

Journal of the House

SIXTY-FIRST DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Thursday, May 16, 2013, 2:00 p.m.

The House met pursuant to adjournment with Speaker Merrick in the chair.

The roll was called with 112 members present.

Rep. Wolfe Moore was excused on verified illness.

Reps. Carlin, Cassidy, Henderson, Hermanson, Johnson, Kleebe, Osterman, Peterson, Rubin, Ryckman, Sr., Suellentrop and Weber were excused on excused absence by the Speaker.

Prayer by Representative Mast:

Heavenly Father, I want to ask that You bless Eunice Brubaker as she faces the challenges before her. I pray You will restore her and give her full recovery.

It is that time of session again Lord where things can get testy and frustrating. May we focus on not being a bigger frustration to You Lord with our tempers, or with our lips. You have said what comes out of our lips comes from our hearts, please remind us of that and let us know how much You love us.

Lord, you have given us a great year this year. We have stayed pretty healthy and we have seen our state prosper. I pray you will let us finish up with the same civility we began this session. May the words of our mouths and the meditation of our hearts be acceptable in Your sight, Oh Lord, our strength, our Redeemer, and our song.

I pray these things in the name of Jesus Christ our Lord, Amen.

The Pledge of Allegiance was led by Rep. Finney.

PERSONAL PRIVILEGE

There being no objection, the following remarks of Reps. Christmann and Thimesch are spread upon the Journal:

Remarks by Rep. Christmann:

After hearing plenty about the great successes of the football and basketball teams and K-State, KU and Wichita State this year, I'm excited to share some news from one of our independent colleges.

The Sterling College men's baseball team beat Oklahoma City University last Saturday afternoon. This victory earned the Sterling Warriors a bid to the Avista-NAIA Baseball World Series, which will be held in Lewiston, Idaho on May 24-31. Only 10 teams across the country qualify for this national championship tournament.

Not only is this the first ever trip for the Sterling Warriors to the NAIA World Series, it is the first time that any college in the KCAC athletic conference has ever made the NAIA World Series.

I wish the team could be here to be recognized, but they each know they are students first and foremost and it is exam week at Sterling. So after finishing their final exams and graduation this weekend, the young men will head to Lewiston, Idaho to play Missouri Baptist University in the first game of the double elimination tournament as the number 8 seed.

The game is May 24 at 11:00 a.m. CDT and can be heard on the radio on 95.9 KWHK out of Hutchinson.

Remarks by Rep. Thimesch:

I hope you all will join me in congratulating Sterling College, Head Coach Adrian Dinkel, Athletic Director, Gary Kempf, and the talented young men from the Sterling College baseball team on their success so far. We look forward to our student-athletes representing Sterling College and Kansas well on the national stage as true Champions of Character and hopefully as NAIA Champions.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

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

HB 2415, AN ACT concerning courts; relating to the retirement system for judges; retirement age; amending K.S.A. 2012 Supp. 20-2608 and repealing the existing section, by Committee on Federal and State Affairs.

HOUSE CONCURRENT RESOLUTION No. **HCR 5019**—

By Committee on Federal and State Affairs

A PROPOSITION to amend the constitution of the state of Kansas by revising article 3 thereof, relating to the judiciary.

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: Article 3 of the constitution of the state of Kansas is hereby amended to read as follows:

"Article 3.—JUDICIAL

"§ 1. **Judicial power; seals; rules.** The judicial power of this state shall be vested exclusively in one court of justice, which shall be divided into one supreme court, one court of appeals, district courts, and such other courts as are provided by law; and all courts of record shall have a seal. The supreme court shall have general administrative authority over all courts in this state.

"§ 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 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 12 of this article; and (3) shall not be subject to a retention election.

"§ 3. Jurisdiction and terms. The supreme court shall have original jurisdiction in proceedings in quo warranto, mandamus, and habeas corpus; and such appellate jurisdiction as may be provided by law. It shall hold one term each year at the seat of government and such other terms at such places as may be provided by law, and its jurisdiction shall be co-extensive with the state.

"§ 4. Reporter; clerk. There shall be appointed, by the justices of the supreme court, a reporter and clerk of such court, who shall hold their offices two years, and whose duties shall be prescribed by law.

"§ 5. Selection of justices of the supreme court. (a) (1) Any vacancy occurring in the office of any justice of the supreme court and any position to be open on the supreme court as a result of enlargement of such court, or the retirement of an incumbent, shall be filled by appointment by the governor, with the consent of the senate, of a person possessing the qualifications of office.

(2) Whenever a vacancy occurs, will occur or position opens on the supreme court, the clerk of the supreme court shall promptly give notice to the governor.

(3) In the event of the failure of the governor to make the appointment within 60 days from the 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 of a person possessing the qualifications of office.

(4) Whenever a vacancy in the office of justice of the supreme court exists at the time the appointment to fill such vacancy is made pursuant to this section, the appointment shall be effective at the time it is made, but where an appointment is made pursuant to this section to fill a vacancy which will occur at a future date, such appointment shall not take effect until such date.

(b) (1) No person appointed pursuant to 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.

(2) The senate shall vote to consent to any such appointment not later than 60 days after such appointment is received by the senate. If the senate is not in session and will not be in session within the 60-day time limitation, the senate shall vote to consent to any such appointment not later than 20 days after the senate begins its next session.

(3) In the event a majority of the senate does not vote to consent to the

appointment, the governor, within 60 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. In the event of the failure of the governor to make the appointment within 60 days from the 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 of a 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.

(4) If the senate fails to vote on an appointment within the time limitation imposed by this subsection, the senate shall be deemed to have given consent to such appointment.

(c) 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.

"§ 6. Court of appeals. (a) The court of appeals shall consist of not less than 14 judges who shall be selected as provided by this article. Judges of the court of appeals: (1) Shall hold their offices during good behavior; (2) shall be subject to the retirement, discipline and removal for cause provisions of section 12 of this article; and (3) shall not be subject to a retention election.

(b) The court of appeals shall be a part of the court of justice in which the judicial power of the state is vested by section 1 of this article and shall be subject to the general administrative authority of the supreme court. The court of appeals shall have such jurisdiction over appeals in civil and criminal cases and from administrative bodies and officers of the state as may be prescribed by law, and shall have such original jurisdiction as may be necessary to the complete determination of any cause on review. During the pendency of any appeal, the court of appeals, on such terms as may be just, may make an order suspending further proceedings in the court below, until the decision of the court of appeals.

(c) (1) Any vacancy occurring in the office of any judge of the court of appeals and any position to be open on the court of appeals as a result of enlargement of such court, or the retirement of an incumbent, shall be filled by appointment by the governor, with the consent of the senate, of a person possessing the qualifications of office.

(2) Whenever a vacancy occurs, will occur or position opens on the court of appeals, the clerk of the supreme court shall promptly give notice to the governor.

(3) In the event of the failure of the governor to make the appointment within 60 days from the 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 of a person possessing the qualifications of office.

(4) Whenever a vacancy in the office of judge of the court of appeals exists at the time the appointment to fill such vacancy is made pursuant to this section, the appointment shall be effective at the time it is made, but where an appointment is made pursuant to this section to fill a vacancy which will occur at a future date, such appointment shall not take effect until such date.

(d) (1) No person appointed pursuant to this section shall assume the office of

judge of the court of appeals 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.

(2) The senate shall vote to consent to any such appointment not later than 60 days after such appointment is received by the senate. If the senate is not in session and will not be in session within the 60-day time limitation, the senate shall vote to consent to any such appointment not later than 20 days after the senate begins its next session.

(3) In the event a majority of the senate does not vote to consent to the appointment, the governor, within 60 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. In the event of the failure of the governor to make the appointment within 60 days from the 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 of a 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.

(4) If the senate fails to vote on an appointment within the time limitation imposed by this subsection, the senate shall be deemed to have given consent to such appointment.

(e) No judge of the court of appeals 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.

(f) The supreme court may assign a judge of the court of appeals to serve temporarily on the supreme court.

"§ 7. District courts. (a) The state shall be divided into judicial districts as provided by law. Each judicial district shall have at least one district judge. The term of office of each judge of the district court shall be four years. District court shall be held at such times and places as may be provided by law. The district judges shall be elected by the electors of the respective judicial districts unless the electors of a judicial district have adopted and not subsequently rejected a method of nonpartisan selection. The legislature shall provide a method of nonpartisan selection of district judges and for the manner of submission and resubmission thereof to the electors of a judicial district. A nonpartisan method of selection of district judges may be adopted, and once adopted may be rejected, only by a majority of electors of a judicial district voting on the question at an election in which the proposition is submitted. Whenever a vacancy occurs in the office of district judge, it shall be filled by appointment by the governor until the next general election that occurs more than 30 days after such vacancy, or as may be provided by such nonpartisan method of selection.

(b) The district courts shall have such jurisdiction in their respective districts as may be provided by law.

(c) The legislature shall provide for clerks of the district courts.

(d) Provision may be made by law for judges pro tem of the district court.

(e) The supreme court or any justice thereof shall have the power to assign judges of district courts temporarily to other districts.

(f) The supreme court may assign a district judge to serve temporarily on the supreme court.

(g) The supreme court or the court of appeals may assign a district judge to serve temporarily on the court of appeals.

"§ 8. Qualifications of justices and judges. Justices of the supreme court, judges of the court of appeals and judges of the district courts shall be at least 30 years of age and shall be duly authorized by the supreme court of Kansas to practice law in the courts of this state and shall possess such other qualifications as may be prescribed by law.

"§ 9. Prohibition of political activity by justices and certain judges. No justice of the supreme court who is appointed and consented to under the procedure of section 5 of this article, nor any judge of the court of appeals who is appointed and consented to under the procedure of section 6 of this article, nor any judge of the district court holding office under a nonpartisan method authorized in subsection (a) of section 7 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.

"§ 10. Extension of terms until successor qualified. All judicial officers shall hold their offices until their successors shall have qualified.

"§ 11. Compensation of justices and judges; certain limitation. The justices of the supreme court, judges of the court of appeals and judges of the district courts shall receive for their services such compensation as may be provided by law, which shall not be diminished during their terms of office, unless by general law applicable to all salaried officers of the state. Such justices or judges shall receive no fees or perquisites nor hold any other office of profit or trust under the authority of the state, or the United States except as may be provided by law, or practice law during their continuance in office.

"§ 12. Removal of justices and judges. Justices of the supreme court may be removed from office by impeachment and conviction as prescribed in article 2 of this constitution. In addition to removal by impeachment and conviction, justices may be retired after appropriate hearing, upon certification to the governor, by the supreme court that such justice is so incapacitated as to be unable to perform adequately such justice's duties. Other judges shall be subject to retirement for incapacity, and to discipline, suspension and removal for cause by the supreme court after appropriate hearing.

"§ 13. Savings clause. Nothing contained in this amendment to the constitution shall: (a) Shorten the term of office or abolish the office of any justice of the supreme court, any judge of the court of appeals, any judge of the district court, or any other judge of any other court who is holding office at the time this amendment becomes effective, or who is holding office at the time of adoption, rejection, or resubmission of a nonpartisan method of selection of district judges as provided in subsection (a) of section 7 of this article, and all such justices and judges shall hold their respective offices for the terms for which elected or appointed unless sooner removed in the manner provided by law; (b) repeal any statute of this state relating to the supreme court, the supreme court nominating commission, the court of appeals, district courts, or any other court, or relating to the justices or judges of such courts, and such statutes shall remain in force and effect until amended or repealed by the legislature."

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 place the law concerning the court of appeals into the constitution and to do away with the supreme court nominating commission. Further, supreme court justices and court of appeals judges would hold office for life, 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. The governor would 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 confirmed by the senate. A procedure is established whereby senate confirmation would occur within 60 days of receiving the appointment. If the senate does not confirm the appointment by a majority vote, the governor would then appoint another qualified person, and such person's appointment 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 60 days, it would be considered that the senate has confirmed 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 or court of appeals judge and the senate, by majority vote, would confirm the appointment of the supreme court justice or court of appeals judge. Supreme court justices and court of appeals judges would hold office for life, 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 or court of appeals and the governor appoints one of such persons. Supreme court justices would continue to hold six-year terms and be subject to retention elections, and court of appeals judges would continue to hold four-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 in 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.

MESSAGES FROM THE SENATE

Announcing passage of **SB 245**, **SB 246**.

Announcing passage of **HB 2216**, as amended.

Also, the Senate adopts the Conference Committee report on **HB 2199**.

The Senate adopts the Conference Committee report on **HB 2249**.

INTRODUCTION OF SENATE BILLS AND CONCURRENT RESOLUTIONS

The following Senate bills were introduced and read by title:

SB 245, SB 246.

INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

The following resolution was introduced and read by title:

HOUSE RESOLUTION No. **HR 6032**—

By Representatives Howell, Bradford, Bridges, Brunk, Crum, DeGraaf, Dillmore, Dove, Edmonds, Edwards, Finney, Goico, Hawkins, Hedke, Hermanson, Hibbard, Houston, Huebert, Hutton, Jennings, Johnson, Jones, Kahrs, Kelley, Kelly, Lunn, Lusk, Mast, Meigs, O'Brien, Osterman, Pauls, Peck, Proehl, Read, Rhoades, Rothlisberg, Ryckman Jr., Sawyer, Seiwert, Shultz, Sloop, Suellentrop, Todd, Trimmer, Vickrey, Victors, Ward and Whipple

A RESOLUTION congratulating Wichita State University Athletics on their successful year in sports.

WHEREAS, Wichita State University Athletics completed a phenomenal year in several NCAA sports including men's basketball, women's basketball, volleyball, men's golf, men's tennis and women's tennis; and

WHEREAS, The men's basketball team advanced to the NCAA tournament Final Four this year with a school record 30 wins. Malcolm Armstead was named the West Regional Most Outstanding Player, and Carl Hall was named to the All-tournament team; and

WHEREAS, The Lady Shockers produced the most successful season of women's basketball in program history. The Lady Shockers won the program's first regular season and Missouri Valley Conference tournament championships. They earned a trip to the NCAA tournament and set a school record with 24 wins, and Coach Jody Adams earned Missouri Valley Conference Coach of the Year honors; and

WHEREAS, The Wichita State volleyball team advanced to its first Sweet 16 in the NCAA tournament in school history this season. They finished the season with a 24-10 overall record and 13-5 record in the Missouri Valley Conference; and

WHEREAS, The men's golf team won the Missouri Valley Conference championship for the sixth straight year. All five Shockers who participated in the Missouri Valley championship earned all-conference status and WSU returned to the NCAA tournament for the 20th time in school history; and

WHEREAS, The men's tennis team won their second Missouri Valley Conference championship. They will now head to the NCAA tournament under head coach Brad Louderback; and

WHEREAS, The women's tennis team won their fifth consecutive regular season and Missouri Valley Conference tournament championship. With a record of 15-10, the team will be heading to their fifth consecutive NCAA tournament: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas: That we congratulate Wichita State University Athletics on their tremendous success this year. Wichita State University has shown dedication to all sports in their athletic program, and we wish them success in the future;

Be it further resolved: That the Chief Clerk of the House of Representatives be

directed to provide one enrolled copy of this resolution to Wichita State University Athletics.

INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Vickrey, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **SB 63**.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 63** submits the following report:

Your committee on conference agrees to disagree and recommends that a new conference committee be appointed;

And your committee on conference recommends the adoption of this report.

LANCE Y. KINZER
ROBERT BRUCHMAN
JANICE L. PAULS

Conferees on part of House

JEFF KING
GREG SMITH
DAVID HALEY

Conferees on part of Senate

On motion of Rep. Kinzer, the conference committee report on **SB 63** was adopted. Speaker Merrick thereupon appointed Reps. Kinzer, Bruchman and Pauls as second conferees on the part of the House.

On motion of Rep. Vickrey, the House adjourned until 10:00 a.m., Friday, May 17, 2013.

CHARLENE SWANSON, *Journal Clerk*.

SUSAN W. KANNARR, *Chief Clerk*.

