

SESSION OF 2015

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2104

As Recommended by House Committee on
Elections

Brief*

HB 2104 addresses the reasons for and filling of party candidacy vacancies for any national, state, county, or township office. The bill would delete language allowing a candidate to withdraw his or her candidacy after the primary election due to being incapable of fulfilling the duties of office, leaving only the contingency of death as a reason to withdraw a candidate's name from the ballot. The bill would make deadline and other related changes as well.

Reasons Allowed for Vacancies (Section 2)

The bill would remove the reason of incapability to fulfill office duties by deleting provisions requiring the Secretary of State to remove from the ballot the name of any nominee for any national, state, county, or township office who declares he or she is incapable of fulfilling duties of office if elected, and then withdraws.

The bill would revise the provision in law addressing removal of the name of a nominee who has died, by doing the following:

- Specifying the time frame in which a name must be removed from nomination. Current law specifies no time frame; the bill would be applicable to deaths that occur on or before the first day of September following the primary election;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Making the name removal a requirement, instead of an option; and
- Adjusting related deadlines as necessary.

“Shall” Means “Shall” (Sections 3 through 5)

The bill would require, with respect to the sections of law addressing filling a party candidacy vacancy in a district office, on the State Board of Education, and in all other congressional district, county, or state offices: (a) the certificate executed under oath by the convention chairperson or vice-chairperson also state the person elected agrees to accept the nomination; and (b) the person elected execute a notarized statement stating he or she agrees to accept the nomination.

In all three of these sections, with respect to the use of the word “shall,” the bill would state: “[T]he word ‘shall’ imposes a mandatory duty and no court may construe that word in any other way.”

Deadline and Related Changes

The bill would make the following deadline changes:

- For the office of district attorney, change the date of filing for candidacy from June 10 to the date specified in KSA 2014 Supp. 25-205(a), which is June 1 with alternate provisions for the date falling on a weekend or holiday. (Section 1); and
- Regarding the deadline by which a district convention must fill a vacancy:
 - For a district office, reduce: (a) from 21 to 14 the number of days after receipt of the notice of vacancy, to call or convene a convention; (b) from 10 to 7 the number of days before a convention to mail notice of the convention to

party chairpersons of other counties when the district crosses county lines; and (c) from 14 to 6 the number of days, after adjournment of a convention in which a quorum was not present, by which a new convention must be held. (Section 3), and

- For the State Board of Education, reduce from 21 to 10 the number of days after receipt of the notice of vacancy to call or convene a convention. (Section 4).

Background

KSA 25-306b provides two reasons to withdraw a name from candidacy for any national, state, county, or township office. Subsection (b) of that statute allows any such candidate “who declares that they are incapable of fulfilling the duties of office if elected” to withdraw. Subsection (c) allows the name of a candidate who has died to be withdrawn. KSA 25-3905 states, in part, “When a vacancy occurs after a primary election in a party candidacy, such vacancy shall be filled by the party committee of the congressional district, county, or state....”

The August 2014 primary election resulted in the election of Shawnee County District Attorney Chad Taylor as the Democrat candidate in the U.S. Senate race against incumbent Senator Pat Roberts. Following the primary election, on September 3, Mr. Taylor submitted a letter to the Secretary of State indicating he was withdrawing his name as a candidate. The Secretary of State refused to remove Mr. Taylor’s name from the ballot. This refusal resulted in a lawsuit, *Taylor v. Kobach*, which eventually was decided by the Kansas Supreme Court in favor of Mr. Taylor, whose name was ordered removed from the ballot.

The *Taylor v. Kobach* decision ultimately resulted in a separate lawsuit, *Orel v. Kansas Democratic Party*, when the

Kansas Democratic Party failed to fill the vacancy left by Mr. Taylor. A three-judge panel of the Shawnee County District Court ruled in favor of the Kansas Democratic Party. The ruling read, in part, "The use of the word 'shall' in legislation, however, 'is not plain, and construction is required.'...." Memorandum Opinion, p. 14 (quoting *State v. Raschke*, 289 Kan. 911, 914-15, 219 P.3d 481 (2009)).

The Secretary of State, who requested the bill, was the sole conferee. The Secretary opined both court decisions were erroneous and stated his office drafted the bill to prevent such actions in the future.

According to the fiscal note prepared by the Division of the Budget, the bill would have no fiscal effect on the state or its counties.