

MINUTES OF THE SENATE EDUCATION COMMITTEE.

The meeting was called to order by Chairperson Senator Dwayne Umbarger at 1:35 p.m. on March 24, 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: Theresa Kiernan, Revisor of Statutes

Others attending: See attached list

HB 2008—Proprietary schools; certification and registration fees
HB 2009—GED credentials; fees

Theresa Kiernan, Revisor of Statutes, reviewed **HB2008** and **HB2009** for the Committee.

Senator Vratil made a motion to amend **HB2008** into **HB2009** and to recommend **HB2009** as amended favorably for passage. Seconded by Senator Teichman. Motion carried.

SB22—School districts; capital outlay fund; computers and software
HB2004—Schools; reconciling amendments to statutes that have been amended more than once
HB 2231—Allowing school districts to charge a fee for preschools; certain limitations

Theresa Kiernan, Revisor of Statutes reviewed **SB22**, **HB2004** and **HB2231** for the Committee.

Senator Vratil made a motion to amend **SB22** and **HB2004** into **HB2231** and make the bill effective upon publication in the Kansas Register. Seconded by Senator Oleen. The motion was discussed, vote taken and motion carried. Senator Bunten requested his no vote be recorded.

Senator Vratil made a motion to recommend **HB2231** as amended favorably for passage. Seconded by Senator Teichman. Vote taken and division was called by Senator Bunten. Motion carried with 5 yeas, 3 nays, 2 passes, and the Chairman abstained. Senator Bunten asked that his no vote be recorded.

SCR1612—State Board of Education; adding three members appointed by the governor

Theresa Kiernan, Revisor of Statutes, reviewed the contents of **SCR1612** for the Committee. The bill would expand the State Board of Education by three members appointed by the Governor and confirmed by the Senate. Ten members of the board would continue to be elected as they are now.)

Senator Schodorf made a motion to recommend favorably **SCR1612** for passage. Seconded by Senator Vratil. Motion was discussed. Motion carried with one no vote by Senator Emler.

HB 2179—Prohibiting a state officer or employee from being a member of the State Board of Education

Chairman Umbarger reviewed the contents of **HB2179** with Committee members. **SB190** was amended into **HB2179** last week. **HB2179** as amended provides for non-partisan election in the fall and prohibits a state office or employee from being a member of the State Board of Education.

Senator Downey made a motion amend **HB2179** to repeal the provision to prohibit state, school district,

CONTINUATION SHEET

MINUTES OF THE SENATE EDUCATION COMMITTEE at 1:35 p.m. on March 24, 2003 in Room 123-S of the Capitol.

or community college officers or employees from serving as a member of the State Board of Education (Attachment 1) and to recommend **HB2179** as amended favorably for passage. Motion seconded by Lee.

Senator Vratil made a substitute motion to amend **HB2179** as it currently exists to read that no school district officer or employee shall be a member of the State Board of Education. Seconded by Senator Bunten. After discussion, vote was taken on Senator Vratil's substitute motion. Motion failed.

Chairman Umbarger turned attention back to Senator Downey's original motion to amend **HB2179** and to recommend the bill favorably for passage. Voted taken on original motion. Motion carried.

Senator Downey made a motion to approve the minutes of March 11, 2003. Seconded by Senator Emler. Motion carried.

Meeting adjourned at 2:05 p.m. The next meeting is scheduled for March 25, 2003 at 1:30 p.m. in Room 123S.

CHRISTINE DOWNEY

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SENATE CHAMBER

COMMITTEE ASSIGNMENTS

RANKING MINORITY MEMBER: EDUCATION
RANKING MINORITY MEMBER: AGRICULTURE
MEMBER: WAYS AND MEANS
NATURAL RESOURCES
LEGISLATIVE EDUCATIONAL PLANNING
COMMITTEE
JOINT COMMITTEE ON CHILDREN'S ISSUES

To: Senate Education Members

From: Senator Christine Downey

Information on HB 2179:

(repeal of prohibition against state, school district, or community college officer or employee serving as a member of the State Board of Education)

- The House Education Committee rejected the amendment to disqualify school district employees and passed the bill out as introduced.
- Passed House of Representatives February 20 with a vote of 112-8

Local School Boards versus the State Board of Education:

The issue of service on a local school board was set to rest in the recent court case known as Baker. USD 501 and KASB challenged the election of a teacher to the USD 501 school board on the basis that she was prohibited from receiving compensation from the board on which she serves. The court agreed that current law would prohibit school employees from serving on their employing district board of education. This decision is not an issue of debate in HB 2179.

It should be noted that currently school employees are allowed to serve on other boards of education. For example, a principal in Topeka who lives in the Auburn-Washburn district is permitted to serve on the Auburn-Washburn Board of Education.

Senate Education
3-24-03
Attachment 1

Conflict of Interest Issues:

While the courts have ruled that “a public officer ...is not permitted to place himself in a position that will subject him to conflicting duties or cause him to act other than for the best interest of the public,” the law “does not forbid the holding of an office and exercising powers thereunder because of a possibility of a future conflict of interest.”

Conflict of interest is not defined but rather is equated with “substantial interest.” The legal definition of substantial interest relates to business and financial interests with business defined as “any corporation, association, partnership, proprietorship, trust, joint venture and every other business interest, including ownership or use of land for income.” **Applying this in the strictest sense, it would appear that farmers or ranchers who serve in the legislature could not vote on any issue relating to agriculture or land use.** Yet this is not the case. We actually apply the common law conflict of interest rule.

Under this rule, one is not forbidden to hold an office because of the *possibility* of a future conflict of interest. Such a conflict of interest would exist if “an administrative official voted on a matter in which he or she had a **personal, direct and pecuniary interest.**”

What the law then requires is that “local government officers and employees to disclose substantial interests in businesses and to abstain from making or participating in the making of contracts where their substantial interests are implicated.” **When voting on a contract with a law firm, an attorney employed by that law firm who also serves on the contracting board would have to abstain from the vote - but would not be prohibited from serving.**

In addition, “local officials may not ‘act on any matter’ where their substantial interests are implicated unless a substantial interest disclosure has been made.” **Such disclosure is made by candidates or appointees to office - the voters can determine for themselves if such issues would disqualify a candidate from serving.**

Conclusion:

The issue in HB 2179 is simple: will the state maintain a prohibition that singles out school employees as automatically disqualified from serving on the state board that oversees the education profession?

To maintain such a prohibition is to once again formally declare that school employees are not capable or qualified to serve. School employees are not paid by the state board, they are not employed or evaluated by the state board, and they do not have a contract or business relationship with the state board. To the extent that any given issue might be construed as a conflict of interest, the school employee would have to abstain from voting **just like any other elected or appointed official.**

Every other regulatory board in Kansas allows practicing professionals to serve - many even *require* it. Kansas does not prohibit barbers from serving on the Board of Cosmetology. Kansas does not prohibit physicians from serving on the Board of Healing Arts. Kansas does not prohibit attorneys from serving on the Kansas Board of Law Examiners. Kansas does not prohibit university professors from serving on the Board of Regents. **Only school employees are singled out as unqualified when it comes to service on their professional regulatory board.**