

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Karin Brownlee at 8:30 a.m. on March 5, 2003 in Room 123-S of the Capitol.

All members were present except: Senator Kerr, absent

Committee staff present: April Holman, Legislative Research
Deb Hollon, Legislative Research
Mitch Rice, Revisor of Statutes
Jodie Anspaugh, Secretary

Conferees appearing before the committee: Steve Weatherford, Kansas Development Finance Authority

Others attending: See attached list.

Deb Hollon from Legislative Research briefed the committee on Executive Reorganization Order 30. An ERO cannot be amended, but can only be approved or disapproved by the committee. If the committee takes no action on the ERO, it will be considered approved. ERO 30 transfers funding and employees from the Department of Commerce to the Kansas Development Finance Authority to create a division of housing. Questions arose about proper procedure. Senator Brownlee cited a memo from Senate Secretary Pat Saville that indicated an ERO can be amended. (Attachment 1)

Steve Weatherford, President of the Kansas Development Finance Authority, testified in support of ERO 30. (Attachment 2) It is the intent of Governor Sebelius to create a "One Stop Shop for Housing." Locating this within KDFFA allows for a continuum of housing programs from homelessness to home ownership. All federal housing programs currently being administered by the Department of Commerce would be the responsibility of KDFFA. These include emergency shelter grants, housing rehabilitation programs, rental assistance programs, housing tax credit programs, and the federal "Home" program. Mr. Weatherford answered questions about his testimony regarding homelessness, other state housing programs, and housing expertise on the KDFFA board.

Senator Barone moved to approve ERO 30. Senator Brungardt seconded. Several committee members expressed their desire to hear SB 222 before they make a decision on ERO 30. Senator Barone withdrew his motion.

Chairperson Brownlee asked the Revisors and Legislative Researchers to look into the proper procedure for an Executive Reorganization Order.

The meeting was adjourned at 9:30 a.m.

The next meeting is scheduled for March 6, 2003 at 8:30 a.m. in Room 123-S.

State of Kansas

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SENATE

Memorandum

TO: Senator Karin Brownlee, Chairperson, Commerce Committee
FROM: *Pat* Pat Saville, Secretary of the Senate
DATE: February 12, 2003
SUBJECT: Executive Reorganization Order 30

The constitution provides that reorganization orders become effective on July 1 following its transmittal to the legislature unless within 60 calendar days and before adjournment, a resolution disapproving such executive reorganization order is adopted by either house by a majority vote. (Under the provisions of an ERO, a portion of the order may be effective at a time later than the date on which the order is otherwise effective.)

This applies to the Senate in the following way:

The Governor's Message and ERO 30 were transmitted to the Senate and House on Monday, February 10, 2003. ERO 30 was printed in the journal dated Tuesday, February 11 and has also been printed and placed in the black bill books. ERO 30 was referred to the Commerce Committee on February 12. This committee has 30 days from referral or until Friday, March 14, to pass out a resolution stating either approval or disapproval of the ERO. The Senate has until the 60th calendar day following transmittal or until Friday, April 11, to take up this resolution.

ERO's become effective under each of the following circumstances:

1. No action is taken by either house.
2. Approval by one house and nothing by other house.
3. Approval by both houses.

ERO's are nullified under the following circumstance:

1. Resolution by either house disapproving ERO.

Senate Commerce Committee
3-5-03
Attachment 1-1

February 12, 2003
Page 2

Senate Rule 76 requires that action on an ERO be made a special order of business under Senate Rule 6. It is believed that the purpose of this provision is to bring together all resolutions for approval or disapproval of each particular ERO so that this business can be disposed of at one particular time. This special order of business must take place not later than the last day the ERO may be disapproved.

Any individual legislator may also introduce a resolution to carry out his desired disposition of any ERO. (This must be taken at the designated time for the special order of business for all ERO resolutions.) The wording in this resolution should be carefully prepared by the Revisor's Office in order to assure that constitutional requirements are met.

An ERO which is effective shall be published as and with the acts of the legislature and the statutes of the state. Any ERO which is to become effective may be amended or repealed as statutes of the state are amended or repealed.

For your information, I am enclosing copies of Senate Rules 6 and 76 and a copy of the Article of the constitution that applies to this subject. If you have any questions, please let me know.

Enclosures

cc: Sue Krische, Chief of Staff, Senate President's Office

Rule 6. Special Order. Whenever any bill or other matter is made the special order for a particular day, and shall not be reached or completed on that day, it shall be returned to its place in the General Orders, unless it shall be made the special order for another day. When any special order is under consideration, it shall take precedence over any special order for a subsequent hour of the same day, but such subsequent special order shall be taken up immediately after the previous order has been disposed of. Notation of a special order shall be placed before the first order of business on the calendar for that day, giving the subject to be considered and the time fixed for its consideration. When that time arrives, other business shall be suspended until the special order has been considered.

Rule 76. Executive Reorganization Orders. When an executive reorganization order is received from the Governor, it shall be referred to an appropriate committee by the President. The committee to which an executive reorganization order is referred shall report its recommendations thereon, by recommending adoption of a Senate resolution, not later than the 60th calendar day of any regular session and not later than 30 calendar days after it has received such referral whichever occurs first. If a committee fails to report upon an executive reorganization order within the time specified in this rule, such committee shall be deemed to have returned the same to the Senate without recommendation. When a report or return of an executive reorganization is made, it and all resolutions for approval or disapproval thereof shall be made the special order of business in accordance with Rule 6 (special order of business) at a time not later than the last day the executive reorganization order may be disapproved under section 6 of article 1 of the Constitution of Kansas. The Senate shall act to approve or reject every reorganization order unless at the time set for such action the House of Representatives shall have already rejected such executive reorganization order.

council not violative of separation of powers doctrine. State, ex rel., v. Bennett, 222 K. 12, 17, 564 P.2d 1281.

§ 4. Reports to governor. The governor may require information in writing from the officers of the executive department, upon any subject relating to their respective duties. The officers of the executive department, and of all public state institutions, shall, at least ten days preceding each regular session of the legislature, severally report to the governor, who shall transmit such reports to the legislature.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 50; L. 1972, ch. 390, § 1; Nov. 7, 1972.

Revisor's Note:

Provision for reports by officers to governor appeared in § 16, prior to 1972 revision of article.

Research and Practice Aids:

States ⇐ 41.
Hatcher's Digest, Attorney General §§ 1, 2.
C.J.S. States §§ 60, 74.

Attorney General's Opinions:

Dept. of administration; inclusion of state agencies' budget requests in governor's budget report. 82-20.

CASE ANNOTATIONS

1. Governor may require attorney general to examine witnesses under prohibitory law. The State, ex rel., v. Dawson, 86 K. 180, 187, 119 P. 360.

2. Mentioned; 1972 amendment to article held properly submitted and adopted. Van Sickle v. Shanahan, 212 K. 426, 430, 511 P.2d 223.

§ 5. Governor's duties for legislature; messages; special sessions; adjournment. The governor may, on extraordinary occasions, call the legislature into special session by proclamation; and shall call the legislature into special session, upon petition signed by at least two-thirds of the members elected to each house. At every session of the legislature the governor shall communicate in writing information in reference to the condition of the state, and recommend such measures as he deems expedient. In case of disagreement between the two houses in respect of the time of adjournment, the governor may adjourn the legislature to such time as he deems proper, not beyond its next regular session.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 50; L. 1972, ch. 390, § 1; Nov. 7, 1972.

Revisor's Note:

Provision for adjournment in case of disagreement between houses prior to 1972, appeared in § 6 of this article.

Cross References to Related Sections:

Adjournment for more than two days; consent of other house required, see Kans. Const. Art. 2, § 8.

Legislative petition for special session, see 46-1401 et seq.

Messages and reports to legislature, see 75-102, 75-3721.

Record of petitions for special sessions maintained, see 75-104.

Research and Practice Aids:

States ⇐ 41.
Hatcher's Digest, Constitutional Law, § 20; States §§ 14 to 16.
C.J.S. States §§ 60, 74.

Attorney General's Opinions:

There is no limitation on subject matter to be dealt with at special session. 87-92.

CASE ANNOTATIONS

1. Governor must necessarily decide which body constitutes house. (Dissenting opinion.) In re Gunn, Petitioner, 50 K. 155, 250, 32 P. 470.

2. Legislation demanded respecting freight rates, authorized governor to convene legislature. Farrelly v. Cole, 60 K. 356, 362, 366, 370, 56 P. 492.

3. Mentioned; legislature at budget session has no power to appoint interim investigating committee. State, ex rel., v. Anderson, 180 K. 120, 123, 126, 299 P.2d 1078.

4. Finance council and emergency fund laws (75-3708 to 75-3714) not encroachment on power of executive. State, ex rel., v. Fadely, 180 K. 652, 667, 676, 686, 696, 308 P.2d 537.

5. Governor may call special session so legislature can lawfully apportion legislative districts. Harris v. Shanahan, 192 K. 183, 213, 387 P.2d 771.

6. Mentioned in holding 1968 reapportionment of senate unconstitutional. Long v. Docking, 283 F. Supp. 539, 543.

§ 6. Reorganization of state agencies of executive branch. (a) For the purpose of transferring, abolishing, consolidating or coordinating the whole or any part of any state agency, or the functions thereof, within the executive branch of state government, when the governor considers the same necessary for efficient administration, he may issue one or more executive reorganization orders, each bearing an identifying number, and transmit the same to the legislature within the first thirty calendar days of any regular session. Agencies and functions of the legislative and judicial branches, and constitutionally delegated functions of state officers and state boards shall be exempt from executive reorganization orders.

(b) The governor shall transmit each executive reorganization order to both houses of the legislature on the same day, and each such order shall be accompanied by a governor's message which shall specify with respect to each abolition of a function included in the order the statutory authority for the exercise

1-4

of the function. Every executive reorganization order shall provide for the transfer or other disposition of the records, property and personnel affected by the order. Every executive reorganization order shall provide for all necessary transfers of unexpended balances of appropriations of agencies affected by such order, and such changes in responsibility for and handling of special funds as may be necessary to accomplish the purpose of such order. Transferred balances of appropriations may be used only for the purposes for which the appropriation was originally made.

(c) Each executive reorganization order transmitted to the legislature as provided in this section shall take effect and have the force of general law on the July 1 following its transmittal to the legislature, unless within sixty calendar days and before the adjournment of the legislative session either the senate or the house of representatives adopts by a majority vote of the members elected thereto a resolution disapproving such executive reorganization order. Under the provisions of an executive reorganization order a portion of the order may be effective at a time later than the date on which the order is otherwise effective.

(d) An executive reorganization order which is effective shall be published as and with the acts of the legislature and the statutes of the state. Any executive reorganization order which is or is to become effective may be amended or repealed as statutes of the state are amended or repealed.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 50; original subject matter stricken by revision and new subject substituted, L. 1972, ch. 390, § 1; Nov. 7, 1972.

Revisor's Note:

Prior to 1972 revision, section provided for adjournment of legislature by governor in case of disagreement between houses of legislature. This authority of governor was included in § 5 of article by revision.

Research and Practice Aids:

States ⇨ 41.

C.J.S. States §§ 60, 74.

Law Review and Bar Journal References:

Discussed in comment on executive reorganization, 13 W.L.J. 530 (1974).

CASE ANNOTATIONS

1. Discussed; 1972 amendment of section does not conflict with Article IV, Section 4, of the U.S. Constitution, guaranteeing to every state a republican form of government. *Van Sickle v. Shanahan*, 212 K. 426, 430, 431, 434, 439, 447, 448, 449, 450, 451, 452, 511 P.2d 223.

§ 7. Pardons. The pardoning power shall be vested in the governor, under regulations and restrictions prescribed by law.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 50; L. 1972, ch. 390, § 1; Nov. 7, 1972.

Revisor's Note:

No change was made in this section by the 1972 revision of this article.

Research and Practice Aids:

Pardon and Parole ⇨ 4.

Hatcher's Digest, Pardon, Parole and Commutation §§ 1, 2, 6 to 9.

C.J.S. Pardons §§ 3, 5, 14, 15, 19.

Attorney General's Opinions:

Criminal procedure; release procedure; pardons and commutations. 79-131.

Schools; teachers' contracts; constitutionality of binding arbitration provision in Senate Bill No. 718. 80-63.

Office of governor; power to accept delegated presidential authority. 80-140.

Law enforcement training center; qualifications of applicant. 85-165.

CASE ANNOTATIONS

1. Not violated by "parole law" conferring power on district court. *Mikesell v. Wilson County*, 82 K. 502, 504, 108 P. 829.

2. Section cited in distinguishing commutation of sentence and conditional pardon. *In re Charles*, 115 K. 323, 222 P. 606.

3. Section includes power to grant commutation of sentence and remit fines and forfeitures. *Jamison v. Flanner*, 116 K. 624, 228 P. 82.

4. Section includes power to parole and commute sentences under laws. *Lynn v. Schneck*, 139 K. 138, 140, 30 P.2d 117.

5. Reprieve of execution of death sentence granted to allow time to present application for executive clemency. *State v. Miller*, 169 K. 1, 217 P.2d 287.

6. Court expungement of criminal records no infringement on pardoning power of executive. *Stephens v. Van Arsdale*, 227 K. 676, 694, 608 P.2d 972.

§ 8.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 50; eliminated by revision, L. 1972, ch. 390; Nov. 7, 1972.

Revisor's Note:

Section related to great seal of Kansas. Subject matter was included in § 9 of this article by revision in 1972.

§ 9. State seal and commissions. There shall be a seal of the state, which shall be kept by the governor, and used by him officially, and which shall be the great seal of Kansas. All commissions shall be issued in the name of the state of Kansas; and shall be signed by

**Testimony to the Senate Commerce Committee
Regarding Executive Reorganization Order No. 30
By Steve Weatherford, President, Kansas Development Finance Authority
March 5, 2003**

Madam Chairman and Honorable Members of the Committee, Kansas Development Finance Authority ("KDFFA") appreciates the opportunity to testify before you regarding Executive Reorganization Order No. 30, issued February 10, 2003, by Governor Sebelius.

- The Governor's vision for housing in Kansas calls for the creation of a state housing finance agency with the intent of marshalling all our housing resources into one entity creating "One Stop Shop for Housing". The location of our "One Stop Shop for Housing" within KDFFA will allow us to develop a continuum of housing programs from homelessness to homeownership.
- Executive Reorganization Order (ERO) No. 30 is the first step in the creation of a state housing finance agency.
- Specifically, the ERO moves the responsibility for all of the federal housing programs currently being administered in the Department Commerce and Housing to KDFFA.
- These programs include: emergency shelter grants, housing rehabilitations programs, rental assistance programs, housing tax credit programs and the federal "Home" program.
- We are currently engaged in a transition and planning process, which after implementation will result in the creation of two divisions within KDFFA, a finance division and a housing division.
- The reorganization plan will also address the physical merger of the finance division and the housing division into one location.
- The capstone in the creation of a state housing finance agency is Senate Bill. ("SB") 222.
- S.B. 222 seeks to amend the KDFFA Enabling Act to authorize the issuance of single family mortgage revenue bonds. This issuing authority will serve as the foundation to a comprehensive housing program affording homeownership opportunities to families throughout the entire State of Kansas.