

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2087**

As Agreed to March 30, 2022

Brief*

HB 2087 would amend law related to the review of administrative rules and regulations. The bill would also make technical changes.

The bill would be in effect upon publication in the *Kansas Register*.

Economic Impact Statements

Current law requires, as part of the rules and regulations approval process, state agencies to provide an economic impact statement to the Director of the Budget (Director) that considers, among other things, the total annual implementation and compliance costs to businesses, local governments, or individuals; a determination of whether costs would be more than \$3.0 million over two years; and an estimate of such costs expressed as a single dollar figure.

The bill would require state agencies to include in such economic impact statement a determination of whether costs would be more than \$1.0 million over any two-year period from the effective date of the bill through June 30, 2024, or exceed \$3.0 million over any two-year period on and after July 1, 2024.

Under current law, the Director is also required to make an independent determination regarding implementation and compliance costs and may approve or disapprove of a rule and regulation based upon the accuracy of the economic impact statement, or a determination that implementation and compliance costs will be more than \$3.0 million over two years. Additionally, if it is determined that such costs would exceed \$3.0 million, the state agency must also conduct a public hearing.

The bill would remove the requirement that the Director make an independent determination of implementation and compliance costs, would remove provisions requiring the Director to approve all rules and regulations, and would specify the Director would not be required to review or approve rules and regulations if the submitting agency determines such rules and regulations would not result in costs of more than \$1.0 million over two years from the effective date of the bill through June 30, 2024, or more than \$3.0 million over two years on and

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after July 1, 2024. Agencies would still be required to provide the Director with a copy of the economic impact statement for each rule and regulation submitted for approval.

The bill would require the Director to approve a proposed rule and regulation with determined costs that exceed \$1.0 million from the effective date of the bill through June 30, 2024, or exceed \$3.0 million on and after July 1, 2024, over any two-year period if:

- The agency has held a public hearing;
- The agency found the costs of the proposed rule and regulation have been accurately determined and are necessary for legislative intent; and
- The Director concurs with the agency's findings and approves the economic impact statement after an independent analysis.

The bill would also specify that the implementation and compliance costs would be those costs reasonably expected to be incurred and shall be separately identified for the affected businesses, local government units, and members of the public. The bill would further specify that in its determination of costs, the agency should not account for any actual or estimated cost savings realized by those entities.

The bill would further state, if a state agency is proposing a rule and regulation because of a federal mandate, the state agency would still be required to provide an economic impact statement, but the Director would not be required to review or approve the proposed rule and regulation, regardless of estimated implementation and compliance costs. The bill would specify, for rules and regulations proposed due to a federal mandate, compliance costs would be calculated from the effective date of the rule and regulation.

The bill would require the Director to submit a report to the Legislature or the Joint Committee on Administrative Rules and Regulations upon approval of a rule or regulation with costs determined to be greater than \$1.0 million from the effective date of the bill through June 30, 2024, or greater than \$3.0 million on and after July 1, 2024, over any two-year period.

Order of Review of Proposed Rules and Regulations

Current law requires proposed rules and regulations to be submitted to the Director before being submitted to the Secretary of Administration and Attorney General. The bill would amend the order of submission to require state agencies send proposed rules and regulations directly to the Secretary of Administration and Attorney General before submission to the Director.

Legislative Post Audit Study

Current law requires the Legislative Post Audit Committee, in 2021, to direct the Legislative Division of Post Audit to conduct an audit to study:

- The accuracy of economic impact statements submitted with proposed rules and regulations by state agencies for the immediately preceding seven years;

- The impact the review by the Director has had on the accuracy of such economic impact statements; and
- Whether the \$1.0 million cost figure is the appropriate amount of economic impact to trigger the public hearing procedure required in continuing law.

The bill would change the year of the required audit to 2026.

Reporting Requirements

The bill would require each state agency that has adopted rules and regulations to submit a report to the Joint Committee on Administrative Rules and Regulations (JCARR) on or before July 15 of the year specified in the bill for the agency. The bill would require the report to include:

- A summary of the agency's review and evaluation of its adopted rules and regulations; and
- A statement for each rule and regulation as to whether it is necessary for the implementation and administration of state law, or if it may be revoked subject to the alternative revocation procedure the bill would create.

Reporting Years

The bill would require each agency that has adopted rules and regulations to submit a report based upon the following schedule:

- For 2023 and every fifth year thereafter, Agency Numbers 1 through 23;
- For 2024 and every fifth year thereafter, Agency Numbers 24 through 51;
- For 2025 and every fifth year thereafter, Agency Numbers 53 through 82;
- For 2026 and every fifth year thereafter, Agency Numbers 84 through 107; and
- For 2027 and every fifth year thereafter, Agency Numbers 108 through 133.

[*Note:* Agency numbers are used above as a substitute for the agency names listed in the bill. Agency numbers are assigned by the Office of the Secretary of State when an agency promulgates rules and regulations for the first time.]

The bill would require any state agency not listed in the bill that adopts rules and regulations having an effective date on or after July 1, 2022, to submit a report on or before July 15 of the fifth year after the effective date, and every fifth year thereafter.

Public Purpose, Supplemental to Filing Act

The bill would state that rules and regulations may be adopted or maintained by an agency only if it serves an identifiable public purpose to support state law, and may be no broader than is necessary to meet such public purpose.

The new section of the bill relating to reporting requirements, reporting years, and the public purpose would be part of and supplemental to the Rules and Regulations Filing Act (Filing Act).

Alternative Revocation Procedure

The bill would amend the Filing Act to authorize a state agency, having identified any rule and regulation as being revocable in its report to the JCARR, to revoke the rule and regulation by filing notice of revocation with the Office of the Secretary of State (Secretary) and having the notice published in the *Kansas Register*. The bill would prohibit the notice of revocation from containing any new rules and regulations, or any amendments to rules and regulations.

Before filing the notice of revocation with the Secretary, the agency would be required to:

- Hold a public hearing on the proposed revocation, if one is requested in writing by a member of the public;
- Submit the notice of revocation to the Attorney General for review and approval, in accordance with continuing law; and
- Submit the notice of revocation to the JCARR, and appear before the JCARR at a hearing on the proposed revocation, if one is requested by the chairperson.

The revocation of a rule and regulation would be effective 15 days following the date the notice is published in the *Kansas Register*.

The bill would also amend the Filing Act to except rules and regulations revoked under the alternative revocation procedure from the JCARR review requirements required by continuing law.

Conference Committee Action

The Conference Committee agreed to amend HB 2087, as amended by the Senate Committee on Ways and Means, to change the year of the study to be conducted by Legislative Post Audit on economic impact statements from 2023 to 2026. The Conference Committee also agreed to add the contents of Sub. for SB 34, as amended by the House Committee on Federal and State Affairs, to HB 2087, as amended by the Conference Committee.

Background

The Conference Committee added the contents of Sub. for SB 34, as amended by the House Committee on Federal and State Affairs, to HB 2087, as amended by the Conference Committee.

HB 2087 (Review of Administrative Rules and Regulations by the Director of the Budget)

The bill was introduced on January 14, 2021, by the House Committee on Federal and State Affairs at the request of Representative Barker.

[*Note:* HB 2087 contains provisions similar to those of 2020 HB 2411, as amended by the House Committee on Federal and State Affairs.]

House Committee on Federal and State Affairs

In the House Committee hearing on February 1, 2021, **proponent** testimony was provided by Representative Highland; the Director; and a representative of the Kansas Department of Wildlife, Parks and Tourism (KDWPT). The proponents indicated the bill would help streamline the rules and regulations approval process and would lighten the administrative workload of the Director, as the economic impact statements of most rules and regulations submitted include estimated costs well below the \$3.0 million threshold in statute.

Neutral testimony was provided by a representative of the Kansas Chamber of Commerce, who stated concern that the current rules and regulations process delays implementation and that changes to the process could make it more efficient.

Written-only neutral testimony was provided by a representative of the Kansas Agribusiness Retailers Association, Kansas Grain and Feed Association, and Renew Kansas Biofuels Association and representatives of the Kansas Cooperative Council and the Office of the Secretary of State.

No **opponent** testimony was provided.

The House Committee amended the bill to change the date of the required audit by the Legislative Division of Post Audit from 2021 to 2023.

Senate Committee on Ways and Means

In the Senate Committee hearing on March 24, 2021, **proponent** testimony was provided by the Director and a representative of KDWPT. Written-only proponent testimony was provided by Representative Highland and representatives of the Office of the Secretary of State and the Kansas State Board of Healing Arts.

Neutral testimony was provided by a representative of the Kansas Agribusiness Retailers Association, Kansas Grain and Feed Association, and Renew Kansas Biofuels Association. The conferee stated decreasing the review threshold from \$3.0 million to \$1.0 million would not significantly impact the Director's workload and would increase transparency of the fiscal impact

of proposed regulations. Written-only neutral testimony was also provided by a representative of the Kansas Cooperative Council.

No **opponent** testimony was provided.

The Senate Committee amended the bill to:

- Require the economic impact statement to include a determination of whether the costs will exceed \$1.0 million over any two-year period from the effective date of the bill through June 30, 2024, or exceed \$3.0 million over any two-year period on and after July 1, 2024;
- Direct the Legislative Division of Post Audit to conduct an audit to study whether the \$1.0 million cost figure is the appropriate amount of economic impact to trigger the public hearing procedure;
- Require an agency to provide a copy of the economic impact statement to the Director if the agency determines a proposed rule and regulation submitted or resubmitted by the agency will not result in costs of more than \$1.0 million from the effect date of the bill through June 30, 2024, or more than \$3.0 million on and after July 1, 2024, over any two-year period;
- Require the Director to review a proposed rule or regulation if the agency determines the proposed rule or regulation will result in costs of more than \$1.0 million from the effective date of the bill through June 30, 2024, or more than \$3.0 million on and after July 1, 2024, over any two-year period; and
- Require the Director to submit a report to the Legislature or the JCARR upon approval of a rule or regulation with costs determined to be greater than \$1.0 million from the effective date of the bill through June 30, 2024, or greater than \$3.0 million on and after July 1, 2024, over any two-year period.

SB 34 (Five-Year Review of Administrative Rules and Regulations)

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Hilderbrand.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing on January 26, 2021, Senator Hilderbrand and representatives from Americans for Prosperity and the Kansas Chamber of Commerce provided **proponent** testimony. The proponents indicated the bill would increase legislative oversight, would require each rule and regulation to have a definable benefit, and would reduce burdensome regulations.

A representative of United WE provided written-only proponent testimony.

Representatives of the Kansas Department of Wildlife, Parks and Tourism, the Kansas State Board of Healing Arts, the Kansas State Board of Pharmacy, and the Office of the Secretary of State provided neutral testimony, indicating the bill has a well-intentioned goal of increasing transparency, but would create logistical and fiscal concerns for the agencies.

Representatives of the Kansas State Board of Nursing and the League of Kansas Municipalities provided written-only neutral testimony.

Opponent testimony was provided by representatives of the Kansas Commission on Peace Officers' Standards and Training, the Kansas Livestock Association, and the Kansas State Board of Technical Professions. The opponents indicated that enactment of the bill would have a burdensome impact on law enforcement certification and could result in good regulations sunseting, and that the process should be left to the rulemaking bodies already created by the Legislature.

Representatives of the American Institute for Architects and the Kansas Farm Bureau provided written-only opponent testimony.

The Senate Committee removed the contents of SB 34 as introduced, which would have sunset any administrative rules and regulations five years after adoption, unless extended by the Legislature; inserted substitute language into the bill; and recommended a substitute bill be passed.

House Committee on Federal and State Affairs

In the House Committee hearing on March 9, 2022, **proponent** testimony was provided by representatives of Americans for Prosperity, the Kansas Agribusiness Retailers Association, Kansas Chamber of Commerce, Kansas Grain and Feed Association, and Renew Kansas Biofuels Association. The proponents stated the substitute bill addresses concerns raised with the initial bill about potential unwanted sunseting of necessary regulations, and that the bill allows for expedited repeal of regulations an agency finds to be no longer necessary. Written-only proponent testimony was provided by representatives of the Kansas Cooperative Council and Kansas Livestock Association.

Written-only neutral testimony was provided by representatives of the Kansas Behavioral Sciences Regulatory Board and the Mercatus Center.

A representative of the Kansas Department of Health and Environment (KDHE) provided **opponent** testimony, stating the bill is unclear on its scope and could require KDHE to hire between 20 to 53 FTE positions to comply with the bill.

The House Committee amended the bill to be effective upon publication in the *Kansas Register*.

Fiscal Information

HB 2087 (Review of Administrative Rules and Regulations by the Director of the Budget)

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Secretary of State and Department of Administration state enactment of the bill would have no fiscal effect and could be implemented within the current budgetary resources.

The Director of the Budget indicates the changes in the bill would allow for a more efficient process for the State's rules and regulations process, and would reduce the Division of the Budget's staff time for the current requirement of processing and stamping each page of every proposed rule and regulation, regardless of the proposed rule and regulation's fiscal effect. The Office of the Attorney General indicates the bill would not change the agency's review process and would have no fiscal effect.

SB 34 (Five-Year Review of Administrative Rules and Regulations)

According to the fiscal note prepared by the Division of the Budget on the substitute bill, agencies do not anticipate enactment of the bill would have a significant effect on state agencies. Any fiscal effect associated with Sub. for SB 34 is not reflected in *The FY 2023 Governor's Budget Report*.

Administrative rules and regulations; JCARR; review of rules and regulations; reporting requirements; Director of the Budget; Secretary of Administration; Attorney General; Legislative Division of Post Audit; economic impact statement

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