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MEMORANDUM

TO: Senators and Representatives of Kansas

FROM: Jill Wolters, First Assistant Revisor of Statutes

DATE: January 23, 2013

RE: Executive Reorganization Orders

I. Constitutional Background.

- A. Article 1, section 6 of the Kansas Constitution authorizes the governor to reorganize state agencies within the executive branch of state government by issuing one or more executive reorganization orders and transmitting the same to the legislature within the first 30 calendar days of any regular session.
- B. An executive reorganization order transmitted to the legislature takes effect as general law on July 1 following its transmittal to the legislature unless within 60 calendar days and before adjournment of the legislative session either the senate or house of representatives adopts a resolution by a majority vote of the members disapproving the executive reorganization order. [majority of all members elected, or appointed, and qualified]

II. 2013-2014 House Rules, HR6004, concerning EROs. (Same as 2011-2012 House Rules)  
[underscore emphasis added]

- A. Rule 4501. Referral of Executive Reorganization Orders. Whenever an executive reorganization order is received from the Governor, it shall be referred to an appropriate committee by the Speaker.
- B. Rule 4502. Committee Report on Executive Reorganization Orders. If the committee to which an executive reorganization order is referred recommends that the executive reorganization order be disapproved, the committee, not later than 15 calendar days after referral of the executive reorganization order to the committee, shall introduce a resolution for disapproval of the executive reorganization order. Such resolution shall be accompanied by the report of the committee recommending that the resolution be adopted.
- C. Rule 4503. Return in Event of Committee's Failure to Report. If a committee fails to report upon an executive reorganization order within 15 calendar days after the executive reorganization order is referred to the committee, the committee shall be deemed to have recommended approval of the executive reorganization order.

- D. Rule 4504. Special Order of Business for ERO. When a resolution for disapproval of an executive reorganization order is introduced and accompanied by the committee's report recommending adoption of the resolution, action on the resolution shall be made the special order of business on a particular day and hour specified by the Speaker but not later than the last day the executive reorganization order may be disapproved under section 6 of article 1 of the Constitution of Kansas. A resolution for disapproval of an executive reorganization order shall be considered under the order of business Final Action and shall be subject to debate and final action by the House.
- E. Rule 4505. Nonapplication to Bills. This Article 45 shall not apply to bills amending or otherwise affecting executive reorganization orders.
- F. Rule 4506. Nonaction When Moot. The House shall act on any resolution for disapproval of an executive reorganization order unless at the time set for such action the Senate has already rejected such executive reorganization order.
- III. 2013-2016 Senate Rule, SR1704, concerning EROs. (Same as 2009-2012 Senate Rule) [Similar to House Rules, underscore emphasis added]
- A. Rule 76. Executive Reorganization Orders. When an executive reorganization order is received from the Governor, it shall be referred to an appropriate committee by the President. The committee to which an executive reorganization order is referred shall report its recommendations thereon, by recommending adoption of a Senate resolution, not later than the 60th calendar day of any regular session and not later than 30 calendar days after it has received such referral whichever occurs first. If a committee fails to report upon an executive reorganization order within the time specified in this rule, such committee shall be deemed to have returned the same to the Senate without recommendation. When a report or return of an executive reorganization is made, it and all resolutions for approval or disapproval thereof shall be made the special order of business in accordance with Rule 6 (special order of business) at a time not later than the last day the executive reorganization order may be disapproved under section 6 of article 1 of the Constitution of Kansas. The Senate shall act to approve or reject every reorganization order unless at the time set for such action the House of Representatives shall have already rejected such executive reorganization order.
- IV. ERO Consideration Procedure.
- A. ERO 42 was transmitted to the House of Representatives and Senate on Friday, January 18, 2013, and was printed in both Journals dated Tuesday, January 22.
- In the House, it is scheduled to be referred to the Committee on Corrections and Juvenile Justice on January 23. Under House rules the committee has 15 calendar days after referral, or until Thursday, February 7, 2013, to report its recommendations (Rule 4502). If the committee fails to report within 15 calendar days after referral, it is deemed to have returned the matter to the House without recommendation (Rule 4503). The House then has until the 60<sup>th</sup> calendar day following transmittal to the

House, or until Tuesday, March 19, 2013, to take up the matter (Rule 4504).

In the Senate, it is scheduled to be referred to the Committee on Judiciary on January 23. Under Senate rules the committee has 30 calendar days after referral, or until Friday, February 22, 2013, to report its recommendations. If the committee fails to report within 30 calendar days after referral, it is deemed to have returned the matter to the Senate without recommendation. The Senate then has until the 60<sup>th</sup> calendar day following transmittal to the Senate, or until Tuesday, March 19, 2013, to take up the matter (Rule 76).

B. An ERO becomes effective when:

- no action is taken by either house;
- approval by one house and no action by the other house; or
- approval by both houses

C. An ERO is disapproved when:

- either house adopts a resolution disapproving the ERO.

D. A committee or individual legislator may introduce a resolution concerning the approval or disapproval of an ERO. The report of the committee and all resolutions for approval or disapproval are made a special order of business on a day and hour specified in the House by the speaker (Rule 4504), and in the Senate by Rule 6, but in both cases, not later than Tuesday, March 19, for ERO 42.

V. Codification of an Approved ERO.

A. An ERO which becomes effective is published like the acts of the legislature and the statutes of the state.

B. Any ERO which is to become effective may be amended or repealed in the same manner as statutes of the state are amended or repealed.

See attached, article 1, section 6 of the Kansas Constitution.

## CONSTITUTION OF THE STATE OF KANSAS

## Article 1.--EXECUTIVE

§ 6. Reorganization of state agencies of executive branch. (a) For the purpose of transferring, abolishing, consolidating or coordinating the whole or any part of any state agency, or the functions thereof, within the executive branch of state government, when the governor considers the same necessary for efficient administration, he may issue one or more executive reorganization orders, each bearing an identifying number, and transmit the same to the legislature within the first thirty calendar days of any regular session. Agencies and functions of the legislative and judicial branches, and constitutionally delegated functions of state officers and state boards shall be exempt from executive reorganization orders.

(b) The governor shall transmit each executive reorganization order to both houses of the legislature on the same day, and each such order shall be accompanied by a governor's message which shall specify with respect to each abolition of a function included in the order the statutory authority for the exercise of the function. Every executive reorganization order shall provide for the transfer or other disposition of the records, property and personnel affected by the order. Every executive reorganization order shall provide for all necessary transfers of unexpended balances of appropriations of agencies affected by such order, and such changes in responsibility for and handling of special funds as may be necessary to accomplish the purpose of such order. Transferred balances of appropriations may be used only for the purposes for which the appropriation was originally made.

(c) Each executive reorganization order transmitted to the legislature as provided in this section shall take effect and have the force of general law on the July 1 following its transmittal to the legislature, unless within sixty calendar days and before the adjournment of the legislative session either the senate or the house of representatives adopts by a majority vote of the members elected thereto a resolution disapproving such executive reorganization order. Under the provisions of an executive reorganization order a portion of the order may be effective at a time later than the date on which the order is otherwise effective.

(d) An executive reorganization order which is effective shall be published as and with the acts of the legislature and the statutes of the state. Any executive reorganization order which is or is to become effective may be amended or repealed as statutes of the state are amended or repealed.