

# Journal of the Senate

SIXTY-SECOND DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Wednesday, May 6, 2009—10:00 a.m.

The Senate was called to order by Vice President John Vratil.  
The roll was called with thirty-eight senators present.  
Senators Masterson and Wysong were excused.  
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,  
All governing authorities are established by God,  
According to the Apostle Paul.  
They are also Your servants to do good,  
And are deserving of respect by all. (Romans 13:1-5)

Too often we're guilty, O God,  
Of rebelling against those who serve.  
We gripe and complain and never pray  
For the kind of treatment they deserve.

I've said it before, and I'll say it again,  
I wish those of us who complain  
Would have to walk in their shoes  
And experience some of their pain.

Governing authorities constantly experience  
That old saying that is still true yet:  
"When I'm right, no one remembers,  
When I'm wrong, no one forgets."

The best thing we can do for them,  
Which we should be doing all along;  
Is to pray a lot more than we criticize,  
Whether they are right or wrong.

I pray in the Name of Jesus Christ,  
AMEN

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

## INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

**SB 339.** An act concerning energy; relating to conservation and electric generation, transmission and efficiency and air emissions; amending K.S.A. 19-101a, 55-1,117, 65-3012 and 66-104d and K.S.A. 2008 Supp. 65-3005, 65-3008a, 66-1,184, 74-99d07 and 74-99d14 and repealing the existing sections; also repealing K.S.A. 19-101a, as amended by section 7 of 2009 Senate Bill No. 336, and 19-101m, by Committee on Federal and State Affairs.

**REFERRED TO COMMITTEE**

Vice President Vratil referred **SB 339** to the **Committee on Utilities**.

**CHANGE OF CONFERENCE**

The Vice President announced the appointment of Senators Emler and Vratil as members of the Conference Committee on **H Sub for SB 168** to replace Senators V. Schmidt and Apple.

**INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS**

Senators Haley and Faust-Goudeau introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1888—

A RESOLUTION recognizing the observance of an annual Juneteenth Day.

WHEREAS, June 19th, the oldest known celebration of the ending of slavery, is known in many places as Juneteenth Day; and

WHEREAS, News of the end of slavery did not reach frontier areas of the United States for more than 2 years after President Lincoln's Emancipation Proclamation of January 1, 1863, and months after the conclusion of the Civil War; and

WHEREAS, On June 19, 1865, Union soldiers led by Major General Gordon Granger arrived in Galveston, Texas, with news that the Civil War had ended and that the enslaved were free; and

WHEREAS, News of the end of slavery did not have the same impact on Kansas because Kansas was established as and remained a "free" state; and

WHEREAS, Many African-Americans continue the tradition of celebrating Juneteenth as inspiration and encouragement for future generations and for more than 140 years, Juneteenth Day celebrations have been held to honor African-American freedom while encouraging self-development and respect for all cultures; and

WHEREAS, Although Juneteenth Day is beginning to be recognized as a national, and even global event, the history behind the celebration should not be forgotten; and

WHEREAS, The faith and strength of character demonstrated by former slaves remains an example for all people of the United States, regardless of background, religion or race: NOW THEREFORE,

*Be it resolved by the Senate of the State of Kansas:* That we recognize the historical significance of Juneteenth; support the continued celebration of Juneteenth to provide an opportunity for the people of the State of Kansas to learn more about the past to better understand the experiences that have shaped the nation and encourage the people of the State of Kansas to observe Juneteenth Day with appropriate ceremonies, activities and programs; and

*Be it further resolved:* That the Secretary of the Senate provide an enrolled copy of this resolution to Senator David Haley.

On emergency motion of Senator Faust-Goudeau **SR 1888** was adopted unanimously.

**REMARKS**

MR. VICE PRESIDENT:

Although Juneteenth Day is beginning to be recognized as a National and even a Global Event—the history behind the celebration should not be forgotten.

Mr. Vice President—I know I won't forget the foresight into the future of President Lincoln's Emancipation Proclamation—because I know it had a direct impact on my being able to stand here today as the first African American female to serve in the Kansas Senate in our state's history. So I will be forever grateful for the celebration and I'd like to thank Senator David Haley for allowing me to co-sponsor this resolution with him—OLETHA FAUST-GOUDEAU

On motion of Senator D. Schmidt, the Senate recessed until 4:00 p.m.

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 AFTERNOON SESSION

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

**CHANGE OF REFERENCE**

The President withdrew **HB 2299** from the Committee on **Assessment and Taxation**, and referred the bill to the **Committee on Transportation**.

**MESSAGE FROM THE HOUSE**

The House concurs in Senate amendments to **Senate Substitute for HB 2295**.

The House adopts the conference committee report on **SB 171**.

The following bills were stricken from the Calendar in accordance with House Rule 1507: **House Substitute for SB 31; SB 37; Substitute SB 89; SB 105; SB 119; SB 139; SB 159; House Substitute for SB 162; SB 183**, effective on March 30, 2009.

**CONFERENCE COMMITTEE REPORT**

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2060**, submits the following report:

Your committee on conference agrees to disagree and recommends that a new conference committee be appointed;

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

THOMAS C OWENS  
DEREK SCHMIDT  
*Conferees on part of Senate*

PAT COLLONTON  
JOE PATTON  
MELODY MCCRAY-MILLER  
*Conferees on part of House*

On motion of Senator Owens, the Senate adopted the conference committee report on **HB 2060**, and requested a new conference committee be appointed.

The President appointed Senators Owens, D. Schmidt and Kelly as a 4th Conference Committee on the part of the Senate on **HB 2060**.

**REPORTS OF STANDING COMMITTEES**

Committee on **Natural Resources** recommends **HB 2283** be amended on page 1, after line 13, by inserting:

“New Section 1. Not less than 60 days before the effective date of any ordinance annexing land into the boundaries of any city:

(a) The city shall give written notice to any rural water district organized pursuant to K.S.A. 82a-612 et seq., and amendments thereto, in whose territory the land or any portion thereof is located of the city’s intent to annex such land; and

(b) the notice shall contain the description of the land to be annexed and the city’s plan for the provision of water service to the land being annexed.

New Sec. 2. Following annexation of rural water district territory by a city, the city and the district may contract for the district to provide water service to all or certain portions of the annexed area. If the agreement includes a provision for the payment of a franchise fee to the city, such agreement shall be subject to the provisions of K.S.A. 12-2001 et seq., and amendments thereto.

New Sec. 3. (a) Following annexation, the rural water district shall remain the water service provider to the annexed area unless the city gives written notice designating a different supplier. If the city designates a different supplier, the city shall purchase the property, facilities, improvements and going concern value of the facilities of the district located within the territory annexed by the city. If an agreement for the purchase of such property,

facilities, improvements and going concern value of the facilities of the district annexed by the city is not executed within 90 days after delivery of the notice designating a different supplier, the city and the rural water district in good faith shall engage in mediation. Unless an agreement is executed, no change in water service provider shall occur and no appraisers shall be appointed until more than 120 days after delivery of the notice of intent to change the water supplier and the mediation has been terminated.

(b) If the district and the city are unable to reach agreement on the reasonable value for such property, facilities, improvements and going concern value of the facilities of the district, then the reasonable value shall be determined in the following manner:

(1) The district and the city shall each select one qualified appraiser and the two appraisers so selected shall then select a third appraiser for the purpose of conducting an appraisal to determine reasonable value of the property, facilities, improvements and going concern value of the facilities of the district annexed by the city. The appraisers shall consider all elements of value, employing any method of valuation the appraisers deem appropriate and shall specifically consider the following factors in determining reasonable value:

- (A) Whether any property of the district is rendered useless or valueless to the district;
- (B) the amount of damage to property remaining in the ownership of the district following annexation;
- (C) impact on the existing indebtedness of the district and such district's ability to repay that debt;
- (D) the value of the service facilities of the district located within the area in question;
- (E) the amount of any expenditures for planning, design or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question;
- (F) the amount of the district's contractual obligations allocable to the area in question;
- (G) any demonstrated impairment of service or increase of cost to consumers of the district remaining after the annexation and the impact on future revenues lost from existing customers;
- (H) any necessary and reasonable legal expenses and professional fees;
- (I) any factors relevant to maintaining the current financial integrity of the district; and
- (J) any other relevant factors.

(2) The appraisers shall hear such evidence as the appraisers deem appropriate and shall make a written summary of findings and conclusions. The agreement or decision of at least two of the three appraisers shall be the fair market value presented to the city for payment and the district for acceptance.

(3) If either the district or the city is dissatisfied with the decision of the appraisers, then the district or the city may appeal within 30 days such award to the district court. Such appeal shall be heard de novo by the court without a jury.

(c) The compensation required by this section shall be paid to the district whether or not the city actually utilizes the facilities of the district for the delivery of water to property within the city and shall be paid at a time not later than 120 days following the date upon which the fair market value of the facilities are certified to the city and to the district, or at such later date as may be mutually agreed upon by the city and the district or as may be determined by the district court.

(d) In any event, the district may elect to retain facilities located within the city used for transmission of water, provided that the district use those facilities to continue to supply water service to benefit units outside the city. The district shall not receive compensation for facilities it elects to retain.

(e) Except as otherwise provided, nothing in this section shall be construed as limiting the authority of a city to select water service suppliers to areas within the city limits, or to limit the authority of a city to adopt and enforce regulations for the operation of a water service supplier, including, but not limited to, standards of water quality, classification of water customers, capacity of water system, water system connections to sanitary sewer systems, rates and billing practices and other regulations for protection of the public health, safety and welfare.

(f) In the event that a district will no longer be the water supplier to land as a result of annexation and notice pursuant to subsection (a), the district shall continue to provide such

service until the city gives notice of its assumption of responsibility for service, designating the date that the service shall transfer to the supplier designated by the city. The district and the city shall cooperate as necessary to minimize the inconvenience to water customers as a result of the transfer. The city shall give written notice to each customer of the district for whom water service is being transferred specifying the name and address of the new supplier, the effective date of the transfer, the reason for the transfer and a schedule of applicable rates. The district shall not discontinue or limit service to customers who were supplied water by the district at the time of annexation during the period of negotiations unless such customer has violated district bylaws or rules and regulations.

(g) Following the transfer of water service from the district to the city, the annexed land, or amount of such land for which water service has been transferred to the city, shall be deleted from the territory of the district and all benefit units attached to land located therein shall be canceled without compensation. Notice of such deletion of territory shall be provided to the county clerk and the chief engineer of the division of water resources of the department of agriculture.

Sec. 4. K.S.A. 2008 Supp. 82a-612 is hereby amended to read as follows: 82a-612. As used in this act, unless the context clearly requires otherwise:

- (a) "District" means a rural water district organized pursuant to this act;
- (b) "board" means the governing body of a district;
- (c) the terms "board of county commissioners" and "county clerk" shall mean, respectively, the board of county commissioners and county clerk of the county in which the greatest portion of the territory of any existing or proposed rural water district is located;
- (d) "participating member" means an individual, firm, partnership, association or corporation which owns land located within a district and:
  - (1) Which has subscribed to one or more benefit units of such district; or
  - (2) *which is charged a franchise fee for water service which is paid, either directly or indirectly through another water provider, to such district;*
- (e) "chief engineer" means the chief engineer of the division of water resources, Kansas department of agriculture.;

And by renumbering the remaining sections accordingly;

Also on page 1, in line 34, after the period, by inserting:

"(d)";

Also on page 1, by striking all in lines 35 through 38 and inserting: "make specific written findings of fact and conclusions determining whether the lands requested to be released cannot be economically or adequately serviced by the facilities of the district and whether such release would be in the best interests of the landowner and the district. The findings and conclusions shall be based upon the preponderance of evidence presented to the board. In determining whether to grant the petition for release, the board's considerations shall be based on the following factors:";

On page 2, in line 19, by striking "a fair profit" and inserting "adequate compensation"; in line 38, after "its" by inserting "written"; also in line 38, after "findings" by inserting "and conclusions"; in line 39, after "such" by inserting "written"; also in line 39, after "findings" by inserting "and conclusions"; in line 40, by striking "Any" and inserting "Except as provided in subsection (f), any";

On page 3, after line 2, by inserting:

"(f) If the district denies the landowner's petition for release because such release would not yield adequate compensation to the district, once such release is denied, the district and the landowner shall determine the amount of compensation sufficient to enable the district to be adequately compensated from the release in the following manner:

(1) The district and the landowner shall each select one qualified appraiser and the two appraisers so selected shall then select a third appraiser for the purpose of conducting an appraisal to determine the amount of compensation sufficient to enable the district to be adequately compensated from the release. The appraisers shall consider all elements of value, employing any method of valuation the appraisers deem appropriate and shall specifically consider the following factors in determining reasonable value:

(A) Whether any property of the district is rendered useless or valueless to the district;

(B) the impact on the existing indebtedness of the district and such district's ability to repay that debt;

(C) the value of the service facilities of the district located within the area in question;

(D) the amount of the district's contractual obligations allocable to the area in question;

(E) any demonstrated impairment of service or increase of cost to consumers of the district remaining after the release and the impact on future revenues lost from existing customers;

(F) any necessary and reasonable legal expenses and professional fees;

(G) any factors relevant to maintaining the current financial integrity of the district; and

(H) any other relevant factors.

(2) The appraisers shall hear such evidence as the appraisers deem appropriate and shall make a written summary of findings and conclusions. At least two of the three appraisers shall agree as to the amount of compensation owed by the landowner to the district and shall require such payment from the landowner to the district for acceptance.

(3) If either the district or the landowner is dissatisfied with the decision of the appraisers, then the district or the landowner may appeal within 30 days such award to the district court. Such appeal shall be heard de novo by the court without a jury.”;

Also on page 3, in line 3, by striking “(f)” and inserting “(g)”; after line 8, by inserting the following:

“Sec. 6. The provisions of sections 1 through 5 shall be part of and supplemental to the Kansas rural water district act.

Sec. 7. K.S.A. 82a-1036 is hereby amended to read as follows: 82a-1036. ~~Whenever~~ *In a groundwater use area which is located within the boundaries of an existing groundwater management district or districts, only when* a groundwater management district recommends the same or whenever a petition signed by not less than ~~three hundred (300)~~ 300 or by not less than ~~five percent (5%)~~ 5% of the eligible voters of a groundwater management district, whichever is less, is submitted to the chief engineer, the chief engineer shall initiate, as soon as practicable thereafter, proceedings for the designation of a specifically defined area within such district *or districts* as an intensive groundwater use control area. The chief engineer upon ~~his or her~~ *such chief engineer's* own investigation may initiate such proceedings whenever ~~said~~ *such* chief engineer has reason to believe that any one or more of the following conditions exist in a groundwater use area which is located outside the boundaries of an existing groundwater management district: (a) Groundwater levels in the area in question are declining or have declined excessively; or (b) the rate of withdrawal of groundwater within the area in question equals or exceeds the rate of recharge in such area; or (c) preventable waste of water is occurring or may occur within the area in question; (d) unreasonable deterioration of the quality of water is occurring or may occur within the area in question; or (e) other conditions exist within the area in question which require regulation in the public interest.”;

And by renumbering the remaining sections accordingly;

Also on page 3, in line 9, after “K.S.A.” by inserting “12-527 and 82a-1036 and K.S.A.”; also in line 9, after “Supp.” by inserting “82a-612 and”; also in line 9, by striking “is” and inserting “are”;

In the title, in line 9, by striking “rural water districts” and inserting “water”; also in line 9, by striking all after the semicolon; in line 10, by striking all before “amending”; also in line 10, before “K.S.A.” by inserting “K.S.A 82a-1036 and” also in line 10, after “Supp.” by inserting “82a-612 and”; in line 11, by striking “section” and inserting “sections; also repealing K.S.A. 12-527”; and the bill be passed as amended.

Committee on **Utilities** recommends **HB 2369**, as amended by House Committee, be amended by substituting a new bill to be designated as “SENATE Substitute for HOUSE BILL No. 2369,” as follows:

“SENATE Substitute for HOUSE BILL No. 2369

By Committee on Utilities

“AN ACT concerning energy; relating to conservation and electric generation, transmission and efficiency and air emissions; amending K.S.A. 19-101a, 55-1,117, 65-3012 and 66-104d and K.S.A. 2008 Supp. 65-3005, 65-3008a, 66-1,184, 74-99d07 and 74-99d14 and

repealing the existing sections; also repealing K.S.A. 19-101a, as amended by section 7 of 2009 Senate Bill No. 336, and 19-101m.”; and the substitute bill be passed.

On motion of Senator D. Schmidt the Senate adjourned until 9:00 a.m., Thursday, May 7, 2009.

HELEN MORELAND, ROSE MARIE GLATT, SHIRLEY LAMOTT, *Journal Clerks.*  
PAT SAVILLE, *Secretary of the Senate.*

