MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 11:00 a. m./p.m., on March 6, 1978.

All members were present except: Senators Gaar and Mulich

The next meeting of the Committee will be held at 11:00 a. m./p.m., on March 7, 1978.

These minutes of the meeting held on [illegible] were considered, corrected and approved.

Elwaine F. Pomeroy
Chairman

The conferees appearing before the Committee were:

Tom Wright - Legal Counsel, Kansas Real Estate Commission
Frank Gentry - Kansas Hospital Association
Major Stuart A. Elliott - Kansas Highway Patrol
Representative Michael Meacham

Staff present:
Art Griggs - Revisor of Statutes
Jerry Stephens - Legislative Research Department
Cynthia Burch - Legislative Research Department

Senate Bill 802 - Kansas real estate commission, appeal of rulings. Further hearings were held on this bill. Mr. Tom Wright testified in support of the bill. He said the Kansas Real Estate Commission is limited to granting and revoking licenses. He stated that unlike other agencies, such as the Civil Rights Commission, it does not have the authority to award damages or assess fines. He urged passage of the bill so as to reduce the length of time it takes to revoke a license. Committee discussion with him followed. Following further committee discussion, the report of the interim committee on administrative procedures was discussed; a copy is attached hereto. Committee members expressed the view that they hate to address the situation on a piece meal basis, and would prefer a standard policy for all agencies. Senator Steineger moved to report the bill adversely; Senator Simpson seconded the motion, and the motion carried, with Senator Parrish being recorded as voting "No."

Sub. for House Bill 2154 - Administration of chemical test for alcoholic content of blood of operators of motor vehicles. Mr. Frank Gentry appeared in support of the bill. He explained that the bill had been requested for several years. Committee discussion with him followed. He indicated that he had no objection to returning to the word "direction" in line 31.

Major Elliott appeared. A copy of his statement is attached hereto. He requested that the bill be amended in line 31 concerning "direction" and "request". He also requested that in line 61, the phrase "except that the hearing shall be held in the county where the refusal of the chemical test was made, or the county adjacent thereto"

CONTINUATION SHEET

Minutes of the Senate Committee on Judiciary March 6, 1978.

Sub. for HB 2154 continued -

be inserted. Committee discussion with him followed.

Representative Meacham appeared in support of the bill. Committee discussion with him followed.

Following committee discussion, Senator Hess moved to amend the bill in line 31 by changing "request" to "direction". Senator Hein seconded the motion, and the motion carried. Senator Berman moved to amend the bill to eliminate urine and saliva tests; Senator Hess seconded the motion, and following committee discussion, the motion carried. Senator Gaines moved to strike "any qualified medical technician". Senator Parrish suggested that it be limited to someone who is working in the hospital. The motion failed for lack of a second. Senator Hein moved that the hearing be held in the county or county adjacent to where the chemical test was refused; Senator Berman seconded the motion. The motion failed on a vote of four to five. Senator Simpson moved to report the bill favorably as amended; Senator Hess seconded the motion, and the motion carried.

The chairman introduced the new staff member from the Research Department, Cyndy Burch.

The meeting adjourned.

These minutes were read and approved by the committee on 4-24-78.

3-6-78

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Stuart A. Elliott	Topeka	Kansas Highway Patrol
Marvin C. Umholtz	Lawrence	Ks. Credit Union League
Larry Oakley	Topeka	Student Washburn Univ
John Powell	Topeka	Ks Real Estate Co
Tom WRIGHT	Topeka	Ks Real Estate Comm
Frank Gentry	"	Ks Hosp. Assoc.
Mindy Bergner	Topeka	Capital-Journal
Nita	TK	AP
Les Sloman	Lawrence	Legislative Assistant - Student
Patti Krueger	"	Student

Summary of Testimony
Before the Senate Judiciary Committee
Kansas Legislature

Substitute for House Bill No. 2154
by Committee on Judiciary

By Major Stuart A. Elliott
Kansas Highway Patrol
(also appearing for the Kansas Peace Officers' Association)
March 6, 1978

Appeared in general support of the passage of Substitute for House Bill 2154, with the two exceptions noted herein.

Subsection (a)

We would respectfully recommend to the Committee that the change in wording from "direction" to "request", at line 31, be deleted. Our objection to this word change in subsection (a) relates to the interpretation placed upon this sentence by the courts.

An arrest for the offense of driving while under the influence of intoxicating liquor is specifically directed by the statute and case law, due to the seriousness of the allegation. The sentence, "The test shall be administered at the direction of the arresting officer.", establishes a specific procedural guideline that:

1.) Only the arresting officer may direct a chemical test be administered. This excludes other officers who would not have firsthand knowledge of circumstances of the alledged violation.

2.) Places the selection of the type of test to be administered (breath, blood, urine or saliva) within the arresting officer's direction.

In Lee v. State, 187 Kansas, 571, the court states:

> "One of plaintiff's complaints is that under the statute (8-1001) he or any other driver should be given his choice of the four mentioned tests, and that he was not afforded such right. It is further argued that the drawing of blood 'shocks the conscience' and is inherently 'brutal and offensive'."

"We do not agree. In the first place, the statute says that the test shall be administered at the direction of the arresting officer. It is common knowledge that few areas in the state have the technical equipment and facilities to administer all of the tests. 8-1003, above, provides that only a physician or qualified medical technician, acting at the request of the arresting officer, is permitted to withdraw any blood of a person submitting to a chemical test under the act. In this day and age there is nothing brutal or offensive about that when done under the protective eye of a physician or qualified medical technician, but rather is admittedly a scientifically accurate method of detecting alcoholic content in the blood. Chemical tests eliminate mistakes from objective observation alone, and they disclose the truth when a driver claims that he has drunk only a little and could not be intoxicated. They protect the person who has not been drinking to excess but has an accident and has the odor of alcohol on his breath. They save a person from a drunken driving charge when his conduct creates the appearance of intoxication but who actually is suffering from other causes over which he has no control. (See Breithaupt v. Abram, 352 U.S. 432, 1 L. Ed. 2d 448, 77 S. Ct. 408.)"

We therefore believe that the rewording of subsection (a) from "direction" to "request" permits the shifting of the selection of the type of test to be administered from the arresting officer to the arrested party. If the arrested person is allowed to make this choice, it will have a detrimental effect upon the reasonable collection of evidence. This would be detrimental to the public interest because all four types of tests are not always available, or are not practical.

1.) There are several areas in our state where a blood test is impossible to have administered, or the medical personnel are unwilling to take the time from their other medical responsibilities to draw the sample and to testify.

2.) Saliva tests, while easy to obtain, must be supported by complex expert testimony, which is not readily available in Kansas.

and 3.) Urine tests require special administration and handling. An initial voiding, a thirty minute waiting period, an appropriate collection device and the necessary observation of the giving of a sample — all contribute to an intolerable collection procedure.

Subsection (b)

We support the addition of subsection (b) and the civil and criminal protection it provides for the doctors, nurses, hospitals and law enforcement officers. The absence of such protection has impeded drinking driver enforcement efforts in the past.

Subsection (c)

On behalf of the Kansas Peace Officers' Association, I respectfully request the committee's consideration of amending subsection (c) at line 61, by substituting a comma for the period following 8-255, and adding the words "except that the hearing shall be held in the county where the refusal of the chemical test was made, or the county adjacent thereto.".

This request is due to the dilution to staff and manpower created by requiring the arresting officer to appear in the alledged violator's county of residence. Cross-state travel is not an uncommon requirement of the present statute. Quite simply, the city, county or highway patrol division is without law enforcement protection and services for one or two days.

The smaller the department, the greater the adverse impact of the officer's absence. Travel expense is an additional burden created by this system.

RE: PROPOSAL NO. 29 - ADMINISTRATIVE PROCEDURES*

Proposal No. 29 called for a study of the feasibility and desirability of adopting a Uniform Administrative Procedures Act establishing uniform procedures for administrative agencies. The Legislative Coordinating Council assigned Proposal No. 29 to the Special Committee on Judiciary.

Background

In 1972, the Kansas Judicial Council Administrative Procedure Advisory Committee was appointed to study and to make recommendations concerning administrative procedures in Kansas. That Committee's recommendations were introduced in the 1975 Legislature as S.B. 574, which was carried over in the Senate Judiciary Committee. The Judiciary Committee recommended interim study on the bill.

Committee Study

The 1976 Special Committee on Judiciary heard from two members of the Kansas Judicial Council Advisory Committee, from a Washburn University professor of law, and from representatives of several state agencies concerning Proposal No. 29.

Conferees addressed two major aspects of S.B. 574: a revision of Kansas rules- and regulation-making procedure, and a uniform procedure for administrative hearings. Concerning the former, several conferees expressed enthusiasm for a State Register publication which basically would resemble the Federal Register. As envisioned in S.B. 574, the State Register would be the official publication for all state agencies and would contain the text of all emergency and permanent rules and regulations filed by state agencies, as well as notices of agency hearings. Thus, the Register would be a central reference work for much state agency business.

The Committee learned that several states have publications resembling the Federal Register. The Maryland

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* House Bill No. 2005 accompanies this report.

Register is published bi-weekly and contains adopted, emergency, and proposed administrative rules, as well as a synopsis of bills signed into law by the Governor, court dockets, bid requests, awarded contracts, and various other items. It is available only by subscription at a cost of $30 per year, and has approximately 2,000 subscribers. The Maryland Register budget includes six full-time employees and approximately $125,000 in publication costs.

The Florida Administrative Weekly includes notices of hearings and public meetings; proposed, adopted and emergency rules and regulations; executive and other orders; and other related items. It is available only by subscription at a price of $25 per year, and has approximately 1,900 subscribers. The Committee learned that the cost of publishing the Florida Administrative Weekly is approximately $58,000 per year.

The Committee discovered that a major difficulty with a State Register for Kansas is whether a notice printed in the Register would constitute actual notice. Not all persons would be aware of the Register and thus would not be notified of hearings. In addition, S.B. 574 would require mailed notice to all licensees of the agency and to persons requesting such advance notice in addition to publication of such notice in the State Register. Further, K.S.A. 1976 Supp. 77-421 requires that the adopting state agency give at least 15 days notice of its intended action "to all parties of interest known to the agency," and to all persons requesting such notice. In a number of cases, this statute would appear to require mailed notice to thousands of persons who might be affected by the adoption of a particular rule. For example, the Board of Regents adopts regulations governing parking on Regents-controlled property; the interested persons number in the thousands and many of them are simply not identifiable.

As another example, regulations of the Kansas Public Employees Retirement System may affect more than 130,000 active and retired members of that system. Presently, notice of proposed rule-making is sent by mail to organizations and representatives of affected parties in a procedure approved by the Attorney General. In the case of KPERS, the Board sends notices to a contact person in each state agency, with a request that these persons post the notice or otherwise disseminate the information. In the case of the Board of Regents, notice is mailed to student government organizations and administrative officers on each campus.

Committee staff surveyed a sample of 17 state agencies with regard to S.B. 574. Six of the 12 responding agencies saw some benefit in a State Register, while six agencies saw no benefits. Several agencies said that they send notices of hearings only to individuals, licensees, or related parties directly involved in such hearings. Several other agencies, however, noted that hearing notices are mailed to several thousand people at a time.

Another major difficulty with S.B. 574 is that it establishes uniform procedures only for "contested cases." This term refers to those proceedings in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for a hearing. The difficulty is that not all agencies statutes provide for hearings; thus, all agency statutes would have to be reviewed and a decision made as to whether an opportunity for a hearing should be provided in each case. Additionally, in the staff survey of 17 state agencies, several agencies noted a problem with non-uniform appeals procedures and with a general lack of uniform hearing procedures. Several conferees concluded that the most urgent need is for uniform procedures in hearings before and appeals from state agencies.

Conclusions and Recommendations

The Special Committee on Judiciary concludes that there is not sufficient justification for a State Register publication at the present time. The Committee recognizes that a Register-type publication could be comprehensive, including session laws, official state paper items, bid notices, contracts awarded, court dockets, House and Senate Journals, etc. It may be that including these kinds of items would make a Register more useful and thus more feasible on a subscription basis. The Committee is of the opinion that further study is needed before a State Register is implemented. In addition, the requirements for providing notice should be examined in order to determine their practical effects, and in order to determine whether a Register could perform the notice function.

The Special Committee is of the opinion that the present diversity of procedures before numerous state agencies works to the disadvantage of all parties involved. The Committee wishes to express its appreciation to the Judicial Council for tackling this problem and acknowledges that its

work. The Special Committee on Judiciary feels that, although it is premature to recommend a State Register for Kansas, a more standardized set of administrative procedures would greatly improve the operation of the state's many agencies. The Committee is mindful that a number of agencies have experienced few appeals from decisions. However, the Committee feels that significant rights are involved in decisions to issue, suspend or revoke a license, in decisions setting rates for regulated industries, and in many other situations where a state agency makes a decision. In an effort towards standardizing the procedures followed by all state agencies, the Special Committee on Judiciary recommends the attached bill, which contains portions of 1975 S.B. 574, for passage by the 1977 Legislature.

In general, this bill would establish procedures for cases in which the legal rights, duties or privileges are required by law to be determined by an agency after an opportunity for hearing. Section 3 of the bill provides that no license shall be denied, revoked, cancelled, suspended or withdrawn by an agency without notice and an opportunity to be heard, except under certain conditions: for example, a license may be summarily suspended if the agency finds that the public health, safety or welfare imperatively requires such action. In these cases, the bill provides for judicial review of the agency decision.

The bill provides that the rules of evidence as applied in non-injury civil cases shall be followed in contested cases. Parties may present evidence and argument on all issues involved in the case, cross-examine any witnesses, and may apply for a rehearing on any matter determined by an agency decision. The agency may either grant or deny an application for re-hearing, and only after the re-hearing process is completed (or the original order is affirmed) may a party petition the district court for review of the agency decision. The bill authorizes the court to reverse, modify or affirm an agency decision or to remand the case for further proceedings. The court may reverse or modify the decision if the court finds that: (a) substantial rights of the party have been prejudiced because the administrative findings, inferences, conclusions or decisions violate constitutional or statutory provisions; (b) the decision exceeds the statutory authority of the agency; (c) the decision results from unlawful procedure or other error of law; (d) the decision is truly erroneous in view of the reliable, probative and substantive evidence on the records; or (e)

by an abuse of discretion or by a clearly unwarranted exercise of discretion. Further, the bill allows an aggrieved party to obtain a review of any district court's judgment by appeal to the Court of Appeals.

Respectfully submitted,

November 18, 1976

Senator J.C. Tillotson,
Chairman
Special Committee on Judiciary

Rep. David Heinemann,
Vice-Chairman
Sen. James L. Francisco
Sen. Vincent E. Moore
Sen. Bob Storey
Rep. Dick Brewster

Rep. Eugene Gastl
Rep. Fred Lorentz
Rep. Philip Martin
Rep. John F. Stites
Rep. Neal D. Whitaker

Session of 1977

HOUSE BILL No. 2005

By Special Committee on Judiciary

Re Proposal No. 29

12-15

AN ACT relating to state agencies; establishing a state administrative procedures act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. This act shall be known and may be cited as the administrative procedures act.

Sec. 2. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Agency" means any department, board, commission, officer or authority of the executive branch of state government which has statewide jurisdiction and which is empowered to determine or affect private rights, privileges or obligations. Such term shall not include the adjutant general or other military units of this state.

(b) "Contested case" means a proceeding, including but not restricted to rate-making and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

(c) "License" means any permit, certificate, registration or other form of permission from an agency which is required by law in order to carry on some trade, business or profession or to sell certain products.

(d) "Licensing" includes the agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

(e) "Party" means such person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(f) "Person" means any individual, governmental subdivision, firm, association, organization, partnership, corporation or company.

Sec. 3. Whenever an agency is required by law to give an opportunity for a hearing to any person, other than hearings pursuant to K.S.A. 1976 Supp. 77-421, and any amendments thereto, the procedure set forth in this act for contested cases shall apply. Such procedure shall control over any conflicting hearing procedures set forth by statutes of this state.

Sec. 4. (a) Except as otherwise provided in subsections (b) and (e), no license shall be denied, revoked, cancelled, suspended or withdrawn by an agency without notice and an opportunity to be heard as in a contested case.

(b) No hearing need be granted to a licensee or applicant for a license when: (1) A statute of this state requires an agency to revoke, suspend, withdraw, cancel or deny a license without exercising any discretion in the matter, on the basis of a court conviction or judgment; (2) the revocation, suspension, withdrawal, cancellation or denial of the license is based solely upon the failure of the licensee to file timely reports, schedules, applications, proof of continuing education or to pay lawfully prescribed fees and the agency has given notice of such failure at least thirty (30) days prior to such revocation, suspension, withdrawal, cancellation or denial and no demand for a hearing was made during such thirty (30) day period; (3) the licensee or applicant for a license has failed to pass an examination required by law as a condition precedent to the issuance or retention of a license; or (4) an applicant seeks reinstatement of a license which has been previously denied, revoked, cancelled, suspended or withdrawn after an opportunity to be heard thereon, except when the previous action against the applicant's license was based on a failure which is described in (2) above and such failure has been remedied or when a statute specifically requires an opportunity to be heard in such instance or authorizes reinstatement of a license after a prescribed period of time.

(c) When a licensee has made timely and sufficient application for the renewal of a license the existing license does not

expire until the application has been finally determined by the agency. If the application is denied or the terms of the license limited, the existing license does not expire until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(d) Prior to the institution of agency proceedings to revoke, suspend, annul or withdraw any license, the agency shall give notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee shall be given an opportunity to show compliance with all lawful requirements for the retention of the license and shall be given a hearing as in a contested case, if requested.

(e) If the agency finds that public health, safety or welfare imperatively require emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. Within five (5) days after a summary suspension order is served on a licensee, the licensee may apply to a district court having jurisdiction on judicial review of the agency's proceedings under section 8 for an order enjoining or staying the suspension. A hearing shall be held on such application by the district court within ten (10) days after the application is filed. A district judge or associate district judge shall hear the matter and such judge, or the clerk of the district court, shall notify the agency by telephone on the date the application is filed and of the date and time of the hearing scheduled on the application, and no further notice or service shall be required to be given to the agency. The agency shall have the burden of proof at said hearing of showing that public health, safety or welfare imperatively require the summary suspension. The district court may enjoin or stay the summary suspension on appropriate terms during the period proceedings are instituted and determined by the agency, until the last day for seeking review of a final agency order, if such order suspends the license, or a later date fixed by said court. Any appeal by the licensee of an agency order or proceeding subsequent to a summary suspension order shall be to the division of the district court

that considered a licensee's application for an injunction or stay of the summary suspension, if such an application was made.

Sec. 5. (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include: (1) A statement of the time, place and nature of the hearing;

(2) a reference to the particular sections of the statutes and regulations involved;

(3) a short and plain statement of the matters involved; and

(4) the manner and time in which interested persons may submit their views.

(c) Upon written request served on a party or the agency a more definite and detailed statement shall be furnished.

(d) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(e) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

(f) The record in a contested case shall include: (1) All pleadings, motions and intermediate rulings;

(2) evidence presented or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections and rulings thereon;

(5) proposed findings and exceptions, if any;

(6) any decision, opinion or report by the officer presiding at the hearing.

(g) Oral proceedings or any part thereof shall be transcribed on request of any party and at the requesting party's expense.

(h) Findings of fact shall be based exclusively on the evidence and on matters administratively noticed.

Sec. 6. In contested cases: (a) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence as applied in non-jury civil cases in the district courts of this state shall be followed, but the rules of evidence may be relaxed and the technical rules of evidence need not be applied

ascertaining the facts. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and the objection and the ruling thereon shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, written testimony of a witness may be presented in lieu of oral testimony.

(b) A party shall be entitled to cross-examine any witness.

(c) Administrative notice may be taken of judicially cognizable facts. In addition, administrative notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before, during or after the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest any material so noticed.

Sec. 7. (a) A final decision or order in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact, accompanied by a concise and explicit statement of the underlying facts supporting the findings, and conclusions of law, with a statement of the reasons therefor. If a party submits proposed findings of fact, the decision shall include a ruling upon each proposed finding. A copy of the decision or order shall be delivered or mailed forthwith to each party or to the party's attorney of record.

(b) Any party dissatisfied with any decision or order of the agency may file with the agency, within twenty (20) days from the date of the service of such decision or order, a written application for a rehearing in respect to any matter determined therein. Such application shall set forth specifically the ground or grounds on which the applicant considers such decision or order to be unlawful or unreasonable. The application shall be granted or denied by the agency within ten (10) days from the date the same shall be filed, and if the rehearing be not granted within said ten (10) days it shall be taken as denied. If a rehearing be granted the matter shall be heard, determined and the agency decision and order served on all parties on rehearing within thirty (30) days

decision and order on rehearing is not served on all parties within said thirty (30) days, it shall be taken as an affirmance of the original order. No cause of action arising out of any decision or order of the agency shall accrue in any court to any party unless such party shall make application for a rehearing as herein provided. No party shall, in any court, urge or rely upon any ground not set forth in said application. An order made after a rehearing abrogating, changing or modifying the original decision or order shall have the same force and effect as an original decision or order.

Sec. 8. (a) A person who has exhausted all administrative remedies and who is aggrieved by a final decision in a contested case is entitled to judicial review under this act. A preliminary, procedural or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) Proceedings for review shall be instituted by filing on appeal a petition: (1) In the district court in the county wherein the appellant resides or has a principal place of business; or

(2) in the district court of Shawnee county; or

(3) in the district court of the county in which any part of the order may be effective; or

(4) in the district court of the county in which any part of the subject matter involved is situated.

The petition shall be filed within thirty (30) days after:

(A) The request for a rehearing is denied by the agency or by operation of law;

(B) an affirmance of the original order by operation of law;

(C) the mailing to the party or personal service on the party of an affirmance of the original order; or

(D) any preliminary, procedural or intermediate agency action or ruling for which review of the final agency decision by the agency would not provide an adequate remedy.

The clerk of the district court forthwith shall serve a copy of the petition, personally or by registered mail, upon the agency and all other parties of record. The court, in its discretion, may permit other interested persons to intervene. The court first acquiring

jurisdiction of any action to review a final administrative decision shall have and retain jurisdiction of the action until final disposition thereof.

(c) Except as otherwise provided in subsection (c) of section 4, filing the petition does not stay enforcement of the agency decision. Upon such conditions as justice requires and to the extent necessary to prevent irreparable injury, the agency may grant, or the reviewing court may order, a stay upon appropriate terms. The court has discretion as to requiring bond except in utility rate cases where bond is mandatory.

(d) Within thirty (30) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court a certified copy of the entire record of the proceeding under review. By stipulation, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(e) The review shall be conducted by the court without a jury and shall be confined to the record. Argument and briefs may be presented. Proof of alleged irregularities in procedure before the agency not shown in the record may be taken.

(f) Except as otherwise provided in K.S.A. 44-1011 and K.S.A. 1976 Supp. 44-556, and any amendments to such sections, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the agency decision or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(1) In violation of constitutional or statutory provisions; or

(2) in excess of the statutory authority of the agency; or

(3) made upon unlawful procedure; or

(4) affected by other error of law; or

(5) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Sec. 9. An aggrieved party may obtain a review of any final judgment of the district court under this act by appeal to the court of appeals. The appeal shall be taken as in other civil cases.

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

Action in Adopting Jurisdictions

Variations from Official Text:

Oklahoma. In subsec. (a), substitutes "individual proceedings" for "contested cases".

Library References

Licenses ⇐22, 36, 38.

C.J.S. Licenses §§ 34, 38, 39, 42, 43, 44.

Notes of Decisions

Generally 2
Validity 1

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1. Validity

Where provisions of Constitution do not purport to authorize state agency to grant, deny, renew, revoke, suspend, annul, withdraw, or amend "licenses," as defined by Administrative Procedure Act, provisions of that Act relating to licensing are not in conflict with Constitution. Ray v. Thompson, Okl.1969, 458 P.2d 300.

2. Generally

In exercise of power to issue and regulate permits and licenses in plumbing business, Board of Plumbing and Piping Examiners performs public function and has administrative discretion, and its action in suspending license will be reviewed only to determine whether it was arbitrary, illegal or unreasonable and an abuse of discretion vested in it. Blesso v. Board of Plumbing and Piping Examiners, 1973, 310 A.2d 136, 30 Conn.Sup. 262.

Provision of the Administrative Procedure Act that licensee be given notice by certified mail of individual facts or conduct which warrant an intended revocation of his license and that he be given an opportunity to show compliance with all lawful requirements for the retention of the license entitled licensee to no further hearings where he had been afforded a hearing at which he endeavored to show that his conduct was lawful, despite contention that he was entitled to both an informal and a formal hearing. Hinson v. Georgia State Bd. of Dental Examiners, 1975, 218 S.E.2d 162, 135 Ga.App. 488.

§ 15. [Judicial Review of Contested Cases]

(a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this Act. This Section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial *de novo* provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) Proceedings for review are instituted by filing a petition the [District Court of the _____ County] within [30] ys after [mailing notice of] the final decision of the agency or,

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if a rehearing is requested, within [30] days after the decision thereon. Copies of the petition shall be served upon the agency and all parties of record.

(c) The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

(d) Within [30] days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(f) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) in violation of constitutional or statutory provisions;

(2) in excess of the statutory authority of the agency;

(3) made upon unlawful procedure;

(4) cted by other error of law;

(5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Commissioners' Comment

An important question that arises under subsection (a) is whether or not the review provisions should be made exclusive and all other review provisions on the statute books should be repealed. Each state will have to deal with this matter as the local circumstances dictate. On the one hand, if there is but one mode and scope of review, the state procedural structure is greatly simplified. On the other hand, local considerations, including practical considerations connected with obtaining adoption of the Model Act, may indicate or even require the retention, at least for the moment, of the pre-existing methods of judicial review.

Two important changes are made in subsection (g) from the corresponding provisions in the original Model Act.

First, the "substantial evidence rule" has been replaced by the "clearly erroneous rule," thus following the recommendation of the Hoover Commission Task Force and the American Bar Association Special Committee on Legal Services and Procedure. This change places court review of administrative decisions on fact questions under the same principle as that applied under the Federal Rules of Civil Procedure in connection with review of trial court decision. See Rule 52(a). Also see *United States v. U. S. Gypsum Company* (1948), 333 U.S. 364, 68 Sup.Ct. 525, and *Barron and Holtzoff, Federal Practice and Procedure*, Par. 1133. This standard of review does not permit the court to "weigh" the evidence, or to substitute its judgment on discretionary matters, but it does permit setting aside "clearly" erroneous decisions. Certainly a clearly erroneous decision should not be permitted to stand.

Second, it should be noted that "clearly unwarranted exercise of discretion" has been specifically equated to "arbitrary action"—as it should be. A clearly unwarranted exercise of discretion should be set aside.

The following are the corresponding provisions of the Federal Administrative Procedure Act:

"Sec. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

"(a) *Right of Review.*—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

"(b) *Form and Venue of Action.*—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

"(c) *Reviewable Acts.*—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

"(d) *Interim Relief.*—Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

"(e) *Scope of Review.*—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof may be cited by any party, and due account shall be taken of the rule of prejudicial error."

RE: PROPOSAL NO. 29 - ADMINISTRATIVE PROCEDURES*

Proposal No. 29 called for a study of the feasibility and desirability of adopting a Uniform Administrative Procedures Act establishing uniform procedures for administrative agencies. The Legislative Coordinating Council assigned Proposal No. 29 to the Special Committee on Judiciary.

Background

In 1972, the Kansas Judicial Council Administrative Procedure Advisory Committee was appointed to study and to make recommendations concerning administrative procedures in Kansas. That Committee's recommendations were introduced in the 1975 Legislature as S.B. 574, which was carried over in the Senate Judiciary Committee. The Judiciary Committee recommended interim study on the bill.

Committee Study

The 1976 Special Committee on Judiciary heard from two members of the Kansas Judicial Council Advisory Committee, from a Washburn University professor of law, and from representatives of several state agencies concerning Proposal No. 29.

Conferees addressed two major aspects of S.B. 574: a revision of Kansas rules- and regulation-making procedure, and a uniform procedure for administrative hearings. Concerning the former, several conferees expressed enthusiasm for a State Register publication which basically would resemble the Federal Register. As envisioned in S.B. 574, the State Register would be the official publication for all state agencies and would contain the text of all emergency and permanent rules and regulations filed by state agencies, as well as notices of agency hearings. Thus, the Register would be a central reference work for much state agency business.

The Committee learned that several states have publications resembling the Federal Register. The Maryland

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* House Bill No. 2005 accompanies thi[illegible]eport.

Register is published bi-weekly and contains adopted, emergency, and proposed administrative rules, as well as a synopsis of bills signed into law by the Governor, court dockets, bid requests, awarded contracts, and various other items. It is available only by subscription at a cost of $30 per year, and has approximately 2,000 subscribers. The Maryland Register budget includes six full-time employees and approximately $125,000 in publication costs.

The Florida Administrative Weekly includes notices of hearings and public meetings; proposed, adopted and emergency rules and regulations; executive and other orders; and other related items. It is available only by subscription at a price of $25 per year, and has approximately 1,900 subscribers. The Committee learned that the cost of publishing the Florida Administrative Weekly is approximately $58,000 per year.

The Committee discovered that a major difficulty with a State Register for Kansas is whether a notice printed in the Register would constitute actual notice. Not all persons would be aware of the Register and thus would not be notified of hearings. In addition, S.B. 574 would require mailed notice to all licensees of the agency and to persons requesting such advance notice in addition to publication of such notice in the State Register. Further, K.S.A. 1976 Supp. 77-421 requires that the adopting state agency give at least 15 days notice of its intended action "to all parties of interest known to the agency," and to all persons requesting such notice. In a number of cases, this statute would appear to require mailed notice to thousands of persons who might be affected by the adoption of a particular rule. For example, the Board of Regents adopts regulations governing parking on Regents-controlled property; the interested persons number in the thousands and many of them are simply not identifiable.

As another example, regulations of the Kansas Public Employees Retirement System may affect more than 130,000 active and retired members of that system. Presently, notice of proposed rule-making is sent by mail to organizations and representatives of affected parties in a procedure approved by the Attorney General. In the case of KPERS, the Board sends notices to a contact person in each state agency, with a request that these persons post the notice or otherwise disseminate the information. In the case of the Board of Regents, notice is mailed to student government organizations and administrative officers on each campus.

Committee staff surveyed a sample of 17 state agencies with regard to S.B. 574. Six of the 12 responding agencies saw some benefit in a State Register, while six agencies saw no benefits. Several agencies said that they send notices of hearings only to individuals, licensees, or related parties directly involved in such hearings. Several other agencies, however, noted that hearing notices are mailed to several thousand people at a time.

Another major difficulty with S.B. 574 is that it establishes uniform procedures only for "contested cases." This term refers to those proceedings in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for a hearing. The difficulty is that not all agencies statutes provide for hearings; thus, all agency statutes would have to be reviewed and a decision made as to whether an opportunity for a hearing should be provided in each case. Additionally, in the staff survey of 17 state agencies, several agencies noted a problem with non-uniform appeals procedures and with a general lack of uniform hearing procedures. Several conferees concluded that the most urgent need is for uniform procedures in hearings before and appeals from state agencies.

Conclusions and Recommendations

The Special Committee on Judiciary concludes that there is not sufficient justification for a State Register publication at the present time. The Committee recognizes that a Register-type publication could be comprehensive, including session laws, official state paper items, bid notices, contracts awarded, court dockets, House and Senate Journals, etc. It may be that including these kinds of items would make a Register more useful and thus more feasible on a subscription basis. The Committee is of the opinion that further study is needed before a State Register is implemented. In addition, the requirements for providing notice should be examined in order to determine their practical effects, and in order to determine whether a Register could perform the notice function.

The Special Committee is of the opinion that the present diversity of procedures before numerous state agencies works to the disadvantage of all parties involved. The Committee wishes to express its appreciation to the Judicial Council for tackling this problem and acknowledges that its

work. The Special Committee on Judiciary feels that, although it is premature to recommend a State Register for Kansas, a more standardized set of administrative procedures would greatly improve the operation of the state's many agencies. The Committee is mindful that a number of agencies have experienced few appeals from decisions. However, the Committee feels that significant rights are involved in decisions to issue, suspend or revoke a license, in decisions setting rates for regulated industries, and in many other situations where a state agency makes a decision. In an effort towards standardizing the procedures followed by all state agencies, the Special Committee on Judiciary recommends the attached bill, which contains portions of 1975 S.B. 574, for passage by the 1977 Legislature.

In general, this bill would establish procedures for cases in which the legal rights, duties or privileges are required by law to be determined by an agency after an opportunity for hearing. Section 3 of the bill provides that no license shall be denied, revoked, cancelled, suspended or withdrawn by an agency without notice and an opportunity to be heard, except under certain conditions: for example, a license may be summarily suspended if the agency finds that the public health, safety or welfare imperatively requires such action. In these cases, the bill provides for judicial review of the agency decision.

The bill provides that the rules of evidence as applied in non-injury civil cases shall be followed in contested cases. Parties may present evidence and argument on all issues involved in the case, cross-examine any witnesses, and may apply for a rehearing on any matter determined by an agency decision. The agency may either grant or deny an application for re-hearing, and only after the re-hearing process is completed (or the original order is affirmed) may a party petition the district court for review of the agency decision. The bill authorizes the court to reverse, modify or affirm an agency decision or to remand the case for further proceedings. The court may reverse or modify the decision if the court finds that: (a) substantial rights of the party have been prejudiced because the administrative findings, inferences, conclusions or decisions violate constitutional or statutory provisions; (b) the decision exceeds the statutory authority of the agency; (c) the decision results from unlawful procedure or other error of law; (d) the decision is truly erroneous in view of the reliable, probative and substantive evidence on the records; or (e) the decision is arbitrary or capricious, or is characterized

by an abuse of discretion or by a clearly unwarranted exercise of discretion. Further, the bill allows an aggrieved party to obtain a review of any district court's judgment by appeal to the Court of Appeals.

Respectfully submitted,

November 18, 1976

Senator J.C. Tillotson,
Chairman
Special Committee on Judiciary

Rep. David Heinemann,
Vice-Chairman
Sen. James L. Francisco
Sen. Vincent E. Moore
Sen. Bob Storey
Rep. Dick Brewster

Rep. Eugene Gastl
Rep. Fred Lorentz
Rep. Philip Martin
Rep. John F. Stites
Rep. Neal D. Whitaker

Session of 1977

HOUSE BILL No. 2005

By Special Committee on Judiciary

Re Proposal No. 29

12-15

AN ACT relating to state agencies; establishing a state administrative procedures act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. This act shall be known and may be cited as the administrative procedures act.

Sec. 2. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Agency" means any department, board, commission, officer or authority of the executive branch of state government which has statewide jurisdiction and which is empowered to determine or affect private rights, privileges or obligations. Such term shall not include the adjutant general or other military units of this state.

(b) "Contested case" means a proceeding, including but not restricted to rate-making and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

(c) "License" means any permit, certificate, registration or other form of permission from an agency which is required by law in order to carry on some trade, business or profession or to sell certain products.

(d) "Licensing" includes the agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

(e) "Party" means such person or agency named or admitted as a party, or proper[illegible]eeking and entitled as of right to be admitted as a party.

(f) "Person" means any individual, governmental subdivision, firm, association, organization, partnership, corporation or company.

Sec. 3. Whenever an agency is required by law to give an opportunity for a hearing to any person, other than hearings pursuant to K.S.A. 1976 Supp. 77-421, and any amendments thereto, the procedure set forth in this act for contested cases shall apply. Such procedure shall control over any conflicting hearing procedures set forth by statutes of this state.

Sec. 4. (a) Except as otherwise provided in subsections (b) and (e), no license shall be denied, revoked, cancelled, suspended or withdrawn by an agency without notice and an opportunity to be heard as in a contested case.

(b) No hearing need be granted to a licensee or applicant for a license when: (1) A statute of this state requires an agency to revoke, suspend, withdraw, cancel or deny a license without exercising any discretion in the matter, on the basis of a court conviction or judgment; (2) the revocation, suspension, withdrawal, cancellation or denial of the license is based solely upon the failure of the licensee to file timely reports, schedules, applications, proof of continuing education or to pay lawfully prescribed fees and the agency has given notice of such failure at least thirty (30) days prior to such revocation, suspension, withdrawal, cancellation or denial and no demand for a hearing was made during such thirty (30) day period; (3) the licensee or applicant for a license has failed to pass an examination required by law as a condition precedent to the issuance or retention of a license; or (4) an applicant seeks reinstatement of a license which has been previously denied, revoked, cancelled, suspended or withdrawn after an opportunity to be heard thereon, except when the previous action against the applicant's license was based on a failure which is described in (2) above and such failure has been remedied or when a statute specifically requires an opportunity to be heard in such instance or authorizes reinstatement of a license after a prescribed period of time.

(c) When a licensee has made timely [illegible]d sufficient application for the renewal of a license, the existing license does not

expire until the application has been finally determined by the agency. If the application is denied or the terms of the license limited, the existing license does not expire until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(d) Prior to the institution of agency proceedings to revoke, suspend, annul or withdraw any license, the agency shall give notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee shall be given an opportunity to show compliance with all lawful requirements for the retention of the license and shall be given a hearing as in a contested case, if requested.

(e) If the agency finds that public health, safety or welfare imperatively require emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. Within five (5) days after a summary suspension order is served on a licensee, the licensee may apply to a district court having jurisdiction on judicial review of the agency's proceedings under section 8 for an order enjoining or staying the suspension. A hearing shall be held on such application by the district court within ten (10) days after the application is filed. A district judge or associate district judge shall hear the matter and such judge, or the clerk of the district court, shall notify the agency by telephone on the date the application is filed and of the date and time of the hearing scheduled on the application, and no further notice or service shall be required to be given to the agency. The agency shall have the burden of proof at said hearing of showing that public health, safety or welfare imperatively require the summary suspension. The district court may enjoin or stay the summary suspension on appropriate terms during the period proceedings are instituted and determined by the agency, until the last day for seeking review of a final agency order, if such order suspends the license, or a later date fixed by said court. Any appeal by the licensee of an agency order or proceeding subsequent to a summary suspension order shall be to the division of the district court

that considered a licensee's application for an injunction or stay of the summary suspension, if such an application was made.

Sec. 5. (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include: (1) A statement of the time, place and nature of the hearing;

(2) a reference to the particular sections of the statutes and regulations involved;

(3) a short and plain statement of the matters involved; and

(4) the manner and time in which interested persons may submit their views.

(c) Upon written request served on a party or the agency a more definite and detailed statement shall be furnished.

(d) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(e) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

(f) The record in a contested case shall include: (1) All pleadings, motions and intermediate rulings;

(2) evidence presented or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections and rulings thereon;

(5) proposed findings and exceptions, if any;

(6) any decision, opinion or report by the officer presiding at the hearing.

(g) Oral proceedings or any part thereof shall be transcribed on request of any party and at the requesting party's expense.

(h) Findings of fact shall be based exclusively on the evidence and on matters administratively noticed.

Sec. 6. In contested cases: (a) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence as applied in non-jury civil cases in the district courts of this state shall be followed, but the rules of evidence may be relaxed and the technical rules of evidence need not be applied when it will be in the public interest to do so and will aid in

ascertaining the facts. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and the objection and the ruling thereon shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, written testimony of a witness may be presented in lieu of oral testimony.

(b) A party shall be entitled to cross-examine any witness.

(c) Administrative notice may be taken of judicially cognizable facts. In addition, administrative notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before, during or after the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest any material so noticed.

Sec. 7. (a) A final decision or order in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact, accompanied by a concise and explicit statement of the underlying facts supporting the findings, and conclusions of law, with a statement of the reasons therefor. If a party submits proposed findings of fact, the decision shall include a ruling upon each proposed finding. A copy of the decision or order shall be delivered or mailed forthwith to each party or to the party's attorney of record.

(b) Any party dissatisfied with any decision or order of the agency may file with the agency, within twenty (20) days from the date of the service of such decision or order, a written application for a rehearing in respect to any matter determined therein. Such application shall set forth specifically the ground or grounds on which the applicant considers such decision or order to be unlawful or unreasonable. The application shall be granted or denied by the agency within ten (10) days from the date the same shall be filed, and if the rehearing be not granted within said ten (10) days it shall be taken as denied. If a rehearing be granted the matter shall be h[illegible]d, determined and the agency decision and order served on a[illegible] parties on rehearing within thirty (30) days from the date of the order granting rehearing. If the agency

decision and order on rehearing is not served on all parties within said thirty (30) days, it shall be taken as an affirmance of the original order. No cause of action arising out of any decision or order of the agency shall accrue in any court to any party unless such party shall make application for a rehearing as herein provided. No party shall, in any court, urge or rely upon any ground not set forth in said application. An order made after a rehearing abrogating, changing or modifying the original decision or order shall have the same force and effect as an original decision or order.

Sec. 8. (a) A person who has exhausted all administrative remedies and who is aggrieved by a final decision in a contested case is entitled to judicial review under this act. A preliminary, procedural or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) Proceedings for review shall be instituted by filing on appeal a petition: (1) In the district court in the county wherein the appellant resides or has a principal place of business; or

(2) in the district court of Shawnee county; or

(3) in the district court of the county in which any part of the order may be effective; or

(4) in the district court of the county in which any part of the subject matter involved is situated.

The petition shall be filed within thirty (30) days after:

(A) The request for a rehearing is denied by the agency or by operation of law;

(B) an affirmance of the original order by operation of law;

(C) the mailing to the party or personal service on the party of an affirmance of the original order; or

(D) any preliminary, procedural or intermediate agency action or ruling for which review of the final agency decision by the agency would not provide an adequate remedy.

The clerk of the district court forthwith shall serve a copy of the petition, personally or by registered mail, upon the agency and all other parties of record. The court, in [illegible]iscretion, may permit other interested persons to intervene. The court first acquiring

jurisdiction of any action to review a final administrative decision shall have and retain jurisdiction of the action until final disposition thereof.

(c) Except as otherwise provided in subsection (c) of section 4, filing the petition does not stay enforcement of the agency decision. Upon such conditions as justice requires and to the extent necessary to prevent irreparable injury, the agency may grant, or the reviewing court may order, a stay upon appropriate terms. The court has discretion as to requiring bond except in utility rate cases where bond is mandatory.

(d) Within thirty (30) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court a certified copy of the entire record of the proceeding under review. By stipulation, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(e) The review shall be conducted by the court without a jury and shall be confined to the record. Argument and briefs may be presented. Proof of alleged irregularities in procedure before the agency not shown in the record may be taken.

(f) Except as otherwise provided in K.S.A. 44-1011 and K.S.A. 1976 Supp. 44-556, and any amendments to such sections, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the agency decision or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(1) In violation of constitutional or statutory provisions; or

(2) in excess of the statutory authority of the agency; or

(3) made upon unlawful procedure; or

(4) affected by other error of law; or

(5) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Sec. 9. An aggrieved party may obtain a review of any final judgment of the district court under this act by appeal to the court of appeals. The appeal shall be taken as in other civil cases.

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