

Approved March 27, 1989  
Date

MINUTES OF THE HOUSE COMMITTEE ON PENSIONS, INVESTMENTS AND BENEFITS

The meeting was called to order by Rep. Vernon L. Williams at  
Chairperson

8:05 a.m./~~p.m.~~ on March 8, 1989 in room 527-S of the Capitol.

All members were present except:

Barbara Allen  
Elaine Wells - Excused  
Dorothy Flottman - Excused

Committee staff present:

Richard Ryan, Alan Conroy, Gordon Self  
Marshall Crowther  
Jack Hawn  
Mary Meier

Conferees appearing before the committee:

Hearing was opened on HB-2402.

Gary Stotts, Kansas Department of Corrections, appeared as a proponent of the bill. No written testimony was provided and Chairman Williams requested that it be provided. Mr. Stotts agreed that it would be provided forthwith.

There were no opponents to said bill.

There was no discussion, and the hearing on HB-2402 was closed.

Hearing was opened on HB-2404.

There were no proponent appearances.

Jerry Marlatt, Kansas State Council of Firefighters, spoke both as a proponent and as an opponent of this bill. No written testimony was provided.

Jerry Shelor, Fraternal Order of Police, appeared as an Opponent of the bill. He cited the many causes of the illnesses set forth in the language of the bill, protesting that the restriction concerning a disability caused by alcohol or tobacco use would be unconstitutional. His written testimony is attached and marked Attachment 1.

John Foster, Chief of Police, Lenexa, Kansas, appeared in opposition to the bill, speaking briefly. His written testimony is attached and marked Attachment 2.

James Todd, Kansas Firefighters Association, spoke briefly in opposition to the bill. No written testimony was provided.

Marshall Crowther, KPERS, spoke briefly to offer some clarifying information to the Committee.


Discussion followed.

The hearing on HB-2404 was closed.

Chairman Williams provided a copy of a balloon of HB-2403 (Attachment 3) to Committee members.

Rep. Sutter MOVED that HB-2403 be passed as amended. The MOTION was SECONDED by Rep. Shallenburger. Discussion followed and on voice vote the MOTION PASSED.

The meeting was adjourned at 8:44 a.m.

  
Representative Vernon L. Williams  
Chairman

Please PRINT Name, Address, the organization you represent, and the Number of the Bill in which you are interested. Thank you.

| NAME             | ADDRESS  | ORGANIZATION   | BILL NO. |
|------------------|----------|----------------|----------|
| Basil Covey      | Topeka   | KIRTA          |          |
| Roger Krehbiel   | Topeka   | KPOC           | 2402     |
| Gary Stott       | Topeka   | KDOC           | 2402     |
| James A. Jach    | Wilho    | KSTPA          | 2404     |
| Jerry Marlatt    | Topeka   | KSCFF          | 2404     |
| John FOSTER      | LENEVA   | POLICE         | 2404     |
| Jack Hawn        | Topeka   | KPERS          |          |
| Marshall Crantho | Lawrence | KPERS          |          |
| Donald Knight    | LAWRENCE | KSCFF          | 2404     |
| Jerry Dehn       | Topeka   | FOP            | 2404     |
| TERRY STEVENS    | TOPEKA   | CITY OF TOPEKA | 2404     |



# FRATERNAL ORDER OF POLICE

March 8, 1989

Mr. Chairman, Honorable members of this committee.

I am Jerry Shelor, lobbyist for the State Fraternal Order of Police which has over 1600 F.O.P. members.

I appear today on the behalf of the Fraternal Order of Police in opposition of House Bill 2404.

Their reasons are as follows:

1. Under present law there is no restriction concerning a "service connected" disability caused by alcohol or tobacco use. This would be new law.
2. While alcohol and tobacco are not necessarily endorsed by policemen, we certainly do not want to restrict any possible future disability benefits to policemen who are underpaid for their duties and have retirement benefits that are less advantageous than regular state employees.
3. The causes of cancer are many. Today's exposure to any number of nature's elements can over the long term produce cancers of the skin or lung.

My concern is the restrictive language under

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section 10 which states: "Service connected disability shall not mean any death or disability caused, in whole or in part, by the members use of tobacco or tobacco products or alcohol....."

This language is so restrictive that even the officer who may have quit smoking 5 years ago, and who dies or is disabled because of lung cancer, could be denied benefits because at one time he did smoke and the doctor determines his disability or death was "in part" caused by smoking or use of tobacco.

In the case of heart disease, **the** causes are many: stress, food and diet, lack of exercise, and many other causes. Should we completely deny an officer disability or death benefits because he used tobacco? I think not. It would be just as ridiculous to amend this legislation to deny an officer disability or death benefits because it was caused "in whole or part" by stress, diet, or lack of exercise.

4. The policeman and firefighter are the first called to emergency situations, whether it is a burning house, a chemical spill, or a burst gas line.

Policemen, like firefighters are often exposed to toxic chemicals, hazardous waste, lethal gas and fumes. Exposure to these dangerous situations can plant the seed of a health time-bomb inside an officer that does

not go off until years later in the form of a lung cancer as an example.

I am not a medical doctor. But I can rationalize through common sense that any officer who is exposed to hazardous chemicals, who possibly smoked at one time, and who develops lung cancer could be denied benefits. His eventual death or disability caused by chemical exposure while the doctor determines it was "in part" due to use of tobacco.

If I were a medical doctor, this legislation could place me in another lawsuit situation if I even made a determination that tobacco use caused a disability or death.

Finally, I am not aware of any similar restrictions in KPERS benefits for state employees.

Let me just ask each of you as public servants of our great state this question. Do you intend to pass new laws to deny your disability and death benefits because "in part" it was due to your use of alcohol or tobacco? Let's not set a double standard.

I appreciate your time and consideration.

Testimony of John L. Foster  
Chief of Police, Lenexa, KS  
Conferee on HB 2404

The inclusion of cancer as a presumed duty-caused, service-connected disability may be appropriate with the advent of first-responder responsibilities concerning hazardous materials. This situation is emphasized by the mandatory training imposed by the Environmental Protection Agency.

The disturbing section of this bill deals with the use of tobacco, alcohol and drugs, wherein the statute calls for a denial of service-connected disability if that disability is caused in whole or in part by the member's use of these products. The "in part" section of this statute would appear to open a Pandora's Box of interpretation and, perhaps, litigation that might well last over a protracted period of time while the experts or the courts are deciding the interpretation of the "in part" clause. In my judgement, the section relating to the use of tobacco products, alcohol or drugs should be omitted from 2404 until a more definitive amendment can be researched.

This legislation should only affect employees hired after January 1, 1990.

*House P.I.D.  
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ATTACHMENT # 2*

## HOUSE BILL No. 2403

By Committee on Pensions, Investments and Benefits

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AN ACT concerning the Kansas public employees retirement system; relating to employment after retirement; amending K.S.A. 1988 Supp. 74-4914 and repealing the existing section.

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

Section 1. K.S.A. 1988 Supp. 74-4914 is hereby amended to read as follows: 74-4914. (1) The normal retirement date for a member of the system shall be the first day of the month coinciding with or following the attainment of age 65 or, during the period commencing July 1, 1986, and ending on July 1, 1989, age 65 or age 60 with the completion of 35 years of credited service or at any age with the completion of 40 years of credited service. In no event shall a normal retirement date for a member be before six months after the entry date of the participating employer by whom such member is employed. A member may retire on the normal retirement date or on the first day of any month thereafter upon the filing with the office of the retirement system of an application in such form and manner as the board shall prescribe. Nothing herein shall prevent any person, member or retirant from being employed, appointed or elected as an employee, appointee, officer or member of the legislature. Elected officers may retire from the system on any date on or after the attainment of the normal retirement date, but no retirement benefits payable under this act shall be paid until the member has terminated such member's office.

(2) No retirant shall make contributions to the system or receive service credit for any service after the date of retirement.

(3) Any member may retire before such member's normal retirement date on the first day of any month coinciding with or following the attainment of age 60 or completion of 10 years of

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44 credited service, whichever occurs later, but in no event before six  
45 months after the entry date, upon the filing with the office of the  
46 retirement system of an application for retirement in such form and  
47 manner as the board shall prescribe.

48 (4) Any member who is an employee of an affiliating employer  
49 pursuant to K.S.A. 74-4954b and amendments thereto and has not  
50 withdrawn such member's accumulated contributions from the Kan-  
51 sas police and firemen's retirement system may retire before such  
52 member's normal retirement date on the first day of any month  
53 coinciding with or following the attainment of age 55.

54 (5) Any member may retire before such member's normal re-  
55 tirement date on the first day of any month coinciding with or  
56 following the attainment of age 55 with the completion of 10 years  
57 of credited service, upon the filing with the office of the retirement  
58 system of an application for retirement in such form and manner as  
59 the board shall prescribe.

60 (6) If a retirant who retired on or after July 1, 1988, is employed;  
61 elected or appointed in or to any position or office for which com-  
62 pensation for service is paid, in an amount equal to ~~[\$5,000]~~ or more,  
63 by a any participating employer for a period of more than 30 days  
64 in any one calendar year, such participating employer shall pay  
65 to the system, in such form and manner prescribed by the  
66 board, an amount equal to the retirement benefits made to or  
67 on behalf of such retirant, which such retirant was employed or  
68 appointed during the final two years of such retirant's participation,  
69 such retirant shall not receive any retirement benefit for any month  
70 for which such retirant serves in such position or office. Such retirant  
71 may elect to revoke ~~their~~ retirement and become an active member  
72 and make employee contributions to the system and receive service  
73 credit for any service after the date of commencement of service in  
74 such position or office by filing with the office of the retirement  
75 system a notice of such intention in such form and manner as the  
76 board prescribes within 10 days after the date of commencement of  
77 service in such position or office. Any retirant employed by a par-  
78 ticipating employer shall not make contributions nor receive addi-  
79 tional credit under such system for such service except as provided  
80 by this section. Upon request of the executive secretary of the sys-

\$6,000

in any one calendar year

such retirant's



81 tem, the secretary of revenue shall provide such information as may  
82 be needed by the executive secretary to carry out the provisions of  
83 this act. The provisions of this subsection shall not apply to retirants  
84 employed as ~~substitute teachers or~~ officers, employees, appointees  
85 or members of the legislature *or any other elected officials.*

86 Sec. 2. K.S.A. 1988 Supp. 74-4914 is hereby repealed.

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