

SESSION OF 2015

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2104**

As Amended by Senate Committee of the Whole

**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, replace it with the ability to withdraw a nominee's name for medical reasons or because the nominee does not live in Kansas, revise law addressing removal of the name of a nominee who has died, and more clearly state the meaning of the word "shall" in the statutes dealing with the requirement that a party fill a vacancy on the ballot for several offices. The bill would make deadline and other related changes as well.

***Reasons Allowed for Vacancies (Section 2)***

The bill would replace the reason of incapability to fulfill office duties by doing the following:

- Deleting current law requiring the Secretary of State, for national and state offices, or the county election officer, for county and township offices, to remove from the ballot the name of any nominee who declares he or she is incapable of fulfilling duties of office if elected, and then withdraws; and
- Replacing the deleted portion with language stating a person who has been nominated may be withdrawn under the following circumstances:

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\*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>

- The nominee must certify to the Secretary of State a notice he or she is withdrawing because of a severe medical hardship signed by a doctor; or
- The nominee must certify to the Secretary of State a notice he or she does not reside in the state of Kansas.

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

- Eliminating the requirement that a request to remove the name from the ballot come from the chairperson of the county party committee before a replacement can be named, instead leaving the fact of the death as the notification;
- Requiring the Secretary of State (for national and state offices) or the county election officer (for county or township offices) notify the chairperson or vice-chairperson of the appropriate party committee within 48 hours of receiving the notification of death;
- Making the name removal a requirement, instead of an option; and
- Adjusting related deadlines as necessary.

***“Shall” Means “Shall” (Sections 3, 4, and 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. The bill would require such certification be transmitted within 21 days of receipt of notice the vacancy has occurred or will occur for a district vacancy and within 14 days for other vacancies addressed by the bill.

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 from 21 to 14 the number of days after receipt of the notice of vacancy, to call or convene a convention; and reduce 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 and from 14 to 3 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 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 Democratic 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 before both the House and the Senate Committees. The Secretary opined both court decisions were erroneous and stated his office drafted the bill to prevent such actions in the future.

The Senate Committee on Elections amended the bill to add the ability of a nominee to withdraw either for medical reasons or because the nominee does not reside in Kansas.

The Senate Committee of the Whole returned one deadline change back to current law. For a vacancy in a district office in a multi-county district, the deadline to call a district convention by mailing a notice would be changed back to at least ten days prior to the convention, instead of reducing this to seven days.

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