

Journal of the House

FOURTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Thursday, January 12, 2006, 10:30 a.m.

The House met pursuant to adjournment with Speaker Mays in the chair.
The roll was called with 111 members present.
Reps. Colloton and Kuether were excused on verified illness.
Reps. Bethell, Hutchins, Huy, McCreary, McLeland, Neufeld, Pilcher-Cook, Pottorff,
Powell, Sawyer and Weber were excused on legislative business.
Rep. Wolf was excused on excused absence by the Speaker.

Prayer by guest chaplain, Pastor John Potter, chaplain of the 108 Aviation, and guest of
Reps. Mays and McKinney:

Heavenly Father, this has been a less than perfect week.

Gripping has escaped our lips.

Rage has been in our hearts.

Acrimony has been felt and shared.

Calls have been less than kind.

Evidence of love seems beyond our grasp.

Numbers have made us angry.

Offices here and across the street frustrate us.

Woes of the world make us curse and scream.

In all these things, forgive us Lord.

We need grace-healed hearts. Hearts that will share the grace You have so lavishly bestowed on us. Hearts that enable us to pray for our enemy. Hearts that allow us to show the love of Jesus. This is our prayer, oh God. Let grace be seen in us.

And now may the Lord bless you and keep you,
the Lord make His face shine upon you,
and be gracious to you;
the Lord lift up His countenance on you,
and give you peace. Amen.

The Pledge of Allegiance was led by Rep. Oharah.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

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

HB 2597, An act relating to taxation; relating to the financing of schools; providing for the equalization of certain property taxes; amending K.S.A. 2005 Supp. 72-6431 and 72-6434 and repealing the existing sections, by Representative Otto.

HB 2598, An act relating to taxation; imposing a special guest worker payroll tax on income earned in Kansas by certain non-citizens of the United States; concerning procedures relating thereto, by Representative Otto.

HB 2599, An act concerning certain unsolicited facsimile transmissions; prohibiting certain acts and providing remedies and penalties for violations, by Committee on Utilities.

HB 2600, An act relating to interpretation of federal statutes, regulations and national codes; amending K.S.A. 77-619 and repealing the existing section, by Representative Otto.

HB 2601, An act concerning sales taxation; relating to sales tax exemption for certain sales of clothing, personal computers and school supplies; amending K.S.A. 2005 Supp. 79-3606 and repealing the existing section, by Representatives Peck, Beamer, Brown, Carlson, Dahl, DeCastro, George, Goico, Grange, M. Holmes, E. Johnson, Kelley, Kelsey, Kiegerl, Knox, Mast, Mays, McCreary, F. Miller, Oharah, Otto and Watkins.

HB 2602, An act relating to energy conservation projects of technical and community colleges; amending K.S.A. 2005 Supp. 75-37,125 and repealing the existing section, by Committee on Higher Education.

HB 2603, An act relating to state educational institutions; amending K.S.A. 2005 Supp. 76-729 and repealing the existing section, by Committee on Higher Education.

HB 2604, An act relating to members of the midwestern higher education commission; amending K.S.A. 72-60b02 and repealing the existing section, by Committee on Higher Education.

HB 2605, An act concerning crimes, punishment and criminal procedure; relating to a drug and alcohol treatment program and facility; amending K.S.A. 2005 Supp. 8-1567, 21-4603d, 21-4704 and 21-4705 and repealing the existing sections, by Representative Owens.

HOUSE CONCURRENT RESOLUTION No. 5024—

By Committee on Higher Education

A CONCURRENT RESOLUTION encouraging the participation of the chief executive officer of the state board of regents in the Governor's cabinet.

WHEREAS, Our state universities are important resources for Kansas citizens and government; and

WHEREAS, Increased utilization of our state universities in addressing issues facing state government and its citizens can be of great usefulness: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the Governor is encouraged to invite the chief executive officer of the state board of regents to participate in the Governor's cabinet.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

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

Appropriations: **HB 2594**; **HCR 5023**.

Education: **HB 2585**.

Federal and State Affairs: **HB 2595**.

Governmental Organization and Elections: **HB 2592**.

Higher Education: **HB 2593**.

Judiciary: **HB 2586**, **HB 2587**.

Taxation: **HB 2596**.

Transportation: **HB 2591**.

Utilities: **HB 2588**, **HB 2589**, **HB 2590**.

COMMUNICATIONS FROM STATE OFFICERS

From Kansas Commission on Disability Concerns, Bi-annual Report, Fiscal Years 2004 and 2005.

From Steve Irsik, Chairman, Kansas Water Authority, pursuant to K.S.A. 82a-951, 2-006 Annual Report to the Governor and Legislature on priorities of the Kansas Water Plan.

From Deb Miller, Secretary, Kansas Department of Transportation Annual Report, January 2006.

The complete reports are kept on file and open for inspection in the office of the Chief Clerk.

INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

On emergency motion of Rep. Aurand, **HR 6003**, by Rep. Mays, as follows, was introduced and adopted:

HOUSE RESOLUTION No. 6003—

A RESOLUTION congratulating and commending John Potter as he departs for military service in Iraq.

WHEREAS, John Potter, the Chief of Staff for the Speaker of the House of Representatives, is leaving his position on January 13 to commence a tour of active military service in Iraq as a chaplain; and

WHEREAS, Mr. Potter is from Columbus and graduated in 1997 from Kansas State University with a bachelor's degree in political science; and

WHEREAS, He commenced state service in 1996 as an intern in Speaker Shallenburger's office. After becoming a full-time employee in 1998 he worked for Representative Mays while Representative Mays was the Speaker Pro Tem. When Representative Mays became the Speaker of the House of Representatives in 2002 he assumed his current duties as Chief of Staff for the Speaker; and

WHEREAS, Mr. Potter has been a masterful and competent director of the speaker's office, tending to the day-to-day operations of the office and providing needed information and assistance to the speaker and the majority party as the political process evolves: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas: That we congratulate and commend John Potter for his exemplary service to the state of Kansas for the past ten years and particularly while performing services as the Chief of Staff to the Speaker of the House of Representatives. His willing spirit and devotion to the speaker will be sorely missed. We give him our best wishes as he assumes his new duties and pray for his safe return: and

Be it further resolved: That the Chief Clerk of the House of Representatives provide an enrolled copy of this resolution to Mr. Potter.

REPORT OF STANDING COMMITTEE

Your Committee on **Calendar and Printing** recommends on requests for resolutions and certificates that

Request No. 1, by Representative Kiegerl, commending Charles J. Carlsen on 25 years as President of Johnson County Community College;

Request No. 2, by Representatives B. Sharp and Burroughs, congratulating Henry W. Falk on attaining the rank of Eagle Scout;

Request No. 3, by Representative Beamer, congratulating the members of the Oakley High School Girls Cross Country team on winning the 2005 2A State Championship;

Request No. 4, by Representative Beamer, congratulating Jason Robben and Crystal Berndt, coaches of the Oakley Girls Cross Country Team;

Request No. 5, by Representative Sloan, congratulating Don and Phyllis Ogburn on their 50th Wedding Anniversary;

Request No. 6, by Representative Krehbiel, congratulating Brian Moorman on being named National Football League All-Pro Punter;

Request No. 7, by Representative Krehbiel, congratulating Joseph Ray Unruh on attaining the rank of Eagle Scout;

Request No. 8, by Representative McKinney, commending Lakewood Rehabilitation of Haviland on receiving the PEAK nursing home award;

be approved and the Chief Clerk of the House be directed to order the printing of said certificates and order drafting of said resolutions.

On motion of Rep. Aurand, the committee report was adopted.

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 and concurrent resolution were thereupon introduced and read by title:

HB 2606, An act; concerning crimes, punishment and criminal procedure; relating to theft of services; amending K.S.A. 2005 Supp. 21-3704 and repealing the existing section, by Committee on Environment.

HB 2607, An act concerning trusts; amending K.S.A. 58a-103, 58a-105, 58a-108, 58a-110, 58a-111, 58a-411, 58a-417, 58a-501, 58a-506, 58a-603, 58a-802, 58a-813 and 58a-1008 and repealing the existing sections, by Committee on Judiciary.

HB 2608, An act concerning the Kansas health policy authority; relating to administrative hearings; amending K.S.A. 2005 Supp. 75-37,121, 75-7413 and 75-7414 and repealing the existing sections, by Committee on Judiciary.

HB 2609, An act concerning small claims; relating to forms; amending K.S.A. 61-2707 and repealing the existing section, by Committee on Judiciary.

HB 2610, An act concerning civil procedure; relating to service outside the state; jurisdiction; amending K.S.A. 60-308 and repealing the existing section, by Committee on Judiciary.

HB 2611, An act amending the child passenger safety act; amending K.S.A. 8-1344 and 8-1345 and repealing the existing sections, by Committee on Judiciary.

HB 2612, An act concerning judges and justices; evaluating the performance thereof; establishing the commission on judicial performance; funding for the commission; amending K.S.A. 59-104, 60-1621, 60-2001, 61-2704 and 61-4001 and K.S.A. 2005 Supp. 20-367 and 28-172a and repealing the existing sections, by Committee on Judiciary.

HB 2613, An act concerning school districts; relating to transportation of certain pupils; amending K.S.A. 72-1046b and repealing the existing section, by Representative Aurand.

HOUSE CONCURRENT RESOLUTION No. 5025—

By Representatives F. Miller, Goico, Grange, Huebert, Huy, Kiegerl, Knox, Judy Morrison, Oharah, Peck and Pilcher-Cook

A PROPOSITION to amend article 15 of the constitution of the state of Kansas by adding a new section thereto, concerning eminent domain.

WHEREAS, The constitution of the United States clearly states, in amendment 5 that “No person shall be...deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” The intent of this amendment clearly provides that the taking of privately owned real property is intended to apply only to public use projects; and

WHEREAS, There is currently no provision in the Kansas constitution prohibiting state or local government from taking private real property except for public use, which has resulted in the abusive taking of real property in many communities in Kansas: Now, therefore,

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) and qualified 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: Article 15 of the constitution of the state of Kansas is amended by adding a new section thereto to read as follows:

“§ 17. **Eminent Domain.** (a) A fee simple title to real property shall not be taken for use by private commercial enterprise, for economic development, or for any other private use, except with the consent of the owner. A fee simple title to private real property may be taken only when necessary for the possession, occupation or enjoyment of the land by the public at large, or by public agencies, or to acquire real property to eliminate an immediate threat to public health or safety. This provision shall, in no way, restrict existing police powers. A fee simple title to private real property shall not be taken from one owner and transferred to another, on the grounds that the public will benefit from a more profitable private use.

(b) Whenever an attempt is made to take a fee simple title to private real property for a use alleged to be public, the entity proposing the taking shall bring an action to determine whether the contemplated use is a public use, and such issue

shall be determined by the court. The entity proposing the taking shall bear the burden of proof to show the court by clear and convincing evidence that the taking of the real property is for a public use.

(c) Except for real property taken to eliminate an immediate threat to public health or safety, when a fee simple title to private real property is taken, just compensation shall not be less than 150% of the highest yearly appraised value of the real property during the preceding five-year period. Just compensation, when a fee simple title to private real property is taken to eliminate an immediate threat to public health or safety, shall be determined by the court.

(d) A fee simple title to private real property taken through eminent domain must be owned and used by the taking entity for a minimum of seven years. If the real property is not used within seven years, the real property, or a portion thereof, shall be sold back to the owner, from whom the private real property was taken, at the compensation determined at the taking, or prorated for any portion thereof. If the owner, from whom the private real property was taken, does not purchase fee simple title to the real property, then the taking entity may sell, or otherwise transfer, such real property to a third party."

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

Explanatory statement. There is currently no constitutional provision prohibiting state or local government from taking private real property except for public use, and there is no definition of "public use".

A vote for this proposition would amend the Kansas constitution to prohibit state and local governments from taking private real property, except for public use, and would require that the owner of any real property taken for public use be paid just compensation. Private real property may be taken to eliminate an immediate threat to public health or safety, but in this case, the court shall determine just compensation. If the taking entity wishes to sell the real property prior to the end of seven years, the real property must be offered to the owner, from whom the private real property was taken, at the just compensation determined at the time of the taking.

A vote against this proposition would not amend the constitution."

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 in November in the year 2006.

REPORT ON ENROLLED RESOLUTIONS

HR 6001, HR 6002 reported correctly enrolled and properly signed on January 11, 2006.

Also, **HCR 5022; HR 6003** reported correctly enrolled and properly signed on January 12, 2006.

On motion of Rep. Aurand, the House adjourned pro forma until 9:00 a.m., Friday, January 13, 2006.

JANET E. JONES, *Chief Clerk.*

CHARLENE SWANSON, *Journal Clerk.*

