

Journal of the House

THIRTEENTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Thursday, January 26, 2006, 11:00 a.m.

The House met pursuant to adjournment with Speaker Mays in the chair.
The roll was called with 124 members present.
Rep. B. Sharp was excused on verified illness.

Prayer by guest chaplain, the Rev. Bobby Massay, pastor, Assembly of God Church, Valley Center, and guest of Rep. Huebert:

Father in Heaven,

Thank you for the privilege of being here today. We are blessed by your mercy and grace that allows us to stand before you. Lord, we are reminded today that your Word clearly proclaims that all are under your authority, and your Word also states that those who govern have been chosen by you. We ask today that you would grant those in this assembly hall integrity of heart as they make decisions that will affect those whom they represent. We ask that their minds be clear and focused as they look into the laws of our liberty and recognize that all freedoms have their foundation in a relationship with you. Lord, grant to all here discernment to understand what is true and what is falsehood, let us clearly see the difference between good and evil. Please forgive us for usurping our will over yours and not listening to your counsel, for walking in our own wisdom while rejecting yours, and for promoting our agendas, while your word was pushed aside. Today, O God, grant us your wisdom to lead, humility of heart to follow, and let the truth of your precious Word be our standard. We will give you praise and glory for all that is accomplished this day.

In Jesus' Name we pray, Amen.

The Pledge of Allegiance was led by Rep. Myers.

INTRODUCTION OF GUESTS

Rep. Hayzlett introduced Miles Pearson, Scott City, District and State winner of an Essay Contest sponsored by the Kansas League of Municipalities. The essays were titled "If I Were a Mayor." He was accompanied to the House by his parents, Clint and Lisa Pearson, and his grandmother, Judy Wulfkuhl.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

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

HB 2733, An act concerning sales taxation; relating to remittance credits for collection services provided by retailers, by Representative Brunk.

HB 2734, An act concerning state boards, commissions and authorities; relating to online education and licensure, by Committee on Health and Human Services.

HB 2735, An act amending the uniform consumer credit code; relating to certain definitions; amending K.S.A. 2005 Supp. 16a-1-301 and repealing the existing section, by Committee on Financial Institutions.

HB 2736. An act concerning taxation; establishing the Kansas corporate income tax study commission, by Representative Gatewood.

HB 2737. An act concerning health care providers; creating the board of health professions and its members, powers and duties; establishing a fund, by Committee on Health and Human Services.

HB 2738. An act concerning schools; relating to healthy food choices in vending machines, by Committee on Health and Human Services.

HB 2739. An act concerning crimes and punishments; relating to tobacco use in medical care facility buildings and property; amending K.S.A. 21-4017 and repealing the existing section, by Committee on Health and Human Services.

HB 2740. An act regulating traffic; concerning all-terrain vehicles; amending K.S.A. 8-15,100 and repealing the existing section, by Representative McCreary.

HB 2741. An act concerning eminent domain; relating to economic development; enacting the fairness in economic development act, by Committee on Judiciary.

HB 2742. An act concerning criminal procedure; relating to the issuance of warrants or summons; amending K.S.A. 22-2302 and repealing the existing section, by Committee on Judiciary.

HB 2743. An act concerning state officers and employees; relating to legal holidays for state service, by Committee on Federal and State Affairs.

HB 2744. An act concerning elections; relating to advance voting; amending K.S.A. 2005 Supp. 25-1122 and repealing the existing section, by Governmental Organization and Elections.

HOUSE CONCURRENT RESOLUTION No. 5032—

By Representatives Kinzer, Aurand, Beamer, Brown, Brunk, Carlson, Carter, Dahl, De-Castro, Faber, Freeborn, George, Goico, Grange, Hayzlett, M. Holmes, Horst, Huebert, Humerickhouse, Hutchins, Huy, E. Johnson, Kelley, Kelsey, Kiegerl, Kilpatrick, Knox, Mast, Masterson, Mays, McLeland, Merrick, F. Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, O'Neal, Oharah, Olson, Otto, Peck, Pilcher-Cook, Powell, Powers, Schwab, Schwartz, Siegfried, Watkins, Weber, and Wilk

A PROPOSITION to amend section 24 of article 2 of the constitution of the state of Kansas, relating to appropriations.

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 24 of article 2 of the constitution of the state of Kansas is hereby amended to read as follows:

“§ 24. **Appropriations.** No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law. *The executive and judicial branches shall have no authority to direct the legislative branch to make any appropriation of money 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. Any existing order directing the legislative branch to make an appropriation of money shall be unenforceable as of the date this provision is adopted.*”

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 clarify that the executive and judicial branches shall not direct the legislative branch to make any appropriation of money or 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. Any existing court order which is inconsistent with this amendment is unenforceable.

“A vote for this amendment would clarify that section 24 of article 2 of the Kansas Constitution provides that neither the judicial branch nor the executive branch

can force the legislative branch to appropriate money, except as the legislative branch may provide by law or as may be required by the Constitution of the United States. The amendment would also prohibit the judicial branch from ordering a change in how money is spent after it has been appropriated by the legislative branch, except as the legislative branch may provide by law or as may be required by the Constitution of the United States. If money is appropriated for a particular purpose the judicial branch could not stop that money from being spent for that purpose. Finally, the amendment would void any current court order directing the legislative branch to make an appropriation of money.

“A vote against this amendment would provide no change to the Kansas Constitution and the existing order that directs the legislative branch to make an appropriation of money shall remain in effect.”

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 to be held on November 7, 2006.

HOUSE CONCURRENT RESOLUTION No. 5033—

By Representatives Kinzer, Beamer, Brown, Carlson, Carter, Dahl, DeCastro, Faber, George, Grange, Hutchins, Huy, Kelley, Kelsey, Kiegerl, Mast, McLeland, Oharah, Olson, Siegfried, Watkins and Weber

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.~~

(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 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.

~~(c)~~ (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.

~~(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:

~~(c)~~ 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."

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 do away with the nonpartisan supreme court nominating commission. The governor will appoint a qualified person, or if the governor fails to act, the chief justice of the supreme court would appoint a qualified person, and such person's appointment would

be required to be consented to by the senate. 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.

“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 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.

HOUSE CONCURRENT RESOLUTION No. 5034—

By Committee on Wildlife, Parks and Tourism

A CONCURRENT RESOLUTION designating Cheyenne Bottoms the “Migratory Bird Capitol of Kansas”.

WHEREAS, Cheyenne Bottoms is a 41,000 acre natural land sink in southwestern Kansas of which nearly 20,000 acres is a state park named the Cheyenne Bottoms Wildlife Area. Mentioned in writings of Zebulon Pike in 1806 as he explored the southern part of the recent Louisiana purchase and discovered by surveyors of the Sante Fe Trail in 1825, the area was observed in 1860 by Lt. J.E.B. Stuart, later of civil war fame, to be surrounded by myriads of buffalo. Although subject to alternating periods of drought and flood, the area was frequented by prodigious numbers of waterfowl and was the site of heavy market shooting during the period from 1890 to 1905; and

WHEREAS, Federal legislation passed in 1937 placing an excise tax on sporting arms and ammunition helped state wildlife agencies to acquire wildlife habitat. The state of Kansas commenced acquiring land in the bottoms in 1942 and by 1949 had completed purchasing the bulk of the acreage making up the reserve. Several projects to build dams, dikes and pump stations were then started and continued through 1990. Today the Cheyenne Bottoms provides diverse marsh habitat for waterfowl and shorebirds during the migrational seasons and insures needed food, water and resting places; and

WHEREAS, The spring and fall migration periods provide the best opportunities to view large numbers of different species at the bottoms. Waterfowl and sand cranes begin arriving in February. Wading birds, such as herons and egrets, arrive in April and May. Nesting and creation of new families occurs in late May. The fall migration may begin as early as July and is at its peak during September and October. Whooping cranes may stop in the area in October and November and eagles are present during the winter months: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That this jewel of conservation which sustains numberless amounts of wildlife and is the source of enjoyment for many birders and sportsmen is properly designated as the “Migratory Bird Capitol of Kansas”; and

Be it further resolved: That the secretary of state provide an enrolled copy of this resolution to the secretary of the Kansas department of wildlife and parks.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to committees as indicated:

Agriculture: **HB 2717, HB 2718.**
 Appropriations: **HB 2714, HB 2730.**
 Education: **HB 2711, HB 2712.**
 Environment: **HB 2710, HB 2716.**
 Federal and State Affairs: **HB 2724, HB 2726, HB 2727, HB 2728.**
 Governmental Organization and Elections: **HB 2719, HB 2720, HB 2721.**
 Health and Human Services: **HB 2713, HB 2715; HCR 5031.**
 Higher Education: **HB 2722.**
 Insurance: **HB 2702, HB 2731.**
 Judiciary: **HB 2699, HB 2700, HB 2701, HB 2704, HB 2706, HB 2725, HB 2729.**
 Taxation: **HB 2723** (separately).
 Transportation: **HB 2705, HB 2707, HB 2708, HB 2709, HB 2732.**
 Utilities: **HB 2703; HB 2723** (separately).

CHANGE OF REFERENCE

Speaker Mays announced the withdrawal of **HB 2650** from Committee on Judiciary and referral to Committee on Health and Human Services.

Also, the withdrawal of **HR 6008** from the Calendar under Motions and Resolutions Offered on a Previous Day and referral to Committee on Environment.

Also, the withdrawal of **HCR 5030** from the Calendar under Motions and Resolutions Offered on a Previous Day and referral to Committee on Environment.

MESSAGE FROM THE GOVERNOR

January 23, 2006

Message to the House of Representatives of the State of Kansas:

Enclosed herewith is Executive Directive No. 06-368 for your information.

EXECUTIVE DIRECTIVE No. 06-368

Authorizing Personnel Transactions

KATHLEEN SEBELIUS
 Governor

The above Executive Directive is on file and open for inspection in the office of the Chief Clerk.

MOTIONS AND RESOLUTIONS OFFERED ON A PREVIOUS DAY

On motion of Rep. Jim Morrison, **HR 6006**, A resolution concerning women and cardiovascular disease, was adopted.

CONSENT CALENDAR

No objection was made to **HB 2555, HB 2608, HB 2609** appearing on the Consent Calendar for the first day.

MOTIONS TO CONCUR AND NONCONCUR

On motion of Rep. O'Neal, the House nonconcurred in Senate amendments to **HB 2129** and asked for a conference.

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

On motion of Rep. Aurand, the House resolved into Committee of the Whole, with Rep. Pottorff in the chair.

COMMITTEE OF THE WHOLE

On motion of Rep. Pottorff, Committee of the Whole report, as follows, was adopted:

Recommended that on motion of Rep. Huntington, **HB 2582** be amended on page 1, in line 16, by striking all following "(b)"; in line 17, by striking all preceding the comma and inserting "Within 60 days of the effective date of this act"; in line 21, by striking "dwellings owned by"; in line 23, following "or" by inserting "other"; also in line 23, following the

period by inserting "Within 10 days of the adoption of the amendment, the amended declaration or other governing document shall be recorded in the same manner as the original declaration or other governing document. No fee shall be charged for such recording."; in line 24, by striking "From and after January 1, 2006, if" and inserting "If"; by striking all in lines 41 and 42;

In the title, in line 9, by striking "discriminating";

Also, on motion of Rep. Huntington, Rep. Feuerborn's name be added to the list of sponsors of the bill.

Also, on motion of Rep. Watkins, **HB 2582** be amended on page 1, in line 38, by striking "2005 Supp."; in line 41, by striking "2005 Supp.";

On page 2, after line 1, by inserting the following:

"Sec. 2. (a) An association shall:

(1) Open all meetings of the board of the homeowner's association to all homeowners; and

(2) adopt an annual budget and within 30 days after the adoption of such budget mail a copy by first-class mail to all homeowner members.

(b) For the purposes of this section "association" means a nonprofit homeowners association as defined in K.S.A. 60-3611, and amendments thereto, which collects dues or fees.";

And by renumbering sections accordingly;

In the title, in line 9, by striking "discrimination" and inserting "homeowners associations"; in line 10, before the period, by inserting "; concerning notification of the annual meeting and budget"; and **HB 2582** be passed as amended.

Committee report to **SB 164** be adopted; and the bill be passed as amended.

Committee report to **HB 2590** be adopted; also, on motion of Rep. Proehl be amended on page 5, in line 40, by striking "4" and inserting "5"; in line 41, by striking "4" and inserting "5";

Also, on motion of Rep. Krehbiel, **HB 2590** be amended on page 5, in line 2, by striking "gross negligence" and inserting "failure to use ordinary care"; and the bill be passed as amended.

REPORTS OF STANDING COMMITTEES

Committee on **Financial Institutions** recommends **HB 2662**, **HB 2663** be passed.

Committee on **Higher Education** recommends **HB 2602** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Committee on **Higher Education** recommends **HB 2604** be amended on page 1, in line 30, by striking "an" and inserting "up to one"; and the bill be passed as amended.

Committee on **Utilities** recommends **HR 6005** be 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 bill was thereupon introduced and read by title:

HB 2745. An act relating to higher education; concerning the educational building fund; providing certain authority and duties for the board of regents; amending K.S.A. 76-6b02 and K.S.A. 2005 Supp. 76-6b01 and repealing the existing sections, by Committee on Higher Education.

On motion of Rep. Aurand, the House adjourned until 8:45 a.m., Friday, January 27, 2006.

CHARLENE SWANSON, *Journal Clerk*.

JANET E. JONES, *Chief Clerk*.

