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LEGISLATIVE OVERSIGHT OF ADMINISTRATIVE RULES AND REGULATIONS

The memorandum summarizes the history of legislative rule and regulation oversight in Kansas, the statutory procedures for the approval and adoption of administrative rules and regulations, current options for legislative actions to influence rules and regulations, and changes to the Rules and Regulations Filing Act since 2000.

History of Legislative Oversight

Since 1939, Kansas statutes have provided for legislative oversight of rules and regulations filed by state officers, boards, departments, and commissions. The 1939 law declared all rules and regulations of a general or statewide character were to be filed with the Revisor of Statutes and would remain in force until and unless the Legislature disapproved or rejected the regulations. It was not until 1974 that the Legislature took steps to formalize an oversight process. In that year, all filed rules and regulations were submitted to each chamber. Within 60 days of submission, the Legislature could act to modify and approve or reject any of the regulations submitted. The 1975 interim Legislative Budget Committee, under Proposal No. 33, found it “important to maintain and even enhance legislative oversight of all regulations in order to make sure that they conform with legislative intent.” In 1976, several amendments to the Rules and Regulations Filing Act were enacted, and the Legislative Coordinating Council created the Special Committee on Administrative Rules and Regulations to review proposed administrative rules and regulations filed with the Revisor of Statutes. The law was later changed to require proposed agency rules and regulations to be reviewed as outlined below.

In 1984, the Kansas Supreme Court, in *State ex rel. Stephan v. Kansas House of Representatives*, 236 Kan. 45, 687 P.2d 622 (1984), held a procedure adopted in 1979, which authorized the use of concurrent resolutions to modify or revoke administrative rules and regulations, violated the doctrine of separation of powers under the *Kansas Constitution*. The opinion notes, “Like the *Constitution of the United States*, the *Kansas Constitution* contains no express provision establishing the doctrine of separation of powers. However, it has been recognized that the very structure of the three-branch system of government gives rise to the doctrine. . . . Generally speaking, the legislative power is the power to make, amend, or repeal laws; the executive power is the power to enforce the laws; and the judicial power is the power to interpret and apply the laws in actual controversies. . . . This is not to say the legislature cannot modify the statute which grants an agency the authority to adopt regulations.” A constitutional amendment to be placed on the November 2022 general election ballot by the passage of 2022 HCR 5014 would authorize the Legislature to provide by law for the revocation or suspension of any rule and regulation that has the force and effect of law, by a majority vote of the members of each house.

A 1977 law created the Joint Committee on Administrative Rules and Regulations (Joint Committee). In 1988, responsibility for filing and publishing all rules and regulations was statutorily assigned to the Secretary of State. The *Policy and Procedure Manual for the Filing of Kansas Administrative Regulations* of the Kansas Department of Administration¹ provides guidance to agencies on the development of and procedures for promulgating rules and regulations.

The Rule and Regulation Adoption Process

Administrative rules and regulations may be temporary or permanent. The Rules and Regulations Filing Act (KSA 77-415 through 77-438, and amendments thereto) outlines the statutory requirements for the filing of regulations by most executive branch agencies and for the review of the agency regulations. Rules and regulations of the Kansas Lottery are exempt from the requirements of the Rules and Regulations Filing Act (KSA 74-8710). Other exclusions, such as hunting seasons and bag limits, are listed in the definition of “rule and regulation” in KSA 77-415.

Temporary Rules and Regulations Adoption Process

A temporary rule and regulation, as defined in KSA 2022 Supp. 77-422, may be adopted by an agency if the State Rules and Regulations Board (Board) finds preservation of the public peace, health, safety, or welfare makes it necessary or desirable to put the regulation into effect before a permanent regulation would take effect. Temporary rules and regulations take effect after approval by the Director of the Budget, the Secretary of Administration, the Attorney General, and the Board and may remain effective for no more than 120 days, beginning with the date of approval by the Board and filing with the Secretary of State. A state agency, for good cause, may request a temporary rule and regulation be renewed one time for an additional period not to exceed 120 days.

Permanent Rules and Regulations Adoption Process

KSA 2022 Supp. 77-420 and KSA 2022 Supp. 77-421 outline the process for the an agency’s adoption of permanent Kansas Administrative Regulations (KARs) or changes to KARs in the following steps, which are to be followed in consecutive order:

- Obtain approval of the organization, style, orthography, and grammar of the proposed rules and regulations from the Secretary of Administration;
- Obtain approval of the proposed rules and regulations from the Attorney General, who must promptly provide an opinion as to the legality of any proposed rule and regulation, including whether the making of the rule and regulation is within the authority conferred by law on the state agency;
- Obtain approval of the proposed rules and regulations from the Director of the Budget (Director) under certain circumstances. KSA 2022 Supp. 77-420 requires the Director to review the economic impact statement submitted with the rules and regulations if the agency determines the implementation or compliance costs

1 This manual is available from the [Department of Administration Document Center](#).

incurred by businesses, local government, or individuals over a two-year period from the rule and regulation effective date would exceed \$1.0 million, through June 30, 2024, or \$3.0 million on and after July 1, 2024;

- If the impact of implementation and compliance costs exceeds the threshold, the Director must approve the proposed rule and regulation, provided the agency had conducted a public hearing prior to submitting the proposed rule and regulation, the agency found the costs to be accurately determined and necessary for achieving legislative intent, and the Director independently concurs with the agency's findings and analysis.
- In 2026, the Legislative Post Audit Committee must direct the Legislative Division of Post Audit to study the accuracy of economic impact statements, the impact the review by the Director has had on the accuracy of those statements, and whether the thresholds chosen are appropriate for triggering the public hearing procedure.
- Submit the notice of hearing, copies of the proposed rules and regulations as approved, the economic impact statement, and the environmental benefit statement (if required by KSA 2022 Supp. 77-416) to the Secretary of State, and submit a copy of the notice of hearing to the chairperson, vice-chairperson, and ranking minority member of the Joint Committee and to the Kansas Legislative Research Department (KLRD); the notice also must be published in the *Kansas Register*;
- Review the proposed rules and regulations with the Joint Committee. KSA 2022 Supp. 77-436 requires the Joint Committee to review all proposed rules and regulations during the public comment period, which is at least 60 days for all rules and regulations, except for those rules and regulations concerning certain hunting and fishing activities and for permanent prior authorization on a prescription-only drug (KSA 2021 Supp. 39-7,120), for which the public comment period is at least 30 days;
 - The Joint Committee is required to issue a report to the Legislature following each meeting making comments and recommendations and indicating concerns about any proposed rule and regulation. The reports are posted on the [KLRD webpage](#) for the Joint Committee. Agencies are asked to respond to any and all comments and questions; those responses are included in Joint Committee records and summarized in its annual report;
 - The Joint Committee may introduce such legislation as it deems necessary in performing its functions of reviewing administrative rules and regulations;
- Hold the public hearing and cause minutes or other records of the meeting to be made;
- Prepare a statement of the principal reason for adopting the rules and regulations, including reasons for not accepting substantial arguments made in comments and reasons for any substantial change from the proposal;

- Initiate new rulemaking proceedings if the final rule and regulation would differ in subject matter or effect in any material respect from the rule and regulation as originally proposed or the rule and regulation is not the logical outgrowth of the rule and regulation as originally proposed;
- Adopt the rules and regulations. At the time it adopts or amends a rule and regulation, the state agency is required to prepare a concise statement of the principal reasons for adopting the rule and regulation or amendment thereto, including:
 - The agency's reasons for not accepting substantial arguments made in testimony and comments; and
 - The reasons for any substantial change between the text of the proposed adopted or amended rule and regulation contained in the published notice of the proposed adoption or amendment of the rule and regulation and the text of the rule and regulation as finally adopted; and
- File the rules and regulations and associated documents with the Secretary of State.

A permanent rule and regulation takes effect 15 days after publication in the *Kansas Register* (KSA 2022 Supp. 77-426). The Secretary of State, as directed by KSA 2022 Supp. 77-417, endorses on each rule and regulation its date of filing, maintains a file of rules and regulations for public inspection, keeps a complete record of all amendments and revocations, indexes the filed rules and regulations, and publishes the rules and regulations. The Office of the Secretary of State publishes new, amended, or revoked regulations in the *Kansas Register* and compiles the adopted regulations in the KAR Volumes and Supplements and on the Office's [website](#). The Secretary of State is authorized to return to the state agency or otherwise dispose of any document that had been adopted previously by reference and filed with the Secretary of State.

Review of Adopted Rules and Regulations

A section of law added by 2022 HB 2087 requires each agency that has promulgated administrative rules and regulations to review, on a five-year cycle, each of its adopted rules and regulations and provide the Joint Committee a statement for each rule and regulation as to whether the rule and regulation is necessary for the implementation and administration of state law, or whether it may be revoked. The bill provides a streamlined revocation procedure for any rule and regulation found through this review to be revocable. The new law specifies review years for each agency, starting in 2023.

Legislative Review and Statutory Legislative Actions

The 12-member Joint Committee is required by KSA 2022 Supp. 77-436 to review proposed rules and regulations during the public comment period prior to the required public hearing on the proposed regulations, as noted above. Recent legislative changes to the Rules and Regulations Filing Act have not changed this review and comment process or opportunities for legislation.

Committee comments and reports. The Joint Committee provides comments reflecting its concerns or recommendations to the agency for consideration at the time of the agency's public hearing on the proposed rules and regulations. The Joint Committee requests the agency reply to it in writing to respond directly to each comment made. It also requests information on any amendments to the proposed rules and regulations made after the Joint Committee hearing, any delays in their adoption, or the withdrawal of the rules and regulations.

Since 2018, KSA 2022 Supp. 77-436 has required the Joint Committee to issue a report to the Legislature of its comments to the agencies following each meeting; these reports are posted on the Joint Committee's [page](#) within the KLRD website and are distributed to the agencies. KLRD maintains a database of responses to Joint Committee comments, reports on those responses to the Joint Committee, and summarizes the comments and responses in the Committee's annual report. The annual report also includes a summary of provisions in legislation enacted in that year that authorize, require, clarify, or remove authority for rules and regulations.

Committee-introduced legislation. The Joint Committee may introduce legislation it deems necessary in the performance of its review functions (KSA 2022 Supp. 77-436(e)).

Legislative concurrent resolution. Provisions of KSA 2022 Supp. 77-426(c) authorize the Legislature to adopt a concurrent resolution expressing its concern with any temporary or permanent rule and regulation filed during the preceding year and requesting revocation or amendment of such rule and regulation.

Amendments to Rule and Regulation Procedures

Few bills since 2000 have changed the basic procedures for agency adoption of rules and regulations and legislative review of them.

2008

SB 579 (L. 2008, ch. 25) required state agencies to consider the impact of proposed rules and regulations on small employers. (These provisions, in KSA 2022 Supp. 77-416, were expanded in 2018.) The bill defined "small employer" in KSA 77-415 as any person, firm, corporation, partnership, or association with 50 or fewer employees, the majority of whom are employed in Kansas.

2010

House Sub. for SB 213 (L. 2010, ch. 95) revised law on rules and regulations by removing obsolete language and authorized publication of the KAR in paper or electronic form by the Secretary of State (KSA 77-430). In addition, the bill amended definitions and the exclusion of certain rules and regulations from the Act (KSA 77-415). Certain procedures to be followed in the rulemaking process and procedures were also revised. One provision requires state agencies to begin new rulemaking procedures when the adopted rules and regulations differ in subject matter or effect in a material respect from those reviewed by the Joint Committee (KSA 77-421).

2011

HB 2027 (L. 2011, ch. 14) named the Rules and Regulations Filing Act (Act) and simplified the definitions of terms such as “rule and regulation” and removed certain obsolete exclusions. It also expanded the definition of “person” to include individuals and legal or commercial entities that previously had not been included (KSA 77-415).

The bill gave precedential value to orders (KSA 77-415) issued in an adjudication against a person who was not a party to the original adjudication when the order is:

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

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

The bill provided for the following to be exempt from the Act (KSA 77-415):

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

The bill authorized state agencies to issue guidance documents without following the procedures set forth in the Act. Under the terms of this section (KSA 77-438), guidance documents may contain binding instructions to state agency staff members, except presiding officers, concerning their duties. The bill required each state agency to maintain an index of the guidance documents, publish the index on the agency’s website, make all guidance documents available to the public, file the index in any other manner required by the Secretary of State, and provide a copy of each guidance document to the Joint Committee.

2012

SB 252 (L. 2012, ch. 61) changed notice requirements in KSA 77-421 from 30 days to 60 days for new rulemaking proceedings when an agency proposes to adopt a final rule and regulation that:

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

2018

HB 2280 (L. 2018, ch. 117) made several changes to the Act:

- Granted new authority to the Director of the Budget to review and approve proposed rules and regulations (KSA 77-420);
- Added certain economic analysis requirements (KSA 77-416);
- Added a member of the minority party and a representative of an appropriations committee to the State Rules and Regulations Board (KSA 77-423);
- Added a ranking minority member to the Joint Committee (KSA 77-436);
- Requires reports to the Legislature from the Joint Committee after each meeting (KSA 77-436); and
- Required the Legislative Post Audit Committee, in 2021, to direct the Legislative Division of Post Audit to evaluate the implementation of the new provisions contained in the bill [*Note: This date was changed to 2026 by 2022 HB 2087.*] (KSA 2022 Supp. 77-416).

2021

HB 2391 (L. 2021, ch. 61), a bill amending law regarding business filing and publication duties of the Secretary of State, removed a requirement that the price of KARs be set in rules and regulations (KSA 45-107). The price of the KARs is to recover costs of publishing and storing the KARs. [The corresponding rules and regulations were revoked as of April 29, 2022.]

2022

HB 2087 (L. 2022, ch. 61) amended provisions regarding review by the Director of the Budget and review by agencies to:

- Require review by the Director only if the agency determines the rules and regulations would result in implementation and compliance costs of more than \$1.0 million over two years through June 30, 2024, or more than \$3.0 million over two years on and after July 1, 2024. If the agency proposes a rule and regulation because of a federal mandate, no Director review or approval is required, regardless of estimated implementation and compliance costs;

- Remove provisions requiring the Director to make an independent determination of implementation and compliance costs;
- Require the Director to approve a proposed rule and regulation regardless of determined costs if the agency has held a public hearing, the agency found the costs have been accurately determined and are necessary for legislative intent, and the Director concurs with the agency's findings and approves the economic impact statement after an independent analysis;
- Require the Director to review the rules and regulations only after review by and approval of the Department of Administration and the Office of the Attorney General.

The bill changed, from 2021 to 2026, the year in which the Legislative Post Audit Committee must direct the Legislative Division of Post Audit to study the accuracy of economic impact statements submitted in the previous seven years, the impact of the review by the Director on the accuracy of the statements, and whether the amounts triggering the public hearing procedure are appropriate.

The bill also added the provisions described above regarding state agency review of each rule and regulation, on a five-year cycle, to determine whether the rule and regulation is necessary or whether it may be revoked, using a streamlined revocation procedure created by the bill.

HCR 5014 places an amendment to the *Kansas Constitution* on the ballot for the general election in November 2022 to create a new section in Article 1 to provide that, whenever the Legislature by law has authorized any officer or agency within the Executive Branch to adopt rules and regulations that have the force and effect of law, the Legislature may provide by law for revocation or suspension of any such rule and regulation, or any portion thereof, by a majority vote of the members of each house.