

Journal of the Senate

EIGHTEENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Monday, February 7, 2011, 2:30 p.m.

The Senate was called to order by President Stephen Morris.
The roll was called with thirty-eight senators present.
Senator Donovan was excused.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

Last week I looked out my window
All the snow on the ground looked great.
My dream of a white Christmas
Finally happened but a little too late.

You have used the snow to teach us, Lord,
Of how You can change our lives.
When King David broke Your commandments,
You used snow to help him survive.

When King David confessed all his sins,
He recalled a prayer he loved so...
And he appealed to God through this prayer:
“Wash me and I will be white as the snow.” (Psalm 51: 7b)

And the prophet Isaiah reminds us
Of something we need to know:
“Though your sins be as scarlet,
They shall be as white as snow.” (Isaiah 1:18)

Thank You, Lord, for reminding us
Of the cleansing that You provide.
Your cleansing as white as the snow
Will forever and ever abide.

I pray in the Name of Jesus Christ,

AMEN

The pledge of allegiance was led by President Stephen Morris.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and resolution were introduced and read by title:

SB 104, AN ACT concerning the Kansas tort claims act; pertaining to charitable health care providers; amending K.S.A. 2010 Supp. 75-6102 and repealing the existing section, by Committee on Judiciary.

SB 105, AN ACT concerning interest on judgments; amending K.S.A. 16-201 and 16-204 and repealing the existing sections, by Committee on Judiciary.

SB 106, AN ACT concerning consumer protection; amending K.S.A. 50-623, 50-634 and 50-636 and K.S.A. 2010 Supp. 50-624 and repealing the existing sections, by Committee on Judiciary.

SB 107, AN ACT concerning liability for medical expenses of persons in custody of law enforcement; amending K.S.A. 22-4612 and repealing the existing section, by Committee on Judiciary.

SB 108, AN ACT concerning register of deeds; relating to recording of plats; payment of taxes and assessments; amending K.S.A. 2010 Supp. 19-1207, 58-3115 and 58-3707 and repealing the existing sections, by Committee on Assessment and Taxation.

SB 109, AN ACT concerning income taxation; relating to credits; electric vehicle charging stations, by Committee on Assessment and Taxation.

SB 110, AN ACT concerning certain appointments made by KTEC; transferring such authority to the governor; amending K.S.A. 2010 Supp. 74-99b04 and repealing the existing section, by Committee on Commerce.

SB 111, AN ACT concerning school districts; relating to special education state aid; amending K.S.A. 2010 Supp. 72-978 and repealing the existing section, by Committee on Federal and State Affairs.

SB 112, AN ACT concerning land surveyors; amending K.S.A. 19-1407, 19-1411, 19-1412, 19-1413, 19-1416, 19-1417, 19-1420, 19-1422, 19-1423, 19-1426, 19-1430, 24-106, 24-802, 25-101, 42-358, 58-2001, 58-2002, 58-2003, 58-2004, 58-2005, 58-2011, 68-104, 68-131, 68-1407 and 79-409 and K.S.A. 2010 Supp. 68-1402 and repealing the existing sections; also repealing K.S.A. 19-1403, 19-1421, 19-1432 and 68-108, by Committee on Federal and State Affairs.

SB 113, AN ACT concerning the conveyance of real estate and improvements thereon; relating to the university of Kansas hospital, by Senator Steineger.

SB 114, AN ACT concerning homeowners associations; amending K.S.A. 2010 Supp. 58-4608 and 58-4618 and repealing the existing sections; also repealing K.S.A. 2010 Supp. 58-4610, by Committee on Ways and Means.

SB 115, AN ACT repealing K.S.A. 75-5002 and 75-5003; relating to the highway advisory commission, by Committee on Ways and Means.

SB 116, AN ACT concerning taxation; regarding tax information; disclosure of information to the state treasurer for the purpose of locating unclaimed property owners; amending K.S.A. 2010 Supp. 79-3234 and repealing the existing section, by Committee on Ways and Means.

SB 117, AN ACT concerning the Kansas health policy authority's drug utilization program; amending K.S.A. 2010 Supp. 39-7,119, 39-7,121a and 77-421 and repealing the existing sections, by Committee on Ways and Means.

SB 118, AN ACT concerning board of barbering; relating to fees; amending K.S.A. 2010 Supp. 65-1817 and repealing the existing section, by Committee on Ways and Means.

SB 119, AN ACT concerning rail service improvement program loans and grants; amending K.S.A. 2010 Supp. 75-5048 and 75-5049 and repealing the existing sections, by Committee on Ways and Means.

SB 120, AN ACT concerning requirements for the issuance of certificates of title for vessels; requiring notice, priority, release and surrender of security interests in vessels, by Committee on Transportation.

SB 121, AN ACT concerning real estate brokers and salespersons; relating to license fees; amending K.S.A. 2010 Supp. 58-3063 and repealing the existing section, by Committee on Ways and Means.

SB 122, AN ACT concerning the Kansas water office; relating to easements on state property for conservation projects, by Committee on Natural Resources.

SB 123, AN ACT concerning the department of wildlife and parks; relating to public use of cabins on state land, by Committee on Natural Resources.

SB 124, AN ACT concerning water; relating to water supply storage access and creating the lower smoky hill water supply access program, by Committee on Natural Resources.

SB 125, AN ACT concerning elections; relating to candidate filing deadlines; amending K.S.A. 25-4004 and K.S.A. 2010 Supp. 25-205 and repealing the existing sections, by Committee on Ethics and Elections.

SB 126, AN ACT concerning elections and campaign finance; relating to public service advertisements by candidates, by Committee on Ethics and Elections.

SB 127, AN ACT concerning elections; pertaining to certain primary elections; amending K.S.A. 25-2102 and K.S.A. 2010 Supp. 25-2021, 25-2108a and 71-1415 and repealing the existing sections, by Committee on Ethics and Elections.

SB 128, AN ACT concerning the presidential preference primary; amending K.S.A. 25-4502 and 25-4503 and K.S.A. 2010 Supp. 25-4501 and repealing the existing sections, by Committee on Ethics and Elections.

SB 129, AN ACT concerning elections; dealing with filling certain vacancies; amending K.S.A. 25-321 and repealing the existing section, by Committee on Ethics and Elections.

SB 130, AN ACT concerning elections; amending K.S.A. 2010 Supp. 25-205 and repealing the existing section, by Committee on Ethics and Elections.

SB 131, AN ACT concerning controlled substances; relating to methamphetamine precursors; amending K.S.A. 65-4109 and 65-4123 and K.S.A. 2010 Supp. 65-4113 and repealing the existing sections; also repealing K.S.A. 2010 Supp. 65-16,101, 65-16,102, 65-16,103, 65-16,104, 65-16,105, 65-16,106, 65-16,107 and 65-16,108, by Committee on Public Health and Welfare.

SB 132, AN ACT concerning dental care; increasing availability and access to dental care; enacting the Kansas comprehensive oral health initiative act; establishing the Kansas dentistry bridging loan program; amending K.S.A. 2010 Supp. 65-1456 and repealing the existing section, by Committee on Public Health and Welfare.

SB 133, AN ACT concerning health information; enacting the Kansas health information technology and exchange act; amending K.S.A. 16-1602 and repealing the existing section; also repealing K.S.A. 65-1734, 65-4970, 65-4972 and 65-4973 and K.S.A. 2010 Supp. 65-3228, 65-4971 and 65-4974, by Committee on Public Health and Welfare.

SB 134, AN ACT relating to nursing; concerning advanced practice nursing; amending K.S.A. 40-2250, 65-1113, 65-1114, 65-1118, 65-1120, 65-1122, 65-1130, 65-1131, 65-1133, 65-1154, 65-1163, 74-32,131, 74-32,132, 74-32,133, 74-32,134, 74-32,135, 74-32,136, 74-32,137 and 74-32,138 and K.S.A. 2010 Supp. 8-1,125, 39-7,119, 40-2,111, 65-468, 65-1132, 65-1626, 65-2921, 65-4101, 65-5402, 65-6112, 65-6119, 65-6120, 65-6121, 65-6123, 65-6124, 65-6129c, 65-6135, 65-6144, 72-5213, 72-8252 and 74-1106 and repealing the existing sections; also repealing K.S.A. 2010 Supp. 65-1626d, by Committee on Public Health and Welfare.

SENATE CONCURRENT RESOLUTION No. 1603

By Committee on Judiciary

A PROPOSITION to amend section 5 of article 3 of the constitution of the state of Kansas; relating to the selection of justices of the supreme court.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein:

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Section 5 of article 3 of the constitution of the state of Kansas is hereby amended to read as follows:

"§ 5. Selection of justices of the supreme court. (a) Any vacancy occurring in the office of any justice of the supreme court and any position to be open thereon as a result of enlargement of the court, or the retirement or failure of an incumbent to file ~~his~~ *such justice's* declaration of candidacy to ~~succeed himself~~ *be retained in office* as hereinafter required, or failure of a justice to be elected to ~~succeed himself~~ *be retained in office*, shall be filled by appointment by the governor of one of three persons possessing the qualifications of office who shall be nominated and whose names shall be submitted to the governor by the supreme court nominating ~~commission established as hereinafter provided,~~ *with the consent of the house of representatives and the senate, of a person possessing the qualifications of office.*

(b) ~~In event of the failure of the governor to make the appointment within sixty days from the time the names of the nominees are submitted to him the chief justice of the supreme court~~

~~shall make the appointment from such nominees. No person appointed pursuant to subsection (a) of this section shall assume the office of justice of the supreme court until the:~~

(1) House of representatives, by an affirmative vote of the majority of all members of the house of representatives then elected or appointed and qualified, consents to such appointment; and

(2) senate, by an affirmative vote of the majority of all members of the senate then elected or appointed and qualified, consents to such appointment.

(c) ~~The house of representatives shall vote to consent to any such appointment not later than 30 days after such appointment is received by the house of representatives. If the house of representatives is not in session and will not be in session within the 30-day time limitation, the speaker of the house of representatives shall convene the house of representatives for the sole purpose of voting on such appointment and no other action shall be in order during such session. In the event a majority of the house of representatives vote to consent to the appointment, within 10 days after the house of representatives vote on the previous appointee, such appointee shall be forwarded to the senate to be considered by the senate. In the event of a majority of the house of representatives does not vote to consent to the appointment, the governor shall appoint another person possessing the qualifications of office and such subsequent appointment shall be considered by the house of representatives in the same procedure provided in this article.~~

(d) ~~The senate shall vote to consent to any such appointment not later than 30 days after such appointment is received by the senate. If the senate is not in session and will not be in session within the 30-day time limitation, the president of the senate shall convene the senate for the sole purpose of voting on such appointment and no other action shall be in order during such session. In the event a majority of the senate does not vote to consent to the appointment, the governor shall appoint another person possessing the qualifications of office and such subsequent appointment shall be considered by the house of representatives and the senate in the same procedure as provided in this article.~~

(e) ~~The same appointment and consent procedure shall be followed until a valid appointment has been made. No person who has been previously appointed but did not receive the consent of the house of representatives or the senate shall be appointed again for the same vacancy. If the house of representatives or the senate fails to vote on an appointment within the 30-day time limitation of each body, the house of representatives or the senate, as applicable, shall be deemed to have given consent to such appointment.~~

(e)(f) Each justice of the supreme court appointed pursuant to provisions of subsection (a) of this section and consented to pursuant to the provisions of subsection (c) of this section shall hold

office for an initial term ending on the second Monday in January following the first general election that occurs after the expiration of ~~twelve~~ 12 months in office. Not less than ~~sixty~~ 60 days prior to the holding of the general election next preceding the expiration of ~~his~~ *such justice's* term of office, any justice of the supreme court may file in the office of the secretary of state a declaration of candidacy for election to ~~succeed himself~~ *be retained in office*. If a declaration is not so filed, the position held by such justice shall be open from the expiration of ~~his~~ *such justice's* term of office. If such declaration is filed, ~~his~~ *such justice's* name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party designation, reading substantially as follows:

"Shall

(Here insert name of justice.)

(Here insert the title of the court.)

be retained in office?"

If a majority of those voting on the question vote against retaining ~~him~~ *such justice* in office, the position or office which ~~he~~ *such justice* holds shall be open upon the expiration of ~~his~~ *such justice's* term of office; otherwise ~~he~~ *such justice* shall, unless removed for cause, remain in office for the regular term of six years from the second Monday in January following such election. At the expiration of each term ~~he~~ *such justice* shall, unless by law ~~he~~ *such justice* is compelled to retire, be eligible for retention in office by election in the manner prescribed in this section.

~~(d) A nonpartisan nominating commission whose duty it shall be to nominate and submit to the governor the names of persons for appointment to fill vacancies in the office of any justice of the supreme court is hereby established, and shall be known as the "supreme court nominating commission." Said commission shall be organized as hereinafter provided.~~

~~(e) The supreme court nominating commission shall be composed as follows: One member, who shall be chairman, chosen from among their number by the members of the bar who are residents of and licensed in Kansas; one member from each congressional district chosen from among their number by the resident members of the bar in each such district; and one member, who is not a lawyer, from each congressional district, appointed by the governor from among the residents of each such district.~~

~~(f) The terms of office, the procedure for selection and certification of the members of the commission and provision for their compensation or expenses shall be as provided by the legislature.~~

~~(g) No member of the supreme court nominating commission shall, while he is a member, hold any other public office by appointment or any official position in a political party or for six~~

~~months thereafter be eligible for nomination for the office of justice of the supreme court. The commission may act only by the concurrence of a majority of its members.”~~

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

“Explanatory statement. The purpose of this amendment is to improve transparency to the selection process of supreme court nominees and to do away with the supreme court nominating commission. Currently, the supreme court nominating commission is composed of nine members; four nonlawyer members appointed by the governor and five lawyer members elected by licensed attorneys who are residents of Kansas. Pursuant to the amendment, the governor will appoint a qualified person, and such person’s appointment would be required to be consented to by the house of representatives and the senate.

“A vote for this proposition would provide a procedure whereby the governor would appoint a person to be a supreme court justice and the house of representatives and the senate, by majority vote, would consent to the appointment of supreme court justices.

“A vote against this proposition would continue in effect the current provision whereby the supreme court nominating commission nominates three persons for the office of the supreme court and the governor appoints one of such persons.”

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the primary election in August in the year 2012 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Ethics and Elections: SB 102, SB 103.

Local Government: **SB 101**.

Public Health and Welfare: **SB 100**.

MESSAGE FROM THE GOVERNOR

February 3, 2011

To the Senate of the State of Kansas:

Submitted herewith for confirmation by the Senate is an appointment made by me as the Governor of the State of Kansas, pursuant to law.

Sam Brownback
Governor

Secretary, Kansas Department of Health and Environment, Robert Moser
Wichita, pursuant to the authority vested in me by KSA 75-301, effective upon the date of confirmation by the Senate, to serve at the pleasure of the Governor.

February 7, 2011

Message to the Senate of the State of Kansas:

Enclosed herewith is Executive Reorganization Order No. 37 and the Governor's Message for that ERO for your information.

Governor's Message
Executive Reorganization Order No. 37
By Governor Sam Brownback
February 7, 2011

Pursuant to Article 1, Section 6(b) of the Constitution of the State of Kansas, I am transmitting this day Executive Reorganization Order No. 37 to both houses of the Kansas Legislature. Simultaneously with this Order, I am transmitting the accompanying Governor's Message.

As we look to grow Kansas' economy and focus state government resources to ensure the most efficient use of taxpayer dollars, I am ordering the abolition of Kansas Inc. as established by K.S.A. 74-8001 *et seq.* Kansas' government has far too many economic development agencies and programs, many of which focus on picking winners and losers instead of creating an environment for growth. As part of the culture change that Kansans expect in state government as we retool for the 21st century economy, I am looking to consolidate these various functions and make them more accountable to voters for their successes or failures.

As I said in my State-of-the-State speech, the days of ever-expanding government are over. This reorganization order is a modest step toward making our economic development structure leaner, more efficient, more accountable, and more successful in growing the state. These means will help us get the more than 100,000 unemployed Kansans back to work and grow our state's net personal income in the years ahead. I look forward to working with the Legislature and my fellow Kansans to achieve these important goals.

Executive Reorganization Order No. 37

By Governor Sam Brownback
Transmitted February 7, 2011

Sec. 1. Kansas, Inc., its board, the office of chief executive officer, and the president of Kansas, Inc., along with their powers, duties, and functions, as created pursuant to K.S.A. 74-8001 *et seq.*, and amendments thereto, are hereby abolished.

Sec. 2. (a) The secretary of administration, for the sole purpose of efficiently wrapping up and concluding the affairs of Kansas, Inc. and satisfying any outstanding liabilities or commitments of Kansas, Inc., shall be the successor in every way to the powers, duties, and functions of the Kansas, Inc., and its chief executive officer and president, hereinafter referred to as president, in which the same were vested prior to the effective date of this order. Every act performed in the exercise of such abolished powers, duties, and functions by or under the authority of the secretary of administration shall be performed by the existing employees of the department of administration and shall be deemed to have the same force and effect as if performed by Kansas, Inc., or its president in which such powers, duties, and functions were vested prior to the effective date of this order.

(b) In furtherance of the sole purpose set forth in Section 2(a) above, whenever Kansas, Inc., or words of like effect are referred to or designated by a statute, contract, memorandum of agreement or other document, such reference or designation shall be deemed to apply to the secretary of administration.

(c) In furtherance of the sole purpose set forth in Section 2(a) above, whenever the president of Kansas Inc., or words of like effect are referred to or designated by a statute, contract, memorandum of agreement or other document, such reference or designation shall be deemed to apply to the secretary of administration.

(d) In furtherance of the sole purpose set forth in Section 2(a) above, all rules and regulations, orders, and directives of Kansas, Inc., or its president which are in effect on the effective date of this order, shall continue to be effective and shall be deemed to be rules and regulations, orders, and directives of the secretary of administration, until revised, amended, revoked or nullified pursuant to law.

(e) In furtherance of the sole purpose set forth in Section 2(a) above, all orders and directives of the Kansas, Inc., or its president in existence on the effective date of this act shall continue to be effective and shall be deemed to be orders and directives of the secretary of administration, until revised, amended or nullified pursuant to law.

Sec. 3. (a) The secretary of administration shall succeed to whatever right, title or interest that Kansas, Inc., has acquired in any real property in this state, and the secretary of administration shall hold the same for and in the name of the state of Kansas.

(b) Whenever any statute, contract, deed or other document concerns the power or authority of Kansas, Inc., or its president to acquire, hold or dispose of real property or any interest therein, the secretary of administration shall

succeed to such power or authority.

Sec. 4. The secretary of administration shall have the legal custody of all records, memoranda, writings, entries, prints, representations, electronic data or combinations thereof of any act, transaction, occurrence or event of Kansas Inc., or its president.

Sec. 5. (a) The balances of all funds or accounts thereof appropriated or reappropriated for Kansas, Inc., relating to the powers, duties, and functions abolished by this order are hereby transferred within the state treasury to the department of administration and shall be used only for the purpose for which the appropriation was originally made.

(b) Liability for all accrued compensation or salaries of officers and employees who are employees of Kansas, Inc., during the period commencing on the first day of the first payroll period chargeable to fiscal year 2012 and ending in on June 30, 2011, shall be assumed and paid by the department of administration.

Sec. 6. When any conflict arises as to the disposition of any records, property, power, duty, or function or the unexpended balance of any appropriation as a result of any abolition made by or under the authority of this order, such conflict shall be resolved by the governor, whose decision shall be final.

Sec. 7. (a) No suit, action, or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency or program mentioned in this order, or by or against any officer of the state in such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this order. The court may allow any such suit, action, or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(b) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this order.

Sec. 8. Except as otherwise provided by this order, all of the provisions of this order shall take effect and have the force of general law on July 1, 2011, unless disapproved by either house of the Kansas legislature as provided by subsection (c) of section 6 of article 1 of the Constitution of Kansas, and unless so disapproved, this order is to be published as and with the acts of the legislature and the statutes of this state.

DONE AT The Capitol in Topeka
Under the Great Seal of the
State of Kansas this 4th day
of February 2011.

BY THE GOVERNOR:
SAM BROWBACK

KRIS W. KOBACH
SECRETARY OF STATE

KATHY M. SACHS
ASSISTANT SECRETARY OF STATE

February 7, 2011

Message to the Senate of the State of Kansas:

Enclosed herewith is Executive Reorganization Order No. 38 and the Governor's Message for that ERO for your information.

Governor's Message
Executive Reorganization Order No. 38
By Governor Sam Brownback
February 7, 2011

Pursuant to Article 1, Section 6(b) of the Constitution of the State of Kansas, I am transmitting this day Executive Reorganization Order No. 38 to both houses of the Kansas Legislature. Simultaneously with this Order, I am transmitting the accompanying Governor's Message.

Kansans have spoken loud and clear: they are looking for their government to be more efficient and their leaders to be more accountable. In this spirit, I am ordering that the Kansas Health Policy Authority as established by K.S.A. 2010 Supp. 75-7401 *et seq.* be reorganized into the Division of Health Care Finance within the Department of Health and Environment.

For this coming fiscal year, Kansas faces a \$550 million budget deficit, much of it related to increased caseloads in Medicaid. Left unaddressed, this growth will continue to consume future budgets and leave the state with very little room to address other priorities. While this reorganization saves \$3 million in administration costs for the next fiscal year, the larger savings will come from unifying the expertise in the KHPA with the accountability of KDHE as we implement major reforms to our Medicaid delivery model. Under the direction of the Lt. Governor and the Secretary of KDHE, the Division of Health Care Finance will be involved in redesigning Medicaid in the State of Kansas.

As I said in my State-of-the-State speech, the days of ever-expanding government are over. This consolidation is a major step toward making state government more efficient, more accountable, and forward looking. As we look toward a future of balancing priorities within the confines of limited state resources, this reorganization will act as a cornerstone for major and long-lasting reforms. I look forward to working with the Legislature and my fellow Kansans on achieving these important goals.

Executive Reorganization Order No. 38
By Governor Sam Brownback
Transmitted February 7, 2011

Section 1. (a) There is hereby established, within the department of

health and environment, the division of health care finance. The head of the division shall be director of health care finance, who shall be appointed by and serve at the pleasure of the secretary of health and environment. The director shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of health and environment and approved by the governor.

(b)(1) The secretary of health and environment shall appoint, in accordance with the provisions of the Kansas civil service act, such employees as may be needed, in the judgment of the secretary and director, to carry out the powers and duties of the division of health care finance.

(2) All officers and employees of the division of health care finance shall act for and exercise the powers of the director of health care finance to the extent that authority to do so is delegated by the secretary and director. Subject to the provisions of this order, the secretary and director may organize the division of health care finance in the manner deemed most efficient.

Sec. 2. (a) The Kansas health policy authority created by K.S.A. 2010 Supp. 75-7401, and amendments thereto, is hereby abolished.

(b) Except as otherwise provided by this order, all powers, duties, and functions of the Kansas health policy authority under K.S.A. 2010 Supp. 75-7401 *et seq.*, and amendments thereto, or any other statute, are hereby transferred to and imposed upon the department of health and environment and its division of health care finance and the secretary and the director of health care finance.

(c) Except as otherwise provided by this order, all powers, duties, and functions of any state agency, department, board, commission or council, providing services and creating systems in order to comply with the provisions of the patient protection and affordable care act, Public Law 111-148, 124 Stat. 119 (2010), and the health care and education reconciliation act of 2010, Public Law 111-152, 124 Stat. 1029 (2010), are hereby transferred to and imposed upon the department of health and environment and its division of health care finance and the secretary and the director of health care finance or their designees.

Sec. 3. (a) The department of health and environment and its division of health care finance shall be the successor in every way to the powers, duties and functions of the Kansas health policy authority in which the same were vested prior to the effective date of this order and that are transferred pursuant to section 2 of this order. Every act performed in the exercise of such transferred powers, duties and functions by or under the authority of the department of health and environment and its division of health care finance or the secretary or the director of health care finance shall be deemed to have the same force and effect as if performed by the Kansas health policy authority in which such powers, duties, and functions were vested prior to the effective date of this order.

(b) The department of health and environment and its division of health care finance or designees appointed by the secretary or the director of health care finance shall be the successor in every way to the powers, duties, and

functions of any state agency, department, board, commission or council, providing services and creating systems in order to comply with the provisions of the patient protection and affordable care act, Public Law 111-148, and the health care and education reconciliation act of 2010, Public Law 111-152, and that are transferred pursuant to section 2 of this order. Every act performed in the exercise of such transferred powers, duties, and functions by or under the authority of the department of health and environment and its division of health care finance shall be deemed to have the same force and effect as if performed by any state agency, department, board, commission or council in which such powers, duties, and functions were vested prior to the effective date of this order.

(c) Whenever the Kansas health policy authority or words of like effect are referred to or designated by a statute, contract, memorandum of agreement or other document and such reference is in regard to any of the powers, duties or functions transferred to the department of health and environment and its division of health care finance, such reference or designation shall be deemed to apply to the department of health and environment and its division of health care finance.

(d) All rules and regulations, orders and directives of the Kansas health policy authority which relate to the functions transferred by this order, and which are in effect on the effective date of this order, shall continue to be effective and shall be deemed to be rules and regulations, orders and directives of the secretary of health and environment until revised, amended, revoked or nullified pursuant to law.

Sec. 4. (a) The balances of all funds or accounts thereof appropriated or reapportioned for the Kansas health policy authority or any state agency, department, board, commission or council, relating to the powers, duties and functions transferred by this order are hereby transferred within the state treasury to the department of health and environment for the division of health care finance and shall be used only for the purpose for which the appropriation was originally made.

(b) Liability for all accrued compensation or salaries of officers and employees who are transferred to the department of health and environment and its division of health care finance under this order shall be assumed and paid by the division of health care finance of the department of health and environment.

Sec. 5. (a) When any conflict arises as to the disposition of any property, power, duty or function or the unexpended balance of any appropriation as a result of any abolition or transfer made by or under the authority of this order, such conflict shall be resolved by the governor, whose decision shall be final.

(b) The division of health care finance in the department of health and environment shall succeed to all property, property rights and records which were used for or pertain to the performance of powers, duties and functions transferred to the division of health care finance in the department of health and environment. Any conflict as to the proper disposition of property, personnel or records arising under this order shall be determined by the governor, whose decision shall be final.

Sec. 6. (a) No suit, action, or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency or program mentioned in this order, or by or against any officer of the state in such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this order. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(b) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this order.

Sec. 7. (a) All officers and employees of the Kansas health policy authority who, immediately prior to the effective date of this order, are engaged in the exercise and performance of the powers, duties and functions transferred by this order, as well as all officers and employees of the Kansas health policy authority who are determined by the director of health care finance of the department of health and environment to be engaged in providing administrative, technical or other support services that are essential to the exercise and performance of the powers, duties and functions transferred by this order, are hereby transferred to the division of health care finance of the department of health and environment. All classified officers and employees so transferred shall retain their status as classified employees.

(b) Officers and employees of the Kansas health policy authority transferred by this order shall retain all retirement benefits and leave balances and rights which had accrued or vested prior to the date of transfer. The service of each such officer or employee so transferred shall be deemed to have been continuous. Any subsequent transfers, layoffs or abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Nothing in this order shall affect the classified status of any transferred person employed by the Kansas health policy authority prior to the date of transfer.

(c) Notwithstanding the effective date of this order, the provisions of this order prescribing the transfer of officers and employees from the Kansas health policy authority abolished by this order to the division of health care finance of the department of health and environment established by this order, the date of transfer of each such officer or employee shall commence at the start of a payroll period.

Sec. 8. Except as otherwise provided by this order, all of the provisions of this order shall take effect and have the force of general law on July 1, 2011, unless disapproved by either house of the Kansas legislature as provided by subsection (c) of section 6 of article 1 of the constitution of Kansas, and unless so disapproved, this order is to be published as and with the acts of the legislature and the statutes of this state.

DONE AT The Capitol in Topeka
Under the Great Seal of the
State of Kansas this 4th day

of February 2011.

BY THE GOVERNOR:
SAM BROWNBACK

KRIS W. KOBACH
SECRETARY OF STATE

KATHY M. SACHS
ASSISTANT SECRETARY OF STATE

REPORTS OF STANDING COMMITTEES

Committee on **Education** recommends **SB 8** be passed.

Committee on **Public Health and Welfare** recommends **SB 5** be amended on page 1, by striking all in lines 15 through 16; in line 17, by striking "(f)" and inserting "(e)"; in line 22, by striking "licensed physician" and inserting "person licensed to practice medicine and surgery"; in line 35, by striking "physician" and inserting "person licensed to practice medicine and surgery";

On page 2, in line 11, by striking "(g)" and inserting "(f)" in line 13, by striking "physician" and inserting "person licensed to practice medicine and surgery"; following line 14, by inserting "(g) "Perfusionist" means a person who practices perfusion as defined in this act.";

On page 3, in line 1, by striking "licensed physician" and inserting "person licensed to practice medicine and surgery"; in line 3, by striking "licensed physician" and inserting "person licensed to practice medicine and surgery";

On page 4, in line 20, by striking "24 months" and inserting "two of the last 10 years";

On page 5, in line 1, after "renewal" by inserting ", continuing education"; in line 16, after "renewal" by inserting ", continuing education";

On page 6, in line 20, by striking "\$150" and inserting "\$200"; in line 21, by striking "\$150" and inserting "\$200"; by striking all in line 25;

On page 7, in line 9, by striking "physician" and inserting "person";

On page 8, in line 26, after "thereto," by inserting "assessed costs incurred by the board in conducting any proceeding in which such licensee is the unsuccessful party"; in line 31, after "felony" by inserting "or class A misdemeanor"; following line 43, by inserting "(6) has had a license to practice perfusion revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country, a certified copy of the record of an action of the other jurisdiction being conclusive evidence thereof,";

And by renumbering the remaining paragraphs accordingly;

On page 9, in line 1, by striking "or" and inserting a comma; also in line 1, after "regulations" by inserting "promulgated by the board or any lawful order or directive of the board previously entered by the board"; and the bill be passed as amended.

On motion of Senator Emler the Senate was adjourned until 2:30 p.m., Tuesday, February 8, 2011.

HELEN MORELAND, ROSE MARIE GLATT, SHIRLEY LAMOTT,
Journal Clerks.

PAT SAVILLE, *Secretary of the Senate.*