

SPECIAL SESSION

Journal of the Senate

THIRD DAY

SENATE CHAMBER, TOPEKA, KANSAS
Friday, June 24, 2005—1:00 p.m.

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

Heavenly Father,

Help us all to really believe
No victory compares with the one
That was won by Your Son when He prayed,
“Not my will, but Thine be done.”

It’s a lesson that we should all learn
Before facing our own setting sun:
It’s found in what’s called The Lord’s Prayer.
We **MUST** pray that “Thy will be done.”

We think we have winning ways;
Each time we think we have won.
But true victory is never really obtained.
Until we pray, “Thy will be done.”

We like to brag “I did it my way,”
But when we find ourselves “under the gun,”
The only way the battle is won
Is when we pray, “Thy will be done.”

Your will, O God, may not be what we like:
Many times it isn’t much fun;
But the victory we gain is worth all the pain
When we pray, “Thy will be done.”

And I pray, O God, that Thy will be done
in the Name of Jesus Christ,

AMEN

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was referred to Committee as indicated:
Assessment and Taxation: **SB 8**.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2004**, **HB 2005**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2004, HB 2005 were thereupon introduced and read by title.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Apple, Allen, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, D Schmidt, V Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, and Wysong introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1805—

A Resolution congratulating and commending Dr. John A. (Andy) Tompkins.

WHEREAS, Dr. John A. (Andy) Tompkins, the Kansas Commissioner of Education, is retiring after completing nearly 10 years in this position; and

WHEREAS, During his tenure as the Kansas Commissioner of Education he has been a dynamic spokesperson for the improvement of education for Kansas children. Salient program implementations under his direction have been the redesign of the school accreditation and teacher licensure systems and the implementation of the federal no child left behind act; and

WHEREAS, After receiving a bachelor's degree in English from East Central State University in Ada, Oklahoma, he commenced his teaching career as a high school English teacher in Pauls Valley, Oklahoma. One year in Oklahoma schools was enough, however. The next year he taught English at Hugoton and then progressed to positions at Kansas schools as the high school principal at Pomona, superintendent of schools at Satanta, El Dorado and Salina and as the interim dean for the school of education at Pittsburg State University before becoming the Commissioner of Education. Along the way he acquired his master's degree from Emporia State University and his doctorate in educational administration from the University of Kansas; and

WHEREAS, Dr. Tompkins' many professional contributions include service on the board of directors and as president of the Kansas Association of School Administrators, chairperson of the Governor's Education Advisory Task Force, chairperson of the resolutions committee of the American Association of School Administrators, member of the board of directors of the Council of Chief State School Officers and treasurer and Kansas commissioner of the Education Commission of the States; and

WHEREAS, Dr. Tompkins has not completed his contribution to Kansas education. Subsequent to his retirement from his current position he plans to teach at the School of Education of the University of Kansas with an emphasis in school district leadership; and

WHEREAS, Dr. Tompkins and his wife, Glenda, are the parents of two children, Amanda and Kyle: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend Dr. John A. (Andy) Tompkins upon his retirement as the Kansas Commissioner of Education. We thank him for the leadership he has given the teachers of our children and for his direct involvement for over 20 years as a teacher and administrator; and we wish his success at the University of Kansas as he continues in his chosen field of education; and

Be it further resolved: That the Secretary of the Senate provide an enrolled copy of this resolution to Dr. John A. (Andy) Tompkins at 6647 SW Wentley Lane, Topeka, Kansas 66614 plus a copy to the office of the Commissioner of Education.

On emergency motion of Senator Apple **SR 1805** was adopted unanimously.

Senators joined Senator Apple in honoring Dr. Tompkins with a standing ovation.

Senators Morris and Haley introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1806—

A RESOLUTION congratulating and commending the General Motors Fairfax automobile assembly plant.

WHEREAS, The General Motors automobile assembly plant located in the Fairfax dis-

tract of Kansas City is scheduled to build its 10 millionth automobile this summer. The company plans to celebrate this event on August 19; and

WHEREAS, The original plant was constructed by the federal government to build B25 bombers. After World War II General Motors leased the plant from the federal government to build automobiles. During the Korean War the plant reverted to building airplanes—this time the F84F fighter planes; and

WHEREAS, Disaster struck the plant during the flood of 1951 when water rose to nine feet in the plant. After the clean-up, it went back on line as the nation's first facility constructing both aircraft and automobiles during the Korean War. General Motors purchased the plant in 1960 and started a \$17 million renovation of the facility. In 1968 the plant was renamed, officially becoming the Fairfax Assembly Plant; and

WHEREAS, Disaster again struck the plant in 1979 when 56,000 square feet of the plant roof collapsed. Reconstruction took three months of effort before full production could be resumed; and

WHEREAS, In 1985 construction on a new plant was commenced. Production at the old plant ceased in 1987 ending 41 years of auto assembling and the production of over seven million automobiles. The new plant was completed in July of 1987 and a second shift of workers was added in 1988. In 1994 a new flexible body shop was completed allowing the plant to build six different body styles from three different platforms; and

WHEREAS, In 2002 General Motors and UAW Local 31 were recognized as the 2002 Greater Kansas City area Corporate Philanthropists of the Year—the first time any organization on the Kansas side of the metropolitan Kansas City area had been so recognized; and

WHEREAS, In 2003 the plant was shut down for three months to retool for state of the art platforms allowing for construction of modern models such as the new Chevrolet Malibu and the Saturn Aura: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That the Senate congratulates and commends General Motors and the dedicated employees of the organization on its long history of automotive manufacturing in the Kansas City area and upon its projected completion of its 10 millionth vehicle this summer; and

Be it further resolved: That the Secretary of the Senate provide three enrolled copies of this resolution to John J. Federico, J. D., 815 SW Topeka Blvd., Second Floor, Topeka, KS 66612, for presentation to the Fairfax Assembly plant manager and the UAW Local 31 President.

On emergency motion of Senator Haley **SR 1806** was adopted unanimously.

REPORTS OF STANDING COMMITTEES

Committee on **Judiciary** recommends **SCR 1603** be amended on page 1, in line 23, by striking “. The.”; by striking all in lines 24 and 25; in line 26, by striking all before the period and inserting “or to redirect the expenditure of funds appropriated by law, except as the legislative branch may provide by law or as may be required by the Constitution of the United States”; in line 33, by striking “nor shall”; by striking all in lines 34 and 35; in line 36, by striking all before the period and inserting “nor to redirect the expenditures of funds appropriated by law, except as the legislative branch may provide by law or as may be required by the Constitution of the United States”; in line 41, by striking “for any purpose” and inserting “, except as the legislative branch may provide by law or as may be required by the Constitution of the United States”; in line 42, by striking “any” and inserting “a”;

On page 2, in line 1, before the period by inserting “, except as the legislative branch may provide by law or as may be required by the Constitution of the United States”; in line 16, by striking “August 16,”; in line 17, by striking “2005” and inserting “the first Tuesday following 60 calendar days after the approval of this resolution by both the Senate and the House of Representatives of the Kansas legislature”; and the concurrent resolution be adopted as amended.

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

AFTERNOON SESSION

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

COMMITTEE OF THE WHOLE

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

On emergency motion of Senator D. Schmidt **SCR 1603** was moved to the first order of business on the calendar under the heading of General Orders.

On motion of Senator Emler the following report was adopted.

Recommended **SCR 1603** be amended by adoption of the of the committee amendments, and the resolution be adopted as amended.

SB 2 be amended by adoption of the committee amendments, be further amended by motion of Senator Vratil as amended by Senate Committee, on page 16, in line 36, after "22%" by inserting "of residual lottery gaming facility revenues"; in line 40, after "78%" by inserting "of residual lottery gaming facility revenues"

Senator Barnett further amended **SB 2** as amended by Senate Committee, on page 7, in lines 13 and 14, by striking "a gaming-related facility" and inserting "class III gaming, as defined in K.S.A. 46-2301, and amendments thereto,,"; also in line 14, after the period, by inserting "A prospective lottery gaming facility manager shall not be deemed to meet the requirement of this paragraph (3) by virtue of having employed, after June 30, 2002, personnel with such experience in the management of class III gaming."

Senator Journey further amended **SB 2** as amended by Senate Committee, on page 17, in line 27, by striking 5% and inserting "0.5%"

on page 18, in line 3 by striking 5% and inserting "0.5%"

on page 18, in line 18 by striking 5% and inserting "0.5%"

on page 18, in line 25 by striking 5% and inserting "0.5%", and **SB 2** be passed as further amended.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator D. Schmidt an emergency was declared by a 2/3 constitutional majority, and **SB 2; SCR 1603** were advanced to Final Action and roll call.

SB 2, An act concerning lotteries; enacting the Kansas expanded lottery act; authorizing operation of certain lottery gaming facilities, electronic gaming machines, video lottery terminals and other lottery games at certain locations; prohibiting certain acts and providing penalties for violations; making appropriations for the fiscal year ending June 30, 2006; amending K.S.A. 74-8702, 74-8705, 74-8710, 74-8716, 74-8723, 74-8830 and 74-8832, K.S.A. 2004 Supp. 74-8711 and K.S.A. 2004 Supp. 19-101a, as amended by section 1 of 2005 Senate Bill No. 298, and repealing the existing sections, was considered on final action.

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

Yeas: Barone, Betts, Brungardt, Emler, Gilstrap, Haley, Hensley, Kelly, Lee, Morris, D. Schmidt, Schodorf, Steineger, Teichman, Umbarger, Vratil, Wysong.

Nays: Apple, Barnett, Brownlee, Bruce, Donovan, Francisco, Goodwin, Huelskamp, Jordan, Journey, McGinn, O' Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, V. Schmidt, Taddiken, Wagle, Wilson.

Absent or Not Voting: Allen.

A constitutional majority having failed to vote in favor of the bill, **SB 2** did not pass.

EXPLANATION OF VOTE

My vote in favor of **SB 2** is a difficult one.

But we face a dramatic need for revenues. We have a responsibility to plan for and respond to financial pressures from increasing Medicaid costs, KPERS expenditures and the ongoing needs of the comprehensive highway plan. All of these are in addition to our top priority of funding public education.

A key part of this proposal for me is that county residents will get to vote — or have already voted — on whether a casino should be located in their county. Only three counties will be eligible to apply for a license. Passage of this bill does **not** signal an unchecked, indiscriminate spread of casinos.

Some argue expanded gaming will lead to more gambling addiction and other social problems. These targeted locations already have access to gaming; it is not a new situation and these are not new problems. Programs to help those with addictions already exist and will be continued.

Another key point is that significant gaming revenue that will come to the state. Casinos and slots and other forms of gambling are here — in our state and in our neighboring states. Kansas currently does NOT benefit from those. We have this opportunity to gain a major source of new revenue for Kansas schools.

Our children and our schools are worth it. I am voting for them. — STEPHEN R. MORRIS
Senators Betts, Haley, Kelly, D. Schmidt, Schodorf, Teichman, Umbarger, Vratil and Wysong request the record to show they concur with the “Explanation of Vote” offered by Senator Morris on **SB 2**.

SCR 1603, A PROPOSITION to amend section 24 of article 2 of the constitution of the state of Kansas, relating to appropriations, was considered on final action.

On roll call, the vote was: Yeas 30, Nays 9, Present and Passing 0, Absent or Not Voting 1.

Yeas: Apple, Barnett, Brownlee, Bruce, Brungardt, Donovan, Emler, Gilstrap, Huel-skamp, Jordan, Journey, McGinn, Morris, O’Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, D. Schmidt, V. Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Barone, Betts, Francisco, Goodwin, Haley, Hensley, Kelly, Lee, Steineger.

Absent or Not Voting: Allen.

The resolution was adopted, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: As we gather in this historic hall of Justice during this special session, the Court Seal of the State of Kansas hangs above these proceedings to provide a telling symbol of the foundation of our State. If you look, you see an outstretched hand from heaven bestowing Justice to the people of Kansas.

Likewise, none of the basic principles of our government are simply relative perspectives. They are the divine rights of a sovereign people.

SCR 1603 does more than just clarify the people’s right to appropriate funds, through the people’s branch of government—the Legislature. It reasserts one of our most sacred principles.

In America, government does not give orders to the people and attempt to control them. In America, the people give orders to the government.

Because I believe, here in Kansas, the people control government. I vote yes for **SCR 1603**.—TERRY BRUCE

Senators Barnett, Brownlee, Jordan, Journey, McGinn, O’Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, D. Schmidt, Taddiken, Umbarger and Wilson request the record to show they concur with the “Explanation of Vote” offered by Senator Bruce on **SCR 1603**.

MR. PRESIDENT: I vote no on **SCR 1603**.

Amendments to our state constitution should be carefully considered over more time than **SCR 1603** has been given.

Just because legislators are angry with the Kansas Supreme Court’s order on school finance is no reason to amend Article 2 of our constitution.

The Court was doing its job, just as all other courts do their job, by deciding the *Montoy* case based on the evidence before it. The evidence before it, the only evidence before it, which was not refuted by the state, was the Auginblick and Myers study. This study was authorized and paid for by the Kansas Legislature.

The Legislature should not attempt to place itself above or outside of scrutiny by the courts. This amendment presumes that every act of appropriations by the Legislature is correct and in compliance with the rights guaranteed to average citizens.

The courts are the arbiters between the legislative branch and the people. The only way citizens can feel their rights are secure is to know that the judicial branch protects them against the people, both in and outside of government, who work against their interests.

This amendment diminishes the judicial branch's power to protect the people. —
ANTHONY HENSLEY

Senators Betts, Francisco, Goodwin, Haley, Kelly and Lee request the record to show they concur with the "Explanation of Vote" offered by Senator Hensley on **SCR 1603**.

ORIGINAL MOTION

Having voted on the prevailing side in Final Action on **SB 2**, Senator Barnett moved the Senate reconsider its adverse action on **SB 2**. The motion failed.

On motion of Senator D. Schmidt the Senate adjourned until 2:00 p.m., Saturday, June 25, 2005.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks*.

PAT SAVILLE, *Secretary of the Senate*.



CORRECTION OF THE JOURNAL

Correct the Journal of the Senate, Wednesday, June 22, 2005, page 9 under the heading of Explanation of Vote, to reflect Senator Bruce's explanation of vote to read as follows:

MR. PRESIDENT: Local entities should have the ability to raise and spend money as they see fit, and sometimes it may mean to file suit to address their grievances in a court of law.
I vote no—TERRY BRUCE

Senators Apple, Barone, Emler, Francisco, Goodwin, Kelly, Lee, McGinn, Morris, Pine, V. Schmidt, Schodorf, Teichman, Umbarger, Vratil and Wysong request the record to show they concur with "Explanation of Vote" offered by Senator Bruce on **SB 3**.