

Approved April 10, 1987
Date

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS

The meeting was called to order by Senator Dan Thiessen at
Chairperson

8:00 a.m./~~p.m.~~ on Friday, April 03, 1987 in room 527-S of the Capitol.

All members were present except:

Senator Paul Feleciano

Senator Joe Norvell

Senator Jack Steineger

Committee staff present:

Jerry Ann Donaldson, Research Department

Gordon Self, Revisor's Office

Marion Anzek, Committee Secretary

Conferees appearing before the committee:

Representative Arthur Douville

Representative Mike O'Neal

Bill Morrissey, Director - Workers Compensation, Department of Human Resources

Rob Hodges - Kansas Chamber of Commerce and Industry

Wayne Maichel - AFL-CIO

Representative Clinton Acheson

Dr. Ray Baker, Director - City-County Health Department of Shawnee County

Ferman Marsh, Superintendent Shawnee Heights High School

Bill Clawson, Chief of Benefits, KS Department of Human Resources

Chairman Thiessen called the meeting to order at 8:00 a.m., calling attention to HB2573.

HB2573: An Act concerning workers' compensation; relating to rehabilitation; preliminary hearings.

The following conferees were all proponents of HB2573.

Representative Douville said several people have been working on this bill over a period of several weeks, and said, he would like to thank them, as he felt they had done a tremendous job with HB2573. Representative Mike O'Neal was one of these people, and I would like to have him review the bill for you.

Representative Mike O'Neal said HB2573 is the vocational rehabilitation side of what we did with HB2086 in the House. What we have tried to do this year with the workers compensation act, is to provide a total approach, and this is what we did with the vocational rehabilitation bill. We focused attention on taking in workers who had injuries and getting them through the workers vocational rehabilitation process.

HB2573 provides an incentive to get the injured worker back to work. What we have done if define the definition of qualifications for vocational rehabilitation, and to focus on getting the individual rehabilitated so they can return to comparable work and pay. The current act simply returns the individual someplace. This is a higher standard.

Representative O'Neal reviewed the bill with the members pointing out the changes in the amendments from the House Committee. (SEE ATTACHMENT 1)

Senator Kerr asked Representative O'Neal if on line 215, should it be 36 weeks, and on line 228 should that be 36 weeks, instead of 26 weeks?

Representative O'Neal said yes, it should be 36 weeks, and he said anywhere the 26 weeks, was written out as twenty-six-weeks, it should read thirty-six weeks, except on line 244, and that should stay 26 weeks.

Bill Morrissey said the idea of drafting this concept, working with the employers, employees and the rehabilitation providers was to be accomplished by an individual in our department, and a position being created called a coordinator. Then it came up that the word coordinator was a word used in the industry, so it caused confusion, and they struck the word coordinator, and inserted, rehabilitation administrator. In doing this they gave us the duties but seemed to eliminate the implication of additional department personnel to handle those responsibilities.

The amendment would be conceptual to allow the director authority to appoint four assistant rehabilitation administrators. (SEE ATTACHMENT 2)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS

room 527-S, Statehouse, at 8:00 a.m./~~PM~~ on Friday, April 03, 1987

Rob Hodges said the Kansas Chamber of Commerce and Industry supports HB2573 for 3 primary reasons. 1st it encourages private relations in the rehabilitation process. 2nd it prioritizes rehabilitation goals, and 3rd it clarifies access to compensation funds. For those reasons we feel it is a very important part of the workers compensation act.

Wayne Maichel said the AFL-CIO also supports the bill.

Chairman Thiessen concluded the hearings on HB2573 and told the members that we had a conceptual amendment that Mr. Morrissey had recommended and also an amendment to change the 26 weeks in the bill to 36 weeks.

Senator Gordon moved to adopt the conceptual motion to allow the director, the authority to appoint four assistant rehabilitation administrators, and amend page 6, lines 215 and 228 by striking twenty-six-week, and inserting thirty-six-week, seconded by Senator Daniels. The motion carried.

Senator Gordon moved to pass the bill favorably as amended, seconded by Senator Daniels. The motion carried.

Chairman Thiessen turned attention to HB2342 calling upon Representative Clinton Acheson.

HB2342: An act concerning the employment security law; relating to disqualification for benefits. As amended by the House would amend the employment security law to disqualify school bus drivers and school nurses, hired by employers other than the educational institution from unemployment compensation between school years or terms if the individuals have a contract or a reasonable assurance of working for any educational institution for both years or terms.

Representative Acheson said HB2342 was born because of a situation that developed in Shawnee County in revised benefits to contract bus drivers who worked only nine months out of the year and school health nurses and aids who contract to work during the school year. It was brought to my attention, just prior to the session this year. The County Health Department of Shawnee County, notified us that the school nurses during the past two or three years drew unemployment, and this put a big hole in their pockets. The County Health Department has a contract with 4 school districts in Shawnee County.

Representative Acheson said he would call upon Dr. Ray Baker, director of the City-County Health Department of Shawnee County to explain some of the problems. (SEE ATTACHMENT 3)

Dr. Baker said for 18 years the Topeka-Shawnee County Health Agency and the Shawnee County suburban schools have joined forces to provide school health services. The Health Agency recruits, hires, trains and supervises the staff, and the school districts assist in planning the program and provide space. The costs are split equally between the schools and health agency. Unfortunately, this is being jeopardized by rapidly increasing unemployment compensation costs which I feel are a result of an oversight in the current law. Our school health nurses and aides, like school personnel, clearly work only 9 or 10 months per year and are assured of re-employment each fall. But, simply because they are employed by the Health Agency rather than the schools they are eligible for unemployment benefits.

The Shawnee County suburban school districts and the city and county governments all support the amendments to HB2342 which will provide an exclusion for school health personnel employed by another agency. It could save these local governments \$21,000 or more per year during these bleak fiscal times, while still preserving the virtues of a cooperative program. (SEE ATTACHMENT 4)

Mr. Ferman Marsh said he supports the amendment for HB2342. I have 225 teachers, 37 bus drivers and approximately 500 employees. All of those people are covered by law where we can assure them if their employment should fall, that they are covered under unemployment. Through some omission of the law our contract health officials are not covered, which means if our nurse leaves on the last day of school, she can draw unemployment, but the secretary can not, and this creates a problem for us.

We are not her employer. We contract with the Health Agency for health services, and it is their job to train the nurses, but they report to me, and they follow my procedures, and under my policies.

Senator Morris asked Mr. Marsh if he had thought about hiring the nurses?

Mr. Marsh said the reason he did not, is I am not a health provider, and I feel that my health program is far superior to one that could be under me. I am an educator.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS,
room 527-S, Statehouse, at 8:00 a.m./p.m. on Friday, April 03, 1987

Senator Morris told Mr. Marsh he understood his problem but it seemed to him that we not only have this problem with nurses and school bus drivers, you have it all the way through temporary employment. We have to decide who is the employer, and if that employer is an outside contractor then they are under the same rules as any other employer.

Senator Daniels asked Mr. Marsh how many claims they had last year for unemployment compensation?

Mr. Marsh said he was not sure that he had that information, but it was about \$21,000 for just this group of people for 1 year, and that is about 20 percent of our total cost on claims that we paid, and he asked the members to consider one thing, that we are offering comprehensive health services in our school district at a much reduced cost, than districts that are employing their own.

Representative Acheson said he would like to address the question by Senator Daniels. This is what they call reimbursing the account. They pay the account of withdrawal. You have before you a map, and this has drawn more magnitude than I anticipated when this bill was introduced. I thought it just applied to Shawnee County, but the map indicates it affects 107 school districts throughout the State. Also, this bill addresses the contract bus people, (SEE ATTACHMENT 5) and you have some information in front of you which is testimony in the House Committee from Joyce Lacey who contracts school buses for U.S.D. #456 with her husband, and she stated they employ, mostly housewives who just want to work part time, maybe 3 or 4 hours a day and they indicated that over the past few years they paid into this approximately \$9,000 and withdrew almost \$16,000 which left a minus balance of \$7,500 to their account. (SEE ATTACHMENT 6)

Senator Morris asked Representative Acheson if he had any assurance from the Department that this wouldn't bring us out of compliance? That it seemed to him, if you give the employer the right not to pay, and if somebody quits you are out of compliance.

Representative Acheson said this is addressed under 44-703 and 44-706 of the bill, which is the same statutes that addresses the school teachers.

Senator Daniels said I see this as gross discrimination against women.

Bill Clawson said that the problem they have with the bill "any employer" starting with line 351, page 10. Any employer would include small employers with non-profit organizations. The Federal statute does not permit our treatment of employees of certain non-profit organizations, and State and Local Government entities, differently. You cannot single out certain classes of occupations. We are requesting an amendment to change any employer line 352, line 361, and line 365 from "any employer" to a private contractor." (SEE ATTACHMENT 7)

Senator Morris moved to amend HB2342 by striking "any employer" in lines 352, 361, and 365, and inserting "a private contractor", seconded by Senator Ehrlich. The motion to amend carried.

Senator Morris moved to pass HB2342 favorably as amended, seconded by Senator Gordon. The motion carried.

Senator Daniels requested her No vote on HB2342 be recorded.

Chairman Thiessen adjourned the meeting at 9:10 a.m.

SESSION OF 1987

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2573

As Amended by House Committee of the Whole

Brief of Bill*

H.B. 2573, as amended, would change the Worker's Compensation Act as it relates to rehabilitation. Under the bill, the ability to perform work in the open labor market and to earn comparable wages designated as the average gross weekly wage the employee was earning at the time of the injury, would replace the current standard of substantial and gainful employment.

Under the bill a vocational rehabilitation evaluation could be furnished to an injured employee by ~~the employer~~, a private agency or facility, a public agency, or the employer's rehabilitation services program in a situation in which rehabilitation services are not voluntarily furnished by the employer. An evaluation report is required to contain a rehabilitation plan which shall adhere to the following priorities:

1. to return the employee to the same work for the same employer;
2. to return the employee to the same work, with modification, for the same employer;
3. to return the employee to other work, with or without modification, for the same employer;

* Bill briefs are prepared by the Legislative Research Department and do not express legislative intent.

4. to return the employee to the same work for another employer;
5. to return the employee to other work for another employer; and
6. to provide vocational rehabilitation, re-education, and training.

Within 50 days after an evaluation referral, the report would be submitted to and reviewed by the rehabilitation administrator with copies furnished to each party. Upon disagreement the administrator would be required to confer with the rehabilitation service provider, the employee, and the employer. Further elaboration of the duties and responsibilities of the rehabilitation administrator is provided.

Temporary total or temporary partial compensation ordered during the rehabilitation phase would not exceed 70 days from the date of evaluation, although a 30-day extension is possible if circumstances outside the control of the employee prevent completion of the evaluation or the rehabilitation plan.

Any vocational rehabilitation, reeducation, or training would not exceed 36 weeks unless an extension is granted by special order of the director. Maximum board, travel, and lodging expenses required for the employee would be raised from \$2,000 to \$3,500. Additional expenses of not more than \$2,000 (raised from the current \$1,000) could be allowed upon special order of the director.

Temporary total benefits, subject to a maximum of 26 weeks, would not be deducted from the maximum number of weeks available under the schedule of injuries for permanent partial disabilities.

Upon refusal by the employee to participate in rehabilitation, reeducation, or training the director may

suspend or reduce compensation with certain restrictions. The director would be required to modify an award if there is a determination that the employee is rehabilitated.

An application for a preliminary hearing could be made for any matter related to vocational rehabilitation.

K.S.A. 44-567 relating to the liability of the Workers' Compensation Fund for subsequent injuries to handicapped employees would be amended to provide that if an employer files a written notice of an employees preexisting impairment with the director, on a form approved by the director, the notice serves to establish a reservation in the mind of the employer as to whether to hire or retain the employee.

Other amendments are technical and clarifying in nature.

Background

The request for H.B. 2573 was necessitated by the anticipated ramifications of H.B. 2186.

HOUSE BILL No. 2573

By Committee on Appropriations

3-19

AN ACT concerning workers' compensation; relating to rehabilitation; preliminary hearings; amending K.S.A. 44-510g and, 44-534a, as amended by section 12 of 1987 House Bill No. 2186, and 44-567, as amended by section 15 of 1987 House Bill No. 2186, and repealing the existing sections.

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

Section 1. K.S.A. 44-510g is hereby amended to read as follows: 44-510g. (a) A primary purpose of the ~~workmen's~~ workers compensation act shall be to restore to the injured employee to ~~substantial and gainful employment~~ the ability to perform work in the open labor market and to earn comparable wages, as determined pursuant to subsection (a) of K.S.A. 44-510e and amendments thereto. To this end, the director shall appoint, subject to the approval of the secretary, a specialist in medical, physical and vocational rehabilitation, who shall be referred to as the rehabilitation administrator.

The rehabilitation administrator shall be in the classified service under the Kansas civil service act. The rehabilitation administrator shall: (1) Continuously study the problems of physical and vocational rehabilitation; (2) investigate and maintain a directory of all rehabilitation facilities, public or private, in this state, and, where such rehabilitation administrator determines necessary, in any other state; and (3) be fully knowledgeable regarding the eligibility requirements of all state, federal and other public medical, physical and vocational rehabilitation facilities and benefits. With respect to private facilities and agencies providing medical, physical and vocational rehabilitation services, including rehabilitation service programs provided directly by employers, the director shall approve as qualified such facilities, institutions, agencies, em-

The director shall appoint, subject to the approval of the secretary, four assistant rehabilitation administrators.

and the assistant administrators.

and the assistant administrators, subject to the direction of the administrator,

WILSON L. ACHESON
 REPRESENTATIVE, FIFTY SECOND DISTRICT
 5859 S.W. 22ND TERRACE
 TOPEKA, KANSAS 66614-1882



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENT
 VICE CHAIRMAN: LABOR AND INDUSTRY
 MEMBER: ENERGY AND NATURAL RESOURCES
 LOCAL GOVERNMENT

Senate Labor & Industry Committee
 Chairman: Senator Dan Thiessen
 April 3, 1987

HB 2342 disqualifies for unemployment compensation benefits bus drivers whose companies are under contract to school districts and health aid personnel employed by city county health departments with a contract to deliver health services to school districts.

This bill was requested by the Shawnee County City Health Department; this department has a contract with four unified school districts in Shawnee County to deliver health services during the nine month term.

Dr. Baker, Director of the Shawnee County Department, testified that during the past two years unemployment compensation benefits paid has escalated from about \$9,000 to more than \$20,000. This, of course, is taxpayers money.

Since hearings were held on this bill in the House Committee, I have learned that 107 USD's across the state have similar contracts with their county health departments.

You have a handout of testimony of Joyce Lacey of Melvern who with her husband has a school bus contract company in Melvern.

Mrs. Lacy has indicated more than 50 companies contract with school districts around the state, and they employ about 1,100 drivers.

Using the examples presented by Mrs. Lacey and Dr. Baker, it is quite obvious that unemployment compensation benefits being paid in these two activities could approach a quarter of a million dollars, and that this comes either directly or indirectly out of the tax payers pockets.

SENATE LABOR, INDUSTRY AND SMALL BUSINESS
 ATTACHMENT 3

4-3-87

I will appreciate your favorable consideration of HB 2342.

Presentation to Senate

April 3, 1987

I'm Dr. Ray Baker, Health Officer for Shawnee County; I'm pleased to be able to appear this morning on behalf of Section Q HB 2342.

For 18 years the Topeka-Shawnee County Health Agency and the Shawnee County suburban schools have joined forces to provide school health services. The Health Agency recruits, hires, trains and supervises the staff, and the school districts assist in planning the program and provide space. The costs are split equally between the schools and health agency. This arrangement recognizes and builds upon the strengths of both agencies: the school is an expert in education, the health agency is an expert in health. It also fulfills both the school's obligation to provide basic screening and the health agency's need to reach large numbers of children in a convenient setting to allow delivery of important preventive health services. It is a cooperative approach which is cost-effective, comprehensive and viewed very favorably by the State Department of Health and Environment as a model.

Unfortunately, that model is being jeopardized by rapidly increasing unemployment compensation costs which I feel are a result of an oversight in the current law. Our school health nurses and aides--like school personnel--clearly work only 9 or 10 months per year and are assured of reemployment each fall. But, simply because they are employed by the Health Agency rather than the schools they are eligible for unemployment benefits.

Those unemployment costs rose 27% between 1984 and 1985 and another 50% between 1985 and 1986; they are approaching 20% of the total Health Agency expenses for our share of the program. Scrutiny of these expenses reveals that although there was some rise in benefits during that period, the vast majority of the increase arose because more and more of these health agency employees became aware of their eligibility and applied.

The Shawnee County suburban school districts and the city and county governments all support the amendments to H.B. 2342 which will provide an exclusion for school health personnel employed by another agency. It could save these local governments \$21,000 or more per year during these bleak fiscal times, while still preserving the virtues of a cooperative program.

House Bill 2342

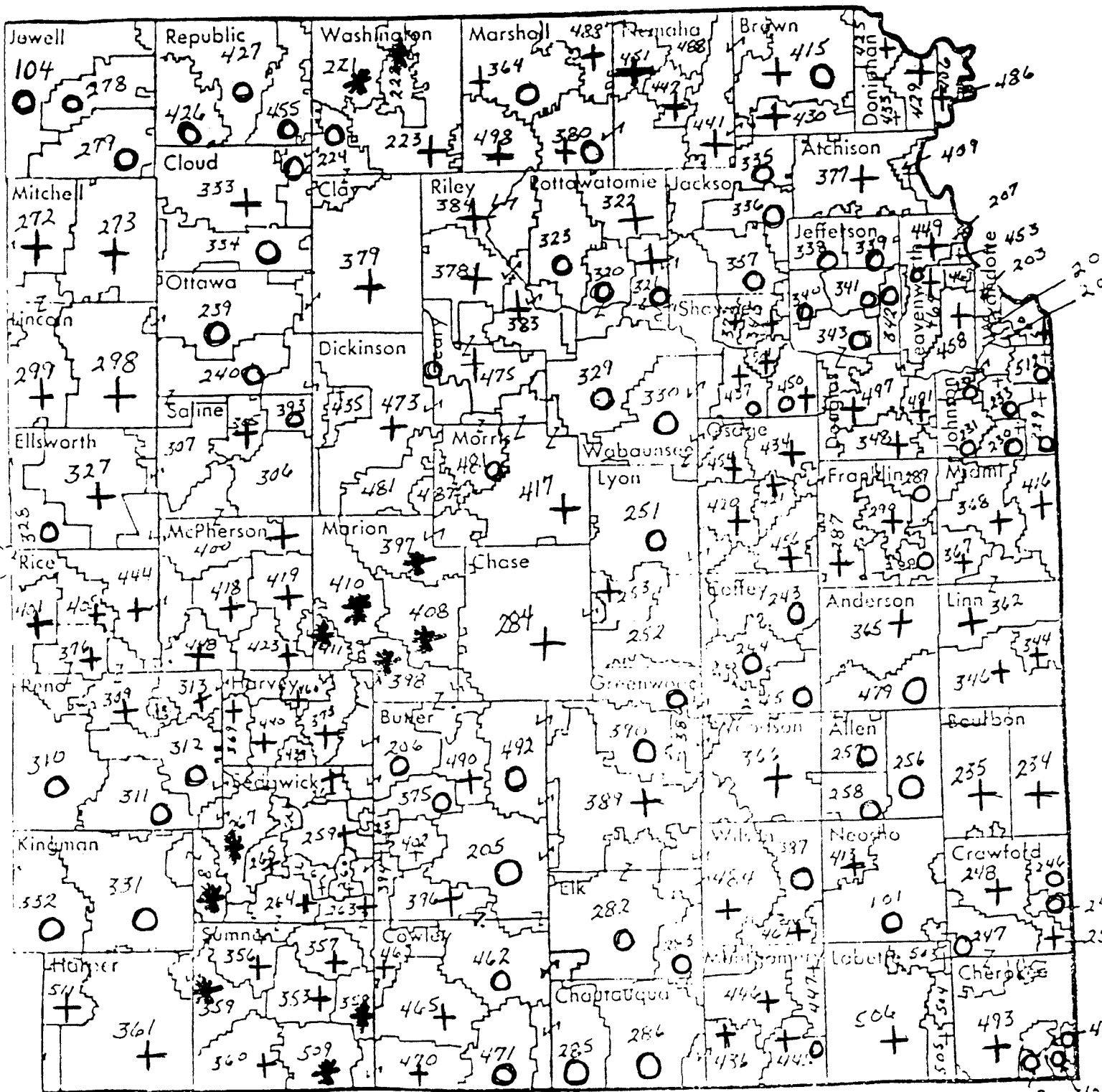
Pg. 8

Insert after Line 0273 and renumber following sections

New Section (L)

(1) For any week of unemployment on the basis of service in a substitute instructional capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703 and amendments thereto, if such week begins during the course of an academic term or year and there is reasonable assurance that such individual will perform services in that capacity for any educational institution during the remainder of that academic term or year.

— Effective July 1, 1985

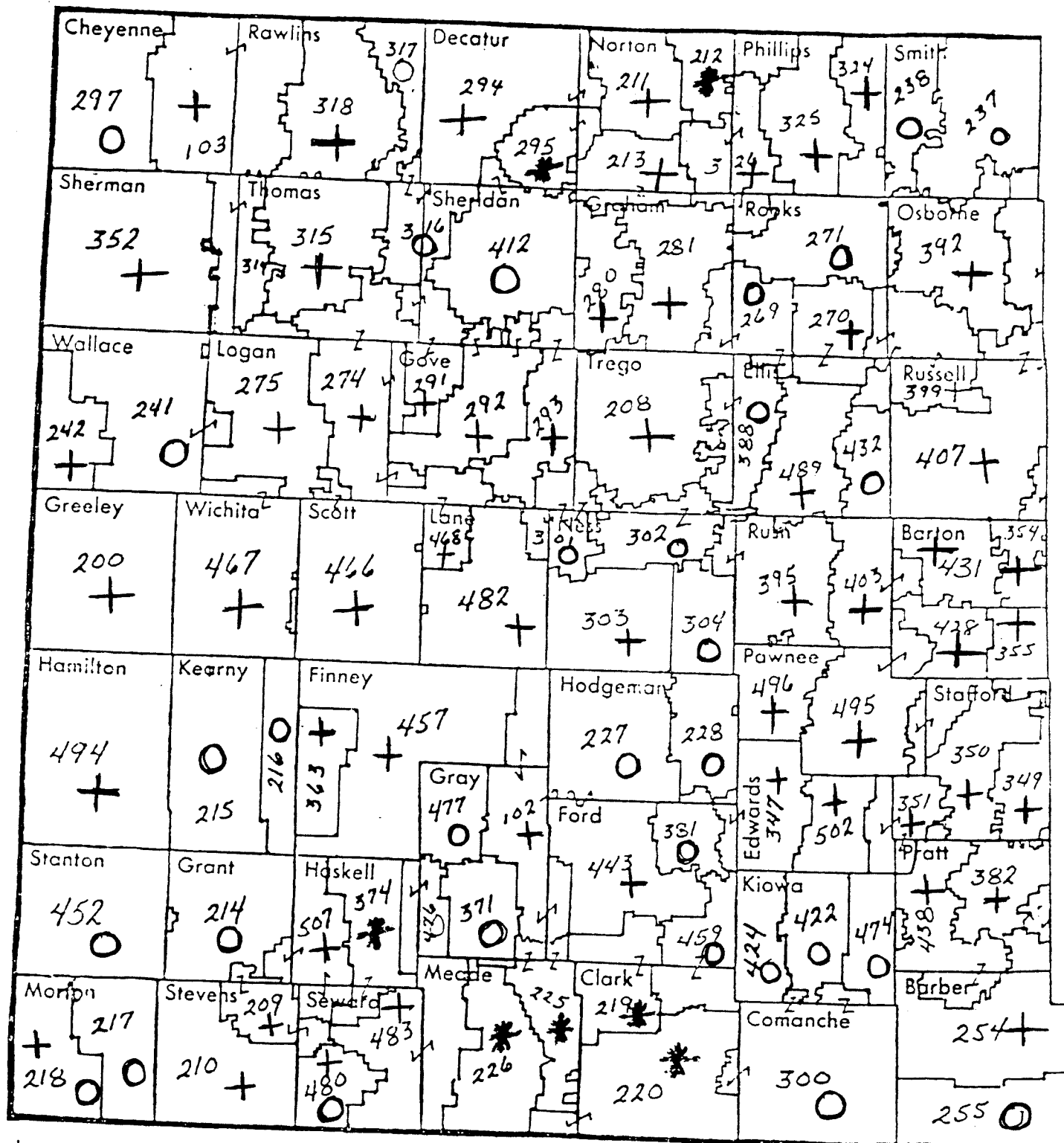


+ - School Nurse (178)

O - Contracts with County Health Departments (107)

* - No Nurse Service (19 USD's)

Kansas Unified School Districts



+ - school nurse

○ - contracts with County Health Departments

* - No Nurse Services (19 U.S.D.'s)

March 6, 1987

Labor and Industry Committee

Chairman , Rep. Arthur Douville

RE: House Bill 2342

Chairman Douville, and Members of the committee, I want to thank you for the opportunity to appear before you this morning.

I'm Joyce Lacey. My husband and I are school bus contractors for U.S.D. #456. We support House Bill 2342. This bill would disallow claims of unemployment for school bus drivers - a change that we believe definately needs to be made.

There are approximately 50-55 school bus contractors in the State of Kansas who employ 1100 bus drivers.

My husband and I are a small contractor as are most of the contractors in the state. we contract 6 routes plus activity trips. To be able to do this, we employ 4 drivers. We have employed retired people and housewives mostly. Right now all our drivers are housewives.

These are housewives who want a part-time job to earn a little extra money and still be home with there children when they are home, such as during summer and holiday vacations. They drive their route in the morning, are home all day (unless they happen to drive a kindergarten route at noon or an activity trip), and drive their route in the afternoon. This makes them getting home about the same time as their children in the afternoon and this is exactly what they want. If I offered them an 8 hour a day job, they'd turn it down. I can tell you from talking to other contractors in the state, this is the same thing we're all finding. To be honest,

-page 2-

these housewives are some of our best drivers and I wouldn't want to lose them. However, these same drivers are drawing unemployment compensation for the holiday vacations, summer vacations, and spring breaks that we are out of school.

I did some calculating on our 4 employees salaries and the hours they drive. The average salary for the year 1986 was \$3,261.04 (a monthly average of \$362.34). The average number of hours spent driving was around 400 hours per driver. These figures include regular routes plus any activity trips the drivers may have taken.

The figure I'd like for you to look at is the 400 hours. That is for the whole year of 1986! For people who work a normal 40 hour week, that is only 10 weeks. Our employees are drawing unemployment compensation for that! I don't agree with it! They know when they are hired that they are going to work only a couple of hours a day for only 9 months out of the year.

We receive an Experience Rating Notice from the Department of Human Resources every December telling us what our contribution rate to the unemployment fund will be for the following year. The notice we received in December 1986 showed "Contributions Paid In" by us for prior years and up to and including June 30, 1986, as \$8,397.62. It also showed "Benefits Charged" to our account as \$15,856.70 up to that same date. Our account balance, therefore, is a minus \$7,459.08. Hence, our contribution rate is 6.4%, the highest rate assigned to employers. This is just another expense that is hurting the small businessman. As school bus contractors, this expense is sooner or later going to have to be passed on to the school district, which in time is going to come back to the state. So its an expense that in the end is costing us all.

-page 3-

You can see what a draining effect just 4 part-time employees are having on the unemployment fund. with 1100 part-time school bus drivers in the state drawing on the fund, I can see why there has been concern about the ability of the fund to continue supplying unemployment assistance to those that really need it and really deserve it.

For these reasons, I urge you to vote in favor of House Bill 2342.

I thank you for your time and attention.

Joyce Lacey
B. & J. Garage, Inc.
Bus Contractor for U.S.D. #456
Melvern, Kansas 66510

For Consideration by Senate Labor, Industry and Small Business

0342 performed in any capacity and under any of the circumstances
0343 described in subsection (i), (j) or (k) which an individual per-
0344 formed in an educational institution while in the employ of an
0345 educational service agency. For the purposes of this subsection
0346 (o), the term "educational service agency" means a governmen-
0347 tal agency or entity which is established and operated exclu-
0348 sively for the purpose of providing such services to one or more
0349 educational institutions.

0350 (p) For any week of unemployment on the basis of service as
0351 a school bus or other motor vehicle driver employed by ~~any~~
0352 ~~employer, other than an educational institution~~ to transport
0353 pupils, students and school personnel to or from school-related
0354 functions or activities for an educational institution, as defined
0355 in subsection (v) of K.S.A. 44-703 and amendments thereto, if
0356 such week begins during the period between two successive
0357 academic years or during a similar period between two regular
0358 terms, whether or not successive, if the individual has a contract
0359 or contracts, or a reasonable assurance thereof, to perform
0360 services in any such capacity with ~~such an employer~~ for any
0361 educational institution for both such academic years or both
0362 such terms. An individual shall not be disqualified for benefits
0363 as provided in this subsection (p) for any week of unemployment
0364 on the basis of service as a bus or other motor vehicle driver
0365 employed by ~~any employer other than an educational institution~~
0366 to transport persons to or from nonschool-related functions or
0367 activities.

a private contractor

a private contractor

a private contractor

0368 ~~(q) For any week of unemployment on the basis of service as~~
0369 ~~an individual employed by any employer, other than an educa-~~
0370 ~~tional institution, to provide school health services for pupils,~~
0371 ~~students and school personnel of an educational institution, as~~
0372 ~~defined in subsection (v) of K.S.A. 44-703 and amendments~~
0373 ~~thereto, if such week begins during the period between two~~
0374 ~~successive academic years or during a similar period between~~
0375 ~~two regular terms, whether or not successive, if the individual~~
0376 ~~has a contract or contracts, or a reasonable assurance thereof, to~~
0377 ~~perform any of such services with such an employer for any~~
0378 ~~educational institution for both such academic years or both~~

0379 ~~[such terms. An individual shall not be disqualified for benefits as~~
0380 ~~provided in this subsection (q) for any week of unemployment~~
0381 ~~on the basis of service as an individual employed by any em-~~
0382 ~~ployer other than an educational institution to provide school-~~
0383 ~~health services.]~~

0384 Sec. 2. K.S.A. 44-706 is hereby repealed.

0385 Sec. 3. This act shall take effect and be in force from and
0386 after its publication in the [statute book]

Kansas register

(q) For any week of unemployment on the basis of servi
performed by the individual in any capacity and under any of the
circumstances described in subsection (i), (j), (k) or (o) which
are provided to or on behalf of an educational institution, as
defined in subsection (1) of K.S.A. 44-703 and amendments
thereto, while the individual is in the employ of an employer
which is a governmental entity or any employer described in
section 501(c)(3) of the federal internal revenue code of 1954
which is exempt from income under section 501(a) of the code.