

Approved: Carl Dean Holmes
Date 3-12-98

MINUTES OF THE HOUSE COMMITTEE ON FISCAL OVERSIGHT.

The meeting was called to order by Vice-Chairperson John Edmonds at 9:00 a.m. on February 2, 1998 in Room 527-S of the Capitol.

All members were present except: Representative Barbara Allen - Excused
Representative Gary Hayzlett - Excused
Representative Mike O'Neal - Excused
Representative Eber Phelps - Excused

Committee staff present: Alan Conroy, Legislative Research Department
Rae Ann Davis, Legislative Research Department
Jim Wilson, Revisor of Statutes
Pat Talbott, Committee Secretary

Conferees appearing before the committee: William G. Wolff, Associate Director,
Legislative Research Department

Others attending: See attached list

Hearing on HB2683 - An act concerning rules and regulations; relating to the rules and regulations filing act; amending K.S.A. 77-421, 77-422 and 77-435 and repealing the existing sections.

Because Chairperson Carl Holmes was attending another meeting, Vice-Chairperson John Edmonds introduced Dr. William G. Wolff, Associate Director of the Legislative Research Department. Dr. Wolff reviewed the content of the bill and explained to the Committee members the technical changes that had been made.

Dr. Wolff noted that the Committee would see the changes made to the bill as an upgrade. He called the Committee's attention to page 2, lines 41, 42 and 43, and explained when an agency adopts rules and regulations, it must do so in an open and public meeting. He commented that it does not make a lot of sense, in those situations where the adopting authority is an individual, to have to declare yourself in an open meeting in your own office. The law has always required rules and regulations to be adopted by a board, commission, authority or other similar body at a meeting which is open to the public and by a roll call vote of a majority of the total membership.

Dr. Wolff noted in Section 2 of the bill, agencies must offer a rationale for the adoption of temporary rules and regulations. He explained that temporary rules and regulations are adopted in order to have them in place sooner than if they had to wait for the formal adoption process for permanent rules and regulations. He said the temporary rules and regulations are good for 120 days and then expire, and in the interim, the agency should be working on permanent adoption.

Dr. Wolff commented that during the mid-eighties there was concern by the legislature that too many temporary rules were being filed and agencies were claiming that it was for the peace, health, safety and welfare of the citizens of the State of Kansas that those regulations were being adopted. As a result, the Legislature put in place different rationale for the adoption of temporary rules and regulations. Dr. Wolff noted that some of the rationale excused agencies from having a hearing prior to the adoption of the temporary rules and regulations.

Dr. Wolff explained that there had, at one time, been a "dead" period from December 15 to May 1 for filing permanent rules and regulations and during that period no rules and regulations could be filed. He said, since then, the Legislature has amended the act to allow for year around filing and now agencies are constantly working on rules and regulations. He noted there are fewer temporary rules and regulations being filed.

Dr. Wolff commented that the Temporary Rules and Regulations Board is a different entity than the Joint

CONTINUATION SHEET

MINUTES OF THE HOUSE FISCAL OVERSIGHT COMMITTEE, Room 527-S Statehouse, at 9:00 a.m. on February 2, 1998.

Committee on Administrative Rules and Regulations. He said the temporary board, by statute, is made up of the Attorney General, Chairperson and Vice-chairperson of the Joint Committee on Administrative Rules and Regulations, the Secretary of Administration, and the Secretary of State, or another elected official designee.

The other change in the bill noted by Dr. Wolff appears on page 3, lines 30 through 38. He stated this change was to expedite the process of adopting rules and regulations. The new language in lines 31 through 38 allows agencies to get a head start if there is enough information available.

Dr. Wolff explained that in new Section 4, old paragraph (c) is reinstated. He said the reason for striking one section and reinstating the new language in new Section 4 was to make the authorization to get the head start applicable to both permanent and temporary rules and regulations. Dr. Wolff noted that, in no case, under the language that is being proposed, can the agency actually adopt anything until the effective date of the act giving the authority to do so has occurred.

Dr. Wolff commented that the additional language on page 5, line 4 through 5, was intended to give back up support to decisions the Secretary of State might make as he or she exercises the statutory authority to make clearer various parts of rules and regulations that are pliable. He noted there was nothing in the law that would allow the Secretary of State to make any substantive changes in rules and regulations.

Dr. Wolff ended his comments by stating that **HB2683** is intended to clear the statute of old language that was necessary when there was a closed filing period, but is not significant to the process that we have now.

Vice-Chairperson John Edmonds asked if an accurate description of **HB2683** was that it would streamline the process and make it easier for agencies to get their regulations on the books. Dr. Wolff responded that by removing some of the obstacles and contradictions it would effectively be easier.

Representative Edmonds asked if this applied to both temporary and permanent regulations and Dr. Wolff said it would apply to both.

Representative Edmonds asked if the shorter time period would reduce the opportunity for public comment on some types of regulations. Dr. Wolff said it would not because the section of the statute that requires agencies to give and file public notice and wait 60 days for a public comment period is not changed by this bill.

Chairperson Holmes asked if the board discouraged returning more than once for a temporary regulation and Dr. Wolff said that had seldom happened.

Representative Reinhart commented that the new language in the bill showed common sense and asked if Dr. Wolff was aware of any precautions that should be used and asked if there had been advantages taken of the system. Dr. Wolff responded that the Legislature's first avenue of oversight of rules and regulations is at the time the delegation of authority is written into a bill.

Representative Reinhart asked, once the rules and regulations are written, what recourse does the Legislature have if the original intent is not accurate. Dr. Wolff stated that during the 60 day public comment period the Filing Act requires that the Joint Committee on Administrative Rules and Regulations review and comment on the proposed rules and regulations. The agency makes the Committee's comments a part of the hearing record and responds back as to what changes, if any, were made.

Representative Burroughs asked if there was a fiscal note on this bill and Chairperson Holmes said he did not anticipate one.

With no further questions the public hearing was closed.

Representative Joe Shriver moved that the Committee show a favorable report for **HB2683** as presented. Representative Jim Morrison seconded the motion. The motion carried.

Chairperson Holmes stated that Representative Shriver would carry the bill on the floor and Representative Edmonds would write the bill brief.

The meeting was adjourned. The next meeting of the Fiscal Oversight Committee is on call of the Chair.

