

Approved: 2-17-2009

Date

MINUTES OF THE HOUSE GOVERNMENT EFFICIENCY AND FISCAL OVERSIGHT
COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 3:30 p.m. on February 12, 2009, in Room 535-N of the Capitol.

All members were present except:

Representative Broderick Henderson- excused
Representative Brenda Landwehr- excused
Representative Judy Loganbill- excused
Representative Melvin Neufeld- excused
Representative Louis Ruiz- excused

Committee staff present:

Renae Jefferies, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Hank Avila, Kansas Legislative Research Department
Mary Galligan, Kansas Legislative Research Department
Gary Deeter, Committee Assistant

Conferees appearing before the committee:

Patrick Hurley, Chief Counsel, Kansas Department of Administration
Tom Krebs, Governmental Relations Specialist, Kansas Association of School Boards

Others attending:

See attached list.

The Chairman invited consideration of **HB 2195 - Public records; certification of electronic records by the state archivist.** Representative Burgess made a motion, seconded by Representative Roth, to amend the bill, changing the effective date from being published in the statute book to being published in the Kansas Register. The motion to amend passed.

A motion was made, seconded, and passed unanimously to recommend the bill as favorable for passage.
(Motion, Representative Burgess; seconded, Representative Gatewood)

The minutes for the February 11 meeting were approved. (Motion by Representative Roth, seconded by Representative Trimmer)

The Chair opened the hearing on **HB 2249 - Amendments to the Kansas whistleblower act.**

Staff Renae Jefferies briefed the Committee on the bill, saying that the bill broadens the categories of persons that an employee may talk with regarding agency matters or public concerns, and it prohibits any person in authority from threatening or taking disciplinary action against an employee who speaks to a permitted person. She said that new sections in the bill provide protection from retaliation for an employee for up to one year.

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Minutes of the House Government Efficiency And Fiscal Oversight Committee at 3:30 p.m. on February 12, 2009, in Room 535-N of the Capitol.

The Chairman passed the gavel to the Vice-Chair.

Patrick Hurley, Chief Counsel, Kansas Department of Administration, spoke as an opponent of the bill (Attachment 1). He stated that the bill will have a chilling effect on an agency's ability to manage the workforce and will not add benefit to any state employee. He explained that allowing a rebuttable presumption for up to a year gives an employee too much latitude to presume that any suggestion or recommendation, however constructive, is retaliatory.

Tom Krebs, Governmental Relations Specialist, Kansas Association of School Boards (KASB), testified as an opponent (Attachment 2). He noted that the KASB provides information such as the Whistle Blower Act for school boards to include in district handbooks; the changes proposed by the bill will make the act weaker, not stronger, and will make it difficult to carry out the intention of the bill fairly. He suggested that a teacher could easily misconstrue a supervisor's comment and mistakenly make an accusation based on the latitude granted by the bill.

Representative Jim Morrison testified as a proponent for the bill, agreeing that some constructive comments by a supervisor might be misconstrued, stated that the bill intends to focus on an employee who sees a supervisor or agency engaged in unethical, immoral, or wasteful activity. He invited opponents to help develop language that will minimize meritless claims.

Angela Stallbaumer, Staff Attorney, KASB, responding to a question, replied that one of the definition sections of civil service includes schools.

Discussion ensued. Mr. Hurley commented that the term *threaten* can be manipulated by individuals and needs to be narrowed. He noted that federal law already gives an employee latitude to speak up regarding perceived violations. A member noted that a study by a sub-committee revealed that Kansas ranks low in relation to an employee's freedom to report perceived infractions. Another member observed that presently no data show that expanding the law will result in more civil service claims. Another member commented that constituents who report on possible agency or supervisor malfeasance nearly always report feeling under duress and are fearful of repercussions if they report activity through the agency chain of command. Members requested that staff seek data from Connecticut, from whose statute the bill was drawn, in order to see what effect the law had in that state. Representative Morrison stated that the bill needs to focus on fiscal malfeasance or encourage fiscal savings. Mr. Krebs commented that excluding school districts would make the bill more palatable. Ms. Stallbaumer replied that the current statute applies to public school teachers.

The hearing was closed.

Representative Morrison, re-assuming the Chair, opened the hearing on **HB 2222 - State agencies; collections of fee, licenses, taxes, surcharges, discounts.**

Staff Daniel Yoza, explaining the bill, said an agency may add a surcharge or discount of no more than 5%

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in order to promote efficiency for the agency.

Representative Burgess, speaking as a proponent, said the bill, a result of collaboration with the Information Network of Kansas, intends to help agencies promote efficiencies by encouraging the use of electronic transactions, since currently agencies must penalize a person who uses electronic transactions by adding a convenience fee. He cited the Kansas Secretary of State, which has used a fee structure to effect 90% compliance with electronic transactions, allowing the agency to re-allocate staff. He said most agencies can achieve only about 30% electronic compliance; reliance on paper increases staff involvement. Jim Hollingsworth, Executive Director, Information Network of Kansas, agreed that paper transactions usually cost an agency more than electronic ones, and the fee structure could be an incentive for an agency to realize more savings. A member wanted assurance that the bill would not result in a blanket increase in agency fees.

Luke Bell, Vice President of Governmental Affairs, Kansas Association of Realtors, provided written testimony in opposition to the bill (Attachment 3).

The hearing was closed, and the Chair opened the hearing for **HB 2219 - Kansas performance measurement commission; extend sunset; other.**

Staff Daniel Yoza briefed the Committee on the bill, saying that it extends the sunset provision for the Kansas Performance Measurement Commission for one year.

Since no conferees appeared in support or opposition to the bill, members discussed implications of the bill among themselves. A member noted that the Commission used the Kansas Social and Rehabilitation Services agency performance measurement activities as a pattern that might be applied to other state agencies.

The hearing was closed.

The meeting was adjourned at 4:55 p.m. The next meeting is scheduled for February 16, 2009.

HOUSE GOVERNMENT EFFICIENCY AND FISCAL OVERSIGHT COMMITTEE

GUEST LIST

DATE: FEBRUARY 12, 2009

NAME	REPRESENTING
Patricia Hurley	DOA
Tom Karls	KASB
Allison Burkhart	DOA
Mark Stock	KDWP.
Pat Michaelis	KSHS
KEITH PANGBURN	REARNEY & ASSOC.
Amelia Kovar-Donohue	COTA
MAT VEATCH	KSHS
Terrri Clark	LAS
Chollusworth	INR
Leslie Kaufman	Ks Co-op Council
Angela Stallbaumer	KASB
John Berger	SFS
Jane Carter	KOSE

**Kansas Department of Administration
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**Committee on Governmental Efficiency and Fiscal Oversight
Kansas Whistleblower Act Amendments**

**Patrick J. Hurley
Department of Administration
Office of Chief Counsel**

**Dick Seaton
Kansas State University
University Attorney**

**Michael Leitch
Attorney General's Office
Chief Counsel**

**W. Thomas Stratton, Jr.
Kansas Corporation Commission
Chief Litigation Counsel**

**A.J. Kotich
Department of Labor
Chief Counsel**

**John Badger
SRS
Chief Counsel**

**Laura Graham
Kansas Bureau of Investigation
General Counsel**

**Linden Appel
Department of Corrections
Chief Counsel**

**Tracy Greene
Emporia State University
General Counsel**

**Todd D. Powell
Fort Hays State University
General Counsel**

**Darron Farha
Pittsburg State University
General Counsel**

**Ryan Vincent
Housing Resources Corp.
General Counsel**

**Rebecca Floyd
KDFA
General Counsel**

**Ann Ruselowski
KHPA
General Counsel**

**Robert North
Department of Commerce
General Counsel**

**Helen Pedigo
Kansas Sentencing Commission
Exec. Director/General Counsel**

**Scott Dold
Adjutant General Depart.
General Counsel**

**James Bartle
Department of Revenue
General Counsel**

February 12, 2009

Thank you for giving me the opportunity to share our comments concerning House Bill 2249. We do not believe the proposed changes to the Kansas Whistleblower Act, K.S.A. 75-2973, are needed or beneficial to the State or its employees.

This bill proposes three significant changes to the current Kansas Whistleblower Act. First, the Act currently permits employees to bring a whistle blower claim for "disciplinary action," which is defined as "...any dismissal demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal, or withholding of work." The bill, in subsection (e), proposes to add a new claim category and adds new parties with whom the disclosure may be discussed. The new claim is identified as disciplinary action "threatened to be taken" by a supervisor against any state employee in retaliation for the employee's disclosure of information to any member of the legislature, the attorney general, another employee of the state agency where the employee is employed, or any employee of an agency pursuant to a mandated reporter statute. The claim category in subsection (e) would create the potential for a significant number of invalid claims,

because while the term “disciplinary action” was originally defined, the word “threatened” is not defined in the bill. To determine whether words were uttered as a threat, the context in which they were spoken must be considered, and without being present at the time the words were uttered, it is difficult to avoid a subjective perception of the actual events by the employee, agency, or jury.

Second, in subsection (h), the bill would create a rebuttable presumption that any disciplinary action taken by an agency within one year of the employee transmitting facts or information, as identified in the proposed changes, is in retaliation for an employee discussing the operations of a state agency or other matter of public concern, including matters relating to public health, safety, and welfare with any member of the legislature, the attorney general, another employee of the state agency where the employee is employed, or any employee of an agency pursuant to a mandated reporter statute. A rebuttable presumption is generally an inference drawn from certain facts that establish a prima facie case, which may be overcome by the introduction of contrary evidence. It would not be uncommon for a claim of “threatened” disciplinary action to be a simple misinterpretation of a conversation, and personal impressions of that oral exchange are typically the only evidence available at trial.

Because of this proposed rebuttable presumption, anytime an agency disciplined or even considered discipline against an employee, the agency would need to consider whether the employee has talked to an outside group about an agency matter and engage in considerable investigations. This could have a significant chilling effect on an agency’s ability to discipline an employee for a legal and legitimate reason. Additionally, the statute of limitations for classified employees is increased from 30 days to 90 days, which deviates from the current statutes indicating that disciplinary matters are to be filed with the Board within 30 days of disciplinary action. These proposed changes to the Act would increase the state’s legal exposure, risk, and cost.

Third, the bill would add a new category of damages called “any other damages” that may be awarded to the prevailing party by the Board or a court. This is a category of damages with potentially a broad or unlimited application since they are not defined in the bill. This proposed change would again ultimately be very costly to the state. This proposed change to the Act would increase the need for manpower to manage potential new claims and create unnecessary litigation and cost.

Finally, the bill would add several other proposed amendments to the Act including the type of parties with whom employees may discuss operations of the state agency. This bill also identifies without limitation specific remedies that could be awarded to employees by the Board or court. The bill also would add the disciplinary action category of “threatened to be taken” to each of the other four statutes listed; K.S.A. 25-4161, K.S.A. 46-256, K.S.A. 2008 Supp. 75-2929d, and K.S.A. 75-7427. We believe that this language should not be added to these four statutes.

In conclusion, along with the current Act, there are several state and federal laws that already provide significant protections to employees, so no new amendments are needed to the Kansas Whistleblower Act.

Thank you. I will stand for questions.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

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Testimony on
HB 2249 – Amendments to the Kansas Whistle Blowers Act

Before the
House Committee on Government Efficiency and Fiscal Oversight

By Tom Krebs, Governmental Relations Specialist

February 12, 2007

Mr. Chair, Members of the Committee:

Thank you for the opportunity to speak as an opponent to **HB 2249**.

KASB, as one of its major services to its members, provides policy and handbook language that outlines efficient, legal and ethical governance standards and practices. Over the last several years, we have sharpened our language that details prohibitions against wasteful and/or fraudulent practices. Our policies and handbook language also makes clear employees that retaliate against “whistleblowers,” whether they are fellow employees or even students, can be disciplined up to, and including, termination. KASB recognizes a primary responsibility of the board and the district is to be a responsible, prudent and efficient stewards of the resources entrusted to it by its constituents. Our opposition, therefore, should in no way be construed as an attempt to water down the current Whistleblower Act.

Our opposition is focused on the phrase “or threatened to be taken” that is added in numerous places following the phrase “against whom disciplinary language has been taken.” We believe, rather than making the Act stronger, the broader language will make it more difficult for school administrators to effectively supervise and evaluate their employees. What standards will be used to determine a threat? Is a formative or summative evaluation conversation meant to be taken as honest assessment of an employee’s strengths and weaknesses? Or could it be perceived to move beyond that and become seen as a threat to job standing or even job retention.

Districts already struggle with the fact removing an ineffective teacher can be a costly and demanding activity, which, on occasion, proves to be one the teacher still remains in the classroom at the end of the process. As a result, districts already are leery about spending scarce resources on a course of action that could prove to be fruitless. By adding this phrase, another potential layer of detriment will be added as boards realize a “threat” of disciplinary action, however, that might be defined, could be used against them as they work with their teachers to develop the best instructional staffs possible.

Thank you for your consideration.

Attachment 2
GEFO 2-12-09



To: House Government Efficiency and Fiscal Oversight Committee
From: Luke Bell, Vice President of Governmental Affairs
Date: February 12, 2009
Subject: **HB 2222** – Allowing State Regulatory Agencies and Boards to Impose a Surcharge on Licensing Fees for Unspecified Efficiency Measures

Chairman Morrison and members of the House Government Efficiency and Fiscal Oversight Committee, thank you for the opportunity to provide written testimony on behalf of the Kansas Association of REALTORS® (KAR) in opposition to **HB 2222**. KAR has faithfully represented the interests of the 9,000 real estate professionals and over 700,000 homeowners in the State of Kansas for over 85 years.

Summary of the Legislation

HB 2222 would allow any state department, agency, commission or authority to impose up to a 5.0% surcharge on licensing fees to be used for unspecified measures to increase the efficiency of fee collections.

Concerns with the Proposed Legislation

In general, we believe that **HB 2222** is a flawed concept that lacks the necessary details on what unspecified measures can be used to accomplish the legislation's stated objective to increase the efficiency of fee collections. In the face of a significant licensing fee increase of up to 5.0%, we do not believe this objective is sufficiently important to justify a significant increase in licensing fees on real estate professionals.

Increasing the efficiency of fee collections will provide absolutely no benefit to real estate professionals or the consumers they serve. In this struggling economy, now is not the time to increase licensing fees on real estate professionals.

Conclusion

As a result, we are very uncomfortable with allowing state agencies to increase licensing fees for unspecified measures that would supposedly increase the efficiency of fee collections. In the turmoil created by this struggling economy, we would urge you to prevent unjustified fee increases by opposing the provisions of **HB 2222**.

*Attachment 3
68FO 2-12-09*



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