

SESSION OF 2008

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR HOUSE BILL NO. 2618**

As Amended by Senate Committee of the Whole

Brief*

Sub. for HB 2618, as amended, would provide that the presiding officer from the Office of Administrative Hearings could order certification of policy issues to a state agency when the proceeding involves questions of policy and there are no established policies in statutes, rules and regulations, or agency precedents.

The bill also would provide that all state agencies, boards, or commissions would be required to use the Office of Administrative Hearings (OAH) for conducting adjudicative hearings under the Kansas Administrative Procedure Act (KAPA). The exceptions would be the Kansas Board of Tax Appeals, the Kansas Corporation Commission, and the Kansas Department of Insurance for hearings specified in the bill.

Intensive Groundwater Use Control Area (IGUCA) hearings would be adjudicative hearings within the meaning of the bill. Further, the Senate Committee broadened the bill to provide that any adjudicative hearing, whether expressly covered by KAPA or not, would be required to use the OAH for conducting the adjudicative hearing, except for Kansas Board of Tax Appeals hearings, Kansas Corporation Commission hearings, and specified hearings for the Kansas Department of Insurance.

“Adjudicative hearing” would mean any hearing or proceeding requiring resolution of disputed facts to formulate and issue a decision or order, but would not include hearings or

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

proceedings conducted by the Kansas Department of Corrections or the Parole Board.

Additionally, the term “adjudicative hearing” would not include any informal conference on property valuation of public utility property, motor vehicle property tax, income tax, or the drug stamp tax.

From July 1, 2008, through July 1, 2009, a presiding officer for all adjudicative hearings for designated agencies would be provided. The presiding officer would render an initial order which would become a final order unless reviewed. After July 1, 2009, this provision would apply to all state agencies.

Other provisions of the bill would do the following:

- Require the burden of proof for disputed issues of fact in occupational or professional licensing disciplinary proceedings be by clear and convincing evidence;
- Require the term “in light of the record as a whole” in the context of Judicial Review to mean that the adequacy of the evidence in the record before the court to support a particular finding of fact must be judged in light of all the relevant evidence in the record.
- Require that a person would be disqualified from being a presiding officer and could not provide confidential legal or technical advice to a presiding officer if that person:
 - Has participated in any stage of an investigation or prosecution of the proceeding or a proceeding arising out of the same event or transaction;
 - Is supervised or directed by a person disqualified under the prior provision; or
 - Has participated in the creation of a summary order as part of another stage of the proceeding.

- Require that a presiding officer could not communicate with a person who has served in an investigatory capacity.
- Provide that the Commissioner of Insurance would be the presiding officer for all adjudicative hearings specified in the bill, unless it would be contrary to any other provision of law.
- Provide that the unsuccessful party in a state agency proceeding pay the costs paid by the state agency, in proportion to the party's level of participation.

Background

Judge Stephen Leben, Kansas Judicial Council, appeared in support of the bill in the House Committee. Niki Christopher spoke in favor of the bill. Opposition to the bill was offered by Martha Coffman on behalf of the Kansas Corporation Commission.

The House Committee of the Whole added the provision that would require the less restrictive interpretations of federal regulations, statutes, or national building or fire codes by other states.

The proponents of the bill included Representative Bill Otto; Steve Schwarm, Kansas Judicial Council; and Larry Magill, Kansas Association of Insurance Agents. Providing written testimony was Robert Waller, Kansas Board of Emergency Medical Services.

The opponents of the bill included Paul Allen, Chair, Board of Accountancy; Tony Scott, Kansas Society of CPAs; Richard Cram, Department of Revenue; Tom Whitaker, Kansas Motor Carriers Association; Gary Reser, Kansas Veterinary Medical Association; Sandy Praeger, Commissioner of Insurance; Rick Fleming, General Counsel, Office of the Securities Commissioner; Roger Werholtz, Secretary of Corrections; Pam Scott, Kansas Funeral Directors and Embalmers Association; John Smith, Kansas Department of Credit Unions; Sherry Diel,

Kansas Real Estate Commission; Tom Thull, Bank Commissioner; Cecil Kingsley, Kansas State Board of Technical Professions; Kansas Parole Board; Mack Smith, Kansas State Board of Mortuary Arts; A.J. Kotich, Kansas Department of Labor; Verle D. Carlson, Kansas Board of Veterinary Examiners; Larry Buening, Kansas Board of Healing Arts; Capt. Dan Meyer, Kansas Highway Patrol; John Badger, Social and Rehabilitation Services; Joann Corpstein, Department on Aging; Betty Wright, Kansas Dental Board; Dan McLaughlin, State Fire Marshal; Trudy Aron, American Institute of Architects; and Phyllis Gilmore, Behavioral Sciences Regulatory Board.

Appearing as a neutral conferee was Yvonne Anderson, Kansas Department of Health and Environment.

The Senate Committee deleted the amendment adopted by the House Committee of the Whole which would have required that a Kansas state agency use the less restrictive interpretation of a federal regulation, statute, or building or fire code.

The Senate Committee also amended the bill to clarify that IGUCA hearings are adjudicative hearings within the meaning of the bill. Further, the Senate Committee broadened the bill to provide that any adjudicative hearing, whether expressly covered by KAPA or not, would be required to use the OAH for conducting the adjudicative hearing, except for Kansas Board of Tax Appeals hearings and Kansas Corporation Commission hearings.

The Senate Committee of the Whole amended the bill to:

- Exclude specified hearings conducted by the Kansas Department of Insurance from the bill;
- Exclude the Kansas Department of Corrections and the Parole Board hearings from the definition of adjudicative hearing;

- Exclude any informal conference on property valuation of public utility property, motor vehicle property tax, income tax and drug stamp tax from the definition of adjudicative hearings;
- Provide that the Commissioner of Insurance would be the presiding officer for all adjudicative hearings for the agency specified in the bill, unless it would be contrary to any other provision of law.
- Provide that the unsuccessful party in a state agency proceeding pay the costs paid by the state agency, in proportion to the party's level of participation.

The fiscal note on the substitute bill was not available when the bill passed out of committee.