

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on Wednesday, February 9, 2005, in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Senator Greta Goodwin
Jack Walker, Vice Chairman, Kansas Commission on Veterans Affairs

Others attending:

See attached list.

Chairman Brungardt asked the Committee to consider the approval of the minutes, which had been distributed last week, covering the meetings of January 25, 26 and 27.

Senator Reitz made a motion to approve the minutes as written, seconded by Senator Ostmeyer, and the motion carried..

Chairman Brungardt called the Committee's attention to distributed copies of Kyle Smith's written testimony, on behalf of the Kansas Peace Officers Association, covering his oral testimony for **SB 77** on February 3. (Attachment 1)

Chairman Brungardt asked for bill introductions. Kyle Kessler, Director, Governmental and Media Affairs, Department of Social and Rehabilitation Services (SRS), requested the introduction of an SRS legislative proposal. The proposal authorizes SRS Child Support Enforcement to establish new orders of support and register non-Kansas orders for enforcement and modification using administrative procedures only. The proposed legislation also expands the existing administrative remedies to require financial institution data matches and levies, to intercept insurance proceeds otherwise payable to support debtors, to restrict driving privileges of debtors, and to require a payment against arrearages from any debtor applying for hunting or fishing licenses. He said it further amends exiting laws to streamline support enforcement procedures, eliminate ambiguities, and assure access to needed information about debtors.

Senator Barnett made a motion to introduce the proposed bill, seconded by Senator Brownlee, and the motion to introduce carried.

SB 110 - Kansas commission on veterans affairs, veterans memorials, donations, capital improvement projects, procedures, guidelines, fund

Chairman Brungardt opened the hearing on **SB 110**, and asked the Revisor to give a brief overview of the proposed legislation. The Revisor explained that the bill provided a mechanism for the Kansas Commission on Veterans Affairs to provide the memorials for veterans of the U.S. Military, prescribes certain guidelines, limitations and procedures; establishing the Kansas Veterans Memorials Fund.

Senator O'Connor inquired if the money in the established fund would be income from private money. The Revisor responded affirmatively, and it does not authorize any kind of appropriations. Senator O'Connor asked who got the interest off the fund, and the Revisor said it goes back into the fund.

Chairman Brungardt asked Senator Goodwin, who sponsored the bill, if she would like to make any comments on **SB 110**. Senator Goodwin expressed her appreciation for the Committee having a hearing on the proposed bill. She said there had been a lot of inquiries from people wanting to know how to give memorials, what the guidelines were on memorials, who gets the money, does one cemetery get all the

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on Wednesday, February 9, 2005, in Room 231-N of the Capitol.

memorials, and the other get none. She stated that she had worked with the Commissioners this past summer, and they had come up with a very good plan to cover all veterans in the State of Kansas.

Jack Walker, Vice Chairman of the Kansas Commission on Veterans Affairs (KCVA), testified in support of **SB 110**. He introduced the Commission's Chairman, Colonel (Ret.) Jack Fowler and their Executive Director, Colonel (Ret.) George Webb, who were in attendance. He stated that the KCVA represents nearly a quarter million veterans in the State of Kansas. Mr. Walker said that the proposed bill provides a means to honor those veterans with memorials that would be placed at the homes and cemeteries overseen by the Kansas Commission of Veterans Affairs.

Mr. Walker explained that **SB 110** provides a mechanism by which privately donated funds can be accepted and safeguarded until sufficient funds can be raised to build any large memorial. The bill contains the requisite controls for the management of funds, as they would be accumulated on deposit with the state. The bill requires that all projects be fiscally responsible and able to be sustained by the KCVA Memorial Fund, without resorting to requests for assistance from the state, and that memorials constructed would be maintained from the same funds. He stated that the bill specifically prohibits the use of these memorial funds to cover operational requirements, and also takes care to keep separate, the KCVA memorial funds and the Benefit funds now authorized by law, which generally are designed to provide a more personal benefit to our veterans.

Mr. Walker talked about the bill's proposal to establish an advisory committee, which would ensure equity among the facilities, that would include not only the KCVA commissioners, Executive Director, superintendent of the Homes and Cemetery director, but a member of the state legislature from the district in which each of our facilities are located. The advisory committee would have the charge to consider ideas and concepts presented along with ensuring that the funds were adequate to support the project under consideration. (Attachment 2)

Chairman Brungardt opened the floor to questions and comments from Committee members. Senator Brownlee asked if it was possible for individuals to contribute as a 501-C-3 donation. Mr. Walker replied that they had looked at that concept, but found that it would take it out of the state control. A 501-C-3 would be outside the management of the state, and if the Commission was going to do this as a representative of a state agency that the funds should go into that pool. He said that as they have it proposed, donations could possibly be a tax credit to the memorial fund. He added that it would also act as an incentive for memorial donations by being tax deductible.

Questions and discussion were raised in regard to the establishment of the advisory committee. The Revisor asked for clarification purposes and possible revised language to the bill whether there would be only one advisory committee or one for each facility. Mr. Walker stated that the intent was to have only one committee with a legislator from the area of each facility in order to make sure there was equity among the four facilities presently in existence, i.e. Ft. Dodge, Winfield, cemetery at Wakeeney, and the proposed cemetery at Ft. Riley. The Chairman stated that there was a need to clean up the language relating to the committee membership before the Federal and State Affairs Committee worked the bill for final action next week.

There being no other conferees to appear to testify on **SB 110**, Chairman Brungardt closed the hearing.

SB 77 - Racial profiling; creating a misdemeanor violation, civil cause of action, requirements of law enforcement agencies

Chairman Brungardt called for discussion on **SB 77**, and called upon the Revisor to go over the balloon amendment that Senator Betts brought to the Committee during the hearing on February 3. The Revisor stated that in hind sight it probably would have been better to do a substitute bill instead of a balloon amendment since so much of the language had been changed, deleted, and language added. She explained all the requested changes contained in the distributed balloon. (Attachment 3)

Discussion and questions followed regarding concerns that the penalty for the criminal activity of racial profiling had been deleted; authorization to file a civil action in Section 6, lines 25-31, relating to the

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on Wednesday, February 9, 2005, in Room 231-N of the Capitol.

prevailing plaintiff can recover reasonable attorney fees, expert witness costs and other litigation costs reasonably incurred, but a prevailing defendant cannot recover such fees; annual training issues; and clarification of the definition of racial profiling under Section 1, lines 24-28.

Question was asked regarding whether there was an updated Fiscal Note covering **SB 77**. (Attachment 4) Chairman Brungardt related that Senator Betts was told by the Budget Division that there wouldn't be an update until the final form of the bill is presented by the Committee. He said that most of what was detailed in the original Fiscal Note had been deleted out of the bill and does not apply.

Senator Barnett stated that he had visited with staff and would like to offer new language to be included as a new subsection under Section 6, to read as follows: "A law enforcement agency shall not be eligible to receive grants or other moneys from the state for the fiscal year following a finding by the Attorney General or the attorney General's designee that a law enforcement agency has engaged in racial profiling or has failed to discipline a law enforcement officer in accordance with the recommendations of the Attorney General or the Attorney General's designee pursuant to this section. The provisions of this subsection shall not apply if the complainant files a civil cause of action pursuant to this section and the district court finds that racial profiling did not occur." (Attachment 5)

Senator Barnett said he wanted to add some "teeth" back into the bill to make it clear Kansans would not tolerate racial profiling, and that state moneys and grants will be withheld if racial profiling occurs and policy is not followed. Chairman Brungardt asked if he had any feel for what potential that holds, and Senator Barnett responded that he did not have an idea of how many grants that would involve. The Revisor stated that she did not know either.

Senator Brownlee questioned if the definition on racial profiling was one typically used by other states or agencies. The Revisor said she did not know as she was not involved in the original drafting of **SB 77**. The Chairman asked Senator Betts where the definition of racial profiling came from. Senator Betts replied that it came from a variety of sources with a similar definition, i.e. Missouri, Oklahoma, Texas, California, Nebraska and Colorado. He said it was also in federal policy.

Senator Brownlee inquired about the terminology used relating to "written policy and regulations" which is rather "atypical" with state law. She said that when dealing with local government, it would be more appropriate to say "policies" and when dealing with a state agency then it should be a regulation. Senator Brownlee expressed that the Committee needed to distinguish between those two units of law. The Revisor said she would check into it for clarification. Chairman Brungardt asked Sandy Jacquot, League of Kansas Municipalities (LKM), if she had any comments on the subject. Ms. Jacquot said in order to help the smaller cities in Kansas, LKM would probably assist in writing a plan and have an adopting ordinance incorporate the plan. She stated LKM does not do regulations, they do ordinances. She added that some of the larger departments do standard operating procedures.

Senator Brownlee reiterated that it probably should be policy rather than regulations. She referenced page 4, lines 28-31, of the revised bill regarding the court being allowed to award to the prevailing plaintiff attorney fees, expert witness costs and other litigation costs reasonably incurred. She asked if there was any place in state laws where that was done as it could become very costly, and could almost create a reverse discrimination situation. Senator Brownlee said she thought the goal of this proposed law was to be fair.

Chairman Brungardt asked the Chairman of the Senate Judiciary Committee, Senator Vratil, to help clarify this question. Senator Vratil explained that over the years the State Legislature has amended more and more statutes authorizing either the plaintiff to recover attorney's fees, or the defendant, or both of the parties. He said there wasn't anything consistent about the Legislature's actions in this regard. Chairman Brungardt inquired if attorney's fees included expert witness costs and other litigation costs. Senator Vratil responded that court costs included: the initial filing fee, any subpoena fees to bring a witness into the court, and cost of depositions if they are used to try the case. Court costs do not include expert witness fees, and have to specifically be requested. Both Senator Brownlee and Senator Vratil said they would offer amendments to clarify the language in the revised bill.

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on Wednesday, February 9, 2005, in Room 231-N of the Capitol.

Chairman Brungardt referred to page 4 and the League of Kansas Municipalities' testimony during the hearing regarding the citizen's advisory board, and that the smaller cities cannot get people to serve on such boards. He said that consideration should be given to amending that language to possibly cities of first class or some modification that would acknowledge that very small communities cannot make such an advisory board workable.

Senator Reitz suggested that the Committee should consider making this a substitute bill because of the extensive revisions. Chairman Brungardt agreed that after all the changes are made that the Committee could request it be redrafted as a substitute bill.

Senator Vratil stated that he was disappointed with the language in Section 6 and the provision for the court to allow the prevailing plaintiff reasonable attorney fees, etc., lines 30-31, which is unfair, unequal, and not justice. He said this bill should be consistently a reflection of fairness, equality, and justice. He proposed that the Committee either strike the language in the sentence that begins in line 30 and continues through line 31, or strike the word plaintiff and insert the word "party" so that either a prevailing plaintiff or a prevailing defendant could recover reasonable attorney fees. He said his preference would be to strike the entire sentence, and explained his reasoning.

Senator Vratil made a motion to amend by striking the sentence beginning in line 30, page 4, and continuing through line 31. Senator Bartlett seconded the motion. Senator Vratil explained that the end result would be that attorney's fees would not be recoverable in a civil action, expert witness fees would not be recoverable, and criminal procedure court costs would be recoverable.

Senator Brownlee made a substitute motion that would leave that sentence in, but strike the word "plaintiff" and insert "party," so that it would read, "The court may allow the prevailing party reasonable attorney fees and court costs." Senator Vratil stated he would support that motion. Senator Reitz seconded the motion. The Revisor clarified that this motion would strike in line 31, "the expert witness cost and other litigation costs reasonably incurred," and add in "and court costs." The Chairman agreed, and called for a vote on the substitute motion. The motion carried.

Chairman Brungardt called for Senator Barnett's balloon amendment. Senator Barnett made a motion to adopt the balloon amendment which would add a new subsection to Section 6. The motion was seconded by Senator Reitz.

Discussion followed regarding whether there was a penalty in the state's criminal code for racial profiling, and whether Kansas has a crime of racial profiling. Senator Vratil commented that it was unusual, but not unprecedented, to not have a penalty for a crime. Senator Betts stated that Kansas does not have a crime of racial profiling. The Revisor explained that Kansas does have in the Statute Books the crime of denying civil rights. Discussion continued on Senator Barnett's motion to adopt the balloon amendment.

Senator Hensley pointed out that on page 3 of the revised bill, Section 3, line 17, which was lined out, that "A violation of this section is a class A misdemeanor"; and suggested that reference should be made at that point that, "A violation of this section would be subject to Section 6 of the bill," which is Senator Barnett's amendment. This would be for clarification. Chairman Brungardt said possibly it should reference the Civil Rights Statute. He asked the Revisor to look into that matter, and advise the Committee.

Chairman Brungardt called for a vote on Senator Barnett's balloon amendment. The motion carried.

Senator Brownlee made a motion regarding language on page 3, line 40, to strike the words "and regulations"; and also on page 4 where those words appear on lines 17, 29, 36, and 43, so it says just "policies." Senator Hensley seconded the motion, and the motion carried.

Senator Brownlee made a motion to include on page 3, line 15, Section 3, that there is a criminal penalty for a law enforcement officer or any law enforcement agency to engage in racial profiling, and it be tied to

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on Wednesday, February 9, 2005, in Room 231-N of the Capitol.

the crime of denial of civil rights. Senator Hensley seconded the motion. Discussion followed. Senator Vratil questioned whether this amendment would be counter to what the agreements were that was worked out on the revised bill between Senator Betts and the law enforcement people. Senator Betts stated that the amendment was still in the same scope of the negotiations. Law enforcement did not want to see the misdemeanor or data collection included. Jeff Bottenberg, representing the Kansas Sheriffs Association, explained that law enforcement did not want the misdemeanor in there because law enforcement officers might be hesitant to investigate any type of a crime that may have a racial component. Senator Vratil commented that he thought this amendment was contrary to the agreement between the conferring parties. Discussion followed regarding the proposed amendment's conflict with the negotiated agreement.

Chairman Brungardt called for a vote on Senator Brownlee's motion to amend with reference to the statute dealing with civil rights. The vote was uncertain, and division was called. The motion carried with six (6) affirmative votes and three (3) votes against.

Senator Vratil made a motion to amend Section 5 to refer to cities of the first class, regarding the establishment or use of current independent citizen advisory boards. The motion was seconded by Senator Hensley, and the motion carried.

Chairman Brungardt called for a motion to adopt the revised bill. Senator Hensley moved to adopt the revised bill as amended, seconded by Senator Barnett, and the motion carried.

Senator Reitz made a motion to draft the revised and amended **SB 77** into a substitute bill form. Senator Reitz moved to have the bill redrafted into a substitute bill, seconded by Senator Brownlee, and the motion carried.

Chairman Brungardt announced that copies of the redrafted substitute bill for **SB 77** would be sent out as soon as it was available so all interested parties will have a chance to study it and make comment. He said after an appropriate time frame for everyone to digest the new version, it would be rescheduled for final action.

The meeting was adjourned at 11:44 a.m. The next meeting is scheduled for February 10, 2005.