

Approved 3-24-89  
Date

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS

The meeting was called to order by SENATOR AUGUST "GUS" BOGINA at  
Chairperson

11:10 a.m./~~PM~~ on MARCH 1 89, 1989 in room 1008-S of the Capitol.

All members were present except:  
All Present

Committee staff present:

Research Department: Diane Duffy, Kathy Porter, Alan Conroy  
Revisor: Norman Furse  
Committee Staff: Judy Bromich, Pam Parker

Conferees appearing before the committee:

INTRODUCTION OF BILLS

Senator Feleciano moved, Senator Doyen seconded, to introduce bill draft 9 RS 1173, an act concerning school districts; relating to the lease of real and personal property. The motion carried.

Senator Johnston moved, Senator Feleciano seconded, to introduce bill draft 9 RS 1160, an act relating to drivers' licenses; requiring a thumb print on license. The motion carried.

Senator Doyen moved, Senator Gaines seconded, to introduce bill draft 9 RS 0972, an act concerning the university of Kansas medical center; concerning health care employees designated by state board of regents to be in the unclassified service. The motion carried.

Senator Feleciano moved, Senator Allen seconded, to introduce bill draft 9 RS 0971, an act concerning scholarships for students enrolled in or admitted to the university of Kansas school of medicine; relating to terms of agreement and medically underserved areas. The motion carried.

Senator Gaines moved, Senator Harder seconded, to introduce bill draft 9 RS 0275, an act authorizing certain state agencies to contract with and provide financial assistance to individuals enrolled in schools of nursing in exchange for such individuals agreeing to employment by such state agencies as provided in such contracts. The motion carried.

Senator Gaines moved, Senator Kerr seconded, to introduce a bill concerning medical malpractice as the ballooned copy of HB 2052. (Attachment 1) The motion carried.

Senator Hayden moved, Senator Feleciano seconded, to introduce a bill authorizing the Kansas Securities Commissioner to affiliate with the Kansas Police and Fire Retirement System. The motion carried.

SB 67 - Appropriations for FY 1990, state board of regents and higher education institutions.

Senator Allen reviewed the Subcommittee Report for FY 1989 and FY 1990 concerning Kansas College of Technology. Senator Kerr reviewed the Subcommittee Reports for FY 1989 and FY 1990 regarding the Kansas State University Veterinary Medical Center and Kansas State University. Following discussion concerning Kansas State University, FY 1990, item three, Senator Doyen moved, Senator Feleciano seconded, to amend the Subcommittee Report regarding Kansas State University, FY 1990, item three, to add \$110,024 for the servicing of Brandeberry Practice Facility and Bramlage Coliseum and fully state fund the servicing of the sports facilities. The motion failed

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS,

room 123-S, Statehouse, at 11:10 a.m./~~PM~~ on MARCH 1, 1989

six to five on a show of hands.

Senator Winter moved, Senator Feleciano seconded, to add a proviso to SB 67 allowing, wherever applicable, expenditures from the Student Health Fee Fund for the purchase of medical malpractice liability coverage for health care providers on the medical staff and the Student Health Center at all of the Regents institutions. The motion carried.

Senator Winter reviewed the Subcommittee Report for FY 1989 and FY 1990 regarding Emporia State University. Senator Johnston reviewed the Subcommittee Report for FY 1989 and FY 1990 regarding Pittsburg State University. Senator Winter moved, Senator Johnston seconded, to amend the FY 1990 Subcommittee Report for Pittsburg State University, item number seven, to indicate more clearly that Dr. Wilson, along with the faculty and others had contributed to the improved communications and success of the University. The motion carried.

In regard to item number six, FY 1990, Pittsburg State University, Senator Johnston explained that the subcommittee had an indepth discussion with Dr. Wilson concerning the lower ratio of students per instructor in the graduate programs and Dr. Wilson pointed out that the students gain a higher level of attention from the faculty where the ratio is much larger which is typical at larger research institutions.

Senator Doyen reviewed the Subcommittee Report for FY 1990 concerning Wichita State University. Due to the fact that the Institute for Aviation Research is a Center of Excellence, and by law all funds for the Centers should go through KTEC's budget, concern was expressed about having a separate line item in the regents bill for the five unclassified FTE positions recommended for the Institute for Aviation Research. It was explained that there is some base money for the existing COE's in the Regents budgets and it is KTEC's intention that the COE's should be competing for the new money going into the COE's.

Senator Winter moved, Senator Johnston seconded, to delete, in item number one, FY 1989 Subcommittee Report concerning Wichita State University, \$150,000 for the five FTE unclassified positions recommended for the Institute for Aviation Research and appropriate that funding to the KTEC budget for Centers of Excellence.

Senator Feleciano offered a substitute motion to appropriate the \$150,000 from the FY 1989 Subcommittee Report regarding Wichita State University, item number one, and insert it in a separate line item for KTEC and earmark the money for the Institute for Aviation Research. Senator Doyen seconded the substitute motion and on a vote of seven to six, the substitute motion failed.

The original motion carried.

The meeting was adjourned.

GUEST LIST

COMMITTEE: SENATE WAYS AND MEANS

DATE: 3-1-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
MARY ELVA SIMON	TOPEKA	Lg. of Women Voters
Bill Hollenbeck	Pittsburg	PSU
John D. McKinney	Lawrence	University Daily Kansan
John Wolf	Salina	Kansas Link
Dr. William H. Wunder	Salina	KANSAS Tech
Beth (Walbin)	Topoka	AAUP
Fred Spolunne	Wichita	WISU
John Steffen	Emporia	ESU
Ken P. [unclear]	Wichita	FHSU
RICHARD HAYTER	MANHATTAN	KSU
Michael Horak	Topoke	AT
Ray Hank	Topoka	Bd of Regents
Mary Estep	Topoka	JOS
Candace Jones	Salina	LW Voters
Edie Wiley	Lawrence	LWV
Barbara Neff	Lawrence	Visitor
Janeine Cordie	Lawrence	Visitor
Phyllis Siefken	Lawrence	visitor
Chris Graves	Topoka	ASK
Mark Tallman	Topoka	ASK
Bob McNeil	"	KPP
WACD DARLDO	TOPEKA	Div. of BUDGET
Bob Kelly	Topoka	ICCA
Marilyn K. Heathouse	Colby	AAUW
Mary Poterfield	Doddland	AAUW
Ruth Burch	Switzerland	AFS
GERONIMO GOMEZ	Dominican Republic	AFS
Yvona Hernandez	Topoka	Inter
Jan Josselyn	Lawrence	KA
M. Sorokke	Topoka	AAUW

# HOUSE BILL No. 2052

By Representatives Buehler, Graeber, Harper, O'Neal and Shore

1-14

0017 AN ACT concerning medical malpractice liability actions; relat-  
0018 ing to pretrial screening panels; amending K.S.A. 1986 Supp.  
0019 65-4904 and repealing the existing section. <sup>1988</sup>

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 1986 Supp. 65-4904 is hereby amended to  
0022 read as follows: 65-4904. (a) Within 90 days after the screening  
0023 panel is commenced, such panel shall make written recommen-  
0024 dations on the issue of whether the health care provider departed  
0025 from the standard of care in a way which caused the plaintiff or  
0026 claimant damage. A concurring or dissenting member of the  
0027 screening panel may file a written concurring or dissenting  
0028 opinion. All written opinions shall be supported by corroborat-  
0029 ing references to published literature and other relevant docu-  
0030 ments.

0031 (b) The screening panel shall notify all parties when its  
0032 determination is to be handed down, and, within seven days of  
0033 its decision, shall provide a copy of its opinion and any concur-  
0034 ring or dissenting opinion to each party and each attorney of  
0035 record and to the judge of the district court or, if the district court  
0036 has more than one division, the administrative judge of such  
0037 court. The screening panel shall also provide a copy of its  
0038 opinion and any concurring or dissenting opinions, and the  
0039 reasons therefor, to the commissioner of insurance.

0040 (c) The written report of the screening panel shall be admis-  
0041 sible in any subsequent legal proceeding, and either party may  
0042 subpoena any and all members of the panel as witnesses for  
0043 examination relating to the issues at trial.

0044 (d) *If the screening panel, by unanimous vote, determines*  
0045 *that the health care provider did not depart from the standard*

0046 *of care in a way which caused the plaintiff or claimant damage,*  
0047 *the plaintiff or claimant shall be assessed court costs and*  
0048 *defendant's reasonable expenses of defending the claim, in-*  
0049 *cluding reasonable attorney fees, if at trial the defendant pre-*  
0050 *vails.*

0051 Sec. 2. K.S.A. 1986 Supp. 65-4904 is hereby repealed.

0052 Sec. 3. This act shall take effect and be in force from and  
0053 after its publication in the statute book.

on the merits of the claim. Such fees may be assessed only upon motion filed by the health care provider with written notice to all parties and the party against whom the additional fee is to be assessed shall be given notice of the motion and afforded an opportunity to be heard. Such hearing shall be conducted according to subsection (e).

(e) The court shall make written findings of facts concerning such fee award, including the specific facts and reasons on which the findings are based. In addition to other evidence the parties may present at such hearing, the court shall consider whether (1) a party has asserted a claim not justified by the facts, (2) the party has denied the truth of a factual statement in a pleading or during discovery, without a reasonable basis in fact and not in good faith, (3) to the best of the party's knowledge, information and belief formed after reasonable inquiry such claim was well grounded in fact or warranted by existing law, (4) there existed a good faith argument for the extension, modification or reversal of existing law, (5) important issues of law were presented requiring an appeal to resolve, (6) there were questions of fact the screening panel was unable to resolve, (7) such panel's report was introduced into evidence and, if introduced, was otherwise inconclusive on the issues of causation or departure from the standard of care, or (8) a claim was pursued for an improper purpose, such as to harass or to cause unnecessary delay or a needless increase in the cost of litigation.

(f) If the screening panel, by unanimous vote, determines that the health care provider departed from the standard of care in a way which caused the claimant or plaintiff damage, the health care provider may be assessed court costs and plaintiff's reasonable expenses of prosecuting the claim, including a reasonable attorney's fee, if at trial the plaintiff prevails on the merits of the claim. Such fees may be assessed only upon motion filed by the plaintiff with written notice to all parties and the party against whom the additional fee is to be assessed shall be given notice of the motion and and afforded an opportunity to be heard. Such hearing shall be conducted according to subsection (e).

ATTACHMENT I  
SWAM 3-1-89

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