

## MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Julia Lynn at 8:30 a.m. on Wednesday, January 21, 2015, 548-S of the Capitol.

All members were present except:

Senator Susan Wagle – Excused

Committee staff present:

Reed Holwegner, Legislative Research Department

Debbie Bartuccio, Kansas Legislative Committee Assistant

Edward Penner, Legislative Research Department

Chuck Reimer, Office of Revisor of Statutes

Conferees appearing before the Committee:

Brad Burke, Deputy Secretary and Chief Attorney, Kansas Department of Labor

Terri Sanchez, Director, Division of Industrial Safety and Health, Kansas Department of Labor

Others in attendance:

[See Attached List](#)

### **Possible bill introductions**

Chairperson Lynn asked if there were any bill introductions and there were none.

### **Presentation on:**

Chairperson Lynn recognized Brad Burke, Deputy Secretary and Chief Attorney, Kansas Department of Labor who presented a report to the Committee as is required by Section 1 of Senate Sub. for 2014 HB 2616, which directed the Labor Department to study the feasibility of having the State enforce safety standards rather than the federal Occupational Safety and Health Administration (OSHA). ([Attachment 1](#)) He said a State plan would need to be authorized by enacted state legislation. The plan then would need to be approved and monitored by OSHA. If federally approved, OSHA would provide up to 50% of a state's operating costs.

Deputy Secretary Burke reported there are currently twenty-five states and two United States territories operating approved State plans. Twenty-five states do not have OSHA-approved plans. State plans may have their own penalty policies and procedures that may differ from OSHA's, but they must be deemed "at least as effective" as OSHA's. All State plan policies and procedures related to penalties must be submitted and reviewed by OSHA. State plans also have their own system for review and appeal of citations, penalties, and abatement periods. The procedures should be generally similar to OSHA's, but cases are heard by a state review board or equivalent authority.

He indicated a new state agency would need to be approved with an estimated cost of \$3,209,312, which includes \$320,500 of initial start-up costs. He stated, at this time, Secretary Gordon does not plan to recommend moving forward with a State plan, due to the costs and the fact it is not included in the Governor's budget.

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Chairperson Lynn questioned whether additional staff would be required and would the new roles be filled from within the current organization. Deputy Secretary Burke replied an additional 26 staff would be required because the Department needs to maintain current operations. These costs were included in the \$3.2 million dollar figure.

Senator Pilcher-Cook commented she had the impression one of the reasons for pursuing the State plan was the potential for more flexibility when there was a disagreement with the federal requirements. Deputy Secretary Burke said he understood that was the philosophy behind the movement toward the State plan, but ultimately OSHA has the final say, and will take priority over the State plan. Senator Pilcher-Cook questioned if there were any state compacts in the works concerning OSHA requirements. She said compacts are used in many situations where states collaborate to create legislation on a particular topic. Deputy Secretary Burke stated he did not know of any compacts on this subject but would explore it further.

Chairperson Lynn commented the struggle is that we are not always in agreement with federal regulations so the question is how much does the State want to become involved with these issues. The fiscal note is a problem. She requested the Department to investigate compacts with other states who already have a plan in place.

Chairperson Lynn requested Director Terri Sanchez to walk the Committee through the steps involved when the State becomes involved with a consultation. Ms. Sanchez indicated some of the consultations are referred to them from OSHA, while others are the result of someone contacting them concerning a potential hazard. The consultation services are provided at no cost to the business incurring the service, and are funded via a federal grant.

For clarification, Senator Holland questioned whether moving forward with a State plan would create a way to circumvent OSHA regulations. Deputy Secretary Burke responded the State program would be required to be at least as effective as the OSHA program and it would not create a way around the OSHA regulations. He indicated some states have pursued the plan as a source of revenue from the penalties assessed.

Chairperson Lynn asked if the State would be subject to an annual review by OSHA and he responded affirmatively.

Senator Faust-Goudeau questioned whether a fine would be incurred if a business does not rectify a problem in a timely manner. Deputy Secretary Burke replied under these circumstances a fine would be incurred and a report would be made to OSHA concerning the situation.

Senator Denning referred to page ten of the report which outlined the dollar amount of fines and penalties levied in Kansas per year over the past five years. He observed the level of fines could partially fund the program. He commented the idea of a State plan made sense on the surface; however,

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if the State was not the majority partner in the arrangement, he stated he would not be interested in pursuing a plan.

Senator Melcher questioned how businesses affected by such state regulation could be protected from an administration which views the State plan as a revenue producing program and enhances the fees to help fund budget problems. Deputy Secretary Burke replied this could potentially occur if the focus of the program was on revenue generation.

Chairperson Lynn expressed her appreciation for the work involved with preparing the report. She requested information be provided to the Committee concerning which States had established a plan and then reverted back to the federal OSHA oversight. She expressed her concern about pursuing a State plan, given the fiscal note and the potential ongoing costs involved with the plan.

Chairperson Lynn adjourned the meeting at 9:00 a.m. The next meeting is scheduled for January 22, 2015.