

Review of Administrative Rules and Regulations; HB 2087

HB 2087 amends law related to the review of administrative rules and regulations.

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 \$3.0 million over two years; and an estimate of such costs expressed as a single dollar figure.

The bill requires 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 are more than \$3.0 million, the state agency must also conduct a public hearing.

The bill removes the requirement that the Director make an independent determination of implementation and compliance costs, removes provisions requiring the Director to approve all rules and regulations, and specifies the Director is not 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 after July 1, 2024. Agencies continue to be required to provide the Director with a copy of the economic impact statement for every rule and regulation submitted for approval.

The bill requires 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 also specifies that the implementation and compliance costs are 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 further specifies that in its determination of costs, the agency should not account for any actual or estimated cost savings realized by those entities.

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

The bill requires the Director to submit a report to the Legislature or the Joint Committee on Administrative Rules and Regulations (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.

Order 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 amends the order of submission to require state agencies to send proposed rules and regulations directly to the Secretary of Administration and Attorney General before submission to the Director.

Legislative Post Audit

The bill changes, from 2021 to 2026, the year in which the Legislative Post Audit Committee must 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 or \$3.0 million cost figure is the appropriate amount of economic impact to trigger the public hearing procedure required in continuing law.

Reporting Requirements

The bill requires each state agency that has adopted rules and regulations to submit a report to the JCARR on or before July 15 of the year specified in the bill for the agency. The report must 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 whether it may be revoked subject to the alternative revocation procedure created by the bill.

Reporting Years

The bill specifies that each agency that has adopted rules and regulations shall submit a report based upon the following schedule:

- For 2023 and every fifth year thereafter, agencies with numbers 1 through 23;
- For 2024 and every fifth year thereafter, agencies with numbers 24 through 51;
- For 2025 and every fifth year thereafter, agencies with numbers 53 through 82;
- For 2026 and every fifth year thereafter, agencies with numbers 84 through 107;
and
- For 2027 and every fifth year thereafter, agencies with 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 requires 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 Rules and Regulations Filing Act

The bill states 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 is made part of and supplemental to the Rules and Regulations Filing Act (Filing Act).

Alternative Revocation Procedure

The bill amends the Filing Act to authorize a state agency, having identified any rule and regulation as being revocable in its report to 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 prohibits 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 is 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 JCARR, and appear before the Committee at a hearing on the proposed revocation, if requested by the chairperson.

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

The bill also amends the Filing Act to except rules and regulations revoked under the alternative revocation procedure from the JCARR review requirements in continuing law.