

Journal of the House

TWENTY-FIRST DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Tuesday, February 10, 2009, 11:00 a.m.

The House met pursuant to recess with Speaker O'Neal in the chair.
The roll was called with 123 members present.
Reps. Mah and Ruiz were excused on excused absence by the Speaker.

Prayer by guest chaplain, Randy Ingmire, Vice President for Academic Affairs, Manhattan Christian College, and guest of Rep. Carlin:

To the God in Whom we trust,
As we begin this day's session, remind us that for everything there is a
season and a time for every purpose under the sun . . .
A time to change, and a time to remain the same.
A time to debate, and a time to resolve.
A time to take sides, and a time to join together.
A time to keep, and a time to throw away.
A time to speak, and a time to keep silent.

We recognize that we are far from perfect, so it is humbling to be placed
in this position as decision makers for the people of this great state of Kansas.
Because good government is not without tension producing decisions, guide
and bless these men and women who have been sent here by the people of
Kansas and who have been ordained by You to govern. Grant them the wis-
dom to rule, and may their decisions direct us to the center of Your will.

And never let any of us forget that the risk of inaction is greater than the
risk of moving forward and changing. Almighty God, today help these decision
makers to move us forward into a time of change that will provide a better
place for all Kansans.

So be it through You. Amen.

The Pledge of Allegiance was led by Rep. Swanson.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

HB 2321, An act concerning sales taxation; relating to Kansas retailers' sales tax act; political subdivisions thereunder; horsethief reservoir benefit district; sales tax refund; amending K.S.A. 2008 Supp. 79-3602 and repealing the existing section, by Committee on Taxation.

HB 2322, An act concerning civil procedure; relating to wrongful death; amending K.S.A. 60-1901 and repealing the existing section, by Committee on Federal and State Affairs.

HB 2323, An act concerning adult care homes and home health agencies; amending K.S.A. 2008 Supp. 39-970 and 65-5117 and repealing the existing sections, by Committee on Federal and State Affairs.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

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

Committee of the Whole: **SCR 1604**.

Elections: **SB 80**.
 Government Efficiency and Fiscal Oversight: **HB 2320**.
 Health and Human Services: **SB 82, SB 102**.
 Judiciary: **Sub. SB 6; SB 85, SB 86, SB 132**.
 Local Government: **SB 38**.
 Taxation: **SB 78**.

MESSAGE FROM THE SENATE

In accordance with **HCR 5007**, a concurrent resolution providing for a joint session of the Senate and House of Representatives for the purpose of hearing a message from the Supreme Court, the Senate announces the appointment of Senators Owens and Haley to wait upon the Supreme Court Justices.

On motion of Rep. Merrick, the House resolved into Committee of the Whole, with Rep. Whitham in the chair.

COMMITTEE OF THE WHOLE

On motion of Rep. Whitham, Committee of the Whole report, as follows, was adopted: Recommended that committee report recommending a substitute resolution to **Sub. HR 6004** be adopted; also, on motion of Rep. Shultz to amend, the motion was withdrawn. Also, on further motion of Rep. Shultz, the resolution be amended on page 29, in line 23, by striking “48” and inserting “24”; and **Sub. HR 6004** be adopted as amended.

The House stood at ease until the sound of the gavel.

Speaker O’Neal called the House to order.

It being the hour in accordance with **HCR 5007** to meet in joint session with the Senate to hear the message of the Chief Justice, Reps. Morrison and Garcia escorted President Morris and members of the Senate to seats in the House.

Reps. King, Patton and D. Gatewood and Senators Owens and Haley escorted the Chief Justice to the rostrum and other members of the Supreme Court to seats in the House.

ADDRESS OF CHIEF JUSTICE ROBERT E. DAVIS TO THE JOINT SESSION OF THE 2009 LEGISLATURE

THE STATE OF THE KANSAS JUDICIARY IN 2009

Speaker O’Neal, President Morris, distinguished members of the Senate and House, honored guests: Thank you for the opportunity to address both houses of the Legislature today as I report on the State of the Judiciary in Kansas. I consider it a privilege and an honor to stand before you.

Before I begin, please allow me to introduce my colleagues on the Kansas Supreme Court who are with me today. In order of seniority, they are: Justice Lawton R. Nuss, Justice Marla J. Luckert, Justice Carol A. Beier, Justice Eric S. Rosen, and Justice Lee A. Johnson. Also present today is Dan Biles, who has recently been appointed to the court by Governor Sebelius and will be sworn in as our newest justice next month. The justices of Kansas’ highest court contribute not only their high-quality legal analysis in our opinions, but we as a court also set policy for administering the Judicial Branch of our government. We are all here today to report to you that the State of the Judiciary in Kansas is sound and that we continue to render quality service to all of our citizens.

For those of you who have not yet met me, I am Bob Davis. I took over the reins as Chief Justice of the Kansas Judicial Branch upon Chief Justice Kay McFarland’s retirement in January. Chief Justice McFarland served an impressive 31 years as a justice of the Kansas Supreme Court—13 of those years as Chief Justice. We are grateful to her for dedicating her career to the people of Kansas. Chief Justice McFarland is a tough act to follow, and I am honored to have had the opportunity to serve with her.

As for me, I am a 16-year veteran of the Kansas Supreme Court. I previously served on the Kansas Court of Appeals for seven years from 1986 until 1993. My background also includes service in the trial and appellate levels of the United States Army JAG Corps, in the private practice of law, and as a county attorney and district court judge.

In my office across the street, I have on display an envelope hand-addressed by the Honorable David J. Brewer. Justice Brewer began his professional career in Leavenworth and eventually became a Kansas Supreme Court justice in 1870. He was appointed to the United States Supreme Court in 1889, where he served until his death in 1910.

While Justice Brewer was on the United States Supreme Court, he said, "Let it never be forgotten that the protection of . . . liberty . . . is the great duty of the republic." These words harken back to George Washington, who wrote in a letter to Edmond Randolph that "[t]he administration of justice is the firmest pillar of government."

What Justice Brewer and George Washington recognized is that the great aim of all public service is to justly protect the liberties of those we serve.

We all promote justice in our different responsibilities. You in the Legislative Branch create and enact the laws we live by. The Executive Branch administers these laws. We in the Judicial Branch interpret the laws and assure that they are within the parameters of our state and federal constitutions.

Perhaps the most commonly stated maxim in our court opinions is that, in cases of statutory interpretation, the intent of the Legislature governs. Our courts seek, in interpreting the law, to determine *your* intent. Of all the laws we in the courts are called on to interpret and apply, two come immediately to mind. K.S.A. 22-2103, which is found at the beginning of our Criminal Procedure Act, instructs the courts "to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay." K.S.A. 60-102, its civil counterpart, charges Kansas' courts "to secure the just, speedy and inexpensive determination of every action or proceeding."

These are high orders, and we in the Judicial Branch take them very seriously. They can be summed up in three words: Justice, Efficiency, and Affordability.

Our first and primary goal, as the statutes make clear, is the administration of *justice* in all proceedings. It is my strong opinion that the best account of our efforts in this regard is not what I say today, but rather lies in the observation of how our courts promote justice on a day-to-day basis. To that end, and on behalf of our judges at every level of the Kansas Judicial Branch, I invite you to our courthouses. There, you will see first-hand the administration of justice.

More than 30 years ago, the Kansas Legislature unified our state court system. They established one court of justice and created a Court of Appeals. Court unification enabled the Supreme Court to administer the third branch of government uniformly throughout our state. Unification also had the dual benefit of saving litigants' expenses by reducing travel costs and bringing the appellate system to people's doorsteps. Eighty percent of the appeals filed in our state are decided by the Court of Appeals.

Today and tomorrow, panels of the Court of Appeals are hearing cases in Wichita, El Dorado, Kansas City, and Topeka. I invite you to come across the street and observe the parties' oral arguments and the judges' pointed questions regarding the application of the law in those cases.

The Supreme Court will next hear oral arguments in March. I invite you to visit our courtroom and observe those arguments as well. All oral arguments are open to the public. Supreme Court arguments may also be heard online, accessed through the Judicial Branch's website.

Perhaps even more visible are the trial courts—the district and magistrate judges throughout our state. In hundreds of cases heard daily, children, crime victims, and all citizens depend upon our trial courts for justice.

While you are visiting the courthouses of this state—whether at the trial or appellate level—keep in mind that the very important work being carried on in those courtrooms still does not give you a full picture of the obligation of judges and other employees of the Judicial Branch. Equally important to our charge of administering justice in this state is our work to assure that all have *access* to justice. This task involves efforts to educate the public and to increase efficiency and affordability in all of our activities. I would like to discuss a

few of the programs we have instituted to demonstrate how we are striving to meet these goals.

We know that, in difficult economic times, the public need for access to the courts does not diminish. In many instances, the need to access the courts actually increases. At the same time, the ability to afford legal representation has become increasingly more difficult for some parties. Over the past several years, the number of self-represented litigants appearing in our district courts has increased substantially.

Self-represented litigants generally pose more questions and make more procedural errors than litigants represented by an attorney. Judges of the district courts, as well as our court clerks, spend additional time assisting these individuals in filing, processing, and understanding their cases. The issue becomes more complex when one considers the fact that clerks of the district court are not attorneys. They are prohibited from providing legal advice to self-represented litigants. Judges, who are neutral fact-finders, also are limited in the advice and guidance they can provide.

These and other issues led the Kansas Supreme Court to create the Self-Represented Study Committee in 2007. With a membership that includes judges, attorneys, court administrators, and clerks of the district court, this committee has been working hard to provide insight and to seek improvements that will benefit self-represented litigants. The intent of this committee's work is not to marginalize or do away with the need for attorneys, but to make better use of limited resources for everyone involved in the system. We are committed to providing self-represented litigants more and easier access to our trial courts.

Just as we are committed to educating self-represented litigants about courtroom activities, we are committed to informing the public about who we are *as judges* and what we do. With the help of funding from the Legislature, we have for the first time helped to provide our citizens with a systematic review of judicial performance. The Kansas Commission on Judicial Performance published the first round of judicial performance evaluations last year, giving voters in the past general election the opportunity to find out much more about their judges. The performance evaluations were based on surveys that were mailed to attorneys, jurors, witnesses, staff, and others who had contact with those justices and judges who stood for retention in the November general election.

One additional way that we are reaching out to the public to inform Kansas citizens about the workings of the Judicial Branch—and save time and money in the process—is through our expansion of court technology. Our Kansas Judicial Branch website, www.kscourts.org, provides access to, among many other things, all Kansas printed appellate decisions, real-time Supreme Court arguments, and all oral arguments before our court since 2004.

I am also pleased to announce that, since our last legislative update in February 2008, the Judicial Branch has completed two major technological upgrades of what was a recent major achievement, our statewide case management system called FullCourt.

Document scanning, also called document imaging, and online access to court records are now operational in all Kansas counties. Document scanning makes it possible to electronically access case pleadings without having to manually retrieve paper files. Court personnel and your constituents are already experiencing the benefits of this enhanced technology. Members of the public may also access public court documents from public computer terminals located in each courthouse.

The online records feature will save citizens both time and money by enabling them to view court actions from the comfort of their own homes. With the index of public court records available online in all Kansas counties at this time, we can look toward our next step, which is to expand electronic access and research capabilities.

In addition, we are working toward accepting credit and debit cards for all transactions handled by the Judicial Branch. As you may or may not know, the district courts currently accept credit and debit card payments in new cases that are filed by fax. The citizens of Kansas have expressed a strong desire for the convenience of paying all court transactions such as traffic tickets, marriage licenses, and other fees by credit or debit card. We are very close to meeting this request.

With these technological advancements in place, the Judicial Branch can now proceed with our exploration of the electronic filing of cases. Electronic filing, or e-filing, will allow litigants to electronically file district court cases from their homes and offices.

These represent only a sampling of our efforts to educate the public and increase the efficiency of our judicial system. These programs, coupled with our award-winning court delay reduction program implemented after unification, demonstrate that we have taken to heart the Legislature's charge that we promote efficient and affordable access to justice in the State of Kansas.

With your help and cooperation, we strive to meet the goals of Justice, Efficiency, and Affordability. As many of you know, we are somewhat unique in our budgetary structure. With court unification in 1977, the state elected to assume all payroll costs for our system. The counties, however, continue to fund almost all other expenses associated with court operating costs throughout Kansas. What this means to you as policy makers is that more than 97 percent of our state Judicial Branch budget is for employee salaries. As a result, there are very few items that can be cut out of the budget. For example, those cases dealing with the well-being of children in need of care cannot be compromised, and the public safety concerns inherent in criminal cases must be addressed promptly. We are all faced with the difficult task of providing justice to the people of Kansas in this economy. I understand that the budget is at the forefront of your agenda, and I look forward to the opportunity to work with you in earnest on this issue.

I would like to close today with a story that demonstrates the profound dedication to justice exhibited by our courts in this state. I ask you to recall the extraordinary challenge that confronted my friend Chief Judge Dan Love, of Dodge City, and the other judges and citizens who were so devastated by the May 2007 Category 5 tornado that ripped through Greensburg and the surrounding area. The Kiowa County courthouse, though still standing at the end of the day, was rendered unusable when the tornado destroyed approximately 95 percent of the town. District Magistrate Judge Ann Dixson, herself a resident of Greensburg, was among those whose homes were destroyed by this horrific tornado.

What most people do not know is that Chief Judge Love, other judges, and court employees from surrounding counties started the recovery effort *the very next morning*. In the can-do spirit that epitomizes Kansans, criminal court proceedings were held on the very next Wednesday at a temporary court location set up seven miles down the road in Mullinville. The commitment and effort of these Judicial Branch employees set the gold standard for what it means to assure access to justice in our state. Yet they represent just one example of our dedication to providing justice for all Kansans.

Thomas Jefferson once said that “[m]an’s capacity for justice makes democracy possible.” I am incredibly proud of the people of our Judicial Branch and am profoundly grateful for all that they do to safeguard the administration of justice in our state. I have discussed only some of those efforts today.

Thank you, once again, for this opportunity to address you today. As you progress with the legislative session, I know that you will take fair account of the needs of the Judicial Branch of our government, as well as the vital services that we provide to the public. And finally, for all the good work you have done and continue to do for the citizens of Kansas in this difficult time, I want to express my gratitude and bid you Godspeed. Thank you.

The House stood at ease until the sound of the gavel.

Speaker O’Neal called the House to order.

REPORTS OF STANDING COMMITTEES

Committee on **Corrections and Juvenile Justice** recommends **HB 2039**, **HB 2059**, **HB 2096**, **HB 2097**, **HB 2098** be passed.

Committee on **Corrections and Juvenile Justice** recommends **HB 2040** be amended on page 7, in line 28, by striking “Except as provided in paragraph (3), if” and inserting “IF”; in line 37, by striking “Except as provided in paragraph (3), if” and inserting “IF”; in line 41, by striking “10” and inserting “20”; in line 43, by striking “10” and inserting “20”; On page 8, by striking all in lines 3 through 9; and the bill be passed as amended.

Committee on **Financial Institutions** recommends **HB 2091** be passed.

Committee on **Financial Institutions** recommends **HB 2092** be amended on page 2, in line 7, by striking “or” where it appears for the second time; in line 11, following the semicolon by inserting “or

(H) any fee charged that is a typical real estate closing cost, including escrow fees, settlement fees or title insurance premiums charged by a real estate title company licensed by the state;”;

Also on page 2, preceding line 22, by inserting the following:

“Sec. 2. (a) On and after the effective date of this act, any transfer fee covenant, as defined in section 1, and amendments thereto, is hereby declared to be against public policy and such covenant shall be void and unenforceable.

(b) The provisions of this section shall apply to any transfer fee covenant in existence on the effective date of this act.”;

And by renumbering the remaining section accordingly; and the bill be passed as amended.

Committee on **Financial Institutions** recommends **HB 2185** be amended on page 1, in line 26, by striking “no one deposit amount exceeds” and inserting “the total cumulative amount of each deposit does not exceed”; in line 29, after “deposits” by inserting “shall not be treated as securities and”;

On page 4, in line 13, by striking “no one deposit amount exceeds” and inserting “the total cumulative amount of each deposit does not exceed”; in line 16, after “deposits” by inserting “shall not be treated as securities and”;

On page 5, in line 13, by striking “no one deposit amount exceeds” and inserting “the total cumulative amount of each deposit does not exceed”; by striking all in line 16 and inserting the following:

“Such deposits shall not be treated as securities and need not be secured as provided in this or any other act, except that such deposits shall be secured as provided in K.S.A. 75-4218, and amendments thereto, when they are held by the selected financial institution prior to placement with reciprocal institutions or upon maturity.

(e) The pooled money investment board shall establish procedures for administering reciprocal deposit programs in its investment policies, as authorized by K.S.A. 75-4232, and amendments thereto.”; and the bill be passed as amended.

Committee on **Health and Human Services** recommends **HB 2162** be amended on page 4, in line 12, by striking “\$200” and inserting “\$150”; and the bill be passed as amended.

Committee on **Transportation** recommends **HB 2146** be passed.

Committee on **Transportation** recommends **HB 2147** be amended on page 1, in line 17, preceding “multilane” by inserting “any”; in line 18, by striking “state highway” and inserting “roadway”; in line 24, preceding the comma by inserting “or the transportation of hazardous material”; and the bill be passed as amended.

CHANGE OF REFERENCE

Speaker O’Neal announced the withdrawal of **HB 2292** from Committee on Judiciary and referral to Committee on Financial Institutions.

COMMITTEE ASSIGNMENT CHANGES

Rep. Lane is appointed to replace Rep. Ruiz on Committee on Federal and State Affairs; Rep. Swenson is appointed to replace Rep. Ruiz on Committee on Commerce and Labor. These appointments are for the week of February 9.

JOINT COMMITTEE ASSIGNMENTS

Joint Committee on Administrative Rules and Regulations: C. Holmes, Chairperson, Faber, Huebert, Patton; Pauls, Trimmer, Williams
Senate members: V. Schmidt, Vice-Chair; Brownlee, Ostmeyer; Lee, Steineger

Joint Committee on Arts and Cultural Resources: Horst, Chairperson; Gordon, Swanson; Carlin, Furtado
Senate members: Schodorf, Vice-Chair; Lynn, Umbarger; Faust-Goudeau, Francisco

Joint Committee on Children's Issues: Kiegerl, Chairperson; DeGraaf, Otto; Crow, Winn

Senate members: Lynn, Vice-Chair; Reitz Wagle; Haley, Faust-Goudeau

Joint Committee on Corrections and Juvenile Justice Oversight: Colloton, Chairperson; Craft, Grange, Patton; Henry, Pauls, Ward

Senate members: Brungardt, Vice-Chair; Brownlee, Bruce, Owens, Kelsey; Haley, Lee

Joint Committee on Economic Development: Gordon, Chairperson; Donohoe, George, Schwartz, Seiwert; Benlon, Slattery, Winn

Senate members: Wyson, Vice-Chair; Lynn, Marshall; Faust-Goudeau, Holland

Joint Committee on Energy and Environmental Policy: C. Holmes, Vice-Chair; M. Holmes, Sloan, Knox; Svaty, Neighbor

Senate members: McGinn, Chairperson; Apple, Reitz, Taddiken; Lee

Joint Committee on Health Policy Oversight: Landwehr, Vice-Chair; Bethell, Hill, Mast; Ruiz, Ward

Senate members: Barnett, Chairperson; V. Schmidt, Reitz, Colyer; Haley, Kelly

Joint Committee on Home and Community Based Services (HCBS) Oversight: Bethell, Vice-Chair, Landwehr, Mast; Henry, McCray-Miller

Senate members: McGinn, Chairperson; Umbarger; Kelly, Kultala

Joint Committee on Information Technology: McLeland, Chairperson; Burgess, Morrison; Dillmore, Lane

Senate members: Huelskamp, Vice-Chair; Petersen, V. Schmidt; Holland, Steineger

Joint Committee on Kansas Security: Goico, Chairperson; Johnson, Tafanelli; Loganbill, Menghini

Senate members: Emler, Vice-Chair, McGinn, Owens; Lee, Hensley

Legislative Post Audit: Peck, Chairperson; Grange, Mast; Sawyer, Burroughs

Senate members: Bruce, Vice-Chair; D. Schmidt, Umbarger; Hensley, Steineger

Joint Committee on Pensions, Investments and Benefits: Olson, Chairperson; Carlson, Huntington, Schwartz, Whitham; Flaharty, Swenson, Long

Senate members: Morris, Vice-Chair; Teichman, Emler; Kelly, Hensley

Joint Committee on Special Claims Against the State: M. Holmes, Vice-Chair; Fund, Huebert, King, Swenson; Grant, Henderson, Feuerborn

Senate members: Wagle, Chairperson; Bruce, Masterson, Pyle; Kultala

Joint Committee on State Building Construction: Pottorff, Chairperson; M. Holmes, Brunk Feuerborn, Grant

Senate members: Umbarger, Vice-Chair; Apple, Emler; Francisco, Kelly

Joint Committee on State-Tribal Relations: Knox, Vice-Chair; Rhoades, K. Wolf; Lukert, Sawyer

Senate members: Brungardt, Chairperson; Pyle, Vratil; Haley, Kultala

REPORT ON ENROLLED RESOLUTIONS

HR 6007, HR 6008 reported correctly enrolled and properly signed on February 10, 2009.

On motion of Rep. Merrick, the House adjourned until 11:00 a.m., Wednesday, February 11, 2009.

CHARLENE SWANSON, *Journal Clerk.*

SUSAN W. KANNARR, *Chief Clerk.*

