

SPECIAL SESSION

Journal of the Senate

SECOND DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, June 23, 2005—10:00 a.m.

The Senate was called to order by President Stephen Morris.

The roll was called with thirty-nine senators present.

Senator Allen was excused.

Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

I have been told that this special session has the potential to be acrimonious.

In 1896 Charles M. Sheldon, pastor of the Central Congregational Church in Topeka wrote a story entitled, "In His Steps". The story tells how a church and a community were changed when church members began to ask themselves, "What would Jesus do?" when faced with a challenging dilemma.

Perhaps, O God, You might lead the Christians to ask ourselves such a question on appropriate occasions.

When engaging in a debate which threatens to become a shouting match, remind us to ask ourselves, "What would Jesus say?"

When asked to do something which seems to be the right thing, but could be a political risk, help us to ask ourselves, "What would Jesus do?"

When faced with the question on how to vote when the measure has both favorable and unfavorable provisions, prompt us to ask ourselves, "How would Jesus vote?"

When I suggested this question several years ago, one of the senators approached me after the invocation and said,

"But you remember Jesus Christ

To crucifixion was subjected."

I replied, "But YOU remember

Jesus Christ was resurrected!"

I pray in the Name of Jesus Christ,

AMEN

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

SB 3, An act concerning schools and school districts; relating to school finance; amending K.S.A. 46-1222, 46-1224, 72-6405, as amended by section 19 of 2005 Senate Bill No. 43, 72-6410, as amended by section 14 of 2005 House Bill No. 2247, 72-6412, as amended by section 15 of 2005 House Bill No. 2247, 72-6414, as amended by section 17 of 2005 House Bill No. 2247, 72-6426, 79-1801 and section 3 of 2005 House Bill No. 2247, and K.S.A. 2004 Supp. 72-978, as amended by section 10 of 2005 House Bill No. 2247, 72-6407, as amended by section 16 of 2005 Senate Bill No. 43, and 72-6434, as amended by section 24 of 2005 House Bill No. 2247, and repealing the existing sections; also repealing K.S.A. 46-1223, was considered on final action.

On roll call, the vote was: Yeas 25, Nays 14, Present and Passing 0, Absent or Not Voting 1.

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

Nays: Barnett, Brownlee, Bruce, Donovan, Huelskamp, Jordan, Journey, McGinn, O'Connor, Palmer, Petersen, Pyle, Wagle, Wilson.

Absent or Not Voting: Allen.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote yes today to move the process forward and to ensure that our schools open on time. Our children and the people of Kansas deserve no less. We have many days before our next regular session and have sufficient time to address many of the concerns expressed today.—PAT APPLE

Senators Betts, Gilstrap, Kelly, Morris, Pine, Teichman, Steineger, Vratil and Umbarger request the record to show they concur with the "Explanation of Vote" offered by Senator Apple on **SB 3**.

MR. PRESIDENT: I support more funding for schools and the classrooms of Kansas. I cannot support **SB 3**. I appreciate the labors of my colleagues, but **SB 3** is crafted to worsen the fiscal condition of our state and represents a concerted effort to use education for the purpose of expanded gambling.

SB 3 also places No Child Left Behind in Kansas Statutes and obligates Kansas taxpayers to fund an impossible and unobtainable goal. That is irresponsible.—JIM BARNETT

Senators Journey, O'Connor, Palmer and Petersen request the record to show they concur with the "Explanation of Vote" offered by Senator Barnett on **SB 3**.

MR. PRESIDENT: I vote "no" on **SB 3**. My constituents have spoken loudly and clearly that they expect me to defy the Kansas Supreme Court. Some have even suggested the justices be impeached. With such clear communication from the people I represent, I cannot vote for this funding bill which is an attempt to bow to the whims of a court which has clearly overstepped its bounds.

This special session should have as its primary focus to preserve the constitutional powers of the Kansas Legislature. Instead, we are allowing ourselves to be manipulated into jeopardizing the future financial integrity of our state. Our schools receive 53% of our budget and our schools have turned out exceptional students; the need is not so great so as lead us into debt as a state.

This is not about the children. We are here to preserve and protect the foundation that was formed by our founding fathers. Because I was elected to represent the people of the 23rd Senate district and the Supreme Court justices were not, I intend to protect the very foundation of our American government and way of life.—KARIN BROWNLEE

Senators Journey, O'Connor and Palmer request the record to show they concur with the "Explanation of Vote" offered by Senator Brownlee on **SB 3**.

MR. PRESIDENT: This bill, I'm told, both satisfies and defys the court order at the same time by giving schools \$130 million in new funding and another \$30 million in property tax relief.

This bill, I'm told, has adopted as a Senate position of "Consolidation by Starvation." By reinstating and adding \$30 million to correlation weighting we back peddle from the compromise reached in **HB 2247** that created an equalibrian between low enrollment and larger school district funding. Without adjusting the low enrollment weighting factor to a pre-2247 ratio with correlation weighting, we will in time create an ever growing disparity between the haves and have nots. Rural districts will eventually have to consolidate with other districts to obtain correlation weighting. If we want to address the issue of consolidation, we should do it overtly not covertly.

This bill, I'm told, provides property tax relief for the LOB under the guise of benefitting the have nots. In reality it is designed to please the court so it will release the stay on local tax initiatives that truly benefit the haves. If we wanted to truly benefit all sides, and stay logically consistent, this bill would have given correlation weighting increases but also repealed the local tax initiatives passed in **HB 2247**.

This bill, I say, substitutes logic, equity and common sense for expediency. I vote no.—
TERRY BRUCE.

MR. PRESIDENT: It is my belief that there are three separate and equal branches of government. If I do not respect, I cannot expect respect. Further, it is my belief that voting “aye” sends only a message of respect, not submission. I fully expect this Legislature to respond to the Supreme Courts’ decision. That response must be measured, well defined and constitutional. It is my opinion Kansas cannot afford the consequences of the Augenblick and Myers recommendations.—JAY SCOTT EMLER

Senators Betts, Gilstrap, Kelly, Morris, Pine, Teichman, Steineger, Umbarger and Vratil request the record to show they concur with the “Explanation of Vote” offered by Senator Emler on **SB 3**.

MR. PRESIDENT: Today, the Kansas Senate has fulfilled its most important constitutional duty—the adequate and equitable financing of public education. It is this duty that brought us to where we are today—the 20th special session in the history of Kansas. Kansans expect us to act responsibly, do our job, and provide good schools for every child in our state, regardless of their special needs, their families income, or where they live.

The alternatives to passing this bill are to await yet another study or risk defying the Kansas Supreme Court. Neither of these choices are acceptable. Kansas school children cannot wait another day, another month, or another year, to be given the suitable education they deserve.

I must remind my Senate colleagues that only a few blocks from here stands a school building that was the focus of another court case—the landmark case known as *Brown v. The Topeka Board of Education*. In that case, the U.S. Supreme Court issued its own order to desegregate the public schools of our nation.

I vote yes because my most important duty is to ensure that every Kansas child is given the best education possible. Our children’s success tomorrow depends on the quality of their schools today.—ANTHONY HENSLEY

Senators Barone, Francisco, Goodwin, Kelly request the record to show they concur with the “Explanation of Vote” offered by Senator Hensley on **SB 3**.

MR. PRESIDENT: As an elected representative of the citizens of my district, I swore an oath of office to uphold the Constitution of both the great State of Kansas and these United States. I cannot support any measure that would surrender my constitutional duty to appropriate funds as specified in Article 2, Section 24 of the Kansas Constitution. This bill would abdicate this solemn responsibility to an unelected judiciary and a cadre of independent consultants. My constitutional duty therefore demands my no vote.—TIM HUELSKAMP

Senators Pyle and O’Connor request the record to show they concur with the “Explanation of Vote” offered by Senator Huelskamp on **SB 3**.

MR. PRESIDENT: I vote No because I first want to protect the constitutional operation of our government. The Kansas Supreme Court has kicked over the scales in our system of checks and balances. The prospective reach of the courts order violates the basic tenets of Judicial review.

While this body is ordered to fulfill the desires of the court we have been denied the basics of Due Process. We are treated as if we are a party when it is held we are not. The presumption we create today when we can afford to comply, will make it much more difficult to resist future orders when we can not afford it.

Perhaps we and most certainly those who follow us in this body will Rue this day for what we have surrendered. Some may say that not only have we lost our chamber within which we have debated for over 100 years but we have now lost our sovereignty, when we were once a co-equal branch of government we now agree voluntarily to become the servant of our courts. Enacting laws not as Senators representing our district but not much more than clerks following the directions of our Task Masters.—PHIL JOURNEY

Senators O’Connor, Palmer and Petersen request the record to show they concur with the “Explanation of Vote” offered by Senator Huelskamp on **SB 3**.

MR. PRESIDENT: **SB 3** still doesn't balance budgets of many districts in western Kansas. Our only option would be to raise LOB or make greater cuts in services or staff. This bill offers relief with LOB funding and raising personal property taxes is extremely unpopular in my district. I'm concerned of this method of funding and will not support gambling. There is the question of fairness to small schools but we will have that debate later.—RALPH OSTMEYER

MR. PRESIDENT: I cast a yes vote with great reluctance. I fully recognize the significance of the Kansas Supreme Court ruling that the increase in educational funding we provided this year is insufficient to meet our constitutional obligation.

However, I have a concern that while technically the additional cost to taxpayers may indeed be below the 143 million dollars the court has ordered, the 160 million dollar overall price tag will send a message to the court and to the citizens of Kansas that the Kansas Senate has turned over its responsibility of appropriations to the court system.

If the cost of education continues to escalate at its present pace, the taxpayers of Kansas will rightfully demand that we find greater efficiencies in our educational system.

As we look for a target to focus those cost savings on, low enrollment weighting is directly in the crosshairs. If we choose to squeeze the trigger on that target we could cause the rapid closure of small school districts.

So while those of us who support small schools welcome the increase in funding, in the long run we may woe the day it increased so rapidly.

I hope my concerns never become reality.—MARK TADDIKEN

Senator Umbarger requests the record to show he concurs with the "Explanation of Vote" offered by Senator Taddiken on **SB 3**.

REPORT ON ENGROSSED BILLS

SB 3, SB 5 reported correctly engrossed June 23, 2005.

REPORT ON ENROLLED BILLS

SCR 1601 reported correctly enrolled, properly signed and presented to the Secretary of State on June 23, 2005.

SR 1801, SR 1802, SR 1803 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on June 23, 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 Emler in the chair.

On motion of Senator Emler the following report was adopted.

Recommended **SB 5** be amended by motion of Senator Brownlee on page 2, preceding line 22, by inserting new material to read as follows:

"Sec. 2. Except as specifically provided by this section, whenever any provision of law provides that the state board of education shall determine the amount of and distribute state aid for school districts, such provision shall be construed to require the legislature to determine the amount of and distribute any such state aid as otherwise provided in such provision. The legislature shall certify to the director of accounts and reports the amount due as state aid to each district. Such certification, and the amount of state aid payable from the state general fund, shall be approved by the director of the budget. The director of accounts and reports shall draw warrants on the state treasurer payable to the district treasurer of each district entitled to payment of state aid, pursuant to vouchers approved by the legislature. Upon receipt of such warrant, each district treasurer shall deposit the amount of state aid as otherwise provided by law.";

By renumbering the remaining section accordingly, and **SB 5** be passed as 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 5** was advanced to Final Action and roll call.

SB 5, An act concerning public schools; relating to maintenance and operation thereof; authority of courts, appointed masters and judicial panel related to closure of public schools.

On roll call, the vote was: Yeas 39 Nays 0; Present and Passing 0; Absent or not voting 1.

Yeas: 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, Peterson, Pine, Pyle, Reitz, D. Schmidt, V. Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or not voting: Allen.

On motion of Senator D. Schmidt, the Senate recessed until 3:00 p.m.

AFTERNOON SESSION

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

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

SB 8, An act concerning taxation of motor vehicles; relating to exemptions for certain members of military service; amending K.S.A. 2004 Supp. 79-5107, as amended by section 1 of 2005 House Bill No. 2187, and repealing the existing section, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The President referred **SB 2** to the Committee on Ways and Means.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Committee on Ways and Means introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1804—

A RESOLUTION concerning the Augenblick & Myers school funding study.

WHEREAS, In 2001 the legislature contracted with the consulting firm of Augenblick & Myers to provide an evaluation as to the cost of a "suitable education" for Kansas students, as required by the Kansas constitution. This study was used extensively by the district and supreme courts in their determinations as to what constitutes a suitable education. This study recommended huge increases in education funding, which has been the case in the several studies produced by this firm; and

WHEREAS, Augenblick & Myers studies in other states have resulted in huge recommendations in increased spending from \$750 million in Nebraska to \$1.3 billion in Maryland; and

WHEREAS, The study provided two cost approaches, the successful school district approach, which analyzed the school spending of 85 Kansas school districts deemed to be successful, and the professional judgment approach, which contained the wish list of a group of 59 educators and proeducation activists. Needless to say, the professional judgment approach resulted in base costs which were 56% to 87% higher than the actual costs of those districts already considered to be successful districts. Strangely, the study concluded no funding was needed for salary increases for teachers; and

WHEREAS, The legislature takes no action on several hundred bills each year, which reflects the lack of support for these bills; likewise having taken no action on the Augenblick & Myers study indicates the lack of support of the study by the legislature: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That the body has considered the Augenblick & Myers study to be unreliable and lacking credibility and the study was unfortunately relied upon by the courts in their call for expensive and expansive changes to a system which currently produces students performing in the top ten states in the country.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The President referred **SR 1804** to the Committee on Ways and Means.

REPORTS OF STANDING COMMITTEES

Committee on **Ways and Means** recommends **SB 2** be amended on page 9, in line 32, by striking "\$30,000,000" and inserting "\$90,000,000"; by striking all in lines 40 through 43;

On page 10, by striking all in lines 1 through 14 and inserting:

"(2) specify the percentage, not to exceed 22%, of residual lottery gaming facility revenues to be paid to the manager;";

On page 12, in line 13, by striking "180" and inserting "30";

On page 16, in line 32, by striking all after "than"; in line 33, by striking all before the semicolon and inserting "22%"; in line 35, by striking all after "than"; by striking all in line 36; in line 37, by striking all before "or" and inserting "78%";

On page 35, in line 30, by striking "and"; in line 33, after "location" by inserting "; and (9) 24% of net video lottery terminal income shall be credited to the Kansas education opportunity trust fund"; and the bill be passed as amended.

On motion of Senator D. Schmidt the Senate adjourned until 1:00 p.m., Friday, June 24, 2005.

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

PAT SAVILLE, *Secretary of the Senate.*

