

Approved: 1-15-98
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Emert at 10:12 a.m. on January 13, 1998 in Room 514-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: Jim Welch, Assistant Attorney General for Consumer Protection
Don McNeely, Kansas Auto Dealers Association
Art Griggs, Chief Attorney, Department of Administration

Others attending: See attached list

SB 404 - Increasing the civil penalty for odometer fraud to not more than \$10,000

Following the Chair's brief synopsis of **SB 404**, Conferee Welch testified in support of the bill. He reviewed the history of the bill which amends the odometer fraud (OF) statute as well as the violation of the title search disclosure (VTSD) statute. The amendments would increase the civil penalty for the latter and would allow the Attorney General (AG) and county and district attorneys to recover operating costs incurred in investigations of OD and VTSD. Discussion and clarification on portions of the bill followed. (attachment 1)

Conferee McNeely, testified in support of **SB 404**. He pointed out that victims of odometer fraud include not only consumers but members of his organization as well. Discussion followed. On inquiry by the Chair regarding the number of prosecutions against KADA members, Jim Clark, County District Attorney's Association offered to research this and forward the information to the committee. (attachment 2)

SB 405 - Change the name of administrative law judges to presiding officers' allowing, not requiring, the office to employ court reporters.

Conferee Griggs testified in support of **SB 405**. He discussed the benefits of making changes in the authorizing statutes and requested four additional amendments which he covered. He stated that **SB 405**, with the balloon amendments, "will assist in a smooth transfer of the hearing functions of the Department of Social and Rehabilitation Services (SRS) to the new Office of Administrative Hearings within the Department of Administration." (attachment 3)

The Chair adjourned the meeting at 11:00 a.m.

The next meeting is scheduled for January 14, 1998

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Tues 1-13-98

NAME	REPRESENTING
Vickilyn Hessel	Division of Budget
Kathy Porter	OJA
Janelle Urhite	Budget
John Reecht	Shoof
Barnie Ann Brown	KS Gov. Consult
James Clarke	KCJAA
Paul Jones	KSC
Nancy Lindberg	AG
Steve KARRICK	AG
John Badger	SRS
Helen Stephens	KPOA/KSA
Randy M. Keavrell	Judicial Council
Carol Finn	SRS
Art Conroy	Dept. of Adm
Jim Welch	Attorney General's Office
Paul Abel	ATTORNEY GENERAL'S OFFICE
Jim Young	KANSAS AUTO DEALERS ASSN
Heather Randall	Whitney Lamson, P.A.
Glenn Beahm	KOLA



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

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Testimony of
James J. Welch, Assistant Attorney General
Before the Senate Judiciary
RE: SB 404
January 13, 1998

Chairperson Emert and Members of the Senate Judiciary:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla Stovall to testify in support of SB 404. My name is Jim Welch and I am an Assistant Attorney General for Consumer Protection.

The Attorney General supports SB 404, which amends K.S.A. 50-651, the odometer fraud statute. However, the Attorney General would ask that additional language be added to SB 404, which is contained in the substitute wording for SB 404 attached to my testimony.

The amendment to K.S.A. 50-651 contained in SB 404 was one of several automobile related proposals made by the Attorney General last session in SB 266. In 1995, a National Association of Attorneys General Report found serious problems in the auto repair industry, which led her to create an Attorney General Task Force to examine these problems. As a result of recommendations from that Task Force, the Attorney General submitted SB 266 last session. SB 266 was referred to the Special Committee on Judiciary, which ultimately recommended only the odometer portion of SB 266. Unfortunately, the language contained in SB 404 does not contain all of the amendments requested by the Attorney General relating to the odometer fraud statute.

The language proposed by the Attorney General would amend the odometer law by increasing the civil penalties from the current amount, \$2,000, to \$10,000 for violations of the criminal odometer fraud statute (K.S.A. 21-3757), and \$5,000 per violation of the title search disclosure statute (K.S.A. 50-653). The current version of SB 404 increases the civil penalty for criminal odometer fraud to \$10,000, but fails to increase the civil penalty for violations of the title search disclosure requirements of K.S.A. 50-653. The current penalty is simply too low to address the conduct involved, especially considering the \$5,000 penalty that can apply to other violations of the Consumer Protection Act.

The Attorney General's suggested language would also amend the odometer law to allow the Attorney General and county and district attorneys to recover reasonable expenses and investigative fees incurred in investigations of odometer fraud and disclosure violation cases. Recovery of

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investigative fees and expenses is allowed under the Kansas Consumer Protection Act, and Attorney General Stovall believes recovery in odometer fraud cases should be allowed as well.

On behalf of Attorney General Stovall, I urge your favorable consideration of Senate Bill 404. Thank you.

O:\RARRICKS\PUBLIC\LEGISLAT.98\SB404.TST

K.S.A. 50-651 is hereby amended to read as follows: 50-651. (a) The commission of any act or practice declared to be a violation of K.S.A. 21-3757 or K.S.A. 50-653, *and amendments thereto*, shall make the violator liable to the aggrieved consumer, or to the state, for the *following*:

(1) ~~Payment~~ Payment of a civil penalty, recoverable in an individual action or in an action brought by the attorney general in a sum set by the court of not more than ~~\$2,000~~ \$5,000 per violation: *of K.S.A. 50-653, and amendments thereto, and not more than \$10,000 per violation for violations of K.S.A. 21-3757, and amendments thereto; and*

(2) *reasonable expenses and investigation fees incurred by the attorney general, county, or district attorney.*

(b) The remedies provided in subsection (a) are in addition to any remedies available under federal odometer law.



KANSAS AUTOMOBILE DEALERS ASSOCIATION

January 13, 1998

To: The Honorable Chairman Tim Emert
and Members of the Senate Judiciary Committee

From: Don L. McNeely, KADA Executive Vice President

Re: SB 404 - Support

Chairman Emert and Members of the Senate Judiciary Committee:

Good morning, my name is Don McNeely, Executive Vice President of the Kansas Automobile Dealers Association, a state trade association representing the 302 franchised new car and truck dealers in the state of Kansas.

I appear before you this morning in support of the Special Committee on Judiciary's recommendation regarding 1997 legislation, SB 266, that resulted in SB 404, which would amend the odometer rollback statute, K.S.A. 21-3757, by increasing the penalty for criminal odometer fraud from \$2,000 to \$10,000.

I believe we would all agree that consumers should be protected from such illegal acts. However, I would be remiss if I did not respectfully point out that consumers are not the only victims of such acts. It is not unusual for our members to also become victims of such fraudulent acts perpetrated by individuals seeking to increase the value of the vehicle they are trading-in or those seeking to avoid excess mileage fees on vehicles which they have leased.

In closing, I would like to thank the Chairman and Committee members for allowing me to appear before you today. I would be pleased to stand for any questions.

DLM:md

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TESTIMONY BEFORE THE
SENATE JUDICIARY COMMITTEE

By
Art Griggs, Department of Administration
Concerning
SB 405

I am appearing today to testify on behalf of the Department of Administration in support of SB 405, and to request four additional amendments that will assist in a smooth transfer of the hearing functions of the Department of Social and Rehabilitation Services (SRS) to the new Office of Administrative Hearings within the Department of Administration.

With the passage of L. 1997, Ch. 182, §88 (now codified at K.S.A. 75-37,121), the SRS administrative hearings office will be transferred on July 1, 1998 to a newly created Office of Administrative Hearings within the Department of Administration. SRS and the Department of Administration have been working closely over the past six months to develop a plan for implementation, funding, and administering the new Office. During that process, we identified several changes to the authorizing statutes that would make that process more efficient. Two of these changes have been incorporated in SB 405.

Use the term "presiding officer" in lieu of "administrative law judge." The civil service system includes an "administrative law judge" (ALJ) classification that currently is assigned to Pay Grade 33 (\$47,838 per year at the job rate, Step 5). However, the hearing officers used by SRS currently include attorneys classified at an Attorney I level (Pay Grade 28, which pays \$37,475 annually at the job rate) or an Attorney II level (Pay Grade 31, which pays \$43,365 annually at the job rate). Those hearing officers classified as Attorney I or II are performing work at a level which is appropriate for that classification, rather than the ALJ classification. Therefore, implementation of K.S.A. 75-37,121 and related statutes that refer to use of an ALJ could unnecessarily increase salary expenditures unless amended to remove the apparent requirement to use ALJ's. "Presiding officer" is a term that is consistent with the Administrative Procedures Act. For this reason, SB 405 replaces the term "administrative law judge" with the term "presiding officer" in K.S.A. 75-37,121 and three related sections.

Clarify having court reporters on staff is optional. Under SB 405, the requirement that the Office hire court reporters will become permissive. *See subsection (b) of Section 2. (Line 9 of page 3).*

In addition to these changes, the Department of Administration requests four other amendments to K.S.A. 75-37,121. *(See Attachment I with proposed balloon amendments.)*

Permit persons directly supervised by an attorney to act as a presiding officer. This amendment provides the flexibility to use non-attorney personnel when the administrative hearing is of a routine, straightforward nature. For example, the Department of Administration currently uses law clerks for debt setoff hearings with a staff attorney supervising, thereby freeing the attorneys to handle more complex matters. *See Section 3, subsection (b). (Line 16 of page 3).*

Eliminate requirement to adopt separate personnel regulations. The provisions in K.S.A. 75-37,121 that require adoption of regulations establishing procedures for recruiting and selecting ALJ's, ALJ qualifications, and standards and procedures for evaluation, training, promotion, and

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discipline are deleted. There is no need to establish a separate, parallel personnel system for these employees. Existing regulations and provisions of the civil service system are appropriate and adequate. *See Section 3, subsection (e). (Lines 34-37 of page 3 and lines 3-5 of page 4).*

Provide permissive authority to adopt regulations. K.S.A. 75-37,121 requires the “Department of Administration” to adopt regulations January 1, 1999 that address certain matters. This provision is amended to provide permissive authority for the Secretary of Administration to adopt regulations covering the listed areas. This approach provides an opportunity to assess which aspects of the new office’s policies and procedures require the force and effect of law. *See Section 3, subsection (e). (Lines 32-33 of page 3).*

Provide authority to establish fees without regulations. K.S.A. 75-37,121 provides that the “department of administration may adopt rules and regulations to establish fees to charge a state agency” for the cost of using a presiding officer. The current funding agreements between SRS and the Department of Administration do not involve fees based on units of service, such as billable hours or hearings held. However, if the two agencies were to conclude that such fees would be useful, it is counterproductive to require that the fees be established by regulation. The process for adopting regulations takes more than three months at best and is cumbersome. That process is necessary and appropriate when an agency is implementing policies that must have the force and effect of law. However, as a provider of services to other state agencies, the Department of Administration sets numerous fees without adopting regulations, including motor pool rates, printing rates, personnel training class fees, health insurance premiums, building rental rates, leave assessment rates, self-insurance workers’ compensation rates, telephone service rates, central data processing rates and other information system charges. In none of these instances, which involve fees charged to state agencies rather than private individuals or organizations, has there been any perceived need to set rates with the force and effect of law. If at some point fees for use of presiding officers are charged to SRS or some other state agency, there is no sound policy basis for imposing a different requirement on those fees than any other established by the Department of Administration.

It should be noted that each of the proposed amendments to SB 405 other than the one relating to fees was also included in HB 2604, which was introduced by the Special Committee on the Judiciary as a result of its interim study. However, HB 2604 would dramatically and rapidly expand the responsibilities of the new Office of Administrative Hearings to include all hearings held under the Kansas Administrative Procedures Act, effective July 1, 1999. This would involve the hearings of over 42 state agencies. Our experience to date in planning for the transfer of the SRS hearing section suggests that there would be numerous issues to resolve relating to location, facilities, funding, and staffing of an expanded office. Moreover, there are extensive gaps in information about the resources currently required to handle hearings in other agencies, which greatly hinder our ability to develop reasonable assumptions about staffing, needed facilities, and cost. Therefore, it is the position of the Department of Administration that if the responsibilities of the Office of Administrative Hearings are to be expanded at all, it should be done only in small, manageable stages so that adequate data-gathering and planning can be completed in advance. SB 405, amended as proposed in Attachment I, provides a flexible statutory framework within which the new Office can be implemented and further incremental expansion could be evaluated.

Thank you for this opportunity to speak in support of SB 405 and for your consideration of the proposed amendments to the bill. I would be happy to stand for questions.

SENATE BILL No. 405

By Special Committee on Child Support Enforcement Oversight

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9 AN ACT concerning administrative procedure; relating to presiding of-
10 ficers; amending K.S.A. 75-3306, as amended by section 91 of chapter
11 182 of the 1997 Session Laws of Kansas, 75-37,121, 77-514, as
12 amended by section 92 of chapter 182 of the 1997 Session Laws of
13 Kansas, and 77-551 and repealing the existing sections.
14

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

16 Section 1. K.S.A. 75-3306, as amended by section 91 of chapter 182
17 of the 1997 Session Laws of Kansas, is hereby amended to read as follows:
18 75-3306. (a) The secretary of social and rehabilitation services, except as
19 set forth in the Kansas administrative procedure act and subsections (f),
20 (g), (h) and (i), shall provide a fair hearing for any person who is an
21 applicant, client, inmate, other interested person or taxpayer who appeals
22 from the decision or final action of any agent or employee of the secretary.
23 The hearing shall be conducted in accordance with the provisions of the
24 Kansas administrative procedure act.

25 It shall be the duty of the secretary of social and rehabilitation services
26 to have available in all intake offices, during all office hours, forms for
27 filing complaints for hearings, and appeal forms with which to appeal from
28 the decision of the agent or employee of the secretary. The forms shall
29 be prescribed by the secretary of social and rehabilitation services and
30 shall have printed on or as a part of them the basic procedure for hearings
31 and appeals prescribed by state law and the secretary of social and re-
32 habilitation services.

33 (b) The secretary of social and rehabilitation services shall have au-
34 thority to investigate (1) any claims and vouchers and persons or busi-
35 nesses who provide services to the secretary of social and rehabilitation
36 services or to welfare recipients, (2) the eligibility of persons to receive
37 assistance and (3) the eligibility of providers of services.

38 (c) The secretary of social and rehabilitation services shall have au-
39 thority, when conducting investigations as provided for in this section, to
40 issue subpoenas; compel the attendance of witnesses at the place desig-
41 nated in this state; compel the production of any records, books, papers
42 or other documents considered necessary; administer oaths; take testi-
43 mony; and render decisions. If a person refuses to comply with any sub-

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1 poena issued under this section or to testify to any matter regarding which
2 the person may lawfully be questioned, the district court of any county,
3 on application of the secretary, may issue an order requiring the person
4 to comply with the subpoena and to testify, and any failure to obey the
5 order of the court may be punished by the court as a contempt of court.
6 Unless incapacitated, the person placing a claim or defending a privilege
7 before the secretary shall appear in person or by authorized representa-
8 tive and may not be excused from answering questions and supplying
9 information, except in accordance with the person's constitutional rights
10 and lawful privileges.

11 (d) The presiding officer may close any portion of a hearing con-
12 ducted under the Kansas administrative procedure act when matters
13 made confidential, pursuant to federal or state law or regulation are under
14 consideration.

15 (e) Except as provided in subsection (d) of K.S.A. 77-511 and amend-
16 ments thereto and notwithstanding the other provisions of the Kansas
17 administrative procedure act, the secretary may enforce any order prior
18 to the disposition of a person's application for an adjudicative proceeding
19 unless prohibited from such action by federal or state statute, regulation
20 or court order.

21 (f) Except as provided in this subsection, decisions and final actions
22 relating to the administration of the support enforcement program set
23 forth in K.S.A. 39-753 *et seq.* and amendments thereto shall be exempt
24 from the provisions of the Kansas administrative procedure act and sub-
25 section (a). Decisions and final actions relating to the support enforce-
26 ment program may be reviewed pursuant to this section if the decision
27 or final action relates directly to federal debt set-off activities or the per-
28 son is specifically permitted by statute to request a fair hearing under this
29 section.

30 (g) Decisions relating to administrative disqualification hearings shall
31 be exempt from the provisions of the Kansas administrative procedure
32 act and subsection (a).

33 (h) The department of social and rehabilitation services shall not have
34 jurisdiction to determine the facial validity of a state or federal statute.
35 ~~An administrative law judge~~ A *presiding officer* from the office of admin-
36 istrative hearings shall not have jurisdiction to determine the facial validity
37 of an agency rule and regulation.

38 (i) The department of social and rehabilitation services shall not be
39 required to provide a hearing if: (1) The department of social and reha-
40 bilitation services lacks jurisdiction of the subject matter; (2) resolution
41 of the matter does not require the department of social and rehabilitation
42 services to issue an order that determines the applicant's legal rights,
43 duties, privileges, immunities or other legal interests; (3) the matter was

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1 not timely submitted to the department of social and rehabilitation serv-
2 ices pursuant to regulation or other provision of law; or (4) the matter
3 was not submitted in a form substantially complying with any applicable
4 provision of law.

5 Sec. 2. K.S.A. 75-37,121 is hereby amended to read as follows: 75-
6 37,121. On and after July 1, 1998: (a) There is created the office of ad-
7 ministrative hearings within the department of administration, to be
8 headed by a director appointed by the secretary of administration. ←

The director shall be in the unclassified service under the Kansas civil service act.

9 (b) The office shall ~~may~~ employ administrative law judges *presiding*
10 *officers*, court reporters and other support personnel as necessary to con-
11 duct proceedings required by the Kansas administrative procedure act for
12 adjudicative proceedings of the department of social and rehabilitation
13 services. The office shall conduct adjudicative proceedings of the de-
14 partment of social and rehabilitation services which are not under the
15 Kansas administrative procedure act when requested by such agency.
16 Only a person admitted to practice law in this state may be employed as
17 an administrative law judge a *presiding officer*. The office may employ
18 regular part-time personnel. Persons employed by the office shall be un-
19 der the classified civil service.

or a person directly supervised by a person admitted to practice law in this state

20 (c) If the office cannot furnish one of its administrative law judges
21 *presiding officers* in response to the department of social and rehabilita-
22 tion services request, the director shall designate in writing a full-time
23 employee of an agency other than the department of social and rehabil-
24 itation services to serve as administrative law judge *presiding officer* for
25 the proceeding, but only with the consent of the employing agency. The
26 designee must possess the same qualifications required of administrative
27 law judges *presiding officers* employed by the office.

28 (d) The director may furnish administrative law judges *presiding of-*
29 *ficers* on a contract basis to any governmental entity to conduct any pro-
30 ceeding not subject to the Kansas administrative procedure act or not
31 listed in K.S.A. 77-551 and amendments thereto.

secretary

32 (e) ~~On or before January 1, 1999,~~ the ~~department of administration~~
33 ~~shall~~ adopt rules and regulations:

may

34 (1) ~~To establish further qualifications for administrative law judges~~
35 ~~*presiding officers*, procedures by which candidates will be considered for~~
36 ~~employment, and the manner in which public notice of vacancies in the~~
37 ~~staff of the office will be given.]~~

38 ~~[(2)]~~ to establish procedures for agencies to request and for the director
39 to assign administrative law judges *presiding officers*. The department of
40 social and rehabilitation services may neither select nor reject any indi-
41 vidual administrative law judge *presiding officer* for any proceeding ex-
42 cept in accordance with the Kansas administrative procedure act;

43 ~~[(3)]~~ to establish procedures and adopt forms, consistent with the Kan-

(2)

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1 sas administrative procedure act, the model rules of procedure, and other
 2 provisions of law, to govern administrative law judges *presiding officers*;
 3 ~~[(4) to establish standards and procedures for the evaluation, training,~~
 4 ~~promotion and discipline of administrative law judges *presiding officers*,~~
 5 ~~and]~~

and

6 ~~[(5)]~~ to facilitate the performance of the responsibilities conferred
 7 upon the office by the Kansas administrative procedure act.

(3)

8 (f) The director may:
 9 ~~(1) Maintain a staff of reporters and other personnel, and~~
 10 ~~(2) implement the provisions of this section and rules and regulations~~
 11 ~~adopted under its authority.~~

secretary

12 (g) The ~~department~~ of administration may ~~adopt rules and regula-~~
 13 ~~tions to~~ establish fees to charge a state agency for the cost of using an
 14 ~~administrative law judge a *presiding officer*.~~

15 (h) Effective July 1, 1998, personnel in the administrative hearings
 16 section of the department of social and rehabilitation services and support
 17 personnel for such administrative law judges *presiding officers*, shall be
 18 transferred to the office of administrative hearings. Such personnel shall
 19 retain all rights under the state personnel system and retirement benefits
 20 under the laws of this state, and such person's services shall be deemed
 21 to have been continuous. This act shall not affect any matter pending
 22 before an administrative hearing a *presiding officer* at the time of the
 23 effective date of the transfer, and such matter shall proceed as though no
 24 transfer of employment had occurred.

25 Sec. 3. K.S.A. 77-514, as amended by section 92 of chapter 182 of
 26 the 1997 Session Laws of Kansas, is hereby amended to read as follows:
 27 77-514. (a) The agency head, one or more members of the agency head,
 28 an administrative law judge a *presiding officer* assigned by the office of
 29 administrative hearings, or, unless prohibited by K.S.A. 77-551, and
 30 amendments thereto, one or more other persons designated by the
 31 agency head may be the presiding officer.

32 (b) Any person serving or designated to serve alone or with others as
 33 presiding officer is subject to disqualification for administrative bias, prej-
 34 udice or interest.

35 (c) Any party may petition for the disqualification of a person
 36 promptly after receipt of notice indicating that the person will preside or
 37 promptly upon discovering facts establishing grounds for disqualification,
 38 whichever is later.

39 (d) A person whose disqualification is requested shall determine
 40 whether to grant the petition, stating facts and reasons for the determi-
 41 nation.

42 (e) If a substitute is required for a person who is disqualified or be-
 43 comes unavailable for any other reason, any action taken by a duly ap-

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1 pointed substitute for a disqualified or unavailable person is as effective
2 as if taken by the latter.

3 (f) If the office of administrative hearings cannot provide a presiding
4 officer, a state agency may enter into agreements with another state
5 agency to provide presiding officers to conduct proceedings under this
6 act.

7 (g) Notwithstanding any quorum requirements, if the agency head of
8 a professional or occupational licensing agency is a body of individuals,
9 the agency head, unless prohibited by law, may designate one or more
10 members of the agency head to serve as presiding officer and to render
11 a final order in the proceeding.

12 Sec. 4. K.S.A. 77-551 is hereby amended to read as follows: 77-551.
13 On and after July 1, 1998: (a) In hearings of the department of social and
14 rehabilitation services under K.S.A. 39-1807, 65-4015, 65-4606, 65-4927,
15 75-3306 and 75-3340, and amendments thereto, the presiding officer shall
16 be the agency head, one or more members of the agency head or an
17 administrative law judge a presiding officer assigned by the office of ad-
18 ministrative hearings.

19 (b) This section shall be part of and supplemental to the Kansas ad-
20 ministrative procedure act.

21 Sec. 5. K.S.A. 75-3306, as amended by section 91 of chapter 182 of
22 the 1997 Session Laws of Kansas, 75-37,121, 77-514, as amended by sec-
23 tion 92 of chapter 182 of the 1997 Session Laws of Kansas, and 77-551
24 are hereby repealed.

25 Sec. 6. This act shall take effect and be in force from and after its
26 publication in the statute book.

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BILL GRAVES
Governor

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DEPARTMENT OF ADMINISTRATION

LEGISLATIVE TESTIMONY

Bill Number: SB 405

Name of person testifying and division: Art Griggs

Name of Committee: Senate Judiciary

Chamber: Senate

Date: Jan. 13

Time: 10 AM

Room Number: 514 S

Explanation/Summary of Testimony: Support bill and

recommend some minor amendments.

Bill relates to the SRS administrative
appeals hearing office which, by virtue
of 1997 legislation, is due to be
transferred to the Dept. of Adm.
on July 1, 1998.