

Journal of the Senate

SIXTY-FIRST DAY

SENATE CHAMBER, TOPEKA, KANSAS
Monday, May 5, 2003—2:00 p.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,

Sunday papers' headlines read,
"Looking for a Fix."
Of course the budget was the subject,
And the art of politics.

Breakfast with the Governor
And conference committees,
Compromise and trade offs
Getting to the nitty-gritty.

Monday papers' tell a story
That they could not avoid:
"Tornados kill twenty-two."
"Many Homes Destroyed."

A natural disaster
Is once more quite effective
In putting all our problems
Suddenly in perspective.

In a matter of few minutes
A mighty wind has blown
People injured, loved ones killed
And many lost their homes.

Except for the death of loved ones,
And injuries quite severe
Nothing's more traumatic
Than for our home to disappear.

So, Lord, while we are praying
For our budget to be fixed,
We pray for injured and grief-stricken,
And those whose hearts are sick.

I pray this in Jesus' Name,
AMEN

CHANGE OF REFERENCE

The President withdrew **SB 241** from the Committee on Agriculture, and referred the bill to the Committee on Commerce.

On motion of Senator Oleen, the Senate recessed until 5:00 p.m.

EVENING SESSION

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

COMMUNICATIONS FROM STATE OFFICERS

DEPARTMENT OF REVENUE
Division OF PROPERTY Valuation

April 25, 2003

Mark S. Beck, Director of Property Valuation, submitted the 2002 Statistical Report of Property Assessment and Taxation. The publication can be accessed on the Kansas Department of Revenue Website at <http://www.ksrevenue.org/pvdstatistics.htm>.

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.

MESSAGE FROM THE HOUSE

Announcing, the House not adopts the conference committee report on **HB 2014**, requests a conference and appoints Representatives McCreary, Neufeld and Shriver as second conferees on the part of the House.

The House concurs in Senate amendments to **Senate Substitute for HB 2400** and requests the Senate to return the bill.

The House announces the appointment of Representative Krehbiel to replace Representative Sloan as a conferee on **HB 2037**.

Announcing passage of **SB 284**.

ORIGINAL MOTION

On motion of Senator Morris, the Senate acceded to the request of the House for a conference on **HB 2014**.

The President appointed Senators Morris, Adkins and Feleciano as second conferees on the part of the Senate.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

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

SENATE RESOLUTION No. 1870—

By Senator Hensley

A RESOLUTION relating to the rules of the Senate 2001-2004; adding a new rule 80 concerning renewal of a failed motion to concur.

Be it resolved by the Senate of the State of Kansas: That the rules of the senate be amended by adding a new rule to read as follows:

Rule 80. Renewal of Failed Motion to Concur. A motion to concur in amendments made by the other house to a senate bill which fails but does not have the effect of killing the bill may be again moved at a later time but prior to adjournment sine die of the legislative session during which such motion was first made. In no case shall such motion be made on any one bill more than three times during such legislative session. Senate Rule 28 shall not apply to this rule.

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 bills: **SB 226**; **HB 2287**.

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 Jordan in the chair.

On motion of Senator Jordan the following report was adopted:

Recommended **HB 2287** be amended by adoption of the committee amendments, be further amended by motion of Senator Corbin as amended by Senate Committee, on page 13, in line 15, by striking "The" and inserting "On and after July 1, 2004, the"

Senator Corbin further amended **HB 2287** as amended by Senate Committee, on page 14, after line 10, by inserting the following:

"Sec. 6. K.S.A. 2002 Supp. 79-32,117 is hereby amended to read as follows: 79-32,117.

(a) The Kansas adjusted gross income of an individual means such individual's federal adjusted gross income for the taxable year, with the modifications specified in this section.

(b) There shall be added to federal adjusted gross income:

(i) Interest income less any related expenses directly incurred in the purchase of state or political subdivision obligations, to the extent that the same is not included in federal adjusted gross income, on obligations of any state or political subdivision thereof, but to the extent that interest income on obligations of this state or a political subdivision thereof issued prior to January 1, 1988, is specifically exempt from income tax under the laws of this state authorizing the issuance of such obligations, it shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income. Interest income on obligations of this state or a political subdivision thereof issued after December 31, 1987, shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income.

(ii) Taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state or any other taxing jurisdiction to the extent deductible in determining federal adjusted gross income and not credited against federal income tax. This paragraph shall not apply to taxes imposed under the provisions of K.S.A. 79-1107 or 79-1108, and amendments thereto, for privilege tax year 1995, and all such years thereafter.

(iii) The federal net operating loss deduction.

(iv) Federal income tax refunds received by the taxpayer if the deduction of the taxes being refunded resulted in a tax benefit for Kansas income tax purposes during a prior taxable year. Such refunds shall be included in income in the year actually received regardless of the method of accounting used by the taxpayer. For purposes hereof, a tax benefit shall be deemed to have resulted if the amount of the tax had been deducted in determining income subject to a Kansas income tax for a prior year regardless of the rate of taxation applied in such prior year to the Kansas taxable income, but only that portion of the refund shall be included as bears the same proportion to the total refund received as the federal taxes deducted in the year to which such refund is attributable bears to the total federal income taxes paid for such year. For purposes of the foregoing sentence, federal taxes shall be considered to have been deducted only to the extent such deduction does not reduce Kansas taxable income below zero.

(v) The amount of any depreciation deduction or business expense deduction claimed on the taxpayer's federal income tax return for any capital expenditure in making any building or facility accessible to the handicapped, for which expenditure the taxpayer claimed the credit allowed by K.S.A. 79-32,177, and amendments thereto.

(vi) Any amount of designated employee contributions picked up by an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919 and 74-4965, and amendments to such sections.

(vii) The amount of any charitable contribution made to the extent the same is claimed as the basis for the credit allowed pursuant to K.S.A. 79-32,196, and amendments thereto.

(viii) The amount of any costs incurred for improvements to a swine facility, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2002 Supp. 79-32,204 and amendments thereto.

(ix) The amount of any ad valorem taxes and assessments paid and the amount of any costs incurred for habitat management or construction and maintenance of improvements on real property, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 79-32,203 and amendments thereto.

(x) Amounts received as nonqualified withdrawals, as defined by K.S.A. 2002 Supp. 75-643, and amendments thereto, if, at the time of contribution to a family postsecondary education savings account, such amounts were subtracted from the federal adjusted gross income pursuant to paragraph (xv) of subsection (c) of K.S.A. 79-32,117, and amendments thereto, or if such amounts are not already included in the federal adjusted gross income.

(xi) *For taxable years commencing after December 31, 2002, the amount of any dividend income, to the extent such dividend income is excluded from federal adjusted gross income pursuant to any amendments to the federal internal revenue code enacted after December 31, 2002.*

(c) There shall be subtracted from federal adjusted gross income:

(i) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States and its possessions less any related expenses directly incurred in the purchase of such obligations or securities, to the extent included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.

(ii) Any amounts received which are included in federal adjusted gross income but which are specifically exempt from Kansas income taxation under the laws of the state of Kansas.

(iii) The portion of any gain or loss from the sale or other disposition of property having a higher adjusted basis for Kansas income tax purposes than for federal income tax purposes on the date such property was sold or disposed of in a transaction in which gain or loss was recognized for purposes of federal income tax that does not exceed such difference in basis, but if a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to that portion of such gain which is included in federal adjusted gross income.

(iv) The amount necessary to prevent the taxation under this act of any annuity or other amount of income or gain which was properly included in income or gain and was taxed under the laws of this state for a taxable year prior to the effective date of this act, as amended, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain.

(v) The amount of any refund or credit for overpayment of taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state, or any taxing jurisdiction, to the extent included in gross income for federal income tax purposes.

(vi) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent that the same are included in federal adjusted gross income.

(vii) Amounts received as annuities under the federal civil service retirement system from the civil service retirement and disability fund and other amounts received as retirement benefits in whatever form which were earned for being employed by the federal government or for service in the armed forces of the United States.

(viii) Amounts received by retired railroad employees as a supplemental annuity under the provisions of 45 U.S.C. 228b (a) and 228c (a)(1) *et seq.*

(ix) Amounts received by retired employees of a city and by retired employees of any board of such city as retirement allowances pursuant to K.S.A. 13-14,106, and amendments thereto, or pursuant to any charter ordinance exempting a city from the provisions of K.S.A. 13-14,106, and amendments thereto.

(x) For taxable years beginning after December 31, 1976, the amount of the federal tentative jobs tax credit disallowance under the provisions of 26 U.S.C. 280 C. For taxable

years ending after December 31, 1978, the amount of the targeted jobs tax credit and work incentive credit disallowances under 26 U.S.C. 280 C.

(xi) For taxable years beginning after December 31, 1986, dividend income on stock issued by Kansas Venture Capital, Inc.

(xii) For taxable years beginning after December 31, 1989, amounts received by retired employees of a board of public utilities as pension and retirement benefits pursuant to K.S.A. 13-1246, 13-1246a and 13-1249 and amendments thereto.

(xiii) For taxable years beginning after December 31, 1993, the amount of income earned on contributions deposited to an individual development account under K.S.A. 79-32,117h, and amendments thereto.

(xiv) For all taxable years commencing after December 31, 1996, that portion of any income of a bank organized under the laws of this state or any other state, a national banking association organized under the laws of the United States, an association organized under the savings and loan code of this state or any other state, or a federal savings association organized under the laws of the United States, for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect, which accrues to the taxpayer who is a stockholder of such corporation and which is not distributed to the stockholders as dividends of the corporation.

(xv) For all taxable years beginning after December 31, 1999, amounts not exceeding \$2,000, or \$4,000 for a married couple filing a joint return, for each designated beneficiary which are contributed to a family postsecondary education savings account established under the Kansas postsecondary education savings program for the purpose of paying the qualified higher education expenses of a designated beneficiary at an institution of postsecondary education. The terms and phrases used in this paragraph shall have the meaning respectively ascribed thereto by the provisions of K.S.A. 2002 Supp. 75-643, and amendments thereto, and the provisions of such section are hereby incorporated by reference for all purposes thereof.

(d) There shall be added to or subtracted from federal adjusted gross income the taxpayer's share, as beneficiary of an estate or trust, of the Kansas fiduciary adjustment determined under K.S.A. 79-32,135, and amendments thereto.

(e) The amount of modifications required to be made under this section by a partner which relates to items of income, gain, loss, deduction or credit of a partnership shall be determined under K.S.A. 79-32,131, and amendments thereto, to the extent that such items affect federal adjusted gross income of the partner.”;

And by renumbering sections accordingly;

Also on page 14, in line 12, after “79-201c” by inserting “, 79-32,117”;

On page 1, in the title, in line 13, before “sales” by inserting “dividend income;”; in line 14, after “79-201c” by inserting “, 79-32,117”

Senator Corbin further amended **HB 2287** as amended by Senate Committee, on page 14, after line 10, by inserting the following:

“Sec. 6. K.S.A. 40-2246 is hereby amended to read as follows: 40-2246. (a) A credit against the taxes otherwise due under the Kansas income tax act shall be allowed to an employer for amounts paid during the taxable year for purposes of this act on behalf of an eligible employee as defined in K.S.A. 40-2239 and amendments thereto to provide health insurance or care.

(b) The amount of the credit allowed by subsection (a) shall be \$35 per month per eligible covered employee or 50% of the total amount paid by the employer during the taxable year, whichever is less, for the first two years of participation. In the third year, the credit shall be equal to 75% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. In the fourth year, the credit shall be equal to 50% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. In the fifth year, the credit shall be equal to 25% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. For the sixth and subsequent years, no credit shall be allowed.

(c) If the credit allowed by this section is claimed, the amount of any deduction allowable under the Kansas income tax act for expenses described in this section shall be reduced

by the dollar amount of the credit. The election to claim the credit shall be made at the time of filing the tax return in accordance with law. If the credit allowed by this section exceeds the taxes imposed under the Kansas income tax act for the taxable year, that portion of the credit which exceeds those taxes ~~shall be refunded to the taxpayer~~ *may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability.*

(d) Any amount of expenses paid by an employer under this act shall not be included as income to the employee for purposes of the Kansas income tax act. If such expenses have been included in federal taxable income of the employee, the amount included shall be subtracted in arriving at state taxable income under the Kansas income tax act.

(e) This section shall apply to all taxable years commencing after December 31, ~~1999~~ 2002.

Sec. 7. K.S.A. 2002 Supp. 79-32,143 is hereby amended to read as follows: 79-32,143.

(a) For net operating losses incurred in taxable years beginning after December 31, 1987, a net operating loss deduction shall be allowed in the same manner that it is allowed under the federal internal revenue code except that such net operating loss may only be carried forward to each of the 10 taxable years following the taxable year of the net operating loss. For net operating farm losses, as defined by subsection (i) of section 172 of the federal internal revenue code, incurred in taxable years beginning after December 31, 1999, a net operating *farm* loss deduction shall be allowed in the same manner that it is allowed under the federal internal revenue code except that such net operating *farm* loss may be carried forward to each of the 10 taxable years following the taxable year of the net operating *farm* loss. The amount of the net operating loss that may be carried back, *if a net operating farm loss*, or forward for Kansas income tax purposes shall be that portion of the federal net operating loss allocated to Kansas under this act in the taxable year that the net operating loss is sustained.

(b) The amount of the loss to be carried back, *if a net operating farm loss*, or forward will be the federal net operating loss after (1) all modifications required under this act applicable to the net loss in the year the loss was incurred; and (2) after apportionment as to source in the case of corporations, nonresident individuals for losses incurred in taxable years beginning prior to January 1, 1978, and nonresident estates and trusts in the same manner that income for such corporations, nonresident individuals, estates and trusts is required to be apportioned.

(c) If a net operating loss was incurred in a taxable year beginning prior to January 1, 1988, the amount of the net operating loss that may be carried back and carried forward and the period for which it may be carried back and carried forward shall be determined under the provisions of the Kansas income tax laws which were in effect during the year that such net operating loss was incurred.

(d) If any portion of a net operating loss described in subsections (a) and (b) is not utilized prior to the final year of the carryforward period provided in subsection (a), a refund shall be allowable in such final year in an amount equal to the refund which would have been allowable in the taxable year the loss was incurred by utilizing the three year carryback provided under K.S.A. 79-32,143, as in effect on December 31, 1987, multiplied by a fraction, the numerator of which is the unused portion of such net operating loss in the final year, and the denominator of which is the amount of such net operating loss which could have been carried back to the three years immediately preceding the year in which the loss was incurred. In no event may such fraction exceed 1.

(e) Notwithstanding any other provisions of the Kansas income tax act, the net operating loss as computed under subsections (a), (b) and (c) of this section shall be allowed in full in determining Kansas taxable income or at the option of the taxpayer allowed in full in determining Kansas adjusted gross income.

(f) No refund of income tax which results from a net operating loss carry back shall be allowed in an amount exceeding \$1,500 in any year. Any excess amount may be carried back, *if a net operating farm loss*, or forward to any other year or years as provided by this section.

Sec. 8. K.S.A. 79-32,176 is hereby amended to read as follows: 79-32,176. (a) Any resident individual taxpayer who makes expenditures for the purpose of making all or any

portion of an existing facility accessible to individuals with a disability, which facility is used as, or in connection with, such taxpayer's principal dwelling or the principal dwelling of a lineal ascendant or descendant, including construction of a small barrier free living unit attached to such principal dwelling, shall be entitled to claim a tax credit in an amount equal to the applicable percentage of such expenditures or \$9,000, whichever is less, against the income tax liability imposed against such taxpayer pursuant to article 32 of chapter 79 of the Kansas Statutes Annotated. Nothing in this subsection shall be deemed to prevent any such taxpayer from claiming such credit: (1) For each principal dwelling in which the taxpayer or lineal ascendant or descendant may reside, or facility used in connection therewith; or (2) more than once, but not more often than once every four-year period of time. The applicable percentage of such expenditures eligible for credit shall be as set forth in the following schedule:

[Taxpayers [Kansas Adjusted [Gross Income	% of expenditures eligible for credit
[\$0 to \$25,000	100%
Over \$25,000 but not over \$30,000	90%
Over \$30,000 but not over \$35,000	80%
Over \$35,000 but not over \$40,000	70%
Over \$40,000 but not over \$45,000	60%
Over \$45,000 but not over \$55,000	50%
Over \$55,000	0

Such tax credit shall be deducted from the taxpayer's income tax liability for the taxable year in which the expenditures are made by the taxpayer. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the fourth taxable year succeeding the taxable year in which the expenditures are made.

(b) ~~Notwithstanding the provisions of subsection (a), if the amount of the taxpayer's tax liability is less than \$2,250 in the first year in which the credit is claimed under this section, an amount equal to the amount by which 1/4 of the credit allowable under this section exceeds such tax liability shall be refunded to the taxpayer and the amount by which such credit exceeds such tax liability less the amount of such refund may be carried over for the next three succeeding taxable years. If the amount of the taxpayer's tax liability is less than \$2,250 in the second year in which the credit is claimed under this section, an amount equal to the amount by which 1/3 of the amount of the credit carried over from the first taxable year exceeds such tax liability shall be refunded to the taxpayer and the amount by which the amount of the credit carried over from the first taxable year exceeds such tax liability less the amount of such refund may be carried over for the next two succeeding taxable years. If the amount of the taxpayer's tax liability is less than \$2,250 in the third year in which the credit is claimed under this section, an amount equal to the amount by which 1/2 of the amount carried over from the second taxable year exceeds such tax liability shall be refunded to the taxpayer and the amount by which the amount of the credit carried over from the second taxable year exceeds such tax liability less the amount of such refund may be carried over to the next succeeding taxable year. If the amount of the credit carried over from the third taxable year exceeds the taxpayer's income tax liability for such year, the amount thereof which exceeds such tax liability shall be refunded to the taxpayer. The provisions of this section shall apply to all taxable years commencing after December 31, 2002.~~

Sec. 9. K.S.A. 79-32,190 is hereby amended to read as follows: 79-32,190. (a) Any taxpayer that pays for or provides child day care services, including the provision of the service of locating such services, to its employees or that provides facilities and necessary equipment for child day care services shall be allowed a credit against the privilege or income tax imposed by articles 11 and 32 of chapter 79 of the Kansas Statutes Annotated as follows:

(1) Thirty percent of the total amount expended in the state during the taxable year by a taxpayer for child day care services purchased to provide care for the dependent children of the taxpayer's employees or for the provision of the service of locating such services for such children;

(2) (A) in the taxable year in which a facility providing child day care services in the state for use primarily by the dependent children of the taxpayer's employees is established, 50% of the total amount expended during such year by a taxpayer in the establishment and operation of such facility;

(B) in the taxable years other than the taxable year to which paragraph (2)(A) applies, 30% of the amount equal to the total amount expended during the taxable year by a taxpayer for the operation of a facility described in paragraph (2)(A) less the amount of moneys received by the taxpayer for use of such facility for child day care services;

(3) (A) in the taxable year in which a facility providing child day care services in the state for use primarily by the dependent children of the taxpayers' employees is established in conjunction with one or more other taxpayers, 50% of the total amount expended during such year by a taxpayer in the establishment and operation of such facility;

(B) in the taxable years other than the taxable year to which paragraph (3)(A) applies, 30% of the amount equal to the total amount expended during the taxable year by a taxpayer for the operation of a facility described in paragraph (3)(A) less the amount of moneys received by the taxpayer for use of such facility for child day care services.

(b) No credit shall be allowed under this section unless the child day care facility or provider is licensed or registered pursuant to Kansas law.

(c) The credit allowed by paragraphs (1), (2)(B) and (3)(B) of subsection (a) shall not exceed \$30,000 for any taxpayer during any taxable year. The credit allowed by paragraphs (2)(A) and (3)(A) of subsection (a) shall not exceed \$45,000 for any taxpayer during any taxable year. *For all taxable years commencing after December 31, 2002*, the amount of the credit which exceeds the tax liability for a taxable year ~~shall be refunded to the taxpayer~~ *may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability.* If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code or a partnership, the credit provided by this section shall be claimed by the shareholders of such corporation or the partners of such partnership in the same manner as such shareholders or partners account for their proportionate shares of the income or loss of the corporation or partnership.

(d) The aggregate amount of credits claimed under this act for any fiscal year shall not exceed \$3,000,000.

Sec. 10. K.S.A. 2002 Supp. 79-32,197 is hereby amended to read as follows: 79-32,197. The amount of credit allowed pursuant to K.S.A. 79-32,196, and amendments thereto, shall not exceed 50% of the total amount contributed during the taxable year by the business firm to a community service organization or governmental entity for programs approved pursuant to K.S.A. 79-32,198, and amendments thereto. The amount of credit allowed pursuant to K.S.A. 79-32,196, and amendments thereto, shall not exceed 70% of the total amount contributed during the taxable year by the business firm in a rural community to a community service organization or governmental entity located therein for programs approved pursuant to K.S.A. 79-32,198, and amendments thereto. *For all taxable years commencing after December 31, 2002*, if the amount of the credit allowed by K.S.A. 79-32,196, and amendments thereto, exceeds the taxpayer's income tax liability imposed under the Kansas income tax act, such excess amount ~~shall be refunded to the taxpayer~~ *may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability.* In no event shall the total amount of credits allowed under this section exceed \$4,130,000 for any one fiscal year.

Sec. 11. K.S.A. 2002 Supp. 79-32,206 is hereby amended to read as follows: 79-32,206. For all taxable years commencing after December 31, 2001, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act, the premiums tax upon insurance companies imposed pursuant to K.S.A. 40-252, and amendments thereto, and the privilege tax as measured by net income of financial institutions

imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, an amount equal to 15% of the property tax levied for property tax years 2002, 2003 and 2004, 20% of the property tax levied for property tax years 2005 and 2006, and 25% of the property tax levied for property tax year 2007, and all such years thereafter, actually and timely paid during an income or privilege taxable year upon commercial and industrial machinery and equipment classified for property taxation purposes pursuant to section 1 of article 11 of the Kansas constitution in subclass (5) or (6) of class 2, machinery and equipment classified for such purposes in subclass (2) of class 2. For all taxable years commencing after December 31, 2004, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act an amount equal to 20% of the property tax levied for property tax years 2005 and 2006, and 25% of the property tax levied for property tax year 2007 and all such years thereafter, actually and timely paid during an income taxable year upon machinery and equipment classified for property tax purposes pursuant to section 1 of article 11 of the Kansas constitution in subclass (3) of class 2. ~~Prior to the 2004 legislative session, the joint committee on economic development shall conduct a study of the economic impact of the foregoing provision. For all taxable years commencing after December 31, 2002, if the amount of such tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount thereof which exceeds such tax liability shall be refunded to the taxpayer may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability.~~ If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code, a partnership or a limited liability company, the credit provided by this section shall be claimed by the shareholders of such corporation, the partners of such partnership or the members of such limited liability company in the same manner as such shareholders, partners or members account for their proportionate shares of the income or loss of the corporation, partnership or limited liability company.

Sec. 12. K.S.A. 2002 Supp. 79-32,210 is hereby amended to read as follows: 79-32,210.

(a) For all taxable years commencing after December 31, 2000, and with respect to property initially acquired and first placed into service in this state on and after January 1, 2001, there shall be allowed as a credit against the tax liability imposed by the Kansas income tax act of a telecommunications company, as defined in K.S.A. 79-3271 and amendments thereto, an amount equal to the difference between the property tax levied for property tax year 2001, and all such years thereafter, and actually and timely paid during the appropriate income taxable year upon property assessed at the 33% assessment rate and the property tax which would be levied and paid on such property if assessed at a 25% assessment rate.

(b) *For taxable years commencing after December 31, 2002*, if the amount of the tax credit determined under subsection (a) exceeds the tax liability for the telecommunications company for any taxable year, the amount thereof which exceeds such tax liability ~~shall be refunded to the telecommunications company~~ *may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability.* If the telecommunications company is a corporation having an election in effect under subchapter S of the federal internal revenue code, a partnership or a limited liability company, the credit provided by this section shall be claimed by the shareholders of such corporation, the partners of such partnership or the members of such limited liability company in the same manner as such shareholders, partners or members account for their proportionate shares of income or loss of the corporation, partnership or limited liability company.

(c) As used in this section, the term "acquired" shall not include the transfer of property pursuant to an exchange for stock securities, or the transfer of assets of one business entity to another due to a merger or other consolidation.”;

And by renumbering sections accordingly;

Also on page 14, in line 11, before “75-3740a” by inserting “40-2246.”; also in line 11, by striking “and” the first time it appears and inserting a comma; also in line 11, after “79-1439” by inserting “, 79-32,176 and 79-32,190”; in line 12, after “79-201c” by inserting “, 79-32,143, 79-32,197, 79-32,206, 79-32,210”;

On page 1, in the title, in line 13, before "amending" by inserting "income tax credits, net operating losses;" also in line 13, after "K.S.A." by inserting "40-2246,;" in line 14, by striking "and" the first time it appears and inserting a comma; also in line 14, after "79-1439" by inserting ", 79-32,176 and 79-32,190"; also in line 14, after "79-201c" by inserting ", 79-32,143, 79-32,197, 79-32,206, 79-32,210"

Senator Corbin moved to amend the **HB 2287** as amended by Senate Committee, on page 14, after line 10, by inserting the following:

"Sec. 6. K.S.A. 2002 Supp. 79-32,105 is hereby amended to read as follows: 79-32,105.

(a) The director shall remit the entire amount collected under the provisions of this act and from the income tax imposed upon individuals, corporations, estates or trusts pursuant to the "Kansas income tax act" less amounts withheld as provided in subsection (b) and any amounts credited to the IMPACT program repayment fund or the IMPACT program services fund under K.S.A. 74-50,107 and amendments thereto to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(b) A revolving fund, designated as "income tax refund fund" not to exceed \$4,000,000 shall be set apart and maintained by the director from income tax collections, withholding tax collections, and estimated tax collections and held by the state treasurer for prompt payment of all income tax refunds, for the payment of interest as provided in subsection (e), for payment of homestead property tax refunds in accordance with the homestead property tax refund act and for payment of property tax refunds allowed pursuant to the provisions of K.S.A. 2002 Supp. 79-255, and amendments thereto. The fund shall be in such amount, within the limit set by this section, as the director determines is necessary to meet current refunding requirements under this act.

(c) If the director discovers from the examination of the return, or upon claim duly filed by the taxpayer or upon final judgment of the court that the income tax, withholding tax, declaration of estimated tax or any penalty or interest paid by or credited to any taxpayer is in excess of the amount legally due for such tax or any other tax owed the state of Kansas, the director shall certify to the director of accounts and reports the name of the taxpayer, the amount of refund and such other information as the director may require. Upon receipt of such certification the director of accounts and reports shall issue a warrant on the state treasurer for the payment to the taxpayer out of the fund provided in subsection (b), except that no refund shall be made for a sum less than \$5, but such amount may be claimed by the taxpayer as a credit against the taxpayer's tax liability in the taxpayer's next succeeding taxable year.

(d) When a resident taxpayer dies, and the director determines that a refund is due the claimant not in excess of \$100, the director shall certify to the director of accounts and reports the name and address of the claimant entitled to the refund and the amount of the refund. A refund may be made upon a claim duly made on behalf of the estate of the deceased or in the absence of any such claim upon a claim by a surviving spouse and if none upon the claim by any heir at law. Upon receipt of such certification the director of accounts and reports shall issue a warrant on the state treasurer for the payment to the claimant out of the fund provided in subsection (b).

(e) Interest shall be allowed and paid at the rate of 12% per annum upon any overpayment of the income tax imposed upon individuals, corporations, estates or trusts pursuant to the Kansas income tax act for any period prior to January 1, 1995, 6% per annum for the period commencing on January 1, 1995, and ending on December 31, 1997, and at the rate prescribed and determined pursuant to K.S.A. 79-2968, and amendments thereto, for any period thereafter.

For the purposes of this subsection:

(1) Any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day, determined without regard to any extension of time granted the taxpayer;

(2) any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid

on the last day prescribed for filing the return for the taxable year to which such amount constitutes a credit or payment, determined without regard to any extension of time granted the taxpayer;

(3) if any overpayment of tax results from a carryback of a net operating loss or net capital loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such net operating loss or net capital loss arises. For purposes of this paragraph, the return for the loss year shall not be deemed to be filed before claim for such overpayment is filed;

(4) in the case of a credit, interest shall be allowed and paid from the date of the overpayment to the due date of the amount against which the credit is taken, except that if any overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year, whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year, and no interest shall be allowed or paid in such overpayment for the taxable year in which the overpayment arises;

(5) in the case of a tax return which is filed after the last date prescribed for filing such return, determined with regard to extensions, no interest shall be allowed or paid for any period before the date on which the return is filed;

(6) in the case of a refund, interest shall be allowed and paid from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, as determined by the director, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer, but acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon; and

(7) if any overpayment is refunded within ~~two~~ *three* months after the last date prescribed, or permitted by extension of time, for filing the return of such tax, or within ~~two~~ *three* months after the return was filed, whichever is later, no interest shall be allowed or paid. For the purposes of this section, an overpayment shall be deemed to have been refunded at the time the refund check in the amount of the overpayment, plus any interest due thereon, is deposited in the United States mail.

Sec. 7. K.S.A. 2002 Supp. 79-3609 is hereby amended to read as follows: 79-3609. (a) Every person engaged in the business of selling tangible personal property at retail or furnishing services taxable in this state, shall keep records and books of all such sales, together with invoices, bills of lading, sales records, copies of bills of sale and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be available for and subject to inspection by the director, or the director's duly authorized agents and employees, for a period of three years from the last day of the calendar year or of the fiscal year of the retailer, whichever comes later, to which the records pertain. Such records shall be preserved during the entire period during which they are subject to inspection by the director, unless the director in writing previously authorizes their disposal. Any person selling tangible personal property or furnishing taxable services shall be prohibited from asserting that any sales are exempt from taxation unless the retailer has in the retailer's possession a properly executed exemption certificate provided by the consumer claiming the exemption. Any retailer asserting a claim that certain sales are exempt who does not have the required exemption certificates in possession shall acquire such certificates within 60 days after receiving notice from the director that such certificates are required. If such certificates are not obtained within the period set forth herein, the sales shall be deemed to be taxable sales under this act.

(b) The amount of tax imposed by this act is to be assessed within three years after the return is filed, and no proceedings in court for the collection of such taxes shall be begun after the expiration of such period. In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed or a proceeding in court for collection of such tax may be begun at any time, within two years from the discovery of such fraud. No assessment shall be made for any period preceding the date of registration of the retailer by more than three years except in cases of fraud. No refund or credit shall be allowed by the director after ~~three years~~ *one year* from the date of payment of the tax as provided in this act unless before the expiration of such period a claim therefor is filed by the taxpayer, and no suit or

action to recover on any claim for refund shall be commenced until after the expiration of six months from the date of filing a claim therefor with the director.

(c) Before the expiration of time prescribed in this section for the assessment of additional tax or the filing of a claim for refund, the director is hereby authorized to enter into an agreement in writing with the taxpayer consenting to the extension of the periods of limitations for the assessment of tax or for the filing of a claim for refund, at any time prior to the expiration of the period of limitations. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. In consideration of such agreement or agreements, interest due in excess of 48 months on any additional tax shall be waived.

(d) For all taxable periods subject to assessment on January 1, 1998, including periods subject to an agreement to extend the statute of limitations, and for all taxable periods commencing after December 31, 1997, interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, shall be allowed on any overpayment of tax computed from the due date of the return if it was timely filed and accompanied by the tax due or, if the return was not timely filed, from the date of payment, except that no interest shall be allowed on any such refund if the same is paid within ~~60~~ 90 days after the date of the return or the date of payment, as the case requires.

(e) Notwithstanding any other provision of this section or the provisions of the Kansas compensating tax act:

(1) (A) Any claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the provisions of subsection (kk) of K.S.A. 79-3606 in existence prior to its amendment by this act which is without dispute shall be allowed, but, with respect to any claim exceeding \$10,000, the refund associated therewith shall not be paid until after 510 days from the date such claim was filed and shall not include interest from such date. As used in this subparagraph, a claim for refund without dispute shall not include any claim the basis for which is a judicial or quasi-judicial interpretation of such subsection occurring after the effective date of this act.

(B) Any refund of tax resulting from a final determination or adjudication with regard to any claim submitted or to be submitted for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the provisions of subsection (kk) of K.S.A. 79-3606 in existence prior to its amendment by this act not described by subparagraph (A) shall, with respect to any refund exceeding \$50,000, be paid in equal annual installments over 10 years commencing with the year of such final determination or adjudication. Interest shall not accrue during the time period of such payment.

(2) No claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the application of the provisions of subsection (n) of K.S.A. 79-3606 pursuant to its interpretation by the court of appeals of the state of Kansas in its opinion filed on August 13, 1999, in the case entitled In re appeal of Water District No. 1 of Johnson County shall be allowed for tax paid prior to the effective date of this act. The provisions of this subsection shall not be applicable to Water District No. 1 of Johnson county.”;

And by renumbering sections accordingly;

Also on page 14, in line 12, by striking “and” and inserting “, 79-32,105,”; also in line 12, after “79-3603” by inserting “and 79-3609”;

On page 1, in the title, in line 14, by striking “and” the last time it appears and inserting “, 79-32,105,”; in line 15, after “79-3603” by inserting “and 79-3609”

REQUEST TO DIVIDE QUESTION

In accordance with Senate Rule 27, Senator Taddiken requested that the question on House Bill No. 2287, As Amended by Senate Committee, be divided in two parts.

Part I

The first part contains the provisions of the bill which relate to the time period for payment of interest on overpayment of sales and income tax and is contained in subsection (e)(7) of K.S.A. 79-32,105 and subsection (d) of K.S.A. 79-3609.

The motion failed and Part I of the amendment was rejected.

Part II

The second part contains provisions of the bill relating to the time period of limitation for allowance of sales tax refunds or credits and is contained in subsection (b) of K.S.A. 79-3609.

And the title and repealer of the bill be adjusted accordingly.

The motion carried and Part II of the amendment was adopted.

Senator Lee amended **HB 2287** as amended by Senate Committee, on page 8, in line 5, by striking "2004, 5.2% on"; in line 6, by striking "and after July 1, 2004, and before July 1, 2005" and inserting "2006"; in line 7, by striking "2005" and inserting "2006";

On page 14, after line 10, by inserting the following:

"Sec. 6. K.S.A. 2002 Supp. 79-3620 is hereby amended to read as follows: 79-3620. (a) All revenue collected or received by the director of taxation from the taxes imposed by this act shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury, less amounts withheld as provided in subsection (b) and amounts credited as provided in subsection (c) and (d), to the credit of the state general fund.

(b) A refund fund, designated as "sales tax refund fund" not to exceed \$100,000 shall be set apart and maintained by the director from sales tax collections and estimated tax collections and held by the state treasurer for prompt payment of all sales tax refunds including refunds authorized under the provisions of K.S.A. 79-3635, and amendments thereto. Such fund shall be in such amount, within the limit set by this section, as the director shall determine is necessary to meet current refunding requirements under this act. In the event such fund as established by this section is, at any time, insufficient to provide for the payment of refunds due claimants thereof, the director shall certify the amount of additional funds required to the director of accounts and reports who shall promptly transfer the required amount from the state general fund to the sales tax refund fund, and notify the state treasurer, who shall make proper entry in the records.

(c) (1) The state treasurer shall credit $\frac{5}{100}$ of the revenue collected or received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 4.9%, and deposited as provided in subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.

(2) ~~The state treasurer shall credit $\frac{5}{100}$ of the revenue collected or received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 5.2%, and deposited as provided in subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.~~

~~(3) The state treasurer shall credit $\frac{5}{100}$ of the revenue collected or received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 5.3%, and deposited as provided in subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.~~

~~(4) (3) The state treasurer shall credit $\frac{1}{20}$ of the revenue collected and received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 5%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.~~

(d) The state treasurer shall credit all revenue collected or received from the tax imposed by K.S.A. 79-3603, and amendments thereto, as certified by the director, from taxpayers doing business within that portion of a redevelopment district occupied by a redevelopment project that was determined by the secretary of commerce and housing to be of statewide as well as local importance or will create a major tourism area for the state as defined in K.S.A. 12-1770a, and amendments thereto, to the city bond finance fund, which fund is hereby created. The provisions of this subsection shall expire when the total of all amounts credited hereunder and under subsection (d) of K.S.A. 79-3710, and amendments thereto, is sufficient to retire the special obligation bonds issued for the purpose of financing all or a portion of the costs of such redevelopment project.

Sec. 7. K.S.A. 2002 Supp. 79-3703 is hereby amended to read as follows: 79-3703. There is hereby levied and there shall be collected from every person in this state a tax or

excise for the privilege of using, storing, or consuming within this state any article of tangible personal property. Such tax shall be levied and collected in an amount equal to the consideration paid by the taxpayer multiplied by 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~~ 2006, and 5% on and after July 1, ~~2005~~ 2006. 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 of 2% until the earlier of: (1) The date the bonds issued to finance or refinance the redevelopment project undertaken in the district have been paid in full; or (2) the final scheduled maturity of the first series of bonds issued to finance the redevelopment project. All property purchased or leased within or without this state and subsequently used, stored or consumed in this state shall be subject to the compensating tax if the same property or transaction would have been subject to the Kansas retailers' sales tax had the transaction been wholly within this state.

Sec. 8. K.S.A. 2002 Supp. 79-3710 is hereby amended to read as follows: 79-3710. (a) All revenue collected or received by the director under the provisions of this act shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury, less amounts set apart as provided in subsection (b) and amounts credited as provided in subsection (c) and (d), to the credit of the state general fund.

(b) A revolving fund, designated as "compensating tax refund fund" not to exceed \$10,000 shall be set apart and maintained by the director from compensating tax collections and estimated tax collections and held by the state treasurer for prompt payment of all compensating tax refunds. Such fund shall be in such amount, within the limit set by this section, as the director shall determine is necessary to meet current refunding requirements under this act.

(c) (1) The state treasurer shall credit $\frac{5}{100}$ s of the revenue collected or received from the tax imposed by K.S.A. 79-3703, and amendments thereto, at the rate of 4.9%, and deposited as provided in subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.

(2) ~~The state treasurer shall credit $\frac{5}{100}$ of the revenue collected or received from the tax imposed by K.S.A. 79-3703, and amendments thereto, at the rate of 5.2%, and deposited as provided in subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.~~

~~—(3) The state treasurer shall credit $\frac{5}{100}$ of the revenue collected or received from the tax imposed by K.S.A. 79-3703, and amendments thereto, at the rate of 5.3%, and deposited as provided in subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.~~

~~(4) (3) The state treasurer shall credit $\frac{1}{20}$ of the revenue collected or received from the tax imposed by K.S.A. 79-3703, and amendments thereto, at the rate of 5%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.~~

(d) The state treasurer shall credit all revenue collected or received from the tax imposed by K.S.A. 79-3703, and amendments thereto, as certified by the director, from taxpayers doing business within that portion of a redevelopment district occupied by a redevelopment project that was determined by the secretary of commerce and housing to be of statewide as well as local importance or will create a major tourism area for the state as defined in K.S.A. 12-1770a, and amendments thereto, to the city bond finance fund created by subsection (d) of K.S.A. 79-3620, and amendments thereto. The provisions of this subsection shall expire when the total of all amounts credited hereunder and under subsection (d) of K.S.A. 79-3620, and amendments thereto, is sufficient to retire the special obligation bonds issued for the purpose of financing all or a portion of the costs of such redevelopment project.";

And by renumbering sections accordingly;

Also on page 14, in line 12, by striking "and" and inserting a comma; also in line 12, after "79-3603" by inserting ", 79-3620, 79-3703 and 79-3710";

On page 1, in the title, in line 14, by striking "and" where it appears for the last time and inserting a comma; in line 15, after "79-3603" by inserting ", 79-3620, 79-3703 and 79-3710"

Senator Huelskamp amended **HB 2287** as amended by Senate Committee, on page 14, after line 10, by inserting the following:

"Sec. 6. K.S.A. 2002 Supp. 17-2036 is hereby amended to read as follows: 17-2036. Every business trust shall make an annual report in writing to the secretary of state, showing its financial condition at the close of business on the last day of its tax period under the Kansas income tax act next preceding the date of filing, but if a business trust's tax period is other than the calendar year, it shall give notice thereof to the secretary of state prior to December 31 of the year it commences such tax period. The reports shall be made on forms provided by the secretary of state and shall be filed at the time prescribed by law for filing the business trust's annual Kansas income tax return, except that if any such business trust shall receive an extension of time for filing its annual income tax return from the internal revenue service or pursuant to subsection (c) of K.S.A. 79-3221, and amendments thereto, the time for filing the report hereunder shall be extended, correspondingly, upon filing with the secretary of state a copy of the extension granted by the internal revenue service or the director of taxation. The report shall contain the following:

(a) Executed copies of all amendments to the instrument by which the business trust was created, or to prior amendments thereto, which have been adopted and have not theretofore been filed under K.S.A. 17-2033, and amendments thereto, and accompanied by the fee prescribed therein for each such amendment;

(b) a verified list of the names and addresses of its trustees as of the end of its tax period; and

(c) a balance sheet as of the end of its tax period, certified by the trustee, fairly and truly reflecting its assets and liabilities and specifically setting out its corpus, and, in the case of a foreign business trust, fairly and truly reflecting an allocation of its moneys and other assets as between those located, used, or to be used in this state and those located, used or to be used elsewhere.

At the time of filing its annual report, the business trust shall pay to the secretary of state an annual franchise tax in an amount equal to ~~\$2~~ \$1 for each \$1,000 of its corpus as shown by its balance sheet, or, in the case of a foreign business trust, in an amount equal to ~~\$2~~ \$1 for each \$1,000 of that portion of its corpus which is located in or which it uses or intends to use in this state as shown by its balance sheet, except that in any case no such tax shall be less than \$40 nor more than \$5,000.

The failure of any domestic or foreign business trust to file its annual report and pay its annual franchise tax within 90 days from the date on which they are due, as aforesaid, shall work a forfeiture of its authority to transact business in this state and all of the remedies, procedures, and penalties specified in K.S.A. 17-7509 and 17-7510, and amendments thereto, with respect to a corporation which fails to file its annual report or pay its annual franchise tax within 90 days after they are due, shall be applicable to such business trust.

Sec. 7. K.S.A. 2002 Supp. 17-7503 is hereby amended to read as follows: 17-7503. (a) Every domestic corporation organized for profit shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the corporation at the close of business on the last day of its tax period next preceding the date of filing, but if a corporation's tax period is other than the calendar year, it shall give notice thereof to the secretary of state prior to December 31 of the year it commences such tax period. The reports shall be made on forms prescribed by the secretary of state. The report shall be filed at the time prescribed by law for filing the corporation's annual Kansas income tax return, except that if any such corporation shall apply for an extension of time for filing its annual income tax return under the internal revenue service or under subsection (c) of K.S.A. 79-3221, and amendments thereto, such corporation shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing the report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code or K.S.A. 79-3221, and amendments thereto. Such application shall include a copy of the application to income tax authorities. The report shall contain the following information:

- (1) The name of the corporation;
- (2) the location of the principal office;
- (3) the names of the president, secretary, treasurer and members of the board of directors, with the residence address of each;
- (4) the number of shares of capital stock issued and the amount of capital stock paid up;

- (5) the nature and kind of business in which the corporation is engaged; and
- (6) a list of stockholders owning at least 5% of the capital stock of the corporation, with the post office address of each.

(b) Every corporation subject to the provisions of this section which holds agricultural land, as defined in K.S.A. 17-5903, and amendments thereto, within this state shall show the following additional information on the report:

- (1) The acreage and location listed by section, range, township and county of each lot, tract or parcel of agricultural land in this state owned or leased by or to the corporation;

- (2) the purposes for which such agricultural land is owned or leased and, if leased, to whom such agricultural land is leased;

- (3) the value of the nonagricultural assets and the agricultural assets, stated separately, owned and controlled by the corporation both within and without the state of Kansas and where situated;

- (4) the total number of stockholders of the corporation;

- (5) the number of acres owned or operated by the corporation, the number of acres leased by the corporation and the number of acres leased to the corporation;

- (6) the number of acres of agricultural land, held and reported in each category under provision (5), state separately, being irrigated; and

- (7) whether any of the agricultural land held and reported under this subsection was acquired after July 1, 1981.

(c) The report shall be signed by its president, secretary, treasurer or other officer duly authorized so to act, or by any two of its directors, or by an incorporator in the event its board of directors shall not have been elected. The fact that an individual's name is signed on such report shall be prima facie evidence that such individual is authorized to sign the report on behalf of the corporation; however, the official title or position of the individual signing the report shall be designated. This report will be dated and subscribed by the person as true, under penalty of perjury. At the time of filing such annual report it shall be the duty of each domestic corporation organized for profit to pay to the secretary of state an annual franchise tax in an amount equal to ~~\$2~~ \$1 for each \$1,000 of the corporation's shareholder's equity attributable to Kansas, except that no such tax shall be less than \$40 or more than \$5,000. The amount of any such franchise tax paid by the corporation to the secretary as provided by this subsection shall not be disclosed by the secretary.

Sec. 8. K.S.A. 2002 Supp. 17-7505 is hereby amended to read as follows: 17-7505. (a) Every foreign corporation organized for profit, or organized under the cooperative type statutes of the state, territory or foreign country of incorporation, now or hereafter doing business in this state, and owning or using a part or all of its capital in this state, and subject to compliance with the laws relating to the admission of foreign corporations to do business in Kansas, shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the corporation at the close of business on the last day of its tax period next preceding the date of filing, but if a corporation operates on a fiscal year other than the calendar year it shall give written notice thereof to the secretary of state prior to December 31 of the year commencing such fiscal year. The report shall be made on a form prescribed by the secretary of state. The report shall be filed at the time prescribed by law for filing the corporation's annual Kansas income tax return, except that if any such corporation shall apply for an extension of time for filing its annual income tax return under the internal revenue service or under subsection (c) of K.S.A. 79-3221, and amendments thereto, such corporation shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing the report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code or K.S.A. 79-3221, and amendments thereto. Such application shall

include a copy of the application to income tax authorities. The report shall contain the following facts:

- (1) The name of the corporation and under the laws of what state or country organized;
- (2) the location of its principal office;
- (3) the names of the president, secretary, treasurer and members of the board of directors, with the residence address of each;
- (4) the number of shares of capital stock issued and the amount of capital stock paid up;
- (5) the nature and kind of business in which the company is engaged and its place or places of business both within and without the state of Kansas;
- (6) the value of the property owned and used by the company in Kansas, where situated, and the value of the property owned and used outside of Kansas and where situated; and
- (7) the corporation's shareholder's equity attributable to Kansas.

(b) Every corporation subject to the provisions of this section which holds agricultural land, as defined in K.S.A. 17-5903, and amendments thereto, within this state shall show the following additional information on the report:

- (1) The acreage and location listed by section, range, township and county of each lot, tract or parcel of agricultural land in this state owned or leased by or to the corporation;
- (2) the purposes for which such agricultural land is owned or leased and, if leased, to whom such agricultural land is leased;
- (3) the value of the nonagricultural assets and the agricultural assets, stated separately, owned and controlled by the corporation both within and without the state of Kansas and where situated;
- (4) the total number of stockholders of the corporation;
- (5) the number of acres owned or operated by the corporation, the number of acres leased by the corporation and the number of acres leased to the corporation;
- (6) the number of acres of agricultural land, held and reported in each category under paragraph (5) of this subsection (b), stated separately, being irrigated; and
- (7) whether any of the agricultural land held and reported under this subsection was acquired after July 1, 1981.

The report shall be signed by its president, secretary, treasurer or other officer duly authorized so to act, or by any two of its directors, or by an incorporator in the event its board of directors shall not have been elected. The fact that an individual's name is signed on such report shall be prima facie evidence that such individual is authorized to sign the report on behalf of the corporation; however, the official title or position of the individual signing the report shall be designated. This report will be dated and subscribed by the person as true, under penalty of perjury. At the time of filing its annual report, each such foreign corporation shall pay to the secretary of state an annual franchise tax in an amount equal to ~~\$2~~ \$1 for each \$1,000 of the corporation's shareholder's equity attributable to Kansas, except that no such tax shall be less than \$40 or more than \$5,000. The amount of any such franchise tax paid by the foreign corporation to the secretary as provided by this subsection shall not be disclosed by the secretary.

Sec. 9. K.S.A. 2002 Supp. 17-76,139 is hereby amended to read as follows: 17-76,139.

(a) Every limited liability company organized under the laws of this state shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the limited liability company at the close of business on the last day of its tax period next preceding the date of filing. If the limited liability company's tax period is other than the calendar year, it shall give notice of its different tax period in writing to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited liability company's annual Kansas income tax return. If the limited liability company applies for an extension of time for filing its annual income tax return under the internal revenue code, the limited liability company shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code. The application shall include a copy of the application to income tax

authorities. The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the following information:

- (1) The name of the limited liability company; and
- (2) a list of the members owning at least 5% of the capital of the company, with the post office address of each.

(b) Every foreign limited liability company shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the limited liability company at the close of business on the last day of its tax period next preceding the date of filing. If the limited liability company's tax period is other than the calendar year, it shall give notice in writing of its different tax period to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited liability company's annual Kansas income tax return. If the limited liability company applies for an extension of time for filing its annual income tax return under the internal revenue code, the limited liability company also shall apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code. The application shall include a copy of the application to income tax authorities. The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the name of the limited liability company.

(c) The annual report required by this section shall be signed by a member of the limited liability company and forwarded to the secretary of state. At the time of filing the report, the limited liability company shall pay to the secretary of state an annual franchise tax in an amount equal to ~~the~~ \$1 for each \$1,000 of the net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, or for a one-member LLC taxed as a sole proprietorship, ~~the~~ \$1 for each \$1,000 of net book value of the LLC as calculated on an income tax basis located in or used in this state at the end of the preceding taxable year, except that no annual tax shall be less than \$40 or more than \$5,000. The amount of any such franchise tax paid by the limited liability company to the secretary as provided by this subsection shall not be disclosed by the secretary.

(d) The provisions of K.S.A. 17-7509, and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, and the provisions of subsection (a) of K.S.A. 17-7510 and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, shall be applicable to the articles of organization of any domestic limited liability company or to the authority of any foreign limited liability company which fails to file its annual report or pay the franchise tax within 90 days of the time prescribed in this section for filing and paying the same. Whenever the articles of organization of a domestic limited liability company or the authority of any foreign limited liability company are forfeited for failure to file an annual report or to pay the required franchise tax, the domestic limited liability company or the authority of a foreign limited liability company may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees and taxes, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506, and amendments thereto, for filing a certificate of extension, restoration, renewal or revival of a corporation's articles of incorporation.

(e) When reinstatement is effective, it relates back to and takes effect as of the effective date of the forfeiture and the company may resume its business as if the forfeiture had never occurred.

(f) No limited liability company shall be required to file its first annual report under this act, or pay any annual franchise tax required to accompany such report, unless such limited liability company has filed its articles of organization or application for authority at least six months prior to the last day of its tax period. If any limited liability company files with the secretary of state a notice of change in its tax period and the next annual report filed by such limited liability company subsequent to such notice is based on a tax period of less than 12 months, the annual tax liability shall be determined by multiplying the annual

franchise tax liability for such year by a fraction, the numerator of which is the number of months or any portion thereof covered by the annual report and the denominator of which is 12, except that the tax shall not be less than \$40.

Sec. 10. K.S.A. 2002 Supp. 56-1a606 is hereby amended to read as follows: 56-1a606.

(a) Every limited partnership organized under the laws of this state shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the limited partnership at the close of business on the last day of its tax period next preceding the date of filing. If the limited partnership's tax period is other than the calendar year, it shall give notice of its different tax period to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited partnership's annual Kansas income tax return. If the limited partnership applies for an extension of time for filing its annual income tax return under the internal revenue code or under K.S.A. 79-3221 and amendments thereto, the limited partnership shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code or K.S.A. 79-3221 and amendments thereto. The application shall include a copy of the application to income tax authorities.

(b) The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the following information:

(1) The name of the limited partnership; and

(2) a list of the partners owning at least 5% of the capital of the partnership, with the post office address of each.

(c) Every limited partnership subject to the provisions of this section which is a limited corporate partnership, as defined in K.S.A. 17-5903 and amendments thereto, and which holds agricultural land, as defined in K.S.A. 17-5903 and amendments thereto, within this state shall show the following additional information on the report:

(1) The number of acres and location, listed by section, range, township and county of each lot, tract or parcel of agricultural land in this state owned or leased by the limited partnership; and

(2) whether any of the agricultural land held and reported under subsection (c)(1) was acquired after July 1, 1981.

(d) The annual report shall be signed by the general partner or partners of the limited partnership, sworn to before an officer duly authorized to administer oaths and forwarded to the secretary of state. At the time of filing the report, the limited partnership shall pay to the secretary of state an annual franchise tax in an amount equal to ~~\$2~~ \$1 for each \$1,000 of the partners' net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, except that no annual tax shall be less than \$40 or more than \$5,000. The amount of any such franchise tax paid by the limited partnership to the secretary as provided by this subsection shall not be disclosed by the secretary.

(e) The provisions of K.S.A. 17-7509 and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, and the provisions of subsection (a) of K.S.A. 17-7510 and amendments thereto, relating to forfeiture of a domestic corporation's articles of incorporation for failure to file an annual report or pay the required franchise tax, shall be applicable to the certificate of partnership of any limited partnership which fails to file its annual report or pay the franchise tax within 90 days of the time prescribed in this section for filing and paying the same. Whenever the certificate of partnership of a limited partnership is forfeited for failure to file an annual report or to pay the required franchise tax, the limited partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees and taxes, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506 and amendments thereto for filing a certificate of extension, restoration, renewal or revival of a corporation's articles of incorporation.

Sec. 11. K.S.A. 2002 Supp. 56-1a607 is hereby amended to read as follows: 56-1a607.

(a) Every foreign limited partnership shall make an annual report in writing to the secretary

of state, stating the prescribed information concerning the limited partnership at the close of business on the last day of its tax period next preceding the date of filing. If the limited partnership's tax period is other than the calendar year, it shall give notice of its different tax period to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited partnership's annual Kansas income tax return. If the limited partnership applies for an extension of time for filing its annual income tax return under the internal revenue code or under K.S.A. 79-3221 and amendments thereto, the limited partnership shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code or K.S.A. 79-3221 and amendments thereto. The application shall include a copy of the application to income tax authorities.

(b) The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the name of the limited partnership.

(c) Every foreign limited partnership subject to the provisions of this section which is a limited corporate partnership, as defined in K.S.A. 17-5903 and amendments thereto, and which holds agricultural land, as defined in K.S.A. 17-5903 and amendments thereto, within this state shall show the following additional information on the report:

(1) The number of acres and location, listed by section, range, township and county of agricultural land in this state owned or leased by the limited partnership; and

(2) whether any of the agricultural land held and reported under subsection (c)(1) was acquired after July 1, 1981.

(d) The annual report shall be signed by the general partner or partners of the limited partnership, sworn to before an officer duly authorized to administer oaths and forwarded to the secretary of state. At the time of filing the report, the foreign limited partnership shall pay to the secretary of state an annual franchise tax in an amount equal to ~~\$2~~ \$1 for each \$1,000 of the partners' net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, except that no annual tax shall be less than \$40 or more than \$5,000. The amount of any such franchise tax paid by the limited partnership to the secretary as provided by this subsection shall not be disclosed by the secretary.

(e) The provisions of K.S.A. 17-7509 and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, and the provisions of subsection (b) of K.S.A. 17-7510 and amendments thereto, relating to forfeiture of a foreign corporation's authority to do business in this state for failure to file an annual report or pay the required franchise tax, shall be applicable to the authority of any foreign limited partnership which fails to file its annual report or pay the franchise tax within 90 days of the time prescribed in this section for filing and paying the same. Whenever the authority of a foreign limited partnership to do business in this state is forfeited for failure to file an annual report or to pay the required franchise tax, the foreign limited partnership's authority to do business in this state may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees and taxes, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506 and amendments thereto for filing a certificate of extension, restoration, renewal or revival of a corporation's articles of incorporation.

Sec. 12. K.S.A. 2002 Supp. 56a-1201 is hereby amended to read as follows: 56a-1201.

(a) Every limited liability partnership organized under the laws of this state shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the limited liability partnership at the close of business on the last day of its tax period next preceding the date of filing. If the limited liability partnership's tax period is other than the calendar year, it shall give notice of its different tax period in writing to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited liability partnership's annual Kansas income tax return. If the limited liability partnership applies for an extension of time for filing its annual income tax return under the internal revenue

code, the limited liability partnership shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code. The application shall include a copy of the application to income tax authorities.

(b) The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the following information:

- (1) The name of the limited liability partnership; and
- (2) a list of the partners owning at least 5% of the capital of the partnership, with the post office address of each.

(c) The annual report shall be signed by a partner of the limited liability partnership and forwarded to the secretary of state. At the time of filing the report, the limited liability partnership shall pay to the secretary of state an annual franchise tax in an amount equal to ~~\$2~~ \$1 for each \$1,000 of the net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, except that no annual tax shall be less than \$40 or more than \$5,000. The amount of any such franchise tax paid by the limited liability partnership to the secretary as provided by this subsection shall not be disclosed by the secretary.

(d) The provisions of K.S.A. 17-7509, and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, and the provisions of subsection (a) of K.S.A. 17-7510 and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, shall be applicable to the statement of qualification of any limited liability partnership which fails to file its annual report or pay the franchise tax within 90 days of the time prescribed in this section for filing and paying the same. Whenever the statement of qualification of a limited liability partnership is forfeited for failure to file an annual report or to pay the required franchise tax, the limited liability partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees and taxes, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506, and amendments thereto, for filing a certificate of extension, restoration, renewal or revival of a corporation's articles of incorporation.

Sec. 13. K.S.A. 2002 Supp. 56a-1202 is hereby amended to read as follows: 56a-1202.

(a) Every foreign limited liability partnership shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the foreign limited liability partnership at the close of business on the last day of its tax period next preceding the date of filing. If the foreign limited liability partnership's tax period is other than the calendar year, it shall give notice in writing of its different tax period to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the foreign limited liability partnership's annual Kansas income tax return. If the foreign limited liability partnership applies for an extension of time for filing its annual income tax return under the internal revenue code, the foreign limited liability partnership shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code. The application shall include a copy of the application to income tax authorities.

(b) The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the name of the foreign limited liability partnership.

(c) The annual report shall be signed by a partner of the foreign limited liability partnership and forwarded to the secretary of state. At the time of filing the report, the foreign limited liability partnership shall pay to the secretary of state an annual franchise tax in an amount equal to ~~\$2~~ \$1 for each \$1,000 of the net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, except that no annual tax shall be less than \$40 or more than \$5,000. The amount of any such franchise tax paid by the foreign limited liability partnership to the secretary as provided by this subsection shall not be disclosed by the secretary.

(d) The provisions of K.S.A. 17-7509, and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, and the provisions of subsection (a) of K.S.A. 17-7510, and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, shall be applicable to the statement of foreign qualification of any foreign limited liability partnership which fails to file its annual report or pay the franchise tax within 90 days of the time prescribed in this section for filing and paying the same. Whenever the statement of foreign qualification of a foreign limited liability partnership is forfeited for failure to file an annual report or to pay the required franchise tax, the statement of foreign qualification of the foreign limited liability partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees and taxes, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506, and amendments thereto, for filing a certificate of extension, restoration, renewal or revival of a corporation's articles of incorporation.”;

And by renumbering sections accordingly;

Also on page 14, in line 11, after “Supp.” by inserting “17-2036, 17-7503, 17-7505, 17-76,139, 56-1a606, 56-1a607, 56a-1201, 56a-1202.”;

On page 1, in the title, in line 13, before “amending” by inserting “franchise tax.”; in line 14, after “Supp.” by inserting “17-2036, 17-7503, 17-7505, 17-76,139, 56-1a606, 56-1a607, 56a-1201, 56a-1202.”, and **HB 2287** be passed as further amended.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator Oleen an emergency was declared by a ⅔ constitutional majority, and **HB 2287** was advanced to Final Action and roll call.

HB 2287, An act concerning taxation; relating to collection and remittance of sales tax by state contractors; property tax classification of and exemption for property used partially for bed and breakfast purposes; dividend income; sales taxation, computer software; income tax credits, net operating losses; franchise tax; amending K.S.A. 40-2246, 75-3740a, 79-1439, 79-32,176 and 79-32,190 and K.S.A. 2002 Supp. 17-2036, 17-7503, 17-7505, 17-76,139, 56-1a606, 56-1a607, 56a-1201, 56a-1202, 75-3739, 79-201c, 79-32,117, 79-32,143, 79-32,197, 79-32,206, 79-32,210, 79-3603 and 79-3609, 79-3620, 79-3703 and 79-3710 and repealing the existing sections.

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

Yeas: 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, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: O'Connor.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: **HB 2287** contains a myriad of proposals dealing with tax issues. While I find many of these objectionable, the provision repealing last year's franchise tax increase is so important for the future of small business in Kansas that I vote “Yes” on this bill.—TIM HUELSKAMP

MR. PRESIDENT: I vote no on **HB 2287**. Although there are some good parts of this bill, I cannot in good conscience vote for a bill that gives the citizens 1 year to make corrections in overpayments of sales tax while the State gives itself at least 3 years to find errors and in certain cases even longer—KAY O'CONNOR

REPORT ON ENROLLED BILLS

SR 1860, SR 1861, SR 1862, SR 1863, SR 1864, SR 1865, SR 1866, SR 1867, 1868 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on May 5, 2003.

On motion of Senator Oleen, the Senate recessed until 8:10 p.m.

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

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Wagle, Feleciano, Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Buntin, Clark, Corbin, Donovan, Downey, Emler, 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 and Vratil introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1871—

A RESOLUTION memorializing the United States Congress
to fund the F/A-22 Raptor Program.

WHEREAS, The Kansas Senate is pleased to join citizens across our great state, our nation, and the world in congratulating our troops on their recent victory in Iraq, as well as the hard working men and women across our state who design and assemble essential equipment and weaponry for our military; and

WHEREAS, Air dominance has become a signature of our armed forces and a determining factor when our military is drawn into combat throughout the world; and

WHEREAS, Kansas' defense and aerospace industry invest millions of dollars and employs thousands of highly skilled workers in Kansas; and

WHEREAS, Defense and aerospace companies in Kansas provide our military with cutting edge technological components that are used to assemble vital military products, like the United States Air Force's new generation fighter, the Lockheed Martin F/A-22 Raptor; and

WHEREAS, Projects like the F/A-22 Raptor will bring more than \$32 million dollars to the Kansas economy while providing thousands of Kansans with high quality jobs, thus stimulating the aerospace industry in the state; and

WHEREAS, The State of Kansas has a tradition of constructing both commercial and military aviation products and is the home of important components of our military's air capabilities, such as the 22nd Air Refueling Wing, as well as dedicated soldiers, sailors, marines and airmen flying and maintaining those aircraft at bases across the country: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That the members of this body recognize that the F/A-22 Raptor is critical to the Kansas economy and that the members of this body implore the Congress of the United States to fully fund the F/A-22 program, thus providing our military heroes with the vital resources they need and invigorating our economy; and

Be it further resolved: That the Secretary of the Senate be directed to send enrolled copies of this resolution to the President of the United States Senate, the Speaker of the United States House of Representatives and to each member of the Kansas legislative delegation.

On emergency motion of Senator Wagle **SR 1871** was adopted unanimously.

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

SENATE RESOLUTION No. 1872—

A RESOLUTION congratulating and commending Public
Wholesale Water Supply District No. 4.

WHEREAS, Public Wholesale Water Supply District No. 4 based in Cherryvale, Kansas, was recently judged as producing the best-tasting water anywhere in the country for 2003 by the National Rural Water Association; and

WHEREAS, To receive this honor a sample of the district's water first was judged as best-tasting in Kansas and then as best-tasting among entries from throughout the United States at a competition in Washington, D.C.; and

WHEREAS, Judges considered three criteria: Clarity, bouquet, and taste; and

WHEREAS, Public Wholesale Water Supply District No. 4 serves more than 10,000 customers in Montgomery and Labette counties, including customers in the City of Cherryvale, and on a typical day treats 800,000 to 1.1 million gallons of water drawn from Pearson-Skubitz Big Hill Lake in Labette County; and

WHEREAS, Public Wholesale Water Supply District No. 4's best-in-the-country water was produced with a 20-year-old drinking water plant that soon will produce even better drinking water after numerous upgrades are completed during the summer; and

WHEREAS, District manager Sam Atherton and all who work with Public Wholesale Water Supply District No. 4 deserve much credit for producing great-tasting water for their customers not only on competition day but every day of the year; and

WHEREAS, This recognition for great-tasting drinking water is just one more bit of proof that Cherryvale, Kansas, and the surrounding area are a great place to live: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That the Senate commends and congratulates Public Wholesale Water Supply District No. 4 on producing the best-tasting drinking water in the United States of America; and

Be it further resolved: That the Senate encourages all Kansans as well as visitors to our state to visit Cherryvale and have a sip of the best-tasting drinking water in the country; and

Be it further resolved: That the Secretary of the Senate be directed to send enrolled copies of this resolution to Sam Atherton, District Manager, Public Wholesale Water Supply District No. 4, P.O. Box 6, Cherryvale, KS 67335 and to John Wright, Mayor, City of Cherryvale, 123 W. Main, Cherryvale, KS 67335.

On emergency motion of Senator Schmidt **SR 1872** was adopted unanimously.

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 Jordan in the chair.

On motion of Senator Jordan the following report was adopted:

Recommended **SB 226** be amended by adoption of the committee amendments.

Senator Steineger moved to amend the bill as amended by Senate Committee, on page 1, by striking all in lines 16 through 43;

By striking all on pages 2 through 25;

On page 26, by striking all in lines 1 through 25 and inserting:

"Section 1. K.S.A. 74-8702 is hereby amended to read as follows: 74-8702. As used in the Kansas lottery act, unless the context otherwise requires:

(a) "Commission" means the Kansas lottery commission.

(b) "Executive director" means the executive director of the Kansas lottery.

~~(c) "Gaming equipment" means any electric, electronic or mechanical device or other equipment unique to the Kansas lottery used directly in the operation of any lottery and in the determination of winners pursuant to this act:~~

(c) "Gaming equipment" means any electric, electronic, computerized or electromechanical machine, mechanism, supply or device, or any other equipment, which is: (1) Unique to the Kansas lottery and used pursuant to the Kansas lottery act; (2) integral to the operation of an electronic gaming machine; or (3) affects the results of an electronic gaming machine by determining win or loss.

(d) "Kansas lottery" means the state agency created by this act to operate a lottery or lotteries pursuant to this act.

(e) "Lottery retailer" means any person with whom the Kansas lottery has contracted to sell lottery tickets or shares, or both, to the public.

(f) "Lottery" or "state lottery" means the lottery or lotteries operated pursuant to this act.

(g) "Major procurement" means any gaming product or service, including but not limited to facilities, advertising and promotional services, annuity contracts, prize payment agreements, consulting services, equipment, tickets and other products and services unique to the Kansas lottery, but not including materials, supplies, equipment and services common to the ordinary operations of state agencies.

(h) "Person" means any natural person, association, *limited liability company*, corporation or partnership.

(i) "Prize" means any prize paid directly by the Kansas lottery pursuant to its rules and regulations.

(j) "Share" means any intangible manifestation authorized by the Kansas lottery to prove participation in a lottery game.

(k) "Ticket" means any tangible evidence issued by the Kansas lottery to prove participation in a lottery game.

(l) "Vendor" means any person who has entered into a major procurement contract with the Kansas lottery.

(m) "Returned ticket" means any ticket which was transferred to a lottery retailer, which was not sold by the lottery retailer and which was returned to the Kansas lottery for refund by issuance of a credit or otherwise.

(n) "Video lottery machine" means any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game authorized by the commission, including but not limited to bingo, poker, black jack and keno, and which uses a video display and microprocessors and in which, by chance, the player may receive free games or credits that can be redeemed for cash.

(o) (1) "Lottery machine" means any machine or device that allows a player to insert cash or other form of consideration and may deliver as the result of an element of chance, regardless of the skill required by the player, a prize or evidence of a prize, including, but not limited to:

(A) Any machine or device in which the prize or evidence of a prize is determined by both chance and the player's or players' skill, including, but not limited to, any machine or device on which a lottery game or lottery games, such as poker or blackjack, are played;

(B) any machine or device in which the prize or evidence of a prize is determined only by chance, including, but not limited to, any slot machine or bingo machine; or

(C) any lottery ticket vending machine, such as a keno ticket vending machine, pull-tab vending machine or an instant-bingo vending machine.

(2) "Lottery machine" shall not mean:

(A) Any food vending machine defined by K.S.A. 36-501, and amendments thereto;

(B) any nonprescription drug machine authorized under K.S.A. 65-650, and amendments thereto;

(C) any machine which dispenses only bottled or canned soft drinks, chewing gum, nuts or candies; ~~or~~

(D) any electronic gaming machine operated in accordance with the provisions of the *Kansas gaming act*; or

(E) any machine excluded from the definition of gambling devices under subsection (d) of K.S.A. 21-4302, and amendments thereto.

(p) "Electronic gaming machine" means any electronic, electromechanical, video or computerized device, contrivance or machine authorized by the Kansas lottery which, upon insertion of cash, tokens, electronic cards or any consideration, is available to play, operate or simulate the play of a game authorized by the Kansas lottery pursuant the *Kansas gaming act*, including, but not limited to, bingo, poker, blackjack, keno and slot machines, and which may deliver or entitle the player operating the machine to receive cash, tokens, merchandise or credits that may be redeemed for cash. Electronic gaming machines may use bill validators and may be single-position reel-type, single or multi-game video and single-position multi-game video electronic game, including but not limited to, poker, blackjack and slot machines. Electronic gaming machines shall be directly linked to a central computer at a location determined by the executive director for purposes of security, monitoring and auditing.

(q) "Key gaming employee" means any natural person 21 years of age or older employed by or under contract with a lottery gaming machine contractor or employed by or under contract with a person providing on or off-site management or employee-related services to the lottery gaming machine contractor, including, but not limited to: (1) Gaming machine contractor manager and assistant manager; (2) facilities operator manager; (3) electronic games manager; (4) accounting department personnel; (5) count room employees; (6) cage department employees, including cashiers and main bank employees; (7) vault department

employees; (8) approvers of credit; (9) surveillance department employees; (10) security department employees; (11) floor managers; (12) electronic gaming machine technicians; (13) custodians of electronic gambling machines, including persons with access to cash and accounting records within such machines; (14) collection personnel; (15) internal auditors of the lottery gaming machine contractor; (16) any employee whose total cash compensation is in excess of \$50,000 per year; and (17) any other type of employee specified by the executive director.

(r) "Lottery gaming machine contractor" means any person with which the executive director has contracted to operate electronic gaming machines at a parimutuel licensee location pursuant to the Kansas gaming act.

(s) "Net machine income" means the total of all cash and the face value of all tokens or electronic cards placed in an electronic gaming machine, less cash, merchandise or credits that may be redeemed for cash paid to players as winnings.

(t) "Progressive electronic game" means a game played on an electronic gaming machine for which the payoff increases uniformly as the game is played and for which the jackpot, determined by application of a formula to the income of independent, local or interlinked electronic gaming machines, may be won.

(u) "Technology provider" means any person or entity other than a lottery gaming machine contractor that designs, manufactures, installs, operates, distributes, supplies or replaces an electronic gaming machine for sale, lease or use in accordance with this act.

(v) "Token" means a metal or other representative of value, which is not legal tender, redeemable for cash only by the issuing lottery gaming machine contractor and which issued and sold by a lottery gaming machine contractor for the sole purpose of playing an electronic gaming machine.

New Sec. 2. (a) Sections 2 through 22, and amendments thereto, shall be known as the Kansas gaming act and shall be part of and supplemental to the Kansas lottery act.

(b) If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application.

New Sec. 3. (a) The executive director may contract with parimutuel licensees for the operation and management, by the state of Kansas, of electronic gaming machines at parimutuel licensee locations in counties where a proposition submitted pursuant to section 5, and amendments thereto, has been approved by the voters of such county. Such contracts shall be subject to the provisions of this act and rules and regulations adopted under this act but shall not be subject to the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto.

(b) The executive director shall select as lottery gaming machine contractors such persons as the executive director deems best able to serve the public convenience and promote marketing plans developed by the Kansas lottery. In the selection of lottery gaming machine contractors, the executive director shall consider factors such as financial responsibility, security of the licensee location, integrity, reputation, volume of expected sales and such other factors as the executive director may deem appropriate.

(c) The executive director may charge an administrative application fee, reasonably related to the costs of processing the application, to applicants to become lottery gaming machine contractors.

(d) A contract shall not constitute property, nor shall it be subject to attachment, garnishment or execution, nor shall it be alienable or transferable, except upon approval by the executive director, or subject to being encumbered or hypothecated. No interest in the contract shall descend by the laws of testate or intestate devolution but any interest shall cease and expire upon the death of the lottery machine contractor or interest holders in the lottery machine contractor except that executors, administrators or representatives of the estate of any deceased contractor and the trustee of any insolvent or bankrupt licensee may continue to operate pursuant to the contract under order of the appropriate court for no longer than one year after the death, bankruptcy or insolvency of such licensee.

(e) Each lottery gaming machine contractor shall be issued a lottery gaming machine contractor certificate which shall be conspicuously displayed at the place where the lottery

gaming machine contractor is authorized to operate and manage electronic gaming machines.

(f) To be selected as a lottery gaming machine contractor, a person must:

(1) Have sufficient financial resources to support the activities required under this act; and

(2) be current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas, excluding items under formal appeal pursuant to applicable statutes.

(g) The lottery gaming machine contractor, at its own expense, shall purchase for the Kansas lottery a license for all software programs used by such lottery gaming machine contractor to operate electronic gaming machines. The Kansas lottery shall be the licensee and owner of all such software programs and shall sublicense such software programs to each lottery gaming machine contractor. A lottery gaming machine contractor may own or lease, on behalf of the Kansas lottery and at the contractor's own expense, electronic gaming machines or the Kansas lottery with the consent of the contractor may lease such machines, subject to reimbursement of the Kansas lottery by the contractor for all expenses related to leasing, installing, operating and managing such machines. Electronic gaming machines purchased or leased by the lottery gaming machine contractor, at its own expense, may be installed, operated or managed, owned or leased by a lottery gaming machine contractor or by a technology provider under contract with the lottery gaming machine contractor as provided by this act. All electronic gaming machines under this act shall be subject to the ultimate control of the Kansas lottery in accordance with this act. Each specific type of electronic gaming machine shall be approved by the Kansas lottery in accordance with K.S.A. 74-8710, and amendments thereto. The use of progressive electronic gaming machines is expressly permitted.

(h) Each contract between the Kansas lottery and a lottery gaming machine contractor shall provide that the Kansas lottery shall receive all of the net machine income derived from the operation of electronic gaming machines.

(i) Each contract between the Kansas lottery and a lottery gaming machine contractor shall include a provision for the accelerated payment of a portion of the state's share of net machine income by multiplying the maximum number of electronic gaming machines authorized for the facility by \$15,000 per machine. The contract also shall specify the mechanism for recovering that payment from the state's share of future net machine income.

Any contract in which the accelerated payment has not been paid to the state treasurer by June 30, 2004, shall be null and void.

(j) Contracts authorized by this section may include provisions relating to:

(1) Accounting procedures to determine the net machine income, unclaimed merchandise and credits.

(2) The location and operation of electronic gaming machines. Except as provided by this act, the days and hours of operation and the number of such electronic gaming machines shall not be restricted.

(3) Minimum requirements for an electronic gaming machine contractor to provide qualified oversight, security and supervision of the operation of electronic gaming machines, including the use of qualified personnel with experience in applicable technology.

(4) The eligibility requirements for employees of a lottery gaming machine contractor who will have responsibility for the handling of cash or tokens. Such requirements may include a background investigation performed by the Kansas lottery and that any key gaming employee shall be licensed as provided by the Kansas gaming act.

(5) Provision for termination of the contract by either party for cause, including but not limited to, failure of the lottery gaming machine contractor to maintain a parimutuel license in accordance with K.S.A. 74-8801 *et seq.*, and amendments thereto, failure of the lottery gaming machine contractor to collect and remit net machine income as required by the Kansas gaming act.

(6) Any other provision deemed necessary by the parties pursuant to this section.

(k) The initial term of a contract pursuant to this section shall be not less than the remaining term of the Kansas lottery. Such contract may be renewed with each extension of the Kansas lottery as provided in K.S.A. 74-8723, and amendments thereto.

(1) (1) The Kansas lottery shall examine prototypes of electronic gaming machines and shall notify the Kansas racing and gaming commission which such types of electronic gaming machines are in compliance with the requirements of this act.

(2) No electronic gaming machine shall be operated at a parimutuel licensee location pursuant to this act unless the executive director of the Kansas racing and gaming commission first issues a certificate for such machine authorizing its use at a specified parimutuel licensee location.

(3) Each electronic gaming machine shall have the certificate prominently displayed thereon. Any machine which does not display the certificate required by this section is contraband and a public nuisance subject to confiscation by any law enforcement officer.

(4) The executive director shall require any manufacturer, supplier, provider, lottery gaming machine contractor or other person seeking the examination and certification of electronic gaming machines to pay the anticipated actual costs of the examination in advance. After the completion of the examination, the executive director shall refund any overpayment or charge and collect amounts sufficient to reimburse the executive director for any underpayment of actual costs. The executive director may contract for the examination of electronic gaming machines as required by this subsection, and may rely upon testing done by or for other states regulating electronic gaming machines, if the executive director deems such testing to be reliable and in the best interest of the state of Kansas.

(m) Electronic gaming machines operated pursuant to this act shall:

(1) Pay out an average of not less than 87% of the amount wagered over the life of the machine;

(2) be directly linked to a central lottery communications system to provide auditing and other program information as approved by the Kansas lottery. The executive director shall select the computer system most suitable for conducting the monitoring and auditing functions required by this act. The communications systems certified by the Kansas lottery shall not limit participation to only one electronic gaming machine manufacturer, distributor, supplier or provider; and

(3) be on-line and in constant communication with a central computer located at a location determined by the executive director. The lottery gaming machine contractor shall lease or purchase at its own expense for the Kansas lottery all gaming equipment necessary to implement such central communications and auditing functions.

(n) No employee, contractor or other person in any way affiliated with a lottery gaming machine contractor shall loan money to or otherwise extend credit to patrons of a parimutuel licensee location.

New Sec. 4. In addition to the powers granted pursuant to K.S.A. 74-8704 and section 3, and amendments thereto, the executive director shall have the power to:

(a) Enter into contracts for placement and replacement of electronic gaming machines. Such contracts shall be subject to rules and regulations adopted pursuant to the Kansas gaming act, but shall not be subject to the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto.

(b) Examine or cause to be examined by any agent or representative designated by the executive director any books, papers, records or memoranda of any lottery gaming machine contractor for the purpose of ascertaining compliance with the provisions of the Kansas lottery act or rules and regulations adopted thereunder.

(c) Issue subpoenas to compel access to or for the production of any books, papers, records or memoranda in the custody or control of any lottery gaming machine contractor, or to compel the appearance of any lottery gaming machine contractor for the purpose of ascertaining compliance with the provisions of this act or rules and regulations adopted hereunder. Subpoenas issued under the provisions of this subsection may be served upon natural persons and corporations in the manner provided in K.S.A. 60-304, and amendments thereto, for the service of process by any officer authorized to serve subpoenas in civil actions or by the executive director or an agent or representative designated by the executive director. In the case of the refusal of any person to comply with any such subpoena, the executive director may make application to the district court of any county where such books, papers, records, memoranda or person is located for an order to comply.

(d) Inspect and view the operation of all machines, systems or facilities where electronic gaming machines controlled and operated by the Kansas lottery are located.

(e) Inspect and approve, prior to publication or distribution, all advertising by a lottery gaming machine contractor which includes any reference to the Kansas lottery.

New Sec. 5. (a) Electronic gaming machines shall be operated pursuant to this act only in counties where, in accordance with this section, the qualified voters of the county have voted to permit operation of electronic gaming machines at locations within the county.

(b) The board of county commissioners of any county where there is a parimutuel licensee location may submit by resolution, and shall submit upon presentation of a petition filed in accordance with subsection (c), to the qualified voters of the county a proposition to permit the operation of electronic gaming machines at locations within the county. The proposition shall be submitted to the voters either in a countywide special election called by the board of county commissioners for that purpose and held not less than 90 days after the resolution is adopted or the petition is filed or at the next general election, as shall be specified by the board of county commissioners or in the petition, as the case may be.

(c) A petition to submit a proposition to the qualified voters of a county pursuant to this section shall be filed with the county election officer. The petition shall be signed by qualified voters of the county equal in number to not less than 10% of the voters of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected. The following shall appear on the petition: "We request an election to determine whether the operation of electronic gaming machines or lottery facility games by the Kansas lottery shall be permitted in _____ county."

(d) Upon the adoption of a resolution or the submission of a valid petition calling for an election pursuant to this section, the county election officer shall cause the following propositions to be placed on the ballot at the election called for that purpose: "Shall the operation of electronic gaming machines or lottery facility games by the Kansas lottery be permitted in _____ county?"

(e) If a majority of the votes cast and counted at such election is in favor of permitting the operation of such machines, the executive director may enter into contracts with such licensees to operate such machines at parimutuel licensee locations in the county. If a majority of the votes cast and counted at an election under this section is against permitting the operation of electronic gaming machines in the county, the Kansas lottery shall not operate such machines in the county. The county election officer shall transmit a copy of the certification of the results of the election to the executive director and to the Kansas racing and gaming commission.

(f) The election provided for by this section shall be conducted, and the votes counted and canvassed, in the manner provided by law for question submitted elections of the county.

(g) If in any election provided for by this section a majority of the votes cast and counted is against the proposition permitting the operation of electronic gaming machines in the county, another election submitting the same proposition shall not be held for at least four years from the date of such election.

New Sec. 6. (a) All purse supplements paid pursuant to this act shall be according to the point schedule in effect on January 1, 2002, at the racetrack facility in Sedgwick county. All purse supplements paid pursuant to this section shall be in addition to purses and supplements paid under K.S.A. 74-8801 et seq., and amendments thereto.

(b) Except as provided in subsection (e), no electronic gaming machine shall be operated pursuant to this act at a parimutuel licensee location unless the facility where the electronic gaming machine is operated displays live and simulcast parimutuel races on video terminals and has installed parimutuel windows for wagering on parimutuel races.

(c) Except as provided in subsection (d):

(1) No electronic gaming machine shall be operated pursuant to this act at a parimutuel licensee location in Sedgwick county unless, during the first full calendar year and each year thereafter in which electronic gaming machines are operated at such location, the parimutuel licensee shall conduct at such location at least eight live racing programs each calendar week for 49 weeks, with at least 13 live races conducted each program.

(2) No electronic gaming machine shall be operated pursuant to this act at a parimutuel licensee location in Wyandotte county unless, during the first full calendar year and each

year thereafter in which electronic gaming machines are operated at such location, the parimutuel licensee shall conduct live horse racing programs for at least 60 days, with at least ten live races conducted each program; with a minimum of seven live thoroughbred and three live quarterhorse races per day and at least eight live dog racing programs each calendar week for at least 49 weeks, with at least 13 live races conducted each program.

(3) No electronic gaming machine shall be operated pursuant to this act at a parimutuel licensee location in Crawford county unless, during the first full calendar year and each year thereafter in which electronic gaming machines are operated at such location, the parimutuel licensee shall conduct at such location live racing the number of days agreed upon by the organization licensee and the parimutuel licensee but not less than 150 days, comprised of at least seven live racing programs each calendar week, with at least 13 live races conducted each program.

(d) The Kansas racing and gaming commission may provide exceptions to the requirements of subsection (c) for a parimutuel licensee conducting live racing when events beyond the control of the licensee may render racing impossible or impractical. Such events shall include any natural or man-made disaster, shortage of qualified racing animals due to kennel sickness or otherwise or state imposed limitations on operations.

New Sec. 7. (a) Expenditures from all funds created pursuant to this section shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive director.

(b) There is hereby established in the state treasury the electronic gaming machine fund. A separate account for each lottery gaming machine contractor shall be maintained in the electronic gaming machine fund for receipt of money from such contractor.

(c) There is hereby established in the state treasury the electronic gaming machine operation and regulatory fund. Moneys in such fund shall be used to pay for the expenses of the Kansas lottery attributable to the operation and regulation of electronic gaming machines. Moneys in such fund may be expended only pursuant to appropriation and moneys in excess of those appropriated to the Kansas lottery may be transferred to the state general fund and expended as provided by appropriation.

New Sec. 8. (a) The executive director shall collect all net machine income from each lottery gaming machine contractor who is a parimutuel licensee. The executive director shall remit the entire amount to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the respective account maintained for such contractor in the electronic gaming machine fund established pursuant to section 7, and amendments thereto.

(b) Not less than once each week, the state treasurer shall transfer the following percentages of the balance in each account in the electronic gaming machine fund for receipt of moneys from lottery gaming machine contractors which are parimutuel licensees:

- (1) To the respective lottery gaming machine contractor, 62.5%;
- (2) to the problem gambling grant fund established pursuant to K.S.A. 2002 Supp. 79-4805, and amendments thereto, 0.5%, except that such transfer shall be to the credit of the state general fund at such time as the balance in such fund is equal to the amount of \$4,000,000, but if the balance in such fund falls below the amount of \$3,000,000, such transfers shall resume;
- (3) to the state general fund, 20%;
- (4) to the nonprofit organization licensed by the Kansas racing and gaming commission to conduct races at the parimutuel licensee location, 1%;
- (5) to any city where the parimutuel licensee location is located, 1%;
- (6) to the county where the parimutuel licensee location is located, 1%;
- (7) to the live dog racing purse supplement fund, 5%;
- (8) to the live horse racing purse supplement fund, 8%; and
- (9) to the electronic gaming machine operation and regulatory fund established pursuant to section 7, and amendments thereto, 1%.

(c) After distribution of moneys pursuant to subsection (b), the state treasurer, not less than once each week, shall remit to the lottery gaming machine contractor the balance in the account maintained for such contractor.

New Sec. 9. (a) Except as when authorized in accordance with subsection (c), it is unlawful for any lottery gaming machine contractor, lottery gaming facility manager or its employees or agents to allow any person to play electronic gaming machines or share in winnings of a person knowing such person to be:

- (1) Under 21 years of age;
- (2) the executive director, a member of the commission or an employee of the Kansas lottery;
- (3) an officer or employee of a vendor contracting with the Kansas lottery to supply gaming equipment or tickets to the Kansas lottery for use in the operation of any lottery conducted pursuant to this act;
- (4) a spouse, child, stepchild, brother, stepbrother, sister, stepsister, parent or stepparent of a person described by subsection (a)(2) or (a)(3); or
- (5) a person who resides in the same household as any person described by subsection (a)(2) or (a)(3).

(b) Violation of subsection (a) is a class A nonperson misdemeanor upon conviction for a first offense. Violation of subsection (a) is a severity level 9, nonperson felony upon conviction for a second or subsequent offense.

(c) The executive director may authorize in writing any employee of the Kansas lottery and any employee of a lottery vendor to play an electronic gaming machine or a lottery game authorized pursuant to the Kansas gaming act to verify the proper operation thereof with respect to security and contract compliance. Any prize awarded as a result of such ticket purchase shall become the property of the Kansas lottery and be added to the prize pools of subsequent lottery games. No money or merchandise shall be awarded to any employee playing an electronic gaming machine or lottery game pursuant to this subsection.

New Sec. 10. Each lottery gaming machine contractor or lottery gaming facility manager shall post one or more signs at the location where the contractor operates electronic gaming machines to inform patrons of the toll-free number available to provide information and referral services regarding compulsive or problem gambling. The text shall be determined by the secretary of the department of social and rehabilitation services. Failure by a lottery gaming machine contractor to post and maintain such signs shall be cause for the imposition of a fine not to exceed \$500 per day.

New Sec. 11. Each lottery gaming machine contractor or lottery gaming facility manager shall provide access for the executive director or the executive director's designee to all its records and the physical premises where the electronic gaming machine activities occur for the purpose of monitoring or inspecting the electronic gaming machines and gaming equipment. None of the information disclosed pursuant to this subsection shall be subject to disclosure under the Kansas open records act, K.S.A. 45-216 *et seq.*, and amendments thereto.

New Sec. 12. (a) Wagers shall be received only from a person at the location where the electronic gaming machine or other lottery game is authorized pursuant to the Kansas gaming act. No person present at such location shall place or attempt to place a wager on behalf of another person who is not present at such location.

(b) Violation of this section is a class A nonperson misdemeanor upon a conviction for a first offense. Violation of this section is a severity level 9, nonperson felony upon conviction for a second or subsequent offense.

New Sec. 13. A person under age 21 shall not be permitted in an area of any location where any electronic gaming machine or other lottery game authorized pursuant to the Kansas gaming act is being conducted, except for a person at least 18 years of age who is an employee of the lottery gaming machine contractor or lottery gaming facility manager. No employee under age 21 shall perform any function involved in gaming by the patrons. No person under age 21 shall be permitted to make a wager on an electronic gaming machine or in a lottery game authorized pursuant to the Kansas gaming act.

New Sec. 14. Pursuant to section 2 of the federal act entitled "An Act to Prohibit Transportation of Gambling Devices in Interstate and Foreign Commerce," 15 U.S.C. 1171 through 1777, the state of Kansas, acting by and through the duly elected and qualified members of the legislature, does hereby in this section, and in accordance with and in compliance with the provisions of section 2 of such federal act, declare and proclaim that

it is exempt from the provision of section 2 of such federal act to the extent that such gambling devices are being transported to or from the Kansas lottery or to or from a lottery gaming machine contractor or lottery gaming facility manager at a location within the state of Kansas where electronic gaming machines or other lottery games are authorized pursuant to the Kansas gaming act.

New Sec. 15. Except for persons acting in accordance with rules and regulations of the Kansas lottery in performing installation, maintenance and repair services, any person who, with the intent to manipulate the outcome, pay out or operation of an electronic gaming machine, manipulates the outcome, pay out or operation of an electronic gaming machine by physical, electrical or mechanical means shall be guilty of a severity level 8, nonperson felony.

New Sec. 16. (a) The Kansas lottery and its designated employees may observe and inspect all electronic gaming machines, gaming equipment and facilities operated by a lottery gaming machine contractor or lottery gaming facility manager.

(b) The executive director may examine, or cause to be examined by any agent or representative designated by the executive director, any books, papers, records or memoranda of any lottery gaming machine contractor, or of any business involved in electronic gaming or lottery games authorized pursuant to the Kansas gaming act, for the purpose of ascertaining compliance with any provision of the Kansas gaming act or any rules and regulations adopted thereunder.

(c) The executive director shall have the power to investigate alleged violations of the Kansas gaming act and alleged violations of any rules and regulations, orders and final decisions of such commission.

(d) Appropriate security measures shall be required in any and all areas where electronic gaming machines or other lottery games authorized pursuant to the Kansas gaming act are located or operated. The executive director shall approve all such security measures.

(e) The executive director shall require an annual audit of the electronic gaming machine operations of each lottery gaming machine contractor contracting with the Kansas lottery. Such audit shall be conducted by a licensed accounting firm approved by the executive director. Such audit shall be conducted at the expense of the lottery gaming machine contractor to which such audit applies.

(f) The executive director shall have the power to take any other action as may be reasonable or appropriate to enforce the provisions of this act and any rules and regulations, orders and final decisions of the executive director.

New Sec. 17. (a) It is a class A nonperson misdemeanor for the executive director, any member of the lottery commission, any employee of the Kansas lottery or any member, employee or appointee of the Kansas racing and gaming commission, including stewards and racing judges, knowingly to:

(1) Participate in the operation of or have a financial interest in any business which has been issued a concessionaire license, racing or wagering or electronic gaming machine equipment or services license, facility owner license or facility manager license, or any business which sells goods or services to an organization licensee;

(2) participate directly or indirectly as an owner, operator, manager or consultant in electronic or other gaming in Kansas;

(3) while in Kansas place a wager on or bet or play an electronic gaming machine or other lottery game authorized pursuant to the Kansas gaming act;

(4) accept any compensation, gift, loan, entertainment, favor or service from any parimutuel licensee, lottery gaming machine contractor, or lottery gaming facility manager except such suitable facilities and services within a racetrack facility operated by an organization licensee or within a facility authorized pursuant to section 18, and amendments thereto, as may be required to facilitate the performance of the executive director's, member's, employee's or appointee's official duties; or

(5) enter into any business dealing, venture or contract with a lottery gaming machine contractor or an owner or lessee of a parimutuel licensee location in Kansas.

(b) It is a severity level 8, nonperson felony for any person playing or using any electronic gaming machine in Kansas knowingly to:

(1) Use other than a lawful coin or legal tender of the United States of America, or to use coin not of the same denomination as the coin intended to be used in an electronic gaming machine, except that in the playing of any electronic gaming machine or similar gaming device, it shall be lawful for any person to use gaming billets, tokens or similar objects therein which are approved by the Kansas lottery;

(2) possess or use, while on the premises of a lottery gaming machine contractor or a parimutuel licensee location or location where electronic gaming machines or other lottery games are authorized pursuant to section 18, and amendments thereto, any cheating or thieving device, including but not limited to, tools, wires, drills, coins attached to strings or wires or electronic or magnetic devices to facilitate removing from any electronic gaming machine any money or contents thereof, except that a duly authorized agent or employee of the Kansas lottery, the Kansas racing and gaming commission, a parimutuel licensee or a lottery gaming machine contractor may possess and use any of the foregoing only in furtherance of the agent's or employee's employment at the parimutuel licensee location or location where electronic gaming machines or other lottery games are authorized pursuant to section 18, and amendments thereto; or

(3) possess or use while on the premises of any parimutuel licensee location or location where electronic gaming machines or other lottery games are authorized pursuant to section 18, and amendments thereto, any key or device designed for the purpose of or suitable for opening or entering any electronic gaming machine or similar gaming device or drop box, except that a duly authorized agent or employee of the Kansas lottery, the Kansas racing and gaming commission, a parimutuel licensee or a lottery gaming machine contractor may possess and use any of the foregoing only in furtherance of the agent's or employee's employment at the parimutuel licensee location or location where electronic gaming machines or other lottery games are authorized pursuant to section 18, and amendments thereto.

New Sec. 18. (a) As used in this section:

(1) "Lottery gaming facility" means a state owned building and associated parking and adjacent real and personal property within which the state lottery gaming enterprise is housed and operated.

(2) "Lottery gaming enterprise" means an entertainment enterprise which includes lottery facility games authorized by the Kansas gaming act and other businesses operated within the lottery gaming facility.

(3) "Lottery gaming facility manager" means a person authorized to construct and manage or manage, pursuant to a management contract with the Kansas lottery, a lottery gaming enterprise and facility.

(4) "Accelerated lottery gaming facility net payment" means the advanced payment to the state treasurer of a portion of the state's future share of lottery gaming facility net revenues upon the final authorization and approval of a management contract with a lottery gaming facility manager for the construction of a lottery gaming facility and management of a lottery gaming enterprise pursuant to this section.

(5) "Lottery gaming facility revenues" mean the total revenues from lottery facility games at a lottery gaming enterprise after all related prizes are paid.

(6) "Lottery gaming facility net revenues" means the balance of lottery gaming facility revenues remaining after deducting lottery gaming facility expenses.

(7) "Lottery gaming facility expenses" means the normal business expenses, as defined by the executive director pursuant to generally accepted accounting principles (GAAP), associated with the ownership and operation of a lottery gaming facility and enterprise. Lottery gaming enterprise expenses also shall include a payment of 0.5% of the lottery gaming facility revenues to the problem gambling grant fund and 0.5% of the lottery gaming facility revenues to designated veteran's service organizations in a manner to be determined pursuant to the management contract with the lottery gaming facility manager.

(8) "Lottery facility games" mean electronic gaming machines and any other lottery games which, as of May 1, 2003, are authorized to be conducted or operated at a tribal gaming facility, as defined in K.S.A. 74-9802, and amendments thereto, located within the exterior boundaries of this state.

(9) "Ancillary lottery gaming facility operations" means additional nonlottery facility game products and services not owned and operated by the state which may be included in

the overall development associated with the lottery gaming facility. Such operations may include restaurants, hotels, motels, museums, entertainment facilities or parimutuel licensee locations. Such operations conducted on state-owned property shall pay reasonable compensation to the state for the use of the space.

(10) "Certificate of authorization" means a written approval of the executive director authorizing the prospective lottery gaming facility manager to proceed with the local approval for establishment of a lottery gaming facility pursuant to this section.

(11) "Management contract" means a contract, subcontract, or collateral agreement between the state and the lottery gaming facility manager to manage a lottery gaming facility and the related lottery gaming enterprise negotiated and signed by the executive director and signed by the governor.

(b) The executive director shall issue a certificate of authorization to each prospective lottery gaming facility manager, which meets the necessary requirements established by the executive director. The executive director shall consider factors such as financial responsibility, integrity, reputation, experience and such other factors as the executive director deems appropriate.

(c) The executive director may charge an administrative application fee, reasonably related to the actual costs of processing the application, to applicants desiring to become lottery gaming facility managers.

(d) To be authorized as a lottery gaming facility manager a person shall:

(1) Have sufficient access to financial resources to support the activities required under this section;

(2) be current in payment of all taxes, interest and penalties owed to any taxing subdivision where the person is located in Kansas;

(3) be current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas, excluding items under formal appeal pursuant to applicable statutes; and

(4) have a minimum of three consecutive years experience in the management of a gaming related facility operated pursuant to state or federal law.

(e) The executive director may issue a temporary certificate of authorization to a person, which the executive director believes will meet the appropriate requirements for a certificate of authorization and upon a showing that the person, the principals, or officers and directors, if a corporation, have already completed acceptable background investigations by federal or state authorities.

(f) No person shall seek authorization from any city or county for development of a lottery gaming facility in the state of Kansas or enter into a management contract, unless such person holds a certificate of authorization.

(g) Subject to the provisions of subsection (h), the executive director, with the approval of the governor, may enter into a management contract with a prospective lottery gaming facility manager holding a certificate of authorization to construct and manage a lottery gaming facility at specified locations in the state where the executive director determines the operation of such facility would promote tourism and economic development.

(h) The executive director shall not contract with any person to operate any lottery gaming facility pursuant to this section unless such person first receives approval for development of such facility from the governing body of the city where the facility will be located or, if the machines will not be located within any city, from the governing body of the county prior to December 31, 2003.

After June 30, 2004, the executive director shall not contract with any party for the development or construction of any new lottery gaming facility.

(i) All management contracts shall:

(1) Have an initial minimum term of five years and a maximum initial term of seven years from the date of opening of the lottery gaming facility;

(2) provide for compensation to the lottery gaming facility manager not to exceed 30% of the lottery gaming facility net revenues;

(3) establish a mechanism for payment of lottery gaming facility expenses, distribution of the state's share of the lottery gaming facility net revenues and payment of the lottery gaming facility manager's share;

(4) establish the lottery facility games to be installed in such facility. The number of electronic gaming machines authorized in the contract shall not be less than 300;

(5) establish the maximum construction cost or purchase cost of the lottery gaming facility and the mechanism for recovering those costs from the state's share of the lottery gaming facility net revenues, and transfer of ownership of such facility to the state;

(6) calculate the accelerated lottery gaming facility net payment by multiplying the maximum number of electronic gaming machines authorized for the facility by \$15,000 per machine. The management contract also shall specify the mechanism for recovering that payment from the state's share of the lottery gaming facility net revenues;

(7) specify that financing is to be arranged by the lottery gaming facility manager, and together with the state, provide security interests, necessary to allow financing for construction and operation of the lottery gaming facility as well as other payments to the state required by the management contract;

(8) incorporate terms and conditions for the ancillary lottery gaming facility operations;

(9) designate as key employees any employees or contractors providing services or functions which are related to lottery facility games authorized by the management contract; and

(10) designate a tourism development region, for the purpose of cooperative promotion and development of tourism. Such contract shall provide for the distribution of regional tourism development funds as provided by subsection (n).

(j) Any management contract in which the accelerated lottery gaming facility net payment has not been paid to the state treasurer by June 30, 2004 shall be null and void.

(k) Management contracts authorized by this section may include provisions relating to:

(1) Accounting procedures to determine the lottery gaming facility revenues, unclaimed prizes and credits;

(2) minimum requirements for a lottery gaming facility manager to provide qualified oversight, security and supervision of the lottery facility games including the use of qualified personnel with experience in applicable technology;

(3) the eligibility requirements for employees of a lottery gaming facility manager who will have responsibility for the handling of cash or tokens. Such requirements may include a background investigation.

(4) provision for termination of the management contract by either party for cause; and

(5) include such other terms and restrictions as necessary to conduct any lottery facility game in a legal and fair manner.

(l) In determining whether to enter into a management contract with a person to manage a lottery gaming facility pursuant to this section, the executive director shall take into consideration the following factors: The size of the proposed facility, the estimated number of tourists that would be attracted by the proposed facility, the number and type of lottery facility games to be operated at the proposed facility.

(m) The executive director shall collect from each lottery gaming facility manager authorized pursuant to this section the state's share of lottery gaming facility net revenues pursuant to the terms of the management contract. The executive director shall remit the entire amount to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the respective account maintained for such contractor in the electronic gaming machine fund established pursuant to section 7, and amendments thereto.

(n) Within one week of receipt of the remittance, the state treasurer shall transfer the following percentages of the balance in each account in the electronic gaming machine fund for receipt of moneys from the lottery gaming facility manager:

(1) To the state general fund, 75%;

(2) to the state tourism fund established pursuant to K.S.A. 74-9003, and amendments thereto, 1%. Such amount shall be used to promote and develop tourism in the region designated pursuant to the management contract as authorized by this section;

(3) to any city where the lottery gaming facility is located, 5%;

(4) to the county where the lottery gaming facility is located, 8%;

(5) to the live greyhound racing purse supplement fund, 5%;

- (6) to the live horse racing purse supplement fund, 5%; and
- (7) to the electronic gaming machine operation and regulatory fund established pursuant to section 7, and amendments thereto, 1%.

(o) Lottery gaming facilities shall be operated pursuant to this section only if the qualified voters of the county in which the facility is located have previously authorized lottery gaming facilities pursuant to section 5, and amendments thereto, or have voted by a majority vote to permit operation of a facility within the county as follows:

(1) The board of county commissioners of any county may submit, by resolution, and shall submit upon presentation of a petition filed in accordance with this subsection, to the qualified voters of the county a proposition to permit the operation of lottery gaming facilities pursuant to this section within the county. The proposition shall be submitted to the voters either at a special election called by the board of county commissioners for that purpose and held not less than 90 days after the resolution is adopted or the petition is filed or at the next general election, as shall be specified by the board of county commissioners or as specified in the petition, as the case may be.

(2) A petition to submit a proposition pursuant to this section shall be filed with the county election officer. The petition shall be signed by qualified voters of the county equal in number to not less than 10% of the voters of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected. The following shall appear on the petition: "We request an election to determine whether the operation of lottery gaming facilities by the Kansas lottery shall be permitted in _____ county."

(3) Upon the adoption of a resolution or the submission of a valid petition calling for an election pursuant to this section, the county election officer shall cause the following proposition to be placed on the ballot at the election called for that purpose: "Shall the operation of lottery gaming facilities by the Kansas lottery be permitted in _____ county?"

(4) If a majority of the votes cast and counted at such election is in favor of permitting the operation of such lottery gaming facilities within the county, the executive director may approve management contracts pursuant to this section for operation of such facilities within the county. If a majority of the votes cast and counted at an election under this section is against permitting the operation of such machines and games within the county, the executive director shall not approve any management contract pursuant to this section for the operation of such facilities within the county. The county election officer shall transmit a copy of the certification of the results of the election to the executive director.

(5) The election provided for by this subsection shall be conducted, and the votes counted and canvassed, in the manner provided by law for question submitted elections of the county.

(6) If in any election provided for by this subsection, a majority of the votes cast and counted is against the proposition permitting the operation of such facilities in the county pursuant to this subsection, another election submitting the same proposition shall not be held for at least four years from the date of such election.

New Sec. 19. No taxes, fees, charges, transfers or distributions, other than those provided for in this act, shall be made or levied by any city, county or other municipality from or against net machine income or lottery gaming facility net revenue from lottery facility games operated pursuant to this act.

New Sec. 20. All sales of electronic gaming machine games and lottery facility games authorized by the Kansas gaming act shall be exempt from sales taxes imposed pursuant to K.S.A. 12-187 *et seq.*, and 79-3601 *et seq.*, and amendments thereto.

New Sec. 21. Each lottery gaming machine contractor shall hold the executive director of the Kansas lottery and the state harmless from and defend and pay for the defense of any and all claims which may be asserted against the executive director, the commission and the state, or the agents or employees thereof, arising from the operation of electronic gaming machines or other games pursuant to the Kansas gaming act. The provisions of this section shall not apply to any claims arising from the negligence or willful misconduct of the executive director, the commission and the state, or the agents or employees thereof.

New Sec. 22. As a condition precedent to contracting for the privilege of being a lottery gaming machine contractor, the contractor shall file with the secretary of state of this state written consent, irrevocable, that any action or garnishment proceeding may be commenced against such contractor in the proper court of any county in this state in which the case of action shall arise or in which the plaintiff may reside by the service of process on a resident agent, and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the contractor. The written consent shall state that the courts of this state have jurisdiction over the person of such contractor and are the proper and convenient forum for such action and shall waive the right to request a change of jurisdiction or venue to a court outside this state and that all actions arising under this act and commenced by the contractor shall be brought in this state's court as the proper and convenient forum. Such consent shall be executed by the contractor and if a corporation, by the president and secretary of the corporate contractor, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees or managers authorizing the president and secretary to execute the same.

Sec. 23. K.S.A. 74-8705 is hereby amended to read as follows: 74-8705. (a) Major procurement contracts shall be awarded in accordance with K.S.A. 75-3738 through 75-3744, and amendments thereto, or subsection (b), as determined by the director, except that:

(1) The contract or contracts for the initial lease of facilities for the Kansas lottery shall be awarded upon the evaluation and approval of the director, the secretary of administration and the director of architectural services; *or*

(2) the commission shall designate certain major procurement contracts or portions thereof to be awarded, in accordance with rules and regulations of the commission, solely to minority business enterprises.

(b) The director may award any major procurement contract by use of a procurement negotiating committee. Such committee shall be composed of: (1) The executive director or a Kansas lottery employee designated by the executive director; (2) the chairperson of the commission or a commission member designated by the chairperson; and (3) the director of the division of purchases or an employee of such division designated by the director. Prior to negotiating a major procurement contract, the committee shall solicit bids or proposals thereon. The division of purchases shall provide staff support for the committee's solicitations. Upon receipt of bids or proposals, the committee may negotiate with one or more of the persons submitting such bids or proposals and select from among such persons the person to whom the contract is awarded. Such procurements shall be open and competitive and shall consider relevant factors, including security, competence, experience, timely performance and maximization of net revenues to the state. If a procurement negotiating committee is utilized, the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto, shall not apply. Meetings conducted by the procurement negotiating committee shall be exempt from the provisions of the Kansas open meeting act, K.S.A. 75-4317 through 75-4320a, and amendments thereto.

(c) Before a major procurement contract is awarded, the executive director shall conduct a background investigation of: (1) The vendor to whom the contract is to be awarded; (2) all officers and directors of such vendor; (3) all persons who own a 5% or more interest in such vendor; (4) all persons who own a controlling interest in such vendor; and (5) any subsidiary or other business in which such vendor owns a controlling interest. The vendor shall submit appropriate investigation authorizations to facilitate such investigation. The executive director may require, in accordance with rules and regulations of the commission, that a vendor submit any additional information considered appropriate to preserve the integrity and security of the lottery. In addition, the executive director may conduct a background investigation of any person having a beneficial interest in a vendor. The secretary of revenue, securities commissioner, attorney general and director of the Kansas bureau of investigation shall assist in any investigation pursuant to this subsection upon request of the executive director. Whenever the secretary of revenue, securities commissioner, attorney general or director of the Kansas bureau of investigation assists in such an investigation and incurs costs in addition to those attributable to the operations of the office or bureau, such additional costs shall be paid by the Kansas lottery. The furnishing of assistance in such an

investigation shall be a transaction between the Kansas lottery and the respective officer and shall be settled in accordance with K.S.A. 75-5516, and amendments thereto.

Upon the request of the chairperson, the Kansas bureau of investigation and other criminal justice agencies shall provide to the chairperson all background investigation information including criminal history record information, arrest and nonconviction data, criminal intelligence information and information relating to criminal and background investigations of a vendor to whom a major procurement contract is to be awarded. Such information, other than conviction data, shall be confidential and shall not be disclosed, except as provided in this section. In addition to any other penalty provided by law, disclosure of such information shall be grounds for removal from office or termination of employment.

(d) All major procurement contracts shall be subject to approval of the commission.

(e) (1) *Except as provided by paragraph (2), the executive director shall not agree to any renewal or extension of a major procurement contract unless such extension or renewal is awarded in the manner provided by this section.*

(2) *The provisions of paragraph (1) shall not apply to the extension or renegotiation of an existing contract with a vendor for the purposes of providing services for the monitoring and control of electronic gaming machines or lottery facility games under the Kansas gaming act. The provisions of this subsection shall expire on June 30, 2005.*

Sec. 24. K.S.A. 74-8710 is hereby amended to read as follows: 74-8710. (a) The commission, upon the recommendation of the executive director, shall adopt rules and regulations governing the establishment and operation of a state lottery as necessary to carry out the purposes of this act. Temporary rules and regulations may be adopted by the commission without being subject to the provisions and requirements of K.S.A. 77-415 through 77-438, and amendments thereto, but shall be subject to approval by the attorney general as to legality and shall be filed with the secretary of state and published in the Kansas register. Temporary and permanent rules and regulations may include but shall not be limited to:

(1) Subject to the provisions of subsection (c), the types of lottery games to be conducted, including but not limited to instant lottery, on-line and traditional games, but not including games on video lottery machines or lottery machines.

(2) The manner of selecting the winning tickets or shares, except that, if a lottery game utilizes a drawing of winning numbers, a drawing among entries or a drawing among finalists, such drawings shall always be open to the public and shall be recorded on both video and audio tape.

(3) The manner of payment of prizes to the holders of winning tickets or shares.

(4) The frequency of the drawings or selections of winning tickets or shares.

(5) The type or types of locations at which tickets or shares may be sold.

(6) The method or methods to be used in selling tickets or shares.

(7) Additional qualifications for the selection of lottery retailers and the amount of application fees to be paid by each.

(8) The amount and method of compensation to be paid to lottery retailers, including special bonuses and incentives.

(9) Deadlines for claims for prizes by winners of each lottery game.

(10) Provisions for confidentiality of information submitted by vendors pursuant to K.S.A. 74-8705, and amendments thereto.

(11) Information required to be submitted by vendors, in addition to that required by K.S.A. 74-8705, and amendments thereto.

(12) The major procurement contracts or portions thereof to be awarded to minority business enterprises pursuant to subsection (a) of K.S.A. 74-8705, and amendments thereto, and procedures for the award thereof.

(13) *Rules and regulations to implement, administer and enforce the provisions of the Kansas gaming act.*

(14) *The types of electronic gaming machines to be operated and lottery facility games operated pursuant to the Kansas gaming act.*

(b) No new lottery game shall commence operation after the effective date of this act unless first approved by the governor or, in the governor's absence or disability, the lieutenant governor. *This subsection shall not be construed to require approval of games played on an electronic gaming machine.*

(c) The lottery shall adopt rules and regulations concerning the game of keno. Such rules and regulations shall require that the amount of time which elapses between the start of games shall not be less than four minutes.

Sec. 25. K.S.A. 74-8711 is hereby amended to read as follows: 74-8711. (a) There is hereby established in the state treasury the lottery operating fund.

(b) *Except as otherwise provided by the Kansas gaming act*, the executive director shall remit all moneys collected from the sale of lottery tickets and shares and any other moneys received by or on behalf of the Kansas lottery to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the lottery operating fund. Moneys credited to the fund shall be expended or transferred only as provided by this act. Expenditures from such fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive director or by a person designated by the executive director.

(c) Moneys in the lottery operating fund shall be used for:

(1) The payment of expenses of the lottery, which shall include all costs incurred in the operation and administration of the Kansas lottery, *other than expenses incurred pursuant to the Kansas gaming act*; all costs resulting from contracts entered into for the purchase or lease of goods and services needed for operation of the lottery, including but not limited to supplies, materials, tickets, independent studies and surveys, data transmission, advertising, printing, promotion, incentives, public relations, communications and distribution of tickets and shares; and reimbursement of costs of facilities and services provided by other state agencies;

(2) the payment of compensation to lottery retailers;

(3) transfers of moneys to the lottery prize payment fund pursuant to K.S.A. 74-8712, and amendments thereto;

(4) transfers to the state general fund pursuant to K.S.A. 74-8713, and amendments thereto;

(5) transfers to the state gaming revenues fund pursuant to subsection (d) of this section and as otherwise provided by law; and

(6) transfers to the county reappraisal fund as prescribed by law.

(d) The director of accounts and reports shall transfer moneys in the lottery operating fund to the state gaming revenues fund created by K.S.A. 79-4801, and amendments thereto, on or before the 15th day of each month in an amount certified monthly by the executive director and determined as follows, whichever is greater:

(1) An amount equal to the moneys in the lottery operating fund in excess of those needed for the purposes described in subsections (c)(1) through (c)(4); or

(2) except for pull-tab lottery tickets and shares, an amount equal to not less than 30% of total monthly revenues from the sales of lottery tickets and shares less estimated returned tickets. In the case of pull-tab lottery tickets and shares, an amount equal to not less than 20% of the total monthly revenues from the sales of pull-tab lottery tickets and shares less estimated returned tickets.

Sec. 26. K.S.A. 74-8723 is hereby amended to read as follows: 74-8723. (a) The Kansas lottery and the office of executive director of the Kansas lottery, established by K.S.A. 74-8703, and amendments thereto, and the Kansas lottery commission, created by K.S.A. 74-8709, and amendments thereto, shall be and hereby are abolished on July 1, ~~2005~~ 2011.

(b) This section shall be part of and supplemental to the Kansas lottery act.

Sec. 27. K.S.A. 2002 Supp. 79-4805 is hereby amended to read as follows: 79-4805. (a) There is hereby established in the state treasury the problem gambling grant fund. All moneys credited to such fund shall be used only for the awarding of grants under this section. Such fund shall be administered in accordance with this section and the provisions of appropriation acts.

(b) All expenditures from the problem gambling grant fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved in the manner prescribed by law.

(c) There is hereby established a state grant program to provide assistance for the direct treatment of persons diagnosed as suffering from pathological gambling, *the continued training of addiction professionals, the marketing of programs funded pursuant to this section*, and to provide funding for research regarding the impact of gambling on residents of Kansas. Research grants awarded under this section may include, but need not be limited to, grants for determining the effectiveness of education, *treatment* and prevention efforts on the prevalence of pathological gambling in Kansas. All grants shall be made after open solicitation of proposals and evaluation of proposals against criteria established in rules and regulations adopted by the secretary of the department of social and rehabilitation services. Both public and private entities shall be eligible to apply for and receive grants under the provisions of this section.

(d) The secretary of the department of social and rehabilitation services is hereby authorized to receive moneys from any grants, gifts, contributions or bequests made for the purpose of funding grants under this section and to expend such moneys for the purpose for which received.

(e) All grants made in accordance with this section shall be made from the problem gambling grant fund. The secretary shall administer the provisions of this section and shall adopt rules and regulations establishing criteria for qualification to receive grants and such other matters deemed necessary by the secretary for the administration of this section. Such rules and regulations shall include, but need not be limited to, a requirement that each recipient of a grant to provide treatment for pathological gamblers report at least annually to the secretary the grantee's measurable achievement of specific outcome goals.

(f) For the purpose of this section "pathological gambling" means the disorder by that name described in the most recent edition of the diagnostic and statistical manual.

Sec. 28. K.S.A. 2002 Supp. 19-101a is hereby amended to read as follows: 19-101a. (a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

(1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.

(2) Counties may not consolidate or alter county boundaries.

(3) Counties may not affect the courts located therein.

(4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(5) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.

(6) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271—74th congress, or amendments thereof.

(7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

(8) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.

(9) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(10) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment project area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

(11) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions

on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

(12) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

(13) Except as otherwise specifically authorized by K.S.A. 12-1,101 through 12-1,109, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived.

(14) Counties may not exempt from or effect changes in K.S.A. 19-430, and amendments thereto.

(15) Counties may not exempt from or effect changes in K.S.A. 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

(16) (A) Counties may not exempt from or effect changes in K.S.A. 13-13a26, and amendments thereto.

(B) This provision shall expire on June 30, 2004.

(17) (A) Counties may not exempt from or effect changes in K.S.A. 71-301a, and amendments thereto.

(B) This provision shall expire on June 30, 2004.

(18) Counties may not exempt from or effect changes in K.S.A. 19-15,139, 19-15,140 and 19-15,141, and amendments thereto.

(19) Counties may not exempt from or effect changes in the provisions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-1226, and amendments thereto, or the provisions of K.S.A. 12-1260 through 12-1270 and 12-1276, and amendments thereto.

(20) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-211, and amendments thereto.

(21) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto.

(22) Counties may not regulate the production or drilling of any oil or gas well in any manner which would result in the duplication of regulation by the state corporation commission and the Kansas department of health and environment pursuant to chapter 55 and chapter 65 of the Kansas Statutes Annotated and any rules and regulations adopted pursuant thereto. Counties may not require any license or permit for the drilling or production of oil and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well.

(23) Counties may not exempt from or effect changes in K.S.A. 79-41a04, and amendments thereto.

(24) Counties may not exempt from or effect changes in K.S.A. 79-1611, and amendments thereto.

(25) Counties may not exempt from or effect changes in K.S.A. 79-1494, and amendments thereto.

(26) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-202, and amendments thereto.

(27) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-204, and amendments thereto.

(28) Counties may not levy or impose an excise, severance or any other tax in the nature of an excise tax upon the physical severance and production of any mineral or other material from the earth or water.

(29) Counties may not exempt from or effect changes in K.S.A. 79-2017 or 79-2101, and amendments thereto.

(30) Counties may not exempt from or effect changes in K.S.A. 2-3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d 65-1,178 through 65-1,199 or K.S.A. 2002 Supp. 17-5909, and amendments thereto.

(31) Counties may not exempt from or effect changes in K.S.A. 2002 Supp. 80-121, and amendments thereto.

(32) Counties may not exempt from or effect changes in K.S.A. 19-228, and amendments thereto.

(33) *Counties may not exempt from or effect changes in the Kansas lottery act.*

(34) *Counties may not exempt from or effect changes in the Kansas gaming act.*

(b) Counties shall apply the powers of local legislation granted in subsection (a) by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b, and amendments thereto.

(c) Any resolution adopted by a county which conflicts with the restrictions in subsection (a) is null and void.

Sec. 29. K.S.A. 74-8702, 74-8705, 74-8710, 74-8711 and 74-8723 and K.S.A. 2002 Supp. 19-101a and 79-4805 are hereby repealed.”;

By renumbering the remaining section accordingly;

In the title, in line 11, following “74-8702,” by inserting “74-8705,”; also in line 11, by striking “and” and inserting a comma; in line 12, following “74-8711” by inserting “and 74-8723”

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

On roll call, the vote was: Yeas 18, Nays 21, Present and Passing 1, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barone, Brungardt, Bunten, Corbin, Emler, Feleciano, Gilstrap, Gooch, Haley, Jackson, Lee, Schmidt, Schodorf, Steineger, Teichman, Vratil.

Nays: Barnett, Brownlee, Buhler, Clark, Donovan, Downey, Goodwin, Harrington, Huelskamp, Jordan, Kerr, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Taddiken, Tyson, Umbarger, Wagle.

Present and Passing: Hensley.

The motion failed and the amendment was rejected.

The Committee recommended **SB 226** be passed as amended by adoption of the committee amendments.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator Oleen an emergency was declared by a $\frac{2}{3}$ constitutional majority, and **SB 226** was advanced to Final Action and roll call.

SB 226, An act concerning electronic gaming machines; allowing electronic gaming machines at racetracks; amending K.S.A. 74-8702, 74-8710 and 74-8711 and K.S.A. 2002 Supp. 19-101a and 79-4805 and repealing the existing sections.

On roll call, the vote was: Yeas 4, Nays 34, Present and Passing 2, Absent or Not Voting 0.

Yeas: Barone, Gilstrap, Haley, Steineger.

Nays: Adkins, Allen, Barnett, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Goodwin, Harrington, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Present and Passing: Gooch, Hensley.

A constitutional majority having failed to vote in favor of the bill, **SB 226** did not pass.

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 bills: **SB 109**; **HB 2205**, **HB 2423**.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2205**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with Senate Committee of the Whole amendments, as follows:

On page 8, following line 3, by inserting the following:

“Sec. 7. K.S.A. 2002 Supp. 79-2804g is hereby amended to read as follows: 79-2804g.

(a) Whenever any tract, lot or piece of real estate is offered for sale at public auction pursuant to K.S.A. 79-2804, and amendments thereto, such tract, lot or piece of real estate shall not be sold, either directly or indirectly, to:

(1) Any person having a statutory right to redeem such real estate prior to such sale, pursuant to the provisions of K.S.A. 79-2803, and amendments thereto, *except that this paragraph (1) shall not prohibit sale to any person or such person's assignee who held an interest in such real estate as mortgagee of record at the time of the sale;*

(2) any parent, grandparent, child, grandchild, spouse, sibling, trustee or trust beneficiary who held an interest in a tract as owner or holder of the record title or who held an interest at any time when any tax constituting part of the county's judgment became due; or

(3) with respect to a title holding corporation, any current or former stockholder, current officer or director, or any person having a relationship enumerated in paragraph (2) to such stockholder, officer or director.

(b) If any such real estate is acquired by a county pursuant to K.S.A. 79-2804, and amendments thereto, and, at the end of six months from and after confirmation of such sale to the county, such real estate is advertised for sale at public auction, as provided in K.S.A. 79-2804f, and amendments thereto, such real estate shall not be sold, either prior to or at such auction, to any person having a statutory right to redeem such real estate, under the provisions of K.S.A. 79-2803, and amendments thereto, for an amount less than the original judgment lien and interest thereon, plus the costs, charges and expenses of the proceedings and sale, as set forth in the execution and order of sale issued pursuant to K.S.A. 79-2804, and amendments thereto.

(c) If any tract, lot or piece of real estate purchased at public auction pursuant to K.S.A. 79-2804, and amendments thereto, is transferred, sold, given or otherwise conveyed to any person who had a statutory right to redeem such real estate prior to such sale pursuant to K.S.A. 79-2803, and amendments thereto, within 10 years of the date of the public auction, such person shall be liable for an amount equal to the original judgment lien and interest thereon from the date of the public auction, *except that this subsection shall not apply to any person or such person's assignee who held an interest in such real estate as mortgagee of record at the time of the sale.*

(d) The provisions of this section shall apply to the sale or conveyance of any real estate by a county land bank established pursuant to K.S.A. 2002 Supp. 19-26,104, *and amendments thereto.*

Sec. 8. K.S.A. 79-2804h is hereby amended to read as follows: 79-2804h. No sale of real estate as provided for in article 28 of chapter 79 of the Kansas Statutes Annotated, *and amendments thereto*, shall be confirmed as provided for in K.S.A. 79-2804, *and amendments thereto*, until the purchaser at the sale; ~~shall file~~ files with the clerk of the court, an affidavit stating that the purchase of the real estate was not made, either directly or indirectly, for any person having the statutory right to redeem, *other than any person or such person's assignee who held an interest in such real estate as mortgagee of record at the time of the sale.*”;

And by renumbering the remaining sections accordingly;

Also on page 8, in line 4, by striking “and” where it first appears and inserting a comma; also in line 4, after “79-503a” by inserting “and 79-2804h”; in line 5, after “79-213” by inserting “and 79-2804g”;

On page 1, in the title, in line 20, after the semicolon, by inserting “relating to the sale of real estate for delinquent taxes;”; also in line 20, by striking “and” and inserting a comma; also in line 20, after “79-503a” by inserting “and 79-2804h”; in line 21, after “79-213” by inserting “and 79-2804g”;

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

DAVID R. CORBIN
LES DONOVAN
JANIS K. LEE
Conferees on part of Senate

MICHAEL O'NEAL
DOUG PATTERSON
JANICE L. PAULS
Conferees on part of House

Senator Corbin moved the Senate adopt the Conference Committee Report on **HB 2205**.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: 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, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2423**, submits the following report:

The Senate recedes from all of its amendments to the bill;

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

STEPHEN R. MORRIS
DAVID ADKINS
PAUL FELECIANO, JR.
Conferees on part of Senate

MELVIN NEUFELD
CLARK SHULTZ
ROCKY NICHOLS
Conferees on part of House

Senator Morris moved the Senate adopt the Conference Committee Report on **HB 2423**.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: 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, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The Conference Committee report was adopted.

MESSAGE FROM THE HOUSE

Announcing passage of **SB 285**, as amended.

The House nonconcur in Senate amendments to **HB 2287**, requests a conference and has appointed Representatives Edmonds, Huff and Larkin as conferees on the part of the House.

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

Senator Huelskamp moved the Senate concur in house amendments to **SB 109**.

SB 109, An act concerning certain municipalities; relating to the transfer of certain property acquired for cemetery purposes; amending K.S.A. 19-3101 and 19-3103 and repealing the existing sections; also repealing K.S.A. 19-3102.

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

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

Nays: Haley.

The Senate concurred.

On motion of Senator Morris the Senate nonconcurred in the House amendments to **SB 285** and requested a conference committee be appointed.

The President appointed Senators Morris, Adkins and Feleciano as a conference committee on the part of the Senate.

ORIGINAL MOTION

On motion of Senator Corbin, the Senate acceded to the request of the House for a conference on **HB 2287**.

The President appointed Senators Corbin, Donovan and Lee as conferees on the part of the Senate.

ORIGINAL MOTION

Having voted on the prevailing side in Final Action and citing Senate Rule 28, Senator Harrington moved the Senate reconsider its adverse action on **SB 226**. The motion failed.

On motion of Senator Oleen the Senate adjourned until 9:30 a.m., Tuesday, May 6, 2003.

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

PAT SAVILLE, *Secretary of the Senate*.

