

Journal of the House

NINETEENTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Friday, February 8, 2008, 9:00 a.m.

The House met pursuant to adjournment with Speaker pro tem Dahl in the chair. The roll was called with 93 members present. Reps. Crow, Johnson, Metsker, Owens, and Kay Wolf were excused on verified illness. Reps. Shultz and Watkins were excused on legislative business. Reps. Aurand, Ballard, Brunk, Burroughs, Colloton, Colyer, Davis, Donohoe, George, Hill, Hodge, Kelley, Kelsey, Masterson, Merrick, Neufeld, O'Neal, Peck, Peterson, Powers, Quigley, Roth, Ruff, Storm, and Yoder were excused by the Speaker.

Prayer by Chaplain Brubaker:

Dear Lord,

As we come to the close of another busy week, we thank you for your faithfulness, wisdom and direction. Our prayer is that the decisions we made will truly benefit all Kansans. Continue to guide us in ongoing discussions and instead of building walls with our differences, please help us build gates of cooperation and partnership.

In Christ's name I pray,

Amen

The Pledge of Allegiance was led by Rep. Kuether.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

HB 2797. An act concerning sales taxation; relating to exemptions; certain organizations for seniors; amending K.S.A. 2007 Supp. 79-3606 and repealing the existing section, by Representatives Trimmer and King.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

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

Appropriations: **HB 2789.**

Economic Development and Tourism: **HB 2787, HB 2788.**

Education: **HB 2790.**

Elections and Governmental Organization: **HB 2791.**

Energy and Utilities: **HB 2792.**

Federal and State Affairs: **HB 2785.**

Insurance and Financial Institutions: **HB 2783.**

Judiciary: **HB 2793, HB 2794, HB 2795.**

Taxation: **HB 2784, HB 2796.**

Transportation: **HB 2786.**

MESSAGE FROM THE SENATE

Announcing passage of **SB 48, SB 411, SB 412, SB 421, SB 423, SB 424, SB 432, SB 441, SB 444** and **SB 467.**

The Senate nonconcurrs in House amendments to **SB 366**, requests a conference and has appointed Senators Vratil, Bruce and Goodwin as conferees on the part of the Senate.

The Senate accedes to the request of the House for a conference on **HB 2186** and has appointed Senators Vratil, Bruce and Goodwin as conferees on the part of the Senate.

INTRODUCTION OF SENATE BILLS AND CONCURRENT RESOLUTIONS

The following Senate bills and concurrent resolutions thereupon introduced and read by title:

SB 48, SB 411, SB 412, SB 421, SB 423, SB 424, SB 432, SB 441, SB 444 and SB 467.

INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Vickrey, the House acceded to the request of the Senate for a conference on **SB 366**.

Speaker pro tem Dahl thereupon appointed Reps. O'Neal, Kinzer and Pauls as conferees on the part of the House.

CONSENT CALENDAR

No objection was made to **HB 2643, HB 2656, HB 2700** appearing on the Consent Calendar for the first day.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

Speaker pro tem Dahl announced that order of business Final Action on Bills and Concurrent Resolutions would be passed over today.

REPORT OF STANDING COMMITTEE

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

Request No. 44, by Representative Proehl, commending Josh D. Maples on achieving a 4.0 grade point average for the 2007 fall semester at Washburn University;

Request No. 45, by Representative Powell, congratulating Mikale Burcher on being named to the 2007 fall semester Washburn President's Honor Roll;

Request No. 46, by Representative Gatewood, congratulating Alex and Hazel Cresson on their 65th wedding anniversary;

Request No. 47, by Representative Bowers, congratulating Glennace Kirn on receiving the Minneapolis Chamber of Commerce Community Service Award;

Request No. 48, by Representative Proehl, congratulating Michell Piva on achieving National Board Teacher Certification;

Request No. 49, by Representative Palmer, honoring Welcome VanSickle on her 100th birthday;

Request No. 50, by Representatives Jim Morrison and George, congratulating Amy Wilson on winning the title of Miss Rodeo America;

Request No. 51, by Representative George, congratulating Shannon Ralph on being named 2008 Kansas Master Teacher;

Request No. 52, by Representative Neufeld, congratulating Penny Schwab on her retirement as Executive Director of the United Methodist Mexican American Ministries;

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. Vickrey, 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 2798. An act concerning school districts; relating to school finance; amending K.S.A. 2007 Supp. 72-6407 and repealing the existing section, by Representative Kinzer.

HB 2799. An act concerning the courts; creating the court of appeals nominating commission; appointment of judges; amending K.S.A. 20-3002, 20-3004, 20-3005, 20-3006, 20-3007 and 20-3010 and repealing the existing sections; also repealing K.S.A. 20-3008 and 20-3009, by Representatives Kinzer, Beamer, Brown, Brunk, Carlson, Crum, Donohoe, Faber, Fund, Goico, Grange, Kelley, Kelsey, Landwehr, Mast, Masterson, Merrick, Judy Morrison, Olson, Otto, Powers, Watkins and B. Wolf.

HOUSE CONCURRENT RESOLUTION No. 5031—

By Representatives Kinzer, Beamer, Brown, Brunk, Carlson, Crum, Donohoe, Faber, Fund, Goico, Grange, Kelley, Kelsey, Landwehr, Mast, Masterson, Merrick, Judy Morrison, Olson, Otto, Peck, Powers, Watkins and B. Wolf

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

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the 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: Section 5 of article 3 of the constitution of the state of Kansas is hereby amended to read as follows:

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

(b) In event of the failure of the governor to make the appointment within sixty days from the ~~time the names of the nominees are submitted to him~~ *date such vacancy occurred or position became open*, the chief justice of the supreme court, ~~with the consent of the senate, shall make the appointment from such nominees of a person possessing the qualifications of office.~~

(c) ~~No person appointed pursuant to subsection (a) or (b) of this section shall assume the office of justice of the supreme court until the senate, by an affirmative vote of the majority of all members of the senate then elected or appointed and qualified, consents to such appointment. The senate shall vote to consent to any such appointment not later than 30 days after such appointment is received by the senate. If the senate is not in session and will not be in session within the 30-day time limitation, the president of the senate shall convene the senate for the sole purpose of evaluating, questioning and voting on such appointment and no other action shall be in order during such session. In the event a majority of the senate does not vote to consent to the appointment, the governor, within 30 days after the senate vote on the previous appointee, shall appoint another person possessing the qualifications of office and such subsequent appointment shall be considered by the senate in the same procedure as provided in this article. The same appointment and consent procedure shall be followed until a valid appointment has been made. No person who has been previously appointed but did not receive the consent of the senate shall be appointed again for the same vacancy. If the senate fails to vote on an appointment within the~~

30-day time limitation, the senate shall be deemed to have given consent to such appointment.

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

"Shall _____
(Here insert name of justice.)

_____ (Here insert the title of the court.)
be retained in office?"

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

(e) 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.

(f) 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. Three members appointed by the speaker of the house of representatives, three members appointed by the president of the senate and three members appointed by the governor. One such member from each of the three appointing authorities shall be a member of the bar who resides and is licensed in Kansas. The chairperson shall be selected by members of the commission.

(g) 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.

(h) No member of the supreme court nominating commission shall, while he is a member, hold any other public office by appointment or any official position in a political party or for six months thereafter be eligible for nomination for the office of justice of the supreme court. The commission may act only by the concurrence of a majority of its members."

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

"Explanatory statement. The purpose of this amendment is to allow the governor to appoint a qualified person to the office of justice of the supreme court, and such person's appointment would be required to be consented to by the senate. If the governor fails to act, the chief justice of the supreme court would appoint a

qualified person, and such person's appointment would also be required to be consented to by the senate. The nonpartisan supreme court nominating commission membership would be changed to include appointments by the speaker of the house of representatives and the president of the senate. The gubernatorial appointments to the commission would be reduced from four members to three members. The members of the bar would no longer elect members of the commission. The commission would continue to nominate three persons for appointment by the governor. However, the governor would make the appointment from all qualified persons, not necessarily from the three nominated by the commission. A procedure is established whereby senate consent would occur with 30 days of receiving the appointment. If the senate does not consent by a majority vote, the governor would then select an appointment which would again go to the senate for consent. The same appointment and consent procedure would be followed until a valid appointment is made. If the senate fails to vote on an appointment within 30 days, it will be considered that the senate has consented to the appointment.

"A vote for this proposition would provide a procedure whereby the governor or chief justice would appoint a person to be a supreme court justice and the senate, by majority vote, would consent to the appointment of supreme court justices. The supreme court nominating commission would continue to nominate three qualified persons to the governor. The governor would appoint from all qualified persons.

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

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the 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 the year 2008 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.

On motion of Rep. Vickrey, the House adjourned until 11:00 a.m., Monday, February 11, 2008.

JANET E. JONES, *Chief Clerk*.

CHARLENE SWANSON, *Journal Clerk*.

