

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Nick Jordan at 8:00 A.M. on February 15, 2006 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Jeff Cooper-Kansas Trial Lawyers Association
Dennis Phillips-Kansas State Council of Firefighters
Doug Allen-Worker
Jim Lubbers-Kansas State Firefighters Association
Hoyt Hillman-SPEEA
Chad Baldwin-Volunteer Firefighter
Dave Wilson-AARP
David Schauner-KNEA
Terri Roberts-Kansas Coalition on Workplace Safety
Beth Forester-AFL-CIO

Others attending:

See attached list.

Chairperson Jordan called the Committee's attention to **SB 360-Eminent domain; prohibition against tax incentive use and SB 493-Economic development; eminent domain; procedure; compensation** stating the Committee needed to take action on these bills.

Chairperson Jordan recognized Senator Barone. Senator Barone stated he had language to offer for **SB 493** to add a protest petition to the line of approval of eminent domain. Senator Brownlee entered the discussion asking Senator Barone where it should be added in the line of approval. Senator Barone stated the ideal place would be at the end of the process.

Chairperson Jordan recognized Senator Wysong who inquired about the procedure on **SB 493** since it was double referred. Chairperson Jordan stated the Commerce Committee would be deciding how they wanted the bill and the Judiciary Committee would also decide on how they wanted the bill and somewhere down the line the two bills would be blended together.

Chairperson Jordan recognized Senator Brownlee and she offered some ideas. The first would be agricultural land would not be condemned via eminent domain to be used for economic development. Senator Kelly entered the discussion regarding the definition of agricultural land. Senator Wagle entered the discussion with concerns regarding the definition of agricultural land. Senator Barone entered the discussion stating he feels the definition of agricultural land is important. He stated possibly that the 3 mile rule should apply and anything within 3 miles of the city limit would not be considered agricultural land. Senator Reitz entered the discussion and stated that eminent domain decisions are not made lightly and he stated he would not support any changes in eminent domain and that the present legislation as it stands is satisfactory to him. Senator Brownlee stated she would also like to limit the number of government agencies that have the power of eminent domain. Senator Kelly entered the discussion asking if they had any idea of how many times the government agencies exercise eminent domain. Senator Barone entered stating the threat of using eminent domain is used often. Senator Brownlee cited an instance where a water shed district took land by eminent domain and in doing so left one land owner without access to his land. Chairperson Jordan entered asking how it would affect KDOT. Senator Brownlee stated she felt that only city, state and county governments should have power of eminent domain.

Senator Brownlee made a motion that eminent domain could only be utilized by cities, counties and state government for economic development only. Senator Barone seconded.

A discussion followed with Committee on who has the power of eminent domain and who has the authority.

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Senator Kelly stated she has concerns with the motion.

Chairperson Jordan called for a vote on the motion on the floor. Motion carried with one “no” vote from Senator Wysong.

Senator Brownlee also stated she feels there should be a time limit on an economic development plan. Senator Schodorf agreed. Senator Kelly entered the discussion asking what the time frame should be. There was discussion with the Revisor, Helen Pedigo.

Senator Brownlee made a motion, the time frame on an economic development plan should be no more than 3 years from the first hearing until the approval. Senator Kelly seconded. Motion carried with one “no” vote from Senator Wysong.

Senator Brownlee shared more ideas on eminent domain. She stated that the Missouri Task Force proposed the following: a Land Owner Bill of Rights; the final written offer to purchase someone’s property would have to be open for 30 days before a filing in Court could be done for condemnation and the land owner would be allowed to get a certified appraisal that could be entered into record. Senator Brownlee stated the entire process is to insure that the land owner be given full consideration.

Chairperson Jordan referred the Committee to the balloon which was brought to the Committee earlier. The balloon would expedite the proceedings.

Chairperson Jordan made a motion to accept the balloon to expedite the proceedings; to assign the hearing at the earliest possible date. Senator Wsong seconded. Motion carried.

Senator Brownlee made a motion to move SB 493 out favorable as amended. Senator Reitz seconded. Motion carried with one “no” vote by Senator Wysong.

Chairperson Jordan turned the meeting over to Chairperson Brownlee to continue the hearing on **SB 461-Workers compensation; preexisting condition; permanent partial general disability; supplemental functional disability compensation.**

Chairperson Brownlee introduced Jeff Cooper representing the KTLA to give his testimony as an opponent to **SB 493**. Mr. Cooper presented written testimony. (Attachment 1) Mr. Cooper stated **SB 461** is a benefit reduction bill. Mr. Cooper stated KTLA feels the bill creates preexisting conditions for every worker in the workforce and it abolishes work disability. Mr. Cooper stated, the evidence is clear that Kansas employers pay the lowest workers compensation rates in the region, and based on the survey by KCCI, employers are not concerned about workers compensation premiums. There is absolutely no evidence to support a need to reduce benefits to injured workers below their already extremely low levels. The bill is a reincarnation of a bill that the Senate previously dealt with and rejected. Even though it has been modified, the intent remains the same. The bill is designed to reduce benefits to injured workers and their families. He urged the Committee to reject the bill.

Chairperson Brownlee introduced Dennis Phillips representing the Kansas State Council of Firefighters to give his testimony as an opponent for to **SB 449**. Mr. Phillips presented written testimony. (Attachment 2) Mr. Phillips stated the bill will have a very damaging effect on Kansas Firefighters when it comes to being compensated for their injuries under work comp. To change how preexisting conditions are determined to contribute to their injury would be detrimental to the Firefighters of Kansas. To have a persons age or what their occupation has done to their body over years of service to their community should not be held against them. Mr. Phillips stated the State Council of Fire Fighters is asking the Committee to oppose this bill.

Chairperson Brownlee introduced Doug Allen to give his testimony as an opponent for **SB 449**. Mr. Allen presented written copy. (Attachment 3) Mr. Allen stated after reviewing **SB 461** he understands, as a claimant, how it could negatively impact future claimants. He stated he suffered an injury on the job which affected his shoulder, back and both knees. Since he was unable to perform all his job duties he was terminated. He stated for the past 16 months, his ex-employer and workers compensation carrier has withheld authorization for medical care for both knees. He stated he had not received any type of compensation from

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the workers compensation carrier or unemployment. He feels that **SB 461** will help the insurance companies to deny even more claims. He also feels that **SB 461** will legalize age discrimination, which will allow insurance carriers to fabricate that any and all injuries are preexisting conditions. In closing, Mr. Allen urged the Committee not to pass the bill.

Chairperson Brownlee introduced Jim Lubbers representing the Kansas State Firefighters Association to give his testimony as an opponent to **SB 461**. Mr. Lubbers presented written testimony. (Attachment 4) Mr. Lubbers stated the Kansas State Firefighters Association feels that **SB 461** reduces or eliminates benefits for firefighters in two ways: (1) By redefining “preexisting condition” to mean virtually any condition a firefighter may have, including conditions that are not symptomatic, have not been diagnosed and have never limited a firefighters ability to do his or her job. The definition of preexisting includes undiagnosed conditions associated with the simple fact of aging, such as degrees of osteoporosis or arthritis. By changing the formula that determines who is eligible for work disability benefits and the amount of compensation disabled firefighters receive, few would qualify for disability benefits and those who do would receive far lower benefits than under current law. The Kansas State Firefighters Association feels that the law would make it more difficult to recruit and retain the dedicated volunteer firefighters that Kansas so desperately needs. In closing he stated **SB 461** is bad news for the 94% of working Kansans, including firefighters who depend on workers compensation when they are injured on the job.

Chairperson Brownlee called the Committee’s attention to the written only testimony of Hoyt Hillman representing SPEEA an opponent of **SB 461**. (Attachment 5)

Chairperson Brownlee introduced Chad Baldwin a volunteer firefighter for Shawnee Heights Fire District to give his testimony as an opponent of **SB 461**. Mr. Baldwin presented written testimony. (Attachment 6). Mr. Baldwin stated the bill is unfair to Kansas workers and would require employees, particularly those who volunteer as Firefighters, to carefully evaluate their decisions so that a preexisting condition would not be held against them down the road. In closing, he asked the Committee to vote against **SB 461**.

Chairperson Brownlee introduced Dave Wilson representing AARP to give his testimony as an opponent to **SB 461**. Mr. Wilson presented written testimony. (Attachment 7) Mr. Wilson stated more than 40% of all AARP members work full or part-time. By 2010 there will be a serious labor shortage as baby boomers begin to retire and fewer and younger workers are available because of slow population growth between 1985 and 1996. He stated that older workers will continue to have a prominent and increasing role in the labor force in coming decades. Mr. Wilson feels that ageism is exactly what **SB 461** is about. It is discriminatory to aging workers. As part of AARP’s national employment policy, they are strongly committed to expanding employment opportunities and promoting job security and benefits for workers of all ages to remove all barriers to equal employment opportunity. These goals include increasing employment opportunities and providing access to jobs through training, retraining and other programs designed both to encourage older workers to remain in the labor force and to improve the job security of all working Americans. Therefore, AARP strongly opposes **SB 461**. AARP believes there is no worker compensation crisis in Kansas. Weekly benefits for injured workers in Kansas are among the lowest in the nation and the lowest in the surrounding five-state region. In closing, Mr. Wilson urged the Committee to oppose **SB 461**.

Chairperson Brownlee introduced David Schauner representing KNEA to give his testimony as an opponent to **SB 461**. Mr. Schauner presented written testimony. (Attachment 8) Mr. Schauner stated KNEA believes **SB 461** is not good public policy and it punishes workers who are injured on the job. He stated instead of cutting benefits and making it harder for workers to collect benefits, the Committee should be talking about how to improve the benefits for the workers in Kansas. In closing, he stated the KNEA stands in opposition on the bill and urged the Committee to do the same.

Chairperson Brownlee introduced Terri Roberts representing the Kansas Coalition on Workplace Safety to give her testimony as an opponent of **SB 461**. Ms. Roberts presented written testimony. (Attachment 9) Ms. Roberts stated **SB 461**'s sole purpose is to reduce benefits to working Kansans who are injured on the job. She stated that both employers and insurance companies are benefitting from the state’s current workers compensation laws. She feel **SB 461** reduces or eliminates work comp benefits by redefining “preexisting condition” and eliminating work disability benefits for workers who suffer career-ending injuries. She urged the Committee to oppose **SB 461**.

Chairperson Brownlee introduced Beth Forester, Legal Counsel, representing the AFL-CIO to give her testimony as an opponent of **SB 461**. Ms. Forester presented written testimony. (Attachment 10) Ms. Forester stated **SB 461** is a bill that the Senate has dealt with previously, and rejected. The words have been tweaked but the intent is the same. It is a benefit reduction bill. Ms. Forester called the Committee's attention to testimony she presented from her partner, John Ostrowski, which he gave before the House Commerce and Labor Committee on January 18, 2006. (A copy of this testimony is on file in the office of the Kansas Senate Commerce Committee Secretary) Ms. Forester made note of the charts in Mr. Ostrowski's testimony. She stated that the work comp rates are the lowest in the region and urged the Committee not to pass **SB 461**.

Written Only testimony was also received from Robert, President, United Steel Workers of America, an opponent of **SB 461**. (Attachment 11)

Upon completion of Ms. Forester's testimony the Committee entered into discussion. Chairperson Brownlee asked Mr. Lubbers to clarify his statement regarding it would be more difficult to recruit and retain dedicated volunteer firefighters in Kansas. Mr. Lubbers stated that in the volunteer sector of firefighters if you have a preexisting condition you would not be covered by work comp and therefore would not be eligible to be a volunteer firefighter. They would not be able to pass a physical. Senator Barone entered with a question for Mr. Cooper representing KTLA regarding preexisting conditions and asked for examples. Mr. Cooper stated if someone had a back injury and the person was overweight, the doctors will routinely say 50% of the problem is the preexisting condition of being overweight. Then 50% will be withheld from benefits based on a condition which did not interfere with their ability to do the job. Mr. Cooper stated the reality is the preexisting condition does not relate to the problem. Senator Kelly entered the discussion with a question for Mr. Cooper asking if employers could not ask potential employees if they had any previous work comp claims. Mr. Cooper stated they could not ask before a job offer is made but after a job offer is made they can. Senator Kelly asked what options injured workers have if they don't receive benefits because of preexisting conditions and are unable to work. Mr. Cooper stated in most cases even when they receive benefits; the benefits are so low most generally lose their car, homes and families. In some cases, they can ask for vocational rehabilitation through SRS.

Chairperson Brownlee announced that tomorrow the Committee would be working **SB 515-Workers compensation pool; group-funded; surplus funds; adequate surplus funds** and would hear testimony from the remaining proponents on **SB 461**. She also announced the Senate Committee Planning Committee will meet today at 3:45 p.m. today in room 192-E.

Meeting adjourned at 9:30 a.m. with the next meeting scheduled for February 16, 2006 at 8:00 a.m. in room 123S.