

**2013 SENATE EDUCATION**

**SB 2216**

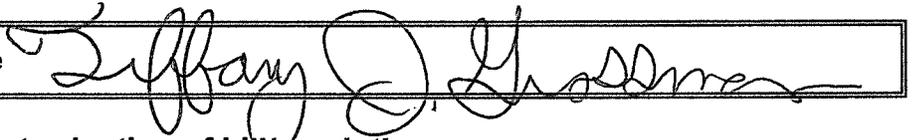
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee  
Missouri River Room, State Capitol

SB 2216  
1-28-13  
17776

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to causes of vacancy for school board positions

## Minutes:

You may make reference to "attached testimony."

**Chairman Flakoll:** Opened hearing on SB 2216

**Senator Schaible:** I am Don Schaible, District 31. I am here to introduce SB 2216 at the request of the School Board Association. The problem was if we had someone not performing their duties, there is no time frame as it is listed now. Please see attachment #1 for policy for ten items we are concerned with.

**Chairman Flakoll:** Would refusal to serve be under number five, failure to discharge. Is that equivalent?

**Vice Chairman Schaible:** Yes.

**Senator Heckaman:** Is the handout administrative rules?

**Vice Chairman Schaible:** It is the Century Code.

**Annette Benish, Leal Council for School Boards Association:** 4402-01 comes from the chapter related to elected officials. We want to hold our school board officials to the same standard as elected officials.

**Chairman Flakoll** closed the hearing on SB 2216.

**Vice Chairman Schaible:** I move for a do pass on the bill

**Senator Marcellais:** Second

A roll call vote was taken on SB 2216 for a Do Pass. 6 yeas, 0 neas, 0 absent.

**Vice Chairman Schaible** will carry the bill.

2216

Date: 1  
Roll Call Vote #: 1-28-13

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO.

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Schaible Seconded By Marcellais

Senators	Yes	No	Senator	Yes	No
Chairman Tim Flakoll	✓		Senator Joan Heckaman	✓	
Vice Chairman Donald Schaible	✓		Senator Richard Marcellais	✓	
Senator Larry Luick	✓				
Senator Nicole Poolman	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Schaible

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2216: Education Committee (Sen. Flakoll, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2216 was placed on the  
Eleventh order on the calendar.

**2013 HOUSE EDUCATION**

**SB 2216**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Education Committee  
Pioneer Room, State Capitol

SB 2216  
March 19, 2013  
20178, 20166

Conference Committee

Committee Clerk Signature



## Minutes:

**Ch. Nathe:** We will open the hearing on SB 2216.

**Sen. Don Schaible:** Sponsor, support, explained the bill. The only concern we had with the idea of school board members not fulfilling their duties and the explanation of why we would like to remove the language on lines 23 and 24 that was overstruck. We would like to replace that with the reasons that are already set in section 44-02-01. It's already clarified in there. The problem was that a school board member that doesn't show up and perform their duties for a certain length of time wasn't listed in there as, per se. Rather than just adding that kind of language to that section, we thought that since it was listed in that section already, it was easier to make it the same all the way through. That is the change we are requesting. That's the premise of this bill, to clarify the reason that the school board member who is not performing his duties, and not showing up and performing their duties at a certain amount of time and clarifying that issue.

**Ch. Nathe:** So there are school board members out there that are elected but not showing up to do their duties, more or less.

**Sen. Don Schaible:** Yes. There are other options such as the recall petition and other ways to do it, to remove them from their position. The biggest problem is the amount of time that the person has been absent. When the school board president say that the board member isn't performing their duty, and a certain amount passes that you can have them removed from office.

**Ch. Nathe:** On line 2, page 2, section 44-02-01, that more or less just sets the reasons for the dismissal or removal not the procedure. Is that correct.

**Sen. Don Schaible:** I don't have that section in front of me. It's a listing of other things in other political office and amount of time is also listed in that section and we could have just added that section of the amount of time that it takes before the determination can be made that they aren't performing their duties and add that in there; but since it's already in there and clarified in there, I thought it was easier just to do it that way.

**Rep. J. Kelsh:** On the first part, page 1, line 7, it says that school districts shall notify the county superintendent. How many counties still have superintendents that are active?

**Sen. Don Schaible:** I'm not sure, but I know there are some. There are some in our area of the state where it is still pretty prevalent.

**Rep. J. Kelsh:** I guess my question is, what would happen if there wasn't an active county superintendent, then who do they report to.

**Sen. Don Schaible:** I'm not sure, but that's existing law, so whatever is taking place now is, I presume that it be followed the same way.

**Rep. Schatz:** I'm looking at 44-02-01, and I see 10 different causes. I'm not sure what the point of this bill is. Is it the point of the bill to just add 2 more causes, just to clarify? Without knowing where to go to find 44-02-01 and I don't know if the ordinary public knows that, I'm just trying to figure out what is the point of the bill.

**Sen. Don Schaible:** As you look at #5, on 44-02, it says, "incumbents may be absent for additional period of 60 days". It's the timeframe, that was the main point of this, and there is probably one other one, because you said there was 8 listed, and 10 listed here. It was the 60 days that we were interested in. If you have a school board member that's not actually doing something wrong, except that they aren't ever showing up. Does that fall into any of the areas that we have listed, probably not? We thought we needed a timeframe which is considered to be not doing their service. This already had the 60 days in it, and that's kind of the premise that we use. Since it's already listed here, we thought it was easier to just put everything in one spot. This probably covers more than just school boards, but it would also include school boards so we put it in there.

**Ch. Nathe:** Just catch-all language.

**Sen. Don Schaible:** Yes.

**Rep. Schatz:** I'm playing the devil's advocate, I'm in the National Guard and go on deployment for a while and if I'm also a school board member, does that mean that I'm no longer a school board member.

**Sen. Don Schaible:** No, I would perceive this as the school board would see that you're not doing your job. In the case of the National Guard deployment, no one would perceive that you aren't doing your job. You would be absent because you're fulfilling some other duty. The thing is, if I'm the school board president and somebody is missing, I will try to find out why and ask them why they aren't coming to the meetings. If you have a school board member that's not performing their duties and doesn't seem like they want to, how do you remove them. Right now, without this bill, we can't do it just because they don't show up. That's what we're looking for.

**Ch. Nathe:** I think under Rep. Schatz' scenario, if a person is on the school board and gets called to active duty, they are protected by law. It is no different if someone worked at a business and got called to active duty, he does not lose his job for being gone for a year. I think they are protected under that.

**Rep. Heller:** It doesn't seem like 60 days is a long time when you're talking about a school board member because how often do they meet. Do they meet monthly? How would you know if a school board member wasn't performing duties in 60 days, just because they don't meet on a weekly basis? How often do they meet?

**Sen. Don Schaible:** I'm pretty sure that they meet at least once a month, sometimes much more than that. It's like an unexcused absence. If you're sick, or carrying for someone, or have an excuse, that's different. I'm not head hunting or looking for someone to do something wrong. If we've got someone not performing their duties, and don't seem to want to fulfill their duties, we need a way to remove them. We're just asking for a timeframe. The 60 day time limit is being used for a lot of other positions, so we thought that was a consistent timeframe.

**Ch. Nathe:** I imagine it might be somebody at the end of their term, or somebody who is pretty disgruntled with the process; certainly not a newly elected board member.

**Rep. Rohr:** Basically when a new person is elected onto the school board, they are made aware of all this information in the orientation process.

**Sen. Don Schaible:** Yes, any new school board member has to complete an orientation within 2 years, so I would imagine that orientations are taking place. When I did it, I had an orientation for new members every time someone came on board. Hopefully you have board members who want to serve and want to be doing their job. In most cases, even in the case of somebody showing up, I think it's the board's job to get them back on track and get them to perform their job duties. This is a case, just by time period, being able to remove someone that you think needs to be removed.

**Rep. Hunskor:** It would seem important that, whichever route we go, 2216 as it was originally written or with the century code that has been referenced, it would seem that the one that is more specific would be the route to go and maybe that's the way you're talking, so that there is room to get around and someone has to make a decision, the board of whoever, about another board member, has he been unfaithful to his duties or not, the bill that is more specific, would be easier for them to handle. Otherwise, we don't know for sure, it could be this or be that. Do you feel that the century code that you are referencing is more specific, easier to work with?

**Sen. Don Schaible:** I think it covers everything we want to do. The only part missing is what is the time period. That is the reason for this bill. I think it makes sense to be similar and consistent all the way through so that if you're talking about removing an elected official, it makes it clearer that it's all in one place. I agree that being precise, if putting corrective language in existing law serves the bill, there's no

**objection to that. The idea is to get a time period where a school board can designate that the person is not fulfilling their duties as a school board member and proceed with the removal process.**

**Rep. Heller: Would there be an exact time that you would start counting the 60 days, or would every school kind of look at that differently.**

**Sen. Don Schaible: As a school board president, if I was going to make that determination, I would go from a point of a school board and designate that sometime in a meeting that is the starting point, but say we're at the second meeting, which is 60 days, at that point as a school board member and I was thinking about this, I would probably contact the person, inform him that he is needed and needs to perform his duties, if not, I would probably designate at a meeting, that this is the time we start it and probably go beyond that just to make sure. Quite frankly if you go to your third meeting, and you set the 60 days at the second meeting and it will be 90 days at the third meeting. I would believe you would have to do it at a meeting or call a special, and either way as a board president, I would want to make sure that I'm performing my duties and go way beyond that. This gives you the minimum parameters; going longer wouldn't be a problem.**

**Rep. Hunskor: This is more of a common sense thing. If someone was sick, a National Guard, you can come up with all kinds of reasons, but that board president wouldn't be tied to 60 days if there was a reason that made sense, that the other board member wasn't there.**

**Sen. Don Schaible: I totally agree with you. I think this is a minimum standards and quite frankly it gives you the avenue that if you think it is appropriate, certainly this is not a tool to head hunt, not a tool for a school board president because you would have to do it by board action, so you would still have to go through the process but I think, with some of these boards having 5 people, maybe less, it might be appropriate that you have a whole board doing their duties. So at that point, I think it's a tough decision but if it's warranted, if we have a board member that's not performing their duties and we think it's appropriate that we have a full board, I think it just gives them a tool to do it.**

**Ch. Nathe: Thank you. Further testimony in support.**

**Annette Bendish, Legal Counsel for the ND School Boards Association: Support. When we reviewed the statute specific to our school board members we noticed that there were some discrepancies between the specific laws that were in law in chapter 15.1-09 related to our school board members and the general law for all other elected officials. So the purpose of this bill is just to align the law that applies with our school board members with the law that applies to all other elected officials and hold those school board members to the same standard that all other elected officials must be held to. The specific provisions in 44-02-01, to try and answer some of the questions you asked. These are, of course, permissive. It's not mandatory if a board member has been absent for 60 days. There is a specific exemption in subsection 5 of 44-02-01 that talks about exceptions and one of those is a "person's service in the**

armed forces, sickness or other unavoidable cause". I think if we get into a situation where we have a board member that has been habitually absent from board meetings, subcommittee meetings, not discharging their duties, I think our school superintendents and school business managers are going to contact that board member and try to find out what is going on and find out what those reasons are for those absences before the board president would proceed with getting a board member off of the board for one of the reasons outlined in law.

**Rep. Meier:** I realize that salaries are determined by each county, but what is the average salary for a school board member.

**Annette Bendish:** I don't know that information. We would have to contact all the business managers to find out, because it is district specific.

**Rep. Meier:** If a school board member is absent, is it up to the county or the city to decide whether or not to have them paid or not.

**Annette Bendish:** I believe that under the statute, board members receive their monthly salary. I think, as long as they are an elected official, they are going to receive that. Once they were removed, of course, they would no longer receive that.

**Ch. Nathe:** You mentioned that this bill would bring align the laws for all elected officials. Do you know that century code?

**Annette Bendish:** Yes, that is 44-02-01, Title 44 relates to officers and 44-02 is the specific chapter that relates to vacancies in office.

**Rep. Schatz:** On #9, on 44-02-01, cease to possess any of the qualifications of office prescribed by law. What are the qualifications of office basically to be on a school board?

**Annette Bendish:** I think "cease to possessing of the qualifications" would basically relate to residency". If a board member would move out of the school district or in some districts there are specific rural board members, so if that rural board member would no longer possess the qualifications to be considered a rural board member, then they couldn't hold that rural board member seat.

**Rep. Schatz:** So the qualifications are basically to be 18 and a resident.

**Annette Bendish:** Correct.

**Rep. Schatz:** Are there any mandatory classes or anything that a school board member has to take.

**Annette Bendish:** Under the law there is a requirement that all school board members do attend new member orientation and that is provided to them every fall at our school boards association annual conference and I believe under that section,

they do have a couple years to complete that new member training, but there is a requirement that they do complete new member training.

**Ch. Nathe:** Do they have to have a high school degree, to be a board member.

**Annette Bendish:** They do not. As long as they are a qualified elector of the state of ND and a resident of the school district, I believe those are the only qualifications in law. They also cannot be a school district employee.

**Rep. Rohr:** Is there a documentation trail that is required in this law as well.

**Annette Bendish:** I believe if you would get to the point where you want to exercise the failure to discharge duty section and you get to that point, and you're working with the attorney general's office to get a board member removed, I think at that point, you would need documentation. You would also want to present that documentation to the board member to say that because they missed the meeting or the subcommittee meeting, this has gone on for X amount of time, what's going on. If it doesn't meet one of the exceptions in the law, then we are going to proceed with removing you from the board.

**Rep. J. Kelsh:** I know this bill isn't about county superintendents, but wouldn't line 7 # (1), isn't that antiquated, shouldn't it be removed because there aren't very many of them, and how does a board report to somebody that isn't there.

**Annette Bendish:** I would agree that there aren't a lot of county superintendents; in the absence of county superintendents each district employs their own superintendent. I think in our districts that don't have county superintendents, the district specific superintendent is filling that role as necessary.

**Rep. Wall:** Could you tell me how common of an occurrence this is, this dereliction of duty. Do you have many cases a year?

**Annette Bendish:** I wouldn't say we have many; I can think of one recent example that we've heard from a district. In that case, the board member just wasn't coming to meetings and wasn't communicating with the board. The president did try to contact them and find out what was going on, and wasn't getting a response from that board member. I wouldn't say it happens often; I would say it happens occasionally. One board member every few years, it's not a chronic problem but it does happen.

**Rep. Hunsakor:** How long is the tenure of a board member is it three years that they are elected for and if that person wasn't doing his/her duty, it seems like the patrons would take care of it at the next election.

**Annette Bendish:** It is a three year term, but if this happened early on in a term, you could have a year or two with a board member not exercising their duties and in the case of a five member board, if you have that one member that you know is not

going to be there, that puts a big burden on the rest of your board members to always be at every meeting so you do have a quorum.

**Ch. Nathe:** Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

**Ch. Nathe:** We will take a look at SB 2216. This bill relates to removing a school board member who isn't discharging their duties.

**Rep. D. Johnson:** I move a Do Pass.

**Rep. Mock:** Second the motion.

**Rep. Rust:** The only question I have is when the 60 consecutive days starts. You could have someone miss a meeting and now they miss another one and now they've already missed 60 days. I wish I would have asked that question this morning. I believe that they will do it justice.

**Ch. Nathe:** It is going to be up to the board's president. I think they are going to err on the other side, and I think 60 days is the minimum amount of time. I think if they have an issue, I'm sure they will end up going over the 60 days before they start acting on the issue.

**Rep. Schatz:** I don't know if I agree with that. In the little towns, I have watched them get into arguments over matters, and it can get ugly. You can get split boards, 3 to 2. I would like to see a definite start to this bill; not just whatever. I think we need to put a date down.

**Rep. Mock:** Because it is existing law, I would be curious to know if there isn't case law that exists that would interpret when the 60 days would ensue and if it has ever gone to court. I would imagine that a district court or a judge has made an interpretation as to what 60 days truly means.

**Rep. Heller:** I actually saw that as a problem as well. Just by chance, what if a school board member got elected and the rest of the board members weren't that thrilled about it. Let's say that the board member misses one meeting, and they start counting right then, the 60 day time period. Then wait to see if they miss another meeting and then they'd have grounds to get rid of the person. I don't know if that would happen, it is probably hypothetical.

**Rep. D. Johnson:** I still recommend a do pass on this. This is more than what we have, and there will always be a lot of what ifs, but I think we have a basis to start with; this is more for the person who habitually misses meetings, and hasn't been there for five months.

**Rep. J. Kelsh:** The school board elections are a certain day in June. In a lot of school districts, their first meeting is like the 1<sup>st</sup> Wednesday, and they are only going to have about 3 weeks, so if they miss 2 meetings, they haven't missed 60 days. I

**don't know when the certification is, if that is immediate certification that they are elected. If you miss the July meeting and the August meeting, the 60 day time limit may not have expired.**

**Ch. Nathe: I think it was brought up that the frequency of this happening is very low; it happens every once in a while.**

**11 YES 0 NO 2 ABSENT**

**DO PASS**

**CARRIER: Rep. Rohr**

Date: 3/19/13

Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 2216

House EDUCATION Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass       Amended       Rerefer to Appropriations  
 Do Not Pass       Adopt Amendment

Motion Made By Rep. Johnson      Seconded By Rep. Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman Mike Nathe	✓		Rep. Bob Hunsakor	✓	
Rep. Mike Schatz	✓		Rep. Jerry Kelsh	✓	
Rep. Joe Heilman	✓		Rep. Corey Mock	✓	
Rep. Brenda Heller	✓				
Rep. Dennis Johnson	✓				
Rep. Ben Koppelman	AB				
Rep. Lisa Meier	✓				
Rep. Karen Rohr	AB				
Rep. David Rust	✓				
Rep. John Wall	✓				

TOTAL (YES) 11 (NO) 0 (ABSENT) 2

FLOOR ASSIGNMENT Rep. Rohr

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2216: Education Committee (Rep. Nathe, Chairman)** recommends **DO PASS**  
(11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2216 was placed on the  
Fourteenth order on the calendar.

**2013 TESTIMONY**

**SB 2216**

**CHAPTER 44-02  
VACANCIES IN OFFICE**

# 1

**44-02-01. Vacancies - Causes thereof.**

An office becomes vacant if the incumbent shall:

1. Die in office;
2. Be adjudged mentally ill;
3. Resign from office;
4. Be removed from office;
5. Fail to discharge the duties of office, when the failure has continued for sixty consecutive days, except when prevented from discharging the duties by reason of the person's service in the armed forces of the United States, by sickness, or by other unavoidable cause. However, as to any office which under the law the vacancy must be filled by the governor, the governor for good cause shown may extend the period, which the incumbent may be absent, for an additional period of sixty days. No remuneration on account of such office may be paid to an absentee officeholder during that person's absence, and the office in all cases becomes vacant upon the termination of the term for which the person was elected or appointed;
6. Fail to qualify as provided by law, which includes taking the designated oath of office prescribed by law;
7. Cease to be a resident of the state, district, county, or other political subdivision in which the duties of the office are to be discharged, or for which the person may have been elected;
8. Be convicted of a felony or any offense involving moral turpitude or a violation of the person's official oath;
9. Cease to possess any of the qualifications of office prescribed by law; or
10. Have the person's election or appointment declared void by a competent tribunal.

**44-02-02. Resignations of officers - To whom made.**

The resignation of an officer must be in writing and must be made as follows:

1. The governor and lieutenant governor, to the legislative assembly, if it is in session, and if not, to the secretary of state.
2. Any other state or district officer, to the governor.
3. A member of the legislative assembly, to the presiding officer of the branch of which the individual is a member, when in session, and when not in session, to the chairman of the legislative management. When made to the presiding officer, the presiding officer at once shall notify the chairman of the legislative management of the resignation.
4. An officer of the legislative assembly, to the branch of which the individual is an officer.
5. An elective county officer, by filing or depositing the resignation in the office of the county auditor, except that the resignation of the county auditor must be filed or deposited with the board of county commissioners. Any resignation under this subsection, unless a different time is fixed therein, takes effect upon the filing or deposit.
6. An officer of a civil township, to the board of supervisors of the township, except that a member of the board shall submit the member's resignation to the township clerk, and the township clerk forthwith shall give to the county auditor notice of the resignation of all officers whose bonds are filed with that officer.
7. Any officer holding office by appointment, to the body, board, court, or officer which appointed the officer.

**44-02-03. Vacancy in state or district office - How filled.**

Any vacancy in a state or district office, except in the office of a member of the legislative assembly, must be filled by appointment by the governor. A vacancy in the office of a supreme court justice or district court judge must be filled as provided in chapter 27-25. If during a