

Journal of the Senate

TWENTY-FIRST DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, February 13, 2014, 2:30 p.m.

The Senate was called to order by President Susan Wagle.

The roll was called with forty senators present.

Invocation by Father Don Davidson:

Slowly Lord, our snow is melting, the good earth is re-appearing and there is hope that spring cannot be too far away. The changing of the weather reminds us that your creation is always changing, re-emerging and re-creating. Help us with finite eyes to see the beauty in the ever changing world around us and give thanks to you who makes it all possible. In grateful thanksgiving we pray. Amen

The Pledge of Allegiance was led by President Susan Wagle.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 392, AN ACT concerning agriculture; relating to the Kansas pet animal act; amending K.S.A. 47-1702, 47-1703, 47-1704, 47-1712, 47-1718, 47-1719, 47-1720, 47-1733 and 47-1734 and K.S.A. 2013 Supp. 47-1701, 47-1706, 47-1709, 47-1710, 47-1711, 47-1721, 47-1723, 47-1725, 47-1726 and 47-1731 and repealing the existing sections; also repealing K.S.A. 47-1717, 47-1732 and 47-1736, by Committee on Agriculture.

SB 393, AN ACT concerning driver's license; amending K.S.A. 2013 Supp. 8-2110 and repealing the existing section; also repealing K.S. A. 2013 Supp. 8-2110a, by Committee on Federal and State Affairs.

SB 394, AN ACT concerning children and minors; enacting the Kansas foster parents' bill of rights act; relating to foster care; family foster homes; establishing the state foster care and adoption board; amending K.S.A. 2013 Supp. 38-2210, 38-2212, 38-2213, 38-2258, 38-2259 and 38-2270 and repealing the existing sections, by Committee on Assessment and Taxation.

SB 395, AN ACT concerning the educational building fund; permitting bonding authority to the state board of regents; amending K.S.A. 76-6b02 and repealing the existing section, by Committee on Ways and Means.

SB 396, AN ACT concerning state building projects; relating to negotiating committees; relating to alternative procurement; amending K.S.A. 2013 Supp. 75-1253 and 75-37,143 and repealing the existing sections, by Committee on Ways and Means.

SB 397, AN ACT concerning agriculture; relating to the Kansas pet animal act;

amending K.S.A. 47-1702, 47-1703, 47-1704, 47-1712, 47-1718, 47-1719, 47-1720, 47-1733 and 47-1734 and K.S.A. 2013 Supp. 47-1701, 47-1706, 47-1709, 47-1710, 47-1711, 47-1721, 47-1723, 47-1725, 47-1726 and 47-1731 and repealing the existing sections; also repealing K.S.A. 47-1717, 47-1732 and 47-1736, by Committee on Ways and Means.

SB 398, AN ACT concerning workers compensation; enacting the public service benefits protection act; amending K.S.A. 2013 Supp. 44-501 and repealing the existing section, by Committee on Commerce.

SB 399, AN ACT concerning reinstatement fees; relating to the judicial branch nonjudicial salary adjustment fund; amending K.S.A. 2012 Supp. 8-241, as amended by section 1 of 2013 House Bill No. 2303 and 20-1a15, as amended by section 2 of 2013 House Bill No. 2303 and repealing the existing sections, by Committee on Judiciary.

SB 400, AN ACT concerning sexually violent predators; relating to reimbursement for costs incurred by counties, by Committee on Judiciary.

SB 401, AN ACT concerning crimes and punishment; relating to promotion to minors of material harmful to minors; removing an affirmative defense; amending K.S.A. 2013 Supp. 21-6402 and repealing the existing section, by Committee on Judiciary.

SB 402, AN ACT concerning the Kansas criminal justice information system committee; amending K.S.A. 2013 Supp. 74-5701, 74-5702, 74-5703, 74-5704 and 74-5706 and repealing the existing sections, by Committee on Judiciary.

SCR 1619—A CONCURRENT RESOLUTION supporting information technology education opportunities in Kansas public schools. By Committee on Education.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Federal and State Affairs: **SCR 1618**.

Financial Institutions and Insurance: **SB 386**, **SB 387**.

Judiciary: **SB 389**, **SB 391**; **HB 2446**, **HB 2453**.

Local Government: **SB 388**.

Natural Resources: **HB 2429**.

Public Health and Welfare: **HB 2418**.

Utilities: **HB 2488**.

Ways and Means: **SB 390**.

COMMUNICATIONS FROM STATE OFFICERS

PRESIDENT OF THE SENATE

February 13, 2014

President Susan Wagle appointed the following members to the Senate Select Committee on KPERS: Senators King (chair), Longbine (vice-chair), Masterson, Holmes, Denning, Knox and Bowers.

MESSAGE FROM THE HOUSE

Announcing passage of **SB 245**, as amended by **House Substitute for SB 245**.

Announcing passage of **HCR 5028**.

The House nonconcur in Senate amendments to **HB 2296**, requests a conference and

has appointed Representatives **Schwab**, **Huebert** and **Sawyer** as conferees on the part of the House.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HCR 5028 was thereupon introduced and read by title.

On emergency motion of Senator Petersen, **HCR 5028** was adopted by voice vote.

Senator Peterson introduced **HCR 5028** honoree, James Chitty, and guests Diane Henderson and Rick Kennedy.

The Senators honored Mr. Chitty and guests with a standing ovation.

FINAL ACTION ON CONSENT CALENDAR

SB 263, AN ACT concerning the adjutant general; establishing the military funeral honors fund.

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

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

The bill passed.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

SB 255, AN ACT concerning crimes, punishment and criminal procedure; relating to capital murder; attempt; sentencing; amending K.S.A. 22-3405, 22-3705 and 22-4210 and K.S.A. 2013 Supp. 21-5301, 21-5401, 21-6617, 21-6620, 21-6626, 22-3717 and 22-3728 and repealing the existing sections, was considered on final action.

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

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

The bill passed, as amended.

SB 270, AN ACT concerning criminal procedure; relating to mental status defenses; notice and procedure; amending K.S.A. 22-3219 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 35; Nays 4; Present and Passing 1; Absent or Not Voting 0.

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

Nays: Faust-Goudeau, Francisco, Haley, Hawk.

Present and Passing: Pettey.

The bill passed, as amended.

SB 287, AN ACT concerning district magistrate judges; jurisdiction; appeals; amending K.S.A. 2013 Supp. 20-302b, 22-3601, 22-3602, 38-2273, 38-2382, 59-2401a, 60-2102 and 61-3902 and repealing the existing sections; also repealing K.S.A. 61-3903 and K.S.A. 2013 Supp. 22-3609a and 60-2103a, was considered on final action.

On roll call, the vote was: Yeas 38; Nays 1; Present and Passing 1; Absent or Not Voting 0.

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

Nays: Pyle.

Present and Passing: Francisco.

The bill passed.

SB 288, AN ACT concerning courts; relating to restitution or collection of debts owed to the courts; amending K.S.A. 60-2419 and 60-4303 and K.S.A. 2013 Supp. 28-178, 61-3604 and 75-719 and repealing the existing sections, was considered on final action.

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

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

Nays: Pyle.

The bill passed.

S Sub HB 2389, AN ACT concerning crimes, punishment and criminal procedure; relating to review and appeal of convictions resulting in a sentence of death; limitations and procedure for motions to correct sentence; amending K.S.A. 60-1507 and K.S.A. 2013 Supp. 21-6619 and repealing the existing sections, was considered on final action.

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

Yeas: Abrams, Apple, Arpke, Bowers, Bruce, Denning, Donovan, Fitzgerald, Holmes, Kerschen, King, Knox, Love, Lynn, Masterson, Melcher, O'Donnell, Olson, Ostmeyer, Petersen, Pilcher-Cook, Powell, Pyle, Shultz, Smith, Wagle, Wolf.

Nays: Faust-Goudeau, Francisco, Haley, Hawk, Hensley, Holland, Kelly, LaTurner, Longbine, McGinn, Pettey, V. Schmidt, Tyson.

The substitute bill passed.

EXPLANATION OF VOTE

Madam President: I vote "No" on **S Sub HB 2389**. The death penalty is an immoral, barbaric custom which is slowly losing favor and support amongst every civilized state and nation on Earth; and, deservedly so. First, Government has no business in the execution business. With all appeals (none of which are constitutionally exhausted by this; **S Sub HB 2389**), it is ridiculously expensive. Life Without Parole ("LWOP") is less expensive by far. Secondly, the death penalty has been proven to not deter crime. In

fact, ironically, states WITH a death penalty statute statistically have a higher rate of violent crime. And, Madam President, we all know that the death penalty verdicts, and the harshest of all prison sentences actually, disproportionately affect the poor and minority groups. We all know that is true. But apparently, not all of us here care. That's not "equal justice under the law." Thirdly, Madam President, I vote "No" on **S Sub HB 2389** in that we shouldn't, as a civilized society, hasten, perhaps unconstitutionally, to the taking of any life; especially where an opportunity for a death-staying appeal exists or the opportunity exists for the accused to be proved innocent of the underlying crime. Fourth, yet imagining the horror of a falsely tried, convicted and sentenced man or woman being wrongfully convicted (due in part to the speediness of the process that this bill creates) being actually assassinated by the State of Kansas, this Senate should have adopted an amendment that compensated, at a base of \$5 million, the estate and the legal team that proved his or her innocence and exonerated the executed; posthumously. How inhumane is it, Madam President, to not guarantee some financial relief to those who continued to fight the horror that executed party must have felt for dying, at the hands of the government, for a crime they did not commit? Fifth, our Special Claims Against the State Committee is no relief. The Committee is hesitant to award large sums from the State's budget and, in its bias, traditionally does not. To even suggest that the victim of a speedy death penalty trial resulting in an execution of an innocent party's successors go to the Claims Against the State is inadequate; a hollow farce. Five million set into statute is the beginning of a responsible apology to the family and legal team that vindicated the victim. Sixth, we believe that by rejecting this or some similar commitment, the Senate underscores a barbaric reckless commitment to government-sponsored vengeance and retribution for a horrible crime, at any cost; quickly, and without necessarily an honest regard for the truth as to who actually committed it.—DAVID HALEY

Madam President: The average time it takes from sentencing to actual execution in the U.S. takes approximately fourteen years. Since 1976, 138 out of 1,365 people nationwide have been exonerated from a death sentencing. Since 1994, a quarter of Kansas death sentences have been overturned. Unfortunately, **S Sub HB 2389** will only hinder appellate review of death penalty cases as opposed to facilitating a more effective process. Indeed, this legislation is contrary to the U. S. Supreme Court mandate under *Ford v. Wainwright* (1986) and *Spaziano v. Florida* (1983) that "procedures in capital proceedings aspire to a heightened standard of reliability." As a supporter of Kansas' death penalty law, I believe that passage of **S Sub HB 2389** would severely weaken the very integrity of those statutes. I vote "No" on **S Sub HB 2389**.

—TOM HOLLAND

Madam President: My vote is for the "forgotten voice." We talk of the injustice of the process, protecting the rights of the accused or the pace of the proceedings. We don't talk about the immoral, vicious slaughter of the victims. The voice of the victim goes unheard. I proudly cast my "aye" vote for **S Sub HB 2389** for the victims.—GREG SMITH

Senators Denning, Lynn, Melcher and Olson request the record to show they concur with the "Explanation of Vote" offered by Senator Smith on **S Sub HB 2389**.

REPORTS OF STANDING COMMITTEES

Committee on **Federal and State Affairs** recommends **SB 349** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Committee on **Financial Institutions and Insurance** recommends **SB 285** be amended on page 1, by striking all in line 9; in line 10, by striking "or health benefit plan"; in line 11, by striking all after "provider"; by striking all in lines 12 through 14; in line 15, by striking "provider"; following line 31, by inserting:

"Sec. 4. No provision of this act shall prohibit the use of a discount card by a patient or client of a vision care provider if:

- (a) Participation by the vision care provider is:
 - (1) Completely voluntary; and
 - (2) not conditioned upon the vision care provider's participation in any other discount card or insurance program; and
- (b) the discount card program does not make or include any coverage or payment to the vision care provider.";

On page 2, in line 2, by striking "subject to"; following line 9, by inserting:

"(c) "Discount card" shall have the meaning ascribed to such term in K.S.A. 50-1,100, and amendments thereto.";

And by redesignating remaining subsections accordingly;

Also on page 2, in line 29, by striking "5" and inserting "6";

And by renumbering remaining sections accordingly; and the bill be passed as amended.

Also, recommends **SB 306** be amended on page 1, in line 30, by striking "(e)" and inserting "(g)";

On page 6, in line 11, by striking "(e)" and inserting "(g)"; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 354** be passed.

Also, **SB 355** be amended on page 5, in line 38, after "terminated" by inserting "or invalidated"; and the bill be passed as amended.

Committee on **Utilities** recommends **SB 284** be amended on page 5, in line 9, by striking all after the period; by striking all in line 10; in line 11, by striking all before the first "The"; in line 12, by striking ", after January 1, 2012,"; in line 14, by striking all after the period; by striking all in lines 15 and 16; in line 17, by striking all before the second "The";

On page 7, in line 5, after the period by inserting "The 911 coordinating council shall receive the advice and consent of the legislative coordinating council in selecting an LCPA if the entity to be designated as the LCPA is different than the previous entity designated as the LCPA."; by striking all in lines 13 through 43;

On page 8, by striking all in lines 1 through 38;

On page 9, in line 21, by striking ", 12-5368, 12-"; in line 22, by striking "5375";

And by renumbering remaining sections accordingly;

On page 1, in the title, in line 3, by striking ", 12-5368, 12-"; in line 4, by striking "5375"; and the bill be passed as amended.

Committee on **Ways and Means** recommends **SB 278** be passed.

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On motion of Senator Bruce, the Senate adjourned until 8:00 a.m., Friday, February 14, 2014.

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

