

Approved: 3/29/95
Date

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Chairperson Al Ramirez at 1:30 p.m. on March 27, 1995 in Room 531-N of the Capitol.

All members were present except:

Committee staff present: Susan Wiegers, Legislative Research Department
Fred Carman, Revisor of Statutes
Jacqueline Breymeyer, Committee Secretary

Conferees appearing before the committee: Brandon L. Myers, Chief Legal Counsel,
Kansas Human Rights Commission
Sharon Huffman, Commission on Disability Concerns
Robert G. Lay, Assistant Director,
Kansas Human Rights Commission
Kirk W. Lowry, Palmer & Lowry
Troy Scroggins, former Director, Kansas
Kansas Human Rights Commission
K.C. Groves, NAACP

Others attending: See attached list

Chairman Ramirez called the meeting to order.

SB 376--Kansas act against discrimination; authorizing dismissal of certain complaints filed

The Chairman called on Fred Carman, Revisor to go explain Substitute for Senate Bill 376. Mr. Carman distributed copies of the substitute bill and gave a briefing on the bill. He stated that the bill had been drafted by Mary Torrance of the Revisor's Office and due to miscommunication, a synopsis of the requested amendments, rather than the specific amendment drafts provided by KHRC were drafted. After receiving the more specific drafts, Mr. Carman incorporated them into the substitute bill. He stated that he had distributed copies of the substitute bill to the Commission and to the Chairman.

Brandon L. Myers, Kansas Human Rights Commission, spoke as a proponent of the substitute bill and distributed copies of his testimony. (Attachment 1) Mr. Myers stated that the basis of this bill is that this is a component of a plan put forth to the Senate Ways and Means committee to deal with the continuing backlog problems and investigative delays due to the increase in complaints filed within the last few years. At this time there are approximately 2600 open cases. Investigation of these complaints could be as long as 16 to 18 months after they are filed. Mr. Myers related that the House had recommended cutting 23 of the 44 person staff, including 16 of the 21 investigators. This is basically why the bill has been introduced so late in that it is in reaction to what the House has attempted. The Commission coordinated a plan with the Senate Ways and Means Committee and subcommittee to address the problem.

One of the committee stated to Mr. Myers that he was horrified to think that the House's solution to the backlog problem was to gut the agency.

Mr. Myers stated the purposed legislation will allow complainants an earlier right to file their cases in court than now exists. The extensive backlog means that a complaint may not be investigated for two years after it is filed. If at that time it is found that a particular case has no probable cause, the complainant has the right to file under Kansas law in the state district court. The bill will allow those who feel the system is taking too long the right to take the case to court as they might do later anyway. This should alleviate the caseload. A case must have been pending with the Commission for at least 300 days, and does provide an opportunity for the administrative system to resolve the matter without the requirement of taking it to the court system. The bill would allow cases filed after July 1, 1996 to be dismissed at the complainant's request, or at the discretion of the Commission if it is not dealt with within a 300- day period. The July 1, 1996 date was chosen to phase in the approach and to provide notice of the changed procedure, as well as to provide time to process cases filed under the current situation. Agency strategies entail continuing staff training, laptop computers, and the upgrading of telecommunications for appropriate service to those who seek the agency's services.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, Room 531-N Statehouse, at 1:30 p.m. on March 27, 1995.

One of the committee stated that he would like to see some information as to the number of cases being heard on the basis of the number of people employed.

The comment was made that one of the concerns is with only a few days left, if the bill gets through the Senate, what will happen to it in the House.

The response made by the agency was that they understand the problem, but the effort has to be made. The plan may meet with some favor in the House. The agency has spoken with several key people in the House and will meet with others next week.

Mr. Myers was asked if the complaints are handled in a first in first out basis. He stated that the cases are assigned in the order in which they are received. Housing is dealt with a little differently because in many cases the agency is dealing with people who have no shelter. It may also not be first in first out with some such situation as a life-threatening illness.

Sharon Huffman, Commission on Disability Concerns, presented testimony in support of the bill. (Attachment 2) Her testimony stated that people with disabilities in Kansas have been filing complaints based on disability with the Kansas Human Rights Commission with increasing frequency. In 1994, for the third consecutive year, employment complaints due to disability were the second highest cited by complaints. By allowing the Commission to dismiss claims earlier than current law permits, individuals will be given the opportunity to pursue their case in court and return to full independence faster. Ms. Huffman stated that anything that can be done to speed up the process will be of benefit to these people.

Robert Lay, Human Rights Commission, stated that they have people frequently withdraw their complaints, but that does not give them the opportunity to go into district court because that does not exhaust the administrative remedy. What this bill says statutorily is that if a person chooses to voluntarily withdraw his/her complaint, that will be considered as exhausting the administrative remedy. Therefore the person does not have to file a petition for review and reconsideration and go through that type of process. Even it is wasn't for the budget being in question this year, this would be a good amendment even though it wasn't a part of the plan. There has been a 70% increase in complaints and a 12.5% increase in staff. For 1995 the agency carefully considered asking for additional staff. If the agency doesn't let the Legislature know that it needs more people, the agency won't get more people. This year the agency asked for 8 people. When they went before the House subcommittee, the agency made its presentation and thoughtfully answered all the questions that were asked and provided all the information asked for. The agency came out of the subcommittee losing 23 positions. The agency was told by various key people that there would be no new FTE positions this year. They were told that they must deal with the problem with what they have. After the House subcommittee took that action, the agency got together and came up with a plan that they call the strategic plan for 1995, 1996, 1997 and 1998. What the agency decided to do was to find ways to address the workload with the people the agency has by refining reports and investigative summaries, adding voice mail to free up some of the secretaries, and ask for lap top computers for the agency investigators to free them up to do more investigations. What the agency has come up with is a plan to increase productivity within the agency. With a little bit more money for technology, over a period of two years the agency should be able to get its backlog problem under control. This part of the legislation today is part of the whole plan.

Kirk Lowry, attorney, appeared as a neutral conferee. He stated that over half his practice is in civil rights work and employment law. He voiced concern with a particular section of the bill, stating that all other sections of the bill allow for complaints to be dismissed if the complainant agrees or requests except for the one particular section. Mr. Lowry was interrupted and told the committee was working from the substitute bill and he was give a copy of that bill. After looking through the bill, he stated the problem was still the same and that was the problems with the interrelationship between Title VII and the Kansas Act. If the case is dismissed and the person doesn't know about it, nor perceive under Title VII that they have to have a right to sue letter, the person won't know what's going on with their complaint. If it dismissed without their knowledge or at their request, it might cause a lot of problems with people wanting to go not only to state court, but federal court under Title VII. They have to file with the Kansas Human Rights Commission no matter what court is gone to. If the person is not aware of his case being dismissed, there may be some statute of limitations problems. This is his only problem with the bill. He would like to see language provided in the bill that notice would have to be provided to the individual or that it can only be done with their consent. The commission is good about this and would probably do it, but it is not in the bill. If a mistake is made because of the number of the load they do not have a duty to do it; if they did have that duty it would probably preserve their rights under federal exhaustion.

Upon being asked by the Commission had any problem with that, they responded they did not.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, Room 531-N
Statehouse, at 1:30 p.m. on March 27, 1995.

The Revisor stated that the two attorneys should get together and decide what language they want in the bill so it could be moved if that is the committee's wish.

While the attorneys were conferring, the Chairman called on the next conferee.

Troy Scroggins, addressed the bill. Mr. Scroggins was the former director of the Kansas Civil Rights Commission, now the Kansas Human Rights Commission. One of the issues of primary concern to him is the backlog of cases. It is a monster that is always there and it is very difficult to deal with. With respect to the bill, if the attorneys' concerns are addressed, this should adequately preserve the person's right to adjudication of his/her case. He mentioned the comments of one of the committee who spoke to the serious concern of whether or not the public's interest was being served when the agency doesn't address or provide due process. He also mentioned the bulk of cases concerned are employment discrimination cases.

K. C. Groves, NAACP, spoke of the technical ramifications of the bill and stated he was opposed to scrapping anyone's complaint after 300 days. He will look over the substitute bill and write his conclusions.

The Revisor, after conferring with the attorneys, read the language they had come up with. On page 4, after the end of the first sentence, "This commission shall mail written notice to all parties of dismissal of complaint within five days of dismissal." This language would also pertain to a similar section on page 6 of the substitute bill.

Senator Papay moved to amend **SB 376** with the new language provided by the attorneys. Senator Lee gave a second to the motion. The motion carried.

Senator Papay moved to pass **SB 376** out favorably as amended. Senator Lee gave a second to the motion. The motion carried.

The meeting was adjourned.

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TESTIMONY OF BRANDON L. MYERS,
CHIEF LEGAL COUNSEL, KANSAS HUMAN RIGHTS COMMISSION,
MARCH 28, 1995, REGARDING S.B. 376
BEFORE THE SENATE GOVERNMENTAL ORGANIZATION COMMITTEE

The Commission supports adoption of a substitute S.B. 376. Request is hereby made that the substitution be authorized by this Committee. A draft of the proposed substitute has been prepared by the Revisor's office and is attached hereto.

The Kansas Human Rights Commission is the State agency which administers and enforces the Kansas Act Against Discrimination ("KAAD") and the Kansas Age Discrimination in Employment Act ("KADEA"). (K.S.A. 44-1001, et seq. and 44-1111, et seq.) The Kansas Supreme Court has held that a person who believes they have been discriminated against in employment or KAAD-covered public accommodations may file a direct tort action in State District Court based upon the authority of these statutes only after they have exhausted their administrative remedies under those laws by filing a complaint with the KHRC and having had the complaint closed without a remedy. (Such as by the Commission investigating the complaint and finding no probable cause, or closing the case for other authorized reasons, without having a public hearing, settlement or other type of remedy/recovery). (See Van Scoyk v. St. Mary's Assumption Parochial School, 224 Kan. 304 (1978)). The Court has held that there is an overall three-year statute of limitations in which to file such a court case, but that period is "tolled" during the time the complaint is pending before the KHRC. (See Wagher v. Guy's Foods, Inc., #68,980 (1994)). [NOTE: The provisions of the KAAD prohibiting discriminatory housing practices were amended in 1992 to adopt options for court-filing which are in line with similar procedures existing under the Federal Fair Housing Act, and are not affected by the above-cited court cases or this proposed bill].

KHRC has had a tremendous increase in complaints filed within the last few years, which has resulted in a large backlog of complaints awaiting investigation. Due to that workload investigation of complaints filed with KHRC currently cannot begin until 16-18 months after they are filed (unless the parties choose to voluntarily participate in a Preliminary Investigative Conference (PIC) and the matter is mediated in that process). This delay and backlog is predicted to increase.

As a means of dealing with this continuing problem, and in recognition of the Legislature's mandate to the agency to innovatively deal with the challenge without adding new FTEs (the House actually recommended cutting 23 of our 44 person staff, including 16 of our 21 investigators), KHRC staff coordinated a multifaceted plan with the Senate Ways and Means Committee and subcommittee to address the problem. The request for this statutory amendment is one important component of the plan. (Attached hereto is KHRC's presentation to the subcommittee and a

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Attachment 1
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copy of the subcommittee's report which was adopted by the full committee, which authorized the amendment). Due to perhaps late-session miscommunication, the information provided to the Revisor's office to put together the requested amendment was basically just the synopsis of the requested amendments contained in the subcommittee report, rather than the specific amendment drafts provided by KHRC. After receiving the more specific drafts, the Revisor's office was able to draw the current drafts which need to be substituted.

The purpose of this proposed legislation is to allow complainants an earlier right to file their case in court than now exists. The extensive backlog means that a complaint may not be finally investigated for 2 years after it is filed. If it is at that time found to be no probable cause, the complainant has the right to file under Kansas law in State District Court. The bill would allow those who feel the administrative system is taking too long the right to take the case to court as they might do later anyway. This will have the effect of reducing the investigative workload of the Commission. However, since the case must have been pending with the Commission for at least 300 days, it does provide a reasonable opportunity for the administrative system to resolve the matter without the requirement of taking it to the court system. As a result of the mix of resources and approaches contained in the plan authorized by the Senate Ways and Means Committee, it is projected that by July 1, 1996 the backlog of cases and delay in investigation will have been significantly reduced. The bill would allow cases filed after that time to be dismissed at the request of the complainant, or at the discretion of the Commission if it is not reasonably able to deal with the case in a timely fashion (within a 300-day period). It is hoped that we will eventually deal with all cases within that 300-day period (which compares favorably with backlogs of other state and federal agencies and courts which deal with similar controversies), unless the case proceeds through subsequent conciliation, public hearing or litigation proceedings.

The date of July 1, 1996 was chosen in order to phase in this approach, and in order to provide notice of the changed procedure, as well as to provide time to process those cases filed under the current situation with an understanding of the backlog and processing delays. We did not think it legally appropriate to summarily change the standards as to those complaints.

Leaving the Commission the discretion as to closure on its own initiative rather than mandating closure after 300 days assures that a party will not be rewarded with a case closure merely because they have delayed the investigation, and provides for circumstances such as where a subpoena enforcement action must be litigated before the investigation can be completed. It also allows us the option of reviewing information from cases first-

filed and first-investigated by EEOC in which EEOC has taken more time to complete their processing of the case.

The 300-day period still allows the administrative system a reasonable opportunity to deal with the matter, and does not disrupt existing caselaw from the Kansas Supreme Court which holds that these statutes require exhaustion of administrative remedies with KHRC before filing in court. Also, since some cases may be filed not only with KHRC under State law, but also with the Federal EEOC under Federal law, the 300-day standard seems appropriate because if a case is filed in a state such as Kansas which has a similar law, the 180-day limitation period in which to file a complaint with EEOC is expanded to 300 days. While as a practical matter most complainants wishing to file with both agencies usually accomplish the filings almost simultaneously, it nevertheless seems incongruous to allow dismissal of the KHRC complaint potentially before it need even be filed with our Federal counterpart.

The substitute draft also is designed to clarify three other technical legal points. It states that a complaint dismissal under these provisions exhausts all administrative remedies (thereby alleviating the argument that such a closure was merely a withdrawal of the complaint by the complainant and insufficient to satisfy exhaustion of administrative remedies under the statutes). Secondly, it clarifies that there is no requirement to file a petition for reconsideration with the Commission in order to exhaust all the required administrative remedies. (The case of Simmons v. Vliets Farmers Cooperative Association, 19 Kan. App. 2d 1 (1994), holds that certain complaint dismissals by KHRC require the filing of such a document as though the complainant intended to appeal the dismissal to state district court). Thirdly, the draft clarifies that closures under these provisions are not actions of the Commission that can be appealed to district court. (This provision is similar to K.S.A. 44-1044's provisions which state that Commission decisions of no probable cause are not appealable).

Lastly, the draft contains amendments to both the KAAD and KADEA. These are separate statutes. Although KADEA provides that processing of age discrimination complaints shall be in the manner provided by the KAAD, those KADEA provisions were adopted several years ago. To avoid the potential argument or confusion over which procedural version of the KAAD was adopted for processing KADEA complaints (the one current when the KADEA provisions were adopted versus an amended version should the current proposal pass), it is suggested that comparable procedural amendments be made in both the KAAD and KADEA per the substitute draft.

In summary, we request passage of the substitute draft. We believe it to be an important component of our plan to deal with the perpetual problem of investigative delay and backlog without dismantling the administrative system for processing complaints.

It is part of a recognition of the limits of the administrative system to efficaciously deal with these complaints and balances the rights of the parties to have the matter dealt with in whichever forum (administrative or court) that is the most expeditious. We are aware of a number of cases where complainants wish to proceed to court, but are experiencing delay in the backlog; we cannot summarily close those cases under our existing statutory or regulatory authority. Despite the backlog and delay, in many other instances the parties wish to fully utilize the administrative process, and this proposal accommodates that. This bill, if adopted, might prompt some earlier filings of cases in court, but it does not create a new burden upon the courts since the cases likely would be filed there later anyway. We believe that the legislation balances the various interests involved, and will help effectuate the goal of expediting complaint processing and eventual reduction of investigative delay and backlog. We urge the Committee's support of the proposed substitute bill.

cc: Michael J. Brungardt, Executive Director
Robert Lay, Assistant Director

BILL GRAVES, GOVERNOR
STATE OF KANSAS

ALYCE HAYES BROWN, Chairperson
TOPEKA

CORBIN R. BENHAM, Vice-Chairperson
MULVANE

PHILLIP E. DeLaTORRE
LAWRENCE

ROBERT W. MIKESIC
LAWRENCE

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FIELD SUPERVISOR

LINDA L. AUWARTER
OFFICE MANAGER

March 8, 1995

Senators William R. Brady and Steve Morris
Senate Ways and Means Committee
State Capitol Building
Topeka, Kansas 66612

Dear Senators Brady and Morris:

We thank you for the opportunity to meet with you again to discuss the budget for FY 96 for the Kansas Human Rights Commission. At our first meeting, you recall, we presented our FY 96 budget request which included adding (8) new positions to address the expanded work load, which we feel was created by the 1991 and 1992 amendments to the Kansas Act Against Discrimination (KAAD). Also, at the conclusion of our last meeting, you requested an estimate of the costs of the type of computer equipment that would be useful in improving our performance and efficiency.

In view of your request and recognizing the usefulness of the new Kansas Quality Management (KQM) principles, and also the pressures to limit the size of state government, we have developed a comprehensive 3-year Strategic Plan for addressing the agency's total work load with the current level of staffing; as recommended by the Governor.

Our comprehensive plan involves the expanded use of computer and telecommunications technology in addition to new management initiatives to improve overall agency operations. These management initiatives include but are not limited to developing new investigator performance standards, new agency performance measures, and an additional emphasis on efficient analysis and screening at the complaint Intake Section.

We expect the results of this initiative will: (1) significantly reduce the open case backlog, (2) significantly reduce the delay in processing time, (3) decrease the number of complaints filed through better screening, and -- within two years essentially eliminate a backlog of cases that are over 300 days to one year old.

1-5

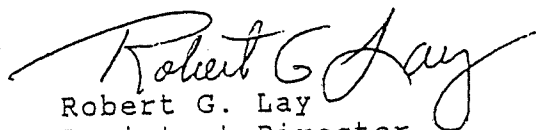
To accomplish these initiatives we will involve our employees in the problem-solving process to review all agency operations to identify and remove operational and communication barriers and reinforce continuous improvement, to better meet the needs of our customers.

Again, thank you for your always sincere consideration of the agency's budget. I will now present to you the agency's (3) year Strategic Plan.

Sincerely,



Michael J. Brungardt
Executive Director



Robert G. Lay
Assistant Director

RGL/law

Kansas Human Rights Commission
Agency Strategic Plan
Fiscal Year: FY 95 FY 96 FY97 FY 98

Agency Mission

The Mission of the Kansas Human Rights Commission is to eliminate and prevent discrimination and assure equal opportunities in the State of Kansas in all employment relations, to eliminate and prevent discrimination, segregation or separation, and assure equal opportunities in all places of public accommodations and in housing. The Agency Mission and purpose is established by the Kansas Act Against Discrimination, the Kansas Age Discrimination in Employment Act, and the Administrative Rules and Regulations.

Agency Philosophy

The Kansas Human Rights Commission in accomplishing its mission will act in accordance with the highest standards of professional conduct, ethics, efficiency, and accountability. We guarantee to those who seek our services and to the public at large, that we will approach our duties with a deep sense of purpose, urgency, and responsibility. We acknowledge and affirm that the principles of equality and the protection of basic human rights is the most noble of human efforts, and that we will dedicate all our activities toward that purpose, believing that constant vigilance is the price of freedom.

Agency Goal

To eliminate and prevent discrimination in employment, housing, and public accommodations by a strong enforcement effort through the investigation and resolution of complaints filed with the agency and by pursuing an aggressive public education program.

Agency Objectives

OBJECTIVE #1:

To provide prompt, professional, and appropriate service to all citizens who contact the agency for assistance, and maintain an effective and efficient complaint Intake service to reduce or eliminate non-jurisdictional and frivolous complaints.

OBJECTIVE #2:

To provide the opportunity for the early resolution through mediation of every complaint filed.

OBJECTIVE #3:

On cases not resolved through mediation, to conduct a prompt and thorough investigation of all allegations in every complaint filed,

and render a timely and appropriate determination, well supported by evidence, of Probable Cause or No Probable Cause on all cases submitted to Commissioner for such determination.

OBJECTIVE #4:

To conduct a timely and effective conciliation effort on all cases determined to be Probable Cause, and to expeditiously refer to the Office of Hearing Examiner all cases in which conciliation efforts have failed.

OBJECTIVE #5:

To expedite cases through the public hearing process by conducting Public Hearing proceedings within 60 days after notification of hearing, and to submit an initial order within 30 days after receipt of transcripts and briefs.

OBJECTIVE #6:

To maintain a statewide, aggressive education program to inform all citizens on what constitutes discrimination, the effects of unlawful discrimination, how to prevent discrimination, and how to obtain redress.

Agency Strategies

1. Provide continuing staff training on investigative procedures, jurisdictional matters, public service relationships, and changing case law.
2. Develop more effective Intake screen methods, to reduce overall number of complaints filed.
3. Assign all complaints filed to the Preliminary Investigation Conference Unit (PIC), or Kansas Legal Services, where parties will be provided the opportunity, through mediation procedures, to resolve the complaint, without the need for a complete investigation. (Participation in mediation is not mandated, but a voluntary procedure for each party).
4. Revise Investigator performance standards, to effect a 28.5% increase in annual case closures in FY 96, and a 4.5% additional increase in FY 97 and FY 98.
5. Provide each Investigator with a Laptop Computer so that case progress reports, case summaries, correspondence, and other related investigative work can be accomplished either in the field, home, or office.
6. Revise the case summary report format to reflect a shorter, less complex, more efficacious format, which will

significantly reduce the investigators time spent in its preparation.

7. Revise the case progress report format to reflect a more precise summarized report of only the relevant key point information necessary.
8. Upgrade agency telecommunications system to provide voice mail for each investigator, administrator, attorney, intake workers, and other key staff.
9. Expand agency case information data base by installation of a LAN (Local Area Network) system which 10 additional PC work stations so that each compliance supervisor, each intake worker, each attorney, and the Assistant Director, will have immediate access to certain information on every case on file with the agency.
10. Involve employees at all levels of problem solving and decision making by establishing a quality management advisory team consisting of employees representing each area of agency operations. The goal of this team would be to identify improved processes, remove barriers, reinforce continuous improvement of agency operations.
11. Reinststitute the backlog screening process. This procedure involves selecting a predetermined number (50-100) of the oldest cases in the backlog and sending correspondence to the complainant and respondent, to determine whether there is still the desire to pursue the complaint, and determine again whether both parties would be interested in mediation.
12. Recommend statutory change which would allow any over 300 day complaint on file, if filed before July 1, 1996, to be closed at the Complainant's request, and on any complaint filed after July 1, 1996, allow closure at Complainant's request, or upon the initiative and discretion of the Commission, after 300 days if the Commission has not issued a finding of Probable Cause or No Probable Cause or taken other administrative action dismissing the complaint.

Strategic Plan A

Agency (Performance) Output Measures

| | <u>FY 94</u> | <u>FY 95</u> | <u>FY 96</u> | <u>FY 97</u> | <u>FY 98</u> |
|---|--------------|--------------|--------------|--------------|--------------|
| Number of public contacts | 6,866 | 6,850 | 6,665 | 6,485 | 6,310 |
| Number of complaints filed | 1,876 | 1,752 | 1,640 | 1,535 | 1,437 |
| Number of cases closed by mediation/PIC | 734 | 704 | 720 | 753 | 788 |
| Number of cases closed by follow-up investigation | 618 | 640 | 1,028 | 1,053 | 1,102 |
| Total Cases Closed | 1,352 | 1,344 | 1,728 | 1,806 | 1,890 |
| Open Case Inventory | 2,416 | 2,824 | 2,736 | 2,465 | 2,012 |
| Processing Delay Time | 19.7 | 22.8 | 22.1 | 19.7 | 16.2 |

Strategic Plan A concurs with the Governor's recommendation in terms of staff and adds the following enhancements:

| | | |
|--|----|--------------------------|
| Voice Mail (37) Staff Phones | -- | \$4,884 (Communications) |
| Portable (Laptop) Computer, 33 Mhz, 20 M | -- | \$2,922 X 16 |
| Portable Ink-Jet Printers | -- | \$241 ea. X 5 |
| | | <u>1,205</u> |
| Total | | \$52,841 |

Plan for Financing

| | |
|--------------------------------|----------------|
| General Funds | \$1,358,649 |
| Federal Funds | 500,717 |
| Re-appropriated Contract Funds | <u>102,591</u> |
| Total | \$1,961,957 |

Strategic Plan B

Agency (Performance) Output Measures

| | <u>FY 94</u> | <u>FY 95</u> | <u>FY 96</u> | <u>FY 97</u> | <u>FY 98</u> |
|---|--------------|--------------|--------------|--------------|--------------|
| Number of public contacts | 6,866 | 6,850 | 6,665 | 6,485 | 6,310 |
| Number of complaints filed | 1,876 | 1,752 | 1,640 | 1,535 | 1,437 |
| Number of cases closed by mediation/PIC | 734 | 704 | *1,384 | 753 | 788 |
| Number of cases closed by follow-up investigation | 618 | 640 | 1,028 | 1,053 | 1,102 |
| Total Cases Closed | 1,352 | 1,344 | 2,412 | 1,806 | 1,890 |
| Open Case Inventory | 2,416 | 2,824 | 2,052 | 1,781 | 1,328 |
| Processing Delay Time | 19.7 | 22.8 | 16.6 | 14.4 | 10.7 |

* Indicates an additional 664 cases mediated by KLS, (720 by PIC and 664 by KLS).

Strategic Plan B concurs with the Governor's recommendation in terms of staff, includes telecommunications and computer enhancements of Plan A, and adds \$500,000 appropriation of general funds to Kansas Legal Services for 3rd party mediation programs. With the adoption of Plan B, the agency predicts that by the end of FY 98, the open case inventory will be approximately a 10 month processing delay time for cases that require complete investigation and no more than 60 days delay in processing time for cases assigned to the PIC Unit. With the adoption of this plan and enactment of the proposed legislation, after FY 98, the agency should never have a backlog of cases more than 300 days to 1 year old.

(Plan B Continued)

Plan for Financing

| | |
|-----------------|----------------|
| General Funds | \$1,858,649 |
| Federal Funds | 500,717 |
| Re-appropriated | |
| Contract Funds | <u>102,591</u> |
| Total | \$2,461,957 |

Strategic Plan C

Agency (Performance) Output Measures

| | <u>FY 94</u> | <u>FY 95</u> | <u>FY 96</u> | <u>FY 97</u> | <u>FY 98</u> |
|---|--------------|--------------|--------------|--------------|--------------|
| Number of public contacts | 6,866 | 6,850 | 6,665 | 6,485 | 6,310 |
| Number of complaints filed | 1,876 | 1,752 | 1,640 | 1,535 | 1,437 |
| Number of cases closed by mediation/PIC | 734 | 704 | 712 | 734 | 740 |
| Number of cases closed by follow-up investigation | 618 | 640 | 800 | 862 | 940 |
| Total Cases Closed | 1,352 | 1,344 | 1,512 | 1,596 | 1,680 |
| Open Case Inventory | 2,416 | 2,824 | 2,952 | 2,891 | 2,648 |
| Processing Delay Time | 19.7 | 22.8 | 23.9 | 23.4 | 21.4 |

Strategic Plan C concurs with the Governor's recommendation in terms of staff, but alters the Federal Funding as indicated below. Plan C anticipates implementing all elements of the strategic plan except those involving the purchasing of telecommunications and computer equipment. Plan C would effect only a 4.5% increase in FY 96 in the backlog, compared to 16.8% the past year. In the following year the backlog would begin to actually decrease.

Plan for Financing

| | |
|-----------------------------------|----------------|
| General Funds | \$1,305,808 |
| Federal Funds | 500,717 |
| Re-appropriated Contract Funds | <u>102,591</u> |
| Total | \$1,909,116 |

Proposed Legislation

K.S.A. 44-1005(i): [The rest of the current 44-1005 remains the same as is currently]: Any complaint filed pursuant to this act must be so filed within six months after the alleged act of discrimination, unless the act complained of constitutes a continuing pattern or practice of discrimination in which event it will be from the last act of discrimination. Complaints filed with the commission on or after July 1, 1996 may be dismissed by the commission on its own initiative, and shall be dismissed by the commission upon the written request of the complainant, if the commission has not issued a finding of probable cause or no probable cause or taken other administrative action dismissing the complaint within 300 days of the filing of the complaint. Complaints filed with the commission before July 1, 1996 shall be dismissed by the commission upon the written request of the complainant, if the commission has not issued a finding of probable cause or no probable cause or taken other administrative action dismissing the complaint within 300 days of the filing of the complaint. Any such dismissal of a complaint in accordance with this subparagraph shall constitute final action by the commission which shall be deemed to exhaust all administrative remedies under the Kansas act against discrimination for the purpose of allowing subsequent filing of the matter in court by the complainant, without the requirement of filing a petition for reconsideration pursuant to K.S.A. 44-1010. Dismissal of a complaint in accordance with this subparagraph shall not be subject to appeal or judicial review by any court under the provisions of K.S.A. 44-1011. The provisions of this subparagraph shall not apply to complaints alleging discriminatory housing practices filed with the commission pursuant to K.S.A. 44-1015, et seq.


Proposed Legislation


K.S.A. 44-1115): [The rest of the current 44-1115 remains the same as is currently]: Any person aggrieved by any alleged unlawful employment practice based on age may file a complaint in the manner provided for processing complaints of unlawful employment practices under the Kansas act against discrimination. Reconsideration and judicial review of the commission's decision in the case shall be conducted in the manner provided by K.S.A. 44-1010 and 44-1011, and amendments thereto. Complaints filed with the commission on or after July 1, 1996 may be dismissed by the commission on its own initiative, and shall be dismissed by the commission upon the written request of the complainant, if the commission has not issued a finding of probable cause or no probable cause or taken other administrative action dismissing the complaint within 300 days of the filing of the complaint. Complaints filed with the commission before July 1, 1996 shall be dismissed by the commission upon the written request of the complainant, if the commission has not issued a finding of probable cause or no probable cause or taken other administrative action dismissing the complaint within 300 days of the filing of the complaint. Dismissal of a complaint in accordance with this section shall constitute final action by the commission which shall be deemed to exhaust all administrative remedies under the Kansas age discrimination in employment act for the purpose of allowing subsequent filing of the matter in court by the complainant, without the requirement of filing of a petition for reconsideration pursuant to K.S.A. 44-1010. Dismissal of a complaint in accordance with this section shall not be subject to appeal or judicial review by any court under the provisions of K.S.A. 44-1011.

SUBCOMMITTEE REPORT

Senate Ways & Means Subcommittee

Human Rights Commission


Sen. Steve Morris, Chairperson


Sen. Bill Brady

SUBCOMMITTEE REPORT

Agency: Kansas Human Rights Commission Bill No. 2234 Bill Sec. 18

Analyst: Wiegiers Analysis Pg. No. 778 Budget Page No. 353

| <u>Expenditure Summary</u> | <u>Agency Request FY 1995</u> | <u>Governor's Recommendation FY 1995</u> | <u>House Subcommittee Adjustments</u> |
|-------------------------------|-----------------------------------|--|---|
| State Operations: | | | |
| State General Fund | \$ 1,407,046 | \$ 1,394,972 | \$ 0 |
| Special Revenue Funds | 573,733 | 580,625 | 0 |
| TOTAL | <u>\$ 1,980,779</u> | <u>\$ 1,975,597</u> | <u>\$ 0</u> |
| FTE Positions | 43.0 | 43.0 | 0.0 |
| Special Projects Appointments | 2.0 | 2.0 | 0.0 |

Agency Request/Governor's Recommendation

The Commission estimates FY 1995 operating expenditures of \$1,980,779, an increase of \$250,280, or 14.5 percent, over the FY 1994 actual expenditures. The request includes a State General Fund supplemental request of \$6,642. The FY 1995 estimate includes \$1,407,046 from the State General Fund, \$562,882 from federal Equal Employment Opportunity Commission (EEOC) and Housing and Urban Development (HUD) funds, and \$10,851 from HUD Incentive Funds, a special federal program to promote education about fair housing. The 1994 Legislature appropriated \$125,000 to the agency in FY 1995 for contracting with outside investigative services. The agency requests an unlimited reappropriation of any of these funds not used by the agency at the end of FY 1995. The Governor recommends expenditures of \$1,975,597, a decrease of \$4,822 below the agency estimate. The recommendation includes \$1,552,977 for salaries and wages, \$400,449 for contractual services, \$13,200 for commodities and \$8,971 for capital outlay. The recommendation for salaries and wages reflects a decrease in health insurance rates. The Governor does not recommend the unlimited reappropriation language.

The following table shows selected agency performance measures:

| Performance Measure | Actual FY 1994 | Agency Est. FY 1995 |
|--|-------------------|------------------------|
| Number of public contacts at intake | 6,866 | 6,850 |
| Number or complaints filed | 1,876 | 1,872 |
| Number of complaints closed | 1,352 | 1,584 |
| Number of cases assigned to Preliminary Investigation Conference (PIC) unit. | 1,263 | 1,263 |
| Number of cases resolved by PIC unit. | 734 | 734 |
| Open Case Inventory | 2,416 | 2,704 |
| Processing Delay Time* | 19.7 | 24.1 |
| * Months between filing and assignment for investigation. | | |

House Subcommittee Recommendation

The House Subcommittee concurs with the Governor's recommendation with the following observations and adjustments:

1. The Subcommittee encourages the agency to pursue a third party mediation plan with Kansas Legal Services or other appropriate organization.
2. The Subcommittee recommends the agency assign more current investigative staff to the Preliminary Investigation Conference (PIC) unit to help resolve cases more quickly. The Subcommittee encourages the increased use of the PIC unit to help prevent further backlog.

The status of the agency Special Revenue Fund, base on the House Subcommittee recommendation, is as follows:

| Resource Estimate | Actual FY 1994 | Estimated FY 1995 |
|--|-------------------|----------------------|
| Beginning Balance | \$ 113,592 | \$ 115,755 |
| Net Receipts | 374,960 | 481,360 |
| Total Funds Available | 488,552 | 597,115 |
| Less: Expenditures | 372,796 | 580,625 |
| Ending Balance | <u>\$ 115,756</u> | <u>\$ 16,490</u> |
| Ending Balance as Percentage of Expenditures | 31.1% | 2.8% |

House Committee

Concur.

House Committee of the Whole

Concur.

| <u>Expenditure Summary</u> | <u>House Adj. FY 1995</u> | <u>House Recommendation FY 1995</u> | <u>Senate Subcommittee Adjustments</u> |
|-------------------------------|-----------------------------------|---|--|
| State Operations: | | | |
| State General Fund | \$ 0 | \$ 1,394,972 | \$ 0 |
| Special Revenue Funds | 0 | 580,625 | 0 |
| TOTAL | <u>\$ 0</u> | <u>\$ 1,975,597</u> | <u>\$ 0</u> |
| FTE Positions | 0.0 | 43.0 | 0.0 |
| Special Projects Appointments | 0.0 | 2.0 | 0.0 |

Senate Subcommittee Recommendations

The Senate Subcommittee concurs with the House Committee of the Whole.

SUBCOMMITTEE REPORT

Agency: Kansas Human Rights Commission Bill No. 2264 Bill Sec. 4
 Analyst: Wiegiers Analysis Pg. No. 778 Budget Page No. 353

| <u>Expenditure Summary</u> | <u>Agency Request FY 1996</u> | <u>Governor's Recommendation FY 1996</u> | <u>House Subcommittee Adjustments</u> |
|-------------------------------|-----------------------------------|--|---------------------------------------|
| State Operations: | | | |
| State General Fund | \$ 1,618,195 | \$ 1,315,808 | \$ 37,105 |
| Special Revenue Funds | 549,148 | 603,308 | (277,402) |
| TOTAL | <u>\$ 2,167,343</u> | <u>\$ 1,909,116</u> | <u>\$ (240,297)</u> |
| FTE Positions | 45.0 | 43.0 | (23.0) |
| Special Projects Appointments | 8.0 | 2.0 | 0.0 |
| TOTAL | <u>53.0</u> | <u>45.0</u> | <u>(23.0)</u> |

Agency Request/Governor's Recommendation

The Commission requests a total of \$2,167,343 for FY 1996, an increase of \$185,423, 9.4 percent, over the revised FY 1995 amount. The request includes funding of \$1,618,195 from the State General Fund and \$549,148 from federal funds. The Commission requests that 2.0 existing special projects appointments be made permanent FTE positions, and requests an additional 8.0 new special projects appointments. The additional personnel requested include: 5.0 Special Investigators I, 1.0 Special Investigator II, 1.0 Office Assistant II, and 1.0 Office Assistant III. The agency also requests additional funding of \$26,106 for 648 square feet of additional office space, office furniture, equipment and operational support for the new staff. The Governor recommends expenditures of \$1,909,116, a decrease of \$258,227, or 11.9 percent, below the agency request. The recommendation does not include the conversion of the 2.0 special projects appointments to FTE positions or the addition of the 8.0 new special projects appointments.

The following table shows selected performance measures and estimated levels of performance under the Governor's recommendation:

| | <u>Actual FY 1994</u> | <u>Estimate FY 1995</u> | <u>Agency FY 1996</u> | <u>Estimated FY 1996*</u> |
|--|---------------------------|-----------------------------|---------------------------|-------------------------------|
| Number of public contacts at intake | 6,866 | 6,850 | 6,645 | -- |
| Number of complaints filed | 1,876 | 1,872 | 1,776 | 1,776 |
| Number of complaints closed | 1,352 | 1,584 | 1,944 | 1,584 |
| Number of cases assigned to Preliminary Investigation Conference (PIC) unit. | 1,263 | 1,263 | 1,275 | 1,263 |
| Number of cases resolved by PIC unit | 734 | 734 | 741 | 734 |
| Open Case Inventory | 2,416 | 2,704 | 2,536 | -- |
| Processing Delay Time* (in months) | 19.7 | 24.1 | 20.2 | -- |

* Time between filing and assignment for full investigation.
 ** Estimated level of performance based on the Governor's recommendation.

House Subcommittee Recommendation

The House Subcommittee concurs with the Governor's recommendation with the following modifications:

1. Delete \$81,687, including \$49,947 from State General Fund based on the recommendation to delete funding for a 3.5 percent unclassified merit pool (\$6,868); classified step movement (\$45,071); a one percent base adjustment for classified employees (\$12,659); and the longevity bonus (\$17,089) from individual agency budgets.
2. The Subcommittee recommends deleting \$658,610 (\$412,948 State General Fund and \$245,662 Special Revenue Funds) to reflect the elimination of 23.0 FTE positions in FY 1996. The positions to be eliminated include 3.0 Office Assistants, 4.0 Secretaries and 16.0 investigators. (Note: The above amount does not include classified step movement, the 1.0 percent base salary adjustment, the 3.5 percent unclassified merit pool and longevity accounted for in number 1 above.)
3. The Subcommittee encourages the agency to increase its utilization of the Preliminary Investigation Conference (PIC). The Subcommittee also recommends that the remaining investigative staff be primarily assigned to the Preliminary Investigation Conference (PIC) unit to help resolve incoming cases more quickly.
4. Add \$500,000 State General Fund for a contract with Kansas Legal Services for third-party mediation services. The Subcommittee encourages the agency to continue to pursue third-party mediation services.

House Committee Recommendation

The House Committee concurs with the House Subcommittee.

House Committee of the Whole Recommendation

The House Committee of the Whole concurs with the House Committee.

| <u>Expenditure Summary</u> | <u>House Adj. FY 1996</u> | <u>House Recommendation FY 1996</u> | <u>Senate Subcommittee Adjustments</u> |
|-------------------------------|-----------------------------------|---|--|
| State Operations: | | | |
| State General Fund | \$ 37,105 | \$ 1,352,913 | \$ 120,423 |
| Special Revenue Funds | (277,402) | 325,906 | 245,662 |
| TOTAL | <u>\$ (240,297)</u> | <u>\$ 1,678,819</u> | <u>\$ 366,085</u> |
| FTE Positions | (23.0) | 20.0 | 23.0 |
| Special Projects Appointments | 0.0 | 2.0 | 0.0 |
| TOTAL | <u>(23.0)</u> | <u>22.0</u> | <u>23.0</u> |

Senate Subcommittee Recommendation

The Senate Subcommittee concurs with the House Committee of the Whole with the following changes and comments:

1. Recommend a statutory change proposed by the agency which would allow any complaint on file over 300 days old, if filed before July 1, 1996, to be closed at the Complainant's request, and on any complaint filed after July 1, 1996, allow closure at Complainant's request, or upon the initiative and discretion of the Commission, after 300 days if the Commission has not issued a finding of Probable Cause or Nor Probable Cause or taken other administrative action dismissing the complaint. This legislation would allow the Complainant to exhaust their administrative remedies by either withdrawing the case or having the Commission close the case. This exhaustion of remedies is required by the court system before the Complainant is allowed to file suit on the case. Currently, the Complainant would have to wait for the case to go through the complete investigation process which will likely take over 2 years before they can file suit. The agency believes this legislation would help clear out some of the older cases in the backlog in which the Complainants are essentially just waiting for the charge to file their case in court. The Subcommittee believes that this proposed legislation is a high priority in trying to eliminate some of the agency backlog.
2. Reappropriate \$102,591 from funds appropriated by the 1994 Legislature for outside contractual investigation in order to replace a shortfall in Federal Funds for FY 1996.
3. Delete \$400,000 State General Fund from the House recommendation of \$500,000 for a third party mediation contract with Kansas Legal Services (KLS). This \$100,000 is appropriated with the proviso that the funds cannot be spent unless KLS provides at least a three-to-one match of private funds. The Subcommittee hopes that this funding will encourage private sources to support this mediation project. The agency estimates that KLS could close approximately 554 cases through mediation in the first year if fully funded. The proposal from KLS to the Human Rights Commission estimated a cost of \$500,000 to start and run the program. The proposal called for private funding of the program from various foundations and businesses.
4. Add \$658,610 (\$412,948 State General Fund and \$245,662 Special Revenue Funds) to restore 23.0 FTE positions deleted by the House. The positions to be restored include 16.0 Investigators, 3.0 Office Assistant and 4.0 Secretaries.
5. In making the decision to restore the 23.0 FTE positions deleted by the House the Senate Subcommittee took the following under consideration:
 - a. The Subcommittee notes that the Preliminary Investigation Conference (PIC) Unit, to which the House recommended assigning the remaining investigators, handles more cases per investigator primarily because this unit deals with the easier cases. These investigators do some preliminary investigation and then either bring the parties in for mediation, provided both parties agree, dismiss the case for lack of jurisdiction or substance or pass the unresolved cases on for further investigation. Those cases not resolved by the

PIC Unit consequently require much more intensive investigation and are much more time consuming for those investigators.

- b. The agency reports that under the House recommendation there would only be 5 investigators remaining in the agency between two offices and those investigators would all be assigned to the PIC Unit. As a result, there would be no investigators left to investigate the cases which are not settled in the PIC Unit. The agency reports that approximately 43 percent of participants agree to mediation and out of that number approximately half settle their case through mediation.
- c. The following chart shows the agency's estimate of the number of cases filed, the open case inventory and processing delay time (months between initial filing and assignment to investigator) for FY 1994, FY 1995, FY 1996 under the Governor's recommendation and FY 1996 under the House recommendation:

| | <u>FY 1994</u> | <u>FY 1995</u> | <u>FY 1996 Gov. Rec.</u> | <u>FY 1996 House Rec.</u> |
|--------------------------------|----------------|----------------|------------------------------|-------------------------------|
| Number of Complaints Filed | 1,876 | 1,752 | 1,640 | 1,640 |
| Open Case Inventory | 2,416 | 2,824 | 2,952 | 3,560 |
| Processing Delay Time (months) | 19.7 | 22.8 | 23.9 | 28.8 |

The Subcommittee estimates that under its recommendation the processing delay time will be between 22.1 and 22.8 months in FY 1996 and will show more significant decreases in FY 1997 and FY 1998. The Subcommittee notes that this estimate is premised upon the agency's belief that the number of complaints filed will continue to decrease.

- 6. Add \$4,884 State General Fund to upgrade the agency telecommunications system to provide voice mail for each investigator, administrator, attorney, intake workers, and other key staff.
- 7. The Subcommittee recommends the agency reinstitute its backlog screening process. This procedure involves selecting a predetermined number (50-100) of the oldest cases in the backlog and sending correspondence to the complainant and respondent, to determine whether there is still the desire to pursue the complaint, and determine again whether both parties would be interested in mediation. This was proposed by the agency as a strategy to help decrease the current backlog without adding additional staff.
- 8. The Subcommittee recommends the agency revise the case summary report format to reflect a shorter, less complex, more efficacious format, which will significantly reduce the investigators time spent in its preparation. This was part of the strategy proposed by the agency to the Subcommittee to help increase the agency's efficiency.

1-23

9. The Subcommittee notes the agency's effort to provide them with three separate strategic plans to help increase efficiency and decrease the backlog over a period of time without increasing staffing.
10. Change the title of the HUD Incentive Fund to the Education and Training Fund. Monies in this fund will come from small fees for attending educational seminars conducted by the agency. The monies will then be used to fund the seminars. The HUD Incentive Program was a federal grant given for the purpose of educating the public regarding fair housing. The grant was discontinued several years ago and the funds remaining in the account will be used up by the end of FY 1995.
11. The Subcommittee notes the agency's report that it will lose its federal contracts for future fiscal years under the House recommendation. The agency will receive the second half of its FY 1995 contract payment in FY 1996 (due the difference between the federal and state fiscal years) but no new contracts will be made between the agency and the Equal Employment Opportunity Commission (EEOC) or the Department of Housing and Urban Development (HUD). According to the agency, with the loss of 16.0 Investigators the agency will no longer be "substantially equivalent" as required by the EEOC and all of the housing program investigators who fulfill the HUD contract will be gone. Federal contract funding is generally around \$500,000 per year. Should the federal contracts be lost the agency will become entirely supported by State General Fund.



Kansas Department of Human Resources

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Testimony Presented to
Senate Governmental Organization Committee
March 27, 1995
SB 376

by Sharon Huffman
Legislative Liaison

Thank you for the opportunity to testify in support of Senate Bill 376 as proposed by the Kansas Human Rights Commission.

The Kansas Commission on Disability Concerns (KCDC), as established by law, is empowered to cooperate with all public and private agencies interested in promoting independent living by people with disabilities.

Since the Kansas Act Against Discrimination (KAAD) was amended in 1991 to provide nondiscrimination coverage equal to the Americans with Disabilities Act, people with disabilities in Kansas have been filing complaints based on disability with the Kansas Human Rights Commission with increasing frequency. In 1994, for the third consecutive year, employment complaints due to disability were the second highest cited by complainants.

When discrimination takes place in the workplace many times the end result is loss of employment for the employee who was alleging the discrimination. Unfortunately, the pending claim also leads to black-listing in many communities in our state. The individual is then left with no job and no ability to obtain gainful employment, therefore is also left with the inability to function in an independent manner.

By allowing the Kansas Human Rights Commission to dismiss claims earlier than current law permits, individuals will be given the opportunity to pursue their case in court and return to full independence at a much faster rate.

It is with all this in mind that KCDC urges this committee to pass SB 376 favorably.

*Senate Governmental Organization
Attachment 2*

3/27/95