

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by Representative Robert H. Miller at  
Chairperson

1:30 a.m./p.m. on February 4, 1985 in room 526S of the Capitol.

All members were present except:

Representative Bob Vancrum - E

Committee staff present:

Russ Mills, Research  
Raney Gilliland, Research  
Mary Torrence, Revisor's Office  
Lynda Hutfles, Secretary

Conferees appearing before the committee:

Representative Richard Harper  
Jack Arnold, Ft. Larned National Historic Site

The meeting was called to order by Chairman Miller.

Representative Roenbaugh made a motion, seconded by Representative Sallee, to approve the minutes of the January 29 meeting. The motion carried.

A proposal which would allow any adjutant general who has served four consecutive years as adjutant general in Kansas to be promoted to the rank of lieutenant general was distributed to the committee. See attach A.

Representative Brady made a motion, seconded by Representative Peterson, to introduce the proposal as a committee bill. The motion carried.

HB2075 - Attainment of concurrent jurisdiction over National Park System areas within the State of Kansas

Representative Richard Harper, sponsor of the bill, explained the bill and its effect on National Parks in Kansas. See attachment B.

Jack Arnold, Superintendent of Fort Larned National Historic Site in Larned, gave testimony in support of the bill which will provide concurrent jurisdiction with the Federal Government over National Park areas in Kansas. This bill will promote cooperative and more efficient State-Federal law enforcement within the National Park Service areas in Kansas. See attachment C.

Hearings were concluded on HB2075.

HB2051 - Annual renewal of request for notice of open meetings

The following amendment was submitted for Rep. Vancrum: On line 0053, but, prior to discontinuing notice to any person, the public body must notify the person that notice will be discontinued unless the person resubmits a request to receive notice.

Representative Brady made a motion, seconded by Representative Aylward, to amend HB2051 as shown above. The motion carried.

Representative Peterson made a motion, seconded by Representative Ramirez, to report HB2051 favorable for passage as amended. The motion carried.

Mary Torrence, Revisor's Office, gave a brief explanation of SB81 which will have hearings starting on Tuesday. Ms. Torrence was asked to get any information she could on the constitutionality of the bill and whether it meets the objections of the 8th District Circuit Court of Appeals. See attachment D.

The meeting was adjourned.



HOUSE BILL NO. \_\_\_\_\_

By Committee on Federal and State Affairs

AN ACT concerning the adjutant general; relating to promotions;  
amending K.S.A. 48-203 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 48-203 is hereby amended to read as follows: 48-203. The governor shall be commander in chief of the militia and shall have supreme command of the military forces of the state while in the service of the state or until they are ordered or accepted into the services of the United States. While the military forces are in the service of the state, the governor, subject to the provisions of federal law, may muster out any national guard organization of the state, discharge any enlisted person who is a member of the state national guard organization or cause any commissioned officer to be summoned and discharged if the officer persists in willfully neglecting the duties of the officer's office or fails to properly account for public property or money in the officer's possession as an officer. The resignation of officers of the national guard shall be accepted by the governor's order before they are discharged from military service of the state.

No armed military force from another state or territory shall be permitted to enter the state without the governor's permission unless the military force is part of the United States army or is acting under the authority of the United States. No independent military organization, except a corps of cadets at an educational institution, shall be permitted to bear arms without first securing permission from the commander in chief.

The governor shall appoint, subject to confirmation by the senate as provided in K.S.A. 1982-Supp. 75-4315b and amendments

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thereto, one adjutant general with the rank of major general, who shall be chief of staff. The person appointed shall have served at least five years as a commissioned officer in the Kansas national guard and shall have been an officer in the armed forces of the United States. The adjutant general shall receive an annual salary fixed by the governor. The governor may promote, subject to confirmation by the senate as provided in K.S.A. 1982 Supp. 75-4315b and amendments thereto, any adjutant general who has served at least ~~15~~ four consecutive years as adjutant general in Kansas to the rank of lieutenant general.

The governor may also detail 12 aides-de-camp from among the officers of the Kansas national guard or the Kansas state guard, or appoint such aides-de-camp from among Kansas ex-service personnel, or reserve personnel of the United States army, air force, navy or marine corps, each with the simulated rank of lieutenant colonel in the Kansas national guard. While serving as aides-de-camp, such personnel may wear either the uniform and insignia of any military service to which they are entitled or the uniform and insignia of lieutenant colonel of the Kansas national guard.

The term of office of officers appointed pursuant to this section shall be during the pleasure of the governor appointing them and until their successors are appointed and qualified.

Sec. 2. K.S.A. 48-203 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

*Richard L. Harper  
11th Dist.*

NATIONAL PARK SERVICE  
MIDWEST REGION

BRIEFING STATEMENT

Subject: Attainment of concurrent jurisdiction over National Park System areas within the State of Kansas.

Issue: The Federal Government exercises several types of legislative jurisdiction, which is the authority to administer governmental powers, over lands comprising the National Park System. Many units of that system are still administered pursuant to proprietary jurisdiction (that is the United States having acquired ownership or use of the land, but no measure of the State's authority over the land). However, a number of units are administered under exclusive jurisdiction (states having granted the United States the right to exercise alone, authority over the lands) or concurrent jurisdiction (states having reserved to themselves the right to exercise jointly the powers granted to the Federal Government).

Title 16 USC, paragraph 1a-3, mandates that "the Secretary (of Interior) shall diligently pursue the consummation of arrangements with each state, commonwealth, territory, or possession within which a unit of the National Park System is located to the end that, insofar as practicable, the United States shall exercise concurrent legislative jurisdiction within units of the National Park System."

Status: Legislation needs to be passed authorizing the Governor to cede jurisdiction to the United States.

Support should be sought for similar legislation for the State of Kansas. Kansas has two (2) NPS areas, both of which are under proprietary jurisdiction. This means that only certain Federal statutory law and regulations may be enforced by NPS law enforcement commissioned rangers. However, the Federal Criminal Statutes which define the crimes of murder, assault, maiming, rape, robbery, theft, arson, receipt of stolen property, destruction of property, etc., do not apply to Federal land unless it is held under exclusive or concurrent jurisdiction.

Consequently, in areas of proprietary jurisdiction (as in both Kansas parks), only State law enforcement officers have the authority to enforce, under State law, such crimes as these. The NPS should attempt to acquire concurrent jurisdiction over both Kansas park areas.

Acquisition of concurrent jurisdiction would in no way limit the right of Kansas to exercise its jurisdiction within any of the NPS areas. It would simply allow the NPS to enforce additional Federal criminal statutes and also to assimilate State law under Title 18 USC, Section 13, where no appropriate Federal law or regulation exists. The result would allow for more efficient conduct of both State and Federal law enforcement functions within the parks.

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Advantages to Federal Government and State of Kansas:

1. Authorized NPS Law Enforcement Officers could assimilate State law into Federal law (Title 18 USC, Sections 7 and 13) where no current Federal law exists or is applicable. Example: Suppose a park ranger witnesses a murder in one of our Kansas parks. Except for a citizens arrest (which is always a risk) under our present proprietorial jurisdiction, the ranger does not have authority to arrest on the murder charge. If the United States had concurrent jurisdiction, the Federal Murder Statute (18 USC, 1111) would apply. If there were no Federal murder statute, however, the Kansas State law for murder would be assimilated into Federal law and be prosecuted in Federal court.
2. Local State and County courts would not have to unilaterally bear the cost of trial for transient visitors from another state charged with violations within NPS areas.
3. The Federal Government could return to Kansas, through the U.S. Marshal Service, any person for whom a warrant has been issued or for those who elude bail. There would be no extradition costs or paperwork for the State or County. There is no extradition within the Federal system for crimes against the United States.
4. Subpoena costs could be borne by the Federal Government. No longer would the State or County be required to bear the expense of returning witnesses from out-of-state. Witnesses could also be subpoenaed from anywhere within the United States.

Disadvantages: None. All Kansas State and County laws and regulations remain and may be enforced by such officers. In no way does this limit or restrict the right of the State of Kansas to exercise its jurisdiction within any NPS area within the State.

Alternatives: Remain under present proprietorial jurisdiction with its attendant unwieldiness.

Service Position: The NPS position and that of the U.S. Congress is to move to concurrent jurisdiction.

State Coordinator: Sheridan S. Steele, Superintendent, Fort Scott National Historic Site, Fort Scott, Kansas (316) 223-0321.

Information Contact: William D. Spruill, Regional Law Enforcement Specialist, Midwest Region, National Park Service, Omaha, Nebraska (402) 221-3439.

Statement in favor of <sup>HB</sup> 2075 before the Legislature of the State of Kansas at a hearing of the Federal and State Affairs Committee. February 4, 1985.

Mr. Chairman and Members of the Committee:

I am Jack Arnold, Superintendent of Fort Larned National Historic Site in Larned and am here today representing the National Park Service and to speak briefly in favor of ~~HB 2075~~ a bill which will provide concurrent jurisdiction with the Federal Government over National Park areas in Kansas.

In 1976, through passage of the National Park Service (NPS) General Authorities Act (P.L. 94-458), Congress directed the Secretary of the Interior to diligently pursue arrangements with States to the end that the United States would exercise concurrent jurisdiction with State governments over areas administered by the National Park Service. By ceding concurrent jurisdiction, the State in no way lessens the powers and authority it now has. State law enforcement officers will continue to apply and enforce State laws in NPS areas. Federal Park Rangers would continue to enforce Federal law and would be able to enforce additional Federal statutes and State laws on areas administered by the National Park Service as well. Since both echelons of government have mutual objectives in the area of law enforcement, neither would intrude on the other's authority. Instead, a basis for mutual assistance would be provided.

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Both National Park Service areas in Kansas, Fort Larned National Historic Site and Fort Scott National Historic Site, currently operate under proprietary jurisdiction.

In areas with proprietary jurisdiction, National Park Service law enforcement rangers are limited to enforcing only certain Federal statutes, primarily crimes against the United States which are offenses wherever they are committed, such as treason or counterfeiting; and violations of the Code of Federal Regulations. These regulations deal mainly with protecting park natural and historical resources, and are usually misdemeanors.

However, the Federal Criminal Statutes which define the crimes of murder, assault, rape, robbery, theft, arson, receipt of stolen property, destruction of property, etc., do not apply to Federal lands unless they are held under exclusive or concurrent jurisdiction. Consequently, in areas of proprietary jurisdiction, only State law enforcement officers have authority to enforce, using State law, crimes such as these.

In a park area with proprietary jurisdiction the entire burden of felony investigation, arrest, and prosecution rests with the State. In our State, when law enforcement personnel are spread very thin at times, this becomes important. While the National Park Service areas in Pawnee and Bourbon counties are certainly not hotbeds of crime, measures which would provide more economical and efficient law enforcement would be mutually advantageous.



With concurrent jurisdiction, a partnership would exist between Kansas and the United States in the administration and management of National Park Service areas. The United States and Kansas would jointly hold and exercise all the rights accorded a sovereign concurrently. Both State and Federal criminal codes would apply to concurrent lands and both State and Federal officials may enforce their respective codes.

Concurrent jurisdiction would not limit the right of the State to exercise its jurisdiction within any of the National Park Service areas. It would simply allow the National Park Service to enforce additional Federal criminal statutes and use the Assimilitive Crimes Act (18 USC 13) to adopt State law where no appropriate Federal law or regulation exists. Laws enacted by a State, would become in effect, Federal law within the park and could be tried in the Federal Court System. The same law cannot be enforced by Rangers in areas of proprietary jurisdiction.

For example:

Suppose a Park Ranger witnesses a theft from a tourist's vehicle parked in one of the National Historic Sites in Kansas. Under proprietary jurisdiction, the Ranger does not have authority to arrest and is powerless to act. By the time a Sheriff's deputy or the Highway Patrol can respond, the subject will likely have left the scene.

If the United States had concurrent jurisdiction, State law regarding larceny from motor vehicles would be assimilated into Federal law, and the Ranger could arrest the suspect and prosecute him/her in Federal court or arrest and hold the suspect for processing through the State court system.

Other advantages of concurrent jurisdiction to the State:

1. Local, State and County courts would not have to unilaterally bear the cost of trial for transient visitors from other States charged with violations within Park areas. The Federal Government would bear subpoena and extradition costs if necessary.

2. The National Park Service can provide reimbursement for supplemental law enforcement assistance when State officers provide assistance. This can only occur in States where concurrent jurisdiction has been ceded to the Federal Government.

In summary, concurrent jurisdiction will provide for more efficient conduct of both State and Federal law enforcement functions within the parks. It does not affect the status quo of either the State or National Park Service's traditional primary legal prerogatives, responsibilities and functions within park areas. Moreover, with concurrent jurisdiction, whenever either party deems it economically advantageous in the interest of effective and consistent law enforcement, investigation, arrest, and prosecution efforts can be negotiated and legally pursued by either State or Federal officers and courts.

We feel that this bill will promote cooperative and more efficient State - Federal law enforcement within the National Park Service areas in Kansas and request your support.

SESSION OF 1981

SUPPLEMENTAL NOTE ON SENATE BILL NO. 81

As Amended by Senate Committee on  
Federal and State Affairs

Brief of Bill\*

S.B. 81 would reinstate capital punishment for certain criminal offenses including:

- a. premeditated murder;
- b. murder in the commission of aggravated kidnapping; or
- c. murder in the commission of rape or aggravated sodomy.

The major provisions of the bill are as follows:

1. Convicted defendants less than 18 years of age at the time of the commission of the crime shall be sentenced to life imprisonment; a death sentence shall not be imposed.
2. A bifurcated trial procedure, composed of a trial phase and a sentencing phase would be established. A separate sentencing proceeding would be held to determine whether the convicted offender should be sentenced to death or life imprisonment.
3. During the sentencing proceeding, evidence could be presented concerning any aggravating or mitigating circumstances which may have existed at the time of the crime. Aggravating

\* Bill briefs are prepared by the Legislative Research Department and do not express legislative intent.

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circumstances are set out in the bill and are limited to the following factors:

- a. The defendant was previously convicted of murder, aggravated kidnapping, or aggravated robbery.
  - b. The defendant knowingly created a great risk of death to more than one person.
  - c. The defendant committed the crime while engaged in the perpetration or attempt to perpetrate aggravated kidnapping, robbery, rape, aggravated sodomy, or aggravated arson.
  - d. The person committed the crime for remuneration or employed another to commit the crime.
  - e. The crime was especially heinous, atrocious, or cruel.
  - f. The crime was committed for the purpose of avoiding or preventing a lawful arrest or prosecution or to escape from lawful custody.
  - g. The crime was committed by a person while serving a sentence of imprisonment on conviction of a felony.
4. Mitigating circumstances include, but are not limited to, the following:
- a. The defendant has no significant history of prior criminal activity.

- b. The crime was committed while the defendant was under the influence of extreme mental or emotional disturbance.
  - c. The victim was a participant in or consented to the defendant's conduct.
  - d. The defendant was an accomplice in the crime committed by another person and his participation was relatively minor.
  - e. The defendant acted under extreme distress or under the substantial domination of another person.
  - f. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired.
  - g. The age of the defendant at the time of the crime.
5. In determining the sentence to be imposed, the jury would consider whether any aggravating circumstances were established beyond a reasonable doubt, whether any mitigating circumstances were demonstrated and whether mitigating circumstances outweighed the aggravating circumstances. Based on these considerations, the jury would determine whether sentence of death or life imprisonment should be imposed. A death sentence would require the unanimous consent of the jurors.

6. The trial court would review the death sentence in all cases to ascertain whether the sentence is supported by the evidence. If the court determines that the sentence is not supported by the evidence, the court must modify the sentence to life imprisonment.

7. A judgement resulting in a death sentence would be subject to automatic review by the Kansas Supreme Court. In this review, the Court would consider the question of punishment as well as any errors and determine:

a. Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor.

b. Whether the evidence supports the findings that an aggravating circumstance or circumstances existed and that any mitigating circumstances were insufficient to outweigh the aggravating circumstances.

c. Whether the death sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

The Court would be authorized to enter any orders necessary to effect a proper and complete disposition of the appeal. In its decision, the Court would include a reference to similar cases which it took into consideration.

8. A new section establishes grounds upon which a prospective juror may be challenged for cause.

9. The mode of carrying out a sentence of death will be by intravenous injection of a lethal substance.

10. In the event a female sentenced to death is pregnant, the execution will be postponed. After the child is born or the pregnancy is otherwise terminated, the judge will fix a date for the execution.

11. Defendants charged with a crime for which a death sentence may be imposed will be entitled to designate counsel of their own choosing. Such counsel must be licensed to practice law in Kansas and a resident of the judicial district in which the case is pending or of a judicial district contiguous thereto. Claims for such legal services would be paid from the state general fund.

Senate Committee Amendment. The Senate Committee amendment is technical.

#### Background

In Furman v. Georgia, 408 U.S. 238 (1972), the U.S. Supreme Court found that the procedures by which the death penalty was imposed were "arbitrary and capricious" and violative of the 8th and 14th Amendments. The court did not declare the death penalty itself to be unconstitutional; it found that the Georgia law did not provide any standards to guide the sentencing authority when deciding whether or not to impose the penalty of death.

Following this decision, some states adopted new mandatory capital punishment laws designed to remove the discretion of whether or not to impose the death penalty from the judge or the jury. In Woodson v. North Carolina, 96 S. Ct. 2978 (1976), the U.S. Supreme Court held that a sentence of death cannot be an automatic consequence of a conviction and

that the circumstances of the case and the offender must be considered.

In 1976, the capital punishment laws of Georgia, Florida, and Texas were upheld by the U.S. Supreme Court (Gregg v. Georgia, 96 S. Ct. 2909). Each of these laws contained standards to guide the sentencing authority in deliberations regarding imposition of the death penalty. To date, some 37 states and the federal government have enacted laws to impose the death penalty for certain crimes.

