

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Jeff King at 10:55am on Wednesday, February 18, 2015, 346-S of the Capitol.

All members were present

Committee staff present:

Lauren Douglass, Legislative Research Department
Robert Allison-Gallimore, Legislative Research Department
Natalie Nelson, Legislative Research Department
Suzanne Nelson, Kansas Legislative Committee Assistant
Katherine Goyette, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes

Conferees appearing before the Committee:

Clayton Barker, Executive Director and General Counsel, KS Republican Party;
Karen Arnold Burger, Judge, KS Court of Appeals;
Derek Schmidt, KS Attorney General;
Mike Kautsch, Professor, KS University Law School;
Nathan Eberline, Legal Counsel, KS Association of Counties;
Doug Anstaett, Executive Director, KS Press Association, Inc.;
Kent Cornish, President, Association of Broadcasters;
Maxwell Kautsch, Attorney at Law, Kautsch Law, L.L.C.;
Nicole Proulx Aiken, Legal Counsel, League of Kansas Municipalities;
Eldon Dillingham, Private Citizen, Wamego, KS;
Alan Brumbaugh, Private Citizen, Derby, KS;
Michael Whalen, Attorney at Law, Wichita, KS;
Tapatha Strickler, Former Psychologist, Kansas Sexual Predator Training Program (SPTP),
Nickerson, KS;

Others in attendance:

[See Attached List](#)

Hearing on: SB197 — Applying the open meetings act to the supreme court nominating commission and judicial district nominating commissions; applying the open records act to certain attorney information; requiring attorneys to document certain eligibility requirements to vote in the commission selection process.

Note: The Senate Judiciary Committee was called to order at 10:55am. The late start was due to the Senate Federal and State Affairs Committee running late in concluding their hearing today.

The Chair opened the hearing on **SB197** and asked Jason Thompson for an overview of the bill.

Clayton Barker provided testimony supporting **SB197**. He expressed concern about the small

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 10:55am on Wednesday, February 18, 2015, 346-S of the Capitol.

percentages of eligible-to-vote attorneys who are not voting (see page 2, Attachment 1 below), which Mr. Barker suggests makes the election and control of the Commission susceptible to special interests. He believes **SB197** makes it possible to track who is voting to determine if attorneys from one geographic area, one firm, or from one area of legal specialization voted in disproportionate numbers in order to control the Commission. ([Attachment 1](#))

Written-only proponent testimony was submitted by:

Kris Kobach, Kansas Secretary of State ([Attachment 2](#))
Stephen Ware, Law Professor, Kansas University ([Attachment 3](#))

Karen Arnold-Burger presented testimony in opposition to the bill. She voiced several concerns about the bill and asked that it be sent to the Judicial Council for further study. ([Attachment 4](#))

Written-only opponent testimony was submitted by:

Joseph Molina, on behalf of Kansas Bar Association ([Attachment 5](#))
Callie Jill Denton, Executive Director, KS Association for Justice ([Attachment 6](#))
Mark Katz, Kansas Association of Defense Counsel ([Attachment 7](#))

There being no other testimony submitted at this time and no further questions, comments, or discussion, the hearing on **SB197** closed.

Hearing on: SB206 — Enforcement of open records and meetings; attorney general; fund.

The Chair turned attention to **SB206** and opened the hearing with an overview by Jason Thompson.

Attorney General Derek Schmidt spoke in support of **SB206**. He told the committee that the overall effect of this bill, if enacted, will step up enforcement and training by the attorney general and by county and district attorneys, and thus reducing inadvertent violations. He encouraged the committee to recommend the bill favorably for passage and addressed questions and comments from the committee. ([Attachment 8](#))

Mike Kautsch gave proponent testimony. He related that as a faculty member at KU School of Law, he teaches classes, engages in research and makes presentations related to the Kansas Open Meetings Act (KOMA) and Kansas Open Records Act (KORA). Mr. Kautsch believes that Kansas has adopted a strong public policy in favor of open government and that **SB206** is a significant initiative, which would establish a meaningful, fair, and consistent process for implementing the policy. ([Attachment 9](#))

Nathan Eberline spoke in favor of the bill. He highlighted the open government fund that is established by the bill, which would help fund investigations and prosecutions of KORA and KOMA cases. The bill also allows for alleviating some conflict of interest situations. ([Attachment 10](#))

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 10:55am on Wednesday, February 18, 2015, 346-S of the Capitol.

Doug Anstaett presented proponent testimony. He related that passage of the bill would add consistency in the process so that the findings across jurisdictions in Kansas would be more uniform. The bill also gives the attorney general the discretion to resolve problems using a variety of methods ranging from mediation to consent orders and findings of violation of a public agency. More importantly, he was happy to see that there would be more and better training in this area. ([Attachment 11](#))

Kent Cornish spoke in support of **SB206**. He believes the provisions of this bill will help create transparency in government and also will strengthen the attorney general's powers to investigate and prosecute violators of KOMA and KORA. ([Attachment 12](#))

Maxwell Kautsch spoke in support of **SB206**, telling the committee that he was highly in favor of the mediation provision, which would allow attempts to resolve issues prior to filing law suits. ([Attachment 13](#))

Nicole Proulx Aiken provided neutral testimony. While the bill would give the attorney general more authority to investigate and penalize public agencies violating KOMA and KORA, Ms. Aiken and public entities she represents are concerned that public agencies would have to pay for reasonable investigation costs and attorney fees which might keep some agencies from pursuing their rights in court even if they believe they have done nothing wrong. She believes that the current standard, requiring attorney fees only if the court finds the agency is guilty, should remain the law. ([Attachment 14](#))

There being no other testimony submitted at this time and no further questions, comments, or discussion, the hearing on **SB206** closed.

Hearing on: SB149 — Civil commitment of sexually violent predators.

The Chair opened the hearing on **SB149**. Jason Thompson gave an overview of the bill, its changes and clarifications regarding the Kansas sexually violent predator act (KSVPA) and the sexual predator treatment program (SPTP).

The Chair, seeing the time for adjournment was approaching, noted that all opponents to **SB149** were from out of town and all proponents were from Topeka. There being no objections, Chair King announced the opponents would testify today, then the committee will hear the proponent and other testimony first on tomorrow's agenda.

Eldon Dillingham testified in opposition to the bill and strongly encouraged the committee to wait until the Legislative Post Audit Report has been completed. It is due out in March. He also asked the committee members to take the time to read the portion of his testimony regarding the experience of an 18 year-old at Larned State Hospital. ([Attachment 15](#))

CONTINUATION SHEET

MINUTES of the Committee on Judiciary at 10:55am on Wednesday, February 18, 2015, 346-S of the Capitol.

Alan Brumbaugh gave opponent testimony. He also requested that the committee wait to take action on the bill until reviewing the Post Audit report. His main concern is that the individuals who enter the program believe they are going to get therapy leading to release, but in his opinion, that never seems to happen. ([Attachment 16](#))

Michael Whalen presented opponent testimony. He told the committee that he has been fighting sexually violent predator (SVP) cases for more than a decade because he believes the KSVPA is poorly developed legislation with numerous constitutional violations. Mr. Whalen mentioned 12 points which he suggested are constitutional violations contained in KSVPA and says the amendments contained in **SB149** only make the violations worse. He also urged the committee to wait to act upon the bill until after the Legislative Post Audit report is released. ([Attachment 17](#))

Tapatha Strickler testified opposing **SB149**. She is a former therapist for the SPTP at Larned State Hospital. She testified regarding the difficulties she encountered as a professional within the program attempting to give care and treatment. She related that during her work there, she believed her hands were tied to the point of being unethical and listed several examples and criteria which make the program inherently unhelpful to the patients and unsuccessful overall. She also encouraged the committee to wait until the Legislative Post Audit Report was published. ([Attachment 18](#))

The Chair continued the hearing until tomorrow, Thursday, February 19, 2015, when the proponent, neutral, and any other opponent testimony will be heard first on the agenda.

Possible action on bills previously heard

There was no action on bills previously heard today.

The hearing adjourned at 12:11pm. The next meeting will be Thursday, February 19, 2015 at 10:30 am.