

Approved

VKS 5-12-89
Date

MINUTES OF THE HOUSE COMMITTEE ON LEGISLATIVE, JUDICIAL AND CONGRESSIONAL
APPORTIONMENT

The meeting was called to order by Representative Vince Snowbarger at
Chairperson

7:40 a.m./~~p.m.~~ on April 29, 19 89 in room 526-S of the Capitol.

All members were present except:

Representatives Bunten, Freeman, Grotewiel and Whiteman

Committee staff present:

Fred Carman and Arden Ensley, Revisors

Robert Coldsnow, Legislative Counsel

Mary Galligan, Research

Marian Holeman, Committee Secretary

Conferees appearing before the committee:

Christopher K. McKinzie, Douglas County Administrator

Wilton Thomas, Riley County Commissioner

Senator Lana Oleen, 22nd District

In response to Chairman Snowbarger's request, Mr. Coldsnow gave a brief explanation of SB-404. This act concerning the census is intended to implement the state constitution in a timely manner by authorizing collection of data and adjustment of the federal census.

Chris McKinzie, Douglas County Administrator appeared as an opponent to SB-404. (Attachment 1).

Wilton Thomas, Riley County Commissioner appeared in opposition to the bill. He referred the committee to his testimony of January 25, 1989.

Senator Oleen presented her objections to the bill.

Public hearings were closed and the committee recessed at 8:40.

The committee reconvened at 3:50 p.m. in room 526-S to take action on the bill. Members received copies of HCR-5030 (Attachment 2), which was just introduced and referred to this committee. A balloon on SB-404 with an additional amendment on a separate sheet (Attachment 3) was also handed out.

Representative Adam explained that the proposed amendments are mostly clarifying in nature. The policy question covered in line 41 and 42 on page 1 is taking military dependents out. The amendment on the separate sheet involves Sec. 7 and is proposed in response to concerns expressed in this morning's public hearings.

Representative Vern Williams moved to amend SB-404, line 19, to change "gather" to "obtain" in order to maintain consistent language throughout the bill. Representative Aylward seconded the motion. Motion passed.

Representative Adam moved that SB-404 be amended by adding the balloon and the separate page. Motion seconded by Representative Hensley. Motion passed. Representative Adam moved that SB-404 be passed out favorably. Representative Justice seconded the motion. Motion passed.

HCR-5030 basically strikes the "adjustment" provisions in section 1 of article 10 of the constitution of the state of Kansas. Representative Charlton moved to report the resolution favorably. Chairman Snowbarger ruled the motion out of order. Public hearings have not

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LEGISLATIVE, JUDICIAL AND CONGRESSIONAL
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room 526-S Statehouse, at 7:40 a.m./~~p.m.~~ on April 29, 1989

been held on the matter. The committee is not ready to take action. Representatives Adam and Snowbarger recommended the matter be set for interim study and the court cases concening the 1988 State Census be monitored. Representative Charlton agreed and withdrew her motion. Representative Charlton moved that the committee recommend HCR-5030 be set for interim study. Chairman Snowbarger indicated a vote was not necessary and that he would request the interim study and monitoring of the court cases.

Chairman Snowbarger and Representative Adam have discussed the minutes and the suggested extensive changes. It was agreed to change minutes of Feb. 7 to record Representative Campbell as voting "no," and April 24 to show two new districts in Sedgwick County as 99 and 100 rather than 94 and 99. Chairman Snowbarger stated he has agreed to request transcription of the tapes of the meeting to be supplementary to the minutes. Representative Williams moved to adopt the minutes as corrected. Representative Miller seconded the motion. Motion passed.

For purposes of clarification, the committee agreed that the request for an interim study is not intended to impact the lawsuits in any way.

Meeting adjourned at 4:15 p.m.

Douglas County

TO: . Committee on Congressional and Legislative
Apportionment, Kansas House of Representatives

FROM: *W* Chris McKenzie, County Administrator

DATE: April 29, 1989

SUBJECT: Senate Bill 404

Good morning. Thank you for the opportunity to testify in opposition to Senate Bill 404. I am the County Administrator of Douglas County, and I appear this morning on behalf of the Board of County Commissioners of Douglas County.

The members of the Committee are well aware of the serious concerns of Douglas, Leavenworth, Riley and Crawford counties, as well as the concerns of the cities of Lawrence, Manhattan, and Pittsburg, with the manner in which the 1988 state census was conducted and the reapportionment of the Kansas House of Representatives that has now occurred based on that census. We have previously testified concerning our legal and political objections to the law that created the census as well and the manner in which it was conducted. Senate Bill 404 poses similar concerns. Let me explain:

1. SB 404 is designed to direct the secretary of state to gather data to make "adjustments" to the federal census for purposes of implementing Article 10, Section 1 of the Kansas Constitution. We believe that Article 10, Section 1 violates the Fourteenth and Twenty-Sixth Amendments to the United States Constitution by providing for the systematic disenfranchisement of students and military personnel. As you know, the vast majority of states count all residents, including students and military personnel, for reapportionment purposes, where they reside on April 1 of the year of the decennial census. By excluding such individuals Kansas prevents some of the members of this group from being counted in any state, effectively disenfranchising them for all purposes in any state.

2. SB 404 vests the secretary of state with far too much discretion. Paragraph (b) of Section 2 in which the term "resident" is defined is a good example. The language contained therein refers to "indicia that the person's presence within the state is something other than transitory in nature..." As was done with the 1988 census, such language would allow the Secretary of State to ignore statements made under oath by students or military personnel, such as the statement made on a voter registration application, that they have abandoned all former residences. We still maintain that such records are strong indications of permanent residence. As was done in the

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Attachment # 1*

past, however, we anticipate such statements will be ignored. Our recent experience in Douglas County indicates this is a valid indication of permanent residence. A tax lid question appeared on our November, 1988 ballot because of a petition that was circulated by a group that was led by a graduate student who is registered to vote in Douglas County. That individual and other students voted on that measure as well as for the presidential and state legislative candidates. Under this bill and the rules followed in the 1988 census, however, they could not be counted for reapportionment purposes. That seems fundamentally wrong to us.

3. Section 3, Section 4, and Section 5 also vest the Secretary with broad discretion that can be abused. For instance, with the 1988 census the Secretary never adopted rules and regulations that explained how students, military personnel or other excluded groups could rebut any presumption of nonresidence. Similar arbitrary and capricious actions could occur again, resulting in the disenfranchisement of these groups in violation of the U.S. Constitution.

4. The manner in which this bill has been introduced and scheduled for a hearing in the House during the veto session perhaps best describes its problems and those of Article 10, Section 1 of the Kansas Constitution. There is no more fundamental right than the right to vote. It is the ticket we all need to participate in the political process. Consideration of any legislative measure at this point in the session and under these circumstances, including SB 404, only demonstrates further the fundamental problems with the concept of automatically excluding certain individuals and groups from participation in the political process.

Thank you for this opportunity. We strongly urge you to report SB 404 adversely.

HOUSE CONCURRENT RESOLUTION NO. HCR-5030

By Representatives Branson, Charlton, Graeber,
Hochhauser, Hurt, Jenkins and Solbach

A PROPOSITION to amend section 1 of article 10 of the constitution of the state of Kansas, relating to reapportionment of senatorial and representative districts.

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 1 of article 10 of the constitution of the state of Kansas is amended to read as follows:

"§ 1. Reapportionment of senatorial and representative districts. (a) ~~At its regular session in 1989, the legislature shall by law reapportion the state representative districts, the state senatorial districts or both the state representative and senatorial districts upon the basis of the latest census of the inhabitants of the state taken by authority of chapter 61 of the 1987 Session Laws of Kansas.~~ At its regular session in 1992, and at its regular session every tenth year thereafter, the legislature shall by law reapportion the state senatorial districts and representative districts on the basis of the population of the state as established by the most recent census of population taken and published by the United States bureau of the census. ~~Senatorial and representative districts shall be~~

*L. J. & C. Apportionment
4-29-89*

Attachment # 2

~~reapportioned--upon--the-basis-of-the-population-of-the state-adjusted:-(1)--To--exclude--nonresident--military personnel--stationed--within--the-state-and-nonresident students-attending-colleges-and-universities-within-the state;-and-(2)-to-include-military-personnel--stationed within--the--state--who--are-residents-of-the-state-and students-attending-colleges-and-universities-within-the state-who-are-residents-of-the-state-in-the-district-of their---permanent---residence.~~ Bills reapportioning legislative districts shall be published in the Kansas register immediately upon final passage and shall be effective for the next following election of legislators and thereafter until again reapportioned.

(b) Within 15 days after the publication of an act reapportioning the legislative districts within the time specified in (a), the attorney general shall petition the supreme court of the state to determine the validity thereof. The supreme court, within 30 days from the filing of the petition, shall enter its judgment. Should the supreme court determine that the reapportionment statute is invalid, the legislature shall enact a statute of reapportionment conforming to the judgment of the supreme court within 15 days.

(c) Upon enactment of a reapportionment to conform with a judgment under (b), the attorney general shall apply to the supreme court of the state to determine the validity thereof. The supreme court, within 10 days from the filing of such application, shall enter its judgment. Should the supreme court determine that the reapportionment statute is invalid, the legislature shall again enact a statute reapportioning the legislative districts in compliance with the direction of and conforming to the mandate of the supreme court within 15 days after entry thereof.

(d) Whenever a petition or application is filed

under this section, the supreme court, in accordance with its rules, shall permit interested persons to present their views.

(e) A judgment of the supreme court of the state determining a reapportionment to be valid shall be final until the legislative districts are again reapportioned in accordance herewith."

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 the legislature to reapportion both senatorial and representative districts during its regular session in 1992 and at its regular session every tenth year thereafter on the basis of the most current census of population taken by the United States bureau of the census but would eliminate the requirements that such census figures be adjusted to (1) exclude nonresident military personnel stationed in the state and nonresident students attending colleges and universities within the state; and (2) include military personnel and students who are residents of the state in the district in which their residence is located.

"A vote for the proposition would require the inclusion of military personnel and students in the district in which they are enumerated by the federal bureau of the census.

"A vote against this proposition would continue the present constitutional requirement that nonresident military personnel and students be excluded and military personnel and students who are residents of Kansas be included in the district in which their residence is located."

Sec. 3. 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 the year 1990 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

SENATE BILL No. 404

By Committee on Ways and Means

4-26

AN ACT concerning the census; making adjustments required by the constitution of Kansas; duties and responsibilities of the secretary of state and other persons; making certain acts unlawful and prescribing penalties for violations.

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

Section 1. In accordance with this act, the secretary of state shall gather data to make adjustments to each federal decennial census such that there is compliance with subsection (a) of section 1 of article 10 of the constitution of Kansas. The secretary shall make or cause to be made all such adjustments.

Sec. 2. As used in this act:

(a) "Nonresident" means a person who has a domicile or permanent residence in another state, and persons with no permanent residence anywhere.

(b) "Resident" means a person who occupies a dwelling within this state and has a present intent to remain within this state for an indefinite period of time with indicia that the person's presence within the state is something other than merely transitory in nature, and who has abandoned all previous permanent residences, and who has no intention of returning to any previous permanent residence.

(c) "Permanent residence" means a fixed place of abode or fixed domicile which a person intends to be such person's residence and to which such person intends to return despite temporary residences elsewhere or temporary absences while in military service or while a student attending a college or university.

(d) "Student" means a person enrolled in classes of a university or college for a minimum of nine credit hours, or a person seeking an academic degree.

(e) "Military personnel" means members of the military and their dependents stationed and located in Kansas.

(f) "College" means a public or private postsecondary educational institution, including community colleges, which offers two year or

"For the purpose of determining the residence or nonresidence of military personnel stationed within the state and students attending colleges and universities within the state"

"outside of the state of Kansas"

"declares that he or she is a resident of the state of Kansas and has a present intent to remain in the state"

armed forces of the United States"

L.V.C. Appointment
H. 24-89
Attachment #3

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1 four year educational programs.

2 (g) "University" means a public or private institution offering at
3 least a baccalaureate degree.

4 Sec. 3. (a) Every public or private university and college shall
5 obtain from all enrolled students census information upon forms
6 provided by the secretary of state. Such information shall be obtained
7 as of the federal census date as specified by the secretary and shall
8 be used to carry out section 1, and shall be supplied to the secretary
9 at a time specified by the secretary.

10 (b) Every military officer in charge of more than 50 persons in
11 the military service shall obtain from all persons in the military
12 service and under the command of such officer census information
13 upon forms provided by the secretary of state. Such information shall
14 be obtained as of the federal census date as specified by the secretary
15 and shall be used to carry out section 1. Such information shall be
16 supplied to the secretary at a time specified by the secretary.

17 Sec. 4. The secretary of state shall obtain decennial census in-
18 formation obtained by the United States Bureau of the Census for
19 each county, city, precinct and part of a precinct that is given an
20 identifying code. The secretary of state shall adjust each piece of
21 such information, and adjust each and all of the same in an organized
22 manner to carry out section 1. When such information is so orga-
23 nized, the secretary of state shall present the adjusted federal census
24 information to the legislature, but not later than July 31 in the year
25 following each federal decennial census.

26 Sec. 5. The secretary of state ~~may~~ adopt rules and regulations
27 necessary to carry out the provisions of this act.

28 Sec. 6. All forms and other personally identifiable data and in-
29 formation obtained by the secretary of state, or by officials of a
30 university or college or a military officer to carry out this act or any
31 part thereof shall be confidential and shall not be subject to the
32 open records act, and shall be used solely and exclusively to make
33 the adjustments required under sections 1 and 4 as contemplated
34 by the constitution of Kansas.

35 Sec. 7. Any person or public or private entity who shall impair,
36 impede, obstruct or otherwise interfere with the secretary of state
37 or any student, college, university, or with any member of the
38 military services or any military installation in carrying out the pro-
39 visions of this act shall be guilty of a class A misdemeanor.

40 Sec. 8. This act shall take effect and be in force from and after
41 its publication in the Kansas register.
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"shall"

"for

the determination of the residence or nonresidence of military
personnel stationed within the state and students attending
colleges and universities within the state of Kansas and
determining the permanent residence of students and military
personnel who are residents of the state of Kansas together with
such other information required"

"Such rules and regulations shall be adopted
in accordance with the provisions of article 4 of chapter 77 of
the Kansas Statutes Annotated, and amendments thereto."

3-2

On page 2, in line 39, following the period, by inserting the following: "Nothing in this section shall be construed to limit or prohibit any person or any public or private entity from engaging in any activity intended to inform the public or any portion of the public of means whereby persons may assure or attempt to assure their qualification to be determined a resident or to have a permanent residence at any particular place.";