

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

April 9, 2012
Room 152-S—Statehouse

Members Present

Senator Vicki Schmidt, Chairperson
Representative Carl Holmes, Vice-chairperson
Senator Oletha Faust-Goudeau
Senator Ralph Ostmeyer
Senator Tim Owens
Senator Allen Schmidt
Representative Steve Huebert
Representative Joe Patton
Representative Jan Pauls
Representative Ed Trimmer
Representative Caryn Tyson
Representative Valdenia Winn

Staff Present

Raney Gilliland, Legislative Research Department
Jill Shelley, Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
Nobuko Folmsbee, Office of the Revisor of Statutes
Katherine McBride, Office of the Revisor of Statutes
Judy Glasgow, Committee Assistant

Conferees

Chris Tymeson, Department of Wildlife, Parks and Tourism
Christine Mennicke, Kansas Department of Health and Environment
Bill Bider, Kansas Department of Health and Environment
David Barfield, Department of Agriculture, Division of Water Resources
Lane Letourneau, Department of Agriculture, Division of Water Resources
Rick Scheufler, Kansas Department of Agriculture
Jeff Vogel, Kansas Department of Agriculture, Plant Protection and Weed Control Program
Tom Hawk, Behavioral Sciences Regulatory Board
Leslie Allen, Behavioral Sciences Regulatory Board
Cheryl Whelan, Kansas State Board of Education
John Wine, Kansas Insurance Department
Frank S. Henderson, Jr., Crime Victims Compensation Board

Others Present

Deb Boss, Hein Law Firm
Susan Vogel, Kansas Department of Health and Environment

Chairperson Vicki Schmidt called the meeting to order on April 9, 2012, at 10:00 a.m. The Chairperson called for action on the minutes of the February 10, 2012, meeting. *Senator Owens moved the minutes be approved as written, Representative Holmes seconded the motion; the motion carried.*

Chairperson Schmidt recognized Chris Tymeson, Chief Counsel, Kansas Department of Wildlife, Parks and Tourism, to address the proposed rules and regulations noticed for hearing by the Wildlife, Parks and Tourism Commission. KAR 115-25-5, turkey; fall season, bag limit, and permits; KAR 115-25-7, antelope; open season, bag limit, and permits; and KAR 115-25-8, elk; open season, bag limit, and permits.

The Committee had no questions about the rules and regulations, but did question the economic impact statement and the inclusion of the funds generated to businesses providing goods and services as economic benefits. It was suggested that on any deer rules and regulations, the Commission could include a positive economic impact to auto repair companies and insurance businesses as a result of deer accidents.

Christine Mennicke was recognized by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Department of Health and Environment, Bureau of Waste Management (Attachment 1). KAR 28-29-109, special waste.

Ms. Mennicke stated this regulation has been modified to require contact information about the person requesting the disposal authorization and to remove redundant concentration limits and references to specific types of analyses for 1,2-dichloroethane, benzene and lead.

A question was asked about the definition of “special waste” since the first paragraph contained two different definitions. Staff suggested the definition be placed in KAR 28-29-3, definition section, so that it would apply to all regulations in KAR 28-29 series. Ms. Mennicke stated there is no list or guideline further specifying “special waste.” Staff recommended the agency hold this regulation back and amend KAR 28-29-3. Then the agency could send this regulation back at the same time so the rules and regulations would be consistent.

Bill Bider stated it would be impossible to list every “special waste” condition, but the most common could be listed in the rules and regulations with the statement “or any other materials that are found to need special handling as identified by the Secretary.” Mr. Bider stated “special waste” is supposed to come into the landfill already identified as requiring special handling. A Committee member questioned whether high chloride levels should be included in the list of constituents for which samples should be analyzed. Mr. Bider stated there has been an increase in drilling especially since the first of this year and this could be done. Mr. Bider stated the only landfill authorized to receive this wet drilling waste is the Plumb Thicket landfill in Harper County.

Chairperson Schmidt recognized David Barfield, Chief Engineer, to speak to the proposed rule and regulation noticed for hearing by the Department of Agriculture, Division of Water Resources (Attachment 2). KAR 5-9-3, quantity.

Mr. Barfield stated this amendment would have a positive fiscal impact to the oil industry allowing a timely and robust water source for the drilling and fracking of oil wells.

Lane Letourneau answered questions raised by a committee member on whether water could be pumped out of a lagoon and whether a permit would be needed. He stated that the Department would have to take a look at this since taking water out would cause a concentration of the remaining waste. A Committee member recommended a notice be mailed to the oil companies and to the land owner that all existing rules and regulations remain in effect when permits are granted for drilling, specifically those relating to the water rights a landowner could retain after the well is no longer needed for drilling purposes.

Chairperson Schmidt welcomed Rick Scheufler, staff attorney, to address the proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-15-4, live plant definition: exclusions; KAR 4-15-7, live plant dealer licensing exemptions; KAR 4-15-8, fees for the inspection of live plants, plant products, bees, beekeeping equipment, and regulated articles; KAR 4-15-9, fees for the certification of live plants, plant products, bees, beekeeping equipment, and regulated articles; KAR 4-15-9a, live plant dealer; certificate of inspection; KAR 4-15-10, pest freedom standards; and KAR 4-15-13, criteria to determine dollar amount of civil penalty.

In reply to a question concerning fees charged for travel in KAR 4-15-8, Jeff Vogel stated that there are four locations throughout the states where inspectors are stationed: Morland, Wichita, Ft. Scott and Topeka. If the budget permits, the agency will add one more around the Kansas City metro area. A Committee member noted that in KAR 4-15-8, there needs to be a clarification that these fees are charged only for requested inspection. Staff asked, regarding KAR 4-15-10, page 4, (e) where he would find out whether a plant was on the quarantined list. Mr. Vogel stated there is a list on the agency web site. Staff asked that the Department include a reference to where this list could be located on the web site.

The Chairperson recognized Tom Hawk, Executive Director, and Leslie Allen to speak to the proposed rule and regulation noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-3-5a, examinations.

Leslie Allen reviewed the rule and regulation for the Committee. This change will allow the applicant to register for the examination within four months of anticipated completion of the applicable academic degree requirements. Staff stated that in (a)(3) the crossed out material should be reinserted and the word "or" added to clarify the intention of the Board.

Dr. Hawk stated SB 290 had been passed by both the House and Senate and was signed by the Governor. He stated progress has been made on the matter that had come before the Committee previously with social workers. The Committee thanked Dr. Hawk for the work that the Board has done to achieve compromise with the social workers in these matters. Representative Holmes thanked Dr. Hawk for traveling to Liberal to meet with members in his area and work with both sides to work out a compromise; he also thanked senators for their Committee work on the bill.

Cheryl Whelan, General Counsel, was recognized by the Chairperson to address the proposed rule and regulation noticed for hearing by the Kansas State Department of Education. KAR 91-1-209, additional endorsements.

The Committee had no comments or questions for Ms. Whelan.

Chairperson Schmidt welcomed John Wine, staff attorney, to speak to the proposed rules and regulations noticed for hearing by the Kansas Insurance Department (Attachments 3 and 4). KAR 40-1-37, audited financial reports; filing requirements; and KAR 40-1-48, risk-based capital instructions for health organizations.

The Committee had no questions for Mr. Wine.

The Chairperson recognized Frank S. Henderson, Jr., Executive Director, to speak to the revocation of rules and regulations noticed for hearing by the Crime Victims Compensation Board. KAR 20-2-5, KAR 20-3-1; and KAR 20-3-2, Revoked. The Committee had no questions for Mr. Henderson.

The Vice-chairperson requested that staff check the recent bill that was vetoed to be sure there were no matters pertinent to Administrative Rules and Regulations.

The Chairperson adjourned the meeting at 12:15 p.m.

COMMITTEE COMMENTS ON PROPOSED RULES AND REGULATIONS APRIL 2012

Kansas Department of Wildlife, Parks and Tourism. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning turkey, fall season, bag limit, and permits; antelope, open season, bag limit, and permits; and elk, open season, baglimit, and permits. After discussion, the Committee had no comment, but did have one request.

Request. The Committee requests that the agency include in future Economic Impact Statements the economic benefits realized by automobile repair establishments in Kansas and the effects on insurance companies from collisions with large animals.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning special waste. After discussion, the Committee had the following comments.

KAR 28-29-109. The Committee requests that the agency hold this administrative rule and regulation until it amends KAR 28-29-3 where the definition of "special waste" currently exists rather than attempt to amend the definition in KAR 28-29-109. The Committee also is concerned that there is no guidance as to what constitutes "special waste." The Committee is concerned that it appears there is only one landfill statewide capable of taking drilling waste for disposal and suggests chloride be added to the substances for which waste must be tested. Additional concern was expressed with the lack of specification regarding the concentration of benzene in that this substance is often used for specialized cleaning; members also were curious as to where this substance may be disposed.

Kansas Department of Agriculture, Division of Water Resources The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning quantity (water for a temporary permit). After discussion, the Committee had no comment, but did have one request:

The Committee requests information on whether water that currently evaporates from municipal water treatment ponds could be used for oil and natural gas recovery.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning live plant definition; exclusions; live plant dealer licensing exemptions; fees for the inspection of live plants, plant products, bees, beekeeping equipment, and regulated articles; fees for the certification of live plants, plant products, bees, beekeeping equipment, and regulated articles; live plant dealer, certificate of inspection; pest freedom standards; and criteria to determine dollar amount of civil penalty. After discussion, the Committee had the following comment.

Request. The members of the Committee request that the location of the list of plants which are quarantined be more easily accessible on the agency's website. Despite the fact testimony indicated that the list exists on the website, members had difficulty in locating it.

Kansas Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning examinations (professional counselor). After discussion, the Committee had the following comments.

KAR 102-3-5a. The Committee suggests that the agency reword its language in (a)(3) as follows: "An applicant shall not be authorized to register for the examination or to qualify for a waiver of the examination until the applicant has fulfilled all educational requirements **or** is within four months of anticipated completion of the applicable academic degree requirements and has satisfied the board that the applicant merits the public trust."

Compliment. The members of the Committee wish to compliment the agency in its efforts to reach a compromise among various interest groups with respect to addiction counseling.

Kansas Department of Education. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning additional endorsements. After discussion, the Committee had no comment.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning audited financial reports, filing requirements; and risk-based capital instructions for health organizations. After discussion, the Committee had no comment.

Kansas Crime Victims Compensation Board. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning revocations. After discussion, the Committee had no comment.

Prepared by Judy Glasgow
Edited by Raney Gilliland

Approved by the Committee on:

June 1, 2012

(Date)