

Approved April 26, 1991
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Anthony Hensley at
Chairperson

9:05 a.m. on March 22, 1991 in room 526-S of the Capitol.

All members were present except:

Rep. Douville - excused

Committee staff present:

Jim Wilson, Revisor

Jerry Donaldson, Research Assistant

Barbara Dudney, Committee Secretary

Conferees appearing before the committee:

Lisa Schwinn, Staff Attorney, Kansas Dept. of Transportation

Sid Snyder, Kansas Dept of Human Resources

The meeting was called to order at 9:05 a.m. by the chairman, Rep. Anthony Hensley.

Chairman Hensley announced that the hearing would continue on House Bill No. 2554. He introduced Lisa Schwinn, staff attorney, Kansas Department of Transportation, as an opponent to the bill.

Ms. Schwinn said that the bill was not needed because the current civil service act, K.S.A. 75-2949 (f), provided numerous safeguards for state employees. Also, she said she opposed the bill because it would change the "burden of proof" required at a civil service hearing to be placed on the state agency. Currently, this burden is placed on the employee (attachment #1).

Ms. Schwinn answered questions from several committee members.

Chairman Hensley opened the hearings on Senate Bills No. 277 and 278. He introduced Sid Snyder, Kansas Department of Human Resources, to explain the bills.

Mr. Snyder stated that the bills were needed to make technical changes in the law to provide for the transfer and acceptance of money in various special funds which are administered by the Department.

The chairman announced discussion and final action to Senate Bills No. 277 and 278. Jim Wilson, committee revisor, suggested a technical amendment of Senate Bill No. 277 by deleting the language on page 1, lines 41-43. He explained the Language is no longer needed in the Employment Security law.

Rep. Gene Amos moved to amend Senate Bill No. 277 as per the technical amendment suggested by the revisor. Rep. Sam Roper seconded the motion. Motion carried.

Rep. Don Smith moved to report Senate Bill No. 277 favorable for passage, as amended. Rep. Dick Edlund seconded the motion. Motion carried.

On Senate Bill No. 278, Rep. Amos moved to report the bill favorable for passage and that it be placed on the Consent Calendar. Rep. Garry Boston seconded the motion. Motion carried.

The chairman then announced discussion and final action on House Bills No. 2576 and 2575.

Rep. Susan Wagle moved to report House Bill No. 2576 favorable for passage. Rep. Denise Everhart seconded the motion. Motion carried.

Rep. Roper moved to report House Bill No. 2575 favorable for passage. Rep. Theo Cribbs seconded the motion. Motion carried.

The chairman entertained a motion to approve the minutes of the February 25, 26, 27, 28 and March 1, 1991 meetings. Rep. Roper moved, seconded by Rep. Darrel Webb, that the minutes of the February 25, 26, 27, 28 and March 1 meetings be approved. Motion carried.

The meeting was adjourned at 9:59 a.m. The next meeting will be March 26, 1991.

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.

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March 21, 1991

Representative Anthony Hensley
Chairperson
Labor and Industry
Statehouse
Topeka, Kansas 66612

Re: House Bill 2554

Dear Representative Hensley:

The Kansas Department of Transportation has several concerns regarding House Bill 2554, which proposes to amend K.S.A. 75-2949. There are four issues the Department wishes to address; they are as follows:

- 1) the proposed changes would alter the burden of proof required at a Civil Service Board hearing;
- 2) it would change the standard required for the agency in taking disciplinary actions and would therefore effect the agency;
- 3) the proposed amendment would create confusion and inconsistencies within the Civil Service Act, especially with regard to K.S.A. 75-2949e and 75-2949f.
- 4) the proposed amendment appears to define "good of the service," however, it is not merely a definition, it has the impacts stated above.

The Department makes the following comments for your consideration.

1) Currently, the burden of proof is stated in K.S.A. 75-2949(f). The employee has the burden of showing that the action taken by the appointing authority was not reasonable. In practice, at a Civil Service Board hearing, the agency puts on its case first. The agency must go forward with its evidence and testimony, and make a prima facie case. Then, the Board listens to evidence and testimony from the employee. Once the agency has shown the actions taken and the reasons therefore, the employee responds. KDOT submits to you that the present system is fair and equitable to the employee, while at the same time requiring the agency to show to the Board the actions taken and the reasons for them. The safeguards currently in the statutes do not need to be altered.

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2) By changing the standard of proof, there is the potential to change the balance of advocacy in a system such as civil service employment. Currently, there are many safeguards, including all rights of due process, which are afforded civil service employees. The agency already has a high standard to meet in taking and upholding disciplinary actions. It is possible that the proposed changes to a system that is currently functioning quite well, could result in a nearly impossible standard for the agency. That could result in the state maintaining in its employ, some workers who do not meet the minimum level of competency or expected conduct of public employees.

3) K.S.A. 75-2949e addresses disciplinary actions pertaining to deficiencies in work performance. The statute requires that the employee received two "Unsatisfactory" evaluations within the last 180 days. If the evaluations have not occurred, the Board will require a showing that the employee has received adequate employment counseling. This certainly affords the employee the protection that appears to be proposed in the last sentence of subsection (a)(2) of House Bill 2554, regarding a violation of agency policy or directive. Adding the proposed amendment would create confusion and possible inconsistencies with other sections of the Civil Service Act. In addition, KDOT states that the proposed amendment does not add any additional protection to employees, which is not already in the law.

K.S.A. 74-2949f addresses disciplinary actions pertaining to conduct detrimental to state service. There are examples listed in subsections (a) through (s). The proposed amendment would again create confusion and inconsistencies with the items enumerated in this statute. The confusion would result as follows: if an employee has committed an act listed in K.S.A. 75-2949f, and it was properly documented, under the present system the disciplinary procedure would follow. If the amendment was enacted, confusion would result, as to the fact that, yes, the act had been committed, but did that "substantially and directly impair the functions of the agency." In addition to adding confusion and inconsistency, this creates an even greater burden on the agency, as stated herein.

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4) House Bill 2554 appears to be a definition of "good of the service." However, as stated above, it actually would change the burden of proof for all agency disciplinary actions. It would require a higher standard of proof, that is, "clear and convincing evidence" at a quasi-judicial hearing. It would, in essence, shift the burden of proof and require a higher standard of proof. That is far beyond a mere definition. In addition, it would not be consistent with statutory provisions already present.

In conclusion, the Department of Transportation submits that there are numerous safeguards currently in the Civil Service Statutes. K.S.A. 75-2949f expressly uses adjective such as, "gross" misconduct, "gross" carelessness, "wilful" abuse, etc. There is no need for additional or greater standards. There is protection for employees, including all rights of due process. The agency already has a high standard to reach to uphold disciplinary actions. The current system works quite well, to the benefit of the State as well as individual employees.

Respectfully submitted,



Lisa E. Schwinn
Staff Attorney, on behalf of
Kansas Department of Transportation