

Journal of the Senate

TENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Monday, January 26, 2004—2:30 p.m.

The Senate was called to order by President Dave Kerr.
The roll was called with thirty-six senators present.
Senators Gilstrap, Haley, Helgerson and Lee were excused.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

We are now two weeks into our ninety day journey. From now on there will be pot holes, detours, dead ends, dangerous intersections, close calls, and other distractions.

The short time we will pause to pray each day is critical to our success. It is a sacred minute which can determine the effect of the day. Help us not to be so arrogant as to think we can successfully complete this journey alone. And don't let us be so sure of ourselves that we ask You to come along with us. You know that's not the way it works. We request that You let us accompany You.

You know the dangerous intersections. You know the direction to take. You know how to drive better than we do. You know the condition and the potential and the limitations of this vehicle we call the Senate.

We ask You to stay in the driver's seat, and not let us try to take over the steering wheel.

I pray in the Name of Christ.

AMEN

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

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

SB 354, An act concerning municipal court procedure; relating to pre-trial authority; amending K.S.A. 12-4203, 12-4209 and 12-4213 and repealing the existing sections, by Committee on Judiciary.

SB 355, An act concerning the death penalty; relating to cognitive disability; amending K.S.A. 21-4634 and repealing the existing section; also repealing K.S.A. 21-4623, by Committee on Judiciary.

SB 356, An act concerning crimes; relating to violation of probation; amending K.S.A. 2003 Supp. 22-3716 and repealing the existing section, by Committee on Judiciary.

SB 357, An act concerning notaries public; creating the Kansas notary public act; repealing K.S.A. 53-401, 53-503, 53-505, 53-506, 53-507, 53-508, 53-509, by Committee on Judiciary.

SB 358, An act concerning administrative procedure; concerning presiding officers; amending K.S.A. 2-1208a, 2-3311, 8-2426, 21-3110, 31-140, 36-509, 40-2,137, 44-322a, 44-1005, 49-606, 65-163, 65-163a, 65-525, 65-526, 65-673, 65-780, 65-786, 65-2305, 65-3483, 65-3488, 65-3490, 66-1,117, 74-4904, 74-8804, 74-8816, 74-8817, 74-8837, 75-6207, 76-3110, 77-505, 77-549, 77-550, 77-551, 77-551 as amended by section 42 of this act, 79-3313, 82a-1405, 82a-1501a, 82a-1502 and 82a-1504 and K.S.A. 2003 Supp. 75-37,121, 77-514, 77-

514 as amended by section 38 of this act and 82a-1503 and repealing the existing sections; also repealing K.S.A. 75-37,122 and 75-5611a, by Committee on Judiciary.

SB 359, An act concerning school districts; relating to enrollment; amending K.S.A. 2003 Supp. 72-6407 and repealing the existing section, by Committee on Education.

SB 360, An act relating to public utilities; concerning the costs of new facilities; amending K.S.A. 66-117 and repealing the existing section, by Committee on Utilities.

SB 361, An act concerning natural gas public utilities; providing for the recovery of certain relocation costs; amending K.S.A. 66-117 and repealing the existing section, by Committee on Utilities.

SB 362, An act relating to safety belts; concerning enforcement; amending K.S.A. 8-2503 and repealing the existing section, by Senator Adkins.

SB 363, An act concerning hunting; amending K.S.A. 32-921 and K.S.A. 2003 Supp. 32-920 and 32-937 and repealing the existing sections, by Committee on Natural Resources.

SB 364, An act concerning wildlife; authorizing issuance of certain permits; providing for reissuance of certain permits to certain military personnel; relating to wild turkeys; amending K.S.A. 32-701, 32-938, 32-943, 32-1004 and 32-1032 and K.S.A. 2003 Supp. 32-930, 32-937, 32-988 and 32-1050 and repealing the existing sections, by Committee on Natural Resources.

SB 365, An act concerning legislative post audit; relating to persons subject to audits; amending K.S.A. 46-1114 and repealing the existing section, by Committee on Ways and Means.

SB 366, An act concerning the cancer registry; relating to the definition of health care provider and parties required to report to the registry; amending K.S.A. 65-1,168 and 65-1,169 and repealing the existing sections, by Committee on Public Health and Welfare.

SENATE CONCURRENT RESOLUTION No. 1616—

By Committee on Utilities

A CONCURRENT RESOLUTION supporting the Kansas Department of Transportation's review of its radio communication policies, objectives and plan.

WHEREAS, Kansas encompasses over 80,000 square miles and is home to over 2.7 million people; and

WHEREAS, Nearly two-thirds of Kansans live in 10 counties with the remainder of the state very sparsely populated; and

WHEREAS, Providing law enforcement and emergency response services in Kansas is often complicated by great distances between communities where services are located; and

WHEREAS, Adequate response to natural or man-made disasters requires coordination of a number of response agencies; and

WHEREAS, The Special Committee on Kansas Security and the Special Committee on Utilities learned during the 2003 interim of the difficulties experienced by public safety and emergency response agencies that currently lack a state-wide interoperable radio communication system; and

WHEREAS, The Department of Transportation operates for its own use and for the Kansas Highway Patrol an 800 MHz radio communication system; and

WHEREAS, Creation and maintenance of a statewide communication system for the use of state and local law enforcement, emergency response, and public health and safety agencies is in the best interest of the citizens of Kansas: Now, therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That the Legislature supports the initiative of the Kansas Department of Transportation to undertake a review of its radio communication policies, objectives and plan in light of the need for a truly statewide radio communication system; and

Be it further resolved: That the Legislature supports the goal of the Kansas Department of Transportation to revise its communication plan in order to maintain current service standards while enhancing the availability of service; and

Be it further resolved: That the Legislature supports the goal of the Kansas Department of Transportation to include in its revised communication plan a mechanism for assisting

state and local law enforcement and other public health and safety entities meet their needs for access to a truly statewide communication system; and

Be it further resolved: That the Secretary of State provide an enrolled copy of this resolution to the Governor of Kansas, the Secretary of Transportation, the Secretary of Administration, the Chair of the Kansas Public Safety Communications Committee, the Superintendent of the Kansas Highway Patrol, the Kansas Adjutant General, the Director of the Kansas Bureau of Investigation, the Kansas Fire Marshal, the Secretary of Corrections, the Secretary of Wildlife and Parks, the Kansas Association of Chiefs of Police, the Kansas Sheriffs' Association, the Kansas Peace Officers' Association, the Kansas State Association of Fire Fighters, the Kansas State Fire Chiefs' Association, the Kansas Emergency Medical Technicians' Association and the Kansas Emergency Medical Services Association and other state and local entities charged with the protection of Kansans.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Agriculture: **SB 352, SB 353.**

Education: **SB 344, SB 345, SB 346.**

Federal and State Affairs: **SB 349.**

Financial Institutions & Insurance: **SB 347, SB 348.**

Judiciary: **SB 343, SB 350.**

Ways and Means: **SB 351.**

MESSAGE FROM THE GOVERNOR

January 21, 2004

Message to the Senate of the State of Kansas:

Enclosed herewith is Executive Directive No. 04-348 for your information.

Sincerely,

KATHLEEN SEBELIUS
Governor

The President announced Executive Directive No. 04-348, Authorizing Personnel Transactions, Authorizing a Fund Transfer, and Authorizing Expenditure of Federal Funds, is on file in the office of the Secretary of the Senate and is available for review at all times.

COMMUNICATIONS FROM STATE OFFICERS

KANSAS HUMAN RIGHTS COMMISSION

James E. Butler, Chairman, Kansas Human Rights Commission, submitted the Annual Report for FY 2003.

KANSAS NATURAL RESOURCES LEGACY ALLIANCE

December 1, 2003

As provided by the 2002 Kansas Legislature in SB 504, Sheila Frahm, Chair, Kansas Natural Resources Legacy Alliance, submitted the Final Report.

KANSAS BOARD OF REGENTS

January 21, 2004

Per K.S.A. 75-7226, Reginald L. Robinson, President and CEO, Kansas Board of Regents, submitted the annual report on the status and progress of the Kan-ed Project.

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.

MESSAGE FROM THE HOUSE

Announcing adoption of **HCR 5029** and the appointment of Representatives Freeborn, Myers and Gilbert to escort the Senate to the House chamber.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HCR 5029, a concurrent resolution providing for a joint session of the Senate and House of Representatives for the purpose of commemorating Kansas Day, commemorating th 150th year anniversary of Kansas becoming a territory of the United States and hearing an address by "John Brown.", was introduced and read by title.

On emergency motion of Senator Oleen **HCR 5029** was adopted by voice vote.

CHANGE OF CONFERENCE

The President announced the appointment of Senator Downey as a member of the Conference Committee on **HB 2067** and **HB 2418** to replace Senator Feleciano.

REPORTS OF STANDING COMMITTEES

Committee on **Judiciary** recommends **SB 297** be amended on page 2, preceding line 23, by inserting new material to read as follows:

"Sec. 2. K.S.A. 2003 Supp. 28-172a is hereby amended to read as follows: 28-172a. (a) Except as otherwise provided in this section, whenever the prosecuting witness or defendant is adjudged to pay the costs in a criminal proceeding in any county, a docket fee shall be taxed as follows:

~~(1) For the period commencing July 1, 2003, and ending June 30, 2005:~~

Murder or manslaughter.....	\$164.50
Other felony.....	147.00
Misdemeanor.....	112.00
Forfeited recognizance.....	62.50
Appeals from other courts.....	62.50

~~(2) On and after July 1, 2005:~~

Murder or manslaughter.....	\$164.50
Other felony.....	146.00
Misdemeanor.....	111.00
Forfeited recognizance.....	62.50
Appeals from other courts.....	62.50

(b) (1) Except as provided in paragraph (2), in actions involving the violation of any of the laws of this state regulating traffic on highways (including those listed in subsection (c) of K.S.A. 8-2118, and amendments thereto), a cigarette or tobacco infraction, any act declared a crime pursuant to the statutes contained in chapter 32 of Kansas Statutes Annotated and amendments thereto or any act declared a crime pursuant to the statutes contained in article 8 of chapter 82a of the Kansas Statutes Annotated, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, a docket fee of \$55 shall be charged ~~during the period commencing July 1, 2003, and ending June 30, 2005, and \$54 shall be charged on or after July 1, 2005.~~ When an action is disposed of under subsections (a) and (b) of K.S.A. 8-2118 or subsection (f) of K.S.A. 79-3393, and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be \$55 ~~during the period commencing July 1, 2003, and ending June 30, 2005, and \$54 on or after July 1, 2005.~~

(2) In actions involving the violation of a moving traffic violation under K.S.A. 8-2118, and amendments thereto, as defined by rules and regulations adopted under K.S.A. 8-249, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, a docket fee of \$55 shall be charged ~~during the period commencing July 1, 2003, and ending June 30, 2005, and \$54 shall be charged on or after July 1, 2005.~~ When an action is disposed of under subsection (a) and (b) of K.S.A. 8-2118, and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be \$55 ~~during the period commencing July 1, 2003, and ending June 30, 2005, and \$54 on or after July 1, 2005.~~

(c) If a conviction is on more than one count, the docket fee shall be the highest one applicable to any one of the counts. The prosecuting witness or defendant, if assessed the costs, shall pay only one fee. Multiple defendants shall each pay one fee.

(d) Statutory charges for law library funds, the law enforcement training center fund, the prosecuting attorneys' training fund, the juvenile detention facilities fund, the judicial branch education fund, the emergency medical services operating fund and the judiciary technology fund shall be paid from the docket fee; the family violence and child abuse and neglect assistance and prevention fund fee shall be paid from criminal proceedings docket fees. All other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Additional fees shall include, but are not limited to, fees for Kansas bureau of investigation forensic or laboratory analyses, fees for detention facility processing pursuant to K.S.A. 12-16,119, and amendments thereto, fees for the sexual assault evidence collection kit, fees for conducting an examination of a sexual assault victim, fees for service of process outside the state, witness fees, fees for transcripts and depositions, costs from other courts, doctors' fees and examination and evaluation fees. No sheriff in this state shall charge any district court of this state a fee or mileage for serving any paper or process.

(e) In each case charging a violation of the laws relating to parking of motor vehicles on the statehouse grounds or other state-owned or operated property in Shawnee county, Kansas, as specified in K.S.A. 75-4510a, and amendments thereto, or as specified in K.S.A. 75-4508, and amendments thereto, the clerk shall tax a fee of \$2 which shall constitute the entire costs in the case, except that witness fees, mileage and expenses incurred in serving a warrant shall be in addition to the fee. Appearance bond for a parking violation of K.S.A. 75-4508 or 75-4510a, and amendments thereto, shall be \$3, unless a warrant is issued. The judge may order the bond forfeited upon the defendant's failure to appear, and \$2 of any bond so forfeited shall be regarded as court costs.

Sec. 3. K.S.A. 2003 Supp. 59-104 is hereby amended to read as follows: 59-104. (a) *Docket fee.* Except as otherwise provided by law, no case shall be filed or docketed in the district court under the provisions of chapter 59 of the Kansas Statutes Annotated or of articles 40 and 52 of chapter 65 of the Kansas Statutes Annotated without payment of an appropriate docket fee as follows:

~~(1) For the period commencing July 1, 2003, and ending June 30, 2005:~~

Treatment of mentally ill	\$25.50
Treatment of alcoholism or drug abuse.....	25.50
Determination of descent of property	40.50
Termination of life estate.....	39.50
Termination of joint tenancy	39.50
Refusal to grant letters of administration	39.50
Adoption.....	39.50
Filing a will and affidavit under K.S.A. 59-618a.....	39.50
Guardianship.....	60.50
Conservatorship.....	60.50
Trusteeship.....	60.50
Combined guardianship and conservatorship.....	60.50
Certified probate proceedings under K.S.A. 59-213, and amendments thereto ..	14.50
Decrees in probate from another state	99.50
Probate of an estate or of a will.....	100.50
Civil commitment under K.S.A. 59-29a01 et seq.....	24.50

~~(2) On and after July 1, 2005:~~

Treatment of mentally ill	\$24.50
Treatment of alcoholism or drug abuse.....	24.50
Determination of descent of property	39.50
Termination of life estate.....	39.50
Termination of joint tenancy	39.50
Refusal to grant letters of administration	39.50
Adoption.....	39.50
Filing a will and affidavit under K.S.A. 59-618a.....	39.50
Guardianship.....	59.50
Conservatorship.....	59.50
Trusteeship.....	59.50

Combined guardianship and conservatorship.....	59.50
Certified probate proceedings under K.S.A. 59-213, and amendments thereto ..	14.50
Decrees in probate from another state	99.50
Probate of an estate or of a will.....	99.50
Civil commitment under K.S.A. 59-29a01 et seq.....	24.50

(b) *Poverty affidavit in lieu of docket fee and exemptions.* The provisions of subsection (b) of K.S.A. 60-2001 and K.S.A. 60-2005, and amendments thereto, shall apply to probate docket fees prescribed by this section.

(c) *Disposition of docket fee.* Statutory charges for the law library and for the prosecuting attorneys' training fund shall be paid from the docket fee. The remainder of the docket fee shall be paid to the state treasurer in accordance with K.S.A. 20-362, and amendments thereto.

(d) *Additional court costs.* Other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Other fees shall include, but not be limited to, witness fees, appraiser fees, fees for service of process outside the state, fees for depositions, transcripts and publication of legal notice, executor or administrator fees, attorney fees, court costs from other courts and any other fees and expenses required by statute. All additional court costs shall be taxed and billed against the parties or estate as directed by the court. No sheriff in this state shall charge any district court in this state a fee or mileage for serving any paper or process.

Sec. 4. K.S.A. 2003 Supp. 60-1621 is hereby amended to read as follows: 60-1621. (a) No post-decree motion petitioning for a change in legal custody, residency, visitation rights or parenting time, or for a modification of child support shall be filed or docketed in the district court without payment of a docket fee in the amount of \$21 ~~during the period commencing July 1, 2003, and ending June 30, 2005, and \$20 on or after July 1, 2005,~~ to the clerk of the district court.

(b) A poverty affidavit may be filed in lieu of a docket fee as established in K.S.A. 60-2001, and amendments thereto.

(c) The docket fee shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. The docket fee shall be disbursed in accordance with subsection (f) of K.S.A. 20-362, and amendments thereto.

Sec. 5. K.S.A. 2003 Supp. 60-2001 is hereby amended to read as follows: 60-2001. (a) *Docket fee.* Except as otherwise provided by law, no case shall be filed or docketed in the district court, whether original or appealed, without payment of a docket fee in the amount of \$106 ~~during the period commencing July 1, 2003, and ending June 30, 2005, and \$105 on or after July 1, 2005,~~ to the clerk of the district court.

(b) *Poverty affidavit in lieu of docket fee.* (1) *Effect.* In any case where a plaintiff by reason of poverty is unable to pay a docket fee, and an affidavit so stating is filed, no fee will be required. An inmate in the custody of the secretary of corrections may file a poverty affidavit only if the inmate attaches a statement disclosing the average account balance, or the total deposits, whichever is less, in the inmate's trust fund for each month in (A) the six-month period preceding the filing of the action; or (B) the current period of incarceration, whichever is shorter. Such statement shall be certified by the secretary. On receipt of the affidavit and attached statement, the court shall determine the initial fee to be assessed for filing the action and in no event shall the court require an inmate to pay less than \$3. The secretary of corrections is hereby authorized to disburse money from the inmate's account to pay the costs as determined by the court. If the inmate has a zero balance in such inmate's account, the secretary shall debit such account in the amount of \$3 per filing fee as established by the court until money is credited to the account to pay such docket fee. Any initial filing fees assessed pursuant to this subsection shall not prevent the court, pursuant to subsection (d), from taxing that individual for the remainder of the amount required under subsection (a) or this subsection.

(2) *Form of affidavit.* The affidavit provided for in this subsection shall be in the following form and attached to the petition:

State of Kansas, _____ County.

In the district court of the county: I do solemnly swear that the claim set forth in the petition herein is just, and I do further swear that, by reason of my poverty, I am unable to pay a docket fee.

(c) *Disposition of docket fee.* The docket fee shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. The docket fee shall be disbursed in accordance with K.S.A. 20-362 and amendments thereto.

(d) *Additional court costs.* Other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Other fees shall include, but not be limited to, witness fees, appraiser fees, fees for service of process outside the state, fees for depositions, alternative dispute resolution fees, transcripts and publication, attorney fees, court costs from other courts and any other fees and expenses required by statute. All additional court costs shall be taxed and billed against the parties as directed by the court. No sheriff in this state shall charge any district court in this state a fee or mileage for serving any paper or process.”;

And by renumbering the remaining sections accordingly; also on page 2, in line 23, by striking “is” and inserting “, 28-172a, 59-104, 60-1621 and 60-2001 are”;

On page 1, in the title, in line 10, before “and” by inserting “, 28-172a, 59-104, 60-1621 and 60-2001”; also in line 10, by striking “section” and inserting “sections”; and the bill be passed as amended.

REPORT ON ENROLLED BILLS

SR 1803 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on January 23, 2004.

On motion of Senator Oleen the Senate adjourned until 2:30 p.m., Tuesday, January 27, 2004.

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

PAT SAVILLE, *Secretary of the Senate.*

