

Journal of the Senate

THIRD DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, January 14, 2004—2:30 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,

As You well know, in the past I have from time to time addressed You on the subject of basketball. That is because the major part of the basketball season takes place during the legislative session, and it is very difficult for the thousands of fans to think and talk about anything else.

Tonight one of the two most anticipated games will be played between the arch rivals, K State at K.U. (The other one will be played two weeks from tonight at K State). Since I have some children who have graduated from each university, I can at least have some semblance of non-partisanship.

But the purpose of my prayer, O Lord, is to compare the K.U./K State rivalry with the rivalry between Democrats and Republicans. While K State and K.U. are intense rivals on the court, when either team plays a team from outside our state, for the most part the fans unite and root for the team from Kansas.

My prayer, O God, is that while the Republicans and Democrats have skirmishes on the floors of the Senate and House, that they will not forget that the welfare of their state supersedes all inter-party rivalry. It is kind of like the family that fights and quarrels among themselves, but woe be to outsiders who attack the family.

There is no question, O God, that the legislature deals with issues far more important than who wins a basketball game, but the Senate is kind of a family to me. These people have rallied around me just as much as my own church during my numerous medical emergencies.

That is why I pray that regardless of the squabbles and yes, the anger, that is manifested during the session, that when April rolls around there will be no question that both Democrats and Republicans love Kansas.

I pray this in Jesus' Name,

AMEN

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 307, An act concerning sales taxation; relating to countywide retailers' sales tax in Clay county; amending K.S.A. 2003 Supp. 12-187 and repealing the existing section, by Committee on Assessment and Taxation.

SB 308, An act concerning taxation; relating to city and county retailer's sales tax; classes of cities; amending K.S.A. 12-195b and K.S.A. 2003 Supp. 12-187, 12-188, 12-189 and 12-192 and repealing the existing sections, by Special Committee on Assessment and Taxation.

CHANGE OF REFERENCE

The President withdrew **SB 305** from the Committee on Judiciary, and referred the bill to the Committee on Federal and State Affairs.

MESSAGE FROM THE GOVERNOR

Governor's Message
Executive Reorganization Order No. 31
By Governor Kathleen Sebelius
January 14, 2004

As a part of my continuing search for changes in government to better serve Kansans and encourage job and economic growth in our state, I am focusing attention on the workforce development system in Kansas. This Executive Reorganization Order transfers the Employment and Training Division and all related workforce development programs from the Department of Human Resources to the Department of Commerce.

The objective is to promote a workforce development system in Kansas that produces qualified employees for any employer in any part of the state, enables Kansas to compete favorably with any other state in attracting new businesses, and is results oriented with a measurable return on investment. Recommendations to move in this direction have consistently been made by a number of task forces and committees for as long as fifteen years.

Through improved coordination of services and increased focus on workforce development, my administration is taking this significant step toward creating a seamless, market driven system that strengthens our infrastructure and creates true centers of education and training excellence. The creation of a single point of contact for businesses will promote accountability and efficiency in state government.

Transferring workforce development programs will ensure that all Kansans, including persons with disabilities, have access to meaningful employment opportunities through a new, integrated workforce development system. My administration is committed to breaking down the barriers to employment, ensuring that all Kansans, regardless of their abilities, can obtain meaningful employment.

The transfer of these programs, as set out in this Executive Reorganization Order will consolidate and streamline the state's workforce development programs to create a new, integrated workforce system that will provide a stronger set of training opportunities to link business and the state's labor pool.

Executive Reorganization Order No. 31
By Governor Kathleen Sebelius
Transmitted January 14, 2004

Section 1. There is hereby established, within the Kansas department of commerce, a division of workforce development. The head of the division shall be the director of workforce development, who shall be appointed by and serve at the pleasure of the secretary of the department of commerce. The director shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of commerce, with the approval of the governor. Under the supervision of the secretary of commerce, the director of workforce development shall administer the division of workforce development.

Sec. 2. (a) The division of employment and training within the department of human resources created by K.S.A. 75-5714, and amendments thereto, is hereby abolished. On the effective date of this order, the department of human resources is hereby renamed the department of labor, and the secretary of human resources is hereby renamed the secretary of labor.

(b) Except as otherwise provided by this order, all of the powers, duties, and functions of the existing division of employment and training within the department of human resources and of the existing director of employment and training are hereby transferred to and imposed upon the division of workforce development within the department of commerce and the director of workforce development established by this order.

(c)(1) Except as otherwise provided by this order, all of the powers, duties, and functions of the department of human resources and the secretary of human resources that relate to labor exchange and training, including but not limited to those powers, duties, and functions that relate to the workforce network of Kansas board, the Kansas apprenticeship council, and the commission on disability concerns, are hereby transferred to and imposed upon the department of commerce and the secretary of commerce.

(2) Notwithstanding the provisions of paragraph (c)(1) above, both the secretary of commerce and the secretary of labor shall continue to be ex officio members of the commission on disability concerns.

Sec. 3. (a) The division of workforce development within the department of commerce and the director of workforce development established by this order shall be the successor in every way to the powers, duties, and functions of the division of employment and training within the department of human resources and the director of employment and training in which the same were vested prior to the effective date of this order and that are transferred pursuant to section 2. The department of commerce and the secretary of commerce shall be the successor in every way to the powers, duties, and functions of the department and secretary of human resources in which the same were vested prior to the effective date of this order and that are transferred pursuant to section 2. Every act performed in the exercise of such transferred powers, duties, and functions by or under the authority of the department or secretary of commerce or the division or director of workforce development within the department of commerce shall be deemed to have the same force and effect as if performed by the department or secretary of human resources or the division or director of employment and training within the department of human resources in which such powers, duties, and functions were vested prior to the effective date of this order.

(b) Whenever the division of employment and training of the department of human resources, or words of like effect, are referred to or designated by a statute, contract, or other document, such reference or designation shall be deemed to apply to the division of workforce development established by this order.

(c) Whenever the director of employment and training within the department of human resources, or words of like effect, are referred to or designated by a statute, contract, or other document, such reference or designation shall be deemed to apply to the director of workforce development established by this order.

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

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

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

(b) On the effective date of this order, liability for all accrued compensation or salaries of officers and employees who are transferred to the department of commerce under this order shall be assumed and paid by the department of commerce.

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

(b) The department of commerce shall succeed to all property, property rights, and records which were used for or pertain to the performance of powers, duties, and functions

transferred to the department of commerce. Any conflict as to the proper disposition of property, personnel, or records arising under this order shall be determined by the governor, whose decision shall be final.

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

(b) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this order.

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

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

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

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

Sec. 8. (a) All officers and employees of the division of employment and training within the department of human resources who, immediately prior to the effective date of this order, are engaged in the exercise and performance of the powers, duties, and functions transferred by this order, as well as all officers and employees of the department of human resources who are determined by the secretary of human resources and secretary of commerce to be engaged in providing administrative, technical, or other support services that are essential to the exercise and performance of the powers, duties, and functions transferred by this order, are hereby transferred to the department of commerce. All classified employees so transferred shall retain their status as classified employees.

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

Sec. 9. All of the provisions of this order shall take effect and have the force of general law on July 1, 2004, unless disapproved by either house of the Kansas legislature as provided by subsection (c) of section 6 of article 1 of the constitution of Kansas, and unless so dis-

approved, this order is to be published as and with the acts of the legislature and the statutes of this state.

DONE AT The Capitol in Topeka
Under the Great Seal of the
State of Kansas this 14th day
of January, 2004.

BY THE GOVERNOR
KATHLEEN SEBELIUS

RON E. THORNBURGH
Secretary of State

JANET A. CHUBB
Assistant Secretary of State

Governor's Message
Executive Reorganization Order No. 32
By Governor Kathleen Sebelius
January 14, 2004

As part of my continuing search in government to better serve Kansas and streamline government, I am transferring several program responsibilities from the Kansas Department of Health and Environment to the Kansas Department of Agriculture. This reorganization is part of my administration's continuing search for changes in government to better serve Kansans. The creation of single points of contact for Kansas businesses increases responsiveness on the part of state government, while continuing to strengthen the safety of food in Kansas.

In today's environment, managing food safety is of paramount importance. With a heightened concern for terrorism, there have been changes in national food safety and security measures. The regulation of food safety from "Farm to Fork" is best accomplished through a strategic realignment of food safety duties between these two agencies responsible for consumer protection.

As food is produced, processed and transported to consumers, the Kansas Department of Agriculture will be the key authority for safety. This is an appropriate function for KDA and will provide businesses in this state with a single point of contact for food safety regulation. This shift in duties complements the existing authority of KDA, which already has a presence in grocery stores in its dairy, meat and egg compliance checks.

The Kansas Department of Health and Environment will focus on the food safety arena, which has historically posed the greatest direct risk of illness—businesses that prepare food for immediate consumption. The state public health agency has the capacity for detecting food borne illness and conducting appropriate follow up in order to diminish any future risks. This realignment of duties supports the concept of focusing public health on issues posing greatest risk.

Executive Reorganization Order No. 32
By Governor Kathleen Sebelius
Transmitted January 14, 2004

Section 1. Except as otherwise provided by this order, the following powers, duties, and functions of the department of health and environment, the secretary of health and environment, the division of health of the department of health and environment, the director of the division of health, and the office of laboratory services of the department of health and environment are hereby transferred to and imposed upon the department of agriculture and the secretary of agriculture:

(a) all powers, duties, and functions under the food service and lodging act, K.S.A. 36-501 et seq., relating to the licensing, inspection, and regulation of mobile retail ice cream vendors and food service establishments located in retail food stores;

(b) all powers, duties, and functions under the food service and lodging act, K.S.A. 36-501 et seq., relating to the licensing, inspection, and regulation of food vending machines, food vending machine companies, and food vending machine dealers as those terms are defined in K.S.A. 36-501;

(c) all powers, duties, and functions under K.S.A. 65-688 through K.S.A. 65-689 relating to the licensing, inspection, and regulation of retail food stores and food processing plants; and

(d) all of those powers, duties, and functions under K.S.A. 65-619 through K.S.A. 65-687 that relate to the powers, duties, and functions transferred under paragraphs (a), (b), and (c) above.

Sec. 2. (a) The department of agriculture and the secretary of agriculture shall be the successor in every way to the powers, duties, and functions of the department and secretary of health and environment, the division of health of the department of health and environment, the director of the division of health, and the office of laboratory services of the department of health and environment in which the same were vested prior to the effective date of this order and that are transferred pursuant to section 1. Every act performed in the exercise of such transferred powers, duties, and functions by or under the authority of the department or secretary of agriculture shall be deemed to have the same force and effect as if performed by the department or secretary of health and environment, the division of health, the director of the division of health, or the office of laboratory services in which such powers, duties, and functions were vested prior to the effective date of this order.

(b) Whenever the department of health and environment, the secretary of health and environment, the division of health, the director of the division of health, or the office of laboratory services or words of like effect, are referred to or designated by a statute, contract, or other document and such reference is in regard to any of the powers, duties, or functions transferred to the department or secretary of agriculture pursuant to this order, such reference or designation shall be deemed to apply to the department of agriculture or the secretary of agriculture.

(c) All rules and regulations, orders, and directives of the secretary of health and environment which relate to the functions transferred by this order and which are in effect on the effective date of this order shall continue to be effective and shall be deemed to be rules and regulations, orders, and directives of the secretary of agriculture until revised, amended, revoked, or nullified pursuant to law.

Sec. 3. (a) The balances of all funds or accounts thereof appropriated or reappropriated for the department of health and environment relating to the powers, duties, and functions transferred by this order are hereby transferred within the state treasury to the department of agriculture and shall be used only for the purpose for which the appropriation was originally made.

(b) Liability for all accrued compensation or salaries of officers and employees who are transferred to the department of agriculture under this order shall be assumed and paid by the department of agriculture.

Sec. 4. (a) When any conflict arises as to the disposition of any property, power, duty, or function or the unexpended balance of any appropriation as a result of any abolition or transfer made by or under the authority of this order, such conflict shall be resolved by the governor, whose decision shall be final.

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

Sec. 5. (a) No suit, action, or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency or program mentioned in this order, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this order. The court may allow any such suit, action, or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(b) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this order.

Sec. 6. (a) All officers and employees of the department of health and environment who, immediately prior to the effective date of this order, are engaged in the exercise and performance of the powers, duties, and functions transferred by this order, as well as all officers and employees of the department of health and environment who are determined by the secretary of health and environment and the secretary of agriculture to be engaged in providing administrative, technical, or other support services that are essential to the exercise and performance of the powers, duties, and functions transferred by this order, are hereby transferred to the department of agriculture. All classified employees so transferred shall retain their status as classified employees.

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

Sec. 9. Except as otherwise provided by this order, all of the provisions of this order shall take effect and have the force of general law on October 1, 2004, unless disapproved by either house of the Kansas legislature as provided by subsection (c) of section 6 of article 1 of the constitution of Kansas, and unless so disapproved, this order is to be published as and with the acts of the legislature and the statutes of this state.

DONE AT The Capitol in Topeka
Under the Great Seal of the
State of Kansas this 14th day
of January, 2004.

BY THE GOVERNOR
KATHLEEN SEBELIUS

RON E. THORNBURGH
Secretary of State

JANET A. CHUBB
Assistant Secretary of State

COMMUNICATIONS FROM STATE OFFICERS

KANSAS CORPORATION COMMISSION
Conservation Division
January 12, 2004

M.L. Korphage, Director, submitted the 2004 Abandoned Oil & Gas Well Status Report and the 2004 Remediation Site Status Report.

KANSAS JUVENILE JUSTICE AUTHORITY
January 2004

The Juvenile Correctional Facilities Population Projections for the Fiscal Year 2004 to Fiscal Year 2013 were submitted by the Kansas Sentencing Commission.

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

On motion of Senator Oleen the Senate adjourned until 2:30 p.m., Thursday, January 15, 2004.

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

PAT SAVILLE, *Secretary of the Senate.*

