

Journal of the Senate

TWENTY-FIRST DAY

SENATE CHAMBER, TOPEKA, KANSAS
Tuesday, February 11, 2003—2:30 p.m.

The Senate was called to order by President Dave Kerr.

The roll was called with thirty-nine senators present.

Senator Lyon was excused.

Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

In his letter to the Colossians, the apostle Paul recorded one of the most comprehensive lists of the characteristics of a godly life:

“Put to death. . . whatever belongs to your earthly nature: sexual immorality, impurity, lust, evil desires and greed which is idolatry. Because of these, the wrath of God is coming. . . you must rid yourselves of. . . anger, rage, malice, slander, and filthy language. . . Do not lie to each other. . . clothe yourselves with compassion, kindness, humility, gentleness, and patience. Bear with each other and forgive whatever grievances you may have against one another. Forgive as the Lord forgave you. And over all these virtues put on love, which binds them all together in perfect unity. Let the peace of Christ rule in your hearts. . . And be thankful.” (Colossians 3:5-6, 8-9, 12-15)

Lord, give us the desire and strength to incorporate all these virtues into our life style.

I pray in Jesus' Name,

AMEN

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 194, An act concerning highways; requiring the placement and maintenance of certain electrically operated traffic control devices on K-7 highway in the city of Shawnee, by Senator Jordan.

SB 195, An act concerning criminal procedure; relating to the Kansas parole board; amending K.S.A. 2002 Supp. 22-3707 and 22-3709 and repealing the existing sections, by Committee on Ways and Means.

SB 196, An act concerning elections; relating to campaign finance; amending K.S.A. 25-4142 and repealing the existing section, by Committee on Federal and State Affairs.

SB 197, An act concerning alcoholic beverages; concerning minors; amending K.S.A. 2002 Supp. 21-3610 and 41-727 and repealing the existing sections, by Committee on Federal and State Affairs.

SB 198, An act concerning taxation; relating to classification of cities for purposes of levying sales and excise taxes; amending K.S.A. 12-188 and repealing the existing section, by Committee on Federal and State Affairs.

SB 199, An act concerning the fitting and dispensing of hearing aids; amending K.S.A. 74-5810 and repealing the existing section, by Committee on Public Health and Welfare.

SB 200, An act enacting the addictions counselor licensure act; amending K.S.A. 74-7507 and repealing the existing section; also repealing K.S.A. 65-6601 through 65-6606, by Committee on Public Health and Welfare.

SB 201, An act concerning insurance; relating to association health plans and the regulation thereof, by Committee on Financial Institutions and Insurance.

SB 202, An act concerning telecommunications; relating to broadband deployment; incentive company regulation, by Committee on Commerce.

SB 203, An act authorizing certain cities to impose an earnings tax; prescribing procedures therefor and duties and authorities for the state department of revenue; amending K.S.A. 12-140 and repealing the existing section, by Senator Haley.

SB 204, An act concerning lead poisoning prevention; amending K.S.A. 65-1,200, 65-1,201, 65-1,202, 65-1,203, 65-1,204, 65-1,205, 65-1,206, 65-1,207, 65-1,208, 65-1,209, 65-1,210, 65-1,211, 65-1,212, 65-1,213 and 65-1,214 and repealing the existing sections, by Committee on Public Health and Welfare.

SB 205, An act enacting the Kansas commemorative coin design act, by Senator Hensley.

SB 206, An act concerning civil procedure; relating to habeas corpus; amending K.S.A. 60-1507 and repealing the existing section, by Senators Oleen, Adkins, Buhler, Bunten, Donovan, Goodwin, Kerr, Lee, Schmidt, Taddiken, Vratil and Wagle.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and resolution were referred to Committees as indicated:

Agriculture: **SB 191**.

Assessment and Taxation: **SB 177, SB 182, SB 192**.

Commerce: **SB 180, SB 181**.

Education: **SB 190**.

Elections and Local Government: **SB 178**.

Federal and State Affairs: **SB 193**.

Financial Institutions & Insurance: **SB 176**.

Judiciary: **SB 179, SB 183, SB 184, SB 185, SB 186, SB 187, SB 189**.

Organization, Calendar and Rules: **SCR 1608**.

Ways and Means: **SB 175**.

MESSAGE FROM THE GOVERNOR

SB 34 approved on February 11, 2003.

Governor's Message
Executive Reorganization Order No. 30
By Governor Kathleen Sebelius
February 10, 2003

Homeownership has long been considered the centerpiece of the American Dream. Kansas families in both rural areas and urban centers share that dream. Today, however, Kansas is the only state in the union without a statewide homeownership program. Homeownership programs in Kansas are administered on the local level, primarily by two counties. The development of a "One Stop Shop for Housing" and a statewide homeownership program would send a strong message to Kansans of all income levels that the American Dream is still alive for them.

The primary mission of our "One Stop Shop for Housing" would be to ensure that Kansas families throughout the entire state have the financial tools for affordable homeownership. *The first step in this process, which is accomplished through this Executive Reorganization Order, is the transfer of the housing programs from the Department of Commerce and Housing to the Kansas Development Finance Authority.* This reorganization would abolish the housing functions performed by the Department of Commerce and Housing, as authorized by and assigned under K.S.A. 74-5002g, and reassign them to KDFHA.

This reorganization would begin to consolidate the authority for making homeownership affordable into a "One Stop Shop for Housing." Communities throughout Kansas have different housing needs. From emergency shelter grants, rental assistance, rehabilitation of substandard housing to the construction of new affordable housing, our "One Stop Shop for Housing" would ensure that the resources are available and administered to meet the needs of our communities.

The ultimate goals of this process would be to (1) distribute housing resources equitably throughout the entire state; (2) increase homeownership for Kansas's families through continuous lending programs that deliver low cost mortgage financing and down payment assistance; (3) deliver programs that meet the basic shelter needs of our low and very low-income Kansas families; (4) deliver resources that assist local communities in the construction of new homes and the rehabilitation of substandard housing. I believe all Kansans support these goals.

Another essential step in this process is to give the Kansas Development Finance Authority the ability to administer a statewide homeownership program. I plan to follow up this ERO with legislation that would authorize KDFA to perform a variety of functions to make homeownership more affordable.

KDFA is an excellent organization, and I have confidence in its leadership and staff. It is well run and businesslike. It is known nationwide by investors in Kansas bonds and is well respected by the rating agencies. Placing this responsibility with KDFA will allow more Kansans to live the American Dream.

Executive Reorganization Order No. 30

By Governor Kathleen Sebelius

Transmitted February 10, 2003

Section 1. There is hereby established within the Kansas development finance authority, a division of housing to be organized and administered by the Kansas development finance authority. The head of the division shall be the director of housing, who shall be appointed by and serve at the pleasure of the president of the Kansas development finance authority. The director of housing shall administer the division of housing.

Sec. 2.(a) The division of housing within the department of commerce and housing and the undersecretary for housing within the department of commerce and housing created by K.S.A. 74-5002g, and amendments thereto, are hereby abolished. On the effective date of this order, the department of commerce and housing is hereby renamed the department of commerce, and the secretary of commerce and housing is hereby renamed the secretary of commerce.

(b) Except as otherwise provided by this order, all of the powers, duties and functions of the existing division of housing within the department of commerce and housing, and the existing undersecretary of housing within the department of commerce and housing, are hereby transferred to and imposed upon the division of housing within the Kansas development finance authority and the director of housing established by this order.

(c) Except as otherwise provided by this order, all of the powers, duties and functions of the department of commerce and housing and the secretary of commerce and housing that relate to housing and housing-related purposes are hereby transferred to and imposed upon the Kansas development finance authority and the president of the Kansas development finance authority.

Sec. 3.(a) The division of housing within the Kansas development finance authority established by this order shall be the successor in every way to the powers, duties, and functions of the division of housing within the department of commerce and housing in which the same were vested prior to the effective date of this order and that are transferred pursuant to section 2. Every act performed in the exercise of such powers, duties and functions by or under the authority of the Kansas development finance authority or the director of housing within the Kansas development finance authority established by this order shall be deemed to have the same force and effect as if performed by the department of commerce and housing or the undersecretary of housing within the department of commerce and housing in which such powers, duties and functions were vested prior to the effective date of this order. Contracts related to housing functions shall be transferred to the extent they may be legally transferred or assigned.

(b) Whenever the division of housing of the department of commerce and housing, or words of like effect, are referred to or designated by a statute, contract or other document,

such reference or designation shall be deemed to apply to the division of housing established by this order.

(c) Whenever the undersecretary for housing within the department of commerce and housing, or words of like effect, are referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the director of housing established by this order.

(d) Whenever the department of commerce and housing or the secretary of commerce and housing, or words of like effect, are referred to or designated by a statute, contract or other document and such reference is in regard to any of the powers, duties, or functions transferred to the Kansas development finance authority pursuant to this order, such reference or designation shall be deemed to apply to the Kansas development finance authority and the president of the Kansas development finance authority.

(e) All rules and regulations, orders and directives of the secretary of the department of commerce and housing or the undersecretary for housing which relate to the functions transferred by this order and which are in effect on the effective date of this order shall continue to be effective and shall be deemed to be rules and regulations, orders and directives of the Kansas development finance authority and the director of housing until revised, amended, revoked, or nullified pursuant to law.

Sec. 4.(a) On the effective date of this order, the balances of all funds or accounts thereof appropriated or reappropriated for the department of commerce and housing relating to the powers and duties and functions transferred by this order are hereby transferred within the state treasury to the division of housing within the Kansas development finance authority and shall be used only for the purpose for which the appropriation was originally made.

(b) On the effective date of this order, liability for all accrued compensation or salaries of officers and employees who are transferred to the Kansas development finance authority under this order shall be assumed and paid by the division of housing within the Kansas development finance authority.

(c) The Kansas development finance authority shall keep separate records and accounts for the division of finance and the division of housing within the Kansas development finance authority. All expenses of the division of finance incurred in the performance of its duties and conducting its finance programs shall be payable from funds generated by or designated for the division of finance, and all expenses of the division of housing incurred in the performance of its duties and conducting its housing programs shall be payable from funds generated by or designated for the division of housing, including state appropriations. This system of separate records and accounts shall be in effect for such period as the Kansas development finance authority deems necessary and appropriate, and may also be subject to modification as the Kansas development finance authority deems necessary and appropriate.

Sec. 5.(a) When any conflict arises as to the disposition of any property, power, duty or function or the unexpended balance of any appropriation as a result of any abolition or transfer made by or under the authority of this order, such conflict shall be resolved by the governor, whose decision shall be final.

(b) The Kansas development finance authority shall succeed to all property, property rights and records which were used for or pertain to the performance of powers, duties and functions transferred to the Kansas development finance authority. Any conflict as to the proper disposition of property, personnel or records arising under this order shall be determined by the governor, whose decision shall be final.

Sec. 6.(a) No suit, action or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency or program mentioned in this order, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this order. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of any such state agency or any officer affected. The state shall remain the party in interest in any such action.

(b) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this order, and the state shall remain the party in interest in any such action.

Sec. 7.(a) Except with respect to the powers, duties, and functions that are transferred by this order to the Kansas development finance authority or to the division of housing within the Kansas development finance authority, the department of commerce established by this order shall be the successor in every way to the powers, duties, and functions of the department of commerce and housing in which the same were vested prior to the effective date of this order. Every act performed in the exercise of such powers, duties and functions by or under the authority of the Kansas department of commerce or the secretary of commerce established by this order shall be deemed to have the same force and effect as if performed by the department of commerce and housing or the secretary of commerce and housing in which such powers, duties and functions were vested prior to the effective date of this order.

(b) Whenever the department of commerce and housing, or words of like effect, are referred to or designated by a statute, contract or other document, and such reference or designation is in regard to any function, power, or duty other than those powers, duties, and functions that are transferred to the Kansas development finance authority under this order, such reference or designation shall be deemed to apply to the department of commerce established by this order.

(c) Whenever the secretary of commerce and housing, or words of like effect, are referred to or designated by a statute, contract or other document, and such reference or designation is in regard to any function, power, or duty other than those powers, duties, and functions that are transferred to the Kansas development finance authority under this order, such reference or designation shall be deemed to apply to the secretary of commerce established by this order.

(d) All rules and regulations, orders and directives of the secretary of the department of commerce and housing that relate to functions other than those functions transferred by this order and that are in effect on the effective date of this order shall continue to be effective and shall be deemed to be rules and regulations, orders and directives of the secretary of commerce until revised, amended, revoked, or nullified pursuant to law.

Sec. 8. (a) All officers and employees of the division of housing within the department of commerce and housing who, immediately prior to the effective date of this order, are engaged in the exercise and performance of the powers, duties and functions transferred by this order are hereby transferred to and become employees of the Kansas development finance authority. All classified employees so transferred shall retain their status as classified employees. Thereafter, the Kansas development finance authority may convert vacant classified positions to positions that are not classified.

(b) Officers and employees of the division of housing of the department of commerce and housing transferred by this order shall retain all retirement benefits and leave balances and rights which had accrued or vested prior to the date of transfer. The service of each such officer and employee so transferred shall be deemed to have been continuous. Any subsequent transfers, layoffs and abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Nothing in this order shall affect the classified status of any transferred person employed prior to the date of transfer by the division of housing within the department of commerce and housing.

Sec. 9. All of the provisions of this order shall take effect and have the force of general law on July 1, 2003, unless disapproved by either house of the Kansas legislature as provided by subsection (c) of section 6 of article 1 of the constitution of Kansas, and unless so disapproved, this order is to be published as and with the acts of the legislature and the statutes of this state.

DONE AT The Capitol in Topeka
Under the Great Seal of the
State of Kansas this 10th day
of February, 2003.

BY THE GOVERNOR
Kathleen Sebelius
Ron E. Thornburgh
Secretary of State
Janet A. Chubb
Assistant Secretary of State

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2055**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2055 was thereupon introduced and read by title.

REPORTS OF STANDING COMMITTEES

Committee on Commerce begs leave to submit the following report:

The following appointment was referred to and considered by the committee and your committee recommends that the Senate approve and consent to such appointment:

By the Governor:

Commerce and Housing, Secretary of: K.S.A. 74-5002a

John Moore, serves at the pleasure of the Governor

Committee on **Education** recommends **SB 74** be passed.

Committee on Federal and State Affairs begs leave to submit the following report:

The following appointment was referred to and considered by the committee and your committee recommends that the Senate approve and consent to such appointment:

By the Governor:

Administration, Secretary: K.S.A. 2002 Supp. 75-3702a

Howard Fricke, serves at the pleasure of the Governor

Committee on Judiciary begs leave to submit the following report:

The following appointment was referred to and considered by the committee and your committee recommends that the Senate approve and consent to such appointment:

By the Governor:

Corrections, Secretary of: K.S.A. 2002 Supp. 75-5203

Roger Werholtz, serves at the pleasure of the Governor

Committee on Transportation begs leave to submit the following report:

The following appointment was referred to and considered by the committee and your committee recommends that the Senate approve and consent to such appointment:

By the Governor:

Transportation, Secretary of: K.S.A. 2002 Supp. 75-5001

Deb Miller, serves at the pleasure of the Governor

REPORT ON ENROLLED BILLS

SR 1810 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on February 11, 2003.

COMMITTEE OF THE WHOLE

On motion of Senator Oleen, the Senate resolved itself into Committee of the Whole for consideration of bills on the calendar under the heading of General Orders with Senator Clark in the chair.

On motion of Senator Clark the following report was adopted:

Recommended **SB 11**, **SB 21**, **SB 118**, **SB 119** be passed.

SB 28, **SB 40**, **SB 46**, **SB 73**, **SB 117** be amended by adoption of the committee amendments, and the bills be passed as amended.

SB 9 be amended by adoption of the committee amendments, be further amended by motion of Senator Oleen, as amended by Senate Committee, on page 1, by striking all in lines 15 through 43;

On page 2, by striking all in lines 1 through 43;

On page 3, by striking all in lines 1 through 35 and inserting:

“Section 1. (a) Whenever a request is specifically directed to a Native American Indian tribal law enforcement agency or law enforcement officer of such tribal agency to assist a state, county or city law enforcement agency or law enforcement officer of such agency, the tribal law enforcement agency or officer shall be considered to be a law enforcement agency or officer of such state, county or city agency and shall have the same powers, duties and immunities of such state, county or city agency during the period of time in which the tribal law enforcement agency or officer is providing such assistance.

(b) The provisions of this section shall be applicable only if such Native American Indian tribe has entered into a valid and binding agreement with an insurance carrier to provide liability insurance to cover the acts, errors and omissions of such tribal law enforcement agency or officer while providing assistance pursuant to this section. Such insurance policy shall be in an amount not less than \$500,000 for any one person and \$2,000,000 for any one occurrence for personal injury and \$1,000,000 for any one occurrence for property damage. Such insurance policy shall be subject to verification by the attorney general. Such insurance policy shall include an endorsement providing that the insurer may not invoke tribal sovereign immunity up to the limits of the policy set forth herein.

(c) If a claim is brought against any tribal law enforcement agency or officer for acts committed by such agency or officer while providing assistance pursuant to this section and while such agency or officer is outside the jurisdiction of such agency or officer, such claim shall be subject to disposition as if the tribe was the state pursuant to the Kansas tort claims act, provided that such act shall not govern the tribe’s purchase of insurance. The tribe shall waive its sovereign immunity solely to the extent necessary to permit recovery under the liability insurance, but not to exceed the policy limits.

(d) Nothing in this section shall be construed to grant any powers to tribal law enforcement agencies or tribal law enforcement officers beyond those specifically provided in this section.

(e) Nothing in this section shall be construed as a mandate on any law enforcement agency to enter into any agreement with any state, county or city law enforcement agency or to request assistance from any state, county or city law enforcement agency.

(f) As used in this subsection, “tribal law enforcement officer” means a tribal law enforcement officer who has successfully completed (1) a state, local or federal law enforcement officer training program which has a course of instruction which is substantially equivalent to the course of instruction of law enforcement training programs for full-time law enforcement officers required by K.S.A. 74-5607a, and amendments thereto, and (2) annual training which is substantially equivalent to the annual training required by K.S.A. 74-5607a, and amendments thereto.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.”;

In the title, in line 11, by striking “; amending”; in line 12, by striking all before the period, and **SB 9** be passed as further amended.

SB 33 be amended by adoption of the committee amendments, be further amended by motion of Senator Barnett, as amended by Senate Committee, on page 4, in line 21, by striking “the” where it appears for the first time and inserting “The”; in line 39, following “impounded”, by inserting “or immobilized”;

On page 6, in line 8, by striking “the” where it appears for the first time and inserting “The”; in line 26, following “impounded”, by inserting “or immobilized”, and **SB 33** be passed as further amended.

SB 120 be amended by adoption of the committee amendments, be further amended by motion of Senator Oleen, as amended by Senate Committee, on page 1, following line 13, by inserting:

“Section 1. K.S.A. 72-5126 is hereby amended to read as follows: 72-5126. (a) The board of education of any school district may enter into contracts with:

(1) The governing authority of any nonpublic school or any child-care institution for the provision of meals for children in attendance at such nonpublic school or child-care institution;

(2) the governing body of any municipality for the provision of meals to persons for whom the municipality is responsible for providing meals; ~~and~~

(3) subject to the provisions of K.S.A. 72-5127, and amendments thereto, any state educational institution or corporation whose operations are substantially controlled by a state educational institution for the provision of meals for students, alumni and other members of the public in attendance at functions or activities of the state educational institution; ~~and~~

(4) *any nonprofit organization for the provision of food services for the elderly, sick, homeless or other vulnerable persons.*

(b) Any contract entered into by a board of education pursuant to the provisions of this section shall provide for payment ~~by the nonpublic school, child-care institution, municipality, state educational institution or corporation, as applicable, of the costs incurred by to the district. Such payment shall not be less than the cost incurred by~~ the school district. Moneys received by a school district under any such contract shall be deposited in the food service fund of the district and may be expended whether budgeted or not.

(c) The provisions contained in article 51 of chapter 72 of Kansas Statutes Annotated, except the provisions contained in K.S.A. 72-5117 and 72-5118, and amendments thereto, shall apply to meals provided by the board of education of a school district under any contract entered into pursuant to the provisions of this section.

(d) As used in this section, ~~the term "nonpublic school" means a nonpublic school approved by the state board of education for participation in food service programs defined in K.S.A. 72-5112, and amendments thereto, the term "child-care institution" has the meaning ascribed thereto in K.S.A. 72-5124, and amendments thereto, the term "municipality" means any county, township, city, or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof, and the term "state educational institution" has the meaning ascribed thereto in K.S.A. 76-711, and amendments thereto.~~

(1) *"Nonpublic school" means a nonpublic school approved by the state board of education for participation in food service programs defined in K.S.A. 72-5112, and amendments thereto;*

(2) *"child-care institution" has the meaning ascribed thereto in K.S.A. 72-5124, and amendments thereto;*

(3) *"municipality" means any political or taxing subdivision of the state and any agency, authority, institution or instrumentality of a municipality; and*

(4) *"state educational institution" has the meaning ascribed thereto by K.S.A. 76-711, and amendments thereto."*

And by renumbering the remaining sections accordingly;

On page 2, in line 20, by striking "72-6760 is" and inserting "72-5126 and 72-6760 are";

In the title, in line 10, following "districts;" by inserting "relating to the powers and duties of the board of education;"; in line 11, following "K.S.A." by inserting "72-5126 and"; also in line 11, by striking "section" and inserting "sections", and **SB 120** be passed as further amended.

On motion of Senator Oleen the Senate adjourned until 2:30 p.m., Wednesday, February 12, 2003.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks.*

PAT SAVILLE, *Secretary of the Senate.*

