

HOUSE BILL No. 2805

AN ACT concerning counties; relating to law enforcement.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act:

(a) "Agency" means a county law enforcement agency established under the provisions of this act.

(b) "County" means Cloud or Lincoln county.

(c) "Department" means a county law enforcement department established under the provisions of this act.

(d) "Director" means the superintendent of a county law enforcement department appointed under the provisions of this act or the duly elected sheriff as determined by the qualified electors at the election at which a proposition to consolidate law enforcement in such county is adopted.

(e) "Law enforcement officer" or "county law enforcement officer" means a law enforcement officer who is a member of a county law enforcement department appointed under the provisions of this act.

Sec. 2. The provisions of this act shall apply to any county as defined section 1, and amendments thereto, in which the question of the adoption of the provisions of this act has been submitted to and approved by the qualified electors of the county in the manner provided herein. The board of county commissioners of any county, by resolution adopted not less than 90 days preceding the date fixed for the holding of the general election in November of an even-numbered year, may direct the county election officer to place such proposition on the ballot at the next general election, and the board shall direct its placement on the ballot at such election whenever (1) the county election officer shall certify that a petition has been filed in such office, requesting that the proposition be placed on the ballot and signed by not less than 10% of the qualified electors who voted for the office of secretary of state in the last preceding election and who reside in any city located within the county and having a population equal to not less than 25% of the total population of such county not less than 90 days preceding the date fixed for the holding of the general election in the month of November of an even-numbered year, or (2) the county election officer shall certify that a petition, requesting that the proposition be placed on the ballot and signed by qualified electors of the county equal in number to not less than 10% of the electors of the county who voted for the office of the secretary of state at the last preceding general election, has been filed in such office not less than 90 days preceding the date fixed for the holding of a general election in the month of November of an even-numbered year. Notice of any election held pursuant to this section shall be given in the manner prescribed by K.S.A. 10-120, and amendments thereto.

Upon the ballot the proposition shall be stated as follows:

"Shall the county of _____ (name of county) adopt the provisions of sections 1 through 21, and amendments thereto, providing for consolidated law enforcement in certain counties?"

If a majority of the votes cast upon such proposition shall be in favor of adopting the act, the provisions thereof shall govern the enforcement of law and the providing of police protection within such county in the manner hereinafter provided.

Upon the ballot a second proposition shall be stated as follows:

"If the county of _____ (name of county) elects to consolidate law enforcement, then shall the director of the consolidated law enforcement agency be the duly elected sheriff of the county of _____ (name of county)?"

If a majority of the votes cast upon such second proposition shall be in favor of the proposition, the director of the consolidated law enforcement agency shall be the duly elected sheriff; otherwise the director of the consolidated law enforcement agency shall be selected as provided by law.

Sec. 3. (a) Subject to the provisions of subsection (b), there is hereby established in all counties adopting the provisions of this act a county law enforcement agency which shall be known as the "_____ county law enforcement agency." (name of county)

Each agency shall have seven members who shall be selected in the following manner:

- (A) One member shall be a member of the board of county commissioners of the county, selected by such board of commissioners;
- (B) one member shall be a resident of the county, to be selected by the board of county commissioners;
- (C) one member shall be a member of the governing body of the largest city located within the county, selected by such governing body;
- (D) two members shall be residents of the largest city located within the county, to be selected by the governing body of such city;
- (E) one member shall be the mayor of the next largest city located within such county, or a member of the governing body of such city, designated by such mayor; and
- (F) one member shall be the county attorney of such county.

The board of county commissioners of the county and the governing body of the two largest cities located within such county shall each meet on the second Monday in January next following the adoption of the provisions of this act and each two years thereafter and shall select and designate the members of their respective bodies and the other appointive members as members of the agency. Appointive members of the agency shall serve for a term of two years unless the director is the duly elected sheriff who shall have a term of four years, and other members of the agency who are members by virtue of their county or city office shall remain eligible to serve as such only while holding such county or city office. All members of such agency shall take and subscribe to an oath as other county officials, and all vacancies occurring in the membership of the agency shall be filled for the remainder of the unexpired term of the member creating such vacancy in like manner as that provided for the appointment of such member. Members of the agency shall not receive compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

(b) Whenever there shall be presented to the county election officer of any such county a petition, signed by qualified electors of such county equal in number to not less than 10% of the electors of the county who voted for the office of secretary of state at the last preceding general election, requesting a special election on the proposition of electing the members of the law enforcement agency of such county to be held at the time of the next primary election in August of an even-numbered year, such special election shall be held at the next such primary election which occurs not less than 60 days after the date the petition is filed, and the question submitted at such special election shall be as follows:

“Shall the law enforcement agency of _____ be composed of seven elected members?”

(Name of county)

If a majority of the electors voting at such election vote in favor of such proposition, such county’s law enforcement agency shall be elected at a special election which shall be held at the time of the next succeeding general election as follows: One member shall be elected from each of the county commissioner districts in such county and the remaining members shall be elected from the county at large, together with that portion of any city within the county which is located in an adjacent county. Any person seeking election to any such position shall file a declaration of candidacy for the appropriate position with the county election officer within 30 days after the special election at which the proposition for electing members of the county law enforcement agency is adopted. The county election officer shall give notice of the special election to elect members of the agency by publication once in a newspaper having general circulation within the county. Such publication notice shall be made not more than 14 nor less than seven days prior to the date of the special election. If a portion of any city within such county is located in an adjacent county, the county election officer also shall give written notice of such special election to the county election officer of such adjacent county

as soon as the results of the special election on the proposition to elect members of the agency are known.

Ballots for the special election to elect members of the agency shall be prepared by the county election officer of the county to which this act applies, including ballots for that portion of any city within such county which is located in an adjacent county which ballots for the portion of such city shall include only the names of the persons having declared themselves to be candidates for the at large positions. All ballots for the at large positions shall be prepared in such manner that each elector is instructed to vote for the same number of candidates as the number of positions to be filled. So far as the same may be made applicable, the laws governing the election of county commissioners shall govern the election of such members to be elected within county commissioner districts, and the laws governing the election of other county officers shall govern the election of the members from the county at large, except that the election of members of the law enforcement agency shall be nonpartisan and in each instance the candidate receiving the greatest number of votes shall be elected. Where electors of an adjacent county residing in a city which is partly in such adjacent county and partly in a county to which this act applies are to vote on candidates for the at large positions, the county election officer of such adjacent county shall conduct the election and the board of canvassers of such adjacent county shall canvass the ballots cast at such special election by electors of such adjacent county who reside in such city. The board of canvassers of such adjacent county shall certify the results of the special election in the adjacent county to the board of canvassers of the county to which this act applies.

Sec. 4. Members of such agency shall meet in the office of the county attorney upon the call of such officer as soon after their appointment as possible and shall organize by electing a chairman, vice-chairman and secretary. Thereafter members of the agency shall meet at least once each month at a time and place which shall be fixed by resolution. Such resolution shall specify the regular hour of commencement of the meeting, the day of the week and the week of the month, and shall provide that if the regular meeting date occurs on a legal holiday or on a holiday specified by the agency, such regular meeting shall be held on the following day at the same hour. Such resolution also shall specify the regular meeting place of the agency and may specify that any regular meeting may be adjourned to another time and place. Special meetings may be called at any time by the chairman. Written notice, stating the time and place of any special meeting and the purpose for which called, shall be given each member at least two days in advance of the meeting, unless such notice is waived by all other members of the agency. No business other than that stated in the notice shall be transacted at such meeting. A majority of the qualified members of the agency shall constitute a quorum for the purpose of conducting any business and the vote of a majority of the qualified members of such agency shall be required for the passage of any motion or resolution. No member shall be permitted to pass or to abstain from voting upon any measure properly before the members of such agency at any meeting except upon the basis of a conflict of interest announced by such member and made a part of the record of the meeting. The chairman, and in his absence or disability, the vice-chairman shall preside at all meetings and sign or execute all orders, contracts or documents of any kind required or authorized to be signed or executed by the agency. The agency shall cause a proper record to be kept of its proceedings.

Sec. 5. The agency shall be responsible for the enforcement of law and the providing of police protection throughout the county and for this purpose is hereby authorized to:

(a) (1) Unless the county has decided that the law enforcement director shall be the duly elected sheriff, appoint and establish the salary and compensation of a law enforcement director for the county.

(2) Establish the salary and compensation of the law enforcement director.

(b) Authorize and provide for the appointment of such law enforcement officers and other personnel as the agency shall deem necessary to carry out the intent of this act.

(c) Establish a job classification and merit rating system for law enforcement officers and provide for the administration thereof.

(d) Establish a schedule of salaries for law enforcement officers and other personnel.

(e) Hear and affirm or revoke orders of the director providing for the suspension or dismissal of law enforcement officers.

(f) Authorize the acquisition and disposition of equipment and supplies necessary for the operation of the agency and department.

(g) Require the keeping of proper law enforcement records and files by the department.

(h) Adopt and certify to the board of county commissioners of the county a budget for the operation of the agency and department.

(i) Enter into contracts for and receive moneys from any private organization or agency, the federal government or the state or any political or taxing subdivision thereof on behalf of the county for the use of the agency and department.

(j) Receive vehicles, equipment and supplies from the county sheriff's department for the use of the law enforcement department.

(k) Sell police vehicles belonging to the law enforcement department and credit the proceeds to a separate fund to be expended for the operation of the county law enforcement agency and department.

(l) Enter into contracts with any political or taxing subdivisions or districts of the state located within such county, empowered to enter into a contract for such purpose, for providing special police protection within the boundaries of such political or taxing subdivision or district.

(m) Enter into contracts with cities located within the county for the enforcement of specified ordinances or the acquisition of city law enforcement equipment and property for the use of the department.

(n) Adopt rules and regulations necessary for the organization and operation of the agency and department.

(o) Perform such other duties as may be provided by law.

Sec. 6. (a) There is hereby established in all counties adopting the provisions of this act a county law enforcement department, which shall be composed of a director, assistant director and such other officers and personnel as the agency shall provide by resolution. Such department shall be under the exclusive supervision and control of the director and no member of the agency shall interfere by individual action with the operation of the department or the conduct of any of the officers or other personnel of such department. The director shall be responsible to the agency for the operation and administration of the department and for the enforcement of law and providing of police protection within the county in conformance with rules and regulations adopted by such agency. The director shall designate and appoint an assistant director who shall serve in such capacity at the pleasure of the director.

(b) Upon request of the director of a county law enforcement department, the county or district attorney of the county in which such department is established shall give legal opinions, advice and assistance to such department upon all matters in which the department is interested or which relate to the powers or duties of the department or any officer or employee thereof.

Sec. 7. On or before the first day of June next following the appointment of the first members of such agency, the agency shall appoint a law enforcement director for such county. Persons appointed to the office of director shall be citizens of the United States, not less than 25 years of age, schooled and experienced in law enforcement supervision and shall not have been convicted of felony under the laws of this state, or any other state, or of the United States. Unless the county has decided that

the law enforcement director shall be the duly elected sheriff, the director shall serve at the pleasure of the agency. The director shall receive such salary and compensation as shall be fixed by resolution of the agency. Before entering upon the duties of office, the director shall take and subscribe to an oath as other county officials and shall give bond in such amount and subject to such conditions as shall be fixed by resolution of the agency. The director shall assist the agency in the preparation of the budget of the department and shall make such reports and provide the agency with such other information as it shall require. The director shall make recommendations to the agency on all matters concerning the operation of the department.

Sec. 8. The director shall appoint such law enforcement officers as deemed necessary for the proper enforcement of law and the providing of police protection within the county. All officers regularly appointed shall be qualified under the provisions of K.S.A. 74-5601 *et seq.*, and amendments thereto, but an officer may receive a temporary appointment pending the completion of the requirements for a certificate thereunder. The agency shall determine and fix such additional minimum qualifications to be required of persons appointed as law enforcement officers as deemed necessary, and may provide for the examination of applicants therefor. Law enforcement officers appointed under the provisions of this act shall be responsible to and may be suspended or removed by the director for cause. The director, within 24 hours thereafter, shall report such suspension or removal and the reason therefor to the agency who as soon thereafter as possible, shall hear and determine the matter and affirm or revoke such suspension or removal.

Sec. 9. The agency by resolution shall authorize the appointment or employment of such personnel other than law enforcement officers as may be necessary for the proper operation of the department in carrying out the intent of this act. The director shall appoint and may remove all such personnel.

Sec. 10. On the first day of January next following the appointment in any county of the first members of the agency under the provisions of this act and thereafter, the department shall assume and shall exercise all powers, duties and responsibilities of the city marshal or chief of police and police officers of cities located within such county, relating to the enforcement of ordinances prohibiting and prescribing penalties for the commission of acts which have been declared to be crimes under the laws of the state of Kansas. Any such city is hereby authorized to contract with the agency for the enforcement of all or any of the remaining ordinances of such city upon such terms and conditions as shall be agreed upon by the agency and the governing body of such city. The city marshal or chief of police of such cities shall transfer and deliver to the agency upon demand all records of the police department relating to the violation of laws of the state and ordinances of the city, responsibility for the enforcement of which has been transferred to the county department, together with the custody of all prisoners held for violations of such ordinances of the city. Any law enforcement agency may enter into a contract with any city located within the county for the use of jail facilities of such city and for the acquisition of city police vehicles and property upon such terms and conditions as shall be agreed upon by the agency and the governing body of such city. On the date fixed for the transfer of law enforcement authority, all police officers of cities located within the county holding law enforcement training certificates and meeting the minimum qualifications established by the agency may become members of the law enforcement department. Upon application therefor, all officers serving in city departments operating under civil service shall be appointed county law enforcement officers in the department.

Sec. 11. On the first day of January next following the appointment in any county of the first members of the law enforcement agency under the provisions of this act and thereafter, the law enforcement department

shall assume and shall exercise all powers, duties and responsibilities previously exercised by the sheriff, deputies of the sheriff and constables. The sheriff, upon demand, shall transfer and deliver to the agency all vehicles, property and records belonging to the sheriff's department. If the provisions of this act are adopted in Cloud county, all property of the city of Concordia police department shall be transferred to the agency. A record of all property so transferred shall be prepared and copies thereof filed in the office of the county clerk and with the secretary of the agency. On the date fixed for the transfer of law enforcement authority: (a) All staff of any city police department and all staff in the office of the county sheriff on such date, holding a law enforcement training certificate and meeting the qualifications established by the county law enforcement agency, may become members of the law enforcement agency, and upon application shall become members of the law enforcement agency; and (b) all other staff of any city police department and all other staff in the office of the county sheriff on such date, meeting the qualifications established by the county law enforcement agency, may become staff of the law enforcement agency, and upon application shall become staff of the law enforcement agency.

Sec. 12. It shall be the duty of the director and officers to keep and preserve the peace, and, for such purpose such director and officers are hereby vested with the power and authority of peace and police officers in the execution of the duties imposed upon them under the provisions of this act. All powers and duties now or hereafter conferred and imposed upon the sheriff and deputies and constables of any county adopting the provisions of this act are hereby conferred and imposed upon the director and officers appointed under the provisions of this act. All the powers and duties now or hereafter conferred and imposed upon the city marshal or chief of police and police officers of cities located within such county relating to the enforcement of the laws of the state and ordinances of such cities, the authority for the enforcement of which has been transferred to and vested in the county department, are hereby conferred and imposed upon the director and officers appointed under the provisions of this act.

Sec. 13. The board of county commissioners of any county adopting the provisions of this act shall provide the agency and department with such quarters and facilities as the agency deems necessary. County law enforcement agencies may utilize quarters and facilities previously used by the sheriff of the county and may enter into contracts with cities located within the county for the use by such agency of city jail facilities. The board of county commissioners may construct or may acquire by purchase, condemnation or lease, buildings and facilities for the use of the agency and department in like manner as that provided by law for the construction or acquisition of public buildings for the use of the county.

Sec. 14. The sheriff of any county adopting the provisions of this act shall be and is hereby relieved of all power, authority and responsibility now or hereafter prescribed by law from and after the date fixed for the transfer of such authority and responsibility to the law enforcement department under the provisions of this act, including the power, authority and responsibility of such sheriff relating to the enforcement of the laws of this state, the service of process, collection of delinquent taxes, the operation of the county jail and any other duty or authority now or hereafter imposed or conferred by law. On the date fixed for the transfer of such power, authority and responsibility, the office of sheriff in such county shall be and is hereby abolished, and at the general election next following such abolishment, and all general elections thereafter, no sheriff shall be elected in any such county.

Sec. 15. All constables elected in townships located within any county adopting the provisions of this act, shall be and are hereby relieved of all power, authority and responsibility now or hereafter prescribed by

law for the enforcement of the laws of this state from and after the date fixed for the transfer of such authority and responsibility to the law enforcement department under the provisions of this act.

Sec. 16. The city marshal or chief of police and police officers of all cities located within any county adopting the provisions of this act shall be and are hereby relieved of all power, authority and responsibility now or hereafter prescribed by law for the enforcement of laws of this state, ordinances of such city, responsibility for the enforcement of which has been transferred to the county department and ordinances of such city the responsibility for the enforcement of which has by contract been placed in the county law enforcement department, from and after the date fixed for the transfer of such authority and responsibility to the law enforcement department under the provisions of this act.

Sec. 17. County law enforcement agencies established under the provisions of this act are hereby declared to be “eligible employers” as defined by subsection (14) of K.S.A. 74-4902, and amendments thereto, for the purpose of affiliating with the Kansas public employees retirement system established under the provisions of K.S.A. 74-4901 et seq., and amendments thereto. All such agencies shall make application for affiliation with such system in the manner provided by K.S.A. 74-4910, and amendments thereto, to be effective on the first day of January next following the appointment of the first members of such agency. Such application shall cover all county law enforcement officers and employees.

Sec. 18. The board of county commissioners of any county adopting the provisions of this act, for the purposes of carrying out the provisions of this act from and after the date of the adoption of the provisions thereof by such county, and prior to the time that moneys are available from the tax levy authorized by section 19, and amendments thereto, is hereby authorized for such purpose, whenever deemed necessary and fixed by resolution of the agency, to issue no-fund warrants in an amount not to exceed the amount which would be raised by the levy of a tax of one mill upon all taxable tangible property in the county. Such no-fund warrants shall be issued by the county in the manner and form and shall bear interest and be redeemable in the manner prescribed by K.S.A. 79-2940, and amendments thereto, except that they may be issued without the approval of the state board of tax appeals, and without the notation required by said section. The board of county commissioners shall make a tax levy at the first levying period after such warrants are issued, sufficient to pay such warrants and the interest thereon. All such tax levies shall be in addition to all other levies authorized or limited by law.

Sec. 19. (a) Except as provided in subsection (b), on or before the first Monday in July of each year the agency shall prepare and submit to the board of county commissioners of the county a budget of expenditures for the operation of such agency and the department for the next budget year, itemizing the expenses and amounts and the purpose. The board of county commissioners of the county shall consider the budget and approve the same or by a unanimous vote of its members, upon the basis of a written statement giving reasons therefor, may require the modification or omission of any item from such proposed budget and approve the same as modified. The board of county commissioners shall levy a tax upon all taxable tangible property of such county sufficient to raise the amount approved and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county.

(b) During the first two years following consolidation pursuant to this section, the amount of expenditures in a budget adopted pursuant to the provisions of this section shall not exceed the combined total of the amount of expenditures budgeted by the city of Concordia and Cloud county in the year preceding such consolidation.

Sec. 20. The board of county commissioners shall approve all expenditures to be made by and claims to be paid on behalf of such agency

and the law enforcement department. When medical expenses have been paid for a prisoner held within such county, the agency may seek reimbursement of such expenses from the prisoner. If the agency determines that a prisoner of the county jail is covered under a current individual or group accident and health insurance policy, medical service plan contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization contract, the agency may require the prisoner of such county jail or the provider rendering health care services to the prisoner to submit a claim for such health care services rendered in accordance with the prisoner's policy or contract.

Sec. 21. Any county operating under the provisions of this act may abandon such operation in the same manner as that provided in section 2, and amendments thereto, for the adoption of the provisions of the act, except that the word "abandon" instead of the word "adopt" shall be used in the petition or resolution and upon the ballot and in the election proclamation. If a majority of the votes cast at the election upon such proposition shall be in favor of abandoning operations under the provisions of this act, the law enforcement agency and department shall be abolished on January 1, next following the date of such election. All equipment and supplies purchased by such agency and department shall be transferred to the county, and all other moneys, equipment and supplies donated or contributed to or acquired by such agency and department shall be disposed of pursuant to an agreement entered into by the board of county commissioners of such county and the governing body of each city within such county. In cities having no city marshal or chief of police such officer shall be appointed in like manner as that now provided by law for the filling of vacancies in such office. A sheriff shall be appointed in such county in the manner prescribed for the filling of vacancies for such office who shall hold office until a successor is elected at the next succeeding general election and is qualified. Such sheriff shall have the power, authority and responsibility prescribed by law for such officer. All records of the agency shall be filed in the office of the county clerk. All records of the department relating to the enforcement of city ordinances of any city within such county shall be transferred to the city marshal or chief of police of such city. All records of the department relating to the enforcement of the laws of the state shall be duplicated, and one copy of all such records shall be furnished to the city marshal or chief of police of each city within such county, and the original records shall be transferred to the county sheriff. All moneys derived from the tax levies made by any city within the county pursuant to section 19, and amendments thereto, may be used by the governing body of such city for law enforcement purposes in the budget year following the year in which operations under the act of which this section is amendatory are abandoned, notwithstanding that the same were not included in the city's budget of expenditures for such budget year, and the board of county commissioners of such county may use all moneys derived from the tax levies made by the county pursuant to section 19, and amendments thereto, for the office of sheriff of such county in the budget year following the year in which such operations are abandoned, notwithstanding that the same were not included in the county's budget of expenditures for such budget year.

Sec. 22. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.

Governor Sebelius' Veto Message for House Bill 2805

Pursuant to Article 2, Section 14 of the Constitution of the State of Kansas, I veto **House Bill 2805**. My office has received contradictory and inconsistent opinions regarding this bill and I feel a great deal of confusion exists concerning what HB 2805 is meant to accomplish. Furthermore, my office has been contacted by a number of statewide public safety organizations who are concerned about the effect this bill will have on the future of their employment, and most importantly the future of their retirement. For these reasons, I veto this bill and ask that the communities involved further review the effects of this legislation.

Dated: May 17, 2004

KATHLEEN SEBELIUS
Governor