

Approved: _____
Date

MINUTES OF THE SENATE EDUCATION COMMITTEE.

The meeting was called to order by Chairperson Senator Barbara Lawrence at 9:00 a.m. on April 30, 1999 in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Avis Swartzman, Revisor
 Ben Barrett, Legislative Research
 Jackie Breymeyer, Committee Secretary

Conferees appearing before the committee: John Heim, Emporia Public Schools
 Craig Grant, KNEA
 Diane Gjerstad, Wichita Public Schools
 Mark Tallman, KASB

Others attending: See Attached List

SB 365 - an act concerning early retirement incentive programs

Chairperson Lawrence called the meeting to order and called on Dale Dennis, Deputy Education Commissioner, gave background on the bill.

The Chairperson called on Joe Heim, Emporia who was speaking on behalf of the Emporia Board of Education. Mr. Heim stated that Emporia was the district that sought the Attorney General's opinion on the issue of early retirement in schools districts. (Attachment 1) The Attorney General's opinion raised even more questions. Board members have been told that they expose the district to liability and that they have personal liability if they authorize payment. The board is asking the legislature to change the law.

Craig Grant, KNEA, appeared on the bill, stating that the Attorney General's opinion on early retirement indicates that many policies may be illegal because of the clause in the statute which indicates than an early retirement incentive plan is for the purpose of reducing the penalties under FICA and/or the KPERS system. The bill would eliminate the phrase about the penalty in the law. (Attachment 2) He asked for favorably passage of the bill.

Diane Gjerstad, Wichita Public Schools, appeared in support of the bill. She stated that the bill is needed to clarify school district early retirement plans, rather than leaving this to potential costly and lengthy litigation. (Attachment 3) Employee groups representing USD 259 employees and the administration are concerned about the Attorney General's opinion.

Mark Tallman, KASB, presented his testimony (Attachment 4) and stated that KASB does not have a policy position on this issue. It has adopted a position supporting school district local control or home rule. By passing home rule for school districts and repealing the current statute, school districts would have authority to continue to initiate such plans.

Discussion was held. The Revisor stated that **HB 2575**, on this same issue, was going to the Committee of the Whole in the House. It was decided to visit with the persons in the House who were concerned with the bill to see if the Senate could use that bill. If it would not work out, the Senate could go with its bill, with a meeting at the rail.

The meeting was adjourned.

SENATE EDUCATION COMMITTEE GUEST LIST

DATE: April 30, 1999

NAME	REPRESENTING
Denise Axt	USA / KCT -
John Heim	USD #253
Bob Vancrum	USD 229 Blue Valley
Howard Shuler	USD 437 Topeka
Oran Burnett	USD 501 # Topeka
Sam Heim	Emporia kids
Bella Scott	USA
Craig Grant	KNEA
Diane Gjerstad	USD 259
Herchel Paer	Cit.
Jacque Dakes	SQE
Don Ryan	How Valley USD 321
Tom Allen	KAGCT
Jim Youally	USD #512
Loquetraude	KGE

Testimony to the Senate Education Committee
presented by John Heim
on behalf of the Emporia Board of Education

4/30/99

On behalf of the staff of the Emporia Public Schools I want to thank the Senators for moving quickly to solve our problem.

Two years ago, several legislators raised the issue of early retirement in school districts and a bill was passed to require actuarial studies of local early retirement plans. In Emporia, the study was discussed in negotiations and the issue of the legality of these plans was raised. It was agreed that an Attorney General's opinion should be sought and the board did so. It is important to note that this was done because the board did not want to offer a plan that was outside of the law.

Two years later, we have the Attorney General's answers to our questions about early retirement. Unfortunately, the answers have raised even more questions. The answers have also created problems for our board, as it was trying to do what was right and for our employees who have played by the rules and are now caught by the system.

In Emporia, the deadline for asking for early retirement was April 1. On March 20, we received an opinion from the Attorney General that our early retirement plan does not meet the requirements of the statute. Six teachers were approved to receive the benefit prior to receipt of the opinion. Four teachers applied for it after the 20th and before April 1.

All of these teachers entered into this school year with a contract. The contract included access to an early retirement plan. These teachers have paid into that plan indirectly for over 15 years. They made a major life decision based upon that contract. They followed all of the rules and met all of the requirements.

Now, three different sets of attorneys have told the Emporia board that the benefit cannot be paid to those four who retired after the receipt of the opinion. The board has received different opinions about whether they can pay those who retired before the March 20 date, even dating back to people who have been on our early retirement plan for four years. The board members have been told that they expose the district to liability and that they have personal liability if they authorize payment. More importantly, the members of the Emporia board swore an oath to uphold the law when they joined the board.

The Emporia board and the Emporia teachers are interested in doing what is right and legal. In doing so, they have been placed in a situation that places those two standards at odds. We are asking that the legislature change the law to allow payment of staff members who are currently on staff their early retirement benefit.

Senate Education
Attachment 1
4-30-99



KANSAS NATIONAL EDUCATION ASSOCIATION / 715 W. 10TH STREET / TOPEKA, KANSAS 66612-1686

Craig Grant Testimony Before
Senate Education Committee
Friday, April 30, 1999

Thank you, Madam Chairman. Members of the committee, I am Craig Grant and I represent Kansas NEA. I appreciate this opportunity to visit briefly with the committee in favor of HB 2575.

School districts and community colleges in this state have, for a number of years, negotiated policies or passed policies allowing early retirement incentives for employees. The districts have been able to afford this because of the districts being able to hire employees at a cheaper level on the salary schedule or in some cases, not replacing teachers who retired. The recent Attorney General's opinion on early retirement indicated that many policies may be illegal because of the clause in the statute which indicates that an early retirement incentive plan is for the purpose of reducing the penalties under FICA and/or the KPERS system. When we moved to an 85 point plan, early retirees with 85 points technically do not have any penalty under the KPERS formula. It is that point which the Attorney General used to make her point.

What the opinion does not indicate is that educators who retire early do have a penalty -- that penalty is that for each additional year of service, the person will get an additional 1.75% of salary added to his/her pension. If one assumes that salaries will increase over time, the person is also penalized because the formula is based on the final average salary.

Rather than taking this issue to the courts to clarify, we believe that the cleanest way to solve this problem would be to pass HB 2575. This step would save both time and money and would allow educators who have planned on this benefit to either continue to receive it or start receiving the incentive. HB 2575 just eliminates the phrase about the penalty in the law. We have asked local districts to run an audit on whether or not these plans save money for the district. All recent audits I am aware of have indicated that there is savings to the district and, ultimately, to the taxpayers.

Kansas NEA would ask that you pass HB 2575 favorably. Thank you for listening to our concerns.

Senate Education
Attachment 2
4-30-99



Superintendent of Schools
Wichita Public Schools
201 North Water
Wichita, KS 67202
Telephone (316) 833-4080
FAX (316) 833-4095

Friday, April 30, 1999

Senate Education Committee
Senator Barbara Lawrence, chair

*Submitted by Diane Gjerstad
Wichita Public Schools*

Support of early retirement

Madame Chair, members of the committee:

Thank you for working this issue late in the session. This bill is very important to thousands of Kansans who have worked hard and planned for their retirements with the knowledge that their employer had an early retirement benefit plan.

This last minute bill is needed to clarify school district early retirement plans, rather than potentially leaving this to costly and lengthy litigation. The concern stems from a recent Attorney General opinion that places school district early retirement benefit plans in jeopardy. Over one-half the school districts in Kansas, including USD 259, have negotiated this benefit with employee groups through statutory authority found in KSA 72-5395. The employee groups representing USD 259 employees and the administration are very concerned about the opinion.

Early retirement in USD 259 is the first item funded from the salary and benefit pool during negotiations, before any discussion of general wage increases. In other words, today's employees are funding the cost of early retirement for those already retired. In USD 259 it is well understood that cost comes off the top, before any other items are funded. The cost of this benefit is determined annually by an independent actuary.

After the legislature amended KPERS to permit "85 and out" the district and employee groups, through the negotiations process, eliminated early retirement for new employees hired after July 1, 1996.

Retirement benefits are about people. Good people who have worked hard and planned ahead based on the knowledge that this benefit would augment their income. This opinion places in jeopardy personal retirement plans that have been made in good faith.

Wichita Public Schools and employee groups urge your favorable consideration of this bill.

Thank you, Madame Chair, I would stand for questions.

*Senate Education
Attachment 3
4-30-99*

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

1420 S.W. Arrowhead Rd, Topeka, Kansas 66604
913-273-3600

TO: Senate Committee on Education
FROM: Mark Tallman, Assistant Executive Director for Advocacy
DATE: April 30, 1999

RE: Testimony on School District Early Retirement Programs

Madam Chair, Members of the Committee:

Thank you for the opportunity to comment on the issue of early retirement programs.

KASB does not have a policy position on the issue of early retirement incentive plans. Although a significant number of districts have adopted a variety of early retirement programs, no proposal to support or oppose such plans has been presented to or adopted by our Delegate Assembly.

KASB has, however, adopted a position supporting school district local control or "home rule." The Senate has passed such legislation in several recent sessions. By passing "home rule" for school districts and repealing the current statute, school districts would have the authority to continue to initiate such plans. That would be our recommended course of action on this issue.

Thank you for your consideration.

*Senate Education
Attachment 4
4-30-99*

Local Early Retirement Incentive Plans

For a number of years, state law has allowed local school boards to develop and implement local early retirement incentive plans. This law originally contemplated plans which would lessen the impact on an individual teacher or administrator taking early retirement under KPERS and experiencing an actuarial reduction in benefits, depending upon the difference between their age and normal retirement at age 65. Since this enabling law was first passed, KPERS provisions have been substantially amended to allow normal retirement at any combination of age and service credit equal to 85, and so an actuarial reduction for "early retirement" at some age less than 65 has become quite rare. Therefore, these local plans have evolved into essentially a second retirement benefit or some other kind of benefit available at retirement, instead of an early retirement incentive.

Our survey collected several elements of data about these plans. The following is a summary of the data from the 154 districts which responded that they did have a plan in place:

Number of USDs:	Yes	No	<i>For more information about local early retirement plans, call KASB to request Printouts:</i>
Do you have a plan?	154	135	
Does it cover Teachers?	154		
Administrators?	102		
Classified Employees?	56		
Board of Education may end the plan?	47		
	Years		
Average Minimum Age Requirement, if any:	56.8		
Average Minimum Service, if any:	13.1		

Benefit Payment Methods	Number of plans: "yes"	Other Plan Information and Provisions
More than one method:	30	Average age benefits expire: 64.6
One-time lump sum payment:	25	Plans with costs this year: 128
Annual payments:	51	Average cost this year: \$127,398
Monthly payments:	81	Plans with retirees this year: 122
		Average number of retirees currently drawing benefits: 15.8

Benefit Calculation Methods	Number of plans: "yes"
Tied to KPERS:	17
A set % of Salary:	93
A fixed \$\$\$\$ amount:	52
Tied to accumulation of unused sick leave:	15
Board will pay for Health Insurance:	66