

Journal of the Senate

THIRTY-FOURTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, March 3, 2011, 2:30 p.m.

The Senate was called to order by President Stephen Morris.
The roll was called with thirty-nine senators present.
Senator Donovan was excused.
Invocation by Reverend Fred S. Hollomon:

Heavenly Father,

Very deep within me
A battle scene unfolds:
A dual between two forces
For the capture of my soul.

One tells me not to worry
When I feel I need to lie.
The other force says lying
I must never justify.

One force says my survival
Rests on a simple plan:
Just realize most people
Will cheat me when they can.

But the other force reminds me
If that's what I believe,
I'll live a life of misery,
Because myself I will deceive.

I'm assuming that this battle
Will continue for my soul:
Please help me, Lord, to listen
To the force that You control.

I pray in the Name of Jesus Christ,

AMEN

The pledge of allegiance was led by President Stephen Morris.

POINT OF PERSONAL PRIVILEGE

Senator Apple introduced and congratulated Susana Kingsley, Mrs. Kansas 2011. Also introduced were Mike Quilling and Fred Burrack, members of the Kansas Music Educators Association and they were welcomed with a standing ovation.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

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

SB 220, AN ACT concerning the state fire marshal; abolishing the office thereof; transferring the duties and functions thereof to the division of facilities management, the Kansas bureau of investigation and the adjutant general; amending K.S.A. 19-1579, 19-4625, 21-4318, 31-134a, 31-135, 31-136, 31-139, 31-141, 31-143, 31-146, 31-147, 31-148, 31-150a, 31-155, 31-156, 31-165, 31-402, 36-132, 36-133, 36-134, 39-928, 39-929, 40-2,110, 48-928, 50-644, 55-1803, 55-1807, 55-1809, 55-1810, 55-1811, 55-1813, 65-429, 65-34,105, 75-1515 and 80-114 and K.S.A. 2010 Supp. 21-4201, 21-4217, 31-133, 31-133a, 31-134, 31-137, 31-140, 31-142, 31-144, 31-150, 31-159, 31-170, 31-501, 31-502, 31-503, 31-504, 31-505, 31-506, 31-603, 31-604, 31-605, 31-606, 31-607, 31-608, 31-609, 31-611, 31-701, 31-702, 31-703, 31-705, 36-510, 39-925, 39-935, 39-938, 39-945, 40-252, 55-1812, 65-506, 65-508, 65-34,133, 65-34,136, 65-34,137, 65-5703, 74-4911f, 74-5602, 74-8841, 75-1508, 75-1514, 75-1517, 75-36,102, 75-36,103, 76-327a, 76-7,105, 76-3319 and 77-618 and repealing the existing sections; also repealing K.S.A. 31-138, 31-157, 46-3201, 74-133, 75-1503, 75-1505, 75-1506, 75-1507, 75-1511, 75-1516, 75-3136 and 75-3137 and K.S.A. 2010 Supp. 74-49781, 75-1510, 75-1513 and 76-327f, by Committee on Ways and Means.

SB 221, AN ACT concerning corrections; amending K.S.A. 19-1930 and 75-52,103 and repealing the existing sections, by Committee on Ways and Means.

SB 222, AN ACT concerning elections; relating to voter identification; amending K.S.A. 25-2352, 25-2411, 25-2416, 25-2423 and 25-2431 and K.S.A. 2010 Supp. 25-1122, 25-1122d, 25-2309, 25-2908, 25-3002 and 25-3104 and repealing the existing sections, by Committee on Ways and Means.

SB 223, AN ACT concerning accessibility standards for public facilities; amending K.S.A. 58-1301b and repealing the existing section, by Committee on Ways and Means.

SB 224, AN ACT concerning the gas safety and reliability surcharge; relating to a petition for rate schedule, extension of deadline for proceeding; amending K.S.A. 2010 Supp. 66-2203 and repealing the existing section, by Committee on Federal and State Affairs.

SB 225, AN ACT designating part of interstate highway 70 as the Eisenhower/Truman Presidential highway; amending K.S.A. 68-1009 and repealing the existing section, by Committee on Federal and State Affairs.

SENATE CONCURRENT RESOLUTION No. SCR 1606—

By Special Committee on Natural Gas Storage Fields and Facilities

A CONCURRENT RESOLUTION urging the United States Department of Transportation to adopt regulations addressing the safety of vertical, down-hole

operations in gas storage fields, thus creating an opportunity for the State Corporation Commission, operating as a designated agent of the Department, to regulate and ensure the safety of all natural gas storage fields in Kansas.

WHEREAS, It is vital to have regulatory oversight to ensure the safe operation of natural gas storage facilities within the State of Kansas; and

WHEREAS, For decades, natural gas transportation companies have integrated underground natural gas storage into their interstate pipeline operations to increase deliverability and decrease overall costs; and

WHEREAS, The growth of the production, transportation and storage of natural gas is an important element in the preservation and creation of jobs in Kansas; and

WHEREAS, The safe underground storage of natural gas within an interstate transportation system is a vital process to ensure efficient development and production of Kansas natural gas resources; and

WHEREAS, Several significant incidents across the United States have occurred where natural gas or hazardous liquids have escaped from storage and resulted in loss of life and property; and

WHEREAS, The Federal Energy Regulatory Commission, which is empowered to establish underground storage sites for interstate gas pipeline companies, and the Department of Transportation, which is empowered to regulate for safety operations of interstate gas pipeline companies, have regulations which do not sufficiently address the safety of vertical, down-hole operations in gas storage fields and do not maintain a physical presence in Kansas, making it difficult to properly regulate and ensure the safety of all natural gas storage facilities in Kansas; and

WHEREAS, The State Corporation Commission not only has the experience and technical ability to regulate the safety of underground storage of gas, but is also best positioned to monitor and safeguard natural gas storage facilities in Kansas; and

WHEREAS, Due to a recent adverse federal court ruling that held 49 U.S.C. § 60104(c) precludes a state authority from adopting or enforcing safety standards for interstate pipeline facilities or pipelines transporting gas in interstate transportation, the State of Kansas may not regulate the safety of underground storage of gas in interstate transportation; and

WHEREAS, It is imperative that the citizens of the State of Kansas be protected from accidents or mishaps at facilities used for the underground storage of natural gas that is in interstate transportation and that both interstate and intrastate gas storage companies be regulated to ensure facilities are operated in a safe manner: Now, therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That the legislature urges the United States Department of Transportation to adopt regulations addressing the safety of vertical, down-hole operations in gas storage fields and to facilitate the ability of the Kansas Corporation Commission to act as its agent for the enforcement of the regulations, to assure the safety and security of Kansans is protected through the regulation of all operations of all natural gas storage facilities located in the State of Kansas; and

Be it further resolved: That the Secretary of State be directed to send enrolled copies of this resolution to the Commissioners of the Federal Energy Regulatory Commission, the United States Secretary of Transportation, members of the Kansas Congressional Delegation, the Governor of Kansas and the Commissioners of the State Corporation Commission.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

- Agriculture: **Sub HB 2271; HB 2282.**
 Commerce: **Sub HB 2135.**
 Education: **Sub HB 2191.**
 Ethics and Elections: **HB 2067 (Separately); HB 2080, HB 2128.**
 Federal and State Affairs: **HB 2120; Sub HB 2188; HB 2194.**
 Financial Institutions & Insurance: **HB 2075, HB 2076, HB 2077, HB 2139.**
 Judiciary: **HB 2067 (Separately); Sub HB 2069; HB 2101, HB 2105, HB 2196, HB 2312.**
 Local Government: **HB 2195, HB 2240.**
 Public Health and Welfare: **HB 2125, HB 2147.**
 Transportation: **HB 2034.**
 Ways and Means: **HB 2258.**

REFERRAL OF APPOINTMENTS

The following appointments made by the Governor and submitted to the senate for confirmation were referred to Committees as indicated:

- Department of Social and Rehabilitation Services,*
 Rob Siedlecki, Secretary, serves at the pleasure of the Governor.
 (Ways and Means)
- Kansas Development Finance Authority,*
 Patti Peterson-Klein, Board of Directors, serves at the pleasure of the Governor.
 (Commerce)
- Kansas Highway Patrol,*
 Ernie Garcia, Superintendent, serves at the pleasure of the Governor.
 (Federal and State Affairs)
- Lottery Commission,*
 Mike King, Member, serves at the pleasure of the Governor.
 (Federal and State Affairs)
- State Banking Commissioner,*
 Edwin Splichal, serves at the pleasure of the Governor.
 (Financial Institutions and Insurance)
- Water Office,*
 Tracy Streeter, Director, serves at the pleasure of the Governor.
 (Natural Resources)

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

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

SENATE RESOLUTION No. SR 1818—

A RESOLUTION proclaiming March 3, 2011, as World Kidney Day and March as

Kidney Awareness Month in Kansas.

WHEREAS, The State of Kansas recognizes that healthy citizens are essential for strong communities to thrive; and

WHEREAS, High blood pressure and diabetes are the main causes of chronic kidney disease, which is a major public health problem, with increasing prevalence, poor outcomes, long waits for kidney transplants and high costs; and

WHEREAS, More than 1 in 8 American adults have chronic kidney disease and over 2,500 Kansans receive life sustaining dialysis treatment; and

WHEREAS, Controlling high blood pressure and diabetes can delay or prevent chronic kidney disease; and

WHEREAS, As the costs of health care continue to grow, early and accurate identification of kidney disease is a critical component of efforts to reduce the negative clinical and economic impact on individuals and on the State of Kansas: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we hereby encourage Kansans to monitor and treat high blood pressure and diabetes to the best of their abilities and proclaim March 3, 2011, as World Kidney Day and March as Kidney Awareness Month in Kansas; and

Be it further resolved: That the Secretary of the Senate be directed to provide five enrolled copies of this resolution to Senator McGinn.

On emergency motion of Senator McGinn **SR 1818** was adopted unanimously.

Senator McGinn recognized Cindy Zielke, Johnye Van Hekken, Tom Musick and Carol Musick for their participation in World Kidney Day in the Capitol.

Committee on Federal and State Affairs introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. SR 1819—

A RESOLUTION disapproving Executive Reorganization Order No. 39, abolishing the Kansas Arts Commission created by K.S.A. 74-5202 and the office of executive director of the commission under K.S.A. 74-5204 and transferring the powers, duties and functions to the state historical society.

Be it resolved by the Senate of the State of Kansas: That Executive Reorganization Order No. 39 is hereby disapproved in accordance with Section 6 of Article 1 of the Constitution of Kansas; and

Be it further resolved: That the secretary of state shall transmit a copy of this resolution to the governor; and

Be it further resolved: That the secretary of state shall cause this resolution to be published in the session laws to show permanently the foregoing disapproval of the Senate of Executive Reorganization Order No. 39.

REPORTS OF STANDING COMMITTEES

Committee on **Judiciary** recommends **HB 2023**, **HB 2030**, as amended by House Committee, be passed.

Also, **HB 2027**, as amended by House Committee of the Whole, be amended on page 11, by striking all in lines 9 through 11; and the bill be passed as amended.

Committee on **Natural Resources** recommends **SB 214** be amended on page 3, in line 2, by striking "an individual, corporation,"; by striking all in lines 3 and 4; in line 5, by striking "or instrumentality; public corporation"; and inserting "any natural person, public or private corporation, municipality"; and the bill be passed as amended.

Committee on **Transportation** recommends **HB 2003** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Also, **SB 213** be amended on page 5, following line 24, by inserting:

"Sec. 4. K.S.A. 2010 Supp. 79-201k is hereby amended to read as follows: 79-201k. (a) It is the purpose of this section to promote, stimulate and develop the general welfare, economic development and prosperity of the state of Kansas by fostering the growth of commerce within the state; to encourage the location of new business and industry in this state and the expansion, relocation or retention of existing business and industry when so doing will help maintain or increase the level of commerce within the state; and to promote the economic stability of the state by maintaining and providing employment opportunities, thus promoting the general welfare of the citizens of this state, by exempting aircraft used in business and industry, from imposition of the property tax or other ad valorem tax imposed by this state or its taxing subdivisions. Kansas has long been a leader in the manufacture and use of aircraft and the use of aircraft in business and industry is vital to the continued economic growth of the state.

(b) The following described property, to the extent herein specified, is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. For all taxable years commencing after December 31, 2002, all aircraft used predominantly to earn income for the owner in the conduct of the owner's business or industry. If the owner's business or industry is the leasing of aircraft, the lessee's use of the aircraft shall not be considered in determining this exemption. ~~For purposes of this provision,~~ The term "predominantly" means: (1) At least 80% of the total use of the aircraft; or (2) utilization of the aircraft such that all of the aircraft costs are deductible for federal income tax purposes. *The term "aircraft" shall not include lightweight roadable vehicles, as defined by K.S.A. 8-126, and amendments thereto.*;

And by renumbering sections accordingly;

In line 25, following "8-126" by striking "and" and inserting a comma; also in line 25, following "8-1486" by inserting "and 79-201k";

On page 1, in the title, in line 1 by striking "motor vehicles; relating to"; in line 2, following the semicolon by inserting "relating to registration; uniform traffic code; property tax exemptions;" also in line 2, by striking the "and" where it appears for the first time and inserting a comma; also in line 2, following "8-1486" by inserting "and 79-201k";

And the bill be passed as amended.

HB 2175 be amended on page 1, in line 5, after "K.S.A." by inserting "68-1038,";

On page 1 in the title, after "K.S.A." by inserting "68-1038,"; also in line 1, by striking "the highway", in line 2, by striking "advisory commission" and inserting "roads, highways and scenic byways"; and the bill be passed as amended.

COMMITTEE OF THE WHOLE

On motion of Senator Emler, the Senate resolved itself into Committee of the Whole,

for consideration of bills on the calendar under the heading of General Orders with Senator Schodorf in the chair.

On motion of Senator Schodorf the following report was adopted:

Recommended: **SB 101** be passed.

SB 193 be amended by the adoption of the committee amendments, and **SB 193** be passed as amended. Senator Holland moved **SB 193** be rereferred to the Committee on Assessment and Taxation. The motion failed.

The committee report on **SB 72** recommending a substitute for **SB 72** be adopted,

Sub SB 72 be amended by motion of Senator Francisco, on page 3, following line 6, by inserting:

"Sec. 2. K.S.A. 66-1,187 is hereby amended to read as follows: 66-1,187. As used in this act:

(a) "Broadband" means the transmission of digital signals at rates equal to or greater than 1.5 megabits per second.

(b) "CLASS services" means custom local area signaling services, which include automatic callback, automatic recall, calling number identification, selective call rejection, selective call acceptance, selective call forwarding, distinctive ringing and customer originated trace.

(c) "Commission" means the state corporation commission.

(d) "Dialing parity" means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications carrier of the customer's designation from among two or more telecommunications carriers, including such local exchange carrier.

(e) "Federal act" means the federal telecommunications act of 1996, P.L. 104-104 (amending the communications act of 1934, 47 U.S.C. § 151, et seq.)

(f) "ISDN" means integrated services digital network which is a network and associated technology that provides simultaneous voice and data communications over a single communications channel.

(g) "LATA" has the meaning ascribed to it in the federal act.

(h) "Local exchange carrier" means any telecommunications public utility or its successor providing switched telecommunications service within any local exchange service area, as approved by the commission on or before January 1, 1996. However, with respect to the Hill City exchange area, in which multiple carriers were certified by the commission prior to January 1, 1996, the commission's determination, subject to any court appeals, of which authorized carrier shall serve as the carrier of last resort will determine which carrier shall be deemed the local exchange carrier for that exchange.

(i) "Number portability" has the meaning ascribed to it in the federal act.

(j) "1+ intraLATA dialing parity" means the ability of a local exchange service customer to specify the telecommunications or local exchange carrier that will carry the intraLATA long distance messages when that customer dials either "1" or "0" plus a 10-digit number.

(k) "Operating area" means:

(1) In the case of a rural telephone company, operating area or service area means such company's study area or areas as approved by the federal communications commission;

(2) in the case of a local exchange carrier, other than a rural telephone company, operating area or service area means such carrier's local exchange service area or areas as approved by the commission.

(l) "Rural telephone company" has the meaning ascribed to it in the federal act, excluding any local exchange carrier which together with all of its affiliates has 20,000 or more access lines in the state.

(m) "Telecommunications carrier" means a corporation, company, individual, association of persons, their trustees, lessees or receivers that provides a telecommunications service, including, but not limited to, interexchange carriers and competitive access providers, but not including local exchange carriers certified before January 1, 1996, *except for electing carriers*.

(n) "Telecommunications public utility" means any public utility, as defined in K.S.A. 66-104, and amendments thereto, which owns, controls, operates or manages any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages, as defined in K.S.A. 66-104, and amendments thereto, or the provision of telecommunications services in or throughout any part of Kansas.

(o) "Telecommunications service" means the provision of a service for the transmission of telephone messages, or two-way video or data messages.

(p) "Universal service" means telecommunications services and facilities which include: single party, two-way voice grade calling; stored program controlled switching with vertical service capability; E911 capability; tone dialing; access to operator services; access to directory assistance; and equal access to long distance services.

(q) "Enhanced universal service" means telecommunications services, in addition to those included in universal service, which shall include: Signaling system seven capability, with CLASS service capability; basic and primary rate ISDN capability, or the technological equivalent; full-fiber interconnectivity, or the technological equivalent, between central offices; and broadband capable facilities to: All schools accredited pursuant to K.S.A. 72-1101 et seq., and amendments thereto; hospitals as defined in K.S.A. 65-425, and amendments thereto; public libraries; and state and local government facilities which request broadband services.";

And by renumbering sections accordingly;

On page 15, in line 9, after "carrier." by inserting "A local exchange carrier may make such election by providing the commission with at least 90 days' written notice of election. The notice of election shall include a verified statement that a majority of the carrier's local exchange access lines are price deregulated. Such notification shall include information regarding the number of access lines the carrier serves in each of the carrier's exchanges. Within 45 days of receipt of such a notification, the commission shall review the information concerning the carrier's local exchange access lines and upon failure of the commission, within 45 days of receipt of the notification, to determine that a majority of such lines of the carrier are not price deregulated the commission shall designate the carrier as an electing carrier.";

On page 16, in line 23, after "50-6,103" by inserting "and 66-1,187";

On page 1, in the title, in line 1, after "50-6,103" by inserting "and 66-1,187" and **Sub SB 72** be passed as amended.

SB 114 be amended by the adoption of the committee amendments. Senator Apple moved to amend **SB 114** on page 2, following line 26, by inserting: "(d) The provisions of subsection (a)(6)(B) shall not apply to any common interest community

for a recreational lake development which contains more than 500 units where less than 50% of such units contain a residence."; in line 27, by striking "(d)" and inserting "(e)" and **SB 114** be passed as further amended.

FINAL ACTION BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator Emler an emergency was declared by a 2/3 constitutional majority, and **Sub SB 72, SB 101, SB 114, SB 193** were advanced to Final Action and roll call.

Sub SB 72, AN ACT concerning telecommunications; amending K.S.A. 50-6,103 and 66-1,187 and K.S.A. 2010 Supp. 66-2005 and repealing the existing sections.

On roll call, the vote was: Yeas 32, Nays 7, Present and Passing 0, Absent or Not Voting 1.

Yeas: Abrams, Brungardt, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, Kultala, Longbine, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Apple, Bruce, Emler, King, Love, Ostmeyer, Schmidt A.

Absent or Not Voting: Donovan.

The substitute bill passed, as amended.

SB 101, AN ACT concerning homeowners associations; amending K.S.A. 2010 Supp. 58-4605 and repealing the existing section.

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

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt A, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Donovan.

The bill passed.

SB 114, AN ACT concerning homeowners associations; amending K.S.A. 2010 Supp. 58-4608, 58-4610 and 58-4618 and repealing the existing sections.

On roll call, the vote was: Yeas 36, Nays 3, Present and Passing 0, Absent or Not Voting 1.

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Reitz, Schmidt A, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Merrick, Olson, Pyle.

Absent or Not Voting: Donovan.

The bill passed, as amended.

SB 193, AN ACT concerning sales taxation; relating to food sales tax refunds; information required in support of claim; amending K.S.A. 79-3637 and repealing the existing section.

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

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt A, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Donovan.

The bill passed, as amended.

On motion of Senator Emler, the Senate adjourned until 8:00 a.m., Friday, March 4, 2011.

HELEN MORELAND, ROSE MARIE GLATT, SHIRLEY LAMOTT, *Journal Clerks.*

PAT SAVILLE, *Secretary of the Senate.*

