

Journal of the Senate

FIFTY-EIGHTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, May 1, 2003—11:30 a.m.

The Senate was called to order by President Dave Kerr.
The roll was called with forty senators present.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

The war in Iraq is winding down,
And Saddam has "bit the dust".
Some of our troops have come back home,
And more will come we trust.

But many of them will stay a while
To help keep law and order,
While people from the coalition
Bring food across the border.

So it is with some concern
We hear Iraqis cry,
"We thank you for our freedom,
But you now must say, 'Good bye'"

It seems that many do not want
Democracy, American style.
So what kind of government do they want
That will make them smile?

Governments by the people
Have proved to be the best
To supply the basic needs
And make a nation blest.

If the people do not govern,
Tyrants tend to reign,
And before you know it,
Up pops one more Hussein!

I pray that cooler heads prevail,
And let their people reign;
So our troops who gave their lives
Will not have died in vain.

I pray in Jesus' Name,

AMEN

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

SB 285, An act concerning the department of commerce and housing; relating to changing the name of such agency; relating to other changes required by 2002 ERO 30; amending K.S.A. 2-3602, 12-1770a, as amended by section 1 of 2003 Senate Substitute for House Bill No. 2208, 12-1771b, 12-1771d, 12-1774, as amended by section 4 of 2003 Senate Substitute for House Bill No. 2208, 12-5242, 32-873, 32-874a, 32-874b, 32-874d, 32-874e, 39-1605, 65-5721, 72-4436, 72-4437, 73-2402, 73-2404, 74-520a, 74-567, 74-575, 74-2622, 74-2916, 74-32,151, 74-4911f, 74-5002o, 74-5049, 74-5073, 74-5074, 74-5082, 74-5084, 74-5086a, 74-5089, 74-5091, 74-5095, 74-5096, 74-5097, 74-50,103, 74-50,104, 74-50,105, 74-50,106, 74-50,107, 74-50,108, 74-50,109, 74-50,110, 74-50,111, 74-50,114, 74-50,115, 74-50,131, 74-50,133, 74-50,134, 74-50,151, 74-50,152, 74-50,153, 74-50,156, 74-50,157, 74-50,158, 74-50,159, 74-50,160, 74-50,162, 74-50,163, 74-7295, 74-8001, 74-8002, 74-8004, 74-8005, 74-8006, 74-8007, 74-8010, 74-8101, 74-8221, 74-8405, 74-8831, 74-8904, 74-8928, 74-8930, 74-8942, 74-8943, 74-9001, as amended by section 1 of 2003 House Bill No. 2106, 74-9002, 74-9003, 74-9004, 74-9005, 74-9201 and 79-32,198 and K.S.A. 2002 Supp. 2-1921, 40-4702, 58-1401, 58-1405, 58-1406, 58-1407, 75-2935, 79-213, 79-251, 79-3271, 79-3271a, 79-32,160a, 79-32,197a, 79-3620, as amended by section 5 of 2003 Senate Substitute for House Bill No. 2208, 79-3620b and 79-3710, as amended by section 8 of 2003 Senate Substitute for House Bill No. 2208, and section 2 of 2003 Senate Substitute for House Bill No. 2208 and section 16 of 2003 Senate Bill No. 237 and repealing the existing sections; also repealing K.S.A. 74-5002f, 74-5002g, 74-5002h, 74-5002i, 74-5002j, 74-5002k, 74-5002n, 74-5083 and 74-5085, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was referred to Committee as indicated:

Committee of the Whole: **SB 284**.

REFERRAL OF APPOINTMENTS

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

Kansas Development Finance Authority, Member, Board of Directors: Brett A. Reber, effective upon the date of confirmation by the Senate, to serve a term of 4 years.
(Commerce)

Kansas Development Finance Authority, Member, Board of Directors: Daniel L. Watkins, effective upon the date of confirmation by the Senate, to fulfill an unexpired term.
(Commerce)

State Bank Commissioner: Clarence W. Norris, effective upon the date of confirmation by the Senate, to serve at the pleasure of the Governor.
(Financial Institutions and Insurance)

State Corporation Commission, Member: Robert E. Krehbiel, effective upon the date of confirmation by the Senate, to serve a term of 4 years.
(Utilities)

State Gaming Agency, Executive Director: John E. McElroy III, effective upon the date of confirmation by the Senate, to serve at the pleasure of the Governor.
(Federal and State Affairs)

COMMUNICATIONS FROM STATE OFFICERS

KANSAS NATURAL RESOURCES LEGACY ALLIANCE

May 1, 2003

As required by K.S.A. 2-1922, Sheila Frahm, Chair, submitted the Preliminary Report of the Kansas Natural Resources Legacy Alliance.

The President announced the above report is on file in the office of the Secretary of the Senate and is available for review at any time.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Tyson, Oleen, Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil and Wagle introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1858—

A RESOLUTION in memory of Jacob Lee Butler.

WHEREAS, Jacob Lee Butler, 24, of Wellsville, a Sergeant in the United States Army, was killed April 1, 2003, in Assamawah, Iraq, while participating in Operation Iraqi Freedom. He gave his life so that others could enjoy freedom and democracy. He was the first Kansan and the first soldier from Fort Riley to be killed in action in Iraq. Sergeant Butler was a scout for the 3rd Brigade of the 1st Armored Division, a dangerous job doing reconnaissance to locate and obtain information about enemy forces; and

WHEREAS, Sergeant Butler enlisted in the United State Army in November 1998. He was stationed at Fort Hood, Texas, for two years before reenlisting in 2001 and being transferred to Fort Riley. As a cavalry scout he was deployed to Kuwait in 1999 and again in 2002. He returned to that area for the third time in March of 2003; and

WHEREAS, Sergeant Butler loved being in the Army; he was a proud member of the United States Army and a loyal member of the Association of the United States Army. His awards and decorations included the Bronze Star Medal, Meritorious Service Medal, Army Commendation Medal with two oak leaf clusters, Good Conduct Medal, National Defense Service Medal, Armed Forces Expeditionary Medal with bronze service star and Purple Heart; and

WHEREAS, Sergeant Butler was born April 26, 1978, in Merriam. He moved with his parents to Wellsville in 1990. He attended Wellsville public schools and graduated from Wellsville High School in 1996. He is remembered in Wellsville as a likable, hard working young man and as the boy next door who helped his father and was a trusted employee at the local grocery store. The entire Wellsville community has joined in giving homage to this young man and in offering condolences to his family; and

WHEREAS, Sergeant Butler was not married. He is survived by his parents, James C. and Cynthia D. Butler; four brothers, James C. Butler, Jr., Joshua M. Butler, Joseph D. Butler and Justin M. Butler; his paternal grandparents, Robert J. and Nancy J. Butler; four uncles and aunts and several cousins; Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we extend our deepest sympathy to the family of Sergeant Butler and express our appreciation and gratitude for the service and sacrifice he made for his country, state and community; and

Be it further resolved: That the Secretary of the Senate be directed to send 12 enrolled copies of this resolution to Mr. and Mrs. James C. Butler, Wellsville, Kansas 66092.

On emergency motion of Senator Tyson **SR 1858** was adopted unanimously.

President Kerr and members of the Senate offered their condolences to family members on their loss. Family members included his parents, James and Cindy Butler; oldest brother James, Jr. and his son Jess; his brother, Joshua and his wife Chrissy, and daughters Kaitlyn and Shelby; twin brother, Joseph; youngest brother, Justin; and friend Sara Jacobs.

Senators Bunten, Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil and Wagle introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1859—

A RESOLUTION congratulating and commending Coach Roy Williams.

WHEREAS, Former University of Kansas basketball coach Roy Williams has left the university to return to his home state of North Carolina to assume the position of head basketball coach at his alma mater, the University of North Carolina; and

WHEREAS, The people of Kansas regard Roy Williams as a man of outstanding character and as among the finest college basketball coaches in the nation; and

WHEREAS, Roy Williams has continued the storied tradition of excellence in the sport of basketball at Kansas University, a tradition established by Dr. James Naismith, inventor of the game, Dr. Forrest C. "Phog" Allen, who won a national championship in 1952, Dick Harp, Ted Owens and Larry Brown, who won a national championship in 1988; and

WHEREAS, Roy Williams has brought great pride to Kansas University and our state with the success the program has achieved under his leadership for the past 15 years; and

WHEREAS, Coach Williams developed his love for the game as an outstanding high school player at T. C. Robertson High School in Asheville, North Carolina, where he earned all county and all state honors in basketball in both his junior and senior years, and upon graduation enrolled at North Carolina University where he earned bachelor's and master's degrees in education; and

WHEREAS, Upon graduation he successfully coached basketball at Swannanoe Owen High School for five years before returning to the University of North Carolina as an assistant coach under the legendary North Carolina coach and Kansas University graduate, Dean Smith; and

WHEREAS, In 1988 Roy Williams became the head basketball coach at the University of Kansas, with a strong recommendation by Coach Smith, and where his teams won 418 games while losing just 101, a winning percentage of 80.5%; and

WHEREAS, Coach Williams' teams averaged 27 wins per season, were conference champions nine times, went to the NCAA tournament for 14 consecutive years, were in the Sweet Sixteen round seven times, the Final Four four times and the championship game in 1991 and 2003; and

WHEREAS, Roy Williams was the Big Eight Coach of the Year in 1990, 1992 and 1997, served on the board of directors of the National Association of Basketball Coaches for 11 years, was on the NCAA basketball rules committee for six years, was the head coach of the 1993 USA Under Twenty Two team, was an assistant coach for the 1991 USA World University Games team and the 1992 USA Basketball Olympic Development team; and

WHEREAS, Roy Williams and his wife Wanda, their son Scott and daughter Kimberly have been proud Kansans for the past 15 years: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we thank Roy Williams for his years of service to Kansas University and the state of Kansas. We congratulate him on his new position and thank him for the years he was with us and the pride he brought us. His many friends will remember the student athletes he recruited, the thrilling victories and the hard to take defeats. We know he will remember the university, Allen Field House and the students and fans who admired him so greatly. Best wishes Roy; and

Be it further resolved: That the Secretary of the Senate be directed to send an enrolled copy of this resolution to Roy Williams, Head Basketball Coach, Department of Athletics, University of North Carolina, P.O. Box 2126, Chapel Hill, NC 27515; Coach Dean E. Smith, Department of Athletics, University of North Carolina, P.O. Box 2126, Chapel Hill, NC 27515; Dr. Robert Hemenway, Chancellor, University of Kansas, 230 Strong Hall, University of Kansas, Lawrence, KS 66045-0000 and Dr. James Moeser, Chancellor, University of North Carolina, 103 South Building, Campus Box 9100, Chapel Hill, NC 27599-9100.

On emergency motion of Senator Buntin **SR 1859** was adopted unanimously.

On motion of Senator Oleen, the Senate recessed until 2:00 p.m.

AFTERNOON SESSION

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

REPORTS OF STANDING COMMITTEES

Committee on **Agriculture** 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:

Secretary of Department of Agriculture: K.S.A. 74-560

Adrian J. Polansky, serves at the pleasure of the Governor

Committee on **Assessment and Taxation** recommends **HB 2287** be amended on page 1, after line 14, by inserting the following:

“Section 1. K.S.A. 2002 Supp. 75-3739 is hereby amended to read as follows: 75-3739. In the manner as provided in this act and rules and regulations established thereunder:

(a) All contracts for construction and repairs, and all purchases of and contracts for supplies, materials, equipment and contractual services to be acquired for state agencies shall be based on competitive bids, except that competitive bids need not be required in the following instances:

(1) For contractual services, supplies, materials, or equipment when, in the judgment of the director of purchases, no competition exists;

(2) when, in the judgment of the director of purchases, chemicals and other material or equipment for use in laboratories or experimental studies by state agencies are best purchased without competition, or where rates are fixed by law or ordinance;

(3) when, in the judgment of the director of purchases, an agency emergency requires immediate delivery of supplies, materials or equipment, or immediate performance of services;

(4) when any statute authorizes another procedure or provides an exemption from the provisions of this section;

(5) when compatibility with existing contractual services, supplies, materials or equipment is the overriding consideration;

(6) when a used item becomes available and is subject to immediate sale; or

(7) when, in the judgment of the director of purchases and the head of the acquiring state agency, not seeking competitive bids is in the best interest of the state.

When the director of purchases approves a purchase of or contract for supplies, materials, equipment, or contractual services in any instance specified in this subsection, the director may delegate authority to make the purchase or enter the contract under conditions and procedures prescribed by the director.

The director of purchases shall prepare a detailed report at least once in each calendar quarter of all contracts over \$5,000 entered into without competitive bids under subsection (a)(1), (2), (3), (5), (6) or (7). The director shall submit the report to the legislative coordinating council, the chairperson of the committee on ways and means of the senate, the chairperson of the committee on appropriations of the house of representatives and the chairperson of the Kansas performance review board.

(b) (1) If the amount of the purchase is estimated to exceed \$50,000, sealed bids shall be solicited by notice published once in the Kansas register not less than 10 days before the date stated in the notice for the opening of the bids. The director of purchases may waive this publication of notice requirement when the director determines that a more timely procurement is in the best interest of the state. The director of purchases also may designate a trade journal for the publication. The director of purchases also shall solicit such bids by sending notices by mail to prospective bidders and by posting the notice on a public bulletin board for at least 10 business days before the date stated in the notice for the opening of the bids unless otherwise provided by law. All bids shall be sealed when received and shall be opened in public at the hour stated in the notice.

(2) The director of purchases shall prepare a detailed report at least once in each calendar quarter of all instances in which the director waived publication of the notice of bid solicitations in the Kansas register as provided in this subsection. The director shall submit the report to the legislative coordinating council, the chairperson of the committee on ways and means of the senate, the chairperson of the committee on appropriations of the house of representatives and the chairperson of the Kansas performance review board.

(c) All purchases estimated to exceed approximately \$25,000 but not more than \$50,000, shall be made after receipt of sealed bids following at least three days' notice posted on a public bulletin board.

(d) All purchases estimated to be more than \$5,000, but less than \$25,000, may be made after the receipt of three or more bid solicitations by telephone, telephone facsimile or sealed bid, following at least three days' notice posted on a public bulletin board. Such bids shall be recorded as provided in subsection (e) of K.S.A. 75-3740 and amendments thereto. Any purchase that is estimated to be less than \$5,000 may be purchased under conditions and procedures prescribed by the director of purchases. Purchases made in compliance with such conditions and procedures shall be exempt from other provisions of this section.

(e) With the approval of the secretary of administration, the director of purchases may delegate authority to any state agency to make purchases of less than \$25,000 under certain prescribed conditions and procedures. The director of purchases shall prepare a report at least once in each calendar quarter of all current and existing delegations of authority to state agencies as provided in this subsection. The director shall submit the report to the legislative coordinating council, the chairperson of the committee on ways and means of the senate, the chairperson of the committee on appropriations of the house of representatives and the chairperson of the Kansas performance review board.

(f) Subject to the provisions of subsection (e), contracts and purchases shall be based on specifications approved by the director of purchases. When deemed applicable and feasible by the director of purchases, such specifications shall include either energy efficiency standards or appropriate life cycle cost formulas, or both, for all supplies, materials, equipment and contractual services to be purchased by the state. The director of purchases may reject a contract or purchase on the basis that a product is manufactured or assembled outside the United States. No such specifications shall be fixed in a manner to effectively exclude any responsible bidder offering comparable supplies, materials, equipment or contractual services.

(g) Notwithstanding anything herein to the contrary, all contracts with independent construction concerns for the construction, improvement, reconstruction and maintenance of the state highway system and the acquisition of rights-of-way for state highway purposes shall be advertised and let as now or hereafter provided by law.

(h) The director of purchases may authorize state agencies to contract for services and materials with other state agencies, or with federal agencies, political subdivisions of Kansas, agencies of other states or subdivisions thereof, or private nonprofit educational institutions, without competitive bids.

(i) The director of purchases may participate in, sponsor, conduct, or administer a cooperative purchasing agreement or consortium for purchases of supplies, materials, equipment, and contractual services with federal agencies or agencies of other states or local units of government. Cooperative purchasing agreements entered into under this subsection shall not be subject to K.S.A. 75-3739 through 75-3740a, and amendments thereto. ~~Nothing in this subsection shall allow federal grant moneys to be handled differently from any other moneys of the state unless the requirements of the applicable federal grant specifically require such federal moneys to be handled differently.~~

(j) The director of purchases may delegate authority to any state agency to make purchases under certain prescribed conditions and procedures when the acquisition is funded, in whole or in part, from a grant. Purchases made in compliance with such conditions and procedures shall be exempt from other provisions of this section. As used in this subsection the term "grant" means a disbursement made from federal or private funds, or a combination of these sources, to a state agency. *Nothing in this subsection shall allow federal grant moneys to be handled differently from any other moneys of the state unless the requirements of the applicable federal grant specifically require such federal moneys to be handled differently.*

(k) The director of purchases shall prepare a detailed report at least once each calendar quarter of all contracts for services, supplies, materials or equipment entered into pursuant to subsection (h), (i) or (j) and submit it to the legislative coordinating council, the chairperson of the committee on ways and means of the senate, the chairperson of the committee on appropriations of the house of representatives and the chairperson of the Kansas performance review board.

(l) Except as otherwise specifically provided by law, no state agency shall enter into any lease of real property without the prior approval of the secretary of administration. A state

agency shall submit to the secretary of administration such information relating to any proposed lease of real property as the secretary may require. The secretary of administration shall either approve, modify and approve or reject any such proposed lease.

(m) The director of purchases shall require all bidders on state contracts to disclose all substantial interests held by the bidder in the state.

(n) *The director of purchases shall require each bidder on a state contract for supplies, materials and equipment to disclose whether such bidder makes sales at retail of tangible personal property or services as defined in K.S.A. 79-3602, and amendments thereto, in this state, or makes sales at retail of tangible personal property as defined in K.S.A. 79-3602, and amendments thereto, for use or storage within this state, as defined in K.S.A. 79-3702, and amendments thereto, and if so, such bidder must agree that if successful, such bidder, as of the date of such award, shall register with the department of revenue and collect, report and remit to the department pursuant to K.S.A. 79-3607 or 79-3706, and amendments thereto, all applicable Kansas retailer's sales tax or compensating use tax on sales at retail of tangible personal property or services in Kansas or sales of tangible personal property shipped or delivered to customers located in Kansas. Absent such agreement, the bid shall not be considered.*

Sec. 2. K.S.A. 75-3740a is hereby amended to read as follows: 75-3740a. (a) To the extent permitted by federal law and regulations whenever the state of Kansas or any agency, department, bureau or division thereof or any municipality of the state including, but not limited to, county, school district, improvement district or other public body lets bids for contracts for the erection, construction, alteration or repair of any public building or structure or any addition thereto or for any public work or improvement or for any purchases of any goods, merchandise, materials, supplies or equipment of any kind, the contractor domiciled outside the state of Kansas, to be successful, shall submit a bid the same percent less than the lowest bid submitted by a responsible Kansas contractor as would be required of such Kansas domiciled contractor to succeed over the bidding contractor domiciled outside Kansas on a like contract let in such contractor's domiciliary state.

(b) *Whenever the state of Kansas or any agency, department, bureau or division thereof or any municipality of the state including, but not limited to, county, school district, improvement district or other public body lets bids for any purchases of any goods, merchandise, materials, supplies or equipment of any kind, the bidder domiciled outside of the state of Kansas, to be successful, shall agree that if awarded such contract, such bidder, as of the date of such award, shall register with the department of revenue and collect, report and remit to the department pursuant to K.S.A. 79-3607 or 79-3706, and amendments thereto, all applicable Kansas retailer's sales tax or compensating use tax on sales at retail of tangible personal property or services in Kansas or sales at retail of tangible personal property shipped or delivered to customers located in Kansas.*;

And by renumbering sections accordingly;

On page 2, in line 14, by striking "five" and inserting "seven";

On page 3, after line 19, by inserting the following:

"Sec. 5. K.S.A. 2002 Supp. 79-3603 is hereby amended to read as follows: 79-3603. For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of 5.3% on and after July 1, 2002, and before July 1, 2004, 5.2% on and after July 1, 2004, and before July 1, 2005, and 5% on and after July 1, 2005, and, within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax at the rate of 2% until the earlier of the date the bonds issued to finance or refinance the redevelopment project have been paid in full or the final scheduled maturity of the first series of bonds issued to finance any part of the project upon:

(a) The gross receipts received from the sale of tangible personal property at retail within this state;

(b) (1) the gross receipts from intrastate telephone or telegraph services; (2) the gross receipts received from the sale of interstate telephone or telegraph services, which (A) originate within this state and terminate outside the state and are billed to a customer's telephone number or account in this state; or (B) originate outside this state and terminate

within this state and are billed to a customer's telephone number or account in this state except that the sale of interstate telephone or telegraph service does not include: (A) Any interstate incoming or outgoing wide area telephone service or wide area transmission type service which entitles the subscriber to make or receive an unlimited number of communications to or from persons having telephone service in a specified area which is outside the state in which the station provided this service is located; (B) any interstate private communications service to the persons contracting for the receipt of that service that entitles the purchaser to exclusive or priority use of a communications channel or group of channels between exchanges; (C) any value-added nonvoice service in which computer processing applications are used to act on the form, content, code or protocol of the information to be transmitted; (D) any telecommunication service to a provider of telecommunication services which will be used to render telecommunications services, including carrier access services; or (E) any service or transaction defined in this section among entities classified as members of an affiliated group as provided by section 1504 of the federal internal revenue code of 1986, as in effect on January 1, 2001. For the purposes of this subsection the term gross receipts does not include purchases of telephone, telegraph or telecommunications using a prepaid telephone calling card or prepaid authorization number. As used in this subsection, a prepaid telephone calling card or prepaid authorization number means the right to exclusively make telephone calls, paid for in advance, that enables the origination of calls using an access number or authorization code or both, whether manually or electronically dialed; and (3) the gross receipts from the provision of services taxable under this subsection which are billed on a combined basis with nontaxable services, shall be accounted for and the tax remitted as follows: The taxable portion of the selling price of those combined services shall include only those charges for taxable services if the selling price for the taxable services can be readily distinguishable in the retailer's books and records from the selling price for the nontaxable services. Otherwise, the gross receipts from the sale of both taxable and nontaxable services billed on a combined basis shall be deemed attributable to the taxable services included therein. Within 90 days of billing taxable services on a combined basis with nontaxable services, the retailer shall enter into a written agreement with the secretary identifying the methodology to be used in determining the taxable portion of the selling price of those combined services. The burden of proving that any receipt or charge is not taxable shall be upon the retailer. Upon request from the customer, the retailer shall disclose to the customer the selling price for the taxable services included in the selling price for the taxable and nontaxable services billed on a combined basis;

(c) the gross receipts from the sale or furnishing of gas, water, electricity and heat, which sale is not otherwise exempt from taxation under the provisions of this act, and whether furnished by municipally or privately owned utilities but such tax shall not be levied and collected upon the gross receipts from: (1) The sale of a rural water district benefit unit; (2) a water system impact fee, system enhancement fee or similar fee collected by a water supplier as a condition for establishing service; or (3) connection or reconnection fees collected by a water supplier;

(d) the gross receipts from the sale of meals or drinks furnished at any private club, drinking establishment, catered event, restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public;

(e) the gross receipts from the sale of admissions to any place providing amusement, entertainment or recreation services including admissions to state, county, district and local fairs, but such tax shall not be levied and collected upon the gross receipts received from sales of admissions to any cultural and historical event which occurs triennially;

(f) the gross receipts from the operation of any coin-operated device dispensing or providing tangible personal property, amusement or other services except laundry services, whether automatic or manually operated;

(g) the gross receipts from the service of renting of rooms by hotels, as defined by K.S.A. 36-501 and amendments thereto, or by accommodation brokers, as defined by K.S.A. 12-1692, and amendments thereto but such tax shall not be levied and collected upon the gross receipts received from sales of such service to the federal government and any agency, officer or employee thereof in association with the performance of official government duties;

(h) the gross receipts from the service of renting or leasing of tangible personal property except such tax shall not apply to the renting or leasing of machinery, equipment or other personal property owned by a city and purchased from the proceeds of industrial revenue bonds issued prior to July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, and any city or lessee renting or leasing such machinery, equipment or other personal property purchased with the proceeds of such bonds who shall have paid a tax under the provisions of this section upon sales made prior to July 1, 1973, shall be entitled to a refund from the sales tax refund fund of all taxes paid thereon;

(i) the gross receipts from the rendering of dry cleaning, pressing, dyeing and laundry services except laundry services rendered through a coin-operated device whether automatic or manually operated;

(j) the gross receipts from the rendering of the services of washing and waxing of vehicles;

(k) the gross receipts from cable, community antennae and other subscriber radio and television services;

(l) (1) except as otherwise provided by paragraph (2), the gross receipts received from the sales of tangible personal property to all contractors, subcontractors or repairmen for use by them in erecting structures, or building on, or otherwise improving, altering, or repairing real or personal property.

(2) Any such contractor, subcontractor or repairman who maintains an inventory of such property both for sale at retail and for use by them for the purposes described by paragraph (1) shall be deemed a retailer with respect to purchases for and sales from such inventory, except that the gross receipts received from any such sale, other than a sale at retail, shall be equal to the total purchase price paid for such property and the tax imposed thereon shall be paid by the deemed retailer;

(m) the gross receipts received from fees and charges by public and private clubs, drinking establishments, organizations and businesses for participation in sports, games and other recreational activities, but such tax shall not be levied and collected upon the gross receipts received from: (1) Fees and charges by any political subdivision, by any organization exempt from property taxation pursuant to paragraph *Ninth* of K.S.A. 79-201, and amendments thereto, or by any youth recreation organization exclusively providing services to persons 18 years of age or younger which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for participation in sports, games and other recreational activities; and (2) entry fees and charges for participation in a special event or tournament sanctioned by a national sporting association to which spectators are charged an admission which is taxable pursuant to subsection (e);

(n) the gross receipts received from dues charged by public and private clubs, drinking establishments, organizations and businesses, payment of which entitles a member to the use of facilities for recreation or entertainment, but such tax shall not be levied and collected upon the gross receipts received from: (1) Dues charged by any organization exempt from property taxation pursuant to paragraphs *Eighth* and *Ninth* of K.S.A. 79-201, and amendments thereto; and (2) sales of memberships in a nonprofit organization which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code of 1986, and whose purpose is to support the operation of a nonprofit zoo;

(o) the gross receipts received from the isolated or occasional sale of motor vehicles or trailers but not including: (1) The transfer of motor vehicles or trailers by a person to a corporation or limited liability company solely in exchange for stock securities or membership interest in such corporation or limited liability company; or (2) the transfer of motor vehicles or trailers by one corporation or limited liability company to another when all of the assets of such corporation or limited liability company are transferred to such other corporation or limited liability company; or (3) the sale of motor vehicles or trailers which are subject to taxation pursuant to the provisions of K.S.A. 79-5101 *et seq.*, and amendments thereto, by an immediate family member to another immediate family member. For the purposes of clause (3), immediate family member means lineal ascendants or descendants, and their spouses. In determining the base for computing the tax on such isolated or oc-

casional sale, the fair market value of any motor vehicle or trailer traded in by the purchaser to the seller may be deducted from the selling price;

(p) the gross receipts received for the service of installing or applying tangible personal property which when installed or applied is not being held for sale in the regular course of business, and whether or not such tangible personal property when installed or applied remains tangible personal property or becomes a part of real estate, except that no tax shall be imposed upon the service of installing or applying tangible personal property in connection with the original construction of a building or facility, the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence or the construction, reconstruction, restoration, replacement or repair of a bridge or highway.

For the purposes of this subsection:

(1) "Original construction" shall mean the first or initial construction of a new building or facility. The term "original construction" shall include the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion or earthquake, but such term, except with regard to a residence, shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances;

(2) "building" shall mean only those enclosures within which individuals customarily are employed, or which are customarily used to house machinery, equipment or other property, and including the land improvements immediately surrounding such building;

(3) "facility" shall mean a mill, plant, refinery, oil or gas well, water well, feedlot or any conveyance, transmission or distribution line of any cooperative, nonprofit, membership corporation organized under or subject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto, or of any municipal or quasi-municipal corporation, including the land improvements immediately surrounding such facility; and

(4) "residence" shall mean only those enclosures within which individuals customarily live;

(q) the gross receipts received for the service of repairing, servicing, altering or maintaining tangible personal property, *except computer software described in subsection (s)*, which when such services are rendered is not being held for sale in the regular course of business, and whether or not any tangible personal property is transferred in connection therewith. The tax imposed by this subsection shall be applicable to the services of repairing, servicing, altering or maintaining an item of tangible personal property which has been and is fastened to, connected with or built into real property;

(r) the gross receipts from fees or charges made under service or maintenance agreement contracts for services, charges for the providing of which are taxable under the provisions of subsection (p) or (q);

(s) the gross receipts received from the sale of computer software, and the sale of the services of modifying, altering, updating or maintaining computer software. As used in this subsection, "computer software" means information and directions loaded into a computer which dictate different functions to be performed by the computer. Computer software includes any canned or prewritten program which is held or existing for general or repeated sale, even if the program was originally developed for a single end user as custom computer software. *The sale of computer software or services does not include: (1) The initial sale of any custom computer program which is originally developed for the exclusive use of a single end user; or (2) those services rendered in the modification of computer software when the modification is developed exclusively for a single end user only to the extent of the modification and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements and other billing documents provided to the end user. The services of modification, alteration, updating and maintenance of computer software shall only include the modification, alteration, updating and maintenance of computer software taxable under this subsection whether or not the services are actually provided;*

(t) the gross receipts received for telephone answering services, mobile telecommunication services, beeper services and other similar services. On and after August 1, 2002, the provisions of the federal mobile telecommunications sourcing act as in effect on January 1, 2002, shall be applicable to all sales of mobile telecommunication services taxable pursuant

to this subsection. The secretary of revenue is hereby authorized and directed to perform any act deemed necessary to properly implement such provisions;

(u) the gross receipts received from the sale of prepaid telephone calling cards or prepaid authorization numbers and the recharge of such cards or numbers. A prepaid telephone calling card or prepaid authorization number means the right to exclusively make telephone calls, paid for in advance, that enables the origination of calls using an access number or authorization code or both, whether manually or electronically dialed. If the sale or recharge of such card or number does not take place at the vendor's place of business, it shall be conclusively determined to take place at the customer's shipping address; if there is no item shipped then it shall be the customer's billing address; and

(v) the gross receipts received from the sales of bingo cards, bingo faces and instant bingo tickets by licensees under K.S.A. 79-4701, *et seq.*, and amendments thereto, shall be taxed at a rate of: (1) 4.9% on July 1, 2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001, and before July 1, 2002. From and after July 1, 2002, all sales of bingo cards, bingo faces and instant bingo tickets by licensees under K.S.A. 79-4701 *et seq.*, and amendments thereto, shall be exempt from taxes imposed pursuant to this section.”;

And by renumbering sections accordingly;

Also on page 3, in line 20, before “79-1439” by inserting “75-3740a and”; also in line 20, after “Supp.” by inserting “75-3739,”; also in line 20, after “79-201c” by inserting “and 79-3603”;

On page 1, in the title, in line 9, by striking “property”; also in line 9, after “to” by inserting “collection and remittance of sales tax by state contractors; property tax”; in line 10, after the semicolon, by inserting “sales taxation, computer software,”; in line 11, before “79-1439” by inserting “75-3740a and”; also in line 11, after “Supp.” by inserting “75-3739,”; also in line 11, after “79-201c” by inserting “and 79-3603”; and the bill be passed as amended.

Committee on **Commerce** begs leave to submit the following report:

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

By the Governor:

Kansas Development Finance Authority: K.S.A. 74-8903

Brett A. Reber, term expires January 15, 2007

Daniel L. Watkins, term expires January 15, 2005

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:

State Gaming Agency, Executive Director: K.S.A. 74-9804

John E. McElroy III, 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:

State Board of Indigents' Defense Services Board: K.S.A. 22-4519

Denise E. Tomasic, term expires January 15, 2006

Committee on **Ways and Means** recommends **HB 2423** be passed.

Also **HB 2067**, **HB 2461**, both as amended by House Committee, be passed.

ORIGINAL MOTION

Senator Oleen moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bill: **S Sub for HB 2399**.

COMMITTEE OF THE WHOLE

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

On motion of Senator Morris the following report was adopted:

Recommended **S Sub for HB 2399** be amended by adoption of the committee report recommending a substitute bill, be amended by motion of Senator Oleen on page 6, by striking all in lines 5 through 12

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 20, Nays 19, Present and Passing 1, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Emler, Goodwin, Harrington, Jordan, Lyon, Morris, O'Connor, Oleen, Salmans, Schmidt, Taddiken, Umbarger, Vratil.

Nays: Bunten, Clark, Corbin, Donovan, Downey, Feleciano, Gilstrap, Gooch, Haley, Hensley, Huelskamp, Jackson, Kerr, Pugh, Schodorf, Steineger, Teichman, Tyson, Wagle.

Present and Passing: Lee.

The motion carried and the amendment was adopted.

Senator Bunten amended **S Sub for HB 2399** on page 5, by striking all in lines 21 through 43;

On page 6, by striking all in lines 1 through 12;

By renumbering sections accordingly

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 25, Nays 15, Present and Passing 0, Absent or Not Voting 0.

Yeas: Brungardt, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Haley, Harrington, Hensley, Huelskamp, Jackson, Kerr, Lee, Lyon, Pugh, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Wagle.

Nays: Adkins, Allen, Barnett, Barone, Brownlee, Buhler, Feleciano, Goodwin, Jordan, Morris, O'Connor, Oleen, Salmans, Umbarger, Vratil.

The motion carried and the amendment was adopted.

The Committee recommended **S Sub for HB 2399** be passed as amended.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator Oleen an emergency was declared by a $\frac{2}{3}$ constitutional majority, and **S Sub for HB 2399** was advanced to Final Action and roll call.

S Sub for HB 2399. An act concerning school districts; relating to the powers and duties thereof; relating to the financing thereof; amending K.S.A. 10-1116a, as amended by section 2 of 2003 Senate Bill No. 4, 72-6417, 72-6431 and 72-6434 and K.S.A. 2002 Supp. 79-201x and repealing the existing sections.

On roll call, the vote was: Yeas 36, Nays 4, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Jackson, Jordan, Kerr, Lee, Morris, O'Connor, Oleen, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Adkins, Huelskamp, Lyon, Pugh.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote yes on **S Sub for HB 2399**. This bill contains important measures to continue funding our excellent Kansas schools. Unfortunately we amended out the one provision that would empower districts to provide their own increases in funding through the capital outlay fund. I support this effort to allow districts more say in solving budget challenges.—KARIN BROWNLEE

Senators Allen, Jordan, O'Connor and Vratil request the record to show they concur with the "Explanation of Vote" offered by Senator Brownlee on **S Sub for HB 2399**.

VETO SUSTAINED

There being no motion to reconsider the line item vetoes on:

Section 29(d) that reads as follows:

This section would allow the Attorney General to transfer funds between line-item appropriations to provide funds for the Colorado or Nebraska litigation. Similar authority allowing the Attorney General to transfer money to water litigation accounts has been passed in **HB 2456**. Therefore, this language is an unnecessary part of the appropriation bill. I veto this section to remove the duplication.

Section 33(a) that reads as follows:

SB 6 appropriates \$60,000 from the State General Fund for FY 2004 for operating expenditures of the Council. However, **SB 36**, which has been signed into law, will raise \$230,000 of new revenue from docket fee increases. Therefore, the State General Fund appropriation is not needed. For this reason, I veto this section.

Section 67(i) that reads as follows:

In a democracy, academic freedom in higher education is essential. Nevertheless, every institution of higher learning in Kansas has an obligation to exercise its academic freedom responsibly. The Kansas Board of Regents has in place well-established policies and procedures to provide redress for students, parents, and taxpayers who question the educational value or appropriateness of any material used in the institutions of higher learning under the authority of the Board of Regents. Following such policies and procedures will resolve concerns within the appropriate exercise of academic freedom. Therefore, I veto the above proviso as an inappropriate use of legislative powers designed to impinge upon academic freedom in the State of Kansas.

Section 82(d) that reads as follows:

A number of state agencies have the authority to shift funds, with the approval of the Director of the Budget, between their line-item appropriations to allow flexibility in the efficient management of fiscal resources, especially in times of reduced budgets. This authority has been in regular use for some time with no problems or complaints. This proviso departs from the authority granted to other agencies and grants authority to make budgetary decisions entirely to the Kansas Water Authority. There is no justifiable reason to remove the Water Office from the same budgetary oversight in the prudent management of funds that other agencies are subject to. I therefore find it necessary to veto this section and request that the Legislature restore the original language.

Section 133 that reads as follows:

Section 133 would establish a procedure to restrict expenditures for information technology hardware, software, and network resources until the Director of the Budget certifies to the Director of Accounts and Reports that an agency has complied with KSA 75-7209. This statute prescribes the procedures by which agencies provide information about proposed information technology projects, including a project description, schedule, financial plan, and cost-benefit statement. This proviso duplicates the existing budget instructions that implement KSA 75-7209. Establishing an additional certification process is unduly burdensome and can result in costs to the taxpayers in both time and money. For these reasons, I veto this section.

The line item vetoes were sustained.

On motion of Senator Oleen the Senate adjourned until 9:30 a.m., Friday, May 2, 2003.

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

PAT SAVILLE, *Secretary of the Senate*.

