

Approved: Feb. 4, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson Dave Kerr at 11:00 a.m. on January 27, 1998 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Alan Conroy, Legislative Research Department
Russell Mills, Legislative Research Department
April Holman, Legislative Research Department
Norman Furse, Revisor of Statutes
Michael Corrigan, Revisor of Statutes
Judy Bromich, Administrative Assistant
Ann Deitcher, Committee Secretary

Conferees appearing before the committee: Attorney General Carla Stovall

Others attending: See attached list

Attorney General Carla Stovall appeared before the Committee to discuss the issue of water litigation with the state of Colorado. After a number of years, she feels they're at the stage now where there's some tangible progress to report.

She said a lawsuit was filed by her predecessor in 1985, and the first stage of litigation was won in March of 1995 before the U.S. Supreme Court on the issue of liability. In May of 1995, Chief Justice Renquist handed down a unanimous opinion saying Kansas was right, Colorado has been wrongfully depleting our supply of water in the Arkansas River pursuant to the contract. Since that time, we have proceeded with the damages phase of the litigation and that is what we're currently involved with.

The Special Master issued a second draft report finding that the amount of water that Kansas said had been wrongfully depleted was accurate. The Special Master adopted Kansas' model, which was determining how much water was taken, and then determined that the 11th amendment didn't bar a state from proving a loss to the individual irrigators in Kansas as part of the damages the state of Kansas has sustained. Lastly, the Special Master held that the state of Kansas was entitled to damages and prejudgment interest in both water and/or money. The prejudgment interest that he said we could legally be entitled to, was unprecedented in water litigation. An historic ruling by the Special Master was very favorable to the state of Kansas.

When this went to the Supreme Court, Colorado objected to the Special Master's findings, breeched that issue and went to the U.S. Supreme Court. Recently the U.S. Supreme Court notified Kansas they had kicked out Colorado's objections to the Special Master's findings and didn't rule on them. Colorado will have the ability to raise them the next time Kansas is in front of the court. But in kicking out those objections, the court is saying that Kansas doesn't even need to go back before the Supreme Court in February, as planned.

The Attorney General said they will now continue in the issue of determining how much water and how much money Colorado owes Kansas and this will be before the U.S. Supreme Court for a final time in another year or two. She said, in regard to any kind of timetable, that she thought it could possibly be as long as two years.

SENATE WAYS AND MEANS COMMITTEE GUEST LIST

DATE: 1/27/98

NAME	REPRESENTING
Ken Baker	KS. Governmental Consulting
DON A. MYER	KS COMMISSION ON VETERANS' AFFAIRS
Roge Stille	Water PACK
Randy Nusz	" "
Dellie Lavin	Leadership Emporia
Walter M. Harms	KS Agg. Producers' Assn.
TIM GEORGE	WATER PACK
Todd Zimmerman	" "
Roger Toelke	Senator Hensley
Don Canby	DOE

**State of Kansas
Department of Social
& Rehabilitation Services**

Rochelle Chronister, Secretary
Janet Schalansky, Deputy Secretary

For additional information, contact:

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**Senate Ways and Means
Tuesday, January 27, 1998**

**Testimony: SB 399
Follow-up**

**Office of the Secretary
Rochelle Chronister, Secretary
785-296-3274**

SWAM
1-27-98
ATTACHMENT 1

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Rochelle Chronister, Secretary

Senate Ways and Means
January 27, 1998

Follow-up on SB 399

Chairman Kerr, members of the Senate Ways and Means committee, thank you for this opportunity to appear before you today. My name is Mike Hutfles, Director of Public Affairs at SRS.

I feel it is important to reiterate why SB 399 is before you today. This past summer, the Legislative Budget Committee asked that this legislation be introduced. An unintended consequence of the passage of HB 2278, sponsored by Rep. Toelkes, was the inability of some state facilities to use inmate labor in and around their campuses. The only intent of SB 399 is to allow the superintendents of state institutions and the Secretary of Corrections the opportunity to utilize inmate labor in those areas where it is **appropriate**.

Secretary Simmons, Don Myers and I are proposing the following change to SB 399. We are attempting to give the superintendents and wardens enough flexibility to utilize inmate labor, while maximizing the safety of our veterans and clients in our state facilities.

Thank you for your support of SB 399 with the proposed changes. I stand for questions.

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1998

SENATE BILL No. 399

By Legislative Budget Committee

12-17

9 AN ACT concerning persons in the custody of the secretary of corrections
10 providing certain services to Kansas soldiers' home and Kansas veter-
11 ans' home; exemption from certain requirements; amending K.S.A.
12 1997 Supp. 39-970 and repealing the existing section.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 1997 Supp. 39-970 is hereby amended to read as
16 follows: 39-970. (a) On and after July 1, 1998, no person shall knowingly
17 operate an adult care home if, in the adult care home, there works any
18 person who:

19 (1) (A) Has a felony conviction for a crime which is described in
20 articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and
21 acts amendatory thereof or supplemental thereto, except K.S.A. 21-3605
22 and amendments thereto, or a conviction of an attempt under K.S.A.
23 21-3301 and amendments thereto to commit any such act, or (B) has
24 been convicted of any act which is described in K.S.A. 21-4301 or 21-
25 4301a and amendments thereto or similar statutes of other states or the
26 federal government;

27 (2) has been adjudicated a juvenile offender because of having com-
28 mitted an act which if done by an adult would constitute the commission
29 of a felony and which is a crime against persons, is any act described in
30 articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and
31 acts amendatory thereof or supplemental thereto except K.S.A. 21-3605
32 and amendments thereto, or is any act described in K.S.A. 21-4301 or
33 21-4301a and amendments thereto or similar statutes of other states or
34 the federal government;

35 (3) has committed an act of physical, mental or emotional abuse or
36 neglect or sexual abuse as validated by the department of social and re-
37 habilitation services pursuant to K.S.A. 38-1523 and amendments thereto
38 and (A) the person has failed to successfully complete a corrective action
39 plan which had been deemed appropriate and approved by the depart-
40 ment of social and rehabilitation services, or (B) the record has not been
41 expunged pursuant to rules and regulations adopted by the secretary of
42 social and rehabilitation services;

43 (4) has had a child declared in a court order in this or any other state

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1 to be deprived of a child in need of care based on an allegation of physical,
2 mental or emotional abuse or neglect or sexual abuse;

3 (5) has had parental rights terminated pursuant to the Kansas juvenile
4 code or K.S.A. 38-1581 through 38-1584, and amendments thereto, or a
5 similar statute of other states;

6 (6) has signed a diversion agreement pursuant to K.S.A. 22-2906 *et*
7 *seq.*, and amendments thereto, or pursuant to K.S.A. 38-1635 and amend-
8 ments thereto involving a charge of child abuse or a sexual offense;

9 (7) has been found by the department of health and environment or
10 the department of social and rehabilitation services under K.S.A. 39-1401
11 *et seq.* and amendments thereto to have committed an act of abuse, ne-
12 glect or exploitation of a resident; or

13 (8) has been found by the department of social and rehabilitation
14 services under K.S.A. 39-1430 *et seq.* and amendments thereto to have
15 committed an act of abuse, neglect or exploitation of an adult.

16 (b) No person shall operate an adult care home if such person has
17 been found to be a disabled person in need of a guardian or conservator,
18 or both.

19 (c) In accordance with the provisions of this subsection (c), the sec-
20 retary of health and environment shall have access to any criminal history
21 record information in the possession of the Kansas bureau of investigation
22 and any report of investigations as authorized by subsection (e) of K.S.A.
23 38-1523 and amendments thereto in the possession of the department of
24 social and rehabilitation services, or any reports of investigations, findings
25 or assessments as provided in K.S.A. 39-1402 and amendments thereto,
26 39-1404 and amendments thereto, 39-1411 and amendments thereto, 39-
27 1433 and amendments thereto and 39-1434 and amendments thereto, in
28 the possession of the department of health and environment or the de-
29 partment of social and rehabilitation services concerning persons working
30 in an adult care home. The secretary shall have access to these records
31 for the purpose of determining whether or not the adult care home meets
32 the requirements of this section. The Kansas bureau of investigation may
33 charge to the department of health and environment a reasonable fee for
34 providing criminal history record information under this subsection.

35 (d) For the purpose of complying with this section, the operator of
36 an adult care home shall request from the department of health and
37 environment information obtained by the secretary of health and envi-
38 ronment under subsection (c) and information available under subsection
39 (c)(4) of K.S.A. 39-936 and amendments thereto, if any, which relates to
40 a person who works in the adult care home, or is being considered for
41 employment by the adult care home, for the purpose of determining
42 whether such person is subject to the provision of this section. For the
43 purpose of complying with this section, the operator of an adult care home

1 shall receive from any employment agency which provides employees to
 2 work in the adult care home written certification that such employees are
 3 not prohibited from working in the adult care home under this section.
 4 For the purpose of complying with this section, information relating to
 5 convictions and adjudications by the federal government or to convictions
 6 and adjudications in states other than Kansas shall not be required until
 7 such time as the secretary of health and environment determines the
 8 search for such information could reasonably be performed and the in-
 9 formation obtained within a two-week period. For the purpose of com-
 10 plying with this section, a person who operates an adult care home may
 11 hire an applicant for employment on a conditional basis pending the re-
 12 sults from the department of health and environment of a request for
 13 information under this subsection. No adult care home, the operator or
 14 employees of an adult care home or an employment agency, or the op-
 15 erator or employees of an employment agency, shall be liable for civil
 16 damages resulting from any decision to employ, to refuse to employ or
 17 to discharge from employment any person based on such adult care
 18 home's compliance with the provisions of this section if such adult care
 19 home or employment agency acts in good faith to comply with this sec-
 20 tion.

21 (e) For the purpose of subsection (a)(3), an act of abuse or neglect
 22 shall not be considered to have been validated by the department of social
 23 and rehabilitation services unless the alleged perpetrator has: (1) Had an
 24 opportunity to be interviewed and present information during the inves-
 25 tigation of the alleged act of abuse or neglect; and (2) been given notice
 26 of the agency decision and an opportunity to appeal such decision to the
 27 secretary and to the courts pursuant to the act for judicial review and civil
 28 enforcement of agency actions.

29 (f) The secretary of health and environment shall charge each person
 30 requesting information under this section a fee equal to cost, not to ex-
 31 ceed \$10, for each name about which an information request has been
 32 submitted to the department under this section.

33 (g) No person who works for an adult care home and who is currently
 34 licensed or registered by an agency of this state to provide professional
 35 services in the state and who provides such services as part of the work
 36 which such person performs for the adult care home shall be subject to
 37 the provisions of this section.

38 (h) A person who volunteers in an adult care home shall not be sub-
 39 ject to the provisions of this section because of such volunteer activity.

40 (i) No person who has been employed by the same adult care home
 41 for five consecutive years immediately prior to the effective date of this
 42 act shall be subject to the provisions of this section while employed by
 43 such adult care home

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SB 399

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1 ~~(j) No person who is in the custody of the secretary of corrections and~~
2 ~~who provides services in nonpatient areas or on the grounds of the Kansas~~
3 ~~soldiers' home, or the Kansas veterans' home shall be subject to the pro-~~
4 ~~visions of this section while providing such services.~~

5 (k) The operator of an adult care home shall not be required under
6 this section to conduct a background check on an applicant for employ-
7 ment with the adult care home if the applicant has been the subject of a
8 background check under this act within one year prior to the application
9 for employment with the adult care home.

10 (l) This section shall be part of and supplemental to the adult care
11 home licensure act.

12 Sec. 2. K.S.A. 1997 Supp. 39-970 is hereby repealed.

13 Sec. 3. This act shall take effect and be in force from and after its
14 publication in the statute book.

(j) No person who is in the custody of the secretary of corrections and who provides services, under direct supervision, in nonpatient areas, on the grounds, or other areas designated by the Superintendent of the Kansas soldiers' home, the Kansas veterans' home, Larned state hospital, or Osawatomie state hospital shall be subject to the provisions of this section while providing such services.