

# Journal of the House

## FOURTH DAY

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HALL OF THE HOUSE OF REPRESENTATIVES,  
TOPEKA, KS, Thursday, January 17, 2013, 11:00 a.m.

The House met pursuant to adjournment with Speaker pro tem Mast in the chair.

The roll was called with 121 members present.

Rep. Lane was excused on verified illness.

Reps. Henry and Peterson were excused on excused absence by the Speaker.

Rep. Montgomery was absent.

Prayer by Chaplain Brubaker:

God in Heaven,  
as we approach You today,  
remind us early on in this session that  
there is never any harmony between:  
servanthood and arrogance,  
leadership and passivity,  
relationships and unkindness  
achievement and complacency.  
“Show *us* Your ways, O Lord, teach *us* Your paths:  
guide *us* in Your truth and teach *us*,  
for You are God *our* Savior,  
and *our* hope is in You all day long.”  
(Ps. 25:4-5)  
In Your Son's Name I pray, Amen.

The Pledge of Allegiance was led by Rep. Hermanson.

### INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

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

**HB 2022**, AN ACT concerning certain deductions from wages; amending K.S.A. 2012 Supp. 44-319 and repealing the existing section, by Committee on Commerce, Labor and Economic Development.

**HB 2023**, AN ACT concerning certain employee organizations; relating to political activities; amending K.S.A. 75-4333 and repealing the existing section, by Committee on Commerce, Labor and Economic Development.

**HB 2024**, AN ACT enacting the Kansas roofing contractor registration act, by

Committee on Commerce, Labor and Economic Development.

**HB 2025**, AN ACT creating the joint committee on KanCare oversight; amending K.S.A. 2012 Supp. 39-7,160 and 39-7,162 and repealing the existing sections; also repealing K.S.A. 2012 Supp. 39-7,161 and 46-3501, by Committee on Health and Human Services.

**HB 2026**, AN ACT concerning retail sales of mobile communication devices, by Committee on Judiciary.

**HB 2027**, AN ACT concerning secondhand stores, by Committee on Judiciary.

**HB 2028**, AN ACT concerning forfeiture; relating to venue in forfeiture proceedings; amending K.S.A. 60-4103 and repealing the existing section, by Committee on Judiciary.

**HB 2029**, AN ACT concerning the Kansas program of medical assistance; relating to the intellectual or developmental disability home and community based services waiver; amending K.S.A. 39-7,100 and 39-1804 and repealing the existing sections, by Representative Ward.

**HB 2030**, AN ACT concerning hunting, relating to deer permits; amending K.S.A. 2012 Supp. 32-971 and repealing the existing section, by Committee on Agriculture and Natural Resources.

**HB 2031**, AN ACT concerning sales and use taxation; relating to distribution of revenue; the state water plan fund; amending K.S.A. 70a-105, 82a-951, 82a-1305, 82a-1311a, 82a-1316 and 82a-1317 and K.S.A. 2012 Supp. 2-1205, 2-2204, 65-163, 75-5133, 79-3603, 79-3620, 79-3703, 79-3710, 79-4804, 82a-734, 82a-1306, 82a-1308a, 82a-1315a, 82a-1315b, 82a-1349, 82a-1801 and 82a-2101 and repealing the existing sections; also repealing K.S.A. 2012 Supp. 75-5133b, 82a-953a, 82a-954 and 82a-1315c, by Committee on Agriculture and Natural Resources.

#### HOUSE CONCURRENT RESOLUTION No. **HCR 5005**—

By Committee on Judiciary

A PROPOSITION to amend sections 2, 5 and 8 of article 3 of the constitution of state of Kansas; relating to the selection and term of office of supreme court justices.

*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: Sections 2, 5 and 8 of article 3 of the constitution of the state of Kansas is hereby amended to read as follows:

**"§ 2. Supreme court.** (a) The supreme court shall consist of not less than seven justices who shall be selected as provided by this article. All cases shall be heard with not fewer than four justices sitting and the concurrence of a majority of the justices sitting and of not fewer than four justices shall be necessary for a decision. ~~The term of office of the justices shall be six years except as hereinafter provided.~~ The justice who is senior in continuous term of service shall be chief justice, and in case two or more have continuously served during the same period the senior in age of these shall be chief justice. A justice may decline or resign from the office of chief justice without resigning

from the court. Upon such declination or resignation, the justice who is next senior in continuous term of service shall become chief justice. During incapacity of a chief justice, the duties, powers and emoluments of the office shall devolve upon the justice who is next senior in continuous service.

*(b) Justices of the supreme court: (1) Shall hold their offices during good behavior; (2) shall be subject to the retirement, discipline and removal for cause provisions of section 15 of article 3 of the constitution of the state of Kansas; and (3) shall not be subject to a retention election.*

**"§ 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 declaration of candidacy to succeed himself as hereinafter required, or failure of a justice to be elected to succeed himself,~~ shall be filled by appointment by the governor, *with the consent of the senate*, 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.

(b) In event of the failure of the governor to make the appointment within ~~sixty~~ 60 days from the time the names of the nominees are submitted to ~~him~~ *the governor*, the chief justice of the supreme court shall make the appointment from such nominees, *with the consent of the senate*.

(c) ~~Each justice of the supreme court appointed pursuant to provisions of subsection (a) 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 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. If a declaration is not so filed, the position held by such justice shall be open from the expiration of his term of office. If such declaration is filed, his 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 in office, the position or office which he holds shall be open upon the expiration of his term of office; otherwise he 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 shall, unless by law he is compelled to retire, be eligible for retention in office by election in the manner prescribed in this section. *Whenever a vacancy occurs or will occur or a position opens on the supreme court, the clerk of the supreme court shall promptly give notice to the governor.*

(d) *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, whose name has been submitted to the governor by the supreme court nominating commission, and such subsequent appointment shall be considered by the senate by the same procedure as provided in this section. The same appointment and consent procedure shall be followed until a valid appointment has been made. No person who has previously been 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 set forth herein, the senate shall be deemed to have given consent to such appointment.*

(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~~ Such commission shall be organized as hereinafter provided.

~~(e) (f)~~ (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 shall be appointed by the speaker of the house of representatives, three members shall be appointed by the president of the senate and three members shall be appointed by the governor. All members shall be residents of Kansas. At least one member appointed by the speaker of the house of representatives, at least one member appointed by the president of the senate and at least one member appointed by the governor shall be members of the bar in good standing and licensed in Kansas. The governor shall appoint one of the nine members of the supreme court nominating commission to serve as such commission's chairperson.~~

(f) (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.

~~(g) (h)~~ (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.

(i) *No justice of the supreme court serving on the supreme court on the date of ratification of this amendment by the electors of the state shall be required to stand for a retention election in order to be retained in office on such date or anytime thereafter.*

**"§ 8. Prohibition of political activity by justices and certain judges.** No justice of the supreme court who is appointed ~~or retained~~ under the procedure of section 5 of this article, nor any judge of the district court holding office under a nonpartisan method

authorized in subsection (a) of section 6 of this article, shall directly or indirectly make any contribution to or hold any office in a political party or organization or take part in any political campaign."

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. A procedure is established whereby senate consent would occur within 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. Further, the supreme court justices would hold the office during good behavior, be subject to the retirement, discipline and removal for cause provisions of section 15 of article 3 of the Kansas constitution and would no longer be subject to a retention election.

"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 supreme court justices would hold the office during good behavior, be subject to the retirement, discipline and removal for cause provisions of section 15 of article 3 of the Kansas constitution and would no longer be subject to a retention election.

"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. Further, the justices of the supreme court would continue to hold six-year terms and be subject to retention elections."

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 election in August of the year 2014 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 and resolutions were referred to committees as indicated:

Corrections and Juvenile Justice: **HB 2013**.

Education Budget: **HB 2018**.

General Government Budget: **HB 2021**.

Judiciary: **HB 2012, HB 2014, HB 2015, HB 2016, HB 2017, HB 2019, HB 2020; HCR 5002, HCR 5003, HCR 5004**.

**COMMUNICATIONS FROM STATE OFFICERS**

From Gary Harshberger, Chair, Kansas Water Authority, 2013 Annual Report to the Governor and Legislature.

From Kansas Employment First Oversight Commission, pursuant to K.S.A. 44-1136 to 44-1138, Kansas Employment First Initiative Act, Annual Report to the Governor and Kansas Legislature, December 31, 2012.

From Gary Alexander, Vice President of Academic Affairs, Kansas Board of Regents, pursuant to KSA 76-717, Annual Report on Implementation of Qualified Admissions.

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

**MESSAGE FROM THE SENATE**

Announcing adoption of **SCR 1604**.

**INTRODUCTION OF SENATE BILLS AND CONCURRENT RESOLUTIONS****SCR 1604.**

On motion of Rep. Vickrey, the House adjourned until 8:00 a.m., Friday, January 18, 2013.

CHARLENE SWANSON, *Journal Clerk*.

SUSAN W. KANNARR, *Chief Clerk*.

