

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairman Wysong at 8:30 a.m. on March 12, 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:

Mr. Richard Wienckowski, Chief Financial Officer, Hills Pet Nutrition
Mr. David Kerr, Secretary, Kansas Department of Commerce

Others attending:

Please see attached list.

Hearing on HB2270 - an act concerning income taxation relating to apportionment of business income

Upon calling the meeting to order, Chairman Wysong announced there would be a hearing on **HB2270** and called on Mr. Ken Wilke, Office of the Revisor of Statutes, to explain the bill. He began with the amendment, starting at the bottom of page 5 and continuing on to page 6, which basically allows the Secretary of Revenue to extend the performance date, provided in subsection (b)(6), for a period not to exceed six months based upon a showing of good cause receiving certification that the applicant has complied with the requirements of this section.

As there were no questions of Mr. Wilke, the Chair called on the first of two proponent conferees to testify, Mr. Richard Wienckowski, Chief Financial Officer, Hills Pet Nutrition who offered a brief history of their company. (Ex. Hills has continuously engaged in business in Topeka for more than 100 years.) He went on to say, encouraged by the legislature enacting K.S.A. 79-3279, Hills is engaged in a major expansion in Emporia which will exceed their current projections of spending some \$190 million and creating significantly more than 100 new jobs.

However, he said due to construction factors beyond their control, reaching the two thresholds by December 31 of this year might be problematic. He stated **HB2270** would allow the Secretary of Revenue a limited amount of flexibility, if just cause was determined for the delay, to extend the deadline for completion of a manufacturing facility after the Department of Commerce has certified that the entity was in substantial compliance. A copy of Mr. Wienckowski's testimony is (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

As there were no questions of Mr. Wienckowski, the Chair called on Mr. David Kerr, Secretary, Kansas Department of Commerce, who stated they strongly support this because:

1. This is a very targeted and specific amendment to the bill,
2. It does not allow other companies to opt into the bill,
3. It does not extend the bill,
4. Very simply, it allows companies that are already in the process (having an application) and applied for a six-month extension to complete the project. A copy of his testimony is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

The Chair thanked both conferees and stated as the Committee heard, this bill was passed by both the House and Senate a couple on years ago and the Secretary of Revenue and the Secretary of Commerce have both basically signed onto this extension to comply. As there were no opponents, neutral or written testimonies,

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and no questions from the Committee, the Chair asked if there was a motion.

Senator Schodorf made a motion to pass out favorably **HB2270** and put it on the consent calendar. It was seconded by Senator Lynn and the motion passed.

Continued hearing and possible action on HB2260 - an act concerning the Kansas home inspectors a professional competence and financial responsibility act

The Chair announced the next order of business was the continued hearing on **HB2260** and again, called on Mr. Wilke who offered, as requested in the March 11, 2009 meeting, something like a partial balloon to include material that was not covered in yesterday's hearing and some of the issues that have already been discussed beginning on page 3, "material defect" is being reinstated and offered two versions of the definition:

1. The first version is the one that came with the bill
2. The second is the definition offered in Mr. Bowers' testimony. (Mr. Wilke mentioned he changed the language somewhat by inserting "the cost of repairing such material defect" to comply with what he thought Mr. Bowers intended.)

The Chair asked Senator Emler for comments who stated, the second version is clearer and will probably help limit some litigation because it offers a threshold where the first does not (the 1% or \$2,000.)

The Chair then asked if the Committee had any problems with taking the second definition and as there were none or further discussion, Senator Wagle made a motion to accept the second definition (h). It was seconded by Senator Emler and the motion carried.

Mr. Wilke continued explaining the bill referring to page 4, stating in accordance with directions that have been issued, he amended line 29 so that both the Chairperson and the Vice Chairperson be registered home inspectors and on line 40, the word "permanent" has been removed so there would not be a problem with the Open Records Act. Referring to page 5, Mr. Wilke said instead of taking out the word "a" and choosing "standards" he chose "a standard" to make it parallel with the language of "a code of ethics" in line 24.

The Chair asked the Committee if there were any problems with these changes? As there were none, Mr. Wilke continued his explanation of the bill referring the Committee to Section 4, where language involving mandatory revocation has been taken out of lines 17 through 25 and moved to page 7, inserting a separate subsection (b)(1). He would modify this slightly if the Committee wants, perhaps limit this kind of provision to crimes involving sex offenses, violent crimes, etc. (not sure where the Committee wants to draw the line and this.)

He went on to say there were some time frames in Mr. Bowers testimony that have not yet been incorporated. This is the type of thing he was thinking about when he said they need to make changes to clarify this section. The Chair asked Mr. Wilke to offer the Committee some choices.

Mr. Wilke first asked if the Committee wanted to make the mandatory revocation aimed primarily at the sex offenses as was done in the real estate act? (Re: K.S.A. 58-3043)

The Chair thought what he was hearing, and asked the Committee to correct him if he was wrong, was marijuana was brought up and did not think this is where they want to be headed. He recognized Senator Wagle who asked Mr. Wilke, if there was already a statute in the licensure for the Realtors Act? Mr. Wilke said it does and it allows discretion within the agency to look at various felonies. (Ex. Sex offenders cannot get a license until 15 years after their conviction.) Senator Wagle suggested that they use this, the Chair asked the will of the Committee and it was a unanimous agreement to use.

Referring to page 7 in subsection © lines 17 through 22, Mr. Wilke stated, in his commentary yesterday this

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particular language basically gets to the point of requiring a hearing every time a civil penalty or civil fine might be used and is suggesting the language proposed on the right-hand side of page 7, which requires the board to make findings after notice and an opportunity for a hearing, easing the situation for the board if they have a default situation. (For instance, if they notify someone they wish to impose a civil penalty or fine used in this act, the language that is here would probably work, but it also leaves open an argument. If you cannot find the person and the board goes ahead and imposes the fine, an argument might be made that the person fined was not there and no hearing, therefore is not valid.) The Chair called on Senator Emler who agreed as did the Committee when polled.

The Committee was referred to page 8 where some bond language had been incorporated that Mr. Barnes had suggested in his testimony. Mr. Wilke stated he had to restructure slightly, basically following the statutes in the Kansas pesticide law. Two changes he noted are:

1. The amount of the bond would have to be so much per year that way you do not have a situation where you have one bond and you have a complaint that comes in two or three years later you do not have just one bond sitting there, you have one for each year of operation.
2. Referring to the language proposed by Mr. Barnes regarding an issue by surety, this would require a corporate surety bond be authorized to do business in this state.
3. He has added rules and regs.

The Chair asked what a \$10,00 surety bond cost?

Referring to page 9, Mr. Wilke said the act, as currently proposed, had effective subpoena and production of document provisions, yet there is nothing in writing that requires the home inspector to maintain or keep any documents. Language has been added requiring them to keep those documents and is listed in (A)(B) and ©. In addition, he added (D) to allow the board the ability to prescribe additional information by rules and regulations to establish a definite starting date for retention of documents.

On page 11, line 15, Mr. Wilke inserted the words "a standard" to correspond with the earlier change found on page 5 and the word "registered" found on lines 17, 25, and 31, suggested by Mr. Barnes, inserted to be consistent. Mr. Wilke concluded by saying this is as far as he had gotten in comparing and incorporating Mr. Barnes and Mr. Bowers' testimonies. However, regarding Mr. Bowers' testimony there were some questions raised as to whether the \$10,000 amounts on lines 21, 23, 33 and 35 are too high?

The Chair then called on Mr. Bowers to answer questions from the Committee which came from Senators Lynn and Holland including revisiting his explanation regarding surety bonds; his reasoning of going from \$10,000 to \$1500; what is that for and what does it cover? Also, on page 8 can he explain (3) and additionally (B)?

The Chair then called on Mr. Luke Bell to answer questions from Senators Lynn, Kelsey and Emler including asking him to refresh them on the \$10,000 liability and what impact would this have on their industry? What about his contention they can go to small claims court?

The Chair recognized Senator Emler who asked Mr. Wilke, with regards to the material deficit, how would this \$1500 interface with the \$2,000?

Senator Kelsey made a motion to set "material defect" at \$2,000 and the surety bond at \$2,000. It was seconded by Senator Wagle. A discussion ensued with Senator Lynn stating she was not comfortable overriding the dollars decided on last year so she cannot support the motion. Mr. Wilke said regarding the material defect definition, as written it states "\$2,000 or 1% whichever is greater," so the 1% will fluctuate depending on the value of the house. Mr. Bowers was asked by Senator Holland to explain his reasoning for this.

The Chair then recognized Senator Emler who referred to line 32 on page 11 asking shouldn't this also be

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“registered home inspectors?” And Senator Holland, who referred to the bottom on page 8 and top of page 9, asked if the continuing education is limited to regions?

A discussion ensued with Senators Holland, Emler, and Wysong, Mr. Bowers and Mr. Wilke regarding the issue of large counties fee collection and registration time period of 2009 and with small counties of 2011, why not move to 2010? Fees need to be set by rules and regs. The Chair asked the Committee and all agreed to the 2010 time frame.

A copy of Mr. Wilke’s additional changes to the bill that were not covered in yesterday’s hearing and some issues were already discussed is (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

As there was no further discussion, Senator Lynn made a substitute motion to Senator Kelsey’s motion to leave language as is on page 11, lines 33 through 35. It was seconded by Senator Holland and with a show of hands, the motion did not pass.

The Chair went back to Senator Kelsey’s original motion, seconded by Senator Wagle, setting the material deficit at \$2,000 and the surety bond at \$2,000 and with a show of hands the motion carried.

Chairman Wysong then recognized Mr. Bowers who asked if Mr. Wilke could make a change on page 9, (7), which should read as “home inspector?” The Committee authorized Mr. Wilke to make any technical changes to this bill.

Adjournment

As it was going on 9:30 a.m., the Chair suggested they meet tomorrow, March 13, 2009 to finish up this substitute bill and asked the Committee to think about putting in a sunset provision to see how this commission is doing in three or four years. He then adjourned the meeting. The time was 9:30 a.m.

The next meeting is scheduled for March 13, 2009.

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