

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on January 29, 2008 in Room 313-S of the Capitol.

All members were present except:

Representative Ben Hodge - Excused
Representative Raj Goyle - Excused
Representative Paul Davis - Excused
Representative Kevin Yoder - Excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

John Campbell, Kansas Insurance Department
Judge Stephen Leben, Kansas Judicial Council
Niki Christopher, CURB (Citizen Utility Ratepayer Board)
Martha Coffman, Kansas Corporation Commission

John Campbell, Kansas Insurance Department, appeared before the committee with a bill request that would make amendments to the insurance code with regard to the difference of opinion of who has the authority to implement rules and regulations. Representative Owens made the motion to have the request introduced as a committee bill. Representative Whitham seconded the motion. The motion carried.

Representative Joe Patton appeared before the committee with a bill request relating to conflicts between child in need of care and child support cases. He made the motion to have his request introduced as a committee bill. Representative Roth seconded the motion. The motion carried.

Representative Jim Ward requested a bill that relates to bonds contractors put up against fraud. He made the motion to have his request introduced as a committee bill. Representative Whitham seconded the motion. The motion carried.

Chairman O'Neal appeared before the committee with a bill request relating to insurance code regulation of Wrap-up policies. Representative Owens made the motion to have the request introduced as a committee bill. Representative Colloton seconded the motion. The motion carried.

The hearing on **HB 2619 - change of Judge in civil case**

Jerry Donaldson, Legislative Research Department, provided the committee with an overview of the Special Committee on Judiciary recommendations. They were charged with studying in more detail 2007 SB 86, which requires a change of a judge in a civil action if there is a written request filed by either party. The request would be granted only once and would be mandatory. The Committee felt that there was no support for that bill but because there are several different statutes addressing change in judge, requested a bill be drafted that clearly requires the litigant to prove the allegations with substantive evidence. The result was **HB 2619.**

Chairman O'Neal announced that the proposed bill is clarifying in nature. He would contact the Office of Judicial Administration to see if there is any interest by judges to have that clarification, if not the bill would not be worked.

The hearing on **HB 2618 - administrative procedure amendments**, was opened.

Jerry Donaldson provided the committee with a brief overview of the Special Committee on Judiciary recommendations. They requested legislation be drafted to clarify that the judicial review shall be on the entire record, including the record of any adjudicative hearing conducted by a presiding officer. It would also place the burden of proof on the agency where a substantial property right is affected.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on January 29, 2008 in Room 313-S of the Capitol.

Judge Stephen Leben, Kansas Judicial Council, appeared to support the concept of the bill but asked the committee to consider the proposed amendments:

1. Clarify that the burden of proof in licensing proceedings is clear and convincing evidence and that it would only apply to occupational and professional licensing disciplinary proceedings against an individual and would not apply to business licensing proceedings.

2. Strike section 3 and replace with amendments from K.S.A. 77-527 (agency review) and 77-621 (judicial review). It would require an agency to give "due regard" to a hearing officer's credibility determinations.

3. Adding a separation of functions requirement and expanding the prohibition of *ex parte* communications.

He believes the amendments would achieve the same goals as **HB 2618**. The proposed amendments are based on the Revised Model State Administrative Procedure Act. (Attachment #1)

Niki Christopher, CURB (Citizen Utility Ratepayer Board), specifically supported the provisions that would allow for a whole record review of any agency actions. Agencies need to demonstrate, on paper, why they made the decisions they made and allow the courts the ability to look at any part of the record. (Attachment #2)

Martha Coffman, Kansas Corporation Commission (KCC), has concerns with section 3 and the changes that may occur because of it. Such as, it could be read to change the scope of judicial review to allow courts to exercise *de novo* review of all administrative proceedings and not necessarily take any of the agencies explanation of their decisions into consideration. She suggested that the courts do not have experts in evaluating applications and determining appropriate utility rates, mergers and acquisitions. (Attachment #3)

Chairman O'Neal disagreed with the statement above because an agency's final order has their explanation of their decision. Ms. Coffman stated that she is concerned that they will have to be more specific in their explanation of their decision. She requested that the KCC be exempted from the scope of review.

Chairman O'Neal stated that the proposed language by the Judicial Council is actually better language and that the committee would consider adopting that language and suggested that Ms. Coffman look it over.

The hearing on **HB 2618** was closed.

The committee meeting adjourned at 4:30p.m. The next meeting is scheduled for January 30, 2008.