Report of the Special Committee on Ethics, Elections, and Local Government to the 2016 Kansas Legislature

CHAIRPERSON: Senator Mitch Holmes

VICE-CHAIRPERSON: Representative Mark Kahrs

OTHER MEMBERS: Senators Oletha Faust-Goudeau and Steve Fitzgerald; Representatives Keith Esau, Tom Sawyer, and John Whitmer

STUDY TOPIC

The Committee is to review and study the following issues:

- The sections of 2015 HB 2104, relating to changing elections to November, with the purpose of determining if any trailer legislation is needed in order to make transition more seamless, correct any drafting errors, and avoid unintended consequences;
- Possible conflicts of interest of school board members including a hearing on 2015 HB 2345, which deals with this topic;
- Campaign finance laws of other states for the purpose of considering ways to modernize Kansas campaign finance statutes;
- Why Kansas has a disproportionate number of local governments and possible ways to simplify and reduce this number;
- Precinct and school district lines, and ways to simplify and/or standardize for the purpose of reducing ballot styles; and
- Whether governmental entities should be required to publish, with their budgets, an accounting of money spent for lobbying purposes (in addition to having required lobbyists to report similar information pursuant to 2015 HB 2183.) (Reference was made to 2015 SB 42, as amended by the Senate Committee of the Whole, for specific detail.)

Special Committee on Ethics, Elections, and Local Government

Report

Conclusions and Recommendations

The Special Committee considered five of the six topics assigned by the Legislative Coordinating Council, as well as an additional topic. With respect to possible trailer legislation for HB 2104, testimony indicated no such legislation was needed at this time. No suggestions were considered regarding either the possible simplification or reduction of the number of local governments, or the question of whether to require governmental entities to report regarding publicly funded lobbying. The additional issue considered, that concerning the City of Frederick, can be addressed during the 2016 Legislative Session after additional research is provided by the League of Kansas Municipalities.

With respect to recommendations on the issue of school board members' conflicts of interest, three alternatives were offered: (a) take legislative action to define a 'bright line' applicable to all elected officials and not just school board members; (b) request the State Board of Education gather best practices from local school districts and apply them statewide; or (c) make no recommendation. After discussion, it was moved, seconded, and approved that no recommendation be made.

The following recommendations were approved regarding campaign finance:

- The Special Committee recommends the Legislature adopt 2015 HB 2213, as amended by the House Committee on Elections, concerning increasing campaign contribution limits; and

- The Special Committee recommends the Legislature adopt 2015 HB 2215, as amended by the House Committee on Elections, concerning campaign finance transferability, with only an additional technical amendment to change the enactment date.

Proposed Legislation: The Special Committee proposed no bills for introduction.

Background

The Legislative Coordinating Council (LCC), in 2015, created the Special Committee on Ethics, Elections, and Local Government, which was composed of seven members. The LCC charge to the Committee included the following:

- Review the sections of 2015 HB 2104, relating to changing elections to November, with the purpose of determining if any "trailer" legislation is needed in order to make transition more seamless, correct any drafting errors, and avoid unintended consequences;

- Examine possible conflicts of interest of school board members including a review

of 2015 HB 2345, which deals with this topic;

- Review campaign finance laws of other states for the purpose of considering ways to modernize Kansas campaign finance statutes;

- Study why Kansas has a disproportionate number of local governments and possible ways to simplify and reduce this number;

- Review precinct and school district lines, and ways to simplify and/or standardize them for the purpose of reducing ballot styles; and

- Examine whether governmental entities should be required to publish, with their budgets, an accounting of money spent for lobbying purposes, in addition to having required lobbyists to report similar information pursuant to 2015 HB 2183. This was in consideration of a Senate Committee of the Whole amendment to 2015 SB 42, which was not adopted in the Conference Committee Report to HB 2183.

The Committee was granted two meeting days by the LCC. It met on October 6 and November 20, 2015. The Committee studied the need for "trailer" legislation for 2015 HB 2104, campaign finance issues and government entities' reporting of publicly funded lobbying on October 6. The issues of school board member conflict of interest and the number of local governments were addressed on November 20. Due to the lack of meeting time, the Committee did not study precinct and school district lines as they relate to ballot styles.

Committee Activities

The Need for "Trailer" Legislation for the Spring-to-Fall Elections Bill (2015 HB 2104)

2015 HB 2104 moved election dates for cities, school districts, and some special districts from the spring to the fall. The bill created several new statutes, modified many statutes, and repealed others.

To determine whether adjustments were needed to ensure a seamless transition from the previous statutory scheme, the Committee received information from Legislative staff and testimony from the Secretary of State's Office, the Kansas County Clerks and Election Officials Association, the League of Kansas Municipalities (LKM), and the Kansas Association of School Boards (KASB) regarding this issue. All those offering testimony agreed there was no need for "trailer" legislation at this time. The sole issue noted was possible confusion regarding the effective date; although the bill stated clearly the change from spring to fall elections would commence January 1, 2017, the bill as a whole was made effective upon publication in the statute book (*i.e.*, July 1, 2015). This left in some minds a concern regarding the effective date of a number of attendant statutes, to which changes were made to related activities such as filing for office. However, the Secretary of State's Office representative stated the Secretary of State had agreed to seek adoption of a regulation clarifying all changes necessarily commensurate with the change in 2017 from spring to fall would not begin until after January 1, 2017. Other conferees agreed this would address the question satisfactorily.

Also related to the effective date was reservation of comment until the change in election dates from spring to fall had taken effect. Several of those offering testimony indicated since HB 2104 will not be effective until 2017, possible changes might surface afterward.

Finally, some conferees noted a more general problem with elections of certain irrigation districts. This was not due to the change of election dates; rather, it concerned issues such as who is qualified to vote. Numerous complaints had been made to county election officers because no irrigation district residents except landowners are qualified to vote in these elections. The Committee Chairperson indicated this issue would be addressed later and not during this Committee's deliberations.

Campaign Finance: Contribution Limits

An elections policy specialist from the National Conference of State Legislatures (NCSL) presented historical and comparative information regarding contribution limits. Noting first the distinction between campaign contribution and expenditure limits, the specialist then summarized relevant United States Supreme Court cases. She stated in *Buckley v. Valeo* (1976), the Court found setting contribution limits was constitutional, but setting expenditure limits was not. Contribution limits were upheld because they act as a deterrent to *quid pro quo* corruption. In *Randall v. Sorrell* (2006), the U.S. Supreme Court declared states cannot limit expenditures for "independent communications," meaning those communications expressly advocating the election or defeat of a clearly identified candidate but not made in cooperation or otherwise coordinating with the candidate, any agent of the candidate, or any political party or party agent. The Court also found states must ensure their contribution limits are high enough to enable a candidate to run an effective campaign. *Citizens United v. Federal Election Commission* (2010) was the case in which the Court declared states cannot place limits on the amount of money corporations, unions, or political action committees (PACs, referred to in Kansas statutes as political committees) use for what are termed "electioneering communications" – those in which advocacy for or against a specific candidate is not present – as long as these groups do not coordinate with a candidate. The Court also ruled corporations, unions, and PACs may spend unlimited amounts of money on ads and other communications designed to support or oppose a specific candidate. The most recent Supreme Court decision in this area was *McCutcheon v. Federal Election Commission* (2014), wherein the Court declared as unconstitutional individual aggregate limits (limiting an individual to a specific total contribution amount for all candidates to which the individual contributes).

In summary, the specialist stated the Court had declared states may impose candidate contribution limits; however, they must not be too low to run an effective campaign, and there may be no individual aggregate limits. In addition, states may not impose limits on independent expenditures.

The NCSL elections specialist summarized current federal contribution limits to a candidate as follows:

- Individual – $2,700;
- Candidate – $2,000;
- Multicandidate PAC – $5,000;
- Non-multicandidate PAC – $2,700;
- State/local/district party – $5,000; and
- National party – $5,000.

In summarizing contribution limits from the states, the specialist stated 12 states have no limits on contributions to candidates, and 6 have no limits at all. Other states have various limits on contributions to candidates from individuals, state parties, PACs, corporations, and unions. Among the 25 states with individual contribution limits, Kansas was reported as having the fifth or sixth lowest limits, depending on whether the office sought was Governor, State Senator, or State Representative. The specialist also reported Kansas' limits were below both the average and the median of the 25 states for Governor (average – $4,509; median – $3,500; Kansas – $2,000) and State House (average – $2,112; median – $1,000; Kansas – $500), and at the median for State Senate (average – $2,182; median/Kansas – $1,000). The NCSL specialist made a similar comparison for state party-to-candidate limits and summarized information about PAC and corporation/union-to-candidate limits as well.

Four neighboring states were highlighted in her presentation for comparison purposes. Nebraska and Missouri have no limits on individual, state party, PAC, corporation, or union contributions to candidates. Oklahoma's limit on individual contributions is $2,700 per candidate – higher than Kansas' limit to any state candidate. Oklahoma's other limits (from the state party to the candidate, and from a PAC to a candidate) were discussed as well; Oklahoma prohibits corporate and union contributions to candidates. Colorado's limit on individual contributions to candidates is $550 per election for statewide

candidates and $200 per election for legislative candidates; the limits double for a candidate who accepts voluntary spending limits and meets certain specific conditions. Colorado's state party-to-candidate limits per election also were presented: for gubernatorial races – $569,530; for other statewide offices – $113,905; for Senate – $20,500; and for House of Representatives – $14,805. Other limits were discussed as well.

The specialist indicated 21 states adjust their contribution limits for inflation: Arkansas, Arizona, California, Colorado, Delaware, Georgia, Illinois, Maine, Maryland, Michigan, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Tennessee, and Washington.

With respect to general legislative trends, the specialist indicated most changes to contribution limits were to increase the limits. Alabama, Arizona, Connecticut, Florida, Maryland, Michigan, Minnesota, Nebraska, North Carolina, Vermont, and Wyoming raised contribution limits in the past two years, and legislation has addressed adjusting contribution limits based on inflation. Other trends in campaign finance legislative activity include electronic reporting and searchable databases, independent expenditure reporting, identification or disclaimers for electioneering communications, and regulating coordination between candidates and independent groups.

The Executive Director of the Kansas Governmental Ethics Commission (KGEC) summarized the history of campaign contribution limits in Kansas since 1974, when KGEC was established. The only change since 1990 was in 2012, when the limit for candidates for State Board of Education was increased from $500 to $1,000.

Transferability of Campaign Fund Balances

Legislative staff reviewed recent Kansas legislative history and laws from other states on a candidate's ability to transfer campaign fund balances to a campaign account for a different office. Recent Kansas legislative attempts were prompted by a December 2003 Kansas Supreme Court decision, which ruled transfers from a campaign account by a candidate to any account but the next one for the same office were prohibited. This decision contradicted opinions issued by the KGEC over a number of years.

Beginning with the 2004 Legislative Session, 11 bills addressing this issue have been considered as a result of the Supreme Court decision but none has been signed into law. The 11 bills (2 of which passed both chambers but were vetoed) have differed in their detail. The most recent of these bills is 2015 HB 2215, which was on General Orders in the House of Representatives when the Special Committee heard testimony on this issue, having been recommended for passage, as amended by the House Committee on Elections. This bill version was confirmed by the KGEC Executive Director to represent the KGEC's interpretation of the law as it related to transfers prior to the 2003 Supreme Court decision.

As amended by the House Committee on Elections, 2015 HB 2215 would allow a candidate to transfer campaign funds to a campaign account for any other office sought by the candidate, regardless of the campaign contribution limits associated with the new office. The transfer could take place only after all debts had been satisfied in the original campaign account. These transfers would not be included in the definition of "contribution" contained in the Campaign Finance Act. However, the bill would require transfers made in the current election cycle to be subject to the contribution limits, and any such amounts in excess of these limitations would have to be returned.

The staff member stated approximately half of states expressly address these transfers in statute and reviewed a sample of the various approaches, which include expressly disallowing such transfers, allowing transfers only under certain circumstances, and allowing such transfers subject to campaign limit restrictions.

Requiring Governmental Entities to Report Lobbying-related Expenditures

Legislative staff presented a summary of informational meetings, held during the 2015 Legislative Session in the Senate Committee on Local Government, that addressed the issue of

publicly funded lobbying. The Special Committee addressed this issue because of the Senate Committee of the Whole amendment in 2015 to SB 42 and subsequent adoption of the bill's contents, without this amendment language, onto another bill during Conference Committee.

General background. Prior to the Senate Committee's informational meetings, the issue of publicly funded lobbying had appeared in several bills in 2013, 2014, and 2015. These bills (2013 SB 109 and Senate Sub. for HB 2141; 2014 SB 343 and Senate Sub. for HB 2231; and 2015 SB 42) were briefly summarized during the meetings. With respect to the last bill named, during the 2015 Legislative Session, the journey of SB 42 was bifurcated. The bill began with language similar to 2014 Sub. for SB 343, requiring lobbyists, instead of governmental entities, to report on all public funds received from any governmental entity. The bill received clarifying amendments in the Senate Committee on Ethics and Elections. Before Senate Committee of the Whole action on the bill, the Senate Committee on Local Government held its informational hearings.

Information requests related to publicly funded lobbying. Two information requests were made concerning the use of public funds to lobby. These information requests, which were detailed in the informational hearings held by the Senate Committee on Local Government, are described below.

On February 4, 2015, the Legislative Division of Post Audit (LPA) submitted a scope statement to the Legislative Post Audit Committee on behalf of the Chairperson of the Senate Committee on Local Government. The request was to determine how much money state and local governments spent on association membership fees and dues in FY 2014, and how much state and local governments (school districts, counties, townships, cities, and special districts) spent directly on lobbyists or to associations that provide lobbying services. Approximately two weeks later, on February 18, the LPA Committee considered but did not approve the request. The letter from the LPA (Division) indicated the LPA Committee would carry the request over to the next meeting when audit requests were to be considered.

The 2015 LPA Committee request was made in part because of what was learned from a 2013 Kansas Open Records Act (KORA) request. In 2013, the Chairperson of the Senate Committee on Ethics, Elections and Local Government (later the Chairperson of the reconstituted Senate Committee on Local Government) requested the Kansas Legislative Research Department (KLRD) survey as many local governments as possible, given time and budget constraints, to obtain information on the number of, and amount spent on, membership dues to various organizations fees other than membership dues to organizations; and lobbyist services procured either by employment or by contract.

Numerous data collection challenges resulted for KLRD, including extensive staff time spent gathering, entering, and reporting the information. Ultimately a small, nonrandom sample was selected of seven counties, along with the largest city in each of those counties, as follows: Brown County – Hiawatha; Johnson County – Overland Park; McPherson County – McPherson; Montgomery County – Coffeyville and Independence (tied for largest city); Reno County – Hutchinson; Sedgwick County – Wichita; and Shawnee County – Topeka.

Another challenge facing KLRD was cost. While some local governments provided the information at no charge to KLRD, others would have required fees ranging from approximately $3 to approximately $1,250. Due to budget constraints, the KLRD Director did not authorize payment of these fees, resulting in no information obtained from any of those charging KORA fees.

The results of the KORA request included reports of membership dues paid in 2012 to various organizations ranging from approximately $5,600 (Hiawatha) to approximately $442,000 (Wichita). Although Sedgwick County had provided information in response to the KORA request, due to its format KRLD staff could not distinguish between dues and fees without investing numerous additional hours. The Sedgwick County data were reported for 18 months in total (January 1, 2012 – July 30, 2013), instead of the two separate budget years (2012 and 2013) as requested; KLRD staff did, however, compute a total from the combined data spreadsheet. For the 18-month period from

January 1, 2012, through July 30, 2013, Sedgwick County reported spending a total of more than $510,000 in membership dues and fees.

Informational hearings. In addition to receiving information such as legislative history and information requests, the Senate Committee on Local Government heard presentations regarding related actions in other states. Following is a summary of the information received.

The first presentation came from a representative of Americans for Prosperity (AFP) –Texas. The AFP–Texas representative summarized facts surrounding *Venable et al. v Williamson County and the Texas Association of Counties*. Texas law prior to the lawsuit (and afterward) prohibited the use of state funds by a political subdivision (or a private entity) to pay for lobbying expenses incurred by the recipient of state funds. Texas law also allowed county commissioners to spend county general fund money for membership and dues in a nonprofit state association of counties if (among other conditions) neither the association nor an association employee influences or attempts to influence the outcome of any pending legislation, either directly or indirectly.

AFP–Texas, after conducting a review, reported more than $50 million was spent on lobbying by local taxing entities. It also discovered, despite the law prohibiting the use of county general fund money to lobby, the Texas Association of Counties (TAC) website listed representation before both the state and federal governments as one of the services provided to counties. After unsuccessfully seeking legislative reforms in 2005, AFP–Texas filed a lawsuit (Case No. 05-483-C277, *Peggy Venable, Janice Brauner, and Judy Morris vs. Williamson County and the Texas Association of Counties, 227th Judicial District*). The case was decided in favor of the plaintiffs, agreeing the TAC had violated existing law. However, the judge issued an opinion providing authority for the TAC to continue its lobbying activity if it segregated its funds (separating membership dues and fees from other funds, such as revenues from ads in its magazine) and used the nongovernmental funds for lobbying.

The AFP–Texas representative reported that, at the time of the court decision, TAC employed 15 registered lobbyists. At the time of her presentation, TAC employed 19 registered lobbyists, for a cost of "as much as $530,000."

After the opinion was issued, AFP–Texas asked the Texas Legislature for an interim study, conducted in 2006 by the House Committee on General Investigating and Ethics. In its report the study committee acknowledged existence of laws apparently restricting the use of publicly funded lobbying, but the study committee did not recommend "any new ban on local government officials expending taxpayer dollars to lobby Austin, or any new ban on them expending taxpayer dollars to hire lobbyists to do so for them."

The study committee report did state the following:

- ...[T]his committee strongly believes that local governments can and should be required to fully disclose these lobbying activities, so that citizens can see and judge these lobbying activities for themselves, and then decide whether or not they want to support such activities when they cast [their next] vote. There is valid concern that, under the current disclosure system, citizens cannot obtain accurate information regarding how much of their tax dollars are used to lobby the legislature, and what positions are being advocated by their local governments using these tax dollars.

- …[P]art of the problem is a flawed disclosure system, and part of the problem is the very definition of lobbying. Because local government officials are statutorily exempt from registering as lobbyists, they can technically argue that their activities are not lobbying and do not need to be reported. Because of this technicality, local officials can spend an unlimited amount of tax dollars in salary and expenses as lobbying….

The study committee recommendations included two requiring specific, detailed reporting

or accounting of public funds used for lobbying, both by lobbyists and by public entities:

- Change the lobby registration process to identify registrants who are paid with local taxpayer funds as well as those who may be paid by other entities but are retained for the benefit of a public entity. When a registration involves a public entity, additional information should be required including the exact amount of the contract (as opposed to just a range), and a more detailed listing of issues covered in the lobby contract.

    - Enact legislation requiring public accounting systems to contain a clear and concise line item which includes amounts expended on lobbying including contracts for lobbying services, direct lobbying expenses (such as travel expenses for public officials) and dues paid to organizations which engage in lobbying, and to include a detailed description of the issues and positions being advocated using taxpayer funds.

The AFP–Texas representative then summarized laws of other states, which range from outright prohibition of some or all such lobbying expenses to more limited laws, such as those requiring reporting of these expenses. Following is a summary of her presentation on other states' laws:

- More restrictive states: Alaska, Connecticut, Florida, Illinois, Louisiana, North Carolina, South Carolina, Texas, Utah, and Virginia.

- Less restrictive states: Hawaii, Iowa, New Hampshire, and Washington.

- States that have begun working on the issue: Kansas, Oklahoma, and South Dakota.

Also testifying regarding other states' experiences were a Texas State Representative, the Chief of Staff for a Texas State Senator (the staff member himself a small-town mayor), a former California Assemblyman, and a former Texas city council member. The Texas Representative described the bill he introduced to prohibit certain political subdivision governing bodies from using public money for lobbying. The Texas Senator's staff person described the Senator's new policy to not meet with publicly funded lobbyists, communicating instead with the elected officials instead of their lobbyists, and he described his own experience as a mayor with positions often opposite of those of the TAC. The former California Assemblyman described the extent of publicly funded lobbying among California local governments, indicating in FY 2007 California counties and cities spent $40 million in taxpayer money on lobbyists to influence the state legislature. The Texas city council member described a 2011 situation in which he found himself testifying on a controversial annexation bill in opposition to his own staff. He then pointed out the difference between the two types of advocacy – "an elected official versus a government" – where taxpayer dollars are used to lobby for more power or more money versus an elected official lobbying as the elected representative of the entity. Finally, the city council member stated governments do not possess the First Amendment right of free speech; individuals have rights and are the ones who must tell governments what their role is. It is a question of what the proper roles are of governments and of elected officials.

SB 42 and HB 2183 action after the informational hearings. SB 42 was considered in the Senate Committee of the Whole after the informational hearings held by the Senate Committee on Local Government were concluded. During the Committee of the Whole meeting, the Chairperson of the Senate Committee on Local Government proposed an amendment to add a requirement for governmental entities to report on public funds used for lobbying purposes. The amendment, which was adopted by the Committee of the Whole, mandated the reporting of information by any governmental entity required to publish any appropriation or budget pursuant to one budget statute, namely KSA 2015 Supp. 79-2925b(c). The report was to include the following:

- An itemized listing of all public funds used by the governmental entity for (a)

employing or contracting for lobbyist services; (b) paying membership dues or other financial support to any association that employs a lobbyist; and (c) paying membership dues or other financial support to an association with an affiliated organization (organization name included) that employs a lobbyist; and

- An itemized listing of (a) all lobbyists who received public funds from the governmental entity; (b) all lobbyists hired by any association that receives public funds from the entity; and (c) all lobbyists hired by associations and affiliated organizations that receive public funds from the entity.

SB 42 passed the Senate by a 38-0 vote, whereupon it was assigned to the House Committee on Elections and no further action was taken in 2015. However, a compromise was reached on this issue during Conference Committee on HB 2183 in the 2015 Session. The Conference Committee for HB 2183 agreed to delete the Senate Committee of the Whole amendment language to SB 42, requiring governmental entities to report, and incorporate modified SB 42 language mandating only lobbyists to report regarding publicly funded lobbying expenses, beginning January 10, 2017. The HB 2183 Conference Committee report was adopted by both chambers and approved by the Governor.

School Board Members—Conflict of Interest

The Special Committee's purpose was to discuss 2015 HB 2345, and not to hold a hearing. The Special Committee received a summary of the bill, which would create new law prohibiting a person from serving as a local school board member or a member of the State Board of Education if the person had a conflict of interest. A conflict of interest is defined in the bill as a person who:

- Has a substantial interest (also defined in the bill) in any business that works directly with or provides services to this state or the school district in which the person resides;

- Holds a position of administrator, teacher, or employee of a school district or the State Department of Education;

- Resides in a home where an employee of a school district or the department of education also resides; or

- Has a spouse, sibling, or parent who is an employee of a school district or the Department of Education.

Legislative staff presented information on the laws currently governing local school boards with respect to conflicts of interest. There are three main legal restrictions on school board members in regard to conflicts of interest. First, a board member may not be a teacher, superintendent, assistant superintendent, deputy superintendent, associate superintendent, supervisor, or principal in the district they serve. (KSA 72-8202a and KSA 72-8202e) Second, a board member must disclose all of his or her financial and business "substantial interests" (defined differently in current law than in the proposed bill). (KSA 75-4301a) Third, a board member may not make a contract with a business in which the board member or spouse has a substantial interest and must abstain from any action regarding that contract. (KSA 75-4304) The second and third restrictions apply to all local government officials. Legislative staff also summarized current Kansas laws regarding the responsibilities and legal status of local school boards. Local school boards are supervised by the State Board of Education, and their powers and duties are granted by the Legislature.

Staff then presented information regarding a survey of local school board members, which was for the purpose of determining how many current members would be disqualified under the bill's original language. With the assistance of both the Kansas State Department of Education (KSDE) and the KASB, staff distributed a confidential survey to all members of local school boards in Kansas. Survey questions were as follows, with instructions to answer each and every condition for which the answer was affirmative:

- _____ I am employed by a (*any*) Kansas school district.

- _____ I am employed by the Kansas State Department of Education (KSDE).

- _____ My spouse, sibling, or parent is employed by a (*any*) Kansas school district.

- _____ My spouse, sibling, or parent is employed by KSDE.

- _____ I reside in a home where an employee of any Kansas school district or the KSDE also resides.

- _____ I have a substantial interest [defined in the survey] in a business that works directly with or provides services to the State of Kansas or my own school district of residence.

- *Optional*: I am a member of USD # ____.

A total of 1,136 responses, or 56.9 percent of a total possible from 1,998 board members, were received as of October 22, 2015. The percentage of respondents out of the total number of *filled* board positions might be higher, as it is unknown how many of the 1,998 possible positions were vacant at the time of the survey.

Staff noted these survey results should not be generalized to the entire population of Kansas school board members because it is unknown why those who did not respond did not do so.

A majority (59.1 percent) of respondents reported having none of the listed conflicts. The remaining 40.9 percent of the respondents reported having at least one of the conflicts. Detail was provided on staff analyses by specific area of conflict and by number of conflicts per respondent. A summary of the detail follows.

- A total of 685 "Yes" responses were received to the 6 items listed above. This does not represent 685 separate respondents, as some respondents reported more than 1 conflict.

- The data revealed school district employment by a relative (*i.e.*, spouse, sibling, or parent) is the area for which most of the 1,136 respondents (339, or 29.8 percent) reported a conflict. These numbers do not reflect those board members who have adult children who work for a school district. The affirmative responses to Item 5, which generated the next highest number of affirmative responses (173, or 15.2 percent), relate to school district and KSDE employment of someone living in the same household.

- Third highest in the number of affirmative responses was Item 6, where a member has a substantial interest in a business that works directly with or provides services to the State of Kansas. A total of 122 respondents, or 10.7 percent, responded affirmatively to this item.

- Of the total 1,136 respondents, 671 reported no HB 2345 conflicts and 465 individuals reported at least 1 HB 2345 conflict. Of these, 186 reported multiple conflicts.

- The most frequent combination involved affirmative answers to item 3 (a spouse, sibling, or parent is employed by any Kansas school district) and item 5 (member resides in a home where a school district or KSDE employee also resides). Of those who answered "yes" to two or more questions, 84.4 percent said "yes" to those two. Of 154 who answered "yes" to only 2 questions, 126 (81.8 percent) said "yes" to questions 3 and 5.

The Special Committee then received testimony from several current and former local school board members, a retired school district superintendent, a member of the Kansas State Board of Education, and a representative of KASB. Board members stated checks and balances exist in the current system; for example, voters generally knew relevant information about the board members' situations (*e.g.*, one's wife was a teacher; another owned a business that had done business with the district). Board members also stated their integrity has served to guide their

behavior with respect to whether to act on an issue in which there might be a conflict. Board members and other conferees testified the pool of candidates already is limited, and the bill would limit it to a much greater extent. The KASB representative indicated KASB conducted training sessions annually with new local board members regarding conflict of interest. Current law does not require a board member to recuse himself or herself when a conflict exists, nor can another member force such recusal. However, KASB training alerts members to conflict situations and advises the members to be cognizant of potential conflict areas as they determine whether to engage in action on a particular issue. Another point made was the bill singled out school board members, although every elected official faces the same or similar potential conflicts and generally has no stronger conflict laws under which to operate.

Number of Local Governments

Legislative staff summarized information obtained from 2012 U.S. Census data, which ranked 48 of the 50 states regarding size of local government. (Two states did not provide data.) Kansas ranked (a) third among the 48 states with respect to the number of "general purpose" governments (county, municipal, town, or township) per 100,000 people; (b) seventh on the number of "special purpose" (school district and special district) governments per 100,000 people; and (c) fourth overall for the total number of local governments per 100,000 people.

Five conferees provided historical and comparative information regarding Kansas' local governments: representatives of the Kansas Association of Counties (KAC), LKM, a member of the Stafford County Board of County Commissioners, the Legislative Post Auditor, and a former speaker of the House of Representatives.

According to the KAC Executive Director, 32 Kansas counties preceded statehood. Another 44 were established between 1861 and 1879. The remaining 44 were established in 1880 or later. A map was provided indicating dates of establishment; in most cases, the counties established earliest were farthest east, and those established latest were farthest west. A United States map of county boundaries showed that counties are generally more numerous, and often smaller in area, in the states farther east. The *Kansas Constitution* requires each county to have at least 432 square miles. Wyandotte County, established prior to statehood, does not have 432 square miles but has been allowed to continue as a county. Butler County is the largest county, having 1,431 square miles.

With respect to county commissioner board size, current law allow boards to have three, five, or seven members. A county's board size can change, either increasing or decreasing in size, by way of election. At one time all 105 counties' boards had 3 members. Over the past several years there has been some gradual increase in the sizes of boards though not necessarily related to county population; now, there are 12 counties with 5-member boards.

There are three different road systems, established in statutes, and a fourth system, established under the Interlocal Cooperation Act, that is used in some counties. The 3 statutory systems are the non-county unit road system, operating in 35 counties, in which the county maintains the main roads and townships maintain the local roads. The second, the county unit road system, in which townships have no road maintenance responsibilities and all roads are maintained *via* a county-wide tax, is used in 67 counties. The third system, the general county rural highway system, is similar to the county unit road system but under this system city residents do not pay taxes for former township roads. It is used in Clay, Pottawatomie, and Leavenworth counties.

Townships were discussed by three conferees: an LKM representative, the KAC Executive Director, and a Stafford County Commissioner, who is a former township board member. The LKM representative indicated there are approximately 1,268 townships. The KAC Executive Director discussed townships through his explanation of road maintenance systems and mention of the additional township duties of fire suppression, cemetery maintenance, and noxious weed control. The KAC Executive Director stated some counties have totally eliminated townships. The Stafford County Commissioner stated Stafford County has 21 townships; 3 small and 3 other, extremely small, towns; and 4,300 people. Each of the 21 townships has a road grader. One of the 21

townships has only 7 people, yet the township board must have 3 members. Filling the positions, including filling vacancies, has been problematic. The County Commissioner also questioned the efficiency of spending $250,000 for a road grader to maintain 50 miles of road. Some townships turn over road maintenance to the county, pursuant to statute. Other townships have followed dissolution procedures, whereupon road maintenance falls to the county.

The LKM representative indicated 15 cities existed prior to Kansas statehood, and a few new cities have been added in the past 2 decades. The last was the City of Parkerfield in Cowley County in 2004. Two cities have become unincorporated, the most recent being Treece in Cherokee County in 2012.

Cities in Kansas are deemed either first, second, or third class, generally based on population. Kansas has 25 first class, 98 second class, and 503 third class cities, for a total of 626. Approximately 82 percent of the state's population resides in incorporated cities.

Cities change class as they grow in population. First class cities have 15,000 or more people. Once a city's population reaches 25,000 it must become a first-class city. Second-class cities have a population of at least 2,000 but less than 15,000 people. When a city's population reaches 5,000, it must become a second-class city. Cities of the third class have populations under 2,000. To incorporate, a new city must have either 250 residents or 250 platted lots served by water and sewer lines.

The LKM representative briefly mentioned school districts and special districts. She stated there are 306 "school districts" (including community college districts) and 1,523 special districts.

Two prior studies were discussed. The issue of special districts was addressed in the 1993 Interim by the Senate and House committees on local government, in terms of the duties and functions of special district governments and their accountability to taxpayers. The Senate Local Government Committee deferred to the House Local Government Committee in regard to specific recommendations on this topic. The House Committee (a) agreed to conduct a survey of recreation commissions in conjunction with the Kansas Recreation and Park Association and have the data tabulated for review during the 1994 Session; (b) concluded all special districts that are supported by tax moneys should be brought under the cash basis law and recommended the introduction of legislation (HB 2565) to accomplish this; (c) agreed to pursue the drafting of legislation at the start of the 1994 Session to provide a means for all fire districts to consolidate; and (d) agreed to continue to investigate the possibility of drafting legislation to establish uniform procedures for the creation, consolidation, and dissolution of special districts.

In 2003, the LPA studied the issue and produced a report titled "Local Governmental Reorganization: Assessing the Potential for Improving Cooperation and Reducing Duplication." The audit report addressed two questions related to reorganizing and improving cooperation among (a) city and county governments and (b) townships and special districts.

The report stated numerous opportunities existed to streamline city and county governments through (a) merging whole units of government; (b) consolidating departments from two or more cities or counties into a single department; and (c) sharing staff, facilities, equipment, and other resources, and using cooperative purchasing agreements.

Regarding townships and special districts, the report stated the following:

- Townships, cemetery districts, and drainage districts comprised more than half the State's units of local government.

- A potential existed for eliminating township governments, cemetery districts, and drainage districts and reassigning their duties and funding to city or county governments, largely because cities and counties generally already provided the same types of services.

Lack of Governing Body for the City of Frederick

The Special Committee addressed one topic in addition to those assigned by the LCC: that of the absence of a City of Frederick governing body and the laws governing the dissolution of cities.

The City of Frederick, though it still is incorporated, apparently has no governing body. This is despite the LKM representative's statement that the last people elected to the city council would, according to law, continue to serve. According to the LKM representative, League staff have tried to communicate with the last city clerk of which LKM was aware, in an attempt to determine what could be done to assist in the situation.

It was noted no one filed as a candidate for the city council in the last election. Additionally, no 2016 budget was filed.

The LKM representative summarized three general categories of city dissolution law among states: passive, involuntary, and voluntary dissolution. Passive and involuntary dissolution are solely in the power of the state, while voluntary dissolution requires affirmative action or consent by the city. Kansas law provides only for voluntary dissolution *via* KSA 15-111, with one limited exception noted in KSA 2015 Supp. 15-111a. The former statute requires (a) a petition of the majority of voters in a city of the third class and then (b) an order for an election by the city council. This statute was adopted in 1872, codified in 1923, and has not been changed since. KSA 2015 Supp. 15-111a, adopted in 2012, provides for automatic dissolution for any city having received public money in 2010 or 2011 from the U.S. Environmental Protection Agency through the Kansas Department of Health and Environment relating to the buyout and relocation of its residents (Treece).

Conclusions and Recommendations

The Special Committee considered five of the six topics assigned by the LCC, as well as an additional topic. With respect to possible trailer legislation for HB 2104, testimony indicated no such legislation was needed at this time. No suggestions were considered regarding either the possible simplification or reduction of the number of local governments, or the question of whether to require governmental entities to report publicly funded lobbying. It was noted the issue concerning the City of Frederick could be addressed during the 2016 Legislative Session after additional research is provided by the LKM, the purpose of which would be to determine whether legislation could be drafted to define a trigger that would precede implementation of a passive dissolution process.

With respect to recommendations on the issue of school board members' conflicts of interest, the following three alternatives were offered by the Chairperson: (a) take legislative action to define a 'bright line' applicable to all elected officials and not just school board members; (b) request the State Board of Education gather best practices from local school districts and apply them statewide; or (c) make no recommendation. After discussion, it was moved, seconded, and approved that no recommendation be made.

The following recommendations were approved regarding campaign finance:

- The Special Committee recommends the Legislature adopt 2015 HB 2213, as amended by the House Committee on Elections, concerning increasing campaign contribution limits; and

- The Special Committee recommends the Legislature adopt 2015 HB 2215, as amended by the House Committee on Elections, concerning campaign finance transferability, with only an additional technical amendment to change the enactment date.