

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Tim Huelskamp at 1:30 P.M. on February 20th, 2006 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Martha Dorsey, Kansas Legislative Research Department
Mike Heim, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes
Zoie Kern, Committee Secretary

Conferees appearing before the committee:

None

Others attending:

See attached list

SB 456 - Open records; disclosure of certain records pertaining to drivers of motor vehicles transporting members of the public.

Senator Huelskamp began the meeting with Senator Pyle's amendment to **SB 456** from yesterday's committee meeting.

Senator Pyle withdrew his amendment on **SB 456** and Senator Huelskamp withdrew his seconded.

Senator Petersen introduced a balloon for **SB 456** stating that contractors need to have criminal background checks done when hiring; Line 13-30 (Attachment 1).

Senator O'Connor seconded.

Discussion

Ken Wilke of the Revisor of Statute Office, stated we will make the changes in language and change the title accordingly. Senator O'Connor then asked the question about this amendment falling within the Open Records Act. Ken Wilke responded with a yes.

Senator Francisco asked if we are having to fund the KBI reports. Ken Wilke responded that this amendment does not provide for it.

Senator Francisco stated she is afraid it will be seen as an unfunded mandate.

Senator O'Connor stated because of the regulations of school and bus companies, the cost of the KBI check will have to be covered by the bus company as a part of their contract.

Senator Reitz thought this might discourage employment by the bus company. He saw this as a potential cost to the school district. The Senator stated he thinks this is more than needs to be done.

Senator O'Connor commented that these checks are apart of CDL licensing for A and B. Sub section A and B is defined in balloon. This is just for those who are dealing with public, children and elderly.

Senator Petersen discussed cost by KBI.

Senator Huelskamp asked about substitution language as long as the background checks are done.

With no addition questions or comments a motion was made by Senator Huelskamp to send **SB 456** to Senate. Chair is in doubt. Motion failed.

Further discussion.

Senator O'Connor, What is the objection?

Ken Wilke said basically the investigation is turned over to the public agency. The agency would have to expose what it could according to Open Records Act.

Senator Huelskamp introduced **SB 419** - Statements of substantial interests; filing required for certain officers and employee of judicial branch.

SB 419 is a bill requiring certain branches of SSI to file reports and a proposal to file a disclosure with ethics committee as matter of public record and who would file. The Courts said they were fine with that. This would eliminate a potential for conflict of interest and for a nomination commission to be added. Senator

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Huelskamp asked Ken Wilke to double check on this and apparently each Justice of the Court has a law clerk that assigns them to writing discussion as well. And it is appropriate that they follow this as well. Senator Huelskamp moved to make amendment. Senator O'Connor seconded. (Attachment 2)
Discussion.

Senator Wilson requested further description on the language on the except in section 5. Ken Wilke said in section 5, sub section J, it was intended to put certain members of the judicial sect back in two parts of the bill.

With no additional question it was moved to except amendment to SB 419.

Motion carried.

It was moved to send out SB 419 out favorable.

Motion carried.

With no additional amendments SB 419 with balloon was sent out by Senator O'Connor, seconded by Senate Wilson.

Discussion..

Those opposed, Senator Betts and Senator Francisco.

Motion carried.

Introduction of SB 457 by Senator O'Connor. Purpose of bill is to limit direct public funding of lobbyists. Senator O'Connor moved SB 457 be sent out favorable. Ken Wilke stated there needed to be a technical amendment to the title.

Senator O'Connor moved to except technical amendment to title seconded by Senator Pyle.

Discussion.

Motion carried.

This bill if referred out today will go to the Education committee next.

Senator O'Connor moved we refer the bill favorable to the Education Committee as amended. Senator Pyle seconded.

Discussion.

Lobbying definition given by Ken Wilke as promoting or opposing in a manner the action or non-action by the legislature on a legislator matter for an adoption or non adoption on a rule and regulation by a state agency. It also includes the entertaining of state offices or employee as far as gifts and honorary in payment that lobbyists normally do. Lobbyist have to be registered. Those who fall under the definition given. This would not include a state employee carrying out the duties of there office.

Ken Wilke said according to statues in 2004, a representative of public mentality is not required to register as a lobbyist. Hiring someone as a lobbyist and being a lobbyist as part of your job duties is covered in this situation.

Senator Francisco concerned about SB 457 limiting testimony.

Senator O'Connor stated legislators can bring issues before committees not limiting testimony on funding basis. Tax payer funding is not for private individuals. There are people to represent them.

A motion made to report SB 457 favorable out of committee once it leaves Commerce and Education committee.

Motion failed.

All opposed were Senator Reitz, Senator Petersen, Senator Betts, Senator Francisco and Senator Donovan.

Senator Huelskamp introduced SB 492 - Repealing unilateral annexation procedure.

Discussion.

Senator Pyle recommended to amend SB 492 to read counties under 100,000 or less. There bye Sedgwick, Johnson, Wyandotte and Shawnee would be exempted.

Ken Wilke comment and clarification. Constitutional home rule amendment requires legislation be backed by general law for the alteration of city boundries, I think when we start making exceptions I am afraid you violate constitutional provision.

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Mike Heim remarked this could violate constitutional issue.

Senator Huelskamp - If it was based on city would it violate constitutional issue? What distinction is there?

Mike Heim - when you make a classification, language says to provide by general law - to unified law. Thought is they mean the same thing from this context, no case law to support that, I am trying to do is alert you if this passes it may become a constitutional issue.

Senator Huelskamp - If it were based on city classifications would there be any constitutional issues?

Mike Heim, you have the same issues, whether you are classifying cities regardless if you are saying cities or counties. Constitutional provisions for cities and statutory provisions for counties.

Further discussion.

Senator Pyle - All counties are local statutes. Counties can override constitution.

Mike Heim said in his opinion it is not constitutional.

Senator Pyle moved to accept amendment to **SB 492**.

Senator O'Connor seconded.

Further discussion.

Senator O'Connor to Mike Heim- If this were to land in court who would sue how? Mike replied in several ways - Could get lawyer to bring into a territorial thing, bringing the issue of constitutionality. Local prosecutor could test this. Classification in the supreme court determines viability.

Senator Huelskamp, Mike another question in the Shawnee county consolidation bill last year was there something regarding annexation. Mike, in my opinion that is suspect as well.

Senator Donovan, Let me understand if the amendment is accepted and it goes into law the smaller towns like Great Bend could do this but Paola couldn't because they are in a county in 100,000. Senator Huelskamp said if **SB 492** passed no one could. as it is.

Amendment fails.

Back on **SB 492**.

Further discussion.

Senator O'Connor this bill without amendment would prohibit all unilateral annexation within the state, is that correct? Senator Huelskamp, that is the intent.

Senator O'Connor, I don't like unilateral annexation. So I am torn on the bill.

Senator Donovan asked Ken or Mike, what about the situation where somebody owns a big parcel of land out of the city a little ways and he wants to be annexed and he petitions the city and wants to be apart of the city. Would this stop this? Mike, If it is not touching the city now this bill will not effect this. There is a procedure for this type of thing. This is a consent annexation. There is situation where two cities are wanting to annex the same piece of ground. The land touches both cities. Consent annexation is still allowed under this bill.

The board of county commissioner basically decides all this.

Additional discussion.

Senator Pyle made motion to report the bill favorable.

Motioned died for lack of second.

Meeting adjourned.

Respectfully submitted,

Zoie C. Kern, Committee Secretary

SENATE BILL No. 456

By Committee on Federal and State Affairs

1-26

9 AN ACT concerning records pertaining to certain holders of a commer-
10 cial drivers license; relating to requests for such records.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) Each public agency which employs or contracts for the
14 use of a driver of a commercial motor vehicle for the purpose of trans-
15 porting students or members of the public shall make available the name
16 of each driver of a commercial vehicle employed and the following in-
17 formation pertaining to such driver upon receipt of a request for such
18 information:

- 19 1. Position;
- 20 2. salary or other compensation;
- 21 3. length of service;
- 22 4. driving records;
- 23 5. convictions of any crime; and
- 24 6. convictions of driving while under the influence of drugs or alcohol.

25 (b) The request for information shall be made in accordance with the
26 open records act, K.S.A. 46-215 et seq. and amendments thereto. In the
27 event that the public agency has contracted with another entity for the
28 use of a driver of a commercial motor vehicle, the request for information
29 shall be made to the public agency and the public agency shall be re-
30 sponsible for obtaining the information requested from its contractor.]

31 (c) [Any information requested pursuant to subsection (a) shall be
32 provided to the requester notwithstanding the applicability of any excep-
33 tion to disclosure contained in K.S.A. 45-221 and amendments thereto.

34 (d) For the purposes of this section:

35 (1) "Commercial motor vehicle" shall have the meaning ascribed to
36 it in K.S.A. [8,128] and amendments thereto, with respect to the trans-
37 portation of passengers. 8-2,128

38 (2) "Driver" shall have the meaning ascribed to it in K.S.A. [8,128] and 8-2,128
39 amendments thereto.

40 (3) "Employer" shall have the meaning ascribed to it in K.S.A. [8,128] 8-2,128
41 and amendments thereto.

42 (e) The provisions of this section shall be a part of and supplemental
43 to the open records act.

(a) (1) Each public agency which employs or contracts for the use of a driver of a commercial motor vehicle for the purpose of transporting students or members of the public shall include in its contract a provision requiring that each driver of a commercial vehicle employed under such submit to a criminal history records check utilizing the files and records of the Kansas bureau of investigation and the federal bureau of investigation. The criminal history records check shall be completed on or before August 1st of the year in which the contract is executed.

(2) For the purpose of obtaining the criminal history records check, each driver of a commercial vehicle who will be employed under a contract pursuant to paragraph (1) shall submit to the public agency or contracting employer a complete set of legible fingerprints of such driver taken by a qualified law enforcement agency. Fingerprints submitted pursuant to this regulation shall be released by the public agency or contracting employer to the Kansas bureau of investigation for the purpose of conducting criminal history records checks, utilizing the files and records of the Kansas bureau of investigation and the federal bureau of investigation.

(b) Each contracting employer shall provide to the public agency a copy of the criminal history records check for each driver of a commercial motor vehicle who is employed under a contract pursuant to subsection (a).

SENATE BILL No. 419

By Senator Huelskamp

1-20

9 AN ACT concerning governmental ethics; requiring certain members
10 and employees of the judicial branch to file statements of substantial
11 interest; amending K.S.A. 46-282, 46-283 and 46-285 and K.S.A. 2005
12 Supp. 46-247 and repealing the existing sections.

46-221,

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2005 Supp. 46-247 is hereby amended to read as
16 follows: 46-247. The following individuals shall file written statements of
17 substantial interests, as provided in K.S.A. 46-248 to 46-252, inclusive,
18 and amendments thereto:

19 (a) Legislators and candidates for nomination or election to the
20 legislature.

21 (b) Individuals holding an elected office in the executive branch of
22 this state, and candidates for nomination or election to any such office.

23 (c) State officers, employees and members of boards, councils and
24 commissions under the jurisdiction of the head of any state agency who
25 are listed as designees by the head of a state agency pursuant to K.S.A.
26 46-285, and amendments thereto.

27 (d) Individuals whose appointment to office is subject to confirmation
28 by the senate whether or not such individual is a state officer or employee.

29 (e) General counsels for state agencies irrespective of how
30 compensated.

31 (f) The administrator or executive director of the education commis-
32 sion of the states, the interstate compact on agricultural grain marketing,
33 the Mo-Kan metropolitan development district and agency compact, the
34 Kansas City area transportation district and authority compact, the mid-
35 west nuclear compact, the central interstate low-level radioactive waste
36 compact, the multistate tax compact, the Kansas-Oklahoma Arkansas river
37 basin compact, the Kansas-Nebraska Big Blue river compact, and the
38 multistate lottery.

39 (g) Private consultants under contract with any agency of the state of
40 Kansas to evaluate bids for public contracts or to award public contracts.

41 (h) From and after January 1, 2003, any faculty member or other
42 employee of a postsecondary educational institution as defined by K.S.A.
43 74-3201b, and amendments thereto, who provides consulting services and

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1 who, on behalf of or for the benefit of the person for which consulting
2 services are provided:

3 (1) Promotes or opposes action or nonaction by any federal agency,
4 any state agency as defined by K.S.A. 46-224, and amendments thereto,
5 or any political subdivision of the state or any agency of such political
6 subdivision or a representative of such state agency, political subdivision
7 or agency; or

8 (2) promotes or opposes action or nonaction relating to the expend-
9 iture of public funds of the federal government, the state or political
10 subdivision of the state or agency of the federal government, state or
11 political subdivision of the state.

12 (i) From and after January 1, 2006, any faculty member who receives
13 an annual salary of \$50,000 or more, other than an adjunct faculty mem-
14 ber, who is employed by a state education institution as defined by K.S.A.
15 76-711, and amendments thereto.

16 (j) (1) Each:

17 (A) Judge of the court of appeals;

18 (B) justice of the supreme court; and

19 (C) nonjudicial employee of an appellate court who is listed as a des-
20 ignee pursuant to K.S.A. 46-285 and amendments thereto.

21 (2) For the purposes of this subsection, the term "appellate court"
22 shall have the meaning ascribed to it in K.S.A. 22-2202 and amendments
23 thereto.

24 Sec. 2. K.S.A. 46-282 is hereby amended to read as follows: 46-282.
25 "Designee" means:

26 (a) Any state officer, employee or member of any agency, depart-
27 ment, division, bureau or other unit of state government who holds a
28 position:

29 (1) Defined as a major policy making position;

30 (2) responsible for contracting, purchasing or procurement, except
31 persons whose sole responsibility is the purchasing of gasoline or emer-
32 gency repair for a state vehicle assigned to them for their use or persons
33 whose sole responsibility relating to purchasing or procurement includes
34 only transactions pursuant to preexisting state contracts;

35 (3) responsible for writing or drafting specifications for contracts;

36 (4) responsible for awarding grants, benefits or subsidies; or

37 (5) responsible for inspecting, licensing or regulating any person or
38 entity.

39 (b) (1) Any judge of the court of appeals, justice of the supreme court
40 or nonjudicial officer or employee of an appellate court who holds a
41 position:

42 (A) Defined as a major policy making position;

43 (B) responsible for contracting, purchasing or procurement, except

- (C) member of the commission on judicial qualifications;
- (D) member of any supreme court nominating commission;
- and
- (E)

(k) For the purposes of this act, for the persons listed in subsection(j) term "statement of substantial interests" shall mean the judicial financial disclosure report required by the supreme court.

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1 persons whose sole responsibility is the purchasing of gasoline or emer-
2 gency repair for a state vehicle assigned to them for use or persons whose
3 sole responsibility relating to purchasing or procurement includes only
4 transactions pursuant to preexisting state contracts;

5 (C) responsible for writing or drafting specifications for contracts;

6 (D) responsible for awarding grants, benefits or subsidies; or

7 (E) responsible for inspecting, licensing or regulating any person or
8 entity.

9 (2) For the purposes of this section, the term "appellate court" shall
10 have the meaning ascribed to it in K.S.A. 22-2202 and amendments
11 thereto.

12 (c) "Designee" does not include any driver's license examiner of the
13 department of revenue or any person performing ministerial functions.

14 Sec. 3. K.S.A. 46-283 is hereby amended to read as follows: 46-283.

15 (a) "Major policy making" position" means ~~(a)~~:

16 (1) The administrative head or heads or executive of a state agency
17 or ~~(b)~~; or

18 (2) the head of each department, division, bureau or other major
19 administrative unit within a state agency.

20 (b) Except as provided in subsection (c), major policy making position
21 also includes:

22 (1) Any justice of the supreme court;

23 (2) any judge of the court of appeals; or

24 (3) the head of each department, division, bureau or other major ad-
25 ministrative unit within the supreme court.

26 (c) Major policy making position includes any judge or nonjudicial
27 personnel of an appellate court as such term is defined in K.S.A. 22-2202
28 and amendments thereto.

29 Sec. 4. K.S.A. 46-285 is hereby amended to read as follows: 46-285.

30 (a) The head of every state agency shall submit a list of designees under
31 the agency head's jurisdiction, identifying the positions, names and home
32 mailing addresses of all designees of that agency to the commission an-
33 nually between March 15 and March 31, inclusive. The agency head may
34 prepare and submit a separate list for each department, division, bureau
35 or other unit within the agency head's jurisdiction. The agency head shall
36 attach to each list an organizational chart for the agency, department or
37 division to which that list corresponds and shall certify the list to be cor-
38 rect. The agency head shall notify the commission of the name, home
39 address and position of any new designee under the agency head's juris-
40 diction within 10 days of appointment. The commission may request the
41 head of a state agency to make additions to or deletions from the list.

42 (b) The chief justice of the supreme court shall submit a list of des-
43 ignees under the jurisdiction of the supreme court, identifying the posi-

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1 tions, names and home mailing addresses of all designees of that agency
 2 to the commission annually between March 15 and March 31, inclusive.
 3 The chief justice may prepare and submit a separate list for each depart-
 4 ment, division, bureau or other unit within the jurisdiction of the supreme
 5 court. The chief justice shall attach to each list an organizational chart
 6 for the agency, department or division to which that list corresponds and
 7 shall certify the list to be correct. The chief justice shall notify the com-
 8 mission of the name, home address and position of any new designee
 9 under the jurisdiction of the supreme court within 10 days of appoint-
 10 ment. The commission may request the chief justice to make additions to
 11 or deletions from the list.

12 (c) The commission shall transmit promptly copies of all lists received
 13 under this section to the secretary of state. ↑ P

Sec. 5. K.S.A. 46-221 is hereby amended to read as follows:

~~46-221. State officer or employee, candidate and state officer elect defined.~~ (a) "State officer or employee" means (1) any individual who is an elected or appointed state officer, (2) any individual who is in the classified service or unclassified service of the Kansas civil service act, (3) all officers and employees of the legislative branch and of the governor's office, irrespective of how compensated or period of employment, and (4) any individual who receives monthly or semimonthly compensation for services from the state or any state agency. State officer or employee does not include any justice or commissioner of the supreme court or judge of the judicial branch or employee or officer of the judicial branch or any member of a board, council or commission who is appointed by the supreme court or who is elected or appointed to exercise duties pertaining to functions of the judicial branch, when such person is engaged in performing a function or duty for the judicial branch. Also, state officer or employee does not include any appointed member of an advisory council, commission or board, who serves without compensation other than amounts for expense allowances or reimbursement of expenses as provided for in subsection (e) of K.S.A. 75-3223 and amendments thereto, when such member is engaged in performing a function or duty for such council, commission or board.

except that each person listed in subsection(j) of K.S.A. 46-247, and amendments thereto, shall be considered to be a state employee for the purposes of this act notwithstanding any language in this section to the contrary.

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(b) "Candidate" means an individual who: (1) Appoints a treasurer or a candidate committee; (2) makes a public announcement of intention to seek nomination or election to state office; (3) makes any expenditure or accepts any contribution for the purpose of influencing such person's nomination or election to any state office; or (4) files a declaration or petition to become a candidate for state office.

(c) "State officer elect" means an individual who has been elected to state office or appointed to fill a vacancy in a state office but who has not yet taken the oath of office.

History: L. 1974, ch. 353, § 7; L. 1975, ch. 272, § 1; L. 1978, ch. 332, § 29; L. 1995, ch. 172, § 1; July 1.

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14 Sec. ~~5~~ K.S.A. 46-282, 46-283 and 46-285 and K.S.A. 2005 Supp. 46-
15 247 are hereby repealed.
16 7 Sec. ~~6~~ This act shall take effect and be in force from and after its
17 publication in the Kansas register.

46-221,