

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

January 8, 2021
Room 112-N—Statehouse

Members Present

Senator Caryn Tyson, Chairperson
Representative Ron Highland, Vice-chairperson
Senator Oletha Faust-Goudeau, Ranking Minority Member
Senator Eric Rucker
Senator Mary Ware
Representative John Carmichael
Representative Annie Kuether
Representative Bill Sutton
Representative Barbara Wasinger
Representative Valdenia Winn

Members Absent

Representative Tom Cox

Staff Present

Jill Shelley, Kansas Legislative Research Department (KLRD)
Jordan Milholland, KLRD
Victoria Potts, KLRD
Jenna Moyer, Office of Revisor of Statutes
Sky Westerlund, Committee Assistant

Conferees

Melissa Wangemann, General Counsel, Office of the State Bank Commissioner
Erik Wisner, Executive Director, Real Estate Commission
Stephanie Murray, Staff Attorney, Kansas Department of Agriculture
Garrett Roe, General Counsel, Office of the Secretary of State
Tucker Poling, Interim Executive Director, Board of Healing Arts
Jason Meinholdt, Environmental Program Administrator, Kansas Department of Health and Environment

Others Attending

See [Attached List](#).

ALL DAY SESSION

Announcements; Approval of Minutes of the December 2, 2020, Meeting

The Chairperson opened the meeting at 10:08 a.m. and attendance was taken by the Committee Assistant.

The Chairperson opened discussion on the minutes of the December 2, 2020, meeting. Senator Faust-Goudeau stated she was present at the meeting but not included in the list as present. She asked the minutes be amended to include her as present. The minutes will be amended.

Representative Highland moved, and Representative Wasinger seconded, to approve the minutes of December 2, 2020, as amended. The motion carried.

Two documents were included in the packet:

- Kansas Legislative Research Department's memorandum on proposed revocations ([Attachment 1](#)); and
- Office of Revisor of Statutes' memorandum on authority for proposed rules and regulations ([Attachment 2](#)).

Review and Comment on Proposed Rule and Regulation Noticed for Hearing by Office of the State Bank Commissioner

KAR 17-24-2, amending mortgage business fees.

Melissa Wangemann, General Counsel, Office of the State Bank Commissioner, joined the Committee meeting *via* conference phone call. She stated the change for KAR 17-24-2 is a fee increase for the renewal registration of a mortgage loan originator (MLO), from \$50 to \$100. Ms. Wangemann stated an MLO is an individual who processes mortgage loan applications on behalf of a mortgage company and performs other duties as part of the Kansas Mortgage Business Act. Ms. Wangemann stated due to the COVID-19 pandemic, many of the MLOs are working remotely from their homes instead of from a branch office. The agency is working to accommodate remote work at persons' homes, which will result in less need for branch offices and therefore reduced fees to the agency for branch offices. Ms. Wangemann stated the Office of the State Bank Commissioner is a fee-funded agency, fees had been reduced, and the surplus in 2013 had been spent down ([Attachment 3](#)).

In response to a question, Ms. Wangemann stated with the increased number of MLOs working remotely, the need for branch offices will decrease. She stated the agency is trying to be flexible for those working remotely.

A concern was raised that the agency is reinterpreting the statute and there could be a challenge to what is meant by "remote."

Review and Comment on Proposed Rules and Regulations Noticed for Hearing by the Real Estate Commission

KAR 86-3-10, retention of records; KAR 86-3-18, trust account records; KAR 86-3-21, revoked (was trust account documentation); KAR 86-3-22, transaction identification.

Erik Wisner, Executive Director, Real Estate Commission, joined the Committee meeting by phone. He reviewed four rules and regulations. KAR 86-3-10 would amend requirements for records to be retained by Kansas licensed brokers. KAR 86-3-18 would clarify requirements for trust account records. KAR 86-3-21 is to be revoked due to obsolete language, and KAR 86-3-22 would simplify identification numbering procedures related to broker records ([Attachment 4](#)).

The conferee responded to several questions regarding review of the records.

Review and Comment on Proposed Rules and Regulations Noticed for Hearing by the Kansas Department of Agriculture

KAR 4-8-13, service of notices and statements; KAR 4-8-14a, herbicides approved for cost-share; KAR 4-8-27, adoption of control methods for musk thistle; KAR 4-8-28, adoption of control methods for Johnsongrass; KAR 4-8-29, adoption of control methods for field bindweed; KAR 4-8-30, adoption of control methods for hoary cress; KAR 4-8-31, adoption of control methods for Russian knapweed; KAR 4-8-32, adoption of control methods for bur ragweed; KAR 4-8-33, adoption of control methods for Canada thistle; KAR 4-8-34, adoption of control methods for leafy spurge; KAR 4-8-35, adoption of control methods for quackgrass; KAR 4-8-36, adoption of control methods for pignut; 4-8-37, adoption of control methods for kudzu; KAR 4-8-38, weed supervisor employment; KAR 4-8-39, revoked (was adoption of multiflora rose control program); KAR 4-8-40, adoption of control methods for *sericea lespedeza*; KAR 4-8-41, revoked (was biological control plan); KAR 4-8-42, revoked (was adoption of bull thistle control program); KAR 4-8-43, revoked (was noxious weeds, declaration of county as a *sericea lespedeza* disaster area); KAR 4-8-44, designation of noxious weeds; KAR 4-8-45, official control plans; KAR 4-8-46, annual report; KAR 4-8-47, management plan; KAR 4-8-48, contents of notices and statements.

Stephanie Murray, Staff Attorney, Kansas Department of Agriculture, presented the proposed changes to rules and regulations regarding noxious weeds. She stated Jeff Vogel, Plant Protection and Weed Control Program Manager, and Scott Marsh, State Weeds Specialist, were available for any questions. Ms. Murray stated the agency is requesting 24 regulation changes. Some were new regulations, some were regulations that were to expire, and others are being repealed. She stated the promulgated rules and regulations were developed with input from an advisory group. Ms. Murray discussed the details of each of the proposed regulation changes, the topics of which included notices, herbicides for cost-share, noxious weed control, weed supervisor employment, official control plans, annual report, and management plans ([Attachment 5](#)).

The conferee answered questions on topics including recovering costs from landowners, responsibility when the noxious weeds are on property owned by the State or a county, authority to regulate employment of county weed supervisors, and reports regarding noxious weeds.

Written-only testimony was submitted by Randy Stookey, Kansas Agribusiness Retailers Association, in support of the proposed changes to the rules and regulations on noxious weeds ([Attachment 6](#)).

Review and Comment on Proposed Rule and Regulation Noticed for Hearing by the Secretary of State

KAR 7-48-1, vote centers, plans, report.

Garrett Roe, General Counsel, Office of the Secretary of State, presented the proposed rule and regulation. Mr. Roe explained 2019 Sub. for SB 130 amended a statute to permit county election officials to operate what are known as “vote centers” during elections. The legislation did not outline requirements for the vote centers, but rather allowed counties the discretion to use vote centers on the condition the counties follow regulations issued by the Secretary of State. He stated the proposed rule and regulation, KAR 7-48-1, was developed with the help of a working group of election officers, county clerks, election experts, and security specialists. Mr. Roe discussed the details of the proposed regulation ([Attachment 7](#) and [Attachment 8](#)).

The conferee responded to questions on topics including connected poll books, costs to implement vote centers, the process for developing the rule and regulation, and the timeline in which a county could implement this change. Compliments also were directed to the Secretary of State and other election officials for the conduct of the November 2020 elections.

A request was made for information regarding whether electronic voting machines required a paper trail or paper audit.

Review and Comment on Proposed Rules and Regulations Noticed for Hearing by the Board of Healing Arts

KAR 100-6-2, education and training requirements; KAR 100-8-3, endorsement licenses; active practice requirements.

Tucker Poling, Interim Executive Director, Board of Healing Arts, presented testimony for proposed changes to two rules and regulations ([Attachment 9](#)). KAR 100-6-2 outlines license qualifications for the resident active license. Mr. Poling stated this is a new category of license in anticipation of a regulatory change to permit an individual who has completed the first year of residency to practice within specific parameters and with ongoing supervision ([Attachment 10](#)). The second proposed regulation, KAR 100-8-3, clarifies the requirements necessary for licensure by endorsement ([Attachment 11](#)).

Mr. Poling responded to questions on topics including accreditation and verifying submitted information.

Discussion of Proposed Rules and Regulations

The Committee turned to discussion and review of proposed rules and regulations heard earlier in the Committee meeting.

Office of the State Bank Commissioner

Concern was expressed about the reinterpretation of current statute, as well as doubling the fee to renew registration as an MLO. The Committee agreed to include in its report a request to the agency for information regarding how the proposed fee amount was determined, information concerning the Bank Commissioner Fee Fund, and the agency's explanation of its interpretation of law to allow for remote work.

Real Estate Commission

The Committee had no comments.

Kansas Department of Agriculture

A Committee member noted the Kansas Agribusiness Retailers Association supported the proposed changes to the rules and regulations. Members expressed several concerns, including wanting more definition on employment requirements for the county weed supervisor, determining three categories of noxious weeds, and availability of reports. The Committee agreed to include in its report a request for additional information regarding the hiring of weed supervisors, to suggest clarifications in provisions concerning the categorization of noxious weeds, and to ask that the agency make annual weed reports available online. The Committee also agreed to commend the agency representative who presented the proposed rules and regulations.

Secretary of State

Several concerns were raised by members. The Committee agreed to request clarification on the timing of vote center plan approval and to request information concerning the certifying and auditing of electronic voting machines. The Committee also agreed to commend the Secretary of State and local election officials for their work in conducting free, fair, and transparent elections in Kansas in 2020.

Lunch

The Chairperson recessed the Committee for lunch at 12:09 p.m. and reconvened the meeting at 1:30 p.m.

Review and Comment on Proposed Rules and Regulations Noticed for Hearing by the Department of Health and Environment

Article 65.—Emergency Planning and Right-to-Know: KAR 28-65-1, general provisions; KAR 28-65-2, definitions; KAR 28-65-3, submitting notifications and reports; KAR 28-65-4, fees.

Jason Meinholdt, Environmental Program Administrator, Kansas Department of Health and Environment (KDHE), joined the Committee meeting *via* phone conferencing. James Uhlemeyer, KDHE, was also present *via* phone. Mr. Meinholdt provided a brief summary of the historical context of the Right-to-Know Program at the federal and state levels. He stated the proposed rules and regulations will update state regulations from 1998 and align the state regulations with the federal regulations. KAR 28-65-1 regards amounts of underground and above-ground oil storage. KAR 28-65-2 adds clarification to existing definitions based on updated federal guidelines. KAR 28-65-3 is about notifications and reports. KAR 28-65-4 is about fees ([Attachment 12](#)).

The conferee responded to questions on topics including current federal requirements, electronic reporting, and fees. He noted this is not a federally funded program, and certain federal requirements had been relaxed.

Written-only testimony was submitted by Randy Stookey, Kansas Agribusiness Retailers Association, in support of these proposed rules and regulations ([Attachment 13](#)).

Review of Findings of the Subcommittee on Occupational Licensing

Representative Highland, Chairperson of the Subcommittee on Occupational Licensing, described the Subcommittee's deliberations and discussed the Subcommittee's recommendations as outlined in its report ([Attachment 14](#)).

After discussion, there was consensus the Committee strongly recommends the 2021 Legislature delve into the issue of occupational licensing, including efforts through criminal justice reforms to address barriers for those coming out of incarceration.

Discussion of Potential Legislation

Committee members discussed state agency processes for promulgating rules and regulations. Concern was expressed that agencies inform the Committee about proposed rules and regulations, but the Committee is limited to only making suggestions or recommendations. There is no authority for enforcement. Several ideas were discussed.

Discussion of Proposed Rules and Regulations

The Committee continued reviewing the proposed rules and regulations presented earlier in the day.

Board of Healing Arts

The Committee had no comments.

Kansas Department of Health and Environment

The Committee had no comments.

Adjourn

The Chairperson thanked the Committee members for their hard work and expressed appreciation for the support of staff.

The meeting was adjourned at 2:48 p.m.

Prepared by Sky Westerlund

Edited by Jordan Milholland and Jill Shelley

Approved by the Committee on:

March 26, 2021
(Date)