

Journal of the House

TWELFTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Wednesday, January 28, 2009, 11:00 a.m.

The House met pursuant to recess with Speaker O'Neal in the chair.
The roll was called with 121 members present.
Rep. Slattery was excused on verified illness.
Reps. Kelley, Landwehr and Mah were excused on excused absence by the Speaker.
Prayer by Chaplain Brubaker:

Father God,
"The fruit of silence is prayer
the fruit of prayer is faith
the fruit of faith is love
the fruit of love is service
the fruit of service is peace."

(Mother Theresa)

This prayer of Mother Theresa is
what I pray for our state leaders today.
May the fruits of our prayers,
faith, love and service result in peace.
Today we want to remember Representative Kelley
and her family in the loss of her grandfather.
Please bring the comfort and grace needed
at a time such as this.
In Christ's Name I pray, Amen.

The Pledge of Allegiance was led by Rep. Phelps.

PERSONAL PRIVILEGE

There being no objection, the following remarks of Rep. Bowers are spread across the Journal:

It is always thrilling to stand down here — however it is even more thrilling to share milestones with my colleagues. Monday afternoon, my son, Charles and his wife Julie were in labor. I clutched my phone waiting for it to vibrate with a call or text. After numerous texts from me, I received one back — *things going very well—texting stinks!!* Four hours later, I get a picture text — no words — just a picture of a pink baby in a pink blanket — all of fifteen minutes old. Madalyn Kay Bowers came into our world at 5:13 p.m. weighing in at 7lb. 1 oz. and 19¾ inches tall. BTW (by the way) — my response to my son's — *texting stinks — yes, but life is good*. His response: *life is very, very good!* I'll second that — very good indeed!! Thank you for allowing me to share this moment with you!

INTRODUCTION OF GUESTS

There being no objection, the following remarks of Rep. Swanson are spread upon the journal:

It is my pleasure to welcome to the House Chamber from Chapman Mayor Bob Gaetz, City Councilman Phil Weishaar, and City Clerk Marietta Lucas.

As you know a deadly tornado tore through Chapman the night of June 11. With 75% of their community damaged or destroyed, including their own properties, these three individuals, other city officials, and thousands of volunteers worked countless hours to restore their city.

And I would add that Marietta is the President of the City Clerks and Municipal Finance Officers Association of Kansas.

Please join me in recognizing these three individuals who represent all of those who have worked so hard the days and weeks following the tornado and continue to do so.

Rep. Swanson presented them with a framed House certificate.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

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

HB 2123, An act concerning the courts; creating the court of appeals nominating commission; appointment of judges; amending K.S.A. 20-3004, 20-3005, 20-3006, 20-3007 and 20-3010 and K.S.A. 2008 Supp. 20-3002 and repealing the existing sections; also repealing K.S.A. 20-3008 and 20-3009, by Committee on Judiciary.

HB 2124, An act concerning planning and zoning; dealing with certain easements; amending K.S.A. 19-2633 and 19-2961 and K.S.A. 2008 Supp. 12-752 and repealing the existing sections, by Committee on Local Government.

HB 2125, An act concerning registers of deeds; pertaining to duties regarding plats; amending K.S.A. 19-1207, 58-3115 and 58-3707 and repealing the existing sections, by Committee on Local Government.

HB 2126, An act concerning telecommunications; relating to providing caller location in emergency situations, by Committee on Energy and Utilities.

HB 2127, An act concerning utilities; establishing the renewable energy standards act; establishing the net metering and easy connection act; relating to energy efficiency for state buildings; amending K.S.A. 2008 Supp. 66-1,184 and By Committee on Energy and Utilities.

HB 2128, An act relating to insurance; concerning the assignment of insurance payments for covered services; amending K.S.A. 2008 Supp. 40-2,103, 40-19c06 and 40-19c09 and repealing the existing sections, by Committee on Insurance.

HOUSE CONCURRENT RESOLUTION No. 5005—

By Committee on Judiciary

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,~~ *subject to confirmation by 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 shall appoint one of the nominated persons or elect not to appoint one of the nominated persons and request that the nominating commission submit the names of three new qualified persons to*

the governor. Such subsequent nominations shall be by the same procedure as provided in this article and law not in conflict with this article.

(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. No person appointed pursuant to subsection (a) of this section shall assume the office of justice of the supreme court until confirmed by the senate as provided in this article and law not in conflict with this article. The senate shall consider and act upon the appointment not later than 30 days after such appointment is received by the senate, if the senate is in session during a regular legislative session. If the senate is not in session and will not be in session within the 30-day time period, the vacancy shall remain open until the next regular legislative session. A special session of the legislature shall not be convened for the sole purpose of considering and acting on such appointment. In the event the senate does not confirm the appointment, the commission, within 30 days after the senate vote on the previous appointee, shall meet to submit to the governor a panel of three nominees possessing the qualifications of office. Such three nominees may include a person or persons who were previously nominated for such vacancy but not appointed by the governor. Such subsequent appointment shall be considered by the senate in the same procedure as provided in this article and law not in conflict with this article. The same appointment and confirmation procedure shall be followed until a valid appointment has been made. No person who has been previously appointed but was not confirmed by 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 during a regular legislative session, the senate shall be deemed to have given consent to such appointment.~~

(c) Each justice of the supreme court appointed pursuant to provisions of subsection (a) of this section ~~and confirmed pursuant to the provisions of subsection (b) 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.

(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. *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. Only 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.*

(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 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 confirmed 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. Only one of each such appointments would be a licensed attorney. 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. A procedure is established whereby senate confirmation would occur within 30 days of receiving the appointment during the regular legislative session. If the senate does not confirm, the governor would then select an appointment from three nominated persons by the commission which would again go to the senate for confirmation. The same appointment and confirmation procedure would be followed until a valid appointment is made. If the senate fails to vote on an appointment within 30 days during the regular legislative session, it will be considered that the senate confirmed the appointment.

"A vote for this proposition would provide a procedure whereby the governor would appoint a person to be a supreme court justice and the senate would confirm 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 the three nominated 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 2010 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 were referred to committees as indicated:

Agriculture and Natural Resources: **HB 2121.**

Appropriations: **HB 2093, HB 2094, HB 2095.**
 Corrections and Juvenile Justice: **HB 2096, HB 2097, HB 2098, HB 2099, HB 2100, HB 2113.**
 Economic Development and Tourism: **HB 2120.**
 Education: **HB 2101, HB 2102, HB 2103, HB 2104, HB 2105.**
 Energy and Utilities: **HB 2115, HB 2116, HB 2117.**
 Financial Institutions: **HB 2091.**
 Health and Human Services: **HB 2118.**
 Judiciary: **HB 2109, HB 2110, HB 2111, HB 2112, HB 2114.**
 Local Government: **HB 2092.**
 Taxation: **HB 2108, HB 2119.**
 Transportation: **HB 2122.**
 Select Committee on KPERs: **HB 2090, HB 2106, HB 2107.**

COMMUNICATIONS FROM STATE OFFICERS

From Tom Thornton, President and CEO, Kansas Bioscience Authority, 2008 Progress Report Focused Strategy, Big Results.

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

REPORTS OF STANDING COMMITTEES

Committee on **Insurance** recommends **HB 2052** be passed.

Committee on **Rules and Journal** recommends **SCR 1601** be amended on page 4, in line 37, by striking all after the period; by striking all in lines 38 through 41; in line 42, by striking all before “The” and inserting “Except when a conference committee report is that members of the committee are unable to reach agreement or is a recommendation to accede to or recede from all amendments of the second house, copies of the report shall be made available as follows: (1) If the report is not more than six pages in length, not later than 30 minutes before the time of its consideration, electronic and paper copies of the report shall be made available to all members of the house considering the report; and (2) if the report is more than six pages in length, not later than 30 minutes before the time of its consideration, electronic copies of the report shall be made available to all members of the house considering the report and 10 paper copies of the report shall be made available to members at the clerk’s or secretary’s desk at the front of the respective house.”;

On page 6, in line 23, by striking “11” and inserting “4”; in line 36, by striking “February 5” and inserting “January 30”;

On page 7, in line 1, by striking “13” and inserting “6”; in line 18, by striking “25” and inserting “28”; and the concurrent resolution be adopted as amended.

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 2129, An act relating to driver’s licenses; concerning the classes thereof; amending K.S.A. 8-234b and repealing the existing section, by Committee on Transportation.

HB 2130, An act relating to motor vehicles; providing for the support Kansas arts license plate; amending K.S.A. 2008 Supp. 8-1,141 and repealing the existing section, by Committee on Transportation.

HB 2131, An act relating to motor vehicles; concerning license plates for disabled veterans; amending K.S.A. 8-160 and repealing the existing section, by Committee on Transportation.

HB 2132, An act regulating traffic; prohibiting the sending, reading or writing of text messages while operating a motor vehicle; amending K.S.A. 2008 Supp. 8-2118 and repealing the existing section, by Committee on Transportation.

HB 2133, An act regulating traffic; concerning certain right-of-way violations; providing for increased penalties, by Committee on Transportation.

HB 2134, An act relating to motor vehicles; concerning distinctive license plates; amending K.S.A. 2008 Supp. 8-1,141 and repealing the existing section, by Committee on Transportation.

HB 2135, An act regulating traffic; concerning traffic-control lights; amending K.S.A. 8-1508 and repealing the existing section, by Committee on Transportation.

HB 2136, An act relating to drivers' licenses; requiring certain examinations for issuance or renewal of; amending K.S.A. 2008 Supp. 8-240 and 8-247 and repealing the existing sections, by Representative Mast.

HB 2137, An act relating to license plates; concerning the county designation thereon; amending K.S.A. 2008 Supp. 8-132, 8-134 and 8-147 and repealing the existing sections, by Representative Burroughs.

HB 2138, An act relating to motor vehicles; providing for a Kansas military family license plate; amending K.S.A. 2008 Supp. 8-1,141 and repealing the existing section, by Committee on Veterans, Military and Homeland Security.

HB 2139, An act concerning the disposition of district court fines, penalties and forfeitures; relating to the percentage credited to the department of corrections alcohol and drug abuse treatment program; amending K.S.A. 2008 Supp. 74-7336 and repealing the existing section, by Committee on Appropriations.

HB 2140, An act concerning retirement and pensions; relating to the Kansas public employees retirement system and certain systems thereunder; federal nontaxable distributions to certain retirants, by Committee on Appropriations.

HB 2141, An act concerning employment security law; relating to unemployment benefits for privately contracted school bus drivers; amending K.S.A. 2008 Supp. 44-706 and repealing the existing section, by Committee on Commerce and Labor.

HB 2142, An act concerning licensure and continuing education requirements for certain trades and crafts; amending K.S.A. 2008 Supp. 12-1509, 12-1526 and 12-1542 and repealing the existing sections, by Committee on Commerce and Labor.

HOUSE CONCURRENT RESOLUTION No. 5006—

By Committee on Veterans, Military and Homeland Security

A PROPOSITION to amend section 1 of article 10 of the constitution of the state of Kansas, relating to the reapportionment of senatorial and representative districts.

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 1 of article 10 of the constitution of the state of Kansas is hereby amended to read as follows:

§ 1. Reapportionment of senatorial and representative districts. (a) ~~At its regular session in 1999, the legislature shall by law reapportion the state representative districts, the state senatorial districts or both the state representative and senatorial districts upon the basis of the latest census of the inhabitants of the state taken by authority of chapter 61 of the 1987 Session Laws of Kansas. At its regular session in 1992 2012, and at its regular session every tenth year thereafter, the legislature shall, by law, shall~~ reapportion the state senatorial districts and representative districts on the basis of the population of the state as established by the most recent census of population taken and published by the United States bureau of the census. ~~Senatorial and representative districts shall be reapportioned upon the basis of the population of the state adjusted: (1) To exclude nonresident military personnel stationed within the state and nonresident students attending colleges and universities within the state, and (2) to include military personnel stationed within the state who are residents of the state and students attending colleges and universities within the state who are residents of the state in the district of their permanent residence. Bills reapportioning legislative districts shall be published in the Kansas register imme-~~

diately upon final passage and shall be effective for the next following election of legislators and thereafter until again reapportioned.

(b) Within 15 days after the publication of an act reapportioning the legislative districts within the time specified in (a), the attorney general shall petition the supreme court of the state to determine the validity thereof. The supreme court, within 30 days from the filing of the petition, shall enter its judgment. Should the supreme court determine that the reapportionment statute is invalid, the legislature shall enact a statute of reapportionment conforming to the judgment of the supreme court within 15 days.

(c) Upon enactment of a reapportionment to conform with a judgment under (b), the attorney general shall apply to the supreme court of the state to determine the validity thereof. The supreme court, within 10 days from the filing of such application, shall enter its judgment. Should the supreme court determine that the reapportionment statute is invalid, the legislature shall again enact a statute reapportioning the legislative districts in compliance with the direction of and conforming to the mandate of the supreme court within 15 days after entry thereof.

(d) Whenever a petition or application is filed under this section, the supreme court, in accordance with its rules, shall permit interested persons to present their views.

(e) A judgment of the supreme court of the state determining a reapportionment to be valid shall be final until the legislative districts are again reapportioned in accordance herewith."

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 eliminate the adjustment of census taken by the United States bureau of the census regarding nonresident military personnel and nonresident students when reapportioning the Kansas senate and house of representatives.

"A vote for this amendment would eliminate the adjustment of census taken by the United States bureau of the census regarding nonresident military personnel and nonresident students when reapportioning the Kansas senate and house of representatives.

"A vote against this amendment would continue in effect the requirement for the adjustment of census taken by the United States bureau of the census regarding nonresident military personnel and nonresident students when reapportioning the Kansas senate and house of representatives."

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 2010 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.

COMMITTEE ASSIGNMENT CHANGES

Rep. Ward has been appointed to replace Rep. D. Gatewood on Committee on Appropriations.

Also, Rep. Swenson is removed from Committee on Higher Education and Committee on Government Efficiency and Fiscal Oversight. These positions will remain vacant.

Also, Rep. Swenson will replace Rep. Lane on Committee on Federal and State Affairs; Rep. Swenson will replace Rep. Long on Committee on Financial Institutions; and Rep. Swenson will replace Rep. Long on Committee on Insurance.

On motion of Rep. Merrick, the House adjourned until 11:00 a.m., Thursday, January 29, 2009.

SUSAN W. KANNARR, *Chief Clerk.*

CHARLENE SWANSON, *Journal Clerk.*

