

Approved: March 18, 1996
date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 15, 1996 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Burke, Downey, Feleciano, Gooch, Harris, Jordan, Ranson, Reynolds, Steffes and Vidricksen.

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:

Pam O'Toole, Executive Director, National Guard Association of Kansas
Lieutenant Colonel John R. Mettner, Jr., Legal Advisor, Office of the Adjutant General
Major General James F. Rueger, Adjutant General
James W. Clark, Executive Director, Kansas County & District Attorneys Association
Representative Dave Lawrence
Representative Tony Powell
Roger Aeschilman, Captain, Company B, Kansas National Guard
Michael Byington, Wichita Industries and Services for the Blind, Inc.
Kelly Jennings, Kansas Association of Public Employees

Others attending: See attached list

HB 2817 Reemployment of members of national guard after called to duty

Pam O'Toole, Executive Director, National Guard Association of Kansas, appeared in support of HB 2817. Ms. O'Toole stated HB 2817 provides members of the National Guard with the same protection they have when called to federal active duty. At the present time members of the National Guard have no protection for keeping their employment when called to state active duty. Attachment 1

Lieutenant Colonel John R. Mettner, Jr., Legal Advisor to the Adjutant General, testified in support of HB 2817. Lt. Col. Mettner stated the inability to protect the employment of Guard members when called to state active duty is a concern to the Guard and has a negative effect on the recruiting and retention of personnel in the military. The re-employment of National Guard members when called to active duty has not been a tremendous problem over the years, however; it is a concern which can be addressed by HB 2817 which mirrors the federal legislation. Attachment 2

James W. Clark, Executive Director, Kansas County & District Attorneys Association, testified in support of the intent of HB 2817, but opposes the language on Page 3, lines 11 through 20. This provision is an unfunded mandate and imposes another duty on the county or district attorney. The Association members do not have the expertise that qualifies them to decide the merits of reemployment cases, or to pursue them through the civil courts. The Association is also concerned with the potential of a conflict of interest when an employee is employed by the county and the county attorney represents the employee and the county's interest on behalf of county commissioners. Representation of such aggrieved service men and women would be best served by the legal department of the Guard and not be a burden on the counties. Attachment 3

Major General James F. Rueger, Adjutant General, appeared in support of HB 2817. General Rueger stated inasmuch as the Department of Defense budget is decreasing, there is a heavier reliance on the National Guard to assist in times of disaster and emergencies. The Guard is concerned about maintaining its level of recruitment and retention and believes this legislation is vital to assure potential recruits their employment is secure.

Representative Doug Lawrence appeared in support of HB 2817. Rep. Lawrence stated the floor amendment put on in the House mirrors federal law.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 15, 1996.

Representative Tony Powell expressed concern with regard to HB 2817. Rep. Powell stated he is not certain this matter is not addressed in federal statute and there are certain provisions in HB 2817 that are not in federal law. He urged the committee to review federal law prior to acting on state legislation.

Roger Aeschilman, Captain, Kansas National Guard, expressed his support of HB 2817. Mr. Aeschilman stated the passage of the proposed legislation is essential and critical to maintain the numbers required in the Guard.

HB 2905 Training and retraining programs laid off employees of closed institutions

Michael Byington, Wichita Industries & Services for the Blind, Inc., appeared in support of HB 2905. Mr. Byington stated HB 2905 provides top priority consideration be given employees displaced due to closure of state institutions to avail themselves of programs administered by the department of commerce and housing. Mr. Byington spoke particularly in support of the amendment which broadens the bill to include any services previously provided by the department of social and rehabilitation services. Attachment 4

Kelly Jennings, Kansas Association of Public Employees, testified in support of HB 2905. Ms. Jennings stated the House Amendments to HB 2905 extends fairness to employees of the department of social and rehabilitation services throughout the state.

The meeting adjourned at 8:50 a.m.

The next meeting is scheduled for March 18, 1996.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: March 15, 1996

NAME	REPRESENTING
Jim Clark	KCDAA
BUD GRANT	KCC1
Michael Byington	WISB Inc.
Kelly Jennings	KAPF
Mark Bannell	KDOCAT
Peter R. Saterza	KDHR
Rep. Tony Powell	leg.

National Guard Association of Kansas

2914 SW Plass Court, Suite 103

Topeka, KS 66611

Phone/FAX (913) 267-9100

Testimony for HB 2817

Pam O'Toole

Executive Director, National Guard Association of Kansas

The National Guard Association of Kansas, with 1,200 members, strongly supports passage of House Bill No. 2817, guaranteeing reemployment rights for Kansas National Guard members serving on State Active Duty.

Every year, members of the Kansas National Guard, both officer and enlisted, are called upon to provide relief due to acts of nature or for the public good in restoration of peace, order and quality of life for fellow Kansas citizens. National Guard members also fulfill a federal mission. When called to federal active duty, they have reemployment rights provided by federal law. House Bill No. 2817 provides this same protection for State Active Duty.

National Guard members serve willingly when called upon. Their training and the special skills and services they provide are often the difference between the success and failure of the task at hand. It is imperative that they are able to serve without fear of sacrificing their permanent employment or job status when called to State Active Duty.

The National Guard has built an excellent network with Kansas employers through the Employer Support of the Guard and Reserve. Most employers realize that National Guard training and experience enhance the value of their employees. However, we feel that it is important to protect members of the Kansas National Guard in the rare case when their employment is jeopardized by their service to our state. We must do this so we can continue to attract the quality of individuals who are now serving, and so they can serve without fear of jeopardizing their full-time employment.

The members of the National Guard Association of Kansas strongly encourage your support of House Bill 2817.

*Senate Commerce Committee
March 15, 1996*

Attachment 1



REPLY TO
ATTENTION OF

DEPARTMENTS OF THE ARMY AND THE AIR FORCE
NATIONAL GUARD OF KANSAS
ADJUTANT GENERAL OF KANSAS
2800 SOUTHWEST TOPEKA BOULEVARD
TOPEKA, KANSAS 66611-1287



BEFORE THE SENATE COMMITTEE ON COMMERCE

MARCH 15, 1996

TESTIMONY ON HOUSE BILL 2817

BY

LIEUTENANT COLONEL JOHN R. METTNER, JR

LEGAL ADVISOR TO THE ADJUTANT GENERAL

MADAM CHAIRPERSON AND MEMBERS OF THE COMMITTEE:

AS LEGAL ADVISOR TO THE ADJUTANT GENERAL FOR THE LAST TWELVE YEARS, I HAVE BEEN ACTIVELY INVOLVED IN ASSISTING MEMBERS OF THE KANSAS ARMY AND AIR NATIONAL GUARD WITH PROBLEMS WITH THEIR EMPLOYERS. AS YOU ARE AWARE, THE FEDERAL LAW PROVIDES STRONG GUIDANCE WHEN MEMBERS OF OUR NATIONAL GUARD ARE CALLED TO FEDERAL MILITARY DUTY. HOWEVER, HOUSE BILL 2817 AS AMENDED, FILLS THE GAP FOR PROTECTION OF OUR SOLDIERS AND AIRMEN, WHEN IN FACT, THEY ARE PLACED ON STATE ACTIVE DUTY.

THIS HAS NOT BEEN A TREMENDOUS PROBLEM OVER THE YEARS. HOWEVER IT ONLY TAKES ONE SOLDIER OR AIRMAN TO BE REFUSED A JOB AFTER WORKING HARD IN A FLOOD OR TORNADO, TO HAVE A NEGATIVE EFFECT ON RECRUITING AND RETENTION IN THE MILITARY. THIS BILL AS AMENDED, WILL GIVE THE ADJUTANT GENERAL'S DEPARTMENT A TOOL IN WHICH WE MAY ASSIST OUR MEMBERS AND HELP EMPLOYERS KNOW WHAT IS EXPECTED OF THEM WHEN THEIR EMPLOYEES ARE CALLED TO STATE DUTY.

IF I CAN ANSWER ANY QUESTIONS OR BE OF ANY ASSISTANCE TO THE COMMITTEE IN THIS REGARD, I WOULD BE GLAD TO TAKE YOUR QUESTIONS AT THIS TIME.

*Senate Commerce Committee
March 15, 1996*

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Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Kansas County and District Attorneys Association Testimony Regarding House Bill No. 2817

The Kansas County and District Attorneys Association is supportive of the intent behind HB 2817. Certainly those who are called into active duty on behalf of a state military organization should receive the same job protection as those called into federal service. It is certainly good policy for the State of Kansas to assist these citizens in their transition back civilian life by assisting them in returning to their former employment.

Our objections are to the language in Subsection (d), an amendment apparently added in the House Committee, which retains the same ill-advised concept found in the original Subsection (d) in which the State seeks to carry out this assistance by imposing yet another duty on the county or district attorney. Our objections are based on the following reasons:

1. **Unfunded Mandate** - The language of the amendment imposes yet another duty on a county official. Prosecution of violations of state law is almost exclusively county funded, this includes the county and district attorney offices. (In contrast, the State spends nearly \$15 million a year to hire attorneys for indigent felons, our opponents.)

2. **Lack of Expertise** - As most people are aware, prosecutors prosecute violations of state law. The increasing number of drug cases, domestic violence cases, child abuse cases and juvenile offender cases require specialization, even in smaller office. Even assuming county and district attorneys were not already overloaded with criminal and juvenile cases, there is nothing in their practice that qualifies them to decide the merits of reemployment cases, or to pursue them through the civil courts.

3. **Conflict of Interest** - It is safe to assume that among the thousands of county employees, there are those who will be called to active duty on behalf of a state military force. Unfortunately, there will be cases where a county may not wish to reemploy such persons upon their return from active duty. Since the county attorney also acts as the county's lawyer, except for the small number of counties having a county counselor, the additional duties imposed by the bill create a conflict of interest. At best, the county would be required to hire counsel on behalf of the veteran; at worst, it may have to hire additional counsel both for the employee as well as the county.

4. **Conflict in Statutes** - When the Legislature created the office of district attorneys, it recognized the need for full time, experienced prosecutors, at least in the larger counties. In K.S.A. 22a101, the Legislature relieved the district attorney from civil responsibility by including the following language: "Said district attorney is hereby declared to be an executive officer of the judicial district in which he (sic) is elected, with said office constituting a separate entity within said district for administrative purposes, and in no even shall said district attorney be deemed an officer of any county." By imposing the additional duty of employment lawyer, the bill is departing from the intent, if not the letter, of the district attorney statutes.

Conclusion - While the purpose of the bill is laudable, the representation of the aggrieved service men and woman should not be shunted onto the counties. If the purpose of the bill is justifiable, then spending State funds to give them qualified counsel is also justified.

*Senate Commerce Committee
March 15, 1996
Attachment 3*

WICHITA INDUSTRIES & SERVICES FOR THE BLIND, INC.

February 27, 1996

TO: Senate Commerce Committee

REPLY TO: Michael Byington
WISB Governmental Affairs Office
P. O. Box 1063
Topeka, Kansas 66601
(913) 575-7477 (office and voice mail)
(913) 233-2539 (FAX)

SUBJECT: House Bill 2905

We support this bill in concept and feel it is needed. The Governor's budget frankly does not provide anywhere near the monies for human services which are being privatized as compared with the monies which were spent on the same services when they existed as a function of State government itself. This is perhaps part of the logic of privatization, and we will not disagree with the concept, but during the transition period some assistance and subsidization may be necessary to insure that both services and jobs remain in place. This bill directly addresses both services and jobs issues in a positive manner.

The House Business, Commerce and labor Committee amended this bill. The amendment was requested by Wichita Industries and Services for the Blind, and the Bill's original sponsors supported the amendment.

In its pre-amendment form, the Bill would have assisted with programming being turned over to privatization due to closure of Winfield State Hospital and Topeka State Hospital. There are many other SRS programs, however, which are being targeted for privatization or closure. Kansas Industries for the Blind is one of these programs which is of particular concern to Wichita Industries and Services for the Blind (WISB). Many other functions of SRS, however, may well be identified as needing to be privatized. We want to be certain that options will exist for privatization which will insure continuation of both services and jobs as these programs privatize as well.

It is my understanding that Governor Graves has expressed reservations concerning the benefits package bills for Topeka State Hospital and Winfield State hospital because he makes the point that Government is in the process of

A not-for-profit
agency providing
employment &
services to people
who are blind.

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Attachment 4 drew 4-2

downsizing all over. He thus questions singling out the employees of the two institutions experiencing the most job losses. The amended form of 2905 addresses this concern. The top priority for those impacted by institutional closings is not changed, but the appeal of the bill's intent is nonetheless broadened.