

MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE:

The meeting was called to order by Chairperson Representative Tony Powell at 3:30 p.m. on February 19, 2001 in Room 521-S of the Capitol.

All members were present.

Committee staff present: Theresa Kiernan, Revisor  
Dennis Hodgins, Research  
Shirley Weideman, Secretary

Conferees appearing before the committee:

**HB 2350:** Proponent: Representative Lisa Benlon  
Opponents: Vic Miller, Topeka Attorney  
Brad Bryant, Deputy Assistant Secretary of State

Others attending: See attached list.

Chairman Powell opened the hearing on **HB 2350 - Elections; recounts; provisional ballots.**

Representative Lisa Benlon appeared as a proponent of **HB 2350**. She gave the example of an election in Kansas for a state representative where the winner was declared, then after a count of the provisional ballots the results changed, and after a recount, that decision was reversed. Rep. Benlon said she wants to avoid the problem in a close race only in those elections that encompass a portion of more than one county. She believes that all counties should be consistent in their methods of counting ballots and that HB 2350 will resolve this problem. (attachment #1) Representative Benlon answered questions asked by committee members.

Brad Bryant, Deputy Assistant Secretary of State, addressed the committee as an opponent of **HB 2350**. He said that the recount is not the place to decide what votes to count. He indicated that Kansas statute provides that the county board of canvassers make the decision on provisional ballots between the time the polls close and the date (Friday) that the counties certify the results. Mr. Bryant said that provisional ballots are sealed in envelopes when they are cast on election day and the county canvassers are charged by law with the responsibility of determining which ballots are valid and which are not. He indicated that the laws already tells canvassers which ballots should count. He also said that the problem encountered in the 2000 election was that those laws were not consistently read, interpreted and applied by those counties. Mr. Bryant said that this bill appears to authorize the special recount board to review provisional ballots, which could result in their reversing decisions already made by the county canvassers. He indicated that a recount is, and should be limited to, re-counting ballots that were counted in the first tabulation and there is an opportunity for provisional ballots to be reviewed in an election contest in court. (attachment #2)

Vic Miller, Topeka attorney, testified in opposition to **HB 2350**. He said the bill has good intentions, but does not clear up the problem it tried to solve. He indicated that by having the involved county representatives meet prior to a board of canvassers, they cannot contemplate the possible thousands of sets of circumstances that could be faced when determining whether a particular ballot should be counted. Mr. Miller said that the law is clear as to which provisional ballots should be counted and several errors were made in the counties involved in the election that was the reason this bill was drafted. His suggestion was for better education of the of the county clerks, canvassers and county counselors in ways of protecting the sanctity of the ballots and following the law in determining which ballots to count. Mr. Miller answered questions asked by committee members.

The hearing was closed on **HB 2350.**

Consideration was opened on **HB 2299 - Advisory committees; open meetings.**

CONTINUATION SHEET

Continuation of February 19, 2001 meeting of the House Ethics and Elections Committee.

Chairman Powell moved conceptual amendment to **HB 2299** to include a definition of subordinate groups as any entity including any committee, sub-committee, council or other entity, excluding staff meetings, which is created by a public body subject to provisions of the open meeting act would be included in those covered by the act. Representative Powers seconded the motion. The motion passed.

Representative Alldritt moved that **HB 2299** be reported favorable for passage as amended. Representative Hermes seconded the motion. The motion passed.

The meeting was adjourned at 4:35 p.m. by Chairman Powell. The next scheduled meeting is February 28 at 3:30 p.m.

House Ethics and Elections

GUEST LIST Date Feb. 19, 2001

Your Name	Representing
Chris Kirch	House Minority Leaders
Brad Bryant	Sec. of State
Vic MILLER	SELF
Bruce Dimmitt	Independent

STATE OF KANSAS



TOPEKA

HOUSE OF  
REPRESENTATIVES

Testimony for February 19, 2001  
House Ethics and Elections Committee

LISA L. BENLON  
REPRESENTATIVE, 17TH DISTRICT  
JOHNSON COUNTY

REPRESENTING PORTIONS OF SHAWNEE  
AND LENEXA

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COMMITTEE ASSIGNMENTS  
CHAIRMAN: HIGHER EDUCATION  
LEGISLATIVE POST AUDIT  
MEMBER: EDUCATION  
FEDERAL AND STATE AFFAIRS

Chairman Powell and Committee Members:

Thank you for the opportunity to speak in favor of **HB 2350**.

While Florida was in the news with the Presidential election recount, Kansas had its own recount scenario.

On Election Day in a State Representative race, the winner won by 7 votes. I attended one of the counties to observe the County's Board of Canvassers. After the Boards had counted their provisional ballots, the results of the election changed. The initial "loser" was now the "winner" by 2 votes.

A manual recount was requested of all the ballots cast. After the recount, the status of the two candidates switched again. The difference was 3 votes.

In most elections, the current method of counting provisional ballots is sufficient. However, in this case where the results are less than a handful of votes, it could make the difference of who will represent that district.

This bill addresses only those elections that encompass a portion of more than one county.

The criteria as to how to determine whether a provisional ballot is legitimate is spelled out in statute. However, one county in this case chose to be more conservative in their determinations than the other.

I believe the results of the election could have been different if the two counties had been consistent in their methods.

**HB 2350** requires all counties involved in the recount agree on the rules for counting provisional ballots. It is intended to promote consistency in close races.

Ethics and Elections Committee  
2-19-01  
Attachment 1

**RON THORNBURGH**  
Secretary of State



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## STATE OF KANSAS

### House Committee on Ethics and Elections

#### Testimony on House Bill 2350

Brad Bryant, Deputy Assistant Secretary of State  
Elections and Legislative Matters

February 19, 2001

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify on House Bill 2350. The Secretary of State's office opposes this bill because we do not think it is the appropriate solution to a perceived problem. We support the bill's attempt to promote consistency in the way counties process ballots, especially provisional ballots, and to provide guidance to county election officers and county boards of canvassers. However, in our opinion, passage of HB 2350 will not accomplish that goal.

Provisional ballots are sealed in envelopes when they are cast on election day. There are two opportunities for them to be reviewed: at the county canvass and in an election contest in court. This bill appears to authorize the special recount board to review provisional ballots, which could result in their reversing decisions already made by the county canvassers. We think this is inappropriate because the canvassers are charged by law with the responsibility of determining which ballots are valid and which are not. I have provided with my written testimony a brief outline of the key steps in the process.

A recount is, and should be, limited to re-counting ballots that were counted in the first tabulation. Recounts are not the time to reconsider the qualifications of provisional voters. That decision was made at the canvass, and it may be reviewed by a district court in a contest.

The laws already tell canvassers which ballots should count. The problem encountered in the 2000 election was that those laws were not consistently read, interpreted and applied by the counties. We hope to address this inconsistency by providing increased training for county election officers and clear guidelines for county canvassers.

We support efforts to improve consistency among the counties, but we do not agree that HB 2350 will accomplish that goal, and therefore we oppose passage of the bill.

Thank you.

## **Stages in the Election Process Where Vote Totals May Be Affected**

1. Election night (Tuesday)

Results at this point are unofficial. They have not been certified and they do not include provisional ballots.

2. County canvass (Friday)

Results are certified as official in each county.

Provisional ballots are reviewed here.

3. Recount (following week)

- if requested

Counties recertify results for the race recounted.

4. Contest (following)

- if filed in court

Provisional ballots may be reviewed here.

5. State canvass (by 1st of next month)