

Approved: March 7, 2000
Date

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Senator Lana Oleen at 11:10 a.m. on February 23, 2000 in Room 245-N of the Capitol.

All members were present.

Committee staff present: Mary Galligan, Legislative Research Department
Russell Mills, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Judy Glasgow, Committee Secretary

Conferees appearing before the committee:
Senator Alicia Salisbury
Dr. Kelly Douglass, President of Kansas Dental Board
Dirk Hanson, DVM, Board of Veterinarian Examiners
Mark Stafford, Kansas Board of Healing Arts
Jim Kaup, Riley County Law Board
Russ Frey, Riley County Commission
Steve Bukaty, Fraternal Order of Police Attorney

Others attending: See Attached Sheet

Senator Gooch introduced Mary Ellen Isaac, Principal of Washington Elementary, Wichita, Kansas, who was part of a group of educators from the Wichita area who were visiting the capitol for the day. Senator Oleen welcomed Ms. Isaac on behalf of the committee.

Chairman Oleen opened the hearing on:

SB 596—An act concerning regulatory board-

Chairman Oleen recognized Senator Salisbury as a proponent for **SB 596**. Senator Salisbury stated that this bill pertains to the several regulatory boards, including the Real Estate Appraisal Board; the Board of Veterinarian Examiners, the Kansas Dental Board; and the Board of Healing Arts. Senator Salisbury stated that the bill was a result of an anonymous complaint that was slipped under the door of the real estate appraiser board. They felt that they had to take action upon it. Senator Salisbury stated that this bill makes it necessary to file a complaint in writing and include the complainant's name and address. Senator Salisbury stated that the issue is whether or not a regulatory board should investigate an anonymous complaint and the second issue would be how broadly the requirement should be addressed.

Chairman Oleen turned to opponents of **SB 596** and recognized Kelly Douglass, President of Kansas Dental Board. Mr. Douglass stated that he was requesting that the language in **SB 596** be amended to remove the proposed language on page 5, lines 2 through 5. (Attachment 1) Mr. Douglass stated that the dental board currently requests the name and address on written complaints, but it does not necessarily ignore complaints if written information is not received, but rather comes in a verbal communication. He stated that one of the mandates of the Dental Board is to help provide protection for the public in dental matters. Mr. Douglass stated that an anonymous complaint cannot cause disciplinary action by the Dental Board but gives the board an opportunity to investigate for evidence of any wrongdoing.

In response to questions by the committee concerning the number of anonymous complaints received in a year and how many of these complaints were valid, Mr. Douglass stated between 10 and 15 anonymous complaints are received a year by the board and approximately fifty per-cent are valid complaints.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS, Room 245-N Statehouse, at 11:00 a.m. on February 23, 2000.

Chairman Oleen recognized Dirk Hanson, DVM, Executive Director Board of Veterinary Examiners, as an opponent to **SB 596**. Dr. Hanson noted that the Board also has concerns about protecting sources where valid justification for confidentiality exist. . (Attachment 2). Dr. Hanson stated that the Board of Veterinary Examiners recommends striking the phrase "in writing" or alternatively adding the phrase "such name and legal address shall be confidential, when requested by the complainant". Dr. Hanson stated that the Board of Veterinary Examiners does not have a problem with current law and would recommend that no changes be made. Dr. Hanson responded to questions from the committee.

Chairman Oleen recognized Mark Stafford, General Counsel, Kansas Board of Healing Arts, who appeared as neither a proponent or opponent to **SB 596**. (Attachment 3). Mr. Stafford stated that the Board of Healing Arts purpose is not to protect the complainant but to protect the public and if valid information comes in that shows a danger to the public, then the board must be able to respond to it whether or not the claimant provided it in writing with their name and address. Mr. Stafford stated that the Board of Healing Arts has several concerns about the bill and requested that section 6 be deleted.

At the request of the chairman Mr. Stafford agreed to return to the committee at a later time to respond to questions from the committee.

Senator Oleen closed the hearings on **SB 596**.

Chairman Oleen opened hearing on:

SB 637—Concerning the Riley County law enforcement agency

Chairman Oleen recognized Jim Kaup, Attorney representing the Riley County Law Board, as a proponent to **SB 637**. Mr. Kaup provided the committee with a copy of a proposed balloon to the bill. (Attachment 4)

Chairman Oleen recognized Russ Frey, County Commissioner and Chairman of the Riley County Law Board, as a proponent to **SB 637**. Mr. Frey stated that the Law Board is the Governing Body for the Riley County Police Department, a consolidated city and county law enforcement agency. (Attachment 5). Mr. Frey reviewed the proposed changes in the bill and the reasons for the request. Mr. Frey stated that the changes were proposed out of a desire to have full and fair hearings on law enforcement officer suspensions and terminations.

Chairman Oleen turned to opponents of **SB 637** and recognized Steve A. J. Bukaty, State Lodge Attorney for the Kansas State Lodge of the Fraternal Order of Police. Mr. Bukaty stated that the existing laws of the state and the bargaining obligations of the Law Board and F.O.P.. Lodge No. 17 already provide a mechanism for accomplishing the proposed changes. (Attachment 6) Grievance procedure are a mandatory subject of bargaining under the PEERA. Mr. Bukaty stated that the Law Board and F.O.P. Lodge No. 17 should sit down at the negotiating table and work out a new hearing procedure, which is in everyone's best interest.

Chairman Oleen closed the hearing on **SB 637**.

There were no proponents or opponents to **SB 340—Kansas Racing and Gaming Compensation** which had been scheduled for public hearing.

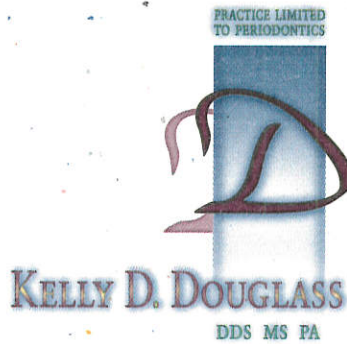
Chairman Oleen requested action on minutes for February 14, February 17, and February 21. Senator Jones moved to accept the minutes before the committee. Senator Gooch seconded the motion. The motion carried.

The meeting adjourned at 12.05 p.m. The next meeting will be held February 25, 2000 upon first adjournment.

**SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST**

DATE: FEB 23, 2000

NAME	REPRESENTING
Russ FREY	Riley County Law Enforcement Agency
Jerrri Freed	KS Dental Board
Glenn O. Thompson	Stand Up For KS
Kelly D. Douglas, DMS, MS	KS Dental Board
Nikki Allen	KS Bd of VET EXAM
Gary Reser	Ks. AV Veterinary Medical Assn.
LARRY BUENING	BD OF HEALING ARTS
Stan Parnum	D. Wood & Associates
Jim Kamp	Riley Co. Police Dept.
William M. Watson	Riley Co. Police Dept.
Myron E. Leaf	Ks Racing & Gaming Comm.



February 23, 2000

Madam Chairman and members of the Committee, I am Dr. Kelly Douglass, a periodontist practicing here in Topeka and President of the Kansas Dental Board. I am speaking today regarding the Dental Board's request to alter the language found in Senate Bill 596.

As you are aware, one of the mandates of the Dental Board is to help provide protection for the public in dental matters. Generally, in order to carry out this protection mandate, we rely on the cooperation of those who believe violations have been made to help inform us. Often this responsibility carries with it a tremendous burden.

I have a concern regarding the language proposed to be amended to KSA 65-1467, found in Senate Bill 596 on page 5, lines 2 through 5.

Many of the Dental Board investigations into statute violations, and public safety, are driven by notice from the public, other professionals, and employees with intimate knowledge of the facts. Often members of this group are very reluctant to inform the Dental Board of the potential violations for fear of retribution.

Often when a licensed person practicing under the Dental Practice Act knows about a violation, this violation is dealing with a colleague and often a friend. Due to obligation of public safety, the professional feels they should make the proper notice that a violation has been made. If that same professional felt, by the intent of this proposed language, that their colleague and the general public would know they were the person responsible for this information they might be more likely to turn their head and let the violation continue. If a dentist practices in a town of only two dentists and is required to provide name and address information on a written complaint, it is more than likely the Dental Board will not be made aware of any violations until serious harm to the public has already been committed repeatedly. This does not provide proper protection to the public.

If an employee, having intimate knowledge of a violation of the Dental Practice Act, feels they must disclose their name and address on a written complaint, they are more likely to let the violations continue for fear of losing their job and also not being able to find work in their trained field with another dental office. This does not provide proper protection to the public.

We do currently request the name and address information on written complaints, but our policy is not to ignore complaints when we do not receive this information. We feel it is our duty to evaluate complaints on a fair and equal basis, with or without this information. Of course, if we have the requested information it makes our job easier to question the source if needed, but we also understand the reluctance of many who fear making this information public.

An anonymous complaint cannot cause disciplinary action by the Dental Board. All it can do is alert the Dental Board to potential illegal activity and give us an opportunity to investigate for evidence of any wrongdoing. Before any disciplinary action can be taken, the person that action is focused upon has all the rights afforded them under the Administrative Acts and the courts.

If the Dental Board is prohibited from investigating anonymous, or verbal complaints, it will surely hinder legitimate complaints. We feel these types of legitimate complaints contribute greatly to the safety of the public.

Once again, I express my request in removing the proposed language found in Senate Bill 596 on page 5, lines 2 through 5. I ask that you amend this legislation to help the Dental Board ensure access to safe care for the public. I would be happy to address any questions you might have at this time.

Thank you for your consideration.

Sen. Federal & State Affairs Comm.
Date: 2-23-00
Attachment: # 1-1



Board of Veterinary Examiners

DIRK HANSON, D.V.M.

Executive Director

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PO Box 242

Wamego, Kansas 66547-0242

(785) 456-8781 FAX 456-8782

E-mail: hansonda@midusa.net

Kansas Senate Federal and State Affairs Committee

11:00 a.m. Wednesday, February 23, 2000

Members of the Senate Federal and State Affairs committee, my name is Dirk Hanson.

As the Executive Director of the Kansas Board of Veterinary Examiners, I am here on behalf of the board members. The Board currently licenses 2330 veterinarians, registers 550 veterinary technicians, and registers 485 veterinary premises.

In order to promote public health, safety, and welfare, the Board also investigates complaints that relate to the practice of veterinary medicine. The Board has concerns about Senate Bill 596, as it would potentially impact the agency's investigations.

The Board has experienced an increased level of legal contestment of its adjudications by defense counsel to the respondent veterinarian. The defense strategy has appeared to include attempting to distort the statutory language from its true intention by the legislature to benefit the respondent client. The defense strategy has also appeared to include attempting to make a defensive mountain out of any grammatical molehill that defense counsel may find in the statutory language.

Senate Bill 596 in nine separate occurrences states "the board may initiate an investigation upon its own motion or upon a complaint in writing." What if the board receives a valid, verifiable complaint orally? The Board of Veterinary Examiners has concerns about the phrase "in writing". If the bill is proposed for further action, the Board would recommend striking the "in writing" phrase.

Additionally, in nine separate occurrences the bill states "such complaint shall contain the complainant's name and legal address". What if the board receives a valid complaint from a credible source who wishes not to have their name or their whereabouts revealed? The Board of Veterinary Examiners also has concerns about protecting sources where valid justification for confidentiality exist. If the bill is proposed for further action, the Board would recommend either striking the section "If the investigation ... shall contain the complainant's name and legal address," or, alternatively adding the phrase "such name and legal address shall be confidential, when requested by the complainant."

Sen. Federal & State Affairs Comr
Date: 2-23-00
Attachment: # 2-1

KANSAS BOARD OF HEALING ARTS

BILL GRAVES
Governor



235 S. Topeka Blvd.
Topeka, KS 66603-3068
(785) 296-7413
FAX # (785) 296-0852
(785) 368-7102

MEMORANDUM

To: Hon. Lana Oleen, Chair
Senate Committee on Federal and State Affairs

From: Mark W. Stafford
General Counsel

Re: Senate Bill No. 596

Date: February 23, 2000

Thank you for the opportunity to appear before the committee on behalf of the State Board of Healing Arts regarding Senate Bill 596. I have requested that the Board be considered neither a proponent nor an opponent of the bill since the Board has a whole has not taken a position. However, the bill creates significant questions that may outweigh its anticipated benefits.

Section 6, would amend K.S.A. 65-2839a, which is part of the healing arts act. That section creates broad investigatory authority. The amendment would allow the Board to investigate upon its own motion or upon a written complaint. Any written complaint must contain the complainant's name and legal address.

The Board's Investigative and Disciplinary Process

The Board's investigative staff consists of a Disciplinary Counsel who is appointed pursuant to K.S.A. 65-2840a, five individuals who are each classified as a Special Investigator II, and two support staff. Additionally, the Board contracts for part-time investigative services with two individuals who have retired from the KBI.

The Board receives complaints from many sources. Attached is an internal report for FY1999 that identifies the various sources of complaints and indicates the number of complaints received from those sources. As indicated, we received over 2000 pieces of information that we might consider a "complaint".

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR

MEMBERS OF THE BOARD
DONALD B. BLETZ, M.D., PRESIDENT
OVERLAND PARK
ROBERT L. FRAYSER, D.O., VICE-PRESIDENT
HOISINGTON

LARRY R. ANDERSON, M.D., WELLINGTON
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HOWARD D. ELLIS, M.D., LEAWOOD
JOHN P. GRAVINO, D.O., LAWRENCE
SUE ICE, PUBLIC MEMBER, NEWTON
JANA D. JONES, M.D., LEAVENWORTH
LANCE E. MALMSTROM, D.C., TOPEKA

BETTY MCBRIDE, PUBLIC MEMBER, COLUMBUS
HAROLD J. SAUDER, D.P.M., INDEPENDENCE
EMILY TAYLOR, PUBLIC MEMBER, LAWRENCE
HAI K. TRUONG, D.O., WICHITA
ROGER D. WARREN, M.D., HANOVER
RONALD J. ZOELLER, D.C., TOPEKA

Sen. Federal & State Affairs Com
Date: 2-23-00
Attachment: # 3-1

Board of Healing Arts, page 2
Re: Senate Bill 596

When a complaint is received, it is reviewed by a staff committee. This committee determines which complaints will actually be investigated. If the complaint alleges facts that, if true, would likely constitute a violation of the healing arts act, it is opened as a case, prioritized, and assigned to an investigator. The extent to which the case will be investigated depends upon its priority rating. A case that suggests a mere technical violation will not be investigated unless there is a threat to the public or there is a pattern of violations that need corrective action. A case that is considered a high priority will be most thoroughly investigated.

At the conclusion of the investigation, the case may be submitted to a peer review body or to an investigative committee comprised of members of the Board. This is the first time that the Board is actually involved in the complaint process. If there appear to be grounds for commencing formal disciplinary action, this committee will authorize an administrative proceeding.

Board administrative hearings follow the Kansas administrative procedure act (KAPA). In a KAPA hearing, the licensee is afforded all elements of due process, including confrontation, cross examination, and discovery as in civil cases.

The thoroughness and complexity of Board investigations suggest that complaining witnesses are necessarily identifiable in the record without the amendments to K.S.A. 65-2839a. The issue then is, how will the Board's processes be improved by amending the statutes as proposed.

Questions Arising out of Section 6

According to the plain language of Senate Bill 596, the Board may investigate in two situations: when the Board institutes an investigation on its own motion, and when there is a complaint in which the complainant's name and legal address are identified. This raises several questions.

- ▶ Is the bill intended do nothing more than to direct agencies to identify complainants, and if so, to what end?
- ▶ Will the staff be authorized to commence an investigation when information is received that does not include the complainant's legal address, or must staff wait until the information can be brought to the Board as a whole at one of its six meetings per year?
- ▶ If the Board as a whole must authorize an investigation, would notions of due process later preclude the Board as a whole from sitting as presiding officer in a disciplinary proceeding?
- ▶ Would the refusal of a complainant to disclose a legal address deprive the Board of jurisdiction to pursue an otherwise valid complaint?
- ▶ Is the purpose of the bill to allow the individual against whom the complaint is made to learn the identity of the complainant and the location at which the individual can

Board of Healing Arts, page 3
Re: Senate Bill 596

find the complainant?

The Kansas Supreme Court holds that an agency may investigate merely on suspicion that the law is being violated, or even just because they want assurance that the law is not being violated. This liberal public policy regarding agencies' investigative authority would be curtailed if agency staff were required to seek a Board motion and approval by the Board as a whole prior to commencing an investigation. The bill also erects potential barriers to the Board fulfilling its obligation to protect the public health, safety and welfare by discouraging action on anonymous complaints, even though they may have merit.

There are reasons for complainants to demand anonymity during investigations. One physician identified several patients who had received substandard care from another physician. This other physician was also the chair of the medical staff committee, and had threatened the hospital physicians with loss of hospital privileges if they complained to the Board of Healing Arts. There is a strong public policy in protecting whistle blowers. While the Board generally does not promise to keep a complainant's identity confidential, there are times when it becomes necessary to respect anonymity in order to protect the process.

We are concerned that these questions arising as a result of Senate Bill 596 might impair the Board's current processes. We are also concerned that the new language will form the basis for challenges to the Board's jurisdiction during disciplinary proceedings. But the bill may also create benefits with regard to other agencies. We therefore request that section 6 be deleted.

KANSAS STATE BOARD OF HEALING ARTS
FISCAL YEAR 1999 DISCIPLINARY INFORMATION SOURCES
JULY 1998 - JUNE 1999

3-4

	Closed Claim Reports	Malpractice Petitions	Malpractice Payment Rpt.	Intent to File	Complaint letters	A.F.R.'s	Federation Reports	Renewals	Applications	Other	Totals
July	22	49	38	9	18	2	11	16	1	1	167
August	23	33	32	6	28	3	7	18	0	3	153
September	13	31	23	12	27	1	8	7	4	6	132
October	42	46	21	20	30	9	6	7	0	9	190
November	27	46	20	14	27	4	5	4	5	8	160
December	31	34	25	15	30	14	16	4	0	7	176
January	31	41	26	9	31	2	10	0	5	4	159
February	28	23	32	20	26	5	7	0	0	3	144
March	59	46	38	19	34	3	15	0	2	0	216
April	20	16	25	4	31	3	8	1	0	0	108
May	8	52	31	7	25	6	10	25	1	0	165
June	75	25	33	8	23	5	12	85	0	0	266
Totals	379	442	344	143	330	57	115	167	18	41	2036

7-4

SENATE BILL No. 637

By Committee on Federal and State Affairs

2-16

10 AN ACT concerning the Riley county law enforcement agency; amend-
11 ing K.S.A. 19-4429 and 19-4432 and repealing the existing sections.

12

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

14 Section 1. K.S.A. 19-4429 is hereby amended to read as follows: 19-
15 4429. The agency shall be responsible for the enforcement of law and the
16 providing of police protection throughout the county and for this purpose
17 is hereby authorized to:

18 (a) Appoint and establish the salary and compensation of a law en-
19 forcement director for the county;

20 (b) authorize and provide for the appointment of such law enforce-
21 ment officers and other personnel as the agency shall deem necessary to
22 carry out the intent of this act;

23 (c) establish a job classification and merit rating system for law en-
24 forcement officers and provide for the administration thereof by county
25 or city personnel;

26 (d) establish a schedule of salaries for law enforcement officers and
27 other personnel;

28 (e) hear and affirm or revoke *appealed* orders of the director provid-
29 ing for the suspension or ~~dismissal~~ *removal* of law enforcement officers.
30 *The agency may appoint a panel for the purpose of hearing and affirming*
31 *or revoking the appealed order of suspension or removal of law enforce-*
32 *ment officers;*

33 (f) authorize the acquisition and disposition of equipment and sup-
34 plies necessary for the operation of the agency and department;

35 (g) require the keeping of proper law enforcement records and files
36 by the department;

37 (h) adopt and certify to the board of county commissioners of the
38 county a budget for the operation of the agency and department;

39 (i) enter into contracts for and receive moneys from any private or-
40 ganization or agency, the federal government or the state or any political
41 or taxing subdivision thereof on behalf of the county for the use of the
42 agency and department;

43 (j) receive vehicles, equipment and supplies from the county sheriff's

1 department for the use of the law enforcement department;

2 (k) sell police vehicles belonging to the law enforcement department
3 and credit the proceeds to a separate fund to be expended for the oper-
4 ation of the county law enforcement agency and department;

5 (l) enter into contracts with any political or taxing subdivisions or
6 districts of the state located within such county, empowered to enter into
7 a contract for such purpose, for providing special police protection within
8 the boundaries of such political or taxing subdivision or district;

9 (m) enter into contracts with cities located within the county for the
10 enforcement of specified ordinances or the acquisition of city law en-
11 forcement equipment and property for the use of the department;

12 (n) adopt rules and regulations necessary for the organization and
13 operation of the agency and department; ~~and~~

14 *(o) adopt procedures for the conduct of hearings from the suspension*
15 *or dismissal of law enforcement officers; and*

16 ~~(p)~~ *(p)* perform such other duties as may be provided by law.

17 Sec. 2. K.S.A. 19-4432 is hereby amended to read as follows: 19-
18 4432. The director shall appoint such law enforcement officers as ~~he~~
19 ~~deems~~ *deemed* necessary for the proper enforcement of law and the pro-
20 viding of police protection within the county. All officers regularly ap-
21 pointed shall be qualified under the provisions of K.S.A. 74-5601 *et seq.*,
22 *and amendments thereto*, but an officer may receive a temporary appoint-
23 ment pending ~~his~~ completion of the requirements for a certificate there-
24 under. The agency shall determine and fix such additional minimum qual-
25 ifications to be required of persons appointed as law enforcement officers
26 as ~~they may deem~~ *deemed* necessary, and may provide for the examination
27 of applicants therefor. Law enforcement officers appointed under the
28 provisions of this act shall be responsible to and may be suspended ~~or~~
29 ~~removed~~ by the director for cause. The director, within ~~twenty-four (24)~~
30 *24* hours thereafter, shall report such suspension or removal and the rea-
31 son therefor to the agency ~~who~~. *The agency or hearing panel* as soon
32 thereafter as possible, shall ~~fully~~ hear and determine the matter and affirm
33 or revoke such suspension or removal *when such suspension or removal*
34 *is appealed by such officer*.

35 New Sec. 3. The agency may appoint a panel for the purpose of
36 hearing and affirming or revoking the suspension or removal of any law
37 enforcement officer. A determination of a panel shall be binding upon
38 the agency and there shall be no appeal from the determination to the
39 agency. Such panel shall have at least three members of whom at least 1/2
40 shall be members of the agency. Terms for panel members shall be as
41 established by the agency. The agency shall provide such panel with the
42 necessary personnel and shall prescribe, by resolution, the duties and
43 procedures of such panel.

1 New Sec. 4. (a) The agency, or any panel established pursuant to
2 section 3, and amendments thereto, shall conduct its hearings in accord-
3 ance with the rules of procedures adopted by the agency. The agency or
4 panel shall not be bound by the technical rules of evidence. The agency
5 or panel shall compel the attendance, at such place as may be designated
6 in this state, of witnesses and the production of books and papers perti-
7 nent to any hearing, and take depositions of witnesses. Subpoenas also
8 shall be issued at the request of the parties to the proceedings. The agency
9 or panel, or any member thereof, may administer oaths and take testi-
10 mony. The agency or panel may examine such records in relation to any
11 matter before it. All officers and other persons shall attend and testify
12 when required to do so by the agency or panel. In case of the refusal of
13 any person to comply with any subpoena issued hereunder or to testify
14 to any matter regarding which such person lawfully may be interrogated,
15 the district court of Riley county, on application of any one of the mem-
16 bers of the agency or panel, may issue an order requiring such person to
17 comply with such subpoena and to testify. Any failure to obey such order
18 of the court may be punished by the court as a contempt thereof.
19 (b) Each person not in the employ of the department who appears
20 before the agency or panel by order shall receive for such attendance the
21 fees and mileage provided for witnesses in civil actions in the district
22 court. Such fees and mileage shall be audited and paid upon presentation
23 of proper vouchers. Witnesses subpoenaed at the request of parties other
24 than the agency or panel shall be entitled to compensation for attendance
25 or travel only if the agency or panel certifies that the testimony of such
26 witnesses was relevant and material to the matter investigated.
27 Sec. 5. K.S.A. 19-4429 and 19-4432 are hereby repealed.
28 Sec. 6. This act shall take effect and be in force from and after its
29 publication in the statute book.

shall conduct
hearings in as
informal a
manner as may
be consistent
with orderly
procedure and

The agency
or panel shall
receive all
relevant and
material
evidence
which may
be offered.

Kansas Register



RILEY COUNTY POLICE DEPARTMENT

MANHATTAN, KANSAS 66502

ADMINISTRATION, TRAINING • 115 N. 4TH • (785) 537-6100 • FAX 565-6525
INVESTIGATIONS • 115 N. 4TH (785) 537-2108 • FAX 537-3640
PATROL, RECORDS • 600 COLORADO (785) 537-2112 • FAX 537-4930
JAIL • 600 COLORADO (785) 537-2112 • FAX 537-3810

ALVAN D. JOHNSON
DIRECTOR

LEGISLATIVE TESTIMONY RILEY COUNTY LAW BOARD

To: Chair Oleen, and Members, Senate Federal and State Affairs Committee

From: Riley County Commissioner Russ Frey, Chair, Riley County Law Board

Date: February 23, 2000

Re: **SB 637; Amendments Relating to Employee Disciplinary Hearings Before Riley County Law Board**

The Riley County Law Board appreciates this opportunity to explain why it has requested introduction of SB 637, a matter of considerable importance to the Law Board.

The Law Board is the Governing Body for the Riley County Police Department, a consolidated city and county law enforcement agency, established and operated in accordance with K.S.A. 19-4424 et seq. The Department is headed by a Director selected by the Law Board.

The Riley County Law Board (referred to in the statutes as Agency@) is constituted of four Manhattan City Commissioners, two Riley County Commissioners, and the Riley County Attorney. (K.S.A. 19-4427).

Nature of the Problem:

In recent months the Law Board has had to deal with evidentiary hearings on personnel disciplinary matters. In arranging for and conducting those hearings the Law Board has discovered the existing statutes relating to conducting the hearings to be both incomplete and cumbersome. The Law Board believes the current laws need to be amended to provide greater guidance and certainty for both the members of the Law Board in conducting employee disciplinary hearings, and for the Law Enforcement officers whose disciplinary actions are brought before the Law Board. SB 637, introduced at the request of the Law Board, would provide greater flexibility in establishing procedures for disciplinary hearings, while at the same time protect the due process rights of Riley County Police Department officers.

Under present law (K.S.A. 19-4429) the Law Board is to hear and determine actions taken by the Director of the Riley County Police Department relative to the suspension and removal of law



enforcement officers. The statutory role of the Law Board is to determine the matter and affirm or revoke such suspension or removal (K.S.A. 19-4432). While the determination of the Law Board to affirm or revoke the Director's action is obviously an important part of the officer's due process, the statutes do not speak to how those hearings should be conducted, nor does the current law provide the Law Board with such basic tools as subpoena power, to help it in carrying out hearings.

The current statutes also did not anticipate the time demands that could be placed upon the elected officials serving on the Law Board in performing this disciplinary hearing function.

Proposed Solutions: SB 637, in brief, does the following three things:

- (1) Allows for appeals by law enforcement officers of disciplinary actions by the Director to be heard and acted upon by a panel of less than the entire membership of the seven member Law Board. (See new section 3, page 2, lines 34:42 and page 1, lines 29:31.)
- (2) Authorizes the Law Board to adopt procedures relative to disciplinary proceedings. (See page 2, lines 13:14.)
- (3) Grants the Law Board, and any panel it may create, subpoena power relative to disciplinary proceedings. (See new section 4, page 2, line 43 and, page 3 lines 1:25)
- (4) Limits hearings on disciplinary matters of law enforcement officers to only those orders of suspension or termination which are appealed by those officers to the Law Board. Under current law all suspensions and terminations must be taken before the Law Board, regardless of whether the employee desires that action. (See page 1, lines 27:28, and page 2 lines 30:33.)

The following paragraphs provide more detailed information regarding the language in New Section 3 and New Section 4 of SB 637. This information also explains the three amendments proposed in the attached balloon.

New Section 3:

- * Agency may appoint a panel to hear and act on suspensions and terminations of law enforcement officers. (Lines 34:36)
- * Panel actions are binding on the agency. (Lines 36:38)
- * The panel must have at least three members, and at least one half of the members must be Law Board members. (Lines 38:39)
- * The terms of the panel members, and the procedures that they are to follow in the conduct of disciplinary hearings are to be established by the Agency. (Lines 39:42)

New Section 4:

- * The Law Board, or any panel it creates, will hold employee hearings in accordance with adopted procedures. (Lines 43 and 1:3)
- * The hearings are not to be subject to the technical rules of evidence and are to be as informal as possible while still maintaining an orderly procedure. (Lines 2:3)
- * The Agency, or any panel it creates, would have subpoena power, and could take depositions of witnesses. (Lines 3:9)
- * Testimony is to be under oath. (Lines 7:9)
- * Refusal of anyone to comply with a subpoena can result in an order of contempt by the Riley County District Court. (Lines 11:17)
- * Witness fees are established. (Lines 18:25)

Balloon Amendments:

Through an oversight, some of the wording the Law Board desired to be included in SB 637, as introduced, was not given to the Committee at the time of the bill=s introduction. The two balloon amendments to New Section 4 simply provide more state law guidance as to how the Law Board hearings are to be conducted.

The final amendment in the balloon requests this Committee=s consideration of moving the effective date of the new law to date of publication in the Kansas Register.

In closing, I will emphasize to this Committee, on behalf of the members of the Law Board, that we are committed to having full and fair hearings on law enforcement officer suspensions and terminations. We have requested these changes to the Law Board statutes out of a desire and need to better perform that responsibility, for the benefit of law enforcement officers, the Riley County Police Department, and the people of Riley County, whom we all serve.

Thank you for your consideration of SB 637, and our proposed amendments.

JMK:ag

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February 23, 2000

TESTIMONY OF STEVE A. J. BUKATY IN OPPOSITION TO SENATE BILL NO. 637

To: The Members of the Senate Committee on Federal and State Affairs

I speak in opposition to Senate Bill No. 637, which proposes to take away rights which have been guaranteed by statute to police officers employed by the Riley County Police Department.

For the past thirteen (13) years, I have served as the State Lodge Attorney for the Kansas State Lodge of the Fraternal Order of Police, which represents over 2,300 sworn police officers throughout the state of Kansas. I also serve as the Lodge Attorney for Riley County, Lodge No. 17 of the Fraternal Order of Police, which is the exclusive bargaining representative of police officers of the rank of Sergeant and below employed by the Riley County Police Department. In 1972, the legislature passed enabling legislation, specifically K.S.A. 19-4424, et seq., which allowed for the creation of the Riley County Law Enforcement Agency, which is a combination of all of the previously existing law enforcement departments in Riley County.

Since its inception, this enabling legislation has provided that all law enforcement officers employed by the Agency could only be removed for cause and that any such removal was subject to a full hearing before the Law Board which oversees Agency, and which has the authority to affirm or revoke the removal. These due process protections for the law enforcement officers of the Riley County Police Department were instrumental and essential in obtaining the support of Kansas law enforcement officers and organizations for the passage of this legislation. Now, nearly 30 years after its creation, and without any legitimate or compelling reason, the Law Board has requested the introduction of amendments to this statute which will take away these essential protections for its law enforcement officers.

The State and Local F.O.P. Lodges strenuously oppose the attempt to dilute, if not completely obliterate, these protections for their members.

Sen. Federal & State Affairs Comr
Date: 2-23-00
Attachment: # 6-1

Senate Bill No. 637 also proposes to allow the Law Board to substitute a hearing panel for the full Law Board in providing the hearing called for by the statute. The F.O.P. is not necessarily opposed to providing for an alternative forum at which a full and fair hearing can be conducted. However, as will be demonstrated below, the existing laws in this state, and the bargaining obligations of the Law Board and F.O.P. Lodge No. 17 already provide a mechanism for accomplishing this, which is far superior and far less intrusive than requiring the legislature to amend the statute.

Lodge No. 17 and the Riley County Law Board have been parties to a series of collective bargaining agreements dating back to 1997. Those collective bargaining agreements have all contained a grievance procedure. Because the parties have been satisfied and in agreement with the provision for disciplinary hearings set out in the enabling statute (K.S.A. 19-4432), no attempt has been made to change the grievance procedure, although it contains a six step procedure which must be followed before one may resort to a hearing before the Law Board as called for in the statute. The Riley County Law Board and Fraternal Order of Police Lodge No. 17 are covered by the provisions of the Public Employee-Employer Relations Act, KSA-75-4321, et seq. It is beyond dispute that the subject of grievance procedures is a mandatory subject of bargaining under that statute, i.e., it is a matter over which the parties are obligated to meet, confer and negotiate in good faith with an affirmative willingness to reach agreement. It is a violation of KSA 75-4333 for either party to refuse to negotiate over a mandatory subject of bargaining.

The Riley County Law Board has made no effort to even contact the F.O.P. and request that it consider negotiating a grievance procedure different than that set out in the collective bargaining agreement and the current statute; even though, by law, it is required to do so before it might even attempt to make any changes in the existing grievance procedure.

Although it has not been given the opportunity to do so, F.O.P. Lodge No. 17 is interested in and stands ready, willing and able to negotiate changes in the existing grievance procedure, including the current hearing procedure before the Law Board. It is not necessary for any change in the statute to be enacted in order for the parties to negotiate modifications to the grievance procedure so long as the parties continue to insure that a full hearing is conducted and the matter is ultimately reviewed by the Law Board, with an eye to insuring that any discipline is for just cause. Indeed, every police department in this state, which has a collective bargaining agreement, has a grievance procedure which covers, among other things, the procedure for conducting hearings on grievances or appeals of discipline.

Senate Bill No. 637 would allow the Law Board to appoint a hearing panel. The F.O.P. submits that it is a waste of the legislature's time to take up such matters when they are clearly a mandatory subject of bargaining. In Wichita, Kansas City, and Hutchinson, to name but a few, the F.O.P. and their respective cities have negotiated procedures by which various panels or grievance boards have been given authority to conduct full and fair hearings to determine grievances or appeals of discipline of their police officers. There is no reason that the Riley County Law Board and F.O.P. Lodge No. 17 cannot do the same thing. In fact, as indicated, the Lodge stands ready, willing and able to do exactly that. In fact, the Lodge is offended that the Law Board has attempted to dilute the grievance rights of its members without even giving the F.O.P. an opportunity to be involved in that process, as it is entitled to under the PEERA.

It appears that the Law Board's reasoning for seeking the proposed legislation set out in Senate Bill No. 637 arose out of two (2) disciplinary hearings which were recently conducted before the Law Board. As noted, the statute has provided since its inception that the Law Board must conduct a full hearing to determine just cause before any officer may be removed. Nonetheless, counsel for the Law Board had insisted that four (4) disciplinary cases which were pending before the Law Board would all be heard in one evening, with no more than one hour allowed for any case. The undersigned served as attorney of record for the police officers in most of those cases. I have been involved in hundreds of police disciplinary hearings in the last twenty years. I honestly and correctly pointed out to counsel for the Law Board that there was no way that a full and fair hearing could be conducted with regard to continued employment of a police officer in one hour. I correctly advised him that I have been involved in police disciplinary hearings which have taken as much as four (4) days.

Ultimately, after much wrangling, the Law Board and its counsel agreed to at least allow one evening for each hearing.

It is the understanding of the undersigned that members of the Law Board do not wish to be tied up for several days in disciplinary hearings. The F.O.P. understands that. As indicated, the F.O.P. is ready to negotiate for a different procedure which allows for some other hearing panel or board. In fact, the F.O.P. has several proposals it could make based upon models which have effectively worked in other unionized police departments around the state. Unfortunately, the Law Board has given the F.O.P. absolutely no opportunity to make these proposals. Indeed, the F.O.P. did not know until a few days ago that the Law Board was even seeking to make the proposed amendments to the statute.

Members of the Senate Committee on Federal and State Affairs
February 23, 2000
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CONCLUSION

Senate Bill No. 637 needlessly seeks to deprive police officers employed by the Riley County Police Department of due process rights to which they are now entitled. There is absolutely **no** compelling reason to deprive these officers of their existing rights.

The real problems which the Law Board seeks to rectify deal with the procedure for conducting appeal hearings. Grievance procedures are a mandatory subject of bargaining under the PEERA. There are numerous police collective bargaining agreements in this state which contain grievance procedures which will more than adequately address all of the concerns of the Law Board. Rather than wasting the time and money of the legislature and the taxpayers, these amendments should be rejected, and the Law Board and F.O.P. Lodge No. 17 should sit down at the negotiating table and work out a new hearing procedure, which is in everyone's best interest.

Thank you for your attention and for allowing me the time to address you today.

Respectfully submitted,


Steve A. J. Bukaty

SAJB/ss