

SENATE BILL No. 19

By Committee on Judiciary

1-13

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 2015 Supp. 77-519, 77-521 and 77-531 and repealing the existing
5 sections.
6

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

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

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

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

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

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

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

26 (1) A person to whom an order is specifically directed; or
27 (2) a person named as a party to a state agency proceeding or allowed
28 to intervene as a party in the proceeding.

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

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

Proposed Amendment for SB19
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1 of evidence and argument, cross-examination, discovery and other
2 participation in the proceedings.

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

10 Sec. 4. K.S.A.-2014 2015 Supp. 77-531 is hereby amended to read as
11 follows: 77-531. (a) Service of an order or notice shall be made upon the
12 party and the party's attorney of record, if any, by:

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

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

transmitting

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

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

32 Sec. 5. K.S.A. 77-545 is hereby amended to read as follows: 77-545.
33 (a) This section applies to adjudicative proceedings before the state
34 corporation commission.

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

41 (2) After the commission has determined and announced that a
42 hearing should be held, prior to the issuance of a final order, copies of any
43 written communications from any party regarding the proceeding that are

1 proceeding with the presiding officer unless reasonable notice is given to
2 all parties who have appeared to enable the parties to be present at the
3 conference.

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

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

19 (c) For purposes of this section, no member of the director's technical
20 staff shall be considered a party to any proceeding before the director,
21 regardless of participation in staff investigations with respect to the
22 proceeding or of participation in the proceeding as a witness. Since the
23 purpose of the staff is to aid the director in the proper discharge of the
24 director's duties, the presiding officer shall be free at all times to confer
25 with any staff member with respect to any proceeding. However, no facts
26 that are outside the record, and that reasonably could be expected to
27 influence the decision in any matter pending before the director, shall be
28 furnished to any presiding officer unless all parties to the proceeding are
29 likewise informed and afforded a reasonable opportunity to respond.
30 Subsection (b) shall apply to staff counsel who have participated in the
31 proceeding in regard to any adjudicatory proceeding before the director.
32 (d) All letters and written communications that are received by the
33 presiding officer from members of the general public, and that are in the
34 nature of ex parte communications, shall be made a part of the file in the
35 docket and shall be made available to all persons who desire to see them.
36 The deposit of such written communications and letters in the file shall not
37 make them a part of the official record of the case.

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

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

42 (b) If reconsideration has not been requested and is not a prerequisite
43 for seeking judicial review, a petition for judicial review of a final order

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~~ 2015 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

transmitting