

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairman Susan Wagle at 8:30 a.m. on March 15, 2011, in Room 548-S of the Capitol.

All members were present.

Senator Emler – excused

Committee staff present:

Ms. Margaret Cianciarulo, Committee Assistant

Mr. Ken Wilke, Office of the Revisor of Statutes

Mr. Reed Holwegner, Kansas Legislative Research Department

Ms. Dorothy Noblitt, Kansas Legislative Research Department

Conferees appearing before the Committee:

Mr. Eric Carter, Attorney, Carter LLP, on behalf of the Kansas Chamber.

Representative Mah

Mr. David Shauner, General Counsel, Kansas National Education Association (KNEA)

Ms. Jane Carter, Executive Director, Kansas Organization of State Employees (KOSE)

Others attending:

Please see attached list.

**Hearing on HB2130 – an act concerning labor organizations; relating to political activities**

Upon calling the meeting to order, Chairperson Wagle announced they would be having a hearing on **HB2130** and called on Mr. Ken Wilke, Office of the Revisor of Statutes, who explained the bill which included:

- 1.) **HB2130** concerns political activities and the automatic deduction from paychecks for political activities.
- 2.) New Sec. 1 makes it unlawful for a labor organization to use dues/assessments taken from a member's paycheck for political activities. The idea being that if an employee belongs to a union and has authorized deductions for political activities, under the current law that is fine. This new section reads, the union could no longer take these authorized deductions, but the employee can still make a contribution for political activities by writing a personal check.
- 3.) Sec. 2. is similar to New Sec. 1 except that it applies to professional organizations.
- 4.) Sec. 3 applies to public employee organizations and again, is similar to New Sec. 1. He referred the Committee to page 3, subsection (b) making it a prohibitive practice for public employee organizations to endorse candidates, spending any of its incomes derived from dues, fees, assessments or other periodic payments required of members. The idea here is to do something similar for public employee organizations like the Kansas Organization for State Employees (KOSE). This section also offers the definition of what political activities are.
- 5.) Sec. 4 creates a penal section for Sec. 3 saying a public employer cannot collect, deduct, or assist in the collection or deduction of funds for political purposes. If used for political funds or mingled with funds collected by a public employer for political funds, this section sets forth the penalties for that. In summary, the bill has this idea spread through 3 types of organizations, labor unions, the state or public employee organizations, and professional organizations.

As there were no questions for Mr. Wilke, the Chair called on the only proponent conferee Mr. Eric Carter, on behalf of the Kansas Chamber who stated:

- 1.) The primary purpose of this bill is, the government should not be involved in supporting any organization's political activities, regardless of their merit. Public perception of the government's partiality can undermine confidence in representative government. Banning payroll deductions for political speech similarly furthers the government's legitimate interest in distinguishing between internal governmental operations and private speech.

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He went on to say he had the opportunity to review the testimony presented to the House of Representatives by the opponents to this bill and notes that the consistent theme of these testimonies appears to be the bill would somehow violate their First Amendment rights. However, he said. The United States Supreme Court in *Ysursa v. Pocatello Education Assn.*, 129 S. Ct. 1093 (2009), recently upheld Idaho's similar statute, the Voluntary Contributions Act, which banned public-employee payroll deductions for political activities.

He offered the ruling of the U.S. Supreme Court as follows:

While publicly administered payroll deductions for political purposes can enhance the unions' exercise of First Amendment rights, Idaho is under *no obligation to aid the unions in their political activities*. And the State's decision not to do so, is not an abridgment of the unions' speech; they are free to engage in such speech as they see fit. *They simply are barred from enlisting the state in support of that endeavor*. *Id.* at 1098 (*emphasis added*).

Lastly, he offered two amendments, including:

1.) The first being mostly grammatical or clean up work. For example, on the first page, the change to New Sec. 1, the way the bill was phrased originally, it made it appear that the labor organization was the one that was doing the payroll deductions, but it is actually the employer. So by changing this it reads, to understand that it applies to the employer who does the deduction, with the same change shown in subsequent sections. On line 23, it obviously does not matter who creates the fund and beginning on lines 27 and 28, "where activities are not pertinent..." does not make sense in this context because they are talking about political activities that are not permitted and this is also repeated in subsequent sections. On page 3, line 24, they propose inserting: "in the form of or" after "any income." On page 4, there are also two replacement phrases (line 12, and 32) and one insertion beginning on line 33.

2.) The second amendment is a substantive change saying, as the bill has already gone through the House, they have had the opportunity to review the testimony of the opposition to the bill. With regard to New Sec. 1 only, they are adding a caveat that it permit the private labor organization to do the payroll deductions, however, they need to get the authorization in writing and do so annually.

A copy of his testimony is ([Attachment 1](#)) attached hereto and incorporated into the Minutes as referenced.

The Chair thanked Mr. Carter and announced they would hold questions until all testimony has been heard. She then stated there was one written opponent testimony offered from Mr. Derrick Sontag, State Director, Americans for Prosperity-Kansas. A copy of his written testimony is ([Attachment 2](#)) attached and incorporated into the Minutes as referenced.

The Chair then called on the first of three opponent conferees, Representative Ann Mah, who stated the bill is not about protecting workers or their money but silencing middle class workers and making sure corporate political action committees or PACs, gain an edge in 2012. She went on to say under current law, union members may choose to voluntarily have PAC donations taken out of their checks through payroll deduction, which are negotiated between the union and employer. This bill denies the union members' right to a negotiated benefit by eliminating payroll deduction. It means "game over" for union members who want to support candidates with a united voice. Also, if this bill had anything to do with protecting employees or their money, it would also include a provision that denies corporate PACs the opportunity to collect donations through payroll deduction.

Representative Mah stated, in the House they heard a lot of testimony about concern as a union member, their money was going for candidates they did not like. As a former employee of a Fortune 100 company, she donated to a corporate PAC and a lot of times they did not give money she personally supported, but she did have a choice to get out. The same choice unions have.

Lastly, she said either this bill should be rejected outright, or the playing field should be leveled so that corporate PAC payroll deductions are ended along with union deductions. A copy of her testimony is ([Attachment 3](#)) attached and incorporated into the Minutes as referenced.

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Chairperson Wagle said, because they will address questions at the end of testimonies she would give Representative Mah a few minutes to think about what corporations deduct political donations automatically from their payroll.

The second opponent called on was Mr. David Shauner, General Counsel, Kansas National Education Association who stated:

1.) That portion of the bill that limits KNEA's (on behalf of its members) use of dues or PAC monies either for advocacy on a "public question" or for *independent* advocacy to support or oppose a candidate for office, plainly violates KNEA's (on behalf of its members) First Amendment right to free speech under the U.S. Supreme Court's recent decision in *Citizens United vs. FEC*, 130 S.Ct. 876 (2010).

2. It also is unconstitutional because it singles out labor organizations for certain disfavored treatment, while allowing all other entities, including corporations and all other voluntary membership associations (such as the National Rifle Association, the NAACP, and the Right to Work Committee) to operate without similar constraints.

3.) Kansas is, by constitution, a right-to-work state. Members join and pay dues to KNEA, or any other union in Kansas, not because they are required to do so, but because they so choose.

A copy of his testimony is ([Attachment 4](#)) attached and incorporated into the Minutes as referenced.

The third and final opponent called to testify was Ms. June Carter, Executive Director, Kansas Organization of State Employees (KOSE), who stated the bill prohibits virtually all labor unions in Kansas, not just those who represent public service workers, from using membership dues and similar payments to engage in broadly defined "political activity" and includes a variation on the anti-union ruse misleadingly called "paycheck protection" by its proponents. Also,

1.) Labor unions are representative democracies and explained the Labor-Management Reporting and Disclosure Act of 1959 and the National Labor Relations Act.

2.) Union membership is entirely voluntary and saying, in Kansas, a so-called "right-to-work" state, employees in a represented bargaining unity may choose not to join the union and may refuse to pay anything to support the union.

3.) Union members strongly support union political advocacy - members have consistently opposed ballot measures and legislation to enact paycheck protection or schemes such as this bill that deny unions the same access to the political areas that other membership organizations and corporations enjoy.

A copy of her testimony is ([Attachment 5](#)) attached and incorporated into the Minutes as referenced.

Written opponent testimonies were offered including:

1.) Mr. Ty Dragon, Director, United Transportation Union.

2.) Mr. Andy Sanchez, Executive Secretary-Treasurer, KS AFL-CIO.

3.) Mr. Fernando Harms, Business Agent, Teamsters Local Union 696.

4.) Ms. Lisa Ochs, President of American Federation of Teachers of Kansas.

5.) Mr. Jeremy Henderickson, Business Manager & Secretary/Treasurer, Laborers' Public Service Employees Union Local 129OPE.

Copies of the above written testimonies are ([Attachment 6](#)) attached and incorporated into the Minutes as referenced.

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As there were no further testimonies, Chairperson Wagle said she had previously asked the question to Representative Mah about corporations who take dues out for the corporate side other than labor union dues, that automatically take payroll deductions for political activities. (As a management employee at Southwestern Bell SBC, she donated through payroll deduction and just verified with employees who are still working there, that AT&T still allows payroll deductions for management employees.) Do you have to sign an authorization form, as this bill does require, to allow that deduction to be taken out of your payroll? (She does not recall if it was annually, but pretty much the same as the unions do.)

The Chair called on Mr. Carter to address the equity in the bill. (He feels Representative Mah hit on the key word which is management. The Chair's comment was on point which is, who are the employees that are asked to contribute? You do not see blue collar workers being asked, it is only the management level employees that are being asked to do that. And more importantly it is the level of coercion that you tend to find, many union members do feel coerced, maybe gently, to make those contributions whereas you do not see that level of coercion in the private market place) The Chair said she is just trying to point out that one is a voluntary authorization. (Correct and again, the difference being, in a private sector you see it targeted to management level employees rather than everybody, and you also have that difference in coercion.)

She then asked for questions from the Committee which came from:

Senator Merrick who asked Mr. Carter regarding KNEA's testimony which states that we are disregarding our oath and we are violating the constitution, will you address that issue? (You are not disregarding or doing anything to violate the constitution. The KNEA is correct in that you did take an oath to uphold the constitution. However, this bill does not do that. In the United States Supreme Court in the Idaho case, it specifically said that this is okay, and there is no obligation that the State of Kansas has, to provide the infrastructure for the Union to engage in its free speech. Nothing that says the state has to do payroll deductions for the unions. The members of the union can still engage in the political process, but it just begs the question, why the concern the opponents of this bill have? If the concern is, if money is not being taken out of your paycheck, you will not voluntarily write that paycheck?)

For Representative Mah, Senator Masterson stated his mother-in-law was a union member for years at Southwestern Bell and she did feel intimidation, but what struck him in her testimony she used the words "game over" for the union, where in the bill does it actually prohibit union members from contributing to their candidate? (There is no absolute prohibition, but it changes the rules so much it makes it really hard to contribute in an easy way.)

Senator Steineger asked Mr. Ken Wilke, Office of the Revisor of Statutes, how this bill does not violate freedom of association or speech? It seems to him that a union is something that you do not have to join, you have a choice. Also, he thinks there is a doctrine known as disparate treatment where you treat one group of people under the law in such a matter and a different group of people in a different way, I do not see how this would pass the test where you only apply this to members of the labor union, to him, this should apply to anybody who contributes political dues through their employers, so does this not mistreat the disparate treatment doctrine? (Regarding the doctrine, this is something the courts are going to have to assess based on a case that is brought to them and in this state the goal would consider to be constitutional until the courts say otherwise and what the Committee chooses to do with the bill is up to the Committee.)

For Ms. Carter, Senator Steineger asked if she knew if there were any other unions in Kansas, are they all allowed or require their members to sign this card? (First of all she only represents state workers, but because this is a right-to-work state, every member has to sign it voluntarily and affirmatively agree to donate money out of his or her paycheck.)

Senator Holland asked Mr. Carter, what gives him the expertise to comment on this bill today starting with his legal profession? (He works in the election law and has a number of clients that are larger companies that have employment issues.) Why are you saying we are keeping government out? (He thinks there is a distinction to be made between the operative sections, ex. Section 2 and 3 focus on the public employees and rely on the government to do their payroll deductions, Section 1 will continue to permit doing private sector deductions.) When you start dragging in private sector employees who are

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unionized, why aren't you tackling corporations? (Management and the labor unions within each of the private sectors, are annually asked to contribute each year.)

The Chair announced that the Committee does have to work this bill today because it has been sent to two Committees, first Commerce then Ethics and Elections, and work needs to finalize Friday. She stated the bill sits before them with two suggested amendments, what is the Committee's will? Senator Lynn made a motion to move the technical amendment and seconded by Senator Merrick. As there was no discussion a voice vote was taken and it appears the motion carried. A division was called with a raise of hand, six for with four opposed. The motion carried.

The Chair announced they were back on the bill and Senator Lynn made a motion to move the amendment that addresses concerns from opponents in Sec. 1 permitting private labor organizations from doing payroll deductions and must get annual permission. It was seconded by Senator Masterson. The motion appears to carry.

The Chair recognized Senator Schodorf who said she finds the bill highly offensive to working people and moves to table. The Chair stated there is a substitute motion to table the bill is in order. It was seconded by Senator Holland. The motion did not appear to pass. A division was called. The Chair asked those that is in favor of the substitute motion to table to raise their hands, there were four, those opposing were five. The motion failed.

The Chair announced they were back on the original motion. Senator Holland made a substitute motion to strike Section 1. It was seconded by Senator Schodorf. The motion appears to fail. The motion fails.

The Chair announced they are back on the original motion by Senator Lynn to adopt the secondary amendment, seconded by Senator Masterson. The motion appears to pass. A division was asked. A count of hands was taken and the motion carried. The Chair asked what was the will of the Committee on the bill? Senator Lynn made a motion to move the bill as amended. It was seconded by Senator Merrick and the motion carried. Senator Holland, Foust-Gaudeau, and Steineger asked to be recorded as no votes. The Chair again announced she is sorry to have to run this quickly through the Committee. It is going to another committee and it had no chance for a secondary hearing unless they worked it today.

### **Adjournment**

As there was no further business, the meeting was adjourned. The time was 9:30 a.m.

The next meeting is scheduled for March 16, 2011.

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