Approved: April 06, 2001
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Karin Brownlee at 8:30 a.m. on March 14, 2001 in Room 123-S of the Capitol.

All members were present except:

Committee staff present:	April Holman, Legislative Research Department Bob Nugent, Revisor of Statutes Lea Gerard, Secretary
Conferees appearing before the committee:	Representative Osborne, District 61 Richard Cram, Department of Revenue John Peterson, National Assoc. of Professional Employer Organizations Sandy Jacquot, League of Municipalities
Others attending:	See attached sheet.

SB 121–Standards for employing leasing firms.
Richard Cram, Department of Revenue, testified in support of **SB 121** with an amendment. The amendment is to clarify the status of professional employer organizations already operating in Kansas. The amendment would address the question as to whether the client of a professional employer organization can treat the assigned workers as employees for purposes of determining "qualified business facility employees" and claiming the "qualified business facility" tax credit (Attachment 1).

John Peterson, representing the National Association of Professional Employer Organizations, testified in support of **SB 121** with balloon amendments from the Department of Revenue, Insurance Department, Division of Workers Compensation and others. The balloon amendments incorporates the amendments that are requested by all three of the aforementioned organizations. It also reflects an attempt to scale the bill down to a bare bones measure that defines Professional Employer Organizations (PEO's). (Attachment 2)

John Parisi, Kansas Trial Lawyers Association, testified in opposition to **SB 121.** The Kansas Trial Lawyers did propose an amendment that would address specifically Page 4, Line 19 through 25 striking section (g) (2) and inserting "*assigned workers are employees of the client company for general liability purposes*" (Attachment 3).

Bill Layes, Chief of Labor Market Information Services, Kansas Department of Human Resources, presented written testimony in support of **SB 121** (Attachment 4).

Senator Brungardt moved, seconded by Senator Steineger to adopt the proposed balloon amendment submitted by The Kansas Trial Lawyers on **SB 121**, Page 4, Line 19 "assigned workers are employees of the client company for general liability purposes". Motion carried.

Senator Emler moved, seconded by Senator Barone to adopt all the remaining balloon amendments for **SB 121**. Motion carried.

Senator Wagle moved, seconded by Senator Brungardt, that **SB 121** be recommended favorably for passage as amended. Motion carried.

HB 2124–Lake Wabaunsee Improvement district; powers and duties.
Representative Osborne testified in support of **HB 2124** stating it is a local control issue. The Lake Wabaunsee Improvement District would like to have the same opportunity as improvement districts that fall outside the 5 mile radius. Lake Wabaunsee is about four miles outside of Eskridge and that is the point of contention. By adding new language on Page 3, Lines 36 and 37, it will allow the district to clearly take charge of their future health and nuisance problems (Attachment 5).

Chairperson Brownlee declared the hearing closed on **HB 2124.**

HB 2301–Workers compensation; computation of benefits and administrative changes.
Sandy Jacquot, Director of Law/Legal Counsel, League of Municipalities, testified in opposition to **HB 2301.** The Kansas Municipal Insurance Trust, a workers compensation pool for municipalities is under the umbrella of the League of Kansas Municipalities and the League provides administration of the pool. The bill does not address all of the competing public policies or legal impediments that are inherent in this issue. The bill is an attempt at a quick fix that only raises more questions and problems (Attachment 6).

Chairperson Brownlee stated the issue the committee was left with the last time the bill was heard was a miscalculation in the benefit amount for the volunteer firefighters. The Chairperson suggested that the Committee correct their benefit to be $401.00 per month and not the $356.00 per month which was a miscalculation.

Chairperson Brownlee declared the hearing closed on **HB 2301.**

Upon motion by Senator Jordan, seconded by Senator Jenkins, the minutes of March 1st , March 2nd and March 5th meetings were unanimously approved.

Meeting adjourned at 9:30 a.m.

Next meeting scheduled March 15, 2001 at 8: 30 a.m.

SENATE COMMERCE COMMITTEE
GUEST LIST
DATE: MARCH 14, 2001

NAME	REPRESENTING
John Peterson	NAPEO
Bill Mayes	NAPEO
Russell B. Walters	City of Burrton,
Bill Layes	KDHR
Phil Harness	KDHR-Div. of Work. Comp.
John Parisi	KTLA
[illegible]	KTLA
Richard Clem	KDOL
Vern Osborne	Dist #61 Rep.
Dick Cook	KS Ins. Dept.
John Washburn	KS INS. DEPT
Jim Keating	KS.A.F.C.
Pat Lehman	KFSA
Bill Snead	State Farm
Paul Bicknell	KDHR
Richard Thomas	KDHR/WC
Roger Traweek	KGC
Sandy Jacquot	CKM
Bill Curtis	Ks Assoc of School Bds
Rob Hodges	KTLA

STATE OF KANSAS
Bill Graves, Governor

DEPARTMENT OF REVENUE
Stephen S. Richards, Secretary

Office of Policy & Research
Richard L. Cram, Director
915 SW Harrison St.
Topeka, KS 66625

(785) 296-3041
FAX (785) 296-7928
Hearing Impaired TTY (785) 296-3909
Internet Address: www.ink.org/public/kdor

Office of Policy & Research

To: Senator Karin Brownlee, Chair
Senate Commerce Committee

From: Richard L. Cram

Re: Testimony on Senate Bill 121

Date: March 14, 2001

The Department of Revenue respectfully requests that the following amendment to Senate Bill 121, now pending in the Senate Commerce Committee. At the end of the sentence on page 3, line 25, subparagraph (b) to Section 4 of the bill, insert the following sentence:

> "Commencing after December 31, 1999, the client shall be considered as the employer of an assigned worker under the terms of the professional employer arrangement between the client and the professional employer organization, for purposes of : (1) K.S.A. 2000 Supp. 79-32,154(d), K.S.A. 2000 Supp. 74-50,114(d), K.S.A. 2000 Supp. 74-50,131, or K.S.A. 2000 Supp. 79-32,160a; and (2) calculating the client's payroll factor under K.S.A. 79-3283. The client shall provide to the department of revenue the payroll information for assigned workers needed for purposes of administering the above provisions."

The Department requests this amendment in order to clarify the status of professional employer organizations already operating in Kansas. This amendment addresses the question that now exists as to whether the client of a professional employer organization can treat the assigned workers as employees for purposes of determining "qualified business facility employees" and claiming the "qualified business facility" tax credit under K.S.A. 2000 Supp. 79-32,153 *et seq*. The amendment also addresses the question of whether the payroll for the assigned workers should be included in the client's payroll factor under K.S.A. 79-3283, for purposes of calculating the client's corporate income tax liability.

"Qualified business facility employee" is defined at K.S.A. 2000 Supp. 79-32,154(d) as follows:

> "Qualified business facility employee" shall mean a person employed by the taxpayer in the operation of a qualified business facility during the taxable year for

Senate Commerce Committee
March 14, 2001
Attachment 1-1

which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed:

> (1)A person shall be deemed to be so engaged if such person performs duties in connection with the operation of the qualified business facility on: (A) A regular, full-time basis; (B) a part-time basis, provided such person is customarily performing such duties at least 20 hours per week throughout the taxable year; or (C) a seasonal basis, provided such person performs such duties for substantially all of the season customary for the position in which such person is employed. . . .
>
> (2) For taxable years commencing after December 31, 1997, in the case of a taxpayer claiming a credit against the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto or the privilege tax as measured by net income of financial institutions imposed pursuant to chapter 79 article 11 of the Kansas Statutes Annotated, "qualified business employee" shall not mean any person who is employed in the operation of a qualified business facility in the state due to the merger, acquisition or other reconfiguration of the taxpayer unless such employee's position represents a net gain of total positions created by the taxpayer and the employee's position was not in existence at the time of the merger acquisition or other reconfiguration of the taxpayer.

If the client of a professional employer organization operates and invests in a "qualified business facility" and attempts to claim the "qualified business facility" investment tax credit under K.S.A. 2000 Supp. 79-32,153 *et seq.*, in order to qualify for the credit (assuming the other requirements are met), the assigned workers must be considered employees of the client. The requested amendment to Senate Bill 121 would resolve this issue.

If the client's assigned workers are considered employees of the client for purposes of the "qualified business facility" tax credit, then they should also be considered employees of the client for purposes of determining the client's corporate income tax liability. For corporate income tax purposes, K.S.A. 79-3283 defines the payroll factor as follows:

> "The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period."

"Compensation" is defined as "wages, salaries, commissions and any other form of remuneration paid to employees for personal services." K.S.A. 79-3271.

The payroll factor is one of three factors (payroll, property and sales) used in apportioning a corporation's business income for state taxation purposes among the states in which the corporation does business. The question may arise as to whether the payroll for the client's assigned workers should be included in the client's payroll factor, for purposes of computing the client's corporate income tax liability. The amendment to Senate Bill 121 would also resolve that issue.

Prepared by John Peterson
National Association of Professional
Employer Organizations

Substitute Bill

Session of 2001

SENATE BILL No. 121

By Committee on Commerce

1-24

AN ACT relating to professional employer organizations; establishing certain minimum standards applicable to all professional employer organizations operating in the state.

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

This Act shall be known as the professional employer organization act.

Section 1. ~~It is hereby declared that the professional employer organization~~ provides a valuable service to commerce and the citizens of this state. The rights and responsibilities of the professional employer organization must be clearly defined. Under agreed terms, two entities are both employers of the same employee. The recognition of this relationship should be based on the nature of the relationship as defined by a written contract between a professional employer organization and a work-site employer rather than left to the common law of the state. Professional employer organizations shall be the coemployer or the employing unit for all employees covered by a professional employer contract, and a professional employer organization may aggregate all employees ~~under the individual contracts to the extent allowed by law.~~

Sec. 2. Unless the context clearly requires otherwise, these terms are defined as follows:

(a) "Administrative fee" means those amounts charged by the professional employer organization to the client over and above amounts applied to the mandatory state and federal taxes, wages of assigned workers and amounts applied to premiums or contributions for benefits provided for assigned workers.

(b) "Assigned worker" means a person having an employment relationship with both the professional employer organization and the client.

(c) "Client" means a person who contracts with a professional employer organization to obtain employer services from another person through a professional employer arrangement.

(d) "Person" means an individual, an association, a company, a firm, a partnership, a corporation or any other form of legally recognized entity.

(e) "Professional employer arrangement" means an arrangement, under contract or whereby:

(1) A professional employer organization agrees to employ all or a majority of a client's workforce;

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(2) the arrangement is intended to be, or is, ongoing rather than temporary in nature;

(3) employer responsibilities for workers under the arrangement are in fact shared by the professional employer organization and the client; and

(4) for the purposes of this act, a professional employer arrangement shall not include:

(A) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements, shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the federal internal revenue code of 1986, as amended, and which does not hold itself out as a professional employer organization.

(B) Arrangements in which a person assumes full responsibility for the product or service performed by such person or such person's agents and retains and exercises, both legally and in fact, a right of direction and control over the individuals whose services are supplied under such contractual arrangements, and such person and such person's agents perform a specified function for the client which is separate and divisible from the primary business or operations of the client.

(C) Any person otherwise subject to this act if, during any fiscal year of the person commencing after July 1, 2000, the person pays total gross wages to employees employed by the person in the state under one or more professional employer arrangements which do not exceed 5% of the total gross wages paid to all employees employed by the person in the state during the same fiscal year under all arrangements described in paragraph (4) and that each person does not advertise or hold itself out to the public as providing services as a professional employer organization.

(f) "Professional employer organization" means any person engaged in providing the services of employees pursuant to one or more professional employer arrangements or any person that represents itself to the public as providing services pursuant to a professional employer arrangement.

Sec. 3. ~~This act shall not apply to labor organizations as defined by~~ the national labor relations act or to any political subdivision of ~~the~~ state, the United States, and any programs or agencies thereof, or to any entity which meets the definitions contained in paragraph (e)(4) of section 2 and amendments thereto. A professional employer arrangement shall have no effect on any existing collective bargaining agreements. Notwithstanding any statements in this subsection to the contrary nothing in this act shall prohibit a client which is a party to a collective bargaining agreement from contracting with a professional employer organization ~~provided that the labor organization consents to such arrangement.~~

~~Sec. 4.~~ (a) Each professional employer organization shall ~~meet the~~

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~~following standards:~~

~~(1) Have~~ a written contract between the client and the professional employer organization setting forth the responsibilities and duties of each party. The contract shall contain a description of the type of services to be rendered by the professional employer organization and the respective rights and obligations of the parties ~~and the contract shall also provide~~ that the professional employer organization:

(A) Reserves a right of direction and control over workers assigned to the client's location. However, the client shall maintain such direction and control over the assigned workers as is necessary to conduct the client's business and without which the client would be unable to conduct its business, discharge any fiduciary responsibility which it may have, or comply with any applicable licensure;

(B) assumes responsibility for the withholding and remittance of payroll-related taxes and employee benefits from its own accounts, as long as the contract between the client and professional employer organization remains in force; and

(C) retains authority to hire, terminate, discipline and reassign ~~workers~~

~~(2)~~ Provide written notice of the general nature of the relationship between the professional employer organization and the client to the assigned workers located at the client work site.

~~(b)~~ A professional employer organization shall be considered an employer for the purposes of withholding state income tax of the assigned workers pursuant to the Kansas income tax act.

~~(c)~~ As long as the professional employer organization's contract with the client remains in force, the professional employer organization shall have a right to and shall assume the following responsibilities:

(1) Pay wages and collect, report and pay employment taxes of its assigned workers from its own accounts;

(2) pay unemployment taxes as required by the employment security law;

(3) secure and provide all required workers compensation coverage for its assigned workers either in its own name or in its clients name.

~~(d)~~ Both client and the professional employer organization shall be considered the employer for the purpose of ~~coverage under~~ the workers compensation act.

~~(e)~~ Both the professional employer organization and its client shall be entitled to protection of the exclusive remedy provision of the workers compensation act irrespective of which entity secures and provides such workers compensation coverage.

~~(f)~~ A recognized professional employer organization shall be deemed the employer for the purposes of sponsoring and maintaining benefit and

have

(b) Each professional employer organization shall

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Commencing after December 31, 1999, the client shall be considered as the employer of an assigned worker under the terms of the professional employer arrangement between the client and the professional employer organization, for purposes of: (1) K.S.A. 2000 Supp. 79-32,154(d), K.S.A. 2000 Supp. 74-50,114(d), K.S.A. 2000 Supp. 74-50,131, or K.S.A. 2000 Supp. 79-32,160a; and (2) calculating the client's payroll factor under K.S.A. 79-3283. The client shall provide to the department of revenue the payroll informtion for assigned workers needed for purposes of administering the above provisions

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welfare plans for its assigned workers.

(g) [In the absence of any contrary provisions contained in the contract between the client and the professional employer organization, the professional employer organization arrangement that exists between a professional employer organization and its clients shall be interpreted for the purposes of insurance and bonding as follows:

(1) A professional employer organization shall not be liable for the acts, errors or omissions of a client or of any assigned worker when such client or worker is acting under the direction and control of a client. A client shall not be liable for the acts, errors or omissions of a professional employer organization or of any assigned worker of a professional employer organization when such professional employer organization or worker is acting under the direction and control of the professional employer organization. This section shall not limit any contractual liability, as may be expressly agreed upon, between the professional employer organization and the client, nor shall this section limit the liabilities of any professional employer organization or client as defined elsewhere in this act; and]

[(2)] assigned workers shall not be deemed employees of the professional employer organization for purposes of general liability insurance, automobile insurance, fidelity bonds, surety bonds or employer's liability insurance other than workers compensation insurance carried by the professional employer organization unless the assigned workers are included by specific reference in the applicable prearranged employment contract, insurance contract or bond.

[(h) The sale of professional employer services in conformance with the provisions of this chapter shall not constitute the sale of insurance for purposes of chapter 40 of the Kansas Statutes Annotated.]

[(i) A] professional employer organization is not engaged in the unauthorized practice of an occupation, trade, or profession that is licensed, certified or otherwise regulated by a governmental entity solely by entering into a professional employer arrangement with a client that is so licensed, certified or regulated.

(h) Except for the conduct of the professional employer organization,

Sec. [5.] (a) Financing of unemployment insurance benefits for workers assigned by a professional employer organization to a nonprofit organization or a unit of government shall be paid by the unit or organization as provided by the employment security law. Unemployment insurance benefits for workers assigned by a professional employer organization to any client other than a nonprofit organization or governmental unit shall be made in accordance with the provisions of this section.

(b) During the term of a professional employer organization agreement, a professional employer organization is liable in accordance with the provisions of employment security law, for the payment of contribu-

tions, penalties and interest on wages paid to employees assigned to a client company. The professional employer organization shall report and pay all contributions under its state employer account number, using the applicable contribution rate.

(c) When a client ceases to pay wages, such client shall be subject to termination of its employer account and experience rating records in the same manner as any other employer, in accordance with the provisions of employment security law. If a client which has ceased to pay wages subsequently resumes paying wages, it will be assigned the appropriate experience rate in accordance with the provisions of employment security law.

Sec. ~~6.~~ (a) Nothing in this act exempts a client of a professional employer organization, nor an assigned worker, from any other state, local or federal license or registration requirement.

(b) Any individual who must be licensed, registered or certified according to law and who is an assigned worker is deemed an employee of the client for purposes of the license, registration or certification.

(c) ~~A~~ professional employer organization does not engage in an occupation, trade or profession that is licensed, certified or otherwise regulated by a governmental entity solely by entering into a professional employer arrangement with a client company or an assigned worker.

Except for the conduct of the professional service organization,

Sec. ~~7.~~ This act shall take effect and be in force from and after its publication in the statute book.

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5-5

KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the Senate Commerce Committee

FROM: John Parisi
Legislative Chair

RE: SB 121

DATE: March 13, 2001

Chair Brownlee and members of the Senate Commerce Committee, thank you for the opportunity to comment on the proposed amendments to SB 121. As was mentioned in KTLA's original comments on SB 121 submitted by Dennis L. Horner on February 6, 2001, our major concerns about the bill remains its effect upon civil law and liability, despite the proposed amendments.

A company can only act through its employees. Since an employer reaps the benefits of its employees actions, the common law of Kansas imposes vicarious liability upon an employer for acts or omissions of its employees which harm others under the doctrine of *respondeat superior*.

As originally drafted, SB 121 provided in Section 1 that assigned workers were employees of both the PEO and the client company, but then Section 4(g)(1) relieved the PEO of any liability for an assigned worker's acts, errors or omissions when the worker was under the direction and control of the client company, and relieved the client company of any liability for an assigned worker's acts, errors or omissions when the worker was under the direction and control of the PEO. A third person injured by an assigned worker who sues the client company, which held itself out to the public as the worker's employer, instead of the PEO the injured person did not know existed, would be denied a remedy. Even if the injured person learns of the PEO, either the client company and the PEO would be immune from liability, depending upon which was exercising "direction and control" at the time of injury.

While the original Section (4)(g)(1) has been stricken, the fact that Section 1 has also been stricken creates uncertainty regarding the vicarious liability of the client company for an assigned worker's acts, errors or omissions. Is it the intent of SB 121 that an assigned worker not be considered an employee of the client company for any purpose other than workers compensation?

Relieving the client company of vicarious liability to third persons injured by assigned workers would be particularly worrisome in light of the retention the original Section 4(g)(2), which provides that the assigned workers are not considered employees of the PEO "for purposes of general liability insurance, fidelity bonds, surety bonds or employer's liability insurance other

Terry Humphrey, Executive Director

Jayhawk Tower • 700 SW Jackson, Suite 706 • Topeka, Kansas 66603-3758 • 785.

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than workers compensation insurance carried by the professional employment organization unless the assigned workers are included by specific reference to the applicable prearranged employment contract, insurance contract or bond." If the PEO buys an ordinary liability insurance policy covering its employees, without an extra provision specifically covering the assigned employees, it will be liable for an assigned worker's acts, errors or omissions but its insurer will not. This not only will be potentially ruinous to an unsuspecting PEO which thought it was insured, but also allows the client company to escape liability for injuries caused by an assigned worker's acts, errors or omissions merely by using a judgment-proof PEO as an intermediary.

If the original Section 4(g)(2) were deleted and a provision added making it clear that assigned workers were employees of the client company for general liability purposes, some of our concerns about the impact of SB 121 on general civil law and liability would be addressed.

We are still concerned about the PEO "legislating" co-employment in Sec. 3 (Page 3, Lines 6-9 and 18-19) We see no reason why the Legislature should become involved in a private contractual matter, giving them legislative sanction. The issue of employment now is "right of control" and actual "direction and supervision." If this statute is passed as is, the PEO will be able to claim it is an employer as a matter of law to avoid civil liability for errors and actions. We believe the contract between the PEO and the client (real employer) should control and see no reason for the proposed statutory language.

We continue to be concerned about the full impact of SB 121 and the proposed amendments.

TESTIMONY – SB121
SENATE COMMERCE COMMITTEE
MARCH 14, 2001

Good morning, Madam Chair and members of the committee, my name is Bill Layes. I am the Chief of Labor Market Information Services, Kansas Department of Human Resources. Thank you for the opportunity to appear before you to report on SB121.

SB121 would create standards applicable to all professional employer organizations. The bill includes definitions and requirements. Briefly, the bill would require each professional employer organization to have a written contract between the client and the professional employer organization outlining responsibilities and duties of each party.

The KDHR Employment Security Advisory Council met on two occasions, August 29, 2000 and November 15, 2000. KDHR also met with Mr. Bill Maness who represents Oasis Outsourcing, Inc. Mr. Maness requested and was allowed to present information outlining professional employer organizations to the Employment Security Advisory Council on August 29, 2000. The Council took no action on this issue. KDHR believes establishment of this bill will have no effect on unemployment insurance payments or on the Employment Security Trust Fund.

Thank you for allowing me to appear before you today. I will try to answer any questions.

STATE OF KANSAS

VERN OSBORNE
REPRESENTATIVE, SIXTY-FIRST DISTRICT
HOME ADDRESS: 6940 KIRTNER DRIVE
ST. GEORGE, KANSAS 66535-9453
(785) 494-2449
OFFICE ADDRESS: STATE CAPITOL, SUITE 110-S
TOPEKA, KANSAS 66612-1504
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
TAXATION COMMITTEE
TOURISM COMMITTEE
KANSAS 2000 SELECT COMMITTEE
ECONOMIC DEVELOPMENT COMMITTEE

Madam chair and committee members. I appreciate the opportunity to testify in regards to HB 2124, a local control issue.

The Lake Wabaunsee Improvement District has struggled over the years with governance problems because they fall within a 5-mile radius of an incorporated city. On page 3, lines 34 and 35, the present statute reads that the board of directors of any improvement district located more than 5 miles from an incorporated city shall have the power to adopt various resolutions. We simply want to provide Lake Wabaunsee the same opportunity as improvement districts that fall outside that 5-mile radius. By adding new language on lines 36 and 37, it will allow them to clearly take charge of their future health and nuisance problems.

Attached for your information, is a letter from the city of Eskridge approving this action by a unanimous vote on January 16, 2001.

Thank you for your time and I will be happy to answer any questions.

Representative Vern Osborne

Vern

Senate Commerce Committee
March 14, 2001
Attachment 5-1

City of Eskridge

110 S. MAIN ST./PO BOX 156
ESKRIDGE, KS 66423
PHONE (785) 449-2621
FAX (785) 449-7289

Donald R. Rush, Mayor

Joe A. Elliott, City Administrator/ City Clerk

Janice K. Turnbull, City Treasurer

Gary H. Hanson, City Attorney

ESKRIDGE CITY COUNCIL: *Debra Fox - John Foster - Rex Kraus - Louella Mercer - Deann Williams*

January 19, 2001

Maritta Elliott, President
Lake Wabaunsee Improvement District
P.O. Box 101
Eskridge, Kansas 66423

Ref.: amending K.S.A. 19-2765

Dear Maritta,

It is the understanding of the Eskridge City Council that the L.W.I.D. has submitted a request to House Representative Vern Osborne concerning an amendment to K.S.A. 19-2765. It is further understood that the purpose of this amendment is to give legal authority to the L.W.I.D. in order to enforce health issues and property cleanup at Lake Wabaunsee by modifying the five mile stipulation in K.S.A. 19-2765. It is also understood that this amendment was initiated after numerous attempts had failed to get cooperative assistance from Wabaunsee County in these matters.

Therefore, the City of Eskridge realizes that it is powerless to aid in these situations legally and understands the problems involved. That being the case and after consulting with City Attorney Gary Hanson during the meeting of January 16th, 2001, at 7:28p.m., Council Person R. Kraus made a motion to approve this action taken by L.W.I.D., Council Person D. Fox seconded the motion and all aye.

If you have any need for further assistance on this, or for any other matter, do not hesitate to give us a call.

Sincerely,

Joe A. Elliott

Joe A. Elliott, City Administrator/Clerk

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LKM
League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

TO: Senate Commerce Committee

FROM: Sandy Jacquot, Director of Law/Legal Counsel

DATE: March 14, 2001

RE: Opposition to HB 2301

I want to thank the committee for the opportunity to appear and testify in opposition to HB 2301. The Kansas Municipal Insurance Trust (KMIT), a workers compensation pool for municipalities, is under the umbrella of the League of Kansas Municipalities and the League provides administration of the pool. As part of my duties for the League, I am currently serving as the interim pool administrator. It is in both of these capacities, for the League and for KMIT, that I appear today.

In 1993, the Kansas Legislature amended K.S.A. 44-511 to provide that when considering payment of workers compensation benefits to volunteer firefighters and law enforcement officers, among others, "[v]olunteer employment shall not be presumed to be full-time employment." In 1995, Insurance Commissioner Kathleen Sebelius issued Bulletin 1995-10, in essence requiring volunteer firefighters to be paid as if they were full-time employees. Since that time, there has been disagreement about the language and the manner in which volunteer firefighters should be covered for workers compensation purposes.

A substantial number of cities in Kansas rely on volunteer firefighters to provide fire protection in our local communities. It is not uncommon for a city to have a fire chief and 20 or more volunteer firefighters. Most of the volunteers put in anywhere from 3 to less than 20 hours per month. While cities depend upon the civic mindedness of their citizenry to step forward as volunteers, there is an inherent inequity and unfairness in requiring workers compensation coverage based upon full-time employment.

Some of our cities employ part-time firefighters. These individuals work, in most cases, more hours than a volunteer, but their benefit will be based upon actual hours on the payroll. Thus, a part-time firefighter working more hours than a volunteer will have a lesser benefit under HB 2301. In addition, as a matter of good public policy, light duty is encouraged as a way to minimize workers compensation costs. To what extent will a city be able to require the volunteer to serve in a light duty position? Theoretically it should be at least 40 hours per week, if the benefit is based upon full-time employment. Another issue that arises is that a volunteer may be deemed unable to return to firefighting and, thus, be eligible for workers compensation, but in fact returns to his or her regular job.

Currently, pursuant to workers compensation regulations, the maximum payroll an insurer can charge a city for volunteer firefighters is capped. This translates directly into reduced premiums to cover the risk of injury to the firefighters. This bill would require increased benefits, but without increased premium dollars. The flip side to this, however, is that our cities could not afford the increased premiums to cover the additional risk, which is likely why the cap exists. Obvious solutions would be to minimize the risk of injury by requiring pre-volunteer physical examinations for firefighters, eliminating many from the volunteer pool, and requesting that cities only provide fire protection within their jurisdictional boundaries. Many cities contract to provide coverage in townships, as well. Forcing cities to make these choices is not good public policy. Another very simple solution, and one that many cities have opted for, is to purchase disability insurance or replacement income type insurance for the volunteers.

In short, we do not believe this bill addresses all of the competing public policies or legal impediments that are inherent in this issue. Rather, the bill is an attempt at a quick fix that really fixes nothing, but only raises more questions and problems. We strongly urge the committee to reject HB 2301. Thank you again for allowing me to testify in opposition to HB 2301.