

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Chairperson Al Ramirez at 1:30 p.m. on March 10, 1994 in Room 531-N of the Capitol.

All members were present except: Senator Feleciano - Excused

Committee staff present: Julian Efird, Legislative Research Department
Fred Carman, Revisor of Statutes
Jackie Breymeyer, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

The Committee took up the continuation of **HB 2596, HB 2597, and HB 2598.**

Staff briefed the committee on the bills.

The Vice Chairman stated that he was a member of the body that drafted the bills. The statutes currently say there shall be a KBI check. The question at that time was, who was to receive those KBI checks in the Pensions, Investments and Benefits committee. In discussion it was decided that no one in that committee wanted to receive them at that particular time. The question came up about what happens in the future. There are three different policy issues that need to be decided; KBI searches, who is to receive them, and should those members appointed by the President of the Senate and the Speaker of the House be subject to confirmation. The committee believes they should be subject to confirmation.

The comment was made that House members are not involved in the confirmations process.

The reply was that they were were last summer. The joint committee makes the recommendation to the confirmation process. It was the first time House members ever voted on a recommendation for confirmation. The Chairman of the Pensions committee is a House member, Representative King.

Another comment was that if anyone should be looking at the KBI reports, it probably should be the oversight committee of the confirmations process because they are all Senators. Why should the House become involved in the process.

It was explained that this committee, with House members on it, by statute reviews the appointees of the Governor and makes recommendations to a standing committee. The standing committee makes the recommendation that goes to the Senate for confirmation.

Staff explained about the bill briefs. They do not give a line-by-line explanation of the bill, but an overview. That is what the Supplemental Note attempts to do on each of the three bills. As amended, the bill would revise the current statutes concerning background investigations and the legislative process, not the Senate confirmation process, to review members appointed to the KPERS Board of Trustees. Currently the Board consists of nine members: 6 appointed and three elected members. The way the current law reads now, (and there is a difference of opinion on interpretation), it appears to provide that all nine trustees, including the three elected members are subject to KBI background investigations. The law is not clear on this. How an elected official would be turned out of office if something in a KBI background check presented a problem, is an unsolved question. There are no qualifications that would disqualify people from serving on the Board if they were elected to office. There are many dilemmas in terms of the way current law reads. The bill addresses a few of these policy issues. Only the four members appointed by the Governor are subject to the legislative confirmation process. This includes going before the joint committee. This is the first time through law the Legislature has required House members to be involved in the confirmation process.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, Room 531-N
Statehouse, at 1:30 p.m. on March 10, 1994.

In the Senate, the President of the Senate designates the standing committee that will receive and review the nominations by the Governor. The nominees made by the President and the Speaker, each of whom designates one Board Trustee member, are not required to go through the confirmations process. Likewise, the State Treasurer, who is an ex officio member by virtue of election by the public, also serves on the Board, as well as two members of the retirement system.

The issue about who is eligible to serve on the Board that is elected by the membership of KPERS is an issue addressed in **HB 2598**. This bill would make the four members appointed by the Governor and two appointed by the legislative leaders, subject to both the background checks by the KBI and to a legislative confirmation process, and would include the joint committee review and a standing Senate committee review. The other three elected members of the KPERS Board would not be subject to the KBI background check or the legislative confirmation process.

The House Governmental Organization and Elections committee amended the bill to clarify that KBI reports would be provided in executive session. It did not talk about the open meetings law explicitly. It included a felony penalty for anyone disclosing this confidential information presented to the legislative committees outside the setting of the closed session.

In giving background, staff commented that this was the subject matter that covered several months of the joint committee struggling to try to decide whether this would all go in one omnibus bill for the Legislature to consider or whether it be broken up into several bills, some of which have more than one policy. There are a group of Senate bills that have passed, as well as these House bills that could be part of an omnibus KPERS bill to reconcile some of the problems in current law that were brought to the joint committee's attention.

Several of these bills dealing with the same policy considerations were brought forward by the Vice Chairman. SB 454 was passed out of committee, passed by the Senate, a motion was made to reconsider, and it was sent back to the committee because the Governor wanted to introduce another bill that changed the same section. The Vice Chairman would like the committee to review the entire policy issue which includes the Senate bill, the three House bills, and the Governor's request that there be no election; the election cost approximately one hundred thousand dollars and the person elected is no longer a member of KPERS. All of these policy considerations could be done in one or two bills.

Since there is so much subject matter contained in this legislation, staff recommended to the Chairman a subcommittee might be appropriate.

The Chairman asked Senator Harris to chair a KPERS subcommittee, with Senator Lee and Senator Reynolds on the committee. Staff will also be present, as well as the Chairman and Vice Chairman as time permits. The subcommittee will meet Monday, March 14, 1:30 p.m. in 531-N.

The Vice Chairman explained the provision of **SB 454**. The State Treasurer cannot appoint an alternate, or someone to vote for her, at the KPERS meeting. The bill states the Treasurer must vote.

The question was posed regarding the concern about the Board having access to the KBI reports. The reply given by the Vice Chairman was that with large funds involved someone should have the background checks, whether that be the Speaker, President, Governor, or KBI. The smaller the access pool the better. Confidential records are being handled. Information that could be damaging could be leaked.

Staff commented that traditionally in Kansas, the KBI background check has not been on all appointees, but only upon selected positions such as the Director of the Lottery, and the Director of the Racing Commission. Historically, it has been the appointing authority who has been briefed by the Director of the KBI. In these bills the focus could be on the appointing authority; the Governor appoints four; the President appoints one; the Speaker appoints one. Precedent might be considered in presenting a briefing to those appointing authorities rather than the full group. That would be consistent.

Where the confusion arises is that the KBI background checks in current law appear to apply to all nine Board members, but only the four gubernatorial appointees are subject to the confirmation process. The House passed the bill on to the Senate that would add the two legislative appointed members to the confirmation process for the first time and keep them subject to the KBI background checks. The elected members at this time appear to be subject to the KBI background check, but not the confirmation process. The bill would clarify that the elected people would not be subject to checks, nor subject to the confirmations procedures. It clarifies some of the questions that have arisen.

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The Attorney General appeared before the joint committee this summer and indicated that he would give the Legislature a chance to cure a possible defect in the election of the two KPERS Board members (not just one, but two were identified by the Attorney General). In the process of the election, while there is statutory guidance, there were rules and regulations that before the conclusion of the certification of the election, expired and the Attorney General called into question the entire election affecting the two members.

HB 2598 is designed in part to cure the question of the election being valid and having two members who are voting who could possibly be subject to removal procedures initiated by the Attorney General. It is complicated because there are different things that line off in the statutes together. The bill clarifies that in future elections, no one who is a non-vested member; inactive, would be eligible to be elected. The individual who was elected was a state employee at the time, but was not vested; did not have the ten years of service. She left her employment with the state agency. Under procedures KPERS cannot refund her money for a period of five years unless she returns to work for an eligible employer, so she becomes an inactive, rather than an active member for that period. The rules and regulations would have made her ineligible, but the statute is not clear about her ineligibility. This is another policy the bill attempts to reconcile for future elections; to make certain in statute that ineligible, nonvested members in the future will not be eligible to serve on the Boards. The term is for four years.

The subcommittee will begin work on the bills Monday with the committee secretary setting the agenda in the Calendar.

The meeting was adjourned.

The next meeting is scheduled for March 15, 1994.

Senate

SENATE
COMMITTEE: Governmental Organization

DATE: March 10, 1994

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