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MEMORANDUM

To: Chairperson Schwartz and members of the House Agriculture and Natural Resources Budget Committee
From: Jill Ann Wolters, Senior Assistant Revisor
Date: March 8, 2012
Subject: HB2770, Office of the Securities Commissioner

House Bill No. 2770 makes several amendments to the statutes concerning the office of the securities commissioner. Under current law, in administrative proceedings, the securities commissioner or a presiding officer assigned by the office of administrative hearings, is the presiding officer. The bill would allow the securities commissioner to appoint the executive director of the commission or any other person to act as the presiding officer.

The bill adds language to state the purpose of the Kansas uniform securities act, as follows: "This act is intended to preserve the integrity and efficiency of the capital formation process and to ensure fairness and full disclosure in securities markets so that investors will have confidence to invest and pursue the financial benefits that are possible through financing the development and growth of businesses and organizations in the capitalism-based Kansas economy.

In order to accomplish its intended purpose, this act provides for:

- (1) Preventive and corrective regulation of securities and persons involved with securities transactions and investment advice so that capital formation and securities transactions are free from fraudulent or abusive practices;
- (2) education of investors and persons participating in capital formation and securities markets; and
- (3) cooperation and coordination with other programs and organizations within Kansas in order to foster capital formation for businesses and organizations in Kansas and to enhance the economy of Kansas."

K.S.A. 17-12a102, the definition section, is amended to include a definition of "act" to mean the Kansas uniform securities act.

Further, the bill allows the commissioner to require the filing of a notice as a condition of any exemption adopted under certain statutes, and to charge an annual notice filing fee for any exemption in an amount not to exceed \$300.

Currently, the securities act fee fund is allowed to carryover \$50,000 to the following fiscal

year, and any money above that amount is transferred to the state general fund, to reimburse for accounting, budgeting and legal services. The bill strikes that language from law. However, the bill adds additional language that the commissioner shall ensure that a carryover balance of at least \$250,000 is carried over for the following fiscal year.

Also, the bill allows the commissioner to authorize transfers from the securities act fee fund to other special revenue or special purpose funds established in the state treasury for use by the commissioner to carry out responsibilities of the act, or for other executive branch agencies with responsibilities reasonably related to investment of capital, creation of jobs or other programs within the state of Kansas for which the benefits of securities regulation and preservation of the integrity of the capital formation process can be realized as determined by the commissioner in consultation with heads of such other agencies. The maximum aggregate amount transferred to special revenue or special purpose funds for other executive branch agencies shall be \$3,000,000 in any fiscal year, but may be exceeded by the commissioner with the approval of the state finance council and such approval also may be given while the legislature is in session.

Regarding investor education, current law allows the commissioner to develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. The amendment changes that language to inform the public about personal financial literacy and investments.

Additional uses of the investor education fund include staff training and grants to public and private schools and universities in Kansas for education in personal or business finance.

Further, the commissioner may authorize transfers from the securities act fee fund to the investor education fund to replenish the investor education fund for operations up to \$750,000 in any fiscal year, but such amount may be exceeded by the commissioner with the approval of the state finance council and such approval also may be given while the legislature is in session. The bill establishes in the state treasury the:

(1) Securities litigation fund. The securities litigation fund shall be used for enforcing provisions of this act through administrative hearings and actions in state and federal courts to resolve alleged violations of this act or a rule and regulation adopted or order issued under this act. The commissioner may authorize transfers from the securities act fee fund to the securities litigation fund to replenish the securities litigation fund for operations up to \$500,000 in any fiscal year, but such amount may be exceeded by the commissioner with the approval of the state finance council and such approval also may be given while the legislature is in session.

(2) Securities restitution fund. The securities restitution fund shall be used for receiving and disbursing restitution payments in connection with settlements of enforcement cases and other legal proceedings under this act. The commissioner may authorize restitution to be paid to Kansas residents who have been awarded damages in connection with alleged or adjudicated violations of this act. Such restitution payments may be made at the discretion of the

commissioner or as agreed upon or ordered in settlements of cases or other legal proceedings under this act. The commissioner may authorize transfers from the securities act fee fund to the securities restitution fund to provide sufficient funding to enable restitution as deemed appropriate by the commissioner. Such transfers shall be limited to aggregate maximum amount of \$500,000 in any fiscal year, but such amount may be exceeded by the commissioner with the approval of the state finance council and such approval also may be given while the legislature is in session. By rules and regulations adopted or order issued under this act, the commissioner shall specify definitions, forms, procedures and limitations for payment of restitution awards from the securities restitution fund.

Finally, the bill would allow the commissioner to appoint professional staff, in the unclassified service. Such staff would have special training as deemed necessary by the commissioner. The bill would become effective upon publication in the Kansas register.