

MINUTES

SPECIAL COMMITTEE ON COMMERCE AND LABOR

September 3-4, 2003
Room 514-S—Statehouse

Members Present

Representative Donald Dahl, Chairman
Senator Karin Brownlee, Vice Chairperson
Representative Candy Ruff, Ranking Minority Member
Senator Les Donovan
Senator U.L. Rip Gooch
Senator Larry Salmans
Representative Broderick Henderson
Representative Terrie Huntington
Representative Todd Novascone
Representative Stephanie Sharp
Representative Jim Ward

Staff Present

Jerry Donaldson, Kansas Legislative Research Department
Becky Krahl, Kansas Legislative Research Department
Norman Furse, Revisor of Statutes Office
Mitch Rice, Revisor of Statutes Office
June Evans, Secretary

Wednesday, September 3 Morning Session

Chairman Dahl called the meeting to order at 10:00 a.m., and welcomed members to the Committee. The Chairman discussed upcoming meetings and the various topics that were to be under consideration.

The Chairman stated the Committee needs to keep in mind what they want to do as a committee, either come up with recommendations or a bill. The Committee might want to come up with a bill, but while it is not something they have to do, there should be some recommendations.

Jerry Donaldson, Legislative Research Department, gave an overview regarding the Creation of a State Occupational Safety and Health Agency (OSHA) (Attachments 1, 2, and 3).

Mitch Rice, Revisor of Statutes Office, gave a briefing on HB 2129 that sets out the proposed state OSHA plan, which would be as, or more, effective than the federal OSHA plan.

Representative Bethell, a proponent for HB 2129, stated while he was involved in the operation of a long-term care facility, OSHA officials appeared. Their concern dealt with the ergonomic conditions that led to claims on the workers compensation policy. OSHA requested information concerning the logs of all claims for workers compensation, as well as any supportive information that was available. This information was given to the two inspectors. After a brief discussion, the staff was asked to lead a tour of the mechanical rooms. This seemed strange, as the issue at hand was the claims that were submitted by direct care staff while working with residents. OSHA did not interview or observe care staff as they worked with the residents.

All of the citations given dealt with the mechanical rooms and the arrangement of equipment in those rooms. A letter was received explaining the citations, the fines, and the opportunity to reduce the fines by 50 percent if the citations were not contested.

According to Representative Bethell, the time has come for Kansas to have a state plan. There would be three beneficial effects for Kansas employers and employees:

- resources could be focused more efficiently in areas which directly impact Kansas—grain handling industry, airplane manufacturing, oil and gas industry, etc;
- fines and penalties would remain in Kansas; and
- appeals would be made through the state administrative procedures.

There are currently 23 approved state plans. OSHA funds 50 percent of these enforcement programs and up to 90 percent of their consultation programs. Petitioning for OSHA funding can begin as soon as enabling legislation is passed (Attachments 4 and 5).

Linda Berndt, Executive Vice President, Kansas Health Care Association (KHCA), testified in support of establishing a state occupational safety plan. KHCA welcomes the opportunity to reduce layers of regulation that detract from providing care to Kansas' most frail and elderly. KHCA has been committed to reducing the occupational hazards and has been active in the Kansas Department of Human Resources' volunteer safety and health consultations. This program has been a true partnering and consultative relationship. Other states she has talked to that have state plans say it is working and it is a true hands-off process (Attachment 6).

Bill Welch, BRB Contractors, a proponent, testified statistics from other state plans indicated dramatic reductions in workplace injuries and fatalities. The proposed plan has a built-in checks and balances system via the Oversight Committee comprised of two from general industry, two from the construction industry, two from labor, and two from the general public. The Oversight Committee can establish what the measuring criteria for success of the program would be. State citations are about one-fourth the amount charged by OSHA (Attachment 7).

Bob Knowles, Cheney, testified in support of the creation of a state OSHA plan. Mr. Knowles has a small residential framing company, and did not know until recently his business

came under OSHA. He did not receive any help from Congressman Tiahrt's office. Mr. Knowles believes the state is more in touch with the standards of construction in Kansas and more willing and able to help those in need. He believes OSHA has chosen small businesses as a target because they are defenseless against a powerful federal agency (Attachment 8).

Ron Pomery, Kansas Castings, Belle Plaine, Kansas, testified as a proponent to the creation of a state OSHA. He stated OSHA was designed for education and consultation to business and workers, not in the current role of policeman. Kansas manufacturers and small business owners need a partner to help comply with current health and safety standards and a partner to develop new standards that are fair and meaningful. It is believed the development of a state plan with OSHA oversight would be a win-win situation (Attachment 9).

Richard D. Carlson, Safety Supervisor, Koch & Co., Inc., a manufacturer of cabinets and doors, testified in support of a state OSHA plan. He stated he had consultations with industrial hygienists and inspectors on numerous occasions. He found their expertise and assistance helpful in creating a safe work environment. Their program has proven to be a resource for questions about safety issues without the threat of inspections or fines.

The problem is that while he trusts the expertise of the federal OSHA officials, his business is still open to the individual interpretations that OSHA allows its inspectors. This creates a situation where it is a better business decision to pay an expedited settlement with a 50 percent reduction in fines than risk a higher penalty on appeal. Businesses are looking for consistency in how the standards are applied and enforced (Attachment 10).

The Chairman stated this concluded the testimony of proponents.

Afternoon Session

Chairman Dahl called the meeting to order at 1:30 p.m., and stated testimony from the opponents on the creation of a state occupational safety and health agency would be heard this afternoon.

Barb Conant, Kansas Trial Lawyers Association (KTLA), stressed the importance of promoting and assuring safe working conditions for Kansas as a priority issue for KTLA. Safe working environments are an essential component of a productive economy and Kansas employees expect and deserve safe working conditions. Fewer injuries mean fewer workers compensation claims and lower insurance premiums for Kansas employers. KTLA recommends that the statutory establishment of such a program should not proceed without continued study of its feasibility and careful and deliberate consideration of the economic and enforcement options (Attachment 11).

Will Leiker, Executive Vice President, Kansas AFL-CIO, testified the AFL-CIO had no official position on the creation of a state occupational safety and health agency. AFL-CIO's primary goal is safe Kansas jobs. He recommends the Secretary of Human Resources develop a business and labor task force to investigate in-depth the pros and cons of this issue (Attachment 12).

Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association, Inc., testified in opposition to the creation of a state occupational safety and health agency. According to the conferee, there is no need to change a system that works. Kansas workplaces are safe. A state OSHA plan would be costly to Kansas businesses (Attachment 13).

Tom Slattery, Associated General Contractors of Kansas (KS-AGC), testified in opposition to a state OSHA in the presentation of Corey Peterson's testimony. The construction industry places safety as its top priority. The number one asset of a construction company is its employees and owners place great value on protecting their welfare. In addition, workers compensation and medical insurance premiums have become a major portion of a business' overhead, the cost of which is directly affected by the company's safety record. States had their choice when OSHA was enacted to either choose the federal plan or initiate their own state plan. Vermont and North Carolina are two states that have state plans and are trying to get into the federal plan as their state plan is too expensive. The KS-AGC is opposed for the following reasons:

- The construction industry has developed a successful relationship with the federal OSHA;
- There is uncertainty as to what the state's standards would be;
- There is a question about funding the program with a 1 percent surcharge on workers compensation insurance;
- There is concern that this new provision would be used as a revenue generator;
- There would be more inspections, more costs;
- There are concerns regarding the state's ability to find and maintain a quality OSHA staff; and
- There is a question of the separation of consulting service and enforcement. (Attachment 14).

Larry R. Baer, Assistant Legal Counsel, League of Kansas Municipalities, testified as an opponent to the creation of a state occupational safety and health agency. The League's opposition has nothing to do with opposing safe municipal workplaces. The opposition is based on public policy and the probable fiscal impact on Kansas cities. A state plan would require that all public sector employers, as well as the private sector employers, become subject to regulations at least as effective as the federal regulations, *i.e.*, the OSHA regulations. Currently, government in Kansas is not investigated by OSHA, nor is there a requirement that OSHA regulations be followed. The long arm of the federal government would be imposing regulations on municipalities in Kansas. Kansas municipalities urge study of this plan and reject creation of the plan as written (Attachment 15).

Don Greenwell, The Builders' Association and Kansas City Chapter, Associated General Contractors (KC-AGC), testified as an opponent to a state occupational safety and health agency. He indicated there is no need for additional regulatory infrastructure at the state level. The safety of commercial construction work sites is a key objective and measure of success in the industry. The strength of the federal OSHA programs have been a significant factor in achieving this objective. The KC-AGC has contacted other AGC chapters and contractors around the country to determine lessons learned from those who have assembled their own state plans. Opinions were received from nine states, and overall, the feedback demonstrated that business is weary about changing from whichever regulatory system they have, whether it is state or federal (Attachment 16).

Janet Stubbs, Administrator of the Kansas Building Industry Workers Compensation Fund, an opponent, expressed concerns regarding the proposed issue of establishing a Kansas OSHA. Ms. Stubbs believes the Kansas Legislature has to determine several items:

- Is the current consulting service of the Department operating appropriately now? Her organization does not believe they are. She believes they could better serve the business community by providing safety training rather than providing "protection" from OSHA which, in her view, allows workers to be exposed to possible injury.
- What is the stated goal of establishment of a state plan? Is it to protect the Kansas workforce or is it to get fines from Kansas businesses to establish an unneeded, duplicated bureaucracy? If it is to provide safer working environments, she did not see that mentioned in the presentations that have been made previously by the proponents. The presentation has been about the number of inspections but with lower fines. She questioned whether it makes more sense to train business owners how to operate safely. The owners are penalized for injuries to their workers through increased cost of workers compensation insurance coverage. She requested help for Kansas businesses in this manner. The tools are already in place and being funded by OSHA to a great extent.
- In previous proponent presentations, it has been said that states with a state plan reduce claims significantly. This could be achieved by the training. It is believed there is a framework in place to provide Kansas businesses with a very needed service of safety education. However, from her organization's perspective it has not been utilized for the education of companies. Her group's goal is to protect the worker (Attachments 17 through 20).

Bill Miller, Building Erections Service, testified as an opponent to a state OSHA Plan. Mr. Miller stated he has been in the industry for over 40 years and was not a good friend of OSHA, but not a staunch enemy either. His relationship with OSHA started out rocky. A state OSHA plan would come with a horrendous cost. It would be costly to train the inspectors. The state plan would have to meet the minimum of the federal plan. OSHA inspections are totally unannounced. They walk in and there is a conference. There is a need to keep the business in order and then there are no problems.

Larry McGill, Kansas Association of Insurance Agents, an opponent, testified their principal concern with the legislation is the fact that it funds the Kansas OSHA program with a 1 percent assessment on workers compensation claims payments. His objections to funding workplace safety with a hidden tax on Workers Compensation premiums are:

- It is a hidden tax on business;
- It could drive carriers out of Kansas;
- Costs may not match revenues or vice versa;
- It adds to the perceived costs of the product;
- The Legislature has raided the Workers Compensation Fund twice in the past two years; and
- There are already a lot of hidden charges in Workers Compensation premiums.

According to the conferee this is not the year to be increasing taxes on Kansas businesses to pay for a program that is running fine the way it is. Do not add another tax in this economy (Attachment 21).

Bob Totten, Public Affairs Director for the Kansas Contractors Association (KCA), testified in opposition to the concept of a Kansas OSHA program. The Association has spent a lot of time investigating this plan. After presentations by various state officials and a lot of discussion, the KCA is opposed to a state plan.

KCA is very satisfied with the present Federal system of OSHA. KCA has a good working relationship with the Kansas regional officials. They are a group of well-qualified professionals and although many of our members cringe when they are faced with a federal OSHA inspection, by and large our members think they do a good job. KCA members have spent a lot of time reviewing this issue and came to the conclusion it is not best for Kansas. The "Feds" are doing a good job and should continue with OSHA (Attachment 22).

The Chairman adjourned the meeting at 3:45 p.m. and said the meeting would start at 9:00 a.m., September 4 and the Federal Reed Act Funds would be the topic of discussion.

Written testimony by Chris Wilson, KBIT Director of Governmental Affairs, was distributed (Attachment 23).

Thursday, September 4 Morning Session

The Chairman called the meeting to order at 9:15 a.m., and stated the topic is the Federal Reed Act Funds, and welcomed Jim Garner, Secretary, Kansas Department of Human Resources (KDHR) to the Committee.

Jim Garner, Secretary, KDHR, shared information on the use of Reed Act Funds, spending on job training programs, and the opportunity of additional funding for job training efforts. In March 2002, the U.S. Congress approved, and the President signed, a one-time distribution of federal Reed Act Funds in the amount of \$8 billion to the states. Kansas' share of the distribution was \$78.1 million. Pursuant to legislation enacted during the 2003 Session, the following uses of the funds were authorized:

- \$1.89 million for unemployment benefits administration;
- \$450,000 to cover the new fees charged by the State Treasurer;
- 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).

Federal law governs how states may use these monies. The Secretary was very supportive of using some of Kansas' Reed Act distribution to help train workers who have lost their jobs. The Secretary was insistent that KDHR staff find a way to use the funds for job training. The Reed Act distribution cannot be used to cover job training costs, as these expenditures are not costs of administering either the state's unemployment insurance law or its public employment offices. The Reed Act distribution comes from a source of federal funds generated from the Federal

Unemployment Tax. This is a tax on employers to fund the Federal Unemployment Insurance system. The funds are collected from employers for the limited purpose of supporting the Unemployment Insurance Program. These restrictions follow the funds even when distributed to the states.

Kansas has recently received a National Emergency Grant (NEG) to help dislocated aviation workers in the Wichita area. On February 27, 2003, Kansas received \$2.37 million in grant funds. However, the grant primarily met the needs of pre-existing commitments to assist dislocated workers in Wichita. The demand for additional help cannot be overstated. KDHR will pursue the possibilities of an extension of this grant to see if additional funding could be received by NEG. The Secretary recently learned that most of the states in Region V (in fact, all states except Kansas) are receiving Congressional Earmark Grants for job training activities. This information was shared with Senator Pat Roberts, Congressman Dennis Moore, and Congressman Todd Tiahrt. If the Committee is interested in pursuing federal funds for job training efforts in Kansas, Congressional Earmarks are an option (Attachment 24).

The question of Congressional Earmark Grants for job training purposes came up for discussion and how it was that Kansas did not pursue efforts to obtain these grants. Secretary Garner indicated he would get back with the Committee on this matter at the September 29-30 meeting.

Secretary Garner said he did not have a proposal regarding how to spend the Reed Act money to present. Last year, \$1.9 million was used for administrative purposes and part of that was used because there was a shortfall in the money that was received. The biggest problem facing the agency is the computer software system for unemployment benefits. The program is antiquated and the Department is looking into how to deal with it.

Secretary Garner said he was going to visit with the Joint Committee on Information Technology and share information. Twenty-four percent of the claims are online.

Vice Chairperson Brownlee requested that Secretary Garner report to the Committees during the Legislative Session with information on all different types of job training grants and what we have to show for the money spent.

Mr. Layes, in response, indicated that tax rates are going to rise with or without the Reed Act. The maximum tax rate is at 4.27 percent and was 3.13 percent in 2002. The tax rate in 1994, before the moratorium, was 3.86 percent.

Information on the Reed Act Distribution prepared by the Kansas Legislative Research Department was distributed (Attachment 25).

The meeting was adjourned.

Prepared by June Evans
Edited by Jerry Donaldson

Approved by Committee on:

January 20, 2004
(date)

