

# Journal of the House

THIRTY-EIGHTH DAY

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HALL OF THE HOUSE OF REPRESENTATIVES,  
TOPEKA, KS, Wednesday, March 9, 2011, 11:00 a.m.

The House met pursuant to adjournment with Speaker O'Neal in the chair.

The roll was called with 119 members present.

Reps. Fund, Kiegerl and Landwehr were excused on verified illness.

Rep. Fawcett was excused on legislative business.

Reps. McLeland and Montgomery were excused on excused absence by the Speaker.

Prayer by guest chaplain, the Rev. Curtis Knapp, New Hope Baptist Church, Seneca, and guest of Rep. Garber:

Father, it is the tradition of this body to pray before each day's sessions, and by praying each morning, whether we mean to or not, we acknowledge that You are God and we are not. Otherwise, prayer is meaningless. You are infinite in strength and we are weak. While You fill the universe, we are but tiny, transitory creatures who occupy a tiny space on a tiny planet in Your creation. You are from everlasting, and we are but a mist that is here one moment and gone the next. You are wisdom itself and you have never needed or desired an advisor. We, on the other hand, are full of confusion and perplexity. If we are honest, we have to admit that much of the time, we have no idea what to do. And it is for this reason that I pray to you this morning – because we are so needy. I have no suggestions to give you. I only have requests. Being poor, I have nothing to give you except needs. I am a beggar, not a benefactor. I would never think that such a huge God as Yourself would listen to such a poor, sinful, tiny creature like myself, except for two things: 1) You have said in Your word that You are merciful to the humble. 2) You hear prayers offered in the name of Christ. It is in His name that I come. It is His merit that I plead, not my own. I know no other god and have no other mediator. Lord, You have exhorted us in scripture to pray for all who are in authority. These men and women gathered here today are in positions of authority and they need You. You have given them great influence and great responsibilities. These are difficult times and these men and women have a difficult job. It is easy to criticize them. It is much harder to walk in their shoes. The

decisions they make have a profound impact upon many people. So, I pray for them. Please help them. Give to them of Your matchless wisdom. Just a fragment of it will do wonders. I do not ask You to adjust Your will to the will of the Legislature. Rather, I ask You to inspire the House, Senate and Governor to do Your will. Help them to see things as You see it. Give them humility. Reveal Your truth to them, then give them a love for that truth. Unity will then be inevitable and meaningful, not the lowest common denominator of pared down convictions. Show them Your glory. Show them that You are merciful and a prayer-hearing God to those who call upon You. Give them love for You, love for each other and love for the citizens of this state. Help them to season their words with grace. Help them to perform their labors as though You were their boss, which indeed You are. Give them courage to do what is right in Your eyes, even if it is unpopular, even if it costs them in the next election. Please have mercy. Please help them. Please help us all. In Jesus' name. Amen.

The Pledge of Allegiance was led by Rep. Knox.

Kansas Trivia Question – What two Kansas towns and their county are named after a famous former publisher and his newspaper?

Answer: Horace Greeley, editor of the New York Tribune. Horace and Tribune are cities in Greeley County.

## INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

**HB 2375**, AN ACT concerning school districts; relating to school accountability and parental choice; creating the Kansas school accountability act; creating the Kansas opportunity scholarship act; creating the Kansas tax credit scholarship act; authorizing the establishment of charter technical career centers; amending K.S.A. 72-1903 and repealing the existing section, by Committee on Appropriations.

**HB 2376**, AN ACT concerning the Kansas uniform securities act; relating to adoption of federal statutes and rules by reference; registration; fees; securities act fee fund and investor education fund; amending K.S.A. 17-12a103, 17-12a406, 17-12a410, 17-12a412 and 17-12a601 and repealing the existing sections, by Committee on Appropriations.

## REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to committees as indicated:

Energy and Utilities: **Sub. SB 72**.

Local Government: **SB 101, SB 114**.

Taxation: **SB 193**.

## FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

**HB 2107**, AN ACT establishing the community defense act; amending K.S.A. 2010

Supp. 22-3901 and repealing the existing section, was considered on final action.

Call of the House was demanded.

On roll call, the vote was: Yeas 91; Nays 28; Present but not voting: 0; Absent or not voting: 6.

Yeas: Alford, Arpke, Billinger, Boman, Bowers, Brookens, Brown, Bruchman, Brunk, Burroughs, Calloway, Carlin, Carlson, Cassidy, Collins, Colloton, Crum, DeGraaf, Denning, Donohoe, Feuerborn, Garber, D. Gatewood, Goico, Gonzalez, Goodman, Grange, Gregory, Grosserode, Hayzlett, Hedke, Henry, Hermanson, Hildabrand, Hineman, Hoffman, C. Holmes, M. Holmes, Howell, Huebert, Johnson, Kelley, Kelly, Kerschen, Kinzer, Kleeb, Knox, Loganbill, Mast, McCray-Miller, Meier, Meigs, Mesa, Mosier, Moxley, O'Brien, O'Hara, O'Neal, Osterman, Otto, Patton, Pauls, Peck, Phelps, Pottorff, Powell, Proehl, Rhoades, Rubin, Ryckman, Scapa, Schroeder, Schwab, Seiwert, Shultz, Siegfried, Slattey, Smith, Spalding, Suellentrop, Swanson, Trimmer, Tyson, Vickrey, Victors, Ward, Weber, Wetta, Williams, B. Wolf, Wolfe Moore.

Nays: Aurand, Ballard, Bethell, Bollier, Burgess, Davis, Dillmore, Finney, Flaharty, Frownfelter, S. Gatewood, Gordon, Grant, Henderson, Hill, Kuether, Lane, Mah, Peterson, Prescott, Roth, Ruiz, Schwartz, Sloan, Tietze, Winn, K. Wolf, Worley.

Present but not voting: None.

Absent or not voting: Fawcett, Fund, Kiegerl, Landwehr, McLeland, Montgomery.

The bill passed, as amended.

#### EXPLANATIONS OF VOTE

MR. SPEAKER: Although I am sympathetic to the issues discussed during the debate, my opposition to this bill is best summed up by the Ronald Reagan quote where he said, "Government exists to protect us from each other. Where government has gone beyond its limits is in deciding to protect us from ourselves."

Therefore, Mr. Speaker, I vote no on **HB 2107**.--MIKE BURGESS, LANA GORDON, WILLIE PRESCOTT, SHARON SCHWARTZ

MR. SPEAKER: **HB 2107** addresses an issue that has been and should be regulated at the local level. This legislation represents unnecessary intrusion by state government. I favor limited government which is why I vote NO on **HB 2107**.--ANNIE TIETZE, GERALDINE FLAHARTY, GAIL FINNEY, STAN FROWNFELETER, BOB GRANT, VALDENIA WINN, PAUL DAVIS, BARBARA BALLARD

MR. SPEAKER: This bill imposes common sense restrictions on sexually oriented businesses that have been carefully crafted to protect legitimate public health, safety and welfare concerns. It goes only so far as is necessary to address these legitimate public policy concerns without unduly infringing or prohibiting the personal liberty or property rights of owners of sexually oriented businesses or their patrons. Each restriction has been included in similar legislation in other states which has consistently been upheld as constitutional by the U.S. Supreme Court and lower courts. I vote yes on **HB 2107**. --JOHN J. RUBIN

On motion of Rep. Siegfried, the House resolved into the Committee of the Whole, with Rep. Schwab in the chair.

**COMMITTEE OF THE WHOLE**

On motion of Rep. Schwab, Committee of the Whole report, as follows, was adopted:

Recommended that on motion of Rep. Patton, **HB 2133** be amended on page 3, in line 26, by striking “facility - facilities operations” and inserting “facility – facilities operations account of the state general”; in line 32, by striking “facility -”; in line 33, by striking “facilities operations” and inserting “facility – facilities operations account of the state general”; in line 39, by striking “facility -”; in line 40, by striking “facilities operations” and inserting “facility – facilities operations account of the state general”; in line 46, by striking “facility -”; in line 47, by striking “facilities operations” and inserting “facility – facilities operations account of the state general”;

On page 4, in line 4, by striking “facility - facilities operations” and inserting “facility – facilities operations account of the state general”; in line 11, by striking “facility -”; in line 12, by striking “facilities operations” and inserting “facility – facilities operations account of the state general”; in line 18, by striking “facility -”; in line 19, by striking “facilities operations” and inserting “facility – facilities operations account of the state general”; in line 25, by striking “facility -”; in line 26, by striking “facilities operations” and inserting “facility – facilities operations account of the state general”; in line 32, by striking “facility -”; in line 33, by striking “facilities operations” and inserting “facility – facilities operations account of the state general”; in line 39, by striking “facility -”; in line 40, by striking “facilities operations” and inserting “facility – facilities operations account of the state general”; in line 45, before “department” by inserting “Kansas”; in line 46, after “amount” by inserting “from the wildlife fee fund”;

On page 5, in line 31, by striking “Kansas”; in line 39, before “state” by inserting “operating expenditures account of the”; in line 47, by striking “Kansas” and inserting “underground”;

Also, on motion of Rep. Worley to amend **HB 2133**, the motion did not prevail; and the bill be passed as amended.

**REPORTS OF STANDING COMMITTEES**

Committee on **Appropriations** recommends **HB 2374** be passed.

Committee on **Appropriations** recommends **HB 2368** be amended: On page 1, by striking all in lines 14 through 36;

On page 2, by striking all in lines 1 through 17;

And by renumbering sections accordingly;

On page 8, in line 5, by striking all after the period; by striking all in line 6;

On page 9, in line 26, by striking all after “amount”; in line 27, by striking all before “shall”;

On page 15, in line 37, by striking all after “be” where it first appears;

On page 23, in line 12, by striking “to”; in line 13, by striking all before the period and inserting “and shall credit the portion of the fine amount collected that equals the commission's actual costs related to the investigation and prosecution of the case and attorney fees, as certified by the executive director of the commission to the state treasurer, to the real estate commission fee fund as provided by K.S.A. 58-3050, and amendments thereto. The balance of the fine amount collected shall be credited to the state general fund”;

On page 36, in line 24, by striking all after “year”; in line 25, by striking all before

“and”;

On page 1, in the title, in line 1, by striking “appropriations” and inserting “state finance”; in line 10, by striking “, 75-3170a”; in line 11, before the period by inserting “and K.S.A. 2010 Supp. 75-3170a”; and the bill be passed as amended.

Committee on **Corrections and Juvenile Justice** recommends **HB 2339** be passed.

Committee on **Corrections and Juvenile Justice** recommends **HB 2318** be amended by substituting a new bill to be designated as "Substitute for HOUSE BILL NO. 2318," as follows:

"Substitute for HOUSE BILL NO. 2318

By Committee on Corrections and Juvenile Justice

"AN ACT concerning crimes, punishment and criminal procedure; relating to controlled substances; sentencing guidelines grid for drug crimes; amending K.S.A. 22-2908, as amended by section 9 of chapter 101 of the 2010 Session Laws of Kansas, and K.S.A. 2010 Supp. 21-36a01, 21-36a03, 21-36a05, 21-36a06, 21-36a09, 21-36a10, 21-36a13, 21-36a14, 21-36a16, 21-36a17, 22-2802, 22-3412, 22-3604, 22-3717, 38-2346, 38-2347, 38-2369, 38-2374, 38-2376 and 75-5291 and sections 244, 248, 251, 254, 286, 289, 291, 302 and 305 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections; also repealing K.S.A. 2009 Supp. 21-4603d, as amended by section 7 of chapter 101 of the 2010 Session Laws of Kansas, and K.S.A. 2010 Supp. 21-4603d, 21-4619, 21-4710 and 22-3717c."; and the substitute bill be passed.

(**Sub. HB 2318** was thereupon introduced and read by title.)

Committee on **Corrections and Juvenile Justice** recommends **HB 2321** be amended on page 1, by striking all in lines 11 through 36;

On page 2, by striking all in lines 1 through 7;

And by renumbering the sections accordingly;

Also, on page 2, in line 11, by striking "Sections 1 and 2" and inserting "Section 1";

On page 5, by striking all in lines 20 through 43;

On page 6, by striking all in lines 1 through 32; following line 32, by inserting:

"Sec. 6. Section 11 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended as follows: Sec. 11. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

(a) "Act" includes a failure or omission to take action.

(b) "Another" means a person or persons as defined in this code other than the person whose act is claimed to be criminal.

(c) "Conduct" means an act or a series of acts, and the accompanying mental state.

(d) "Conviction" includes a judgment of guilt entered upon a plea of guilty.

(e) "Deception" means knowingly creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind. Deception as to a person's intention to perform a promise shall not be inferred from the fact alone that such person did not subsequently perform the promise. Falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive reasonable persons, is not deception.

(f) "Deprive permanently" means to:

(1) Take from the owner the possession, use or benefit of property, without an intent to restore the same;

(2) retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(3) sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

(g) "Distribute" means the actual or constructive transfer from one person to another of some item whether or not there is an agency relationship. "Distribute" includes, but is not limited to, sale, offering for sale, furnishing, buying for, delivering, giving, or any act that causes or is intended to cause some item to be transferred from one person to another. "Distribute" does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act, or otherwise authorized by law.

(h) "DNA" means deoxyribonucleic acid.

(i) "Domestic violence" means an act or threatened act of violence against a person with whom the offender is involved or has been involved in a dating relationship, or an act or threatened act of violence against a family or household member by a family or household member. Domestic violence also includes any other crime committed against a person or against property, or any municipal ordinance violation against a person or against property, when directed against a person with whom the offender is involved or has been involved in a dating relationship or when directed against a family or household member by a family or household member. For the purposes of this definition:

(1) "Dating relationship" means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since termination of the relationship, if applicable.

(2) "Family or household member" means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

(j) "Domestic violence offense" means any crime committed whereby the underlying factual basis includes an act of domestic violence.

~~(k)~~ "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

~~(l)~~ "Expungement" means the sealing of records such that the records are unavailable except to the petitioner and criminal justice agencies as provided by K.S.A. 22-4701 et seq., and amendments thereto, and except as provided in this act.

~~(m)~~ "Firearm" means any weapon ~~designed or having the capacity to propel a projectile by force of an explosion or combustion, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.~~ "Firearm" does not include an antique firearm. "Antique firearm" means:

(1) Any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured in or before 1898;

(2) any replica of any firearm described in subsection (m)(1) if such replica: (A) Is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or (B) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and

(3) any muzzle loading rifle, muzzle loading shotgun or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this paragraph, "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock or any combination thereof.

~~(h)~~(n) "Forcible felony" includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person;

~~(m)~~(o) "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

~~(n)~~(p) "Law enforcement officer" means:

(1) Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;

(2) any officer of the Kansas department of corrections or, for the purposes of ~~sections~~ section 47 and subsection (d) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, any employee of the Kansas department of corrections;

(3) any university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto.

~~(o)~~(q) "Obtain" means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

~~(p)~~(r) "Obtains or exerts control" over property includes, but is not limited to, the taking, carrying away, sale, conveyance, transfer of title to, interest in, or possession of property.

~~(q)~~(s) "Owner" means a person who has any interest in property.

~~(r)~~(t) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.

~~(s)~~(u) "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.

~~(t)~~(v) "Possession" means having joint or exclusive control over an item with knowledge of or intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

~~(u)~~(w) "Property" means anything of value, tangible or intangible, real or personal.

~~(v)~~(x) "Prosecution" means all legal proceedings by which a person's liability for a crime is determined.

~~(w)~~(y) "Prosecutor" means the same as prosecuting attorney in K.S.A. 22-2202, and amendments thereto.

~~(x)~~(z) "Public employee" is a person employed by or acting for the state or by or for a county, municipality or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a "public officer."

~~(y)~~(aa) "Public officer" includes the following, whether elected or appointed:

(1) An executive or administrative officer of the state, or a county, municipality or other subdivision or governmental instrumentality of or within the state;

(2) a member of the legislature or of a governing board of a county, municipality, or other subdivision of or within the state;

(3) a judicial officer, which shall include a judge of the district court, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy;

(4) a hearing officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer;

(5) a law enforcement officer; and

(6) any other person exercising the functions of a public officer under color of right.

~~(z)~~(bb) "Real property" or "real estate" means every estate, interest, and right in lands, tenements and hereditaments.

~~(aa)~~(cc) "Solicit" or "solicitation" means to command, authorize, urge, incite, request or advise another to commit a crime.

~~(bb)~~(dd) "State" or "this state" means the state of Kansas and all land and water in respect to which the state of Kansas has either exclusive or concurrent jurisdiction, and the air space above such land and water. "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

~~(ee)~~(ee) "Stolen property" means property over which control has been obtained by theft.

~~(dd)~~(ff) "Threat" means a communicated intent to inflict physical or other harm on any person or on property.

~~(ee)~~(gg) "Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.";

On page 10, by striking all in lines 15 through 43;

By striking all on page 11;

On page 12, by striking all in lines 1 through 7;

On page 14, by striking all in lines 28 through 43;

On page 15, by striking all in lines 1 through 9;

On page 17, by striking all in lines 31 through 43;

By striking all on page 18;

On page 19, by striking all in lines 1 through 22;

On page 26, in line 14, after "K.S.A." by inserting "2009 Supp. 21-3110, as amended by section 5 of chapter 101 of the 2010 Session Laws of Kansas, and K.S.A."; in line 15, by striking "34," and inserting "11,"; also in line 15, by striking "68, 71,"; in line 16, by striking "93,"; also in line 16, by striking "136,";

On page 1, in the title, in line 1, by striking "crimes" and inserting "crime"; in line 2, by striking "armed criminal action and"; in line 4, by striking "34," and inserting "11,"; also in line 4, by striking "68, 71,"; in line 5, by striking "93,"; also in line 5, by striking "136," where it appears the first time; in line 7, after "repealing" by inserting "K.S.A. 2009 Supp. 21-3110, as amended by section 5 of chapter 101 of the 2010 Session Laws of Kansas, and "; and the bill be passed as amended.

Committee on **Elections** recommends **SB 67** be passed.

Upon unanimous consent, the House referred back to the regular order of business, Introduction of Bills and Concurrent Resolutions.

## INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill and concurrent resolution were thereupon introduced and read by title:

**HB 2377**, AN ACT concerning abortion; regarding restrictions on late term abortion; creating the no taxpayer funding for abortion act; amending K.S.A. 60-1901, 65-6701, 65-6703 and 65-6713 and K.S.A. 2010 Supp. 40-2,103, 40-19c09, 40-2246, 65-6709, 65-6710, 79-32,117, 79-32,138, 79-32,182b, 79-32,195, 79-32,261 and 79-3606 and repealing the existing sections, by Committee on Federal and State Affairs.

### HOUSE CONCURRENT RESOLUTION NO. **5024**--

By Representatives O'Neal, Sloan, Alford, Arpke, Aurand, Ballard, Bethell, Billinger, Bollier, Boman, Bowers, Brookens, Brown, Bruchman, Brunk, Burgess, Burroughs, Calloway, Carlin, Carlson, Cassidy, Collins, Colloton, Crum, Davis, DeGraaf, Denning, Dillmore, Donohoe, Fawcett, Feuerborn, Finney, Flaharty, Frownfelter, Fund, Garber, S.

Gatewood, D. Gatewood, Goico, Gonzalez, Goodman, Gordon, Grange, Grant, Gregory, Grosserode, Hayzlett, Hedke, Henderson, Henry, Hermanson, Hildabrand, Hill, Hineman, Hoffman, C. Holmes, M. Holmes, Howell, Huebert, Johnson, Kelley, Kelly, Kerschen, Kiegerl, Kinzer, Kleeb, Knox, Kuether, Landwehr, Lane, Loganbill, Mah, Mast, McCray-Miller, McLeland, Meier, Meigs, Mesa, Montgomery, Mosier, Moxley, O'Brien, O'Hara, Osterman, Otto, Patton, Pauls, Peck, Peterson, Phelps, Pottorff, Powell, Prescott, Proehl, Rhoades, Roth, Rubin, Ruiz, Ryckman, Scapa, Schroeder, Schwab, Schwartz, Seiwert, Shultz, Siegfried, Slattery, Smith, Spalding, Suellentrop, Swanson, Tietze, Trimmer, Tyson, Vickrey, Victors, Ward, Weber, Wetta, Williams, Winn, B. Wolf, K. Wolf, Wolfe Moore, and Worley.

A RESOLUTION recognizing Lecompton as a Territorial Capital.

WHEREAS, The City of Lecompton was recognized as a Territorial Capital of Kansas from 1855 to 1861; and

WHEREAS, Presidents Pierce and Buchanan appointed a total of nine Kansas Territorial Governors who subsequently resided in Lecompton; and

WHEREAS, There was a free state victory in the territorial election in October of

1857; and

WHEREAS, The Lecompton Constitution split the National Democrat Party in 1858, which led to four candidates for President in 1860 with Abraham Lincoln as the sole Republican candidate. He won with only 39% of the popular vote; and

WHEREAS, The name Lecompton was mentioned at least 55 times during the Lincoln-Douglas Presidential debates; and

WHEREAS, The Kansas-Nebraska Act proposed the rejection of the Lecompton Constitution by Congress, and a majority of Kansans established that Kansas would not be a slave state; and

WHEREAS, The establishment of Kansas as a free state established a tradition of Kansas supporting equal rights for all in the United States and around the world: Now, therefore,

*Be it resolved by the House of Representatives of the State of Kansas:* That we recognize and honor Lecompton as a Territorial Capital of Kansas; and

*Be it further resolved:* That the people of Kansas and its elected leaders celebrate 150 years of Kansans supporting equal rights, political freedom, and religious freedom for all people; and

*Be it further resolved:* That the Chief Clerk of the House of Representatives provide an enrolled copy of this resolution to Speaker of the House, Representative Mike O'Neal, Minority Leader, Paul Davis, and the Lecompton Historical Society.

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

The following resolution was introduced and read by title:

### **HOUSE RESOLUTION No. 6015—**

By Committee on Federal and State Affairs

A RESOLUTION requesting that the Attorney General bring an action in quo warranto in a court of competent jurisdiction against the Kansas Racing and Gaming commission and its members, the Kansas Lottery Commission and its members and the Kansas Lottery Gaming Facility Review Board and its members and challenging the constitutionality of K.S.A. 74-8762(e) and such other claims as the Attorney General may deem warranted under the circumstances.

WHEREAS, In 2010, Peninsula Gaming Partners LLC and Global Gaming KS LLC submitted proposals to the Kansas Lottery Commission for developing and managing a lottery gaming facility in Sumner County; and

WHEREAS, In a meeting on September 8, 2010, the Kansas Lottery Commission approved lottery gaming facility management contracts with Peninsula Gaming and Global Gaming for a casino in Sumner County, provided the companies received local planning and zoning approvals; and

WHEREAS, In October, 2010, a special prosecutor for the state of Iowa charged Peninsula Gaming Partners LLC and two executives of the company, the chief executive officer and the chief operating officer, with illegally funneling \$25,000 in contributions through a third party to the re-election campaign of a candidate for governor; and

WHEREAS, The trial of this matter is scheduled to begin in June, 2011, in Iowa; and

WHEREAS, In a meeting on December 15, 2010, the Kansas Lottery Gaming Facility Review Board selected Peninsula Gaming as the developer and manager of the casino in

Sumner County; and

WHEREAS, In a meeting on January 14, 2011, the Kansas Racing and Gaming Commission approved the background checks of Peninsula Gaming key officials and approved the casino development and management contract with the company; and

WHEREAS, The Kansas Expanded Lottery Act (K.S.A. 74-8733 et. seq.) was enacted with the specific requirement in K.S.A. 74-8734 that the Kansas Lottery Commission “adopt standards to promote the integrity of gaming and finances of lottery gaming facilities, which shall apply to all management contracts, shall meet or exceed industry standards for monitoring and controlling the gaming and finances of gaming facilities and shall give the executive director sufficient authority to monitor and control the gaming operations and to ensure its integrity and security”; and

WHEREAS, The Kansas Expanded Lottery Act (K.S.A. 74-8736) requires the Kansas Lottery Facility Review Board determine that a gaming facility management contract is the “best possible such contract” prior to the contract becoming binding on the parties; and

WHEREAS, The Kansas Expanded Lottery Act (K.S.A. 74-8751) requires the Kansas Racing and Gaming Commission to adopt rules and regulations relating to certification requirements by implementing such background investigations and standards for applicants, as may be “necessary to determine whether such person’s reputation, habits or associations pose a threat to the public interest of the state or to the reputation of or effective regulation and control of the lottery gaming facility.”; and

WHEREAS, The Kansas Expanded Lottery Act (K.S.A. 74-8751 and 74-8772) directs the Kansas Racing and Gaming Commission to adopt rules and regulations for suspension, revocation or nonrenewal of a certification and promoting the integrity of the lottery and racetrack gaming facilities in Kansas; and

WHEREAS, K.A.R. 112-101-6(b) provides that a certification may be denied, suspended or revoked if the certificate holder or its officers, directors, key gaming employees, or any person directly or indirectly owning an interest of at least 0.5% in the applicant, poses a threat to the public interest or to the effective regulation of gaming; or creates or enhances the dangers of unfair or illegal practices in the conduct of gaming; and

WHEREAS, The Kansas Expanded Lottery Act (K.S.A. 74-8734(o)) provides that a lottery gaming facility shall comply with any planning and zoning regulation of the city and county in which it is to be located and that the executive director shall not contract with any prospective lottery gaming facility manager who lacks proper approvals under the planning and zoning requirements of the city or county in which the facility is to be located; and

WHEREAS, Compliance with local planning and zoning requirements for the proposed Sumner County lottery gaming facility requires zoning changes, a special use permit, approval of a planned unit development application, a variance, site plan and plat approval; and

WHEREAS, Final action by the appropriate local government entities as to all planning and zoning matters was not complete at the time of the approval of the Peninsula Gaming facility management contract; and

WHEREAS, The state has an interest in determining under what authority the Peninsula Gaming facility management contract was approved given the conditions precedent to approval set forth at K.S.A. 74-8734(o); and

WHEREAS, The Kansas Expanded Lottery Act (K.S.A. 74-8762(e)) purports to limit the authority of state officials, including legislators, to act in their official capacity to perform their legislative duties; and

WHEREAS, The matters delineated above are areas of legitimate public interest and concern and as such implicate traditional areas of legislative action as reserved to the legislature under Article 2 of the Constitution of the State of Kansas; and

WHEREAS, The state has an interest in determining the constitutionality of a provision of the Kansas Expanded Lottery Act (K.S.A. 74-8762e) which purports to limit the power of state officials and state legislators under the Kansas and United States Constitutions;

WHEREAS, Pursuant to K.S.A. 75-702 the Attorney General shall, when required by either branch of the legislature, appear for the state and prosecute in any court, any matter in which the state may be interested: Now, therefore,

*Be it resolved by the House of Representatives of the State of Kansas:* That in accordance with K.S.A. 75-702, the Attorney General of the State of Kansas is hereby required to bring: (a) an action in quo warranto in a Court of competent jurisdiction against the Kansas Racing and Gaming Commission and its members, the Kansas Lottery Commission and its members and the Kansas Lottery Gaming Facility Review Board and its members to determine under what authority the gaming facility management contract with Peninsula Gaming was approved given the requirements of K.S.A. 74-8762(e); (b) an action challenging the Constitutionality of K.S.A. 74-8762(e) as applied to the Kansas legislature and its members and other affected public officials, and; (c) such other claims as the Attorney General may deem warranted under the circumstances; and

*Be it further resolved:* That the Chief Clerk of the House of Representatives shall send enrolled copies of this resolution to the Attorney General of the State of Kansas.

## **REPORT ON ENGROSSED BILLS**

**HB 2107** reported correctly engrossed March 9, 2011.

On motion of Rep. Siegfried, the House adjourned until 11:00 a.m., Thursday, March 10, 2011.

CHARLENE SWANSON, *Journal Clerk.*

SUSAN W. KANNARR, *Chief Clerk.*

