Approved: March 17, 2010
Date

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 1:30 p.m. on March 10, 2010, in Room 346-S of the Capitol.

All members were present except:
Representative Mike Peterson- excused

Committee staff present:
Mike Heim, Office of the Revisor of Statutes
Jason Long, Office of the Revisor of Statutes
Ken Wilke, Office of the Revisor of Statutes
Julian Efird, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Nikki Feuerborn, Committee Assistant

Conferees appearing before the Committee:
Representative Pauls, Kansas Legislature
Honorable Judge Steven Leben, Court of Appeals and Kansas Judicial Council (Attachment 1)
Commissioner Russell Jennings, Juvenile Justice Authority (Attachment 2)

Others attending:
See attached list.

Representative Huebert moved for the approval of the minutes for March 3, 2010. Motion was seconded by Representative Fund. Motion carried.

Hearing and Action on HB 2530 - Rules and regulations filing act

Ken Wilke, Office of the Revisor of Statutes, reviewed the bill which instructs agencies to file with the Secretary of State every rule and regulation adopted by it and every amendment and revocation in the manner prescribed by the Secretary of State.

Representative Pauls served in an advisory capacity to the Judicial Council's Administrative Procedures Advisory Committee while they studied the Rules and Regulations Filing Act. She told the Committee she was pleased with the end product as it removes the guidance provisions which will be studied this next year.

The Honorable Judge Steven Leben, Court of Appeals and the Kansas Judicial Council, testified in favor of the bill which was written after the original bill was passed by the House Judiciary Committee (Attachment 1). The Council then found provisions in the bill which would allow agencies to publish on the web "guidance documents" of the agencies current opinions in implementing legislative directives. It was decided that further review was needed thus **HB 2530** was proposed. The Council plans to ask for the introduction of additional legislation regarding revised guidance standards next year.

Representative Neufeld closed the hearing on **HB 2530**.

Representative Kiegerl moved to amend the language of **HB 2530** into **SB 213**. Motion was seconded by Representative Hill. Motion carried. Representative Loganbill asked to be recorded as a "no" vote.

Representative Holmes moved to report **House Substitute for SB 213** favorable for passage as amended. Motion was seconded by Representative Fund. Motion carried. Representative Loganbill and Representative Benlon asked to be recorded as "no" votes.

Hearing on SB 452 - Purchase or consumption of alcoholic beverage by person less than 18 years of age; detention

Jason Long, Office of the Revisor of Statutes, explained that in order to receive federal funds under the Juvenile Justice and Delinquency Prevention Act, states are required to maintain core protections for children. This bill would bring the state into compliance with these regulations.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on March 11, 2010, in Room 346-S of the Capitol.

J. Russell Jennings, Commissioner of the Juvenile Justice Authority, testified in support of the bill which will align state law with federal law and regulations (Attachment 2). These changes would support their request for a block grant of $600,000 from the Juvenile Prevention Funds. These changes are:

- Prohibit placement of youth under 18 in a jail when arrested only for the offense of possession or consumption of alcohol.
- Prohibit the placement of a youth under the age of 18 in a juvenile detention center for a period in excess of 24 hours exclusive of weekends and holidays for the above mentioned offense.
- Prohibits the use of juvenile correctional facility, juvenile detention center or sanction house placement as an option at the time of disposition when a youth is adjudicated a juvenile offender for the offense of possession or consumption of alcohol.

Chairman Neufeld closed the hearing on **HB 452**.

The next meeting is scheduled for March 11, 2010.

The meeting was adjourned at 2:10 p.m.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

FEDERAL AND STATE AFFAIRS COMMITTEE GUEST LIST
DATE: March 10, 2010

NAME	REPRESENTING
Travis Lowe	Little Govt Relations
Sean Miller	Capitol Strategies
Steve Leben	Ks. Judicial Council
Christy Molzen	Ks. Judicial Counsel
John [illegible]	Kansas [illegible]
Joe Mosimann	PMCA
Tuck Duncan	KS Wine & Spirits Wholesalers
Kevin Barone	WC

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MEMORANDUM

TO: **House Federal and State Affairs Committee**

FROM: **Kansas Judicial Council - Judge Steve Leben**

DATE: **March 10, 2010**

RE: **2010 HB 2530**

The Judicial Council recommends 2010 HB 2530 in revised form as recommended by the Joint Committee on Administrative Rules and Regulations.

The bill was recommended by the Judicial Council's Administrative Procedure Advisory Committee after a year-long study, and it was initially recommended for House passage by the House Judiciary Committee. Our full report regarding the bill we originally proposed, which was approved by the Judiciary Committee, is attached.

Later, some questions were raised regarding the provisions of the bill that would have provided that agencies could publish on the web "guidance documents" that would advise the public of the agency's current opinions and approaches in implementing legislative directives. Based on

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Attachment 1

our discussions with legislators, we concluded that we should do further review of the proposed guidance document provisions, and the Judicial Council supports the Joint Committee's recommendation to remove those provisions from HB 2530 so that the rest of the bill's provisions can be adopted this year. We plan to come back with a revised guidance document proposal for consideration next year.

The remaining provisions of HB 2530 are intended (1) to improve public access to and participation in the process under which Kansas administrative agencies—under legislative authority—enact regulations, and (2) to give the Secretary of State more flexibility in the filing and publication of regulations. These provisions are explained in detail in the attached report, and we recommend their adoption.

Approved by the Judicial Council
on December 4, 2009

REPORT OF THE JUDICIAL COUNCIL ADMINISTRATIVE PROCEDURE ADVISORY COMMITTEE

BACKGROUND

In June 2008, the Judicial Council's Administrative Procedure Advisory Committee requested that the Judicial Council assign it the task of studying the Rules and Regulations Filing Act, K.S.A. 77-415 *et seq.* The Committee was particularly interested in finding ways to improve notice and public participation in rulemaking and to take advantage of technology by utilizing internet and electronic transmission of information. The Judicial Council agreed and made the requested assignment.

COMMITTEE MEMBERSHIP

The members of the Administrative Procedure Advisory Committee taking part in this study were:

Carol L. Foreman, Chair, Topeka; Deputy Secretary of the Department of Administration
Yvonne Anderson, Topeka; General Counsel for the Kansas Department of Health and Environment
Martha Coffman, Lawrence; Chief Advisory Counsel for the Kansas Corporation Commission
Tracy T. Diel, Topeka; Director of the Office of Administrative Hearings
James G. Flaherty, Ottawa; practicing attorney
Jack Glaves, Wichita; practicing attorney
Hon. Steve Leben, Fairway; Kansas Court of Appeals Judge
Prof. Richard E. Levy, Lawrence; Professor at the University of Kansas School of Law
Camille A. Nohe, Topeka; Assistant Attorney General
Hon. Eric Rosen, Topeka; Kansas Supreme Court Justice
Steve A. Schwarm, Topeka; practicing attorney
John S. Seeber, Wichita; practicing attorney
Mark W. Stafford, Topeka; practicing attorney

The Committee invited two additional persons with rulemaking expertise to serve on a temporary basis during the study of rulemaking statutes:

Rep. Janice Pauls, Hutchinson; State Representative from the 102nd District and ranking Democrat on the Joint Committee on Rules and Regulations
Diane Minear, Tonganoxie; Legal Counsel for the Secretary of State

METHOD OF STUDY

In conducting its study of the rules and regulations filing act, the Administrative Procedure Advisory Committee held 8 meetings during 2009. The Committee solicited input from a variety of sources, including legal counsel for state agencies and other attorneys practicing in the area of administrative law.

COMMITTEE RECOMMENDATIONS

The Committee proposes the adoption of a number of amendments to the Rules and Regulations Filing Act, K.S.A. 77-415 *et seq*., which are contained in 2010 HB 2530. The "Comments" section beginning at page 4 of this report discusses the reasons for each of the amendments, many of which are technical or intended for purposes of clarification. Most of the Committee's proposed changes to the Rules and Regulations Filing Act fall into two main categories: (1) amendments to improve public access to and notice of the rulemaking process and (2) amendments to give the Secretary of State's office more flexibility in the filing and publication of rules and regulations.

Improving transparency of agency action was an important overarching goal of the Committee. This includes both making the agency's views of the law and the public's obligations under the law as broadly available as possible. It also includes promoting public access to and participation in the rulemaking process, which the Committee believes is an important means of improving the content of rules and regulations as well as holding agencies accountable. Amendments that improve public access to and notice of the rulemaking process include:

- New Section 1, which allows agencies to publish non-binding "guidance documents" to provide helpful information to both the public and agency staff.
- Amendments to K.S.A. 77-421(b), which require an agency to prepare a concise statement of its principal reasons for adopting or amending a rule, including the agency's reasons for not accepting substantial arguments made in testimony and reasons for any substantial change between the text of the proposed rule and the version finally adopted. (HB 2530, Section 10.)
- New subsection (c) of K.S.A. 77-421, which provides guidance on when an agency is required to reinitiate the rulemaking process, including providing notice and another public comment period, because of changes to a proposed rule. (HB 2530, Section 10.)

Current provisions impose strict publication requirements on the Secretary of State's office and prescribe the precise form for various filings. These requirements are increasingly inappropriate as information technology develops, and impose some unnecessary costs on both the Secretary of State and the agencies. Although that office does not plan dramatic changes in the short term, increasing flexibility for the Secretary of State's office concerning the filing and publication of rules and regulations will permit the office to develop alternatives that will produce substantial cost savings in the long run. To ensure that there is some accountability in this process, the Secretary of State is to adopt rules and regulations specifying filing and publication requirements.

Amendments that give the Secretary of State's office more flexibility in the filing and publication of rules and regulations include:

- Amendment to K.S.A. 77-415a, which gives the Secretary of State authority to adopt its own rules and regulations necessary for the execution of its functions under the act. (HB 2530, Section 3.)
- Amendments to K.S.A. 77-416(a) and 77-418, which remove specific technical requirements about how proposed rules are to be filed with the Secretary of State's office. Instead the Secretary of State's office may set those technical requirements itself. (HB 2530, Sections 5 and 7.)
- Amendments to K.S.A. 77-419, 77-428, 77-429, 77-430a, and 77-431 which delete requirements that rules and regulations must be published in written form. Although the Secretary of State does not intend to completely discontinue print publication in the near future, the amendments give the Secretary of State the option to move toward electronic publication, which will reduce costs. (HB 2530, Sections 8, 15, 16, 18 and 19.)
- Amendments to K.S.A. 77-430, which allow the Secretary of State to distribute copies of the Kansas administrative regulations to certain entities in an electronic or paper medium and only upon request. (HB 2530, Section 17.)

Issues raised by state agency counsel

The Committee received several responses to its request for input from state agency counsel regarding the Rules and Regulations Filing Act. The Committee considered each of the responses, and either made the requested change or rejected it for the reasons set out below.

Matt Spurgin, Litigation Counsel for the Kansas Corporation Commission, suggested it would be helpful if the Committee drafted amendments to clarify when changes to a proposed regulation rise to the level that the agency must initiate new rulemaking proceedings. The Committee agreed that some guidance in this area was needed and proposes adding a new subsection (c) to K.S.A. 77-421. (HB 2530, Section 10.) The amendment provides that if an agency proposes to adopt a final rule or regulation that (1) differs in subject matter or effect in material respects from the rule as originally proposed and (2) is not a logical outgrowth of the rule as originally proposed, then the agency must initiate new rulemaking proceedings including notice and an additional public comment period of not less than 30 days.

Patrick Hurley, Chief Counsel for the Department of Administration, suggested that the two-step process of submitting proposed rules and regulations to the Secretary of Administration for editing and then to the Attorney General for substantive review might be shortened by moving both roles to the AG's office. However, the Committee also heard from Deputy Attorney General Mary Feighny that transferring the Secretary of Administration's rule review function to the AG's office would pose personnel, budgetary, and logistical problems. The Committee found that both review steps are important. The Committee recommends no substantive change in this area.

Mr. Hurley also suggested that an electronic approval process, rather than the paper approval

process articulated in K.S.A. 77-416 and 77-418, would be more efficient and would be more easily managed if set out by regulation rather than by statute. The Committee agreed, and recommends amendments that would allow the Secretary of State's office to set the technical requirements for the filing of rules and regulations. Under the Committee's recommended amendments, the Secretary of State would have the flexibility to require proposed rules and regulations to be submitted electronically.

John Campbell, General Counsel for the Kansas Insurance Department, suggested that the 60-day notice period seems longer than necessary to obtain public comments and that the comment period should be shortened to 30 days. The Committee found that, if the notice period were shortened, the joint legislative committee might not have enough time to schedule meetings and provide its comments before the public hearing. Also, the Committee did not wish to restrict public participation in the rulemaking process by shortening the period for public comment. Accordingly, the Committee does not recommend shortening the 60-day notice period.

COMMENTS TO 2010 HB 2530

New Section 1.

The Advisory Committee recommends a new section designed to encourage agencies to advise the public of its current opinions and approaches by using guidance documents (also often called interpretive rules or policy statements). A guidance document, in contrast to a rule, lacks the force of law. The section recognizes the agencies' need to use such documents to guide both agency employees and the public. Agency law often needs interpretation, and agency discretion needs some channeling. The public has an interest in knowing the agency's position on these matters, and increasing public knowledge reduces unintentional violations and lowers transaction costs. For example, a company may find that an agency has a guidance document and that the company can reasonably comply with the document's interpretation of a statute or regulation. In that case, the company may proceed based on the guidance document rather than engaging in extensive legal consultations, regulatory proceedings, or even litigation.

This section strengthens agencies' abilities to fulfill these legitimate objectives by explicitly excusing them from having to comply with formal rulemaking procedures before issuing nonbinding statements. Meanwhile, the section incorporates safeguards to ensure that agencies will not use guidance documents in a manner that would undermine the public's interest in administrative openness and accountability. The section also encourages broad public accessibility to guidance documents through agency websites.

This section is based upon section 310 of the Revised Model State Administrative Procedure Act (Draft of September 30, 2009). This comment is based upon the comment to section 310 in the draft Model Act.

Section 2 (amending K.S.A. 77-415).

Most of the changes to this section were drafted by the Revisor of Statutes to alphabetize the definitions contained in the statute. The definition of guidance document in subsection (c) is new.

Section 3 (amending K.S.A. 77-415a).

The amendment to this section is part of a series of amendments intended to provide more flexibility for the Secretary of State's office regarding the filing and publication of rules and regulations. Other amendments remove specific requirements from the statutes about the exact number of copies of proposed rules and regulations required to be filed with the Secretary of State's office. Instead, the Secretary of State may set those technical requirements by rules and regulations. The amendment to K.S.A. 77-415a gives the Secretary of State authority to adopt such rules and regulations.

Section 4 (amending K.S.A. 77-415b).

Subsections (b) and (c) are deleted because their provisions are no longer necessary.

Section 5 (amending K.S.A. 77-416).

The amendments to subsection (a) are part of a series of amendments intended to build in more flexibility for the Secretary of State's office by allowing the Secretary of State to decide how many copies of each rule and regulation to require. The amendments remove specific requirements from the statutes about the exact number of copies of proposed rules and regulations required to be filed with the Secretary of State's office. Instead, the Secretary of State may set those technical requirements by adopting rules and regulations.

The amendments to subsection (b) affect the timing of when an economic impact statement is prepared and when it is updated. The statute currently requires an economic impact statement to be prepared at the time of drafting of a proposed rule and updated, if necessary, at the time of giving notice of hearing and again when the final rule is adopted. The Committee found that actual agency practice in this area does not conform to the requirements of the statute.

Under the amendments, the agency must consider the economic impact at the time of drafting a proposed rule or regulation; the agency must prepare the economic impact statement prior to giving notice of hearing on the proposed rule or regulation; and the agency must reevaluate and, if necessary, update the economic impact statement at the time of filing the rule or regulation with the Secretary of State.

The amendments to subsection (d) affect the timing of when an environmental impact statement is prepared and when it is updated. They parallel the amendments to subsection (b) relating to the economic impact statement.

Subsection (f) deals with a different subject matter than the rest of K.S.A. 77-416a. The Committee felt the substance of subsection (f) should be moved to new subsection (b) in K.S.A. 77-417.

Section 6 (amending K.S.A. 77-417).

New subsection (b) was moved from existing K.S.A. 77-416a(f). Because the provision addresses a power of the Secretary of State's office, the Committee believed the provision belongs in this section rather than the preceding one.

Section 7 (amending K.S.A. 77-418).

The amendment deletes unnecessary technical detail on how rules and regulations are to be filed, and leaves those details to the Secretary of State's office.

Section 8 (amending K.S.A. 77-419).

The amendments in lines 10-12 are intended to clarify the meaning of the statute.

The amendment in line 15 strikes the phrase, "and to the legislature" because the cross-reference, K.S.A. 77-426, does not require rules to be submitted to the legislature.

In lines 19-20 and 22-23, the term "strike-through" type is preferred over the term "cancelled" type. The amendment on lines 22-23 also deletes unnecessary technical detail about how rules and regulations are to be printed.

Section 9 (amending K.S.A. 77-420).

The amendments to subsections (b) and (c) clarify that, when the attorney general reviews the legality of a proposed rule or regulation, that review includes a determination of whether the making of the rule and regulation is within the authority conferred by law on the state agency.

Subsection (c)(7) is stricken because the Secretary of State's office no longer accepts for filing copies of documents adopted by reference.

Section 10 (amending K.S.A. 77-421).

This section has been amended in several respects. Two amendments are minor and require little discussion. The amendment to subsection (a) at page 12, line 3, gives more flexibility to agencies by allowing notice of hearing to be provided to the secretary of state and to the chairperson of the joint committee by means other than mailing. For instance, notice might be provided by e-mail. The amendment to subsection (d)—subsection (c) under current law—clarifies that, if a recording or transcript of a hearing on the adoption of a proposed rule or regulation is made, the agency must maintain that recording or transcript for three years from the effective date of the rule or regulation. The amendment to subsection (b) and the addition of proposed new subsection (c) and subsection (a)(4) warrant more extended explanation.

Subsection (b)—The amendment to subsection (b) requires that, whenever an agency adopts or amends a rule or regulation, the agency must provide an explanation of the reasons for adopting the rule or regulation, the reasons for rejecting any substantial arguments, and the reasons for any

substantial change from the version of the rule or regulation originally proposed. The language of the amendment is adapted from section 312 of the Revised Model State Administrative Procedure Act. The language changes current law in two ways. First, K.S.A. 77-421(b) currently requires the agency to provide an explanation on request, and this language would make it mandatory. Challenges to a rule or its application may arise after the rulemaking is complete and may be raised by persons who do not participate in the rulemaking process. In such cases, there may be no request and the benefits of an agency explanation are lost. Second, the current language does not address the extent to which the agency must address arguments made during the course of the proceeding or changes in the substance from the rule as originally proposed. The proposed language concerning those issues comes from the model act, but the Committee did not include a third component of the explanation required by the model act—that the explanation must include "[t]he summary of any regulatory analysis," such as the economic impact statement prepared under K.S.A. 77-416. This requirement was omitted from proposed K.S.A. 77-421(b) because K.S.A. 77-416 already addresses the preparation and handling of the economic impact statement, and preparation of a separate summary as part of the explanation seemed unnecessary and unduly burdensome.

The proposed changes to subsection (b) represent a compromise between two competing sets of concerns. On the one hand, it is arguably incumbent upon all agencies to explain why they adopt rules (or amendments to rules). Because an agency's statutory authority often affords it substantial policy making discretion, verifying that an agency has acted within its statutory authority does not ensure that the agency has exercised its authority in a reasonable manner. Requiring an agency to provide reasons for adopting a rule will help to hold agencies accountable by ensuring there is reasonable basis in the record for determining that the adoption of the rule or regulation furthers the underlying statutory policy. In addition, the inclusion of an explanation facilitates review of the regulation by the Joint Committee on Rules and Regulations and by courts, who must determine whether the rule is arbitrary and capricious or unreasonable under K.S.A. 77-621(c)(8).

On the other hand, requiring agencies to prepare an explanation for their rules and regulations in every case may impose unnecessary and undesirable burdens on agencies. Many rules and regulations (or amendments) are not controversial or are expressly required by statute. For such regulations, the preparation of an explanation is arguably not needed and will consume limited agency resources that might be used more effectively to further other aspects of the agency's mission. In addition, there is concern that the requirement will fuel litigation, and make the rulemaking process longer and more costly. A similar requirement at the federal level has arguably contributed to this problem for federal rulemaking. Insofar as most agencies are struggling to fulfill their statutory missions with limited resources, additional procedural requirements that consume agency resources must be approached with caution.

The proposed changes are intended to provide the benefits of having agencies give the reasons for their rules, while minimizing the burdens on agencies to the extent possible. Thus, if a regulation directly follows from statutory requirements, the explanation would ordinarily be very limited. But when the agency regulation involves policy judgments based upon uncertain data and information, the agency would have to explain why it resolved contested issues in the manner in which it did. In particular, the agency would have to explain why it rejected substantial arguments, and why it made substantial changes from the rule, regulation, or amendment as originally proposed. It is to be emphasized that this requirement applies only to substantial arguments or objections, and

does not require the agency to respond to objections that lack a plausible basis in fact or policy or that do not go to the substance of the rule, and that the agency need not respond separately to multiple comments that raise substantially similar arguments or concerns. Likewise, the agency is not required to explain technical or stylistic changes or other minor amendments to the rule as originally proposed that do not significantly affect the substance of the rule.

The issue is one that divided the members of the committee. All the members of the committee agree, however, that the issue represents an important policy choice that ultimately rests with the Legislature.

Subsection (c) and subsection (a)(4)—New subsection (c), as proposed, is intended to address an area of uncertainty under current law—whether and when agencies that wish to adopt rules that differ significantly from the rules originally proposed must have the revised rule approved under K.S.A. 77-420 and provide additional notice and hearing under K.S.A. 77-421. There is a large body of case law in other jurisdictions, including the federal courts, holding that when a final rule differs so significantly from the original rule that it is not the "logical outgrowth" of the original rule, a new notice and additional public comment or hearing must be provided. The underlying rationale for this rule is to ensure that those affected by the final rule were "on notice" that their interests were at stake in the rulemaking so that they could protect their interests by participating in the rulemaking proceeding. At the same time, it is natural and appropriate for agencies to change their proposed rules in response to input from the rulemaking process, and changes in response to public input should not be discouraged. In addition, affected persons should be expected to participate in the original rulemaking proceeding when the content of the rule and related notice are sufficient to apprise them that an issue will be addressed in the rulemaking.

At present, there is considerable uncertainty in Kansas regarding whether and under what circumstances agencies are required to provide a new notice and rulemaking hearing as a result of changes in a rule. The committee therefore considered it desirable to provide further guidance, and proposes new subsection (c) to accomplish this objective. Under new subsection (c), an agency must begin new rulemaking proceedings if it proposes to adopt a final rule or regulation that (1) differs in subject matter or effect in material respects from the rule originally proposed and (2) is not a logical outgrowth of the original. However, the period for public comment may be shortened to no less than 30 days.

Notice is the key to determining when a final rule is the "logical outgrowth" of the original proposed rule. A final rule is not considered to be the logical outgrowth of the original if a person affected by the final rule was not put on notice that his or her interests were affected in the original rulemaking proceeding. This provision reflects the Committee's view that not every substantial change in a rule should require the agency to initiate a new rulemaking proceeding because many substantial changes are the natural product of the rulemaking process and resolve issues that were raised by the original rule and notice, so that affected persons had ample opportunity to participate in the rulemaking process.

Section 11 (amending K.S.A. 77-421a).

The amendments to this section are technical.

Section 12 (amending K.S.A. 77-422).

The amendment to subsection (c)(3) extends the time that temporary rule or regulation is effective from 120 to 180 days and allows a temporary rule or regulation to be renewed once for up to an additional 180 days. The Committee believes the amendments are necessary in order to give agencies sufficient time to complete the permanent rulemaking process while still carefully considering public input. Also, the amendments clarify that an agency cannot rely indefinitely on a temporary rule or regulation.

Other amendments to this section are technical.

Section 13 (amending K.S.A. 77-423).

The amendments clarify that the Attorney General, Secretary of State, and Secretary of Administration may name designees to serve on the state rules and regulations board. Naming of designees is already occurring in practice.

Section 14 (amending K.S.A. 77-424).

The last sentence of K.S.A. 77-424 currently prohibits publication of rules and regulations adopted jointly by two or more agencies in more than one place in the Kansas administrative regulations. The Committee believes this prohibition is unnecessary and recommends striking the sentence. The amendment would allow, but not require, a rule adopted jointly by two or more agencies to be published in more than one place in the Kansas administrative regulations. Publication in more than one place would still require approval by the state rules and regulations board.

Section 15 (amending K.S.A. 77-428).

The amendments to this section are part of a series of amendments intended to provide more flexibility to the Secretary of State's office by eliminating the requirement that regulations be published in written form. Although the Secretary of State does not intend to completely discontinue print publication in the near future, the amendments give the Secretary of State's office the ability to move toward electronic publication of the regulations, which will reduce costs.

Section 16 (amending K.S.A. 429).

The amendments to this section are part of a series of amendments intended to provide more flexibility to the Secretary of State's office by eliminating the requirement that regulations be published in written form.

Section 17 (amending K.S.A. 77-430).

K.S.A. 77-430 sets out which entities receive free printed copies of the Kansas administrative regulations. The proposed amendments would make such copies available only upon request and would allow copies to be provided in an electronic or paper medium. Eliminating distribution of

unnecessary copies will reduce costs.

Section 18 (amending K.S.A. 77-430a).

The amendments to this section are part of a series of amendments intended to provide more flexibility to the Secretary of State's office by eliminating the requirement that regulations be published in written form.

New language in subsections (b) and (c) relating to money received from sale of replacement volumes and fixing the price of replacement volumes is parallel to the provisions of K.S.A. 77-421(b) and (c).

Section 19 (amending K.S.A. 77-431).

The amendments to this section are part of a series of amendments intended to provide more flexibility to the Secretary of State's office by eliminating the requirement that regulations be published in written form.

Section 20 (amending K.S.A. 77-435).

Subsections (a) and (c) are stricken because they describe editing powers that the Secretary of State's office does not currently exercise and does not intend to exercise in the future.

Section 21 (amending K.S.A. 77-436).

The amendments eliminate review of forms by the Joint Committee on Rules and Regulations. The amendment reflects the current practice of the Joint Committee on Rules and Regulations, which does not review forms used by an agency unless the forms are part of a rule or regulation.

Section 22 (amending K.S.A. 77-438).

The amendment to this section is technical.

KANSAS
JUVENILE JUSTICE AUTHORITY

Mark Parkinson, Governor
J. Russell Jennings, Commissioner
jja.ks.gov

TESTIMONY ON SB 452
TO THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
BY COMMISSIONER J. RUSSELL JENNINGS
KANSAS JUVENILE JUSTICE AUTHORITY
MARCH 10, 2010

The Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974 and subsequent re-authorizations provides a significant source of federal funding to improve Kansas' juvenile justice system. The JJDPA was developed with a broad consensus that children should not have contact with adults in jails and other institutional settings and that status offenders should not be placed in secure detention. Under the JJDPA and its subsequent re-authorizations, in order to receive federal funds, states are required to maintain these core protections for children:

Deinstitutionalization of Status Offenders (DSO)

Status offenders may not be held in secure detention or confinement. There are, however, several exceptions to this rule, including allowing some status offenders to be detained for up to 24 hours. The DSO provision seeks to ensure that status offenders who have not committed a criminal offense are not held in secure juvenile facilities for extended periods of time or in secure adult facilities for any length of time. These youth, instead, should receive community-based services, such as day treatment or residential home treatment, counseling, mentoring, alternative education and job development support. Status offenders are youth under the age of 18 years who commit an offense that if committed by an adult would not be a violation of law. Examples of such offenses include runaways, truants, curfew violations, truancy, tobacco violations and liquor violations for possession or consumption.

Adult Jail and Lock-up Removal

Juvenile status offenders may not be detained in adult jails and lock-ups. Juvenile offenders may be held for purposes of processing for limited times before or after a court hearing (6 hours). This provision does not apply to youth who are tried or convicted in adult criminal court of a felony level offense. This provision is designed to protect youth from psychological abuse, physical assault and isolation. Youth housed in adult jails and lock-ups have been found to be

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House Fed & State Affairs
Date: 3-10-2010
Attachment 2

eight times more likely to commit suicide, five times more likely to be sexually assaulted, two times more likely to be assaulted by staff, and 50 percent more likely to be attacked with a weapon than youth in juvenile facilities.

"Sight and Sound" Separation and Disproportionate Minority Contact, overrepresentation of minority youth within the juvenile justice system, are the other two core requirements of JJDPA.

JJA supports the proposed changes found in SB 452 that seek to align state law with federal law and regulations. SB 452 will make three specific changes that will bring Kansas into statutory compliance with JJDPA and subsequent re-authorizations.

1.) **Prohibit the placement of a youth under the age of 18 in a jail when arrested only for the offense of possession or consumption of alcohol.**
2.) **Prohibit the placement of a youth under the age of 18 in a juvenile detention center for a period in excess of 24 hours exclusive of weekends and holidays when the only offense upon which the youth is arrested is for possession or consumption of alcohol.**
3.) **Prohibits the use of juvenile correctional facility, juvenile detention center or sanction house placement as an option at the time of disposition when a youth is adjudicated a juvenile offender for the offense of possession or consumption of alcohol.**