

Journal of the Senate

TWENTY-SECOND DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, February 9, 2005—2:30 p.m.

The Senate was called to order by President Stephen Morris.
The roll was called with forty senators present.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

Not one of the Senators who comprised the Senate when I came in 1979 are in the Senate today. Probably none of these Senators know for sure how long they will be here. But I pray that all of them will be concerned about what their legacy will be.

Whether they are here for just four years
Or stay considerably later,
May they resolve to be remembered
As an effective legislator.

May they resolve they'll not be known
As a manipulator,
But will be remembered by their peers
As an honest legislator.

May they also not be known
As a fabricator,
But they'll be long remembered as
An excellent motivator.

I also pray that none will be
Just a commentator,
But respected by everyone
As an accomplished arbitrator.

And finally, Lord, if it is Your will,
May there be no judgment greater
When their constituents rise and say,
"We had no finer legislator."

I pray in the Name of Jesus Christ,

AMEN

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

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

SB 226, An act relating to health care expenditure accounts for certain persons; authorizing a state match for certain deposits into health care expenditure accounts, by Senators Pyle, Journey and O'Connor.

SB 227, An act concerning sales taxation; relating to remittance credits for collection services provided by retailers, by Senators Pyle, Brownlee, Donovan, Jordan, Journey, O'Connor, Ostmeyer, Palmer and Petersen.

SB 228, An act concerning the preservation of Cedar Bluff Reservoir and controlling the release of water contained therein, by Committee on Natural Resources.

SB 229, An act concerning child support enforcement; amending K.S.A. 23-9,102, 39-759, 39-7,136, 39-7,138, 39-7,139, 39-7,140, 39-7,141, 39-7,144, 39-7,145, 39-7,146, 39-7,147, 39-7,148, 39-7,150 and 39-7,151 and K.S.A. 2004 Supp. 23-4,107, 23-4,146, 65-2422d and 74-2012 and repealing the existing sections; also repealing K.S.A. 39-7,153, by Committee on Federal and State Affairs.

SB 230, An act concerning the code for care of children; relating to parents with disabilities; amending K.S.A. 38-1501 and repealing the existing section, by Committee on Judiciary.

SB 231, An act concerning property taxation; relating to exemption for certain residential housing for elderly persons; amending K.S.A. 2004 Supp. 79-201 and 79-201b and repealing the existing sections, by Committee on Assessment and Taxation.

SB 232, An act concerning crimes, punishment and criminal procedure; relating to identity theft, identity fraud and vital record fraud; amending K.S.A. 21-3830 and 65-2434 and K.S.A. 2004 Supp. 21-4018 and repealing the existing sections, by Senator Petersen.

SB 233, An act concerning agritourism; relating to food service establishments; licensing; exception; amending K.S.A. 2004 Supp. 36-503 and 74-50,168 and repealing the existing sections, by Committee on Commerce.

SB 234, An act concerning motor vehicles and equipment used by the state; relating to fuel purchase therefor; amending K.S.A. 2004 Supp. 75-3744a and repealing the existing section, by Committee on Elections and Local Government.

SB 235, An act concerning hospitals; instituting a moratorium on establishment of certain hospitals prior to July 1, 2006; amending K.S.A. 65-450, 65-451, 65-452 and 65-454 and repealing the existing sections; also repealing K.S.A. 65-453, by Committee on Health Care Strategies.

SB 236, An act concerning retirement and pensions; relating to the Kansas public employees retirement system and systems thereunder; postretirement benefit adjustment; amending K.S.A. 2004 Supp. 74-4920 and repealing the existing section, by Senators Hensley, Betts, Francisco, Gilstrap, Haley and Kelly.

SB 237, An act concerning retirement and pensions; relating to the Kansas public employees retirement system and systems thereunder; retirant dividend payments to certain retirants thereof, by Senators Hensley, Barone, Betts, Francisco, Gilstrap, Haley and Kelly.

SB 238, An act concerning the department on aging; relating to the senior services fund; creating the health care for seniors fund; disposition of certain additional tobacco litigation settlement proceeds; prescribing certain powers, duties and functions for the secretary of aging; amending K.S.A. 38-2101 and repealing the existing section, by Senators Brownlee, Haley, Ostmeyer, Vratil and Wysong.

SB 239, An act concerning protection and advocacy for Kansans with disabilities; fund established; crediting certain moneys thereto; administration and uses thereof; amending K.S.A. 2004 Supp. 20-367 and repealing the existing section, by Committee on Ways and Means.

SB 240, An act concerning appointment of guardians and conservators; amending K.S.A. 2004 Supp. 59-3068 and 59-3075 and repealing the existing sections, by Committee on Ways and Means.

SB 241, An act enacting the special education seclusion and restraint modernization and parental support act; requiring certain annual appropriations, by Committee on Ways and Means.

SB 242, An act concerning the placement of inmates; prohibiting contracts with private contract prisons outside of Kansas; amending K.S.A. 2004 Supp. 75-5206, 75-5210 and 75-52,129 and repealing the existing sections, by Committee on Ways and Means.

SB 243, An act concerning correctional facilities; relating to construction by private companies; amending K.S.A. 2004 Supp. 75-52,129 and repealing the existing section, by Committee on Ways and Means.

SB 244. An act concerning school districts; establishing the 2010 commission; prescribing the powers and duties thereof, by Committee on Ways and Means.

SB 245. An act concerning school districts; concerning audits by the division of legislative post audit, by Committee on Ways and Means.

SB 246. An act concerning school districts; relating to school finance; amending K.S.A. 72-979, 72-6410, 72-6413, 72-6414 and 72-6433 and K.S.A. 2004 Supp. 72-978, 72-6409, 72-6431 and 79-201x and repealing the existing sections, by Committee on Ways and Means.

SENATE CONCURRENT RESOLUTION No. 1606—

By Senators Wagle and D. Schmidt, Apple, Barnett, Barone, Brownlee, Bruce, Donovan, Gilstrap, Huelskamp, Jordan, Journey, McGinn, Morris, O'Connor, Ostmeier, Palmer, Petersen, Pine, Pyle, Reitz, V. Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Wilson and Wysong

A PROPOSITION to amend section 5 of article 3 of the constitution of the state of Kansas, relating to the selection of justices of the supreme court.

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: Section 5 of article 3 of the constitution of the state of Kansas is 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~~ *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, *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, *with the consent of the senate*, shall make the appointment from such nominees.

(c) *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 supreme court nominating commission shall submit to the governor three additional names possessing the qualifications of office and such nominations shall be considered in the same procedure as provided in this article. The same nomination, 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 nominated again for the same vacancy. If the senate fails to vote on an appointment within the 30 day time limitation, the senate shall be deemed to have given consent to such appointment.*

(d) Each justice of the supreme court appointed pursuant to provisions of subsection (a) or (b) of this section *and consented to pursuant to the provisions of subsection (c) 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~~ *such justice's* 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~~ *be retained in office*. If a declaration is not so filed, the position held by such justice shall be open from the expiration of ~~his~~ *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.)
be retained in office?”

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 upon the expiration of ~~his~~ *such justice's* term of office; otherwise ~~he~~ *such justice* 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~~ *such justice* shall, unless by law ~~he~~ *such justice* is compelled to retire, be eligible for retention in office by election in the manner prescribed in this section.

(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.

(f) The supreme court nominating commission shall be composed as follows: One member, who shall be ~~chairman~~ *chairperson*, 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.

(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.

(h) No member of the supreme court nominating commission shall, while ~~he~~ *such person* 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.”

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 require persons appointed by the governor or the chief justice to the office of justice of the supreme court to be consented to by the senate. A procedure is established whereby senate consent would occur with 30 days of receiving the appointment. If the senate does not consent by a majority vote, the supreme court nominating commission would submit three more names to the governor. The governor would then select an appointment which would again go to the senate for consent. The same nomination, 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.

“A vote for this proposition would provide a procedure whereby the senate, by majority vote, would consent to the appointment, by the governor or chief justice, of supreme court justices.

“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.”

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 2006 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:

Agriculture: **SB 219**.

Financial Institutions & Insurance: **SB 223**.

Judiciary: **SB 215, SB 220, SB 221, SB 224**.

Public Health and Welfare: **SB 216, SB 217, SB 222**.

Ways and Means: **SB 214, SB 218, SB 225**.

COMMUNICATIONS FROM STATE OFFICERS

SOCIAL AND REHABILITATION SERVICES

January 2005

Gary J. Daniels, Acting Secretary, submitted the 2005-2006 Business Plan.

The President announced the above report is on file in the office of the Secretary of the Senate and is available for review at any time.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2078, HB 2097, HB 2098, HB 2123, HB 2125**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2078, HB 2097, HB 2098, HB 2123, HB 2125 were thereupon introduced and read by title.

REPORTS OF STANDING COMMITTEES

Committee on **Education** recommends **SB 42, SB 49** be passed.

Committee on **Financial Institutions and Insurance** recommends **SB 101, SB 104** be passed.

Committee on **Public Health and Welfare** recommends **SB 115** be passed.

Committee on **Transportation** recommends **SB 94** be amended on page 1, in line 37, by striking “, as defined in the project contract documents.”;

On page 2, in line 12, by striking “30” and inserting “21”;

On page 3, following line 21, by inserting the following:

“Sec. 3. K.S.A. 2004 Supp. 68-1117 is hereby amended to read as follows: 68-1117. Within ~~30~~ 21 days after any public letting, the bidder to whom any contract shall be awarded shall enter into contract with the board of county commissioners and shall give bond to the county in a penal sum equal to the amount of the contract price, conditioned upon the faithful performance of the contract and guaranteeing the county against loss from defects of workmanship and materials. The sufficiency of the bond shall be approved by the chairperson of the board of county commissioners, but the county shall not be bound until the county attorney or county counselor approves the form as legal and binding upon both parties by the county attorney’s or county counselor’s signature endorsed thereon.”;

By renumbering the remaining sections accordingly;

Also on page 3, in line 22, following "68-1115" by inserting "and 68-1117";
In the title, in line 10, following "68-1115" by inserting "and 68-1117"; and the bill be passed as amended.

REPORT ON ENROLLED BILLS

SR 1808, SR 1809, SR 1810, SR 1811, SR 1812 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on February 8, 2005.

COMMITTEE OF THE WHOLE

On motion of Senator D. Schmidt, the Senate resolved itself into Committee of the Whole for consideration of bills on the calendar under the heading of General Orders with Senator Taddiken in the chair.

On motion of Senator Taddiken the following report was adopted:

Recommended **SB 8, SB 9, SB 105, SB 119** be passed.

SB 4, SB 5, SB 7, SB 10, SB 25, SB 60, SB 124 be amended by adoption of the committee amendments, and the bills be passed as amended.

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Thursday, February 10, 2005.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks.*

PAT SAVILLE, *Secretary of the Senate.*

