

MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE.

The meeting was called to order by Chairperson Representative Don Myers at 3:30 p.m. on March 19, 2003 in Room 521-S of the Capitol.

All members were present except: Representative Bill McCreary

Committee staff present: Ken Wilke, Revisor  
Kathie Sparks, Research  
Shirley Weideman, Secretary

Conferees appearing before the committee: Deputy Assistant Secretary of State Brad Bryant

Others attending: See attached list.

Chairman Myers said that the committee would work **SB 103 - Elections; recall procedures.**

Committee Chairman Myers asked Brad Bryant, Deputy Assistant Secretary of State, to explain his proposed amendments to **SB 103.** He said that he brought the first part of the amendment to the last meeting for discussion. Mr. Bryant reminded the committee that there are 2 steps in the recall process on the local level and 3 steps in the process on the state level. Mr. Bryant proposed an amendment to SB 103 for clarifying the number of signatures required for a recall petition pertaining to state officers in Sections 2, 3 and 5 by inserting after.....(percent or number) of the votes cast for all candidates "for the office of the state officer sought to be recalled, such percentage to be based upon"....., and pertaining to local officers in Sections 7 and 8 by inserting after.....(percent or number) of the votes cast for all candidates "for the office of the local officer sought to be recalled, such percentage to be based upon"..... The second part of his amendment was on page 5, Section 7, line 19, striking "200" and inserting "180" so that it will read on lines 18-20 "*(3) the petition was filed during the first 120 days of the term of office of the official sought to be recalled or within less than 180 days of the termination of the term of office of the officer sought to be recalled;*". (Attachment 1)

Representative Miller moved that SB 103 be amended as proposed by Brad Bryant. Representative Betts seconded the motion. Motion passed.

Representative Miller moved SB 103 as amended be passed favorably from committee. Representative Sharp seconded the motion and the motion passed.

The meeting was adjourned at 3:55 p.m.



[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2003

## SENATE BILL No. 103

By Committee on Elections and Local Government

1-30

12 AN ACT concerning elections; relating to recalls; amending K.S.A. 25-  
13 4302, 25-4307, 25-4308, 25-4311, 25-4315, 25-4322, 25-4325 and 25-  
14 4329, 25-4329 and 60-1205 and K.S.A. 2002 Supp. 25-4306 and re-  
15 pealing the existing sections.

16  
17 *Be it enacted by the Legislature of the State of Kansas:*

18 **Section 1.** *K.S.A. 25-4302 is hereby amended to read as follows:*

19 **25-4302.** *(a) Grounds for recall are conviction of a felony, miscon-*  
20 *duct in office, incompetence or failure to perform duties prescribed*  
21 *by law. No recall submitted to the voters shall be held void because*  
22 *of the insufficiency of the grounds, application, or petition by which*  
23 *the submission was procured.*

24 *(b) As used in this section, the term "misconduct in office" means a*  
25 *violation of law by the officer that impacts the officer's ability to perform*  
26 *the official duties of the office.*

27 ~~Section 1.~~ **Sec. 2.** *K.S.A. 2002 Supp. 25-4306 is hereby amended to*  
28 *read as follows: 25-4306. The application under K.S.A. 25-4305 shall in-*  
29 *clude (a) the name and office of the person sought to be recalled, (b) the*  
30 *grounds for recall described in particular in not more than 200 words, (c)*  
31 *a statement that the sponsors are residents of the state of Kansas and*  
32 *possess the qualifications of an elector of the state of Kansas and who*  
33 *signed the application with the statement of grounds for recall attached,*  
34 *(d) the designation of a recall committee of three sponsors who shall*  
35 *represent all sponsors and subscribers in matters relating to the recall,*  
36 *(e) the designation of at least 100 residents of the state of Kansas who*  
37 *possess the qualifications of electors of the state of Kansas and who sub-*  
38 *scribe to the application as sponsors for purposes of circulation, and (f)*  
39 *the signatures and addresses of registered electors in the state or election*  
40 *district of the state officer sought to be recalled equal in number to not*  
41 *less than 10% of the votes cast for the all candidates [at the last general*  
42 *election for the current term of office of the officer sought to be recalled*  
43 *in the last general election at which a person was elected to such office,*

for the office of the state officer sought to be recalled, such percentage to be based upon

Brad Bryant, SOS office

House Ethics and Elections

3-19-03

Attachment 1

1     Sec. ~~2~~ 3. K.S.A. 25-4307 is hereby amended to read as follows: 25-  
 2 4307. Notice on all matters pertaining to the application and petition may  
 3 be served on any member of the recall committee in person or by mail  
 4 addressed to a committee member as indicated on the application. The  
 5 secretary of state, upon request, shall notify the recall committee of the  
 6 official number of votes cast for ~~the all candidates~~ <sup>[at]</sup> ~~the last general~~  
 7 ~~election for the current term of office of the officer sought to be recalled~~  
 8 ~~in the last general election at which a person was elected to such office.~~  
 9 County election officers shall assist the secretary of state as requested by  
 10 such secretary.

11     Sec. ~~3~~ 4. K.S.A. 25-4308 is hereby amended to read as follows: 25-  
 12 4308. ~~The secretary of state shall review the application and shall either~~  
 13 ~~certify it or notify the recall committee of the grounds of refusal. The~~  
 14 ~~secretary of state shall deny certification if he or she~~ (a) ~~Applications for~~  
 15 ~~the recall of state officers shall be reviewed by the state recall board which~~  
 16 ~~shall consist of the lieutenant governor, secretary of state and attorney~~  
 17 ~~general. A decision of a majority of these officers shall be final. Upon~~  
 18 ~~receiving an application for the recall of a state officer, the secretary of~~  
 19 ~~state shall immediately notify the other officers required to determine the~~  
 20 ~~matter of the time and place when the application for recall will be re-~~  
 21 ~~viewed. The time of the meeting shall be not more than five days following~~  
 22 ~~the giving of such notice. The state recall board shall deny the application~~  
 23 ~~for recall if the state recall board~~ [The secretary of state shall review  
 24 the application and shall either certify such application or notify  
 25 the recall committee of the grounds of refusal. The secretary of state  
 26 shall deny certification if the secretary of state] determines that (a):

- 27     (1) ~~The facts do not support the grounds for recall as stated in the~~  
 28 ~~application;~~
- 29     (2) ~~the application is not substantially in the required form;~~ (b);
- 30     (3) ~~the application was filed during the first one hundred and twenty~~  
 31 ~~(120) 120 days of the term of office of the official sought to be recalled~~  
 32 ~~or within less than two hundred (200) 200 days of the termination of the~~  
 33 ~~term of office of the state officer sought to be recalled;~~ (c);
- 34     (4) ~~the person named in the application is not a state officer;~~ (d);
- 35     (5) ~~there is an insufficient number of required signatures of any kind;~~  
 36 ~~(e);~~
- 37     (6) ~~the state officer sought to be recalled has been or is being sub-~~  
 38 ~~jected to another recall election during such officer's current term of~~  
 39 ~~office~~ or (f); or
- 40     (7) ~~the application does not conform to any other requirement of this~~  
 41 ~~act. The secretary of state shall either certify or deny the application based~~  
 42 ~~on the determination of the state recall board and shall promptly notify~~  
 43 ~~the recall committee of the state recall board's decision.~~

for the office of the state officer sought to be recalled, such percentage to be based upon

1 ~~(b) (1) In the case of a recall of the attorney general or lieutenant~~  
2 ~~governor, the secretary of state shall designate an elected official of the~~  
3 ~~state to serve in the place of the lieutenant governor or attorney general~~  
4 ~~as may be required.~~

5 ~~(2) In the case of a recall of the secretary of state, the attorney general~~  
6 ~~shall designate an elected official of the state to serve in the place of the~~  
7 ~~secretary of state.~~

8 ~~(e) [(b)] All mandamus proceedings to compel a recall election and~~  
9 ~~all injunction proceedings to restrain a recall election shall be commenced~~  
10 ~~not less than 30 days after the recall board's [secretary of state's]~~  
11 ~~decision.~~

12 Sec. 4. 5. K.S.A. 25-4311 is hereby amended to read as follows: 25-  
13 4311. Before being filed, each petition shall be certified by an affidavit  
14 by the sponsor who personally circulated the petition. The affidavit shall  
15 state in substance that (a) the person signing the affidavit is a sponsor,  
16 (b) the person is the only circulator of that petition or copy, (c) the sig-  
17 natures were made in ~~his or her~~ the petition circulator's actual presence,  
18 (d) to the best of ~~his or her~~ the petition circulator's knowledge, the sig-  
19 natures are those of the persons whose names they purport to be, and (e)  
20 the person circulated the petition in the manner provided by this act. In  
21 determining the sufficiency of the petition, the secretary of state and  
22 county election officers assisting the secretary of state shall not count  
23 subscriptions on petitions not properly certified. Only one election may  
24 be held for the recall of a particular state officer in a single term of office,  
25 and no application for a second recall election within a single term shall  
26 be approved nor shall any petition therefor be circulated. No petition may  
27 be filed within less than ~~one hundred and eighty (180)~~ 180 days of the  
28 termination of the term of office of the state officer sought to be recalled.  
29 The recall committee may file the petition only if signed by registered  
30 electors in the state or in the election district of the state officer sought  
31 to be recalled equal in number to not less than ~~forty percent (40%)~~ 40%  
32 of the votes cast for all candidates for the ~~[at] the last general election for~~  
33 ~~the current term of office of the state officer sought to be recalled in the~~  
34 ~~last general election at which a person was elected to such office.~~

for the office of the state officer sought to be recalled, such percentage to be based upon

35 Sec. 5. 6. K.S.A. 25-4315 is hereby amended to read as follows: 25-  
36 4315. The secretary of state shall, ~~through county election officers,~~ pro-  
37 vide each county election board officer in the state or in the election  
38 district of the state officer sought to be recalled with ~~four (4) copies~~ one  
39 copy of the statement of the grounds for recall included in the application  
40 and ~~four (4) copies~~ one copy of the statement of not more than ~~two~~  
41 ~~hundred (200)~~ 200 words made by the state officer sought to be recalled  
42 in justification of ~~his or her~~ such state officer's conduct in office. The state  
43 officer sought to be recalled may provide the secretary of state with his

1 ~~or her such state officer's~~ statement within ~~ten (10)~~ 10 days after the date  
 2 the secretary of state gave notification that the petition was properly filed.  
 3 ~~Each election board shall post all copies of the statements for and against~~  
 4 ~~recall in conspicuous places at its polling place, one of which places shall~~  
 5 ~~be immediately outside, and one of which shall be immediately inside,~~  
 6 ~~the entrance to the polling place. Each county election officer shall main-~~  
 7 ~~tain such statements for public inspection.~~

8 Sec. ~~6.~~ 7. K.S.A. 25-4322 is hereby amended to read as follows: 25-  
 9 4322. (a) Before any petition for recall of a local officer is circulated, a  
 10 copy thereof accompanied by names and addresses of the recall commit-  
 11 tee and sponsors shall be filed in the office of the county election officer  
 12 with whom the petitions are required to be filed. The copy of the petition  
 13 so filed shall be subscribed by the members of the recall committee in  
 14 the presence of such county election officer. The recall committee shall  
 15 represent all sponsors and subscribers in matters relating to the recall.  
 16 Notice on all matters pertaining to the recall may be served on any mem-  
 17 ber of the recall committee in person or by mail addressed to a committee  
 18 member as indicated on the petition so filed. The county election officer,  
 19 upon request, shall notify the recall committee of the official number of  
 20 votes cast for ~~the all candidates~~ [at] the last general election for the current  
 21 term of office of the officer sought to be recalled in the last general  
 22 election at which a person was elected to such office.

for the office of the local officer sought to be recalled, such percentage to be based upon

23 ~~(b) Before any petition for recall of a local officer is circulated, the~~  
 24 ~~county election officer shall transmit a copy of such petition to the county~~  
 25 ~~or district attorney or to the attorney designated pursuant to subsection~~  
 26 ~~(c) for determination of the sufficiency of the grounds stated in the pe-~~  
 27 ~~tion for recall. Within five days of receipt of the copy of the petition~~  
 28 ~~from the county election officer, the county or district attorney or the~~  
 29 ~~attorney designated pursuant to subsection (c) shall make such determi-~~  
 30 ~~nation and notify the county election officer and the recall committee of~~  
 31 ~~such determination.~~

32 ~~(c) In the case of a recall of the county or district attorney, a judge~~  
 33 ~~of the district court of such county shall designate an attorney to deter-~~  
 34 ~~mine the sufficiency of the grounds stated in the petition for recall. Such~~  
 35 ~~attorney shall perform the duties imposed on the county or district at-~~  
 36 ~~torney in the recall of other local officers.~~

37 ~~(b) Before any petition for recall of a local officer is circulated, such~~  
 38 ~~petition shall be reviewed by the county recall board which shall consist~~  
 39 ~~of the county election officer, the county or district attorney and an elected~~  
 40 ~~official of the county whose position is not involved in the recall designated~~  
 41 ~~by the county election officer. The decision of a majority of the county~~  
 42 ~~recall board shall be final. Upon the filing of a petition for the recall of a~~  
 43 ~~local officer, the county election officer shall immediately notify the other~~



1 ~~members of the county recall board to determine the time and place when~~  
 2 ~~the petition for recall shall be reviewed. The time of the meeting shall not~~  
 3 ~~be more than five days following the giving of such notice. The county~~  
 4 ~~recall board shall deny the petition for recall if the county recall board~~  
 5 ~~determines that [(b) Before any petition for recall of a local officer~~  
 6 ~~is circulated, the county election officer shall transmit a copy of~~  
 7 ~~such petition to the county or district attorney or to the attorney~~  
 8 ~~designated pursuant to subsection (c) for determination of the suf-~~  
 9 ~~ficiency of the grounds stated in the petition for recall. Within five~~  
 10 ~~days of receipt of the copy of the petition from the county election~~  
 11 ~~officer, the county or district attorney or the attorney designated~~  
 12 ~~pursuant to subsection (c) shall make such determination and notify~~  
 13 ~~the county election officer and the recall committee of such deter-~~  
 14 ~~mination. Such determination shall include whether]:~~

- 15 (1) The facts do not support the grounds for recall as stated in the
- 16 petition for recall;
- 17 (2) the petition is not substantially in the required form;
- 18 (3) the petition was filed during the first 120 days of the term of office
- 19 of the official sought to be recalled or within less than [200] days of the
- 20 termination of the term of office of the officer sought to be recalled;
- 21 (4) the person named in the petition is not a local officer;
- 22 (5) there is an insufficient number of required signatures of any kind;
- 23 (6) the local officer sought to be recalled has been or is being subjected
- 24 to another recall election during such officer's current term of office; or
- 25 (7) the application does not conform to any other requirement of this
- 26 act.

27 ~~The county election officer shall either certify or deny the petition for~~  
 28 ~~recall based on the determination made by the county recall board and~~  
 29 ~~shall promptly notify the recall committee of the county recall board's~~  
 30 ~~decision.~~

31 ~~—(c) (1) In the case of a recall of the county or district attorney, a~~  
 32 ~~judge of the district court of such county shall designate an attorney to~~  
 33 ~~serve as a member of the county recall board.~~

34 ~~—(2) In the case of a recall of a county election officer who also serves~~  
 35 ~~as the county clerk, the county or district attorney, as the case may be,~~  
 36 ~~shall designate an elected official of the county whose position is not in-~~  
 37 ~~volved in the recall to serve in the place of the county clerk.~~

38 [(c) In the case of a recall of the county or district attorney, a  
 39 judge of the district court of such county shall designate an attorney  
 40 to determine the sufficiency of the grounds stated in the petition for  
 41 recall. Such attorney shall perform the duties imposed on the county  
 42 or district attorney in the recall of other local officers.]

43 (d) All mandamus proceedings to compel a recall election and all in-

180

1 *junction proceedings to restrain a recall election shall be commenced not*  
 2 *less than 30 days after the county recall board's [county or district*  
 3 *attorney's] decision.*

4 Sec. 7. 8. K.S.A. 25-4325 is hereby amended to read as follows: 25-  
 5 4325. Before being filed, each petition shall be certified by an affidavit  
 6 by the sponsor who personally circulated the petition. The affidavit shall  
 7 state in substance that (a) the person signing the affidavit is a sponsor,  
 8 (b) the person is the only circulator of that petition or copy, (c) the sig-  
 9 natures were made in such person's actual presence, (d) to the best of  
 10 such person's knowledge, the signatures are those of the persons whose  
 11 names they purport to be, (e) the person circulated the petition in the  
 12 manner provided by this act and (f) the person signing the affidavit, being  
 13 duly sworn, on oath states that the statements of grounds for recall con-  
 14 tained in the recall petition are true. In determining the sufficiency of  
 15 the petition, the county election officer shall not count signatures on  
 16 petitions not properly certified. The recall committee may file the petition  
 17 only if signed by registered electors in the election district of the local  
 18 officer sought to be recalled equal in number to not less than 40% of the  
 19 votes cast for all candidates ~~for the [at] the last general election for the~~  
 20 ~~current term of office of the local officer sought to be recalled in the last~~  
 21 ~~general election at which a person was elected to such office.~~ If more  
 22 than one person was elected to such office at such election the number  
 23 of signatures required shall be equal to not less than 40% of the votes  
 24 cast at such election for all candidates for the office divided by the number  
 25 of persons elected to such office.

26 Sec. 8. 9. K.S.A. 25-4329 is hereby amended to read as follows: 25-  
 27 4329. ~~The county election officer shall provide each election board in the~~  
 28 ~~election district of the local officer sought to be recalled with four (4)~~  
 29 ~~copies of the statement of the grounds for recall included in the petition~~  
 30 ~~and four (4) copies of the statement of not more than two hundred (200)~~  
 31 ~~words made by the local officer sought to be recalled in justification of~~  
 32 ~~his or her conduct in office. The person sought to be recalled may provide~~  
 33 ~~the county election officer with his or her statement within ten (10) days~~  
 34 ~~after the date such county election officer gave notification that the pe-~~  
 35 ~~tion was properly filed. Each election board shall post all copies of the~~  
 36 ~~statements for and against recall in conspicuous places at the polling~~  
 37 ~~place, one of which places shall be immediately outside, and one of which~~  
 38 ~~shall be immediately inside, the entrance to the polling place. Within 10~~  
 39 ~~days after the date the county election officer gave notification that the~~  
 40 ~~recall petition was properly filed, the person sought to be recalled may~~  
 41 ~~provide to the county election officer such person's statement, containing~~  
 42 ~~not more than 200 words, in justification of such person's conduct in~~  
 43 ~~office. The county election officer shall maintain such statement for public~~

for the office of the local officer sought to be recalled, such percentage to be based upon