

SENATE BILL No. 19

By Committee on Judiciary

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Technical Balloon for SB 19
January 20, 2016
Senate Judiciary
Prepare by: Jason Thompson
Office of Revisor of Statutes

1 AN ACT concerning administrative procedure; relating to the Kansas
2 administrative procedure act; Kansas judicial review act; amending
3 K.S.A. 77-502, 77-545, 77-546, 77-548 and 77-613 and K.S.A. 2014
4 Supp. 77-519, 77-521 and 77-531 and repealing the existing sections.
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6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 77-502 is hereby amended to read as follows: 77-
8 502. As used in this act:

9 (a) "State agency" means any officer, department, bureau, division,
10 board, authority, agency, commission or institution of this state, except the
11 judicial and legislative branches of state government and political
12 subdivisions of the state, which is authorized by law to administer, enforce
13 or interpret any law of this state.

14 (b) "Agency head" means an individual or body of individuals in
15 whom the ultimate legal authority of the state agency is vested by any
16 provision of law.

17 (c) "License" means a franchise, permit, certification, approval,
18 registration, charter or similar form of authorization required by law for a
19 person to engage in a profession or occupation.

20 (d) "Order" means a state agency action of particular applicability
21 that determines the legal rights, duties, privileges, immunities or other
22 legal interest of one or more specific persons.

23 (e) "Party to state agency proceedings," or "party" in context so
24 indicating, means:

25 (1) A person to whom an order is specifically directed; or

26 (2) a person named as a party to a state agency proceeding or allowed
27 to intervene as a party in the proceeding.

28 (f) "Person" means an individual, partnership, corporation,
29 association, political subdivision or unit thereof or public or private
30 organization or entity of any character, and includes another state agency.

31 (g) "Political subdivision" means political or taxing subdivisions of
32 the state, including boards, commissions, authorities, councils,
33 committees, subcommittees and other subordinate groups or administrative
34 units thereof, receiving or expending and supported in whole or in part by
35 public funds;

36 (h) "Writing," "written," or "in writing" means any worded or

1 *numbered expression that can be read, reproduced and later*
2 *communicated, and includes electronically transmitted and stored*
3 *information.*

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4 Sec. 2. K.S.A. 2014 Supp. 77-519 is hereby amended to read as
5 follows: 77-519. (a) The presiding officer, at appropriate stages of the
6 proceedings, shall give all parties full opportunity to file pleadings,
7 objections and motions, including, but not limited to, motions to dismiss
8 and motions for summary judgment.

9 (b) The presiding officer, at appropriate stages of the proceedings,
10 may give all parties full opportunity to file briefs, proposed findings of fact
11 and conclusions of law and proposed initial or final orders.

12 (c) A party shall serve copies of any filed item on all parties, by mail
13 or any other means, *including electronic means, if the party to be served*
14 *has consented to service by electronic means*, prescribed by state agency
15 rule and regulation or by the presiding officer.

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16 Sec. 3. K.S.A. 2014 Supp. 77-521 is hereby amended to read as
17 follows: 77-521. (a) The presiding officer shall grant a petition for
18 intervention if:

19 (1) The petition is submitted in writing to the presiding officer, with
20 copies ~~mailed to~~ *served upon* all parties named in the presiding officer's
21 notice of the hearing, at least three business days before the hearing;

22 (2) the petition states facts demonstrating that the petitioner's legal
23 rights, duties, privileges, immunities or other legal interests may be
24 substantially affected by the proceeding or that the petitioner qualifies as
25 an intervener under any provision of law; and

26 (3) the presiding officer determines that the interests of justice and
27 the orderly and prompt conduct of the proceedings will not be impaired by
28 allowing the intervention.

29 (b) The presiding officer may grant a petition for intervention at any
30 time upon determining that the intervention sought is in the interests of
31 justice and will not impair the orderly and prompt conduct of the
32 proceedings.

33 (c) If a petitioner qualifies for intervention, the presiding officer may
34 impose conditions upon the intervener's participation in the proceedings,
35 either at the time that intervention is granted or at any subsequent time.
36 Conditions may include:

37 (1) Limiting the intervener's participation to designated issues in
38 which the intervener has a particular interest demonstrated by the petition;

39 (2) limiting the intervener's use of discovery, cross-examination and
40 other procedures so as to promote the orderly and prompt conduct of the
41 proceedings; and

42 (3) requiring two or more interveners to combine their presentations
43 of evidence and argument, cross-examination, discovery and other

1 participation in the proceedings.

2 (d) The presiding officer, at least one business day before the hearing,
3 shall issue an order granting or denying each pending petition for
4 intervention, specifying any conditions and briefly stating the reasons for
5 the order. The presiding officer may modify the order at any time, stating
6 the reasons for the modification. The presiding officer shall promptly give
7 notice of an order granting, denying or modifying intervention to the
8 petitioner for intervention and to all parties.

9 Sec. 4. K.S.A. 2014 Supp. 77-531 is hereby amended to read as
10 follows: 77-531. (a) Service of an order or notice shall be made upon the
11 party and the party's attorney of record, if any, by:

12 (1) Delivering a copy of the order or notice to the person to be served
13 or by;

14 (2) mailing a copy of the order or notice to the person at the person's
15 last known address; or

16 (3) *sending a copy of the order or notice to the person by electronic*
17 *means, if such person has consented to service by electronic means.*

18 (b) Service shall be presumed if the presiding officer, or a person
19 directed to make service by the presiding officer, makes a written
20 certificate of service. Delivery of a copy of an order or notice means
21 handing the order or notice to the person or leaving the order or notice at
22 the person's principal place of business or residence with a person of
23 suitable age and discretion who works or resides therein. Service by mail
24 is complete upon mailing. *Service by electronic means is complete upon*
25 *transmission or as otherwise specified in the consent. Any consent to*
26 *electronic service shall specify when such service is complete.* Whenever a
27 party has the right or is required to do some act or take some proceedings
28 within a prescribed period after service of a notice or order and the notice
29 or order is served by mail or *electronic means*, three days shall be added to
30 the prescribed period.

31 Sec. 5. K.S.A. 77-545 is hereby amended to read as follows: 77-545.

32 (a) This section applies to adjudicative proceedings before the state
33 corporation commission.

34 (b) (1) After the commission has determined and announced that a
35 hearing should be held, and prior to the issuance of a final order, no parties
36 to the proceeding, or their counsel, shall discuss the merits of the matter or
37 proceeding with the presiding officer unless reasonable notice is given to
38 all parties who have appeared to enable the parties to be present at the
39 conference.

40 (2) After the commission has determined and announced that a
41 hearing should be held, prior to the issuance of a final order, copies of any
42 written communications from any party regarding the proceeding that are
43 directed to the presiding officer shall be ~~mailed to~~ served upon all parties

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1 of record and proof of service shall be furnished to the commission.
2 Communications requested by members of the commission staff from any
3 party and any written communications received by members of the
4 commission staff from any party shall be made a part of the file and the
5 docket and shall be made available to all persons who desire to use them,
6 provided that all commission requests for information from a party shall be
7 ~~mailed to~~ served upon all parties of record.

8 (3) The person or persons to whom any ex parte communication has
9 been made shall promptly and fully inform the full commission of the
10 substance of the communication, and the circumstances thereof, to enable
11 the commission to take appropriate action.

12 (c) For purposes of this section, no member of the technical staff shall
13 be considered a party to any proceeding before the commission, regardless
14 of participation in staff investigations with respect to the proceeding or of
15 participation in the proceeding as a witness. Since the purpose of the staff
16 is to aid the commission in the proper discharge of commission duties, the
17 presiding officers shall be free at all times to confer with any staff member
18 with respect to any proceeding. However, no facts that are outside the
19 record, and that reasonably could be expected to influence the decision in
20 any matter pending before the commission, shall be furnished to any
21 presiding officer unless all parties to the proceeding are likewise informed
22 and afforded a reasonable opportunity to respond. Subsection (b) shall
23 apply to staff counsel in regard to any adjudicatory proceeding before the
24 commission.

25 (d) All letters and written communications that are received by the
26 presiding officer from members of the general public, and that are in the
27 nature of ex parte communications, shall be made a part of the file in the
28 docket and shall be made available to all persons who desire to see them.
29 The deposit of such written communications and letters in the file shall not
30 make them a part of the official record of the case.

31 Sec. 6. K.S.A. 77-546 is hereby amended to read as follows: 77-546.

32 (a) This section applies to adjudicative proceedings before the
33 commissioner of insurance concerning any rate, or any rule, regulation or
34 practice pertaining to the rates over which the commissioner has
35 jurisdiction and adjudicative proceedings held pursuant to the Kansas
36 insurance holding companies act.

37 (b) (1) After the commissioner has determined and announced that a
38 hearing should be held, and prior to the issuance of a final order, no parties
39 to the proceeding, or their counsel, shall discuss the merits of the matter or
40 proceeding with the presiding officer unless reasonable notice is given to
41 all parties who have appeared to enable the parties to be present at the
42 conference.

43 (2) After the commissioner has determined and announced that a

1 hearing should be held, prior to the issuance of a final order, copies of any
2 written communications from any party regarding the proceeding that are
3 directed to the presiding officer shall be ~~mailed to~~ *served upon* all parties
4 of record and proof of service shall be furnished to the commissioner.
5 Communications requested by the commissioner's staff from any party and
6 any written communication received by the commissioner's staff from any
7 party shall be made a part of the file and the docket and shall be made
8 available to all persons who desire to use them, provided that the
9 commissioner's requests for information from a party shall be mailed to all
10 parties of record.

11 (3) The person or persons to whom any ex parte communication has
12 been made shall promptly and fully inform the commissioner of the
13 substance of the communication, and the circumstances thereof, to enable
14 the commissioner to take appropriate action.

15 (c) For purposes of this section, no member of the commissioner's
16 technical staff shall be considered a party to any proceeding before the
17 commissioner, regardless of participation in staff investigations with
18 respect to the proceeding or of participation in the proceeding as a witness.
19 Since the purpose of the staff is to aid the commissioner in the proper
20 discharge of the commissioner's duties, the presiding officer shall be free
21 at all times to confer with any staff member with respect to any
22 proceeding. However, no facts that are outside the record, and that
23 reasonably could be expected to influence the decision in any matter
24 pending before the commissioner, shall be furnished to any presiding
25 officer unless all parties to the proceeding are likewise informed and
26 afforded a reasonable opportunity to respond. Subsection (b) shall apply to
27 staff counsel who have participated in the proceeding in regard to any
28 adjudicatory proceeding before the commissioner.

29 (d) All letters and written communications that are received by the
30 presiding officer from members of the general public, and that are in the
31 nature of ex parte communications, shall be made a part of the file in the
32 docket and shall be made available to all persons who desire to see them.
33 The deposit of such written communications and letters in the file shall not
34 make them a part of the official record of the case.

35 Sec. 7. K.S.A. 77-548 is hereby amended to read as follows: 77-548.
36 (a) This section applies to adjudicative proceedings before the director of
37 taxation. Informal conferences held pursuant to K.S.A. 79-3226, and
38 amendments thereto, shall not be deemed to be adjudicative proceedings
39 for the purposes of this act.

40 (b) (1) After the director has determined and announced that a
41 hearing should be held, and prior to the issuance of a final order, no parties
42 to the proceeding, or their counsel, shall discuss the merits of the matter or
43 proceeding with the presiding officer unless reasonable notice is given to

1 all parties who have appeared to enable the parties to be present at the
2 conference.

3 (2) After the director has determined and announced that a hearing
4 should be held, prior to the issuance of a final order, copies of any written
5 communications from any party regarding the proceeding that are directed
6 to the presiding officer shall be ~~mailed to~~ *served upon* all parties of record
7 and proof of service shall be furnished to the director. Communications
8 requested by the director's staff from any party and any written
9 communication received by the director's staff from any party shall be
10 made a part of the file and the docket and shall be made available to all
11 persons who desire to use them, provided that the director's requests for
12 information from a party shall be ~~mailed to~~ *served upon* all parties of
13 record.

14 (3) The person or persons to whom any ex parte communication has
15 been made shall promptly and fully inform the director of the substance of
16 the communication, and the circumstances thereof, to enable the director
17 of any division within the department to take appropriate action.

18 (c) For purposes of this section, no member of the director's technical
19 staff shall be considered a party to any proceeding before the director,
20 regardless of participation in staff investigations with respect to the
21 proceeding or of participation in the proceeding as a witness. Since the
22 purpose of the staff is to aid the director in the proper discharge of the
23 director's duties, the presiding officer shall be free at all times to confer
24 with any staff member with respect to any proceeding. However, no facts
25 that are outside the record, and that reasonably could be expected to
26 influence the decision in any matter pending before the director, shall be
27 furnished to any presiding officer unless all parties to the proceeding are
28 likewise informed and afforded a reasonable opportunity to respond.
29 Subsection (b) shall apply to staff counsel who have participated in the
30 proceeding in regard to any adjudicatory proceeding before the director.

31 (d) All letters and written communications that are received by the
32 presiding officer from members of the general public, and that are in the
33 nature of ex parte communications, shall be made a part of the file in the
34 docket and shall be made available to all persons who desire to see them.
35 The deposit of such written communications and letters in the file shall not
36 make them a part of the official record of the case.

37 Sec. 8. K.S.A. 77-613 is hereby amended to read as follows: 77-613.
38 Subject to other requirements of this act or of another statute:

39 (a) A petition for judicial review of a rule and regulation may be filed
40 at any time, except as otherwise provided by law.

41 (b) If reconsideration has not been requested and is not a prerequisite
42 for seeking judicial review, a petition for judicial review of a final order
43 shall be filed within 30 days after service of the order.

(c) Except as provided in K.S.A. 77-631, *and amendments thereto*, if reconsideration has been requested or is a prerequisite for seeking judicial review, a petition for judicial review of a final order shall be filed: (1) Within 30 days after service of the order rendered upon reconsideration, unless a further petition for reconsideration is required under K.S.A. 66-118b, and amendments thereto; (2) within 30 days after service of an order denying the request for reconsideration; or (3) in proceedings before the Kansas corporation commission, within 30 days of the date the request for reconsideration is deemed to have been denied.

(d) A petition for judicial review of agency action other than a rule and regulation or final order shall be filed within 30 days after the agency action, but the time is extended:

(1) During the pendency of the petitioner's timely attempts to exhaust administrative remedies; and

(2) during any period that the petitioner did not know and was under no duty to discover, or did not know and was under a duty to discover but could not reasonably have discovered, that the agency had taken the action or that the agency action had a sufficient effect to confer standing upon the petitioner to obtain judicial review under this act.

(e) Service of an order, pleading or other matter shall be made upon the parties to the agency proceeding and their attorneys of record, if any, by:

(1) Delivering a copy of it to them ~~or by~~;

(2) mailing a copy of it to them at their last known addresses; *or*

(3) *sending a copy of it to them by electronic means when authorized by supreme court rule or a local rule.*

Delivery of a copy of an order, pleading or other matter means handing it to the person being served or leaving it at that person's principal place of business or residence with a person of suitable age and discretion who works or resides therein. Service shall be presumed if the presiding officer, or a person directed to make service by the presiding officer, makes a written certificate of service. Service by mail is complete upon mailing. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of an order, pleading or other matter and it is served by mail *or electronic means*, three days shall be added to the prescribed period. Unless reconsideration is a prerequisite for seeking judicial review, a final order shall state the agency officer to receive service of a petition for judicial review on behalf of the agency.

Sec. 9. K.S.A. 77-502, 77-545, 77-546, 77-548 and 77-613 and K.S.A. 2014 Supp. 77-519, 77-521 and 77-531 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.