

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 20, 2007 in Room 313-S of the Capitol.

All members were present except:  
Marti Crow- excused

Committee staff present:  
Jerry Ann Donaldson, Kansas Legislative Research  
Athena Andaya, Kansas Legislative Research  
Duston Slinkard, Office of Revisor of Statutes  
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:  
Randy Hearrell, Kansas Judicial Council  
Tracy Dial, Director, Office Administrative Hearings  
Chris Biggs, Kansas Securities Commissioner  
Tom Thull, Kansas Banking Commissioner

The hearing on **SB 351**- office of administrative hearings, was opened.

Randy Hearrell, Kansas Judicial Council, appeared before the committee as a proponent to the bill. He explained that as the bill came out of the Senate it is consistent with the same format that the Kansas Judicial Council has supported in the past. The Office of Administrative Hearing (OAH) gives independence to the hearing officers from agencies over the proceedings and helps make clear judgements on cases. The advantage of the bill would be a huge cost savings to the state.

Beginning in July 2005 through July 2009 all state agencies, boards and commissions are subject to the Kansas Administrative Procedure Act and are being phased in and will have administrative hearings being done by OAH. Mr. Hearrell suggested that 1/2 of the agencies are in compliance with the Act and the rest are scheduled to be phased in by July 1, 2009. (Attachment 1)

Mr. Hearrell commented that the Uniform Law Commission is working on a model act and that the Judicial Council will be reviewing and making their recommendations.

Tracy Dial, Director, Office Administrative Hearings, stated that some agencies suggest that a central hearing office would result in the loss of agency expertise. However, the Act allows for the transfer of those hearing officers to the OAH, but that most agencies are eliminating those positions over time.

Mr. Dial pointed out that there is an exception to using the OAH when an agency head is a presiding officer and acts as the hearing officer. Chairman O'Neal stated that this is the reason for having the OAH in the first place, to avoid conflict.

Chris Biggs, Kansas Securities Commissioner, informed the committee that he currently serves as the hearing officer and makes decisions which are appealable to the district court level. When there is a conflict with the office and having him be a hearing officer, they appoint an outside hearing officer. (Attachment 2)

Mr. Biggs was asked what the difference was between having the district court hear a case and a hearing officer. He responded that judges have the ability to look at different fact matters. Certain levels of proof are different at the court level.

Tom Thull, Kansas Banking Commissioner, appeared in opposition of the bill. He stated that, as amended, it would lengthen the hearing process and increase costs to agencies, therefore delaying a prompt resolution of the issues at hand.

Commissioner Thull informed the committee that during 2006 they had 125 administrative actions, with 56 of them resulting in appearing before a hearing officer. Four have been petitioned to the district court where the agency's decision was upheld and one is still pending. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on March 20, 2007 in Room 313-S of the Capitol.

The hearing on **SB 351** was closed.

**SB 204 - requirements for persons required to register pursuant to Kansas offender registration act**

Representative Watkins made the motion to amend the bill to make it clear that judicial discretion is retroactive with regard to juvenile offenders and upon the effective date of Jessica's law. Representative Kinzer seconded the motion. The motion carried.

Representative Owens made the motion to delete the requirement that changes in registration be done within 3 days. Representative Wolf seconded the motion. The motion carried.

Representative Owens made the motion to delete the provision requiring sex offenders to report three times a year, but keep the provisions of clarifying that \$20 fee shall go to the sheriff's office to offset their expenses in handling the registration. Representative Kuether seconded the motion. Committee members expressed support for showing up three times a year because it keeps photos updated and keeps track of these offenders. The motion failed.

Representative Goyle made the motion to have the sex offenders show up in person when reporting twice a year. Representative Pauls seconded the motion. The motion failed.

Representative Wolf made the motion to delete the provisions requiring adjudicated juveniles moving into the state to have to register and the retro-activity provision. Representative Goyle seconded the motion. There was a request to divide the motion.

Part A - adjudicated juveniles - the motion carried.

Part B - retro-activity - the motion carried.

Representative Owens made the motion to delete the cyberspace provisions because they are not enforceable. Representative Kuether seconded the motion. The motion failed.

Representative Pauls made the motion to delete on page 14, lines 23 & 24 requiring a "sex offender safety link". Representative Kuether seconded the motion. The motion failed.

Representative Kinzer made the motion to report **SB 204** favorably for passage, as amended. Representative Whitham seconded the motion. The motion carried.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for March 21, 2007.

**JUDICIAL COUNCIL TESTIMONY  
ON 2007 SB 351**

INTRODUCTION

Senate Bill 351, as amended by the Senate Judiciary Committee, amends K.S.A. 75-37,121 concerning when state agencies must utilize hearing officers (presiding officers) provided by the Office of Administrative Hearings (OAH). Beginning July 1, 2005, and concluding July 1, 2009, all state agencies, boards and commissions subject to the Kansas Administrative Procedure Act (KAPA) are being “phased-in” to the requirement that OAH provide presiding officers for their hearings. Approximately one-half of administrative proceedings of state agencies are filed in accordance with KAPA. On July 1, 2009, the final group of agencies, board and commissions will be “phased-in.”

Prior to SB 351, a group of fee-funded agencies had successfully requested to be excepted from the application of K.S.A. 75-37,121. SB 351 eliminates the exception for these agencies, so that effective July 1, 2009, they will be required to use OAH presiding officers for their KAPA hearings.

HISTORY AND BACKGROUND

The current Office of Administrative Hearings was established July 1, 1998, by the provisions of K.S.A. 75-37,121. In 2004, the Legislature passed 2003 SB 141 which phased in the requirement that all state agencies, boards and commissions subject to KAPA use presiding officers provided by OAH. As a result of that bill, OAH currently conducts proceedings for SRS, KDHE, the Kansas Health Policy Authority, Kansas Department on Aging, Division of Accounts & Reports (State Debt-setoff Program) and coordinates the State Civil Service Board hearing process for the

Division of Personnel Services, along with many other state agencies.

### THE ADMINISTRATIVE PROCEDURE ADVISORY COMMITTEE

The Administrative Procedure Advisory Committee of the Judicial Council is comprised of judges, state agency lawyers, and private attorneys who regularly represent private parties before state agencies. The advisory committee was responsible for the creation of the Kansas Register in 1981, and the drafting of the Kansas Administrative Procedure Act (KAPA) (K.S.A. 77-501 *et seq.*) and the Act for Judicial Review and Civil Enforcement of Agency Actions (KJRA) (K.S.A. 77-601 *et seq.*). KAPA and KJRA were adopted by the Legislature in 1984 and have worked well, both for the public and state agencies. The advisory committee is currently conducting a comprehensive review of both KAPA and KJRA to determine whether any changes are needed.

KAPA and KJRA generally follow the Uniform Law Commissioners 1981 model state administrative procedure act, with modifications appropriate for Kansas. One aspect of the model act which the advisory committee has long favored is an independent Office of Administrative Hearings.

### REASONS FOR STATE CENTRAL OFFICE

The basic purpose of a central Office of Administrative Hearings is to give administrative hearing officers independence from agencies over whose proceedings they preside. Such independence promotes fairness in the hearing process and a perception of greater fairness, independence and impartiality if the presiding officer is not dependent on the agency for continued employment or advancement.

The central hearing office system consolidates a large number of hearing units into a professional, well-managed agency. This provides efficiency in implementing management systems for quality assurance, better performance evaluations, streamlined hearing processes, better training

(including cross-training), opportunities for peer consultation and the opportunity to develop a code of professional ethics.

The central hearing office achieves cost reduction by allowing a more even distribution of workload. There is also potential that use of independent hearing officers will cause agencies to more closely evaluate cases and perhaps promote settlements, thus reducing the number of hearings. A central office promotes consistency among agency proceedings and consistent policies on a number of issues common to state agencies.

Most states have adopted some form of a central hearing office and their experience is the central office has achieved cost efficiencies.

#### ARGUMENTS AGAINST OAH

Some agencies have expressed concern that a central office will result in a loss of agency "expertise." To the extent this concern relates to the inability to reflect expertise through policy implementation, it is reduced by the recommended authority of the agency head to review orders rendered by administrative hearing officers. To the extent the concern relates to loss of expertise of the hearing officer, the personnel transferred to the central office will bring along with them the special knowledge of each agency's type of cases, regulations and statutes, and a central office offers the opportunity to impart that specialized knowledge to other administrative hearing officers through cross training. In addition, the OAH has authority to contract with outside hearing officers if necessary.

In the opinion of the advisory committee, it is fair to place the burden on the agency to make known to the administrative hearing officer, and all parties, during the hearing process what the agency considers to be relevant matters of agency expertise or policy. Concerns with expertise of the administrative hearing officer should be balanced against concerns with the impartiality of the administrative hearing officer.

## INCREMENTAL EXPANSION OF OAH

Under K.S.A. 75-37,121, the responsibilities of the Office of Administrative Hearings are being incrementally expanded over a period of five years. Most years, one or two cabinet level agencies are added. In addition to each cabinet level agency, a group of small boards and commissions are added each year. This allows for manageable expansion.

Under 2007 SB 351, during the final year of the expansion, all other agencies which hold KAPA hearings will be added.



# KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR  
CHRIS BIGGS, COMMISSIONER

**TESTIMONY IN OPPOSITION TO SENATE BILL No. 351**  
**House Judiciary Committee**

**Chris Biggs**  
**Kansas Securities Commissioner**  
**March 20, 2007**

Mr. Chairman and Members of the Committee,

I would like to take this opportunity to testify in opposition to SB 351 as it was amended by the Senate Judiciary Committee. My office did not testify at the March 6, 2007, Senate Judiciary Committee hearing because the bill, as presented, would not have affected our operations. However, as amended by the Committee on March 12, SB 351 will now have an impact on this office and the investors of Kansas.

As background information, our administrative process does not operate in the same manner as that of the Department of Health and Environment, the subject of the complaint voiced by the one conferee at the Senate hearing. I, as Securities Commissioner, serve as the hearing officer and issue administrative decisions for the office. Those decisions are then appealable to the District Court.

Occasionally, when a conflict exists because our office is prosecuting an entity both administratively and criminally, I recuse myself and appoint an outside hearing officer. In that instance, I try to appoint someone who is already an expert in the subject matter of the particular case. A decision by an outside hearing officer can be reviewed by me to ensure that rulings are consistent; otherwise, we do not have a multi-level review process within the agency.

The area of securities regulation is a highly technical and specialized area of the law. It involves a blend of state law and federal law, as well as regulatory statements of policy from the North American Securities Administrators Association [NASAA] and self-regulatory organizational rules prepared by the NASD [formerly known as the National Association of Securities Dealers]. All of these regulatory segments must be reviewed and considered in any decision made by the hearing officer.

By appointing an expert as the hearing officer, it reduces the need to provide expert or foundational testimony on securities-specific issues, e.g., churning, selling away, suitability, etc., and products, e.g., stocks, mutual funds, investment contracts, promissory notes, certificates of deposit, oil and gas interests, etc. This makes the administrative hearing process much more efficient not only for our staff, but for respondents in our cases.

In at least the past ten years, we have never received a complaint about any of our outside hearing officers. The amendment to SB 351, while intended to level the playing field for respondents, would actually impair their ability to receive fair and efficient resolution of cases. Therefore, I would respectfully request that SB 351 be rejected in its current form so that I may continue to appoint qualified securities experts to hear cases referred by this office.

Thank you for allowing me the opportunity to testify on this bill. I would be willing to answer any questions for the Committee members.





# KANSAS

KATHLEEN SEBELIUS, GOVERNOR

OFFICE OF THE STATE BANK COMMISSIONER  
*J. Thomas Thull, Bank Commissioner*

## HOUSE JUDICIARY COMMITTEE

March 20, 2007

Chairman O'Neal and Members of the Committee:

Our agency opposes SB 351, in the form passed by the Senate. We believe the bill, as amended, could unnecessarily lengthen the hearing process, increasing costs to our agency, and delaying prompt resolution of issues that affect the industries we regulate and the consumers we assist.

As a fee-funded agency, costs of our operation are ultimately passed on to all the entities we regulate. Those entities, who are the individuals and companies that would request a hearing concerning a decision of the agency, have expressed no concerns that we are aware of, with respect to the current hearing process. In fact, the Kansas Association of Mortgage Brokers (KAMB) provided testimony in favor of SB 197 and SB 351 (both bills contained the exact same language, as introduced), which would have allowed our agency to continue to conduct our own hearings on and after July 1, 2009. That testimony, in its entirety, is attached for your review. In part, the KAMB indicated that the current hearing process "facilitates consistent and reasonable application of the laws, and timely disposition of hearings. Removing that process from the Bank Commissioner's office would only create another layer of bureaucracy that would slow the process and limit the expertise to make informed rulings often involving complex financial issues." While some issues are straightforward, some examples of more complex issues a hearing officer may need to be familiar with include mortgage fraud, calculation of interest using the actuarial method, secondary market transactions involving mortgages, application of state usury limits with regard to specific loan products, and application of federal laws and regulations, including Truth in Lending and RESPA. The KAMB goes on to note that removing the ability of the agency to appoint a hearing officer with financial expertise, "could create situations that would not benefit consumers or our industry." We are also concerned that a hearing officer from the office of administrative hearings will have little background in the particular area of law, less flexibility in scheduling hearings for either party, and lack the interest in facilitating settlement. The hearing officer we currently use is a licensed attorney. He has a financial background, having served as the securities commissioner for Kansas, and as a commissioner for the Kansas Corporations Commission. In addition, he is an expert in the area of administrative law and has taught administrative law at the law school level.

The quality of our current process is reflected by the infrequency of appeals or further challenges to agency-level adjudications. In calendar year 2006, of approximately 125 administrative actions, our agency had 56 cases that resulted in some appearance before a hearing officer, either through a pre-hearing conference, a discovery conference, or a full administrative hearing. For calendar year 2006, a total of four petitions for judicial review of agency orders were filed in the district court. Of those, one is pending, and in the other cases, the agency's decision was upheld by the court. These numbers reflect that the hearing officer is conducting full and fair hearings, and issuing decisions based on the facts presented.

The Office of Administrative Hearings provides a necessary service for agencies that want to use their services, either because they cannot or because they prefer not to conduct hearing within their agencies. However, we do not believe that use of the Office of Administrative Hearings should be imposed on agencies that are capable of conducting hearings in a fair and efficient manner.

I would respectfully request that the committee not approve SB 351 favorable for



Kansas Association of Mortgage Brokers  
14904 W 87<sup>th</sup> Parkway #234  
Lenexa, KS 66215

To: Senate Financial Institutions and Insurance Committee

February 6, 2007

RE: Testimony in support of SB 197

Madam Chairman and Members of the Committee:

On behalf of the Kansas Association of Mortgage Brokers (KAMB), I would like to express our Association's support for SB 197. KAMB believes appropriate, consistent regulation and oversight is a necessary and important step to insure consumer confidence and high standards of professionalism in the mortgage industry. Our association has worked closely with the Office of the State Bank Commissioner to promote consumer protection and weed out bad players who do not support the high standards of conduct to which our members subscribe. KAMB believes it is appropriate for the Bank Commissioner's office to retain the ability to conduct administrative hearings. The current process facilitates consistent and reasonable application of the laws, and timely disposition of hearings. Removing that process from the Bank Commissioner's office would only create another layer of bureaucracy that would slow the process and limit the expertise to make informed rulings often involving complex financial issues. This could create situations that would not benefit consumers or our industry. For these reasons, we urge the committee to act favorably on SB 197. Thank you in advance for your support.

Randy Anderson  
Randy Anderson  
Director of Legislative Affairs  
Kansas Association of Mortgage Brokers