

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2087

As Amended by Senate Committee on Ways
and Means

Brief*

HB 2087, as amended, would amend law related to the review of administrative rules and regulations.

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 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 \$3,000,000 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 \$1,000,000 over any two year period from the effective date of the bill through June 30, 2024 or exceed \$3,000,000 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

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

and regulation based upon the accuracy of the economic impact statement, or a determination that implementation and compliance costs will be more than \$3,000,000 over two years. Additionally, if it is determined that such costs would be over \$3,000,000, 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 \$1,000,000 over two years from the effective date of the bill through June 30, 2024 or more than \$3,000,000 over two years on and after July 1, 2024. Agencies would still be required to provide the Director with a copy of the economic impact statement for every rule and regulation submitted for approval.

The bill would require the Director to approve a proposed rule and regulation with determined costs that exceed \$1,000,000 from the effective date of the bill through June 30, 2024 or exceed \$3,000,000 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 \$1,000,000 from the effective date of the bill through June 30, 2024 or greater than \$3,000,000 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 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

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 \$1,000,000 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 2023.

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

Background

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, **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 \$3,000,000 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.

Senate Committee on Ways and Means

In the Senate Committee hearing, **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 \$3,000,000 to \$1,000,000 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 \$1,000,000 over any two-year period from the effective date of the bill through June 30, 2024, or exceed \$3,000,000 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 \$1,000,000 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 \$1,000,000 from the effect date of the bill through June 30, 2024, or more than \$3,000,000 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 \$1,000,000 from the effective date of the bill

through June 30, 2024, or more than \$3,000,000 on and after July 1, 2024, over any two-year period; and

- 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 \$1,000,000 from the effective date of the bill through June 30, 2024, or greater than \$3,000,000 on and after July 1, 2024, over any two-year period.

Fiscal Information

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.

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