

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Tuesday, February 24, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator Dwayne Umbarger- arrived 9:39 a.m.
Senator Edward Pugh- arrived 9:50 a.m.
Senator Greta Goodwin- arrived 9:38 a.m.
Senator Les Donovan-arrived 9:40 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee: None

Others attending: See attached list.

Final Actions:

SB 461 - Limitations on acquisition of land by eminent domain by a port authority and county

Chairman Vratil called for continued discussion and final action on **SB 461**. The Chair explained the bill, and said there were possible amendments. He directed the Committee's attention to language on page 1, line 40, through to page 2, line 4, and questioned whether the language was necessary through the words "land or site". He explained that current law requires legislative approval when a port authority is organized, and current law also indicates legislative approval is necessary when a port authority wants to modify, amend, or extend the authority's official plan. He said he did not know what the language at the top of page 2 added, and thought it could be deleted. Senator Goodwin agreed, and thought it was added as a safeguard for the land owners and citizens of Cowley County. (Attachment 1)

Considerable Committee discussion and questions followed. Senator O'Connor made a motion to adopt the proposed amendment by deleting the wording on page 2 in lines 1, 2, and 3, and the words in line 4 "upon such acquired land or site". The motion was seconded by Senator Donovan. The motion carried. Senator Goodwin requested her "no" vote be recorded.

Senator Schmidt made a motion to recommend **SB 461**, as amended, favorable for passage, seconded by Senator Goodwin, and the motion carried.

SB 430 - Results of a survey or inspection report of an adult care home used only for determining compliance with state law; not admissible as evidence in a civil proceeding

Chairman Vratil called for discussion and final action on **SB 430**. Senator Schmidt said that the Revisor had a balloon amendment to distribute which was proposed by the Kansas Health Care, Inc. He explained the amendment and that it included provision for continuing education for staff of adult care homes. (Attachment 2)

The Chair stated that the Committee would first consider Senator Schmidt's amendments, and then the Kansas Trial Lawyers Association (KTLA) also had a slight modification concerning the admissibility of surveys or inspection reports offered in the form of a clarifying amendment. (Attachment 3)

Senator Schmidt made a motion to adopt the balloon amendment presented, seconded by Senator Donovan, and the motion carried.

Chairman Vratil presented the proposed KTLA amendment relating to language on page 2, to strike the wording "all one or more excerpts from", and the other is to strike the reference language "directly or indirectly refer and or". Senator Schmidt clarified the proposed changes by the strikeouts.

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Senator Umbarger made the motion to adopt KTLA's proposed amendment, and seconded by Senator Betts.

The Chair called for Committee discussion on the motion. Senator Schmidt expressed his concerns about the proposed amendment and its language. He stated if this was a technical amendment, he did not know why the Committee would want to make it.

Chairman Vratil asked if anyone had comments on the wording "directly refer". He suggested that the wording should be, "nothing in this section shall prohibit the use and admissibility in evidence of one or more excerpts from any such survey or inspection report that relate to the allegations asserted by the named plaintiff...". He explained that it would leave in the existing language concerning "one or more excerpts from any survey or inspection report", but then it would substitute language focusing on the allegations made in the complaint rather than the named plaintiff.

Senator Schmidt asked for an explanation of the rationale for removing the "directly" language. The Chairman stated that if "directly" was in there, the KTLA wanted to add in "or indirectly", and his thought was once you get indirectly in there, the door is opened wide. He said rather than add indirectly, KTLA suggested to delete any reference to directly or indirectly and require that it relate to the allegations.

Discussion continued, with Senator Umbarger pointing out that the trial judge will have the final say as to what is admissible or not. Chairman Vratil agreed, and stated that the judge will also make appropriate findings on the record to support his/her decision.

Senator Schmidt conceded that the language the Chair proposed would probably be the best to offer in an amendment.

Chairman Vratil stated that there was a motion on the floor and with the consent of Senator Umbarger, who made the motion, and a second by Senator Betts, he would suggest to modify that motion which would be to further amend the bill by changing the language in Sec. 3, page 2, line 23, to read, "nothing in this section shall prohibit the use and admissibility in evidence of one or more excerpts from any such survey or inspection report that relates to the allegations asserted by the named plaintiff if the court determines on the record...".

The Chairman called for a vote on the modified motion made by Senator Umbarger and seconded by Senator Betts. The motion carried.

Senator Goodwin made a motion to recommend the bill favorably as amended, seconded by Senator Pugh, and the motion carried.

SB 466 - Physicians and optometrists reporting to the division of motor vehicles medical information concerning a patient

Chairman Vratil called for discussion and final action on **SB 466**. He explained the bill related to medical information being reported to Division of Motor Vehicles.

Senator Allen made a motion to amend the bill as recommended by the Kansas Medical Society's proposed balloon amendment presented during the hearing. The motion was seconded by Senator Donovan, and the motion carried. (Attachment 4)

Senator Allen moved that **SB 466** be passed out favorably as amended, seconded by Senator Goodwin, and the motion carried.

SB 469 - Inmate deaths, requiring investigation and report of findings

Chairman Vratil called for discussion and final action on **SB 469**. He asked Senator Schmidt to explain the balloon amendment proposed by the Kansas Bureau of Investigation. Senator Schmidt said that the balloon amendment incorporated all the recommendations the KBI had made with the exception of an agreed upon exclusion of the natural death language and what is and is not investigated. Every death in

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custody would receive KBI review, and based on that review it would be determined if a cursor review is sufficient and it was a natural death or whether further investigation would be necessary. (Attachment 5)

Senator Schmidt made a motion to amend **SB 469** in accordance with the proposed KBI balloon amendment, seconded Senator Donovan.

Senator Oleen stated that she wanted the amendment to include facilities contracted through a city or county. The Chair asked Senators Schmidt and Donovan if they were agreeable to modifying their motion and second, and it was agreed to do so. The Chair called for a vote on the motion to amend. The motion carried.

Senator Schmidt moved to pass **SB 469** out favorably as amended, seconded by Senator Haley, and the motion carried.

SB 388 - Statewide authority for capitol area security

Chairman Vratil directed the Committee's attention to **SB 388**, and called for discussion and final action. He explained the bill and reminded the Committee that there was a proposed amendment by Ken North of North & Associates. (Attachment 6)

Following Committee discussion, Senator Oleen suggested that in Mr. North's proposed amendment regarding Sub Section (c), the word "Sheriff" should be changed to the "chief law enforcement officer of any county" since some counties in Kansas did not have a Sheriff. The Chairman instructed the Revisor to make that revision in the proposed language.

Senator Oleen made a motion to amend **SB 388** as recommended by Ken North with the Revisor having the authority to use the appropriate language to achieve the desired purpose, seconded by Senator Goodwin, and the motion carried.

Senator Pugh moved to pass **SB 388** out favorably as amended, seconded by Senator Schmidt, and the motion carried.

SB 321 - Contempt powers of municipal court judges

Chairman Vratil called for discussion and final action on **SB 321**. The Chairman referred to Senator Pugh's Sub-Committee Report covering meeting on February 19 in which **SB 321**, **SB 350**, and **SB 354** were heard. (Attachment 7)

Senator Pugh explained that there was a proposed amendment for **SB 321** on page 2, line 30, inserting wording following: municipal judge in "*contempt findings*". The Sub-Committee recommended adoption of this added language.

Senator Allen made a motion to adopt the proposed amendment to **SB 321**, seconded by Senator Goodwin, and the motion carried.

Senator Allen made a motion to pass **SB 321** out favorably as amended, seconded by Senator Betts, and the motion carried.

SB 350 - Clarifies length of parole

Chairman Vratil called for final action on **SB 350** which was included in Vice Chairman Pugh's Sub-Committee Report. Following the Sub-Committee hearing on **SB 350**, Senator Pugh said the Sub-Committee recommended the bill for passage.

Senator Donovan moved to pass **SB 350** out favorably, seconded on Senator Schmidt, and the motion carried.

SB 354 - Municipal court pre-trial authority to detain

Vice Chairman Pugh explained that the Sub-Committee recommended **SB 354** be amended in accordance

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with the balloon amendment attached to the report. (See Attachment 6)

Senator Allen moved to adopt the balloon amendment, seconded by Senator Betts, and the motion carried.

Senator Allen made a motion to pass **SB 354** out favorably as amended, seconded by Senator Schmidt, and the motion carried.

SB 389 - Law enforcement, special deputies, multi-jurisdictional law enforcement groups

Vice Chairman Pugh said the Sub-Committee was unable to have a hearing on this bill, which was sponsored by Senator Emler and recommended by the Special Committee on Kansas Security. He distributed copies of a balloon amendment requested by Senator Emler, and asked if the Committee might be able to give this bill some consideration even though scheduled committee time had expired.

(Attachment 8)

Chairman Vratil stated he was reluctant to take action on a bill that had not had a proper hearing. He suggested the bill be introduced in an exempt committee in order to be heard this session. Senator Emler commented that the bill could be pared down to the one main issue that everybody agreed to, and he would check into getting it introduced in an exempt committee so it could be heard.

Minutes for the February 19, 2004 meeting were presented for approval. Senator Donovan moved to approve the minutes as written, seconded by Senator Goodwin, and the motion carried.

The meeting was adjourned at 10:30 a.m.

The next scheduled meeting for the Senate Judiciary Committee is March 2, 2004.