

Approved: March 29, 2010

Date

MINUTES OF THE HOUSE GOVERNMENT EFFICIENCY AND FISCAL OVERSIGHT
COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 3:37 p.m. on March 17, 2010, in Room 546-S of the Capitol.

All members were present except:

Representative Melvin Neufeld- excused
Representative Charlie Roth- excused
Representative Tom Sloan- excused

Committee staff present:

Renae Jefferies, Office of the Revisor of Statutes
Julian Efird, Kansas Legislative Research Department
Artur Bagyants, Kansas Legislative Research Department
Gary Deeter, Committee Assistant

Conferees appearing before the Committee:

R. J. Wilson, Sandstone Group
Jane Carter, Executive Director, Kansas Organization of State Employees
Carl Parker, Member, Kansas Organization of State Employees

Others attending:

See attached list.

The minutes for the March 9 meeting were approved. (Motion by Representative Loganbill and seconded by Representative Ruiz)

R. J. Wilson, representing the Sandstone Group, discussed the State Employees Health Plan contract with CVS Caremark, which oversees the Pharmacy Benefits Manager (PBM) for state employees (Attachment 1). He noted that the vendor is both a pharmacy company and a benefits manager, a dual role that creates a conflict of interest and has resulted in higher costs for generic drugs. He recommended that the state consider other vendors and insist on transparency before renewing the contract with CVS Caremark.

A member requested clarification to determine that CVS Caremark and the Pharmacy Benefits Manager are separate entities. Mr. Wilson replied to questions that drug rebates are not returned to customers, but retained by the PBM and that generic drugs are not priced competitively. He said the deadline for the new contract is April 1, 2010.

A motion was made, seconded, and passed unanimously to alert the House Speaker to the PBM situation. (Motion by Representative Ruiz; seconded by Representative Gatewood)

The Chair opened the hearing on HB 2249 - Amendments to the Kansas whistle-blower act.

CONTINUATION SHEET

Minutes of the House Government Efficiency and Fiscal Oversight Committee at 3:37 p.m. on March 17, 2010, in Room 546-S of the Capitol.

Renae Jefferies, Revisor of Statutes' Office, briefed the Committee on the bill, noting the Committee's intent to amend **SB 294** (Amendments to the Kansas whistle-blowers act; employee suggestion program) into the bill. (Attachment 2). She commented on the award section of **SB 294** and noted that the definition of *threat* in **HB 2249** was replaced with a warning in the latter bill. She referenced a technical amendment (Attachment 3) and distributed the amended bill, **H Sub for HB 2249** (Attachment 4).

Jane Carter, Executive Director, Kansas Organization of State Employees (KOSE), spoke as a proponent for the bill (Attachment 5). She recommended the substitute bill, saying that the bill is important as a protection for state employees and provides incentives for effecting cost savings for the state.

Carl Parker, Member, KOSE, spoke in favor of the bill, saying that employees are often aware of waste in state government and can offer cost savings suggestions and promote efficiencies (Attachment 6). He commented that, because change is sometimes unacceptable to supervisors, employees who suggest changes are threatened by supervisors, situations which the bill addresses. Responding to questions, he replied that retaliation is frequently threatened by supervisors, that there is a disproportionate ratio of supervisors to employees, and that the financial rewards of the bill are fair.

Members noted the two disparate aspects of the bill—protecting whistle-blowers from retaliation and offering incentives for suggested efficiencies. Ms. Jefferies replied that there is no language in the bill to exempt awards from state income tax. A member suggested that such language be included.

The hearing on **HB 2249** was closed.

The meeting was adjourned at 4:40 p.m. The next meeting is scheduled for March 18, 2010.

HOUSE GOVERNMENT EFFICIENCY AND FISCAL OVERSIGHT COMMITTEE

GUEST LIST

DATE: MARCH 17 2010

NAME	REPRESENTING
Robert Witt	KOSE
George Breshears	KOSE
Sherry Calogian	KOSE
Thomas Giles	KOSE
Scott Towery	KOSE
Courtney Towery	KOSE
Shilo Towery	KOSE
Samantha Towery	KOSE
Ron Peterson	KOSE
Gail Fox	KOSE
Jeff Capper	KOSE
Steven Shepard	KDOT
Raymond E. McNeal	KOSE
CHRIS STALEY	KOSE
Donald R Wiley Jr	KOSE
Tim Baker	KOSE
Ken Filand	KOSE
Carrol Nather	KOSE
Red Johnny W. Augman	KOSE

HOUSE GOVERNMENT EFFICIENCY AND FISCAL OVERSIGHT COMMITTEE

GUEST LIST

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DATE: March 17, 2010

NAME	REPRESENTING
Chandra Green	KOSE
Marie Stewart	KOSE
Sharon Rodwell	KOSE
Maria Howe	KOSE
Kevin G. Golay	KOSE
Whitney Eichel	SELF
Jumitte Chapman	SELF
Levi Henry	Sandstone Group LLC
Laine Ann Brown	MW Solutions
Michelle Cady	GBA
Lugh Keck	HLF
RJ Wilson	CTW
John A. Botterby	CVS Caremark
Sam Jones	Bo Solutions/VHG
Jeff Botterby	Petrolini Shykat

SEHP Contract for Pharmacy Benefits: Background on CVS Caremark

The Kansas State Health Care Commission (HCC) is currently in the process of bidding out a new contract to provide pharmacy benefits for the Kansas State Employee Health Plan, which is estimated to cost \$60 million annually. Kansas decision makers should be aware of serious concerns about CVS Caremark, the State's current pharmacy benefits manager (PBM), regarding costs, contract transparency, and potential risks from CVS Caremark's business model.

CVS Caremark has failed to offer Kansas the lowest prices on hundreds of generic drugs. Any person who enrolls in CVS pharmacy's generic discount program can purchase hundreds of prescription drugs for significantly lower prices than CVS Caremark charges the State of Kansas and its employees for those same drugs¹, even though CVS Caremark is paid to reduce drug costs for the Kansas government and its workers. Change to Win research revealed that CVS Caremark charges the State and employees higher prices for 269 generic drugs than CVS charges customers enrolled in the discount program for a 90-day supply; this represents 91% of 296 drugs matched between the Kansas State Employee Health Plan and CVS pharmacy's generic discount program.

Former CVS Caremark clients, such as the states of Illinois, New Jersey, and Maryland, have saved or expect to save millions through transparent contracting. For example, In August 2009, the State of New Jersey announced that it would end its relationship with CVS Caremark and enter into a new contract with Medco Health Solutions to provide pharmacy benefits for approximately 670,000 state employees, dependents, and retirees. The new contract is projected to save the State \$559 million over five years through a transparent, pass-through pricing model. The State decided on the pass-through option because it "satisfies dual goals of attaining the greatest cost savings while achieving transparency in a time when that keyword is paramount to business operations in the public sector."¹

Public entities have charged CVS Caremark with cheating their health plans and sought millions of dollars in recoveries. For example, according to an audit released in February 2009 by the Maryland Department of Legislative Services, while CVS Caremark managed pharmacy benefits for the State from 2004 to 2007 it collected more than \$10 million in potential overpayments and undisclosed rebates. In 2007, Maryland replaced CVS Caremark with Catalist, a smaller, transparency-oriented PBM.²

CVS Caremark is being investigated by the Federal Trade Commission (FTC).³ CVS Caremark acknowledged the investigation in November 2009. The FTC has received communications from health plans, independent pharmacists, consumer groups, five U.S. Senators and over a dozen members of the House expressing concerns about the potential anti-competitive effects of the merged retail-PBM business model and the potential risks for consumers and health plans when such a large portion of the pharmaceutical supply chain is controlled by one company.⁴

Kansas should consider whether doing business with a PBM owned by a drugstore, such as CVS Caremark, is in the State's best interest. We believe HCC should carefully evaluate the fact that CVS Caremark has failed to offer the State of Kansas the lowest prices on hundreds of generic drugs, the potential risks of the CVS Caremark merger, and other disturbing aspects of CVS Caremark's track record before accepting a bid from CVS Caremark.

¹ Under the CVS generics discount program, anyone who enrolls can obtain a 90-day supply of any one of more than 370 generic medications for \$9.99, plus an annual enrollment fee.

Attachment 1
GEFO - 3-17-10

¹ *State of New Jersey, Department of Treasury, Purchasing Bureau, "Award Recommendation, Employee Benefits: Pharmacy Benefit Management, Reference Number: 10-X-20899, T2679," 4 Aug 2009. For savings from transparent contract, see pp 3-4, 46.*

² Office of Legislative Audits, Department of Legislative Services, Maryland General Assembly. "Audit Report: Department of Budget and Management, Office of Personnel Services and Benefits." Feb 2009, Executive Summary, at p5. Available at: <<http://www.ola.state.md.us/reports/Fiscal%20Compliance/OPSB09.pdf>>.

³ *Bloomberg News*. "CVS Caremark under FTC investigation, company says." 5 Nov 2009. Available at: <<http://www.latimes.com/business/la-fi-cvs6-2009nov06.0,1158825.story>>

⁴ Letters to the Federal Trade Commission calling for a review of the CVS Caremark merger from: 15 members of Congress: Six health plans and purchasing coalitions – Delaware Valley Health Care Coalition; New York Labor Health Care Alliance; Sergeants Benevolent Association, Police Dept, City of New York; 1199 New England, SEIU; Sheet Metal Workers International Union; Laundry, Dry Cleaning and Allied Workers Joint Board of New York; the National Legislative Association on Prescription Drug Prices (NLARx), Consumer Federation of America, US Public Interest Research Group; and the National Community Pharmacists Association. House members listed in Reuters article along with Jan Schakowsky (IL) and Jim Gerlach (PA); Reuters, "Eight lawmakers ask FTC to reopen CVS merger," 16 Sept 2009. Available at: <<http://in.reuters.com/article/rbssConsumerGoodsAndRetailNews/idINN156908820090915>>; Carol Wolf, Bloomberg News, "Senators Urge CVS Caremark Probe in Letters to FTC," 30 July 2009. Available at: <<http://www.bloomberg.com/apps/news?pid=20601087&sid=aCpZ0X2wZxPM>>

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MEMORANDUM

To: House Committee on Government Efficiency and Fiscal Oversight
From: Renae Jefferies, Assistant Revisor
Date: March 17, 2010
Subject: SB 294

SB 294 amends the Whistleblower act and revives and amends the employee award program. It had a hearing on March 13, 2009, but no action taken upon it by the senate committee.

Section 1 of the bill amends K.S.A. 75-2973, the Kansas Whistleblower Act. In lines 26 to 28, on page 1, the definition of "Disciplinary action" is amended to add the "warning of possible dismissal, demotion, transfer, reassignment, suspension, reprimand or withholding of work" as a disciplinary action. A definition for "Public contractor" is also added to the statute.

Also on page 1, line 40 the attorney general is added to the list of persons an employee may talk to under the act. In lines 42 and 43 of page 1 and lines 1 through 5 of page 2 provide that no supervisor or appointing agency shall take a disciplinary action against an employee who talks to a member of the legislature, the attorney general or any state auditing agency.

In lines 42 and 43 of page 2 and lines 1 and 2 of page 3, language is added to allow remedies the board may provide in a hearing regarding whether an employee was improperly disciplined to include "reinstatement to the employee's former position, back pay, reestablishment of any employee benefits for which the employee would have otherwise been eligible if such violation had not occurred. "

Ines 29 through 43 and lines 1 and 2 of page 4, provide that a public contractor or such contractor's employee may not prohibit an employee from talking to or disciplining an employee who has talked to a member of the legislature , the attorney general or an auditing agency about the operations of a state agency or other matters of public concern, including matters relating to

the public health, safety and welfare.” An employee who alleges that a disciplinary action has been taken may bring a civil action for appropriate relief within 90 days of the disciplinary action. The court may award the prevailing party all or a portion of the action, including reasonable attorney and witness fees. IF the employee prevails, the court may provide 6the same relief as in the board can.

Section 2 of the bill on pages 4 through 6 reestablishes the State Employee Award and Recognition Program for state employees wherein an employee may receive a monetary or non-monetary reward for distinguished accomplishment, meritorious service, innovations, Kansas quality management or length of service. An employee may not receive more than \$3,500 in any given fiscal year except as provided in subsections (f) and (g), Nor shall any KPERS deduction be taken from the award amount. The Secretary of Administration shall adopt rules and regulations to implement the program.

Subsection (f) provides that each state agency shall establish an employee suggestion program through which a state employee may submit a suggestion which may result in cost reductions for the state agency. If the suggestion is adopted by the state agency a monetary award for innovation shall be made to the state employee results in the amount of 2.5% of the estimated cost reduction up to a maximum of \$3,500. The state employee shall also receive an employee suggestion bonus in the amount of the difference between the amount of the innovation award received and 10% of the documented cost reduction in the first 12 months after the suggestion was implemented up to a maximum of \$37,500.

Subsection (g) refers to a program that no longer exists and is struck as one of the technical amendments in my technical balloon to the bill.

The act shall take effect upon publication in the statute book.

According ti the fiscal note, expanding the Kansas Whistleblower act would have a negligible effect on Department of Administrations expenditures while the effects of reestablishing the Employee Award Program could not be calculated at this time.

SENATE BILL No. 294

By Committee on Ways and Means

2-27

Revisor's
Technical Amendments 1
March 17, 2010

Attachment 3
CFO 3-17-10

9 AN ACT concerning state agencies; relating to the whistleblowers act; 2009
10 employee award program; amending K.S.A. ~~2008~~ Supp. 75-2973 and
11 75-37,105 and repealing the existing sections.

12 *Be it enacted by the Legislature of the State of Kansas:* 2009

13 Section 1. K.S.A. ~~2008~~ Supp. 75-2973 is hereby amended to read as
14 follows: 75-2973. (a) This section shall be known and may be cited as the
15 Kansas whistleblower act.

16 (b) As used in this section:
17 (1) "Auditing agency" means the (A) legislative post auditor, (B) any
18 employee of the division of post audit, (C) any firm performing audit
19 services pursuant to a contract with the post auditor, (D) any state agency
20 or federal agency or authority performing auditing or other oversight
21 activities under authority of any provision of law authorizing such activi-
22 ties, or (E) the inspector general created under K.S.A. 2008 Supp. 75-
23 7427 and amendments thereto.

24 (2) "Disciplinary action" means any dismissal, demotion, transfer,
25 reassignment, suspension, reprimand, warning of possible dismissal, *de-*
26 *motion, transfer, reassignment, suspension, reprimand* or withholding of
27 work.

28 (3) "State agency" and "firm" have the meanings provided by K.S.A.
29 46-1112 and amendments thereto.

30 (4) "Public contractor" means any person, partnership, association,
31 corporation or other private business entity that has entered into a con-
32 tract with a state agency for the provision of any supplies, materials,
33 equipment or other goods for the performance of any services, including
34 subcontractors thereof.

35 (c) (1) No supervisor or appointing authority of any state agency shall
36 prohibit any employee of the state agency from discussing the operations
37 of the state agency or other matters of public concern, including matters
38 relating to the public health, safety and welfare either specifically or gen-
39 erally, with any member of the legislature, the attorney general or any
40 auditing agency.

41 (2) No supervisor or appointing authority of any state agency shall
42 take any disciplinary action against any employee of the state agency in
43

1 *retaliation for such employee's discussing the operations of the state*
2 *agency or other matters of public concern, including matters relating to*
3 *the public health, safety and welfare either specifically or generally, with*
4 *any member of the legislature, the attorney general or any auditing*
5 *agency.*

6 (d) No supervisor or appointing authority of any state agency shall:

7 (1) Prohibit any employee of the state agency from reporting any
8 violation of state or federal law or rules and regulations to any person,
9 agency or organization; or

10 (2) require any such employee to give notice to the supervisor or
11 appointing authority prior to making any such report.

12 (e) This section shall not be construed as:

13 (1) Prohibiting a supervisor or appointing authority from requiring
14 that an employee inform the supervisor or appointing authority as to leg-
15 islative or auditing agency requests for information to the state agency or
16 the substance of testimony made, or to be made, by the employee to
17 legislators or the auditing agency, as the case may be, on behalf of the
18 state agency;

19 (2) permitting an employee to leave the employee's assigned work
20 areas during normal work hours without following applicable rules and
21 regulations and policies pertaining to leaves, unless the employee is re-
22 quested by a legislator or legislative committee to appear before a legis-
23 lative committee or by an auditing agency to appear at a meeting with
24 officials of the auditing agency;

25 (3) authorizing an employee to represent the employee's personal
26 opinions as the opinions of a state agency; or

27 (4) prohibiting disciplinary action of an employee who discloses in-
28 formation which: (A) The employee knows to be false or which the em-
29 ployee discloses with reckless disregard for its truth or falsity, (B) the
30 employee knows to be exempt from required disclosure under the open
31 records act, or (C) is confidential or privileged under statute or court rule.

32 (f) Any officer or employee of a state agency who is in the classified
33 service and has permanent status under the Kansas civil service act may
34 appeal to the state civil service board whenever the officer or employee
35 alleges that disciplinary action was taken against the officer or employee
36 in violation of this act. The appeal shall be filed within 90 days after the
37 alleged disciplinary action. Procedures governing the appeal shall be in
38 accordance with subsections (f) and (g) of K.S.A. 75-2949 and amend-
39 ments thereto and K.S.A. 75-2929d through 75-2929g and amendments
40 thereto. If the board finds that disciplinary action taken was unreasonable,
41 the board shall modify or reverse the agency's action and order such relief
42 for the employee as the board considers appropriate, *including, but not*
43 *limited to, reinstatement to the employee's former position, back pay and*

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1 *reestablishment of any employee benefits for which the employee would*
2 *otherwise have been eligible if such violation had not occurred.* If the
3 board finds a violation of this act, it may require as a penalty that the
4 violator be suspended on leave without pay for not more than 30 days or,
5 in cases of willful or repeated violations, may require that the violator
6 forfeit the violator's position as a state officer or employee and disqualify
7 the violator for appointment to or employment as a state officer or em-
8 ployee for a period of not more than two years. The board may award
9 the prevailing party all or a portion of the costs of the proceedings before
10 the board, including reasonable attorney fees and witness fees. The de-
11 cision of the board pursuant to this subsection may be appealed by any
12 party pursuant to law. On appeal, the court may award the prevailing
13 party all or a portion of the costs of the appeal, including reasonable
14 attorney fees and witness fees.

15 (g) Each state agency shall prominently post a copy of this act in
16 locations where it can reasonably be expected to come to the attention
17 of all employees of the state agency.

18 (h) Any officer or employee who is in the unclassified service under
19 the Kansas civil service act who alleges that disciplinary action has been
20 taken against such officer or employee in violation of this section may
21 bring an action pursuant to the act for judicial review and civil enforce-
22 ment of agency actions within 90 days after the occurrence of the alleged
23 violation. The court may award the prevailing party in the action all or a
24 portion of the costs of the action, including reasonable attorney fees and
25 witness fees.

26 (i) Nothing in this section shall be construed to authorize disclosure
27 of any information or communication that is confidential or privileged
28 under statute or court rule.

29 (j) *No public contractor or officer or employee of such public con-*
30 *tractor shall prohibit any other officer or employee of such public con-*
31 *tractor from discussing the operations of the state agency or other matters*
32 *of public concern, including matters relating to the public health, safety*
33 *and welfare either specifically or generally, with any member of the leg-*
34 *islature, the attorney general or any auditing agency. Any officer or em-*
35 *ployee of a public contractor who alleges that disciplinary action has been*
36 *taken against such officer or employee in violation of this subsection may*
37 *bring a civil action for appropriate injunctive relief within 90 days after*
38 *the occurrence of the alleged violation. A court, in rendering a judgment*
39 *in an action brought pursuant to this subsection, shall order, as the court*
40 *considers appropriate, reinstatement of the officer or employee, the pay-*
41 *ment of back wages, full reinstatement of fringe benefits or seniority*
42 *rights, or any combination thereof. The court may award the prevailing*
43 *party in the action all or a portion of the costs of the action, including*

4-3

1 *reasonable attorney fees and witness fees. Nothing in this subsection shall*
2 *create a cause of action against the state or any state agency.*

2009

3 Sec. 2. K.S.A. ~~2008~~ Supp. 75-37,105 is hereby amended to read as
4 follows: 75-37,105. (a) (1) There is established an employee award and
5 recognition program for state employees. Under this program monetary
6 or non-monetary awards may be made to state employees. An appointing
7 authority may implement a program of award and recognition for classi-
8 fied and unclassified employees or teams of employees for distinguished
9 accomplishment, meritorious service, innovations, Kansas quality man-
10 agement, volunteerism or length of service.

11 (2) All awards and recognition provided under this section shall meet
12 the conditions for a discretionary bonus set out in 29 C.F.R. 778.211.

subsection (f)

13 (b) The total gross value of awards to any employee of the state during
14 a single fiscal year shall not exceed \$3,500 except as provided in subsec-
15 tions (f) and (g). No award paid pursuant to this section during the fiscal
16 year shall be compensation, within the meaning of K.S.A. 74-4901 et seq.,
17 and amendments thereto, for any purpose under the Kansas public em-
18 ployees retirement system and shall not be subject to deductions for em-
19 ployee contributions thereunder. Each taxable award paid under this sec-
20 tion shall be a discretionary bonus, as defined by 29 C.F.R. 778, and shall
21 be in addition to the regular earnings to which that employee may be
22 entitled or for which the employee may become eligible. Monetary
23 awards are subject to taxes in accordance with federal internal revenue
24 code regulations. The value of non-monetary awards shall be reported by
25 state agencies in accordance with sections 74 and 132 of the federal in-
26 ternal revenue code and procedures prescribed by the director of ac-
27 counts and reports.

28 (c) The award and recognition program shall be paid from moneys
29 appropriated and available for operating expenditures of the state agency
30 or from other funding sources as appropriated. In the case of employee
31 suggestions, the award or recognition for each employee shall be paid or
32 provided by the state agency that benefited from and implemented the
33 suggestion.

34 (d) The regulations of the employee award board adopted pursuant
35 to K.S.A. 75-37,108 are hereby revoked.

36 (e) The secretary of administration shall adopt rules and regulations
37 that provide oversight and administrative review of agency award and
38 recognition programs. The secretary of administration shall adopt rules
39 and regulations to provide safeguards to preclude opportunities for abuse
40 within the employee award and recognition program in each state agency
41 and to ensure objective decision-making procedures in award and rec-
42 ognition determinations for all participating employees.

43 (f) (1) (A) ~~Each state agency shall establish a state employee sug-~~

1 ~~gestion program through which state employees may submit suggestions~~
2 ~~for cost reductions in that agency through increased efficiencies or other~~
3 ~~economies or savings in the operations of the state agency.~~

4 ~~—(B) Each employee making a suggestion for cost reduction shall be~~
5 ~~paid a monetary employee award for innovation pursuant to subsection~~
6 ~~(a) of this section upon adoption of the suggestion by the agency. Such a~~
7 ~~monetary award for innovation shall be non-discretionary and shall be in~~
8 ~~the amount of 2.5% of the estimated cost reduction, as certified by the~~
9 ~~agency's chief fiscal officer and the agency appointing authority up to a~~
10 ~~maximum of \$3,500. Each employee making a suggestion for cost reduc-~~
11 ~~tion shall also be paid an employee suggestion bonus in the amount of~~
12 ~~the difference between the amount of the innovation award received by~~
13 ~~the employee and 10% of the documented cost reduction during the first~~
14 ~~12 months after implementation of the suggestion, as documented to the~~
15 ~~division of the budget, up to a maximum employee suggestion bonus of~~
16 ~~\$37,500.~~

17 ~~—(C) The agency shall retain 10% of the documented cost reduction.~~
18 ~~Savings achieved through this cost reduction shall be placed in the Kansas~~
19 ~~savings incentive account or fund for that agency. The remaining balance~~
20 ~~of the savings achieved through this cost reduction shall revert to the state~~
21 ~~general fund.~~

22 ~~—(2) Each state agency shall submit each suggestion it receives, to-~~
23 ~~gether with the state agency's estimated cost reduction, if any, and dis-~~
24 ~~persation of the suggestion to the division of the budget. The director of~~
25 ~~the budget shall file copies with the director of the legislative research~~
26 ~~department, who shall report annually on the information to members of~~
27 ~~the legislative budget committee.~~

28 ~~—(g) (1) Salary bonus payments under the Kansas savings incentive~~
29 ~~program shall be made only for the following conditions:~~

30 ~~—(A) Monetary innovation awards made under subsection (f), or~~

31 ~~—(B) for awards and recognition provided pursuant to subsection (a).~~

32 ~~—(2) The director of personnel services shall establish guidelines and~~
33 ~~limitations for bonus payments under the Kansas savings incentive pro-~~
34 ~~gram.~~

35 *(f) (1) (A) Each state agency shall establish a state employee sugges-*
36 *tion program through which state employees may submit suggestions for*
37 *cost reductions in that agency through increased efficiencies or other*
38 *economies or savings in the operations of the state agency.*

39 *(B) Each employee making a suggestion for cost reduction shall be*
40 *paid a monetary employee award for innovation pursuant to subsection*
41 *(a) of this section upon adoption of the suggestion by the agency. Such a*
42 *monetary award for innovation shall be non-discretionary and shall be in*
43 *the amount of 2.5% of the estimated cost reduction, as certified by the*

1 agency's chief fiscal officer and the agency appointing authority up to a
 2 maximum of \$3,500. Each employee making a suggestion for cost reduc-
 3 tion shall also be paid an employee suggestion bonus in the amount of the
 4 difference between the amount of the innovation award received by the
 5 employee and 10% of the documented cost reduction during the first 12
 6 months after implementation of the suggestion, as documented to the di-
 7 vision of the budget, up to a maximum employee suggestion bonus of
 8 \$37,500.

9 (C) The agency shall retain 10% of the documented cost reduction.
 10 Savings achieved through this cost reduction shall be placed in the Kansas
 11 savings incentive account or fund for that agency. The remaining balance
 12 of the savings achieved through this cost reduction shall revert to the state
 13 general fund.

14 (2) Each state agency shall submit each suggestion it receives, to-
 15 gether with the state agency's estimated cost reduction, if any, and dis-
 16 pensation of the suggestion to the division of the budget. The director of
 17 the budget shall file copies with the director of the legislative research
 18 department, who shall report annually on the information to members of
 19 the legislative budget committee.

20 ~~(g) (1) Salary bonus payments under the Kansas savings incentive~~
 21 ~~program shall be made only for the following conditions:~~

22 ~~(A) Monetary innovation awards made under subsection (f), or~~

23 ~~(B) for awards and recognition provided pursuant to subsection (a).~~

24 ~~(2) The director of personnel services shall establish guidelines and~~
 25 ~~limitations for bonus payments under the Kansas savings incentive pro-~~
 26 ~~gram.~~

27 ~~(h)~~ Awards and incentives and other recognition pursuant to this sec-
 28 tion shall not be deemed in violation of K.S.A. 46-237a, and any amend-
 29 ments thereto.

30 ~~(i) The provisions of subsections (f) and (g) of this section shall expire~~
 31 ~~on June 30, 2006.~~

2009

32 Sec. 3. K.S.A. ~~2008~~ Supp. 75-2973 and 75-37,105 are hereby
 33 repealed.

34 Sec. 4. This act shall take effect and be in force from and after its
 35 publication in the statute book.

Substitute for HOUSE BILL NO. 2249

By Committee on Government Efficiency and Fiscal Oversight

AN ACT concerning state agencies; relating to the whistleblowers act; employee award program; amending K.S.A. 2009 Supp. 75-2973 and 75-37,105 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2009 Supp. 75-2973 is hereby amended to read as follows: 75-2973. (a)

This section shall be known and may be cited as the Kansas whistleblower act.

(b) As used in this section:

(1) "Auditing agency" means the (A) legislative post auditor, (B) any employee of the division of post audit, (C) any firm performing audit services pursuant to a contract with the post auditor, (D) any state agency or federal agency or authority performing auditing or other oversight activities under authority of any provision of law authorizing such activities, or (E) the inspector general created under K.S.A. 2008 Supp. 75-7427 and amendments thereto.

(2) "Disciplinary action" means any dismissal, demotion, transfer, reassignment, suspension, reprimand, withholding of work or warning of possible dismissal, demotion, transfer, reassignment, suspension, reprimand or ~~withholding of work~~ other punishment.

(3) "State agency" and "firm" have the meanings provided by K.S.A. 46-1112 and amendments thereto.

(4) "Public contractor" means any person, partnership, association, corporation or other private business entity that has entered into a contract with a state agency for the provision of any supplies, materials, equipment or other goods for the performance of any services, including subcontractors thereof.

Attachment 4
G&FO 3-17-10

(c) (1) No supervisor or appointing authority of any state agency shall prohibit any employee of the state agency from discussing the operations of the state agency or other matters of public concern, including matters relating to the public health, safety and welfare either specifically or generally, with any member of the legislature, the attorney general or any auditing agency.

(2) No supervisor or appointing authority of any state agency shall take any disciplinary action against any employee of the state agency in retaliation for such employee's discussing the operations of the state agency or other matters of public concern, including matters relating to the public health, safety and welfare either specifically or generally, with any member of the legislature, the attorney general or any auditing agency.

(d) No supervisor or appointing authority of any state agency shall:

(1) Prohibit any employee of the state agency from reporting any violation of state or federal law or rules and regulations to any person, agency or organization; or

(2) require any such employee to give notice to the supervisor or appointing authority prior to making any such report.

(e) This section shall not be construed as:

(1) Prohibiting a supervisor or appointing authority from requiring that an employee inform the supervisor or appointing authority as to legislative or auditing agency requests for information to the state agency or the substance of testimony made, or to be made, by the employee to legislators or the auditing agency, as the case may be, on behalf of the state agency;

(2) permitting an employee to leave the employee's assigned work areas during normal work hours without following applicable rules and regulations and policies pertaining to leaves, unless the employee is requested by a legislator or legislative committee to appear before a legislative

committee or by an auditing agency to appear at a meeting with officials of the auditing agency;

(3) authorizing an employee to represent the employee's personal opinions as the opinions of a state agency; or

(4) prohibiting disciplinary action of an employee who discloses information which: (A) The employee knows to be false or which the employee discloses with reckless disregard for its truth or falsity, (B) the employee knows to be exempt from required disclosure under the open records act, or (C) is confidential or privileged under statute or court rule.

(f) Any officer or employee of a state agency who is in the classified service and has permanent status under the Kansas civil service act may appeal to the state civil service board whenever the officer or employee alleges that disciplinary action was taken against the officer or employee in violation of this act. The appeal shall be filed within 90 days after the alleged disciplinary action. Procedures governing the appeal shall be in accordance with subsections (f) and (g) of K.S.A. 75-2949 and amendments thereto and K.S.A. 75-2929d through 75-2929g and amendments thereto. If the board finds that disciplinary action taken was unreasonable, the board shall modify or reverse the agency's action and order such relief for the employee as the board considers appropriate, including, but not limited to, reinstatement to the employee's former position, back pay and reestablishment of any employee benefits for which the employee would otherwise have been eligible if such violation had not occurred. If the board finds a violation of this act, it may require as a penalty that the violator be suspended on leave without pay for not more than 30 days or, in cases of willful or repeated violations, may require that the violator forfeit the violator's position as a state officer or employee and disqualify the violator for appointment to or employment as a state officer or employee for a period of not more than two years. The board may award the

prevailing party all or a portion of the costs of the proceedings before the board, including reasonable attorney fees and witness fees. The decision of the board pursuant to this subsection may be appealed by any party pursuant to law. On appeal, the court may award the prevailing party all or a portion of the costs of the appeal, including reasonable attorney fees and witness fees.

(g) Each state agency shall prominently post a copy of this act in locations where it can reasonably be expected to come to the attention of all employees of the state agency.

(h) Any officer or employee who is in the unclassified service under the Kansas civil service act who alleges that disciplinary action has been taken against such officer or employee in violation of this section may bring an action pursuant to the act for judicial review and civil enforcement of agency actions within 90 days after the occurrence of the alleged violation. The court may award the prevailing party in the action all or a portion of the costs of the action, including reasonable attorney fees and witness fees.

(i) Nothing in this section shall be construed to authorize disclosure of any information or communication that is confidential or privileged under statute or court rule.

(j) No public contractor or officer or employee of such public contractor shall prohibit any other officer or employee of such public contractor from discussing the operations of the state agency or other matters of public concern, including matters relating to the public health, safety and welfare either specifically or generally, with any member of the legislature, the attorney general or any auditing agency. Any officer or employee of a public contractor who alleges that disciplinary action has been taken against such officer or employee in violation of this subsection may bring a civil action for appropriate injunctive relief within 90 days after the occurrence of the alleged violation. A court, in rendering a judgment in an action brought pursuant to this subsection, shall order, as the

court considers appropriate, reinstatement of the officer or employee, the payment of back wages, full reinstatement of fringe benefits or seniority rights, or any combination thereof. The court may award the prevailing party in the action all or a portion of the costs of the action, including reasonable attorney fees and witness fees. Nothing in this subsection shall create a cause of action against the state or any state agency.

Sec. 2. K.S.A. 2009 Supp. 75-37,105 is hereby amended to read as follows: 75-37,105. (a)

(1) There is established an employee award and recognition program for state employees. Under this program monetary or non-monetary awards may be made to state employees. An appointing authority may implement a program of award and recognition for classified and unclassified employees or teams of employees for distinguished accomplishment, meritorious service, innovations, Kansas quality management, volunteerism or length of service.

(2) All awards and recognition provided under this section shall meet the conditions for a discretionary bonus set out in 29 C.F.R. 778.211.

(b) The total gross value of awards to any employee of the state during a single fiscal year shall not exceed \$3,500 except as provided in subsections (f) and (g). No award paid pursuant to this section during the fiscal year shall be compensation, within the meaning of K.S.A. 74-4901 et seq., and amendments thereto, for any purpose under the Kansas public employees retirement system and shall not be subject to deductions for employee contributions thereunder. Each taxable award paid under this section shall be a discretionary bonus, as defined by 29 C.F.R. 778, and shall be in addition to the regular earnings to which that employee may be entitled or for which the employee may become eligible. Monetary awards are subject to taxes in accordance with federal internal revenue code regulations. The value of non-monetary awards shall be reported by state agencies in

accordance with sections 74 and 132 of the federal internal revenue code and procedures prescribed by the director of accounts and reports.

(c) The award and recognition program shall be paid from moneys appropriated and available for operating expenditures of the state agency or from other funding sources as appropriated. In the case of employee suggestions, the award or recognition for each employee shall be paid or provided by the state agency that benefited from and implemented the suggestion.

(d) The regulations of the employee award board adopted pursuant to K.S.A. 75-37,108 are hereby revoked.

(e) The secretary of administration shall adopt rules and regulations that provide oversight and administrative review of agency award and recognition programs. The secretary of administration shall adopt rules and regulations to provide safeguards to preclude opportunities for abuse within the employee award and recognition program in each state agency and to ensure objective decision-making procedures in award and recognition determinations for all participating employees.

~~(f) (1) (A) Each state agency shall establish a state employee suggestion program through which state employees may submit suggestions for cost reductions in that agency through increased efficiencies or other economies or savings in the operations of the state agency.~~

~~— (B) Each employee making a suggestion for cost reduction shall be paid a monetary employee award for innovation pursuant to subsection (a) of this section upon adoption of the suggestion by the agency. Such a monetary award for innovation shall be non-discretionary and shall be in the amount of 2.5% of the estimated cost reduction, as certified by the agency's chief fiscal officer and the agency appointing authority up to a maximum of \$3,500. Each employee making a~~

~~suggestion for cost reduction shall also be paid an employee suggestion bonus in the amount of the difference between the amount of the innovation award received by the employee and 10% of the documented cost reduction during the first 12 months after implementation of the suggestion, as documented to the division of the budget, up to a maximum employee suggestion bonus of \$37,500.~~

~~—— (C) The agency shall retain 10% of the documented cost reduction. Savings achieved through this cost reduction shall be placed in the Kansas savings incentive account or fund for that agency. The remaining balance of the savings achieved through this cost reduction shall revert to the state general fund.~~

~~—— (2) Each state agency shall submit each suggestion it receives, together with the state agency's estimated cost reduction, if any, and dispensation of the suggestion to the division of the budget. The director of the budget shall file copies with the director of the legislative research department, who shall report annually on the information to members of the legislative budget committee.~~

~~—— (g) (1) Salary bonus payments under the Kansas savings incentive program shall be made only for the following conditions:~~

~~—— (A) Monetary innovation awards made under subsection (f), or~~

~~—— (B) for awards and recognition provided pursuant to subsection (a).~~

~~—— (2) The director of personnel services shall establish guidelines and limitations for bonus payments under the Kansas savings incentive program.~~

(f) (1) (A) Each state agency shall establish a state employee suggestion program through which state employees may submit suggestions for cost reductions in that agency through increased efficiencies or other economies or savings in the operations of the state agency.

(B) Each employee making a suggestion for cost reduction shall be paid a monetary employee award for innovation pursuant to subsection (a) of this section upon adoption of the suggestion by the agency. Such a monetary award for innovation shall be non-discretionary and shall be in the amount of 2.5% of the estimated cost reduction, as certified by the agency's chief fiscal officer and the agency appointing authority up to a maximum of \$3,500. Each employee making a suggestion for cost reduction shall also be paid an employee suggestion bonus in the amount of the difference between the amount of the innovation award received by the employee and 10% of the documented cost reduction during the first 12 months after implementation of the suggestion, as documented to the division of the budget, up to a maximum employee suggestion bonus of \$37,500.

(C) The agency shall retain 10% of the documented cost reduction. Savings achieved through this cost reduction shall be placed in the Kansas savings incentive account or fund for that agency. The remaining balance of the savings achieved through this cost reduction shall revert to the state general fund.

(2) Each state agency shall submit each suggestion it receives, together with the state agency's estimated cost reduction, if any, and dispensation of the suggestion to the division of the budget. The director of the budget shall file copies with the director of the legislative research department, who shall report annually on the information to members of the legislative budget committee.

(g) (1) Salary bonus payments under the Kansas savings incentive program shall be made only for the following conditions:

(A) Monetary innovation awards made under subsection (f), or

(B) for awards and recognition provided pursuant to subsection (a).

(2) The director of personnel services shall establish guidelines and limitations for bonus payments under the Kansas savings incentive program.

(h) Awards and incentives and other recognition pursuant to this section shall not be deemed in violation of K.S.A. 46-237a, and any amendments thereto.

~~(i) The provisions of subsections (f) and (g) of this section shall expire on June 30, 2006.~~

Sec. 3. K.S.A. 2009 Supp. 75-2973 and 75-37,105 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Testimony before the
Government Efficiency and Fiscal Oversight Committee
On
HB 2249
By
Jane Carter, Executive Director
Kansas Organization of State Employees

DATE: February 2, 2010

I am here today to speak on behalf of the 11,000 executive branch employees represented by the Kansas Organization of State Employees (KOSE) that support strengthening our state's whistleblower laws.

According to the National Whistleblowers Center,^[1] sixteen states have already strengthened their whistleblower protections beyond the piecemeal laws of Kansas. These strengthened protections encourage state employees to come forward with allegations of waste, fraud, and abuse in their state government free from any reprisal or threat of reprisal.

In Kansas we have been told again and again that we must cut the waste from our state agencies, especially now that we are facing a \$400 million budget hole. So there is no better time for us to encourage state employees to identify waste and inefficiencies than the present. However, in doing so, we must recognize the hardship any employee would confront having to possibly go against a supervisor—someone that can discipline, make a performance evaluation, or even fire an employee.

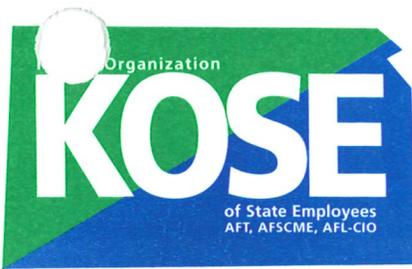
State employees are already stressed about furloughs and layoffs, so most with knowledge of waste, fraud, and abuse would rather stay quiet and not rock the boat. Many state employees will tell you there is plenty of waste in our agencies, but without stronger whistleblower protections how can an employee feel safe coming forward? How can an employee be asked to risk their job in our tough economy?

This Legislature must encourage state employees to come forward and tell their stories without fear of reprisal or the threat of reprisal. A web site should be established for state employees to identify waste and inefficiencies in our system. We would strongly recommend the Committee have language for a year of protection. Employees should be able to speak directly with the Attorney General's Office. Financial incentives for coming forward would be an amicable gesture as well.

We urge the Committee to support employees coming forward to root out waste, fraud, or any other inefficiency in state government.

[1] National Whistleblower Center: Statutes per state:

http://www.whistleblowers.org/index.php?option=com_content&task=view&id=742&Itemid=16



A NEW DAY... A BETTER WAY... FOR STATE EMPLOYEES

Testimony before the
Government Efficiency and Fiscal Oversight Committee
On
HB 2249
By
Carl Parker
March 17, 2010

My name is Carl Parker, and I am an administrative assistant at Larned State Hospital. First I would like to thank the Committee for hearing this extremely important proposed legislation today. I thank each of you for taking the time to make real changes, and help state employees come forward to identify waste.

In this tough budget crisis, the State can save money in more ways than one. Employees know what is truly happening at the work site. We can tell you where to cut costs, improve certain processes, and where to find mismanagement. Even more importantly, we can tell you how to do our jobs better and make the state run better.

Every day, I see waste and changes that should be made. Every week, I hear from other employees who have ideas on how to make things work better. But very rarely do we speak our minds out of fear of losing our jobs. State employees will tell you that abuse of the system is everywhere, but they won't give you the facts – our jobs are more important.

Our supervisors evaluate us, and they soon will decide whether or not we 'deserve' a raise. If a supervisor's plan isn't working, would you be the first to point out the flaws, or the first to keep your mouth shut?

We should be able to tell the Legislature what is happening in the trenches without fear of losing our jobs or losing position on the shift roster. House Bill 2249 reinstates the provision of the Whistleblower Act and is needed to help cleanup government waste. However, I would urge the Committee to adopt some of the proposals in SB 294. Adding language to offer a financial incentive for employees who find significant waste would make it more likely that more employees would step forward.

The Legislature should support employees coming forward, and employees should not be fearful to expose the 'fat at the top'. I urge you to support House Bill 2294.

Kansas Organization of State Employees, AFT/AFSCME, AFL-CIO

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*Attachment 6
GEFO 3-17-10*

