

Journal of the Senate

TWENTY-SECOND DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, February 13, 2008—2:30 p.m.

The Senate was called to order by President Stephen Morris.

The roll was called with forty senators present.

President Morris introduced as guest chaplain, Rev. Kevin Hopkins, Grace United Methodist Church, Winfield, Kansas, who delivered the invocation:

Lord on this day, we gather together thankful for the many mercies that you have given us. We are thankful to be serving this great state of Kansas and its people. Help us to never forget the public trust that has been granted to each and every one of us. As we gather this day, we are mindful of the wonderful people that call themselves Kansans. Our thoughts and prayers are this afternoon with those Kansans that are serving in distant parts of the globe. We have Kansans scattered all over the globe, many who are serving in war torn countries and as we meet this afternoon they are in harms way. May you guide them, guard them, comfort them, and strengthen them. May they feel the prayers of all Kansans surrounding them as they seek to serve our state and country.

God as we meet today there will undoubtedly be tough decisions. There is much that we agree about but also issues that create an opportunity for dialogue and healthy debate. As we approach this afternoon session may you give us the patience of Job, the wisdom of Solomon, and the courage of David to do what is right and best for this great state of Kansas we call home. We ask this in your name.

AMEN

The Pledge of Allegiance was led by President Stephen Morris.

POINT OF PERSONAL PRIVILEGE

Senator Ostmeyer rose on a Point of Personal Privilege to announce that a seven pound, six ounce, 20 inch long baby girl, Paxton, was greeted by her parents, Troy and Jody Ostmeyer this morning, February 13, 2008, and that an eight pound, 20 inch long baby girl, Cymri was greeted by her parents, Mark and Shirley Elton on January 24, 2008.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 608, An act relating to civil procedure; concerning pretrial conferences; amending K.S.A. 60-216 and repealing the existing section, by Senator Francisco.

SB 613, An act making and concerning appropriations for the fiscal years ending June 30, 2009, and June 30, 2010, for the department of transportation; 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, by Senator Brownlee.

SB 609, An act concerning certain homeowners associations; amending K.S.A. 2007 Supp. 58-3830 and repealing the existing section, by Committee on Federal and State Affairs.

SB 610, An act concerning racial profiling; prescribing duties for the attorney general; requiring training for law enforcement agencies and personnel; amending K.S.A. 22-4606, 22-4607, 22-4609, 22-4610 and 22-4611 and K.S.A. 2007 Supp. 74-9501 and repealing the existing sections, by Committee on Federal and State Affairs.

SB 611, An act relating to driving under the influence; concerning penalties; amending K.S.A. 2007 Supp. 8-1014 and 8-1015 and repealing the existing sections, by Senator Journey.

SB 612, An act concerning discrimination in employment; relating to domestic violence and sexual abuse victims; authorizing enforcement by the secretary of labor, by Committee on Commerce.

SB 613, AN ACT making and concerning appropriations for the fiscal years ending June 30, 2009, and June 30, 2010, for the department of transportation; 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, by Senator Brownlee.

SB 614, An act concerning the Kansas electric transmission act; relating to notice of intent to construct by the Kansas electric transmission authority to private entities; amending K.S.A. 2007 Supp. 74-99d14 and repealing the existing section, by Committee on Ways and Means.

SB 615, An act amending the Kansas automobile injury reparations act; concerning failure to maintain financial security; amending K.S.A. 2007 Supp. 8-1021 and 40-3104 and repealing the existing sections, by Senators Umbarger and Vratil.

SB 616, An act concerning elections; pertaining to applications for advanced ballots; amending K.S.A. 2007 Supp. 25-1122 and repealing the existing section, by Committee on Elections and Local Government.

SB 617, An act concerning income taxation; relating to credits; property tax paid by certain taxpayers, by Senator Pyle.

SB 618, An act concerning state agencies; relating to the location of certain state offices, by Senators Ostmeyer and Huelskamp.

SB 619, An act concerning the legislature; providing for the preparation of economic impact statements regarding economic costs for certain average families residing in Kansas, by Senator Palmer.

SB 620, An act concerning school districts; relating to funding for special education, by Committee on Ways and Means.

SB 621, An act concerning open meetings; pertaining to serial communications with members of the governing body of municipalities; amending K.S.A. 75-4317a and repealing the existing section, by Committee on Elections and Local Government.

SB 622, An act concerning alcoholic beverage; relating to the regulation thereof; amending K.S.A. 41-102, 41-210, 41-211, 41-304, 41-307, 41-308, 41-601, 41-602, 41-701, 41-708, 41-717, 41-718, 41-724, 41-725, 41-726, 41-729, 41-806, 41-901, 41-905, 41-1001, 41-1002, 41-1004, 41-1101, 41-1102, 41-1122, 41-1123, 41-1125, 41-2604, 41-2610, 41-2614, 41-2632, 41-2637, 41-2641, 41-2642, 41-2643, 41-2705, 41-2706, 41-2707, 41-2709, 41-2722, 41-2726, 79-4101, 79-4102, 79-4103, 79-4104, 79-41a01, 79-41a02, 79-41a04, 79-41a06, 79-41a07 and 79-41a08 and K.S.A. 2007 Supp. 41-104, 41-209, 41-308b, 41-712, 41-805, 41-2611, 41-2645, 41-2701, 41-2704, 41-2728, 79-3606 and 79-41a03 and repealing the existing sections; also repealing K.S.A. 41-103 and 41-2712 and K.S.A. 2007 Supp. 41-2702, 41-2703 and 41-2708, by Committee on Federal and State Affairs.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Agriculture: **SB 604**.

Assessment and Taxation: **SB 602**.

Federal and State Affairs: **SB 607**.

Financial Institutions & Insurance: **SB 601**.

Judiciary: **SB 600**, **SB 603**.

Natural Resources: **SB 606**.

Ways and Means: **SB 605**.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2643, SB 2656, HB 2700**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2643, SB 2656, HB 2700 were thereupon introduced and read by title.

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

On motion of Senator Emler the Senate nonconcurrred in the House amendments to **SB 49** and requested a conference committee be appointed.

The President appointed Senators Emler, Apple and Lee as a conference committee on the part of the Senate.

FINAL ACTION ON CONSENT CALENDAR

SB 449, SB 521 having appeared on the Consent Calendar for the required two full legislative days without objection from any member, were considered on final action.

SB 449, An act amending the uniform commercial code; relating to secured transactions; amending K.S.A. 2007 Supp. 84-9-521 and repealing the existing section.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

SB 521, An act concerning payment for motor vehicle registrations; amending K.S.A. 8-145a and repealing the existing section.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

SB 301, An act concerning criminal procedure; dealing with expungement; amending K.S.A. 21-4619 and K.S.A. 2007 Supp. 12-4516 and repealing the existing sections was considered on final action.

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

Yeas: Allen, Barone, Betts, Bruce, Brungardt, Francisco, Gilstrap, Goodwin, Haley, Hensley, Journey, Kelly, Lee, Morris, Reitz, Schodorf, Steineger, Umbarger, Vratil, Wysong.

Nays: Apple, Barnett, Brownlee, Donovan, Emler, Huelskamp, Jordan, Lynn, McGinn, Ostmeyer, Palmer, Petersen, Pine, Pyle, Schmidt D, Schmidt V, Taddiken, Teichman, Wagle, Wilson.

A constitutional majority having failed to vote in favor of the bill, **SB 301**, did not pass.

SB 419, An act concerning criminal procedure; relating to the journal entry; amending K.S.A. 22-3426 and 22-3426a and repealing the existing sections was considered on final action.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

SB 430, An act relating to crimes, punishment and criminal procedure; concerning aggravated criminal threat; amending K.S.A. 21-3419a and repealing the existing section was considered on final action.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

SB 431, An act concerning the probate code; relating to the increase in allowances for spouses and minor children; amending K.S.A. 59-403, 59-6a215 and 59-2287 and K.S.A. 2007 Supp. 59-1507b and repealing the existing sections was considered on final action.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

SB 433, An act enacting the uniform prudent management of institutional funds act; repealing K.S.A. 58-3601 through 58-3609 was considered on final action.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed, as amended.

SB 434, An act relating to civil procedure; concerning certain rules of procedure; amending K.S.A. 60-216, 60-226, 60-233, 60-234, 60-237 and 60-245 and repealing the existing sections was considered on final action.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

SB 435, An act relating to children and minors; concerning the revised Kansas juvenile justice code and the revised Kansas code for care of children; amending K.S.A. 2007 Supp. 38-2202, 38-2203, 38-2211, 38-2217, 38-2237, 38-2241, 38-2243, 38-2244, 38-2247, 38-2248, 38-2251, 38-2254, 38-2258, 38-2259, 38-2260, 38-2264, 38-2265, 38-2268, 38-2269, 38-2304 and 38-2317 and repealing the existing sections; also repealing K.S.A. 2007 Supp. 38-133 was considered on final action.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed, as amended.

SB 450, An act relating to cemetery corporations; concerning the investment of permanent maintenance fund; amending K.S.A. 17-1349 and repealing the existing section was considered on final action.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Taddiken.

The bill passed.

SB 465, An act concerning insurance companies; relating to certain requirements regarding filing rates and forms; amending K.S.A. 2007 Supp. 40-216 and repealing the existing section was considered on final action.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

SB 472, An act concerning the pooled money investment board; pertaining to investment in certain corporate bonds; amending K.S.A. 2007 Supp. 75-4209 and repealing the existing section was considered on final action.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

SB 487, An act concerning sales taxation; relating to imposition of tax; hunting and fishing and sale of game birds; amending K.S.A. 2007 Supp. 79-3603 and 79-3606 and repealing the existing sections was considered on final action.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed, as amended.

SB 509, An act concerning the state corporation commission; relating to impoundment of certain motor vehicles; authorizing sale of certain impounded motor vehicles; amending K.S.A. 2007 Supp. 66-1,129a and repealing the existing section was considered on final action.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

REPORTS OF STANDING COMMITTEES

Committee on **Federal and State Affairs** recommends **SB 397** be amended on page 3, by striking all in line 26 and inserting the following:

“Sec. 2. K.S.A. 41-346 is hereby amended to read as follows: 41-346. In any administrative proceeding pursuant to the Kansas liquor control act to suspend or revoke a license, or to impose a civil fine, for a violation of K.S.A. 21-3610, 21-3610a or 41-2615, and amendments thereto, it shall be a defense if evidence is presented which indicates that: (a) The defendant

permitted the minor to possess or consume the alcoholic liquor or cereal malt beverage with reasonable cause to believe that the minor was 21 or more years of age; and (b) to possess or consume the alcoholic liquor or cereal malt beverage, the minor exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document, ~~containing that reasonably appears to contain~~ a photograph of the minor and purporting to establish that such minor was 21 or more years of age.

Sec. 3. K.S.A. 41-2615 is hereby amended to read as follows: 41-2615. (a) No licensee or permit holder, or any owner, officer or employee thereof, shall knowingly or unknowingly permit the possession or consumption of alcoholic liquor or cereal malt beverage by a minor on premises where alcoholic beverages are sold by such licensee or permit holder, except that a licensee's or permit holder's employee who is not less than 18 years of age may serve alcoholic liquor or cereal malt beverage under the on-premises supervision of the licensee or permit holder, or an employee who is 21 years of age or older.

(b) Violation of this section is a misdemeanor punishable by a fine of not less than \$100 and not more than \$250 or imprisonment not exceeding 30 days, or both.

(c) It shall be a defense to a prosecution under this section if: (1) The defendant permitted the minor to possess or consume the alcoholic liquor or cereal malt beverage with reasonable cause to believe that the minor was 21 or more years of age; and (2) to possess or consume the alcoholic liquor or cereal malt beverage, the minor exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document, ~~containing that reasonably appears to contain~~ a photograph of the minor and purporting to establish that such minor was 21 or more years of age.

Sec. 4. K.S.A. 41-346 and 41-2615 and K.S.A. 2007 Supp. 41-719 are hereby repealed.”;

And by renumbering the remaining section accordingly;

In the title, in line 9, by striking all after “concerning”; in line 10, by striking all before “K.S.A.” and inserting “alcoholic beverages; relating to the consumption thereof; amending K.S.A. 41-346 and 41-2615 and”; and the bill be passed as amended.

Committee on **Financial Institutions and Insurance** recommends **SB 464**, **SB 561** be passed.

Also, **SB 511** be amended on page 1, in line 26, after the comma by inserting “the”; also in line 26, after “in” by inserting “the”; in line 27, after the first “and” by inserting “the”; also in line 27, after the second “and” by inserting “the”; in line 30, after “2008” by inserting “, and to the senate committee on financial institutions and insurance and the house committee on insurance and financial institutions on or before February 1, 2009”; and the bill be passed as amended.

COMMITTEE OF THE WHOLE

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

On motion of Senator Emler the following report was adopted:

The committee report on **HB 2066** recommending a **S Sub for HB 2066** , be adopted and the substitute bill be passed.

S Sub for HB 2066 was amended by motion of Senator Apple, on page 3, in line 27, by striking “fuel”, where it appears for the first time, and inserting “energy”; also in line 27, by striking all after “average”; in line 28, by striking “entity generating electricity” and inserting “cost including fuel and purchased power for the preceding 12 months”;

On page 4, in line 7, after “mechanism” by inserting “accessible by electric utility personnel”; in line 27, after “supplier’s” by inserting “Kansas”; by striking all in lines 42 and 43;

On page 5, by striking all in lines 1 through 13 and inserting the following:

“New Sec. 5. The utility will supply, own and maintain all necessary meters and associated equipment utilized for billing. In addition, and for the purposes of monitoring customer generation and load, the utility may install at its expense, load research metering. The customer shall supply, at no expense to the utility, a suitable location for meters and associated equipment used for billing and for load research.”;

Also on page 5, in line 33, by striking “fuel cost” and inserting “energy”;

On page 11, after line 9, by inserting the following:

“(h) The provisions of the net metering and easy connection act shall not preclude the state corporation commission from approving net metering tariffs upon request of an electric utility for other methods of renewable generation not prescribed in subsection (a)(1) of section 3, and amendments thereto.”; the amendment passed.

S Sub. for HB 2066 was passed by adoption of the committee amendment, and the bill be passed as amended.

The following amendments offered to **S Sub for HB 2066** were rejected:

Senator Steineger moved to amend **S Sub for HB 2066**, on page 19, after line 28, by inserting the following:

“New Sec. 24. (a) Sections 24 through 26, and amendments thereto, shall be known and may be cited as the carbon dioxide emissions offset act and shall not be construed to be part of the Kansas air quality act.

(b) As used in the carbon dioxide emissions offset act:

(1) “Affected facility” means a fossil-fuel-fired steam electricity generating unit of more than 250 million British thermal units per hour heat input other than:

(A) A facility owned or operated by the federal government;

(B) a facility located on tribal lands; or

(C) any other facility exempt under section 111 of the federal clean air act.

(2) “Community wind resources” means any new wind energy project that:

(A) Has an ownership structure as follows:

(i) For a project that consists of one or two turbines, is owned by one or more qualified owners with at least 33% of the power purchase agreement payments flowing to a qualified owner or owners or local community; and

(ii) for a project that consists of more than two turbines, is owned by qualified owners with no single qualified owner owning more than 15% of a project and with at least 33% of the power purchase agreement payments flowing to the qualified owner or owners or local community; or

(B) has a resolution of support adopted:

(i) By the county board of each county in which the project is to be located; or

(ii) by the tribal council for the project located within the boundaries of an Indian reservation.

(3) “Construct” or “construction” means physical on-site construction of an affected facility.

(4) “Owner or operator” means any person who owns, leases, operates, controls or supervises an affected facility subject to any standard or requirement of the Kansas air quality act, K.S.A. 65-3001 et seq., and amendments thereto, or any rules and regulations promulgated thereunder.

(5) “Potential-to-emit” means the maximum capacity of an affected facility to emit carbon dioxide under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit carbon dioxide, including any reduction equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design.

(6) “Qualified owner or owners” means:

(A) An individual who is a Kansas resident;

(B) any of the following entities, all members of which are individuals who was Kansas residents: A limited liability company which is organized under the Kansas revised limited liability company act (K.S.A. 17-7662 et seq., and amendments thereto), a corporation organized not-for-profit under the laws of this state or a cooperative organized under the cooperative marketing act (K.S.A. 17-1601 et seq., and amendments thereto), the electric cooperative act (K.S.A. 17-4601 et seq., and amendments thereto) or the renewable energy electric generation cooperative act (K.S.A. 17-4651 et seq., and amendments thereto);

(C) a Kansas political subdivision or local government including, but not limited to, a municipal electric utility, or a municipal power agency on behalf of and at the request of a member distribution utility, a county, a city, a school district, a public or private higher

education institution or any other local or regional governmental organization such as a board, commission or association; or

(D) a tribal council.

(7) "Reconstruct" or "reconstruction" means any rebuilding of an emission source within an existing affected facility which generates electricity from fossil fuel that would result in an increase in carbon dioxide emissions from such facility.

(8) "Supercritical pulverized coal technology" means a steam generating facility operating at or above 3,600 pounds per square inch and less than 1,200 degrees Fahrenheit.

(9) "Ultra-supercritical pulverized coal technology" means a steam generating facility operating at or above 4,500 pounds per square inch and at or above 1,200 degrees Fahrenheit.

New Sec. 25. (a) Any affected facility to be constructed or reconstructed on or after January 1, 2008, shall comply with the emission limitations provided for herein if the potential-to-emit from the proposed affected facility equals or exceeds 250,000 tons per year of carbon dioxide.

(b) Except as otherwise provided herein:

(1) On and after the date on which the initial performance test of an affected facility is completed or required to be completed, whichever occurs first, neither the owner nor the operator of such affected facility shall on an annual basis cause to be discharged into the atmosphere from such affected facility any gases containing carbon dioxide in excess of the following emission limits:

(A) For an affected facility using solid fuel, carbon dioxide in excess of 1,520 pounds per net megawatt hour;

(B) for an affected facility using liquid fuel, carbon dioxide in excess of 1,080 pounds per net megawatt hour; and

(C) for an affected facility using gaseous fuel, carbon dioxide in excess of 810 pounds per net megawatt hour; and

(2) ten years after the initial performance test of an affected facility using solid fuel is completed or required to be completed, whichever occurs first, neither the owner nor the operator of such affected facility shall cause to be discharged into the atmosphere any gases containing carbon dioxide in excess of 1,330 pounds per net megawatt hour.

New Sec. 26. (a) For affected facilities not meeting the carbon dioxide emission limitations set forth in section 24, and amendments thereto, the owner or operator shall be deemed to be in compliance if the emissions in excess of such limitations are mitigated or offset by any of the following means or methods in the amount of the credit as provided below:

(1) For wind-powered electricity generating facilities constructed after January 1, 2000, excluding community wind resources, an offset credit equal to one and one-half times an amount computed as follows, if the affected facility is located in Kansas, and one times such amount if located outside of Kansas: The affected facility's expected carbon dioxide emission rate expressed in pounds per megawatt, multiplied by the name plate rating of the wind-powered electricity generating facility expressed in megawatt hours, multiplied by the expected average capacity factor of the wind-powered electricity generating facility at the proposed site or sites, multiplied by 8,760 hours per year. The owner or operator of the affected facility shall be entitled to the offset credit whether it owns or leases the wind-powered electricity generating facility, or purchases power from such wind-powered electricity generating facility;

(2) for development of carbon reduction, storage or utilization projects, an offset credit shall be received for the reduced, avoided, displaced, captured, stored or sequestered carbon dioxide as follows:

(A) For capture of carbon dioxide emitted from an affected facility using chilled ammonia, amine capture and coal gasification, an offset credit equal to two times the actual carbon dioxide tonnage captured; or

(B) for storage of carbon dioxide emitted from an affected facility using deep aquifer injection, depleted oil or natural gas field injection, enhanced oil or gas recovery, carbon capture sequestration or pipeline projects for the transportation of carbon dioxide to be used for enhanced oil or gas recovery or carbon storage, an offset credit equal to three times the actual carbon dioxide tonnage sequestered, stored or displaced; or

(C) for development of carbon utilization technology that displaces or offsets the release of carbon dioxide using algae to produce bio-diesel or starch substitutes for grain based ethanol, an offset credit equal to three times the actual carbon dioxide tonnage displaced or offset in Kansas;

(3) for any nuclear or hydro-power electricity generating facility constructed after January 1, 2008, any large-scale energy storage project, any central station solar energy project or any efficiency project of an existing fossil-fueled electricity generating facility, an offset credit equal to three times the actual carbon dioxide tonnage avoided if the facility or project is located in Kansas. If the facility or project is located outside of Kansas, the offset credit shall be equal to the actual carbon dioxide tonnage avoided;

(4) for energy efficiency and renewable distributed generation sources located in Kansas, using demand-side peak-shaving or photo-voltaic, bio-mass or community wind resources, excluding wind-powered electricity generating facilities described in subsection (a)(1), and for electricity purchased from a customer-generator pursuant to the net metering and easy connection act, an offset credit equal to three times the actual carbon dioxide tonnage avoided;

(5) for ultra-supercritical pulverized coal technology projects, an offset credit equal to three times the actual carbon dioxide tonnage avoided in comparison to the carbon dioxide emissions per megawatt hour from a supercritical pulverized coal technology project;

(6) for non-release agricultural related projects, using minimum till or no-till practices, conversion of cultivated land to pasture, forest sequestration projects, and erosion, windbreaks or community beautification projects, an offset credit equal to three times the actual carbon dioxide tonnage sequestered as a result of such projects in Kansas, and two times the actual carbon dioxide tonnage sequestered as a result of such projects within the service territory of the owner or operator.

(b) For transmission system improvements located inside or outside Kansas, including direct-current converters or ties, which enable or enhance the development in whole or in part of renewable resources electricity generating facilities located in Kansas, an offset credit shall be allowed as follows:

(1) The carbon dioxide offset credit from any project shall be based on the incremental available transfer capacity, expressed in mega-volt-amperes, which may be available for renewable energy transfers as a result of such project. Such determination of available transfer capacity must be demonstrated by an engineering study performed by, or in accordance with procedures developed by, the southwest power pool or other reliability, planning or regional transmission organization, if any, in the affected transmission grid or grids.

(2) Such carbon dioxide offset shall be determined by taking the additional transmission capacity, expressed in mega-volt-amperes, multiplied by a 0.9 power factor, multiplied by the rate of the affected facility's expected carbon dioxide release rate expressed in pounds per megawatt hour, multiplied by a 40% capacity factor, multiplied by 8,760 hours per year, to be recalculated on an annual basis. The owner or operator of the affected facility shall be entitled to an offset credit whether it owns or leases the transmission facility.

(c) For research and development projects to develop new technology to capture, displace or sequester carbon, which were incurred in good faith but did not result in the development of successful technology to capture, displace or sequester carbon, an offset credit equal to one ton of carbon dioxide reduction for each dollar expended shall be allowed for 10 years.

(d) For expenditures by any Kansas electric public utility for energy efficiency programs whose purpose is to educate the public on energy conservation, or expected to lead to the reduction of energy use by the public, an offset credit equal to one-half of a ton of carbon dioxide for each dollar expended shall be allowed.

(e) An owner or operator of an affected facility shall receive an offset credit for the retirement of other electricity generating units located in Kansas which are permanently removed from service on or after July 1, 2008, and which combusted the same fuel as the affected facility. The owner or operator shall state, in a written format prescribed by the permitting authority, those units that have been permanently retired on a specific date and the fossil-fuel capability of such unit. Such offset credit is only applicable if fuel utilized by the affected facility is the same fuel as that utilized by the retired electricity generating unit.

(f) If an owner or operator is rendered unable, wholly or in part, by force majeure, to carry out its obligations under this act, the owner's or operator's performance herein, to the extent affected by such force majeure, shall be suspended during the continuance of any inability, provided the owner or operator is in good faith attempting with reasonable dispatch to remedy the cause. As used in this subsection, "force majeure" means acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockages, insurrections, riots, epidemics, natural disasters, civil disturbances, failure of or accidents to machinery or lines or any other cause, whether similar or dissimilar to the foregoing, that is beyond the owner's or operator's reasonable control.

(g) Any person that can substantiate the reduction of the emission of carbon dioxide through a carbon mitigation project located in Kansas, shall be entitled to an offset credit in the amount of carbon dioxide reduction and, may sell, trade or exchange the credit to an owner or operator of an affected facility which may then be utilized to satisfy the carbon dioxide emission limitations herein.

(h) (1) For carbon dioxide releases not otherwise reduced or mitigated, the owner or operator shall mitigate emissions in excess of the allowable emissions set forth herein by paying to the state corporation commission the sum of \$3 for each ton of carbon dioxide emissions from the affected facility which are in excess of the allowable limitations set forth herein. Consistent with the methods required under K.A.R. 28-19-202, the owner or operator of an affected facility shall determine such emissions which are greater than the allowable limitation and shall report the same to the secretary on the date specified in K.A.R. 28-19-202(d)(1). The owner or operator of an affected facility shall remit to the state corporation commission such payment consistent with a determination under this subsection by the same date. The state corporation commission shall remit to the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys received by the commission pursuant to such section. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the energy efficiency grant programs fund which is hereby created in the state treasury.

(2) Moneys in the energy efficiency grant programs fund shall be expended in accordance with appropriation acts for grants for energy efficiency programs or as otherwise determined by the legislature.

(3) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the energy efficiency grant fund interest earnings based on:

(A) The average daily balance of moneys in the energy efficiency grant programs fund for the preceding month; and

(B) the net earnings rate for the pooled money investment portfolio for the preceding month.

(4) All expenditures from the energy efficiency grant programs fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the state corporation commission, or a person or persons designated by the chairperson of the commission, for the purposes set forth in this section.

(i) Before July 1, 2009, the secretary of the Kansas department of health and environment shall adopt such rules and regulations to implement this section and sections 10 and 11, and amendments thereto, including, but not limited to, monitoring, reporting and record keeping requirements, consistent herewith as deemed necessary to ensure conformance with the provisions of this section and section 11, and amendments thereto. The secretary shall consult with the state corporation commission in the promulgation of such rules and regulations. The secretary shall not defer nor delay the issuance of any construction permit pursuant to the Kansas air quality act, and amendments thereto, pending the establishment of such rules and regulations. The limitations under this act shall not be set forth in any construction or operating permit to be issued under the Kansas air quality act.":

And by renumbering the remaining sections accordingly;

Upon a showing of 5 hands, a roll call vote was requested:

On roll call, the vote was: Yeas 3, Nays 32, Present and Passing 5, Absent or Not Voting 0.

Yeas: Brungardt, Reitz, Steineger

Nays: Allen, Apple, Barnett, Betts, Brownlee, Bruce, Donovan, Emler, Gilstrap, Goodwin, Hensley, Huelskamp, Jordan, Journey, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson.

Present and Passing: Barone, Francisco, Haley, Kelly, Wysong.

Absent or Not Voting: 0

The motion failed and the amendment was rejected.

Senator Francisco moved to amend **S Sub for HB 2066**, on page 17, by striking all in lines 20 through 43;

By striking all on page 18;

On page 19, by striking all in lines 1 through 28;

And by renumbering the remaining sections accordingly;

Also on page 19, in line 34, by striking "and 66-104d";

On page 1, in the title, in line 13, by striking "and 66-104d";

The motion failed and the amendment was rejected.

Senator Francisco further moved to amend the bill on page 11, by striking all in line 10 through 43;

By striking all on pages 12 through 16;

On page 17, by striking all in lines 1 through 19;

And by renumbering the remaining sections accordingly;

On page 1, in the title, in line 12, by striking all after "emissions"; by striking all in line 13; in line 14, by striking all before the period;

The motion failed and the amendment was rejected.

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Thursday, February 14, 2008.

HELEN MORELAND, CHARLENE BAILEY, PAT MATZEK, *Journal Clerks.*

PAT SAVILLE, *Secretary of the Senate.*

