

Journal of the Senate

TWELFTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, January 30, 2013, 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:

Heavenly Father we live in safety because we are unable to go where you are not. So simple and yet so real, help us Lord to remember that our most private thoughts are known to you, that there is no place on earth nor any power on earth that can keep you from hearing our prayers. While each of us has a relationship to you that is wonderfully unique, our common connection to you brings light to all human kind. We truly are blessed, Oh Lord, this day and every day in your Name. 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 95, AN ACT concerning the uniform vital statistics act; relating to issuance of certificate of birth resulting in stillbirth; amending K.S.A. 65-2401 and 65-2412 and repealing the existing sections, by Senator Olson.

SB 96, AN ACT concerning motor vehicles; relating to registration fees, multiple registration facilities; amending K.S.A. 2012 Supp. 8-145d and repealing the existing section, by Committee on Transportation.

SB 97, AN ACT concerning Logan county; relating to the election of the board of county commissioners, by Committee on Federal and State Affairs.

SB 98, AN ACT concerning elections; relating to local government candidates; amending K.S.A. 25-904 and repealing the existing section, by Committee on Ethics, Elections and Local Government.

SB 99, AN ACT concerning lobbyists; regarding definitions; amending K.S.A. 46-222 and repealing the existing section, by Committee on Ethics, Elections and Local Government.

SB 100, AN ACT concerning lobbyists; regarding filings; amending K.S.A. 46-268 and repealing the existing section, by Committee on Ethics, Elections and Local Government.

SB 101, AN ACT concerning motor-vehicle fuels; relating to retail pump labeling requirements; amending K.S.A. 2012 Supp. 79-3408 and repealing the existing section, by Committee on Commerce.

SB 102, AN ACT concerning the office of the state treasurer; relating to daily deposits; amending K.S.A. 2012 Supp. 75-4203 and repealing the existing section, by Committee on Legislative Post Audit Committee.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Agriculture: **SB 86**, **SB 87**.

Assessment and Taxation: **SB 83**, **SB 84**.

Commerce: **SB 93**.

Federal and State Affairs: **SB 91**, **SB 94**.

Financial Institutions and Insurance: **SB 85**.

Judiciary: **SB 88**, **SB 89**, **SB 90**, **SB 92**.

CHANGE OF REFERENCE

The President withdrew **SB 94** from the Committee on **Federal and State Affairs**, and referred the bill to the Committee on **Judiciary**.

FINAL ACTION ON CONSENT CALENDAR

SB 7 having appeared on the Consent Calendar for the required two full legislative days without objection from any member, was considered on final action.

SB 7, AN ACT concerning alcoholic beverages; relating to preparation of samples for tasting; relating to penalties; amending K.S.A. 41-713 and K.S.A. 2012 Supp. 41-308d, 41-354 and 41-2655 and repealing the existing sections.

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

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

The bill passed.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

SB 18, AN ACT concerning civil procedure; relating to restraining orders; amending K.S.A. 60-903 and repealing the existing section, was considered on final action.

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

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

Nays: Haley.

The bill passed, as amended.

EXPLANATION OF VOTE

Madam President: I vote no on **SB 18**. A temporary restraining order (or "TRO") is often the only means by which a party can prevent real, or perceived, "irreparable harm." Going to court every two weeks to show cause and extend a TRO can create economic hardship for a working party to hire counsel and keep up the review process on the merits of their claim for injunctive relief. I would support a longer, definitive time other than fourteen (14) days but not indefinite but two (2) weeks is too often so I vote "no."—DAVID HALEY

SB 20, AN ACT concerning civil procedure; relating to docket fees and costs; poverty affidavit; amending K.S.A. 2012 Supp. 60-2001 and repealing the existing section, was considered on final action.

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

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

Nays: Haley.

The bill passed.

EXPLANATION OF VOTE

Madam President: I vote no on **SB 20**. Allowing a preliminary ruling, as to a party's ability to afford a docket fee and/or costs to an action, by the same court later hearing and ruling on the merits of a matter may prejudice the same court on essentially the same matter; the court having to independently weigh and rule both the financial status and on the veracity of the moving party. — DAVID HALEY

REPORTS OF STANDING COMMITTEES

Committee on **Federal and State Affairs** recommends **SB 28** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Also, **SB 21** be amended on page 2, by striking all in lines 10 through 43;

By striking all on pages 3 through 5;

On page 6, by striking all in lines 1 through 11;

On page 23, in line 15 by striking "21-5111,";

On page 1, in the title, in line 4 by striking "21-5111,"

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

SB 34 be amended on page 2, in line 5, by striking "represent the tribes of Kansas" and inserting "act as a representative or liaison of any federally recognized tribe residing in the state"; and the bill be passed as amended.

SB 35 be amended on page 1, in line 31, after the first "of" by inserting "two or more violations of K.S.A. 21-5607, and amendments thereto, furnishing alcoholic liquor to minors or similar law furnishing sale of alcoholic liquor to minors of any other state, or of the United States, within the immediately preceding five years, or who has been adjudged guilty of"; in line 32, after the second comma by inserting "not involving the sale of alcoholic liquor to minors"; and the bill be passed as amended.

COMMITTEE OF THE WHOLE

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

On motion of Senator Apple the following report was adopted:

Recommended **SCR 1601** be amended by adoption of the committee amendments, be further amended by motion of Senator Francisco on page 8, in line 23, before "The governor" by inserting "When there is a vacancy on the supreme court or the court of appeals"; in line 27, by striking "A procedure is established whereby"; by striking all of line 28; in line 29, by striking "the appointment."; in line 30, before "a majority vote" by inserting "by"; in line 34, before "fails to vote" by inserting "is in session and"; in line 38, before "person" by inserting "qualified";

On page 9, in line 1, before "persons" by inserting "qualified" and **SCR 1601** be adopted as further amended.

Senator McGinn made a motion to amend **SCR 1601**, on page 9, in line 10, by striking "August" and inserting "November"

Upon the showing of five hands a roll call vote was requested:

On roll call, the vote was: Yeas 14; Nays 26; Present and Passing 0; Absent or Not Voting 0.

Yeas: Bowers, Emler, Faust-Goudeau, Francisco, Haley, Hawk, Hensley, Holland, Kelly, Longbine, McGinn, Pettey, V. Schmidt, Wolf.

Nays: Abrams, Apple, Arpke, Bruce, Denning, Donovan, Fitzgerald, Holmes, Kerschen, King, Knox, LaTurner, Love, Lynn, Masterson, Melcher, ODonnell, Olson, Ostmeyer, Petersen, Pilcher-Cook, Powell, Pyle, Smith, Tyson, Wagle. and the motion failed and the amendment was rejected.

An amendment by Senator Francisco on **SCR 1601** was withdrawn.

SB 8 be amended by adoption of the committee amendments, be further amended by motion of Senator Hensley on page 2, in line 16, by striking "may" and inserting "shall"; in line 17, by striking "in either executive or regular session except that"; in line 18, by striking "no final action thereon may be taken in executive" and inserting "only in open" and **SB 8** be passed as further amended.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTION

On motion of Senator Bruce an emergency was declared by a 2/3 constitutional majority, and **SCR 1601**; **SB 8** were advanced to Final Action and roll call.

SCR 1601, to amend the constitution of the state of Kansas by revising article 3 thereof, relating to the judiciary.

On roll call, the vote was: Yeas 28; Nays 12; Present and Passing 0; Absent or Not Voting 0.

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

Nays: Emler, Faust-Goudeau, Francisco, Haley, Hawk, Hensley, Holland, Kelly, McGinn, Pettey, V. Schmidt, Wolf.

A two-thirds constitutional majority having voted in favor of the resolution, **SCR 1601** was adopted, as amended.

EXPLANATIONS OF VOTE

Madam President: The current system of selecting judges and justices is not broken. Could it be improved? Probably. Is amending the Kansas Constitution pursuant to **SCR 1601** the best solution? Absolutely not. **SCR 1601**, if passed, will subject Kansas to pure, unadulterated Washington D.C. style politics when all future appellate judges are chosen. I believe the voters of Kansas deserve better. Madam President, I vote no. —
JAY EMLER

Senator Kelly requests the record to show she concurs with the "Explanation of Vote" offered by Senator Emler on **SCR 1601**.

Madam President: I vote no on **SCR 1601**. Any change made to the constitution should be held in a General Election, not a Primary Election. According to the Kansas Secretary of State's website, voter turnout is consistently higher during general elections than primary. For example, in 2012, the general election had a 66.8% turnout while the primary election had a 23.2% turnout. That's a difference of 43.6%.

Furthermore, the people of Kansas made it clear in the late 1950s that they prefer an independent, non-partisan judiciary branch of government. They voted in Article 3 of the Kansas Constitution after witnessing the most blatant example of a politicized judicial system – Governor Hall's "triple play."

The judiciary branch is the last remaining branch of government free from Governor Brownback's control. Voting for **SCR 1601** would give the Governor control of all three branches of government.

The people of Kansas deserve a system of checks and balances. It is not necessary to repeat Kansas history and politicize the judicial system. I do not agree with replacing a non-partisan system that was voted into place by the people of Kansas and has worked well for the past 55 years. — ANTHONY HENSLEY

Senators Francisco, Kelly and Pettey request the record to show they concur with the "Explanation of Vote" offered by Senator Hensley on **SCR 1601**.

Madam President: Sadly, **SCR 1601** is but a politically-motivated solution in search of a problem. I vote "No". — TOM HOLLAND

SB 8, AN ACT concerning judicial appointments; creating the Kansas commission on judicial nominations; relating to senate confirmation; amending K.S.A. 2012 Supp. 75-4319 and repealing the existing section.

On roll call, the vote was: Yeas 28; Nays 11; Present and Passing 1; Absent or Not Voting 0.

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

Nays: Emler, Faust-Goudeau, Haley, Hawk, Hensley, Holland, Kelly, McGinn, Pettey, V. Schmidt, Wolf.

Present and Passing: Francisco.

The bill passed, as amended.

EXPLANATION OF VOTE

Madam President: **SB 8** is a companion to **SCR 1601**. Since **SCR 1601** is not in the best interests of the people of this great state, **SB 8** is unnecessary. Madam President, I vote no. — JAY EMLER

Senator Kelly requests the record to show she concurs with the "Explanation of Vote" offered by Senator Emler on **SB 8**.

REPORT ON ENGROSSED BILLS

SB 18 and **SCR 1604** reported correctly engrossed January 29, 2013.

On motion of Senator Bruce, the Senate adjourned until 2:30 p.m., Thursday, January 31, 2013.

HELEN MORELAND, ROSE MARIE GLATT, CHARLENE BAILEY, *Journal Clerks*.

DIANE MINEAR, *Secretary of the Senate*.

