

MINUTES OF THE HOUSE KANSAS 2000 COMMITTEE MEETING.

The meeting was called to order by Chairperson Kenny Wilk at 1:30 p.m. on March 11, 1999 in Room 526-S of the Capitol.

All members were present except: Representative Doug Gatewood - excused

Committee staff present: Paul West, Legislative Research Department
Gordon Self, Revisor of Statutes
Janet Mosser, Committee Secretary

Conferees appearing before the committee: Representative Brenda Landwehr
Representative Melvin Neufeld
Representative Marti Crow
Duane Olberding
Matt Hickam, State Long-Term Care Ombudsman
Jan Maxwell, Kansas Department on Aging

Others attending: See attached list

Chairperson Wilk opened the hearing on **HB 2545 - Office of advocates within the legislative branch of state government.**

Chairperson Wilk recognized Rep. Brenda Landwehr, proponent, who expressed her support of the bill because it coordinates advocacy efforts thus making State government more efficient and responsive to the needs of Kansans (**Attachment 1**).

Chairperson Wilk recognized Rep. Melvin Neufeld, proponent, who noted that this bill calls attention to structural and policy issues that need to be addressed such as whether an advocate employed by an agency can really be an advocate for the citizen. He feels the bill is a positive step toward creating an ombudsman/advocacy program separated from the agency. He supports the creation of the new advocate positions especially the advocate for children.

Paul West, Legislative Research Department, gave a briefing on the bill (**Attachment 2**).

Chairperson Wilk recognized Rep. Marti Crow, proponent, who expressed her support of the bill because it creates an advocate for children (**Attachment 3**).

Duane Olberding, proponent, was recognized by Chairperson Wilk who expressed his support of the bill especially the new Section 8 which creates an advocate for foster care and adoption (**Attachment 4**).

Matt Hickam, State Long-Term Care Ombudsman, opponent, was recognized by Chairperson Wilk and shared with the Committee his concerns in three areas: separation of powers, impact on the Older Americans Act, and commingling of duties (**Attachment 5**).

Ron Hammerschmidt, Kansas Department of Health and Environment, opponent, submitted written testimony (**Attachment 6**).

Jan Maxwell, Kansas Department on Aging (KDOA), neutral, was recognized by Chairperson Wilk and shared with the Committee KDOA concerns with the proposals contained in the bill (**Attachment 7**).

Chairperson Wilk closed the hearing on **HB 2545**.

Chairperson Wilk informed the Committee that a substitute for **HB 2522** on the performance-based compensation plan for state agencies is being prepared and will be reviewed at the next meeting.

Chairperson Wilk adjourned the meeting at 2:30 p.m.

The next meeting is scheduled for March 15, 1999.

KANSAS 2000 SELECT COMMITTEE GUEST LIST

DATE: 3-11-99

NAME	TITLE	REPRESENTING
SUE PETERSON		K-STATE
Dodie Wershaw Johnson		KAC
Mark Crow	Representative, 41st Dist	41st Dist
Christy Cramer	Intern	Rep. Lane.
Patricia Henshall		CJA
Tina Wulfe	intern	
Robin Lehman		Kansas Action for Children
Brenda Owens	HRP II	SRS
Tom Bell	Ks. Hosp. Assn	
Rick Guthrie	Health Midwest	
Tom Sykes	KDHE	KGC
Roger Frank	lobbyist	
Quane Olberding		Children

State of Kansas
House of Representatives

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TOPEKA

BRENDA K. LANDWEHR
Representative, Ninety-First District

COMMITTEE ASSIGNMENTS
HOUSE APPROPRIATIONS
SRS SUBCOMMITTEE
JOINT COMMITTEE ON CHILDREN
AND FAMILIES

TESTIMONY

HB 2545: Creating an Office of Advocates.
Kansas 2000 Committee Hearing, March 11, 1:30 p.m.

Thank you Mr. Chairman and Members of the Committee for allowing me the opportunity to appear before you today in support of HB 2545.

This is an idea whose time has come... neither too soon nor too late, but just in time...

Current Scenario

Right now if someone has a concern, for example about foster care. First of all, they must determine on their own what agency deals with the area of foster care. When they call them, they may not be aware that there is an advocate called an "ombudsman". If they know there is such a person as an ombudsman, because of the name itself, they may not understand that this person is there to serve as an advocate for the citizen. Because they are employed within the agency, it appears that they are just speaking to another department head, loyal to the agency.

At the same time, the ombudsman is beholding to the agency because of the simple fact that they are located within the agency and respond directly to the agency director.

All of this is assuming that a person has located the correct agency on their own. What if the person has no idea what agency to contact?

Over the years, as the need has arisen, Ombudsmen have been added to several agencies to address the concerns of citizens. Between 1998 and 1999 we will have added three ombudsmen to three additional agencies. This bill will do the following:

1. Change the name of "Ombudsman" to "Advocate".
 1. This will better describe to the general public what the person in this position does... advocate on their behalf.
2. Combines all "Advocates" in one department under the Legislature.
 1. This alleviates any perception that the Advocate reports to the agency for which he/she responds to concerns within.
 2. Allows the legislature to more closely monitor the needs voiced by citizens.
 3. Will provide for easier access to the public by having one central telephone number and address for all concerns, and will facilitate cross-communication between advocates for different agencies.
3. Provides for the creation of two additional "Advocates"
 - Foster Care & Adoption
 - Health Care

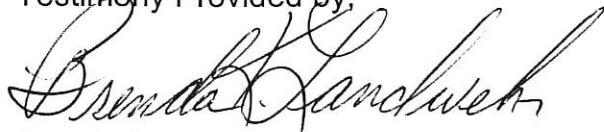
Before we venture further down the road with a piecemeal advocacy system, now is the ripe time to coordinate our efforts in the area of providing advocacy for the citizens of the State of Kansas.

In an effort to make State Government more efficient and more responsive to the needs of Kansans, it is time that we coordinate and combine our efforts in the area of advocacy, on behalf of our citizens. With the additions of new ombudsman/advocates, it only makes sense that we would combine our resources into one area - allocating space, office equipment, and communications systems at one central location. This also allows them easy access to each other's information and problem-solving techniques.

What the passage of HB 2545, all advocates would have clearly defined roles, clear by their title as an advocate in the eyes of the citizens, and located in one central place making them more accessible to the needs of Kansans.

Thank you for considering this measure. I stand for questions and concerns.

Testimony Provided by,



Brenda Landwehr,
State Representative, 91st District

Summary of House Bill 2545

H.B. 2545 creates an Office of Advocates within the Legislative branch of government. The Office of Advocates would be under the direction of a newly created ten member Joint Legislative Committee for Advocates, who shall appoint a Director of Advocates.

In addition to the Director of Advocates, the bill establishes an Advocate for Health Care and an Advocate for Foster Care - Adoption. The Advocate for Health Care would be responsible for developing information about health care and investigating complaints concerning the health care system. The Advocate for Foster Care - Adoption would be responsible for investigating complaints concerning the foster care and adoption systems of the state.

The bill also transfers to the Office responsibility for the following ombudsman activities:

- The duties of the Long Term Care Ombudsman;
- the duties of the Ombudsman of Corrections;
- the Small Business Stationary Sources Ombudsman in the Department of Health and Environment;
- ombudsman functions with the Department of Social and Rehabilitation Services;
- ombudsman functions for the University of Kansas; and
- ombudsman functions for Kansas State University.

All state employees and all appropriated funding associated with the above ombudsman functions are transferred to the Office of Advocates. The Governor's FY 2000 budget recommendation for these functions includes \$848,497 (\$438,676 State General Fund) and 16.25 FTE positions.

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TOPEKA
 HOUSE OF
 REPRESENTATIVES

Kansas 2000 Select Committee
 HB 2545
 Thursday, March 11, 1999

House Bill 2545 creates an Advocate for children. I am interested in the proposed bill because I introduced HB 2466, co-sponsored by 14 other members of the Kansas House of Representatives. HB 2466 proposed the creation of a Children's Ombudsman, an advocate for children in protective custody of the state and in the process of placement or foster care.

I patterned the Children's Ombudsman office in HB 2466 after the Kansas Long Term Care Ombudsman. I attended a symposium in Lawrence in December 1996 and learned about the Michigan Children's Ombudsman, which was created by their Legislature in 1994 and began operation in January 1995. Michigan's Children's Ombudsman office has operated effectively for 4 years providing independent oversight of that state's foster care and children's protective service system.

Public sector advocate or ombudsman offices can be traced back to Sweden in 1809. The Swedish ombudsman, who was appointed by and responsible to Parliament, was responsible for protecting individual rights against the excesses of the bureaucracy. The office was tasked with receiving and investigating complaints about administrative actions. Similar offices of advocates or ombudsman have existed for over thirty years in this country.

Michigan has found their Children's Ombudsman to be valuable both to citizens and to policy makers. I believe that an Advocate for foster children, with clear definition of authority and independence, can provide direct service to children and families in our foster care system. A Children's Advocate can also perform a role in legislative oversight of agency and private contractor actions, making reports about how the foster care system is working and recommendations about necessary improvements.

I support placing the office of Children's Advocate in the legislative branch. Such a scheme may work better than the proposal in HB 2466, placing the office of Children's Ombudsman in the executive branch. An advocate tasked with making

Kansas 2000 Select Committee

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Attachment 3

recommendations and who may not compel executive or judicial agencies to take substantive actions, does not conflict with the important separation of powers. An ombudsman or advocate has no enforcement or disciplinary powers. These powers are reserved for the executive and legislative bodies of government.

To be effective, the Children's Advocate should have defined responsibilities and jurisdiction. Confidentiality is critical to effectiveness. People need to be able to talk to this Advocate in confidence, and, although oversight reports should be public, the identity and information about individual children and families must be protected.

Most public sector Advocate offices are required to report annually to the legislature, to provide the public with information about issues of concern and agency performance. The annual report contains statistical information about contacts by citizens during the prior year, an analysis of statistics and recommendations to the agency or to the Legislature.

An Advocate for children can perform a valuable role in our government. The Advocate office's job is to receive complaints from the public, and to collect and evaluate all of the facts regarding the complaint as a neutral investigator. The job of the Advocate is to determine if there was an error, unfairness or harm by the agency and, if so, to make recommendations to correct wrongs done to individuals and to improve the administration of agency responsibilities.

If we create a Children's Advocate, families and children who have problems with our foster care system have a place to seek solutions, independent explanations, information about how the system operates and the laws, rules, and policies of the agency. The Legislature will have an established complaint process with investigations and recommendations about the validity of complaints and solutions for problems.

We have an advocate for prison inmates and for long term care. Children in protective service or foster care are very vulnerable and the state is responsible for their welfare and safety. I believe we would be wise to create an office to advocate for children who are wards of the state.

Testimony

From: Duane L. Olberding
Box C9, Corning, Kansas (h) 785-868-3518 (w) 785-350-5324
To: Members of the Kansas 2000 Select Committee
Re: House Bill 2545, Establishing an Office of Advocates

Thank you for the opportunity to speak here today.

I am testifying on behalf of the children being served by our foster care and adoption agencies in Kansas. I am not an expert witness. There are probably many people in this room here today who are experts and I bow to their expertise and knowledge. Although I am not an expert I am a student of the foster care system because I am a concerned citizen and I feel the children of Kansas deserve the best service we can provide.

I will testify on that part of Bill 2545, New Section 8, which creates an advocate for foster care and adoption.

The Office of Advocate for Foster Care and Adoption would have the power to investigate complaints about children's protective services, foster care, group homes, and other programs.

The children of Kansas need such an oversight program. The foster care program was in disarray in 1989 when the American Civil Liberties Union filed a lawsuit, *Sheila A. et. al. v. Joan Finney*, charging that the Department of Social and Rehabilitation Services was not adequately caring for children who may have been victims of abuse or neglect. In May, 1993, the Department of SRS and the ACLU reached an out-of court settlement which provided, among other things, that an independent entity, the Legislative Division of Post Audit, would act as a monitor of the Department of SRS's compliance with the terms of the agreement. In December, Children's Rights Inc., a New York based child welfare organization, withdrew a motion to reopen this lawsuit. This means that in the future the Legislative Division of Post Audit will not monitor the state's foster care system. One method of oversight of the foster care system will thus be eliminated.

In December of 1998 a system that would allow professionals to anonymously report problems with the privatized foster care program, created by District Judge James Buechele at the request of Rochelle Chronister, Secretary of the Kansas Department of Social and Rehabilitation Service, was disbanded by the Secretary. Thus a second method of oversight of the foster care system was eliminated.

I may not be an expert but I know that agencies have a hard time policing themselves and the SRS has not been able to police itself in the past. This is proven by the fact that our foster care system was a mess when the class-action lawsuit was filed in 1989. The Secretary of the SRS, Rochelle Chronister, proved this again when she disbanded Judge Buechele's program last December. Kansas since 1997 has been the nation's guinea pig for privatization of foster care

and adoption and if reports in the media are to be believed the foster care system under privatization is still a mess.

The creation of an Office of Advocate for Foster Care and Adoption would help take the place of the aforementioned oversight programs. Foster care faltered without an oversight agency before and it will again. We have the nations eyes upon us as we test these privatization waters. But more importantly we have to be able to look into the children's eyes and feel that we are doing the best we can. Bill 2545 is one way to ensure this.

LOVING THE CHILDREN HATING THE SYSTEM

Lawr,
Journal World
4-26-98

State health officials earlier this month moved to pull the license of Kaw Valley's main group home in Kansas City, Kan. Kaw Valley is the largest of the state's three contract service providers for foster care. A suspension order and \$500 fine, the maximum allowed by law, await appeal before a state hearing officer.

Critics say privatization of foster care in Kansas is failing miserably — and the children are suffering the most

By Mike Shields
Journal-World Writer

According to the polls, voters like Bill Graves more than any governor in recent Kansas history. But there is strong and growing evidence that privatization, the biggest single initiative of his administration, is producing miserable results for a few thousand vulnerable people who can't vote: the children whose lives are so bleak they have become wards of the state.

These are children shunted from one temporary home to another. They are children who can only dare to think about their next bed, let alone the next election.

Critics of the privatized foster care initiative say it has made a historically inadequate system worse than ever. In eastern Kansas, where a seriously troubled contractor, Kaw Valley Center, has a state-franchise lock on foster care services, the criticism has been especially sharp. But others elsewhere in the state, served by other state contractors, cite similar con-

cerns.

The list of critics includes judges, social workers, foster parents, legislators, attor-

neys and children's advocates. Their complaints are many and varied, but branch from a single root: a quick and massive change in the way the state takes care of foster children.

A year ago, front-line responsibility for these children, unwanted or abused in their own homes, was shifted from state social workers to three private contractors and their employees.

The three contractors agreed to care for state wards in exchange for a fixed annual fee ranging between \$13,000 and \$15,000 per child. This new per-capita

"No state in the country has ever done this before. We're swinging without a net here in many cases."

— John Garlinger, Kansas SRS spokesman

system, built upon the same fixed-price principles that have swept the medical industry under the rubric managed care, was such a novel approach to government care of needy kids that it continues to keep Kansas social services in the national spotlight.

"We've started driving from New York to California without a roadmap," said Kansas Social and Rehabilitation Services spokesman John Garlinger. "No state in the country has ever done this before. We're swinging without a net here in many cases. But do I think children are better off than they were two years ago? I think they are. We have people from all over the country coming here and they walk out saying, 'You're really doing some good stuff.'"

Complaints voiced

The experts might not be so impressed if they heard the whole story, said Douglas County District Court Judge Shepherd.

"Their experts from out of state attended a seminar sponsored by SRS and the contractors were SRS and contractors," said the judge, who has worked with troubled children for 14 years. "No one else was invited to speak nor were we invited to attend."

Here are the sort of complaints the experts missed hearing.

"The foster homes are not working," said Shelley Bock, a Lawrence attorney and general counsel for young state wards from Douglas County.

"Anybody who says the system is working is way off," said Gaye Kitsmiller, a Lawrence woman who was a foster parent and trainer of other foster parents for 12 years, but quit because of her bad experience under the new system.

"The new system is awful," said one long-time provider of services to troubled children. "It's certainly not better." asked not to be identified because the non-profit agency she heads relies, in part, on funding through subcontractors from the state's principal contractors.

4-3

A troubled system

"We're line people. It's very frustrating. We send our concerns to Topeka and nothing happens. I just can't take it home with me anymore and worry about it. I'll get sick. I do the best I can. ...I've brought it to the attention of those who can do something about it and now it's up to them."

— Nancy Wynn, Wyandotte County Health Department official on her dealings with problems in foster care at Kaw Valley Center

● **Virginia consultants** were paid \$250,000 to analyze privatized foster care for the state of Kansas. Pursuing the same goal, the Lawrence Journal-World recently interviewed, among others, nine girls who have recently exited or remain in the state's foster care system.

Lawrence Journal-World 8-16-98

BY MIKE SHIELDS
JOURNAL-WORLD WRITER

TOPEKA — About 18 months ago, the administration of Gov. Bill Graves launched a privatization initiative, unprecedented in the United States, that has dramatically changed the state's child welfare system.

Everyone closely involved with the reform has acknowledged potholes on the road to change. During the transition from a system directly managed by state welfare workers to one run by private contractors, many more children have become state wards than were expected. The private contractors, burdened with new responsibilities and burgeoning caseloads, have had trouble finding and keeping properly trained workers. And the Department of Social and Rehabilitation Services' new computer system for tracking delivered children's services still isn't reliable enough to serve its intended purpose in the new system.



ON THE INSIDE

Uncertain how well or poorly the new initiative is faring, the state has hired a Virginia consulting firm — for \$250,000 a year — to analyze the available data and tell Kansas policymakers what the consultants think is going on here.

On Monday, 20 expert panelists who make up the Continuous Quality Improvement Council will meet here to discuss the consultants' first quarterly report. The 68-page jargon-choked document has pie charts and graphs and a large section describing what the consultants expect to know later when information is more complete. But it offers no recommendations about what can be done now to improve the new system, whose problems have sparked enough public concern to prompt an audit call by legislators and unsuccessful pleas for a special legislative committee to review foster care problems before the full Legislature convenes in January.

Unheard in the government committee rooms and at confabs studying foster care are the voices of the children who know the system from living in it.

The identities of children in foster care, in most circumstances, are cloaked by the confidentiality laws that bar social workers, court officers, care providers and welfare bureaucrats from revealing the children's names or details of their lives in custody from which their names might be deduced.

As a result, foster children are rarely, if ever, quoted in newspaper reports or heard in public forums. By no means a silent population, their voices generally are heard only by the front line of court and welfare workers who deal with them daily.

When awful enough, a child's story might escape as steam from

the pot where human experience is cooked into the statistical made digestible as pie charts for those who make child welfare policies. But when that happens, the story usually is dismissed or

played as an isolated incident emotion-exciting anecdote kept from the decision-making equation until it is quantified, cross-tabulated, preferably by an expensive team of social scientists with multiple degrees who speak in technical dialects.

Inside information

The Lawrence Journal-World recently interviewed nine children between the ages of 14 and 17 who have recently exited or remain in the state's foster care system.

Their sole claim to expertise about the system is that they lived within it. One girl had nearly half of her short life in the system. All had been state wards for at least one year. Because they live in the Lawrence area, they know the system through their experiences with Kaw Valley Center, the nonprofit service contractor chosen by state welfare officials to serve children from Douglas and 32 other Kansas counties.

Although they sometimes spoke well of individual foster care workers who cared for them, they were all critical of the system as a whole. In separate

When awful enough, a child's story might escape as steam from the pot where human experience is cooked into the statistical made digestible as pie charts for those who make child welfare policies. But when that happens, the story usually is dismissed or played as an isolated incident emotion-exciting anecdote kept from the decision-making equation until it is quantified, cross-tabulated, preferably by an expensive team of social scientists with multiple degrees who speak in technical dialects.

— Mike Shields' phone message number 832-7144. His e-mail address is mshields@jworld

*TESTIMONY of
MATT HICKAM
STATE LONG-TERM CARE OMBUDSMAN
on
H.B. 2545
before the
HOUSE KANSAS 2000 SELECT COMMITTEE
March 11, 1999*

Mr. Chairman, Members of the Committee.

My name is Matt Hickam. I serve as the State Long-Term Care Ombudsman for Kansas, and I am pleased to have this opportunity to comment on House Bill 2545, a bill to create an office of advocates within the legislative branch of state government.

About thirty thousand Kansans live in long-term care facilities, commonly known as *nursing homes*. All of these elderly residents are dependent on others for some of their activities of daily living. All are human beings, citizens, voters, and members of communities. Each has a community of loved ones concerned for their well being.

Each has rights. Each deserves to see every one of those rights fully honored. But remember each one is dependent, most are feeble, all are fearful that they will suffer some retaliation if they make demands -- even if they are demanding what is theirs by right. The job of the Ombudsman Program is to assure that each of these residents receives humane and responsible service from the facility in which they reside. By law, we investigate and resolve complaints made by, or on behalf of, these residents.

Three Reasons H.B. 2545 is Bad Policy

Certainly, Legislatures ought to consider changes to the law if they are effecting repairs, or improvements. If it is not broken, our wise people tell us, do not fix it. That is good advice for government.

Occasionally, it is not broken but we can see it being made better. We can see streamlining, simplifying, making something smoother, or less expensive, or less complicated. And for government, this is not a bad goal.

I am sure that improvement was the goal envisioned for H.B. 2545. But it does not quite meet another test used by our wise people. They say, 'If it's not better than what I have now, I'm not gonna swap.' And simply stated, H.B. 2545 is not better than what we have now.

SEPARATION OF POWERS: H.B. 2545 seems to have problems with the doctrine of Separation of Powers, the idea that legislatures ought legislate, judges ought judge, executives ought execute. I don't know if there has been a legal review of the matter but it looks to me and to my people that the tasks and duties subsumed by the bill are

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classically executive concerns and yet the bill imposes these concerns onto the already burdened legislature

OLDER AMERICANS ACT: Funds for Kansas under the federal Older Americans Act come with strings; it is an article of our political faith that all funds from Washington are going to bear strings. Among those strings are requirements that our age-oriented programs will have safeguards for the recipient constituencies. Older Kansans are guaranteed ombudsman services by the Older Americans Act. That federal measure ties large blocks of funds to the provision of ombudsman services and if we don't do that, if we don't comply with the requirements of the program, we don't get those federal funds. Nothing in this bill prevents the Director of Advocates from using federal dollars specifically allocated for elder rights for other purposes. In fact, we threaten Kansas' Medicaid eligibility if we do not get this right.

COMMINGLING OF DUTIES: This bill provides no assurance that the duties of long-term care advocates will be performed only by persons qualified to perform such duties. Indeed, it is not at all difficult to imagine a management decision that has a person responding to every advocacy requirement in a geographical area. We believe this affords inadequate safeguards for the people who need the aid of an advocacy program. We think it leans on the idea that an ombudsman is an ombudsman, no matter what the area of interest. It is no more appropriate to believe that just because a ballet dancer is a dancer that she would make an appropriate finalist in a square dance competition.

While our Regional Long-Term Care Ombudsmen have the same title as a corrections ombudsman, we lose sight of the fact that although the title is the same the techniques are vastly different. The Long-Term Care Ombudsman necessarily begins with the idea that the resident is probably not wrong; the corrections ombudsman may begin with the recognition that the resident has been found to be a wrong one at least once or would not be there in the first place.

Conclusion

I am strongly in favor of legislation that streamlines government and reduces waste, but this bill falls short. H.B. 2545 may not be Constitutional, it certainly threatens Kansas' Medicaid eligibility, and may cause Kansas' frail elderly residents of nursing homes to have less access to the services of Long-Term Care Ombudsmen. In general, it seems appropriate to remember the Hippocratic oath that physicians take when deciding on the fate of this bill. "First, do no harm."



KA. SAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Acting Secretary

**Testimony presented to the
Kansas 2000 Select Committee**
by
The Kansas Department of Health and Environment
House Bill 2545

The Department of Health and Environment wishes to express concern regarding the action proposed in HB 2545, Section 11, related to the ombudsman for the small business stationary source technical and environmental compliance assistance program as required under the 1990 amendments to the federal Clean Air Act. The Clean Air Act states that the state's air quality state implementation plan (SIP) is approvable if the ombudsman is housed in a designated office within the relevant State Agency. The Clean Air Act does not have provisions for locating this position under the legislative branch.

The question arises as to the acceptability or status of the state implementation plan and air quality program delegation as administered by KDHE. There is always the possibility of sanctions by the U. S. Environmental Protection Agency (EPA). Two (2) types of sanctions exist:

- 1) Kansas City Metropolitan Area offsets - Companies wishing to locate in the Kansas City metropolitan area would face the problem of finding means of reducing certain pollutants in the area at a rate of up to twice what they intend to emit and
- 2) highway funding, whereby, EPA and federal Department of Transportation (DOT) would hold back federal highway funding until the state complied with the law.

K.S.A. 1998 Supp. 65-3027 created a compliance advisory panel in accordance with the federal Clean Air Act (ACT) requirements, whereby, the ombudsman and the small business stationary source technical and environmental compliance assistance program serves as the secretariat. The current ombudsman also acts as an intermediary between small sources and the regulators in the Bureau of Air and Radiation. The current approval of both the state implementation plan and program delegation under the Clean Air Act of 1990 are both predicated on the assignment of the office and program within KDHE.

Thank you for allowing the department to submit this information and comments. If you have any questions or if we can be of assistance, please contact me at 296-1535 or Jan Sides, Director, Bureau of Air and Radiation at 296-1551.

Testimony presented by: Ron F. Hammerschmidt, PhD
Director, Division of Environment
March 11, 1999

DIVISION OF ENVIRONMENT
Bureau of Air and Radiation

Forbes Field, Building 283
(785) 296-1593

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Attachment 6

Before the KANSAS 2000 COMMITTEE
TESTIMONY
Regarding HB 2545
March 11, 1999

On behalf of the Kansas Department on Aging, I welcome the opportunity to highlight areas of concern with the proposals contained in House Bill 2545. A year ago, the Department on Aging requested that the Long-Term Care Ombudsman be established independently to remove any potential for a conflict of interest as KDOA assumed responsibility for administering the Medicaid nursing facility services payment program. HB 2545 would create a mixture of advocates by folding all existing and several new ombudsman programs into one office. If passed, the Bill would result in an office with an inconsistent mix of responsibilities requiring a highly diverse knowledge base. It is highly unlikely that a director of advocates could be equally well versed in corrections, long-term care, foster care and adoption, state university issues, air emissions, health care and programs run by the Department of Social and Rehabilitation Services.

I can only express the concern of the Secretary that this proposal could very well dilute the existing advocacy resources of the State Long-Term Care Ombudsman which requires special consideration of federal law to maintain federal funding. Currently, the funding for the long-term care ombudsman program is a mix of federal funds from the Older American Act together with state general fund match. The Department on Aging, as the single state agency responsible for receiving and disbursing Older Americans Act funds, is responsible for assuring to the federal government that requirements for long-term care ombudsman duties and functions have been met and the federal funds have been expended solely for those purposes. 42 U.S.C.A. 3027 (a) (21) and (38). It may be difficult, if not impossible, to make those assurances when more than long-term care ombudsman-type functions are being performed by a single agency and financed with commingled funds from diverse sources.

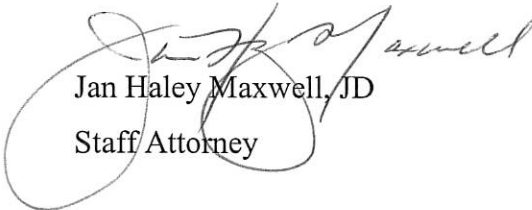
Under the provisions of the Older American Act, the state must have an individual designated as "the State Long-Term Care Ombudsman" who has "expertise and experience in the fields of long-term care and advocacy." 42 U.S.C.A. 3058g (a)(2). The state must operate an Office of

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Attachment 7

the "State Long-Term Care Ombudsman" to perform the required long-term care ombudsman activities. 42 U.S.C.A. 3058g (a)(1)(A), and (B). HB 2545 deletes the terms "State Long-Term Care Ombudsman" and "Office of the State Long-Term Care Ombudsman" and replaces those federally required terms with the generic terms "Director of Advocacy" and "advocacy services." In addition, the Older Americans Act requires the Office of the State Long-Term Care Ombudsman to collect specific long-term care program data and submit it regularly to specified entities. 42 U.S.C.A. 3058 g (c).

In closing, the Kansas Department on Aging is concerned that the advocacy efforts of a program that has a very specific federal funding stream and a very specific focus may be diluted by the pending proposal which would lump existing ombudsman services into one agency, to the very possible detriment of Kansans who reside in long-term care facilities.

Respectfully submitted,



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