

Approved March 18, 1987
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~p.m.~~ on March 17, 1987 in room 514-S of the Capitol.

All members were present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington, Winter and Yost.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

David Ryan, Administrative Procedure Advisory Committee
Matt Lynch, Kansas Judicial Council
Pam Sjoholm, Kansas Insurance Department
Carol Bonebrake, Department of Revenue
Jo Jenkins, Kansas Corporation Commission

Senate Bill 334 - Kansas administrative procedure act, application thereof.

The chairman reviewed the bill. Copies of a balloon of the relevant sections of the bill which sets forth the advisory committee's recommended amendments were passed out to committee members (See Attachment I). A copy of a letter from the Kansas Judicial Council listing the proposed amendments is attached (See Attachment II).

David Ryan, Administrative Procedure Advisory Committee, explained the recommended amendments of the advisory committee that appear on the balloon copy.

Matt Lynch, Kansas Judicial Council, addressed New Section 358 and explained the recommendations of the Division of Taxation. He also pointed out line 118 of the bill, the exemptions from APA listed, and asked that the vehicle suspensions be included in the list of exemptions.

Pam Sjoholm, Kansas Insurance Department, passed out copies of the department's proposed amendments and explained the recommendations to the committee (See Attachment III).

Considerable committee discussion was held. Representative Duncan was recognized to respond to a question by a committee member concerning intervention.

Carol Bonebrake, Department of Revenue, stated the department still has concerns about ex parte provisions, but other than that they are well satisfied with the changes in the bill.

Jo Jenkins, Kansas Corporation Commission, stated the limited exemption in Section 355 of the bill, to the extent that it goes, that language is satisfactory. She stated some amendment to Section 10 is needed, which is the ex parte rule.

Senator Gaines moved to amend the bill by adopting the proposed amendments that appear on the balloon, and also include the acceptable language on page 13 of the balloon. Senator Winter seconded the motion, and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 17, 1987.

Senate Bill 334 continued

Following committee discussion concerning the ex parte provision, Senator Steineger moved to amend the bill to grant ex parte exemption to the Kansas Corporation Commission proceedings and to the Department of Revenue. Senator Gaines seconded the motion, and the motion carried.

Senator Steineger moved to report the bill favorably as amended and as a substitute bill. Senator Parrish seconded the motion, and the motion carried.

Senate Bill 318 - Act for judicial review and civil enforcement of agency actions.

Senator Parrish moved to report the bill favorably. Senator Hoferer seconded the motion, and the motion carried.

The meeting adjourned.

A copy of the guest list is attached (See Attachment IV).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-17-87

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
John Jenkins	State of Bldg	KCC
Matt Lynch	Topeka	Judicial Council
Newton Rice	Capital	Secretary of State
Rochelle Campbell	Delphos	Government Class
Alyssa Kimmel	Minneapolis	"
Amy Heikes	"	"
Marcia Nichols	Longford	"
Dita Amos	Minneapolis	"
Michelle	Topeka	Suppl.
Wendy B. Fouch	"	DOR
Pam Scholz	Topeka	Kansas Ins Dept.
Sally J. Panieton	Lawrence	KS N.O.W.
David Cunningham	Topeka	BOIA
Carol Foreman	Topeka	SRS
David Ryan	Topeka	APA-Judicial Council
Pete King	Topeka	SRS
Charles V. Hamm	Forbes Field-Topeka	Kansas Dept of Health & F.
Cindy Lutz	Topeka	KASB
Mitch Bernason	Topeka	Ks Railroad Ass'n.
Phil Anderson	Topeka	BUDGET DW
Jim Halt	Topeka	KCW
Bob Chast	TOPEKA	KSIA
Rick Kready	"	KPL Gas Service
Faith Loretto	"	Dept. of Adm.
Bob Culbert	Topeka	KTLA

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0091 license and is of particular applicability to a person that deter-
0092 mines the legal rights, duties, privileges, immunities or other
0093 legal interest of one or more specific persons.

0094 (e) "Party to state agency proceedings," or "party" in context
0095 so indicating, means:

0096 (1) A person to whom an order is specifically directed; or

0097 (2) a person named as a party to a state agency proceeding or
0098 allowed to intervene or participate as a party in the proceeding.

0099 (f) "Person" means an individual, partnership, corporation,
0100 association, political subdivision or unit thereof or public or
0101 private organization or entity of any character, and includes
0102 another state agency.

0103 (g) "Political subdivision" means political or taxing subdivi-
0104 sions of the state, including boards, commissions, authorities,
0105 councils, committees, subcommittees and other subordinate
0106 groups or administrative units thereof, receiving or expending
0107 and supported in whole or in part by public funds.

0108 Sec. 2. K.S.A. 1986 Supp. 77-503 is hereby amended to read
0109 as follows: 77-503. (a) This act applies ~~only to the extent that~~
0110 ~~other statutes expressly provide that the provisions of this act~~
0111 ~~govern proceedings under those statutes to all orders and to all~~
0112 ~~adjudicative proceedings thereon not expressly exempted by~~
0113 ~~statute.~~

0114 (b) This act creates only procedural rights and imposes only
0115 procedural duties. They are in addition to those created and
0116 imposed by other statutes.

0117 (c) This act does not apply to:

0118 (1) Orders under the workmen's compensation act other
0119 than orders of the commissioner of insurance;

0120 (2) orders under the employment security act;

0121 (3) orders of the mined-land conservation and reclamation
0122 board;

0123 (4) orders of the director or division of vehicles concerning
0124 drivers' licenses, driving privileges or suspensions of vehicle
0125 registrations as provided in K.S.A. 40-3104 and 40-3108 and
0126 amendments thereto;

0127 (5) orders of state educational institutions and the state

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0128 board of regents other than orders relating to the granting of
0129 licenses; ~~and~~

0130 (6) orders under K.S.A. 72-972 through 72-975, and amend-

0131 ments thereto.

; and
(7) orders of the Kansas parole board

0132 Sec. 3. K.S.A. 1986 Supp. 77-508 is hereby amended to read
0133 as follows: 77-508. (a) Except as provided by this section, an
0134 adjudicative proceeding shall be the process for formulating and
0135 issuing an order, unless the order is a decision:

0136 (a) To issue or not to issue a complaint, summons or similar
0137 accusation;

0138 (b) to initiate or not to initiate an investigation, prosecution
0139 or other proceeding before the state agency, another agency or a
0140 court; or

0141 (c) under K.S.A. 1985 Supp. 77-510, not to conduct an ad-
0142 judicative proceeding.

0143 (b) Unless prohibited by law, a state agency may issue an
0144 order subject to the right of a person to whom the order is
0145 directed to request in writing an appropriate adjudicative pro-
0146 ceeding within 15 days after service of the order. The order shall
0147 inform the person to whom it is directed of the right to request
0148 an adjudicative proceeding and the time and manner for making
0149 such request. The state agency may extend the time for re-
0150 questing an adjudicative proceeding for good cause shown. If an
0151 adjudicative proceeding is not requested, the order shall become
0152 effective upon the expiration of the time for requesting an
0153 adjudicative proceeding. If an adjudicative proceeding is re-
0154 quested, any order resulting from the proceeding shall become
0155 effective in accordance with the provisions of this act. This
0156 subsection does not preclude a state agency from taking imme-
0157 diate action to protect the public interest in accordance with
0158 K.S.A. 1986 Supp. 77-536 and amendments thereto.

0159 (c) The following state agency actions, whether or not in-
0160 cluded within the definition of order, shall not require an
0161 adjudicative proceeding under this act:

0162 (1) A decision to issue or not to issue a complaint, summons
0163 or similar accusation or a determination as to whether or not
0164 probable cause exists for crediting a complaint;

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0165 (2) a decision to initiate or not to initiate an investigation,
0166 prosecution or other proceeding before the state agency, an-
0167 other agency or a court;

0168 (3) a decision under K.S.A. 1986 Supp. 77-510 and amend-
0169 ments thereto not to conduct an adjudicative proceeding;

0170 (4) decisions pertaining to contracts, obtaining materials or
0171 services, or awarding grants;

0172 (5) management decisions pertaining to internal agency
0173 policy and procedure, personnel matters other than orders of
0174 the state civil service board, or the budget process;

0175 (6) decisions pursuant to K.S.A. 45-215 et seq., and amend-
0176 ments thereto, pertaining to disclosure or copying of public
0177 records;

0178 (7) decisions pursuant to K.S.A. 75-4317 et seq., and amend-
0179 ments thereto, pertaining to access to meetings of public bodies;

0180 (8) approval of plans, specifications or other matters pre-
0181 liminary to the granting of a license or permit;

0182 (9) decisions regarding management, discipline or release of
0183 persons in the custody of the secretary of corrections or com-
0184 mitted to a state youth center;

✓ 0185 [(10) decisions relating to parole or revocation of parole;] (10)

✓ 0186 [(11)] decisions relating to the admission, treatment, condi-
0187 tional release or discharge of persons at state psychiatric hos-
0188 pitals or state institutions for the mentally retarded; (11)

✓ 0189 [(12)] decisions regarding public improvement need, design or
0190 location; (12)

✓ 0191 [(13)] decisions as to the specifications governing the nature
0192 and quality of materials to be used in any public improvement
0193 project or the plans and specifications governing the design of
0194 any such project prior to the time the contract for any such
0195 project is awarded; and (13)

✓ 0196 [(14)] other agency actions exempted by statute. (14)

0197 Sec. 4. K.S.A. 1986 Supp. 77-509 is hereby amended to read
0198 as follows: 77-509. (a) A state agency may provide an adjudicative
0199 proceeding at any time with respect to an order within the
0200 agency's jurisdiction.

0201 (b) A state agency shall provide an opportunity for an ad-

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0387 statements. If the presiding officer proposes to consider a state-
0388 ment by a nonparty, the presiding officer shall give all parties an
0389 opportunity to challenge or rebut it and, on motion of any party,
0390 the presiding officer shall require the statement to be given
0391 under oath or affirmation.

0392 (d) The presiding officer may conduct all or part of the
0393 hearing by telephone or other electronic means, if each partici-
0394 pant in the hearing has an opportunity to participate in the entire
0395 proceeding while it is taking place.

0396 (e) The presiding officer shall cause the hearing to be re-
0397 corded at the state agency's expense. The state agency is not
0398 required, at its expense, to prepare a transcript, unless required
0399 to do so by a provision of law. Any party, at the party's expense
0400 and subject to such reasonable conditions as the state agency
0401 may establish, may cause a person other than the state agency to
0402 prepare a transcript from the state agency's record, or cause
0403 additional recordings to be made during the hearing.

0404 (f) The hearing is open to public observation, except for the
0405 parts that the presiding officer states to be closed pursuant to a
0406 provision of law expressly authorizing closure.

0407 Sec. 10. K.S.A. 1986 Supp. 77-525 is hereby amended to read
0408 as follows: 77-525. (a) A presiding officer serving in an adjudica-
0409 tive proceeding may not communicate, directly or indirectly,
0410 regarding any issue in the proceeding while the proceeding is
0411 pending, with any party or participant, with any person who has
0412 a direct or indirect interest in the outcome of the proceeding or
0413 with any person who presided at a previous stage of the pro-
0414 ceeding, without notice and opportunity for all parties to par-
0415 ticipate in the communication.

0416 (b) A member of a multimember panel of presiding officers
0417 may communicate with other members of the panel regarding a
0418 matter pending before the panel, and any presiding officer may
0419 receive aid from staff assistants if the assistants do not:

0420 (1) Receive *ex parte* communications of a type that the pre-
0421 siding officer would be prohibited from receiving; or

0422 (2) furnish, augment, diminish or modify the evidence in the
0423 record.

0424 (c) Unless required for the disposition of *ex parte* matters
0425 specifically authorized by statute, no party to an adjudicative
0426 proceeding, and no person who has a direct or indirect interest in
0427 the outcome of the proceeding or who presided at a previous
0428 stage of the proceeding, may directly or indirectly communicate
0429 in connection with any issue in that proceeding, while the
0430 proceeding is pending, with any person serving as presiding
0431 officer unless notice and an opportunity are given all parties to
0432 participate in the communication.

0433 (d) If, before serving as presiding officer in an adjudicative
0434 proceeding, a person receives an *ex parte* communication of a
0435 type that could not properly be received while serving, the
0436 person, promptly after starting to serve, shall disclose the com-
0437 munication in the manner prescribed in subsection (e).

0438 (e) A presiding officer who receives an *ex parte* communica-
0439 tion in violation of this section shall place on the record of the
0440 pending matter all written communications received, all written
0441 responses to the communications and a memorandum stating the
0442 substance of all oral communications received, all responses
0443 made and the identity of each person from whom the presiding
0444 officer received an *ex parte* communication and shall advise all
0445 parties that these matters have been placed on the record. Any
0446 party desiring to rebut the *ex parte* communication must be
0447 allowed to do so, upon requesting the opportunity for rebuttal
0448 within 10 days after notice of the communication.

0449 (f) If necessary to eliminate the effect of an *ex parte* commu-
0450 nication received in violation of this section, a presiding officer
0451 who receives the communication may be disqualified and the
0452 portions of the record pertaining to the communication may be
0453 sealed by protective order.

0454 (g) The state agency shall, and any party may, report any
0455 willful violation of this section to appropriate authorities for any
0456 disciplinary proceedings provided by law. In addition, each state
0457 agency, by rule and regulation, may provide for appropriate
0458 sanctions, including default, for any violations of this section.

0459 (h) This section shall not apply to adjudicative proceedings
0460 before the state corporation commission concerning any rate,

0461 joint rate, toll, charge or classification or schedule of charges, or
0462 any rule or regulation or practice pertaining to the service or
0463 rates of a public utility or common carrier. Such proceedings
0464 shall be subject to the provisions of section 355.

0465 Sec. 11. K.S.A. 1986 Supp. 77-527 is hereby amended to read
0466 as follows: 77-527. (a) The agency head, upon its own motion
0467 may, and upon petition by any party or when required by law
0468 shall, review an initial order, except to the extent that:

0469 (1) A provision of law precludes or limits state agency review
0470 of the initial order; or

0471 (2) the agency head (A) determines to review some but not all
0472 issues, or not to exercise any review, (B) delegates its authority to
0473 review the initial order to one or more persons, unless such
0474 delegation is expressly prohibited by law, or (C) authorizes one
0475 or more persons to review the initial order, subject to further
0476 review by the agency head.

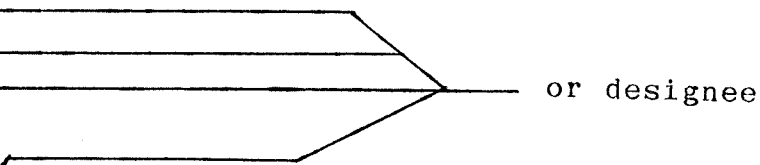
0477 (b) A petition for review of an initial order must be filed with
0478 the agency head, or with any person designated for this purpose
0479 by rule and regulation of the state agency, within 15 days after
0480 service of the initial order. If the agency head on its own motion
0481 decides to review an initial order, the agency head shall give
0482 written notice of its intention to review the initial order within
0483 15 days after its service. If the agency head determines not to
0484 review an initial order in response to a petition for review, the
0485 agency head shall, within 20 days after filing of the petition for
0486 review, serve on each party an order stating that review will not
0487 be exercised.

0488 (c) The petition for review shall state its basis. If the agency
0489 head on its own motion gives notice of its intent to review an
0490 initial order, the agency head shall identify the issues that it
0491 intends to review.

0492 (d) In reviewing an initial order, the agency head shall exer-
0493 cise all the decision-making power that the agency head would
0494 have had to render a final order had the agency head presided
0495 over the hearing, except to the extent that the issues subject to
0496 review are limited by a provision of law or by the agency head
0497 upon notice to all parties.

(i) This section shall not apply to adjudicative proceedings before the commissioner of insurance concerning any rate, or any rule, regulation or practice pertaining to the rates over which the commissioner has jurisdiction or adjudicative proceedings held pursuant to the Kansas insurance holding companies act. Such proceedings shall be subject to the provisions of section 356.

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0498 (e) The agency head shall afford each party an opportunity to
0499 present briefs and may afford each party an opportunity to
0500 present oral argument.

0501 (f) The agency head may shall render a final order disposing
0502 of the proceeding or may remand the matter for further proceed-
0503 ings with instructions to the person who rendered the initial
0504 order. Upon remanding a matter, the agency head may order
0505 such temporary relief as is authorized and appropriate.

0506 (g) A final order or an order remanding the matter for further
0507 proceedings shall be rendered in writing and served within 30
0508 days after receipt of briefs and oral argument unless that period
0509 is waived or extended with the written consent of all parties or
0510 for good cause shown.

0511 (h) A final order or an order remanding the matter for further
0512 proceedings under this section shall identify any difference
0513 between this order and the initial order and shall include, or
0514 incorporate by express reference to the initial order, all the
0515 matters required by subsection (c) of K.S.A. 1985 Supp. 77-526
0516 and amendments thereto.

0517 (i) The agency head shall cause copies of the final order or
0518 order remanding the matter for further proceedings to be served
0519 on each party in the manner prescribed by K.S.A. 1985 1986
0520 Supp. 77-531 and amendments thereto.

0521 (j) A final order rendered on review of an initial order is
0522 subject to review in accordance with the act for judicial review
0523 and civil enforcement of agency actions. An initial order which
0524 has not been reviewed under this section is not subject to
0525 judicial review unless a provision of law precluded administra-
0526 tive review of the initial order or the agency head determined
0527 not to review the initial order in response to a petition for
0528 administrative review.

0529 Sec. 12. K.S.A. 1986 Supp. 77-529 is hereby amended to read
0530 as follows: 77-529. Unless otherwise provided by statute or rule
0531 and regulation: (a) Any party, within 15 days after service of a
0532 final order, may file a petition for reconsideration with the
0533 agency head, stating the specific grounds upon which relief is
0534 requested. The filing of the petition is not a prerequisite for

or designee

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0535 seeking administrative or judicial review *except as provided in*
 0536 *K.S.A. 44-1010 and 44-1115, and amendments thereto concern-*
 ✓ 0537 *ing orders of the commission on civil rights*[and] *K.S.A. 1986*
 ✓ 0538 *Supp. 55-606 and 66-118b, and amendments thereto concerning*
 0539 *orders of the corporation commission.*

0540 (b) The agency head shall render a written order denying the
 0541 petition, granting the petition and dissolving or modifying the
 0542 final order, or granting the petition and setting the matter for
 0543 further proceedings. The petition may be granted, in whole or in
 0544 part, only if the agency head states, in the written order, findings
 0545 of fact, conclusions of law and policy reasons for the decision if it
 0546 is an exercise of the state agency's discretion, to justify the order.
 0547 The petition is deemed to have been denied if the agency head
 0548 does not dispose of it within 20 days after the filing of the
 0549 petition.

0550 An order under this section shall be served on the parties in
 0551 the manner prescribed by K.S.A. ~~1985~~ 1986 Supp. 77-531 and
 0552 amendments thereto.

0553 Sec. 13. K.S.A. 1986 Supp. 77-530 is hereby amended to read
 0554 as follows: 77-530. (a) *Unless a later date is stated in a final*
 0555 *order or a stay is granted, a final order is effective upon service*
 0556 *unless stayed.*

0557 (b) *Unless a later date is stated in an initial order or a stay is*
 0558 *granted, an initial order shall become effective and shall become*
 0559 *the final order: (1) When the initial order is served, if adminis-*
 0560 *trative review is unavailable; (2) when the agency head serves*
 0561 *an order stating, after a petition for review has been filed, that*
 0562 *review will not be exercised; or (3) 30 days after service if no*
 0563 *party has filed a petition for review by the agency head, the*
 0564 *agency head has not given written notice of its intention to*
 0565 *exercise review and a final determination by the agency head is*
 0566 *not otherwise required by law.*

0567 (c) This section does not preclude a state agency from taking
 0568 immediate action to protect the public interest in accordance
 0569 with K.S.A. ~~1985~~ 1986 Supp. 77-536 and amendments thereto.

0570 New Sec. 14. State agencies are hereby authorized to
 0571 promulgate rules and regulations pursuant to K.S.A. 77-415 et

, and K.S.A. 1986 Supp. 74-2426 and amendments thereto concerning orders of the board of tax appeals

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0640 (i) ~~Voting security.~~ The term "Voting security" shall include
0641 means any security convertible into or evidencing a right to
0642 acquire a voting security.

0643 Sec. 113. K.S.A. 40-3304 is hereby amended to read as fol-
0644 lows: 40-3304. (a) No person other than the issuer shall make a
0645 tender offer for or a request or invitation for tenders of, or enter
0646 into any agreement to exchange securities for, seek to acquire, or
0647 acquire, in the open market or otherwise, any voting security of a
0648 domestic insurer if, after the consummation thereof, such person
0649 would, directly or indirectly (or by conversion or by exercise of
0650 any right to acquire) be in control of such insurer, and no person
0651 shall enter into an agreement to merge with or otherwise to
0652 acquire control of a domestic insurer unless, at the time any such
0653 offer, request, or invitation is made or any such agreement is
0654 entered into, or prior to the acquisition of such securities if no
0655 offer or agreement is involved, such person has filed with the
0656 commissioner of insurance and has sent to such insurer, and such
0657 insurer has sent to its shareholders, a statement containing the
0658 information required by this section and such offer, request,
0659 invitation, agreement or acquisition has been approved by the
0660 commissioner of insurance in the manner hereinafter prescribed.
0661 The requirements of this section shall not apply to the merger or
0662 consolidation of those companies subject to the requirements of
0663 K.S.A. 40-507 and 40-1216 to 40-1225, inclusive, and amend-
0664 ments thereto.

0665 For the purposes of this section a domestic insurer shall
0666 include any other person controlling a domestic insurer unless
0667 such other person is either directly or through its affiliates
0668 primarily engaged in business other than the business of insur-
0669 ance.

0670 (b) The statement to be filed with the commissioner of in-
0671 surance hereunder shall be made under oath or affirmation and
0672 shall contain the following information:

0673 (1) The name and address of each person by whom or on
0674 whose behalf the merger or other acquisition of control referred
0675 to in subsection (a) of this section is to be affected, hereinafter
0676 called "acquiring party", and: (A) If such person is an individual,

0010 such individual's principal occupation and all offices and posi-
0011 tions held during the past five years and any conviction of crimes
0012 other than minor traffic violations during the past 10 years; (B) if
0013 such person is not an individual, a report of the nature of its
0014 business operations during the past five years or for such lesser
0015 period as such person and any predecessors thereof shall have
0016 been in existence; an informative description of the business
0017 intended to be done by such person and such person's subsidi-
0018 aries; and a list of all individuals who are or who have been
0019 selected to become directors or executive officers of such person,
0020 or who perform or will perform functions appropriate to such
0021 positions. Such list shall include for each such individual the
0022 information required by subparagraph (A) of this subsection;
0023 (2) the source, nature and amount of the consideration used
0024 or to be used in effecting the merger or other acquisition of
0025 control, a description of any transaction wherein funds were or
0026 are to be obtained for any such purpose and the identity of
0027 persons furnishing such consideration, except that where a
0028 source of such consideration is a loan made in the lender's
0029 ordinary course of business, the identity of the lender shall
0030 remain confidential, if the person filing such statement so re-
0031 quests;

0032 (3) fully audited financial information as to the earnings and
0033 financial condition of each acquiring party for the preceding five
0034 fiscal years of each such acquiring party or for such lesser period
0035 as such acquiring party and any predecessors thereof shall have
0036 been in existence, and similar unaudited information as of a date
0037 not earlier than 90 days prior to the filing of the statement;

0038 (4) any plans or proposals which each acquiring party may
0039 have to liquidate such insurer, to sell its assets or merge or
0040 consolidate it with any person or to make any other material
0041 change in its business or corporate structure or management;

0042 (5) the number of shares of any security referred to in sub-
0043 section (a) of this section which each acquiring party proposes to
0044 acquire and the terms of the offer, request, invitation, agreement
0045 or acquisition referred to in subsection (a) of this section, and a
0046 statement as to the method by which the fairness of the proposal

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0047 was arrived at;

0048 (6) the amount of each class of any security referred to in
0049 subsection (a) of this section which is beneficially owned or
0050 concerning which there is a right to acquire beneficial owner-
0051 ship by each acquiring party;

0052 (7) a full description of any contracts, arrangements or un-
0053 derstandings with respect to any security referred to in subsec-
0054 tion (a) of this section in which any acquiring party is involved,
0055 including but not limited to transfer of any of the securities, joint
0056 ventures, loan or option arrangements, puts or calls, guarantees
0057 of loans, guarantees against loss or guarantees of profits, division
0058 of losses or profits, or the giving or withholding of proxies. Such
0059 description shall identify the persons with whom such contracts,
0060 arrangements or understandings have been entered into;

0061 (8) a description of the purchase of any security referred to in
0062 subsection (a) of this section during the 12 calendar months
0063 preceding the filing of the statement, by any acquiring party,
0064 including the dates of purchase, names of the purchasers, and
0065 consideration paid or agreed to be paid therefor;

0066 (9) a description of any recommendations to purchase any
0067 security referred to in subsection (a) of this section made during
0068 the 12 calendar months preceding the filing of the statement, by
0069 any acquiring party, or by anyone based upon interviews or at
0070 the suggestion of such acquiring party;

0071 (10) copies of all tender offers for, requests or invitations for
0072 tenders of, exchange offers for and agreements to acquire or
0073 exchange any securities referred to in subsection (a) of this
0074 section, and, if distributed, of additional soliciting material re-
0075 lating thereto;

0076 (11) the terms of any agreement, contract or understanding
0077 made with any broker-dealer as to solicitation of securities re-
0078 ferred to in subsection (a) of this section for tender, and the
0079 amount of any fees, commissions or other compensation to be
0080 paid to broker-dealers with regard thereto;

0081 (12) such additional information as the commissioner of in-
0082 surance may by rule or regulation prescribe as necessary or
0083 appropriate for the protection of policyholders and security-

0084 holders of the insurer or in the public interest.

0085 If the person required to file the statement referred to in
0086 subsection (a) of this section is a partnership, limited partner-
0087 ship, syndicate or other group, the commissioner of insurance
0088 may require that the information called for by paragraphs (1)
0089 through (12) of subsection (b) of this section shall be given with
0090 respect to each partner of such partnership or limited partner-
0091 ship, each member of such syndicate or group, and each person
0092 who controls such partner or member. If any such partner,
0093 member or person is a corporation or the person required to file
0094 the statement referred to in subsection (a) of this section is a
0095 corporation, the commissioner of insurance may require that the
0096 information called for by paragraphs (1) through (12) of subsec-
0097 tion (b) of this section shall be given with respect to such
0098 corporation, each officer and director of such corporation and
0099 each person who is directly or indirectly the beneficial owner of
0100 more than 10% of the outstanding voting securities of such
0101 corporation.

0102 If any material change occurs in the facts set forth in the
0103 statement filed with the commissioner of insurance and sent to
0104 such insurer pursuant to this section, and amendment setting
0105 forth such change, together with copies of all documents and
0106 other material relevant to such change, shall be filed with the
0107 commissioner of insurance and sent to such insurer within two
0108 business days after the person learns of such change. Such
0109 insurer shall send such amendment to its shareholders.

0110 (c) If any offer, request, invitation, agreement or acquisition
0111 referred to in subsection (a) of this section is proposed to be
0112 made by means of a registration statement under the securities
0113 act of 1933 or in circumstances requiring the disclosure of similar
0114 information under the securities exchange act of 1934, or under a
0115 state law requiring similar registration or disclosure, the person
0116 required to file the statement referred to in subsection (a) of this
0117 section may utilize such documents in furnishing the informa-
0118 tion called for by that statement.

0119 (d) (1) The commissioner of insurance shall approve any
0120 merger or other acquisition of control referred to in subsection

0121 (a) of this section unless, after a public hearing thereon con-
0122 ducted in accordance with the provisions of the Kansas admin-
0123 istrative procedure act, the commissioner finds that:

0124 (A) After the change of control the domestic insurer referred
0125 to in subsection (a) of this section would not be able to satisfy the
0126 requirements for the issuance of a license to write the line or
0127 lines of insurance for which it is presently licensed;

0128 (B) the effect of the merger or other acquisition of control
0129 would be substantially to lessen competition in insurance in this
0130 state or tend to create a monopoly therein;

0131 (C) the financial condition of any acquiring party is such as
0132 might jeopardize the financial stability of the insurer or preju-
0133 dice the interest of its policyholders;

0134 (D) the plans or proposals which the acquiring party has to
0135 liquidate the insurer, sell its assets or consolidate or merge it
0136 with any person, or to make any other material change in its
0137 business or corporate structure or management, are unfair and
0138 unreasonable to policyholders of the insurer and not in the
0139 public interest; or

0140 (E) the competence, experience and integrity of those per-
0141 sons who would control the operation of the insurer are such that
0142 it would not be in the interest of policyholders of the insurer and
0143 of the public to permit the merger or other acquisition of control.

0144 (2) The public hearing referred to in paragraph (1) of sub-
0145 section (d) of this section shall be held as soon as practical after
0146 the statement required by this subsection (a) of this section is
0147 filed, and at least 20 days' notice thereof shall be given by the
0148 commissioner of insurance to the person filing the statement.
0149 Not less than seven days' notice of such public hearing shall be
0150 given by the person filing the statement to the insurer and to
0151 such other persons as may be designated by the commissioner of
0152 insurance. The insurer shall give such notice to its security-
0153 holders. ~~The commissioner of insurance shall issue an order after~~
0154 ~~the conclusion of such hearing setting forth the commissioner's~~
0155 ~~findings.~~ At such hearing, the person filing the statement, the
0156 insurer, any person to whom notice of hearing was sent, and any
0157 other person whose interests may be affected thereby shall have

shall be a party.

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0158 the right to present evidence, examine and cross-examine wit-
0159 nesses, and offer oral and written arguments.]

0160 (e) All statements, amendments or other material filed pur-
0161 suant to subsection (a) or (b) of this section, and all notices of
0162 public hearings held pursuant to subsection (d) of this section,
0163 shall be mailed by the insurer to its shareholders within five
0164 business days after the insurer has received such statements,
0165 amendments, other material or notices. The expenses of mailing
0166 shall be borne by the person making the filing. As security for the
0167 payment of such expenses, such person shall file with the com-
0168 missioner of insurance an acceptable bond or other deposit in an
0169 amount to be determined by the commissioner of insurance.

0170 (f) The provisions of this section shall not apply to:

0171 (1) Any offers, requests, invitations, agreements or acquisi-
0172 tions by the person referred to in subsection (a) of this section of
0173 any voting security referred to in subsection (a) of this section
0174 which, immediately prior to the consummation of such offer,
0175 request, invitation, agreement or acquisition, was not issued and
0176 outstanding;

0177 (2) any offer, request, invitation, agreement or acquisition
0178 which the commissioner of insurance by order shall exempt
0179 therefrom as: (A) Not having been made or entered into for the
0180 purpose and not having the effect of changing or influencing the
0181 control of a domestic insurer; or (B) as otherwise not compre-
0182 hended within the purposes of this section.

0183 (g) The following shall be violations of this section:

0184 (1) The failure to file any statement, amendment or other
0185 material required to be filed pursuant to subsection (a) or (b) of
0186 this section; or

0187 (2) the effectuation or any attempt to effectuate an acquisition
0188 of control of, or merger with, a domestic insurer unless the
0189 commissioner of insurance has given the commissioner's ap-
0190 proval thereto.

0191 (h) The courts of this state are hereby vested with jurisdiction
0192 over every security holder of a domestic insurer and every
0193 person not resident, domiciled or authorized to do business in
0194 this state who files a statement with the commissioner of insur-

be deemed to meet the requirements for intervention
contained in (a)(2) of K.S.A. 1986 Supp. 77-521, and
amendments thereto, and shall have the right to present oral
or written statements in accordance with K.S.A. 1986 Supp.
77-523 and amendments thereto

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0195 ance under this section and over all actions involving such
0196 person arising out of violations of this section. Each such person
0197 shall be deemed to have performed acts equivalent to and
0198 constituting an appointment by such a person of the commis-
0199 sioner of insurance to be such person's true and lawful attorney
0200 upon whom may be served all lawful process in any action, suit
0201 or proceeding arising out of violations of this section. Copies of
0202 all such lawful process shall be served on the commissioner of
0203 insurance and transmitted by registered or certified mail by the
0204 commissioner of insurance to such person at such person's last
0205 known address.

0206 Sec. 114. K.S.A. 40-3305 is hereby amended to read as fol-
0207 lows: 40-3305. (a) Every insurer which is authorized to do busi-
0208 ness in this state and which is a member of an insurance holding
0209 company system shall register with the commissioner of insur-
0210 ance, except a foreign insurer subject to disclosures require-
0211 ments and standards adopted by statute or regulation in the
0212 jurisdiction of its domicile which are substantially similar to
0213 those contained in this section. Any insurer which is subject to
0214 registration under this section shall register within ~~sixty (60)~~ 60
0215 days after the effective date of this act or ~~fifteen (15)~~ 15 days after
0216 it becomes subject to registration, whichever is later, unless the
0217 commissioner of insurance for good cause shown extends the
0218 time for registration, and then within such extended time. The
0219 commissioner of insurance may require any authorized insurer
0220 which is a member of a holding company system which is not
0221 subject to registration under this section to furnish a copy of the
0222 registration statement or other information filed by such insur-
0223 ance company with the insurance regulatory authority of domi-
0224 ciliary jurisdiction.

0225 (b) Every insurer subject to registration shall file a registra-
0226 tion statement on a form provided by the commissioner of insur-
0227 ance, which shall contain current information about:

0228 (1) the capital structure, general financial condition, owner-
0229 ship and management of the insurer and any person controlling
0230 the insurer;

0231 (2) the identity of every member of the insurance holding

0083 any subpoena so issued, or refuses to testify or produce any
0084 books, papers, or documents, the state board of education, or any
0085 member thereof, may present a petition to the district court of the
0086 judicial district in which any ~~hearing or~~ investigation is being
0087 conducted, setting forth the facts, and thereupon the court shall,
0088 in a proper case, issue its subpoena to such person, requiring
0089 attendance before the court and there to testify or to produce
0090 such books, papers and documents as may be deemed necessary
0091 and pertinent by the practices commission or any member of it.
0092 Any person failing or refusing to obey the subpoena or order of
0093 the district court may be proceeded against for contempt in the
0094 same manner as for refusal to obey any other subpoena or order
0095 of the court. *Hearings of the practices commission, including*
0096 *review of orders of the practices commission by the state board,*
0097 *shall be conducted in accordance with the provisions of the*
0098 *Kansas administrative procedure act.*

0099 Sec. 285. K.S.A. 72-8509 is hereby amended to read as fol-
0100 lows: 72-8509. The state board of education, either on its own
0101 initiative or on the recommendation of the professional standards
0102 board or the professional practices commission, may remove a
0103 member of such standards board or practices commission. Prior
0104 to removal of a member, the member shall be given reasonable
0105 notice and hearing ~~before a committee of the state board,~~ but in
0106 *accordance with the provisions of the Kansas administrative*
0107 *procedure act.* Removal of such member shall be accomplished
0108 only by a majority vote of the entire membership of the state
0109 board. Grounds for removal shall be misconduct or malfeasance
0110 in office, incompetence or neglect.

0111 Sec. 286. K.S.A. 1986 Supp. 74-2426 is hereby amended to
0112 read as follows: 74-2426. (a) ~~Whenever~~ *Orders of the board of tax*
0113 *appeals enters a final order* on any appeal, in any proceeding
0114 under the tax protest, tax grievance or tax exemption statutes or
0115 in any other original proceeding before the board, ~~the board shall~~
0116 ~~make written findings of fact forming the basis of its determina-~~
0117 ~~tion and final order and the findings shall be made a part of the~~
0118 ~~final order.~~ *The board shall mail a copy of its final order to all*
0119 *parties to the proceeding within 10 days following the certifica-*

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Notwithstanding the provisions of subsection (g) of K.S.A. 1986 Supp. 77-526 and amendments thereto, a final order of the board shall be rendered in writing and served within 120 days after the matter was fully submitted to the board unless this period is waived or extended with the written consent of all parties or for good cause shown.

tion of the order. The appellant or applicant and the county appraiser shall be served by restricted mail shall be rendered and served in accordance with the provisions of the Kansas administrative procedure act.

(b) No final order of the board shall be subject to review pursuant to subsection (e) unless the aggrieved party first files a motion for rehearing of that order with the board and the board has granted or denied the motion. If 30 days have lapsed from the date the motion was filed with the board, it shall be presumed that the board has denied the motion. Any order issued by the board following a rehearing shall become the final order of the board.

(b) No final order of the board shall be subject to review pursuant to subsection (c) unless the aggrieved party first files a petition for reconsideration of that order with the board in accordance with the provisions of K.S.A. 1986 Supp. 77-529 and amendments thereto.

(e)(b) Any action of the board pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions, except that:

(c)

(1) The parties to the action for judicial review shall be the same parties as appeared before the board in the administrative proceedings before the board. The board shall not be a party to any action for judicial review of an action of the board.

(2) There is no right to review of any order issued by the board in a no-fund warrant proceeding pursuant to K.S.A. 12-110a, 12-1662 et seq., 19-2752a, 79-2938, 79-2939 and 79-2951, and amendments thereto, and statutes of a similar character.

(3) The court of appeals has jurisdiction of any action for review pertaining to property appraised and assessed by the director of property valuation or excise, income or inheritance taxes assessed by the director of taxation. The district court of the proper county has jurisdiction in all other cases.

(4) Review of orders issued by the board of tax appeals relating to the valuation or assessment of property for ad valorem tax purposes or relating to the tax protest shall be conducted by the district court of the county in which the property is located or, if located in more than one county, the district court of any county in which any portion of the property is located. Review of orders relating to tax exemption under K.S.A. 79-201 et seq., and amendments thereto, shall be conducted by the district court of Shawnee county.

(5) In addition to the cost of the preparation of the transcript, the appellant shall pay to the board the other costs of certifying the record to the reviewing court. Such payment shall be made prior to the transmission of the agency record to the reviewing court.

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0157 ~~(d)~~ ^(c) If review of an order of the board relating to excise,
 0158 income or inheritance taxes, is sought by a person other than the
 0159 director of taxation, such person shall give bond for costs at the
 0160 time the petition is filed. The bond shall be in the amount of
 0161 125% of the amount of taxes assessed or a lesser amount ap-
 0162 proved by the court of appeals and shall be conditioned on the
 0163 petitioner's prosecution of the review without delay and pay-
 0164 ment of all costs assessed against the petitioner.

(d)

0165 ~~(e)~~ ^(d) If review of an order is sought by a party other than the
 0166 director of property valuation or a taxing subdivision and the
 0167 order determines, approves, modifies or equalizes the amount of
 0168 valuation which is assessable and for which the tax has not been
 0169 paid, a bond shall be given in the amount of 125% of the amount
 0170 of the taxes assessed or a lesser amount approved by the re-
 0171 viewing court. The bond shall be conditioned on the petitioner's
 0172 prosecution of the review without delay and payment of all costs
 0173 assessed against the petitioner.

(e)

0174 Sec. 287. K.S.A. 1986 Supp. 74-2433 is hereby amended to
 0175 read as follows: 74-2433. There is hereby created a state board of
 0176 tax appeals, referred to in this act as the board. The board shall
 0177 be composed of five members who shall be appointed by the
 0178 governor, subject to confirmation by the senate as provided in
 0179 K.S.A. 75-4315b and amendments thereto. Not more than three
 0180 members of the board shall be of the same political party.
 0181 Members of the board shall be residents of the state and one
 0182 shall be appointed from each of the five congressional districts of
 0183 Kansas. The members of the board shall be selected with special
 0184 reference to training and experience for duties imposed by this
 0185 act. Members shall hold office for terms of four years. If a
 0186 vacancy occurs on the board, the governor shall appoint a suc-
 0187 cessor to fill the vacancy for the unexpired term. The board shall
 0188 select one of its members to serve as chairperson. The votes of
 0189 three members shall be required for any action to be taken by the
 0190 board. Meetings may be called by the chairperson and shall be
 0191 called on request of a majority of the members of the board and
 0192 when otherwise prescribed by statute.

0193 Any member of the state board of tax appeals may be removed

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0194 by the governor for cause, after public hearing ~~and at least 10~~
 0195 ~~days' notice conducted in accordance with the provisions of the~~
 0196 *Kansas administrative procedure act.*

0197 The state board of tax appeals shall have no capacity or power
 0198 to sue or be sued.

0199 Sec. 288. K.S.A. 74-2438 is hereby amended to read as fol-
 0200 lows: 74-2438. An appeal may be taken to the state board of tax
 0201 appeals from any finding, ruling, order, decision, or other final
 0202 action on any case of the director of taxation or director of
 0203 property valuation by any person aggrieved thereby. Notice of
 0204 such appeal shall be filed with the secretary of the board within
 0205 ~~thirty (30)~~ 30 days after such finding, ruling, order, decision, or
 0206 other action on a case, and a copy served upon the director
 0207 concerned. ~~The board shall fix a time and a place for hearing said~~
 0208 ~~appeal, and shall notify the appellant or his attorney of record at~~
 0209 ~~least five (5) days prior to the date of said hearing~~ Upon receipt of
 0210 a timely appeal, the board shall conduct a hearing in accordance
 0211 with the provisions of the *Kansas administrative procedure act.*

0212 Sec. 289. K.S.A. 74-3301 is hereby amended to read as fol-
 0213 lows: 74-3301. There is hereby created the Kansas fish and game
 0214 commission, referred to in this act as the commission. The
 0215 governor shall appoint, subject to confirmation by the senate as
 0216 provided in K.S.A. 75-4315b *and amendments thereto*, five resi-
 0217 dents of this state to be members of the commission. One
 0218 member shall be appointed from each of the four districts of this
 0219 state and one from the state at large. For the purpose of the
 0220 appointment and tenure of office of four members of the com-
 0221 mission the state is divided into four districts, which shall be
 0222 constituted as follows:

0223 First district, the counties of Atchison, Brown, Clay, Cloud,
 0224 Dickinson, Doniphan, Douglas, Franklin, Geary, Jackson, Jef-
 0225 ferson, Johnson, Leavenworth, Lyon, Marshall, Miami, Morris,
 0226 Nemaha, Osage, Ottawa, Pottawatomie, Republic, Riley, Saline,
 0227 Shawnee, Wabaunsee, Washington and Wyandotte.

0228 Second district, the counties of Cheyenne, Decatur, Ellis,
 0229 Ellsworth, Gove, Graham, Jewell, Lincoln, Logan, Mitchell,
 0230 Norton, Osborne, Phillips, Rawlins, Rooks, Russell, Sheridan,

The hearing before the board shall be a de novo hearing unless the parties agree to submit the case on the record made before the director.

0158 burden of proof shall be upon the employee to establish that the
0159 appointing authority did not act reasonably in taking such action.
0160 (g) No employee shall be disciplined or discriminated
0161 against in any way because of the employee's proper use of the
0162 appeal procedure.

0163 (h) A permanent employee who is demoted pursuant to this
0164 section need not meet the qualifications for the class of positions
0165 to which demoted if the appointing authority determines that the
0166 employee can reasonably be expected to perform satisfactorily
0167 the duties of the position to which the employee is demoted. A
0168 permanent employee who is demoted pursuant to this section
0169 shall have permanent status in the class to which demotion is
0170 made, effective on the date of the demotion.

0171 (i) In case of a situation in which the possibility of proposing
0172 dismissal, suspension or demotion of a permanent employee is
0173 indicated, but where the appointing authority needs time to
0174 conduct an investigation before proposing such action, or in a
0175 situation where immediate removal of an employee from such
0176 employee's job is needed to avoid disruption of work, or for the
0177 protection of persons or property, or for a similar reason, the
0178 appointing authority may relieve the employee of duties or
0179 change the duties of the employee for a limited period and keep
0180 the employee in pay status. The secretary of administration shall
0181 provide by rules and regulations, adopted pursuant to K.S.A.
0182 75-3706 and amendments thereto, procedures to be followed in
0183 such cases.

0184 Sec. 302. K.S.A. 75-3306 is hereby amended to read as fol-
0185 lows: 75-3306. (a) The secretary of social and rehabilitation
0186 services shall provide a fair hearing for any person who is an
0187 applicant, client, inmate, other interested person or taxpayer
0188 who appeals from the decision or final action of any agent or
0189 employee of the secretary. The hearing shall be conducted by an
0190 employee or employees of the secretary of social and rehabilita-
0191 tion services to be designated by the secretary as an appeals
0192 referee or committee. The secretary of social and rehabilitation
0193 services shall prescribe the procedure for hearing all appeals in
0194 accordance with the provisions of the Kansas administrative

, except as set forth in the Kansas adminis-
trative procedure act and subsection (f) of
this section,

subject to an order, as defined in K.S.A.
1986 Supp. 77-502 and amendments thereto,
issued by

and who appeals such order

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0195 *procedure act.*

0196 It shall be the duty of the secretary of social and rehabilitation
0197 services to have available in all intake offices, during all office
0198 hours, forms for filing complaints for hearings, and appeal forms
0199 with which to appeal from the decision of the agent or employee
0200 of the secretary. The forms shall be prescribed by the secretary of
0201 social and rehabilitation services and shall have printed on or as
0202 a part of them the basic ~~rules and regulations~~ *procedure* for
0203 hearings and appeals prescribed by state law and the secretary of
0204 social and rehabilitation services.

0205 (b) The secretary of social and rehabilitation services shall
0206 have authority to investigate (1) any claims and vouchers and
0207 persons or businesses who provide services to the secretary of
0208 social and rehabilitation services or to welfare recipients, (2) the
0209 eligibility of persons to receive assistance and (3) the eligibility
0210 of providers of services.

0211 (c) ~~The secretary of social and rehabilitation services shall~~
0212 ~~have authority, when hearing appeals or conducting investiga-~~
0213 ~~tions as provided for in this section, to issue subpoenas; compel~~
0214 ~~the attendance of witnesses at the place designated in this state;~~
0215 ~~compel the production of any records, books, papers or other~~
0216 ~~documents considered necessary; administer oaths; take testi-~~
0217 ~~mony; and render decisions. A copy of each decision shall be~~
0218 ~~delivered to the appellant, provider of services or agent or~~
0219 ~~employee of the secretary, as the case may be, who shall comply~~
0220 ~~with the decision. If a person refuses to comply with any sub-~~
0221 ~~poena issued under this section or to testify to any matter~~
0222 ~~regarding which the person may lawfully be questioned, the~~
0223 ~~district court of any county, on application of the secretary, may~~
0224 ~~issue an order requiring the person to comply with the subpoena~~
0225 ~~and to testify, and any failure to obey the order of the court may~~
0226 ~~be punished by the court as a contempt of court. Unless inea-~~
0227 ~~pacitated, the person placing a claim or defending a privilege~~
0228 ~~before the secretary shall appear in person and may not be~~
0229 ~~excused from answering questions and supplying information;~~
0230 ~~except in accordance with the person's constitutional rights and~~
0231 ~~lawful privileges.~~

(c) The secretary of social and rehabili-
tation services shall have authority, when
conducting investigations as provided for in
this section, to issue subpoenas; compel the
attendance of witnesses at the place designated
in this state; compel the production of any
records, books, papers or other documents
considered necessary; administer oaths; take
testimony; and render decisions. If a person
refuses to comply with any subpoena issued
under this section or to testify to any matter
regarding which the person may lawfully be
questioned, the district court of any county,
on application of the secretary, may issue an
order requiring the person to comply with the
subpoena and to testify, and any failure to
obey the order of the court may be punished
by the court as a contempt of court. Unless
incapacitated, the person placing a claim or
defending a privilege before the secretary
shall appear in person and may not be excused
from answering questions and supplying infor-
mation, except in accordance with the person's
constitutional rights and lawful privileges.

✓ 0232 ~~[(c)]~~ ^(d) The presiding officer may close any portion of a hearing
 0233 conducted under the Kansas administrative procedure act when
 0234 matters made confidential, pursuant to federal or state law or
 0235 regulation are under consideration.

✓ 0236 ~~[(d)]~~ ^(e) Except as provided in subsection (c) of K.S.A. 77-511 and
 0237 amendments thereto and notwithstanding the other provisions
 0238 of the Kansas administrative procedure act, the secretary may
 0239 enforce any order issued pursuant to subsection (b) of K.S.A.
 0240 77-508 and amendments thereto, prior to the disposition of a
 0241 person's application for an adjudicative proceeding unless pro-
 0242 hibited from such action by federal or state statute, regulation
 0243 or court order.

✓ 0244 Sec. 303. K.S.A. 75-3340 is hereby amended to read as fol-
 0245 lows: 75-3340. (a) The division of services for the blind of the
 0246 department of social and rehabilitation services shall:
 0247 ~~(a)~~ (1) Provide for each licensed blind person such vending
 0248 facility equipment, and adequate initial stock of suitable articles
 0249 to be vended therefrom as may be necessary: ~~Provided, however,~~
 0250 ~~That.~~ Such equipment and stock may be owned by ~~said the~~
 0251 division of services for the blind, or by the blind individual to
 0252 whom the license is issued: ~~And provided further, That.~~ If
 0253 ownership of such equipment is vested in the blind licensee:
 0254 ~~(1)~~ ^(A) ~~said (A)~~ The division of services for the blind shall retain
 0255 a first option to repurchase such equipment; and
 0256 ~~(2)~~ ^(B) in the event such individual dies or for any other
 0257 reason ceases to be a licensee or transfers to another vending
 0258 facility, ownership of such equipment shall become vested in
 0259 ~~said the~~ division of services for the blind ~~(,~~ for transfer to a
 0260 successor licensee), subject to an obligation on the part of the
 0261 division of services for the blind to pay to such individual or to
 0262 ~~his or her~~ ^{his or her} ~~such~~ individual's estate the fair value of ~~his or her~~ ^{his or her} ~~such~~
 0263 ~~individula's~~ interest therein as later determined in accordance
 0264 with regulations of the division of services for the blind and after
 0265 opportunity for a fair hearing.
 0266 ~~(b)~~ ⁽²⁾ If any funds are set aside, or caused to be set aside,
 0267 from the proceeds of the operation of the vending facilities such
 0268 funds shall be set aside, or caused to be set aside, only to the

(f) Decisions relating to the administration of the support enforcement program set forth in K.S.A. 39-753 et seq. and amendments thereto except for federal debt set off activities shall be exempt from the provisions of the Kansas administrative procedure act and subsection (a) of this section.

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0417 property valuation shall be made a party to such hearing. The
 0418 state board of tax appeals shall make its determination upon such
 0419 matter within 10 days of the conclusion of the hearing thereon
 0420 and notify the county board and director of property valuation by
 0421 mail of its determination within five days after the date such
 0422 determination is made.

0423 The director of property valuation shall require written jus-
 0424 tification from the county board of equalization when that board
 0425 issues an order modifying the valuation of individual tracts of
 0426 real property. The justification shall be conveyed on forms pre-
 0427 scribed by the director, notifying the director of such actions of
 0428 the county board and conveyed by certified mail, return receipt
 0429 requested, or personally delivered to the director of property
 0430 valuation or his designee. The director shall within 90 days after
 0431 receipt of such justification review such justification to deter-
 0432 mine compliance with K.S.A. 79-503a, and amendments thereto.
 0433 If the director finds the county board's actions are not in com-
 0434 pliance with K.S.A. 79-503a, and amendments thereto, the di-
 0435 rector shall appeal the decision of the county board of equaliza-
 0436 tion to the state board of tax appeals which shall ~~administer the~~
 0437 ~~appeal~~ *conduct a hearing on the appeal in accordance with the*
 0438 *provisions of the Kansas administrative procedure act.*

0439 Sec. 321. K.S.A. 79-1575 is hereby amended to read as fol-
 0440 lows: 79-1575. As soon as practicable after the return or affidavit
 0441 is filed, the director shall make an examination thereof and
 0442 determine the correct amount of the tax liability. If the tax found
 0443 due is less than the amount paid, the excess so paid shall be
 0444 refunded to the executor, administrator or deemed executor who
 0445 paid the tax. If the tax found due shall be greater than the amount
 0446 theretofore paid, or if a claim for a refund is denied, notice shall
 0447 be mailed to the person filing the return by registered or cer-
 0448 tified mail. *[The determination contained in such notice shall not*
 0449 *require an adjudicative proceeding under the Kansas adminis-*
 0450 *trative procedure act. The notice shall inform the executor,*
 0451 *administrator or deemed executor (1) of the right to an informal*
 0452 *conference as provided in this section and (2) that the failure to*
 0453 *request an informal conference shall preclude any appeal under*

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✓ 0454 *K.S.A. 74-2438 and amendments thereto.* Within 30 days after the
 0455 mailing of the notice any executor, administrator or deemed
 0456 executor aggrieved by any such determination of the director
 0457 may request a hearing of ~~an informal conference before~~ the
 0458 director relating to the tax liability by filing a written request
 0459 with the director. ~~Upon receipt of such a request the director~~
 0460 ~~shall hold an informal conference within 90 days of the date of~~
 0461 ~~the request.~~ Based on the evidence presented at such hearing
 0462 informal conference, the director shall make a final determina-
 0463 tion within a reasonable time 30 days and shall notify the
 0464 executor, administrator or deemed executor by registered or
 0465 certified mail of the decision, accompanied by a notice and
 0466 demand for payment. The tax shall be paid within 30 days
 0467 thereafter, together with interest on the additional tax from the
 0468 date the tax was due unless an appeal is taken in the manner
 0469 provided by K.S.A. 74-2438, and amendments thereto. No addi-
 0470 tional tax shall be assessed for less than \$5.

✓ | 0471 *Informal conferences held pursuant to this section may be*
 0472 *conducted by the director or the director's designee. The rules of*
 0473 *evidence shall not apply to an informal conference and no*
 0474 *record shall be made except at the request and expense of the*
 0475 *executor, administrator or deemed executor. The executor, ad-*
 0476 *ministrator or deemed executor may present any evidence*
 0477 *deemed necessary to determine the correct amount of tax. The*
 0478 *director or director's designee shall clearly advise the executor,*
 0479 *administrator or deemed executor of the statutory or other basis*
 0480 *for the assessment of tax. If it is deemed necessary by the*
 0481 *director to have additional information or documents provided*
 0482 *by the executor, administrator or deemed executor, the director*
 0483 *shall make a final determination within 30 days of the receipt of*
 0484 *the additional information.*

✓ 0485 Sec. 322. K.S.A. 79-1964a is hereby amended to read as fol-
 0486 lows: 79-1964a. When it is apparent to the governing body of any
 0487 taxing district except cities, counties, community junior colleges,
 0488 and school districts at tax levying time that the rate of levy, for
 0489 any individual fund for which ~~said~~ the board desires to make a
 0490 levy, is so limited by the maximum levy limit for the individual

a hearing of

The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. An order finding additional tax shall be

A-I

0308 ~~vided further~~, That. Any such city having a surplus in any public
 0309 utility fund may use such surplus to pay the warrants authorized
 0310 by the board under this section: ~~Provided further~~, That. When
 0311 the money must be raised by a tax levy such city may issue and
 0312 sell at par no-fund warrants in multiples of ~~one hundred dollars~~
 0313 ~~(\$100)~~ \$100 as hereinafter provided and place the money in the
 0314 fund and issue regular warrants in the usual manner: ~~Provided~~
 0315 ~~further~~, That. Whenever any such city receives insurance money
 0316 in payment of damage occasioned by the unforeseen occurrence,
 0317 and authority to issue warrants is authorized by the board under
 0318 this section, such insurance money shall be deposited with the
 0319 county treasurer immediately and used by the county treasurer
 0320 in lieu of ad valorem taxes as provided in K.S.A. 79-2940 and
 0321 ~~amendments thereto~~. This section shall not require a deposit of
 0322 insurance money in excess of the total amount of such warrants
 0323 and interest thereon.

0324 Sec. 329. K.S.A. 79-3226 is hereby amended to read as fol-
 0325 lows: 79-3226. As soon as practicable after the return is filed, the
 0326 director of taxation shall examine it and shall determine the
 0327 correct amount of the tax. If the tax found due shall be greater
 0328 than the amount theretofore paid, or if a claim for a refund is
 0329 denied, notice shall be mailed to the taxpayer. The determina-
 0330 tion contained in such notice shall not require an adjudicative
 0331 proceeding under the Kansas administrative procedure act. The
 0332 notice shall inform the taxpayer (1) of the right to an informal
 0333 conference as provided in this section and (2) that the failure to
 0334 request an informal conference shall preclude any appeal under
 0335 K.S.A. 74-2438 and amendments thereto. Within 30 days after
 0336 the mailing of such notice the taxpayer may request a hearing of
 0337 an informal conference before the director relating to the tax
 0338 liability by filing a written request with the director. Upon
 0339 receipt of such a request the director shall hold an informal
 0340 conference within 90 days of the date of the request. Based on
 0341 the evidence presented at such hearing informal conference, the
 0342 director shall make a final determination within a reasonable
 0343 time 30 days and shall notify the taxpayer of such decision,
 0344 accompanied by a notice and demand for payment. Notice under

a hearing of

The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. An order finding additional tax shall be

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A-I

0345 this section shall be sent by first-class mail in the case of
 0346 individual taxpayers and by registered or certified mail in the
 0347 case of all other taxpayers. The tax shall be paid within 20 days
 0348 thereafter, together with interest at the rate per month pre-
 0349 scribed by subsection (a) of K.S.A. 79-2968, and amendments
 0350 thereto, on the additional tax from the date the tax was due
 0351 unless an appeal is taken in the manner provided by ~~law~~ K.S.A.
 0352 74-2438 and amendments thereto, but no additional tax shall be
 0353 assessed for less than \$5. Interest at such rate shall continue to
 0354 accrue on any additional tax liability during the course of any
 0355 appeal.

✓ 0356 [Informal conferences held pursuant to this section may be
 0357 conducted by the director or the director's designee. The rules of
 0358 evidence shall not apply to an informal conference and no
 0359 record shall be made except at the request and expense of the
 0360 taxpayer. The taxpayer may present any evidence deemed nec-
 0361 essary to determine the correct amount of tax. The director or
 0362 the director's designee shall clearly advise the taxpayer of the
 0363 statutory or other basis for the assessment of tax. If it is deemed
 0364 necessary by the director to have additional information or
 0365 documents provided by the taxpayer, the director shall make a
 0366 final determination within 30 days of the receipt of the addi-
 0367 tional information.]

✓ 0368 Sec. 330. K.S.A. 79-3229 is hereby amended to read as fol-
 0369 lows: 79-3229. Whenever the director of taxation has reason to
 0370 believe that a taxpayer liable for tax under any provisions of
 0371 article 32 of chapter 79 of the Kansas Statutes Annotated is about
 0372 to depart from the state or to remove ~~said such~~ taxpayer's prop-
 0373 erty therefrom, or to conceal ~~himself or herself or said oneself or~~
 0374 ~~such~~ taxpayer's property therein, or to do any other act tending to
 0375 prejudice, jeopardize or render wholly or partly ineffectual the
 0376 collection of such tax unless proceedings ~~be~~ are brought without
 0377 delay, the director shall immediately make an assessment for all
 0378 such taxes due from such taxpayer, noting such finding on the
 0379 assessment. Thereupon a warrant shall ~~forthwith~~ be issued for
 0380 the collection of the tax as provided in K.S.A. 79-3235 and
 0381 amendments thereto. The taxpayer may within ~~fifteen~~ (15) 15

A-I

0234 under authority thereof.

0235 Sec. 342. K.S.A. 79-3608 is hereby amended to read as fol-
 0236 lows: 79-3608. It shall be unlawful for any person to engage in
 0237 the business of selling tangible personal property at retail or
 0238 furnishing services taxable hereunder in this state without a
 0239 registration certificate from the director of taxation. Application
 0240 for such certificate shall be made to ~~said the~~ director upon forms
 0241 furnished by ~~him or her~~ the director, and shall state the name of
 0242 the applicant, the address or addresses at which ~~he or she~~ such
 0243 person proposes to engage in such business, and the character of
 0244 such business: ~~Provided, however,~~ Utilities taxable under this
 0245 act shall not be required to register but shall comply with all
 0246 other provisions of this act. Thereupon the taxpayer shall be
 0247 issued a registration certificate to engage in the business for
 0248 which application is made: ~~Provided, however,~~ If ~~said such~~
 0249 applicant does at the time of making such application owe any
 0250 sales tax, penalty, or interest, then before a registration certifi-
 0251 cate is issued the director of taxation shall require the applicant
 0252 to pay the amount owed.

0253 A separate registration certificate shall be issued for each place
 0254 of business, and shall be conspicuously displayed therein. Upon
 0255 violation of any of the terms of this act, the director ~~after a~~
 0256 ~~reasonable notice and a hearing~~ may revoke such certificate ~~after~~
 0257 ~~notice and hearing in accordance with the provisions of the~~
 0258 ~~Kansas administrative procedure act.~~

0259 Sec. 343. K.S.A. 79-3610 is hereby amended to read as fol-
 0260 lows: 79-3610. The director of taxation shall examine all returns
 0261 filed under the provisions of this act, and shall issue final
 0262 determinations of tax liability hereunder in the manner pre-
 0263 scribed by K.S.A. 79-3226, ~~or any and~~ amendments thereto,
 0264 relating to income taxes. Any taxpayer may request a hearing of
 0265 ~~an informal conference before~~ the director relating to his or her
 0266 such taxpayer's tax liability and a ~~hearing~~ ~~conference~~ thereon
 0267 shall be had and the director shall make a final determination
 0268 and give the taxpayer notice thereof. In case any person required
 0269 by the provisions of this act to make a return fails or refuses to do
 0270 so, ~~said the~~ director, after notice to such person, and a ~~hearing~~ ~~an~~

a hearing of

hearing

✓
✓

A-H ✓

a hearing

0271 *informal conference* thereon, shall make a final determination of
0272 the amount of such tax according to ~~his or her~~ *the director's* best
0273 judgment and information.

0274 Whenever the director of taxation has ~~reasons~~ *reason* to be-
0275 lieve that a person liable for tax under any provisions of the
0276 Kansas retailers' sales tax act is about to depart from the state or
0277 to remove ~~his or her~~ *such person's* property therefrom, or to
0278 conceal ~~himself or herself or his or her~~ *oneself or such person's*
0279 property therein, or to do any other act tending to prejudice,
0280 jeopardize or render wholly or partly ineffectual the collection of
0281 such sales tax unless proceedings be brought without delay, the
0282 director shall immediately make an assessment for all sales taxes
0283 due from such taxpayer, noting such finding on the assessment.

0284 *The assessment shall be made on the basis of emergency ad-*
0285 *judicative proceedings in accordance with the provisions of*
0286 *K.S.A. 1986 Supp. 77-536 and amendments thereto.* Thereupon a
0287 warrant shall ~~forthwith~~ be issued for the collection of the tax as
0288 provided in K.S.A. 79-3235, ~~or any~~ *and* amendments thereof. The
0289 taxpayer may within ~~fifteen (15)~~ 15 days from the date of filing of
0290 such warrant request a hearing by the director on the correctness

0291 of the jeopardy assessment. *Hearings* required under this para-
0292 graph *shall be conducted in accordance with the provisions of*
0293 *the Kansas administrative procedure act.*

section

0294 Sec. 344. K.S.A. 79-3708a is hereby amended to read as fol-
0295 lows: 79-3708a. Whenever any retailer authorized to collect the
0296 tax herein imposed fails to comply with any of the provisions of
0297 this act, or any orders, rules or regulations of the secretary of
0298 revenue prescribed and adopted hereunder, the director may,
0299 upon a notice and hearing, by order revoke the permit, if any,
0300 issued to such retailer. If such retailer is a corporation authorized
0301 to do business in this state, the director may certify to the
0302 secretary of state a copy of an order finding that such retailer has
0303 failed to comply with certain specified provisions, orders, rules
0304 or regulations. The secretary of state shall, upon receipt of such
0305 certified copy, revoke the permit authorizing ~~said~~ *such* corpora-
0306 tion to do business within this state, and shall issue a new permit
0307 only when such corporation has complied with its obligations

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New Sec. 356. (a) This section applies to adjudicative proceedings before the commissioner of insurance concerning any rate, or any rule, regulation or practice pertaining to the rates over which the commissioner has jurisdiction and adjudicative proceedings held pursuant to the Kansas insurance holding companies act.

(b)(1) After the commissioner has determined and announced that a hearing should be held, and prior to the issuance of a final order, no parties to the proceeding, or their counsel, shall discuss the merits of the matter or proceeding with the presiding officer unless reasonable notice is given to all parties who have appeared to enable the parties to be present at the conference.

(2) After the commissioner has determined and announced that a hearing should be held, prior to the issuance of a final order, copies of any written communications from any party regarding the proceeding that are directed to the presiding officer shall be mailed to all parties of record and proof of service shall be furnished to the commissioner. Communications requested by the commissioner's staff from any party and any written communication received by the commissioner's staff from any party shall be made a part of the file and the docket and shall be made available to all persons who desire to use them, provided that the commissioner's requests for information from a party shall be mailed to all parties of record.

(3) The person or persons to whom any ex parte communication has been made shall promptly and fully inform the commissioner of the substance of the communication, and the circumstances thereof, to enable the commissioner to take appropriate action.

(c) For purposes of this section, no member of the commissioner's technical staff shall be considered a party to any proceeding before the commissioner, regardless of participation in staff investigations with respect to the proceeding or of participation in the proceeding as a witness. Since the purpose of the staff is to aid the commissioner in the proper discharge of commissioner's duties, the presiding officer shall be free at all times to confer with any staff member with respect to any proceeding. However, no facts that are outside the record, and that reasonably could be expected to influence the decision in any matter pending before the commissioner, shall be furnished to any presiding officer unless all parties to the proceeding are likewise informed and afforded a reasonable opportunity to respond. Subsection (b) shall apply to staff counsel who have participated in the proceeding in regard to any adjudicatory proceeding before the commissioner.

(d) All letters and written communications that are received by the presiding officer from members of the general public, and that are in the nature of ex parte communications, shall be made a part of the file in the docket and shall be made available to all persons who desire to see them. The deposit of such written communications and letters in the file shall not make them a part of the official record of the case.

New Sec. 357. For purposes of administrative proceedings of the insurance department under the Kansas administrative procedure act, "agency head" shall mean the commissioner of insurance or the assistant commissioner of insurance, when acting on behalf of the commissioner.

New Sec. 358. (a) The filing of a return with the director of taxation under article 15, 32, 33, 34, 36, 37, 41 or 47 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, shall not be deemed an application for an order under the Kansas administrative procedure act.

(b) A determination by the division of taxation or the audit services bureau of the department of revenue concerning tax liability under article 15, 32, 33, 34, 36, 37, 41 or 47 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, which is made prior to the opportunity for a hearing before the director of taxation on such tax liability, shall not require an adjudicative proceeding under the Kansas administrative procedure act.

(c) For purposes of the Kansas administrative procedure act, the director of taxation shall be deemed the agency head in regard to orders rendered by the director under chapter 79 of the Kansas Statutes Annotated, and amendments thereto.

(d) Final orders of the director of taxation pursuant to K.S.A. 1986 Supp. 77-526 and amendments thereto, shall be rendered in writing and served within 120 days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) of K.S.A. 1986 Supp. 77-526 and amendments thereto, unless this period is waived or extended with the written consent of all parties or for good cause shown.

3-17-87



JUSTICE ROBERT H. MILLER, CHAIRMAN,
 TOPEKA
 JUDGE MARY BECK BRISCOE, TOPEKA
 JUDGE WILLIAM D. CLEMENT, JUNCTION CITY
 JUDGE HERBERT W. WALTON, OLATHE
 SENATOR ROBERT G. FREY, LIBERAL
 REPRESENTATIVE ROBERT S. WUNSCH,
 KINGMAN
 ROBERT H. COBEAN, WELLINGTON
 JACK E. DALTON, DODGE CITY
 MARVIN E. THOMPSON, RUSSELL
 JAMES D. WAUGH, SECRETARY, TOPEKA

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 (913) 296-2498

March 16, 1987

Honorable Robert G. Frey, Chairman
 Senate Judiciary Committee
 State Capitol
 Topeka, Kansas 66612

Dear Senator Frey:

At the conclusion of the hearing on S.B. 334 on Thursday, March 5, you requested that the Administrative Procedure Advisory Committee to the Judicial Council meet with agency representatives to discuss concerns raised in regard to the bill. The advisory committee held such a meeting on Tuesday, March 10, and as a result of that meeting the advisory committee recommends certain amendments to S.B. 334. Attached is a balloon of the relevant sections of S.B. 334 which sets forth the advisory committee's recommended amendments. A brief summary of the recommended amendments follows:

Parole Board - The committee agreed with the chairman of the parole board that it would be simpler and more direct to place the exemption for the parole board in 77-503(c) [sec. 2 of S.B. 334] rather than in 77-508(c)(10) [sec. 3]. p. 2
p. 3

Insurance Department - The committee recommends an exception from the ex parte provisions of 77-525 [sec. 10] for rate proceedings before the commissioner of insurance. The exception is essentially identical to that recommended for rate proceedings of the corporation commission and would involve the adoption of new sec. 356 on page 29 of the balloon. p. 6

The amendments to 40-3304 (sec. 113) contained on pages 13 and 14 of the balloon are intended to clarify the status of the various classes of persons who are given notice of hearing under that statute.

New sec. 357 on page 30 of the balloon is intended to clarify the meaning of the term "agency head" in the context of the insurance department. It is the opinion of the committee that new sec. 357 makes explicit the construction that would be given "agency head" in the absence of such a section.

*Attach II
 Sen. Jud.
 3-17-87*

SRS - At the request of the chief counsel for SRS, the committee recommends the addition of "or designee" to subsections (d) and (e) of 77-527 (sec. 11) as indicated on pages 6 and 7 of the balloon. Again, it is the opinion of the committee that this amendment merely makes explicit authority that may already be implied from the language of the section. The committee also recommends amendments requested by SRS to 75-3306 (sec. 302) which are set out on pages 20 through 22 of the balloon. The language of proposed subsection (c) on page 21 of the balloon is necessary to preserve investigatory powers which were inadvertently deleted.

Board of Tax Appeals - The proposed amendments to 77-529 (sec. 12) on page 8 of the balloon would preserve mandatory reconsideration for orders of the board of tax appeals. This recommendation also requires the amendment of 74-2426 (sec. 286) by the addition of a new subsection (b) as set out on page 18 of the balloon. Page 17 of the balloon contains two further amendments to 74-2426. The first gives the board 120 days within which to render an order. This time period is recommended with the provisions of 1987 S.B. 166 in mind. Senate Bill 166 would toll the accrual of interest on any tax appealed to the board 120 days after the matter was fully submitted. At the request of the board, the committee also recommends that 74-2438 (sec. 288) be amended as suggested on page 19 of the balloon. The amendment would clarify that hearings on appeals to the board are de novo unless the parties agree otherwise.

Director of Taxation - The committee recommends the amendment of 79-1575 (sec. 321), 79-3226 (sec. 329) and 79-3610 (sec. 43) to remove the proposed provisions for informal conferences before the director and to require instead formal hearings before the director in accordance with the provisions of the administrative procedure act. The recommended amendments to these sections are contained on pages 23 through 28 of the balloon. Presently, the statutes provide for a hearing before the director of taxation which is followed by the opportunity for a second hearing before the board of tax appeals. With the intention of reducing expense and delay, the advisory committee initially recommended in S.B. 334 that the hearing before the director be replaced with an informal conference. This is an area of ongoing discussions between private attorneys and the state agencies involved. At the same time, certain aspects of the situation are being addressed by pending legislation such as S.B. 166, which contains provisions for the tolling of interest on taxes which are the subject of administrative proceedings. In light of this activity, the committee recommends at this time the deletion of the provisions for informal conferences and the retention of hearings before both the director of taxation and the board of tax appeals, such hearings to be subject to the administrative procedure act.

The Committee also recommends that various concerns raised by the director of taxation be addressed by the adoption of new sec. 358 which appears on page 30 of the balloon. Subsection (a) is intended to avoid any construction of the administrative procedure act which would result in the application of the time lines contained in 77-511 to the processing of tax returns. Subsection (b) is intended to clarify the stage of the taxation process at which an opportunity for a hearing is required. Subsection (c) represents a more explicit statement of the meaning of the term "agency head" in regard to orders of the director of taxation. As was the case with the similar amendment for the board of tax appeals, subsection (d) gives the director 120 days within which to render an order. The 120-day provision for rendering an order was chosen with the provisions of 1987 S.B. 166 in mind.

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In addition to the above recommendations, I should note a few areas where the position of the advisory committee is not viewed as satisfactory by some of the interested parties.

S.B. 334 contains the advisory committee's recommendation that rate proceedings of the corporation commission be exempted from the ex parte provisions of 77-525 (sec. 10, pages 11 through 13). Such exempted rate proceedings would be governed by the provisions of new sec. 355 (page 405), which represents a codification of the present KCC rule on ex parte communications. The KCC has never viewed the partial exemption contained in S.B. 334 as being sufficient. I believe that through prior testimony the senate judiciary committee is aware of the reasons for the respective positions of the KCC and the advisory committee. The KCC also has concerns about the authority of hearing examiners under the administrative procedure act which have not been alleviated by any of the recommendations of the advisory committee.

Finally, the public disclosure commission requested that the senate judiciary committee remove certain of their statutes from the bill on the basis that such statutes do not result in the issuance of an "order" as defined in 77-502(d) [sec. 1]. Unfortunately, due to prior commitments the attorney for the public disclosure commission was unable to meet with the advisory committee on March 10. At this time, the advisory committee recommends the retention of the public disclosure commission's statutes (sections 59, 60, 149 and 150) in S.B. 334. However, it is the intention of the advisory committee to meet with representatives of the public disclosure commission for further discussion of this issue and to do so in a manner which would allow sufficient time for legislative action.

Sincerely,

Matthew B. Lynch

MBL:ng

Attach. II

0121 (a) of this section unless, after a public hearing thereon *con-*
0122 *ducted in accordance with the provisions of the Kansas admin-*
0123 *istrative procedure act*, the commissioner finds that:

0124 (A) After the change of control the domestic insurer referred
0125 to in subsection (a) of this section would not be able to satisfy the
0126 requirements for the issuance of a license to write the line or
0127 lines of insurance for which it is presently licensed;

0128 (B) the effect of the merger or other acquisition of control
0129 would be substantially to lessen competition in insurance in this
0130 state or tend to create a monopoly therein;

0131 (C) the financial condition of any acquiring party is such as
0132 might jeopardize the financial stability of the insurer or preju-
0133 dice the interest of its policyholders;

0134 (D) the plans or proposals which the acquiring party has to
0135 liquidate the insurer, sell its assets or consolidate or merge it
0136 with any person, or to make any other material change in its
0137 business or corporate structure or management, are unfair and
0138 unreasonable to policyholders of the insurer and not in the
0139 public interest; or

0140 (E) the competence, experience and integrity of those per-
0141 sons who would control the operation of the insurer are such that
0142 it would not be in the interest of policyholders of the insurer and
0143 of the public to permit the merger or other acquisition of control.

0144 (2) The public hearing referred to in paragraph (1) of sub-
0145 section (d) of this section shall be held as soon as practical after
0146 the statement required by this subsection (a) of this section is
0147 filed, and at least 20 days' notice thereof shall be given by the
0148 commissioner of insurance to the person filing the statement.
0149 Not less than seven days' notice of such public hearing shall be
0150 given by the person filing the statement to the insurer and to
0151 such other persons as may be designated by the commissioner of
0152 insurance. The insurer shall give such notice to its security-
0153 holders. ~~The commissioner of insurance shall issue an order after~~
0154 ~~the conclusion of such hearing setting forth the commissioner's~~
0155 ~~findings.~~ At such hearing, the person filing the statement, the
0156 insurer, any person to whom notice of hearing was sent, and any
0157 other person whose interests may be affected thereby shall have

shall be a party.

A-III
Hon. Guad.
3-17-89

0158 the right to present evidence, examine and cross-examine wit-
0159 nesses, and offer oral and written arguments.

0160 (e) All statements, amendments or other material filed pur-
0161 suant to subsection (a) or (b) of this section, and all notices of
0162 public hearings held pursuant to subsection (d) of this section,
0163 shall be mailed by the insurer to its shareholders within five
0164 business days after the insurer has received such statements,
0165 amendments, other material or notices. The expenses of mailing
0166 shall be borne by the person making the filing. As security for the
0167 payment of such expenses, such person shall file with the com-
0168 missioner of insurance an acceptable bond or other deposit in an
0169 amount to be determined by the commissioner of insurance.

0170 (f) The provisions of this section shall not apply to:

0171 (1) Any offers, requests, invitations, agreements or acquisi-
0172 tions by the person referred to in subsection (a) of this section of
0173 any voting security referred to in subsection (a) of this section
0174 which, immediately prior to the consummation of such offer,
0175 request, invitation, agreement or acquisition, was not issued and
0176 outstanding;

0177 (2) any offer, request, invitation, agreement or acquisition
0178 which the commissioner of insurance by order shall exempt
0179 therefrom as: (A) Not having been made or entered into for the
0180 purpose and not having the effect of changing or influencing the
0181 control of a domestic insurer; or (B) as otherwise not compre-
0182 hended within the purposes of this section.

0183 (g) The following shall be violations of this section:

0184 (1) The failure to file any statement, amendment or other
0185 material required to be filed pursuant to subsection (a) or (b) of
0186 this section; or

0187 (2) the effectuation or any attempt to effectuate an acquisition
0188 of control of, or merger with, a domestic insurer unless the
0189 commissioner of insurance has given the commissioner's ap-
0190 proval thereto.

0191 (h) The courts of this state are hereby vested with jurisdiction
0192 over every security holder of a domestic insurer and every
0193 person not resident, domiciled or authorized to do business in
0194 this state who files a statement with the commissioner of insur-

may petition for intervention in accordance with K.S.A. 77-521 and
be deemed to meet the requirements for intervention contained in
(a)(2) of K.S.A. 1986 Supp. 77-521, and amendments thereto, and
shall have the right to present oral or written statements in
accordance with K.S.A. 1986 Supp. 77-523 and amendments thereto

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