

Journal of the House

TWENTY-THIRD DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Thursday, February 10, 2005, 11:00 a.m.

The House met pursuant to adjournment with Speaker Mays in the chair.
The roll was called with 119 members present.
Reps. Huy and Kuether were excused on verified illness.
Rep. Weber was excused on legislative business.
Reps. George, Judy Morrison and Winn were excused on excused absence by the Speaker.
Prayer by guest chaplain, Dr. L. D. Holmes, Senior Pastor, Wanamaker Woods Church of the Nazarene, Topeka, and guest of Rep. Gordon:

Dear Father,

We have been the recipients of your blessings and for that we want to give you thanks and praise. You have allowed us to live in peace, prosperity and the promise of your continual presence on this journey called life.

Help us to not forget the Divine hand which has directed our destinies, preserved us in peace and strengthened our resolve to be better today than we were yesterday.

Today, I pray for these who have been selected by you and their peers. I ask that you give them keen wisdom and insight as well as vision which will guide our great state into its very best days. I also pray for the families of these who have gathered to serve. Protect and bless them while their loved ones give of themselves in the cause of democracy.

I would also ask you to refresh those who may be discouraged and to bring a sense of balance to any who might be tempted to indulge in the intoxication of success.

In the name of the One who has the power to grant eternal life we pray.
Amen.

The Pledge of Allegiance was led by Rep. Faber.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

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

HB 2431, An act relating to commercial drivers' licenses; requiring reporting of certain alcohol and drug test results to the division of vehicles, by Committee on Transportation.

HB 2432, An act concerning real property; relating to recreational trails; liability of adjacent property owners; amending K.S.A. 2004 Supp. 58-3214 and repealing the existing section, by Committee on Agriculture.

HB 2433, An act concerning sales taxation; relating to exemptions; SkillsUSA convention; amending K.S.A. 2004 Supp. 79-3603 and repealing the existing section, by Committee on Taxation.

HB 2434, An act concerning sales taxation; exempting sales of certain appliances; amending K.S.A. 2004 Supp. 79-3606 and repealing the existing section, by Committee on Utilities.

HOUSE CONCURRENT RESOLUTION No. 5012—

By Representative Oharah

A PROPOSITION to amend sections 5 and 8 of article 3 of the constitution of the state of Kansas; providing for the election of justices of the supreme court.

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

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Sections 5 and 8 of article 3 of the constitution of the state of Kansas are hereby amended as follows:

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

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

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

“Shall _____

(Here insert name of justice.)

(Here insert the title of the court.)

be retained in office.”

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

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

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

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

~~(g) No member of the supreme court nominating commission shall, while he is a member, hold any other public office by appointment or any official position in a political party or for six months thereafter be eligible for nomination for the office of justice of the supreme court. The commission may act only by the concurrence of a majority of its members election at the next general election. Such election shall be nonpartisan and from the state at large. Persons who have been admitted to practice law for a minimum of five years and are in good standing before the state supreme court may file in the office of the Secretary of State a declaration of candidacy for election to fill a vacancy on the supreme court. Such candidates shall be subject to a primary election held at least 60 days before the next general election. The three candidates receiving the greatest number of votes at the primary election shall have their names placed on the ballot for the general election, and the candidate receiving the greatest number of votes at the general election shall succeed to the vacant supreme court position. Each justice so elected shall hold office for a term of six years which term shall commence on the second Monday in January following the general election. Justices of the supreme court may seek reelection.~~

~~§8. Prohibition of political activity by justices and certain judges. No justice of the supreme court who is appointed or retained under the procedure of section 5 of this article, nor any judge of the district court holding office under a nonpartisan method authorized in subsection (a) of section 6 of this article, shall directly or indirectly make any contribution to or hold any office in a political party or organization or take part in any political campaign.~~

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

“Explanatory statement. The purpose of this amendment is to provide for the election of justices of the supreme court through nonpartisan election as a candidate at large for the entire state. The three candidates receiving the greatest number of votes at a primary election would be placed on the ballot at the general election with the candidate receiving the greatest number of votes at the general election succeeding to the vacant position on the supreme court. Such election would be for a term of six years and would be subject to reelection. The successful candidate would be installed in January of the year following the general election the same as other candidates elected from the state at large.

“A vote for this proposition would cause justices of the supreme court to be elected by popular election at general elections for terms of six years.

“A vote against this proposition would retain the current system of having justices of the supreme court being appointed by the governor from a list of three individuals submitted by the supreme court nominating commission.”

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the House of Representatives, and two-thirds of the members elected (or appointed) and qualified to the Senate shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election on November 7, 2006, unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and resolution were referred to committees as indicated:

Agriculture: **HB 2392, HB 2395, HB 2411.**

Appropriations: **HB 2364, HB 2379, HB 2394, HB 2398, HB 2399, HB 2410, HB 2412, HB 2413, HB 2428, HB 2429, HB 2430.**

Commerce and Labor: **HB 2370, HB 2372, HB 2405, HB 2422.**

Corrections and Juvenile Justice: **HB 2380, HB 2381, HB 2382, HB 2383, HB 2384, HB 2385, HB 2386, HB 2387, HB 2388, HB 2389, HB 2414, HB 2418, HB 2424, HB 2425, HB 2426.**

Education: **HB 2403.**

Environment: **HB 2390, HB 2393, HB 2400.**

Federal and State Affairs: **HB 2374, HB 2378, HB 2415, HB 2427.**

Health and Human Services: **HB 2396, HB 2397, HB 2417.**
 Insurance: **HB 2365, HB 2366, HB 2367, HB 2371, HB 2401.**
 Judiciary: **HB 2369, HB 2377, HB 2402, HB 2416, HB 2420, HB 2421.**
 Taxation: **HB 2373, HB 2376, HB 2406, HB 2423.**
 Transportation: **HB 2391, HB 2409.**
 Utilities: **HB 2368, HB 2407, HB 2408.**
 Wildlife, Parks and Tourism: **HR 6016.**
 Select Committee on School Finance: **HB 2375, HB 2404, HB 2419.**

CHANGE OF REFERENCE

Speaker Mays announced the withdrawal of **HB 2361** from Committee on Taxation and referral to Committee on Insurance.

MESSAGES FROM THE GOVERNOR

HB 2007 approved on February 3, 2005.

CONSENT CALENDAR

No objection was made to **HB 2154, HB 2225** appearing on the Consent Calendar for the first day.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

HB 2052. An act concerning solid waste; relating to uncontaminated soil; amending K.S.A. 65-3402 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 119; Nays 0; Present but not voting: 0; Absent or not voting: 6.

Yeas: Aurand, Ballard, Beamer, Bethell, Brown, Brunk, Burgess, Burroughs, Carlin, Carlson, Carter, Colloton, Cox, Craft, Crow, Dahl, Davis, DeCastro, Decker, Dillmore, Edmonds, Faber, Faust-Goudeau, Feuerborn, Flaharty, Flora, Flower, Freeborn, Garcia, Gatewood, Goico, Gordon, Grange, Grant, Hawk, Hayzlett, Henderson, Henry, Hill, Holland, C. Holmes, M. Holmes, Horst, Huebert, Huff, Humerickhouse, Huntington, Hutchins, Jack, D. Johnson, E. Johnson, Kelley, Kelsey, Kiegerl, Kilpatrick, Kinzer, Kirk, Knox, Krehbiel, Landwehr, Lane, Larkin, Light, Loganbill, Long, Loyd, Mah, Mast, Mays, McCreary, McKinney, McLeland, Menghini, Merrick, F. Miller, M. Miller, Jim Morrison, Myers, Neufeld, Newton, Novascone, O'Malley, O'Neal, Oharah, Olson, Otto, Owens, Pauls, Peck, Peterson, Phelps, Pilcher-Cook, Pottorff, Powell, Powers, Roth, Ruff, Ruiz, Sawyer, Schwab, Schwartz, B. Sharp, S. Sharp, Showalter, Shultz, Siegfried, Sloan, Storm, Svaty, Swenson, Thull, Treaster, Vickrey, Ward, Watkins, Wilk, Williams, Yoder, Yonally.

Nays: None.

Present but not voting: None.

Absent or not voting: George, Huy, Kuether, Judy Morrison, Weber, Winn.

The bill passed.

HCR 5004. A concurrent resolution urging Congress to modify the provisions of the National Voter Registration Act of 1993 to simplify the procedure for removal of voters from voter registration lists, was considered on final action.

On roll call, the vote was: Yeas 74; Nays 45; Present but not voting: 0; Absent or not voting: 6.

Yeas: Aurand, Beamer, Bethell, Brown, Brunk, Burgess, Carlson, Carter, Colloton, Cox, Craft, Dahl, DeCastro, Decker, Edmonds, Faber, Flower, Freeborn, Goico, Gordon, Grange, Hayzlett, Hill, C. Holmes, M. Holmes, Horst, Huebert, Huff, Humerickhouse, Huntington, Hutchins, Jack, D. Johnson, E. Johnson, Kelley, Kelsey, Kiegerl, Kilpatrick, Kinzer, Knox, Krehbiel, Landwehr, Mast, Mays, McCreary, McLeland, Merrick, F. Miller, Jim Morrison, Myers, Neufeld, Newton, Novascone, O'Malley, O'Neal, Oharah, Olson, Otto, Peck, Pilcher-Cook, Pottorff, Powell, Roth, Schwab, Schwartz, S. Sharp, Shultz, Siegfried, Sloan, Vickrey, Watkins, Wilk, Yoder, Yonally.

Nays: Ballard, Burroughs, Carlin, Crow, Davis, Dillmore, Faust-Goudeau, Feuerborn, Flaharty, Flora, Garcia, Gatewood, Grant, Hawk, Henderson, Henry, Holland, Kirk, Lane, Larkin, Light, Loganbill, Long, Loyd, Mah, McKinney, Menghini, M. Miller, Owens, Pauls,

Peterson, Phelps, Powers, Ruff, Ruiz, Sawyer, B. Sharp, Showalter, Storm, Svaty, Swenson, Thull, Treaster, Ward, Williams.

Present but not voting: None.

Absent or not voting: George, Huy, Kuether, Judy Morrison, Weber, Winn.

The resolution was adopted, as amended.

EXPLANATION OF VOTE

MR. SPEAKER: **HCR 5004** is not about amending the Kansas Constitution or Laws, rather it is about urging our Federal Government to re-examine present Federal Law to allow local government election officials a more efficient way of cleaning up the voter registration list. It does not infringe upon a voter's franchise; instead it urges him or her to be more accountable regarding their privilege to vote. A free society, as defined in our Constitution, depends on all citizens voting responsibly in order to protect the freedom of this great nation—The United States of America. I vote yes on **HCR 5004**.—C. FRANK MILLER

SB 23, An act concerning sales tax on isolated or occasional sales of motor vehicles; relating to base of computation; verification; sales tax refunds; motor vehicle certificate of title; amending K.S.A. 79-3604 and K.S.A. 2004 Supp. 8-135 and 79-3603 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 119; Nays 0; Present but not voting: 0; Absent or not voting: 6.

Yeas: Aurand, Ballard, Beamer, Bethell, Brown, Brunk, Burgess, Burroughs, Carlin, Carlson, Carter, Colloton, Cox, Craft, Crow, Dahl, Davis, DeCastro, Decker, Dillmore, Edmonds, Faber, Faust-Goudeau, Feuerborn, Flaharty, Flora, Flower, Freeborn, Garcia, Gattewood, Goico, Gordon, Grange, Grant, Hawk, Hayzlett, Henderson, Henry, Hill, Holland, C. Holmes, M. Holmes, Horst, Huebert, Huff, Humerickhouse, Huntington, Hutchins, Jack, D. Johnson, E. Johnson, Kelley, Kelsey, Kiegerl, Kilpatrick, Kinzer, Kirk, Knox, Krehbiel, Landwehr, Lane, Larkin, Light, Loganbill, Long, Loyd, Mah, Mast, Mays, McCreary, McKinney, McLeland, Menghini, Merrick, F. Miller, M. Miller, Jim Morrison, Myers, Neufeld, Newton, Novascone, O'Malley, O'Neal, Oharah, Olson, Otto, Owens, Pauls, Peck, Peterson, Phelps, Pilcher-Cook, Pottorff, Powell, Powers, Roth, Ruff, Ruiz, Sawyer, Schwab, Schwartz, B. Sharp, S. Sharp, Showalter, Shultz, Siegfried, Sloan, Storm, Svaty, Swenson, Thull, Treaster, Vickrey, Ward, Watkins, Wilk, Williams, Yoder, Yonally.

Nays: None.

Present but not voting: None.

Absent or not voting: George, Huy, Kuether, Judy Morrison, Weber, Winn.

The bill passed, as amended.

REPORTS OF STANDING COMMITTEES

Committee on **Agriculture** recommends **SB 16** be passed.

Committee on **Appropriations** recommends **HR 6015** be adopted.

Committee on **Taxation** recommends **HB 2082** be passed.

Committee on **Taxation** recommends **HB 2187** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

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

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were thereupon introduced and read by title:

HB 2435, An act concerning the uniform trust code; amending K.S.A. 2004 Supp. 58a-103, 58a-110, 58a-411, 58a-417, 58a-603, 58a-802, 58a-813 and 58a-1008 and repealing the existing sections, by Committee on Judiciary.

HB 2436, An act concerning consumer protection; relating to automatic renewals, by Committee on Corrections and Juvenile Justice.

HB 2437, An act pertaining to the legislature; relating to the size thereof; amending K.S.A. 4-101 and repealing the existing section, by Committee on Federal and State Affairs.

HB 2438, An act amending and supplementing the fair credit reporting act; providing for nondisclosure of certain information under certain circumstances; providing remedies for violations; amending K.S.A. 50-702 and repealing the existing section, by Committee on Federal and State Affairs.

HB 2439, An act concerning firearms and ammunition, and components or combinations thereof; prohibiting cities and counties from taking certain actions with regard thereto, by Committee on Federal and State Affairs.

HB 2440, An act concerning the secretary of state; limiting certain fees, by Committee on Federal and State Affairs.

HB 2441, An act enacting the Kansas blue sky act; prohibiting certain acts with respect to sales of certain business opportunities; providing penalties and remedies for violations, by Committee on Federal and State Affairs.

CHANGE OF REFERENCE

Speaker Mays announced the withdrawal of **HB 2309** from Committee on Governmental Organization and Elections and referral to Committee on Federal and State Affairs.

COMMITTEE ASSIGNMENTS

Rep. Huebert will replace Rep. Hutchins as a member on the Joint Committee on Legislative Educational Planning.

On motion of Rep. Aurand, the House adjourned until 10:30 a.m., Friday, February 11, 2005.

JANET E. JONES, *Chief Clerk*.

CHARLENE SWANSON, *Journal Clerk*.

