

Approved: 2-25-09

Date

## MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 a.m. on February 12, 2009, in Room 136-N of the Capitol.

All members were present.

### Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes  
Melissa Calderwood, Kansas Legislative Research Department  
Terri Weber, Kansas Legislative Research Department  
Beverly Beam, Committee Assistant

### Conferees appearing before the committee:

Melissa Calderwood, Principal Analyst,  
Joan Wagon, Secretary of Revenue, ([Attachment 1](#))  
Wayne Mayhew, President, Central National Bank ([Attachment 2](#))  
Robert Munson, President, Central National Bank ([Attachment 3](#))  
Tom Thull, State Banking Commissioner ([Attachment 4](#))  
Doug Wareham, Kansas Bankers Association ([Attachment 5](#))  
Scott M. Gates, Director, Learning Quest ([Attachment 6](#))  
Kevin Glendening, Office of the State Banking Commissioner ([Attachment 7](#))  
Craig Yaryian, Kansas Association of Mortgage Professionals ([Attachment 8](#))  
A. W. Pickle, Kansas Association of Mortgage  
Ron Gaches, Kansas Association of Financial Services ([Attachment 9](#))  
Kathleen Olsen, KBA (written only) ([Attachment 10](#))  
Martha Neu Smith, Kansas Manufactured Housing Association ([Attachment 11](#))

### Others attending:

See attached list.

Due to Chairman Teichman's absence, Senator Brownlee, Vice Chair, conducted the meeting.

Hearing on

### **SB 239 - Enacting the rural risk bank loan guarantee loan program.**

Melissa Calderwood, Principal Analyst, Research Department, gave an overview of the bill. Ms. Calderwood stated that this bill would establish the Kansas Rural Risk Bank Loan Guarantee Program that would be implemented by the State Treasurer. She said this program would authorize the State Treasurer to provide loan guarantees against risk of default for rural development projects with rural developers for the renovation or construction of commercial, manufacturing, or value-added agricultural facilities or equipment. She noted that the total principal amount of outstanding loan guarantees for any single borrowing organization could not exceed \$3.0 million and the total outstanding amount of all loan guarantees for borrowing organizations could not exceed \$15 million. She said this bill would also establish the Rural Risk Bank Loan Guarantee Review Committee within the office of the State Treasurer. She noted that the State Treasurer or his designee would serve as nonvoting chairperson and the review committee would elect a vice-chairperson from its members.

She said **SB 239** would also create the Rural Risk Bank Loan Guarantee Fund that would receive all fees and charges for the purposes of implementing the program. In conclusion, she said the State Treasurer indicates the agency would have increased workload and expenditures associated with administering this program.

## CONTINUATION SHEET

Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on February 12, 2009, in Room 136-N of the Capitol.

Joan Wagon, Secretary of Revenue, testified in support of **SB 239**. She stated the problem came to light in discussions in the Kansas Innovation Consortium even before the financial crisis emerged. She said entrepreneurs were reporting that banks are increasingly reluctant to loan funds for buildings in very rural areas. She said their costs of construction often exceed their value as collateral, therefore banks elevate their pricing or fail to loan because if the business doesn't survive, there may not be another use in the community for the building. She noted that the proposed solution is for the legislature to authorize a loan guarantee program to encourage lending in rural areas to entrepreneurial ventures so that local banks can be involved and innovative companies can locate in rural areas. (Attachment 1)

Wayne Mayhew, Edenspace Vice President of Finance and Chief Financial Officer, testified in support of **SB 239**. Mr. Mayhew said Edenspace is developing proprietary crops to reduce the cost of producing cellulosic ethanol, butanol and other fuels from non-food plant biomass (biofuel). He said these crops demonstrate innovative traits that are expected to help make cellulosic biofuel cost-competitive with gasoline. He said Edenspace plans to sell seed directly to farmers and refinery operators, and to license traits to other seed producers for incorporation in their own commercial seed. Mr. Mayhew said in 2007 Edenspace relocated its headquarters and primary energy crop development to northeastern Kansas. He said a new state-of-the-art facility is planned in Junction City, Kansas but the company had three significant concerns in relocating to the Junction City area: 1. their ability to hire the necessary management and scientific personnel to meet the company's needs, 2. distance to major airports and 3. availability of adequate facilities, including specialized laboratories and greenhouse space for research and development. He said Edenspace believes the program as outlined in the Rural Risk Bank Loan Guarantee Program would be of substantial assistance to technology companies like Edenspace that need specialized facilities to locate, grow and prosper in rural Kansas. (Attachment 2)

Robert C. Munson, President, Central National Bank, Junction City, testified in support of **SB 239**. Mr. Munson said the primary advantage of the Rural Risk Guarantee Program is that it would assist entrepreneurial enterprises to be able to actually obtain a loan, thus mitigating the "rural risk" that exists in a banker's mind because a large or specialized commercial building has limited resale possibilities in a rural area. He said bankers in rural communities are facing a number of issues with regard to commercial loan financing for building construction or renovation. He said there is some risk of loss to the state under this program. (Attachment 3)

Tom Thull, State Banking Commissioner, testified in support of **SB 239**. Mr. Thull stated collateral is a major issue. He said the ability to establish a collateral value certainly weighs heavy on the minds of lenders when they are pondering a lending decision. He said we are very concerned about the value of collateral and the adequacy of that collateral to protect the interests of the depositor whose money was loaned. He noted that it would be beneficial to have a guaranteed program to take some of the risk from our bankers and would free up credit availability in rural communities. (Attachment 4)

Doug Wareham, Kansas Bankers Association, testified in support of **SB 239**. He said KBA sees this bill as a useful tool in filling the gap between the market value of the completed structure versus the construction costs of building it. He said this bill would allow a bank in a non-metropolitan area to apply for a state loan guarantee of up to 50% of a commercial construction loan. He said KBA's mission is to support and assist Kansas banks and Kansas bankers. (Attachment 5)

Scott M. Gates, General Counsel, State Treasurer's Office, testified in support of **SB 239**. He stated the Treasurer's Office will be able to implement this program with existing resources by charging fees to recover the program's costs. He noted, however, that he is concerned with the provision in section 3 requiring all claims against the guarantee to be approved by the joint committee on special claims against the state. He said eventually, funds will need to be set aside to fund the guarantee without looking to the state general fund claims process. He said a good benchmark is 10% of the outstanding loan balances. He said this would not be necessary until 2011 or 2012 after the program ramps up. He said an unfunded guarantee may discourage banks from participating in the program or increase the interest rates they charge borrowers. (Attachment 6)

Following discussion, the chair closed the hearing on **SB 239**.

## CONTINUATION SHEET

Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on February 12, 2009, in Room 136-N of the Capitol.

Hearing on

### **SB 240 - Mortgages, the regulation of.**

Melissa Calderwood gave an overview of **SB 240**. She stated **SB 240** would amend both the Kansas Uniform Consumer Credit Code and the Kansas Mortgage Business Act relating to mortgages and mortgage loan originators. She said the bill would bring these state laws into compliance with recently enacted federal legislation under sections of the Housing and Economic Recovery act of 2008, commonly known as the SAFE Act. She said the bill would also prohibit a loan processor or underwriter from advertising that they perform the duties of a mortgage loan administrator. She continued that the bill would require the Office of the State Bank Commissioner to continue to regulate the industry and to participate in the Nationwide Mortgage Licensing System and Registry. She said the bill would allow the office of the State Bank Commissioner to assess the cost of the administration of the Kansas Mortgage Business Act in a similar way as current law permits under the Uniform Consumer Credit Code. She said all mortgage loan originators would be required to comply with additional reporting and other requirements.

Kevin Glendening, Administrator, Kansas Uniform Consumer Credit Code, testified in support of **SB 240**. He stated the amendments in this bill have been structured to meet the requirements put forth by HUD in order to comply with the minimum federal requirements. (Attachment 7)

Craig Yaryan, President, Kansas Association of Mortgage Professionals, testified in support of **SB 240**. Mr. Yaryan stated there are three important factors that must be considered when a consumer is applying for a loan: 1. For most consumers, their home is their largest and most important investment, 2. The process of purchasing a home is a very complicated process, one in which underwriting guidelines are constantly changing, new loan products are either being introduced or removed from the market on a regular basis, appraisal requirements are changing, and the loan closing process can differ from one state to another, and 3. It is quite evident that homeownership is the foundation of this country's economy. He said the only way to insure that all three of the above factors have been adequately addressed is to create a level playing field and establish the same minimum criteria for any individual that the consumer and our economy place such a large trust in. He said it is also imperative that this legislation works in concert with the Department of HUD.

(Attachment 8)

A. W. Pickle, Kansas Association of Mortgage Professionals testified in support of **SB 240**. He said in 1996 he helped write the bill with the Banking Commissioner at the time. He said he is currently legislative Chair for the Kansas Association of Mortgage Brokers and fully supports this bill. He noted if we don't continue to tightened this up, it will continue to be a much greater problem. We would like to make sure home owners are protected and that loan originators are registered and educated.

Ron Gaches, representing the Kansas Association of Financial Services, testified in support of **SB 240**. Mr. Gaches said while some of the KAFS members continue to examine the language of the bill and pose clarifying questions to the Commissioner's Office, they believe it is a reasonable and prudent proposal to bring Kansas into compliance with federal guidelines for such legislation. (Attachment 9)

Kathleen Olsen presented written testimony in support of **SB 240**. (Attachment 10)

Martha Neu Smith, Kansas Manufactured Housing, testified as neutral on **SB 240**. She stated that in Kansas, all aspects of the manufactured housing industry are already licensed under the Kansas Manufactured Housing Act, including manufactured home retailers. She said at this time they have conflicting opinions on whether the manufactured home retailer's actions would bring them under the requirements of the S.A.F.E. Act or not. She suggested an amendment to insert "and" in front of "or" so it will read "and or" on page 4, line 37 of the bill. We are just asking for clarification that we are not a loan originator by definition, she said. She noted they have received conflicting opinions on whether the manufactured home retailer's actions would bring them under the requirements of the S.A.F.E. Act or not. She said it is not their goal to slow this process down and they are amenable to other suggestions that would provide clarifications. (Attachment 11)

## CONTINUATION SHEET

Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on February 12, 2009, in Room 136-N of the Capitol.

Chair asked the Committee for questions. Senator Brownlee asked Mr. Glendening for his thoughts on the proposed amendment that Manufactured Housing suggested. Mr. Glendening responded that a couple of issues come into play there. The original language of the S.A.F.E. Act did have an “and” instead of the “or” in the federal bill that was passed. He stated as far as implementation of that, they have commented to say they are going to interpret it that you can’t link the activity of taking applications. He said in his opinion, as long as you are not actively participating in origination of that mortgage, they would not be considered loan originators. He said if we took all of these S.A.F.E. comments out of our existing law, since 1996, our existing law has never linked the two things together.

The Vice Chair closed the hearing on **SB 240**.

The next meeting is scheduled for February 17, 2009.

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