

# Journal of the Senate

FORTY-SIXTH DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Wednesday, March 17, 2004—2:30 p.m.

The Senate was called to order by President Dave Kerr.

The roll was called with forty senators present.

President Kerr introduced as guest chaplain, Rev. Mr. Art O'Connor, guest and husband of Senator O'Connor of Johnson County, who delivered the invocation:

Mr. President, worthy senators and staff and guests:

An Irish American, by Chris Fitzgerald;

I'm proud to be an American  
And I'm proud to be Irish too,  
And I love the wearin' of the green  
And I love the red, white and blue.

I love to watch the marchers  
As they go parading by  
Whether it's on St. Patrick's Day  
Or the fourth of July.

And what could be more beautiful  
Than a shamrock, goodness knows,  
Unless your heart is captured  
By an American Beauty Rose?

Hot dogs, yes, I love'em  
And watermelon too,  
But I'll always have an appetite  
For good old Irish stew.

No, it isn't just the blarney  
When I proudly say, "It's true  
That my heart is pledged to America  
And to dear old Erin, too!"

And now, let us bow our heads in prayer.

Lord God, may everything we do begin with your inspiration, and continue with your help, so that all our works, prayers, joys and sufferings may begin with you, and by you, be happily ended.

May God strengthen you in the difficult decisions which you are asked to face.

May hope accompany your journey through the days to come and God's abiding presence be with you all the days of your life.

And we ask that God bless and keep you, may His face shine upon you and be gracious to you, that He look upon you with kindness and give you His peace.

Amen.

**GUESTS**

Senator Downey introduced as guests of the Senate her father, Fred Lorson of Hope, Kansas, and her sister, Trish Schimming of Newton, Kansas.

**REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS**

The following bills and resolution were referred to Committees as indicated:

Commerce: **HB 2908**.

Federal and State Affairs: **HB 2835**.

Natural Resources: **SB 561**.

Utilities: **SR 1829**.

Ways and Means: **HB 2582, HB 2912**.

**CHANGE OF REFERENCE**

The President withdrew **HB 2568** from the Committee on Judiciary, and referred the bill to the Committee on Ways and Means.

**MESSAGE FROM THE GOVERNOR**

**SB 323, SB 352** approved on March 17, 2004.

**MESSAGE FROM THE HOUSE**

Announcing passage of **HB 2484**.

Also, passage of **SB 141, as amended; SB 297, as amended; SB 443, SB 452**.

**INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS**

**HB 2484** was thereupon introduced and read by title.

**CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR**

On motion of Senator Schmidt the Senate nonconcurred in the House amendments to **SB 353** and requested a conference committee be appointed.

The President appointed Senators Schmidt, Huelskamp and Downey as a conference committee on the part of the Senate.

On motion of Senator Teichman the Senate nonconcurred in the House amendments to **SB 404** and requested a conference committee be appointed.

The President appointed Senators Teichman, Barnett and Steineger as a conference committee on the part of the Senate.

**FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS**

**HB 2293**, An act concerning fees for services by sheriffs; amending K.S.A. 28-110 and 28-170 and K.S.A. 2003 Supp. 60-2001 and 60-2003 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Betts, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Haley, Helgerson, Hensley, Huelskamp, Jackson, Jordan, Journey, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

**HB 2556**, An act concerning property; relating to trusts; debts, claims and other repayment obligations; amending K.S.A. 39-709 and K.S.A. 2003 Supp. 58a-103, 58a-105, 58a-401, 58a-406, 58a-411, 58a-502, 58a-505, 58a-602, 58a-603, 58a-802, 58a-810, 58a-813 and 58a-815 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Betts, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Haley, Helgerson, Hensley, Huelskamp, Jackson, Jordan, Journey, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

**Sub HB 2592**, An act concerning school districts; relating to the transfer of territory between districts; requiring mediation, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Betts, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Haley, Helgerson, Hensley, Huel-skamp, Jackson, Jordan, Journey, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The substitute bill passed, as amended.

**HB 2618**, An act concerning the court of appeals; relating to the judge's term of office; amending K.S.A. 20-3010 and K.S.A. 2003 Supp. 20-3006 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Betts, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Haley, Helgerson, Hensley, Huel-skamp, Jackson, Jordan, Journey, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed.

**HB 2764**, An act concerning civil procedure; relating to class actions; amending K.S.A. 2003 Supp. 60-223 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Betts, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Haley, Helgerson, Hensley, Huel-skamp, Jackson, Jordan, Journey, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed.

**HB 2871**, An act regulating traffic; concerning certain traffic infractions for motor carriers; requiring certain warning devices on garbage trucks; amending K.S.A. 8-1738, 8-1901, 8-2118, 66-1315, 66-1324 and 79-34,122 and K.S.A. 2003 Supp. 8-2107 and 66-1,130 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Betts, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Haley, Helgerson, Hensley, Huel-skamp, Jackson, Jordan, Journey, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

#### REPORTS OF STANDING COMMITTEES

Committee on **Elections and Local Government** recommends **HB 2615**, as amended by House Committee, be passed.

Also, **HB 2600** be amended on page 1, following line 13, by inserting:

"Section 1. K.S.A. 19-211 is hereby amended to read as follows: 19-211. (a) *Except as provided in subsection (b):*

(1) Except for any property belonging to a county law enforcement department and as otherwise provided in this section, no property, the value of which is more than \$50,000, belonging to any county shall be sold or disposed of by any board of county commissioners without a unanimous vote of such commissioners and public notice of such sale or disposition. Such notice shall state the time or date of the sale or disposition or the date after which the property will be offered for sale or disposal, the place of the sale or disposition and the terms and conditions of the sale or disposition. Such notice shall be published at least once each week for three consecutive weeks prior to the sale or disposition in the official newspaper of the county. The property shall be sold or disposed of publicly, in the manner deemed prudent by the board of county commissioners, to the person or entity

tendering the highest and best bid as determined by the board. The board of county commissioners shall have the right to reject any or all bids.

If, within 45 days after the first publication of the notice of sale or disposition a petition signed by not less than 2% of the qualified electors of the county is filed with the county election officer, such property shall not be sold or disposed of unless the proposition of sale or disposal of such property is submitted to a vote of the electors of the county at a question submitted election called therefor. The election shall be called, noticed and held in the manner provided by K.S.A. 10-120, and amendments thereto, or at a general election. If a majority of the votes cast at any such election authorizes any sale or disposition, such sale or disposition shall be made upon the notice hereinbefore prescribed by publication, to the person or entity tendering the highest and best bid, as determined by the board. The board of county commissioners shall have the right to reject any or all bids.

(b) (2) If the board of county commissioners rejects all bids or if no bids are received, the board may proceed to sell or dispose of the property publicly, in the manner deemed prudent by the board, to the person or entity tendering the highest and best bid or offer as determined by the board. If the notice of sale or disposition has been previously published in the manner set forth in subsection (a), no further notice of sale shall be published before the property is sold or disposed of pursuant to this subsection. When property of the county is sold or disposed of pursuant to this subsection, the board shall cause to be published as a part of the statement required by K.S.A. 19-227, and amendments thereto, a detailed account of such sale or disposition which shall list such property, the person who acquired the property and the purchase price.

(c) (3) If the value of the property does not exceed \$1,000, such notice by publication shall not be required prior to the sale or disposition of such property. When property of the county having a value of more than \$50 but not more than \$1,000 is sold or disposed of, the board of county commissioners shall cause to be published as a part of the statement required by K.S.A. 19-227, and amendments thereto, a detailed account of such sale or disposition which shall list such property, the person who acquired the property and the purchase price.

(d) (4) Upon a finding by the board that any property is no longer required, or cannot prudently be used for public purposes of the county, the board, by a unanimous vote, may sell or dispose of such property, the value of which does not exceed \$50,000, by public or private sale or by negotiation, as determined by the board. Notice of the board's intent to sell or dispose of such property shall be published at least two times in the official county newspaper. Such notice shall include the time, place and conditions of such sale or disposition.

(e) (5) The board, by unanimous vote, may sell or dispose of any real property interest belonging to the county, including any interest derived through dedication, plat, condemnation, reversion, abandonment, reservation or tax foreclosure, which the board determines, after notice and public hearing, to be surplus property not required for public use, and to be unmarketable property. Such property interest may be sold or disposed of by the county by the adoption of a resolution providing that the interest of the county shall be vacated and transferring by quitclaim, without benefit of warranties of title, whatever right, title or interest the county has or may have in the property. The resolution shall provide for the reservation to the county and the owners of any lesser property rights for public utilities, the rights-of-way and easements for public service facilities which are in existence and in use across the property. Upon adoption of the resolution, the property interests vacated and conveyed shall revert to and vest in the owners of the real estate immediately abutting thereon, in proportion to the frontage of such land, except in cases where such land may have been acquired for public use in a different proportion, in which event it shall revert and vest in the owner of the adjoining real estate in the same proportion that it was acquired.

Following the adoption of the resolution, the county clerk shall record the conveyance upon the transfer records of the county and shall cause a notice of the transfer to be published at least two times in the official county newspaper and to be sent by certified mail to each owner of the adjoining real estate to whom the property is being transferred, at the address where the owner's tax statement is sent. A copy of the transfer and the notice shall

be recorded with the register of deeds of the county, and no fee shall be charged by the county clerk or the register of deeds recording the transfer.

⌘ (6) In the event of any sale or disposition of real property pursuant to the authority under this section, the board, in its discretion, may enter into and execute contracts for sale or lease-purchase agreements for a term of not more than five years.

(b) (1) *In lieu of following the procedures established in subsection (a), a county commission may adopt a resolution establishing an alternate methodology for the disposal of property. Such alternate methodology for the disposal of property shall contain, at a minimum, procedures for:*

(A) *Notification of the public of the property to be sold;*

(B) *describing the property to be sold; and*

(C) *the method of sale, including, but not limited to, fixed price, negotiated bid, sealed bid, public auction or auction or any other method of sale which allows public participation.*

(2) *Any methodology for the disposal of property established pursuant to this subsection may contain different procedures for real property and personal property.*

⌘ (c) The provisions of this section shall not apply to or restrict the conveyance of real property by any county to the state of Kansas, the title to which was previously conveyed to such county by the state of Kansas.

⌘ (d) The provisions of this section shall not apply to or restrict the conveyance of real property by any county to a nonprofit corporation organized under the laws of Kansas if such real property is acquired and conveyed by the county for the purpose of development of an industrial or business park on such real property comprised of businesses engaged in: (1) Manufacturing articles of commerce; (2) conducting research and development; or (3) storing or processing goods or commodities. If the real property is to be conveyed for an amount which is less than the amount the county paid to acquire such property, the board of county commissioners shall publish a notice of its intent to convey such property. The notice shall include a description of the property, the cost of acquiring the property and the amount for which such property is to be conveyed. Such notice shall be published once each week for three consecutive weeks in the official county newspaper. If, within 45 days after the first publication of such notice a petition signed by not less than 2% of the qualified electors of the county is filed with the county election officer, such property shall not be conveyed unless the proposition of sale or disposal of such property is submitted to and approved by a majority of the qualified voters of the county at an election called therefor. The election shall be called, noticed and held in the manner provided by K.S.A. 10-120, and amendments thereto, or at a general election.

⌘ (e) The provisions of this section shall not apply to or restrict the conveyance of real property by any county to a port authority if such real property is acquired and conveyed by the county for the purpose of development of an industrial, commercial or business park on such real property. The board of county commissioners shall publish a notice of its intent to convey such property. The notice shall include a description of the property, the cost of acquiring the property and the amount for which the property is to be conveyed. Such notice also shall include the time and date of the public hearing at which the board proposes to consider the conveyance of such property. Such notice shall be published at least once in the official county newspaper. Following the public hearing, the board of county commissioners may convey such property.

⌘ (f) Whenever it is required by this section that the board of county commissioners approve a sale or disposition of property by unanimous vote and a county has a five-member board, such board may approve a sale or disposition of property by a  $\frac{4}{5}$  majority.

⌘ (g) The provisions of this section shall not apply to the conveyance of property pursuant to K.S.A. 2-1319, and amendments thereto.”;

By renumbering “Section 1.” and “Sec. 2.” as “Sec. 2.” and “Sec. 3.”, respectively;

In the title, in line 10, by striking “repealing K.S.A. 19-211.”; in line 11, following “counties” by inserting “; amending K.S.A. 19-211 and repealing the existing section”; and the bill be passed as amended.

**HB 2758**, as amended by House Committee, be amended on page 6, in line 24, by striking “to the”; in line 25, by striking all before “pa-” and inserting “that such”; and the bill be passed as amended.

**HB 2774**, as amended by House Committee of the Whole, be amended on page 4, by striking all in lines 6 through 8; in line 9, by striking all preceding “the”; and the bill be passed as amended.

Committee on **Federal and State Affairs** recommends **Substitute for HB 2713**, as amended by House Committee of the Whole, be amended by substituting a new bill to be designated as “SENATE Substitute for Substitute for HOUSE BILL NO. 2713,” as follows:  
“SENATE Substitute for Substitute for HOUSE BILL NO. 2713

By Committee on Federal and State Affairs

“AN ACT concerning certain sports; relating to the regulation thereof; establishing an athletic commission; relating to the powers and duties thereof; amending K.S.A. 21-1801 and K.S.A. 2003 Supp. 79-3606 and repealing the existing sections; also repealing K.S.A. 12-5101, 12-5102, 12-5103, 12-5104, 12-5105, 12-5106, 12-5107, 12-5108, 12-5109, 12-5110, 12-5111, 12-5112, 12-5113, 12-5114, 12-5115, 12-5116, 12-5117, 12-5118, 12-5119, 12-5120, 12-5121, 12-5122, 12-5123, 12-5124, 12-5125 and 12-5126.”;  
and the substitute bill be passed.

Committee on **Financial Institutions and Insurance** recommends **HB 2685**, as amended by House Committee, be passed.

Also, **SB 558** be amended on page 2, in line 39, following “coverage” by inserting “within the two years next preceding the date upon which health insurance is offered”; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 547** be amended on page 1, in line 16, by striking all after the period; by striking all in lines 17 through 25 and inserting “The taking of private property for the purpose of selling, leasing or transferring such property to any private entity to be used by such private entity for industrial or economic development shall not constitute public use. It shall be *prima facie* evidence that the purpose of such taking was industrial or economic development if such sale, lease or transfer resulted in commercial or economic benefit to the private entity. No private property shall be taken through the exercise of the right of eminent domain prior to a showing stated in the petition filed pursuant to K.S.A. 26-502, and amendments thereto, that all required state and federal permits to use or develop any such property have been obtained.”;

On page 2, after line 42 by inserting the following:

“Sec. 2. K.S.A. 26-502 is hereby amended to read as follows: 26-502. A petition shall include ~~allegations of~~ (1) The authority for and the purpose of the taking; (2) a description of each lot, parcel or tract of land and the nature of the interest to be taken; (3) insofar as their interests are to be taken (a) the name of any owner and all lienholders of record, and (b) the name of any party in possession; and (4) a showing that all required state and federal permits to use or develop any such property have been obtained pursuant to K.S.A. 26-513, and amendments thereto. Such petition shall be verified by affidavit. Upon the filing of such petition the court by order shall fix the time when the same will be taken up. No defect in form which does not impair substantial rights of the parties shall invalidate any proceeding.”;

And by renumbering the remaining sections accordingly;

Also on page 2, in line 43, after “K.S.A.” by inserting “26-502 and”; also in line 43, by striking “is” and inserting “are”;

Also on page 1, in the title, in line 10, after “K.S.A.” by inserting “26-502 and”; in line 11, by striking “section” and inserting “sections”; and the bill be passed as amended.

Committee on **Transportation** recommends **HB 2633**, as amended by House Committee, **HB 2695**, **HB 2746** be passed.

Also, **HB 2624** be amended on page 1, in line 12, preceding “Section” by inserting “New”; following line 19, by inserting the following:

“Sec. 2. K.S.A. 8-1343a is hereby amended to read as follows: 8-1343a. As used in K.S.A. 8-1343 through 8-1347, and amendments thereto, “passenger car” means a motor vehicle manufactured or assembled after January 1, 1968, with motive power designed for carrying 10 passengers or fewer, including vans, but does not include a motorcycle, a trailer or a vehicle constructed either on a truck chassis registered for a gross weight of more than 12,000 pounds or a farm truck registered for a gross weight of more than 16,000 pounds.

Sec. 3. K.S.A. 8-1344 is hereby amended to read as follows: 8-1344. (a) Every driver as defined in K.S.A. 8-1416, and amendments thereto, who transports a child under the age

of ~~14~~ 18 years in a passenger car as defined in K.S.A. 8-1343a, and amendments thereto, on a highway as defined in K.S.A. 8-1424, and amendments thereto, shall provide for the protection of such child by properly using:

~~(1)~~ (1) For a child under the age of four years a child passenger safety restraining system that meets or exceeds the standards and specifications contained in federal motor vehicle safety standard no. 213 ~~in effect on July 1, 1997; or~~

(2) *for a child four years of age, but under the age of eight years and who weighs less than 80 pounds or is less than 4 feet 9 inches in height, a child passenger safety restraining system that meets or exceeds the standards and specifications contained in federal motor vehicle safety standard no. 213; or*

~~(3)~~ (3) for a child ~~four~~ eight years of age but under the age of ~~14~~ 18 years or who weighs more than 80 pounds or is more than 4 feet 9 inches in height, a safety belt manufactured in compliance with federal motor vehicle safety standard no. 208, ~~except that if the number of children subject to this requirement exceeds the number of passenger securing locations available for use by children affected by this requirement, and all of those securing locations are in use by children, then there is not a violation of this section.~~

*(b) If the number of children subject to the requirements of subsection (a) exceeds the number of passenger securing locations available for use by children affected by such requirements, and all of these securing locations are in use by children, then there is not a violation of this section.*

*(c) The provisions of paragraph (2) of subsection (a) shall not apply in any seating position where there is only a lap belt available.*

Sec. 4. K.S.A. 8-1345 is hereby amended to read as follows: 8-1345. (a) It shall be unlawful for any driver to violate the provisions of K.S.A. 8-1344, and amendments thereto, and upon conviction such driver shall be punished by a fine of ~~\$20~~ \$60. The failure to provide a child safety restraining system or safety belt for more than one child in the same passenger car at the same time shall be treated as a single violation. Any conviction under the provisions of this subsection shall not be construed as a moving traffic violation for the purpose of K.S.A. 8-255, and amendments thereto.

~~(b) Ten dollars of the \$60 fine provided for in subsection (a) and court costs assessed under K.S.A. 26-172a, and amendments thereto,~~ shall be waived if the driver convicted of violating subsection (a) or (b) of K.S.A. 8-1344, and amendments thereto, provides proof to the court that such driver has purchased or acquired an approved child passenger safety restraining system.

(c) No driver charged with violating the provisions of this act shall be convicted if such driver produces in the office of the arresting officer or in court proof that the child was ~~14~~ 18 years of age or older at the time the violation was alleged to have occurred.

(d) Evidence of failure to secure a child in a child passenger safety restraining system or a safety belt under the provisions of K.S.A. 8-1344, and amendments thereto, shall not be admissible in any action for the purpose of determining any aspect of comparative negligence or mitigation of damages.

*(e) From and after the effective date of this act, and prior to July 1, 2005, a law enforcement officer shall issue a warning citation to anyone violating paragraph (2) of subsection (a) of K.S.A. 8-1344, and amendments thereto.*

Sec. 5. K.S.A. 2003 Supp. 8-1558 is hereby amended to read as follows: 8-1558. (a) Except as provided in subsection (b) and except when a special hazard exists that requires lower speed for compliance with K.S.A. 8-1557, and amendments thereto, the limits specified in this subsection or established as authorized by law shall be maximum lawful speeds, and no person shall operate a vehicle at a speed in excess of such maximum limits:

- (1) In any urban district, 30 miles per hour;
- (2) on any separated multilane highway, as designated and posted by the secretary of transportation, ~~70~~ 75 miles per hour;
- (3) on any county or township highway, 55 miles per hour; and
- (4) on all other highways, 65 miles per hour.

(b) No person shall drive a school bus to or from school, or interschool or intraschool functions or activities, at a speed in excess of the maximum speed limits provided in subsection (a), except that the board of education of any school district may establish by board

policy lower maximum speed limits for the operation of such district's school buses. The provisions of this subsection relating to school buses shall apply to buses used for the transportation of students enrolled in community colleges or area vocational schools, when such buses are transporting students to or from school, or functions or activities.

(c) The maximum speed limits in this section may be altered as authorized in K.S.A. 8-1559 and 8-1560, and amendments thereto.

Sec. 6. K.S.A. 8-1560c is hereby amended to read as follows: 8-1560c. (a) Any conviction or forfeiture of bail or bond for violating the maximum posted or authorized speed limit of 55 miles per hour or more but not exceeding 70 miles per hour on any highway, by not more than 10 miles per hour, shall not be construed as a moving traffic violation for the purpose of K.S.A. 8-255, and amendments thereto.

(b) *Any conviction or forfeiture of bail or bond for violating the maximum posted or authorized speed limit of 75 miles per hour on any highway, by not more than five miles per hour, shall not be construed as a moving traffic violation for the purpose of K.S.A. 8-255, and amendments thereto.*

Sec. 7. K.S.A. 8-1560d is hereby amended to read as follows: 8-1560d. (a) Convictions for violating a maximum posted speed limit of 55 miles per hour or more but not exceeding 70 miles per hour, by not more than 10 miles per hour in excess of such maximum speed limit, shall not be a part of the public record and shall not be considered by any insurance company in determining the rate charged for any automobile liability insurance policy or whether to cancel any such policy under the provisions of subsection (4)(c)(7) of K.S.A. 40-277, and amendments thereto.

(b) *Convictions for violating a maximum posted speed limit of 75 miles per hour, by not more than five miles per hour in excess of such maximum speed limit, shall not be a part of the public record and shall not be considered by any insurance company in determining the rate charged for any automobile liability insurance policy or whether to cancel any such policy under the provisions of subsection (4)(c)(7) of K.S.A. 40-277, and amendments thereto.*

Sec. 8. K.S.A. 75-46a02 is hereby amended to read as follows: 75-46a02. The purpose of K.S.A. 75-46a02 to 75-46a09, inclusive, *and amendments thereto*, is to promote conservation of petroleum resources, reduce traffic and parking congestion, and diminish air pollution by ~~providing~~ *facilitating the creation of self-supporting* commuter vanpools in which state employees living and working in similar locations may ride to and from their places of employment.

Sec. 9. K.S.A. 75-46a03 is hereby amended to read as follows: 75-46a03. ~~The department~~ *Subject to the availability of sufficient revenues from passenger fees under K.S.A. 75-46a06, and amendments thereto, the secretary* of administration shall purchase such motor vehicles necessary to accomplish the purposes set forth in K.S.A. 75-46a02 to 75-46a09, inclusive, *and amendments thereto. Said department* ~~The secretary~~ is authorized to obtain and disburse any federal funds made available to accomplish ~~said~~ such purposes.

Sec. 10. K.S.A. 2003 Supp. 75-46a05 is hereby amended to read as follows: 75-46a05. ~~(a)~~ The driver of every motor vehicle designated for use in the state vanpool program shall not be authorized to use the same for personal nonbusiness purposes ~~but shall reimburse the state for such personal use at the prevailing state motor pool mileage rate as determined by the secretary of administration. The reimbursement for the private use is due and payable each month to the department of administration at the time of the monthly log review.~~ Each driver shall keep a log of all miles driven in the vehicle ~~assigned to such driver as being for commuter or personal use.~~ The log shall be reviewed every month by the department of administration.

(b) ~~The secretary of administration shall remit all moneys received under this section and K.S.A. 75-46a06, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the motor pool service fund.~~

Sec. 11. K.S.A. 75-46a06 is hereby amended to read as follows: 75-46a06. (a) The driver of each motor vehicle designated for use in the state vanpool program shall charge each passenger a ~~monthly rate~~ *passenger fee in an amount to be determined for all vehicles within the program by the* ~~department~~ *secretary* of administration. ~~The secretary of administration~~

shall set the uniform passenger fee at an amount that enables the program to be self-supporting, including, but not limited to, all operating, servicing, repair, insurance, vehicle replacement and appropriate administrative costs. Within six ~~(6)~~ days of the first of each month ~~such~~, such funds shall be remitted by the driver to the department of administration.

(b) The provision of maintenance and repair services shall be the responsibility of the state motor pool. All drivers shall be responsible for arranging for necessary maintenance services with the motor pool. All drivers shall be provided with state credit cards for the purchase of fuel.

(c) *The secretary of administration shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the motor pool service fund.*

Sec. 12. K.S.A. 75-46a09 is hereby amended to read as follows: 75-46a09. The ~~department~~ secretary of administration may bring to the legislature a proposal to terminate the vanpool program ~~at any time that it is no longer felt to be in the best interests of the state if the secretary of administration determines that it is no longer feasible to operate the program in a manner consistent with the provisions of K.S.A. 75-46a02 through 75-46a08, and amendments thereto.~~

Sec. 13. K.S.A. 8-1343a, 8-1344, 8-1345, 8-1560c, 8-1560d, 75-46a02, 75-46a03, 75-46a06 and 75-46a09 and K.S.A. 2003 Supp. 8-1558 and 75-46a05 are hereby repealed.”;

By renumbering the existing section 2 as section 14;

In the title, by striking all in line 9 and inserting:

“AN ACT concerning motor vehicles; relating to the regulation of traffic; concerning the state vanpool program; amending K.S.A. 8-1343a, 8-1344, 8-1345, 8-1560c, 8-1560d, 75-46a02, 75-46a03, 75-46a06 and 75-46a09 and K.S.A. 2003 Supp. 8-1558 and 75-46a05 and repealing the existing sections.”; and the bill be passed as amended.

#### COMMITTEE OF THE WHOLE

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

On motion of Senator Bunten the following report was adopted:

Recommended **SB 459, SB 560; HB 2553, HB 2580** be passed.

The Committee recommended **SB 528** be passed.

A motion by Senator Haley to amend **SB 528** failed and the following amendments were rejected:

First Amendment read: on page 1, in line 14, before “The” by inserting “(a)”; in line 18, by striking “two” and inserting “three”; in line 23, by striking all after “panel”; in line 24, by striking “the board”; after line 24, by inserting the following:

“(b) Any decision of the Kansas parole board granting original parole to an inmate sentenced for a class A or class B felony or for off-grid crimes committed on or after July 1, 1993, shall be by unanimous vote of all members of the three-member panel acting on such parole except that, if two members of such panel vote to parole the inmate, the full membership of the board shall review the decision of the panel and may parole such inmate upon the vote of three members of the board.

“Sec. 2. K.S.A. 2003 Supp. 22-3707 is hereby amended to read as follows: 22-3707. (a) ~~Except as otherwise provided by this section~~ *On and after July 1, 2005*, the Kansas parole board shall consist of ~~three~~ *four* members appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person shall exercise any power, duty or function as a member of the board until confirmed by the senate. ~~No successor shall be appointed as provided in this section for the office of one of the members of the Kansas parole board whose term expires on January 15, 2003.~~ No appointment to the board shall be made that would result in more than two members of the board being members of the same political party. The term of office of the members of the board shall be four years and until their successors are appointed and confirmed. If a vacancy occurs in the membership of the board before the expiration of the term of office, a successor shall be appointed for

the remainder of the unexpired term in the same manner that original appointments are made. Each member of the board shall devote the member's full time to the duties of membership on the board.

(b) The governor may not remove any member of the Kansas parole board except for disability, inefficiency, neglect of duty or malfeasance in office. Before removal, the governor shall give the member a written copy of the charges against the member and shall fix the time when the member can be heard at a public hearing, which shall not be less than 10 days thereafter. Upon removal, the governor shall file in the office of the secretary of state a complete statement of all charges made against the member and the findings thereupon, with a complete record of the proceedings.”;

And by renumbering sections accordingly;

Also on page 1, in line 25, after “Supp.” by inserting “22-3707 and”; also in line 25, by striking “is” and inserting “are”;

In the title, in line 10, after “Supp.” by inserting “22-3707 and”; also in line 10, by striking “section” and inserting “sections”

Second Amendment read: on page 1, after line 24, by inserting the following:

“Sec. 2. K.S.A. 2003 Supp. 22-3707 is hereby amended to read as follows: 22-3707. (a) Except as otherwise provided by this section, the Kansas parole board shall consist of three members appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person shall exercise any power, duty or function as a member of the board until confirmed by the senate. No successor shall be appointed as provided in this section for the office of one of the members of the Kansas parole board whose term expires on January 15, 2003. No appointment to the board shall be made that would result in more than two members of the board being members of the same political party. *At least one member of the Kansas parole board shall be a member of a racial minority group.* The term of office of the members of the board shall be four years and until their successors are appointed and confirmed. If a vacancy occurs in the membership of the board before the expiration of the term of office, a successor shall be appointed for the remainder of the unexpired term in the same manner that original appointments are made. Each member of the board shall devote the member's full time to the duties of membership on the board.

(b) The governor may not remove any member of the Kansas parole board except for disability, inefficiency, neglect of duty or malfeasance in office. Before removal, the governor shall give the member a written copy of the charges against the member and shall fix the time when the member can be heard at a public hearing, which shall not be less than 10 days thereafter. Upon removal, the governor shall file in the office of the secretary of state a complete statement of all charges made against the member and the findings thereupon, with a complete record of the proceedings.”;

And by renumbering sections accordingly;

Also on page 1, in line 25, after “Supp.” by inserting “22-3707 and”; also in line 25, by striking “is” and inserting “are”;

In the title, in line 10, after “Supp.” by inserting “22-3707 and”; also in line 10, by striking “section” and inserting “sections”

**HB 2555, HB 2669, HB 2737** be amended by adoption of the committee amendments, and the bills be passed as amended.

**HB 2745** be amended by motion of Senator Donovan as amended by House Committee, on page 1, in line 13, preceding “Section” by inserting “New”; following line 35, by inserting the following:

“Sec. 2. K.S.A. 2003 Supp. 79-3603 is hereby amended to read as follows: 79-3603. For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of 5.3% on and after July 1, 2002, and before July 1, ~~2004, 5.2% on and after July 1, 2004, and before July 1, 2005~~ 2006, and 5% on and after July 1, ~~2005~~ 2006, and, within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax at the rate of 2% until the earlier of the date the bonds issued to finance or refinance the redevelopment project have been paid in full or

the final scheduled maturity of the first series of bonds issued to finance any part of the project upon:

(a) The gross receipts received from the sale of tangible personal property at retail within this state;

(b) (1) the gross receipts from intrastate telephone or telegraph services; (2) the gross receipts received from the sale of interstate telephone or telegraph services, which (A) originate within this state and terminate outside the state and are billed to a customer's telephone number or account in this state; or (B) originate outside this state and terminate within this state and are billed to a customer's telephone number or account in this state except that the sale of interstate telephone or telegraph service does not include: (A) Any interstate incoming or outgoing wide area telephone service or wide area transmission type service which entitles the subscriber to make or receive an unlimited number of communications to or from persons having telephone service in a specified area which is outside the state in which the station provided this service is located; (B) any interstate private communications service to the persons contracting for the receipt of that service that entitles the purchaser to exclusive or priority use of a communications channel or group of channels between exchanges; (C) any value-added nonvoice service in which computer processing applications are used to act on the form, content, code or protocol of the information to be transmitted; (D) any telecommunication service to a provider of telecommunication services which will be used to render telecommunications services, including carrier access services; or (E) any service or transaction defined in this section among entities classified as members of an affiliated group as provided by section 1504 of the federal internal revenue code of 1986, as in effect on January 1, 2001; and (3) the gross receipts from the provision of services taxable under this subsection which are billed on a combined basis with nontaxable services, shall be accounted for and the tax remitted as follows: The taxable portion of the selling price of those combined services shall include only those charges for taxable services if the selling price for the taxable services can be readily distinguishable in the retailer's books and records from the selling price for the nontaxable services. Otherwise, the gross receipts from the sale of both taxable and nontaxable services billed on a combined basis shall be deemed attributable to the taxable services included therein. Within 90 days of billing taxable services on a combined basis with nontaxable services, the retailer shall enter into a written agreement with the secretary identifying the methodology to be used in determining the taxable portion of the selling price of those combined services. The burden of proving that any receipt or charge is not taxable shall be upon the retailer. Upon request from the customer, the retailer shall disclose to the customer the selling price for the taxable services included in the selling price for the taxable and nontaxable services billed on a combined basis;

(c) the gross receipts from the sale or furnishing of gas, water, electricity and heat, which sale is not otherwise exempt from taxation under the provisions of this act, and whether furnished by municipally or privately owned utilities, except that, on and after January 1, 2006, for sales of gas, electricity and heat delivered through mains, lines or pipes to residential premises for noncommercial use by the occupant of such premises, and for agricultural use and also, for such use, all sales of propane gas, the state rate shall be 0%; and for all sales of propane gas, LP gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises, the state rate shall be 0%, but such tax shall not be levied and collected upon the gross receipts from: (1) The sale of a rural water district benefit unit; (2) a water system impact fee, system enhancement fee or similar fee collected by a water supplier as a condition for establishing service; or (3) connection or reconnection fees collected by a water supplier;

(d) the gross receipts from the sale of meals or drinks furnished at any private club, drinking establishment, catered event, restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public;

(e) the gross receipts from the sale of admissions to any place providing amusement, entertainment or recreation services including admissions to state, county, district and local fairs, but such tax shall not be levied and collected upon the gross receipts received from sales of admissions to any cultural and historical event which occurs triennially;

(f) the gross receipts from the operation of any coin-operated device dispensing or providing tangible personal property, amusement or other services except laundry services, whether automatic or manually operated;

(g) the gross receipts from the service of renting of rooms by hotels, as defined by K.S.A. 36-501 and amendments thereto, or by accommodation brokers, as defined by K.S.A. 12-1692, and amendments thereto but such tax shall not be levied and collected upon the gross receipts received from sales of such service to the federal government and any agency, officer or employee thereof in association with the performance of official government duties;

(h) the gross receipts from the service of renting or leasing of tangible personal property except such tax shall not apply to the renting or leasing of machinery, equipment or other personal property owned by a city and purchased from the proceeds of industrial revenue bonds issued prior to July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, and any city or lessee renting or leasing such machinery, equipment or other personal property purchased with the proceeds of such bonds who shall have paid a tax under the provisions of this section upon sales made prior to July 1, 1973, shall be entitled to a refund from the sales tax refund fund of all taxes paid thereon;

(i) the gross receipts from the rendering of dry cleaning, pressing, dyeing and laundry services except laundry services rendered through a coin-operated device whether automatic or manually operated;

(j) the gross receipts from the rendering of the services of washing and waxing of vehicles;

(k) the gross receipts from cable, community antennae and other subscriber radio and television services;

(l) (1) except as otherwise provided by paragraph (2), the gross receipts received from the sales of tangible personal property to all contractors, subcontractors or repairmen for use by them in erecting structures, or building on, or otherwise improving, altering, or repairing real or personal property.

(2) Any such contractor, subcontractor or repairman who maintains an inventory of such property both for sale at retail and for use by them for the purposes described by paragraph (1) shall be deemed a retailer with respect to purchases for and sales from such inventory, except that the gross receipts received from any such sale, other than a sale at retail, shall be equal to the total purchase price paid for such property and the tax imposed thereon shall be paid by the deemed retailer;

(m) the gross receipts received from fees and charges by public and private clubs, drinking establishments, organizations and businesses for participation in sports, games and other recreational activities, but such tax shall not be levied and collected upon the gross receipts received from: (1) Fees and charges by any political subdivision, by any organization exempt from property taxation pursuant to paragraph *Ninth* of K.S.A. 79-201, and amendments thereto, or by any youth recreation organization exclusively providing services to persons 18 years of age or younger which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for participation in sports, games and other recreational activities; and (2) entry fees and charges for participation in a special event or tournament sanctioned by a national sporting association to which spectators are charged an admission which is taxable pursuant to subsection (e);

(n) the gross receipts received from dues charged by public and private clubs, drinking establishments, organizations and businesses, payment of which entitles a member to the use of facilities for recreation or entertainment, but such tax shall not be levied and collected upon the gross receipts received from: (1) Dues charged by any organization exempt from property taxation pursuant to paragraphs *Eighth* and *Ninth* of K.S.A. 79-201, and amendments thereto; and (2) sales of memberships in a nonprofit organization which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code of 1986, and whose purpose is to support the operation of a nonprofit zoo;

(o) the gross receipts received from the isolated or occasional sale of motor vehicles or trailers but not including: (1) The transfer of motor vehicles or trailers by a person to a corporation or limited liability company solely in exchange for stock securities or membership interest in such corporation or limited liability company; or (2) the transfer of motor

vehicles or trailers by one corporation or limited liability company to another when all of the assets of such corporation or limited liability company are transferred to such other corporation or limited liability company; or (3) the sale of motor vehicles or trailers which are subject to taxation pursuant to the provisions of K.S.A. 79-5101 *et seq.*, and amendments thereto, by an immediate family member to another immediate family member. For the purposes of clause (3), immediate family member means lineal ascendants or descendants, and their spouses. *The base for computing the tax shall be the stated selling price of the motor vehicle or trailer or the value pursuant to subsections (a), (b)(1) and (b)(2) of K.S.A. 79-5105, and amendments thereto, whichever amount is higher. The actual selling price shall be the base for computing the tax on the isolated or occasional sale of wrecked or damaged vehicles.* In determining the base for computing the tax on such isolated or occasional sale, the fair market value of any motor vehicle or trailer traded in by the purchaser to the seller may be deducted from the selling price;

(p) the gross receipts received for the service of installing or applying tangible personal property which when installed or applied is not being held for sale in the regular course of business, and whether or not such tangible personal property when installed or applied remains tangible personal property or becomes a part of real estate, except that no tax shall be imposed upon the service of installing or applying tangible personal property in connection with the original construction of a building or facility, the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence or the construction, reconstruction, restoration, replacement or repair of a bridge or highway.

For the purposes of this subsection:

(1) "Original construction" shall mean the first or initial construction of a new building or facility. The term "original construction" shall include the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion or earthquake, but such term, except with regard to a residence, shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances;

(2) "building" shall mean only those enclosures within which individuals customarily are employed, or which are customarily used to house machinery, equipment or other property, and including the land improvements immediately surrounding such building;

(3) "facility" shall mean a mill, plant, refinery, oil or gas well, water well, feedlot or any conveyance, transmission or distribution line of any cooperative, nonprofit, membership corporation organized under or subject to the provisions of K.S.A. 17-4601 *et seq.*, and amendments thereto, or of any municipal or quasi-municipal corporation, including the land improvements immediately surrounding such facility; and

(4) "residence" shall mean only those enclosures within which individuals customarily live;

(q) the gross receipts received for the service of repairing, servicing, altering or maintaining tangible personal property which when such services are rendered is not being held for sale in the regular course of business, and whether or not any tangible personal property is transferred in connection therewith. The tax imposed by this subsection shall be applicable to the services of repairing, servicing, altering or maintaining an item of tangible personal property which has been and is fastened to, connected with or built into real property;

(r) the gross receipts from fees or charges made under service or maintenance agreement contracts for services, charges for the providing of which are taxable under the provisions of subsection (p) or (q);

(s) the gross receipts received from the sale of computer software, the sale of the service of providing computer software other than prewritten computer software and the sale of the services of modifying, altering, updating or maintaining computer software, whether the computer software is installed or delivered electronically by tangible storage media physically transferred to the purchaser or by load and leave;

(t) the gross receipts received for telephone answering services, mobile telecommunication services, beeper services and other similar services. On and after August 1, 2002, the provisions of the federal mobile telecommunications sourcing act as in effect on January 1, 2002, shall be applicable to all sales of mobile telecommunication services taxable pursuant

to this subsection. The secretary of revenue is hereby authorized and directed to perform any act deemed necessary to properly implement such provisions;

(u) the gross receipts received from the sale of prepaid calling service as defined in K.S.A. 2003 Supp. 79-3673, and amendments thereto; and

(v) the gross receipts received from the sales of bingo cards, bingo faces and instant bingo tickets by licensees under K.S.A. 79-4701, *et seq.*, and amendments thereto, shall be taxed at a rate of: (1) 4.9% on July 1, 2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001, and before July 1, 2002. From and after July 1, 2002, all sales of bingo cards, bingo faces and instant bingo tickets by licensees under K.S.A. 79-4701 *et seq.*, and amendments thereto, shall be exempt from taxes imposed pursuant to this section.

Sec. 3. K.S.A. 2003 Supp. 79-3603 and 79-3603c are hereby repealed.”;

By renumbering the remaining sections accordingly;

In the title, in line 10, by striking “the registration of certain fleet”; also in line 10, preceding the period, by inserting “; concerning the registration of certain motor vehicles; relating to isolated or occasional sales; amending K.S.A. 2003 Supp. 79-3603 and repealing the existing section; also repealing K.S.A. 2003 Supp. 79-3603c.”, and **HB 2745** be passed as amended.

**SB 405** be amended by adoption of the committee amendments, be further amended by motion of Senator Wagle as amended by Senate Committee, on page 3, in line 10, by striking “30” and inserting “20”; in line 14, after “project” by inserting “, unless the board of county commissioners and the board of education identified in K.S.A. 12-1771, and amendments thereto, approves a request in writing from the city to extend the project a maximum of 10 years beyond the original 20”, and **SB 405** be passed as further amended.

**HB 2154** be amended by adoption of the committee amendments, be further amended by motion of Senator Huelskamp as amended by Senate Committee, on page 1, following line 40, by inserting the following:

“Sec. 2. K.S.A. 66-274 is hereby amended to read as follows: 66-274. Any railroad company or corporation operating a line of railroad in Kansas failing or neglecting to comply with K.S.A. 66-273, and amendments thereto, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine as follows: ~~Fifty~~ *One hundred* dollars if the blocking is for more than 10 minutes but less than 20 minutes; ~~\$150~~ *\$300* if the blocking is for more than 20 minutes but less than 30 minutes; ~~\$300~~ *\$600* if the blocking is for ~~more than~~ *more than* 30 minutes *and \$600 for each additional 30 minutes if the blocking is for more than 30 minutes*. No member of a railroad train, yard, or engine crew shall be held personally responsible or found guilty of violating any state laws or any municipal ordinances regulating or intended to regulate the occupying or blocking of any street, road or highway crossing-at-grade by trains or passenger or freight cars upon reasonable proof that such person’s action was necessary due to circumstances beyond such person’s control, or to comply with the order or instructions, either written or verbal, of the person’s employer or officers or supervisory officials. Nothing in this section shall relieve the employer or railroad from any responsibility placed upon such employer or railroad by any such state law or any municipal ordinance.

Sec. 3. K.S.A. 66-274 is hereby repealed.”;

By renumbering the existing section 2 as section 4;

In the title, in line 10, by striking all following “ACT”; in line 11, by striking all preceding the period and inserting “relating to highways and other public improvements; concerning certain construction contracts; relating to certain penalties; amending K.S.A. 66-274 and repealing the existing section”, and **HB 2154** be passed as further amended.

**HB 2606** be passed over and retain a place on the calendar.

On motion of Senator Oleen the Senate adjourned until 2:30 p.m., Thursday, March 18, 2004.

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

PAT SAVILLE, *Secretary of the Senate.*

