

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Chairperson Al Ramirez at 1:30 p.m. on February 8, 1994 in Room 531-N of the Capitol.

All members were present except: Senator Feleciano - Excused
Senator Lee - Excused

Committee staff present: Julian Efird, Legislative Research Department
Fred Carman, Revisor of Statutes
Jackie Breymeyer, Committee Secretary

Conferees appearing before the committee: Senator Marge Petty
Nancy Echols, Director, Division of Personnel Services,
Department of Administration
Linda Wanklyn, Department of Revenue
Pat Russell, Policy Consultant, Division of Personnel
Services, Department of Administration

Others attending: See attached list

Chairman Ramirez called the meeting to order and stated the first order of business was introduction of bills. He called on Jerry Ray, Johnson County Commissioners, to briefly explain her proposed legislation that would enact the local government computer technology and data management act. User fees would be charged for computerized information.

Senator Vidricksen moved to introduce the bill. Senator Papay seconded the motion. The motion carried.

Mike Haines, Director of the Appraisal Board, was present to introduce legislation relating to real estate appraisers; licenses.

Senator Reynolds moved the bill introduction. Senator Papay seconded the motion. The motion carried.

The Chairman asked Mr. Haines to give a few statements about his occupation. Mr. Haines replied that he had been appointed five months ago as the new Director. The Board meets once a month with Mr. Haines setting the agenda. He has found the experience very rewarding.

The Chairman took up the agenda for the day, **SB 609**, Shared Leave Program.

As Senator Petty was detained, the Chairman called on Linda Wanklyn, Proponent, to begin testimony. Ms. Wanklyn distributed copies of her testimony. (Attachment 1) Ms. Wanklyn told of her daughter's surgery whereby Ms. Wanklyn used some of her sick and annual leave to attend her daughter. A short time later Ms. Wanklyn developed back problems and had to enter a hospital and undergo surgery. Recovery lasted six months and used the rest of her annual and sick leave. When this time expired, Ms. Wanklyn was placed on leave without pay. She applied for shared leave, but was denied because her problem was not considered catastrophic by the committee. Ms. Wanklyn ended her testimony by stating the shared leave program is needed for state employees.

Nancy Echols, Director, Division of Personnel Services, Department of Administration, was present to testify in opposition to **SB 609**. Ms. Echols provided the committee with copies of her testimony. (Attachment 2), which she read to the committee. She gave the makeup of the Leave Share Review Committee and stated the proposed amendment to the shared leave program would change the voting procedures to require only a majority vote to approve or deny a shared leave request. Concern was expressed with the retroactive aspect of the bill. If the bill would pass, all cases previously denied would have to be reviewed. If the assumption was that all cases were overturned and approved by majority vote, the cost to the state would be over \$900,000. Ms. Echols ended her testimony.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, Room 531-N
Statehouse, at 1:30 p.m. on February 8, 1994.

The Chairman commented to Ms. Echols about the bill he had sponsored in the past concerning shared leave and how the concerns expressed would not be a problem if handled properly.

Questions were asked by the committee with regard to the definition of catastrophic. Pat Russell, Policy Consultant, Division of Personnel Services, stated they used the dictionary for the definition. Webster's dictionary defines catastrophic as "sudden and disastrous". After a review of an employee's application is made, that is the first hurdle they have to pass. If the employee meets this definition, the second requirement would be "life threatening".

Senator Petty appeared to speak to the bill. She did not realize the concern over the retroactive aspect of the bill. She stated that it was obviously up to the discretion of the committee as to what it wants to do with it. Her thinking was that the retroactive aspect would affect those employees who applied last year.

Fred Carman, Revisor, stated that line 11 was a mistake and should read 'shared leave' and not 'leave share', but stated the bill needs no correction in that aspect. He also commented on the retroactive aspect Senator Petty wanted. This, of course, will be the committee's decision if it wants it retroactive or not.

The Chairman gave the agenda for Wednesday, February 9, and adjourned the meeting.

The next meeting is scheduled for February 9, 1994.

GUEST LIST

COMMITTEE: SENATE GOVERNMENTAL ORGANIZATION

DATE: Feb. 8, 1994

[illegible]

SENATE BILL # 609

Good Afternoon-

I am here today because of my concern for Senate Bill number 609 (shared leave for State employees).

I want to start by telling my experience with the state policy on shared leave that is now in effect. In May '92 my daughter had surgery to correct a birth defect. An "Ilizarov" was installed which lengthened, angled and rotated the bone in her right leg. I want to pass a picture around to help explain the "Ilizarov". It required six surgeries over one year. During this time she used all her sick and annual leave. She applied for shared leave and was denied because her case was not considered catastrophic by the reviewing committee. I attended her while she was in the hospital and escorted her for out patient visits. I did not use all my sick and annual leave, but I did use a large part of it.

Now here is where my problem started. In June of '93 one month after my daughter's ordeal was completed, I unexpectedly entered the hospital with a back problem. My Doctor explained that the situation would not get better on its own and soon if not already, it would cause nerve damage. This would result in permanent impairment of my left leg. I

Attachment 1
Sen. Gov. Org.
2/1-8/94

was operated on to remove a disk from the lower part of my back. This disk had exploded into the spinal column. Recovery lasted six months with physical therapy extending into December '93.

As soon as all my annual and sick leave was used I was placed on leave without pay. I immediately applied for shared leave. When this request reached personnel they requested my supervisor provide documentation stating that I had legally and wisely used my leave time. My supervisor promptly provided this to personnel. I was denied because my problem was not considered catastrophic by the committee. My supervisor requested personnel ask the committee for a definition of catastrophic and also ask why the whole process revolved around one word. The answer was, "this has been discussed before". My personnel department was baffled. They could not understand why I was denied shared leave; my condition met the criteria and shared leave was available.

The Federal Government has a shared leave program which is similar to the States program. The federal criteria is, a recipient must have a need and shared leave must be available. My husband has donated to the federal program.

I feel that the shared leave program is a needed and viable benefit both for the federal employees and the state employees. However, I do not feel that the present state program is a benefit. It is controlled by the committees connotation of catastrophic. Because of this, very few

employees can receive this benefit when they experience a medical problem that causes a need for shared leave. In addition employees are not afforded an appeal, which removes the check and balance system so cherished by our society.

I am honored for the opportunity to testify before you today. I am confident Senate Bill # 609 will evolve into a viable benefit for state employees. I will participate further today or anytime to make this bill a true benefit for state employees.

LINDA L. WANKLYN

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Testimony To The
SENATE GOVERNMENTAL ORGANIZATION COMMITTEE

By
Nancy M. Echols
Division of Personnel Services
Department of Administration

Tuesday, February 8, 1994
RE: Senate Bill 609

Mr. Chairperson, members of the committee, thank you for this opportunity to appear before you today. My name is Nancy Echols, and I am the Director of the Division of Personnel Services in the Department of Administration.

The Department of Administration wishes to express concerns with Senate Bill 609 which relates to the shared leave program established by K.A.R. 1-9-23.

The Leave Share Review Committee as established by K.A.R. 1-9-23 is a three member committee made up of two representatives from the agency of the requesting employee and one member from the Division of Personnel Services. The committee reviews all shared leave requests to determine if an illness or injury is catastrophic based on the facts of each individual situation supported by a physician's statement or other medical evidence according to K.A.R. 1-9-23. The regulation stipulates that illnesses or injuries must be catastrophic such as cancer, major surgery, serious accident, heart attack, etc., pose a threat to life or require inpatient or hospice care, extensive outpatient treatment or care at home, and keep the employee from performing regular work duties. Any approval of a request for shared leave must be made by a consensus vote of all three committee members.

The proposed amendment to the shared leave program would change the voting procedures to require only a majority vote to approve or deny a shared leave request. In addition, the bill calls for the majority vote to retroactively apply to all previous decisions made by the Leave Share Review Committee since its inception in July of 1992.

The representative from the Division of Personnel Services is the only standing member of the committee and is the only member who reviews every shared leave request. The lone standing member on the committee provides consistency to the committee determinations regarding illnesses or injuries that qualify as catastrophic. The consensus vote allows an advantage to the standing committee member in order to ensure an impartial and objective decision. Because the shared leave program is a state-wide program and donations cross agency lines, the consensus vote helps to make sure one agency is not approving shared leave requests for the same illnesses or injuries that another agency is denying.

Changing the voting procedures to a majority vote would greatly reduce the consistency of what illnesses or injuries qualify for shared leave, and could increase the number of requests approved. Of the 143 denied requests since the beginning of the shared leave program, approximately 85% of those decisions were made by a consensus decision of all three committee members. While a great majority of the decisions by the committee since the beginning of the program have been decided by a consensus vote, some committee members might be inclined to be much more lenient in approving shared leave requests in the future if only a majority vote is needed to approve. And because of the retroactive aspect of the bill, many of the previous decisions may be overturned.

Some states presented with the problem of maintaining consistency as to what does or does not qualify for shared leave have had to put some strict parameters in their regulations. The State of South Dakota not only requires the illness or injury to be catastrophic, but dictates that the illness or injury will also keep the employee from work for at least 90 days. Our regulation is more flexible because it allows the committee to look at cases individually, and while some illnesses or injuries may not require an employee to be away from work for 90 days, it may still be considered a catastrophic incident. However, because we do allow that flexibility, we believe the consensus vote to be a check on that flexibility.

Most agencies have stated they like the way the committee is currently set up. Changing the decision process of the committee to a majority vote may put pressure on the agency representatives to approve many shared leave requests they might not otherwise approve. Agency representatives might also have to deal with employees who claim favoritism may be involved in some decisions. With the current consensus vote, the standing committee person offers an objective opinion in each case.

If this bill passes, the Leave Share Review Committee will have to review all 143 cases that were previously denied. Some of those include such illnesses or injuries as an abscessed tooth, broken arm, and sore feet. Because all review decisions would be made by majority decision, it is possible that all previously denied requests could be overturned. As indicated in this bill's fiscal note, if you assume that all 143 cases are overturned and approved by a majority vote, the cost to the State would be over \$900,000. If denied requests were overturned, each individual would receive paid rather than unpaid leave for the amount of time requested and the State would be responsible for the employer portion of the employee's Group Health Insurance and other benefits during that time away from work.

We do not believe the shared leave program was intended for minor illnesses or injuries or as a short-term disability program. By keeping a consensus vote in the committee, we can continue to make sure that all approvals for shared leave meet the conditions of catastrophic as set out in K.A.R. 1-9-23.

Thank you for allowing me this time. I would be happy to answer any questions you may have.