

Journal of the Senate

TWENTY-SIXTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Tuesday, February 17, 2004—2:30 p.m.

The Senate was called to order by President Dave Kerr.
The roll was called with thirty-nine senators present.
Senator Oleen was excused.

President Kerr introduced as guest chaplain, Rev. Clint W. Decker, Clay Center Wesleyan Church, Clay Center, Kansas, who delivered the invocation:

Holy and all-powerful God, I humbly come to you in the name of my Lord and Savior, Jesus. He is the Wonderful Counselor, Almighty God, and Prince of Peace.

God, the Scripture says you are love. Oh, how much you love each of these Senators today. Your love for them is without measure, unconditional, and everlasting. Carefully and slowly pour out your love upon them in this moment. May their hearts receive your love, walk in your ways, and return thanks to you.

In their discussions today grant them the wisdom of Christ. In their choices today guide them to choose good over evil, right over wrong and the wise over the foolish.

May you help these Senators to be leaders of integrity today and through their life may you bless their staff, families, and the citizens of Kansas.

In Jesus name I pray, Amen.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 526, An act enacting the emergency contraception education act; providing for education and dissemination of information relating thereto, by Committee on Federal and State Affairs.

SB 527, An act concerning the Kansas water office; establishing the water supply storage assurance fund; establishing the local water project match fund, by Committee on Ways and Means.

SB 528, An act concerning the Kansas parole board; amending K.S.A. 2003 Supp. 22-3709 and repealing the existing section, by Committee on Ways and Means.

SB 529, An act concerning physical therapy; amending K.S.A. 2003 Supp. 65-2901 and 65-2912 and repealing the existing sections, by Committee on Ways and Means.

SB 530, An act concerning public water supply; requiring fluoridation in certain public water supply systems; amending K.S.A. 65-162a, 65-171m and 65-171p and repealing the existing sections, by Committee on Ways and Means.

SB 531, An act concerning the department of social and rehabilitation services; relating to state developmental disabilities institutions; creating the developmental disabilities institutions closure commission; prescribing powers, duties and functions for the commission, the governor and the secretary of social and rehabilitation services, by Committee on Ways and Means.

SB 532, An act concerning sales taxation; relating to time for returns and payment of tax; waiver of penalties and interest in certain circumstances; income tax credit for certain retailer costs; remittance credits; amending K.S.A. 2003 Supp. 79-3607, 79-3615 and 79-3706 and repealing the existing sections, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Agriculture: **HB 2530**.

Elections and Local Government: **HB 2641**.

Financial Institutions & Insurance: **HB 2580**.

Judiciary: **HB 2553, HB 2555, HB 2556, HB 2612**.

COMMUNICATIONS FROM STATE OFFICERS

KANSAS WATER OFFICE

February 13, 2004

Joseph F. Harkins, Acting Director, Kansas Water Office, submitted six water supply contracts negotiated under the provisions of the State Water Plan Storage Act (K.S.A. 82a-1301 *et al.*) and approved by the Kansas Water Authority during calendar year 2003 and January 2004.

They included the contract between the State of Kansas and Jost Farms for an Interim Irrigation Water Supply from Marion Lake (Surplus Water Purchase Contract Number 03-1); between the State of Kansas and Jost Farms for an Interim Irrigation Water Supply from Marion Lake (Surplus Water Purchase Contract Number 03-2); between the State of Kansas and Tom J. Moxley for an Interim Irrigation Water Supply from Council Grove Lake (Water Purchase Contract Number 03-3); between the State of Kansas and D. Randall Heilman for an Interim Irrigation Water Supply from Council Grove Lake (Surplus Water Purchase Contract Number 03-4); between the State of Kansas and Rural Water District No. 3 of Miami County, Kansas for a Public Water Supply from Hillsdale Lake (Water Purchase Contract Number 03-5) and between the State of Kansas and City of Spring Hill, Johnson and Miami Counties, Kansas for a Public Water Supply from Hillsdale Lake (Water Purchase Contract Number 04-1).

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

REFERRAL OF WATER SUPPLY CONTRACTS

The President referred the water supply contracts submitted by Joseph F. Harkins, Acting Director, Kansas Water Office, to the Committee on Natural Resources.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2531, HB 2542, HB 2545, HB 2554, HB 2565, HB 2597, HB 2623, HB 2624, HB 2678, HB 2737**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2531, HB 2542, HB 2545, HB 2554, HB 2565, HB 2597, HB 2623, HB 2624, HB 2678, HB 2737 were thereupon introduced and read by title.

REPORTS OF STANDING COMMITTEES

Committee on **Commerce** recommends **SB 410** be amended on page 5, in line 30, after the semicolon by inserting "or"; in line 32, by striking "; or" and inserting a period; by striking all in lines 33 through 35;

On page 12, after line 27 by inserting the following:

"(v) If the individual has been discharged for failing a pre-employment drug screen required by the employer and if such discharge occurs not later than seven days after the employer is notified of the results of such drug screen."; and the bill be passed as amended.

Also, **SB 440** be amended on page 21, in line 5, by striking "(c)(2)(F)" and inserting "(c)(2)(G)"; and the bill be passed as amended.

Committee on **Financial Institutions and Insurance** recommends **SB 348** be passed.

Committee on **Judiciary** recommends **SB 460** be passed.

Committee on **Transportation** recommends **SB 501** be passed.

Also, **SB 330** be amended on page 1, in line 40, by striking ", except that such" and inserting ". Such"; in line 42, following the period, by inserting "Notwithstanding the pro-

visions of this section, a city may adopt an ordinance prohibiting the activation of such whistle, bell or other audible signal during specific periods of time during the day.”; and the bill be passed as amended.

Committee on **Utilities** recommends **SB 331** be amended on page 1, in line 15, by striking “Every” and inserting “Except as provided in section 2, and amendments thereto, every”; by striking all in line 18; in line 19, by striking all before “or”; in line 20, by striking “(d)” and inserting “(c)”; following line 40, by inserting the following two new sections:

“New Sec. 2. (a) Every instrument that conveys any estate or interest created by any lease or easement involving wind resources and technologies to produce and generate electricity shall include:

(1) A description of the real property subject to the easement and a description of the real property benefitting from the wind lease or easement;

(2) a description of the vertical and horizontal angles, expressed in degrees, and distances from the site of the wind power system in which an obstruction to the wind is prohibited or limited;

(3) any terms or conditions under which the lease or easement is granted or may be terminated, excluding any compensation received by the owner of the real property; and

(4) any other provisions necessary or desirable to execute the instrument.

(b) Every instrument described in subsection (a) may be recorded in the office of register of deeds of the county such real estate is situated. It shall be the duty of the register of deeds to file the same for record immediately, and in those counties where a numerical index is maintained in the register of deeds’ office, the register of deeds shall compare such instrument, before copying the same in the record, with the last record of transfer in the register of deeds’ office of the property described. If the register of deeds finds such instrument contains apparent errors, the register of deeds shall not record the instrument until the grantee has been notified, if such notice is reasonably possible.

The grantor, lessor, grantee or lessee or any other person conveying or receiving real property or other interest in real property upon recording the instrument in the office of register of deeds shall furnish the register of deeds the full name and last known post-office address of the person to whom the property is conveyed or such person’s designee. The register of deeds shall forward such information to the county clerk of the county who shall make any necessary changes in address records for mailing tax statements.

New Sec. 3. (a) When a recorded deed or conveyance covering mineral and royalty rights purporting to cover mineral and royalty rights not owned by grantor, and which deed or conveyance may include a general conveyance provision (including but not limited to a “mother hubbard” clause or a “cover-all” clause) for other property conveyed by grantor, but which the grantor believes there was a mistake of fact that such general conveyance provision should not have been included in such deed or conveyance, then any party with an interest in the real estate covered by such deed may make demand upon the grantee or grantor, as applicable, to rescind or reform the mistake caused by the general conveyance provision.

(b) Any grantee or grantor who refuses or neglects to correct or reform such legal description in the office of the register of deeds within 20 days after written demand has been made as provided in subsection (a), unless a longer period has been agreed to in writing by the parties, shall be liable in damages to the party for whom the demand was made in the sum of up to \$10,000 per title affected, and reasonable attorney’s fee for preparing and prosecuting the action before any court of competent jurisdiction. The plaintiff in such action may recover any additional damages that the evidence in the case warrants.

(c) The remedies provided under this section shall not affect other remedies or damages provided by statute or law.”;

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

Committee on **Ways and Means** recommends **SB 442** be passed.

REPORT ON ENROLLED BILLS

SR 1815 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on February 17, 2004.

COMMITTEE OF THE WHOLE

On motion of Senator Donovan, the Senate resolved itself into Committee of the Whole for consideration of bills on the calendar under the heading of General Orders with Senator Schodorf in the chair.

On motion of Senator Schodorf the following report was adopted:

Recommended **HB 2522** be passed.

The Committee considered **SB 421**.

Senator Pugh moved to amend **SB 421**, on page 1, preceding line 38, by inserting new material to read as follows:

“Sec. 5. K.S.A. 26-513 is hereby amended to read as follows: 26-513. (a) *Necessity*. Private property shall not be taken or damaged for public use without just compensation.

(b) *Taking entire tract*. If the entire tract of land or interest in such land is taken, the measure of compensation is the fair market value of the property or interest at the time of the taking.

(c) *Partial taking*. If only a part of a tract of land or interest is taken, the compensation and measure of damages is the difference between the fair market value of the entire property or interest immediately before the taking, and the value of that portion of the tract or interest remaining immediately after the taking.

(d) *Factors to be considered*. In ascertaining the amount of compensation and damages, the following nonexclusive list of factors shall be considered if such factors are shown to exist. Such factors are not to be considered as separate items of damages, but are to be considered only as they affect the total compensation and damage under the provisions of subsections (b) and (c) of this section. Such factors are:

- (1) The most advantageous use to which the property is reasonably adaptable.
- (2) Access to the property remaining.
- (3) Appearance of the property remaining, if appearance is an element of value in connection with any use for which the property is reasonably adaptable.
- (4) Productivity, convenience, use to be made of the property taken, or use of the property remaining.
- (5) View, ventilation and light, to the extent that they are beneficial attributes to the use of which the remaining property is devoted or to which it is reasonably adaptable.
- (6) Severance or division of a tract, whether the severance is initial or is in aggravation of a previous severance; changes of grade and loss or impairment of access by means of underpass or overpass incidental to changing the character or design of an existing improvement being considered as in aggravation of a previous severance, if in connection with the taking of additional land and needed to make the change in the improvement.
- (7) Loss of trees and shrubbery to the extent that they affect the value of the land taken, and to the extent that their loss impairs the value of the land remaining.
- (8) Cost of new fences or loss of fences and the cost of replacing them with fences of like quality, to the extent that such loss affects the value of the property remaining.
- (9) Destruction of a legal nonconforming use.
- (10) Damage to property abutting on a right-of-way due to change of grade where accompanied by a taking of land.
- (11) Proximity of new improvement to improvements remaining on condemnee's land.
- (12) Loss of or damage to growing crops.
- (13) That the property could be or had been adapted to a use which was profitably carried on.
- (14) Cost of new drains or loss of drains and the cost of replacing them with drains of like quality, to the extent that such loss affects the value of the property remaining.
- (15) Cost of new private roads or passageways or loss of private roads or passageways and the cost of replacing them with private roads or passageways of like quality, to the extent that such loss affects the value of the property remaining.

(e) *Fair market value*. “Fair market value” means the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion. The fair market value shall be determined by use of the comparable

sales, cost or capitalization of income appraisal methods or any combination of such methods.

(f) *No private property shall be taken for the purpose of industrial or economic development.*”;

By renumbering the remaining sections accordingly;

Also on page 1, in line 38, by striking “is” and inserting “and 26-513 are”;

In the title, in line 10, following “26-504” by inserting “and 26-513”; in line 11, by striking “section” and inserting “sections”

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

On roll call, the vote was: Yeas 18, Nays 19, Present and Passing 2, Absent or Not Voting 1.

Yeas: Barone, Betts, Brownlee, Clark, Goodwin, Haley, Hensley, Huelskamp, Jackson, Journey, Lee, Lyon, O’Connor, Pugh, Salmans, Steineger, Tyson, Wagle.

Nays: Adkins, Allen, Barnett, Brungardt, Buhler, Bunten, Corbin, Donovan, Emler, Gilstrap, Helgerson, Kerr, Morris, Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil.

Present and Passing: Downey, Jordan.

Absent or Not Voting: Oleen.

The motion failed and the amendment was rejected.

The Committee recommended **SB 421** be passed.

EXPLANATION OF VOTE

MADAM CHAIRMAN: I absolutely support the concept. The language of the amendment is too broad and subject to too many different interpretations. If the amendment were more detailed and specific, I could support it. As it is written, I cannot.—JAY SCOTT EMLER

Senators Donovan, Kerr, Schodorf, Teichman and Umbarger request the record to show they concur with the “Explanation of Vote” offered by Senator Emler on Senator Pugh’s amendment to **SB 421**.

MADAM CHAIRMAN: Those who failed to support this amendment demonstrate an alarming unwillingness to support one of our most cherished constitutional rights—the right to private property.—TIM HUELSKAMP

MADAM CHAIRMAN: I support the intent of this amendment—to prevent government from taking one person’s private property and giving it to another person. But I don’t think the language in the amendment does that. This language is so broad as to prohibit, for example, the taking of land to build public roads to an industrial plant. This amendment as drafted will have unintended and undesired consequences. Instead of recklessly plowing ahead, we should send this proposal to a committee for hearings and for re-drafting. The right to own private property is too important to address without understanding what we are doing.—DEREK SCHMIDT

SB 289, SB 337, SB 342 be amended by adoption of the committee amendments, and the bills be passed as amended.

On motion of Senator Donovan the Senate adjourned until 2:30 p.m., Wednesday, February 18, 2004.

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

PAT SAVILLE, *Secretary of the Senate*.

