

Approved: 4-06-00
Date

MINUTES OF THE HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS.

The meeting was called to order by Chairperson Lisa Benlon at 3:35 p.m. on March 20, 2000 in Room 521-S of the Capitol.

All members were present.

Committee staff present: Dennis Hodgins, Research
Mary Galligan, Research
Theresa Kiernan, Revisor
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list.

The minutes of the Governmental Organization and Elections Committee for February 21 and March 6 were presented for additions and corrections. Representative Hayzlett made a motion to approve the minutes as written, seconded by Representative Horst, and the motion carried.

Chairperson Benlon called for discussion and final action on **HB 2738** which authorizes municipalities to sell or license computer software. The Chair related that the Kansas Trial Lawyers had problems with Section 2 on page 4, item (w).

Representative Welshimer offered an amendment to the bill on page 1, (D) (c) added to read, "No software shall be copyrighted until policy and procedure is established for the dissemination for the electronic data for the software in compliance with the Kansas open records act." She explained that this is before they can sell software, they need to go through their City Council or County Commission and get a policy approved that sets out how they are going to disseminate the public record information that is input into the software. The Chair asked for an example or reason for this wording due to the confusion. Representative Welshimer said there have been attempts to get public records in Sedgwick County, and they have been refused because the software involved mapping, graphics, etc. She said the excuse given has been that the software is copyrighted.

Representative Palmer asked why the Trial Lawyers were opposed to this bill, and requested further explanation of Representative Welshimer's amendment. The Chair asked Terry Humphrey, representing the Kansas Trial Lawyers, to explain what her group was objecting to. Ms. Humphrey related that they were opposed to that section because it gave immunity from product responsibility, and asked for that provision to be deleted. She said their concern was that when you are in the business of developing, selling and marketing software, there should be some responsibility for that product and customers buying that product would have no recourse if it was faulty or deficient in any way. She stated that the Trial Lawyers would not have a problem with the rest of the bill as long as the one clause was deleted. She also explained that this bill is far broader than one municipality selling a product to another municipality as it allows a municipality to sell it to individuals, private businesses, real estate companies, or others.

Dana Fenton, Intergovernmental Relations Coordinator for Johnson County, who was the sponsor of this legislation, stated that he was fine with that section being removed from the bill.

Committee questions continued concerning what actually this software program contains and ultimately does for the user, and where PVD stands on this legislation. The Revisor brought to the Chair's attention the fact that this bill had not been blessed, and it was beyond the deadline for the Committee to work. The Chair apologized for not being able to work this bill, but suggested that it could possibly be combined with a Senate bill. The Revisor suggested that **HB 2534** possibly could be used as the legislation to insert the software bill into.

CONTINUATION SHEET

Representative Shriver made a motion for the Committee to consider using **HB 2534** which came out of the Appropriations Committee as the vehicle to inject the software bill into for consideration. The motion for consideration was seconded by Representative Barnes.

Representative Shriver made a motion to amend **HB 2534** by deleting all contents and inserting the provisions of **HB 2738**, eliminating Section 2 (w), page 4, lines 10 through 14 and also Section 3, page 4, line 19. Representative Huff seconded the motion, and the motion carried.

Representative Jenkins moved to pass this substitute bill out of Committee favorably as amended, and Representative Johnston seconded the motion.

Representative O'Connor made a substitute motion for an amendment to the motion to change lines 24 and 25 of page 1 in **HB 2738** to read as follows: "...software for commercial or noncommercial use to any public entity directly or through a distributor." Representative Johnston seconded the motion.

Representative O'Connor expressed her concern that tax dollars in the counties are being used to develop software that is now being sold and becomes competitive with the private business sector which is unfair competition.

General discussion followed with questions addressed to Mr. Fenton regarding general Home Rule power, clarification that they are only selling software programs not data or information that is contained in the data bases created by the use of such software, and competing with private enterprise.

The Chair called for a vote on the amendment offered by Representative O'Connor, and division was requested. There were nine votes for and six votes against the amendment. The substitute motion carried to amend Representative Jenkins' motion.

Representative Welshimer made a motion to add a provision that before software is copyright then the data the municipality or county has that a policy be set up for the dissemination of the information be retained somewhere else within that department of the county or municipality to insure that the information is not lost when software is modified or updated. Ruby Gilbert seconded the motion. Discussion followed regarding the short life span of software, possibly a need for a hard copy as a backup to be retained so required data won't be lost, questions involving what the Counties are not providing or what data they are losing when software is modified, why PVD is not monitoring this problem, and designing software around the data elements that it will be used for.

Representative Shriver offered a substitute amended motion to insert the following provision that would read as follows: "Any potential loss of information in development of software shall be identified to the County Commission and a hard copy must be retained." The substitute motion was seconded by Representative Horst. Motion carried. Representative Hayzlett requested he be recorded as voting against this amended bill.

Discussion continued by the Committee members, and concern was expressed about the counties expending a lot of manpower, time and energy into developing, marketing and selling their software programs. Mr. Fenton reassured the Committee that the county staff was not devoted to development of software, and that they did not want to create a new core of business in the software field. It was noted by a Committee member that during the hearing on this bill there were seven proponents and only one opponent, and the one opponent had been satisfied now by the deletion of the immunity clause.

Representative Huff made the motion to move out the substitute bill as amended, and Representative Jenkins seconded the motion. The motion carried. Representative Welshimer requested to be recorded as voting against passing this substitute amended bill out of Committee.

Representative Storm asked that **SB 462** be reconsidered by the Committee since she was on the prevailing voting side when the bill was worked in Committee, and felt that the bill needed further consideration. The Chair clarified that **SB 462** was amended by the Committee last week to clarify the definition of a political committee. The act prohibits anyone other than an individual from contributing campaign contributions, after January 1 and prior to adjournment sine die of the Legislature, to any recognized political party committee in the House and Senate or any political party committee established

CONTINUATION SHEET

to support or oppose candidates of a single party in either the Senate or the House. The Chair reiterated that the purpose of this legislation was to broaden the ban on solicitations during the time period when legislators are making decisions or voting on changes in law.

Representative Storm made a motion to reconsider SB 462, and Representative Gilbert seconded the motion.

Representative Welshimer made a motion to table the bill, and it was seconded by Representative Barnes. The Chair called for a vote and division was requested. There were seven votes in favor and eight votes against, with one abstention. Motion failed.

General discussion continued with a request for Carol Williams to explain what has happened so far on the Senate side, and she complied

Representative Johnston made a motion to add to **SB 462** the Governmental Organization and Elections Committee version of **HB 2627** which is the disclosure bill plus the \$100 limit on recreation. The motion was seconded by Representative Storm. A vote on the motion was taken, and the motion carried.

Representative Shriver made a motion to add an amendment to **SB 462** that would prohibit legislators from going over to state party headquarters and making solicitation calls for contributions. The motion was seconded by Representative Johnston. Motion carried.

Representative Horst asked for a clarification if he was referencing only legislators, and Representative Shriver responded that was correct.

Representative Vining made a motion to pass this out as amended, and it was seconded by Representative Jenkins. Motion carried.

Chairman Benlon adjourned the meeting at 4:50 p.m.

