all in lines 31 through 38;

On page 13, in line 6, by striking "(a)"; by striking all in lines 12 through 19;

On page 16, following line 15, by inserting:

"(4) As used in the Kansas pet animal act, "adequate veterinary medical care" shall not apply to United States department of agriculture licensed animal breeders or animal distributors.";

On page 25, in line 27, after "39." by inserting "On January 1, 2013,";

On page 28, in line 24, by striking "47-1809,"; following line 25, by inserting:

"Sec. 44. On January 1, 2013, K.S.A. 2011 Supp. 47-1809 is hereby repealed.";

And by renumbering the remaining section accordingly;

And your committee on conference recommends the adoption of this report.

MARK TADDIKEN

RUTH TEICHMAN

MARCI FRANCISCO

*Conferees on part of Senate*

L. R. POWELL

DAN KERSCHEN

JERRY D. WILLIAMS

*Conferees on part of House*

Senator Taddiken moved the Senate adopt the Conference Committee Report on **S Sub for HB 2596**.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

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

The Conference Committee Report was adopted.

#### **REPORT ON ENROLLED BILLS**

**SR 1866, SR 1867, SR 1868, SR 1869** reported correctly enrolled, properly signed and presented to the Secretary of the Senate on May 3, 2012.

On motion of Senator Emler, the Senate recessed until 2:00 p.m.

---

The Senate met pursuant to recess with Vice President Vratil in the chair.

#### **MESSAGE FROM THE HOUSE**

The House adopts the Conference Committee report on **HB 2471**.

The House adopts the Conference Committee report on **House Substitute for SB 129**.

The House not adopts the Conference Committee report on **Senate Substitute for HB 2730**, requests a conference and appoints Representatives Powell, Kerschen, and Williams as Second conferees on the part of the House.

#### **ORIGINAL MOTION**

Senator Emler moved that subsection 4(k) of the Joint Rules of the Senate and House of Representative be suspended for the purpose of considering the following bills: **S Sub for S Sub for HB 2249; HB 2324; S Sub for Sub HB 2333**.

#### **COMMITTEE OF THE WHOLE**

On motion of Senator Emler, the Senate resolved itself into Committee of the Whole, for consideration of bills on the calendar under the heading of General Orders with Senator V. Schmidt in the chair.

On motion of Senator V. Schmidt the following report was adopted:

Recommended: Committee report on **S Sub HB 2249** recommending **S Sub for S Sub HB 2249** be adopted, and the substitute bill be passed.

**HB 2324** be amended by the adoption of the committee amendments, and **HB 2324** be passed as amended.

**HB 2729** be amended by the adoption of the committee amendments and further amended by motion of Senator Apple, on page 4, in line 29, by striking "and"; in line 30, before the period by inserting "; and

(3) The fee for a daily permit or annual permit for a motor vehicle registered in Kansas by a resident who is 65 or more years of age or who is a person with a disability and displays a special license plate or placard issued pursuant to K.S.A. 8-1,125, and amendments thereto, shall be an amount equal to 1/2 the fee fixed by the secretary for daily or annual park and recreation motor vehicle permits. A nonresident shall pay the full fee" and **HB 2729** be passed as further amended.

**Sub for HB 2333** be amended by adoption of the committee report recommending a **S Sub for Sub for HB 2333**.

Senator Kelly further amended, on page 29, following line 23, by inserting:

"Sec. 29. K.S.A. 2011 Supp. 74-4918 is hereby amended to read as follows: 74-4918. (1) A member may elect to have such member's retirement benefit paid under one of the options provided in this section in lieu of having it paid in the form stated in K.S.A. 74-4915, and amendments thereto. Such election must be made before the date of actual retirement. A specific person must be designated as joint annuitant at the time of election of the joint and 1/2 to joint annuitant survivor option, the joint and survivor option and the joint and 3/4 to joint annuitant survivor option. ~~Under no circumstances may~~ Except as specifically provided in this subsection, an option elected by a member as provided in this section shall not be changed or canceled nor shall the named joint annuitant be changed after the date of actual retirement of the member. If a retirant is divorced after the retirant's date of actual retirement, and the retirant has named the retirant's ex-spouse as a joint annuitant under subsection (3), the joint annuitant option

may be canceled and the retirant's benefit returned to the maximum amount of such retirant's retirement benefit commencing the first month following the date such cancellation is ordered by the district court of the county where the divorce action was filed. The retirant shall not receive a refund or interest of any amounts already paid to fund the original joint annuitant benefit. The retirant may not name a subsequent joint annuitant once the original joint annuitant option has been cancelled.

(2) The amount of retirement benefit payable under an option shall be based on the age of the member and, if applicable, the age of the joint annuitant, and shall be such amount as to be the actuarial equivalent of the retirement benefit otherwise payable under K.S.A. 74-4915, and amendments thereto, as prescribed in subsection (3). In no case shall the total amount of retirement benefit paid under any option provided in this section be more than 100% of the retirement benefit which would have been otherwise payable if no option had been elected under this section.

(3) The following retirement options, which are subject to the provisions of K.S.A. 74-49, 123, and amendments thereto, are available:

(A) *Joint and 1/2 to joint annuitant survivor.* A reduced retirement benefit is payable to the retirant during the retirant's lifetime in a monthly amount equal to the product of (i) the monthly payment of the retirement benefit otherwise payable under K.S.A. 74-4915, and amendments thereto, and (ii) the percentage equal to 91% minus .4% for each year by which the age of the retirant's joint annuitant is less than the retirant's age, computed to the nearest whole year, or plus .4% for each year by which the age of the retirant's joint annuitant is more than the retirant's age, computed to the nearest whole year, with 1/2 of that monthly amount continued to the retirant's joint annuitant during such joint annuitant's remaining lifetime, if any, after the death of the retirant. In the event that the designated joint annuitant under this option predeceases the retirant, the amount of the retirement benefit otherwise payable to the retirant under this option shall be adjusted automatically to the retirement benefit which the retirant would have received if no option had been elected under this section.

(B) *Joint and survivor.* A reduced retirement benefit is payable to the retirant during the retirant's lifetime in a monthly amount equal to the product of (i) the monthly payment of the retirement benefit otherwise payable under K.S.A. 74-4915, and amendments thereto, and (ii) the percentage equal to 83% minus .6% for each year by which the age of the retirant's joint annuitant is less than the retirant's age, computed to the nearest whole year, or plus .6% for each year by which the age of the retirant's joint annuitant is more than the retirant's age, computed to the nearest whole year, with that amount continued to the joint annuitant during the joint annuitant's remaining lifetime, if any, after the death of the retirant. In the event that the designated joint annuitant under this option predeceases the retirant, the amount of the retirement benefit otherwise payable to the retirant under this option shall be adjusted automatically to the retirement benefit which the retirant would have received if no option had been elected under this section.

(C) *Joint and 3/4 to joint annuitant survivor.* A reduced retirement benefit is payable to the retirant during the retirant's lifetime in a monthly amount equal to the product of (i) the monthly payment of the retirement benefit otherwise payable under K.S.A. 74-4915, and amendments thereto, and (ii) the percentage equal to 87% minus .5% for each year by which the age of the retirant's joint annuitant is less than the retirant's age, computed to the nearest whole year, or plus .5% for each year by which the age of the

retirant's joint annuitant is more than the retirant's age, computed to the nearest whole year, with  $\frac{3}{4}$  of that monthly amount continued to the retirant's joint annuitant during such joint annuitant's remaining lifetime, if any, after the death of the retirant. In the event that the designated joint annuitant under this option predeceases the retirant, the amount of the retirement benefit otherwise payable to the retirant under this option shall be adjusted automatically to the retirement benefit which the retirant would have received if no option had been elected under this section.

(D) *Life with 5 years certain.* A reduced retirement benefit is payable to the retirant during the retirant's lifetime in a monthly amount equal to 98% of the monthly payment of the retirement benefit otherwise payable under K.S.A. 74-4915, and amendments thereto, and if the retirant dies within the five-year certain period, measured from the commencement of retirement benefit payments, such payments shall be continued to the retirant's beneficiary during the balance of the five-year certain period.

(E) *Life with 10 years certain.* A reduced retirement benefit is payable to the retirant during the retirant's lifetime in a monthly amount equal to 95% of the monthly payment of the retirement benefit otherwise payable under K.S.A. 74-4915, and amendments thereto, and if the retirant dies within the ten-year certain period, measured from the commencement of retirement benefit payments, such payments shall be continued to the retirant's beneficiary during the balance of the ten-year certain period.

(F) *Life with 15 years certain.* A reduced retirement benefit is payable to the retirant during the retirant's lifetime in a monthly amount equal to 88% of the monthly payment of the retirement benefit otherwise payable under K.S.A. 74-4915, and amendments thereto, and if the retirant dies within the fifteen-year certain period, measured from the commencement of retirement benefit payments, such payments shall be continued to the retirant's beneficiary during the balance of the fifteen-year certain period.

(G) *Lump sum payment at retirement.* (i) Pursuant to this option, the member must specify a lump sum amount to be paid to the member upon the member's retirement. The lump sum amount will be based on the actuarial present value of the benefit as provided in K.S.A. 74-4915, and amendments thereto. The lump sum amount designated by the member must be in 10% increments and shall not exceed  $\frac{1}{2}$  of the actuarial present value of the benefit provided in K.S.A. 74-4915, and amendments thereto. If the member's spouse elects a lump sum payment as provided in this section pursuant to the provisions of subsection (4), the lump sum payment will be based on the present value of the retirement option selected by the spouse. The lump sum amount designated by the spouse must be in 10% increments and shall not exceed  $\frac{1}{2}$  of the actuarial present value of the option selected in this section.

(ii) Pursuant to this option, the member must elect to have the remaining actuarial present value paid in a monthly amount under the provisions of K.S.A. 74-4915, and amendments thereto, or subsections (3)(A) through (3)(F) of this section.

(iii) In the event that the designated joint annuitant pursuant to subsection (3)(A), (3)(B) or (3)(C) under this option predeceases the retirant, the amount of the retirement benefit otherwise payable to the retirant under this option shall be adjusted automatically to the retirement benefit which the retirant would have received if no option had been elected under this section.

(iv) The provisions of this subsection shall be effective on and after July 1, 2001.

(4) If a member, who is eligible to retire in accordance with the provisions of K.S.A. 74-4914, and amendments thereto, dies without having actually retired, the

member's spouse, if the spouse is the sole beneficiary for the member's accumulated contributions, may elect to receive benefits under one of the options provided in this section in lieu of receiving the member's accumulated contributions.

(5) The benefits of subsection (4) shall be available in the case of death within the first six months after the entry date of the member's participating employer.

(6) On and after May 1, 2004, if a member with 10 or more years of credited service dies before attaining retirement age, the member's spouse, if the spouse is the sole beneficiary for the member's accumulated contributions, may elect to receive benefits under one of the options provided in this section in lieu of receiving the member's accumulated contributions. Payments under one of the options provided in this section to the member's spouse if so elected, shall commence on the date that the member would have been eligible for normal retirement pursuant to subsection (1) of K.S.A. 74-4914, and amendments thereto, or would have been eligible for early retirement pursuant to subsection (4) of K.S.A. 74-4914, and amendments thereto, if such early retirement date occurs earlier.

(7) Benefits payable to a joint annuitant shall accrue from the first day of the month following the death of a member or retirant and, in the case of the joint and  $\frac{1}{2}$  to joint annuitant survivor option, the joint and survivor option and the joint and  $\frac{3}{4}$  to joint annuitant survivor option, shall end on the last day of the month in which the joint annuitant dies.

(8) The provisions of the law in effect on the retirement date of a member under the system shall govern the retirement benefit payable to the retirant and any joint annuitant, except, for retirement benefits payable after July 1, 1993, for retirants who retired prior to July 1, 1982, in the event that the designated joint annuitant under the option provided in subsection (3)(A), (B) or (C), as applicable, predeceased the retirant, the amount of the retirement benefit otherwise payable to the retirant under the option provided in subsection (3)(A), (B) or (C), as applicable, shall be adjusted automatically to the retirement benefit which the retirant would have received if no option had been elected under this section.

(9) Upon the death of a joint annuitant who is receiving a retirement benefit under the provisions of this section, there shall be paid to such joint annuitant's beneficiary an amount equal to the excess, if any, of the accumulated contributions of the retirant over the sum of all retirement benefit payments made to such retirant and such joint annuitant. Such joint annuitant shall designate a beneficiary by filing in the office of the retirement system such designation at the time of death of the retirant. If there is no named beneficiary of such joint annuitant living at the time of death of such joint annuitant, any amount provided for by this section shall be paid to, in order of preference as follows:

- (A) The joint annuitant's surviving spouse;
- (B) the joint annuitant's dependent child or children;
- (C) the joint annuitant's dependent parent or parents;
- (D) the joint annuitant's nondependent child or children;
- (E) the joint annuitant's nondependent parent or parents; or
- (F) the estate of the deceased joint annuitant.";

And by renumbering the remaining sections accordingly;

Also on page 29, in line 25, after "4914d,"; by inserting "74-4918,";

On page 1, in the title, in line 8, before "amending" by inserting "retirement benefit

options;"

in line 9, after "4914d," by inserting "74-4918," and **S Sub for Sub for HB 2333** be passed as further amended.

A motion by Senator King to amend **S Sub for HB 2333** failed and the following amendment was rejected, on page 1 by striking all in lines 14 through 35;

By striking all on pages 2 through 8;

On page 9, by striking all in lines 1 through 32 and inserting the following:

"New Section 1. (a) The provisions of sections 1 through 18, and amendments thereto, shall be known and may be cited as the Kansas public employees retirement system act of 2014.

(b) This act applies to any individual who is:

(1) First hired on and after January 1, 2014, by a participating employer and who would otherwise qualify for membership in the Kansas public employees retirement system, K.S.A. 74-4901 *et seq.*, and amendments thereto; and

(2) any individual:

(A) Who was a member of the Kansas public employees retirement system prior to January 1, 2014, but was not an active or inactive member of the Kansas public employees retirement system on January 1, 2014;

(B) who is hired on or after January 1, 2014, by a participating employer; and

(C) who would otherwise qualify for membership in the Kansas public employees retirement system, K.S.A. 74-4901 *et seq.*, and amendments thereto.

(c) This act does not apply to members of the Kansas police and firemen's retirement system, K.S.A. 74-4951 *et seq.*, and amendments thereto, and the retirement system for judges, K.S.A. 20-2601 *et seq.*, and amendments thereto.

(d) A system member may not simultaneously be a member of the pre-2014 plan and the plan established pursuant to this act. A period of service may not be credited in more than one retirement plan within the system.

(e) The board of trustees of the Kansas public employees retirement system shall administer the provisions of this act in the same manner as the board administers the provisions of K.S.A. 74-4901 *et seq.*, and amendments thereto, except as specifically provided in this act.

(f) Unless specifically provided in this act, the provisions of K.S.A. 74-4901 *et seq.*, and amendments thereto, shall be applicable to this act. In an event that a conflict exists between the provisions of this act and the provisions of K.S.A. 74-4901 *et seq.*, and amendments thereto, the provisions of this act shall control, and to that end, no legal or contractual rights shall inure to the benefit of members or participating employers under this act with regard to the provisions of K.S.A. 74-4901 *et seq.*, and amendments thereto, when the provisions of this act control.

(g) Each participating employer as provided in this act and each employee as defined by this act shall be subject to the provisions of this act as specified in this act and subject to the provisions of K.S.A. 74-4901 *et seq.*, and amendments thereto, as appropriate as to terms, conditions and requirements not specifically covered in this act. The provisions of this act shall not apply to members of the Kansas public employees retirement system as provided in K.S.A. 74-4901 *et seq.*, and 74-49,201 *et seq.*, and amendments thereto, employed by a participating employer prior to January 1, 2014, unless otherwise provided in this act.

(h) The provisions of this act shall be part of and supplemental to the provisions of

K.S.A. 74-4901 *et seq.*, and amendments thereto, subject to the limitations contained in this act.

New Sec. 2. (a) Terms that are used in this act have the meanings set forth for them in K.S.A. 74-4902, and amendments thereto, unless otherwise provided or the context otherwise requires.

(b) As used in this act, unless otherwise provided or the context otherwise requires:

(1) "Act" means the Kansas public employees retirement system act of 2014, section 1 *et seq.*, and amendments thereto;

(2) "active member" means a member who is actively employed by a participating employer;

(3) "403(b) plan" means a retirement plan offered to qualifying public school employees, community college employees and other eligible employees as allowed under section 403(b) of the internal revenue code. The 403(b) plan shall be comprised of tax deferred annuities described in section 403(b) of the internal revenue code, including custodial accounts described in section 403(b)(7) of the internal revenue code;

(4) "employee directed account" means the account established for a member under section 3, and amendments thereto;

(5) "employer annuity account" means the account established for a member under section 3, and amendments thereto;

(6) "member" means an individual who is required by section 1, and amendments thereto, to be a member of the plan. The term also includes any survivor or beneficiary of such member;

(7) "normal retirement age" means the attainment of age 65, except that for security officers, normal retirement age means the attainment of age 55;

(8) "plan" means the plan established within the Kansas public employees retirement system by section 3, and amendments thereto;

(9) "pre-2014 plan" means the plan established pursuant to K.S.A. 74-4901 *et seq.*, and amendments thereto, and K.S.A. 74-49,201 *et seq.*, and amendments thereto; and

(10) "system" means the Kansas public employees retirement system.

New Sec. 3. (a) The board shall establish within the Kansas public employees retirement system a plan in accordance with the provisions of this act. In addition to other options provided under such plan, for qualifying public school employees, community college employees and other eligible employees, the plan shall include all plan options as allowed under section 403(b) of the internal revenue code. For all other employees, the plan must be established as part of the pension plan pursuant to K.S.A. 74-4920, and amendments thereto, for the exclusive benefit of members and their beneficiaries, and as a qualified governmental plan pursuant to sections 401(a), 414(d), and 414(k) of the federal internal revenue code and its implementing regulations. The plan is established in addition to any retirement, pension, deferred compensation or other benefit plan currently administered by the state or a political subdivision thereof. Assets of the plan must be held in the trust for the Kansas public employees retirement system, other than those assets held in the 403(b) plan which may be held in annuities or custodial accounts as provided by section 403(b) of the federal internal revenue code and implementing regulations.

(b) (1) For members who are qualifying public school employees, community college employees and other eligible employees, the board shall establish separate accounts for employee contributions of each member. These separate accounts shall be

administered as a defined contribution plan as provided by section 403(b) of the federal internal revenue code and implementing regulations.

(2) For all other members, the board shall establish separate accounts for the mandatory contributions of each member. These separate accounts shall be administered in the nature of a defined contribution plan as provided by section 414(k) of the federal internal revenue code and implementing regulations.

(3) Accounts described in both subsection (b)(1) and (b)(2) shall be referred to as the employee directed accounts.

(c) The board shall establish for each member an employer annuity account, which shall be credited with employer credits as provided pursuant to section 10, and amendments thereto, and interest credits on those employer contribution credits as determined by the board under section 11, and amendments thereto. The employer annuity account shall be used to determine a lump-sum distribution or an annuity for the member upon retirement as provided in section 13, and amendments thereto.

New Sec. 4. (a) The board has the powers and shall perform the duties regarding the plan as provided in K.S.A. 74-4909, and amendments thereto, as applicable. The board may exercise the powers and shall perform the duties provided in this act.

(b) The board may contract for any aspect of plan administration, subject to subsection (c), and must use a competitive proposal process when contracting for consulting, educational, investment, recordkeeping or other administrative services for the plan.

(c) The board shall administer the plan through a third party administrator/recordkeeper selected by the board based on a competitive proposal process established by such specifications and considerations as are deemed appropriate by the board. The administrator/recordkeeper shall be independent of any of the retirement plan providers or investment providers selected by the board or by any participating employer.

New Sec. 5. (a) For participants in the 403(b) plan, up to the amount allowed by the internal revenue code, each participating employer shall make a mandatory contribution of 6% of an eligible employee's compensation to the 403(b) plan for participants in such plan. Eligible employees for the 403(b) plan may contribute an additional, discretionary contribution through payroll deductions on a pre-tax or after-tax basis. The 403(b) plan shall comply with all applicable provisions of the internal revenue code.

(b) For all other members, up to the amount allowed by the internal revenue code, each active member shall make a mandatory contribution of 6% of the member's compensation to the member's employee directed account in the 401(a) plan. These contributions shall be picked up by the employer via a salary reduction as provided in section 414(h)(2) of the federal internal revenue code. An employer may not pick up these contributions without a corresponding salary reduction as provided in section 414(h)(2) of the federal internal revenue code. A member under this subsection may not make voluntary contributions to the plan. The 401(a) plan shall comply with all applicable provision of the internal revenue code.

(c) A member's employee directed account includes the member's mandatory contributions under this section, and the gains and losses on those contributions. The member's employee directed account is vested from the date the employee becomes a member of the plan.



New Sec. 6. (a) A wide range of investment alternatives shall be established for the employee directed accounts. For all employees, there also shall be offered an investment alternative that is similar to the investment portfolio of the Kansas public employees retirement system.

(b) Each eligible employee in the 403(b) plan shall select one or more investment options for the contributions made on such employee's behalf and may transfer such employee's directed account plan balance among those investments, as allowed under the internal revenue code and the rules, regulations and policies established by the board, from among the section 403(b) annuities and section 403(b)(7) custodial accounts made available under the 403(b) plan:

(1) By the board. The board shall make available section 403(b) options from no less than three annuity or investment providers, reviewed and selected by the board based on a competitive proposal process established by such specifications and considerations as are deemed appropriate by the board; and

(2) by the employee's employer. In addition to the options made available by the board, each participating employer shall use all reasonable efforts to make available to its eligible employees section 403(b) options from no less than three annuity or investment providers, reviewed and selected by the employer based on a competitive proposal process established by such specifications and considerations as are deemed appropriate by the employer. The board shall establish procedures for incorporating these options into the operation and administration of the 403(b) plan. All materials relating to the 403(b) plan that are provided by the board to participating employers or eligible employees, or by a participating employer to its eligible employees, including, but not limited to, summaries of the 403(b) plan and plan marketing materials, shall not favor specific annuity or investment providers or products.

(c) The section 403(b) options selected by the board shall:

(1) Encompass a broad range of investment alternatives, including one or more alternatives that provide asset management, one or more alternatives that provide asset protection, and one or more alternatives that provide income guarantees;

(2) include a low fee or self-service alternative; and

(3) include an independent local financial advisor alternative; and provide eligible employees with a reasonable opportunity to materially affect the potential return on such employee's retirement investment, to choose among diversified investments that in the aggregate minimize the risk of the employee's overall retirement investment, and to achieve a retirement investment portfolio with the varying risk and return characteristics in the aggregate that are normally appropriate for plan participants.

(d) The board shall from time to time review the suitability and management of investment alternatives under the employee directed accounts, including those 403(b) options chosen by the board and may change the alternatives to be offered. The board shall notify affected members of potential changes before any changes become effective, except if the board determines there is a compelling need to change an alternative immediately.

(e) The default option for any member or beneficiary who does not have an effective investment direction shall be the fund that is similar to the investment portfolio of KPERs.

(f) Assets within each employee directed account must be invested as directed by the member within the investment alternatives established by the board, unless the

board determines there is a compelling need to remove assets from an investment alternative. In such a case, the asset will be moved to the default alternative until the member elects another investment alternative.

New Sec. 7. (a) With respect to the employee directed accounts, the board may:

(1) Assess fees on member employee directed accounts to pay the reasonable administrative costs of the accounts, which fees may be reasonable or asset-based fees, or both, as determined by the board;

(2) negotiate with a vendor or vendors for vendor reimbursement of board administrative expenses for the accounts;

(3) assess fees on employers to pay reasonable administrative costs of the accounts; and

(4) assess specific fees on an individual member employee directed account to pay specific expenses attributable to that member.

(b) All fees assessed must be fully disclosed to members and treated as public information.

(c) Costs for the board to secure investment advice, recordkeeping, contract oversight, educational materials for members, performance evaluations and other appropriate information and services are included as part of the administrative expenses of the plan.

New Sec. 8. The board shall establish a rollover account for each member and shall accept the rollover of contributions and the income on those contributions from another eligible retirement plan to the member's rollover account only to the extent allowed under applicable federal law. The board shall establish policies with respect to the rollover accounts as to investments, distributions and other administrative matters.

New Sec. 9. (a) An employer credit shall be made to the member's employer annuity account at the end of each calendar quarter according to the following schedule:

(1) One percent of compensation for each member who has up to one year of service;

(2) one and one-half percent of compensation for each member who has one but less than two years of service;

(3) two percent of compensation for each member who has two but less than three years of service;

(4) two and one-half percent of compensation for each member who has three but less than four years of service;

(5) three percent of compensation for each member who has four but less than five years of service;

(6) three and one-half percent of compensation for each member who has five but less than six years of service;

(7) four percent of compensation for each member who has six but less than seven years of service;

(8) four and one-half percent of compensation for each member who has seven but less than eight years of service; and

(9) five percent of compensation for each member who has eight or more years of service.

(b) An active member's employer shall contribute a percentage of compensation, determined by the board, which must be allocated to the death and long-term disability plan under K.S.A. 74-4927, and amendments thereto.

(c) Any credited service accrued by a member under the provisions of the pre-2014 plan shall be credited for the purpose of computing such member's years of service under this section.

New Sec. 10. (a) A member's employer annuity account is the sum of all employer credits to the account plus the interest credits on the account, which shall be determined at the end of each year. The interest credits shall be determined under section 11, and amendments thereto.

(b) If the member's employer annuity account is not vested upon the member's termination of plan membership, as provided in section 13, and amendments thereto, the employer credits and interest credits are forfeited as provided in section 13, and amendments thereto. If the member's employer annuity account is vested upon the member's termination of plan membership, as provided in section 13, and amendments thereto, but the member dies prior to attaining normal retirement age without a spouse eligible for the employer annuity account under section 13, and amendments thereto, the employer credits and interest credits are forfeited. Forfeitures may not be used to increase a member's account, but instead will be used to pay administrative expenses of the accounts or to reduce employer contributions.

New Sec. 11. At the end of each calendar year, the board shall credit each employer annuity account with a zero percent interest credit. At the end of each calendar year, the board shall also credit each employer annuity account with a supplemental interest credit rate, which will equal the net investment return on the KPERS portfolio, which may be negative or positive, in that particular calendar year. If the member retires in the middle of a calendar year, the board shall credit that member's employer annuity account with a supplemental interest credit rate that equals the net investment return on the KPERS portfolio, which may be negative or positive, for that portion of that calendar year. For the purposes of determining the member's annuity benefit amount pursuant to section 13, and amendments thereto, a member's employer annuity account shall not be less than the total amount of employer credits to the account.

New Sec. 12. (a) Any time after termination of service or death, a member or the member's beneficiary may file a written application with the board and take a distribution of the member's employee directed account from the plan through any combination of the following payout options, each of which is subject to the applicable provisions of the federal internal revenue code and the applicable regulations of the internal revenue service:

- (1) A direct rollover to an eligible retirement plan;
- (2) a lump-sum distribution; or
- (3) an optional form of periodic distribution offered by the board by official action.

(b) The board by official action may specify minimum account balances for purposes of allowing benefit payment options and rollovers in accordance with federal law.

New Sec. 13. (a) A member is vested, but subject to forfeiture, in the member's employer annuity account upon completion of five years of service. A member's benefit is nonforfeitable upon the attainment of normal retirement age and the completion of at least five years of service, whichever is later.

(b) Except as provided in subsection (d), a member who has a nonforfeitable interest in the member's employer annuity account, at any time after termination from service and the attainment of normal retirement age, shall receive an annuity that may

be provided by employer credits and income credits in the employer annuity account, using factors established by the board by official action as of the member's annuity start date, and based on the pension benefits guaranty corporation distress termination interest rates. The normal form of benefit shall be a single life annuity with five-year certain. The member may elect any joint and survivor option described in K.S.A. 74-4918, and amendments thereto.

(c) Except as provided in subsection (d), in the case of an active or inactive member:

- (1) Who is vested in the member's employer annuity account;
- (2) who has 10 or more years of service at death; and
- (3) who dies before attaining normal retirement age, with their spouse at time of death designated as their sole primary beneficiary, the member's surviving spouse on and after the date the member would have attained normal retirement age had the member not died, shall receive an annuity that may be provided by employer credits and income credits in the employer annuity account, using factors established by the board by official action as of the beneficiary's annuity start date and taking into consideration the pension benefit guaranty corporation distress termination interest rates. The normal form of benefit shall be a single life annuity with five-year certain. The beneficiary may elect any joint and survivor option as described in K.S.A. 74-4918, and amendments thereto.

(d) If a member's vested employer annuity account is less than \$1,000 upon separation from service, the account balance shall be mandatorily distributed to the member in accordance with section 401(a)(31)(B) of the federal internal revenue code. If the member does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly, then the board will pay the distribution to the member directly.

New Sec. 14. A member's beneficiary must be determined as provided in the pre-2014 plan regulations. Upon filing a written application with the board after the death of a member, the member's beneficiary is entitled to the member's employee directed account.

New Sec. 15. (a) Members of the retirement system under the Kansas public employees retirement system act of 2014 shall be covered in the death and disability plan in accordance with K.S.A. 74-4927, and amendments thereto, but subject to the provisions of this section.

(b) (1) In the event that a member becomes eligible for and begins receiving a long-term disability benefit under the plan, such member shall be given participating service credit for the entire period of such disability. Such member's employer annuity account shall be credited with the amount of credits and interest prescribed in this act for the entire period of such disability.

(2) The salary upon which credits to such member's employer annuity account are based shall be the employee's salary at the time of disability, which shall be adjusted once each year on January 1, but only after five years of disability, by the lesser of: (A) The percentage increase in the consumer price index for all urban consumers as published by the bureau of labor statistics of the United States department of labor measured in the prior November, minus 1%; or

(B) 4% per annum.

(3) All credits to the employer annuity account shall cease upon the earliest of: (A)

Death; (B) attainment of normal retirement age; or (C) the date the member is no longer entitled to receive disability benefits pursuant to law.

New Sec. 16. The provisions of K.S.A. 74-49,122, 74-49,123 and 74-49,124, and amendments thereto, apply to this act, except the definitions of "actuarial equivalent" and "actuarial computation" are not applicable to this act.

New Sec. 17. On and after January 1, 2014, any benefit earned or accrued by a member of the legislature under the provisions of this act shall be calculated based only upon all compensation received: (a) As *per diem* compensation for service during a regular or special session of the legislature pursuant to subsection (a) of K.S.A. 46-137a, and amendments thereto; (b) as per diem compensation for attendance at in-state or out-of-state meetings pursuant to K.S.A. 75-3212, 75-3215 or 75-3223, and amendments thereto, in the amount prescribed under subsection (a) of K.S.A. 46-137a, and amendments thereto; (c) as additional compensation for legislative officers as provided in K.S.A. 46-137b, and amendments thereto; and (d) as any other additional compensation provided by law, excluding any allowances or reimbursements for any expenses incurred.

New Sec. 18. The provisions of sections 1 through 18, and amendments thereto, shall be effective on and after January 1, 2014."

Upon the showing of five hands a roll call was requested.

On roll call, the vote was: Yeas 20; Nays 20; Present and Passing 0; Absent or Not Voting 0.

Yeas: Abrams, Apple, Bruce, Donovan, Haley, Kelsey, King, Love, Lynn, Marshall, Masterson, Merrick, Olson, Ostmeier, Petersen, Pilcher-Cook, Pyle, Steineger, Taddiken, Wagle.

Nays: Brungardt, Emler, Faust-Goudeau, Francisco, Hensley, Holland, Huntington, Kelly, Kultala, Longbine, McGinn, Morris, Owens, Reitz, A. Schmidt, V. Schmidt, Schodorf, Teichman, Umbarger, Vratil.

The motion failed and the amendment was rejected.

A motion by Senator Masterson to amend **S Sub for HB 2333** failed and the following amendment was rejected: on page 1, in line 18, following "2014," by inserting "and who makes an election as prescribed by section 26, and amendments thereto, or the default election in subsection (b)(2) of section 26, and amendments thereto,";

On page 21, following line 12, by inserting:

"New Sec. 26. (a) An employee first employed by a participating employer on or after January 1, 2014, shall elect to become a member of the plan established pursuant to section 1 *et seq.*, and amendments thereto, or shall select a plan established pursuant to section 27 *et seq.*, and amendments thereto, by making an election within six months from such employee's first day of employment with a participating employer.

(b) (1) Elections made pursuant to this section shall be made on a form and in a manner prescribed by the board.

(2) An employee failing to make an election prescribed by this section shall be a member of the plan established pursuant to section 1 *et seq.*, and amendments thereto.

(3) An election made by a member prescribed by this section, including the default election pursuant to subsection (b)(2), is a onetime irrevocable election.

(c) A member in either plan who becomes inactive after an election prescribed by this section, and who returns to active membership remains in the plan previously

elected.

(d) A member may not simultaneously be a member of the plan established in section 1 *et seq.*, and amendments thereto, and the plan selected in section 27 *et seq.*, and amendments thereto, and shall be a member of one plan or the other. A period of service shall be credited in only one plan or the other.

(e) During the six-month period commencing after the employee's first day of employment in which the employee has to make the election required pursuant to this section, the following provisions are applicable:

(1) Such employee shall participate in the Kansas public employees deferred compensation plan as provided pursuant to K.S.A. 2011 Supp. 74-49b07 *et seq.*, and amendments thereto, except that such employees shall have 6% of such employee's compensation deferred and deducted each payroll period in accordance with the Kansas public employees deferred compensation plan;

(2) the participating employer of any such employee shall contribute 4% of such member's compensation to a qualified government plan pursuant to section 401(a) or 414(d) of the federal internal revenue code and its implementing regulations; and

(3) upon the commencement of the employee's plan after the six-month election period prescribed by this section, all amounts in the employee's deferred compensation plan and the qualified plan prescribed in subsection (e)(2) shall be transferred to the plan that the employee elects pursuant to this act or the default election as prescribed by the board.

(f) Unless the context requires otherwise, terms used in this section shall have the meanings set forth in K.S.A. 74-4902, and amendments thereto.

New Sec. 27. (a) The provisions of sections 27 through 34, and amendments thereto, shall be known and may be cited as the Kansas public employees retirement system defined contribution act, and shall be effective on and after January 1, 2014.

(b) This act applies to any individual who is first employed by a participating employer on or after January 1, 2014, and who makes an election as prescribed by section 26, and amendments thereto.

(c) This act does not apply to members of the Kansas police and firemen's retirement system, K.S.A. 74-4951 *et seq.*, and amendments thereto, and the retirement system for judges, K.S.A. 20-2601 *et seq.*, and amendments thereto, and security officers as provided in K.S.A. 74-4914a, and amendments thereto.

New Sec. 28. Unless the context requires otherwise, terms that are used in this act have the meanings set forth for them in K.S.A. 74-4902, and amendments thereto, and the following definitions apply:

(a) "Act" means the provisions of section 27 *et seq.*, and amendments thereto;

(b) "active DC plan member" means a DC plan member who is actively employed by a participating employer;

(c) "defined benefit plan" means the defined benefit plan for the Kansas public employees retirement system for KPERS;

(d) "DC plan member" means an individual who is required by section 27, and amendments thereto, to be a member of a defined contribution plan. The term also includes any survivor or beneficiary of a DC plan member, who has a retirement account in the defined contribution plan;

(e) "optional retirement program" means the retirement plan established by the state board of regents under K.S.A. 74-4925, and amendments thereto; and

(f) "plan" or "defined contribution plan" means the defined contribution retirement plan chosen by the member pursuant to section 29, and amendments thereto.

New Sec. 29. (a) Upon making the election prescribed by section 26, and amendments thereto, a DC plan member shall be eligible to choose any qualified government plan including, but not limited to, qualified plans, pursuant to sections 414(k), 401(a), 457 or 403(b) of the federal internal revenue code and its implementing regulations.

(b) Upon notification of the employee's choice of DC plan, the board shall transfer all employee and employer contributions pursuant to section 33, and amendments thereto, to the employee's plan.

New Sec. 30. The board has the powers and shall perform the duties regarding the defined contribution plan as provided in K.S.A. 74-4909, and amendments thereto, as applicable. The board may also exercise the powers and shall perform the duties provided in this act.

New Sec. 31. The statutory provisions governing the defined contribution plan are subject to amendment by the legislature. The board has the power to amend the plan document, policies and procedures, consistent with the statutory provisions governing the defined contribution plan at the time of the amendment.

New Sec. 32. The board shall accept the rollover of contributions and the income on those contributions from another eligible retirement plan to the member's rollover account only to the extent allowed under applicable federal law.

New Sec. 33. (a) An active DC plan member shall contribute 6% of compensation to their defined contribution plan. These contributions shall be picked up by the employer via a salary reduction as provided in section 414(h)(2) of the federal internal revenue code.

(b) An active DC plan member's employer shall contribute:

- (1) Four percent of compensation to the employee's defined contribution plan; and
- (2) a percentage of compensation, determined by the board, must be allocated to the death and long-term disability plan under K.S.A. 74-4927, and amendments thereto.

New Sec. 34. (a) For the purposes of providing the "insured death benefit" and "insured disability benefit" as prescribed in K.S.A. 74-4927, and amendments thereto, the term "member" as used in K.S.A. 74-4927, and amendments thereto, shall include those members of the Kansas public employees retirement system's defined contribution plan as defined in section 28, and amendments thereto.

(b) Each participating employer shall pay to the Kansas public employees retirement system in such manner as the board of trustees shall prescribe each payroll period an amount sufficient to pay the employer's contribution to the group insurance reserve as provided in subsection (b)(2) of section 33, and amendments thereto.

(c) Except as otherwise provided, in the event that a DC plan member as defined in section 28, and amendments thereto, becomes eligible for and begins to receive the insured disability benefit prescribed in K.S.A. 74-4927, and amendments thereto, the member's participating employer shall continue to make the contributions on behalf of such individual to the retirement plan as required under subsection (b)(1) of section 33, and amendments thereto, and shall also contribute to the retirement plan an amount equal to the individual's contribution required under subsection (a) of section 33, and amendments thereto, if the DC plan member is permanently and totally disabled as defined in section 72(m) of the federal internal revenue code. Commencing on and after

July 1, 2013, such contributions shall cease at the earlier of: (1) The date that the individual is no longer entitled to an insured disability benefit under K.S.A. 74-4927, and amendments thereto; or (2) the date that is five years after the date the individual becomes eligible for and begins to receive the insured disability benefit prescribed in K.S.A. 74-4927, and amendments thereto. For purposes of applying this subsection, compensation under section 33, and amendments thereto, means the individual's compensation at the time the individual became disabled as defined under the insured disability program prescribed in K.S.A. 74-4927, and amendments thereto.";

And by renumbering sections accordingly;

On page 1, in the title, in line 7, after "compensation;" by inserting "enacting the Kansas public employees retirement system defined contribution act, terms, conditions, requirements, benefits and contributions; new member election;"

Upon the showing of five hands a roll call was requested.

On roll call, the vote was: Yeas 20; Nays 20; Present and Passing 0; Absent or Not Voting 0.

Yeas: Abrams, Apple, Bruce, Donovan, Huntington, Kelsey, King, Love, Lynn, Marshall, Masterson, Merrick, Olson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Steineger, Taddiken, Wagle.

The motion failed and the amendment was rejected.

A motion by Senator King to amend **S Sub for HB 2333** failed and the following amendment was rejected: on page 4, in line 25, by striking "6%" and inserting "5%"; also in line 25, by striking all after "annum"; by striking all in lines 26 and 27; in line 28, by striking all before the period; in line 32, by striking all following the comma; by striking all in lines 33 through 37; in line 38, by striking "board" and inserting "if the funded ratio of the plan established by section 3, and amendments thereto, exceeds 100% on both the funded basis and current value basis of the plan. If the board elects not to provide an additional interest credit when the funded ratio exceeds 100%, then the amount which exceeds 100% shall be used only for the purpose of securing the funded status of the plan established by section 3, and amendments thereto";

On page 5, in line 19, by striking "6%" and inserting "5%"; also in line 19, by striking all after "annum"; by striking all in lines 20 and 21; in line 22, by striking all before the period; in line 26, by striking all following the comma; by striking all in lines 27 through 31; in line 32, by striking "board" and inserting "if the funded ratio of the plan established by section 3, and amendments thereto, exceeds 100% on both the funded basis and current value basis of the plan. If the board elects not to provide an additional interest credit when the funded ratio exceeds 100%, then the amount which exceeds 100% shall be used only for the purpose of securing the funded status of the plan established by section 3, and amendments thereto"

Upon the showing of five hands a roll call was requested.

On roll call, the vote was: Yeas 18; Nays 22; Present and Passing 0; Absent or Not Voting 0.

Yeas: Abrams, Apple, Bruce, Donovan, King, Love, Lynn, Marshall, Masterson, Merrick, Olson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Steineger, Taddiken, Wagle.

Nays: Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, Kultala, Longbine, McGinn, Morris, Owens, Reitz, A. Schmidt, V. Schmidt, Schodorf, Teichman, Umbarger, Vratil.

The motion failed and the amendment was rejected.



**FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS**

On motion of Senator Emler an emergency was declared by a 2/3 constitutional majority, and **S Sub for S Sub for HB 2249; HB 2324; S Sub for Sub HB 2333; HB 2729** were advanced to Final Action and roll call.

**S Sub for S Sub HB 2249**, AN ACT concerning confidentiality of health information; amending K.S.A. 2011 Supp. 65-6828 and repealing the existing section.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

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

The substitute bill passed.

**HB 2324**, AN ACT concerning cigarettes and tobacco products; relating to electronic cigarettes; amending K.S.A. 2011 Supp. 79-3301, 79-3303 and 79-3321 and repealing the existing sections.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

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

The bill passed, as amended.

**S Sub for Sub HB 2333**, AN ACT concerning retirement and pensions; relating to the Kansas public employees retirement system and systems thereunder; enacting the Kansas public employees retirement system act of 2014; providing terms, conditions, requirements, benefits and contributions related thereto; relating to employer and employee contributions; member election; employment after retirement; plan of death and long-term disability benefits; members of legislature, rate of compensation; retirement benefit options; amending K.S.A. 74-4915 and 74-4919 and K.S.A. 2011 Supp. 74-4914d, 74-4918, 74-4920, as amended by section 2 of 2012 House Bill No. 2460, 74-4927, 74-4937, 74-4995, 74-49,205 and 74-49,213 and repealing the existing sections.

On roll call, the vote was: Yeas 32; Nays 8; Present and Passing 0; Absent or Not Voting 0.

Yeas: Abrams, Bruce, Brungardt, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, Kultala, Longbine, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Reitz, A. Schmidt, V. Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil.

Nays: Apple, King, Love, Lynn, Marshall, Pilcher-Cook, Pyle, Wagle.

The substitute bill passed, as amended.

**EXPLANATION OF VOTE**

MR. PRESIDENT: I vote yes on **S Sub for Sub HB 2333**.

In 2011, the Kansas House passed a defined contribution system that would force Kansas taxpayers and public employees to pay \$1.2 billion more in contributions, crippling the defined benefit plan for thousands of current and retired Kansas public employees.

While some legislators may claim that Kansas taxpayers foot the entire bill for what they call “lavish retirements”, they won't tell you that state government funded only 22% of employee retirements in FY 2010.

Or that the average retirement benefit under KPERS is \$1,100 per month. Employee contributions and investment earnings make up the remaining 78% of annual revenues to KPERS used to fund benefits for current and future retirees. That's hardly a lavish retirement.

Instead of raiding the retirement funds of 280,000 Kansans to appease Wall Street and special interests, Kansas should be moving to eliminate the Unfunded Actuarial Liability (UAL).

**S Sub for Sub HB 2333** makes that first step. – ANTHONY HENSLEY

#### EXPLANATION OF VOTE

MR. PRESIDENT: I vote aye on **S Sub for Sub HB 2333** with great reluctance and deep disappointment in the product before us. It is only because I feel compelled to at least take a small step forward in restructuring our public retirement system and to begin addressing our tremendous unfunded liability that I do. By the will of only twenty members, we even refused to give new employees, our constituents, the same choice we are afforded as legislators to opt out and direct our own retirement plan. My hope is that this is only a first step in the right direction. – TY MASTERSON

Senators Abrams, Lynn, Merrick, Petersen and Taddiken request the record to show they concur with the “Explanation of Vote” offered by Senator Masterson on **S Sub for Sub HB 2333**.

#### EXPLANATION OF VOTE

MR. PRESIDENT: I vote in favor of **S Sub for Sub HB 2333**. While this KPERS plan does not fulfill all the necessary changes to address the current system problems, it does provide security to current KPERS employees and provides acceptable modifications to new KPERS employees.

Our state employees rank 48<sup>th</sup> in the nation of pay. This is unacceptable. The retirement system for these underpaid employees is very important to offset their pay situation and an important aspect to retaining them in that employment, and avoiding high costly attrition rates in our state employment force. We must maintain a strong state employee retirement system and ensure the state keeps its commitment. Thank-You, Mr. President. – ALLEN SCHMIDT

**HB 2729**, AN ACT concerning motor vehicles; relating to parks and recreation motor vehicle permits; amending K.S.A. 32-901 and K.S.A. 2011 Supp. 8-134 and repealing the existing sections.

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

Yeas: Abrams, Apple, Bruce, Brungardt, Donovan, Emler, Faust-Goudeau, Francisco,

Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pyle, Reitz, A. Schmidt, V. Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Pilcher-Cook.

The bill passed, as amended.

### REPORTS OF STANDING COMMITTEES

Committee on **Ways and Means** begs leave to submit the following report:

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

By the Governor:

Member, Kansas Bioscience Authority: K.S.A. 74-99b04

Leon H. Borck, to fill a term expiring on March 15, 2016

Committee on **Ways and Means** begs leave to submit the following report:

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

By the Governor:

Member, State Board of Indigents' Defense Services: K.S.A. 22-4519

Andrew D. Wimmer, to fill a term expiring on January 15, 2014

### ORIGINAL MOTION

Senator Emler moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bill: **SB 394**.

### CONSIDERATIONS OF MOTIONS TO CONCUR OR NONCONCUR

Senator Bruce moved the Senate concur in House amendments to **SB 394**.

Citing Rule 26, Senator Owens moved to lay on the table the motion to concur.

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 22; Nays 17; Present and Passing 0; Absent or Not Voting 1.

Yeas: Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, King, Kultala, Longbine, Marshall, McGinn, Morris, Owens, Reitz, A. Schmidt, V. Schmidt, Schodorf, Teichman, Umbarger, Vratil.

Nays: Abrams, Apple, Bruce, Donovan, Kelly, Kelsey, Love, Lynn, Masterson, Merrick, Olson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Taddiken, Wagle.

Absent or Not Voting: Steineger.

The motion carried.

### EXPLANATION OF VOTE

MR. PRESIDENT: Affordable housing is key to the economic vitality of rural Kansas. Nowhere is this more true than communities like Iola that were devastated by the great 2007 flood. The Department of Corrections housing program would provide quality affordable housing in areas (like Iola) where the private sector cannot meet existing demand at prices that local residents can afford. It also provides much needed training and job skills to prisoners in a way that does not compete with private industry. This bill, if adopted, would have killed the Department of Corrections housing program and prevented communities across Kansas from best addressing their affordable housing needs. For that reason, and that reason alone, I voted to table the Motion to Concur on this bill. – JEFF KING

On motion of Senator Emler, the Senate adjourned until 10:00 a.m., Friday, May 4, 2012.

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

PAT SAVILLE, *Secretary of the Senate.*

