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State and Local Government

I-2 Administrative Rule and Regulation Legislative Oversight

Since 1939, Kansas statutes have provided for legislative oversight of rules and regulations filed by state officers, boards, departments, and commissions. The 1939 law declared all rules and regulations of a general or statewide character were to be filed with the Revisor of Statutes and would remain in force until and unless the Legislature disapproved or rejected the regulations. It was not until 1974 the Legislature took steps to formalize an oversight process. In that year, all filed rules and regulations were submitted to each chamber. Within 60 days of submission, the Legislature could act to modify and approve or reject any of the regulations submitted. In 1984, the Kansas Supreme Court held that a procedure adopted in 1979, which authorized the use of concurrent resolutions to modify or revoke administrative rules and regulations, violated the doctrine of separation of powers under the *Kansas Constitution*.

The 1975 interim Legislative Budget Committee, under Proposal No. 33, found it “important to maintain and even enhance legislative oversight of all regulations in order to make sure that they conform with legislative intent.” The 1976 Legislature agreed with that finding and enacted several amendments to the Rules and Regulations Filing Act (Act). In that same year, the Legislative Coordinating Council created the Special Committee on Administrative Rules and Regulations to review proposed administrative rules and regulations filed with the Revisor of Statutes. The law was later changed to require proposed agency rules and regulations to be reviewed as outlined below. A 1977 law created the Joint Committee on Administrative Rules and Regulations (Joint Committee).

Administrative rules and regulations are developed using the *Policy and Procedure Manual for the Filing of Kansas Administrative Regulations* developed by the Kansas Department of Administration.

Rule and Regulation Authority—Examples

Regulations serve to implement or interpret legislation administered by a state agency. The statutory authority for the agency to adopt these rules and regulations is found in enabling legislation, as illustrated in the language found in legislation:

Kansas Amusement Ride Act (2017 Session)

The Secretary of Labor shall adopt rules and regulations necessary to implement provisions of the Kansas Amusement Ride Act (2017 House Sub. for SB 86, amending KSA 44-1613).

Acupuncture Practice Act (2016 Session)

The Board [of Healing Arts] shall promulgate all necessary rules and regulations which may be necessary to administer the provisions of this act and to supplement the provisions herein (2016 HB 2615, KSA 65-7615).

The Rules and Regulations Filing Act (KSA 2018 Supp. 77-415 through 77-438, and amendments thereto) outlines the statutory requirements for the filing of regulations by most executive branch agencies and for the Legislature’s review of the agency regulations.

The Regulation Adoption Process

There are two types of administrative rules and regulations: temporary and permanent. A temporary rule and regulation, as defined in KSA 2018 Supp. 77-422, may be utilized by an agency if preservation of the health, safety, welfare, or public peace makes it necessary or desirable to put the regulation into effect before a permanent regulation would take effect. Temporary rules and regulations take effect and remain effective for 120 days, beginning with the date of approval by the State Rules and Regulations Board and filing with the Secretary of State. A state agency, for good cause, may request a temporary rule and regulation be renewed one time for an additional period not to exceed 120 days. A permanent rule and regulation takes effect 15 days after publication in the *Kansas Register*.

KSA 2018 Supp. 77-420 and 77-421 outline the process for the adoption of permanent Kansas

Administrative Regulations (KAR) in the following steps (to be followed in consecutive order):

- Obtain approval of the proposed rules and regulations from the Director of the Budget, who will conduct an independent analysis to determine whether the costs incurred by non-state government entities would be \$3.0 million or less over a two-year period. The Director will approve the proposed rule and regulation for submission to the Secretary of Administration and Attorney General if it is determined the impact is less than or equal to \$3.0 million. If the impact exceeds \$3.0 million, the Director may either disapprove the proposed rule and regulation or approve it, provided the agency had conducted a public hearing prior to submitting the proposed rule and regulation and found the costs have been accurately determined and are necessary for achieving legislative intent;
- Obtain approval of the proposed rules and regulations from the Secretary of Administration;
- Obtain approval of the proposed rules and regulations from the Attorney General, including whether the rule and regulation is within the authority of the state agency;
- Submit the notice of hearing, copies of the proposed rules and regulations as approved, and the economic impact statement to the Secretary of State, and submit a copy of the notice of hearing to the chairperson, vice-chairperson, and ranking minority member of the Joint Committee, and to the Kansas Legislative Research Department (KLRD);
- Review the proposed rules and regulations with the Joint Committee;
- Hold the public hearing and prepare a statement of the principal reason for adopting the rules and regulations;
- Revise the rules and regulations and economic impact statement, as

needed, and again obtain approval of the Director of the Budget, Secretary of Administration, and the Attorney General;

- Adopt the rules and regulations; and
- File the rules and regulations and associated documents with the Secretary of State.

The Secretary of State, as authorized by KSA 2018 Supp. 77-417, endorses each rule and regulation filed, including the time and date of filing; maintains a file of rules and regulations for public inspection; keeps a complete record of all amendments and revocations; indexes the filed rules and regulations; and publishes the rules and regulations. The Office of the Secretary of State publishes the adopted regulations in the KAR Volumes and Supplements and on the Office's website.

In addition, new, amended, or revoked regulations are published in the *Kansas Register* as they are received. The Secretary of State has the authority to return to the state agency or otherwise dispose of any document that had been adopted previously by reference and filed with the Secretary of State.

Legislative Review

The law dictates that the 12-member Joint Committee review all proposed rules and regulations during the 60-day public comment period prior to the required public hearing on the proposed regulations. Upon completion of its review, the Joint Committee may introduce legislation it deems necessary in the performance of its review functions. Following the review of each proposed rule and regulation, the Joint Committee procedure is to forward comments it deems appropriate to the agency for consideration at the time of its public hearing on the proposed rules and regulations. The report expressing comments by the Joint Committee may include a request that the agency reply to the Joint Committee in writing to respond directly to the comments made, and to detail any amendments in the proposed rules and regulations made after the Joint Committee hearing and any delays in the adoption or the withdrawal of the rules and

regulations. KLRD staff maintains a database of responses to Joint Committee comments and reports on those responses to the Joint Committee. A limited number of rules and regulations are exempt from the review process of the Joint Committee. In addition, certain permanent regulations have a defined statutory review period of 30 days, rather than the 60-day review period.

Each year, KLRD prepares a report on the oversight activities of the Joint Committee; this electronic report is available from KLRD.

As part of its review process, the Joint Committee examines economic impact statements, as required by law, that are prepared by agencies and accompany the proposed rules and regulations. Provisions of 2018 HB 2280 require cost-benefit analyses and analysis of the effect on the Kansas economy, including specific businesses, of each rule and regulation.

The Director of the Budget will review the agency's economic impact statement and prepare a supplemental or revised statement and an independent analysis (2018 HB 2280, sec. 1(c)).

The Legislature is also permitted to adopt a concurrent resolution expressing its concern regarding any permanent or temporary rule and regulation. The resolution may request revocation of the rule and regulation or amendment as specified in the resolution. If the agency does not respond positively in its regulation to the recommendations of the Legislature, the Legislature may take other action through a bill. Recent legislative changes to the Act have not changed this review process.

2008 Legislative Action

During the 2008 Legislative Session, SB 579 was enacted. This legislation requires state agencies to consider the impact of proposed rules and regulations on small businesses. (These provisions were expanded in 2018.) The bill defined "small businesses" as any person, firm, corporation, partnership, or association with

50 or fewer employees, the majority of whom are employed in the State of Kansas.

2010 Legislative Action

During the 2010 Legislative Session, House Sub. for SB 213 revised the Act by removing obsolete language and allowed for future publication of the KAR in paper or electronic form by the Secretary of State. In addition, the bill made changes in the definitions used in the Act and in the exclusion of certain rules and regulations from the Act. Certain procedures to be followed in the rule-making process and procedures were also revised. One provision requires state agencies to begin new rule-making procedures when the adopted rules and regulations differ in subject matter or effect in a material respect. Under these conditions, the public comment period may be shortened to not less than 30 days.

2011 Legislative Action

During the 2011 Legislative Session, HB 2027 amended the Act by deleting definitions of “rule and regulation,” “rule,” and “regulation,” including several provisions exempting specific rules and regulations from formal rule-making under the Act, and replacing them with a simplified definition.

It also expanded the definition of “person” to include individuals and companies or other legal or commercial entities.

The bill gave precedential value to orders issued in an adjudication against a person who was not a party to the original adjudication when the order is:

- Designated by the agency as precedent;
- Not overruled by a court or other adjudication; and
- Disseminated to the public through the agency website or made available to the public in any other manner required by the Secretary of State.

The bill also allowed statements of policy to be treated as binding within the agency when

directed to agency personnel concerning their duties or the internal management or organization of the agency.

The bill provided that agency-issued forms, the contents of which are governed by rule and regulation or statute, and guidance and information the agency provides to the public do not give rise to a legal right or duty and are not treated as authority for any standard, requirement, or policy reflected in the forms, guidance, or information.

Further, the bill provided for the following to be exempt from the Act:

- Policies relating to the curriculum of a public educational institution or to the administration, conduct, discipline, or graduation of students from such institution;
- Parking and traffic regulations of any state educational institution under the control and supervision of the State Board of Regents; and
- Rules and regulations relating to the emergency or security procedures of a correctional institution and orders issued by the Secretary of Corrections or any warden of a correctional institution.

Similarly, statutes that specify the procedures for issuing rules and regulations will apply rather than the procedures outlined in the Act.

Finally, the bill created a new section giving state agencies the authority to issue guidance documents without following the procedures set forth in the Act. Under the terms of this section, guidance documents may contain binding instructions to state agency staff members, except presiding officers. Presiding officers and agency heads may consider the guidance documents in an agency adjudication, but are not bound by them.

To act in variance with a guidance document, an agency must provide a reasonable explanation for the variance and, if a person claims to have reasonably relied on the agency’s position, the explanation must include a reasonable

justification for the agency's conclusion that the need for the variance outweighs the affected person's reliance interests. The bill required each state agency to maintain an index of the guidance documents; publish the index on the agency's website; make all guidance documents available to the public; file the index in any other manner required by the Secretary of State; and provide a copy of each guidance document to the Joint Committee (may be provided electronically).

2012 Legislative Action

During the 2012 Legislative Session, SB 252 made several changes to the Act.

The bill changed notice requirements from 30 days to 60 days for new rule-making proceedings when an agency proposes to adopt a final rule and regulation that:

- Differs in subject matter or effect in any material respect from the rule and regulation as originally proposed; and
- Is not a logical outgrowth of the rule and regulation as originally proposed.

In addition, the bill changed the Act by removing language that stated the period for public comment may be shortened to no less than 30 days, as the Act already stated the notice provided by state agencies constitutes a public comment period of 60 days.

2013-2014 Legislative Action

The only legislative action during the 2013 Legislative Session was the passage of HB 2006, which amended the Act to remove "Kansas" from the name of the Act. No amendments were made to the Act during the 2014 Legislative Session.

2015-2016 Legislative Action

The Act was not amended.

2017 Legislative Action

The Act was not amended.

2018 Legislative Action

During the 2018 Legislative Session, HB 2280 made several changes to the Act.

HB 2280 revised the Act pertaining to economic impact statements, granted new authority to the Director of the Budget to review and approve proposed rules and regulations, added a member of the minority party and a representative of an appropriations committee to the State Rules and Regulations Board, added a ranking minority member to the Joint Committee, requires reports to the Legislature from that committee after each meeting, and requires the Legislative Division of Post Audit evaluate the implementation of the new provisions contained in the bill in 2021.

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