

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 March 17, 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:

**SB 103** Proponents: Brad Bryant, Deputy Assistant Secretary of State  
Jim Edwards, Kansas Association of School Boards  
Mark Tomb, League of Kansas Municipalities  
Opponent: Mark Desetti, Kansas National Education Association

Others attending: See attached list

Representative Wilson moved to approve the committee minutes for March 10 and 12. Representative Miller seconded the motion and the motion passed.

Chairman Myers opened the hearing on **SB 103 - Elections; recall procedures.**

The Chair requested the Revisor of Statutes, Ken Wilke to explain **SB 103**. Ken said that Section 1 changes the statutory grounds for recall by eliminating “incompetence” and explaining the term “misconduct in office” as a violation of law by the officer that impacts the officer’s ability to perform the duties of that office. Sections 2 is a procedural portion of the process in recall, clarifying the language so that we’re looking at 10% of all the votes cast for the candidates at the last general election. Section 3 has a similar change. Section 4 has been rewritten regarding the recall of state officials, adding that the Secretary of State reviews the application and certifies or notifies a committee of the grounds of refusal. It also adds (b) a mandamus proceeding. Section 5 makes a few changes in wording in the existing law. Section 6 covers local, county elections and Section 7 makes revisions for the recall of local officials similar to those for state officials, but the county or district attorney or other designated attorney will review the application. Section 8 adds more clarification of votes needed. Section 9 allows for a statement to be submitted and Section 10 changes the ouster statute to include “mental impairment”.

Brad Bryant, Deputy Assistant Secretary of State appeared before the committee as a proponent of **SB 103**. He said that the bill will improve the process for recalling state and local elected officials by:

- (1) amending the grounds for recall by defining “misconduct in office,” removing “incompetence” and adding a definition of “mental impairment” into the ouster statute,
- (2) clarifying which election results are used to calculate recall petition requirements,
- (3) increasing the authority of the Secretary of State, at the state level, and the county or district attorney, at the local level, to substantively review the grounds for recall,
- (4) maintaining a public access file of the grounds for recall and the statement in defense of the

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person being recalled in the county election office instead of posting them at each polling place.

(Attachment 1) Mr. Bryant responded to questions asked by committee members regarding the original bill with the recall board and the difference between a local-level recall and a state-level recall.

Jim Edwards, Kansas Association of School Boards, testified in support of **SB 103**. He indicated that the bill with the Senate amendments addresses the issue of frivolous recall. In current law, to be legally sufficient, a recall petition must state one of four grounds for the recall. They are 1) conviction of a felon, 2) misconduct in office, 3) incompetence, or 4) failure to perform duties prescribed by law. He said there were no definitions for two of the grounds for recall, and, as a result, these grounds can be alleged simply because a school board member makes an unpopular decision. This bill not only removes “incompetence” and defines “misconduct in office”, but also provides a mechanism that would look at the “structural” aspects of the recall petition as well as the “merits” of the petition. (Attachment 2) Mr. Edwards answered questions asked by committee members.

Another proponent of **SB 103** was Mark Tomb, League of Kansas Municipalities. He said that the recall statutes have provided weapons for those wishing to attack public officials, without reasonable safeguards for elected public officials. He indicated that the two most abused portions have been misconduct in office and incompetence. Mr. Tomb also said that he supports this bill because it removes those terms which are subject to broad interpretation and can lead to an abuse of the statute. (Attachment 3) Mr. Tomb responded to questions asked by committee members.

Mark Desetti appeared before the committee as an opponent of **SB 103**. He said that the law has been working, although it may be inconvenient or messy to some. He has four major concerns with the bill as it has been amended. His first concern is with the percentage of votes for a state officer to be recalled, page 1, lines 41 through 43 and page 2, lines 6 through 8. His second concern is with the definition of “misconduct in office”. He would expect that a violation of the open meetings act would be considered misconduct, but does it impact the board member’s ability to perform the official duties of the office? His next concern is that it gives the Secretary of State, rather than the voters, the authority to determine whether the facts support the grounds for recall. Mr. Desetti’s last concern with the bill is moving incompetence from the recall statute to the ouster statute. He indicated that defining incompetence as “mental impairment such that the person lacks the capacity to manage the office held” restricts the ability of the electorate to seek either recall or ouster. (Attachment 4) Mr. Desetti answered questions asked by committee members.

Brad Bryant of the Secretary of State’s Office proposed an **amendment to SB 103 to clarify which election is used to calculate the number of signatures required on recall petitions**. In sections 2, 3, 5, 7 and 8 it would read after the number or %..... *“of the votes cast for all candidates for the office of the state (local) officer sought to be recalled, such percentage to be based upon the last general election for the current term of office of the state (local) officer sought to be recalled”*. (Attachment 5)

Chairman Myers closed the hearing on **SB 103**.

Chair Myers told the committee he plans to work **SB 103** and **SB 166** on Wednesday.

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The meeting was adjourned at 4:55 p.m. The next scheduled meeting is March 19 at 3:30 p.m.