

Journal of the House

TWENTY-EIGHTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Thursday, February 20, 2003, 11:00 a.m.

The House met pursuant to adjournment with Speaker Mays in the chair.
The roll was called with 120 members present.
Reps. B. Sharp, Swenson and Toelkes were excused on verified illness.
Reps. Kauffman and Sawyer were excused on excused absence by the Speaker.

Prayer by Chaplain Chamberlain:

Almighty God, hear our prayers as we gather this morning to tackle the work that you have laid before us. If it is your will, give us the gift of a vision that will allow us to see past the present moment to the future that our decisions will bring. Give us the gift of energy that will allow us to do the work that is necessary, but sometimes unexciting. Give us the perseverance to stay with the task until it is completed in a way that pleases you.

Lord, as we work in your vineyard may thanksgiving and praise be always on our lips and may the warmth of your grace be always in our hearts. At the end of the day may our ears hear your judgement, "Well done, good and faithful servant." Amen.

The Pledge of Allegiance was led by Rep. Burroughs.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

HB 2407, An act relating to clerks of the district court; providing for disposition of certain vehicle registration fines, by Committee on Taxation.

MESSAGE FROM THE SENATE

Announcing passage of **SB 15, SB 35, SB 57, SB 82, SB 95, SB 109, SB 159**.

INTRODUCTION OF SENATE BILLS AND CONCURRENT RESOLUTIONS

The following Senate bills were thereupon introduced and read by title:

SB 15, SB 35, SB 57, SB 82, SB 95, SB 109, SB 159.

CONSENT CALENDAR

No objection was made to **HB 2218** appearing on the Consent Calendar for the first day.

No objection was made to **HCR 5008** appearing on the Consent Calendar for the second day.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

HB 2017, An act concerning the legislature; relating to the joint committee on corrections and juvenile justice oversight, expiration thereof; amending K.S.A. 46-2801 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 120; Nays 0; Present but not voting: 0; Absent or not voting: 5.

Yeas: Aurand, Ballard, Ballou, Barbieri-Lightner, Beggs, Bethell, Betts, Boyer, Brunk, Burgess, Burroughs, Campbell, Carlin, Carter, Compton, Cox, Craft, Crow, Dahl, Davis, DeCastro, Decker, Dillmore, Dreher, Edmonds, Faber, Feuerborn, Flaharty, Flora, Freeborn, Gatewood, Gilbert, Goering, Goico, Gordon, Grant, Hayzlett, Henderson, Henry, Hill, Holland, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Huntington, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kassebaum, Kirk, Klein, Krehbiel, Kuether, Landwehr, Larkin, Light, Loganbill, M. Long, P. Long, Loyd, Mason, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neighbor, Neufeld, Newton, Nichols, Novascone, O'Malley, O'Neal, Osborne, Ostmeyer, Owens, Patterson, Pauls, Peterson, Phelps, Pottorff, Powell, Powers, Reardon, Rehorn, Reitz, Ruff, Schwab, Schwartz, S. Sharp, Showalter, Shriver, Shultz, Siegfried, Sloan, Storm, Svaty, Tafanelli, Thimesch, Thull, Vickrey, Ward, Wilk, D. Williams, J. Williams, Wilson, Winn, Yoder, Yonally.

Nays: None.

Present but not voting: None.

Absent or not voting: Kauffman, Sawyer, B. Sharp, Swenson, Toelkes.

The bill passed, as amended.

HB 2040, An act enacting the religious freedom restoration act, was considered on final action.

On roll call, the vote was: Yeas 61; Nays 59; Present but not voting: 0; Absent or not voting: 5.

Yeas: Ballou, Barbieri-Lightner, Brunk, Burgess, Campbell, Carter, Dahl, DeCastro, Decker, Edmonds, Faber, Freeborn, Goering, Goico, Grant, Hayzlett, Henderson, Henry, Holmes, Howell, Huebert, Humerickhouse, Hutchins, Huy, E. Johnson, Landwehr, Larkin, M. Long, P. Long, Mason, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Jim Morrison, Judy Morrison, Neufeld, Newton, Novascone, Osborne, Ostmeyer, Pauls, Powell, Powers, Reardon, Ruff, Schwab, Schwartz, Shultz, Siegfried, Svaty, Tafanelli, Thimesch, Thull, Vickrey, Ward, D. Williams, J. Williams.

Nays: Aurand, Ballard, Beggs, Bethell, Betts, Boyer, Burroughs, Carlin, Compton, Cox, Craft, Crow, Davis, Dillmore, Dreher, Feuerborn, Flaharty, Flora, Gatewood, Gilbert, Gordon, Hill, Holland, Horst, Huff, Huntington, Jack, D. Johnson, Kassebaum, Kirk, Klein, Krehbiel, Kuether, Light, Loganbill, Loyd, Minor, Myers, Neighbor, Nichols, O'Malley, O'Neal, Owens, Patterson, Peterson, Phelps, Pottorff, Rehorn, Reitz, S. Sharp, Showalter, Shriver, Sloan, Storm, Wilk, Wilson, Winn, Yoder, Yonally.

Present but not voting: None.

Absent or not voting: Kauffman, Sawyer, B. Sharp, Swenson, Toelkes.

The bill did not pass.

EXPLANATIONS OF VOTE

MR. SPEAKER: I vote "No" on **HB 2040**. Although I supported similar legislation last year, I cannot support the bill this year with the amendments adopted by the committee. Adding "groups" to the bill makes the bill unworkable and, likely, unconstitutional. The word "groups" has no legal definition, yet would be given legal standing to sue. With no severability clause, the act is likely to be struck down. I vote "No."—MIKE O'NEAL

MR. SPEAKER: I vote NO on **HB 2040**. Although I have no doubt that proponents of this bill are well meaning and although I strongly support protection of the freedom of religion, I vote NO on **HB 2040**.

The Unites State Supreme Court found this legislation was unconstitutional six years ago. The Court said and I quote: (this law) "is not designed to identify and counteract state laws likely to be unconstitutional because of their treatment of religion." I vote NO.—MARTI CROW, ETHEL M. PETERSON, SUE STORM

MR. SPEAKER: I cannot vote to have my constituents pay with their tax dollars the legal fees of those whose rights may be violated by either indifferent or overzealous bureaucrats, or as a consequence of unintended legislative action. I cannot vote to empower unspecified and unidentified "groups" to file legal action where they are not now permitted by Kansas law to do so. I cannot vote for an unconstitutional bill. I will never vote against supporting

“freedom of religion.” I vote no on 2003 **HB 2040**.—WARD LOYD, LANA GORDON, CLAY AURAND

MR. SPEAKER: Because I support the freedom of individuals to exercise their religion as their own conscience dictates, I must vote against **HB 2040**. I believe it places undue burdens upon both our government and upon our free exercise of religion. Government will no longer be “neutral;” it will be required to consider the impact of neutral bills on individuals and groups based solely on their religion. I believe this bill would give the courts more power, not less, over determining the proper exercise of religious beliefs in Kansas. This law goes beyond the scope of the constitutional mandate of the legislature.—JEFF JACK, STEPHANIE SHARP, KEVIN YODER, SYDNEY CARLIN

MR. SPEAKER: I support **HB 2040**. To my friends troubled by the provision allowing for the recovery of attorney fees, I note that:

Under existing federal law, citizens that suffer discrimination on the basis of race, gender, age, disability, or national origin may recover attorney fees. We as a nation have declared no citizen should be denied access to the courthouse doors when they suffer such discrimination. The freedom of religion is no less important than freedom from discrimination. As such, we should not deny access to the courthouse doors to citizens who have been deprived of this basic, core freedom.—JEFF GOERING, SCOTT SCHWAB

MR. SPEAKER: The Fourteenth Amendment to the United States Constitution provides the State shall not deny to any person equal protection of the law, nor life, liberty or property without due process of law. Yet despite this constitutional protection, it was necessary for Congress to pass legislation prohibiting the deprivation of civil rights by individuals in government.

Free exercise of religion is as important as equal rights of all citizens. Legislation was necessary to prohibit individuals in government from depriving citizens of basic civil rights. **HB 2040** is necessary to protect the religious freedom upon which our nation was founded. I vote yes on **HB 2040**.—BRENDA K. LANDWEHR

MR. SPEAKER: If we restrict the press from this House chamber or make it illegal for citizens to speak out against the government, would courts allow it? Why not? These laws would apply equally to everyone. Courts would not allow this because freedoms of the press, speech, and to redress government are fundamental rights in the First Amendment, protected by the highest legal standard. Yet the free exercise of religion is listed before any of these rights. It is time that we protect religious freedom with the same standard used for every other fundamental First Amendment freedom and support **HB 2040**. I vote yes on **HB 2040**.—DAN WILLIAMS

MR. SPEAKER: I vote no on **HB 2040**. Both the United States and Kansas Constitutions provide for the freedom of religion. Proponents of this legislation were unable to provide the body with firm examples when the religious liberty of Kansas citizens were in jeopardy. Our proud heritage of religious freedom rests on a solid foundation. **HB 2040** is not needed.—ED O’MALLEY.

HB 2179, An act repealing K.S.A. 25-1904; relating to members of the state board of education, was considered on final action.

On roll call, the vote was: Yeas 112; Nays 8; Present but not voting: 0; Absent or not voting: 5.

Yeas: Aurand, Ballard, Ballou, Barbieri-Lightner, Beggs, Bethell, Betts, Boyer, Brunk, Burgess, Burroughs, Campbell, Carlin, Carter, Compton, Cox, Craft, Crow, Dahl, Davis, Decker, Dillmore, Dreher, Feuerborn, Flaharty, Flora, Gatewood, Gilbert, Goering, Goico, Gordon, Grant, Hayzlett, Henderson, Henry, Hill, Holland, Holmes, Horst, Huebert, Huff, Humerickhouse, Huntington, Hutchins, Jack, D. Johnson, E. Johnson, Kassebaum, Kirk, Klein, Kuether, Landwehr, Larkin, Light, Loganbill, M. Long, P. Long, Loyd, Mason, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neighbor, Neufeld, Newton, Nichols, O’Malley, O’Neal, Osborne, Ostmeyer, Owens, Patterson, Pauls, Peterson, Phelps, Pottorff, Powell, Powers, Reardon, Rehorn, Reitz, Ruff, Schwab, Schwartz, S. Sharp, Showalter, Shriver, Shultz, Siegfried, Sloan,

Storm, Svaty, Tafanelli, Thimesch, Thull, Vickrey, Ward, Wilk, D. Williams, J. Williams, Wilson, Winn, Yoder, Yonally.

Nays: DeCastro, Edmonds, Faber, Freeborn, Howell, Huy, Krehbiel, Novascone.

Present but not voting: None.

Absent or not voting: Kauffman, Sawyer, B. Sharp, Swenson, Toelkes.

The bill passed.

On motion of Rep. Aurand, the House went into Committee of the Whole, with Rep. Edmonds in the chair.

COMMITTEE OF THE WHOLE

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

Recommended that **HB 2207** be passed.

On motion of Rep. Hayzlett, **HB 2113** be amended on page 1, in line 15, by striking “subsections (b) and (e)” and inserting “subsection (b)”; in line 31, by striking the colon; by striking all in lines 32 through 36; in line 37, by striking all before the period and inserting “the maximum speed limits provided in subsection (a), except that the board of education of any school district may establish by board policy lower maximum speed limits for the operation of such district’s school buses”; and **HB 2113** be passed as amended.

Committee report recommending a substitute bill to **Sub. HB 2073** be adopted; and the substitute bill be passed.

Committee report to **HB 2032** be adopted; and the bill be passed as amended.

Committee report to **HB 2034** be adopted; also, on motion of Rep. Crow be amended on page 1, in line 16, by striking “15” and inserting “16”; and **HB 2034** be passed as amended.

Committee report to **HB 2068** be adopted; and the bill be passed as amended.

Committee report to **SB 16** be adopted; and the bill be passed as amended.

Committee report to **HB 2100** be adopted; and the bill be passed as amended.

REPORTS OF STANDING COMMITTEES

The Committee on **Agriculture** recommends **HB 2245** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

The Committee on **Agriculture** recommends **HB 2027** be amended on page 2, in line 25, by striking “others” and inserting “other”;

On page 4, after line 5, by inserting the following:

“(f) Notwithstanding any provision of law to the contrary, the secretary of wildlife and parks shall not adopt rules and regulations to carry out the provisions of this section and K.S.A. 80-1201, and amendments thereto.

New Sec. 1. Trapping and transplanting prairie dogs to any location outside of the Kansas traditional home range of the prairie dog is prohibited except when done in conjunction with a scientific, educational or exhibition permit issued pursuant to K.S.A. 32-952, and amendments thereto. As used in this section, “Kansas traditional home range” means that area of Kansas extending from the Kansas-Colorado border eastward and ending with the easternmost boundary of Washington, Clay, Dickinson, Marion, Harvey, Sedgwick and Sumner counties and including all counties in between.”;

And by renumbering sections accordingly;

On page 1, in the title, in line 10, before “amending” by inserting “prohibited acts;”

and the bill be passed as amended.

The Committee on **Agriculture** recommends **HB 2036** be amended by substituting a new bill to be designated as “Substitute for HOUSE BILL No. 2036,” as follows:

“Substitute for HOUSE BILL No. 2036

By Committee on Agriculture

“AN ACT concerning the petroleum products inspection act; relating to diesel fuel; misrepresentations regarding biodiesel; penalties; amending K.S.A. 2002 Supp. 55-443 and repealing the existing section.”; and the substitute bill be passed.

(Sub. HB 2036 was thereupon introduced and read by title.)

The Committee on **Commerce and Labor** recommends **HB 2242**, **HB 2243** be passed and, because the committee is of the opinion that the bills are of a noncontroversial nature, be placed on the consent calendar.

The Committee on **Ethics and Elections** recommends **HB 2288** be amended on page 3, in line 24, by striking “a” and inserting “my”;

On page 9, in line 19, by striking “or refuses”; and the bill be passed as amended.

The Committee on **Higher Education** recommends **HB 2145** be amended by substituting a new bill to be designated as “Substitute for HOUSE BILL No. 2145,” as follows:

“Substitute for HOUSE BILL No. 2145

By Committee on Higher Education

“AN ACT concerning public postsecondary education; certain persons deemed to be residents for purposes of tuition and other fees at postsecondary educational institutions.”; and the substitute bill be passed.

(Sub. HB 2145 was thereupon introduced and read by title.)

The Committee on **Insurance** recommends **HB 2071** be amended on page 2, in line 6, following “indemnity” by inserting “, including any explanatory materials.”; in line 9, by striking the comma and inserting “or”; also in line 9, by striking all after “insurance” and inserting “who is given”; in line 10, after “indemnity” by inserting “or explanatory materials”; in line 13, after “demnity” by inserting “or explanatory materials”; in line 14, after “indemnity” by inserting “or explanatory materials”; in line 26, after “indemnity” by inserting “or explanatory materials”; in line 29, by striking “advertising mate-”; in line 30, by striking “rial” and inserting “application”; and the bill be passed as amended.

The Committee on **Transportation** recommends **HB 2192**, **HB 2193**, **HB 2220** be passed.

The Committee on **Transportation** recommends **HB 2191** be amended on page 1, in line 29, by striking “and” and inserting “or”;

On page 3, following line 18, by inserting the following:

“Sec. 2. K.S.A. 12-3415 is hereby amended to read as follows: 12-3415. (a) For the purpose of paying all or any part of the cost of purchasing or acquiring land or interests therein, and the cost of purchasing, acquiring, constructing, equipping, reconstructing, improving, repairing, enlarging, remodeling and furnishing buildings, structures, plants, docks, wharves, warehouses, piers, sidings and other water-port facilities, airport facilities, terminal facilities, land transportation facilities, railroad facilities or industrial-use facilities or any part thereof; including additions, improvements, relocations, renovations, extensions and modifications thereof (all of which as are included in a single project are hereafter referred to in this act as “facility or facilities”), a port authority created pursuant to this act, is authorized to borrow money upon credit of the income and revenues to be derived from the operation of such facilities, together with any other available income and revenues from other revenue producing facilities of such port authority, and to issue negotiable *notes*, bonds or other evidence of indebtedness authorized under subsection (b) of K.S.A. 12-3406, and amendments thereto, of such port authority in such amount as the board of directors of the port authority shall deem necessary for the purpose; and to provide for payment of such *notes*, bonds or other evidence of indebtedness and rights of holders thereof as herein provided.

(b) The port authority shall not issue bonds without first having received approval, by resolution, of the governing body of the cities or counties which comprise such port authority.”;

By renumbering sections accordingly;

Also on page 3, in line 19, by striking "is" and inserting "and 12-3415 are"; in line 21, by striking "statute book" and inserting "Kansas register";

In the title, in line 10, following "and" by inserting "12-3415 and"; also in line 10, by striking "section" and inserting "sections"; and the bill be passed as amended.

The Committee on **Utilities** recommends **HB 2131** be amended on page 1, in line 14, by striking all after "The"; by striking all in lines 15 and 16; in line 17, by striking all before "is" and inserting "International Energy Conservation Code 2003 (IECC 2003)"; after line 25, by inserting:

"Sec. 2. K.S.A. 66-1228 is hereby amended to read as follows: 66-1228. (a) Except as provided by subsection (b), the person building or selling a previously unoccupied new residential structure shall disclose to ~~the buyer~~ prospective buyers, upon request or, at the latest, during contract negotiations, information regarding the thermal efficiency of the structure on a form prepared and disseminated by the state corporation commission, which form shall be substantially as follows:

"ENERGY EFFICIENCY DISCLOSURE

This residence (mark one of the following):

_____ 1. Has been built to meet the energy efficiency standards of the ~~Model Energy Code of 1993~~ *International Energy Conservation Code 2003 or receives a Home Energy Rating score of 80 or greater when performed in accordance with the Mortgage Industry National Home Energy Rating System Accreditation Standard (June 15, 2002) by a rater certified and listed by the Residential Energy Services Network (RESNET)*

_____ 2. Has been built to include the following energy efficiency elements:

- (1) Insulation values (R-value of insulation installed) for each of the following:
- Ceiling with attic above R-value _____
 - Cathedral ceiling R-value _____
 - Opaque walls R-value _____
 - Floors over unheated spaces R-value _____
 - Floors over outside air R-value _____
 - Foundation type:
 - Slab-on-grade _____
 - Crawlspace _____
 - Basement and percent of basement walls underground _____
- (2) Thermal properties of windows and doors for each of the following:
- Entry door(s) R-value _____
 - Sliding door(s) R-value _____
 - Other exterior doors R-value _____
 - Garage to house door R-value _____
 - Window U-value (determined from NFRC rating label or default table) _____
- (3) HVAC equipment efficiency levels:
- Heating systems:
 - Gas fired forced air furnace AFUE rating _____
 - Electric heat pump HSPF rating _____
 - Air conditioning systems:
 - Electric unit SEER rating _____
 - Electric heat pump EER rating _____
 - Ground source heat pump EER rating _____
 - Duct insulation levels: Insulation R-value of ducts outside envelope _____
 - Thermostat:
 - Manual control type _____
 - Automatic set-back type _____

- (4) Water heating efficiency levels:
 Water heater fuel type _____
 Water heater capacity _____
 NAECA energy factor _____

“(b) If a structure is subject to both the national manufactured housing construction and safety standards act (42 U.S.C. 5403) and the federal trade commission regulation on labeling and advertising of home insulation, 16 CFR section 460.16, both as in effect on the effective date of this act, the builder or seller may disclose, instead of the information required by subsection (a), the information regarding such structure that is required to be disclosed pursuant to such federal act and regulation.”;

Also on page 1, in line 26, by striking “is” and inserting “and 66-1228 are”;

In the title, in line 10, after “66-1227” by inserting “and 66-1228”; also in line 10, by striking “section” and inserting “sections”; and the bill be passed as amended.

The Committee on **Utilities** recommends **HB 2186** be amended on page 1, in line 20, by striking “under the jurisdiction”; in line 21, by striking all before the period and inserting “unless exempted from the jurisdiction of the commission pursuant to K.S.A. 66-104b, 66-104c or 66-104d, and amendments thereto”; and the bill be passed as amended.

The Committee on **Utilities** recommends **HB 2280** be amended on page 1, in line 13, by striking “Any lease” and inserting “A memorandum of any lease or easement”; in line 15, after “recorded” by inserting “by the lessee or the grantee of the easement”; in line 16, after “located” by inserting “within five business days after the lease or easement is executed”; and the bill be passed as amended.

The Committee on **Utilities** recommends **HB 2374** be amended on page 1, in line 30, after the last “recovery” by inserting “requested”; 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 bill was thereupon introduced and read by title:

HB 2408, An act concerning school district budgeting; enacting the school budgeting best practices reform act; amending K.S.A. 12-1663, 72-8223 and 79-2927 and repealing the existing sections, by Committee on Appropriations.

REPORT ON ENGROSSED BILLS

HB 2017, **HB 2040** reported correctly engrossed February 19, 2003.

On motion of Rep. Aurand, the House adjourned until 10:30 a.m., Friday, February 21, 2003.

JANET E. JONES, *Chief Clerk.*

CHARLENE SWANSON, *Journal Clerk.*

