

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 1:30 p.m. on February 2, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative Judy Loganbill- excused  
Representative Rob Olson- excused  
Representative Mike Peterson- excused

Committee staff present:

Jason Long, Office of the Revisor of Statutes

Conferees appearing before the Committee:

Jane Rhys, Kansas Council on Developmental Disabilities  
Representative Tom Moxley  
Representative Melody McCray Miller  
David Hutchings, Kansas Bureau of Investigation  
Representative Steve Brunk  
Representative Rocky Fund  
Representative Anna Tietze  
Representative Bob Bethell (Attachment 1).  
Scott Franklin, Legislative Post Audit (Attachment 2).  
Robert W. McLemore, President, Kansas State Association of Fire Chiefs (Attachment 3).  
Gary E. Curmode, President, Kansas Professional Fire Chiefs Association (Attachment 4).  
Karen Eager, Attorney for the Disability Rights Association of Kansas (Attachment 5).  
Matt Fletcher, Associate Director, Interhab (Attachment 6).  
Debra Zehr, President, KAHSA (Attachment 7).  
David A. Hanson, Legislative Counsel, Kansas Association of P&C Insurance Companies (Attachment 8).  
Dan McLaughlin, Kansas State Fire Marshal, (Attachment 9).  
Kevin Flory, NE Trustee Kansas State Firefighters Association (Attachment 10).

Others attending:

See attached list.

Representative Ruiz asked for the introduction of a bill which would request "employment first" as a presumption for service providers at the request of Jane Rhys of the Kansas Council on Developmental Disabilities. Motion was seconded by Representative Hill. Motion carried.

Representative Tietze moved for the introduction of legislation which would address campaign finance at the request of Representative Moxley. Motion was seconded by Representative Hill. Motion carried.

Representative Swenson moved for the introduction of legislation which would cap the excessive interest rates on title loans at the request of Representative McCray Miller. Motion was seconded by Representative Ruiz. Motion carried.

Representative Grant moved for the introduction of legislation which would amend the Kelsey Act at the request of David Hutchings of the Kansas Bureau of Investigation. Motion was seconded by Representative Holmes. Motion carried.

Representative Brunk moved for three pieces of proposed legislation: (1) electronic citations; (2) regulations of sexually oriented businesses; and (3) unemployment insurance. Motion was seconded by Representative Holmes. Motion carried.

Representative Fund moved to introduce legislation which would rename Highway 75 from NE 46<sup>th</sup> street in Topeka to Holton the James Lane Freedom Trail. Motion was seconded by Representative Holmes. Motion carried.

CONTINUATION SHEET

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on February 2, 2010, in Room 346-S of the Capitol.

Representative Titetz moved for legislation concerning reapportionment. Motion was seconded by Representative Swenson. Motion carried.

**Hearing on HB 2444 - Creating a division of the state fire marshal within the insurance department.** Mike Heim, Revisor of Statutes office, explained the bill as transferring the oversight of the Kansas State Fire Marshal's Office to the Kansas Insurance Department. It is currently under the auspice of the Governor. Technical amendments regarding transition would be necessary prior to passage of the current bill.

Representative Bob Bethell appeared before the committee in support of HB 2444 (Attachment 1). He pointed out that there are very minor requirements to qualify for this appointed position. There is also minimal oversight through the Governor's office. He would support an amendment to add qualifications to the bill. There is no fiscal note and this transfer could be financed within existing resources.

Scott Franklin, Legislative Post Audit, distributed copies of an audit of the State Fire Marshal's Office which was published in June 2004 (Attachment 2). The audit recommended the same level of oversight and accountability for the operations of the Fire Marshall's Office as most other agencies. Other options included placing this fire safety function within the insurance or state police departments.

Robert McLemore, President of the Kansas State Association of Fire Chiefs and Fire Chief of Colby, appeared in support of the bill relating to the selection of and qualifications for the Kansas State Fire Marshal (Attachment 3). He suggested a Fire Marshal Advisory Committee be created to provide oversight of and guidance to the Fire Marshal.

Gary Curmode, President of the Kansas Professional Fire Chiefs Association and Fire Chief of Sedgwick County, expressed concern about the way past Fire Marshals have been selected in the past stating that several had no relevant experience (Attachment 4). He recommended a Fire Marshal Advisory Committee be established and be a proactive force in both the selection of and an active advisor to the Fire Marshal.

Karen Eager, Disability Rights Center of Kansas, appeared both as their attorney and as a representative for Adam Swaney, a qualified individual with a disability (Attachment 5). She stressed the need to bring the Fire Marshal's Office under the supervision and direction of the Insurance Commissioner. This would likely result in greater consumer assistance and protection of the rights of Kansans. Ms. Eager presented an amendment which would protect Kansans with disabilities and guarantee that they will not have their state and federal rights infringed upon by the Office of the Fire Marshal.

Matt Fletcher, Associate Director of Interhab, stated that many of their members have expressed concern regarding the interpretation of fire safety codes for community residential settings for Kansans with developmental disabilities (Attachment 6). He related several examples of inconsistent interpretation of fire codes by inspectors in these settings.

Debra Zehr, President of KAHSA, too, related the problem of conflicting interpretations among inspectors, state officials, and CMS of existing fire codes (Attachment 7). Her agency consists of not-for-profit nursing homes, retirement communities, assisted living and senior housing facilities, and community-based service programs.

David Hanson, Legislative Counsel, Kansas Association of P&C, appeared as a neutral conferee for the state trade association (Attachment 8). He stated that they would support the decision of the Legislature should they determine the transfer of the State Fire Marshal's Office to the Insurance Department.

Dan McLaughlin, Kansas State Fire Marshal, related the workings and procedures of his office in support of his request that the Office of the State Fire Marshal remain a stand-alone agency (Attachment 9). He questioned the need as they have not received any complaints or major issue concerns regarding the operation or enforcement policies. He stated he was aware of the on-going negotiations in the Swaney case. In response to Committee questions, he related the continuous training of inspectors, the upcoming availability of all fire codes, and the differences in types of inspections.

CONTINUATION SHEET

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on February 2, 2010, in Room 346-S of the Capitol.

Kevin Flory, Northeast Trustee for the Kansas State Firefighters Association, said their organization could find no good reason for moving the Office of the State Fire Marshal to the Insurance Department (Attachment 10). Due to unpopular code enforcement of businesses and other entities, this often puts the Fire Marshal at odds with the current politically popular view. According to Mr. Flory, moving the office into an elected official's domain could be a threat to the integrity of the Fire Marshal.

Chairman Neufeld closed the hearing on HB 2444. He appointed a subcommittee comprised of Representative Kiegerl as Chairman, Representative Holmes, Representative Benlon, Representative Loganbill, and Representative Bowers and asked that they report their recommendation to the Committee next week.

The next meeting is scheduled for February 3, 2010.

The meeting was adjourned at 3:25 p.m.

FEDERAL AND STATE AFFAIRS COMMITTEE GUEST LIST

DATE: Feb, 2, 2010

NAME	REPRESENTING
Robert McLemore	KANSAS STATE ASSN. of Fire Chiefs
Gary E. Curmode	President, Kansas Professional Fire Chiefs Ass'n
DAVID HUTCHINGS	KBI
TED HENRY	CAPITOL STRATEGIES.
Det Lehman	KFSA
Brenda Miller	KSFMO
Kevin Flory	Ks State FF. Assn.
JL ELLIS	KCFFA
Dawn McLaughlin	KSFMO
Al Miller	KSFMO
Scott Heidner	ACEC
Jeff Bottoby	Stok Farm
Debra Zehr	KAITSA
Bob Wing	KSCFF
Dennis Phillips	KSCFF
Ed Redmon	KSCFF
Lori Church	KAPCIC
David Hanson	KAPCIC

Matt Fletcher

TOM LAING

Chad Austin

Cindy Luxem

Ed Krupp

Inter-Hab

Inter-Hab

KAAA

KHCA

KACP/KPIM/KSA

STATE OF KANSAS

BOB BETHELL  
STATE REPRESENTATIVE, 113TH DISTRICT  
104 E. THIRD, P.O. BOX 186  
ALDEN, KS 67512  
(620) 534-3085  
CELL (620) 727-5962  
bethell@ink.org



COMMITTEE ASSIGNMENTS  
CHAIR: AGING AND LONG TERM CARE  
MEMBER: COMMERCE AND LABOR  
CORRECTIONS AND JUVENILE  
JUSTICE  
ELECTIONS  
STATE CAPITOL--ROOM 55-S  
TOPEKA, KS 66612  
(785) 296-7616

TOPEKA  
House Federal and State Affairs  
Room 346 S State Capitol  
February 2, 2010  
HB 2444

Chairman Neufeld and members of the House Federal and State Affairs, I am Bob Bethell, Representative of District 113 of the State of Kansas.

I appear before you today in support of HB 2444.

There are probably in the minds of many a vast number of reasons why this bill makes sense. I would like to make you aware of only a couple and those that I believe are the reasons that the State Fire Marshall's office should be a part of the Insurance Commissioners Agency.

Kansas is one of only eight states in the Union that has a "stand alone" Fire Marshall. This lends the office to be basically on their own when it comes to protecting the citizens of Kansas.

The Fire Marshall is an appointee of the Governor and has in the past been a political appointment that has not always served Kansas well. The reason I say this is that there are very minor requirements to qualify for the position. There has been no oversight on the nominees for the position and it seems that the appointment may have been made for reasons other than protecting Kansans.

The Fire Marshall does not have the availability of oversight by anyone tending to allow for criticism that could be reduced with qualifications and oversight. The position of Fire Marshall should not be seen as a "Political Plum" for someone that is not qualified to protect the very people we are to serve.

I know there is a desire to amend this bill to include qualifications necessary to fulfill the position of Fire Marshall. I would support qualifications being a part of HB 2444.

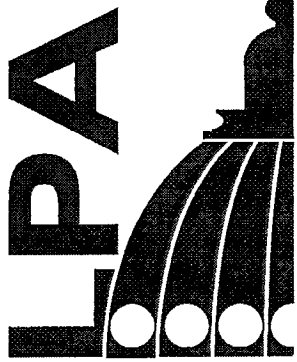
Again the purpose for HB 2444 is to give the Fire Marshall stability and oversight to allow for better service to the State of Kansas.

I ask for your favorable passage of HB 2444. I will stand for questions.

House Fed & State Affairs

Date: 2-2-2010

Attachment 1



# PERFORMANCE AUDIT REPORT

## Kansas Fire Marshal: Reviewing the Funding and Administration of the Agency

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

June 2004

## Question 1: Is There Sufficient Oversight of the Operations of the Fire Marshal's Office?

As an independent agency that doesn't report to an oversight board or commission, the Fire Marshal's Office receives less direct oversight than most of the agencies we looked at. Only 5 state fire safety offices are structured as independently as the Fire Marshal's Office; most are part of a larger agency. Most of the smaller executive branch agencies in Kansas report to an oversight board or commission. Legislation was introduced during the 2003 session that would have placed the Fire Marshal's Office under an oversight board, but that legislation didn't pass. While officials from the Fire Marshal's Office expressed concerns that a board or commission would add costs and slow down decisions, these issues don't appear to be unique and confront most agencies in Kansas. These and other findings are discussed in the sections below.

### *The Fire Marshal's Office Has Less Oversight Than Most of The Agencies We Looked At*

The Fire Marshal's Office is a relatively small, largely autonomous agency with 51 employees. It has 3 advisory boards that can provide input, but that have no decision-making authority. The Fire Marshal is appointed by, and reports directly to, the Governor.

**Only 5 state fire safety offices are structured as independently as the Fire Marshal's Office.** The organizational structures for the 50 states plus Washington, D.C. are summarized in *Table I-1* below. As the table shows, the vast majority of fire safety offices are located within a larger agency—typically a consolidated public safety department. Only 8 offices have been structured as independent agencies, and 3 of those report to an oversight board or commission.

**Table I-1  
Different Oversight Structures for State Fire Marshal Functions**

Organizational Structure	General Type of Agency	Fire Marshal reports to . . .	# of Fire Safety Offices With This Structure
Located Within Another Agency	Public Safety or Other Agency	Agency Head	43
Established as Independent Agency	Non-Cabinet Agency	Oversight Board or Commission	3
		Governor	3
	Cabinet Agency	Governor	2
<b>Total</b>			<b>51</b>

Source: "A Profile of a State Fire Marshal's Office" by the National Association of Fire Marshals.

Only 7 of 51 smaller executive branch agencies we reviewed in Kansas don't report to an oversight board or commission. The information about these agencies' structures is summarized in *Table I-2* below. As the table shows, of the 7 agencies that don't report to a board or commission, 3 are related to the banking and securities industry (the Department of Credit Unions, and the Offices of the Securities Commissioner and State Bank Commissioner) and 3 are public service agencies (the Adjutant General, Fire Marshal's Office, and Highway Patrol). We interviewed staff from the Legislative Research Department and the Revisor's Office to determine if they knew why these agencies had been set up without boards or commissions. They didn't recall any particular rationale for this set up.

Oversight Structure	# of Kansas Agencies With This Structure
<b>Agency Head reports to oversight board or commission</b>	44
<b>Agency Head does <u>NOT</u> report to oversight board or commission</b>	7(b)
<p>(a) Excludes elected officials, State hospitals, correctional facilities, higher educational institutions, and cabinet agencies.</p> <p>(b) Includes 3 public safety agencies—the Adjutant General, Highway Patrol, and Fire Marshal's Office; 3 banking-related agencies—the Department of Credit Unions and Offices of the Securities Commissioner and State Bank Commissioner; and the State Library.</p>	
Source: FY 2005 Governor's Budget Report	

**Senate Bill 252, which was introduced but didn't pass in 2003, would have created a board to oversee the operations of the Fire Marshal's Office.** The bill would have placed the Office under the control of a Board of Fire Services, whose responsibilities would have included hiring the Fire Marshal, approving the agency's budget, and adopting new rules and regulations. Its members would have been appointed by the Governor to represent a variety of groups involved with fire safety, including volunteer fire fighters, fire chiefs, and architects.



Officials from the Fire Marshal's Office raised several concerns about being placed under the type of board envisioned by Senate Bill 252. They indicated such a board might be subject to in-fighting, would slow down the agency's ability to make decisions, and would cost the agency money it doesn't have to fund the board's operations. While these concerns may be understandable, other agencies with boards or commissions are confronted with these same issues as well.

There also have been numerous attempts over the years to consolidate the Fire Marshal's Office with other public safety agencies. As far back as 1971, a commission on executive reorganization recommended placing the Adjutant General, Fire Marshal's Office, Highway Patrol, and law enforcement training and safety education programs into a consolidated public safety agency to improve efficiency and accountability. None of these attempts have succeeded.

**Conclusion** We're not certain why the Fire Marshal's Office was established without an oversight board or commission, but we found no compelling reason why it shouldn't be subject to the same level of oversight as most other agencies. Although the Fire Marshal's concerns about slower decisions and additional costs are understandable, they don't in our opinion overshadow the benefits to be gained from increased oversight and accountability. These include helping to ensure that government programs and agencies are responsive to the public, operate as intended, are administered in a cost-effective way, and are free of waste, fraud, abuse, and misconduct. An oversight board or commission also can help ensure that more diverse viewpoints are included in agency decisions, and can provide for more continuity in leadership.

**Recommendation** The House Appropriations Committee or Senate Ways and Means Committee should introduce legislation to amend State law to provide the same level of oversight and accountability for the operations of the Fire Marshal's Office as most other agencies have. At a minimum, consideration should be given to placing the Fire Marshal's Office under an oversight board or commission. Other options could include placing the Office under an existing State agency (a number of states have placed their fire safety functions within their insurance or state police departments), or even consolidating the public safety agencies into a single agency (a common organizational structure for other states' public safety functions).

**Testimony of  
Robert W. McLemore, President Kansas State Association of Fire Chiefs  
Presented to the House Committee on Federal and State Affairs  
February, 2 2010**

The Kansas State Association of Fire Chiefs (KSAFC) appears today in support of HB 2444 relating to the selection of and qualifications for the Fire Marshal for the Kansas State Fire Marshal's Office.

As you are aware, the Kansas Fire Service is a very diverse group from the largest metro to the smallest rural volunteer department. The Kansas State Fire Marshal is expected to interact, assist and advise all of Kansas' fire departments with information, coordination, arson investigation, inspection, legal, education and legislative issues. The activities of the Kansas State Fire Marshal reflect on and impact all Kansas fire departments at a local, state and national level.

To begin we would like to note that our support for this bill does not in any way reflect a negative opinion on the current Fire Marshal Dan McLaughlin or his office. We feel that he is doing an admirable job and has the respect of this organization. Sadly this hasn't always been true and that is the focus of what we wish to address in this bill.

The Kansas State Fire Marshal is perceived by many to be representative of the Kansas fire service even though we have very little input in his/her selection. There have been times when the person appointed to fill this role had absolutely no fire service experience even though a minimum level is required by state statute (KSA 75-1510).

In order to make the selection of the Kansas State Fire Marshal reflect the needs of the Kansas Fire Service, the KSAFC would like the selection of this individual to be performed by a representative demographic of the fire service that understands and reflects the pertinent issues we face. A Fire Marshal Advisory Committee should be created and this committee should meet quarterly with the Kansas Insurance Commissioner, and Kansas State Fire Marshal to provide oversight of and guidance to The Kansas State Fire Marshal. The committee will approve selection of the Kansas State Fire Marshal who shall be appointed by the Kansas Insurance Commissioner. Members of this committee shall receive reasonable travel expenses as defined by Kansas statute. The committee should consist of the following members:

One member appointed by the Executive Boards of each of the following associations:

- o Kansas State Association of Fire Chiefs (KSFCA)
- o Kansas Professional Fire Chiefs' Association (KPFCA)
- o Kansas State Firefighters' Association (KSFFA)
- o Kansas Chapter International Association of Arson Investigators
- o Kansas State Council of Firefighters

1 member appointed by the Kansas Insurance Commissioner from:

- o The Insurance Property and Casualty Industry
- o Public Citizen at large

House Fed & State Affairs

Date: 2-2-2010

Attachment 3

Qualifications for the position of Fire Marshal should include the following:

Minimum 5 years supervisory fire experience, Captain or above, Chief Fire Officer Certification (CFO), National Fire Academy Executive Fire Officer (EFO), Certified Plans Examiner, or equivalent, Bachelor's degree required. The person appointed shall demonstrate documented skills in legislative activity, budget preparation and office administration.

The Kansas State Fire Marshal is an active and integral component of the Kansas fire service community. It is the goal of the KSAFC to help ensure that The Kansas State Fire Marshal's Office remains a quality resource that Fire Departments and our citizens can continue to turn to for their services.

I respectfully wish to thank this committee for the opportunity to testify on behalf of this bill.

# Kansas Professional Fire Chiefs Association

Gary Curmode, President 316-660-3490 7750 N Wild West Dr Park City, Kansas 67147-7929

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**Testimony of  
Gary E. Curmode, President Kansas Professional Fire Chiefs Association  
Presented to the House Committee on Federal and State Affairs  
February 2, 2010**

The Kansas Professional Fire Chiefs' Association (KPFCA) appears today in support of HB 2444 relating to the selection of and qualifications for the Fire Marshal for the Kansas State Fire Marshal's Office.

As you are aware, the Kansas Fire Service is a very diverse group from the largest metro to the smallest rural volunteer department. The Kansas State Fire Marshal is expected to interact, assist, and advise all of Kansas' fire departments with information, coordination, arson investigation, inspection, legal, education, and legislative issues. The activities of the Kansas State Fire Marshal reflect on and impact all Kansas fire departments at a local, state, and national level.

We want to go on record as stating that, in no way, is our stand to be interpreted as disparaging of the incumbent in the position, Mr. McLaughlin. However, we do take umbrage in the manner that this VITAL position has been filled in past years. Past Fire Marshals have been selected without due regard to their experience/background in the fire service profession; to the extent that several have had NO relevant experience at all!

In order to respond to this almost tragic track record, we enthusiastically support HB 2444 recommendation to create a Fire Marshal Advisory Committee to be a proactive force in both the selection of and an active advisor to this extremely important position in the State fire community. We also agree to the composition of this Committee; it represents members of the fire service community who have a vital interest in the safety and well being of the citizens of Kansas whose life and property they are pledged to protect.

The Committee should consist of one (1) member appointed by the Executive Boards of each of the following associations:

- o Kansas State Association of Fire Chiefs (KSFCA)
- o Kansas Professional Fire Chiefs Association (KPFCA)
- o Kansas State Firefighters Association (KSFFA)
- o Kansas Chapter International Association of Arson Investigators
- o Kansas State Council of Firefighters

One (1) member appointed by the Kansas Insurance Commissioner from:

- o The Insurance Property and Casualty Industry
- o Public Citizen at large

Qualifications for the position of Fire Marshal should include the following:

- o Minimum five (5) years supervisory fire experience

- o Captain or above
- o Chief Fire Officer Certification (CFO)
- o National Fire Academy Executive Fire Officer (EFO)
- o Certified Plans Examiner or equivalent
- o Bachelor's degree required/Masters desired
- o The person appointed shall demonstrate documented skills in legislative activity, budget preparation, and office administration.

The Kansas Professional Fire Chiefs Association enthusiastically supports the required stated qualifications of the position of Fire Marshal. We are deeply committed to the concepts of national certification and self-improvement through higher education; the state's highest fire official should represent no less!

I respectfully thank this committee for the opportunity to testify on behalf of this bill.

Sincerely,

Gary E. Curmode, President  
Kansas Professional Fire Chiefs' Association

Chief, Sedgwick County Fire District #1



## Disability Rights Center of Kansas

635 SW Harrison St. ♦ Topeka, KS 66603

785.273.9661 ♦ 785.273.9414 FAX

877.335.3725 (toll free TDD) ♦ 877.776.1541 (toll free voice)

www.drckansas.org ♦ info@drckansas.org

**TESTIMONY TO THE FEDERAL AND STATE AFFAIRS COMMITTEE  
HOUSE BILL NO. 2442  
February 2, 2010**

Chairperson and members of the Federal And State Affairs Committee, my name is Karen Eager. I'm an attorney at the Disability Rights Center of Kansas (DRC), formerly known as Kansas Advocacy and Protective Services (KAPS). DRC is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As such, DRC is the officially designated protection and advocacy organization for Kansans with disabilities. DRC is a private, 501(c)(3) nonprofit corporation, organizationally independent of state government and whose sole interest is the protection of the legal rights of Kansans with disabilities. I am here today to present testimony on HB 2444 on behalf of DRC and the Kansans with disabilities that we serve.

In my capacity as an attorney for DRC, I also represent Adam Swaney, a qualified individual with a disability. On behalf of DRC and Adam Swaney, I am here to address the propriety of bringing the State Fire Marshal's Office under the supervision and direction of the Insurance Commissioner. Our interest in this issue derives from Adam Swaney's experience with the State Fire Marshal, the problems that he has incurred and what we believe is a drastic need for change in how the State Fire Marshal's office operates and performs. We believe that in order for this committee to make an informed decision on this matter that it must first take notice of Adam Swaney's case, analyze the benefits of changing who directs and controls the State Fire

Marshal office and finally, to offer a proposed amendment to HB 2444 that will further improve the performance and efficiency of the State Fire Marshal.

Adam Swaney, at first glance, is an unlikely proponent of HB 2444. Adam is 21 years old and lives in Winfield in an adult care home run by Creative Community Living, Inc. Adam has Duchenne, a severe form of muscular dystrophy. Adam was diagnosed with Duchenne when he was 5 years old. It is a rapidly progressing disease that causes muscle weakness effecting the entire body. By the age of 11, Adam needed to use a wheelchair and by age 13 could no longer walk. As the disease progressed he needed a tracheotomy and eventually a ventilator and a feeding tube. Adam knows that this disease is fatal and that he is at or near his life expectancy. Despite the devastating effects of the disease on his body, Adam is very much an engaged 21 year old man who has an active mind and a full spirit. Just like other young people in their twenties, Adam wants to lead as full of a life as is possible given his disease. With the help of Creative Community Living, he was able to move into an adult care home that offered him independence from his family, a community to participate in and quality care without institutionalization. In his Winfield adult care home, Adam has 24 hour nursing care and attendant care. The home has a generator to back up the power system in case of an emergency for Adam's ventilator and Adam has a mobile ventilator system with a 6 to 9 hour battery pack that allows him to get out into the community and participate in community activities.

On August 20, 2009, Adam's quality of life and his right to live in the community was threatened by an inspection of his home by the State Fire Marshal. The State Fire Marshal issued a Violation Notice (attached to this testimony) stating that the generator in Adam's home was insufficient under the Uniform Fire Code and Life Safety Codes. In looking at the Violation Notice, you can see that it is entirely unclear how the existing generator does not meet

“requirements”. Furthermore, you should note that the Violation Notice contains absolutely no information on the right to Due Process, rights to appeal or to seek any legal avenue to challenge the Fire Marshal’s finding. As an attorney, I was further dismayed at how difficult it was to locate a copy of the specific codes that are listed in this notice. The Uniform Fire Code and the Life Safety Code currently used by the Fire Marshal could not be located in the Supreme Court Library, the State Library or the Kansas and Washburn University Law Libraries. These codes were also not available on the internet.

In an attempt to keep Adam in his home, Creative Community Living contracted with an architect to work on a solution with a representative of the Fire Marshal Office to remedy these matters. Though the architect believed he had reached a resolution, the Fire Marshal ultimately rejected this solution. Pursuant to the Fire Marshal’s own procedure, Adam filed for a “Waiver of a Specific Life Safety Code Provisions.” In his Waiver, Adam clearly demonstrated that his safety was not at risk because of the equipment and back-up systems available to him in case of a power failure. The Fire Marshal office rejected the waiver stating that such a Waiver was only to be a temporary measure.

In the end, the Fire Marshal office has been adamant that Adam needs to be institutionalized and should not be allowed to reside in this adult care home. Such a position is contrary to state and federal law. Furthermore, the codes adopted by the Fire Marshal’s Office are outdated and do not take into consideration the advances in technology that allow for someone like Adam to live outside of a hospital or institution.

Throughout this process with Adam, we have faced a state office that sees itself as immune from disability laws and which seems to see no need to inform Kansans of their right to

due process. These deficiencies may well be corrected with a change to the very structure of the State Fire Marshal Office.

Under the direction of the Insurance Commissioner, the State Fire Marshal Office could benefit from a well developed consumer information/rights department that is very responsive to the questions and concerns of Kansans. In addition, there is a legal staff that could oversee due process concerns and insure that Kansans will understand their due process rights should they have issues with the fire codes.

Finally, to specifically address the problems incurred by Adam and Creative Community Living, we would propose an amendment to HB 2444. (attached). This amendment will protect Kansans with disabilities and guarantee that they will not have their state and federal rights infringed upon the Fire Marshal office.

### **Recommendation**

Based on the federal and state law and public policy, the Fire Marshal Office acts as if it is immune from disability laws and due process. As a state office, it is under its own direction and control and without any oversight. Moving the State Fire Marshal under the direction and control of a state agency, like the Insurance Commission, would likely result in greater consumer assistance and protection of the rights of Kansans. Adoption of our proposed amendment to HB 2444 would further insure that the State Fire Marshal Office operates within the protections of disability rights laws. We recommend approving HB 2444 and adopt our proposed amendment.

Thank you for your time and attention, I would stand for any questions.



**Kansas State Fire Marshal Office**  
**Fire Prevention Division**  
**700 SW Jackson**  
**Suite 600**  
**Topeka, KS 66603**

**KSFM Violation Notice**

Fri Aug 21, 2009

KIDS Occupancy File Number: **CL45W2X9**

**CREATIVE COMM LIVING 12TH HOUSE**  
**2730 E 12TH**  
**WINFIELD, KS 67156**

An inspection of your facility on Thu Aug 20, 2009 revealed the violations listed below.

ORDER TO COMPLY: Since these conditions are contrary to law, you must correct them upon receipt of this notice.

If you fail to comply with this notice, you may be liable for the penalties provided for by law for such violations.

**CHECKLIST ITEM AND FINDINGS**  
**What & Where**

**Facility Plan of Correction Response**  
**How & When**

**06-13 Emergency Generator Testing**

- 91-101/31-1.3.9
- 02-110/8.3
- 02-110/8.4
- UFC 1211.2

When provided, written documentation shall be maintained of a) emergency generator weekly inspection, b) once a month load tests of 30 minute minimum duration, c) exercising, and d) any repairs including date, personnel, notation of any unsatisfactory condition & the corrective action taken.

See Also National Fire Protection Association Standard 110- Emergency Standby Power Systems available from NFPA.

**FINDINGS INCLUDE:**

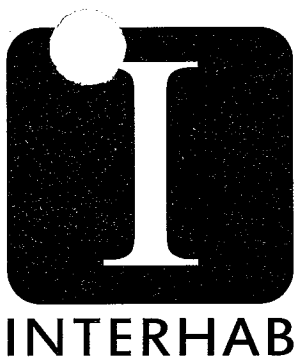
1. EMERGENCY GENERATOR DOES NOT MEET LEVEL ONE REQUIREMENTS FOR PATIENTS DEPENDENT UPON LIFE SUSTAINING MEDICAL EQUIPMENT

**Proposed amendment to HB 2444**

**From the Disability Rights Center of Kansas**

**New Section.**

Regarding the operations of the division of the state fire marshal, it is the policy of the state of Kansas is that people with disabilities shall receive accommodations to enable them to live in the most integrated, community-based setting of their choosing. The division of the state fire marshal, under the direction and control of the Insurance Commissioner, shall promulgate rules and regulations and other policy directives to ensure that this policy is realized through the operations of the division. Additionally, when creating and carrying out policy the division of the state fire marshal shall ensure that such implementation fully conforms to the American's with Disabilities Act, the Kansas Developmental Disabilities Reform Act, and other disability rights laws that prevent discrimination and ensure community integration for people with disabilities.



INDEPENDENCE  
INCLUSION  
INNOVATION

February 2<sup>nd</sup>, 2010

TO: House Federal and State Affairs Committee

FR: Matt Fletcher, Associate Director

RE: HB 2444 and Concerns Regarding the Fire Marshal

Chairman Neufeld and members of the Committee, thank you for the opportunity to discuss HB 2444, and concerns that members of InterHab have expressed regarding the interpretation of fire safety codes for community residential settings for Kansans with developmental disabilities.

InterHab is an association of community developmental disability service providers, many of whom operate residential settings across the state. They have lifetimes of experience in how to successfully build quality housing, as well as adapt available community housing, in order to provide quality residential settings for Kansans with developmental disabilities.

They have been so proficient, and successful, at setting up these types of community residential opportunities, that community housing sites for Kansans with developmental disabilities are literally everywhere, and every member of this committee has these types of residential settings in their district.

Our members face many challenges in obtaining and providing quality residential options for the persons they support. Often, the most perplexing and potentially costly challenges involve interpretations of fire safety codes for these residential settings by the State Fire Marshal's office.

The community developmental disability service system is built upon the foundation of community integration. It is vitally important that Kansans with developmental disabilities be allowed to live in the community, in safe and affordable homes of their choosing.

Providers make every effort to provide a truly integrated residential setting. In many cases, that means renting or purchasing already-built residential properties in ordinary neighborhoods across the state.

Many providers have also constructed residential settings throughout the years, and these homes also reflect the strong desire for community integration. In fact, many of these settings are indistinguishable

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from your homes or mine.. The number of persons with developmental disabilities that live within these settings is small – typically four to eight at maximum.

So it is with this history focused on integration in mind that providers are frustrated when these typical residential settings are viewed by fire safety regulators through the same regulatory lens as large institutional congregate settings. As a result, many small residential settings have been made to take extraordinary measures to fall into compliance. Measures that cost tens of thousands of dollars to implement – all due to interpreting these *home* settings the same as if they were *institutional* settings.

Consider the following feedback from a DD provider in South Central Kansas:

*“Requirement of use of fire sprinkler systems in any setting with a basement or second story living area effectively limits the ability to provide community services. Many organizations use rental homes to provide services to persons with developmental disabilities in the community.*

*Landlords that we lease from always ask us to pay for items that are above and beyond what they would normally have in place in their homes. Up to this point in time, that has been inter-connected smoke detectors in each bedroom and living area.*

*Requiring the use of fire sprinkler systems in these homes places an unreasonable burden on providers at a time when we are all being challenged by cuts in our funding from the state. Retrofitting an existing home with a fire sprinkler is not something that we would want to fund for a property we do not own, which would lead us to utilize more agency owned homes. Many organizations would not have the capital to fund the construction of new homes to meet the existing demand.*

*The state does not subsidize the housing costs for persons with developmental disabilities. Organizations must fund these costs through room and board fees paid by our consumers. All are very low income, most limited to SSI. Room and board fees paid usually do not cover the costs of a rental home and utilities. Adding new costs to retrofit fire sprinkler systems will make these services cost prohibitive.”*

Or this feedback from a provider in Western Kansas:

*“It seems that every time the Fire Marshal visits our sites, we have some corrections to be made. The items needing corrections were there for years and there were no tags issued, however it seems that whenever they cannot find anything major, they start getting pickier as if they have to justify their visit by identifying an area of correction.*

*Just recently we had a tag in one of our homes for not having paneling in one of the bedrooms painted with ‘Intumescent’ flame retardant paint. The paneling in this room had been installed for more than 10 years (but recently it was painted blue) and there have been at least annual, if not more frequent visits to this home by the Fire Marshal. This was the only finding during that visit.*

*There are other requirements that seem silly. In one of our homes, the smoke detectors are too close to the ceiling fan, so our maintenance staff will need to go into the attic and move the smoke detectors further away from the ceiling fan to be in compliance with the fire marshal code. If a smoke detector is too close to a corner of a room, there are also tags issued."*

Or this feedback from a Wichita provider:

*"We have recently been working with several inspectors in Wichita. This is when it came to our attention that they are not all on the same understanding of the code. Depending which one I <sup>am</sup> working with would determine what I was being told. The main disagreement was what had to be sprinkled and what did not. I was told by one that any home with a second level, either upstairs or down stairs would have to be sprinkled. If this is what the final decision is that will make it very difficult for providers to be responsive to client in crisis. Opening up a new home will become a long process. It won't be as easy as just going to rent a home. There are not many if any landlords that will pay for this. It will become yet another expense that falls to the provider to have to pay for."*

Or this feedback, from a North East Kansas provider:

*"In 2009, our agency wished to renovate a home with a walk-out lower floor to include a third bedroom; this didn't qualify for inspection. We sought information on what could be done to safely make an additional fourth bedroom on the lower level. We were informed until it was built and/or we planned to house a fourth consumer, it didn't qualify for inspection, and that the office would not need to be involved in approving renovations of the facility until four persons occupied the structure (which did not occur; due to lack of input from the Fire Marshal, and concern for non-compliance in the future, only quarters for three individuals were created).*

*In 2009, our agency requested a window of time that we could anticipate an inspection, since we no longer had any other sites meeting "board and care" definitions. We telephoned three times and e-mailed twice. About four weeks after initial inquiries, we were notified by a voicemail that we were only due biannually and would not be inspected until June 2010. The support staff for the inspectors was contacted, and informed our agency that due to official regulations in place for other entities, by act(s) of the legislature, these facilities were prioritized. Budget and staffing concerns made it impossible to perform inspections by request for entities (community service providers) not currently attached to annual inspection regulations within the Fire Marshal office. Their office was unable to act based upon SRS regulations, as these regulations did not originate within their organization.*

*Our agency requested at the time of the contact in the prior paragraph, if a person certified in another geographic area could perform the inspections in our county, and were informed no. This was not possible as we were not within the service area for the other county's fire department. This seems to contradict some practices recommended by SRS QE staff; a certified inspector who works with two fire*

departments in other counties was performing inspections for many providers in Riley and adjacent counties.

*Continued requests for inspections (which are required for our SRS licensing) were not addressed; upon contacting the Fire Marshal inspection support staff in January 2010, our agency was told that we had violated standards by making renovations without the prior approval of the Fire Marshal. The agency was informed that had our organization remained in compliance, we would have ordered pre-renovation and post-renovation inspections to assure compliance with structures, however, this process may have taken several weeks or even a few months from start to finish. This did, however, prompt an inspection to be scheduled; one is to take place with priority as soon as their office visits our area again."*

These examples are representative of many, many more experiences that community DD providers can share.

However, it is important to note that our providers are serious about providing safe residential settings for the persons they support. Kansas DD providers go to great lengths to ensure safety, including timed fire drills to measure each person's ability to leave a dangerous structure when needed. In addition, many of their residential settings have staff on site around the clock to assist those who cannot safely respond to a fire emergency. What providers would ask of fire regulators is:

- *That the test of common sense be applied by the Fire Marshal's office when these types of residential settings are reviewed,*
- *That the Fire Marshal's office work more closely with other State entities charged with regulating these services, including SRS, KDHE, Department on Aging and Department of Education*
- *That fire safety codes be interpreted consistently by those within the Fire Marshal's office,*
- *And that the Fire Marshal's office be more responsive and accountable to those whom they inspect.*

We believe that bringing the State Fire Marshal's office within the structure of the Department of Insurance would create an opportunity for the above goals to be met.

We support passage of HB 2444.

6-4  
~~6-5~~



To: Chairman Melvin Neufeld, and Members,  
House Federal and State Affairs Committee  
From: Debra Zehr, President  
Date: Tuesday, February 2, 2010

### **Testimony on House Bill 2444**

Thank you, Chairman Neufeld and Members of the Committee. I am Debra Zehr, President of the Kansas Association of Homes and Services for the Aging. Over 20,000 older Kansans are served everyday by KAHSA's 160 not-for-profit nursing homes, retirement communities, assisted living and senior housing facilities, and community-based service programs.

**We support the provisions of House Bill 2444 that would require the State Fire Marshal to have significant expertise in fire safety and inspection.**

Our members are dedicated to providing excellent care and services in a safe living environment. They have extensive fire prevention and safety systems in place. My members need to, and want to, understand and comply with life safety code regulations. But conflicting interpretations among inspectors, state officials and CMS make this an ever-changing and costly target.

It is my hope that House Bill 2444 will serve as a vehicle to have open discussion about how to correct this serious problem so that the regulated community is afforded clear guidance and consistent inspections to achieve and maintain a safe environment, and to rein in unnecessary expenditure of private and public dollars due to inaccurate or inconsistent regulatory interpretation.

Thank you. I would be happy to stand for questions.

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Attachment 7

# KANSAS ASSOCIATION OF P&C INSURANCE COS.

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TELEPHONE NO. (785) 232-0545  
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Kansas Association of  
Property & Casualty Ins. Cos.

## House Federal and State Affairs Committee Testimony on House Bill 2444

Member Companies:

Armed Forces Insurance  
Exchange  
Ft. Leavenworth

Bremen Farmers Mutual  
Insurance Co.  
Bremen

Columbia Insurance Group  
Salina

Farm Bureau Mutual  
Insurance Company  
Manhattan

Farmers Alliance Mutual  
Insurance Company  
McPherson

Farmers Mutual Insurance Co.  
Ellinwood

Federated Rural Electric  
Insurance Exchange  
Lenexa

Kansas Mutual Insurance Co.  
Topeka

Marysville Mutual Insurance Co.  
Marysville

Mutual Aid Association of the  
Church of the Brethren  
Abilene

Mutual Aid eXchange  
Overland Park

Upland Mutual Insurance Co.  
Chapman

February 2, 2010

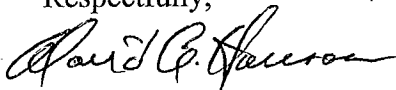
Mr. Chairman and Members of the Committee:

Thank you for this opportunity to present information on behalf of the Kansas Association of Property and Casualty Insurance Companies, our state trade association for domestic property and casualty insurance companies in Kansas.

We are offering this testimony as a neutral position, neither for or against the transfer of the Office of the State Fire Marshal to the Insurance Department, but to offer our domestic property and casualty industry perspective. For your consideration, in conjunction with this proposed legislation, our companies remain vitally interested in fighting insurance fraud, as well as fire prevention generally. Through the years, we have worked very closely with the Insurance Department and the State Fire Marshal's Office. While there have sometimes been concerns with the exchange of fire investigation reports, as required under the Kansas Arson Reporting-Immunity Act, K.S.A. 31-401, *et seq*, and assuring the confidentiality of those reports, we have found that cooperation with both the State Fire Marshal's Office and the Insurance Department has been critical to our ability to detect and prosecute arson. If the Legislature determines that the transfer of the State Fire Marshal's Office is necessary for consolidation and efficiency, then we firmly believe that the transfer to the Insurance Department would be the most appropriate placement, rather than a transfer to any other state agency. The Insurance Department has a very knowledgeable and skilled anti-fraud division, as well as a strong consumer assistance division, to assist with oversight and enforcement.

Thank you again.

Respectfully,



DAVID A. HANSON

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Attachment 8





STATE OF KANSAS  
OFFICE OF THE FIRE MARSHAL

MARK PARKINSON    DAN McLAUGHLIN  
GOVERNOR            FIRE MARSHAL

700 SW Jackson, Suite 600  
Topeka, KS 66603-3714  
Voice: 785.296.3401  
Fax: 785.296.0151  
[www.accesskansas.org/firemarshal](http://www.accesskansas.org/firemarshal)

**Testimony before the Federal and State Affairs Committee  
Regarding House Bill No. 2444**

**By Dan McLaughlin, Kansas State Fire Marshal  
February 2, 2010**

Good afternoon Chairman Neufeld and committee members. I am Dan McLaughlin the Kansas State Fire Marshal and I come before you today to testify on behalf of the position of Fire Marshal and the staff of the office itself in opposition of House Bill #2444.

We would like to make clear beforehand that our opinion of this proposal in no way is intended to disrespect Representatives Neufeld or Bethel, Commissioner Sandy Praeger or the Insurance Department. We hope to shed some light on the workings and procedures of the Fire Marshal's Office and why it needs to remain a standalone agency rather than moving under the Insurance Department.

Our agency began in 1913 - 97 years ago. It was then that the fire insurance industry, state government, and citizens came together in an effort to prevent fires, to control the number of arson fires, and to minimize the loss of lives and property throughout Kansas. Over the years our agency's mission has increased with the adoption of nationally recognized codes, technological advances in fire fighting, the war on drugs including meth labs, and working hand in hand with homeland security.

The agencies statutory authority and legislative mandates over the years have greatly changed the scope of responsibility. Much of this reflects the changing needs of our citizens and special interest groups. Some of the more recent changes include Agency Emergency Management Support function to State Emergency Operations Center, Fire Safe Cigarette Program, Statewide Hazardous Device Unit, Explosive and Firework Databases, Prevention Licensing and Registration Programs, IDR - which is a policy on Two Tiered Informal Dispute Resolution Process for healthcare facilities, Regional Hazardous Material Response Programs. Our programs include:

Administration Division

- Support Services - Fiscal Management, Personnel, Staff Training, Legal
- Kansas Fire Information System – Data Collection and Analysis
- Publication of Press Releases and Public Education Materials
- Maintaining Agency Web Services
- Youth Fire Prevention Program
- Agency Emergency Management Support function to State Emergency Operations Center
- Fire Safe Cigarette Program

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Attachment 9

### Investigation Division

- Fire Origin and Determination
- Criminal Fire Investigation
- Explosive Investigations
- Statewide Hazardous Device Unit
- Explosives Licensing (User/Blaster/Storage)
- Fireworks (Licensing, Storage & Sales)
- State Certified Fire Investigator I/II
- Fire Investigation and Explosive Training and Education
- Investigative Reporting System
- Explosive and Fireworks Databases

### Fire Prevention Division

- Field Inspection/Enforcement Program – Educational, Health Care, Correctional, Childcare Flammables and Fuels
- Fire and Life Safety Training and Education
- Facility Plans Reviews
- Facility Enforcement
- Public Education
- Technical Code Interpretation and Analysis
- Licensing and Registration Programs

### Hazardous Materials Response Division

- Regional Hazardous Material Response Program
- Hazardous Material Response Training & Education Program

Our office meets with - Fire organizations, Emergency Medical Services, Healthcare Associations on a regular basis for feedback, and to share information on how to better serve each other and the public.

Our agency does code enforcement state wide for the Kansas Department of Health and Environment and for the Kansas Department on Aging which are Federal Contracts with Centers for Medicare/Medicaid Services. KSFMO is mandated by KDHE, KDOA, CMS and the Federal Government on how and what must be written as a code violation, (they set the rules) which sometimes causes facilities the need to spend money to correct violations found which in turn causes some discontent among owners.

So with all this said, we have asked ourselves the question, " how would moving our agency under another agency help the Kansas State Fire Marshal's office serve Kansans more effectively and efficiently." Would this in fact really make our agency better? We are always looking for ways to improve our services. We reviewed the recent survey The National Association of State Fire Marshal's conducted, which I am happy to provide to you, and found

that nine (9) states are presently under their Department of Insurance and ten (10) states are stand alone agencies similar to Kansas. This profile reflects that the KSFMO mirrors what they believe to be the ideal department setup.

After reviewing the bill it is not clear as to why we need an agency over us. To our knowledge we have not received any complaints or major issue concerns regarding our operation or enforcement policies. Granted by following the codes and enforcing state law it doesn't always make us the most popular kids on the block. But you must remember we are talking about "life safety." This covers all the way from folks in nursing homes, frat and sorority houses, grade schools, gyms, etc.

We would like to add that we recently installed a new computer system and have gone as paperless as possible – just this month we added a Quality Assurance position and all health care inspections are sent to the office via email and reviewed for proper code cites properly written and grammatical errors prior to issue to the facility --- by going paperless and using email it gives the facility a couple extra days to formulate their response and the capability to send it to their corporate office, maintenance department, etc. all at the same time. Plus it saves both us and the facility postage. We have received positive feedback on this from many facilities. We welcome all suggestions on how we can improve customer satisfaction.

We are proud of the fact that we are sensitive to our customers needs and do try to work with them on becoming compliant. It's hard to make constructive changes if the issues are brought to other agencies or legislators and not to us.

Thank you for the speaking opportunity today.  
Respectfully submitted Dan McLaughlin

**House Federal and State Affairs Committee****Presentation by Kevin Flory, NE Trustee Kansas State Firefighters Association**

Good afternoon Ladies and Gentleman. My name is Kevin Flory. I am the NE Trustee for the Kansas State Firefighters Association. Our group represents the almost 16,000 firefighters in the state of Kansas. I am here today to speak in opposition to HB 2444.

The Kansas State Fire Marshals Office has been an independent agency since 1913. The Office has several tasks that it oversees in the fire service world. Life Safety Inspections, Fire Investigations, Hazardous Materials Responses, and Data collection for reporting to the Federal Government, as well as Juvenile Firesetters Program and Firewise Youth Program. They also assist local departments with training needs as well as educational resources for training firefighters across the state.

Our association feels that there has not been presented a good reason for moving the Fire Marshal's Office. We have had discussions with this bills author and we were not convinced of the need to move the office into another agency. He mentioned in our discussions with him job qualifications and hiring processes for the Fire Marshal, but none of these are found in this bill. In fact no issue is seen in this bill except the change of adding another layer of bureaucracy to the office and the potential of another layer of red tape for those wanting to do business with the State Fire Marshal. This is the second attempt in three years by the same author to implement oversight panels on the office of the Fire Marshal. If the job descriptions and hiring process are truly the issue, we feel there would have been some mention of that in the bill. However, there is none. That leaves us wondering where the validity of this bill is at.

Many times, the Fire Marshals Office must enforce unpopular code issues upon businesses and other entities. Many of these are non-negotiable federal regulations such as those that pertain to schools, prisons, and health care facilities such as nursing homes and hospitals. This often times puts the Fire Marshal at odds with what is the politically popular view of the day. Moving this office into a division of an elected officials office risks making this issue even worse. Currently, the Governor is the top of the chain of command for the Fire Marshal. By adding another layer of bureaucracy in, all those involved in the Insurance Commissioners' office will then be potentially in the line of fire so to speak for dealing with the politically unpopular stance that life safety issues often bring about. This will mean that the integrity of the Fire Marshals office will be based on the political fortitude of whoever is Insurance Commissioner at the time. This will undoubtedly lead to an issue with rule enforcement down the road.

For this reason, we, the Kansas State Firefighters Association, strongly oppose HB 2444. For the best interest of the Kansas business owner and the Kansas Firefighter, we ask that this bill not be moved out of this committee. Thank you for your time.