

# Journal of the House

## FIFTIETH DAY

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HALL OF THE HOUSE OF REPRESENTATIVES,  
TOPEKA, KS, Tuesday, March 23, 2004, 10:30 a.m.

The House met pursuant to adjournment with Speaker Mays in the chair.  
The roll was called with 125 members present.

Prayer by guest chaplain, Senator Stan Clark, guest of Reps. McKinney, Jim Morrison, Ostmeyer and Phelps:

Father—Help me so slow down and take time for you,  
To realize that you are not here for me, but that I am here for you.  
Give me the wisdom to separate the significant from the superficial,  
the eternal from the urgent.  
Give me wisdom as I struggle with voting for bills that replace inner  
moral conviction with external statutory power.  
Help me to understand that my purpose is not to establish a moral  
society, but to glorify you.  
Father, I pray that through each of our lives, our faithfulness to you  
will be reflected in our culture.  
Guide and direct our thoughts, our words and our actions as we serve  
the citizens of our state.  
I ask this in Jesus' name, Amen.

The Pledge of Allegiance was led by Rep. Reardon.

### INTRODUCTION OF GUESTS

There being no objection, the following remarks of Rep. D. Johnson are spread upon the Journal:

I am honored to introduce Jack Selbe, a retired businessman from Plainville. Mr. Selbe presented the Kansas House of Representatives with framed copies of the United States Constitution, Bill of Rights, and Declaration of Independence, "Presented to the citizens of Kansas by Jack Selbe and the Plainville VFW."

Since September, 2003, Mr. Selbe has presented 300 copies of these important documents to schools throughout Kansas as well as several neighboring states. Sponsored by the Plainville VFW as a community service project, he is working with VFW's and American Legions across the state to get these historic documents into all schools in Kansas. He does this as a labor of love.

Mr. Selbe served two years in the Marine Corps including Korean service in 1952. He believes all children in Kansas need to be made aware of the history and importance of these famous documents.

### REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was referred to committee as indicated:

Appropriations: **HB 2943**.

**MESSAGE FROM THE GOVERNOR**

March 17, 2004

*Message to the House of Representatives of the State of Kansas:*

Enclosed herewith is Executive Directive No. 04-350 for your information.

EXECUTIVE DIRECTIVE No. 04-350  
Authorizing Expenditure of Federal FundsKATHLEEN SEBELIUS  
*Governor*

The above Executive Directive is on file and open for inspection in the office of the Chief Clerk.

**MESSAGE FROM THE SENATE**The Senate nonconcurrs in House amendments to **H. Sub. for SB 147**, requests a conference and has appointed Senators Corbin, Donovan and Lee as conferees on the part of the Senate.The Senate nonconcurrs in House amendments to **SB 312**, requests a conference and has appointed Senators Morris, Adkins and Downey as conferees on the part of the Senate.The Senate accedes to the request of the House for a conference on **HB 2154** and has appointed Senators Vratil, Schmidt and Goodwin as conferees on the part of the Senate.The Senate accedes to the request of the House for a conference on **HB 2293** and has appointed Senators Vratil, Pugh and Goodwin as conferees on the part of the Senate.The Senate accedes to the request of the House for a conference on **HB 2312** and has appointed Senators Vratil, Pugh and Goodwin as conferees on the part of the Senate.The Senate accedes to the request of the House for a conference on **HB 2555** and has appointed Senators Vratil, Pugh and Goodwin as conferees on the part of the Senate.The Senate accedes to the request of the House for a conference on **HB 2556** and has appointed Senators Vratil, Schmidt and Goodwin as conferees on the part of the Senate.The Senate accedes to the request of the House for a conference on **HB 2617** and has appointed Senators Vratil, Schmidt and Goodwin as conferees on the part of the Senate.The Senate accedes to the request of the House for a conference on **HB 2621** and has appointed Senators Tyson, Taddiken and Lee as conferees on the part of the Senate.The Senate accedes to the request of the House for a conference on **HB 2669** and has appointed Senators Morris, Adkins and Downey as conferees on the part of the Senate.The Senate accedes to the request of the House for a conference on **HB 2731** and has appointed Senators Tyson, Taddiken and Lee as conferees on the part of the Senate.The Senate accedes to the request of the House for a conference on **HB 2745** and has appointed Senators Donovan, Salmans and Goodwin as conferees on the part of the Senate.The Senate accedes to the request of the House for a conference on **HB 2871** and has appointed Senators Donovan, Salmans and Goodwin as conferees on the part of the Senate.**INTRODUCTION OF ORIGINAL MOTIONS**On motion of Rep. Aurand, the House acceded to the request of the Senate for a conference on **H. Sub. for SB 147**.

Speaker Mays thereupon appointed Reps. Edmonds, Huff and Larkin as conferees on the part of the House.

On motion of Rep. Aurand, the House acceded to the request of the Senate for a conference on **SB 312**.

Speaker Mays thereupon appointed Reps. Neufeld, Shultz and Feuerborn as conferees on the part of the House.

**CONSENT CALENDAR**Objection was made to **SB 416** appearing on the Consent Calendar; the bill was placed on the calendar under the heading of General Orders.

**FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS**

**HB 2918**, An act relating to the comprehensive transportation program; concerning the financing thereof; amending K.S.A. 2003 Supp. 79-3603, 79-3620, 79-3703 and 79-3710 and repealing the existing sections; also repealing K.S.A. 79-34,148 and K.S.A. 2003 Supp. 79-34,147, 79-3603c, 79-3620c and 79-3710a, was considered on final action.

Call of the House was demanded.

On roll call, the vote was: Yeas 119; Nays 6; Present but not voting: 0; Absent or not voting: 0.

Yeas: Aurand, Ballard, Barbieri-Lightner, Beggs, Bethell, Boyer, Brunk, Burgess, Burroughs, Campbell, Carlin, Carter, Compton, Cox, Craft, Crow, Dahl, Davis, DeCastro, Decker, Dillmore, Dreher, 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, Kirk, Klein, Krehbiel, Kuether, Landwehr, Lane, Larkin, Light, Loganbill, M. Long, Loyd, Mason, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neighbor, Neufeld, Newton, Novascone, O'Malley, O'Neal, 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, Svaty, Swenson, Tafanelli, Thimesch, Thull, Toelkes, Vickrey, Ward, Wilk, D. Williams, J. Williams, Wilson, Winn, Yoder, Yonally.

Nays: Ballou, Edmonds, Kassebaum, Kauffman, Long-Mast, Osborne.

Present but not voting: None.

Absent or not voting: None.

The bill passed, as amended.

## EXPLANATION OF VOTE

MR. SPEAKER: As you know, I have been a long-time supporter of the Comprehensive Transportation Program. I am convinced that the transportation infrastructure is one of the important building blocks of the state economy.

Unfortunately, **HB 2918** funds the CTP by placing an excessively heavy burden on the taxpayers of the state, increasing the state sales tax rate from 5.0% to 5.3% on July 1, 2006. This amounts to a tax increase of more than three-fourths billion dollars over the ensuing five years. This is far too great an increase for a non-emergency situation. I vote "NO" on **HB 2918**.—JOHN EDMONDS

**SB 384**, An act regulating traffic; concerning the maximum speed limits; amending K.S.A. 8-1560c and 8-1560d and K.S.A. 2003 Supp. 8-1558 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 64; Nays 61; Present but not voting: 0; Absent or not voting: 0.

Yeas: Aurand, Ballou, Beggs, Bethell, Boyer, Brunk, Burgess, Burroughs, Carter, Cox, DeCastro, Dillmore, Edmonds, Faber, Faust-Goudeau, Flora, Freeborn, Goering, Goico, Gordon, Hayzlett, Hill, Howell, Huebert, Huff, Humerickhouse, Huntington, D. Johnson, E. Johnson, Kassebaum, Krehbiel, Landwehr, Larkin, Light, Long-Mast, Mason, McCreary, McKinney, McLeland, Merrick, J. Miller, Judy Morrison, Myers, Neufeld, Newton, Novascone, O'Neal, Osborne, Owens, Patterson, Pauls, Phelps, Powell, Sawyer, Schwab, S. Sharp, Showalter, Siegfried, Sloan, Swenson, Ward, D. Williams, Wilson, Yoder.

Nays: Ballard, Barbieri-Lightner, Campbell, Carlin, Compton, Craft, Crow, Dahl, Davis, Decker, Dreher, Feuerborn, Flaharty, Gatewood, Gilbert, Grant, Henderson, Henry, Holland, Holmes, Horst, Hutchins, Huy, Jack, Kauffman, Kirk, Klein, Kuether, Lane, Loganbill, M. Long, Loyd, Mays, F. Miller, Minor, Jim Morrison, Neighbor, O'Malley, Ostmeyer, Pottorff, Powers, Reardon, Rehorn, Reitz, Ruff, Schwartz, Scoggins-Waite, B. Sharp, Shriver, Shultz, Storm, Svaty, Tafanelli, Thimesch, Thull, Toelkes, Vickrey, Wilk, J. Williams, Winn, Yonally.

Present but not voting: None.

Absent or not voting: None.

The bill passed, as amended.

## EXPLANATION OF VOTE

MR. SPEAKER: Accidents happen in the blink of an eye. People already have the leeway to drive at 75 mph. I feel we are encouraging people to drive at speeds far from reasonable and prudent with this bill. Especially in emergency situations, such as swerving to miss a deer, higher speed limits increase the chances for accidents. We preach for people to be responsible yet encourage them to be irresponsible with speed limits such as this. The bottom line is that speed kills, and we are only making the highways more dangerous for people who wish to drive at a safer speed. I vote No on SB 384.—SHARON SCHWARTZ, MARY COMPTON

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

## COMMITTEE OF THE WHOLE

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

Recommended that **SB 448, SB 449, SB 447, SB 446** be passed.

Committee report to **HB 2749** be adopted; also, on motion of Rep. Loyd be amended on page 1, in line 41, by striking "and";

On page 2, in line 2, before the period by inserting "; and

(7) review and make recommendations concerning the re-establishment of the capitol grounds tree identification marker program, showing the donor state, the date of the gift, and the variety of the tree"; and **HB 2749** be passed as amended.

Committee report to **HB 2937** be adopted; also, on motion of Rep. Aurand be amended on page 2, in line 29, by striking all following "living";

On page 3, in line 4, by striking "weighting" and inserting "levy"; in line 7, by striking "weighting to enrollment"; in line 19, by striking "assignment of" and inserting "the"; also in line 19, by striking "weighting to en-"; in line 20, by striking "rollment" and inserting "levy";

On page 4, in line 19, by striking "weighting" and inserting "levy"; in line 20, by striking all following "year"; in line 21, by striking all preceding "as"; in line 25, following the semicolon, by inserting "and"; in line 28, by striking "; and" and inserting a period; by striking all in lines 29 through 43;

By striking all on pages 5 through 7;

On page 8, by striking all in lines 1 through 12;

By renumbering the remaining sections accordingly;

On page 12, in line 16, by striking "72-6407,";

In the title, in line 13, by striking "72-6407,";

Also, on further motion of Rep. Aurand, **HB 2937** be amended on page 11, in line 8, by striking all following "means"; by striking all of line 9; in line 10, by striking all preceding the semicolon and inserting "eight mills";

Also, on motion of Rep. Long-Mast to amend **HB 2937**, the motion was withdrawn.

Also, roll call was demanded on motion to recommend **HB 2937** favorably for passage.

On roll call, the vote was: Yeas 63; Nays 62; Present but not voting: 0; Absent or not voting: 0.

Yeas: Aurand, Barbieri-Lightner, Beggs, Bethell, Brunk, Carter, Compton, Dahl, DeCastro, Decker, Edmonds, Goering, Goico, Gordon, Hayzlett, Hill, Holmes, Howell, Huebert, Huff, Humerickhouse, Huntington, Hutchins, Huy, D. Johnson, E. Johnson, Kauffman, Landwehr, Light, Long-Mast, Mason, Mays, McCreary, McLeland, Merrick, F. Miller, Jim Morrison, Judy Morrison, Myers, Neighbor, Neufeld, Newton, Novascone, O'Malley, O'Neal, Osborne, Ostmeyer, Owens, Patterson, Pottorff, Powell, Powers, Schwab, Schwartz, S. Sharp, Shultz, Siegfried, Storm, Tafanelli, Wilk, D. Williams, Yoder, Yonally.

Nays: Ballard, Ballou, Boyer, Burgess, Burroughs, Campbell, Carlin, Cox, Craft, Crow, Davis, Dillmore, Dreher, Faber, Faust-Coudeau, Feuerborn, Flaharty, Flora, Freeborn, Gatewood, Gilbert, Grant, Henderson, Henry, Holland, Horst, Jack, Kassebaum, Kirk, Klein, Krehbiel, Kuether, Lane, Larkin, Loganbill, M. Long, Loyd, McKinney, J. Miller, Minor, Pauls, Phelps, Reardon, Rehorn, Reitz, Ruff, Sawyer, Scoggins-Waite, B. Sharp,

Showalter, Shriver, Sloan, Svaty, Swenson, Thimesch, Thull, Toelkes, Vickrey, Ward, J. Williams, Wilson, Winn.

Present but not voting: None.

Absent or not voting: None.

The motion prevailed, and **HB 2937** be passed as amended.

**SB 346** be passed over and retain a place on the calendar.

Committee report to **SB 309** be adopted; also, on motion of Rep. Holmes be amended on page 1, in line 31, after "electric" by inserting "or natural gas";

On page 2, in line 38, after the second "electric" by inserting "or natural gas"; and **SB 309** be passed as amended.

Committee report to **SB 382** be adopted; also, on motion of Rep. Long-Mast to amend, Rep. Kuether requested a ruling on the amendment being germane to the bill. The Rules Chair ruled the amendment not germane. Rep. Long-Mast challenged the ruling, the question being "Shall the Rules Chair be sustained?" The Rules Chair was sustained; and **SB 382** be passed as amended.

Committee report to **SB 472** be adopted; and the bill be passed as amended.

#### REPORTS OF STANDING COMMITTEES

Committee on **Agriculture** recommends **SB 296** be amended on page 4, in line 9, after the period by inserting "In exercising their respective authorities under K.S.A. 36-501 *et seq.*, and amendments thereto, the secretary of agriculture and the secretary of health and environment shall apply consistent standards, policies, protocols and procedures in the licensing, inspection and regulation of food service establishments, taking into account the relative risk posed by such establishments to public health and food safety.";

On page 5, in line 1, by striking "12" and inserting "11";

On page 6, in line 4, after "13." by inserting "The secretary of agriculture is hereby authorized and empowered to contract with the governing body of any county for the enforcement of all or any portion of the rules and regulations established under this act. Any county entering into a contract with the secretary to enforce such rules and regulations shall act as an agent of the secretary in carrying out such duties. Any inspection of any premises by officers, employees or agents of any such county, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if such had been done by the secretary.";

On page 7, after line 40, by inserting the following:

New Sec. 16. (a) Notwithstanding any provision of law to the contrary, any person or registration holder aggrieved or in dispute with any action of the secretary of agriculture under the authority of the provisions of K.S.A. 65-6a18 *et seq.*, and amendments thereto, may make a request to the governing body of the Kansas meat processors association that a review board be convened to settle such disputes related thereto. If a majority of such governing body agree that a review board is necessary to make a determination related to any such dispute, a review board shall be convened.

(b) The review board shall be composed of three members as follows: One member designated by the Kansas meat processors association; one member designated by the secretary of agriculture; and one member designated by the office of administrative hearings of the department of administration.

(c) The review board shall determine whether the actions of the secretary of agriculture are in accordance with law. The person or registration holder and the secretary of agriculture shall provide all relevant information and records requested by the review board. In making its determination the review board shall be guided, but not limited to, by its findings with respect to the following factors:

(1) Whether the actions of the secretary are within appropriate state requirements and authority pursuant to K.S.A. 65-6a18 *et seq.*, and amendments thereto;

(2) whether the actions of the secretary are within appropriate and relevant federal requirements pursuant to the federal meat inspection act; and

(3) whether the actions of the secretary are an appropriate balance of regulatory necessity and most cost effective compliance methods for the person or registration holder.

(d) The review board shall make its determination of approving or disapproving the actions of the secretary within 90 days of the appointment of the first member of the review board. The review board shall state its reasons and findings for its determination. Decisions of the review board are final. Any determination of the review board is subject to judicial review as provided pursuant to the act for judicial review and civil enforcement of agency actions.

(e) All costs incurred by the member designated by the office of administrative hearings of the department of administration designated to serve on a review board shall be paid by the nonprevailing party.”;

And by renumbering sections accordingly;

On page 1, in the title, in line 12, after the semicolon by inserting “meat and poultry inspection dispute review board;” and the substitute bill be passed as amended.

Committee on **Agriculture** recommends **Substitute for SB 335** be amended on page 1, in line 18, by striking “shall mean”; in line 19, by striking “and include” and inserting “means”; also in line 19, by striking “or” and inserting a comma; also in line 19, after “corporation” by inserting “, association or other entity”; in line 21, by striking “shall mean” and inserting “means”; in line 24, by striking “shall mean and include” and inserting “means”; by striking all in lines 28 through 31; in line 32, by striking “(5)” and inserting “(4)”; also in line 32, by striking “shall mean and include” and inserting “means”; in line 34, by striking “(6)” and inserting “(5)”; also in line 34, by striking “shall mean and”; in line 35, by striking “include” and inserting “means”; in line 37, by striking “in a building”; in line 38, by striking “of any kind”; in line 39, by striking “(7)” and inserting “(6)”; also in line 39, by striking “shall mean” and inserting “means”; in line 43, by striking “(8)” and inserting “(7)”; also in line 43, by striking “shall mean” and inserting “means”;

On page 2, in line 5, by striking “(9)” and inserting “(8)”; also in line 5, by striking “shall mean” and inserting “means”; in line 7, by striking “(10)” and inserting “(9)”; also in line 7, by striking “shall mean” and inserting “means”; in line 23, by striking “propane” and inserting “liquefied petroleum gas”;

On page 3, in line 3, by striking “the” and inserting “any”; also in line 3, after “act” by inserting “of such individual, licensee or liquefied petroleum marketer”; in line 9, by striking “no” and inserting “not”; in line 11, by striking “A plan and application” and inserting “An application and plan”; in line 12, by striking “with”; in line 13, by striking all before “be” and inserting “shall”; in line 14, by striking all after “marshal”; in line 15, by striking “construction” and inserting “. Construction”; in line 17, by striking the period; by striking all in lines 18 and 19; in line 20, by striking “gallons”; also in line 20, by striking “plan and application” and inserting “application and plan”; in line 23, by striking “(c)” and inserting “(b)”; in line 39, by striking “fire marshal”; in line 40, before “state” by inserting “office of the”;

On page 4, in line 6, by striking “fire”; in line 7, by striking “marshal’s”; in line 24, by striking “propane” and inserting “liquefied petroleum gas”; in line 25, by striking “establish” and inserting “promulgate”; in line 26, by striking “consistent with” and inserting “to carry out the provisions of”; in line 31, by striking “Establish” and inserting “The establishment of”; in lines 33, 37, 39 and 43, after “license” by inserting “which”;

On page 5, in lines 2, 4 and 7, after “license” by inserting “which”; in lines 9 and 10, by striking “establish” and inserting “the establishment of”; in line 16, by striking all before “codes” and inserting “the establishment of”; in line 41, by striking “a civil penalty” and inserting “fines”;

On page 6, in line 7, by striking all after “(e)”; by striking all in line 8; in line 19, before “fire” by inserting “state”; also in line 20, after “charges” by inserting “pursuant to the provisions of section 1 et seq., and amendments thereto.”;

On page 1, in the title, in line 10, after “thereof” by inserting “”; prescribing certain prohibited and unlawful acts and providing penalties therefor”; and the substitute bill be passed as amended.

Committee on **Appropriations** recommends **SB 552, SB 557** be passed.

Committee on **Appropriations** recommends **SB 336** be amended by substituting a new bill to be designated as “HOUSE Substitute for SENATE BILL No. 336,” as follows:

"HOUSE Substitute for SENATE BILL NO. 336  
By Committee on Appropriations

"AN ACT concerning adult care homes; relating to paid nutrition assistants; amending K.S.A. 2003 Supp. 39-923 and 39-936 and repealing the existing sections."; and the substitute bill be passed.

(H. Sub. for **SB 336** was thereupon introduced and read by title.)

Committee on **Commerce and Labor** recommends **SB 534** be passed.

Committee on **Education** recommends **HB 2940** be amended on page 1, in line 43, by striking all following "for";

On page 2, by striking all in line 1; in line 2, by striking all preceding "the"; in line 14, by striking "the" and inserting "their"; also in line 14, following "heritage" by inserting "and those"; in line 32, by striking all following "provide"; in line 33, by striking all preceding the colon and inserting: "additional programs or services, including but not limited to, the following"; in line 34, by striking "service" and inserting "services"; in line 35, by striking "service" and inserting "services"; in line 36, by striking "service" and inserting "services";

On page 3, in line 21, by striking "shall engage"; also in line 21, following "staff" by inserting "shall engage"; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 343** be amended on page 1, after line 11, by inserting the following:

"New Section 1. (a) In accordance with the provisions of 21 C.F.R. 56.101, et seq., and amendments thereto, and 45 C.F.R. 46.101, et seq., and amendments thereto, in the case of an adult or emancipated minor who: (1) Is being treated by a person licensed to practice medicine and surgery and who has medical staff membership with a medical care facility, as defined in K.S.A. 65-4921, and amendments thereto, that has its own, or contracts with, an independent institutional review board; and (2) is incapable of giving informed consent for the research protocol, which has been approved by an institutional review board, the research protocol may proceed upon obtaining the informed consent of the adult or emancipated minor's legal guardian or the attorney in fact with the authority to make health care decisions for that person pursuant to K.S.A. 58-625, et seq., and amendments thereto.

(b) If neither of the designations described in subsection (a) has been made or neither of the parties described in subsection (a) can be contacted using reasonably diligent efforts, any member of the adult or emancipated child's family, in the order listed in this subsection, who has the capacity to provide informed consent and can be contacted using reasonably diligent efforts may provide informed consent to a research protocol, as described in subsection (a). The order of priority for family members to provide consent is as follows:

- (1) The adult or emancipated minor's spouse, unless they are legally separated;
- (2) an adult child;
- (3) a parent; or
- (4) an adult relative by blood or marriage.

(c) Nothing in this section shall authorize a legal guardian, attorney in fact with the authority to make health care decisions or family member authorized to provide informed consent pursuant to subsection (b) to provide informed consent as to research protocols that are contrary to the incapacitated person's permission, expressed orally or in writing, regarding such research protocols."

And by renumbering sections accordingly; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 424** be amended on page 1, in line 22, by striking ": (1) Such"; by striking all in line 23; in line 24, by striking "(2)"; also in line 24, by striking "and" where it appears for the last time; by striking all in line 25 and inserting "of such trust during the settlor's lifetime."; in line 31, by striking "transferor" and inserting "settlor"; and the bill be passed as amended.

Select Committee on **Pensions** recommends **SB 260** be amended by substituting a new bill to be designated as "HOUSE Substitute for SENATE BILL No. 260," as follows:

"HOUSE Substitute for SENATE BILL NO. 260  
By Select Committee on Pensions

"AN ACT concerning retirement and pensions; relating to the Kansas public employees retirement system and systems thereunder; employer contributions; source of payment

of certain obligations of retirement system; employment after retirement; investments by the system; amending K.S.A. 38-2102, 71-801, 72-5437, 72-5445, 72-7513, 74-4914, 74-4921, 74-4922, 74-4939, 74-4957 and 74-4967 and K.S.A. 2003 Supp. 20-2605, 74-4920 and 74-4927 and repealing the existing sections.”; and the substitute bill be passed.

**(H. Sub. for SB 260** was thereupon introduced and read by title.)

Committee on **Taxation** recommends **HB 2540, HB 2662** be passed.

Committee on **Taxation** recommends **HB 2882** be amended on page 1, after line 13, by inserting the following:

Section 1. K.S.A. 2003 Supp. 79-32,101 is hereby amended to read as follows: 79-32,101.

(a) At the time prescribed in this section: (1) Every individual shall pay estimated tax who can reasonably expect to owe, after withholding and credits, tax of at least ~~\$200~~ \$500 and who expects their withholding and credits to be less than (A) 90% of the tax shown on the return for the current year or (B) 100% of the tax shown for the preceding tax year; and

(2) every corporation shall pay estimated tax if its Kansas income tax liability can reasonably be expected to exceed \$500.

(b) In the case of a husband and wife, single payments under this section may be made by them jointly. If a joint payment is made, but a joint return is not made for the taxable year, the estimated tax for such year may be divided between them. Notification of the division of such payments shall be made at such time and in such manner as the director of taxation may provide, on forms issued by the director of taxation.

(c) If on or before January 31, or March 1, in the case of an individual referred to in subsection (b) of K.S.A. 79-32,102, *and amendments thereto* relating to income from farming or fishing, of the succeeding year, the taxpayer files a return for the taxable year, and pays in full the amount of tax computed on the return, then, under rules and regulations of the secretary of revenue no payment otherwise required to be made under this section on January 15, or at any time during the preceding year, in the case of an individual referred to in subsection (b) of K.S.A. 79-32,102, *and amendments thereto* relating to income from farming or fishing, is required to be made.

(d) An individual or corporation with a taxable year of less than 12 months shall make a declaration for less than 12 months as prescribed by rules and regulations of the secretary of revenue.

(e) The provisions of this section shall not apply to an estate or trust.

Sec. 2. K.S.A. 79-32,107 is hereby amended to read as follows: 79-32,107. (a) All penalties and interest prescribed by K.S.A. 79-3228, and amendments thereto, for noncompliance with the income tax laws of Kansas shall be applicable for noncompliance with the provisions of the Kansas withholding and declaration of estimated tax act relating to withholding tax which shall be enforced in the same manner as the Kansas income tax act. A penalty at the same rate per annum prescribed by subsection (b) of K.S.A. 79-2968, and amendments thereto, for interest upon delinquent or unpaid taxes shall be applied and added to a taxpayer's amount of underpayment of estimated tax due from the date the estimated tax payment was due until the same is paid or until the 15th day of the fourth month following the close of the taxable year for which such estimated tax is a credit, whichever date is earlier, but such penalty shall not be added if the total amount thereof does not exceed \$1. For purposes of this subsection, the amount of underpayment of estimated tax shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to 90% of the tax shown on the return for the taxable year or, if no return was filed, 90% of the tax for such year, over the amount, if any, of the installment paid on or before the last date prescribed for payment. Amounts due from any employer on account of withholding or from any taxpayer for estimated tax may be collected by the director in the manner provided for the collection of state income tax in K.S.A. 79-3235, and amendments thereto. For purposes of this subsection, "underpayment of tax" means the difference between the amount of tax actually paid and the amount of tax which would have been required to be paid to avoid penalty pursuant to subsection (b) or (c).

(b) No penalty or interest shall be imposed upon any individual with respect to any underpayment of any installment if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds

the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least:

(1) The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year;

(2) zero if no return was required to be filed or if the tax liability on the individual's return was less than \$200 for the preceding taxable year;

(3) an amount equal to 66 $\frac{2}{3}$ %, in the case of individuals referred to in subsection (b) of K.S.A. 79-32,102, and amendments thereto, and 90%, in the case of all other individuals, of the tax for the taxable year computed by placing on an annualized basis, pursuant to rules and regulations adopted by the secretary of revenue, the taxable income for the months in the taxable year ending before the month in which the installment is required to be made.

(c) No penalty or interest shall be imposed upon any corporation with respect to any underpayment of any installment of estimated tax if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least:

(1) The tax shown on the return of the corporation for the preceding taxable year, if a return showing a liability for tax was filed by the corporation for the preceding taxable year, or zero if no return was required to be filed, or if the tax liability on the corporation's return was less than \$500 for the preceding taxable year; or

(2) (A) an amount equal to 90% of the tax for the taxable year computed by placing on an annualized basis the taxable income: (i) For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month; (ii) for the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month; (iii) for the first six months or for the first eight months of the taxable year in the case of the installment required to be paid in the ninth month; and (iv) for the first nine months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) For purposes of this subsection (2), the taxable income shall be placed on an annualized basis by (i) multiplying by 12 the taxable income referred to in subsection (2)(A), and (ii) dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or 11, as the case may be) referred to in subsection (2)(A).

(d) If the employer, in violation of the provisions of this act, fails to deduct and withhold under this chapter, and thereafter the tax against which such withholding may be credited is paid, the amount otherwise required to be deducted and withheld shall not be collected from the employer; but this subsection shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

(e) Any person required to collect, truthfully account for, and pay over any tax imposed by this act, who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall in addition to the other penalties of this section be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

(f) In case of failure by any employer required by subsection (b) of K.S.A. 79-3298, and amendments thereto, to remit any amount of withheld taxes by the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed upon such person a penalty of 15% of the amount of the underpayment. For purposes of this subsection, the term "underpayment" means the excess of the amount of the tax required to be withheld and remitted over the amount, if any, remitted on or before the date prescribed therefor. The failure to remit for any withholding period shall be deemed not to continue beyond the last date prescribed for filing the annual return as required by subsection (d) of K.S.A. 79-3298, and amendments thereto. Penalty and interest as prescribed by K.S.A. 79-3228, and amendments thereto, shall not begin to accrue under subsection (a) of this section on the amount of any such underpayment until the due date of the annual return for the calendar year in which such failure to remit occurs.

(g) Whenever the secretary or the secretary's designee determines that the failure of the taxpayer to comply with the provisions of subsections (a), (e), or (f) of this section was due

to reasonable causes, the secretary or the secretary's designee may waive or reduce any of ~~said~~ such penalties and may reduce the interest rate to the underpayment rate prescribed and determined for the applicable period under section 6621 of the federal internal revenue code as in effect on January 1, 1994, upon making a record of the reasons therefor.

(h) *For tax year 2004 and tax years thereafter, no penalty for a tax year shall be imposed upon any individual with respect to any underpayment of estimated tax, if such individual has a federal income tax balance due of zero for that same tax year.*;

And by renumbering sections accordingly;

On page 2, in line 9, after "Sec. 2." by inserting "K.S.A. 79-32,107 and"; also in line 9, after "Supp." by inserting "79-32,101 and"; also in line 9, by striking "is" and inserting "are";

On page 1, in the title, in line 9, by striking "credit;" and inserting "estimated tax of individuals; credits,;" in line 10, after "amending" by inserting "K.S.A. 79-32,107 and"; also in line 10, after "Supp." by inserting "79-32,101 and"; in line 11, by striking "section" and inserting "sections"; and the bill be passed as amended.

Committee on **Utilities** recommends **HR 6026** be amended by substituting a new resolution to be designated as "Substitute for HOUSE RESOLUTION No. 6026," as follows:

"Substitute for HOUSE RESOLUTION No. 6026

By Committee on Utilities

A RESOLUTION requesting the State Corporation Commission to collect certain information regarding deployment of high speed Internet service in the state of Kansas."; and the substitute resolution be adopted.

(**Sub. HR 6026** was thereupon introduced and read by title.)

#### **CHANGE OF CONFEREES**

Speaker pro tem Ballou announced the appointment of Rep. Minor as a member of the conference committee on **SB 312** to replace Rep. Feuerborn.

#### **REPORT ON ENGROSSED BILLS**

**HB 2918** reported correctly engrossed March 23, 2004.

**HB 2737** reported correctly re-engrossed March 23, 2004.

On motion of Rep. Aurand, the House adjourned until 10:30 a.m., Wednesday, March 24, 2004.

CHARLENE SWANSON, *Journal Clerk.*

JANET E. JONES, *Chief Clerk.*

