

MINUTES OF THE SENATE ETHICS AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Vicki Schmidt at 9:30 a.m. on February 13, 2009, in Room 446-N of the Capitol.

All members were present except:

Senator David Wysong- excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes
Ken Wilke, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Reed Holwegner, Kansas Legislative Research Department
Carolyn Long, Committee Assistant

Conferees appearing before the committee:

Dennis Pyle, Kansas State Senator
Anthony Hensley, Kansas State Senator
Kelly Kultala, Kansas State Senator

Others attending:

See attached list.

The Chair opened the discussion on **SB 186–Vacancy in office of lieutenant governor; notice of resignation from office of governor or lieutenant governor** and asked staff for a brief explanation of the bill. Currently there is no clear procedure in the statutes or Constitution and the vacancy is filled by the governor. The proposed bill would establish an order and calendar for resignation as well as require senate confirmation for gubernatorial appointments to the office of lieutenant governor when a vacancy occurs.

Testifying in favor of the bill was the sponsor, Senator Dennis Pyle. Senator Pyle testified that this would also provide some oversight to the appointment and he will work with the revisors for an amendment addressing the situation should a confirmation be necessary when the senate is not in session (Attachment 1).

There being no further questions, the hearing on **SB 186** was closed.

The hearing on **SB 193–Vacancy in office of United States Senator; procedure** was opened. The bill explanation given by staff indicated that current law contained similar language with regard to filling a vacancy for the United States House of Representatives and the proposed legislation parallels that law.

Senator Pyle stated this bill was first passed by the Senate and the House in February 2007 but was vetoed by the governor. The bill would provide uniformity and allow the voters to fill a Senate vacancy the same as they do for a House of Representatives vacancy (Attachment 2). The fiscal note for a special election is \$2 million dollars.

There being no further discussion, the hearing on **SB 193** was closed.

The Chair then opened the hearing on **SB 210–Counties; election commissioners** and recognized Senator Anthony Hensley. Senator Hensley informed the committee that current law states that in the four counties in Kansas having a population of over 130,000 there is an election commissioner appointed by the Secretary of State. All other counties have county clerks who are elected by registered voters. The intent of this bill is to provide the board of county commissions the authority to appoint the election commissioners in these four counties. Senator Hensley was asked to submit his testimony in writing.

Senator Kultala also lent her support to the bill indicating that further intent of the bill is to clear up any confusion created by the two methods (Attachment 3)

Written testimony in support of **SB 210** was submitted by:

Mike Taylor, Unified Government, Wyandotte County (Attachment 4).

CONTINUATION SHEET

Minutes of the Senate Ethics And Elections Committee at 9:30 a.m. on February 13, 2009, in Room 446-N of the Capitol.

Written testimony in opposition was submitted by:

Bruce Newby, Wyandotte County Election Office (Attachment 5)

Brian D. Newby, Johnson County Election Commissioner (Attachment 6).

The hearing on **SB 210** was closed.

The chair thanked all those in attendance.

The meeting adjourned at 10:22 a.m. The next meeting is scheduled for February 18, 2009.

SENATE ETHICS AND ELECTIONS COMMITTEE GUEST LIST

DATE: February 13, 2009

NAME	REPRESENTING
TRAVIS LOWE	Pinegar, Smith & ASSOC
Brad Bryant	Sec. of State
BRUCE NEWBY	WYANDOTTE COUNTY ELECTION OFC

STATE OF KANSAS
SENATE CHAMBER

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HIAWATHA, KANSAS 66434
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Capitol Office:
STATE CAPITOL, ROOM 221-E
TOPEKA, KANSAS 66612
(785) 296-7379



COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE
ETHICS AND ELECTIONS
FEDERAL AND STATE AFFAIRS
JOINT COMMITTEE ON SPECIAL CLAIMS
AGAINST THE STATE
JOINT COMMITTEE ON STATE
TRIBAL RELATIONS

Senator Dennis Pyle

February 13, 2009

Thank you Madam Chair and committee for the opportunity to testify on SB 186, concerning succession reform.

This legislation will establish an order and calendar for resignation as well as require senate confirmation for gubernatorial appointments to the office of lieutenant governor when a vacancy occurs.

The problem- language in 25-312 which says the governor fills the vacancy until the next general election after the vacancy occurs. That works OK in our present situation since at this time, a vacancy would occur after the mid-term general election (for the governor and Lt gov) and the next general election will occur when the Lt gov's position is filled by election in running with the gubernatorial nominee. The problem with current language is if the vacancy occurs before the mid-term (for gov and Lt gov) general election. 23-312 says that the vacancy is filled by the governor until the next general election after the vacancy occurs, but that is impossible for the Lt governor because that position is only elected under the constitution by the gov and Lt gov running together.

Since the lieutenant governor no longer independently seeks re-election every two years, as I understand was the situation when current law was written, SB 186 proposes not only to address the aforementioned problem and needed changes which are necessary due to the fact that the current process of governor and lieutenant governor run as a team rather than independently on a two year cycle, but in order to hopefully add some oversight of this executive vacancy and the appointment procedure.

Senate Ethics and Elections Cmte
Date 2-13-2009
Attachment 1

In my opinion, appointment without oversight is comparative to walking along a cliff in the dark; it is dangerous. This proposal will allow some light on the subject to insure safety. Senate confirmation eliminates the possibility of someone stepping into the office of lieutenant governor or governor without ever having faced the scrutiny of the voters or those elected by the voters. Hypothetically speaking if the current governor were to vacate the office and the current lieutenant governor become governor and appoint a successor, that successor could potentially become governor should the new governor vacate for whatever reason. History has shown on several occasions that the lieutenant governor has become the chief executive of the state. Should anyone ever become governor without facing the scrutiny of the voters or their elected representatives?

Just imagine if the appointments of President Obama hadn't faced scrutiny, Sen Daschle and Governor Richardson would have been appointed to high level positions. The light of scrutiny brought out of darkness needed information.

Also, consider the many appointments that are seemingly not as prominent, which face the scrutiny of the confirmation process. Appointments not only by the Governor but by the President of the Senate and the Speaker of the House. Please see the list compiled by KLRD.

With Kansas facing many challenges including the budget shortfall, making sure those in positions of executive authority are accountable to the voters or their representatives is more crucial than ever. Through this proposal some of the responsibility for the selection of lieutenant governor is placed in the hands of politically accountable elected officials, by choosing to "take a peek" through the confirmation process. Please see the confirmation questionnaire.

Please see the memorandum by Norm Furse, which details some of the history and concerns surrounding the question of vacancies in executive offices.

I ask the committee to give a favorable recommendation regarding this bill. Again, Madam Chair, fellow members, thank you for the opportunity to testify on behalf of this legislation.

I will be happy to stand for questions. Thank you.

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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January 22, 2009

To: Senator Dennis Pyle
From: Sharon Wenger, Principal Analyst
Re: Senate Confirmations



This letter is in response to your recent inquiry of Alan Conroy with respect to details regarding the Senate confirmations process.

Attached is a list of officers appointed by the Governor, President of the Senate, and the Speaker of the House subject to confirmation by the Senate. There is a much longer list of officials appointed by each of these individuals which are not subject to Senate confirmation.

Also enclosed is a list of members of the 2008 Senate Confirmation Oversight Committee along with a description of the Committee's responsibilities.

A person being appointed must submit to a background investigation by the Kansas Bureau of Investigation (KBI) and to the release of tax information by the Department of Revenue and the federal Internal Revenue Service. A Statement of Substantial Interest also must be completed. I am attaching a copy of the appointment questionnaire nominees must complete.

Please do not hesitate to contact me if you have additional questions.

SLW/jal

Enclosures

Appointments by the Speaker of the House and Subject to Senate Confirmation

Entity Name	Number of Appointments by the Speaker of the House
Kansas Commission on Rural Policy	2
Kansas Bioscience Authority	2
Kansas Health Policy Authority	2
Board of Directors - Kansas Technology Enterprise Corporation	2
Kansas, Inc.	1
Kansas Public Employees' Retirement Board of Trustees	1
Kansas Water Authority	1
Subsidiary Corporation of the State Board of Regents concerning research projects at Kansas State University, Kansas University Medical Center, Wichita State University, and the University of Kansas	1

Appointments by the Senate President and Subject to Senate Confirmation

Entity Name	Number of Appointments by the Senate President
Kansas Commission on Rural Policy	2
Kansas Bioscience Authority	2
Kansas Health Policy Authority	2
Board of Directors - Kansas Technology Enterprise Corporation	2
Kansas, Inc.	1
Kansas Public Employees' Retirement Board of Trustees	1
Kansas Water Authority	1
Subsidiary Corporation of the State Board of Regents concerning research projects at Kansas State University, Kansas University Medical Center, Wichita State University, and the University of Kansas	1

Officers Appointed by the Governor and Subject to Senate Confirmation

- Credit Union Administrator;
- Secretary of the Department of Wildlife and Parks;
- Adjutant General;
- Twelve military aides-de-camp;
- General officers of the military;
- Member of the Central Interstate Low-level Radioactive Waste Commission;
- Secretary of Agriculture;
- Superintendent of the Kansas Highway Patrol;
- Director of the Water Office;
- Secretary of Commerce;
- Executive Director of the Kansas Lottery Commission;
- Executive Director of the Kansas Racing and Gaming Commission;
- Executive Director of the State Gaming Agency;
- State Bank Commissioner;
- State Fire Marshal;
- State Librarian;
- Executive Director of the State Historical Society;
- Secretary of the Department of Administration;
- Secretary of the Department of Transportation;
- Secretary of the Department of Revenue;
- Secretary of the Department of Corrections;
- Acting Secretary of the Department of Corrections;
- Secretary of the Department of Social and Rehabilitation Services;
- Secretary of the Department of Health and Environment;
- Secretary of the Department of Labor;
- Secretary of the Department on Aging;
- Securities Commissioner; and
- State Long-term Care Ombudsman.

2008 SENATE CONFIRMATION OVERSIGHT COMMITTEE

Members

Senator Derek Schmidt, Chair
Senator Anthony Hensley, Vice-Chair
Senator Les Donovan
Senator Greta Goodwin
Senator Nick Jordan
Senator Jean Kurtis Schodorf

Kansas Legislative Research Department

Dennis Hodgins, Hank Avila, Mary Galligan
Judy Glasgow, Committee Secretary

Revisor of Statutes Office

Theresa Kiernan, Gordon Self

CHARGE

The Committee is charged with holding confirmation hearings to consider confirmation for persons appointed to a commission or board prior to that person exercising any power, duty, or function as a member of that commission or board. The law requires appointed persons to be confirmed by the Senate prior to exercising any power, duty, or function.

MEMORANDUM

subject: Vacancy in Office of Lieutenant Governor
from: Norman J. Furse, Revisor of Statutes
date: June 7, 1996

I have received a number of inquiries about the legal authority for the filling of a vacancy in the office of the Lieutenant Governor. This memorandum is intended to address the questions which have been raised.

I. Kansas Constitution.

- A. Article 1, section 11 of the Kansas Constitution relates to vacancies in executive offices. This section provides among other things that when the office of the governor is vacant, the lieutenant governor becomes governor. The section mandates that the legislature provide by law for the succession to the office of governor should the offices of governor and lieutenant governor be vacant.
- B. In addition, the section provides that when the office of secretary of state or attorney general is vacant, the governor fills the vacancy by appointment for the remainder of the term.
- C. This section does not mention the filling of a vacancy in the office of lieutenant governor. No other section of the Kansas Constitution specifically mentions the filling of a vacancy in the office of lieutenant governor.

II. Kansas Statutes.

- A. As required under article 1, section 11 of the Kansas Constitution, the legislature has provided by law for successors to the office of governor if that office and the office of lieutenant governor are vacant. Under K.S.A. 75-125, whenever the offices of governor and lieutenant governor are vacant, the president of the senate would become governor. Whenever the offices of governor, lieutenant governor and president of the senate are vacant, the speaker of the house of representatives would become governor.
- B. There is no specific statutory provision for filling a vacancy in the office of lieutenant governor if that office becomes vacant. A vacancy in the office of lieutenant governor is mentioned in K.S.A. 75-127 which provides that whenever the office of lieutenant governor is vacant, the president of the senate becomes a member or officer of any board, commission, council of other statutory body of which the lieutenant governor by law is a member.
- C. K.S.A. 25-312 provides in part as follows: "All vacancies in any elective state or county office, unless otherwise provided for by law, shall be filled by appointment

by the governor, until the next general election after such vacancy occurs, when such vacancy shall be filled by election.” This section requires an election for the office filled by appointment at “the next general election” after the vacancy occurs. As used in this section, “general election” means the election held biennially on the Tuesday succeeding the first Monday in November in even-numbered years. (*Hamilton v. Raub*, 131 Kan. 392 (1930) and article 4, section 2 of the Kansas Constitution) The person elected to fill the vacancy holds the office for the remainder of the unexpired term. (*Forrest v. Ryan*, 126 Kan. 390) Under article 1, section 1 of the Kansas Constitution, the constitution provides that the offices of governor and lieutenant governor are “nominated and elected jointly” so that “a single vote shall be cast for a candidate for governor and a candidate for lieutenant governor running together....” To apply K.S.A. 25-312 to the office of lieutenant governor would not be consistent with the manner in which the office of lieutenant governor is elected under article 1, section 1 of the Kansas Constitution.

III. Inherent or Implied Power of the Governor.

- A. Does the governor have inherent or implied power to fill vacancies? Inherent powers are those which an authority possesses owing to the nature of the authority. Implied powers are powers which are necessary to carry out specific grants of authority whether constitutional or statutory.
- B. Under article 2, section 18 of the Kansas Constitution the legislature, not the governor, is specifically authorized to provide for the filling of vacancies: “The legislature may provide for the election or appointment of all officers and the filling of all vacancies not otherwise provided for in this constitution.”
- C. The power of the governor to make appointments is limited by authority conferred by specific constitutional or statutory provisions. As the Kansas Supreme Court ruled in *Leek v. Theis*, 217 Kan. 784 (1975), syl. 5: “The only power the governor has to make official appointments is that conferred upon him by specific constitutional or statutory provisions.”

IV. Conclusions.

- A. Neither the Kansas Constitution nor any statute of this state specifically provides for filling a vacancy in the office of the lieutenant governor.
- B. To apply the provisions of K.S.A. 25-312 to filling a vacancy in the office of lieutenant governor would not be consistent with the joint election of the governor and lieutenant governor required under article 1, section 1 of the Kansas Constitution.
- C. The governor does not have inherent or implied power to fill vacancies. Under article 2, section 18 of the Kansas Constitution, the legislature is specifically granted authority to provide for the filling of all vacancies not otherwise provided

for in the constitution. The governor's appointment authority is limited to that "conferred upon him by specific constitutional or statutory provisions." (*Leek v. Theis*, supra)



Kansas Senate

CONFIRMATION OVERSIGHT COMMITTEE APPOINTMENT QUESTIONNAIRE

Full Name: _____
(please include title and middle name along with any names previously used)

Home Address: _____
(Street Address) (City, State, Zip)

Driver's License Number: _____ Social Security Number: _____

Position to which Appointed: _____

Appointing Authority: _____

* Information on this page will not be made public but is used by the KBI and Department of Revenue.

(for Committee use only)

KBI Check: N/A___ In-Process___ Complete___

DOR Check: N/A___ In-Process___ Complete___

This Questionnaire is to be fully completed by each appointee appearing before the Senate Confirmation Oversight Committee (Committee) and returned to the Committee Chairman's Office. A meeting of the Committee to consider an appointee will not be scheduled until a completed questionnaire and other forms are received by the Chairman. Please answer each question completely to the best of your knowledge. Should a question not be applicable, please so state. Hand-written responses are strongly discouraged. If filling out this form electronically, "" should be replaced with "X" by the appropriate response on the form. Please contact your appointing authority if you have questions when completing the form.

Full Name: _____
(please include title and middle name along with any names previously used)

Position to which Appointed: _____

Appointing Authority: _____

Home Address: _____
(Street Address) (City, State, Zip)

Business Name: _____

Business Address: _____
(Street Address) (City, State, Zip)

Position Title: _____

Home Phone: _____ Business Phone: _____ Cell Phone: _____

Fax Number: _____ E-Mail Address: _____

Kansas resident? Yes / No Date of Birth: _____ Place of Birth: _____

Registered Voter? _____ Party Affiliation: _____

Congressional District: _____ Kansas Senate District: _____ Kansas Representative District: _____

Do you have the legal right to live and work in the United States? Yes / No

Please answer the following questions numbered 1 – 43. Each question MUST BE ANSWERED ON THIS ORIGINAL FORM. If the answers the question are provided on your resume, please state "See Resume" or if you supply additional attachment(s) with answers, please state "See Attachment(s)" on this form.

1. What is your educational background?
2. Describe your employment experience. Include any expertise related to the position to which you were appointed.

3. List any professional licenses that you have obtained and include the number for each license.
4. Why do you feel you are a good candidate for the position to which you have been appointed?
5. What do you see as the purpose or mission of the role to which you have been appointed?
6. **Military Service:** List rank, date and type of discharge from active service.
None
7. **Government Experience:** List any experience or association with local, state or federal government (exclusive of elective public office but including advisory, consulting, honorary, appointed or other part-time service or positions) and include dates of service.
None
8. **Elective Public Office:** List all elective public offices sought and/or held with dates of service.
None
9. **Campaigns:** Have you ever played a role or held a position in a political campaign? If so, please identify the candidate(s), the dates of the campaign and describe your involvement.
No Yes
10. **Honors and Awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships and any other special recognition for outstanding service or achievements.
None
11. **Organization Affiliations:** List all civic, cultural, educational, charitable, or work-related organizations that you have been associated with in the past ten years. Include any position held in the organization and the dates of service.
None
12. **Organization Restrictions:** To your knowledge, is any organization listed above restricted on the basis of race, color, religion, sex, national origin, disability, marital status or veteran status? If so, please describe.
No Yes
13. **Issues:** Have you ever been publicly identified, in person or by organizational membership, with a particularly controversial national or local issue? If so, please describe.
No Yes
14. **Submission of Views:** Have you ever submitted oral or written views to any governmental authority, whether executive or legislative, or to the news media on any particularly controversial issue other than in an official governmental capacity? If so, please describe.
No Yes
15. **Associations:** Have you ever had any association with any person, group or business venture that could be used, even unfairly, to impugn or attack your character and qualifications for the position to which you seek to be appointed? If so, please describe.
No Yes

16. **Opposition:** Do you know of any person or group who might take overt or covert steps to attack, even unfairly, your appointment? If so, please identify and explain the basis for the potential attack.
No Yes
17. **Miscellaneous:** List any factors, other than the information provided above, which particularly qualifies you or is relevant to the position to which you are seeking appointment? Include any special skills.
None
18. **Relationship to Governmental Employees:** Are you or your spouse or other close family members related to any state governmental official or employee? If so, please provide details.
No Yes
19. **Compensation:** During the past five years, have you or your spouse or other close family members received any compensation or been involved in any financial transaction with the State of Kansas? If so, please explain.
No Yes
20. **Business Relationships:** Describe any business relationship, dealing or financial transaction which you have had during the last five years, whether for yourself, on behalf of a client or acting as an agent, which you believe may constitute an appearance of impropriety or result in a potential conflict of interest in the position to which you want to be appointed. If none, please so state.
None
21. **Transactions with Officials:** During the past five years, have you or your spouse or other close family members received any compensation or been involved in any financial transaction with any state government official? If so, please explain.
No Yes
22. **Spouse or Other Family Members:** If the nature of employment for your spouse or other close family member is related in any way to the position to which you have been appointed, please indicate the employer, the position and the length of time it has been held. If not, please so state.
No Yes
23. **Lobbying Activities:** Describe any lobbying activity during the past ten years in which you and/or your spouse have engaged for the purpose of influencing the passage, defeat or modification of any legislative or administrative action. Lobbying activity includes any activity performed as an individual or agent of another individual, or of any organization that involves direct communication with an official in the executive branch of state government or any official of the legislative branch. If none, please so state.
None
24. **Regulated Activities:** Describe any interest that you, your spouse or other close family member may have (whether as an officer, owner, director, trustee, or partner) in any corporation, firm, partnership or other business enterprise and any non-profit organization or other institution that is regulated by or receives direct financial benefits from any department or agency of the State of Kansas. If none, please so state.
None

25. **Other:** Please describe any other matter in which you are involved that is or may be incompatible or in conflict with the discharge of the duties of the position to which you have been appointed or which may impair or tend to impair your independence of judgment or action in the performance of the duties of that position. If none, please so state.
None
26. **Conflict of Interest:** How would you resolve any potential conflicts of interest that, while maybe unforeseen at this point in time, could arise?
27. **Citations:** Have you ever been cited for a breach of ethics for unprofessional conduct, or been named in a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please provide details.
No Yes
28. **Convictions:** Have you ever been convicted of or entered a plea of guilty or nolo contendere or forfeited collateral for any criminal violation other than a traffic infraction? (Please include any offenses of driving under the influence, operating while impaired, reckless driving, or the equivalent offenses in other states.) If so, please explain.
No Yes
29. **U.S. Military Convictions:** Have you ever been convicted by any military court? If so, please provide details.
No Yes
30. **Imprisonment:** Have you ever been imprisoned, been on probation or been on parole? If so, please provide details.
No Yes
31. **Agency Proceedings/Civil Litigation:** Are you presently, or have you ever been, a party in interest in any administrative agency proceeding or civil litigation that is related in any way to the position to which you are seeking appointment? If so, please provide details.
No Yes
32. **Agency Proceedings and Civil Litigation of Affiliates and Family:** a.) Is your spouse or other close family member currently, or ever been, a party in interest in any administrative agency proceeding or civil litigation that is related in any way to the position to which you are seeking appointment? If so, please provide details.
No Yes
- b.) Has any business in which you, your spouse, close family member or business associate are or were an officer, director or partner been a party to any administrative agency proceeding or civil litigation relevant to the position to which you are seeking appointment? If so, please provide details. (With respect to this question, you need only consider proceedings and litigation that occurred while you, your spouse, close family member, or business associate were an officer of that business.)
No Yes

33. **Other Litigation:** a.) Other than the litigation described in question 32, have you or any business in which you are or were an officer, director, or partner been a plaintiff or a defendant in a civil lawsuit? If so, please describe.
No Yes
b.) Are you aware of any pending or anticipated litigation against you or any business in which you are an officer, director, or partner? If so, please describe.
No Yes
34. **Drivers License:** Has your driver's license ever been suspended or revoked? If so, please describe.
No Yes
35. **Parking Tickets:** Do you have outstanding parking tickets from any jurisdiction that have remained unpaid for more than 60 days? If so, please explain.
No Yes
36. **Security Clearance Denial:** Have you ever been denied a military or other governmental clearance? If so, please explain.
No Yes
37. **Firings:** a.) During the past ten years, have you been fired from a job for any reason? If so, please explain.
No Yes
b.) During the past ten years, have you quit a job after being told that you would be fired? If so, please explain.
No Yes
c.) During the past ten years, did you leave a job by mutual agreement because of specific problems? If so, please explain.
No Yes
38. **Alimony and Child Support:** Are you now, or have you ever been, delinquent in the payment of alimony or child support? If so, please explain
No Yes
39. **Consumption of Alcohol:** Have you ever or are you currently abusing alcohol? If so, please explain.
No Yes
40. **Controlled Substances:** Have you ever or are you currently engaged in the illegal use of a controlled substance or abusing the use of a prescribed controlled substance? If so, please explain.
No Yes
41. **Physical Examination:** If you receive a conditional offer of appointment or employment, would you be willing to take a physical examination, which may include a drug test?
No Yes

42. **Governmental Delinquencies:** Are you delinquent in the payment of any obligation owed to the federal or state government or any political or taxing subdivision or any instrumentality thereof? (Include delinquencies in the payment of: Income, property, or other taxes; exactions, fees or special assessments; loans, including any defaults, on or under loans which are or were made by, guaranteed, insured or subsidized by any unit of government or instrumentality thereof; overpayment of benefits; required payments into or under governmental programs; payments under a diversion arrangement or other repayment schedule.) If applicable, please state whether such delinquency is under formal appeal.
No Yes
43. **Other:** Please provide any additional information, favorable or unfavorable, which you feel should be considered in connection with your appointment. If none, please so state.
None

Please include resume and completed Statement of Substantial Interest not more than twelve months old.

REFERENCES

Name: _____ Knows you how?: _____

Address: _____
(City, State, Zip)

Home Phone: _____ Business Phone: _____

Name: _____ Knows you how?: _____

Address: _____
(City, State, Zip)

Home Phone: _____ Business Phone: _____

Name: _____ Knows you how?: _____

Address: _____
(City, State, Zip)

Home Phone: _____ Business Phone: _____

Name: _____ Knows you how?: _____

Address: _____
(City, State, Zip)

Home Phone: _____ Business Phone: _____

AUTHORIZATION AND CERTIFICATION:

The facts set forth in my application are true and complete. False statements, answers, or omissions on this application shall be sufficient cause for nonconsideration or for dismissal after appointment or employment. I also recognize that my selection is based on receipt of satisfactory information from former employers and references, and upon my ability to perform the essential elements, with or without reasonable accommodations, for the position for which I am applying. I herein authorize investigation, without liability, of the information supplied by me in this application for employment or appointment including academic, occupational, health, law enforcement, and government records. I also authorize listed employers and references, without liability, to make full response to any inquiries in connection with this application for appointment or employment. I understand and agree that the terms, conditions, compensation, benefits, hours, schedule, and duration of my appointment or employment may be determined, changed, or modified from time to time at the will of the appointing authority or designee without limitation or condition. I FURTHER CERTIFY THAT I HAVE READ THE FOREGOING PARAGRAPH AND KNOWINGLY MAKE THIS AUTHORIZATION BY SETTING FORTH MY SIGNATURE.

I understand that if I am required to be registered, licensed, or certified by federal or state law or regulation for the position I seek, I will notify the appointing authority immediately if any investigation, limitation, or cancellation of my registration, licensure, or certification occurs. If any investigation, probation, limitation, or cancellation occurs, I understand that my failure to notify my appointing authority as described above will result in the termination of my appointment or employment.

Signature _____

Date _____

STATE OF KANSAS
SENATE CHAMBER

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COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE
ETHICS AND ELECTIONS
FEDERAL AND STATE AFFAIRS
JOINT COMMITTEE ON SPECIAL CLAIMS
AGAINST THE STATE
JOINT COMMITTEE ON STATE
TRIBAL RELATIONS

Senator Dennis Pyle

February 13, 2009

Thank you Madam chair and fellow members of the committee for the opportunity to testify today on SB 193, succession reform.

If you recall, this legislation was proposed in February, 2007 after the events surrounding US Senator Johnson of South Dakota were brought to my attention. Once again it is being proposed due to observations of problems with direct gubernatorial appointments. I refer to the former Governor of Illinois, Rod Blagojevich and the many questions and inferences of corruption that have arisen in connection to his appointing a replacement to fill President Obama's vacant seat in the US Senate.

For those of you who are new to the senate and to refresh our memories, this legislation passed the senate twice and passed both chambers last session but was unfortunately vetoed by the governor.

Why change? Such a change would bring about uniformity. While Kansas law says a vacancy in the U.S. House must be filled by special election, our current statutes require that a vacancy in the U.S. Senate be filled by appointment by the governor. In order to ensure uniformity in procedure on such an important position, the people of Kansas should be empowered and allowed to vote. This legislation would allow the people to vote to fill a US Senate seat just as they currently would do for a US House vacancy.

Senate Ethics and Elections Cmte

Date 2-13-2009

Attachment 2

Aside from providing uniformity, this change would promote and encourage voter participation by allowing the people to choose who would represent our state in the U.S. Senate. How does a gubernatorial appointment encourage voter participation? This legislation would ensure that any vacancy would be filled promptly and in such a manner as to appropriately represent the interests of the people and our state.

Another point is that this legislation would bring more transparency and hopefully end some of the perceived so called back room deals. It would remove the partisan politics of “who holds the governor’s seat”. One can only speculate, but do you suppose the people of Illinois would like to have this change?

As to the fiscal note, any extra costs associated with holding such an election would be offset by the benefits created educating the public regarding their representation in the U.S. Senate.

It is for these reasons that I would ask the committee to give a favorable recommendation regarding this bill. Again, Madam Chair, fellow members, thank you for the opportunity to testify on behalf of this legislation.

I will be happy to stand for questions. Thank you.



TOPEKA

SENATE CHAMBER

KELLY KULTALA
SENATOR, 5TH DISTRICT
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JOINT COMMITTEE ON
SPECIAL CLAIMS
AGAINST THE STATE
JOINT COMMITTEE ON
STATE TRIBAL RELATIONS

SENATE ETHICS AND ELECTIONS COMMITTEE

TESTIMONY FOR SB 210

FEBRUARY 13, 2009

Committee:

Current law states that in the four counties in Kansas having a population of over 130,000, which are Wyandotte, Johnson, Sedgwick and Shawnee, there shall be an office of commissioner of elections, administered by an election commissioner, appointed by the Secretary of State. The other 101 counties have county clerks, who are elected by registered voters. The election commissioner's budget is approved by the board of county commissioners and paid out of the county budget. So, basically the county pays for the office of commissioner of elections, but does not have any authority over who is appointed to the position and sometimes there is confusion over who the election commissioner reports to...the person who appointed him/her to the position or the governing body that pays for his/her budget.

The intent of SB 210 is to provide an opportunity for local government to create efficiencies and clear up this confusion by allowing the board of county commissioners to appoint the election commissioner in the counties with populations of over 130,000, rather than the Secretary of State. All other requirements of the election commissioner remain the same.

Sincerely,

Senator Kelly Kultala



Testimony

Unified Government Public Relations
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Senate Bill 210 Appointment of Elections Commissioner

Delivered February 13, 2009
Senate Ethics and Elections Committee

The Unified Government supports Senate Bill 210 which would allow the Unified Government Board of Commissioners to select and appoint the Wyandotte County Elections Commissioner.

101 out of 105 Kansas counties already have local control over the selection and appointment of their Elections Commissioners. There is no reason the four largest counties should be treated differently.

The Unified Government supports local control and Home Rule. Having the Secretary of State make the decision who will serve as Elections Commissioner in Wyandotte and the three other large counties, is in direct contradiction to local control. But the issue is more than philosophical. There is a practical reason for this change. County Commissioners are responsible for the budgets and operations of the Elections Office, they should have the say in who is hired to perform the job.

Your support of Senate Bill 210 is encouraged.

Senate Ethics and Elections Cmte

Date 2-13-2009

Attachment 4



Wyandotte County Election Office

Bruce L. Newby, Election Commissioner
Frances D. Sheppard, Assistant Election Commissioner

TESTIMONY BEFORE SENATE COMMITTEE ON ETHICS AND ELECTIONS

Friday, February 13, 2009

Thank you for the opportunity to speak briefly in opposition to Senate Bill No. 210.

Senate Bill 210 seeks to change the manner in which the Election Commissioners for the four most populous counties in the state are selected and appointed. This bill gives the appointing authority of the Secretary of State to the County Board of Commissioners. Nothing could or would be improved by making this change to existing law and procedure. Appointment of Election Commissioners by the Kansas Secretary of State has served and continues to serve the state of Kansas and the counties of Johnson, Sedgwick, Shawnee, and Wyandotte extremely well.

The selection and appointment process used by the Secretary of State is extremely fair and ensures that the best qualified applicant is appointed. The county is fully involved in the process from the beginning. Applications and resumes are reviewed and interviews of applicants are conducted by a panel of county officials, the State Election Director, and the Secretary of State's Chief of Staff. The panel recommends the best three for interview by the Secretary of State. After his interview, the best applicant is appointed. This process is extremely fair to each county affected but it also ensures that the appointee fully understands the magnitude and complexity of the responsibility to which he or she is appointed.

A county Election Commissioner serves the voters of the county to provide fair and honest elections. The Secretary of State interprets election laws and determines election standards and best practices. As the chief state election official, it makes perfect sense that the Secretary of State possesses and retains the authority to select and appoint county election commissioners. To be successful, election commissioners must work closely with city and county officials, with multiple school districts, with colleges and universities, with public utilities and drainage districts, with each of the recognized political parties, and county residents. We cooperate with and must have the cooperation of our county officials. But it is the Secretary of State to whom we turn for guidance, instruction, standards and procedures for properly conducting elections.

I oppose Senate Bill No. 210 and welcome any questions you may have.

Bruce L. Newby
Election Commissioner

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Senate Ethics and Elections Cmte

Date 2-13-2009

Attachment 5

Johnson County Election Office



Brian D. Newby
Election Commissioner

TESTIMONY BEFORE THE SENATE COMMITTEE ON ETHICS AND ELECTIONS

Friday, February 13, 2009

Thank you for the opportunity to provide written comments associated with Senate Bill Number 210.

First, not to ignore the obvious—I am not related to the Wyandotte County Election Commissioner. I am honored to call him a friend but had not met him until his swearing-in ceremony in 2006. While it isn't uncommon to have persons with the same last name working together, it is a very odd coincidence that we were both appointed to our positions by the Secretary of State.

Likewise, I did not know Secretary of State Ron Thornburgh until days before I was selected as Election Commissioner in 2004. Secretary Thornburgh created a comprehensive applicant process, with a screening committee comprised of persons I did not previously know, and I was proud that the committee advanced my candidacy from among 65 applicants.

Regardless of how an Election Commissioner is eventually appointed, I am an advocate for that process, although I don't believe Senate Bill 210 is intended to change the method Election Commissioners are selected. I believe that the process created by Secretary Thornburgh utilizes could be emulated by a county governing body if that body were now appointing Election Commissioners.

It is my understanding that Senate Bill 210 only changes the *entity* doing the appointing, from the Secretary of State to the Board of County Commissioners. However, this is a significant public policy change.

Such public policy goes beyond the actual appointment and reporting structure of the Election Commissioner. Personally, I don't have an immediate opinion on the question of who appoints, but I would ask the Committee to thoughtfully consider the far-reaching public policy impacts of what, on the surface, is a very simple word change.

In our case in Johnson County, while I don't report to the County Commissioners, my budget is established by the Board and I feel accountable to the Board. I have built working relationships with each Board member, as well as leaders in our county government.

In most Kansas counties, and in Johnson County, each election is certified by the Board of County Canvassers, comprised of the Board of County Commissioners. So, the county governing body certifies the election results presented by the Election Commissioner. The neutrality eliminates concerns that a Board member who also is a candidate, for instance, could sway the outcome of an election by pressuring an employee to conduct illegal activities.

Senate Ethics and Elections Cmte
Date 2-13-2009
Attachment 6

Of course, the Secretary of State also is an elected position, but it is statewide and that race isn't under the jurisdiction of one county election official or one Board of County Canvassers.

Elections are highly regulated through laws and standards and there could be conflicts between these laws and guidelines and a Governing Body's objectives and directions. Adequate funding to conduct elections is required by law, but a Governing Body could provide less than necessary funding and leave the Election Commissioner without the ability to meet the requirements of law and no point of escalation to raise such concerns.

Although I interact with the Board often, the fact is that I am one of only about 30 department heads. My direct public-meeting face time with the Board is very limited. If this law change were enacted, I could see the Election Commissioner eventually reporting up through a County Manager or Deputy County Manager, who would become filters of information between the Election Commissioner and the Board. This would, essentially, make the County Manager the chief election officer in the county. Currently, the Election Commissioner is autonomous from the County Manager and operates much like the Sheriff or District Attorney, following county policies and sharing county resources.

And, if addressing this statute, there is probably also the matter of the proper threshold for which to appoint an Election Commissioner in the first place. The existing law sets that population threshold at 130,000 and that number may or may not be the most appropriate metric today.

I raise these issues only as examples of items I would request the Committee consider before taking action with this bill. I applaud the Committee for giving existing public policy a fresh evaluation and am confident that whatever conclusions the Committee reaches will be best for all Kansans.

Thank you.

Brian D. Newby