

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

October 3, 2005
Room 514-S—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Vicki Schmidt, Vice Chairperson
Senator Chris Steineger
Representative Lance Kinzer
Representative Jan Pauls
Representative Sharon Schwartz
Representative Josh Svaty
Representative Mark Treaster

Members Absent

Senator Donald Betts
Senator Karin Brownlee
Senator Ralph Ostmeyer
Representative Scott Schwab

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Kenneth Wilke, Revisor of Statutes Office
Judy Glasgow, Secretary

Others Present

Greg Foley, State Conservation Commission
Scott Carlson, State Conservation Commission
David Pope, Kansas Department of Agriculture
Dan Riley, Kansas Department of Agriculture
Deletria Nash, Kansas Insurance Department
Rick Fleming, Office of the Securities Commissioner
Anne Haught, Department of Labor
Terry Tracy, Department of Labor
Randy Forbes, Kansas Dental Board
Dr. Lou Saadi, Kansas Department of Health and Environment
Jack Alexander, State Fire Marshal

Dan McLaughlin, State Fire Marshal's Office
Gregg Noll, PMAK
Leslie Kaufman, Kansas Cooperative Council
Mary Jane Stankiewicz, KGFA/KARA
Sandy McAdam, Kansas Department of Health and Environment
Tina Langley, Kansas Department on Aging
Carleen Roberts, Kansas Department on Aging
Ron Seeber, Hein Law Firm
Melissa Graham, Kansas Dental Board
David Owens, Homeless Come Home
Larry Buening, Board of Healing Arts

Chairperson Holmes called the meeting to order at 9:05 a.m., and introduced Senator Vicki Schmidt as the newest member to the Committee. Senator Schmidt is the new Vice Chairperson.

Greg Foley, State Conservation Commission, addressed the proposed rules and regulations noticed for hearing by the State Conservation Commission. KAR 11-11-1 through 11-11-7, revocations. Mr. Foley stated that the agency was revoking these rules and regulations because the 2005 Legislature did not provide funding for the Irrigation Transition Assistance program and the Joint Committee had requested this revocation. The Committee had no questions for Mr. Foley and the Chairperson thanked him for appearing before the Committee.

David Pope, Chief Engineer, spoke to the proposed rules and regulations noticed for hearing by the Department of Agriculture, Division of Water Resources. KAR 5-16-1, definitions, and KAR 5-16-5, maximum annual quantity of water authorized by term permit.

Mr. Pope gave the Committee a brief overview of the program and stated that the changes were the result of legislation passed during the 2005 Legislative Session. These proposed rules and regulations bring the agency into alignment with the new statute. Mr. Pope stated that the changes reflect a more accurate water usage for determining flex accounts. Staff suggested that the formula as written should be clarified. Mr. Pope responded to questions of a general nature from Committee members. Chairperson Holmes thanked Mr. Pope for his presentation before the Committee.

Deletria Nash, Staff Attorney, Kansas Insurance Department, spoke to the proposed rules and regulations noticed for hearing by the Kansas Insurance Department (Attachment 1). KAR 40-1-42, electronic filing and filing financial statements; KAR 40-1-51, securities valuation; requirements; KAR 40-2-14a, life insurance and annuities; recommendation standards; and KAR 40-2-14b, revocation.

Ms. Nash explained that the changes were primarily to clarify the existing regulations and allow companies to use the most current filing techniques. Staff noted that the statute needs to be updated to allow changes of this nature in the future. After answering Committee members' questions of a general nature, Ms. Nash was thanked by the Chairperson for her presentation.

Chairperson Holmes asked for action on the Committee minutes from the August 22-23, 2005, Committee meeting. *Representative Pauls moved the minutes be approved as presented; Representative Treaster seconded the motion. Motion carried.*

Rick Fleming, General Counsel, Office of the Securities Commissioner, was introduced by Chairperson Holmes to speak to the proposed rules and regulations noticed for hearing by that office. KAR 81-4-4, registration requirements for not-for-profit issuers; and KAR 81-5-15, notice filings and fees for rule 506 offerings.

Mr. Fleming responded to general questions from the Committee regarding the economic impact statement and the total cost to the general public. He stated that because of the exemptions that may be filed under the new rules and regulations, the number of filers is expected to decrease. Chairperson Holmes thanked Mr. Fleming for his presentation before the Committee.

The Chairperson introduced Anne Haught to address the proposed rule and regulation noticed for hearing by the Department of Labor, Division of Workers Compensation. KAR 51-2-5, special local administrative law judge fees and expenses.

Ms. Haught gave an overview of the proposed rule and regulation for Committee members and explained when and why the services of the special administrative judges were used. The Committee had no questions for Ms. Haught and she was thanked by the Chairperson for appearing before the Committee.

Terry Tracy, Department of Labor, was recognized by Chairperson Holmes to speak to the proposed rule and regulation noticed for hearing by the Department of Labor, Division of Workers Compensation. KAR 51-9-7, fees for medical and hospital services.

Mr. Tracy presented a general background of the schedule of medical fees and explained how the current charges were determined. The Committee had no questions for Mr. Tracy and he was thanked for his appearance before the Committee.

Chairperson Holmes recognized Randy Forbes to address the proposed rule and regulation noticed for hearing by the Kansas Dental Board. KAR 71-2-2, branches of dentistry.

Mr. Forbes stated that the proposed rule and regulation was of a technical nature and that it reflected the changes as requested by the Joint Committee on Administrative Rules and Regulations at an earlier meeting. There were no questions and Mr. Forbes was thanked for his presentation before the Committee.

Dr. Lou Saadi was recognized by Chairperson Holmes to address the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment. KAR 120-1-1, revoked and KAR 120-1-2, data collection form used by department on aging.

Dr. Saadi explained that KAR 120-1-2 was requested by the Health Care Data Governing Board for use in the collection of data beginning January 1, 2006. Staff noted that there does not seem to be authority under the statute cited for the agency to promulgate this regulation. The members of the Committee suggested further review of statutes that may be applicable to determine whether authority exists. The Chairperson thanked Dr. Saadi for her appearance before the Committee.

Dan McLaughlin, Chief Deputy, was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the State Fire Marshal's Office. KAR 22-8-2, required signs at liquefied petroleum gas facilities; KAR 22-8-3, definitions; KAR 22-8-5, application and drawings; KAR 22-8-8, inspections; KAR 22-8-9, approval process for application and drawings; KAR 22-8-10, licensing requirements; classes; fees; renewals; KAR 22-8-11, training requirements for initial licenses; instructor and class approval; KAR 22-8-12, continuing education requirements for license renewal; KAR 22-8-13, adoption of national codes; KAR 22-8-14, interruption of LP gas service; and KAR 22-8-17, public LP gas cylinder exchange cabinets.

A question was raised concerning KAR 22-8-3, page 3, (j) "public transportation vehicle." It was suggested that a further definition may be needed to clarify. A concern was also raised from a Committee member that in KAR 22-8-8, KSA 55-1808 also should be cited. A Committee member

noted that in KAR 22-8-5, page 2, paragraph c may not be needed. Mr. McLaughlin stated that he would take this back for the agency to review. Some questions were raised about KAR 22-8-11, and the fact that Kansas Propane Education Research Council (KanPERC) was not mentioned at all in this section and no standards were set for the educational classes. A Committee member had questions concerning where the maps were kept and if they would be available to anyone. Staff suggested that the agency review the Kansas Open Records Act and the exceptions to open records in the energy-related statutes.

Interested parties were asked to make comments with respect to the regulations proposed by the State Fire Marshal. Leslie Kaufman, Government Relations Director, Kansas Cooperative Council, was recognized by Chairperson Holmes to speak concerning the proposed rules and regulations by the State Fire Marshal's Office (Attachment 2). Ms. Kaufman addressed several concerns that the Kansas Cooperative Council has concerning the proposed rules and regulations. Those concerns were as follows:

- Security of the detailed facility information;
- Inconsistency of language used throughout; and
- The need to clarify language when an application is denied and the reasons for that denial.

The Chairperson thanked Ms. Kaufman for her presentation before the Committee.

The Chairperson recognized Mary Jane Stankiewicz, Kansas Grain and Feed Association and Kansas Agriculture Retailers Association, to address concerns with the proposed rules and regulations of the State Fire Marshal's Office (Attachment 3). In addition to other concerns, Ms. Stankiewicz stated her organizations were concerned with the adoption of Standards No. 54 and 58 of the National Fire Protection Association standards, and also the fact that when a license is not approved, the process for appeal is not set out in detail. Ms. Stankiewicz was thanked for her appearance before the Committee.

Chairperson Holmes introduced Larry Buening, Executive Director, to speak to the proposed rules and regulations noticed for hearing by the Kansas State Board of Healing Arts. KAR 100-29-1, applications; KAR 100-29-2, approval of physical therapy programs; KAR 100-29-3, requirements for physical therapists and physical therapist assistants from non-approved schools; KAR 100-29-4, examination; KAR 100-29-5, revocation; KAR 100-29-6, lost or destroyed certificates; change of name; new certificates; KAR 100-29-8, license and certificate renewal; expiration date; notification of supervision; KAR 100-29-9, license and certificate renewal; continuing education; KAR 100-29-10, canceled licenses and certificates; reinstatement; KAR 100-29-11, grounds for discipline; institution of proceedings; hearings; KAR 100-29-12, unprofessional conduct; KAR 100-29-13, notification to board; KAR 100-29-14, revocation; KAR 100-29-15, professional liability insurance; KAR 100-29-16, supervision of physical therapist assistants and support personnel; and KAR 100-29-17, initiation of treatment; restrictions.

Mr. Buening stated that these rules and regulations were the result of SB 225, passed during the 2003 Legislative Session, which amended almost all of the statutes involving physical therapists. He noted that many of these rules and regulations have not been amended since 1983. A Committee member noted in KAR 100-29-1, page 2, (4) that a clarification be made as to the style and size of the photo being requested. A Committee member questioned the use of the word "nationally" in KAR 100-29-4, and whether this was intended to be restricted to the United States. Mr. Buening stated he thought that this was the intent of the Board, and he would have the Board

look at it again. Staff suggested that in KAR 100-29-9, page 3 (g), continuing education should include all categories and then the list of definitions should be given. A Committee member suggested that in KAR 100-29-12 (C), "excessive use" may need to be more clearly defined. After answering questions of a general nature from Committee members, Chairperson Holmes thanked Mr. Buening for his appearance before the Committee.

Chairperson Holmes noted that the next meeting would be a one-day meeting on November 7, 2005. There being no further business, the meeting adjourned at 12:15 p.m.

COMMITTEE COMMENTS ON PROPOSED RULES AND REGULATIONS

State Conservation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning revocations and had no comment.

Kansas Department of Agriculture, Division of Water Resources. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; and maximum annual quantity of water authorized by term permit and had the following comments.

KAR 5-16-1. Please correct the statutory citation in the last line of subsection (a). Also, consider including a formula for the calculation base average usage conservation factor.

Request. Please provide to Legislative Research Department staff aggregated annual water use for groundwater management districts 1, 3, and 4 since 2000.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning life insurance and annuities, recommendation standards; revocation; electronic filing and filing financial statements; securities valuation requirements; and had the following comment:

Comment. The Committee is concerned with the agency adopting practices and procedures issued by the National Association of Insurance Commissioners (KAR 40-1-42). The Committee may consider introduction of legislation to address what may appear to be an unlawful delegation of authority.

Kansas Securities Commissioner. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning registration requirements for not-for-profit issuers; notice filings and fees for rule 506 offerings and had no comment.

Kansas Department of Labor. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning special local administrative law judge fees and expenses; fees for medical and hospital services; fees for medical and hospital services and had no comment.

Kansas Dental Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning branches of dentistry and had no comment.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning data collection form used by department on aging; revocation and had the following comment:

Comment. The Committee is aware of the upcoming transfer of the Health Care Data Governing Board. However, the Committee requests that the agencies involved review their statutory authority to promulgate rules and regulations in this area. This may require a statutory remedy. Please advise the Committee of any needed statutory clarification.

State Fire Marshal. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning required signs at liquefied petroleum gas facilities; definitions; application and drawings; inspections; approval process for application and drawings; licensing requirements, classes, fees, renewals; training requirements for initial licenses, instructor and class approval; continuing education requirements for license renewal; adoption of national codes; interruption of LP gas service; and public LP gas cylinder exchange cabinets and had the following comments:

KAR 22-8-3. Please clarify the definition of "public transportation vehicle." Consider a reference to KSA 55-1808.

KAR 22-8-5. In subsection (c), the Committee questions the authority to permit an appeal to the State Fire Marshal from a decision at the local level.

General Comment. The Committee is concerned with the potential release of application information and maps, which could create a security risk. Please review applicable sections of the Kansas Open Records Act to determine if the records of the agency are open or closed. Please advise the Committee of any needed revision to either rules and regulations or statutes.

KAR 22-8-8. Please consider a reference to KSA 55-1808.

KAR 22-8-11. The Committee recommends that the training standards be a part of the regulation.

Economic Impact Statement. The Economic Impact Statement is in error. Please revise.

Interested Party Comments. Attached are the comments from interested parties presented to the Joint Committee on Administrative Rules and Regulations. Please include these as a part of the public record at the hearing on these regulations.

Kansas State Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning applications; approval of physical therapy programs; requirements for physical therapists and physical therapists and physical therapist assistants from non-approved schools; examination; lost or destroyed certificates, change of name, new certificates; license and certificate renewal, expiration date, notification of

supervision; license and certificate renewal, continuing education; canceled licenses and certificates, reinstatement; grounds for discipline, institution of proceedings, hearings; unprofessional conduct; notification to board; professional liability insurance; supervision of physical therapist assistants and support personnel; initiation of treatment; and revocations and had the following comments.

KAR 100-29-1. Clarify the standard for the type of applicant photograph.

KAR 100-29-4. Consider clarification of the term "nationally administered" since the Board spokesperson indicated that there are a number of foreign-trained applicants.

KAR 100-29-9. In subsection (g), consider listing the allowable education experiences prior to their definitions to clarify the regulation's meaning. Consider reorganizing this regulation.

KAR 100-29-10. The Committee notes that there is no disciplinary action provided for a name change requirement. The Committee questions the necessity of the change of name requirement in KAR 100-29-6 if there is no associated penalty.

KAR 100-29-12. In subsection (a)(2)(C), the Committee is concerned with the term "excessive," since no definition is provided. Consider clarification of this issue.

Prepared by Judy Glasgow
Edited by Raney Gilliland and Melissa Calderwood

Approved by Committee on:

November 6, 2005

(date)