

Journal of the Senate

FIFTY-NINTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, May 4, 2011, 10:00 a.m.

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

Heavenly Father,

Sometimes when I'm discouraged
And cannot get things done;
It helps a lot for me to pray,
"Lord, thy will be done."

I recommend that Senators
When disagreeing with someone;
Silently pray to You, O God,
"Lord, thy will be done."

When we have alternatives
And we can't decide which one,
Utter a silent prayer to You,
"Lord, thy will be done."

When we thought it was complete,
And it never was begun,
Quietly pray to You, O God,
"Lord, thy will be done."

When I thought we had a victory,
And found out we had not won;
Confidently pray, "Not my will,
But Lord, Thy will be done."

I pray in the Name of Jesus Christ, AMEN

The Pledge of Allegiance was led by President Stephen Morris.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committee as indicated:

Committee of the Whole: **SB 247**; **HCR 5024**.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2314**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2314 was thereupon introduced and read by title.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senator Brungardt introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1855—

A RESOLUTION recognizing and commending Sheriff Darrell Wilson.

WHEREAS, Darrell Wilson began his service in law enforcement to the people of Kansas in July 1962 as an officer with the Salina Police Department. Darrell Wilson rose through the ranks to Assistant Chief in 1971. He retired from the Salina Police Department in 1984, serving a total of 22 years; and

WHEREAS, Darrell Wilson was elected Saline County Sheriff in 1984 and served the citizens of Saline county in that capacity until 1997, serving a total of 13 years; and

WHEREAS, In 1997 Darrell Wilson was elected the Executive Director of the Kansas Sheriff's Association and provided guidance and leadership to other sheriffs in that capacity until 2010, serving a total of 13 years; and

WHEREAS, Darrell Wilson also served the Kansas law enforcement community as the Chairman of the Kansas Law Enforcement Training Commission from 1997 to 2004: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend Sheriff Darrell Wilson for his outstanding accomplishments and thank him for his combined 48 years of service to the people and law enforcement community of Kansas; and

Be it further resolved: That the Secretary of the Senate shall be directed to provide 15 enrolled copies of this resolution to Senator Brungardt.

On emergency motion of Senator Brungardt **SR 1855** was adopted unanimously.

REPORT ON ENGROSSED BILLS

SB 216 reported correctly engrossed May 2, 2011.

On motion of Senator Emler, the Senate recessed until 2:30 p.m.

AFTERNOON SESSION

The Senate met pursuant to recess with President Morris in the chair.

MESSAGE FROM THE HOUSE

The House adopts the Conference Committee report on **Substitute SB 50**.

The House not adopts the Conference Committee report on **SB 143**, requests a conference and appoints Representatives Aurand, Huebert and Ward as second conferees on the part of the House.

CONSIDERATION OF MOTIONS AND SENATE RESOLUTIONS

President Morris announced the time had arrived to consider the motion submitted in writing by Senator Steve Abrams, citing Rule 11, to withdraw **H Sub for SB 25** from the Committee on **Federal and State Affairs** and be placed on the calendar under the heading of General Orders.

H Sub for SB 25, AN ACT establishing the community defense act; amending K.S.A. 2010 Supp. 22-3901 and repealing the existing section.

On roll call, the vote was: Yeas 17, Nays 22, Present and Passing 0, Absent or Not Voting 1.

Yeas: Abrams, Bruce, Holland, Kelsey, King, Love, Lynn, Masterson, Merrick, Olson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Schmidt A, Taddiken, Wagle.

Nays: Apple, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Huntington, Kelly, Kultala, Longbine, Marshall, McGinn, Morris, Owens, Reitz, Schmidt V, Schodorf, Steineger, Teichman, Umbarger, Vratil.

Absent or Not Voting: Donovan.

The motion failed and **H Sub for SB 25** remains in committee.

On emergency motion of Senator Haley, **SR 1854**, A RESOLUTION recognizing the misuse and abuse of prescription drug medications as a major threat to public health and safety in Kansas and nationwide, was adopted by voice vote. **SR 1854** appeared in the Senate Journal on Tuesday, May 3, 2011.

EXPLANATION OF VOTE

Mr. President: I support the National Prescription Drug Take-Back Day and sponsor and join the Committee of the Whole in unanimous support of this Resolution. According to Kansas US Attorney Grissom, last year, (2010) six people died in Kansas due to accidental overdose of prescription drugs not prescribed to them. With thefts of unused prescriptions rising and as we continue to criminalize relatively benign substances, I will continue to voice my support for regulating prescription drugs (as well as tobacco and alcohol... legal substances?) to keep them out of the bodily systems of our youth. — DAVID HALEY

ORIGINAL MOTION

Senator Emler moved that Subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bills: **SB 10, Sub SB 50, SB 93, SB 97, SB 124, SB 247**.

CONSIDERATION OF MOTIONS TO CONCUR AND NONCONCUR

Senator Owens moved the Senate concur in house amendments to **SB 97**.

SB 97, AN ACT concerning courts; relating to court fees and costs; relating to the judicial branch surcharge fund; docket fees for expungement of records; amending Section 254 of chapter 136 of the 2010 Session Laws of Kansas and K.S.A. 2010 Supp. 8-2107, 8-2110, 22-2410, 23-108a, 28-170, 28-172a, 28-177, 28-178, 38-2215, 38-2312, 38-2314, 59-104, 60-1621, 60-2001, 60-2203a, 61-2704 and 61-4001 and repealing the existing sections.

On roll call, the vote was: Yeas 37, Nays 2, Present and Passing 0, Absent or Not Voting 1.

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Reitz, Schmidt A, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Pilcher-Cook, Pyle.

Absent or Not Voting: Donovan.

The Senate concurred.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 10** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with House Committee of the Whole amendments as follows:

On page 17, after line 31, by inserting the following:

"Sec. 4. On and after July 1, 2011, K.S.A. 2010 Supp. 79-1701a is hereby amended to read as follows: 79-1701a. Any taxpayer, the county appraiser or the county clerk shall, on their own motion, request the board of county commissioners to order the correction of the clerical errors in the appraisal, assessment or tax rolls as described in K.S.A. 79-1701, and amendments thereto. The board of county commissioners of the several counties are hereby authorized to order the correction of clerical errors, specified in K.S.A. 79-1701, and amendments thereto, in the appraisal, assessment or tax rolls for the current year and the immediately preceding two years during the period on and after November 1 of each year. If a county treasurer has collected and distributed the property taxes of a taxpayer and it shall thereafter be determined that the tax computed and paid was based on an erroneous assessment due to a clerical error which resulted in an overpayment of taxes by the taxpayer, and such error is corrected under the provisions hereof then the county commissioners may direct a refund in the amount of the overpayment plus interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, *plus two percentage points, per annum*, from the date of payment from tax moneys collected during the current year and approve a claim therefor. If all or any portion of the taxes on such property remain unpaid, the board of county commissioners shall cancel that portion of such unpaid taxes which were assessed on the basis of the error which is being corrected. In lieu of taking such a refund the taxpayer may, at the taxpayer's option, be allowed a credit on the current year's taxes in the amount of the overpayment plus interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, from the date of payment for the previous year. In the event the error results in an understatement of value or taxes as a result of a mathematical

miscomputation on the part of the county, the board of county commissioners of the several counties are hereby authorized to correct such error and order an additional assessment or tax bill, or both, to be issued, except that, in no such case shall the taxpayer be assessed interest or penalties on any tax which may be assessed. If such error applies to property which has been sold or otherwise transferred subsequent to the time the error was made, no such additional assessment or tax bill shall be issued.

Sec. 5. On and after July 1, 2011, K.S.A. 79-2968 is hereby amended to read as follows: 79-2968. Except as otherwise specifically provided by law, whenever interest is charged under any law of this state upon any delinquent or unpaid taxes levied or imposed by the state of Kansas or any taxing subdivision thereof, or whenever interest is allowed under any law of this state upon any overpayment of taxes levied or imposed by the state of Kansas or any taxing subdivision thereof, the rate thereof shall be: ~~(a) One and one-half percent per month for any period prior to January 1, 1995, 1% per month for the period commencing on January 1, 1995, and ending on December 31, 1997, and 1/12 of the annual rate prescribed in subsection (b) thereafter, if computed monthly; and (b) eighteen percent per annum for any period prior to January 1, 1995; 12% per annum for the period commencing on January 1, 1995, and ending on December 31, 1997, and for any period thereafter;~~ the underpayment rate per annum prescribed and determined under paragraph (2) of subsection (a) of section 6621, without regard to subsection (c) thereof, of the federal internal revenue code, as in effect on September 1, 1996, and which rate is in effect thereunder on July 1 of the year immediately preceding the calendar year for which the rate is being annually fixed hereunder, plus one percentage point, if computed annually. *Beginning on January 1, 2012, the rate for property tax delinquencies or underpayments of \$10,000 or more shall be as provided for under this section or 10% per annum, whichever is greater.*

In the event the interest rate prescribed under this section cannot be determined by reference to section 6621 of the federal internal revenue code, as in effect on September 1, 1996, the rate at which interest shall be collected on underpayments shall be the rate prescribed by K.S.A. 16-204, and amendments thereto, for interest on judgments for the applicable period.

Sec. 6. On and after July 1, 2011, K.S.A. 2010 Supp. 79-3609 is hereby amended to read as follows: 79-3609. (a) Every person engaged in the business of selling tangible personal property at retail or furnishing services taxable in this state, shall keep records and books of all such sales, together with invoices, bills of lading, sales records, copies of bills of sale and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be available for and subject to inspection by the director, or the director's duly authorized agents and employees, for a period of three years from the last day of the calendar year or of the fiscal year of the retailer, whichever comes later, to which the records pertain. Such records shall be preserved during the entire period during which they are subject to inspection by the director, unless the director in writing previously authorizes their disposal. Any person selling tangible personal property or furnishing taxable services shall be prohibited from asserting that any sales are exempt from taxation unless the retailer has in the retailer's possession a properly executed exemption certificate provided by the consumer claiming the exemption, except as follows: (1) A retailer is relieved of liability for tax otherwise applicable if the retailer obtains a fully completed exemption certificate or captures the relevant data elements required by the director

within 90 days subsequent to the date of the sale; or (2) if the retailer has not obtained an exemption certificate or all relevant data elements, the retailer, within 120 days subsequent to a request for substantiation by the director, either may obtain a fully completed exemption certificate from the purchaser, taken in good faith which meets the requirements specified in this subsection, or obtain other information establishing that the transaction was not subject to tax. Otherwise, the sales shall be deemed to be taxable sales under this act. The seller shall obtain an exemption certificate that claims an exemption that was authorized pursuant to Kansas law on the date of the transaction in the jurisdiction where the transaction is sourced pursuant to law, could be applicable to the item being purchased and is reasonable for the purchaser's type of business. If the seller obtains an exemption certificate or other information as described in this subsection, the seller is relieved of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction, and it must be established that the seller had knowledge or had reason to know at the time the information was provided that the information was materially false.

(b) The amount of tax imposed by this act is to be assessed within three years after the return is filed, and no proceedings in court for the collection of such taxes shall ~~be begun~~begin after the expiration of such period. In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed or a proceeding in court for collection of such tax may ~~be begun~~begin at any time; within two years from the discovery of such fraud. No assessment shall be made for any period preceding the date of registration of the retailer by more than three years except in cases of fraud. For any refund or credit claim filed after ~~June 15, 2009~~July 1, 2011, no refund or credit shall be allowed by the director after ~~one year~~three years from the due date of the return for the reporting period as provided by K.S.A. 79-3607, and amendments thereto, unless before the expiration of such period a claim therefor is filed by the taxpayer, and, except as otherwise provided in K.S.A. 2010 Supp. 79-3694, and amendments thereto, no suit or action to recover on any claim for refund shall be commenced, until after the expiration of six months from the date of filing such claim satisfying the requirements specified by K.S.A. 2010 Supp. 79-3693, and amendments thereto, therefor with the director. A refund claim shall not be deemed filed unless such claim is complete as required by K.S.A. 2010 Supp. 79-3693, and amendments thereto. For all mailed returns, including refund claims, each return or refund claim shall be presumed to have been filed with the department on the postmark date of such return or refund claim or if such date is illegible, the date three days prior to the date such return or refund claim is received.

(c) Before the expiration of time prescribed in this section for the assessment of additional tax or the filing of a claim for refund, the director is hereby authorized to enter into an agreement in writing with the taxpayer consenting to the extension of the periods of limitations for the assessment of tax or for the filing of a claim for refund, at any time prior to the expiration of the period of limitations. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. In consideration of such agreement or agreements, interest due in excess of 48 months on any additional tax shall be waived.

(d) Interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, shall

be allowed on any overpayment of tax computed from the filing date of the return claiming the refund, except that no interest shall be allowed on any such refund if the same is paid within 120 days after the filing date of the return claiming the refund or the date of payment, whichever is later, provided that such return or refund claim satisfies the requirements specified by K.S.A. 2010 Supp. 79-3693, and amendments thereto, at the time the return or refund claim is received.

(e) Notwithstanding any other provision of this section or the provisions of the Kansas compensating tax act:

(1) (A) Any claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the provisions of subsection (kk) of K.S.A. 79-3606 in existence prior to its amendment by this act which is without dispute shall be allowed, but, with respect to any claim exceeding \$10,000, the refund associated therewith shall not be paid until after 510 days from the date such claim was filed and shall not include interest from such date. As used in this subparagraph, a claim for refund without dispute shall not include any claim the basis for which is a judicial or quasi-judicial interpretation of such subsection occurring after the effective date of this act.

(B) Any refund of tax resulting from a final determination or adjudication with regard to any claim submitted or to be submitted for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the provisions of subsection (kk) of K.S.A. 79-3606 in existence prior to its amendment by this act not described by subparagraph (A) shall, with respect to any refund exceeding \$50,000, be paid in equal annual installments over 10 years commencing with the year of such final determination or adjudication. Interest shall not accrue during the time period of such payment.

(2) No claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the application of the provisions of subsection (n) of K.S.A. 79-3606, *and amendments thereto*, pursuant to its interpretation by the court of appeals of the state of Kansas in its opinion filed on August 13, 1999, in the case entitled *In re appeal of Water District No. 1 of Johnson County* shall be allowed for tax paid prior to the effective date of this act. The provisions of this subsection shall not be applicable to water district no. 1 of Johnson county.";

And by renumbering the remaining sections accordingly;

Also on page 17, after line 33, by inserting the following:

"Sec. 8. On and after July 1, 2011, K.S.A. 79-2968 and K.S.A. 2010 Supp. 79-1701a and 79-3609 are hereby repealed.";

On page 1, in the title, in line 1, by string all after "ACT"; by striking all in lines 2 and 3 and inserting "concerning taxation; relating to sales taxation, countywide retailers', sales tax, periods of limitation for certain refunds and credits; property taxation, delinquent or underpaid taxes and overpayment of taxes, clerical errors, rate of interest; amending K.S.A. 79-2968 and K.S.A. 2010 Supp. 12-187, 12-189, 12-192, 79-1701a and 79-3609 and repealing the existing sections.";

And your committee on conference recommends the adoption of this report.

RICHARD CARLSON

MARVIN KLEEB

NILE DILLMORE

Conferees on part of House

PAT APPLE

JEFF KING

G. THOMAS HOLLAND II

Conferees on part of Senate

Senator Apple moved the Senate adopt the Conference Committee Report on **SB 10**.

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

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt A, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Donovan.

The Conference Committee Report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: The committee on conference on House amendments to **SB 50** submits the following report:

The Senate accedes to all House amendments to the bill, and the committee on conference further agrees to amend the bill as printed with House Committee of the Whole amendments, as follows:

On page 1, in line 13, by striking "(a)"; by striking all in line 15;

On page 3, in line 24, after "PSAP" by inserting "or have extensive prior 911 experience in Kansas";

On page 4, in line 8, by striking "be an administrator of a PSAP" and inserting "serve at the pleasure of the governor and have extensive prior 911 experience in Kansas"; in line 24, after "council." by inserting "The council shall adopt rules and regulations for the terms of the contract with the LCPA. All contract terms and conditions shall satisfy all contract requirements as established by the secretary of administration. The council may, pursuant to rules and regulations, increase the duration of the contract with the LCPA to a maximum of three years.";

On page 6, following line 43, by inserting "(f) This section shall take effect on and after January 1, 2012.";

On page 7, following line 41, by inserting "(g) This section shall take effect on and after January 1, 2012.";

On page 8, in line 2, by striking "five" and inserting "two";

On page 9, in line 1, before "per" by inserting "\$.53"; by striking all in lines 39 and 40;

And by redesignating subsections accordingly;

On page 10, in line 2, by striking "1.1%" and inserting "1.06%";

On page 13, in line 34, after "fund." by inserting "No such repayment of 911 fees shall be imposed pursuant to this section except upon the written order of the council. Such order shall state the unauthorized purposes for which the funds were used, the amount of funds to be repayed and the right of such PSAP to appeal to a hearing before the council. Any such PSAP may, within 15 days after service of the order, make a written request to the council for a hearing thereon. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure

act.

(c) Any action of the council pursuant to subsection (b) is subject to review in accordance with the Kansas judicial review act.

(d) As long as the PSAP is working in good faith to use the 911 fees for expenditures authorized by this act, no repayment of 911 fees shall be required prior to January 1, 2013.";

And by redesignating subsections accordingly;

On page 16, by striking all after line 12;

By striking all on pages 17 through 25 and inserting,

"Sec. 23. On and after July 1, 2011, K.S.A. 2010 Supp. 45-221, as amended by section 192 of 2011 House Bill No. 2339, is hereby amended to read as follows: 45-221.

(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2010 Supp. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2010 Supp. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual, except documents relating to the appointment of persons to fill a vacancy in an elected office.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation, except if the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public officer or employee.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except as provided herein. The district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the

court finds that disclosure:

- (A) Is in the public interest;
- (B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;
- (C) would not reveal the identity of any confidential source or undercover agent;
- (D) would not reveal confidential investigative techniques or procedures not known to the general public;
- (E) would not endanger the life or physical safety of any person; and
- (F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

- (A) The information which the agency maintains on computer facilities; and
- (B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate or release, except that:

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed

after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

(B) the ombudsman of corrections, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;

(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall not be disclosed; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(33) Financial information submitted by contractors in qualification statements to any public agency.

(34) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(35) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(36) Information which would reveal the precise location of an archeological site.

(37) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(38) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 40-2c20 and 40-2d20, and amendments thereto.

(39) Memoranda and related materials required to be used to support the annual actuarial opinions submitted pursuant to subsection (b) of K.S.A. 40-409, and amendments thereto.

(40) Disclosure reports filed with the commissioner of insurance under subsection

(a) of K.S.A. 40-2,156, and amendments thereto.

(41) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.

(42) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.

(43) Market research, market plans, business plans and the terms and conditions of managed care or other third party contracts, developed or entered into by the university of Kansas medical center in the operation and management of the university hospital which the chancellor of the university of Kansas or the chancellor's designee determines would give an unfair advantage to competitors of the university of Kansas medical center.

(44) The amount of franchise tax paid to the secretary of revenue or the secretary of state by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships.

(45) Records, other than criminal investigation records, the disclosure of which would pose a substantial likelihood of revealing security measures that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; or (C) private property or persons, if the records are submitted to the agency. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments.

(46) Any information or material received by the register of deeds of a county from military discharge papers (DD Form 214). Such papers shall be disclosed: To the military dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the commissioner of veterans affairs, to a person conducting research.

(47) Information that would reveal the location of a shelter or a safehouse or similar place where persons are provided protection from abuse or the name, address, location or other contact information of alleged victims of stalking, domestic violence or sexual assault.

(48) Policy information provided by an insurance carrier in accordance with subsection (h)(1) of K.S.A. 44-532, and amendments thereto. This exemption shall not be construed to preclude access to an individual employer's record for the purpose of verification of insurance coverage or to the department of labor for their business purposes.

(49) An individual's e-mail address, cell phone number and other contact information which has been given to the public agency for the purpose of public agency notifications or communications which are widely distributed to the public.

(50) *Information provided by providers to the local collection point administrator or to the 911 coordinating council pursuant to the Kansas 911 act, and amendments thereto, upon request of the party submitting such records.*

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser or the director of property valuation to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

(g) Any confidential records or information relating to security measures provided or received under the provisions of subsection (a)(45) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

Sec. 24. On and after July 1, 2011, K.S.A. 2010 Supp. 75-5133, as amended by section 276 of 2011 House Bill No. 2339, is hereby amended to read as follows: 75-5133. (a) Except as otherwise more specifically provided by law, all information received by the secretary of revenue, the director of taxation or the director of alcoholic beverage control from returns, reports, license applications or registration documents made or filed under the provisions of any law imposing any sales, use or other excise tax administered by the secretary of revenue, the director of taxation, or the director of alcoholic beverage control, or from any investigation conducted under such provisions,

shall be confidential, and it shall be unlawful for any officer or employee of the department of revenue to divulge any such information except in accordance with other provisions of law respecting the enforcement and collection of such tax, in accordance with proper judicial order or as provided in K.S.A. 74-2424, and amendments thereto.

(b) The secretary of revenue or the secretary's designee may:

(1) Publish statistics, so classified as to prevent identification of particular reports or returns and the items thereof;

(2) allow the inspection of returns by the attorney general or the attorney general's designee;

(3) provide the post auditor access to all such excise tax reports or returns in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106, and amendments thereto;

(4) disclose taxpayer information from excise tax returns to persons or entities contracting with the secretary of revenue where the secretary has determined disclosure of such information is essential for completion of the contract and has taken appropriate steps to preserve confidentiality;

(5) provide information from returns and reports filed under article 42 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, to county appraisers as is necessary to insure proper valuations of property. Information from such returns and reports may also be exchanged with any other state agency administering and collecting conservation or other taxes and fees imposed on or measured by mineral production;

(6) provide, upon request by a city or county clerk or treasurer or finance officer of any city or county receiving distributions from a local excise tax, monthly reports identifying each retailer doing business in such city or county or making taxable sales sourced to such city or county, setting forth the tax liability and the amount of such tax remitted by each retailer during the preceding month, and identifying each business location maintained by the retailer and such retailer's sales or use tax registration or account number;

(7) provide information from returns and applications for registration filed pursuant to K.S.A. 12-187, and amendments thereto, and K.S.A. 79-3601, and amendments thereto, to a city or county treasurer or clerk or finance officer to explain the basis of statistics contained in reports provided by subsection (b)(6);

(8) disclose the following oil and gas production statistics received by the department of revenue in accordance with K.S.A. 79-4216 et seq., and amendments thereto: Volumes of production by well name, well number, operator's name and identification number assigned by the state corporation commission, lease name, leasehold property description, county of production or zone of production, name of purchaser and purchaser's tax identification number assigned by the department of revenue, name of transporter, field code number or lease code, tax period, exempt production volumes by well name or lease, or any combination of this information;

(9) release or publish liquor brand registration information provided by suppliers, farm wineries and microbreweries in accordance with the liquor control act. The information to be released is limited to: Item number, universal numeric code, type status, product description, alcohol percentage, selling units, unit size, unit of measurement, supplier number, supplier name, distributor number and distributor name;

(10) release or publish liquor license information provided by liquor licensees, distributors, suppliers, farm wineries and microbreweries in accordance with the liquor

control act. The information to be released is limited to: County name, owner, business name, address, license type, license number, license expiration date and the process agent contact information;

(11) release or publish cigarette and tobacco license information obtained from cigarette and tobacco licensees in accordance with the Kansas cigarette and tobacco products act. The information to be released is limited to: County name, owner, business name, address, license type and license number;

(12) provide environmental surcharge or solvent fee, or both, information from returns and applications for registration filed pursuant to K.S.A. 65-34,150 and 65-34,151, and amendments thereto, to the secretary of health and environment or the secretary's designee for the sole purpose of ensuring that retailers collect the environmental surcharge tax or solvent fee, or both;

(13) provide water protection fee information from returns and applications for registration filed pursuant to K.S.A. 82a-954, and amendments thereto, to the secretary of the state board of agriculture or the secretary's designee and the secretary of the Kansas water office or the secretary's designee for the sole purpose of verifying revenues deposited to the state water plan fund;

(14) provide to the secretary of commerce copies of applications for project exemption certificates sought by any taxpayer under the enterprise zone sales tax exemption pursuant to subsection (cc) of K.S.A. 79-3606, and amendments thereto;

(15) disclose information received pursuant to the Kansas cigarette and tobacco act and subject to the confidentiality provisions of this act to any criminal justice agency, as defined in subsection (c) of K.S.A. 22-4701, and amendments thereto, or to any law enforcement officer, as defined in section 11 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, on behalf of a criminal justice agency, when requested in writing in conjunction with a pending investigation; ~~and~~

(16) provide to retailers tax exemption information for the sole purpose of verifying the authenticity of tax exemption numbers issued by the department.; *and*

(17) provide information concerning remittance by sellers, as defined in section 2, and amendments thereto, of prepaid wireless 911 fees from returns to the local collection point administrator, as defined in section 2, and amendments thereto, for purposes of verifying seller compliance with collection and remittance of such fees.

(c) Any person receiving any information under the provisions of subsection (b) shall be subject to the confidentiality provisions of subsection (a) and to the penalty provisions of subsection (d).

(d) Any violation of this section shall be a class A, nonperson misdemeanor, and if the offender is an officer or employee of this state, such officer or employee shall be dismissed from office. Reports of violations of this paragraph shall be investigated by the attorney general. The district attorney or county attorney and the attorney general shall have authority to prosecute any violation of this section if the offender is a city or county clerk or treasurer or finance officer of a city or county.";

On page 26, in line 5, after "12-5338" by striking ",", and inserting "and"; in line 6, after "12-5361" by striking ", 45-221 and 75-5133"; following line 6, by inserting,

"Sec. 27. From and after July 1, 2011, K.S.A. 2010 Supp. 45-221, as amended by section 192 of 2011 House Bill No. 2339 and 75-5133, as amended by section 276 of 2011 House Bill No. 2339 are hereby repealed.";

And by redesignating the remaining sections accordingly;

On page 1, in the title, in line 3, after "45-221" by inserting ", as amended by section 192 of 2011 House Bill No. 2339,"; also in line 3, after "75-5133" by inserting ", as amended by section 276 of 2011 House Bill No. 2339";

And the committee on conference recommends the adoption of this report.

CARL D. HOLMES
FORREST J. KNOX
ANNIE KUETHER

Conferees on part of House

PAT APPLE
MIKE PETERSEN
KELLY KULTALA

Conferees on part of Senate

Senator Apple moved the Senate adopt the Conference Committee Report on **Sub SB 50**.

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

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt A, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Donovan.

The Conference Committee Report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 93**, submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with House Committee of the Whole amendments, as follows:

On page 3, in line 30, by striking "and agencies";

On page 4, by striking all in line 1 and inserting "office of the attorney general"; in line 32, by striking "officer" and inserting "officers";

On page 5, in line 9, by striking all after "with"; by striking all in line 10; in line 11, by striking "commission" and inserting "the office of the attorney general. The office of the attorney general"; also in line 11, before the period, by inserting "and may find there is insufficient evidence of racial or other biased-based policing or may forward the complaint for further review and possible action to the Kansas commission on peace officers' standards and training. The commission shall review and, if necessary, further investigate the complaint. The commission may take action on the officer's certification or other corrective action as allowed by its governing statutes and rules and regulations"; in line 12, by striking "commission's designee" and inserting "commission"; in line 13, by striking "making" and inserting "taking"; in line 14, by striking "recommendation" and inserting "action"; following line 18, by inserting the following:

"(b) Within 10 days of receiving a complaint, the office of the attorney general

shall provide notification that such complaint has been filed to the accused officer and to the head of the accused officer's law enforcement agency, including a copy of all complaint documentation submitted by the complainant.";

And by relettering the remaining subsections accordingly;

On page 6, in line 10, after "agency" by inserting "and officer";

And your committee on conference recommends the adoption of this report.

LANCE KINZER

JOE PATTON

JANICE L. PAULS

Conferees on part of House

PETE BRUNGARDT

ROGER P. REITZ

Conferees on part of Senate

Senator Brungardt moved the Senate adopt the Conference Committee Report on **SB 93**.

On roll call, the vote was: Yeas 33, Nays 6, Present and Passing 0, Absent or Not Voting 1.

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Schmidt A, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Faust-Goudeau, Francisco, Haley, Hensley, Reitz, Steineger.

Absent or Not Voting: Donovan.

The Conference Committee Report was adopted.

EXPLANATION OF VOTE

Mr. President: I vote "NO" on the conference committee report on **SB 93**. I appreciate the good work and progress made by the committee, however I believe that the state's Human Rights Commission should continue to be involved in the process for reviewing complaints. —MARCI FRANCISCO

Mr. President: I vote "NO" on the Conference Committee report on **SB 93**. (If only all of the Conference Committee members voting "No" now, had not signed the report.) Actually empowering those who practice profiling and harassment of motorists based on race, skin color, county of origin should never be the function of any American Legislature. **SB 93** does just that today. And the sad thing is, all of you that vote for this bill know it. With a wink-and-a-nod, this Legislature looks away from those crooked cowards hiding behind tarnished badges to harass and degrade based on their antique prejudices. And by making a part of Kansas, some Kansans less secure in their person; subject to "unreasonable searches and seizures", you inflict all Kansans.—DAVID HALEY

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 124** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with House Committee of the

Whole amendments, as follows:

On page 1, in line 5, before "Section" by inserting "New";

On page 2, in line 7, before "Sec." by inserting "New"; in line 14, before "Sec." by inserting "New"; in line 27, before "Sec." by inserting "New";

On page 3, in line 23, before "Sec." by inserting "New"; in line 38, before "Sec." by inserting "New"; in line 42, before "Sec." by inserting "New";

On page 4, in line 6, before "Sec." by inserting "New"; in line 16, before "Sec." by inserting "New"; in line 33, before "Sec." by inserting "New";

On page 5, in line 38, before "Sec." by inserting "New";

On page 6, in line 1, before "Sec." by inserting "New"; in line 10, before "Sec." by inserting "New"; in line 19, before "Sec." by inserting "New"; in line 28, before "Sec." by inserting "New"; in line 30, before "Sec." by inserting "New"; in line 34, before "Sec." by inserting "New"; also in line 34, by striking "river";

On page 7, in line 11, before "Sec." by inserting "New"; in line 24, before "Sec." by inserting "New";

On page 8, in line 15, before "Sec." by inserting "New";

On page 9, in line 7, before "Sec." by inserting "New"; in line 31, before "Sec." by inserting "New"; in line 37, before "Sec." by inserting "New"; in line 40, before "Sec." by inserting "New"; following line 41, by inserting the following:

"New Sec. 25. (a) The chief engineer may administer a water rights conservation program. An eligible water right in good standing may be enrolled in the program, subject to the approval of the chief engineer.

(b) A water right may be enrolled in the program for a period that shall not exceed 10 years. A water right enrolled in the program may be re-enrolled within two years of the expiration date of the previous enrollment period, subject to the approval of the chief engineer.

(c) Each application for enrollment in the program and each application for renewal of enrollment shall include a non-refundable fee not to exceed \$300.

(d) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto.

(e) The chief engineer shall adopt rules and regulations to effectuate and administer the provisions of this section.

Sec. 26. K.S.A. 2010 Supp. 82a-718 is hereby amended to read as follows: 82a-718. (a) All appropriations of water must be for some beneficial purpose. Every water right of every kind shall be deemed abandoned and shall terminate when without due and sufficient cause no lawful, beneficial use is henceforth made of water under such right for five successive years. Before any water right shall be declared abandoned and terminated the chief engineer shall conduct a hearing thereon. Notice shall be served on the user at least 30 days before the date of the hearing. The determination of the chief engineer pursuant to this section shall be subject to review in accordance with the provisions of K.S.A. 2010 Supp. 82a-1901, and amendments thereto.

The verified report of the chief engineer or such engineer's authorized representative shall be prima facie evidence of the abandonment and termination of any water right.

(b) When no lawful, beneficial use of water under a water right has been reported for three successive years, the chief engineer shall notify the user, by certified mail, return receipt requested, that: (1) No lawful, beneficial use of the water has been reported for three successive years; (2) if no lawful, beneficial use is made of the water

for five successive years, the right may be terminated; and (3) the right will not be terminated if the user shows that for one or more of the five consecutive years the beneficial use of the water was prevented or made unnecessary by circumstances that are due and sufficient cause for nonuse, which circumstances shall be included in the notice.

(c) The provisions of subsection (a) shall not apply to a water right that has not been declared abandoned and terminated before the effective date of this act if the five years of successive nonuse occurred exclusively and entirely before January 1, 1990. However, the provisions of subsection (a) shall apply if the period of five successive years of nonuse began before January 1, 1990, and continued after that date.

(d) Notwithstanding the provisions of subsection (a), an eligible water right enrolled in and continually in compliance with the water rights conservation program, pursuant to section 25, and amendments thereto, shall be deemed to have due and sufficient cause for nonuse and shall not be deemed abandoned.

~~(d)~~(e) Notwithstanding the provisions of subsection (a), a groundwater right, which has as its local supply an aquifer area that has been closed to new appropriations by rule, regulation or order of the chief engineer and where means of diversion are available to put water to a beneficial use within a reasonable time, shall be deemed to have due and sufficient cause for nonuse and shall not be deemed abandoned.

Sec. 27. K.S.A. 2010 Supp. 82a-731 is hereby amended to read as follows: 82a-731. There is hereby created in the state treasury the water appropriation certification fund. The chief engineer of the division of water resources of the Kansas department of agriculture shall remit all moneys received under K.S.A. 82a-708a, 82a-708b and 82a-727, and amendments thereto, *and section 25, and amendments thereto*, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the water appropriation certification fund. All expenditures from the water appropriation certification fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person designated by the secretary.

Sec. 28. K.S.A. 2010 Supp. 82a-736 is hereby amended to read as follows: 82a-736. (a) As used in this section:

(1) "Base average usage" means: (A) The average amount of water actually used for a beneficial use under a groundwater water right during calendar years ~~1992~~2000 through ~~2002~~2009, excluding any amount used in any such year in excess of the amount authorized by such water right; or (B) if the holder of a groundwater water right shows to the satisfaction of the chief engineer that the holder has implemented significant water conservation measures during calendar years ~~1992~~ 2000 through ~~2002~~2009, the average amount of water actually used for a beneficial use under such right during the five calendar years immediately before the calendar year when such measures were implemented, excluding any amount used in any such year in excess of the amount authorized by such water right.

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

(b) Any holder of a groundwater water right which has not been deposited or placed in a safe deposit account in a chartered water bank may establish a flex account

where the holder may deposit, in advance, water from such water right for any five consecutive calendar years, subject to the following:

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

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

(3) the water right shall not ~~have been~~ *be deemed* abandoned and shall be in good standing, based on past water usage and compliance with the terms of the holder's permit and all applicable provisions of law and orders of the chief engineer; and

(4) the amount of water that shall be deposited in the account shall not exceed 90% of the amount of the holder's base average usage times five.

(c) 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 five consecutive calendar years for which the application for the term permit is made, without annual limits on such use. ~~Application for any such term permit shall be filed not later than October 10, of the year preceding the first year for which the application is made.~~

(d) 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.

(2) The quantity of water authorized for diversion shall be limited to the amount deposited pursuant to subsection (b)(4).

(3) The authorized place of use for the term permit shall not be greater than that authorized by the existing groundwater right.

(4) The chief engineer may establish, by rules and regulations, criteria for such term permits when the water right authorizes multiple points of diversion or multiple water rights authorize a single point of diversion or overlapping places of use.

(5) 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.

(e) Unless a term permit is issued pursuant to an application filed before November 1 of the year prior to the first year for which the application is made, the quantity of water used under the water right during the year in which the application for the term permit is filed shall be deducted from the amount of water deposited into the account authorized by the term permit.

~~(f)~~ (f) 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 which 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.

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

~~(g)~~^(h) This section shall be part of and supplemental to the Kansas water appropriation act.

New Sec. 29. (a) (1) There is hereby established in the state treasury the Arkansas river gaging fund, which shall be administered by the secretary of agriculture. All expenditures from the Arkansas river gaging fund shall be for the operation and maintenance of the gages along the Arkansas river necessary to manage the river under the Arkansas river compact, except that, after all expenditures are made during the fiscal year for the operation and maintenance of the gages along the Arkansas river necessary to manage the river under the Arkansas river compact, then, in accordance with the following priorities and subject to the expenditure limitations prescribed therefor:

(A) First, any remaining moneys authorized to be expended from the fund for the fiscal year shall be expended for the purposes of livestock market reporting in an amount not to exceed \$20,000 in a fiscal year; and

(B) second, if there are any remaining moneys authorized to be expended from the fund for the fiscal year after the expenditures for livestock market reporting, then expenditures shall be made from the fund for the purpose of funding the bluestem pasture report in an amount not to exceed \$5,000.

(2) All expenditures from the Arkansas river gaging fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or the designee of the secretary of agriculture.

(b) All moneys received as royalties from the state's oil and gas leases in Hamilton, Kearny, Finney, Gray and Ford counties, except those moneys arising from leases on lands under the control of the secretary of wildlife and parks as provided by K.S.A. 32-854, and amendments thereto, shall be deposited in the state treasury in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, and shall be credited to the Arkansas river gaging fund. During each fiscal year, when the total amount of moneys credited to the fund is equal to \$75,000, no further moneys shall be credited to the fund. The remainder of the moneys received for such royalties for such fiscal year shall be credited to the state general fund.

Sec. 30. K.S.A. 2010 Supp. 82a-718, 82a-731 and 82a-736 are hereby repealed.";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking "and"; in line 2, by striking all before the period and inserting "; water rights conservation program; multi-year flex accounts; Arkansas river gaging fund; amending K.S.A. 2010 Supp. 82a-718, 82a-731 and 82a-736 and repealing existing sections";

And your committee on conference recommends the adoption of this report.

LARRY POWELL

DAN KERSCHEN

JERRY WILLIAMS

Conferees on part of House

RALPH OSTMEYER

CAROLYN MCGINN

MARCI FRANCISCO

Conferees on part of Senate

Senator Ostmeyer moved the Senate adopt the Conference Committee Report on **SB**

124.

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

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt A, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Francisco.

Absent or Not Voting: Donovan.

The Conference Committee Report was adopted.

EXPLANATION OF VOTE

Mr. President: I vote "NO" on the conference committee report on **SB 124**. I support all the measures in the report except for those that were in **HB 2357**. And although I fully support the expenditures identified in **HB 2357** for streamgages and the livestock market and bluestem reports. I believe that it would be not only more appropriate but also more efficient to continue to fund these expenditures directly from the State Water Plan or the State General Fund rather than by setting up yet another fund to bypass the budgeting process. —MARCI FRANCISCO

ORIGINAL MOTION

On motion of Senator Schodorf, the Senate acceded to the request of the House for a conference on **SB 143**.

The President appointed Senators Schodorf, Vratil and Hensley as second conferees on the part of the Senate.

CONSIDERATION OF APPOINTMENTS

In accordance with Senate Rule 56, the following appointments, submitted by the Governor to the Senate for confirmation, were considered.

Senator Emler moved the following appointments be confirmed as recommended by the Standing Senate Committees.

By the Governor:

On the appointment to the:

Kansas Corporation Commission:

Mark P. Sievers, Member, to serve a four year term, expiring March 15, 2015.

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

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt A, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Donovan.

The appointment was confirmed.

On the appointment to the:

Pooled Money Investment Board:

Robert Chestnut, Member, to serve a four year term, expiring March 15, 2012.

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

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt A, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Donovan.

The appointment was confirmed.

COMMITTEE OF THE WHOLE

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

On motion of Senator Petersen the following report was adopted:

Recommended **SB 247** be passed.

HCR 5024 be adopted.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator Emler an emergency was declared by a 2/3 constitutional majority, and **SB 247; HCR 5024** were advanced to Final Action and roll call.

SB 247, AN ACT reconciling amendments to certain statutes and making certain technical changes related thereto; amending K.S.A. 19-4804, 20-369, as amended by section 4 of chapter 101 of the 2010 Session Laws of Kansas, 22-2307, as amended by section 8 of chapter 101 of the 2010 Session Laws of Kansas, 22-2908, as amended by section 9 of chapter 101 of the 2010 Session Laws of Kansas, 58-2011, as amended by section 23 of 2011 Senate Bill No. 112, 60-1620, as amended by section 44 of 2011 Senate Bill No. 24, 65-445, as amended by section 2 of 2011 House Bill No. 2035, 65-6703, as amended by section 4 of 2011 House Bill No. 2035 and 65-6721, as amended by section 8 of 2011 House Bill No. 2035 and K.S.A. 2009 Supp. 22-2909, as amended by section 10 of chapter 101 of the 2010 Session Laws of Kansas and K.S.A. 2010 Supp. 8-116a, as amended by section 1 of 2011 House Bill No. 2192, 8-259, 8-1020, 8-2118, 9-1703, as amended by section 1 of 2011 House Bill No. 2056, 12-1774, 12-17,149, 12-4117, 22-2410, 22-2802, as amended by section 118 of 2011 House Bill No. 2339, 22-3305, 22-3428, 22-3428a, 22-3437, 38-2258, 38-2373, 40-2,118, as amended by section 6 of 2011 House Bill No. 2030, 60-740, 60-3107, as amended by section 46 of 2011 Senate Bill No. 24, 65-530, 66-2304 and 75-52,127 and sections 52, 189, 194 and 266 of chapter 136 of the 2010 Session Laws of Kansas and section 244 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 66 of 2011 House Bill No. 2339, section 285 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 1 of 2011 Senate Substitute for House Bill No. 2008 and section 298 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 81 of 2011 House Bill No. 2339 and section 36 of 2011 Senate Bill No. 24 and repealing the existing sections; also repealing K.S.A. 19-4804, as amended by section 108 of 2011

House Bill No. 2339, 20-369, as amended by section 109 of 2011 House Bill No. 2339, 22-2307, as amended by section 120 of 2011 House Bill No. 2339, 22-2908, as amended by section 121 of 2011 House Bill No. 2339, 58-2011, as amended by section 24 of 2011 Senate Bill No. 229, 60-1620, as amended by section 218 of 2011 House Bill No. 2339, 65-445, as amended by section 4 of 2011 House Bill No. 2218, 65-6703, as amended by section 247 of 2011 House Bill No. 2339, 65-6721, as amended by section 248 of 2011 House Bill No. 2339 and K.S.A. 2009 Supp. 22-2909, as amended by section 122 of 2011 House Bill No. 2339 and K.S.A. 2010 Supp. 8-116a, as amended by section 85 of 2011 House Bill No. 2339, 8-259a, 8-1020a, 8-2118b, 9-1703, as amended by section 4 of 2011 Senate Bill No. 229, 12-1774c, 12-17,149a, 12-4117a, 21-4603d, as amended by section 1 of 2011 House Bill No. 2118, 22-2410, as amended by section 114 of 2011 House bill No. 2339, 22-2802, as amended by section 2 of 2011 House Bill No. 2118, 22-3305a, 22-3428c, 22-3428d, 22-3437a, 38-2258a, 38-2373a, 40-2,118, as amended by section 177 of 2011 House Bill No. 2339, 60-740a, 60-1610, as amended by section 8 of 2011 Senate Bill No. 38, 60-1610, as amended by section 217 of 2011 House Bill No. 2339, 60-1629, as amended by section 219 of 2011 House Bill No. 2339, 60-3107, as amended by section 221 of 2011 House Bill No. 2339, 65-504a, 65-530a, 65-1626d, 66-2304, as amended by section 249 of 2011 House Bill No. 2339 and 75-52,127, as amended by section 281 of 2011 House Bill No. 2339 and section 52 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 21 of 2011 House Bill No. 2339, section 189 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 51 of 2011 House Bill No. 2339, section 194 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 54 of 2011 House Bill No. 2339, section 244 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 3 of 2011 House Bill No. 2118, section 266 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 72 of 2011 House Bill No. 2339, section 285 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 77 of 2011 House Bill No. 2339 and section 298 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 1 of 2011 House Bill No. 2038.

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

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt A, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Donovan.

The bill passed.

HCR 5024, A CONCURRENT RESOLUTION recognizing LeCompton as a Territorial Capital.

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

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt A, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Donovan.

The resolution was adopted.

Senator Francisco welcomed and introduced the following guests for their involvement of recognizing Lecompton as a Territorial Capital: Paul Bahnmaier, Jason Dexter, Opal Goodrick, Elsie Middleton, Keith Noe, Deb Powell, Tim Rues, Iona Spencer, Georgia Trammel, Johnny Trammel, and Charlene Winter. All were acknowledged with a standing ovation from the Senate.

REPORTS OF STANDING COMMITTEES

Committee on **Federal and State Affairs** begs leave to submit the following report:

The following appointments were referred to and considered by the committee and your committee recommends that the Senate approve and consent to such appointments:

By the Governor:

State Gaming Agency, Executive Director: K.S.A. 74-9804

Mark Dodd, serves at the pleasure of the Governor

State Librarian: K.S.A. 75-2535

Joanne Budler, serves at the pleasure of the Governor

State Civil Service Board: K.S.A. 75-2929a

Phillis Setchell, term expires March 15, 2015

Kansas Racing and Gaming Commission, Executive Director: K.S.A. 74-8805

Rick Petersen-Klein, serves at the pleasure of the Governor

Also, **SB 241** be amended on page 4, in line 32, by striking "2%" and inserting "1%"; following line 34 by inserting:

"(14) include a provision for 1% of lottery gaming facility revenue to be paid to the development and promotions fund of the Kansas department of wildlife and parks for the purposes of promoting tourism;"

And by renumbering the remaining paragraphs accordingly;

On page 10, in line 41, by striking "2%" and inserting "1%"; following line 43 by inserting:

"(7) 1% of net electronic gaming machine income shall be credited to the development and promotions fund of the Kansas department of wildlife and parks for the purposes of promoting tourism;"

And by renumbering the remaining paragraphs accordingly;

And the bill be passed as amended.

Committee on **Public Health and Welfare** recommends **HB 2241**, as amended by adoption of the committee report as recommended by Committee on Public Health and Welfare as reported in the Journal of the Senate on March 18, 2011, and the bill as printed with amendments by Senate Committee, be further amended:

On page 1, in line 20, by striking "independent" and inserting "professional"; in line 21, by striking "in the performance of such dentist's professional"; in line 23, by striking "duties";

On page 2, in line 6, by striking "independent" and inserting "professional"; in line 7, by striking "in the performance of such dentist's professional"; in line 8, by striking "duties"; in line 39, by striking "Kansas"; in line 42, by striking "Kansas";

On page 4, in line 3, by striking "Kansas"; in line 19, by striking "Kansas";

On page 7, in line 13, by striking "Kansas"; in line 38, by striking "Kansas";

On page 8, in line 14, after "representation;", by inserting "and"; following line 30,

by inserting the following: "New Sec. 7. (a) The Kansas dental board may seek declaratory judgment pursuant to K.S.A. 60-1701 et seq., and amendments thereto, against any dentist or franchisor or other entity that contracts with a dentist, if any contract between the dentist and franchisor or any other entity appears to the board to be in violation of the dental practices act. Upon a finding that a dentist, franchisor or other entity is a party to an agreement that is in violation of state law, or the dental practices act, or both, the court may enjoin the enforcement of the contract provisions determined to be in violation of state law, or the dental practices act, or both. The court may award reasonable attorney fees to the prevailing party in any action for declaratory judgment brought pursuant to this section.

- (b) This section shall be part of and supplemental to the dental practices act.";
- And by renumbering remaining sections accordingly;
- On page 8, in line 34, by striking "statute book" and inserting "Kansas register";
- On page 1, in the title, in line 1, by striking "Kansas";
- And the bill be passed as amended.

Committee on **Ways and Means** begs leave to submit the following report:

The following appointment was referred to and considered by the committee and your committee recommends that the Senate approve and consent to such appointment:

By the Governor:

Kansas Public Employees' Retirement System Board of Trustees: K.S.A. 74-4905

Terry Matlack, term expires January 15, 2015

Also, HB 2357 be amended by substituting a new bill to be designated as "SENATE Substitute for HOUSE BILL NO. 2357," as follows:

"SENATE Substitute for HOUSE BILL NO. 2357

By Committee on Ways and Means

"AN ACT concerning to Kansas bioscience authority; relating to membership thereof; amending K.S.A. 2010 Supp. 74-99b04 and repealing the existing section.";

And the substitute bill be passed.

SB 240 be amended on page 6, in line 21, after "oversight" by inserting "and the legislative coordinating council"; and the bill be passed as amended.

HB 2336, as amended by House Committee of the Whole, be amended on page 1, in line 6, after the period by inserting "As used in this act:

(1) "Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(2) "Integrated setting" means with respect to an employment outcome, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.";

On page 2, by striking all in lines 32 through 43;

On page 3, by striking all in lines 1 through 8; following line 8, by inserting "(a) There is hereby established a Kansas employment first oversight commission consisting of five members. The commission shall consist of the following members who shall serve for a three-year term:

(1) Four members who are persons with a disability or who are knowledgeable of disability issues and who are not state employees, of whom:

- (A) One shall be appointed by the speaker of the house of representatives;
- (B) one shall be appointed by the minority leader of the house of representatives;
- (C) one shall be appointed by the president of the senate; and
- (D) one shall be appointed by the minority leader of the senate;

(2) one member who is experienced with employment service programs and who is not a state employee shall be appointed by the governor.

(b) The governor shall designate one member to convene and organize the first meeting of the commission at which the commission shall elect a chairperson and a vice-person from among its members. The commission shall meet at least four times a year and, additionally, whenever called by the chairperson. A quorum shall consist of three members. All actions of the commission shall be taken by a majority of the members of the commission.

(c) Each member of the commission shall be paid mileage and other expenses as provided by K.S.A. 75-3212, and amendments thereto.

(d) The commission shall establish measurable goals and objectives for the state of Kansas to ensure implementation of this act. The commission shall track the measurable progress of public agencies in implementing this act. All state agencies shall fully cooperate with and provide data and information to assist the commission in carrying out its duties.

(e) The commission shall issue an annual report on or before January 1 each year which shall be presented to the governor and members of the state legislature. The report shall detail progress toward the goals and objectives and full implementation of this act. All state agencies shall cooperate with the commission on the creation and dissemination of the annual report. The report also shall identify barriers to achieving the outcomes along with the effective strategies and policies that can help realize the employment first initiative.

(f) The governor shall select from the cabinet agencies the lead agency responsible for compiling data and coordinating the preparation of the annual report at the direction of the commission. The activities of the commission and lead agency pursuant to this section shall be done within existing grants and resources.";

On page 1, in the title, in line 2, before the period by inserting "and creating the Kansas employment first oversight commission";

And the bill be passed as amended.

On motion of Senator Emler, the Senate adjourned until 10:00 a.m., Thursday, May 5, 2011.

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

PAT SAVILLE, *Secretary of the Senate.*

