

Approved 1-22-90  
Date

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Senator Lana Oleen at  
Chairperson

1:35 ~~xxx~~ p.m. on January 16, 1990 in room 531-N of the Capitol.

All members were present except: Senator Bogina - Excused Senator Moran  
Senator Gaines - Excused Senator Vidricksen  
Senator Doyen - Excused  
Senator Francisco  
Committee staff present: Fred Carman - Revisor  
Mary Galligan - Research  
Nancy Jones - Secretary

Conferees appearing before the committee:

Chairman Oleen welcomed members as the new session begins and introduced Fred Carman of the Revisor staff, to the Committee.

Mary Galligan was asked to give a review of the bills studied during the interim that have been assigned to this committee.

The first legislation reviewed was SCR 1628. A summary of recommendations and observations during two days of hearings was highlighted with emphasis on the decoupling recommendation and changes in length of terms for the legislators. Committee members discussed both subjects with questions asked of Mary Galligan. (Attachment 1)

The second piece of legislation to be reviewed was Proposal 27 which has been introduced as SB 427 and considers the establishment of an Office of Housing in the Department of Commerce. The recommendations, committee activities and conclusions were briefly outlined. A hearing will be held on SB 427. (Attachment 2)

Legislations concerning polygraphists was considered during interim and has been introduced as HB 2589. Considerations and recommendations were highlighted by Mary Galligan for the committee. (Attachment 3)

Bills which remained in committee from the 1989 session, will be discussed by the committee members and action will occur at future meetings.

Meeting adjourned. The next meeting will be January 17, 1990.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Guest List  
1-16-90

PHILIP DUBACH SRZS, HOUSING  
Julie Hein Hein & Ebert

1-16-90  
g... ..

RE: PROPOSAL NO. 24 -- LEGISLATURE -- STRUCTURAL  
IMPROVEMENTS\*

Background

The Committee was directed to consider changes in the Executive and Legislative articles of the Kansas Constitution and related statutes, procedures, and rules in view of structural changes that might contribute to the more efficient operation of a part-time Legislature. In connection with both this topic and Proposal No. 28 -- Parimutuel Wagering, the matter of ethical conduct rules applicable to members of the Legislature was discussed. The Committee concluded that recommendations should be made regarding this issue and included in this report.

Material Reviewed

Staff memoranda initially reviewed by the Committee (copies available in Committee files) addressed a broad range of matters, most of which related to specific topics identified by Representative Keith Roe, the chief proponent of the study. Topics covered included: pertinent provisions of the Legislative and Executive articles of the Kansas Constitution; Kansas budget preparation cycle; early executive budget submission requirements in other states; gubernatorial terms, including length of terms and service limitations, among the states; length of legislative sessions among the states, with emphasis on those which appear to spend about the same or less time in session than does Kansas; states having coterminous House and Senate district boundaries; states in which Senators are elected for staggered terms; philosophical and other issues associated with the part-time versus the full-time approaches to legislative service; and the office of Lieutenant Governor in Kansas and in other states, including requirements pertaining to qualification for and service in this office and the types of duties this officer performs.

Subsequently, in connection with the principle of making improvements in the legislative process so as to help maintain the part-time or "citizen" nature of the Kansas Legislature, the Committee instructed the staff to prepare memoranda (copies available in the Committee files) which explored several additional areas of interest. One addressed considerations in connection with the following concepts: having the

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\* S.B. 426, S.C.R. 1627, S.C.R. 1628, and H.C.R. 5032 accompany this report.

S.G.O  
ATTACH 1  
1-16-90

Governor and Legislature take the oath of office on the second Tuesday in December, allowing the appropriations committees to begin official meetings immediately after January 1, requiring that measures recommended by interim study committees be referred directly to the Committee of the Whole of the house of which the chairperson of the study committee was a member, holding joint hearings of counterpart House and Senate committees during the first week of the session, requiring the Governor's budget to be submitted to the Legislature at least seven days prior to the commencement of the session (assuming the session commencement would continue to be the second Monday in January), and terminating legislative pay after the conclusion of 90 calendar days of a session. The second memorandum focused on changes that might be made in the interim study structure and procedures so that the bills and concurrent resolutions produced by interim committees would more readily be accepted by the Legislature as well-considered and finished proposals, thereby reducing substantially the time during the session required to be devoted to such measures. The third memorandum identified those states having biennial (rather than annual) budget cycles.

With respect to the matter of ethical conduct codes applicable to members of the Legislative Branch, the Committee reviewed a staff memorandum which identified certain pertinent provisions of the Kansas Constitution, House and Senate rules, and statutes; in addition, the memorandum included a summary of a variety of provisions contained in the legislative ethics codes of several states and of the United States House of Representatives.

#### **Comments of Selected Former Legislative Leaders**

The Committee solicited assistance from some "veterans" of the legislative reform movement of the 1970s on certain issues. In this regard, former Governors Bennett and Carlin (also former legislative leaders), former House Speaker McGill, and former House Minority Leader Loux were contacted and asked to contribute written testimony regarding the following issues:

1. the rationale for the present "lame duck" period between the time of election and assumption of office by the Governor and members of the Legislature and whether there is merit, from the standpoint of more efficient operation of the Legislature, to reduce such period;

2. the feasibility of earlier submission of the Governor's budget to the Legislature;
3. the weaknesses, if any, of present gubernatorial transition provisions and how such problems might be addressed by reducing the "lame duck" period;
4. the desirability of adopting a biennial rather than an annual state budget; and
5. the merits of adopting and applying a separate code of ethics for the legislative bodies.

Responses were provided on various points by the four former leaders. Following is a summary of their principal observations.

Former Governor Carlin stated that from the standpoint of the responsibilities of the Governor, it would be a mistake to reduce the current "lame duck" transition period. (This observation was made in the context of changes that might contribute to increased efficiency of legislative operations, especially as related to making possible earlier legislative work on the state budget.) It takes considerable time for the incoming Governor to make key appointments and assemble an administration and to prepare the budget. This is an enormous job to be accomplished within the present time constraints. In principle, former Governor Bennett's conclusion was similar. The current "lame duck" time interval is about right for allowing the departing administration to wind up its work. If this period were shortened, it would be necessary to provide a transition office for the departing Governor. The most important problems faced by the incoming Governor are facilities and time. The problem concerning access to facilities and services largely has been addressed. Time remains a problem. Realistically, there is no way to shorten the time between election and qualification of a Governor and the budget presentation in the year following the election -- if the desire is for the Governor to submit as complete a budget as is possible.

With regard to the "lame duck" period as it pertains to the Legislature, former Governor Bennett indicated that an argument could be made for reducing this period. There probably is no compelling reason to delay this transition to January. However, it is likely that such a change would be one more of form than of substance. Legislation already provides for newly selected legislative leaders to oversee pre-session activities commencing early in December. Also, it must be remembered that what is under consideration are activities that would occur during a holiday season. Realistically, there is a serious

question as to whether anything more would be accomplished with an earlier swearing-in date than occurs under the present system. With regard to the adequacy of gubernatorial transition provisions, it was noted by both former Governors Bennett and Carlin that changes made in recent years appear to adequately address this matter.

Former Governor Carlin said it would be possible technically to complete budget preparation sometime in December. However, the Executive Branch work on the budget is tremendously time-consuming. An administration is hard-pressed to meet the existing deadlines. Consequently, moving the formal budget presentation to an earlier date in both election and nonelection years is inadvisable. There is merit, though, in accelerating the Legislature's work on the budget. Perhaps there would be some way of communicating at a somewhat earlier time the Governor's budget recommendations to the legislative staff. Such options could be explored. Former Governor Bennett likewise counseled against earlier budget submission dates. If such dates were established, the Governor would be tempted initially to submit a minimum budget and later to submit a series of budget amendments. This could be done in a manner designed to attract continuing publicity to a variety of issues or, conversely, to obscure some matters. It is preferable to give the Governor enough time to submit a completed budget. If presentation of the Governor's budget is a problem insofar as adequate review by the Legislature is concerned, then a more appropriate way to address the problem would be for the Legislature to convene at the regular time, take care of immediate problems, and then to recess until the date of the Governor's budget presentation. Then, except for the appropriations committees, the Legislature could recess again for two or three weeks. The Legislature could reconvene for the period which normally constitutes the regular session and the adjournment date of the regular session could be adjusted accordingly. This would allow the Legislature adequate time for its deliberations and for approving the budget by about June 1 -- nearer to the beginning of the new fiscal year.

Former Governor Carlin thought that the biennial state budget concept deserved serious consideration. Now, budget work is virtually a continuous activity throughout the year and, for the Governor (as well as others), is immensely time-consuming. No doubt, there would be some adjusting of the budget in the off-years, but, perhaps, there could be some reduction of the time and resources consumed by the budgeting process.

Former Governor Carlin had no strong feelings regarding the need for a separate legislative ethics code. Former Governor Bennett expressed the view that it would not be inappropriate for the Legislature, or the House or Senate separately, to adopt a code of ethics or ethical

conduct standards that might constitute guidelines for the membership as to what behaviors are appropriate under certain circumstances. Mr. Loux endorsed the idea of establishing a code of ethics, as contrasted with guidelines for conduct, for the Legislature. Mr. McGill observed that it might be timely to review the ethics, campaign finance, and disclosure laws. However, he noted that Kansas has been a leader in addressing these issues and counseled against over-reacting with respect to changes that might be proposed.

Former Governor Bennett noted that, with some exceptions, present ethics laws reflect a general policy of requiring disclosure as contrasted with prohibition of certain activities. This is regarded as being the best approach so long as the philosophical commitment in Kansas is to retain a part-time or citizen Legislature. If the decision were made to opt for a full-time Legislature, then a more stringent approach might be in order.

Mr. Loux singled out campaign finance reporting requirements by indicating that attention should be directed to requiring as complete reporting of expenditures as possible before the election is held. Mr. Loux also indicated that it would be desirable to increase the enforcement powers of the Public Disclosure Commission as it relates to administration of the campaign finance, disclosure, and ethics laws. There is a need, however, to guard against over-zealous enforcement activities. It should be possible to more effectively pursue actions against those who deliberately violate the laws while avoiding harassment of well-intentioned persons who make inadvertent mistakes.

Former Governor Carlin commented on the importance of the public holding governmental institutions and public officials in high esteem. Thus, if public officials believe that the public perception of the integrity of government institutions is negative, there is adequate justification for a comprehensive study of applicable laws and practices. In order for it to be credible from the standpoint of the public perception, such a study should not be conducted internally; it should be conducted by a group including persons of stature who are not legislators or members of the Executive Branch and who represent a wide variety of interests.

### **Hearings**

Portions of two days were allotted to Committee hearings. This included the services of Mr. Rich Jones, a member of the staff of the National Conference of State Legislatures, who served as a resource person for the Committee. Following is a summary of the main observations and recommendations submitted by the conferees.

**Representative Keith Roe.** Representative Roe placed emphasis on changes which would: have the Governor assume office early in December and submit the budget at an earlier time; have the Legislature take office early in December, elect the leadership, and commence some activities at that time; continue to begin the formal session of the Legislature on the second Monday in January, but complete the work of the session somewhat earlier than is the existing practice (made possible by work accomplished in December); and increase the membership of the Senate from 40 to 41 members. (Representative Roe was unable to appear in person, but submitted written testimony.)

**Representative Vern Williams.** Representative Williams emphasized that his principal recommendation was to place a 12-year limit on legislative service. His second recommendation was to place formal limitations on length of service in legislative leadership positions. In Representative Williams' view, the people of Kansas are better served by a traditional part-time citizen Legislature than by a professional one. Turnover is to be encouraged to enlarge participation and to generate new ideas. The professional legislator is ". . . yet another step away from the ideal of representative democracy." The trend toward "Congressionalization" of the state Legislature is viewed with alarm. The history of state Legislatures shows that, as with Congress, it is becoming increasingly difficult to unseat an incumbent. There is a tendency for members to be driven by an overriding concern to ensure their reelection.

**Representative Martha Jenkins.** Representative Jenkins submitted two specific recommendations: to increase the terms of members of the House from two years to four years, and to limit to 12 the number of years a person can serve in the Kansas Legislature. With respect to increasing the length of terms in the House, Representative Jenkins stated that the amount of time and effort spent in "posturing" for reelection would be reduced, members could devote more of their efforts to developing competence in various areas of governmental responsibility, and the amount of time and money devoted to campaigning could be reduced. The most compelling reason to consider limiting legislative service to 12 years would be to reduce ". . . the strangulation of state government by special interests groups." The infusion of "fresh blood" is important to the continued vitality of governmental bodies.

**Representative William R. Roy, Jr.** Representative Roy proposed amending the Kansas Constitution to abolish the office of Lieutenant Governor. In his view, this simply is an unneeded office. Representative Roy pointed out that as early as the time of the Wyandotte Constitutional Convention (in 1859), some delegates regarded



this as a useless office; that eight states presently do not have this office; that there are no qualifications established for the holder of this office in Kansas; that statutory duties assigned to this office are, at best, minimal and easily could be performed by someone else; that all Legislative Branch duties formerly assigned to this officer were eliminated with adoption of a 1972 constitutional amendment; that there are satisfactory alternative means of providing for gubernatorial succession (a process which has been little used in Kansas -- and never used due to death or disability of a sitting Governor); that holding the office has little tradition as a stepping-stone to the Governorship; and that some fiscal savings could be achieved by eliminating this essentially useless office.

**Dennis Taylor (Governor Hayden's Office).** Mr. Taylor recommended submitting to the voters a proposal to amend the Executive Article of the Kansas Constitution to provide that the Governor and other Executive Branch elected officials take office in December of the year of their election. This would reduce the "lame duck" period for outgoing officials and would permit the incoming Governor a critical head start in the budget and legislative address preparation activity.

**Dr. Marvin A. Harder.** Dr. Harder, Director of the University of Kansas Capitol Complex Center, reported that he had begun preparation of a video presentation for visitors to the State Capitol, and he urged that visitors to the Statehouse be encouraged to watch and listen to the video before they tour the building.

Dr. Harder proposed that more attention be given to upgrading a number of the legislative committee rooms. There are too few committee rooms that convey a sense of the dignity and importance of the legislative decision-making process. Most of the rooms cannot adequately accommodate very many observers and conferees. (Former Speaker McGill also commented on the gross inadequacy of the committee hearing facilities.)

With respect to the matter of efficiency of operation, Dr. Harder explained that even though the policy workload is increasing, there is an alternative to a full-time Legislature. Legislative leaders and committee chairs could plan for policy action. They could decide that certain policy problems will be on the agenda of the upcoming session and others would be addressed at a later session. The hearing process could be structured so that there is a clearer statement about the nature of the public problem, the role of the government in addressing the problem, and the relative costs and benefits of the proposal. This would help in the process of determining legislative priorities. Lobbyists would be given their day in court after agenda decisions have been made. Hearings could be structured so that members of the committee

and committee staff have an opportunity for more advance preparation, thus enabling more thorough and penetrating questioning of conferees. Also, efficiency of state government operations could be positively affected if the Legislature were less involved in Executive Branch decision-making. This does not mean that legislative oversight is not important or necessary, it simply means that there should be less legislative involvement in policy implementation activities, while still holding the Executive Branch responsible for its actions. Further, it might be possible to improve efficiency of legislative operations if fewer issues were delegated to the appropriations committees and if the appropriations subcommittees operated under clearer instructions. Some of these issues properly could be addressed by other standing committees.

Dr. Harder also commented on the importance of legislative conduct which inspires public confidence in the institution of the Legislature. This requires bold political leadership in attacking public problems and the exhibition of a high level of integrity in the actions of public officials.

**Dr. Burdett Loomis.** Dr. Loomis, Chairperson of the Political Science Department, University of Kansas, commented on contrasts between the operation of the U.S. Congress and the Kansas Legislature. Generally, Kansas compares favorably on most matters. Dr. Loomis explained that the ". . . Kansas Legislature is not without flaws, but overall it serves the state well, with a mix of responsiveness to constituents and a professional ability to grapple with tough problems." No major changes were proposed. It was noted that legislatures are not, nor were they designed to be, efficient institutions. It probably is more important to worry about the efficiency of the bureaucracy than that of the Legislature. This does not mean that some improvements in expediting budgetary activities would not be helpful. It would be useful to make a change from 40 to 41 members of the Senate and from 125 to 123 members of the House in order to reduce the number of discontinuities in district boundaries.

Dr. Loomis noted that conducting more organizational activities in December might be a productive reform, that the matter of staggering terms of members of the Legislature is a relatively minor issue, that it is not a good idea to place legal limitations on members' terms, and that staffing arrangements are good but could be expanded somewhat. The Kansas Legislature provides a nice mix of the responsiveness of citizen legislatures and the policy capacity of full-time bodies. Maintenance of a citizen legislature is much preferable to a body composed of professional politicians.

## Conclusions and Recommendations

The study provided the Committee the opportunity to revisit a number of issues that pertain, in one way or another, to the basic organization and operation of the Legislature. Periodic reexamination of various of the legislative structures and procedures is healthy for the institution. From time to time changes are needed in order to better prepare the Legislature to meet its increasingly demanding challenges. The principal premise upon which this study was based was that of the importance of maintaining a part-time or citizen legislative body. The Committee reaffirms the wisdom of such a commitment. The Kansas Legislature must remain open to means of preserving this important principle.

The Committee considered whether action should be taken on a large number of specific issues. Following is a summary of the results of those deliberations.

**Legislative Code of Ethics.** The Committee recommends adoption of a concurrent resolution requesting the Legislative Coordinating Council to appoint a special committee charged with developing a proposed legislative code of ethics that will set standards of conduct for legislators and procedures to be followed and disciplinary action to be taken when the standards of conduct are violated. The resolution also charges the special committee to make recommendations for creation, membership, and powers and duties of a joint legislative committee on ethical conduct.

The work of the special committee is to be completed by March 15, 1990. This will give the 1990 Legislature the opportunity to act on this matter prior to adjournment of the Session.

In the process of carrying out this assignment, the special committee is expected to review and evaluate the present Kansas laws that pertain to governmental ethics, public disclosure, and campaign finance and to make recommendations for strengthening such laws. The Committee cites the Indiana ethics provisions, among others, as one model from another state that appears to merit review by the special committee during the course of its study.

Further, the concurrent resolution urges the Legislative Coordinating Council to incorporate in member orientation programs information on, and discussion of, applicable standards of ethical conduct.

The Committee believes this course of action will lead to development of a body of ethical conduct standards that will be tailored appropriately to the Legislature and its unique status in state government.

The dual role of a legislator as public servant and private citizen with varied economic interests appears to call for ethical conduct standards which better recognize the need to balance private and public activities, bearing in mind the great importance of maintaining public confidence in the integrity of elected officials. It will be helpful to tailor appropriate ethical standards for members, and it also will be important to maintain a high level of consciousness regarding the letter and spirit of such standards. This latter concern is the main reason the Committee is recommending the establishment of a joint legislative committee on ethical conduct and urging member orientation sessions on ethics standards. The Committee believes that if members of the Legislature have greater awareness of applicable ethics standards, they will more conscientiously consider the implications of daily decisions and activities that might impact upon their personal and economic interests.

**Membership of the Legislature.** The Committee recommends amendment of the Legislative Article of the Kansas Constitution as it relates to legislative membership to accomplish three changes:

1. to increase the length of the terms of Senators from four years to six years and of Representatives, from two years to four years;
2. to provide for staggered terms of office for members of the Senate and House so that approximately one-third of the number of Senators and one-half of the number of Representatives are elected at each general election; and
3. to increase the maximum membership of the Senate from 40 to 41 members.

If these changes are approved by the electors, implementation would commence with the general election held in 1992.

To accomplish these changes, it also was necessary for the Committee to recommend a change in the Education Article of the Kansas Constitution because that Article requires that members of the State Board of Education be elected from ten member districts, each composed of four contiguous Senatorial districts. Thus, the Committee proposes that the Article be amended merely to provide that the ten State Board of Education districts be prescribed by law. Implementation of this change also would occur in 1992. (State Board of Education members would continue to be elected officials.)

Inasmuch as it is not permissible to include amendments to more than one article of the Constitution in a single proposition, it will be necessary to submit two separate propositions to the electorate. It is the Committee's proposal that the amendment pertaining to State Board of Education member districts be placed on the 1990 primary ballot and that the one pertaining to the Legislature be placed on the 1990 general election ballot -- but only if the State Board of Education proposition is approved by the electors.

The proposal to lengthen the terms of members of the House and Senate and to stagger them so that only a portion of each body is subject to election at any general election endeavors to address at least four concerns. Lengthening these terms, as proposed by the Committee, will reduce the amount of time, effort, and resources members must devote to securing their reelection. This is a more significant problem for members of the House who, soon after they assume office, feel compelled to set their sights on securing reelection. Consequently, members are not able to spend as much of their time and attention on understanding and addressing important matters of public policy. The Committee believes such a change will produce dividends from the standpoint of the energies elected representatives will be able to devote to public policy issues, yet terms will not be so long that members will be inclined to neglect their constituency ties. Second, that terms will be somewhat longer and that only a portion of either house will be subject to election at any one time will contribute to continuity of leadership and membership in the body, as well as to the institutional memory of the body. Third, staggering of terms will mean that every two years the voters still will have the opportunity to register their views on the performance of state government. Those members who are not up for election will continue to pay close attention to the messages the voters convey, for they will know that their turn to be reevaluated by the electorate is never very far away. This change also will require the Senate to reorganize every two years (rather than only every four years as presently is the case). This is a meritorious change, because it will operate to keep the Senate leadership better attuned to the messages the electorate is communicating at the biennial elections. At the present time, in 27 states, members of the state Senate are serving under a staggered term arrangement. Fourth, members will be less preoccupied with raising money to fund campaigns as they will be conducted less often. On balance, it should be possible for members to reduce total spending for campaign purposes.

The proposal to increase the maximum number of Senators from 40 to 41 principally is to provide for an odd number of members of the Senate so as to minimize the potential for a body evenly divided between the two major political parties. Even though at times it may seem disagreeable to members of the minority party, it clearly is in the

interest of the Legislature's ability to function effectively to hold one group -- the one which represents a majority of the membership -- responsible for the organization and operation of the assembly. Evenly divided legislative bodies occasionally do occur and are able, through compromises, to work out agreements for operation of the body, but much of the ability to function decisively and effectively is sacrificed under these arrangements. It is the Committee's hope that the crippling effects caused by an equally divided legislative body could be avoided through the adoption of the Committee's recommendation to increase the maximum membership in the Senate by one member.

The Committee wishes to make clear that it has no desire to make substantive policy changes with regard to the establishment of State Board of Education member districts. Its recommendations were brought about by the present situation which makes it impossible to alter the number of Senate districts without also addressing the State Board of Education member district issue. The Committee's recommendation is designed to address this problem in the least obtrusive way.

**Assignment of Interim Committee Bills and Resolutions Directly to the Committee of the Whole.** The Committee recommends passage of legislation to provide that prefiled bills and concurrent resolutions which are the product of an interim committee and which may be prefiled will be referred directly to the Committee of the Whole in the house of origin. If it is the desire of the membership of that body, such a bill or concurrent resolution could be removed from the Committee of the Whole and assigned to a standing committee by a majority vote of those present and voting on the question. In the second house, it is assumed that the bill would follow the traditional path of assignment to the appropriate standing committee.

The purpose of this recommendation is to focus greater attention on bills and concurrent resolutions recommended as a result of the work of interim legislative study committees. Considerable resources are devoted to work by interim study committees as they grapple with a wide variety of issues and attempt to fashion legislation to address important state policy concerns. The common practice is that legislative proposals produced by these study committees are assigned to the appropriate standing committees of the House or Senate and are processed in much the same manner as any other legislative proposal. That is, they are scheduled for hearings and committee action no differently from any other measure. At least two major factors contribute to this situation. One is that interim committee bills and concurrent resolutions often have not, themselves, been subjected to the public hearings process. Normally, hearings have been held on the subject matter, but not on the specific legislative proposal crafted by the interim committee. Thus, the standing committee of the Legislature

feels compelled to conduct such hearings. Second, many times there is only a small contingent of the membership of the standing committee to which the bill or concurrent resolution is assigned who actually participated in the interim consideration of the measure. Of those who did participate, the support of the measure by some may be only lukewarm and some may be hostile to the proposal. The result is that the nucleus of support for the measure might be very small.

With adoption of its recommendation, the Committee hopes to accomplish several things. The assignment of bills and concurrent resolutions directly to the Committee of the Whole of the first house should afford greater prominence to the legislation recommended by interim study committees. Such an assignment will place a greater premium on the work of the interim study committees. This should provide more incentive for such committees to produce a finished product -- one that will have been subjected to hearings and which will have been refined through careful scrutiny by the study committee. Majority support for such a proposal should come to imply strong advocacy for it during debate in the Committee of the Whole. In turn, it is hoped that when initial decisions are made about the matters that are to be studied during the interim and the committees that will conduct the studies, there will be greater selectivity in terms of the number and types of topics designated for consideration and increased attention to the structure and composition of the committees to which studies are assigned. Implementation of this recommendation potentially could produce grist for some significant Committee of the Whole deliberations much earlier in the session than now occurs. Also, this change could save some time for standing committees, to the extent that the step of assigning the measure to the standing committee in the first house is discontinued.

**Early Submission of Executive Branch Budget Recommendations to the Legislative Branch.** The Committee proposes that there be communications between Executive Branch and Legislative Branch personnel to determine when and under what conditions it might be possible for the Executive Branch to transmit to Legislative Branch personnel gubernatorial budget recommendations for various agencies in advance of the formal budget presentation by the Governor.

The Committee examined in considerable depth the issue of expediting the Legislature's work on the state budget through arrangements that would make it possible for the Legislature to accelerate its work thereon earlier in the session. Testimony and other information the Committee received led to the conclusion that, under existing circumstances, there is little opportunity to make change in this area, assuming that it is desirable to continue to expect from the Governor a finished, comprehensive budget presentation. The Committee does not wish to

sacrifice the comprehensiveness of the budget presentation. The Committee concluded that perhaps some progress could be made if legislative staff could receive some portion of the Governor's budget recommendations a few days earlier than presently is the case. This could contribute to somewhat earlier completion of the legislative staff analysis of the budget, thus enabling the House and Senate appropriations committees and subcommittees to begin earlier their detailed budget work. As a consequence, the Committee is supportive of communications between the two branches to determine the extent to which it may be possible to provide some portion of the gubernatorial recommendations to legislative staff prior to the formal budget submission date.

**Biennial State Budget.** The Committee has conducted a preliminary inquiry concerning the desirability of adopting a biennial state budget for Kansas. Unfortunately, the Committee did not have enough time to examine in-depth the myriad of implications associated with such a change. It would appear, though, that there could be advantages under such a system. For example, longer term planning, greater stability in budget making, and conservation of human and financial resources associated with the budget making process might be possible.

In order to keep the momentum on this issue alive, the Committee recommends that the Legislative Budget Committee take this issue under consideration and analyze thoroughly the pros and cons of adopting a biennial budget for Kansas, and, in so doing, consider the potential for shortening the legislative session. This analysis should include the potential for conserving resources associated with the annual budget cycle and possible savings in legislative time that might result.

With approval of the Legislative Coordinating Council, the Legislative Budget Committee is authorized by law to meet throughout the year, and, thus, is strongly encouraged to immediately commence a study of this matter.

**Committee Meeting Facilities.** The Committee urges the Legislative Coordinating Council to consider changes that might be made to further improve the quality of committee meeting facilities available in the State Capitol.

The Committee received testimony indicating the very strong opinion that facilities available for use of the standing committees are woefully inadequate and ill-equipped for the proper conduct of legislative business. It was urged that these facilities be improved so as to better project the dignity of the legislative process and accommodate citizens who come to Topeka to express their views to their elected representatives. The Committee wishes to call to the attention of the Legislative Coordinating



Council, which has some jurisdiction in such matters, these strong criticisms regarding the existing facilities.

**Changes Considered But Not Supported.** Matters that were discussed but for which there was not majority support included: placing limitations on the number of terms members of the Legislature could serve, eliminating the office of Lieutenant Governor, limiting the number of bills a member may introduce, establishing more stringent deadlines applicable to bill introductions (thus encouraging greater use of the bill prefiling provisions of existing law), ceasing legislative pay after some specified number of calendar days, establishing coterminous House and Senate districts, requiring earlier gubernatorial submission of the budget to the Legislature, and having the Governor and the Legislature take office during the month of December.

Respectfully submitted,

November 21, 1989

Sen. Edward Reilly, Chairperson  
Special Committee on Federal  
and State Affairs/Govern-  
mental Organization

Rep. Tom Walker,  
Vice-Chairperson  
Rep. Elizabeth Baker  
Rep. Betty Jo Charlton\*  
Rep. Ginger Barr  
Rep. Nancy Brown  
Rep. John McClure  
Rep. Robert D. Miller  
Rep. Alfred Ramirez  
Rep. Bill Reardon  
Rep. L. V. Roper

Sen. Eugene Anderson  
Sen. Fred Kerr  
Sen. Don Montgomery  
Sen. Jack Steineger  
Sen. John Strick  
Sen. Ben Vidricksen

\* Ranking minority member.

## Minority Report

We agree wholeheartedly with the majority's reaffirmation of the principle of preserving for Kansas the "citizen" or "part-time" nature of the Legislature. Highly summarized, what this means is that legislative service should be viewed as a temporary commitment of time to high public service by public-spirited citizens representing a wide variety of interests and fields of endeavor. We are, therefore, compelled to disagree with two of the majority's recommendations which, if implemented, would operate to undermine the very principle the majority and, we believe, most Kansans hold so dearly. Further, we are disappointed that the majority failed to recommend the one change that would have made the greatest contribution toward helping to preserve the "citizen" nature of legislative service, *i.e.*, imposing a limitation on the number of terms a member of the Legislature may serve.

**Length of Terms.** The majority has proposed doubling the length of the term of House members and increasing by 50 percent the length of the term of Senators. What would be achieved by such a change would be to make members even more secure in their offices, lessen the pressure on them to keep close to the pulse of their constituencies, and reduce the time and effort members must devote to reelection efforts. Fewer elections would result in increased campaign expenditures at each election, the consequence being to further discourage members of the general public from risking time and resources on a legislative race, especially when the race involves the challenge of an incumbent.

Increasing the terms of members of the Legislature would reduce rather than encourage broad citizen participation in the lawmaking process, work as something of a throttle on the infusion of new and creative solutions to intractable social problems, and promote a view of legislative service as a career choice instead of a temporary concurrent commitment of energy to both public service and a person's private interests. In short, the net result of such a change would be to promote a more entrenched legislative membership and a more career-oriented (professional) view of the nature of legislative service.

By way of comparison, the length of the term of House members is two years in all but three states where there is a four-year term. In 38 states, a Senator's term is four years; it is two years in 12 states. There is no state that provides a term as long as six years for membership in either house of the Legislature. On this issue the conventional wisdom is sound. If there is any merit in departing from tradition on this matter, it could only be in relation to a policy choice

to move in the direction of a full-time professional legislature. Such a path is wrong for Kansas.

**Assignment of Interim Committee Bills and Resolutions Directly to the Committee of the Whole.** The majority has recommended that prefiled bills and resolutions proposed by interim study committees be referred directly to the Committee of the Whole upon original introduction. We are sympathetic with the objective of the majority to give greater prominence to the product of the interim committee process and to conserve the time of members during the session. We believe, however, that this change would have unintended results that would not serve the interest of preserving the part-time Legislature.

Such a change would put a much greater premium on the time and attention interim committees would need to devote to legislative proposals. Somewhat ironically, it also would reduce input from the public and from members of the Legislature on important public policy matters.

As to the first point, this is due to the expectation that legislation proposed by interim committees would be a finished product -- meaning that full hearings would have been conducted and final compromises and concessions would have been made. Now, the interim period serves the valuable function of allowing members of the Legislature to gather, analyze, and synthesize information on difficult policy issues that, due to time constraints, cannot be fully considered during the regular session. The greater emphasis is on determining preferred state policy direction, not on working out the many technical implementation details that legislation ultimately must address. Normally, the finishing work can be completed during the session.

Our view is that the proposed change would greatly increase the time required by interim committees to conduct and complete their work assignments. In this connection, it could be expected that lobbying and other special interest group activity would be accelerated in recognition of the higher stakes associated with each action taken by interim study committees. This, too, would result in increased time demands on legislators.

Our fear is that the proposed change would have the effect of significantly increased time demands on members of the Legislature during the interim period. As much as possible, we must guard against changes that increase the time commitment to legislative service if we are to preserve the part-time legislature.

As to the second point, this change could be expected to actually reduce input regarding specific issues by members of the public and legislators. Many such persons are not able to free themselves from commitments during the interim period to travel back and forth to Topeka to express views on particular matters. It is much more convenient to do this during the session when such persons plan to be at the State Capitol. Because interim committee proposals would be referred directly to the Committee of the Whole in the house of origin, many legislators and members of the public would be, in effect, cut out of a key part of the deliberative process. This would be detrimental to the public purpose.

Another major flaw in this recommendation manifests itself in the legislative session following a general election. New members of the body in which the interim committee bill or concurrent resolution is originally introduced will be expected to pass judgment on a measure about which they have little background information. Many times they will not have had the opportunity to become familiar with the measure through the standing committee process. This opportunity should not be denied the new members.

**Limitation on the Number of Terms of Legislative Service.**  
The majority considered but rejected the notion of placing some limitation on the number of terms a person may serve in the Legislature. We believe that such limitations should be imposed.

More than any other issue considered, such a provision would ensure preservation of the "citizen" nature of the Legislature. Such limitations would contribute directly to the infusion of new ideas and "new blood" into the state policy-making arena. There would be no professional or "career" legislators. Consequently, members would be much less inclined to consider issues on the basis of how a particular stand will affect their prospects for retaining office and more likely to adopt a position based on their conception of what is "right." Such a limitation also could reduce somewhat the advantages of seniority so that, potentially, merit would become even more important in the determination of leadership assignments and in the parceling out of responsibilities.

Any limitations should be made to operate prospectively so as not to apply legislative service before the limitations are first imposed. We could support any of several possible types or combinations of limitations so long as they would accomplish effectively the objective of discouraging careerism in office.

It is acknowledged that this change would be breaking new ground. There are no states which currently impose limitations on the number of terms members of the Legislature may serve. A number of states, including Kansas, do impose limitations on the consecutive or the absolute number of terms the Governor may serve. Twenty-two states (including Kansas) impose a limit of two consecutive terms on gubernatorial service, three states impose an absolute two-term limit, and three states prohibit the Governor from serving immediately successive terms. Such limits are designed principally to ensure turnover in the state's highest executive office and can be applied equally well to the office of state legislator. Legislative term limitations should be adopted.

Respectfully submitted,

Representative Elizabeth Baker

Representative Nancy Brown

Representative John McClure

### **Minority Report**

I subscribe to the views expressed in the Minority Report of Representatives Baker, Brown, and McClure with respect to the sections identified as "Length of Terms" and "Assignment of Interim Committee Bills and Resolutions Directly to the Committee of the Whole."

Respectfully submitted,

Representative Ginger Barr

## Minority Report

We subscribe to the views expressed in the Minority Report of Representatives Baker, Brown, and McClure with respect to the section identified as "Length of Terms."

Respectfully submitted,

Representative Tom Walker

Senator Fred Kerr

1-16-90  
C. Galligan

**RE: PROPOSAL NO. 27 -- ESTABLISHING A STATE OFFICE  
OF HOUSING\***

Proposal No. 27 directed the Special Committee on Federal and State Affairs/Governmental Organization to:

Consider the need to establish an Office of Housing in the Department of Commerce to coordinate state activities and to serve as a clearinghouse for federal and state information about housing (S.B. 253).

**Background**

S.B. 253 would create an Office of Housing within the Community Development Division of the Department of Commerce. Under the terms of the bill, the Office would promote the economic health and well-being of Kansas citizens by enhancing the availability of affordable and accessible housing. The bill also would give the Office the following powers and duties:

1. to serve as a clearinghouse for information, programs and resources related to affordable and accessible housing;
2. to research affordable and accessible housing needs, compile housing data as it relates to affordable and accessible housing in Kansas, and report annually to the Kansas Legislature;
3. to provide technical assistance with regard to housing that is not available from existing resources;
4. to work with existing agencies, organizations, and social programs to develop affordable and accessible housing;
5. to encourage home ownership and the preservation and adaptation for accessibility of existing housing; and
6. to exercise such other powers and perform such other duties as may be specified by law.

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\* S.B. 427 accompanies this report.

S.G.O.  
ATTACH 2  
1-16-90

The Department of Commerce estimated that implementation of S.B. 253 in FY 1990 would require additional State General Fund expenditures of \$233,137 and 6.0 FTE positions.

Currently, the Department administers two programs directly related to housing. The Rental Rehabilitation program, which was assumed by the state in FY 1988, serves to pass through federal funds to smaller local units of government to assist in financing the rehabilitation of rental units occupied by low and moderate income persons. The Low Income Housing Tax Credit program, which was developed in late FY 1987, administers the state's allocation of federal tax credits available to private sector developers of housing for low and moderate income persons. In addition, the Department allocates the funding available under the federal mortgage revenue bond program among participating Kansas municipalities and administers the Small Cities Community Development Block Grant program.

During the period from FY 1976 through FY 1985, the Department, which was then known as the Department of Economic Development, had a Division of Housing. The Division, which was created under the provisions of 1975 Executive Reorganization Order No. 7, had no statutorily defined duties. Since there was no formal state housing policy at that time, the Division attempted to meet five objectives which would appear to be similar to the duties outlined in S.B. 253. The five objectives of the Division, as articulated in the agency's budget requests, included the following:

1. to continue the effort of providing a better quality of life through assisting Kansans in obtaining a decent home and suitable living environment;
2. to act as a state clearinghouse for housing information;
3. to assist communities in being able to evaluate and fulfill their own housing needs and problems;
4. to work toward the development of state policies, strategies, legislative and administrative proposals, and evaluation techniques necessary to accomplish state housing goals and objectives; and
5. to work with the private sector to provide functional housing at the lowest possible cost.



In late FY 1981, the Division received the responsibility for operating the federal Section 8 Housing Assistance program for smaller cities in the state. This program occupied the major portion of the Division's staffing (2.0 FTE positions during most of its existence) when the Section 8 program became fully implemented. The Division was formally eliminated at the end of FY 1985, with the Section 8 program being transferred to the Community Development Division. The Section 8 program was formally transferred to the Department of Social and Rehabilitation Services (SRS) at the end of FY 1986.

In addition to the Section 8 program, SRS also operates two other housing related programs. The "Operation Homeless" program administers the federal housing voucher program in the greater Kansas City area. The Emergency Shelter Grant program provides for the pass through of the state's allocation of federal funds designed to improve and expand local emergency shelters for the homeless.

The Kansas Development Finance Authority (K DFA) also is authorized to be involved in the housing issue. K.S.A. 1988 Supp. 74-8904(s) provides the Authority shall "have and exercise all of the powers granted to the public housing authorities by the state, except that the authority shall not have the power of eminent domain." K.S.A. 1988 Supp. 74-8905(c) authorizes the Authority to issue bonds for housing projects. To date, the K DFA has not issued any bonds for housing.

While the creation of an Office of Housing has not been the subject of prior interim study, several interim studies in the past have focused on housing-related topics. A listing of housing-related interim study topics since 1970 is provided in the following table:

**Housing-Related Interim Study Topics  
1970-1988**

| Year<br>Pub. | Pro.<br>No. | Study Topic  |
|--------------|-------------|--|
| 1970         | 48          | Creation of a State Housing Authority  |
| 1971         | *           | Landlord-Tenant Relations  |
| 1971         | *           | Rental Policies of Agencies Providing Housing for<br>Employees                                     |
| 1972         | 26          | Rental Housing Code  |
| 1973         | 16          | Rental Housing Standards   |
| 1973         | 17          | Landlord-Tenant Relations  |
| 1973         | 76          | Kansas Housing Corporation Act   |
| 1975         | 18          | Kansas Housing Finance Authority   |
| 1980         | 11          | Kansas Residential Landlord-Tenant Act   |
| 1984         | 46          | Establishment of a Housing Trust Fund  |
| 1985         | 10          | Property Tax Exemptions for Special Care Housing   |
| 1986         | 12          | Zoning for Manufactured Housing  |
| 1986         | 25          | Residential Facilities for the Handicapped, Elderly, and<br>Mentally Ill and Functionally Disabled |
| 1986         | 27          | Homeless and Indigent Services   |

\* Interim topics were not assigned separate numbers in 1971.

**Committee Activity**

In its review of Proposal No. 27, the Special Committee received staff briefings, conducted a public hearing on the need for the creation of an Office of Housing, and received testimony from the Secretary of Commerce.

The staff briefings provided the Special Committee with background information on S.B. 253 and a status report on proposed federal legislation which could potentially increase funding for housing programs within the state. The Special Committee also received information regarding the former Division of Housing of the Department of Economic Development and the current status of housing assistance programs in the Department of Commerce, the Kansas Development Finance Authority, and the Department of Social and Rehabilitation Services.

The public hearing conducted by the Special Committee on the need for an Office of Housing produced considerable input from

conferees. Representatives of the following organizations testified in favor of the creation of such an office: Kansas Development Finance Authority; Kansas Department on Aging; Kansas Commission on Disability Concerns; Kansas Manufactured Housing Association; Kansas League of Municipalities; Topeka Independent Living Resource Center; Kansas Society of Architects; Housing and Credit Counseling, Inc.; Lockwood Management of Topeka; Shawnee County Community Assistance and Action; Mennonite Housing Rehabilitation Services; Manhattan Emergency Shelter; Hughes Development Company; the Association of Landlords of Kansas; Speaker and Associates; Wichita's Department of Human Services; and the Kansas Chapter of the National Association of Housing and Redevelopment Officials. Proponents of the creation of an Office of Housing cited the need for a central point of contact in the state for the collection and distribution of information regarding federal and state housing assistance programs; the collection of data on the housing needs of the state; the possibility that the state, local units of government, and nonprofit organizations may have missed out on some federal funding opportunities for housing assistance; and the possibility of enhanced federal funding for housing assistance programs in the future, which would require the establishment of a state housing agency for participation.

A representative of the Kansas Association of Realtors testified in support of the concept of establishing a state housing office but expressed concern over the extreme broadness and lack of definitions in S.B. 253. The Homebuilders Association of Kansas appeared in opposition to the creation of a state housing office, expressing concern about the growth of government and the possibility of the office imposing regulatory burdens on the home construction industry.

The Committee also received testimony from the Secretary of Commerce related to the subject of housing. The Secretary reported that due to the growth of interest in the housing issue, he has designated the Community Development Division of the Department of Commerce as the single point of contact within the agency to deal with housing-related issues. The Secretary further outlined his expectations of the Division regarding housing, which include:

1. to serve as a clearinghouse and single point of contact for the state regarding information, programs, and resources related to affordable and accessible housing;
2. to provide access and management of national housing programs for delivery to the citizens and businesses of Kansas;

3. to work with existing agencies, organizations, and social programs to assist in the development of affordable and accessible housing; and
4. to exercise such powers and perform other duties as may be specified by law.

The Secretary further testified that in view of the current status of federal legislation and the difficulties occurring within the Department of Housing and Urban Development, it may be prudent to defer action on S.B. 253. In response to Committee questions regarding the consolidation of state administered housing programs, the Secretary stated that he and the Secretary of SRS had discussed the transfer of the SRS housing programs to the Department of Commerce and that neither party had any objections to such a transfer.

### **Conclusions and Recommendations**

The Committee recommends that no action be taken on S.B. 253 at this time, due to the actions of the Secretary of Commerce in designating the Community Development Division as the single point of contact for housing programs within the Department of Commerce, and considering the current status of federal housing initiatives. The Committee further recommends, however, that the Kansas Legislature, the appropriate state agencies, and other interested parties continue to monitor the progress of federal housing initiatives which might require the creation of a more formal housing office at a future date. Finally, in order to promote governmental efficiency and public access to information on housing programs, the Committee recommends S.B. 427 which will transfer the housing-related programs at SRS to the Department of Commerce and create a single point of contact for the administration of housing programs.

Respectfully submitted,

November 21, 1989

Sen. Edward Reilly, Chairperson  
Special Committee on Federal  
and State Affairs/Govern-  
mental Organization

Rep. Tom Walker,  
Vice-Chairperson  
Rep. Elizabeth Baker  
Rep. Betty Jo Charlton\*  
Rep. Ginger Barr  
Rep. Nancy Brown  
Rep. John McClure  
Rep. Robert D. Miller  
Rep. Alfred Ramirez  
Rep. Bill Reardon  
Rep. L. V. Roper

Sen. Eugene Anderson  
Sen. Fred Kerr  
Sen. Don Montgomery  
Sen. Jack Steineger  
Sen. John Strick  
Sen. Ben Vidricksen

\* Ranking minority member.

1-16-90  
gooding

RE: PROPOSAL NO. 26 -- REGULATION OF POLYGRAPHERS\*

The Committee was charged with reviewing current state and federal laws pertaining to polygraphy and studying proposals for changes in state law (1989 S.B. 379, S.B. 387, and H.B. 2491). The study topic was requested by the House Committees on Governmental Organization and Local Government and the Senate Committee on Local Government.

**Background**

Licensure of polygraphists in Kansas was mandated by enactment of 1987 H.B. 2223 (K.S.A. 75-740 et seq.). The statutes establish the Kansas Board of Polygraphists and provide for regulation of polygraphy. Polygraphy is defined as the use of a mechanical or electronic instrument to test or question people to determine the truthfulness of their responses.

The statute establishes the five-member Kansas Board of Polygraphists appointed by the Attorney General. The Board is composed of four polygraphists and one public member, no two of whom may reside in the same congressional district.

Beginning January 1, 1988, persons were required to be licensed by the Kansas Board of Polygraphists in order to conduct polygraph examinations for remuneration or to represent themselves as polygraphists, polygraph operators, or polygraph examiners. Requirements for licensure include a baccalaureate degree or completion of two years of study at the collegiate level, with at least two years' experience as an investigator or two years' supervised internship.

Each applicant for licensure must satisfactorily complete a polygraphy training course of at least 250 hours of instruction, serve a supervised internship, have conducted at least 100 polygraph examinations, and pass a written and a practical examination.

The education, training, internship, and examination requirements may be waived by the Board if an applicant has conducted polygraph examinations in Kansas for at least one year, has conducted at least 250 polygraph examinations, and has had training or experience that is substantially equivalent to the requirements imposed by the law.

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\* H.B. 2589 accompanies this report.

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1-16-90

The Board of Polygraphists has not issued any licenses. According to information from the Attorney General's office, only three of the required five members of the Board were appointed. The Attorney General was unable to identify persons qualified to fill the two remaining positions. Those positions must be filled by law enforcement officers who have performed 500 law enforcement polygraph examinations in the five years preceding appointment.

### 1988 Legislative Session

During the 1988 Session, two bills were introduced to remedy problems with the current law. 1988 S.B. 614 would have changed the effective date of the licensure requirement from January 1, 1988 to July 1, 1989. The purpose of the bill was to delay imposition of the licensure requirement pending an interim study and action by the 1989 Legislature to amend the statute. The bill passed the Senate, but died in the House Committee on Federal and State Affairs. The topic was not assigned to an interim committee in 1988.

Another 1988 bill, S.B. 479, would have added licensed polygraphists and polygraphist interns to the list of persons exempt from the requirement to be licensed as private investigators. This bill was introduced by the Joint Committee on Administrative Rules and Regulations to eliminate the current requirement that licensed polygraphists also be licensed private detectives. Prior to enactment of the licensure act, persons who performed polygraph examinations were required to have a private investigator license. With enactment of the polygraphist licensure law a dual licensure requirement was put in place. (Dual licensure has not been implemented, however, because the Board of Polygraphists has not been able to function.) The bill was reported adversely by the Senate Committee on Federal and State Affairs.

### Federal Law

Also in 1988 a federal law was enacted that impacts polygraph examiners and which makes the experience requirements of the state law almost impossible to meet. In short, the federal law regulates polygraph testing and prohibits such tests altogether in many instances. There are virtually no provisions in the federal law for licensure or standards for training polygraphists. The law leaves to states the licensing of polygraphists and requires that polygraphists who conduct tests under provisions of federal law be licensed by the state if the state requires licensure.

The federal law is to be implemented by the U.S. Secretary of Labor who is required to prepare and distribute a notice summarizing the provisions of the act which must be posted by employers in a conspicuous place. The Secretary has authority to issue subpoenas for the purpose of any hearing or investigation in connection with the act's provisions. The Secretary is also authorized to cooperate with regional, state, and local agencies and provide technical assistance to employers, labor unions, and employment agencies to facilitate implementation of the act.

The Secretary may bring court action against any employer who violates the act. An employer could be fined up to \$10,000 for willful violation of the act. Private civil actions against employers who violate the act may also be brought and an employer who violates the act is liable for legal or equitable relief.

The law bans the use of lie detectors, defined to include polygraphs, deceptographs, voice-stress analyzers, psychological-stress evaluators, and similar tests, for most private-sector job applicants and workers. Employers are prohibited from directly or indirectly requiring, requesting, suggesting, or causing an employee or prospective employee to take a lie detector test.

Most personnel actions based on the results of lie detector tests are also prohibited. Employers cannot discharge, discipline, discriminate against, or deny employment or promotion to any employee or job applicant who refuses to take a lie detector test, or who has filed a complaint or started a lawsuit against the employer for violating the law prohibiting such tests.

Federal, state, and local governments may use polygraphs. Also exempt from the ban on polygraph use are consultants and private employers who contract with government intelligence agencies, the Defense Department, the FBI, the Department of Energy (in connection with atomic-energy defense activities), employers who provide security services, and companies that manufacture, distribute, or sell controlled substances. The exemptions specified in the law do not diminish an employer's responsibility to comply with state and local law or with any negotiated collective-bargaining agreement that prohibits the use of lie detector tests on employees and job applicants. Even when a polygraph test is allowed, an employer is forbidden to take an adverse job action based solely on the results of the test.

Employers may use polygraph tests as part of an ongoing criminal investigation of such crimes as theft, embezzlement, misappropriation, or unlawful industrial espionage or sabotage if they have suffered economic



loss or injury and have good reason to suspect that an employee was involved. Tests may be administered under those circumstances only if:

1. the employee had access to the property under investigation;
2. the employer makes a statement available to the worker prior to the test that outlines the specific incident under investigation and the basis of the employer's suspicions; and
3. the statement is signed by a person authorized to legally bind the employer and is kept on file for at least three years.

Specific testing procedures are set out in the act. No test may be shorter than 90 minutes and no examiner can conduct and complete more than five polygraph tests on a given day. Prior to taking a lie detector test, the person being examined must:

1. receive reasonable written notice of the date, time, and place of the examination and of the examinee's right to obtain legal counsel;
2. be informed in writing of the nature of the test and the instruments involved;
3. be informed in writing whether the test will be observed through a two-way mirror or any other such device and whether it will be recorded;
4. read and sign a notice informing the examinee of his or her rights under the act, including provisions that the examinee cannot be required to take a lie detector test as a condition of employment and that the results of such a test may be used as supporting evidence to fire, discipline, or refuse to hire an individual;
5. receive a copy of the questions to be asked during the test; and
6. be informed that the examinee can terminate the test at any time.

During the test, the examinee may end the test at any time and cannot be asked questions that were not presented in writing prior to the test. The questions asked during a test cannot be asked in a manner designed to degrade the examinee nor can questions deal with race, religion, politics, sex, or union affiliation. A test may not be conducted if there is sufficient evidence from a doctor that the examinee is suffering from a medical or psychological condition, or is undergoing treatment that might adversely affect the test results.

After a test, and before any adverse action is taken against the examinee, an employer must further interview the employee on the test results and provide the employee with a written copy of the questions, responses, and the test results. Information obtained during a polygraph test cannot be disclosed to anyone except the examinee, or someone designated by the examinee; the employer, or government agency, who requested the test; or any person, court, or government agency with a warrant for the information.

An employee or job applicant may sue an employer who has violated the provisions of the act. The suit must be brought within three years of the alleged violation and an employer can be held liable for legal and equitable relief, including employment, reinstatement, promotion, and the payment of lost wages and benefits.

Polygraph examiners must comply with licensure and regulatory laws of the state in which the test is to be conducted. In addition, the examiner must maintain at least a \$50,000 bond or the equivalent in professional liability insurance. Examiners must submit in writing any conclusion or opinion based on the test results. The conclusion must be based solely on the results of the polygraph charts and cannot include any recommendations concerning the employment status of the examinee. All records relating to a polygraph test must be retained for at least three years.

### 1989 Legislative Session

Three related bills were introduced to the 1989 Legislature. S.B. 387, by the Committee on Ways and Means, would have changed the date by which polygraphists must be licensed to July 1, 1990. The bill was referred to the Senate Committee of the Whole and was passed 38 to 0. The bill was in the House Committee on Governmental Organization at the end of the 1989 Session.

H.B. 2491, by Committee on Governmental Organization, would make extensive amendments to the existing licensure act. The bill would exempt polygraphists and polygraphist interns from the private

investigator licensure law. As in 1989 S.B. 387, the deadline for licensure under the act would be moved to January 1, 1990. The bill also would make several amendments to conform with federal law.

As passed by the House, the bill would have reduced from 500 to 100 the number of polygraph examinations a polygraphist who is a member of a law enforcement agency would have to have conducted in order to become a member of the Kansas Board of Polygraphists. The bill would also reduce the number of polygraph examinations a polygraphist would have to have conducted to serve on the Board from 500 to 250 in the case of polygraphists who are privately employed. The bill would add a continuing education requirement, to be established by the Board, for applicants for license renewal and would provide that two years' experience as an investigator approved by the Board or two years' internship under the supervision of a licensed examiner would be an alternative to study at a college or university as a requirement to be licensed as a polygraphist.

Areas in which changes would be made by the bill to conform to federal law include the definition of "polygraph," the questions that are prohibited during polygraph tests, and the length of time polygraph examination records must be kept. In addition, the requirement is added that applicants for licensure as polygraphists would have to submit evidence that they maintain a surety bond or professional malpractice insurance. The bill was in the Senate Governmental Organization Committee at the end of the 1989 Session.

The third 1989 bill, S.B. 379, by Committee on Federal and State Affairs was also in Senate Governmental Organization Committee at the end of the 1989 Session. The bill would enact the Security Professions Licensing Act. That act would consolidate licensure of polygraphists and private investigators and place that responsibility with a five-member Security Professions Licensing Board. Introduction of the bill was requested by the Attorney General.

The five-member Board would be appointed by the Governor to three year terms. At least one member of the Board would be required to be a licensed polygraphic examiner. At least one member would be required to be a licensed private investigator who is a sole practitioner or who is affiliated with an agency of fewer than six licensees. At least one member would be required to be a licensed private investigator who is affiliated with an agency of six or more licensees. At least one member would be a representative of the general public. No two members of the Board could live in the same judicial district.

The Board would be authorized to employ an executive director and other employees as necessary to administer the act. All employees of the Board would be in the classified civil service. Among the Board's powers and duties would be adoption of rules and regulations necessary for administration of the act, and fixing and collecting fees to conduct examinations.

Effective January 1, 1990, all private investigators and polygraph examiners in the state would have to be licensed under the act. Persons licensed as private detectives on July 1, 1989 would be able to renew their licenses under this act without meeting the required educational or experience qualifications, but would have to meet all other qualifications.

Each applicant would be required to pass a written examination for an initial license and may be required to pass an oral examination. The Board would be required to give examinations at least four times per year.

The Board would be required to investigate applicants, including the directors and officers of corporate applicants, as the Board determines necessary. Each applicant would be required to pay a \$750 license fee for the first category of license and \$250 for each additional category of license, which would be applied to the cost of conducting the investigation. An individual applicant who is a resident of Kansas would be liable for the entire cost of the investigation up to a maximum cost of \$1,500 for the first category of license and \$500 for each additional category of license. A corporate applicant or an applicant who is not a Kansas resident would be liable for the entire cost of the investigation. Each applicant would be required to pay the entire fee and cost for which the applicant is liable before taking an examination. The Board would be required to provide the applicant with a copy of the report of the investigation within a reasonable time after it receives the completed report.

In order to be licensed under the act, a person must:

- be at least 21 years of age;
- be a citizen of the United States or lawfully entitled to remain and work in the United States;
- be of good moral character and temperate habits; and
- have no conviction of a felony or a crime involving moral turpitude or the illegal use or possession of a dangerous weapon.

In addition, an applicant for licensure or renewal of a license must:

- submit proof of coverage by a policy of insurance for protection against liability to third persons, with limits of liability in amounts not less than \$100,000, written by an insurance company authorized to do business in this state; or
- submit proof, in a form required by the Board, that the applicant possesses and will continue to possess sufficient means to act as a self-insurer against that liability.

Licensees would be required to maintain the policy of insurance or self-insurance. Failure to maintain the required insurance would result in suspension of a license.

In order to be licensed as a private investigator, a person must have at least five years' experience as an investigator, or the equivalent thereof as determined by the Board. For the purpose of determining qualifications for licensure, one year of experience would consist of 2,000 hours of experience.

In order to be licensed as an intern a person would be required to have a baccalaureate degree from an accredited college or university and at least one year's experience in investigation or polygraphic examination satisfactory to the Board, an associate degree from an accredited college or university and at least three years' experience, or a high school diploma or its equivalent and at least five years' experience. In addition, the person must have satisfactorily completed a basic course of instruction in polygraphic techniques satisfactory to the Board.

In order to be licensed as a polygraphic examiner a person must meet the requirements for interns; have actively conducted polygraphic examinations for at least two years; have completed successfully at least 250 polygraphic examinations, including at least 100 examinations concerning specific inquiries as distinguished from general examinations for the purpose of screening; have completed successfully at least 50 polygraphic examinations, including ten examinations concerning specific inquiries, during the 12 months immediately before the date of application; and have completed successfully at least 24 hours of advanced polygraphic training acceptable to the Board.

The bill would also authorize the Board to impose other requirements.

Any license obtained under the act would give the licensee authority to engage in the business specified by the license in any city or county in the state. Cities and counties would be prohibited from enacting ordinances regulating persons licensed under the act, except general business regulations designed to raise revenue, to assure compliance with building codes and ordinances, or regulations concerning zoning and fire safety.

### **Committee Activity**

The Committee held a hearing on this proposal on July 6. At that hearing a representative of the Attorney General's office and four polygraph examiners and investigators appeared. Some of the testimony, including that provided by the Attorney General's office, indicated that current enforcement of the private investigator statute is not adequate, especially for regulation of polygraphists. However, some conferees stated their opinions that polygraphists could be adequately regulated by using the private investigator's law. The representative of the Attorney General's office asked that the existing polygraph licensure law be repealed.

With the exception of the representative of the Attorney General's office, none of the conferees supported either of the 1989 bills. The Attorney General's representative cited the small number of polygraph examiners (the current estimate is approximately 30) as the main reason that separate licensure and regulation of the profession would no longer be cost effective.

### **Committee Conclusions and Recommendations**

The Committee concludes that a consensus regarding the appropriate form and type of regulation of polygraph examiners should be developed within the industry prior to further legislative consideration of the matter. The Committee also recognizes that the existing statute cannot be enforced and for that reason recommends introduction of legislation that would repeal K.S.A. 75-740 et seq.

Respectfully submitted,

October 24, 1989

Sen. Edward Reilly, Chairperson  
Special Committee on Federal and  
State Affairs/Governmental  
Organization

Rep. Tom Walker,  
Vice-Chairperson  
Rep. Elizabeth Baker  
Rep. Betty Jo Charlton\*  
Rep. Ginger Barr  
Rep. Nancy Brown  
Rep. John McClure  
Rep. Robert D. Miller  
Rep. Alfred Ramirez  
Rep. Bill Reardon  
Rep. L. V. Roper

Sen. Eugene Anderson  
Sen. Fred Kerr  
Sen. Don Montgomery  
Sen. Jack Steineger  
Sen. John Strick  
Sen. Ben Vidricksen

\* Ranking minority member.