

Journal of the House

THIRTIETH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Monday, February 20, 2006, 11:00 a.m.

The House met pursuant to adjournment with Speaker Mays in the chair.
The roll was called with 123 members present.
Reps. Huy and Sawyer were excused on verified illness.

Prayer by guest chaplain, the Rev. Dr. Peter A. Luckey, Senior Pastor, Plymouth Congregational Church, United Church of Christ, Lawrence, and guest of Rep. Holland:

O God, as we the legislators of the great state of Kansas, gather in this solemn assembly, we are humbled by the privilege of being able to participate in this great endeavor known as democracy.

As we take up the mantle that has been passed onto us, from pioneer men and women who settled our state for freedom's cause, we might remember the words of that great champion for freedom, Abraham Lincoln who said, *"Let us have faith that right makes might, and in that faith let us to the end dare to do our duty as we understand it."*

O God, we recognize that we have been entrusted with the well being of all Kansans. As such we understand that as we deliberate on our common affairs, the easy answers are most often not the right ones, that our task is to listen to and weigh many voices, and then with gravity and grace to make decisions for the good of all. We are reminded of the words of Otto Van Bismarck, *"politics is the art of the possible."*

O God, we take this moment of prayer before we plunge into the business of our state, so we might realize the full meaning of having been given this moment in this history of our collective journey, to add whatever skills, brains and character that have been given to us, to forward the cause of our common humanity, "seeking malice toward none but charity for all." Help us God to appreciate the full import of what has been given to us.

And, as we reflect at the end of the day what will matter, let us recall these words of Michael Josephson:

"What will matter is not what you bought but what you built,

Not what you got, but what you gave.

What will matter is not what you learned, but what you taught.

What will matter is every act of integrity, compassion, courage or sacrifice that enriched, empowered or encouraged others to emulate your example.

What will matter is not how many people you knew, but how many will feel a lasting loss when you're gone."

O God may we be mindful of these words, of choosing a life that matters, as we preside over the affairs of our beloved Kansas this Monday, the 20th of February.

The Pledge of Allegiance was led by Rep. Lukert.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

HB 2959, An act concerning property taxation; relating to exemptions; community housing development organizations; amending K.S.A. 2005 Supp. 79-201z and repealing the existing section, by Committee on Taxation.

HB 2960, An act concerning sales taxation; relating to countywide retailers' sales tax; Marion county; amending K.S.A. 2005 Supp. 12-187 and 12-189 and repealing the existing sections, by Committee on Taxation.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and resolutions were referred to committees as indicated:

Agriculture: **SB 500**; **SCR 1620**.

Appropriations: **HB 2956**, **HB 2957**, **HB 2958**; **SB 475**.

Governmental Organization and Elections: **SB 448**.

Health and Human Services: **SB 470**.

Higher Education: **SB 332**.

Insurance: **SCR 1619**.

Judiciary: **SB 397**, **SB 407**.

Taxation: **Sub. SB 358**.

Transportation: **SB 388**.

Utilities: **Sub. SB 463**.

Select Committee on School Finance: **SB 481**.

CHANGE OF REFERENCE

Speaker Mays announced the withdrawal of **HB 2953** from Committee on Judiciary and referral to Committee on Appropriations.

CONSENT CALENDAR

No objection was made to **HB 2824** appearing on the Consent Calendar for the second day.

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

COMMITTEE OF THE WHOLE

On motion of Rep. Yoder, Committee of the Whole report, as follows, was adopted:

Recommended that **HB 2562**, **HB 2616** be passed.

Committee report to **HR 6010** be adopted; and the resolution be adopted as amended.

Committee report to **HB 2606** be adopted; and the bill be passed as amended.

Committee report to **HB 2735** be adopted; and the bill be passed as amended.

Committee report to **HB 2610** be adopted; and the bill be passed as amended.

Committee report to **HB 2626** be adopted; and the bill be passed as amended.

Committee report to **HB 2617** be adopted; and the bill be passed as amended.

Committee report to **HB 2716** be adopted; also, on motion of Rep. Watkins to amend, the motion was withdrawn, and the bill be passed as amended.

Committee report to **HB 2665** be adopted; and the bill be passed as amended.

REPORTS OF STANDING COMMITTEES

Committee on **Commerce and Labor** recommends **HB 2753** be amended on page 3, by striking all in lines 17 through 22 and inserting the following:

“(f) Any claim that has not proceeded to final hearing, a settlement hearing, or an agreed award under the worker’s compensation act within five years from the date of filing an application for hearing pursuant to K.S.A. 44-534, and amendments thereto, shall be dismissed by the administrative law judge for lack of prosecution. The administrative law judge may grant an extension for good cause shown, which shall be conclusively presumed in the event that the claimant has not reached maximum medical improvement, provided such motion to extend is filed prior to the five year limitation provided for herein. This section

shall not affect any future benefits which have been left open upon proper application by an award or settlement.”; and the bill be passed as amended.

Committee on **Environment** recommends **HB 2710** be amended on page 1, in line 14, after “assistance” by inserting “pilot project”; in line 21, before “The” by inserting “(1)”; after line 23, by inserting the following:

“(2) Federal and state funds shall not exceed \$1,500,000 per year.”;

Also on page 1, in line 24, before “All” by inserting: “The state conservation commission may retire permanently part or all of landowner historic consumptive use water rights. The state conservation commission and the participating groundwater management districts shall carry over unexpended funds from one fiscal year to the next.

(d);

Also on page 1, in line 25, by striking all after “funding”; by striking all in line 26; in line 27, by striking all before the period; in line 28, by striking “(d)” and inserting:

“(e) Permanent retirement of partial water rights shall only be approved by the Kansas department of agriculture division of water resources when the groundwater management district has the metering and monitoring capabilities necessary to ensure compliance with the program.

(f);

By relettering remaining subsections accordingly;

Also on page 1, in line 36, before “The” by inserting “(1)”; in line 37, after “in” by inserting “not more than two”; in line 40, by striking all after “resources”; by striking all in line 41; in line 42, by striking all before the period; after line 42, by inserting the following:

“(2) Notwithstanding any other provisions of this act, one of the two target or high priority areas shall be the prairie dog creek area located in hydrologic unit code 10250015.”;

On page 2, in line 7, by striking “either”; also in line 7, by striking all after “permanently”; in line 8, by striking all before the period;

On page 3, in line 1, after the period, by inserting: “When adopting such rules and regulations the state conservation commission shall consider cropping, system design, metered water use and all other pertinent information that will permit a verifiable reduction in annual water consumptive use and permit alternative crop or other use of the land so that the landowner’s economic opportunities are taken into account.”; in line 2, before “The” by inserting: “The state conservation commission shall report annually to the senate standing committee on natural resources and the house standing committee on environment on the results of economic impact studies conducted on the reduction of water consumption and the financial impact on the communities within the program areas. Such studies shall include comparative data for areas and communities outside the program areas.

(m);

Also on page 3, in line 5, by striking “(k)” and inserting “(n)”; and the bill be passed as amended.

Committee on **Environment** recommends **HB 2756** be amended on page 2, in line 9, after the period by inserting “An aboveground storage tank or bulk plant shall be eligible for reimbursement under this section, if such aboveground storage tank or bulk plant is used for the storage of petroleum products for resale.”; in line 16, before the semicolon by inserting “products”;

On page 3, in line 12, by striking “may contract” and inserting “contracts”; in line 20, by striking “facilities” and inserting “plant”;

On page 4, in line 1, by striking “os” and inserting “of”; in line 9, by striking “fuel” and inserting “fuels”;

On page 5, in line 32, by striking “and” and inserting a comma; in line 33, before the period by inserting “and biofuels”;

On page 8, in line 11, by striking “requires” and inserting “require”;

In the title, in line 11, following the second “fund” by inserting “compensation”; and the bill be passed as amended.

Committee on **Judiciary** recommends **HB 2554** be amended on page 1, in line 32, by striking “and an oral sample” and inserting “or an oral or other biological sample authorized by the Kansas bureau of investigation”;

On page 2, in line 8, by striking all preceding “sample” and inserting “such specimen or”; in line 9, by striking “specimens of blood and an oral” and inserting “such specimen or”; in line 11, by striking “speci-”; in line 12, by striking all preceding “sample” and inserting “such specimen or”; in line 20, by striking all following the comma; in line 21, by striking all preceding “sample” and inserting “such specimen or”; in line 25, by striking “the specimens of blood and an oral” and inserting “such specimen or”; in line 27, by striking “specimens of”; in line 28, by striking all before “sample” and inserting “such specimen or”; in line 33, by striking “July 1, 2006” and inserting “January 1, 2007”; in line 34, following “arrested” by inserting “or charged”; also in line 34, following “for” by inserting “or charged with”; in line 36, by striking “an oral sample” and inserting “such specimen or sample”; in line 39, following “arrested” by inserting “or charged”; also in line 39, following “for” by inserting “or charged with”; in line 40, by striking “an oral sample” and inserting “such specimen or sample”; in line 42, by striking all following the period; by striking all in line 43;

On page 3, in line 1, following “arresting” by inserting “, charging”; in line 4, by striking “in the database” and inserting “on file with the Kansas bureau of investigation”; in line 6, by striking “bureau” and inserting “Kansas bureau of investigation”; also in line 6, following “arresting” by inserting “, charging”; in line 7, by striking “in the database” and inserting “on file with the Kansas bureau of investigation”; in line 9, by striking all following “(4)”; by striking all in lines 10 through 13 and inserting the following:

“If a court later determines that there was not probable cause for the arrest, charge or placement in custody, the court shall send a copy of such determination to the Kansas bureau of investigation. The Kansas bureau of investigation shall forthwith remove such specimen or sample from the Kansas bureau of investigation records.

(5) The clerk of the district court shall notify the Kansas bureau of investigation of final disposition of the criminal proceedings. If the charge for which the specimen was taken is dismissed or the defendant is acquitted at trial, the Kansas bureau of investigation shall destroy the specimen and all records thereof, provided there is no other pending qualifying warrant for an arrest, charges or other conviction that would otherwise require the specimen remain in the database.

(f) The Kansas bureau of investigation shall provide all specimen vials, mailing tubes, labels and instructions necessary for the collection of oral or other biological samples. No person authorized by this section to collect oral or other biological samples, and no person assisting in the collection of these samples shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to rules and regulations promulgated by the Kansas bureau of investigation. The samples shall thereafter be forwarded to the Kansas bureau of investigation. The bureau shall analyze the samples to the extent allowed by funding available for this purpose.”;

And by relettering the remaining sections accordingly;

Also on page 3, in line 16, by striking “and oral”; in line 18, by striking “and collect an oral sample”;

On page 4, in line 7, by striking “: (A) The” and inserting “the”; also in line 7, by striking “and” where it appears the second time, and inserting a comma; in line 8, preceding “of” by inserting “and expungement”; also in line 8, by striking the semicolon; by striking all in lines 9 and 10; in line 11, by striking all preceding “and”; in line 12, by striking “(C)”; in line 25, by striking all following the “(k)”; by striking all in lines 26 through 28; in line 29, by striking “(l)”; in line 33, following “arrest” by inserting “, the charging”; and the bill be passed as amended.

Committee on **Judiciary** recommends **HB 2607** be amended on page 2, in line 14, by striking “entitled” and inserting “eligible”; also in line 14, after “receive” by inserting “mandatory or discretionary”; in line 15, by striking “entitled” and inserting “eligible”;

On page 3, in line 13, before “administer” by inserting “act in good faith and”;

On page 10, in line 2, before “may” by inserting “, or its affiliate,”; in line 4, after “trustee” by inserting “, or its affiliate,”; in line 7, by striking “must” and inserting “shall”; in line 33, by striking “A” and inserting “As provided in this section, a”;

On page 11, in line 2, before the semicolon by inserting “, or a copy of the trust instrument if specifically so requested by the qualified beneficiary”; in line 11, after the third “of” by inserting “relevant portions of”; in line 19, before the period by inserting “, except a ben-

eficiary who received a specific bequest”; in line 20, by striking “entitled” and inserting “eligible”; in line 25, after the second “the” by inserting “method for calculating the”;

On page 12, in line 16, by striking “will be” and inserting “is”; in line 17, before the period by inserting “, except a beneficiary who received a specific bequest”; in line 29, by striking all after “(b)”; by striking all in line 30; in line 31, by striking “an” and inserting “An”; in line 37, before the period by inserting “and such attorney has reviewed the exculpatory term and provided independent legal advice regarding such term”; and the bill be passed as amended.

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

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were thereupon introduced and read by title:

HB 2961, An act concerning security officers appointed by the adjutant general; relating to powers as law enforcement officers; amending K.S.A. 48-204 and K.S.A. 2005 Supp. 74-5602 and repealing the existing sections, by Committee on Federal and State Affairs.

HB 2962, An act concerning alcoholic liquor; relating to removal of partially consumed containers of wine from certain licensed premises; amending K.S.A. 8-1599 and repealing the existing section, by Committee on Federal and State Affairs.

HB 2963, An act concerning minors; relating to services provided by domestic violence or sexual assault crisis intervention centers, by Committee on Federal and State Affairs.

HB 2964, An act concerning eminent domain; amending K.S.A. 26-509 and 26-513 and repealing the existing sections, by Committee on Federal and State Affairs.

HB 2965, An act concerning real estate sales validation questionnaires; amending K.S.A. 2005 Supp. 79-1437f and repealing the existing section, by Committee on Federal and State Affairs.

HB 2966, An act concerning the militia; amending K.S.A. 48-241 and repealing the existing section, by Committee on Federal and State Affairs.

HB 2967, An act concerning the Kansas national guard; relating to periods of state active duty; cost of certain health insurance; amending K.S.A. 2005 Supp. 79-32,213 and repealing the existing section, by Committee on Federal and State Affairs.

INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

The following resolutions were introduced and read by title:

HOUSE RESOLUTION No. 6013

By Committee on Federal and State Affairs

A RESOLUTION memorializing the Congress of the United States to repeal the Real ID Act portion of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror and Tsunami Relief, 2005.

WHEREAS, Congress passed the Real ID Act as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror and Tsunami Relief, 2005, which resulted in a law without hearings, testimony or public discussion; and

WHEREAS, The possibility of radio frequency identification tags being placed in national identification cards are a potential invasion of civil liberties and an infringement of the fundamental constitutional right of freedom of religion; and

WHEREAS, A national identification card would be required of all citizens in order to enter any federal building, use mass transportation or legally drive on United States roads and highways. Such requirement would result in a potential violation of certain constitutional rights and promote alienation of many children whose parents do not qualify for a national identification card, further resulting in the exclusion of those citizens under the age of majority to receive and exercise their rights as afforded to all American citizens; and

WHEREAS, The state of Kansas would relinquish decision-making power on issues regarding highway safety, law enforcement effectiveness, state health benefits, state taxes and revenues as it pertains to residents who do not qualify for a national identification card; and

WHEREAS, The state of Kansas would incur additional expenditures associated with the implementation of the national identification card through machine readable technology, increased training of Division of Motor Vehicles employees, increased employee work hours and increased financial burdens on Kansas' already stressed economy affecting all Kansas residents; and

WHEREAS, The Real ID Act places unreasonable demands on Division of Motor Vehicles personnel to meet the Department of Homeland Security's May 2008 launch deadline to comply with requirements and regulations that to date have yet to be announced by the Department of Homeland Security; and

WHEREAS, No provisions have been announced for persons whose identities must remain undisclosed as a matter of security to sustain operation or protection on a personal, local, state or national level; and

WHEREAS, The consolidation of so much personal information opens significant avenues to further increase cyber crime, identity theft and the sale of personal information by consolidating personal information in one nationwide database; and

WHEREAS, The Real ID Act is discriminatory, in that several groups of vulnerable individuals, including religious minorities, foreign-born individuals and those individuals in asylum proceedings would suffer the consequences of Division of Motor Vehicles decisions on legal status and constitutional rights: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas: That we memorialize the Congress of the United States to repeal the Real ID Act portion of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005; and

Be it further resolved: That the Chief Clerk of the House of Representatives provide an enrolled copy of this resolution to the President and Vice-President of the United States, the Speaker of the House of Representatives, the Majority Leader of the Senate, and each Senator and Representative from Kansas in the Congress of the United States.

HOUSE RESOLUTION No. 6014

By Representative Loyd

A RESOLUTION in support of the patriot patrol riders.

WHEREAS, The patriot patrol riders is a diverse amalgamation of motorcycle riders from across the nation which has been formed to render respect for service members who have given their lives in the conflict for freedom in Iraq and other areas of the world. As requested by the deceased soldier's family, patriot patrol riders will attend the funeral services. The mission of this newly formed organization is to show its sincere respect for our fallen heroes, their families and communities and to shield mourning family members and friends of the deceased service member from interruptions by protesters protesting or picketing in a manner to communicate a message of hatred or intolerance at the funeral service. The activities of the patriot patrol riders is not limited to service personnel killed in the current conflict in Iraq, and the organization will respond to attend funerals of other veterans; and

WHEREAS, The patriot patrol was formed by three military veterans, Terry Houck, Carvel Logan and Gregg Hansen, who were outraged when they learned that mourners attending funerals of service personnel killed in Iraq were the subject of harassment by fellow Americans. Composed of veterans' motorcycle groups, motorcycle enthusiasts, Christian motorcycle groups and people who consider themselves patriots, the group provides a barrier at funerals to protect mourners from seeing and hearing the protesters if authorized by the family of the deceased; and

WHEREAS, The patriot patrol riders were present at the memorial service for Clinton R. Upchurch in Garden City on January 18. Upchurch, a resident of Garden City and former deputy sheriff in the Finney County sheriff's officer, was killed in Iraq while serving with the United States Army; and

WHEREAS, The initial funerals attended by the patriot patrol riders were in Oklahoma and Kansas. The organization has become national in scope and is planning a national

convention. Its web site, *www.patriotguard.org* provides current information regarding its activities; and

WHEREAS, The extent to which individuals may protrude into the affairs of others, particularly in the matter of funerals, has been considered by Kansas cities and counties and is a subject of a bill currently pending in this legislature. Certainly a balance as to the rights of individuals to protest on public property must be set against the dignity of grieving family members: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas: That the body indicates its support for the activities of the patriot patrol riders as it seeks to provide a balance of individual protest rights and those of grieving families.

HOUSE RESOLUTION No. 6015

By Representative Loyd

A RESOLUTION in memory of Clinton R. Upchurch.

WHEREAS, Clinton R. Upchurch, 31, of Garden City was killed January 7, 2006, while serving with the United States Army in Samarra, Iraq. A military policeman assigned to the 101st Airborne Division, he was killed by enemy fire after an explosive device detonated near his convoy. He was posthumously promoted to the rank of specialist and buried at Arlington National Cemetery in Arlington, Virginia. Memorial services were held also at Fort Campbell, Kentucky, and at the Word of Life Church in Garden City. He was the first Garden City service person to be killed in Iraq; and

WHEREAS, Specialist Upchurch was a Garden City native graduating from Garden City High School in 1993 and from Garden City Community College in 2004. He was a member of the Word of Life Church in Garden City. He had been a deputy sheriff for the Finney County Sheriff's Office for several years before enlisting in the Army in 2004. After completing required training, he was stationed at Fort Campbell, Kentucky; and

WHEREAS, Specialist Upchurch was married to Karri Stewart in Garden City on March 3, 2001. She survives. Also surviving are three stepsons, Ryan Stewart, Earl Stewart and Patrick Nicks; his parents, Greg and Cindy Upchurch; a brother, John Upchurch, and a sister, Misty Dawn Upchurch; and

WHEREAS, Like all of the American military personnel serving in Iraq, Specialist Upchurch was a volunteer fighting to provide a better life for people in a land which had long suffered a despot's rule. Only through the efforts of people such as Specialist Upchurch can the dream of freedom be realized for these people: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas: That we honor a Kansan who gave his life in the pursuit of freedom for all people and extend our deepest sympathy for his surviving wife, parents and family members; and

Be it further resolved: That the Chief Clerk of the House of Representatives provide an enrolled copy of this resolution to his wife and parents both addressed to 305 Davis Street, Garden City, KS 67846.

REPORT ON ENROLLED BILLS

HB 2673 reported correctly enrolled, properly signed and presented to the governor on February 20, 2006.

REPORT ON ENROLLED RESOLUTIONS

HR 6012 reported correctly enrolled and properly signed on February 20, 2006.

On motion of Rep. Aurand, the House adjourned until 11:00 a.m., Tuesday, February 21, 2006.

CHARLENE SWANSON, *Journal Clerk.*

JANET E. JONES, *Chief Clerk.*

