

## SPECIAL SESSION

# Journal of the House

## THIRD DAY

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HALL OF THE HOUSE OF REPRESENTATIVES,  
TOPEKA, KS, Friday, June 24, 2005, 10:00 a.m.

The House met pursuant to adjournment with Speaker Mays in the chair.  
The roll was called with 122 members present.  
Rep. Showalter was excused on verified illness.  
Rep. Goico was excused on legislative business.  
Rep. Davis was excused on excused absence by the Speaker.  
Present later: Rep. Davis.

Prayer by Chaplain Chamberlain:

Lord of heaven and earth, ruler of all nature and of nature's bounty, we praise your holy name as we begin this day.

We come to do the work to which you have called us. We have come to live up to the potential that you have created in us. We have come to claim the promise that you offer to all of us acting together. We have come to seek and to do your will.

Help us Lord to not confuse doing your will with doing ours. Help us to not confuse your righteousness with our self-righteousness. Help us to experience your freedom and vision lest we be hindered by our narrow views.

God of possibilities and promises, fulfill your promise today in the work of your people and let all that is said and done be pleasing in your sight. Amen.

The Pledge of Allegiance was led by Rep. Feuerborn.

**INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS**

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

**HB 2014.** An act concerning lotteries; enacting the Kansas expanded lottery act; authorizing operation of certain lottery gaming facilities, electronic gaming machines and other lottery games at certain locations; prohibiting certain acts and providing penalties for violations; amending K.S.A. 74-8702, 74-8710 and 74-8723, K.S.A. 2004 Supp. 74-8711 and K.S.A. 2004 Supp. 19-101a, as amended by section 1 of 2005 Senate Bill No. 298, and repealing the existing sections, by Committee on Federal and State Affairs.

**HB 2015.** An act concerning lotteries; enacting the Kansas expanded lottery act; authorizing operation of certain lottery gaming facilities, electronic gaming machines, video lottery terminals and other lottery games at certain locations; prohibiting certain acts and providing penalties for violations; making appropriations for the fiscal year ending June 30, 2006; amending K.S.A. 74-8702, 74-8705, 74-8710, 74-8716, 74-8723, 74-8830 and 74-8832, K.S.A. 2004 Supp. 74-8711 and K.S.A. 2004 Supp. 19-101a, as amended by section 1 of 2005 Senate Bill No. 298, and repealing the existing sections, by Committee on Federal and State Affairs.

## HOUSE CONCURRENT RESOLUTION No. 5004—

By Representative Siegfried

A PROPOSITION to amend section 6 of article 6 of the constitution of the state of Kansas, relating to school finance.

*Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the House of Representatives and two-thirds of the members elected (or appointed) and qualified to the Senate concurring therein:*

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Section 6 of article 6 of the constitution of the state of Kansas is hereby amended to read as follows:

“§ 6. **Finance.** (a) The legislature may levy a permanent tax for the use and benefit of state institutions of higher education and apportion among and appropriate the same to the several institutions, which levy, apportionment and appropriation shall continue until changed by statute. Further appropriation and other provision for finance of institutions of higher education may be made by the legislature.

(b) The legislature shall make suitable provision for finance of the educational interests of the state: *Provided, that the distribution of state funding shall not be precluded, and public schools shall not be closed by any entity other than a locally elected board of education, as a remedy for finding that the legislature has not made suitable provision for finance of the education interests of the state.* No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. The legislature may authorize the state board of regents to establish tuition, fees and charges at institutions under its supervision.

(c) No religious sect or sects shall control any part of the public educational funds.”

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

*“Explanatory statement.* The purpose of this amendment is to provide that the distribution of state funding shall not be precluded, and public schools shall not be closed by any entity other than a locally elected board of education, as a remedy for a finding that the legislature has not made suitable provision for finance of the educational interests of the state.

“A vote for this amendment would provide that the distribution of state funding shall not be precluded, and public schools shall not be closed by any entity other than a locally elected board of education, as a remedy for a finding that the legislature has not made suitable provision for finance of the educational interests of the state.

“A vote against this amendment would continue in effect the current interpretation by the Kansas Supreme court that this provision of the Kansas constitution requires the Kansas legislature to make suitable provision for the finance of the educational system of the state in an amount determined by the court without specifically addressing the distribution of funds and the closing of schools as a court remedy.”

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the House of Representatives, and two-thirds of the members elected (or appointed) and qualified to the Senate shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election in November in the year 2006 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

**FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS**

**HB 2004.** An act making and concerning appropriations for the fiscal year ending June 30, 2005, and June 30, 2006, for the state agencies and the department of social and rela-

bilitation services; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements and acts incidental to the foregoing; amending section 83 of 2005 Senate Substitute for House Bill No. 2482 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 98; Nays 24; Present but not voting: 0; Absent or not voting: 3.

Yeas: Aurand, Ballard, Beamer, Bethell, Brown, Brunk, Burgess, Burroughs, Carlson, Carter, Colloton, Craft, Dahl, DeCastro, Decker, Dillmore, Edmonds, Faber, Flower, Freeborn, George, Gordon, Grange, Hawk, Hayzlett, Henry, Hill, Holland, C. Holmes, M. Holmes, Horst, Huebert, Huff, Humerickhouse, Huntington, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kelley, Kelsey, Kiegerl, Kilpatrick, Kinzer, Knox, Krehbiel, Landwehr, Light, Loganbill, Long, Loyd, Mast, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, M. Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Novascone, O'Malley, O'Neal, Oharah, Olson, Otto, Owens, Pauls, Peck, Peterson, Pilcher-Cook, Pottorff, Powell, Powers, Roth, Ruff, Schwab, Schwartz, S. Sharp, Shultz, Siegfried, Sloan, Swenson, Thull, Treaster, Vickrey, Ward, Watkins, Weber, Wilk, Williams, Yoder, Yonally.

Nays: Carlin, Cox, Crow, Faust-Goudeau, Feuerborn, Flaharty, Flora, Garcia, Gatewood, Grant, Henderson, Kirk, Kuether, Lane, Larkin, Mah, Menghini, Phelps, Ruiz, Sawyer, B. Sharp, Storm, Svaty, Winn.

Present but not voting: None.

Absent or not voting: Davis, Goico, Showalter.

The bill passed, as amended.

**HB 2005.** An act concerning the adjutant general; providing for reimbursement for certain life insurance premiums coverage; creating the national guard life insurance premium reimbursement fund; making and concerning appropriations for the fiscal year ending June 30, 2006, for the adjutant general; amending K.S.A. 75-3713b, as amended by section 3 of 2005 Senate Substitute for House Bill No. 2518, and K.S.A. 2004 Supp. 79-32,117, as amended by section 21 of 2005 House Bill No. 2537, and repealing the existing sections; also repealing section 1 of 2005 Senate Substitute for House Bill No. 2518, was considered on final action.

On roll call, the vote was: Yeas 122; Nays 0; Present but not voting: 0; Absent or not voting: 3.

Yeas: Aurand, Ballard, Beamer, Bethell, Brown, Brunk, Burgess, Burroughs, Carlin, Carlson, Carter, Colloton, Cox, Craft, Crow, Dahl, DeCastro, Decker, Dillmore, Edmonds, Faber, Faust-Goudeau, Feuerborn, Flaharty, Flora, Flower, Freeborn, Garcia, Gatewood, George, Gordon, Grange, Grant, Hawk, Hayzlett, Henderson, Henry, Hill, Holland, C. Holmes, M. Holmes, Horst, Huebert, Huff, Humerickhouse, Huntington, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kelley, Kelsey, Kiegerl, Kilpatrick, Kinzer, Kirk, Knox, Krehbiel, Kuether, Landwehr, Lane, Larkin, Light, Loganbill, Long, Loyd, Mah, Mast, Mays, McCreary, McKinney, McLeland, Menghini, Merrick, F. Miller, M. Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Novascone, O'Malley, O'Neal, Oharah, Olson, Otto, Owens, Pauls, Peck, Peterson, Phelps, Pilcher-Cook, Pottorff, Powell, Powers, Roth, Ruff, Ruiz, Sawyer, Schwab, Schwartz, B. Sharp, S. Sharp, Shultz, Siegfried, Sloan, Storm, Svaty, Swenson, Thull, Treaster, Vickrey, Ward, Watkins, Weber, Wilk, Williams, Winn, Yoder, Yonally.

Nays: None.

Present but not voting: None.

Absent or not voting: Davis, Goico, Showalter.

The bill passed.

#### INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

On emergency motion of Rep. Henderson, **HR 6004**, by Rep. Henderson, as follows, was introduced and adopted:

## HOUSE RESOLUTION No. 6004—

A RESOLUTION congratulating and commending the General Motors Fairfax automobile assembly plant.

WHEREAS, The General Motors automobile assembly plant located in the Fairfax district of Kansas City is scheduled to build its 10 millionth automobile this summer. The company plans to celebrate this event on August 19; and

WHEREAS, The original plant was constructed by the federal government to build B25 bombers. After World War II General Motors leased the plant from the federal government to build automobiles. During the Korean War the plant reverted to building airplanes—this time the F84F fighter planes; and

WHEREAS, Disaster struck the plant during the flood of 1951 when water rose to nine feet in the plant. After the clean-up, it went back on line as the nation's first facility constructing both aircraft and automobiles during the Korean War. General Motors purchased the plant in 1960 and started a \$17 million renovation of the facility. In 1968 the plant was renamed, officially becoming the Fairfax Assembly Plant; and

WHEREAS, Disaster again struck the plant in 1979 when 56,000 square feet of the plant roof collapsed. Reconstruction took three months of effort before full production could be resumed; and

WHEREAS, In 1985 construction on a new plant was commenced. Production at the old plant ceased in 1987 ending 41 years of auto assembling and the production of over seven million automobiles. The new plant was completed in July of 1987 and a second shift of workers was added in 1988. In 1994 a new flexible body shop was completed allowing the plant to build six different body styles from three different platforms; and

WHEREAS, In 2002 General Motors and UAW Local 31 were recognized as the 2002 Greater Kansas City area Corporate Philanthropists of the Year—the first time any organization on the Kansas side of the metropolitan Kansas City area had been so recognized; and

WHEREAS, In 2003 the plant was shut down for three months to retool for state of the art platforms allowing for construction of modern models such as the new Chevrolet Malibu and the Saturn Aura: Now, therefore,

*Be it resolved by the House of Representatives of the State of Kansas:* That the House of Representatives congratulates and commends General Motors and the dedicated employees of the organization on its long history of automotive manufacturing in the Kansas City area and upon its projected completion of its 10 millionth vehicle this summer; and

*Be it further resolved:* That the Chief Clerk of the House of Representatives provide three enrolled copies of this resolution to John J. Federico, J. D., 815 SW Topeka Blvd., Second Floor, Topeka, KS 66612, for presentation to the Fairfax Assembly plant manager and the UAW Local 31 President.

On motion of Rep. Aurand, the House recessed until 2:00 p.m.

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### AFTERNOON SESSION

The House met pursuant to recess with Speaker Mays in the chair.

On motion of Rep. Aurand, the House resolved into Committee of the Whole, with Rep. Novascone in the chair.

### COMMITTEE OF THE WHOLE

On motion of Rep. Novascone, Committee of the Whole report, as follows, was adopted: Recommended that **HCR 5002, HCR 5003** be passed over and retain a place on the calendar.

Committee report recommending a substitute bill to **H. Sub. for SB 3** be adopted; also, on motion of Rep. O'Neal be amended on page 2, in line 4, preceding "It" by inserting

“(a)”; in line 7, by striking “instructional purposes” and inserting “instruction”; preceding line 8, by inserting the following:

“(b) As used in this section, “instruction” means the activities dealing directly with the interaction between teachers and students and may be provided in a school classroom, in another location such as a home or hospital, and in other learning situations such as those involving cocurricular activities. Instruction also may be provided through the internet, television, radio, computer, multimedia telephone, correspondence that is delivered inside or outside the classroom and other teacher-student settings or through other approved medium. Instruction also includes the activities of aides or classroom assistants of any type including, but not limited to, clerks, graders and teaching machines which assist in the instructional process.”;

Also on page 2, in line 13, by striking “legislature” and inserting “legislative coordinating council”; in line 14, preceding the period, by inserting “in the amount as determined by the legislature”;

On page 29, in line 29, by striking “cost of living levy” and inserting “local activities budget”;

In the title, in line 9, preceding “amending” by inserting “relating to school finance; relating to the powers and duties of the legislature, courts, state board of education and school districts in relation thereto; relating to litigation in relation thereto.”;

Also, roll call was demanded on motion of Rep. O’Neal to amend **H. Sub. for SB 3** on page 35, preceding line 22, by inserting the following:

“New Sec. 36. (a) As used in this section:

- (1) “District” or “school district” means any school district;
- (2) “special revenue grant” means a grant awarded pursuant to this section;
- (3) “enrollment” shall have the meaning ascribed thereto is K.S.A. 72-6407, and amendments thereto; and
- (4) “state board” means the state board of education.

(b) Each school district is eligible for a special revenue grant under this section. The amount of the grant a school district is eligible to receive shall be determined by the state board as provided by this subsection. The state board shall:

- (1) Determine the full-time equivalent enrollment of the district on September 20, 2005;
- (2) multiply the amount determined under paragraph (1) by \$168;
- (3) divide the amount determined under paragraph (2) by the amount of base state aid per pupil. The quotient is the special revenues grant of the district.

(c) All moneys received under the provisions of subsection (b) shall be deposited in the general fund of the school district. Such moneys shall not be included in the calculation of the amount of the supplemental general fund or supplemental general state aid under section 16 and K.S.A. 72-6434, and amendments thereto.

(d) The provisions of this section shall expire July 1, 2006.”;

And by renumbering the remaining sections accordingly;

On roll call, the vote was: Yeas 51; Nays 69; Present but not voting: 0; Absent or not voting: 5.

Yeas: Aurand, Bethell, Carlson, Carter, Colloton, Dahl, Decker, Freeborn, George, Gordon, Grange, Hayzlett, M. Holmes, Horst, Huebert, Huff, Humerickhouse, Huntington, Huy, D. Johnson, E. Johnson, Kelsey, Kilpatrick, Kinzer, Landwehr, Mast, Mays, McLeland, Merrick, F. Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Novascone, O’Malley, O’Neal, Oharah, Olson, Otto, Powell, Roth, Schwab, Schwartz, S. Sharp, Shultz, Siegfried, Vickrey, Yoder, Yonally.

Nays: Ballard, Beamer, Brown, Burgess, Burroughs, Carlin, Cox, Craft, Crow, Davis, DeCastro, Dillmore, Edmonds, Faber, Faust-Goudeau, Feuerborn, Flaharty, Flora, Flower, Garcia, Gatewood, Grant, Hawk, Henderson, Henry, Hill, Holland, C. Holmes, Hutchins, Jack, Kelley, Kirk, Knox, Krehbiel, Kuether, Lane, Larkin, Light, Loganbill, Long, Loyd, Mah, McCreary, McKinney, Menghini, M. Miller, Owens, Pauls, Peck, Peterson, Phelps, Pottorff, Powers, Ruff, Ruiz, Sawyer, B. Sharp, Sloan, Storm, Svaty, Swenson, Thull, Treasurer, Ward, Watkins, Weber, Wilk, Williams, Winn.

Present but not voting: None.

Absent or not voting: Brunk, Goico, Kiegerl, Pilcher-Cook, Showalter.

The motion of Rep. O'Neal did not prevail.

Also, on motion of Rep. O'Neal, **H. Sub. for SB 3** be amended on page 27, by striking all in lines 26 through 37;

By renumbering the remaining sections accordingly;

Also, roll call was demanded on motion of Rep. Watkins to amend **H. Sub. for SB 3** on page 24, in line 29, preceding "The" by inserting "(a)"; in line 31, preceding "On" by inserting:

"(b)";

Also on page 24, preceding line 40, by inserting the following:

"(c) The superintendent of each school district shall certify that the profile of the school district, summary of the proposed budget, attendance center budget report and the budget of the district and all other financial data or information required by this section and reported to the state board or the department are accurate. If such superintendent certifies any data or information that is false, such superintendent shall be guilty of a class B nonperson misdemeanor.";

On roll call, the vote was: Yeas 68; Nays 55; Present but not voting: 0; Absent or not voting: 2.

Yeas: Aurand, Beamer, Bethell, Brown, Brunk, Burgess, Carlson, Carter, Colloton, Craft, Dahl, DeCastro, Decker, Edmonds, Flower, George, Gordon, Grange, Hayzlett, C. Holmes, M. Holmes, Huebert, Humerickhouse, Huntington, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kelley, Kelsey, Kiegerl, Kilpatrick, Kinzer, Knox, Krehbiel, Landwehr, Loyd, Mast, Mays, McCreary, McLeland, Merrick, F. Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Novascone, O'Malley, O'Neal, Oharah, Olson, Peck, Pilcher-Cook, Pottorff, Powell, Powers, Schwab, Schwartz, S. Sharp, Shultz, Siegfried, Watkins, Weber, Wimm, Yoder.

Nays: Ballard, Burroughs, Carlin, Cox, Crow, Davis, Dillmore, Faber, Faust-Goudeau, Feuerborn, Flaharty, Flora, Freeborn, Garcia, Gatewood, Grant, Hawk, Henderson, Henry, Hill, Holland, Horst, Huff, Kirk, Kuether, Lane, Larkin, Light, Loganbill, Long, Mah, McKinney, Menghini, M. Miller, Otto, Owens, Pauls, Peterson, Phelps, Roth, Ruff, Ruiz, Sawyer, B. Sharp, Sloan, Storm, Svaty, Swenson, Thull, Treaster, Vickrey, Ward, Wilk, Williams, Yonally.

Present but not voting: None.

Absent or not voting: Goico, Showalter.

The motion of Rep. Watkins prevailed.

Also, on motion of Rep. Mast, **H. Sub. for SB 3** be amended on page 35, after line 21 by inserting the following:

"New Sec. 36. No school district shall expend, use or transfer any state moneys appropriated by the state or any moneys specified in subsection (c) of K.S.A. 72-6410, and amendments thereto, for the purpose of engaging in or supporting in any manner any lobbying by the school district. No such moneys shall be paid, donated or otherwise provided to any person, association, corporation or other entity and used for the purpose of any such lobbying. As used in this section, "lobbying" has the meaning ascribed thereto in K.S.A. 46-225, and amendments thereto.";

And by renumbering the remaining sections accordingly;

Also, on motion of Rep. F. Miller to amend **H. Sub. for SB 3**, the motion did not prevail.

Also, on motion of Rep. Kinzer to refer **H. Sub. for SB 3** to Select Committee on School Finance, the motion did not prevail.

Also, roll call was demanded on motion to recommend **H. Sub. for SB 3** as amended favorably for passage.

On roll call, the vote was: Yeas 30; Nays 92; Present but not voting: 0; Absent or not voting: 3.

Yeas: Aurand, Bethell, Brunk, Carlson, DeCastro, Decker, Flower, Gordon, Hayzlett, C. Holmes, Huebert, Humerickhouse, Hutchins, Huy, E. Johnson, Landwehr, Mast, Mays, McCreary, McLeland, Merrick, Judy Morrison, Myers, Neufeld, Novascone, O'Neal, Powell, Schwab, Siegfried, Weber.

Nays: Ballard, Beamer, Brown, Burgess, Burroughs, Carlin, Carter, Colloton, Cox, Craft, Crow, Dahl, Davis, Dillmore, Edmonds, Faber, Faust-Goudeau, Feuerborn, Flaharty,

Flora, Freeborn, Garcia, Gatewood, George, Grange, Grant, Hawk, Henderson, Henry, Hill, Holland, M. Holmes, Horst, Huff, Huntington, Jack, D. Johnson, Kelley, Kelsey, Kilpatrick, Kinzer, Kirk, Knox, Krehbiel, Kuether, Lane, Larkin, Light, Loganbill, Long, Loyd, Mah, McKinney, Menghini, F. Miller, M. Miller, Jim Morrison, Newton, O'Malley, Oharah, Olson, Otto, Owens, Pauls, Peck, Peterson, Phelps, Pilcher-Cook, Pottorff, Powers, Roth, Ruff, Ruiz, Sawyer, Schwartz, B. Sharp, S. Sharp, Shultz, Sloan, Storm, Svaty, Swenson, Thull, Treaster, Vickrey, Ward, Watkins, Wilk, Williams, Winn, Yoder, Yonally.

Present but not voting: None.

Absent or not voting: Goico, Kiegerl, Showalter.

The motion to recommend **H. Sub. for SB 3** favorably for passage did not prevail.

On motion of Rep. Aurand, the House recessed until 4:15 p.m.

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### LATE AFTERNOON SESSION

The House met pursuant to recess with Speaker Mays in the chair.

#### INTRODUCTION OF ORIGINAL MOTIONS

In accordance with House Rule 2306, Rep. Aurand moved that **H. Sub. for SB 3** be withdrawn from the calendar and be referred to Select Committee on School Finance. The motion prevailed.

#### INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following concurrent resolution was introduced and read by title:

HOUSE CONCURRENT RESOLUTION No. 5005—

By Representative Siegfried

A PROPOSITION to amend section 6 of article 6 of the constitution of the state of Kansas, relating to school finance.

*Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the House of Representatives and two-thirds of the members elected (or appointed) and qualified to the Senate concurring therein:*

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Section 6 of article 6 of the constitution of the state of Kansas is hereby amended to read as follows:

“§ 6. **Finance.** (a) The legislature may levy a permanent tax for the use and benefit of state institutions of higher education and apportion among and appropriate the same to the several institutions, which levy, apportionment and appropriation shall continue until changed by statute. Further appropriation and other provision for finance of institutions of higher education may be made by the legislature.

(b) The legislature shall make suitable provision for finance of the educational interests of the state: *Provided, that the distribution of state funding shall not be precluded, and public schools shall not be closed, as a remedy for a finding that the legislature has not made suitable provision for finance of the educational interests of the state.* No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. The legislature may authorize the state board of regents to establish tuition, fees and charges at institutions under its supervision.

(c) No religious sect or sects shall control any part of the public educational funds.”

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

*“Explanatory statement.* The purpose of this amendment is to provide that the distribution of state funding shall not be precluded, and public schools shall not be

closed, as a remedy for a finding that the legislature has not made suitable provision for finance of the educational interests of the state.

“A vote for this amendment would provide that while other possible remedies would remain available, the distribution of state funding shall not be precluded, and public schools shall not be closed, as a remedy for a finding that the legislature has not made suitable provision for finance of the educational interests of the state.

“A vote against this amendment would provide no change to the Kansas Constitution and closure of public schools would remain a possible remedy to enforce a finding that the legislature has not made suitable provision for finance of the educational interests of the state.”

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the House of Representatives, and two-thirds of the members elected (or appointed) and qualified to the Senate shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at a special election to be held on August 16, 2005.

#### REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

Speaker Mays announced the referral of the following concurrent resolutions to committees as indicated:

Calendar and Printing: **HCR 5004**.

Committee of the Whole: **HCR 5005**.

On motion of Rep. Aurand, the House recessed until 8:00 p.m.

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### NIGHT SESSION

The House met pursuant to recess with Speaker Mays in the chair.

#### INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

**HB 2016**, An act concerning sales taxation; relating to county taxing authority; economic development; amending K.S.A. 2004 Supp. 12-187, as amended by section 2 of 2005 House Bill No. 2537, 12-189, as amended by section 4 of 2005 House Bill No. 2537, and 12-192, as amended by section 5 of 2005 House Bill No. 2537 and repealing the existing sections, by Committee on Taxation.

#### MESSAGE FROM THE SENATE

Announcing adoption of **SCR 1603**.

#### INTRODUCTION OF SENATE BILLS AND CONCURRENT RESOLUTIONS

The following Senate concurrent resolution was thereupon introduced and read by title:  
**SCR 1603**.

#### INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

The following resolutions were introduced and read by title:

HOUSE RESOLUTION No. 6005—

By Representatives Vickrey, Aurand, Ballard, Beamer, Bethell, Brown, Brunk, Burgess, Burroughs, Carlin, Carlson, Carter, Colloton, Cox, Craft, Crow, Dahl, Davis, DeCastro, Decker, Dillmore, Edmonds, Faber, Faust-Goudeau, Feuerborn, Flaharty, Flora, Flower, Freeborn, Garcia, Gatewood, George, Goico, Gordon, Grange, Grant, Hawk, Hayzlett, Henderson, Henry, Hill, Holland, C. Holmes, M. Holmes, Horst, Huebert, Huff, Humerickhouse, Huntington, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kel-



ley, Kelsey, Kiegerl, Kilpatrick, Kinzer, Kirk, Knox, Krehbiel, Kuether, Landwehr, Lane, Larkin, Light, Loganbill, Long, Loyd, Mah, Mast, Mays, McCreary, McKinney, McLeland, Menghini, Merrick, F. Miller, M. Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Novascone, O'Malley, O'Neal, Oharah, Olson, Otto, Owens, Pauls, Peck, Peterson, Phelps, Pilcher-Cook, Pottorff, Powell, Powers, Roth, Ruff, Ruiz, Sawyer, Schwab, Schwartz, B. Sharp, S. Sharp, Showalter, Shultz, Siegfried, Sloan, Storm, Svaty, Swenson, Thull, Treaster, Ward, Watkins, Weber, Wilk, Williams, Winn, Yoder and Yonally

A RESOLUTION congratulating and commending Dr. John A. (Andy) Tompkins.

WHEREAS, Dr. John A. (Andy) Tompkins, the Kansas Commissioner of Education, is retiring after completing nearly 10 years in this position; and

WHEREAS, During his tenure as the Kansas Commissioner of Education he has been a dynamic spokesperson for the improvement of education for Kansas children. Salient program implementations under his direction have been the redesign of the school accreditation and teacher licensure systems and the implementation of the federal no child left behind act; and

WHEREAS, After receiving a bachelor's degree in English from East Central State University in Ada, Oklahoma, he commenced his teaching career as a high school English teacher in Pauls Valley, Oklahoma. One year in Oklahoma schools was enough, however. The next year he taught English at Hugoton and then progressed to positions at Kansas schools as the high school principal at Pomona, superintendent of schools at Satanta, El Dorado and Salina and as the interim dean for the school of education at Pittsburg State University before becoming the Commissioner of Education. Along the way he acquired his master's degree from Emporia State University and his doctorate in educational administration from the University of Kansas; and

WHEREAS, Dr. Tompkins' many professional contributions include service on the board of directors and as president of the Kansas Association of School Administrators, chairperson of the Governor's Education Advisory Task Force, chairperson of the resolutions committee of the American Association of School Administrators, member of the board of directors of the Council of Chief State School Officers and treasurer and Kansas commissioner of the Education Commission of the States; and

WHEREAS, Dr. Tompkins has not completed his contribution to Kansas education. Subsequent to his retirement from his current position he plans to teach at the School of Education of the University of Kansas with an emphasis in school district leadership; and

WHEREAS, Dr. Tompkins and his wife, Glenda, are the parents of two children, Amanda and Kyle: Now, therefore,

*Be it resolved by the House of Representatives of the State of Kansas:* That we congratulate and commend Dr. John A. (Andy) Tompkins upon his retirement as the Kansas Commissioner of Education. We thank him for the leadership he has given the teachers of our children and for his direct involvement for over 20 years as a teacher and administrator; and we wish his success at the University of Kansas as he continues in his chosen field of education; and

*Be it further resolved:* That the Chief Clerk of the House of Representatives provide an enrolled copy of this resolution to Dr. John A. (Andy) Tompkins at 6647 SW Wentley Lane, Topeka, Kansas 66614 plus a copy to the office of the commissioner of education.

HOUSE RESOLUTION No. 6006—

By Representative McCreary

A RESOLUTION concerning funding for public schools.

WHEREAS, The legislature has shown good faith to comply with all of the directives of the supreme court's preliminary ruling issued in January 2005 by increasing funds for special education, at-risk students, bilingual students, increasing the base per pupil budget and other expenditures. The legislature has appropriated \$142 million of new moneys, which is the largest single-year increase in over a decade; and

WHEREAS, There are significant new demands of the out year budgets to fund the Kansas public employees retirement system, the comprehensive highway plan and growth

in education spending dictated by 2005 House Bill No. 2247. These demands, coupled with an additional \$143.1 million mandated by the supreme court in June 2005 will result in a financial crisis to the state of Kansas. This will result in an ending balance deficit of \$117.4 million in fiscal year 2007 and an ending balance deficit of \$510.6 million in fiscal year 2008; and

WHEREAS, To address this large deficit in our state budget, it would necessitate a \$1.2 billion tax increase beginning in fiscal year 2007 on the citizens of Kansas to repair the fiscal damage caused by the supreme court demands; and

WHEREAS, May it be known: That this projected budget profile includes the \$86 million additional revenue identified in 2005 and the \$86 million increase in revenue projected for fiscal year 2006: Now, therefore,

*Be it resolved by the House of Representatives of the State of Kansas:* That as responsible elected representatives of the citizens of Kansas, we have addressed the preliminary ruling of the supreme court, and for the reasons stated herein cannot be bound by the dollar amount dictated by the supreme court. This decision is an infringement on the right and responsibility of the legislature as determined by the Kansas constitution. The amount of money provided for public education or any other program is the responsibility of the elected legislative body.

HOUSE RESOLUTION No. 6007—

By Representatives Decker and O’Neal

A RESOLUTION responding to the Kansas Supreme Court’s decision in the case of  
Montoy v. State of Kansas.

WHEREAS, In January of 2005 the Kansas Supreme Court issued a preliminary ruling that the Legislature had failed to make suitable provision for finance of the public school system; and

WHEREAS, The Legislature passed provisions in 2005 House Bill No. 2247 in response to this ruling; and

WHEREAS, In crafting this legislation the Legislature considered all relevant data, including information from the Kansas State Department of Education, Office of Legislative Research, Office of Revisor of Statutes, Legislative Division of Post Audit, conferees who appeared before various committees of the Legislature, and the further input of school officials, community leaders and our constituents; and

WHEREAS, In crafting this legislation the Legislature considered, along with other information, data from various studies commissioned by the legislature in past years, including the Augenblick & Myers (A&M) study referenced in the Court’s decision of January 3, 2005; and

WHEREAS, In 2001, the Legislature enacted in K.S.A. 2004 Supp. 46-1225(e) a statutory definition of “suitable education” for the purpose of the professional evaluation of school district finance; and

WHEREAS, The definition of “suitable education” enacted by the Legislature was limited to “a curricular program consisting of the subjects and courses required under the provisions of K.S.A. 72-1101, 72-1103 and 72-1117, and amendments thereto, the courses in foreign language, fine arts and physical education required for a state scholarship under the provisions of K.S.A. 72-6810 through 72-6816, and amendments thereto, and the courses included in the precollege curriculum prescribed by the board of regents under the provisions of K.S.A. 76-717, and amendments thereto”; and

WHEREAS, The above-mentioned statutory references in the definition of “suitable education” refer to the required subjects in elementary school, required courses of instruction for graduation from high school, the requirement of a course of instruction in Kansas history and government, the courses required to qualify for the state scholarship program, and the course requirements to meet the state’s qualified admissions criteria; and

WHEREAS, The purpose for the study and of this definition of “suitable education” for purposes of the cost analysis was to “determine the cost of a suitable education for Kansas children” (K.S.A. 46-1225(a)). The Legislature wanted to know the cost of providing the

courses mandated for K-12 Kansas students in order for them to accomplish one or more of the goals set forth in the referenced statutes; and

WHEREAS, The Augenblick and Myers study references and acknowledges the fact that, notwithstanding the statute, the legislatively enacted definition of “suitable education” was not used for purposes of their study (A&M, III. Setting a Suitable Education Definition); and

WHEREAS, During the 2005 legislative session it was confirmed that the definition that was ultimately used incorporated not only what the state required, but also included everything else districts chose to teach or offer in the way of curriculum or activities. Specifically, it was confirmed that pursuant to the expanded definition used by Augenblick & Myers, the Department of Education couldn’t identify anything that schools currently offered that would not be included; and

WHEREAS, Accordingly, the Augenblick & Myers study, while making numerous spending recommendations based on funding of all mandated and nonmandated offerings did not address the question asked by the legislature, i.e., the cost of providing what every Kansas K-12 student is required to be offered; and

WHEREAS, The Augenblick and Myers study did not determine actual costs but instead took a blended percentage of its “professional judgment” analysis and its “successful schools” analysis; and

WHEREAS, Augenblick & Myers, in the Kansas study, noted that the “professional judgment” approach “assumes that people can be reasonably precise in specifying the resources schools need if they are expected to meet a particular set of objectives, however our experience contradicts that assumption.” According to Augenblick & Myers’ experience “people tend to overestimate the resources schools need. In part, this is because people believe schools should meet broader objectives than those defined by state accountability systems and, in part, it is because panel participants tend to avoid being Machiavellian (that is, they want to serve the needs of all students even when doing so is not necessary to meet state objectives.)”; and

WHEREAS, The “successful school” approach fails to accurately account for actual costs: “The most obvious criticism of the “successful schools” approach... is that it makes no adjustment based on poverty, peer effects, family status, and other demographic factors that may influence achievement...” *Yale Law and Policy Review*, Vol. 22, 571, 603 (2004); and

WHEREAS, Augenblick & Myers noted that one of the strengths of the “successful schools” approach to their cost analysis was that it allowed for the inclusion of spending efficiency to be used as a measure of success, and that in New Hampshire, e.g., the lowest spending half of successful districts were used to create the base cost figure. However, for purposes of the Kansas study, because, using Augenblick & Myers’ methodology, a majority of the successful districts would be considered inefficient spenders, they discarded their methodology; and

WHEREAS, The Ohio Supreme Court deferred to the educational spending decisions of its legislature and has refused to allow further constitutional challenges to legislative spending authority. See, *DeRolph III* and *Lewis*; and

WHEREAS, During the 2005 Legislative session, some school districts pointed to the Augenblick & Myers study as support for their request for additional funds. However, some of the same districts were sharply critical of Augenblick & Myers’ recommendation to, e.g., eliminate vocational education funding and its recommendation against increases in teacher pay. It was apparent throughout consideration of school finance legislation that Augenblick & Myers was cited by districts to the extent it suggested greater funding and criticized when Augenblick & Myers recommended action that was not favorable to the districts’ position; and

WHEREAS, As a result of the lack of usefulness of the Augenblick & Myers study in determining the actual cost of a “suitable education” as defined by the statute for purposes of the study, the Augenblick & Myers cost analysis was not adopted. In view of the fact that this Court suggested in its January 3, 2005, preliminary decision that a lack of a true cost analysis has distorted some of the school finance law’s weighting factors, the school finance plan embodied in 2005 House Bill No. 2247 includes a requirement that each school district

shall compile, record and report expenditures by category and the Department of Education shall verify on an ongoing basis the costs incurred by districts to provide the programs required by law; and

WHEREAS, The enacted school finance plan requires the Department of Education to design and implement a uniform system of reporting of this data by district in a user-friendly, internet-based system. In that regard, the respective House and Senate committees working on school finance had representatives from the state of Wisconsin demonstrate their highly efficient system, and representatives of the Legislative Division of Post Audit were sent to Wisconsin to analyze its system. In March, the Legislative Division of Post Audit released its performance audit report: "School Finance: Putting District Budgetary Data into a More Accessible Database." Its audit of school finance information in the Department of Education revealed that our current system "doesn't lend itself to ready financial comparisons between districts, or to obtaining more detailed financial information within a district. If legislators have questions about revenues or expenditures that can't be answered from the website, a Department programmer has to write a specialized program to answer them"; and

WHEREAS, The Legislative Division of Post Audit converted revenue and expenditure data from the 2004-2005 school district budgets to a more accessible format and noted that "[u]ntil the Department is able to convert its existing mainframe system to a database system, a website such as Wisconsin's that is directly accessible by the public won't be able to be built."; and

WHEREAS, In crafting a Legislative response to the Court's January 3, 2005, preliminary decision, the Legislature used the most updated financial data available, but it was not possible, in the time allotted, to perform a true cost analysis in all areas of court inquiry. The Legislature was hindered by the fact that, in many cases, funds allocated to school districts were comingled and it was not possible to sort out what districts had actually spent on certain categories of services. Two thousand five House Bill No. 2247 solves that problem in the future; and

WHEREAS, The enacted school finance plan also provides that in order to assist the legislature in gathering the necessary information needed to make suitable provision for the finance of the educational interests of the state, the Legislative Division of Post Audit will conduct a professional cost study to determine the costs of delivering the K-12 curriculum, related services and other programs mandated by statute in accredited schools. The cost study will include, inter alia, relevant information regarding the cost of such items as curriculum, services, administration, support staff, supplies, equipment and building costs, special education, bilingual education, at-risk programs, and LOB spending; and

WHEREAS, The cost study will also include a review of the relevant studies that assess whether there is a correlation between amounts spent on education and educational performance. The Augenblick & Myers study noted that "no research exists that demonstrates a straightforward relationship between how much is spent to provide education services and student, school or school district performance"; and

WHEREAS, To the extent actual cost data was available, the Legislature considered the actual cost of providing a suitable education; and

WHEREAS, In crafting the legislation the Legislature itself engaged in substantial open and public discussion and debate both in various committees and on the floor of both legislative chambers; and

WHEREAS, In passing 2005 House Bill No. 2247 the Legislature made full, proper and judicious use of the legislative process which is an integral part of our system of government as set forth in article 2 of the Constitution of the State of Kansas; and

WHEREAS, 2005 House Bill No. 2247 contains a provision dealing with the problems encountered by districts with extraordinary declining enrollments. The Legislature received evidence demonstrating that while current declining enrollment provisions in law are sufficient to aid most affected districts, extraordinarily large declines in enrollment in larger school districts presents a unique problem meriting legislative attention; and

WHEREAS, In districts with extraordinary declines in enrollment, reductions in funding based on per pupil budgeting are not sufficiently offset by reductions in necessary school district expenditures. Enrollment declines spread over a large number of buildings and grade

levels do not result in significant savings on expenditures. Class size must remain within reason and some schools must be allowed to operate at diminished capacity to avoid significant overcrowding at another facility, until such time as the low enrollment center can be closed; and

WHEREAS, The extraordinary declining enrollment provisions of 2005 House Bill No. 2247 ensure cost justification. Districts must document to the Board of Tax Appeals (BOTA) its inability to absorb all the lost revenue from declining enrollment. If approved by BOTA, the district would be authorized to raise, through local taxes, the difference between what the district is able to absorb and the total lost revenue. Eligibility must be reaffirmed every two years; and

WHEREAS, The extraordinary declining enrollment provision is particularly important for districts with low per pupil operating expenses. These districts have less flexibility and are more at risk of having to cut programs without assistance; and

WHEREAS, The issue of extraordinary declining enrollment was not an issue in Montoy and represents an important matter of compelling public policy and merits reenactment and immediate implementation; and

WHEREAS, The "cost-of-living" provision in House Bill No. 2247 allows qualifying school districts additional budget authority to address the additional costs of residential housing for teachers in the qualifying districts; and

WHEREAS, The Legislature received information that regional factors such as cost-of-living differences have been addressed in other states and should be considered in Kansas; and

WHEREAS, The Legislature rejected recommendations, including Augenblick & Myers', that involved redistributing state dollars through a formula that increased funding to some districts at the expense of other districts. Instead, the Legislature determined that housing costs are a major factor in cost-of-living differences and are costs that are easily determined on a district-by-district basis; and

WHEREAS, The cost-of-living weighting is a self-funded weighting based on data provided by the Kansas Department of Revenue. Those districts with housing costs more than 125% of the statewide average qualify for the weighting, with the percentage based on the percentage of income an average wage earner might be expected to pay for a home purchase; and

WHEREAS, The Legislature considered expressed concerns relating to equity but determined, as a matter of public policy, that qualifying school districts should be allowed the authority to seek and access local funds to compensate teachers at a level that would enable them to purchase an average home in the district where they teach; and

WHEREAS, The cost-of-living provision was not an issue in Montoy and the Legislature finds that this provision merits reenactment and immediate implementation; and

WHEREAS, Members of the Legislature studied and discussed whether increasing local option budget (LOB) authority would cause or contribute to increased disparity in school district operating expenses per pupil; and

WHEREAS, In approving additional LOB authority in 2005 House Bill No. 2247, the Legislature concluded that increasing LOB authority will not cause or contribute to increased disparity in school district operating expenses per pupil. Larger school districts tend to use LOB authority more than do smaller school districts. Larger school districts generally have lower operating expenses per pupil. The Legislature finds there is a rational basis to conclude that increasing LOB authority will not increase disparity in spending. In fact, increasing LOB authority is likely to result in decreased disparity in spending; and

WHEREAS, Fifteen of the 17 school districts that may qualify for this cost-of-living weighting are in the bottom 25% of all school districts in terms of operating expenses per pupil. The Legislature finds that this new weighting is unlikely to result in increased disparity of spending; and

WHEREAS, The legislative history of the school finance law, the School District Finance and Quality Performance Act, relied upon a local option budget at the time of its adoption in 1992 to prevent some school districts from losing revenue under the Act and was immediately used as part of the basic school expenditures by various districts; and

WHEREAS, It is the legislative intent that the local option budget is a necessary part of funding for schools throughout the state; and

WHEREAS, It is the intent of the Legislature that the local option budget provisions be immediately available during the 2005-2006 school year; and

WHEREAS, The Kansas Legislature has appropriated moneys to support the following programs:

<i>State Program</i>	<i>Actual FY 2004 Expenditures</i>
KPERS-Schools	\$110,806,841
Juvenile Detention Facilities and Flint Hills Job Corps Center	6,028,857
School Safety Hotline	6,840
School Food Assistance	2,369,551
Educational Deaf-Blind Program	97,859
Governor's Teaching Excellence	135,500
Parent Education	6,979,745
State Safety Fund	1,519,479
Motorcycle Safety Fee Fund	4,905

for a total of fiscal year 2004 expenditures of \$127,949,577. Additionally, the legislature has provided \$56 million to match bond and interest requirements for local capital improvements and will provide \$403 million to satisfy KPERS unfunded liability, all of which totals \$587,599,145. These expenditures of public moneys were not considered by the Kansas Supreme Court in its decision regarding the funding of public schools; and

WHEREAS, The state has provided to the State Department of Education the above moneys to be distributed to Kansas schools. These moneys will be counted as part of the K-12 funding for Kansas schools; and

WHEREAS, In crafting the legislative response to the Court's January 3, 2005, preliminary decision, the Legislature had the benefit of relevant school finance and performance data that was not available to the Court or the parties prior to the decision. For example, *EDUCATION WEEK*, a highly respected national education publication, released at the start of the legislative session its annual "Quality Counts" report card. Based on data from the U.S. Department of Education, National Center for Education Statistics, the Education Week Research Center, adjusting for regional cost differences, ranked Kansas 19th in the country for per pupil expenditures. (Their 2001-2002 figures were \$8,206 per pupil. 2002-2003 was actually \$8,894 and 2003-2004 was slightly higher.) Kansas received a grade of "B" for resources: equity, an important measure for evaluating a school finance formula. Kansas scored in the top 10 states in the area of equity (near the top in its "wealth-neutrality" score) and was the top state in school climate. Kansas also scored well with standards and accountability. (*EDUCATION WEEK*, Vol. 24, No. 17-Jan. 6, 2005); and

WHEREAS, Performance data for the 2003-2004 school years shows that Kansas rated among the top 10 states in student participation in the ACT college entrance exam. And that among these 10 high participation states Kansas students had the second highest composite scores on the ACT; and

WHEREAS, Performance data for the 2003-2004 school year shows that with respect to state assessment tests Kansas students improved in all subject areas and across all grade levels. And that furthermore, the difference in performance between majority and minority students and advantaged and disadvantaged students decreased in all subject areas; and

WHEREAS, Article 6, section 3 of the Kansas Constitution, prior to the 1966 amendments, provided:

*"State permanent school fund.* The proceeds of all lands that have been or may be granted by the United States to the state for the support of schools... and all estates of persons dying without heir or will, and such percent as may be granted by congress, on the sale of lands in this state, shall be the common property of the state, and shall be a perpetual school fund which shall not be diminished, but the interest of which, together with all the rents of the lands, and such other means as the legislature may provide, by tax or otherwise, shall be inviolably appropriated to the support of the common schools.";

and

WHEREAS, Article 6, section 6 of the Kansas Constitution, prior to the 1966 amendment, provided:

*“Money applied to schools.* All money which shall be paid by persons as an equivalent for exemption from military duty; the clear proceeds of strays, ownership of which shall vest in the taker-up; and the proceeds of fines for any breach of the penal laws, shall be exclusively applied in the several counties in which the money is paid or fines collected to the support of common schools.”; and

WHEREAS, According to the report of the Kansas Legislative Council in December 1965, regarding the proposed education amendment to the Kansas Constitution:

“The proposed new article would establish a framework capable of providing for a modern educational system, possibly for the next 100 years. It would eliminate obsolete provisions, nullify portions of Article I relating to the election of the state superintendent, *give the legislature greater freedom in dealing with educational problems*, and provide constitutional guarantees of local control of local schools.”; and

WHEREAS, The report cites to *Lemons v. Noller*, 144 Kan. 813 (1944) for the proposition that “Since the people have all governmental power, and exercise it through the legislative branch of the government, the legislature is free to act except as it is restricted by the state constitution...” Also, “Our constitution limits, rather than confers, power, and hence, we look to it to see what it prohibits, instead of what it authorizes.”; and

WHEREAS, The report stated:

“A constitution should be elegantly concise, shorn of detail. The people make succinct statements in their constitution and delegate to their legislature the obligation to supply the detail. They leave to the judiciary the obligation to interpret the legislature’s action within the framework of the constitution.”; and

WHEREAS, The report speaks to “equality of educational opportunity” and not adequacy of funding. The report refers to “finance” as the determination of sources of available funding, not to the level of funding; and

WHEREAS, In considering the constitutionality of a statute duly enacted by the legislature, certain basic principals apply. When a statute is attacked as unconstitutional a presumption of constitutionality exists and the statute must be allowed to stand unless it is shown to violate a clear constitutional prohibition. It is generally agreed that the Kansas Constitution limits rather than confers power and any power and authority not limited by the constitution remains with the people and their legislators; and

WHEREAS, If a legislative enactment is constitutional, it is not for the court to set policy or to substitute its opinion for that of the legislature no matter how strongly individual members of the court may personally feel on the issue; and

WHEREAS, In determining whether a statute is constitutional, courts must guard against substituting their views on economic or social policy for those of the legislature. Courts are only concerned with the legislative power to enact statutes, not with the wisdom behind those enactments; and

WHEREAS, The Kansas Supreme Court in U.S.D. #229 reaffirmed the proposition that Article 6 of the Kansas Constitution is a grant of legislative power. In discussing the 1966 amendments to the Education article to the Kansas Constitution, the court stated: “...the amendment reaffirmed the inherent powers of the legislature - and through its members, the people - to shape the general course of public education and provide for its financing.”; and

WHEREAS, The Kansas Supreme Court in U.S.D. #229 held that the issue for judicial determination was “whether the Act provides suitable financing, not whether the level of finance is optimal or the best policy...”; and

WHEREAS, The district court in U.S.D. #229, as quoted with approval by the supreme court, found that “[s]uitability does not mandate excellence or high quality. In fact, suitability does not imply any objective, quantifiable education standard against which schools can be measured by a court.”; and

WHEREAS, Rules have to be made and lines drawn in providing “suitable financing.” The drawing of these lines lies at the very heart of the legislative process and the compromises inherent in the process.”; and

WHEREAS, The determination of the amounts, sources, and objectives of expenditures of public moneys for educational purposes, especially at the state level, presents issues of enormous practical and political complexity, and resolution appropriately is largely left to the interplay of the interests and forces directly involved and indirectly affected, in the arenas of legislative and executive activity. This is of the very essence of our governmental and political polity. It would normally be inappropriate, therefore, for the courts to intrude upon such decision-making; and

WHEREAS, The court in *State ex rel Stephan v. House of Representatives* provided a detailed discussion of the doctrine of separation of powers. The court recognized the doctrine and that through it “a dangerous concentration of power is avoided through the checks and balances each branch of government has against the other,” and that, generally speaking, “the legislative power is the power to make, amend, or repeal laws; the executive power is the power to enforce the laws; and the judicial power is the power to interpret and apply the laws in actual controversies.”; and

WHEREAS, Despite the outstanding performance of Kansas public schools and the continued legislative commitment to those schools evidenced in 2005 House Bill No. 2247, the Kansas Supreme Court ruled on June 3, 2005, that 2005 House Bill No. 2247 “falls short of the standard set by article 6, section 6 of the Kansas Constitution”; and

WHEREAS, The Kansas Supreme Court has now ordered the Legislature to appropriate an additional \$143 million in public school funding by July 1, 2005, and has further threatened to order the Legislature to appropriate an additional \$568 million in new money for public schools during the 2006 legislative session; and

WHEREAS, Under article 2, section 24 of the Kansas constitution the power of appropriations is vested exclusively in the legislative branch; and

WHEREAS, The judiciary is not free to exercise all state power; it may exercise only the judicial power. The confinement of appropriations to the legislative branches, both in our federal and state governments, was not random. It reflects our national ideal that the power of appropriation must be under the control of those whose money is being spent. This truth animated all of our colonial and revolutionary history; and

WHEREAS, On May 2, 2005, the Kansas Supreme Court issued an order stating, “Neither chamber of the legislature is a party to this action.” However, as a nonparty the Legislature was the subject of an order by the supreme court to appropriate a specific amount of money on a specific date after final adjournment of the 2005 legislative session: Now, therefore,

*Be it Resolved by the House of Representatives of the State of Kansas.* That 2005 House Bill No. 2247 was, as a matter of public policy, a proper legislative response to the court’s January 2005 ruling; and

*Be it further resolved:* That given the delegation of the appropriation powers under the Kansas Constitution and the status of the Legislature as a nonparty to the *Montoy* litigation, the order of the court directing the legislature to appropriate a specific level of funding for public schools is viewed by this body as a advisory in nature; and

*Be it further resolved:* That with respect to the determination of a specific amount to appropriate for the funding of public schools the House of Representatives of the State of Kansas will act based solely upon its own deliberative judgment as to the proper public policy determination in this area.

#### REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

Speaker Mays announced the referral of the following bill and resolutions to committees as indicated:

Committee of the Whole: **HR 6006, HR 6007; SCR 1603.**

Taxation: **HB 2016.**

On motion of Rep. Aurand, the House adjourned until 11:00 a.m., Saturday, June 25, 2005.

CHARLENE SWANSON, *Journal Clerk.*

JANET E. JONES, *Chief Clerk.*

