

Journal of the Senate

TWENTY-EIGHTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, February 17, 2005—2:30 p.m.

The Senate was called to order by Vice President John Vratil.
The roll was called with forty senators present.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,
The question often arises,
How do we deal with those
Who accuse us falsely
And all we do...oppose.
They treat us with disdain
And at times they yell and curse;
They treat us as their enemy,
And sometimes even worse.
The answer comes from Jesus
Who suffered so much pain
From intense persecution,
And afterwards was slain.
He said to love our enemies;
Do good to those who hate.
If we bless all those who curse us
Our reward will then be great. (Luke 6:27-28,35)
Of course all this is hard to do,
It was even hard for Him.
But results are so much better
Than to fight back and condemn.
Help us, Lord, to try Your way,
And not retaliate;
For the Creator knows a whole lot more
Than we humans You create.
I pray in the Name of Jesus Christ,
AMEN

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 269, An act concerning real estate brokers and salespersons; relating to licensure; relating to escrow accounts; relating to prohibited acts; amending K.S.A. 2004 Supp. 58-3039, 58-3062, 58-3077 and 58-30,113 and repealing the existing sections, by Committee on Federal and State Affairs.

SB 270, An act making and concerning appropriations for the fiscal years ending June 30, 2006, and June 30, 2007, for state agencies; authorizing certain transfers, capital

improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements and acts incidental to the foregoing; amending K.S.A. 2004 Supp. 2-223, 55-193, 75-2319, 75-6702, 76-775, 79-2959, 79-2964, 79-3425c, 79-3425i and 82a-953a and repealing the existing sections, by Committee on Ways and Means.

SB 271, An act concerning real estate brokers and sales persons; relating to fees; amending K.S.A. 2004 Supp. 58-3035 and 58-3063 and repealing the existing sections, by Committee on Ways and Means.

SB 272, An act making and concerning appropriations for the fiscal year ending June 30, 2005, for state agencies; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements and acts incidental to the foregoing, by Committee on Ways and Means.

SB 273, An act making and concerning appropriations for the fiscal years ending June 30, 2005, June 30, 2006, and June 30, 2007, for state agencies; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements and acts incidental to the foregoing, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Commerce: **HB 2140**.

Committee of the Whole: **SR 1820**.

Federal and State Affairs: **SB 267**.

Financial Institutions & Insurance: **SB 268**.

Judiciary: **HB 2034**, **HB 2122**.

Public Health and Welfare: **HB 2153**.

Transportation: **HB 2215**.

Ways and Means: **SB 266**; **HB 2072**, **HB 2347**.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2017**, **HB 2058**, **HB 2147**, **HB 2183**, **HB 2265**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2017, **HB 2058**, **HB 2147**, **HB 2183**, **HB 2265** were thereupon introduced and read by title.

FINAL ACTION ON CONSENT CALENDAR

SB 39 having appeared on the Consent Calendar for the required two full legislative days without objection from any member, was considered on final action.

SB 39, An act concerning sheriffs; relating to fees for service; amending K.S.A. 28-110 and repealing the existing section.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

SB 27, An act concerning controlled substances; relating to schedule V substances; unlawful acts; amending K.S.A. 65-1643, 65-4113, 65-4152, 65-4159, 65-7001 and 65-7006 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: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. VICE PRESIDENT: I vote aye on **SB 27**. This measure will choke off easy access to ephedrine and pseudoephedrine tablets. It is a necessary step to combat methamphetamine production—with all of its enormous social, health, and economic costs. This measure also acknowledges that the meth problem evolves over time, and it puts in place an ongoing process to monitor trends in meth production, to identify opportunities to stem those trends, and to recommend specific steps future legislatures may take to seize those opportunities.

The Senate also saw fit in this bill to rename the Chemical Control Act as the Sheriff Matt Samuels Chemical Control Act. This step honors the memory of the late Greenwood County Sheriff who was murdered while serving an arrest warrant at a suspected methamphetamine laboratory. That crime took place just before 10 a.m. on January 19, 2005—the same time the Senate Judiciary Committee was beginning deliberations on **SB 27**.

My hope is that when historians someday record the story of the methamphetamine scourge Kansas faced during the early years of the 21st century, they will credit passage of the Samuels Act with helping consign that story to history.—D. SCHMIDT

Senators Francisco, Goodwin, Hensley, Lee, Morris, Umbarger and Vratil request the record to show they concur with the Explanation of Vote offered by D. Schmidt on **SB 27**.

SB 45, An act concerning property taxation; relating to unpaid real property taxes; judgment and enforcement thereof pursuant to code of civil procedure, was considered on final action.

On roll call, the vote was: Yeas 27, Nays 13, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Apple, Barnett, Brownlee, Bruce, Brungardt, Donovan, Emler, Gilstrap, Goodwin, Jordan, Lee, McGinn, Morris, Ostmeyer, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wilson, Wysong.

Nays: Barone, Betts, Francisco, Haley, Hensley, Huelskamp, Journey, Kelly, O'Connor, Palmer, Petersen, Pyle, Wagle.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. VICE PRESIDENT: This bill is a travesty; the spawn of one local county government, regrettably my own, run amuck...to further harass "the little guy" and hide its own malfeasance.

Earlier this week, we were shocked to learn of the apparent misuse (to the tune of potentially millions of dollars) by the U.G of Wyandotte County/Kansas City, Kansas of S.T.A.R. Bonds to build Village West...and to the detriment of the taxpayers of my county. Shameful! The estimated recoup of \$1 million under **SB 45** to help relieve the backlog of delinquent tax indebtedness is a drop in the bucket and a ridiculous irony especially after the revelation of this week's report.—DAVID HALEY

SB 51, An act amending the tobacco master settlement agreement; release of escrow funds; amending K.S.A. 2004 Supp. 50-6a03 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 30, Nays 10, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Hensley, Jordan, Kelly, Lee, McGinn, Morris, Ostmeyer, Petersen, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wysong.

Nays: Brownlee, Bruce, Haley, Huelskamp, Journey, O'Connor, Palmer, Pyle, Wagle, Wilson.

The bill passed.

SB 69, An act concerning the self-service storage act; relating to late fees; amending K.S.A. 58-814 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 1, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Brungardt.

The bill passed, as amended.

SB 70, An act creating the Kansas petroleum education and marketing act, was considered on final action.

On roll call, the vote was: Yeas 30, Nays 10, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Apple, Barone, Betts, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Jordan, Lee, McGinn, Morris, Petersen, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wilson, Wysong.

Nays: Barnett, Brownlee, Huelskamp, Journey, Kelly, O'Connor, Ostmeyer, Palmer, Pyle, Wagle.

The bill passed, as amended.

SB 108, An act concerning employment security law; amending K.S.A. 44-719 and K.S.A. 2004 Supp. 44-703, 44-710a and 44-716a 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: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

SB 118, An act concerning state procurement; relating to state purchase of products by certain qualified vendors; definitions; amending K.S.A. 75-3317 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: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Palmer and Barnett introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1821—

A RESOLUTION in memory of Sheriff Matthew H. "Matt" Samuels.

WHEREAS, Matthew H. "Matt" Samuels, 42, sheriff of Greenwood County, was fatally wounded in the line of duty January 19 while serving two warrants in northeast Greenwood County; and

WHEREAS, Samuels' career in law enforcement began as he worked part-time as a jailer in 1979 for his father, the late Charles Samuels, and sheriff of Greenwood County until

1986. He was awarded the Silver Medal of Valor in 1992 for his acts of heroism while saving the life of another person. Matt Samuels was elected sheriff in 2000 and reelected in 2004. A longtime resident of Eureka, he was a friendly and outgoing person who believed in moderation and communication instead of confrontation. He was very proud of the service of his family in law enforcement; and

WHEREAS, Matt Samuels was president of the local Kiwanis Club, a member of Masonic Lodge Fidelity No. 106, Midian Shrine and served as a district and county director of special olympics. At one time he set up a bicycle safety clinic for local children and made repairs as needed. He and his wife made a habit of checking on the safety of elderly women in the community. Known in the area as an avid hunter, he is remembered as a talented wrestler and football player at Eureka High School where he graduated in 1981; and

WHEREAS, Matt Samuels married Tamara Bechtle on April 23, 1983. They are the parents of two children, a daughter, Sharlee, 15, who is a sophomore at Eureka High School, and a son, Heath, 19, who attends Washburn University in Topeka: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we acknowledge the death of a fine and compassionate lawman, devoted husband and father who made the ultimate sacrifice in line of duty; and

Be it further resolved: That the Secretary of the Senate provide an enrolled copy of this resolution to Mrs. Matthew H. Samuels, 1106 N. Oak Street, Eureka, KS 67045.

On emergency motion of Senator Barnett **SR 1821** was adopted unanimously.

Vice President Vratil and members of the Senate offered Tami and her children, Sharlee and Heath Samuels, their deepest condolences. Accompanying the family were friends Catherine Rotert and Phill Johnston; also joining the family was KBI Director, Larry Welch.

REPORTS OF STANDING COMMITTEES

Committee on **Assessment and Taxation** recommends **SB 13** be amended on page 6, in line 13, by striking all after “to”; by striking all in line 14; and the bill be passed as amended.

Committee on **Commerce** recommends **SB 138** be amended on page 2, in line 8, after “teacher” by inserting “in a position that requires mathematics or science skills commensurate with the classes that the teacher regularly teaches”; also in line 8, by striking “months” and inserting “times”; and the bill be passed as amended.

Committee on **Elections and Local Government** recommends **SB 133** be amended on page 1, in line 14, following “(a)” by inserting “(1)”; also in line 14, by striking “2001” and inserting “2006”; in line 15, by striking all following “issue”; in line 16, by striking “claimant” and inserting “to the county clerk by October 15 an electronic record containing the name of each eligible claimant”; in line 17, by striking all after the period; by striking all in line 18; in line 19, by striking all preceding “to” and inserting two new paragraphs as follows:

“(2) When initially filing a claim for a homestead property tax refund between January 1 and April 15, the claimant shall be given an election to receive such refund directly from the director of taxation or have such refund applied on claimant’s ad valorem taxes in the county. The claimant shall make the election on a form supplied by the director of taxation. Such refund shall not be applied to any special assessment.

(3) After the electronic record has been received from the director of taxation, the county clerk of the county in which the property is located shall make any corrections needed, if any, based upon information known by the county clerk concerning any change in eligibility of any claimant listed in such record. After any needed corrections have been made to the electronic record, the county clerk, on behalf of each claimant listed in such record, shall certify the information contained in such record”;

Also on page 1, in line 35, by striking all following “shall”; in line 36, by striking “gibility” and inserting “certify and return the electronic record referred to in subsection (a), including any changes made by the county clerk pursuant to subsection (a),”; in line 37, by striking all following “who”; in line 38, by striking “bility under this section” and inserting “is listed in the electronic record submitted by the county treasurer”;

On page 2, in line 1, by striking “cer-”; in line 2, by striking “tificate of”; following line 5, by inserting the following new paragraph:

“(c) For the purposes of this section, the term ”electronic record“ shall have the meaning ascribed to it in K.S.A. 16-1602, and amendments thereto.”; and the bill be passed as amended.

Committee on **Federal and State Affairs** recommends **SB 110** be amended on page 2, in line 9, by striking all after “appointment”; by striking all in lines 10 and 11; in line 12, by striking all preceding “and” and inserting “by the commission of an advisory committee to advise the commission regarding memorials for veterans, which committee shall include one or more members of the legislature representing each area where a memorial may be located pursuant to this section”; in line 38, by striking “advisory committees” and inserting “the advisory committee”; and the bill be passed as amended.

Committee on **Financial Institutions and Insurance** recommends **SB 175** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Also, **SB 114** be amended on page 1, in line 29, following the period, by inserting “No civil money penalty shall be assessed for the same act or practice if another government agency has taken similar action against the bank, trust company or person to be assessed such civil money penalty.”; in line 32, preceding “penalty” by inserting “money”; in line 35, preceding “penalty” by inserting “money”; by striking all in lines 37 and 38; in line 39, by striking all preceding “and”; in line 40, by striking “(6)” and inserting “(5)”; and the bill be passed as amended.

SB 178 be amended on page 1, in line 43, following “who” by inserting “administers, issues, makes, provides, sells or offers to sell a service contract, or”

On page 2, in line 2, following “contract” by inserting “but shall not include any individual or other person who simply acts on behalf of a registered provider as an employee or agent”;

On page 3, in line 13, by striking “authorized” and inserting “licensed”; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 181** be passed.

Also, **SB 72** be amended on page 2, in line 21, after “riod” by striking the comma; and the bill be passed as amended.

Committee on **Public Health and Welfare** recommends **SB 216** be passed.

Also, **SB 116** be amended on page 1, in line 18, by striking all after “for”; in line 19, after “persons” by inserting “with mental illness, developmental disabilities or other persons with disabilities”; in line 34, by striking all after “for”; in line 35, by striking “abled”; also in line 35, after “persons” by inserting “with mental illness, developmental disabilities or other persons with disabilities”; in line 37, by striking all after “where”; in line 38, by striking all before “persons”; also in line 38, after “persons”, by inserting “with mental illness or developmental disabilities”;

On page 2, in line 6, by striking “mental retardation” and inserting “developmental disability”; in line 10, by striking all after “for” and inserting “persons with developmental disabilities”; in line 11, by striking “handicapped”; also in line 11, after “persons”, by inserting “with disabilities”; in line 22, before “enforcement”, by inserting “civil”; in line 26, by striking all after “for”; in line 27, by striking “sons” and inserting “persons with mental illness, developmental disabilities or other persons with disabilities”; following line 27, by inserting:

“(d) The state protection and advocacy system shall have reasonable unaccompanied access to public and private facilities and programs in the state which render care, treatment or services for individuals with disabilities, and to those individuals with disabilities who receive care, treatment or services from those facilities and programs, and to the records of individuals with disabilities who receive services from those facilities and programs.

Sec. 2. K.S.A. 2004 Supp. 65-5603 is hereby amended to read as follows: 65-5603. (a) The privilege established by K.S.A. 65-5602 and amendments thereto shall not extend to:

(1) Any communication relevant to an issue in proceedings to involuntarily commit to treatment a patient for mental illness, alcoholism or drug dependency if the treatment personnel in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

(2) an order for examination of the mental, alcoholic, drug dependency or emotional condition of the patient which is entered by a judge, with respect to the particular purpose for which the examination is ordered;

(3) any proceeding in which the patient relies upon any of the aforementioned conditions as an element of the patient's claim or defense, or, after the patient's death, in any proceeding in which any party relies upon any of the patient's conditions as an element of a claim or defense;

(4) any communication which forms the substance of information which the treatment personnel or the patient is required by law to report to a public official or to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed;

(5) any information necessary for the emergency treatment of a patient or former patient if the head of the treatment facility at which the patient is being treated or was treated states in writing the reasons for disclosure of the communication and makes such statement a part of the treatment or medical record of the patient;

(6) information relevant to protect a person who has been threatened with substantial physical harm by a patient during the course of treatment, when such person has been specifically identified by the patient, the treatment personnel believes there is substantial likelihood that the patient will act on such threat in the reasonable foreseeable future and the head of the treatment facility has concluded that notification should be given. The patient shall be notified that such information has been communicated;

(7) any information from a state psychiatric hospital to appropriate administrative staff of the department of corrections whenever patients have been administratively transferred to a state psychiatric hospital pursuant to the provisions of K.S.A. 75-5209 and amendments thereto;

(8) any information to the patient or former patient, except that the head of the treatment facility at which the patient is being treated or was treated may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient;

(9) any information to any state or national accreditation, certification or licensing authority, or scholarly investigator, but the head of the treatment facility shall require, before such disclosure is made, a pledge that the name of any patient or former patient shall not be disclosed to any person not otherwise authorized by law to receive such information;

(10) any information to ~~Kansas advocacy and protective services, inc.~~ *the state protection and advocacy system* which concerns individuals who reside in a treatment facility and which is required by federal law and federal rules and regulations to be available pursuant to a federal grant-in-aid program;

(11) any information relevant to the collection of a bill for professional services rendered by a treatment facility; or

(12) any information sought by a coroner serving under the laws of Kansas when such information is material to an investigation or proceeding conducted by the coroner in the performance of such coroner's official duties. Information obtained by a coroner under this provision shall be used for official purposes only and shall not be made public unless admitted as evidence by a court or for purposes of performing the coroner's statutory duties;

(13) any communication and information between or among treatment facilities regarding a proposed patient, patient or former patient for purposes of promoting continuity of care between the state psychiatric hospitals and the community mental health centers; the proposed patient, patient, or former patient's consent shall not be necessary to share evaluation and treatment records between or among treatment facilities regarding a proposed patient, patient or former patient; as used in this paragraph (13), "proposed patient" and "patient" shall have the meanings respectively ascribed thereto in K.S.A. 2004 Supp. 59-2946 and amendments thereto;

(14) the name, date of birth, date of death, name of any next of kin and place of residence of a deceased former patient when that information is sought as part of a genealogical study; or

(15) any information concerning a patient or former patient who is a juvenile offender in the custody of the juvenile justice authority when the commissioner of juvenile justice, or the commissioner's designee, requests such information.

(b) The treatment personnel shall not disclose any information subject to subsection (a)(3) unless a judge has entered an order finding that the patient has made such patient's condition an issue of the patient's claim or defense. The order shall indicate the parties to whom otherwise confidential information must be disclosed.”;

And by renumbering sections accordingly;

Also on page 2, in line 28, by striking “is” and inserting “and K.S.A. 2004 Supp. 65-5603 are”;

On page 1, in the title, in line 9, after “ACT”, by inserting “relating to certain facilities.”; in line 10, before “amending”, by inserting “authorizing the state protection and advocacy system access to certain facilities, individuals receiving care from such facilities and records of such individuals.”; also in line 10, after “75-3307b”, by inserting “and K.S.A. 2004 Supp. 65-5603”; in line 11, by striking “section” and inserting “sections”; and the bill be passed as amended.

SB 154 be amended on page 1, in line 15, after the period, by inserting “In developing such standards, the state board of education shall consult with other state agencies, private foundations and other private entities.”; in line 16, after “beverages”, by inserting “, physical activities and wellness education”; and the bill be passed as amended.

SB 183 be amended on page 4, in line 13, by striking “physician” and inserting “person licensed to practice the healing arts”; and the bill be passed as amended.

Committee on **Utilities** recommends **SB 93** be amended on page 2, in line 15, by striking the colon; in line 16, by striking all preceding “siting” and inserting “the”; in line 17, by striking “; or”; by striking all in lines 18 and 19 and inserting “, including the towers. Nothing in this subsection shall prohibit the connection of wind powered electrical generators or turbines by the use of lines, when such generators or turbines are connected to the same station power grid.

Except for the restrictions contained in this subsection, the provisions of this subsection shall not limit or restrict the authority of a public utility to use the power of eminent domain authorized under subsection (a).”; and the bill be passed as amended.

REPORT ON ENGROSSED BILLS

SB 27, SB 45, SB 69, SB 70 reported correctly engrossed February 17, 2005.

Also: **SB 23** correctly re-engrossed February 17, 2005.

COMMITTEE OF THE WHOLE

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

On motion of Senator Umbarger the following report was adopted:

Recommended **SB 113, SB 152, SB 219, SB 252** be passed.

SB 89 be amended by adoption of the committee amendments, be further amended by motion of Senator D. Schmidt as amended by Senate Committee, on page 3, after line 13, by inserting the following:

“Sec. 3. K.S.A. 2004 Supp. 21-4603d is hereby amended to read as follows: 21-4603d. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567 and amendments thereto, the court may

include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence, or community corrections placement;

(4) assign the defendant to a community correctional services program as provided in K.S.A. 75-5291, and amendments thereto, or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(5) assign the defendant to a conservation camp for a period not to exceed six months as a condition of probation followed by a six-month period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program;

(6) assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502 and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes of conviction of the defendant includes escape, as defined in K.S.A. 21-3809 and amendments thereto or aggravated escape, as defined in K.S.A. 21-3810 and amendments thereto; repay expenses incurred by a fire district, fire department or fire company responding to a fire which has been determined to be arson under K.S.A. 21-3718 or 21-3719, and amendments thereto, if the defendant is convicted of such crime; ~~or~~ repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which leads to the defendant's conviction; *or repay the amount of any medical costs and expenses incurred by any law enforcement agency or county.* Such repayment of the amount of any such costs and expenses incurred by a county, law enforcement agency, fire district, fire department or fire company or any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the county, law enforcement agency, fire district, fire department or fire company;

(9) order the defendant to pay the administrative fee authorized by K.S.A. 2004 Supp. 22-4529 and amendments thereto, unless waived by the court;

(10) order the defendant to pay a domestic violence special program fee authorized by K.S.A. 2004 Supp. 20-369, and amendments thereto;

(11) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7), (8), (9) and (10);

or

(12) suspend imposition of sentence in misdemeanor cases.

(b) (1) In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor.

(2) If the court orders restitution, the restitution shall be a judgment against the defendant which may be collected by the court by garnishment or other execution as on judgments in civil cases. If, after 60 days from the date restitution is ordered by the court, a defendant is found to be in noncompliance with the plan established by the court for payment of restitution, and the victim to whom restitution is ordered paid has not initiated proceedings in accordance with K.S.A. 2004 Supp. 60-4301 *et seq.* and amendments thereto, the court shall assign an agent procured by the attorney general pursuant to K.S.A. 75-719 and amendments thereto to collect the restitution on behalf of the victim. The administrative judge of each judicial district may assign such cases to an appropriate division of the court for the conduct of civil collection proceedings.

(c) In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (4) of K.S.A. 21-4502 and amendments thereto.

(d) In addition to any of the above, the court shall order the defendant to reimburse the county general fund for all or a part of the expenditures by the county to provide counsel and other defense services to the defendant. Any such reimbursement to the county shall be paid only after any order for restitution has been paid in full. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

(e) In imposing a fine the court may authorize the payment thereof in installments. In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole, conditional release or postrelease supervision.

(f) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony or while the offender is on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, a new sentence may be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608 and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of K.S.A. 2004 Supp. 21-4729, and amendments thereto, prior to revocation of a nonprison sanction of a defendant whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of K.S.A. 2004 Supp. 21-4729, and amendments thereto, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendment thereto or a community intermediate sanction center. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or a community intermediate sanction center and the defendant meets all of the conservation camp's or a community intermediate sanction center's placement criteria unless the court states on the

record the reasons for not placing the defendant in a conservation camp or a community intermediate sanction center.

(h) The court in committing a defendant to the custody of the secretary of corrections shall fix a term of confinement within the limits provided by law. In those cases where the law does not fix a term of confinement for the crime for which the defendant was convicted, the court shall fix the term of such confinement.

(i) In addition to any of the above, the court shall order the defendant to reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

(j) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty as a result of conviction of crime.

(k) An application for or acceptance of probation or assignment to a community correctional services program shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(l) The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp or a conservation camp established by the secretary pursuant to K.S.A. 75-52,127, and amendments thereto, of an inmate sentenced to the secretary's custody if the inmate: (1) Has been sentenced to the secretary for a probation revocation, as a departure from the presumptive nonimprisonment grid block of either sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, or for an offense which is classified in gridblocks 4-E or 4-F of the sentencing guidelines grid for drug crimes and such offense does not meet the requirements of K.S.A. 2004 Supp. 21-4729, and amendments thereto, and (2) otherwise meets admission criteria of the camp. If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 21-4611 and amendments thereto.

(m) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of this section shall not apply.

(n) Except as provided by subsection (f) of K.S.A. 21-4705, and amendments thereto, in addition to any of the above, for felony violations of K.S.A. 65-4160 or 65-4162, and amendments thereto, the court shall require the defendant who meets the requirements established in K.S.A. 2004 Supp. 21-4729, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. 2004 Supp. 75-52,144, and amendments thereto, including but not limited to, an approved after-care plan. If the defendant fails to participate in or has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding, the defendant shall be subject to revocation of probation and the defendant shall serve the underlying prison sentence as established in K.S.A. 21-4705, and

amendments thereto. For those offenders who are convicted on or after the effective date of this act, upon completion of the underlying prison sentence, the defendant shall not be subject to a period of postrelease supervision. The amount of time spent participating in such program shall not be credited as service on the underlying prison sentence.”;

And by renumbering the remaining sections accordingly;

Also on page 3, in line 14, by striking “and” and inserting a comma; also in line 14, after “19-4444” by inserting “and 21-4603d”;

In the title, in line 10, before the semicolon by inserting “and law enforcement agencies”; in line 11, by striking “and” and inserting a comma; also in line 11, after “19-4444” by inserting “and 21-4603d”, and **SB 89** be passed as further amended.

SB 122 be amended by adoption of the committee amendments, be further amended by motion of Senator Barone as amended by Senate Committee, on page 1, in line 30, before the period by inserting “for employees hired on or after July 1, 2005”, and **SB 122** be passed as further amended.

SB 209 be amended by adoption of the committee amendments, be further amended by motion of Senator Allen as amended by Senate Committee, on page 1, in line 41, by striking “estimated” and inserting “maximum”;

On page 2, in line 39, by striking “estimated” and inserting “maximum”, and **SB 209** be passed as further amended.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator D. Schmidt an emergency was declared by a $\frac{2}{3}$ constitutional majority, and **SB 89**, **SB 113**, **SB 122**, **SB 152**, **SB 209**, **SB 219**, **SB 252** were advanced to Final Action and roll call.

SB 89, An act concerning certain counties and law enforcement agencies; relating to payment of certain expenses; amending K.S.A. 2004 Supp. 19-1910, 19-4444 and 21-4603d and repealing the existing sections.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed, as amended.

SB 113, An act concerning agriculture; relating to soil amendment products; amending K.S.A. 2004 Supp. 2-2805 and repealing the existing section; also repealing K.S.A. 2004 Supp. 2-2806.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

SB 122, An act concerning payment of compensation; relating to payment methods; electronic transfer and deposit; amending K.S.A. 44-314 and repealing the existing section.

On roll call, the vote was: Yeas 20, Nays 20, Present and Passing 0, Absent or Not Voting 0.

Yeas: Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Huelskamp, Jordan, Kelly, Ostmeyer, Pine, Reitz, Schodorf, Steineger, Teichman, Wagle, Wilson.

Nays: Allen, Apple, Barnett, Barone, Betts, Hensley, Journey, Lee, McGinn, Morris, O'Connor, Palmer, Petersen, Pyle, Schmidt D, Schmidt V, Taddiken, Umbarger, Vratil, Wysong.

A constitutional majority having failed to vote in favor of the bill, **SB 122** did not pass.

EXPLANATION OF VOTE

MR. VICE PRESIDENT: I understand **SB 122** will lower costs in the work place and it's good for business. However as a businessman I also understand what this bill will do to those persons of mature age who are used to the way they have been paid, some over a half century. I do not believe that government should force this change.—DAVID WYSONG

SB 152, An act relating to district hospitals; relating to the sale of property; amending K.S.A. 80-2520 and repealing the existing section.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

SB 209, An act concerning the transportation development district act; relating to district sales tax; amending K.S.A. 2004 Supp. 12-17,142, 12-17,144 and 12-17,145 and repealing the existing sections.

On roll call, the vote was: Yeas 35, Nays 5, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Palmer, Petersen, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Teichman, Umbarger, Vratil, Wagle, Wysong.

Nays: Huelskamp, Ostmeyer, Pyle, Taddiken, Wilson.

The bill passed, as amended.

SB 219, An act concerning agriculture; creating the pest control compact.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

SB 252, An act relating to dealer license plates; concerning the use thereof; amending K.S.A. 8-136 and repealing the existing section.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed.

On motion of Senator D. Schmidt the Senate adjourned until 9:30 a.m., Friday, February 18, 2005.

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

PAT SAVILLE, *Secretary of the Senate.*

