

Approved 2-27-92
Date

MINUTES OF THE House COMMITTEE ON Elections

The meeting was called to order by Representative Sherman Jones at
Chairperson

9:15 a.m./p.m. on February 18, 1992 in room 521-S of the Capitol.

All members were present except: Representative Cates (excused)
Representative Johnson (excused)

Committee staff present:

Arden Ensley, Revisor
Pat Mah, Research
Shirley Lee, Committee Secretary

Conferees appearing before the committee:

Ann Cozine
Gayle Landoll, Clerk of Marshall County and Legislative Chairman, Kansas County
Clerks Association
Joe de la Torre, Secretary of State Office

Others attending: see attached list.

Representative Cozine requested that **HB 2150** be reconsidered. Chairman Jones stated a motion must be made. Representative Cozine moved that **HB 2150** be reconsidered. Representative McKechnie seconded the motion and the motion carried. Representative McKechnie stated the bill had already been reported adversely by the Committee. Chairman Jones stated the Committee did report the bill adversely, but the bill had not been read in. As a result, it allowed the Committee to further act on the bill.

Representative Cozine moved that the bill be amended to strike "engage in lobbying or." Representative McKechnie seconded the motion and the motion carried. Representative Baker moved that the bill be amended to include, "no person who is a member of the executive branch and Representative McKechnie added unclassified service. Representative Shallenburger seconded the motion and the motion carried.

Representative Macy moved that **HB 2150** be passed favorably with amendments. Representative McKechnie seconded the motion and the motion carried.

Chairman Jones opened the hearing for **HB 2876**, **HB 2877**, and **HB 2878**.

Representative Wells appeared before the Committee in support of the bills. See attachments 1, 2, and 3.

Committee members discussed **HB 2876** and **HB 2877**.

Gayle Landoll, Marshall County Clerk and Legislative Chairman, Kansas County Clerks Association, appeared before the Committee as a proponent to **HB 2878**. She expressed a concern that if the automatic recount required in the bill was applied to elections for township officers, precinct committeemen and women second and third class cities, and small school districts, many of which are determined solely by write-in votes, it would require recounts in virtually every election (see attachment 4).

Ms. Landoll entertained questions from Committee members.

Joe de la Torre appeared before the Committee in support of **HB 2876**. He testified that the bill allows the office of the Secretary of State flexibility in prescribing the ballot format, allowing their office to make changes to the ballot or required by changing technology (see attachment 5).

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Elections,
room 521-S, Statehouse, at 9:15 a.m./p.m. on February 18, 1992

Joe de la Torre entertained questions from Committee members, and stated the Secretary of State was also in support of **HB 2878** and **HB 2877**. He expressed that he hoped for a clarification concerning the recount when the difference of an election was within 25 votes or 1%. He also made a comparison of **SB 241** and **HB 2878** as it related to the time of the recounts.

The Revisor addressed questions and they were discussed. With no further discussion, Chairman Jones closed the hearings.

Chairman Jones presented the minutes for February 11 and February 13. Representative Shallenburger moved that the minutes be approved. Representative Scott seconded the motion and the motion carried.

With no further business, the meeting was adjourned at 10:15.



TOPEKA

HOUSE OF
REPRESENTATIVES

ELAINE L. WELLS
 REPRESENTATIVE, FIFTY-NINTH DISTRICT
 OSAGE AND NORTH LYON COUNTIES
 R.R. 1, BOX 166
 CARBONDALE, KANSAS 66414
 (913) 665-7740

COMMITTEE ASSIGNMENTS
 MEMBER: ELECTIONS
 INSURANCE
 PENSIONS, INVESTMENTS AND
 BENEFITS

TESTIMONY ON HB2876

Thank you Mr. Chairman, and committee for the opportunity of allowing me to testify on the bills we are hearing today and tomorrow. I also want to thank you Mr. Chairman for giving the attention and the time needed to study these issue in a Sub-committee.

The 1990 Elections brought out many flaws in the statutes relating to the governance of how elections are conducted in the State of Kansas. Most of you should remember the letter of my opponent which was read at the microphone. The following is a quote from that letter, "If we want fair elections, we must have clear laws. I urge you as a House to address this problem this session, so that no candidates will have to face what I and Rep. Wells have faced."

Mr. Chairman, I appreciated very much being selected to serve on the Sub-committee that studied these issues. At those hearings we also received testimony from Rep. Hackler which indicated the need for addressing the statutes on elections. I have also visited with the attorneys who represented both parties in the Fifty-ninth District election lawsuit and advised them of the hearings on these bills. Both agreed to the need for these changes.

This first bill is one that was debated and passed by the Senate last session (SB 98). The Sub-committee recommended that the other bills relating to the same statutes be amended into this one.

The first part of this bill deals with ballot format. Although the contested election did not in particular relate to this, an easier understanding for voters in marking their ballots would have resulted if this format would have been in place. One of the problems in our election was the similarity of our last names. With the boxes to mark being place directly beside the name of the candidate, it will be easier for the voter to mark his ballot.

Page 8 of HB2876 addresses the concerns of both myself and my opponent from the lawsuit. Of the 651 ballots that became questionable by the Board of Inspection, most were due to the statute relating to "identifying marks, defaced, mutilated, or torn ballots". By eliminating this section of the statute, such ballots will be counted.

One suggestion to improve the language and to provide assurance against the possibility of voter fraud on recommendation from the Secretary of States office, we may want to add that a voter cannot identify his ballot with his/her

House Elections
 2-18-92
 Attachment 1

name.

I have attached several copies of ballots from the election that were in question due to this statute.

The last change in the statutes is on page 9, which requires a notice to be posted that informs a voter he/she may receive a new ballot if he/she made a mistake. The only suggestion may be to replace the word "booth" with "polling place". In precincts which have paper ballots, this will eliminate the possibility of a voter marking on the notice if it is placed in the booth.

Again, thank you for the attention and time given to these issues and I respectfully request that this bill be recommended favorable for passage.

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State of Kansas
Official General Ballot
National and State Offices
County of Osage
November 6, 1990

NATIONAL OFFICES

To vote for a person whose name is printed on the ballot make a cross or check mark in the square at the right of the person's name. To vote for a person whose name is not printed on the ballot, write the person's name in the blank space and make a cross or check mark in the square to the right.

For UNITED STATES SENATOR Vote For One
 DICK WILLIAMS, Wichita Democrat
 NANCY LANDON KASSEBAUM, Burdick Republican

For UNITED STATES REPRESENTATIVE
5th DISTRICT Vote For One
 GEORGE D. WINGERT, Ottawa Democrat
 DICK NICHOLS, McPherson Republican

STATE OFFICES

To vote for the pair of candidates, make a cross or check mark in the square or parentheses at the right of the names of the candidates for governor and lieutenant governor.

For GOVERNOR and LIEUTENANT GOVERNOR
Vote For One Pair

MIKE HAYDEN, Atwood
 HARLAND E. PRIDDLE, Topeka Republican

N. CHRISTINA CAMPBELL-CLINE, Wichita Independent
 TIMOTHY T. BENTON, Garnett Nomination(s)

JOAN FINNEY, Topeka
 JAMES FRANCISCO, Mulvane Democrat

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For SECRETARY of STATE Vote For One
 BILL GRAVES, Salina Republican
 RONALD J. (R.J.) DICKENS, Wichita Democrat

For ATTORNEY GENERAL Vote For One
 BOB STEPHAN, Wichita Republican
 BERT CANTWELL, Edwardsville Democrat

For STATE TREASURER Vote For One
 SALLY THOMPSON, Topeka Democrat
 ERIC RUCKER, Topeka Republican

Taped back in place

For COMMISSIONER of INSURANCE Vote For One
 RONALD L. (RON) TODD, Lawrence Republican
 PAUL FELECIANO, JR., Wichita Democrat

For STATE REPRESENTATIVE
59th DISTRICT Vote For One
 ELAINE L. WELLS, Carbondale Republican
 KARLEN CHRISTESEN-WELLMAN, Osage City Democrat

For STATE BOARD OF EDUCATION MEMBER
3rd DISTRICT Vote For One
 PAUL D. ADAMS, Osage City Republican

OK

PETITIONER'S EXHIBIT
59
5 Burlington Home

State of Kan
Official General Ballot
National and State Offices
County of Osage
November 6, 1990

NATIONAL OFFICES

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For UNITED STATES SENATOR Vote For One
 DICK WILLIAMS, Wichita Democrat
 → NANCY LANDON KASSEBAUM, Burdick Republican

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 GEORGE D. WINGERT, Ottawa Democrat
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 HARLAND E. PRIDDLE, Topeka
 N. CHRISTINA CAMPBELL-CLINE, Wichita Independent
 TIMOTHY T. BENTON, Gamett Nomination(s)
 → JOAN FINNEY, Topeka Democrat
 JAMES FRANCISCO, Mulvane

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For SECRETARY of STATE Vote For One
 → BILL GRAVES, Salina Republican
 RONALD J. (R.J.) DICKENS, Wichita Democrat

For ATTORNEY GENERAL Vote For One
 → BOB STEPHAN, Wichita Republican
 BERT CANTWELL, Edwardsville Democrat

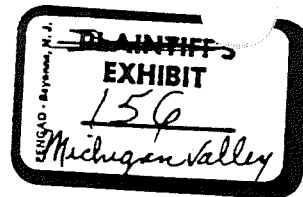
For STATE TREASURER Vote For One
 → SALLY THOMPSON, Topeka Democrat
 ERIC RUCKER, Topeka Republican

For COMMISSIONER of INSURANCE Vote For One
 → RONALD L. (RON) TODD, Lawrence Republican
 PAUL FELECIANO, JR., Wichita Democrat

For STATE REPRESENTATIVE
59th DISTRICT Vote For One
 KARLEN CHRISTESEN-WELLMAN, Osage City Democrat
 → ELAINE L. WELLS, Carbondale Republican

For STATE BOARD OF EDUCATION MEMBER
3rd DISTRICT Vote For One
 → PAUL D. ADAMS, Osage City Republican

State of Kan
Official General Ballot
 National and State Offices
 County of Osage
 November 6, 1990



NATIONAL OFFICES

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For UNITED STATES SENATOR Vote For One
 DICK WILLIAMS, Wichita Democrat
 NANCY LANDON KASSEBAUM, Burdick Republican

For UNITED STATES REPRESENTATIVE
5th DISTRICT Vote For One
 GEORGE D. WINGERT, Ottawa Democrat
 DICK NICHOLS, McPherson Republican

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Vote For One Pair

MIKE HAYDEN, Atwood
 HARLAND E. PRIDDLE, Topeka Republican

N. CHRISTINA CAMPBELL-CLINE, Wichita Independent
 TIMOTHY T. BENTON, Garnett Nomination(s)

JOAN FINNEY, Topeka
 JAMES FRANCISCO, Mulvane Democrat

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 RONALD J. (R.J.) DICKENS, Wichita Democrat

For ATTORNEY GENERAL Vote For One
 BOB STEPHAN, Wichita Republican
 BERT CANTWELL, Edwardsville Democrat

For STATE TREASURER Vote For One
 SALLY THOMPSON, Topeka Democrat
 ERIC RUCKER, Topeka Republican

For COMMISSIONER of INSURANCE Vote For One
 RONALD L. (RON) TODD, Lawrence Republican
 PAUL FELECIANO, JR., Wichita Democrat

For STATE REPRESENTATIVE
59th DISTRICT Vote For One
 KARLEN CHRISTESEN-WELLMAN, Osage City Democrat
 ELAINE L. WELLS, Carbondale Republican

For STATE BOARD OF EDUCATION MEMBER
3rd DISTRICT Vote For One
 PAUL D. ADAMS, Osage City Republican

**STATE OF KANSAS
ABSENT VOTER BALLOT**

GENERAL ELECTION

November 6, 1990

Lyon County

NATIONAL OFFICES

To vote for a person, darken the oval to the left of the person's name. To vote for a person whose name is not printed on the ballot, write the person's name in the blank space and darken the oval to the left.

**For ATTORNEY GENERAL
Vote For One**

- BOB STEPHAN Republican
Wichita
- BERT CANTWELL Democrat
Edwardsville
- _____

Torn & Taped

**For UNITED STATES SENATOR
Vote For One**

- DICK WILLIAMS Democrat
Wichita
- NANCY LANDON Republican
KASSEBAUM, Burdick
- _____

**For STATE TREASURER
Vote for One**

- SALLY THOMPSON Democrat
Topeka
- ERIC RUCKER Republican
Topeka
- _____

**For UNITED STATES
REPRESENTATIVE
5th DISTRICT
Vote For One**

- GEORGE D. WINGERT, Ottawa Democrat
- DICK NICHOLS Republican
McPherson
- _____

**For COMMISSIONER OF
INSURANCE
Vote for One**

- RONALD L. (RON) TODD, Lawrence Republican
- PAUL FELICIANO, Wichita Democrat
- _____

JUDICIAL BALLOT

QUESTION NUMBER 1

To vote for a Justice being retained in office, darken the oval to the left of the word "YES".
To vote against a Justice being retained in office, darken the oval to the left of the word "NO".

Shall KAY McFARLAND, Topeka, Position No. 2, Kansas Supreme Court, be retained in office?

- YES
- NO

STATE OFFICES

To vote for the pair of candidates, darken the oval to the left of the names of the candidates for governor and lieutenant governor.

**For STATE REPRESENTATIVE
59th DISTRICT
Vote for One**

- KARLEN CHRISTESEN- WELLMAN, Osage City Democrat
- ELAINE L. WELLS Republican
Carbondale
- _____

Shall RICHARD W. HOLMES, Wichita, Position No. 3, Kansas Supreme Court, be retained in office?

- YES
- NO

**For GOVERNOR AND
LIEUTENANT GOVERNOR
Vote For One Pair**

- JOAN FINNEY Democrat
Topeka
JAMES FRANCISCO
Mulvane
- MIKE HAYDEN Republican
Atwood
HARLAND E. PRIDDLE
Topeka
- N. CHRISTINA CAMPBELL-CLINE, Wichita Independent Nominations
TIMOTHY T. BENTON
Garnett

**For STATE BOARD OF EDUCATION
3rd DISTRICT
Vote for One**

- PAUL D. ADAMS Republican
Osage City
- _____

Shall TYLER C. LOCKETT, Wichita, Position No. 4, Kansas Supreme Court, be retained in office?

- YES
- NO

To vote for a person, darken the oval to the left of the person's name. To vote for a person whose name is not printed on the ballot, write the person's name in the blank space and darken the oval to the left.

To vote for a Judge of the District Court being retained in office, darken the oval to the left of the word "YES".

To vote against a Judge of the District Court being retained in office, darken the oval to the left of the word "NO".

Shall FRED N. SIX, Lawrence, Position No. 5, Kansas Supreme Court, be retained in office?

- YES
- NO

**For SECRETARY OF STATE
Vote For One**

- BILL GRAVES Republican
Salina
- RONALD J. (R.J.) DICKENS, Wichita Democrat
- _____

Shall JOHN O. SANDERSON, Emporia, District Judge, 5th District, be retained in office?

- YES
- NO

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STATE OF KANSAS
 ABSENT VOTER BALLOT

GENERAL ELECTION

E November 6, 1990

F Lyon County

QUESTION NUMBER 2

To vote for a Judge of the Court of Appeals being retained in office, darken the oval to the left of the word "YES".

To vote against a Judge of the Court of Appeals being retained in office, darken the oval to the left of the word "NO".

Shall EDWARD LARSON, Hays, Position No. 1, Kansas Court of Appeals, be retained in office?

- YES
- NO

Shall MARY BECK BRISCOE, Council Grove, Position No. 5, Kansas Court of Appeals, be retained in office?

- YES
- NO

Shall ROBERT J. LEWIS, JR., Atwood, Position No. 6, Kansas Court of Appeals, be retained in office?

- YES
- NO

Shall JERRY G. ELLIOTT, Lawrence, Position No. 8, Kansas Court of Appeals, be retained in office?

- YES
- NO

Shall GARY W. RULON, Emporia, Position No. 9, Kansas Court of Appeals, be retained in office?

- YES
- NO

Shall ROBERT L. GERNON, Hiawatha, Position No. 10, Kansas Court of Appeals, be retained in office?

- YES
- NO

CONSTITUTIONAL AMENDMENT BALLOT

To vote in favor of any question submitted on this ballot, darken the oval to the left of the word "Yes"; to vote against it, darken the oval to the left of the word "No".

QUESTION NUMBER 1

Shall the following be adopted? Article 6 of the constitution of the state of Kansas is hereby revised to read as follows:

"Article 6.-EDUCATION

§1. System of public education. The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing a system of public education which may be organized and changed in such manner as may be provided by law.

§ 2. Governance. (a) The legislature shall make suitable provision for governance of the system of public education and the schools and institutions which are parts of the system. The legislature shall provide for such instrumentalities of governance as may be necessary, and such instrumentalities shall exercise such power and perform such duties as may be prescribed by law.

(b) Public elementary and secondary schools shall be maintained, operated and managed, under state supervision, by locally elected boards.

(c) Public institutions of postsecondary education, and such other public education institutions as may be provided for by law, shall be maintained, operated and managed, under state supervision or control, as provided by law.

§ 3. Finance. (a) The legislature shall make suitable provision for finance of the system of public education. The legislature may levy a permanent tax for the use and benefit of the system of public education and provide for apportionment and appropriation of the proceeds of such tax.

(b) No tuition shall be charged for attendance at any public school or other public education institution to persons who are required by law to attend such school or institution; fees other than tuition may be charged to such persons when authorized by law. The legislature may authorize or require the charging of tuition and other fees for attendance at any public school or other public education institution to persons who are not required by law to attend such school or institution.

(c) No religious sect or sects shall control any part of the public educational funds.

§ 4. Savings clause. All laws in force at the time of the adoption of this amendment and consistent therewith shall remain in full force and effect until amended or repealed by the legislature. All laws inconsistent with this amendment, unless sooner repealed or amended to conform with this amendment, shall remain in full force and effect until July 1, 1991."

"Explanatory statement. The present education article of the state constitution is very explicit in specifying the manner in which certain functions in the field of public education are to be performed. For example, the present education article specifies that the function of governance of public schools and other public education institutions will be performed by the state board of education or the state board of regents. Since the present education article is so explicit with regard to the performance of certain functions in the field of public education, the legislature is restrained from providing for changes in the performance of such functions by statute even though changes may be deemed necessary or desirable by the people.

"A vote for this proposition would not mandate a change in public education policy or governance. A vote for this proposition would provide flexibility in the operation of the education article so that the legislature, and through its members, the people, would have more freedom in providing for public education policy and governance.

"A vote against this proposition would continue in effect the present operation of the education article."

- YES
- NO

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Approved _____ Date _____

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS

The meeting was called to order by SENATOR DON SALLEE at _____
Chairperson

11:30 ~~x~~m./p.m. on February 11, 1991 in room 529-S of the Capitol.

All members were present ~~xxxx~~ or excused:

Committee staff present:

Pat Mah, Legislative Research Department
Ardan Ensley, Office of the Revisor of Statutes
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Vic Miller, Attorney
Karlen Christensen-Wellman Jones
Ron Hein, Attorney
Representative Elaine Wells

Others attending: See attached list.

The meeting was called to order by Chairman Sallee at 1:30 p.m.

Senator Bond presented seven bill requests from the Johnson County Elections Commissioners relating to cleanup of statutes concerning the position of election commissioners. (Attachment 1)

Senator Bond, with a second from Senator Lee moved introduction of the bills. The motion carried.

Vic Miller appeared before the committee noting he had represented Karlen Christesen-Wellman Jones in the recent contested election for the House seat in the 59th District. Noting the experience had been both interesting and educational he recommended repeal of election laws, KSA 25-3002 (b)2 pertaining to identifying marks and (b)3 pertaining to torn, defaced and mutilated ballots. He noted the statutes would appear to serve no constructive purpose. Mr. Miller noted there is no definition of "identifying marks" used in (b)2. In discussing torn, defaced or mutilated ballots it was noted that there were instances where it was not equitable to the voter to apply (b)3 and void the ballot.

Mr. Miller noted he had no suggestions relating to the contested elections although he did not like the process as it relates to the legislature with the candiate having to appeal to the legislative body. He did suggest a panel of three judges to decide which votes to count since it might be open to less criticism than a decision determined by a single person.

Mr. Miller commented that members might be interested in reading the decision as there were questions raised which he, personally, had never envisioned such as counting an absentee ballott which arrived in an unsigned envelope and a vote cast at a wrong polling place although advised they were not a registered voter in that polling place.

Mr. Miller also mentioned that change of name legislation was needed as present statutes are wholly discriminatory. He felt the process should be automatic and that an affidavit could be used.

Karlen Christensen-Wellman Jones spoke to the committee thanking the members for looking at the various laws. Ms. Christensen-Wellman Jones noted the laws should be open to interpretation by different people with the same results. Clear instructions and training are necessary for people working election boards. Difficulties arise due to the fact that people may have worked election boards for many years without receiving proper training or were not advised of procedural changes.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS

room 529-S, Statehouse, at 1:30 ~~a.m.~~/p.m. on February 11, 1991

Mr. Miller was asked whether the step involving a judge could be eliminated as the ultimate decision was made by the legislative house involved. Mr. Miller noted one fiscal problem in doing this was that between the first Monday in November and the second Monday in January there is no legislative input as the new body would be the one to act on the election. While noting problems were anticipated, the number of difficulties which came to light during "discovery" were not anticipated. However, to delay until the legislative session convened would mean the session would be quite far along before a decision could be reached.

A member asked Mr. Miller if he was really saying an improvement would mean a constitutional amendment. Mr. Miller answered that in order to take the legislature out of the process it would take a constitutional amendment.

Ron Hein appeared before the committee noting he concurred with the statements made by Vic Miller. The sections of the two statutes, KSA 25-3002 (b)2 and (b)3, should be repealed as section (b)1 states no ballot or portion thereof shall be declared invalid unless it is impossible to determine the intent of the voter.

Mr. Hein presented examples of identifying marks made to correct an error and which ultimately caused the ballot not to be counted. Other problems encountered were marking inconsistencies where instructions were not followed. Different counties have different ballots and methods of marking them as well as numerous write-in discrepancies.

Mr. Hein told the committee that the determination of ballots to be counted is laborious, time consuming and an extremely expensive process for the candidates.

Mr. Hein recommended looking at the contest laws themselves as well as the grounds stated in statutes, possibly fine-tuning them in order to determine, once there was a final determination by the recount board, at what point does the process go, either into court or to the legislature. Mr. Hein pointed out changes were made in 1968 concerning bipartisan election boards where those boards were supposed to vote unanimously as to whether to count a ballot. If there is not a unanimous vote the minority should object to the ballot and the ballot would be removed. Mr. Hein noted it was his opinion and probably that of Mr. Miller that the election board personnel do not know how this process is supposed to operate. Therefore educational procedures appear necessary. Such ballots are separated to be judged by the board of canvassers.

Mr. Hein told committee members they repeatedly asked the House legislative committee whether proponents or opponents had the burden of proof. The committee never made that determination. A second area of difficulty was parameters for the standard of review. It appeared the legislative committee operated at their own discretion without considering the judge's opinion. It is difficult to operate without having rules and there is a need to know what the statutes mean in a number of areas.

Mr. Hein noted, as did Mr. Miller, that the re-registration law was discriminatory to women and needed to be changed.

A question was posed as to whether the court should be eliminated from the process. Mr. Hein noted he felt the court is already involved making a finding on the number of lawfully cast votes and therefore, it would seem the judge would make the finding. Another issue mentioned was legislature having a right to look at the qualifications of the person coming into the body. Mr. Hein noted he felt it would be wise to amend the constitution so that a legislative committee whose members have the power in the legislature may come in and declare any of their party as winners.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS

room 529-S, Statehouse, at 1:30 ~~xxx~~/p.m. on February 11, 1991, 1991

A member expressed the understanding some of the ballots in question had not been defaced by the voter and questioned whether, when it was very evident the voter did not deface the ballot and you can read the ballot that it should be counted. Mr. Miller suggested the repeal of (b)2 and (b)3 which would take care of this problem.

Following a question concerning a panel of three judges, Mr. Hein, after explaining the process of choosing a judge, noted that if the issue were put into the constitution it would go to the district court and then an appeal would be possible to an appellate court. Mr. Hein noted there was difficulty getting one judge's docket cleared in order to deal with the ballots.

The question was posed as to the type of training used by election boards. Ron Thornburgh, office of the Secretary of State, told the committee they did have training sessions, tried to explain to workers that the training was mandatory, but there was no method of enforcement.

Mr. Miller noted that although the law is in place the persons working on the boards are not lawyers.

A member asked Mr. Hein his feeling on signed absentee ballots with Mr. Hein replying that the system worked at the count and recount level but came up again at the time of trial. There were inconsistencies of counting between counties with one counting such ballots and others not counting them. The district judge said such unsigned absentee ballots should be counted.

Representative Wells told the committee that she had introduced bills related to the election process and would be testifying before the committee if the bills came to the Senate committee. Representative Wells noted that she felt instructions to the voters using paper ballots should make it clear they have the opportunity to obtain a second and third ballot if they make an error. She noted the idea of a three judge panel was good although the presiding judge did consult with other judges when making determinations on the ballots. The judge also volunteered to testify as he was concerned with the legislative committee overturning his decision on the ballots. He felt the judge's ruling should stand firm and the ability to overturn the court decision made it a total waste of a week's time used to make the decision.

Senator Reilly moved with a second by Senator Lee to approve the minutes of February 4 and 5, 1991.

Written testimony concerning SB-85 was presented to committee members by Ron Thornburgh, office of the Secretary of State. (Attachment 2)

The meeting adjourned at 2:28 p.m.



TOPEKA

HOUSE OF
REPRESENTATIVES
TESTIMONY ON HB2877

ELAINE L. WELLS
REPRESENTATIVE, FIFTY-NINTH DISTRICT
OSAGE AND NORTH LYON COUNTIES
R.R. 1, BOX 166
CARBONDALE, KANSAS 66414
(913) 665-7740

COMMITTEE ASSIGNMENTS
MEMBER: ELECTIONS
INSURANCE
PENSIONS, INVESTMENTS AND
BENEFITS

Thank you, Mr. Chairman, for the opportunity to testify on HB2877.

This legislation proposal is a result of the need to clarify the statutes regarding election contests. Currently the law states that any contest of election shall be brought on any one or more of the six grounds listed in KSA 25-1436. But the grounds are not required to be stated in writing with specific facts and circumstances.

This problem created undue time and expense in the contested election, by requiring the judge to determine on his own if there was sufficient evidence (much like a preliminary hearing) to continue with the suit and court action. We all spent almost a whole day trying to determine when the ballots could be opened, according to the current statutes.

When Rep. Hackler came before the Sub-committee, she also stated that there needed to be further clarification as to the grounds for a contest.

HB2877 rectifies the situation by requiring on page one, starting with line 34, that specific facts and circumstances alleged to constitute such grounds are to be stated when an election contest is filed. By requiring this, the judge will better be able to determine if sufficient evidence has been produced to continue with a court hearing.

It is my understanding that in other court filings, grounds for the case have to be stated with particularity.

The other issue addressed in this bill is on page two which requires five "calendar" days for filing the notice of contest.

In Rep. Hackler's situation because there was a delay in the filing of the contest, the Christmas holidays were interrupted with having to get subpoenas, etc. With this requirement of calendar days the latest a contest could be filed is five actual days which would avoid the holiday season.

The final revision of the statute is on page two which once more reflects the need for the grounds to be specifically stated.

Again, thank you, and I respectfully urge the committee to recommend favorable passage for HB2877.

Abuse Elections
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Attachment 2

ELAINE L. WELLS
 REPRESENTATIVE, FIFTY-NINTH DISTRICT
 OSAGE AND NORTH LYON COUNTIES
 R.R. 1, BOX 166
 CARBONDALE, KANSAS 66414
 (913) 665-7740



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 MEMBER: ELECTIONS
 INSURANCE
 PENSIONS, INVESTMENTS AND
 BENEFITS

TESTIMONY ON HB2878

Again, thank you, Mr. Chairman, for the opportunity to testify.

HB2878 was the only controversial bill, of all the bills the Sub-committee looked at, to be recommended to the full committee.

The intent of this bill is to require the county board of canvassers to hold a manual recount when the difference of an election is within 25 votes or 1%, whichever ever is less.

In 1985 I won the election by 25 votes. A recount was requested by my opponent and there was a discrepancy in the actual number of votes cast, particularly in Lyon county where the counting is done by optical scanning. In 1989 with a very close election (six votes) a recount again proved that there were inaccuracies in the counting. Again, the errors occurred mostly in the optical scanning county.

In both cases, one of the candidates had to request the recount.

There were many close elections in 1989, and several had recounts. The costs of these recounts was minimal, (mine was approximately \$350 for both counties), yet the publicity was intense, not only in the 59th District election but also in the other close ones. We do not know how many close elections there will be this year, and I sincerely hope that none of you have to go through one.

If we establish that an automatic recount is to be performed in these very close elections, it will solve two problems: first, it will assure that the counting is correct. Secondly, it will dispel the attitude that the recount was performed with bias.

In the major urban areas the question of the count is easily addressed. With the use of machine voting versus paper ballots, a recount is easily and quickly performed. In counties where paper ballots are used there are discrepancies which require a recount to be performed manually to establish a correct count.

Last year the Lyon County Clerk addressed this issue and recommended that township, and third class city elections be excluded due to the low number of votes cast. I believe the Sub-committee addressed this issue by adding 1% or less than the total number of

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ballots cast or 25, whichever is less. In an election of 25 votes total, the difference of two votes would constitute a recount. In an election of 1000 votes a difference of ten votes would constitute a recount. In an election of 5000 votes, twenty-five votes would constitute a recount.

In all organizations that use Roberts Rules of Order of which I have been a member, we have always recounted close elections. Human error or more importantly machine error should be taken into consideration for the election of public officials. A recount should be performed to insure that our elections were performed as correctly as possible.

Again, thank you, and I respectfully request this bill be recommended favorable for passage.

Kansas County Clerks Association

February 18, 1992

To: The House Elections Committee
Representative Sherman Jones, Chairman

From: Gayle Landoll, Marshall County Clerk and
Legislative Chairman, Kansas County Clerks
Association

Re: House Bill 2878

The County Clerks Association respectfully requests that this committee consider an amendment to House Bill 2878 which would make it applicable to only state, county, first class city, community college and large school district elections.

The automatic recount required in this bill, if applied to elections for township officers, precinct committeemen and women, second and third class cities, and small school districts, many of which are determined solely by write-in votes, would require recounts in virtually every election.

Allow me to give you some statistics from my county using the 1988 primary election as an example, since this was the last time both township officers and precinct committeemen and women were on the ballot at the same time. In Marshall County there were only 40 persons who filed for township officers out of the 150 positions available to be nominated, and only 45 persons who filed for precinct committeemen and women out of the 120 positions available to be elected. Because of the lack of filings we had many write-in votes, which is normal for these positions in my county. In almost every occurrence that involved a nomination or election by write-in votes, a recount would have been required had House Bill 2878 been law at that time, as there were only one or two votes difference in most of these instances.

Many times there are not enough write-in votes cast to nominate a candidate for township office or elect a precinct committeeman or committeewoman, but House Bill 2878 appears to require a recount even if no one is nominated or elected.

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House Elections Committee
HB 2878, February 18, 1992

We are concerned that a close vote not carry with it the negative assumption that the vote tally was in error. We recognize the concerns you express by proposing House Bill 2878, but we again respectfully request that you consider exempting the smaller jurisdictions from the automatic recount provisions of this bill.

Sincerely,



Gayle Landoll
Marshall County Clerk
KCCA Legislative Chairman

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Attachment 4-2



Bill Graves
Secretary of State

2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS

TESTIMONY OF JOSE DE LA TORRE
HOUSE ELECTIONS COMMITTEE
February 18, 1992
House Bill 2876

Thank you, Mr. Chairman and members of the committee for the opportunity to appear before you today on behalf of Secretary of State Graves. I want to testify in support of House Bill 2876. This bill allows the office of the Secretary of State flexibility in prescribing the ballot format, allowing our office to make changes to the ballot or required by changing technology.

House Bill 2876 will also allow paper ballot counties to print all ballots on one page, resulting in cost savings for tax payers and less confusing process for the voter and the election board workers because fewer ballots will be handled. I ask that you report this bill favorably. Thank you.

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Attachment #5*