


Approved 

Date

APR 29 1992

MINUTES OF THE House COMMITTEE ON Governmental Organization

The meeting was called to order by Representative Gary Blumenthal  
Chairperson

8:00 a.m./~~p.m.~~ on April 7, 1992 in room 522-S of the Capitol

All members were present except:

Representative Barbara Lawrence, excused  
Representative Franklin Weimer, excused

Committee staff present:

Carolyn Rampey, Legislative Research Department  
Julain Efird, Legislative Research Department  
Avis Swartzman, Revisor of Statutes  
Nita Shively, Committee Secretary

Conferees appearing before the committee:

Gene Johnson, Kansas Alcoholism & Drug Addiction Counselors Association  
Mary Ann Gabel, Executive Director, Behavioral Sciences Regulatory Board  
John Gilbert, Kansas Alcoholism & Drug Abuse Counselors Association  
Andrew O'Donovan, Acting Commissioner, Alcohol & Drug Abuse Services, SRS  
Tom Culala, Executive Director, Cypress Recovery  
Dennis R. Gilhousen, Vice-President, Valley Hope Association, Norton  
Bill Newman, Staff Attorney, Department of Administration  
Ron Todd, Commissioner of Insurance  
Gloria O'Dell, State Treasurer's Office  
Sally Thompson, State Treasurer

Chairperson Blumenthal called meeting to order when quorum was present.

Hearing on SB 458 - An act concerning alcohol and other drug abuse treatment and evaluation; providing for registration of alcohol and other drug abuse counselors.

Gene Johnson pointed out the tremendous increase in substance abuse since 1968. He also described several efforts to obtain some form of state credentialing for counselors. The need to set standards is vital, therefore, requiring specific qualification for registration will insure qualified practitioners. (Attachment 1)

Mary Ann Gabel, proponent for SB 458, spoke briefly. She acknowledged that the Board had administrative concerns regarding the original wording in the bill. In response to these concerns, the Senate Public Health & Welfare Committee developed amendments intended to satisfy the problem. Consequently, the Behavioral Sciences Regulatory Board endorses SB 458 and requests that this committee report it favorably. (Attachment 2)

Dennis Gilhousen described how, for many years, his organization operated a 1-year training program and developed their own standards for competence and adequacy of training. This was necessary since the state did not require a uniform standard of training and knowledge.

The entire situation in the treatment field has changed drastically in the last 2 years. In addition, 3rd party payors increasingly favor the concept of managed care. Mandating credentialing of alcohol and drug abuse counselors would benefit patients and their families. (Attachment 3)

John Gilbert spoke in support of SB 458. He provided the committee with the background of KADACA and also the process they followed before making their recommendation to the Legislature for credentialing drug and alcohol abuse counselors. (Attachment 4)

KADACA has been certifying alcohol and drug abuse counselors since 1975. It is estimated, however, that there are probably 400 to 500 practitioners,

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not members of KADACA, who hold themselves to be alcohol and drug counselors. Potential harm to the public due to unregulated practice is inevitable.

Andrew O'Donovan stated that his department worked closely with all interested parties in establishing the necessary criteria for determining qualifications for registration. (Attachment 5)

Discussion followed and Chair explained the procedure necessary before the bill could be introduced. Other questions were asked and answered by conferees.

Thomas Culala stated that although he is in favor of SB 458, he also has certain reservations. He feels that registration is not sufficient to practice counseling in Kansas. There should be stipulation that registered individuals should be accountable through an agency with appropriate licensure. (Attachment 6)

Hearing closed on SB 458.

Hearing on HCR 5045 - A proposition to amend sections 1 and 11 of article 1 of the constitution of the state of Kansas, relating to constitutional officers of the executive department of the state.

Bill Newman appeared in support of HCR 5045. He pointed out that on several occasions efforts were made to remove the State Treasurer from the elected category. HCR 5045 would insure that citizens have the right to elect the State Treasurer and the Insurance Commissioner. (Attachment 7)

Chair recognized Commissioner Ron Todd, proponent for HCR 5045. He advised that the Insurance Department is a major policy-making agency affecting every citizen in the state. (Attachment 8)

The problems that would result if it were an appointive office were outlined along with many of the accomplishments of the agency. Commissioner Todd feels that many of these accomplishments would not have been possible if the Commissioner was responsible both to the person who appointed him and to the public.

Gloria O'Dell spoke briefly in support of HCR 5045. She noted the expertise necessary to handle vast sums of money. Since this is the responsibility of the State Treasurer, it follows that the Treasurer should answer directly to the citizens of the state.

Sally Thompson, proponent for HCR 5045, spoke briefly. Several points she outlined were: the need for independence and objectivity; the office should be free from internal control; should be accountable solely to the voters.

Hearing closed on HCR 5045

Action on SB 458 - Motion by Representative McClure to report SB 458 favorably. Motion seconded by Representative Watson, motion carried.

Action on HCR 5045 - Motion by Representative Hamilton to report HCR 5045 favorably. Motion seconded by Representative Ramirez, motion carried.

Representative Bowden moved to accept minutes for March 30 and 31st. Motion seconded by Representative Watson, motion carried.

Chair recognized Representative McClure, who submitted Subcommittee #2's report on the Department of Health & Environment (ERO 25). Representative McClure advised that since the Senate rejected ERO 25, there was no further

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need to deliberate on this matter. However, the Department of Health & Environment raised several issues that the committee felt were valid concerns that should be addressed. The following 3 recommendations were made:

1. The Department of Health and Environment should be the subject of interim study.
2. Consideration should be given to enacting HB 2801, which concerns the Department's responsibilities in the area of solid waste management.
3. Consideration should be given to strengthening the Department's information system, both within the agency and among other users and units of government. (Attachment 9)

Representative McClure elaborated on each of the 3 recommendations.

Motion by Representative McClure to accept the Subcommittee's report. Motion seconded by Representative Brown, motion passed.

Chair thanked members of the committee and Subcommittee Chairs for their cooperation.

Meeting adjourned at 9:00 a.m.



TO: House Governmental Affairs Committee

RE: SB 458

DATE: April 7, 1992 - 8:00 A.M.

Mr. Chairman and Members of the Committee:

My name is Gene Johnson and I am the lobbyist in the State Legislature for the Kansas Alcohol and Drug Addiction Counselors Association. I also represent the Kansas Association of Alcohol and Drug Program Directors. In addition, I have been the lobbyist for the Kansas Community Alcohol Safety Action Project Coordinators Association.

Since the middle of the 1970's the alcohol and drug counselors in the State of Kansas have sought some type of recognition for their work in the alcohol and drug field, keeping in mind however that this is a fairly new profession. As of a quarter of a century ago there was very little formalized treatment for those who suffered with the disease of alcoholism and drug addiction. Since 1968 when several treatment organizations started operating within the State of Kansas, including some within the Social Rehabilitation Services in the State hospitals, we have seen an enormous growth of those afflicted persons who need professional assistance for their alcoholism and drug addiction. We found, in the past, that treatment does work and with proper treatment those afflicted people can return to somewhat normal lives and become tax paying citizens in their communities. The success of the treatment

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attachment 1

programs within the State of Kansas are largely due to the undying efforts of the alcohol and drug addiction counselors who are working in the trenches with that afflicted person. The counselor does not feel it is a lack of willpower for the person nor is it a moral decay of character which causes him to be afflicted with the disease of alcoholism or drug addiction.

After several unsuccessful attempts to become certified within the State of Kansas, under the direction of the Secretary of Social Rehabilitation Services, we determined after the 1990 legislative session that we must go through the proper process in order to receive some type of state credentialing. On July 16, 1990 our counselors association presented the Secretary of Health and Environment an intent to apply for approved credentialing status of the provisions as set forth under state law and regulations KSA 65-5001. Since that July 16, 1990 date we have presented our application to the Secretary, and went through the credentialing process of the Technical Committee appointed by the Secretary of Health and Environment. On December 30th, 1991, we received the approval of the Technical Committee for the purpose of registration of Alcohol and Drug Addiction Counselors and on January 27, 1992, Dr. Azzie Young, Secretary of the Department of Health and Environment made recommendations to the Legislature approving registration for those persons practicing alcohol and drug addiction counseling.

On April 17, 1991, the Senate Ways and Means Committee

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introduced SB 458 concerning alcohol and other drug abuse treatment and evaluation. At that time that bill called for the licensure of alcohol and other drug abuse counselors. This was an error in printing. It was the intent of the association to only seek registration for the alcohol and drug abuse counselors. The error has been corrected and proposed legislation calls for the registration of counselors.

Hearings were held on February 13, 1992 in the Senate Public Health and Welfare Committee. After those hearings, SB 458 was referred to a sub-committee for further work. The sub-committee met twice and after four hours of deliberation returned the bill to the full committee for their approval. During the sub-committee deliberation, input was received from the Counselor's Association, the Commissioner of Alcohol and Drug Abuse Services and the Executive Director of the Behavioral Sciences Regulatory Board. On March 13, 1992 the full committee passed the bill out favorable. The full Senate acted on this legislation on March 31, 1992 and passed it favorably without any amendments on a vote of 35 to 5.

In addition, I am in the position to inform you that this legislation has the full approval of the Kansas Association of Alcohol and Drug Program Directors and the full approval of the Community Alcohol Action Project Coordinators Association. It has been the combined efforts of these three professional organizations in the past three years, with many meetings held

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amongst peers and also with the keen guidance and assistance of the office of the Commissioner and his staff for Alcohol and Drug Abuse Services. This has not been a singular effort by the counselors association but the joint effort of all of those people who are interested in providing top notch services to the people who are in need of assistance with the disease of alcoholism and drug addiction.

Finally, I firmly believe that in order to press forward in fighting the third largest disease as recognized by health experts today that we press forth with professional counseling in order to preserve the lives of our citizens of Kansas. We are in a tight money situation in the state and also in the nation. The time has come that we must get the "best bang for a buck" for the treatment of those afflicted with alcoholism and drug addiction. This can be accomplished in a much more efficient way if we provide qualified and regulated alcohol and drug counselors through the registration process for our citizens of this fine State.

Thank you and I will attempt to answer any questions at this time.



Gene Johnson, Lobbyist  
Kansas Alcohol and Drug Addiction Counselors Association  
Kansas Association of Alcohol and Drug Program Directors  
Kansas Community Alcohol Safety Action Project Coordinators  
Association

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MARY ANN GABEL, *Executive Director*

BOARD MEMBERS:

*Public Members*

SUE BAUMAN

RONALD D. REINERT

JOSEPH N. ROBB, *Vice-Chairman*

*Psychology*

DONALD J. FORT, Ph.D.

GERALD K. GENTRY, Ph.D.

*Social Work*

SHARON T. RUSSELL, MSW

THELMA JOHNSON SIMMONS, MSW



Landon State Office Building  
900 S.W. Jackson, Room 855-S  
Topeka, Kansas 66612-1220  
913/296-3240 FAX 913/296-6729

LICENSED PROFESSIONALS:

*Psychologists  
Social Workers*

REGISTERED PROFESSIONALS:

*Master Level Psychologists  
Professional Counselors  
Marriage and Family Therapists*

**BEHAVIORAL SCIENCES REGULATORY BOARD**

TESTIMONY BEFORE THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

S.B. 458 AS AMENDED

Tuesday, April 7, 1992

CHAIRPERSON BLUMENTHAL, VICE-CHAIRPERSON WATSON, AND COMMITTEE MEMBERS:

I am Mary Ann Gabel, Executive Director of the Behavioral Sciences Regulatory Board, appearing on behalf of and at the request of the board, and in support of SB 458 as amended.

The board supports the efforts of this group to protect the public through the registration of qualified practitioners to practice as alcohol and other drug abuse counselors.

The board found it had administrative concerns in the original wording of the legislation; however, the board worked with the proponents and the Senate Public Health and Welfare Committee to arrive at acceptable amendments. The amendments in the bill address the board's administrative concerns.

I will be happy to attempt to answer any questions you may have regarding the administration of this worthwhile program.

Thank you.

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attachment 2

TESTIMONY TO THE  
HOUSE GOVERNMENTAL ORGANIZATION COMMITTEE  
APRIL 7, 1992

Dennis R. Gilhousen, Vice-President  
Valley Hope Association  
Norton, Kansas

My name is Dennis Gilhousen, Vice-President of the Valley Hope Association, and I am here this morning to speak in behalf of the registration of alcohol and drug abuse counselors in the State of Kansas.

By means of background, the Valley Hope Association is a non-profit organization headquartered in Norton, Kansas, operating fifteen substance abuse treatment centers in Kansas, Nebraska, Missouri, Oklahoma, Colorado, Wyoming, and Arizona. Since admitting our first patient on August 15, 1967, we have treated nearly 100,000 substance abusers and their families. Throughout the nearly quarter century of our involvement in this field, we have consistently worked toward maintaining high quality treatment programs through the development and maintenance of high quality, well-trained treatment staffs.

For much of that time, we have depended on our own standards of competence and adequacy of training, because external standards did not exist in Kansas. As a result, from the very beginning of our existence, we have operated an intensive, one-year counselor training program in conjunction with our treatment program. In that time, about 200 people, ranging from G.E.D. educated to those with Masters degrees in behavioral sciences, have entered the training program. This has assured us of a steady source of counseling personnel who were trained and competent to be involved in the recovery of addicted people and their families. It also has provided a substantial number of trained personnel to other programs in Kansas and throughout the country. We had, in effect, developed our own criteria defining the knowledge and training, independent of the educational degree the trainee might or might not have, that was required in order to meet the needs of the public that looked to us for help. Empathy, understanding, and a self-recovery program were helpful to the trainee's development, but, by our definition, they were not enough.

We believe that the need for credible standards for substance abuse counselors is

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more an issue now than it has ever been. Substantial changes have occurred in the substance abuse treatment field in the past decade. The standards of the Joint Commission on Accreditation of Healthcare Organizations have moved many programs toward formalizing the treatment process. Attention has been drawn to the fact that we as treatment providers need to be concerned not only with what we do, but also with how we do it. Client assessment, treatment and aftercare planning, case management, and record keeping have become much more than just words in an expanding therapeutic vocabulary. State licensing standards and procedures have also become more refined and quality oriented.

Furthermore, the whole treatment field has been revolutionized in the past two years or so as third party payors have increasingly embraced the concept of managed care. Precertification, re-certification, and utilization review have become a fact of life for us, and for the patients we serve. In short, the substance abuse treatment field is not what it used to be.

That reality calls us to accept the fact that more is also expected now of our counseling staffs. You cannot give quality patient care if you cannot first help the patient get into treatment and then help the patient stay long enough to receive the kind of services appropriate to the circumstances. Simply put, the patient can be harmed both therapeutically and financially by a counselor not equipped to deal with the complexities of the system. A clearer definition of standards expected of treatment facilities also calls, by extension, to a clearer definition of the standards set for the people providing the services. Those standards should, we believe, include requirements for someone to become a counselor, through initial training and competence testing, and to remain a counselor through continuing education. With the variety of treatment models currently available to the public, patients should have the assurance that no matter where they enter the system, they will be met by a counselor who has met a uniform standard of training and knowledge. If we as treatment providers take what we are doing seriously, we owe that to the people we serve.

Finally, I also submit to you that the state of Kansas would not be breaking new ground in mandating the credentialing of alcohol and drug abuse counselors. A number of

states already have done so. Valley Hope operates facilities in Nebraska and Colorado, both of which require certification of counselors in state certified or licensed facilities. We can say from experience and with certainty that:

1. Mandated certification of counselors in those states has had no meaningful effect on our cost of providing services in those states. Required continuing education, in fact, has the effect of increasing productivity both through the sharpening of skills and the sense of professional self-satisfaction derived from it.
2. Mandated certification of counselors has had no effect on our ability to recruit or retain counselors in those states. In fact, recruitment is probably made easier by knowing that some positions must be filled by a person who is already credentialed. When we hire someone already certified, we know they have met an accepted standard of training and competence.
3. While we are not aware of any nationally mandated standards of education and training for counselors, enough states have adopted standards sufficiently similar in substance to draw conclusions about generally accepted standards of education and training. Twenty-three of those states have joined together in a consortium, granting reciprocity among them for counselors certified in any of the states.
4. The American Society of Addiction Medicine has developed national certification criteria for physicians working with alcohol and drug addicted patients, leading to board certification in the specialty of addictionology. While those criteria do not apply to counselors, they do suggest there is a distinct body of knowledge applicable to the treatment of addicted people, and that standards of training and education can be set for those working with them in the treatment process. If it is true for physicians who work primarily with the physical aspects of the disease, then it also must be true for the counselors who are most closely involved in the therapeutic milieu.

In summary, the Valley Hope Association appreciates the opportunity to speak to you today in support of the registration of alcoholism and drug addiction counselors in Kansas, and we pledge our cooperation and assistance in the process leading toward that end.



**KADACA**

TO: House of Representatives Governmental Organization Committee  
Representative Gary H. Blumenthal, Chairman

RE: Senate Bill 458

DATE: April 7, 1992

Dear Mr. Chairman and members of the committee:

We are presenting testimony on behalf of KADACA's approximately 475 member counselors who are in support Senate Bill 458, which provides for state registration of alcoholism and drug addiction counselors.

As has been previously mentioned in earlier testimony by Mr. Gene Johnson, KADACA submitted a letter of intent to the Secretary of the Department of Health and Environment in the summer of 1990 to apply for credentialing status of alcoholism and drug addiction counselors in Kansas. After the Secretary invited KADACA to submit the application, we convened several meetings with representatives of the various statewide alcohol and drug agencies in Kansas to solicit input and support as we spent several months acquiring the needed information to develop this comprehensive application. Andrew O'Donovan, Commissioner of Alcohol and Drug Abuse Services within the Kansas Department of Social and Rehabilitation Services, and his staff were valuable resources in this process. After submission of the application to the Secretary of the Department of Health and Environment in April 1991, the Secretary appointed the Technical Committee to review the application. That review process began in early October 1991 and was completed on December 18, 1991, with a unanimous recommendation of approval by members of the Technical Committee. On January 27, 1992, Dr. Azzie Young, Secretary, Department of Health and Environment, made the recommendation to the Legislature for the registration of alcoholism and drug addiction counselors in Kansas. After some modification in a subcommittee of the Senate Public Health and Welfare Committee, that committee's chairman, Senator Roy Ehrlich guided Senate Bill 458 onto the floor of the full Senate where on March 31 it received an overwhelming

vote of approval by a margin of 35 to 5.

Some of you may not be familiar with the alcoholism and drug addiction counseling profession or with KADACA. If I may, I would like to give you a brief overview of both.

KADACA was chartered in 1974 and began certifying alcoholism and drug addiction counselors in 1975. In 1976, KADACA became a charter member of the National Association of Alcohol and Drug Abuse Counselors (NAADAC), an association which today includes more than 40 state counselor's associations. In the early 1980s, KADACA joined with several states in forming a National Certification Reciprocity Consortium (NCRC), which today includes 43 states, as well as the US Air Force and Navy certification bodies. This organization provides for reciprocity of members to member states that have agreed to uniform minimum criteria for certification. In other words, a counselor who is certified in Kansas can reciprocate or transfer his or her certification to another state by simply providing verification of current certification in Kansas.

Qualifications for testing are a blend of education, plus 3,000 hours of practicum and/or work experience under the supervision of a certified alcoholism counselor. The qualifications proposed in SB 458 are approximately the same as the current KADACA certification requirements, other than that the proposed registration bill requires a person practicing the occupation to eventually attain a bachelor's degree.

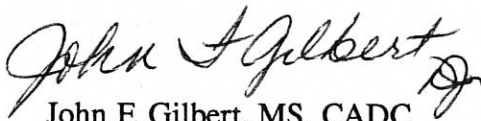
As mentioned in earlier testimony, KADACA has sought state credentialing of counselors on several previous occasions. One of the major reasons for these efforts is the continual risk of harm to clients by unqualified non-certified counselors who present themselves to the public as alcoholism and drug addiction counselors. KADACA has a membership of approximately 475 counselors who are either certified or are members with associate status. In the latter instance, associate members are working to meet the criteria to become certified or, under the provisions of this bill, registered. It is estimated there are at least 400 and possibly 500 practitioners who are not members of KADACA but who, without any state restrictions or designation, hold themselves out to be alcoholism and/or drug addiction counselors.


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Senate Bill 458 will eliminate these problems. The Department of Health and Environment credentialing review process required the applicant (KADACA) to document that with the current unregulated practice of alcohol and drug abuse counseling, the potential of harm to the public exists and is recognizable and is not remote. The applicant was also required—and succeeded in doing so—to convince the members of the Technical Committee that credentialing substantially reduces this potential for harm. During the review process the Technical Committee became convinced that credentialing this occupation would accomplish both these criteria. This resulted in the committee approval of the application.

We believe the registration proposed in SB 458 is state-of-the-art. It is compatible with the criteria of both National organizations which have been adopted by more than 80 percent of the states. We urge you to view this bill favorably and move it into law. ,

Sincerely,

  
John F. Gilbert, MS, CADC  
President, KADACA

  
Ronald L. Eisenbarth, SCADC  
Chair, Legislative Committee

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attachment 4-3

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Testimony Before

The Committee on Governmental Organization  
Gary Blumenthal, Chairperson

April 7, 1992  
Testimony in Regard to S.B. 458

Presented by: Andrew O'Donovan  
Acting Commissioner  
Social and Rehabilitation Services/Alcohol and Drug Abuse Services

On behalf of the Secretary of the Kansas Department of Social and Rehabilitation Services (SRS), I am Andrew O'Donovan, Acting Commissioner of SRS/Alcohol and Drug Abuse Services (ADAS) testifying in support of S.B. 458.

Services in any human field are as good as the practitioners who provide them. The more qualified the practitioners, the better the quality of service. ADAS has had a long-standing concern that there are no state approved standards for alcohol and drug counselors.

With uniform standards and determinations of basic requirements and competencies, there is the potential for proper diagnosis, appropriate placement, referral and good treatment care.

ADAS endorses the 12 core functions that are outlined in the application and see them as the uniform skills basic to all practicing counselors. We also believe that University course work is necessary for the scope and level of work that is required.

ADAS is supportive of counselor registration and agrees in principle with the concept of registration as submitted in the application. Kansans will be better served with state-sanctioned registration and consistent professional standards applicable to all counselors and practitioners.

Thank you for the opportunity to testify and I will be pleased to respond to additional questions.

For further information contact, Andrew O'Donovan, Social and Rehabilitation Services, Alcohol and Drug Abuse Services 913/296-3925.

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attachment 5





Remarks to the Committee on  
Governmental Organization  
Concerning a Proposition to Amend  
Sections I and II of Article 1 of the  
Constitution Relating to  
Constitutional Officers of the  
Executive Department of the State.

by Bill Newman  
Staff Attorney  
Department of Administration

March 26, 1992

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attachment 7

Mr. Chairman, Members of the Committee, thank you for this opportunity to speak to you today.

In her Legislative Message, Governor Finney recommended a constitutional amendment to include the State Treasurer and Insurance Commissioner as constitutional officers, elected by the public. HCR 5045 provides the framework to accomplish that mission.

The Governor's proposal is based on the belief that the citizens of Kansas possess the right and desire to elect the persons who hold these two highly visible and policy creating offices. Administrative actions by either of these offices may have dramatic and long-term effects on the economic development and financial well-being of this state. By placing these positions in our State constitution, it would be assured that the people's right to elect these officials, their ideas and policies could not be challenged without the approval of the citizens of Kansas.

In order to fully assess the importance of this concurrent resolution, a review of the events leading up to this time is necessary. The Office of Treasurer was, prior to 1972, a constitutional one.

The Report of the Kansas Joint Commission on Constitutional Revision of 1961 first recommended that there be a popular election of only the Governor, Lieutenant Governor and the Attorney General, with the Governor and the Lieutenant Governor to be voted for jointly as a single choice. It was presumed that the Treasurer and other office holders would become subject, through legislative enactment, either to executive appointment as department heads or placed under the classified civil service.

The Report of the Second Commission on Revision of the Kansas Constitution again recommended that the short ballot--only the offices of Governor, Lieutenant Governor and Attorney General--be adopted. This Commission further recommended that, should the State Treasurer be removed from the "elected" category, the treasury function be placed within the Department of Administration. Its rationale was that most of the state's fiscal operations were then centered in that department.

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The Report of the Citizen's Committee on Constitutional Revision in 1969 for a third time recommended that the Executive Article of the Kansas Constitution be revised. The report notes that the motivation for the change was to give the legislature the opportunity to decide whether the treasurer or other offices would remain elective, become appointive, or be discontinued altogether.

At the General Election in November, 1970, a proposed constitutional amendment which would have removed both the State Auditor and State Treasurer from the list of constitutional officers of the Executive Department was submitted to Kansas voters. It was approved, challenged in court and declared unconstitutional and thus void.

Two years later, another similar constitutional amendment was placed on the November 1972 General Election ballot. It was approved and sustained as constitutional by the courts. (Perry v. Shanahan, Case No. 46,952, January 30, 1973.)

On its face, it would appear that the people thus approved a non-constitutional based State Treasurer office. It could even be argued that they voiced approval for a non-elected office of Treasurer. It could be argued that they voiced a desire for that office to become a classified civil service position within the Department of Administration or even eliminated altogether. This because both Houses passed and the voters approved a constitutional amendment which resulted in the complete removal of any reference in the constitution to the Office of State Treasurer.

It could be argued, however, the facts do little to support such an argument.

The amendment submitted to the voters was a total revision of the executive branch article in our State constitution. Back then, constitutional amendments did not have the type of explanatory statements that are now required when voters consider a change in our constitution. Further, the revision submitted to the voters was a total replacement of the existing language. It did not show strike-type or underline to show the true change. Based on this background, it is highly questionable that the 1970 and 1972 vote really reflected the sentiment that the voters no longer wanted to maintain the stricken positions or their direct accountability to the electors.

Governor Finney strongly believes that a popular vote today would overwhelmingly endorse the continued election of the State Treasurer and Insurance Commissioner.

Last session, the Governor proposed HCR 1513, which would have added the State Treasurer, Insurance Commissioner and State Auditor as constitutional state offices. That resolution stayed in house committee and no hearing was held on it. This session, in the interest of compromise and in an attempt to work hand in hand with the members of the legislature, a different approach is being used. Rather than tying the current State Treasurer and Insurance Commissioner offices together with a new State Auditor office, HCR 5045 proposes that only the State Treasurer and Insurance Commissioner be included in the proposed constitutional amendment. This approach has effectively separated the State Auditor question from the question of merely letting the voters of this state decide whether the State Treasurer and Insurance Commissioner should be elected constitutional officers and thus not subject to executive reorganization, the appearance of inappropriate legislative influence or present "sunset" provisions (K.S.A. 74-7265 and K.S.A. 74-7262).

While the mechanisms used to select officers responsible for insurance and treasurer functions in other states vary widely, constitutional provisions for election of these offices are quite common. As reported in the 1990-91 Edition, Volume 28 of The Book of the States, Council of State Governments, the constitutions of eight states, including Delaware, Florida, Georgia, Louisiana, Mississippi, North Dakota, Oklahoma, and Washington, provide for election of an insurance commissioner. With respect to the office of state treasurer, a clear majority of states (33) have a constitutionally-created, elected treasurer. Only five states have an elected treasurer created by statute. Those states have discovered the importance of retaining direct voter protection of the right to select individuals for these offices.

Your assistance in allowing your constituents, the voters of Kansas the opportunity to express their desire to continue to elect the State Treasurer and Insurance Commissioner is requested. It is hoped that the legislature will give serious consideration to the proposal during this session so that the citizens of Kansas can express their views on the matter during the upcoming general election.

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attachment 7-4

Testimony by  
Ron Todd, Commissioner of Insurance  
Before the House Governmental Organization Committee  
House Concurrent Resolution No. 5045

Mr. Chairman -- members of the committee -- I sincerely appreciate the opportunity to appear before you today in support of House Concurrent Resolution 5045. In doing so, I want to use this time to acquaint you more fully with the responsibilities of the Commissioner of Insurance and the impact the decisions of the individual in that office has on every man, woman, and child in this state. In my opinion, it is the nature of the office and its responsibilities which should be used to measure its value and, in all candor, I believe, my 35 plus years of experience as an employee of the Kansas Insurance Department and my contact with insurance regulatory officials of the other 49 states and U.S. territorial possessions during that time qualifies me to speak with some degree of authority on this subject. The real question as I see it is whether the office is of such value that the Commissioner of Insurance should be an elective office. If so, then it clearly should be a constitutional office which -- unlike the State Treasurer -- it has never been. So I believe I can best serve you today by articulating the need for the Commissioner of Insurance to be an elected position.

With this background, first let me say that if you asked me for the one most important factor to be considered in any discussion of this subject, I would urge you to consider the importance of having the Insurance Department directly responsible to the citizens of this state. Quite frankly, I believe that over the years the importance and the nature of the functions and responsibilities of the Commissioner of Insurance have been grossly miscalculated. The office has been labeled as a "minor" office -- it has been referred to as "just another administrative office" and similar misnomers when in fact, it is a major policymaking agency which not only controls but, in actuality, establishes the insurance

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environment which affects the personal and economic security of every Kansas citizen, every Kansas business, and every Kansas employer, those who are insured and even those few who purchase no kind of insurance protection. The regulation of insurance rates, control over insurance contracts, surveillance over the financial condition and market activities of insurers, admission and authorization of companies to do business in this state, licensing and qualification of insurance agents, maintenance of insurance markets and the all important function of assisting Kansas policyholders on specific and individual problems obviously involve far more than a recipe type of administration of the insurance statutes. When you consider these functions together with other intangible but significant factors which must enter into any effective process of safeguarding the insurance welfare of Kansas citizens -- when you consider the complexities of the insurance business itself -- when you consider that the Commissioner of Insurance is responsible for regulating the activities of almost fifteen hundred insurance companies, numerous automobile clubs, premium finance companies, insurance pools, and approximately twenty thousand agents -- when you consider that Kansas citizens spend more than two billion dollars annually for insurance -- and when you consider the very real, personal and significant effect insurance has on the life of every citizen -- it seems more than abundantly clear that the Commissioner of Insurance and the Insurance Department must stand alone in its responsibilities to the public.

I would be less than honest if I did not advise you of some of the potential disadvantages of the appointive process when applied to the Commissioner of Insurance. First, there is an almost inherent lack of continuity because, despite the experience, abilities and dedication to public service an individual appointee may possess, his or her continuation in office depends on factors separate and apart from the ability to meet the needs and demands of the public. To illustrate this point, you might be interested in the fact that generally and historically the average length of service of commissioners appointed by

the Governor is only 2.7 years. To put it another way, the states in this category had an average of four different commissioners during the most recent ten year period. In all honesty and sincerity, I simply cannot understand how the public can benefit from this kind of frequent and constant change in insurance regulatory personnel and philosophy unless the Insurance Department has performed inadequately. Even if a well-qualified and knowledgeable commissioner is replaced by a person of equal abilities, there is a serious disruption in services and activities because generally there is no period of transition available as there is in the case of elected offices.

Secondly, while it may be somewhat immodest for me to say so, I am quite proud of the constructive and meaningful progress which has been achieved in the field of insurance regulation and the insurance process during the time I have been with the Kansas Insurance Department. Obviously much of this progress could not have been made without the assistance and most of all, the support of the Kansas legislature. But equally obvious is the fact that many of the legislative recommendations which have been made and many of the programs that have been implemented would quite probably not have been developed or presented had the Commissioner of Insurance been an appointed official and thus required to serve two masters. He or she would have been seriously hampered by a lack of authority to make independent decisions; loyalties would only naturally be divided between the official who appointed him or her and the public the office is supposed to serve; and, of perhaps the most significance, an appointee would have a greatly reduced incentive to initiate insurance reforms since he or she would, in reality, be more concerned with satisfying the individual responsible for his or her employment which is infinitely more easy than satisfying the general public. In other words, the appointment process places the Commissioner of Insurance in an obscure position as far as the public is concerned and it is extremely difficult, if not impossible, for them to fix the responsibility for their insurance welfare.



In addition, it must be recognized that the Insurance Department is not a "one man operation". While the Commissioner of Insurance is the policy making authority and is directly responsible for the myriad details and decisions which must be disposed of, the success or failure of any administration depends on the ability to develop and maintain a competent and seasoned staff which is knowledgeable in the field of insurance regulation. The current staff is comprised of individuals who possess these qualities. For example, the twelve (12) people who, in effect, form the nucleus of the Insurance Department staff and whose talents and abilities are to an extremely large degree, responsible for the progress we have made have a combined total of more than 250 years of experience in Kansas insurance regulation. This, in my judgement, is a reflection of our efforts over the years to develop and retain a professional staff and there should be no question that this accumulation of experience is most significantly benefiting the people of Kansas. Needless to say, this technical expertise and experience does not end with those in supervisory positions but that number is, I believe, illustrative of the kind of maturity, experience and competence that in the last two years alone played a large role in the development and implementation of House Bill 2001, Substitute for House Bill 2511 and Senate Bill 561 which, if you check with Legislative Research, I believe you will place Kansas in the forefront of health insurance reform efforts. During this same period of time, we were recognized by a national consumer organization headed by Esther Peterson, a former consumer affairs advisor to the President of the United States, as one of six states having the best consumer service programs of all insurance departments and just last December Kansas became one of only nine states to be accredited by the National Association of Insurance Commissioners as a result of meeting or exceeding the rigid financial regulation standards established by that organization.

In summary -- and as I believe you can surmise from my remarks -- it is my sincere and firm conviction that the very personal nature of the services performed by the Insurance Department, the sensitive and

pressurized area of insurance regulation and the necessary right of the public to have a direct voice in their insurance environment, would strongly suggest the wisdom of the 1899 Kansas legislature which made the office of Superintendent of Insurance, as it was then called, an elective office.

House Concurrent Resolution 5045 provides the 1992 Kansas legislature an opportunity to take another important, related, action by permitting Kansas citizens to exercise their right to vote on whether the office of Commissioner of Insurance should at long last be embraced by the constitution for the first time and whether the office of State Treasurer should be returned to its rightful place alongside the other state offices.

# MEMORANDUM

## Kansas Legislative Research Department

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March 31, 1992

**To:** House Committee on Governmental Organization

**From:** Subcommittee No. 2 -- Representative John McClure, Chairperson; Representative Nancy Brown, Representative Ruby Gilbert, Representative Ruth Ann Hackler, and Representative Ellen Samuelson

**Re:** Executive Reorganization Order (E.R.O.) No. 25 Concerning the Department of Health and Environment

The Subcommittee held two meetings to consider E.R.O. No. 25 and also met once with the Appropriations Subcommittee on the Department of Health and Environment's budget. At these meetings the Subcommittee reviewed the Governor's proposal to divide the Department of Health and Environment into two cabinet agencies -- a Department of Health and a Department of Environment.

The Subcommittee's deliberations became moot when the Senate adopted Senate Resolution No. 1830 disapproving the E.R.O., thus effectively rejecting the Governor's proposal. Nevertheless, the Subcommittee thinks issues raised by the proposed division deserve further consideration and therefore submits the following comments and observations:

1. **The Department of Health and Environment should be the subject of interim study.**

The Subcommittee understands that a request will be made for an interim study of the Department of Health and Environment. The Subcommittee supports this request. The significant step of dividing an existing agency deserves more time and attention than is possible during the session and an interim study will give the Legislature the opportunity to better understand what the agency presently does and what benefits there might be to separating it.

Equally significant is the possibility that the Legislature might conclude that a single agency should be retained, but reorganization within that agency should take place that would accomplish some of the benefits identified by proponents of the E.R.O. For example, the Secretary of Health and Environment told the Subcommittee that the Radiation Control and Right-to-Know units within the present Division of Health would be transferred to the proposed Department of Environment if the E.R.O. were to be implemented. The Subcommittee wonders why that transfer cannot be made within the existing agency and suggests that the interim study give particular consideration to whether the existing placement of

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units within the Department is the most appropriate, especially in the case of those units in the Division of Health that the Secretary has indicated would have been transferred to a Department of Environment.

Another benefit of the proposed separation was the strengthening of district offices. The Subcommittee wants to know why district offices cannot be strengthened now, either through the Secretary's administrative discretion or, if necessary, through legislation. Why does the agency have to be divided to accomplish this? These are some of the questions the interim study should address.

2. **Consideration should be given to enacting H.B. 2801, which concerns the Department's responsibilities in the area of solid waste management.**

H.B. 2801 has passed the House and is currently in the Senate. The bill strengthens present law relating to solid waste management plans that must be developed by local units and submitted to the Secretary of the Department of Health and Environment.

According to representatives of the Department who appeared before the Subcommittee, enactment of this bill which was requested by the Department would enhance the Department's planning and regulatory activities. While the bill does not have a direct impact upon the organization of the Department, the Subcommittee cites it as one means of increasing the Department's role in environmental matters, which was identified as one of the goals of the proposed E.R.O.

3. **Consideration should be given to strengthening the Department's information system, both within the agency and among other users and units of government.**

Testimony before the Subcommittee indicated that the Department sees a need to strengthen its health care data system to link state and local users of data, such as hospitals and local health departments, and to development a better environmental data system. Questions also were raised by Subcommittee members about linkages among agencies concerning the reporting and use of the health and environment data the state collects.

Regardless of how organizational issues are resolved, the Subcommittee thinks information collected by the Department is critical to the operation of divisions within the Department, state and local units, and other users. The Subcommittee encourages the Legislature to include a review of the Department's information system within the scope of the interim study.