

**Kansas Association for the Blind and Visually Impaired, Inc.
(KABVI)**

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TO: House Health and Human Services Committee

FROM: Michael Byington, President of KABVI and Registered Kansas Lobbyist

SUBJECT: Response to staff briefing on HB 2388 delivered on 2/9/04

DATE: February 10, 2004

I want to thank Dr. Wolff for the very technical briefing on House Bill 2388 as delivered on the date noted above. Some of the concerns and questions he raised do reflect some minor drafting problems, all of which I am sure are my errors as the primary drafter, and not those of the Revisor's office. Other comments and questions he raised are in fact elements which we intended to place in the Bill, and which I can explain. I will try to address his concerns in the order they arise within the Bill.

Dr. Wolff raises questions about language in line 17 of page two regarding the governing board of the Commission. In usual parlance of Kansas statutes, commissions consist of certain numbers of members, and do not usually have governing boards. The Commission for the Blind and Visually Impaired, however, is clearly defined operationally throughout the proposed statute as being a government agency which is a service provider. The governing board is made up of the commissioners who govern the Commission (a service provider). If Dr. Wolff feels that this is not sufficiently clear, and might cause confusion, expanding the definition of "commission" to additionally define it as the principal State agency provider of rehabilitation services for blind and visually impaired Kansans should provide the necessary clarification. It might also be advisable to add a definition of "governing board" to mean the five Commissioners responsible for administration of the Commission. These additions to the definitions section should resolve any confusion on the issue of the governing board as opposed to the Commission.

In line 19 of page two, Dr. Wolff questions having the Commissioners approved by a majority of the Legislature. He states that such approvals in Kansas and most other States are normally handled by the Senate. He is correct. "Legislature" should be changed to "Senate." This error was made because parts of House Bill 2388 are based on legislation which was adopted in Nebraska a few years ago. This part of the proposal must have come directly from Nebraska statutes. Nebraska is the only state

in the United States which has a unicameral legislature. There is thus no Senate in Nebraska. When former Representative Edlund and I drafted the propose legislation, we obviously failed to change this wording.

Dr. Wolff raised concerns about language starting in line 25 of page two stating that no board member shall be a current employee of the Commission. The language used may, as stated before, be a little different than Kansas drafting parlance, but the Board means the governing board as currently defined in the definitions section. The governing board means the Commissioners. The section could perhaps be amended to read that no commissioner shall be a current employee of the commission, but with either wording, this is the, I believe, clear intent of the statute. Commissioners have expenses paid as set forth elsewhere in the act, but they are not paid staff.

With regard to Section five (b), Dr. Wolff raised questions about the relationship between the Director of the Commission and the Commission itself in hiring staff. The intent of the legislation is that the Director serves as an agent for the Commission, and has the authority to act on behalf of the Commission in hiring Commission staff, The Director, however, would be directly supervised by the governing Board of the Commission (or Commissioners if you prefer) in accordance with standards set by the Commission. As I read what is written in this section, it seems to say this to me, but if the statute is not as clear as it could be, language to the effect of that noted above could be substituted.

Dr. Wolff also expressed some confusion about the duties of the Commission as opposed to the Rehabilitation Council of the Commission. I would agree that this language may at initial glance seem somewhat confusing, but it is based on federal requirements. First of all, it must be understood that the Commission and the Rehabilitation Council are two separate entities which do not have overlapping membership. The Commission, through its governing board of Commissioners, administers the direct service programming for blind Kansans. The Rehabilitation Council is largely an advisory group of consumers and stakeholders who advise the Governing Board of Commissioners. Currently, Kansas has what the federal Rehabilitation Services Administration defines as a combined program. This means that only one state plan, covering jointly both blind services and other types of rehabilitation services, which take place in the state through the use of federal rehabilitation services administration dollars, is submitted. The federal Rehabilitation Act, which is a part of the federal Workforce Development Act, requires that each rehabilitation services entity submitting a plan have a Rehabilitation Council. The Chair of the Rehabilitation Council is required by the federal Rehabilitation Act to sign off on the state plan that is submitted each year. The Rehabilitation Act, and Rehabilitation Services Administration provides two options for State plans. Combined States, such as Kansas, submit one plan. The option also exists in law and regulation, however, for States to submit two plans, one for blind services, and one for general vocational rehabilitation. The most recent statistics I have been able to find from the American Foundation for the Blind, document that 26 States submit combined plans. The other 24 States submit two plans. In the two plan states, the federal Rehabilitation Act requires that two Rehabilitation Councils exist, one to supervise development of each of the two plans. House Bill 2388 would indeed switch Kansas from a one-plan state to a two-plan state. It would thus be required to have two rehabilitation councils. The provisions in the Bill simply exist to meet this federal requirement. It would undoubtedly be simpler if the Rehabilitation Councils were legally referred to as "advisory" councils. The federal language in previous incarnations of the federal Rehabilitation Act did indeed at one time contain the word "advisory" to describe the one or two required councils. In the reauthorization of the federal Rehabilitation Act prior to the most recent one, however, the federal Congress specifically removed the word "advisory" from the

description of the Rehabilitation Councils. This was done because disability rights advocates and lobbyists argued that the fact that the Chair of the Councils must sign off on the Rehabilitation plans submitted to the federal Rehabilitation Services Administration makes the duties of the councils more than strictly advisory. States which had the word "advisory" in existing implementing state statutes were required to remove this word in order to continue to receive their federal funds.

The creation of the Rehabilitation Council of the Commission would not, however, double the expenses from what exists in the current system. The issue here is that the Kansas Services for the Blind and Visually Impaired as it currently exists already maintains an advisory committee which is not codified in State law, and which is not actually required in federal law. This body would essentially be elevated to the status of the Rehabilitation Council of the commission.

I understand this stuff because I have spent a lot of time studying federal rehabilitation laws and regulations as well as State statutes and regulations. In attempting to explain it in this document, however, I realize how convoluted it actually is. Dr/. Wolff's questions are thus very helpful. I realize that most members of the Committee probably had similar questions which he has articulated very well. I hope this explanation helps elucidate issues a bit. If things are still not clear, however, please let me know and I will be glad to take another crack at providing cogent explanations.