

Journal of the Senate

THIRTIETH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Monday, February 20, 2023, 2:30 p.m.

The Senate was called to order by President Ty Masterson.
The roll was called with 36 senators present.
Senators Holland, Longbine, Pyle and Ware were excused.
Invocation by Reverend Cecil T. Washington:

To The King of Kings and Lord of Lords
On This President's Day
Psalm 136:3, Hebrews 13:5

Heavenly Father, today has been designated as President's Day. A day set aside to recognize and honor those who have served this great republic in the highest office, that of President of the United States. We're thankful for those who have sacrificed to serve, some for four years, some for 8, some whose lives of service were cut short.

But our greatest recognition and honor should be to You. Your devotion as our Leader, is not limited to a 4 or 8 year term. That's why the Psalmist said in 136:3, "Give thanks to the Lord of lords, Your loving devotion endures forever." In Hebrews 13:5, Your promise is to never take a leave of absence or abandon us. And no one has the power to put term limits on You.

You are KING of kings and LORD of lords. So, on this President's Day and all the days that follow, help us to walk by faith in the steady promise of Your persevering presence. I come to You now, in the marvelous Name of Jesus. Amen and Amen

The Pledge of Allegiance was led by President Masterson.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 268, AN ACT concerning the state fire marshal; eliminating the statutory qualifications of the chief inspector for boiler safety; amending K.S.A. 44-918 and repealing the existing section, by Committee on Federal and State Affairs.

SB 269, AN ACT concerning alcoholic beverages; relating to charitable raffle prizes; exempting prizes of alcoholic liquor and cereal malt beverages from the Kansas liquor control act, the club and drinking establishment act and the Kansas cereal malt beverage act; amending K.S.A. 41-104 and repealing the existing section, by Committee on Federal and State Affairs.

SCR 1608—A CONCURRENT RESOLUTION urging the adoption of a student bill of rights, by Committee on Federal and State Affairs

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Commerce: **HB 2234**.

Education: **HB 2060; HCR 5004**.

Federal and State Affairs: **HB 2314**.

Financial Institutions and Insurance: **HB 2093, HB 2096, HB 2100**.

Judiciary: **HB 2021**.

Public Health and Welfare: **HB 2262**.

CHANGE OF REFERENCE

The President withdrew **SB 51** from the Committee on **Ways and Means**, and re-referred to the calendar under the heading of **General Orders**.

REPORTS OF STANDING COMMITTEES

Committee on **Agriculture and Natural Resources** recommends **SB 120** be passed.

Also, **SB 205** be amended on page 2, following line 16, by inserting:

"Sec. 4. K.S.A. 2022 Supp. 82a-736 is hereby amended to read as follows: 82a-736.

(a) It is hereby recognized that an opportunity exists to improve water management by enabling multi-year flexibility in the use of water authorized to be diverted under a groundwater water right, provided that such flexibility neither impairs existing water rights, nor increases the total amount of water diverted, so that such flexibility has no long-term negative effect on the source of supply. It is therefore declared necessary and advisable to permit the establishment of multi-year flex accounts for groundwater water rights, together with commensurate protections for existing water rights and their source of supply.

(b) As used in this section:

(1) "Alternative base average usage" means an allocation based on net irrigation requirements calculated pursuant to subsection (c)(1)(D)(ii) that may be used in place of the base average usage.

(2) "Base water right" means a water right under which an applicant applies to the chief engineer to establish a multi-year flex account and where all of the following conditions exist:

(A) The authorized source of supply is groundwater; and

(B) the water right is not currently the subject of a multi-year allocation due to a change approval that allows an expansion of the authorized place of use.

(3) "Multi-year flex account" means a term permit that suspends a base water right during its term, except when the term permit may be no longer exercised because of an order of the chief engineer, and is subject to the terms and conditions as provided in subsection (e).

(4) "Base average usage" means:

(A) The average amount of water actually diverted for the authorized beneficial use under the base water right during calendar years 2000 through 2009, excluding:

(i) Any amount diverted in any such year that exceeded the amount authorized by the base water right;

(ii) any amount applied to an unauthorized place of use; and

(iii) diversions in calendar years when water was diverted under a multi-year

allocation with an expansion of the authorized place of use due to a change approval;

(B) if water use records are inadequate to accurately determine actual water use or upon demonstration of good cause by the applicant, the chief engineer may calculate the base average usage with less than all 10 calendar years during 2000 and 2009. In no case shall the base average usage be calculated with less than five calendar years during 2000 and 2009; or

(C) if the holder of the base water right shows to the satisfaction of the chief engineer that water conservation reduced water use under the base water right during calendar years 2000 through 2009, then the base average usage shall be calculated with the five calendar years immediately before the calendar year when water conservation began.

(5) "Chief engineer" means the chief engineer of the division of water resources of the department of agriculture.

(6) "Flex account acreage" means the maximum number of acres lawfully irrigated during a calendar year, except for any acres irrigated under a multi-year allocation that allowed for an expansion of the authorized place of use due to a change approval and any of the following conditions are met:

(A) The calendar year is 2000 through 2009;

(B) if water conservation reduced water use under the base water right during calendar years 2000 through 2009, the calendar year is a year within the five calendar years immediately prior to the calendar year when water conservation began; or

(C) if an application to appropriate water was approved after December 31, 2004, the calendar year is any during the perfection period.

(7) "Net irrigation requirement" means the net irrigation requirement for 50% chance rainfall of the county that corresponds with the location of the authorized place of use of the base water right as provided in K.A.R. 5-5-12, on the effective date of this act.

(c) (1) Except as provided in sections 1 and 2, and amendments thereto, any holder of a base water right that has not been deposited or placed in a safe deposit account in a chartered water bank may establish a multi-year flex account where the holder may deposit, in advance, the authorized quantity of water from such water right for any five consecutive calendar years, except when the chief engineer determines a shorter period is necessary for compliance with a local enhanced management area or an intensive groundwater use control area and the corrective controls in the area do not prohibit the use of multi-year flex accounts, and subject to all of the following:

(A) The water right must be vested or shall have been issued a certificate of appropriation;

(B) the withdrawal of water pursuant to the water right shall be properly and adequately metered;

(C) the water right is not deemed abandoned and is in compliance with the terms and conditions of its certificate of appropriation, all applicable provisions of law and orders of the chief engineer;

(D) the amount of water deposited in the multi-year flex account shall not exceed the greatest of the following:

(i) 500% of the base average usage;

(ii) 500% of the product of the annual net irrigation requirement multiplied by the flex account acreage, multiplied by 110%, but not greater than five times the maximum

annual quantity authorized by the base water right;

(iii) if the authorized place of use is located wholly within the boundaries of a groundwater management district, an amount that shall not increase the long-term average use of the groundwater right as specified by rule or regulation promulgated pursuant to K.S.A. 82a-1028(o), and amendments thereto; or

(iv) pursuant to subparagraph (F), the amount computed in (i), (ii) or (iii) plus any deposited water remaining in a multi-year flex account up to 100% of the base average usage or alternative base average usage;

(E) if the multi-year flex account is approved for less than five calendar years, the amount of water deposited in the multi-year flex account shall be prorated based on the number of calendar years approved and otherwise calculated as required by subsection (c)(1)(D)(i), (ii) or (iii); and

(F) any deposited water remaining in a multi-year flex account up to 100% of the base average usage or alternative base average usage may be added to the deposit amount calculated in subparagraph (D) if the base water right is enrolled in another multi-year flex account during the calendar year in which the existing multi-year flex account expires. The total amount of water deposited in any multi-year flex account shall not exceed 500% of the authorized quantity of the base water right.

(2) The provisions of K.A.R. 5-5-11 are limited to changes in annual authorized quantity and shall not apply to this subsection.

(d) The chief engineer shall implement a program providing for the issuance of term permits to holders of groundwater water rights who have established flex accounts in accordance with this section. Such term permits shall authorize the use of water in a flex account at any time during the consecutive calendar years for which the application for the term permit authorizing a multi-year flex account is made, without annual limits on such use.

(e) Term permits provided for by this section shall be subject to the following:

(1) A separate term permit shall be required for each point of diversion authorized by the base water right.

(2) The quantity of water authorized for diversion shall be limited to the amount deposited pursuant to subsection (c)(1)(D).

(3) The rate of diversion for each point of diversion authorized under the term permit shall not exceed the rate of diversion for each point of diversion authorized under the base water right.

(4) The authorized place of use shall be the place of use or a subdivision of the place of use for the base water right. Any approval of an application to change the place of use of the base water right shall automatically result in a change to the place of use for the term permit.

(5) The point of diversion authorized by the term permit shall be specified by referencing one point of diversion authorized by the base water right at the time the multi-year flex account term permit application is filed with the chief engineer or at the time any approvals changing such referenced point of diversion of the base water right are approved during the multi-year flex account period. For a base water right with multiple points of diversion, each point of diversion authorized by a term permit shall receive a specific assignment of a maximum authorized quantity of water, assigned proportionately to the authorized annual quantities of the respective points of diversion under the base water right.

(6) The chief engineer may establish, by rules and regulations, criteria for such term permits.

(7) Except as explicitly provided for by this section, such term permits shall be subject to all provisions of the Kansas water appropriation act, and rules and regulations adopted under such act, and nothing in this section shall authorize impairment of any vested right or prior appropriation right by the exercise of such term permit.

(f) An application for a multi-year flex account shall be filed with the chief engineer on or before December 31 of the first year of the multi-year flex account term for which the application is being made.

(g) All costs of administration of this section shall be paid from fees for term permits provided for by this section. Any appropriation or transfer from any fund other than the water appropriation certification fund for the purpose of paying such costs shall be repaid to the fund from where such appropriation or transfer is made. At the time of repayment, the secretary of agriculture shall certify to the director of accounts and reports the amount to be repaid and the fund to be repaid. Upon receipt of such certification, the director of accounts and reports shall promptly transfer the amount certified to the specified fund.

(h) The fee for a multi-year flex account term permit shall be the same as specified for other term permits in K.S.A. 82a-708c, and amendments thereto.

(i) The chief engineer shall have full authority pursuant to K.S.A. 82a-706c, and amendments thereto, to require any additional measuring devices and any additional reporting of water use for term permits issued pursuant to this section. Failure to comply with any measuring or reporting requirement may result in a penalty, up to and including the revocation of the term permit and the suspension of the base water right for the duration of the term permit period.

(j) The chief engineer shall submit a written report on the implementation of this section to the house standing committee on agriculture and natural resources and the senate standing committee on natural resources on or before February 1 of each year.

(k) This section shall be a part of and supplemental to the Kansas water appropriation act.";

Also on page 2, in line 17, by striking "is" and inserting "and K.S.A. 2022 Supp. 82a-736 are";

And by renumbering sections accordingly;

On page 1, in the title, in line 3, after "and" by inserting "K.S.A. 2022 Supp. 82a-736 and"; in line 4, by striking "section" and inserting "sections"; and the bill be passed as amended.

Committee on **Assessment and Taxation** recommends **SB 97, SB 169** be passed.

Also, **SB 8** be amended on page 1, following line 7, by inserting:

"Section 1. K.S.A. 79-306 is hereby amended to read as follows: 79-306. On or before March 15 of each year, or the next following business day if such date falls on a day other than a regular business day, every person, association, company or corporation required by this act to list property shall make and personally sign a statement listing all tangible personal property which by this act such person is required to list, either as the owner thereof, or as parent, guardian, trustee, executor, administrator, receiver, accounting officer, partner or agent, as the case may be, and deliver the same to the county appraiser of the county where such property has its situs for the purpose of taxation. In addition to the foregoing requirements, any such

statement prepared by a personal property tax rendition form preparer shall be certified as true and correct by such preparer's signature. On and after January 1, 2024, after a person has filed an initial statement listing property with the county appraiser pursuant to this section, no subsequent annual statement shall be required to be filed with the county appraiser regarding such property unless there is a change to report relating to the property previously listed or the statement.";

On page 2, in line 19, by striking "may" and inserting "shall"; also in line 19, by striking the second "the" and inserting "a reasonable amount of"; in line 22, by striking "may" and inserting "shall"; also in line 22, by striking all after the period; by striking all in line 23 and inserting "For purposes of this section, on and after January 1, 2022, good cause for granting an extension of time in which to make and file a statement listing property for assessment and taxation purposes shall include, but not be limited to, the previous classification of the property as real property or as a fixture to real property. Such previous classification shall specifically include, but not be limited to, machinery and equipment used in the grain storage and processing industry, ethanol processing industry or other biofuels processing industry that had been previously classified as real property or fixtures to real property."; in line 35, after "appeals" by inserting "or the county appraiser"; also in line 35, by striking "have the authority to"; in line 42, after the period by inserting "For purposes of this section, on and after January 1, 2022, excusable neglect for the failure to make and file a statement listing property for assessment and taxation purposes shall include, but not be limited to, the previous classification of the property as real property or as a fixture to real property. Such previous classification shall specifically include, but not be limited to, machinery and equipment used in the grain storage and processing industry, ethanol processing industry or other biofuels processing industry that had been previously classified as real property or fixtures to real property.";

On page 4, in line 21, after "K.S.A." by inserting "79-306,";

And by renumbering sections accordingly;

On page 1, in the title, in line 3, after the semicolon by inserting "reporting changes after initial statement,"; in line 4, after "K.S.A." by inserting "79-306,"; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 193** be passed.

Also, **SB 75** be amended on page 1, in line 7, after the period by inserting "(a) Except as provided in subsection (b),"; in line 8, before the first "per" by inserting "of 10%"; also in line 8, by striking all after the first "annum"; in line 9, by striking all before "when"; following line 19, by inserting:

"(b) In all civil tort actions filed under chapter 60 of the Kansas Statutes Annotated, and amendments thereto, in which the court determines that prejudgment interest shall be awarded, the judgment creditor shall be allowed to receive interest at the rate per annum of two percentage points below the rate per annum specified in K.S.A. 16-204(e) (1), and amendments thereto."; and the bill be passed as amended.

SB 174 be amended on page 2, in line 26, by striking "possessed" and inserting "discharged or used"; and the bill be passed as amended.

Committee on **Public Health and Welfare** recommends **SB 113**, **SB 180**, **SB 219**, **SB 233** be passed.

The Committee on **Transparency and Ethics** recommends **SB 63** be amended on page 2, in line 11, by striking "senior care"; also in line 11, after "services" by inserting

"under the Kansas senior care act"; in line 13, after "grandchild" by striking the comma and inserting "or"; also in line 13, by striking all after "spouse"; in line 14, by striking all before "in" and inserting "who resides"; and the bill be passed as amended.

The Committee on **Utilities** recommends **SB 49** be amended on page 1, in line 8, by striking "(1)"; also in line 8, by striking "January" and inserting "July"; following line 17, by inserting:

"(b) (1) On and after January 1, 2026, any developer, owner or operator of a wind energy conversion system that has commenced commercial operations in the state without a light-mitigating technology system shall apply to the federal aviation administration for installation and operation of a light-mitigating technology system that complies with federal aviation administration regulations 14 C.F.R. § 1.1 et seq. within six months after the execution of a new power offtake agreement related to such wind energy conversion system. If approved by the federal aviation administration, the developer, owner or operator of such wind energy conversion system shall install the light-mitigating technology system on approved turbines within 24 months following such approval.";

Also on page 1, in line 18, by striking all after "(2)"; by striking all in lines 19 through 26; in line 27, by striking all before the period and inserting "The board of county commissioners of any county may enter into an agreement with the developer, owner or operator of a wind energy conversion system for the purpose of financing some or all of the costs of the purchase and installation of a light-mitigating technology system subject to the approval of the federal aviation administration. The board of county commissioners of any county may issue revenue bonds for such purpose. At or prior to the issuance of such revenue bonds, the board of county commissioners may pledge any revenues associated with the wind energy conversion system or any other revenues. Any costs associated with the ongoing operation and maintenance of a light-mitigating technology system financed in whole or in part by a county shall be the sole responsibility of the developer, owner or operator of the wind energy conversion system.

(c) Any vendor that is selected for installation of a light-mitigating technology system on a wind energy conversion system pursuant to the requirements of this section and is approved by the federal aviation administration for such installation shall provide to the Kansas department of transportation aviation division, in the form and manner prescribed by the division, notice of the progress of the installation of such light-mitigating technology system. If the installation of the light-mitigating technology system is delayed beyond the 24-month installation requirement established pursuant to this section, such vendor shall provide notice to the Kansas department of transportation aviation division not less than once every three months to provide an update on the reasons for the delay and the current status of the installation. The division may establish policies and procedures to establish a uniform schedule for submitting notice pursuant to this subsection";

Also on page 1, in line 34, by striking ", light intensity dimming solution technology";

On page 2, in line 2, after "(2)" by inserting ""Power offtake agreement" means a long-term contract that provides for:

(A) The provision of the whole or any part of the available capacity or the sale or other disposal of the whole or any part of the output of a wind energy conversion

system; or

(B) a contract for differences or financial hedge tied to the output from the wind energy conversion system.

(3)";

And by redesignating subsections, paragraphs, subparagraphs and clauses accordingly;

Also on page 2, in line 8, by striking "statute book" and inserting "Kansas register";

On page 1, in the title, in line 4, after "operations" by inserting "; requiring existing wind energy conversion systems to install light-mitigating technology systems upon execution of a long-term power offtake agreement; authorizing any board of county commissioners to issue revenue bonds to finance some or all of the costs of the installation of a light-mitigating technology system subject to an agreement with the owner or operator of the wind energy conversion system; making all such installations"; and the bill be passed as amended.

Also, **SB 166** be amended on page 1, in line 22, after "(b)" by inserting "(1)"; in line 24, after the period by inserting "Notwithstanding the provisions of K.S.A. 66-1220a, and amendments thereto, or any rules and regulations adopted by the commission, the commission shall not limit the disclosure of the names and addresses of the landowners of record that are required to be included with an application pursuant to subsection (a) (2).

(2) Any protective order issued by the commission prior to July 1, 2023, that limited the disclosure of the information required to be specified or included with an application pursuant to subsection (a)(2) shall be null and void only to the extent that such protective order limits the disclosure of the information required to be specified or included with an application pursuant to subsection (a)(2). Except as otherwise provided in this paragraph, the provisions of this paragraph shall not be construed to affect any other document, data, contract, proprietary information, trade secret or other commercial information subject to a protective order issued by the commission pursuant to K.S.A. 66-1220a, and amendments thereto, or any rules and regulations adopted by the commission.

(c)";

And by redesignating subsections, paragraphs, subparagraphs and clauses accordingly; and the bill be passed as amended.

On motion of Senator Alley, the Senate adjourned until 2:30 p.m., Tuesday, February 21, 2023.

CHARLENE BAILEY, CINDY SHEPARD, *Journal Clerks.*

COREY CARNAHAN, *Secretary of the Senate.*

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