Approved Friday, March 8, 1988
Date

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

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

1:30 ~~xxx~~/p.m. on Tuesday, March 29, 1988 in room 527-S of the Capitol.

All members were present except:
Senator Paul Feleciano
Senator David Kerr, Vice Chairman

Committee staff present:
Marion Anzek, Committee Secretary
Jerry Ann Donaldson, Research Department
Gordon Self, Revisor's Department

Conferees appearing before the committee:
Representative Darrel Webb
David Depue, Vocational Education Council
Representative Edwin Bideau
Brad Avery, General Counsel, KS. Association of Public Employees
Patricia Henshall, Staff Attorney-Office of Judicial Administration

Chairman Thiessen called the meeting to order at 1:30 p.m. and asked Jerry Ann Donaldson is she would review HB2453 for the committee.

HB2453:An Act concerning the employment security law; relating to the creation of a shared work unemployment compensation program.

Jerry Ann Donaldson said HB2453 as amended would change the Employment Security Law, by creating a voluntary shared work unemployment compensation program by which an employee whose normal weekly hours of work are reduced by at least 20%, but not more than 40%, that would allow that employee to receive benefit payments that would be equal to the employee's regular weekly benefit amount multiplied by the percentage of reduction of that individual's hours.

We did have a conferee from the Department of Human Resources come over and listen to the testimony and they, under the bill would establish the regulations to establish procedures. The effective date of the provisions of the bill would be April 1, 1989 and would expire on April 1, 1992.

Chairman Thiessen called upon Representative Darrel Webb.

Representative Webb said this bill was 1st introduced in about 1981, by Larry Johnson. Larry told me that in the last stage of the session, the committee didn't have time to look at it, and I always remembered that, and in reading an article in the paper, I remembered the bill, and came up with some information from Texas, which I have passed out to the committee (Attachment 1) called "What is Work Sharing?"

It is a voluntary plan, and if an employer runs short of work, and he thinks he may have to lay off one of them, instead of laying off 20 permanent employees, he could lay off 100 at 1 a day, and for that 1 day they could draw their unemployment compensation for a period of 26 weeks. This keeps people from being laid off permanently, and it keeps the benefits paid.

As far as the employer goes, it won't cost any more on his benefits, but he can keep his trained and experienced people for that 26 weeks, and hope his business picks up, and he can put them back to work, because at the end of 26 weeks, he has to make a decision to lay off permanently. The bill goes into effect April 1, 1989, which would give the department time to get the information out to the employers. If passed, and no one used it, it would sunset in 1992, and would go off of the books.

There are 13 state's that have it now, and Missouri is one that we are looking at now, because there are 87 employers that use the program. HB2453 passed the House by a vote 124-16.

Senator Morris moved to pass HB2453 favorably, seconded by Senator Daniels. The motion carried.

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

room 527-S, Statehouse, at 1:30 ~~a.m.~~/p.m. on Tuesday, March 29, 1988.

Chairman Thiessen turned attention to HB2515 calling upon Jerry Ann Donaldson for a review of the bill.

HB2515: An Act concerning economic development; relating to employee training and retraining; providing for a Kansas industrial training program and a Kansas industrial retraining program, prescribing certain powers, duties and functions.

Jerry Ann Donaldson reviewed the bill for committee members, and said HB2515 as amended would establish statutorily the Kansas Industrial Training program and the Kansas Industrial Retraining program. The Secretary of commerce would administer both programs, and is authorized to enter into contractural agreements with any industry or job training agency defined in the bill, and these agreements may be fixed-fee performance contracts. The Secretary is authorized to prescribe appropriate performance criteria and qualifications and other standards for job training agencies under the KIT and KIR programs.

Chairman Thiessen called upon Dr. David Depue, representing Vocational Education Council.

Dr. David Depue said we have done a study to recommend policies on the retraining program. Last year we funded a study, and a couple of the recommendations that came up, summarized in this handout (Attachment 2)which we feel are the most economic measures toward economic development.

I would encourage this committee to support this legislation favorable for passage.

After discussion by the members, Chairman Thiessen concluded hearings on HB2515 and asked for the pleasure of the committee.

Senator Daniels moved to pass HB2515 favorably, seconded by Senator Gordon. Motion to pass HB2515 favorably, carried.

Chairman Thiessen turned attention to HB2998, and asked Jerry Ann Donaldson to review the bill for the committee.

HB2998: An Act concerning the workers compensation act; relating to rate of interest imposed for failure to pay compensation prior to award.

Jerry Ann Donaldson said HB2998 changes the rate of interest in the worker's comp law on a claim for failure to pay compensation prior to an award shall be four percentage points above the discount rate the same as the interest rate on civil judgements. Under the current law it is eight percent.

Representative Bideau said the interest rate has not been raised in several years, and I do want to emphasize, the bill requires that before interest is due, carrier or employer has failed without just cause to pay compensation, prior to award. So there is not subsidy change in the law that says we will change this interest rate when we want to, it simply brings HB2998 into conformity.

HB2998 passed the House by a 121-3 vote.

Richard H. Mason, Exec. Dir. KS Trial Lawyers Assoc. turned in written testimony only. (See Attachment 3)

Chairman Thiessen asked if the committee was ready for action on HB2998?

Senator Werts moved to report HB2998 favorably for passage, seconded by Senator Morris. The motion to pass favorably carried.

Chairman Thiessen turned attention to SB644 and called upon Jerry Ann Donaldson to review SB644 for the committee.

SB644: An Act relating to public employer-employee relations; concerning application of certain laws relating thereto; amending K.S.A. 75-4321 and 75-4322.

Jerry Ann Donaldson said SB644 would amend public employer-employee relations, and on page 2, line 60 by deleting the opted out section, it is my opinion that every agency would be under the law.

Chairman Thiessen recognized Brad Avery, General Counsel, KS. Association of Public Employees.

Brad Avery said he had passed out some written testimony (Attachment 4) and he is representing Kansas Association of Public Employees, and they are in support of Senate Bill 644.

Mr. Avery said this legislation accomplishes two objectives; 1. provides full coverage for non-teacher public employees under the Public Employer, Employee Relations Act. 2. clarifies the intention of the act to provide coverage for all state employees.

Chairman Thiessen asked Mr. Avery what impact this bill would have on county governments?

Brad Avery said it would have absolutely no impact, unless a request was filed by the employees. Kansas is a right to work state, and this does not undercut that whatsoever.

Chairman Thiessen recognized Ray Siehndel, Acting Director of Labor Management, Department of Human Resources.

Ray Siehndel said he had furnished the committee, for their information only, two sheets marked A and B simply shows units of government who have elected to come under the act as it currently stands, and one showing the activity, which is the part that would be effected under the public employees. It shows all the cities and counties who now are covered, and their activity. (Attachment 5)

Chairman Thiessen recognized Patricia Henshall, Staff Attorney-Office of Judicial Administration.

Patricia Henshall said it is not clear, but it may be that SB644 is intended to extend coverage of the Public Employer-Employee Relations Act to the Legislative and Judicial Branches. If in fact this is what the language at 11.118-120 is intended to accomplish and if the committee chooses to recommend this, at least two statutes in the Act in addition to those in the bill should be amended to allow legislative and judicial authorities to appropriately deal with the representatives of any of their respective employees who might choose to organize under the Act. (See Attachment 6) for the recommended amendments.

I do not have amendatory language prepared at this time, if the committee is favorable toward the bill, I would be happy to work with the Revisor to draft language to make the amendments which are needed to make it workable.

Chairman Thiessen concluded hearings on SB644, and said he had some proposed amendments on HB3060, which we had a hearing on March 22, 1988, regarding the payments of worker's comp. benefits.

I have had word that our SB341 which passed the Senate by 40 votes, is in the House Committee and will not receive consideration, so I had these amendments proposed to amend parts of SB341 into HB3060. (Attachment 7)

Senator Werts moved to adopt the proposed amendments into HB3060, from SB341, seconded by Senator Daniels. Motion to adopt the amendments favorably, carried.

Senator Werts moved to report HB3060 favorable for passage, as amended, seconded by Senator Morris. The motion carried.

Chairman Thiessen asked if the committee members had further discussion, or were ready for action on SB644, having none, then Chairman Thiessen said this completes our work, and thanked the committee members for their work in the committee this year, and adjourned the meeting at 2:20 p.m.

GUEST LIST

COMMITTEE: SENATE LABOR, INDUSTRY AND SMALL BUSINESS DATE: Tuesday, 3-29-88

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Bill Clawson	Topeka	DHR
Ray Schuddel	"	DHR

What is Work Sharing?

Work sharing is an alternative to laying off employees, whereby a larger group of workers simply work shorter hours and are compensated for their lost work time with partial unemployment insurance benefits. Thus work sharing offers an alternative to laying off workers and enables affected workers to receive unemployment insurance payments under a broader set of conditions than those that apply to regular unemployment insurance. The program has been implemented in 13 states. This program may be viewed as a workforce stabilization program to be used during temporary periods of economic downturn that are expected to have only short-term effects on the labor needs of employers.

How Does It Work?

To illustrate how work sharing can be used, consider an employer which must temporarily make a 20% reduction in its workforce. It may, of course, opt for laying off a selected 20% of its employees. As an alternative, it may elect to reduce all workers' hours by 20% (e.g. one day per week) in lieu of layoffs. All affected workers would then be eligible for 20% of their weekly unemployment insurance benefits to compensate for the 20% reduction in hours. All workers would work 80% of their previous work hours and would, through the unemployment insurance supplement, receive more than 80% of their previous take-home pay. No worker would lose a job.

Case #1: Average weekly hours: 40

Work hours loss: 8 (20%)

Weekly UI benefit: $200.00

20% X $200.00: $40.00 (work share supplement)

Case #2: Average weekly hours: 40

Work hours loss: 16

Weekly UI benefit: $150.00

40% X $150.00: $60.00 (work share supplement)

March 29, 1988 Attachment 1
Senate Labor, Industry and Small Business

Case #3: Average weekly hours: 38

Work hours loss: 12

Weekly UI benefit: $79.00

31.5789% X $79.00: ~~$24.94~~ $24.00 (work share supplement)

What Advantages does the Program Offer Employers?

The program aids employers in that the production process runs more smoothly, costs of hiring and training new employees during economic recovery are reduced and the employer is in a position to respond more quickly to either adverse economic conditions or to economic recovery. All of these factors lend themselves to increasing productivity for the employer.

What Advantages does the Program Offer Employees?

The program allows employees to be protected from the financial burden of job loss in addition to allowing the claimant to maintain job-specific skills. In most cases, employees also are allowed to receive full benefits when participating in work sharing. Total job loss may lead to a wide variety of broader social benefits such as reduction in payments made under other transfer programs (food stamps or AFDC). The program also allows for greater government tax collections on wages. A final benefit is that the plan reduces the psychological costs of job loss.

VOCATIONAL/TECHNICAL EDUCATION AND KANSAS ECONOMIC DEVELOPMENT

A Research Report

prepared for

The Kansas Council on Vocational Education

November 9, 1987

Institute for Public Policy and Business Research
The University of Kansas

No. 128

Principal Investigator: Dr. Charles Krider
Professor of Business and
Director of Business Research

Project Director: Kathleen Bryant
Research Associate

Research Director: Don Eskew

Research Assistant: Tim Ternes

3. INNOVATIVE PROGRAMS

Recommendation 3: Establish innovative programs to facilitate the development of a highly skilled labor force that better serves the skilled-worker needs of Kansas Industry.

State funding of job training programs currently is limited to the Kansas Industrial Training Program (KIT), which sponsors customized training opportunities only for new and expanding firms. Other funds are available from the U.S. government through the Job Training Partnership Act, but a set of rigorous federal stipulations constrain the amount of JTPA monies that can be used for customized training. Both of these programs provide important training opportunities for Kansas industries, and deserve continued support. Their scope, however, limits the type and number of businesses that receive assistance, and many companies that are otherwise deserving of state support cannot meet the restrictive eligibility criteria for KIT and/or JTPA.

Recommendation 3.A: Establish the KANSAS INDUSTRIAL RETRAINING PROGRAM to provide state-sponsored customized training to Kansas businesses offering new products or instituting new production processes.

A large segment of the Kansas business community that is not currently assisted by state-sponsored training opportunities includes existing companies that have introduced new products, new production technologies, or other changes in product mix and production process that are designed to maintain a company's competitive position. While many of these companies do not expand their existing labor force to accommodate new products or technologies, most do require specialized training to upgrade current worker

skills. Kansas should be in a position to respond to the retraining needs of these companies, needs that will increasingly become the norm for businesses that function in highly competitive and rapidly changing markets.

As new technologies revolutionize the marketplace and as the number of young entrants to the labor force continues to decline, retraining programs will assume an increasingly greater role in business investment decisions. The Kansas Industrial Retraining Program (KIR), as introduced by House Bill 2515, would provide an important source of training support to firms that have introduced new products or production processes. Implementation of this program would be an important signal of the state's commitment to developing a highly skilled labor force and, ultimately, to the economic well-being of Kansas industry.

As primary providers of customized training, two-year post-secondary institutions would receive the majority of these funds. The KIR program will not only help with customized training at present, but will also act as a catalyst for initiating contact between industry and vocational education in the future. After first working together, companies will be more willing to return to an institution and invest more in training.

Recommendation 3.B: **Establish the KANSAS TRAINING CORPORATION as an organizational link between the Kansas business community and the Kansas Vocational/Technical Training System for the delivery of innovative, high-tech training programs.**

Recommendation 3.C: **Establish a special fund within the Kansas Training Corporation to provide for the continuing education of educators in all technical fields.**

An additional labor deficiency not addressed by KIT, KIR, or JTPA, but of great importance to leading-edge industries, is the short supply of specialized technical workers. The creation of a Kansas Training Corporation (KTC) is intended to counteract this shortage through a partnership arrangement between needy companies and the state's training institutions. It is also intended to identify entrepreneurs in the educational system with new ideas for training programs that meet the market test of finding companies that are willing to fund those programs.

Modelled after the Bay State Skills Corporation (see pp. 19-20), the KTC would be partially funded by the state, and would award grants on a competitive basis for training projects that have been custom-designed by an educational institution for participating companies. Awards would be contingent upon matching contributions--in the form of material resources and/or technological expertise--from the companies that benefit from training programs. Examples of "in-kind" contributions might be: internships, instructor-counselor work experience, training equipment, etc.

The advantages of the KTC are significant:

- State assistance for training programs becomes available to all businesses in Kansas that develop innovative training programs, not just to new or expanding firms, or those with new products or technologies;

- The working relationship between the business and educational communities is strengthened by a joint investment of resources in the development of human capital; and

- The process of technology transfer is changed from a one-way transmission--education to work force--to an interactive exchange: from industry to education through instructor training and from education to industry through worker training.

An additional benefit to participating businesses, moreover, is minimization of the bureaucratic constraints that can hinder a timely response by educational institutions to provide needed training programs. Interviews with Kansas business representatives indicate that these constraints do exist, and that they unnecessarily impede the competitive efforts of Kansas companies.

Industry itself provides the model for minimizing bureaucratic encumbrances with its growing number of examples of "intrapreneurship"--entrepreneurial activity that occurs within an existing company and that leads to innovative products and processes. The KTC is designed to identify and support innovators in the education system. Educators can bypass the bureaucratic constraints of other training programs and the education system if they meet the market test of locating a company that merits participation in the competition for KTC grants. In this regard, the KTC is analogous to the function and structure of K-TECH, a state-sponsored advisory panel that screens research proposals and awards state grants on a competitive basis to the best university research projects.

By encouraging innovation in the education system, the KTC can better ensure the evolution of programs and curricula that keep pace with the emergence of leading-edge technologies. Without such encouragement, it is easier, for example, for institutions to continue funding traditional programs of vocational education, such as cosmetology or auto body repair, because of steady enrollment streams. In addition, the current system offers a number of disincentives to educational administrators for the provision of timely and appropriate responses to industry training needs. For example, state funding stipulations and a complex course approval process encourage institutions to fit instruction into existing courses and curricula. These encumbrances discourage the design of customized training programs that respond more directly to a company's exact set of training needs. (See Interview Summaries: Policies, Laws, and Regulations.) The KTC is designed to overcome these unnecessary obstacles and to lead the evolution of technical training programs toward greater congruence with changing markets for skilled labor.

An additional feature of the KTC's proposed design includes provision for the training and retraining of instructors from the education system by company personnel. Industry experts are exposed earlier and more comprehensively to the leading-edge technologies that drive their respective industries; their expertise constitutes an important source of technical knowledge for the state's vocational/technical instructors. Given the rapid rate of technological change, instructors are not able to keep <u>their</u> skills and knowledge base current; their continued training is imperative if they have the responsibility for teaching the skills necessary for leading-edge technologies. Business representatives in Kansas expressed some concern over the adequacy of instructor skills. A special fund dedicated to instructor training is desirable and necessary to keep pace with technological change and business training needs.

KANSAS
TRIAL LAWYERS ASSOCIATION
112 West Sixth, Suite 311, Topeka, Kansas 66603, (913) 232-7756

March 29, 1988

TO: Members, Senate Labor, Industry and Small Business Committee

FROM: Richard H. Mason, Executive Director

SUBJECT: HB 2998

Mr. Chairman, Members of the Committee, my name is Richard Mason; I am the Executive Director of the Kansas Trial Lawyers Association. I want to thank you for allowing me to testify today, and voice KTLA's support for House Bill 2998.

HB 2998 passed the House by a vote of 121-3 and amends K.S.A. 44-512(b) which is the penalty section of the Workers Compensation Act.

The change that HB 2998 proposes, would entitle the employee to interest on compensation found to be due and unpaid at the rate of four percentage points above the discount rate as opposed to the current, fixed rate of 8%.

KTLA supports this change because it allows for consistency in the amount of interest that is charged for other awards, and it will also allow for flexibility with the economic conditions of the time, since it is linked to the discount rate.

I want to thank you again for allowing me to appear before the Committee and ask for your support for HB 2998.

March 29, 1988 Attachment 3
Senate Labor, Industry and
Small Business

TESTIMONY OF BRAD E. AVERY BEFORE THE LABOR, INDUSTRY AND SMALL BUSINESS COMMITTEE, MARCH 29, 1988

Thank you, Mr. Chairman. My name is Brad Avery and I am the General Counsel for the Kansas Association of Public Employees. I am here in support of Senate Bill 644.

This legislation accomplishes two objectives:

1) provides full coverage for (nonteacher) public employees under the Public Employer Employee Relations Act.

2) clarifies the intention of the act to provide coverage for all state employees.

The principal reason for seeking the first objective is equity. State law currently does not treat public employees alike in regard to rights of representation before their employers. Teachers, under the Professional Negotiations Act, have a nonqualified right to elect their bargaining representatives. Most other public employees do not. They have no organizational rights unless their employer recognizes the Public Employer Employee Relations Act.

Therefore, teachers have the nonqualified right to negotiate but the secretaries, clerks and maintenance people who work for the same school systems do not. I am not here to advocate that you take organizational rights away from teachers. KAPE's

position is that those rights should be distributed in the same measure to other public employees as well.

Doing so is not only the fair way to proceed, but it would correct the logical inconsistency of the law in declaring the aim of developing and maintaining harmonious relationships through the Public Employer Employee Relations Act to be a fundamental interest of the people of this state but also allowing nonstate units of governments to decide whether that interest is sufficiently fundamental for them to be governed by the law. This aspect clearly undermines the overall intent of the law.

Most legislation passed by this legislature is not optional. If citizens were given the choice of whether to obey a law, its effectiveness would be destroyed, thus harming the greater public good. Since the fundamental interest of the people of this state is so specifically declared in the preamble of this act, you as legislators must ask yourselves what justification remains for continuing to allow that interest to be harmed by making its observance discretionary?

You are not protecting local governments from binding arbitration. It's not in the act. Nor from oppressive labor contracts. All negotiated agreements must be approved by the governing body of the local unit. KAPE's answer is that there is no justification. The law should apply to everyone.

The problem the current law presents to most public

employees is far more serious than the technical flaws I have cited. KAPE has repeatedly gotten calls from public employees across the state seeking representation because they have been unfairly treated. Most of the time we have to tell them that there is little we can do unless the employer has done something illegal or a bargaining unit has been established and recognized under the Public Employer Employee Relations Act. We can offer little hope to an employee faced with an uncompromising supervisor of management that won't listen when the act has not been recognized.

The employer's basic obligations under this act are to recognize the representative of the employees and meet and confer in good faith over the conditions of employment and grievances. KAPE has represented some local units of government for 15 years, and has found it necessary to ask for a fact finder's intervention precisely once. A fact finder's conclusions is the final remedy the act provides during the negotiation process.

The fundamental rights of management to hire, fire and determine duties of its employees are well protected. Compared with collective bargaining rights given to employees in the private sector, Kansas public sector employees are given very few prerogatives under this act. But they are better than dealing with a public employer without the assistance of representation or a collective voice. KAPE, therefore, urges that the Public Employer Employee Relations Act receive full implementation.

Section two of the bill is simply designed to clarify the

current language in regard to state employees. State government has greatly expanded since the bill's inception, and thus questions have been raised regarding whether the classes of employees added after the act's passage in the early 70's should be included within its provisions. The original intent of the legislature was that all state employees should be included. The employer is defined, in part, as the "state of Kansas and its agencies." KAPE seeks to clarify the original intent of the legislature in light of this expansion by adding the language before you. Thank you, Mr. Chairman.

KANSAS
ASSOCIATION OF
PUBLIC EMPLOYEES

2/18/88

Senator Merrill Werts
Room 120-S, State Capitol
Topeka, Ks. 66612

Dear Senator ~~Werts~~ Merrill, re: Senate Bill 644

I am writing to provide material supporting Senate Bill 644, referred to the Labor, Industry and Small Businees Committee last week.

This legislation would accomplish two things:

1) provide full coverage for all public employees under the the Public Employer Employee Relations Act; and

2) clarify the intention of the act to provide coverage for all state employees.

Under current law, local (nonstate) units of government are subject to the act's provisions only if that body passes a resolution recognizing it. This discretionary recognition is in sharp contrast to the rights of another group of public employees, teachers.

Teachers are covered by the Professional Negotiations Act (PNA), under which local school boards are required to recognize the majority representative of teachers as their exclusive bargaining agent. However, the custodians who take care of school buildings or the clerks who handle the school district's paperwork cannot have a bargaining unit recognized unless the school board does so voluntarily or has declared recognition of the Public Employer Employee Relations Act.

From a policy perspective, it makes no sense to acknowledge the right of professionals with at least bachelor degrees, and more likely master's degrees, to have representation in negotiations but deprive people with high school or technical school educations of the same type of prerogatives unless their employer exercises its discretion to come under the law.

In addition, it may not be constitutional to provide differing organizational rights for public employees. Local units of

March 29, 1988 Attachment 4
Senate Labor, Industry and Small
Business-presented by Brad Avery

400 West 8th Ave. Suite #306 Topeka, Kansas 66603 913-235-0262

government are considered "subdivisions" of the state and for the legislature to decide that some groups of public employees have the right to organize and some do not (unless their employer agrees) is a deprivation of equal protection under the law.

This is especially true in light of the fact that Article 15, section 12 of the Kansas Constitution recognizes the right of people to join labor organizations. It does not stretch the meaning of this provision to suggest its corollary is that employees also have the right to obtain the most essential advantage in belonging to a labor organization, i.e representation, without having to get the consent of the employer.

Representation would remain voluntary under the proposed revision, but the option of organizing is a right given to employees. Therefore, it should be their option, not that of the employer, as to whether its privileges are put into effect.

The present structure of the Public Employer Employee Relations Act is also inconsistent with the findings made by the legislature in the preamble of the act. K.S.A. 75-4321(1), (2) and (3) state:

1) The people of this state have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees;

2) the denial by some public employers of the right of public employees to organize and the refusal by some to accept the principle and procedure of full communication between public employers and public employee organizations can lead to various forms of strife and unrest;

3) the state has a basic obligation to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government.

In the context of these findings, the present restriction on the organization of nonstate public employees makes little sense. If denial of the right to organize led, in part, to the passage of the original act, why should nonstate units of government be allowed to continue to deny these rights, a practice the Kansas Legislature found to be against public policy.

The Public Employer Employee Relations Act has worked well in the areas of the state where it has been recognized. Therefore, whatever uncertainty about its operation that led to the current restriction should end.

Section two of KAPE's proposal clarifies current policy that

brings all state employees under the act. The present language defines a "Public Employer" as the "state of Kansas and its state agencies." However, the Public Employee Relations Board recently denied jurisdiction over a petition filed by KAPE for the organization of a group of nonjudicial employees working in the Judicial Branch. Their decision was based on the rationale that since these employees were brought into the state system after the act was passed, the legislature had not contemplated their inclusion.

This ignores the fact that at least some of them were already under it, working for counties that had recognized the act. The Board's decision was based on an attorney general's opinion requested specifically because of KAPE's petition. Since the opinion has raised questions concerning the applicability of the act, it is KAPE's desire that the committee clarify the original intention of the legislature to bring all state employees under it.

Thank you for your support.

Yours truly,

Brad Avery
KAPE Counsel

KANSAS DEPARTMENT OF HUMAN RESOURCES

OFFICE OF THE SECRETARY
401 S.W. Topeka Boulevard, Topeka, Kansas 66603-3182
913-296-7474

Mike Hayden, Governor

Dennis R. Taylor, Secretary

LABOR, INDUSTRY AND SMALL BUSINESS

SUBJECT: Senate Bill 644

This Bill removes the local "options" provisions from K.S.A. 75-4321 sub (c). The Bill would subject all cities, counties and special board employees to the provision of the Public Employer-Employee Relations Act.

Currently, the Public Employer-Employee Relations Act provides that the governing body of any public employer, other than the state, must elect coverage before any provisions of the Act is controlling on the governmental entity. Attached is a list of the cities and counties that have elected to be covered by the Act.

Senate Bill 644 would have a dramatic impact on the caseload of the Public Employees Relations Board and its staff. Additional funds would be required for additional staff and support services to handle the increased caseload. Initially, the increased caseload would be from unit determinations hearings and elections for those employees desiring to organized. As these bargaining units begin to negotiation with the local units of government the caseload will expand in all work areas handled by the Public Employees Relations Board.

lm

March 29, 1988 Attachment 5.
5A and 5B
Senate Labor, Industry and
Small Business

PROFESSIONAL NEGOTIATIONS ACT (PNA)

	FY 88	FY 87	FY 86
72-Impasse	3	90	82
Fact-Finding	1	11	18
72-CAE	2	8	10
72-CAEO	0	3	1
72-URE	4	5	2
72-UD	0	0	1
72-UCA	1	2	2

CAE (Complaint Against Employer)
CAEO (Complaint Against Employee Organization)
URE (Unit Representation Election)
UD (Unit Determination)
UCA (Unit Clarification or Amendment)

PUBLIC EMPLOYEE RELATIONS BOARD (PERB)

	FY 88	FY 87	FY 86
75-CAE*	17	12	6
75-CAEO*	4	0	1
75-Impasse	9	15	12
Fact-Finding	2	3	8
75-UD*	2	2	1
75-UC	0	4	2
75-UDC	7	4	3
75-UCA*	2	7	3
75-UDE	1	1	2

UC (Unit Certification)
UDC (Unit Determination & Certification)
UDE (Unit Decertification Election)
*See explanation above

3/29/88

CURRENT

CITIES & COUNTIES UNDER THE PEERA

No. of Cities	No. of Counties
Burlington	Ellis
Chanute	Norton
Coffeyville	*Phillips
Ellis	Reno
Hays	Saline
Hutchinson	Sedgwick
Junction City	Shawnee
Kansas City	
McPherson	
Manhattan	
Osawatomie	
*Russell	
Topeka	
Wichita	
Derby	

*Units in these areas have been decertified.

Attachment 5B 3-29-88

State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 West 10th
Topeka, Kansas 66612-1507 (913) 296-2256

TESTIMONY
by Patricia Henshall, Staff Attorney
on SB 644
Senate Committee on Governmental Organization
March 29, 1988

Although it is not clear on the face of it, it may be that SB 644 is intended to extend coverage of the Public Employer-Employee Relations Act to the Legislative and Judicial Branches.

If in fact this is what the language at *ll.* 118-120 is intended to accomplish, and if the committee chooses to recommend this, at least two statutes in the Act in addition to those in the bill should be amended to allow legislative and judicial authorities to appropriately deal with the representatives of any of their respective employees who might choose to organize under the Act.

First, K.S.A. 75-4322(*h*) should be amended. The current statute provides that the Secretary of Administration appoints the head of the team representing the employer in negotiations with an employee group. Because neither Judicial nor Legislative personnel systems are under the Secretary of Administration, this power of appointment by the Secretary is clearly inappropriate if the Judicial or Legislative Branch is the public employer involved. The Judicial Administrator would be the appropriate person to exercise this appointment authority for the Judicial Branch. For the Legislative Branch, I wouldn't presume to suggest who the appropriate legislative officer would be to appoint the head of the negotiating team.

Likewise, K.S.A. 75-4330(*c*), requiring submission of each memorandum of agreement to the State Finance Council may need amending to appropriately accommodate the separation of powers among the three Branches.

The other change we would suggest at this time is in the language offered to amend the definition of "public agency" or "public employer" (*ll.* 118-120). If the intent of the amendment is to cover all three branches of government, then that intent should be explicitly stated.

I do not have amendatory language prepared at this time, but if the committee is favorable toward the bill, I would be happy to work with the Revisor to draft language to make the amendments which are needed to make it workable.

# # #

March 29, 1988 Attachment 6
Senate Labor, Industry and Small Business

As Amended by House Committee

Session of 1988

HOUSE BILL No. 3060

By Committee on Labor and Industry

2-24

AN ACT concerning the workers compensation act; relating to payment of compensation pending judicial review in certain cases and to certain credits for overpayment of compensation during pendency of judicial review; amending K.S.A. 1987 Supp. 44-556 and repealing the existing section.

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

Section 1. K.S.A. 1987 Supp. 44-556 is hereby amended to read as follows: 44-556. (a) Any action of the director pursuant to the ~~workmen's~~ *workers* compensation act shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions. Such review shall be upon questions of law and fact as presented and shown by a transcript of the evidence and proceedings as presented, had and introduced before the director. The venue of the action shall be the county where the cause of action arose or the county mutually agreed upon by all of the parties. Any such action shall have precedence over all other hearings except those of like character~~,~~ and shall be heard not later than the first term of the district court after the appeal has been perfected~~, and~~. The court shall decide all such cases within 60 days after submission. The appealing party shall notify the director when judgment is issued by the court. If judgment is not issued within 60 days of submission, the appealing party shall notify the director to that effect. The director will advise the judge to whom the case was submitted that 60 days has elapsed since submission of the case and request that a decision be rendered. If no decision is forthcoming within 30 days of such request by the director, the director will advise the supreme court justice having jurisdiction over such judge of all of the facts in regard to the review and the failure of the judge to

PROPOSED AMENDMENTS

March 29, 1988 Attachment 7
Senate Labor, Industry and Small Business

render a decision as required by this section.

(b) On any such review the district court shall have jurisdiction to grant or refuse compensation, or to increase or diminish any award of the director as justice may require. ~~No compensation~~ shall be due or payable until the expiration of the time for commencing an action for review and then the payment of past due compensation awarded by the director shall not be payable if, within such time ~~notice of appeal to the district court~~ *a petition for review,* has been filed *in accordance with the act for judicial review and civil enforcement of agency actions.* ~~The~~ **Except as otherwise provided by this section, the** right of review shall include the right to make no payments of such compensation until the review has been decided by the district court if the employer is insured for ~~workmen's~~ workers compensation liability with an insurance company authorized to do business in this state, if the employer is maintaining membership in a qualified group-funded workers' compensation pool under K.S.A. 44-581 through 44-591 and amendments thereto, or if the employer is currently approved by the director as a self-insurer and has filed a bond with the district court in accordance with K.S.A. 44-530 and amendments thereto. **In any case of a petition for review by the district court which does not include a challenge to the claimant's right to compensation, payments of compensation due in such case shall be made pursuant to the award of the director and there shall be no right to make no payments of such compensation until the review has been decided in such case by** ~~the district court.~~ Commencement of an action for review shall not stay the payment of compensation due for the ten-week period next preceding the director's decision and for the period of time after the director's decision and prior to the decision of the district court on review.

(c) If review of the decision of the district court is sought pursuant to K.S.A. 77-623 and amendments thereto, the compensation payable under the decision of the district court shall not be stayed pending such review. Review of the decision of the district court shall take precedence over other cases except cases of the same character.

application for review pursuant to K.S.A. 44-551 and amendments thereto or an

judicial

following the award of the administrative law judge

(d) If compensation has been paid to the worker by the employer or the employer's insurance carrier during the pendency of review by the district court or by appellate courts and the amount of compensation awarded by the director or the district court is reduced or totally disallowed by the decision on the appeal or review, the employer and the employer's insurance carrier, except as otherwise provided in this section, shall be reimbursed from the workers' compensation fund established in K.S.A. 44-566a and amendments thereto for all amounts of compensation so paid which are in excess of the amount of compensation that the worker is entitled to as determined by the final decision on review. The director shall determine the amount of compensation paid by the employer or insurance carrier which is to be reimbursed under this subsection, and the director shall certify to the commissioner of insurance the amount so determined. Upon receipt of such certification, the commissioner of insurance shall cause payment to be made to the employer or the employer's insurance carrier in accordance therewith.

(e) If compensation has been paid to the worker by the employer or the employer's insurance carrier during the pendency of review by the district court or by appellate courts and the amount of compensation awarded by the director or the district court is reduced by the final decision on the appeal or review, the employer or the employer's insurance carrier is entitled to a credit against compensation payments, which are payable after the effective date of such final decision on the appeal or review, equal to the amount of any compensation so paid during the pendency of such review which constitutes an overpayment of compensation under such final decision, if any. **Any such credit shall be applied first against the last compensation payment payable at the end of the period over which such compensation payments are to be paid or are payable and shall be then retrogressively applied to the next-to-last payment and to successively preceding payments until the full credit has been satisfied.**

Sec. 2. K.S.A. 1987 Supp. 44-556 is hereby repealed.

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

director, the