

MINUTES OF THE House COMMITTEE ON Labor and Industry

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

9:05 a.m./~~pm~~ on March 2 1992 in room 526-S of the Capitol

All members were present except:

Rep. Carmody - excused Rep. Wagle - excused

Rep. Gomez - excused

Rep. Grant - excused

Committee staff present:

Jim Wilson - Revisor of Statutes

Jerry Donaldson - Principal Analyst

Barbara Dudney - Committee Secretary

Conferees appearing before the committee:

Jeff Buescher, representing Div. of Personnel Services, Ks. Dept. of Administration

John Collins, representing the Div. of Personnel Services, Ks. Dept. of Administration

Brad Avery, Kansas Association of Employees

Senator Marge Petty

Rep. Denise Everhart

James Wolf, state employee

Brad Avery, KAPE

Bob Holloway, state employee

Chris Barber, state employee

Mike Davis, state employee

Bruce Forbes, state employee

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

Chairman Hensley stated that the purpose of the meeting was to have public hearings on the following bills:

House Bill No. 2781, an act clarifying that the state employee drug screening program shall apply to Department of Social and Rehabilitation Services employees who work in mental health and retardation institutions.

House Bill No. 2783, an act relating to the demotion, suspension and dismissal of state employees.

House Bill No. 3117, an act prohibiting any permanent classified employee from being dismissed, demoted or suspended as a result of a state agency's leave or attendance policies that are based solely on points or demerits.

The chairman introduced Jeff Buescher, representing the Division of Personnel Services, Kansas Department of Administration, who explained and spoke in support of House Bill No. 2781 (attachment #1).

No other conferees appearing, the chairman closed the public hearing on House Bill No. 2781.

On House Bill No. 2783, John Collins, representing the Division of Personnel Services, Kansas Department of Administration, appeared in support of the bill (attachment #2) and answered questions from several members of the committee.

Brad Avery, representing the Kansas Association of Employees (KAPE), gave testimony in opposition to House Bill No. 2783, and answered questions.

Chairman Hensley closed the public hearing on House Bill No. 2783.

The chairman then introduced Rep. Denise Everhart, who explained House Bill No. 3117. She handed out written material citing examples in which a points system was being used to discipline persons employed in the Buildings and Grounds division of the Kansas Department of Administration (attachment #3). She answered questions from committee members.

State Senator Marge Petty appeared as a proponent of House Bill No. 3117. She stated that she has received numerous complaints from state employees about the points system. Senator Petty then answered questions.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,
room 526-S, Statehouse, at 9:05 a.m./~~p.m.~~ on March 2, 1992

James Wolf, a state employee, testified in favor of the bill, and answered questions.

Brad Avery, representing KAPE, told of a case in which a state employee was fired under the points system for staying home with a sick daughter.

Bob Holloway, a state employee, urged the committee to pass House Bill No. 3117.

Chris Barber, a state employee, described what he perceived to be inconsistent administration of the points system.

Mike Davis, a state employee, testified in support of the bill.

Bruce Forbes, a state employee, also appeared in favor of the bill.

The chairman announced that due to the lack of time, the opponents of House Bill No. 3117 would be heard during the committee's meeting tomorrow.

The meeting was adjourned at 9:57 a.m.

GUEST LIST

COMMITTEE: House Labor and Industry

DATE: March 2, 1992

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Robert Zburko
 Hubert Holman
 Carl Topoka
 B&G
 Topoka
 B&G
 Topoka
 B&G

NAME	ADDRESS	COMPANY/ORGANIZATION
John Himm	2068 S. W. Lane	B & G
Mike Langston	1604 N.W. 8th	B & G
Larry Large	2718 Minn.	Bldg. + Grounds
R. Lipsy	Topoka	AP
P. Higgins	" "	DOA
Mark Andrews	"	KDOR
Janice Hafertine	"	KDOT
Bob Barnum	"	SRS
TERRY J Scott	Topoka	KXP
Joseph Lynn	Topoka	B&G
TED D. AYLES	Topoka	BOARD OF REGENTS
Wayne Maikhe	Top	K AFL-CIO
Mary Petty	Topoka	Senator/Legis
Lynn Farenburg	Topoka	D/A
Christie Babe	Calondale	D/A
Jicki Summeron	Topoka	Marpoll
Tom Nungling	Topoka	
Janette Brooks	Topoka	
Joyce Nesse	Topoka	S&S - Bldg + Grounds
Mike Davis	"	"
James Wood		
Ray Large	Top	B & G
Roy Branch	"	"
Ernie Erdman Jr	Topoka KS	B & G
Bruce Forbes	Topoka	B & G

NAME.

JACK WACNON
Charles Jackson
Brad Ching

Address

Topeka
TOPEKA
" "

Co. / Organization

Legislative Intern
KAPL -
" "

Testimony To The
HOUSE LABOR AND INDUSTRY COMMITTEE

By
Jeff Buescher
Division of Personnel Services
Department of Administration

March 2, 1992
Re: HB 2781

Mr. Chairperson, members of the committee, thank you for the opportunity to appear in support of House Bill 2781. My name is Jeff Buescher. I am employed by the Division of Personnel Services, Department of Administration, as the state's drug screening program coordinator.

A revision to K.S.A. 75-4363 is necessary to clarify that applicants for positions located within the Department of Social and Rehabilitation Services' mental health and retardation facilities are subject to the provisions of the drug screening program. This would make the expansion of the drug screening program at the SRS institutions consistent with the procedures of the current drug testing program established under K.S.A. 75-4362. The current program provides for pre-employment testing of applicants and testing current employees when based upon reasonable suspicion of the use of illegal drugs.

House Bill 2781 also proposes to amend K.S.A. 75-4363 by including a statement that implementation, continuation or expansion of the program for SRS positions would be contingent upon the

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appropriation of necessary funding. This statute was passed last year, however funding was not provided. This statement is necessary to prevent a statutory requirement for testing SRS applicants and employees when funds are not available for that purpose. Drug screening includes a direct cost which must be paid to a third party vendor. Once started, testing must be done for all applicants consistently. It is not an area where costs can be cut at the expense of legal liabilities or where a program can be continued without adequate funding.

In addition, the current statute states that alcohol and drug testing of SRS positions shall be subject to the same conditions and limitations of the drug screening program established by K.S.A. 75-4362. The current program established under K.S.A. 75-4362 has no provisions for alcohol testing. This is clearly a contradiction, since the program cannot be expanded within the current limitations. In addition, there are no legal precedents for alcohol testing of direct care workers.

Testing current employees for alcohol based upon reasonable suspicion involves several procedural problems as well. I would like to address concerns associated with the possibility of implementing alcohol testing within the confines of the current drug testing program.

Our current drug screening program utilizes urinalysis testing. Urine screens are not accurate or practical for conducting employment alcohol testing. The technology is just not available. The only two types of tests for measuring alcohol in the system are blood alcohol tests and breathalyzer tests.

While breathalyzer tests are not considered as intrusive as the blood alcohol tests, there are other procedural problems associated with this type of testing. Breathalyzer alcohol tests are not practical due to the logistics involved. The current drug testing program utilizes 20 urine specimen collection sites maintained in accordance with the State's contract with the drug testing laboratory. The laboratory and collection sites are not licenced for or equipped with breathalyzer machines at these collection sites. Breathalyzer testing machines require trained operators and must be constantly recelibrated due to the sensitivity of the machines.

Breathalyzer tests results do not offer an opportunity for replication and cannot be subject to review by a Medical Review Officer as required under the current drug screening program. In addition, the accuracy levels of the test can be affected by food items, diabetes, or regurgitated alcohol in the mouth.

Blood alcohol testing by public employers has been held by the courts as far too invasive on privacy rights of individual employees. To be defensible, there must be an overriding concern for public safety to justify infringement on individual's privacy rights. The courts have determined that testing blood samples is reasonable only if performed under stringently limited conditions and if the collection constitutes only a minor intrusion into an individual's body (such as when performed in conjunction with a mandatory pre-employment physical).

There would be additional problems with alcohol testing due to the fact that alcohol is a legal substance and the current program addresses only illegal drugs. The State of Kansas has disciplinary procedures set out in K.S.A. 75-2949f to address the workplace use or performance affects of alcohol which is a legal substance. The state has an employee assistance program to help employees with alcohol related problems.

Based on the logistic and legal problems I have outlined, it is proposed that the reference to alcohol testing be removed from K.S.A. 75-4363.

Thank you for allowing me this time. I would be happy to respond to any questions you might have.

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**Testimony To The
HOUSE LABOR AND INDUSTRY COMMITTEE**

**By
John Collins
Division of Personnel Services
Department of Administration**

**March 2, 1992
Re: HB 2783**

Mr. Chairperson, members of the committee, thank you for this opportunity to appear in support of House Bill 2783. My name is John Collins. I am employed by the Division of Personnel Services, Department of Administration. Under the Kansas Civil Service Act, the director of the Division of Personnel Services acts as the secretary of the State Civil Service Board or may designate a person to serve as the secretary. The director has appointed me as the designated secretary of the board.

The bill before you proposes to amend K.S.A. 75-2949e and K.S.A. 75-2949f which relate to dismissal, demotion or suspension of permanent classified employees based on performance or personal conduct.

Currently, the statute requires that two evaluations be given within 180 days to dismiss, demote or suspend an employee for deficiencies in work performance.

House Bill 2783 would expand that time period to one year. This change is intended to facilitate the process of counseling an

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employee and improving their job performance. Under certain circumstances the 180 days is not sufficient time to provide for counseling or documenting charges in performance. This can be detrimental to employees who may be terminated when there really was not adequate time for counseling or training to improve their performance.

Under the Kansas Civil Service Act, you have provided for two general categories which constitute a basis for discipline, personal conduct and deficiencies in work performance. Personal conduct is set out in K.S.A. 75-2949f and work performance is addressed in K.S.A. 75-2949e. House Bill 2783 would move the basis for discipline which address flagrant abuse of leave, habitual absenteeism and harmonious relationships with co-workers, from K.S.A. 75-2949e to K.S.A. 75-2949f. These problems are more appropriately considered a basis for discipline related to personal conduct rather than to deficiencies in work performance. This would help alleviate confusion on the part of employees and agencies when confronting disciplinary issues and processes.

A committee of state agency personnel administrators was appointed to review the statewide work performance evaluation system. These two changes were recommended as a result of the HB study. This change is beneficial to employees and will facilitate

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John Collins
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the performance evaluation process, and if necessary the disciplinary process.

Thank you for allowing me this time. I would be happy to answer any questions you may have.

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Subject: Memorandum "Attendance Policy-Advisory Letters"
Dated 9-11-1991

This memorandum raises several questions. We would like some guidance from you that we may better understand how it will affect our jobs. Since an employee of Bldgs. and Grnds. filed a grievance over this sick leave policy pertaining to the use of family sick leave was told, "it was his wife's duty to stay home and care for their sick children" and "he was the only one who had complained". We each employees of Bldgs. and Grnds. are complaining and are quite naturally concerned for our jobs. This policy seems to have been designed so that employees may be fired at will with no regard to past service to the State of Kansas.

One problem we are having is it's validity. When we were hired by the State of Kansas one of the major job benefits offered us was "**earning one day a month sick leave**". This had a large impact on our decisions to accept employment with the state. The use of this benefit was not to our knowledge to be considered a reason for dismissal, as peoples health varies, one to another, so will vary their need to use earned sick leave. How can an employee be accessed a point, which could lead to dismissal, unless the sick leave is unauthorized? How can the sick leave be unauthorized if said person has accumulated sick leave available to them?

The use of sick leave in conjunction with days off is another case in point. The fact that a person gets sick on a Monday or Friday should not be grounds for disciplinary action. No one can decide when they are going to be ill. Illnesses **can** and **do** occur on Mondays and Fridays as well as any other day of the week. We're not sure we would want a fellow employee here passing an illness to us because he feared to take a sick leave day on Monday or Friday!

The state approved health plan was devised to keep employees healthy thus cutting health care cost. The policy used by Bldgs. and Grnds. is in direct conflict with this plan. We are encouraged by our health plan to use the emergency room as little as possible, yet following the directives of this memorandum we will be forced to use the emergency rooms quite often. Few of us can get a doctors appointment the day we are taken ill. A week to three weeks is not uncommon. To fulfill this policy we must either go to the emergency room or stay off work until we get to see the doctor so we can provide documentation. Neither of these seem very realistic to us. They do however seem unreasonable.

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There is another problem also. Employees will want to use sick leave in the approved manner to receive authorization. How can they do it? Authorization is only given prior to sick leave use, when an employee applies for sick leave for a doctors appointment in advance. Generally employees won't know if their leave is going to be approved until after the fact. Employees won't know until they have recovered and returned to work whether or not they are going to be **approved or punished** for their illness. This policy will cost the State of Kansas and its employees both a great deal of money. Morale, which has been declining in Bldgs. and Grnds. for some time now will diminish even more.

We don't feel that stripping state employees of this part of their monthly compensation will solve the State's tax problems. It will in fact, in the long run, cost the State it's most valuable asset, it's **CAREER EMPLOYEES!** Let us work together to improve this situation which is so vital to us all. We also understand that our group are the **only** state employees with this policy. Why are we being descriminated against by being punished for using earned sick leave.

We the undersigned have each read and helped prepare this letter. We have freely signed and wholly agree with it's content.

Henry C Andrews

Stephen Lyman

James E. Siedel

Charles Newsham

Ray Long

Phillip D. Baudley

Christopher Baker

Bill Hale

[REDACTED]

Chester Parky

Ronald B. Jinder

Jameson Weyl

Ray Bunch

Francis Moran

Lynn V. Havenkamp

Mark W. Seim

John Hold

Robert L. Edwards

Donald O. Lawson

Larry Luge

Jack Heim

Russell Kaye

Richard Newell

Mike Langston

Sam Mesbitt

Donald H. [unclear]

Donald H. [unclear]

Ed [unclear]

Richard Tolson

Francis J. ...
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Earned Sick Leave Policy

Cyril Stang

John Gadsen

Stanley L. Stanley

Tony Tinoco

James Brown

Charles Sandmeyer

M...

is Gorkel

Paul W. Wilhelm

Dee Page

Dan Schultz

D. Pritchett

Mr. J. Kisey

Jim Kent

John Warner

James Smith

Neal Starr

Robert ...

Jim Wright

Kevin Dreher

Stirling Brooks

Wayne Klein

Lorby Burgess

Carl C. Martin

Bruce Forbes

Joe Bruce

James Armstrong

Walter Diller

Wyn's ...

Ronald ...

Mary Wagner

Jimmy Lane