



City Hall
8500 Santa Fe Drive
Overland Park, Kansas 66212
www.opkansas.org

Date: Wednesday, February 12, 2025
To: Chair Bergquist and the House Committee on Local Government
From: City of Overland Park
Re: Written Testimony in Opposition to HB 2160

Thank you for allowing the City of Overland Park to submit testimony in opposition to HB 2160, which would cause taxpayers to pay increased costs for frivolous litigation resulting from the unnecessary expansion of existing whistleblower protections.

Kansas courts already recognize a cause of action for whistleblower retaliation, which protects employees from retaliation for reporting violations of laws, rules, or regulations that pertain to public health, safety, or welfare.¹ However, that cause of action includes important limitations that prevent frivolous lawsuits that would result in taxpayers having to pay significant legal expenses. For example, Kansas courts only recognize whistleblower retaliation claims where the employee engaged in whistleblowing in good faith based on a concern about the wrongful activity rather than for a corrupt motive. HB 2160 contains no such limitation. So, if a disgruntled employee was reprimanded for reporting outside their chain-of-command that their supervisor committed some technical policy violation (e.g. failure to complete an appropriate form) in retribution for a poor performance evaluation, HB 2160 would allow that employee to file a frivolous whistleblower claim against the employer. Expanding whistleblower protections to bad faith actions will only damage workplace environments and increase costs to taxpayers to defend frivolous lawsuits.

HB 2160 also expands the scope of whistleblower protections to communications that no reasonable person would consider whistleblowing. Kansas courts currently only recognize whistleblower protections for workers who seek out the intervention of a higher authority, either inside or outside of the company.² Unfortunately, HB 2160 would expand these protections to communications to “any person, agency or organization.” Kansas courts have clearly stated that whistleblower protections should exist to encourage employees who seek to stop corruption and impropriety, not create a cause of action related to “every workplace dispute over the water cooler on company practices.”³

Although HB 2160 appears to be based on the state whistleblower statute (K.S.A. 75-2973), the legislation contains several differences that would put municipalities in a worse position than state agencies. For example, HB 2160 adds whistleblower protections for reporting “malfeasance,” but does not define that term. Black’s Law Dictionary broadly defines malfeasance as the commission of a wrongful, unlawful, or dishonest act. Coupled with HB 2160’s lack of protection against bad faith actions and any requirement that communications be directed to higher authorities, the broad scope of what may constitute malfeasance could result in whistleblower protections for any sort of office gossip.

¹ *Conge v. City of Olathe*, 64 Kan. App. 2d 383 (2024).

² *Fowler v. Criticare Home Health Servs., Inc.*, 27 Kan. App. 2d 869 (2000).

³ *Id.*

Additionally, the state whistleblower statute allows whistleblower complaints to be considered by an administrative body rather than allowing such complaints to go directly to court.⁴ This provides the employee with a forum to present their complaint without requiring the state to pay significant legal fees to respond to every complaint. Conversely, HB 2160 does not allow municipalities to have whistleblower complaints to heard by an administrative body. Therefore, if HB 2160 is enacted then municipalities (unlike the state) and their taxpayers will be responsible for paying the legal fees necessary to defend every whistleblower complaint in court.

Thank you for allowing the City to submit testimony in opposition of HB 2160. We respectfully request that the Committee not advance this legislation to the full House.

⁴ K.S.A. 75-2973(f).