

Journal of the Senate

THIRTY-SECOND DAY

SENATE CHAMBER, TOPEKA, KANSAS
Tuesday, March 1, 2022, 2:30 p.m.

The Senate was called to order by President Ty Masterson.

The roll was called with 39 senators present

Senator Pyle was excused.

Invocation by Reverend Cecil T. Washington:

God's Light Overpowers The World's Darkness
Genesis 1:2-3, Daniel; 3:8-27

Heavenly Father, when I ponder the magnitude of Your creative power and how You displayed it to benefit us, I think of Genesis 1:2-3. This world was unliveable. Your Word reveals that this earth was chaotic. An empty darkness prevailed over it. But all You had to do was speak the words, LET THERE BE LIGHT! And that changed everything!

Today Lord, there's a part of our world that's in chaos. We're witnessing misery, desperation and despair. There's a darkness that's pervading. But in the midst of it, we're also seeing solid indications of faith and courage.

Lord, I'm reminded of the third chapter of Daniel. Shadrach, Meshach and Abednego were in a desperate predicament. Nebuchadnezzar, in his position of authority, was determined to subjugate them or kill them by fire. But in spite of what they were facing, their faith in You was solid. Give us like faith!

In verse 17 and 18, they said, if we are thrown into the blazing furnace, the God that we serve is still able to save us. He will rescue us from your power. In life or in death, He will rescue us from the power of evil. Lord, it's good to know, that one way or another, You will keep the faithful! Some of us You'll keep FROM the fire. And some of us You'll keep IN the fire.

So in the midst of all the darkness in our world, would You again speak the words, LET THERE BE LIGHT! In Jesus' Name, Amen.

The Pledge of Allegiance was led by President Masterson.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 540, AN ACT concerning taxation; relating to income taxation; expanding the selective assistance for effective senior relief (SAFESR) credit for certain residential property taxes paid; amending K.S.A. 79-32,263 and repealing the existing section, by Committee on Assessment and Taxation.

SB 541, AN ACT concerning public health; requiring compensation for the use, restriction on use, damage, loss or destruction of property as a result of certain governmental actions; providing that orders and similar actions by public officials relating to face mask mandates, gathering limitations, business restrictions and religious gathering limitations shall not exceed 30 days in duration at a time before being renewed or allowed to expire; requiring court petitions challenging such orders and actions to be ruled on without unreasonable delay; prohibiting school officials from issuing or requiring use of a COVID-19 vaccination passport or discriminating against a student based upon COVID-19 vaccination status; requiring schools to recognize exemptions from vaccination requirements and face mask mandates; modifying judicial review provisions related to certain executive orders issued during a state of disaster emergency and certain actions taken by a local unit of government during a state of local disaster emergency; prescribing powers, duties and functions of the board of education of each school district, the governing body of each community college and the governing body of each technical college related to contagious or infectious disease and modifying judicial review provisions related thereto; removing the sunset provision in the COVID-19 contact tracing privacy act; prohibiting schools and child care facilities from denying access to facilities unless there are reasonable grounds to believe that the person is actually infected with a disease suspected of being infectious or contagious; authorizing reimbursement of property taxes levied upon businesses shut down or restricted as a result of certain governmental actions related to contagious or infectious disease; amending K.S.A. 65-119, 65-122 and 72-6262 and K.S.A. 2021 Supp. 48-925, 48-925c, 48-925d, 48-932, 48-961, 65-101, 65-201 and 79-1614 and repealing the existing sections, by Committee on Federal and State Affairs.

SENATE CONCURRENT RESOLUTION No. **SCR 1620**—

A PROPOSITION to amend article 11 of the constitution of the state of Kansas by adding a new section thereto; requiring a supermajority for passage of certain bills for new or increased state taxes.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives 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 11 of the constitution of the state of Kansas is hereby amended by adding a new section to read as follows:

"§ 14. Supermajority for passage of certain bills for new or increased state taxes. (a) On and after July 1, 2023, a supermajority of two-thirds of the members then elected (or appointed) and qualified to each house, voting in the affirmative, shall be necessary to pass any bill enacting or amending any law creating any new state tax or increasing the rate of any existing state income tax, sales tax, compensating use tax or other excise tax, or a tax in the nature of an excise tax, property tax, or a tax in the nature of a property tax, or estate or inheritance tax, or a tax in the nature of an estate or inheritance tax, or any combination

thereof.

(b) In any case of a conflict between any provision of this section and any other provision contained in the constitution, the provisions of this section shall control."

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

"Explanatory statement. Beginning on July 1, 2023, this amendment would require a supermajority of two-thirds of all members of the House of Representatives and Senate to pass bills to enact or amend any law creating any new state tax or increasing the rate of existing state income tax, sales tax, compensating use tax, other excise tax, property tax, estate or inheritance tax or a tax in the nature of such taxes.

"A vote for this proposition would require a supermajority of two-thirds of each house of the legislature to pass bills enacting or amending laws creating new state taxes or increasing the rate of existing state taxes.

"A vote against this proposition would not make any changes to the constitution and would continue the present constitutional authority of the legislature related to vote requirements for passage of bills."

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives, 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 2022, 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.

SENATE CONCURRENT RESOLUTION No. **SCR 1621**—

A PROPOSITION to amend sections 5 and 15 of article 3 of the constitution of the state of Kansas; relating to the selection of supreme court justices; providing for senate confirmation; abolishing the supreme court nominating commission.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives 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 5 and 15 of article 3 of the constitution of the state of Kansas are hereby amended to read as follows:

"§ 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 ~~thereon~~ *on the supreme court* as a result of enlargement of the court, or the retirement or failure of an incumbent to file ~~his~~ *such justice's* declaration of candidacy to ~~succeed himself~~

~~be retained in office as hereinafter required, or failure of a justice to be elected to succeed himself be retained in office, shall be filled by appointment by the governor of one of three persons possessing the qualifications of office who shall be nominated and whose names shall be submitted to the governor by the supreme court nominating commission established as hereinafter provided, with the consent of the senate, of a person possessing the qualifications of office.~~

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

~~(b)(3) In the event of the failure of the governor to make the appointment within sixty days from the time the names of the nominees are submitted to him~~ *date such vacancy occurred or such position became open, the chief justice of the supreme court shall make the appointment from such nominees, with the consent of the senate, 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 the appointment is made, but where an appointment is made pursuant to this section to fill a vacancy that will occur at a future date, such appointment shall not take effect until such date.*

(b) *No person appointed pursuant to subsection (a) 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 sixty days after such appointment is received by the senate. If the senate is not in session and will not be in session within the sixty-day time limitation, the senate shall vote to consent to any such appointment not later than twenty days after the senate begins its next session. In the event a majority of the senate does not vote to consent to the appointment, the governor, within sixty 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 section. The same appointment and consent procedure shall be followed until a valid appointment has been made. No person who has been previously appointed but did not receive the consent of the senate shall be appointed again for the same vacancy. If the senate fails to vote on an appointment within the time limitation imposed by this subsection, the senate shall be deemed to have given consent to such appointment.*

(c) (1) *Each justice of the supreme court appointed pursuant to provisions of subsection (a) of this section and consented to pursuant to subsection (b) 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.

(2) Not less than sixty days prior to the holding of the general election next preceding the expiration of ~~his~~ *the* term of ~~office~~, any justice of the supreme court, *the justice* may file in the office of the secretary of state a declaration of candidacy for ~~election to succeed himself~~ *retention in office*. If a declaration is not ~~so~~ filed *as provided in this section*, the position held by such justice shall be ~~open from the expiration of his~~ *vacant upon the expiration of 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.)

, *Justice of the Supreme Court*, be retained in office?"

(3) 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~~ *vacant* upon the expiration of ~~his~~ *such justice's* term of office; Otherwise ~~he~~ *shall*, unless *such justice* is removed for cause, *such justice shall* 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~~ *such justice* is compelled to retire, *such justice shall* 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.~~

(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.

(4) If a majority of those voting on the question vote against the justice's retention, the secretary of state, following the final canvass of votes on the question, shall certify the results to the clerk of the supreme court. Any such justice who has not been retained in office pursuant to this section shall not be eligible for appointment to the office of justice of the supreme court prior to the expiration of six years after the expiration of the justice's term of office.

"§ 15. 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 ~~nominating commission~~ that such justice is so incapacitated as to be unable to perform adequately ~~his~~ 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."

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 provide for senate confirmation of supreme court justices and to eliminate the supreme court nominating commission. The governor will appoint a qualified person, or if the governor fails to act, the chief justice of the supreme court will appoint a qualified person, and such person's appointment will require the consent of the senate. If the senate does not consent to the appointment by a majority vote, the governor will then appoint another qualified person, and such person's appointment will again go to the senate for consent. The same appointment and consent procedure will be followed until a valid appointment is made. If the senate fails to vote on an appointment within 60 days, it will be considered that the senate has given consent to the appointment.

"A vote for this proposition would abolish the supreme court nominating commission and provide a procedure whereby the governor or chief justice will appoint a person to be a supreme court justice, and such person will only take office if the senate, by majority vote, consents to the appointment.

"A vote against this proposition would continue the current system in which justices of the supreme court are appointed by the governor from a list of three individuals submitted by the supreme court nominating commission."

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives, 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 a special election, which is hereby called on August 2, 2022, pursuant to section 1 of article 14 of the constitution of the state of Kansas, to be held in conjunction with the primary election held on such date.

SENATE CONCURRENT RESOLUTION No. **SCR 1622**—

By Committee on Federal and State Affairs

A PROPOSITION to amend sections 5, 8 and 15 of article 3 of the constitution of the state of Kansas; relating to the selection of supreme court justices; providing for direct partisan election; abolishing the supreme court nominating commission.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives 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 5, 8 and 15 of article 3 of the constitution of the state of Kansas are 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 declaration of candidacy to succeed himself as hereinafter required, or failure of a justice to be elected to succeed himself, resignation or removal of a justice,~~ 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 ~~election at the next general election. Such election shall be partisan and from the state as a whole. Except as otherwise provided in this section, election laws applicable to other state officers elected from the state as a whole shall apply to the nomination and election of justices of the supreme court. Each justice of the supreme court elected as provided by law shall hold office for a term of six years. Such term shall commence on the second Monday in January following the general election. Justices of the supreme court may seek reelection.~~

(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~~ Each justice of the supreme court in office at the time this amendment takes effect shall hold office for the term for which such justice was retained in office by election, or hold office for the initial term for which such justice was appointed, and until a successor is elected and qualified. The office that such justice holds shall be open upon the expiration of such justice's term of office or upon the retirement, resignation or removal of such justice,

whichever occurs first. Such justice shall be eligible for election to such office in the manner prescribed in this section, unless by law such justice is compelled to retire or such justice retired, resigned or was removed from such office.

~~(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.~~

~~(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.~~

~~(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.~~

"§ 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.

"§ 15. 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 ~~nominating commission~~ that such justice is so incapacitated as to be unable to perform adequately ~~his~~ *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."

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 provide for election of justices of the supreme court and to eliminate the supreme court nominating commission. Future justices would be elected in partisan, statewide elections. Each justice elected would hold office for a term of six years and would be allowed to seek reelection.

"A vote for this proposition would cause justices of the supreme court to be elected in partisan, statewide elections for terms of six years.

"A vote against this proposition would continue the current system in which justices of the supreme court are appointed by the governor from a list of three individuals submitted by the supreme court nominating commission."

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives, 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 a special election, which is hereby called on August 2, 2022, pursuant to section 1 of article 14 of the constitution of the state of Kansas, to be held in conjunction with the primary election held on such date.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Assessment and Taxation: **SB 538**.

Judiciary: **SB 537**.

Public Health and Welfare: **SB 539**.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Ware and Faust-Goudeau introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1730

A RESOLUTION designating February 2, 2022,
as Envision Day to recognize Envision's life-changing research,
support and programming for the blind and visually impaired community.

WHEREAS, Across Kansas, there are approximately 70,000 people who are blind or visually impaired, and more than half are unemployed due to lack of inclusive job opportunities; and

WHEREAS, Envision strives to improve the quality of life for people of all ages who are blind or visually impaired; and

WHEREAS, Envision was established in 1933, amid the Great Depression, as the Wichita Workshop and Training School to enable adults who were blind to make and sell their own products, thereby providing a fulfilling and inspirational purpose for the blind and visually impaired community; and

WHEREAS, Envision helps adults who are blind or visually impaired to acquire professional skills to enter into the workforce; and

WHEREAS, Through the power of employment, Envision helps adults who are blind or visually impaired gain life skills and relevant work training for jobs, including the production of high-quality, American-made products; and

WHEREAS, Envision facilitates opportunities for adults who are blind or visually impaired and enriches communities through innovative outreach, rehabilitation and research programs; and

WHEREAS, Envision's College Success program was developed to help students who are blind or visually impaired receive the resources the students need to make the most of their college experience and achieve their goals; and

WHEREAS, Opened on January 5, 2022, the Envision Art Gallery features an artist in residency program, which is designed to connect the blind and visually impaired community to other artists working within the community of Wichita; and

WHEREAS, Members of the program have showcased their work in the Envision Art Gallery, and the members work together with Envision Arts to help create more accessibility in the art world; and

WHEREAS, Individuals who are blind, visually impaired or have disabilities navigate through societal misconceptions on a daily basis due to a lack of general education; and

WHEREAS, It is imperative that we break down stereotypes while building understanding about this important group of citizens: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we designate February 2, 2022, as Envision Day to honor and encourage the continuation of Envision's life-changing research, support and programming for the blind and visually impaired community; and

Be it further resolved: That the Secretary of the Senate shall send an enrolled copy of this resolution to Terese Goren, Michael Monteferrante, Charles Wilks and Senators Ware and Faust-Goudeau.

On emergency motion of Senator Ware **SR 1730** was adopted.

CHANGE OF REFERENCE

The President withdrew **SB 455, SB 484, SB 496** from the Committee on **Ways and Means**, and rereferred the bills to the Committee on **Education**.

The President withdrew **SB 152** from the Committee on **Ways and Means**, and rereferred the bill to the Committee on **Judiciary**.

The President withdrew **SB 501** from the Committee on **Ways and Means**, and rereferred the bill to the Committee on **Public Health and Welfare**.

The President withdrew **SB 478** from the Committee on **Ways and Means**, and rereferred the bill to the Committee on **Utilities**.

MESSAGES FROM THE GOVERNOR

SB 337 approved on February 25, 2022

Enclosed herewith is Executive Directive No. 22-550 for your information. (February 15, 2022)

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2110, HB 2299, HB 2386, HB 2456, HB 2481, HB 2483, HB 2496, HB 2508, HB 2510, HB 2515, HB 2516, HB 2529, HB 2547, HB 2559, HB 2563, HB 2567, HB 2568, HB 2574, HB 2579, HB 2595, HB 2597, HB 2608, HB 2633, HB 2654, HB 2688, HB 2703**.

Announcing adoption of **HCR 5022**,

Announcing passage of **HB 2605**.

Announcing adoption of **HCR 5030**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2110, HB 2299, HB 2386, HB 2456, HB 2481, HB 2483, HB 2496, HB 2508, HB 2510, HB 2515, HB 2516, HB 2529, HB 2547, HB 2559, HB 2563, HB 2567, HB 2568, HB 2574, HB 2579, HB 2595, HB 2597, HB 2605, HB 2608, HB 2633, HB 2654, HB 2688, HB 2703; HCR 5022, HCR 5030 were thereupon introduced and read by title.

REPORTS OF STANDING COMMITTEES

Committee on **Federal and State Affairs** recommends **SB 479** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

On motion of Senator Alley, the Senate adjourned until 2:30 p.m., Wednesday, March 2, 2022.

MARCH 1, 2022

1599

CHARLENE BAILEY, CINDY SHEPARD, *Journal Clerks.*
COREY CARNAHAN, *Secretary of the Senate.*

