

## **MINUTES**

### **JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS**

September 20, 2010  
Room 152-S—Statehouse

#### **Members Present**

Senator Vicki Schmidt, Chairperson  
Representative Carl Holmes, Vice-chairperson  
Senator Karin Brownlee  
Senator Janis Lee  
Senator Ralph Ostmeyer  
Senator Chris Steineger  
Representative Steve Huebert  
Representative Shirley Palmer  
Representative Joe Patton  
Representative Jan Pauls  
Representative Ed Trimmer

#### **Member Absent**

Representative John Faber

#### **Staff Present**

Corey Carnahan, Kansas Legislative Research Department  
Jill Shelley, Kansas Legislative Research Department  
Sharon Wenger, Kansas Legislative Research Department  
Nobuko Folmsbee, Office of the Revisor of Statutes  
Ken Wilke, Office of the Revisor of Statutes  
Judy Glasgow, Committee Assistant

#### **Conferees**

Chris Tymeson, Kansas Department of Wildlife and Parks  
David Barfield, Division of Water Resources, Department of Agriculture  
Sharon Falk, Groundwater Management District No. 5  
Sarah Byrne, Department of Revenue  
Linda Stumbaugh, Department of Revenue  
Vera Van Bruggen, Department on Aging  
Steven Shields, Meadowlark Hills Retirement

Joe Ewert, Kansas Association of Homes and Services for the Aging  
C.W. Klebe, Office of the Attorney General  
Dave Halferty, Kansas Department on Aging  
Marc Shiff, Kansas Department of Health and Environment  
Mary Murphy, Kansas Department of Health and Environment  
Miles Stotts, Kansas Department of Health and Environment

## **Others Present**

Susan Vogel, Kansas Department of Health and Environment  
Rick Brunetti, Kansas Department of Health and Environment  
Wes Essmiller, Groundwater Management District No. 5  
LeAnn Bell, Kansas Health Policy Authority  
Amy Thornton, Kansas Department of Wildlife and Parks  
Rob Mealy, Kearney and Associates  
Sean Miller, Capitol Strategies  
Dorothy Tenney, Kansas Department of Health and Environment  
Linda Kenney, Kansas Department of Health and Environment  
Shari Albrecht, Kansas Department of Health and Environment

## **Morning Session**

Chairperson Vicki Schmidt called the meeting to order on September 20, 2010, at 9:00 a.m.

The Chairperson recognized Chris Tymeson, Chief Counsel, Kansas Department of Wildlife and Parks (KDWP), to address the proposed rules and regulations noticed for hearing by the Kansas Department of Wildlife and Parks. KAR 115-2-1, amount of fees; KAR 115-2-3, camping, utility, and other fees; KAR 115-2-3a, cabin camping permit fees; KAR 115-7-1, fishing, legal equipment, methods of taking, and other provisions; KAR 115-7-8, revoked; KAR 115-7-9, weigh-in black bass fishing tournaments; KAR 115-18-20, tournament black bass pass, requirements, restrictions, and pass duration; and exempt regulations KAR 115-25-6, turkey, spring season, bag limit, permits, and game tags; and KAR 115-25-14, fishing, creel limit, size limit, possession limit, and open season.

Mr. Tymeson stated he did not believe the Commissioners would approve the combination deer permit fees at its next meeting, as proposed on page 3 of KAR 115-2-1 and, if they do not, the Department would amend the regulation before the public hearing. He stated KAR 115-2-1 was being amended to include a license for resident hunting for ages 16 years through 20, a license for resident fishing for ages 16 through 20, and resident combination hunting and fishing license for ages 16 through 20.

A suggestion was made by a Committee member to state that it was a one-time license, good for up to five years, otherwise it looks like the fee exceeds the statutory allowance. Mr. Tymeson stated the agency would go back and look at this, but he was not sure the Department of Administration would approve the change. A Committee member requested that the agency check its brochure and website concerning the rental of cabins to be sure it is stated that there are no linens furnished with the cabins. Mr. Tymeson stated that he would check on this.

Chairperson Schmidt asked for action on the Committee's minutes from the August 16, 2010, meeting. *Senator Ostmeyer moved that the minutes be approved as presented; Representative Pauls seconded the motion; and the motion carried.*

David Barfield, Chief Engineer, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 5-3-23, maximum reasonable annual quantity approvable for irrigation use for an application for change in place of use and a request to reduce a water right, exceptions; and KAR 5-25-5, water flowmeter requirements.

Committee members had questions concerning the wording of KAR 5-3-23. There was concern whether this would impose a penalty on those members who had ceased the use of end guns from center-pivot irrigation systems. Staff questioned when this rule and regulation was submitted to the Secretary of Agriculture for review. Mr. Barfield stated he did not have that information, but would get it for the Committee. In response to a question, Mr. Barfield stated there is a temporary regulation in place identical to this one and was approved on August 16, 2010. A Committee member questioned the agency's policy on notifying customers about noncompliance. Groundwater Management District No. 5 provided written testimony ([Attachment 1](#)).

Chairperson Schmidt recognized Sarah Byrne to speak to the proposed rule and regulations noticed for hearing by the Department of Revenue, Division of Alcoholic Beverage Control. KAR 14-11-11, revoked; and KAR 14-11-22, special order shipping, license requirements.

Ms. Byrne stated KAR 14-11-22 had been through the Committee, but at the public hearing, the industry requested changes and the agency agreed to those in the regulation. The rule and regulation was changed by adding items (8) and (9) on page 2 and again are ready for public hearing.

The Committee asked that the economic statement be revised to show the approximate amount of revenue that would be generated by this new fee and renewal. Ms. Byrne stated this would be done.

Ms. Byrne stated KAR 14-11-27 was withdrawn by the agency, but it was independently published as having passed. The Department is not publishing it on its website as a current rule and regulation as staff are in the process of revoking it. The Committee stated the Department should go ahead and publish it on its website with a disclaimer that it is not being enforced and is in the process of being revoked.

Linda Stumbaugh was recognized by the Chairperson to address the rule and regulation noticed for hearing by the Kansas Department of Revenue. KAR 92-24-23, bond.

The Committee had no questions concerning this rule and regulation.

Chairperson Schmidt welcomed Vera Van Bruggen to speak to the proposed rules and regulations noticed for hearing by the Department on Aging. KAR 26-39-100, definitions; KAR 26-39-101, licensure of adult care homes; KAR 26-39-105, adoptions by reference; KAR 26-40-301, nursing facility physical environment, construction and site requirements; KAR 26-40-302, nursing facility physical environment, applicants for initial licensure and new construction; KAR 26-40-303, nursing facility physical environment, existing nursing facilities; KAR 26-40-304, nursing facility physical environment, details and finishes; KAR 26-40-305, nursing facility physical environment, mechanical, electrical and plumbing systems; and KAR 28-39-162; KAR 28-39-162a; KAR 28-39-162b; and KAR 28-39-162c, revoked.

The Committee had concerns in KAR 26-39-100 about the use of the terms “alteration” and “remodeling.” Ms. Van Bruggen stated the definition of "alteration" was pulled from another source, but would be looked at again. Several questions were raised about KAR 26-39-105 and whether it would apply to all adult care homes, as stated in the first paragraph. Ms. Van Bruggen stated this was not the intent and another rule and regulation covered existing facilities. A concern was raised about KAR 26-40-302 changing the percent of private rooms from 5 percent to 50 percent or more and what effect this would have on the number of available rooms being built and the costs associated with the change. The Committee stated this should not be regulated by the State of Kansas, but should be a decision made by industry based on demand. The Committee expressed concern regarding KAR 26-40-305, page 2(c)(3) regulating the temperatures. It was suggested some flexibility be given to the temperature parameter. This could be included in individual care plans. Ms. Van Bruggen stated the agency would look at these. Committee members requested that the Department review the Economic Impact Statement and a report be given to the Committee showing how the requirement of 50 percent or more private rooms being constructed under these new regulations would affect the availability of space and the cost of living in the future.

Chairperson Schmidt recognized Steve Shields, Meadowlark Hills Retirement, who spoke in opposition to the proposed rules and regulations. He stated the subject regulations would be bad for rural Kansas. Mr. Shields stated good nursing facilities can be provided by working within the regulatory environment. The proposed regulations would require providing 50 percent or more private rooms at the time of construction, increasing the cost, and reducing the number of occupants. These have to be affordable to be occupied. It is necessary to work up to this figure, rather than require it at the beginning. Some of the remodeling projects currently in the planning stage will not be feasible under these regulations.

The Chairperson recognized Joe Ewert, Kansas Association of Homes and Services for the Aging, who spoke in opposition to the proposed rules and regulations (Attachment 2). Mr. Ewert stated that complying with proposed KAR 26-39-302 within an existing facility would be overly burdensome, if not impossible, due to physical constraints.

Written testimony was provided by Shawn Sullivan, Kansas Masonic Home (Attachment 3); Tom Williams, Asbury Park (Attachment 4); Gretchen Wagner, Parkside Homes (Attachment 5); Thomas M. Church, Catholic Care Center (Attachment 6); James Frazier, Lakeview Village, (Attachment 7); and David Beck, Brewster Place (Attachment 8).

The Committee suggested the Department and industry, especially from the rural areas, meet prior to the public hearing in order to work through some of the concerns that had been expressed.

Chairperson Schmidt welcomed C.W. Klebe, Office of the Attorney General (AG), who addressed the proposed rules and regulations noticed for hearing by the AG. KAR 16-11-1, definitions; KAR 16-11-2, instructor certification standards; KAR 16-11-3, handgun safety and training course, instructors; KAR 16-11-4, handgun safety and training course; KAR 16-11-5, application procedure; KAR 16-11-6, revoked; KAR 16-11-7, signs; and KAR 16-11-8, restraining order, effect of procedure.

Mr. Klebe stated the proposed changes to these rules and regulations are the result of SB 306 passed by the 2010 Legislature.

Committee members asked several questions concerning “intimate partner” and “cohabitate,” and how they would be interpreted. Mr. Klebe stated the terms were different under state and federal definitions, and the agency would look into these terms to clarify. A Committee member questioned how an entrance is defined and where signs would be placed when there may be four or more doors

together. Mr. Klebe stated the agency was evaluating public comments before making any changes to this definition.

Chairperson Schmidt recognized David Halferty, Kansas Department on Aging, to address the proposed rule and regulation noticed for hearing by the Kansas Health Policy Authority. KAR 129-10-31, responsibilities of, assessment of, and disbursements for the nursing facility quality care assessment program.

Mr. Halferty explained the rule and regulation was the result of legislation passed in 2010. The Committee requested that the Economic Impact Statement reflect, by category, the amount of revenue generated by each fee group and how many facilities are in each group.

The Chairperson recessed the meeting at 12:30 p.m.

### **Afternoon Session**

Vice-chairperson Holmes reconvened the meeting at 1:45 p.m.

Kenneth Wilke, Office of the Revisor of Statutes, distributed a copy of correspondence he received from Brett Berry, Kansas Department of Agriculture, to all Committee members concerning a question raised during the morning hearing on KAR 5-3-23 and KAR 5-25-5 (Attachment 9).

The Vice-chairperson welcomed Marc Shiff, Kansas Department of Health and Environment (KDHE), to speak to the proposed rules and regulations noticed for hearing by KDHE, Children and Youth with Special Health Care Needs Program. KAR 28-4-503, timing of specimen collections; KAR 28-4-505, unsatisfactory specimens; KAR 28-4-514, MSUD and PKU, financial assistance availability for certain related expenses; KAR 28-4-520, definitions; and KAR 28-4-521, reporting abnormal conditions and congenital anomalies.

Mr. Shiff stated the changes in KAR 28-4-504 and KAR 28-4-505 are based on recommendations from the Centers for Disease Control and Prevention (CDC).

Regarding KAR 28-4-504, Committee members raised concerns about taking specimens before a very sick infant is 24 hours old, noting the receiving hospital will be required to take additional specimens. A Committee member asked if this was medically safe for the sick infant. Mr. Shiff stated this was recommended by CDC and the agency also had consulted with area physicians. Staff noted the changes in the proposed rules and regulations are the result of amendments made in May 2007 and were required to be adopted no later than July 1, 2008. Mr. Shiff stated the process began in 2009 and apologized for being late. A Committee member asked what had prompted the change in KAR 28-4-514. Mr. Shiff stated the Department was seeing an increased number of persons applying to the program due to economic need, rising unemployment, and lack of insurance. The agency needed to change the financial guidelines in order to have funds available to accommodate those most in need. Mr. Shiff stated the agency overspent by \$44,000 in FY 2010. The Committee noted the economic impact statement needed to be changed to reflect the number of families that will be affected by the proposed regulation changes. A Committee member asked that the Economic Impact Statement reflect the savings of \$44,000 to the agency, which will result in a neutral budget deficit balance. Staff stated in KAR 28-4-520, the document specified subsection (d) should be adopted by date certain. The Committee noted items (d)(1) through (4) should be alphabetized, rather than listed by code numbers.

Vice-chairperson Holmes recognized Mary Murphy, KDHE, to speak to the proposed rule and regulation noticed for hearing by KDHE, Child Care Licensing and Registration Program. KAR 28-4-92, license fees.

Ms. Murphy stated this rule and regulation is a result of Senate Sub. for HB 2356, which was passed by the 2010 Legislature. The results of this bill include an increase in inspection responsibilities for approximately 2,600 additional day care homes.

A Committee member had questions about the increase in fees and how the increased revenue would be spent. Ms. Murphy stated this money would be provided to counties to help with their increased costs in implementing and enforcing this regulation. A Committee member suggested it might be helpful to members of the Legislature and the Committees responsible for regulating these day care facilities to receive this fiscal information and report. The Committee commented positively on the completeness of the Economic Impact Statement that was included.

Miles Stotts, Bureau of Air, KDHE, was welcomed by the Vice-chairperson to speak to the proposed rule and regulation noticed for hearing by KDHE (Attachment 10). KAR 28-19-325, compressed air energy storage.

Mr. Stotts stated this rule and regulation was authorized by 2009 Senate Sub. for HB 2369. Staff had a question concerning the Economic Impact Statement. Mr. Stotts stated he would review the references in part I.(1)(a) since that section referred to pollutant emissions.

Mr. Stotts continued to address the proposed rules and regulations noticed for hearing by KDHE Bureau of Air (Attachments 11 and 12). KAR 28-19-200a, general provisions, definitions to implement the federal greenhouse gas tailoring rule; and KAR 28-19-350, prevention of significant deterioration (PSD) of air quality.

Mr. Stotts stated these rules and regulations will align the Kansas air quality regulations with the revised federal regulations. He gave the Committee members an estimate of costs for implementing programs under KAR 28-19-350.

Regarding KAR 28-19-200a, staff questioned the new definition of "major source" and asked if there were any other definitions of "major source" listed outside these regulations. Staff noted that the wording appeared to indicate that prior definitions would not apply. Mr. Stotts stated the agency would take another look at this. Staff noted the adoption by reference needs a date certain.

The Vice-chairperson adjourned the meeting at 4:10 p.m.

Prepared by Judy Glasgow  
Edited by Corey Carnahan

Approved by the Committee on:

November 8, 2010  
(Date)