

**JCARR**

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**Report on Oversight Activities of the**

**JOINT COMMITTEE ON**

**ADMINISTRATIVE RULES**

**AND REGULATIONS**

**July 2013—June 2014**

Kansas Legislative Research Department  
August 2014



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## INTRODUCTION

Since 1939 (L. 1939, Ch. 308), the Kansas statutes have provided for legislative oversight of rules and regulations. For more than 40 years, that oversight generally allowed the Legislature to reject, modify, or revoke an administrative rule and regulation. The Joint Committee on Administrative Rules and Regulations was formed in 1977, to review all filed rules and regulations and to recommend to the Legislature whether to amend, revoke, or reject the regulations reviewed. In 1984, the Kansas Supreme Court found provisions allowing the Legislature to rewrite or reject administrative rules and regulations to be unconstitutional (*State, ex rel. Stephan v. Kansas House of Representatives*, 236 Kan 45).

Statutes related to rules and regulations underwent extensive revisions in 1988. KSA 2013 Supp. 77-436 specifies the composition and duties of the Joint Committee on Administrative Rules and Regulations. It states that all rules and regulations filed each year with the Secretary of State are subject to review by the Committee, which is authorized to “introduce such legislation as it deems necessary in performing its functions of reviewing administrative rules and regulations.” The Act was further revised in 2010, primarily with updates to procedures, and more extensively in 2011 (as noted in the report for that year), but the Committee’s basic charge has not changed. The 2011 bill also designated KSA 2013 Supp. 77-415 through 77-438 as the Kansas Rules and Regulations Filing Act.

A brief history of oversight from 1939 through May 2010 is provided in the *Report on Oversight Activities of the Joint Committee on Administrative Rules and Regulations, June 2009-May 2010*, available from the Kansas Legislative Research Department or available at its website. This volume repeats two annual reports contained in that volume.

This volume contains a report for the current year, 2013-2014, plus reports for the previous five years:

- 2012-2013;
- 2011-2012;
- 2010-2011;
- 2009-2010; and
- 2008-2009.

More information on rules and regulations heard by the Joint Committee in recent years and state agency responses to Committee comments is available from the Kansas Legislative Research Department.

**REPORT OF THE OVERSIGHT ACTIVITIES OF THE  
JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS  
July 2013 through June 2014**

From July 2013 through June 2014, the Joint Committee on Administrative Rules and Regulations (JCARR) reviewed proposed rules and regulations of 33 different state executive branch agencies or agency divisions that have separate agency numbers. To review all of the proposed rules and regulations within their public comment periods as required by law, the Joint Committee met eight times.

The dates of Joint Committee meetings, the state agencies appearing before the Committee on such dates, and the main topic of the proposed rules and regulations by date are listed in the following table.

<b>JCARR Meeting Dates, Agency Appearances, and Topics, July 2013 - June 2014</b>								
Agency	July 22, 2013	Aug. 27, 2013	Nov. 5, 2013	Jan. 7, 2014	March 6, 2014	March 24, 2014	April 29, 2014	May 30, 2014
<b>Abstracters' Board of Examiners</b>								Fees*
<b>Accountancy</b>				CPA exam, standards				Job injury leave; furloughs*
<b>Administration</b>								
<b>Aging and Disability Services</b>		Adult care homes; aides	Adult care home assessment					
<b>Agriculture – Animal Health Division</b>	Cattle diseases							
<b>Agriculture – Water Resources Division</b>				Water rights				
<b>Attorney General</b>		Concealed carry signs; Roofing Reg. Act						
<b>Bank Commissioner</b>							Loan documents; appraisals	
<b>Behavioral Sciences</b>		Addiction counselor licensing						
<b>Commerce</b>	High Performance Incentive Program							
<b>Commerce – Athletic Commission</b>	Various						Fees, testing, boxing*	
<b>Corporation Commission</b>	Hydraulic fracturing							
<b>Corrections</b>	Certain grievances						Inmate communications	

**JCARR Meeting Dates, Agency Appearances, and Topics, July 2013 - June 2014**

<b>Agency</b>	<b>July 22, 2013</b>	<b>Aug. 27, 2013</b>	<b>Nov. 5, 2013</b>	<b>Jan. 7, 2014</b>	<b>March 6, 2014</b>	<b>March 24, 2014</b>	<b>April 29, 2014</b>	<b>May 30, 2014</b>
<b>Cosmetology</b>	Students; tattooing, piercing (1)							
<b>Crime Victims Compensation</b>			Payments, misc.					
<b>Dental</b>				Cont. ed.				
<b>Education</b>			Celebrate Freedom Week					
<b>Emergency Medical Services</b>	Graduated sanctions		Ambulance service permit; credentials	Staffing; authorized activities for EMTs (3)				
<b>Fire Marshal</b>	Explosives				LP gas; training			
<b>Health and Environment (KDHE)</b>	Land-spreading		Tiny-K services	Staff secure facilities; occupational exposure			Lab fees; surface water register	
<b>KDHE – Division of Health Care Finance</b>			Eligibility					Prior authorization*
<b>Insurance</b>			Misc.					
<b>Labor – Division of Workers Compensation</b>		Medical fees						
<b>Library</b>				Internet access policy				
<b>Nursing</b>	Exam fee; LPN IV therapy			Fees				
<b>Pharmacy</b>						Prescription monitoring		
<b>Real Estate Appraisal</b>						Fees		Experience; fees*
<b>Revenue</b>		Vehicle registration			Ignition interlocks			
<b>Revenue – Property Valuation Division</b>			Appraiser qualifications					
<b>Securities Commissioner</b>	Investment advisers							
<b>Technical Professions</b>			License; reciprocity (2)					
<b>Wildlife, Parks and Tourism</b>	Exempt, bird hunting	Fees; bait fish; misc.		Fees; restitution	Exempt, permits		Hunting misc.*	

\* Rules and regulations in this set were NOT published in the *Kansas Register* as final rules and regulations before July 1, 2014.

(1) 3 of the 19 rules and regulations in this set were not published by June 30, 2014

(2) 1 of the 12 rules and regulations in this set was not published by June 30, 2014

(3) 1 of the 4 rules and regulations in this set was not published by June 30, 2014

## **Comments to Agencies**

After each proposed rule and regulation was reviewed, the Committee expressed comments it deemed appropriate, including commendations, and staff forwarded those remarks to each state agency for consideration. The Committee requested a response to each comment. Staff maintain a database of information about Committee comments and agency responses to them. All comments and responses are available for public inspection.

## **Comments to Agencies**

After each proposed rule and regulation was reviewed, the Committee expressed comments it deemed appropriate, including commendations, and staff forwarded those remarks to each state agency for consideration. The Committee requested a response to each comment. Staff maintain a database of information about Committee comments and agency responses to them. All comments and responses are available for public inspection.

**Examples** of Committee concerns are summarized below, by general topic. Additional information, including a summary of the agency's response if the response was received by the deadline for this report, is summarized in parentheses.

### ***Adoption by reference***

- Accountancy, auditing standards, January 7, 2014. The Committee noted the auditing standards mentioned in a proposed rule and regulation had been adopted by reference in a different rule and regulation and suggested a cross-reference to the adoption by reference. (The agency provided no specific response to this comment.)
- Department of Revenue, ignition interlock devices, March 6, 2014. The Committee was concerned that a document was adopted by reference without a specific date for that document; Department of Administration guidance appeared to require such a date. (The agency said it checked with the Department of Administration, and the citation to a *Federal Register* document that included a page number did not require change.)
- Real Estate Appraisal Board, appraisal experience requirements, May 30, 2014. The Committee noted a table was adopted by reference in three rules and regulations and suggested adopting the table in only one rule and regulation and adding cross-references to that adoption by reference in the other two rules and regulations.

### ***Authority for rules and regulations***

- Department of Agriculture, Division of Water Resources, water rights conservation program, January 7, 2014. The Committee requested review of the Chief Engineer's authority to promulgate rules and regulations related to the Water Rights Conservation Program because the statute establishing the program had not been made part of the Water Appropriations Act. (HB 2429, which would have addressed the issue, passed the House in 2014 and received a hearing in the Senate

Committee on Natural Resources, but its contents were not enacted. The bill was mentioned in the agency's response.)

- KDHE, surface water register, April 29, 2014. The Committee suggested the agency review its authority to promulgate this rule and regulation, because the listed authorizing statute specified a date in 2003 for promulgating rules and regulations. (The agency added a reference to an additional authorizing statute.)

### **Clarity**

- Department of Commerce, Athletic Commission, licensure requirements, July 22, 2013. The Committee asked the agency to clarify what was meant by a "valid, government-issued identification card"; a copy of such identification was to be submitted with an application for a license to compete or serve in any contest. (The agency determined submission of valid photo identification was unnecessary in the context of the rule and regulation, and the requirement was not included in the final rule and regulation.)
- Behavioral Sciences Regulatory Board, addiction counselor requirements, August 27, 2013. The Committee suggested the agency define the terms "cultural sensitivity" and "cultural competence" and use more consistency in its references to cultural issues. (The agency replaced both terms with "culturally informed," which it called a more precise term that would not require an additional definition.)
- Crime Victims Compensation Board, cooperation with law enforcement, November 5, 2013. The Committee noted the term "offices and agencies with investigatory or prosecutorial responsibilities" used in the proposed rule and regulation includes the fire marshal (KSA 31-137), the Secretary of Labor (KSA 75-5702), the Director of Property Valuation (KSA 79-1406), the Secretary for Aging and Disability Services (KSA 75-5945, KSA 39-1905), and the long term care ombudsman (KSA 75-7306). (The agency replaced the questioned term with "the offices and agencies responsible for investigating the crime or prosecuting the offender.")
- Board of Accountancy, renewal of a permit to practice, January 7, 2014. The Committee suggested the agency substitute a 30-day limit, rather than the vague "time frame specified by the board," to specify the time frame for submitting information the Board needs to verify the number of continuing professional education hours an applicant has claimed. (The agency substituted a requirement for a response within 30 days.)
- Department of Administration, furloughs, May 30, 2014. The Committee suggested "lapse in appropriations" should be replaced by words such as "lack of funding" because "lapse in appropriations" has a different meaning than what appeared to be intended in the rule and regulation. The Committee also suggested retaining "notwithstanding" rather than replacing it with "despite," to retain the legal meaning of "notwithstanding." (The latter suggestion also was made to the Office of the State Bank Commissioner after the Committee's April 29, 2014, meeting. The Office stated the Department of Administration said proposed rules and regulations should be drafted to avoid complicated or confusing language, and the use of "notwithstanding" would counter that position.)

- Board of Pharmacy, prescription monitoring program, March 24, 2014. The Committee suggested the agency remove a reference to a statute's subsection, so that the rule and regulation would not need to be revised if an amendment changed the subsection designation in the statute. (The agency said the subsection reference provided clarity and did not remove it.)

### ***Compliments***

- Behavioral Sciences Regulatory Board, addiction counselor licensing, August 27, 2013. The Committee expressed its appreciation for the work of the agency and stakeholders in developing the proposed rules and regulations and integrating the regulation of addiction counselors into the work of the Board.
- KDHE, Division of Health Care Finance, November 5, 2013. The Committee expressed its appreciation to the agency staff members who presented the proposed rules and regulations for the expertise they demonstrated in answering questions from Committee members.
- Board of Nursing, fees, January 7, 2014. The Committee commended the agency's executive director for her assistance to leaders in other small regulatory agencies.
- Real Estate Appraisal Board, fees, March 24, 2014. The Committee thanked the agency for being diligent in decreasing fees when the fund balance allows.
- KDHE, laboratory fees, April 29, 2014. The Committee commended the agency on a complete and thorough Economic Impact Statement.

### ***Economic Impact Statements***

- Corporation Commission, hydraulic fracturing, July 22, 2013. The Committee believed the Environmental Benefit Statement included in the Economic Impact Statement did not meet the requirements of KSA 2012 Supp. 77-416(d) because it did not summarize certain risks or specific contaminants. (The agency submitted an expanded Environmental Impact Statement.)
- Department of Wildlife, Parks and Tourism, camping fees, January 7, 2014. The Committee requested documentation of the utility cost increases that the Committee was told prompted the proposed increases in camping permit fees. (The agency submitted information showing utility costs from 2005 to 2013 had nearly doubled, and the fee had increased from \$5.50 to the proposed \$9 in that time frame. The response also noted the fee also pays for associated infrastructure costs.)

### ***Information requests***

- Board of Cosmetology, tattooing and piercing, July 22, 2013. The agency's representative stated a proposed change to the expiration dates of certain licenses reflected a policy change; the Committee asked when the policy was changed. (The

agency responded the expiration date for cosmetology practitioner licenses was changed in approximately 1998, and it is unknown why the rule and regulation was not changed at that time.)

- KDHE, land-spreading of well-drilling wastes, July 22, 2013. The Committee asked what would happen if a land-spreading operation has been approved and not completed by July 1, 2015, when the exemption under the Solid Waste Act is set to expire. (The agency responded it will seek during the 2015 Session to have the Legislature remove the expiration date and make any other legislative changes required to the program, based on experience with the program to that point. It further stated it will inform anyone with an active approval that no land-spreading may be done after July 1, 2015, if the expiration date is not removed.)
- Department of Education, Celebrate Freedom Week curricula, November 5, 2013. The Committee requested clarification regarding whether the rule and regulation applies to innovative and charter schools. (The agency stated the issue was unresolved and that the Office of the Attorney General had declined a request for an opinion, citing pending action in *Gannon, et al. v. State.*)

### ***Policy suggestions***

- Board of Cosmetology, tattooing and piercing, July 22, 2013. The Committee stated it believed the addition of mobile facilities to the facilities that can be licensed is a major regulatory change that should be preceded by statutory change and asked why such a statutory change was not requested. (The agency found five mobile body art facilities had been licensed between 1998 and 2009 and stated authority was derived from a KDHE definition of a mobile establishment.)
- KDHE, Tiny-K services, November 5, 2013. The Committee asked whether the agency considered allowing a clinical professional counselor licensed by the Behavioral Sciences Regulatory Board (BSRB) to be among the “qualified personnel” who may provide early intervention services. (The rule and regulation was changed to include clinical professional counselors licensed by the BSRB.)
- KDHE, staff secure facilities, January 7, 2014. The Committee suggested the agency consider reducing the 24-hour time limit for reporting serious incidents and ensure any such time limits be compatible with duty of reporting requirements for professional staff elsewhere in state law. (The agency changed the provision to require reporting upon discovery of the incident or event but no later than 24 hours after discovery.)

### ***Uniformity with other law***

- Department of Aging and Disability Services, adult care homes, August 27, 2013. The Committee asked the agency to consider aligning its definition of “concentrated livestock operation” with definitions used by KDHE and the Department of Agriculture and to make its definition of “physician” consistent. (The agency reworded the definition of concentrated livestock operation to coincide with the KDHE definition for

confined feeding operations and modified the statutory references in definitions of “physician” to be consistent with law applicable to the Board of Healing Arts.)

- Board of Cosmetology, tattooing and piercing, July 22, 2013. The Committee requested information regarding client-disclosed health information to be retained by the tattoo licensee, the effects of those records on liability, and whether the provisions were acceptable under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Americans with Disabilities Act (ADA). (The agency determined a body arts practitioner is not a “covered entity” under either HIPAA or ADA. It also said the Board shared the Committee’s liability concerns if the record is not specific and that other states also were grappling with how to handle the health information collected from clients.)
- KDHE, Tiny-K services, November 5, 2013. The Committee suggested removing “Kansas” before the names of various boards, to reflect their statutory names. (The agency retained “Kansas,” stating that was based on the Attorney General’s review of the proposed rule and regulation.)
- Department of Administration, furloughs, May 30, 2014. The Committee asked whether provisions in the rule and regulation for mandatory leave without pay violate any state employment contract statutes or contracts.

## **Legislative Action**

Of the 144 bills enacted in 2014, 21 contained provisions authorizing, requiring, moving, or clarifying authority for rules and regulations. The following list summarizes the authority granted to each agency. Statutory deadlines that were specified are mentioned. The list also includes changes to authority but does not include transfers of authority related to the Governor’s executive agency reorganization. For more information on aspects of these bills not related to rules and regulations, the reader is directed to the 2014 *Summary of Legislation*.

### ***Aging and Disability Services, Department of***

**HB 2418**, the Operator Registration Act, requires the Secretary to adopt by rules and regulations a system for registering adult care home operators. It also requires the Secretary to adopt rules and regulations establishing requirements for reinstatement of people whose registrations have lapsed for failure to renew. All fees under the Act are to be established by rules and regulations.

### ***Agriculture, Department of***

**SB 278** states rules and regulations of the Board of Veterinary Examiners, through June 30, 2016, are to be submitted to the Secretary of Agriculture and formally proposed and adopted by the Secretary. The Secretary may recommend changes to proposed rules and regulations, but the bill requires any changes be approved by the Board.

## ***Attorney General***

**SB 308** clarifies the Attorney General is authorized to promulgate rules and regulations that adopt provisions of the Federal Trade Commission regulations implementing the national do-not-call law including, but not limited to, the telemarketing sales rule in 16 CFR Part 310.

**HB 2578** requires the Attorney General to adopt rules and regulations prescribing the location, content, size, and other characteristics of signs to be posted on any building where carrying an unconcealed firearm is prohibited.

## ***Behavioral Sciences Regulatory Board***

**HB 2744** authorizes the Board to promulgate rules and regulations to implement and administer the Applied Behavior Analysis Licensure Act.

## ***Corporation Commission***

**Senate Sub. for HB 2482** authorizes the Commission to adopt rules and regulations to administer the Energy Efficiency Investment Act, which the bill added to the statutes. The Act's provisions include a requirement the Commission permit electric and natural gas public utilities to implement Commission-approved programs and cost recovery mechanisms to reduce the consumption of electricity or natural gas by retail customers.

## ***Education, State Board of***

**Senate Sub. for HB 2506** authorizes the Board to adopt rules and regulations regarding a specific group of prospective teachers exempted from a requirement to complete a teacher preparation program prior to licensure: teachers with degrees in science, technology, engineering, mathematics, finance, or accounting; five years of work experience in the subject matter area; and commitments from local school district boards to hire them to teach related courses. The bill also requires the Board to adopt rules and regulations to determine whether a scholarship granting organization is in substantial compliance with provisions of the Tax Credit for Low Income Students Scholarship Program Act.

## ***Healing Arts, Board of***

**HB 2673** requires the Board take several actions with regard to rules and regulations:

- The bill requires the Board to establish requirements for continuing education for exempt licensees of each branch of the healing arts. (An exempt license may be issued to a person who is not regularly engaged in the practice of healing arts in Kansas and does not hold himself or herself out to the public as being professionally engaged in such practice.)
- The bill requires the Board to establish rules and regulations for the issuance, renewal, and scope of practice for a reentry license (which is created by the bill).

- The bill allows the Board to adopt rules and regulations establishing qualitative and quantitative practice activities which qualify as active practice for the purpose of issuing a license to a person who has been in the active practice of a branch of the healing arts in some other state, territory, or country or the District of Columbia.
- The bill requires the Board to adopt rules and regulations governing the practice of physician assistants.

***Health and Environment, Department of***

**SB 254** amends statutes of the State Children’s Health Insurance Program and the Medicaid Estate Recovery Program to clarify the rules and regulations authority of the Secretary of Health and Environment over these programs.

**HB 2552** requires the Secretary of Health and Environment to adopt rules and regulations to carry out provisions regarding payment deadlines in any contract between the Kansas Medical Assistance Program and any managed care organization and penalties. The bill requires such contracts to require the allowed amount on all clean claims to be fully paid or denied within 30 days after receipt and the allowed amount on all other claims be fully paid or denied within 90 days after receipt.

***Insurance, Department of***

**HB 2668**, which becomes effective July 1, 2017, requires the Insurance Commissioner to adopt rules and regulations necessary to carry out the provisions of the Predetermination of Health Care Benefits Act. Under the Act, a health plan that receives an electronic health predetermination request will be required to provide to the requesting health care provider the estimated amounts of expected benefits coverage on the procedures specified in the request.

***Investigation, Kansas Bureau of***

**HB 2501** directs the Bureau to adopt rules and regulations by July 1, 2014, requiring district courts to electronically report filings and dispositions to the KBI Central Repository in cases involving the crimes of human trafficking, aggravated human trafficking, selling sexual relations, promoting the sale of sexual relations, buying sexual relations, and commercial sexual exploitation of a child.

***Pharmacy, Board of***

**Senate Sub. for HB 2146** requires the Board to establish by rules and regulations the expiration dates for licenses, registrations, and permits issued by the Board and to allow for the prorating of fees for license and registration periods. The bill also authorizes the Board to adopt rules and regulations related to the registration, discipline, training, and oversight of pharmacist interns.

### ***Regents, Board of***

**HB 2544** authorizes the Board to adopt rules and regulations to implement provisions authorizing certain postsecondary educational institutions to enter into the State Authorization Reciprocity Agreement to provide distance education to out-of-state students.

### ***Revenue, Department of***

**Senate Sub. for HB 2506** requires the Secretary of Revenue to adopt rules and regulations regarding filing of documents that support the amount of credit claimed under the Tax Credit for Low Income Students Scholarship Program, which was created by the bill.

**HB 2643** requires the Secretary to adopt, by January 1, 2015, rules and regulations necessary to implement provisions relating to contracting with an independent appraiser to classify and appraise natural gas and helium processing facilities, ethanol facilities, crude oil refineries, fertilizer manufacturing facilities, cement manufacturing facilities, and such other complex industrial properties as otherwise requested by the county appraiser or the taxpayer.

**Senate Sub. for HB 2693** requires the Secretary to adopt, by January 1, 2015, rules and regulations to implement commercial driver's license skills testing by authorized community and technical colleges.

**HB 2727** requires the Secretary to promulgate rules and regulations necessary to remain compliant with certain federal standards regarding parking placards for people with disabilities.

### ***State, Secretary of***

**HB 2130** authorizes the Secretary of State to promulgate rules and regulations on the rights and responsibilities of election officials regarding ballot language statements.

**Sub. for Sub. for HB 2721** authorizes the Secretary to adopt rules and regulations to implement the Business Entity Standard Treatment Act, which centralizes the requirements for the most common filings of corporations, limited liability companies, limited partnerships, and limited liability partnerships with the Secretary. No such rules and regulations may be effective before January 1, 2015.

### ***Tax Appeals, Board of***

**HB 2643** authorizes the Board of Tax Appeals to issue rules and regulations regarding the classification of property constructed with the proceeds of industrial revenue bonds as real or personal property. (The Court of Tax Appeals was renamed the Board of Tax Appeals with enactment of House Sub. for SB 231.)

### ***Technical Professions, Board of***

**SB 349** authorizes the Board to adopt rules and regulations concerning canceled, inactive, and emeritus licensure status for the professions regulated by the Board. The bill also

requires the Board to adopt rules and regulations prescribing minimum standards for boundary surveys, mortgage title inspection, American Land Title Association surveys, and such other surveys as necessary to control the quality of surveying in the state of Kansas..

### ***Veterans Affairs Office***

**Sub. for HB 2681** transfers all rules and regulations of the Kansas Commission on Veterans Affairs to the Kansas Commission on Veterans Affairs Office, which was created by the bill. It also authorizes the Director of the Office, in accordance with general policies directed by the Governor, to adopt, amend, or revoke any rules and regulations.

**REPORT OF THE OVERSIGHT ACTIVITIES OF THE  
JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS  
JULY 2012 THROUGH JUNE 2013**

From July 2012 through June 2013, the Joint Committee on Administrative Rules and Regulations (JCARR) reviewed proposed rules and regulations of 32 different state executive branch agencies or agency divisions that have separate agency numbers. To review all of the proposed rules and regulations within their public comment periods as required by law, the Joint Committee met seven times.

The dates of Joint Committee meetings, the state agencies appearing before the Committee on such dates, and the main topic of the proposed rules and regulations by date are listed in the following table.

**JCARR MEETING DATES, AGENCY APPEARANCES, AND TOPICS, JULY 2012 – JUNE 2013**

<b>AGENCY</b>	<b>July 23, 2012</b>	<b>Sept. 17, 2012</b>	<b>Nov. 26, 2012</b>	<b>Jan. 7, 2013</b>	<b>March 6, 2013</b>	<b>April 22, 2013</b>	<b>June 20, 2013</b>
911 Coordinating Council			Grant distribution				
Agriculture		Food service inspection	Lodging; food safety		Meat inspection; food code	Food establishments * (6)	
Agriculture – Animal Health			Trichomoniasis tests* (3)				
Agriculture – Conservation Division						Water right transition assistance	
Agriculture – Water Resources						Multi-year flex accounts	
Agriculture – Weights & Measures							NIST standards adoption*
Attorney General	Batterer intervention						
Bank Commissioner				Loan documents			
Children & Families	Child abuse definitions						
Commerce	HPIP*						
Corporation Commission		Compressed air energy storage				Horizontal drilling, other oil and gas*	Motor carriers*
Corrections			Prisoner fees; good time credits				
Cosmetology	Body art licenses*						
Dental Board						Extended care permits	

AGENCY	July 23, 2012	Sept. 17, 2012	Nov. 26, 2012	Jan. 7, 2013	March 6, 2013	April 22, 2013	June 20, 2013
Education				Use of restraint, seclusion			
Emergency Medical Services	Medication administration			Misc.		Ambulance services	
Health and Environment		Air quality standards	Abortion reports; HIPAA form	Alcohol tests; xray equipment fees	Hazardous waste	Water wells	Foster care licensing*
Health and Environment (former Health Policy Authority)		Medicaid prior authorization					
Indigents' Defense	Capital case attorney qualifications	Payments for services					
Insurance			Misc.* (2)				
KBI							Reporting criminal history*
Labor – Workers Compensation	Schedule for review of briefs*		Electronic medical claim reports			Data submission	
Nursing					Cont. ed. for nurses* (5)		
Peace Officers' Standards and Training	Redo of standards						
Pharmacy	Prescription monitoring*						
Real Estate Appraisal	Appraisal management company registration (1)		Registration renewal	Fee reduction			Fee reduction*
Regents		Qualified admissions	Residency for military; qualified admissions				
Revenue – Alcoholic Beverage Control		Fines and penalties	Retail liquor dealers (4)		Tasting events		
Water Office							State water plan; misc.*
Wildlife, Parks and Tourism	Falconry; wildlife rehab.	Misc.	Migratory bird program; falconry		Fees; bow hunting	Camping fees; misc.	Agritourism*

\* Rules and regulations in this set were NOT published in the *Kansas Register* as final rules and regulations before July 1, 2013.

(1) Two of the proposed rules and regulations were heard again at the JCARR's Nov. 26, 2012, meeting.

(2) Two of the four proposed rules and regulations had not been published as final before July 1, 2013.

(3) The proposed rule and regulation was withdrawn.

(4) Three of the proposed rules and regulations were heard again at the JCARR's March 6, 2013, meeting.

(5) One of the proposed rules and regulations (60-16-102, Scope of practice for licensed practical nurse performing intravenous fluid therapy) was withdrawn and heard again at the July 22, 2013 meeting.

(6) One of the proposed rules and regulations (4-28-35, Exempt food sold directly to the end consumer) was delayed or withdrawn.

## Comments to Agencies

After each proposed rule and regulation was reviewed, the Committee expressed comments it deemed appropriate, including commendations, and staff forwarded those remarks to each state agency for consideration. The Committee requested a response to each comment. Staff maintain a database of information about Committee comments and agency responses to them. All comments and responses are available for public inspection.

The Committee expressed particular concerns about some of the proposed rules and regulations it heard. **Examples** of those concerns are summarized below, by general topic.

### Clarity

- Real Estate Appraisal Board, appraisal management company registration, July 23, 2012. The Committee requested the agency clarify when an applicant for renewal that is a appraisal management company can be of “good moral character,” as defined in the proposed rule and regulation. (The agency responded that the term “good moral character” was used twice in the statute but not defined, leading the agency to define it in rule and regulation. Its representative said the first use of the term [now KSA 2012 Supp. 58-4709] clearly applies to individuals but the second [now KSA 2012 Supp. 58-4722] was not clear in its application, and statutory change could be needed.)
- Kansas Corporation Commission, Oil and Gas Conservation Division, compressed air energy storage, September 17, 2012. The Committee requested clarification of the terms “substantial change,” “material change,” and “necessary,” to ensure regulatory consistency. (In the final published rules and regulations, in the first two instances, the agency used the term “substantial change” and added “including a change in the rate, pressure, or volume of injected air.” The agency considered adding additional language to clarify “necessary,” but the final rule and regulation was unchanged from the proposed rule and regulation.)
- Board of Regents, qualified admissions, November 26, 2012. The Committee recommended the Board reconsider the use of the term “state educational institution” in the proposed rules and regulations when the meaning of that term in the rules and regulations differs from the meaning in statute. (The Board amended the definition in the state university admissions rules and regulations article to refer to the statute and to clarify that the meaning of the regulatory term differs from the meaning of the statutory term when used in that specific article of rules and regulations.)
- Department of Agriculture, Division of Water Resources, base water rights, April 22, 2013. The Committee recommended the agency define “inadequate” as applied to water use records and recommended wording to say no actual water use will be counted for a year for which records are inadequate. (The published rule and regulation reflects the suggested wording change.)
- Water Office, weather modification permit, June 20, 2013. The Committee requested clarification of the term “statement of individual worth” and suggested replacing it

with “profit and loss statement” or a similar, widely used term. (No response was received or final rule and regulation published before July 1, 2013.)

### ***Compliments***

- Attorney General, batterer intervention programs, July 23, 2012. The Committee commended the agency on the work it undertook in developing the set of rules and regulations.
- KDHE, National Ambient Air Quality Standards for fine particulate matter, September 17, 2012. The Committee commended the agency on its efforts to work with the U.S. Environmental Protection Agency to find workable solutions for rural states.
- Wildlife, Parks and Tourism, camping fees, turkey hunts, exempt regulations, April 22, 2013. The Committee complimented the agency for including an economic impact statement after each proposed rule and regulation.

### ***Consistency with Other Law***

- Board of Cosmetology, tattoo and body piercing practice standards, July 23, 2012. The Committee raised concerns about the proposed rule and regulation’s requirement for obtaining medical information from “protected classes” of individuals (under the Americans with Disabilities Act) or consulting with those people’s physicians. (The agency did not adopt the proposed rule and regulation. The Board stated it would revise the proposal.)
- KDHE, foster care licensing, June 20, 2013. The Committee requested the agency review a proposed rule and regulation regarding which family members may transport a foster child, for consistency with graduated driver’s license provisions. (No response was received or final rule and regulation published before July 1, 2013.)

### ***Effect on Stakeholders***

- Labor, Workers Compensation Division, time schedule for appellate briefs to be submitted to the Appeals Board, July 23, 2012. The Committee requested information about the numbers of cases in the Appeals Board’s backlog and the reasons for any backlog. (The agency stated the average number of days from appeal to decision, from January 1, 2011, to July 23, 2012, was 97 days and the proposed rule and regulation was expected to reduce that time frame by at least 3 weeks. It also stated there were 696 appeals and 593 decisions during that time period, and 139 decisions were pending as of July 2012.)
- Bank Commissioner, loan documentation, January 7, 2013. The Committee believed the proposed rule and regulation would make it more difficult for smaller banks to conduct business. (The Bank Commissioner and the Kansas State Banking Board amended the rule and regulation, saying the amended rule and regulation will allow

more discretion and flexibility in how they monitor loans of less than \$100,000 that are not adequately secured.)

- Board of Nursing, scope of practice for licensed practical nurse (LPN), March 6, 2013. The Committee questioned whether the rule and regulation should authorize LPNs qualified by the Board before June 1, 2000, to perform certain activities, regardless of their training. (The proposed rule and regulation was withdrawn.)
- Corporation Commission, Transportation Division, motor carrier safety, June 20, 2013. After discussion on a requirement for letters of recommendation from medical examiners on institutional or personalized letterhead, the Committee stated such letterhead is now easily fabricated and suggested the agency consider a requirement the physician provide a National Provider Identifier instead. (No response was received or final rule and regulation published before July 1, 2013.)

### ***Economic Impact Statement***

- KDHE, National Ambient Air Quality Standards for fine particulate matter, September 17, 2012. The Committee requested information about the formula that would be used to calculate the potential loss of federal transportation dollars, should the agency not adopt the proposed rules and regulations. (The agency responded that federal sanctions would be imposed if the National Ambient Air Quality Standards continued to be exceeded and amounts of Federal Highway Fund restrictions would be based on Federal Highway Administration and U.S. EPA regulations.)
- Agriculture, Water Resources, multi-year flex accounts and base water rights, April 22, 2013. The Committee requested a more detailed economic impact statement, including information on impacts on the agency from the agency absorbing approximately \$750,000 in costs for these programs. (The agency stated it did not believe an updated economic impact statement was necessary.)
- Corporation Commission, Transportation Division, motor carrier safety, June 20, 2013. The Committee requested information on the economic impact of not adopting the proposed rules and regulations, which would adopt by reference various federal statutes, with certain Kansas-specific changes. (No response was received or final rule and regulation published before July 1, 2013.)

### ***Fees***

- Kansas Corporation Commission, Oil and Gas Conservation Division, compressed air energy storage, September 17, 2012. The Committee asked why proposed fees were the same as those for cavern natural gas storage. (The agency provided details on the numbers of KDHE-regulated natural gas storage facilities, costs, and the parallels between the programs.)

## **Information Requests**

- KDHE, Division of Health Care Finance, prior authorization for certain medications, September 17, 2012. The Committee requested information on costs for the state-owned automated prior authorization system that would be replaced under KanCare. (The agency's response included the information that the state paid Xerox \$1.00 for implementation costs, nearly \$38,000 for change requests, and \$32,700 a month – a total of \$439,616 through August 2012. It further stated the SmartPA system had generated an average monthly savings of \$762,885 for the Kansas Medicaid Pharmacy program. It further stated, "Xerox has met all milestones set forth for the SmartPA programs, and continues to be very responsive to the needs of the Kansas Medicaid Pharmacy program, as well as those of its providers and beneficiaries.")
- Kansas Corporation Commission, Oil and Gas Conservation Division, horizontal drilling, April 22, 2013. The Committee asked the agency to compare its proposed notice of intent to drill requirements and its proposed well completion report requirements with notice requirements of nearby states. (The KCC reported its staff had reviewed the regulations of Oklahoma, Texas, and Colorado. The agency said those states appear to permit horizontal well drilling by a form process. It further said Kansas requires a well completion report within 120 days of the spud date [with exceptions available], while the other states generally require a well completion report within 30 days of the actual well completion date.)

## **Subjective Criteria**

- Peace Officers' Standards and Training, unprofessional conduct, July 23, 2012. The Committee requested the criteria for what would "cause disrepute to the law enforcement profession, the appointing authority, or the officer" and suggested the agency add such criteria to the proposed rule and regulation. (The agency removed the quoted language from the rule and regulation.)
- Department of Agriculture, food safety, November 26, 2012. The Committee stated it believed a rule and regulation was not complete because it did not include the conditions required to be met to prevent transported food from becoming adulterated. (The agency revised the rule and regulation. It added language stating the food shall be "protected from physical, chemical, and microbial contamination and degradation" and specified vehicles and containers must be clean and sanitary and temperature-control standards must be met.)

## **Legislative Action**

During the 2013 Session, the Legislature authorized multiple agencies to adopt rules and regulations. The following list summarizes the authority granted to each agency. Statutory deadlines that were specified are mentioned. The list also includes changes to authority but does not include transfers of authority related to the Governor's executive agency reorganization. For more information on aspects of these bills not related to rules and regulations, the reader is directed to the 2013 *Summary of Legislation*.

## ***All Licensing Bodies***

**HB 2078** requires a licensing body to accept education, training or service completed in military service toward application requirements for certification or licensure in Kansas if the applicant demonstrates to the satisfaction of the licensing body that such education, training or service is substantially equivalent to the existing requirements for certification or licensure. The section allows each licensing body (defined to not include the Board of Nursing or the Board of Emergency Medical Services) to adopt rules and regulations necessary to implement the provisions of the section.

**HB 2181** allows each licensing body to adopt rules and regulations to waive educational requirements for certification or licensure if an applicant provides satisfactory evidence of completion of a distance education course. An “applicant” is defined as a person who has separated from military service under conditions other than dishonorable. The section does not apply to the regulation of attorneys or the practice of law.

## ***Agriculture, Department of***

**Sub. for SB 57** extends the rules and regulations authority of the animal health commissioner to allow rules and regulations to ensure compliance with federal requirements and to protect domestic animals and wildlife from disease risks related to domestic deer production.

**HB 2363** requires the Chief Engineer, Division of Water Resources, to adopt rules and regulations to implement new provisions that allow limited transfer permits and to ensure there is no increase in consumptive use. A limited transfer permit may authorize the use of up to 4 million gallons from an existing water right. The permit is limited to a single calendar year. The bill also authorizes the Chief Engineer to adopt rules and regulations for the issuance of a general permit for a project that requires limited supervision and review. The projects covered by general permits include the construction, modification or addition of certain dams and water obstructions in designated streams.

## ***Attorney General***

**SB 59**, the Medicaid Fraud Act, authorizes the Attorney General to promulgate rules and regulations necessary to implement monetary rewards to those who report violation by any person of the Medicaid Fraud Control Act, the False Claims Act, or any other provision of law that protects the integrity of the public treasury.

**Sub. for HB 2024**, the Kansas Roofing Registration Act, authorizes rules and regulations necessary to implement the Act, which is part of the Kansas Consumer Protection Act and requires roofing contractors to register with the Attorney General.

## ***Bank Commissioner, State***

**SB 139** authorizes the State Bank Commissioner to adopt rules and regulations necessary to administer and implement the Kansas Money Transmitter Act. The bill also amended the Act to allow money transmitters to submit applications for licensure and to allow the Commissioner to request and receive licensure information and report violations of the law

and other relevant information through a nationwide multi-state licensing system and registry, and it revised and added definitions in the Act, clarified licensee activities, and specified when licensees are allowed to share agents.

### ***Children and Families, Department for***

**SB 149** authorizes the Secretary for Children and Families to adopt rules and regulations necessary to carry out a program of drug screening the applicants for cash assistance as a condition of eligibility and for continued receipt of that assistance.

**HB 2015** requires the Secretary to adopt rules and regulations regarding distribution of child support collected by the Department's central unit. The rules and regulations are to be based on child support distribution requirements in Title IV-D of the federal Social Security Act and accompanying federal regulations. The rules and regulations will not be effective before July 1, 2015.

### ***Education, State Board of***

**HB 2261** requires the State Board of Education to adopt, by December 31, 2013, rules and regulations requiring appropriate instruction for Celebrate Freedom Week, as part of the curriculum for grades kindergarten through eight.

**HB 2319**, the Public Innovative Districts Act, authorizes the Board to adopt rules and regulations to implement and administer the Act. The bill provides that a public innovative district is exempt from all other laws and regulations applicable to school districts.

### ***Executive Chief Information Technology Officer***

**HB 2200** moves responsibility for certain information technology rules and regulations from the Secretary of Administration to the Executive Chief Information Technology Officer (ECITO). After approval from the Secretary of State and the Attorney General, and holding a public hearing, the ECITO's rules and regulations related to the powers or duties of the Office of Information Technology Services are to be submitted to the Governor, who may approve, modify or reject any of them. The bill also moves authority for rules and regulations related to establishment of rates and charges for services performed by the Division of Information Systems and Communications' Office of Information Technology Services, for any other governmental unit, from the Secretary of Administration to the ECITO.

### ***Fire Marshal, State***

**SB 135** transfers the authority for rules and regulations under the Boiler Safety Act from the Secretary of Labor to the Office of the State Fire Marshal.

### ***Health and Environment, Department of***

**SB 187** transfers authority for rules and regulations related to the administration of the Workers Compensation Self-Insurance Fund from the Secretary of Administration to the Secretary of Health and Environment.

**Senate Sub. for HB 2034** requires the Secretary of Health and Environment, in consultation with the Attorney General, to promulgate rules and regulations to implement provisions related to staff secure facilities for minors who are victims of human trafficking.

**Sub. for HB 2183** requires the Secretary to adopt, by January 1, 2014, rules and regulations to protect those who may be exposed to blood or other potentially infectious materials by providing or receiving services. The bill also amends agency authority regarding the prevention of diseases dangerous to the public health, from promulgating rules and regulations “for the isolation and quarantine” of affected people to promulgating rules and regulations “as may be medically necessary and reasonable to prevent the spread and dissemination of diseases . . . including, but not limited to, providing for the testing for such diseases and the isolation and quarantine. . . ” of affected people.

**HB 2363** states no rules and regulations adopted by the Secretary to prevent surface and subsurface water pollution and soil pollution shall apply to land-based sand and gravel pits or to aggregate mining operations utilizing washwater ponds under certain circumstances.

### ***Insurance, Commissioner of***

**SB 85** authorizes the Commissioner of Insurance to adopt rules and regulations that require any motor vehicle liability insurance company authorized to do business in Kansas to provide verification of insurance using an image displayed on a cellular phone or other portable electronic device. The Commissioner previously had that authority regarding proof of insurance provided using photocopy or facsimile.

### ***Investigation, Bureau of***

**Sub. for HB 2017** requires the Bureau of Investigation to promulgate rules and regulations concerning training for law enforcement agencies in the implementation of provisions on the reporting of sexually violent crimes and pornographic materials seized or documented as evidence. The process for such reporting is to be in place within one year of the implementation of a “capable” central data repository system.

**HB 2041** moved from 2013 to 2014 a deadline for the Bureau to adopt rules and regulations requiring district courts to electronically report all case filings and dispositions related to driving under the influence or to refusing to submit to a test to determine the presence of alcohol or drugs.

### ***Labor, Department of***

**SB 149** authorizes the Secretary of Labor to adopt rules and regulations necessary to require employers to submit reports containing the name and address of each job applicant who has been refused employment by reason of specified types of misconduct (use of or impairment caused by alcohol or a non-prescribed controlled substance) and any other information required by the Secretary. The Secretary may use this information to determine eligibility for unemployment benefits.

### ***Librarian, State***

**HB 2109**, the Children's Internet Protection Act, requires the State Librarian to establish standards and promulgate rules and regulations for the enforcement of provisions that require public libraries to ensure no minor has access to visual depictions that are harmful to minors and no person has access to visual depictions that are classed as child pornography or obscene.

### ***Pharmacy, Board of***

**SB 199** allows the Board to adopt rules and regulations on additional subjects under the Utilization of Unused Medications Act: procedures for the acceptance of unused medications, designating certain controlled substances as accepted donated medicines, and standards and procedures for a qualifying center or clinic to prepare any donated medications for dispensing or administering.

### ***Revenue, Department of***

**SB 136** authorizes the Director of Vehicles to adopt rules and regulations necessary to allow a veteran's driver's license to include a "veteran" designation.

**SB 164** authorizes the Secretary of Revenue to adopt rules and regulations to establish minimum standards and practices for providers of motor vehicle functions, and to implement and administer contracts with county treasurers and other contractors to perform motor vehicle functions relating to certificates of title, driver's licenses, identification cards, and personal property taxation.

**HB 2011** authorizes the Secretary to adopt rules and regulations to establish a procedure for transferring distinctive license plates under certain circumstances.

**REPORT OF THE OVERSIGHT ACTIVITIES OF THE  
JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS  
JULY 2011 THROUGH JUNE 2012**

From July 2011 through June 2012, the Joint Committee on Administrative Rules and Regulations (JCARR) reviewed proposed rules and regulations of 29 different executive branch agencies. To review all of those proposed rules and regulations within their public comment periods as required by law, the Joint Committee met nine times.

The dates of Joint Committee meetings, the agencies appearing before the Committee, and the main topic of the proposed rules and regulations are listed in the following table.

**JCARR Meeting Dates, Agency Appearances, and Topics, July 2011 - June 2012**

Agency	July 22, 2011	Aug. 29, 2011	Sept. 26, 2011	Oct. 10, 2011	Nov. 21, 2011	Jan. 3, 2012	Feb. 10, 2012	April 9, 2012	June 1, 2012
Accountancy							Permits, continuing education		
Administration	Leave payouts								
Aging	Homes Plus staff training								
Agriculture	Commercial feeding stuffs		Fees, lodging and food service			Live plant dealers		Live plants: licenses, fees, inspection, penalties	
Agriculture, Water Resources				Flex accounts				Permits for water for fracking	
Behavioral Sciences		Addiction counselors			Revoking counselor regulations			Examination requirements for counselors*	
Commerce	Rural opportunity zones								
Corrections					Community corrections	Parole, house arrest			
Crime Victims Compensation								Hearing procedures*	
Dental Board		Continuing education							
Education								Teacher licenses*	

Agency	July 22, 2011	Aug. 29, 2011	Sept. 26, 2011	Oct. 10, 2011	Nov. 21, 2011	Jan. 3, 2012	Feb. 10, 2012	April 9, 2012	June 1, 2012
Emergency Medical Services		Updates to reflect 2011 HB 2182 (1)		Scope of practice for EMT		Training; continuing education (2)	Continuing education		
Healing Arts					Continuing education for physician assistants				
Health and Environment	Abortion clinic standards	Obsolete references; waste facilities fees			Radon	Medicaid prior authorization; trauma centers	Construction material landfills*; abortion reports	Disposal of special waste*	
Home Inspector Registration						Fees			
Indigents' Defense		Eligibility, reimbursement							
Insurance					External review			Reports, instructions	
Labor – Workers Compensation	Compensation for loss of body part			Fees for medical services					
Nursing							Updating terms		
Racing and Gaming	Miscellaneous updates								
Real Estate Appraisal							Fees		Appraisal standards*
Regents	Fees for private institutions						Postsecondary admissions		
Revenue	Tax liability abatement								
Revenue – Alcoholic Beverage Control					Trade practices				
Secretary of State						Voter ID			
Tax Appeals	Fees								
Technical Professions				Reciprocity; adoption by reference					
Wildlife, Parks and Tourism	Cabin fees; ice fishing, nuisance birds	Commercial bait fish, misc.		Bait fish; motor vehicle permit; misc.			Electronic registration; crossbows	Exempt hunting regulations	Blinds; commercial guides; misc.

\* All rules and regulations in this set were NOT published in the *Kansas Register* as final rules and regulations before July 1, 2012.

(1) Of the 13 proposed rules and regulations, 1 was not adopted by the Board.

(2) The agency delayed two of the eight proposed rules and regulations.

## Comments to Agencies

After each proposed rule and regulation was reviewed, the Committee expressed comments it deemed appropriate, including commendations, and staff forwarded those remarks to each agency for consideration. The Committee requested a response to each comment. Staff maintain a database of information about Committee comments and agency responses to them. All comments and responses are available for public inspection.

The Committee expressed particular concerns about some of the proposed rules and regulations it heard. **Examples** of those concerns are summarized below, by general topic.

### ***Agency Authority***

- Department of Agriculture, Division of Water Resources, flex accounts, Oct. 10, 2011. The Committee requested review of the listed authorizing statutes, because the bill creating the statute implemented by the rule and regulation did not specifically state the new section was to be part of the Water Appropriations Act. (The agency responded that the new provisions make sense only when they are considered part of the Water Appropriations Act, even if the legislation itself did not so specify. The agency made no changes to the regulation.)
- Department of Health and Environment, radon measurement, Nov. 21, 2011. The Committee questioned the authority of the agency to promulgate rules and regulations regarding reciprocal certification. (The agency removed references to reciprocity.)

### ***Clarity***

- Board of Emergency Medical Services, updates to reflect 2011 HB 2182, Aug. 29, 2011. The Committee noted that the term “political subdivision” used in a proposed rule and regulation has various meanings in statutes, depending on the context, and suggested the agency define the term. (The agency revised the rule and regulation to use “city, county, or township.”)
- Department of Health and Environment, modification of obsolete references, Aug. 29, 2011. The Committee stated the proposed rule and regulation, which modifies language in other rules and regulations, did not conform to Rules and Regulations Filing Act requirements that changes proposed in rules and regulations be indicated with strikeouts and italics. The Committee also said this type of regulation would be confusing to the regulated community. (The rule and regulation was adopted. An agency official provided a schedule for modifying each of the regulations listed in the presented proposed rule and regulation.)
- Department of Agriculture, Division of Water Resources, flex accounts, Oct. 10, 2011. The Committee asked whether the phrase “actual, legal annual water use” used in the proposed regulations meant the amount authorized or the amount used. (The Division changed the wording to “water lawfully used each year.”)

- Secretary of State, voter identification, Jan. 3, 2012. The proposed regulation directed the county election officer to assess the document presented as proof of citizenship and then add the voter's name to the voter registration list. The Committee requested the agency specify the result if a county election officer assesses a citizenship document but finds it to be unacceptable. (The agency replied that the statutes state no one shall be registered unless the applicant has produced evidence of citizenship. The proposed regulation was not changed.)
- Board of Regents, post-secondary admissions, Feb. 10, 2012. The Committee asked whether, according to statute, a General Educational Development (GED) credential is a certificate or diploma. (The agency replied the statutes are inconsistent and amended the regulations to refer to the GED as a "credential" rather than a "certificate." It stated "credential" is the most inclusive term and is used in the GED statute.)

### ***Information Requests***

- Department of Administration, limits on state leave payouts, July 22, 2011. The Committee requested a list of agencies that have authority to pay new retirees for more than 240 hours of accrued vacation leave when they retire. (A list was provided.)
- Department of Health and Environment, hazardous waste facilities fees, August 29, 2011. The Committee requested information to explain the need for significant fee increases and why the Legislature was not notified during the 2011 Session about program underfunding. It also notified legislative officials about this concern. (The agency replied the agency had monitored the relevant fund but had not determined declining revenues would require a fee increase until after the Legislature had adjourned.)
- Real Estate Appraisal Board, revocation of adoption by reference of specific standards, June 1, 2012. The Committee asked the Attorney General whether this revocation created an unlawful delegation of authority. (The Attorney General's designee replied that the plain language of the statute requires appraisers to follow the Uniform Standards of Professional Appraisal Practice [USPAP] standards and the statutes do not give the agency the authority to approve or disapprove USPAP standards. The reply further states KSA 58-4121 appears to delegate the authority to establish, amend, supplement, and retire standards to the Appraisal Standards Board of the Appraisal Foundation.)
- Real Estate Appraisal Board, revocation of adoption by reference of specific standards and related changes to additional rules and regulations, June 1, 2012. The Committee requested demographic information on appraisers in Kansas and asked whether a new requirement that a supervisor be in good standing is likely to affect the availability of appraisers. (The agency provided statewide information and information by county on the numbers of appraisers in various categories. It stated the effect of the federal requirement that a supervisor be in good standing is unknown, both in Kansas and across the country.)

## ***Program Concerns***

- Department of Health and Environment, abortion clinic standards, July 22, 2011. The Committee suggested that the rule and regulation be amended to require an ultrasound examination before the consent to the abortion is obtained. (The agency agreed and revised the rule and regulation.)
- Department of Commerce, rural opportunity zone programs, July 22, 2011. The Committee questioned regulations addressing both the student loan repayment program and the tax credit program and suggested they be separated. (The agency removed state income tax credit qualifications, definitions, and procedures from the rural opportunity zone rules and regulations.)
- Behavioral Sciences Regulatory Board, addiction counselor standards, August 29, 2011. The Committee strongly recommended the agency work with representatives of social workers and university social work programs to reach a common ground on proposed rules and regulations. (The agency organized a “compromise committee.” 2012 Senate Bill 290, approved by the Governor on March 30, clarified licensure requirements for licensed addiction counselors and licensed clinical addiction counselors. At its April 9, 2012, meeting, the Committee thanked the Board for its work toward compromise.)
- Wildlife, Parks and Tourism, taking and use of bait fish, Oct. 10, 2011. The Committee was concerned that the proposed rule and regulation did not address the transportation of wild-caught bait fish from a stream basin to a pool or pond. (The agency amended the rule and regulation to state that wild-caught bait fish shall be used on the flowing stream or river from which they were taken.)
- 911 Coordinating Council, selection of a local collection point administrator, Nov. 21, 2011. The Committee was concerned that the Council had selected a local collection point administrator before this rule and regulation was in place and believed the timing could risk a legal challenge to the selection. (The agency replied that the statutory time line required such action. It said 2011 Senate Bill 50, which established the Council, was signed by the Governor on May 1, 2011, and its members appointed by July 1, 2011. SB 50 also required a local collection point administrator be in place by January 1, 2012, and rules and regulations for the terms of the contract by December 31, 2011. Because of the time needed to promulgate rules and regulations, the Council proceeded on those tasks simultaneously, and the requirements in the request for proposals for a local collection point administrator were the same as those included in the proposed rule and regulation.)
- Secretary of State, voter identification, Jan. 3, 2012. The Committee questioned the use of the terms “if practicable” and “by any means” in proposed rules and regulations regarding applications for advance ballots and requested the agency provide more direction to local officials needing to contact a voter in order to fully complete such an application. (The agency stated it recognizes the authority given to county election officials in statutes and wished to preserve local discretion. If a question remains about the application, the voter could be issued a provisional ballot, the agency said. The proposed rule and regulation was not changed.)

- Board of Regents, post-secondary admissions, Feb. 10, 2012. The Committee was concerned with the deletion of required courses in the social sciences and stated the standards should require courses in American history, geography, and government. (The agency amended the proposed rule and regulation to provide that the three required units of approved qualified admission social sciences courses include instruction in U.S. history, U.S. government, and geography.)

## **Legislative Action**

During the 2012 Session, the Legislature authorized multiple agencies to adopt rules and regulations. The following list summarizes the authority granted, by agency. Statutory deadlines that were specified are mentioned. The list also includes changes to authority but does not include transfers of authority related to executive agency reorganization. For more information on aspects of these bills not related to rules and regulations, the reader is directed to the 2012 *Summary of Legislation*.

### **All Agencies**

**SB 252** amends the Rules and Regulations Filing Act to update agency names and to change notice requirement from 30 days to 60 days for new rule-making proceedings when the 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. The public comment period is 60 days. This bill was introduced by the Joint Committee on Administrative Rules and Regulations.

### **Administration, Department of, and Department for Aging and Disability Services**

**HB 2453** establishes bidding preferences for certain businesses that employ individuals with disabilities. The bill authorizes the Secretary of Administration and the Secretary for Aging and Disability Services, jointly, to adopt rules and regulations necessary to implement that section. This portion of the bill becomes effective January 1, 2013.

### **Aging and Disability Services, Department for**

**House Sub. for SB 60** amends various administrative and criminal statutes related to driving under the influence. Section 13 provides that, on and after July 1, 2013, all alcohol and drug evaluations conducted prior to sentencing or under a diversion agreement are to utilize a standardized substance use evaluation approved by the Secretary of Social and Rehabilitation Services. (These duties have been moved to the Department for Aging and Disability Services.) It requires the Secretary to promulgate rules and regulations to implement this section by July 1, 2013.

**HB 2453**, among other things, creates a rebuttable presumption that an individual with a disability is eligible for reinstatement to the level of home and community based services or other Medicaid program services to which the individual was entitled on the day preceding the day the individual stopped receiving those services because of full-time employment. It authorizes the Secretary for Aging and Disability Services to adopt rules and regulations necessary to implement those provisions.

### ***Agriculture, Department of***

**House Sub. for SB 191** authorizes the Secretary of Agriculture to adopt rules and regulations to establish fees for and administer laboratory testing of samples from other states.

**Senate Sub. for HB 2730** amends various sections of the Kansas Food Service and Lodging Act and the Kansas Meat and Poultry Inspection Act. Its changes regarding rule and regulation authority are in four sections:

- Section 6 gives express authority to the Secretary to promulgate rules and regulations with respect to the licensure of lodging establishments and fees related to licensure and inspection.
- Section 23 changes rule and regulation authority of the Secretary of Agriculture from authority to adopt rules and regulations establishing an inspection fee for retail food stores to authority to adopt an application and license fee for food establishments. The bill sets maximum license fees.
- Section 26 authorizes the Secretary to prescribe rules and regulations to implement voluntary inspection for animals other than livestock, poultry, or rabbits which can or may be used in and for the preparation of meat or meat products or poultry or poultry products. Such rules and regulations can include fees to cover inspection costs.
- Section 29 authorizes the Secretary to prescribe rules and regulations for the voluntary inspection of all livestock, domestic rabbits and poultry which can be used in and for meat or meat products or poultry or poultry products in intrastate commerce.

### ***Agriculture, Department of, Division of Water Resources***

**SB 310** requires the Chief Engineer to adopt rules and regulations regarding local enhanced management areas within groundwater management districts.

### ***Attorney General***

**SB 304** requires the Attorney General to adopt rules and regulations governing the administration and enforcement of the Batterer Intervention Program Certification Act. These requirements may include, but not be limited to, standards, program elements and goals, the role of the certified batterer intervention program in the community, technical considerations, the assessment of batterer participants and the utilization of the Kansas domestic violence offender assessment, and orientation training and continuing education requirements. These rules and regulations are to be adopted before May 31, 2013 (the first anniversary of the Act's effective date). This bill was introduced by the Joint Committee on Administrative Rules and Regulations.

### ***Corporation Commission***

**Senate Sub. for HB 2526** provides explicit authority for the Kansas Corporation Commission to regulate hydraulic fracturing, and it authorizes the Commission to promulgate

rules and regulations for supervision and disclosure of any well on which a hydraulic fracturing treatment is performed.

### ***Creative Arts Industries Commission***

**Senate Sub. for HB 2454** creates the Creative Arts Industries Commission within the Department of Commerce, merging the powers, functions, and duties of the Kansas Arts Commission and the Kansas Film Commission. It authorizes the Commission to adopt necessary rules and regulations.

### ***Dental Board***

**HB 2631**, among other things, extends the length of time dentists may be employed to provide services to patients after the death or substantial disability of a dentist until the practice can be sold or closed. It adds authority for the Dental Board to adopt rules and regulations necessary to implement certain provisions related to the employment of dentists.

### ***Health and Environment, Department of***

**Senate Sub. for HB 2597** enacts new law relating to the disposal of solid waste generated by drilling of oil and gas wells. It requires the Secretary of Health and Environment to adopt, by January 1, 2014, rules and regulations governing land-spreading of waste generated by drilling oil and gas wells. The Secretary is required to coordinate with the Kansas Corporation Commission on this matter.

**HB 2697** requires the Department of Health and Environment (KDHE), in conjunction with the Department of Social and Rehabilitation Services, to review and update rules and regulations that establish eligibility requirements for Medicaid. It also requires KDHE to establish a procedure to allow the holder of a life insurance policy with cash surrender value to give the Kansas Medicaid program collateral assignment of the proceeds of such policy, in lieu of requiring the owner to sell the policy to meet the property ownership limits for Medicaid eligibility. Any needed changes to rules and regulations are to be accomplished within a year following receipt of a federal waiver to implement this or, if no waiver is necessary, by July 1, 2013.

### ***Information Technology Services, Office of***

**HB 2175** requires the implementation of an overall Kansas land and geographic resources program using a geographic information system. It authorizes the Executive Chief Information Technology Office to adopt rules and regulations to implement the Act.

### ***Insurance, Department of***

**Senate Sub. for HB 2077** creates the Professional Employer Organization (PEO) Act. A PEO is defined as a person or business that enters into an ongoing co-employment relationship with an employer-client, and the act requires a PEO to register with the Commissioner of insurance. The bill authorizes the Commissioner to adopt rules and regulations the Commissioner deems necessary to implement the Act.

### ***Investigation, Kansas Bureau of***

**SB 60**, Section 38, amended the law to authorize, rather than require, the Director of the Kansas Bureau of Investigation to adopt rules and regulations regarding preliminary screening devices for testing of saliva for law enforcement purposes. The bill also removed a deadline for such rules and regulations.

### ***Juvenile Justice Authority***

**HB 2496** amends the Law Enforcement Training Act to include special investigators of the Juvenile Justice Authority. The bill gives the Commissioner of the Juvenile Justice Authority the authority to adopt rules and regulations prescribing additional training required for those special investigators.

### ***Real Estate Appraisal Board***

**SB 345** creates the Kansas Appraisal Management Company Registration Act and authorizes the Real Estate Appraisal Board to adopt, amend, and revoke rules and regulations governing the administration and enforcement of the Act, including rules and regulations for fees and reports. The Act provides a process for registering and regulating entities that conduct, perform, or engage in real estate management.

### ***Regents, Board of, and State Board of Education***

**SB 155**, Section 2, authorizes the State Board of Regents and the State Board of Education, jointly, to adopt rules and regulations necessary to implement a portion of the Career Technical Education Incentive Program: reimbursements for career credentials gained by high school students.

### ***Regents, Board of***

**SB 155**, Section 3, authorizes the Board to adopt rules and regulations regarding career technical education programs. The section containing this authorization is effective July 1, 2013.

**HB 2435**, among other things, replaces the Vocational Education Scholarship with the new Career Technical Workforce Grant. It amends a provision regarding the Scholarship to authorize, rather than require, the Board to adopt rules and regulations for administering the grants.

### ***Revenue, Department of***

**Sub. for HB 2689** includes two provisions related to rules and regulations:

- Section 2 of the bill allows the Director of Alcoholic Beverage Control to issue a permit to the Kansas State Fair or a *bona fide* group of distillers a permit to import small quantities of spirits. The spirits can be used only for *bona fide* education and scientific tasting programs. The Secretary is required to adopt rules and regulations regarding such importation and the conduct of such tasting programs.

- Section 25 extends the Secretary's authority to regulate advertising of alcoholic liquor to include advertising by a micro-distillery.

**HB 2729** adds park and recreation motor vehicle permits to vehicle registration activities for which the Secretary of Revenue may adopt rules and regulations.

***Wildlife, Parks and Tourism, Department of***

**SB 314** requires the Secretary of Wildlife, Parks and Tourism to implement a combination antlered and antlerless deer permit and adopt rules and regulations to administer that permit, by April 30, 2013.

**REPORT OF THE OVERSIGHT ACTIVITIES OF THE  
JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS  
JUNE 2010 THROUGH JUNE 2011**

From June 2010 through June 2011, the Joint Committee on Administrative Regulations (JCARR) reviewed proposed rules and regulations of 36 different executive branch agencies. To review all of those proposed rules and regulations within their public comment periods as required by law, the Joint Committee met eight times.

The dates of Joint Committee meetings, the agencies appearing before the Committee, and the main topic of the proposed rules and regulations are listed in the following table.

<b>JCARR Meeting Dates, Agency Appearances, and Topics, June 2010 - June 2011</b>								
<b>Agency</b>	<b>June 29, 2010</b>	<b>Aug. 16, 2010</b>	<b>Sept. 20, 2010</b>	<b>Nov. 8, 2010</b>	<b>Jan. 5, 2011</b>	<b>March 1, 2011</b>	<b>April 27&amp;29, 2011</b>	<b>June 1, 2011</b>
Administration				Energy efficiency*				
Aging			Adult care homes*				Misc.*	
Agriculture	Weights and measures*					Commercial feeding stuffs	Ag. chemical registration, use*	
Agriculture, Water Resources			GMD 5 flowmeter, misc.*			GMD 1 yield*; cause for nonuse		GMD 2 flow-meters
Animal Health	Reportable diseases*							
Attorney General			Concealed carry*					
Behavioral Sciences								Social work licenses
Commerce				IMPACT*	PEAK*			
Corporation Commission	Carrier fees*	Oil and gas*; motor carriers (1)					Pipeline safety; telecom-munications	Motor carriers
Education						Licensure; program approval		
Emergency Medical Services	Credentials*					Instruction*		Cont. ed., misc
Fire Marshal								Flame-retardant cigarettes; investigators
Governmental Ethics				Campaign contributions*				
Health and Environment		Radiation*; air quality*	Newborn screening*; day care home fees*; air quality*	HIV screening*; hazardous waste*	Charitable providers*; speech-language*; TB*	Surface water	Lexie's law; child care licensing; Flint Hills smoke	Adult care homes; medication aides

**JCARR Meeting Dates, Agency Appearances, and Topics, June 2010 - June 2011**

Agency	June 29, 2010	Aug. 16, 2010	Sept. 20, 2010	Nov. 8, 2010	Jan. 5, 2011	March 1, 2011	April 27&29, 2011	June 1, 2011
Health Policy			Adult care homes*	Medicaid prior authorization				
Indigents' Defense		Eligibility, attorney rates*						
Insurance	Title agent records*			Advertising*; capital instructions*; public adjuster*	Financial reports*; inspection*	Firefighter relief act*	Assuming risk*	
Juvenile Justice		Contraband*						
Labor	Employer contribution rates*							
Labor, Workers Compensation		Fees for medical services*						
Mortuary Arts								Crematories
Pharmacy	Nuclear pharmacy; electronic supervision	Logging sale of meth. precursors			Electronic reports, prescriptions*	Tele-pharmacy		
Racing and Gaming					Updates*			
Real Estate Appraisal					Fees*			
Regents					Credit hours*; student health insurance*			Admissions standards
Revenue	Vehicle dealer license*		Bonds*		Sales tax*			
Revenue, Alcoholic Beverage Control			Farm wineries*	Farm wineries*	Advertising, packaging			
Secretary of State	Services fees*							
Securities					Dishonest practices, filings*			Land sales*; Invest Kansas
State Employee Health Care				Eligibility*				
Surety Bonds					Define "purchase"*			
Tax Appeals		Procedures, fees*						
Transportation		Rail assist.*						
Treasurer	Housing loans*							
Wildlife and Parks			Fees, seasons*			Fees*; hunting and fishing*		Fur-bearers; deer

\* - all rules and regulations in this set were published in the *Kansas Register* as final rules and regulations on or before June 30, 2011.

(1) Three of the 44 proposed rules and regulations were withheld.

## Comments to Agencies

After each proposed rule and regulation was reviewed, the Committee expressed comments it deemed appropriate, including commendations, and staff forwarded those remarks to each agency for consideration. The Committee requested a response to each comment. Staff maintain a database of information about Committee comments and agency responses to them. All comments are available for public inspection.

The Committee expressed particular concerns about some of the proposed rules and regulations it heard. **Examples** of those concerns are summarized below, by general topic.

### ***Agency Authority***

- Board of Pharmacy, telepharmacies, March 1, 2011. The Committee expressed its belief that the Board does not have statutory authority to allow a pharmacy in which no pharmacist is physically present and asked how the Board intended to enforce supervision statutes under the proposed rules and regulations. (The Board has tabled the proposed rules and regulations.)
- Kansas Corporation Commission, pipeline safety, April 29, 2011. The Committee expressed its concern that the Economic Impact Statement stated that a proposed amendment would comply with a Commission order. The Committee asked by what authority the Commission can overturn an administrative rule and regulation by entering and implementing a Commission Order.
- Securities Commissioner, Invest Kansas exemption, June 1, 2011. The Committee questioned the agency's authority to create an exemption to the Securities Act and asked the Commissioner's representative to explain the basis of the agency's authority.

### ***Clarity***

- Department on Aging, adult care home renovation, September 20, 2010. The Committee commented that, throughout the proposed rules and regulations, "alteration" and "remodeling" were used but were not clearly defined, and imprecision in these definitions could cause facilities unnecessary expense. (The terms were removed in the final rules and regulations.)
- Department of Health and Environment, hazardous waste, November 8, 2010. The Committee said that a reference to "40 CFR parts 124 through 279" seemed too broad in that not all of those parts of the Code of Federal Regulations apply to hazardous waste. (The agency said it agreed and changed the reference to "40 CFR part 124 or 40 CFR parts 260 through 279.")
- Department of Revenue, retailers' sales tax, January 5, 2011. The Committee suggested a subsection be reworded so that it was clear that a "financing lease" is a

type of “conditional sale.” (The subsection was reworded to include the sentence, “Conditional sale contracts include ‘financing leases.’”)

### **Consistency**

- Juvenile Justice Authority, contraband, August 16, 2010. The Committee suggested that the Authority refer to the statutory language concerning concealed carry for appropriate language regarding the carry of guns and firearms in employee vehicles. (The final rule and regulation contains such a reference.)
- Department on Aging, appeals in Medicaid programs, April 27, 2011. The Committee asked whether rules and regulations of the Department of Social and Rehabilitation Services referenced in the Department on Aging proposed rules and regulations reflect current Kansas Administrative Procedures Act practices. (The agency replied that the Social and Rehabilitation Services regulations contain certain federal requirements for the appeals and fair hearing process required for the Medicaid programs and supplement, rather than reflect, the Kansas Administrative Procedures Act.)

### **Economic Impact Statements**

- Kansas Corporation Commission, motor carrier registration fees, June 29, 2010. The Committee requested the Economic Impact Statement be clarified as to the actual changes in fees and the change in the total amount expected to be generated. (The statement was amended accordingly.)
- Department of Labor, Division of Workers Compensation, fees for medical and hospital services, August 16, 2010. The Committee requested the Economic Impact Statement be revised before the public meeting to reflect costs to the regulated community (in addition to costs to the agency). (The statement was amended accordingly.)
- Department of Health and Environment, reductions in MSUD and PKU [treatment infant formula] financial assistance program, September 20, 2010. The Committee requested more detail in the Economic Impact Statement, specifically the savings incurred by the agency as a result of the program eligibility reductions and the number of families whose benefits would be reduced. (The agency reported level funding and estimated that benefits with the sliding fee scale would be reduced for 173 families.)

### **Outreach**

- Court of Tax Appeals, procedures, August 16, 2010. The Committee expressed its concern that those who do not have e-mail or have access to a fax machine would not have sufficient access to the agency. (The Court responded that its staff are careful to conduct all formal business by physical mail in accordance with the Kansas Administrative Procedures Act.)

- Department on Aging, adult care home renovation, September 20, 2010. The Committee requested the Department reach out to adult care homes and nursing facilities in rural and western Kansas for input on the proposed rules and regulations. (The agency provided information on its subsequent outreach efforts.)
- Department of Revenue, Division of Alcoholic Beverage Control, farm wineries, September 20, 2010. The Committee commended the agency for its work with the interested parties on the set of rules and regulations.
- Health Policy Authority, prior authorization for Medicaid medications, November 8, 2010. The Committee requested the agency not move forward with the proposed rule and regulation until it had provided interested parties adequate participation in the selection of drugs and their alternatives. It appeared to the Committee that patients, physicians, and drug manufacturers were excluded from the development of the prior authorization list. (The agency notified the Committee that, as a result of its reorganization under the Department of Health and Environment, the proposed rule and regulation was being delayed and would be re-evaluated in terms of its role in the overall Medicaid reform efforts underway in Kansas.)

### ***Possible Legislation***

- Department of Commerce, Promoting Employment Across Kansas (PEAK) Act, January 5, 2011. The Committee believed additional segments of a company should be eligible and asked the agency if it believed such a change would require a statutory modification. (The agency did not request statutory change.)
- Kansas Corporation Commission, pipeline safety, April 29, 2011. Because of federal action to repeal the Natural Gas Pipeline Safety Act of 1968 (cited in state law) and include most of its provisions in Public Law 103-272, the Committee suggested the agency may need to seek revisions to certain pipeline-related statutes.

### ***Program Concerns***

- Department of Animal Health, reportable diseases, June 29, 2010. The Committee suggested the proposed rule and regulation be revised to retain authority for the Livestock Commissioner to designate other diseases as reportable infectious or contagious animal diseases. (The agency adopted the recommendation.)
- Department of Agriculture, Division of Water Resources, water use in Groundwater District No. 5, September 20, 2010. The Committee expressed its concern with the structure of the Agricultural Water Enhancement Program and said the program fails to recognize individuals who have long practiced water conservation and instead rewards those who have practiced certain types of water conservation only since program payments became available. (The agency stated that it had no involvement in the development of the program and its terms and defined individuals who practiced conservation prior to the program who could qualify for benefits.)

- Department of Health and Environment, air quality, August 16, 2010. The Committee encouraged the agency to continue to make the cases for exemption from federal Environmental Protection Agency (EPA) regulations that may not be applicable to Kansas. It also encouraged agency staff to continue to point out discrepancies and inaccuracies in EPA data that would result in further detrimental impact to the regulated community.
- Board of Pharmacy, statewide electronic logging system for the sale of methamphetamine precursors, August 16, 2010. The Committee expressed concern with the delay in the adoption of these rules and regulations and asked the Board to suggest means to accomplish these types of tasks in a more timely manner. (The 2009 Statewide Electronic Logging System for Sale of Methamphetamine Precursor Act includes a January 1, 2010, date for the rules and regulations. These rules and regulations had not been published as final rules and regulations by June 30, 2011.)
- Department of Revenue, Division of Alcoholic Beverage Control, advertising and packaging, January 5, 2011. The Committee expressed concern that the proposed rules and regulations would impose more requirements more stringent than federal requirements. (The agency stated that the agency and industry worked closely on these trade practice regulations, and both parties felt the topics addressed by these rules and regulations were appropriate and necessary. These rules and regulations had not been finalized by June 30, 2011.)
- Department of Health and Environment, medication aides, June 1, 2011. The Committee asked whether the agency had considered a proficiency test in oral English for medication aides and the English proficiency levels required by other states.

### **Legislative Action, 2011 Session**

During the 2011 Session, the Legislature authorized multiple agencies to adopt rules and regulations. The following list summarizes the authority granted, by agency. Statutory deadlines that were specified are mentioned. The list also includes changes to authority. For more information on aspects of these bills not related to rules and regulations, the reader is directed to the 2011 *Summary of Legislation*.

### **All Agencies**

- **HB 2027** amends the Rules and Regulations Filing Act. The bill simplifies the definition of “rule and regulation,” “rule,” and “regulation” (a single definition for the three terms) and removes certain exemptions from the definition of “rule and regulation.” The bill retains exemptions related to curriculum, administration, conduct, discipline, or graduation of students at a public institution; parking and traffic at regents institutions; and emergency or security procedures of a correctional institution. Among the exemptions eliminated are rules and regulations relating to highways and made known to the public through signs, relating to the form and content of reports by units of government, valuing securities held by insurance companies, and setting seasons and bag, creel, possession, size or length limits for the taking or possession of wildlife if such limits are made known to the public by

other means. It adds an exemption for orders issued by the Secretary of Corrections or a warden.

The bill gives state agencies the authority to issue guidance documents without following the procedures set forth in the Rules and Regulations Filing Act. This new section of law states that guidance documents can contain binding instructions to state agency staff members, except presiding officers. Each agency must 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 on Administrative Rules and Regulations.

The bill states that an agency may bind parties, establish policies, and interpret statutes or regulations by order in an adjudication under the Kansas Administrative Procedure Act or other procedures required by law, but those adjudications do not establish precedent except under certain circumstances listed in the bill. The bill allows 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 also expands the definition of "person" to include individuals and companies or other legal or commercial entities.

- **HB 2336**, the Kansas Employment First Initiative Act, requires state programs and services that support employment of people with disabilities to consider, as their first option, competitive and integrated employment for people with disabilities. The bill requires all state agencies to follow the policy by coordinating among agencies and collaborating. Agencies may share data and information to track progress. State agencies may adopt rules and regulations to implement the Act.

### ***911 Coordinating Council***

- **Sub. for SB 50** requires the 911 Coordinating Council to adopt rules and regulations for the terms of the contract with the local collection point administrator. It also authorizes the Council to adopt rules and regulations necessary to effectuate other provisions of the Act, including a uniform reporting form regarding spending by a public safety answering point (PSAP), standards for equipment, and civil penalties. The deadline for rules and regulations necessary to begin administration of the Act is December 31, 2011.

### ***Administration, Department of***

- **SB 115** makes changes to an award and recognition program for state employees. Under previous law, the Secretary of Administration was required to adopt rules and regulations that provide oversight and administrative review of state agency award and recognition programs. No rules and regulations on those topics currently are in effect.

### ***Agriculture, Department of, Division of Water Resources***

- **SB 124** requires the Chief Engineer to adopt rules and regulations to implement the Lower Smoky Hill Water Supply Access Program. The bill also authorizes the Division's Chief Engineer and the Director of the Kansas Water Office to adopt any rules and regulations necessary to carry out the purposes of and procedures for the Water Rights Conservation Program. The bill establishes both programs.

### ***Citizens Utility Ratepayer Board***

- **Executive Order 11-02** ordered the Citizens Utility Ratepayer Board (CURB) to receive proposed rules and regulations and, at CURB's discretion, to review those proposed rules and regulations for their impact on Kansas citizens and provide comments to the Office of the Governor. The order requires executive agencies to send copies of proposed rules and regulations to CURB after getting approval from the Department of Administration and the Attorney General's Office on those proposed rules and regulations. However, **HB 2014, Sec. 96**, prohibits CURB from using state funding in the Utility Regulatory Fee Fund for any duties pursuant to Executive Order No. 11-02.

### ***Commerce, Department of***

- **SB 198** authorizes the Secretary of Commerce to adopt rules and regulations necessary to implement provisions relating to a matching program to repay certain student loans for individuals living in Rural Opportunity Zones. The bill authorizes 50 counties to be designated as Rural Opportunity Zones.
- **HB 2054** abolishes the Kansas Technology Enterprise Corporation (KTEC) and, in general, transfers its rules and regulations to the Department of Commerce, including those related to the Angel Investor Act. The bill also transfers KTEC rules and regulations relating to the Strategic Technology and Research (STAR) Fund and the Experimental Program to Stimulate Competitive Research (EPSCoR) to the Board of Regents. The Governor may resolve any conflict over the disposition of any power or duty.
- **HB 2125** authorizes the Athletic Commission to adopt rules and regulations in several areas and clarifies that the Athletic Commission has permissive rule and regulation authority regarding professional wrestling. The Commission is specifically authorized to adopt rules and regulations regarding liability insurance, indemnity coverage, and surety bonds for professional wrestling. The Commission is to adopt rules and regulations by July 1, 2012, on the certification and payment of inspectors; drug testing; communicable diseases; fees for electronically distributing a regulated sports contest; disclosure between any promoter, broadcaster, media network or distributor who electronically distributes or televises a regulated sports contest; and any other rules and regulations the Commission deems necessary regarding the televising, broadcasting or distributing of a regulated sports contest.

### ***Emergency Medical Services, Board of***

- **HB 2182** adds fees and temporary licensure for ambulances and rescue vehicles and requirements for a quality assurance and improvement program for ambulance services to the list of topics on which the Emergency Medical Services Board is required to adopt rules and regulations.

### ***Health and Environment, Department of***

- **House Sub. for SB 36** requires the Secretary of Health and Environment to adopt rules and regulations for the licensure of facilities for the performance of abortions. The bill specifies areas to be covered by the rules and regulations, such as sanitation, staff qualifications, medical records and reporting, and infection control.
- **HB 2035** requires the Secretary of Health and Environment to adopt rules and regulations regarding the collection of details about referrals, record keeping, and reporting requirements for physicians performing certain abortions.
- **HB 2182** requires the Secretary of Health and Environment to adopt, by January 1, 2012, rules and regulations regarding a standard authorization form for the use and disclosure of protected health information consistent with requirements of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- **HB 2218** requires the Secretary of Health and Environment to adopt rules and regulations on information required on late-term abortions, including information that must be provided by a physician in order to comply with the obligation to disclose the medical basis and specific medical diagnoses relied upon in determining that a specific abortion meets statutory requirements.

### ***Health Policy Authority***

- **Executive Reorganization Order No. 38** states that all rules and regulations, orders, and directives of the Health Policy Authority shall be deemed to be those of the Department of Health and Environment.
- **SB 210** authorizes the Health Policy Authority to adopt rules and regulations regarding an assessment on providers of services to individuals with developmental disabilities. The rules and regulations are to be adopted within 30 days of authorization for the program from the federal Centers for Medicare and Medicaid Services.

### ***Insurance, Department of***

- **SB 170** creates the Portable Electronics Insurance Act, to regulate the licensing and sale of or offer of coverage for portable electronic devices. The bill authorizes the Commissioner of Insurance to adopt rules and regulations necessary to implement the Act.

- **Sub. for HB 2134** authorizes the Commissioner of Insurance to adopt rules and regulations related to an affidavit of exempt status to be used by any person who is not required to be covered under a workers compensation insurance policy or other plan for the payment of workers compensation.
- **HB 2139** authorizes the Insurance Commissioner to adopt rules and regulations to carry out the purpose and provisions for the purchase of workers compensation policies through a shared employment relationship.

***Investigation, Kansas Bureau of***

- **House Sub. for SB 6** requires the Kansas Bureau of Investigation to adopt rules and regulations regarding testing of saliva for law enforcement purposes and a list of approved preliminary screening devices. The Bureau's director also is required to adopt rules and regulations requiring district courts to report the filing of all cases alleging a violation of driving under the influence (DUI) statutes. The deadline for both types of rules and regulations is July 1, 2012. By July 1, 2013, the director is required to adopt rules and regulations regarding electronic filing of all cases alleging DUI violations.
- **House Sub. for SB 37** authorizes the Director to adopt rules and regulations necessary to implement the provisions of the Kansas Offender Registration Act.

***Labor, Department of***

- **Sub. for HB 2135** authorizes the Secretary of Labor and the Secretary of Revenue to adopt rules and regulations regarding the proper classification of a worker (employee or independent contractor). The bill authorizes the Secretaries' agencies to share information.

***Revenue, Department of***

- **SB 193** requires the Secretary of Revenue to adopt rules and regulations regarding the filing of documents to support the qualifications of a taxpayer who wishes to claim a tax credit under the Promoting Employment Across Kansas (PEAK) Act. The bill allows a 95 percent individual income tax exemption (through an income tax credit mechanism) for certain Kansas source income (related to a relocated business operation) received by Kansas resident owners of qualified companies who materially participate in the business activities.
- **Sub. for HB 2135** authorizes the Secretary of Revenue and the Secretary of Labor to adopt rules and regulations regarding the proper classification of a worker (employee or independent contractor). The bill authorizes the Secretaries' agencies to share information.

### ***Secretary of State***

- **HB 2067** authorizes the Secretary of State to adopt rules and regulations regarding advance voting and voting at the polling place in general in addition to rules and regulations authorized under previous law to define valid forms of identification. The bill also authorizes rules and regulations to implement provisions regarding application for an advance ballot to be transmitted by mail, permanent advance voting status, and providing proof of citizenship in order to register to vote.
- **HB 2240** requires the Secretary of State to promulgate rules and regulations fixing fees on each preneed cemetery merchandise contract, for preneed burial products or services, and on each interment. Each fee cannot exceed \$30. The bill also requires the Secretary of State to promulgate rules and regulations for the purpose of oversight and audit of any cemetery merchandise trust fund and any permanent maintenance fund maintained by a cemetery corporation.

### ***Social and Rehabilitation Services, Department of***

- **House Sub. for SB 6** requires Department of Social and Rehabilitation Services to promulgate rules and regulations regarding alcohol and drug evaluations, by July 1, 2012.

### ***Water Office, Kansas***

- **SB 122** authorizes the Director of the Kansas Water Office to adopt rules and regulations to carry out provisions of the bill, which authorizes the Director to negotiate and grant easements on state property for construction and maintenance of conservation projects with cooperating landowners.
- **SB 124** authorizes the Director of the Kansas Water Office and the Chief Engineer (of the Division of Water Resources in the Department of Agriculture) to adopt any rules and regulations necessary to carry out the purposes and procedures of the Act, which, among other things, creates the Lower Smoky Hill Water Supply Access Program. The bill also requires the Office to adopt rules and regulations to implement the Program.

### ***Wildlife, Parks, and Tourism, Department of***

- **SB 123** exempts fees for the use of cabins owned and operated by the Department from requirements that the fees be established in rules and regulations.

**REPORT OF THE OVERSIGHT ACTIVITIES OF THE  
JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS  
JUNE 2009 - MAY 2010**

From June 2009 through May 2010, the Joint Committee on Administrative Rules and Regulations reviewed proposed rules and regulations of 36 different executive branch agencies. To review all of those proposed rules and regulations, the Joint Committee met eight times.

The dates of Joint Committee meetings and agencies that proposed permanent rules and regulations in this review period are listed in the following table:

<b>JCARR Meeting Dates, Agency Appearances, and Topics, July 2009 - May 2010</b>								
<b>Agency</b>	<b>July 6, 2009</b>	<b>Aug. 24, 2009</b>	<b>Oct. 5, 2009</b>	<b>Nov. 16, 2009</b>	<b>Jan. 4, 2010</b>	<b>Feb. 26, 2010</b>	<b>April 5, 2010</b>	<b>May 4-5, 2010</b>
Administration					travel			
Agriculture		free sale (KS product)	ammonia, pesticides			lodging, food safety		pesticides, dairy
Agriculture, Water Resources				conservation program		various	water bank	
Bank Commissioner	various							
Behavioral Sciences Regulatory Board		fees			fees		practicum	
Corporation Commission	motor carriers			CO <sub>2</sub> storage				energy
Credit Unions							audits	
Dental Board	sedation				sedation			
Education							special ed.	
Emergency Medical Services			continuing ed.					continuing ed.
Employment Security Board of Review					updates			
Ethics Commission				non-disclosure				
Fire Marshal, State	various							
Healing Arts, Board of	occ. therapy, fees	fees	application		various	application		
Health and Environment	air quality, birth centers		lead, various		speech, audiology		salt mining wells	

**JCARR Meeting Dates, Agency Appearances, and Topics, July 2009 - May 2010**

<b>Agency</b>	<b>July 6, 2009</b>	<b>Aug. 24, 2009</b>	<b>Oct. 5, 2009</b>	<b>Nov. 16, 2009</b>	<b>Jan. 4, 2010</b>	<b>Feb. 26, 2010</b>	<b>April 5, 2010</b>	<b>May 4-5, 2010</b>
Health Care Commission, State Employee							waiting period	
Health Policy Authority	brain injury			health centers				
Home Inspectors Registration			registration			various	standards	
Indigents' Defense Services		fees						
Insurance		liability	financial condition				cancer trial coverage	
Labor					amusement rides			
Labor, Workers Compensation		medical fees						
Nursing							IV board	
Optometry, Examiners in							fees	
Pharmacy		various	various			various	various	
Racing and Gaming Commission	keys, forms	table games						
Real Estate Appraisal					continuing ed.	continuing ed.		
Regents		admissions				fees		GED
Revenue								wine
Social and Rehabilitation Services				provider license				
Technical Professions		various					various	
Transportation					intermodal fund			
Treasurer, State	savings acct.		savings acct.					
Veterans Affairs, Commission on				medallion program				
Veterinary Medical Examiners				standards				
Wildlife and Parks	furs	fees; various		permits		deer, fishing	arrows	fees; various

(a) Department of or Board of, unless otherwise noted

## Comments to Agencies

After each proposed rule and regulation was reviewed, the Committee expressed comments it deemed appropriate, including commendations, and staff forwarded those remarks to each agency for consideration. Staff maintain information about Committee remarks and agency responses to those remarks.

The Committee expressed particular concerns about some of the regulations it heard. Examples of those concerns are summarized below, by general topic.

### Clarity

- August 24, 2009. Board of Regents, exceptions to admissions qualifications. The Committee requested clarification as to whether a ten percent exception window referred to exceptions within each type of admission (resident freshmen, resident transfer student, nonresident transfer student) or ten percent overall. (The Board responded with clarification of the former.)
- August 24, 2009. Board of Technical professions, intern certificates. The Committee requested that the Board adopt a specific National Council of Architectural Registration Boards intern development program, so applicants would know which requirements apply. (The Board adopted the 2009 intern guidelines.)
- August 24, 2009. Racing and Gaming Commission, table games. The Committee requested the Commission define “day” so that it would be clear for related rules and regulations whether time periods include weekends and holidays, and it requested removal of a definition of a term that was not used in the regulations.
- October 5, 2009. Clarity on when a separate fee is imposed.
  - Department of Agriculture, pesticides. The Committee requested the Department clarify the examination fee structure. The pertinent part of the regulation now reads: “The examination fee for a commercial applicator’s certificate shall be \$45.00 through June 30, 2015, for each category, subcategory, and general core examination taken. The fee shall also apply if the applicant seeks reexamination.”
  - Department of Health and Environment, residential childhood lead poisoning prevention program. The Committee suggested clarity as to whether a separate fee would be charged for each language version of a training course. (The regulation was changed to read: “. . . If a training course is taught in more than one language, a separate accreditation fee shall be required for each language version of a training course.”)
- October 5, 2009. Employment Security Review Board, updates. At the Committee’s request, the Board clarified that hearsay evidence shall be admissible but carries less weight than direct evidence and shall not be persuasive if the other party contests its admissibility.

- January 4, 2010. Department of Administration, travel reimbursement. The Committee was concerned that rules and regulations for travel allowances will not be interpreted uniformly among state agencies. The Committee also expressed to legislative leaders its belief there may be a more financially prudent way to reimburse state employees for required travel, such as reimbursement for actual expenses rather than set allowances.

### ***Agency Head Delegation of Authority***

- February 26, 2010. Division of Water Resources, Department of Agriculture, distribution of water. The Committee requested the Division review the regulations to determine which authority is delegated to the Chief Engineer's authorized representative and which is reserved solely for the Chief Engineer.
- April 5, 2010. Department of Health and Environment, salt solution mining wells. The Committee requested the Department review the regulations to determine whether, in all places where the term "Secretary" is used, if the agency also wants to give the specified authority to the "Secretary's authorized representative."

### ***Economic Impact Statements***

- August 24, 2009. Department of Labor, Division of Workers Compensation, fees for medical services. The Committee requested the agency specify a dollar amount in addition to stating that a new schedule of fees was predicted to reduce overall rates by approximately 2 percent.
- February 26, 2010. Board of Regents, Private Postsecondary Education, fees for private and out-of-state postsecondary education institutions. The Committee was concerned with the extent of the increase in fees and believed a cost analysis should be done to determine whether the proposed increases are justified. (A summary of a cost study was sent to the Committee.)
- April 5, 2010. State Employees Health Care Commission, waiting period for state employee health insurance. The Committee was concerned with the cost estimate of \$2.429 million to agencies by changing a 60-day waiting period for benefits to a 30-day waiting period for new employees.

### ***Extent of Regulation***

- October 5, 2009. Department of Health and Environment, air quality in the Kansas City metropolitan region. The Committee expressed its view that no regulations dealing with air quality should contain standards more strict than those in neighboring states, and it requested that the Department identify any of the requirements that are more stringent than those being implemented in Missouri.
- November 16, 2009. Commission on Veterans Affairs, Vietnam War era medallion program. The Committee requested the Commission amend the set of regulations to

ensure that no individual regulation was more stringent than the provisions found in the related statutes.

### ***Personal Identification***

- October 5, 2009. Department of Health and Environment, residential childhood lead poisoning prevention program. The Committee was concerned with the requirement that mandates the submission of a Social Security number, as this appears to be inconsistent across agencies. It requested that the Department review these requirements and KSA 74-139 and 74-148 and determine whether the submission of a Social Security number is required. It further asked the Department to consider requiring a number from state-issued identification.
- January 4, 2010. Board of Healing Arts, license renewal for respiratory therapists. The Committee requested consideration be given to the use of a Kansas driver's license number for an application to be complete.

### ***Legislation***

- November 16, 2009. Board of Veterinary Medical Examiners, standards of practice, including "humane methods." The Committee requested the Board not proceed with the regulation and advised the Board, if it so desired, to introduce legislation on the issue. (No such bill was introduced.)
- November 16, 2009. Governmental Ethics Commission, confidentiality requirements. The Committee commented that it would correspond with the House and Senate ethics and elections committees, asking them to consider the introduction of legislation to maintain former confidentiality requirements. (No such bill was introduced.)

### ***Information Requests***

- August 24, 2009. Board of Pharmacy, institutional drug rooms. The Committee requested information including the name of the institution and the pharmacist in charge of each institutional drug room as defined in KSA 65-1626d(o).
- August 24, 2009. Board of Regents, qualified admissions. The Committee requested information about interaction between the Board of Regents and the State Board of Education regarding admission standards. The Committee also requested statistics regarding admissions including the numbers of students admitted under the various exceptions to admissions standards.
- April 5, 2010. Home Inspectors Registration Board, code of ethics and standards of practice. The Committee said it believes groups including lenders, real estate agents, and individuals associated with title companies should have access to the requirements outlined in the regulations. It requested information on the Board's outreach to those groups and how the Board intended to notify home inspectors of the requirements.

## ***Recommendations of Changes to Draft Regulations***

- October 5, 2009. Department of Agriculture, anhydrous ammonia container valves. The Committee requested the Department determine whether pressure gauges should be included, whether any language conflicted with unlawful acts regulations, and whether a requirement prohibiting galvanized or cast iron components should be removed.
- January 4, 2010. Department of Labor, amusement rides. The Committee requested a regulation be rewritten in order to provide for an alternative location for the records to be housed other than at the location of the amusement ride's operation.
- February 26, 2010. Department of Agriculture, lodging establishments. The Committee suggested the agency consider inspection of lodging facilities by private inspection services, similar to those inspecting scales and scanning devices under the agency's Weights and Measures program.
- April 5, 2010. Home Inspectors Registration Board, standards of practice. The Committee was concerned that some of the inspection requirements conflicted with each other and that it was unclear how a home inspector should determine how many components (such as stairways) to inspect. It requested those types of items be reviewed and appropriately modified. It also questioned whether a reference to a seawall was needed in Kansas regulations. Also, the Committee requested the Board develop a checklist of items to be included in and excluded from a home inspection.
- April 5, 2010. Department of Health and Environment, salt solution mining wells, underground injection control design and construction requirements. The Committee expressed its concern over whether the 72 hours in the draft regulation is sufficient time for the cement mixture to be used to cure. It further was concerned about the regulation's silence on the time frame before pressurization could occur. Further, it suggested that cement bond logs be reviewed by a third party to determine their adequacy.

## ***Legislative Action, 2010 Session***

During the 2010 Session, the Legislature authorized multiple agencies to adopt rules and regulations. The following list summarizes the authority granted, by agency. Statutory deadlines that were specified are mentioned. The list also includes changes to authority. Aspects of these bills not related to rules and regulations are not included.

### ***Agriculture, Department of***

- **HB 2566** changes all references to the Kansas Department of Health and Environment in the Kansas Food, Drug, and Cosmetic Act to the Kansas Department of Agriculture as the Act relates to regulating over-the-counter drugs and cosmetics, including statutes authorizing rules and regulations. The bill also removes a prohibition on laboratory fees performed for regulatory purposes from law

administered by the Department of Agriculture to regulate the State's dairy, milk, and milk products industry.

### ***Attorney General***

- **House Sub. for SB 306** amends the Personal and Family Protection Act, which established the concealed carry law. The bill requires the Attorney General to adopt rules and regulations prescribing the location, content, size and other characteristics of signs to be posted on premises where carrying a concealed handgun is prohibited.
- **Sub. for HB 2517** creates new law to require, on or after July 1, 2011, a domestic violence designation in a criminal case by the court if the trier of fact determines that a defendant committed a domestic violence offense. The Attorney General is required to promulgate rules and regulations, on or before July 1, 2011, to carry out the provision providing for disposition of a criminal case with a domestic violence designation.

### ***Behavioral Sciences Regulatory Board***

- **HB 2577** creates the Addictions Counselor Licensure Act. It requires the Behavioral Sciences Regulatory Board to adopt rules and regulations necessary to administer the Act, including rules and regulations related to examination for licensure, professional conduct, and continuing education.

### ***Commerce, Department of***

- **HB 2551** authorizes the Department of Commerce to distribute two types of bonds – recovery zone bonds and energy conservation bonds – to counties and to cities with populations of more than 100,000. The bill grants the Department the authority to make rules and regulations necessary to implement and administer the bill's provisions.

### ***Corporation Commission***

- **HB 2418** amends provisions of the Carbon Dioxide Reduction Act to state that no rule and regulation can create or impose any liability of the State for the underground storage of carbon dioxide or the maintenance of any carbon dioxide injection well or underground storage of carbon dioxide except as permitted by the Kansas Tort Claims Act. It says any requirement in any rule and regulation adopted by the Corporation Commission that conflicts with this prohibition is null and void as of July 1, 2010.

### ***Healing Arts, Board of***

- **House Sub. for SB 83** creates the Naturopathic Doctors Licensure Act, changing the regulatory status of naturopathic doctors with the Board of Healing Arts from registrants to licensees and retaining the Board's authority to regulate those

licensees. The bill also amends the Physical Therapy Practice Act by creating two new licensure categories: “exempt license” and “federally active license.” The bill requires the Board to adopt rules and regulations establishing continuing education requirements for exempt licensees and inactive licensees whose licenses had been exempt or inactive for less than two years, so they could become licensed to regularly practice physical therapy in Kansas.

### ***Health and Environment, Department of***

- **SB 62** enacts new law regarding human immunodeficiency virus (HIV) screenings for pregnant women and newborn children. It authorizes the Secretary of Health and Environment to adopt rules and regulations, by January 1, 2011, establishing guidelines for routine HIV infection screening for pregnant women and each newborn child when the HIV status of the mother is unknown at the time of birth. The bill also amended law regarding the responsibilities for the prevention and control of tuberculosis in postsecondary institutions. The Secretary is authorized and directed to adopt rules and regulations establishing guidelines for a tuberculosis prevention and control plan for any postsecondary educational institution.
- **SB 531** creates the Radon Certification Law, requiring certification of radon measurement technicians, radon mitigation technicians, and radon measurement laboratories by the Secretary of Health and Environment. The bill requires the Secretary to adopt rules and regulations to administer and implement a radon certification program by July 1, 2011. Those rules and regulations can not be more stringent, restrictive, or expansive than federal Environmental Protection Agency standards.
- **Senate Sub. for HB 2356**, “Lexie’s Law,” changes supervision, licensing and inspection requirements for certain types of child care. It requires rules and regulations regarding the “competent supervision” and care of children in child care facilities. The bill establishes an online information dissemination system that is accessible to the public, including names of licensees, applicants and history of citations and substantiated findings. The Secretary of Health and Environment is required to adopt rules and regulations to establish such a system that are consistent with the requirements for the receipt of child care American Recovery and Reinvestment Act funds. The notices for hearing on the initial rules and regulations on the above two subjects are to be published in the *Kansas Register* after February 14, 2011, but before March 11, 2011. The bill also requires adoption of rules and regulations relating to the transition of family day care homes to day care homes within 60 days of the act’s effective date (by September 1, 2010).

### ***Health Policy Authority, Kansas***

- **Senate Sub. for Sub. for HB 2320** creates an annual provider assessment on all licensed beds within skilled nursing care facilities in the State of Kansas, deems the Kansas Health Policy Authority to be the state agency to calculate and implement the provider assessment, establishes a Quality Care Fund where all assessments and penalties collected through the assessment program will be deposited, and establishes a Quality Care Improvement Panel. It authorizes the Authority to adopt rules and regulations necessary to implement these provisions.

### ***Insurance, Department of***

- **Sub. for HB 2345** provides that the Insurance Commissioner is permitted to adopt rules and regulations to implement provisions of State statutes that apply to the formation of life insurance companies.

### ***Investigation, Kansas Bureau of***

- **HB 2652** amends the 2009 Kelsey Smith Act requirements for information to be collected and made available to law enforcement, to change the Kansas Bureau of Investigation's required promulgation date for related rules and regulations from July 1, 2010, to July 1, 2011.

### ***Mortuary Arts, State Board of***

- **Senate Sub. for HB 2310** creates licensure requirements for crematory operators. The State Board of Mortuary Arts is required to prepare rules and regulations it deems necessary regarding that licensure, with those rules and regulations to be effective on or after July 1, 2011. The bill also increases the statutory maximum for certain fees charged by the Board and amends laws governing the cremation process.

### ***Revenue, Department of***

- **HB 2221** bans smoking and makes the act of smoking in certain places a cigarette or tobacco infraction. It authorizes the Director of Alcoholic Beverage Control to promulgate rules and regulations to insure any exemption from the ban is *bona fide* and the entity seeking such exemption is not inappropriately seeking to circumvent the smoking ban.
- **Senate Sub. for Senate Sub. for HB 2650** enacts a new comprehensive transportation program. It includes new law concerning one-time registration for certain large trailers, those used in combination with vehicles registered for a gross weight of 54,000 pounds or more, on and after January 1, 2013. Such registration will be good for the lifespan of the trailer or until its title is transferred to a new owner. The Secretary of Revenue is authorized to adopt rules and regulations necessary to implement this type of registration.

### ***State, Secretary of***

- **House Sub. for SB 213** revises the Rules and Regulations Filing Act. It updates the Act by removing obsolete language (such as a reference to the Department of Social and Rehabilitation Services when the function has been transferred to the Kansas Health Policy Authority) and allows for future publication of the Kansas Administrative Rules and Regulations in paper or electronic form by the Secretary of State. Other provisions do the following:

- Allow the Secretary to return or dispose of materials previously adopted by reference.
- Add the Vice Chairperson and Ranking Minority Member of the Joint Committee on Administrative Rules and Regulations plus the Legislative Research Department to those who must be provided with notice of a proposed rule and regulation.
- Clarify under which circumstances a new rulemaking must be initiated when a proposed rule and regulation is changed; the public comment period for such a new rulemaking may be shortened to not less than 30 days.
- Allow an agency to request that a temporary rule and regulation (which can be effective for only 120 days) be renewed for an additional period not to exceed 120 days.
- Allow the Attorney General, Secretary of State, and Secretary of Administration to designate representatives to the State Rules and Regulations Board.
- Remove a requirement that rules and regulations adopted jointly by two or more agencies be published in only one place.
- Require the Secretary to prepare a searchable database containing all of the rules and regulations, by July 1, 2012, if practicable.
- Remove requirements that the Joint Committee on Administrative Rules and Regulations review proposed forms used by state agencies.

The bill gives the Secretary of State authority to adopt rules and regulations necessary to carry out its duties under the Act, and it requires the Secretary to fix the price of electronic or printed copies of the Regulations in rules and regulations.

- **SB 439** updates and clarifies the law regarding the publication of the *Kansas Register*. It adds authorization for the Secretary of State to prescribe, in rules and regulations, the method of delivery to that office of documents required to be published under the Rules and Regulations Filing Act.

### ***Transportation, Department of***

- **SB 409** authorizes the Secretary of Transportation to establish and implement a passenger rail service program and to adopt related rules and regulations. The bill allows the Secretary to enter into agreements with rail operators, local jurisdictions, and other states; provide assistance to local jurisdictions; and provide loans or grants to passenger rail service providers from a fund established by the bill.
- **HB 2561** allows the Secretary of Transportation to authorize transit buses to be operated on the right shoulders of highways in the state highway system in Johnson County under certain circumstances. It authorizes the Secretary to promulgate rules and regulations, on topics including required signage, to implement the bill's provisions.

### Legislative Oversight–2008-2009

From June 2008 through May 2009, the Joint Committee on Administrative Rules and Regulations reviewed proposed rules and regulations of 36 different executive branch agencies. To review all of those proposed rules and regulations, the Joint Committee met eight times.

The dates of Joint Committee meetings and agencies that proposed permanent rules and regulations in this review period are listed in the following table:

<b>JCARR Meeting Dates, Agency Appearances, and Topics, July 2008 - May 2009</b>								
<b>Agency</b>	<b>July 7, 2008</b>	<b>Aug. 12, 2008</b>	<b>Sept. 22, 2008</b>	<b>Nov. 6, 2008</b>	<b>Jan. 8, 2009</b>	<b>Feb. 13, 2009</b>	<b>April 6-7, 2009</b>	<b>May 18, 2009</b>
Administration, Department of								X
Aging, Department of					X			
Agriculture, Department of			X	X		X	X	
Agriculture, Department of, Division of Water Resources	X				X			
Behavioral Sciences Regulatory Board		X	X	X		X		
Conservation Commission, State		X						
Corporation Commission						X	X	X
Cosmetology, Board of								X
Credit Unions, Department of						X		
Dental Board			X				X	
Education, Department of							X	
Emergency Medical Services, Board of		X				X	X	
Fire Marshal, State			X					X
Healing Arts, Board of	X		X	X	X		X	
Health and Environment, Department of			X	X		X	X	X
Health Policy Authority					X		X	

**JCARR Meeting Dates, Agency Appearances, and Topics, July 2008 - May 2009**

<b>Agency</b>	<b>July 7, 2008</b>	<b>Aug. 12, 2008</b>	<b>Sept. 22, 2008</b>	<b>Nov. 6, 2008</b>	<b>Jan. 8, 2009</b>	<b>Feb. 13, 2009</b>	<b>April 6-7, 2009</b>	<b>May 18, 2009</b>
Home Inspectors Registration Board							X	
Housing Resources Corporation					X			
Indigents' Defense Services, Board of		X						
Insurance, Department of		X		X	X	X	X	
Labor, Department of		X					X	X
Nursing, Board of		X	X					
Pharmacy, Board of		X	X	X	X			
Racing and Gaming Commission	X			X			X	
Real Estate Appraisal Board					X		X	
Real Estate Commission		X						
Revenue, Department of			X		X	X		
Securities Commissioner, Office of the			X				X	
Social and Rehabilitation Services, Department of							X	X
State, Secretary of		X			X			
Tax Appeals, Court of		X						
Technical Professions, Board of				X				
Treasurer, State		X						
Veterans Affairs, Commission on					X			
Wildlife and Parks, Department of			X				X	X

After each proposed rule and regulation was reviewed, the Committee expressed comments it deemed appropriate, including commendations, and staff forwarded those remarks to each agency for consideration. Staff maintain information about Committee remarks and agency responses to those remarks.

In January and in May 2009, staff presented summaries of agency responses to Committee questions and comments. The January summary covered June 2006 through December 2008, and the May summary covered January 2006 through April 2009. In general, these analyses showed that most agencies were fully addressing Committee comments. However, some agencies did not respond directly in writing to the Committee, as the Committee requested, and some comments had not been addressed. In May 2009, the Committee requested that staff notify agencies of comments to which they had not responded and request full responses within two months. That effort is under way at the time of the writing of this report.

The Committee expressed particular concern about some of the regulations it heard. Examples of those concerns are summarized below, by general topic. Many of the comments had to do with agency authority for regulation, the economic impact of proposed regulations on the regulated community, and the clarity within various regulations. However, the Committee also expressed concerns to the agencies on many other topics. The following list is not inclusive.

### ***Authority for Regulation***

- July 7, 2008. Racing and Gaming Commission, Office of Responsible Gaming. The Committee questioned the statutory authority for the agency to license any person or entity. Because the word “license” is not used in 2007 SB 66, the Kansas Expanded Lottery Act, Committee members and staff did not believe the Legislature authorized the Racing and Gaming Commission to “license” any individual or entity pursuant to that Act. The Committee also questioned the agency’s authority to require record retention and requested the Commission cite the source for that authority. The Committee requested information regarding the basis of the agency’s authority to waive requirements. The Committee had concern that this authority to waive regulations could make void any regulations. Lastly, the Committee requested information regarding the basis for the agency’s authority to detain individuals or to close a record. (In response to this and similar questions, the Racing and Gaming Commission referenced KSA 2008 Supp. 74-8772, which says in part that “The Kansas Racing and Gaming Commission shall adopt such rules and regulations as the Commission deems necessary to carry out the duties and functions of the Commission pursuant to the Kansas Expanded Lottery Act.”)
- August 12, 2008. State Treasurer, agricultural production and housing loans. The Committee requested the Office of the State Treasurer determine whether it has authority to limit or prohibit using housing loans for building in a flood-plain and, if so, to include that prohibition in the regulation. The Committee requested the State Treasurer determine whether the program should follow HUD guidelines regarding the underwriting of loans under this program.

- September 22, 2008. Board of Healing Arts, special meetings. The Committee questioned the authority of the president to call a special meeting at any time and asked the agency to explain the basis for promulgation of specific subsections. The Committee also questioned why the agency was not proposing the authority for the vice-president to preside at regular meetings of the Board if the vice-president needed the authority to perform the duties of the president during special meetings.
- September 22, 2008. Department of Revenue, retail dealer incentives. The Committee questioned the authority of the agency to require record keeping and indicated that if relevant authority is elsewhere in the statutes, the agency should include it in the history section. The Committee also questioned the authority for the informal conference process and the audit process and asked for an explanation and whether the authority is contained in other statutes.
- November 6, 2008. Racing and Gaming Commission, sanctions. The Committee questioned the authority to make each offense of a continuing nature a separate offense. (In response to this and similar questions, the Racing and Gaming Commission referenced KSA 2008 Supp. 74-8772, which says in part that “The Kansas Racing and Gaming Commission shall adopt such rules and regulations as the Commission deems necessary to carry out the duties and functions of the Commission pursuant to the Kansas Expanded Lottery Act.”)
- November 6, 2008. Racing and Gaming Commission, electronic gaming machine requirements. The Committee was concerned about the authority for the Commission to grant waivers and where the agency believes this authority exists. (In response to this and similar questions, the Racing and Gaming Commission referenced KSA 2008 Supp. 74-8772, which says in part that “The Kansas Racing and Gaming Commission shall adopt such rules and regulations as the Commission deems necessary to carry out the duties and functions of the Commission pursuant to the Kansas Expanded Lottery Act.”)
- February 13, 2009. Department of Revenue, transfer of income tax credit. The Committee believes that this rule and regulation is contrary to statutory requirements and wanted the agency to explain the rationale for this rule and regulation.
- February 13, 2009. Behavioral Sciences Regulatory Board, program approval (social work). The Committee was concerned with the impact of and the approval process contained in this regulation and asked that the regulation be withdrawn. In addition, the Committee asked the agency to explain the inadequacies of the social work programs in the state and to provide the Committee with the appropriate documentation of those inadequacies.
- February 13, 2009. Corporation Commission, carbon dioxide (CO<sub>2</sub>) storage facilities. The Committee was concerned with the reference to KSA 55-155 since that section applies to oil and gas operators rather than those who may be involved with CO<sub>2</sub> sequestration.
- April 6 and 7, 2009. Department of Social and Rehabilitation Services, eligibility factors specialized to the General Assistance program. The Committee was concerned that the proposed wording regarding the time frame for assistance means

the lifetime maximum benefit could be changed by the Secretary without legislative notification and believed that the agency should change the regulation each time the agency wishes to change the time frame.

- May 18, 2009. Department of Labor, employee discrimination against victims of certain crimes. The Committee questioned the authority of the agency to deem an employer to have engaged in a prohibited practice if the employer failed to respond within the specified time frame. The Committee was concerned that this places the agency in a position of determining “guilt in fact.” The Committee also questioned the authority to require that complaints be filed within 60 days of the alleged occurrence. The Committee sought information about what the agency would do if the complaint was filed on the 62nd or 63rd day after the occurrence.

### ***Economic Impact and Fees***

- September 22, 2008. State Fire Marshal, fireworks. The Committee was concerned that the Economic Impact Statement indicated the program will not pay for itself and wonders how the agency intends to address this issue in the future.
- November 6, 2008. Board of Healing Arts, fees. The Committee was concerned that the renewal rate for paper and on-line renewals is the same and indicated that it does not encourage individuals to renew on-line, which would save the agency time and money.
- November 6, 2008. Racing and Gaming Commission, rule of hearings, concerning alleged violations and hearing procedure. The Committee suggested that the Economic Impact Statement not only include the cost to the State, but also the cost to facility operators in order to comply with the proposed regulations.
- May 18, 2009. Department of Labor, filing of complaint; employer’s response; administrative hearing; and judicial review. The Committee believed that the Economic Impact Statement should include some estimate of the cost of hearings and investigations for these types of complaints.

### ***Adoption by Reference***

- July 7, 2008. Department of Agriculture, dam breach analysis. The Committee believed that federal regulations should be adopted by reference and that the version of 44 CFR 60.3 referenced is different from the version referenced elsewhere.

### ***Clarity***

- July 7, 2008. Board of Healing Arts, physician assistant supervision and direction, adequacy. The Committee suggested that the agency revisit this entire regulation to add clarity and not proceed with the final adoption of this regulation. If the suggestion was not taken, then the Committee believed that clarity should be added as to how a physician would actually “ensure” that a physician assistant would be properly licensed.

- July 7, 2008. Department of Agriculture, dam breach analysis. The Committee suggested that further language was needed to clarify whether the distance limitation extends to a maximum of 1,320 feet in both directions (upstream and downstream) or whether the 1,320 feet is the total length of the boundary, *i.e.*, 660 feet upstream and 660 feet downstream.
- September 22, 2008. Department of Agriculture, certificates of free sale. The Committee believed that there should include a definition of “free sale” to provide clarity. In addition, the Committee believed that the agency should examine this regulation to clarify that the sum of the fees charged plus the delivery charges, if any, not exceed the statutory fee limitation of \$25. Finally, the Committee suggested that the agency compare these regulations with those transferred from the Kansas Department of Health and Environment regarding food safety to ensure that there are no conflicting rules and regulations.
- September 22, 2008. Dental Board, sedative and general anesthesia. The Committee believed mortality or morbidity could occur through no fault of the dentist and suggested the agency clarify its intent.
- September 22, 2008. State Fire Marshal, fireworks. The Committee was concerned that a license or permit would be denied permanently if a violation had occurred at any time and wonders whether the agency actually wants to do this and wondered if perhaps the Fire Marshal should be given discretionary authority to consider applicants with previous violations under some circumstances.
- January 8, 2009. Insurance Department, accident and sickness insurance. The Committee believed that the insurance company should be the entity required to provide notice and collect the premium rather than the former employer. The Committee asked the agency to withdraw this regulation until legislation could be considered by the Legislature to change the law.
- January 8, 2009. Division of Water Resources, Department of Agriculture, intensive groundwater use control areas. The Committee believed that the agency should consider some sort of time frame for the withdrawal of a pending matter when a presiding officer has received an *ex parte* communication and whether there should be a mechanism for determining whether the hearing officer should be disqualified. In addition, the Committee believed that there should be a time frame established for those who wish to participate by telephone.
- January 8, 2009. Secretary of State, registered certification authorities. The Committee believed that reference should be made to a “registered certification authority” in order to comply with the term used in the statute. In addition, the Committee voted to introduce legislation to clarify that it is unlawful for a state agency to conduct business with a certification authority which is not registered with the Kansas Secretary of State. Finally, the Committee questioned the striking of the requirement for records retention and wondered if it could be made clearer by requiring that all records be kept for a certain time period rather than being reliant on the “certificate policy.”

- January 8, 2009. Department on Aging, adult care homes; assisted living facilities and residential health care facilities; home plus; and adult day care facilities. The Committee asked the agency to determine whether the agency would want to consider abuse in any type of facility other than in an adult care home, and asked it to review other similar regulations in this set to determine if similar changes needed to be made.
- April 6 and 7, 2009. Department of Education, endorsements; licensure requirements; and procedures for promulgation of in-service education plans. The Committee suggested that clarity could be achieved if additional language were added to make clear that it is college credit being required. In addition, the Committee believed clarifying language should be added so that there is a specific time frame when the plan will be approved, approved with modifications, or disapproved to indicate that the time frame is within the first semester.
- May 18, 2009. Department of Social and Rehabilitation Services, expungement of name of perpetrator from central registry. The Committee was concerned that only the name would be expunged and not the record and asked the agency to consider new language which would make it clear that both the name and the record would be expunged.
- May 18, 2009. Department of Health and Environment, psychiatric residential treatment facilities. The Committee suggested the agency address the situation where a prescription is phoned in by a medical practitioner. It also was unclear to the Committee whether the facility would have a qualified person present and authorized to place a prescription in writing when a medical practitioner phones in a prescription and when the notification is to be accomplished.

### ***Concerns with Definitions***

- July 7, 2008. Racing and Gaming Commission, Office of Responsible Gaming. The Committee was concerned that certain definitions may be in conflict with the statutory definitions for the corresponding terms in the enacting statute due to the provisions of KSA 2007 Supp.74-8733 and KSA 2007 Supp. 74-8702.
- August 12, 2008. State Conservation Commission, dismissal or permanent reduction of water right. The Committee requested the Commission consider being more specific in its definition of “target area” by specifying target areas by township, subbasin, zip code, or other area designation. The Committee requested the Commission review this issue and come back to the Committee with its proposal.
- January 8, 2009. Health Policy Authority, scope of covered hospital services for MediKan program recipients. The Committee questioned why the definition of “severe acute traumatic injury” is not included in the regulation. In addition, the Committee noted that this is not the term used in the statute, and perhaps clarification could be added by defining all of the terms used in this regulation.
- January 8, 2009. Commission of Veterans Affairs, administrative oversight. The Committee was not sure why the terms “pistol” and “revolver” were necessary when

the term “firearm” also was used and asked the agency to review the terms and their use.

- February 13, 2009. Corporation Commission, CO2 storage facilities. The Committee was concerned with the definitions of “fresh water” and “usable water,” with regard to water which may some day be needed for consumption purposes and whether different definitions, should be used. It also asked whether these definitions were consistent with those used by the Division of Water Resources of the Department of Agriculture and the Kansas Department of Health and Environment.

### ***Request for Additional Information and Communications***

- August 12, 2008. Department of Labor, boiler specifications and inspections. The Committee requested a copy of the list of boilers recently sent from the Department of Labor to the Kansas Department of Health and Environment (KDHE) at KDHE’s request.
- August 12, 2008. Secretary of State, information and services fee and technology communications fee. The Committee requested that a copy of a letter the Secretary of State received from the Division of the Budget requesting a two percent budget reduction be sent to Legislative Research staff.
- August 12, 2008. Pharmacy Board, incident reports and fees for premises registrations and permits. The Committee requested the Board provide Legislative Research staff with the number of the statute that allows the Board to regulate oxygen suppliers.
- August 12, 2008. State Board of Nursing, requirements for initial approval; curriculum requirements; licensure qualifications; misdemeanor convictions by the licensee; and satisfactory completion of a refresher courses. The Committee requested information from the Board regarding its ability to license those who have been home schooled or who otherwise received their secondary educations at schools not approved by the Kansas State Board of Education.
- January 8, 2009. Pharmacy Board, N-Benzylpiperazine. The Committee asked the agency to inform the Committee whether there are other drugs which have been classified as Schedule 1 by federal agencies and have not been so designated by the State of Kansas. In addition, the Committee expressed its disappointment with the fact that no staff from the agency was present during the time of review of this regulation and planned to distribute copies of this letter to members of the Pharmacy Board. Further, the Committee requested an update to its previous request concerning the registration of “qualifying centers or clinics.”
- January 8, 2009. Division of Water Resources, Department of Agriculture, intensive groundwater use control areas. The Committee asked the agency to withhold this regulation until July 1 in order to give the Legislature the opportunity to pass legislation to address the issue of the initiation of an intensive groundwater use control area. In the absence of new law, the Committee believed the agency should proceed with the regulation.

- April 6 and 7, 2009. Office of the Securities Commissioner, dishonest or unethical practices of broker-dealers and agents and dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers. The Committee wrote to the Attorney General with respect to the establishment of a rebuttable presumption for a designating or certifying organization to determine whether portions of these regulations were an unlawful delegation of authority.
- April 6 and 7, 2009. Health Policy Authority, local unit of government employee health care benefits plan. The Committee requested that the agency provide a copy of the coverage for regular KPERS retired individuals to determine whether the language is identical. In addition, in terms of local entities covered, the Committee asked for information on which local environmental protection programs are included by the regulation. Finally, the Committee requested that a spokesperson from the agency appear at the next regular meeting of the Committee to answer further questions about these issues.
- April 6 and 7, 2009. Home Inspectors Registration Board, registration; examination; fees; and approval of educational program. The Committee was concerned with the potential impact that the 2009 enactment of HB 2260 may have upon these rules and regulations and wrote to the Attorney General to express this concern.
- April 6 and 7, 2009. Department of Health and Environment, underground crude oil storage facilities. The Committee was concerned with the agency granting variances when no specific authority to do so exists. The Committee wrote to the Attorney General expressing concern with the approval of this rule and regulation and others when no specific statutory authority exists.
- May 18, 2009. Department of Labor, employee discrimination against victims of certain crimes. The Committee inquired as to what has occurred in the past with these types of complaints and sought information as to what types of complaints have been made previous to the rules and regulations, the number of complaints, and information on what happens to these types of complaints currently.
- May 18, 2009. State Fire Marshal's Office, municipal compliance with Kansas fire prevention code; compliance with certain building codes; and adopted national standards. During Committee discussion, it came to the attention of the Committee that the State of California and the City of Phoenix, Arizona, no longer use the "Building Construction and Safety Code." The Committee asked the agency to determine what these two entities use as a replacement and why the State of Kansas would adopt this if there are liability issues. In addition, the Committee learned that the agency could assist in providing information as to what entities are using each of the two proposed codes as their standard and asked the agency to provide the Committee with the information. Further, the Committee was told that the codes may include energy efficiency standards. The Committee was concerned that these standards may conflict with other standards adopted by the State of Kansas and asked the agency to provide information regarding whether the standards conflict with any others adopted by the State or any of its legal entities.

- May 18, 2009. Department of Health and Environment, psychiatric residential treatment facilities. With respect to food safety, the Committee requested information about any type of agreement the agency may have with the Kansas Department of Agriculture to ensure food safety.

### ***Continuing Education***

- September 22, 2008. Behavioral Sciences Regulatory Board, renewal audit (psychologists); renewal audit (social workers); renewal audit (professional counselors); renewal audit (master's level psychologists); renewal audit (marriage and family therapists); and renewal audit (alcohol and drug abuse counselors). The Committee was concerned that the continuing education completed after the renewal application would be determined only during an audit and not at any other time. The Committee wondered whether the agency wishes to allow a licensee who in good faith counted specific continuing education units that are disapproved during the audit to make up the questioned number of credits.
- November 6, 2008. Board of Technical Professions, minimum standards for the practice of land surveying; continuing education activities; and computation of credit. The Committee was concerned about the awarding of continuing education credit for serving as a volunteer member of a governmental or regulatory body involved in planning, zoning, construction, or any other area associated with a technical profession and that the volunteer status may not be adequate to deserve continuing education credit. In addition, the Committee questioned the number of professional development hours received for self-study and wondered how the agency intends to monitor this self-study to determine if it really occurred.
- February 13, 2009. Board of Emergency Medical Services, continuing education and recognition of non-Kansas credentials. The Committee expressed concern with the potential of receiving 28 hours of continuing education in one day and suggested that a maximum of eight hours of credit should be allowed to be obtained in one day. Further, the Committee was concerned with the type of continuing education which would qualify.

### ***General Comments***

- January 8, 2009. Department of Revenue, filing of quarterly reports. The Committee believed that those producers who fail to report should be penalized only for the quarter in which they were untimely in their reporting. In addition, the Committee believed that the Department should consider "extenuating circumstances" which could have prevented a producer from reporting on a timely basis.
- January 8, 2009. Division of Water Resources, Department of Agriculture, intensive groundwater use control areas. The Committee was concerned that the civil penalty could be imposed by a designee of the Chief Engineer, rather than by just the "Chief Engineer."

### ***Legislative Action, 2009 Session***

- During the 2009 Session, the Legislature authorized multiple agencies to adopt rules and regulations related to new and to ongoing programs. The following list summarizes the authority granted, by agency. Statutory deadlines that were specified are mentioned.

### ***Administration, Department of***

- **HB 2369** enacts new law and amends existing laws related to energy and includes the Renewable Energy Standards Act, the Net Metering and Easy Connection Act, and the Compressed Air Energy Storage Act. New law requires the Secretary of Administration to adopt rules and regulations related to energy efficiency in equipment and fixtures and in state-owned and -leased buildings and to fuel economy for state-owned vehicles by January 1, 2011. Specifically, the Secretary is required to develop rules and regulations to do the following:
  - Ensure state agency purchases of products and equipment including, but not limited to, appliances, lighting fixtures and bulbs, and computers, meet energy efficiency guidelines at least as stringent as those for products that qualify as energy star products if the projected cost savings for the useful life of the more energy-efficient products is at least equal to the additional cost as compared to the costs of less-efficient but functionally equivalent products and equipment.
  - Require state agencies to conduct energy audits at least every five years on all state-owned real property.
  - Establish energy efficiency performance standards to apply to leased space and improvements.
  - Require the average fuel economy standard for state-owned motor vehicles purchased during Fiscal Year 2011 to be not less than 10 percent higher than the average fuel economy standard of state-owned motor vehicles purchased during Fiscal Year 2008, if such higher average fuel economy standards are life-cycle cost effective for the vehicles purchased during Fiscal Year 2011.

### ***Agriculture, Department of***

- **SB 203** adds and clarifies authority of the Secretary of Agriculture to administer and enforce provisions of laws relating to the Food Service and Lodging Act and to other food safety laws. It authorizes the Secretary of Agriculture to promulgate rules and regulations necessary to receive lodging inspection reports from qualified individuals, private entities or public entities who determine compliance with lodging standards. These rules and regulations are to be promulgated by July 1, 2010.
- **Sub. for HB 2050** addresses fees for various applications and issuances of the Division of Water Resources of the Kansas Department of Agriculture. The Chief Engineer is to adopt rules and regulations to implement term permits. A term permit is a permit to appropriate water for a limited specified period of time in excess of six months, and no water right is perfected pursuant to a term permit. The rules and regulations are to include application fees for term permits.

- **HB 2295** modifies and adds to statutes relating to pesticides and fertilizers. Among its provisions are those authorizing the Secretary of Agriculture to promulgate rules and regulations to do the following:
  - Classify or designate as restricted-use any pesticide registered for sale, use or distribution in the state of Kansas. Information required to be filed pursuant to this classification or designation may be filed electronically according to rules and regulations.
  - Issue a permit for an experimental use pesticide in lieu of registration.

Also, a deadline of July 1, 2010, was added to the Secretary's authorization to adopt rules and regulations necessary to carry out the provisions of the Kansas Chemigation Safety Law.

***Attorney General***

- **SB 154** amends the Requirements for Sale of Cigarettes Act to provide enhanced enforcement of the Master Settlement Agreement escrow statutes. The bill allows the Attorney General to promulgate rules and regulations necessary to regulate tobacco product manufacturers under the act. (The bill also contains related provisions for the regulation of other entities by the Department of Revenue.)

***Bank Commissioner, State***

- **SB 240** enacts new law and amends the Uniform Consumer Credit Code and the Kansas Mortgage Business Act to amend and establish standards for regulating mortgages and mortgage loan originators. It authorizes the State Bank Commissioner to adopt rules and regulations to implement the requirements of the federal S.A.F.E. Act (the Secure and Fair Enforcement for Mortgage Licensing Act of 2008), and it states that the Commissioner may establish in rules and regulations the amounts of a surety bond required for an applicant or licensee to maintain a *bona fide* office in Kansas. It says that related document retention periods may be specified in rules and regulations. It adds federal acts for which the Consumer Credit Commissioner (within the office of the State Bank Commissioner) is authorized to adopt rules and regulations: the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act of 1974, and Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007. These rules and regulations must be consistent with or no less restrictive than the federal act.

***Commerce, Department of***

- **SB 97** enacts the Promoting Employment Across Kansas (PEAK) Act. It authorizes diversion of employee withholding taxes under certain circumstances to "qualified" companies or third parties performing services on behalf of such companies. The bill requires the Secretary of Commerce to adopt rules and regulations necessary to implement and administer the Act. It further requires the Secretary of Revenue to adopt rules and regulations necessary for the Department of Revenue to implement the Act. The bill requires the Secretaries of Commerce and Revenue to coordinate the Act's implementing procedures.

## ***Corporation Commission***

- **Senate Sub. for HB 2032** enacts the Kansas Surface Owner Notice Act and amends existing law relating to oil and gas operations. It requires information from any applicant for an intent to drill permit, which the KCC is to send to surface owners. It authorizes the Commission, with input from the Advisory Committee on the Regulation of Oil and Gas Activities, to adopt or amend rules and regulations necessary to carry out the Act. These rules and regulations are to be promulgated by July 1, 2010.
- **Senate Sub. for HB 2369** enacts new law and amends existing law related to energy. It includes several acts that specify rule and regulation authority for the Corporation Commission.
  - The Net Metering and Easy Connection Act requires the Commission, by July 1, 2010, to establish rules and regulations necessary to administer it. Those rules and regulations must ensure that simple contracts are used for interconnection and net metering.
  - The Renewable Energy Standards Act requires the Commission to establish, by July 1, 2010, rules and regulations implementing the Act's standards and establishing a certification process and reporting and enforcement mechanisms including administrative penalties. The rules and regulations are to include a portfolio requirement for all affected utilities to generate or purchase electricity generated from renewable energy resources or purchase renewable energy credits and a certification process for use of renewable energy resources.
  - The Compressed Air Energy Storage Act requires the Commission to use rules and regulations to establish requirements, procedures, and standards for the safe and secure injection of compressed air into storage wells. Those rules and regulations are to be established by January 1, 2011. It also authorizes the Commission to adopt rules and regulations that establish fees for permitting, monitoring, and inspecting operators of compressed air energy storage wells and underground storage.

## ***Healing Arts, Board of***

- **HB 2010** creates the Medical Records Maintenance Trust Fund for the storage, maintenance, and transfer of abandoned medical records by the Board of Healing Arts. The Board is required to adopt rules and regulations necessary to establish procedures and standards to implement the bill by July 1, 2010.

## ***Health and Environment, Department of***

- **Senate Sub. for HB 2369** enacts new law and amends existing law related to energy. Within the Compressed Air Energy Storage Act (one of the acts included in the bill) is a requirement for the Department to establish rules and regulations for requirements, procedures, and standards for the monitoring of air emissions coming from compressed air energy storage wells and storage facilities to ensure the wells and facilities comply with the Kansas Air Quality Act. Those rules and regulations

are to be established by January 1, 2011. The bill also prohibits the Secretary of Health and Environment from promulgating rules and regulations under the Kansas Air Quality Act that are more stringent, restrictive, or expansive than those required under the Federal Clean Air Act without approval by an act of the Legislature or to enforce rules and regulations prior to the time required by the Federal Clean Air Act.

### ***Home Inspectors Registration Board***

- **HB 2260** adds to former law that, through its rules and regulations, the Home Inspectors Registration Board may approve courses of study, educational providers and providers of continuing education, and continuing education courses. It also requires the Board, by rules and regulations, to establish the date for renewal of a registration, which may be on an annual or biennial basis.

### ***Insurance, Department of***

- **HB 2052** includes the new Public Adjusters Licensing Act, an act governing the qualifications and procedures for the licensing of public adjusters. It requires the Insurance Commissioner to promulgate rules and regulations necessary to carry out the provisions of the act, including rules and regulations governing examinations required for applicants for public adjuster licenses. These rules and regulations are to be adopted by July 1, 2010. HB 2052 also allows the Commissioner to adopt by rules and regulations a newer version of the risk-based capital instructions promulgated by the National Association of Insurance Commissioners if certain conditions are met.
- **HB 2214** includes the new Controlled Insurance Programs Act, an act that creates requirements for liability or workers compensation insurance, or both, under construction contracts. It requires the Commissioner to require, through rules and regulations, controlled insurance programs to report the participant's respective claims details and loss information to that participant, address cancellation, and meet additional requirements. It authorizes the Commissioner to adopt additional rules and regulations necessary to carry out the Act's provisions. These rules and regulations are required by July 1, 2010.

### ***Investigation, Bureau of***

- **SB 336** includes a requirement for the Director of the Kansas Bureau of Investigation to promulgate rules and regulations related to the Kelsey Smith Act by July 1, 2010. The Kelsey Smith Act requires wireless telecommunications carriers to provide information about the location of the telecommunications device of a user of the carriers' services under certain emergency circumstances. (This rules and regulations requirement was inadvertently omitted from the enrolled version of Senate Sub. for HB 2126, also the Kelsey Smith Act.)

### ***Labor, Department of***

- **SB 178** requires the Secretary of Labor to adopt, by July 1, 2010, rules and regulations necessary to implement the Kansas Amusement Ride Act. The Amusement Ride Act requires inspections. Certain not-for-profit amusement rides will be exempt from the rules and regulations.

### ***Pharmacy, Board of***

- **SB 33** includes the Statewide Electronic Logging System for Sale of Methamphetamine Precursor Act. By January 1, 2010, the Board is required to adopt rules and regulations necessary to implement that Act, including rules and regulations specifying a standardized format for a statewide electronic logging system for the sale of methamphetamine precursors and information that each pharmacy must submit to the Board. The Board may implement the program in only part of the state if funding is not available for a statewide program.
- **Sub. for HB 2008** authorizes administration of epinephrine in an emergency situation to a student or a member of a school's staff under certain circumstances. A school may not maintain an epinephrine kit unless the school has consulted with a pharmacist licensed by the State Board of Pharmacy. The Board is authorized to adopt rules and regulations necessary for the maintenance of epinephrine kits.

### ***Regents, Board of***

- **SB 9**, the State Educational Institution Project Delivery Construction Procurement Act, exempts certain construction projects and construction project services at state universities funded completely with non-state moneys from many of the requirements imposed on other state agencies when obtaining the services of architects, engineers, and contractors for construction projects. The bill authorizes the Board to adopt rules and regulations necessary to implement the Act, including rules and regulations related to projects let as a whole. The provisions of the bill expire on June 30, 2012.
- **HB 2197** authorizes the Board of Regents to adopt rules and regulations setting standards that deviate from statutory standards for admission of students to state educational institutions. Any rules and regulations that are more rigorous than statutory standards could not take effect before the first day of the fourth academic year following the year in which the rules and regulations are adopted. The bill also adds that the following are to be included in the Board's rules and regulations related to admissions:
  - A Kansas resident who has graduated from a non-accredited private secondary school shall be admitted to a state educational institution if the applicant has a composite American College Testing Program (ACT) score of not less than 21 points and that a graduate of a non-accredited private school be admitted if that graduate is 21 or older.
  - Criteria and guidelines to be applied system-wide to allow exceptions to requirements for admissions of transfer students with at least 24 credit hours of transferable course work. (The bill allows each educational institution to

admit not more than 10 percent of the total number of resident transfer students and of non-resident transfer students as exceptions to requirements that each transfer student have a grade point average of not less than 2.0 on a 4.0 scale.)

### ***Revenue, Department of***

- **SB 97** enacts the Promoting Employment Across Kansas (PEAK) Act. It requires the Secretaries of Commerce and Revenue to coordinate certain rules and regulations. See the Department of Commerce entry.
- **SB 154** amends the Requirements for Sale of Cigarettes Act to provide enhanced enforcement of the Master Settlement Agreement. The bill allows the Director of Taxation at the Department of Revenue to promulgate rules and regulations necessary to regulate stamping agents, retail dealers, and vending machine operators. (The bill also contains a related provision for the regulation of other entities by the Attorney General.)
- **SB 212** provisions include amendments to the Liquor Control Act to allow certain shipments and sales of wines in Kansas. It authorizes the Secretary of Revenue to adopt rules and regulations to implement, administer, and enforce provisions relating to direct shipments of wine to consumers in this state. It also authorizes the Secretary to adopt rules and regulations necessary to implement provisions relating to sales of wine at bona fide farmer's markets.
- **Senate Sub. for HB 2096** includes provisions that authorize the Department of Revenue to establish statewide driver improvement clinics or contract with private individuals or companies to provide such services. A person facing suspension of driving privileges may, under certain circumstances, retain driving privileges by attending such a clinic. It requires the Secretary of Revenue to adopt rules and regulations to establish a driver's improvement clinic fee, which could not exceed \$500, and other rules and regulations necessary to carry out the clinic provisions, including standards and criteria for the driver improvement clinics.

### ***Social and Rehabilitation Services, Department of***

- **SB 237** includes provisions dealing with the crime of traffic in contraband in a correctional institution to add any care and treatment facility to the types of facilities where contraband is illegal. A "care and treatment facility" means a facility operated by Social and Rehabilitation Services for involuntarily committed sexually violent predators. The bill states that contraband, as defined in rules and regulations adopted by the Secretary of Social and Rehabilitation Services, is a severity level 5, nonperson felony.

### ***State, Secretary of***

- **SB 132** enacts the Business Entity Transaction Act to provide comprehensive statutory authority for business entities to perform mergers, conversions, interest exchanges, and domestications with similar or dissimilar business entities. The

Secretary of State is required to establish by rules and regulations the filing fees for instruments filed pursuant to the Act.

***Technical Professions, Board of***

- **SB 29** amends statutes of the Board of Technical Professions. It specifies that the Board's rules and regulations may exclude persons from continuing education requirements for license renewal or reinstatement.

***Transportation, Department of***

- **HB 2131** creates an Intermodal Transportation Revolving Fund, which KDOT is to administer to provide assistance to eligible government units for projects such as bridges and railroad crossings. An eligible government unit must have an intermodal transportation project with a cost exceeding \$150 million within its jurisdiction. The bill authorizes the Secretary of Transportation to adopt rules and regulations necessary to implement the bill's provisions.

***Veterans Affairs, Commission on***

- **HB 2171** authorizes the Kansas Commission on Veterans Affairs to adopt all rules and regulations necessary to administer the new Vietnam War Era Medallion Program. Under the Program, each veteran who meets listed criteria may receive a medallion, medal, and a certificate of appreciation.