

Approved: March 17, 1999
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 16, 1999 in Room 123-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

A. J. Kotich, General Counsel, Department of Human Resources
Representative Robert "Bob" Grant
Steve Jack, Department of Commerce and Housing
Jim DeHoff, AFL-CIO
Representative Kenny Wilk
Gary Carlson, Leavenworth Area Development Council

Others attending: See attached list

HB 2049 - Modifications to wage payment act

A. J. Kotich, General Counsel, Department of Human Resources, testified in support of **HB 2049**, which amends the Kansas Wage Payment Act to make it easier for Kansas employers to pay earned wages by electronic deposit; resolves the uncertainty regarding the statute of limitations for a "willful penalty" claim; repeals surplus language regarding the effect of a bankruptcy or court appeal on the calculation of the penalty; and broadens the application of the willful penalty so it can be claimed by current employees as well as by employees who have quit or been discharged.

Mr. Kotich stated current law allows employees who have quit or been discharged to claim a monetary penalty of up to 100% of the unpaid wages, if their former employer "knowingly" and "willfully" fails to pay remaining wages when due. The proposed amendment makes clear that the monetary award is a "statutory penalty" rather than a form of compensatory "damages", and sets the statute of limitations at one year, rather than three or five years. (Attachment 1)

Senator Barone moved, seconded by Senator Steineger that HB 2049 be recommended favorable for passage and placed on the Consent Calendar. The recorded vote was in favor of the motion.

HB 2320 - Joint port authorities; amendment to agreement creating authority

Representative Kenny Wilk, author of **HB 2320**, introduced Gary E. Carlson, Executive Director, Leavenworth Area Development Corporation.

Mr. Carlson stated the Leavenworth Area Development Corporation is a private non-profit development corporation which also serves as staff to the Leavenworth County Port Authority. In 1981 the Legislature amended the 1969 Act which created the Leavenworth County Port Authority, to require approval by concurrent resolution of the Legislature before any "new" Port Authority could be created. As a result of this amendment to the Port Authority Act, a letter from an Assistant Attorney General, dated June 23, 1993, interpreted the law to require that any change in an existing Port Authority Joint Agreement can only be accomplished by first dissolving and then reconstituting a new Port Authority authorized only by a concurrent resolution of the legislature.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE, Room 123-S of the Statehouse, at 8:00 a.m. on March 16, 1999.

The Leavenworth Port Authority operates throughout Leavenworth County and owns industrial land and buildings in the cities of Leavenworth and Tonganoxie. The cities of Basehor, Lansing and Tonganoxie would like to have the possibility of participating in further industrial development through the Leavenworth County Port Authority; however, under present statutory authority it is necessary that the Port Authority dissolve itself in order to accommodate the wishes of the cities who desire to become a part of the Port Authority. Due to the real estate holdings and financing arrangements, it is not practical to dissolve the current Port Authority. **HB 2320** allows cities and counties to amend existing Port Authority Joint Agreements to include adding additional cities and representation without a concurrent resolution of the Legislature. (Attachment 2)

Bob Nugent, Revisor of Statutes, in response to a question from the Committee, stated he believes the genesis of legislative involvement in 1981 was due to a suit brought by Wyandotte County against the Leavenworth County Port Authority.

Senator Ranson moved, seconded by Senator Steineger that HB 2320 be recommended favorable for passage and be placed on the Consent Calendar. The recorded vote was in favor of the motion.

HB 2380 - KIT and KIR funding for apprenticeship programs

Representative Robert "Bob" Grant testified in support of **HB 2380** which allows registered apprenticeship programs to apply for training funds or grants available from the Department of Commerce and Housing, and application made to the Kansas Industrial Training Program (KIT) and the Kansas Industrial Retraining Program (KIR). The training grants represent lottery money and are available for new expanding businesses, new employees or for restructured existing businesses which include updated training for new technology. (Attachment 3)

Steve Jack, Manager, Business Finance and Workforce Training, Kansas Department of Commerce and Housing (KDCOH), stated the Department believes the suggested changes to the statute are benign and is neutral on **HB 2380**. The bill modifies the existing statute and adds apprenticeship programs to the definition of eligible job training agencies. The KIT and KIR programs approach the development of a trained workforce in a different manner than apprenticeship programs. The KIT and KIR programs are intended to respond quickly to short-term training projects targeted at an immediate need with a specific company or group of companies. Current law allows KDCOH to consider proposals from any public or private entity which is qualified to provide training or retraining under the KIT and KIR programs. The law presently allows for training provided by any qualified training provider including those entities delivering apprenticeship programs. (Attachment 4)

Jim DeHoff, Executive Secretary, Treasurer, Kansas AFL-CIO, testified in support of **HB 2380**, stating the bill allows state apprenticeship programs that are registered through the Kansas Apprenticeship Council to apply for grants through KDCOH. The grant applications are then submitted to KIT and KIR. Presently there are 155 apprenticeship programs registered in the State of Kansas; and 900 employers in registered apprenticeship representing a variety of businesses. Apprentices have to complete extensive training programs that include job training together with required hours of classroom instruction. **HB 2380** provides an opportunity to apply for KIT and KIR training funds to expand and update training in Kansas which will help businesses and workers prepare for the future. (Attachment 5)

Senator Steffes moved, seconded by Senator Steineger that HB 2380 be recommended favorable for passage and placed on the Consent Calendar. The recorded vote was in favor of the motion.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE, Room 123-S of the Statehouse, at 8:00 a.m. on March 16, 1999.

HB 2166 - Projects of statewide as well as local importance; maximum bond maturity

Bob Nugent, Revisor of Statutes, briefed the committee on the provisions contained in **HB 2166**. The bill extends the maximum maturity of bonds from 20 to 30 years; removes the current requirement that a project of statewide, as well as local importance, be located outside the city limits of any city; increases the state sales tax rate within a redevelopment district from 4.9% to 6.9 percent; authorizes KDFFA to form one or more subsidiary corporation for acquiring or conveying property or issuing bonds; requires as a precondition for taking legal title an agreement to be responsible for the remediation of all environmental contamination on the federal enclave; and requires a redevelopment plan be completed and adopted by July 1, 2001.

The Committee requested staff to prepare a flow chart describing the sources of sales tax that can be pledged to the project and in what amounts.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for March 17, 1999.

**Testimony on 1999 House Bill 2049:
Amendments to the Kansas Wage Payment Act**
A.J. Kotich, Chief Counsel, Kansas Department of Human Resources

House Bill 2049 was introduced at the request of the Secretary of Human Resources to amend the Kansas wage payment act at K.S.A. 44-314(a) and K.S.A. 44-315(b).

The bill amends K.S.A. 44-314(a) to make it easier for Kansas employers to pay earned wages by electronic deposit. The current law requires the employer to submit a direct deposit "plan" for approval by the Secretary of Human Resources. The amendment simply requires that the employer obtain the written consent of the employee.

The bill also amends K.S.A. 44-315(b) to resolve uncertainty regarding the statute of limitations for a "willful penalty" claim. The current law allows employees who have quit or been discharged to claim a monetary penalty of up to 100% of the unpaid wages, if their former employer "knowingly" and "willfully" fails to pay their remaining wages when due.

The amendment is intended to make clear that the monetary award is a "statutory penalty" rather than a form of compensatory "damages". This is an important clarification, because a claim for a statutory penalty must be brought within one year, pursuant to K.S.A. 60-514; while a claim based on a liability created by a statute, other than a penalty or forfeiture, must be brought within three years, pursuant to K.S.A. 60-512(2).

The amendment also repeals surplus language in K.S.A. 44-315(b) regarding the effect of a bankruptcy or court appeal on the calculation of the penalty. These provisions never come into play, and can be safely eliminated in the interest of clarity.

Finally, the amendment broadens the application of the willful penalty, so it can be claimed by current employees, as well as by employees who have quit or been discharged. The employment status of the claimant would no longer be a factor in determining whether the willful penalty should be assessed.

Senate Commerce Committee

Date 3-16-99

Attachment # 1-1 thru 1-2

The elimination of prior review of employer direct deposit plans in K.S.A. 44-314(a) will save several hours of Legal Services staff time each week. Those resources will be redirected to agency head review of initial orders and other wage payment tasks.

The amendments to the penalty provisions of K.S.A. 44-315(b) are technical in nature, and will simply clarify and improve the application of the law to individual cases. We do not expect these changes to affect the number of cases filed or the resources needed to process claims.

Please note that in Section 1(b) of the original bill (page 1, line 29), the phrase “whichever is smaller” was inadvertently stricken from the statute. That problem was corrected by the House Committee of the Whole, which added back the phrase “whichever is less” (page 1, line 35). The phrase is needed to ensure that the 100% penalty is a maximum, not a minimum.

Finally, please be aware that to prove a “willful” violation under K.S.A. 44-315(b), the Kansas Supreme Court has ruled that a claimant must show that the employer had a “design, intent or purpose” to cause injury. See Weinzirl v. The Wells Group, Inc. 234 Kan. 1016, 1021, 1023 (1984). Other courts have ruled that the term “willfully” means “conduct that is purposeful and intentional and not accidental.” Most notably, the United States Supreme Court has ruled that, to prove a “willful” violation under the federal Fair Labor Standards Act, there must be evidence that the defendant “knew or showed reckless disregard for the matter of whether its conduct was prohibited.” McLaughlin v. Richland Shoe Co., 486 U.S. 128, 108 S.Ct. 1677, 100 L.Ed.2d 115 (1988).

I stand ready to answer any questions the committee may have concerning this bill.
Thank you for your attention.

SENATE COMMERCE COMMITTEE TESTIMONY

In support of House Bill 2320

by

Gary E. Carlson, Executive Director
Leavenworth Area Development Corporation

March 15, 1999

Hello, my name is Gary Carlson. I'm the Executive Director of Leavenworth Area Development Corporation. We are a private non-profit development corporation established in 1981, we also serve as staff to the Leavenworth County Port Authority.

The Leavenworth County Port Authority was created in 1969 by a joint agreement between the city of Leavenworth and Leavenworth County when prior approval by the Kansas Legislature was not required. In 1981, a change in the law now requires approval by concurrent resolution of the Legislature before any "new" Port Authority can be created.

However, the changes in to K.S.A. 12-3402 in 1981, according to a June 23, 1993 letter by Mary Feighny, Assistant Attorney General, now requires that **ANY** change in an existing Port Authority Joint Agreement can only be accomplished by first dissolving and then by reconstituting a "new" Port Authority authorized only by a concurrent resolution of the legislature.

The Leavenworth County Port Authority operates throughout Leavenworth County and owns industrial land and buildings in the cities of Leavenworth and Tonganoxie. The cities of Basehor, Lansing and Tonganoxie would like to have the possibility of more formally participating in further industrial development through the Leavenworth County Port Authority. The cities of Basehor, Lansing and Tonganoxie have expressed an interest in entering into the joint agreement and becoming a part of the Leavenworth County Port Authority and having representation on the five member appointed board.

Because of the real estate holdings and financing arrangements, it is not advisable or practical to dissolve the current Port Authority. Thus, the only practical solution is to amend state law (K.S.A. 12-3402) as proposed by House Bill 2320 to allow cities and counties to amend existing Port Authority Joint Agreements which could also include adding additional cities and representation.

The Leavenworth Area Development Corporation Board of Directors and the board of the Leavenworth County Port Authority have encouraged the introduction and now support the passage of House Bill 2320 which would allow the current 1969 joint agreement to be amended so as to comply with current state laws and to allow greater cooperation, participation and representation in economic development by other cities in Leavenworth County through an amended joint agreement.

Gary E. Carlson, CED, EDFP



Senate Commerce Committee

Date: 3-14-99

Attachment # 2



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: BUSINESS, COMMERCE AND LABOR
FINANCIAL INSTITUTIONS
INSURANCE
TRANSPORTATION
FISCAL OVERSIGHT

ROBERT "BOB" GRANT
REPRESENTATIVE, 2ND DISTRICT
MOST OF CRAWFORD COUNTY
AND PART OF CHEROKEE AND
NEOSHO COUNTIES
407 W. MAGNOLIA
CHEROKEE, KANSAS 66724

MARCH 16 , 1999

TESTIMONY ON HOUSE BILL 2380

MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE:

HOUSE BILL 2380 WOULD ADD LANGUAGE TO KS 74-5065 THAT WOULD ALLOW STATE REGISTERED APPRENTICESHIP PROGRAMS TO APPLY FOR TRAINING FUNDS OR GRANTS. THE TRAINING GRANTS ARE AVAILABLE FROM THE KANSAS DEPARTMENT OF COMMERCE & HOUSING, AND APPLICATION IS MADE TO THE KANSAS INDUSTRIAL TRAINING PROGRAM (KIT) AND THE KANSAS INDUSTRIAL RETRAINING PROGRAM (KIR).

THE TRAINING GRANTS REPRESENT LOTTERY MONEY AND ARE MADE AVAILABLE FOR A NEW EXPANDING BUSINESS, NEW EMPLOYEES OR RESTRUCTURING OF AN EXISTING BUSINESS WHICH INCLUDES UPDATED TRAINING FOR NEW TECHNOLOGY.

ALL THIS LEGISLATION SEEKS TO DO IS PROVIDE THE OPPORTUNITY FOR APPRENTICESHIP PROGRAMS THAT ARE REGISTERED THROUGH THE KANSAS STATE APPRENTICESHIP COUNCIL TO APPLY FOR THE KIT AND KIR GRANTS.

Senate Commerce Committee

Date: 3-16-99

Attachment # 3

**Testimony on HB 2380
Presented to The Senate Commerce Committee
Statehouse, Room 123-S
March 16, 1999, 8:00 a.m.**

**by Steve Jack
Manager, Business Finance and Workforce Training
Kansas Development of Commerce & Housing
Business Development Division**

It is a pleasure today to be able to comment on House Bill 2380 which would modify the existing statute which established the Kansas Industrial Training (KIT) and Kansas Industrial Retraining (KIR) programs. This amendment would add apprenticeship programs to the definition of eligible job training agencies.

The KIT program funds job training for new or expanding industries which are creating new jobs. The KIR program retrains existing employees who are likely to be displaced because of obsolete or inadequate job skills. The KIR program targets those industries which are restructuring their operations through incorporation of new technology or diversification of production. The statute requires the Secretary to adopt appropriate priorities for "basic industries" which include manufacturing, distribution, and national service firms.

While apprenticeship programs clearly play a crucial role in the development of skills throughout our workforce, the KIT and KIR programs approach the development of a trained workforce in a slightly different manner. The KIT and KIR programs are intended to respond quickly to short-term training projects targeted at an immediate need with a specific company or group of companies.

In order to best accomplish this mission, our agency primarily contracts directly with the company adding or retaining jobs. In several cases, though, we have contracted with a community college, a technical school, a university, or the Mid-America Manufacturing Technology Center (MAMTC) to train employees for a consortium of companies with similar training needs. In all cases, the company hiring or retaining the employees must sign or co-sign the agreement and agree

Senate Commerce Committee

Date: 3-16-99

Attachment # 4-1 thru 4-2

to retain the affected jobs for at least six months after the completion of training and to maintain a significant presence in the state for another two years.

The current law allows for our agency to consider proposals from “any public or private educational or job training institution and any other public or private entity which is qualified to provide the training or retraining under the KIT and KIR programs.” We believe the existing statute clearly allows for training provided by any qualified training provider including those entities delivering apprenticeship programs. We would welcome the opportunity to discuss projects with any provider of training for employees of appropriate, specific companies filling newly created positions or for existing employees of these companies who are likely to be displaced.

Our agency believes the suggested changes to the statute are benign and is neutral on this bill.

Kansas AFL-CIO

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Senate Commerce Committee

Testimony HB 2380

Presented by: Jim DeHoff, Executive Secretary, Treasurer, Kansas AFL CIO
March 16, 1999

Chairperson Salisbury and Committee members, my name is Jim DeHoff, Executive Secretary Treasurer of the Kansas AFL CIO.

I appear before you today in support of HB 2380. HB 2380 makes a very small change to KSA 74-5065 that would allow state apprenticeship programs that are registered through the Kansas Apprenticeship Council to apply for training grants through the Kansas Department of Commerce & Housing. The grant applications would be submitted to the Kansas Industrial Training Program (KIT) or the Kansas Industrial Retraining Program (KIR).

The Kansas Industrial Training Program is a program that is used for new and expanding businesses, and the Kansas Industrial Retraining Program is for employees who are likely to be displaced due to obsolete or inadequate job skills or knowledge.

There are 155 State Apprenticeship Programs registered in the State of Kansas. There are 900 employers in registered apprenticeship. These employers represent a variety of industries, for example, construction, manufacturers, auto mechanics and numerous other businesses.

As of 12/31/98 there were 1,089 apprentices registered in the State of Kansas. 2/3 of the apprenticeship programs in Kansas are non-union and 1/3 are union sponsored training programs.

Apprentices have to complete a very extensive training program that is usually on the job training along with required hours of classroom instruction. Many return to apprenticeship schools after completing their apprenticeship to upgrade their skills to meet new technology changes. Workers who are trained in apprenticeship schools are the most skilled workers in Kansas.

We are asking for the opportunity to apply for KIT & KIR Training Funds to expand and update training. This will help Kansas business and workers prepare for the future. We are asking that you pass HB 2380 favorably.

Thank you.



Senate Commerce Committee

Date: 3-16-99

Attachment # 5