

Approved: 3/15/96 ha  
Date

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairman Al Lane at 9:07 a.m. on March 8, 1996 in Room 526-S of the Capitol.

All members were present except: Rep. John Toplikar - excused  
Rep. Shari Weber - excused

Committee staff present: Jerry Donaldson, Legislative Research Department  
Bob Nugent, Revisor of Statutes  
Bev Adams, Committee Secretary

Conferees appearing before the committee: Bob Corkins, KCCI, KS Council on Privatization

Others attending: See attached list

Norm Wilks, Director of Labor Relations, Kansas Association of School Boards, furnished the committee with additional written testimony on Sub SB 474. (see Attachment 1)

Committee action on:  
SB 562 - Renewal of real estate appraiser's license or certification.

Rep. Beggs made a motion to recommend SB 562 favorably for passage and to place it on the Consent Calendar. It was seconded by Rep. Ballard. The motion carried.

Committee action on:  
SB 102 - Establish Kansas Performance Review Board

Rep. Packer made a motion to recommended SB 102 favorably for passage. It was seconded by Rep. Grant. A substitute motion was made by Rep. Pauls to amend the bill with amendments contained in the sub-committee report plus an added balloon amending page 1, line 18, by adding at the end of the paragraph, "State agencies shall use the same or similar analysis of services as the performance review board when identifying areas for privatization." , and on page 3, line 32, after the word "currently", "No service may be privatized unless either a cost savings or improved level of service has been identified." The substitute motion carried. A motion was made by Rep. Beggs to recommend the bill favorably for passage as amended. It was seconded by Rep. Ruff. The motion carried.

During discussion on SB 102, Bob Corkins, KCCI and a member of the Kansas Privatization Council, answered a question about the bill from the committee.

Committee action on:  
Sub SB 474 by Legislative Post Audit Committee--- Kansas whistleblower act; employees of state and local governments and certain public contractors; communications with auditors.

Rep. Presta made a motion to table the bill. It was seconded by Rep. Geringer. On vote, a division was called with a final count of 8 yeas - 7 nays. The motion carried and the bill was tabled.

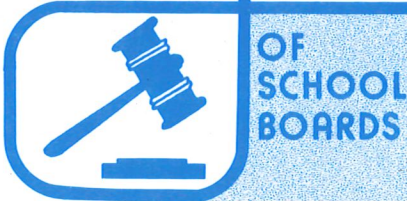
The meeting was adjourned at approximately 9:25 a.m.

The next meeting is scheduled for March 12, 1996.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE  
GUEST LIST

DATE March 8, 1996

NAME	REPRESENTING
Tom Smith	Ks Bar Assoc
Terry Leatherman	KCCI
Kelly Jennings	KAPE
Scott Stone	KAPE
Janne Eudaley	Sen. Pat RANSON
Sandra Powell	ARA
JASON PITTSBURGER	KGC
Jim McHaff	KTLA
Gene M. Seabold	KTLA
Bob Corkins	KCCI



MEMO

TO: Chairman and Members of the House Committee on Business, Commerce & Labor

FROM: Norm Wilks, Director of Labor Relations, Kansas Association of School Boards

RE: Substitute for S.B. 474

DATE: March 7, 1996

Following hearings on Substitute for S.B. 474, we wish to call your attention to the expansion created by the bill for local units of government and possible solutions to the practical problems created by the legislation.

The current situation for local units of government is established by Kansas case law. Current case law provides that an employee who is terminated for reporting employer violations of rules, regulations or laws may be reversed when such whistle-blowing activity relates to public health, safety or general welfare. The proposed legislation would expand termination to include dismissal, demotion, transfer, reassignment, suspension, reprimand, warning and possible dismissal or withholding of work. The case law is concerned with reports of matters pertaining to public health, safety or general welfare. The proposed legislation creates four areas of prohibited retaliation. The areas are as follows: 1) discussing the operations of the agency or contractor; 2) discussing other matters of public concern, either specifically or generally; 3) reporting any violation of state or federal law or rules and regulation to any person, agency or organization; and, 4) to take such action without giving notice to a supervisor or appointing authority prior to making the report.

The bill is silent as to which party has the burden of proof. We would represent that if the employee alleges that any disciplinary action was taken as a result of their whistle-blowing activities, the burden of proving such action should be on the employee.

Further there is no time restraint or limitation between the time of the whistle-blowing activity and the alleged disciplinary action complained of.

As we stated, in both our oral and written testimony, we believe that the activities of the employee and whistle-blowing should not prevent the employer from taking what is otherwise legitimate job action. If the employee should be reprimanded, disciplined or dismissed for reasons unrelated to any whistle-blowing activities, the employer should be free to take such action. This legislation should not be used by an employee to thwart the employer's legitimate job action.

*House, Business, Commerce  
& Labor Committee  
3/8/96  
attachment 1*

Possible actions or amendments by the committee include: 1) the definition of disciplinary action can be limited to termination or nonrenewal of employment; 2) limiting the actions on subparagraph (c) to discussing the operations of the agency or reporting the violation of state or federal laws or rules and regulations; 3) that to be considered retaliation for whistle-blowing activity, the employment action must be taken within ninety (90) days of the employer's awareness of the whistle-blowing activities.

The employer may be protected to proceed with legitimate job action unrelated to the whistle-blowing activity by following a procedure similar to that set forth in K.S.A. 72-5446. The obligation would first be on the employee to show that the job action was a direct result of the whistle-blowing activity. If that is in fact the case the employer would be then charged with the burden of showing that there was a legitimate business reason or employment reason unrelated to the whistle-blowing activity for taking the job action.

As discussed in the hearings the legislation as proposed is a dramatic expansion of public policy in the area of whistle-blower protection. Such protection should not be at the sacrifice of the employer to take legitimate job disciplinary action.

We hope that these suggestions may make it easier for you to address the public policy concerns.

Again, thank you for your consideration of these issues.