

SESSION OF 2016

SUPPLEMENTAL NOTE ON SENATE BILL NO. 439

As Amended by Senate Committee of the Whole

Brief*

SB 439 would create new law stating that justices of the Supreme Court may be removed from office by impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. Similarly, the bill would state the governor and all other officers under the *Kansas Constitution* shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. [Note: This language echoes Article 2, § 28 of the *Kansas Constitution*, which states: “The governor and all other officers under this constitution, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.”]

Further, the bill would establish that, for the purposes of sections 27 and 28 of Article 2 and section 15 of Article 3 of the *Kansas Constitution*, in an impeachment proceeding against a Supreme Court justice or a constitutional officer of the executive department, other high crimes and misdemeanors would include, but not be limited to:

- Offenses bearing on the justice’s or officer’s fitness for the justice’s or officer’s duties, which the justice or officer is bound by oath or affirmation to perform;
- Other indictable criminal offenses;
- Breach of the public trust;
- Breach of judicial ethics (for justices);

*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>

- Failure to perform adequately the duties of office;
- Attempting to subvert fundamental laws and introduce arbitrary power;
- Attempting to usurp the power of the other branches of government;
- Discourteous conduct toward certain persons;
- Wanton or reckless conduct;
- Personal misbehavior or misconduct;
- Failure to properly supervise, administer, or discipline personnel; or
- Such other actions which, in accordance with the constitutional provisions cited above, may constitute grounds for impeachment or discipline, suspension, or removal for cause.

Background

In the hearing before the Senate Committee on Judiciary, Senator Holmes testified in support of the bill. Senator Smith and a representative of the National Legal Foundation provided written testimony supporting the bill. An attorney and representatives of the Kansas Association of Defense Counsel and Kansas District Judges Association testified in opposition to the bill. Representatives of the Kansas Association for Justice and Kansas Bar Association provided written testimony opposing the bill.

The Senate Committee amended the bill to remove its application to appointed district court judges, apply it to constitutional officers of the executive department, and adjust the list of offenses and grounds for impeachment.

The Senate Committee of the Whole amended the bill to add language derived from Article 2, § 28 of the *Kansas Constitution*, regarding grounds for impeachment.

According to the fiscal note for the bill, as introduced, the Office of Judicial Administration indicates that if impeachment proceedings were brought against a justice or a disciplinary proceeding against a judge is held, the Judicial Branch could incur costs to provide other judges to handle the judge's or justice's work throughout the proceedings, and to sit with the court if the action is successful and a new judge or justice is appointed. However, an estimate of the fiscal effect on expenditures of the Judicial Branch cannot be determined.