

# Journal of the Senate

FIFTY-FOURTH DAY

---

SENATE CHAMBER, TOPEKA, KANSAS  
Wednesday, June 1, 2016, 10:00 a.m.

As provided by **HCR 5027**, the Sine Die Session of the regular 2016 Kansas Senate was called to order by President Susan Wagle.

The roll was called with 40 senators present.

Invocation by Reverend Cecil Washington, Jr.:

Heavenly Father, For a few weeks, some of these seats have been empty. You've given Your servants a break. You provided for a pause in these legislative chambers. We come today looking to finish out this session. In Proverbs 15:6-7, You said there's great wealth in the house of the righteous, and the lips of the wise spread knowledge. So, Lord, help these servants to complete their tasks with excellence...looking to You for a wealth of wisdom, guidance and resources. Thank You Lord, for the labor...for the faithfulness of these servants. We know that even when we leave here, there'll still be work to do and more to accomplish. But, let the summer and the fall be a times of revitalizing. And please maintain a protective hedge around each one until we gather again. We thank You for blessing us here and we look forward to an even greater hereafter. It's truly an honor to serve You Lord. And I thank You, in Jesus' name, Amen.

The Pledge of Allegiance was led by President Susan Wagle.

## **POINT OF PERSONAL PRIVILEGE**

Senator McGinn rose on a Point of Personal Privilege to introduce guests, Eddy and Anne McGinnis from England visiting Kansas. Also introduced were Karen Hall and Mark McGinn.

Senators honored the guests with a standing ovation.

## **POINT OF PERSONAL PRIVILEGE**

Senator Fitzgerald rose on a Point of Personal Privilege to honor fallen officer, Detective Brad Lancaster who lost his life in the line of duty protecting the citizens of Kansas City, Kansas. Members of his family and several of his fellow officers were present. A Senate Tribute was presented to Detective Lancaster's family in honor of his selfless dedication to his community and the State of Kansas. The Senate honored the guests with a standing ovation.

**MESSAGES FROM THE GOVERNOR**

**SB 318, SB 319, SB 321, SB 373, SB 387, SB 390, SB 408** approved on May 6, 2016.

**SB 19; H Sub SB 44, H Sub SB 227; SB 326; H Sub SB 337; SB 407** approved on May 9, 2016.

**H Sub SB 168, H Sub SB 193; SB 224, SB 248; H Sub SB 255** approved on May 10, 2016.

**Sub SB 22; H Sub SB 149; Sub SB 323** approved on May 11, 2016.

**H Sub SB 128, H Sub SB 402** approved on May 16, 2016.

**SB 325, SB 366, SB 418, SB 449** approved on May 17, 2016.

**H Sub SB 280 – Veto Message from the Governor**

In 2014, I signed **House Substitute for Senate Bill 231**, which contained numerous revisions governing the litigation of tax cases. In connection with the consideration of that legislation, I expressed concerns about a section in a prior version of the bill that would have retroactively given the parties in previously determined matters a second opportunity to litigate their cases. This objectionable provision then was removed from the final 2014 legislation, which I eventually signed.

The bill that I am vetoing today renews the concerns I expressed two years ago, by adding a new provision that would for the first time allow tax cases that are on appeal and eventually remanded to the Board of Tax Appeals to then be the subject of a subsequent appeal to a district court, where the court would conduct an entirely new trial and decide all of the issues over again. Section 3(c)(4)(B). This new possibility of district “trial de novo,” as defined in this provision, improperly gives parties in previously determined matters a second opportunity to litigate their cases, and essentially nullifies the prior proceedings – thereby wasting time, effort, and expenses incurred by the parties and the courts in these matters. Significantly, the Kansas courts have recognized that the Board of Tax Appeals already performs the necessary judicial function of an initial court of record for the matters at issue here – a function that would be upended by this legislation. See *In re Appeal of Trickett*, 27 Kan. App. 2d 651,656, 8 P.3d 18, 23 (2000).

The new appeal right contained in this bill would be very beneficial to parties in cases positioned to take advantage of them, and as it turns out, to one case in particular. The State of Kansas is currently litigating an income tax matter in which the state has received a tax deposit of \$48,467,227.00. The taxpayers in that case, Mr. and Mrs. O. Gene Bicknell, have been supporters of and financial donors to my campaigns for public office, as well as the campaigns of many others. Mr. Bicknell was a candidate for the Republican nomination for Governor of Kansas in 1994. His tax dispute with the State of Kansas far predates my election as Governor, but the litigation has continued throughout my administration and I have always taken the position that the matter should be left to the Department of Revenue and the court system. See *In re Bicknell*, No. 2010-8529-DT (decision of the Kansas Court of Tax Appeals dated Dec. 3, 2013), vacated and remanded, No. 111,202 (decision of the Kansas Court of Appeals dated Sept. 25, 2015) (transfer motion pending before Kansas Supreme Court.)

Under these circumstances, it would be improper for me to approve this legislation. Taxpayers should contest their past tax obligations before the board and the courts under the laws that apply to everyone. Most Kansans lack the resources necessary to seek special treatment through the legislative process. I share the Legislature's interest in ensuring a fair and impartial system of justice for taxpayers. Toward that end, I look forward to receiving any new legislation with reforms that operate on a going forward basis and which do not disturb pending cases.

Accordingly, pursuant to Article 2, Section 14(a) of the Constitution of the State of Kansas, I hereby veto **House Substitute for Senate Bill 280**.

SAM BROWNBACK, *Governor*

Dated: May 17, 2016

### **H Sub SB 249 – Veto Message from the Governor**

I want to thank every member of the Kansas Legislature for your hard work during the 2016 session. I have taken actions to balance the budget and reduce the growth of state spending. If the Kansas Supreme Court orders an additional \$40 million, or more, in funding for schools, it could result in additional cuts to Medicaid and higher education beyond those enumerated here.

These actions protect public safety and provide support to state hospitals, specifically:

- Increasing SGF to Osawatomie State Hospital and Larned State Hospital by \$11.4 million in FY 2016.
- Increasing SGF to Osawatomie State Hospital and Larned State Hospital by \$5.6 million in FY 2017, including direct care pay increases to Registered Nurses at OSH and Mental Health Technicians at OSH and LSH in order to provide aid in recruitment and retention of qualified nursing and direct care staff.
- Increasing DCF's budget by \$1.1 million to fund pay increases to Social Workers to improve recruitment and retention in these hard to fill positions.
- Realizing \$6.5 million in reduced expenditures from the State General Fund in order to pay for the pay increases that will be realized through implementation of Alvarez and Marsal efficiency recommendations.

Pursuant to Article 2, Section 14 of the Constitution of the State of Kansas, I hereby return **House Substitute for Senate Bill No. 249** with my signature approving the bill, except for the items enumerated below.

#### **Department of Aging and Disability Services – Mental Health Screenings**

Section 20(b) is vetoed in its entirety.

In October 2015, the Department for Aging and Disability Services discontinued its policy of requiring mental health screenings prior to admission to inpatient psychiatric beds at community hospitals and residential treatment facilities. The screenings were discontinued based on the potential loss of funding from the federal government due to federal Mental Health parity regulations. The proviso at issue here would return to the former policy, at a cost of more than \$1.8 million. While that cost may be justified by the benefits to be obtained from the screenings, approving this provision could additionally jeopardize substantial federal funding of inpatient Medicaid services. I

would be pleased to revisit this issue if the state receives new and different assurances from the federal government on the matter.

### **KPERS – Transfer of Tobacco Litigation Settlement Revenue**

Section 50(c) is vetoed in its entirety.

**House Substitute for SB 249** states that if KPERS employer contributions for any state agency is lapsed or transferred in FY 2016, the amount will be certified and repaid with interest of 8.0 percent per annum to the KPERS retirement fund from the State General Fund. The five repayment provisions are prescribed as follows:

- a) The amount of which the actual tax receipt revenues to the State General Fund exceeds the April 2017 joint estimate of revenue shall repay the KPERS amount lapsed or transferred.
- b) The amount of which the actual tax receipt revenues to the State General Fund exceeds the April 2018 joint estimate of revenue shall repay the KPERS amount lapsed or transferred.
- c) The amount received from the master tobacco settlement litigation revenue in excess of expenditures or transfers that have been made from the Key Endowment for Youth Fund as provided by law in FY 2017 shall be used to repay the KPERS amount lapsed or transferred.
- d) The amount received from master tobacco settlement litigation revenue in excess of expenditures or transfers that have been made from the Key Endowment for Youth Fund as provided by law in FY 2018 shall be used to repay the KPERS amount lapsed or transferred; and
- e) Any amounts remaining to be repaid from the amount lapsed or transferred in FY 2016 will be repaid from the State General Fund by June 30, 2018.

The excess master tobacco settlement litigation revenue is estimated to be \$16.0 million in FY 2017. In order to increase the State General Fund ending balance by \$16.0 million and guard against further reductions to Medicaid and Higher Education, the proviso prescribing excess master tobacco settlement litigation revenue to be used to repay the KPERS amount lapsed or transferred in FY 2016 is vetoed. The remaining four provisions relating to the repayment of KPERS employer contributions lapsed or transferred in FY 2016 will remain.

SAM BROWNBACK, *Governor*

Dated: May 18, 2016

### **COMMUNICATIONS FROM STATE OFFICERS**

Office of the Attorney General  
May 4, 2016

Kansas Attorney General, Derek Schmidt, submitted the fiscal year 2015 annual report of the Crime Victims Compensation Board.

Human Rights Commission  
May 31, 2016

Executive Director, Ruth Glover, submitted the Kansas Human Rights Commission Annual Report for fiscal year 2015.

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

On motion of Senator Bruce the Senate recessed until 11:45 a.m.

---

The Senate met pursuant to recess with Vice President Jeff King in the chair.

### **ACTIONS ON VETO MESSAGE**

The Vice President announced a veto message from the Governor having been received on May 17, 2016 and read, the time had arrived for consideration.

Senator Melcher moved **H Sub SB 280** be passed notwithstanding the Governor's veto.

**H Sub SB 280**, AN ACT concerning property tax; powers of taxing jurisdictions; valuation, appeals, procedure; ratio study, presentation to county commissioners; exemptions; bed and breakfasts; oil and gas leases, determination of value of production, evidence; county appraisers, persons eligible; market study analysis; tax liens, extinguishment; delinquent real property taxes, interest rates, claims against the county.

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

Yeas: Abrams, Arpke, Baumgardner, Bowers, Bruce, Denning, Donovan, Faust-Goudeau, Fitzgerald, Francisco, Haley, Hawk, Hensley, Holland, Holmes, Kelly, Kerschen, Knox, LaTurner, Longbine, Love, Lynn, Masterson, McGinn, Melcher, O'Donnell, Olson, Ostmeyer, Petersen, Pettey, Pilcher-Cook, Powell, Pyle, V. Schmidt, Smith, Tyson, Wagle, Wilborn, Wolf.

Nays: King.

### **VETO SUSTAINED**

Vice President King announced the time had arrived for reconsideration of the line item vetoes on **H Sub SB 249**, AN ACT making and concerning appropriations for FY 2016, FY 2017 and FY 2018 for various state agencies; omnibus appropriation act of 2016; capital improvement projects; claims against the state.

No motion having been offered to reconsider, Vice President King announced the Governor's line vetoes on **H Sub SB 249** were declared sustained.

### **INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS**

Senators Wagle, Abrams, Arpke, Baumgardner, Bowers, Bruce, Denning, Donovan, Fitzgerald, Holmes, Kerschen, King, Knox, LaTurner, Longbine, Love, Lynn, Masterson, McGinn, Melcher, O'Donnell, Olson, Ostmeyer, Petersen, Pilcher-Cook, Powell, Pyle, V. Schmidt, Tyson, Wilborn and Wolf introduced the following Senate resolution, which was read:

## SENATE RESOLUTION No. 1798—

A RESOLUTION supporting student privacy and safety.

WHEREAS, The State of Kansas has a compelling interest in protecting the privacy, safety, health and welfare of all students in public schools, colleges and universities in this state; and

WHEREAS, Public schools, colleges and universities have a duty to respect and protect the privacy rights of their students. Courts have recognized a constitutional right to privacy that includes a right not to be compelled by the government to undress or be unclothed in the presence of members of the opposite sex; and

WHEREAS, Children and young adults have a reasonable expectation that public schools, colleges and universities in this state will not allow their students to be viewed in various states of undress by members of the opposite sex while using student restrooms, locker rooms and showers; and

WHEREAS, Parents have a reasonable expectation that public schools in this state will not allow their minor children to be viewed in various states of undress by members of the opposite sex, nor allow their minor children to view members of the opposite sex in various states of undress; and

WHEREAS, The U.S. Departments of Justice and Education under the Obama Administration unilaterally determined that Title IX applies to prohibitions on discrimination based on "gender identity," as well as to students' biological sex, despite the lack of legislative history, textual or direct judicial support for this conclusion in issuing Title IX "guidance" to all public schools on May 13, 2016 (Obama Administration Title IX guidance); and

WHEREAS, The U.S. Departments of Justice and Education are threatening to condition every school district's ability to receive federal education funding upon compliance with the Obama Administration Title IX guidance; and

WHEREAS, The action of the U.S. Departments of Justice and Education threatens the ability of public schools in this state to protect the privacy, safety, health and welfare of their students, should schools comply with the Obama Administration Title IX guidance, or else threatens the ability of schools to continue to provide high-quality educational activities, should schools lose federal funding in order to protect their students; and

WHEREAS, Education policy decisions should be made by local school leaders and communities, not the federal government, because local school leaders and communities, along with parents, know best how to respond to specific situations involving student privacy and safety: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That the Senate of the State of Kansas supports the right of states and local school boards, not the federal government, to direct education policy; and

*Be it further resolved:* That the Senate of the State of Kansas stands steadfast in its support for the privacy and safety rights of all students in public schools, colleges and universities in this state; and

*Be it further resolved:* That the Senate of the State of Kansas stands steadfast in its support for parents who send their minor children to school, expecting that public schools will not allow their children to be viewed in various states of undress by members of the opposite sex, or to view members of the opposite sex in various states

of undress; and

*Be it further resolved:* That the Senate of the State of Kansas encourages public schools, colleges and universities in this state to uphold their primary responsibility to protect the privacy and safety of all students, and to therefore disregard the Obama Administration Title IX guidance; and

*Be it further resolved:* That the Senate of the State of Kansas strongly opposes the Obama Administration Title IX guidance as an act of executive overreach that threatens the rights to privacy, safety and education of students in this state; and

*Be it further resolved:* That the Senate of the State of Kansas strongly encourages the Congress of the United States to curtail the Obama Administration Title IX guidance by using every legislative tool in their power, including passing legislation to protect students' privacy rights; reassuring states, schools and other educational institutions that they will not lose federal education funding by disregarding the Obama Administration Title IX guidance; withholding funding for the U.S. Departments of Justice and Education that would otherwise be used to implement the Obama Administration Title IX guidance so as to ensure agency enforcement of the law is based on the clear statutory text as passed by Congress and signed into law; and holding hearings to investigate the process by which the U.S. Departments of Justice and Education developed the Obama Administration Title IX guidance and holding those responsible for the decision accountable for their overreach; and

*Be it further resolved:* That the Senate of the State of Kansas expresses deep gratitude and steadfast support for the Attorney General of the State of Kansas for joining a brief of amicus curiae in the case of Grimm v. Gloucester County School Board asking the U.S. Court of Appeals for the Fourth Circuit to rehear the case en banc in order to correct the misinterpretation of Title IX by a panel of that court and the U.S. Departments of Justice and Education; and

*Be it further resolved:* That the Senate of the State of Kansas expresses deep gratitude and steadfast support for the Attorney General of the State of Kansas for joining litigation against the U.S. Departments of Justice and Education challenging the Obama Administration Title IX guidance or filing a separate similar lawsuit; and

*Be it further resolved:* That the Secretary of the Senate shall send enrolled copies of this resolution to the Governor of the State of Kansas, the Attorney General of the State of Kansas, the President of the United States, the President of the United States Senate and the Speaker of the United States House of Representatives.

On roll call, the vote was: Yeas 30; Nays 8; Present and Passing 0; Absent or Not Voting 2.

Yeas: Arpke, Baumgardner, Bowers, Bruce, Denning, Fitzgerald, Holmes, Kerschen, King, Knox, LaTurner, Longbine, Love, Lynn, Masterson, McGinn, Melcher, O'Donnell, Olson, Ostmeyer, Petersen, Pilcher-Cook, Powell, Pyle, V. Schmidt, Smith, Tyson, Wagle, Wilborn, Wolf.

Nays: Faust-Goudeau, Francisco, Haley, Hawk, Hensley, Holland, Kelly, Pettey.

Absent or Not Voting: Abrams, Donovan.

The resolution was adopted.

#### EXPLANATION OF VOTE

Mr. Vice President: If you believe your “son” has the right to see my daughter in various stages of undress, you’re wrong. If you believe the Kansas Legislature abdicated

its duties to equitably fund schools, you're wrong. Dropped on us late Friday night was a political decision, issued by an unelected branch of government. The Kansas Supreme Court is holding school children hostage in order to distract the public from its use of poor judgment, which has allowed murders and rapists like the Carr brothers off the hook. It has been insinuated the resolution before us is based purely on election motives. To the contrary, it is the right thing to do, and I urge the body to adopt it.—TERRY BRUCE

Senators Lynn, Melcher, Olson, Pilcher-Cook and Smith request the record to show they concur with the "Explanation of Vote" offered by Senator Bruce on **SR 1798**.

Mr. Vice President: I vote "No" on **Senate Resolution 1798**. The Kansas Legislature has once again failed to comply with our constitutional duty to fairly fund our public schools. If we are truly concerned with keeping schools open in August, we should have used this Sine Die session to appropriate the required amount of money, in this case \$38 million, for school funding equity rather than waste taxpayer dollars on an election year charade over which bathroom students should use. I find it hard to believe that every Senate Republican wanted to spend our time debating school bathrooms instead of debating school finance. That is why I vote no.—ANTHONY HENSLEY

Senators Faust-Goudeau, Haley, Hawk, Holland, Kelly and Pettey request the record to show they concur with the "Explanation of Vote" offered by Senator Hensley on **SR 1798**.

#### REPORT ON ENROLLED BILLS

**SB 19; H Sub SB 149, H Sub SB 227; SB 326; H Sub SB 337; SB 407** reported correctly enrolled, properly signed and presented to the Governor on May 3, 2016.

**H Sub SB 128, H Sub SB 168, H Sub SB 193; SB 224, SB 248; H Sub SB 249, H Sub SB 255, H Sub SB 280; Sub SB 323; SB 325, SB 366; H Sub SB 402; SB 418, SB 449** reported correctly enrolled, properly signed and presented to the Governor on May 9, 2016.

**SR 1798** reported correctly enrolled, properly signed and presented to the Secretary of the Senate on June 1, 2016.

#### TRIBUTES

The Committee on **Organization, Calendar and Rules** authorizes the following tributes for Sine Die on June 1, 2016:

Senator Bowers: congratulating the *Belleville Telescope* and staff on their 2015 Kansas Press Association Awards, congratulating Dylan Riedel on being named the Russell City Fire Department's 2015 Firefighter of the Year, congratulating the *Washington County News* and staff on their 2015 Kansas Press Association Awards;

Senator Faust-Goudeau: recognizing the Heartland Black Business Chamber of Commerce-Wichita, congratulating the Kansas State Council of Firefighters and IAFF Local 135 on their 71st Annual Conference, recognizing Sheila Officer and Mike Harden for their work with the Hutchinson Correctional Facility Offender Educational Program;

Senator Fitzgerald: honoring the life and service of Detective Brad Lancaster;  
 Senator Haley: recognizing the Sumner High School Class of 1966;

Senator Kerschen: congratulating Apollo Elementary School and Discovery Intermediate School on winning the Governor's Achievement Award;



Senator Ostmeyer: congratulating Augustine and Phyllis Zerr on their 65th Wedding Anniversary; and

Senator Tyson: recognizing ECKAN on their 50th Anniversary and commending their decades of outstanding service in Kansas, congratulating Franklin County EMS on its 40th Anniversary and commending their service in the State of Kansas.

As provided by **HCR 5027**, Senator Bruce moved the Senate adjourn Sine Die. The motion prevailed.

Vice President King thereupon announced: "By virtue of the authority vested in me as vice president of the Senate, I now declare the 2016 Session of the Kansas Senate adjourned Sine Die."

### MESSAGE FROM THE HOUSE

Announcing the House herewith transmits certificate of action by the House of Representatives on **H Sub SB 280**, AN ACT concerning taxation; relating to powers of taxing jurisdictions; valuation, appeals, procedure; ratio study, presentation to county commissioners, exemptions; bed and breakfasts; oil and gas leases, determination of value of production, evidence; county appraisers, persons eligible; market study analysis; tax liens, extinguishment; delinquent real property taxes, interest rate, claims against the county; amending K.S.A. 19-432, 79-504, 79-1412a, 79-1456, 79-1460a and 79-2011 and K.S.A. 2015 Supp. 12-1927, 74-2426, 74-2433, 74-2438, 77-618, 79-331, 79-425a, 79-503a, 79-1439, 79-1448, 79-1460, 79-1476, 79-2004, 79-2005 and 79-2026 and repealing the existing sections.

The veto message from the Governor having been received, a motion was made that not withstanding the Governor's objection to **H Sub SB 280**, the bill be passed. By a vote of 120 Yeas and 0 Nays, the motion having received the required two-thirds constitutional majority of the members elected or appointed to the House of Representatives, voting in the affirmative, the bill passed.

The following bills and concurrent resolutions are hereby transmitted to the Senate with final disposition:

Senate bills that died on the House Calendar: **H Sub SB 29, H Sub SB 59, H Sub SB 64, H Sub Sub SB 65, Sub SB 131, H Sub Sub SB 216, SB 241, SB 242, SB 243, SB 313, Sub SB 428.**

Senate bills that died in House Committee: **SB 6, SB 23, SB 24, SB 31, SB 42, SB 48, SB 56, SB 57, Sub SB 60, SB 62, SB 86, SB 98, SB 121, Sub SB 155, Sub SB 171, SB 180, SB 181, Sub SB 182, SB 190, SB 197, SB 215, SB 239, SB 244, SB 246, SB 271, SB 274, Sub SB 277, SB 288, Sub SB 335, SB 341, SB 342, SB 353, Sub SB 356, SB 359, SB 363, SB 372, SB 374, SB 379, SB 391, SB 393, SB 395, SB 404, SB 410, SB 415, SB 419, SB 421, SB 422, SB 424, SB 436, SB 437, SB 439, Sub SB 440, SB 445, SB 453, SB 454, SB 457, Sub SB 462, SB 469, SB 474, SB 476, SB 480, SB 509.**

Senate concurrent resolutions that died in House Committee: **SCR 1610.**

ROSE MARIE GLATT, CHARLENE BAILEY, CINDY SHEPARD, *Journal Clerks.*  
COREY CARNAHAN, *Secretary of the Senate.*

