

Journal of the Senate

SIXTY-EIGHTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, May 3, 2001—10:00 a.m.

The Senate was called to order by President Dave Kerr.

The roll was called with thirty-nine senators present.

Senator Downey was excused.

Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

It's easy to grow impatient with the system when we find ourselves having to return again and again to square one.

Of course, Lord, everyone knows the quickest and most efficient way to end this session is to designate one person to make all the decisions. That way we could eliminate all the time spent meeting and debating and researching and revising and amending and compromising and conferring and negotiating.

Unfortunately, no one would benefit except the designated dictator. After all, it is true that democracy is still the worst possible form of government except for all the rest.

So help us, O God, to tighten our belts, sharpen our pencils, bite the bullet, take a deep breath, put our nose to the grindstone and grind away until we come up with something the House will pass and the Governor will sign and we can go home with no one completely happy, but everyone real glad we don't live in Cuba, Iraq, Libya, or any number of other places where no one has a voice except the bully in the palace.

I pray in Jesus' Name,

AMEN

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was referred to Committee as indicated:

Elections and Local Government: **SB 367**.

ORIGINAL MOTION

Senator Donovan 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 97**; **HB 2136**, **HB 2296**.

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

Senator Vratil moved the Senate concur in house amendments to **SB 97**.

SB 97, An act concerning the signing of certain documents issued or made by the governor; amending K.S.A. 75-106 and repealing the existing section.

On roll call, the vote was: Yeas 36, Nays 0, Present and Passing 0, Absent or Not Voting 4.

Yeas: Adkins, Allen, Barone, Brownlee, Clark, Corbin, Donovan, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steinger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Barnett, Brungardt, Downey, Haley.

The Senate concurred.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2136**, 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 with Senate Committee amendments, as follows:

On page 1, by striking all in lines 17 through 43;

By striking all on page 2;

On page 3, by striking all in lines 1 through 8, and inserting the following:

"Section 1. K.S.A. 50-632 is hereby amended to read as follows: 50-632. (a) The attorney general or any county or district attorney may bring an action:

(1) To obtain a declaratory judgment that an act or practice violates this act;

(2) to enjoin, or to obtain a restraining order against a supplier who has violated, is violating, or is otherwise likely to violate this act; or

(3) to recover damages on behalf of consumers by reason of violations of this act; and

(4) to recover reasonable expenses and investigation fees.

(b) In lieu of instigating or continuing an action or proceeding, the attorney general may accept a consent judgment with respect to any act or practice declared to be a violation of this act. Such a consent judgment shall provide for the discontinuance by the supplier entering the same of any act or practice declared to be a violation of this act, and it may include a stipulation for the payment by such supplier of reasonable expenses and investigation fees incurred by the attorney general. The consent judgment also may include a stipulation for restitution to be made by such supplier to consumers of money, property or other things received from such consumers in connection with a violation of this act and also may include a stipulation for specific performance. Any consent judgment entered into pursuant to this section shall not be deemed to admit the violation, unless it does so by its terms. Before any consent judgment entered into pursuant to this section shall be effective, it must be approved by the district court and an entry made thereof in the manner required for making an entry of judgment. Once such approval is received, any breach of the conditions of such consent judgment shall be treated as a violation of a court order, and shall be subject to all the penalties provided by law therefor.

(c) In any action brought by the attorney general or the county or district attorney, the court may, without requiring bond of the attorney general or the county or district attorney:

(1) Make such orders or judgments as may be necessary to prevent the use or employment by a supplier of any practices declared to be a violation of this act;

(2) make such orders or judgments as may be necessary to compensate any consumer for damages sustained;

(3) make such orders or judgments as may be necessary to carry out a transaction in accordance with consumers' reasonable expectations;

(4) appoint a master or receiver or order sequestration of ~~assets~~ *property* whenever it shall appear that the supplier threatens or is about to remove, conceal or dispose of property to the damage of consumers to whom restoration would be made under this subsection or whenever it shall appear that the property was derived or is commingled with other property derived from transactions involving violations of the act, the court shall assess the expenses of a master or receiver against the supplier;

(5) revoke any license or certificate authorizing that supplier to engage in business in this state;

(6) issue a temporary restraining order or enjoin any supplier from engaging in business in this state;

(7) award reasonable expenses and investigation fees, civil penalties and costs; and

- (8) grant other appropriate relief.
- (d) *If an order of sequestration is issued pursuant to paragraph (4) of subsection (c):*
- (1) *Application for such order shall be by motion verified by an affidavit setting forth facts in support thereof and the court may hear such motion ex parte;*
- (2) *such order shall operate as a lien on the sequestered property and may contain other provisions as the court deems appropriate;*
- (3) *if such order of sequestration was issued ex parte, such order shall be served upon the supplier whose property is sequestered not later than five days after such order is issued. Service shall be by any manner permitted by the code of civil procedure or by ordinary first class mail to the last known address of the supplier;*
- (4) *a supplier whose property is sequestered may file a motion to dissolve the sequestration, verified by affidavit, putting in issue the sufficiency of the proceedings, the supplier's claim of exemption as to any property which has been sequestered, or the truth of the facts alleged in the affidavit on which the sequestration was ordered. The court shall hold a hearing on the motion within five days after the filing; and*
- (5) *upon a finding that the party which obtained an ex parte order of sequestration knew or should have known that grounds for sequestration did not exist, the court, upon a motion to dissolve, may allow actual damages for the wrongful sequestration.*

Sec. 2. K.S.A. 50-632 is hereby repealed.”;

On page 1, in the title, by striking all in lines 12 through 14 and inserting the following: “AN ACT concerning consumer protection; relating to certain remedies under the consumer protection act; amending K.S.A. 50-632 and repealing the existing section.”;

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

JOHN VRATIL
EDWARD W. PUGH
GRETA GOODWIN
Conferees on part of Senate

MICHAEL O'NEAL
WARD LOYD
JANICE L. PAULS
Conferees on part of House

Senator Vratil moved the Senate adopt the Conference Committee Report on **HB 2136**.

On roll call, the vote was: Yeas 36, Nays 0, Present and Passing 0, Absent or Not Voting 4.

Yeas: Adkins, Allen, Barone, Brownlee, Clark, Corbin, Donovan, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steinger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Barnett, Brungardt, Downey, Haley.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **Senate Sub for HB 2154**, 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 with Senate Committee of the Whole amendments, as follows:

On page 1, by striking all in lines 19 through 43;

By striking all on pages 2 through 8;

On page 9, by striking all in lines 1 through 17; in line 18, by striking “New Sec. 3.” and inserting “Section 1. (a)”; in line 30, after the period by inserting “The local government shall not totally restrict such facilities from placement in such community through planning, zoning, public health and building laws, ordinances, resolutions and regulations. To the extent reasonably possible, such residential facility or day reporting center shall otherwise be subject to applicable planning, zoning, public health and building laws, ordinances, res-

olutions and regulations of the local government. After meeting the requirements provided in this subsection, the secretary of corrections shall have final authority to determine the location of the residential facility or day reporting center.

(b) The secretary of social and rehabilitation services shall provide information to the local government of a community regarding site selection considerations, alternative sites which have been identified and site preferences any time the department of social and rehabilitation services seeks to establish, either directly or indirectly, a new residential alcohol and substance abuse treatment program facility in that community. If the local government objects to the site alternatives identified by the department, the local government shall actively assist the department in identifying a suitable location for the residential alcohol and substance abuse treatment program facility within the community, giving due consideration to the site selection criteria established by the department. In making a final determination regarding the location of the residential alcohol and substance abuse treatment program facility, the secretary shall consider the views of the local government and affected members of the public. The local government shall not totally restrict such facilities from placement in such community through planning, zoning, public health and building laws, ordinances, resolutions and regulations. To the extent reasonably possible, such residential alcohol and substance abuse treatment program facility shall otherwise be subject to applicable planning, zoning, public health and building laws, ordinances, resolutions and regulations of the local government. After meeting the requirements provided in this subsection, the secretary of social and rehabilitation services shall have final authority to determine the location of the residential alcohol and substance abuse treatment program facility.

(c)";

Also on page 9 by striking all in lines 33 through 43;

By striking all on pages 10 through 16;

On page 17, by striking all in lines 1 through 16;

By renumbering "Sec. 8." as "Sec. 2.";

In the title, in line 10, by striking all after "concerning"; by striking all in line 11; in line 12, by striking all before "placement" and inserting "certain state agencies; relating to"; also in line 12, by striking the comma and inserting "in local communities;"; in line 13, by striking all after "ments"; by striking all in lines 14 and 15; in line 16, by striking "sections";

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

JOHN VRATIL
EDWARD W. PUGH
GRETA GOODWIN
Conferees on part of Senate

MICHAEL O'NEAL
WARD LOYD
JANICE L. PAULS
Conferees on part of House

Senator Vratil moved the Senate adopt the Conference Committee Report on **S Sub for HB 2154**.

On roll call, the vote was: Yeas 32, Nays 4, Present and Passing 0, Absent or Not Voting 4.

Yeas: Adkins, Allen, Barone, Clark, Corbin, Donovan, Emler, Feleciano, Gooch, Goodwin, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Brownlee, Gilstrap, O'Connor, Steineger.

Absent or Not Voting: Barnett, Brungardt, Downey, Haley.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2296**, 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 with Senate Committee amendments, as follows:

On page 1, in line 17, before "K.S.A." by inserting "On and after July 1, 2001,";

On page 2, in line 20, before "K.S.A." by inserting "On and after July 1, 2001,";

On page 10, before line 3, by inserting the following:

"Sec. 4. K.S.A. 2000 Supp. 60-2610 is hereby repealed.";

By renumbering remaining sections accordingly;

Also on page 10, in line 3, before "K.S.A." where it appears the first time by inserting "On and after July 1, 2001,"; also in line 3, by striking "and" where it appears for the second time; in line 4, by striking "60-2610"; in line 6, by striking "statute book" and inserting "Kansas register"

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

JOHN VRATIL
EDWARD W. PUGH
GRETA GOODWIN
Conferees on part of Senate

MICHAEL O'NEAL
WARD LOYD
JANICE L. PAULS
Conferees on part of House

Senator Vratil moved the Senate adopt the Conference Committee Report on **HB 2296**.

On roll call, the vote was: Yeas 36, Nays 0, Present and Passing 0, Absent or Not Voting 4.

Yeas: Adkins, Allen, Barone, Brownlee, Clark, Corbin, Donovan, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steinger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Barnett, Brungardt, Downey, Haley.

The Conference Committee report was adopted.

REPORT ON ENGROSSED BILLS

SB 239, SB 294, SB 343 reported correctly engrossed May 2, 2001.

Also: **SB 14, SB 214** correctly re-engrossed May 2, 2001.

On motion of Senator Oleen, the Senate recessed until 3:00 p.m.

AFTERNOON SESSION

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

CHANGE OF REFERENCE

The Vice-President withdrew **HB 2065** from the Committee on Assessment and Taxation, and referred the bill to the Committee on Financial Institutions and Insurance.

COMMUNICATIONS FROM STATE OFFICERS

DEPARTMENT OF ADMINISTRATION
Division of Accounts and Reports
May 2, 2001

Dale Brunton, Director, Division of Accounts and Reports, submitted a copy of the State of Kansas *Monthly Financial Perspective* for the month of February, 2001.

Enhanced monthly financial information is available on the internet under *Monthly Financial Perspective*. There is also a web-site available.

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

MESSAGE FROM THE HOUSE

Announcing the House adopts the conference committee report on **HB 2101**.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senator Praeger introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1858—

A RESOLUTION congratulating and commending Dr. Karen Swisher.

WHEREAS, Dr. Karen Swisher was inaugurated as President of Haskell Indian Nations University at an official inaugural ceremony which occurred at 10:00 a.m. on February 2, 2001, on the Haskell campus in Lawrence; and

WHEREAS, Dr. Swisher is the first woman to hold this position, and since its inception in 1884, will be the 25th person to serve as the chief administrator of the organization and the fourth person to hold the position of President; and

WHEREAS, Dr. Swisher was born and reared in North Dakota on the Standing Rock Sioux reservation. She received a Bachelor of Science degree in elementary education and Master of Science degree in elementary school administration from Northern State University, Aberdeen, South Dakota. She holds a doctorate in educational administration from the University of North Dakota. Dr. Swisher has higher education experience at Huron College in South Dakota, the University of Utah and Arizona State University. In March 1998, she received the Native American Educator of the Year from the Kansas Association for Native American Education and was named National Indian Educator of the Year by the National Indian Education Association in 1997. Memberships in various organizations include being on the Board of Directors of the Urban Indian Education Research Center, Board of Trustees for the American Indian College Fund and the National Board of Directors of the Girl Scouts of America; and

WHEREAS, Receptions in her honor continued throughout the week of January 29, 2001. A traditional honor powwow, open to the public, was held the evening of February 2, 2001, to conclude the activities of the week: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend Dr. Karen Swisher upon her installation as President of Haskell Indian Nations University; and

Be it further resolved: That the Secretary of the Senate be directed to send enrolled copies of this resolution to Dr. Karen Swisher, in care of Dr. Reeze L. Hanson, Haskell Indian Nations University, 155 Indian Avenue, Lawrence, KS 66046.

On emergency motion of Senator Praeger **SR 1858** was adopted unanimously.

Committee on Education introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1859—

A RESOLUTION urging the President and the Congress of the United States to increase funding for special education from an average federal share of 15% nationwide to the 40% level authorized by the Individuals with Disabilities Education Act.

WHEREAS, In *Brown v. Board of Education*, a unanimous Supreme Court of the United States recognized that education is perhaps the most important function of state and local governments; in *Wisconsin v. Yoder*, the Supreme Court recognized that the provision of public schools ranks at the very apex of the function of a state; in *San Antonio Independent School District v. Rodriguez*, the Supreme Court refused to invalidate the Texas system of financing its public schools opining that education is one of the most important services performed by the state and declining to intrude in an area which traditionally has been reserved for state legislatures; and

WHEREAS, The architects of America's Constitution and Bill of Rights constructed a unique form of federalism under which the people delegated to the national government certain limited powers while reserving all other authority to the states and the people; the

powers of the two government levels were carefully balanced and each had distinct roles with most day-to-day functions being left at the level closest to the people; the founders expected state power to rival national power; and

WHEREAS, America's unique form of federalism worked for a while, but has been severely eroded over the years; the states have become enfeebled while the federal government has consolidated power and now involves itself in every conceivable area of governance, including the most local of concerns; nowhere is encroachment by the federal government on state rights more apparent than in the area of education, specifically special education; and

WHEREAS, The states were and are well aware of the constitutional obligation to provide public education for children with disabilities; many of the states enacted constitutionally sound special education laws prior to enactment in 1975 by Congress of Public Law 94-142, the Education for All Handicapped Children Act, known since 1990 as the Individuals with Disabilities Education Act or IDEA; nearly six million American children receive special education services provided by the states at a cost of almost \$40 billion, only about \$6.3 billion of which is federal money; and

WHEREAS, Enactment of the IDEA transferred decisions about the ways in which special education services would be provided from state capitals to Washington, D.C.; in an effort to alleviate the intrusion that transfer of control over special education had upon an area traditionally reserved to the states, the Act authorized appropriation of a sum equal to 40% of the average per pupil expenditure for general education pupils; Congressional appropriations have never come near the authorization level; and

WHEREAS, A recent report by the Kansas State Department of Education provided the Kansas Legislature with the estimated special education expenditures in Kansas for fiscal year 2002; the report estimated expenditures for special education in the amount of \$515,362,780, and was broken down by anticipated state, local, and federal aid percentages; the report revealed that federal aid, including medicaid reimbursement of approximately \$17 million, would comprise only 14% of the total expenditures for special education; if increased to the authorized 40% level, federal aid would increase from \$55,300,000 to \$158,000,000; and

WHEREAS, The National Council on Disability recently reported that many children with disabilities are receiving substandard schooling because the states are not complying with federal rules on special education; the response of officials at the U.S. Department of Education, the federal agency responsible for overseeing compliance with the IDEA, was predictable, not an assertion that the agency would make an intense effort to get Congress to provide assistance to the states in the form of increased dollars, at least to a level more nearly approaching the 40% level of expenditures authorized for special education, but with a threat to be more aggressive in monitoring and enforcing compliance; and

WHEREAS, In 1998 and in 2000, the Kansas Legislature adopted concurrent resolutions memorializing the Congress to assume its fair share of the costs of special education services by increasing funding to a level more nearly approaching the level authorized by the Individuals with Disabilities Education Act; and

WHEREAS, The Kansas Legislature devotes considerable effort and a great amount of time during each session in an attempt to address concerns regarding delivery of special education services and to find some solution to the rapidly escalating costs of providing such services; in the course of its study of the matter during the 2000 session, the Legislature received reports from the Kansas State Department of Education and from embattled providers of special education services in the field; the reports were overwhelmingly disturbing and revealed that from 1990 through 1998, Kansas realized a 29% increase in the number of pupils with disabilities, a 32% increase in the number of professionals, and a 150% increase in the number of paraprofessionals; one special education cooperative reported a 48% increase in expenditures for special education from the 1990-91 school year through the 1999-2000 school year; school districts are experiencing continuing growth in the population of children with severe disabilities, in the number of behavior disordered pupils and in other high need populations of children, such as children with autism or traumatic brain injury, who require high cost programs; the 1997 IDEA amendments added several new specific disabling conditions; the quality and quantity of special education teachers is a major

concern as the growth in numbers of pupils and severity of disabilities increase and the pool of trained teachers decreases; special education professionals face stress, burnout and increased paperwork even though the 1997 amendments to the IDEA were supposed to reduce paperwork; one director of special education services stated that he had been a special education professional since 1972 and was more worried than in his whole career about the increasing demands on the system to serve more pupils, with more severe disabilities, to higher standards than ever before, with fewer trained, skilled teachers and decreasing financial resources; and

WHEREAS, President Bush has sent Congress a budget proposal containing an education reform plan that offers federal support for several new programs; while many of the centerpieces of the budget proposal may be praiseworthy, legislators and school officials in Kansas would rather the Congress, in drafting its own spending proposals, honor the commitment to fully fund the federal share of special education costs before adopting any spending proposal that is dedicated to new programs: Now, therefore,

Be it resolved by the Senate of the State of Kansas: In recognition that children with disabilities have a fundamental right to be provided with a free and appropriate public education and that the Congress of the United States has enacted a federal law for the purpose of assisting the states in honoring that fundamental right and in the belief that projected federal budget surpluses present the federal government with the tremendous opportunity to assume its fair share of the costs of providing special education services, the Senate of the State of Kansas hereby strongly urges the President and the Congress of the United States to put a new twist on the old joke about federal officials appearing in a state and saying "we're here to help" by increasing funding for the provision of special education services for children with disabilities from the average federal share of 15% nationwide to the 40% level authorized by the Individuals with Disabilities Education Act; and

Be it further resolved: That the Secretary of the Senate is hereby directed to send enrolled copies of this resolution to The Hon. George W. Bush at 1600 Pennsylvania Ave., Washington, D.C. 20500; The Hon. Pat Roberts at 302 Hart Senate O.B., Washington, D.C. 20510; The Hon. Sam Brownback at 303 Hart Senate O.B., Washington, D.C. 20510; The Hon. Jerry Moran at 1519 Longworth House O.B., Washington, D.C. 20515; The Hon. Jim Ryun at 330 Cannon House O.B., Washington D.C. 20515; The Hon. Dennis Moore at 431 Cannon House O.B., Washington, D.C. 20515; The Hon. Todd Tiahrt at 428 Cannon House O.B., Washington, D.C. 20515; National Conference of State Legislatures at 444 North Capitol Street, N.W., Suite 515, Washington, D.C. 20001, and at 1560 Broadway, Suite 700, Denver, CO 80202; American Legislative Exchange Council at 910 17th Street N.W., Fifth Floor, Washington, D.C. 20006; Council of State Governments at Hall of the States, Suite 401, Washington, D.C. 20001; National Governors' Association at Hall of States, 444 North Capitol Street, Washington, D.C. 20001.

On motion of Senator Oleen the Senate adjourned until 11:00 a.m., Friday, May 4, 2001.

HELEN A. MORELAND, *Journal Clerk.*

PAT SAVILLE, *Secretary of Senate.*

