

MINUTES OF THE SENATE EDUCATION COMMITTEE.

The meeting was called to order by Chairperson Senator Dwayne Umbarger at 1:35 p.m. on March 13 2003 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Carolyn Rampey, Legislative Research  
Kathie Sparks, Legislative Research  
Theresa Kiernan, Revisor of Statutes  
Judy Steinlicht, Secretary

Conferees appearing before the committee: Carolyn Rampey, Legislative Research  
Theresa Kiernan, Revisor of Statutes  
Mark Tallman, KASB

Others attending: See attached list

**SCR 1601–Proposition to amend sections 3 & 7 of the constitution of the state of Kansas**  
**SCR 1611–State Board of Education; elected by members of local boards of education**  
**SB 190–State Board of Education; nonpartisan election**

Carolyn Rampey, Legislative Research, gave the Committee a report from the National Association of State Boards of Education showing how each state elects or appoints their state board of education, the number on the board, length of term, etc. Carolyn presented a summary of the elementary-secondary education governance among the states. The most common method of selection of members of state-level boards of education was by gubernatorial appointment with thirty states using this method. Five states elect board members by partisan election and four by non-partisan elections. Four states use a combination of election and gubernatorial appointment. Two states have no state-level boards of education and the remaining five states and the District of Columbia use other, less common, methods of selection. Most states have an uneven number of members and Texas appears to be the only state that has an elected state board by a partisan election and a chief state school officer who is appointed by the Governor. ([Attachment 1](#))

Carolyn continued with a overview of governance of elementary-secondary education in Texas. In 1949, an elected State Board of Education was created. The State Board appointed the Commissioner of Education. In 1995, the law was changed to make the Commissioner an appointee by the Governor. Since that time, an erosion of powers has occurred. Law provides that the board meet quarterly, but until 1996, the board met much more frequently. The past two years, the board met approximately every other month and now has not met for two months because it has no chair. They may however, have subcommittees that are active. The chair is appointed by the Governor and is selected from the 15 member board. The appointee must be confirmed by the state. The Commissioner is an ex officio member of the Board and attends meetings, serves a four year term commensurate with the term of the Governor and serves as the head of the Texas Education Agency. ([Attachment 2](#))

Carolyn provided the background of the Kansas Constitution. Article 6 was adopted in its present form in 1966. Thirty-two resolutions have been introduced since 1973 to change the constitution and only three of those were submitted to the voters, but none have passed. ([Attachment 3](#))

Theresa Kiernan, Legislative Research, explained **SB190**, and two resolutions, **SCR1601** and **SCR1611**.

**SB190** provides for the non partisan election of the State Board of Education and elections would be held in the spring of odd-numbered years.

**SCR1601** provides for an appointed nine-member board of education and members would be subject to

CONTINUATION SHEET

MINUTES OF THE SENATE EDUCATION COMMITTEE at 1:35 p.m. on March 13 2003 in Room 123-S of the Capitol.

confirmation by the Senate.

**SCR1611** continues the elected ten-member board of education and members would be elected by members of local boards of education.

Theresa also explained two new proposed Senate Concurrent Resolutions. The first adds three appointed members to the State Board of Education and each appointed and elected member would serve a four-year term. The second resolution, removes self-executing powers of the State Board of Education, replaces the commissioner of education appointed by the State Board of Education with a secretary of education appointed by the Governor, subject to confirmation by the Senate, and the secretary would exercise supervision over the maintenance, development and operation of elementary and secondary schools as provided by law. (Attachment 4)

Committee discussion followed. Chairman Umbarger advised the Committee that he would be open to other options, that he would like to consider this matter further and come to some conclusion next week. Feedback from the Committee showed interest in an uneven number of board members, input from the Governor on the board through appointment of one to three members and some interest in a non-partisan election.

Mark Tallman, KASB, stated that his organization has not considered gubernatorial appointments. Their position is to support an elected board. KASB believes that this would not be on the election ballot until the 2004 election. In that case, they would take a look at the proposal and may be in a position to support it by that time. In the past, Mark believes that resolutions have failed because the State Board was against them and that there was no strong advocate behind the changes.

Chairman Umbarger adjourned the meeting with the comments that he wishes to take final action on the matter of changes for the State Board of Education next Tuesday at the next hearing on this bill. The next meeting is scheduled for Monday, March 17, 2003 at 1:30 p.m. in Room 123S.

**SENATE EDUCATION COMMITTEE GUEST LIST**

DATE - 3/13/03

<u>NAME</u>	<u>REPRESENTING</u>
Shirley Freshman	KACCT
Jennie Rose	KACCT
Bill WAGNON	KS BOE
John Pinegar	Washburn University
Melissa Massey	Cowley County Leadership Class
Nicole Romine	GBBA
Kara Lock	Intern - Sen. Downey
Tara Foyt	Rep. HRT's office
Bill P. King	USD#774
Jacque Dakes	SQE
Wanda's Jones	<del>FUR</del> KFWDC
Mary E. Beems	KFWDC
Arthur Balachandran	AGI Forum Veteran
L. J. Minor	VFW #7714
David W. Taylor	KDUA
Mark Desetti	KNEA
Janis McMillen	LWVK
Jo Ann Anderson	Johnson Co League of Women Veterans
Shana Gibson	LWV - Johnson Cty.
Diane Kuhn	LWV Jo Co
Barb Jensen	LWV Emporia
Jan Kone	LWV Manhattan
Karin Weism	League of Women Veterans Jo Co.





# STATE EDUCATION GOVERNANCE AT-A-GLANCE

Compiled by the National Association of State Boards of Education  
January 2002

*We are aware that there are often changes to state governance structures. Please help keep board members and the education community informed. When changes do occur in your state, contact David Kysilko at NASBE, 1-800-368-5023.*

**NASBE**  
NATIONAL ASSOCIATION OF  
STATE BOARDS OF EDUCATION

Senate Education  
3-13-03  
Attachment 1

**STATE EDUCATION GOVERNANCE AT A GLANCE**  
 Compiled by the National Association of State Boards of Education  
 (Revised January 2002)

1-2-1

STATE	METHOD OF SELECTION OF STATE BOARD MEMBERS	NUMBER OF VOTING STATE BOARD MEMBERS	LENGTH OF TERM	METHOD OF SELECTION OF CHIEF STATE SCHOOL OFFICER	OFFICIAL ROLE OF CHIEF STATE SCHOOL OFFICER (CSSO) ON STATE BOARD	UNIQUE FEATURE OF STATE BOARD	SPECIAL NOTES
Alabama	Partisan Ballot	8 elected & Governor	4	Appt. by SBE	Sec. & Exec. Officer	Governor sits as President of Board	Four members elected in 1998 received 2-year terms so that 4 members will run for election every other year
Alaska	Appt. by Gov.	7	5	Appt. by SBE, with approval by Gov.	Exec. Officer	Board appoints one non-voting student advisor and one non-voting military advisor	CSSO must have 5 yrs. experience in education; 3 in administration
Arizona	Appt. by Gov.; Confirmed by Senate	9	4	Partisan Ballot	Exec. Officer	Sits as Vo-Tech board	Requires three lay members
Arkansas	Appt. by Gov.	10	6	Appt. by SBE	Agent Ex Officio	The CSSO serves at the pleasure of the Governor	CSSO must have 10 yrs. experience as a teacher, including 5 in administration or supervision, and hold Ark. teacher's certificate
California	Appt. by Gov.	11 incl. student member	4 (1yr. for student)	Non-Partisan Ballot	Sec. & Exec. Officer	Voting student member who has full participation rights	
Colorado	Partisan Ballot	7	6	Appt. by SBE	Secretary		
Connecticut	Appt. by Gov., approved by House and Senate	9	4	Appt. by SBE	Secretary	The Commissioner of Higher Education serves as an ex officio, non-voting member of the board	Beginning in 1998, two student members (non-voting) serve 1-year terms on the board
Delaware	Appt. by Governor, approved by Senate. President serves at the pleasure of the Governor	7	6	Appt. by Gov.	Exec. Secretary	<ul style="list-style-type: none"> <li>2 SBE members must have local board experience;</li> <li>Must be a resident for 5 yrs. in order to sit on board</li> </ul>	Change from State Board-appointed CSSO to Governor-appointed CSSO occurred in 1997.

STATE	METHOD OF SELECTION OF STATE BOARD MEMBERS	NUMBER OF VOTING STATE BOARD MEMBERS	LENGTH OF TERM	METHOD OF SELECTION OF CHIEF STATE SCHOOL OFFICER	OFFICIAL ROLE OF CHIEF STATE SCHOOL OFFICER (CSSO) ON STATE BOARD	UNIQUE FEATURE OF STATE BOARD	SPECIAL NOTES
Florida	Appt. by Gov. (new board)	7	4	Elected statewide through Dec. 2002; Appt. by SBE beginning Jan. 2003	Currently Secretary & Exec. Officer	After January 7, 2003, this will be a "K-20" board with authority over community colleges and the state's higher education system as well as elementary and secondary education	Florida is in transition from the old board composed of the Governor's cabinet to the new Governor-appointed K-20 board. The transition will be complete in January 2003.
Georgia	Appt. by Gov.	11	7	Elected statewide	Executive Secretary	Must be a resident for 5 yrs. to sit on board	CSSO must have 3 years teaching experience
Hawaii	Non-Partisan Ballot	13	4	Appt. by SBE	Executive Officer	Non-Voting Student Member selected by the state student council	
Idaho	Appt. by Gov.	8	5	Non-Partisan Ballot	Executive Secretary and voting Ex Officio member of the board	<ul style="list-style-type: none"> <li>Must be a resident for 3 yrs. in order to sit on board;</li> <li>Members are also Regents of the Univ. of Idaho</li> </ul>	
Illinois	Appt. by Gov.	9	6	Appt. by SBE	Chief Executive Officer	Requirements for regional and political balance on board	Chair is appointed by Governor
Indiana	10 appt. by Gov. and elected Chief	11	4	Partisan Ballot	Chairman and voting member	4 members must be educators Political balance is required	\$2,000 per year for state board members
Iowa	Appt. by Gov.	9	6	Appt. by Gov.	Executive Officer		
Kansas	Partisan Ballot	10	4	Appt. by SBE	Executive Officer		
Kentucky	Appt. by Gov.	11	4	Appt. by SBE	Executive Secretary, Executive Admin.	<ul style="list-style-type: none"> <li>President of Council on Postsecondary Ed. is non-voting ex officio member;</li> <li>Board members must be resident for 3 yrs., be at least 30 years old, and hold a 2-year Associate degree</li> </ul>	Governor appoints Secretary of Education, Arts & Humanities
Louisiana	8 elected, 3 appt. by Gov.	11	4	Appt. by SBE	Ex. Officio Sec.		
Maine	Appt. by Gov.	9	5	Appt. by Gov.	None		
Maryland	Appt. by Gov.	12 incl. student member	4	Appt. by SBE	Chief Exec./Sec. Treas.	Voting high school student, which is a one-year appointment by the Gov.	CSSO must have 7 yrs. teaching experience. and administration exp.

STATE	METHOD OF SELECTION OF STATE BOARD MEMBERS	NUMBER OF VOTING STATE BOARD MEMBERS	LENGTH OF TERM	METHOD OF SELECTION OF CHIEF STATE SCHOOL OFFICER	OFFICIAL ROLE OF CHIEF STATE SCHOOL OFFICER (CSSO) ON STATE BOARD	UNIQUE FEATURE OF STATE BOARD	SPECIAL NOTES
Massachusetts	Appt. by Gov.	9 incl. student member	5	Appt. by SBE	Board Secretary & CEO	<ul style="list-style-type: none"> <li>Chancellor of Higher Ed. Board is voting member;</li> <li>Voting student elected by the State Student Advisory Council</li> </ul>	Board reduced from 15 to 9 members in August, 1996. Current terms vary in length to provide transition period.
Michigan	Partisan Ballot	8	8	Appt. by SBE	Chairman	Constitutional Board with defined responsibility for K-12 education and more limited role in post-secondary.	
Minnesota	None			Appt. by Gov.			State Board ended operations as of Dec. 31, 1999. Most board authority was transferred to the Commissioner of Children, Families & Learning
Mississippi	5 appt. by Gov. 4 appt. by Leg.	9	9	Appt. by SBE	Executive Secretary	Lt. Gov. and speaker of the house each appoint 2 members	CSSO must have 5 yrs. admin. experience
Missouri	Appt. by Gov. with consent of Senate	8	8	Appt. by SBE	Chief Admin. Officer	Authority over University and Community College system teacher education programs.	
Montana	Appt. by Gov.	7	7	Partisan Ballot	Ex officio member	<ul style="list-style-type: none"> <li>Non-voting Student member;</li> <li>Governor is ex officio member</li> </ul>	
Nebraska	Non-Partisan Ballot	8	4	Appt. by SBE	Executive Officer	Constitutional Board	Teachers; State officials or candidates; and non-residents are not-eligible for board membership.
Nevada	Non-Partisan Ballot	11	4	Appt. by SBE	Secretary	Non-voting Student member	
New Hampshire	Appt. by Gov.	7	5	Appt. by SBE	None	Gov. & Council appoint SBE	
New Jersey	Appt. by Gov.	13	6	Appt. by Gov.	Secretary	3 members of SBE must be women	Resident for 5 yrs. to sit on board
New Mexico	10 elect./5 appt. by Gov.	15	4	Appt. by SBE	Chief Admin. Officer	3 appointed members are of same affiliation as Gov. who appointed them	
New York	Appt. by Legislature	16	5	Appt. by SBE	Chief Executive Officer	Responsible for higher education, cultural institutions, and licensed professions	

STATE	METHOD OF SELECTION OF STATE BOARD MEMBERS	NUMBER OF VOTING STATE BOARD MEMBERS	LENGTH OF TERM	METHOD OF SELECTION OF CHIEF STATE SCHOOL OFFICER	OFFICIAL ROLE OF CHIEF STATE SCHOOL OFFICER (CSSO) ON STATE BOARD	UNIQUE FEATURE OF STATE BOARD	SPECIAL NOTES
North Carolina	Appt. by Gov.	11	8	Partisan Ballot	Secretary & Chief Admin. Officer	2 Teacher of the Year advisors; 2 student advisors	Separate higher ed. board Separate community colleges board
North Dakota	Appt. by Gov.	7	6	Non-Partisan Ballot	Exec. Dir. & Sec.		
Ohio	11 elected by Non-Partisan Ballot; 8 Appt. by Gov.	19	4	Appt. by SBE	Secretary & Admin. Officer	Separate board for higher education	2 Ex Officio members (non-voting)
Oklahoma	Appt. by Gov.	7	6	Partisan Ballot	Chairperson of both State Board and State Board of Voc. and Tech. Education	State Board members are ex officio voting members of the State Board of Vocational and Technical Education	New Board member must take new Board member training established by the State Department during the first year of membership to remain on Board.
Oregon	Appt. by Gov.	7	4	Non-Partisan Ballot	Admin. Officer	K-12 and Community College Authority	
Pennsylvania	Appt. by Gov., confirmed by Senate	21	6	Appt. by Gov.	Chief Executive Officer	Statutory responsibility for post-secondary education.	Also sits as State Board for Vocational Education; 4 Ex Officio legislative members
Rhode Island	Appt. by Gov.	11	3	Appt. by SBE	Chief Executive Officer	<ul style="list-style-type: none"> <li>1 member is appointed from House;</li> <li>1 member is appointed from Senate</li> </ul>	Separate Higher Education Board
South Carolina	Appt. by Legislature	17	4	Partisan Ballot	Secretary & Admin. Officer	Legislative delegations elect 16 SBEs; gov. appoints 1 SBE member.	
South Dakota	Appt. by Gov.	9	4	Appt. by Gov.	Executive Officer		
Tennessee	Appt. by Gov., confirmed by General Assembly	10 incl. student member	9	Appt. by Gov.	Required to be present at SBE meetings	<ul style="list-style-type: none"> <li>Voting student member (1 yr. term)</li> <li>Board selects Executive Director</li> <li>Serves as State Board for Vocational Education</li> </ul>	The Board maintains its own staff apart from the Dept. of Ed.; Exec. Dir. of Higher Education Commission is ex officio, non-voting member of SBE.
Texas	Partisan Ballot	15	4	Appt. by Gov.	Executive Secretary	The SBE is also the State Board for Vocational Education.	
Utah	Non-Partisan Ballot	15	4	Appt. by SBE	Executive Officer	The SBE is also the State Board for Career and Technology Education.	\$3,000 per year for SBE members.

STATE	METHOD OF SELECTION OF STATE BOARD MEMBERS	NUMBER OF VOTING STATE BOARD MEMBERS	LENGTH OF TERM	METHOD OF SELECTION OF CHIEF STATE SCHOOL OFFICER	OFFICIAL ROLE OF CHIEF STATE SCHOOL OFFICER (CSSO) ON STATE BOARD	UNIQUE FEATURE OF STATE BOARD	SPECIAL NOTES
Vermont	Appt. by Gov. and approved by the Senate	9 incl. student member	6	Appt. by SBE and approved by Gov.	CEO & Secretary	Chair is elected by the board for 2-year term.	2 student members: one is appointed each year for a 2-year term. Student does not vote during 1 <sup>st</sup> year of term, has full voting rights during 2 <sup>nd</sup> .
Virginia	Appt. by Gov.	9	4	Appt. by Gov.	Secretary		Sec. of Ed. is a cabinet member
Washington	9 elected by local school board members, 1 elected by private schools	11	4	Non-Partisan Ballot	Chief Executive Officer and Ex Officio member	<ul style="list-style-type: none"> <li>• CSSO votes only to break ties;</li> <li>• Private school rep. votes only on issues affecting private schools;</li> <li>• Nonvoting students and Governor's representatives</li> </ul>	
West Virginia	Appt. by Gov.	9	9	Appt. by SBE	Chief Executive Officer		
Wisconsin	None			Non-Partisan Ballot			
Wyoming	Appt. by Gov.	11	6	Partisan Ballot	Ex Officio Member	Meets quarterly; reviews all school accreditation compliance for approval or disapproval.	Deputy CSSO is ex officio member and parliamentarian
District of Columbia	5 Non-Partisan Ballot 4 appt. by mayor	9	4	Appt. by SBE	Ex Officio Member	Board president elected at-large	Newly reconfigured board took office in January 2001
Guam	No central board; four district boards elected by voters in each district			Appt. by Gov., confirmed by legislature	Chief Executive Officer		The CSSO (Director of Education) has policymaking authority for state-level functions
Northern Marianas	Elected	5	4			Serves as both the state and local school board	
Puerto Rico	Appt. By Gov.	7	5	Appt. by Gov.	None	General Council on Education is a state agency for licensing and accreditation of public and private schools from pre-school to post secondary—not university level.	



March 6, 2003

## ELEMENTARY-SECONDARY EDUCATION GOVERNANCE AMONG THE STATES

Information compiled by the National Association of State Boards of Education in January 2002 shows that the most common method of selection of members of state-level boards of education is by gubernatorial appointment. Thirty states use this form of selection, combined with legislative confirmation in seven of those states. In most cases involving confirmation, it is by the Senate, but in Connecticut it is by both the House and the Senate and in Tennessee, by the General Assembly.

Five states elect state board members in partisan elections (Alabama, Colorado, **Kansas**, Michigan, and Texas) and four states elect members in non-partisan elections (Hawaii, Nebraska, Nevada, and Utah).

In Indiana, Louisiana, New Mexico, and Ohio, members are selected by a combination of election and gubernatorial appointment, as follows:

- In Indiana, ten members are appointed by the Governor, but the chief state school officer, who serves as the chair of the board and is a voting member, is elected on a partisan ballot.
- In Louisiana, eight members of the board are elected and three are appointed by the Governor. The chief state school officer, who serves *ex officio* on the board, is the board's appointee.
- In New Mexico, ten members of the board are elected and five are appointed by the Governor. The chief state school officer is appointed by the board.
- In Ohio, eleven members of the board are elected in non-partisan elections and eight are appointed by the Governor. The chief state school officer is appointed by the board.

Minnesota and Wisconsin have no state-level boards of education. (Minnesota terminated its state board in 1999 and transferred most of the board's authority to an official appointed by the Governor. Wisconsin has a chief state school officer who is elected on a non-partisan ballot.) Five states and the District of Columbia use other, less common, methods of selection which are summarized below.

- In Mississippi, the Governor appoints five members of the board and the Legislature appoints four. The chief state school officer is appointed by the board.
- In New York and South Carolina, the state board is appointed by the Legislature. In New York, the chief state school officer is appointed by the board, and in South Carolina is elected on a partisan ballot.
- In Washington, nine state board members are elected by local school board members and one is elected by private schools. The chief executive officer is elected on a non-partisan ballot and serves as an *ex officio* member of the board.
- In Washington D.C., five board members are elected on non-partisan ballot and four are appointed by the Mayor. The chief executive officer is selected by the board.

### **Other Unique Features**

Alabama and Idaho both have an even number of state board members. The Alabama board is elected by partisan ballot and the Idaho board is appointed by the Governor. In each case, there appears to be a "tie breaker" member. In the case of Alabama, it is the Governor who sits as president of the board. In Idaho, the chief state school officer serves as an *ex officio* voting member of the board.

Texas appears to be the only state that has an elected state board (partisan election) and a chief state school officer who is appointed by the Governor.



March 11, 2003

## Governance of Elementary-Secondary Education in Texas

- In 1949, the administration of public education was reorganized and an elected State Board of Education was created. The State Board appointed the Commissioner of Education. That arrangement was changed in 1995 when the law was changed to make the Commissioner an appointee of the Governor. There has been a marked erosion of the powers of the State Board since that time as the result of the Texas Legislature transferring powers and duties of the State Board to the Commissioner of Education.
- Texas law requires the State Board of Education to meet at least quarterly but, in the years immediately after 1996, it met much more frequently than that. There also are subcommittees of the State Board that conduct business. However, in the last two years, the powers of the State Board have diminished to the extent that it usually meets about every other month, although some of its subcommittees may be active. In the last two months of 2003, it has not met because it had no chair.
- The chair of the State Board is appointed by the Governor, who selects from among the 15 elected members. The Governor's nominee must be confirmed by the Senate.
- The Commissioner of Education is an *ex officio* member of the Board and attends Board meetings. When asked who would prevail in the event the Commissioner is directed to do contrary policies by the Board and by the Governor, the response was that the Governor would prevail.
- The Commissioner of Education, by statute, serves a four-year term commensurate with the term of the Governor. The Governor's appointee must be confirmed by the Senate and may be removed from office by the Governor, with the advice and consent of the Senate.
- The Commissioner of Education heads the Texas Education Agency. A small, three-member, staff paid by the Texas Education Agency is assigned to staff the State Board. Additional services not provided by the dedicated staff, such as legal services, are provided the Board by the Texas Education Agency.

Source: Conversation with Carrie Taylor,  
Staff to the Texas Board of Education (512) 463-5823

Revised  
March 7, 2003

## Efforts to Amend Article 6 of the *Kansas Constitution* (the Education Article)

Article 6 of the *Kansas Constitution* was adopted in its present form in 1966. Efforts to amend it did not occur until 1973, which is when the Kansas Supreme Court issued an opinion concerning the State Board of Education's "self-executing" powers. Since then, 32 resolutions have been introduced (not counting resolutions introduced during the 2003 Session) that would amend Article 6. Only three of these have been submitted to the voters, having received the requisite two-thirds majority vote of both houses of the Legislature for a constitutional amendment. None of the proposals passed. The resolutions submitted to the voters are the following:

1974 SCR 122, which limited the powers of the State Board of Education to those delegated to it by the Legislature and provided for authorization to create a third state-level governing board for community colleges.

1986 HCR 5028, which limited the powers of the State Board of Education to those delegated to it by the Legislature.

1989 HCR 5010 (voted on in 1990), which deleted references to the State Board of Education and the Kansas Board of Regents from the *Kansas Constitution*.

The issues addressed by the resolutions are summarized below. The total exceeds the number of resolutions considered because some of the resolutions would have made more than one change:

Would delete the State Board of Education's "self-executing" power	14
Would change the composition or appointment (or both) of the State Board of Education	12
Would authorize the creation or would actually create a third state-level governing board for community colleges or area vocational schools, or both	6
Would make some other change, including deleting entirely reference to the State Board of Education in the <i>Constitution</i>	6
Would make the Commissioner of Education a cabinet official or make some other change affecting the Commissioner	5
Would change State Board of Education member districts	3
Would change the length of terms of members of both the State Board of Education and the State Board of Regents	3
TOTAL	49

Senate Education  
3-13-03  
Attachment 3



A brief description of these proposals to amend Article 6 follows:

- 1974 **SCR 122.** SCR 122 proposed to make the language referring to the supervisory authority of the State Board of Education identical to the State Board of Regents. Thus, the authority of the State Board of Education could no longer be interpreted to be self-executing. In addition, a sentence was added to say that "any community junior college shall be operated, supervised and controlled as provided by law." This subsection, identical to an existing provision for municipal universities, would have given the Legislature the ability to create a separate community junior college governing board. The proposition was rejected by the voters in August 1974, by a vote of 141,492 to 130,265.
- SCR 76.** SCR 76 proposed a nine-member State Board of Education appointed by the Governor to four-year terms, subject to confirmation by the Senate. Terms of six years were proposed for members of the Board of Regents. The resolution was not reported out of the first committee.
- 1975 **SCR 24.** SCR 24 was almost identical to the proposition defeated in 1974, except that it added area vocational schools to the proposed amendment concerning community junior colleges and said that both types of schools would be "operated, supervised and controlled as provided by law." Such a change would have permitted the creation of a separate governing board (or boards) to govern community junior colleges and area vocational schools. Like the proposition defeated in 1974, SCR 24 would have made it clear that the Legislature could prescribe and limit the power of the State Board of Education. The resolution was carried over to the 1976 Session where it died in committee.
- 1979 **SCR 1621.** SCR 1621 concerned the composition of the State Board of Education and would have made it like the State Board of Regents. That is, there would be nine members of the State Board of Education appointed by the Governor, subject to Senate confirmation. The resolution was held over a year and was not reported out of the first committee.
- 1980 **SCR 1671.** SCR 1671 was recommended by the Committee on Legislative, Congressional, and Judicial Apportionment. The resolution, which concerned State Board of Education districts, proposed that there be ten single-member districts instead of ten districts comprised of four contiguous senatorial districts. The proposal would have separated State Board of Education member districts from state senatorial districts which would have permitted a fewer number of senators than 40. (The Legislative Article of the *Constitution* says that the number of representatives and senators shall be regulated by law, but may not exceed 125 representatives and 40 senators. The fact that the Education Article requires ten State Board of Education districts each comprised of four senatorial districts appears to mandate that there be 40 senatorial districts.) SCR 1671 was not reported out of the first committee.
- 1981 **SCR 1626.** SCR 1626 was identical to SCR 1671, which had died the previous year. SCR 1626 was not reported out of the first committee.



- 1982 **SCR 1653.** SCR 1653 again addressed the issue of the State Board of Education's constitutional authority and would have made it clear that powers of the State Board of Education are subject to directives adopted by the Legislature. This particular resolution was in response to an opinion by the Attorney General (No. 81-236) that the Legislature could not prescribe, amend, modify, or otherwise alter the content of rules and regulations adopted by the State Board of Education acting upon its constitutional authority. SCR 1653 died on General Orders in the House.
- 1984 **HCR 5077.** HCR 5077 combined many of the provisions contained in prior proposals to amend the Education Article. First, it contained an amendment to limit the powers of the State Board of Education to those delegated to it by the Legislature. Second, it changed the composition of the State Board of Education to nine members appointed by the governor, subject to Senate confirmation. Finally, the resolution contained a subsection providing for the operation, supervision, and control of community colleges as provided by law, which would have made it possible for the Legislature to create a separate community college governing board. HCR 5077 died on General Orders in the Senate.
- 1986 **SCR 1634.** SCR 1634 limited the powers of the State Board of Education to those delegated to it by the Legislature, proposed a nine-member State Board of Education appointed by the Governor and confirmed by the Senate, and subjected the position of Commissioner of Education, who was appointed by the State Board, to Senate confirmation. The resolution was not reported out of the first committee.
- HCR 5028.** HCR 5028 contained an amendment limiting the powers of the State Board of Education to those delegated to it by the Legislature. The resolution was submitted to the voters on November 4, 1986, and failed by a vote of 384,188 to 364,156.
- 1987 **HCR 5020.** HCR 5020 provided for a state board of community colleges composed of nine members appointed by the Governor and confirmed by the Senate. HCR 5020 was not reported out of the first committee.
- 1988 **SCR 1613.** SCR 1613 deleted references to the State Board of Education and the Kansas Board of Regents from the *Constitution* and left it to the Legislature to provide, by statute, for a system of public education and for governance of the system. The resolution was killed by the Senate on final action. The resolution was identical to 1989 HCR 5010 and 1997 SCR 1607.
- 1989 **HCR 5010.** HCR 5010 was identical to 1988 SCR 1613 and to 1997 SCR 1607. It deleted references to the State Board of Education and the Kansas Board of Regents from the *Constitution* and was adopted by the Legislature in 1990. It was submitted to a vote of the people on November 6, 1990, and failed by a vote of 377,625 to 245,132.
- SCR 1623.** SCR 1623 also deleted references to the State Board of Education and the Kansas Board of Regents from the *Constitution* and left it to the Legislature to provide for a system of public education and for governance of the system. The resolution was not reported out of the first committee.



1990 **HCR 5032.** HCR 5032 proposed that the ten members of the State Board of Education be elected from single-member districts instead of from ten districts comprised of four contiguous senatorial districts. The resolution died on General Orders in the Senate.

**HCR 5042.** HCR 5042 limited the powers of the State Board of Education to those delegated to it by the Legislature and provided for a ten-member State Board of Education appointed by the Governor and confirmed by the Senate. The resolution died in House Committee.

1991 **SCR 1610.** SCR 1610 contained a preamble stating that education is a fundamental right of the people of Kansas, made it clear that the State Board of Education and the Kansas Board of Regents exercised only those powers granted to them statutorily by the Legislature, gave the Legislature the authority to create other governing bodies, increased the membership of the State Board of Education from ten to 11 members, eliminated the requirement that State Board of Education member districts be composed of four state senatorial districts, and authorized the Governor to appoint a Secretary of Education (who would be in addition to the Commissioner of Education appointed by the State Board). The resolution was not reported out of the first committee.

**HCR 5001.** HCR 5001 created the State Board of Community Colleges and Vocational-Technical Education to have control and supervision over the community colleges and area vocational schools. The Board was comprised of nine members appointed by the Governor, subject to Senate confirmation. The resolution also restricted the powers of the State Board of Education and the Kansas Board of Regents to those statutorily granted to them by the Legislature. The resolution was not reported out of the first committee.

1993 **HCR 5016.** HCR 5016 restricted the powers of the State Board of Education to those statutorily granted by the Legislature. The resolution passed the House but died in the Senate.

1995 **HCR 5021.** HCR 5021 was identical to 1988 HCR 1613, 1989 HCR 5010 (which was submitted to a vote of the people in 1990), and to 1997 SCR 1607. It deleted references to the State Board of Education and the Kansas Board of Regents from the *Constitution*. The resolution passed the House but died in the Senate.

1997 **SCR 1607.** SCR 1607 deleted references to the State Board of Education and the Kansas Board of Regents from the *Constitution*. It was identical to 1988 SCR 1613 and to 1989 HCR 5010. The resolution was not reported out of the first committee.

**HCR 5008.** HCR 5008 limited the powers of the State Board of Education to those delegated to it by the Legislature and provided that the Commissioner of Education would be appointed by the Governor and confirmed by the Senate. The Commissioner would be a member of the Governor's cabinet.

**HCR 5009.** HCR 5009 limited the powers of the State Board of Education to those delegated to it by the Legislature and provided that the Governor would appoint a



Commissioner of Education and a Commissioner of Higher Education, subject to confirmation of the Senate. Both commissioners would be members of the Governor's cabinet.

1999 **SCR 1621.** SCR 1621 added an eleventh member to the State Board of Education. The ten existing members of the State Board would continue to be elected from their existing member districts, but an eleventh would be appointed at large by the Governor and would serve at the Governor's pleasure. The resolution was not reported out of the first committee and died at the end of the 2000 Session.

**SCR 1622.** SCR 1622 expanded the State Board of Education to 11 members, each of whom would be elected. The resolution provided that the state would be divided into 11 single-member State Board of Education districts. The resolution was not reported out of the first committee and died at the end of the 2000 Session.

**HCR 5003.** HCR 5003 contained the same policy as SCR 1622 and provided for an 11-member State Board of Education whose members would be elected from 11 State Board single-member districts. The resolution was not reported out of the first committee and died at the end of the 2000 Session.

**HCR 5008.** HCR 5008 removed the State Board of Education's self-executing authority by making it clear that the Board had only the authority given it by the Legislature. In addition, the resolution made the Commissioner of Education a cabinet official who would be appointed by the Governor and confirmed by the Senate. The resolution was not reported out of the first committee and died at the end of the 2000 Session.

**HCR 5029.** HCR 5029 retained the existing ten-member elected State Board of education, but added an eleventh member who would be appointed at large by the Governor and who would serve at the Governor's pleasure. The resolution also specified that elections for the other members of the State Board had to be nonpartisan. Candidates in each member district who received the highest and second highest number of votes in the primary election would face each other in the general election. The resolution was not reported out of the first committee and died at the end of the 2000 Session.

2000 **HCR 5058.** HCR 5058 would have abolished the State Board of Education entirely. (No change was made to the State Board of Regents.) The resolution would have replaced the State Board with a cabinet agency (the State Department of Education) under the direction of the Secretary of Education, who would be a cabinet official appointed by the Governor and confirmed by the Senate. The resolution was not reported out of the first committee and died at the end of the 2000 Session.

**HCR 5062.** HCR 5062 changed the Commissioner of Education to a cabinet official (the Secretary of Education), who would be appointed by the Governor and confirmed by the Senate. The Secretary of Education would serve as chair of the State Board of Education, but would not be a member of the State Board and would vote only to break a tie vote. The resolution was not reported out of the first committee and died at the end of the 2000 Session.

**HCR 5066.** HCR 5066 retained the ten-member State Board elected from ten single-member districts, but added an eleventh member elected from the state at large. That member would serve as chair of the State Board. The resolution was not reported out of the first committee and died at the end of the 2000 Session.

**HCR 5073.** HCR 5073 deleted the State Board's self-executing authority and provided for an eleventh member of the State Board who would be appointed by the Governor and serve at the Governor's pleasure. The remaining ten members of the State Board would be elected from existing ten single-member districts. The resolution was not reported out of the first committee and died at the end of the 2000 Session.



February 7, 2000

## ARTICLE 6 OF THE KANSAS CONSTITUTION

### Background

Article 6 of the *Kansas Constitution* was adopted in its present form on November 8, 1966. It replaced an article that was, with one exception, part of the original *Constitution* adopted in 1861. At the time the present Education Article was adopted, both the State Board of Regents and the State Board of Education were statutory, not constitutional, entities. The Board of Regents was composed of nine members appointed by the Governor to four-year overlapping terms and had jurisdiction over the three state universities, the three state colleges, the School for the Deaf in Olathe, and the School for the Blind in Kansas City.

The State Board of Education was composed of seven members appointed by the Governor to three-year overlapping terms. The Board played a dual role. First, it was advisory to the State Superintendent of Public Instruction in the area of general education, with no legal authority to initiate policy of its own. It did, however, have the statutory authority to approve or reject policies submitted to it by the State Superintendent in the areas of school textbook adoption, standards and curriculum, and teacher and administrator certification. Second, it was the State Board of Vocational Education, in fulfillment of the federal requirement that, in order to receive federal vocational education funds, a state's vocational education program had to be supervised by a board. In its capacity as the State Board of Vocational Education, the Board had its own staff and had supervisory authority over all vocational education programs that received state and federal vocational education money, including the authority to make policy and to allocate funds. Vocational rehabilitation programs were also within its jurisdiction.

The State Superintendent of Public Instruction was a constitutional officer who was elected to a two-year term. The State Superintendent had general supervisory authority over public elementary and secondary education, including prescribing courses of study and curriculum for the community junior colleges. In spite of the statutory authority of the State Board of Education to approve or reject the State Superintendent's recommendations in the areas of textbook adoption, standards and curriculum, and certification of school personnel, it appears that, in practice, the State Board was fairly weak and real authority resided in the Office of State Superintendent.

During the 1960s, a number of changes took place in the public education system. Among them was the 1963 School Unification Act that reduced the number of school districts from 1,745 to approximately 380 by 1966. Also in 1963, the Legislature passed the Area Vocational School Act, partly in response to the federal Vocational Education Act of 1963. Area vocational schools (12 at that time) were under the authority of the State Board

of Vocational Education. In 1965, the Legislature created the Schilling Institute (which now is Kansas State University-Salina, College of Technology) and placed it under the governance of the State Educational Authority, a three-member body composed of the State Superintendent of Public Instruction and two other members appointed by the Governor. Also in 1965, the Legislature enacted the Community Junior College Act, which continued the 16 existing community junior colleges under the supervision of the State Superintendent.

Thus, by the mid-1960s, elementary and secondary education and the junior colleges were under the supervision of the State Superintendent of Public Instruction, except for the State School for the Deaf and the State School for the Blind, which were under the Board of Regents. Schilling Institute was under the jurisdiction of a separate three-member governing board. All vocational education programs that received state and federal vocational education funds were under the State Board of Vocational Education, regardless of the type of school in which the programs were offered. The public four-year institutions were under the governance of the State Board of Regents.

This fragmentation of supervisory authority among four boards caused some people to think it was time for a change. For example, the Kansas Legislative Council, whose recommendations led to the Community Junior College Act of 1965, wanted to place the community junior colleges under the jurisdiction of a strong policy-making board. The Council's report stated:

"The ideal solution would be to have a strong state board of education with prestige and status comparable to that of the state board of regents, with an administrator removed from the political arena . . . ."

But, the Council concluded, "such an important change in the organization of state educational functions would require a constitutional amendment." This was because the *Constitution* created the Office of State Superintendent of Public Instruction and provided that this office would have "general supervision . . . of educational interests of the state." There was no way legally for the Legislature to delegate supervisory powers to a board that was created by statute and given advisory, not policy-making, authority.

The 1965 Legislature directed the Legislative Council to make a study of the Education Article of the *Constitution* and to submit its recommendations to the 1966 Budget Session of the Legislature.

In its report to the 1966 Legislature, the Council identified a number of shortcomings of the existing Education Article, beginning with the complaint that it was obsolete. For example, it referred to "normal" and "preparatory" and other types of schools that existed in 1861 when the Article was adopted, but which had disappeared by 1965.

The Council pointed out that the existing Article made no mention of the State Board of Education or the State Board of Regents, even though, in the case of the Board of

---

\* *Report and Recommendations of the Kansas Legislative Council* submitted to the 1965 Legislature.



Regents, the Board exercised considerable authority over the state's public four-year institutions.

The Council expressed concern that the growth of federal programs and the possibility that federal funds could flow directly to school districts would cause the "states [to] be by-passed by the federal government on the grounds that they [were] not capable nor adequately equipped to administer new educational programs." The report concluded that constitutional change was necessary in order to strengthen the administration of education at the state level.

Prominent in the report was the Council's concern about vocational education. Regarding the dual role of the State Board of Education, it cited the Board's weak role in matters of general education on one hand and its strong role in vocational education on the other and described the result of "policy-making confusion."

The Council concluded that the Education Article should be amended, that a State Board of Education and a State Board of Regents should be provided for in the *Constitution*, that the responsibility for all public education below the four-year level should be placed in the State Board of Education, that the chief school officer of the state should be a Commissioner of Education appointed by and responsible to the State Board of Education, and that vocational and technical education should be integrated into the educational structure by placing it under the State Board of Education.

The 1966 Legislature adopted a proposed constitutional amendment to the Education Article that was approved by the voters the following November. The Legislature had until July 1, 1969, to implement all of the statutory changes that were needed as the result of the new Article.

In conjunction with the passage of the amendment, the Kansas Legislative Council asked the education advisory committee that had participated in the Council's study of the Article the year before to make recommendations concerning how the Article should be implemented. The advisory committee's report included the recommendation that supervision of area vocational schools, community junior colleges, the Schilling Institute, the School for the Deaf, and the School for the Blind be placed under the State Board of Education.

## **Article 6—Education**

Following is a discussion of the Education Article on a section-by-section basis.

**Section 1—Schools and Related Institutions and Activities.** The legislature shall provide for intellectual, educational, vocational, and scientific improvement by establishing and maintaining public schools, education institutions, and related activities which may be organized and changed in such manner as may be provided by law.



Both the existing and former Article assign to the Legislature the responsibility for providing for a public education system.

**Section 2—State Board of Education and State Board of Regents.** (a) The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law. (Emphasis added.)

(b) The legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. Public institutions of higher education shall include universities and colleges granting baccalaureate or post baccalaureate degrees and such other institutions and educational interests as may be provided by law. The state board of regents shall perform such other duties as may be prescribed by law. (Emphasis added.)

(c) Any municipal university shall be operated, supervised and controlled as provided by law.

This is the section that makes the State Board of Regents and the State Board of Education constitutional entities. Prior to 1966, both boards were statutory. The words that are underscored are the basis upon which the Kansas Supreme Court determined that the powers of the State Board of Education are "self-executing."

Subsection (c) gives the Legislature control over the state's municipal university, including the authority to provide for a statutory governing board.

The concept that powers of the State Board of Education are self-executing was articulated by the Kansas Supreme Court in 1973 in the opinion cited as *State, ex rel. v. Board of Education*, 212 Kan. 482, commonly known as the "Peabody" case. This case resulted from a challenge by the Peabody (Marion County) Board of Education of a State Board of Education regulation requiring local boards to adopt disciplinary rules applicable to employees and students. The rules were to be filed with the Commissioner of Education no later than March 31, 1970. At the trial level, the court upheld the school district board and found that the State Board had no statutory authority to issue the regulation in question. The case was appealed to the Kansas Supreme Court, which held:

That part of article 6, section 2 (a) of the *Kansas Constitution* granting to the state board of education authority to exercise general supervision of the public schools, educational institutions and educational interests of the state, except educational functions delegated by law to the state board of regents, is self-executing in effect.

The Court also stated:

A self-executing provision of a constitution is a provision requiring no supplementary legislation to make it effective and leaving nothing to be done by the legislature to put it in operation.

In addition, the Court held:

Where a constitutional provision is self-executing the legislature may enact legislation to facilitate or assist in its operation, but whatever legislation is adopted must be in harmony with and not in derogation of the provisions of the constitution.

In a later case (*State, ex rel. v. State Board of Education*, 215 Kan. 551), Chief Justice Fitzer stated that "the present *Constitution* (Article 6, Section 2) authorizes the vesting of 'legislative' power in the State Board of Education—that is to say, the power to exercise its discretion in matters entrusted to it in the same manner that the Legislature might. In this virtually unique area of our constitutional law no standards or guidelines are required. The board acts as a mini-legislature of its own."

As will be noted later, various attempts by the Legislature to amend the *Constitution* to make it clear that the Legislature could prescribe and limit the power of the State Board of Education have failed.

**Section 3—Members of State Board of Education and State Board of Regents.**

(a) There shall be ten members of the state board of education with overlapping terms as the legislature may prescribe. The legislature shall make provision for ten member districts, each comprised of four contiguous senatorial districts. The electors of each member district shall elect one person residing in the district as a member of the board. The legislature shall prescribe the manner in which vacancies occurring on the board shall be filled.

The statutes establish a term of four years for State Board members.

(b) The state board of regents shall have nine members with overlapping terms as the legislature may prescribe. Members shall be appointed by the governor, subject to confirmation by the senate. One member shall be appointed from each congressional district with the remaining members appointed at large; however, no two members shall reside in the same county at the time of their appointment. Vacancies occurring on the board shall be filled by appointment by the governor as provided by law.

The statutes establish a four-year term for members of the Board of Regents and require the Governor to select appointees from among members of the two major political parties. No more than five members can be from the same party.

(c) Subsequent redistricting shall not disqualify any member of either board from service for the remainder of his term. Any member of either board may be removed from office for cause as may be provided by law.

**Section 4—Commissioner of Education.** The state board of education shall appoint a commissioner of education who shall serve at the pleasure of the board as its executive officer.

The statutes say very little about the Commissioner of Education. The Commissioner's statutory duties are to "serve at the pleasure of the state board and perform such duties as are prescribed by law or by the state board." Statutes require that the Commissioner be in the unclassified service and receive a salary as set by the Board.



**Section 5—Local Public Schools.** Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature.

Elected local boards of education are a tradition in Kansas that dates back to early statehood. However, public schools under the control of locally-elected boards were not given constitutional recognition until the present article was adopted in 1966. The statutes contain extensive provisions relating to the operation of public schools.

**Section 6—Finance.** (a) The legislature may levy a permanent tax for the use and benefit of state institutions of higher education and apportion among and appropriate the same to the several institutions, which levy, apportionment, and appropriation shall continue until changed by statute. Further appropriation and other provision for finance of institutions of higher education may be made by the legislature.

The *Constitution* first authorized a property tax for educational buildings in 1918. The first levy was made in 1942. The Article adopted in 1966 limits the use of revenues from the tax to institutions of "higher education," but does not specify how proceeds from the levy are to be used or set the levy rate. Prior to 1966, the State School for the Deaf and the State School for the Blind benefited from the levy. Since 1966, the two schools may receive funds from the State Institutions Building Fund. By statute, the present levy for the Educational Building Fund is 1.0 mill and the money generated must be used for buildings, repairs, and equipment at the state educational institutions under the control and supervision of the State Board of Regents.

(b) The legislature shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. The legislature may authorize the state board of regents to establish tuition, fees and charges at institutions under its supervision.

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

**Section 7—Savings Clause.** (a) 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, 1969.

(b) Notwithstanding any other provision of the constitution to the contrary, no state superintendent of public instruction or county superintendent of public instruction shall be elected after January 1, 1967.

In addition to abolishing the Office of State Superintendent, the Article adopted in 1966 abolished the position of county superintendent of public instruction. County superintendents were elected to two-year terms.

(c) The state perpetual school fund or any part thereof may be managed and invested as provided by law or all or any part thereof may be appropriated, both as to principle and income, to the support of the public schools supervised by the state board of education.

This fund, which no longer exists, consisted primarily of income from Congressional land grants to the state, some dating back to 1841. The original *Constitution* required that interest from the fund be appropriated "to the support of common schools."

## Efforts to Amend Article 6

Since the Kansas Supreme Court's decision in 1973 regarding the State Board of Education's "self-executing" authority through 1999, 23 resolutions have been introduced to amend the Education Article. Three of these have been submitted to the voters, but none has passed. Except for proposed amendments relating to a third board and a few amendments relating to the State Board of Regents, major changes proposed over the years relate to the powers and the membership of the State Board of Education.

A brief description of these proposals to amend Article 6 follows:

1974 **S.C.R. 122.** S.C.R. 122 proposed to make the language referring to the supervisory authority of the State Board of Education identical to the State Board of Regents. Thus, the authority of the State Board of Education could no longer be interpreted to be self-executing. In addition, a sentence was added to say that "any community junior college shall be operated, supervised and controlled as provided by law." This subsection, identical to an existing provision for municipal universities, would have given the Legislature the ability to create a separate community junior college governing board. The proposition was rejected by the voters in August 1974, by a vote of 141,492 to 130,265.

**S.C.R. 76.** S.C.R. 76 proposed a nine-member State Board of Education appointed by the Governor to four-year terms, subject to confirmation by the Senate. Terms of six years were proposed for members of the Board of Regents. The resolution was not reported out of the first committee.

1975 **S.C.R. 24.** S.C.R. 24 was almost identical to the proposition defeated in 1974, except that it added area vocational schools to the proposed amendment concerning community junior colleges and said that both types of schools would be "operated, supervised and controlled as provided by law." Such a change would have permitted the creation of a separate governing board (or boards) to govern community junior colleges and area vocational schools. Like the proposition defeated in 1974, S.C.R. 24 would have made it clear that the Legislature could prescribe and limit the power of the State Board of Education. The resolution was carried over to the 1976 Session where it died in committee.

1979 **S.C.R. 1621.** S.C.R. 1621 concerned the composition of the State Board of Education and would have made it like the State Board of Regents. That



is, there would be nine members of the State Board of Education appointed by the Governor, subject to Senate confirmation. The resolution was held over a year and was not reported out of the first committee.

1980 **S.C.R. 1671.** S.C.R. 1671 was recommended by the Committee on Legislative, Congressional, and Judicial Apportionment. The resolution, which concerned State Board of Education districts, proposed that there be ten single-member districts instead of ten districts comprised of four contiguous senatorial districts. The proposal would have separated State Board of Education member districts from state senatorial districts which would have permitted a fewer number of senators than 40. (The Legislative Article of the *Constitution* says that the number of representatives and senators shall be regulated by law, but may not exceed 125 representatives and 40 senators. The fact that the Education Article requires ten State Board of Education districts each comprised of four senatorial districts appears to mandate that there be 40 senatorial districts.) S.C.R. 1671 was not reported out of the first committee.

1981 **S.C.R. 1626.** S.C.R. 1626 was identical to S.C.R. 1671, which had died the previous year. S.C.R. 1626 was not reported out of the first committee.

1982 **S.C.R. 1653.** S.C.R. 1653 again addressed the issue of the State Board of Education's constitutional authority and would have made it clear that powers of the State Board of Education are subject to directives adopted by the Legislature. This particular resolution was in response to an opinion by the Attorney General (No. 81-236) that the Legislature could not prescribe, amend, modify, or otherwise alter the content of rules and regulations adopted by the State Board of Education acting upon its constitutional authority. S.C.R. 1653 died on General Orders in the House.

1984 **H.C.R. 5077.** H.C.R. 5077 combined many of the provisions contained in prior proposals to amend the Education Article. First, it contained an amendment to limit the powers of the State Board of Education to those delegated to it by the Legislature. Second, it changed the composition of the State Board of Education to nine members appointed by the governor, subject to Senate confirmation. Finally, the resolution contained a subsection providing for the operation, supervision, and control of community colleges as provided by law, which would have made it possible for the Legislature to create a separate community college governing board. H.C.R. 5077 died on General Orders in the Senate.

1986 **S.C.R. 1634.** S.C.R. 1634 limited the powers of the State Board of Education to those delegated to it by the Legislature, proposed a nine-member State Board of Education appointed by the Governor and confirmed by the Senate, and subjected the position of Commissioner of Education, who was appointed by the State Board, to Senate confirmation. The resolution was not reported out of the first committee.

**H.C.R. 5028.** H.C.R. 5028 contained an amendment limiting the powers of the State Board of Education to those delegated to it by the Legislature. The resolution was submitted to the voters on November 4, 1986, and failed by a vote of 384,188 to 364,156.

1987 **H.C.R. 5020.** H.C.R. 5020 provided for a state board of community colleges composed of nine members appointed by the Governor and confirmed by the Senate. H.C.R. 5020 was not reported out of the first committee.

1988 **S.C.R. 1613.** S.C.R. 1613 deleted references to the State Board of Education and the Kansas Board of Regents from the *Constitution* and left it to the Legislature to provide, by statute, for a system of public education and for governance of the system. The resolution was killed by the Senate on final action. The resolution is identical to 1989 H.C.R. 5010 and 1997 S.C.R. 1607.

1989 **H.C.R. 5010.** H.C.R. 5010 was identical to 1988 S.C.R. 1613 and to 1997 S.C.R. 1607. It deleted references to the State Board of Education and the Kansas Board of Regents from the *Constitution* and was adopted by the Legislature in 1990. It was submitted to a vote of the people on November 6, 1990, and failed by a vote of 377,625 to 245,132.

**S.C.R. 1623.** S.C.R. 1623 also deleted references to the State Board of Education and the Kansas Board of Regents from the *Constitution* and left it to the Legislature to provide for a system of public education and for governance of the system. The resolution was not reported out of the first committee.

1990 **H.C.R. 5032.** H.C.R. 5032 proposed that the ten members of the State Board of Education be elected from single-member districts instead of from ten districts comprised of four contiguous senatorial districts. The resolution died on General Orders in the Senate.

**H.C.R. 5042.** H.C.R. 5042 limited the powers of the State Board of Education to those delegated to it by the Legislature and provided for a ten-member State Board of Education appointed by the Governor and confirmed by the Senate. The resolution died in House Committee.

1991 **S.C.R. 1610.** S.C.R. 1610 contained a preamble stating that education is a fundamental right of the people of Kansas, made it clear that the State Board of Education and the Kansas Board of Regents exercised only those powers granted to them statutorily by the Legislature, gave the Legislature the authority to create other governing bodies, increased the membership of the State Board of Education from ten to 11 members, eliminated the requirement that State Board of Education member districts be composed of four state senatorial districts, and authorized the Governor to appoint a Secretary of Education (who would be in addition to the Commissioner of Education appointed by the State Board). The resolution was not reported out of the first committee.

**H.C.R. 5001.** H.C.R. 5001 created the State Board of Community Colleges and Vocational-Technical Education to have control and supervision over the community colleges and area vocational schools. The Board was



comprised of nine members appointed by the Governor, subject to Senate confirmation. The resolution also restricted the powers of the State Board of Education and the Kansas Board of Regents to those statutorily granted to them by the Legislature. The resolution was not reported out of the first committee.

1993 **H.C.R. 5016.** H.C.R. 5016 restricted the powers of the State Board of Education to those statutorily granted by the Legislature. The resolution passed the House but died in the Senate.

1995 **H.C.R. 5021.** H.C.R. 5021 was identical to 1988 H.C.R. 1613, 1989 H.C.R. 5010 (which was submitted to a vote of the people in 1990), and to 1997 S.C.R. 1607. It deleted references to the State Board of Education and the Kansas Board of Regents from the *Constitution*. The resolution passed the House but died in the Senate.

1997 **S.C.R. 1607.** S.C.R. 1607 deletes references to the State Board of Education and the Kansas Board of Regents from the *Constitution*. It is identical to 1988 S.C.R. 1613 and to 1989 H.C.R. 5010. The resolution was not reported out of the first committee.

**H.C.R. 5008.** H.C.R. 5008 limits the powers of the State Board of Education to those delegated to it by the Legislature and provides that the Commissioner of Education will be appointed by the Governor and confirmed by the Senate. The Commissioner would be a member of the Governor's cabinet.

**H.C.R. 5009.** H.C.R. 5009 limits the powers of the State Board of Education to those delegated to it by the Legislature and provides that the Governor would appoint a Commissioner of Education and a Commissioner of Higher Education, subject to confirmation of the Senate. Both commissioners would be members of the Governor's cabinet.

## PROPOSED SENATE CONCURRENT RESOLUTION NO. \_\_\_\_\_

By

A PROPOSITION to amend sections 3 and 7 of article 6 of the constitution of the state of Kansas, relating to the state board of education.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives 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: Sections 3 and 7 of article 6 of the constitution of the state of Kansas are hereby amended to read as follows:

"§ 3. Members of state board of education and state board of regents. (a) (1) There shall be ~~ten~~ 13 members of the state board of education with overlapping terms as the legislature may prescribe.

(2) Three members of the state board of education shall be appointed by the governor. Such members shall have such qualifications as the legislature may prescribe.

(3) Ten members of the state board of education shall be elected. The legislature shall make provision for ten member districts, each comprised of four contiguous senatorial districts. The electors of each member district shall elect one person residing in the district as a member of the board.

(4) The legislature shall prescribe the manner in which vacancies occurring on the board shall be filled.

(b) The state board of regents shall have nine members with overlapping terms as the legislature may prescribe. Members shall be appointed by the governor, subject to confirmation by the senate. One member shall be appointed from each congressional district with the

Senate Education  
3-13-03  
Attachment 4

remaining members appointed at large, however, no two members shall reside in the same county at the time of their appointment. Vacancies occurring on the board shall be filled by appointment by the governor as provided by law.

(c) Subsequent redistricting shall not disqualify any member of either board from service for the remainder of his the term. Any member of either board may be removed from office for cause as may be provided by law.

§ 7. Savings clause. (a) All laws in force at the time of the adoption approval 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 17, 1969~~ July 1, 2005.

~~(b) Notwithstanding any other provision of the constitution to the contrary, no state superintendent of public instruction or county superintendent of public instruction shall be elected after January 17, 1967.~~

~~(c) The state perpetual school fund or any part thereof may be managed and invested as provided by law or all or any part thereof may be appropriated, both as to principal and income, to the support of the public schools supervised by the state board of education."~~

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

"Explanatory statement. The constitution of this state provides for a ten-member state board of education. Members are selected by election from prescribed member districts. The constitution further provides for selection of members of the state board of

regents by gubernatorial appointment."

"A vote for this proposition would provide for a thirteen-member state board of education. A vote for this proposition would provide for the election of 10 of the members of the board and the appointment, by the governor, of three members of the board."

"A vote against this proposition would continue in effect the requirement of a ten-member state board of education and that the members are selected by election."

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives 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 2004.

SENATE CONCURRENT RESOLUTION NO. \_\_\_\_\_

By Committee on Education

A PROPOSITION to revise article 6 of the constitution of the state of Kansas, relating to education.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives 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: Article 6 of the constitution of the state of Kansas is hereby revised to read as follows:

"Article 6. -- EDUCATION

"§ 1. ~~Schools---and---related---institutions---and activities~~ System of public education. The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining ~~public-schools, educational institutions--and related-activities~~ a system of public education which may be organized and changed in such manner as may be provided by law."

"§ 2. ~~State-board-of-education-and--state--board--of regents~~ Governance. (a) The legislature shall provide for a state board of education ~~which--shall--have--general supervision-of-public-schools,--educational--institutions and--all--the--educational-interests-of-the-state,--except educational-functions-delegated-by-law-to-the-state-board of-regents~~. The state board of education shall perform such ~~other~~ duties as may be provided by law.

(b) The legislature shall make suitable provision for the governance of the system of public education and the schools and institutions that are parts of the system.

(c) The legislature shall provide for the



supervision of elementary and secondary schools and such other educational institutions and interests.

(b) (d) The legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. ~~Public institutions of higher education shall include universities and colleges~~ granting baccalaureate or postbaccalaureate degrees and such other educational institutions and educational interests as may be provided by law. The state board of regents shall perform such other duties as may be ~~prescribed~~ provided by law.

(e) The legislature may provide for such other instrumentalities of governance, supervision or control of the schools, educational institutions and educational interests of the state as the legislature may deem necessary. Such instrumentalities shall perform such duties as may be provided by law.

(e) (f) Any municipal university shall be operated, supervised and controlled as may be provided by law."

"§ 4. ~~Commissioner of education~~ Secretary of education. ~~The state board of education shall appoint a commissioner of education who shall serve at the pleasure of the board as its executive officer.~~ The governor shall appoint a secretary of education, subject to confirmation by the senate. The secretary shall serve at the pleasure of the governor and exercise such powers and perform such duties as may be provided by law."

"§ 5. ~~Local~~ Public elementary and secondary schools. ~~Local Public elementary and secondary schools under the general supervision of the state board of education~~ shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs ~~under the general supervision of the state board of education,~~ but. All



such agreements shall be subject to limitation, change or termination by the legislature. The secretary of education shall exercise such supervision over the maintenance, development and operation of public elementary and secondary schools as may be provided by law."

"§ 6. 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 state institutions of higher education and ~~apportion-among-and-appropriate-the-same-to the---several---institutions,---which---levy,~~ provide for apportionment and appropriation shall---continue---until changed-by-statute of the proceeds of such tax. Further appropriation and other provision for finance of institutions of higher education may be made by the legislature.

(b) ~~The--legislature--shall--make-suitable-provision for-finance-of-the-educational-interests-of-the-state.~~ No tuition shall be charged for attendance at any public school or other public educational institution to pupils persons required by law to attend such school, ~~---except such or institution.~~ Fees or-supplemental-charges-as-may be other than tuition may be charged to such persons when authorized by law. The legislature may authorize the ~~state--board--of--regents--to--establish~~ or require the charging of tuition, and other fees and--charges for attendance at institutions--under--its--supervision any public school or other public educational 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."

"§ 7. Savings clause. (a) 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, ~~1969~~ 2005.

~~(b)--Notwithstanding any other provision of the constitution to the contrary, no state superintendent of public instruction or county superintendent of public instruction shall be elected after January 1, 1967.~~

~~(c)--The state perpetual school fund or any part thereof may be managed and invested as provided by law or all or any part thereof may be appropriated, both as to principal and income, to the support of the public schools supervised by the state board of education."~~

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

"Explanatory statement. The purposes of this revision of the education article of the state constitution are to: (1) Authorize the legislature to provide for persons or agencies, in addition to the state board of education and the state board of regents, to whom governing or supervisory powers in the area of education may be granted; (3) require the governor to appoint a secretary of education; and (4) eliminate obsolete language and generally update the provisions of the article.

"A vote for this proposition will effectuate the purposes for revision of the education article as hereinbefore enumerated.

"A vote against this proposition will continue in effect the present provisions of the education article."

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives 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 2004.