

MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE.

The meeting was called to order by Chairperson Representative Don Myers at 3:30 p.m. on February 3, 2003 in Room 521-S of the Capitol.

All members were present except: Representative Ruby Gilbert, Excused

Committee staff present: Ken Wilke, Revisor
Dennis Hodgins, Research
Kathie Sparks, Research
Shirley Weideman, Secretary

Conferees appearing before the committee:

HB 2061 Proponents:

Jennifer Foster, Rossville
Randall Allen, Kansas Association of Counties
Jim Edwards, Kansas Association of School Boards
Don Moler, League of Kansas Municipalities
Robert Sharp, Harper County Commissioner

Opponent:

Mark Desetti, Kansas National Education Association

Neutral:

Brad Bryant, Deputy Assistant Secretary of State

Others attending: See attached list.

Chairman Myers opened the hearing on **HB 2061 - Elections: Grounds for recall.**

Jennifer Foster of Rossville, which is in Kaw Valley Unified School District No. 321 appeared before the committee as a proponent for **HB 2061.** She told the committee of the problems their board had in trying to reorganize their school district. Ms. Foster also said that the opponents of the reorganization sought and injunction against the board in the district court and then, when that failed, they circulated petitions seeking to recall three of the board members who had voted for the restructuring plan. (Attachment 1)

The second proponent for **HB 2061** was Randall Allen, Executive Director of the Kansas Association of Counties. He told the committee that the bill retains two grounds for recall: 1) conviction of a felony, and 2) failure to perform duties as prescribed by law. It also removes two other grounds for recall: 1) misconduct in office and 2) incompetence, which are not defined in statute and therefore subject to interpretation. Mr. Allen said that these latter two grounds are difficult, if not impossible, to define with any degree of precision, and as such, inadvertently can serve as a vehicle to remove officials who are doing their jobs and giving attention to their positions, but at the same time making tough decisions on behalf of constituents. (Attachment 2)

Jim Edwards of the Kansas Association of School Boards appeared before the committee as a proponent of **HB 2061.** He said that the bill was prompted in part by a decision of District Judge Tracy Klingensmith. Mr. Edwards indicated that the judge's decision was handed down in a case where several school board

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members were threatened with recall after voting to convert a high school building to another use. The judge said the current law “needs clarity, either in the interpretation of current law, or by legislative amendment to existing statutes” as there is no legal definition of “misconduct” or “incompetence” in the recall statutes. (Attachment 3)

Don Moler, Executive Director of the Kansas League of Municipalities was also a proponent of **HB 2061**. He said the League believes that the two most abused portions of the recall act are misconduct in office and incompetence. Mr. Moler indicated that since neither of these terms is defined, they cover a very wide range of activities. As a result, it is very easy to come up with grounds under these very broad, poorly defined statutory terms to instigate a recall proceeding against an elected public officer. He also said that once an allegation has been made and sufficient signatures have been collected, it is no longer a search for truth and does not have to be proven to be true. (Attachment 4)

The last proponent for **HB 2061** was Robert Sharp, Harper County Commissioner. He told the committee how he had been subjected to a recall petition in Harper County. Mr. Sharp told the committee that it was a frivolous issue about not having an open meeting, since the meeting was recessed to another date because of bad weather and the public was not notified. He said that the only thing that saved him was that the statute, allowing people outside of his district and county to sponsor a petition, was not in effect until July of 2002 and this occurred in April and May of 2002. Mr. Sharp said the people sponsoring the petition were not all from his county .

The proponents responded to committee members questions after all of them had testified.

Mark Desetti, representing the Kansas National Education Association, appeared before the committee as an opponent to **HB 2061**. He gave two examples where the current law has worked in the state. In the first incident in Piper, the board was found to have violated the open meetings act and made a decision during an illegal closed meeting that the electorate found inappropriate. In the ensuing recall election, one of the board members was removed. Mr. Desetti cited another example where a school board failed to examine the financial transactions of the district and an 18-year-old, who took the time to look at some credit card purchases, found some rather dramatic misuse of funds. There was no recall attempt made, but he indicated that it might have been under the incompetence provision should the voters have so wished. (Attachment 5) Mr. Desetti answered questions asked by committee members.

Brad Bryant , Deputy Assistant Secretary of State, appeared before the committee as neutral to **HB 2061**. He questions whether the recall approach in HB 2061 will be effective. He said with the recent increase in the number of recall efforts, and also an unfortunate tendency for recall efforts to go to court usually delaying the resolution of the controversy, often means that the voting public never has the opportunity to exercise their constitutional right of recall at an election. Mr. Bryant questioned whether the number of spurious recall efforts based on questionable grounds would be reduced by removing two of the grounds for recall from the law. He indicated that there are instances where elected officials are incompetent, one example being that some people become incapacitated due to illnesses, and misconduct can occur in the form of gender or age harassment. Mr. Bryant said their office is awaiting a hearing on **SB 103** which would establish a quasi-judicial recall board modeled after the objections board. (Attachment 6) Mr. Bryant responded to committee members questions.

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Chairman Myers closed the hearing on **HB 2061**.

Chairman Myers asked for introduction of committee bills.

Deputy Assistant Secretary of State Brad Bryant asked for the introduction of three committee bills requested by the Kansas County Election Officials Association:

The first bill would allow the election officer to appoint a special bi-partisan board to open the sealed sacks of ballots to look for write-in votes in cases where the original people counting ballots failed to produce the write-in total. Representative Sawyer moved and Representative Yonally seconded the motion that this bill be introduced. Motion passed.

The second bill would set a deadline for special elections to be requested of the election officer by local governing bodies. This would give election officials enough time to prepare ballots. Representative Miller moved and it was seconded by Representative Sharp that this be introduced as a bill. The motion passed.

The last bill would change the deadline in the current law from 30 days to 60 days for processing annexations by cities. This would give the county election officer time to process voters and ballots. Representative Sharp moved that such a bill be introduced. The motion was seconded by Representative McLeland. Motion passed.

The meeting was adjourned at 5:05 p.m. The next scheduled meeting is February 5th at 3:30 p.m.