

Journal of the Senate

FIFTY-SEVENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, April 27, 2005—9:30 a.m.

The Senate was called to order by President Stephen Morris.
The roll was called with forty senators present.

President Morris introduced as guest chaplain, Rev. Michael Chamberlain, First United Methodist Church, Topeka, and Chaplain of the House of Representatives, who delivered the invocation.

Almighty God, hear us as we pray this day, for you are the God who calls us to open ourselves before you, to seek in you the things that give life and to look to you for the answers we seek and the wisdom we need. Lead us in your will for your name's sake.

We pray today for the state that we love and for those who serve her. As your servants in this chamber meet to complete their work, we ask your special blessing on their efforts. Grant them the vision that reveals new solutions to old problems. Grant them the openness that hears as well as speaks. Grant them the humility that distinguishes between human will and your will. Grant them the courage to accomplish the work that you have placed before them. Above all, grant them the good humor and forbearance that sees your face in the face of others.

Bless our beautiful state, Lord, this home we have on the range. Bless her golden fields and rolling plains. Bless the people of Kansas who are its greatest treasure and lead them always in the way which pleases you and which brings about your kingdom on earth as it is in heaven.

Amen.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

SB 313, An act concerning the governor's budget report; relating to the printing and distribution thereof; amending K.S.A. 75-3720 and repealing the existing section, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following resolutions were referred to Committees as indicated:

Assessment and Taxation: **SCR 1611**.

Committee of the Whole: **HCR 5014**.

Education: **SR 1851**.

Health Care Strategies: **SR 1856**.

REPORT ON ENGROSSED BILLS

Sub SB 33 reported correctly engrossed April 1, 2005.

SB 164, SB 176; Sub SB 306 reported correctly engrossed April 4, 2005.

SB 13, SB 37, SB 91, SB 126, SB 138, SB 147, SB 178, SB 209 correctly re-engrossed April 4, 2005.

SB 48, SB 78, SB 108, SB 119, SB 161; H Sub SB 195; SB 225 reported correctly engrossed April 5, 2005.

SB 10, SB 27, SB 36, SB 75; Sub SB 77; SB 116, SB 225, SB 254 correctly re-engrossed April 5, 2005.

H Sub SB 24; Sub SB 103 reported correctly engrossed April 6, 2005.

REPORT ON ENROLLED BILLS

SR 1846, SR 1847 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on April 1, 2005.

SB 82, SB 100 reported correctly enrolled, properly signed and presented to the Governor on April 4, 2005

SR 1848, SR 1849, SR 1852, SR 1853, SR 1854, SR 1855, SR 1857 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on April 5, 2005.

SB 4, SB 7, SB 10, SB 13; Sub SB 24; SB 26, SB 27; Sub SB 33; SB 36, SB 37, SB 39, SB 48, SB 69, SB 75; Sub SB 77; SB 78, SB 91; Sub SB 103; SB 108, SB 116, SB 119, SB 126, SB 138, SB 147, SB 161, SB 176, SB 178; Sub SB 195; SB 209, SB 254, SB 257, SB 295 reported correctly enrolled, properly signed and presented to the Governor on April 8, 2005.

SB 225 reported correctly enrolled, properly signed and presented to the Governor on April 11, 2005.

MESSAGE FROM THE GOVERNOR

SB 8, SB 46, SB 50, SB 56, SB 58, SB 152; H Sub SB 153 approved on April 4, 2005.

SB 5, SB 19, SB 42, SB 59, SB 60, SB 63, SB 158, SB 256 approved on April 6, 2005.

SB 94, SB 110, SB 121, SB 124, SB 133, SB 148, SB 175 approved on April 7, 2005.

SB 74, SB 112, SB 154, SB 183, SB 192, SB 194, SB 252, SB 258, SB 268 approved on April 8, 2005.

SB 4, SB 13, SB 26, SB 36, SB 69, SB 82, SB 91; Sub SB 103; SB 254; Sub SB 257; SB 295 approved on April 12, 2005.

SB 39, SB 78, SB 100, SB 119, SB 138, SB 209 approved on April 13, 2005.

SB 10, SB 27, SB 75, SB 108, SB 161, SB 178; Sub SB 195 approved on April 15, 2005.

SB 7; H Sub SB 24; Sub SB 33; SB 37, SB 48; Sub SB 77; SB 116, SB 126, SB 147, SB 176 approved on April 18, 2005.

SB 225 approved on April 21, 2005.

April 15, 2005

Today, I am signing Senate Bill 195 because it simplifies the gun laws in Kansas. Today, hunters and other law-abiding gun owners traveling across Kansas may unknowingly violate gun ordinances by simply driving through another town. Senate Bill 195 solves that problem by requiring many gun laws to be statewide in scope. Cities and counties will still retain the power to adopt zoning measures related to firearms and to regulate the carrying of firearms.

In addition, Senate Bill 195 permits (1) law enforcement agencies to sell or trade seized firearms, (2) retired law enforcement officers to be trained to carry weapons according to federal law, and (3) local sheriffs to execute warrants to seize guns from delinquent taxpayers. All of these are positive steps.

I remain concerned about gun safety. I believe Senate Bill 195 will have a positive effect on hunters and other law-abiding Kansans. This result outweighs the concerns expressed about eliminating local gun ordinances, which are not uniform. I call on the Legislature to work with law enforcement officials to explore reasonable statewide standards for firearm transportation, storage, and possession.

KATHLEEN SEBELIUS
Governor

April 8, 2005

Pursuant to Article 2, Section 14 of the Constitution of the State of Kansas, I veto Senate

Bill 107, which relates to charges to base period employer's unemployment insurance accounts, when the former employee was a part-time employee.

My administration has recently been notified by the United States Department of Labor that Senate Bill 107 would place the Kansas unemployment insurance program out of conformity with federal law. The Federal Unemployment Tax Act, (FUTA), and the State's unemployment insurance act work conjunctively to allow Kansas employers substantial credits against the FUTA tax.

If the state's program is out of conformity, Kansas employers are in danger of losing these valuable tax credits. This could mean an additional \$405.8 million in federal taxes and \$42.9 million in state taxes for Kansas employers this year. Therefore, to protect Kansas employers, I must veto Senate Bill 107.

I recommend that the issues outlined in Senate Bill 107 be brought before the Employment Security Advisory Council for review and recommendation to ensure that any future changes in this area of the state's unemployment insurance act are in conformity with federal statutes.

KATHLEEN SEBELIUS
Governor

April 8, 2005

Pursuant to Article 2, Section 14 of the Constitution of the State of Kansas, I veto Senate Bill 123. Senate Bill 123 codifies into law funding the State Treasurer's Office through "banking fees," fees charged on warrants issued by other state agencies. This funding mechanism was first implemented in the FY 2004 budget as a response to my request for the State Treasurer's Office to become a self-supporting agency. In my FY 2004 budget, I recommended a new plan to fund this office, one that would not place an unnecessary burden upon other state agencies. However, the State Treasurer rejected that plan. In the FY 2005 budget, and again in the FY 2006 budget the Legislature approved last week, "banking fees" fully fund the State Treasurer's office.

I believe the State Treasurer's Office should operate with funding that is not simply shifted from other state agencies, but generated from fees on services the Treasurer's Office delivers to the people of Kansas.

The veto of this legislation in no way jeopardizes the funding of the Treasurer's Office. Full funding of the State Treasurer's office is provided under the FY 2006 budget. This measure, however, does allow the State Treasurer's Office, the office of the Governor, and the legislature to further discuss how best to fund the Treasurer's Office.

KATHLEEN SEBELIUS
Governor

April 21, 2005

To the Senate of the State of Kansas:

Submitted herewith for confirmation by the Senate is an appointment made by me as the Governor of the State of Kansas, pursuant to law.

KATHLEEN SEBELIUS
Governor

Member, Kansas Racing and Gaming Commission, William J. Falstad pursuant to the authority vested in me by KSA 74-8803, effective upon the date of confirmation by the Senate, to serve a term of four years.

April 26, 2005

To the Senate of the State of Kansas:

Submitted herewith for confirmation by the Senate is an appointment made by me as the Governor of the State of Kansas pursuant to law.

KATHLEEN SEBELIUS
Governor

Member, Kansas Public Employees' Retirement System Board of Trustees, Michael Braude, pursuant to the authority vested in me by KSA 74-4905, effective upon the date of confirmation by the Senate, to serve a term of four years.

Member, Kansas Public Employees' Retirement System Board of Trustees, Rachel Lipman Reiber, pursuant to the authority vested in me by KSA 74-4905, effective upon the date of confirmation by the Senate, to serve a term of four years.

April 19, 2005

Message to the Senate of the State of Kansas

Enclosed herewith is Executive Order No. 2005-03 for your information.

KATHLEEN SEBELIUS
Governor

The President announced Executive Order 05-03, directing the Secretary of the Department of Homeland Security to develop and administer a National Incident Management System (NIMS), which would provide a consistent nationwide approach for Federal, State, local and tribal governments to work together more effectively and efficiently to prevent, prepare for, respond to, and recover from domestic incidents, regardless of cause, size or complexity, is on file in the office of the Secretary of the Senate and available for review at any time.

COMMUNICATIONS FROM STATE OFFICERS

KANSAS HIGHWAY PATROL

April 1, 2005

William R. Seck, Colonel, Superintendent, submitted the agency's 2004 Annual Report. The report is also available online at www.kansashighwaypatrol.org.

THE UNIVERSITY OF KANSAS School of Social Welfare

Ann Weick, Dean, submitted the 2003-2004 Annual Report.

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

CHANGE OF CONFERENCE

The President announced the appointment of Senator Morris as a member of the Conference Committee on **S Sub for HB 2037** to replace Senator Emler.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Morris, Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, D Schmidt, V Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, and Wysong introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1858—

A RESOLUTION honoring legislative spouses.

WHEREAS, Early newsclippings reveal that legislative wives met regularly for luncheon and a program as early as 1945, providing friendship and a social activity for those women who accompanied their husbands to Topeka for the legislative session; and

WHEREAS, No further records exist until the legislative wives group was formally organized in 1955, the start of a 50 year tradition of friendship and service, caring and sharing, prayer and inspiration, and 50 years of supporting our legislative family, with the election of Mrs. Paul Wunsch as president for a two-year term; and

WHEREAS, Also in 1955, based on a suggestion from Mrs. C.R. Mong and her friend, Mrs. Dana Dawson, the tradition of a weekly prayer group began, providing a spiritual support for the wives of legislators, and in 1959, the legislature designated a 5th floor room in the Capitol to the group for "meditation"; and

WHEREAS, The **Capitol Cookbook**, an instant collector's item compiled and printed by the legislative wives from 1986-1992, which included recipes from elected officials, Kansas trivia and a collection of pen and ink drawings by Kansas artists, required a third printing to meet the demand; and those proceeds purchased the silver service, crystal glassware and china with a gold Kansas seal used for state dinners at Cedar Crest, the governor's residence; and

WHEREAS, In 1995, in recognition of the fact that legislative wives was no longer a completely accurate or inclusive title, the group, under the leadership of Mrs. Al Lane, wife of the representative from Mission Hills, officially changed its name to "legislative spouses" and continues today to attempt to bring legislative husbands into active participation; and

WHEREAS, In 1997-98, at the urging of then-president Barb Morris, wife of Senator Steve Morris of Hugoton, the group moved decisively toward more philanthropic efforts, making significant contributions to the Topeka Ronald McDonald House, Midland Hospice and the Marian Medical and Dental Clinics; and legislative spouses continue its charitable fundraising efforts today through the sale of pins of the Kansas state seal pins, coordinated by Mrs. Morris: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That the legislative spouses filled a key role in its early days of bringing together lawmakers' wives for support, spiritual growth and socializing; have adapted to the dynamics of the times to embrace all legislative spouses; and have broadened its goals to include more educational programs and activities with a focus on charitable giving. In doing so, the legislative spouses continue to be relevant and necessary and deserving of honor in this, its 50th anniversary year. Thank you for the love and support you give your own legislator and for the sacrifices you have made for your spouse who serves in the Kansas Senate or House of Representatives. With this resolution we salute the officers and the membership of the Kansas legislative spouses of today and those who have served in the past; and

Be it further resolved: That the Secretary of the Senate provide 30 enrolled copies of this resolution to Willynda Holmes, wife of Representative Carl D. Holmes, the 2005-2006 president of the Kansas legislative spouses.

On emergency motion of Senator Morris **SR 1858** was adopted unanimously.

President Morris and members of the Senate honored the wives of the legislators with a standing ovation. Current and Former Legislative Spouses present were Barb Morris, Shelby Peterson, Cindy Rogers, Willynda Holmes, Phyllis Merrick, Sharon Miller, Myrna Powell, Helen Hayzlett, Betty Mason, Tamara Peck, Marsha Johnson, Judith Tanner, Renee Knox and Virginia Reitz.

Senators Morris, D. Schmidt and Vratil introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1859—

A RESOLUTION authorizing the Legislative Coordinating Council to participate in the case of *Montoy v. State*.

WHEREAS, The Kansas Supreme Court in the case of *Montoy v. State*, 278 Kan. 769, ____ P.3rd ____ (2005) held that the legislature had failed to meet its burden as imposed by Article 6 of the Kansas Constitution to "make suitable provision for finance" of the public schools, but withheld a formal opinion until the Kansas Legislature, by April 12, 2005, had enacted corrective legislation; and

WHEREAS, The legislature during the 2005 session has introduced bills, accepted testimony and debated the financing of public education, and has in good faith enacted legislation to comply with the decision of the Kansas Supreme Court; and

WHEREAS, The legislature is not a party in *Montoy v. State* but has a responsibility to ensure that the courts are fully informed of the legislature's actions and the reasons therefor; and

WHEREAS, During the legislative session one house of the legislature may pass a resolution to authorize the Legislative Coordinating Council to participate in a lawsuit, pursuant to K.S.A. 46-1224: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That the Legislative Coordinating Council is authorized to file an amicus curiae brief or otherwise participate in the case of *Montoy v. State*; and

Be it further resolved: That the Secretary of the Senate provide an enrolled copy of this resolution to the Chairperson of the Legislative Coordinating Council.

REPORTS OF STANDING COMMITTEES

Committee on **Ways and Means** recommends **HB 2482**, as amended by House Committee of the Whole, be amended by substituting a new bill to be designated as "SENATE Substitute for HOUSE BILL No. 2482," as follows:

"SENATE Substitute for HOUSE BILL No. 2482

By Committee on Ways and Means

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; amending K.S.A. 2004 Supp. 82a-953a and section 187 of 2005 Senate Bill No. 225, and repealing the existing sections; also repealing K.S.A. 2004 Supp. 82a-953a, as amended by section 186 of 2005 Senate Bill No. 225."; and the substitute bill be passed.

On motion of Senator D. Schmidt, the Senate recessed until 2:00 p.m.

AFTERNOON SESSION

The Senate met pursuant to recess with President Morris in the chair.

POINT OF PERSONAL PRIVILEGE

Senator Wilson and members of the Senate honored former Governor John Anderson, Jr. who was a guest in the Senate with a standing ovation. Accompanying Governor Anderson were his son, Judge John Anderson III, former Senator Dave Webb and former Attorney General Robert C. Londerholm.

MESSAGE FROM THE HOUSE

Announcing adoption of **HCR 5019**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HCR 5019 was thereupon introduced and read by title.

HOUSE CONCURRENT RESOLUTION No. 5019—

By Representatives Bethell, Carlson, Hayzlett, C. Holmes, D. Johnson, McCreary, Jim Morrison, Otto and Williams

A CONCURRENT RESOLUTION recognizing the thousands of Freemasons in the state of Kansas and honoring them for their many contributions to the state throughout its history.

WHEREAS, The Grand Lodge of Ancient Free and Accepted Masons of Kansas is celebrating 150 years of Freemasonry in the state; and

WHEREAS, Freemasons, whose lineage precedes the founding of our state and nation, have set an example of high moral standards and charity for all people; and

WHEREAS, The founding fathers of this great nation and signers of the constitution provided a well-rounded basis for developing themselves and others into valuable citizens of the United States, which quality has been continued by the Freemasons of the great state of Kansas; and

WHEREAS, Members of the masonic fraternity, both individually and as an organization, continue to make invaluable charitable contributions of service to the state of Kansas, as

most recently exemplified by their contribution and commitment of over \$20 million dollars to cancer research at the University of Kansas Medical Center in Kansas City; and

WHEREAS, The masonic fraternity continues to provide for the charitable relief and education of the citizens of the state of Kansas; and

WHEREAS, The masonic fraternity is deserving of formal recognition of their long history of care-giving for the citizenry and their example of high moral standards: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the body recognizes the thousands of Freemasons throughout the state and honors them for their many contributions to the state throughout its history; and

Be it further resolved: That the Secretary of State provide an enrolled copy of this resolution to Jim Falkner, CEO, Kansas Masonic Home, 401 S. Seneca, Wichita, KS 67213; Larry J. Mersbery, Grand Master of Kansas, Box 313, Dearing, KS 67430-0313 and Kansas Grand Lodge, 320 SW 8th Street, Topeka, KS 66601.

On emergency motion of Senator Emler **HCR 5019** was adopted by voice vote.

President Morris and members of the Senate welcomed the Most Worshipful Grand Master of the Grand Lodge of Kansas, Larry Mersberg and the CEO of the Kansas Masonic Home, Jim Falkner.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senator Vratil introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1860—

A RESOLUTION congratulating and commending Victoria Luhrs.

WHEREAS, Victoria Luhrs, a student at Kansas State University majoring in secondary education, has been awarded a \$30,000 Harry S. Truman scholarship. Truman scholars are selected primarily on the basis of leadership potential and communications skills, intellectual strength and analytical ability, and the likelihood of making a difference in public service. She plans to teach for a few years before returning to graduate school; and

WHEREAS, While a student at Kansas State University, Ms. Luhrs has been both a Kassebaum and KSU Foundation Scholar and served as president of K-State's Mortarboard, the national senior honor society. In earning 121 academic hours at the university, she has a grade point average of 4.0 and has achieved university honors every semester. She has served as vice-president of fraternity relations at Alpha Chi Omega sorority, vice-president of development for the K-State Student Alumni Board, president of Chimes, K-State's junior honorary group, and is a member of the Phi Kappa Phi honor society; and

WHEREAS, During the 2005 Kansas legislative session she has served as an intern for Senator John Vratil, vice-president of the Kansas Senate. She will be doing her student teaching in the Kansas City, Kansas, school district. She has started and developed after-school programs at local schools, including a leadership group for at-risk middle school girls, and is serving as the senior high youth group director at the First Presbyterian Church at Manhattan; and

WHEREAS, Ms. Luhrs is the daughter of Barbara Luhrs, Overland Park, and Bob Luhrs, Carmel, Indiana, and is a 2001 graduate of Blue Valley Northwest High School: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend Victoria Luhrs upon her sterling career as a student at Kansas State University and her selection as a Harry S. Truman scholar, and wish her every success as she commences her career in education; and

Be it further resolved: That the Secretary of the Senate provide an enrolled copy of this resolution to Ms. Luhrs and her parents.

On emergency motion of Senator Vratil **SR 1860** was adopted unanimously.

President Morris and members of the Senate congratulated Victoria on her many accomplishments and wished her well in the future. Accompanying Victoria were her mother, Barbara Luhrs and her grandparents, Lauren and Virginia Roe.

CONSIDERATION OF MOTIONS AND SENATE RESOLUTIONS

SENATE RESOLUTION No. 1859—

By Senators Morris, D. Schmidt and Vratil

A RESOLUTION authorizing the Legislative Coordinating Council to participate in the case of *Montoy v. State*.

WHEREAS, The Kansas Supreme Court in the case of *Montoy v. State*, 278 Kan. 769, ____ P.3rd ____ (2005) held that the legislature had failed to meet its burden as imposed by Article 6 of the Kansas Constitution to “make suitable provision for finance” of the public schools, but withheld a formal opinion until the Kansas Legislature, by April 12, 2005, had enacted corrective legislation; and

WHEREAS, The legislature during the 2005 session has introduced bills, accepted testimony and debated the financing of public education, and has in good faith enacted legislation to comply with the decision of the Kansas Supreme Court; and

WHEREAS, The legislature is not a party in *Montoy v. State* but has a responsibility to ensure that the courts are fully informed of the legislature’s actions and the reasons therefor; and

WHEREAS, During the legislative session one house of the legislature may pass a resolution to authorize the Legislative Coordinating Council to participate in a lawsuit, pursuant to K.S.A. 46-1224: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That the Legislative Coordinating Council is authorized to file an amicus curiae brief or otherwise participate in the case of *Montoy v. State*; and

Be it further resolved: That the Secretary of the Senate provide an enrolled copy of this resolution to the Chairperson of the Legislative Coordinating Council.

On emergency motion of Senator D. Schmidt **SR 1859** was advanced to Final Action and roll call.

SR 1859, A resolution authorizing the Legislative Coordinating Council to participate in the case of *Montoy v. State*.

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

Yeas: Allen, Apple, Barnett, Brownlee, Bruce, Brungardt, Donovan, Emler, Huelskamp, Jordan, Journey, McGinn, Morris, O’Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Barone, Betts, Francisco, Gilstrap, Goodwin, Haley, Hensley, Kelly, Lee, Steineger. The resolution was adopted.

Protest of Senator Hensley against Senate Resolution 1859
April 27, 2005

Mr. President, I hereby exercise my right under Article 2, Section 10, of the Kansas Constitution to protest Senate Resolution 1859.

On April 6, 2005, Governor Kathleen Sebelius’ chief counsel delivered to the Kansas Supreme Court 2005 House Bill 2247, the school finance bill, for review by the Court.

This bill is the Kansas Legislature’s attempt to address the issues contained in the Court’s preliminary order in *Montoy v. State of Kansas*.

With the passage of Senate Resolution 1859, the majority party has authorized the Legislative Coordinating Council (LCC) to file an amicus curiae brief in the *Montoy* case. The majority party’s rationale for doing this is, “to ensure that the courts are fully informed of the legislature’s actions and the reasons therefor.”

If the LCC so authorizes the majority party’s amicus brief, only one side of the school finance debate will be presented to the Court on behalf of the Kansas Legislature.

As the Senate Minority Leader, I believe it is my duty to provide the other side as to the process that resulted in the passage of 2005 House Bill 2247, which I believe is an inadequate response to the Court’s preliminary order.

You might call the following my own amicus brief:

I predict that in their future amicus brief, the proponents will have the Court believe they based 2005 House Bill 2247 on actual costs, which the Court told us we must do.

In *Montoy*, the Court admonished the Legislature to determine the actual costs of providing a suitable education. Specifically, it stated that, "actual costs of education, including appropriate levels of administrative costs, are critical factors for the legislature to consider in achieving a suitable formula for financing education." In response to this admonition, the Senate Education Committee requested that Dale Dennis, deputy commissioner of education at the Kansas State Department of Education (KSDE), conduct a study to determine such actual costs.

Mr. Dennis surveyed 55 school districts of varying size and location on the actual cost of educating children in each district. These districts make up 35% of the students in our state. Upon completion of the survey, Mr. Dennis presented the findings to the Senate Education Committee. The survey's findings accompany this protest.

The Senate committee examined these findings, but chose not to develop a school finance plan based on the actual costs as determined by experts in the field. Many legislators either discredited or ignored the survey. The House Education Committee never examined the survey's findings, nor did they pursue any additional data on actual costs. In fact, Republican House members were given a memo from their leadership urging them not to consider the findings of the KSDE survey.

In both the House and Senate, attempts were made to include the KSDE survey's findings in the debate. During floor debate in the Senate on March 2, 2005, an amendment was proposed to the original Senate school finance bill, Senate Bill 246, which would have implemented the specific recommendations contained in the KSDE survey. That amendment failed.

In *Montoy* the Court stated, "Specifically, the district court found that the financing formula was not based upon actual costs to educate children but was instead based on former spending levels and political compromise." I believe 2005 House Bill 2247 continues that trend. This bill is not based on any of the available actual cost data, such as the KSDE survey or the Augenblick & Myers study that was commissioned by the Legislature.

This bill, in failing to account for actual costs, ignores the Court's instructions to the Legislature to analyze the needs of school districts around the state. And, as it pertains to the current funding formula, the Court stated, "This failure to do any cost analysis distorted the low enrollment, special education, vocational, bilingual education, and the at-risk student weighting factors." I believe 2005 House Bill 2247 continues that failure.

In addition to ignoring the Court's instructions to determine actual costs, 2005 House Bill 2247 also ignores its instructions to equitably fund schools in Kansas. In fact, the bill includes numerous provisions that will actually increase the inequity of funding among school districts.

For example, the bill provides for an increase in the Local Option Budget (LOB) from 25% to 30% of the school district's general fund. This increase is not equalized. In *Montoy*, the Court stated, "Additional evidence of the inadequacy of the funding is found in the fact that, while the original intent of the provision for local option budgets within the financing formula was to fund 'extra' expenses, some school districts have been forced to use local option budgets to finance general education." I believe 2005 House Bill 2247 will continue to force school districts to use the LOB for financing basic programs. And, I believe the LOB increase only compounds the inequity between wealthy and poor districts, both urban and rural.

Also included in the bill is an additional 5% local taxing authority for school districts with the highest residential property valuations in the state. This "cost-of-living" LOB is not equalized. It will allow 17 school districts with average residential values 125% of the state-wide average to raise local tax dollars to pay their teachers higher salaries. It is my belief the COLA LOB only compounds the inequity between wealthy and poor districts, both urban and rural.

This bill also contains a provision that places an 8-mill cap on capital outlay levies. This provision is not equalized. The failure to provide state funding to equalize the property tax burden of capital outlay levies is inequitable. This will shift the burden back onto local property taxes for school improvements and maintenance. I believe the capital outlay provision only compounds the inequity between wealthy and poor districts, both urban and rural.

This bill creates a new taxing authority, thus a new revenue source, for districts with declining enrollment. This provision applies primarily to the Shawnee Mission school district and is a viable option only for districts with a strong property tax base. This provision also is not equalized. Therefore, I believe it only compounds the inequity among districts.

Finally, this bill retains a provision for "ancillary facilities weighting" of \$12.3 million to Olathe, \$9.1 million to Blue Valley, and \$1 million to DeSoto, for a total of \$ 22.4 million. This is additional revenue for a select few school districts that have high costs for new construction, but is not available to the vast majority of school districts. I believe this provision only compounds the inequity among districts.

In both chambers, amendments were offered to eliminate the previously listed provisions. Unfortunately, the amendments were defeated and the provisions remain in the final version of 2005 House Bill 2247. Both House and Senate Democrats issued constitutional protests to the original school finance bills and the final bill citing discrepancies between the proposed legislation and the Court's preliminary order in *Montoy v. State of Kansas*.

In the end, 2005 House Bill 2247 perpetuates the inequities among school districts statewide and ignores the findings of the Kansas Supreme Court.

I predict that in their future amicus brief, the proponents of the bill will have the Court believe that it is a good faith effort to provide more funding for schools. While the bill does increase funding for schools, is that enough? I do not believe it is because as stated in the Court's order, "increased funding may not in and of itself make the financing formula constitutionally suitable. The equity with which the funds are distributed and the actual costs of education...are critical factors for the legislature to consider in achieving a suitable formula for financing education."

I believe 2005 House Bill 2247 can be described using the same language the Court used to describe the current funding formula. As the Court stated, it "increases disparities in funding, not based on a cost analysis, but rather on political and other factors not relevant to education."

I predict that in their future amicus brief, the proponents of the bill will have the Court believe it will adequately fund our schools. This is not true. It is a quick fix, not a long-term solution. It proposes to spend money we will not have. While the bill provides additional funding, it is for one year only and cannot be sustained in future years. The bill is financed with existing revenues, reducing the state budget's ending balance, and overly optimistic revenue projections.

The Division of the Budget has provided the Legislature more realistic projections that show we cannot continue to fund 2005 House Bill 2247 without additional revenues. According to the Division, our ending balance in Fiscal Year 2007 will be negative \$97 million and in Fiscal Year 2008 negative \$341 million.

Senate Resolution 1859 refers to how the Legislature "has in good faith enacted legislation to comply with the decision of the Kansas Supreme Court."

2005 House Bill 2247 does not represent a viable, good faith effort to meet the challenges the Court set forth in *Montoy v. State of Kansas*. Instead, it represents piecemeal provisions that together, were able to garner the political support of a majority in the Legislature.

Majority party leadership believed that the process of adequately and equitably funding schools was unavoidably political. The chairwoman of the House Education Committee said after acknowledging that certain provisions were included to appease Johnson County legislators, "I know we're not supposed to be political, but we've got to get the votes somehow."

I do not agree. Kansas legislators should have put aside politics and parochialism to answer the charge of the Kansas Supreme Court.

APRIL 27, 2005

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January 26, 2005

FROM: Dale M. Dennis, Deputy
Commissioner of Education

SUBJECT: Survey on Education Costs

As a result of the Supreme Court opinion on the Kansas school finance law, the State Department of Education was requested to survey a cross-section of school districts with the following questions.

1. What would be the PER PUPIL COST for your school district to educate a "normal/regular student?"
2. What is the **additional per pupil cost for an at-risk student?**
3. What is the **additional per pupil cost for a bilingual student?**

We provided definitions for an at-risk student (current law), a bilingual student (current law), and suitable education which was the same used in the Augenblick & Myers study approved by the Legislative Educational Planning Committee and the Legislative Coordinating Council. We also requested that the school districts exclude state special education, at-risk, bilingual, and transportation aid in computing the cost of educating a student with no exceptionalities. They assumed that No Child Left Behind remains in place and is a part of suitable.

Responses were received from all 55 school districts surveyed. Some districts did not have bilingual students. This information was reflected in their responses. Anytime you conduct a survey of this nature, you will have some outliers both on the high and low sides. That is to be expected. We have tried to account for that when we set up our line of best fit.

We have prepared tables which shows the low, median, and high amounts for different enrollment categories and charts showing the cost of enrollments which will be helpful in analyzing this information.

SCHOOL FINANCE SURVEY

As a result of the recent Supreme Court opinion on the Kansas school finance formula, we have been requested to collect specific data concerning the costs of education for the 2005-06 school year.

Please calculate your estimated education costs as requested below and return to my office by Friday, January 21, 2005. We are also requesting that you include your working papers used in determining your estimated education costs.

USD No. _____
 USD Name _____
 Person Completing Request _____
 Telephone Number _____

1. What would be the PER PUPIL COST for your school district to educate a "normal/regular student?"

Please use the attached definitions of suitable education (including graduation requirements) in making your estimates and exclude students identified as special education, at-risk, and bilingual. Do not include any transportation costs in your calculation. Also, please assume that No Child Left Behind remains in place.

\$_____ Est. cost of educating a normal/regular student

2. What is the **additional per pupil cost for an at-risk student?** Please use the attached at-risk definition in making your estimates.

\$_____ Est. additional cost of educating an at-risk student

3. What is the **additional per pupil cost for a bilingual student?** Please use the attached bilingual definition in making your estimates.

\$:_____ Est. additional cost of educating a bilingual student

AT-RISK DEFINITION

Kansas statutes define at-risk as the number of students eligible for free lunches. Even though the students eligible for free lunch determines the amount of money eligible for at-risk students, all students who meet the definition of at-risk would be eligible to receive benefits.

An at-risk student is defined as a student who meets one or more of the following:

A student who is not meeting the requirements necessary for promotion to the next grade level or graduation from high school.

A student whose education attainment is below other students of their age or grade level.

A student who is a potential dropout.

A student who is failing two or more courses of study.

A student who has been retained.

A student who is not reading on grade level.

This definition does not include a student who has been identified for special education services under Individuals with Disabilities Education Act (IDEA).

BILINGUAL EDUCATION DEFINITION

A student whose primary language is other than English and, based on an English proficiency assessment, scored below "proficient" in any of the domains of speaking, listening, reading, and writing.

Listed below is the definition of SUITABLE EDUCATION to be used for this project.

72-1101. Required subjects in elementary schools. Every accredited elementary school shall teach reading, writing, arithmetic, geography, spelling, English grammar and composition, history of the United States and of the State of Kansas, civil government and the duties of citizenship, health and hygiene, together with such other subjects as the State Board may determine. The State board shall be responsible for the selection of subject matter within the several fields of instruction and for its organization into courses of study and instruction for the guidance of teachers, principals and superintendents.

72-1103. Required courses of instruction; graduation requirements. All accredited schools, public, private or parochial, shall provide and give a complete course of instruction to all pupils, in civil government, and United States history, and in patriotism and the duties of a citizen, suitable to the elementary grades; in addition thereto, all accredited high schools, public, private or parochial, shall give a course of instruction concerning the government and institutions of the United States, and particularly of the Constitution of the United States; and no student who has not taken and satisfactorily passed such course shall be certified as having completed the course requirements necessary for graduation from high school.

72-1117. Kansas history and government, required courses; duties of State Board. (a) The State Board of Education shall provide for a course of instruction in Kansas history and government, which shall be required for all students graduating from an accredited high school in this state. (b) The State Board of Education shall prescribe the school year, not later than the 1990-91 school year, in which the requirement of subsection (a) shall become applicable and may provide for such waivers from the requirement as the Board deems appropriate.

Qualified Admissions
Precollege Curriculum

4 units of English
3 units of Math

3 units of Natural Science
3 units of Social Studies
1 unit of Computer Technology
2 units of Foreign Language (preferred)
1 unit of Fine or Performing Arts (preferred)

State Scholarship Program
Precollege Curriculum

4 units of English/Language Arts
3 units of Natural Science
(1 each of Biology, Chemistry, and Physics)
4 units of Math
3 units of Social Studies
1 unit of Computer Technology
2 units of Foreign Language

HIGH SCHOOL GRADUATION REQUIREMENTS

Four units of English language arts
Three units of history and government
Three units of science
Three units of mathematics
One unit of physical education
One unit of fine arts
Six units of elective courses

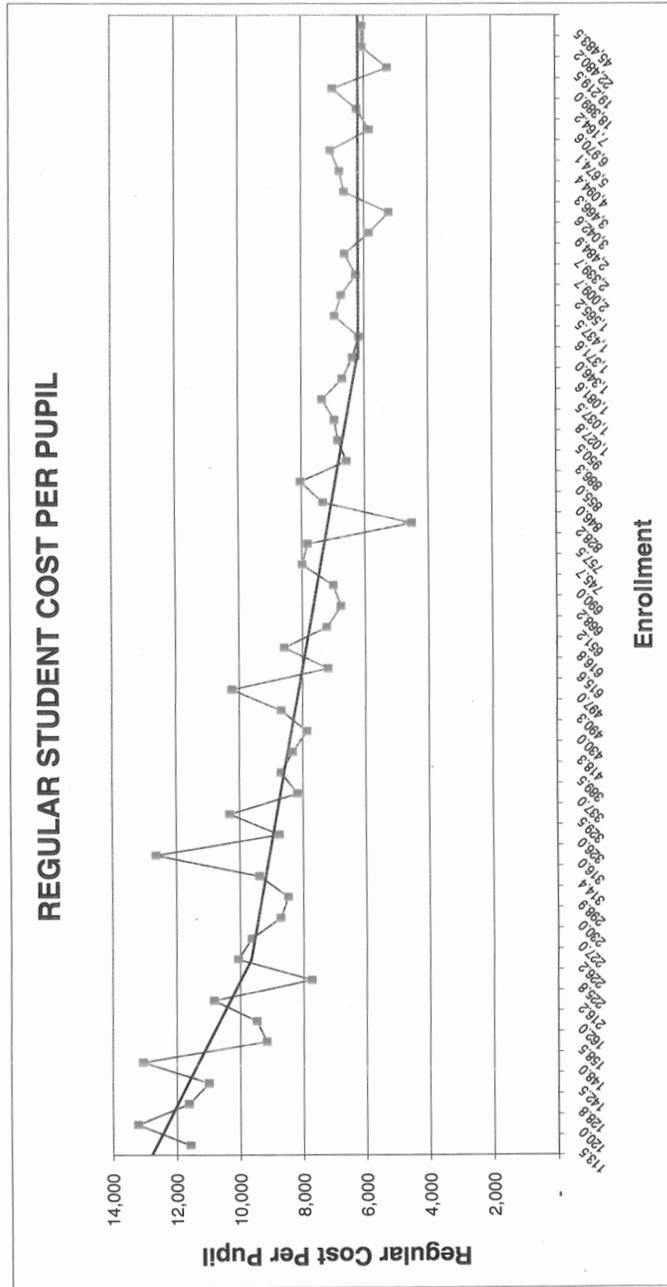
PROGRAMS AND SERVICES ADDED BY THE LEGISLATURE

- Student and staff safety
- Early childhood programs
- Extended learning time
- Alternative schools
- Technical education*
- Technology training
- Library media services
- Foreign language
- Fine arts
- Nursing and counseling services
- Activities programs
- Student transportation
- Qualified teacher in each classroom

*We assume technical education includes business, vocational agriculture, family consumer science, etc.

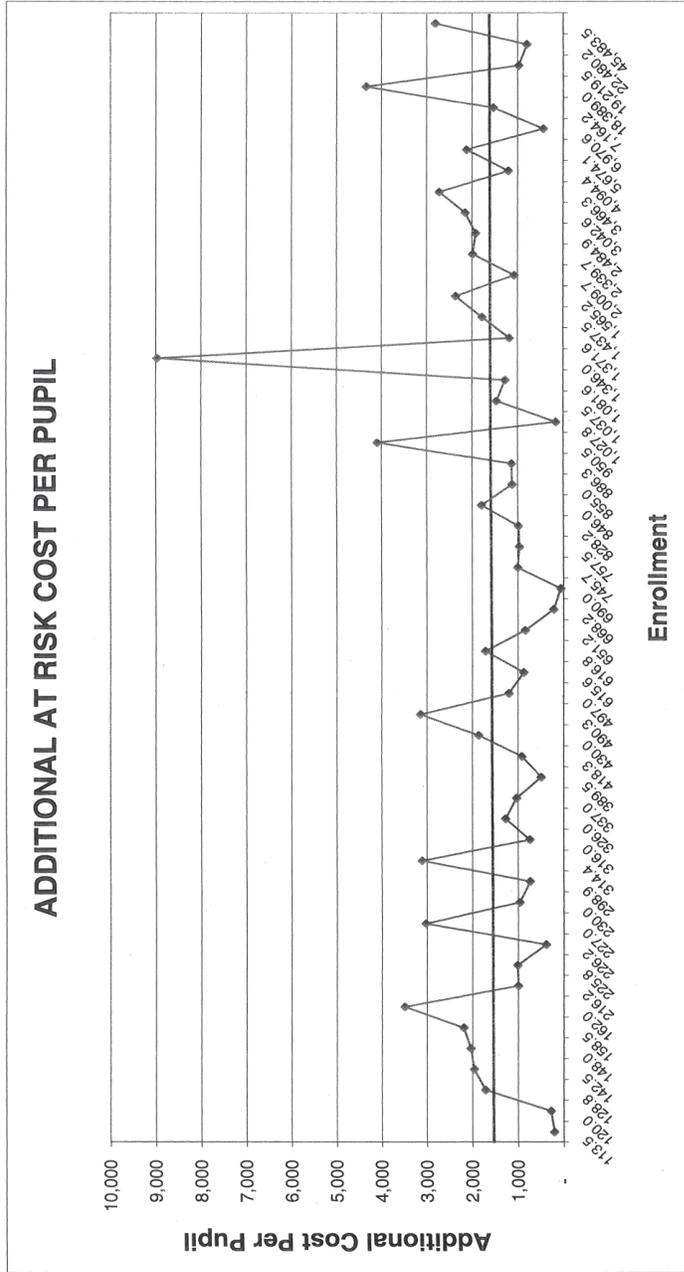
**COST OF EDUCATING A STUDENT
WITH NO EXCEPTIONALITIES
2005-06 Estimated Cost
For Educating A Child With No Exceptionalities
By Enrollment Category**

Enrollment Category	Regular Student Cost Per Pupil			
	Low	Median	High	# USDs
100-199.9	9,162	11,570	13,219	7
200-299.9	7,732	9,175	10,824	6
300-399.9	8,164	9,063	12,633	6
400-499.9	7,859	8,496	10,233	4
500-699.9	6,774	7,185	8,575	5
700-899.9	4,520	6,894	9,475	6
900-1,099.9	6,699	6,894	7,336	4
1,100-1,499.9	6,167	6,366	6,939	3
1,500-4,999.9	5,213	6,615	6,775	7
5,000-9,999.9	5,826	6,226	7,064	3
10,000-above	5,258	6,057	6,990	4



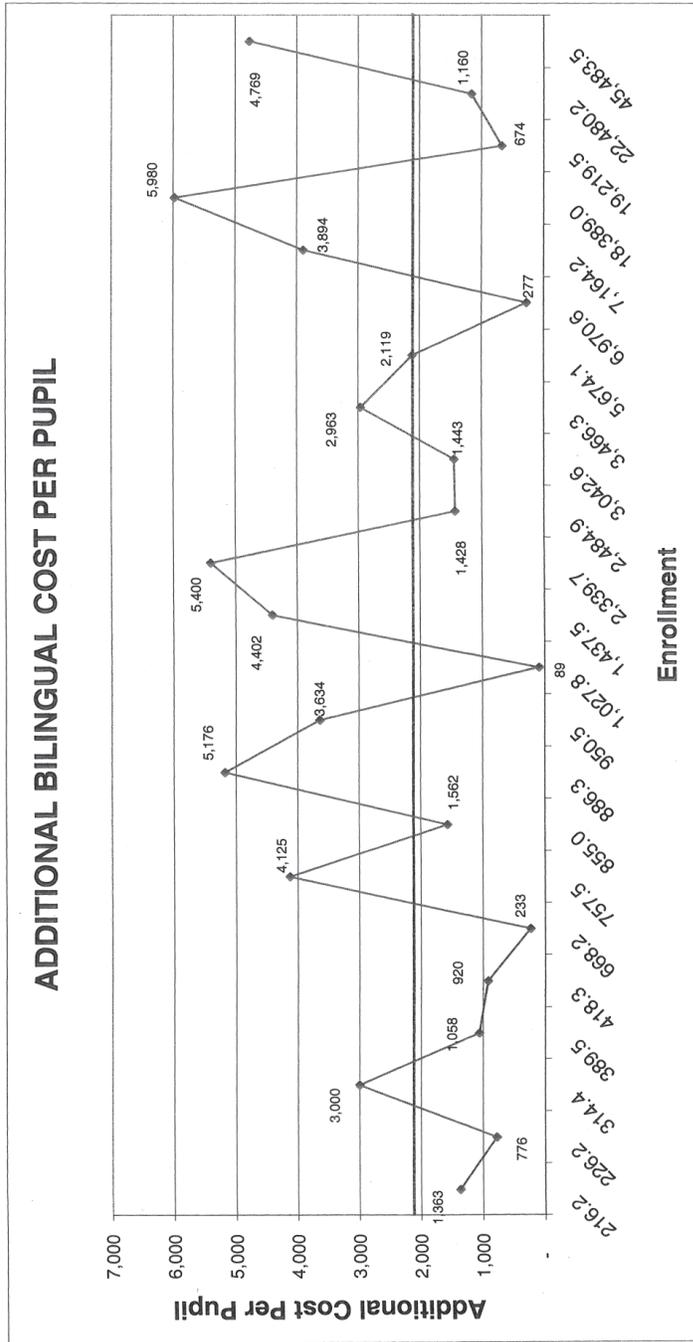
**ADDITIONAL COST OF EDUCATING
AN AT-RISK STUDENT
(Current Law)
2005-06 Estimated Additional Cost
For Educating An At Risk Child
By Enrollment Category**

Enrollment Category	Additional At Risk Cost Per Pupil			
	Low	Median	High	# USDs
100-199.9	204	1,966	3,500	7
200-299.9	387	980	3,026	6
300-399.9	495	1,331	3,112	5
400-499.9	915	1,530	3,142	4
500-699.9	60	838	1,710	5
700-899.9	966	1,059	1,790	6
900-1,099.9	164	1,366	4,095	4
1,100-1,499.9	1,177	1,780	8,969	3
1,500-4,999.9	1,070	1,985	2,719	7
5,000-9,999.9	433	1,528	2,119	3
10,000-above	794	1,890	4,340	4



**ADDITIONAL COST OF EDUCATING
A BILINGUAL STUDENT
(Current Law)
2005-06 Estimated Additional Cost
For Educating A Bilingual Child
By Enrollment Category**

Enrollment Category	Additional Bilingual Cost Per Pupil			
	Low	Median	High	# USDs
100-199.9	0	0	0	0
200-299.9	776	1,070	1,363	2
300-399.9	1,058	2,029	3,000	2
400-499.9	920	920	920	1
500-699.9	233	233	233	1
700-899.9	1,562	3,621	5,176	3
900-1,099.9	89	1,862	3,634	2
1,100-1,499.9	4,402	4,402	4,402	1
1,500-4,999.9	1,428	2,890	5,400	4
5,000-9,999.9	277	2,097	3,894	3
10,000-above	674	3,146	5,980	4



ACTION ON VETO MESSAGE

On motion of Senator Umbarger, the Senate proceeded to reconsider **SB 123**, An act concerning the state treasurer; authority to charge certain fees.

The Governor's objections to **SB 123** having been read, the question was, shall the bill pass notwithstanding the governor's veto?

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

Yeas: Allen, Apple, Barnett, Brownlee, Bruce, Brungardt, Donovan, Emler, Huelskamp, Jordan, Journey, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Barone, Betts, Francisco, Gilstrap, Goodwin, Haley, Hensley, Kelly, Lee, Steineger.
A two-thirds constitutional majority having voted in favor of overriding the Governor's veto, the motion prevailed and the bill passed.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote NO on **SB 123**. The State Treasurer's office should operate with funding that is not simply shifted from other state agencies, but generated from fees on services the Treasurer's office delivers to the people of Kansas.

If the Treasurer doesn't want to increase fees on services she delivers, perhaps she should find efficiencies in her own agency and reduce expenditures just as every other state agency must do.—ANTHONY HENSLEY

Senator Lee requests the record to show she concurs with the "Explanation of Vote" offered by Senator Hensley on **SB 123**.

REPORTS OF STANDING COMMITTEES

Committee on Ways and Means recommends **HB 2108**, as amended by House Committee; **HB 2320**, **HB 2399** be passed.

Also, **HB 2507**, as amended by House Committee, be amended by substituting a new bill to be designated as "SENATE Substitute for HOUSE BILL No. 2507," as follows:

"SENATE Substitute for HOUSE BILL No. 2507

By Committee on Ways and Means

"AN ACT providing for appointment of the legislative counsel; amending K.S.A. 46-1222 and repealing the existing section; also repealing K.S.A. 46-1223."; and the substitute bill be passed.

MESSAGE FROM THE HOUSE

Announcing the House not adopts the conference committee report on **SB 142**, requests a conference and appoints Representatives Vickrey, Goico and Holland as third conferees on the part of the House.

The House adopts the conference committee report on **SB 151**.

The House adopts the conference committee report on **SB 215**.

Rejection of **SB 102**.

ORIGINAL MOTION

Senator D. Schmidt moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bills: **SB 142**, **SB 151**, **SB 215**; **HB 2026**; **Sub HB 2457**.

ORIGINAL MOTION

On motion of Senator Huelskamp, the Senate acceded to the request of the House for a conference on **SB 142**.

The President appointed Senators Huelskamp, O'Connor and Francisco as third conferees on the part of the Senate.

CHANGE OF REFERENCE

The President withdrew **HB 2480** from the Committee on Ways and Means, and referred the bill to the Committee on Assessment and Taxation.

ORIGINAL MOTION

Senator D. Schmidt moved Joint Rule 3(f) of the Senate and House of Representatives be suspended and dispense with distribution of copies of the conference committee report on **SB 151, SB 215**.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 151**, submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with House Committee amendments, as follows:

On page 1, by striking all in lines 15 through 40 and inserting the following:

“Section 1. K.S.A. 2004 Supp. 50-6a03 is hereby amended to read as follows: 50-6a03. Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the effective date of this act shall do one of the following:

(a) Become a participating manufacturer (as that term is defined in section II(jj) of the master settlement agreement) and generally perform its financial obligations under the master settlement agreement; or

(b) (1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

(A) 1999: \$.0094241 per unit sold after the effective date of this act;

(B) 2000: \$.0104712 per unit sold;

(C) for each of 2001 and 2002: \$.0136125 per unit sold;

(D) for each of 2003 through 2006: \$.0167539 per unit sold;

(E) for each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) of subsection (b) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(A) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow, *based on units sold in the state of Kansas* in a particular year, was greater than the ~~state's allocable share of the total payments that such manufacturer would have been required to make in that year under the master settlement agreement (as determined pursuant to section IX(i)(2) of the master settlement agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment)~~ *master settlement agreement payments, as determined pursuant to section IX(i) of that agreement including, after final determination of all adjustments, that such manufacturer would have been required to make based on such units sold* had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B) of paragraph (2) of subsection (b), funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the attorney general that it is in compliance with this subsection. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under

this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(A) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be credited to the state general fund in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100% of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the state general fund in an amount not to exceed 15% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300% of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed two years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. A tobacco product manufacturer who is found in violation of this section shall pay, in addition to other amounts assessed under this section and pursuant to law, the costs and attorney's fees incurred by the state during a successful presentation under this paragraph (3).

New Sec. 2. If any portion of the amendment to subsection (b)(2)(B) of K.S.A. 50-6a03 made by this act, is adjudged by any court of competent jurisdiction to be unconstitutional or invalid, then such subsection (b)(2)(B) of K.S.A. 50-6a03 shall be deemed to be repealed in its entirety. If subsection (b)(2) of K.S.A. 50-6a03 is adjudged by any court of competent jurisdiction to be unconstitutional or invalid, then this act shall be deemed repealed, and subsection (b)(2)(B) of K.S.A. 50-6a03 shall be restored as if no such amendment had been made. Neither any holding of unconstitutionality nor the repeal of subsection (b)(2)(B) of K.S.A. 50-6a03 shall affect, impair or invalidate the remainder thereof, or the application thereof to any other person or circumstance, and such remaining portions of K.S.A. 50-6a03 shall continue in full force and effect.

Sec. 3. K.S.A. 2004 Supp. 50-6a03 is hereby repealed.”;

And by renumbering the remaining section accordingly;

In the title, in line 10, by striking all after “ACT”; by striking all in line 11; in line 12, by striking all before the period and inserting “amending the tobacco master settlement agreement; release of escrow funds; amending K.S.A. 2004 Supp. 50-6a03 and repealing the existing section”;

And your committee on conference recommends the adoption of this report.

WARD LOYD
THOMAS C. OWENS
PAUL T. DAVIS
Conferees on part of House

JOHN VRATIL
TERRY BRUCE
GRETA GOODWIN
Conferees on part of Senate

Senator Vratil moved the Senate adopt the Conference Committee Report on **SB 151**.

On roll call, the vote was: Yeas 29, Nays 10, Present and Passing 1, Absent or Not Voting 0.

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

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

Present and Passing: Donovan.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 215**, submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with House Committee of the Whole amendments, as follows:

On page 1, in line 18, by striking "This act" and inserting: "Sections 1 to 18, inclusive, and amendments thereto,";

On page 2, in line 23, by striking "(a)"; in line 25, by striking "(1)" and inserting "(a)"; in line 31, by striking "(2)" and inserting "(b)"; by striking all in lines 35, 36 and 37;

On page 5, preceding line 22, by inserting the following:

"Sec. 17. The costs of any proceeding arising out of a lien filed pursuant to this act, including reasonable attorney's fees, shall be awarded to the prevailing party or parties.";

And by renumbering sections accordingly;

Also on page 5, in line 28, by striking "no interest" and inserting "no legitimate claim"; by striking all in lines 42 and 43;

On page 6, by striking all in lines 1 through 5 and inserting in lieu thereof the following:

"Sec. 19. K.S.A. 2004 Supp. 58-3062 is hereby amended to read as follows: 58-3062.

(a) No licensee, whether acting as an agent, transaction broker or a principal, shall:

(1) Intentionally use advertising that is misleading or inaccurate in any material particular or that in any way misrepresents any property, terms, values, policies or services of the business conducted, or uses the trade name, collective membership mark, service mark or logo of any organization owning such name, mark or logo without being authorized to do so.

(2) Fail to account for and remit any money which comes into the licensee's possession and which belongs to others.

(3) Misappropriate moneys required to be deposited in a trust account pursuant to K.S.A. 58-3061, and amendments thereto, convert such moneys to the licensee's personal use or commingle the money or other property of the licensee's principals with the licensee's own money or property, except that nothing herein shall prohibit a broker from having funds in an amount not to exceed \$100 in the broker's trust account to pay expenses for the use and maintenance of such account.

(4) Accept, give or charge any rebate or undisclosed commission.

(5) Pay a referral fee to a person who is properly licensed as a broker or salesperson in Kansas or another jurisdiction or who holds a corporate real estate license in another jurisdiction if the licensee knows that the payment of the referral fee will result in the payment of a rebate by the Kansas or out-of-state licensee.

(6) Represent or attempt to represent a broker without the broker's express knowledge and consent.

(7) Guarantee or authorize any person to guarantee future profits that may result from the resale of real property.

(8) Place a sign on any property offering it for sale or lease without the written consent of the owner or the owner's authorized agent.

(9) Offer real estate for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent.

(10) Induce any party to break any contract of sale or lease.

(11) Pay a commission or compensation to any person, not licensed under this act, for performing any activity for which a license is required under this act.

(12) Fail to see that financial obligations and commitments between the parties to an agreement to sell, exchange or lease real estate are in writing, expressing the exact agreement of the parties or to provide, within a reasonable time, copies thereof to all parties involved.

(13) Procure a signature to a purchase contract which has no definite purchase price, method of payment, description of property or method of determining the closing date.

(14) Engage in fraud or make any substantial misrepresentation.

(15) Represent to any lender, guaranteeing agency or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

(16) Fail to make known to any purchaser or lessee any interest the licensee has in the real estate the licensee is selling or leasing or to make known to any seller or lessor any interest the licensee will have in the real estate the licensee is purchasing or leasing.

(17) Fail to inform both the buyer, at the time an offer is made, and the seller, at the time an offer is presented, that certain closing costs must be paid and the approximate amount of such costs.

(18) Fail without just cause to surrender any document or instrument to the rightful owner.

(19) Accept anything other than cash as earnest money unless that fact is communicated to the owner prior to the owner's acceptance of the offer to purchase, and such fact is shown in the purchase agreement.

(20) Fail to deposit any check or cash received as an earnest money deposit or as a deposit on the purchase of a lot within five business days after the purchase agreement or lot reservation agreement is signed by all parties, unless otherwise specifically provided by written agreement of all parties to the purchase agreement or lot reservation agreement, in which case the licensee shall deposit the check or cash received on the date provided by such written agreement.

(21) Fail in response to a request by the commission or the director to produce any document, book or record in the licensee's possession or under the licensee's control that concerns, directly or indirectly, any real estate transaction or the licensee's real estate business.

(22) Refuse to appear or testify under oath at any hearing held by the commission.

(23) Demonstrate incompetency to act as a broker, associate broker or salesperson.

(24) *Except as provided by K.S.A. 40-2404, and amendments thereto*, knowingly receive or accept, directly or indirectly, any rebate, reduction or abatement of any charge, or any special favor or advantage or any monetary consideration or inducement, involving the issuance of a title insurance policy or contract concerning which the licensee is directly or indirectly connected, from a title insurance company or title insurance agent, or any officer, employee, attorney, agent or solicitor thereof.

(25) Engage in the purchase of one-, two-, three- or four-family dwellings, including condominiums and cooperatives, or the acquisition of any right, title or interest therein, including any equity or redemption interests, if:

(A) (i) At the time of such purchase, the dwellings are subject to a right of redemption pursuant to foreclosure of a mortgage on such dwellings; (ii) the licensee fails to give written notice of the purchase, within 20 days thereafter, to the mortgage holder or judgment creditor who held such mortgage; and (iii) the licensee, unless otherwise required by law or court order, fails to apply any rent proceeds from the dwellings to the judgment lien arising from the foreclosure of such mortgage, as payments become due under the loan, regardless of whether the licensee is obligated to do so;

(B) (i) the dwellings are subject to a loan which is secured by a mortgage and which is in default at the time of such purchase or in default within one year after such purchase; (ii) the licensee fails to give written notice of the purchase, within 20 days thereafter, to the mortgage holder; and (iii) the licensee, unless otherwise required by law or court order, fails to apply any rent proceeds from the dwellings to the mortgage as the payments come due, regardless of whether the licensee is obligated on the loan; or

(C) the licensee fails to notify, at the time of rental, any person renting any such dwelling of the extent and nature of the licensee's interest in such dwelling and the probable time until possession will be taken by the mortgage holder or judgment creditor.

(26) Commit forgery or, unless authorized to do so by a duly executed power of attorney, sign or initial any contractual agreement on behalf of another person in a real estate transaction.

(27) Enter into contracts with persons not licensed by the commission to perform services requiring a license under K.S.A. 58-3034 *et seq.*, and amendments thereto, except as provided by K.S.A. 2004 Supp. 58-3077, and amendments thereto.

(b) No salesperson or associate broker shall:

(1) Except as provided in paragraph (A) or (B), accept a commission or other valuable consideration from anyone other than the broker by whom the licensee is employed or with whom the licensee is associated as an independent contractor.

(A) A salesperson or associate broker may accept a commission or other valuable consideration from a licensee who employs the salesperson or associate broker as a personal assistant provided that: (i) the licensee and the salesperson or associate broker who is employed as a personal assistant are licensed under the supervision of the same broker, and (ii) the supervising broker agrees in writing that the personal assistant may be paid by the licensee.

(B) If a salesperson or associate broker has (i) organized as a professional corporation pursuant to K.S.A. 17-2706 *et seq.*, and amendments thereto, (ii) incorporated under the Kansas general corporation code contained in K.S.A. 17-6001 *et seq.*, and amendments thereto, (iii) organized under the Kansas limited liability company act contained in K.S.A. 2004 Supp. 17-7662 *et seq.*, and amendments thereto, or (iv) has organized as a limited liability partnership as defined in K.S.A. 2004 Supp. 56a-101, and amendments thereto, the commission or other valuable consideration may be paid by the licensee's broker to such professional corporation, corporation, limited liability company or limited liability partnership. This provision shall not alter any other provisions of this act.

(2) Fail to place, as soon after receipt as practicable, any deposit money or other funds entrusted to the salesperson or associate broker in the custody of the broker whom the salesperson or associate broker represents.

(3) (A) Except as provided by paragraph (B), be employed by or associated with a licensee at any one time other than the supervising broker who employs such salesperson or associate broker or with who the salesperson or associate broker is associated as an independent contractor.

(B) An associate broker may be employed by or associated with more than one supervising broker at any one time if each supervising broker who employs or associates with the associate broker consents to such multiple employment or association. Such consent shall be on a form provided by the commission and shall not be effective until a signed copy of the completed form has been filed with the commission.

(4) Except as provided by subsection (b), pay a commission or compensation to any person for performing any activity for which a license is required under this act.

(5) Fail to disclose to such salesperson's or associate broker's supervising broker or branch broker that such salesperson or associate broker is performing any activity for which a license is required under K.S.A. 58-3036, and amendments thereto, outside the supervision of the supervising broker or branch broker. The provisions of this subsection shall not apply to any activity or person exempted from the real estate brokers' and salespersons' license act pursuant to K.S.A. 58-3037, and amendments thereto.

(c) No broker shall:

(1) Pay a commission or compensation to any person for performing the services of an associate broker or salesperson unless such person is licensed under this act and employed by or associated with the broker.

(2) Fail to deliver to the seller in every real estate transaction, at the time the transaction is closed, a complete, detailed closing statement showing all of the receipts and disbursements handled by the broker for the seller, or fail to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same was disbursed, or fail to retain true copies of such statements in the broker's files, except that the furnishing of such statements to the seller and buyer by an escrow agent shall relieve the broker's responsibility to the seller and the buyer.

(3) Fail to properly supervise the activities of an associated or employed salesperson or associate broker.

(4) Lend the broker's license to a salesperson, or permit a salesperson to operate as a broker.

(5) Fail to provide to the principal a written report every 30 days, along with a final report, itemizing disbursements made by the broker from advance listing fees.

(d) (1) If a purchase agreement provides that the earnest money be held by an escrow agent other than a real estate broker, no listing broker shall:

(A) Fail to deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement within five business days after the purchase agreement is signed by all parties unless otherwise specifically provided by written agreement of all parties to the purchase agreement, in which case the broker shall deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement on the date provided by such written agreement; or

(B) fail to obtain and keep in the transaction file a receipt from the escrow agent showing date of delivery of the purchase agreement and earnest money deposit.

(2) If a purchase agreement provides that the earnest money be held by an escrow agent other than a real estate broker and the property was not listed with a broker, no broker for the buyer shall:

(A) Fail to deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement within five business days after the purchase agreement is signed by all parties unless otherwise specifically provided by written agreement of all parties to the purchase agreement, in which case the broker shall deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement on the date provided by such written agreement; or

(B) fail to obtain and keep in the transaction file a receipt from the escrow agent showing date of delivery of the purchase agreement and earnest money deposit.

(3) If a purchase agreement provides that the earnest money be held by an escrow agent other than a real estate broker and neither the seller nor buyer is represented by a broker, no transaction broker shall:

(A) Fail to deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement within five business days after the purchase agreement is signed by all parties unless otherwise specifically provided by written agreement of all parties to the purchase agreement, in which case the broker shall deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement on the date provided by such written agreement; or

(B) fail to obtain and keep in the transaction file a receipt from the escrow agent showing date of delivery of the purchase agreement and earnest money deposit.

The commission may adopt rules and regulations to require that such purchase agreement which provides that the earnest money be held by an escrow agent other than a real estate broker include: (1) notification of whether or not the escrow agent named in the purchase agreement maintains a surety bond, and (2) notification that statutes governing the disbursement of earnest money held in trust accounts of real estate brokers do not apply to earnest money deposited with the escrow agent named in the purchase agreement.

(e) A branch broker shall not be employed by or associated with more than one supervising broker at any one time unless each supervising broker who employs or associates with the branch broker consents to such multiple employment or association. Such consent shall be on a form provided by the commission and shall not be effective until a signed copy of the completed form has been filed with the commission.

(f) Nothing in this section shall be construed to grant any person a private right of action for damages or to eliminate any right of action pursuant to other statutes or common law.

Sec. 20. K.S.A. 58-4109 is hereby amended to read as follows: 58-4109. (a) There is hereby established the following classes of real property appraisers:

- (1) State licensed real property appraiser classification;
- (2) certified general real property appraiser classification;
- (3) certified residential real property appraiser classification; and
- (4) state provisional licensed real property appraiser classification.

(b) The board may establish, by rules and regulations, such other classifications as permitted by federal law.

(c) The board shall adopt rules and regulations, consistent with requirements and criteria adopted pursuant to federal law, to:

- (1) Define each classification;
- (2) establish education and experience requirements for each classification;

- (3) establish examination specifications for each classification; and
- (4) establish continuing education requirements for renewal of each classification.
- (d) In adopting rules and regulations pursuant to subsection (c), the board shall determine the education, experience and examination requirements necessary to provide appropriate assurance that an applicant for certification or licensure is competent to perform appraisals within the scope of practice of the appraisal work authorized for the classification applied for and that persons renewing their certificates or licenses have current knowledge of real property appraisal theory, practices and techniques which will provide a high degree of service and protection to those members of the public with whom they deal. In making such determination, the board shall take into consideration the following:
 - (1) Appropriate knowledge of technical terms commonly used in or related to real estate appraising, appraisal report writing and economic concepts applicable to real estate;
 - (2) understanding of the principles of land economics, real estate appraisal processes and problems likely to be encountered in gathering, interpreting and processing data in carrying out appraisal disciplines;
 - (3) understanding of the standards for the development and communication of real estate appraisals as provided in this act;
 - (4) knowledge of theories of depreciation, cost estimating, methods of capitalization and mathematics of real estate appraisal that are appropriate for the classification applied for;
 - (5) knowledge of such other principles and procedures as may be appropriate for the respective classifications;
 - (6) basic understanding of real estate law;
 - (7) understanding of the types of misconduct for which disciplinary proceedings may be initiated against a state certified or licensed appraiser, as set forth in this act;
 - (8) the requirements of federal law; and
 - (9) such other matters as the board determines appropriate and relevant.
- (e) The application for original certification or licensure and examination shall specify the classification being applied for.
- ~~(f) In no event shall a certificate or license be issued to an individual unless the examination required for the classification applied for was passed by the applicant within the five-year period immediately preceding the date of application.~~
- ~~(g) The board may approve applications for transitional licenses received prior to December 31, 1991, if the board determines the applicant has met the education and examination requirements established for state licensed appraisers.~~
- ~~— A transitional license shall expire on the next June 30 after issuance and shall not be renewed more than two times. The license shall include a statement that it is a transitional license. If the transitional license is renewed a second time, the renewed license shall include a statement that it may not be renewed and extended beyond the expiration date appearing on the license.~~
- ~~— The holder of a transitional license may obtain forms from the board to submit evidence of having completed the experience requirements established for state licensed appraisers. If the board approves issuance of a license prior to the expiration date of the transitional license, the applicant shall return the transitional license to the board.~~
- ~~— Except as provided in this subsection, applicants for transitional licenses and holders of transitional licenses are subject to all provisions of this act and any rules and regulations adopted hereunder.~~

Sec. 21. K.S.A. 58-4109 and K.S.A. 2004 Supp. 58-3062 are hereby repealed.”;

And by renumbering the remaining section accordingly;

On page 1, in the title, in line 14, after “ACT” by inserting: “concerning real estate;”; also in line 14, by striking “amending”; in line 15, by striking all before the period and inserting: “concerning real estate appraisers; relating to real estate brokers and salespersons; amending K.S.A. 58-4109 and K.S.A. 2004 Supp. 58-3062 and repealing the existing sections”;

And your committee on conference recommends the adoption of this report.

DONALD L. DAHL
TODD NOVASCONE
Conferees on part of House

JOHN VRATIL
DEREK SCHMIDT
GRETA GOODWIN

Conferees on part of Senate

Senator Vratil moved the Senate adopt the Conference Committee Report on **SB 215**.

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 Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2026**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with Senate Committee of the Whole amendments, as follows:

On page 3, in line 14, by striking "and"; in line 15, before the period, by inserting "; and in fiscal year 2009, \$5,500,000"; in line 17, by striking "2008" and inserting "2009"; in line 31, by striking "and 2007" and inserting ", 2007 and 2008";

On page 4, following line 9, by inserting:

"New Sec. 1. (a) As used in this section:

(1) "VoIP provider" means any provider of voice over internet protocol service (hereafter referred to as VoIP) other than a business which: (A) Does not provide such service to customers outside its business organization; or (B) provides VoIP service as a customer product secondary to the primary product sold by the business.

(2) "PSAP" has the meanings provided in the wireless enhanced 911 act.

(b) Each VoIP provider shall direct to the appropriate PSAP dispatcher any emergency 911 calls made by users of its VoIP service.";

By renumbering sections 3 through 6 as sections 4 through 7;

And your committee on conference recommends the adoption of this report.

KARIN S. BROWNLEE
NICK JORDAN
LAURA KELLY

Conferees on part of Senate

CARL DEAN HOLMES
CARL C. KREHBIEL
ANNIE KUETHER

Conferees on part of House

Senator Brownlee moved the Senate adopt the Conference Committee Report on **HB 2026**.

On roll call, the vote was: Yeas 38, Nays 2, 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, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Huelskamp, O'Connor.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **Substitute for HB 2457**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with Senate Committee amendments, as follows:

On page 6, in line 4, before the colon by inserting “, the supersedeas bond shall be set at the full amount of the judgment. If the appellant proves by a preponderance of the evidence that setting the supersedeas bond at the full amount of the judgment will result in the appellant suffering an undue hardship or a denial of the right to an appeal, then the court may reduce the amount of the supersedeas bond as follows”; in line 5, by striking “exceeds” and inserting “is less than or equal to”; also in line 5, by striking all after “\$1,000,000”; in line 6, by striking “\$100,000,000”; also in line 6, by striking “not exceed \$1,000,000” and inserting “be set at the full amount of the judgment”; in line 8, by striking all after “judgment”; in line 9, by striking all before the period and inserting “exceeds \$1,000,000 in value, the supersedeas bond shall be set at a total of \$1,000,000 plus 25% of any amount in excess of \$1,000,000”; in line 11, by striking “paragraph (A)” and inserting “paragraph (A)(i) or (A)(ii)”;

On page 7, in line 27, by striking all after the first comma; in line 28, by striking all before the last “the”;

And your committee on conference recommends the adoption of this report.

JOHN VRATIL
DEREK SCHMIDT
GRETA GOODWIN
Conferees on part of Senate

MICHAEL O'NEAL
JEFF JACK
JANICE L. PAULS
Conferees on part of House

Senator Vratil moved the Senate adopt the Conference Committee Report on **Sub HB 2457**.

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 Conference Committee report was adopted.

EXPLANATION OF VOTE

MR. PRESIDENT: I reluctantly voted against **Substitute for HB 2457** when it was before this body in its original form. It is a bill that amends procedure for setting appeal bonds. This bill now reverses its prior provisions and affirms the current practice, by requiring the loser at trial to prove circumstances to decrease the appeal bond. Now that my amendment has finally passed shifting the burden of proof back to the party who benefits from this change, I am glad I can now support this bill. The party who benefits from this provision will now bear the burden of proof. It is fair to require the party who lost the lawsuit to bear the expense of a hearing to prove the facts required to protect the interests of the victor at trial and reduce their appeal bond. If the party who lost at trial chooses to appeal the jury verdict, the party who is the judgment creditor should be protected in their interest and now is by this legislation.—PHILLIP B. JOURNEY

Senators Barone and Gilstrap request the record to show they concur with the “Explanation of Vote” offered by Senator Journey on **Sub HB 2457**.

APRIL 27, 2005

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On motion of Senator D. Schmidt the Senate adjourned until 9:30 a.m., Thursday, April 28, 2005.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks*.
PAT SAVILLE, *Secretary of the Senate*.

