

## MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Barbara Allen at 10:42 A.M. on March 13, 2008 in Room 519-S of the Capitol.

All members were present except:

Anthony Hensley  
Nick Jordan

Committee staff present:

Gordon Self, Office of Revisor of Statutes  
Chris Courtwright, Kansas Legislative Research Department  
Scott Wells, Office of Revisor of Statutes  
Ryan Hoffman, Kansas Legislative Research Department  
Judy Swanson, Committee Assistant

Conferees appearing before the committee:

Representative Tim Owens  
Joan Wagnon, Kansas Department of Revenue  
Tony Scott, Kansas CPA Association  
Paul Welcome, Johnson County Assessor

Others attending:

Hearing on **HB 2018--An act creating the state court of tax appeals and abolishing the state board of tax appeals** was opened.

Scott Wells, Revisor of Statutes, reviewed **HB 2018**, which would rename the Board of Tax Appeals (BOTA) the Court of Tax Appeals (COTA), and the Board members would be renamed Tax Law Judges.

Representative Tim Owens testified in support of **HB 2018**. (Attachment 1) He said the bill was the product of a 15-month sub-committee effort. The proposed four-member Board would consist of one CPA, one attorney and two others. Tax experience would not be necessary, but preferred for Tax Law Judges. COTA would be a quasi-judicial body. A current geographic requirement prohibiting more than one member from any congressional district would be repealed. Senator Lee expressed concern over that provision being repealed. Representative Owens said the person appointing the positions should take into consideration the fact all areas of the state should be represented. He said **HB 2018** is one of the more taxpayer-friendly bills that has been introduced in a long time. Removing the district court from the appeals process would eliminate up to one year of appeals time.

Rebecca Crotty, Chairman of BOTA, said she would be pleased to answer the Committee members' questions and concerns about **HB 2018**.

Paul Welcome, Johnson County Appraiser, commended Chairman Crotty on the expedition of the hearing process. He testified his goal was to have the commercial properties heard in a timely fashion and to eliminate the interest charge that is currently being paid by the county. (Attachment 2) Mr. Welcome would like to return to five Board members for COTA. He provided an overview of the commercial BOTA cases in Johnson County with his testimony.

Senator Schmidt expressed concern about taking the district court out of the equation for appeals. The **HB 2018** appeals process goes directly to the Court of Appeals. Ms. Crotty said the rules of evidence are more relaxed in BOTA. The issues of admissibility are currently considered in the appeals process. She said lay members of BOTA are subject to judicial rules and regulations.

Secretary Joan Wagnon, Kansas Department of Revenue, (KDOR), testified in support of **HB 2018**.

CONTINUATION SHEET

MINUTES OF THE Senate Assessment and Taxation Committee at 10:42 A.M. on March 13, 2008 in Room 519-S of the Capitol.

Tony Scott, Kansas CPA Association, testified as a neutral party relating to **HB 2018**. He supported the bill's removal of geographic diversity requirements. (Attachment 3) In response to Senator Schmidt, Mr. Scott said he feels CPAs are as infinitely qualified as attorneys, and a magistrate was not needed by COTA. Senator Lee questioned why it would be difficult to find CPAs or attorneys in all districts. Mr. Scott clarified BOTA board member J. Kubic is a Republican. Ms. Crotty said she was currently the "attorney" member of BOTA.

Court of Appeals Judge Richard Green discussed the appeals process with committee members. With respect to leaving the district court out of the appeals process he said the district court would just as soon not have those cases on their dockets. An increase in case loads could be handled by the Court of Appeals. Currently, the Court of Appeals judges tend to ignore what the district court did and look to the court of record, BOTA. The Worker's Compensation Board does not go through the district court on appeals. The Court of Appeals would like **HB 2018** better if all members of COTA were required to be members of the Kansas Bar.

Chairman Allen thanked Judge Green for his information and requested he put his key comments in writing as they would be helpful to the Committee as the bill is being considered. She then asked committee members to let her know if they would like additional information on **HB 2018**, a sub-committee for further study of the bill, to send the bill to interim, or to simply work the bill.

The hearing was closed.

Hearing on **HB 2520--Liability for taxes and other expenses related to conversion of lands into condominiums** was opened.

Paul Welcome, Johnson County Appraiser, testified in support of **HB 2520**. (Attachment 4) The bill would prevent condominium owners from being unfairly taxed for developable land designated for future condominiums. A problem arises with "convertible" land because the County Appraiser is required to appraise it as developable land. As a result, convertible land is appraised at a much higher value than regular common area. Cindy Dunham, Assistant Johnson County Counselor, explained the situation only arises when a developer builds on convertible land.

The hearing on **HB 2520** was closed.

Senator Apple moved to approve the minutes of the March 6 and March 12 Committee meetings. Senator Bruce seconded the motion, and the motion passed.

Being no further business, the meeting adjourned at 11:37 a.m. The next meeting will be March 19.

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COMMITTEE ASSIGNMENTS  
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Chairman, Corrections & Juvenile Justice Oversight

Sub HB 2018  
Testimony March 13, 2008  
SENATE TAX COMMITTEE

Madam Chair and members of the Committee:

Thank you for the opportunity to appear before you today to testify on Substitute HB 2018. I am Representative Tim Owens, a member of the House Taxation Committee and Chair of the BOTA Subcommittee. For approximately one year and three months, the BOTA Subcommittee heard testimony and considered a lot of research into the history and statutory requirements of the BOTA. Originally the mandate of the Committee was to determine if the BOTA was in need of change, particularly in the areas which had backlogs of cases. Through testimony and staff input, it was determined that the Board, under the chairmanship of Rebecca Crotty, needed to be given an opportunity to address concerns about the Board internally before the Legislature took action to make changes. In addition, the Committee wanted to have more information as to the best practices from other States.

The Board, under Chairperson Crotty's leadership, was able to make significant strides regarding the backlog of cases in the Board, particularly in the property cases. The Commercial cases continued to be backlogged more because of the process and lack of a full board to hear the cases. After significant review of the BOTA and its operation, the Subcommittee took action and made several recommendations for change which are listed below:

- Sub HB 2018 would rename the State Board of Tax Appeals (BOTA) the State Court of Tax Appeals (COTA), which would be construed to be an administrative law court within the executive branch of government. Various sections provide for the transfer of all jurisdiction, rights, powers, duties, and functions of BOTA to COTA.
- In addition to the three board members, who would be renamed as "Tax Law Judges," the bill would create a new position, Chief Hearing Officer. The Chief Hearing Officer, who would serve as a judge pro tempore of the court, would be appointed by the Governor and subject to Senate confirmation (as are members of BOTA under current law and as would be judges of COTA under the bill). The Chief Hearing Officer would be paid at the same level as a Tax Law Judge.

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- Any member of BOTA appointed prior to July 1, 2008 could continue to serve as a judge until his or her term expires. Additional language clarifies that the Governor could reappoint any judge, including the Chief Hearing Officer, to additional four-year terms. All judges and the Chief Hearing Officer would be required to be selected with special reference to tax, legal, or accounting training and experience.
- A current requirement prohibiting more than one member from any congressional district would be repealed.
- The current small claims division of BOTA would be renamed the "Small Claims and Expedited Hearings Division" of COTA. The Chief Hearing Officer would be responsible for appointing Hearing Officers of this division. Compensation for the Hearing Officers would be determined by the Chief Judge and then approved by the court.
- A current prohibition against filing fees' being imposed for certain single-family residential cases would be relaxed such that a filing fee of up to \$35 may be charged for appeals of decisions of the Small Claims and Expedited Hearings Division to the full COTA. Additional language clarifies that no filing fee shall be imposed on any such application or appeal of residential property filed with the Small Claims and Expedited Hearings Division.
- The Kansas Court of Appeals would have jurisdiction for review of most final COTA orders (except for certain no-fund warrant proceedings). Current law provides that district courts conduct any reviews of BOTA decisions relating to the valuation or assessment of all non-state-appraised property. Additional language would clarify that votes of two judges would be required for any final order of COTA.

This is a quick review of the recommendations found in Sub HB 2018. I would be happy to stand for questions Madam Chairperson and thank you, again, for allowing me to present this bill before the Senate Tax Committee.



# JOHNSON COUNTY APPRAISER'S OFFICE

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To: Senate Assessment and Taxation Committee

From: Paul A. Welcome, CAE & ASA

Date: March 13, 2008

RE: Sub HB 2018

It appears the following changes with Sub House bill 2018 are as follows::

- Renaming of BOTA to COTA
- Review of all of the orders is the jurisdiction of the court of appeals. This should expedite the court process) (p.2)
- Chief Hearing Officer shall serve as a judge pro tempore of the court. A manager position was funded in the past to handle small claims scheduling. However, this person was not judge pro tempore.(p.3)
- The three members are to be tax law judges with the following: two members from the practice of law and one with CPA and five years in practice. (Is there a need for this requirement?) (p.3)
- Residential Small Claims process remains free but there is a \$35.00 filing fee for those residential properties that file with the COTA. (It is my understanding BOTA would be able to waive the fee for those that cannot pay this fee?)(p.10)

The county would like to have the following accomplishments with a passage of a Sub House 2018 bill. I

- A process to have the final decisions for residential cases heard and finalized before the tax bills are sent to the property owner. Currently, we are not able to accomplish this. Can the creation of the Chief Hearing Officer accomplish this, I am not sure. Does the county continue to have the right to appeal the value.
- To have the commercial properties heard timely and to eliminate the interest charge that is currently being paid by the county. A three year average is over \$225,000 per year. BOTA controls the scheduling of the cases. It is very important to have those high valued properties move through this process. Usually, if a prior case is pending in the District or Court of Appeals, BOTA will not schedule those cases until a final decision is reached in the higher court.
- Also, the legal process cannot handle cases in a timely manner for complex and high valued properties. We currently have a property with a value dispute in the \$100,000,000 range. We both have to hire valuation experts and they need time to estimate a value. By the time the case is heard we will have two to three years' values at stake. This becomes a huge potential liability for the jurisdictions. In addition, the county has the interest charge to be paid based on the total tax bill. How can these be handled effectively?

Potential remedies for BOTA

- Return BOTA to the original five board members. This should help with the scheduling of hearings at the BOTA level.
- The specific qualifications for BOTA members could hamper the governor in the search for potential qualified candidates. (CPA with five years active practice and practicing attorneys)
- Filing fee may help with the residential cases filing to BOTA after the hearing with the Small Claims Division
- Will the elimination of the district court resolve solved this issue, time will tell us.

**Commercial BOTA cases  
Johnson County only**

<b>Year</b>	<b>Total # of Cases</b>	<b>Not Heard</b>	<b>BOTA Hearing Held</b>	<b>Pending Decision</b>
2003	4	4	0	0
2004	6	6	0	0
2005	13	12	1	1
2006	37	36	1	6
2007	322	295	0	27
<b>TOTAL</b>	<b>382</b>	<b>353</b>	<b>2</b>	<b>34</b>



# Kansas Society of Certified Public Accountants

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## TESTIMONY

Tony A. Scott, JD, CPA  
Executive Director

To: The Honorable Barbara Allen, Chair  
Members, Senate Committee on Assessment and Taxation

From: Tony A. Scott

Date: March 13, 2008

Re: Testimony as Neutral Party relating to Substitute for HB 2018

Ladies and Gentlemen of the Committee:

Approximately 2,600 members strong, the Kansas Society of Certified Public Accountants is the statewide professional association of CPAs *dedicated to implementing strategies that enhance the well-being of our members, the accounting profession and the general public.* My name is Tony A. Scott and I am Executive Director of the KSCPA. **Today I am testifying as a neutral party relating to the Substitute for HB 2018.**

The Board of Tax Appeals serves a compelling function for Kansans vis-à-vis their judicial review of tax appeals, tax protests, tax grievances and/or tax exemptions. Individual and collective qualifications and credentials for members of the Board are, therefore, an integral part of the fair and reasoned decisions they render. By virtue of education, examination and experience, and employing professional standards of independence, integrity and objectivity, the CPA is well-suited to carry out statutory responsibilities of the Board. We believe maintenance of the Board seat statutorily dedicated to a Certified Public Accountant actively engaged in the practice of certified public accountancy for a period of at least five years is a compelling component of the bill.

We also applaud the bill's removal of geographic diversity requirements insofar as those requirements may impede gubernatorial appointment of the most competent and qualified candidate(s) who are otherwise ready, willing and able to serve but are regrettably outside congressional district(s) from which appointments are to be made. Our institutional experience is that the Governor, whomever he or she may be, works to ensure geographic diversity on Boards, Commissions and the like so that continuation of a statutory requirement for geographic diversity is redundant, potentially discriminatory against otherwise qualified candidates, and therefore unnecessary.

It is my honor and privilege to appear before you today. I will be pleased to stand for questions at the appropriate time.

Respectfully submitted,

Tony A. Scott

TAS/mmi

Assessment & Taxation  
Date 3-13-08  
Attachment # 3



# JOHNSON COUNTY APPRAISER'S OFFICE

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**To: Senate Assessment and Taxation Committee**  
**From: Paul A. Welcome, CAE, ASA, & RMA**  
**Subject: Testimony in support of HB 2520**  
**Date: March 13, 2008**

Chairperson and committee members, I am Paul Welcome, Johnson County Appraiser, and I appear here today on behalf of the Board of County Commissioners of Johnson County. I appreciate the opportunity to appear before the Committee and to present testimony in support of House Bill 2520.

HB 2520 will amend K.S.A. 58-3115a to prevent condominium owners from being unfairly taxed for developable land designated for future condominiums. Under HB 2520, condominium developers, not the owners of already built units, will be liable for real estate taxes owed on "convertible land" that is awaiting development as future condominium units.

Currently, under the Kansas condominium statutes (known as the Apartment Ownership Act), when developers are platting a condominium, they can designate part of the condominium as "convertible land." K.S.A. 58-3111. Convertible land is a part of the condominium site that has been set aside for future condominiums. K.S.A. 58-3102(h).

Until it is converted, convertible land is deemed part of the common area and, therefore, is not separately taxed. K.S.A. 58-3115a & 3122. Instead, the value of the common area is spread among all the condominium owners based on their undivided interests in the common areas as set forth in the condominium declaration. In other words, when a condominium owner receives a real estate tax bill, it is for the value of their unit along with a percentage of an undivided interest in the common areas of the whole condominium development.

A problem arises with convertible land because the county appraiser is required to appraise it as developable land. As a result, convertible land is appraised at a much higher value than regular common area. Based on how K.S.A. 58-3115a and 58-3122 are currently written, the relatively high value of the convertible land ends up being spread among the existing condominium owners. The owners' real estate tax bills increase because their undivided interest in the highly appraised convertible land is included in their tax bill. Meanwhile, the developer does not have to pay any tax on the land he is ultimately planning to convert and sell as condominium units. In other words, the tax burden for the convertible land is unfairly shifted to the existing condominium owners while the developer, who will ultimately profit from the development and sale of more condominiums on that convertible land, does not have to pay any taxes on it.

For example, a developer records a condominium plat showing that the project will ultimately contain ten units. However, five of those units are designated as "convertible" and will not initially be built with the other five units. The five built units are valued by the appraiser at \$100,000 each. Then, because the condominium plat contains five convertible units, the appraiser must place a value on the convertible land, which is valued as developable land rather than ordinary common area. The value is based on the right to build five more units, as established by the plat, declaration, and the Kansas statutes. So, let's say the



appraiser values the unbuilt convertible units at \$15,000 each, which totals \$75,000. Under the current statutory scheme, the convertible land is treated as common area and, thus, each of the current condominium unit owners has an undivided interest in the common area. Since in our example we have five built units, the result is that an additional \$15,000 in value will be added onto each of those built units. Each of the owners of the built units winds up with a value of \$115,000 and will pay real estate taxes based on that value. The end result is that the real estate tax liability on the convertible land is shifted from the developer to the existing condominium unit owners.

HB 2520 will alter the result in our example by requiring the tax liability on convertible land to remain with the developer prior to conversion and not be passed over to the existing condominium owners. Similarly, HB 2520 includes a provision that any income or proceeds from the convertible land will be retained by the developer. The result is a fair distribution of the real estate tax liability on convertible land prior to conversion.

We appreciate your consideration of this problem and of the proposed solution, HB2520, and urge your support of this amendment. Thank you.