

MINUTES OF THE SENATE COMMITTEE ON JUDICIARYThe meeting was called to order by Elwaine F. Pomeroy at
Chairperson10:00 a.m./~~p.m.~~ on February 7, 1984 in room 514-S of the Capitol.~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaar, Gaines, Hein, Hess, Mulich and Werts.Committee staff present: Mary Torrence, Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Representative Elwaine Hassler
Secretary Barbara Sabol, Kansas Department on Health and Environment
Representative Steven Ediger
Dan Watkins, Kansas Department of Transportation
Wayne Hundley, Office of the Attorney GeneralHouse Bill 2564 - Increasing penalties for certain violations of laws relating to restraint of trade actions and hazardous waste disposal.

Representative Hassler explained this bill arose from her subcommittee in House Governmental Organization Committee. The penalties concerning hazardous waste materials was amended into the bill in the House.

Secretary Barbara Sabol spoke to the area of the bill that deals with hazardous waste. She explained the department was trying to meet federal standards regarding a \$10,000 minimum fine. They still support the provisions in the bill. The increase in penalties would allow them to greater enforcement authority. She pointed out this provision is also included in House Bill 2740 which is in House Energy and Natural Resources Committee. They continue to support provisions increasing the penalties. Secretary Sabol explained House Bill 2740 has additional provisions; the update of hazardous waste statute. There have been hearings held already, and the committee will work the bill next week. The chairman said he would like to coordinate the two bills. A committee member inquired, in line 144, Subsection (c), are you satisfied with the wording, willfully, wantonly or recklessly? She replied, this does meet our needs. The committee member inquired, could you get a conviction under that kind of language? She replied, no, they want language that would adequately enforce. The committee member suggested substituting a word in place of deliberately. Secretary Sabol agreed with that suggestion. Another committee member inquired, what does federal law require, when would we be able to assess a \$10,000 penalty? Why have a misdemeanor at all? Committee discussion was held regarding violations and penalties. A committee member suggested making it a class C penalty if it is harm to the environment. She replied, that might be one way to do it; will have to discuss with her staff. The chairman reminded the committee to consider the overcrowding of prisons when considering increasing penalties.

Representative Ediger spoke to the bid rigging aspect of the bill. A copy of his testimony is attached (See Attachment No. 1). The chairman inquired, how do you respond to increasing penalties and increasing length of incarcerations? Representative Ediger replied, these people would be put on probation. A committee member inquired, you prefer it the way you introduced it or the way Representative Frey amended it? He replied, if the chairman of the Judiciary felt this is necessary it was all right. Representative Hassler responded, she would reenforce they would want to write his suggestion in, if you write statutes to prevent them reorganizing and starting again. The chairman inquired, the main focus is on the mandatory aspects? Representative Hassler replied, yes. The chairman recognized Secretary Sabol to respond to questions. A committee member inquired, are we setting policy we are not going to stand for violating our standards and set up a serious consequence for people who do this? Does this

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~xxx~~ on February 7, 1984

House Bill 2564 continued

bill really meet that test? She replied, if you separate out the type of violations, this provision of the bill will give us enforcement authority that we need. The chairman inquired, does it cause you any concern, you can change things, by rule and regulation, and create a class C felony? A committee member inquired, in subsection (1), unlawful dumping, don't you want to say to people, if you dump hazardous waste in an improper facility, there is a penalty? Don't you want that deterrent? She replied, yes.

Dan Watkins testified in regard to bid rigging. He suggested the penalties be increased to be more in line with the federal statutes, and the length of jail term could be lessened. They thought this would put more bite in the state law. In regard to disqualification of contractors, they have adopted rules and regulations that allow them to suspend. Most contractors are suspended for a period up to six months. They felt the limit could go the length of time they could work. A committee member referred to the existing language providing for fines; the new language is restitution money. What is the disposition of the money? He replied, if recovered through settlements, it would go to the highway fund. If it is settled in court, it goes to general fund. The chairman noted, you are more interested in the punitive aspect rather than the monetary, although you prefer the original amendatory language to provide for one million dollars fine and one hundred thousand dollars for an individual. Mr. Watkins agreed.

Wayne Hundley stated he would like to echo Mr. Watkins comments. He suggested the committee consider hazardous waste in a separate bill. He feels there are two subjects in one bill, and there should be two bills. He suggested going back to the stated fine amount. He favors going back to the one million dollar fine and leaving incarceration as a deterrent value.

This concluded the hearings on House Bill 2564.

Senator Winter requested introduction of a bill that would provide additional money for domestic violence facilities that will assist in providing emergency shelter. This money would be separate from SRS grant funds, and will aid victims of family abuse and their children. The bill will increase the marriage license fee from \$17 to \$25, which will raise \$180,000. Following committee discussion, Senator Winter moved that the bill be introduced. Senator Werts seconded the motion. The motion carried.

Senator Gaines will make the Youth Services Program report available to the committee members that show the distribution of funds to SRS.

Senator Mulich moved that the minutes of January 30, 1984, be approved. Senator Hess seconded the motion, and the motion carried.

The meeting adjourned.

2-7-84

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Angela Unterberger	Box 2C St. George	Page.
Don Widrig	Boys & McPherson	
LeRoy Schmidt	480 Liberty Dr. McPherson, Ks	
Cuki L Schmidt	480 Liberty Dr. McPherson, Kans.	
Elaine Harlow	State Legislature	
STATE EDITOR	STATE REP.	
Tom Fritzen	Lawrence	Sen Hess
Vic Phipps	Lawrence	Sen Steingass
Wayne Hundley	Topeka	A. H.
Dan Watkins	Topeka	KDOT
B. J. Sabol	Topeka	KDOT
H.C. Woody	Attonwood Falls, Ks	Ks. Nat'l Organization for Women

STATE OF KANSAS



TOPEKA

HOUSE OF
REPRESENTATIVES

STEVEN A. EDIGER
REPRESENTATIVE, ONE HUNDRED FOURTH DISTRICT
422 EAST 15TH STREET
HUTCHINSON, KANSAS 67501

2-7-84
Attach. # 1

COMMITTEE ASSIGNMENTS
MEMBER FEDERAL AND STATE AFFAIRS
GOVERNMENTAL ORGANIZATION
JUDICIARY
JOINT COMMITTEE ON SPECIAL
CLAIMS AGAINST THE STATE

February 7, 1984

TO: Senate Judiciary Committee
FROM: Steven Ediger
RE: House Bill 2564

House Bill 2564 increases the penalty for bid-rigging and violations of hazardous waste disposal to double the amount of pecuniary gain by the offender or felony imprisonment up to three years or a combination of both in the discretion of the court.

Regarding the bid-rigging aspect of the bill, increased penalties were the recommendations of the post-audit study of the Department of Transportation in order to discourage collusion.

The Attorney General has indicated the Federal Government wishes to decrease its involvement with collusion investigation. The current state law, in effect since 1897, makes bid-rigging a misdemeanor and only a \$1,000 fine. This obviously is no deterrent.

The House Governmental Organization Committee originally increased the penalties to match Federal standards. The bill was later amended to reflect the penalties found in K.S.A. 21-4503.

Legislative Post Audit estimated that the probable rigged bids since 1980 total \$13.7 million. Officials also estimate that this has cost Kansas 6% of that total in collusion. In other words, \$822,000 is the total of pecuniary gain derived by contractors from 1980-82. If these companies had been subject to H.B. 2564, it is doubtful they would have exposed themselves to \$1.6 million in penalties and felony charges.

For this reason, I urge the approval of House Bill 2564.

Attch. 1