

Approved

Stephen R. Cloud 3-4-86
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Representative Stephen R. Cloud at
Chairperson

9:07 a.m./~~p.m.~~ on Tuesday, February 25, 1986 in room 522-S of the Capitol.

All members were present except:

Representative Brown - Excused
Representative Sprague - Excused
Committee staff present:
Avis Swartzman - Revisor
Julian Efird - Legislative Research Dept.
Russ Mills - Legislative Research Dept.
Carolyn Rampey - Legislative Research Dept.

Conferees appearing before the committee:

Representative Shore

The meeting of the House Governmental Organization Committee was called to order at 9:07 a.m. on February 25. Representative Shore was present to speak on HB 2922, an act relating to the director of property valuation.

Representative Shore distributed copies of his testimony. (See Attachment A) He stated that HB 2922 would simply make the Director of Property Valuation a position which would be confirmed by the Senate.

Russ Mills, Legislative Research Department, distributed copies of a 1982 Interim Report (See Attachment B) and directed the Committee's attention to page 84 where the seven criteria used in deciding whether or not a particular position should be subject to Senate confirmation were listed. On page 85 were the positions that did not fit the criteria. This prompted several questions from committee members with responses by Mr. Mills.

Harley Duncan, Secretary of Revenue, stated the department has no official position on the bill.

As there was no one else present to address the bill, the hearing was concluded on HB 2922. Minutes of the February 19 meeting were approved and February 21 minutes distributed. The agenda for the rest of the week was announced and the meeting adjourned at 9:28 a.m.

SRC

STATE OF KANSAS

EUGENE L. SHORE
REPRESENTATIVE, 124TH DISTRICT
GRANT, W. HASKELL, MORTON,
STANTON AND STEVENS COUNTIES
ROUTE 2
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ENERGY AND NATURAL RESOURCES
PENSIONS, INVESTMENTS AND
BENEFITS
TRANSPORTATION

STATEMENT PRESENTED ON H.B. 2922 TO THE GOVERNMENTAL
ORGANIZATIONAL COMMITTEE ON FEBRUARY 25, 1986
BY EUGENE L. SHORE, REPRESENTATIVE
124TH DISTRICT

Thank you Mr. Chairman and members of the Committee.

House Bill 2922 would simply make the Director of Property Valuation a position which would be confirmed by the Senate.

Currently the Director of Property Valuation Department is appointed by the Secretary of Revenue and serves at his pleasure.

With reappraisal in progress and the probability of classification, this position takes on broad new potential to affect each person in the State of Kansas as to how his or her individual property is valued, and how it is valued in comparison to other classes of property as well. The law has always told us how we were to value our property (uniform and equal) but not due to action taken by the 1985 legislature, we are actually moving with reappraisal.

H.B. 2922 is in no way a reflection on the current director of property valuation. It is simply a recognition that the job is too important to be strictly a political appointment to fulfill a political debt. It also recognizes the fact that the Director must be compatible with people state-wide.

Mr. Chairman this concludes my testimony and I'd be glad to stand for any questions.

ATTACHMENT A

2/25/86 Hs. Gov. Org.

Report to the 1982 Legislature

79

RE: PROPOSAL NO. 5 - CONFIRMATIONS*

The Special Committee on Confirmations was directed to conduct a review of the Senate confirmation procedure of executive appointments, including an examination of the various types of nominations which require confirmation and the applicable statutes and Senate rules.

Background

Kansas Senate Rule 7 establishes a Standing Committee on Confirmations, consisting of not less than seven and not more than nine members. Senate Rule 55 describes the procedure for Senate consideration of nominations or appointments made by the Governor or other state officials. A brief summary of Senate Rule 55 follows.

All nominations or appointments made by the Governor or other state officials, which are subject to Senate confirmation, may be considered and acted upon in either executive or open session. All nominations or appointments are printed in the Senate calendar and journal. The names of nominees or appointees not previously confirmed are printed in the Senate calendar, together with the name of the Senator in whose district the person resides. That Senator may file a written recommendation concerning the nomination or appointment with the Secretary of the Senate. Appointments and reappointments to a list of positions defined by Senate rule must be referred to the Committee on Confirmations. Appointments and reappointments to positions not on the list contained in the Senate rule are placed on the appointments consent calendar.

Nominations placed on the appointments consent calendar are published for five legislative days. Any Senator may request that the nomination be removed from the appointments consent calendar and referred to the Committee on Confirmations. If no Senator requests the removal of a nominee during the five days, action is taken by the Senate without debate on the fifth day.

* S.B. 496 accompanies this report.

2/25/86 Hs. Gov. Org.
ATTACHMENT B

The Committee on Confirmations considers each nomination referred to it and makes recommendations to the Senate. Such recommendations are published once in the calendar and journal. The Senate may take action on the recommendations at any time following their submission. Any nomination may at any time be withdrawn from the Committee on Confirmations by majority vote of all members of the Senate and may then be acted upon by the Senate. The Committee on Confirmations may meet at any time when the Legislature is not in session when authorized by the President of the Senate.

Committee Activity

During the course of its study, the Special Committee on Confirmations reviewed the applicable statutes and Senate rules, discussed the pertinent Kansas case law, examined the procedures used in other states for confirmation of executive appointments, and heard testimony from the Office of the Governor, executive branch officials, and interested legislators and a private citizen. When originally appointed, the Special Committee consisted of five Senate members; during the course of the study, the Legislative Coordinating Council expanded the membership of the Committee to include five House members.

Applicable Statutes. The Special Committee caused a computer search to be conducted to identify all existing statutes concerning gubernatorial appointments and other appointments made by state officials. The Special Committee reviewed these statutes in some detail to analyze the language concerning Senate confirmations and to determine:

1. whether the position should be subject to Senate confirmation if not currently subject, or
2. whether any positions now subject to confirmation should be made not subject to confirmation.

(Memoranda submitted available in the Legislative

Kansas Case
Kansas Supreme Court
of Senate confirmations

Leek v. The
Kansas case re
appointments.
power of the Legislature
any appointments
Supreme Court
confirmation of
rejection of an
encroachment on
that confirmation
Senate.

Barrett v.
Matassarini, 114
Supreme Court
subject to confirmation
If the Senate
continues to hold

Driscoll v.
statute in dispute
to approve" a
person to replace
Kansas Supreme
beyond the usual
appointment with
at the next legislative
the position be
appointed by the

The court
terms such as
tion" was not s

(Memoranda summarizing these applicable statutes are available in the Legislative Research Department.)

Kansas Case Law. The Special Committee reviewed four Kansas Supreme Court cases which relate directly to the issue of Senate confirmation of executive appointments.

Leek v. Theis, 217 Kan. 784 (1975) is the most important Kansas case relating to Senate confirmation of executive appointments. In this case, the defendant challenged the power of the Legislature to statutorily require confirmation of any appointment by the Governor. In its opinion, the Kansas Supreme Court held that the Legislature may require Senate confirmation of executive appointments and that Senate rejection of an appointment is not an unconstitutional encroachment on executive power. In addition, the court stated that confirmation procedures are to be determined only by the Senate.

Barrett v. Duff, 114 Kan. 220, and State ex rel. v. Matassarini, 114 Kan. 244 (1923) are cases in which the Kansas Supreme Court held that executive appointments which are subject to confirmation are valid until rejected by the Senate. If the Senate fails to act on an appointment, the appointee continues to hold office.

Driscoll v. Hershberger, 172 Kan. 145 (1951) construed a statute in dispute which provided that, "if the senate shall fail to approve" an appointment, the Governor would appoint a person to replace the person who "failed of confirmation." The Kansas Supreme Court construed that language, which goes beyond the usual confirmation provisions, to mean that the appointment was valid only if actively approved by the Senate at the next legislative session. If not approved at that time, the position became vacant and a new person would have to be appointed by the Governor.

The court indicated in this case that the use of different terms such as "consent," "approval," "advice" and "confirmation" was not significant.

Procedures Used in Other States. In late 1977, the Legislative Research Department conducted a survey of the 50 states concerning the procedures used for Senate confirmation of gubernatorial appointments and nominations. At the request of the Special Committee, the survey was revised to update the information to 1981. (Copies of the survey are available in the Legislative Research Department.) Analysis of the survey results indicates that there are five basic models of the Senate confirmation procedure:

1. No Confirmation Procedure. Two states have no confirmation procedure; the appointing authority has total discretion in making the appointment.
2. Confirmation by Executive Council. Two states utilize an executive council to approve appointments.
3. Confirmation by Entire Legislature. Five states require confirmation for some or all appointments by both houses of the Legislature.
4. Joint Action. Two states require that the appointee appear before a joint committee prior to action by the Senate.
5. Confirmation by the Senate. The majority of the states (38) require that the confirmation procedure be accomplished by the Senate.

The survey also contains information on the practices of other states with regard to background investigations, confirmation criteria, use of legislative staff, committee structure, open meetings requirements, and unique approaches to the confirmation process.

Committee Hearings. The Special Committee heard testimony from several interested officials. The Office of the Governor appeared several times before the Committee to

indicate the Governor's position and to offer suggestions for legislative development. Legislative agencies were invited to comment on the recommendations made by the Special Committee. Agencies which responded included the Department of Agriculture, Livestock and Poultry Inspection Division, and the Department of Water Resources. The Special Committee will recommend to the Senate confirmation of their thought and the citizen support of the State.

Committee Conclusions and Recommendations

Uniform Confirmation Procedure. It is recommended that a uniform confirmation procedure be established for the Senate. The confirmation process should be uniform in manner provided the Senate will confirm only those nominees. If the position is vacant at that time

Provision for Successor. It is recommended that a provision be drawn an appointing authority to withdraw the appointment of the successor when the incumbent is elected. This provision is similar to the other elected officials and the "lame duck" election.

indicate the Governor's position on the confirmation process and to offer suggested amendments concerning the draft legislation developed by the Committee. All affected executive agencies were notified of the preliminary recommendations made by the Committee and were given the opportunity to comment on the recommendations. Most of the executive agencies which responded agreed with the Committee's action. Exceptions were the Secretary of the State Board of Agriculture, Livestock Commissioner, and Chief Engineer of the Division of Water Resources, all of whom objected to the recommendation that these positions be made subject to Senate confirmation. Two legislators advised the Committee of their thoughts concerning specific positions and a private citizen supported the recommendation concerning the Secretary of the State Board of Agriculture.

Committee Conclusions and Recommendations

Uniform Procedure. The Special Committee believes that a uniform procedure should be established regarding Senate confirmations. The Committee has recommended a bill to establish such a uniform procedure. The proposed legislation requires that all appointments subject to confirmation by the Senate will be received, considered, and acted upon in the manner provided by rules of the Senate. Appointments may be confirmed only by an affirmative vote of a majority of the Senate. If the Senate votes on the question of confirmation and the appointment is not confirmed, the office will become vacant at that time.

Provision is made for an appointing authority to withdraw an appointment or for a successor of an appointing authority to withdraw an appointment from consideration if the appointment was made to fill a vacancy occurring after the successor was elected to succeed the appointing authority. This provision is intended to permit an incoming governor or other elected official to withdraw any appointments made by a "lame duck" elected official.

If the Senate votes on the question of confirmation and the appointment is not confirmed, the appointing authority may not subsequently appoint the same person to the same office. The bill also provides that, if a particular appointment is subject to Senate confirmation, any appointment to fill a vacancy in an unexpired term of that office will also be subject to Senate confirmation.

Positions Subject to Confirmation. The Special Committee reviewed the statutes pertaining to executive appointments and nominations. The Committee developed several criteria to be used in deciding whether or not a particular position should be subject to Senate confirmation. The Committee believes that the following types of appointments should be subject to Senate confirmation:

1. appointments to agencies handling large amounts of state monies;
2. agencies operating in sensitive areas of high social concern;
3. key cabinet-level positions;
4. major policymaking positions;
5. regulatory agencies;
6. financial regulatory agencies; and
7. fee agencies with regulatory powers.

The Committee does not believe relatively minor administrative positions or appointments to advisory bodies should be subject to Senate confirmation. Using these criteria, the draft legislation makes several changes in existing statutes which concern positions now subject or not subject to confirmation. These policy changes contained in the bill are noted below, as well as the Committee's rationale for recommending the change.

I. Positions Now Subject to Confirmation Which Should Not be Subject to Confirmation.

Agricultural Labor Relations Board. Agency has no workload as agricultural disputes are almost non-existent in Kansas.

Grain Advisory Commission. This is an advisory body.

Milk Advisory Commission. This is an advisory body.

Commissioners of the Department of Social and Rehabilitation Services (Division Heads). These should not be subject to confirmation as they are division heads who operate under the direction of the Secretary of SRS.

Directors of Property Valuation, Taxation, and Vehicles. These should not be subject to confirmation as they are division heads who operate under the direction of the Secretary of Revenue. (The Committee believes that the Director of Alcoholic Beverage Control should remain subject to confirmation as this is an area of high social concern.)

Director of Information Systems and Computing. This should not be subject to confirmation as the director is a division head operating under the supervision of the Secretary of Administration.

Board of Accountancy, Behavioral Sciences Regulatory Board, Board of Embalming, Board of Healing Arts, Board of Technical Professions. These should not be subject to confirmation as they are occupational licensing boards which do not carry out a general governmental function.

Building Advisory Commission, Fire Protection and Personnel Standards Advisory Commission, Highway Advisory Commission, Mexican American Affairs Advisory Commission, National Guard Generals, Turnpike Authority, Washburn University Board of Regents. Change to not subject to confirmation since these positions do not meet the Committee's criteria for positions requiring confirmation.

II. Positions Not Now Subject to Confirmation Which Should be Subject to Senate Confirmation.

Secretary of the State Board of Agriculture. This is a major policy-making and regulatory position which should be subject to confirmation.

Chief Engineer of the Division of Water Resources and the Livestock Commissioner. These are policy-making and regulatory positions which should be subject to confirmation.

The bill makes a number of changes in exemptions. However, it has been noted about the 1982 Legislative session.

December 4, 1982

Sen. Ben Vidriel
Vice-Chairman
Sen. Paul Burke
Sen. Norma Dar
Sen. Gerald Kar

Alcoholic Beverage Control Board of Review. This agency operates in an area of high social concern and should be subject to confirmation.

Fire Marshal, Hazardous Waste Disposal Facility Approval Board. Change to subject to confirmation since these agencies deal with areas of high social concern.

Credit Union Council. This agency is a financial regulatory agency and should be subject to confirmation, as are all other financial regulatory agencies.

The bill recommended by the Special Committee also makes a number of technical, conforming, and clean-up changes in existing statutes concerning executive appointments. However, the policy changes contained in the bill have been noted above. The Special Committee recommends that the 1982 Legislature take favorable action on the proposed legislation.

Respectfully submitted,

Sen. John Chandler,
Chairperson
Special Committee on
Confirmations

Rep. James Guffey
Rep. Elaine Hassler
Rep. Ed Rolfs
Rep. George Teagarden
Rep. Neal Whitaker

December 4, 1981

Sen. Ben Vidricksen,
Vice-Chairperson
Sen. Paul Burke
Sen. Norma Daniels
Sen. Gerald Karr