

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:10 a.m. on February 6, 1996 in Room 254-E of the Capitol.

Members present were: Senator Oleen, Chair  
Senator Tillotson, Vice Chair  
Senator Jones, Ranking Minority Member  
Senator Gooch  
Senator Hensley  
Senator Jordan  
Senator Papay  
Senator Praeger  
Senator Ramirez  
Senator Vidricksen  
Senator Walker

Committee staff present: Mary Galligan, Legislative Research  
Mary Torrence, Revisor  
Nancy Wolff, Committee Secretary

Conferees appearing before the Committee:  
None

Others attending meeting: See attached list

Senator Jones made a motion that the committee introduce a bill which incorporates the Democratic Caucus proposal to designate the Kansas lottery as the state gaming agency for purposes of tribal-state gaming compacts. Senator Ramirez seconded the motion and the motion carried.

Senator Vidricksen requested that a committee bill be introduced which would relate to the payment of royalties. Senator Hensley made the motion that such a bill be introduced and Senator Praeger seconded the motion. The motion carried.

Senator Oleen then requested that the committee begin work on **SB474**, the Whistleblowers Act. She commented that there had been a number of concerns expressed relative to attorney-client privilege and there is intent to present an amendment to the bill.

For purposes of discussion on the balloon (Attachment 1) for **SB474**. Senator Walker made a motion to adopt the changes encompassed in the balloon but deferring the length of time designation until a future date. Senator Ramirez seconded the motion. Following discussion, Senator Ramirez withdrew his second and Senator Walker withdrew the motion.

Senator Walker then made a motion that damages would stay with the current language and incorporate the other amendments within the balloon. Senator Hensley seconded the motion. The committee continued to discuss the bill and what such amendments would ultimate bring about in the law and Senator Hensley withdrew his second and Senator Walker withdrew the motion.

The Chairman announced that she would meet with staff and representatives of the Department of Administration for further clarification and the committee would postpone working of the bill until such clarification was received.

Senator Papay made a motion that the minutes for January 23, 24, and 25 be approved as written and Senator Jones seconded the motion. The motion carried.

There being no other business, the meeting was adjourned at 11:35 a.m.



# SENATE BILL No. 474

By Legislative Post Audit Committee

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SB 474

Attachment 1  
Federal and State Affairs  
2/6/96

9 AN ACT relating to certain communications by employees of state agen-  
10 cies, local governments and certain public contractors; prohibiting cer-  
11 tain acts by supervisors and appointing authorities; providing remedies  
12 for violations; amending K.S.A. 1995 Supp. 75-2973 and repealing the  
13 existing section.

14  
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 1995 Supp. 75-2973 is hereby amended to read as  
17 follows: 75-2973. (a) No supervisor or appointing authority of any state  
18 public agency or public contractor shall prohibit any employee of the  
19 public agency or public contractor from discussing the operations of the  
20 public agency or public contractor, as the case may be, or other matters  
21 of public concern, either specifically or generally, with any member of the  
22 legislature or any auditing agency.

Insert A

23 ~~(b)~~ No supervisor or appointing authority of any state public agency  
24 or public contractor shall:

(c)

25 (1) Prohibit any employee of the *public agency or public contractor*  
26 from reporting any violation of state or federal law or rules and regulations  
27 to any person, agency or organization; or  
28 (2) require any such employee to give notice to the supervisor or  
29 appointing authority prior to making any such report.

(a)

30 ~~(c)~~ This section shall not be construed as:

31 (1) Prohibiting a supervisor or appointing authority from requiring  
32 that an employee inform the supervisor or appointing authority as to leg-  
33 islative or auditing agency requests for information to the *public agency*  
34 *or public contractor* or the substance of testimony made, or to be made,  
35 by the employee to legislators or the auditing agency, as the case may be,  
36 on behalf of the *public agency or public contractor*;

37 (2) permitting an employee to leave the employee's assigned work  
38 areas during normal work hours without following applicable rules and  
39 regulations and policies pertaining to leaves, unless the employee is re-  
40 quested by a legislator or legislative committee to appear before a legis-  
41 lative committee or by an auditing agency to appear at a meeting with  
42 officials of the auditing agency;

43 (3) authorizing an employee to represent the employee's personal

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1 opinions as the opinions of a state public agency or public contractor; or  
2 (4) prohibiting disciplinary action of an employee who discloses in-  
3 formation which: (A) The employee knows to be false or which the em-  
4 ployee discloses with reckless disregard for its truth or falsity, (B) the  
5 employee knows to be exempt from required disclosure under the open  
6 records act or (C) is confidential under any other provision of law.

7 ~~(d)~~ Any officer or employee of a state agency who is ~~either~~ in the  
8 classified service and has permanent status under the Kansas civil service  
9 act ~~for in the unclassified service under the Kansas civil service act~~ may  
10 appeal to the state civil service board whenever the officer or employee  
11 alleges that disciplinary action was taken against the officer or employee  
12 in violation of this act or in any court of law or administrative hearing.  
13 The appeal shall be filed within ~~30~~ days of the alleged disciplinary action.

(e)

14 Procedures governing the appeal shall be in accordance with subsections  
15 (f) and (g) of K.S.A. 75-2949 and amendments thereto and K.S.A. 75-  
16 2929d through 75-2929g and amendments thereto. If the board finds that  
17 disciplinary action taken was unreasonable, the board shall modify or re-  
18 verse the agency's action and order such relief for the employee as the  
19 board considers appropriate. ~~If the board finds a violation of this act, it~~  
20 ~~may require as a penalty that the violator be suspended on leave without~~  
21 ~~pay for not more than 30 days or, in cases of willful or repeated violations,~~  
22 ~~may require that the violator forfeit the violator's position as a state officer~~  
23 ~~or employee and disqualify the violator for appointment to or employ-~~  
24 ~~ment as a state officer or employee for a period of not more than two~~  
25 ~~years. The decision of the board in such cases may be appealed by any~~  
26 ~~party pursuant to law.~~

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The board may award the prevailing party all or a portion of the costs of the proceeding before the board, including reasonable attorney fees and witness fees.

(f)

27 ~~(e)~~ Each state public agency and public contractor shall prominently  
28 post a copy of this act in locations where it can reasonably be expected  
29 to come to the attention of all employees of the public agency or public  
30 contractor, as the case may be.

31 ~~(f)~~ As used in this section: (1) "Auditing agency" means the legislative  
32 post auditor, any employee of the division of post audit, any firm per-  
33 forming audit services pursuant to a contract with the post auditor, or  
34 any state agency, agency of a local government or federal agency or au-  
35 thority performing auditing or other oversight activities under authority  
36 of any provision of law authorizing such activities;

37 (2) "disciplinary action" means any dismissal, demotion, transfer,  
38 reassignment, suspension, reprimand, warning of possible dismissal or  
39 withholding of work;

40 (3) "local government" means any county, township, city, municipal  
41 university, school district, community college, drainage district and any  
42 other special district, taxing district or political subdivision of Kansas that  
43 ~~is supported by tax funds and includes any board, commission, committee,~~

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1 ~~bureau, department, division of agency thereof.~~  
 2 (4) "public agency" means any state agency or local government;  
 3 (5) "public contractor" means any person, partnership, association,  
 4 corporation or other private business entity that has entered into a con-  
 5 tract with a state agency for any supplies, materials, equipment or other  
 6 goods or for performance of any services; "public contractor" does not  
 7 include any public agency; and  
 8 (6) "state agency" and "firm" have the meanings respectively ascribed  
 9 ~~thereto by K.S.A. 46-1112 and amendments thereto.~~  
 10 (g) Any officer or employee who is in the unclassified service ~~of a~~  
 11 ~~local government or public contractor~~ who alleges that disciplinary action  
 12 has been taken against such officer or employee in violation of this section  
 13 may bring a civil action for appropriate injunctive relief, ~~or actual dam-~~  
 14 ~~ages, or both within 90~~ days after the occurrence of the alleged violation.  
 15 A court, in rendering a judgment in an action brought pursuant to this  
 16 ~~act,~~ shall order, as the court considers appropriate, reinstatement of the  
 17 officer or employee, the payment of back wages, ~~full reinstatement of~~  
 18 fringe benefits and seniority rights, ~~actual damages,~~ or any combination  
 19 of these remedies. ~~A court may also award such officer or employee the~~  
 20 ~~prevailing party in any such civil action~~ all or a portion of the costs of  
 21 litigation, including reasonable attorney fees and witness fees.  
 22 ~~(4)~~ This statute shall be known and may be cited as the Kansas whis-  
 23 tleblower act.  
 24 Sec. 2. K.S.A. 1995 Supp. 75-2973 is hereby repealed.  
 25 Sec. 3. This act shall take effect and be in force from and after its  
 26 publication in the Kansas register.

Insert B

within 60

section

or

If the officer of employee is the prevailin party in the civil action, the court also ma award the officer or employee

(i)

INSERT A

As used in this section:

(1) "Auditing agency" means the legislative post auditor, any employee of the division of post audit, any firm performing audit services pursuant to a contract with the post auditor, or any state agency, agency of a local government or federal agency or authority performing auditing or other oversight activities under authority of any provision of law authorizing such activities.

(2) "Disciplinary action" means any dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal or withholding of work.

(3) "Local government" means any county, township, city, municipal university, school district, community college, drainage district and any other special district, taxing district or political subdivision of Kansas that is supported by tax funds and includes any board, commission, committee, bureau, department, division of agency thereof.

(4) "Public agency" means any state agency or local government.

(5) "Public contractor" means any person, partnership, association, corporation or other private business entity that has entered into a contract with a state agency for any supplies, materials, equipment or other goods or for performance of any services; "public contractor" does not include any public agency.

(6) "State agency" and "firm" have the meanings provided by K.S.A. 46-1112 and amendments thereto.

(b)

INSERT B

of a state agency who is in the unclassified service under the Kansas civil service act who alleges that disciplinary action has been taken against such officer or employee in violation of this section may bring an action pursuant to the act for judicial review and civil enforcement of agency actions within 60 days after the occurrence of the alleged violation. If the officer or employee is the prevailing party in the action, the court, in addition to any other remedies authorized by such act, may award the officer or employee all or a portion of the costs of the action, including reasonable attorney fees and witness fees.

(h) Any officer or employee

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