

Approved Thomas F. Walker  
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by REPRESENTATIVE THOMAS F. WALKER at  
Chairperson

9:00 a.m./~~xxx~~ on WEDNESDAY, MARCH 22, 1989 in room 522-S of the Capitol.

All members were present except:

Representative Graeber

Committee staff present:

Avis Swartzman - Revisor  
Carolyn Rampey - Legislative Research  
Julian Efird - Legislative Research  
Jackie Breymeyer - Committee Secretary

Conferees appearing before the committee:

Gene Yockers - Director, Kansas Real Estate Commission  
Karen France, Director Governmental Affairs, KS. Assn. of Realtors  
Anne D. Smith - Kansas Auctioneers Association  
David S. Rosenthal - Executive Director, KS. Comm. Deaf & Hearing Impaired  
Gabriel R. Faimon - Commissioner, SRS  
Mildred McMillon - State Board of Education

The meeting of the House Governmental Organization Committee was called to order by Representative Thomas F. Walker, Chairman. The minutes of the previous meeting were approved as corrected.

SB 45 - Regulation of real estate brokers and salespersons

Gene Yockers, Director, Kansas Real Estate Commission, distributed an attachment that explained the amendments in the bill. (Attachment 1) He said that basically the reason for the 'ring man' being out there is for the taking of bids. He is really trying to sell real estate and to bring in the listings for the auctioneers. The auctioneers association does support the bill. He told the committee the buyer thinks he is the one who is being represented, when actually it is the seller who is being represented. This bill would require the licensees to disclose whom they represent in any real estate transaction.

Chairman Walker clarified several points in the bill. Karen France, Director, Governmental Affairs, Kansas Association of Realtors, appeared in support of SB 45. (Attachment 2) The major proposal of this legislation is that it would require licensees to disclose to customers they deal with exactly who it is they are representing in the real estate transaction.

Anne D. Smith, Kansas Auctioneers Association, stated the Association has no objection to the provisions of SB 45 and specifically supports the language in the bill requiring a real estate license to participate in the auction of real property. (Attachment 3)

The Chairman, see no further conferees, declared the hearing on SB 45 closed.

SB 53 - Composition of Kansas Commission for the Deaf & Hearing Impaired

David Rosenthal, Executive Director, Kansas Commission for the Deaf and Hearing Impaired, stated the purpose of the bill which is to reinstate the Department of Education as an ex officio member of the Commission. (Attachment 4) The Commission will benefit by increased perspective on special education issues.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION,  
room 522-S Statehouse, at 9:00 a.m. ~~xxx~~ on WEDNESDAY, MARCH 22, 1989

Gabriel Faimon, Commissioner of Rehabilitation Services, SRS, appeared in support of SB 53. He said that for budgetary purposes, the Kansas Commission for the Deaf and Hearing Impaired is administratively assigned to Rehabilitation Services. (Attachment 5) Representation by the State Board of Education will strengthen the capability of the Commission to address special education issues.

Mildred McMillon, State Board of Education member from Tonganoxie addressed the bill. She stated that there are approximately 500 students in public school programs for the deaf and hearing impaired which are not currently represented on the Commission. (Attachment 6) The State Board of Education is the governing body for the Kansas School for the Deaf. The State Board recommends that SB 53 be reported favorably for passage.

Chairman Walker, seeing no other conferees, stated that this closed the hearing on SB 53.

The Chairman asked the committee to turn to SB 273. Discussion began. Representative Brown stated she had several amendments of a technical nature. The committee followed along as she went through some of the amendments. It was decided to wait until the next meeting when a balloon would be distributed to the committee so that they could see more clearly what the amendments would do.

The Committee began discussion of SB 45. One of the main problems in the real estate business is who represents whom. More credibility needs to be employed. Contracts, multi-listings, agents and sub-agents were discussed.

Representative Gjerstad moved to report SB 45 favorably for passage. Representative Weimer gave a second to the motion. The motion carried.

The committee turned to SB 53.

Representative Brown moved that SB 53 be passed and placed on the Consent Calendar. Representative Gjerstad gave a second to the motion. The motion carried.

The committee took up SB 272.

Representative Miller moved to amend SB 272 by repealing K.S.A. 55-428 and K.S.A. 74-2428.

Representative Weimer gave a second to the motion. The motion carried.

Representative Miller moved to report SB 272 as amended favorable for passage. Representative Turnbaugh gave a second to the motion. The motion carried.

The full committee will meet again Friday.

The meeting was adjourned.



House Governmental Organization Committee  
March 22, 1989  
Senate Bill 45

Mr. Chairman and members of the committee:

My name is Gene Yockers, and I am the director of the Kansas Real Estate Commission.

Section 1

"Agency agreement" is defined in subsection (b) [line 34].

An amendment in (f)(5) [line 59] is intended to clarify that all persons who assist an auctioneer selling real estate at auction have to be licensed. Clerks would be exempt.

Sections 2, 3, 4 and 5 - no amendments other than references to amended sections.

Section 6 [line 215]

Deletes the requirement for annual publication of names and addresses of licensees. A computer print-out is generated annually in order to meet the statutory requirement. However, since the agency changed from annual licensing to two-year renewals (with a group of licensees renewing every two months), an annual publication is immediately out-of-date.

Section 7 [line 240]

Subsection (a)(4) prohibits a Kansas licensee from paying a rebate. The purpose of the amendment is to prohibit participation in plans thorough which the Kansas licensee would pay a referral fee to a broker licensed in another jurisdiction, who in turn pays a rebate to the principals.

Subsection (a)(13) requires that agency agreements be in writing.

The bill further provides that real estate licensees disclose agency relationships. Subsections (a)(14), (15), and (16) set out specific disclosures and the time that each disclosure is to be made, depending on whether the licensee represents the seller, the buyer, or both the seller and the buyer.

Other amendments relating to agency may be found in (a)(10), (11), (12) and (17) and in subsections (b) and (c).

Section 8

Amendments in lines 472 and 473 are to clarify the language.

G.O.  
#1  
3/22/89



Executive Offices:  
3644 S. W. Burlingame Road  
Topeka, Kansas 66611  
Telephone 913/267-3610

TO: HOUSE GOVERNMENTAL ORGANIZATION COMMITTEE  
FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS  
DATE: MARCH 22, 1989  
SUBJECT: SB 45

On behalf of the Kansas Association of REALTORS®, I appear today to support SB 45.

First, we want to say that we have worked with the Kansas Real Estate Commission for the past four years now in order to educate our membership about the issue of agency relationships and also to develop legislation which is both helpful to the public and workable for our people in the field. We are satisfied that this piece of legislation does both.

One of the major purposes of the Kansas Association of REALTORS® is to promote professionalism within the real estate industry and so, in effect, to better serve the public.

The major proposal in this piece of legislation would require licensees to disclose to the customers they deal with exactly who it is they are representing in the real estate transaction. If they are representing the seller, which is currently the typical arrangement, when a buyer comes to them and asks their assistance in finding a piece of property with particular characteristics, the real estate agent must tell the prospective buyer up front either orally in writing that:

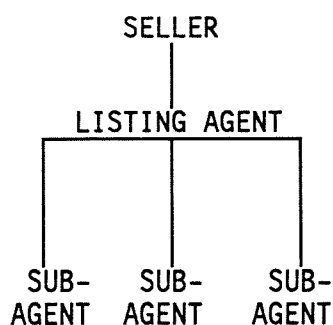
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3/22/89

1. They are acting as the agent of the seller with the duty to represent the seller's interest;
2. They will not be the agent of the prospective buyer; and
3. Any information given to the agent will be disclosed to the seller.

Then, the disclosure must be in writing as a part of any contract, acknowledging that the disclosure has been made.

What this does is merely disclose to homebuyers exactly what is going on in a real estate transaction. The public knows when they go to buy a new car that the salesman in the showroom represents the car dealership and they know they should not tell them exactly how much they are willing to pay for a car when they are in the middle of the bidding process. For some reason, home purchasers forget this same relationship exists when they go to buy a home. What we are doing is telling them, up front, what is what.

This legislation also acknowledges a new trend in the real estate industry. That is, the concept of buyer's brokerage. Up until recently the typical real estate transaction meant a real estate licensee agreed to be the agent of the seller through the agreement called a listing. When a house was put on the multi-list system, the agent who showed the house who was not the listing agent was also acting as the agent of the seller and was called a "sub-agent" of the seller.



The new trend in the industry is for real estate agents to sign agency agreements with buyers, whereby all fiduciary responsibilities are owed to the buyer. The real estate agent then, is looking out for the best interests of the buyer, which before this development, had not happened unless the buyer enlisted the assistance of an attorney. Under this kind of agreement the commission could be paid by the buyer, by the seller, or could be split between the buyer and seller. This is a negotiable item of the agency agreement.

We think this is a great new development and may actually serve the public better in the long run. In order to have everyone clear about this type of arrangement, this bill provides that where there is a buyer's broker involved, the agent must disclose to any seller or seller's agent that:

1. The agent will be acting as agent of the buyer with the duty to represent the buyer's interest;
2. The agent will not be the agent of the seller; and
3. Any information given to the agent will be disclosed to the buyer

The disclosure is made orally or in writing before the seller or the seller's agent shows a house to the buyer or buyer's agent. That way everyone knows who is representing whom. The disclosure must also be made in any contract.

There is also a provision in the bill what disclosure needs to be made if a real estate agent chooses to represent both buyer and seller. This is called dual agency and we highly discourage it because we all know it is difficult to serve two masters. However, disclosed dual agency is legal and we have needed guidelines as to how to do it for some time.

The rest of the bill is essentially cleanup work which is necessary in the statute in order to accomodate these new requirements or to clarify ambiguities in the law which have become apparent. We also support these provisions.

In particular, Sections (11) and (12) on page 8 clarify that a licensee cannot directly go to negotiate in any way with a buyer or seller if the licensee knows that the buyer or seller is represented by an agent. Section (13) on the same page states that all agency agreements must be in writing. We have encouraged this all along and, in this age of high litigation levels, it just makes good sense to put it into law, particularly in this new area of buyer's agency.

I believe the balance of the amendments have been discussed. I thank you for the opportunity to speak about this bill. We ask that you pass the bill with a favorable recommendation.



TESTIMONY TO HOUSE GOVERNMENTAL ORGANIZATION COMMITTEE  
ON BEHALF OF KANSAS AUCTIONEERS ASSOCIATION

RE: SB 45

PRESENTED BY ANNE D. SMITH

MARCH 22, 1989

Mr. Chairman, members of the committee:

My name is Anne Smith, and with Ron Hein, I represent the Kansas Auctioneers Association. The Kansas Auctioneers Association has no objections to the provisions of SB 45, and specifically supports the language in the bill requiring a real estate license to participate in the auction of real property.

This is probably existing law without the amendment, and has been interpreted by the Attorney General in the manner set out in this codification. In addition, most if not all auctioneers currently operate in this manner.

The reasons why it is important to have all persons involved in the sale be licensed as real estate agents or brokers is to ensure that all communications with the purchaser or seller regarding the real property is handled by a properly licensed person. This is consistent with the requirements on staff of a real estate broker.

Thank you very much for permitting us to testify this morning.

G.O.  
#3  
3/22/89

Department of Social and Rehabilitation Services

Winston Barton - Secretary

Statement regarding Senate Bill 53

Title: AN ACT concerning the Kansas commission for the deaf and hearing impaired; affecting the composition of the membership thereof; amending K.S.A. 1988 Supp. 75-5392 and repealing the existing section.

Purpose: The purpose of the bill is to reinstate the Department of Education as an ex officio member of the Kansas commission for the deaf and hearing impaired.

Background: During the 1988 legislative session, a bill was introduced by the Kansas Association of the Deaf seeking to increase representation of the deaf people on the Commission. The original bill sought to delete one or two membership positions and replace them with hearing impaired persons. This bill passed the House of Representatives, and was amended by the Senate to include more hearing impaired representation by deleting three ex-officio positions, and adding three Governor-appointed positions. The Department of Education was one of the three state agencies deleted from membership. The Commission voted to respectfully request reinstate the representation of the State Board of Education at its August 5, 1988 meeting.

Effect of Passage: The impact this bill will have on the agency is by increasing membership of the Kansas commission for the deaf to seventeen (17) members from sixteen (16). There is no fiscal impact on the commission budget because travel and subsistence expenses or allowances for ex-officio members at meetings are the responsibility of the respective departments of such members. Participation of the Department of Education will benefit the commission by increasing its perspective on special education issues.

Recommendation: The Department of Social and Rehabilitation Services (SRS) supports this bill.

David S. Rosenthal,  
Executive Director  
Kansas Commission for the  
Deaf and Hearing Impaired  
296-2874

*H.O.  
#4  
3/22/89*

Department of Social and Rehabilitation Services

Winston Barton - Secretary

Statement Regarding: Senate Bill 53

Title: An Act concerning the Kansas commission for the deaf and hearing impaired; affecting the composition of the membership thereof; amending K.S.A. 1988 Supp. 75-5392 and repealing the existing section.

Purpose: The purpose of the bill is to reinstate representation of the State Board of Education as an ex officio member of the Kansas Commission for the Deaf and Hearing Impaired.

Background: The Kansas Commission for the Deaf and Hearing Impaired is administratively assigned to Rehabilitation Services for budgetary purposes.

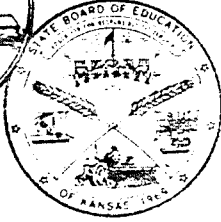
To allow the Commission to have broader representation by persons who are deaf or hearing impaired, legislation was enacted in 1988 which deleted three ex officio positions and added three appointive positions. Representation by the State Board of Education was one of the three ex officio positions deleted from the membership. During its meeting of August 5, 1988, the Commission voted to recommend reconsideration of the decision to delete representation of the State Board of Education. In a letter to the Commissioner of Rehabilitation Services, dated November 7, 1988, the State Board of Education stated agreement with the recommendation to reinstate its membership.

Effect of Passage: Representation of State Board of Education will strengthen the capability of the Commission to address special education issues related to deafness or hearing impairment. The bill will increase membership of the Commission for the Deaf and Hearing Impaired from sixteen (16) members to seventeen (17), increasing the number of ex officio members from four (4) to five (5). The increase in the number of ex officio members will not impact the Commission's budget, for the travel and subsistence expenses or allowances for attendance of ex officio members at Commission meetings are the responsibility of the respective departments of such members.

Recommendation: The Department of Social and Rehabilitation Services recommends adoption of Senate Bill No. 53.

For more information contact:  
Commissioner Gabriel R. Faimon  
Rehabilitation Services  
296-3911

K.O.  
# 5  
3/22/89



# Kansas State Board of Education

Kansas State Education Building

120 East 10th Street Topeka, Kansas 66612-1103

Mildred McMillon  
District 1

Connie Hubbell  
District 4

Bill Musick  
District 6

Evelyn Whitcomb  
District 8

Kathleen White  
District 2

I. B. "Sonny" Rundell  
District 5

Richard M. Robl  
District 7

Timothy R. Emert  
District 9

Paul D. Adams  
District 3

March 22, 1989

Richard J. Peckham  
District 10

TO: House Committee on Governmental Organization

FROM: State Board of Education

SUBJECT: 1989 Senate Bill 53

My name is Mildred McMillon, State Board of Education Member from Tonganoxie. It is a pleasure for me to appear before this Committee on behalf of the State Board.

Senate Bill 53 adds a member of the State Board of Education as an ex officio member of the Kansas Commission for the Deaf and Hearing Impaired. There are approximately 500 students in public school programs for the deaf and hearing impaired which are not currently represented on this Commission.

In addition, the State Board of Education is the governing body for the Kansas State School for the Deaf.

Therefore, we believe that a member of the State Board should serve as an ex officio member of the Kansas Commission for the Deaf and Hearing Impaired.

We recommend that Senate Bill 53 be reported favorably for passage.

Y.O.  
#6  
3/22/89