

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by Representative Robert H. Miller at
Chairperson

1:30 a.m./p.m. on February 7, 1984 in room 526S of the Capitol.

All members were present except:

Committee staff present:

Russ Mills, Research Department
Mary Torrence, Revisor's Office

Conferees appearing before the committee:

The meeting was called to order by Chairman Miller.

HB2791 - concerning confidentiality of certain records relating to inmates of correctional institutions.

Representative Goosen made a motion, seconded by Representative Sughrue, to report HB2791 favorably. The motion carried.

HB2602 - Corporation code; name of incorporated churches.

Representative Edigar made a motion, seconded by Representative Hensley, to report HB2602 favorably as amended on line 22 by striking "and churches" and adding "churches" after "association". The motion carried.

HB2391 - relating to the preservation and disposition of public records; concerning certain county records

Representative Hensley made a motion, seconded by Representative Aylward, to amend the bill according to the amendments proposed by the Kansas State Historical Society. The motion carried. See attachment A.

Representative Barr made a motion, seconded by Representative Matlack, to incorporate these amendments into a substitute bill. The motion carried.

SBl86 - Exemption of windsurfers from life jacket requirements.

Representative Barr made a motion, seconded by Representative Grotewiel, to report SBl86 favorable for passage.

Representative Roe made a substitute motion, seconded by Representative Ott to table the bill.

There was discussion as to whether life preservers were needed when windsurfing.

Representative Roe withdrew his motion.

Representative Barr's motion was voted on; a division was called. The motion lost.

Representative Roe made a motion, seconded by Representative Murphy, to report the bill adversely. Division. The motion lost.

CONTINUATION SHEET

Minutes of the F&SA Committee on February 7, 1984

HB2621 - concerning employees of state agencies; relating to information provided or offered to be provided by such employees to a member of the legislature

Representative Hensley made a motion, seconded by Representative Matlack, to remove HB2621 from the table. The motion carried.

Art Griggs distributed a memorandum with suggested changes. See attachment B.

There was discussion about how these amendments would effect the employees and whether employees should have the opportunity to speak with their legislator without first going through their supervisor.

Representative Vancrum distributed some suggested amendments. See attachment C.

The Chairman asked Ms. Klaseth and Mr. Griggs if they could be available on Wednesday to answer questions.

Representative Ott made a motion, seconded by Representative Vancrum to approve the minutes of the February 6 meeting. The motion carried.

The meeting was adjourned.

A

Amendments Proposed by the Kansas State Historical Society

Session of 1983

HOUSE BILL No. 2391

By Representatives Matlack, Baker, Cribbs, Foster, Francisco, Helgerson, Jarchow, Luzzati, K. Ott, Spaniol, Darrel Webb and Whitaker

2-9

0019 AN ACT relating to the preservation and disposition of public
0020 records; concerning certain county records; amending K.S.A.
0021 45-402, 45-404, 45-405, 45-406, ~~45-407~~, ~~45-408~~ and ~~45-412~~ and
0022 repealing the existing sections and also repealing K.S.A. ~~19-~~
0023 ~~250~~, 19-254, 19-255, 19-256, 19-325, 19-326 and 19-327.

}
}

Eliminate amendment of K.S.A. 45-407,
45-408, and 45-412 and eliminate
repeal of 19-250; add repeal of 19-257 and
19-258.

0024 *Be it enacted by the Legislature of the State of Kansas:*
0025 Section 1. K.S.A. 45-402 is hereby amended to read as fol-
0026 lows: 45-402. As used in this act:
0027 (a) "State agency" means any department, board, commis-
0028 sion, or authority of the executive branch of state government.
0029 (b) "Local agency" means any department, board, commis-
0030 sion, officer or authority of a county, city, township, school
0031 district or other tax-supported governmental subdivision of the
0032 state.
0033 (c) "Board" means the state records board established pursu-
0034 ant to K.S.A. 75-3502.
0035 (d) "Government records" means all volumes, documents,
0036 reports, maps, drawings, charts, indexes, plans, memoranda,
0037 sound recordings, microfilms, photographic records and other
0038 data, information or documentary material, regardless of physical
0039 form or characteristics, storage media or condition of use, made or
0040 received by an agency in pursuance of law or in connection with
0041 the transaction of official business or bearing upon the official
0042 activities and functions of any governmental agency. Published
0043 material acquired and preserved solely for reference purposes,
0044 extra copies of documents preserved only for convenience of
0045 reference and stocks of publications, blank forms and duplicated
0046 documents are not included within the definition of government

}

Restore "county"

Atch. A

0047 records.

0048 (e) "Noncurrent government records" means all government
0049 records which no longer are necessary for the handling of ordi-
0050 nary official public business by the agency and which are not
0051 required by law to be retained in the immediate custody of the
0052 agency for a longer period of time.

0053 (f) "Government records with enduring value" means all
0054 government records which merit preservation for historical, legal,
0055 fiscal or administrative reasons, or for research purposes.

0056 (g) "Retention and disposition schedules" means lists of
0057 series of government records, prepared pursuant to K.S.A. 45-404
0058 and subsections (c) and (d) of K.S.A. ~~45-405~~, specifying which
0059 series of records have enduring value, authorizing disposition of
0060 certain other series of records, and indicating how long certain
0061 series of records should be retained before disposition of them.

0062 Sec. 2. K.S.A. 45-404 is hereby amended to read as follows:
0063 45-404. The state records board shall:

0064 (a) Approve or modify retention and disposition schedules
0065 and records manuals prepared pursuant to subsections (c) and (d)
0066 of K.S.A. 45-406, *and amendments thereto*. Once approved by the
0067 board the retention and disposition schedules for state agencies
0068 ~~and counties~~ shall be filed with the revisor of statutes. Without
0069 further action by the board, noncurrent records of state agencies
0070 ~~and counties~~ scheduled for disposition may be disposed of as
0071 provided in the schedules and noncurrent records scheduled for
0072 retention may be transferred to the state archives, subject to
0073 approval by the state archivist and in accordance with procedures
0074 to be established by the state archivist.

0075 (b) Pass upon any proposed revisions in the retention and
0076 disposition schedules and upon requests for authority to dispose
0077 of records of state agencies *or counties* not listed in the schedules.
0078 No records of state agencies *or counties* shall be disposed of
0079 before the retention periods designated in the schedules have
0080 elapsed without the approval of the board. No state agency *or*
0081 *county* shall be required to destroy records which it chooses to
0082 retain, even though the retention and disposition schedules au-
0083 thorize their destruction. The retention and disposition schedules

} should be 45-406 (error in K.S.A.)

} Eliminate "and counties"

... - - - -

all ³ except counties

Note additions

0084 for local agencies shall be recommendations and shall not alter or
0085 replace current statutes authorizing or restricting the disposition
0086 of government records by local agencies.

0087 (e) ~~Let~~ Pass upon recommendations by the state archivist for
0088 transfer to the state archives of any noncurrent government rec-
0089 ords with enduring value which are held by a state agency or
0090 ~~county~~ opposing such a transfer. When the state archivist makes
0091 such a recommendation, the state agency ~~or county~~ opposing the
0092 transfer shall defend before the board its reasons for wanting to
0093 retain the records in its custody, and the board shall determine
0094 whether the transfer shall occur.

0095 (f) ~~Let~~ Approve or modify recommended microphotographic
0096 standards prepared by the state archivist and pass upon requests
0097 for authority to dispose of original government records of state
0098 agencies ~~and counties~~ following reproduction on film, as pro-
0099 vided in K.S.A. 45-412.

0100 Sec. 3. K.S.A. 45-405 is hereby amended to read as follows:
0101 45-405. (a) The state historical society shall serve as the official
0102 state archives and shall assist state ~~and local governmental~~ agen-
0103 cies in the preservation of government records with enduring
0104 value.

0105 (b) Any state ~~or local governmental~~ agency may transfer to the
0106 state archives any noncurrent government records accepted by
0107 the state archivist and all state agencies ~~and counties~~ shall
0108 transfer to the state archives any noncurrent government records
0109 when directed to do so by the state records board. With the
0110 approval of the state archivist, noncurrent legislative and judicial
0111 records also may be deposited in the state archives for preserva-
0112 tion.

0113 (c) The secretary of state shall not be prevented by subsection
0114 (A) of K.S.A. 74-7249 ~~or~~ by K.S.A. 75-402 or 75-408 from deposit-
0115 ing in the state archives any noncurrent government records
0116 accepted by the state archivist.

0117 (d) The provisions of this act shall not prohibit discarding or
0118 otherwise disposing of extraneous, worthless or duplicate mate-
0119 rial found in government records when processed by the state
0120 archives staff. Any records placed in the state archives may be

Add: (c) Any board of county commissioners may order disposition of any noncurrent county government records after minimum retention periods set forth in the schedules prepared pursuant to subsection (d) of K.S.A. 45-406. Any board of county commissioners may petition the state records board for amendments to the schedules, for authority to depart from specific provisions of the schedules, or for authority to implement schedules applicable to only a single county.

(d) Any county government records for which permanent retention is set forth in the schedules shall be offered to the state historical society before such records may be destroyed.

Omit "or county"
twice.

Omit "and counties"

Restore "state and local"

Omit "and counties"

0121 disposed of in any manner approved by the board and the state
0122 archivist upon a determination that such records no longer have
0123 enduring value.

0124 Sec. 4. K.S.A. 45-406 is hereby amended to read as follows:
0125 45-406. Under the supervision of the secretary of the state histor-
0126 ical society, the state archivist shall:

0127 (a) Seek, negotiate for, acquire and receive noncurrent gov-
0128 ernment records with enduring value from agencies and branches
0129 of state government, ~~counties~~ and from local agencies.

0130 (b) Properly arrange, store, preserve and make accessible to
0131 the public the records in the state archives, in accordance with
0132 appropriate archival procedures and in accordance with the pro-
0133 visions of K.S.A. 45-407. Provide advice and assistance to state,
0134 ~~county~~ and local agencies and to branches of state government
0135 with regard to proper arrangement, storage, preservation and
0136 accessibility of the government records with enduring value
0137 remaining in their custody.

0138 (c) Advise and assist state agencies ~~and counties~~ in the prepa-
0139 ration of retention and disposition schedules for government
0140 records.

0141 (d) Prepare, publish and distribute to the appropriate public
0142 officers and to other interested persons records manuals contain-
0143 ing retention and disposition schedules for government records
0144 of local agencies. ~~other than counties~~. Recommendations for
0145 proper arrangement, storage and preservation of records with
0146 enduring value and an analysis of state and federal legislation
0147 relevant to government records in Kansas also shall be included
0148 in these records manuals. Appropriate public officers of the state
0149 and its governmental subdivisions shall be consulted during the
0150 preparation of the records manuals.

0151 (e) Review the contents of the records manuals annually and
0152 distribute any revisions which are made to the appropriate public
0153 officers. The contents of the records manuals and subsequent
0154 revisions shall be approved by the state records board.

0155 (f) Assist in preparing and making available to the public
0156 comprehensive inventories containing general information about
0157 the nature, scope, contents and location of government records of

} Omit "counties" if amendment to subsection
(b) of K.S.A. 45-402 eliminated.

} Omit "county" if amendment to subsection
(b) of K.S.A. 45-402 eliminated.

} Omit "and counties" if amendments to subsection
(b) of K.S.A. 45-402 and subsection (d) of
K.S.A. 45-406 are eliminated.

} Omit "other than counties"

0158 the agencies and branches of state government, ~~counties~~ and of
0159 local agencies in Kansas.

} Omit "counties" if amendment to subsection
(b) of K.S.A. 45-402 eliminated.

0160 (g) Prepare or permit the preparation of copies of government
0161 records deposited in the state archives, as required by current
0162 statutes, unless public access to the records is restricted as pro-
0163 vided in K.S.A. ~~45-406 45-407, and amendments thereto~~. When
0164 certified by the state archivist such copies shall have all the force
0165 and effect as if made by the officer originally in custody of them.
0166 Reasonable fees may be charged for preparation of such copies.
0167 The state archivist shall not allow copies to be made by methods
0168 which might damage the original records.

} Omit "and amendments thereto"

0169 (h) Exercise such other duties and functions as the secretary
0170 of the state historical society may direct or as may be provided by
0171 law.

0172 Sec. 5. K.S.A. 45-407 is hereby amended to read as follows:

0173 45-407. (a) All government records deposited subsequent to
0174 adoption of this act in the state archives shall remain subject to
0175 any current state or federal statutes, or administrative regulations
0176 authorized by statute, which require public access or restrict
0177 public access to the records while retained by the state, ~~county~~ or
0178 local agency or the branch of state government making the de-
0179 posit. The state, ~~county~~ or local agency or the branch of state
0180 government making the deposit may require continued applica-
0181 tion to government records deposited in the state archives of any
0182 discretionary restrictions on public access which are authorized
0183 by statute or by administrative regulations authorized by statute,
0184 if such requirements are specified at the time of the deposit. No
0185 fees shall be charged for the examination of government records
0186 held by the state archives.

— Omit "county" if amendment to subsection
(b) of K.S.A. 45-402 eliminated.

0187 (b) Any discretionary restrictions placed on public access to
0188 government records deposited in the state archives shall be en-
0189 forced for periods designated at the time of the deposit which
0190 shall not exceed, and preferably will be much less than, 70 years
0191 after creation of the records.

0192 (c) The state archivist, or representatives of the state archivist
0193 may examine records deposited in the state archives to which
0194 public access is restricted by statute or by administrative regula-

0195 tions authorized by statute, to the extent necessary to properly
0196 arrange, store and preserve them and provide proper public
0197 access.

0198 (d) Statutes or administrative regulations authorized by stat-
0199 ute restricting public access to certain types of records shall not
0200 prohibit the state archivist or authorized representatives of the
0201 state archivist from examining any government records held by a
0202 state, ~~county~~ or local agency in order to prepare comprehensive
0203 inventories containing general information about the nature,
0204 scope, contents and location of each record series, or in order to
0205 assist in properly arranging, storing and preserving government
0206 records with enduring value. No confidential information found
0207 in such restricted government records shall be revealed to any
0208 person by the state archivist or by representatives of the state
0209 archivist. Violation of this subsection shall be punishable as a
0210 class B misdemeanor.

0211 Sec. 6. K.S.A. 45-408 is hereby amended to read as follows:
0212 45-408. Each agency of state government ~~and county~~ shall:

0213 (a) Obtain authority from the state records board before dis-
0214 posing of any government record, unless the disposition is au-
0215 thorized by statute or in the retention and disposition schedules,
0216 or unless the record is being deposited in the state archives;
0217 obtain authority from the board before disposing of any govern-
0218 ment record prior to termination of the minimum retention period
0219 listed in the retention and disposition schedules.

0220 (b) Provide storage conditions for all government records
0221 with enduring value which are not seriously adverse to their
0222 preservation and which will not prevent providing proper public
0223 access to the records; adopt reasonable security measures to
0224 protect government records from theft or damage.

0225 (c) Cooperate with efforts by the state archivist or representa-
0226 tives of the state archivist to inspect records and the conditions in
0227 which they are stored, to prepare comprehensive inventories of
0228 government records, to microfilm noncurrent records with en-
0229 doring value and to improve the arrangement, storage and physi-
0230 cal condition of noncurrent government records with enduring
0231 value in accordance with appropriate archival techniques. State

} Omit "county" if amendment to subsection (b) of K.S.A. 45-402 eliminated.

} Omit "and county" if amendment to subsection (b) of K.S.A. 45-402 eliminated.

0232 agencies ~~and counties~~ shall not be required to provide funds or
0233 staff time for these purposes, but they shall give careful consid-
0234 eration to requests and recommendations made by the state ar-
0235 chivist.

0236 (d) Comply with rules and regulations, standards and pro-
0237 cedures adopted by the state records board and the state archivist
0238 pursuant to the provisions of this act.

0239 Sec. 7. K.S.A. 45-412 is hereby amended to read as follows:
0240 45-412. (a) The state archivist shall prepare recommendations, to
0241 be approved by the state records board, based on the current
0242 standards of the federal government and the American national
0243 standards institute, for the quality of film, proper arrangement of
0244 materials, suitable filming techniques and equipment, quality of
0245 photographic images, film processing results, and film storage
0246 conditions which should be achieved or utilized by state, ~~county~~
0247 and local agencies in making microphotographic copies of gov-
0248 ernment records with enduring value pursuant to K.S.A. 12-122,
0249 19-250 or 75-3506. Whenever microphotographic copies of rec-
0250 ords with enduring value fail to meet the standards recommended
0251 by the state archivist and approved by the state records board, the
0252 state archivist shall urge state, ~~county~~ and local agencies to retain
0253 the original records.

0254 (b) Whenever photographs, microphotographs or other repro-
0255 ductions on film have been prepared pursuant to K.S.A. 75-3506
0256 and have been placed in conveniently accessible files and provi-
0257 sions made for preserving, examining and using the same, and
0258 when a negative copy of the film has been deposited in a secure
0259 place where it will not be subject to use except in making
0260 additional positive copies, any state agency, with the approval of
0261 the state records board or as authorized by the retention and
0262 disposition schedules, may cause the original records from which
0263 the photographs, microphotographs or other reproductions on
0264 film have been made, or any part thereof, to be destroyed. Such
0265 records shall not be destroyed and shall be retained by the agency
0266 or transferred to the state archives or temporarily to another
0267 suitable place designated by the board, if the board judges such
0268 materials to have enduring value in their original form.

} Omit "and counties" if amendment to subsection
(b) of K.S.A. 45-402 is eliminated.

Omit "county" if amendment to subsection
(b) of K.S.A. 45-402 is eliminated.

0269 (c) Whenever photographs, microphotographs or other repro-
 0270 ductions on film have been prepared as provided in K.S.A. 12-122
 0271 or 19-250 and have been placed in conveniently accessible files
 0272 and provisions made for preserving, examining and using the
 0273 same, and when a negative copy of the film has been deposited in
 0274 a secure place where it will not be subject to use except in making
 0275 additional positive copies, a ~~county or~~ local agency may retain the
 0276 original records in its custody at any suitable location, may
 0277 deposit them in collections established pursuant to K.S.A. 12-
 0278 1658 and 12-1660 or K.S.A. 19-2648 and 19-2649, or may dispose
 0279 of the original records as provided in the retention and disposi-
 0280 tion schedules. If there are no relevant provisions in the retention
 0281 and disposition schedules, the original records shall be offered to
 0282 the state historical society prior to other disposition of them.

0283 (d) The state historical society may prepare and deposit in the
 0284 state archives a microfilm or other copy of any noncurrent gov-
 0285 ernment record which is retained by a state, ~~county~~ or local
 0286 agency, unless public access to the record is restricted by statute
 0287 or by administrative regulation authorized by statute.

0288 Sec. 8. K.S.A. ~~19-250~~, 19-254, 19-255, 19-256, ^{19-257, 19-258} 19-325, 19-326,
 0289 19-327, 45-402, 45-404, 45-405, 45-406, ~~45-407, 45-408~~ and ~~45-~~
 0290 ~~412~~ are hereby repealed.

0291 Sec. 9. This act shall take effect and be in force from and after
 0292 its publication in the statute book.

} Restore "or 19-250"

} Omit "county or" if amendment to subsection (b) of K.S.A. 45-402 is eliminated.

} Omit "county" if amendment to subsection (b) of K.S.A. 45-402 is eliminated.

} Eliminate repeal of K.S.A. 19-250, 45-407, 45-408, and 45-412 and strike sections 45-407, 45-408, and 45-412 from this bill; add repeal of 19-257 and 19-258.

AN ACT to provide protection to employees who report a violation or suspected violation of state, local, or federal law; to provide protection to employees who participate in hearings, investigations, legislative inquiries, or court actions; and to prescribe remedies and penalties.

The People of the State of Michigan enact:

§ 17.428(1) Definitions.] Sec. 1. As used in this act:

(a) "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied. Employee includes a person employed by the state or a political subdivision of the state ~~(except state classified civil service.)~~

(b) "Employer" means a person who has 1 or more employees. Employer includes an agent of an employer and the state or a political subdivision of the state.

(c) "Person" means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.

(d) "Public body" means all of the following:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.

(ii) An agency, board, commission, council, member, or employee of the legislative branch of state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, a council, school district, special district, or municipal corporation, or a board, department, commission, council, agency, or any member or employee thereof.

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body.

(v) A law enforcement agency or any member or employee of a law enforcement agency.

(vi) The judiciary and any member or employee of the judiciary. (MCL § 15.361.)

§ 17.428(2) Report of violation of law; prohibited conduct on part of employer.] Sec. 2. An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action. (MCL § 15.362.)

§ 17.428(3) Civil action, alleged violation.] SEC. 3. (1) A person who alleges a violation of this act may bring a civil action for appropriate injunctive relief, or actual damages, or both within 90 days after the occurrence of the alleged violation of this act.

Commencement of action, county.] (2) An action commenced pursuant to subsection (1) may be brought in the circuit court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has ♦ [his or her] principal place of business.

Damages, definition.] (3) As used in subsection (1), "damages" means damages for injury or loss caused by each violation of this act, including reasonable attorney fees.

Necessary showing.] (4) An employee shall show by clear and convincing evidence that ♦ [he or she] or a person acting on ♦ [his or her] behalf was about to report, verbally or in writing, a violation or a suspected violation of a law of this state, a political subdivision of this state, or the United States to a public body.

(MCL § 15.363.)

§ 17.428(4) Judgment order, contents; award.] Sec. 4. ~~A court, in rendering a judgment in an action brought pursuant to this act, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate. (MCL § 15.364.)~~

§ 17.428(5) Civil fine, disposition.] Sec. 5. (1) ~~A person who violates this act shall be liable for a civil fine of not more than \$500.00.~~

(2) A civil fine which is ordered pursuant to this act shall be submitted to the state treasurer for deposit in the general fund. (MCL § 15.365.)

§ 17.428(6) Construction of act, collective bargaining agreement; disclosures affecting confidentiality of communications.] Sec. 6. This act shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement, nor to permit disclosures which would diminish or impair the rights of any person to the continued protection of

§ 17.428(7) Construction of act, compensation for participation in investigation.] Sec. 7. This act shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by a public body in accordance with section 2 of this act. (MCL § 15.367.)

§ 17.428(8) Posting notices, protections and obligations of act.] Sec. 8. An employer shall ~~post notices~~ and use other appropriate means to keep his or her employees informed of their protections and obligations under this act. (MCL § 15.368.)

§ 17.428(9) Short title.] Sec. 9. This act shall be known and may be cited as "the whistleblowers' protection act". (MCL § 15.369.)

A portion of a similar law
from State of Indiana

4-15-10-4 Protection of employees reporting
violations of state or federal
laws, etc.

Sec. 4. (a) Any employee may report in writing the existence of:

- (1) a violation of state or federal laws;
- (2) a violation of state or federal agency regulations; or
- (3) the misuse of public resources;

first to a supervisor or appointing authority and then, if no good faith effort is made to correct the problem within a reasonable time, to any person, agency, or organization without fear of reprisal.

HOUSE BILL No. 2621

By Special Committee on Efficiency in State Government

Re Proposal No. 19

12-19

0018 AN ACT concerning employees of state agencies; relating to
0019 information provided or offered to be provided by such em-
0020 ployees to a member of the legislature, a legislative commit-
0021 tee, an administrative hearing or a court of law; granting
0022 certain powers to and imposing certain duties upon the state
0023 civil service board; providing for forfeiture of office for certain
0024 actions.

0025 *Be it enacted by the Legislature of the State of Kansas:*

0026 Section 1. (a) No supervisor or appointing authority of any
0027 state agency shall prohibit employees of such agency, whether in
0028 the classified or unclassified service under the Kansas civil
0029 service act, from discussing the operations of the agency, either
0030 specifically or generally, with any member of the legislature.

0031 ~~/(b) The state civil service board shall adopt rules and regu-~~
0032 ~~lations providing for all state agencies and state employees to be~~
0033 ~~informed of their rights of expression and communication. The~~
0034 ~~rules and regulations shall provide for the prominent posting of a~~
0035 ~~statement of employee rights under this section in all offices of~~
0036 ~~all state agencies and shall also provide for the direct distribution~~
0037 ~~of a statement of rights of employees pursuant to this section to~~
0038 ~~each employee of the state of Kansas.~~

0039 (c) ~~Disciplinary actions, including, but not limited to, any~~
0040 ~~direct or indirect form of discipline, any dismissal, demotion,~~
0041 ~~transfer, reassignment, suspension, reprimand, admonishment,~~
0042 ~~warning of possible dismissal, reduction in force, reduction in~~
0043 ~~rank, reduction in status or withholding of work, shall not be~~
0044 ~~taken against any employee for providing information or offering~~
0045 ~~to provide information to any member of the legislature or any~~

(1) This subsection (a) shall not be construed as precluding supervisors or appointing authorities from requesting that they be informed by employees as to (A) legislative requests for information; or (B) the substance of information or testimony made, or to be made, by an employee to legislators or legislative staff.

(2) Notwithstanding clause (1) above, any employee may report in writing the existence of:

(A) A violation of state or federal laws;

(B) A violation of state or federal agency regulations; or

(C) The misuse of public resources;

first to a supervisor or appointing authority and then, if no good faith effort is made to correct the problem within a reasonable time, to any person, agency, or organization.

(b) This act shall not be construed as: (1) Permitting an employee to leave the employee's assumed work areas during normal work hours without following applicable regulations and policies pertaining to leaves; (2) Authorizing an employee to represent the employee's personal opinions as the opinions of a state agency; or (3) Precluding disciplinary action of an employee who discloses information: (A) which the employee knows to be false or which the employee discloses with disregard for the truth or falsity thereof; (B) that is exempt from required disclosure under the open records act; or (C) which is confidential under any other provision of law.

Each state agency shall prominently post a copy of this act in locations where it can reasonably be expected to come to the attention of all employees of the agency.

Any classified employee with permanent status may appeal to the state civil service board whenever such employee alleges that disciplinary action was unreasonably taken against such employee as a result of discussing the operations of the employee's agency with any member of the legislature, in any court of law or administrative hearing. Such appeal shall be filed within 30 days of the alleged disciplinary action. As used in this subsection (c), "disciplinary action" means

0046 ~~legislative committee, administrative hearing or court of law.~~
0047 ~~(d) Any employee or any former employee aggrieved pursu-~~
0048 ~~ant to this section may file a written request within 30 days of the~~
0049 ~~alleged disciplinary action for a hearing by the state civil service~~
0050 ~~board. The state civil service board shall schedule such matters~~
0051 ~~for hearing within 30 days after the filing of a request for review.~~
0052 ~~Except as otherwise provided in this subsection (d), the provi-~~
0053 ~~sions of K.S.A. 1983 Supp. 75-2929d and amendments thereto~~
0054 ~~shall be applicable to any hearing conducted by the state civil~~
0055 ~~service board under this section.~~ ^

0056 ~~(c) Any supervisor or appointing authority of any state~~
0057 ~~agency, whether in the classified or unclassified service under~~
0058 ~~the Kansas civil service act, violating the provisions of this~~
0059 ~~section shall forfeit the position such person holds in the state~~
0060 ~~service and shall be ineligible for appointment to or employment~~
0061 ~~in a position in state service for a period of five years. The~~
0062 ~~decision of the state civil service board in such cases may be~~
0063 ~~appealed by any party pursuant to law.~~ ^

0064 Sec. 2. This act shall take effect and be in force from and
0065 after its publication in the statute book.

(d) Procedures governing appeals to the civil service board pursuant to this section shall be in accordance with K.S.A. 1983 Supp. 75-2949, subsections (f) and (g) and 75-2929d to 75-2929g, inclusive.

(e) In cases where the civil service board finds that disciplinary action taken was unreasonable, the board shall modify or reverse the agency's action and order such relief for the employee as the board deems appropriate. The board shall inform the appointing authority of any supervisor that the board has found acted unreasonably in order that the appointing authority may take appropriate disciplinary action against the supervisor. In cases where the board finds that an appointing authority acted unreasonably, the board shall inform the governor and attorney general thereof for appropriate action.

K.S.A. 1983 Supp. 75-2929d to 75-2929g, inclusive

75-2929d. Same; hearing of appeals; subpoenas; oaths and testimony; witness fees; rules of evidence. (a) The state civil service board shall hear appeals taken to it pursuant to K.S.A. 1982 Supp. 75-2940, 75-2949 and 75-3747, or any amendments thereto, concerning demotion, dismissal or suspension of a permanent employee in the classified service, or concerning refusal to examine an applicant or to certify a person as eligible for a job class.

(b) When an appeal is taken to the board, the board shall establish a time and a place for the hearing which shall be held within 45 days after receipt of request for the appeal. The board shall notify the person bringing the appeal and the appointing authority or other person whose action is being reviewed of the time and the place of the hearing, within 14 days prior to such hearing, by certified mail, return receipt requested. Each party at the hearing shall have the right to be heard, to be represented by a person of the party's own choice, to present evidence and to cross examine witnesses.

(c) The board, or the director of personnel services when authorized by majority vote of the board, may take deposition of witnesses or may issue subpoenas to compel the attendance of witnesses at such place as may be designated in this state and to compel the production of books and papers pertinent to any inquiry or investigation authorized by this act. Subpoenas shall also be issued at the request of the parties to the proceedings other than the board and the director. The board or any member thereof, or the director when authorized by the board, may administer oaths and take testimony. The board or the director may examine such public records as may be required in relation to any matter which the board has authority to investigate. All officers and other persons shall attend and testify when required to do so by the board, or by the director when authorized by the board.

(d) In case of the refusal of any person to comply with any subpoena issued under this section or to testify to any matter regarding which the person may be lawfully interrogated, the district court of any county, on application of any one of the members of the board, or on application of the director when authorized by the board, may issue an order requiring such person to comply with the subpoena and to testify, and any failure to obey the order of the court may be punished by the court as a contempt thereof. Unless incapacitated, the person placing a claim or defending a privilege before the board shall appear in person and may not be excused from answering questions and supplying information, except in accordance with such person's constitutional rights and lawful privileges.

(e) Each person not in the classified or unclassified service who appears before the board or the director by order shall receive for such person's attendance the fees and mileage provided for witnesses in civil actions in the district court, which fees and mileage shall be audited and paid by the state upon presentation of proper vouchers. Witnesses subpoenaed at the request of parties other than the board or the director shall be entitled to compensation from the state for attendance or travel only if the board certifies that the testimony of such witnesses was relevant and material to the matter investigated.

(f) The board and the director, in conducting hearings and investigations in accordance with the provisions of this act, shall not be bound by the technical rules of evidence.

History: L. 1978, ch. 332, § 21; L. 1981, ch. 334, § 1; July 1.

Law Review and Bar Journal References:

"Rethinking Kansas Administrative Procedure," Marilyn V. Ainsworth and Sidney A. Shapiro, 28 K.L.R. 419, 435 (1980).

CASE ANNOTATIONS

1. Act provides complete procedure for administrative review; administrative remedy must be exhausted before resort to courts. *Pecenka v. Alquest*, 232 K. 97, 99, 652 P.2d 679 (1982).

75-2929e. Same; decision on appeal; final orders of board; application for rehearing. (a) The state civil service board within thirty (30) days after hearing and consideration of the evidence shall affirm, modify or reverse a case on its merits and order any other action it deems appropriate.

(b) All final orders of the board shall be in writing signed by the chairperson or secretary, shall state the findings of the board and reason for the order and shall be binding upon the parties thirty (30) days after issued unless a rehearing is requested under subsection (c). Any member of the board may submit a minority or supplemental report which shall be filed as a matter of reference. All final orders of the board shall be permanently filed by the secretary and copies thereof shall be mailed to the person who brought the appeal and to the appointing authority or other person who was a party to the appeal by certified mail, return receipt requested.

(c) Within ten (10) days after the date of the board's final order, any party aggrieved by the final order of the board may apply for a rehearing in respect to any matter determined therein. Within ten (10) days of the date of filing of an application for rehearing, the application shall be granted or denied or continued, but any such continuance shall not exceed thirty (30) days from the date of the order of continuance. If the rehearing is not granted or continued within such ten-day period it shall be taken as denied. If a

rehearing is granted, the matter shall be determined by the board within thirty (30) days after the rehearing is granted and the rehearing shall be conducted *de novo*. No appeal shall be taken from any final decision of the board by any party unless such party has made application for a rehearing as provided by this section. An application for rehearing shall set forth specifically the ground or grounds on which the applicant considers all or any portion of the final order or decision to be unlawful or unreasonable. In any subsequent appeal or proceeding in any court, no party shall urge or rely upon any ground not set forth in the application for a rehearing. A decision made after a rehearing which abrogates, changes or modifies the original decision, shall have the same force and effect as the original decision.

History: L. 1978, ch. 332, § 22; July 1.

Law Review and Bar Journal References:

"Rethinking Kansas Administrative Procedure," Marilyn V. Ainsworth and Sidney A. Shapiro, 28 K.L.R. 419, 435 (1980).

CASE ANNOTATIONS

1. Act provides complete procedure for administrative review; administrative remedy must be exhausted before resort to courts. *Pecenka v. Alquest*, 232 K. 97, 99, 652 P.2d 679 (1982).

75-2929f. Same; appointment and powers of hearing examiner; record, finding

and recommendations of hearing examiner; consideration by board. (a) The state civil service board may designate or appoint a hearing examiner to make investigations and conduct hearings that may be conducted by the board under the Kansas civil service act. The order appointing a hearing examiner shall be made in writing and shall be filed in the proceedings of the case. Such investigations and hearings shall be made and conducted as and in the manner and at the place directed by the board. The hearing examiner shall have the same powers in conducting an investigation and a hearing as those which the board may exercise, and the applicable provisions of law concerning the conduct of investigations and hearings by the board shall apply to the conduct of investigations and hearings by the hearing examiner. The hearing examiner may provide for a record to be made of any hearing which he or she conducts. The hearing examiner shall report his or her findings and recommendations to the board.

(b) The board may consider the evidence and record introduced before or made by the hearing examiner or if it so desires the board may hear additional evidence and hold further hearings. The final order of the board shall have the same force and effect as though the entire hearing had been held before the board. After a matter has been so heard and a final order of the board issued, any party may file an application for rehearing as provided by K.S.A. 1978 Supp. 75-2949b.

History: L. 1978, ch. 332, § 23; July 1.

75-2929g. Same; rules and regulations adopted by secretary of administration. The secretary of administration, upon recommendation of the director of personnel services and the board, shall adopt rules and regulations as provided in K.S.A. 75-3706 to carry out the provisions of K.S.A. 1978 Supp. 75-2929d to 75-2929g, inclusive, and 75-2949a to 75-2949c, inclusive.

History: L. 1978, ch. 332, § 24; July 1.

K.S.A. 1983 Supp. 75-2949, subsections (f), (g)

(f) Any permanent employee finally dismissed, demoted or suspended, may request in writing within 30 calendar days after the effective date of the dismissal, demotion or suspension, a hearing from the state civil service board to determine the reasonableness of such action, and the board shall grant the employee a hearing within 45 calendar days after receipt of such request. At the hearing the burden of proof shall be upon the employee to establish that the appointing authority did not act reasonably in taking such action.

(g) No employee shall be disciplined or discriminated against in any way because of the employee's proper use of the appeal procedure.

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STATE OF KANSAS
DEPARTMENT OF ADMINISTRATION
JOHN CARLIN, Governor
PATRICK J. HURLEY, Secretary of Administration
Room 263-E, Capitol Building
(913) 296-3011

MEMORANDUM

TO: House Federal and State Affairs Committee

FROM: Arthur H. Griggs, Chief Attorney

DATE: February 7, 1984

SUBJECT: House Bill 2621 and Related Issue

This memorandum provides information relative to:

1. Current remedies available to employees when their constitutional rights of free speech are impaired;
2. Broader approach to legislation protecting "whistleblowers"; and
3. Specific language changes to House Bill 2621.

I. Current Remedies and Related Case Law

Our Kansas Constitution, in pertinent part, provides as follows:

". . . all persons may freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such rights; . . ."
[Kansas Constitution, Section 11 of the Bill of Rights]

Although the First Amendment of our U. S. Constitution speaks in terms of prohibiting Congress from "abridging the freedom of speech", these two constitutional provisions are generally considered coextensive.

As the following sample of cases indicates, employees whose rights of free speech have been impaired by governmental employes have the ability to seek redress in the courts.

1. Childers v. Independent School District No. 1, 676 F.2d 1338 (1982). Childer's first amendment claim arose from his allegation that the school board reasigned him in retaliation for the exercise of his right to help organize a teachers' union and to support a

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candidate for the school board election. The school district argued that because the case involved reassignment of an employee, as opposed to termination, the facts did not rise to a significant infringement of activities protected by the First Amendment. The U. S. Court of Appeals, Tenth Circuit, disagreed and held:

"Retaliation that takes the form of altered employment conditions instead of termination may nonetheless be an unconstitutional infringement of protected activity."
(676 F.2d 1342)

2. Perry v. Sendermann, 408 U.S. 593 (1972). Perry's first amendment claim alleged that his non-retention as a Texas college professor was based on his testimony before legislative committees and his other public statements critical of the Regents' policies. The U. S. Supreme Court found that Perry's allegations did raise a genuine issue and that:

". . . a teacher's public criticism of his superiors on matters of public concern may be constitutionally protected and may, therefore, be an impermissible basis for termination of his employment." (408 U.S. 598)

3. Givhan v. Western Line Consolidated School District, 439 U.S. 410 (1979). Givhan was dismissed from her employment as a teacher. Court action sought reinstatement on the grounds that her dismissal infringed her right of free speech. The employer attempted to justify the dismissal by introducing evidence of a series of private encounters between the school principal and Givhan in which Givhan allegedly made "petty and unreasonable demands" in a manner the school principal characterized as "insulting", "loud", and "arrogant". The U. S. Supreme Court, in rejecting the school board's attempt to defend on the basis that the conversations were private rather than public speech, held that their prior cases "do not support the conclusion that a public employee forfeits his protection against governmental abridgment of freedom of speech if he decides to express his views privately rather than publicly." (439 U.S. 414).

4. Mt. Healthy City School District v. Doyle, 429 U.S. 274 (1977). Doyle's claim arose when his teacher's contract was not renewed. The school board cited the reason for the nonrenewal as Doyle's lack of tact in

handling professional matters. The board made specific mention of Doyle's action in telling a local radio station the substance of a memo the school principal circulated relating to teachers' dress and appearance, and Doyle's action in making an obscene gesture. The Court's opinion held:

"That question of whether speech of a governmental employee is constitutionally protected expression necessarily entails striking 'a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.'" (429 U.S. 284)

In addition to the remedy currently available to employees through court actions, permanent classified employees have the ability to go to the Kansas Civil Service Board in cases involving their suspension, demotion or dismissal for any reason. In such cases, the Board determines whether the state agency's action in demoting, suspending or dismissing the employee was reasonable. [K.S.A. 1983 Supp. 75-2949(f)]. The Board has the power to "affirm, modify or reverse a case on its merits and order any other action it deems appropriate." [K.S.A. 1983 Supp. 75-2929e, subsection (a)]

In summary, all state employees have a court remedy that can be pursued when infringement of free speech rights is present. Admittedly, this remedy entails time and expense for the involved employee. For permanent classified employees, the Civil Service Board remedy is also available when demotion, suspension or dismissal is involved.

II. Broader Approaches to "Whistleblowers" Legislation

House Bill 2621, as introduced, appears to limit its application to disciplinary actions taken against state employees for offering or providing information to legislators, courts, administrative hearings or legislative committees. Thus, if an employee of a waste disposal company is fired for turning in his employer for illegal dumping of hazardous waste, no protection is afforded the employee by the bill.

Since the principle embodied in House Bill 2621 (protection for whistleblowers) appears equally meritorious in other situations, a copy of a broader type of whistleblowers act which was adopted in Michigan is attached for the Committee's consideration (Attachment A).

III. Specific Language Changes

Attachment B contains specific language changes for the Committee to consider. In general terms, the modified language would permit a permanent classified employee to appeal to the Civil Service Board on broader grounds than existing law, i.e., in addition to the current dismissal, suspension or demotion grounds, the bill would permit employees to go to the Civil Service Board when transfers, reassignments or the withholding of work were taken in retaliation for exercising free speech rights.

HOUSE BILL No. 2621

By Special Committee on Efficiency in State Government

Re Proposal No. 19

12-19

0018 AN ACT concerning employees of state agencies; relating to
0019 information provided or offered to be provided by such em-
0020 ployees to a member of the legislature, a legislative commit-
0021 tee, an administrative hearing or a court of law; granting
0022 certain powers to and imposing certain duties upon the state
0023 civil service board; providing for forfeiture of office for certain
0024 actions.

0025 *Be it enacted by the Legislature of the State of Kansas:*

0026 Section 1. (a) No supervisor or appointing authority of any
0027 state agency shall prohibit employees of such agency, whether in
0028 the classified or ~~unclassified~~ service under the Kansas civil
0029 service act, from discussing the operations of the agency, either
0030 specifically or generally, with any member of the legislature.

0031 (b) The ~~state civil service board~~ shall adopt rules and regu-
0032 lations providing for all state agencies and state employees to be
0033 informed of their rights of expression and communication. The
0034 rules and regulations shall provide for the prominent posting of a
0035 statement of employee rights under this section in all offices of
0036 all state agencies and shall also provide for the direct distribution
0037 of a statement of rights of employees pursuant to this section to
0038 each employee of the state of Kansas.

0039 (c) Disciplinary actions, including, but not limited to, any
0040 direct or indirect form of discipline, any dismissal, demotion,
0041 transfer, reassignment, suspension, reprimand, admonishment,
0042 warning of possible dismissal, reduction in force, reduction in
0043 rank, reduction in status or withholding of work, shall not be
0044 taken against any employee for providing information or offering
0045 to provide information to any member of the legislature or any

department of administration

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0046 legislative committee, administrative hearing or court of law.
 0047 (d) Any employee or any former employee aggrieved pursu-
 0048 ant to this section may file a written request within 30 days of the
 0049 alleged disciplinary action for a hearing by the state civil service
 0050 board. The state civil service board shall schedule such matters
 0051 for hearing within 30 days after the filing of a request for review.
 0052 Except as otherwise provided in this subsection (d), the provi-
 0053 sions of K.S.A. 1983 Supp. 75-2929d and amendments thereto
 0054 shall be applicable to any hearing conducted by the state civil
 0055 service board under this section.

0056 (e) ~~Any supervisor or appointing authority of any state~~
 0057 ~~agency, whether in the classified or unclassified service under~~
 0058 ~~the Kansas civil service act, violating the provisions of this~~
 0059 ~~section shall forfeit the position such person holds in the state~~
 0060 ~~service and shall be ineligible for appointment to or employment~~
 0061 ~~in a position in state service for a period of five years. The~~
 0062 decision of the state civil service board in such cases may be
 0063 appealed by any party pursuant to law.
 0064 Sec. 2. This act shall take effect and be in force from and
 0065 after its publication in the statute book.

*Suspension on
leave without pay*

The Board in its discretion may determine whether a violation of this section has occurred. In the event it finds a violation it may impose as a penalty the forfeiture of up to 30 days' pay, or in cases of willful or repeated violations, forfeiture of the position such person holds in the state service and disqualification for appointment to or employment in a position in state service for a period of up to two years.

provision for reinstatement