

MINUTES OF THE SENATE WAYS & MEANS COMMITTEE.

The meeting was called to order by Chairperson Dave Kerr at 11:00 a.m. on March 23, 2000 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Alan Conroy, Chief Fiscal Analyst, KLRD
Rae Anne Davis, KS Legislative Research Department
Debra Hollon, KS Legislative Research Department
Norman Furse, Revisor of Statutes
Michael Corrigan, Asst. Revisor of Statutes
Judy Bromich, Administrative Assistant to the Chairman
Ronda Miller, Committee Secretary

Conferees appearing before the committee:

Representative Kenny Wilk
Representative Annie Kuether
Barb Hinton, Legislative Post Audit
Carol McDowell, President of the Kansas Preservation Alliance
Jim Hoy, President, Kansas State Historical Society, Inc.
Cheryl Collins, Past President of Kansas State Historical Society, Inc.
Nancy Holt, Chairperson of the Executive Committee of Kansas State Historical Society, Inc.
Michael Hoeflich, Dean of KU Law School and member of bylaws Committee of Kansas State Historical Society
Dr. Herschel Stroud
Helen King, volunteer, Kansas State Historical Society

Others attending: See attached list

SB 653: Intergovernmental transfers with nursing facilities

Copies of the balloon on **SB 653** were distributed to members (Attachment 1). There was lengthy discussion about who would be eligible under the Senior Services programs. Secretary Hubbell, Department on Aging, stated that the Senior Trust Fund earnings allow the Department to reduce future Medicaid costs to the state and she interpreted that to mean that services could be provided to avoid premature institutionalization and to those currently not on Medicaid. Kathie Sparks, KLRD, told members that she did not believe the age "65" addresses the Senior Services Trust Fund because it is not referenced anywhere else in the balloon except on page 1, line 28, where it references the Frail and Elderly Program as under the Secretary of Aging.

Senator Salisbury moved, Senator Morris seconded, that the balloon amendments for SB 653 be adopted. The motion carried on a voice vote.

Senator Petty moved, Senator Downey seconded, that SB 653 be further amended by eliminating the transfer of 25% of the Intergovernmental Transfer monies to the State General Fund in the first year, and redirecting it to a newly created State Matching Medicaid Fund to be used for the HCBS/Frail Elderly Waiver and for the Physically Disabled Waiver (Attachment 2). Copies of a document entitled "Where to Spend HCFA Funds?" was distributed to members (Attachment 3). There was lengthy discussion about whether the proposed amendment would transfer the risk (inherent in not receiving the monies) from the Governor's proposal for education to those persons on the HCBS/Frail Elderly Waiver and the Physically Disabled Waiver. There was general consensus among staff that it would. However, during the discussion, it was pointed out that distributing the monies to some fund other than the SGF would avoid affecting the 7.5% ending balance requirement. Senator Petty stated that she wanted to ensure that

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Medicaid dollars were used for Medicaid eligible clients and to establish the new fund for a Medicaid match. The Chairman stated that he thought it would be possible to structure the bill in such a way that the risk would not be passed on to the Frail/Elderly or Developmentally Disabled and provide a solution to the ending balance problem by setting up a separate fund.

Senator Petty withdrew her motion, Senator Downey withdrew her second, noting that an amendment would be offered on the floor.

It was moved by Senator Salisbury and seconded by Senator Ranson that **SB 653** as amended be recommended favorably for passage. In answer to a question about the use of the Intergovernmental Transfer monies, Secretary Hubbell noted that Nebraska has used the dollars for programs other than those for seniors. The motion carried on a roll call vote.

HB 2605: Sub for H 2605 by committee on Kansas 2000 Select Committee – Kansas state historical society created as a new state agency, transferring statutory agency powers, duties and functions from not-for-profit corporation

Audrey Nogle, KLRD, distributed copies of an interim study on “The Organization and Structure of the State Historical Society to the 2000 Kansas Legislature”(Attachment 4) and noted that the interim committee and Post Audit reviewed issues of clear lines of authority between the public and private entities, questions about contracting because of the same names, and questions about accountability. She distributed and reviewed copies of a summary of the original provisions of **HB 2605** and of the amendments made by the Kansas 2000 Select Committee (Attachment 5).

Representative Wilk appeared before the Committee in support of **HB 2605** and reviewed the historical background of the bill from the perspective of the Post Audit Committee and the Kansas 2000 Select Committee (Attachment 6). In answer to Senator Ranson, Representative Wilk stated that the name of the public agency was changed back to “Kansas State Historical Society” in deference to the non profit entity. Responding to Senator Jordan’s inquiry, Representative Wilk stated that he did not believe that any provisions of the amended bill would make changes to current staff of the non profit entity. Members discussed the procedure outlined in the bill for choosing the Executive Director.

Written testimony from Bill Rich, Professor of Law at Washburn University School of Law, was distributed to members (Attachment 7). Dr. Rich’s comments addressed the constitutional issues that the Legislature might want to consider in its review of **HB 2605**.

Representative Annie Kuether distributed and reviewed copies of her written testimony in support of **HB 2605** (Attachment 8). She enumerated the issues which were reviewed by the interim committee and addressed some issues which she termed inaccurate information.

Barb Hinton, Legislative Post Auditor, provided background information on some of the issues that led to this bill (Attachment 9). She pointed out that her testimony included a chart illustrating the issues addressed by the Post Audit Committee, some of the discussion related to those issues, and the options that evolved from discussions with nine other states about the structure of their “historical societies.” The last page of her testimony provided an organizational chart showing the separation and togetherness of the two entities. Senator Salisbury noted that the interim committee was very much guided by the Post Audit Report in the writing of the bill.

Carol McDowell, President of the Kansas Preservation Alliance, Inc., appeared before the Committee in support of **HB 2605** and presented her Board of Directors’ position (Attachment 10). She noted that the bill would elevate the importance of historic preservation in state government.

Jim Hoy, President of Kansas State Historical Society, Inc., appeared before the Committee in opposition to **HB 2605** and reviewed his written testimony (Attachment 11). He pointed out that the Historical Society is highly regarded and that the Post Audit Report only called attention to the potential for problems which he did not believe had materialized.

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Michael Hoeflich, Dean of the University of Kansas School of Law, Kansas University, testified before the Committee in opposition to **HB 2605** (Attachment 12). He addressed some of the constitutional issues presented by Dr. Bill Rich. Dr. Hoeflich opposed the passage of the bill and asked that the Historical Society be permitted to refine its current structure.

Dr. Herschel Stroud, D.D.S. appeared before the Committee in opposition to **HB 2605** and stated that "Kansas has the tallest tree in the forest when it comes to historical museums and research facilities." (Attachment 13). He noted that he believed concerns expressed by the Post Audit Committee have been addressed by recent changes in the bylaws.

Cheryl Collins, past President of the Kansas State Historical Society, Inc., distributed and reviewed copies of her written testimony in opposition to **HB 2605** (Attachment 14). In answer to Senator Salisbury, Ms. Collins stated that she had not witnessed a high level of confusion between the not-for-profit entity and the state agency in fund raising and the receipt of donations. She stated that when people have given money to the Kansas State Historical Society, Inc., they have known and preferred giving it to a 501(c)3 not-for-profit entity.

Nancy Holt, Executive Committee Chairperson of the Kansas State Historical Society, appeared in opposition to the bill and reviewed her written testimony which outlined some of the changes that the Kansas State Historical Society, Inc. has initiated in its bylaws to address legislative concerns (Attachment 15). Ms. Holt added that the private entity still has some concerns about the bill which were discussed in her document. Senator Salisbury pointed out that the bill does not change the authority of Executive Director to serve in an ex-officio capacity on the executive committee under the new bylaws. Senator Salisbury read a sentence from the minutes of the January 14 meeting of the Executive Committee ("It was reiterated that members of the Board of Directors and the Executive Committee should express a unified position and the view was expressed that members who cannot support the position of the Society should be asked to resign.") and inquired if that was the decision of the Executive Committee. Ms. Holt stated that the sentence was a point of view and was not adopted by the Committee.

Helen King, a long time supporter of the Kansas State Historical Society and past member of the Board of Directors, told members of the volunteer efforts that have contributed to the success of the Kansas State Historical Society. She noted that she is a founding member of the Genealogy Society whose members use the facilities, attend the events, and contribute time, energy and money to the public entity. Ms. King stated that she believed the accomplishments could not have been made without the volunteers who are members of the not-for-profit entity.

The Chairman noted that the Committee would take action on **HB 2605** at the following meeting.

Chairman Kerr told members that the Committee had adopted the Capital Improvements subcommittee report as amended on March 20, 2000 but had not amended those provisions into a bill. Senator Salisbury moved, Senator Morris seconded, that the original language in HB 2513 be deleted and that the provisions of the FY 2001 subcommittee report on Capital Improvements as amended be inserted into the bill. The motion carried on a roll call vote.

The Chairman adjourned the meeting at 12:50 p.m. The next meeting will be March 24, 2000.

SENATE WAYS & MEANS COMMITTEE GUEST LIST

DATE: March 23, 2000

NAME	REPRESENTING
Bill Brady	Ks Gov't Consulting
TAMA WAGNER	KS. PRESERVATION ALLIANCE, INC
Carol McDouell	Kansas Preservation Alliance, Inc
Paul Johnson	PACK
Vicki Lynn Helms	Budget
John Kiefhaber	Ks Health Care Assn.
Victoria Sherry	Ks Humanities Council
Marge Tunstetter	Bd. Member / Kans State Hst. Society
James W. Lindesch	" " "
Jim Hay	" " "
Ramon Power	Kansas State Historical Society
M. H. Jones	Bd. Member / KSHS
Herschel L. Stroud	Myself
Elborn E. Mendenhall	Myself & Historian -
Shannon Jones	SILCK
Lina McDonald	KA CK
Maura Mahony	KVC Kan Valley Ctr
Melissa L. Ness	Ks. Children's Service League

SENATE BILL No. 653

By Committee on Ways and Means

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DRAFT OF Technical AMENDMENTS
March 16, 2000

Senate Ways and Means Committee
Date March 23, 2000
Attachment # 1

9 AN ACT establishing an intergovernmental transfer program; concern-
10 ing nursing facilities owned and operated by units of government; re-
11 lating to the federal medical assistance (medicaid) program; establish-
12 ing an intergovernmental transfer fund, ~~a long-term care loan fund, a~~
13 senior services trust fund and a senior services fund within the state
14 treasury; authorizing certain participation agreements, loans, grants
15 and contracts; amending K.S.A. 75-5321a and repealing the existing
16 section.

17
18 *Be it enacted by the Legislature of the State of Kansas:*

19 Section 1. K.S.A. 75-5321a is hereby amended to read as follows: 75-
20 5321a. The secretary of social and rehabilitation services shall take nec-
21 essary actions to transfer the administration of certain long-term care
22 programs and services to the secretary of aging. The programs shall in-
23 clude the nursing facility services payment program, the home and com-
24 munity based ~~nursing facility services for the frail elderly~~ waiver program,
25 *the case management for the frail elderly program* and the income eligible
26 (home care) program. Excluding nursing facility programs, the programs
27 to be transferred shall not include long-term care programs for individuals
28 under the age of 65 with mental illness, mental retardation, other mental
29 disabilities or physical disabilities. All such transfers shall be made only
30 in accordance with federal grant requirements related to such programs.

(a) 31 New Sec. 2. The secretary of social and rehabilitation services and
32 the secretary of aging shall take necessary actions to establish an inter-
33 governmental transfer program as a part of the nursing facility services
34 payment program within the medicaid state plan.

(b) 35 (a) In implementing the intergovernmental transfer program, the
36 ~~state treasurer shall periodically transfer state general funds and federal~~
37 ~~funds in amounts certified by the~~ secretary of aging ~~(to units of govern-~~
38 ~~ment which have entered into participation agreements with the secretary~~
39 ~~of aging and the secretary of social and rehabilitation services. The~~
40 ~~amount of state general funds transferred to the units of government~~ shall
41 not exceed the amount necessary to match federal funds available to the
42 state under the intergovernmental transfer program. The secretary of
43 aging shall periodically calculate the amount of federal funds available

an intergovernmental transfer administration fund,

shall disburse moneys received from the federal government for the intergovernmental transfer program and moneys transferred from the state general fund to the intergovernmental transfer fund for the program

moneys disbursed to the units of government from moneys transferred from the state general fund to the intergovernmental transfer fund for the program

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1 under the program according to the [program] methodology in the medi-
2 caid state plan.

[prescribed for the intergovernmental transfer program

(c) 3 (b) The secretary of social and rehabilitation services and the secre-
4 tary of aging are authorized to enter into intergovernmental transfer pro-
5 gram participation agreements with units of government which own and
6 operate nursing facilities. The participation agreements may permit the
7 units of government to retain a participation fee specified by the secretary
8 of aging from [program funds] which are otherwise required to be trans-
9 ferred back to the secretary of aging.

[moneys received under the intergovernmental transfer program

10 (c) Program funds transferred from participating units of government
11 to the secretary of aging shall be deposited in the intergovernmental
12 transfer fund established within the state treasury. The state treasurer
13 shall distribute portions of the transferred funds attributable to medicaid
14 federal financial participation within the intergovernmental transfer fund
15 to the senior services trust fund and the long-term care loan fund estab-
16 lished within the state treasury in the amounts required by this section.
17 The state treasurer shall transfer the portion of the transferred funds
18 attributable to medicaid state matching funds into the state general fund.

19 (d) Distributions from the senior services trust fund through the in-
20 tergovernmental transfer program may not be used to create or fund an
21 entitlement program not in existence on the effective date of this act. The
22 secretary of aging may recover the department's costs of administering
23 the intergovernmental transfer program from the intergovernmental
24 transfer fund after certifying the amount of those costs to the state trea-
25 surer each calendar quarter.

26 (e) Subject to appropriations, from the total program funds trans-
27 ferred into the intergovernmental transfer fund before July 1, 2001:

28 (1) A portion, not to exceed 60%, shall be transferred to the senior
29 services trust fund to be invested and managed by the Kansas public
30 employment retirement system board of trustees as described in sections
31 3 and 4 of this act and amendments thereto. Each calendar quarter, the
32 board of trustees shall transfer the interest earned on the senior services
33 trust fund investments to the senior services fund within the state treas-
34 ury. Subject to appropriations, the moneys in senior services fund shall
35 be used by the secretary of aging only for projects intended to reduce
36 future medicaid costs to the state, to help seniors avoid premature insti-
37 tutionalization or to improve the quality of care or the quality of life of
38 seniors who are customers of long-term care programs, or for state match
39 for senior service programs authorized by federal law.

40 (2) A portion, not to exceed 25%, shall be transferred to the state
general fund.

41 (3) A portion, not to exceed 15%, shall be transferred to the long-
42 term care loan fund for use by the secretary of aging to make market-
43

1-3

1 ~~rate, low interest or no interest, fully or partially secured or unsecured~~
2 ~~loans for the following types of projects:~~

INSERT 1 attached

- (1) 3 ~~(A)~~ Converting all or parts of some types of licensed adult care homes
- 4 from their existing licensure types to different licensure types to meet
- 5 demonstrated changing service demands in their communities;
- (2) 6 ~~(B)~~ converting private residences to licensed homes plus facilities, as
- 7 defined by K.S.A. 39-923 and amendments thereto;
- (3) 8 ~~(C)~~ converting space in rural hospitals to hospital-based long-term
- 9 care facilities;
- (4) 10 ~~(D)~~ improving some types of licensed adult care homes;
- (5) 11 ~~(E)~~ rural hospitals contracting for physician, physician assistant or
- 12 licensed professional nurse services; or
- (6) 13 ~~(F)~~ building congregate housing for seniors in Kansas cities with pop-
- 14 ulations of 2,500 or less.

15 (f) Subject to appropriations, from the total program funds trans-
 16 ferred into the intergovernmental transfer fund during each fiscal year
 17 beginning on and after July 1, 2001:
 18 (1) A portion, not to exceed 70%, shall be transferred to the senior
 19 services trust fund to be invested and managed by the Kansas public
 20 employment retirement system board of trustees as described in sections
 21 3 and 4 and amendments thereto. Each calendar quarter, the board of
 22 trustees shall transfer the interest earned on the senior services trust fund
 23 investments to the senior services fund within the state treasury. Subject
 24 to appropriations, the moneys in the senior services fund shall be used
 25 by the secretary of aging only for projects intended to reduce future
 26 medicaid costs to the state, to help seniors avoid premature institution-
 27 alization or to improve the quality of care or the quality of life of seniors
 28 who are customers of long-term care programs, or for state match for
 29 senior service programs authorized by federal law.
 30 (2) A portion, not to exceed 30%, shall be transferred to the state
 31 general fund.

(j) 32 ~~(g)~~ The secretary of aging may consider the following factors to pri-
 33 oritize and select ~~long-term care fund~~ loans ~~and senior services fund~~
 34 ~~projects:~~

under the long-term care loan program and projects financed from the senior services fund

- (1) 35 Type of loan — higher interest is preferable to lower interest and
- 36 more secured is preferable to less secured;
- 37 (2) location — rural is preferable to urban or suburban;
- 38 (3) availability and utilization of the same type of facilities or services
- 39 in the proposed loan or project area;
- 40 (4) type of facility owner or borrower — unit of government, Kansas
- 41 not-for-profit, Kansas for-profit, foreign not-for-profit, foreign for-profit
- 42 organizations, and individuals, in that order of preference; and
- 43 (5) type of research project organization — geriatric schools or pro-

(d)(1) There is hereby established the intergovernmental transfer fund in the state treasury which shall be administered by the secretary of aging in accordance with this act. All expenditures from the intergovernmental transfer fund shall be to disburse the state match amount under the intergovernmental transfer program and shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of aging or the secretary's designee. Subject to the provisions of appropriation acts, when the secretary of aging determines that an amount of federal medicaid moneys is available for the intergovernmental transfer program, the secretary of aging shall determine the amount required as the state match and shall certify that amount to the director of accounts and reports. Upon receipt of each such state match certification, the director of accounts and reports shall transfer the amount certified by revenue transfer from the state general fund to the intergovernmental transfer fund. Upon the crediting of such state match amount in the intergovernmental transfer fund, the secretary of aging shall disburse the amount of federal moneys and the state match amount to the units of government that have entered into participation agreements under the program.

(2) Each unit of government receiving a disbursement under the intergovernmental transfer program shall reimburse the amount of money received, less the amount of the participation fee, to the secretary of aging. Upon receipt of each amount of moneys from participating units of government under the intergovernmental transfer program, the secretary of aging shall deposit the entire amount in the state treasury to the credit of the intergovernmental transfer fund. The secretary of aging shall determine the amount of each such deposit that was transferred from the state general fund to match medicaid federal funds under the intergovernmental transfer program and shall certify such amount to the director of accounts and reports. Upon receipt of each such certification, the director of accounts and reports shall retransfer the amount certified from the intergovernmental transfer fund to the state general fund.

(e) There is hereby established the intergovernmental transfer administration fund in the state treasury which shall be administered by the secretary of aging in accordance with this act. All expenditures from the

intergovernmental transfer administration fund shall be to pay the costs of administering the intergovernmental transfer program and shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of aging or the secretary's designee. The secretary of aging shall recover the costs of administering the intergovernmental transfer program from the intergovernmental transfer fund by certifying the amount of such costs to the director of accounts and reports each calendar quarter. Upon receipt of each certification of costs from the secretary of aging under this subsection, the director of accounts and reports shall transfer the amount certified from the intergovernmental transfer fund to the intergovernmental transfer administration fund.

(f) After each amount of moneys is credited to the intergovernmental transfer fund and the amount of the state match that had been transferred from the state general fund has been transferred back to the state general fund pursuant to subsection (d)(2), and after the transfer of the amount certified by the secretary of aging to the intergovernmental transfer administration fund pursuant to subsection (e), if any, the director of accounts and reports shall transfer the remaining amount in the intergovernmental transfer fund as follows:

(1) During the period from the effective date of this act through June 30, 2001, 60% of such amount shall be transferred to the senior services trust fund established by section 4 and amendments thereto, 25% of such amount shall be transferred to the state general fund and 15% of such amount shall be transferred to the long-term care loan fund established by subsection (h); and

(2) after June 30, 2001, 70% of such amount shall be transferred to the senior services trust fund and 30% of such amount shall be transferred to the state general fund.

(g) There is hereby established the senior services fund in the state treasury which shall be administered by the secretary of aging in accordance with this act. All expenditures from the senior services fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of aging or the secretary's designee. Moneys in the senior services fund shall be used by the secretary of aging only for projects intended (1) to reduce future medicaid costs to the state, (2) to help seniors avoid premature institutionalization, (3) to improve the quality of care or

the quality of life of seniors who are customers of long-term care programs, or (4) to satisfy state matching requirements for senior service programs authorized by federal law. Moneys credited to the senior services fund from income of investments of the moneys in the senior services trust fund shall not be used to create or fund any entitlement program not in existence on the effective date of this act.

(h) There is hereby established the long-term care loan fund in the state treasury which shall be administered by the secretary of aging in accordance with this act. All expenditures from the long-term care loan fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of aging or the secretary's designee. Moneys in the long-term care loan fund shall be used to make loans under the long-term care loan program developed by the secretary of aging in accordance with this section.

(i) The secretary on aging is hereby authorized to develop and implement a long-term care loan program in accordance with this section. Subject to the provisions of this section and the provisions of appropriation acts, the secretary of aging may enter into loan agreements for market-rate, low-interest or no-interest, fully or partially secured or unsecured loans with repayment provisions and other terms and conditions as may be prescribed by the secretary under such program. Loans under the long-term care loan program may be made for the following:

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grams in Kansas colleges or universities, Kansas colleges or universities, educational foundations, foreign colleges or universities, Kansas not-for-profit organizations, Kansas for-profit organizations, foreign not-for-profit organizations, foreign for-profit organizations, and individuals, in that order of preference.

(k) (h) The principal and interest of any loan made under this act shall be repaid to the long-term care loan fund within the state treasury and used to make new loans. ~~The funds within the long-term care loan fund shall be invested as required by law and the interest may be used as part of the state general fund match required for the intergovernmental transfer program.~~ The repayment of a loan or of a senior services fund project contract or grant may not be forgiven, in whole or in part, except by an act of the legislature.

All moneys received from repayments of

deposited in the state treasury and credited

(l) (i) For purposes of this section, "units of government" and "units of government which own and operate nursing facilities" which are eligible to enter into intergovernmental transfer program participation agreements shall be limited to cities of the first class, cities of the second class, counties, hospital districts, or health care facilities and services hospital districts which hold legal title to and are actively involved in the day-to-day operations of any of the following:

- (1) Medicaid-certified nursing facilities and nursing facilities for mental health, as defined in K.S.A. 39-923 and amendments thereto;
- (2) Medicaid-certified long-term care facilities which are operated in connection with city hospitals established under K.S.A. 13-14b01 *et seq.* and amendments thereto or K.S.A. 14-601 *et seq.* and amendments thereto, county hospitals established under K.S.A. 19-4601 *et seq.* and amendments thereto, or district hospitals established under K.S.A. 80-2501 *et seq.* and amendments thereto; or
- (3) Medicaid-certified long-term care facilities operated under authority of K.S.A. 80-2550 *et seq.* and amendments thereto.

(m) (j) Entities eligible to apply for loans under this section shall be limited to the owners of:

the long-term care loan program under

- (1) Licensed adult care homes, excluding nursing facilities for mental health and intermediate care facilities for the mentally retarded, as defined in K.S.A. 39-923 and amendments thereto;
- (2) Medicaid-certified licensed hospitals and Medicaid-certified long-term care facilities based in or operated in connection with licensed hospitals as defined in K.S.A. 65-425 and amendments thereto;
- (3) Private residences which the owners will contract to convert into licensed homes plus facilities, as defined in K.S.A. 39-923 and amendments thereto, and in which the owners will reside after the conversion and licensure; or
- (4) Congregate senior housing projects being built with loans in Kan-

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1 sas cities with a population of 2,500 or less.

2 New Sec. 3. (a) The board of trustees ~~[of the Kansas public employees]~~

3 ~~[retirement]~~ is responsible for the management and investment of the senior services trust fund ~~[and]~~ shall discharge the board's duties relative to the fund for the exclusive purpose of providing investment revenue for the purposes for which the fund moneys may be used and defraying reasonable expenses of administering the fund. The board shall invest and reinvest moneys in the fund and acquire, retain, manage, including the exercise of any voting rights, and dispose of investments of the fund within the limitations and according to the powers, duties and purposes as prescribed by this section.

which is hereby established in the state treasury. The board of trustees

12 (b) Moneys in the fund shall be invested and reinvested to achieve the investment objective which is preservation of the fund to provide income and accordingly providing that the moneys are as productive as possible, subject to the standards set forth in this act. No moneys in the fund shall be invested or reinvested if the sole or primary investment objective is for economic development or social purposes or objectives.

18 (c) In investing and reinvesting moneys in the fund and in acquiring, retaining, managing and disposing of investments of the fund, the board of trustees shall exercise the judgment, care, skill, prudence and diligence under the circumstances then prevailing, which persons of prudence, discretion and intelligence acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims by diversifying the investments of the fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, and not in regard to speculation but in regard to the permanent disposition of similar funds, considering the probable income as well as the probable safety of their capital.

29 (d) In the discharge of such management and investment responsibilities the board of trustees may contract for services of one or more professional investment advisors or other consultants in the management and investment of moneys in the fund and otherwise in the performance of the duties of the board of trustees under this act.

34 (e) The board of trustees shall require that each person contracted with under subsection (d) to provide services shall obtain commercial insurance which provides for errors and omissions coverage for such person in an amount to be specified by the board of trustees. The amount of such coverage specified by the board of trustees shall be at least the greater of \$500,000 or 1% of the funds entrusted to such person up to a maximum of \$10,000,000. The board of trustees shall require a person contracted with under subsection (d) to provide services give a fidelity bond in a penal sum as may be fixed by law or, if not so fixed, as may be fixed by the board of trustees, with corporate surety authorized to do

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1 business in this state. Such persons contracted with the board of trustees
2 pursuant to subsection (d) and any persons contracted with such persons
3 to perform the functions specified in subsection (b) shall be deemed to
4 be fiduciary agents of the board of trustees in the performance of con-
5 tractual obligations.

6 (f) (1) Subject to the objective set forth in subsection (b) and the
7 standards set forth in subsection (c), the board of trustees shall formulate
8 and adopt policies and objectives for the investment and reinvestment of
9 moneys in the fund and the acquisition, retention, management and dis-
10 position of investments of the fund. Such policies and objectives shall be
11 in writing and shall include:

12 (A) Specific asset allocation standards and objectives;

13 (B) establishment of criteria for evaluating the risk versus the poten-
14 tial return on a particular investment; and

15 (C) a requirement that all investment advisors, and any managers or
16 others with similar duties and responsibilities as investment advisors, shall
17 immediately report all instances of default on investments to the board
18 of trustees and provide such board of trustees with recommendations and
19 options, including, but not limited to, curing the default or withdrawal
20 from the investment.

21 (2) The board of trustees shall review such policies and objectives,
22 make changes considered necessary or desirable and readopt such policies
23 and objectives on an annual basis.

24 (g) (1) Except as provided in subsection (d) and this subsection, the
25 custody of money and securities of the fund shall remain in the custody
26 of the state treasurer, except that the board of trustees may arrange for
27 the custody of such money and securities as it considers advisable with
28 one or more member banks or trust companies of the federal reserve
29 system or with one or more banks in the state of Kansas, or both, to be
30 held in safekeeping by the banks or trust companies for the collection of
31 the principal and interest or other income or of the proceeds of sale.

32 (2) The state treasurer and the board of trustees shall collect the
33 principal and interest or other income of investments or the proceeds of
34 sale of securities in the custody of the state treasurer and shall pay such
35 moneys when so collected into the state treasury to the credit of the fund.

36 (3) The principal and interest or other income or the proceeds of sale
37 of securities as provided in paragraph (1) of this subsection shall be re-
38 ported to the state treasurer and the board of trustees and credited to
39 the fund.

40 (h) All interest or other income of the investments of the moneys in
41 the fund, after payment of any management fees, shall be considered
42 income of the fund and shall be withdrawn and deposited quarterly in
43 the state treasury to the credit of the senior services fund to be used by

of the fund

the director of accounts and reports

1 the secretary of aging for the purposes permitted by section 2 [of this act]
2 and amendments thereto.

3 (i) As used in this section:

4 (1) "Board of trustees" means the board of trustees of the Kansas
5 public employees retirement system established by K.S.A. 74-4905 and
6 amendments thereto.

7 (2) "Fiduciary" means a person who, with respect to the fund, is a
8 person who:

9 (A) Exercises any discretionary authority with respect to administra-
10 tion of the fund;

11 (B) exercises any authority to invest or manage assets of the fund or
12 has any authority or responsibility to do so;

13 (C) provides investment advice for a fee or other direct or indirect
14 compensation with respect to the assets of the fund or has any authority
15 or responsibility to do so;

16 (D) provides actuarial, accounting, auditing, consulting, legal or other
17 professional services for a fee or other direct or indirect compensation
18 with respect to the fund or has any authority or responsibility to do so;
19 or

20 (E) is a member of the board of trustees or of the staff of the board
21 of trustees.

22 (3) "Fund" means the senior services trust fund.

23 (4) With respect to the investment of moneys in the senior services
24 trust fund, "purposes for which the moneys may be used" means the
25 purposes for which the moneys in the senior services [trust] fund may be
26 used, as provided in section 2 and amendments thereto.

27 New Sec. 4. The board of trustees of the Kansas public employees
28 retirement system shall report to the governor and to the legislature on
29 the moneys credited to the senior services trust fund and investment
30 earnings thereon at ~~least~~ once each calendar quarter and on a monthly
31 basis upon request of the governor, the president of the senate or the
32 speaker of the house of representatives. The director of the budget and
33 the governor shall use the information in such reports in the preparation
34 of the governor's budget report under K.S.A. 75-3721 and amendments
35 thereto.

least

36 Sec. 5. K.S.A. 75-5321a is hereby repealed.

37 Sec. 6. This act shall take effect and be in force from and after its
38 publication in the Kansas register.

Amendment to SB 653

Change the 25% distribution for State General Funds to 25% distribution to the State Matching Medicaid Fund which will allow for no more than \$20.2 million for HCBS/Frail Elderly Waiver including the Protected Income Level, and no more than \$2.2 million for Physically Disabled Waiver including the Protected Income Levels.

This amendment fulfills the requirement that the interest proceeds from the Intergovernmental Transfer be used for “projects intended to reduce future Medicaid costs to the state.”

Where to Spend HCFA Funds?

Senate Ways and Means Committee
 Date *March 23, 2000*
 Attachment # *3*

Graves' Plan: Funding K-12 Education w/ HCFA funds	FY01	
Keep 1999 promise to increase BSAPP by \$50 (\$3,820)	\$7.7	HCFA
Keep special education funding at current level (85% of excess costs)	\$14.7	HCFA
TOTAL	\$22.4	

Proposed Amendment: Funding Health & Medicaid-related services w/ HCFA funds	FY01	
Physically Disabled Waiver (covers all of Graves' increase for FY01)	\$2.2	HCFA
HCBS/Frail Elderly Waiver (covers entire state share of program for FY01)	\$20.2	HCFA
TOTAL	\$22.4	

Proposed Amendment: Funding K-12 Education w/ SGF	FY01	
Keep 1999 promise to increase BSAPP by \$50 (\$3,820)	\$7.7	SGF
Keep special education funding at current level (85% of excess costs)	\$14.7	SGF
TOTAL	\$22.4	

Report of the
Special Committee on the Organization and
Structure of the State Historical Society
to the
2000 Kansas Legislature

CHAIRPERSON: Senator Alicia Salisbury

VICE-CHAIRPERSON: Representative Kenny Wilk

OTHER MEMBERS: Senators Marge Petty and Ben Vidricksen; Representatives Annie Kuether and Jo Ann Pottorff

STUDY TOPIC:

Organization and Structure of the State Historical Society

December 1999

Senate Ways and Means Committee

Date *March 23, 2000*

Attachment #

4

SPECIAL COMMITTEE ON THE ORGANIZATION AND STRUCTURE OF THE STATE HISTORICAL SOCIETY

ORGANIZATION AND STRUCTURE OF THE STATE HISTORICAL SOCIETY*

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends the introduction of legislation to create, in statute, a free-standing state agency called the Kansas Department of History and Preservation. The Director of the Department would be appointed by the Governor, subject to Senate confirmation. The new agency would be authorized by statute to contract with other entities.

The Director of History and Preservation would appoint the State Historic Preservation Officer, who would be in the classified service. The Committee also encourages the State Historic Preservation Officer to become proactive in performing duties related to restoration and renovation of state buildings, and in the Main Street and Neighborhood Revitalization programs in conjunction with the Department of Commerce and Housing.

Though not within the purview of the Legislature, the Committee recommends that the Kansas Historical Society, Inc., consider employment of a full-time development officer to maximize private fund raising and the appointment of a separate Investment Committee or a subcommittee of the Finance Committee to manage investments.

BACKGROUND

The Special Committee was directed to review the organization and structure of the State Historical Society.

History of the Society. The Kansas State Historical Society was founded in 1875 by Kansas newspaper publishers to collect and preserve the artifacts and documents that tell the history of Kansas. In 1879, it became the official trustee for the state historical

collections. Since then, the Society has functioned both as a not-for-profit membership organization and as a state agency supported by legislative appropriations.

The Society has a Board of Directors, whose size and membership the Board itself determines. State law is silent on who appoints the Secretary of the State Historical Society. In practice, the Secretary, who also serves as the state agency's Executive Director, is elected by the Board. The Executive

* Proposed legislation was not available at time of publication.

Director is in the state's unclassified service, and his salary is set by the Governor. The Secretary/Executive Director also serves as the State Historic Preservation Officer.

The Executive Committee runs the private not-for-profit organization and is primarily involved in fund-raising activities for historic preservation purposes. The day-to-day work is performed by the state agency under the direction of the Executive Director.

Post Audit Report. In anticipation of an interim study regarding potential reorganization of the Historical Society, a Post Audit report was requested. The scope statement for the report was approved by the Legislative Post Audit Committee in March 1999, and the Committee reviewed the report in July 1999.

The report reviewed existing state law; compared and contrasted the structure and activities of the Kansas State Historical Society with historical societies in several other states; and interviewed Board members, staff, patrons, and other interested parties.

The report concluded that the meshing of the not-for-profit membership organization and the state agency "has resulted in an organizational structure that is confusing, that lacks clear lines of authority and responsibility, and places considerable power in the hands of one official without providing the same level of accountability that other agency heads are subjected to."

The performance audit report recommended that the Legislature study the structure of the Society, and specifically consider the following:

- The need to explicitly create a state

historical agency in statute with an agency head appointed, directly or indirectly, by the Governor;

- The relationship between the not-for-profit State Historical Society, Inc., and the state agency;
- The need to separate the positions of Executive Director of the state agency and Secretary of the not-for-profit;
- The need to clearly define the relationships, responsibilities, and lines of authority between the state agency and the not-for-profit; and
- The need to designate someone other than the Executive Director as the State Historic Preservation Officer.

COMMITTEE ACTIVITIES

The Committee met for four days during the 1999 Interim, and received information from the Legislative Division of Post Audit, representatives of the Historical Society including the present Executive Director and one former Executive Director, and representatives of other state historical societies. The Committee also received oral and written testimony from board members, volunteers, employees, and other interested parties. The Committee discussed fund raising by the not-for-profit side and information was presented to the Committee on the operation of the Washburn University Endowment Association as a possible model.

Post Audit Findings. Staff of the Legislative Division of Post Audit reviewed the findings of the Post Audit report with the Committee. Staff explained that the State Historical Society operates essentially as two separate entities housed within a single agency. Post Audit staff indicated that when the private side wanted to increase its fund

raising efforts, it wanted to emphasize its identity as a separate, not-for-profit entity capable of receiving donations. The private side of the Society changed its name to include the term "incorporated," to make the two sides more distinct. Staff also noted that the Secretary/Executive Director of the Society has also been designated as the State Historic Preservation Officer and noted that an issue raised during the audit was that these roles can sometimes be conflicting.

By-Laws Changes. At the October meeting, representatives of the Kansas State Historical Society, Inc., presented the Committee with information on by-laws changes proposed by the Society's By-Laws Committee. The changes were subsequently adopted by the Board of Directors at its annual meeting in November 1999. Under the by-laws changes, the position of Secretary of the Board is eliminated, breaking the linkage between the Secretary of the not-for-profit entity and the Executive Director of the agency. The 15-member Executive Committee of the Board would continue to appoint the Executive Director of the agency and the Governor would appoint three members of the Executive Committee.

Other State Historical Societies. At its October meeting, the Committee held video or telephone conferences with representatives of historical societies in four other states—South Dakota, Iowa, Georgia, and Illinois. Those representatives explained the structures of history-related agencies in those states. In addition, staff provided the Committee with information regarding history related agencies in the State of Indiana. In South Dakota and Iowa, the historical societies are part of a larger cabinet level agency. In Georgia and Indiana, the responsibilities for different functions are divided among several different agencies within state government. All of the history-related functions of state government in Illinois are performed by a single agency, the Illinois

Historic Preservation Agency. At the November meeting, staff provided the Committee with additional information on the structure of the Minnesota, Ohio, and Wisconsin historical societies. In all three of those states, a private, not-for-profit historical society performs the same functions performed by the Kansas State Historical Society. There are, however, distinct differences in the structures of those state societies and that of the Kansas State Historical Society.

Other Information Presented to the Committee. The Committee received oral and written testimony from several Board members. Some Board members noted concern with certain aspects of the Society's operations, including a concern with the lack of an investment committee to manage the Society's approximately \$1.4 million endowment, and the lack of updated Society policies and job descriptions. One Board member expressed a concern with the Society's handling of property donated by his family. Other Board members testified as to the value of the diversity of membership on the 99-member Board. The Committee also received testimony from employees and volunteers at the Society, some of whom noted concerns with the current management of the Society, and employee morale at the Society. The current Executive Director of the Society addressed those issues with the Committee. A former Executive Director of the Society addressed the findings of the Legislative Post Audit report and noted that he believed the position of State Historic Preservation Officer should be removed from the State Historical Society and located in the Governor's office.

The Committee also heard about fund raising on the part of the private side of the Society. The Society's half-time development officer highlighted recent fund raising achievements. The Committee heard testimony from the President of the Washburn University Endowment Association who

briefly explained the relationship between the Endowment Association and the University. He explained that there is a clear contractual relationship established between the two entities. In addition, one member of the public testified regarding a concern with the Society's perceived lack of interest in a specific historical project.

CONCLUSIONS AND RECOMMENDATIONS

The primary goal of the Committee in making its recommendations regarding the organization and structure of the State Historical Society was not to diminish the importance and significance of the Society. It was also important to keep in place and support the well-established public/private partnership between the state agency and the 501(c)(3) corporation.

In addition, the Committee notes and commends the Society on the efforts it has undertaken to address the concerns raised in the Post Audit report. While the Committee does not want to impede the good work currently being done, the Committee is seriously concerned with issues of accountability for significant amounts of state funding and significant numbers of state employees.

The Committee believes that it is in the best interests of the people of the State of Kansas and the future effectiveness of the Society to provide a more clear distinction between the 501(c)(3) corporation and the state agency. To that end, the Committee recommends the following.

- **Establishment of a Free-Standing State Agency.** The Committee recommends the introduction of legislation to create in statute, a free-standing state agency. In recognition of the importance of name identification to the 501(c)(3) Kansas State Historical Society, Inc., the Com-

mittee recommends the newly created agency be called the Kansas Department of History and Preservation.

- **Appointment of Agency Head.** The Director of the Department would be appointed by the Governor, subject to Senate confirmation.
- **Qualifications for Director of History and Preservation.** The Committee recommends that the Director of History and Preservation be qualified by education or training and experience in the field of history, historic preservation, education, museum administration or a related field and have demonstrated executive and administrative ability to perform the duties of the position.
- **Authority to Contract.** The new agency would be authorized by statute to contract with other entities. This serves to stress the commitment to not undermine the good working relationship between the state agency and the private Society.
- **State Historic Preservation Officer.** Under the recommendation of the Committee, the Director of History and Preservation would appoint a State Historic Preservation Officer, who would be in the classified service. The Committee believes that the protections of classified service provides the Preservation Officer with more autonomy to make difficult, controversial, or politically unpopular decisions when they are necessary. The Committee also wants to encourage the State Historic Preservation Officer to become proactive in performing duties related to restoration and renovation of state buildings, and in the Main Street and Neighborhood Revitalization programs administered by the Department of Commerce and Housing.

- **Other Necessary Statutory Changes.**

The recommendations of the Committee, and the by-laws changes adopted by the Historical Society Board, require several existing statutory provisions to be amended.

- **Items Related to Private Society.**

Though not within the purview of the Legislature, the Committee recommends that the Kansas Historical Society, Inc., consider the following options to maximize its fund raising potential:

- As discussed with the Committee, consider the employment of a full-time development officer to maxi-

mize the raising of private funds.

- While the Committee commends the Society for the development of a Finance Committee, the Committee also was troubled by the lack of an Investment Committee to oversee an endowment which currently stands at approximately \$1.4 million. The Committee recommends that the Society consider the appointment of a separate Investment Committee or, as suggested by a member of the Executive Committee, a subcommittee of the Finance Committee to manage investments.

Summary of HB 2605

Original Bill

Create a free standing agency called the Kansas Department of History and Preservation to avoid the name confusion that had developed regarding the Kansas State Historical Society and the Kansas State Historical Society, Inc.

The agency head should be appointed by the Governor and approved by the Senate and should have education, training, or experience in history or a related field as well as demonstrated executive and administrative ability.

The Governor would appoint a new agency head on the effective date of this bill.

The new agency should have authority to contract with other agencies.

The position of Historic Preservation officer should be a classified position separate from the Executive Director position.

As amended by the Kansas 2000 Select Committee

Create a free standing agency retaining the name Kansas State Historical Society

The Governor would appoint the agency head from three individuals recommended by the executive committee of the not-for-profit society.

The executive committee would have 180 days from the effective date of the bill to develop the list of three candidates for the first Executive Director selected by the Governor.

The Kansas State Historical Society would enter into contracts to provide space for the museum store operated by the not-for-profit corporation in the Kansas Museum of History, other space for office and administrative activities for the not-for-profit corporation, and otherwise provide assistance or make available equipment and facilities to the not-for-profit to continue and develop the existing beneficial relationship.

The Executive Director would be required to meet, advise, and consult with the not-for-profit corporation on a regular basis to set policy and agency direction regarding the programs and activities of the society and would be required to consult with the not-for-profit society and other state and local groups in historic preservation matters.

Trusteeship authority is transferred from the not-for-profit society to the agency on July 1, 2000.

As amended by the House Committee of the Whole

Effective date of the act is July 1, 2001.

Senate Ways and Means Committee

Date *March 23, 2000*

Attachment # *5*

State of Kansas

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TOPEKA

House of Representatives

COMMITTEE ASSIGNMENTS

CHAIRMAN: KANSAS 2000
VICE-CHAIRMAN: LEGISLATIVE POST AUDIT
MEMBER: TAXATION

EXECUTIVE BOARD MEMBER, KANSAS
STATE HISTORICAL SOCIETY, INC.

Testimony for Sub. HB 2605 March 23, 2000

Mr. Chairman and members of the committee. I appreciate the opportunity to appear before you in support of Sub. HB 2605. Others will share the details and specifics of the legislation. I would like to discuss the process by which we arrived at Sub. HB 2605.

The process started when Legislative Post Audit authorized an audit last summer. I was chairing the committee at the time. Barb Hinton will speak with you later about some of the specifics of the audit. After the audit the LCC appointed a special interim committee. The Speaker appointed me to that committee. I served with Sen. Salisbury, Sen. Petty and others. We spent four full days hearing testimony and discussing the issue. The interim committee issued a report and recommended legislation which was the original HB 2605. It was a unanimous, bipartisan recommendation from the interim committee.

In January, HB 2605 was assigned to the Kansas 2000 Select Committee. The committee spent a great deal of time on the bill. We dedicated two days of hearings. After the hearings, myself along with the vice-chair (Deena Horst) and the ranking member (Bonnie Sharp) met and conferred with three members of the Kansas State Historical Society, Inc. (KSHS, Inc., the non-profit organization) Executive Committee. From those discussions came the substitute bill. There are many changes from the original bill and I have presented the substitute version as the compromise legislation and felt like we reached consensus on the draft. KSHS, Inc. will follow and present their formal position. I do want the committee to know we spent a lot of time and energy in an attempt to

Senate Ways and Means Committee

Date *March 23, 2000*

Attachment # *6*

address the legislative concerns, while giving the non-profit organization as much authority and oversight as possible.

Regardless of what some may say, the issue for me is one of taxpayer accountability. I believe Sub. HB 2605 strikes the fine line of balance. It gives the non-profit organization tremendous influence, input, and opportunity for participation, while providing taxpayer accountability for the Legislature. I appreciate your consideration of Sub. HB 2605 and would equally appreciate your support.

January 19, 2000

To: Special Committee on Structure and Organization of the State Historical Society

Fr: Bill Rich
Professor of Law
Washburn University School of Law

Re: Constitutional Questions Concerning Historical Society Structure

Summary of Testimony

I have been asked to address constitutional issues that might affect legislative consideration of proposed changes to the structure of the Kansas Historical Society. The primary constitutional issue is whether the current structure of the Society comports with a requirement that state agencies which exercise general governmental power must be accountable. To meet this requirement, agency structures must be consistent with a doctrine of equal representation. The Committee should consider whether the current structure of the Society meets these constitutional constraints and whether proposed alternatives eliminate constitutional problems, and these are the issues which I will address.

First, is the Kansas Historical Society an agency which exercises "general governmental power"? The answer to that question is fairly complex. Primary guidance comes from three decisions by the United States Supreme Court: *Hadley v. Junior College District of Metropolitan Kansas City*, 397 U.S. 50 (1970); *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719 (1973); and *Ball v. James*, 451 U.S. 355 (1981). Guidance can also be found from the decisions of the United States District Court which more recently concluded that the structure of the Kansas Board of Agriculture failed to meet constitutional requirements. *Hellebust v. Brownback*, 824 F.Supp. 1524 (D.Kan. 1993); *Hellebust v. Brownback*, 812 F.Supp. 1136 (D.Kan. 1993). We can learn from these cases that an agency exercises "general" power if it affects the public equally, as distinguished from agencies which have a limited impact on a distinct segment of the public and which can therefore be held accountable by that limited group. A Water Storage District was a body affecting a distinct group, while the Junior College and the Kansas Board of Agriculture affected the general public. I conclude that the Historical Society has general, rather than limited, responsibilities.

It is also important to determine whether the type of responsibilities exercised by the Historical Society are "governmental" or should be categorized in some more restricted terms. Clearly, the legislature can delegate ministerial or advisory responsibilities to entities that would not necessarily be considered a part of the government and therefore need not meet government accountability standards. If, for example, the functions of an agency were merely investigatory or advisory and did not involve significant exercises of discretion, then we could conclude that there did not need to be executive control over such an agency. The United States Supreme Court decisions actually do not tell us a great deal about how this line should be drawn. It would appear, however, that several functions of the Historical Society fit within a reasonable concept of governmental authority. I would note in particular the authority to spend state money, to

Senate Ways and Means Committee

Date March 23, 2000

Attachment # 7

administer state property, to hire and fire state employees, to act as the state historic preservation agency, to administer federal funds that have been allocated to the states, to establish and approve expenditures from fees, to adopt rules and regulations and to otherwise administer provisions of the law. It is difficult to imagine that this collections of responsibilities would not be considered "governmental." I would need to assess more specific information about each of these tasks, however, in order to give more detailed guidance regarding this issue.

If you agree with my conclusion that the Kansas Historical Society exercises general governmental power, then the next question is whether the structure of the Society comports with requirements of accountability. The single most important principle in this context is that of equal representation, or "one person, one vote." Failure to meet that standard led to the conclusion that the Kansas City Junior College and the Kansas State Board of Agriculture were not structured in a valid manner. The Supreme Court has consistently ruled that any requirement that ties voting for a government authority to payment of a fee is unconstitutional. Rules for selecting the Historical Society governing board by dues paying members violate this standard.

The final question I will address is the question of remedies. I do not have any constitutional concerns regarding the changes in structure and organization encompassed by House Bill No. 2605; those changes appear to eliminate the constitutional problems described above. Other remedies are possible, however, and judicial opinions in this context do not be construed as strait-jackets that block all innovative or experimental combinations of public and private entities. While I do not believe that allowing the Governor to appoint three members of the Historical Society Executive Committee resolves the problems of accountability described above, other solutions are possible.

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
ECONOMIC DEVELOPMENT—RANKING DEMOCRAT
EDUCATION & LEGISLATIVE BUDGET COMMITTEE
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT
UTILITIES

March 23, 2000

Dear Committee Members:

The Kansas State Historical Society is just that—read the title again. The Society employees 137.5 state employees..

The Kansas State Historical Society receives an annual appropriation from the State of Kansas. Approximately \$7 million dollars worth. I'd like to address some inaccurate information. In a letter to the editor of the Capital Journal, President of the KSHS, Jim Hoy, claims that HB 2605 seeks a remedy for the Governance of this institution

This is not an issue raised by the Special Interim Committee this fall. The committee addressed two issues as directed with the findings of a Legislative Post Audit.

1. Accountability of a state-funded agency, the Kansas State Historical Society. The public side of the institution.
2. The State Historic Preservation officer should not be the same person as the Executive Director.

We are only suggesting changes to the public side of the society-funded with public

Senate Ways and Means Committee

FAX: (785) 232-7798

E-MAIL: KUET@AOL.

Date *March 23, 2000*

Attachment #

8

dollars and requiring accountability for how those dollars are spent.

One question that was asked at one meeting was how did we get up to 137.5 state employees? There wasn't an answer.

There never was a question that the Kansas State Historical Society is highly respected. There never was any question as to whether this was a personal vendetta to remove the Executive Director. It was not. Each and everyone of this bi-partisan committee served because we realize the value and importance of history in our great State

President Hoy also points out that the society receives an appropriation of \$7 million. I serve on the Appropriations Subcommittee for Education and Legislative Budgets. I, against the pleasure of the Chair, successfully got into the budget, funding for some of the societies requests.

\$71,000 First Territorial Capital

\$50,000 Fort Hays Block House

\$35,000 Humanities

\$70,000 Visitor Donation Match

If I didn't believe in the value of our Historical Society, I certainly would not have made those motions.

KU Law Professor Mike Hoeflich claims that HB 2605 is "a slap" in the face to all the thousands

of Kansans who have volunteered their services to the State Historical Society.” While he is entitled to his opinion, I will state that it was some of those very volunteers who came to testify that there were some very real problems that need addressing.

The State Historical Preservation officer plays a very important part of taking care of Kansas history. We are in danger of losing several valued sites. The Executive Director of the Kansas State Historical Societies testified that he spends 7% of his time devoted to preservation. I suggest that when we are in danger, something is wrong.

Lastly, I’d like to address comments made in an article written by Tom Averill calling HB 2605 “malicious”. He claims that “dumb legislators” are trying to ruin the Executive Director’s career. These remarks border on libel.

I support HB2605 because I believe that we addressed the concerns we were asked to address. Leadership of both chambers and parties determine the topics addressed by interim committees. This was a bi-partisan and unanimous decision. Not once did Tom Averill, Ramon Powers or Mike Hoeflich come to speak to me about their concerns. No telephone calls were made to discuss any compromise language. Instead there has been a continual effort, behind our backs to defame the bill after supposedly agreeing to the changes, and accusing me of abusing my legislative powers.

As an elected official, it is my responsibility to oversee state programs. HB2605 is the product of the seven member, bipartisan, special interim committee who did the job, as directed.

**Testimony for the
Senate Ways and Means Committee on
Substitute for House Bill 2605**
Barb Hinton, Legislative Post Auditor
March 23, 2000

Mr. Chairman and members of the Committee, thank you for allowing me to appear on behalf of the Legislative Post Audit Committee to provide background information on some of the issues that led to this bill.

In June 1999, our office issued a performance audit titled *Reviewing the Organization and Structure of the State Historical Society*. The audit addressed two questions:

1. **How are the nonprofit and State agency “sides” of the State Historical Society organized, funded, and operated, and does its current structure create any problems?**
2. **Could a revised organizational structure make the Society and its nonprofit affiliate more responsive and effective?**

Based on our review and analysis of the Historical Society’s organizational structure, our review of 9 other state structures, and the concerns raised by people we surveyed or interviewed, we found several aspects of the Society’s structure that seemed unusual or that could hamper the Society’s ability to effectively carry out its responsibilities. The most significant ones can be summarized as follows:

The State Historical Society has evolved over time to encompass a not-for-profit “side” and a State agency “side” that’s never been explicitly created by statute. The Society was founded by Kansas newspaper publishers in 1875 as a not-for-profit membership corporation. The 1879 Legislature passed a law designating this private corporation as the official trustee of the State’s historic collections and property, and authorizing it to spend State money and administer State-owned assets. Over the years, the Legislature also has amended the law to grant the Society many of the same powers and duties given to State agencies. However, the typical language used when creating a State agency is missing. Thus, it’s not clear whether the Legislature’s actions to date have simply conferred some of the powers of a State agency on a private not-for-profit group. State law also doesn’t define the responsibilities and level of accountability between the two entities.

The Secretary of the not-for-profit side of the Society is the de facto head of the State agency side of the Society. The not-for-profit corporation’s by-laws have established a 15-member executive committee that includes a Secretary of the Society. In practice, the Secretary is hired by other members of that executive committee, which then puts his or her name up to the Society’s board of directors for election as Secretary. Under the by-laws the Secretary is automatically the executive director as well, who is responsible for carrying out the Society’s day-to-day activities—including those of the State side.

Because the executive director position isn't appointed by and can't be removed by the Governor or any State-appointed official—either directly or indirectly—that position is less accountable to the State than other heads of State agencies. The executive director is elected by the board of directors of the not-for-profit side of the Society, none of whom are appointed by the Governor. Thus, neither the Governor nor other officials accountable to the public have any authority in designating or retaining the executive director position. Yet the State side of the Society spends—and the executive director position has authority over—about \$6 million a year in State funding.

The executive director position has access to and authority over moneys and employees for both sides of the Society. This arrangement can create both a perception and an actual risk that decisions could be made that aren't in the best interests of one side or the other. (This same type of risk would be present if one person were over both KU and the KU Endowment Association, for example) Because there are fewer restrictions on private-side moneys, they could be used to pay for things that State appropriations can't be used for.

Over the years, State employees had been handling many of the payroll and accounting functions for the not-for-profit side. Normally, a State agency wouldn't provide State employees to do work for a private entity. For a variety of reasons, the two sides have become more separate over time. For example, because it wanted to increase its fund-raising efforts in the late 1970s, the private side began to emphasize its identity as a separate not-for-profit entity capable of receiving donations. Also, in 1988 the not-for-profit side changed its name to include "incorporated" because the two sides had been signing contracts with each other using the same name. Between 1978 and 1998, the not-for-profit side also began handling many of its own payroll and accounting functions. However, State-side employees still sometimes work on private-side projects or supervise private-side staff.

As the designated State Historic Preservation Officer, the executive director must make decisions that could conflict with his or her role as a fund-raiser for the Society. In this position, the executive director must render opinions about whether public projects can proceed without damaging historical property. Such decisions could alienate potential contributors to the Historical Society who are either for or against a proposed project. (This conflict was the most common problem Society Board members mentioned in response to our surveys.)

As part of my testimony, I've attached a more detailed summary of these potential problem areas and the options we presented in our report for addressing them.

Thank you for giving me the opportunity to appear before you today. I'd be happy to answer any questions.



PERFORMANCE AUDIT REPORT

Reviewing the Organization and Structure Of the State Historical Society

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
July 1999**

Issues Related to the Executive Director Position

Issues

Discussion . . .

The Executive Director (through his dual role as Secretary of the Society) is elected by the board of directors of the not-for-profit side of the Society. None of the directors are less accountable to the Governor. Thus, neither the Governor nor other officials accountable to the public have any authority in designating or retaining the Executive Director, who is the defacto head of a State agency. Because the State side accounts for approximately 90% of the funding for the operations of the Society as a whole, it's isn't appointed by and logical to provide some accountability over those moneys. In most other Kansas agencies where an agency head is appointed by a private board, the Governor appoints directly or indirectly by the majority of the board members, and is able to exercise control in that way. Although the Director has some accountability to the Governor and the Legislature through the budget and appropriations processes, his ultimate accountability is only to the private board of directors.

Options for Addressing This Issue

■ Have the Executive Director be appointed by the Governor or by a board controlled by the Governor. In at least two states, Nebraska and Oklahoma, the director is appointed by members of a state board, but the governor appoints some members of that board.

■ Make the Historical Society a division within another agency. In Iowa, South Dakota, and Missouri, the historical society is a division within a larger state agency. The director of the historical society is accountable to the director of the umbrella agency, who is accountable to the Governor.

■ Create the Historical Society as a State agency separate from the not-for-profit organization, with an executive director appointed by the Governor.

■ Don't have the Executive Director be a member of the Board. In Colorado, Illinois, and Iowa, the executive director isn't a member of the board of directors.

■ Have the Executive Director be a "non-voting" member of the Board. In Oklahoma and Oregon, the executive director is a "non-voting" member of the board of directors.

Having the Executive Director be a member of the Board may give him or her too much influence over policy decisions.

Current Society bylaws designate the Executive Director of the Society as the Board secretary and the secretary of the Board's executive committee. The bylaws don't specify whether the position of secretary is a voting or non-voting position. However, the bylaws do specifically give the Executive Director / Secretary the authority to call a meeting of either of these two groups. Because the Board and the Executive Committee are the groups that exercise direct supervision over the operations of the Historical Society, it's important that the Director's role as secretary to each group be specifically spelled out. For example, it takes as few as three members of the Executive Committee to constitute a quorum. If the Executive Director/Secretary were allowed to vote on matters before the Committee, he or she and as few as two other members could take action on important issues. It should be noted that although the bylaws aren't specific on this issue, the Board response indicated the current Executive Director

has served only as staff to the Board and the Executive Committee and hasn't voted on issues before either group during his tenure.

Giving one person authority over both the public and private sides of the Society creates a perception and a risk that resources could be "diverted" to one side or the other, or that decisions won't always be made in each side's best interest.

The executive director's position has access to and authority over separate moneys and employees for both sides of the Society. Sometimes State-side employees are used to work on private-side projects. For example, we were told that State staff are used to edit private side publications, and that a State employee supervises staff from the private side. Normally, a State agency wouldn't provide State employees to do work for a private entity. Also, because there are fewer restrictions on private-side moneys, those moneys can be used to pay for things that State appropriations can't be used for. For example, private-side moneys have been used in the past to pay for entertainment, parking tickets, an expensive limestone conference table, and the like. Given the current structure the board of directors exercises the only external "control" over the executive director's expenditure of private-side moneys. However, board members told us they didn't get much detail on expenditure information, so their level of oversight would be limited. We reviewed a sample of fiscal year 1999 expenditures from both sides of the agency during this audit and found that the State side didn't pay any private-side costs during that period, however, private-side funds were used to pay some operating costs for the State side such as printing costs.

- Have separate executive directors for the State agency and for the not-for-profit sides of the Society. At least four states - Colorado, Iowa, South Dakota, and Nebraska - have totally separate public and private sides with separate boards and separate directors. The private side controls the private money, granting it to the State side as needed.
- Create the Historical Society as a State agency separate from the not-for-profit organization with an executive director appointed by the Governor.

13.

Having the Society's Executive Director also be Secretary of the Society means the Board can't change its Secretary without also changing the Executive Director.

If the board of directors wanted to elect a new Secretary but keep the same Executive Director, that couldn't be done because the two positions are linked. The new Secretary would automatically become the new Executive Director. (We also noted that the Society's bylaws don't specifically include a process for removing the Executive Director from office, other than by electing a new secretary during elections which occur every two years.)

- Separate the positions of Board Secretary and Executive Director. Only Oregon and Minnesota had both a not-for-profit secretary and an executive director.

In Oregon, the executive director is not the same person as the board secretary.

In Minnesota, the board secretary may serve as the executive director, but the positions aren't automatically linked. Also, the Minnesota bylaws have a provision for removing the executive director.

Designating the Society's Secretary as the State Historic Preservation Officer could create potential conflicts of interest.

The State Historic Preservation Officer is the State official responsible for reviewing public projects and rendering an opinion about whether the project can proceed as planned without damaging historical property. In this role, the Executive Director may alienate potential contributors to the Historical Society by opposing people who are either for or against a proposed project. This situation may be detrimental to his or her role as a fund-raiser for the Society, because the Executive Director may need to solicit funds from some of the people he may have alienated with a decision as the Historic Preservation Officer. Also, concern about alienating potential contributors could - consciously or unconsciously - affect the decisions the Executive Director renders as the Historic Preservation Officer.

This conflict was the most common problem Society Board members mentioned in their responses to our surveys. Some typical comments are as follows:

“Some consideration may need to be directed to the unwarranted criticism of the Executive Director of the Society as the State Historic Preservation Officer. The preservationists want more rigid enforcement; the developers want less.”

“This officer can get a fair amount of flak, and in the past few years this has brought some criticism to the Society.”

- Designate someone within the Historical Society other than the executive director as the Historic Preservation Officer. In Iowa, a lower-level division director within the state historic agency has been designated as the state historic preservation officer. That division director has no connection with fund-raising activities.
- Designate someone outside the Historical Society as the Historic Preservation Officer. In Colorado, the Governor appoints the historic preservation officer, who isn't necessarily part of the historic society. In both Missouri and Oregon, the historic preservation office isn't connected to the historical agency. Instead, that office is located within a different department or state agency, such as a department of natural resources.
- Create a separate office of historic preservation. Illinois' historic preservation office is a separate stand-alone agency.
- If the Executive Director remains as the Historic Preservation Officer, make it so that he or she isn't responsible for fund raising, by designating that responsibility to someone else. In Minnesota and Colorado, where the executive directors of the historic agency also serve as the Historic Preservation Officer, there are separate development staffs who concentrate on fund raising, freeing the director from being directly involved in this activity.

Issues Related to the Language in the Statutes

<i>Issue</i>	<i>Discussion</i>	<i>Options for Addressing This Issue</i>
The statutes are unclear about the structure of the Historical Society.	The Historical Society has never been explicitly created as a State agency by statute. Current laws are unclear regarding whether the Legislature was simply conferring some of the powers of a State agency on a private not-for-profit group. The typical language used when creating a State agency is missing from the statutes governing the Historical Society. However, in 1977 language was added to designate the Society as the State agency for historic preservation purposes. It appears that this may have been done primarily for the purpose of being able to participate in federal funding available from the National Historic Preservation Act of 1966. State laws don't define the responsibilities and level of accountability between the two entities.	<ul style="list-style-type: none"> ■ Consider explicitly creating the State Historical Society as a State agency in the statutes. ■ Decide whether to maintain one entity with separate branches, two completely separate entities, or some other variation. ■ Clearly spell out in law what the relationship, responsibilities, and level of accountability are for each of the entities.

15.

Issues Related to the Board of Directors (Not Within the Legislature's Purview)

<i>Issue</i>	<i>Discussion</i>	<i>Options for Addressing This Issue</i>
A 99-member board of directors may be too large to be functional.	The board of directors of the State Historical Society was more than twice the size of the boards in the other nine states we reviewed for this audit. In addition, 20 of the 58 board members who responded to our survey said the board was too large. However, many respondents pointed out that because there's an executive committee of manageable size (15 members), the size of the overall board was less important. Some respondents saw value in having a large board in terms of having broad representation across the State, which could be beneficial for public relations and fund-raising purposes.	<ul style="list-style-type: none"> ■ <u>Consider reducing the size of the board of directors.</u> The average size of the Boards of other states we reviewed was 25 members. The largest board had 47 members.

Organizational Chart for the Kansas State Historical Society

Private Not-for-Profit Society
Kansas State Historical Society, Inc.

State Agency
Kansas State Historical Society

Membership
 (6,500 - 7,000)

Board (99
 members elected
 by membership)

Executive Committee (15
 members elected by the board)
 > Board President, Past
 President, 2 Vice
 Presidents, Treasurer
 > 9 members elected at-large
 > **Secretary of the Society**

Governor and Legislature
The budget of the Society goes through the normal budgetary and appropriations process of review and approval by the Legislature and Governor. However, there is no direct oversight of the Executive Director.

Secretary of the Society
 (elected by the Board) / **Executive Director**
This person also has been designated as the State Historic Preservation Officer.

Not-for-profit corporation employees (4 FTE)

Treasurer	1.0	FTE
Development Officer	.5	FTE
Office Assistant	1.0	FTE
Shop Managers	1.5	FTE

State agency employees (138.5 FTE)

Administration	23	FTE
Museum	20	FTE
Education/Outreach	16	FTE
Cultural Resources	15.5	FTE
Library/Archives	43	FTE
Historic Sites	21	FTE



Kansas Preservation Alliance, Inc.

SAVING THE PAST TO ENRICH THE FUTURE

.....

Board of Directors

- Barbara Anderson
First Vice President
Manhattan
- Lt. Gen. Robert Arter
Leavenworth
- Breta Bloomberg
Vice President
Program Development
Manhattan
- Jody Ladd Craig
Past President
Leawood
- Christy Davis
Newton
- Eric Engstrom
Wichita
- Dennis Enslinger
Lawrence
- Judy Ewalt
Vice President
Network Development
Salina
- marci francisco
President Elect
Treasurer
Lawrence
- Muriel Golobay
Cottonwood Falls
- Sally Hatcher
Leavenworth
- Jim Kaup
Topeka
- Greg Kite
Wichita
- Carol McDowell
President
Topeka
- Michele Reid
Vice President
Resource Development
Topeka
- Marcia Rinehart
Leawood
- Michael Shaw
Secretary
Lawrence
- Brenda Spencer
Wamego
- Terry Tietjens
Abilene

Honorary

- Board Members
- Dennis Domer, Ph.D.
- Bernd Forester, FAIA
- Dean Graves, FAIA

National Trust For Historic Preservation

- Joan Adam
Atchison
- Cheryl Brown Henderson
Topeka

March 23, 2000

Kansas Senate Committee on Ways and Means

The Honorable Dave Kerr, Chairman

Mr. Chairman and members of the Committee, I appreciate this opportunity to appear before you. I am Carol McDowell, President of the Kansas *Preservation Alliance, Inc.*

The Alliance is a statewide, not-for-profit corporation organized to further the work of historic preservation throughout Kansas. Organized in 1979 by a group of citizen activists to protect historic sites, the Alliance is one of the oldest statewide historic preservation organizations in America.

Our members are preservationists, educators, community leaders, businesses, individuals and organizations from across this state who form a committed grassroots network.

The Alliance is associated with the National Trust for Historic Preservation. Last year, a grant from the National Trust helped us hire our first full-time Executive Director.

As President of the Alliance, I appear before you this afternoon in support of Substitute for House Bill Number 2605.

On September 11, 1999, after a lengthy, but very worthy discussion our Board of Directors unanimously adopted the following position:

“The Kansas State Historical Society should be separated from the Kansas State Historical Society, Inc., and renamed appropriately, and become a cabinet level state agency with a director appointed by the governor and confirmed by the Senate, and the State Historic Preservation Office should be located within it, and the State Historic Preservation Officer should be the highest level classified employee.” *September 11, 1999.*

Senate Ways and Means Committee

Date *March 23, 2000*

Attachment # *10*

.....

At issue is whether state appropriations to the private society constitutes an unconstitutional delegation of legislative and executive authority to an entity not subject to popular election.

Sub. for HB 2605 addresses that issue by establishing accountability to taxpayers through the transfer of state money to a state agency, with its executive director appointed by the Governor and confirmed by the Senate.

The principal benefit for my organization is that Sub. for HB 2605 would elevate the importance of historic preservation in state government.

Sub. for HB 2605 provides that the State Historic Preservation Officer would be a full time classified state employee. Under current statute, the Executive Secretary of the Kansas State Historical Society is also the State Historic Preservation Officer.

The Alliance urges the state to begin looking at historic preservation as an engine for economic development. We know that dollar for dollar historic preservation is one of the highest job generating options available today.

Across Kansas, historic preservation projects have led to the revitalization of small towns and downtowns, made us proud of who we are, and created significant opportunities for heritage tourism, one of the fastest growing and most profitable industries in America.

In conclusion, it has not been easy to take a position on this issue. We are convinced, however, that HB 2605 will enhance and encourage the preservation of historic Kansas resources, leading to heritage tourism, new jobs, more money for local communities and renewed pride in Kansas.

Senate Testimony
23 March 2000
Jim Hoy
President, KSHS

I want to thank the members of the Senate Ways & Means Committee for the opportunity to express my views on the legislation concerning the reorganization of the Kansas State Historical Society, which would eliminate the trustee relationship over the state operations. I would like to make three points.

First, the state of Kansas is recognized as having one of the best historical organizations in the country. (Media reports have ranked us among the top five nationwide.) In terms of our museum, educational outreach, library, and research center, historic preservation, general service to the public-- the list could be extended and refined extensively--the KSHS has provided outstanding service to the citizens of Kansas. In no small way, this record of excellence results from the non-partisan leadership of private citizens (KSHS) in managing a state operations, pursuing a common goal--to preserve and present the history of Kansas. Would that all state agencies could be as effective, and could enjoy such citizen cooperation and good will, as the Kansas State Historical Society.

(Parenthetically, I might point out that while the success of any enterprise depends upon the sum of its parts, upon the individual efforts of all its employees, nevertheless chaos, not success, will result if there is no guiding vision to direct those efforts. Thus while the success of the KSHS results from the happy combination of citizens and state employees working together, still the credit for creating the atmosphere in which these successes can occur must go to the person ultimately in charge, in this case Ramon Powers.)

Senate Ways and Means Committee

Date *March 23, 2000*

Attachment # *11*

The second point I would make is that the pending legislation results from a legislative post-audit report that found no problems, no conflicts-of-interest, no irregularities in the current or the past operations of the KSHS and its state and private functions. Rather, **the report pointed out only that the potential for such problems existed.** Following the post-audit report, the KSHS, at its annual meeting last fall, instituted a number of changes in its bylaws and its procedures that will, if given the opportunity to take full effect, counter the areas of potential problems noted in the report. The bill as sent to you from the House has, thankfully, eliminated some of the well intentioned but, in my opinion, misguided changes that were found in the original bill.

Among the areas of concern that remain, one is the subject of my third point. The **directorship of the state operations must not be politicized!** As a citizen, as an academic, and as a state employee, I believe it would be a drastic mistake to have the director of the state operations serve “at the pleasure of the governor.” That would mean, literally, that appointment (or reappointment) of the director would occur following each gubernatorial election. From my perspective, having a politically appointed director would be comparable to having politically appointed university presidents. What kind of stability, what kind of vision could be implemented, what kind of continuity of operations could one expect from our universities if their presidents were dependent upon gubernatorial reappointment after each election? Academic and cultural institutions of the state can be, and are, held accountable without direct political involvement. One of the great strengths of the Kansas State Historical Society is that citizens of all political persuasions, from hide-bound conservatives to bleeding-heart liberals, from anti-authoritarian Kansas Populists to Teddy Roosevelt Progressives, come together under one umbrella, their political differences forgotten in their love of Kansas history. Despite the best intentions, any legislation that has the director serve “at the pleasure of the governor,” no

matter how much citizen involvement there is in the selection process, runs the risk (a far greater risk, I might add, than any of the potential areas of concern noted by the post-audit report) of making the directorship the subject of political machination. (Should you doubt that such machinations would occur, consider the current brouhaha on the national level concerning the appointment of a chaplain for the House of Representatives.)

Let me conclude by listing, in descending order, my two preferences for action on the legislation before you. 1) Do nothing. Let this bill die so that the changes put into place last fall by the KSHS can take full effect, and so that other necessary changes can be instituted as necessary, thus insuring both the accountability of the state operations under the leadership of the KSHS for the full benefit of the people and the continued cooperation with the private operations. 2) Adopt a bill that would incorporate the provisions of the KSHS bylaws, thereby assuring that the director would serve without being subject to political whim. Only thus can the best interests of Kansas history be served. Thank you for your attention.

Senate Testimony on Substitute for House Bill No. 2605
Senate Ways and Means Committee
March 23, 2000
Michael H. Hoeflich

I wish to thank the Committee for permitting me to testify today. I will be very brief. My name is Michael H. Hoeflich. I serve currently as the Dean of the University of Kansas School of Law and as the John H. & John M. Kane Distinguished Professor of Law and Courtesy Professor of History at the University of Kansas. I am not a member of the Kansas Bar but I have been a lawyer and law professor for nearly two decades. I have published six books and over sixty articles on various legal topics. I am also a member of the Board of Directors of the Kansas State Historical Society and, as such, served as a member of the by-laws revision committee of the KSHS during summer and fall 1999.

It is my understanding that Professor Bill Rich of the Washburn University School of Law testified in January as to his views on the constitutionality of the present structure of the KSHS in light of the case of Hellebust v. Brownback, (824 F.Supp. 1506 and 42 F.3 1331). This case, as I am sure the Committee knows, was the case which challenged the constitutionality of the Kansas State Board of Agriculture. Professor Rich's testimony makes it unnecessary for me to recite in detail all of the facts of Hellebust. Prof. Rich, based upon his analysis of the KSHS by-laws, testified that, in his opinion, the current structure of the KSHS does not pass muster under Hellebust and related cases. With all due respect to Professor Rich's distinguished credentials, I would suggest that there are those who would disagree with that judgement. The By-laws Committee, when it was working this summer on the by-laws revision was well aware of the Hellebust case. Further, the case was also raised and discussed at the Board meeting this fall which adopted the revised by-laws. A number of distinguished members of the Kansas Bar and judiciary are members of that Board.

I believe that the applicability of Hellebust to the KSHS is, at the very least, open to debate. Both Judge Lungstrum in the District Court and Judge Moore in the Circuit Court focused much of their opinions on the "broad regulatory powers which affect all residents of Kansas" [at 824 F.Supp. 1507 (D.Kan. 1993)] exercised by the State Board of Agriculture. The opinions also reflect concern with the Board of Agriculture's restricted governance structure and its governance by precisely those who were prime targets of regulation. I believe that one can make a credible argument that these concerns are not applicable to the Kansas State Historical Society. The KSHS exercises very limited regulatory authority [most of which rests with the State Historic Preservation Officer] and the governance of the Society is very much in the hands of disinterested, civic-minded volunteers. Indeed, the entire mission of the KSHS is quite different from that of the State Board of Agriculture. The primary mission of the KSHS is educational in a very broad sense; that of the Board of Agriculture was, and is--regulatory. Thus, I am not convinced that a court would, indeed, follow Hellebust if called to decide the issue of the constitutionality of the KSHS.

Senate Ways and Means Committee

Date *March 23, 2000*

Attachment # *12*

I would add further that even Professor Rich concedes that the radical transformation of the KSHS proposed by HB 2605 is not necessary were the current structure of the Society, in fact, ever deemed to be unconstitutional. There are a number of ways in which the by-laws might be changed which would not result in so radical a change worked by HB 2605, which could solve any constitutional problems. In fact, we do not, at present, know what changes, if any, are necessary because there have been no legal challenges to the constitutionality of the KSHS and no court has yet to determine whether its current structure is unconstitutional and, if so, what elements of the structure are deficient.

Judge Lungstrum pointed out in his opinion [at 824 F.Supp. 1507 (D.Kan. 1993)] that the old maxim "if it ain't broke, don't fix it" is not a principle of constitutional interpretation which a federal court may use. But it is, in fact, a rather sensible rule for legislative action. At the moment any discussion of the constitutionality of the KSHS as presently constituted is mere speculation amongst lawyers. All of us know that there are always differing opinions in such matters. To act now and pass legislation that radically transforms the structure of the KSHS on such speculative grounds, without further expert study, would be highly inappropriate.

Speaking as a member of the Board of Directors of the KSHS and as a frequent and happy user of the Museum and Research Library, institutions which are now absolutely superb, I would urge this committee and the Senate to reject HB 2605 at this time and permit the Society, working with legal experts, to refine its current structure, if necessary, during the course of the next year. Speaking as a taxpayer, I would also urge this committee and the Senate not to further expand state government by the creation of a new state agency, when such expansion is not needed.

Thank you for your time.

HERSCHEL L. STROUD, D. D. S.
3640 SW DRURY LANE
TOPEKA, KANSAS 66604
(785) 272-0620

22 March 2000

I am here as a native Kansan, born in Peabody, Marion County. My grandparents came to Kansas after the American Civil War after Peabody was the railhead in 1871.

I live in Topeka and practiced dentistry here for 37 years. I am now retired and have discovered that there is life after work. My life long love has been Kansas. Some say I still have sunflower seeds in my ears. I represent no one but myself.

As a lecturer on Kansas pre-statehood, the turbulent Kansas/Missouri conflict, the Civil War and its aftermath, I have had the privilege of visiting many of our nation's state historical societies. Kansas has the tallest tree in the forest when it comes to historical museums and research facilities in our nation. Why? The unique way our Kansas Museum and Research Center is structured is admired by many of the other state historical societies. The success that we have created is actually copied.

I was in Richmond, Virginia, March 7 through March 12, doing research at the Virginia Historical Society. When I registered as being from Topeka, the research assistant gushed at my being near to and having access to our world-famous Research Center.

This past Monday night, while watching the History Channel-whatelse-the "Harry Award" was being presented by the host, Sandor Van Ocher. Who do you suppose was the winner and recipient of the "Harry Award", given for the most accurate historical film of 1999. It was academy-award-winner Ang Lee's production of "Ride with the Devil", the story of the Kansas/Missouri conflict. When the credits for the film were shown on the trailer, guess what was a primary source of historical accuracy?

Senate Ways and Means Committee

Date *March 23, 2000*

Attachment # *13*

22 March 2000

That's right, it was our Kansas State Museum and Research Center.

It is my opinion that previous concerns of legislative committees have been remedied by the changes in the Bylaws of the Society made last fall.

Again, it is my opinion that when you have a diamond -- why would you want to chance trading it for a zircon.

Just as the Topeka Capital Journal's editorial of February 28, 2000, recommended, I urge you to keep our tallest tree from the ax, and to continually polish our diamond, rather than quash its brilliance with a lesser stone.

My final opinion -- Do not move this substitute for House Bill No. 2605 forward. Let it die here in committee.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "Herschel L. Stroud". The signature is written in a cursive style with a large, sweeping initial "H".

Herschel L. Stroud, DDS

HERSCHEL L. STROUD, D. D. S.
3640 SW DRURY LANE
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(785) 272-0620

6 March 2000

The Honorable Alicia L. Salisbury
Office of the Vice President
Kansas Senate
State Capitol 120-S
Topeka, Kansas 66612-1504

REFERENCE: (1) Your letter of 29 February 2000
(2) Substitute for House Bill No. 2605 by Kansas
2000 Select Committee, February 16, 2000

Dear Alicia:

Thank you for your thoughtful letter about my concerns of legislation which may, if passed, affect the Kansas State Historical Society. By the way, what a barn-burner at Lawrence this afternoon. It was a sweet and draining victory for all KU supporters.

Amendments to the Kansas State Historical Society's bylaws last fall appeared to me to appease the concerns raised by the Legislative Division of Post Audit of how the Society functioned. I have understood that the governor now has the privilege of appointing three members of the Society's executive committee, and, Alicia, congratulations to you on your appointment to the Executive Committee.

Further, I have understood that the governor does now have the right of final approval over any appointment of the Executive Director of the Society. Is it not true that the present concept of Society funding and budgeting is subject to the same review as all state agency budgets?

The concept of more political control over our Kansas State Historical Society appears to me to be misguided. The concept of the executive director serving at the pleasure of the governor insures the politicizing of the position. Is this what is wanted?

The concept of allowing financial control by the governor over the salary of the executive director puts in place a punitive power that is, in my opinion, loathsome to anyone wanting to apply for this position, qualifications notwithstanding. It appears to further create a monetary way of forcing a popular executive director to resign, rather than by overtly and publically removing the individual from office. In my opinion, this may be construed as political Machiavellianism in its worst sense.

I have had the privilege of visiting many state historical museums and research libraries. None has impressed me as much as our Kansas edition.

The Honorable Alicia L. Salisbury (cont)

Some do compare, it is true. But, many others leave so much to be desired. I wonder if a study has ever been made on the quality of state museums and research libraries in relation to partisan political control of the entity? A study of this nature might indeed add some light to this subject of creating another level of political favoritism when a change in governors occurs.

Jacque and I are leaving for Richmond, Virginia, and thence to Williamsburg for a Civil War medical conference this coming Tuesday. Knowing that we will not have an opportunity to meet personally, I wanted to share with you my thoughts and feelings.

My very best to you, and, as in Civil War parlance,

May I remain your humble and obedient servant,

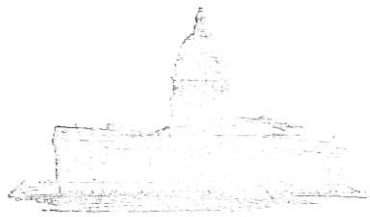
A handwritten signature in black ink, appearing to read "Herschel". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Herschel L. Stroud, DDS

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ALICIA L. SALISBURY
VICE PRESIDENT • KANSAS SENATE

CHAIRMAN:
COMMERCE

VICE-CHAIRMAN:
WAYS AND MEANS

MEMBER:
CAPITOL AREA PLAZA AUTHORITY
CONFIRMATIONS
CORRECTIONS AND JUVENILE
JUSTICE
ECONOMIC DEVELOPMENT
INTERSTATE COOPERATION
KANSAS WORKFORCE INVESTMENT
PARTNERSHIP
ORGANIZATION, CALENDAR, RULES
UTILITIES
WORKERS' COMPENSATION FUND

February 29, 2000

Dr. Herschel L. Stroud
3640 SW Drury Lane
Topeka, Kansas 66604

Dear Herschel,

I appreciate receiving your letter which expresses your concern about legislation that would affect the structure and organization of the Kansas State Historical Society. I have hoped to have the opportunity to visit with you personally about this matter, but rather than wait any longer, I will try to explain by letter what prompted the introduction of this legislation.

In 1995, the Chairman of the Senate Ways and Means Committee, Senator Bogina, discovered the Kansas State Historical Society was receiving \$6 million in state funds with no state control. He introduced legislation that would change the trustee of the state for historical property, but his bill was never approved by the legislature.

Last year a Post Audit of the State Historical Society was conducted and its findings were reported in July. Auditors reviewed existing state law; compared and contrasted the structure and activities of the Kansas State Historical Society with historical societies in several other states; and interviewed board members, staff, patrons, and other interested parties. The Post Audit report concluded that the meshing of the not-for-profit membership organization and the state agency "has resulted in an organizational structure that is confusing, that lacks clear lines of authority and responsibility, and places considerable power in the hands of one official without providing the same level of accountability that other agency heads are subjected to".

Following the publication of this report, the Legislative Coordinating Council appointed a special committee to review the organization and structure of the State Historical Society, and asked me to chair the committee. The committee met four days and received information from the Division of Post Audit, representatives of the Historical Society including the present Executive Director and one former Executive Director, and representatives of other state historical societies. The committee also received oral and written testimony from board members, volunteers, employees and other interested parties. The committee discussed fund raising by the not for profit side and information was presented to the committee on the operation of the Washburn University Endowment Association as a possible model.

Dr. Herschel L. Stroud

Page 2

February 29, 2000

The primary goal of the committee in making its recommendations regarding the organization and structure of the State Historical Society was not to diminish the importance and significance of the society. In fact, we felt it important to keep in place and support the well established public/private partnership between the state agency and the 501(c)3 organization. Although the Post Audit pointed out some weaknesses in the structure and operations of the not-for-profit society, the committee recommendation's do not intrude on the manner the society has chosen to organize itself. In our report to the legislature, we commend the society on the efforts it has undertaken to address the concerns raised in the Post Audit report, but we also agree with the findings of the Post Audit and underscore our serious concern with issues of accountability for significant amounts of state funding and significant numbers of employees.

I am keenly aware of opposition to this legislation by the Executive Director, the Chairman and some members of the Executive Committee, and the President of the Society. The Director apparently feels that this is a move to replace him, but clearly the legislation does not do this. The bipartisan committee would also argue that appointment by the Governor would not bring partisan politics into this organization, as the legislation clearly states the qualifications of an appointee.

It is in both my personal and public interests to promote the effectiveness of the Society, not to impose changes that could be detrimental to it's success. I greatly appreciate your enthusiasm for the Society's mission and want you to know that both John and I share your interest, as evidenced by our monetary support and his volunteer activity. You may also be interested to know that I am a newly appointed member of the Executive Committee of the Kansas State Historical Society.

Sincerely,



Alicia L. Salisbury

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30 January 2000

Senator Alicia Salisbury
Kansas State Senate
Capitol Building
Topeka, Kansas 66612

Dear Alicia:

Everyone is not interested in history, but everyone is affected by history because of the well-turned phrase, "If you don't know where you have been, you won't know where you are going."

I recently became aware of House Bill #2605 concerning the structure and organization of the Kansas State Historical Society. The first governor of our state, Dr. Charles Robinson, donated all his and his wife's personal papers to the State Historical Society, which he personally headed as one of its first directors.

Since 1875 the Kansas State Historical Society has flourished and grown using a concept of organization and structure which time and reputation have proven successful. The continuity has been maintained because of the excellence of the few directors we have had. Our Museum proper is of world-class quality. Our Research Center is visited by scholars and researchers from all over the world. The Society, structured as it is today, has brought this jewel of Kansas to a zenith of international fame.

It is my opinion that when success breeds success, why experiment with the unknown. I question the reasoning for changing the horse in mid-stream, bringing partisan politics by appointment into this wonderful organization. We now have state-wide representation and participation on the present Board of Directors by those who love history and who are of various political persuasions. Continuity, long-range planning, and the morale of the professional staff could be severely damaged with the possibility of changing society directors with every new governor.

I sincerely believe the present structure is sound. Let's leave it alone. Please consider opposing this legislation.

Kindest regards,



Herschel L. Stroud, D.D.S.

EDITORIALS

KANSAS STATE HISTORICAL SOCIETY

Let's preserve it

There's been a bit of debate lately over what the Kansas State Historical Society should be. Should it be Professor Jones, who prefers to sit back and teach, or should it be Indiana Jones, who takes the glasses off and dons a dusty hat and goes to the ends of the Earth to salvage bits of history for the good guys?

Meanwhile, lawmakers wonder if the historical society should be more accountable; as it turns out, the quasi-private society's structure may not be answerable enough to the state government to suit the state constitution, or lawmakers for that matter.

The latter concern, about the historical society's structure, is in the process of being alleviated. The House has passed a bill setting up a procedure by which the not-for-profit organization would supply three executive director nominees to the governor, who would appoint one. In addition, the society's historical preservation officer would become a classified state position.

And it's similar, in some respects, to the restructuring that took place in the Department of Agriculture a few years ago, when it was determined that the secretary of agriculture needed to be named by the governor rather than by agriculture interests.

In addition, there's no arguing with calls for accountability. After all, some lawmakers point out, the state should have more responsibility in exchange for an approximate \$150 million annual appropriation to the historical society.

This is all well and good, as far as it goes. But how far should it go?

While restructuring the flow chart to meet constitutional muster, lawmakers need to be careful not to

Changes are apparently needed to the structure of the historical society. But let's do it without compromising its integrity.

tinker too much. That would definitely be fixing something that isn't broken. The state's history center in Topeka and its various historical sites statewide are in good hands — in the hands of professionals who are in the preservation business not to make a buck but to make a difference.

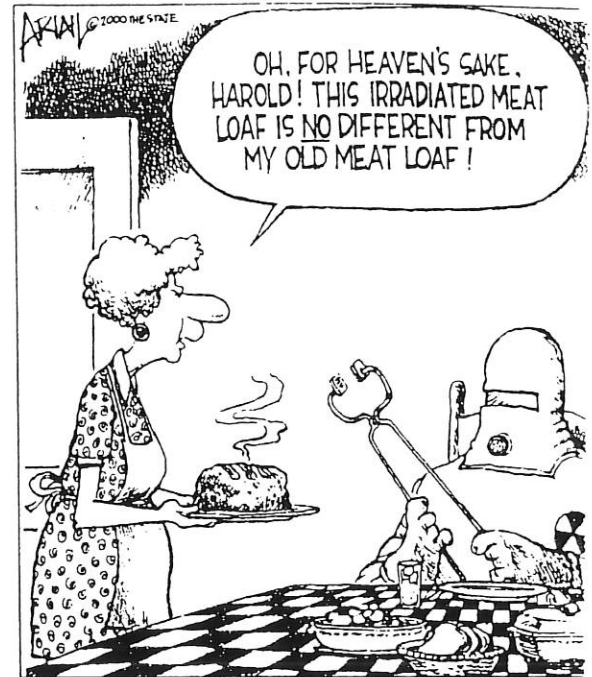
In addition, lawmakers should resist the temptation to further politicize the preservation of history. It should be an objective effort to preserve what has gone on before. As we've seen with the tussling over the first territorial capital at Fort Riley — first it's funded, then it isn't — politics and history are separate disciplines altogether.

Indeed, some would say one is disciplined and the other is not.

As for how aggressive the historical society should be, the answer probably is: not very.

This, too, is not broken. The historical society has reached a delicate balance between advocating for historical preservation, research and education and just hugging buildings for old times' sake. Moreover, working within state laws and the constraints they set, the society is probably best used as a resource for local communities and counties, upon which the bulk of historical preservation rests.

Like the sites and events it catalogs and protects, the state historical society needs to be preserved pretty much as it is.



LETTERS

Everyone can love

I am writing in response to the Jan. 29 letter titled "Love begins with God."

Love comes from our hearts. Some believe God gives love, but every person has capability to love from within. If a person is genuine and caring, they will accept all people of different races, ages and backgrounds. I am able to love because my mother raised me to not be judgmental of others, not because I accepted God's love.

If one chooses to believe that God's love gives them love, so be it. It all boils down to a matter of opinion. Some believe in God; others do not. Therefore, one person cannot make another accept God's love. I do believe that everyone is entitled to their own opinion, but being a hypocrite on discrimination doesn't solve any problems anytime soon.

A person may believe that God's love equals acceptance of others, but does that person accept those who don't believe in God? Choose words wisely, or else you too might be judgmental without even knowing it. Do yourself a favor — don't force yourself to love. No one in this world can change a person's personal choices. It is not up to God to decide whom or how we love; it is only up to you.

— JAMIE POLLMAN, Topeka.

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TESTIMONY
OF
D. CHERYL COLLINS
TO THE KANSAS SENATE WAYS AND MEANS COMMITTEE
CONCERNING HOUSE BILL 2605
MARCH 23, 2000

Chairman Kerr and Members of the Kansas Senate Ways and Means Committee:

Thank you for allowing me to speak to you today.

There are a number of things about House Bill 2605 that I find make me uneasy about the future of our Kansas past.

Most critical though is the severing of the trusteeship held by the Kansas State Historical Society Inc. (the KSHS.)

The Kansas State Historical Society Inc. was asked by the State to serve as its trustee in 1879. The trustee role is broad, far reaching, and in my mind critical. It is far more than that of overseeing the money appropriated by the State. The State has a comprehensive set of policy and procedures for expenditure of State money which the KSHS in its management of State operations has always followed, and so our financial stewardship has been relatively straightforward and has never been questioned. More significantly the KSHS has set goals and philosophy in concert with the Governor, Legislature, and Staff; has watched over collections and properties; and has provided a sounding board and citizen voice. I thought of a few examples of how important this trusteeship has been in the past:

A few years ago the Legislature decided that the Kansas State Historical Society must get rid of some of its properties. They told staff –Get rid of properties. When staff reported this message to the Executive Committee they said “Wait, we can’t simply walk away from our commitments and responsibilities to those properties and dump them on their local communities. Some of those communities are completely unprepared to preserve them. We will have to find some way to comply with this Legislative order without simply turning our back on our past commitments.” So staff worked out (and it was a lot of work) agreements with Ossawatimie, with Riley County, with the Partners of the First Territorial Capital and didn’t just dump those historic sites. In my heart, I am certain that if House Bill 2605 were in place, staff would have simply boarded up the windows and put the key in the mail. It would have been a lot easier. And the Goodnow House and all the others would not be open to Kansans today. Their crumbled ruins would be a graphic warning that the State will accept your gift, but it won’t necessarily keep it or value it. We need the trusteeship of the Kansas State Historical Society Inc., the not for profit, to provide institutional memory and to find ways to honor our past commitments, even if doing so takes hard work. The partnerships the KSHS has made with these communities are working. They are a model for future partnerships. I don’t

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think we would have them without the trusteeship, and I'm not sure they will continue if the trusteeship is severed.

Another example of the trusteeship role that I believe is important and needed occurred to me:

Not long ago someone in Hollywood filmed another movie – one made for T.V.- about the tragic killing of the Clutter family at Holcomb. There was quite a lot of media hype about this new movie. The television promoters approached the staff of the Kansas State Historical Society and asked if they would exhibit the gallows (which is an artifact in the KSHS collection) on which the men responsible for this crime were hung. The television promoters would use footage of the gallows promoting the film. Initially staff thought this a fine idea, but after discussion with the Executive Committee considered the ramifications of using this artifact with its powerful emotional aura as a sideshow piece, displayed for no educational or historical reasons. An artifact used in this exploitative way would have served only as a lightning rod for political controversy, not to fulfill the noble ends of the Society. This artifact may appear in an exhibit at the Kansas Museum of History one day, but I hope not as a sideshow piece. If House Bill 2605 passes the Board of Directors of the KSHS would no longer serve as trustee of the collection. You have, I am sure, read about a number of museums and historical societies across the country who have made grievous errors in judgement concerning exhibits and programs. I cannot tell you that continuing the trusteeship which allows citizens to have a voice in how we present Kansas History will continue to keep us from making this sort of error, but if we do not have that citizen voice, I believe error much more likely.

As Trustee of the Society, the Board of Directors, through the Executive Committee, has worked with the Governor, Legislature, and Staff to set the goals and philosophy. I am proud that the membership of the Board has always come from a variety of occupations: doctors, museum professionals, lawyers, farmers, academic historians, business people, archivists, ministers and the list goes on. We come from every corner of our state and have all sorts of personal and educational backgrounds. Society Board members are interested in all of the Society's concerns, in its museums, in its library and archives, in historic preservation, in archeology and so on. We give our experience, our judgment, and our time to provide the citizen voice needed in the setting of goals and implementing of philosophy. Yes, the Kansas State Historical Society Inc. is "private" but only in the legal sense as a 501 c 3 not for profit. The only thing you need to be a member of the Kansas State Historical Society is an interest in and love of Kansas History. We need those citizens to help shape the Kansas State Historical Society's future. Without that influence the Society may very well error by allowing decisions to be made based on politics instead of history.

One of the high points of my year as President of the Kansas State Historical Society Inc. was meeting the great great niece of Carry Nation, Mrs. Kelley from Santa Rosa, California. Mrs. Kelley and her husband donated a number of very interesting and valuable objects (dresses, false teeth, papers) that had belonged to Carry Nation this last year. Mrs. Kelley began to cry when she told how happy she was to bring these precious

family things back to Kansas where they will be valued and kept safe. When people give objects and they are accepted into our collection they are not just things, they have a history and an emotional attachment. The Kelley family are not wealthy and the tax deduction they received from donating to a not for profit was very helpful to them even if it was not what they could have realized from a sale. The KSHS., the not for profit, receives objects on behalf of the State and the objects become State property under their trusteeship. I believe that the trusteeship is what gives donors the confidence that we will not forget why we took their precious objects in the first place. These things are not "State Property" in the same sense as the computers, chairs, and desks used by State legislators and State office workers. They are unique and deserves a unique treatment. We must make sure that the confidence of donors is maintained and that donations continue to be tax deductible. I have spoken with a tax attorney and I am not confident that tax deductibility is preserved by the bill under discussion. But even more importantly, I am not convinced that House Bill 2605 will give donors confidence that their donations will be valued and remembered.

As well as securing donations of important historical artifacts and documents for the State, the KSHS has provided a non governmental, tax deductible avenue for donating funds to State projects. An example of this is the over one- half million dollars given to the KSHS by the Koch Industries for the renovation of the State owned Pottawatomie Misson. This wonderful historic building is now used constantly by Kansans. But many corporations, and individuals, will not make direct donations to the State. We need greater non governmental support for our history programs, let us make sure that any changes we make do not jeopardize this type of gift or its tax deductibility.

For the last 125 years the State and KSHS have been partners in collecting, preserving and interpreting Kansas History. During the process of working with Legislators concerning House Bill 2605 I have been impressed that the Legislature and the KSHS genuinely share the common goal of finding the very best system for preserving, interpreting, and presenting Kansas History for Kansans. I believe that the bylaw changes that the KSHS made giving the Governor and the Legislature a direct voice in the Executive Committee through appointment of a House Representative, a Senate Representative and an Governor at large appointment, addresses the concerns that were raised by the Post Audit. The Governor has made excellent appointments to the Executive Committee. We would like to try these changes. If changes don't prove to resolve the questions raised by the audit, then let Legislators and representatives of the KSKS work together to find solutions in a less rushed and adversarial manner to produce a bill that puts smiles on all our faces. History does not hurry. Let us not hurry as we shape our stewardship of History.

**Nancy Holt, Executive Committee Chairperson
Kansas State Historical Society**

**Testimony to the Senate Ways and Means Committee
on Substitute for House Bill 2605, March 23, 2000**

I am Nancy Holt, Chairperson of the Executive Committee of the Kansas State Historical Society, Inc. (which I will refer to as the KSHS). Thank you for this opportunity to come before you and present the position of the KSHS on the Substitute for House Bill 2605.

The KSHS has initiated changes in our bylaws that we feel speak very strongly to the constitutional concerns of the Legislative Division of Post Audit study. These changes include: the addition of three gubernatorial appointees to the Executive Committee of the KSHS to provide a conduit from the governor's office to the KSHS; deleting the secretary's position on the roster of officers of the KSHS, which was a dual office with the Executive Director of the state operations; making the Executive Director of the state operations an ex-officio, non-voting member of KSHS Executive Committee, and further, delineating the policies and procedures of the private operations that interface with the operations of the state.

The Interim Committee's recommendations prompted the KSHS to initiate further changes. The KSHS agreed that the State Historic preservation Officer (SHPO) would not be the Executive Director of the state operations; the SHPO would be a classified position, appointed by the Executive Director, within a division of the state operations. A job description of the Executive Director was agreed upon from the description the Interim Committee devised.

Members of the Executive Committee met with members of the Kansas 2000 Select Committee to discuss changes to the original HB 2605 specifically to address five points: (1) name change; (2) Executive Director's appointment; 3) gubernatorial appointees; (4) trusteeship; and (5) the SHPO. Substitute for House Bill 2605 is the result of that deliberation. At that time, the six members of the combined committee (House and Executive Committee) came to a consensus on those issues; however, in subsequent review of the new bill, we have serious concerns that lead us to seek deferral of the bill for further review.

We are asking for time to implement the changes the KSHS has initiated in the bylaws. We hope to have a full-time CEO/Development Director for the private operations hired and working within the next six months. We need transition time for that person to be oriented by the Executive Committee.

We are particularly concerned that substitute H.B. 2605 provides that the director of the proposed newly created state operations would serve at the pleasure of the governor. It is a tenuous position, to say the least, if a new governor coming in every four years has the option to replace the director at any time. We also feel that if the Governor confirms the director on the advice of the KSHS Executive Committee and Board of Directors, the Governor should only dismiss the director with the consensus of the Executive Committee and Board of Directors. We feel this would help in depoliticizing the position and keep the Society a non-political entity.

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Lastly, but very importantly, is the idea of trusteeship. The past relationship between the Society and the state government is the ideal for this function of government. Inherent in that structure is the partnership between the state and private operations so desired in other agencies with a built-in system of overview. The KSHS represents the public interest. The KSHS leads the state operations without politicizing history, the study of history, or the preservation of history. When the trusteeship is taken from the KSHS, as it now exists, it will change how it will be regarded by those who would serve on its Board and Executive Committee and give money and objects and papers for the service of Kansas History.

If the KSHS is the trustee of the state operations and the private operations, the KSHS benefits the state and private operations and the public it serves, as well as increasing the visibility and stature of the state operations. The KSHS has been the well-known and trusted conduit to the state operations for many years in regard to donations and tax-deductible gifts. The concern is that donations will "dry up" if there is no guarantee of tax incentives for the donors. Individuals who give to the KSHS, as it is now constituted, may not give to a stand-alone state agency. We feel that people want to entrust their history to an organization that has a trustee relationship with the state, but is not under the partisan political control of the state.

We know that all of you--the legislature and the members and staff of the KSHS (public and private) want the best for the Society and the people of Kansas. Most importantly, you do not want to change the mission of the Society, which is to preserve, collect, and educate the citizens of Kansas and the world about Kansas history. Thank you for your consideration of these issues, and we hope we can work to together to come to an agreeable understanding that addresses all of our concerns.

The Kansas State Historical Society, Inc., was created by charter in 1875 as a not-for-profit corporation in Kansas; in 1879 it was made trustee of the state for the purposes of maintaining the history of the state. It provides for the governance of the state operations, fund-raising by the private operations, and the education of Kansans about their history.

MEMBERSHIP

BOARD OF DIRECTORS -- Ninety-nine (99) members elected by the Membership

OFFICERS ELECTED BY THE BOARD OF DIRECTORS

- ▶ **President**
- ▶ **President-Elect**
- ▶ **Vice President** (also Recording Secretary)
- ▶ **Treasurer** (non-voting member of the Executive Committee)

EXECUTIVE COMMITTEE -- Thirteen (13) voting members and two (2) non-voting members:

Voting Members:

- ▶ **President, President-Elect, Vice President**
- ▶ **Six (6) members** elected by the Board of Directors for staggered three-year terms
- ▶ **Three (3) members** appointed by the **GOVERNOR** (one (1) at-large member to serve a three-year term; one (1) current member of the state Senate appointed after consultation with the President of the Senate; one (1) current member of the House appointed after consultation with the Speaker of the House)
- ▶ **Immediate Past President**

Non-Voting Members

- ▶ **Treasurer**
- ▶ **Executive Director**

EXECUTIVE DIRECTOR (non-voting member of Executive Committee)

- ▶ Shall be nominated by the Executive Committee subject to election by the board of directors and confirmation by the **GOVERNOR**
- ▶ Shall be Chief Operating Officer of the Society (state operations)
- ▶ The Executive Committee will submit a written annual review of the Executive Director and forward it to the **GOVERNOR**

The Executive Committee is authorized to exercise the power of the Board of Directors in managing the affairs of the Society, both the state and private operations.

The Budget of the Society is submitted to the **GOVERNOR** and the Legislature in the same manner as all state agency budgets.