

Journal of the House

TWENTY-FOURTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Tuesday, February 15, 2011, 11:00 a.m.

The House met pursuant to adjournment with Speaker O'Neal in the chair.

The roll was called with 117 members present.

Reps. Frownfelter, Fund, Kiegerl, K. Wolf and Worley were excused on verified illness.

Rep. Colloton was excused on legislative business.

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

Prayer by guest chaplain, the Rev. Jack LeRoy, chaplain, Leavenworth VA Center, and guest of Rep. Goodman:

Oh Lord my God and Savior,

As we come before you praying for your guidance and deliverance we ask that you give the elected officials a clear heart and clear mind, so that they may perform the rightful duties that they were elected for by their constituents and not those of vested interest groups. We ask that you watch over them during their deliberations and performance of duties and give them protection from harm.

Let us not forget to ask you for the protection of all the men and women who are in harm's way, protecting the "rights" and "freedom" this Glorious Nation has provided us. And let us remember the sacrifices they daily give for us to have these rights and the freedom to speak out against injustices without fear of harm or retaliation.

All of this we ask in thy blessed name. Amen

The Pledge of Allegiance was led by Rep. Goodman.

Kansas Trivia Question – What was the original name of the song that became our official state song and who composed the song?

Answer: "My Western Home," by Dr. Brewster Highley

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

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

HB 2338, AN ACT concerning taxation; providing a sales tax exemption for certain commercial data centers; amending K.S.A. 2010 Supp. 79-3606 and repealing the existing section, by Committee on Taxation.

HOUSE CONCURRENT RESOLUTION No. **HCR 5015**—
By Committee on Judiciary

A PROPOSITION to amend sections 2, 5 and 8 of article 3 of the constitution of the 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: Section 2 article 3 of the constitution of the state of Kansas is 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."

Sec. 2 The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Section 5 of the constitution of the state of Kansas is 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,~~ 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

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*.

~~(e) 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.~~

~~(c) 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 with 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.~~

~~(d)(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 commission shall be organized as hereinafter provided.

(e)(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. One member appointed by the speaker of the house of representatives, one member appointed by the president of the senate and one member appointed by the governor shall be members of the bar in good standing licensed in Kansas. The other members shall not be attorneys. 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) 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."*

Sec. 3. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Section 8 of the constitution of the state of Kansas is amended to read as follows:

"§ 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. 4. 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. 5. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the House of Representatives, and two-thirds of the members elected (or appointed) and qualified to the Senate shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election in November of the year 2012 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to committees as indicated:

Commerce and Economic Development: **HB 2336**.

Federal and State Affairs: **HB 2337**.

Judiciary: **HB 2335**.

CHANGE OF REFERENCE

Speaker O'Neal announced the withdrawal of **HB 2009** from the Calendar under the heading General Orders and rereferral to Committee on Corrections and Juvenile Justice.

Also, the withdrawal of **HB 2235** from Committee on Financial Institutions and referral to Committee on Commerce and Economic Development.

In accordance with **HCR 5014** providing for a joint session for the purpose of hearing a message from the Supreme Court, Speaker O'Neal appointed Reps. Goico, Burgess and Ballard to escort the Senate; Reps. McLeland, Powell and Pauls to escort the Supreme Court.

On motion of Rep. Siegfried, the House resolved into Committee of the Whole with Rep. Rhoades in the chair.

COMMITTEE OF THE WHOLE

On motion of Rep. Rep. Rhoades, Committee of the Whole report, as follows, was adopted:

Recommended that **HB 2038** be passed.

Committee report to **HB 2017** be adopted; and the bill be passed as amended.

REPORTS OF STANDING COMMITTEES

Committee on **Education** recommends **HB 2200** be amended on page 5, in line 27, by striking all after "(c)"; by striking all in lines 28 through 31; in line 32, by striking "(d)"; and the bill be passed as amended.

Committee on **Government Efficiency** recommends **HB 2140** be passed.

Committee on **Insurance** recommends **HB 2074** be passed, and because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Committee on **Judiciary** recommends **HB 2029** be amended on page 2, in line 32, following "technologist" by inserting "currently registered in any area of sonography credentialed through the American registry of radiology technologists, the American registry for diagnostic medical sonography or cardiovascular credentialing international and"; in line 33, following "surgery" by inserting ","; and the bill be passed as amended.

Committee on **Transportation** recommends **HB 2003** be passed.

Committee on **Transportation** recommends **HB 2058** be amended on page 2, in line 33, after "motorcycle" by inserting "or a person riding a bicycle"; in line 36, by striking "motorcyle" and inserting "motorcycle or bicycle"; in line 37, by striking all after "rules"; in line 38, by striking all before the period and inserting "stated herein. After stopping, the driver or rider shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver or rider is moving across or within the intersection or junction of roadways. Such motorcycle or bicycle traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection"; and the bill be passed as amended.

Upon unanimous consent, the House referred back to the regular order of business, Introduction of Bills and Concurrent Resolutions.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were thereupon introduced and read by title:

HB 2339, AN ACT concerning crimes, punishment and criminal procedure; amending K.S.A. 8-254, 8-285, 8-1450, 9-2004, 19-101d, 19-27,139, 19-4808, 20-369, 22-2411, 22-2615, 22-2307, 22-2908, 22-3008, 22-3102, 22-3414, 22-3415, 22-3427, 22-3429, 22-3436, 22-3439, 22-3602, 22-3701, 22-3725, 22-4807a, 34-228, 34-249a, 36-602, 38-1132, 39-720, 39-785, K.S.A. Supp. 8-255, 8-116a, 8-255, 8-262, 8-287, 8-2,144, 8-1013, 8-1102, 8-1567, 8-2106, 8-2117, 8-2410, 12-16,119, 12-4104, 12-4516, 12-4516a, 12-4517, 17-12a508, 20-2207, 20-2208, 20-3207, 22-2310, 22-3410, 22-2512, 22-2802, 22-2901, 22-2909, 22-3212, 21-3212a, 21-3220, 21-3221, 22-3303, 22-3426, 22-3716, 22-3717, 22-3727, 22-3727a, 22-4614, 22-4616, 22-4617, 22-4902, 22-4906, 28-177, 32-1013, 32-1047, 32-1063, 36-604, 38-2202, 38-2255, 38-2271, 38-2302, 38-2303, 38-2309, 38-2310, 38-2312, 38-2313, 38-2326, 38-2331, 38-2355, 38-2356, 38-2361, 38-2364, 38-2365, 38-2371, 38-2377, 39-970, 40-252, 40-2,118, 40-1702, 40-3213, Section 2, 11, 21, 22, 23, 24, 25, 26, 28, 33, 34, 35, 39, 47, 48, 49, 52, 53, 56, 57, 60, 61, 62, 64, 67, 68, 70, 74, 76, 78, 88, 96, 98, 105, 136, 139, 141, 147, 158, 159, 164, 177, 183, 186, 187, 188, 189, 190, 192, 194, 198, 209, 212, 223, 225, 230, 232, 242, 243, 244, 247, 248, 254, 257, 259, 260, 262, 266, 267, 268, 269, 271, 285, 291, 292, 298 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections; also repealing 22-3220 and K.S.A. 2009 Supp. 21-3110, as amended by section 5 of chapter 101 of the 2010 Session Laws of, 21-3412a, as amended by section 6 of chapter 101 of the 2010 Session Laws of, 21-4603d, as amended by section 7 of chapter 101 of the 2010 Session Laws of, K.S.A. 2010 Supp. 8-255, 21-3105, 21-3211, 21-3212, 21-3212a, 21-3213, 21-3214, 21-3215, 21-3216, 21-3217, 21-3218, 21-3220, 21-3301, 21-3302, 21-3303, 21-3437, 21-3446, 21-3447, 21-3449, 21-3450, 21-3502, 21-3504, 21-3506, 21-3513, 21-3516, 21-3520, 21-3608a, 21-3826, 21-4018, 21-4201, 21-4203, 21-4204, 21-4218, 21-4226, 21-4311, 21-4316, 21-4603d, 21-4610a, 21-4619, 21-4623, 21-4624, 21-4632, 21-3221; Section 2, Section 105, Section 11, Section 136, Section 139, Section 141, Section 147, Section 158, Section 159, Section 164, Section 177, Section 183, Section 186, Section 187, Section 189, Section 190, Section 192, Section 194, Section 198 of chapter 136 of the 2010 Session Laws of Kansas, Section 21, Section 22, Section 23, Section 24, Section 25, Section 26, Section 28, Section 33, Section 34, Section 35, Section 39, Section 47, Section 48, Section 49, Section 52, Section 53, Section 56, Section 57, Section 60, Section 61, Section 62, Section 64, Section 67, Section 68, Section 70, Section 74, Section 76, Section 78, Section 88, Section 96 and Section 98 and repealing the existing section, by Committee on Appropriations.

HB 2340, AN ACT concerning smoking; amending K.S.A. 2010 Supp. 21-4010 and repealing the existing section, by Committee on Federal and State Affairs.

On motion of Rep. Siegfried, the House recessed until 5:00 p.m.

EVENING SESSION

The House met pursuant to recess with Speaker O'Neal in the chair.

It being the hour in accordance with **HCR 5014** to meet in joint session with the Senate to hear the message of the Chief Justice, Reps. Goico, Burgess and Ballard escorted President Morris and members of the Senate to seats in the House.

Reps. McLeland, Powell and Pauls and Senators King and Kultala escorted the Chief Justice to the rostrum and other members of the Supreme Court to seats in the House.

Chief Justice Lawton R. Nuss addressed remarks on the State of the Judiciary to the members of the House and Senate.

REPORT ON ENGROSSED BILLS

HB 2014, HB 2049 reported correctly engrossed February 14, 2011.

REPORT ON ENGROSSED RESOLUTIONS

HCR 5003; Sub. HR 6004 reported correctly engrossed February 14, 2011.

On motion of Rep. Siegfried, the House adjourned until 11:00 a.m., Wednesday, February 16, 2011.

CHARLENE SWANSON, *Journal Clerk.*

SUSAN W. KANNARR, *Chief Clerk.*

