

# Journal of the House

## SIXTEENTH DAY

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HALL OF THE HOUSE OF REPRESENTATIVES,  
TOPEKA, KS, Tuesday, February 3, 2004, 11:00 a.m.

The House met pursuant to adjournment with Speaker Mays in the chair.  
The roll was called with 123 members present.  
Rep. Schwab was excused on verified illness.  
Rep. D. Williams was excused on excused absence by the Speaker.

Prayer by guest chaplain, the Rev. Clint W. Decker, pastor, Clay Center Wesleyan Church, and husband of Rep. Decker:

Father in heaven, holy is your name. I seek your blessing on behalf of our Nation and its leaders. May our Representatives draw near to you and experience your unconditional love. May each seek your divine guidance for the hard decisions they face today.

Grant us all a holy desire to study Scripture, pray, and seek your plans for our lives.

In your unfolding mercy strengthen marriages, sustain vital relationships, and grant peace to each and every home.

God, bring a spiritual awakening across this land that every citizen of this great country would know your love and mercy as it transforms their lives, heals their wounds, and creates hope in hungry hearts.

I pray in the name of Jesus my Lord, who is the Wonderful Counselor, Mighty God, and Prince of Peace. Amen.

The Pledge of Allegiance was led by Rep. Huebert.

### INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

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

**HB 2683**, An act concerning punitive damages; relating to splitting damage awards; amending K.S.A. 60-3701 and 60-3702 and repealing the existing sections, by Committee on Judiciary.

**HB 2684**, An act concerning civil procedure; relating to joint custody; amending K.S.A. 2003 Supp. 60-1610 and repealing the existing section, by Committee on Judiciary.

**HB 2685**, An act relating to payday loans; concerning the regulation thereof; amending K.S.A. 2003 Supp. 16a-2-404 and repealing the existing section, by Committee on Financial Institutions.

**HB 2686**, An act relating to emergency medical services; providing for emergency medical responder; amending K.S.A. 65-6001, 65-6112, 65-6124, 65-6144 and 65-6145 and K.S.A. 2003 Supp. 75-4364 and repealing the existing sections, by Select Committee on Kansas Security.

**HB 2687**, An act concerning the office of the adjutant general; relating to the duties of the division of emergency management; amending K.S.A. 2003 Supp. 48-904 and 48-928 and repealing the existing sections, by Select Committee on Kansas Security.

## HOUSE CONCURRENT RESOLUTION No. 5033—

By Committee on Federal and State Affairs

A PROPOSITION to amend article 15 of the constitution of the state of Kansas by adding a new section thereto, concerning marriage.

*Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the House of Representatives and two-thirds of the members elected (or appointed) and qualified to the Senate concurring therein:*

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Article 15 of the constitution of the state of Kansas is amended by adding a new section thereto to read as follows:

“§ 16. **Marriage.** The marriage contract is to be considered in law as a civil contract. Marriage shall be constituted by one man and one woman only and the rights, privileges and incidents of marriage shall inure only to the benefit of parties to such a marriage. All other marriages are declared to be contrary to the public policy of this state and are void.”

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

“*Explanatory statement.* There is currently no constitutional provision regarding the marriage relationship.

“A vote for this proposition would provide in the constitution that marriage is a civil contract between a man and a woman and that all other marriages are void.

“A vote against this proposition would allow the legislature to continue to determine by statute the nature of the marriage relationship.”

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the House of Representatives, and two-thirds of the members elected (or appointed) and qualified to the Senate, shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election in November in the year 2004 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

**REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS**

The following bills were referred to committees as indicated:

Appropriations: **HB 2675.**

Federal and State Affairs: **HB 2680.**

Judiciary: **HB 2676, HB 2677, HB 2678.**

Taxation: **HB 2679, HB 2681, HB 2682.**

**INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS**

The following resolutions were introduced and read by title:

## HOUSE RESOLUTION No. 6016—

By Representatives Merrick, Aurand, Ballard, Ballou, Barbieri-Lightner, Beggs, Bethell, Boyer, Brunk, Burgess, Campbell, Carlin, Carter, Compton, Cox, Craft, Crow, Dahl, Davis, DeCastro, Decker, Dillmore, Dreher, Edmonds, Faber, Faust-Goudeau, Feuerborn, Flaharty, Flora, Freeborn, Gatewood, Gilbert, Goering, Goico, Gordon, Grant, Hayzlett, Henderson, Henry, Hill, Holland, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Huntington, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kassebaum, Kauffman, Kirk, Klein, Krehbiel, Landwehr, Lane, Larkin, Light, Loganbill, M. Long, Long-Mast, Loyd, Mason, Mays, McCreary, McKinney, McLeland, F. Miller, J. Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neighbor, Neufeld, Newton, Novascone, O'Malley, O'Neal, Osborne, Ostmeyer, Owens, Patterson, Pauls, Phelps, Pottorff, Powell, Powers, Reardon, Rehorn, Reitz, Ruff, Sawyer, Schwab, Schwartz, Scoggins-Waite, B. Sharp, S. Sharp, Showalter, Shriver, Shultz, Siegfried, Sloan, Storm,

Swenson, Tafanelli, Thimesch, Thull, Toelkes, Vickrey, Ward, Wilk, D. Williams, J. Williams, Wilson, Winn, Yoder and Yonally

A RESOLUTION recognizing February 6 as Ronald Reagan Day.

WHEREAS, President Ronald Reagan worked throughout his life serving freedom and advancing the public good, having been employed as an entertainer, union leader, corporate spokesman, Governor of California and President of the United States; and

WHEREAS, Ronald Reagan served with honor and distinction for two terms as the 40th President of the United States of America; the second of which he was victorious in 49 of the 50 states in the general election — a record unsurpassed in the history of American presidential elections; and

WHEREAS, During Mr. Reagan's presidency he worked in a bipartisan manner to enact his bold agenda of restoring accountability and common sense to government which led to an unprecedented economic expansion and opportunity for millions of Americans; and

WHEREAS, President Reagan's commitment to our armed forces contributed to the restoration of pride in America, her values and those cherished by the free world, and prepared America's armed forces to meet 21st century challenges; and

WHEREAS, President Reagan's vision of "peace through strength" led to the end of the Cold War and the ultimate demise of the Soviet Union, guaranteeing basic human rights for millions of people; and

WHEREAS, On February 6, 2004, Ronald Reagan will have reached the age of ninety-three years: Now, therefore,

*Be it resolved by the House of Representatives of the State of Kansas:* That we honor the legacy of Ronald Reagan by recognizing February 6 as Ronald Reagan Day; and

*Be it further resolved:* That the Chief Clerk of the House of Representatives provide an enrolled copy of this resolution to the Ronald Reagan Legacy Project, 1920 L. Street N.W., Suite 200, Washington, D.C. 20036.

HOUSE RESOLUTION No. 6017—

By Committee on Taxation

A RESOLUTION regarding the reporting of local sales or use taxes.

WHEREAS, The Kansas Legislature enacted, in 2003 House Bill No. 2005, the uniformity provisions required by the streamlined sales and use tax agreement, including the destination-based sourcing rules codified at K.S.A. 79-3670 *et seq.*; and

WHEREAS, Implementation of destination-based sourcing rules has resulted in increased burdens for certain retailers in filing sales and use tax returns for reporting local sales or use tax by taxing jurisdiction in which sales were shipped or delivered: Now, therefore,

*Be it resolved by the House of Representatives of the State of Kansas:* That the Legislature hereby urges the Department of Revenue to implement necessary steps to reduce the reporting burden by allowing retailers collecting local sales or use tax on sales sourced to cities that have not levied a city tax to report such tax under the applicable county taxing jurisdiction code; and

*Be it further resolved:* That the Chief Clerk of the House of Representatives provide an enrolled copy of this resolution to the Secretary of Revenue.

#### CONSENT CALENDAR

No objection was made to **HB 2549** appearing on the Consent Calendar for the second day.

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

#### COMMITTEE OF THE WHOLE

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

Recommended committee report to **HB 2522** be adopted; and the bill be passed as amended.

Committee report to **HB 2528** be adopted; also, on motion of Rep. Long-Mast be amended on page 2, in line 3, by striking all following “hydrants”; by striking all in lines 4, 5 and 6; in line 7, by striking all preceding “acquisition” and inserting “, or similar devices for fighting fires, including necessary equipment, services or supplies related thereto.

The”;

Also on page 2, in line 11, following “hydrant” by inserting “, or other similar device for fighting fires.”; in line 34, by striking all following “hydrants”; by striking all in lines 35, 36 and 37; in line 38, by striking all preceding “acquisition” and inserting “, or similar devices for fighting fires, including necessary equipment, services or supplies related thereto.

The”;

Also on page 2, in line 42, following “hydrant” by inserting “, or other similar device for fighting fires.”;

On page 3, in line 16, by striking all following “hydrants”; by striking all in lines 17, 18 and 19; in line 20, by striking all preceding “acquisition” and inserting “, or similar devices for fighting fires, including necessary equipment, services or supplies related thereto.

The”;

Also on page 3, in line 24, following “hydrant” by inserting “, or other similar device for fighting fires.”;

On page 4, in line 23, by striking all following “hydrants”; by striking all in lines 24, 25 and 26; in line 27, by striking all preceding “acquisition” and inserting “, or similar devices for fighting fires, including necessary equipment, services or supplies related thereto.

The”;

Also on page 4, in line 31, following “hydrant” by inserting “, or other similar device for fighting fires.”;

On page 5, in line 7, by striking all following “hydrants”; by striking all in lines 8, 9 and 10; in line 11, by striking all preceding “acquisition” and inserting “, or similar devices for fighting fires, including necessary equipment, services or supplies related thereto.

The”;

Also on page 5, in line 15, following “hydrant” by inserting “, or other similar device for fighting fires.”; in line 29, by striking all following “hydrants”; by striking all in lines 30, 31 and 32; in line 33, by striking all preceding “acquisition” and inserting “, or similar devices for fighting fires, including necessary equipment, services or supplies related thereto.

The”;

Also on page 5, in line 37, following “hydrant” by inserting “, or other similar device for fighting fires.”;

On page 7, in line 7, by striking all following “hydrants”; by striking all in lines 8, 9 and 10; in line 11, by striking all preceding “acquisition” and inserting “, or similar devices for fighting fires, including necessary equipment, services or supplies related thereto.

The”;

Also on page 7, in line 15, following “hydrant” by inserting “, or other similar device for fighting fires.”; in line 35, by striking all following “hydrants”; by striking all in lines 36, 37 and 38; in line 39, by striking all preceding “acquisition” and inserting “, or similar devices for fighting fires, including necessary equipment, services or supplies related thereto.

The”;

Also on page 7, in line 43, following “hydrant” by inserting “, or other similar device for fighting fires.”;

On page 8, in line 15, by striking all following “hydrants”; by striking all in lines 16, 17 and 18; in line 19, by striking all preceding “acquisition” and inserting “, or similar devices for fighting fires, including necessary equipment, services or supplies related thereto.

The”;

Also on page 8, in line 23, following “hydrant” by inserting “, or other similar device for fighting fires.”; in line 41, by striking all following “hydrants”; by striking all in lines 42 and 43;

On page 9, by striking all in line 1; in line 2, by striking all preceding “acquisition” and inserting “, or similar devices for fighting fires, including necessary equipment, services or supplies related thereto.

The”;

Also on page 9, in line 6, following "hydrant" by inserting ", or other similar device for fighting fires,"; in line 23, by striking all following "hydrants"; by striking all in lines 24, 25 and 26; in line 27, by striking all preceding "acquisition" and inserting ", or similar devices for fighting fires, including necessary equipment, services or supplies related thereto.

The";

Also on page 9, in line 31, following "hydrant" by inserting ", or other similar device for fighting fires,";

Also, on motion of Rep. O'Neal, **HB 2528** be amended on page 10, following line 14, by inserting:

"Sec. 12. K.S.A. 31-137 is hereby amended to read as follows: 31-137. The state fire marshal, ~~his~~ *deputies of the fire marshal*, the chief of any organized fire department of any municipality, whether such fire department is regular or volunteer, or any member of any such fire department who has been duly authorized by the chief thereof, shall enforce the provisions of this act and any rules and regulations adopted pursuant thereto. ~~Said~~ *Such* persons are authorized to make any investigations deemed necessary of any fire or explosion occurring within this state; ~~and they~~. *Such persons* shall make an investigation of any fire or explosion occurring within this state, or an attempt to cause any fire or explosion within this state, if there is reason to believe that the fire was of an incendiary origin or was an attempt to defraud an insurance company. *In addition, the chief of any organized fire department of any municipality may designate other qualified persons to conduct such investigations in such municipality.* In order to carry out such investigations, the state fire marshal and those persons ~~herein~~ *designated by or authorized to be designated by this section* shall have the right and authority at all times of day or night to enter upon or examine, in accordance with existing laws and regulations, any building or ~~premise~~ *premises* where any fire or explosion or attempt to cause a fire or explosion ~~shall have~~ *has* occurred. ~~Every person designated herein~~ *Such persons* shall make a written report of the findings of any investigation conducted ~~by him~~ pursuant to this section which shall be filed in the office of the state fire marshal.";

By renumbering sections accordingly;

Also on page 10, in line 15, before "K.S.A." by inserting "K.S.A. 31-137 and";

In the title, in line 12, after the semicolon, by inserting "relating to fire and explosion investigations,"; also in line 12, following "amending" by inserting "K.S.A. 31-137 and"; and **HB 2528** be passed as amended.

#### REPORTS OF STANDING COMMITTEES

Committee on **Ethics and Elections** recommends **HB 2606** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Upon unanimous consent, the House referred back to the regular order of business, Introduction of Bills and Concurrent Resolutions.

#### INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

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

**HB 2688**, An act concerning state procurement; relating to state purchase of products by certain qualified vendors; amending K.S.A. 75-3317, 75-3319, 75-3321 and 75-3322 and K.S.A. 2003 Supp. 75-3320 and repealing the existing sections by Committee on Appropriations.

**HB 2689**, An act concerning health insurance; requiring certain disclosures to holders of group policies; enacting the Kansas employee health care affordability and accountability act, by Committee on Insurance.

**HB 2690**, An act concerning civil procedure; relating to the disclosure of financial records of a criminal offender; amending K.S.A. 2003 Supp. 60-4305 and repealing the existing section, by Committee on Corrections and Juvenile Justice.

**HB 2691**, An act amending the child passenger safety act; amending K.S.A. 8-1343a, 8-1344 and 8-1345 and repealing the existing sections, by Representative Vickrey.

**HB 2692.** An act concerning the transfer of certain sales tax revenue to the state highway fund; amending K.S.A. 2003 Supp. 79-34,147 and repealing the existing section, by Committee on Transportation.

**HB 2693.** An act concerning crimes and punishment; relating to mistreatment of a dependent adult; amending K.S.A. 21-3437 and repealing the existing section, by Representatives Newton and Davis.

**HB 2694.** An act relating to drivers' licenses; concerning certain age restrictions; amending K.S.A. 8-235d, 8-237, 8-239, 8-296, 8-297 and 8-2,147 and K.S.A. 2003 Supp. 8-240 and repealing the existing sections, by Representative Burroughs.

**HB 2695.** An act relating to littering; providing for criminal littering; creating a traffic infraction of littering; amending K.S.A. 8-2118 and 21-3722 and repealing the existing sections, by Representatives Vickrey and Feuerborn.

HOUSE CONCURRENT RESOLUTION No. 5034—

By Representatives Landwehr, Barbieri-Lightner, Brunk, Carter, Dahl, DeCastro, Faber, Goering, Goico, Hayzlett, Howell, Huebert, Hutchins, Huy, Kauffman, Long-Mast, Mason, Mays, McCreary, McLeland, Merrick, F. Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Novascone, Osborne, Ostmeyer, Powell, Powers, Schwab, Schwartz, Shultz, Siegfried and D. Williams.

A PROPOSITION to amend the constitution of the state of Kansas by adding a new article thereto, prescribing certain limits upon taxes, revenues and expenditures by the state.

*Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the House of Representatives and two-thirds of the members elected (or appointed) and qualified to the Senate concurring therein:*

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: The constitution of the state of Kansas is amended by adding a new article thereto to read as follows:

**“Article 16. — TAX, REVENUE AND EXPENDITURE LIMITATIONS ON STATE GOVERNMENT.**

§ 1. *Definitions.* As used within this article:

(a) “State” means the state government including all branches, state offices, authorities, agencies, boards, commissions, institutions, instrumentalities and any division or unit of state government which are directly supported with tax funds, except that “state” does not include any enterprise;

(b) “local government” means any county, township, city, education district, other special district and any other taxing district or political subdivision of Kansas which is directly supported by tax funds, except that “local government” does not include any enterprise;

(c) “enterprise” means a state-owned or local government-owned business authorized to issue its own revenue bonds and receiving less than 10% of annual revenue in grants or other direct cash benefit from the state and local governments combined;

(d) “bond” means any bond, note, debenture, interim certificate, grant and revenue anticipation note, lease-purchase agreement, lease certificate of participation or other evidence of indebtedness which, in any such case, is entered into or establishes a debt obligation for longer than one fiscal year, whether or not the interest on which is subject to federal income taxation;

(e) “fiscal year” means the twelve-month fiscal period prescribed by law for the state;

(f) “fiscal year spending” means all expenditures and reserve increases except, as to both, (A) expenditures for refunds of any kind, (B) expenditures of moneys received from the federal government, moneys received as grants, gifts or donations which are to be expended for purposes specified by the donor, moneys that are collections for another government, moneys received for pension contributions by

employees and pension fund earnings, or (C) emergency reserve fund or budget stabilization reserve fund transfers or expenditures in accordance with this article;

(g) “inflation” means the change expressed as a percentage in the consumer price index for the Kansas City metropolitan area, all goods, all urban consumers, as officially reported by the bureau of labor statistics of the United States department of labor, or its successor index; and

(h) “population” means the more recent of either the periodic census conducted by the United States department of commerce or its successor agency or the annual update of such census as prescribed by the legislature by law, which shall be adjusted every decade to match the federal decennial census.

(i) “education district” means each school district, vocational or technical school, community college, technical college, municipal university, and any other public educational entity established as provided by law, except that “education district” does not include any state educational institution under the control and supervision of the state board of regents.

(j) “total state revenue” means all moneys received by the state from any source except any of the following:

(1) Moneys received as grants, gifts or donations which are to be expended for purposes specified by the donor;

(2) moneys received from the federal government; and

(3) moneys which are income earned on moneys in permanent endowment funds, trust funds, deferred compensation funds or pension funds and which are credited to such funds.

§ 2. *Prior Elector Approval for Tax Increases or Issuance of Certain Bonds.* (a) For any fiscal year that commences on or after July 1, 2005, the state must have approval of the electors in advance (1) for any new state income, sales or other excise tax rate increase before the state tax rate increase can take effect, (2) for any state mill levy ad valorem property tax rate increase above the state mill levy ad valorem property tax rate for the prior year before the state mill levy ad valorem property tax rate increase can take effect, (3) for any extension of any expiring state income, sales or other excise tax or expiring state ad valorem property tax before the extension can take effect, or (4) for any state tax policy change enacted into law by the state which would directly cause a net tax revenue gain to the state or local government, before such tax policy change can take effect.

(b) For any fiscal year that commences on or after July 1, 2005, the state must have approval of the electors before authorizing any bonds, except for refinancing existing bonded debt at a lower interest rate.

(c) The legislature shall provide by law for the manner of submitting matters subject to approval under this section to the electors.

§ 3. *Spending and Revenue Limits.* (a) For any fiscal year that commences on or after July 1, 2005, fiscal year spending by the state shall not increase above the fiscal year spending for the preceding fiscal year by more than the maximum percentage increase determined pursuant to this section. The maximum percentage increase in fiscal year spending for a fiscal year shall be equal to the result obtained by adding the rate of inflation for the calendar year ending during the preceding fiscal year, plus the percentage change in state population during the calendar year ending during the preceding fiscal year if a positive number, adjusted for revenue changes approved by electors under section 2 of this article.

(b) If the amount of the total state revenue for the preceding fiscal year exceeds the amount of total state revenue for the second preceding fiscal year, the total state revenue limitation for a fiscal year shall be the result obtained by adding (1) the lesser of (A) the amount of total state revenue for the preceding fiscal year or (B) the amount of the total state revenue limitation for the preceding fiscal year, and (2) the product of (A) the amount determined under clause (1) of this subsection, and (B) the sum of (i) the rate of inflation for the calendar year ending during the preceding fiscal year, plus (ii) the percentage change in state population during the calendar year ending during the preceding fiscal year if a positive number.

(c) If the amount of the total state revenue for the preceding fiscal year is less than the amount of total state revenue for the second preceding fiscal year, the amount of the total state revenue limitation for a fiscal year shall be the lesser of (1) the amount of total state revenue for such fiscal year, or (2) the amount of the total state revenue limitation for the most recent fiscal year for which the amount of total state revenue exceeded the amount of total state revenue for the preceding fiscal year.

(d) The legislature, by law, shall provide a mechanism to adjust the amount of a limitation under this section to reflect any subsequent transfer of all or any part of the cost of providing a governmental function. The mechanism shall adjust the amount of a limitation so that total costs are not increased as a result of the transfer. The adjustment mechanism provided for in this subsection shall be used in determining a limitation under this section beginning with the fiscal year immediately following the transfer.

(e) For the purposes of determining total revenue limitations under this section for the state, the total authorized fiscal year expenditures for the fiscal year ending on June 30, 2004, shall be construed to be the total revenue limitation for that preceding fiscal year and the total authorized fiscal year expenditures for the fiscal year ending on June 30, 2005, shall be construed to be the total revenue limitation for that preceding fiscal year.

§ 4. *Emergency Reserve Fund.* (a) For any fiscal year that commences on or after July 1, 2005, if revenue from sources not excluded from total state revenue exceeds the total state revenue limitation for that fiscal year and subject to the other provisions of this section, a portion of total state revenue in excess of the total state revenue limitation, determined in accordance with section 3 of this article, shall be transferred in the amount and in the manner prescribed by the legislature by law to the emergency reserve fund, which fund is hereby created in the state treasury, to the extent necessary to ensure that a balance of the emergency reserve fund at the end of the fiscal year is an amount equal to not more than 3% of the total state revenue limitation for the ensuing fiscal year. Any amount required to be maintained in the ending balance of the state general fund as provided by law shall be excluded from the amount available for transfer to the emergency reserve fund by this section. Each transfer to the emergency reserve fund prescribed by this section shall be made before making any transfer to the budget stabilization reserve fund as provided in section 5 of this article or any refunds as required by section 6 of this article. The state shall not be required to transfer any moneys other than any amount of total state revenue in excess of the total state revenue limitation to the emergency reserve fund. The moneys in the emergency reserve fund shall be in addition to, and shall not be used to meet, any other reserve requirement under this constitution or any law. In no case shall additional moneys be transferred to the emergency reserve fund if the balance in the emergency reserve fund is more than 3% of the total state revenue limitation for the ensuing fiscal year.

(b) Moneys in the emergency reserve fund may be expended only for emergencies declared by law. Two-thirds ( $\frac{2}{3}$ ) of the members then elected (or appointed) and qualified in each house, voting in the affirmative, shall be necessary to declare an emergency within the state of Kansas as a whole and to pass any bill making an appropriation of money or transferring any moneys from the emergency reserve fund. Income earned on the emergency reserve fund of the state shall accrue to the fund.

(c) As used in this section "emergency" means an extraordinary event or occurrence that could not have been reasonably foreseen or prevented and that requires immediate expenditures to preserve the health, safety and general welfare of the people within the state and "emergency" does not mean a revenue shortfall or budget shortfall.

§ 5. *Budget Stabilization Reserve Fund.* (a) For any fiscal year that commences on or after July 1, 2005, if total state revenue exceeds the total state revenue limitation for that fiscal year, then the remaining excess amount, after making any transfer to

the emergency reserve fund as required by section 4 of this article, shall be reserved as prescribed by this section or refunded as prescribed by section 6 of this article, subject to the other provisions of this section. Any amount required to be maintained in the ending balance of the state general fund as provided by law shall be excluded from the amount available for transfer to the budget stabilization reserve fund by this section.

(b) After any amount required to be transferred to the emergency reserve fund pursuant to section 4 of this article has been transferred, an amount of any remaining excess amount of total state revenue shall be transferred in the amount and in the manner prescribed by the legislature by law to the budget stabilization reserve fund, which fund is hereby created in the state treasury. The amount transferred to the budget stabilization reserve fund in accordance with this subsection shall be equal to the lesser of (1) the amount necessary to ensure that the balance in the budget stabilization reserve fund at the end of the fiscal year is an amount equal to 10% of the total state revenue limitation for the ensuing fiscal year, or (2) the amount equal to 50% of any such remaining excess amount of total state revenue. Income earned on the budget stabilization reserve fund shall accrue to the fund. In no case shall additional moneys be transferred into the budget stabilization reserve fund if the balance in the fund is equal to or more than 10% of the total state revenue limitation for the ensuing fiscal year.

(c) For any fiscal year that commences on or after July 1, 2005, if the amount of the total state revenue is less than the amount of total state revenue for the prior fiscal year, the legislature shall provide by law for the transfer of moneys from the budget stabilization fund to the state general fund in an amount equal to not more than the difference between the amount of total state revenue for the prior fiscal year and the amount of total state revenue for the current fiscal year. Under no other circumstances shall moneys be transferred or expended from the budget stabilization fund of the state.

§ 6. *Disposition of Excess Revenues.* (a) Any excess amount of total state revenues for a fiscal year that remains after the transfers to the emergency reserve fund and budget stabilization reserve fund pursuant to section 4 or section 5 of this article, if any, shall be reserved in the current fiscal year and shall be refunded as provided by law during the next ensuing fiscal year to the taxpayers who paid the state ad valorem property taxes or state income, sales or other excise taxes for or during the preceding fiscal year, in a manner that is proportional, on a pro rata basis, to the manner in which such taxes were collected from such taxpayers. Any amount required to be maintained in the ending balance of the state general fund as provided by law shall be excluded from the amount available to be reserved and refunded by the state as prescribed by this section.

(b) In a case of any amount that is received pursuant to any tax and required to be reserved and refunded to taxpayers by the state pursuant to this section and that is determined by the state in the manner prescribed by law to be insufficient for refunds to be made during the ensuing fiscal year, such amount shall be reserved for refunds to be made thereafter when the amount reserved is sufficient therefor.

§ 7. *Temporary Borrowing.* On or after July 1, 2005, during any fiscal year, transfers which are temporary and are to be repaid, or any other temporary borrowing, through certificates of indebtedness or any other device or manner, of any moneys in the state treasury to be credited to the state general fund, are prohibited unless the moneys so transferred or otherwise borrowed are restored or repaid to the original funds or accounts of the state treasury from the state general fund within the same fiscal year. The provisions of this section do not apply to transfers from the emergency reserve fund or the budget stabilization reserve fund to the state general fund in accordance with this article.

§ 8. *General Revenue Supplanting.* On or after July 1, 2005, any appropriation of moneys in the state treasury that either supplants any appropriation from the state general fund, or that, if not made, would require an appropriation from the state general fund is prohibited. For purposes of this section, any appropriation of moneys

in the state treasury that is funded by user charges or fees imposed on goods or services that do not exceed the cost of the goods or services provided shall not be deemed to be an appropriation that supplants any appropriation from the state general fund.

§ 9. *State Mandates on Local Governments.* A local government may not be required to fulfill any mandate imposed by the state unless and until, and may be required to fulfill that mandate only to the extent that, funds are provided to the local government by the state for that purpose. The legislature is not required to appropriate funds for mandates if more than two years have passed since the effective date of the mandate and no claim for funding has been made by the local government during that period.

§ 10. *Construction and Enforcement.* (a) The provisions of this article shall be liberally construed for the purpose of effectuating the purposes thereof, except that nothing in this article shall be construed to authorize any new or increased tax of any kind other than as provided or authorized by law enacted by the legislature in accordance with and subject to the other provisions of this constitution.

(b) In any case of a conflict between any provision of this article and any other provision contained in the constitution, the provisions of this article shall control.

(c) All laws in force at the time of the adoption of this amendment and consistent therewith shall remain in full force and effect until amended or repealed by the legislature. The legislature shall repeal or amend all laws inconsistent with the provisions of this article to conform with the provisions of this article.

(d) Any individual or class of individuals shall have standing to bring a suit to enforce this article. A court of record shall award a successful plaintiff costs and reasonable attorney fees in the suit, but may not allow the state to recover costs and reasonable attorney fees unless a suit against it is ruled frivolous.”

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

“*Explanatory statement.* This amendment (1) would require the state to have prior voter approval for any new tax or tax increase or extension of an existing tax and for any bonded debt other than refinancing bonds, (2) would impose spending and revenue limits on the state based on increases in the consumer price index and population, with provisions to adjust for economic downturns or transferred functions, (3) would provide for emergency reserves to be used only for emergencies that are declared by law passed by  $\frac{2}{3}$  of all members of the House and Senate, and not to be used for any revenue shortfall, (4) would limit state temporary borrowing to that repaid within the same year and would prohibit the state from replacing general revenues with excessive fees and charges for goods and services, (5) would provide that local governments could not be required to fulfill unfunded state mandates, and (6) would govern in case of conflicts with statutes or other state constitutional provisions and would permit individual or class action enforcement actions.

“A vote for the proposition would limit state legislative authority and would require voter approval for state tax increases or extensions and certain bonded debt, would impose state spending and revenue limits, would require excess state revenues to be reserved for emergencies and economic downturns, with limits, or to be refunded to taxpayers, would limit state temporary borrowing, would prohibit unfunded mandates on local governments and would permit enforcement actions.

“A vote against the proposition would continue the present constitutional and statutory authority for state government taxing and spending by law, for disposition of tax revenues and for other related matters in the exercise of the legislative power of this state.”

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the House of Representatives, and two-thirds of the members elected (or appointed) and qualified to the Senate shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided

by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election to be held on November 2, 2004, unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

#### INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

The following resolutions were introduced and read by title:

##### HOUSE RESOLUTION No. 6018—

By Representatives Loyd, Long, Powell and Rehorn

A RESOLUTION in recognition of the Kansas Mission of Mercy.

WHEREAS, Kansas dentists are caring and compassionate people; and

WHEREAS, The Kansas Mission of Mercy dental charity project was organized by the Kansas Dental Association through the Kansas Dental Charitable Foundation with funds from dentists, private foundations and other private sources; and

WHEREAS, Five hundred seventy-four total volunteers, including 81 dentists, 51 dental hygienists and 85 dental assistants provided \$554,000 in dental care to 1,734 patients at the Finney County Fairgrounds in Garden City on February 28 through March 2, 2003; and

WHEREAS, Eight hundred sixty-three total volunteers, including 207 dentists, 128 dental hygienists and 153 dental assistants provided \$758,455 in dental care to 2,659 patients at the Kansas Speedway in Kansas City on August 22 through 24, 2003; and

WHEREAS, The Kansas Mission of Mercy dental charity project will continue in the future and currently is scheduled to be held on the campus of Pittsburg State University on April 30 through May 2, 2004, and later in Salina; and

WHEREAS, The Kansas Mission of Mercy is the largest free dental clinic in the world; and

WHEREAS, The strength, success, vitality and health of Kansas citizens and its communities depend in great measure upon volunteerism, and concerned and devoted programs such as the Kansas Mission of Mercy: Now, therefore,

*Be it resolved by the House of Representatives of the State of Kansas:* That the Kansas Mission of Mercy dental charity project and its volunteers be recognized and thanked for their ongoing generosity for providing free dental care to the citizens of Kansas; and

*Be it further resolved:* That the Chief Clerk of the House of Representatives provide an enrolled copy of this resolution to the Kansas Dental Association and the Kansas Dental Charitable Foundation, both at 5200 S.W. Huntoon Street, Topeka, Ks. 66604.

##### HOUSE RESOLUTION No. 6019—

By Representative Barbieri-Lightner

A RESOLUTION urging the Congress of the United States to pass the RU-486 suspension and review act of 2003.

WHEREAS, The Clinton administration did not require proper Federal Food and Drug Administration review of the medical abortion pill RU-486; and

WHEREAS, Since that time at least seven American women have died as a result of the use of RU-486, most recently Holly Patterson, 18 years of age, of Livermore, California, on September 17, 2003; and

WHEREAS, There is currently a bill before the Congress of the United States, H.R. 3453, 108th Cong., 1st Sess. (2003), seeking to suspend the use of RU-486 until the Comptroller General of the United States reviews the process by which the Food and Drug Administration approved the use of such drug; Now, therefore,

*Be it resolved by the House of Representatives of the State of Kansas:* That the Kansas Legislature urges the Congress of the United States to pass H.R. 3453, 108th Cong., 1st Sess. (2003), known as the RU-486 suspension and review act of 2003; and

*Be it further resolved:* That the Secretary of State is hereby directed to provide an enrolled copy of this resolution to the President pro tempore of the United States Senate, to the Speaker of the United States House of Representatives and to each member of the Kansas Congressional Delegation.

**REPORT ON ENROLLED RESOLUTIONS**

**HR 6004, HR 6015** reported correctly enrolled and properly signed on February 3, 2004.

On motion of Rep. Aurand, the House adjourned until 11:00 a.m., Wednesday, February 4, 2004.

JANET E. JONES, *Chief Clerk*.

CHARLENE SWANSON, *Journal Clerk*.

