

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairman David Wysong at 8:30 a.m. on March 10, 2009, in Room 545-N of the Capitol.

All members were present.

Committee staff present:

Ms. Margaret Cianciarulo, Committee Assistant
Mr. Norm Furse, Office of the Revisor of Statutes
Mr. Ken Wilke, Office of the Revisor of Statutes
Mr. Reed Holwegner, Kansas Legislative Research Department

Conferees appearing before the Committee:

Representative Steve Brunk, 85th District Chairman House Commerce & Labor
Ms. Mary Diane Minear, Legal Counsel, Deputy Assistant for Secretary of State
Mr. Jeff Barnes, Chairman, Kansas Home Inspectors Regulatory Board Agency 130
Mr. Kerry Parkham, President, Kansas Association of Real Estate Inspectors
Mr. Dan Bowers, Building Consultant, Holmes Inspection Company

Others attending:

See attached list.

Hearing on HB2260 - an act concerning the Kansas home inspectors professional competence and financial responsibility act.

Upon calling the meeting to order, Chairman Wysong announced a hearing on **HB2260** and called upon the first of three proponents to testify, Representative Steve Brunk, 85th District and Chairman, House Commerce & Labor, who offered an explanation as to why the bill is so marked up, beginning with a previous bill last year (**HB2315**) that established a home inspectors board. He stated with the goal being to establish a board that would be able to self regulate, the Committee was trying to put together some mechanism that would be consistent with many of the other boards that already existed, to copy what the home inspectors would do off of some of the existing boards. He went on to say, now that the board members were appointed, **HB2260** would actually help them with their functions, with some of the changes being made at their attorney's suggestion.

He added there was a point where they felt they needed the ability if there was some allegation of misconduct by a home inspector, to deal with this person as one of the elements of the board's functions. They were told they need to have some mechanism to be able to fingerprint if they were going to do some kind of investigation. The committee felt this was an over reach saying no home inspector goes into a home unannounced, so this is the reason there is so much strike out language on page one, Section 1. He went on to say, they did pick up some additional information that gives them the appropriate edict (found on page 5, lines 23 through 41), establishing a code of ethics and the ability to ask certain inspectors for some documentation and paperwork if there is an allegation. Lastly, he referred to page 4, lines 40 and 41 that are stricken because it was an error, stating originally it was discussed what authority they would be under and one of the bills they had, said that the Secretary of State would keep the records. No written testimony was offered.

The Chair recognized Senator Schodorf who stated the Secretary of State was not a mistake, "it may not have been the right place to put it, but in that Committee, when the Chairwoman was concerned with the large fiscal note and the technical corp. of engineers' architecture did not want, so the Committee talked to the Secretary of State who sort of agreed to set up the books there."

As there were no questions of Representative Brunk, Chairman Wysong called on Ms. Mary Diane Minear, Legal Counsel, Deputy Assistant for Secretary of State who stated she was testifying before the Committee as a neutral conferee, to answer questions relating to **HB2260** assigning the Secretary of State as custodian of the permanent records for the Kansas Home Inspectors Registration Board (KHIRB). She went on to offer a brief history of how this assignment came about:

- in the 2008 legislative session, **HB2315**, which created the KHIRB, was passed.

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- Section 3, Paragraph (3) ©, which is now K.S.A. 58-4503, required the secretary of this board maintain the permanent records and in this same paragraph, required the Secretary of State to be the custodian of all permanent records of the board.

Adding, she said, the definition of "Official Custodian" as shown in K.S.A. 2008 Supp. 45-217, of the Kansas Open Records Act, along with Black's Law Dictionary defining "maintenance," the duties assigned to both the secretary of the KHIRB's board and the Secretary of State mirror one another and as written, it is their belief, that neither can fulfill their statutory obligations.

Ms. Minear, requests that K.S.A. 58-4503 be amended to remove the Secretary of State as custodian of the permanent record for the KHIRB and allow them the autonomy to maintain custody of its records. A copy of her testimony is ([Attachment 1](#)) attached hereto and incorporated into the Minutes as referenced.

The Chair then recognized Senator Schodorf who asked if the Board is able to perform all of the duties that are described in the bill?

As there were no further questions for Ms. Minear, the Chair called on the second proponent conferee, Mr. Jeff Barnes, Chairman of Kansas Home Inspectors Regulatory Board Agency 130 who stated during the process of developing the rules & regulations and working through the steps necessary to implement the provisions of this law, they have determined that not only are they not be able to maintain the intent and spirit of the original bill, but will not be able to implement or enforce the bill without making the requested corrections and adjustments:

1. Offering a balloon amendment to clarify language deficiencies and implementation date confusion as identified by the Attorney General's office including:

A. Insert the word "registered" on page 7, line two after the second "the" to read "registered home inspector."

B. On page 11, line 31 before the first word "home" to read registered home inspector."

2. Offering a second balloon as a requirement of the bonding industry as a prerequisite to issuing a bond. The language will be added on page 8, line 17 before © and should be listed as (I) of sub paragraph (B).

He included a listing of each correction, addition, or adjustment of the bill and the reason for the change for the items which passed out of the House, to assist the Committee in understanding the reasoning for the requested changes.

Lastly, he stated the intent of the final bill last year was to set it up in a two-tier fashion:

1. Tier 1 states that inspectors who work in populations of sixty thousand or more are to be registered by July 1 of this year. However, the word "registered" was inadvertently left out in a couple of places causing that part of the bill to be enforced on July 1 of last year according to the Attorney General But with the bill not being signed off until 5-18, it only gave inspectors a month and a half to make changes to legal documents and how the way they operate their business.

2. Tier 2 states those inspectors who work in populations of 60 thousand or less are required to be registered by July 1, 2011 and with that language it also makes them responsible for those same change last year. They are asking that the word "registered" be inserted into the bill as shown on his attachments and offered for the revisor's benefit. (See a copy of both page 7 and 11 of the bill.) A copy of his testimony, balloons, and list are ([Attachment 2](#)) attached hereto and incorporated into the Minutes as referenced.

The Chair then asked for questions or comments from the Committee which came from Senators Emler opposing the change Mr. Barnes offered on page 3, lines 21 through 28 as there is no uniformity in the law at all and did they have rule and regs? A discussion ensued regarding Senator Emler's second question

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regarding the chair of the board being a registered home inspector and the vice president taking over (found on page 2) but there was no reference that the vice president be a registered home inspector. On page 5 reference was made to "standards of practice" and asking if this was a grammatical error (is it standards or standard)? In reference to the same page and section, but regarding the code of ethics, Senator Lynn asked is it particular to Kansas? Lastly Senator Reitz asked were there any opponents to this bill?

As there were no further questions or comments, the Chair called on the final proponent conferee, Mr. Kerry Parkham, President, Kansas Association of Real Estate Inspectors (KAREI) who stated they support that the Chairman of the KHIRB board be a registered home inspector and support wording allowing a non-registered person to assist a registered home inspector during an inspection, as they have members with health issues that cause them to require assistance carrying tools and getting around tight or high places.

He went on to say they do not support the Attorney General's opinion regarding implementation dates and provisions of the original **HB2315** and know as coauthor, the original intent of the legislation was to establish only rules for registered home inspectors with no provisions applicable to anyone until July 1, 2009, and only later for those in rural areas. As it is now interpreted, liability limits, bond and insurance provisions began for everyone on July 2, 2008. (A bond for this purpose is not yet available in the state of Kansas.) A copy of his testimony is ([Attachment 3](#)) attached and incorporated into the Minutes as referenced.

As there were no questions of Mr. Parkham, the Chair called on Mr. Dan Bowers, Building Consultant, Holmes Inspection Co., the only opponent conferee, who also offered a listing of each correction, addition or adjustment and the reason for the change. As they were running short of time, Chairman Wysong asked Mr. Bower for written testimony to be given to the Committee Secretary and the Revisor and that he can continue his testimony at tomorrow's meeting.

Referring the Committee to Mr. Wilke's handout, the Chair stated he had asked Mr. Wilke to go section by section of the bill to make this a little easier (similar to Mr. Barnes list), and that tomorrow they would take the easy part first referring to Mr. Wilke's technical corrections, and then go to substantive corrections. A copy of Mr. Wilke's handout is ([Attachment 4](#)) attached hereto and incorporated into the Minutes as referenced.

Adjournment

As there was no further business or discussion, the Chair adjourned the meeting. The time was 9:28 a.m.

The next meeting is scheduled for March 11, 2009.