

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 a.m. on January 26, 2004 in Room 123-S of the Capitol.

All members were present except:

Senator Chris Steineger- excused
Senator David Kerr- excused
Senator Nick Jordan- excused
Senator Pete Brungardt- excused

Committee staff present:

Kathie Sparks, Legislative Research
Susan Kanarr, Legislative Research
Helen Pedigo, Revisor of Statutes
Nikki Kraus, Committee Secretary

Conferees appearing before the committee:

Kathie Sparks, Legislative Research

Others attending:

See Attached List.

Ms. Sparks presented and explained to the committee three different reports from the 2003 Interim Committees. First, she reviewed the Special Committee on Utilities. (Attachment 1) This report focused on the issue of telecommunications including broadband coverage, SBC deployment of DSL services, and KAN-ED. The report provided the following conclusions and recommendations: KAN-ED should provide services to medical clinics in communities without a hospital, House Utilities, JCIT, and Senate Commerce should hold a joint meeting during session to address information on broadband services available in various communities and address the use of KUSF moneys by public school districts, libraries, and hospitals for KAN-ED implementation. It went on to say that the Legislature should consider increasing the maximum fine from the KCC for violations of its orders, that the Department of Transportation allow the use of its 800 MHz radio towers, and that a link be created between the KDOT fiber backbone along I-70 through Topeka and the Capitol in downtown Topeka.

The Special Committee on Commerce and Labor discussed workers compensation issues including the system itself, insurance and rates, fraud and abuse, physician choice, school cost presentation, Kansas cooperative cost outlook, small and business cost outlook, and other citizen concerns.

Ms. Sparks then presented the committee with "Reports of the Joint Committee on Economic Development" which addressed rural economic development issues such as agritourism and "Farmaceutical" development. (Attachment 2) The conclusions and recommendations of the committee were that the Kansas Insurance Commissioner open a dialog with the Kansas insurance industry about the lack of liability insurance for farmers and ranchers developing agritourism operations. The report went on to say that the committee wished to acknowledge Senator Schmidt's proposed bill regarding limiting liability on agritourism and recommended that all of the interested parties should come together to produce a cooperative bill.

Ms. Sparks provided the committee with copies of an explanation of Executive Reorganization Order 31 (Attachment 3) and concluded with the "Report of the Special Committee on Commerce and Labor". (Attachment 4)

Following discussion, Chairperson Brownlee adjourned the meeting at 9:30 a.m. The next meeting will be held at 8:30 a.m. on January 27, 2004 in Room 123-S of the Capitol.

January 26, 2004

To: Senate Commerce Committee
From: Kathie Sparks, Principal Analyst
Re: Committee Reports

Special Committee on Utilities

TELECOMMUNICATIONS

The Special Committee on Utilities was directed to:

Assess the current broadband coverage in Kansas by various technologies. Study any barriers to deployment and discuss possible incentives to encourage deployment. Review the recent February 20th FCC ruling on broadband deregulation and the current issues of Kansas deployment before the KCC. In addition, review the current status of the KAN-ED network.

Generally, the term broadband is used to describe services that provide consumers with fast access to data over telecommunication lines, coaxial cable (as used by cable television companies) or radio waves. The potential to provide broadband services over electric lines are being tested in several locations throughout the nation. In most instances, broadband services are used to access the Internet or to access dedicated information systems (such as those used by geographically separated facilities of a company).

In addition to broadband services provided by telephone companies, cable operators, wireless, and satellite companies have entered the broadband market. Currently, cable modem service is available to over 70 percent of households in the United States. By mid-2002 over 90 percent of the nation's population lived in counties with at least three wireless providers. Broadband service provided via satellite is available in most areas of the United States, but generally cannot compete with digital subscriber line (DSL) and cable modem pricing.

State and federal jurisdictions in regard to regulation of broadband services currently are being sorted out. The most recent ruling by the FCC, the Triennial Review Order (TRO) issued in August 2003 has been appealed to the federal district court for the District of Columbia.

In the Triennial Review Order the FCC delegated to the states specific market analyses to determine the existence of competition for a particular telecommunication service. The existence of competition, both intermodal and intramodal, is key to determination of the degree of regulation required to ensure provision of the service at a reasonable price.

The FCC's Triennial Review Order with particular importance for broadband services essentially states that incumbent telephone companies (companies providing telecommunication services to an area in 1996) will not be required to lease their broadband facilities to competitors if the FCC's decision is upheld by the federal courts.

Senate Commerce
Attach #1
01/26/04

Broadband Coverage

In regard to broadband availability, KCC staff informed the Committee that highly detailed coverage information regarding broadband services is not readily available. That is because the lowest geographic level for which the FCC collects and reports such data is zip code. In many parts of Kansas, zip codes are sufficiently large that technical distance limitations imposed by broadband technology result in only partial coverage. The KCC's ability to collect data from entities such as cable, wireless and satellite companies that provide broadband service is limited to requests for voluntary reporting because those entities are not regulated by the Commission.

Barriers and Incentives

Barriers to widespread availability of broadband include:

- technical issues unique to each type of broadband delivery technology;
- access to rights-of-way;
- uncertain regulatory environment;
- price;
- access to capital; and
- low consumer demand.

In regard to incentives, broadband industry participants expressed a variety of positions:

- Some participants stated that any incentives must be technology/provider neutral.
- Several participants noted that their entry and continuation in the broadband service market was not dependent upon incentives other than those provided by the marketplace.
- Rural telephone companies recognized rate of return regulation as a service expansion incentive.
- Regulatory incentives might spur expansion of broadband services in sparsely populated areas of the state.
- The provision of broadband services to public facilities such as schools and libraries would create demand among other customers.

SBC Deployment of DSL Services

The Committee received a briefing from KCC staff, counsel for the Citizens' Utility Ratepayer Board (CURB) and SBC regarding the proposed settlement of a case before the KCC (Docket Number 99-SWBT-677-GIT). The docket, originally opened in 1999, was initially settled by a Stipulation and Agreement in January 2000. One provision of that settlement was that SBC would

provide broadband to Kansas customers in 40 wire centers in 24 communities during the three years beginning on August 1, 2000. The service was to be provided in Hays, Hutchinson, Kansas City, Lawrence, Manhattan, Salina, Topeka, and Wichita. The service was to be provided where technically feasible in Arkansas City, Bonner Springs, Coffeyville, Dodge City, El Dorado, Emporia, Garden City, Great Bend, Independence, Leavenworth, Liberal, McPherson, Newton, Ottawa, Parsons and Pittsburg.

In March 2003, the KCC directed SBC to file reports regarding progress of broadband deployment required by the initial settlement. In April 2003 SBC filed reports with the Commission, one of which indicated that erroneous information had been provided to Commission staff in 2001 and 2002. Also in April, SBC requested an extension of time to complete the broadband deployment. The extension was requested because SBC had not met the requirement of the original order in regard to broadband deployment.

Commission staff suggested fines be imposed on SBC for the inaccurate reports that overstated significantly the extent of broadband deployment. KCC staff also recommended imposition of fines on SBC. After negotiation of issues, KCC staff, CURB, and SBC formulated a second Stipulation and Agreement regarding broadband deployment. At the time of the Committee's final meeting in November, the Commission had not acted on that proposed settlement agreement.

The September 2003 proposed settlement provided for additional broadband deployment, specific upgrades to telephone lines in specific communities, intermediate completion dates for some portions of the work, and regular reporting to the KCC. The broadband deployment outlined in the agreement would be completed by December 31, 2004.

The 2003 proposed settlement provides for DSL service in 81 new central offices, fourteen of which are in or near Topeka and Wichita. Other central offices identified in the settlement are in rural areas and serve at least 1,000 access lines. Further, 108 additional DSL-capable remote terminals will be deployed by December 31, 2004 in: Hays, Hutchinson, Kansas City, Manhattan, Salina, Topeka and Wichita. Other technical upgrades would be required for all exchanges covered by the 2000 and 2003 agreements. Finally, SBC would be required to file with the KCC quarterly reports of progress toward completion of the required work. KCC staff indicated these reports would be certified in the future in order to better deal with erroneous information such as that contained in reports filed under the prior settlement.

CURB and the KCC staff identified the following benefits of the proposed settlement:

- DSL deployment in the communities is closely aligned with KCC staff's interpretation of the original settlement.
- The settlement would make DSL services available to approximately 90 percent of SBC's customers in metropolitan areas.
- The settlement would result in deployment of DSL in 19 communities identified in 2002 as not having any available broadband service: Atwood, Blue Rapids, Waterville, Cottonwood Falls, Ellsworth, Eureka, Greensburg, Herington, LaCrosse, Lincoln, Marion, Meade, Minneapolis, Oakley, Plains, Sedan, Smith Center and St. Francis. Imposition of fines as a penalty for SBC not meeting the deadline was discussed, but more widespread deployment was the more desirable outcome.

- DSL service would become available to between 70 percent and 75 percent of all SBC customers by the end of the implementation period.
- The settlement would achieve benefits in the time that would have been spent in litigation had the settlement not been reached.

The KCC has since approved the agreement.

KAN-ED

The briefing on the status of KAN-ED described progress toward implementation of the network that will eventually link the state's schools, libraries, and hospitals. The State Librarian reported that 291 libraries, representing approximately 90 percent of the library system, currently are utilizing the KAN-ED network. The Committee also learned that KAN-ED had provided \$2.4 million in subsidies to network participants.

CONCLUSIONS AND RECOMMENDATIONS

The Committee heard from representatives of the industry and discussed the issue of additional incentives for broadband deployment. The Committee makes no recommendation regarding the issue at this time.

The Committee recommends that:

- KAN-ED provide services to medical clinics in those communities that do not have a hospital.
- The House Utilities Committee, Senate Commerce Committee and Joint Committee on Information Technology meet jointly during the third week of the 2004 Session for an update on KAN-ED implementation. The report to those committees is to include:
 - Information about broadband services available in each community. That portion of the report should be developed cooperatively by KAN-ED, the industry, and the KCC. The Committee would prefer that information be presented as a map in sufficient detail for members to determine precisely where gaps in service availability exist in the state.
 - A report of the use of Kansas Universal Service Fund moneys by public school districts, libraries and hospitals for KAN-ED implementation. Specifically, the Committee is interested in the amount spent and the purpose for which it was spent. This portion of the report also should highlight where and how KAN-ED is encouraging broadband deployment.
- The Legislature consider increasing the maximum administrative fine that can be imposed by the KCC for violation of its orders. Under current law, the maximum fine for violation of a Commission order is \$1,000. That maximum has been in place since enactment of the statute in 1911. The Committee further recommends that any such increase in the maximum fine be aligned with fines imposed under the Consumer Protection Act.

- The Department of Transportation provide to the House Committee on Utilities and to the Senate Commerce Committee during the 2004 Session documentation supporting the Department's policies regarding use of the 800 MHz radio towers. In particular, the Committee is interested in documentation regarding interference that results from placement of equipment using other radio frequencies on those towers. Also, the Committee specifically is interested in documentation supporting the Department's position that weather warning system equipment should not be located on those towers.
- A link be created between the KDOT fiber backbone that runs along I-70 through Topeka and the Capitol in downtown Topeka.

Joint Committee on Economic Development

AGRITOURISM LIMITED LIABILITY

The Committee was directed to "study the issues surrounding limited liability for agritourism activities within Kansas; review issues related to 2003 SB 134, which was approved by the Legislature, but vetoed by the Governor."

SB 134 expanded the definition of "recreational purpose" as it relates to the liability of a property owner toward an individual entering that property. Recreational farming activities would include an individual's farming activities, but not the operation of agricultural equipment by a person who is a member of the public on the land for recreational purposes.

Staff from the Office of the Governor noted that, in the Governor's opinion, the bill allowed nearly total immunity from liability for activities identified as agritourism. He also noted that few, if any other states, are developing agritourism by limiting liability.

Senator Derek Schmidt appeared before the Committee to present a draft of a new bill which he intended to pre-file for the 2004 Legislative Session (which is now SB 334). The bill would propose a new statute on agritourism rather than amending the current Land and Recreational Area Act. The proposed statute would be modeled after the current Kansas Domestic Animal Law. The bill includes a provision that the Secretary of Commerce review requests from landowners for protection under the law. In addition, the landowner would be required to post a sign warning tourists of potential risks.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends that the Kansas Insurance Commissioner open a dialog with the Kansas insurance industry about the lack of liability insurance for farmers and ranchers that are developing an agritourism enterprise and report back to the appropriate standing committees during the 2004 Session. In addition, the Commissioner is asked to encourage Kansas insurance companies to assist in providing coverage.

The Committee wishes to acknowledge Senator Schmidt's proposed bill regarding limiting liability in agritourism. At this time, the Committee recommends that all of the interested parties come together to propose a cooperative bill early in the 2004 Session that addresses their differences. If there is no new legislation with significant consensus and support introduced by this group, the Committee recommends that the language from 2003 SB 134 as presented to the Governor be reintroduced as the basis for discussion for agritourism during the 2004 Session. In addition, any agritourism bill sponsor is asked to consider including both entities and individuals in the definition of operator.

RURAL ECONOMIC DEVELOPMENT INITIATIVES

Farmaceutical Development

According to the conferees, pharmaceutical development of medications would be more cost effective than the process currently being used. In addition, the economic impact on a community would include not only the farming operations, but also the down-stream protein extraction and

manufacturing facilities which could provide capital investment and high wage jobs in the area where the crops are grown.

A representative of the Kansas Rural Center outlined the potential risks of engineered crops. He noted that the major risk was contamination of surrounding food crops or stores in grain elevators. Other concerns were that large companies would buy large tracts of land rather than contract with small family farms and that the required inspections would be difficult due to staffing and distances.

The Committee also heard testimony from a representative of the Kansas Center for Rural Initiatives, Kansas State University. The purpose of the center is to connect the resources of the university with the needs of the community. Classes at KSU use projects to assist communities with rural development issues.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recognizes that entrepreneurship is the key to rural economic development and will require the passage of legislation during the 2004 Legislative Session. However, at this time, the Committee does not propose to submit any legislation with regard to entrepreneurship.

The Committee has begun the groundwork with Kansas Technology Enterprise Corporation (KTEC) to facilitate the development of 'farmaceutical' ventures which include the growth and processing of genetically engineered crops to create components, proteins in particular, for use in the manufacturing of drugs. At this time, no progress has been reported to the Committee.

The Committee supports and encourages the expansion of the Enterprise Facilitation Initiative at the Department of Commerce.

Special Committee on Commerce and Labor

WORKERS COMPENSATION

The Legislative Coordinating Council requested the Special Committee on Commerce and Labor to study the possibility of reforming the Workers Compensation law, including SB 181, and the role and performance of the Workers Compensation Advisory Council.

Conferees who presented testimony included state agency representatives, attorneys, federal agency representatives, associations and citizens.

The Workers Compensation System

Workers Compensation, an insurance plan, was outlined for the Committee by staff from the Division of Workers Compensation. It was explained that the Workers Compensation Law is designed to protect the interests of both the employee and the employer. Furthermore, that a *quid pro quo* or give and take situation under which an injured employee gives up the right to sue an employer in exchange for effective and efficient medical treatment and indemnity payments is in place. In addition, there must be a causal connection between the injury and the work activities. The conferee stated the claimant must meet the burden of proof. In addition, according to the speaker, premiums are driven by rapidly rising medical costs, the stock market crash, September 11, 2001, and insurance premiums but not by judges' decisions.

Workers Compensation Insurance and Rates

Workers compensation insurance written by insurance companies in Kansas is either written by an insurance company directly (voluntary market) or through the Kansas Workers Compensation Insurance Plan (the Plan). The two other methods of workers compensation insurance are the group funded pool and self insurance. Group funded pools provide that similar and dissimilar types of employers can join a pool for liability coverage when financial safeguards are met. Self insurance for employers is allowed when certain requirements are met and are outlined in the Committee report. If a company meets all the minimum requirements the amount of security required to be on deposit with the state is determined. Rates, which are usually adjusted annually, are based on premium and loss information provided by the insurance carriers to the NCCI.

Fraud and Abuse

A 1999 Legislative Post Audit found a pervasive pattern of inaction and excessive delays in making decisions in the Workers Compensation Fraud and Abuse Investigation Unit within the Division of Workers Compensation. A current aggressive program has been instituted to combat fraud and abuse within the workers compensation system, according to the conferee, an attorney from KDHR.

Analysis of SB 181

As drafted, the bill contained five issues, namely: 1) treatment of pre-existing conditions; 2) separation from employment; 3) accumulated type injuries; 4) disability retirement benefits; and 5) permanent partial disability benefits. Ultimately, the bill was revised so that the substitute bill in its current form contains two issues:

- treatment of pre-existing conditions, and
- separation from employment after a work related injury.

Physician Choice

Kansas law provides for the employer choice of physician for an injured worker. Comments in favor of retaining the employer choice of physician suggested that employers are in a position to provide the best choice of physician. Testimony in favor of the employee choice of physician was advocated as a factor for improving the injured workers progress and hence improving the workers compensation system.

School Cost Presentation

Comments on behalf of the Kansas Association of School Boards addressed the increasing costs of workers compensation facing schools. The cost has increased from \$.30 per \$100 paid in 2001 to \$.46 in 2003. Additionally, only two companies write this business in Kansas, one being KASB.

A representative of KNEA stated there is no workers compensation crisis in Kansas. He continued that, due to low rates in Kansas, businesses are attracted to the state.

Kansas Cooperative Cost Outlook

Individuals from the Kansas Farmers Service Association (KFSA) testified about rate escalation, multiple losses, and negative results attributable to workers compensation costs in their Association. The conferees related examples of workers who experienced medical injuries, but the conferees indicated it was doubtful that the injuries warranted the workers compensation claims that were awarded.

The conferees encouraged changes that would bring a sense of fairness to the workers compensation system.

Small Business Cost Outlook

Conferees representing small businesses spoke about the phenomenon of increasing rates and the need for safety precautions in the workplace.

Large Business Cost Outlook

Speaking on behalf of Superior Industries International, Inc., stronger measures to protect against fraud need to be in place. The conferees stated that all cases they have experienced before an Administrative Law Judge (ALJ) have been settled in favor of the employee, until recently when a new ALJ was appointed.

Citizen Concerns

Two citizens testified; one testified about the DeBruce Grain Elevator explosion in which seven people died and ten were injured and advocated that stricter safety measures and accountability need to be in place. The other, spoke about the death of her mother while on the job due to another employee driving while impaired by prescription drugs. She addressed the importance of safety and accountability in the workplace on the part of the employer.

CONCLUSIONS AND RECOMMENDATIONS

After discussion and deliberation, the Committee makes the following proposals:

- that a bill be drafted that requires the Workers Compensation Advisory Council to meet by February 1 each year for the purpose of reviewing proposed legislation and quarterly thereafter, as needed. Also to be included in the bill is a provision that a quorum and votes of the Council be by simple majority of each side.
- that a follow up audit on the 1999 Post Audit be conducted to evaluate whether the problems revealed in the 1999 audit have been resolved. Further, the Post Audit should conduct a statewide review of workers compensation cases in order to compile statistics on the number of cases, investigations conducted, prosecutions involved and settlement or outcome of cases. The Audit should also look at the number of cases settled in favor of the claimant as opposed to the employer. A final issue to be included in the audit should be an examination of the pay scale and retirement plans for Administrative Law Judges.
- that the legislature deal with the issues of pre-existing conditions, date of injury, work disability (currently based on a comparison of skills over 15 years) level of benefits for injured employees and whether drug or alcohol abuse on the part of the employer endangers the safety of the employees.

Reports of the
Joint Committee on Economic Development
to the
2004 Kansas Legislature

CHAIRPERSON: Representative Kenny Wilk

VICE-CHAIRPERSON: Senator Nick Jordan

RANKING MINORITY MEMBER: Representative Tom Burroughs

OTHER MEMBERS: Senators Jim Barone, Karin Brownlee, and U.L. "Rip" Gooch;
Representatives Don Dahl, John Faber, Lana Gordon, Judith Loganbill, Vern Osborne, and
Valdenia Winn

STUDY TOPICS

Agritourism Limited Liability
Healthcare and the Business Community
Kansas Economy and Future Business Developments in Kansas
Rural Economic Development Initiatives
Tourism in Kansas
University Research and Development
Virtual Tax Increment Financing District
Workforce Development Coordination

December 2003

*Senate Commerce
01/26/04
Attach #2*

Joint Committee on Economic Development

AGRITOURISM LIMITED LIABILITY

CONCLUSIONS AND RECOMMENDATIONS

- The Committee recommends that the Kansas Insurance Commissioner open a dialog with the Kansas insurance industry about the lack of liability insurance for farmers and ranchers who are developing an agritourism enterprise and report back to the appropriate standing committees during the 2004 Session. In addition, the Commissioner is asked to encourage Kansas insurance companies to assist in providing coverage.
- The Committee wishes to acknowledge Senator Schmidt's proposed bill regarding limiting liability in agritourism. At this time, the Committee recommends that all of the interested parties come together to propose a cooperative bill early in the 2004 Session that addresses their differences. If there is no new legislation with significant consensus and support introduced by this group, the Committee recommends that the language from 2003 SB 134 as presented to the Governor be reintroduced as the basis for discussion for agritourism during the 2004 Session. In addition, any agritourism bill sponsor is asked to consider including both entities and individuals in the definition of operator.

Proposed Legislation: None

BACKGROUND

The Legislative Coordinating Council assigned this topic to the Joint Committee on Economic Development. Specifically, the Committee was directed to "study the issues surrounding limited liability for agritourism activities within Kansas; review issues related to 2003 SB 134, which was approved by the Legislature, but vetoed by the Governor."

COMMITTEE ACTIVITIES

Staff reviewed the provisions of 2003 SB134 which dealt with "agritourism." The bill expanded the definition of "recreational purpose" as it relates to the liability of a property owner toward an individual entering that property. Recreational farming activities would include an individual's farming activities, but not the operation of

agricultural equipment by a person who is a member of the public on the land for recreational purposes.

Staff from the Office of the Governor appeared before the Committee to explain the Governor's veto. He noted that, in the Governor's opinion, the bill allowed nearly total immunity from liability for activities identified as agritourism. He also noted that few, if any other states, are developing agritourism by limiting liability.

The Committee reviewed and discussed an opinion issued by Attorney General, as requested by this Committee, regarding the Land and Recreational Area Act and the amendments to this law contained in 2003 SB 134.

The Committee received testimony from a representative of the Kansas Farm Bureau concerning the organization's view that current state law provides adequate liability

protections for agritourism. The conferee also noted that the state could assist agritourism providers more by providing incentives for business development and technical expertise in the areas of assessment of tourism potential, calculation of operational costs, and financing.

A representative of the Kansas Sampler Foundation provided the Committee with several examples of the difficulties agritourism providers have in obtaining liability insurance. The conferee stated that the difficulties stem from a lack of consistency in insurance policy guidelines, a lack of consideration on the part of insurance companies for the safety precautions taken by the landowner, and a lack of education on the part of the landowners about liability policies.

The Kansas Livestock Association presented the Committee with several questions which the organization believes must be answered by the insurance industry before the issue can be resolved. These questions include:

- Does the farm or ranch liability policy typically purchased by landowners in Kansas include protection for recreational uses of that property?
- Is the current farm or ranch liability insurance policy purchased by Kansas landowners discounted because of the protections offered by the statute?
- What changes would the insurance industry offer to clarify, simplify, and assure affordable and available coverage to landowners seeking to engage in tourism activities?

Senator Derek Schmidt appeared before the Committee to present a draft of a new bill which he intends to pre-file for the 2004 Legislative Session. The bill would propose a new statute on agritourism rather than amending the current Land and Recreational Area Act as S.B. 134 was intended to do. The proposed statute would be modeled after the current Kansas Domestic Animal Law. The bill includes a provision that the Secretary of Commerce review requests from landowners for protection under the law. In addition, the landowner would be required to post a sign warning tourists of potential risks.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends that the Kansas Insurance Commissioner open a dialog with the Kansas insurance industry about the lack of liability insurance for farmers and ranchers that are developing an agritourism enterprise and report back to the appropriate standing committees during the 2004 Session. In addition, the Commissioner is asked to encourage Kansas insurance companies to assist in providing coverage.

The Committee wishes to acknowledge Senator Schmidt's proposed bill regarding limiting liability in agritourism. At this time, the Committee recommends that all of the interested parties come together to propose a cooperative bill early in the 2004 Session that addresses their differences. If there is no new legislation with significant consensus and support introduced by this group, the Committee recommends that the language from 2003 SB 134 as presented to the Governor be reintroduced as the basis for discussion for agritourism during the 2004 Session. In addition, any agritourism bill sponsor is asked to consider including both entities and individuals in the definition of operator.

Joint Committee on Economic Development

HEALTHCARE AND THE BUSINESS COMMUNITY

CONCLUSIONS AND RECOMMENDATIONS

The Committee acknowledges that health care costs continue to be a major concern for all Kansas business.

Proposed Legislation: None

BACKGROUND

The Joint Committee on Economic Development is statutorily authorized to set its own agenda. The Committee recognized this topic as being important to the discussion of economic development in Kansas.

COMMITTEE ACTIVITIES

At the October meeting, Dr. Andrew Allison, Director of Health Care Finance and Organization, Kansas Health Institute, reported on national public health care spending. He informed the Committee that, although nationally tax financed health care has grown approximately 15 percent, the rate in Kansas has held at 11 percent. Nationally, spending on the uninsured accounts for approximately 5 percent of total health care expenditures. In Kansas, the 5 percent for uninsured health care is several hundred million dollars. The Institute of Medicine estimates the loss economically to be \$65 to \$130 billion annually to the nation due to poor health.

Dr. Allison reported that 30 percent of the cost of health care received is paid by the uninsured individual, out-of-pocket with a mix of public subsidies, physicians, and hospitals paying the remaining 70 percent. However, about 80 percent of hospitals' uncompensated health care costs are covered

through Medicare and Medicaid or direct tax support from local communities and states. Finally, Dr. Alison reported that the facts and figures include the cost of nursing home care as part of the expenditures for acute care.

Sandy Praeger, Insurance Commissioner, Kansas Department of Insurance, addressed the cost of health insurance to small businesses. Commissioner Praeger said this ongoing issue is centered around cost and availability.

The Commissioner pointed out that the face of insurance is changing due to fewer choices for consumers, medical malpractice insurance costs and contraction, growth in the utilization of services, prescription drug use and costs, and cost shifting involving the uninsured as well as the Medicaid and Medicare programs. She also mentioned that there are fewer choices with 10 insurance companies withdrawing from the Kansas market since July 1, 2001, and five additional companies that have closed blocks of business in Kansas in the last two years. Three of the major medical malpractice carriers have quit writing coverage in the last two years due to financial difficulties. Kansas has also seen a rise in rates due to an increase in severity of losses, and carriers in Kansas appear to have been under-priced for a few years. There also has been a downturn in the investment market. Commissioner Praeger reported that the total national health

care spending is projected to continue growing 7 to 20 percent a year through 2006.

CONCLUSIONS AND RECOMMENDATIONS

The Committee acknowledges that health care costs continue to be a major concern for all Kansas business.

Joint Committee on Economic Development

KANSAS ECONOMY AND FUTURE BUSINESS DEVELOPMENTS IN KANSAS

CONCLUSIONS AND RECOMMENDATIONS

- The Committee is requesting a follow-up report from the Federal Reserve Bank of Kansas City on the economic condition of the state and asks that this report be given to the appropriate committees during the 2004 Legislative Session.
- The Committee is encouraged by the new leadership of Kansas, Inc. and its vision and goals for the agency.
- The Committee strongly recommends that reports from the Life Sciences Initiative and the Stowers Institute need to be presented to the Senate Ways and Means Committee and the House Appropriations Committee.
- The Committee suggests that there needs to be a consistent emphasis in our schools on science and math and this emphasis needs to start during a child's early years. The Committee hopes this emphasis coupled with new opportunities in employment will slow or stop the "brain drain" from Kansas.

Proposed Legislation: None

BACKGROUND

The Joint Committee on Economic Development is statutorily authorized to set its own agenda. The Committee recognized this topic as being important to the discussion of economic development in Kansas.

COMMITTEE ACTIVITIES

Mr. William R. Keeton, Senior Economist, Economic Research Department, Federal Reserve Bank of Kansas City, presented an update on the Kansas economy. The report included information about the recent performance of the Kansas economy, including employment and income; manufacturing, construction and real estate; services and government; and agriculture. Mr. Keeton explained that housing has kept

the economy going, and is solid in Kansas. Private sector service jobs are holding steady, but state and local jobs are down more than 2 percent over a year ago. However, retail trade is currently adding jobs and consumer spending has been edging up. In addition, Kansas is not as dependent on farming as it had been in the past; however, the farm sector has been helped by a good wheat harvest and high livestock prices. Services and manufacturing make up much more of the economy, and travel and tourism accounts for more than manufacturing. Mr. Keeton said that firms are moving jobs overseas increasingly in the service area. He did note, however, that he is seeing some signs that business is starting to improve because of an increase in future hiring plans. In closing, Mr. Keeton summed up with the following:

- Kansas is slowly recovering from the recession like the rest of the nation;

- Businesses must start investing and hiring for recovery to continue;
- Most economists think this investment will happen which will allow the recovery to continue; and
- Demographic trends pose challenges for both rural and urban Kansas.

Mr. Jerry Lonergan, President, Kansas Inc., reported that a 2-year decline in private sector jobs has occurred, but noted that Kansas' 1.2 percent loss is a smaller percentage in total private jobs than either the nation or the six surrounding states. He mentioned that the Kansas per capita income level of \$28,838 in 2002 has stabilized the past two years relative to the national average at 93.5 percent of the nation's per capita income. However, Kansas' income performance is less positive than employment since the state now has only the 4th highest income level in the seven state region after ranking second for a number of years. Kansas' population growth lags the nation, and with the exception of Nebraska and Iowa, trails the states in the region. A growing and younger population base with an increasing minority population would suggest that Kansas has the base to be a leading participant in future economic turnarounds.

As the new President of Kansas, Inc., Mr. Lonergan proposed the following goals for the organization:

- Be the economic development policy and research arm for the state and be a role model for other states;
- Leverage resources to attract public and private dollars to create a healthy research agenda; and
- Make board service and board meetings interesting and challenging, so people will desire to be board members

Dr. Melissa H. Birch, Associate Professor, Director, Center for International Business Education and Research (CIBER), University of Kansas School of Business, reminded the Committee that in 2002, Kansas exports increased 7 percent to a record \$5.8 billion. However, the 1998 Annual Survey of Kansas Manufacturers and Exporters (ASKME), indicated that only about one-third of Kansas firms export when 85 percent thought their products or services had export potential. Dr. Birch said CIBER has the capability to help firms access international customers for their products and services. CIBER's portfolio of activities include Internet resources, seminars and workshops, research on foreign markets, and cooperation with other organizations to maximize their mutual effectiveness.

Mr. Carl J. Schramm, President and CEO, Kauffman Foundation, spoke about recognizing tomorrow's opportunities today, and specifically entrepreneurship, technology transfer, and the life sciences. The point was made that firms of fewer than 20 employees generate the majority of new jobs in the United States. In addition, more than 10.1 million adults in the U.S. attempt at some time in their life to create a business and this is almost as common as getting married or having a baby. He mentioned that one of the keys to entrepreneurship is to facilitate the transfer of new technology. For this reason, the Kauffman Panel of Advisors on the Life Sciences was initiated to find ways of accelerating new advances in life sciences into the marketplace.

From a Kauffman Foundation study, it was learned that universities' ability to transfer expertise and commercialization of products has not kept pace with the increases in research funding. Mr. Schramm believes the organization and operation of technology transfers are not very productive due to under-funding, insufficient staff, and not being an integral part of research departments. He stressed that this was particularly disturbing because 60 percent of government funding for academic research

and development now goes to the life sciences.

Mr. Schramm's testimony stated that Kansas City ranks 42nd out of 51 metropolitan statistical areas. However, Kansas City ranks 18th best in terms of economic structure and 3rd in terms of resource endowment. The point was made that Kansas City is ripe for success, but needs improvement in innovation in research and development spending and in the ability to transfer research from the lab to the marketplace. Mr. Schramm stated that the Stowers Institute has the possibility of becoming one of the most innovative biomedical research facilities in the world. He stressed that, "Life Sciences is the next frontier of entrepreneurship," and that he hopes the Kansas Legislature will strive to help advance entrepreneurship.

CONCLUSIONS AND RECOMMENDATIONS

The Committee is requesting a follow-up report from the Federal Reserve Bank of Kansas City on the economic condition of the state and asks that this report be given to the appropriate committees during the 2004 Legislative Session. Furthermore, the Committee is encouraged by the new leadership of Kansas, Inc. and its vision and goals for the agency.

The Committee strongly recommends that reports regarding the Life Sciences Initiative and the Stowers Institute need to be presented to the Senate Ways and Means Committee and the House Appropriations Committee. Finally, the Committee suggests that there needs to be a consistent emphasis in our schools on science and math and this emphasis needs to start during a child's early years. The Committee hopes this emphasis coupled with new opportunities in employment will slow or stop the "brain drain" from Kansas.

Joint Committee on Economic Development

RURAL ECONOMIC DEVELOPMENT INITIATIVES

CONCLUSIONS AND RECOMMENDATIONS

- The Committee recognizes that entrepreneurship is the key to rural economic development and will require the passage of legislation during the 2004 Legislative Session. However, at this time, the Committee does not propose to submit any legislation with regard to entrepreneurship.
- The Committee has begun the groundwork with Kansas Technology Enterprise Corporation (KTEC) to facilitate the development of 'farmaceutical' ventures which include the growth and processing of genetically engineered crops to create components, proteins in particular, for use in the manufacturing of drugs. At this time, no progress has been reported to the Committee.
- The Committee supports and encourages the expansion of the Enterprise Facilitation Initiative at the Department of Commerce.

Proposed Legislation: None

BACKGROUND

The Legislative Coordinating Council assigned the topic of rural economic development initiatives to the Joint Committee on Economic Development.

COMMITTEE ACTIVITIES

The Committee heard testimony on this topic at its August meeting. Staff summarized the white paper report of the Rural Development Subcommittee of the Senate Commerce Committee. The Subcommittee was formed during the 2003 Legislative Session to examine the challenges unique to economic development in non-urban settings and the current resources available to meet those challenges. Several recommendations were outlined in the white paper including:

- Formation of a task force of legislators, state agencies, and stakeholders to

develop long-term strategy for rural development;

- Examination of federal, state, and local programs for effectiveness, duplication, and unnecessary barriers;
- Development of a one-stop call center for available resources;
- Examination of programs to make more capital available for entrepreneurs;
- Examination of ways to deploy broadband state-wide;
- Creation of a state-wide, regional or local foundation to fund rural community projects;
- Development of stronger working relationships with the institutions of higher education in the area of economic development and entrepreneurship;

- Development of a program to encourage the purchase of downtown buildings in smaller communities; and
- Examine policies concerning rural air transportation.

Representatives of the Higuchi Biosciences Center testified to the Committee on the subject of "farmaceuticals" in which the natural protein in a plant is replaced with a protein needed for a biotechnologic application such as the production of pharmaceutical drugs. According to the conferees, farmaceutical development of medications would be more cost effective than the process currently being used. In addition, the economic impact on a community would include not only the farming operations, but also the down-stream protein extraction and manufacturing facilities which could provide capital investment and high wage jobs in the area where the crops are grown.

A representative of the Kansas Rural Center outlined the potential risks of engineered crops. He noted that the major risk was contamination of surrounding food crops or stores in grain elevators. Other concerns were that large companies would buy large tracts of land rather than contract with small family farms and that the required inspections would be difficult due to staffing and distances.

The Committee also heard testimony from a representative of the Kansas Center for Rural Initiatives, Kansas State University. The purpose of the center is to connect the

resources of the university with the needs of the community. Classes at KSU use projects to assist communities with rural development issues.

Staff from the Community Development Division, Kansas Department of Commerce, testified to the Committee regarding the Enterprise Facilitation program. The program was developed by the Sirolli Institute as a person-centered approach to community and economic development. There are currently five pilot programs in Kansas being funded through Community Development Block Grant funds.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recognizes that entrepreneurship is the key to rural economic development and will require the passage of legislation during the 2004 Legislative Session. However, at this time, the Committee does not propose to submit any legislation with regard to entrepreneurship.

The Committee has begun the groundwork with Kansas Technology Enterprise Corporation (KTEC) to facilitate the development of 'farmaceutical' ventures which include the growth and processing of genetically engineered crops to create components, proteins in particular, for use in the manufacturing of drugs. At this time, no progress has been reported to the Committee.

The Committee supports and encourages the expansion of the Enterprise Facilitation Initiative at the Department of Commerce.

Joint Committee on Economic Development

TOURISM IN KANSAS

CONCLUSIONS AND RECOMMENDATIONS

- The Committee noted that the boxing industry could be one vehicle to promote tourism in Kansas and to generate revenues for the state.
- The Committee is very encouraged by Scott Allegrucci and his staff in the Travel and Tourism Division at the Department of Commerce on their approach to promoting tourism in Kansas.
- The Committee recognizes the importance of product development and marketing, and that in Kansas, the funding for these endeavors has fallen short. In the future, the Committee believes the state must make a significant financial investment in tourism. The Committee hopes that information and assistance from the Federal Reserve Bank of Kansas City can help identify the state's return on this investment.

Proposed Legislation: None

BACKGROUND

The Joint Committee on Economic Development is statutorily authorized to set its own agenda. The Committee recognized this topic as being important to the discussion of economic development in Kansas.

Unfortunately, the Kansas Athletic Commission, which could have been used to promote the sport, was abolished, and Kansas separated itself from boxing. This has limited the ability to bring sanctioned fights from national and international competition to the State. Representative Burroughs hopes consideration will be given to reestablishing the Kansas Athletic Commission.

COMMITTEE ACTIVITIES

During the August meeting Representative Burroughs made a presentation of boxing as a means to increase tourism. Representative Burroughs pointed out that Kansas has a strong tie to the boxing industry. Today's average ticket prices are \$40.00 at most local events, which could generate significant revenues if a 2,500 seat area is sold out, which is occurring with martial arts competitions. He believes that a 5,000 seat arena would be three-fourths sold out, and that kind of a market brings in national television, HBO, and other media.

At the November meeting the Committee heard from the Scott Allegrucci, Director, Travel and Tourism Division, Department of Commerce. Mr. Allegrucci stressed that there are many areas in tourism which remain untapped, and that Kansas could be doing a much better job. He went on to state that not only is money needed to solve the problems, but he believes that priorities must be established and a plan developed before the state will know how to spend tourism dollars.

The Department has heard from the tourism industry and the following concepts continue to surface again and again:

- Data and a unified state image and marketing plan;
- Leadership;
- Communication (from the state office);
- Planning; and
- Stability.

Mr. Allegrucci reported that the growth in the travel industry seems to be in travelers finding authentic destinations and participating fully in the experiences offered by these destinations. People are looking to get more "hands on" experiences which are off the beaten path. This is partially because people are taking more trips and shorter trips. Today's lifestyles are demanding opportunities for recreational and educational experiences, and general quality of life experiences. Finally, he reported that the Department of Transportation has been a great partner in funding travel and tourism initiatives with highways; Wildlife and Parks has managed and maintained some of the most scenic and beautiful land; and the Sales Tax and Revenue (STAR) bonds legislation,

the Attraction and Development Grant; and other Commerce programs and ideas are forthcoming.

CONCLUSIONS AND RECOMMENDATIONS

The Committee noted that the boxing industry could be one vehicle to promote tourism in Kansas and to generate revenues for the state.

The Committee is very encouraged by Scott Allegrucci and his staff in the Travel and Tourism Division at the Department of Commerce on their approach to promoting tourism in Kansas.

The Committee recognizes the importance of product development and marketing and that in Kansas the funding for these endeavors has fallen short. In the future, the Committee believes the state must make a significant financial investment in tourism. The Committee hopes that information and assistance from the Federal Reserve Bank of Kansas City can help identify the state's return on this investment.

Joint Committee on Economic Development

UNIVERSITY RESEARCH AND DEVELOPMENT

CONCLUSIONS AND RECOMMENDATIONS

The Committee acknowledges that the implementation of 2002 HB 2690 is currently on schedule and under budget for the construction of research facilities at Kansas State University, University of Kansas Medical Center, and Wichita State University. Furthermore, the Committee, with great interest, will continue to follow the progress of the University Research and Development Act created by HB 2690.

Proposed Legislation: None

BACKGROUND

The Joint Committee on Economic Development is statutorily authorized to set its own agenda. The Committee reviewed the implementation of the University Research and Development Act (2002 HB 2690). This Act authorized the issuance of not more than \$120.0 million in bonds to fund a portion of the financing for research facilities at the state universities. The bill also directed the Board of Regents to form a subsidiary corporation to oversee and implement the projects. The proceeds of the research bonds were to be used for four specific projects:

- Constructing the Biosecurity Research Institute at Kansas State University;
- Constructing the Biomedical Research Facility at the University of Kansas Medical Center;
- Expanding the Aviation Engineering Complex at Wichita State University; and
- Equipping the Biosciences Research Building at the University of Kansas.

The legislation also provided for additional bonding authority of \$13.0 million for capital improvements and equipment

purchases for the National Institute for Aviation Research at Wichita State University.

COMMITTEE ACTIVITIES

At its November meeting, the Committee heard testimony from a representative of the Research and Development Enhancement Corporation established by the Board of Regents as authorized by the 2002 legislation. The conferee noted that the new facilities would improve on the universities' current strengths and make them more competitive for research grants. Groundbreaking on the infrastructure for the facilities at Kansas State University and the University of Kansas Medical Center have already taken place. Groundbreaking at the University of Kansas is expected in April 2004. The facilities at Kansas State University and Wichita State University are in the design phase.

The conferee also noted that doctoral students at the University of Kansas, Kansas State University, and Wichita State University would be analyzing the different construction methods throughout the process. Recommendations based on this analysis will then be made for use in future state construction projects.

A representative of the National Institute for Aviation Research at Wichita State University provided the Committee with a listing of its current research partnerships as well as an explanation of the aircraft development cycle and the laboratory's role in that cycle. The conferee also outlined the areas of focus and proposed uses for the additional \$13.0 million bond issuance:

- Wind tunnel;
- Crash dynamics;
- Fatigue and fracture;
- Composites and advanced materials;
- Full-scale structural testing laboratory; and
- Equipment for the new Engineering Research Laboratory Building.

The Committee received testimony from a representative of the University of Kansas concerning research at the main campus. The Life Sciences Research Laboratory is a three-building research complex purchased in 2001. This complex houses the Center for Environmentally Beneficial Catalysis, the Combinatorial Methodology and Library Development Center, the Center for Cancer Experimental Therapeutics, and the Early Child Care and Youth Development Center. The \$3.6 million purchase price for the building has generated \$42.2 million in research projects. During the discussion of the enacting legislation in 2002, the equipment to be purchased through the bond issuance was to have been placed in this complex. However, the space is now completely utilized by other research projects and the building does not meet the structural requirements for the equipment. A new building will be constructed using other funds with completion projected for August, 2004.

A representative of the University of Kansas Medical Center appeared before the Committee to discuss the new Biomedical Research Center being built on their campus. The building will contain facilities to conduct bench research in neuroscience; reproductive sciences; toxicology, pharmacology, and drug discovery; and protein structure and function. The conferee also noted the Biotechnology Development Center of Greater Kansas City which is a wet lab business incubator for early-stage bioscience companies to provide them with the resources needed to bridge the gap between bench science and product commercialization.

The Committee received information from a representative of Kansas State University concerning its Food Safety and Security Program, the National Agricultural Biosecurity Center, and the Biosecurity Research Institute. The Biosecurity Research Institute will contain facilities to conduct:

- Food crop infectious disease research;
- Food animal infectious disease research;
- Food processing research;
- Basic molecular biology research; and
- Biosecurity education and training.

CONCLUSIONS AND RECOMMENDATIONS

The Committee acknowledges that the implementation of 2002 HB 2690 is currently on schedule and under budget for the construction of research facilities at Kansas State University, University of Kansas Medical Center, and Wichita State University. Furthermore, the Committee, with great interest, will continue to follow the progress of the University Research and Development Act created by HB 2690.

Joint Committee on Economic Development

VIRTUAL TAX INCREMENT FINANCING DISTRICT

CONCLUSIONS AND RECOMMENDATIONS

The Committee has no conclusions or recommendations concerning the Virtual Tax Increment Financing Districts.

Proposed Legislation: None

BACKGROUND

The Joint Committee on Economic Development is statutorily authorized to set its own agenda. The Committee studied the concept of a virtual tax increment financing (TIF) district. Tax increment financing enables a city to dedicate future increased tax revenues to finance redevelopment in statutorily-defined geographic areas. A snapshot of the tax receipts from a redevelopment district is taken when that district is established. This becomes the base year assessed valuation. As the property is redeveloped and property values and taxes increase, taxpayers within the district pay the tax due on the new assessed values. The difference between the taxes raised from the base year assessed valuation and from the new assessed valuation is called the "tax increment." This tax increment is then used to pay for the redevelopment costs.

COMMITTEE ACTIVITIES

A representative of the Kansas City Area Development Council provided the Committee with historical information about the organization. It is an 18-county, bi-state regional economic development group funded almost entirely by the Kansas City business community. The Committee's attention was brought to a letter from the president and chief executive officer of the

Stowers Institute stating that future growth of the Institute in the greater Kansas City area hinged upon the increased annual investment by both Kansas and Missouri in basic biomedical research at the University of Missouri - Kansas City and the University of Kansas Medical Center. The conferee also noted that a second campus of the Stowers Institute was projected to have a ten-year economic impact of \$1.4 billion on the Kansas City area.

A new funding strategy was presented to the Committee. Rather than establishing a tax increment financing district based upon geography, a "virtual" TIF district would be based upon the functionality of the businesses. In this situation, the current amount of tax revenue generated from life sciences companies and their employees would be used as the base. A portion of the incremental growth from these sources would then be used to fund life sciences research at the universities. The conferee noted a study by Arthur Andersen which estimated the incremental revenue at \$260.4 million for Johnson County alone for the 2004-2013 period.

CONCLUSIONS AND RECOMMENDATIONS

The Committee has no conclusions or recommendations concerning the Virtual Tax Increment Financing District.

Joint Committee on Economic Development

WORKFORCE DEVELOPMENT COORDINATION

CONCLUSIONS AND RECOMMENDATIONS

- The Committee wishes to commend and encourage the continued collaboration and success of the Kansas Technical Training Initiative (KTTI) in Wichita. KTTI is working with the City of Wichita and Sedgwick County which provided start-up funding to KTTI to retrain laid-off workers in the airframe program.
- The Committee wishes to commend the Departments of Commerce and Revenue for their cooperative efforts on economic development issues as this cooperation is an essential element for a positive business climate.

Proposed Legislation: None

BACKGROUND

The Legislative Coordinating Council assigned the topic of workforce development coordination to the Joint Committee on Economic Development. Specifically, the Committee was directed to “study coordination of Workforce Development and progress made by the Administration in consolidation of administrative functions.”

COMMITTEE ACTIVITIES

Lieutenant Governor John Moore, Secretary, Department of Commerce, appeared before the Committee to discuss the consolidation of workforce development programs. He noted that the workforce development system must be market driven and able to meet and anticipate employers needs. He added that the Department of Commerce grants or loans approximately \$14 million per year to employers to do their own training but that the funds might be better utilized by providing the training through Kansas educational institutions.

The Lt. Governor proposed that a comprehensive, integrated program must be:

market driven; fully integrated; easily accessible to and widely recognized by employers and employment seekers; cost effective with minimum administrative costs and duplication; designed with assessment as a key component; flexible; designed with meaningful evaluation criteria such as job preparedness, placement, and retention; and designed with accountability for quality clearly assigned.

Lt. Governor Moore outlined the steps to creating a comprehensive, integrated workforce development system:

- Create seven economic development regions organized around similar industries, geography, and opportunity;
- Maintain the service delivery areas established under the Workforce Investment Act for funding;
- Eliminate community college service areas for workforce development (keeping service areas for education);
- Place one-stop shops in community

colleges or technical colleges and renamed centers of excellence for workforce development;

- Relocate Department of Human Resources training programs and Workforce Investment Act in the Department of Commerce;
- Charge the Department of Commerce with responsibility for identifying market requirements;
- Identify training programs at community colleges and technical colleges that are true programs of excellence;
- Create a single point of entry for businesses within the Department of Commerce (KansasFirst);
- Eliminate payments from the Department of Commerce to employers who expand in or relocate to Kansas, but instead guarantee qualified, certified employees for these employers. Payments will be

made to KansasFirst and the educational institutions providing the training; and

- Implement a well-defined strategy to have one-stop shops pay Kansas educational institutions.

CONCLUSIONS AND RECOMMENDATIONS

The Committee wishes to commend and encourage the continued collaboration and success of the Kansas Technical Training Initiative (KTTI) in Wichita. KTTI is working with the City of Wichita and Sedgwick County which provided start-up funding to KTTI to retrain laid-off workers in the airframe program.

The Committee wishes to commend the Departments of Commerce and Revenue for their cooperative efforts on economic development issues as this cooperation is an essential element for a positive business climate.

January 26, 2004

To: Senate Commerce Committee
From: Kathie Sparks, Principal Analyst
Re: Executive Reorganization Orders

Section 6 of Article I of the *Kansas Constitution* provides that the Governor may issue executive reorganization orders (EROs) for the purpose of transferring, abolishing, consolidating, or coordinating agencies and functions within the Executive Branch of state government. (Legislative and Judicial agencies and functions and constitutionally-delegated functions of state officers and state boards are exempt from EROs).

EROs must be transmitted to both houses of the Legislature on the same day within the first 30 calendar days of any regular session. An ERO becomes effective and has the effect of general law on July 1, following its transmittal to the Legislature, unless within 60 calendar days thereafter, either the Senate or the House of Representatives adopts a resolution disapproving the ERO.

Section 6 of Article I provides that any ERO which is or is to become effective may be amended or repealed as statutes of the state are amended or repealed.

EROs are further addressed in the rules of the House and Senate. Article 45 of the House Rules (2003 HR 6004), and Senate Rule 76, which are basically the same, say that when EROs are received they must be referred to appropriate committees. The rules direct that the committee of reference shall report its recommendations by recommending the adoption of a resolution. The committee recommendation must be reported within 30 calendar days after the committee has received the ERO but not later than the 60th calendar day of the session, whichever comes first.

If the committee makes no report, it will be deemed that the committee has returned the ERO to the House or Senate without recommendation. Once the ERO is out of committee, with or without a recommendation, the House or the Senate has until the 60th calendar day of the session to adopt a resolution approving or disapproving the ERO. The rules of each House permit that house to take no action on an ERO if the other house has already disapproved it.

Executive Reorganization Order 31

ERO 31, which transfers the Division of Workforce Development from the Kansas Department of Human Resources to the Kansas Department of Commerce, was transmitted to the Senate and House on Wednesday, January 14, 2004, and referred to the Commerce Committee on January 15. The Senate Committee on Commerce has until February 14 to pass out a resolution stating either approval or disapproval of the ERO or to take no action. The full Senate has until the 60th calendar day following transmittal or until Sunday, March 14, to take up this resolution.

Attached please find copies of Senate Rule 6 (Special Order), Senate Rule 76 (Executive Reorganization Orders), and Article I of the *Kansas Constitution*.

39244(1/25/4{1:50PM})

Senate Commerce
01/26/04
Attach #3

Rule 6. Special Order. Whenever any bill or other matter is made the special order for a particular day, and shall not be reached or completed on that day, it shall be returned to its place in the General Orders, unless it shall be made the special order for another day. When any special order is under consideration, it shall take precedence over any special order for a subsequent hour of the same day, but such subsequent special order shall be taken up immediately after the previous order has been disposed of. Notation of a special order shall be placed before the first order of business on the calendar for that day, giving the subject to be considered and the time fixed for its consideration. When that time arrives, other business shall be suspended until the special order has been considered.

Rule 76. Executive Reorganization Orders. When an executive reorganization order is received from the Governor, it shall be referred to an appropriate committee by the President. The committee to which an executive reorganization order is referred shall report its recommendations thereon, by recommending adoption of a Senate resolution, not later than the 60th calendar day of any regular session and not later than 30 calendar days after it has received such referral whichever occurs first. If a committee fails to report upon an executive reorganization order within the time specified in this rule, such committee shall be deemed to have returned the same to the Senate without recommendation. When a report or return of an executive reorganization is made, it and all resolutions for approval or disapproval thereof shall be made the special order of business in accordance with Rule 6 (special order of business) at a time not later than the last day the executive reorganization order may be disapproved under section 6 of article 1 of the Constitution of Kansas. The Senate shall act to approve or reject every reorganization order unless at the time set for such action the House of Representatives shall have already rejected such executive reorganization order.

council not violative of separation of powers doctrine. State, ex rel., v. Bennett, 222 K. 12, 17, 564 P.2d 1281.

§ 4. Reports to governor. The governor may require information in writing from the officers of the executive department, upon any subject relating to their respective duties. The officers of the executive department, and of all public state institutions, shall, at least ten days preceding each regular session of the legislature, severally report to the governor, who shall transmit such reports to the legislature.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 50; L. 1972, ch. 390, § 1; Nov. 7, 1972.

Revisor's Note:

Provision for reports by officers to governor appeared in § 16, prior to 1972 revision of article.

Research and Practice Aids:

States ⇐ 41.
Hatcher's Digest, Attorney General §§ 1, 2.
C.J.S. States §§ 60, 74.

Attorney General's Opinions:

Dept. of administration; inclusion of state agencies' budget requests in governor's budget report. 82-20.

CASE ANNOTATIONS

1. Governor may require attorney general to examine witnesses under prohibitory law. The State, ex rel., v. Dawson, 86 K. 180, 187, 119 P. 360.
2. Mentioned; 1972 amendment to article held properly submitted and adopted. Van Sickle v. Shanahan, 212 K. 426, 430, 511 P.2d 223.

§ 5. Governor's duties for legislature; messages; special sessions; adjournment. The governor may, on extraordinary occasions, call the legislature into special session by proclamation; and shall call the legislature into special session, upon petition signed by at least two-thirds of the members elected to each house. At every session of the legislature the governor shall communicate in writing information in reference to the condition of the state, and recommend such measures as he deems expedient. In case of disagreement between the two houses in respect of the time of adjournment, the governor may adjourn the legislature to such time as he deems proper, not beyond its next regular session.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 50; L. 1972, ch. 390, § 1; Nov. 7, 1972.

Revisor's Note:

Provision for adjournment in case of disagreement between houses prior to 1972, appeared in § 6 of this article.

Cross References to Related Sections:

Adjournment for more than two days; consent of other house required, see Kans. Const. Art. 2, § 8.

Legislative petition for special session, see 46-1401 et seq.

Messages and reports to legislature, see 75-102, 75-3721.

Record of petitions for special sessions maintained, see 75-104.

Research and Practice Aids:

States ⇐ 41.
Hatcher's Digest, Constitutional Law, § 20; States §§ 14 to 16.
C.J.S. States §§ 60, 74.

Attorney General's Opinions:

There is no limitation on subject matter to be dealt with at special session. 87-92.

CASE ANNOTATIONS

1. Governor must necessarily decide which body constitutes house. (Dissenting opinion.) In re Gunn, Petitioner, 50 K. 155, 250, 32 P. 470.
2. Legislation demanded respecting freight rates, authorized governor to convene legislature. Farrelly v. Cole, 60 K. 356, 362, 366, 370, 56 P. 492.
3. Mentioned; legislature at budget session has no power to appoint interim investigating committee. State, ex rel., v. Anderson, 180 K. 120, 123, 126, 299 P.2d 1078.
4. Finance council and emergency fund laws (75-3708 to 75-3714) not encroachment on power of executive. State, ex rel., v. Fadely, 180 K. 652, 667, 676, 686, 696, 308 P.2d 537.
5. Governor may call special session so legislature can lawfully apportion legislative districts. Harris v. Shanahan, 192 K. 183, 213, 387 P.2d 771.
6. Mentioned in holding 1968 reapportionment of senate unconstitutional. Long v. Docking, 283 F. Supp. 539, 543.

§ 6. Reorganization of state agencies of executive branch. (a) For the purpose of transferring, abolishing, consolidating or coordinating the whole or any part of any state agency, or the functions thereof, within the executive branch of state government, when the governor considers the same necessary for efficient administration, he may issue one or more executive reorganization orders, each bearing an identifying number, and transmit the same to the legislature within the first thirty calendar days of any regular session. Agencies and functions of the legislative and judicial branches, and constitutionally delegated functions of state officers and state boards shall be exempt from executive reorganization orders.

(b) The governor shall transmit each executive reorganization order to both houses of the legislature on the same day, and each such order shall be accompanied by a governor's message which shall specify with respect to each abolition of a function included in the order the statutory authority for the exercise

of the function. Every executive reorganization order shall provide for the transfer or other disposition of the records, property and personnel affected by the order. Every executive reorganization order shall provide for all necessary transfers of unexpended balances of appropriations of agencies affected by such order, and such changes in responsibility for and handling of special funds as may be necessary to accomplish the purpose of such order. Transferred balances of appropriations may be used only for the purposes for which the appropriation was originally made.

(c) Each executive reorganization order transmitted to the legislature as provided in this section shall take effect and have the force of general law on the July 1 following its transmittal to the legislature, unless within sixty calendar days and before the adjournment of the legislative session either the senate or the house of representatives adopts by a majority vote of the members elected thereto a resolution disapproving such executive reorganization order. Under the provisions of an executive reorganization order a portion of the order may be effective at a time later than the date on which the order is otherwise effective.

(d) An executive reorganization order which is effective shall be published as and with the acts of the legislature and the statutes of the state. Any executive reorganization order which is or is to become effective may be amended or repealed as statutes of the state are amended or repealed.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 50; original subject matter stricken by revision and new subject substituted, L. 1972, ch. 390, § 1; Nov. 7, 1972.

Revisor's Note:

Prior to 1972 revision, section provided for adjournment of legislature by governor in case of disagreement between houses of legislature. This authority of governor was included in § 5 of article by revision.

Research and Practice Aids:

States ⇨ 41.

C.J.S. States §§ 60, 74.

Law Review and Bar Journal References:

Discussed in comment on executive reorganization, 13 W.L.J. 530 (1974).

CASE ANNOTATIONS

1. Discussed; 1972 amendment of section does not conflict with Article IV, Section 4, of the U.S. Constitution, guaranteeing to every state a republican form of government. *Van Sickle v. Shanahan*, 212 K. 426, 430, 431, 434, 439, 447, 448, 449, 450, 451, 452, 511 P.2d 223.

§ 7. Pardons. The pardoning power shall be vested in the governor, under regulations and restrictions prescribed by law.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 50; L. 1972, ch. 390, § 1; Nov. 7, 1972.

Revisor's Note:

No change was made in this section by the 1972 revision of this article.

Research and Practice Aids:

Pardon and Parole ⇨ 4.

Hatcher's Digest, Pardon, Parole and Commutation §§ 1, 2, 6 to 9.

C.J.S. Pardons §§ 3, 5, 14, 15, 19.

Attorney General's Opinions:

Criminal procedure; release procedure; pardons and commutations. 79-131.

Schools; teachers' contracts; constitutionality of binding arbitration provision in Senate Bill No. 718. 80-63.

Office of governor; power to accept delegated presidential authority. 80-140.

Law enforcement training center; qualifications of applicant. 85-165.

CASE ANNOTATIONS

1. Not violated by "parole law" conferring power on district court. *Mikesell v. Wilson County*, 82 K. 502, 504, 108 P. 829.

2. Section cited in distinguishing commutation of sentence and conditional pardon. *In re Charles*, 115 K. 323, 222 P. 606.

3. Section includes power to grant commutation of sentence and remit fines and forfeitures. *Jamison v. Flanner*, 116 K. 624, 228 P. 82.

4. Section includes power to parole and commute sentences under laws. *Lynn v. Schneck*, 139 K. 138, 140, 30 P.2d 117.

5. Reprieve of execution of death sentence granted to allow time to present application for executive clemency. *State v. Miller*, 169 K. 1, 217 P.2d 287.

6. Court expungement of criminal records no infringement on pardoning power of executive. *Stephens v. Van Arsdale*, 227 K. 676, 694, 608 P.2d 972.

§ 8.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 50; eliminated by revision, L. 1972, ch. 390; Nov. 7, 1972.

Revisor's Note:

Section related to great seal of Kansas. Subject matter was included in § 9 of this article by revision in 1972.

§ 9. State seal and commissions. There shall be a seal of the state, which shall be kept by the governor, and used by him officially, and which shall be the great seal of Kansas. All commissions shall be issued in the name of the state of Kansas; and shall be signed by

Report of the
Special Committee on Commerce
and Labor
to the
2004 Kansas Legislature

CHAIRPERSON: Representative Donald Dahl

VICE-CHAIRPERSON: Senator Karin Brownlee

RANKING MINORITY MEMBER: Representative Candy Ruff

OTHER MEMBERS: Senators Les Donovan, U.L. "Rip" Gooch, and Larry Salmans; Representatives Broderick Henderson, Terrie Huntington, Todd Novascone, Stephanie Sharp, and Jim Ward

STUDY TOPICS

Federal Reed Act Funds

State Occupational Safety and Health Agency

Taxable Wage Base

Workers Compensation

January 2004

Senate Commerce
01/26/04
Attach# 4

Special Committee on Commerce and Labor

FEDERAL REED ACT FUNDS

CONCLUSIONS AND RECOMMENDATIONS

The Committee concluded the Kansas Department of Human Resources (KDHR) should pursue an allocation of Congressional Earmark Grant funds, but the Committee did not suggest how these monies should be spent. During the 2004 Session, the Secretary of KDHR is invited to report to the appropriate standing committees regarding Congressional Earmark Grant appropriations. It is believed that spending any available moneys should be dealt with during the 2004 Legislative Session. Further, the Committee recommends that the Reed Act funds remain in the Unemployment Trust Fund.

Proposed Legislation: None

BACKGROUND

The Legislative Coordinating Council called for the Special Committee on Commerce and Labor to review and make recommendations regarding available federal Reed Act monies which are a part of the Employment Security Financing Act of 1954. This legislation was named in honor of Congressman Daniel A. Reed of New York, who was chairman of the House Ways and Means Committee at the time. The review should include the possibility of using Reed Act Funds in an innovative manner, such as training unemployed aviation workers.

COMMITTEE ACTIVITIES

Secretary Jim Garner, Department of Human Resources (KDHR), reviewed information on the Reed Act which was authorized in 2002 on a one-time basis. Funds to the states are to be used only for authorized purposes. Kansas' share of the moneys was \$78.1 million. The following are permissible uses of the Reed Act distribution:

- Operational funding as the states assume nearly total responsibility for the current federal Unemployment Insurance pro-

gram over the next six years.

- Administration of state Unemployment Insurance Law.
- Computer and network equipment as well as training, technical assistance, and professional development of staff.
- One Stop operations.
- Labor Market Information and career guidance materials.
- Special additional compensation programs.
- Payments to individuals not otherwise eligible for regular compensation. These include part-time workers and those who qualify under alternative base periods.
- The distribution also could remain in the state trust fund to provide Employer tax relief.

As a result of 2003 legislation, the following uses of the funds were authorized:

- \$1.89 million for unemployment administration;
- \$450,000 to cover new fees charged by the State Treasurer; and
- up to \$9 million for the Kansas Additional Benefits program (up to an additional two weeks of benefits for those who exhaust all regular state and federal extended entitlement). The balance remains in the Unemployment Trust Fund.

The Committee received information about the receipt of a National Emergency Grant (NEG) to assist dislocated aviation workers in the Wichita area. Earlier in 2003, Kansas received \$2.35 million in grant funds. These monies have gone primarily to meet the needs of pre-existing commitments for these dislocated employees. KDHR will be seeking an extension of this grant for additional NEG funds.

Another possible source of funding which was brought to the attention of the Committee was the allocation of Congressional Ear-

mark Grants. As one of the states in Region V, Kansas has been the only state not to receive monies from these grants for job training purposes. The Secretary of KDHR offered this avenue as a possibility for additional funding for job training activities.

Another official with KDHR indicated that unemployment tax rates were going to go up with or without the Reed Act monies.

CONCLUSIONS AND RECOMMENDATIONS

The Committee concluded the Kansas Department of Human Resources (KDHR) should pursue an allocation of Congressional Earmark Grant funds, but the Committee did not suggest how these monies should be spent. During the 2004 Session, the Secretary of KDHR is invited to report to the appropriate standing committees regarding Congressional Earmark Grant appropriations. It is believed that spending any available moneys should be dealt with during the 2004 Legislative Session. Further, the Committee recommends that the Reed Act funds remain in the Unemployment Trust Fund.

Special Committee on Commerce and Labor

STATE OCCUPATIONAL SAFETY AND HEALTH AGENCY

CONCLUSIONS AND RECOMMENDATIONS

The Special Committee on Commerce and Labor recommends that the current federal Occupational Safety and Health Agency (OSHA) system be maintained. During the deliberation, the Committee could find no compelling reason for a state OSHA at this time. The expense involved in setting up a state system was a major factor in the decision-making process. The Committee encourages state agencies, such as the Kansas Department of Health and Environment and the Kansas Department of Human Resources, on a cooperative basis and without duplication, to promote and publicize information that will make businesses aware of safety measures that are available to the business world in order to improve safety on the job. Additionally, the Committee recommends a future review of other state OSHA plans in order to analyze and possibly incorporate additional job safety measures.

Proposed Legislation: None

BACKGROUND

The Legislative Coordinating Council asked the Special Committee on Commerce and Labor to review the possibility of creating a state OSHA.

The Special Committee conducted a one-day hearing on this topic. The review was to include the financing of the proposed agency and the impact on the state business community. In 2002 there was an interim examination of 2002 HB 2868 which would have established a state OSHA plan. At that time, the Interim Committee on Commerce and Labor concluded that there was concern associated with the costs of initiating an OSHA type program and these costs would be detrimental to the financial situation in Kansas. In 2003, HB 2129 was drafted. The main supporter of HB 2129, Representative Bob Bethell, also sponsored 2002 HB 2868.

COMMITTEE ACTIVITIES

Conferees who appeared on this topic included the following: Representative Bob

Bethell; Linda Berndt, Kansas Health Care Association (KHCA); Bob Welch, BRB Contractors; Bob Knowles, Bob Knowles Construction; Ron Pomeroy, Kansas Castings; Rick Carlson, Koch & Co.; Barb Conant, Kansas Trial Lawyers Association (KTLA); Pam Scott, Kansas Funeral Directors Association; Cory Peterson and Tom Slattery, Associated General Contractors of Kansas (KS-AGC); Don Greenwell, Kansas City Chapter of Associated General Contractors (KC-ACG); Larry Baer, League of Kansas Municipalities (LOKM); Janet Stubbs, Administrator of the Kansas Building Industry Association (KBIA) Workers Compensation Fund; Bill Miller, Building Erections Service; Larry Magill, Kansas Association of Insurance Agents; Bob Totten, Kansas Contractors Association (KCA); and Will Leiker, Kansas AFL-CIO. Written testimony was received from Chris Wilson with the Kansas Building Industry Association (KBIA).

Testimony favorable to HB 2129 and a state OSHA plan was received from Representative Bob Bethell and the conferees from KHCA, BRB Contractors, Bob Knowles Construction, Kansas Castings, and Koch & Co.

Further study of the issues involved in a state statutory OSHA plan was encouraged by the conferee from KTLA. The representative of the Kansas AFL-CIO recommended the development of business and labor task force to investigate the advantages and disadvantages of the proposal.

Opposition on this issue was expressed on behalf of the Kansas Funeral Directors, KS-AGC, LOKM, KC-AGC, the Administrator of KBIA Compensation Fund, Building Erections Service, Kansas Association of Insurance Agents, KCA, and KBIA.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends that the

current system be maintained. During the deliberation, the Committee could find no compelling reason for a state OSHA at this time. The expense involved in setting up a state system was a major factor in the decision-making process. The Committee encourages state agencies, such as the Kansas Department of Health and Environment and the Kansas Department of Human Resources, on a cooperative basis and without duplication, to promote and publicize information that will make businesses aware of safety measures that are available to the business world in order to improve safety on the job. Additionally, the Committee recommends a future review of other state OSHA plans in order to analyze and possibly incorporate additional job safety measures.

Special Committee on Commerce and Labor

TAXABLE WAGE BASE

CONCLUSIONS AND RECOMMENDATIONS

The Committee concluded that due to a total lack of interest by the public, there are no recommendations on this topic.

Proposed Legislation: None

BACKGROUND

The Legislative Coordinating Council called for the Special Committee on Commerce and Labor to review the taxable wage base of \$8,000 a year per employee for unemployment insurance tax payment calculations. The taxable wage base has not changed since 1984.

COMMITTEE ACTIVITIES

The Committee scheduled a meeting date, but as a result of a lack of public response, the meeting was cancelled.

CONCLUSIONS AND RECOMMENDATIONS

The Special Committee on Commerce and Labor cancelled the meeting that was scheduled for a hearing on the issue of the taxable wage base.

The Committee concluded that due to a total lack of interest by the public, there are no recommendations on this topic.

Special Committee on Commerce and Labor

WORKERS COMPENSATION

CONCLUSIONS AND RECOMMENDATIONS

After discussion and deliberation, the Committee makes the following proposals:

- that a bill be drafted that requires the Workers Compensation Advisory Council to meet by February 1 each year for the purpose of reviewing proposed legislation and quarterly thereafter, as needed. Also to be included in the bill is a provision that a quorum and votes of the Council be by simple majority of each side.
- that a follow up audit on the 1999 Post Audit be conducted to evaluate whether the problems revealed in the 1999 audit have been resolved. Further, the Post Audit should conduct a statewide review of workers compensation cases in order to compile statistics on the number of cases, investigations conducted, prosecutions involved and settlement or outcome of cases. The Audit should also look at the number of cases settled in favor of the claimant as opposed to the employer. A final issue to be included in the audit should be an examination of the pay scale and retirement plans for Administrative Law Judges.
- that the legislature deal with the issues of pre-existing conditions, date of injury, work disability (currently based on a comparison of skills over 15 years) level of benefits for injured employees and whether drug or alcohol abuse on the part of the employer endangers the safety of the employees.

Proposed Legislation: HB 2537 accompanies this report.

BACKGROUND

The Legislative Coordinating Council requested the Special Committee on Commerce and Labor to study the possibility of reforming the Workers Compensation law, including SB 181, and the role and performance of the Workers Compensation Advisory Council.

The Special Committee held hearings during four days of meetings in order to review this topic. Conferees who presented testimony before the Committee included various individuals. Among those who appeared were Paula Greathouse, Richard Thomas, Carol Cast, John Bouilet, and Rudy Leutzinger, from the Division of Workers Compensation; Virgil Dean, Kansas Historical Society; Jerry Donaldson, Legislative Re-

search Department; Mitch Rice, Revisor of Statutes Office; Dick Cook, Kansas Insurance Department; Brad Smoot, National Council on Compensation Insurance (NCCI); Joe Lawhon and Leo Hafner, Legislative Post Audit; A.J. Kotich, Department of Human Resources; David Schauner, Richard Hofmann, and Terry Roberts, Coalition for Workplace Safety; Tim Short, Kansas Trial Lawyers Association (KTLA); Alicia Salisbury, former Chair of the Senate Commerce Committee; Al Lane, former Chair of the House Business Commerce and Labor Committee; Jim DeHoff, Kansas AFL-CIO; John Ostrowski, Workers Compensation Advisory Council (WCAC) member; Gary Peterson, Mike Snider and Robert Martin, attorneys; Representative Candy Ruff; and Johnny Sutton and Jamie McDonald, citizens.

Other conferees who appeared included Charles Adkins, Occupational Safety and Health Administration; Terry Leatherman, Kansas Chamber of Commerce and Industry; Bruce Moore, Administrative Law Judge; Janet Stubbs, Kansas Building Industry Association Workers Compensation Fund; Bill Curtis, Kansas Association of School Boards (KASB); Mike Schaffter and Scott Anders, Kansas Farmers Service Association; Leon Lungwitz, Wichita Independent Business Association; Mike Pendergrass and Tim Rakestraw, Superior Industries; Hal Hudson, National Federation of Independent Business (NFIB); Mark Desetti, Kansas National Education Association (KNEA); and Beth Regier Foerster, Adjunct Professor of Law at Washburn University School of Law.

COMMITTEE ACTIVITIES

Historical Perspective

Virgil Dean, representative of the Kansas State Historical Society presented an overview of special conditions that gave rise to the workers compensation movement to the Committee. Of note is the fact that Kansas was one of the first states to enact a Workers Compensation Act in 1911.

Exclusive Remedy Doctrine

Legislative Research staff and others explained the exclusive remedy doctrine that provides a *quid pro quo* or give and take situation under which an injured employee gives up the right to sue an employer in exchange for effective and efficient medical treatment and indemnity payments.

Another conferee from KTLA who addressed the exclusive remedy issue suggested the WCAC should review this doctrine to consider an exception to the rule when egregious conduct is involved.

The Workers Compensation System

Workers Compensation, an insurance plan, was outlined for the Committee by staff

from the Division of Workers Compensation. It was explained that the Workers Compensation Law is designed to protect the interests of both the employee and the employer. According to an adjunct professor of workers compensation at the Washburn University School of Law, the principle that an accident must arise out of and in the course of employment was presented as the standard test for compensability in Kansas. There must be a causal connection between the injury and the work activities. The conferee stated the claimant must meet the burden of proof. In addition, according to the speaker, premiums are driven by rapidly rising medical costs, the stock market crash, September 11, 2001, and insurance premiums but not by judges' decisions.

Workers Compensation Insurance and Rates

Staff from the Insurance Department and the Division of Workers Compensation reviewed the mechanism of the workers compensation system. Workers compensation insurance written by insurance companies in Kansas is either written by an insurance company directly (voluntary market) or through the Kansas Workers Compensation Insurance Plan (the Plan). The two other methods of workers compensation insurance are the group funded pool and self insurance. Group funded pools provide that similar and dissimilar types of employers can join a pool for liability coverage when financial safeguards are met. Self insurance for employers is allowed when certain requirements such as:

- the company has been in continuous operation for at least five years;
- the company has provided the last five years of audited financial reports of the company applying for self insurance;
- the company has at least 100 employees, not necessarily in Kansas;

- the company has a manual premium of at least \$300,000 to \$350,000;
- the company has a net worth of \$10,000,000; however a company with a net worth of less than \$10,000,000 can be considered.

If a company meets all the minimum requirements the amount of security required to be on deposit with the state is determined.

Rating issues effecting workers compensation insurance were explained for the Committee. Rates, which are usually adjusted annually, are based on premium and loss information provided by the insurance carriers to the NCCI.

Workplace Safety

Safety measures under the auspices of Industrial Safety and Health (ISHS) of KDHR were set out for the Committee. ISHS performs audits that reviews the programs of employers and compares the services they have received or requested to receive from their workers compensation insurance provider. Consultation programs are provided in coordination with accident prevention programs.

Fraud and Abuse

Information was presented to the Committee based on the 1999 Legislative Post Audit dealing with the entirety of the workers compensation division including the issue of fraud and abuse in the workers compensation system. The 1999 Audit found a pervasive pattern of inaction and excessive delays in making decisions in the Workers Compensation Fraud and Abuse Investigation Unit within the Division of Workers Compensation. A current aggressive program has been instituted to combat fraud and abuse within the workers compensation system, according to the conferee, an attorney from KDHR.

Reforms from 1993

The former two chairpersons of both the 1993 Senate Commerce Committee and the 1993 House Commerce and Labor Committee briefly reviewed the 1993 Workers Compensation legislation and urged the Committee to evaluate the Workers Compensation Advisory Committee which was established under the 1993 legislation.

Richard Thomas with the Division of Workers Compensation provided information on the major changes in the 1993 workers compensation reform legislation. In addition, he presented the current status of these various changes. Other conferees addressed selected changes brought about by the 1993 changes.

Analysis of SB 181

The revisor reviewed SB181 for the Committee. As drafted, the bill contained five issues, namely: 1) treatment of pre-existing conditions; 2) separation from employment; 3) accumulated type injuries; 4) disability retirement benefits; and 5) permanent partial disability benefits. Ultimately, the bill was revised so that the substitute bill in its current form contains two issues:

- treatment of pre-existing conditions, and
- separation from employment after a work related injury.

Physician Choice

The question of physician choice was another issue presented for the Committee's consideration. Staff presented an analysis of the Kansas statute KSA 44-510h regarding the method of physician selection as well as change of physician. Kansas law provides for the employer choice of physician for an injured worker. Comments in favor of retaining the employer choice of physician suggested that employers are in a position to provide the best choice of physician. Testi-

mony in favor of the employee choice of physician was advocated as a factor for improving the injured workers progress and hence improving the workers compensation system.

Occupational Safety and Health Administration (OSHA)

The regional administrator of OSHA informed the Committee about the mission of OSHA, which is to ensure safe and healthful work places. The conferee explained OSHA's role in the DeBruce Grain Elevator explosion and the Emerson accidents. The administrator clarified that it is against the law for OSHA to notify an employer of an upcoming visit.

Multiple Factors of Workers Compensation Costs

Testimony was provided from the delegate representing the Kansas Building Industry regarding pre-existing conditions and the need to address this issue. In addition the availability of a new methodology the Physical Capacity Profile Testing System, used for new hire testing was introduced to the Committee. According to the conferee, the aim of the System is to match up the capabilities of an employee with the job.

School Cost Presentation

Comments on behalf of the Kansas Association of School Boards addressed the increasing costs of workers compensation facing schools. The cost has increased from .30 per \$100 paid in 2001 to .46 in 2003. Additionally, only two companies write this business in Kansas, one being KASB.

A representative of KNEA stated there is no workers compensation crisis in Kansas. He continued that, due to low rates in Kansas, businesses are attracted to the state.

Kansas Cooperative Cost Outlook

Individuals from the Kansas Farmers Service Association (KFSA) testified about rate escalation, multiple losses, and negative results attributable to workers compensation costs in their Association. The conferees related examples of workers who experienced medical injuries, but the conferees indicated it was doubtful that the injuries warranted the workers compensation claims that were awarded.

The conferees encouraged changes that would bring a sense of fairness to the workers compensation system.

Small Business Cost Outlook

Conferees representing small businesses spoke about the phenomenon of increasing rates and the need for safety precautions in the workplace. The need for maintaining the exclusive remedy doctrine was emphasized by the conferee from the NFIB.

Large Business Cost Outlook

Speaking on behalf of Superior Industries International, Inc., two individuals addressed the issue of workers who file fraudulent workers compensation claims and the effects that such fraudulent claims have on their business. According to the conferees, stronger measures to protect against fraud need to be in place. The conferees stated that all cases they have experienced before an Administrative Law Judge (ALJ) have been settled in favor of the employee, until recently when a new ALJ was appointed.

Citizen Concerns

Johnny Sutton, citizen, testified about the DeBruce Grain Elevator explosion in which seven people died and ten were injured. The conferee advocated that stricter safety measures and accountability need to be in place.

Jamie McDonald, citizen, spoke about the death of her mother while on the job due to another employee driving while impaired by prescription drugs. She addressed the importance of safety and accountability in the workplace on the part of the employer.

CONCLUSIONS AND RECOMMENDATIONS

After discussion and deliberation, the Committee makes the following proposals:

- that a bill be drafted that requires the Workers Compensation Advisory Council to meet by February 1 each year for the purpose of reviewing proposed legislation and quarterly thereafter, as needed. Also to be included in the bill is a provision that a quorum and votes of the Council be by simple majority of each side.
- that a follow up audit on the 1999 Post Audit be conducted to evaluate whether

the problems revealed in the 1999 audit have been resolved. Further, the Post Audit should conduct a statewide review of workers compensation cases in order to compile statistics on the number of cases, investigations conducted, prosecutions involved and settlement or outcome of cases. The Audit should also look at the number of cases settled in favor of the claimant as opposed to the employer. A final issue to be included in the audit should be an examination of the pay scale and retirement plans for Administrative Law Judges.

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