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**Testimony in Support of Senate Bill 58  
An Act Concerning the Kansas Judicial Review Act; Relating to Venue;  
Amending K.S.A. 77-609 and repealing the existing section**

**Presented to the Senate Judiciary Committee  
By Assistant Attorney General M.J. Willoughby**

**January 29, 2015**

Chairman King and Members of the Committee:

I am an Assistant Attorney General in the Civil Litigation Division of the Attorney General's Office where we are charged with bringing and defending lawsuits on behalf of the State of Kansas, its agencies and officials. I appear today on behalf of Attorney General Derek Schmidt in support of SB 58.

**Proposed Change**

This bill would amend K.S.A. 77-609 to clearly provide that venue for actions seeking judicial review of actions by state agencies is in Shawnee County, Kansas under the specialized judicial review procedure provided in the Kansas Judicial Review Act. The bill legislatively overrules a Kansas Court of Appeals' decision expanding venue over these specialized actions to all 105 counties and returns to what appears to have been the original intention of the Legislature when the Act was enacted in 1984.

**Background Regarding Kansas Judicial Review Act**

The Kansas Judicial Review Act ("KJRA") provides a procedure for prompt and efficient review of actions by state agencies. It applies to all agencies and all procedures for judicial review and civil enforcement of agency actions not specifically exempted by statute from the provisions of the act. K.S.A. 77-603 (2014 Supp.). The KJRA is intended to be the exclusive means of judicial review of state agencies in Kansas. K.S.A. 77-606. The KJRA was originally enacted in 1984. According to one commentator, the intention was to provide a simplified and uniform process and eliminate traps and pitfalls for those seeking review of actions by state agencies.<sup>1</sup> The last series of amendments were in 2009. 2009 Kan. Sess. Laws Ch. 109.<sup>2</sup>

<sup>1</sup> D. Ryan, "The New Kansas Administrative Procedure and Judicial Review Acts," 54 J. Kan. B.A. 53, 70 (1985).

<sup>2</sup> According to one commentator, the intent of the 2009 amendments based upon recommendations from the Kansas Judicial Council was to "strengthen the protections for fair and impartial judgments without sacrificing agency

## **Current Status**

Under the existing version of the KJRA venue provision, K.S.A. 77-609, enacted in 1986, 1986 Kan. Sess. Laws Ch. 318, § 4, “venue is in the county in which the order or agency action is entered or is effective or the rule or regulation is promulgated.” This language, particularly the phrase, “or is effective,” has proven ambiguous and confusing to those seeking review and to the Kansas district courts outside of Shawnee County faced with these unusual and specialized actions.

In *Karns v. Kansas Board of Agriculture*, 22 Kan. App. 2d 739, 741, 923 P.2d 78 (1996), the Kansas Court of Appeals applied a broad interpretation of K.S.A. 77-609 to allow a KJRA action to be filed wherever the effects of agency action are felt, *i.e.*, anywhere within the State. In essence, *Karns* eliminated any restriction on where a KJRA action could be filed.

Although the venue point was debated during the initial enactment, the Legislature’s original intent was that venue for these specialized actions be “quite simple and pro-agency: being the ‘county in which the order is entered or the rule or regulation is promulgated.’ This will far more often than not be the Shawnee County District Court in Topeka.” *Karns*, at 741 (quoting D. Ryan, “The New Kansas Administrative Procedure and Judicial Review Acts,” 54 J. Kan. B.A. 53, 65 (1985)).

The 1986 amendment added the phrase, “or is effective” to K.S.A. 77-609(b). According to *Karns*, “the legislative history surrounding the 1986 amendment is not very enlightening,” and did not state a purpose behind the amendment. *Id.*, at 742. The *Karns* Court held that by adding these three words in 1986, the Legislature intentionally expanded venue from one county to as many as all 105 counties as that is the potential reach of state regulation. *Id.*

## **Procedure Under the KJRA is Specialized**

While the cost of defense of these actions is certainly increased by broad venue across the State, the real problem is that KJRA actions are specialized, involve special procedures and a limited scope of review, K.S.A. 77-601, *et seq.*, different from the general procedure provided in Chapter 60 and the Kansas Code of Civil Procedure, K.S.A. 60-201, *et seq.* (2014 Supp.).

The KJRA action is initiated with the filing of a Petition which must contain specified detailed information. K.S.A. 77-610, 77-614 (2014 Supp.). The Chapter 60 Petition requirements are general, requiring only “[a] short and plain statement of the claim showing that the pleader is entitled to relief.” K.S.A. 60-208(a)(1) (2014 Supp.). The KJRA Petition is to be filed within 30 days of the agency action to be reviewed. K.S.A. 77-613(d); *compare* K.S.A. 60-511-514

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expertise or interfering with policy making responsibilities.” M. Feighny, “2009 Amendments to the Kansas Administrative Procedure Act and the Kansas Judicial Review Act,” 78 J. Kan. B.A. 21 (Oct. 2009) (citing Minutes, Senate Judiciary Committee, Feb. 4, 2009, Testimony by Judge Steve Leben).

(reciting limitations periods of one to five years for other types of actions). The manner of service is specified in the KJRA. *Compare* K.S.A. 77-615 with K.S.A. 60-205 (2014 Supp.).

While an Answer is optional under the KJRA, K.S.A. 77-614(d) (2014 Supp.), an Answer or other responsive pleading is required under Chapter 60 within 21 days. K.S.A. 60-212 (2014 Supp.).

The KJRA does, however require the agency to file an agency record within 30 days of service of the Petition. K.S.A. 77-620. The agency record is presented for judicial review and consists of “any agency documents expressing the agency action, other documents identified by the agency as having been considered by it before the action and used as a basis for its action and any other material required by law as the agency record for the type of agency action at issue.” K.S.A. 77-620.

Review of the agency action is generally confined to the agency record. K.S.A. 77-618 (2014 Supp.). It is not a de novo review. The Petitioner is generally limited to issues raised before the agency. K.S.A. 77-617 (2014 Supp.). The scope of the Court’s review is defined in the statute and limited as stated. K.S.A. 77-621 (2014 Supp.).

### **Limiting Venue to Shawnee County is Consistent with the Specialized Nature of the KJRA**

Given the specific procedures and limited scope of judicial review under the KJRA, the general procedures of Chapter 60 and local court rules, including status conferences, scheduling orders or case management orders or discovery are not needed and undermine what is to be a simple and expedited judicial review process.

The evident intent of the KJRA is to allow persons aggrieved by actions of a state agency to clearly and quickly seek and obtain review by filing a copy of the agency action at issue or describing it, stating the facts and the Petitioner’s reasons for believing relief should be granted and the relief requested. K.S.A. 77-614 (2014 Supp.). In response to the Petition, the agency has to quickly file a documented record of what it did and why. K.S.A. 77-620. The Court reviews it as per K.S.A. 77-617 through 621 and may grant appropriate relief as per K.S.A. 77-622. No other proceedings are contemplated. Although published court statistics do not appear to be available to allow a definitive statement on the amount of time needed to dispose of a Chapter 60 case, the procedure itself in K.S.A. 60-201, *et seq.*, is not an expedited one.

KJRA actions are relatively few in number, representing 488 cases filed under the code “administrative agency appeals,” in 2014. Of the total statewide caseload for the Kansas District Courts for the year ending June 30, 2014 of 399,040, these actions represent a mere .0012 percent of cases filed statewide.

Because courts outside of Shawnee County see these kinds of actions rarely and because they represent such a small percentage of cases, the tendency is to apply the usual procedure under Chapter 60, not Chapter 77. The result is confusion and delay, the possibility of additional

burdens and expenses, including discovery not contemplated by Chapter 77, as well as possible misapplication of the law, including the required standard of review.

Administrative law is different and represents a specialized body of law as is reflected in its own treatise. David L. Ryan, *Kansas Administrative Procedure and Judicial Review Acts* (1987). The issues presented in these actions tend to be specialized and differ from those in Chapter 60. *See, e.g.,* M. Coffman, “Procedures under the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601, *et seq.*,” 76 J. Kan. B.A. 21 (Feb. 2007). Courts in Shawnee County tend to have more experience with these types of matters and clearly providing for review in Shawnee County will allow this Court to continue to develop expertise in this specialized area of law. In administering their duties, implementing statutes and dealing with persons affected by agency rules, regulations, orders and decisions, it is important to state agencies to have uniform interpretations of state regulations and state law. It is also important to make the review process simple and uniform for those aggrieved by agency action, as originally intended.

I would be happy to answer any questions.