

As Amended by House Committee

Session of 2010

HOUSE BILL No. 2442

By Committee on Appropriations

1-13

10 AN ACT establishing the Kansas streamlining government commission;
11 providing for an independent review of state agencies of the executive
12 branch of state government; prescribing powers, duties and functions
13 for the commission and certain other state agencies; amending K.S.A.
14 2009 Supp. 75-2973 and 75-4319 and repealing the existing sections.
15

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

17 New Section 1. (a) Sections 1 through 9, and amendments thereto,
18 shall be known and may be cited as the Kansas streamlining government
19 act.

20 (b) The purposes of the Kansas streamlining government act are to
21 improve the performance, streamline the operations, improve the effect-
22 iveness and efficiency, and reduce the operating costs of the executive
23 branch of state government by reviewing state programs, policies, proc-
24 esses, original positions, staffing levels, agencies, boards and commissions,
25 identifying those that should be eliminated, combined, reorganized,
26 downsized or otherwise altered, and recommending proposed executive
27 reorganization orders, executive orders, legislation, rules and regulations,
28 or other actions to accomplish such changes and achieve such results.

29 **(c) The Kansas streamlining government act shall not apply to**
30 **any fee-funded state agency. The Kansas streamlining government**
31 **commission shall have no authority to review or make recommen-**
32 **dations regarding any fee-funded state agency.**

33 New Sec. 2. As used in sections 1 through 9, and amendments
34 thereto:

35 (a) "Act" means the Kansas streamlining government act;

36 (b) "commission" means the Kansas streamlining government com-
37 mission established by section 3, and amendments thereto;

38 (c) "documents" means books, records, papers, accounts, transcripts,
39 transcriptions and reports, in whatever form or medium they may be
40 preserved;

41 (d) "state agency" means any state agency in the executive branch of
42 state government;

43 (e) "member" means a member of the commission; ~~and~~

1 (f) “paid public office or position” means a public office or position
2 for which any compensation is paid for service, but “paid public office or
3 position” does not include any public office or position for which only
4 reimbursement is paid for travel and other expenses incurred for service
5 in such public office or position; **and**

6 (g) **“Fee-funded state agency” means the abstracters’ board of**
7 **examiners, behavioral sciences regulatory board, board of ac-**
8 **countancy, board of examiners in optometry, board of nursing,**
9 **consumer credit commissioner, Kansas board of barbering, Kansas**
10 **board of examiners in fitting and dispensing of hearing aids, Kan-**
11 **sas dental board, Kansas real estate commission, Kansas state**
12 **board of cosmetology, office of the securities commissioner of Kan-**
13 **sas, real estate appraisal board, state bank commissioner, state**
14 **board of healing arts, state board of mortuary arts, state board of**
15 **pharmacy, state board of technical professions, state board of vet-**
16 **erinary examiners, state department of credit unions and Kansas**
17 **home inspectors registration board..**

18 New Sec. 3. (a) There is hereby established the Kansas streamlining
19 government commission within the legislative branch of state govern-
20 ment. The commission shall be composed of seven members, appointed
21 as follows:

- 22 (1) One person appointed by the president of the senate;
- 23 (2) one person appointed by the majority leader of the senate;
- 24 (3) one person appointed by the minority leader of the senate;
- 25 (4) one person appointed by the speaker of the house of
26 representatives;
- 27 (5) one person appointed by the majority leader of the house of
28 representatives;
- 29 (6) one person appointed by the minority leader of the house of rep-
30 resentatives; and
- 31 (7) one person appointed by the governor.

32 (b) Of the members appointed under subsection (a):

- 33 (1) Each member shall be a citizen of the United States of America
34 and shall reside in the state of Kansas;
- 35 (2) not more than ~~five~~ **four** members shall be affiliated with the same
36 political party;
- 37 (3) a member may not: (A) Currently hold or have held within the
38 preceding three years any paid office or position with any state agency or
39 local governmental entity in Kansas; or (B) hold any paid public office or
40 position with any state or federal governmental entity at the time of ap-
41 pointment or during the member’s tenure as a member of the
42 commission;
- 43 (4) a member may not be a party to an ongoing and continuing con-

1 tract with any state agency or local governmental entity in Kansas, or be
2 an employee of an entity that is a party to any such contract; and

3 (5) a member may not be a lobbyist or be engaged in lobbying, as
4 defined by either K.S.A. 46-225, and amendments thereto, or under any
5 federal law, at the time of the appointment of the member or during the
6 member's tenure as a member of the commission.

7 (c) The commission shall initially convene and organize on call of the
8 member appointed by the governor. At such meeting the commission
9 shall select one member to serve as chairperson of the commission.

10 (d) Four members shall constitute a quorum for meetings of the com-
11 mission. A lesser number of members may conduct hearings, but no ac-
12 tion shall be taken at meetings at which such hearings are conducted. All
13 actions of the commission shall be by affirmative vote of a majority of all
14 members of the commission.

15 (e) In the event that a member accepts a position as a lobbyist or as
16 an officer or employee of any state agency or local governmental entity
17 in Kansas, the member **shall be disqualified to serve as a member of**
18 **the commission and** shall resign from the commission ~~within 10 days~~
19 ~~from effective on~~ the date the member accepts such position.

20 (f) A vacancy in the commission shall be filled in the manner in which
21 the original appointment was made. The appointment of the replacement
22 member shall be made not later than 30 days after the date on which the
23 vacancy occurs.

24 (g) Members shall serve without compensation, but members attend-
25 ing meetings of the commission, or meetings of a subcommittee author-
26 ized by the commission, shall receive subsistence allowances, mileage and
27 other expenses as provided in K.S.A. 75-3212, and amendments thereto,
28 for members of the legislature.

29 New Sec. 4. (a) The commission may:

30 (1) Meet at any time and at any place within the state, upon the call
31 of the chairperson, subject to the provisions of appropriation acts; and

32 (2) recess in closed or executive meetings in accordance with K.S.A.
33 75-4319, and amendments thereto, to conduct discussions and delibera-
34 tions and to receive testimony in the discharge of the duties imposed
35 under this act, but all votes shall be made in open meeting and no binding
36 action shall be taken during closed or executive recesses.

37 (b) In the discharge of the duties imposed under this act, the com-
38 mission and officers and employees of the commission may require state
39 agencies to preserve and make available their accounts, records, docu-
40 ments, vouchers, requisitions, payrolls, canceled checks or vouchers and
41 coupons, and other evidence of financial transactions.

42 (c) The commission shall report immediately to the appropriate au-
43 thority whenever it appears in the opinion of the commission that there

1 may have occurred any violation of penal statutes or any instances of
2 misfeasance, malfeasance or nonfeasance by a public officer or employee
3 of the executive branch of state government that is disclosed by any in-
4 vestigation or review conducted under authority of this act.

5 New Sec. 5. (a) The staff of the legislative research department, the
6 office of revisor of statutes and the division of legislative administrative
7 services shall provide such assistance as may be requested by the com-
8 mission, to the extent authorized by the legislative coordinating council.

9 (b) Upon approval by the legislative post audit committee, the divi-
10 sion of post audit shall conduct government effectiveness and efficiency
11 audits, financial and compliance audits, performance audits and other
12 audit work with respect to state agencies in the manner provided by the
13 legislative post audit act pursuant to request by the commission.

14 New Sec. 6. (a) The commission shall have authority to review any
15 agency, board, commission or program of the executive branch of state
16 government. In determining which aspects of the executive branch of
17 state government are to be reviewed, the commission shall consider any
18 recommendations made to it by the governor, by any legislator, by any
19 executive branch personnel, or by any member of the public. The chair-
20 person of the commission shall determine which aspects of the executive
21 branch of state government shall be reviewed by the commission and
22 shall present the scope of such review to the commission. In establishing
23 such data, the chairperson shall settle upon those units of exam where
24 the greatest likelihood for cost savings exists. The chairperson's deter-
25 mination shall prescribe the commission's scope of review unless it is
26 rejected or modified by a motion adopted by the affirmative vote of five
27 or more commissioners. The commission may review multiple aspects of
28 the executive branch of state government at the same time and may
29 change or amend the scope of review under this section at any time.

30 (b) All state agencies of the executive branch of state government,
31 and the officers and employees thereof, shall cooperate fully with the
32 commission and its officers and employees in the discharge of the com-
33 mission's duties under this act.

34 New Sec. 7. (a) The commission shall:

35 (1) Examine the current configuration of executive agencies and in-
36 vestigate their duties and responsibilities;

37 (2) review the operational jurisdictions of state agencies to determine
38 whether areas of overlap exist and whether the mission of any state
39 agency, or any portion thereof, has become obsolete or inefficient;

40 (3) establish a systematic method for assessing the effectiveness and
41 accountability of state agencies;

42 (4) assess programs based on achievement of performance goals; and

43 (5) assess programs based in part on whether the program has ful-

1 filled the legislative intent surrounding the creation of the program.

2 (b) As part of this review, the commission shall identify and address:

3 (1) Opportunities for increasing effectiveness and efficiency and re-

4 ducing costs in state agencies as a result of executive action or legislation;

5 (2) areas within state agencies where managerial accountability can

6 be enhanced and administrative control can be improved;

7 (3) any state programs that have accomplished their original objec-

8 tives and should be terminated;

9 (4) any state services that could be provided at lower cost by the

10 private sector, the federal government, any nongovernmental entity or in

11 any other manner;

12 (5) budget process reforms that could yield savings, increase account-

13 ability, effectiveness and efficiency, and enhance public confidence in the

14 budget process; and

15 (6) areas for further study based on likelihood for potential savings.

16 (c) In addition, the commission shall review existing audit reports of

17 the legislative division of post audit, together with any other existing state

18 or federal governmental and nongovernmental recommendations for ad-

19 vancing the purposes of the provisions of this act.

20 New Sec. 8. (a) Upon completing its review of any aspect of the

21 executive branch of state government, the commission shall make such

22 recommendations for changes to the executive branch of state govern-

23 ment as it determines to be appropriate in order to achieve the purposes

24 of the commission. Upon completion of its review of any aspect of the

25 executive branch of state government, the commission may recommend

26 any of the following:

27 (1) The abolition of any state program, agency, board or commission

28 of the executive branch of state government;

29 (2) the reorganization or combination of any state program, agency,

30 board or commission of the executive branch of state government;

31 (3) a change in any state procedure or process of the executive branch

32 of state government; and

33 (4) such other changes regarding the executive branch of state gov-

34 ernment as the commission may deem appropriate to fulfill its purposes.

35 (b) In presenting its recommendations, the commission may do any

36 of the following:

37 (1) Recommend that any agency or office of the executive branch of

38 state government use existing authority to change policies, procedures or

39 organization in order to achieve the purposes of the commission;

40 (2) recommend that the governor issue an executive directive, exec-

41 utive order or executive reorganization order to change policies, proce-

42 dures or organization of the executive branch of state government in order

43 to achieve the purposes of the commission; or

1 (3) make such other recommendations for action as the commission
2 determines advisable to carry out the purposes of the commission.

3 (c) On or before September 1, 2010, December 31, 2010, September
4 1, 2011, and December 31, 2011, the commission shall submit a report
5 to the governor and the legislature.

6 (d) The legislature's support and approval of the recommendations
7 presented by the commission under subsection (b) shall be expressed by
8 adoption of a concurrent resolution.

9 (e) It is declared to be the policy of the state of Kansas that the house
10 of representatives and the senate each adopt rules for the proceedings of
11 such body to provide specific procedures for the consideration and action
12 on any resolutions introduced pursuant to subsection (d) in support of
13 any recommendations of the commission. The rules adopted for this pur-
14 pose by the house of representatives and the senate should include pro-
15 cedures to provide that no such resolution shall be subject to amendment
16 during consideration by the body and final action on such resolution shall
17 be by roll call vote.

18 New Sec. 9. On December 31, 2011, the commission is hereby abol-
19 ished and the provisions of sections 1 through 8 shall expire.

20 Sec. 10. K.S.A. 2009 Supp. 75-2973 is hereby amended to read as
21 follows: 75-2973. (a) This section shall be known and may be cited as the
22 Kansas whistleblower act.

23 (b) As used in this section:

24 (1) "Auditing agency" means the (A) legislative post auditor, (B) any
25 employee of the division of post audit, (C) any firm performing audit
26 services pursuant to a contract with the post auditor, (D) any state agency
27 or federal agency or authority performing auditing or other oversight
28 activities under authority of any provision of law authorizing such activi-
29 ties, ~~or~~ (E) the inspector general created under K.S.A. 2009 Supp. 75-
30 7427, and amendments thereto, or (F) *the Kansas streamlining govern-
31 ment commission established by section 3, and amendments thereto.*

32 (2) "Disciplinary action" means any dismissal, demotion, transfer,
33 reassignment, suspension, reprimand, warning of possible dismissal or
34 withholding of work.

35 (3) "State agency" and "firm" have the meanings provided by K.S.A.
36 46-1112, and amendments thereto.

37 (c) No supervisor or appointing authority of any state agency shall
38 prohibit any employee of the state agency from discussing the operations
39 of the state agency or other matters of public concern, including matters
40 relating to the public health, safety and welfare either specifically or gen-
41 erally, with any member of the legislature or any auditing agency.

42 (d) No supervisor or appointing authority of any state agency shall:

43 (1) Prohibit any employee of the state agency from reporting any

1 violation of state or federal law or rules and regulations to any person,
2 agency or organization; or
3 (2) require any such employee to give notice to the supervisor or
4 appointing authority prior to making any such report.
5 (e) This section shall not be construed as:
6 (1) Prohibiting a supervisor or appointing authority from requiring
7 that an employee inform the supervisor or appointing authority as to leg-
8 islative or auditing agency requests for information to the state agency or
9 the substance of testimony made, or to be made, by the employee to
10 legislators or the auditing agency, as the case may be, on behalf of the
11 state agency;
12 (2) permitting an employee to leave the employee's assigned work
13 areas during normal work hours without following applicable rules and
14 regulations and policies pertaining to leaves, unless the employee is re-
15 quested by a legislator or legislative committee to appear before a legis-
16 lative committee or by an auditing agency to appear at a meeting with
17 officials of the auditing agency;
18 (3) authorizing an employee to represent the employee's personal
19 opinions as the opinions of a state agency; or
20 (4) prohibiting disciplinary action of an employee who discloses in-
21 formation which: (A) The employee knows to be false or which the em-
22 ployee discloses with reckless disregard for its truth or falsity, (B) the
23 employee knows to be exempt from required disclosure under the open
24 records act, or (C) is confidential or privileged under statute or court rule.
25 (f) Any officer or employee of a state agency who is in the classified
26 service and has permanent status under the Kansas civil service act may
27 appeal to the state civil service board whenever the officer or employee
28 alleges that disciplinary action was taken against the officer or employee
29 in violation of this act. The appeal shall be filed within 90 days after the
30 alleged disciplinary action. Procedures governing the appeal shall be in
31 accordance with subsections (f) and (g) of K.S.A. 75-2949, and amend-
32 ments thereto, and K.S.A. 75-2929d through 75-2929g, and amendments
33 thereto. If the board finds that disciplinary action taken was unreasonable,
34 the board shall modify or reverse the agency's action and order such relief
35 for the employee as the board considers appropriate. If the board finds
36 a violation of this act, it may require as a penalty that the violator be
37 suspended on leave without pay for not more than 30 days or, in cases of
38 willful or repeated violations, may require that the violator forfeit the
39 violator's position as a state officer or employee and disqualify the violator
40 for appointment to or employment as a state officer or employee for a
41 period of not more than two years. The board may award the prevailing
42 party all or a portion of the costs of the proceedings before the board,
43 including reasonable attorney fees and witness fees. The decision of the

1 board pursuant to this subsection may be appealed by any party pursuant
2 to law. On appeal, the court may award the prevailing party all or a portion
3 of the costs of the appeal, including reasonable attorney fees and witness
4 fees.

5 (g) Each state agency shall prominently post a copy of this act in
6 locations where it can reasonably be expected to come to the attention
7 of all employees of the state agency.

8 (h) Any officer or employee who is in the unclassified service under
9 the Kansas civil service act who alleges that disciplinary action has been
10 taken against such officer or employee in violation of this section may
11 bring an action pursuant to the act for judicial review and civil enforce-
12 ment of agency actions within 90 days after the occurrence of the alleged
13 violation. The court may award the prevailing party in the action all or a
14 portion of the costs of the action, including reasonable attorney fees and
15 witness fees.

16 (i) Nothing in this section shall be construed to authorize disclosure
17 of any information or communication that is confidential or privileged
18 under statute or court rule.

19 Sec. 11. K.S.A. 2009 Supp. 75-4319 is hereby amended to read as
20 follows: 75-4319. (a) Upon formal motion made, seconded and carried,
21 all bodies and agencies subject to the open meetings act may recess, but
22 not adjourn, open meetings for closed or executive meetings. Any motion
23 to recess for a closed or executive meeting shall include a statement of
24 (1) the justification for closing the meeting, (2) the subjects to be dis-
25 cussed during the closed or executive meeting and (3) the time and place
26 at which the open meeting shall resume. Such motion, including the re-
27 quired statement, shall be recorded in the minutes of the meeting and
28 shall be maintained as a part of the permanent records of the body or
29 agency. Discussion during the closed or executive meeting shall be limited
30 to those subjects stated in the motion.

31 (b) No subjects shall be discussed at any closed or executive meeting,
32 except the following:

- 33 (1) Personnel matters of nonelected personnel;
34 (2) consultation with an attorney for the body or agency which would
35 be deemed privileged in the attorney-client relationship;
36 (3) matters relating to employer-employee negotiations whether or
37 not in consultation with the representative or representatives of the body
38 or agency;
39 (4) confidential data relating to financial affairs or trade secrets of
40 corporations, partnerships, trusts, and individual proprietorships;
41 (5) matters relating to actions adversely or favorably affecting a per-
42 son as a student, patient or resident of a public institution, except that
43 any such person shall have the right to a public hearing if requested by

- 1 the person;
- 2 (6) preliminary discussions relating to the acquisition of real property;
- 3 (7) matters permitted to be discussed in a closed or executive meeting
- 4 pursuant to K.S.A. 74-8804 and amendments thereto;
- 5 (8) matters permitted to be discussed in a closed or executive meeting
- 6 pursuant to subsection (d)(1) of K.S.A. 38-1507 and amendments thereto
- 7 or subsection (e) of K.S.A. 38-1508 and amendments thereto;
- 8 (9) matters permitted to be discussed in a closed or executive meeting
- 9 pursuant to subsection (j) of K.S.A. 22a-243 and amendments thereto;
- 10 (10) matters permitted to be discussed in a closed or executive meet-
- 11 ing pursuant to subsection (e) of K.S.A. 44-596 and amendments thereto;
- 12 (11) matters permitted to be discussed in a closed or executive meet-
- 13 ing pursuant to subsection (g) of K.S.A. 39-7,119 and amendments
- 14 thereto;
- 15 (12) matters required to be discussed in a closed or executive meeting
- 16 pursuant to a tribal-state gaming compact;
- 17 (13) matters relating to security measures, if the discussion of such
- 18 matters at an open meeting would jeopardize such security measures,
- 19 that protect: (A) Systems, facilities or equipment used in the production,
- 20 transmission or distribution of energy, water or communications services;
- 21 (B) transportation and sewer or wastewater treatment systems, facilities
- 22 or equipment; (C) a public body or agency, public building or facility or
- 23 the information system of a public body or agency; or (D) private property
- 24 or persons, if the matter is submitted to the agency for purposes of this
- 25 paragraph. For purposes of this paragraph, security means measures that
- 26 protect against criminal acts intended to intimidate or coerce the civilian
- 27 population, influence government policy by intimidation or coercion or
- 28 to affect the operation of government by disruption of public services,
- 29 mass destruction, assassination or kidnapping. Security measures include,
- 30 but are not limited to, intelligence information, tactical plans, resource
- 31 deployment and vulnerability assessments;
- 32 (14) matters permitted to be discussed in a closed or executive meet-
- 33 ing pursuant to subsection (f) of K.S.A. 65-525, and amendments thereto;
- 34 (15) matters permitted to be discussed in a closed or executive meet-
- 35 ing pursuant to K.S.A. 2009 Supp. 75-7427, and amendments thereto;
- 36 ~~and~~
- 37 (16) matters permitted to be discussed in a closed or executive meet-
- 38 ing pursuant to K.S.A. 2009 Supp. 46-3801, and amendments thereto;
- 39 *and*
- 40 (17) *matters permitted to be discussed in a closed or executive meeting*
- 41 *pursuant to section 4, and amendments thereto.*
- 42 (c) No binding action shall be taken during closed or executive re-
- 43 cesses, and such recesses shall not be used as a subterfuge to defeat the

1 purposes of this act.

2 (d) (1) Any confidential records or information relating to security
3 measures provided or received under the provisions of subsection (b)(13),
4 shall not be subject to subpoena, discovery or other demand in any ad-
5 ministrative, criminal or civil action.

6 (2) (A) Except as otherwise provided by law, any confidential docu-
7 ments, records or reports relating to the parole board provided or re-
8 ceived under the provisions of subsection (b)(16) shall not be subject to
9 subpoena, discovery or other demand in any administrative, criminal or
10 civil action.

11 (B) Notwithstanding any other provision of law to the contrary, any
12 summary statement provided or received under the provisions of subsec-
13 tion (b)(16) shall not be subject to subpoena, discovery or other demand
14 in any administrative, criminal or civil action.

15 Sec. 12. K.S.A. 2009 Supp. 75-2973 and 75-4319 are hereby
16 repealed.

17 Sec. 13. This act shall take effect and be in force from and after its
18 publication in the statute book.